

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



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*Commissioner for Taking Affidavits (or as may be)*

**GREGORY SHEPPARD**

**ABORIGINAL TITLE CLAIM TO  
WATER WITHIN THE TRADITIONAL  
LANDS OF THE MISSISSAUGAS OF  
THE NEW CREDIT**



**for  
THE MISSISSAUGAS OF THE NEW CREDIT**

**March 2015**

# ABORIGINAL TITLE CLAIM TO WATER WITHIN THE TRADITIONAL LANDS OF THE MISSISSAUGAS OF THE NEW CREDIT

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## **Methodology**

The Crown has an obligation to consult with Aboriginal peoples where it contemplates decisions or actions that may adversely impact either asserted or established Aboriginal or treaty rights. The purpose of this project was to examine pre-Confederation Upper Canada land cessions to which the Mississaugas of the Credit (antecedents of the Mississaugas of the New Credit First Nation (MNC)) were signatories in order to determine whether any waters were specifically included or excluded from those cessions, in order to assist the MNC with the documentation of treaty rights with respect to water resources.

At the outset Joan Holmes & Associates (JHA) compiled a list of the following eleven land cessions and agreements dating from 1781 to 1820 for review:

- The Mississauga Cession at Niagara – 1781
- Between the Lakes Purchase (Surrender No. 3) – 1784
- The Toronto Purchase – 1787
- The Gunshot Treaty – 1788
- Renewal of the Between the Lakes Purchase – 1792
- Brant Tract – 1797
- The Toronto Purchase – 1805
- The Head of the Lake Purchase – 1806
- The Huron Tract Provisional Agreement – 1819
- The Ajetance Purchase – 1818
- Surrenders No. 22 and No. 23 – 1820

From those cessions, with the aid of the text of the treaties as well as maps, we compiled a list of key words/waterways to guide us in our research. This list includes Burlington Bay/Beach, the Bay of Quinte, Catfish Creek, Chipewigh River, River Etobicoke, Head of Lake Ontario (Head of the Lake), Humber River, Lamabinicon (small creek), Lake Erie, Lac La Claie, Lake Huron, Niagara, Rice Lake, River Credit, River La Tranche, River St. Claire, River Thames, Rouge River/River Nen, Sixteen Mile Creek, Twelve Mile Creek, Waghquata, and Mississauga/Messissague Point.

JHA developed a detailed research plan and identified wide-ranging historical sources for examination. The focus of our research included searches for pre-surrender discussions between the Crown and the Mississaugas and/or records of council meetings which might shed light on the understanding of both the Crown and the Mississaugas of the land and resources included or excluded in the cessions. For example, according to the terms of Surrender No. 13A, concluded in 1805, the Mississaugas reserved the right to fish in the Twelve Mile Creek, the Sixteen Mile Creek, the Etobicoke River, and retained land on the

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River Credit one mile on each side of the river. We also examined survey records, including survey instructions, field notes, and diaries to determine if there were any directions regarding either the inclusion/exclusion of waters, water beds, and/or fishing resources in post-surrender survey instructions. We also attempted to document the importance of water resources to the MNC for social and economic purposes such as transportation, fisheries, harvesting, hunting for water fowl, and gathering of wild rice. In addition we attempted to document actions of both the Crown—by instruction, directives, and/or legislation—and the Mississaugas to protect those resources.

Our extensive research effort culminated in the review of over 150 record sources consisting of collections of primary historical documents as well as published primary and secondary monographs held at the Library and Archives of Canada (LAC), the Archives of Ontario (AO), and the Toronto Reference Library. JHA researchers also searched the on-line holdings of repositories including the Archives of the City of Toronto and the University of Toronto cartographical collection. In addition to the above, numerous Finding Aids at the above stated repositories were consulted which aided in the identification of potentially relevant files in various collections. Finally, several reports, indices and document/map collections completed by Joan Holmes & Associates for the MNC were reviewed.

## Chapter One: Background

The shores along the Great Lakes attracted First Nation settlement and the vast expanse of lake waters eased transport and enhanced trade opportunities. At the time of first contact with Europeans, there were approximately 34 First Nations settled around the Great Lakes.<sup>1</sup> First Nations were agreeable to allow other First Nations as well as Europeans to utilize fish resources and travel on the waterways. However, in regard to European land purchases, First Nations “showed no inclination to give up or sell the lakes which were central to their existence.”<sup>2</sup> Victor Lytwyn, historical geographer, argues that land surrenders negotiated with Great Lakes First Nations during the 18th and 19th centuries did not cover the water nor aquatic resources.<sup>3</sup>

Early Jesuit records profile the importance of fisheries among the Ojibwa of the Great Lakes.<sup>4</sup> In 1647-48, the Jesuits reported that Algonquian tribes occupying lands north of the Huron Indians lived off hunting and fishing and exercised seasonal subsistence, staying at one place if the fish were plentiful.<sup>5</sup> Donald B. Smith, historian, in his article about the Algonquian (Ojibwa) Indians known as the Mississaugas, notes that by moving into southern areas of Ontario during the 17<sup>th</sup> century they obtained new hunting and fishing grounds:

By coming south the Ojibwa acquired new hunting and fishing grounds, and many obtained a new name. In 1640, the Jesuits first recorded the term Mississauga, or rather “oumisagai,” as the name of an Algonkin band near the Mississagi River on the northwestern shore of Lake Huron. The French, and later the English, for unknown reasons applied this name to all the Ojibwa settling on the north shore of Lake Ontario.<sup>6</sup>

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<sup>1</sup> Victor P. Lytwyn, “Waterworld: The Aquatic Territory of the Great Lakes First Nations,” in *Gin Das Winan Documenting Aboriginal History in Ontario*, Occasional Papers No. 2, Eds. Dale Standen and David McNab (Toronto: Champlain Society, 1996), p. 14 [Doc. 155].

<sup>2</sup> Victor P. Lytwyn, “Waterworld ...,” 1996, p. 15 [Doc. 155].

<sup>3</sup> Victor P. Lytwyn, “Waterworld ...,” 1996, p. 15 [Doc. 155].

<sup>4</sup> Victor P. Lytwyn, “Ojibwa and Ottawa Fisheries around Manitoulin Island: Historical and Geographical Perspectives on Aboriginal and Treaty Fishing Rights,” *Native Studies Review* 6:1 (1990), p. 5 [Doc. 152].

<sup>5</sup> E. S. Rogers, “Southeastern Ojibwa,” in *Handbook of North American Indians*, Volume 15 – Northeast, Ed. Bruce C. Trigger (Washington: Smithsonian Institution, 1978), p. 760 [Doc. 145].

<sup>6</sup> Donald B. Smith, “The Dispossession of the Mississauga Indians: a Missing Chapter in the Early History of Upper Canada,” *Ontario History*, Vol. LXXIII, No. 2 (June 1981), p. 69 [Doc. 146].

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Charles Le Roy Basqueville de La Potherie, in his late 17<sup>th</sup> century account entitled *History of the Savage Peoples who are allies of New France*, described the Sauteurs<sup>7</sup>, their territory, and the importance of fisheries to them and the “Missisakis” people:

The Sauteurs, who live beyond the Missisakis, take their name from a fall of water which forms the discharge of Lake Superior into Lake Huron, through extensive rapids of which the ebullitions [*sic*] are extremely violent. These people are very skillful in a fishery which they carry on there, of fish which are white, and as large as salmon. The savages surmount all those terrible cascades, into which they cast a net which resembles a bag a little more than half an ell in width ... It is only they the Missisakis, and the Nepiciriniens who can practice this fishery, although some Frenchmen imitate them.<sup>8</sup>

Jesuit priests working amongst the Upper Algonquins or Anishnabi at the Sainte Marie du Sault mission identified various Indian nations in the area, noting that the 150 Sauteurs united with three other nations numbering more than 550 people.<sup>9</sup> The priests claimed there were seven other nations dependent on the Sault Ste. Marie mission including the Achiligouiane, the Amicoures, and the Mississague, all engaged in fishing in the rapids and hunting on the islands around Lake Huron.<sup>10</sup> One priest, Father Louys Andre, evidently ministered to the Mississague Indians who lived on the banks of a river, rich in sturgeon, some 30 leagues from the Sault.<sup>11</sup>

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<sup>7</sup> French term for Ojibwa Indians residing along portions of the north shore of Lakes Huron and Superior.

<sup>8</sup> Claude Charles Le Roy, Basqueville de La Potherie, “History of the Savage Peoples who are allies of New France,” ca. 1660-1701, in Emma Blair, ed., *The Indian Tribes of the Upper Mississippi Valley and Region of the Great Lakes: as described by Nicolas Perrot, French commandant in the Northwest; Bacqueville de la Potherie, French Royal Commissioner to Canada; Morrell Marston, American army officer; and Thomas Forsyth, United States Agent at Fort Armstrong*, Vol. I (Lincoln and London: University of Nebraska Press, 1996), pp. 275-277 [Doc. 1].

<sup>9</sup> Father Dablon, Superior, Sainte Marie de Sault Mission, to Reverend Father François le Mercier, Superior General, Relation of 1669-70, in Reuben Gold Thwaites, ed., *The Jesuit Relations and Allied Documents: Travels and Explorations of the Jesuit Missionaries in New France, 1610-1791*, Volume 54 [Iroquois, Ottawa, Lower Canada, 1669-1671] (Cleveland: The Burrows Brothers Company, Publishers, 1899), p. 133 [Doc. 2].

<sup>10</sup> Father Dablon, Superior, Sainte Marie de Sault Mission, to Reverend Father François le Mercier, Superior General, Relation of 1669-70, in Reuben Gold Thwaites, ed., *The Jesuit Relations and Allied Documents*, Volume 54, p. 131 [Doc. 2].

<sup>11</sup> Father Dablon, Superior, Sainte Marie de Sault Mission, to Reverend Father François le Mercier, Superior General, Relation of 1669-70, in Reuben Gold Thwaites, ed., *The Jesuit Relations and Allied Documents*, Volume 54, pp. 131 & 133 [Doc. 2].



## **Mississaugas Move into Southwestern Ontario**

Chief George Copway, tracing the history of his Ojibway nation, stated that the Ojibway, “or those now called Messasaugans [*sic*], settled in Canada West after the years 1634 and 1635. They came over from St. Marie’s River to Lake Huron.”<sup>12</sup> Chief Copway explained that the Mississaugas began to replace the Iroquois in the lands on the northern shore and inland of Lake Ontario during the latter decades of the seventeenth century.<sup>13</sup> The chief noted that via conquest, the Mississaugas gained control of the easternmost great lakes: “At one time the easternmost lake of the Ojibways was Huron. But they have, by their prowess, gained the waters of Ontario and Erie.”<sup>14</sup>

Helen Tanner, anthropologist, remarked that in the late 1600s the Mississaugas moved into what is now eastern and southern Ontario. They established villages along the north shore of Lake Ontario and adjacent waterways, some of which were formerly occupied by elements of the Iroquois Confederacy.<sup>15</sup> These Mississaugas village sites included Ganneous and Quinte on the Bay of Quinte, Quintio at Rice Lake, Ganaraska on Lake Ontario close to present-day Port Hope, and Teiaiaigon and Ganestiquiaigon on Lake Ontario in the present-day Toronto area. There were also a number of Mississaugas villages on the west end of the lake.<sup>16</sup>

Reverend Peter Jones or Kahkewaquonaby, a Mississaugas chief and a minister, in his book *History of the Ojebway Indians*, states that the Ojibwa who had moved into Southwestern Ontario had formerly conquered the Huron Indians and occupied their lands along the shores of Lakes Superior and Huron:

The different tribes of the Ojebway nation who now inhabit the shores of Lakes Ontario, Erie, Simcoe, &c., have a tradition amongst them, that they originally came from the great western

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<sup>12</sup> George Copway, *The Traditional History and Characteristic Sketches of the Ojibway Nation* (Toronto: Coles Publishing Company, 1972 [reprint of 1850 edition by Charles Gilpin, London]), p. 20 [Doc. 138].

<sup>13</sup> Percy J. Robinson, *Toronto During the French Regime: A History of the Toronto Region from Brûlé to Simcoe, 1615-1793*, 2<sup>nd</sup> ed. (Toronto: University of Toronto Press, 1965), pp. 58-59 [Doc. 144]. Note: Percy James Robinson was a teacher, historian, and scholar of Native languages in Ontario. The Robinson fonds, held at the Archives of Ontario, consist of records relating to Robinson’s historical research. Robinson published *Toronto During the French Regime* in 1933. The historical research he conducted for the preparation of that paper, including the archival documents he collected and drafts of various papers, are included in the collection.

<sup>14</sup> George Copway, *The Traditional History and Characteristic Sketches of the Ojibway Nation*, 1850, p. 3 [Doc. 138].

<sup>15</sup> Helen Hornbeck Tanner, *Atlas of Great Lakes Indian History* (Norman and London: University of Oklahoma Press, 1987), p. 34 [Doc. 150].

<sup>16</sup> Helen Hornbeck Tanner, *Atlas of Great Lakes Indian History*, 1987, Map 6, p. 33 [Doc. 150].

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lakes, Huron and Superior. The former tribes who resided on the shores of these lakes called *Nahdooways*\* or *Hurons* whom the Ojebways dispossessed of their country by conquest....<sup>17</sup>

E. S. Rogers, for his part, believed that the Mississaugas living at the mouth of the Missisagi River on Lake Huron moved southward to the Lake Ontario area sometime between 1690 and 1710, dispersing into two groups settling in the western and eastern parts of the lake.<sup>18</sup>

### **Importance of Lake Ontario waterways**

One large group of Mississaugas occupied lands in the Trent River Valley and eastward along Lake Ontario and the St. Lawrence River. A second group established themselves in the area between present-day Toronto and Lake Erie. These Indians considered the Credit River as a favourite area of their ancestors and the Mississaugas who settled on the Credit River and “at the western end of the lake became known collectively as the Credit River Indians.”<sup>19</sup> This latter group of Mississaugas “are the direct ancestors of the present Mississaugas of the New Credit First Nation.”<sup>20</sup>

The historical documents indicate that as of 1700, Mississaugas Indians occupied settlements along the north shore of Lake Ontario. Two of the Mississaugas villages were located at the end of two trails leading from the Holland River to Lake Ontario. These two villages were respectively Teiaiaigon (Toronto) and Ganestiquiaigon (on the Rouge River) on Lake Ontario:

... there were two trails from the Holland to Lake Ontario; one from the east branch to Ganatsekwyagon at the mouth of the Rouge, and the other from the west branch to Teiaiaigon at the mouth of the Humber.<sup>21</sup>

Percy Robinson, historian, stated that the Iroquois withdrew from the Lake Ontario north shore and by 1700, “the Mississaugas were established in the western edge of the lake; their villages, of which the most important was at

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<sup>17</sup> Peter Jones (Kahkewaquonaby), *History of the Ojibwa Indians: with especial reference to their Conversion to Christianity* (London: A. W. Bennett, 1861), p. 32 [Doc. 141].

<sup>18</sup> E. S. Rogers, “Southeastern Ojibwa,” in *Handbook of North American Indians*, Volume 15, 1978, p. 761 [Doc. 145].

<sup>19</sup> Donald B. Smith, *Sacred Feathers: The Reverend Peter Jones (Kahkewaquonaby) and the Mississauga Indians* (Toronto and London: University of Toronto Press, 1987), p. 21 [Doc. 149].

<sup>20</sup> Praxis Research Associates, “The History of the Mississaugas of the New Credit First Nation,” undated, p. 6 [Doc. 158].

<sup>21</sup> Percy J. Robinson, *Toronto During the French Regime ...*, 1965, p. 51 [Doc. 144].

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Toronto, extended from the mouth of the Rouge to the mouth of the Niagara. They were thus in control of the approaches to Mackinac and of the immensely valuable trade there.”<sup>22</sup>

The newly arrived Mississaugas Indians called the Credit River the ‘Missinnihe’ or ‘trusting creek,’ as traders issued goods in advance for the next year’s furs.<sup>23</sup> The Mississaugas also gathered at the mouth of the Credit River as it was a good source of salmon.<sup>24</sup> In 1861, Peter Jones identified several rivers running into Lake Ontario where salmon ran – the Credit, Nappane, Black, Oswego, and Genesee Rivers.<sup>25</sup> An 1800 map indicates important salmon spawning waterways that flowed into Lake Ontario.<sup>26</sup>

The importance of waterways to the Mississaugas people is reflected in early 18<sup>th</sup> century French records that place the Mississaugas along the shore at the Bay of Quinte, the Humber River, the head of Lake Ontario, and at Matchedash Bay.<sup>27</sup> A 1736 census of the French-allied Indians included 120 “itinerant” Mississaugas from around Lake Ontario, 50 Mississaugas from the area of Detroit (Lake St. Clair), a village at the mouth of Lake Huron inhabited by about 60 Mississaugas, and about 15 Mississaugas along Lake Ontario between Quinte and Toronto.<sup>28</sup> The census document revealed that on Lake Ontario, “There are no more Iroquois settled ... The Mississagués are dispersed along this lake, some at Kenté, others at the River Toronto, and finally at the head of the Lake, to the number of one hundred and fifty in all, and at Matchedash. The principal tribe is that of the Crane.”<sup>29</sup> The Mississaugas Indians were now living all along the Lake Ontario shore from the Bay of Kente (Quinte) west to the head of the lake.

<sup>22</sup> Percy J. Robinson, *Toronto During the French Regime...*, 1965, p. 62 [Doc. 144].

<sup>23</sup> Donald B. Smith, “The Dispossession of the Mississauga Indians: a Missing Chapter in the Early History of Upper Canada,” *Ontario History*, Vol. 73, No. 2 (June 1981), p. 154 [Doc. 146].

<sup>24</sup> Donald B. Smith, *Sacred Feathers: The Reverend Peter Jones (Kahkewaquonaby) and the Mississauga Indians*, 1987, p. 8 [Doc. 149].

<sup>25</sup> Peter Jones (Kahkewaquonaby), *History of the Ojibwa Indians ...*, 1861, p. 49 [Doc. 141].

<sup>26</sup> *A map of the province of Upper Canada describing all the new settlements, towns, townships, &c. with the countries adjacent, from Quebec to Lake Huron Compiled, at the Request of His Excellency Major General John G. Simcoe, First Lieutenant Governor [sic] by David William Smyth Esqr Surveyor General London, Published by W. Faden, Geographer to His Majesty and to H.R.H. Prince of Wales. Charing Cross, April 12th 1800* [Doc. 89].  
<http://yorkspace.library.yorku.ca/xmlui/handle/10315/20542>

<sup>27</sup> M. de La Chauvignerie, French Soldier, 1734, in Percy J. Robinson, *Toronto During the French Regime ...*, 1965, p. 64 [Doc. 144].

<sup>28</sup> Census, 1736 [Doc. 4]. LAC MG 1 Series C11A Vol. 66 Reel F-66 fol. 236-256v.

<sup>29</sup> “Enumeration of the Indian Tribes Connected with the Government of Canada; the Warriors and Armorial Bearings of Each Nation,” 1736, in E. B. Callaghan, ed., *The Documentary History of the State of New York*, Volume I (Elibron Classics, Adamant Media Corporation, 2003 [reprint of 1849 edition by Weed, Parsons & Co., Albany]), pp. 15-26 [Doc. 3].

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On May 20, 1750, French soldiers arrived at the present-day Toronto area to construct the small Fort Toronto (replaced shortly thereafter by the larger Fort Rouille). Percy Robinson notes that a Seneca village (Teiaiaagon) in this area no longer existed as these Indians had been displaced by Mississaugas several decades earlier:

... but there was a village of Mississaugas somewhere near the mouth of the Humber ... It is likely that the Mississauga at Toronto, which is shown on the Johnson map of 1771, was either on Baby Point or on the west bank of the Humber above the Old Mill.<sup>30</sup>

In 1762, Mississaugas were amongst the assembly of seven to eight hundred Western Indians gathered at Cataraqui (Kingston).<sup>31</sup> Sir William Johnson wrote to Major General Jeffrey Amherst and discussed the duties of British Indian agents. He observed that:

...it will be a necessary to observe that Cadarachqui (which was always a place of Considerable resort for the Inds.) is now a place of Genl. rendezvous where not only the Neighbouring Mississagas, Chippawaes &ca. who are very numerous, but many other Nats. spend a great part of the year fishing & hunting and also hold several Meetings there, which it will make it necessary to visit that country often (amongst the other parts ) for the preserving peace & preventing any ill designs.<sup>32</sup>

### **British views prior to the 1763 Royal Proclamation**

Internationally, the 1763 Treaty of Paris raised the question of British governance of the newly acquired territory of Canada. In May of 1763, Lord Egremont, Secretary of State for the Southern Department, asked the Lords of Trade to consider the treaty with a view to commercial profit and security.<sup>33</sup> With regard to the question of security, Egremont considered:

<sup>30</sup> Percy J. Robinson, *Toronto During the French Regime ...*, 1965, p. 100 [Doc. 144].

<sup>31</sup> Daniel Claus, Deputy Superintendent of Indian Affairs, Montreal, to Sir William Johnson, Superintendent of Indian Affairs, June 2, 1762, in James Sullivan, ed., *The Papers of Sir William Johnson*, Volume III (Albany: The University of the State of New York, 1921), pp. 751-754 [Doc. 6].

<sup>32</sup> Sir William Johnson, Superintendent of Indian Affairs, to Major General Jeffrey Amherst, September 5, 1762, in James Sullivan, ed., *The Papers of Sir William Johnson*, Volume III, pp. 876-877 [Doc. 8].

<sup>33</sup> Earl of Egremont to the Lords of Trade, May 5, 1763, in Adam Shortt and Arthur G. Doughty, eds., *Documents Relating to the Constitutional History of Canada 1759-1791*, 2<sup>nd</sup> ed., Part I (Ottawa: J. de L. Taché, King's Printer, 1918), p. 127 [Doc. 10].

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... it may become necessary to erect some Forts in the Indian Country, with their Consent, yet his Majesty's Justice & Moderation inclines Him to adopt the more eligible Method of conciliating the Minds of the Indians by the Mildness of His Government, by protecting their Persons & Property & securing to them all the Possessions, Rights & Priviledges they have hitherto enjoyed & are entitled to, most cautiously guarding against any Invasion or Occupation of their Hunting Lands, the Possession of which is to be acquired by fair Purchase only;...<sup>34</sup>

The Lords of Trade were concerned that the Crown's title to Canada derived from conquest, while their title to the surrounding territory and sovereignty over the Indians had a different basis. The Lords of Trade wrote:

... Your Majesty's Title to it, had taken it's [*sic*] Rise, singly from the Cessions made by France, in the late Treaty, whereas **Your Majesty's Title to the Lakes and circumjacent Territory as well as to the Sovereignty over the Indian Tribes**, particularly of the Six Nations, rests on a more solid and equitable Foundation; and perhaps nothing is more necessary than that just Impressions on this Subject should be carefully preserved in the Minds of Indians, whose Ideas might be blended and confounded, if they should be brought to consider themselves as under the Government of Canada.<sup>35</sup> [emphasis added]

The Lords of Trade informed Sir William Johnson that the proposed Royal Proclamation would prohibit settlement on Indian lands, leaving them as hunting grounds and accessible to all British subjects for fur trade purposes. They asked Johnson for his thoughts on a plan for the management of Indian affairs "to the Satisfaction of the Indians, the benefit of free Trade, and the Security and Interests of his Majesty's Dominions."<sup>36</sup>

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<sup>34</sup> Earl of Egremont to the Lords of Trade, May 5, 1763, in Adam Shortt and Arthur G. Doughty, eds., *Documents Relating to the Constitutional History of Canada 1759-1791*, p. 128 [Doc. 10].

<sup>35</sup> The Lords of Trade to the King, August 5, 1763, in Adam Shortt and Arthur G. Doughty, eds., *Documents Relating to the Constitutional History of Canada 1759-1791*, p. 151 [Doc. 12].

<sup>36</sup> Lords of Trade to Sir William Johnson, August 5, 1763, in Clarence Walworth Alvord and Clarence Edwin Carter, eds., *The Critical Period, 1763-1765*, British Series, Volume I, Collections of the Illinois State Historical Library, Volume X (Springfield, Illinois: Illinois State Historical Library, 1915), pp. 17-19 [Doc. 11].

## Chapter Two: Land Cessions 1764-1788

### The Seneca Treaty at Niagara, 1764

In 1762, General Jeffrey Amherst, Commander in Chief of the British forces in North America, granted 10,000 acres of land at Niagara to a number of British officers. Merchants from Albany protested, believing the grants contravened the terms of an agreement made with the Six Nations in 1726.<sup>37</sup> The British Lords of Trade recommended that if grants had been made the settlers should be required to remove themselves.<sup>38</sup> The Crown issued an Order in Council on June 19, 1762, ordering General Amherst to put a stop to settlement on the carrying place. In his own defence, Amherst contended that the settlement was for the public good, was not intended for the benefit of private individuals, and was only granted by him on a temporary basis until the King's approval could be obtained.<sup>39</sup>

Two years later, in April 1764, the spring following the outbreak of Pontiac's war, the Seneca Indians entered into a preliminary agreement of peace, friendship, and alliance with the British Crown; Sir William Johnson, Superintendent of Indian Affairs for the Northern District, represented the Crown. The Seneca ceded a tract of land around Fort Niagara for the sole use of the King and promised not to "obstruct the passage of the carrying place." Treaty lines were to be run in the presence of Sir William Johnson and Seneca representatives to prevent future disputes.<sup>40</sup>

The 1764 agreement also provided for free passage through Seneca territory and use of the harbours and rivers around Lake Ontario with permission to "land stores and erect sheds for their security."<sup>41</sup> The permission sought by the British to use harbours and rivers around Lake Ontario in lands they believed the Seneca had some control over is a strong indication that occupation and control of these waters remained with First Nations people. It should be recalled that

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<sup>37</sup> "Petition of Merchants of Albany to the Lords of Trade," January 28, 1762, in E. B. O'Callaghan, ed., *Documents Relative to the Colonial History of the State of New York; Procured in Holland, England and France, by John Romeyn Brodhead, Esq., Agent* [hereinafter cited as *DRCHNY*], Vol. VII (Albany: Weed, Parsons and Company, 1856), pp. 488-489 [Doc. 5]. The merchants feared that the grants would give the officers a trade monopoly.

<sup>38</sup> "Report of the Lords of Trade on the Memorial of the Albany Merchants," June 3, 1762, in O'Callaghan, ed., *DRCHNY*, Vol. VII, pp. 502-503 [Doc. 7].

<sup>39</sup> Sir Jeffrey Amherst to Mr. Sharpe, October 20, 1762, in O'Callaghan, ed., *DRCHNY*, Vol. VII, pp. 508-509 [Doc. 9].

<sup>40</sup> "Articles of Peace concluded with the Seneca Indians," April 3, 1764, in O'Callaghan, ed., *DRCHNY*, Vol. VII, p. 621 [Doc. 13].

<sup>41</sup> "Articles of Peace concluded with the Seneca Indians," April 3, 1764, in O'Callaghan, ed., *DRCHNY*, Vol. VII, p. 622 [Doc. 13].

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while the Seneca and other Six Nations groups may have used and occupied lands along the southern shore of Lake Ontario, the British would have been well aware that the Mississaugas occupied and controlled the land and waters along the northern and western shore of Lake Ontario.

In August 1764, Johnson sent a copy of the treaty to the Lords of Trade and informed them about the completion of the land cession,<sup>42</sup> reiterating that the Seneca did not “chuse it should become private property, as their hunting grounds are adjacent to it.”<sup>43</sup> Johnson reported that it would have been insulting to refuse the personal gift of islands in the straits between Lakes Ontario and Erie which had been added at the time the treaty was finalized. However, as he knew accepting such a gift was prohibited, he offered these islands to the King.<sup>44</sup>

A month after the 1764 conference at Niagara concluded a group of Mississaugas from the north shore of Lake Ontario represented by Chief Poton of Wapaskotiang met with Johnson at Johnson Hall. They stated that they knew peace had been made with the nations who had attended the Niagara Treaty but they themselves were hunting at the time. They had decided to come themselves and hear what had transpired at Niagara and express friendship to the British.<sup>45</sup> Johnson reported the encounter to Gage, identified “Wapaskotiany” as lying near the north end of Lake Ontario, and stated that these Mississaugas had come on behalf of all the Mississaugas Indians living above the Bay of Quinte:

... to make peace and enter into the same Engagements the rest of their Nation had done which they did on behalf of themselves and all the Neighbouring Inds. living about the Lakes formed by Kenté River, & delivered a large Covt. Chainbelt.<sup>46</sup>

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<sup>42</sup> Colonel Guy Johnson, who participated in the preliminary April cession, later explained that the preliminary agreement had been finalized at the Niagara Treaty Council in July 1764. Colonel Guy Johnson, Superintendent of Indian Affairs, Niagara, to General Frederick Haldimand, Governor of Quebec, August 21, 1780, in E. A. Cruikshank, ed., *Records of Niagara: A Collection of Documents Relating to the First Settlement, 1778-1783*, Niagara Historical Society Pamphlet No. 38 (Niagara-on-the-Lake: Niagara Historical Society, 1927), p. 22 [Doc. 20].

<sup>43</sup> Sir William Johnson to the Earl of Halifax, August 30, 1764, in O’Callaghan, ed., *DRCHNY*, Vol. VII, p. 647 [Doc. 14].

<sup>44</sup> Sir William Johnson to the Earl of Halifax, August 30, 1764, in O’Callaghan, ed., *DRCHNY*, Vol. VII, p. 647 [Doc. 14].

<sup>45</sup> Sir William Johnson, Indian Superintendent, to General Thomas Gage, September 21, 1764, in Alexander Flick, ed., *The Papers of Sir William Johnson*, Volume IV (Albany: The University of the State of New York, 1925), pp. 543-544 [Doc. 15].

<sup>46</sup> Sir William Johnson to General Thomas Gage, September 21, 1764, in Flick, ed., *The Papers of Sir William Johnson*, Volume IV, p. 544 [Doc. 15].

### **Mississaugas residing along Lake Ontario north shore**

In May 1770, Ferral Wade and Michael Keiuser, traders, reported on their expedition from “Fonda to Toronto.” Their journal records several encounters with Indians camped along the creeks flowing into Lake Ontario. Their first stop on the way from Niagara to Toronto was at a creek at the “Uttermost End” of Lake Ontario where they found “a Great Number of Hutts ... a Number of Graves Curiously Stockaded....” At this encampment they also found “one horse with his back sore, which we judged Used to carry There [*sic*] packs [words missing] the Carrying Place.”<sup>47</sup>

The next day as they continued toward Toronto, they came upon a number of Indians who assisted in hauling their small boat into a creek. The Indians brought the traders “a Deer, a Bowl of Corn, two Sturgeons ... We gave them in return a Dozen of Biscuit, & three Quarts of rum.” The Indian elders explained that their chief had died a few days earlier, and “that Seven of there [*sic*] village was gone to Niagara to Solicit the Commanding Officer to make or Appoint them a Chief in the place [of the] Disceased [*sic*].” These Mississaugas Indians explained they would assist the two men in finding their way to the Carrying Place at Toronto. Wade and Keiuser encountered another Indian village four miles along the shore and eight miles further they arrived at another “fine Large Creek, where there was a Large Camp [of Ind]ians Incamped [*sic*].”<sup>48</sup>

While the two traders referred to the people at these camps along the Lake Ontario north shore as simply ‘Indians,’ a September 12, 1770, letter identified them as Mississaugas. In this letter Daniel Claus, Deputy Superintendent of Indian Affairs, informed William Johnson, Indian Superintendent, that the trading goods would arrive in Toronto by boat, and then noted the intent of the Mississaugas to have “all the Rum brought among them this fall for fear of its keeping them from Hunting, so that it is difficult how to act in that case; Ferral ought to be upon the spot himself & conduct the Boats to the place he wants them.”<sup>49</sup>

In 1779 Captain Walter Butler travelled by batteau from Niagara on his way to Quebec. The journal he kept provides an interesting description of the north shore of Lake Ontario from this time period. Butler’s entries reveal the presence of Mississaugas Indians from the Head of the Lake to Cataraqui (Kingston):

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<sup>47</sup> “Journal of Wade and Keiuser’s Trading Expedition from Fonda to Toronto,” May 13-June 10, 1770, in Alexander Flick, ed., *The Papers of Sir William Johnson*, Volume VII (Albany: The University of the State of New York, 1931), pp. 723-730 [Doc. 16].

<sup>48</sup> “Journal of Wade and Keiuser’s Trading Expedition from Fonda to Toronto,” May 13-June 10, 1770, in Flick, ed., *The Papers of Sir William Johnson*, Volume VII, pp. 723-730 [Doc. 16].

<sup>49</sup> Daniel Claus, Deputy Superintendent of Indian Affairs, to Sir William Johnson, Indian Superintendent, September 12, 1770, in Flick, ed., *The Papers of Sir William Johnson*, Volume VII, p. 899 [Doc. 17].



Niagara 8<sup>th</sup> March 1779.

Three o'Clock in the Afternoon, Set off for Canada in a Batteau....<sup>50</sup>

12 Mile Pond March 9th. At Six put off, the Wind & Swell high and ahead, but the hands being good Oarsmen Kept the Lake till the 20 Mile Pond, or River,<sup>51</sup> When the Wind increasing & no Harbour nearer than 40 Mile Creek, made for the Creek and was near striking on the Barr, but the force of the Waves on the Stern and working briskly of the Oars, got into the River **An Indian Cabin on the Banck Inhabited by Messessaugoes**<sup>52</sup> the 20 Mile Creek is a fine Stream, tho' shallow at the Entrance, and Narrow at the Mouth, but very wide a little way up....

10th of March—Put off at Daylight, ... was obliged to put into the River at the head of the Lake,<sup>53</sup> Shipped Water twice before we made the River—the wind at East—from the West side the 20 Mile Creek the land lowers, ... in windy weather a Boat may go up this River<sup>54</sup> Ten or thirteen Miles, from whence there is a Carrying Place of thirteen Miles to the River Trance,<sup>55</sup> which falls into the Lake of St Clair, After you enter this River about 400 yards, it forms a Lake or Pond<sup>56</sup> of 4 miles over and six long, between it & the Lake is a narrow neck of Land of 400 yards wide cover'd with a few Trees, & reedy Grass, **on this the Indians hunt in the Fishing Season** ... we saw the Spray or Mist of the Fall of Niagara bearing from this about South East—**A Canoe with Messessaugoes Came to us**, gave me Ducks, in return gave them Powder & Shot & Bread, they being out of Ammunition—....

12th of March—Set off at Seven o'Clock this Morning the wind at N-W too much off Land to sail, row'd till 11 o'Clock, **Put into the**

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<sup>50</sup> All spelling and grammar errors are as in the original document.

<sup>51</sup> Now Jordan Harbour. "Twenty Mile Creek" flows through "Twenty Mile Pond" before emptying into Lake Ontario. Jordan is situated three miles from the mouth.

<sup>52</sup> Emphasis added for all bold sections.

<sup>53</sup> The original channel connecting Burlington Bay with Lake Ontario.

<sup>54</sup> Now the Desjardins Canal and Linden Creek. The immediate goal of the portage here was the Grand River—leading to Lake Erie—rather than the Thames, which was much more remote.

<sup>55</sup> La Tranche, now the Thames.

<sup>56</sup> Burlington Bay. Butler regarded the channel from Lake Ontario and what are now Burlington Bay, the Desjardins Canal, and Linden Creek, as constituting one river.

**River called Du Credit 17 miles from our last station, the shore in general good for Boats to Land, the Sand low and a good Beach, except the Points which are Bluff, two Messessaugoes came to me & informed me a number of them lived up this River,** gave them Bread, put off at 12, row'd to the Bottom of the Bay.<sup>57</sup> .....The Bay of Toronto was filled with All sorts of Wild Fowl, **saw on the North side of the Bay several Wigwams & Canoes turned up on the shore,** the Land about Toronto Appears very good for Cultivation, from Toronto to River du Credit it's twelve Miles Across the Bays but better than twenty along shore—.....

13th of March—Got off at Daylight, the wind from the Land, could not sail, rowed till twelve, pass'd the high Lands And a small Bay—put into Pine Wood Creek—here one Duffin a Trader resided formly, since which a Frenchman has wintered here,<sup>58</sup> he was off a little before we came, two houses a little up the Creek, the one Entire, the other strip'd, **this Creek famous with the Indians for great Quantities of fish,** the distance from this to the other end of the Highlands is about 20 Miles, 15 of which, is few, or no places, where a Boat could be saved in case of a Storm off the Lake....

14th March—Set off at Daylight, rowed till twelve, the swell increasing with the wind ahead at East put into a Creek called by the Indians *Pamitiescotiyank*.<sup>59</sup> (the fat fire) the distance from our Encampment 15 Miles, **at this Creek and two others nearly of the same name, the Indians in Fishing Season resided, all those three Creeks head near A Lake of about 30 Miles long, distant from this 50 miles, where the Messessaugoes have two Villages and where the Canadians in Winter send Traders....**

15th March—Put off as soon as day appeared and row'd till ten, Passed a long Point<sup>60</sup> which forms two Deep Bays, one on either side, of Ten miles to the Bottom—**in the Bay to the West falls**

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<sup>57</sup> Humber Bay.

<sup>58</sup> The stream at Pickering is still known as Duffin's Creek, and Pickering Harbour also bore the name Frenchman's Bay.

<sup>59</sup> This has been identified as present-day Port Hope. It may be noted that Rice Lake, which evidently is the inland lake of which he subsequently refers to, bore an Indian name represented as *Pemedashcoutayong*.

<sup>60</sup> Presqu'Isle.

**one of the Creeks before mentioned, Coming from near the  
small Lake Inhabited by the Messessaugoes, ....**

March 16th—Put off our Boat very early, ... The weather  
Calm row'd across a very deep Bay<sup>61</sup> of Twenty Miles down,  
& about ten directly over, this Bay is much larger, ... many  
Persons not acquainted with the Passage have taken down  
the Bay<sup>62</sup> supposing it to be the Entrance of the River and in  
coming from the River have imagined the main to the West  
to be Islands from its appearance and gone down likewise  
down this Bay, **Traders go in two Days to the before  
mentioned small Lake Inhabited by the  
Messessaugoes**,—Continued rowing till the mouth of  
Caderonqua Bay<sup>63</sup> the wind coming fair sailed into  
Caderonqua Harbour the distance from our Encampment to  
Caderoghqua about thirty two miles....<sup>64</sup>

**The Mississaugas Cession at Niagara, 1781**

In July 1780, Governor Frederick Haldimand issued instructions to Colonel Guy Johnson<sup>65</sup> to purchase a strip of Mississaugas land opposite Fort Niagara.<sup>66</sup> Haldimand wanted a strip of land parallel to the Niagara River, leading from Lake Ontario to Lake Erie. Natural boundaries were used to delineate the tract:

... the Tract of Land belonging to the Messessaguas [*sic*],  
opposite to the Fort, bounded by the River Niagara, and what is  
called the Four Mile Creek, extending from Lake Ontario to Lake  
Erie in a Paralel [*sic*] line or near it, with the river, taking the  
advantage wherever it can be done, of a natural boundary....<sup>67</sup>

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<sup>61</sup> Prince Edward or South Bay.

<sup>62</sup> That is, by the Bay of Quinté and the River Trent.

<sup>63</sup> Cataragui, now Kingston.

<sup>64</sup> James F. Kenney, ed., "Walter Butler's Journal of an Expedition Along the North Shore of Lake Ontario, 1779," in *The Canadian Historical Review*, Vol. 1, No. 4 (1920), pp. 381-391 [Doc. 18].

<sup>65</sup> Jonathan G. Rossie, "Johnson, Guy," in *Dictionary of Canadian Biography*, Vol. 4 (Toronto & Montreal: University of Toronto/Université Laval, 2003), accessed at: [http://www.biographi.ca/en/bio/johnson\\_guy\\_4E.html](http://www.biographi.ca/en/bio/johnson_guy_4E.html) [Doc. 157]

<sup>66</sup> Robert J. Surtees, "Land Cessions, 1763-1830," in *Aboriginal Ontario, Historical Perspectives on the First Nations*, Eds. Edward S. Rogers and Donald B. Smith (Toronto: Dundurn Press, 1994), p. 97 [Doc. 154].

<sup>67</sup> General Frederick Haldimand, Governor of Quebec, to Colonel Guy Johnson, Superintendent of Indian Affairs, Niagara, July 13, 1780, in Cruikshank, ed., *Records of Niagara ...*, p. 21 [Doc. 19].

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Responding to Haldimand's inquiries about the previous purchase from the Seneca Indians, Guy Johnson described the boundaries of the 1764 Niagara cession, noting the Seneca stipulation that the land was reserved for the use of the Crown and was not for settlement. Johnson also noted that the intended survey could not be accomplished at the time.<sup>68</sup>

Johnson explained that the Mississaugas had not been party to the 1764 cession, but stated that "the Mississauga have good pretension to it." He advised raising the matter with the Six Nations as he thought it necessary to make some arrangements with their chiefs, "to facilitate the business with the Mississaugas who I apprehend will make few difficulties."<sup>69</sup> On May 8, 1781, Brigadier General Powell wrote from Niagara to General Haldimand. Powell reported that Colonel Johnson had almost completed the purchase of lands from the Mississaugas.<sup>70</sup>

The following day Johnson reported that he convened the "Chipeweighs" and "Misisages" with interest in the lands to be purchased for the Crown and obtained an executed deed from them. He remarked about the bounds of the tract of land in question:

I have not been able to find any Natural boundary, neither did I think it adviseable [*sic*] to make the Lines parallel to the Courses of the Straits as it would be attended with difficulty and could not be easily comprehended by the Indians, but I took one course to the Chipeweigh [*sic*] River, and another to Lake Erie, by which the contents are more favorable for Government (as I shall show from a Sketch which I intend to transmit by another opportunity) and the Indians are well satisfied, having received about the value of Three hundred Suits of Clothing, which was as little as I could give them....<sup>71</sup>

On May 9, 1781, Johnson informed General Haldimand of the land cession at Niagara taken from the Chippewas and Mississaugas. He included a sketch and plan of the ceded tract of land.<sup>72</sup> The boundaries of the ceded land included the banks of Lake Ontario and Erie as well as the west side along the strait of water

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<sup>68</sup> Colonel Guy Johnson to General Frederick Haldimand, Governor of Quebec, August 21, 1780, in Cruikshank, ed., *Records of Niagara ...*, p. 22 [Doc. 20].

<sup>69</sup> Colonel Guy Johnson to General Frederick Haldimand, Governor of Quebec, August 21, 1780, in Cruikshank, ed., *Records of Niagara ...*, p. 22 [Doc. 20].

<sup>70</sup> Brigadier General Powell, Niagara, to General Frederick Haldimand, Governor of Quebec, May 8, 1781 [Doc. 21]. LAC MG 21 Add.MSS. 21761 Series B 101 pp. 63-63v Reel A-681.

<sup>71</sup> Guy Johnson, Niagara, to General Frederick Haldimand, Governor of Quebec, May 9, 1781 [Doc. 22]. LAC MG 21 Add.MSS. 21767 Series B-106 pp. 179-179v Reel A-683.

<sup>72</sup> "Sketch of a Tract of Land purchased of the Mississaugas for His Majesty by Col. Guy Johnson at Niagara..." May 9, 1781 [Doc. 23]. AO RG 1-1 Vol. 1 Reel MS 7422.

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connecting Lakes Erie and Ontario. The deed was signed by three Mississaugas chiefs (Paghquan, Bear totem; Wabacanine, Eagle totem; Menaghquah, Duck totem) and one Chippewa chief (Nanibizure, Swan totem) on behalf of the Mississaugas and Chippewa who had been summoned to perfect the cession of land around Niagara including land ceded in 1764 by the Seneca. The text of the cession indicated that the Crown's directions to Johnson had been fully explained to the assembled Mississaugas and Chippewa.<sup>73</sup> There is no evidence that any water ownership rights were transmitted by the deed of surrender.

On May 20, 1781, Brigadier General Powell corresponded to Haldimand and reported that he had visited Fort Erie in the Niagara area which was in a bad state of repair. He explained that while the artificers were repairing the works, "the Engineer took that opportunity to mark out the Boundary Line of the Land lately purchased from the Masasagas [*sic*]."<sup>74</sup>

### **Additional Mississaugas Lands required**

Following the American Revolution, Joseph Brant, chief of the Mohawks, in return for their alliance with the British, proposed that his colony settle in British North America in the Grand River Valley while Governor Haldimand dispatched a surveyor to the Bay of Quinte. In regard to the latter, some of the Mohawks intended to settle at the Bay of Quinte under the leadership of John Deserontyon.<sup>75</sup>

On the last day of March in 1783, Colonel John Butler wrote to Captain Matthews and pointed out that the lands "to the Twelve Mile Creek & Westward as far as Lake Erie" are good and could be purchased from the Indians for 500 to 600 pounds sterling.<sup>76</sup> On May 26, 1783, Haldimand issued instructions to Major Holland, Surveyor General, to survey the country from the last concessions to Cataraqui and then to Niagara on the north side of Lake Ontario for the purpose of establishing settlements.<sup>77</sup>

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<sup>73</sup> Surrender No. 381 [Niagara Purchase], May 9, 1781, in Canada, *Indian Treaties and Surrenders. From No. 281 to No. 483*, Vol. III (Saskatoon: Fifth House Publishers, 1993 [reprint of 1912 edition by C. H. Parmelee, King's Printer, Ottawa]), pp. 196-197 [Doc. 24].

<sup>74</sup> Brigadier General Powell, Niagara, to General Frederick Haldimand, Governor of Quebec, May 20, 1781 [Doc. 25]. LAC MG 21 Add.MSS. 21761 Series B 101 pp. 77-77v Reel A-681.

<sup>75</sup> Arthur J. Ray, *I Have Lived Here Since the World Began: An Illustrated History of Canada's Native People* (Toronto: Lester Publishing and Key Porter Books, 1996), pp. 131-133 [Doc. 156].

<sup>76</sup> Colonel John Butler to Captain Robert Mathews, March 31, 1783, in Cruikshank, *Records of Niagara ...*, p. 49 [Doc. 26].

<sup>77</sup> Frederick Haldimand, Governor of Quebec, to Major Holland, Surveyor General, May 26, 1783 [Doc. 27]. LAC MG 21 Add.MSS. 21784 Series B 124 p. 31 Reel A-688.

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On August 11, 1783, John Johnson wrote to Haldimand transmitting the proceedings [not found] of meetings held with the Six Nations at Niagara and with the Mississaugas at Carleton Island. Johnson stated that the Mississaugas exhibited uneasiness about the prospect of members of the Six Nations coming to settle in the area of Cataraqui. The Mississaugas complained that the more numerous Six Nations Indians would overrun their hunting territories and oblige them to seek new and more distant ground. Johnson suggested that the fears could be reduced by the purchase of some of the Mississaugas land on the north shore of the lake. Johnson stated that “a purchase of the lands including the islands from the Bay of Kenty downwards and including the Crown lands would be sufficient to answer every purpose both for Loyalists and Indians.”<sup>78</sup>

Twenty days later Haldimand informed Johnson that a surveyor would be sent to identify and mark out lands for intended settlements at Cataraqui. He stated that proper steps had to be taken to satisfy the Mississaugas in regard to the “Tract of country intended to be settled by the Mohawks & any of the Six Nations who shall wish to accompany them.”<sup>79</sup>

### **Crawford Purchase, 1783**

On September 15, 1783, General Haldimand corresponded with Major John Ross and one of the issues he raised related to settlement of Mohawks “and some other Tribes” near the Bay of Kinte [*sic* – Quinte]. Haldimand mentioned uneasiness among the Mississaugas who claimed the north shore of Lake Ontario:

The Only difficulty seems to be, giving uneasiness to the Missisagues [*sic*], as they claim The Northern Part of Lake Ontario, to avoid which, I have directed Sir J. Johnson to treat with them on this Matter and if necessary to make such purchases as the King’s Service may require, which he tells me will be easily accomplished.<sup>80</sup>

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<sup>78</sup> Brigadier General John Johnson to General Haldimand, Governor of Quebec, August 11, 1783 [Doc. 28]. LAC MG 21 Add.MSS. 21775 Series B 115 pp. 152-153 Reel A-685.

<sup>79</sup> Frederick Haldimand, Governor of Quebec, to Brigadier General Sir John Johnson, September 1, 1783 [Doc. 29]. LAC MG 21 Add.MSS. 21775 Series B 115 pp. 158-158v Reel A-685.

<sup>80</sup> General Frederick Haldimand, Governor of Quebec, to Major John Ross, September 15, 1783, in Ernest A. Cruikshank and Gavin K. Watt, *The History and Master Roll of The King’s Royal Regiment of New York*, Revised edition (Milton, ON: Global Heritage Press, 2006), pp. 108-109 [Doc. 30].

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On October 9, 1783, Captain William Crawford corresponded with Sir John Johnson and informed him that he had followed out his instructions to purchase land from the Mississaugas:

According to your directions I have purchased from the Missisaguas [*sic*] all the lands from Toniata or Onagara River to a river in the Bay of Quinte within eight leagues of the bottom of the said Bay including all the Islands, extending from the lake back as far as a man can travel in one day, the Chiefs claiming the land at the bottom of the Bay could not be got together at the present. I believe their land can be got nearly on the same terms, though this when I see them.

The consideration demanded by the Chiefs for the lands granted is that all the families belonging to them shall be clothed and that those that have not fuses shall receive new ones, some powder and ball for their winter hunting, as much coarse red cloth as will make about a dozen coats and as many laced hats.<sup>81</sup>

Crawford noted that he purchased the land below (east) of the fort at Cataraqui from an Indian called Menas, who ordinarily lived at “Canosadauga.”<sup>82</sup> He remarked that the Mississaugas were pleased with the idea that whites would settle among them. The following week Major John Ross corresponded with Captain Matthews and mentioned that the land had been purchased from the Mississaugas without any suggestion that the Six Nations would be settling along the lake, “least the Missisagoes [*sic*] be unwilling to treat.”<sup>83</sup>

On November 3 Ross wrote once more to Matthews and briefly discussed the purchase of lands in the area of Cataraqui. He explained that the land purchase negotiations were greatly assisted by Mynas, an old Mississauga chief normally resident in Canada but who happened to be at Cataraqui. Ross reported that the lands purchased from the Mississaugas extended about 45 miles up the lake and that he had sent some officers from the garrison to explore the country:

The party which went to meet Lieut. French returned some days after his arrival here. They travelled about sixty miles, nearly a northern course. The lands in general are of a better quality than those reported by Lieut. French on the banks of the River

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<sup>81</sup> Captain William Redford Crawford to Sir John Johnson, October 9, 1783, in Cruikshank and Watt, *The History and Master Roll of The King's Royal Regiment of New York*, p. 111 [Doc. 31].

<sup>82</sup> Kanesatake.

<sup>83</sup> Major John Ross to Captain Robert Matthews, October 15, 1783, in Cruikshank and Watt, *The History and Master Roll of The King's Royal Regiment of New York*, p. 110 [Doc. 32].

Ganenencui, which he has described as very barren. They did not touch upon that river—the Indians would go no further.<sup>84</sup>

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

In March 1784, Sir John Johnson informed Governor Haldimand that Mohawks and others under Captain Joseph Brant and David Hill wished to settle on the Grand River, about 20 miles from the head of Lake Ontario.<sup>85</sup> These people had supported the British in the Revolutionary War and had been displaced by the establishment of the American boundary.

Four days later Haldimand expressed support for the settlement of Six Nations Indians on the Grand River. He observed that Joseph Brant had reported “that Col. Butter [*sic* – Butler] is persuaded he can purchase the Right of the Lands from the Mississagues for a very trifling consideration.”<sup>86</sup> Haldimand authorized the issuance of instructions to Colonel Butler to proceed upon the matter.<sup>87</sup> In a March 23, 1783, extract of a letter, Haldimand instructed Johnson to direct Colonel Butler to purchase a tract of land located between Lakes Ontario, Erie, and Huron.<sup>88</sup>

Sir John Johnson issued instructions to Lieutenant Colonel Butler, Deputy Agent of Indian Affairs, to purchase Mississaugas land lying between Lakes Ontario, Huron, and Erie for the use of the Six Nations and Loyalists. Consequently, Butler sent a message and a belt calling the parties to council and Chief Pokquan collected his people to travel to the meeting. Representatives of the Mississaugas, Six Nations, Delaware, and British met at Niagara on May 22, 1784.<sup>89</sup>

At the council, Chief Pokquan stated that the Mississaugas were not the owners of all the land lying between Lakes Ontario, Erie, and Huron, but that they would

<sup>84</sup> Major John Ross to Captain Robert Matthews, November 3, 1783, in Willis Chipman, *The Life and Times of Major Samuel Holland, Surveyor General, 1764-1801*, Reprinted from *Papers and Records*, Vol. XXI (Toronto: Ontario Historical Society, 1924), p. 42 [Doc. 33].

<sup>85</sup> Sir John Johnson, Superintendent General and Inspector General of Indian Affairs, to General Frederick Haldimand, Governor of Quebec, March 11, 1784 [Doc. 34]. LAC MG 21 Add.MSS. 21775 pp. 234-236 Reel H-1450.

<sup>86</sup> Frederick Haldimand, Governor of Quebec, to Sir John Johnson, March 15, 1784 [Doc. 35]. LAC MG 21 Add.MSS. 21723 Series B 63 No. 1 pp. 39-40 Reel A-664.

<sup>87</sup> Frederick Haldimand, Governor of Quebec, to Sir John Johnson, March 15, 1784 [Doc. 35]. LAC MG 21 Add.MSS. 21723 Series B 63 No. 1 pp. 39-40 Reel A-664.

<sup>88</sup> Frederick Haldimand, Governor of Quebec, to Sir John Johnson, March 23, 1784 [Doc. 36]. AO RG 1-1 Vol. 2 Reel MS 7422 Doc. No. 106.

<sup>89</sup> “A Meeting held at Niagara 22nd May 1784 with the Mississaga Indians accompanied by the Chiefs and Warriors of the Six Nations Delawares &c,” May 22, 1784 [Doc. 37]. LAC MG 11 CO 42 Vol. 46 pp. 224-225 Reel B-37.



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be willing to transfer their “right of soil & property to the King” for a tract of land from the head of Lake Ontario to the Thames River, south to Lake Erie. The chief described the tract as being “from the Head of the Lake Ontario or the Creek Waghquata, to the River La Tranche, then down that River until a South course will strike the Mouth of Catfish Creek on Lake Erie.”<sup>90</sup>

A copy of the original deed indicates that the Mississaugas ceded a tract of land between Lake Erie and Lake Ontario that approximated the area offered by Pokquan. This tract included a 550,000-acre section along the Grand River that was later reserved for the Six Nations. The deed described the tract of land, employing familiar landmarks such as rivers and creeks.<sup>91</sup>

Crown officials paid compensation of £1,180.7.4 at the time of the council meeting.<sup>92</sup> Ten Mississaugas signed the deed, including Wabakanyne and Pokquan. Witnesses to the deed included military officers, the Acting Secretary of the Six Nations, and Mohawk leaders Joseph Brant and David Hill.<sup>93</sup>

***Renewal by Surrender, 1792***

As there were doubts about the limits of the tract ceded on May 22, 1784, John Graves Simcoe, Lieutenant Governor of Upper Canada, asked Surveyor General Samuel Holland to verify one of the boundaries. Simcoe referred specifically to the “North West Course.”<sup>94</sup> The ensuing survey showed that the limit, defined in the deed’s description of the ceded tract as an imaginary line extending northwesterly from Lake Waghquata (Washquarter) to River La Tranche (Thames River), was impossible because it could not join the two reference points referred to in the deed, and thus a more accurate description was

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<sup>90</sup> “A Meeting held at Niagara 22nd May 1784 with the Mississaga Indians accompanied by the Chiefs and Warriors of the Six Nations Delawares &c,” May 22, 1784 [Doc. 37]. LAC MG 11 CO 42 Vol. 46 pp. 224-225 Reel B-37.

<sup>91</sup> Robert J. Surtees, *Indian Land Cessions in Ontario, 1763-1862: The Evolution of a System*, Ph.D. Thesis, Carleton University, 1982, p. 68 [Doc. 147].

<sup>92</sup> Indenture between Wabakanyne, Nannebosure, Pokquan, Nanaghkagwiskam (Nanaghkaweskam), Peapamaw, Tabendan (Tanendan), Sawameneck (Sawarnenik), Peasanish, Wapamonisschisqua, Wapeanoghqua (Wapeanghqua), Sachems, War Chiefs & Principal Women of the Mississaga, and King George III, made at Niagara, May 22, 1784, in Alexander Fraser, ed., *Third Report of the Bureau of Archives for the Province of Ontario, 1905* (Toronto: L. K. Cameron, 1906), pp. 486-489 [Doc. 38].

<sup>93</sup> Indenture between Wabakanyne ... and King George III, made at Niagara, May 22, 1784, in Fraser, ed., *Third Report ...*, pp. 486-489 [Doc. 38].

<sup>94</sup> J. G. Simcoe, Lieutenant Governor, to Samuel Holland, Surveyor General, March 17, 1792, in E. A. Cruikshank, ed., *The Correspondence of Lieut. Governor John Graves Simcoe, With Allied Documents Relating to His Administration of the Government of Upper Canada*, Vol. I (Toronto: Ontario Historical Society, 1923), pp. 126-127 [Doc. 52].

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required.<sup>95</sup> Consequently, Simcoe met with five Mississaugas chiefs on December 7, 1792, and drew up a new document at Navy Hall in Lincoln County (Niagara).<sup>96</sup> The 1792 indenture, which became known as Surrender No. 3, summarized the 1784 transaction, including the description of the lands the Mississaugas had granted.<sup>97</sup>

Significantly, British officials took the opportunity to seek permission for free use of Mississaugas waters for transport and navigation purposes throughout the lands used and occupied by the First Nation. Within Surrender No. 3, the Mississaugas granted the Crown separate permission to navigate the lakes and rivers within the “Messissague Country”:<sup>98</sup>

....  
And whereas at a conference held by John Collins and William R. Crawford, Esqrs, with the principal Chiefs of the Messissague Nation, Mr. John Russeau, Interpreter, it was unanimously agreed that the King should have a right to make roads thro’ the Messissague Country, that the navigation of the said rivers and lakes should be open and free for His vessels and those of His subjects, that the King’s subjects should carry on a free trade unmolested, in and thro’ the country: Now this Indenture doth hereby ratify and confirm the said conference and agreement so had between the parties aforesaid, giving and granting to His said Majesty a power and right to make roads thro’ the said Messissague Country together with the navigation of the said rivers and lakes for His vessels and those of His subjects trading thereon free and unmolested.<sup>99</sup>

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<sup>95</sup> Colonel John Graves Simcoe, Lieutenant Governor of Upper Canada, Quebec, to Evan Nepean, Undersecretary of State for the Home Department, April 28, 1792, in Cruikshank, ed., *Simcoe Correspondence*, Vol. I, pp. 145-147 [Doc. 53].

<sup>96</sup> Surrender No. 3 listed the 1784 signatories as “Wabakanyne, Nannibosure, Pokquawr [Pokquan], Nanaughkawestrawr [Nanaghkagwiskam], Peapamaw, Tabendau [Tabendan], Sawainchik [Sawameneck], Peasanish, Wapamanischigun [Wapamonisschisqua], Wapeanojhqua [Wapeanoghqua], Sachems and War Chiefs and Principal Women of the Messissague Indian Nation.” Surrender No. 3, December 7, 1792, in Canada, *Indian Treaties and Surrenders*, Vol. I, Treaties 1-138 (Saskatoon: Fifth House Publishers, 1992 [reprint of 1891 edition by Brown Chamberlin, Ottawa]), pp. 5-7 [Doc. 55].

<sup>97</sup> Surrender No. 3, December 7, 1792, in Canada, *Indian Treaties and Surrenders*, Vol. I, pp. 5-7 [Doc. 55].

<sup>98</sup> Surrender No. 3, December 7, 1792, in Canada, *Indian Treaties and Surrenders*, Vol. I, pp. 5-7 [Doc. 55].

<sup>99</sup> Surrender No. 3, December 7, 1792, in Canada, *Indian Treaties and Surrenders*, Vol. I, pp. 5-7 [Doc. 55].

## 1785

On May 2, 1785, Benjamin Frobisher, North-West Company, wrote to Lieutenant Governor Henry Hamilton reporting on alternatives to the Ottawa River transportation route to the interior. Frobisher noted the existence of a water “road” between the Bay of Quinte and Lake Simcoe but argued it had too many portages. Frobisher recommended establishing communications between Lake Ontario and Lake Huron via the “Toronto Carrying Place” route from the mouth of the Humber River to Lake Simcoe, then overland to Lake Huron. He identified the presence of Mississaugas and Chippewa settlements along the latter route, but expected little difficulty to purchase the necessary lands.<sup>100</sup>

A 1785 census of Indians reported that the 500 “Fond du Lac Huron Indians are Missisageys, Chipeways & Matchidas Nations” and that “These nations claim a right to hunt the continent between the Lakes Huron and Ontario.”<sup>101</sup> It seemed to be clearly understood that in the 18<sup>th</sup> century the Mississaugas Indians (also described as Chipeways and/or “Matchidas” Indians) were known to reside on and hunt on the lands between Lakes Huron and Ontario, as well as the north shore of Lake Ontario. The Mississaugas also controlled the lands along the two important water transportation routes (one originating on the Rouge River and the other on the Humber River) between the Toronto area and Lake Huron.

On August 9, 1785, John Collins, Deputy Surveyor General, signed a report that served as a record of a conference between Collins and William R. Crawford with the principal chiefs of the Mississaugas Nation. Collins asserted that, among other understandings, the Mississaugas agreed to allow the King’s subjects to have open and free navigation of the rivers and lakes within their lands:

... that the King shall have a right to make roads through the Mississauga country, **that the navigation of the rivers and lakes shall be open and free for his vessels and those of his subjects**, that the King’s subjects shall carry on a free trade unmolested, in and though the country, that the King shall erect forts, redoubts, batteries, & storehouses, etc. in all such places as shall be judged proper for that purpose; respecting payment for the above right, the chiefs observed they were poor and naked, they wanted clothing and left it to their Good Father to be a judge of the quantity.<sup>102</sup>

<sup>100</sup> Benjamin Frobisher, North-West Company, to Henry Hamilton, Lieutenant Governor, May 2, 1785, in Percy Robinson, *Toronto During the French Regime...*, pp. 161-163 [Doc. 40].

<sup>101</sup> Census of Indians, 1785 [Doc. 39]. LAC MG 19 F1 Vol. 4 pp. 66-68 Reel C-1478.

<sup>102</sup> Record of a Conference signed by John Collins, Deputy Surveyor General, August 9, 1785 [Doc. 41]. AO F 47-1-1 File F 47-1-1-1 Reel MS 1797.

## **1787 Toronto Purchase**

In July 1787, Lord Dorchester instructed Deputy Surveyor John Collins to assist Sir John Johnson, Superintendent General of Indian Affairs, in the purchase of land along the north shore of Lake Ontario between Quinte and Toronto, in order to facilitate the settlement of the lands between existing settlements at Cataraqui and Niagara. Dorchester informed Collins that he had issued instructions to Johnson:

... to take such steps with the Indians concerned, as may be necessary to establish a free and amicable right for Government to the interjacent lands, and not yet purchased, on the north of Lake Ontario, for the purpose, as well as such parts of the country, as may be necessary on both sides of the proposed communication from Toronto to Lake Huron.<sup>103</sup>

In September 1787, the Mississaugas Indians, including Chief Wabakanyne, met with Sir John Johnson, Superintendent General of Indian Affairs, to negotiate the surrender of a tract of land known as the Toronto Purchase. The indenture did not identify the surrendered lands.<sup>104</sup>

## **1788-1790 Events related to the Gunshot Treaty**

On July 7, 1788, Deputy Surveyor John Collins instructed Surveyor Alexander Aitken to commence a survey of the lands purchased at Toronto.<sup>105</sup> On August 1 Aitken arrived at Toronto and a few days later met with the Mississaugas and in the company of an interpreter attempted to reach agreement on the eastern and western bounds of the lands purchased in 1787:

I then desired Mr. Lines, the Interpreter, to signify to the Indian Chief then on the spot my intention of beginning to survey the land purchased from them last year by Sir John Johnson and pointed out to him where I was to begin. I requested of him to go with me to the spot along with Mr. Lines, which he did, but instead of going to the lower end of the Beach which forms the Harbour he brought me to the river called on the Plan

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<sup>103</sup> Lord Dorchester to John Collins, July 19, 1787 [Doc. 42]. AO RG 1-1 Vol. 2 Reel MS 7422 Doc. No. 100.

<sup>104</sup> Surrender No. 13 [Toronto Purchase], September 23, 1787-June 18, 1806, in Canada, *Indian Treaties and Surrenders*, Vol. I, Treaties 1-138 (Saskatoon: Fifth House Publishers, 1992 [reprint of 1891 edition by Brown Chamberlin, Queen's Printer, Ottawa]), pp. 32-36 [Doc. 43].

<sup>105</sup> Alexander Aitken, Deputy Provincial Surveyor, to John Collins, Deputy Surveyor General, September 15, 1788, in Percy J. Robinson, *Toronto During the French Regime...*, p. 166 [Doc. 46]. Note: Survey instructions have never been located.

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Nechengquakekonk [Don River] which is upwards of three miles nearer the Old Fort than the place you mention in your instructions: he insisted that they had sold the land no further, so that to prevent disputes I had to put it off for some days longer until a few more of the Chiefs came in, when Mr. Lines settled with them that I was to begin my Survey at the west end of the High Lands which I did on the 11<sup>th</sup> of August having lost a week of the finest weather we had during my stay at Toronto.<sup>106</sup>

While Surveyor Alexander Aitken commenced a survey of the 1787 Toronto Purchase in the late summer of 1788, the Mississaugas in the Toronto area held meetings with Sir John Johnson and Colonel Butler. These two Crown officials paid the Mississaugas in goods for the lands ceded in 1787.<sup>107</sup> It seems that Johnson and Butler then proposed a second land purchase (the 1788 Gunshot Treaty) to the gathered Mississaugas.

No purchase deed for the 1788 Gunshot Treaty lands has been located. Historical documentation of any kind about the 1788 Treaty is extremely sparse. In two letter extracts dated August 26, 1788, Lieut. Colonel John Butler claims to have purchased the Gunshot Treaty lands, which he described as running along the north shore of Lake Ontario from the eastern boundary of the 1787 Toronto Purchase to the Bay of Quinte and as far back as "Lake La Clay and the Rice lake."<sup>108</sup>

A year later, in September 1789, Sir John Johnson issued instructions to Patrick Langan, who was apparently on his way to the Bay of Quinte to distribute Indian Stores as payment for a cession of land. Although the purpose of this 1789 payment is somewhat obscure, the instructions indicate that the meeting and payment of Indian Stores seemed to have been for the lands covered by the 1788 Gunshot Treaty, as well as to satisfy any of the Indians who did not receive payment for the 1787 Toronto Purchase cession:

In order to fully accomplish his Excellency Lord Dorchester's liberal intentions in rewarding & compensating the Mississages for the additional cession of Lands they last year made from their

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<sup>106</sup> Alexander Aitken, Deputy Provincial Surveyor, to John Collins, Deputy Surveyor General, September 15, 1788, in Percy Robinson, *Toronto During the French Regime...*, pp. 166-168 [Doc. 46].

<sup>107</sup> "The Chevalier De Rocheblave and the Toronto Purchase," circa 1922 [Doc. 143]. AO F1080 MU 2407 Percy Robinson Papers File IIIA pp. 16-17.

<sup>108</sup> Lieutenant Colonel John Butler to Unknown, August 26, 1788 [Doc. 45]. AO RG 1-1 Vol. 2 Reel MS 7422; and John Butler, Niagara, to Sir John Johnson, August 26, 1788 [Doc. 44]. LAC RG 8 Series C Vol. 250 Pt. 1 p. 290 Reel C-2849.

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former grant at Toronto, to the Lands they before ceded to the King up to the head of the Bay de Quinte....

... you should proceed to Kingston with all convenient dispatch, and make application to the Officer Commanding Stores for the presents sent up for that purpose and everything requisite to transport them to the place of Rendezvous at the head of the Bay of Quinte with a sufficient quantity of Provisions to answer the necessities of the Indians....

You will endeavour to make a similar distribution to that made on the former occasion alluded to, as far as the nature of the goods you will have to distribute will admit of first satisfying those Indians who did not receive their proportions last year from Mr. Lines....<sup>109</sup>

On October 18, 1789, Patrick Langan met with Mississaugas gathered at the head of the Bay of Quinte for the purpose of completing payment to the Indians for land ceded “on the North side of Lake Ontario.” At the gathering, Langan made a speech to the Mississaugas as to why they were meeting. He declared that he had come to reward the Indians for lands ceded in 1788. Langan described the land as lying “between the boundary of the old purchase [1783/1784 Crawford Purchase] and the Creek above Toronto.” Langan also stated that the gathered Mississaugas had now surrendered almost all of the land on the north shore of Lake Ontario:

Brethren,

It is true you have given your Father a great deal of Lands upon Lake Ontario: indeed almost the whole of the North side of that great Water, **and as the small corner from the head of the Lake to the River Credit can be of little use to you; your Father would take it kindly that you add that spot to the former purchase, still however retaining to yourselves that River & the Land between it and the boundary of the old purchase on this side, and the same distance above the River in order to keep your Road to the Lake open and clear.**<sup>110</sup> [emphasis added]

<sup>109</sup> Sir John Johnson to Patrick Langan, Acting Secretary, Indian Affairs, September 20, 1789 [Doc. 47]. LAC RG 1 Series E3 Vol. 37A File I 1 pp. 35-36 Reel C-1194.

<sup>110</sup> “Speech delivered by Patrick Langan Acting Secretary for Indian Affairs, to the Messesagey Indians Collected at the head of the Bay de Quinte,” October 18, 1789 [Doc. 48]. LAC RG 1 Series E3 Vol. 37A File I 1 pp. 37-40 Reel C-1194.

## **Chapter Three: Land Cessions 1790-1801**

### **Mississaugas and Water Issues 1790-1796**

In conjunction with British colonial recognition of Mississaugas exclusive use of the River Credit, and insistence that Mississaugas access to Lake Ontario and/or Lake Simcoe remain open and clear, colonial officials provided a great deal of finished products for use in Mississaugas fisheries.

On May 25, 1790, John Johnson, Superintendent General of Indian Affairs, signed off on a “Return of Indian Stores proposed to be distributed amongst the Mississaugay Nation of Indians, inhabiting the Head of Lake Ontario, Toronto, & River La Tranche to be forwarded to Niagara for that purpose.” Included among the list of Indian Stores were 109 fish spears, 600 fish hooks (sorted), and 120 fishing lines.<sup>111</sup>

In October of 1790, J. Butler signed off on a document outlining a complaint received from the chiefs of the “Messisague” Indians about “white people” fishing in their creeks:

Upon a Complaint made to me by the Chiefs of the Messisague Indians requesting me to make known their Intention in Writing respecting White people Fishing in their Creeks, I do therefore give this Warning to all Concerned that they will not allow any person of that description 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.<sup>112</sup>

Evidently the Mississaugas understood that the fisheries on the River Credit were exclusively reserved to them. At the same time they did not object to non-Mississaugas fishing in other creeks within their traditional territory.

An extract dated April 28, 1792, records correspondence between Lieutenant Governor Simcoe and the Lords of Trade. Simcoe made the following statement about the rights of the Indians to their territory, hunting grounds, and streams and lakes:

The Indians can in no way be deprived of their rights to their Territory and Hunting Grounds, save and except as formerly

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<sup>111</sup> John Johnson, Superintendent General for Indian Affairs, “Return of Indian Stores proposed to be distributed amongst the Mississaugay Nation of Indians, inhabiting the Head of Lake Ontario, Toronto, & River La Tranche to be forwarded to Niagara for that purpose,” May 25, 1790 [Doc. 49]. AO F47-1-1 File 47-1-1-5 Reel MS1797.

<sup>112</sup> J. Butler, Deputy Agent, October 16, 1790 [Doc. 50]. AO F47 File F 47-1-1-6 Reel MS 1797.

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stated, Any portion of Lands ceded by them held as a Reservation must and shall be fully protected, as well as rights reserved on certain Streams and Lakes for fishing and hunting privileges or purposes.<sup>113</sup>

In March 1792, an unsigned draft of a letter, likely written by Lieutenant Governor Simcoe to Lord Dorchester, made clear that British officials were intent on purchasing from the Indians a tract of land situated on the carrying place from Sturgeon Bay into another part of Lake Huron. The attached colour-coded map delineated the Great Lakes region; the intended land purchase would extend the communication route from Mississaugas of the Credit lands extending from Toronto to Lake Simcoe, and then Chippewa lands from Lake Simcoe to Lake Huron.<sup>114</sup>

In the winter of 1793, the Lieutenant Governor of Upper Canada received a memorial from “Different family of the Massasagoes Indians etc.” The different Massasagoes [*sic*] families cultivated the land at 12 Mile Creek, 16 Mile Creek, and the River Credit, and claimed to be imposed upon by some of the non-Indian inhabitants. The Mississaugas families declared that over the preceding three autumns the non-Indians “have destroyed our houses when we was not there besides fishing and hunting when we are not there.” The families also referred to injuries they had received from “white people ... for when white peoples sees [*sic*] anything that they like they never quit us until they have it.”<sup>115</sup>

A lack of documentation related to some late 18<sup>th</sup> century land transactions inspired Crown officials to begin searching for available documents relating to various land purchases, including purchases taken from the Mississaugas. On November 5, 1793, Lieutenant Governor Simcoe sent a request to Joseph Chew, Superintendent of Indian Affairs in Montreal, asking him to assist Alexander Aitken, Deputy Provincial Surveyor, with information relative to some Indian land purchases between Lakes Ontario and Huron.<sup>116</sup>

In mid-December of 1793, Alexander Aitken, surveyor, travelled to Montreal to meet with Captain Chew in regard to “lands heretofore purchased from the

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<sup>113</sup> J. G. Simcoe, Lieutenant Governor of Upper Canada, to the Lords of Trade, April 28, 1792 [Doc. 54]. AO F 4337-2-0-11 Reel MS 2605.

<sup>114</sup> J. G. Simcoe, Lieutenant Governor, to [Lord Dorchester?], March 10, 1792 [Doc. 51]. LAC MG 11 Vol. 316 pp. 60-62 Reel B-280.

<sup>115</sup> “Different family of the Massesagoe Indians &c” to Sir John Graves Simcoe, Lieutenant Governor of Upper Canada, 1793 [Doc. 56]. AO F 47 File F 47-1-2-8 Reel MS 1798.

<sup>116</sup> E.B. Littlehales, York, to J. Chew, Superintendent of Indian Affairs, Montreal, November 5, 1793 [Doc. 57]. LAC RG10 Vol. 8 p. 8563 Reel C-10999.



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Mississaugue [*sic*] Indians”.<sup>117</sup> On December 19 Aitken called on Chew and showed him his instructions from Lord Simcoe. Aitken noted that “Mr. Chew promised to procure me all the information he could.” Three days later Aitken received a brief description of some of the boundaries of purchased Indian lands, but not sufficient information for certainty about the purchases.<sup>118</sup>

In early January of 1794, Aitken conducted further searches in the Surveyor General’s Office at Quebec, “for the plan of the communication from York to Lake Huron (by Mr Collins), found the plan with a blank deed annexed to it signed by Messrs Collins, Kotte & Lines.”<sup>119</sup> Five days later Aitken went to see Lord Dorchester at the chateau with Collins, “who was interrogated by His Lordship with respect to the Indian purchases but could give no satisfactory answer.”<sup>120</sup>

On January 27, Lord Dorchester corresponded with Simcoe and advised that, in regard to the Grand River lands, the government intended to make the land grant as beneficial to the Six Nations as possible. He instructed that it would be improper to allow these lands to get into the hands of land jobbers and noted that if lands were to be sold then the Crown should repurchase it. Dorchester also highlighted the fact that the government did not own the lands along the lake [Ontario and/or Erie]:

**It were much to be wished that Government possessed all the Lands along the Lake, the want of which will prevent the Communication of the Settlements.** It is true that Brant did say we might have them, but as it was not with that cordiality and good will that were to be wished for at the moment, and I think it would not be advisable to press it at any time, if disagreeable to them. In all negotiations of consequence with Indians, the Superintendent General of Indian Affairs, if possible should be present, and as Sir John Johnson is expected upon the opening of Navigation, If the whole of this business can be put off till he comes, it will be best.<sup>121</sup> [emphasis added]

<sup>117</sup> Alexander Aitken, Deputy Surveyor for the Midland District, Journal and Field Book, April 10, 1794 [Doc. 59]. AO RG 1-61 File RG 1-61-0-06 Box 1 [Barcode B241800], p. 9.

<sup>118</sup> Alexander Aitken, Deputy Surveyor for the Midland District, Journal and Field Book, April 10, 1794 [Doc. 59]. AO RG 1-61 File RG 1-61-0-06 Box 1 [Barcode B241800], p. 9.

<sup>119</sup> Alexander Aitken, Deputy Surveyor for the Midland District, Journal and Field Book, April 10, 1794 [Doc. 59]. AO RG 1-61 File RG 1-61-0-06 Box 1 [Barcode B241800], p. 11.

<sup>120</sup> Alexander Aitken, Deputy Surveyor for the Midland District, Journal and Field Book, April 10, 1794 [Doc. 59]. AO RG 1-61 File RG 1-61-0-06 Box 1 [Barcode B241800], p. 15.

<sup>121</sup> Lord Dorchester, Captain General and Governor in Chief, Upper and Lower Canada, to Colonel John Graves Simcoe, Lieutenant Governor of Upper Canada, January 27, 1794, in E. A. Cruikshank, ed., *The Correspondence of Lieut. Governor John Graves Simcoe, With Allied Documents Relating to His Administration of the Government of Upper Canada*, Vol. II, 1793-1794 (Toronto: Ontario Historical Society, 1924), pp. 137-138 [Doc. 58].

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Dorchester also mentioned an enquiry related to a land purchase at Matchedash Bay.<sup>122</sup> He explained that a plan had been discovered in the Surveyor General's Office, "to which is attached a blank deed, with the names or devices of three Chiefs of the Mississaga [*sic*] Nation, on separate pieces of paper annexed thereto." As the plan document was blank, Dorchester opined that it "not being filled up, is of no validity, or may be applied to all the Land they [the Mississaugas] possess."<sup>123</sup> He considered that it was "an omission which will set aside the whole transaction and throw us on the good faith of the Indians for just as much Land as they are willing to allow, and what may be further necessary must be purchased anew."<sup>124</sup> It seems evident that Governor General Dorchester considered a properly executed deed was required for each cession of territory. Neither the 1787 Toronto Purchase nor the 1788 Gunshot Treaty involving the Mississaugas Indians had properly executed deeds.

In August of 1794, John Ferguson, former Deputy Commissary at Cataraqui, stated that he attended an August 1787 meeting at the Carrying Place at the Bay of Quinte, when Sir John Johnson "settled a purchase of lands on the north side of Lake Ontario with the Missassaguas [*sic*]." Ferguson pointed out that Johnson remedied some differences between the Indians and Captain Crawford concerning a former purchase<sup>125</sup>:

... which Ferguson supposes to be from the Head of Bay Quinte, as far down as the extent of the Missasaguas [*sic*] claim; at which time it was agreed between Sir John and the Indians that these purchases should extend as far back as a man could walk, or go on foot, in a day. John Ferguson further says, he saw the Indians sign two deeds for the lands in question, and that Wabacanane was among the principal chiefs present.

Ferguson also says that he heard the late Captain Crawford say the lower purchase was from the River St. Lawrence River as far back as the Ottawa River, and which he also heard confirmed by Sir John Johnson.<sup>126</sup>

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<sup>122</sup> The inquiry carried out by Alexander Aitken and officials in the Surveyor General's Office of Quebec.

<sup>123</sup> Lord Dorchester to John Graves Simcoe, January 27, 1794, in Cruikshank, ed., *The Correspondence of Lieut. Governor John Graves Simcoe...*, Vol. II, pp. 137-138 [Doc. 58].

<sup>124</sup> Lord Dorchester to John Graves Simcoe, January 27, 1794, in Cruikshank, ed., *The Correspondence of Lieut. Governor John Graves Simcoe...*, Vol. II, pp. 137-138 [Doc. 58].

<sup>125</sup> The purchase in question appears to be the 1783 Crawford Purchase.

<sup>126</sup> Statement of John Ferguson, August 1, 1794 [Doc. 60]. LAC RG 5 Series A-1 Vol. 52 pp. 26047-26048 Reel C-4604.

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Despite irregularities related to a lack of documentation evident in some of the land purchases, Dorchester expressed confidence that Mississaugas occupants of Upper Canada would provide a testimonial vouching for the honour and reliability of the Crown in land dealings. While Dorchester claimed the Mississaugas were well satisfied, Mississauga chiefs complained about a purchase at Lake Simcoe and near York and also disputed the right of one of the Mississaugas signatories (Chief Wabakanyne) to be a party to ceding land west of the Thames River under the 1784 Between the Lakes Purchase.<sup>127</sup>

At the end of 1794, Lord Dorchester summarized the views of the government with respect to Indian land purchases in a letter to Deputy Superintendent General of Indian Affairs Alexander McKee:

I have likewise thought it expedient for His Majesty's service to Establish further Instructions and Orders relative to the purchase of Indian Territory a Copy of which is also inclosed for your direction and Guidance.

In the year 1787 a purchase was made from the Mississagas of a Portion of their Lands and although the exact limits were probably ascertained and goods to the amount agreed upon paid therefor, yet the proceedings are so informal and irregular as to invalidate and set aside the whole transaction, a Blank Deed found in the Office of the Surveyor General appears to be the only testimonial of this purchase and tho' of no Validity or Value Colonel Simcoe thinks it may be useful in explaining the intentions of the Indians at that time, for that purpose it is now sent to you but it is on no account to be made use of or considered as an Instrument transferring a Right to Indian territory, and is to be returned to the Superintendent General's Office as soon as the Transaction has been explained.<sup>128</sup>

In subsequent years Crown officials continued to attempt to clarify various purchases made from the Mississaugas Indians. In 1795, Alexander McKee interviewed Nathaniel Lines, interpreter, in an effort to determine the boundaries of the 1788 Gunshot Treaty. The recollections of Nathaniel Lines in this regard do not provide the sought after clarity as he stated that the purchase extended from:

<sup>127</sup> William Chewett to Major E. B. Littlehales, August 31, 1794, in E. A. Cruikshank, ed., *The Correspondence of Lieut. Governor John Graves Simcoe, With Allied Documents Relating to His Administration of the Government of Upper Canada*, Vol. III, 1794-1795 (Toronto: Ontario Historical Society, 1925), p. 24 [Doc. 61].

<sup>128</sup> Lord Dorchester to Alexander McKee, Deputy Superintendent General of Indian Affairs, December 24, 1794 [Doc. 62]. LAC RG 10 Vol. 8 pp. 8805-8807 Reel C-10999.

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... the Head or carrying Place of the Bay of Quinti to a Creek called Tobeka from seven to fourteen Miles above Toronto ... but the lands intended to be sold and purchased at the time are connected all the way in front on Lake Ontario running in Depth 10 or 12 Miles nearly as far as the Rice Lake and above the Rice Lake a common days Journey back from Toronto.<sup>129</sup>

Interpreter Lines' conflation of the boundaries of the 1787 Toronto Purchase and the 1788 Gunshot Treaty might be attributable to confusion arising from the fact that he interpreted at both purchases several years earlier. More importantly, he recalled that the southern boundary of the purchases ran along the Lake Ontario shore. Lines made no mention of the boundary of the purchases extending out into the lake beyond the shore.

Lakes and various rivers and creeks provided valuable food sources for the Mississaugas. In 1796, Mrs. J. G. Simcoe noted the importance of wild rice as a principal food for the Indians and Indian traders in Upper Canada. She recorded in her diary that it "grows plentifully on the edges of the Lakes & in the Creeks of Upper Canada."<sup>130</sup>

On July 4, 1796, Augustus Jones, surveyor, put together a list entitled "Names of the Rivers and Creeks, as they are called by the Mississagues, and the meaning thereof explained in English, beginning at Niagara, and extending along the shore by Burlington Bay." This list provided Mississaugas names for various rivers, streams, creeks, bays, etc. Thirty-five places were named, including the Humber River that was called "Cobecheonock" meaning "leave the canoes and go back" as it was the beginning of the Toronto Carrying Place. The River Credit was called "Missinihe" for trusting creek and York Island was called "Min ne sink".<sup>131</sup>

### **1797 Brant Tract Purchase**

The Brant Tract was a purchase of land at Burlington Bay from the Mississaugas for Mohawk Captain Joseph Brant. The purchase was made through a series of transactions between 1795 and 1797. The Quebec Land Board had recommended that land be granted to Brant "for the Accomodation [*sic*] of ... his

<sup>129</sup> A. McKee, Deputy Superintendent General of Indian Affairs, Record of an interview with Nathaniel Lines, Interpreter, June 10, 1795 [Doc. 65]. LAC RG 8 Series C Vol. 250 Pt. 1 pp. 287-288 Reel C-2849.

<sup>130</sup> Mrs. J. G. Simcoe, journal extract, ca. 1796 [Doc. 72]. AO F 47-10-0-7 Reel MS 1812.

<sup>131</sup> A. Jones, Deputy Provincial Surveyor, "Names of the Rivers and Creeks, as they are called by the Mississagues, and the meaning thereof explained in English, beginning at Niagara, and extending along the shore by Burlington Bay," July 4, 1796 [Doc. 77]. AO RG 1-2-1 Vol. 32 pp. 103 and 105 Reel MS 7433.

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military & family claims.”<sup>132</sup> Sometime between 1791 and 1795, Lord Dorchester appears to have told Captain Brant that he could choose 3,450 acres of land in payment for his service and loyalty to the British during the American Revolution.<sup>133</sup> Brant apparently made an agreement with the Mississaugas in 1795 to purchase some of their lands at Burlington Bay.<sup>134</sup> According to Dorothy Turcotte, author of *Remember the Brant Inn*, Brant chose “the finest tract of land around the Head of the Lake. It was situated at the north end of the beach strip with a fine view of both Lake Ontario and Burlington Bay.”<sup>135</sup>

In October 1795, Simcoe informed Lord Dorchester that Brant had already purchased land “near the Little Lake or Burlington Bay” from the Mississaugas, and, as Simcoe considered Brant’s personal purchase to be invalid and “a principle which I consider in no case to be admissible,” he would immediately direct Colonel John Butler,<sup>136</sup> Indian Agent at Niagara, to buy the land.<sup>137</sup>

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<sup>132</sup> John Graves Simcoe, Lieutenant Governor, to Alexander McKee, Deputy Superintendent General of Indian Affairs, May 10, 1795 [Doc. 64]. LAC RG 10 Vol. 9 Reel C-10,999. The decision had been made prior to the 1791 split of the Province of Quebec into Upper and Lower Canada.

<sup>133</sup> Lord Dorchester, Commander in Chief of British North America, to John Graves Simcoe, Lieutenant Governor of Upper Canada, January 24, 1796, in Cruikshank, ed., *Simcoe Correspondence*, Vol. IV, pp. 179-180 [Doc. 73]. This amount was based on 3,000 acres for Brant as a captain in the British Army, and 50 acres each for his wife and eight children. Dorothy Turcotte, *Remember the Brant Inn* (Erin: The Boston Mills Press, 1990), pp. 7-9 [Doc. 151].

<sup>134</sup> J. G. Simcoe, Lieutenant Governor of Upper Canada, to Lord Dorchester, Commander in Chief of British North America, October 9, 1795, in Cruikshank, ed., *Simcoe Correspondence*, Vol. IV, p. 101 [Doc. 66].

<sup>135</sup> Dorothy Turcotte, *Remember the Brant Inn*, 1990, pp. 7-9 [Doc. 151].

<sup>136</sup> Simcoe complained that Colonel Butler was unable to act effectively for the Crown due to his deafness preventing him from speaking or interpreting at public councils. J. G. Simcoe, Lieutenant Governor of Upper Canada, to Lord Dorchester, Commander in Chief of British North America, October 9, 1795, in Cruikshank, ed., *Simcoe Correspondence*, Vol. IV, p. 101 [Doc. 66]. Dorchester also noted that Butler’s “age and infirmities” prevented him from performing his tasks at Niagara, and expressed hope that he would retire. Dorchester to Simcoe, November 5, 1795, in Cruikshank, ed., *Simcoe Correspondence*, Vol. IV, pp. 125-126 [Doc. 70]. Simcoe also complained that Butler could not speak the Mississaugas’ language. Simcoe to Dorchester, April 9, 1796, in Cruikshank, ed., *Simcoe Correspondence*, Vol. IV, p. 239 [Doc. 74].

Despite his inability to speak Mississauga and his reduced capacity, Butler was much esteemed by Brant as a man who understood First Nations’ manners and customs. See “Proceedings of a Ceremony of Condolence on the Death of the Late Lieutenant Colo. Butler Deputy Agent of Indian Affairs, Contained in a Speech on the Occasion Addressed to Government by Captain Brant and the Chiefs of the Six Nations,” May 16, 1796, in Cruikshank, ed., *Simcoe Correspondence*, Vol. IV, pp. 265-267 [Doc. 76].

<sup>137</sup> J. G. Simcoe, Lieutenant Governor of Upper Canada, to Lord Dorchester, Commander in Chief of British North America, October 9, 1795, in Cruikshank, ed., *Simcoe Correspondence*, Vol. IV, p. 101 [Doc. 66].

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Less than two weeks later, Simcoe instructed Butler to purchase lands shown in a sketch he forwarded. The agreement with the Mississaugas was to be made “in the mode prescribed by Lord Dorchester’s orders and regulations.” A sketch attached to the instructions contains the following note, “Purchase Lines by Major Hall under Plan, by Deed of Cession from the Indians 22 May 1784, explained & confirmed by another Deed, 7 Dec 1792.”<sup>138</sup> Simcoe instructed Butler to explain to Captain Brant that the Mississaugas were to “**retain their customary use of the Beach &c.** that a public road will be cut through it and it is probable a Bridge will be shortly built to connect the two Beaches.”<sup>139</sup> [emphasis added]

Three days later, the Mississaugas signed a provisional agreement to surrender 3,450 acres at Burlington Bay to the Crown in consideration of £100 “good and lawfull money of the Province.”<sup>140</sup> The tract was described by geographical points, distances, compass bearings, and the boundary of the Between the Lakes Purchase. The agreement was signed by Wabakanyne, Wabanip, Wanapenant, Tabandan, Okamapenes, and Potakquan, and by Butler, officers from the Fifth Regiment (Captain R. H. Sheaffe, Lieutenant J. M. Mason, Ensign Wm. Gainsfort), Indian Department Storekeeper William Johnson Chew, and Surveyor Augustus Jones.<sup>141</sup>

According to Butler’s November 9, 1795, report, he called the Mississaugas leaders together at the head of the lake in accordance with Simcoe’s instructions. Interpreter John Baptiste Rousseau assisted Butler at the council, where the Mississaugas were shown the sketch of the land that the Crown wished to purchase for Captain Brant. According to Butler, the Mississaugas “consented to part with it without any hesitation whatever.” Butler noted that the Mississaugas signed the agreement in the presence of Captain Sheaffe and Lieutenant Mason, who had been sent to certify the delivery of the “Annual Presents.” Butler

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<sup>138</sup> J. G. Simcoe, Lieutenant Governor, to John Butler, Indian Agent, October 20, 1795, in Cruikshank, ed., *Simcoe Correspondence*, Vol. IV, p. 106 [Doc. 67]. E. B. Littlehales, Secretary to the Lieutenant Governor, forwarded these instructions to Butler on October 21, 1795. E. B. Littlehales to J. Butler, Indian Agent, October 21, 1795 [Doc. 68]. LAC RG 8 Series C Vol. 248 p. 408 Reel C-2848.

<sup>139</sup> J. G. Simcoe, Lieutenant Governor, to John Butler, Indian Agent, October 20, 1795, in Cruikshank, ed., *Simcoe Correspondence*, Vol. IV, p. 106 [Doc. 67].

<sup>140</sup> Surrender No. 3 3/4, October 24, 1795, in Canada, *Indian Treaties and Surrenders ...*, Vol. I, pp. 8-9 (also on LAC RG 8 Series C Vol. 249 pp. 85-86 Reel C-2849) [Doc. 69].

<sup>141</sup> Surrender No. 3 3/4, October 24, 1795, in Canada, *Indian Treaties and Surrenders ...* Vol. I, pp. 8-9 (also on LAC RG 8 Series C Vol. 249 pp. 85-86 Reel C-2849) [Doc. 69]. W. J. Chew, Indian Department Storekeeper, forwarded a copy of the agreement to his father, Joseph Chew, Secretary of Indian Affairs, on April 29, 1796 [Doc. 75]. LAC RG 8 Series C Vol. 249 pp. 83-84 Reel C-2849.

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stressed that the Mississaugas “Appeared to be Very Well Pleased at the Idea of Capt. Brant’s Settling and Improving land so near them.”<sup>142</sup>

A few months after Butler made the provisional purchase, Lord Dorchester advised Simcoe that he had seen Simcoe’s instructions to Butler and protested that Simcoe did not have the authority to order purchases of Indian lands without his approval as Commander in Chief.<sup>143</sup> Dorchester stated that he had previously advised Brant that he should have a grant of land and that, if Simcoe concurred and continued to be satisfied with Brant’s conduct, Simcoe should forward sketches and a requisition to Dorchester and to the Deputy Superintendent General, as was required by Dorchester’s instructions of December 26, 1794.<sup>144</sup>

On April 9, 1796, Simcoe corresponded with Dorchester and enclosed a copy of a letter from the Acting Surveyor General with a sketch of lands to be purchased from the Mississaugas Indians for Captain Brant. Simcoe also recommended immediately concluding the previously ordered purchase of lands between the head of Lake Ontario, or Burlington Bay, and the Etobicoke River, and extending back into the country allowing the formation of townships 12 miles in depth. Simcoe also argued that the Mississaugas should retain their rivers and fishing grounds if these lands were purchased:

**These land should be purchased so as to leave the Mississaugas in full possession of their rivers and fishing grounds**, nor should I think it by any means advisable to grant them universally, but only in such detached lots as might tend to facilitate the communication between this place and Burlington Bay.<sup>145</sup> [emphasis added]

On September 12, 1796, three of the original Mississaugas signatories signed a document at Navy Hall agreeing to execute a regular deed of conveyance of the

<sup>142</sup> John Butler, Indian Agent, to Major E. B. Littlehales, November 9, 1795 [Doc. 71]. LAC RG 8 Series C Vol. 248 pp. 409-410 Reel C-2848.

<sup>143</sup> Lord Dorchester, Commander in Chief of British North America, to John Graves Simcoe, Lieutenant Governor of Upper Canada, January 24, 1796, in Cruikshank, ed., *Simcoe Correspondence*, Vol. IV, pp. 179-180 [Doc. 73].

<sup>144</sup> Lord Dorchester to Sir John Johnson, Superintendent General and Inspector General of Indian Affairs, December 26, 1794, in Cruikshank, ed., *Simcoe Correspondence*, Vol. III, pp. 241-242 [Doc. 63].

<sup>145</sup> John Graves Simcoe, Lieutenant Governor of Upper Canada, to Lord Dorchester, Captain General and Governor in Chief, Upper and Lower Canada, April 9, 1796, in Cruikshank, ed., *Simcoe Correspondence*, Vol. IV, p. 239 [Doc. 74]. The map referred to is likely the sketch attached to the provisional agreement of September 12, 1796. See sketch titled “A Survey of Lands to be Purchased from the Missasagues for Captain Brant containing about 3450 Acres,” attached to Provisional Agreement, September 12, 1796 [Doc. 78]. LAC RG 8 Series C Vol. 249 pp. 418-419 Reel C-2849.

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Brant Tract upon the receipt of three hundred dollars in “Indian Goods at the Montreal price.”<sup>146</sup> The agreement was signed by Wabanip, Wanapinant, and Tabandon; and by P. Selby, Assistant Secretary of Indian Affairs; Matthew Elliott, Superintendent of Indian Affairs at Amherstburg; and Storekeeper Chew. Alexander McKee, Deputy Superintendent General and Deputy Inspector General of Indian Affairs, represented the Crown.<sup>147</sup>

A month after McKee had made the agreement, he forwarded a copy of it with a letter to Secretary Chew of October 16, 1796, making arrangements for the goods required for payment. In this letter, McKee referred to the December 26, 1794 “General orders” from Dorchester, and requested special authority to allow the Niagara Superintendent to oversee the final step in the Brant Tract purchase, that of distributing the goods.<sup>148</sup>

The Brant Tract purchase was finalized by William Claus, Indian Superintendent at Niagara, on August 21, 1797. The description of the land had been prepared by D. W. Smith, the Assistant Surveyor General, based on a survey by Augustus Jones.<sup>149</sup>

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<sup>146</sup> The price stipulated in the original provisional agreement was £100 in provincial currency. It is unclear what type of currency is meant by “three hundred Dollars”; however, this amount in Canadian currency would have been roughly equal to the £75.2.3 referred to in a November 1796 requisition as payment for the lands. See Requisition, November 16, 1796 [Doc. 80]. LAC RG 8 Series C Vol. 249 p. 421 Reel C-2849.

<sup>147</sup> Provisional Agreement, September 12, 1796 [Doc. 78]. LAC RG 8 Series C Vol. 249 pp. 418-419 Reel C-2849. A sketch titled “A Survey of Lands to be Purchased from the Missisagues for Captain Brant containing about 3450 Acres” was attached.

<sup>148</sup> Alexander McKee, Deputy Superintendent General of Indian Affairs, to Joseph Chew, Secretary of Indian Affairs, October 16, 1796 [Doc. 79]. LAC RG 8 Series C Vol. 249 p. 420 Reel C-2849.

<sup>149</sup> The Brant Tract survey description reads: “Commencing on the North Bank of Burlington Bay, with limit between the lands heretofore purchased from the Missisagues, & the lands intended to be purchased from the Missisagues for Capt. Brant; that being the South Eastern Angle of the Township of Flamborough East;—then North 45 degrees West, along the purchase line, 288 Chains, more or less; The North 45 degrees East, 120 Chains—Then South 45 degrees East to the mouth of a small Creek, (which empties itself into Lake Ontario) called by the Indians Lamabinicon; then Westerly, along the Shore of Lake Ontario to where the Sandy Beach, (otherwise called North Neck) joins to the main Land; then along the eastern shore of the said Beach to the outlet, from the Little Lake, or Burlington Bay as aforesaid, & then North 45 degrees West, to the place of beginning—Containing 3450 Acres, may there be more or less.” See “A Purchase of Further Lands from the Mississaugas for Joseph Brant,” prepared by D. W. Smith, Acting Surveyor General, August 3, 1797, in E. A. Cruikshank and A. F. Hunter, eds., *The Correspondence of the Honourable Peter Russell, With Allied Documents Relating to his Administration of the Government of Upper Canada During the Official Term of Lieut.-Governor J. G. Simcoe While on Leave of Absence*, Vol. I, 1796-1797 (Toronto: Ontario Historical Society, 1932), pp. 240-241 [Doc. 81].



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Goods in the value of £75.2.6 were distributed, listed, and acknowledged as having been received by the Mississaugas Indians.<sup>150</sup>

### **Issues related to Land Purchased from the Mississaugas of the Credit**

An August 28, 1797, Order in Council noted the great importance of the land on the north side of the lake beginning at the Tobicot (Etobicoke) River and extending to the head of the lake, “still in the possession of the Mississaugas ... & the obvious necessity of it being eventually purchased & incorporated into the rest of the Province.”<sup>151</sup>

In September of 1797, Peter Russell, Administrator of the Government of Upper Canada, explained to Robert Prescott, Governor General of Canada, that he could not locate records about all of the land purchases made from Indians. He remarked about disputes between settlers and “the Messissagues [*sic*] & the Rice Lake Indians in consequence,” in a number of townships on the north side of Lake Ontario. Russell requested either the originals or copies of the following land purchase deeds:

The Deed of Cession from the Indians to the Crown for a Purchase made in 1787, for a Tract at Toronto and another at Matchidash on Lake Huron.

The Deed for the Cession of the Country on the No. side of Lake Ontario from the head of the Bay of Quinté to York (purchased perhaps by Capt. Crawford in 1787).<sup>152</sup>

Russell clearly was discussing both the 1787 Toronto Purchase and the 1788 Gunshot Treaty, though he erroneously described the latter as taking place in 1787 and “perhaps” involving Captain Crawford. Russell inquired as to how far back the purchased lands extended (Gunshot Treaty), and “how far westward of the Rideau and Gananoqui [*sic*] Waters do the purchased lands extend? I shall likewise be glad to know which Islands in the River St. Lawrence remain with the Indians, and which have been ceded to the Crown.”<sup>153</sup> The inquiry from Peter

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<sup>150</sup> Surrender No. 8, August 21, 1797, in Canada, *Indian Treaties and Surrenders ...*, Vol. I, pp. 22-23 [Doc. 82].

<sup>151</sup> Order in Council, August 28, 1797 [Doc. 83]. LAC RG 1 Series E3 Vol. 58 File 02 Reel C-1197 pp. 12-13.

<sup>152</sup> Peter Russell to Robert Prescott, Governor General, September 21, 1797, in Cruikshank and Hunter, eds., *The Correspondence of the Honourable Peter Russell ...*, Vol. I, pp. 284-285 [Doc. 84].

<sup>153</sup> Peter Russell to Robert Prescott, Governor General, September 21, 1797, in Cruikshank and Hunter, eds., *The Correspondence of the Honourable Peter Russell ...*, Vol. I, pp. 284-285 [Doc. 84].

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Russell about the status of islands in the St. Lawrence indicates that while certain islands had been surrendered, the river bed had not.

On December 14, 1797, Peter Russell issued a Proclamation concerning many complaints made by the Mississaugas Indians about depredations committed upon their fisheries and burial places. Russell then proclaimed that:

*Be it therefore known* that if any complaint shall hereafter be made of injuries done to the fisheries and burial places of the said Indians, or either of them, and the persons can be ascertained who misdemeaned himself or themselves, in manner aforesaid, such person or persons will be proceeded against with the utmost severity, and a proper example made of any herein offending.<sup>154</sup>

In April 1798, Captain Joseph Brant corresponded with a Crown official and provided a description of a tract of land marked off for the Mississaugas. Brant described the bounds of the land and commented that the reserved fisheries would be spoiled if settlement took place in the marshes of the creeks:

... a mile to the West of the 12 Mile Creek to extent 3 miles from the Lake and then a Strait line till it strikes the line of the River of Credit 3 miles from the Lake, **by that means the fisheries of all the Rivers will be reserved and otherwise it would be impossible for if the Marshes of the Creeks should be settled it would certainly spoil the fishery.**<sup>155</sup> [emphasis added]

In mid-October 1798, Brant wrote to Peter Russell and explained he had just returned from salmon fishing on the River Credit. He referred to a proposed purchase of Mississaugas lands and stated that it did not cause him alarm.<sup>156</sup>

Early in 1799 the Executive Council met and the President outlined certain conditions related to the lease of a mill and surrounding lands on the Humber River. One of the conditions dictated that wicker stops “be placed above the Race to prevent the salmon from being drawn into the Steam & either caught

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<sup>154</sup> Peter Russell, President, Administering the Government, Proclamation, December 14, 1797, in *Fourth Report of the Bureau of Archives for the Province of Ontario, 1906* (Toronto: L. K. Cameron, 1907), p. 193 [Doc. 85].

<sup>155</sup> Captain Joseph Brant to Unknown [Peter Russell?], April 5, 1798 [Doc. 86]. LAC RG 8 Vol. 251 Reel C-2850.

<sup>156</sup> Joseph Brant to Peter Russell, President, Administering the Government, October 14, 1798 [Doc. 87]. LAC MG 19 F 28 Vol. 20 p. 102 Reel M-5218.

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within the Race or cut to pieces by the wheel.” Other criteria related to free passage for the salmon to ascend and descend the river.<sup>157</sup>

As noted earlier in this report, an 1800 map entitled “A map of the province of Upper Canada describing all the new settlements, towns, townships, &c. with the countries adjacent, from Quebec to Lake Huron Compiled, at the Request of His Excellency Major General John G. Simcoe, First Lieutenant Governor by David William Smyth Esqr Surveyor General,” outlines certain salmon fishing areas. In particular, salmon fisheries are identified along the northwestern shore of Lake Ontario, at the mouth of the River Credit and the Etobicoke.<sup>158</sup>

On June 1, 1801, James Givins, Indian Affairs, reported to James Green, Secretary of the Lieutenant Governor, that he learned from the Mississaugas that a great flood on the Credit River prevented the Indians from catching salmon. The water was so “thick & muddy” the Indians could not see the fish.<sup>159</sup>

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<sup>157</sup> Executive Council of Upper Canada, January 19, 1799 [Doc. 88]. LAC RG 1 Series E3 Vol. 34B File H23/H24 pp. 102-103 Reel C-1193.

<sup>158</sup> *A map of the province of Upper Canada describing all the new settlements, towns, townships, &c. with the countries adjacent, from Quebec to Lake Huron Compiled, at the Request of His Excellency Major General John G. Simcoe, First Lieutenant Governor by David William Smyth Esqr Surveyor General. London, Published by W. Faden, Geographer to His Majesty and to H.R.H. Prince of Wales. Charing Cross, April 12th 1800*, accessed at <http://yorkspace.library.yorku.ca/xmlui/handle/10315/20542> [Doc. 89].

<sup>159</sup> J. Givens, Indian Agent, to Major Green, Secretary to the Lieutenant Governor, June 1, 1801 [Doc. 90]. LAC RG 5 Series A-1 Vol. 2 pp. 624-625 Reel C-4502.

## Chapter Four: Land Cessions 1805-1820

### 1805 Toronto Purchase Renewal

Due to the irregularity of the 1787 Toronto Purchase, Deputy Superintendent General William Claus met with the Mississaugas of the Credit Nation on July 31, 1805. During this meeting Claus explained that the Crown did not know the exact limits of the 1787 Toronto Purchase and requested the gathered chiefs to describe the boundaries so that a fresh deed could be executed.<sup>160</sup> Chief Quenepenon replied and explained that all of the Mississauga chiefs who had participated in the original sale were dead but they had informed their successors of the boundaries which began on the east side of the Etobicoke River:

...  
I now speak for all the Chiefs of the Mississaugas ...

The said Chiefs declared the Line of the said purchase began on the East side of the River Etobicook, that it follows the course of the said River until the line running N. 22 degrees W intersected the said R. Etobicook about 3 miles from its Entrance and then continuing the said Line 28 miles: that it has always been within their knowledge that the R. Etobicook divided the lands of the Mississauges from that sold in 1787 to His Majesty until the intersection as before mentd. and they are perfectly satisfied that the line should so continue.<sup>161</sup>

Chief Quenepenon insisted that the old chiefs “particularly reserved the fishery of the River to our Nation.” He 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.**”<sup>162</sup> [emphasis added]

On August 1, 1805, Crown officials and the Mississaugas of the Credit executed a new deed for the purchase of about 250,880 acres confirming the Toronto Purchase of 1787 and clearly establishing its boundaries. The deed included a special provision protecting Mississaugas fishing rights on the Etobicoke River.

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<sup>160</sup> P. Selby, Assistant Secretary of Indian Affairs, “Proceedings of a Meeting with the Mississaugas at the River Credit,” July 31, 1805 [Doc. 91]. LAC MG 11 Q Series Vol. 303 Reel C-10231.

<sup>161</sup> “River Credit 31<sup>st</sup> July 1805,” July 31, 1805 [Doc. 92]. LAC MG 19 F 1 Vol. 9 pp. 125-126v Reel C-1480.

<sup>162</sup> P. Selby, Assistant Secretary of Indian Affairs, “Proceedings of a Meeting with the Mississaugas at the River Credit,” July 31, 1805 [Doc. 91]. LAC MG 11 Q Series Vol. 303 Reel C-10231.

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The ceded tract was shown on an attached plan. This surrender became known as Surrender No. 13:<sup>163</sup>

... all that tract or parcel of land commencing on the east bank of the south outlet of the River Etobicoke; thence up the same, following the several windings and turnings of the said river to a maple tree blazed on four sides at the distance of three miles and three-quarters, in a straight line from the mouth of the said river; thence north twenty-two degrees west twenty-four miles and one quarter; then north sixty-eight degrees east fourteen miles; then south twenty-two degrees east twenty-eight miles, more or less, to Lake Ontario; then westerly along the water's edge of Lake Ontario to the eastern bank of the south outlet of the River Etobicoke, being the place of beginning, containing Two hundred and fifty thousand, eight hundred and eighty acres, together with all the woods and waters thereon ... **save and except the fishery in the said River Etobicoke, which they the said Chiefs, Warriors and people expressly reserve for the sole use of themselves and the Mississague Nation.** <sup>164</sup> [emphasis added]

### **1805 Head of the Lake Purchase**

As noted earlier, beginning in 1796 government officials attempted to secure Mississaugas land lying between the Etobicoke River and the Brant Tract at the head of Lake Ontario.<sup>165</sup> The Mississaugas, with the assistance of Joseph Brant, resisted the government purchase offers for several years. Although no official instructions to make a purchase from the Mississaugas have been found, it is evident that in 1805 the government had once again turned its attention to the tract of land lying between Burlington Bay and the Etobicoke River.

At the same meeting to discuss the renewal of the Toronto Purchase, Chief Quinepenon informed Claus that he and the other chiefs wanted to remain under Claus's protection, "But it is hard for us to give away more Land. The Young Men

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<sup>163</sup> Surrender No. 13 [Toronto Purchase], September 23, 1787-June 18, 1806, and attached plan titled "The descriptive plan of the Toronto purchase made on 23d September 1787 and Completed on the 1st day of August 1805," in Canada, *Indian Treaties and Surrenders*, Vol. I, pp. 32-36 [Doc. 43].

<sup>164</sup> Indenture between William Claus and the Mississague Nation, August 1, 1805 [Doc. 93]. LAC RG 10 Vol. 1 pp. 301-303 Reel C-10996.

<sup>165</sup> John Graves Simcoe, Lieutenant Governor of Upper Canada, to Lord Dorchester, Captain General and Governor in Chief, Upper and Lower Canada, April 9, 1796, in Cruikshank, ed., *Simcoe Correspondence*, Vol. IV, p. 239 [Doc. 74].

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& Women have found fault with so much having been sold before.” The chief then produced a sheet of bark with carved marks representing the additional land they were willing to sell to the British. Evidently, the bark outlined lands from the Etobicoke River extending to Captain Brant’s tract. The Mississaugas left the sale price for the land “to the generosity of our Father.”<sup>166</sup>

The Mississaugas, however, reserved “a mile on each side of the Credit to its source; half a mile on each side the sixteen mile Creek & half a mile on each side the Twelve Mile Creek; A tract sold by them to the Tuscarora’s [*sic*] near Brant’s and a Sugar Bush which they gave to Mrs. Brant.”<sup>167</sup> The Mississaugas also wished to retain land two to three chains wide along the length of the Beach so that they could not be driven off. In exchange, the Mississaugas offered to sell land “Two miles to the Northward of the road and all to the southward of it except the Two or three Chains on the Beach.”<sup>168</sup> In reply to this offer, Deputy Superintendent General Claus remarked that he was quite certain that the Governor would not accept these land sale terms.<sup>169</sup>

On August 2, 1805, the Mississauga chiefs, in consideration of £1000, surrendered a tract of land on Lake Ontario containing 70,784 acres. 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 flats or low grounds on said creeks and river which we have heretofore cultivated and on which we have camps our camps and also the sole right of the fishery in the River Credit with one mile on each side of the said river.<sup>170</sup>

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<sup>166</sup> P. Selby, Assistant Secretary of Indian Affairs, “Proceedings of a Meeting with the Mississaugas at the River Credit,” July 31, 1805 [Doc. 91]. LAC MG 11 Q Series Vol. 303 Reel C-10231.

<sup>167</sup> P. Selby, Assistant Secretary of Indian Affairs, Proceedings of a Meeting with the Mississaugas at the River Credit, August 1, 1805 [Doc. 94]. LAC MG 11 Q Series Vol. 303 pp. 50-54 Reel C-10231.

<sup>168</sup> P. Selby, Assistant Secretary of Indian Affairs, Proceedings of a Meeting with the Mississaugas at the River Credit, August 1, 1805 [Doc. 94]. LAC MG 11 Q Series Vol. 303 pp. 50-54 Reel C-10231. Note: The road referred to was Dundas Street which ran through this unsurrendered tract and had been completed in 1796. See Roger E. Riendeau, *Mississauga: An Illustrated History* (s.l.: Windsor Publications Ltd., 1985), p. 15 [Doc. 148].

<sup>169</sup> P. Selby, Assistant Secretary of Indian Affairs, Proceedings of a Meeting with the Mississaugas at the River Credit, August 1, 1805 [Doc. 94]. LAC MG 11 Q Series Vol. 303 pp. 50-54 Reel C-10231.

<sup>170</sup> Provisional Agreement between the Principal Chiefs of the Mississauga Nation, River Credit, and William Claus, Deputy Superintendent General of Indian Affairs, August 2, 1805 [Doc. 95]. LAC MG 11 CO 42 Vol. 340 pp. 43-43v Reel B-290. See also P. Selby, Assistant

The bounds of the purchased land were described as:

... commencing at the eastern bank of the mouth of the River Etobicoke being on the limit of the western boundary line of the Toronto Purchase in the year 1787 ... Then north twenty-two degrees west six miles then south thirty-eight degrees west twenty-six miles more or less until it intersects a line on a course north forty-five degrees produced from the outlet at Burlington Bay then along the said produced line, one mile more or less to the lands granted to Captain Brant then north forty-five degrees east three miles and a half more or less to Lake Ontario ... **Then northeasterly along the water's edge of Lake Ontario to the eastern bank of the River Etobicoke** being the place of beginning.<sup>171</sup> [emphasis added]

Lise Hansen, anthropologist, pointed out that one of earliest explicit references to fisheries in pre-1850 Indian land cessions took place in the 1805 treaties with the Mississaugas. Hansen noted that as a condition of the land surrenders the Mississaugas reserved to themselves “the sole right of the fisheries” in the 12 Mile Creek, 16 Mile Creek, Credit River, and Etobicoke River from the mouth of these waters to a specified distance upstream.<sup>172</sup>

### **Survey of Surrendered Land**

On August 8, 1805, Claus wrote to Lieutenant Colonel Green and enclosed a deed confirming the Toronto Purchase of 1787 and the Provisional Agreement with the Mississaugas for the purchase of “four concessions deep in the front of their land lying between the Etobicoke and Burlington Bay.”<sup>173</sup>

In mid-February of 1806, C. B. Wyatt, Surveyor General, sent survey instructions to Samuel Wilmot for the tract of land on Lake Ontario between the Etobicoke River and the Brant Tract recently purchased from the Mississaugas. In addition to describing the bounds of the land, Wyatt advised that the Indians had reserved a mile on each side of the River Credit:

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Secretary of Indian Affairs, “Proceedings of a Meeting with the Mississague at the River Credit,” August 2, 1805 [Doc. 96]. LAC MG 11 Q Series Vol. 303 pp. 55-57 Reel C-10231.

<sup>171</sup> Provisional Agreement between the Principal Chiefs of the Mississauga Nation, River Credit, and William Claus, Deputy Superintendent General of Indian Affairs, August 2, 1805 [Doc. 95]. LAC MG 11 CO 42 Vol. 340 pp. 43-43v Reel B-290.

<sup>172</sup> Lise C. Hansen, “Treaty Fishing Rights and the Development of Fisheries Legislation in Ontario: A Primer,” Ontario Native Affairs Secretariat, May 1991, p. 3 [Doc. 153].

<sup>173</sup> William Claus, Deputy Superintendent General of Indian Affairs, Fort George, to Lieutenant-Colonel Green, August 8, 1805 [Doc. 97]. LAC MG11 Q Series Vol. 303 Reel C-10231.

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The Indians having reserved one [Mile] upon each side of the River Credit for their own, you will be particularly careful not to encroach. For this purpose, you had better take the several [missing word(s)] and distances of that River, which will enable [you] to lay off one Mile upon each side thereof, by [missing word(s)] of Parallel lines, conformable to the General [missing words] the said River, upon the same principle as a similar Reserve, heretofore laid off upon the Grand River, which lines being marked, will determine the position of the lots which your are to lay off. This you can do perhaps, with greater facility, and with losing less [of] your time, as you Traverse the Shore of the Lake, which will save you making a Trip expressly for that purpose.<sup>174</sup>

On July 1, 1806, William Stanton of the President's Office issued directions for a survey of the Etobicoke River from its mouth to the depth of the "Mississague Purchase in order to determine the boundaries between Etobicoke Township and Township No. 1 within the purchased land."<sup>175</sup> Six days later, Wilmot reported to Wyatt that he began the survey, "at the Mouth of the River Etobicoke but on the west side thereof" and surveyed as follows:

... from thence measured Six Miles, and planted the necessary posts, at the North west corner of the purchase. Then returned and commenced Traversing the Shore of Lake Ontario from the River Etobicoke to the River Credit, which I also traversed about seven Miles, then continued the Traverse of the Lake Shore to the outlet of a small Creek where I found Captain Brant's North East Boundary line, which course was about N45°W. Then proceeded to measure the said line and found the distance 293 Chains to the North West corner; as this distance being greater than was expected, I proceeded to the South West Boundary of the Etobicoke Township, where I first Commenced the Survey....<sup>176</sup>

On August 15, 1806, the Surveyor General requested that the President administering the Government of Upper Canada be informed that exclusive of a reservation of the fisheries and land measuring a mile on each side of the River

<sup>174</sup> C. B. Wyatt, Surveyor General, to Samuel Wilmot, Surveyor, February 14, 1806 [Doc. 98]. OMNR Survey Records, Letters of Instruction, Volume 3, No. 239a.

<sup>175</sup> William Stanton, C.C. in the President's Office, to Charles Burton Wyatt, Surveyor General, July 1, 1806 [Doc. 100]. LAC RG 5 Series A-1 Vol. 5 Pt. 2 pp. 1920-1921 Reel C-4503.

<sup>176</sup> S. Wilmot, Surveyor, to Charles B. Wyatt, Surveyor General, June 7, 1806 [Doc. 99]. AO RG 1-2-1 Vol. 39 Reel MS 7435.



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Credit, the August 1, 1805, “provisional treaty” reserved the fishery rights in Twelve Mile and Sixteen Mile Creeks to the Mississaugas Nation. Wyatt noted the Mississaugas also retained the Etobicoke River and the flats or low grounds along previously mentioned creeks and rivers. He suggested a new survey identifying the true courses of the various creeks and rivers for the purpose of determining whether any Indian reserves lay along banks of the interior waterway.<sup>177</sup>

That same day, Thomas Scott, Chairman of the Executive Council of Upper Canada, recommended that a surveyor determine what flats and low lying grounds were reserved for the Indians from the recently purchased land:

As it is found to be accompanied with difficulty to ascertain the intent and meaning of that part of the Provisional Agreement for the purchase of the Mississagua [*sic*] Tract, wherein the Indians reserve to themselves the Flats and low grounds on the Creeks and Rivers within the said Tract, which the Indians had, before the said Provisional Agreement, cultivated, and also had made their Camps; The Board therefore recommend to Your Honor, to order a Surveyor to be sent out with Mr. St. John, the Interpreter, to ascertain what Flats and low grounds are reserved by the Provisional Agreement...<sup>178</sup>

On August 18, Wilmot reported to Wyatt about the progress of his survey:

The Reserves on the 16 and 12 Mile Creeks, are to be one quarter of a Mile on each side of the said Creeks, and to extend to the 2nd. Concession line from the Lake Shore, then to extend up the Creeks to enclose all the flat Ground to the extent of the purchase that the Banks or high land on each side of these two Creeks may be the Boundary of the Mississague Indian Reserve. The Reserve lines are to be the same as on the River Credit, by Traversing and taking the general course of the 12 and 16 Mile Creeks, which will take up some time to complete the Survey. There is no time

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<sup>177</sup> C. B. Wyatt, Surveyor General, to William Stanton, August 15, 1806 [Doc. 101]. LAC RG 1 Series E3 Vol. 93 File W17 pp. 9-11 Reel C-1202.

<sup>178</sup> Thomas Scott, Chairman, Executive Council of Upper Canada, to Alexander Grant, President administering the Government of the Province of Upper Canada, August 15, 1806 [Doc. 102]. LAC RG 1 Series E3 Vol. 93 File W17 pp. 7-8 Reel C-1202.

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lost by my sending this express, having sufficient men to go on with the Survey.<sup>179</sup>

At the end of August, Wilmot discussed how he engaged a party of Mississaugas Indians, who provided information about their reserves on the 16 and 12 Mile Creeks. He noted that the reserves extended a half-mile on each side of the creeks and took in all the Flats with a bank on each side as the boundary of their reserve.<sup>180</sup>

On September 5 and 6, 1806, the 85,000-acre tract on the shore of Lake Ontario, stretching from the Etobicoke River to the head of the lake, was formally surrendered by the Mississaugas of the Credit in exchange for goods approximately valued at £1,000. The indenture included a detailed outline of the surrendered land and excepted out on behalf of the Mississaugas:

... the sole right of the fisheries in the Twelve Mile Creek, the Sixteen Mile Creek, the River Credit and the River Etobicoke, together with the lands on each side of the said creeks and the River Credit as delineated and laid out on the annexed plan, the said right of fishery and reserves extending from Lake Ontario up the said creeks and River Credit....<sup>181</sup>

On February 10, 1807, Thomas Ridout of the Surveyor General's Office informed the President's Office that several broken lots "situate upon Lake Ontario" remained from the Mississaugas land purchase and were available for settlement.<sup>182</sup>

At the end of 1809, Samuel Wilmot, surveyor, contacted the Surveyor General and requested supplies. He also requested information about the boundary of the Purchase [Mississaugas] along Lake Ontario: "Please acquaint me what is

<sup>179</sup> Samuel Wilmot, Deputy Government Surveyor, Twelve Mile Creek, to Charles Burton Wyatt, Surveyor General, August 18, 1806 [Doc. 103]. AO RG 1-2-1 Vol. 39 pp. 19-20 Reel MS 7435.

<sup>180</sup> Samuel Wilmot, Deputy Government Surveyor, York, to Charles Burton Wyatt, Surveyor General, August 27, 1806 [Doc. 104]. AO RG 1-2-1 Vol. 39 Reel MS 7435.

<sup>181</sup> Surrender No. 14, September 5-6, 1806, in Canada, *Indian Treaties and Surrenders ...*, Vol. I, pp. 36-40 [Doc. 105]. See also copy of Agreement between Chechalk, Quenepenon, Wabukanyne, Okemapenese, Wabenose, Kebonecence, Osenego, Acheton, Pateguan, and Wabakegogo, Mississauga Nation, and King George III, represented by W. Claus, Deputy Superintendent General of Indian Affairs, September 6, 1806, in Province of Upper Canada, "Report of the Select Committee to which was referred the Petition of the Indians residing on the river Credit," in *Appendix to Journal of the House of Assembly of Upper Canada, 1829* (Toronto: F. Collins, 1829), Appendix 17, No. 32 [Doc. 106].

<sup>182</sup> Thomas Ridout, Clerk, Surveyor General's Office, York, to William Stanton, President's Office, February 10, 1807 [Doc. 107]. LAC RG 5 Series A-1 Vol. 6 Reel C-4504.

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considered the boundary of the Purchase whether waters or a certain distance from Lake Ontario that I can tell when I come to it.”<sup>183</sup> No response to this boundary location inquiry has been located.

### **Fisheries Protection**

On March 10, 1807, the Parliament of Great Britain passed *An Act for the Preservation of Salmon* applicable to the Province of Upper Canada. The Act protected salmon in Upper Canada rivers and creeks and outlined penalties for taking salmon by use of nets or fishing weirs. The Act, however, did not prevent taking salmon with a spear or hook and line.<sup>184</sup>

In October of 1810, William Claus, Deputy Superintendent General of Indian Affairs, met with the Mississaugas at the River Credit. Chief Quenepenon of the 12 Mile Creek Indians expressed their satisfaction with the amount of goods received for a land purchase five years earlier, “but you tell us that our good Father was not satisfied, and that he sent us what you gave us yesterday as a further payment of these lands.” The chief then raised the matter of the fisheries and trespass by whites:

Father. **We must now speak to you about our River, and the fish.** You promised before to try and help us, but the white People will come here.... They make us drunk and then cheat us of our fish. You have told us often that we should take care of our fisheries and to look at our Women and Children. **It was you who advised us to reserve our Rivers for the support of our Women and Children.** When we complained to you about the whites, you told us if they would not pay us, to turn them away,....

Father We wish you to help us and prevent them from fishing. We will kill the fish and sell them to the whites, we have told them so, but they do not mind us. We are strong enough to drive them away, but we do not wish to hurt any of our Father’s people; but if they persist we must take care of our property and strike them.

<sup>183</sup> Samuel Wilmot, Surveyor, to Chewett & Ridout, Acting Surveyor General, December 28, 1809 [Doc. 109]. AO RG 1-2-2 Vol. 63 Reel MS 7443.

<sup>184</sup> *An Act for the Preservation of Salmon*, c. 12, in *A Collection of the Acts Passed in the Parliament of Great Britain, Particularly Applying to the Province of Upper Canada, and of such Ordinances of the Late Province of Quebec, as Have Force of Law Therein* (York: R. C. Horne, 1818), assented to on March 10, 1807 [Doc. 108].

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Father **We wish you to prevent mischief which will be the consequence if they do not leave our River.....**

The Deputy Superintendent [*sic*] General's Answer

...

Children I shall communicate your thanks to Lieut. Governor Gore for the additional Goods given to you by the King your Father for the Land purchased five Years ago. I shall also lay before him your complaint about the White People taking your Fish. I have seen with sorrow the manner in which you have been wrong'd of your fish, which if you disposed of properly would make you very comfortable, but you allow yourselves to be imposed upon, and tempted with Liquor, and when they get you drunk, rob you of your fish. **I still advise you not to use personal violence, and 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.** I shall lay the whole of the business before Lieut. Governor Gore, who will do every thing in his power to assist you.<sup>185</sup> [emphasis added]

In 1816, a Naval Establishment Survey was carried out on Lake Ontario. Within a section discussing Lake Ontario towns and waterways, there is mention of the salmon fishery on the Humber River and the Credit River:

The River Humber is one of the most considerable on Lake Ontario but has not been examined, and very little information could be gained of it. There is a good salmon Fishery at its entrance as well as the River Credit to which the Indians resort in great numbers whilst the season lasts.<sup>186</sup>

<sup>185</sup> "Proceedings of a meeting with the Missisaugues at the R. Credit," October 3, 1810 [Doc. 110]. LAC RG 10 Vol. 27 pp. 16143-16155 Reel C-11007.

<sup>186</sup> "Observations Relative to the defence of the Lake Frontier," ca. 1816 [Doc. 112]. LAC MG 11 Series Q Vol. 141 Pt. 1 Reel C-11924.

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In July of 1816, an Admiralty official corresponded at length with Henry Goulburn, Secretary of State, in regard to points of interest for defence purposes and a survey of Lakes Huron and Ontario. The report briefly touched upon the importance of the salmon fishing at the Humber and Credit Rivers, “which has been taken advantage of by subjects of the United States.”<sup>187</sup>

In late October 1818, Malcolm McGregor, Clatterford, Isle Wight, 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 [*sic*] of its fish by the whites/Canadians, as well as, and what is more to be regretted, People from the United States.”<sup>188</sup>

### ***Military Grant***

In March of 1812, Thomas Ridout submitted a report to Isaac Brock, Major General and President of Upper Canada, concerning a petition of William Bates, who received 500 acres of land as a military claimant. The Twelve Mile Creek passed diagonally through a portion of his land in the 2nd Concession South of Dundas Sheet. Ridout explained that in accordance with the Mississaugas 1806 cession of land, “they received to themselves, the waters of the aforesaid Twelve Mile Creek, throughout the said second concession, together with the low lands or flats on each side thereof.” The result was a reduction in the acreage allotted to Bates in the 2nd Concession.<sup>189</sup>

### **Further Land Cessions**

At the end of October 1818, Deputy Superintendent General William Claus met with the chiefs of the Mississaugas of the Credit. Claus discussed purchasing what he believed were their remaining lands in exchange for “goods yearly to cover your Women & Children.”<sup>190</sup> The council reconvened on the morning of the 28th of October, at which time Adjutant, speaking on behalf of the assembled chiefs, asked Deputy Superintendent Claus if the British wanted all of the

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<sup>187</sup> J. W. Croker, Admiralty Office, to Henry Goulburn, July 6, 1816 [Doc. 113]. LAC MG 11 Q Series Vol. 141 Pt. 1 Reel C-11924.

<sup>188</sup> Malcolm McGregor, Clatterford, Isle Wight, to Henry Goulburn, Under Secretary of State, October 25, 1818 [Doc. 114]. LAC MG 11 Q Series Vol. 324 Pt. 2 Reel C-10763.

<sup>189</sup> Thomas Ridout, Surveyor General, to Isaac Brock, President Administering the Government of Upper Canada, March 18, 1812 [Doc. 111]. LAC RG 5 A1 Vol. 15 Reel C-4507.

<sup>190</sup> “Minutes of the Proceedings of a Council held at the Rivière au Credit,” October 27-29, 1818 [Doc. 115]. LAC RG 10 Vol. 790 pp. 7025-7028 Reel C-13499.

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Mississaugas country. Claus replied that his directions were that the present purchase was to begin where the last purchase ended.

Chief Adjutant, on behalf of the Mississaugas, requested “**the little ground at the Mouths of the Rivers**, to the line where you now begin ... it is but small, & we will not have it long, it is all we have to live upon.” [emphasis added] The Deputy Superintendent General then pointed out that Mississaugas land on the 12 and 16 Mile Creeks extended no higher than the Rapids.<sup>191</sup> On October 28, 1818, the Mississaugas of the Credit agreed to cede 648,000 acres of land north-west of Toronto (bounded on the east by the townships of Etobicoke, Vaughan, and King) to the Crown for an annual cash payment of five hundred and twenty-two pounds and ten shillings (£522.10).<sup>192</sup>

In May of 1819, Deputy Superintendent General William Claus sent a letter to Peregrine Maitland, Lieutenant Governor of Upper Canada, reporting on the situation and extent of land on the banks of the Credit River and the number of Indians who settled on that land. Claus described the reserves and recommended against depriving the Mississaugas, who viewed the land at the River Credit as ancestral lands and depended on the location for its salmon fishery:

The Messessagas [*sic*] are a wandering nation, and do not, like many others, settle themselves in Villages, and but a small Number apply themselves to the cultivation of Corn, Beans, or Potatoes, depending on the produce of the Gun, and of the Spear, for their Support; hence they acquire an extensive range of country, the different parts of which they resort to at the proper Season, for game or for fish. For the latter purpose they resort in Numbers to the River Credit, in the Spring and Fall of the year at which times the Salmon is plenty, when not less than Two hundred and eight resort to it....

There is no tract in the Neighbourhood on which they could be so well provided for, for with the exception of a much smaller Reservation on the Sixteen, and Twelve Mile Creeks than that on the River Credit, they have surrendered the whole of their Lands to the Crown.<sup>193</sup>

<sup>191</sup> “Minutes of the Proceedings of a Council held at the Rivière au Credit,” October 27-29, 1818 [Doc. 115]. LAC RG 10 Vol. 790 pp. 7025-7028 Reel C-13499.

<sup>192</sup> Surrender No. 19 [Ajetance Purchase], October 28, 1818, in Canada, *Indian Treaties and Surrenders*, Vol. I, p. 35 [Doc. 116].

<sup>193</sup> William Claus, Deputy Superintendent General of Indian Affairs, to P. Maitland, Lieutenant Governor of Upper Canada, May 1, 1819 [Doc. 117]. LAC MG 11 CO 42/361 Reel B-300 folios 203-205.

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On May 18, 1819, a Memorandum to Council advised that the Mississaugas Indians should not be induced to surrender their reserve on the River Credit so long “as they resort to the fishing on that stream for their support.”<sup>194</sup>

### **Mississaugas of the Credit, Surrenders Nos. 22 and 23, 1820**

According to Treaty No. 14, the Mississaugas of River Credit reserved a tract of land extending one mile on either side of the River Credit, as well as a tract on Twelve Mile Creek and one on Sixteen Mile Creek.<sup>195</sup>

In February 1820, William Claus met with the Mississaugas in council in the presence of Superintendent James Givens, several military men, the hospital surgeon, the Secretary of the Province, a secretary and an interpreter from the Indian Department. The minutes of proceedings indicated that Givens had informed the assembly of the purpose of the council at some unspecified time, and that discussion had already taken place. Claus addressed the council, noting the distress and poverty of the women and children, and then informing the Mississaugas that he had been instructed to propose that they surrender their reserved tracts to the Crown for the relief of their misery. Claus then stated:

... It appears that you have cheerfully come into the views of your Father, by surrendering to the Crown this day ... in furtherance of this intention, & in order to meet your wishes, I am directed by your Father to assure you that the whole of the proceeds of this surrender ... [except for proceeds from Block E, along Dundas Street] ... shall be applied towards educating your Children & instructing yourselves in the principles of the Christian Religion....<sup>196</sup>

Another version of Claus’s statements was recalled ten years later by Chief Joseph Sawyer (Nawahjegezhegwabe, son of Chief Wahbanosay), a signatory of the 1806 Head of the Lake Purchase. Chief Sawyer stated:

Several years ago we owned land on the twelve mile creek, the sixteen, and the Credit. **On these we had good hunting and fishing and we did not mean to sell the land but to keep it for**

<sup>194</sup> William Dummer Powell, Executive Council, to Peregrine Maitland, Lieutenant Governor, Upper Canada, May 18, 1819 [Doc. 118]. LAC CO 42/362 Reel B-300 folios 206-207.

<sup>195</sup> Surrender No. 14, September 5, 1806, in Canada, *Indian Treaties and Surrenders ...*, Vol. I, pp. 36-40 [Doc. 105].

<sup>196</sup> “Minutes of a Council held with the Mississague Nation of Indians at the Garrison of York ...,” February 28, 1820 [Doc. 121]. LAC MG 19 F1 Vol. 12 Reel C-1480.

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**our children for ever.** Our great father (by Col. Claus) went to us and said, the white people are getting thick around you and we are afraid they or the Yankees will cheat you out of your land. You had better put it into the hands of your very great father the King to keep for you till you want to settle, and he will appropriate it for your good & he will take good care of it, and will take you under his wing, and keep you under his arm, & give you schools & build houses for you when you want to settle. Some of these words were thought good, but we did not like to give up all our lands as some were afraid that our great father would keep our land. But our great father had always been very good to us, & we believed all his words & always had great confidence in him so we said “Yes”, keep our land for us. ...<sup>197</sup> [emphasis added]

According to the written text of the surrender, the Mississaugas surrendered a tract of about 4,000 acres east of the River Credit, referred to as Block D, and a second tract of about 2,400 acres west of the river, designated Block F. Two additional tracts were taken at the same time: Block B, about 1,120 acres on Sixteen Mile Creek; and Block G, about 1,420 acres on Twelve Mile Creek. This transaction, known as Surrender No. 22, reserved a 200-acre block for a Mississaugas village site.<sup>198</sup> On the same day, a second surrender (No. 23) purportedly yielded up Block E, a portion of the original reserve on the River Credit containing about 2,000 acres, including all the woods and waters, for the sum of £50 Province Currency.<sup>199</sup>

In June 1820, an extract of a letter indicates that Lieutenant Governor Maitland may have corresponded with Lord Bathurst about religious and civil instruction for various Indian groups. At one point he discussed usage of the Mississaugas reserve land and stated they were prepared to:

... resign to H. M. all their lands on the River Credit, and on two other small streams running into Lake Ontario, amounting together to about 20,000 acres. The situation of these Lands, surrounded by our settlements and extending along the banks of streams render them highly valuable.<sup>200</sup>

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<sup>197</sup> Joseph Sawyer and John Jones, on behalf of the Mississaugas Indians settled at the River Credit, to Sir John Colborne, Lieutenant Governor of Upper Canada, April 3, 1829 [Doc. 128]. LAC RG 10 Vol. 5 Reel C-10997.

<sup>198</sup> Surrender No. 22, February 28, 1820, in Canada, *Indian Treaties and Surrenders ...*, Vol. I, pp. 50-53 [Doc. 119].

<sup>199</sup> Surrender No. 23, February 28, 1820, in Canada, *Indian Treaties and Surrenders ...*, Vol. I, pp. 53-54 [Doc. 120].

<sup>200</sup> Sir P. Maitland to the Earl of Bathurst, June 1820 [Doc. 122]. LAC MG 11 Q Series Vol. 328 Pt. 1 Reel C-10764.



## **Chapter Five: Mississaugas efforts to maintain Traditional Rights and Remaining Lands 1821-1855**

### **Fisheries protection**

In 1821, the Province of Canada issued legislation entitled *An Act to repeal the laws now in force relative to the preservation of Salmon, and to make further provisions respecting the Fisheries in certain parts of this Province, and also to prevent accidents by fire from persons fishing by torch or fire light* (Chap. 10, 2nd George IV, A.D. 1821). Section VIII of the Act stipulated that nothing in the Act “shall extend or be construed to extend to prevent the Indians fishing as heretofore, when and where they please, except within one hundred yards of a Mill or Mill-Dam, by fire or torch light.”<sup>201</sup>

### **Petitions from the Mississaugas of the Credit**

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:

**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....**

Wherefore we your petitioners humbly pray your Excellency may be pleased to secure the said fishery unto us, and to stop all white people from fishing on the said river, so far as our reserve extends, that is to say, from the mouth of the river to Mr. Racy's line.<sup>202</sup> [emphasis added]

Four years later, on January 31, 1829, James Ajetance, Peter Jones, Joseph Sawyer, John Jones, and 49 other Mississaugas of the River Credit sent a petition to the House of Assembly of Upper Canada. These petitioners described themselves as a remnant of the great Indian nation who inhabited the country in which the British now lived. They petitioners pointed out that they had “sold a

<sup>201</sup> *An Act to repeal the laws now in force relative to the preservation of Salmon, and to make further provisions respecting the Fisheries in certain parts of this Province, and also to prevent accidents by fire from persons fishing by torch or fire light*, Revised Statutes of Upper Canada 1821, c. 10, assented to on April 14, 1821 [Doc. 123].

<sup>202</sup> Province of Upper Canada, “To our Great Father Sir Peregrine Maitland, K.C.B. Lieutenant Governor of the Province of Upper Canada, etc., The Petition of the Messisagua Nation of Indians residing on the River Credit,” November 16, 1825, in the *Journal of the House of Assembly of Upper Canada*, Second Session of the Ninth Provincial Parliament of Upper Canada, Session 1825-1826 (York: W. L. MacKenzie, 1826) [Doc. 124].

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great deal of land to our great father, the King, for very little, and we became poorer and poorer. We reserved all the hunting and fishing ground.” The Mississaugas recounted that they kept 12 Mile Creek, 16 Mile Creek, and the reserve of one mile on each side of the River Credit. They stated that the first two “are gone from us,” and insisted they wanted to keep the Credit Reserve. They requested protection of their fisheries in these waters:

Now, Father, once all the fish in those Rivers and those Lakes, and all the deer in these woods, were ours; but your red Children only ask you to cause laws to be made to keep these bad men away from our fishery at the River Credit, from Mr. Racey’s line to the mouth of the River; and along the Lake shore one mile on each side of the River, as far as our Land extends – and to punish those who attempt to fish here. We will not fish on Saturday night, Sunday night, and Sunday but will let the fish pass up to our White Brothers up the River.<sup>203</sup>

Subsequently the petition was referred to a Select Committee which submitted a February 2, 1829, report to the Commons House of Assembly. The Select Committee made note of the September 6, 1806, land surrender which reserved to the Indians the sole right “of the fisheries in the Twelve Mile Creek, the Sixteen Mile Creek, the river Credit and the river Etobicoke ... The said right of fishery and reserves extending from the Lake Ontario up the said creeks and river Credit.”<sup>204</sup>

The Select Committee further noted that on February 28, 1820, the Mississaugas surrendered a tract of land measuring about 2,000 acres, leaving about 4,000 acres in the Credit River Reserve, “whereon the right of fishing thereupon, remains to the said Mississaga [*sic*] people and their posterity, solely and rightfully forever.” The Select Committee recommended passage of a law protecting the Mississaugas Indians living on the Credit River from non-Indian fishermen.<sup>205</sup>

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<sup>203</sup> James Ajetance, Peter Jones, Joseph Sawyer, John Jones, and 49 other Mississaugas of the River Credit to the House of Assembly of Upper Canada, January 31, 1829 [Doc. 125]. LAC RG 10 Vol. 1011 Reel T-1456.

<sup>204</sup> Province of Upper Canada, “Report of the Select Committee to which was referred the Petition of the Indians residing on the river Credit,” in *Appendix to Journal of the House of Assembly of Upper Canada, 1829* (Toronto: F. Collins, 1829), Appendix 17, No. 32 [Doc. 126].

<sup>205</sup> Province of Upper Canada, “Report of the Select Committee to which was referred the Petition of the Indians residing on the river Credit,” in *Appendix to Journal of the House of Assembly of Upper Canada, 1829*, Appendix 17, No. 32 [Doc. 126].

## **Salmon Fishery**

On March 20, 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. The Act identified the Mississaugas fishery in the following way:

That the said right to the sole fishery as 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 thence 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.<sup>206</sup>

Lise Hansen remarked with some perplexity that this 1829 legislation passed by the Government of Upper Canada protected a Mississaugas exclusive fishery, “which appears to have been surrendered nine years earlier by the group benefiting from the legislation.”<sup>207</sup>

Two weeks later, Chief Joseph Sawyer submitted a Statement of the Credit River Mississaugas to Lieutenant Governor Colborne. They thanked Colborne for the “law to be made to protect us in our fishing” while also raising the issue that “we did not mean to sell the land” at 12 and 16 Mile Creeks and the Credit. The Mississaugas recalled that Colonel Claus had warned them that settlers or Americans could cheat them out of their land. The Indians indicated that they believed the land surrendered was being held by the Crown for their future needs; however, much of the land had been sold, which they sorely regretted.<sup>208</sup>

Mississaugas of the Credit Band Council minutes dating between 1834 and 1848 contain a description of the boundaries of the original territory of the River Credit Indians:

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<sup>206</sup> *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*, Statutes of the Province of Upper Canada 1829, c. III, assented to on March 20, 1829 [Doc. 127].

<sup>207</sup> Lise C. Hansen, “Treaty Fishing Rights and the Development of Fisheries Legislation in Ontario: A Primer,” Ontario Native Affairs Secretariat, May 1991, p. 3 [Doc. 153].

<sup>208</sup> Joseph Sawyer and John Jones, on behalf of the Mississaugas Indians settled at the River Credit, to Sir John Colborne, Lieutenant Governor of Upper Canada, April 3, 1829 [Doc. 128]. LAC RG 10 Vol. 5 Reel C-10997.

*Mississaugas of the New Credit  
Aboriginal Title Claim*

The boundaries of the original Territory of the River Credit Indians were as follows: Commencing at the mouth of the River Rouge. Thence north to the source of the said river. Thence westerly along the dividing ridges which Separate the waters of Lakes Ontario and Simcoe & Huron. Thence to the source of the Grand River or Ouse. Thence southerly along the dividing ridges between waters of the Grand River and River Thames to Long Point on Lake Erie. Then easterly along Lake Erie, Niagara River, and Lake Ontario to the place of beginning.<sup>209</sup>

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.<sup>210</sup>

A September 25, 1837 Mississaugas of the Credit council minute recorded eight resolutions. The fourth resolution declared that Chief Peter Jones would be appointed legal agent and was directed to determine what reserves had been established by the Credit Indians on various waterways:

Resolved that our beloved Brother and relative the Rev. Peter Jones be authorized to act as our lawful Agent to transact our Affairs with the Colonial and Home Government.

Especially to ascertain what Reserves have been made by our forefathers at the different Rivers, creeks & points, along the shores of Lake Ontario.<sup>211</sup>

In October 1837, the Indians of the Credit River submitted a petition to Queen Victoria. The petitioners discussed the River Credit Reserve and noted that

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<sup>209</sup> Description of boundaries "of the original territory of the River Credit Indians," circa 1834 [Doc. 129]. LAC RG 10 Vol. 1011 p. 2 Reel T-1456. Note: The approximate date is based on the placement of the entry at the start of the Council Minutes book which has a date range of 1834-1848. However, it could be as late as 1848 since it is very similar to the description provided by Chiefs Joseph Sawyer and Peter Jones on December 5, 1844.

<sup>210</sup> *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,"* Statutes of the Province of Upper Canada 1835, c. 27, assented to on April 16, 1835 [Doc. 130].

<sup>211</sup> Minute of Council signed by Chiefs Joseph Sawyer and Peter Jones, September 25, 1837 [Doc. 131]. LAC RG 10 Vol. 1011 Reel T-1456.

*Mississaugas of the New Credit  
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Parliament had acknowledged the tract to be theirs and forbade the whites from disturbing their fisheries.<sup>212</sup>

Five years later, Peter Jones sent a letter to Edward L. Bull and informed him that the Credit Indians were prepared to sell the Credit Reserve including the saw mills, water privilege, houses and improvements, and stock in the Credit Harbour Company. Jones then stated that the Indians wanted “our right to the Salmon Fishery secured to us by law.”<sup>213</sup>

On December 5, 1844, Chiefs Joseph Sawyer and Peter Jones wrote to the Governor General on behalf of the Mississaugas of the Credit. The two chiefs described their traditional lands from time immemorial as “extended as far down as the river Rouge thence up the said river Rouge to its source thence Westerly along the dividing ridge between Lakes Huron and Ontario to the head waters of the river Thames thence southerly to Long point on Lake Erie, thence down Lake Erie, Niagara river and Lake Ontario to the place of beginning.”<sup>214</sup>

At one point Chiefs Sawyer and Jones referred to the last large-scale sale of their lands (1818 Ajetance Purchase) and Mississaugas of the Credit concerns about removing their opportunity to hunt and fish. They claimed that the government told them they would still have their traditional harvesting rights. The chiefs declared that they were being driven off the land by settlers when they tried to hunt or fish:

At the last bargain and sale of our lands we objected to selling all our lands on account that we would have no place to hunt and fish. The persons making the bargain on behalf of the Government, stated that their people were tillers of the ground and no hunters, that they wanted lands to till and not to game and fish; the game and the fish should still be the property of the Indians. With the above assurance we consented and the government settled an annuity of five hundred and twenty-two pounds ten shillings currency per annum upon our Tribe, and now in many parts of our country our people are driven away by the white people for taking what we consider is our own.<sup>215</sup>

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<sup>212</sup> Mississauga Tribe of the Chippewa Nation of Indians of the River Credit, to Queen Victoria, Petition, October 4, 1837 [Doc. 132]. LAC RG 10 Vol. 1011 Reel T-1456.

<sup>213</sup> Peter Jones to Edwd. L. Bull, October 17, 1842 [Doc. 133]. LAC RG 10 Vol. 1011 Reel T-1456.

<sup>214</sup> Joseph Sawyer and Peter Jones, Chiefs of the River Credit Indians, to the Governor General, December 5, 1844 [Doc. 134]. LAC RG10 Vol. 1011 pp. 105-109 Reel T-1456.

<sup>215</sup> Joseph Sawyer and Peter Jones, Chiefs of the River Credit Indians, to the Governor General, December 5, 1844 [Doc. 134]. LAC RG 10 Vol. 1011 pp. 105-109 Reel T-1456.

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One week later, Reverend Playter corresponded with J. M. Higginson, Civil Secretary, Indian Department, and listed a number of complaints from the Indians of the Province of Canada. Among their complaints, the Indians stated that they had exchanged large areas of land for ones with narrow limits, land sale conditions had not been met by the government, and restrictions had been imposed upon Indian freedom to hunt and fish.<sup>216</sup>

On June 8, 1847, Chiefs Joseph Sawyer and Peter Jones of the Mississaugas of the Credit forwarded a statement to T.G. Anderson, "claiming certain Tracts of land which to the best of their knowledge and belief have never been surrendered to the Crown; and therefore remain their property." Chief Peter Jones added that though they had no written documents in their possession to show that these lands were theirs, they believed that the Crown would nevertheless respect their claims to the following areas:

- 1st The well known Reserve at the River Credit.
- 2nd The Reserve at the 16 Mile Creek now called Oakville.
- 3rd The Reserve at the 12 Mile Creek now called Bronte.
- 4th The Burlington Bay Beach through which the Canal to the Bay passes and is about five miles in length.
- 5th The Burlington Heights near to Sir Allan MacNabs House containing about 200 acres of land.
- 6th A small Reserve near the Town of Niagara called Mississaga Point.
- 7th The Tract of land at the Mouth of the River Rouge.

The Chiefs of the said Credit Indians, beg leave to state that their Forefathers have always been careful to teach their Children to consider these Reserves as their own, having been removed by them at the time they ceded their Territories to the Crown of Great Britain and that they were given to understand by the Officers of Government who treated with them that the above mentioned Tracts of land should be reserved for the use of themselves and descendants forever as hunting and camping grounds.<sup>217</sup>

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<sup>216</sup> Reverend G. Playter, Methodist Missionary, to J. M. Higginson, Civil Secretary, Indian Department, December 16, 1844 [Doc. 135]. LAC RG 10 Vol. 144 No. 272 Reel C-11491.

<sup>217</sup> "Statement of the Mississaga Indians of the River Credit; claiming certain tracts of land which to the best of their knowledge and belief have never been surrendered to the Crown; and therefore remain their property," June 8, 1847 [Doc. 137]. LAC RG 10 Vol. 182 Reel C-11509. This statement was enclosed in a letter from Chiefs Joseph Sawyer and Peter Jones to T. G. Anderson, Superintendent of Indian Affairs, June 8, 1847 [Doc. 136]. LAC RG 10 Vol. 182 Reel C-11509.

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Three years later, Chief Peter Jones wrote to T. G. Anderson, referring to the June 8, 1847, statement and requesting that the matter be brought to a close as soon as possible. Jones then put forward an additional claim for land that he described as “Long Point and the Island annexed with it, in Lake Erie. That Peninsula and Island were Reserved by our fathers as hunting and fishing grounds.” He concluded by asking to be present when an investigation into the papers associated with the claims took place.<sup>218</sup>

In February of 1855, Peter Jones, Chief of the New Credit, wrote to S. Y. Chesley, Indian Department, in regard to the claim of the New Credit Indians to reserved lands on the River Credit. In this letter, Chief Jones once again described the traditional territory of the Mississaugas of the Credit:

The said Indians were the original owners of the said territory embraced in the following description, namely commencing at Long Point on Lake Erie, thence eastward along the shore of the lake to 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 ridges between lakes [sic] Ontario and Simcoe, then along the dividing ridges to the head waters of the River Thames, then southward to Long Point, the place of beginning. This vast tract of land now forms the garden of Canada West.<sup>219</sup>

In 1866, James Cockburn, Solicitor General, Upper Canada, raised the matter of a claim that Indians have exclusive fishing rights, and stated an opinion “that they have no other or larger rights over the public waters of this Province than those which belong at Common Law to Her Majesty’s subjects in general.” Cockburn noted an exception might be made in the case of treaties of land cessions that included a clause reserving exclusive rights of fishing to certain Indian tribes. However, he argued that in these cases an Act of Parliament ratifying the reservation of fishing rights was required.<sup>220</sup>

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<sup>218</sup> Chief Peter Jones to T. G. Anderson, Superintendent of Indian Affairs, March 30, 1850 [Doc. 139]. LAC RG 10 Vol. 182 Reel C-11509.

<sup>219</sup> Chief Peter Jones, New Credit, to S. Y. Chesley, Indian Department, February 13, 1855 [Doc. 140]. LAC RG10 Vol. 2357 File 72566-1 Pt. 1 Reel C-11207.

<sup>220</sup> James Cockburn, Solicitor General, Upper Canada, March 8, 1866 [Doc. 142]. LAC RG 13 Vol. 2368 File 9-4/1866 Pt. 1.

## Summary

First Nations were generally agreeable to allow other First Nations as well as Europeans to utilize fish resources and travel on waterways within their traditional lands. However, in regard to European land purchases, First Nations demonstrated no inclination to give up or sell the lakes and waterways central to their existence. Victor Lytwyn, historical geographer, argues that land surrenders negotiated with Great Lakes First Nations during the 18th and 19th centuries did not cover the water or aquatic resources.

Early Jesuit records profile the importance of fisheries among the Ojibwa of the Great Lakes. In 1647-48, the Jesuits reported that Algonquian tribes occupying lands north of the Huron Indians lived off hunting and fishing and exercised seasonal subsistence, staying at one place if the fish were plentiful. Donald B. Smith, historian, in his article about the Algonquian (Ojibwa) Indians known as the Mississaugas, argued that by moving into southern areas of Ontario during the 17<sup>th</sup> century they obtained new hunting and fishing grounds.

Chief George Copway noted that via conquest, the Mississaugas gained control of the easternmost Great Lakes in the late 17<sup>th</sup> century. The importance of waterways to the Mississaugas people is reflected in early 18<sup>th</sup> century French records that place the Mississaugas along the shore at the Bay of Quinte, the Humber River, the head of Lake Ontario, and at Matchedash Bay. Within the 1780-1820 study period for this report, the Mississaugas of the Credit used and occupied the north and western shores of Lake Ontario as well as various waterways that flow into the lake. The importance of these waters for Mississaugas transportation and fishing purposes is well-documented.

British officials sought land cessions from the Mississaugas Indians for communication and settlement purposes. There is no evidence that the lakebed of Lake Ontario, within the Mississaugas' traditional land region, was ever surrendered. Extant documents relating to the 1780-1820 land cessions strongly indicate that the Mississaugas of the Credit were averse to surrendering waterways and the Lake Ontario lakeshore. Waterways crucial for salmon spawning or traditional harvesting activities were extremely important as a food source for the Mississaugas. The importance of the fisheries was strongly underlined in 1805 during the Toronto Purchase renewal when Chief Quenepenon insisted to William Claus, Deputy Superintendent General of Indian Affairs, that the old chiefs in particular reserved the fishery of the river. Chief Quenepenon 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."



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British recognition of the importance of the waterways and fishing resources to the Mississaugas is exemplified by the passage of various pieces of legislation in the first half of the 19<sup>th</sup> century, designed to protect Mississaugas rights to the salmon fisheries within traditional waterways.

The Mississaugas of the Credit repeatedly submitted petitions to British officials in which they declared that they had reserved all of their hunting and fishing grounds when they ceded land to the Crown. On a number of occasions the Mississaugas requested protection of fisheries in various waterways within their traditional lands. As late as 1850, Mississaugas chiefs identified various unsurrendered reserves on waterways leading into Lake Ontario, as well as unsurrendered tracts of land on the Lake Ontario lakeshore. The chiefs stressed the importance of these areas for hunting and fishing activities for the Mississaugas and their future descendants.

Aboriginal title related to waterways and certain tracts of land within Mississaugas of the New Credit traditional lands continues to be unsurrendered.

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



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*Commissioner for Taking Affidavits (or as may be)*

**GREGORY SHEPPARD**

**Reonegro, Elena**

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**From:** Nuri Frame <nframe@pstlaw.ca>  
**Sent:** Sunday, February 5, 2023 4:56 PM  
**To:** Shapiro, Max  
**Cc:** Antonios, Iris; Robert Janes; Dougan, Laura; Torrance, Rebecca; Sheppard, Gregory; Town, Brittany; Alexander DeParde  
**Subject:** Re: Six Nations v Canada and Ontario - MCFN Motion - Request for Draft Pleading

External Email | [Courrier électronique externe](#)

Max:

Thanks for your email. We have considered your request that MCFN provide a draft pleading “forthwith,” and in advance of a ruling on our motion for leave to intervene. We decline your request and will not be providing any draft pleading at this time.

To our knowledge, there is no requirement under Rule 13.01, nor in the caselaw, that a proposed intervenor provide a draft pleading prior to being granted party status as a defendant. If you have any authority to support your request, please provide it. The former case management judge’s direction to HDI to provide a draft pleading was made in light of serious questions about the nature and scope of their proposed involvement in the proceeding, including whether HDI intended to be added as a plaintiff or a defendant, or intended to replace the plaintiff. Those issues do not arise with respect to the MCFN intervention. MCFN clearly proposes to be a defendant. As such, we do not consider the situation of HDI to be analogous to ours and we consider the order of the former case management judge directing HDI to provide a draft pleading to be inapposite. We will, of course, further consider your request once we have received Justice Akbarali’s case management endorsement with respect to HDI’s request for a draft pleading from Men’s Fire.

In advance of preparing any pleading—draft or otherwise—MCFN would also need to be provided with further materials from the parties. I note that Justice Akbarali’s case management endorsement of December 19, 2022 directed that “[b]y February 3, 2023, the plaintiff shall either deliver a response to the demand for particulars and to the written interrogatories ... or deliver an amended statement of claim.” We will obviously need to receive those materials in advance of drafting any pleading. We would also need to receive copies of any responses to demands for particulars provided previously in the case, along with responses to any interrogatories or requests to admit, and any expert reports that have been served. I note that Ontario’s recent case management memo makes clear that their most recent pleading was informed by both requests to admit and interrogatories in this case, some going as far back as 1995; MCFN would also need to have that information if and when we prepare a statement of defence.

Moreover, I confess that we were a bit surprised to receive this request now. Six Nations has emphasized repeatedly that its principal concern is that our intervention motion proceed expeditiously and we have tried to accommodate that interest. Given that, we struggle with the notion that Six Nations is requesting a draft pleading now, more than three months after we served our notice of motion, more than two months after we provided you with the substance of our motion record, and only a few days before Six Nations responding materials are due. It is not, in our view, reasonable for a party to both urge expediency while also waiting until the 11<sup>th</sup> hour to make a request of this sort and “reserv[ing] the right” to file late responding materials as a result of its own last-minute request.

Best,

Nuri

**Nuri G. Frame (He/Him)**

Partner



Pape Salter Teillet LLP, 546 Euclid Avenue, Toronto, Ontario M6G 2T2 Canada · T 416.916.2989 x1254 · F 416.916.3726 · C 416.460.5350 · [nframe@pstlaw.ca](mailto:nframe@pstlaw.ca) · [www.pstlaw.ca](http://www.pstlaw.ca)

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**From:** "Shapiro, Max" <max.shapiro@blakes.com>

**Date:** Wednesday, February 1, 2023 at 4:43 PM

**To:** Nuri Frame <nframe@pstlaw.ca>, Alexander DeParde <adeparde@pstlaw.ca>

**Cc:** "Antonios, Iris" <iris.antonios@blakes.com>, Robert Janes <RJanes@jfkllaw.ca>, "Dougan, Laura" <laura.dougan@blakes.com>, "Torrance, Rebecca" <rebecca.torrance@blakes.com>, "Sheppard, Gregory" <gregory.sheppard@blakes.com>, "Town, Brittany" <brittany.town@blakes.com>

**Subject:** Six Nations v Canada and Ontario - MCFN Motion - Request for Draft Pleading

Dear Nuri and Alex,

You will have seen the Gilberts letter attached to this CMC memo where HDI requested a draft pleading from Men's Fire. The Court also previously directed HDI to deliver a draft pleading, which HDI did last fall. Consistent with that, we request that MCFN deliver a draft pleading forthwith and that you please let us know when we can expect to receive it. Given where we are on the calendar, we reserve the right to respond to that document after the current February 6 deadline to put in responding materials.

Thanks,

Max

**Max Shapiro** (he, him, his)

Partner

[max.shapiro@blakes.com](mailto:max.shapiro@blakes.com)

T. +1-416-863-3305

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Blake, Cassels & Graydon LLP

199 Bay Street, Suite 4000, Toronto ON M5L 1A9 ([Map](#))

[blakes.com](http://blakes.com) | [LinkedIn](#)

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

A handwritten signature in black ink, appearing to read "Gregory Sheppard", written in a cursive style.

---

*Commissioner for Taking Affidavits (or as may be)*

**GREGORY SHEPPARD**



Blake, Cassels & Graydon LLP  
 Barristers & Solicitors  
 Patent & Trademark Agents  
 199 Bay Street  
 Suite 4000, Commerce Court West  
 Toronto ON M5L 1A9 Canada  
 Tel: 416-863-2400 Fax: 416-863-2653

**Max Shapiro**

Partner

Dir: 416-863-3305

max.shapiro@blakes.com

February 6, 2023

**VIA E-MAIL**

Reference: 00034539/000061

Nuri Frame  
 Alexander DeParde  
 Pape Salter Teillet LLP  
 546 Euclid Avenue  
 Toronto, ON M6G 2T2

**RE: *Six Nations v. Canada and Ontario*, Toronto Court File No. CV-18-594281  
 Mississaugas of the Credit First Nation (“MCFN”) Motion**

Dear Counsel:

This responds to your Sunday February 5, 2023 email in which the MCFN declined to provide a draft pleading.

We are surprised by MCFN’s position. MCFN has applied to be added to this case as a party and not merely as a friend of the court. Typically proposed parties define their role and position in the litigation by means of a draft pleading, as HDI has done.

We have considered MCFN’s motion record in light of your email and saw no reference in it to the effect that MCFN “clearly proposes to be a defendant”, as your email states, though that is a helpful starting point. If that is the case, MCFN should confirm the allegations in the plaintiff’s claim that it admits, denies, and has no knowledge of, whether it has a counterclaim, and whether it has crossclaims against the two defendant Crowns.

None of this information is contained in MCFN’s motion record. Based on the materials delivered, we find it difficult to discern what relevant issues MCFN proposes to address at the trial of this action. It appears that MCFN intends to raise, or to ‘keep the door open’ to potentially raising, a wide range of irrelevant or peripheral matters that are not actually raised in Six Nations’ claim and for which Six Nations has not sought judicial relief. For example, MCFN’s materials suggest that it intends to ask the court to make rulings on matters such as the existence of MCFN’s claimed Aboriginal title and Aboriginal rights; the effect (or non-effect) of various treaties on MCFN’s claimed Aboriginal rights and title; and the legal status of various instruments (such as the Nanfan deed) as treaties for the purpose of Section 35(1) of the *Constitution Act, 1982*. Further, while MCFN has articulated an interest in certain general historical matters, it has not identified what specific legal interests it says are potentially affected – notably, whether MCFN has any legal interest in the core questions in the Six Nations’ action about whether the Haldimand Proclamation is a treaty and created the Six Nations reserve. Based on  
 24632637.3



MCFN's materials, we are concerned that it intends to take the action far beyond the issues raised in the existing pleadings and into issues that are primarily of interest to MCFN in its dealings with the Crowns and which would not be legally affected by the relief sought in Six Nations' action. We are also concerned that this would have the effect of playing into the Crowns' hands of wishing to delay the action.

MCFN has had months, if not longer, to consider the operative statement of claim. Further, pursuant to the most recent 'main action' Case Management Endorsement of Justice Akbarali, the plaintiff delivered a draft Fresh as Further Amended Statement of Claim to the Crowns on Friday February 3, 2023. That draft, along with a version showing the proposed changes in underlined form that was also delivered to the Crowns, is enclosed. This draft pleading adds greater detail concerning the legal and factual basis for the relief sought by Six Nations. Please note, in particular, that – as with the prior pleading – no relief is sought in respect of the Nanfan instrument, Dish with One Spoon Treaty, and the status of MCFN Aboriginal rights or Aboriginal title. You have had the details of historical context evidence that we intend to lead in this regard since counsel for Ontario shared the experts reports from Drs. Good, Tayler, and Parmenter.

In the absence of a pleading that would allay some of these concerns, all of this leads Six Nations to the position that MCFN's motion should be dismissed. It appears that MCFN intends to significantly expand the scope of the litigation and to add issues at this point in the litigation that will significantly prejudice Six Nations' ability to prosecute this case in a just, timely, and cost-effective manner.

We would have thought that the opportunity to provide greater clarity on the scope and focus of MCFN's proposed intervention would have been welcome. That would also be consistent MCFN's statements to the Court to the effect that it is not seeking the delay the matter. Nevertheless, you are free to take the position that you will not deliver a draft pleading and we can take the matter up with the Case Management Judge. That said, we invite you to reconsider.

For authority on delivering a draft pleading, please see Justice Sanfilippo's August 26, 2022 Case Conference Endorsement at paragraphs 5-9, a copy of which is enclosed. You will note His Honour's discussion contains a complete answer to your suggestion that MCFN requires more materials in order to deliver a draft pleading (see paragraph 10, in particular). Six Nations is prepared to provide MCFN with the documents referenced in its pleading, which the Court previously directed be provided to HDI, if MCFN agrees to reimburse its reasonable fees and disbursements for doing so.

Yours truly,

Max Shapiro

Encls. August 26, 2022 Case Management Endorsement, February 3, 2023 Six Nations draft amended pleading (fresh and underlined)

c: Robert Janes, *JFK Law Corporation*  
Iris Antonios, Laura Dougan, Rebecca Torrance, Gregory Sheppard, Brittany Town, Louise James, *Blakes*

24632637.3





**COURT FILE NO.:** CV-18-594281-0000  
 (Formerly Court file no.: 406/95)  
**DATE:** 20220826

**SUPERIOR COURT OF JUSTICE – ONTARIO**

**RE:** SIX NATIONS OF THE GRAND RIVER BAND OF INDIANS

Plaintiff

**AND:**

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

Defendants

**BEFORE:** A.A. SANFILIPPO J.

**COUNSEL:** *Iris Antonios, Max Shapiro, and Robert Janes,*, for the Plaintiff  
*Anusha Aruliah, Hasan Junaid, ~~Maria Vujanovic~~, ~~Edward Harrison~~, and Sarah Kanko*, for the Defendant the Attorney General of Canada  
*Manizeh Fancy, David Feliciant, Christine Perruzza, Shima Heidari, Julia McRandall, Catherine Ma, ~~Insiyah Kanjee~~, and Lina Chaker*, for the Defendant  
 Her Majesty the Queen in Right of Ontario  
*Tim Gilbert, Thomas Dumigan, Jonathan Martin, Dylan Gibbs and Jack MacDonald*, for the proposed moving party, the Haudenosaunee Development Institute

**HEARD**

**(By videoconference):** August 15, 2022

**CASE CONFERENCE ENDORSEMENT (REVISED)**

[1] The Haudenosaunee Development Institute (“HDI”) submitted for filing a motion proposed to be advanced for the following relief: (i) an Order to add HDI as a party to this action, either pursuant to Rule 5.03 (joinder as necessary party) or Rule 13.01 (leave to intervene as an added party) of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194; (ii) an Order appointing HDI as a representative of the citizens of the Haudenosaunee Confederacy, pursuant to Rule 10.01 or 12.08.

[2] As I had ordered, as part of the Case Management of this action, that “no motion may be brought in this action before being considered at a case conference”,<sup>1</sup> HDI requested the scheduling of a Case Conference to speak to their proposed motion. This Case Conference was convened to hear submissions on the scheduling of the motion proposed by HDI.

[3] HDI pleaded in their proposed Notice of Motion, that HDI was established in 2017 pursuant to authorization by the Haudenosaunee Confederacy Chiefs Council (“HCCC”) and was delegated the role of facilitating meaningful engagement on development and infrastructure projects involving Haudenosaunee lands. HDI pleaded that the HCCC has delegated authority to HDI to advance the interests of the Haudenosaunee Confederacy.

[4] HDI submitted that they have a vital interest in the issues raised in this action and seek to have a role, without delaying or impacting the orderly development of this action for trial. HDI stated that they require production from Six Nations of the Grand River Band of Indians (“Six Nations”), the Attorney General of Canada (“Canada”) and Her Majesty the Queen in Right of Ontario (“Ontario”) (collectively the “Parties”) of the documents referred to in their pleadings, in order to complete HDI’s proposed pleading.

[5] Six Nations submitted that this action was initiated in 1995, and that since 2018 the parties have intensified the steps required to prepare this action for trial. In this context, Six Nations stated that it is unclear why HDI has only come forward now, and that there is also a lack of clarity regarding the nature and scope of involvement sought by HDI.

[6] Six Nations submitted that the first step is that HDI should deliver a pleading, to set out the nature of their claim and proposed involvement. The second step is a determination of whether HDI, alleged to be an unincorporated association, can represent others and, if so, the nature and scope of the representation. Third, Six Nations submitted that notice must be provided so that others who may be affected by HDI’s involvement would have an opportunity to come forward. And fourth, Six Nations submitted that HDI must provide a complete motion record on which the parties can assess the nature of HDI’s proposal for involvement in this action.

[7] Canada submitted that the issues raised by HDI’s proposed motion are, at this stage, largely between HDI and Six Nations. However, Canada stated that any proposal to add a party has an impact on the entirety of the action and that all should strive toward the most practical and least complicated way to determine the issues raised by this action.

[8] Ontario echoed the Plaintiff’s submission that it is challenging to put forward a position on HDI’s proposed motion without knowing the claims that HDI seeks to advance, or the precise nature of the involvement that HDI seeks. Ontario submitted that the trial process must allow for

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<sup>1</sup> *Six Nations of the Grand River Band of Indians v. The Attorney General of Canada*, 2018 ONSC 1289, at para. 22.

certainty and finality to the Parties in relation to the issues raised, and this requires clarity on who HDI represents in order to understand who would be bound by the determinations at trial.

[9] I accept Six Nations' submission, largely supported by Ontario and Canada, that the first step is for HDI to deliver a pleading, so that the parties can understand the nature of the claims and involvement that is being sought. HDI's proposed Notice of Motion, dated June 10, 2022, sets out in 57 paragraphs the grounds for their motion, but does not annex a draft pleading. HDI thereby did not explain whether they seek to intervene in the determination of the issues raised by Six Nations and/or advance claims of their own.

[10] Until the nature of HDI's proposed involvement is clarified, I do not accept that HDI is entitled to demand from the Parties the production of documents contained in the data base being assembled for the trial of this action. HDI submitted that the documents are needed to inform the preparation of their pleading. I found persuasive Six Nations' submission that if HDI has decided that they require involvement in this action, HDI must have determined, and should be able to set out the basis and scope of their proposed involvement independent of the production of documents from the Parties.

[11] As the documents sought by HDI from the Parties are, according to HDI, all referred to in the Parties' pleadings, as the Parties confirmed that all of the documents being requested are public in nature, and as HDI has agreed to pay the Parties their reasonable fees and disbursements for the production of the documents, I will order, on the Parties' consent, that the Parties produce to HDI those documents listed in Schedule "A" to their lawyer's letter of August 12, 2022. I will reserve to the Parties, however, the right to contest whether a document listed for production by the Schedule "A" Chart does properly arise from their pleading.

[12] I will establish a timetable for the production of the documents requested by HDI; the delivery of HDI's pleading; an opportunity for the parties to consider the issues arising from the pleading; and then a return to Case Conference to speak to the procedural steps that the parties consider are required to determine issues pertaining to HDI's proposed involvement in this action. None of the steps in this timetable will impact the ongoing preparation of this action for trial, including the Case Management Conference scheduled, by para. 14(g) of the Case Management Endorsement of June 8, 2022 (the "June 2022 CM Endorsement"), to take place on September 6, 2022 at 1:00 p.m.

### **Specific Case Conference Directions**

[13] On the basis of the issues addressed at the Case Management Conference, and on the basis of Rule 50.13(6), I direct as follows:

- (a) On their consent, Six Nations, Canada, and Ontario shall, by August 22, 2022, produce to HDI the documents alleged by HDI to arise from the Parties' pleadings, as listed in Schedule "A" to Mr. Gilbert's letter of August 12, 2022 (the "Production Chart"), subject to the following:

- (i) HDI shall reimburse the Parties for their reasonable fees and disbursements for the production of the documents;
  - (ii) The Parties may challenge whether a document identified in the Production Chart properly arises from their pleading.
- (b) HDI shall, by September 9, 2022, deliver to the Parties their proposed draft pleading.
- (c) A further Case Conference shall be conducted on September ~~26~~ 16, 2022 at 2:30 p.m., by videoconference, to address the procedural steps that the Parties and HDI consider are required to determine the issues pertaining to HDI's proposed involvement in this action.
- (d) The Parties and HDI shall, by September ~~25~~ 15, 2022 at 1:00 p.m., each deliver a Case Conference Memorandum identifying the issues to be raised at the next Case Conference, and setting out their positions.
- (e) The Case Management Conference scheduled by para. 14(g) of the June 2022 CM Endorsement to take place on September 6, 2022 at 1:00 p.m., shall proceed, by videoconference, for the purposes set out in the June 2022 CM Endorsement. The parties shall deliver their Case Management Conference Memoranda in accordance with para. 14(h) of the June 2022 CM Endorsement.

[14] Broad application of Rule 50.13 will be used to address and resolve matters raised at case conference, in circumstances where this is possible. Counsel ought to expect that procedural orders and directions will be made at case conferences, in accordance with Rule 50.13(6), on informal notice of the issue to be addressed.

[15] In accordance with *Rules* 59.04(1), 77.07(6) and 1.04, this order is effective from the date that it is made and is enforceable without any need for entry and filing, and without the necessity of a formal order.

---

A.A. Sanfilippo J.

**Date: August 26, 2022**  
**(Revised-August 26, 2022)**



Toronto Court File No. CV-18-594281-0000  
(Originally Brantford Court File No. 406/95)

**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

**FURTHER FURTHER AMENDED 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 upon 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.

Dated: March 7, 1995

Issued by \_\_\_\_\_

Local Registrar

Address of court office:

Court House  
70 Wellington Street  
Brantford, Ontario  
N3T 2L9

TO: THE ATTORNEY GENERAL OF CANADA  
Ontario Regional Office  
National Litigation Sector  
Department of Justice Canada  
120 Adelaide Street West, Suite 400  
Toronto, Ontario  
M5H 1T1

Attention: Anusha Aruliah  
Tania Mitchell

AND TO: HIS MAJESTY THE KING IN RIGHT OF ONTARIO  
Crown Law Office - Civil  
720 Bay Street, 8th Floor  
Toronto, Ontario  
M7A 2S9

Attention: Manizeh Fancy  
David Feliciant

**C L A I M**

1. The Plaintiff Six Nations of the Grand River Band of Indians (the “**Six Nations of the Grand River**”) claims:

(a) A declaration that the Haldimand Proclamation set apart or aside lands whose legal title was vested in the Crown extending for six miles from each side of the Grand River beginning at Lake Erie and extending in that proportion to the head of the Grand River (the “**Haldimand Tract**”) for the use and benefit of the Six Nations of the Grand River, and that this gave rise to the **Reserve Land Duties, Surrender Duties, Surrender Implementation Duties, Appropriation Duties and Indian Monies Management Duties** defined further below in this Statement of Claim, including:

- (i) The duty to protect and preserve the Six Nations of the Grand River’s interest in the Haldimand Tract lands from exploitation;
- (ii) The duty to protect the Haldimand Tract from settlement, use, or alienation by or to persons other than the Six Nations of the Grand River, unless the free and informed consent of the Six Nations of the Grand River was obtained in accordance with applicable customs and practices for obtaining such consent and that the transaction was not exploitative;



- (iii) The duty to ensure that the use and benefit of the Haldimand Tract, including proceeds from sales, leases, licences or other authorizations of parts of the Haldimand Tract, were used for the use and benefit of the Six Nations of the Grand River; and
  - (iv) The duty to ensure that all monies or other assets provided as compensation for the sale, alienation, lease, use or appropriation of the Haldimand Tract were managed prudently and accounted for.
- (b) A declaration that, if the Haldimand Proclamation did not set aside the Haldimand Tract as a Reserve (as defined in paragraph 2 below) in 1784, that it obliged the Crown to make the Haldimand Tract a Reserve and gave rise to the **Reserve Creation Duties, Reserve Land Duties, Surrender Duties, Surrender Implementation Duties, Appropriation Duties and Indian Monies Management Duties** defined further below in this Statement of Claim, including:
- (i) The duty to act diligently to set aside the Haldimand Tract as a Reserve for the Six Nations of the Grand River;
  - (ii) The duty to protect the Haldimand Tract from settlement, use, or alienation by or to persons other than the Six Nations of the Grand River, unless the free and informed consent of the Six Nations of the Grand River was obtained in accordance with applicable customs and practices for obtaining such consent and that the transaction was not exploitative;

- (iii) The duty to ensure that the use and benefit of the Haldimand Tract, including proceeds from sales, leases, licences or other authorizations of parts of the Haldimand Tract, were used for the use and benefit of the Six Nations of the Grand River; and
  - (iv) The duty to ensure that all monies or other assets provided as compensation for the sale, alienation, lease, use or appropriation of the Haldimand Tract were managed prudently and accounted for.
- (c) Declarations that one or both of the Defendants breached fiduciary and/or treaty obligations owing to the Six Nations of the Grand River, as described herein;
- (d) equitable compensation and/or damages arising from the above-noted breaches of fiduciary and/or treaty obligations;
- (e) alternatively to (d), a declaration, if and as appropriate, that one or both of the Defendants is obliged to account to the Six Nations of the Grand River for all property, interests in property, money or other assets (“**assets**”) which were or ought to have been received, managed or held by the Defendants or either of them, or by others for whom they are in law responsible, including their predecessors (collectively, the “**Crown**”) for the benefit of the Six Nations of the Grand River, as described herein;
- (f) if necessary, a declaration that one or both of the Defendants must restore to the Six Nations Trust (as hereinafter defined) all assets which were not

received but ought to have been received, managed or held by the Crown for the benefit of the Six Nations of the Grand River or the value thereof;

- (g) a reference or references as may be appropriate;
- (h) all further or ancillary declarations, accounts and directions as may be appropriate, including declarations of breaches of the Crown duties set out in Schedule A;
- (i) costs on a full indemnity basis; and
- (j) such other relief as may seem just.

### ***The Parties***

2. The Plaintiff, the Six Nations of the Grand River, is a band within the meaning of the *Indian Act*, R.S.C. 1985, c.I-5, as amended. The members of the Six Nations of the Grand River are aboriginal people within the meaning of section 35 of the *Constitution Act, 1982*. In this pleading, the “Six Nations of the Grand River” and the “band” refers to the body of Indians for whose use and benefit the Haldimand Tract lands were set apart or aside under the Haldimand Proclamation, being those of the Six Nations who settled along the banks of the Grand River and their posterity. Land whose legal title is vested in the Crown and that is set apart or aside for the use and benefit for a body or band of Indians is a reserve (“**Reserve**”).

3. The Defendant The Attorney General of Canada represents His Majesty the King in right of Canada (the “**Crown in right of Canada**”), pursuant to section 23(1) of the

*Crown Liability and Proceedings Act*, R.S.C. 1985, c. C-50, as amended. The Crown in right of Canada:

- (a) has legislative authority in Canada by and with the advice of the Parliament of Canada, with respect to Indians and lands reserved for the Indians, pursuant to section 91(24) of the *Constitution Act, 1867*; and
- (b) is the successor in Canada to, and is subject to all of the obligations, duties and liabilities which His Majesty the King or Her Majesty the Queen (the “**Imperial Crown**”) had or owed to the Six Nations of the Grand River except for those obligations, duties and liabilities conferred or imposed upon the Defendant, His Majesty the King in right of Ontario, under the *Constitution Act, 1867* or otherwise by law.

4. The Defendant His Majesty the King in right of Ontario (the “**Crown in right of Ontario**”):

- (a) became on July 1, 1867 the owner of all lands, mines, minerals and royalties situate within the Province of Ontario belonging to the former Province of Canada and the recipient of all sums then due or payable for such lands, mines, minerals or royalties, subject to any trusts existing in respect thereof and to any interest other than that of the then Province of Canada, pursuant to section 109 of the *Constitution Act, 1867*; and
- (b) is the successor in the Province of Ontario to, and is subject to all of the obligations, duties and liabilities which the Imperial Crown had or owed to

the Six Nations of the Grand River except for those obligations, duties and liabilities conferred or imposed upon the Crown in right of Canada, under the *Constitution Act, 1867* or otherwise by law.

5. The Defendants, either alone or together, are subject to all of the obligations, duties and liabilities owed to the Six Nations of the Grand River by the Imperial Crown or before Confederation by the Province of Canada and the Province of Upper Canada.

### ***Introduction***

6. As a result of the treaties, legislation, common law and facts hereinafter described, the Imperial Crown, the Crown in right of Canada and its predecessors, and the Crown in right of Ontario and its predecessors, were at all material times under fiduciary obligations to the Six Nations of the Grand River to *inter alia* hold, protect, manage and care for the lands, personal property and all other assets of the Six Nations of the Grand River for the benefit of the Six Nations of the Grand River in a similar manner that trustees are required to hold, protect, manage and care for the assets of a trust for the benefit of the beneficiaries of the trust.

6.1 Specifically, the Crown had the following duties in respect of the Haldimand Tract (the “**Reserve Land Duties**”):

- (a) The duty to protect and preserve the band’s interest in the Haldimand Tract Reserve from exploitation;

- (b) The duty to act with loyalty and good faith towards the band in respect of the management of the Reserve;
- (c) The duty to fully disclose material information in respect of the Crown's dealings with or management of the Reserve and to consult the band;
- (d) The duty to act with ordinary prudence with a view to the best interests of the band; and
- (e) The duty to make efforts to fairly reconcile conflicting demands or competing interests.

6.2 To the extent that the Haldimand Proclamation did not set aside the Haldimand Tract as a Reserve, it was a unilateral undertaking or agreement by the Crown which obliged it to create the Haldimand Tract as a Reserve and which gave rise following duties (the "**Reserve Creation Duties**"):

- (a) The duty to act diligently to create the proposed Reserve;
- (b) The duty to act with loyalty and good faith towards the band in respect of the creation of the Reserve;
- (c) The duty to fully disclose material information in respect of the Crown's dealings with or management of the Reserve land;
- (d) The duty to act with ordinary prudence with a view to the best interests of the band in the process of creating the Reserve; and

- (e) The duty to correct any deficiencies or omissions in the Reserve creation process reasonably capable of correction.

6.3 Where it was proposed that all or part of the Haldimand Tract be alienated whether by sale, lease or otherwise, the Crown was under the following fiduciary duties (the “**Surrender Duties**”) in considering whether or not to accept an absolute or conditional surrender for this purpose:

- (a) To ensure the surrender is made in accordance with the applicable procedural requirements;
- (b) To ensure that the band consents to the surrender;
- (c) To ensure that the surrender reflects the intention of the band; and
- (d) To ensure that the surrender is not exploitative.

6.4 In respect of land that has been subject to surrender, whether absolute or conditional, the Crown was under the following fiduciary duties (the “**Surrender Implementation Duties**”):

- (a) To manage the process to advance the best interests of the band;
- (b) To give effect to the intention of the band in making the surrender, including fulfilling any conditions;
- (c) To seek the consent of the band for any change in the implementation of the surrender;

- (d) To scrutinize the proposed transaction to ensure that it is not an exploitative bargain; and
- (e) To fully disclose material information in respect of the Crown's dealings with or management of the Reserve land.

6.5 In respect of any Haldimand Tract land lawfully appropriated for public purposes of carrying out an activity or undertaking the Crown was under the following fiduciary duties (the "**Appropriation Duties**"):

- (a) To ensure that the appropriation was actually required;
- (b) To ensure that the least interest possible was appropriated or that the band's interest in the Reserve was preserved to the greatest extent possible;
- (c) To protect a sufficient Six Nations of the Grand River interest in expropriated land in order to preserve the taxation jurisdiction of the band over the land; and
- (d) To secure compensation that reflected the nature of the Reserve interest, the impact on the band, and the value of the land to the proposed activity or undertaking.

6.6 In respect of any Six Nations of the Grand River monies (including any monies or proceeds derived from the disposition or appropriation of Haldimand Tract lands) or



assets held as investments of Six Nations of the Grand River monies the Crown was and is under the following fiduciary duties (the “**Indian Monies Management Duties**”):

- (a) To manage the monies prudently to preserve the capital and to achieve a reasonable return, including:
  - (i) The duty to invest these monies in the manner of a common law trustee, subject to any legislation limiting its ability to do so; and
  - (ii) The duty to account for the monies when requested;
- (b) Where the Crown appointed a manager to manage a band's monies, the duty to ensure that the manager made full and adequate disclosure to the band of information relating to the management of the band's funds.

7. The Crown has repeatedly breached its fiduciary duties and treaty obligations to the Six Nations of the Grand River as hereinafter described, and should be held liable for those breaches to the Six Nations of the Grand River.

8. Notice of this action was given to the Crown in right of Ontario on December 23, 1994, in accordance with section 7 of *The Proceedings Against the Crown Act*, R.S.O. 1990, c. P.27, and to the Crown in right of Canada on December 28, 1994.

### ***The Royal Proclamation of 1763***

9. By the *Royal Proclamation of 1763*, the Imperial Crown recognized and confirmed certain of the fiduciary obligations which the Crown had assumed in respect

of Indian peoples and their lands. It also continued, affirmed and enunciated the unwritten law of the colonies with regard to the status and alienation of lands occupied or used by the Indians in British North America. Unceded lands were recognized as reserved to the Indian peoples, no such lands were to be taken from them without their express consent, and the Indians' interest in unceded lands was to be inalienable otherwise than to the Crown. The purpose of this surrender requirement was to interpose the Crown between the Indians and prospective purchasers or lessees of their land, so as to prevent the Indians from being exploited, to facilitate the Crown's ability to represent the Indians in dealings with third parties, and to ensure that the Crown's sovereign jurisdiction would extend over Indian lands settled by non-Indians. The *Royal Proclamation of 1763* has never been repealed, was and is part of the laws in force in Canada and Ontario and bound the Crown.

10. The *Royal Proclamation of 1763 inter alia* provided that:

- (a) colonial governments were forbidden from granting unceded Indian lands;
- (b) private persons were prohibited from occupying or otherwise possessing unceded Indian lands;
- (c) private persons were prohibited from purchasing unceded land from the Indians; and
- (d) Indian lands could only be granted after these had been ceded or surrendered to the Crown in a public assembly of the Indians held by the

governor or commander-in-chief of the colony in which the lands in question lay.

### ***Six Nations of the Grand River Lands***

11. In the eighteenth century and from time immemorial, the Six Nations (sometimes then referred to as the Five Nations) occupied, possessed or used very large territories in what is today the United States of America and the Provinces of Ontario and Quebec (the “**Six Nations Aboriginal Lands**”).

12. Throughout the American War of Independence, most of the Six Nations were faithfully allied with and supported the Imperial Crown. As a result of the ultimate defeat of the Imperial Crown in that war, the Six Nations of the Grand River left the United States and at the invitation of the Crown settled on a very large specific tract of land within their aboriginal lands in what is today Canada.

13. In order to facilitate this settlement and in partial recompense for the Six Nations of the Grand River’s alliance with and support of the Imperial Crown, the Imperial Crown agreed as hereinafter described to formally reserve for the Six Nations of the Grand River a large tract of land within the Six Nations Aboriginal Lands for the exclusive possession and settlement of the Six Nations of the Grand River so that those lands could be enjoyed by the Six Nations of the Grand River and their descendants forever.

### ***The Haldimand Proclamation***

14. On October 25, 1784, the Imperial Crown through its representative in British North America, the Governor of Canada, Sir Frederick Haldimand, issued a Proclamation (the “**Haldimand Proclamation**”) authorizing the Six Nations of the Grand River to take possession of and settle upon the banks of the Grand River running into Lake Erie, allocating to them the lands extending for six miles from each side of the river beginning at Lake Erie and extending in that proportion to the head of the Grand River (the Haldimand Tract), which the members of the Six Nations of the Grand River and their descendants were to enjoy forever. The lands allocated to the Six Nations of the Grand River under the Haldimand Proclamation consist of approximately 950,000 acres (384,465 hectares), inclusive of the riverbed between the banks of the Grand River. It was expected, in accordance with the practices of the day for determining the precise boundaries of tracts or parcels of lands, that the precise boundaries of the Haldimand Tract would be determined in consultation with and with the consent of the Six Nations of the Grand River as the lands were surveyed or it became necessary to ascertain the precise boundaries.

14.1. The Haldimand Proclamation set aside or had the effect of setting aside the whole of the Haldimand Tract as land held by the Crown for the use and benefit of the Six Nations of the Grand River, and as such constituted the whole of the Haldimand Tract as a Reserve for the Six Nations of the Grand River.

14.2. In the alternative, to the extent that the Haldimand Proclamation failed to set aside some or all of the Haldimand Tract as a Reserve (which is denied), the Haldimand Proclamation gave rise to an obligation to set these lands apart as a Reserve and the Crown was subject to the Reserve Creation Duties in the process of doing so.

14.3 In either case, from the date that the Haldimand Proclamation was issued, the Crown was subject to Indian Monies Management Duties in respect of any compensation derived from the sale, lease or other disposition of the land forming part of the Haldimand Tract.

15. In addition, the Haldimand Proclamation constitutes a treaty within the meaning of section 35 of the *Constitution Act, 1982*. In this action the Plaintiff claims that as a treaty the Haldimand Proclamation either:

- (a) Set aside the whole of the Haldimand Tract as a Reserve (as described above), subjected the Crown to the Reserve Land Duties, and gave the Six Nations a right to the Reserve; or
- (b) Imposed an obligation on the Crown to set aside the whole of the Haldimand Tract as a Reserve (as described above) and subjected the Crown to the Reserve Creation Duties and gave the Six Nations a right to have the Reserve created and a right to the Reserve so-created.

15.1 To the extent that the Haldimand Proclamation did not set aside the whole of the Haldimand Tract as a Reserve (which is not admitted but denied) the only administrative

step required to complete the Reserve creation process was the Crown satisfying itself that it had obtained sufficient consent from other potentially affected Indigenous nations to enable it to set aside the Haldimand Tract as a Reserve. By 1793 (when Lieutenant Governor John Graves Simcoe drafted the Simcoe Patent described further below) the Crown had satisfied itself that any such conditions had been satisfied, and thereafter treated the Haldimand Proclamation as having created the Reserve of the whole of the Haldimand Tract.

### ***The Simcoe Patent and the Appropriation of the Headwaters Lands***

16. On January 14, 1793, the Imperial Crown through its representative, the Lieutenant-Governor of Canada, John Graves Simcoe, drafted a patent (the “**Simcoe Patent**”) to, *inter alia*, grant to the Six Nations of the Grand River forever, all of that territory of land forming part of the district lately purchased by the Imperial Crown from the Mississauga Nation, beginning at the mouth of the Grand River where it empties itself into Lake Erie, and running along the banks of the Grand River for a space of six miles on each side of the river, or a space co-extensive therewith, and continuing along the Grand River to a place known by the name of the Forks, and from there along the main stream of the Grand River for the space of six miles on each side of the main stream, or for a space equally extensive therewith (the “**Simcoe Patent Lands**”). The above lands included the riverbed between the banks of the Grand River.

16.1 Simcoe met with representatives of the Six Nations of the Grand River to discuss the proposed patent. The Six Nations of the Grand River objected to the terms of the

proposed patent for a number of reasons. The Six Nations of the Grand River rejected or disputed many aspects of the proposed Simcoe Patent but, in particular, the Six Nations did not accept that the draft Simcoe Patent accurately defined the geographic extent of the Haldimand Tract lands. The representatives of the Six Nations of the Grand River explained to Simcoe that the Haldimand Tract extended to the source of the Grand River. The draft Simcoe Patent excluded those lands along the Grand River located north of the present Township of Nichol extending to the head of the Grand River (the “**Headwaters Lands**”). Because of these deficiencies in the Simcoe Patent – including the failure to include the whole of the Haldimand Tract – Simcoe did not issue the Simcoe Patent. Given the lack of agreement on the proposed deed, Crown officials continued to recognize that these lands set aside for the Six Nations of the Grand River were those lands described in the Haldimand Proclamation.

16.2 In 1819 Crown officials began to negotiate with the Six Nations of the Grand River for the surrender or release of the Headwaters Lands but no such agreement was reached. On March 20, 1819 the Executive Council made a report to Lieutenant-Governor Maitland taking the position that (1) the Headwaters Lands were not part of the Haldimand Tract and that (2) only the Simcoe Patent Lands had been reserved for the Six Nations of the Grand River. Maitland accepted this report.

16.3 To the extent that the Simcoe Patent Lands had not been established as a Reserve by the Haldimand Proclamation, the effect of Maitland accepting the March 20, 1819 report from the Executive Council was to confirm the Simcoe Patent Lands as a Reserve, subject to any lawful surrenders that had been made prior to that date. From

this date forward the Crown was subject to the Reserve Land Duties in respect of any Crown land in the Simcoe Patent Lands.

16.4 After Maitland accepted the Executive Council report of March 20, 1819, the Crown refused to recognize or protect any interest of the Six Nations of the Grand River in the Headwaters Lands and used and alienated those lands (1) without advising or consulting with the Six Nations of the Grand River; (2) without the consent of the Six Nations of the Grand River; and (3) without holding the monies derived from the disposition of the Headwaters Lands for the benefit of the Six Nations of the Grand River.

17. The Crown failed to set aside for the Six Nations of the Grand River in the draft Simcoe Patent all of the lands which the Six Nations of the Grand River were entitled to have reserved for them under the Haldimand Proclamation. In particular, the Crown failed to reserve for the Six Nations of the Grand River those lands along the Grand River located north of the present Township of Nichol extending to the head of the Grand River in the Township of Melancthon, consisting of approximately 275,000 acres (111,292.5 hectares). This failure constituted a breach by the Crown of its fiduciary and/or treaty obligations to the Six Nations of the Grand River under the Haldimand Proclamation.

17.1 In particular, to the extent that the Haldimand Proclamation:



- (a) Created the Haldimand Tract as a Reserve or created a Reserve as a treaty right of the Six Nations of the Grand River, and the Crown by appropriating the Headwaters Lands for its own use and benefit breached the Reserve Land Duties; or
- (b) In the alternative, created an obligation to set aside a Reserve for the Six Nations of the Grand River or a treaty right to set aside a Reserve for the Six Nations of the Grand River, and the Crown by appropriating the Headwaters Lands for its own use and benefit breached the Reserve Creation Duties.

17.2 As a result of the appropriation of the Headwaters Lands for its own use and benefit and the consequent breach of either the Reserve Land Duties or the Reserve Creation Duties, the Crown is liable to pay equitable damages or equitable compensation for the fair market value of the Headwaters Lands.

18. Although never issued, and despite its geographic limitations, the terms of the Simcoe Patent did repeat the following provisions existing at law:

- (a) the Six Nations of the Grand River could not lawfully alienate the Simcoe Patent Lands except by surrender to the Crown at a public meeting or assembly of the Chiefs, Warriors and people of the Six Nations of the Grand River;
- (b) any transfer, alienation, conveyance, sale, gift, exchange, lease or possession of the Simcoe Patent Lands directly to any persons whatever

other than members of the Six Nations of the Grand River, was to be null and void, unless there was first a surrender to the Crown for that purpose; and

- (c) the Six Nations of the Grand River were to enjoy free and undisturbed possession of the Simcoe Patent Lands under the protection of the Crown.

### **1812 Governor's Instructions**

19. On May 1, 1812, the Crown's duly authorized representative, the Governor-General of Upper Canada issued instructions further regulating the alienation of Indian lands in the then Province of Upper Canada by requiring *inter alia*:

- (a) that the person administering the government in Upper Canada requisition any Indian lands wanted for public service and identify those lands with a sketch;
- (b) that all purchases by the Crown be made at a public council according to the ancient usages and customs of the Indians to whom the lands belonged, with proper interpreters present and without the presence of liquor;
- (c) that the Governor or two persons commissioned by him, the Superintendent of Indian Affairs, two or three members of his Department and at least one military officer be present at the public council;

- (d) that there be a proper explanation to the Indians of the nature and extent of the proposed disposition and the proceeds to be paid therefor; and
- (e) that deeds of conveyance and descriptive plans of the lands so conveyed be attached to the deed and be executed in public by the Principal Indian Chiefs and the Superintendent of the Indian Department or his appointee, and duly witnessed.

### **Legislation**

20. The Crown's recognition of its fiduciary obligation to the Six Nations of the Grand River is in part reflected in the enactment of legislation *inter alia* to protect the Six Nations of the Grand River lands and regulate dispositions of those lands including:

- (a) *An Act for the Protection of the Lands of the Crown in this Province, from trespass and injury*, S.U.C. 1839, c.15;
- (b) *An Act for the Protection of the Indians in Upper Canada from imposition, and the property occupied or enjoyed by them from trespass and injury*, S. Prov. C. 1850, c.74;
- (c) *An Act to amend the Law for the Sale and the Settlement of the Public Lands*, S. Prov. C. 1853, c.159;
- (d) *An Act to prevent trespasses to Public and Indian Lands*, S. Prov. C. 1859, c.81;

- (e) *An Act respecting the Management of the Indian Lands and Property*, S. Prov. C. 1860, c.151;
- (f) *An Act providing for the Organization of the Department of Secretary of State of Canada and for the Management of Indian and Ordinance Lands*, S.C. 1868, c.42;
- (g) *The Indian Act*, 1876, S.C. 1876, c.18 and its successor legislation.

### ***Crown's Breach of Fiduciary Duty***

21. The Six Nations of the Grand River currently occupies and uses only the lands which comprise the Six Nations of the Grand River Indian Reserve No. 40 which is located southeast of the City of Brantford, Ontario and the Six Nations of the Grand River Indian Reserve No. 40B and lot 5, Eagle's Nest tract which are located within the City of Brantford. These lands consist of approximately 45,506 acres (18,416 hectares), less than 4.8 percent of the lands allocated to the Six Nations of the Grand River forever by the Haldimand Proclamation.

22. Subsequent to the dates of the Haldimand Proclamation and the Simcoe Patent, the Imperial Crown and its successors in Canada including the Defendants made or permitted to be made various grants, sales, leases, permits or other dispositions ("**Dispositions**") which purported to grant the title to, rights of possession, occupation, use or other interests in, parts of the Haldimand Tract or Simcoe Patent Lands (collectively the "**Six Nations Lands**") to persons who were not members of the Six

Nations of the Grand River (“**Third Parties**”) in breach of the Crown’s fiduciary duty to the Six Nations of the Grand River and without complying with the requirements of the laws hereinbefore referred to.

23. The Crown repeatedly breached its fiduciary and/or treaty obligations to the Six Nations of the Grand River by *inter alia* repeatedly:

- (a) making or permitting Dispositions of the Six Nations Lands to Third Parties without the consent of the Six Nations of the Grand River and without first obtaining from the Six Nations of the Grand River a lawful and valid surrender to the Crown;
- (b) permitting Third Parties to possess, occupy, or trespass on the Six Nations Lands without obtaining lawful surrenders from the Six Nations of the Grand River to the Crown;
- (c) making or permitting transactions relating to the Six Nations Lands without obtaining full and fair compensation therefor for the Six Nations of the Grand River and without ensuring that the Six Nations of the Grand River’s interest in such transactions was at all times fully protected and that the Six Nations of the Grand River received or were credited with all the proper proceeds of such Dispositions (which proceeds are hereinafter referred to as the “**Six Nations Trust**”);
- (d) failing to honour the terms or conditions of surrenders, sales and leases;

- (e) taking or permitting the taking or use of parts of the Six Nations Lands for roads, canals or other public waterways, railways, cemeteries, church grounds, public squares or parks, or for military, naval or other public purposes without obtaining lawful surrenders or providing full and fair compensation to the Six Nations of the Grand River;
- (f) managing the Six Nations Trust or permitting it to be managed, in a manner inconsistent with the standards of conduct required by the Crown's fiduciary obligations; and
- (g) failing to account to the Six Nations of the Grand River.

24. The following are some examples of the breaches of the Crown's obligations to the Six Nations of the Grand River hereinbefore described.

### ***Brant's Power of Attorney***

24.1 On February 5, 1798 Mohawk Chief Joseph Brant obtained a limited power of attorney from Five of the Six Nations of the Grand River assembled in Council on November 2, 1796 ("**Brant's Power of Attorney**").

24.2 By the terms of Brant's Power of Attorney, in order that monies from the sales of certain lands could be used to purchase an annuity or stipend for their future support, the Six Nations of the Grand River consented to surrender that portion of their lands, namely Blocks 1 to 4, legally described in the power of attorney and consisting of about 310,391 acres. This was upon the "express condition" that those lands would be

regranted by the Crown, through grants under the Great Seal of the Province of Upper Canada, to persons nominated by Joseph Brant, and on the understanding that security would be demanded and received for the payment of the purchase price for such lands.

24.3 In breach of the Crown's obligations under the Haldimand Proclamation and the Crown's Reserve Land Duties, Reserve Creation Duties and Surrender Implementation Duties, the Six Nations of the Grand River did not receive any or full payment for the purchase price of such lands, nor did they receive any interest on the monies from the sale nor proceeds of any investment from the monies from the sale. Further, the Crown used Six Nations of the Grand River's money to fund the expenses related to the sale of these lands.

***Crown Grant of Block No. 5***

24.4 Despite Brant's Power of Attorney only being for Blocks 1 to 4, on February 5, 1798, in breach of the Crown's obligations under the Haldimand Proclamation the Crown purported to accept a surrender for sale an area of land totalling 352,707 acres, that included Blocks 5 and 6.

24.5 In purporting to accept a surrender of Block 5 and subsequently disposing of this land as described below, the Crown breached the Haldimand Proclamation and the Reserve Land Duties (or in the alternative, the Reserve Creation Duties) and is liable for equitable compensation or equitable damages for the loss of these lands from the Haldimand Tract, subject to adjustment for any consideration that the Crown can demonstrate was obtained for the sale of Block 5 that was properly credited to the Six Nations of the Grand River.

24.6 In the alternative, if Block 5 was lawfully surrendered, which is not admitted but denied, the Crown was subject to the Surrender Implementation Duties which required the Crown to obtain fair market compensation for the land, collect any consideration due on the payment of the land, take reasonable steps to recover any consideration that was not paid, and to hold that consideration for the Six Nations of the Grand River. By its failure to obtain consideration due for the sale of Block 5, as detailed below, the Crown breached the Surrender Implementation Duties.

25. On November 18, 1807, the Crown granted letters patent under the seal of the Province of Upper Canada to one Thomas Douglas, Earl of Selkirk ("**Selkirk**") for a block of the Simcoe Patent Lands known as Block No. 5, which later became the Township of Moulton in the County of Haldimand (the "**Block No. 5 lands**").

26. The Crown conveyed the Block No. 5 lands to Selkirk without obtaining a surrender of those lands from the Six Nations of the Grand River to the Crown for the purpose of such sale.

27. Selkirk entered into a one-year mortgage with the Crown due and payable on November 18, 1808, purportedly to secure most or all of the purchase price (the "**Selkirk Mortgage**"). The Selkirk Mortgage provided for interest at the rate of six percent per year.

28. The principal and interest due under the Selkirk Mortgage was not paid on November 18, 1808 as required by its terms. The Crown neither enforced nor attempted



to enforce the collection of the principal sum and interest payable under the Selkirk Mortgage.

29. The principal sum owing under that Selkirk Mortgage has never been paid. Some interest payments may have been made on the principal prior to February 1853 but the particulars have not been provided and are presently unknown to the Plaintiff.

30. Since at least February, 1853, no payments of any kind in respect of the Selkirk Mortgage or any other mortgage for the Block No. 5 lands have been collected by the Crown for the benefit of the Six Nations Trust.

***Crown Grant of Block No. 6***

30.1 In purporting to accept a surrender of Block 6 and subsequently disposing of this land as described below, the Crown breached the Haldimand Proclamation and the Reserve Land Duties (or in the alternative, the Reserve Creation Duties) and is liable to the Six Nations of the Grand River for equitable compensation or damages for the loss of these lands from the Haldimand Tract, subject to adjustment for any consideration that the Crown can demonstrate was obtained for the sale of Block 6 that was properly credited to the Six Nations of the Grand River.

30.2 In the alternative, if Block 6 was lawfully surrendered, which is not admitted but denied, the Crown was subject to the Surrender Implementation Duties which required the Crown to obtain fair market compensation for the land, collect any consideration due on the payment of the land, take reasonable steps to recover any consideration that

was not paid, and to hold that consideration for the Six Nations of the Grand River. By its failure to obtain consideration due for the sale of Block 6, as detailed below, the Crown breached the Surrender Implementation Duties.

31. On February 5, 1798, the Crown granted letters patent under the seal of the Province of Upper Canada to one Benjamin Canby for a block of the Simcoe Patent Lands known as Block No. 6, which later became the Township of Canborough in the County of Haldimand (the “**Block No. 6 lands**”).

32. The Crown conveyed the Block No. 6 lands to Canby:

- (a) without obtaining a surrender of the lands from the Six Nations of the Grand River to the Crown for the purpose of a sale to Canby or anyone else;
- (b) without obtaining any mortgage or other security from Canby or anyone else to secure the payment of the purchase price;
- (c) without collecting any payment from Canby or anyone else for the lands for the benefit of the Six Nations Trust;
- (d) without taking any legal proceedings against Canby or his heirs or assigns to obtain payment for the Block No. 6 lands, despite the Crown’s acknowledgement, reduced to writing in 1803, 1830 and 1843, that the lands ought not to have been conveyed as a free grant and that the Crown

was under a fiduciary duty to take the steps necessary to remedy the matter.

***Colonel Claus and the Lands in Innisfil and East Hawkesbury Townships***

33. In the early 1800's the Crown's Deputy Superintendent General and Inspector General of Indian Affairs in Upper Canada, Colonel William Claus, misappropriated and mismanaged monies belonging to the Six Nations Trust in breach of the Crown's Indian Monies Management Duties to the Six Nations of the Grand River.

33.1 In or about 1803, Claus also inappropriately influenced certain Six Nations of the Grand River individuals to purport to give 4,000 acres of Haldimand Tract lands, at the mouth of the Grand River, to William Dickson, without obtaining a lawful surrender and despite the passing of a Six Nations of the Grand River general council resolution rejecting a previous proposal by Claus to give the lands to Dickson. The Crown subsequently issued Dickson a grant for these lands and the Six Nations of the Grand River did not receive proper compensation for such lands, in breach of the Crown's Reserve Land Duties or in the alternative its Surrender Duties and Surrender Implementation Duties.

34. In 1830, the Lieutenant Governor of Upper Canada ordered an investigation into the Six Nations Trust which resulted in a report determining that Colonel William Claus (who died in November 1826) and his son, John Claus, had misappropriated monies from the Six Nations Trust.

35. The Crown, however, failed to pursue a full accounting from Colonel William Claus' estate and from John Claus with respect to the handling of Six Nations of the Grand River trust monies by Colonel William Claus and John Claus.

36. Instead, the Crown unilaterally, and without securing legal title, arranged to obtain three tracts of land elsewhere in the Province of Ontario for the benefit of the Six Nations of the Grand River from members of the Claus family purportedly in lieu of a monetary settlement for the misappropriation of the Six Nations of the Grand River's trust monies by Colonel William Claus. On June 6, 1831, John Claus (Colonel William Claus' son) purported to convey some 900 acres in Innisfil Township (the "**Innisfil lands**"), and, in addition, John Claus along with Catherine Claus (Colonel William Claus' widow) purported to convey some 2,800 acres and 1,200 acres respectively in East Hawkesbury Township (the "**East Hawkesbury lands**") to some nominees appointed by the Crown "in trust for the sole use, benefit and behoof of the Indians known as the Six Nations Indians".

37. The Crown failed to ensure that the conveyances were effective and in fact the titles purportedly conveyed were defective.

38. On June 16, 1840, the Executive Council of Upper Canada determined that the Six Nations of the Grand River's Innisfil and East Hawkesbury lands should be sold by private sale, rather than by public auction, and at prices which in total were less than required to offset the minimum amounts which years earlier had been misappropriated by Colonel William Claus and John Claus.

39. Subsequently, in the 1840's, the Crown made sales of portions of the Innisfil and East Hawkesbury lands without obtaining any surrender of those lands from the Six Nations of the Grand River to the Crown.

40. In 1852, the Court of Upper Canada, Queen's Bench, held in a test case (*Dickson v. Gross* (1852), 9 U.C.Q.B. 580) that the title of one of the purchasers to a part of the Innisfil lands was defective because John Claus did not have proper title in 1831 in order to be able to convey the lands to the nominees to be held in trust for the Six Nations of the Grand River. The Court held that such title had resided in the Colonel William Claus Estate, and not in John Claus personally.

41. The Province of Canada undertook the defence of this action on behalf of the third party purchaser. Costs of the action were awarded against the Defendants. Those costs and the other expenses of the Defendants in relation to the action were paid out of the Six Nations Trust, without the knowledge, authorization or consent of the Six Nations of the Grand River.

42. On February 23, 1853, the Crown unilaterally withdrew £5,000 from the Six Nations Trust to pay to the beneficiaries of Colonel William Claus' Estate. This payment was made to release any and all interests that the beneficiaries of the Colonel William Claus Estate might allegedly continue to have in the Innisfil and East Hawkesbury lands which the Crown either had already sold or would later sell to Third Parties.

43. Notwithstanding the defect found by the Court in the Six Nations of the Grand River's title to the Innisfil and East Hawkesbury lands to be received in place of the trust monies earlier misappropriated by Colonel William Claus and John Claus, the Crown never reimbursed the Six Nations Trust for the misappropriated funds.

43.1 Throughout Claus' management of the Six Nations Trust and the Reserve, the Crown was subject to the Indian Monies Management Duties and Reserve Land Duties. The Crown breached the duties through the various dealings set out above and is liable for equitable damages or equitable compensation to the Six Nations of the Grand River as a result.

### ***Welland Canal Flooding***

44. The Crown failed to secure or pay compensation to the Six Nations of the Grand River for the value of at approximately 3,500 to 3,800 acres of the Simcoe Patent Lands expropriated and flooded for the Welland Canal project. The flooding resulted from canal construction projects, more particularly dam projects, which were carried on between approximately 1829 and 1835.

45. Under special legislation of the Parliament of Upper Canada, specifically S.U.C. 1824, c.17, enacted January 19, 1824, a company called the Welland Canal Company (the "**WCC**") was incorporated to construct the Welland Canal.

46. This legislation imposed an obligation on the WCC to compensate landowners or occupiers for any damages sustained as a result of the WCC exercising its statutory

powers. Part IX of the statute provided that if any part of the Welland Canal passed through Indian lands, or damaged the property or possessions of Indians, compensation was to be made in the same manner as with respect to the property, possessions or rights of other individuals. The amount of the compensation was to be paid to the Chief Officer of the Indian Department to the use of the Indians.

47. Despite assurances by the Crown's representatives that the WCC would compensate the Six Nations of the Grand River for any losses occasioned by the Welland Canal project and despite the statutory obligation to compensate, no compensation was made to the Six Nations of the Grand River for the value of the portions of the Simcoe Patent Lands lost due to the flooding. The WCC only made payments to individuals for their improvements on the land.

47.1 Upon considering and then allowing the WCC to appropriate Haldimand Tract land for the Welland Canal project, the Crown was subject to the Appropriation Duties. The Crown breached those Appropriation Duties by failing to ensure that the Six Nations of the Grand River's interest in the appropriated lands was preserved to the greatest extent possible and that the WCC compensated the Six Nations of the Grand River for the lands lost due to flooding.

48. On June 9, 1846, by Act of the Parliament of the Province of Canada, being S. Prov. C. 1846, c.37, the works *inter alia* of the Welland Canal were vested in the government of the Province of Canada, with provision made for the determination of any

unsettled claim for property taken, or for direct or consequential damages to property arising from the construction of public works including the Welland Canal.

49. Pursuant to section 108 of the *Constitution Act, 1867*, ownership and control of the Welland Canal passed from the Province of Canada to the Crown in right of Canada at Confederation in 1867.

50. Since Confederation, various government departments have undertaken valuations of the Simcoe Patent Lands flooded by the Welland Canal project and have recommended that compensation be paid to the Six Nations Trust in respect of the flooded lands:

- (a) On January 25, 1878, the Superintendent General of Indian Affairs, David Mills, recommended to the Minister of Public Works a payment of \$29,715.63 as proposed compensation for 1,993.65 acres of the acreage that had been flooded.
- (b) On August 5, 1882, James Cowan, an official arbitrator, reported to the Minister of Railways and Canals, that 1,993.65 acres of the flooded lands had a value of \$28,672.67.
- (c) On May 6, 1884, John A. Macdonald, Superintendent General of Indian Affairs, recommended to the Privy Council that the sum of \$28,672.67 be paid as compensation for 1,993.65 acres of the acreage which had been flooded.



### ***The Grand River Navigation Company***

51. Beginning in or about 1834 the Crown improvidently invested trust monies belonging to the Six Nations of the Grand River in the undertaking of the Grand River Navigation Company (the “**GRNC**”) in return for worthless shares and debentures of the GRNC. Through these improvident investments and through subsequent failures to mitigate or limit the losses arising from these improvident investments, the Crown breached the Indian Monies Management Duties.

52. The GRNC was incorporated and established under special legislation enacted on January 28, 1832, being S.U.C. 1832, c.13 (the “**GRNC Act**”) for the purpose of constructing dams and related works in order to make the Grand River more navigable and provide a better transportation route between the Welland Canal and the City of Brantford. The Six Nations of the Grand River were opposed to this project.

53. The Crown knew from the outset that:

- (a) investments of the Six Nations Trust monies in the GRNC were speculative and imprudent;
- (b) public revenues would not be invested in the GRNC’s activities because of the speculative nature of the GRNC’s project and the heavy expenditures it would require; and

- (c) the Province and the private promoters of the GRNC, rather than the Six Nations of the Grand River, would derive all of the potential benefits of the investment.

54. In addition to diverting trust monies belonging to the Six Nations of the Grand River to the GRNC, the Crown granted free letters patent dated November 18, 1837 to the GRNC under the seal of the Province of Upper Canada contrary to the requirements of the *GRNC Act*, for a tract of the Simcoe Patent Lands consisting of 368 and 7/10 acres including a 36 acre portion of towing path lands along the Grand River. In conveying these lands to the GRNC contrary to the requirements of the *GRNC Act*, the Crown breached its Reserve Land Duties and its Appropriation Duties owed to the Six Nations of the Grand River.

55. The Crown purported to convey such lands to the GRNC without obtaining any surrender from the Six Nations of the Grand River and without obtaining full and fair compensation for these lands for the Six Nations Trust. If this conveyance was lawfully authorized, which is not admitted but denied, the Crown was subject to the Appropriation Duties and breached those duties by failing to obtain full and fair compensation for these lands.

55.1 As a result of the breaches of the Reserve Land Duties, Indian Monies Management Duties and the Appropriation Duties the Crown is liable to the Six Nations of the Grand River for equitable damages or compensation for the monies invested in the GRNC and the fair value of the lands appropriated by the GRNC.

***Lands Surrendered for the Purpose of Sale but Subsequently Conveyed by the Crown Without Obtaining Proper Compensation for Six Nations of the Grand River***

56. The Crown conveyed or otherwise transferred surrendered Simcoe Patent Lands to Third Parties without obtaining full and fair compensation for the Six Nations of the Grand River in accordance with its own valuations and sale conditions or, indeed, without obtaining any compensation for the benefit of the Six Nations of the Grand River. This frequently occurred for conveyances or transfers of Simcoe Patent Lands, for example, under the following surrenders:

- (a) surrender no. 30 dated April 19, 1830, being a surrender of an estimated 807 acres for a townplot for Brantford;
- (b) surrender no. 40 dated April 2, 1835, being a surrender of an estimated 48,000 acres in the Township of Brantford excluding an area of land later known as the Johnson Settlement;
- (c) surrender no. 38 dated 8 February 1834, being a surrender of an estimated 50,212 acres in Dunn, Moulton, Canborough and Cayuga Townships; and
- (d) the purported surrender of 26 March 1835 to settle possession of lands that were the subject of so-called “Brant Leases” made in opposition to government orders, without having been surveyed, and without proper consideration to the Six Nations of the Grand River.

56.1 In disposing of the lands above, the Crown was subject to the Surrender Implementation Duties. The Crown breached these duties, as described below, in two ways. First, by failing to maintain proper records and accounts, the Crown made it impossible to assess or account for the disposition of the lands and the management of the monies derived from the sale of the lands. Second, the information that is available indicates that the Crown systematically failed to obtain fair market value or take steps to obtain fair market value.

56.2 In particular, the Crown failed to protect unsurrendered Haldimand Tract lands for the Six Nations of the Grand River's exclusive use, failing to evict existing intruders from these lands. The Crown then sought and obtained surrenders from the Six Nations of the Grand River on the expectation that the land would be surveyed, subdivided, and sold at fair market value for the benefit of the Six Nations of the Grand River. However, the Crown disposed of the surrendered land below market value, in certain cases to the intruders who had unlawfully settled upon the land prior to it being offered for sale, failed to set appropriate upset prices for the disposal of the land, and failed to collect compensation that was owing or gave credit for alleged improvements that had been illegally made to the land by persons who had unlawfully entered onto and occupied the lands. The Crown also disposed of certain lots as free grants and others for nominal consideration. The failure to obtain proper compensation was contrary to the wishes of the Six Nations of the Grand River who wanted to obtain fair value for the lands; and was contrary to the obligation to ensure that the surrenders were not implemented in a way that was exploitative.

56.3 As a result of the Crown's breaches of the Surrender Implementation Duties, the Crown must:

- (a) account for the disposition of the lands and the monies derived from disposition of the lands; and
- (b) to the extent that it cannot or there is shortfall in either the value or the sale proceeds, pay equitable compensation to the Six Nations of the Grand River for the value of the surrendered lands, subject to any proceeds of disposition as the Crown can demonstrate were held for the benefit of the Six Nations of the Grand River.

57. These surrenders had been agreed to by the Six Nations of the Grand River so that the Crown could make Dispositions of lands within the surrendered areas to Third Parties for the benefit of the Six Nations of the Grand River, namely Dispositions that would result in full and fair compensation to the Six Nations of the Grand River for all of the lands, that fully protected at all times Six Nations of the Grand River's interest in the relevant transactions and that would result in the Six Nations of the Grand River receiving or being credited with all the proper proceeds of such Dispositions. The Crown has never accounted to the Six Nations of the Grand River for the proceeds from Dispositions over the years of the numerous specific parcels of lands encompassed by surrender documents listed above.

### ***Talbot Road Lands***

58.1 On April 20, 1831, the Six Nations of the Grand River in council confirmed their previous consent of March 22, 1830, to a surrender proposed of lands needed for the construction of a road to be known as the Talbot Road (today Ontario Highway 3) from Canborough Township to Rainham Township and lands on each side of the road in lots of “33 chains by 30”, being approximately 100 acre lots, all of which were to be sold for the benefit of the Six Nations of the Grand River. The surrender proposed was recorded in a letter of March 9, 1830 which was communicated to the Six Nations of the Grand River in council (the “**Talbot Road Lands Surrender Proposal**”).

58.2 On April 20, 1831, representatives of the Six Nations of the Grand River executed a document of surrender dated April 19, 1831, known as surrender no. 31, on the understanding that it reflected the Talbot Road Lands Surrender Proposal.

58.3 In fact, surrender document no. 31 wrongfully contained a metes and bounds legal description for an area of land considerably larger in size than the extent of land reflected in the Talbot Road Lands Surrender Proposal that had been consented to by the Six Nations of the Grand River in council.

58.4 As a result, the Crown did not immediately sanction surrender document no. 31 with any order in council and in fact did not accept or act upon surrender document no. 31 as it formally read because on July 7, 1831 a written communication was made by the Chief Superintendent of the Indian Department advising that the Lieutenant

Governor requested that the Six Nations of the Grand River cede to the Crown a portion of land on either side of the Talbot Road, so that the ceded lots could be sold to Third Parties for the benefit of the Six Nations of the Grand River.

58.5 On September 28, 1831, the Six Nations of the Grand River in council and the Crown agreed that the Crown could sell 100 acre lots, or any portion of such lots, on either side of the Talbot Road to settlers, with the proceeds therefrom to benefit the Six Nations of the Grand River, provided that there was reserved for the use of the Six Nations of the Grand River an area of the Talbot Road lands consisting of two miles on each side of the Grand River. This agreement had the effect of restricting or reducing the area of land formally and incorrectly described as being surrendered in surrender document no. 31.

58.6 Subsequently, the Crown issued a public notice dated December 1, 1831 ordering that lands for disposition to Third Parties were to be laid out in 100 acre lots. Notwithstanding the agreement of September, 1831 with the Six Nations of the Grand River and the notice, the Crown subsequently proceeded wrongfully to sell lots of greater depth from the Talbot Road, resulting in lots being sold consisting of 200 acres rather than 100 acres. The selling agent for the Crown acknowledged in writing that this was contrary to the instructions of the Lieutenant Governor.

58.7 The Crown wrongfully failed to reserve for the Six Nations of the Grand River the area of the Talbot Road lands on each side of the Grand River which the Six Nations of the Grand River in council had reserved on September 28, 1831. Instead, the Crown

ordered on November 25, 1831 that only a one mile tract on each side of the Grand River along the Talbot Road be reserved for the Six Nations of the Grand River and a survey subsequently reflected that reservation of lands.

58.8 In 1833, the Six Nations of the Grand River consented to the sale of part of the reserved tract of the Talbot Road lands in order to accommodate the establishment of a town plot for the Town of Cayuga.

58.9 The Crown failed to seek and did not receive consent from the Six Nations of the Grand River to dispose of the remaining portion of the reserved tract within the Talbot Road lands which were not included in the Cayuga town plot.

58.10 Although a public notice dated January 22, 1844 issued by the Crown's Chief Superintendent of Indian Affairs advised that the lands on the south side of the Grand River between the Townships of Brantford and Dunn were exclusively appropriated to the use of Six Nations of the Grand River, the Crown failed to protect any portion of the surrender no. 31 lands on the south side of the Grand River for the benefit of the Six Nations of the Grand River including the reserved tract of the Talbot Road lands not used for the Cayuga town plot. The Crown has not accounted to the Six Nations of the Grand River for the proceeds of Dispositions purporting to grant title or other interests to Third Parties in the Talbot Road and the lands on either side of it.

58.11 The Crown breached the Reserve Land Duties and/or the Surrender Implementation Duties by failing to ensure that the Six Nations of the Grand River's



interest in the appropriated lands was preserved to the greatest extent possible and that the lands that were supposed to have been reserved were in fact reserved and not disposed of and that any proceeds that may have been derived from the disposition of these lands was accounted for and held to the benefit of the Six Nations of the Grand River. As a result of these breaches the Crown is liable to pay equitable compensation or equitable damages for these lands, subject to any proceeds of disposition that the Crown can establish were obtained and held for the benefit of the Six Nations of the Grand River.

#### ***Hamilton/Port Dover Plank Road Lands***

59. The Crown granted letters patent in fee simple to Third Parties on the lands approximately a half-mile on each side of a Plank Road from Hamilton to Port Dover (which eventually became Highway 6) built across unsurrendered Simcoe Patent Lands, although the Six Nations of the Grand River only wished to lease those lands.

60. The Six Nations of the Grand River were accordingly deprived of continual earnings from these lands from continual rental revenues for the land and royalty revenues on the mineral resources thereunder. The Crown breached the Reserve Land Duties and/or the Surrender Implementation Duties by failing to ensure that the Six Nations of the Grand River's interest in these lands was preserved to the greatest extent possible and that the lands that were supposed to have been reserved were in fact reserved and not disposed of and that any proceeds that may have been derived from the disposition of these lands was accounted for and held to the benefit of the Six

Nations of the Grand River. As a result of these breaches the Crown is liable to pay equitable compensation or equitable damages for these lands, subject to any proceeds of disposition that the Crown can establish were obtained and held for the benefit of the Six Nations of the Grand River.

### ***Port Maitland Lands***

61. The Crown took possession of lands comprising lots 25 and 26, concession 4 in the Township of Dunn (the “**Port Maitland lands**”), purportedly under *An Act to authorize Her Majesty to take Possession of Lands for the erection of Fortifications in this Province, under certain restrictions*, S.U.C. 1840, c.16, which *inter alia* provided that:

- (a) land could be purchased or leased for the erection of military works;
- (b) where the requisite land could not be obtained by consent, the Military could take possession of lands required for military works if the necessity for the lands was first certified by the Commander of Her Majesty’s Forces in the Province of Upper Canada, or there was an enemy invasion; and
- (c) proper compensation was required to be made to the owners of land taken for military purposes.

62. There was no voluntary purchase or lease of the Port Maitland lands for the purpose of erecting military works, no invasion and no certification that the Port Maitland lands were required to be taken by the Crown for military purposes. No compensation

was ever made to the Six Nations of the Grand River for the taking of the Port Maitland lands, including when the Crown subsequently sold most of the Port Maitland lands.

62.1 The Crown breached the Reserve Land Duties and/or the Appropriation Duties by appropriating the Port Maitland Lands for its own uses and by failing to ensure that the Six Nations of the Grand River's interest in the appropriated lands was preserved to the greatest extent possible and that proper compensation was paid for the appropriation of the lands. The Crown is liable to pay equitable compensation or equitable damages for the loss of these lands, subject to any compensation that the Crown can demonstrate was paid and held for the benefit of the Six Nations of the Grand River.

### ***Purported Surrender of 1841***

63. On January 18, 1841, the then Chief Superintendent of Indian Affairs, Samuel Jarvis ("**Jarvis**") (who was later discharged by the Crown after an investigation by a Commission of Inquiry) allegedly obtained the signatures of seven individuals to what purported to be an agreement of the Six Nations of the Grand River to "Her Majesty's Government disposing of the land belonging and formerly reserved upon the Grand River for the Six Nations Indians", expressly excluding some lands in a tract known as the "Johnson Settlement".

64. The document of January 18, 1841 incorporates by reference two letters of January 5 and January 15, 1841 authored by Jarvis (together, "**the Purported 1841**

**Jarvis Arrangement**”). None of these documents contained any definite description of what land was to be surrendered for lease or otherwise to Third Parties. While the letter of January 15, 1841 refers to the preparation of a “general survey of the tract”, none was appended to the document of January 18, 1841 or to any later document which might properly be characterized as a surrender document.

65. The Purported 1841 Jarvis Arrangement did not constitute a lawful and valid surrender of Simcoe Patent Lands for reasons which include the following:

- (a) the Six Nations of the Grand River did not authorize the seven alleged signatories to consent to the Purported 1841 Jarvis Arrangement; and
- (b) no specific lands were identified in the relevant documents for lease or otherwise by the Six Nations of the Grand River and no survey was prepared.

66. In the letter dated January 5, 1841, Jarvis represented that the only solution to prevent unlawful white settlements on the Simcoe Patent Lands was for the Six Nations of the Grand River to surrender those lands, with the exception of the portions the Six Nations of the Grand River wished to retain for their own use.

67. In the letter dated January 15, 1841, Jarvis represented:

- (a) that neither would he recommend nor the government approve, the removal of unauthorized Third Parties from unsurrendered Six Nations Lands;

- (b) that if the Six Nations of the Grand River adopted the government's proposal, the income of the Six Nations of the Grand River would immediately be increased and that monies from future land dispositions would be paid over to the benefit of the Six Nations Trust; and
- (c) that measures would soon be adopted resolving the issue of investment in stock of the GRNC in a manner advantageous to the Six Nations of the Grand River.

68. The Jarvis letter of January 15, 1841 recommended approval by the Six Nations of the Grand River of the "Government disposing for their exclusive benefit and advantage, either by lease or otherwise, all of their Lands which can be made available, with the exception of the farms at present in their actual occupation and cultivation, and of 20,000 acres as a further reservation, and that the selection of this reservation be deferred until after a general survey of the tract when the position most advantageous to the general interests and peculiar wants of the Indians can be more judiciously selected".

69. Upon learning of the Purported 1841 Jarvis Arrangement, the Six Nations of the Grand River protested by *inter alia*:

- (a) submitting a petition of February 4, 1841, signed by fifty-one Chiefs, Warriors and Sachems of the Six Nations of the Grand River to the Governor General of Canada;

- (b) submitting a petition of July 7, 1841 signed by one hundred twenty three Chiefs, Warriors and Sachems of the Six Nations of the Grand River to the Governor General of Canada;
- (c) making a submission of January 28, 1843 to a three-person commission of inquiry (the Bagot Commission) which had been appointed in October 1842 to investigate the affairs of the Indian Department; and
- (d) submitting a further petition dated June 24, 1843 to a newly appointed Governor General of Canada, in which the Chiefs of the Six Nations of the Grand River *inter alia* asked the new Governor General to examine the earlier submissions protesting the irregularity of the Purported 1841 Jarvis Arrangement.

70. In response to the protests by the Six Nations of the Grand River, the Crown acting by the Governor General of Canada, in Council, decided on October 4, 1843 that the Crown would continue to reserve for the Six Nations of the Grand River those parts of the Simcoe Patent Lands identified as follows:

- (a) all of the Simcoe Patent Lands on the south side of the Grand River with the exception of the Plank Road lands between the Township of Cayuga and Burtch's Landing, being a distance of more than twenty miles;
- (b) a tract near Brantford called the "Oxbow" containing some 1,200 acres;

- (c) another tract on the north side of the Grand River called the "Eagles Nest" containing some 1,800 acres;
- (d) the "Martin Tract" containing some 1,500 acres;
- (e) the "Johnson Settlement" land containing some 7,000 acres;
- (f) a lot at Tuscarora on which a church was built;
- (g) lands on the north side of the Grand River resided upon and improved by members of the Six Nations of the Grand River; and
- (h) any further lands which the Six Nations of the Grand River wished to retain.

71. The Crown through the Governor General in Council decided that the Johnson Settlement lands and other small tracts would be leased on short term leases for the benefit of the Six Nations of the Grand River. The Crown then granted letters patent in fee simple, instead of leases, to Third Parties for these lands, thereby depriving the Six Nations of the Grand River of the continual rental revenues which could be earned therefrom.

72. There has been no surrender by the Six Nations of the Grand River to the Crown of any of the above-mentioned lands and the present day Six Nations of the Grand River Reserve does not include all of the area that the Crown indicated would be reserved on October 4, 1843.

73. On May 10, 1845, Jarvis was discharged by the Crown as Chief Superintendent of Indian Affairs after a Commission of Inquiry could not obtain an accounting of Jarvis' administration of Indian trust monies which included unauthorized use of such monies.

73.1 In any event, regardless of whether the Purported 1841 Jarvis Arrangement was valid, the Crown has never provided an account to the Six Nations of the Grand River identifying the specific lands allegedly encompassed by it or an account for the related proceeds that ought to have been received as full and fair compensation for the benefit of the Six Nations of the Grand River as a result of all Dispositions allegedly made on the basis of that arrangement.

73.2 In respect of all of the lands subject to the Purported 1841 Jarvis Arrangement the Crown was subject to the Reserve Land Duties or, in the alternative, the Surrender Duties and the Surrender Implementation Duties and breached all of these duties.

73.3 The Crown breached the Reserve Land Duties by failing to protect the Reserve land from squatters and permitting Reserve land to be alienated without the consent of the Six Nations of the Grand River and contrary to their intentions with respect to these lands. As such the Crown is liable for equitable damages and equitable compensation for the loss of these lands on the basis of the fair market value of these lands as a Reserve, subject to any compensation the Crown can demonstrate was obtained for these lands and held for the benefit of the Six Nations of the Grand River.



73.4 In the alternative, if there was a valid surrender, which is not admitted but denied, the Crown breached the Surrender Duties and the Surrender Implementation Duties by failing to:

- (a) ensure that the surrender was not exploitative on account of it arising from unlawful occupation of the Reserve and the Crown's unwillingness to address this unlawful occupation;
- (b) implement the surrenders in accordance with the expectations of the Six Nations of the Grand River that fair market value would be obtained for any lands alienated and that those monies would be held for the benefit of the Six Nations of the Grand River; and
- (c) ensure that certain lands would be withheld from disposition and continue to be held for the exclusive use and benefit of the Six Nations of the Grand River.

73.5 As a part of the Surrender Duties and Surrender Implementation Duties, the Crown was also under a duty to account and be able to account for the land that was surrendered and any monies that were derived from the disposition of these lands. The Crown breached these duties both by failing to maintain the necessary books and records that would allow for an accounting, and by failing to account. The Crown is therefore liable for equitable damages or equitable compensation on the basis of the fair market value of the land subject to any compensation the Crown can demonstrate was obtained for these lands and held for the benefit of the Six Nations of the Grand River.

73.6 In either case, to the extent that the Crown appropriated land that formed part of the Purported 1841 Jarvis Arrangement the Crown was obliged to compensate the Six Nations of the Grand River for the appropriation of the land, either as a result of the Appropriation Duties or as a result of the terms of the Purported 1841 Jarvis Arrangement. The Crown did not pay such compensation and is therefore liable for equitable damages or equitable compensation on the basis of the fair market value of the land subject to any compensation the Crown can demonstrate was obtained for these lands and held for the benefit of the Six Nations of the Grand River.

73.7 To the extent that the Crown obtained monies or other compensation for the lands forming part of the Purported 1841 Jarvis Arrangement, those monies formed part of the Six Nations Trust and the Crown was subject to the Indian Monies Management Duties in respect of such funds. The Crown breached the Indian Monies Management Duties in respect of these funds by failing to: (1) in fact credit them to the Six Nations Trust; (2) maintain adequate books and records that would allow the Crown to account for these monies; and (3) account for these monies.

### ***Misappropriation and/or Mismanagement of Trust Monies***

74. The Crown in right of Canada reported to the Six Nations of the Grand River that, as of February 1, 1995, it only held \$2,183,312 in trust monies for the benefit of the Six Nations of the Grand River, consisting of \$2,080,869 on capital account and \$102,443 on revenue account.

74.1 The Crown was at all times subject to the Indian Monies Management Duties in respect of all compensation derived from the sale, lease, appropriation or any other disposition of the Haldimand Tract, whether such lands were Reserve land or subject to being set aside as Reserve land. The Indian Monies Management Duties extended to any monies or compensation obtained by way of investment of the existing Six Nations of the Grand River monies.

74.2 As described above, the historical record demonstrates that the Crown or its employees or agents failed to keep appropriate books and records that would allow for an accounting and that the Crown and/or its agents mismanaged or misappropriated monies from the Six Nations Trust.

74.3 Given this historical record of misappropriation or mismanagement, the Crown must either account for the monies that ought to have been in the Six Nations Trust and demonstrate that such misappropriation or mismanagement has been remedied, or pay equitable damages or equitable compensation for the loss of these monies.

75. The Crown has not accounted to the Six Nations of the Grand River for the administration of the monies which ought to be in the Six Nations Trust and despite the Crown's awareness of the improprieties hereinbefore referred to.

***Allowing the Removal by Third Parties of Natural Resources from the Six Nations of the Grand River Reserve Without Valid Authority and Without Proper Compensation***

76. At various times, the Crown failed to protect Six Nations of the Grand River's interest in the natural resources underlying the Six Nations of the Grand River Reserve by failing to take any or appropriate steps to prevent Third Parties from removing natural resources from the Six Nations of the Grand River Reserve without proper authority. In addition the Crown failed to obtain or provide proper compensation to the Six Nations of the Grand River. An example of these failures is the extraction of natural gas from the Six Nations of the Grand River Reserve in the period from July 15, 1945 through November 18, 1970.

77. On May 20, 1925, the Six Nations of the Grand River surrendered to the Crown for twenty years the oil and gas rights under the Six Nations of the Grand River Reserve so that a twenty year lease for the same could be granted to the Honourable Edward Michener.

78. By agreement dated December 31, 1928, Michener assigned his rights to Petrol Oil & Gas Company Limited ("**POG**").

79. By letter of July 18, 1947, the Deputy Minister of the Department of Indian Affairs advised POG that the Michener lease had expired on July 15, 1945 and that no authority had been obtained by POG pursuant to section 54 of the *Indian Act* (R.S.C.

1927, Chap. 98) which would enable POG to operate thereafter on the Six Nations of the Grand River Reserve.

80. From July 15, 1945 through November 18, 1970, POG drilled wells and extracted natural gas from gas wells on the Six Nations of the Grand River Reserve without any lawful entitlement to the gas or any lawful authority to drill and extract gas.

81. Accordingly, the Crown in right of Canada should account to the Six Nations Trust for the fair market value of all natural gas extracted by POG from the Six Nations of the Grand River Reserve.

### ***The Crown's Failures to Account***

82. As set out above, the Crown has breached its fiduciary obligations and/or treaty obligations to the Six Nations of the Grand River to such an extent that the Six Nations of the Grand River is not fully aware of all of the transactions since 1784 concerning the assets held, or which ought to have been held, by the Crown for the benefit of the Six Nations of the Grand River, including from all sales, leases and other dispositions of the Six Nations Lands, and monies earned or derived or which ought to have been earned or derived therefrom. In particular, as a result of the lack of accountings (particularly respecting when most of the Dispositions of Six Nations Lands occurred), the Six Nations of the Grand River do not have a full awareness as to matters such as the following:

- (a) whether all portions of the Six Nations Lands which today are not part of the Six Nations of the Grand River Reserve No. 40 and 40B were lawfully disposed of by first obtaining from the Six Nations of the Grand River a surrender in accordance with the applicable legal requirements;
- (b) whether the terms and conditions of any valid surrenders, sales and leases, including any lands that were validly surrendered pursuant to Brant's Power of Attorney, were fulfilled and whether full and fair compensation was obtained in respect of the Dispositions or uses of the Six Nations Lands;
- (c) whether the Six Nations Trust earned, derived, received, held and continues to hold all appropriate sums which should have been earned, derived, received or held on behalf of the Six Nations of the Grand River, including those derived from lands included within Brant's Power of Attorney, in accordance with the Crown's fiduciary obligations; and
- (d) the extent to which the Six Nations of the Grand River have been deprived of their property rights by the Crown's failure to fulfil its fiduciary or treaty obligations under the Haldimand Proclamation.

83. Despite the Crown's fiduciary obligations the Crown has failed to account for the administration of the Six Nations Trust. In particular:

- (a) By letter dated October 25, 1979 the Six Nations of the Grand River Council requested the Auditor General of Canada to conduct an historical

audit and report on the Six Nations of the Grand River trust funds and lands. On November 15, 1979, the Parliament of Canada directed the Auditor General to conduct an audit of Indian trust accounts generally but no report on any such audit has yet been supplied to the Six Nations of the Grand River as requested.

- (b) By letter of October 23, 1992, the Six Nations of the Grand River by its solicitors requested a full general accounting of all transactions involving the property held for the benefit of the Six Nations of the Grand River including all sales and leases of land and all money held by the Crown since 1784. The Crown in right of Canada refused to do so and instead directed the representatives of the Six Nations of the Grand River to examine the Indian Land Registry. The Crown in right of Ontario did not respond at all to the request for an accounting.

84. The Plaintiff proposes that the trial of this action take place in the City of Toronto, Ontario.

## **SCHEDULE A: CROWN DUTIES**

**(Crown as defined in paragraph 1(e) of the Statement of Claim)**

### **Reserve Land Duties**

1. In respect of the Haldimand Tract Reserve, the Crown has the following duties (the “**Reserve Land Duties**”):
  - a. The duty to protect and preserve the band’s interest in the Haldimand Tract lands from exploitation;
  - b. The duty to act with loyalty and good faith towards the band in respect of the management of the Reserve;
  - c. The duty to fully disclose material information in respect of the Crown’s dealings with or management of the Reserve and to consult the band;
  - d. The duty to act with ordinary prudence with a view to the best interests of the band; and
  - e. The duty to make efforts to fairly reconcile conflicting demands or competing interests.

### **Reserve Creation Duties**

2. In respect of land where the Crown has made a unilateral undertaking or agreed to create a Reserve (whether by treaty or otherwise) the Crown has the following duties (the “**Reserve Creation Duties**”):
  - a. The duty to act diligently to create the proposed Reserve;



- b. The duty to act with loyalty and good faith towards the band in respect of the creation of the Reserve;
- c. The duty to fully disclose material information in respect of the Crown's dealings with or management of the Reserve land;
- d. The duty to act with ordinary prudence with a view to the best interests of the band in the process of creating the Reserve; and
- e. The duty to correct any deficiencies or omissions in the Reserve creation process reasonably capable of correction.

### **Surrender Duties**

- 3. In respect of a Reserve where it is proposed that all or part of the Reserve be alienated whether by sale, lease or otherwise, the Crown is under the following fiduciary duties (the "**Surrender Duties**") in considering whether or not to accept an absolute or conditional surrender for this purpose:
  - a. The surrender is made in accordance with the applicable procedural requirements;
  - b. The band consents to the surrender;
  - c. The surrender reflects the intention of the band; and
  - d. The surrender is not exploitative.

### **Surrender Implementation Duties**

4. In respect of land that has been subject to surrender, whether absolute or conditional, the Crown is under the following fiduciary duties (the “**Surrender Implementation Duties**”):
- a. To manage the process to advance the best interests of the band;
  - b. To give effect to the intention of the band in making the surrender, including fulfilling any conditions;
  - c. To seek the consent of the band for any change in the implementation of the surrender;
  - d. To scrutinize the proposed transaction to ensure that it is not an exploitative bargain; and
  - e. To fully disclose material information in respect of the Crown’s dealings with or management of the Reserve land.

### **Appropriation Duties**

5. In respect of any land that is lawfully appropriated for public purposes of carrying out an activity or undertaking the Crown is under the following fiduciary duties (the “**Appropriation Duties**”):
- a. To ensure that the appropriation is actually required;
  - b. To ensure that the least interest possible is appropriated or that the band’s interest in the Reserve was preserved to the greatest extent possible;

- c. To protect a sufficient Indian interest in expropriated land in order to preserve the taxation jurisdiction of the band over the land; and
- d. To secure compensation that reflected the nature of the Reserve interest, the impact on the band, and the value of the land to the proposed activity or undertaking.

### **Indian Monies Management Duties**

- 6. In respect of any Indian Monies (including any monies or proceeds derived from the disposition or appropriation of Reserve lands or land identified to become Reserve lands) or assets held as investments of Indian Monies the Crown is under the following fiduciary duties (the “**Indian Monies Management Duties**”):
  - a. To manage the monies prudently to preserve the capital and to achieve a reasonable return, which includes:
    - i. The duty to invest these monies in the manner of a common law trustee, subject to any legislation limiting its ability to do so; and
    - ii. The duty to account for the monies when requested;
  - b. Where the Crown appoints a manager to manage a band's monies, the duty to ensure that the manager makes full and adequate disclosure to the band of information relating to the management of the band's funds.

March 7, 1995  
(Amended: May 7, 2020)  
(Amended: February 3, 2023)

**BLAKE, CASSELS & GRAYDON LLP**

Barristers & Solicitors  
199 Bay Street  
Suite 4000, Commerce Court West  
Toronto ON M5L 1A9

**Iris Antonios** LSO #56694R

Tel: 416-863-3349  
iris.antonios@blakes.com

**Max Shapiro** LSO #60602U

Tel: 416-863-3305  
max.shapiro@blakes.com

**Rebecca Torrance** LSO #75734A

Tel: 416-863-2930  
Fax: 416-863-2653  
rebecca.torrance@blakes.com

**JFK LAW LLP**

816-1175 Douglas Street  
Victoria, BC V8W 2E1

**Robert Janes** LSO #33646P

Tel: 250-405-3466  
RJanes@jfkllaw.ca

Lawyers for the Plaintiff

SIX NATIONS OF THE GRAND  
RIVER BAND OF INDIANS

Plaintiff

THE ATTORNEY GENERAL OF  
CANADA et al.

Defendants

Toronto Court File No. CV-18-594281-0000  
(Originally Brantford Court File No. 406/95)

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at Toronto

**FURTHER AMENDED STATEMENT OF CLAIM**

**BLAKE, CASSELS & GRAYDON LLP**

Barristers & Solicitors

199 Bay Street

Suite 4000, Commerce Court West

Toronto ON M5L 1A9

**Iris Antonios** LSO #56694R

Tel: 416-863-3349 / iris.antonios@blakes.com

**Max Shapiro** LSO #60602U

Tel: 416-863-3305 / max.shapiro@blakes.com

**Rebecca Torrance** LSO #75734A

Tel: 416-863-2930 / rebecca.torrance@blakes.com

Fax: 416-863-2653

**JFK LAW LLP**

816-1175 Douglas Street

Victoria, BC V8W 2E1

**Robert Janes** LSO #33646P

Tel: 250-405-3466

RJanes@jfkllaw.ca

Lawyers for the Plaintiff



Toronto Court File No. CV-18-594281-0000  
(Originally Brantford Court File No. 406/95)

**ONTARIO**

**SUPERIOR COURT OF JUSTICE**

B E T W E E N:

SIX NATIONS OF THE GRAND RIVER BAND OF INDIANS

Plaintiff

- and -

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

Defendants

**FURTHER FURTHER AMENDED 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 upon 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.

Dated: March 7, 1995

Issued by \_\_\_\_\_

Local Registrar

Address of court office:

Court House  
70 Wellington Street  
Brantford, Ontario  
N3T 2L9

TO: THE ATTORNEY GENERAL OF CANADA

Ontario Regional Office  
National Litigation Sector  
Department of Justice Canada  
~~P.O. Box 36~~  
~~3400 Exchange Tower~~  
~~First Canadian Place~~  
120 Adelaide Street West, Suite 400  
Toronto, Ontario  
M5XH 1K6T1

Attention: ~~Charlotte A. Bell, Q.C.~~ Anusha Aruliah  
(416) 973-6901

Tania Mitchell

AND TO: HERHIS MAJESTY THE QUEEN KING IN RIGHT OF ONTARIO

~~c/o Attorney General of Ontario~~  
Crown Law Office - Civil  
720 Bay Street, 8th Floor  
Toronto, Ontario  
M5G7A 2K1S9

Attention: ~~J.T.S. McCabe, Q.C.~~ Manizeh Fancy  
(416) 326-4127

David Feliciant



**C L A I M**

1. The Plaintiff Six Nations of the Grand River Band of Indians (the “**Six Nations of the Grand River**”) claims:

(a) A declaration that the Haldimand Proclamation set apart or aside lands whose legal title was vested in the Crown extending for six miles from each side of the Grand River beginning at Lake Erie and extending in that proportion to the head of the Grand River (the “**Haldimand Tract**”) for the use and benefit of the Six Nations of the Grand River, and that this gave rise to the **Reserve Land Duties, Surrender Duties, Surrender Implementation Duties, Appropriation Duties and Indian Monies Management Duties** defined further below in this Statement of Claim, including:

(i) The duty to protect and preserve the Six Nations of the Grand River’s interest in the Haldimand Tract lands from exploitation;

(ii) The duty to protect the Haldimand Tract from settlement, use, or alienation by or to persons other than the Six Nations of the Grand River, unless the free and informed consent of the Six Nations of the Grand River was obtained in accordance with applicable customs and practices for obtaining such consent and that the transaction was not exploitative;

- (iii) The duty to ensure that the use and benefit of the Haldimand Tract, including proceeds from sales, leases, licences or other authorizations of parts of the Haldimand Tract, were used for the use and benefit of the Six Nations of the Grand River; and
- (iv) The duty to ensure that all monies or other assets provided as compensation for the sale, alienation, lease, use or appropriation of the Haldimand Tract were managed prudently and accounted for.
- (b) A declaration that, if the Haldimand Proclamation did not set aside the Haldimand Tract as a Reserve (as defined in paragraph 2 below) in 1784, that it obliged the Crown to make the Haldimand Tract a Reserve and gave rise to the **Reserve Creation Duties, Reserve Land Duties, Surrender Duties, Surrender Implementation Duties, Appropriation Duties and Indian Monies Management Duties** defined further below in this Statement of Claim, including:

  - (i) The duty to act diligently to set aside the Haldimand Tract as a Reserve for the Six Nations of the Grand River;
  - (ii) The duty to protect the Haldimand Tract from settlement, use, or alienation by or to persons other than the Six Nations of the Grand River, unless the free and informed consent of the Six Nations of the Grand River was obtained in accordance with applicable customs and practices for obtaining such consent and that the transaction was not exploitative;

- (iii) The duty to ensure that the use and benefit of the Haldimand Tract, including proceeds from sales, leases, licences or other authorizations of parts of the Haldimand Tract, were used for the use and benefit of the Six Nations of the Grand River; and
- (iv) The duty to ensure that all monies or other assets provided as compensation for the sale, alienation, lease, use or appropriation of the Haldimand Tract were managed prudently and accounted for.
- (c) ~~(a)~~ Declarations that one or both of the ~~defendants~~Defendants breached fiduciary and/or treaty obligations owing to the Six Nations of the Grand River, as described herein;
- (d) ~~(b)~~ equitable compensation and/or damages arising from the above-noted breaches of fiduciary and/or treaty obligations;
- (e) ~~(c)~~ alternatively to ~~(b)~~, a ~~Declaration~~declaration, if and as appropriate, that one or both of the ~~defendants~~Defendants is obliged to account to the Six Nations of the Grand River for all property, interests in property, money or other assets (“**assets**”) which were or ought to have been received, managed or held by the ~~defendants~~Defendants or either of them, or by others for whom they are in law responsible, including their predecessors (collectively, the “**Crown**”) for the benefit of the Six Nations of the Grand River, as described herein;

- (f) ~~(d)~~—if necessary, a ~~Declaration~~declaration that one or both of the defendants~~Defendants~~ must restore to the Six Nations Trust (as hereinafter defined) all assets which were not received but ought to have been received, managed or held by the Crown for the benefit of the Six Nations of the Grand River or the value thereof;
- (g) ~~(e)~~—a reference or references as may be appropriate;
- (h) ~~(f)~~—all further or ancillary declarations, accounts and directions as may be appropriate, including declarations of breaches of the Crown duties set out in Schedule A;
- (i) ~~(g)~~—costs on a full indemnity basis; and
- (j) ~~(h)~~—such other relief as may seem just.

### ***The Parties***

2. The Plaintiff, the Six Nations of the Grand River, is a band within the meaning of the *Indian Act*, R.S.C. 1985, c.I-5, as amended. The members of the Six Nations of the Grand River are aboriginal people within the meaning of section 35 of the *Constitution Act, 1982*. In this pleading, the ~~predecessors, and the current body, of the Indians known as the~~ “Six Nations of the Grand River ~~together are referred to as the~~ “Six Nations” and the “band” refers to the body of Indians for whose use and benefit the Haldimand Tract lands were set apart or aside under the Haldimand Proclamation, being those of the Six Nations who settled along the banks of the Grand River and their posterity. Land whose

legal title is vested in the Crown and that is set apart or aside for the use and benefit for a body or band of Indians is a reserve (“Reserve”).

3. The Defendant The Attorney General of Canada represents ~~Her~~His Majesty the ~~Queen~~King in right of Canada (the “**Crown in right of Canada**”), pursuant to section 23(1) of the *Crown Liability and Proceedings Act*, R.S.C. 1985, c. C-50, as amended. The Crown in right of Canada:

- (a) has legislative authority in Canada by and with the advice of the Parliament of Canada, with respect to Indians and lands reserved for the Indians, pursuant to section 91(24) of the *Constitution Act, 1867*; and
- (b) is the successor in Canada to, and is subject to all of the obligations, duties and liabilities which His Majesty the King or Her Majesty the Queen (the “**Imperial Crown**”) had or owed to the Six Nations of the Grand River except for those obligations, duties and liabilities conferred or imposed upon the Defendant, ~~Her~~His Majesty the ~~Queen~~King in right of Ontario, under the *Constitution Act, 1867* or otherwise by law.

4. The Defendant ~~Her~~His Majesty the ~~Queen~~King in right of Ontario (the “**Crown in right of Ontario**”):

- (a) became on July 1, 1867 the owner of all lands, mines, minerals and royalties situate within the Province of Ontario belonging to the former Province of Canada and the recipient of all sums then due or payable for such lands, mines, minerals or royalties, subject to any trusts existing in respect thereof

and to any interest other than that of the then Province of Canada, pursuant to section 109 of the *Constitution Act, 1867*; and

- (b) is the successor in the Province of Ontario to, and is subject to all of the obligations, duties and liabilities which the Imperial Crown had or owed to the Six Nations of the Grand River except for those obligations, duties and liabilities conferred or imposed upon the Crown in right of Canada, under the *Constitution Act, 1867* or otherwise by law.

5. The Defendants, either alone or together, are subject to all of the obligations, duties and liabilities owed to the Six Nations of the Grand River by the Imperial Crown or before Confederation by the Province of Canada and the Province of Upper Canada.

### ***Introduction***

6. As a result of the treaties, legislation, common law and facts hereinafter described, the Imperial Crown, the Crown in right of Canada and its predecessors, and the Crown in right of Ontario and its predecessors, were at all material times under fiduciary obligations to the Six Nations of the Grand River to *inter alia* hold, protect, manage and care for the lands, personal property and all other assets of the Six Nations of the Grand River for the benefit of the Six Nations of the Grand River in a similar manner that trustees are required to hold, protect, manage and care for the assets of a trust for the benefit of the beneficiaries of the trust.

6.1 Specifically, the Crown had the following duties in respect of the Haldimand Tract (the “Reserve Land Duties”):

- (a) The duty to protect and preserve the band's interest in the Haldimand Tract Reserve from exploitation;
- (b) The duty to act with loyalty and good faith towards the band in respect of the management of the Reserve;
- (c) The duty to fully disclose material information in respect of the Crown's dealings with or management of the Reserve and to consult the band;
- (d) The duty to act with ordinary prudence with a view to the best interests of the band; and
- (e) The duty to make efforts to fairly reconcile conflicting demands or competing interests.

6.2 To the extent that the Haldimand Proclamation did not set aside the Haldimand Tract as a Reserve, it was a unilateral undertaking or agreement by the Crown which obliged it to create the Haldimand Tract as a Reserve and which gave rise following duties (the "Reserve Creation Duties"):

- (a) The duty to act diligently to create the proposed Reserve;
- (b) The duty to act with loyalty and good faith towards the band in respect of the creation of the Reserve;
- (c) The duty to fully disclose material information in respect of the Crown's dealings with or management of the Reserve land;

- (d) The duty to act with ordinary prudence with a view to the best interests of the band in the process of creating the Reserve; and
- (e) The duty to correct any deficiencies or omissions in the Reserve creation process reasonably capable of correction.

6.3 Where it was proposed that all or part of the Haldimand Tract be alienated whether by sale, lease or otherwise, the Crown was under the following fiduciary duties (the “Surrender Duties”) in considering whether or not to accept an absolute or conditional surrender for this purpose:

- (a) To ensure the surrender is made in accordance with the applicable procedural requirements;
- (b) To ensure that the band consents to the surrender;
- (c) To ensure that the surrender reflects the intention of the band; and
- (d) To ensure that the surrender is not exploitative.

6.4 In respect of land that has been subject to surrender, whether absolute or conditional, the Crown was under the following fiduciary duties (the “Surrender Implementation Duties”):

- (a) To manage the process to advance the best interests of the band;
- (b) To give effect to the intention of the band in making the surrender, including fulfilling any conditions;



- (c) To seek the consent of the band for any change in the implementation of the surrender;
- (d) To scrutinize the proposed transaction to ensure that it is not an exploitative bargain; and
- (e) To fully disclose material information in respect of the Crown's dealings with or management of the Reserve land.

6.5 In respect of any Haldimand Tract land lawfully appropriated for public purposes of carrying out an activity or undertaking the Crown was under the following fiduciary duties (the "Appropriation Duties"):

- (a) To ensure that the appropriation was actually required;
- (b) To ensure that the least interest possible was appropriated or that the band's interest in the Reserve was preserved to the greatest extent possible;
- (c) To protect a sufficient Six Nations of the Grand River interest in expropriated land in order to preserve the taxation jurisdiction of the band over the land; and
- (d) To secure compensation that reflected the nature of the Reserve interest, the impact on the band, and the value of the land to the proposed activity or undertaking.

6.6 In respect of any Six Nations of the Grand River monies (including any monies or proceeds derived from the disposition or appropriation of Haldimand Tract lands) or assets held as investments of Six Nations of the Grand River monies the Crown was and is under the following fiduciary duties (the “Indian Monies Management Duties”):

- (a) To manage the monies prudently to preserve the capital and to achieve a reasonable return, including:
  - (i) The duty to invest these monies in the manner of a common law trustee, subject to any legislation limiting its ability to do so; and
  - (ii) The duty to account for the monies when requested;
  
- (b) Where the Crown appointed a manager to manage a band's monies, the duty to ensure that the manager made full and adequate disclosure to the band of information relating to the management of the band's funds.

7. The Crown has repeatedly breached its fiduciary duties and treaty obligations to the Six Nations of the Grand River as hereinafter described, and should be held liable for those breaches to the Six Nations of the Grand River.

8. Notice of this action was given to the Crown in right of Ontario on December 23, 1994, in accordance with section 7 of *The Proceedings Against the Crown Act*, R.S.O. 1990, c. P.27, and to the Crown in right of Canada on December 28, 1994.

### ***The Royal Proclamation of 1763***

9. By the *Royal Proclamation of 1763*, the Imperial Crown recognized and confirmed certain of the fiduciary obligations which the Crown had assumed in respect of Indian peoples and their lands. It also continued, affirmed and enunciated the unwritten law of the colonies with regard to the status and alienation of lands occupied or used by the Indians in British North America. Unceded lands were recognized as reserved to the Indian peoples, no such lands were to be taken from them without their express consent, and the Indians' interest in unceded lands was to be inalienable otherwise than to the Crown. The purpose of this surrender requirement was to interpose the Crown between the Indians and prospective purchasers or lessees of their land, so as to prevent the Indians from being exploited ~~and~~, to facilitate the Crown's ability to represent the Indians in dealings with third parties, and to ensure that the Crown's sovereign jurisdiction would extend over Indian lands settled by non-Indians. The *Royal Proclamation of 1763* has never been repealed, was and is part of the laws in force in Canada and Ontario and bound the Crown.

10. The *Royal Proclamation of 1763 inter alia* provided that:

- (a) colonial governments were forbidden from granting unceded Indian lands;
- (b) private persons were prohibited from ~~settling on~~occupying or otherwise possessing unceded Indian lands;
- (c) private persons were prohibited from purchasing unceded land from the Indians; and

- (d) Indian lands could only be granted after these had been ceded or surrendered to the Crown in a public assembly of the Indians held by the governor or commander-in-chief of the colony in which the lands in question lay.

### **Six Nations of the Grand River Lands**

11. In the eighteenth century and from time immemorial, the Six Nations (sometimes then referred to as the Five Nations) occupied, possessed or used very large territories in what is today the United States of America and the Provinces of Ontario and Quebec (the “**Six Nations Aboriginal Lands**”).

12. Throughout the American War of Independence, most of the Six Nations were faithfully allied with and supported the Imperial Crown. As a result of the ultimate defeat of the Imperial Crown in that war, ~~many of the Six Nations~~ of the Grand River left the United States and at the invitation of the Crown settled on a very large specific tract of land within their aboriginal lands in what is today Canada.

13. In order to facilitate this settlement and in partial recompense for the Six Nations of the Grand River’s alliance with and support of the Imperial Crown, the Imperial Crown agreed as hereinafter described to formally reserve for the Six Nations of the Grand River a large tract of land within the Six Nations Aboriginal Lands for the exclusive possession and settlement of the Six Nations of the Grand River so that those lands could be enjoyed by the Six Nations of the Grand River and their descendants forever.

### ***The Haldimand Proclamation***

14. On October 25, 1784, the Imperial Crown through its representative in British North America, the Governor of Canada, Sir Frederick Haldimand, issued a Proclamation (the “**Haldimand Proclamation**”) authorizing the Six Nations of the Grand River to take possession of and settle upon the ~~Banks~~banks of the Grand River running into Lake Erie, allocating to them the lands extending for six miles from each side of the river beginning at Lake Erie and extending in that proportion to the head of the Grand River (the “~~Haldimand Proclamation Lands~~”Tract), which the members of the Six Nations of the Grand River and their descendants were to enjoy forever. The lands allocated to the Six Nations of the Grand River under the Haldimand Proclamation consist of approximately 950,000 acres (384,465 hectares), inclusive of the riverbed between the banks of the Grand River. It was expected, in accordance with the practices of the day for determining the precise boundaries of tracts or parcels of lands, that the precise boundaries of the Haldimand Tract would be determined in consultation with and with the consent of the Six Nations of the Grand River as the lands were surveyed or it became necessary to ascertain the precise boundaries.

~~15-~~14.1. The Haldimand Proclamation ~~was accepted~~set aside or had the effect of setting aside the whole of the Haldimand Tract as land held by the Crown for the use and benefit of the Six Nations and of the Grand River, and as such constituted the whole of the Haldimand Tract as a Reserve for the Six Nations of the Grand River.

14.2. In the alternative, to the extent that the Haldimand Proclamation failed to set aside some or all of the Haldimand Tract as a Reserve (which is denied), the Haldimand Proclamation gave rise to an obligation to set these lands apart as a Reserve and the Crown was subject to the Reserve Creation Duties in the process of doing so.

14.3 In either case, from the date that the Haldimand Proclamation was issued, the Crown was subject to Indian Monies Management Duties in respect of any compensation derived from the sale, lease or other disposition of the land forming part of the Haldimand Tract.

15. In addition, the Haldimand Proclamation constitutes a treaty within the meaning of section 35 of the *Constitution Act, 1982*. In this action the Plaintiff claims that as a treaty the Haldimand Proclamation either:

- (a) Set aside the whole of the Haldimand Tract as a Reserve (as described above), subjected the Crown to the Reserve Land Duties, and gave the Six Nations a right to the Reserve; or
- (b) Imposed an obligation on the Crown to set aside the whole of the Haldimand Tract as a Reserve (as described above) and subjected the Crown to the Reserve Creation Duties and gave the Six Nations a right to have the Reserve created and a right to the Reserve so-created.

15.1 To the extent that the Haldimand Proclamation did not set aside the whole of the Haldimand Tract as a Reserve (which is not admitted but denied) the only administrative

step required to complete the Reserve creation process was the Crown satisfying itself that it had obtained sufficient consent from other potentially affected Indigenous nations to enable it to set aside the Haldimand Tract as a Reserve. By 1793 (when Lieutenant Governor John Graves Simcoe drafted the Simcoe Patent described further below) the Crown had satisfied itself that any such conditions had been satisfied, and thereafter treated the Haldimand Proclamation as having created the Reserve of the whole of the Haldimand Tract.

### **The Simcoe Patent and the Appropriation of the Headwaters Lands**

16. On January 14, 1793, the Imperial Crown through its representative, the Lieutenant-Governor of Canada, John Graves Simcoe, drafted a Patent~~patent~~ (the “**Simcoe Patent**”) to, *inter alia*, grant to the Six Nations of the Grand River forever, all of that territory of land forming part of the district lately purchased by the Imperial Crown from the Mississauga Nation, beginning at the mouth of the Grand River where it empties itself into Lake Erie, and running along the ~~Banks~~banks of the Grand River for a space of six miles on each side of the river, or a space co-extensive therewith, and continuing along the Grand River to a place known by the name of the Forks, and from there along the main stream of the Grand River for the space of six miles on each side of the main stream, or for a space equally extensive therewith (the “**Simcoe Patent Lands**”). The above lands included the riverbed between the banks of the Grand River.

16.1 Simcoe met with representatives of the Six Nations of the Grand River to discuss the proposed patent. The Six Nations of the Grand River objected to the terms of the

proposed patent for a number of reasons. The Six Nations of the Grand River rejected or disputed many aspects of the proposed Simcoe Patent but, in particular, the Six Nations did not accept that the draft Simcoe Patent accurately defined the geographic extent of the Haldimand Tract lands. The representatives of the Six Nations of the Grand River explained to Simcoe that the Haldimand Tract extended to the source of the Grand River. The draft Simcoe Patent excluded those lands along the Grand River located north of the present Township of Nichol extending to the head of the Grand River (the “Headwaters Lands”). Because of these deficiencies in the Simcoe Patent – including the failure to include the whole of the Haldimand Tract – Simcoe did not issue the Simcoe Patent. Given the lack of agreement on the proposed deed, Crown officials continued to recognize that these lands set aside for the Six Nations of the Grand River were those lands described in the Haldimand Proclamation.

16.2 In 1819 Crown officials began to negotiate with the Six Nations of the Grand River for the surrender or release of the Headwaters Lands but no such agreement was reached. On March 20, 1819 the Executive Council made a report to Lieutenant-Governor Maitland taking the position that (1) the Headwaters Lands were not part of the Haldimand Tract and that (2) only the Simcoe Patent Lands had been reserved for the Six Nations of the Grand River. Maitland accepted this report.

16.3 To the extent that the Simcoe Patent Lands had not been established as a Reserve by the Haldimand Proclamation, the effect of Maitland accepting the March 20, 1819 report from the Executive Council was to confirm the Simcoe Patent Lands as a Reserve, subject to any lawful surrenders that had been made prior to that date. From this date



forward the Crown was subject to the Reserve Land Duties in respect of any Crown land in the Simcoe Patent Lands.

16.4 After Maitland accepted the Executive Council report of March 20, 1819, the Crown refused to recognize or protect any interest of the Six Nations of the Grand River in the Headwaters Lands and used and alienated those lands (1) without advising or consulting with the Six Nations of the Grand River; (2) without the consent of the Six Nations of the Grand River; and (3) without holding the monies derived from the disposition of the Headwaters Lands for the benefit of the Six Nations of the Grand River.

17. The Crown failed to set aside for the Six Nations of the Grand River in the draft Simcoe Patent all of the lands which the Six Nations of the Grand River were entitled to have reserved for them under the Haldimand Proclamation. In particular, the Crown failed to reserve for the Six Nations of the Grand River those lands along the Grand River located north of the present Township of Nichol extending to the head of the Grand River in the Township of Melancthon, consisting of approximately 275,000 acres (111,292.5 hectares). This failure constituted a breach by the Crown of its fiduciary and/or treaty obligations to the Six Nations of the Grand River under the Haldimand Proclamation.

17.1 In particular, to the extent that the Haldimand Proclamation:

- (a) Created the Haldimand Tract as a Reserve or created a Reserve as a treaty right of the Six Nations of the Grand River, and the Crown by appropriating

the Headwaters Lands for its own use and benefit breached the Reserve Land Duties; or

- (b) In the alternative, created an obligation to set aside a Reserve for the Six Nations of the Grand River or a treaty right to set aside a Reserve for the Six Nations of the Grand River, and the Crown by appropriating the Headwaters Lands for its own use and benefit breached the Reserve Creation Duties.

17.2 As a result of the appropriation of the Headwaters Lands for its own use and benefit and the consequent breach of either the Reserve Land Duties or the Reserve Creation Duties, the Crown is liable to pay equitable damages or equitable compensation for the fair market value of the Headwaters Lands.

18. ~~The~~Although never issued, and despite its geographic limitations, the terms of the Simcoe Patent incorporated~~did repeat~~ the following provisions existing at law:

- (a) the Six Nations of the Grand River could not lawfully alienate the Simcoe Patent Lands except by surrender to the Crown at a public meeting or assembly of the Chiefs, ~~warriors~~Warriors and people of the Six Nations of the Grand River;
- (b) any transfer, alienation, conveyance, sale, gift, exchange, lease or possession of the Simcoe Patent Lands directly to any persons whatever other than members of the Six Nations of the Grand River, was to be null

and void, unless there was first a surrender to the Crown for that purpose;  
and

- (c) the Six Nations of the Grand River were to enjoy free and undisturbed possession of the Simcoe Patent Lands under the protection of the Crown.

### **1812 Governor's Instructions**

19. On May 1, 1812, the Crown's duly authorized representative, the Governor-General of Upper Canada issued Instructions ~~(the "1812 Governor's Instructions")~~ instructions further regulating the alienation of Indian lands in the then Province of Upper Canada by requiring *inter alia*:

- (a) that the person administering the government in Upper Canada requisition any Indian lands wanted for public service and identify those lands with a sketch;
- (b) that all purchases by the Crown be made at a public council according to the ancient usages and customs of the Indians to whom the lands belonged, with proper interpreters present and without the presence of liquor;
- (c) that the Governor or two persons commissioned by him, the Superintendent of Indian Affairs, two or three members of his Department and at least one military officer be present at the public council;
- (d) that there be a proper explanation to the Indians of the nature and extent of the proposed disposition and the proceeds to be paid therefor; and

- (e) that deeds of conveyance and descriptive plans of the lands so conveyed be attached to the deed and be executed in public by the Principal Indian Chiefs and the Superintendent of the Indian Department or his appointee, and duly witnessed.

### **Legislation**

20. The Crown's recognition of its fiduciary obligation to the Six Nations of the Grand River is in part reflected in the enactment of legislation *inter alia* to protect the Six Nations Lands of the Grand River lands and regulate dispositions of those lands including:

- (a) *An Act ~~with respect to~~ for the Protection of the Lands of the Crown in this Province, from trespass upon lands of Indians and upon other lands and the removal of persons therefrom and injury, S.U.C. 1839, c.15;*
- (b) *An Act for the ~~protection~~ Protection of the Indians in Upper Canada from imposition, and the property occupied or enjoyed by them from trespass and injury, S. Prov. C. 1850, c.74;*
- (c) *An Act to amend the Law for the Sale and the Settlement of the Public Lands, S. Prov. C. 1853, c.159;*
- (d) *An Act to prevent trespasses to Public and Indian Lands, S. Prov. C. 1859, c.81;*
- (e) *An Act respecting the Management of the Indian Lands and Property, S. Prov. C. 1860, c.151;*

- (f) *An Act providing for the Organization of the Department of Secretary of State of Canada and for the ~~management~~Management of Indian and Ordinance Lands, S.C. 1868, c.42;*
- (g) The *Indian Act, 1876, S.C. 1876, c.18* and its successor legislation.

### ***Crown's Breach of Fiduciary Duty***

21. The Six Nations of the Grand River currently occupies and uses only the lands which comprise the Six Nations of the Grand River Indian Reserve No. 40 which is located southeast of the City of Brantford, Ontario and the Six Nations of the Grand River Indian Reserve No. 40B and lot 5, Eagle's Nest tract which are located within the City of Brantford. These lands consist of approximately 45,506 acres (18,416 hectares), less than 4.8 percent of the lands allocated to the Six Nations of the Grand River forever by the Haldimand Proclamation.

22. Subsequent to the dates of the Haldimand Proclamation and the Simcoe Patent, the Imperial Crown and its successors in Canada including the Defendants made or permitted to be made various grants, sales, leases, permits or other dispositions ("**Dispositions**") which purported to grant the title to, rights of possession, occupation, use or other interests in, parts of the Haldimand ~~Proclamation Lands~~Tract or Simcoe Patent Lands (collectively the "**Six Nations Lands**") to persons who were not members of the Six Nations of the Grand River ("**Third Parties**") in breach of the Crown's fiduciary duty to the Six Nations of the Grand River and without complying with the requirements of the laws hereinbefore referred to.

23. The Crown repeatedly breached its fiduciary and/or treaty obligations to the Six Nations of the Grand River by *inter alia* repeatedly:

- (a) making or permitting Dispositions of the Six Nations Lands to Third Parties without the consent of the Six Nations of the Grand River and without first obtaining from the Six Nations of the Grand River a lawful and valid surrender to the Crown;
- (b) permitting Third Parties to possess, occupy, or trespass on the Six Nations Lands without obtaining lawful surrenders from the Six Nations of the Grand River to the Crown;
- (c) making or permitting transactions relating to the Six Nations Lands without obtaining full and fair compensation therefor for the Six Nations of the Grand River and without ensuring that the Six Nations of the Grand River's interest in such transactions was at all times fully protected and that the Six Nations of the Grand River received or were credited with all the proper proceeds of such Dispositions (which proceeds are hereinafter referred to as the “**Six Nations Trust**”);
- (d) failing to honour the terms or conditions of surrenders, sales and leases;
- (e) taking or permitting the taking or use of parts of the Six Nations Lands for roads, canals or other public waterways, railways, cemeteries, church grounds, public squares or parks, or for military, naval or other public

purposes without obtaining lawful surrenders or providing full and fair compensation to the Six Nations of the Grand River;

- (f) managing the Six Nations Trust or permitting it to be managed, in a manner inconsistent with the standards of conduct required by the Crown's fiduciary obligations; and
- (g) failing to account to the Six Nations of the Grand River.

24. The following are some examples of the breaches of the Crown's obligations to the Six Nations of the Grand River hereinbefore described.

### **Brant's Power of Attorney**

24.1 On February 5, 1798 Mohawk Chief Joseph Brant obtained a limited power of attorney from Five of the Six Nations of the Grand River assembled in Council on November 2, 1796 ("Brant's Power of Attorney").

24.2 By the terms of Brant's Power of Attorney, in order that monies from the sales of certain lands could be used to purchase an annuity or stipend for their future support, the Six Nations of the Grand River consented to surrender that portion of their lands, namely Blocks 1 to 4, legally described in the power of attorney and consisting of about 310,391 acres. This was upon the "express condition" that those lands would be regranted by the Crown, through grants under the Great Seal of the Province of Upper Canada, to persons nominated by Joseph Brant, and on the understanding that security would be demanded and received for the payment of the purchase price for such lands.

24.3 In breach of the Crown's obligations under the Haldimand Proclamation and the Crown's Reserve Land Duties, Reserve Creation Duties and Surrender Implementation Duties, the Six Nations of the Grand River did not receive any or full payment for the purchase price of such lands, nor did they receive any interest on the monies from the sale nor proceeds of any investment from the monies from the sale. Further, the Crown used Six Nations of the Grand River's money to fund the expenses related to the sale of these lands.

***Crown Grant of Block No. 5 of the Simcoe Patent Lands***

24.4 Despite Brant's Power of Attorney only being for Blocks 1 to 4, on February 5, 1798, in breach of the Crown's obligations under the Haldimand Proclamation the Crown purported to accept a surrender for sale an area of land totalling 352,707 acres, that included Blocks 5 and 6.

24.5 In purporting to accept a surrender of Block 5 and subsequently disposing of this land as described below, the Crown breached the Haldimand Proclamation and the Reserve Land Duties (or in the alternative, the Reserve Creation Duties) and is liable for equitable compensation or equitable damages for the loss of these lands from the Haldimand Tract, subject to adjustment for any consideration that the Crown can demonstrate was obtained for the sale of Block 5 that was properly credited to the Six Nations of the Grand River.

24.6 In the alternative, if Block 5 was lawfully surrendered, which is not admitted but denied, the Crown was subject to the Surrender Implementation Duties which required



the Crown to obtain fair market compensation for the land, collect any consideration due on the payment of the land, take reasonable steps to recover any consideration that was not paid, and to hold that consideration for the Six Nations of the Grand River. By its failure to obtain consideration due for the sale of Block 5, as detailed below, the Crown breached the Surrender Implementation Duties.

25. On November 18, 1807, the Crown granted letters patent under the seal of the Province of Upper Canada to one Thomas Douglas, Earl of Selkirk ("**Selkirk**") for a block of the Simcoe Patent Lands known as Block No. 5, which later became the Township of Moulton in the County of Haldimand (the "**Block No. 5 lands**").

26. The Crown conveyed the Block No. 5 lands to Selkirk without obtaining a surrender of those lands from the Six Nations of the Grand River to the Crown for the purpose of such sale.

27. Selkirk entered into a one-year mortgage with the Crown due and payable on November 18, 1808, purportedly to secure most or all of the purchase price (the "**Selkirk Mortgage**"). The Selkirk Mortgage provided for interest at the rate of six percent per year.

28. The principal and interest due under the Selkirk Mortgage was not paid on November 18, 1808 as required by its terms. The Crown neither enforced nor attempted to enforce the collection of the principal sum and interest payable under the Selkirk Mortgage.

29. The principal sum owing under that Selkirk Mortgage has never been paid. Some interest payments may have been made on the principal prior to February 1853 but the particulars have not been provided and are presently unknown to the ~~plaintiff~~Plaintiff.

30. Since at least February, 1853, no payments of any kind in respect of the Selkirk Mortgage or any other mortgage for the Block No. 5 lands have been collected by the Crown for the benefit of the Six Nations Trust.

***Crown Grant of Block No. 6 of the ~~Simcoe Patent Lands~~***

30.1 In purporting to accept a surrender of Block 6 and subsequently disposing of this land as described below, the Crown breached the Haldimand Proclamation and the Reserve Land Duties (or in the alternative, the Reserve Creation Duties) and is liable to the Six Nations of the Grand River for equitable compensation or damages for the loss of these lands from the Haldimand Tract, subject to adjustment for any consideration that the Crown can demonstrate was obtained for the sale of Block 6 that was properly credited to the Six Nations of the Grand River.

30.2 In the alternative, if Block 6 was lawfully surrendered, which is not admitted but denied, the Crown was subject to the Surrender Implementation Duties which required the Crown to obtain fair market compensation for the land, collect any consideration due on the payment of the land, take reasonable steps to recover any consideration that was not paid, and to hold that consideration for the Six Nations of the Grand River. By its

failure to obtain consideration due for the sale of Block 6, as detailed below, the Crown breached the Surrender Implementation Duties.

31. On February 5, 1798, the Crown granted letters patent under the seal of the Province of Upper Canada to one Benjamin Canby for a block of the Simcoe Patent Lands known as Block No. 6, which later became the Township of Canborough in the County of Haldimand (the “**Block No. 6 lands**”).

32. The Crown conveyed the Block No. 6 lands to Canby:

- (a) without obtaining a surrender of the lands from the Six Nations of the Grand River to the Crown for the purpose of a sale to Canby or anyone else;
- (b) without obtaining any mortgage or other security from Canby or anyone else to secure the payment of the purchase price;
- (c) without collecting any payment from Canby or anyone else for the lands for the benefit of the Six Nations Trust;
- (d) without taking any legal proceedings against Canby or his heirs or assigns to obtain payment for the Block No. 6 lands, despite the Crown’s acknowledgement, reduced to writing in 1803, 1830 and 1843, that the lands ought not to have been conveyed as a free grant and that the Crown was under a fiduciary duty to take the steps necessary to remedy the matter.

***Colonel Claus and the ~~lands~~Lands in Innisfil and East Hawkesbury Townships***

33. In the early 1800's the Crown's Deputy Superintendent General and Inspector General of Indian Affairs in Upper Canada, Colonel William Claus, misappropriated and mismanaged monies belonging to the Six Nations Trust in breach of the Crown's Indian Monies Management Duties to the Six Nations of the Grand River.

33.1 In or about 1803, Claus also inappropriately influenced certain Six Nations of the Grand River individuals to purport to give 4,000 acres of Haldimand Tract lands, at the mouth of the Grand River, to William Dickson, without obtaining a lawful surrender and despite the passing of a Six Nations of the Grand River general council resolution rejecting a previous proposal by Claus to give the lands to Dickson. The Crown subsequently issued Dickson a grant for these lands and the Six Nations of the Grand River did not receive proper compensation for such lands, in breach of the Crown's Reserve Land Duties or in the alternative its Surrender Duties and Surrender Implementation Duties.

34. In 1830, the Lieutenant Governor of Upper Canada ordered an investigation into the Six Nations Trust which resulted in a report determining that Colonel William Claus (who died in November 1826) and his son, John Claus, had misappropriated monies from the Six Nations Trust.

35. The Crown, however, failed to pursue a full accounting from Colonel William Claus' estate and from John Claus with respect to the handling of Six Nations of the Grand River trust monies by Colonel William Claus and John Claus.

36. Instead, the Crown unilaterally, and without securing legal title, arranged to obtain three tracts of land elsewhere in the Province of Ontario for the benefit of the Six Nations of the Grand River from members of the Claus family purportedly in lieu of a monetary settlement for the misappropriation of the Six Nations of the Grand River's trust monies by Colonel William Claus. On June 6, 1831, John Claus (Colonel William Claus' son) purported to convey some 900 acres in Innisfil Township (the "**Innisfil lands**"), and, in addition, John Claus along with Catherine Claus (Colonel William Claus' widow) purported to convey some 2,800 acres and 1,200 acres respectively in East Hawkesbury Township (the "**East Hawkesbury lands**") to some nominees appointed by the Crown "in trust for the sole use, benefit and behoof of the Indians known as the Six Nations Indians".

37. The Crown failed to ensure that the conveyances were effective and in fact the titles purportedly conveyed were defective.

38. On June 16, 1840, the Executive Council of Upper Canada determined that the Six Nations of the Grand River's Innisfil and East Hawkesbury lands should be sold by private sale, rather than by public auction, and at prices which in total were less than required to offset the minimum amounts which years earlier had been misappropriated by Colonel William Claus and John Claus.

39. Subsequently, in the 1840's, the Crown made sales of portions of the Innisfil and East Hawkesbury lands without obtaining any surrender of those lands from the Six Nations of the Grand River to the Crown.

40. In 1852, the Court of Upper Canada, Queen's Bench, held in a test case (*Dickson v. Gross* (1852), 9 U.C.Q.B. 580) that the title of one of the purchasers to a part of the Innisfil lands was defective because John Claus did not have proper title in 1831 in order to be able to convey the lands to the nominees to be held in trust for the Six Nations of the Grand River. The Court held that such title had resided in the Colonel William Claus Estate, and not in John Claus personally.

41. The Province of Canada undertook the defence of this action on behalf of the third party purchaser. Costs of the action were awarded against the ~~defendants~~ Defendants. Those costs and the other expenses of the ~~defendants~~ Defendants in relation to the action were paid out of the Six Nations Trust, without the knowledge, authorization or consent of the Six Nations of the Grand River.

42. On February 23, 1853, the Crown unilaterally withdrew £5,000 from the Six Nations Trust to pay to the beneficiaries of Colonel William Claus' Estate. This payment was made to release any and all interests that the beneficiaries of the Colonel William Claus Estate might allegedly continue to have in the Innisfil and East Hawkesbury lands which the Crown either had already sold or would later sell to ~~third parties~~ Third Parties.

43. Notwithstanding the defect found by the Court in the Six Nations of the Grand River's title to the Innisfil and East Hawkesbury lands to be received in place of the trust monies earlier misappropriated by Colonel William Claus and John Claus, the Crown never reimbursed the Six Nations Trust for the misappropriated funds.

43.1 Throughout Claus' management of the Six Nations Trust and the Reserve, the Crown was subject to the Indian Monies Management Duties and Reserve Land Duties. The Crown breached the duties through the various dealings set out above and is liable for equitable damages or equitable compensation to the Six Nations of the Grand River as a result.

### ***Welland Canal Flooding***

44. The Crown failed to secure or pay compensation to the Six Nations of the Grand River for the value of at least ~~2,415.6~~ approximately 3,500 to 3,800 acres of the Simcoe Patent Lands expropriated and flooded for the Welland Canal project. The flooding resulted from canal construction projects, more particularly dam projects, which were carried on between approximately 1829 and 1835.

45. Under special legislation of the Parliament of Upper Canada, specifically S.U.C. 1824, c.17, enacted January 19, 1824, a company called the Welland Canal Company (the "**WCC**") was incorporated to construct the Welland Canal.

46. This legislation imposed an obligation on the WCC to compensate landowners or occupiers for any damages sustained as a result of the WCC exercising its statutory

powers. Part IX of the statute provided that if any part of the Welland Canal passed through Indian lands, or damaged the property or possessions of Indians, compensation was to be made in the same manner as with respect to the property, possessions or rights of other individuals. The amount of the compensation was to be paid to the Chief Officer of the Indian Department to the use of the Indians.

47. Despite assurances by the Crown's representatives that the WCC would compensate the Six Nations of the Grand River for any losses occasioned by the Welland Canal project and despite the statutory obligation to compensate, no compensation was made to the Six Nations of the Grand River for the value of the portions of the Simcoe Patent Lands lost due to the flooding. The WCC only made payments to individuals for their improvements on the land.

47.1 Upon considering and then allowing the WCC to appropriate Haldimand Tract land for the Welland Canal project, the Crown was subject to the Appropriation Duties. The Crown breached those Appropriation Duties by failing to ensure that the Six Nations of the Grand River's interest in the appropriated lands was preserved to the greatest extent possible and that the WCC compensated the Six Nations of the Grand River for the lands lost due to flooding.

48. On June 9, 1846, by Act of the Parliament of the Province of Canada, being S. Prov. C. 1846, c.37 (the "1846 Act"), the works *inter alia* of the Welland Canal were vested in the government of the Province of Canada, with provision made for the determination



of any unsettled claim for property taken, or for direct or consequential damages to property arising from the construction of public works including the Welland Canal.

49. Pursuant to section 108 of the *Constitution Act, 1867*, ownership and control of the Welland Canal passed from the Province of Canada to the Crown in right of Canada at Confederation in 1867.

50. Since Confederation, various government departments have undertaken valuations of the Simcoe Patent Lands flooded by the Welland Canal project and have recommended that compensation be paid to the Six Nations Trust in respect of the flooded lands:

- (a) On January 25, 1878, the Superintendent General of Indian Affairs, David Mills, recommended to the Minister of Public Works a payment of \$29,715.63 as proposed compensation for 1,993.65 acres of the acreage that had been flooded.
- (b) On August 5, 1882, James Cowan, an official arbitrator, reported to the Minister of Railways and Canals, that 1,993.65 acres of the flooded lands had a value of \$28,672.67.
- (c) On May 6, 1884, John A. Macdonald, Superintendent General of Indian Affairs, recommended to the Privy Council that the sum of \$28,672.67 be paid as compensation for 1,993.65 acres of the acreage which had been flooded.

### ***The Grand River Navigation Company***

51. Beginning in or about 1834 the Crown improvidently invested trust monies belonging to the Six Nations of the Grand River in the undertaking of the Grand River Navigation Company (the “**GRNC**”) in return for worthless shares and debentures of the GRNC. Through these improvident investments and through subsequent failures to mitigate or limit the losses arising from these improvident investments, the Crown breached the Indian Monies Management Duties.

52. The GRNC was incorporated and established under special legislation enacted on January 28, 1832, being S.U.C. 1832, c.13 (the “**GRNC Act**”) for the purpose of constructing dams and related works in order to make the Grand River more navigable and provide a better transportation route between the Welland Canal and the City of Brantford. The Six Nations of the Grand River were opposed to this project.

53. The Crown knew from the outset that:

- (a) investments of the Six Nations Trust monies in the GRNC were speculative and imprudent;
- (b) public revenues would not be invested in the GRNC’s activities because of the speculative nature of the GRNC’s project and the heavy expenditures it would require; and

- (c) the Province and the private promoters of the GRNC, rather than the Six Nations of the Grand River, would derive all of the potential benefits of the investment.

54. In addition to diverting trust monies belonging to the Six Nations of the Grand River to the GRNC, the Crown granted free letters patent dated November 18, 1837 to the GRNC under the seal of the Province of Upper Canada contrary to the requirements of the *GRNC Act*, for a tract of the Simcoe Patent Lands consisting of 368 and 7/10 acres including a 36 acre portion of towing path lands along the Grand River. In conveying these lands to the GRNC contrary to the requirements of the *GRNC Act*, the Crown breached its Reserve Land Duties and its Appropriation Duties owed to the Six Nations of the Grand River.

55. The Crown purported to convey such lands to the GRNC without obtaining any surrender from the Six Nations of the Grand River and without obtaining full and fair compensation for these lands for the Six Nations Trust. If this conveyance was lawfully authorized, which is not admitted but denied, the Crown was subject to the Appropriation Duties and breached those duties by failing to obtain full and fair compensation for these lands.

55.1 As a result of the breaches of the Reserve Land Duties, Indian Monies Management Duties and the Appropriation Duties the Crown is liable to the Six Nations of the Grand River for equitable damages or compensation for the monies invested in the GRNC and the fair value of the lands appropriated by the GRNC.

***Lands Surrendered for the Purpose of Sale but Subsequently Conveyed by the Crown Without Obtaining Proper Compensation for Six Nations of the Grand River***

56. The Crown conveyed or otherwise transferred surrendered Simcoe Patent Lands to Third Parties without obtaining full and fair compensation for the Six Nations of the Grand River in accordance with its own valuations and sale conditions or, indeed, without obtaining any compensation for the benefit of the Six Nations of the Grand River. This frequently occurred for conveyances or transfers of Simcoe Patent Lands, for example, under the following surrenders:

- (a) surrender no. 30 dated April 19, 1830, being a surrender of an estimated 807 acres for a townplot for Brantford; and
- (b) surrender no. 40 dated April 2, 1835, being a surrender of an estimated 48,000 acres in the Township of Brantford excluding an area of land later known as the Johnson Settlement;
- (c) surrender no. 38 dated 8 February 1834, being a surrender of an estimated 50,212 acres in Dunn, Moulton, Canborough and Cayuga Townships; and
- (d) the purported surrender of 26 March 1835 to settle possession of lands that were the subject of so-called “Brant Leases” made in opposition to government orders, without having been surveyed, and without proper consideration to the Six Nations of the Grand River.

56.1 In disposing of the lands above, the Crown was subject to the Surrender Implementation Duties. The Crown breached these duties, as described below, in two

ways. First, by failing to maintain proper records and accounts, the Crown made it impossible to assess or account for the disposition of the lands and the management of the monies derived from the sale of the lands. Second, the information that is available indicates that the Crown systematically failed to obtain fair market value or take steps to obtain fair market value.

56.2 In particular, the Crown failed to protect unsurrendered Haldimand Tract lands for the Six Nations of the Grand River's exclusive use, failing to evict existing intruders from these lands. The Crown then sought and obtained surrenders from the Six Nations of the Grand River on the expectation that the land would be surveyed, subdivided, and sold at fair market value for the benefit of the Six Nations of the Grand River. However, the Crown disposed of the surrendered land below market value, in certain cases to the intruders who had unlawfully settled upon the land prior to it being offered for sale, failed to set appropriate upset prices for the disposal of the land, and failed to collect compensation that was owing or gave credit for alleged improvements that had been illegally made to the land by persons who had unlawfully entered onto and occupied the lands. The Crown also disposed of certain lots as free grants and others for nominal consideration. The failure to obtain proper compensation was contrary to the wishes of the Six Nations of the Grand River who wanted to obtain fair value for the lands; and was contrary to the obligation to ensure that the surrenders were not implemented in a way that was exploitative.

56.3 As a result of the Crown's breaches of the Surrender Implementation Duties, the Crown must:

- (a) account for the disposition of the lands and the monies derived from disposition of the lands; and
- (b) to the extent that it cannot or there is shortfall in either the value or the sale proceeds, pay equitable compensation to the Six Nations of the Grand River for the value of the surrendered lands, subject to any proceeds of disposition as the Crown can demonstrate were held for the benefit of the Six Nations of the Grand River.

57. These surrenders had been agreed to by the Six Nations of the Grand River so that the Crown could make Dispositions of lands within the surrendered areas to Third Parties for the benefit of the Six Nations of the Grand River, namely Dispositions that would result in full and fair compensation to the Six Nations of the Grand River for all of the lands, that fully protected at all times Six Nations of the Grand River's interest in the relevant transactions and that would result in the Six Nations of the Grand River receiving or being credited with all the proper proceeds of such Dispositions. The Crown has never accounted to the Six Nations of the Grand River for the proceeds from Dispositions over the years of the numerous specific parcels of lands encompassed by surrender documents ~~no. 30 and 40~~ listed above.

### ***Talbot Road Lands***

58.1 On April 20, 1831, the Six Nations of the Grand River in council confirmed their previous consent of March 22, 1830, to a surrender proposed of lands needed for the construction of a road to be known as the Talbot Road (today Ontario Highway 3) from

Canborough Township to Rainham Township and lands on each side of the road in lots of “33 chains by 30”, being approximately 100 acre lots, all of which were to be sold for the benefit of the Six Nations of the Grand River. The surrender proposed was recorded in a letter of March 9, 1830 which was communicated to the Six Nations of the Grand River in council (the “**Talbot Road Lands Surrender Proposal**”).

58.2 On April 20, 1831, representatives of the Six Nations of the Grand River executed a document of surrender dated April 19, 1831, known as surrender no. 31, on the understanding that it reflected the Talbot Road Lands Surrender Proposal.

58.3 In fact, surrender document no. 31 wrongfully contained a metes and bounds legal description for an area of land considerably larger in size than the extent of land reflected in the Talbot Road Lands Surrender Proposal that had been consented to by the Six Nations of the Grand River in council.

58.4 As a result, the Crown did not immediately sanction surrender document no. 31 with any order in council and in fact did not accept or act upon surrender document no. 31 as it formally read because on July 7, 1831 a written communication was made by the Chief Superintendent of the Indian Department advising that the Lieutenant Governor requested that the Six Nations of the Grand River cede to the Crown a portion of land on either side of the Talbot Road, so that the ceded lots could be sold to Third Parties for the benefit of the Six Nations of the Grand River.

58.5 On September 28, 1831, the Six Nations of the Grand River in council and the Crown agreed that the Crown could sell 100 acre lots, or any portion of such lots, on either side of the Talbot Road to settlers, with the proceeds therefrom to benefit the Six Nations of the Grand River, provided that there was reserved for the use of the Six Nations of the Grand River an area of the Talbot Road lands consisting of two miles on each side of the Grand River. This agreement had the effect of restricting or reducing the area of land formally and incorrectly described as being surrendered in surrender document no. 31.

58.6 Subsequently, the Crown issued a public notice dated December 1, 1831 ordering that lands for disposition to Third Parties were to be laid out in 100 acre lots. Notwithstanding the agreement of September, 1831 with the Six Nations of the Grand River and the notice, the Crown subsequently proceeded wrongfully to sell lots of greater depth from the Talbot Road, resulting in lots being sold consisting of 200 acres rather than 100 acres. The selling agent for the Crown acknowledged in writing that this was contrary to the instructions of the Lieutenant Governor.

58.7 The Crown wrongfully failed to reserve for the Six Nations of the Grand River the area of the Talbot Road lands on each side of the Grand River which the Six Nations of the Grand River in council had reserved on September 28, 1831. Instead, the Crown ordered on November 25, 1831 that only a one mile tract on each side of the Grand River along the Talbot Road be reserved for the Six Nations of the Grand River and a survey subsequently reflected that reservation of lands.



58.8 In 1833, the Six Nations of the Grand River consented to the sale of part of the reserved tract of the Talbot Road lands in order to accommodate the establishment of a town plot for the Town of Cayuga.

58.9 The Crown failed to seek and did not receive consent from the Six Nations of the Grand River to dispose of the remaining portion of the reserved tract within the Talbot Road lands which were not included in the Cayuga town plot.

58.10 Although a public notice dated January 22, 1844 issued by the Crown's Chief Superintendent of Indian Affairs advised that the lands on the south side of the Grand River between the Townships of Brantford and Dunn were exclusively appropriated to the use of Six Nations of the Grand River, the Crown failed to ~~reserve~~protect any portion of the surrender no. 31 lands on the south side of the Grand River for the benefit of the Six Nations of the Grand River including the reserved tract of the Talbot Road lands not used for the Cayuga town plot. The Crown has not accounted to the Six Nations of the Grand River for the proceeds of Dispositions purporting to grant title or other interests to Third Parties in the Talbot Road and the lands on either side of it.

58.11 The Crown breached the Reserve Land Duties and/or the Surrender Implementation Duties by failing to ensure that the Six Nations of the Grand River's interest in the appropriated lands was preserved to the greatest extent possible and that the lands that were supposed to have been reserved were in fact reserved and not disposed of and that any proceeds that may have been derived from the disposition of these lands was accounted for and held to the benefit of the Six Nations of the Grand

River. As a result of these breaches the Crown is liable to pay equitable compensation or equitable damages for these lands, subject to any proceeds of disposition that the Crown can establish were obtained and held for the benefit of the Six Nations of the Grand River.

### ***Hamilton/Port Dover Plank Road Lands***

59. The Crown granted letters patent in fee simple to Third Parties on the lands approximately a half-mile on each side of a Plank Road from Hamilton to Port Dover (which eventually became Highway 6) built across unsurrendered Simcoe Patent Lands, although the Six Nations of the Grand River only wished to lease those lands.

60. The Six Nations of the Grand River were accordingly deprived of continual earnings from these lands from continual rental revenues for the land and royalty revenues on the mineral resources thereunder. The Crown breached the Reserve Land Duties and/or the Surrender Implementation Duties by failing to ensure that the Six Nations of the Grand River's interest in these lands was preserved to the greatest extent possible and that the lands that were supposed to have been reserved were in fact reserved and not disposed of and that any proceeds that may have been derived from the disposition of these lands was accounted for and held to the benefit of the Six Nations of the Grand River. As a result of these breaches the Crown is liable to pay equitable compensation or equitable damages for these lands, subject to any proceeds of disposition that the Crown can establish were obtained and held for the benefit of the Six Nations of the Grand River.

**Port Maitland Lands**

61. The Crown took possession of lands comprising lots 25 and 26, concession 4 in the Township of Dunn (the “**Port Maitland lands**”), purportedly under *An Act to authorize Her Majesty to take Possession of Lands for the erection of Fortifications in this Province, under certain restrictions*, S.U.C. 1840, c.16, which *inter alia* provided that:

- (a) land could be purchased or leased for the erection of military works;
- (b) where the requisite land could not be obtained by consent, the Military could take possession of lands required for military works if the necessity for the lands was first certified by the Commander of Her Majesty’s Forces in the Province of Upper Canada, or there was an enemy invasion; and
- (c) proper compensation was required to be made to the owners of land taken for military purposes.

62. There was no voluntary purchase or lease of the Port Maitland lands for the purpose of erecting military works, no invasion and no certification that the Port Maitland lands were required to be taken by the Crown for military purposes. No compensation was ever made to the Six Nations of the Grand River for the taking of the Port Maitland lands, including when the Crown subsequently sold most of the Port Maitland lands.

62.1 The Crown breached the Reserve Land Duties and/or the Appropriation Duties by appropriating the Port Maitland Lands for its own uses and by failing to ensure that the Six Nations of the Grand River’s interest in the appropriated lands was preserved to the

greatest extent possible and that proper compensation was paid for the appropriation of the lands. The Crown is liable to pay equitable compensation or equitable damages for the loss of these lands, subject to any compensation that the Crown can demonstrate was paid and held for the benefit of the Six Nations of the Grand River.

### ***Purported Surrender of 1841***

63. On January 18, 1841, the then Chief Superintendent of Indian Affairs, Samuel Jarvis (“**Jarvis**”) (who was later discharged by the Crown after an investigation by a Commission of Inquiry) allegedly obtained the signatures of seven individuals to what purported to be an agreement of the Six Nations of the Grand River to “Her Majesty’s Government disposing of the land belonging and formerly reserved upon the Grand River for the Six Nations Indians”, expressly excluding some lands in a tract known as the “Johnson Settlement”.

64. The document of January 18, 1841 incorporates by reference two letters of January 5 and January 15, 1841 authored by Jarvis (together, “**the Purported 1841 Jarvis Arrangement**”). None of these documents contained any definite description of what land was to be surrendered for lease or otherwise to Third Parties. While the letter of January 15, 1841 refers to the preparation of a “general survey of the tract”, none was appended to the document of January 18, 1841 or to any later document which might properly be characterized as a surrender document.

65. The Purported 1841 Jarvis Arrangement did not constitute a lawful and valid surrender of Simcoe Patent Lands for reasons which include the following:

- (a) the Six Nations of the Grand River did not authorize the seven alleged signatories to consent to the Purported 1841 Jarvis Arrangement; and
- (b) no specific lands were identified in the relevant documents for lease or otherwise by the Six Nations of the Grand River and no survey was prepared.

66. In the letter dated January 5, 1841, Jarvis represented that the only solution to prevent unlawful white settlements on the Simcoe Patent Lands was for the Six Nations of the Grand River to surrender those lands, with the exception of the portions the Six Nations of the Grand River wished to retain for their own use.

67. In the letter dated January 15, 1841, Jarvis represented:

- (a) that neither would he recommend nor the government approve, the removal of unauthorized Third Parties from unsurrendered Six Nations Lands;
- (b) that if the Six Nations of the Grand River adopted the government's proposal, the income of the Six Nations of the Grand River would immediately be increased and that monies from future land dispositions would be paid over to the benefit of the Six Nations Trust; and

- (c) that measures would soon be adopted resolving the issue of investment in stock of the GRNC in a manner advantageous to the Six Nations of the Grand River.

68. The Jarvis letter of January 15, 1841 recommended approval by the Six Nations of the Grand River of the “Government disposing for their exclusive benefit and advantage, either by lease or otherwise, all of their Lands which can be made available, with the exception of the farms at present in their actual occupation and cultivation, and of 20,000 acres as a further reservation, and that the selection of this reservation be deferred until after a general survey of the tract when the position most advantageous to the general interests and peculiar wants of the Indians can be more judiciously selected”.

69. Upon learning of the Purported 1841 Jarvis Arrangement, the Six Nations of the Grand River protested by *inter alia*:

- (a) submitting a petition of February 4, 1841, signed by fifty-one Chiefs, Warriors and Sachems of the Six Nations of the Grand River to the Governor General of Canada;
- (b) submitting a petition of July 7, 1841 signed by one hundred twenty three Chiefs, Warriors and Sachems of the Six Nations of the Grand River to the Governor General of Canada;
- (c) making a submission of January 28, 1843 to a three-person commission of inquiry (the Bagot Commission) which had been appointed in October 1842 to investigate the affairs of the Indian Department; and

- (d) submitting a further petition dated June 24, 1843 to a newly appointed Governor General of Canada, in which the Chiefs of the Six Nations of the Grand River *inter alia* asked the new Governor General to examine the earlier submissions protesting the irregularity of the Purported 1841 Jarvis Arrangement.

70. In response to the protests by the Six Nations of the Grand River, the Crown acting by the Governor General of Canada, in Council, decided on October 4, 1843 that the Crown would continue to reserve for the Six Nations of the Grand River those parts of the Simcoe Patent Lands identified as follows:

- (a) all of the Simcoe Patent Lands on the south side of the Grand River with the exception of the Plank Road lands between the Township of Cayuga and Burtch's Landing, being a distance of more than twenty miles;
- (b) a tract near Brantford called the "Oxbow" containing some 1,200 acres;
- (c) another tract on the north side of the Grand River called the "Eagles Nest" containing some 1,800 acres;
- (d) the "Martin Tract" containing some 1,500 acres;
- (e) the "Johnson Settlement" land containing some 7,000 acres;
- (f) a lot at Tuscarora on which a church was built;
- (g) lands on the north side of the Grand River resided upon and improved by members of the Six Nations of the Grand River; and

(h) any further lands which the Six Nations of the Grand River wished to retain.

71. The Crown through the Governor General in Council decided that the Johnson Settlement lands and other small tracts would be leased on short term leases for the benefit of the Six Nations of the Grand River. The Crown then granted letters patent in fee simple, instead of leases, to Third Parties for these lands, thereby depriving the Six Nations of the Grand River of the continual rental revenues which could be earned therefrom.

72. There has been no surrender by the Six Nations of the Grand River to the Crown of any of the above-mentioned lands and the present day Six Nations of the Grand River Reserve does not include all of the area that the Crown indicated would be reserved on October 4, 1843.

73. On May 10, 1845, Jarvis was discharged by the Crown as Chief Superintendent of Indian Affairs after a Commission of Inquiry could not obtain an accounting of Jarvis' administration of Indian trust monies which included unauthorized use of such monies.

~~73A.~~73.1 In any event, regardless of whether the Purported 1841 Jarvis Arrangement was valid, the Crown has never provided an account to the Six Nations of the Grand River identifying the specific lands allegedly encompassed by it or an account for the related proceeds that ought to have been received as full and fair compensation for the benefit of the Six Nations of the Grand River as a result of all Dispositions allegedly made on the basis of that arrangement.



73.2 In respect of all of the lands subject to the Purported 1841 Jarvis Arrangement the Crown was subject to the Reserve Land Duties or, in the alternative, the Surrender Duties and the Surrender Implementation Duties and breached all of these duties.

73.3 The Crown breached the Reserve Land Duties by failing to protect the Reserve land from squatters and permitting Reserve land to be alienated without the consent of the Six Nations of the Grand River and contrary to their intentions with respect to these lands. As such the Crown is liable for equitable damages and equitable compensation for the loss of these lands on the basis of the fair market value of these lands as a Reserve, subject to any compensation the Crown can demonstrate was obtained for these lands and held for the benefit of the Six Nations of the Grand River.

73.4 In the alternative, if there was a valid surrender, which is not admitted but denied, the Crown breached the Surrender Duties and the Surrender Implementation Duties by failing to:

- (a) ensure that the surrender was not exploitative on account of it arising from unlawful occupation of the Reserve and the Crown's unwillingness to address this unlawful occupation;
- (b) implement the surrenders in accordance with the expectations of the Six Nations of the Grand River that fair market value would be obtained for any lands alienated and that those monies would be held for the benefit of the Six Nations of the Grand River; and

- (c) ensure that certain lands would be withheld from disposition and continue to be held for the exclusive use and benefit of the Six Nations of the Grand River.

73.5 As a part of the Surrender Duties and Surrender Implementation Duties, the Crown was also under a duty to account and be able to account for the land that was surrendered and any monies that were derived from the disposition of these lands. The Crown breached these duties both by failing to maintain the necessary books and records that would allow for an accounting, and by failing to account. The Crown is therefore liable for equitable damages or equitable compensation on the basis of the fair market value of the land subject to any compensation the Crown can demonstrate was obtained for these lands and held for the benefit of the Six Nations of the Grand River.

73.6 In either case, to the extent that the Crown appropriated land that formed part of the Purported 1841 Jarvis Arrangement the Crown was obliged to compensate the Six Nations of the Grand River for the appropriation of the land, either as a result of the Appropriation Duties or as a result of the terms of the Purported 1841 Jarvis Arrangement. The Crown did not pay such compensation and is therefore liable for equitable damages or equitable compensation on the basis of the fair market value of the land subject to any compensation the Crown can demonstrate was obtained for these lands and held for the benefit of the Six Nations of the Grand River.

73.7 To the extent that the Crown obtained monies or other compensation for the lands forming part of the Purported 1841 Jarvis Arrangement, those monies formed part of the Six Nations Trust and the Crown was subject to the Indian Monies Management Duties

in respect of such funds. The Crown breached the Indian Monies Management Duties in respect of these funds by failing to: (1) in fact credit them to the Six Nations Trust; (2) maintain adequate books and records that would allow the Crown to account for these monies; and (3) account for these monies.

***Misappropriation and/or Mismanagement of Trust Monies***

74. The Crown in right of Canada reported to the Six Nations of the Grand River that, as of February 1, 1995, it only held \$2,183,312 in trust monies for the benefit of the Six Nations of the Grand River, consisting of \$2,080,869 on capital account and \$102,443 on revenue account.

74.1 The Crown was at all times subject to the Indian Monies Management Duties in respect of all compensation derived from the sale, lease, appropriation or any other disposition of the Haldimand Tract, whether such lands were Reserve land or subject to being set aside as Reserve land. The Indian Monies Management Duties extended to any monies or compensation obtained by way of investment of the existing Six Nations of the Grand River monies.

74.2 As described above, the historical record demonstrates that the Crown or its employees or agents failed to keep appropriate books and records that would allow for an accounting and that the Crown and/or its agents mismanaged or misappropriated monies from the Six Nations Trust.

74.3 Given this historical record of misappropriation or mismanagement, the Crown must either account for the monies that ought to have been in the Six Nations Trust and demonstrate that such misappropriation or mismanagement has been remedied, or pay equitable damages or equitable compensation for the loss of these monies.

75. The Crown has not accounted to the Six Nations of the Grand River for the administration of the monies which ought to be in the Six Nations Trust and despite the Crown's awareness of the improprieties hereinbefore referred to.

**Allowing the Removal by Third Parties of Natural Resources from the Six Nations of the Grand River Reserve Without Valid Authority and Without Proper Compensation**

76. At various times, the Crown failed to protect Six Nations of the Grand River's interest in the natural resources underlying the Six Nations of the Grand River Reserve by failing to take any or appropriate steps to prevent Third Parties from removing natural resources from the Six Nations of the Grand River Reserve without proper authority. In addition the Crown failed to obtain or provide proper compensation to the Six Nations of the Grand River. An example of these failures is the extraction of natural gas from the Six Nations of the Grand River Reserve in the period from July 15, 1945 through November 18, 1970.

77. On May 20, 1925, the Six Nations of the Grand River surrendered to the Crown for twenty years the oil and gas rights under the Six Nations of the Grand River Reserve so

that a twenty year lease for the same could be granted to the Honourable Edward Michener.

78. By agreement dated December 31, 1928, Michener assigned his rights to Petrol Oil & Gas Company Limited (“**POG**”).

79. By letter of July 18, 1947, the Deputy Minister of the Department of Indian Affairs advised POG that the Michener lease had expired on July 15, 1945 and that no authority had been obtained by POG pursuant to section 54 of the *Indian Act* (R.S.C. 1927, Chap. 98) which would enable POG to operate thereafter on the Six Nations of the Grand River Reserve.

80. From July 15, 1945 through November 18, 1970, POG drilled wells and extracted natural gas from gas wells on the Six Nations of the Grand River Reserve without any lawful entitlement to the gas or any lawful authority to drill and extract gas.

81. Accordingly, the Crown in right of Canada should account to the Six Nations Trust for the fair market value of all natural gas extracted by POG from the Six Nations of the Grand River Reserve.

### ***The Crown’s Failures to Account***

82. The As set out above, the Crown has breached its fiduciary obligations and/or treaty obligations to the Six Nations of the Grand River to such an extent that the Six Nations of the Grand River is not fully aware of all of the transactions since 1784

concerning the assets held, or which ought to have been held, by the Crown for the benefit of the Six Nations of the Grand River, including from all sales, leases and other dispositions of the Six Nations Lands, and monies earned or derived or which ought to have been earned or derived therefrom. In particular, as a result of the lack of accountings (particularly respecting when most of the Dispositions of Six Nations Lands occurred), the Six Nations of the Grand River do not have a full awareness as to matters such as the following:

- (a) whether all portions of the Six Nations Lands which today are not part of the Six Nations of the Grand River Reserve No. 40 and 40B were lawfully disposed of by first obtaining from the Six Nations of the Grand River a surrender in accordance with the applicable legal requirements;
- (b) whether the terms and conditions of any valid surrenders, sales and leases, including any lands that were validly surrendered pursuant to Brant's Power of Attorney, were fulfilled and whether full and fair compensation was obtained in respect of the Dispositions or uses of the Six Nations Lands;
- (c) whether the Six Nations Trust earned, derived, received, held and continues to hold all appropriate sums which should have been earned, derived, received or held on behalf of the Six Nations of the Grand River, including those derived from lands included within Brant's Power of Attorney, in accordance with the Crown's fiduciary obligations; and

- (d) the extent to which the Six Nations of the Grand River have been deprived of their property rights by the Crown's failure to fulfil its fiduciary or treaty obligations under the Haldimand Proclamation.

83. Despite the Crown's fiduciary obligations the Crown has failed to account for the administration of the Six Nations Trust. In particular:

- (a) By letter dated October 25, 1979 the Six Nations of the Grand River Council requested the Auditor General of Canada to conduct an historical audit and report on the Six Nations of the Grand River trust funds and lands. On November 15, 1979, the Parliament of Canada directed the Auditor General to conduct an audit of Indian trust accounts generally but no report on any such audit has yet been supplied to the Six Nations of the Grand River as requested.
- (b) By letter of October 23, 1992, the Six Nations of the Grand River by its solicitors requested a full general accounting of all transactions involving the property held for the benefit of the Six Nations of the Grand River including all sales and leases of land and all money held by the Crown since 1784. The Crown in right of Canada refused to do so and instead directed the representatives of the Six Nations of the Grand River to examine the Indian Land Registry. The Crown in right of Ontario did not respond at all to the request for an accounting.

84. The ~~plaintiff~~ Plaintiff proposes that the trial of this action take place in the City of Toronto, Ontario.

## SCHEDULE A: CROWN DUTIES

### (Crown as defined in paragraph 1(e) of the Statement of Claim)

#### Reserve Land Duties

1. In respect of the Haldimand Tract Reserve, the Crown has the following duties (the “Reserve Land Duties”):

- a. The duty to protect and preserve the band’s interest in the Haldimand Tract lands from exploitation;
- b. The duty to act with loyalty and good faith towards the band in respect of the management of the Reserve;
- c. The duty to fully disclose material information in respect of the Crown’s dealings with or management of the Reserve and to consult the band;
- d. The duty to act with ordinary prudence with a view to the best interests of the band; and
- e. The duty to make efforts to fairly reconcile conflicting demands or competing interests.

#### Reserve Creation Duties

2. In respect of land where the Crown has made a unilateral undertaking or agreed to create a Reserve (whether by treaty or otherwise) the Crown has the following duties (the “Reserve Creation Duties”):

- a. The duty to act diligently to create the proposed Reserve;



- b. The duty to act with loyalty and good faith towards the band in respect of the creation of the Reserve;
- c. The duty to fully disclose material information in respect of the Crown's dealings with or management of the Reserve land;
- d. The duty to act with ordinary prudence with a view to the best interests of the band in the process of creating the Reserve; and
- e. The duty to correct any deficiencies or omissions in the Reserve creation process reasonably capable of correction.

### **Surrender Duties**

- 3. In respect of a Reserve where it is proposed that all or part of the Reserve be alienated whether by sale, lease or otherwise, the Crown is under the following fiduciary duties (the "**Surrender Duties**") in considering whether or not to accept an absolute or conditional surrender for this purpose:
  - a. The surrender is made in accordance with the applicable procedural requirements;
  - b. The band consents to the surrender;
  - c. The surrender reflects the intention of the band; and
  - d. The surrender is not exploitative.

### **Surrender Implementation Duties**

4. In respect of land that has been subject to surrender, whether absolute or conditional, the Crown is under the following fiduciary duties (the “**Surrender Implementation Duties**”):
- a. To manage the process to advance the best interests of the band;
  - b. To give effect to the intention of the band in making the surrender, including fulfilling any conditions;
  - c. To seek the consent of the band for any change in the implementation of the surrender;
  - d. To scrutinize the proposed transaction to ensure that it is not an exploitative bargain; and
  - e. To fully disclose material information in respect of the Crown’s dealings with or management of the Reserve land.

### **Appropriation Duties**

5. In respect of any land that is lawfully appropriated for public purposes of carrying out an activity or undertaking the Crown is under the following fiduciary duties (the “**Appropriation Duties**”):
- a. To ensure that the appropriation is actually required;
  - b. To ensure that the least interest possible is appropriated or that the band’s interest in the Reserve was preserved to the greatest extent possible;

- c. To protect a sufficient Indian interest in expropriated land in order to preserve the taxation jurisdiction of the band over the land; and
- d. To secure compensation that reflected the nature of the Reserve interest, the impact on the band, and the value of the land to the proposed activity or undertaking.

### **Indian Monies Management Duties**

- 6. In respect of any Indian Monies (including any monies or proceeds derived from the disposition or appropriation of Reserve lands or land identified to become Reserve lands) or assets held as investments of Indian Monies the Crown is under the following fiduciary duties (the “**Indian Monies Management Duties**”):
  - a. To manage the monies prudently to preserve the capital and to achieve a reasonable return, which includes:
    - i. The duty to invest these monies in the manner of a common law trustee, subject to any legislation limiting its ability to do so; and
    - ii. The duty to account for the monies when requested;
  - b. Where the Crown appoints a manager to manage a band's monies, the duty to ensure that the manager makes full and adequate disclosure to the band of information relating to the management of the band's funds.

March 7, 1995  
(Amended: May 7, 2020)  
(Amended: February 3, 2023)

**BLAKE, CASSELS & GRAYDON LLP**  
Barristers & Solicitors  
199 Bay Street  
Suite 4000, Commerce Court West  
Toronto ON M5L 1A9

~~**Ben A. Jetten** LSO #22064H  
Tel: 416-863-2938  
ben.jetten@blakes.com~~

**Iris Antonios** LSO #56694R  
Tel: 416-863-3349  
iris.antonios@blakes.com

**Max Shapiro** LSO #60602U  
Tel: 416-863-3305  
max.shapiro@blakes.com

**Rebecca Torrance** LSO #75734A  
Tel: 416-863-2930  
Fax: 416-863-2653  
rebecca.torrance@blakes.com

**JFK LAW LLP**  
816-1175 Douglas Street  
Victoria, BC V8W 2E1

**Robert Janes** LSO #33646P  
Tel: 250-405-3466  
RJanes@jfklaw.ca

Lawyers for the ~~plaintiff~~Plaintiff

SIX NATIONS OF THE GRAND -and-  
RIVER BAND OF INDIANS

Plaintiff

THE ATTORNEY GENERAL OF  
CANADA et al.

Defendants

Toronto Court File No. CV-18-594281-0000  
(Originally Brantford Court File No. 406/95)

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at Toronto

**FURTHER AMENDED STATEMENT OF CLAIM**

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**BLAKE, CASSELS & GRAYDON LLP**

Barristers & Solicitors

199 Bay Street

Suite 4000, Commerce Court West

Toronto ON M5L 1A9

**Ben A. Jetten** LSO #22064H

Tel: 416-863-2938 / [ben.jetten@blakes.com](mailto:ben.jetten@blakes.com)

**Iris Antonios** LSO #56694R

Tel: 416-863-3349 / [iris.antonios@blakes.com](mailto:iris.antonios@blakes.com)

**Max Shapiro** LSO #60602U

Tel: 416-863-3305 / [max.shapiro@blakes.com](mailto:max.shapiro@blakes.com)

**Rebecca Torrance** LSO #75734A

Tel: 416-863-2930 / [rebecca.torrance@blakes.com](mailto:rebecca.torrance@blakes.com)

Fax: 416-863-2653

**JFK LAW LLP**

816-1175 Douglas Street

Victoria, BC V8W 2E1

**Robert James** LSO #33646P

Tel: 250-405-3466

[RJanes@jfklaw.ca](mailto:RJanes@jfklaw.ca)

Lawyers for the plaintiff Plaintiff

SIX NATIONS OF THE GRAND  
RIVER BAND OF INDIANS  
Plaintiff

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

MISSISSAUGAS OF THE CREDIT  
FIRST NATION  
Moving Party

Court File No. CV-18-594281-0000

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**ONTARIO  
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at Brantford  
and transferred to Toronto

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

**BLAKE, CASSELS & GRAYDON LLP**  
199 Bay Street  
Suite 4000, Commerce Court West  
Toronto ON M5L 1A9

**Iris Antonios** LSO #56694R  
Tel: 416-863-3349 / iris.antonios@blakes.com

**Max Shapiro** LSO #60602U  
Tel: 416-863-3305 / max.shapiro@blakes.com

**Rebecca Torrance** LSO #75734A  
Tel: 416-863-2930 / rebecca.torrance@blakes.com

**Gregory Sheppard** LSO #80268O  
Tel: 416-863-2616 / gregory.sheppard@blakes.com  
Fax: 416-863-2653

**JFK LAW LLP**  
816-1175 Douglas Street  
Victoria, BC V8W 2E1

**Robert James** LSO #33646P  
Tel: 250-405-3466 / RJames@jfklaw.ca

Lawyers for the Plaintiff

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  
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**RESPONDING MOTION RECORD OF THE  
PLAINTIFF**

**MOTION RETURNABLE MAY 8-11, 2023**

**BLAKE, CASSELS & GRAYDON LLP**

199 Bay Street  
Suite 4000, Commerce Court West  
Toronto ON M5L 1A9

**Iris Antonios** LSO #56694R

Tel: 416-863-3349 / iris.antonios@blakes.com

**Max Shapiro** LSO #60602U

Tel: 416-863-3305 / max.shapiro@blakes.com

**Rebecca Torrance** LSO #75734A

Tel: 416-863-2930 / rebecca.torrance@blakes.com

**Gregory Sheppard** LSO #80268O

Tel: 416-863-2616 / gregory.sheppard@blakes.com

Fax: 416-863-2653

**JFK LAW LLP**

816-1175 Douglas Street  
Victoria, BC V8W 2E1

**Robert Janes** LSO #33646P

Tel: 250-405-3466 / RJanes@jfkllaw.ca

Lawyers for the Plaintiff