Court File No. CV-18-594281-0000

ONTARIO
SUPERIOR COURT OF JUSTICE

B E T W E E N:

SIX NATIONS OF THE GRAND RIVER BAND OF INDIANS

Plaintiff

- and -

THE ATTORNEY GENERAL OF CANADA and HIS MAJESTY THE KING IN RIGHT OF ONTARIO

Defendants

- and -

THE HAUDENOSAUNEE DEVELOPMENT INSTITUTE (AARON DETLOR AND BRIAN DOOLITTLE), AS APPOINTED BY THE HAUDENOSAUNEE CONFEDERACY CHIEFS COUNCIL, ON BEHALF OF THE HAUDENOSAUNEE CONFEDERACY

Moving Party

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

MOTION RETURNABLE MAY 8-11, 2023

February 6, 2023

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Moving Party

AFFIDAVIT OF MARK HILL
(Affirmed December 5, 2022)

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

1. I am the Elected Chief of the Six Nations Elected Council ("**Elected Council**") of the Six Nations of the Grand River Band of Indians ("**Six Nations of the Grand River**"), and previously affirmed an affidavit in this matter on November 2, 2022. As such, I have

knowledge of the matters in this affidavit, and where I have relied on information received from others, I have indicated the source of that information and believe it to be true.

2. I am advised by Greg Sheppard, one of the Six Nations of the Grand River's lawyers, that at a case management conference held on November 15, 2022, Justice Akbarali asked the parties to provide more information about Indigenous law issues potentially raised by the Haudenosaunee Development Institute's pending motion and efforts to keep the Six Nations of the Grand River community members informed about the progress and status of this court case.

3. Since then, the Elected Council and I have considered Justice Akbarali's request. On December 2, 2022, the Elected Council passed the resolution attached as **Exhibit A**. That resolution appends a more detailed report regarding Justice Akbarali's request that was prepared by the Six Nations Lands and Resources Department.

AFFIRMED remotely by Mark Hill at the village of Ohsweken, Six Nations of the Grand River Territory, before me at the City of Toronto, in the Province of Ontario, on December 5, 2022 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

DocuSigned by:
Mark B. Hill
AC45EFFA61F1436...

Commissioner for Taking Affidavits
(or as may be)

GREGORY SHEPPARD

MARK HILL

This is Exhibit “A” referred to in the Affidavit of Mark Hill affirmed remotely by Mark Hill at the village of Ohsweken, Six Nations of the Grand River territory, before me at the City of Toronto, in the Province of Ontario, on December 5, 2022 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

Commissioner for Taking Affidavits (or as may be)

GREGORY SHEPPARD

IN CAMERA SPECIAL COUNCIL MOTION MEMORANDUM

TO: Lonny Bomberry, Director of Lands and Resources
Tayler Hill, Co-Director of Lands and Resources

Cc: Renay Ross, Executive Assistant to Chief Executive Officer
Brooke Froman, Executive Coordinator
Tammy Martin, Chief of Staff
Rebecca McComber, Admin. Assistant to Director of Finance

FROM: Brooke Froman, Executive Coordinator

DATE: **December 2, 2022**

MEETING DATE: December 2, 2022

RESOLUTION NO: **ICSC02/12/02/2022 and ICSC#03/12/02/2022**

ICGC#02/12/02/2022

Moved by Audrey Powless Bomberry and seconded by Hazel Johnson that Six Nations of the Grand River 58th Elected Council do hereby resolve that:

WHEREAS:

(a) On December 23, 1994, the Six Nations of the Grand River Band of Indians (the "Band") commenced an action in the Ontario Superior Court of Justice at Brantford against the Attorney General of Canada ("Canada") and His Majesty the King in Right of Ontario ("Ontario") for breaches of the Crown's fiduciary and treaty obligations to manage Six Nations' lands and monies arising from the 1784 Haldimand Grant (the "Action");

(b) Since it was commenced, the Action has been managed and conducted on behalf of the Band by the Six Nations of the Grand River Elected Council (the "Elected Council");

(c) Between 2004 and 2009 the Action was paused and in 2006 formally put in abeyance to pursue settlement negotiations;

(d) Settlement negotiations were unsuccessful and the Action was reactivated in 2009;

(e) In November 2017 the Action was transferred to Toronto, on consent of the parties pursuant to an order of Regional Senior Justice Morawetz;

(f) On January 5, 2018 Justice Sanfilippo was appointed case management judge, and case managed the Action until October 2022;

(g) On June 10, 2022 the Haudenosaunee Development Institute ("HDI") "as appointed by the Haudenosaunee Confederacy Chiefs Council" brought a motion to be appointed a

Representative of the Haudenosaunee Confederacy and be added as a party to the Action. At the Elected Council's direction, the Band advised HDI and the parties that it would oppose the motion;

(h) On October 14, 2022 Justice Akbarali was appointed as case management judge for the Action;

(i) During a case conference held on November 7, 2022, Justice Akbarali raised questions about notice of the HDI's motion to Haudenosaunee communities and Indigenous and Haudenosaunee processes employed to deal with such issues in the community;

(j) The Elected Council wishes to report to the Court on the history of the Action, and its communications and engagement with our community, including efforts to engage with the Haudenosaunee Confederacy Chiefs Council;

IT IS HEREBY RESOLVED THAT:

1. The Elected Council affirms and adopts the Report attached as Appendix "A".

2. The Elected Council instructs the lawyers for the Band to present the Report to the Court.

3. The Elected Council expresses its grave concern that HDI is using the Court process to delay and disrupt the Action. The Elected Council will strongly oppose any effort, by anyone, to delay the Action as such a delay risks throwing the legitimacy of the Court into doubt in the eyes of the Six Nations of the Grand River community.

ALL IN FAVOUR CARRIED.

ICSC#03/12/02/2022

Moved by Audrey Powless Bomberry and seconded by Hazel Johnson that the Six Nations of the Grand River 58th Elected Council waive second reading on ICSC#02/12/02/2022.

ALL IN FAVOUR CARRIED.

SIX NATIONS OF THE GRAND RIVER ELECTED COUNCIL

Shirley W Johnson,

Manager of Central Administration

Appendix "A"

December 1, 2022

Report to the Six Nations of the Grand River Elected Council

RE: *Six Nations of the Grand River Band of Indians v. The Attorney General of Canada and His Majesty the King in Right of Ontario* (the "Action")

We have prepared this high-level report in response to Justice Akbarali's request to have more information about the efforts made to engage with the Indigenous law issues potentially raised by the Haudenosaunee Development Institute ("**HDI**") and our efforts to keep the Six Nations of the Grand River community members informed concerning the progress and status of the litigation. A detailed chronology of these matters is attached as **Schedule "A"**.

As we understand it, the issues before Justice Akbarali which have raised some questions concerning Haudenosaunee law relate to the entitlement of the Band (as defined below), as opposed to the Haudenosaunee Confederacy (the "**Confederacy**"), to the reserve established under the 1784 Haldimand Proclamation. We canvassed our team (Phil Monture, Lonny Bomberry, and Tayler Hill) and looked at our records and have been unable to find any occasion where the Haudenosaunee Confederacy Chiefs Council ("**HCCC**") or the Confederacy raised any question about the entitlement of the Band to the reserve and the claims made in the Action, as described below.

History of the Action

In a December 23, 1994 Notice of Action, the Six Nations of the Grand River Band of Indians (the "**Band**") commenced an action in the Ontario Superior Court of Justice in Brantford against the Attorney General of Canada ("**Canada**") and His Majesty the King in Right of Ontario ("**Ontario**") for breaches of the Crown's fiduciary and treaty obligations to manage Six Nations' lands and monies arising from the 1784 Haldimand Proclamation (the "**Action**"). Soon after, on March 7, 1995, the Band issued the Statement of Claim in the Action.

Since it was commenced, the Action has been managed and conducted on behalf of the Band by the Six Nations of the Grand River Elected Council (the "**Elected Council**").

Canada and Ontario delivered responding pleadings in the Action in 1995 and 1996. Following the exchange of pleadings, the Band brought a motion on May 17, 1999 to compel Canada to answer written questions and provide particulars of allegations in its Statement of Defence. The Band was successful on the motion and subsequent appeals, which lasted until 2002. The motion was publicly heard in the Brantford courthouse. Many members of the Six Nations of the Grand River community attended the hearings, which were widely publicized as noted below.

With the agreement of the parties, between 2004 and 2009 the Action was paused and in 2006 it was formally put in abeyance to pursue settlement negotiations.

Settlement negotiations were unsuccessful and the Action was reactivated in 2009. Beginning in 2011 and continuing through 2022, the parties conducted a lengthy process of exchanging Requests to Admit, pursuing written discovery, and delivering expert reports.

In November 2017, the Action was transferred to Toronto on consent of the parties. On January 5, 2018, Justice Sanfilippo was appointed as case management judge. His Honour case managed the Action until October 2022, including by setting timetables to complete steps leading up to trial.

On June 10, 2022, the Haudenosaunee Development Institute ("**HDI**") "as appointed by the Haudenosaunee Confederacy Chiefs Council" brought a motion to be appointed a Representative of the Confederacy and be added as a party to the Action. At the Elected Council's direction, the Band advised HDI and the parties that it would oppose the motion.

On October 14, 2022, Justice Akbarali was appointed as case management judge for the Action.

The trial was initially scheduled by Justice Sanfilippo to begin in the Fall of 2022, but the timetable was amended several times. Most recently, the start of trial was extended from April 2023 to a date after January 1, 2024, after Canada and Ontario requested and were given more time by the Court to deliver their expert reports. This extension was made over the Band's strong objection.

Engagement with the Community regarding the Action

The Elected Council has kept the Six Nations of the Grand River community informed regarding the Action since it started. The Elected Council holds regular meetings several times a month, open to the public, where the Action has been debated and discussed. Phil Monture, the former Director of the Lands and Resources Department, spoke to the Six Nations of the Grand River community through the CKRZ community radio station to provide updates on the Action at least six times from 1994 to 2002, including hosting phone-in sessions where community members could ask questions about the Action.

The Action has also been the subject of dozens of articles in the *Two Row Times*, the *Turtle Island News*, the *Brantford Expositor* and other community, regional, and national news outlets since 1994. News articles published when the Action was started included:

- *Brant News* article dated September 9, 1995, titled "Native frustration at root of local court case";

- *Globe and Mail* article dated October 10, 1995, titled "Accounting sought of land worth billions"; and

- *Brantford Expositor* article dated January 25, 1996, titled "Governments seek to have Six Nations' suit thrown out".

News articles published during the 1999-2002 motion hearing and appeals included:

- *Brantford Expositor* article dated July 30, 1999, titled "Six Nations wins round in land fight";

- *Tekawennake News* article dated August 4, 1999, titled "Small but important win in SN claims case";

- *Brantford Expositor* article dated May 6, 2000, titled "Feds appealing land rights court decision";

- *Brantford Expositor* article dated September 12, 2000, titled "Six Nations will receive answers on land claims"; and

- Public notice published in the *Turtle Island News* dated July 24, 2002, titled "Six Nations Council update for the community on the trust litigation (court case)".

News articles published when the Action was restarted in 2009 included:

- *Turtle Island News* article dated May 6, 2009, titled "Band council reopening court case with own 'legal war chest'";

- *Tekawennake News* article dated May 13, 2009, titled "Band council reopens litigation against Crown"; and

- *Turtle Island News* article dated September 16, 2009, titled "Six Nations band council lawsuit may force Canada from negotiation table".

The Elected Council, through the Lands and Resources Department, has published informational pamphlets and booklets describing the Action and has distributed these within the community on a regular basis, including the "Global Solutions" pamphlet prepared by the Lands and Resources Department and updated regularly. The 2020 version of this pamphlet, which is publicly available on the Lands and Resources Department website,[1] describes the Band's long history of trying unsuccessfully to obtain redress from Canada and Ontario for its claims. In a section entitled "Litigation Driven by Canada's Failed Land Claims Policy", the pamphlet describes the Action as follows:

> It was evident that through twenty years of research, Six Nations was merely stockpiling validated "Land Claims" under Canada's Specific Claims Policy. Canada's arbitrary and undefined discount factors were unacceptable not only to the [Elected Council] but to many First Nations across Canada. The most offensive term was the prerequisite for extinguishment of our children's rights to the lands at issue.
>
> Enough was enough. The Six Nations of the Grand River as represented by the Six Nations of the Grand River Elected Council (SNGREC) filed a Statement of Claim on March 7, 1995 against Canada and Ontario (Court File 406/95) regarding the Crowns' handling of Six Nations' property before and after Confederation. Six Nations is seeking from the Crown a comprehensive general accounting for all money, all property under the 1784 Haldimand Treaty and for other assets belonging to the Six Nations and the manner in which the Crown managed or disposed of such assets. Six Nations is further seeking an order that the Crown must replace all assets or value thereof, which ought to have been received or held by the Crown, plus compound interest on all sums, which the Crown should have

[1] https://www.sixnations.ca/LandsResources/SNLands-GlobalSolutions-FINALyr2020.pdf.

> received but failed to receive or hold for the benefit of the Six Nations and the return of lands where appropriate.

The Lands and Resources Department also maintains a website that provides the community with information about the Action, including a timeline with dates up to and including trial.[2] A screenshot of the litigation timeline on the Lands and Resources Department home page (which will be updated to reflect the most recent delay in the trial start date), is below:

[2] https://www.sixnations.ca/LandsResources/index.htm.

Litigation Timeline

- March 1995 – Action commenced in Brantford
- 1995-1997 – Initial exchange of pleadings
- 1996 – Parties begin producing documents
- 1999 – Discovery motion (a motion to obtain the opposing party's evidence) decided in Six Nations' favour
- 2000 – Examination of Canada's discovery representative
- 1998-2002 – Interlocutory motions and appeals arising from discovery disputes
- 2004-2009 – Six Nations of the Grand River Elected Council decides to pause litigation activity while pursuing settlement negotiations (in 2006 the action was formally placed in abeyance at Canada's request and, on consent, while settlement negotiations were active)
- 2009 – Action reactivated, Six Nations embarks on a process of preparing detailed Requests to Admit (Facts relating to specific documents being identified and facts identified in certain relevant documents)
- July 2012 to October 2019 – Delivery of lengthy and detailed Requests to Admit, and Responses to Requests to Admit, between the parties
- March 2016 – Parties agree to Discovery Plan and Electronic Discovery Protocol
- November 2017 – Action transferred on consent to Toronto after retirement of Brantford judge that was "case managing" the action
- January 2018 – Justice Sanfilippo is appointed Case Management Judge
- May 25, 2020 – Action bifurcated between liability and damages and timetable set for completion of discovery and expert reports
- May 2020 to September 2020 – Parties deliver amended pleadings
- October 30, 2020 – Parties delivered written questions on discovery arising from amended pleading
- March 12, 2021 - All parties to respond to any written questions on discovery
- April 30, 2021 - All parties may serve any written questions on discovery that follow up on answers provided to previous written questions on discovery
- June 30, 2021 - All parties shall answer any written questions on discovery that follow up on answers provided to previous written questions on discovery and all parties to complete a Joint Electronic Database of documentary production

Proposed Dates:

- April 1, 2022 - Plaintiff's delivery of expert reports
- October 3, 2022 - Defendant's delivery of expert reports
- January 15, 2023 - Parties shall complete a compilation of all expert reports and supporting documentation
- February 28, 2023 - Plaintiff's delivery of reply expert reports
- March 15, 2023 – Parties shall complete a compilation of all reply expert reports and supporting documentation (Final)
- April 3, 2023 - As the trial was bifurcated on May 25, 2020, the trial for liability will be set to begin on April 3,2023 and the trial on damages will occur later

Band Governance

First Elected Council System, 1924

The HCCC initially led the community that settled along the Grand River in Ontario in the 18th and 19th centuries, now the Band. In 1924, following the Six Nations of the Grand River community's desire for a more representative government, the Canadian government passed an Order-in-Council creating the Elected Council, an elected system of government operating under the *Indian Act* electoral system.

The Elected Council was established in 1924 by Order-in-Council P.C. 1629, which created an elected system of government for the Band under the *Indian Act* electoral system. Order-in-Council P.C. 1629 was repealed and replaced by Order-in-Council P.C. 6015 in 1951, although no changes to Band governance occurred at that time.

Community Consultation and Customary Elected Council, 1995

The Elected Council no longer operates under the *Indian Act* electoral system. In the early 1990s, the Band started a process to implement a new electoral system outside of the *Indian Act*, based on community input. This process involved many opportunities for community participation through public meetings and mailing the new electoral code to community members.

On March 4, 1997, the Canadian government passed Regulation SOR/97-134, which delisted the Band from the list of First Nations holding elections under the *Indian Act* electoral system.

Community Referendum and Changes to Elected Council, 2019

In 2019, the Band reformed its electoral system again and held a referendum to approve the changes. Six Nations of the Grand River community members had expressed a preference for a smaller Elected Council and wanted Council members to represent the entire community and not specific electoral districts, as they did under the 1995 Election Code. As a result, several community consultations were held and a revised draft election code was completed. The proposed election code was accepted in a community referendum on May 21, 2019. To our knowledge, the HCCC did not challenge this reform or take any steps to seek to set it aside.

Engagement with the HCCC

The HCCC has challenged the Elected Council's right to govern the Band in Canadian Courts at least three times, and each of these challenges has been dismissed. Below is a summary of these three court cases.

1) ***Logan v Styres et al*** (1959):[3] The wife of a Hereditary Chief, stating that she had been nominated to bring an action on behalf of the Hereditary Chiefs, sued the chief councillor of the Elected Council, and sought an injunction restraining the surrender of Six Nations reserve land and a declaration that Privy Council Order P.C. 1629 (establishing the Elected Council) and P.C. 6015 (continuing the Elected Council) were beyond the power of the Canadian federal Parliament. The elected councillors had negotiated a surrender to sell 3.05 acres of reserve land to a third party for a sum of money. The elected councillors

[3] 1959 CanLII 406 (Ontario High Court)

had agreed to the purchase price and arranged for a community vote on the surrender of the land in question so that it might be sold to the proposed purchaser, although many eligible voters did not vote. The court dismissed the action, holding that the plaintiff was not entitled to an injunction or to the declaration sought as Parliament had the authority to pass the Privy Council Orders and upholding the surrender.

2) ***Davey et al v Isaac et al*** (1977):[4] This case began in the Ontario High Court of Justice, and went all the way up to the Supreme Court of Canada. In the initial action, members of the Elected Council sued for a permanent injunction restraining the Hereditary Chiefs from blocking access to the Council House on the Six Nations reserve (built in 1886). The action was dismissed at trial, but the Ontario Court of Appeal allowed an appeal and granted the injunction. The Hereditary Chiefs appealed to the Supreme Court of Canada, arguing that Privy Council Order P.C. 6015, establishing the Elected Council, was invalid. The Supreme Court of Canada dismissed the appeal, holding that the Privy Council Order was valid, and that the elected Council was entitled to use the Council House, which was the property of the Band.

3) ***Hill v Canada*** (1998):[5] The plaintiff Leroy Hill (the current secretary of the HCCC) sued Canada in Federal Court for a declaration that a surrender of the Band's interest in certain lands in which the Band had an interest land was null and void, on the basis that the Hereditary Chiefs did not accept the surrender and that a majority of Band electors did not assent to it. The surrender had been negotiated as part of a settlement of a Band claim under Canada's Specific Claims Policy between the Elected Council and representatives of what was then called the Department of Indian Affairs and Northern Development Canada. Two community referenda were held to approve the settlement agreement, which was then implemented. As part of the settlement, Canada paid the Band money compensation, which the Band then used by buy land to be added to the Six Nations reserve. The Court dismissed the plaintiff's action seeking to invalidate the surrender, and held that the community referenda were valid in accordance with the *Indian Act*.

In none of these prior challenges has the HCCC or a Hereditary Chief (or anyone acting on their behalf) ever before asserted that Six Nations of the Grand River reserve lands belong to the entire Confederacy or that they speak for the entire Confederacy, as the HCCC is now doing through the HDI on the motion to intervene in the Action.

We are also aware of petitions submitted by the Confederacy to the League of Nations in 1923 (attached as **Schedule "B"**) and to the United Nations in 1945 (attached as **Schedule "C"**), both of which sought to enforce the Crown's fiduciary and treaty obligations under the Haldimand Proclamation. Neither of these petitions asserted that the Six Nations of the Grand River reserve lands belonged to the entire Confederacy. Instead, the 1923 petition to the League of Nations acknowledged that the reserve land on the Grand River was set aside for those who chose to settle there, and the 1945 petition to the United Nations was sent "on behalf of the people of the Six Nations Indians settled upon part of the territory granted to [them] pursuant to the pledge given by the British Crown and granted under the terms of the Haldimand Treaty".

Despite the HCCC's challenges to the Band's governance over the years, the Elected Council has continued to make efforts to engage with the HCCC and its supporters. For example, Mr.

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[4] [1977] 2 SCR 897, 1977 CanLII 21 (Supreme Court of Canada)

[5] 1998 CanLII 8264 (Federal Court)

Monture spoke with the HCCC Chiefs about the Action when it started. In 1994 and 1995, Mr. Monture and Elected Council Chief William K. Montour met informally with HCCC representatives at least twice to inform them of the Action. Lonny Bomberry, the current Lands and Resources Department Director, was also present for at least one of those meetings. The Elected Council representatives told the HCCC representatives what the Band was seeking in the Action. While the HCCC Chiefs did not recognize the Canadian courts' jurisdiction over them and did not want to participate in the Action for that reason, they told Mr. Monture that they generally wished the Elected Council success against the Crowns.

In addition, in 2018, the Elected Council and the HCCC participated in a mediation led by former Supreme Court of Canada Justice Frank Iacobucci in Hamilton to discuss community divisions and how best to cooperate in the best interests of the Six Nations of the Grand River community as a whole. The mediation lasted one day and members of the HCCC, along with Aaron Detlor, were present. However, the HCCC decided not to continue with the mediation or cooperate with the Elected Council and ultimately the mediation was unsuccessful.

The current Elected Council and Band Chief continue to make attempts to reach out to the HCCC in the best interests of the Six Nations of the Grand River community. Unfortunately, this outreach has not generally been welcomed.

Schedule "A" – Chronology

Date	Event
August 6, 1923	"Six Nations of the Iroquois" submit a petition to the League of Nations, seeking to enforce the Crown's fiduciary and treaty obligations to those who settled on the Haldimand tract
September 17, 1924	Order-in-Council P.C. 1629 establishes the Elected Council operating under the *Indian Act* electoral system
April 13, 1945	"Six Nations 'Iroquois' Confederacy" submit a petition to the United Nations, seeking to enforce the Crown's fiduciary and treaty obligations "on behalf of the people of the Six Nations Indians on the Grand River at Brantford, Ontario"
November 12, 1951	Order-in-Council P.C. 6015 passes, repealing and replacing P.C. 1629
September 3, 1959	Ontario High Court (Justice King) dismisses an action by Confederacy representative seeking an injunction restraining the Band from surrendering reserve land and a declaration that Order P.C. 6015 is *ultra vires* Parliament: *Logan v Styres et al*, 1959 CanLII 406 (ON SC)
May 31, 1977	Supreme Court of Canada (Justice Martland for a unanimous Court) affirms that the Elected Council can obtain a permanent injunction restraining HCCC Chiefs from blocking access to the Elected Council Office and affirms the validity of Order P.C. 6015: *Davey et al v Isaac et al*, [1977] 2 SCR 897, 1977 CanLII 21 (SCC)
December 23, 1994	Band commences the Action in the Ontario Superior Court of Justice in Brantford by a Notice of Intended Action against Canada and Ontario
March 7, 1995	Band issues Original Statement of Claim
August 18, 1995	Revised election code adopted by the Elected Council
January 15, 1996	Canada delivers Statement of Defence
January 22, 1996	Ontario delivers Statement of Defence and Crossclaim
July 25, 1996	Band delivers Reply
March 4, 1997	Federal Regulation SOR/97-134 passes, delisting the Band from the list of First Nations holding elections under the *Indian Act* electoral system

Date	Event
October 7, 1997	Canada delivers Statement of Defence to Crossclaim and Counterclaim to Ontario
August 12, 1998	Federal Court of Canada (Justice Wetston) dismisses an action by a Confederacy representative seeking a declaration that the surrender of the Band's interest in certain reserve land was void: *Hill v Canada*, 1998 CanLII 8264 (FC)
May 17, 1999	Band brings a motion to compel Canada to answer written questions and provide particulars of the allegations in its Statement of Defence
July 27, 1999	Justice Kent orders Canada to answer written questions and provide particulars of the allegations in its Statement of Defence
April 12, 2000	Divisional Court dismisses Canada's appeal of Justice Kent's decision relating to written interrogatories in the Action: *Six Nations of the Grand River Band of Indians v. Canada (Attorney General)*, 2000 CanLII 26988 (ON SCDC)
July 18, 2000	Court of Appeal dismisses Canada's application for leave to appeal the Divisional Court's decision
October 19, 2001	Justice Kent makes multiple preliminary rulings regarding undertakings, written interrogatories, and demands for particulars
March 1, 2002	Justice Kent orders Canada to answers various undertakings and provide more precise particulars
September 2004	Parties agree to explore out of court settlement of the Action
2006	Action formally placed in abeyance on consent of the parties, to allow for negotiations
c. April-October 2006	Negotiations between the Band, Canada and Ontario, led by the HCCC, to resolve Douglas Creek Estates protests
April 2009	Action taken out of abeyance
May 6, 2009	*Turtle Island News* article titled "Band council reopening court case with own 'legal war chest'" published, quoting HCCC Chief Allen MacNaughton as not having any concerns with restating the court case, although he would have preferred to pursue negotiations
August 18 and 19, 2010	Two-day public informational meeting held by the Elected Council to update the Six Nations of the Grand River community about the Action after it was taken out of abeyance

Date	Event
2011-2021	Band delivers lengthy and detailed requests to admit, and Crowns deliver responses; the parties exchange written discovery questions and answers
December 5, 2017	Action moved on consent from Brantford to Toronto
January 5, 2018	Justice Sanfilippo appointed as case management judge
February 23, 2018	Case management conference endorsement by Justice Sanfilippo publicly reported as *Six Nations of the Grand River Band of Indians v. The Attorney General of Canada, et al*, 2018 ONSC 1289
May 21, 2019	Community referendum passed to adopt a further revised election code for the Elected Council
May 7, 2020	Band delivers Further Amended Statement of Claim
May 25, 2020	Case management conference endorsement by Justice Sanfilippo publicly reported as *Six Nations of the Grand River Band of Indians v. The Attorney General of Canada, et al*, 2020 ONSC 3230
April 1-June 30, 2022	Band delivers expert reports
June 16, 2020	Case management conference endorsement by Justice Sanfilippo publicly reported as *Six Nations of the Grand River Band of Indians v. The Attorney General of Canada, et al*, 2020 ONSC 3747
August 31, 2020	Canada delivers Fresh as Amended Statement of Defence
August 31, 2020	Ontario delivers Amended Statement of Defence and Crossclaim
November 25, 2020	Case management conference endorsement by Justice Sanfilippo publicly reported as *Six Nations of the Grand River Band of Indians v Ontario*, 2020 CanLII 92494 (ON SC)
December 11, 2020	Case management conference endorsement by Justice Sanfilippo publicly reported as *Six Nations of the Grand River Band of Indians v. The Attorney General of Canada*, 2020 ONSC 7714
January 14, 2021	Case management conference endorsement by Justice Sanfilippo publicly reported as *Six Nations of the Grand River Band of Indians v. The Attorney General of Canada*, 2021 ONSC 322
January 19, 2021	Community update held virtually via Zoom to provide an update on the Action's progress

Date	Event
June 10, 2022	HDI brings motion to be appointed as a representative of the Confederacy and to be added as a party to the Action
September 21, 2022	Case management conference endorsement by Justice Sanfilippo publicly reported as *Six Nations of the Grand River Band of Indians v. The Attorney General of Canada*, 2022 ONSC 5373
October 14, 2022	Justice Akbarali appointed as case management judge
After January 1, 2024	Action scheduled to be ready for trial (previously scheduled for the second quarter of 2023)

TO THE LEAGUE OF NATIONS

THE REDMAN'S APPEAL FOR JUSTICE

The Honourable Sir James Eric Drummond, K.C.M.G., C.B.,
Secretary-General of the League of Nations, Geneva.

Sir,

Under the authority vested in the undersigned, the Speaker of the Council and the Sole Deputy by choice of the Council composed of forty-two chiefs, of the Six Nations of the Iroquois, being a state within the purview and meaning of Article 17 of the Covenant of the League of Nations, but not being at present a member of the League, I, the undersigned, pursuant to the said authority, do hereby bring to the notice of the League of Nations that a dispute and disturbance of peace has arisen between the State of the Six Nations of the Iroquois on the one hand and the British Empire and Canada, being Members of the League, on the other, the matters in dispute and disturbance of the peace being set out in paragraphs 10 to 17 inclusive hereof.

2. The Six Nations of the Iroquois crave therefore invitation to accept the obligations of Membership of the League for the purpose of such dispute; upon such conditions as may be prescribed.

3. The constituent members of the State of the Six Nations of the Iroquois, that is to say, the Mohawk, the Oneida, the Onondaga, the Cayuga, the Seneca and the Tuscarora, now are, and have been for many centuries, organised and self-governing peoples, respectively, within domains of their own, and united in the oldest League of Nations, the League of the Iroquois,

for the maintenance of mutual peace; and that status has been recognised by Great Britain, France and the Netherlands, being European States which established colonies in North America; by the States successor to the British Colonies therein, being the United States of America, and by the Dominion of Canada, with whom the Six Nations have in turn treated, they being justly entitled to the same recognition by all other peoples.

4. Great Britain and the Six Nations of the Iroquois (hereinafter called " The Six Nations ") having been in open alliance for upwards of one hundred and twenty years immediately preceding the Peace of Paris of 1783, the British Crowns in succession promised the latter to protect them against encroachments and enemies making no exception whatever, and King George the Third, falling into war with his own colonies in America, promised recompense for all losses which might be sustained by the Six Nations in consequence of their alliance in that war and they remain entitled to such protection as against the Dominion of Canada.

5. Pursuant to such alliance and to his promise of protection and recompense King George the Third, about the year 1784, acquired the territorial rights of the occupants of certain domains bordering the Grand River and Lake Erie, over which the Six Nations had exercised suzerain rights, and lying northerly of the boundary line then recently fixed between him and the United States of America, such rights of the occupants being so acquired by His Britannic Majesty to induce the Six Nations to remove to that domain as a common home-land in place of their separate ancient homes on the south of the line. Thereupon the Six Nations (excepting certain numbers of those people who elected to remain), at the invitation of the British Crown and under its express promise of protection, intended as security for their continued independence, moved across the Niagara and thereafter duly established themselves and their league in self-government upon the said Grand River lands, and they have ever since held the unceded remainder thereof as a separate and independent people, established there by sovereign right.

6. The Six Nations crave leave to refer, in support and verification of their status and position as an independent State, and of their recognition as such, to (inter alia) the following documents, facts and circumstances:—

The Treaties between the Six Nations and the Dutch.

The Treaties between the Six Nations and France.

The Treaties between the Six Nations and the British and particularly the treaty between the Mohawk and others of the Six Nations electing to become parties thereto, and the British under date of October 25th, 1784.

The Memorial of His Britannic Majesty's Government in support of the claim of the Cayuga Nation being one of the components of the Six Nations against the United States of America filed the 4th December, 1912, in the Arbitration of outstanding Pecuniary Claims between Great Britain and the United States.

In regard to the said Memorial, lastly referred to, the Six Nations desire particularly to note (inter alia) the following passage contained in the said Memorial:—" The Six Nations were recognised as independent nations and allies by the Dutch and afterwards by the English to whom the Dutch surrendered their possessions in 1664."

7. The Six Nations have at all times enjoyed recognition by the Imperial Government of Great Britain of their right to independence in home-rule, and to protection therein by the British Crown—the Six Nations on their part having faithfully discharged the obligations of their alliance on all occasions of the need of Great Britain, under the ancient covenant chain of friendship between them, including the occasion of the late World War.

8. Because of the desire of Great Britain to extend its colonial domain, and of the Six Nations to dispose of domain not deemed by them at the time as of future usefulness, the British Crown prior to 1867, the year in which the Dominion of Canada was established, obtained from the Six Nations cessions of certain parts of their Grand River domain for purpose of sale to British subjects, retaining, by consent of the Six Nations, the stipulated sale moneys for the cessions, but in express trust for the use of the Six Nations and the British Crown at the same time promised to pay to the Six Nations the interest moneys annually earned by those funds; but subsequently the Imperial Government of its sole accord handed over to the Dominion Government such funds, but for administration according to the terms of that trust and promise, and the fund is now in the actual possession of the Dominion Government, the beneficial rights remaining as before in the Six Nations.

9. The circumstances and causes leading up to the matters in dispute and the said matters in dispute are set out in the next following paragraphs.

10. The Parliament of the Dominion of Canada, in or about the year 1919, enacted a measure called an Enfranchisement amendatory of its Indian Act so-called, imposing or purporting to impose Dominion rule upon neighbouring Red men, and the administrative departments undertook to enforce it upon citizens of the Six Nations, and in the next year those departments undertook to apply Canadian laws for the tenure of private property to the remaining territory of the Six Nations which had long before been sub-divided by and among the people thereof; and mortgages of proprietary title to those private parcels under those laws have recently been taken by authorised Officials of the Dominion from certain citizens of the Six Nations, tempted by loans of the public funds of Canada and, under cover of Canadian laws, but in violation of Six Nation Laws, administration over such titles and parcels has since been undertaken by various departments of the Dominion Government at the instance of the Mortgagees.

11. The Dominion Government is now engaged in enforcing upon the people of the Six Nations certain penal laws of Canada, and, under cover thereof, the Dominion Government is violating the Six Nation domain and has wrongfully seized therein many nationals of the Six Nations and cast them into Canadian prisons, where many of them are still held.

12. Large sums of the Six Nations' funds held by the Dominion Government have been misappropriated and wasted without consent of the Six Nations and misappropriation thereof is still being practised by the Dominion Government and accountings thereof, asked for by the Six Nations, have never been made.

13. All the measures aforesaid have been taken without the consent of the Six Nations, and under protest and continued protest of the duly constituted Council thereof, and with the manifest purpose on the part of the Dominion Government to destroy all de jure government of the Six Nations and of the constituent members thereof, and to fasten Canadian authority over all the Six Nations' domain, and to subjugate the Six Nation peoples, and these wrongful acts have resulted in a situation now constituting a menace to international peace.

14. The Dominion Government for the manifest purpose of depriving the Six Nations of means for self-defence, has withheld for three years last past moneys earned by the said trust funds, and is now disbursing the principal thereof, together with such earnings, for such objects as it sees fit, and has ignored

the request of the Six Nations, recently made upon it, that the said funds in its hands be turned over to the Six Nations; and the Dominion Government, after firm opposition by the Six Nations to these aggressive measures, and for about two years last past, has been using these trust funds to incite rebellion within the Six Nations, to furnish occasion for setting up of a new Government for the Six Nations, tribal in form but devised by the Dominion Parliament and intended to rest upon Canadian authority under a Dominion Statute known as the "Indian Act."

15. To the manifest end of destroying the Six Nations Government, the Dominion Government did, without just or lawful cause, in or about December of the year 1922, commit an act of war upon the Six Nations by making an hostile invasion of the Six Nations domain, wherein the Dominion Government then established an armed force which it has since maintained therein, and the presence thereof has impeded and impedes the Six Nations Council in the carrying on of the duly constituted government of the Six Nations people, and is a menace to international peace.

16. The aforesaid acts and measures of the Dominion Government are in violation of the nationality and independence of the Six Nations, and contrary to the successive treaties between the Six Nations and the British Crown, pledging the British Crown to protect the Six Nations; and especially in violation of the treaty pledge of October 25th, of the year 1784, of the same tenor, entered into between King George the Third of Great Britain and the Six Nations, hereinbefore referred to which, never having been abrogated by either party, remains in full force and effect and all of which were and are binding upon the British Crown and the British Dominion of Canada; and the said acts and measures were and are in violation as well of the recognised law of Nations, the Six Nations never having yielded their right of independence in home-rule to the Dominion of Canada, and never having released the British Crown from the obligation of its said covenants and treaties with them, but they have ever held and still hold the British Crown thereto.

17. In the month of August of the year 1921, the Six Nations made earnest application to the Imperial Government of Great Britain for the fulfilment on its part of its said promise of protection, and for its intervention thereunder to prevent the continued aggressions upon the Six Nations practised by the Dominion of Canada, but the Imperial Government refused.

18. The Six Nations have within the year last past and with the acquiescence of the Imperial Government of Great Britain, negotiated at length through its Council with the Government of the Dominion of Canada for arbitration of all the above-mentioned matters of dispute, when the Six Nations offered to join in submission of the same to impartial arbitration, and offered also to treat for establishing satisfactory relations, but those offers were not accepted.

19. The Six Nations refrained from engaging the armed Canadian troops, making the invasion aforesaid, in reliance on protection at the hands of the League of Nations under the peaceful policies of its covenant and they continue so to rely.

20. The Six Nations now invoke the action of the League of Nations to secure:—

(1) Recognition of their independent right of home-rule.

(2) Appropriate indemnity for the said aggressions for the benefit of their injured nationals.

(3) A just accounting by the Imperial Government of Great Britain, and by the Dominion of Canada of the Six Nations trust funds and the interest thereon.

(4) Adequate provision to cover the right of recovery of the said funds and interest by the Six Nations.

(5) Freedom of transit for the Six Nations across Canadian territory to and from international waters.

(6) Protection for the Six Nations hereafter under the League of Nations, if the Imperial Government of Great Britain shall avow its unwillingness to continue to extend adequate protection or withhold guarantees of such protection.

The Six Nations invoke also the action of the League of Nations to secure interim relief as follows:—

(a) For securing from the Dominion of Canada for unrestricted use by the Six Nations, sufficient funds for the purposes of this application from the moneys of the Six Nations held in trust as aforesaid, the balance of which, as admitted by the Dominion Government, approximates seven hundred thousand dollars, but which in truth largely exceeds that amount:

(b) For securing suspension of all aggressive practices by the Dominion of Canada upon the Six Nation peoples pending consideration of this application and action taken thereunder.

Done in behalf of the SIX NATIONS this Sixth day of August, in the year One Thousand nine hundred and twenty-three.

~~DESKAHEH~~, Deskaheh

Sole Deputy and Speaker of the Six Nations Council.

Yeates Limited (F.U.) 2 Johnson's Court, Fleet Street E.C.

Schedule "C"

Doc # 100954

SIX NATIONS "IROQUOIS" CONFEDERACY

Ohsweken, Ont.

April 13th, 1945.

To The Representatives of the United Nations
and The Commission on Minorities' Questions
At the United Nations Conference,
SAN FRANCISCO, California, U.S.A.

Gentlemen:

On behalf of the people of the Six Nations Indians settled upon part of the territory granted to then pursuant to the pledge given by the British Crown and granted under the terms of the Haldimand Treaty of March 1784, we, the representatives of the above named people of the Six Nations Indians, appeal to the conscience of the democratic nations for action to correct the deep injustice under which we are suffering.

In accord with the terms of the proposal made to us by representatives of the English Crown, we as a sovereign people accepted the terms of the Haldimand Treaty and settled upon the territory thereby granted to us. A few years after our occupation of the territory and before it was fully settled a large part of the territory was alienated from us by methods and on terms which did a deep injustice to our people and all their descendents. One, Joseph Brant, using an alleged power of attorney from the Six Nations Indians dated November 2, 1796, leased large sections of our territory to white people. No revenue whatsoever accrued to the people of the Six Nations Indians for such leases and until now we have been unable to secure either restoration of the property which was granted to us and our descendents and friends in perpetuity, nor to secure compensation for its alienation.

Our claim for abrogation of the so-called leases under which this property was alienated from us or, failing such abrogation, compensation for such alienation or revenues from all such lands, is based upon the fact that, according to the terms of the India Act (which deny to Indians the legal status of a person) and the terms under which the land was granted to us, the methods by which the above named Brant disposed of said lands were illegal and cannot be justified either in the eyes of the law or by the conscience of governments.

We appeal to the representatives of the governments and peoples of the United Nations gathered here in this historic conference at San Francisco to aid the people of the Six Nations Indians in securing these fundamental rights. Our appeal for restoration of the property rights guaranteed to us in 1784 is based first of all upon our duty, as parents, to protect the rights and the futures of our children, but it is based also upon our solemn obligation to protect the rights of our people as a whole. We, the people of the Six Nations Indians, who fought as allies of the British Crown during the American revolutionary war, accepted the grant of lands described in the Haldimand Treaty and came to Canada from the United States to settle on these lands in the spirit and in the understanding that we were doing so as a sovereign people. As a nation we now appeal to the conscience of the nations of the world. We appeal for the restoration of those lands which the terms of the Haldimand Treaty guaranteed the people of the Six Nations "and their posterity are to enjoy forever."

Verification of all the above statements is to be found in the copy of Sessional Paper No.151 tabled in the House of Commons Canada on April 5th, 1945, which is attached.

ON BEHALF of the people of the Six Nations Indians on the Grand River at Brantford, Ontario....

.....	.....
Chief Jacob Lewis.	R.R.1 Wilsonville.....
Chief Jas. S. Hill....	Ontario Canada.....

SIX NATIONS OF THE GRAND RIVER BAND OF INDIANS	-and-	THE ATTORNEY GENERAL OF CANADA et al.	-and-	THE HAUDENOSAUNEE DEVELOPMENT INSTITUTE et al.	Court File No. CV-18-594281-0000
Plaintiff		Defendants		Moving Party	

ONTARIO
SUPERIOR COURT OF JUSTICE

Proceeding commenced at Brantford
and transferred to Toronto

AFFIDAVIT OF MARK HILL
(Affirmed December 5, 2022)

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Lawyers for the Plaintiff

Court File No. CV-18-594281-0000

ONTARIO
SUPERIOR COURT OF JUSTICE

B E T W E E N:

SIX NATIONS OF THE GRAND RIVER BAND OF INDIANS

Plaintiff

- and -

THE ATTORNEY GENERAL OF CANADA and HIS MAJESTY THE KING IN RIGHT OF ONTARIO

Defendants

- and -

THE HAUDENOSAUNEE DEVELOPMENT INSTITUTE (AARON DETLOR AND BRIAN DOOLITTLE), AS APPOINTED BY THE HAUDENOSAUNEE CONFEDERACY CHIEFS COUNCIL, ON BEHALF OF THE HAUDENOSAUNEE CONFEDERACY

Moving Party

SECOND SUPPLEMENTARY AFFIDAVIT OF MARK HILL
(Affirmed February 6, 2023)

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

1. I am the Elected Chief of the Six Nations Elected Council ("**Elected Council**") of the Six Nations of the Grand River Band of Indians ("**Six Nations of the Grand River**" or the "**Band**"), and previously affirmed an affidavit in this matter on November 2 and December 5, 2022. As such, I have knowledge of the matters in this affidavit, and where

I have relied on information received from others, I have indicated the source of that information and believe it to be true.

2. Attached as **Exhibit A** is a letter I received from Indigenous Services Canada in November 2022, in response to the Band's request for approval of the Six Nations of the Grand River Citizenship Code. I received this letter after I affirmed my November 2, 2022 affidavit.

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

DocuSigned by:
Mark B. Hill
AC45EFFA61F1436...

Commissioner for Taking Affidavits
(or as may be)

GREGORY SHEPPARD

MARK HILL

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

Commissioner for Taking Affidavits (or as may be)

GREGORY SHEPPARD

Services aux Autochtones Canada | Indigenous Services Canada

Our file number: MIN-A23831

Chief Mark B. Hill
Six Nations of the Grand River
1695 Chiefswood Road
OHSWEKEN ON N0A 1M0
BY EMAIL: markhill@sixnations.ca

Dear Chief Hill,

RE: Six Nations of the Grand River Control of Membership

Thank you for your letter dated April 13, 2022, regarding the membership code of the Six Nations of the Grand River. We appreciate your patience during our lengthy review period and delays in responding to correspondence of June 17, 2019 and October 4, 2019.

Transfer of Membership Control

Section 10 of the *Indian Act* provides a route by which a First Nation may establish membership rules and request that control over its membership. The transfer from Canada is done in accordance with the *Indian Act* and with the membership rules developed by the First Nation. The first step involves a First Nation providing notice of its intention to assume control over its membership, to both the Minister of Indigenous Services and to its electors. The second step involves establishing membership rules in writing, which rules must protect the acquired rights of those individuals who were members and or eligible to be members, in accordance with the *Indian Act,* as of the date notice is given. Finally, a majority of the First Nation's electors must consent to the transfer of membership control from Canada to the First Nation.

Fulfilling the Criteria

Six Nations of the Grand River provided Indigenous Services Canada with a copy of the Six Nations of the Grand River Citizenship Code in June 2019, along with notice under subsection 10(6) of the *Indian Act* of the intention to assume membership control, as well as evidence of notice. We also received the results of the plebiscite but

unfortunately the results did not meet the double majority threshold for a transfer of membership under section 10 of the *Indian Act*. Further supporting documentation was provided in October 2019.

The affidavits provided by Six Nations of the Grand River stated that 612 individuals participated in the plebiscite vote for consent of the electors: 414 ballots in favour, 196 against, and 2 spoiled ballots, out of approximately 22,694 eligible electors as of June 1, 2019, resulting in a participation rate of approximately 3% of the electors of the Six Nations of the Grand River.

The affidavits further provided relevant context and history on plebiscite voting in the community, including on the consistently low elector participation across a variety of plebiscite votes (e.g., council elections and referenda), and especially for voting for purposes relating to the *Indian Act* and related federal legislation. This information was certainly helpful in our understanding of factors affecting voter turnout in the community and the challenges of legislated processes on the community's realization of its goals.

We recognize the considerable efforts made to inform and encourage elector engagement in the process, including through the use of OneFeather's voting services, on various media platforms (e.g., radio, newspaper, website, and local news), and through your Community Awareness Week and other information sessions. In addition, we appreciate that electors were provided with multiple dates, times, locations and modalities of voting: electronic voting, advance polls and regular polls within and around the Six Nations of the Grand River community.

Nevertheless, we have some concerns over the very low voter participation rate of only three percent of the electors of the Six Nations of the Grand River and the possible legal challenges against both Canada and the community that could flow from that. We want to ensure that we have a mutual understanding of potential challenges and how we can mitigate them and move forward together.

Way Forward

We respect the inherent right of self-determination articulated in the *United Nations Declaration on the Rights of Indigenous Peoples Act* and acknowledge the hurdles posed by section 10 of the *Indian Act* towards achieving it. The Department has highlighted this limitation in its commitments towards self-determination.

We remain committed to collaborating with the Six Nations of the Grand River, working towards achieving their many goals including membership control. To that end, we look forward to meeting at your earliest convenience to discuss these matters and explore options for moving forward.

We hope this review is of assistance to you. Please do not hesitate to contact the Policy, Procedures and Program Management (PPPM) Team at pppm-ppgp@sac-isc.gc.ca so that we can arrange a meeting together.

Yours Sincerely,

Michael Walsh
Senior Director, Registration and Integrated Program Management
Regional Operations Sector
Indigenous Services Canada

SIX NATIONS OF THE GRAND RIVER BAND OF INDIANS	-and-	THE ATTORNEY GENERAL OF CANADA et al.	-and-	THE HAUDENOSAUNEE DEVELOPMENT INSTITUTE et al.	Court File No. CV-18-594281-0000
Plaintiff		Defendants		Moving Party	

ONTARIO
SUPERIOR COURT OF JUSTICE

Proceeding commenced at Brantford
and transferred to Toronto

SECOND SUPPLEMENTARY AFFIDAVIT OF MARK HILL
(Affirmed February 6, 2023)

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Lawyers for the Plaintiff

Court File No. CV-18-594281-0000

ONTARIO
SUPERIOR COURT OF JUSTICE

B E T W E E N:

SIX NATIONS OF THE GRAND RIVER BAND OF INDIANS

Plaintiff

- and -

THE ATTORNEY GENERAL OF CANADA and HIS MAJESTY THE KING IN RIGHT OF ONTARIO

Defendants

- and -

THE HAUDENOSAUNEE DEVELOPMENT INSTITUTE (AARON DETLOR AND BRIAN DOOLITTLE), AS APPOINTED BY THE HAUDENOSAUNEE CONFEDERACY CHIEFS COUNCIL, ON BEHALF OF THE HAUDENOSAUNEE CONFEDERACY

Moving Party

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

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

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

2. Attached are the following documents downloaded from the website of the Government of Canada from the links indicated in each document:

(a) Statement titled “Exploration Resolution Progress – Joint Statement of Canada, Ontario and Six Nations” dated April 5, 2006, as **Exhibit A**;

(b) Statement titled “Statement From Canada’s Representatives in Six Nations Talks” dated December 12, 2007, as **Exhibit B**;

(c) News release titled “Canada Reaffirms Its Commitment to a Negotiated Settlement with Ontario and Six Nations” dated July 9, 2009, as **Exhibit C**; and

(d) Statement titled “Canada’s Response to Haudenosaunee Six Nations Counteroffer” dated September 15, 2010, as **Exhibit D**.

3. Attached as **Exhibit E** is a Government of Ontario website titled “Six Nations of the Grand River”, which I downloaded on February 6, 2023 from the link indicated in the document.

4. Attached as **Exhibit F** is a news article titled “HCCC launches paid social media campaign spreading misinformation about hereditary chiefs removal in 1924” dated November 30, 2022, which I downloaded from the *Two Row Times* website on February 6, 2023.

5. Attached as **Exhibit G** is a news article titled “Oneida Men’s Fire declare official opposition of HDI representing them” dated January 11, 2023, which I downloaded from the *Two Row Times* website on February 6, 2023.

6. Attached as **Exhibit H** is a news article titled “Deadline approaching for intervenors in Six Nations’ mammoth land claim case” dated January 18, 2023, which I downloaded from the *Two Row Times* website on February 6, 2023.

7. Attached as **Exhibit I** is an Amended Notice of Application issued by the Mohawk Council of Kahnawà:ke on December 9, 2022, as obtained by Blakes on January 27, 2023.

8. Attached as **Exhibit J** is the Plaintiff’s draft Fresh as Further Further Amended Statement of Claim dated February 3, 2023. Attached as **Exhibit K** is the same pleading showing the proposed changes in underlined form.

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

Commissioner for Taking Affidavits
(or as may be)

ELENA REONEGRO

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

Commissioner for Taking Affidavits (or as may be)

GREGORY SHEPPARD

We have archived this page and will not be updating it.

You can use it for research or reference.

Exploration Resolution Progress - Joint Statement of Canada, Ontario and Six Nations

Statement

April 5, 3006

Six Nations of the Grand River, Canada and Ontario are pleased to report on the successful progress of an exploratory resolution process begun in 2004, and on their agreement to continue to discuss whether

settlement is possible of any or all of the claims raised in litigation by Six Nations of the Grand River. These claims seek an accounting and damages with respect to over 200 years of history and transactions. While Canada and Ontario have different views with respect to their roles and responsibilities, the parties agree that resolution of the claims of Canada's largest First Nation and the fostering of a respectful and mutually beneficial relationship, and reconciliation, is best achieved through dialogue and negotiation. While this without prejudice resolution process is ongoing, the parties have agreed to an abeyance of the litigation.

After a series of discussions and proposals it was agreed that the exploration teams would examine two of Six Nations claims in which minimal additional historical research was required. The exploration teams chose to examine the Port Maitland and Jarvis claims with a view to first agreeing to a factual narrative of each claim. The teams reached agreement on the narratives in December 2005 and Six Nations Council approved proceeding with the resolution discussions. The parties agreed to continue discussions on the Jarvis and Port Maitland claims.

The exploration teams hope that these first steps will result in a process
that can deal with and ultimately resolve the litigation to the satisfaction
of all parties. It is also hoped that this process will shorten the timeframe
for the ultimate resolution of the litigation.

In our view, the resolution of these claims through dialogue and negotiation
will assist in fostering a harmonious and mutually advantageous relationship
among Six Nations, Ontario and Canada.

Backgrounder on the
Claims of the Six Nations of the Grand River Band of Indians

Search for related information by keyword

Indigenous and Northern Affairs Canada | Society and Culture | Government and Politics

Date modified:
2006-04-05

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

Commissioner for Taking Affidavits (or as may be)

GREGORY SHEPPARD

Statement From Canada's Representatives in Six Nations Talks

Statement

2-2980

Ottawa (December 12, 2007) - The following statement was released today by the Honourable Barbara McDougall, Federal Representative, and Ronald L. Doering, Federal Negotiator, with the Haudenosaunee/Six Nations and the Province of Ontario, following this week's negotiation session with Six Nations and the Province of Ontario.

"Canada's negotiating team continues to seek innovative and concrete solutions to the complex issues facing all parties.

Today, in an effort to find common ground at the table, Canada made an offer to the Haudenosaunee/Six Nations relating

to the Welland Canal Flooding Claim - a pre-confederation claim dating back to 1829.

The Government of Canada firmly believes that negotiation, rather than litigation, is the best route to follow for the benefit of all Canadians. As demonstrated by today's offer, Canada remains committed to the process of resolving the complex issues along the Grand River in Southern Ontario.

This offer of $26 million, relates to Six Nations assertion that they were not adequately compensated for the loss of use of roughly 2400 acres of land flooded for the Welland Canal project.

Making progress is key -- not only to the people of Six Nations, but also to the residents of neighbouring communities."

The Honourable Barbara McDougall, PC, OC
Federal Representative
Ronald L. Doering, BA, LLB, MA, LLD
Federal Negotiator

For more information, please visit Six Nations - Claims and Negotiations

Contacts:
INAC Media Relations
819-953-1160

Search for related information by keyword

Indigenous and Northern Affairs Canada | Processes | Government and Politics | Form descriptors

Date modified:

2007-12-12

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

Commissioner for Taking Affidavits (or as may be)

GREGORY SHEPPARD

We have archived this page and will not be updating it.

You can use it for research or reference.

Canada Reaffirms Its Commitment To A Negotiated Settlement With Ontario And Six Nations

News Release

Ottawa (July 9, 2009) - The Honourable Chuck Strahl, Minister of Indian Affairs and Northern Development and Federal Interlocutor for Métis and Non-Status Indians today reaffirmed Canada's commitment to move forward on claim negotiations with Haudenosaunee Six Nations (HSN) and the Province of Ontario.

"We still believe that negotiations offer the best forum in which to resolve Six Nations' claims in a manner that will benefit all parties, including surrounding communities," said Minister Strahl. "The process of reconciling relationships and building trust takes time and requires open communications among all parties."

During yesterday's talks, the federal negotiating team advised both HSN and the Province of Ontario that Canada will continue to participate in negotiations after the litigation is reactivated by the Elected Council in August 2009. The Six Nations of the Grand River Band of Indians filed a lawsuit against the Government of Canada and the Province of Ontario in March 1995.

In addition, Canada tabled a negotiation protocol for Ontario and HSN's consideration. The goal of the proposed protocol is to establish mutually acceptable principles to govern the continued participation of all three parties in the negotiations.

Canada's negotiating team continues to seek innovative and concrete solutions to the complex issues facing all parties and is committed to finding common ground on the issues through talks.

Discussions with HSN deal with complex issues which stem from historical events dating back to the 18th century. These issues cannot be resolved overnight. The parties must work through challenging issues to find lasting and common solutions.

Background information

For more information, please contact:

Minister's Office

Nina Chiarelli

Canada Press Secretary

Office of the Honourable Chuck Strahl

819-997-0002

Search for related information by keyword

Indigenous and Northern Affairs Canada | Society and Culture | Government and Politics

Date modified:

2009-07-09

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

Commissioner for Taking Affidavits (or as may be)

GREGORY SHEPPARD

Archived - Canada’s Response to Haudenosaunee Six Nations Counteroffer

Archived information

This Web page has been archived on the Web. Archived information is provided for reference, research or record keeping purposes. It is not subject to the Government of Canada Web Standards and has not been altered or updated since it was archived. Please contact us to request a format other than those available.

In December 2007, Canada made a $26 million offer to Haudenosaunee Six Nations (HSN) on the Welland Canal Flooding Claim. On August 29, 2008, the federal government received a formal counteroffer from HSN regarding the Welland Canal Flooding Claim for $500 million. Canada had hoped that the HSN response to Canada's offer would have been more favourable.

Towards an improved relationship

Canada maintains that the original offer of $26 million to settle this claim was fair. The counteroffer from HSN demonstrates that we have different views with respect to the resolution of this claim. Despite these differences, we will continue to work with the HSN to try to find a negotiated solution.

Many people in the community are affected by the lack of progress on settling these claims. The federal government remains committed to resolving Haudenosaunee Six Nations' claims at the Lands Resolution Side Table, rather than through the courts. The federal negotiating team will continue to work with Six Nations and Ontario to discuss Canada's response to the offer and the future of the negotiation process. All parties need to refocus efforts and continue to work to find common ground on these complex issues.

Background on the Welland Canal Flooding Claim

There are certain basic facts that are part of the historical record regarding the flooding of Six Nations lands during the construction of the Welland Canal.

In 1829, as part of the construction of the Welland Canal, a dam was built across the Grand River, which resulted in the flooding of certain Six Nation lands. In addition, a federal Act incorporating the Welland Canal Company required that the Company would provide compensation for damages sustained as a result of the construction of the Canal and that Indians who sustained damages would be compensated in the same manner as non-Indians.

Over a period of approximately 120 years, Six Nations representatives complained about the damage caused by the flooding and sought to obtain compensation. In 1949, the Six Nations sought compensation in a case called *Miller v. The King*, but the petition was dismissed by the Court.

There is no evidence that compensation has, to this day, been paid to the Six Nations of the Grand River for the value of the flooded lands.

Date modified: 2010-09-15

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

Commissioner for Taking Affidavits (or as may be)

GREGORY SHEPPARD

Ontario (https://www.ontario.ca/page/government-ontario)

Six Nations of the Grand River

Information about the status of negotiations with the Six Nations of the Grand River related to land and accounting claims, including lands around Caledonia.

About the Six Nations of Grand River

The Six Nations are the Mohawk, Seneca, Oneida, Cayuga, Onondaga and Tuscarora nations.

After the American War of Independence, some of the families who were allies of the British moved from their homeland in the Finger Lakes region of New York State to the Grand River.

They settled on a tract of land granted by the Haldimand Proclamation of 1784 and confirmed by the Simcoe Patent of 1793.

The Six Nations claims

The Six Nations of Grand River are seeking compensation as well as an accounting of what happened to their property, money and other assets in southwestern Ontario, within the Haldimand Tract.

The Haldimand Tract is a parcel of land 6 miles on either side of the Grand River from its mouth to its source. The Simcoe Patent outlined a smaller area of land that did not extend to the source of the Grand River.

Download the map (http://www.sixnations.ca/LandsResources/LCMap.pdf)

Between 1980 and 1995, Six Nations of the Grand River submitted 29 claims to Canada under Canada's Specific Claims Policy. So far, one of these claims has been resolved.

Status of unresolved claims

In 1995, the Six Nations commenced litigation against Canada and Ontario for an accounting of what happened to its land, money and other assets and the manner in which the Crown managed and disposed of these assets.

In 2009, the Six Nations formally reactivated the 1995 litigation against Canada and Ontario. Their claims are now being pursued in the courts.

Who's involved

These parties are involved in the matter:

- the Government of Canada
- the Government of Ontario
- the Six Nations of Grand River

Ontario's involvement

Ontario became involved because of a protest at the Douglas Creek Estates, a housing development under construction in Caledonia. The development sits on part of the lands being claimed by the Six Nations.

Ontario is working with the Six Nations, surrounding municipalities and other interested parties to strengthen relationships and promote reconciliation. Some of the steps taken so far include:

- buying the land at Douglas Creek on the condition the Six Nations remove the barricades that were erected in Caledonia
- agreeing to transfer the former Burtch correctional facility lands to the Six Nations
- providing financial aid to municipalities affected by the dispute

Where discussions stand now

Status of the land at Douglas Creek

No decisions have been made. The ministry continues to encourage discussions about its future between the Six Nations, Haldimand County and the province.

Status of the Burtch facility transfer

The environmental assessment of the Burtch property is complete and remediation is ongoing. The province is discussing the transfer of ownership of the Burtch land to the Six Nations people.

Moving Forward

Ontario is working with Six Nations and local residents to help broker a resolution that serves all interests. Ontario supports a negotiated settlement and we are working to achieve one.

Related

Government of Canada (http://www.aadnc-aandc.gc.ca/eng/1100100016334/1100100016335)

Six Nations Elected Council (http://www.sixnations.ca)

Haudenosaunee Confederacy Chiefs Council (http://www.haudenosauneeconfederacy.com/)

Neighbouring Communities Project (http://www.neighbouringcommunities.net/)

Ministry of Indigenous Affairs (https://www.ontario.ca/page/ministry-indigenous-affairs)

Updated: August 11, 2021
Published: June 21, 2013

This is Exhibit “F” referred to in the Affidavit of Elena Reonegro affirmed February 6, 2023.

Commissioner for Taking Affidavits (or as may be)

GREGORY SHEPPARD

HCCC launches paid social media campaign spreading misinformation about hereditary chiefs removal in 1924

Editorial The Staff • November 30, 2022 • Views 1072 • Comments off Share

he Haudenosaunee Confederacy Chiefs Council has been long criticized for their lack of transparency and accountability with the Six Nations people.

Now, they are being trolled by Haudenosaunee people for not knowing their own history.

In October, an embarrassing ad campaign was sponsored with misleading and inaccurate information about a historical black and white photo depicting the chiefs in council.

The photo was an image of the chiefs in council at the Six Nations Council House on Fourth Line in Ohsweken. Within the comments, the Haudenosaunee Confederacy official page began responding to comments from the community and identified the image as one taken “right before the RCMP removed the council at gun point”.

The image was definitely not taken right before RCMP removed the council at gun point. In part, because the confederacy chiefs were never removed from council at gunpoint.

The photo is, in fact, part of a series of images taken of Six Nations in 1914. Copies of this image are archived with the Marquette University Archives – a Catholic Jesuit university in Milwaukee, Wisconsin. It is listed under file 01259 in part of a digital collection on American Indian history.

It appeared in a report titled “The Administration of Indian Affairs in Canada” by Frederick H. Abbott from the United States Board of Indian Commissioners and was published in 1915.

Abbott writes that the population of Six Nations at that time was 4692 people including 1955 Mohawks, 377 Onondagas, 441 Tuscaroras, 1117 Cayuga, 230 Senecas, 177 Delawares and 395 Oneidas.

He sat in session with the chiefs council and writes, “I saw the council of the Six Nations opened by the Onondaga chief with the same ceremony that has opened the councils of this famous confederacy for the last 300 years; heard the chief offer thanks to the Great Spirit for protecting the chiefs sine their previous meeting and praying for his protection of the present proceedings; saw the same belt of wampum spread over the table, which had been used in connection with meetings of the council for three centuries.”

The assessment of the community contained descriptions of land transactions, schools and included images of the former home of Chief William Smith at the corner of Mohawk Road and First Line as well as an image of the Six Nations Agricultural Fair on its 48th anniversary.

It is evident that a photo taken and published in 1915 is not a picture of the chiefs prior to them being removed by RCMP at gunpoint.

The public is again being spoon fed more rhetoric and revisionist history by the HCCC on their official social media accounts in a paid, cross-platform social media campaign and the hereditary leaders of the community should be investigating who is responsible.

The hereditary chiefs of Six Nations were never “removed at gunpoint” from the council house in Ohsweken by the RCMP. This is a rumour that is continuously peddled by HCCC spokespeople, perhaps to up the shock value of the deposition of the hereditary appointment of leaders in 1924.

But those are not the facts.

To read a true account of what happened one just needs to turn to the hereditary chiefs own notes about the day.

“Agricultural Hall
Oct 7, 1924

General Council of the Chiefs of the Six Nations was held at the Agri Hall, the Council House being under repairs opened in due form by Chief Geo. Davis one of the Fire Keepers.

Present: Col. CE Morgan, Superintendant of Indian Affairs; Mr HM Hill, Clerk Indian Office; Chief JC Martin, Acting Speaker; Chief C Garlow, Deputy Speaker and DS Hill, Secretary.

And 19 chiefs with about a score of RCMP accompanying Agent Morgan.

The Agent read a length proclamation dissolving the Six Nations Council of Chiefs and appointing a day for an election day under a clause of the Indian Act.”

There is no record of the chiefs or their meeting being interrupted by being forcibly removed from the council house at gunpoint that day because it didn't happen. The minutes show the council carried on with business at the Agricultural Hall after the proclamation was read, settling William Johnson's estate, approving land leases on the territory, assigning guardianship of children over to family members in the community and settling the honorarium for secretary Chauncey Garlow.

Council minutes show that the hereditary chiefs met again on October 21, 1924 at Upper Cayuga Longhouse and made more decisions — with JC Martin, C Garlow, David S Hill and 20 chiefs in attendance. This meeting included a land tax of "10 cents per acre upon all lands on the Reserve for the purpose of the redemption of Bonds issued when due in 1928 as arranged for by the Council." It also included formal minutes about the community opposition to the installation of elected chiefs.

So was this blatant misinformation? Or is it a case of someone who is not skilled in Six Nations history at the helm of a paid advertising campaign on social media? Leadership at the council need to investigate and for the sake of building trust in the community — ensure that they are only distributing factual information to the public through their official channels. Spreading misinformation, especially about our history, does not build a strong case for being an effective governing body capable to manage Six Nations in any capacity.

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

Commissioner for Taking Affidavits (or as may be)

GREGORY SHEPPARD

Oneida Men’s Fire declare official opposition of HDI representing them

Local News The Staff • January 11, 2023 • Views 668 • Comments off Share

ONEIDA NATION OF THE THAMES — The Men’s Fire of Oneida has issued an official statement — opposing the Haudenosaunee Development Institute claim that they are the proper party to speak for the entire Haudenosaunee population in the upcoming Six Nations land claim legal battle.

“We, the Lotisk^laketeh (Men’s Council of Oneida of the Thames) would like to clearly state our strong objection to the request the HDI is to be named the official Land Negotiator or Stewards of all lands within the Beaver Territory as outlined in 1701 Treaty (Montreal),” says the statement.

Under the Haudenosaunee Great Law process, there are hereditary title holders, people the HCCC refers to as ‘chiefs’. These title holders are traditionally ceremonially installed by the women of each clan, as speakers for their families within the Confederacy.

The Men’s Fires are another important part of the Great Law process. In combination with community fires, or women’s fires — these collectives serve as an accountability measure — collecting the perspectives of the people, ensuring the chiefs follow proper protocol, are representing the needs and wants of their families, and are not acting outside of their duties.

The current HCCC structure has excluded the voice of the community councils from its deliberations, and made the decision to enter into the Six Nations land claim as an intervener at the direction of a small collective of male title holders. This was much to the frustration of the people of the Six Nations Confederacy, who say that they were not consulted prior to HDI making application to the courts as an intervenor — and further — that the HDI has “no business” claiming to represent the entire Haudenosaunee population.

The statement reads, “The Lotisk^laketeh are upholding our duties and responsibilities bestowed upon us within K^nthyukwanhasta (People’s Circle Wampum) and following the protocols outlined in Kayatikowa (Great Law). We write this letter to remind the incorporated entity, one, the Band Administration Chief and Council (INAC) and two, the Haudenosaunee Development Institute (HDI), that both entities are not in our circle and that you both are under the Crown of England and their Corporation Canada. We also remind you that you have no business negotiating within yourselves, Haudenosaunee issues that include land negotiations, as you do not have the authority of the Clan families, their heirs and descendants, because of this you do not have their best interest at heart. Let us remind you that corporations do not have land (ownership), clan families, clan titles, language, songs, ceremonies as all of thee things belong inside the K^nthyukwanhasta (People’s Circle Wampum).”

“Lotisk^laketeh have the responsibility to maintain our duties and responsibilities as our role is outlined within K^nthyukwanhasta and Kayatikowa to protect our women, children, homelands, language, our way of life and everything else that makes us who we are as Haudenosaunee.

HDI have removed themselves from our circle wampum and therefore no longer have the protection of the clan families their titles and they do not have the authority to engage in land issues or any business that will try to assimilate our culture, our language and our very existence as Haudenosaunee. Lotisk^laketeh will also remind Band Administration Chief and Council that your only role is to administrate for the people as you were appointed by the Federal Government (INAC),” says the statement.

“In closing, the Lotisk^laketeh (Men’s Council of Oneida of the Thames) are in full agreement and stand united with the Hodiskeagehda (Men’s Fire of the Grand River Territory) in our strong objection to HDI and Band Administration Chief and Council request to be named the official Land Negotiator or Stewards of all Land Claim Issues within the Haldimand Tract,” says the statement.”

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

Commissioner for Taking Affidavits (or as may be)

GREGORY SHEPPARD

Deadline approaching for intervenors in Six Nations' mammoth land claim case

Local News Donna Duric • January 18, 2023 • Views 467 • Comments off Share

Any groups wishing to participate in Six Nations' litigation against the Crown in its monumental land claims case dating back to 1995, when it was first filed, have until Feb. 3 to apply.

Three known groups have already stepped in asking to be part of the proceedings, claiming an interest in the almost one-million-acre Haldimand Tract, which Six Nations claims was wrongfully ceded from them without its consent since the lands were granted to "the Mohawks and such others" under the Haldimand Proclamation of 1784.

A court has decided anyone who wishes to argue their reasons to intervene in the case and be added to the roster of plaintiffs will be heard beginning May 8, 2023, for four days.

Six Nations initiated the lawsuit against the federal government in 1995, saying that after 1784, the British Crown, along with federal and provincial governments, failed to set aside the lands for the enjoyment of the Mohawks and such others and improperly sold most of the lands to settlers, while mismanaging the proceeds of the sales.

Today, the Six Nations of the Grand River people are living on less than five per cent of the original 950,000-acre land grant.

The Haudenosaunee Development Institute (HDI) was the first to file as an intervenor in the land claims case, saying it was the rightful steward over the lands in question.

Next came the Six Nations Men's Fire and then, the neighbouring Mississuagas of the Credit First Nation.

That First Nation is applying to be a plaintiff in what could be the biggest land claim lawsuit settlement in Canadian history saying the parts of the Haldimand Deed territory cover MCFN's traditional territory, as well.

The suit seeks answers to what happened to Six Nations land along the Grand River and any monies or proceeds the government obtained from those land transactions.

Lonny Bomberry, director of Six Nations Lands and Resources, says the intervenors are applying out of pure "greed."

The massive land rights case could be the biggest land claim settlement in Canadian history, with some estimates putting the dollar amount in the trillions, and is expected to be heard sometime in 2024. The case was supposed to be heard in September 2022, and was pushed to 2023, and will now be heard in 2024, according to Bomberry, who said the province of Ontario is not equipped to defend its position in the case.

Bomberry said SNGR elected council will "vigorously" defend its position as the sole plaintiff in the land rights case, which seeks an accounting of lands the Crown granted to the "Mohawks and such others" as part of the Haldimand Proclamation of 1784, consisting of six miles on either side of the Grand River from its mouth to source.

Any amount awarded to Six Nations, he said, would be for the benefit of all the people in the community, not just elected council.

The HDI applied in September to be an intervenor in the case on behalf of the HCCC, citing the Haudenosaunee Confederacy Chiefs Council (HCCC) as the true governing body of Six Nations and all Haudenosaunee people in both Canada and the United States.

Bomberry has said the case is more of a monetary accounting case rather than a land claim case, as Six Nations seeks an accounting of monies associated with the sales and leases of its land without its consent.

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

Commissioner for Taking Affidavits (or as may be)

GREGORY SHEPPARD

AMENDED THIS Dec 9/2022 PURSUANT TO
MODIFIÉ CE CONFORMÉMENT À
☒ RULE/LA RÈGLE 26.02 (A)
☐ THE ORDER OF
L'ORDONNANCE DU
DATED / FAIT LE
W. Camacho
REGISTRAR GREFFIER
SUPERIOR COURT OF JUSTICE COUR SUPÉRIEURE OF JUSTICE

Court File No.: CV-22-00690830-0000

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:

MOHAWK COUNCIL OF KAHNAWÀ:KE

Applicant

- and -

iGAMING ONTARIO and THE ATTORNEY GENERAL OF ONTARIO

Respondents

AMENDED NOTICE OF APPLICATION
(Pursuant to Rule 14.05(3)(h) of the *Rules of Civil Procedure*)

TO THE RESPONDENTS:

A LEGAL PROCEEDING HAS BEEN COMMENCED by the applicant. The claim made by the applicant appears on the following page.

THIS APPLICATION will come on for a hearing

☐ In person

☐ By telephone conference

☐ By video conference

At the following location: 330 University Ave. Toronto, ON M5G 1R7, on a day to be set by the Registrar.

IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the application or to be served with any documents in the application, you or an Ontario lawyer acting for you must forthwith prepare a notice of appearance in Form 38A prescribed by the *Rules of Civil Procedure*, serve it on the applicant's lawyer or, where the applicant does not have a lawyer, serve it on the applicant, and file it, with proof of service, in this court office, and you or your lawyer must appear at the hearing.

IF YOU WISH TO PRESENT AFFIDAVIT OR OTHER DOCUMENTARY EVIDENCE TO THE COURT OR TO EXAMINE OR CROSS-EXAMINE WITNESSES ON THE APPLICATION, you or your lawyer must, in addition to serving your notice of appearance, serve a copy of the evidence on the applicant's lawyer or, where the applicant does not have a lawyer, serve it on the applicant, and file it, with proof of service, in the court office where the application is to be heard as soon as possible, but at least four days before the hearing.

If you fail to appear at the hearing, judgment may be given in your absence and without further notice to you. If you wish to oppose this application but are unable to pay legal fees, legal aid may be available to you by contacting a local legal aid office.

Date: November 28, 2022

Issued by "L. Smith"
Local registrar

Address of court office: 330 University Ave. Toronto, ON M5G 1R7

TO: iGaming Ontario
90 Sheppard Ave E
Suite 200
Toronto, Ontario M2N 0A4

Ministry of the Attorney General
McMurtry-Scott Building
720 Bay Street, 11th floor
Toronto, Ontario M7A 2S9

Ministry of the Attorney General
Constitutional Law Branch
720 Bay Street, 4th floor
Toronto, Ontario M7A 2S9

APPLICATION

1. The applicant makes application for:

    a. A declaration that the Ontario government does not "conduct and manage" online lottery schemes established and operated pursuant to the iGaming Scheme (defined *infra*) as required under s. 207(1)(a) of the *Criminal Code* (R.S.C., 1985 c. C-46);

    b. An order quashing the iGaming Scheme because it is *ultra vires* the Legislative Assembly of Ontario to the extent it permits online lottery schemes which are not conducted and managed by the Ontario government;

    c. In the alternative, an order declaring the iGaming Scheme inoperative or otherwise without effect to the extent it permits online lottery schemes which are not conducted and managed by the Ontario government;

    d. The costs of this application; and

    e. Such other relief as counsel requests and this Honourable Court deems just.

2. The grounds for the application are:

    a. The Mohawks of Kahnawà:ke (Kahnawákeró:non) are one of the eight communities that make up the Mohawk (Kanien:keha'ka) Nation. The traditional territory of the Mohawk extends through vast regions of what is currently referred to as Quebec, Ontario, and the northeastern United States. This traditional territory has never been ceded, leaving full Mohawk title and interests intact.

    b. The Mohawk Council of Kahnawà:ke ("MCK") is the duly elected organization that provides governmental, administrative, and operational services to the community of Kahnawà:ke. The Mohawks of Kahnawà:ke

have the capacity of an Indian Band under the *Indian Act*, R.S.C. 1985, c. I-5, as amended, and are an Aboriginal people under section 35 of the *Constitution Act, 1982*.

c. MCK has a longstanding interest in gaming and wagering, which have been integral parts of Mohawk culture since time immemorial. This interest has caused MCK to, among other things, appear before the Standing Committee of the House of Commons on Justice and Human Rights regarding *Bill C-218: An Act to amend the Criminal Code (sports betting)*. MCK also has specific expertise in gaming and wagering derived from its unique history and culture, and from conducting and managing their own gaming regime pursuant to their Aboriginal right to do so.

d. iGaming Ontario ("IGO") is a corporation without share capital continued under O. Reg. 722/21, *Lottery Subsidiary – iGaming Ontario*. IGO is mandated to, among other things, develop, undertake, and organize prescribed online lottery schemes, and "conduct and manage" those online lottery schemes in accordance with the *Criminal Code* and the *Gaming Control Act, 1992*. IGO is a subsidiary of the Alcohol and Gaming Commission of Ontario ("AGCO"). The Ministry of the Attorney General is the Ministry responsible for the AGCO and IGO.

Ontario announces plans for online gaming market

e. In its 2019 budget, the Ontario government announced its plan to establish a "competitive market for online gambling," which would include online gaming operated by private operators. The Ontario government repeated that plan in its 2020 budget. In a departure from past practice in Ontario, the AGCO, and not Ontario Lottery and Gaming, would "conduct and manage iGaming, in addition to having the role of regulator."

f. A "key part" of the Ontario government's online gaming strategy was the legalization of single event sports wagering, which at the time was prohibited by the *Criminal Code*. On June 29, 2021, that prohibition was repealed when *Bill C-218, An Act to amend the Criminal Code (sports betting)* received royal assent.

Ontario makes legislative changes to establish an online gaming market

g. Ontario took preliminary steps towards establishing an online gaming market on December 8, 2020, when Bill 229, *An Act to implement Budget measure and to enact, amend and repeal various statutes* received Royal Assent. The Act amended the *Alcohol and Gaming Commission of Ontario Act, 2019* and the *Alcohol, Cannabis and Gaming Regulation and Public Protection Act, 1996* by, among other things, empowering the Lieutenant Governor in Council to make regulations:

i. establishing a "lottery subsidiary" of the AGCO which has as its objects and duties "conducting and managing prescribed online lottery schemes"; and

ii. prescribing online lottery schemes for the subsidiary to conduct and manage.

Ontario establishes iGaming Ontario

h. On July 6, 2021, the Lieutenant Governor in Council exercised these new regulation-making powers by promulgating O. Reg. 517/21, *Lottery Subsidiary – iGaming Ontario*, which:

i. established the "lottery subsidiary", IGO; and

ii. prescribed the online lottery schemes IGO is responsible for conducting and managing as follows:

> For the purposes of the Act and this Regulation, a lottery scheme offered through a gaming site that is an electronic channel operated by a supplier registered as an operator under the *Gaming Control Act, 1992* is prescribed as an online lottery scheme.[1]

i. On November 29, 2021, the Lieutenant Governor in Council continued IGO under O. Reg. 722/21, *Lottery Subsidiary – iGaming Ontario*.

The AGCO publishes an application guide for becoming an iGaming operator

j. On or about August 18, 2021, the AGCO published information to assist private operators in applying to register to operate gaming sites in Ontario's planned online gaming market in the *Internet Gaming Operator Application Guide*. The Guide explains that in general, private operators operating a gaming site would have "control" over the site, and "ongoing responsibility for the gaming site as a whole, including key decision-making activities."

Ontario publishes the *Registrar's Standards for Internet Gaming*

k. On or about September 9, 2021, the AGCO published the *Registrar's Standards for Internet Gaming*, which set out the regulatory standards with which operators of online gaming sites must comply. Among other things, the Standards make private operators that are registered, and which have entered into commercial agreements with IGO, responsible for the conduct and management of their online gaming platforms.

Ontario launches online gaming market

l. On January 28, 2022, IGO announced that the *Registrar's Standards for Internet Gaming* will come into force on April 4, 2022, which is the date when "private gaming operators that have registered with the AGCO and

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[1] General Regulation 78/12 under the *Gaming Control Act, 1992*, defines "operator" as "a person who operates a gaming site."

have executed an operating agreement with [IGO] can begin offering their games to players in Ontario." Despite outstanding debate about the iGaming Scheme's[2] legality,[3] the iGaming Scheme launched on that date.

The iGaming Scheme is illegal

m. Section 206(1) of the *Criminal Code* prohibits all forms of gaming. However, s. 207(1)(a) and s. 207(4)~~(c)~~ together create an exception for lottery schemes conducted and managed by the government of a province in accordance with any law enacted by the legislature of that province.

n. Online lottery schemes established and operating under the iGaming Scheme are not conducted and managed by the Ontario government, since, among other things:

i. Private operators, not the province, own and operate their own proprietary platforms;

ii. Private operators, not the province, are responsible for key decision-making activities;

iii. Private operators, not the province, are responsible for meeting compliance obligations for their gaming sites;

iv. Private operators, not the province, have authority to retain suppliers in relation to the gaming site; and

---

[2] Defined to include the *Registrar's Standards for Internet Gaming*, commercial agreements between iGaming Ontario and private operators, and all other instruments that permit online lottery schemes in Ontario.

[3] See e.g. Report of the Office of the Auditor General of Ontario, *Internet Gaming in Ontario*, December 2021, p. 7

v. Private operators, not the province, are the primary beneficiaries of revenue generated by the iGaming Scheme.

o. Lottery schemes established and operating under the iGaming Scheme are conducted and managed by private operators, not the province. They therefore do not fall within the exception in s. 207(1)(a) and s. 207(4)~~(c)~~ of the *Criminal Code*. Operators complying with the iGaming Scheme are being made to violate the prohibition in s. 206(1) of the *Criminal Code*.

The iGaming Scheme is *ultra vires* the province

p. To the extent it purports to expand the exception in s. 207(1)(a) and s. 207(4)~~(c)~~ of the *Criminal Code* or otherwise permit activity which Parliament has prohibited in the *Criminal Code*, the iGaming Scheme is *ultra vires* Ontario because it is in pith and substance in relation to criminal law.

Federal paramountcy renders the iGaming Scheme inoperative

q. Dual compliance with the iGaming Scheme and s. 206(1) of the *Criminal Code* is impossible. The iGaming Scheme also conflicts with the purpose of s. 207(1)(a) and s. 207(4)~~(c)~~. Federal paramountcy therefore renders the iGaming Scheme inoperative to the extent of the inconsistency.

Statutes and regulations

(a) *Constitution Act, 1867*, ss. 91(27)

(b) *Rules of Civil Procedure*, rules 14.05(2), 14.05(3)(h);

(c) *Alcohol, Cannabis and Gaming Regulation and Public Protection Act*, 1996, S.O. 1996, c. 26, ss. 1.1, 4.1, 6.1, 16(d)(e);

(d) *Alcohol and Gaming Commission of Ontario Act*, 2019, S.O. 2019, c. 15, ss. 1.1, 3(1), 4.1, 6.1, s. 16(i);

(e) *Criminal Code of Canada*, R.S.C., 1985, c. C-46, s. 206(1), 207(1)(a), 207(4);

(f) Ontario Regulation 78/12, *General*, s. 1, 3(1); and

(g) Ontario Regulation 722/21, *Lottery Subsidiary, iGaming Ontario*.

3. The following documentary evidence will be used at the hearing of the application:

a. Affidavits to be sworn; and

b. Such other evidence as counsel advises and this Honourable Court permits.

November 28, 2022

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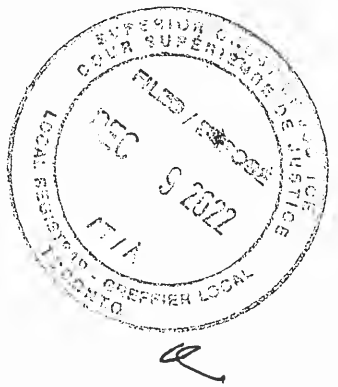
Counsel for the Applicant

MOHAWK COUNCIL OF KAHNAWA'KE	iGAMING ONTARIO and THE ATTORNEY GENERAL OF ONTARIO	Court File No.: CV-22-00690830-0000
Applicant	Respondents	

ONTARIO
SUPERIOR COURT OF JUSTICE

PROCEEDING COMMENCED AT TORONTO

NOTICE OF APPLICATION



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Counsel for the Applicant

This is Exhibit “J” referred to in the Affidavit of Elena Reonegro affirmed February 6, 2023.

Commissioner for Taking Affidavits (or as may be)

GREGORY SHEPPARD

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)

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SIX NATIONS OF THE GRAND RIVER BAND OF INDIANS Plaintiff	-and-	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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This is Exhibit “K” referred to in the Affidavit of Elena Reonegro affirmed February 6, 2023.

Commissioner for Taking Affidavits (or as may be)

GREGORY SHEPPARD

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~~HIS MAJESTY THE ~~QUEEN~~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
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Tania Mitchell

AND TO: ~~HER~~HIS MAJESTY THE ~~QUEEN~~KING IN RIGHT OF ONTARIO
~~c/o Attorney General of Ontario~~
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Attention: ~~J.T.S. McCabe, Q.C.~~ Manizeh Fancy
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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~~d), 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)

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SIX NATIONS OF THE GRAND RIVER BAND OF INDIANS Plaintiff	-and- 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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SIX NATIONS OF THE GRAND RIVER BAND OF INDIANS	-and-	THE ATTORNEY GENERAL OF CANADA et al.	-and-	THE HAUDENOSAUNEE DEVELOPMENT INSTITUTE	Court File No. CV-18-594281-0000
Plaintiff		Defendants		Moving Party	

ONTARIO
SUPERIOR COURT OF JUSTICE

Proceeding commenced at Brantford
and transferred to Toronto

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

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SIX NATIONS OF THE GRAND RIVER BAND OF INDIANS	-and-	THE ATTORNEY GENERAL OF CANADA et al.	-and-	THE HAUDENOSAUNEE DEVELOPMENT INSTITUTE	Court File No. CV-18-594281-0000
Plaintiff		Defendants		Moving Party	

ONTARIO
SUPERIOR COURT OF JUSTICE

Proceeding commenced at Brantford
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SUPPLEMENTAL RESPONDING MOTION RECORD OF THE PLAINTIFF

MOTION RETURNABLE MAY 8-11, 2023

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