

Court File No. CV-18-594281-0000

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

BETWEEN:

**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

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**MOTION RECORD  
OF MISSISSAUGAS OF THE CREDIT FIRST NATION**  
(For leave to intervene pursuant to rules 13.01 and 37 of the  
*Rules of Civil Procedure*, RRO 1990, Reg 194,  
Returnable May 12, 2023)

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March 2, 2023

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(Originally Brantford Court File No: 406/95)

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**SUPERIOR COURT OF JUSTICE**

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Plaintiff

- and -

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

Defendants

**NOTICE OF MOTION**

The moving party and proposed intervenor Mississaugas of the Credit First Nation will make a motion for leave to intervene to the Court on May 12, 2023, at a time and location to be determined by the case management judge.

**PROPOSED METHOD OF HEARING:** The motion is to be heard by video conference, details to be provided.

**THE MOTION IS FOR:**

1. An order under Rule 13.01 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194 granting Mississaugas of the Credit First Nation leave to intervene as an added party in the above-captioned action (“Action”) with the full rights of a party;
2. An order requiring the parties to the Action to, within 15 days, provide counsel for Mississaugas of the Credit First Nation all documents exchanged between

the parties in the Action to date, inclusive of productions, discovery transcripts or questions and answers on written examination for discovery, expert reports and documents referred to therein, and orders and endorsements of this Honourable Court;

3. Costs of this motion; and
4. Such further relief as Mississaugas of the Credit First Nation may request and this Honourable Court deems just.

**THE GROUNDS FOR THE MOTION ARE:**

**A. Overview**

5. Since the 1600s and at least until the assertion of Crown sovereignty, Mississaugas of the Credit First Nation or its predecessors (together, “MCFN”) exclusively occupied, used, and controlled its territory within what is now southern and southwestern Ontario (“MCFN Territory”). MCFN continues to use, occupy, and exercise rights across MCFN Territory to the present day.
6. In the decades following the Royal Proclamation of 1763, MCFN and the Crown entered into a series of treaties under which the Crown purchased lands from MCFN to accommodate the influx of settlers, including loyalists fleeing the United States following the American Revolution, arriving in MCFN Territory.
7. These loyalists included the predecessor of Six Nations of the Grand River Band of Indians (“Six Nations”) who had fought with the British in the American Revolution. After the war, Six Nations found the new international border put

their territory under American control. In recognition of Six Nations' support during the American Revolution, the Crown offered to resettle Six Nations in the Grand River Valley in MCFN Territory.

8. To resettle Six Nations in Ontario, the Crown had to first purchase the Grand River Valley from the Indigenous title-holder: MCFN. In 1784, MCFN and the Crown entered into the Between the Lakes Purchase under which the Crown purchased lands between Lake Erie and Lake Huron from MCFN, including the Grand River Valley. The Crown then granted six miles on either side of the Grand River to Six Nations under the Haldimand Proclamation of 1784 ("Haldimand Tract").
9. In 1995, Six Nations commenced an action against the Attorney General of Canada ("Canada") and Her Majesty the Queen (now His Majesty the King) in Right of Ontario ("Ontario", together with Six Nations and Canada, the "Parties") seeking relief arising from the disposition or mismanagement of certain lands within the Haldimand Tract. Six Nations, Canada, and Ontario all plead and rely on the history, rights, interests, and treaties of MCFN in support of their respective positions.
10. Six Nations alleges in its pleadings that its history in Ontario is deep and enduring. It asserts rights under section 35 of the *Constitution Act, 1982* ("Section 35") within MCFN Territory and asserts MCFN agreed to extinguish certain rights in the same area. Canada and Ontario present a contrasting view, pleading MCFN has deeper historical connections in Ontario and expelled the

Haudenosaunee, one of whose successors is Six Nations, from the territory in the late 1600s. Ontario and Canada rely on the Crown's treaties with MCFN as a defence to Six Nations' allegations. In this battle between the Crown and Six Nations, MCFN and its rights, history, and treaties are caught in the crossfire.

11. MCFN seeks leave to intervene in the Action as an added party, with the full rights of a party, to defend its rights and interests.

**B. The history, rights, and interests of MCFN**

12. MCFN is an Indigenous community of Anishinaabe people and is one of the “aboriginal peoples of Canada” within the meaning of Section 35. MCFN is also a “band” within the meaning of s. 2(1) of the *Indian Act*, R.S.C. 1985, s. I-5.

**i. MCFN occupied its territory in what is now southern and southwestern Ontario prior to the assertion of Crown sovereignty**

13. Long before the assertion of Crown sovereignty, MCFN and other communities of Anishinaabe people occupied territory in what is now Ontario. This territory included lands north and west of Lake Ontario as well as lands along Georgian Bay and the north shore of Lake Huron.
14. MCFN was seasonally migrant and used this territory for hunting, fishing, gathering, healing, cultural activities, and other purposes. Like other Indigenous communities at the time, MCFN participated in the commercial fur trade.
15. By the 1600s, the Haudenosaunee—one of whose successors is Six Nations—whose territory was situated entirely south of Lake Ontario and east of the

Niagara River in what is now the state of New York, had nearly exhausted the beaver population within their territory.

16. In or around 1650, the Haudenosaunee launched an invasion into what is now Ontario to expand their hunting grounds and secure continued participation in the commercial fur trade.
17. During the following decades, MCFN and other communities of Anishinaabe people launched a coordinated campaign to repel the Haudenosaunee invaders. The ensuing conflict is known as the “Beaver Wars.”
18. In or around 1695, MCFN defeated the Haudenosaunee, which completely withdrew from what is now Ontario and returned to its territory south of Lake Ontario and east of the Niagara River in what is now the state of New York.
19. From that time, MCFN exclusively occupied MCFN Territory, which extends from the Rouge River Valley in the east, across to the headwaters of the Thames River in the west, down to Long Point on Lake Erie and back along the shores of Lake Erie, the Niagara River, and Lake Ontario to the Rouge River Valley. MCFN Territory includes the Grand River Valley.
20. In or around 1701, the conclusion of the “Beaver Wars” was memorialized in two agreements: the Dish with One Spoon and the Great Peace of Montreal. At the same time, the Haudenosaunee signed an agreement with the British at Albany, New York—the Nanfan Deed of 1701—seeking British protection over the very territory they had just failed to conquer.

21. Among other things, the Dish with One Spoon and the Great Peace of Montreal governed terms upon which the Haudenosaunee could pass through and use MCFN Territory; namely, with MCFN consent. They did not recognize, grant, or protect any legal interest of the Haudenosaunee in the lands comprising MCFN Territory.

**ii. MCFN possesses treaty rights with respect to MCFN Territory**

22. At all relevant times, the Crown recognized MCFN as the sole Indigenous people with title to and control over lands within MCFN Territory.

23. Beginning in the late 18th century, MCFN and the Crown entered into a series of treaties within the meaning of Section 35 respecting lands within MCFN Territory, including the Grand River Valley, including, but not limited to:

- a) In 1781, the Treaty at Niagara respecting certain lands on the west bank of the Niagara River from the shore of Lake Erie to the shore of Lake Ontario;
- b) In 1784 and 1792, the Between the Lakes Purchase and Purchase No. 3, respectively, respecting certain lands between Lake Erie and Lake Huron, including the Haldimand Tract;
- c) In 1795 and 1797, the Brant Tract No. 3<sup>3</sup>/<sub>4</sub> and Treaty No. 8, respectively, respecting certain lands at and around Burlington Bay ultimately transferred by the Crown to Six Nations leader Joseph Brant;



- d) In 1805, the Toronto Purchase No. 13 respecting certain lands in and around what is now Toronto;
  - e) In 1806, the Head of the Lake Treaty No. 14 respecting certain lands in and around what is now Toronto, Mississauga, Oakville, and Burlington;
  - f) In 1818, the Ajetance Treaty No. 19 respecting certain lands north of those lands contemplated under the Head of the Lake Treaty No. 14; and
  - g) In 1820, Treaties No. 22 and 23 respecting certain lands along Bronte Creek and 16 Mile Creek in what is now Oakville and the Credit River in what is now Mississauga.
24. The Crown has never entered into a treaty within the meaning of Section 35 with any other Indigenous peoples within or respecting MCFN Territory, including Six Nations or its predecessors.
- iii. MCFN possesses Aboriginal rights with respect to MCFN Territory**
25. MCFN possesses certain rights protected under Section 35 as Aboriginal rights flowing from its historic and contemporary use, occupation, and control of MCFN Territory that have not been addressed in its treaties with the Crown, including, but not limited to, self-government, harvesting rights, and Aboriginal title to certain lands and waters within MCFN Territory.

**iv. MCFN and the Crown are engaged in negotiations and other processes to determine, recognize, and respect its rights and claims**

26. In recent years, MCFN has entered into various agreements with Canada and Ontario establishing confidential negotiations and other processes to settle MCFN's outstanding claims and in furtherance of the Crown's treaty and other constitutional obligations to MCFN. The scope and content of these processes are determined, in part, by MCFN's Aboriginal and treaty rights, its outstanding claims against the Crown, and the scope and content of the Crown's duties to MCFN that flow from the honour of the Crown.

**C. The Action engages the rights and interests of MCFN**

27. On March 7, 1995, Six Nations commenced the Action against Canada and Ontario. Six Nations seeks relief arising from the disposition or mismanagement of certain lands within the Haldimand Tract, a piece of land situated within MCFN Territory on lands subject to one or more of the treaties between MCFN and the Crown. The statement of claim has been amended several times, most recently on May 20, 2020.

28. On April 1, 2022, Six Nations delivered certain expert reports to Canada and Ontario, including (a) the report of Dr. Jon Parmenter, dated March 2022; (b) the report of Dr. Alan Taylor, dated March 28, 2022; and (c) the report of Dr. Reginald Good, dated March 30, 2022 ("Six Nations Expert Reports"). Canada and Ontario have delivered or will deliver expert reports in accordance with the timetable set by this Honourable Court.

29. The Parties' pleadings and the Six Nations Expert Reports raise legal issues and make factual assertions that engage and expressly rely on MCFN's history, rights, and interests, including:

- a) the historic use, occupation, and control of what is now southern and southwestern Ontario by Anishinaabeg—including MCFN—and Haudenosaunee peoples, and rights, title, or Crown duties flowing therefrom, including, for example:
  - i) whether, from time immemorial, Six Nations or its predecessors occupied, possessed, or used territories in what is now Ontario and Quebec and whether such territories comprise Six Nations' "aboriginal lands";
  - ii) whether Six Nations or its predecessors intermittently occupied lands within what is now Ontario in the 1600s;
  - iii) whether, during the 1640s and 1650s, Six Nations or its predecessors conquered and acquired sovereignty over what is now southern and southwestern Ontario, including the Grand River Valley;
  - iv) whether MCFN drove Six Nations or its predecessors from certain lands within what is now Ontario in the latter part of the 1600s;

- v) whether, from at least the early 1700s, the lands south of the headwaters of the Grand River to Lake Erie were occupied and used by MCFN;
  - vi) whether Six Nations or its predecessors first migrated to the Haldimand Tract in or around 1784;
  - vii) whether the Haldimand Tract or any portion thereof, including land covered by water, was or is held by Six Nations or its predecessors as Aboriginal title or sovereign territory;
- b) the nature, scope, and meaning of agreements between Anishinaabeg—including MCFN—and Haudenosaunee peoples with respect to lands in what is now southern and southwestern Ontario, including, for example:
- i) whether MCFN and Six Nations or its predecessors agreed to share certain lands, including sovereignty over those lands, within what is now southern and southwestern Ontario, including under the Dish with One Spoon or the Great Peace of Montreal;
- c) the legal status, interpretation, and effect of agreements between Six Nations or its predecessors and the Crown relating to lands within MCFN Territory, and whether such agreements are treaties within the meaning of Section 35, including, for example:
- i) whether the Nanfan Deed of 1701 is a treaty within the meaning of Section 35;

- ii) whether, under the Nanfan Deed of 1701, the Crown
  - (a) recognized certain lands of Six Nations or its predecessors for hunting, trapping, fishing, and trading within what is now Ontario, including the Haldimand Tract; (b) undertook to protect those lands on behalf of Six Nations or its predecessors; and
  - (c) guaranteed the sovereignty and ownership of Six Nations or its predecessors over those lands;
- iii) whether the Haldimand Proclamation of 1784 is a treaty within the meaning of Section 35;
- iv) whether the Haldimand Proclamation of 1784 represents the deferred fulfillment by the Crown of a portion of its commitments under the Nanfan Deed of 1701;
- v) whether the Haldimand Proclamation of 1784 recognized (a) the sovereign nationhood of Six Nations or its predecessors; or (b) the Haldimand Tract as Six Nations' or its predecessors' sovereign territory;
- vi) whether any agreements, including treaties under Section 35, if any, between Six Nations or its predecessors and the Crown have any effect on the Section 35 rights and other interests of MCFN;

- d) the interpretation of treaties and agreements entered into between MCFN and the Crown, and Crown duties flowing therefrom, including, for example:
- i) whether, in 1784, the Crown purchased certain lands from MCFN and whether such purchase was linked to the Haldimand Proclamation or the Simcoe Patent of 1793;
  - ii) whether, in 1784, MCFN, Six Nations, and the Crown entered into a tripartite treaty under which (a) MCFN executed a quitclaim in favour of Six Nations or its predecessors; and (b) MCFN agreed to cease exercising customary hunting and ancillary rights within the Haldimand Tract; and
  - iii) whether, in 1792, MCFN executed a quitclaim in favour of Six Nations or its predecessors.

**D. MCFN satisfies the requirements to be added as a party to the Action**

30. MCFN has an interest in the subject matter of the Action and MCFN may be adversely affected by a judgment in the Action.
31. The Action squarely deals with lands within MCFN Territory. The Action directly engages the history, rights, and interests of MCFN, including its historic use and occupation of MCFN Territory and its treaties with the Crown. The Parties expressly and repeatedly plead and rely on historical and contemporary

facts relating to MCFN, including MCFN's treaties and other agreements with the Crown.

32. The Six Nations Expert Reports purport to interpret MCFN's treaties with the Crown and assert that in those treaties MCFN agreed to surrender certain rights within the Haldimand Tract as well as opine on MCFN history within MCFN Territory.
33. There is a significant likelihood that the Action will make factual findings about MCFN's history, treaties, and rights and that it will make legal determinations about the scope and meaning of MCFN's treaties with the Crown or its rights under Section 35. As defendants in the Action, MCFN's treaty partners—Canada and Ontario—would be bound by findings of fact and law in relation to these issues. This would unavoidably impact the continuing relationship between MCFN and the Crown, both in respect of the Crown's discharge of its constitutional obligations to MCFN and how MCFN and the Crown resolve MCFN's outstanding claims and how MCFN builds its future within MCFN Territory based on its constitutional rights.
34. Moreover, findings of fact or conclusions of law with respect to any asserted Aboriginal or treaty rights of Six Nations within the heart of MCFN Territory would necessarily—and likely adversely—impact MCFN's ability to exercise its rights and jurisdictions, including MCFN's right of self-government and jurisdiction as steward of its traditional lands.

**E. MCFN would introduce Elder and expert evidence**

35. As an Indigenous community of Anishinaabe people with Aboriginal and treaty rights in relation to southern and southwestern Ontario, MCFN would introduce Elder and expert evidence on issues that engage its rights and interests, including, but not limited to (a) the history of MCFN in what is now southern and southwestern Ontario, including the historical relationship between MCFN and Six Nations or its predecessors; and (b) the history of treaty making between MCFN, Six Nations or its predecessors, and the Crown.
36. This evidence is necessary for this Honourable Court to adjudicate effectively and completely the factual and legal issues in the Action. As the rights holder, MCFN—and not Canada or Ontario—is best positioned to adduce such evidence.

**F. MCFN’s participation would not prejudice the Parties**

37. On January 6, 2022, MCFN wrote to the Honourable Justice Sanfilippo, the case management judge at that time, advising that “[t]he Six Nations Action has the potential to adversely impact MCFN’s Aboriginal and treaty rights protected by s. 35 of the *Constitution Act, 1982*.” MCFN requested an invitation to attend case management conferences in the Action as an observer for the purpose of ascertaining how, if at all, the issues in the Action may impact its rights and interests. As set out in the case management endorsements of January 24, 2022, and March 1, 2022, both Canada and Ontario advised they consented to



MCFN's attendance at case management conferences; Six Nations refused to provide its consent.

38. In its case management endorsement of March 1, 2022, the Court directed the question of MCFN's attendance at case management conferences should be deferred until after the completion of the development of an issues list by the Parties. Despite the passage of over ten months since MCFN wrote to the Court, and the subsequent service of the Six Nations Expert Reports in April 2022, the issues list has not been completed.
39. The factual and legal issues introduced by the Parties engage and may adversely impact the rights of MCFN. The participation of MCFN is necessary for this Honourable Court to adjudicate effectively and completely the factual and legal issues set out above and would outweigh any prejudice potentially caused by its intervention in the Action.

**G. MCFN seeks all the rights of a party**

40. MCFN seeks all the rights of a party to the Action.

**H. Statutes, rules, and regulations relied on**

41. Rules 1.04, 1.05, 2.01, 13.01, 37, and 50.13 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194.
42. Such further and other grounds as counsel may advise and this Honourable Court may permit.

**THE FOLLOWING DOCUMENTARY EVIDENCE** will be used at the hearing of this motion:

43. Affidavit of R. Stacey Laforme, to be affirmed.
44. Affidavit of John A. Wilson, to be affirmed.
45. Such further and other materials as counsel may advise and this Honourable Court may permit.

Dated: October 27, 2022

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Band of Indians Canada et al.  
(Plaintiff) (Defendants)

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**SUPERIOR COURT OF JUSTICE**

BETWEEN:

**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

**AFFIDAVIT OF R. STACEY LAFORME**  
**Affirmed on December 2, 2022**

I, R. Stacey Laforme, Chief of the Mississaugas of the Credit First Nation, in the County of Brant, Indian Reserve New Credit 40A, in the Province of Ontario, AFFIRM THAT:

1. My name is R. Stacey Laforme. I am a member of Mississaugas of the Credit First Nation, which is an Indigenous community of Anishinaabe people and an *Indian Act* band. I live on Mississaugas of the Credit First Nation's reserve—New Credit 40A—which is located immediately west of the town of Hagersville in southwestern Ontario and adjacent to the reserve of Six Nations of the Grand River Band of Indians (“Six Nations”)—Six Nations 40—which is an Indigenous community of Haudenosaunee people and an *Indian Act* band.
2. Since 2015, I have been the elected Chief of Mississaugas of the Credit First Nation. As such, I have personal knowledge of the facts and matters deposed to

in this affidavit, save and except where stated to be based upon information and belief, in which case I verily believe them to be true.

3. I make this affidavit in support of Mississaugas of the Credit First Nation's motion for leave to intervene in *Six Nations of the Grand River Band of Indians v. The Attorney General of Canada and His Majesty the King in Right of Ontario* ("Action") and for no other or improper purpose.

**A. We have a responsibility to our people to ensure our history and our connection to our territory continues for generations into the future**

4. Mississaugas of the Credit First Nation's territory extends from the Rouge River Valley in the east, across to the headwaters of the Thames River, down to Long Point on Lake Erie and back along the shores of Lake Erie, the Niagara River and Lake Ontario to the Rouge River Valley. Our territory encompasses present-day Kitchener, Niagara Falls, Hamilton, Toronto, and Six Nations' reserve (Six Nations 40), as well as our communal lands and waters between and surrounding the same, including the waters and lakebeds of Lake Erie and Lake Ontario. Our territory has sustained us for countless generations and must continue to do so for all our generations to come. A true copy of a map of Mississaugas of the Credit First Nation's territory and our treaties is attached as **Exhibit "A"**.

5. Our relationship to our territory is central to our identity and our very existence as a people. We have been entrusted with the stewardship and care of our lands, waters, and resources by the Creator. Just as we are sustained by our territory, so



must we sustain it. This is our responsibility to all of creation and to our future generations. This sacred trust lies at the heart of who we are and how we seek to live as Indigenous people.

6. Mississaugas of the Credit First Nation has Aboriginal title, Aboriginal rights, and treaty rights across our territory. Our members use our territory for harvesting, hunting, fishing, and cultural ceremonies. We are actively involved in protecting the environmental and archaeological resources within our territory to ensure our lands and waters continue to provide for the exercise of our Aboriginal and treaty rights and to ensure the preservation of our culture and way of life.
7. The responsibility of Mississaugas of the Credit First Nation as stewards of the lands and waters of our territory is one that has been built and reinforced over the generations of our occupancy and reliance on these lands and waters. It was built slowly, over the years, decades, and centuries of our ancestors living on the lands around Lakes Erie and Ontario, fishing in our waters, and travelling up and down the rivers across our territory. It is our role and responsibility to ensure that this history and the connection of our people to our territory continues for generations into the future. It is this responsibility that grounds our decision to seek leave to intervene in the Action.

**B. Our decision to seek leave to intervene in the Action is grounded in our responsibility to our people and our territory**

8. Our decision to seek leave to intervene in this Action was a difficult, but necessary, one, and was based on our responsibility to our people and our territory. It was not a decision we made lightly.
9. We have always supported—and will always support—Six Nations’ effort to hold the government of Canada (“Canada”) and the government of Ontario (“Ontario”) accountable for their mismanagement and abuses relating to the lands granted to Six Nations under the Haldimand Proclamation of 1784. I believe our support of Six Nations in its pursuit of justice is consistent with a pattern of mutual respect between our peoples. For example, and as I explain in more detail below, our people entered into a treaty with the Crown in 1784 that paved the way for the Crown to grant Six Nations its lands in the Grand River Valley—the very lands that are the subject of the Action; and in the 1840s, when our people were driven from our village on the banks of the Credit River, Six Nations offered us lands that have now become our reserve. Both of our peoples have suffered immeasurably under the yoke of colonialism.
10. The relationship between our peoples, however, is a long and complicated one and has also been marred by conflict. For example, in the 1600s, the Haudenosaunee—whose territory was situated in what is now the state of New York—invaded our ancestors’ territory in what is now Ontario in a conflict known as the “Beaver Wars.” Our ancestors and our Anishinaabe brothers and

sisters ultimately drove the Haudenosaunee out of our lands and back to their territory south of Lake Ontario. While our peoples made peace in the early 1700s under a Dish with One Spoon agreement, the decades-long war remains a significant moment in our peoples' histories.

11. Unfortunately, I believe that in seeking justice for wrongs committed against it by Canada and Ontario, Six Nations has taken aim at our people and put our history, our rights, and our territory in its crosshairs. While we do not wish to stand in the way of Six Nations' pursuit of justice, the Action engages—and denies—our people's history within our territory and our constitutional rights and connection to it.
12. For its part, the Crown—both Canada and Ontario—has relied on our people's history and our treaties with the Crown in this Action. The Crown is our treaty partner, and over the centuries, it has failed to live up to its treaty commitments to our people in many ways. Now that the Crown is relying on our treaties to its benefit, our voice must be heard, and we must have a say in determining what these constitutionally protected agreements mean.
13. We seek to intervene to ensure our story is honestly, accurately, and respectfully told—in our voice and by our people—and that our constitutionally protected rights and interests to and within our territory are preserved and do not become unnecessary casualties of Six Nations' battle for justice. To be clear, we do not seek any damages or other compensation from the Crown in connection with its wrongdoing in this Action, and we do not wish to diminish any compensation

that the Crown may owe to Six Nations for the Crown's mismanagement of Six Nations' lands.

14. I have had an opportunity to review the pleadings in this Action and I note that Six Nations, Canada, and Ontario all refer to and rely on our history—which is fundamental to our Aboriginal rights and connection to our territory—and our treaties with the Crown. I also note that Six Nations claims to have treaty rights respecting our territory, which—as I explain in more detail below—is inconsistent with our people's understanding of our history and Crown-Indigenous relations within our territory.
15. I am deeply concerned that the Action will—by design or not—have profound impacts on how our people relate to our territory and our ongoing relationships with the federal and provincial Crown. Like many Indigenous peoples, our relationship with the Crown has historically been one of broken promises. In recent years, however, Mississaugas of the Credit First Nation and Canada and Ontario have come to the negotiation table in a good faith effort to address our outstanding claims and our unfulfilled rights within our territory, without resorting to the courts. We are cautiously optimistic that a renewed relationship with the Crown—based on mutual respect and understanding—will result in our treaties finally being respected and will secure the well-being of our people for generations to come.
16. Before we arrive at that goal, there is a lot of hard work that needs to be done. This work includes working together to reach shared understandings of our

people's history in southern and southwestern Ontario, and shared understandings of what legal rights and obligations our many treaties with the Crown create. As treaty partners, Mississaugas of the Credit First Nation and the Crown have—to date—largely chosen to work through these issues at the negotiation table.

17. If this Action addresses our history and our rights, it would inevitably impact how the Crown approaches our ongoing negotiations and would deprive our people of agency over our future. We seek leave to intervene to have a say in the determination, recognition, and respect of our rights and our future relationship with the Crown.
  
18. I am also concerned that Six Nations is using this Action to re-write history to create treaty rights where there are none. I note that Six Nations refers to the “Deed from the Five Nations to the King of their Beaver Hunting Ground” (“Nanfan Deed”) of 1701 and the Haldimand Proclamation of 1784—both of which I address in more detail below—as treaties. We are the sole Indigenous people with treaties within and respecting our territory, except for a northern portion of our territory with respect to which the Crown treated with our Anishinaabe brothers and sisters. Subject to this exception, which I explain in more detail below, our understanding as a people is that the Crown never entered into any treaty respecting our territory with any other Indigenous people, including Six Nations.

**C. The story of our territory**

19. Since time immemorial, our ancestors and other communities of Anishinaabe people have lived in and occupied territory in what is now Ontario. Our ancestors' territory included lands north and west of Lake Ontario as well as lands along Georgian Bay and the north shore of Lake Huron.
20. In the 1600s, the Haudenosaunee attempted to take over the territory of our ancestors and our Anishinaabe brothers and sisters in the Beaver Wars. At the time of the Haudenosaunee invasion, their territory was located south of Lake Ontario and east of the Niagara River in what is now the state of New York.
21. In the decades that followed, our ancestors left their settlements on Lake Huron to repel the invasion. Our ancestors travelled down the trail known as the Toronto Carrying Place, which extended from Georgian Bay across Lake Simcoe and down the Holland and Humber Rivers to Lake Ontario. Our ancestors fought—alongside our Anishinaabe brothers and sisters—and ultimately defeated the Haudenosaunee, driving them back to their territory in what is now the state of New York.
22. After the defeat of the Haudenosaunee in the Beaver Wars, our ancestors settled in, occupied, used, and controlled the territory that extends from the Rouge River Valley in the east, across to the headwaters of the Thames River in the west, down to Long Point on Lake Erie and back along the shores of Lake Erie, the Niagara River, and Lake Ontario to the Rouge River Valley. Mississaugas of

the Credit First Nation is the direct descendant of our ancestors who settled in this part of our territory.

23. Our ancestors put down roots along the north shore of Lake Ontario and adjacent lands and waterways. In establishing exclusive control of our territory, our ancestors held a position of prominence and authority in the trade routes through what is now Toronto and across the lands between and waters of Lakes Erie and Ontario.
24. Our ancestors followed a yearly cycle of movement and resource harvesting throughout our territory in seasonal rounds. In winter months, extended family groups dispersed across our territory to hunt large and small game. This provided both food and pelts for commercial trade.
25. In spring, families moved to sugar bushes to tap maple trees. Following the maple harvest, families congregated at the Credit River to deliver the furs and pelts they had harvested over the winter, and to fish for salmon, which were abundant in that waterway. Fishing was supplemented by hunting small game and fowl.
26. Our ancestors also planted corn and other vegetables and collected a variety of wild foods including berries, mushrooms, and wild rice. In fall, our ancestors often returned to the Credit River to fish for salmon and obtain credit, in the form of trade foods, for the furs that would be harvested over the coming winter.

**D. Our Aboriginal rights within our territory**

27. Like our ancestors before us, we continue to use the lands, waters, and watershed ecosystems within our territory for a variety of purposes, including harvesting, ceremonial, and spiritual purposes. Mississaugas of the Credit First Nation is also extensively involved in protecting the spiritual, cultural, and heritage value of archaeological resources within our territory through close monitoring.
28. We have always exercised governance functions and stewardship in order to protect our territory, conserve the fish and wildlife that depend on it, and ensure its ongoing ability to sustain our people. Our Aboriginal rights entitle us to continue to act as stewards of our territory, to be involved in decisions that affect it, and to participate in the ongoing, responsible management of the resources it provides.
29. Our territory is the source of our identity as a First Nation and the base for our many cultural activities and spiritual ceremonies. It is home to sacred sites, burial grounds, traditional teaching and meeting places, and sites of profound archaeological and historical significance. Our Aboriginal rights entitle us to preserve and exercise our culture and heritage.
30. The ways in which our territory has supported us have changed over time. Our ancestors hunted, trapped, fished, grew crops, gathered wild foods, and tapped maple trees. When Europeans arrived, our ancestors became involved in the



commercial fur trade. Like all other cultures, communities, and nations, we continue to evolve our economies and our relationship to and reliance on the land. Our Aboriginal rights entitle us to support ourselves economically through the lands, waters, and resources of our territory, now and in the future, and in modern and evolving ways. This includes the right to share in the wealth and benefits our territory generates.

31. Despite the long history of treaty making with the Crown, Mississaugas of the Credit First Nation still has Aboriginal title to a tract of land in and around the Rouge River Valley. We also have Aboriginal title to all water, land under water, and floodplains in our territory. We have submitted claims in respect of our Aboriginal title to Canada and Ontario and have advised Canada and Ontario of our title and of the duty to consult and accommodate that arises before any government action that could affect or impair our title. A true copy of the April 6, 2015, letter from Chief B. LaForme to the Honourable B. Valcourt and the Honourable D. Zimmer is attached as **Exhibit “B”**.

**E. Our historical relationships with Six Nations and the Crown**

32. I now return to our people’s nation-to-nation relationships with Six Nations and the Crown. I do not intend or purport to provide an exhaustive history of these relationships and the agreements flowing from them. Our relationships are complex and have spanned centuries and will continue into the future. Instead, my intention is to provide an overview of our people’s history with Six Nations and the Crown for the purposes of our motion for leave to intervene.

**i. The end of the Beaver Wars and the expulsion of the Haudenosaunee from our territory**

33. Toward the end of the Beaver Wars, our ancestors and our Anishinaabe brothers and sisters had driven the Haudenosaunee back to their territory south of Lake Ontario and east of the Niagara River in what is now the state of New York.
34. In or around June 1700, representatives of our ancestors and our Anishinaabe brothers and sisters met with representatives of the Haudenosaunee in Onondaga to negotiate an end to the Beaver Wars. They reached a peace agreement whose underlying principals have ancient roots—known as a Dish with One Spoon agreement—which was recorded in a wampum belt. Our Dish with One Spoon set out the terms upon which our ancestors and the Haudenosaunee would respect each other’s respective territories; namely, the Haudenosaunee could pass through and use our territory with our agreement. It did not grant ownership or control over our territory to the Haudenosaunee.
35. In the summer of 1701, representatives of our ancestors, their Anishinaabe brothers and sisters, the Haudenosaunee, and the French convened in Montreal to engage in further peace discussions. As a result of discussions over a two-week period, the Dish with One Spoon was reaffirmed, and the parties present entered into a further agreement: the Great Peace of Montreal. Like the Dish with One Spoon, the Great Peace of Montreal set out terms of peace that solidified the end of the Beaver Wars; it did not grant ownership or control over

our territory to the Haudenosaunee. A true copy of the Great Peace of Montreal is attached as **Exhibit “C”**.

36. At the same time as peace discussions were taking place in Montreal, Lieutenant Governor John Nanfan, the representative of the British Crown in New York, asked for a meeting with the Haudenosaunee in Albany. The Haudenosaunee sent a small delegation to meet with Lieutenant Governor Nanfan and on July 19, 1701, the parties signed a document known as Nanfan Deed under which the Haudenosaunee purported to place our territory under the protection of the British Crown. These are the very lands from which the Haudenosaunee were expelled by our ancestors and our Anishinaabe brothers and sisters at the end of the Beaver Wars. As such, it is questionable what rights to our territory the Haudenosaunee could have even conveyed in the Nanfan Deed. A true copy of the Nanfan Deed is attached as **Exhibit “D”**.

37. After the end of the Beaver Wars, the Haudenosaunee did not return to our territory in any permanent way until 1784, as I explain in more detail below.

**ii. Our people’s treaties with the Crown**

38. On October 7, 1763, King George III issued a Royal Proclamation (“Royal Proclamation”). Although not a treaty, the Royal Proclamation recognized the pre-existing rights and sovereignty of Indigenous peoples and established that such rights could be ceded only to the Crown. In doing so, the Royal Proclamation confirmed that the Crown was solely responsible for

treaty-making. A true copy of the Royal Proclamation is attached as **Exhibit “E”**.

39. Following the Royal Proclamation, the Crown pursued lands from our ancestors to accommodate the influx of settlers, including loyalists fleeing the United States following the American Revolution and arriving in our territory. Between 1781 and 1820, our ancestors and the Crown entered into a series of treaties respecting our territory, including those set out below. I am not aware of the Crown entering into treaties with any other Indigenous people with respect to our territory, subject to the exception I indicated above.
40. Our history during this time is characterized by a patchwork of treaties and agreements with the Crown over parcels of land in our territory. Through these treaties, our ancestors sought to ensure that we would continue to be able to draw sustenance from the lands, waters, and resources on which our people had long relied.
41. Our treaty rights reflect our unique historical, cultural, and spiritual relationship to our territory and our special relationship with the Crown. Our relationship with the Crown is based on our treaties, solemn agreements between our people and the Crown to share access to the land, preserve peace, and protect our way of life as a First Nation within our territory. By signing treaties, our ancestors never intended to become subjects of the Crown. Our treaties were not intended to, and did not, sever our connection to our territory, or give up our right to be sustained by our lands, waters, and resources.

*1. Treaty at Niagara (1781)*

42. In July 1780, Governor Frederick Haldimand, the Governor of the Province of Quebec (which at the time included what is now the province of Ontario) issued instructions to Colonel Guy Johnson, an Indian Department official, to purchase a strip of our ancestors' land four miles wide on the west side of the Niagara River, from Lake Ontario to Lake Erie.
43. On or around May 9, 1781, representatives of our ancestors met with representatives of the Crown and entered into the Treaty at Niagara under which our people conveyed certain rights to a tract of land west of the Niagara River from Lake Ontario to Lake Erie to the Crown. A true copy of the Treaty at Niagara is attached as **Exhibit "F"**.

*2. Between the Lakes Purchase (1784) and Purchase No. 3 (1792)*

44. At the end of the American Revolution, Six Nations' ancestors—who had fought alongside the British in that conflict—found their territory under American control. In 1784, in recognition of Six Nations' ancestors' support during the American Revolution, the Crown offered to resettle their community in the Grand River Valley in what is now southwestern Ontario, which is in the core of our people's territory.
45. However, in 1784, the Crown had not treated with our ancestors for any of our lands, except under the Treaty at Niagara. The Crown's offer to Six Nations' ancestors could not be implemented until it obtained rights to the lands of the

Grand River Valley from our ancestors. To give effect to its promise to Six Nations, the Crown sought to acquire a further tract of land from our ancestors for the use of Six Nations and other loyalists who were immigrating to Canada following their displacement by the American Revolution.

46. In 1784, our ancestors agreed that they would transfer a tract of land lying between Lake Erie and Lake Huron, including 550,000 acres along the Grand River that was later granted to Six Nations. This agreement was enshrined in the Between the Lakes Purchase treaty, which granted the Crown certain rights to our lands. After the Crown acquired rights to the Grand River Valley, it granted six miles on either side of the Grand River to Six Nations' ancestors under the Haldimand Proclamation of 1784.
47. In 1792, a new document was prepared setting out a detailed description of the lands our ancestors were said to have granted in 1784 because of an error in the boundary description. Five Mississauga Chiefs confirmed the new document, which became known as Purchase No. 3. A true copy of the Between the Lakes Purchase and Purchase No. 3 is attached as **Exhibit "G"**.

**3. *Brant Tract No. 3<sup>3/4</sup> (1795) and Treaty No. 8 (1797)***

48. Sometime between 1791 and 1795, the Crown informed Six Nations leader Captain Joseph Brant he could choose 3,450 acres of land in payment for his service and loyalty to the British during the American Revolution. Captain Brant selected a tract of our ancestors' lands at Burlington Bay.

49. To give effect to Captain Brant’s selection, in 1795 and 1797, our ancestors and the Crown entered into the Brant Tract No. 3¾—a provisional agreement—and Treaty No. 8, respectively, which dealt with the lands selected by Captain Brant, which the Crown later transferred to him. A true copy of Brant Tract No. 3¾ is attached as **Exhibit “H”**. A true copy of Treaty No. 8 is attached as **Exhibit “I”**.

**4. *The Toronto Purchase (1787), the Gunshot Treaty (1788), and Toronto Purchase No. 13 (1805)***

50. In the late 1700s, the Crown was also seeking lands along the north shore of Lake Ontario between Quinte and Toronto to accommodate settlement. In 1787, Sir John Johnson, the Superintendent of Indian Affairs, met with our ancestors and purported to negotiate the Toronto Purchase (“Toronto Purchase (1787)”). The deed was left blank, however, and did not include a description of the boundaries of the lands to be treated for. When a survey was attempted in 1788, it became clear that there was no agreement as to the eastern and western boundaries.
51. In 1788, Crown officials proposed another land purchase to our ancestors, this time for the lands along the north shore of Lake Ontario from the eastern boundary of the Toronto Purchase (1787) to the Bay of Quinte, and as far north as Lake Simcoe and Rice Lake. Although the Crown claimed to have reached an agreement with our ancestors, known as the Gunshot Treaty, once again there was no deed. The Gunshot Treaty was not recorded in writing.

52. In 1793, the town of York—present-day Toronto—was named the capital of the new colony of Upper Canada. By 1794, colonial officials were aware that the Toronto Purchase (1787) was invalid and the Crown did not have legal title to the land on which the town was located.
53. It was not until 1805 under the Toronto Purchase No. 13 that a deed was executed for the Toronto Purchase (1787). Although the Toronto Purchase No. 13 was portrayed as being simply a “confirmation” of the Toronto Purchase (1787), it encompassed far more land, including what are now the Toronto Islands. This area was and remains a site of profound spiritual significance for our people and was never intended to form part of Toronto Purchase No. 13. Moreover, Toronto Purchase No. 13 included an express provision that protected our exclusive right to fish on the Etobicoke River. A true copy of Toronto Purchase (1787) and Toronto Purchase No. 13 is attached as **Exhibit “J”**.

***5. Head of the Lake Treaty No. 14 (1806)***

54. Immediately after signing Toronto Purchase No. 13, the Crown asked our ancestors to treat for additional land along Lake Ontario, extending from the Etobicoke River—the western boundary of Toronto Purchase No. 13—to the tract of land that had been sold to Captain Brant. At that time, our ancestors expressed concern about the amount of land our people were being asked to treat for.



55. In the face of continued encroachment by settlers, our ancestors agreed in 1806 to transfer the land the Crown sought. The treaty—known as the Head of the Lake Treaty No. 14—expressly reserved lands on either side of the Credit River, Twelve Mile Creek (also known as Bronte Creek), and Sixteen Mile Creek, along with exclusive fishing rights on those waterways. Toronto Purchase No. 13, in 1805, had similarly included an express provision that reserved to our people the exclusive right to fish on the Etobicoke River. By reserving lands and fishing grounds for our exclusive use, our ancestors sought to ensure that we would continue to be able to draw sustenance from the lands, waters, and resources on which our people had long relied. A true copy of the Head of the Lake Treaty No. 14 is attached as **Exhibit “K”**.

*6. Ajetance Treaty No. 19 (1818)*

56. As of the date of the Head of the Lake Treaty No. 14, our ancestors and the Crown had not treated for approximately 648,000 acres of hunting grounds bounded by the lands subject to the Head of the Lake Treaty No. 14 in the south and the unceded territory of the Chippewa of Lakes Huron and Simcoe to the north.
57. In October 1818, the Chippewa of Lakes Huron and Simcoe ceded their territory north of these hunting grounds to the Crown. As a result, our ancestors found themselves with three reserves near the Lake Ontario shore and roughly 648,000 acres of land sandwiched between already ceded territory to the north and south, parts of which were rapidly filling with settlers. Our traditional economy had

been destroyed, and constant encroachment on our reserves and fisheries weakened our subsistence. Our population was in rapid decline.

58. By the end of October 1818, the Crown sought to purchase the 648,000 acres of our hunting grounds north of the lands subject to the Head of the Lake Treaty No. 14. In October 1818, Lieutenant Governor William Claus met with our assembled chiefs—led by Chief Ajetance—and proposed to treat for our hunting grounds north of the Head of the Lake Treaty No. 14 in exchange for annual payments of goods. On October 28, 1818, Chief Ajetance—on behalf of assembled Mississauga chiefs—accepted the proposal. Our ancestors and the Crown entered into the Ajetance Treaty No. 19, a true copy of which is attached as **Exhibit “L”**.

*7. Treaties No. 22 and 23 (1820)*

59. Despite the Crown’s promise of protection, our reserves and fisheries were encroached upon and our people suffered. In 1819, the Lieutenant Governor of Upper Canada requested a full report about the extent of our people’s reserved tracts of land, the number of occupants, and whether we could be accommodated elsewhere. Deputy Superintendent General William Claus responded, and recommended against depriving our people of our reserves.
60. Despite this recommendation, in June 1819, Major James Givens, the Superintendent of Indian Affairs for the York area, met with our chief—Chief

Acheton—and advised he had been directed to seek our reserves. At that time, Chief Acheton refused to agree to the proposal.

61. In February 1820, a second meeting was held. At this meeting, our people and the Crown entered into Treaties No. 22 and 23, under which Mississaugas of the Credit First Nation agreed to treat for the remainder of our reserves at Twelve Mile Creek, Sixteen Mile Creek, and most of our lands on the Credit River—on the understanding they would be held by the Crown to meet our future needs. True copies of Treaties No. 22 and 23 are attached as **Exhibits “M” and “N”**, respectively.

62. Instead of preserving the lands, the Crown sold them. During the years following Treaties No. 22 and 23, our people wrote petitions to the Crown asking for the fulfillment of the Crown’s promises to no avail.

**iii. The renewal of the Dish with One Spoon and our resettlement in the Grand River Valley at the invitation of Six Nations**

63. Following Treaties No. 22 and 23, in 1826 our people established the Credit River Mission Village—located on the west bank of the Credit River opposite a 200-acre parcel of land reserved for us in Treaty No. 22—and cleared 600 acres in the area for farms. Our people wanted to secure this land as our reserve, and over the following years we repeatedly petitioned the Crown for a deed. The Crown refused.

64. At a week-long council meeting in January 1840, which was also attended by Six Nations, Samuel Peter Jarvis, Chief Superintendent of Indian Affairs for Upper Canada, explained that the Crown's reason for not providing a deed was because of fears we would dispose of the lands and be susceptible to fraud by settlers.
65. At this same council meeting, our people and Six Nations renewed our Dish with One Spoon agreement of 1700.
66. Without a deed to our land on the Credit River and faced by further settler encroachment, we began the process of looking for land upon which to resettle. In the 1840s, we considered several locations, including at Saugeen, Rice Lake, and the Thames River.
67. In 1847—consistent with the renewal of our Dish with One Spoon agreement and in recognition of our ancestors' role in granting Six Nations their lands along the Grand River Valley in 1784—Six Nations extended an invitation to our people to come and live on their reserve in the Grand River Valley in the very lands they were granted under the Haldimand Proclamation of 1784. The tract of land to which we relocated is now our reserve—New Credit 40A.

**F. Our process of rebuilding a nation-to-nation relationship with the Crown**

68. For more than 200 years, the Crown's treaty promises have gone largely unfulfilled or been broken. Mississaugas of the Credit First Nation has been progressively dispossessed of our lands and resources, displaced within our own

territory, and deprived of any share of the wealth and benefits that others have taken. Today, our territory, situated within the region referred to as the “golden horseshoe,” has become densely populated, heavily urbanized, and industrialized.

69. In 1998, Mississaugas of the Credit First Nation filed a claim against Canada relating to breaches of the Toronto Purchase No. 13. We asserted that the Crown unlawfully acquired more land—including the Toronto Islands—than had been originally agreed upon in the Toronto Purchase (1787) and that the Crown had not paid a reasonable sum for the land obtained in Toronto Purchase No. 13. In 2010, Canada settled this claim and a further claim relating to Brant Tract No. 3¾ and Treaty No. 8 for compensation of \$145 million—at that time the largest land claim settlement in Canadian history.
70. In recent years, we have entered into various agreements with the Crown establishing confidential negotiations and other processes to settle our people’s outstanding claims and in furtherance of the Crown’s treaty and other constitutional obligations to Mississaugas of the Credit First Nation.
71. The scope and content of these processes are determined, in part, by our Aboriginal and treaty rights, our outstanding claims against the Crown, and the scope and content of the Crown’s duties to Mississaugas of the Credit First Nation that flow from the honour of the Crown. To the extent this Action engages these matters, our ongoing reconciliation-oriented processes with the Crown will be impacted.

72. On June 9, 2017, Mississaugas of the Credit First Nation and Canada entered into the “Memorandum of Understanding – Recognition of Indigenous Rights and Self-Determination Table” (“Recognition of Rights MOU”). In the Recognition of Rights MOU, Mississaugas of the Credit First Nation and Canada agreed to establish negotiations with the objective of “explor[ing] new approaches to understanding and implementing the treaties between [Mississaugas of the Credit First Nation] and Canada, new governance models, and the resolution of [Mississaugas of the Credit First Nation’s] outstanding claims.” The content of the negotiations established under the Recognition of Rights MOU are confidential. A true copy of the Recognition of Rights MOU is attached as **Exhibit “O”**.
73. On September 6, 2018, and as a result of the negotiations held pursuant to the Recognition of Rights MOU, Mississaugas of the Credit First Nation and Canada entered into the Consultation Protocol Agreement. Under the Consultation Protocol Agreement, Canada recognized that “a federal duty to consult may arise in relation to a proposed federal activity or decision that may have an adverse impact on the treaty rights or Aboriginal rights including title claims of the [Mississaugas of the Credit First Nation].” To fulfill this constitutional duty and to preserve the outstanding section 35 rights of Mississaugas of the Credit First Nation pending final resolution, Canada agreed to follow the consultation process set out in the Consultation Protocol Agreement. A true copy of the Consultation Protocol Agreement is attached to this affidavit as **Exhibit “P”**.

74. On August 28, 2019, and as a result of the negotiations held pursuant to the Recognition of Rights MOU, Mississaugas of the Credit First Nation and Canada entered into the Preliminary Agreement to Advance Reconciliation and Establish a Renewed Relationship (“Preliminary Reconciliation Agreement”). Under the Preliminary Reconciliation Agreement, Mississaugas of the Credit First Nation and Canada agreed to establish a negotiation process to:

- 1.1.1. Jointly develop a renewed nation-to-nation and government-to-government relationship between the Canada and [Mississaugas of the Credit First Nation] that advances reconciliation between the Parties consistent with the purpose of section 35 of the *Constitution Act, 1982*; and
- 1.1.2 Engage in without-prejudice, non-binding discussions to reach shared understandings on:
  - a) renewing concepts of governance, including incremental approaches for [Mississaugas of the Credit First Nation] to adopt new forms of governance outside of the *Indian Act*;
  - b) innovative approaches to implementing [Mississaugas of the Credit First Nation]’s Rights in modern and evolving ways, including through shared-decision making and a renewed fiscal relationship that works toward [Mississaugas of the Credit First Nation] having fair and ongoing access to their lands, territory and resources to support its traditional economies and to share equitably in the wealth generated from those lands and resources; and
  - c) [Mississaugas of the Credit First Nation]’s Aboriginal Title Claims.

75. The content of the negotiations established by the Preliminary Reconciliation Agreement are confidential. A true copy of the Preliminary Reconciliation Agreement is attached to this affidavit as **Exhibit “Q”**.

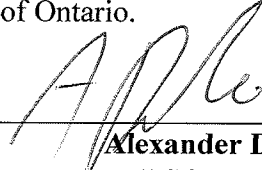
**G. Conclusion**

76. Our struggle to have a say in our future as an Indigenous people has always been driven and informed by our responsibility to current and future generations to ensure our history and constitutionally protected connection to our territory continues. While in recent years our fulfillment of this responsibility has been advanced out of court at the negotiation table—which, in my view, best ensures we are in the driver’s seat in advancing our rights and interests—I believe the circumstances of this Action require our participation. This belief is compounded by the fact all the parties rely on our rights and our history.
77. We support Six Nations’ fight for justice. Our intent in participating in the Action—if our request to intervene is granted—is simply to ensure our history is honestly and accurately portrayed and that our constitutional rights and interests and connection to our territory are not adversely impacted in the process. Anything less than seeking leave to intervene in this Action would fall short of our sacred responsibility to our people.



78. I affirm this affidavit in support of Mississaugas of the Credit First Nation's motion for leave to intervene in this Action and for no other or improper purpose.

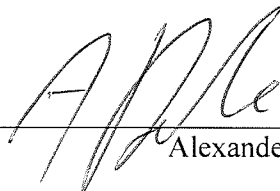
**AFFIRMED BEFORE ME** in person on the 2nd day of December 2022 in the City of Toronto, Province of Ontario.

  
\_\_\_\_\_  
**Alexander DeParde**  
**LSO #77616N**  
A Commissioner for Taking Affidavits



  
\_\_\_\_\_  
**R. Stacey Laforme**

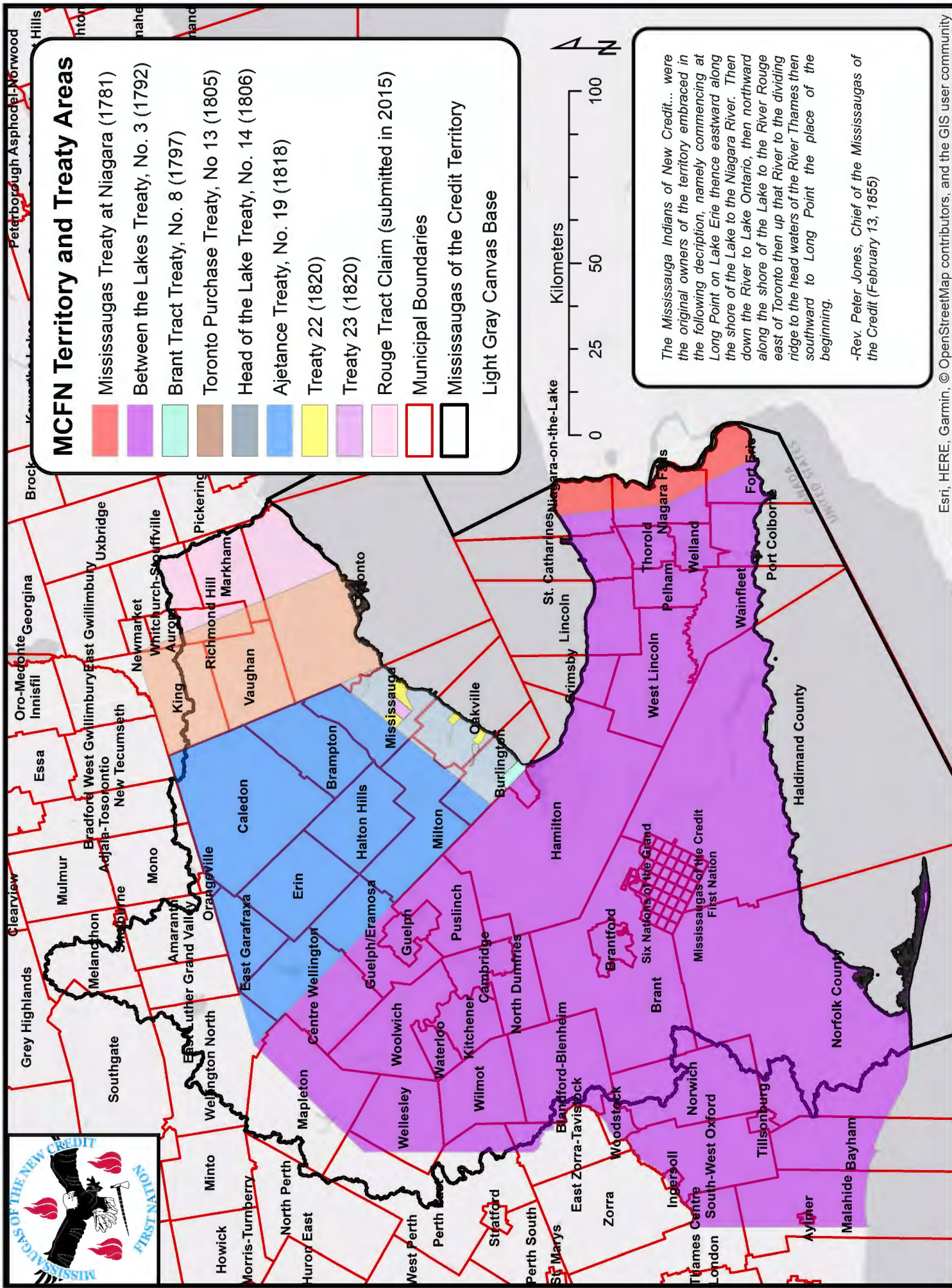
This is Exhibit "A" to the affidavit of R. Stacey Laforme,  
affirmed before me on December 2, 2022



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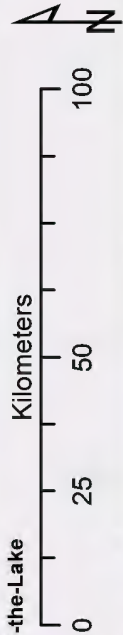
Alexander DeParde

A Commissioner for Taking Affidavits



### MCFN Territory and Treaty Areas

- Mississaugas Treaty at Niagara (1781)
- Between the Lakes Treaty, No. 3 (1792)
- Brant Tract Treaty, No. 8 (1797)
- Toronto Purchase Treaty, No 13 (1805)
- Head of the Lake Treaty, No. 14 (1806)
- Ajetaan Treaty, No. 19 (1818)
- Treaty 22 (1820)
- Treaty 23 (1820)
- Rouge Tract Claim (submitted in 2015)
- Municipal Boundaries
- Mississaugas of the Credit Territory
- Light Gray Canvas Base



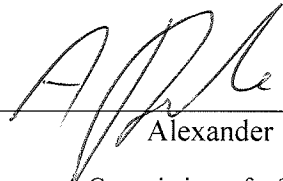
The Mississauga Indians of New Credit... were the original owners of the territory embraced in the following description, namely commencing at Long Point on Lake Erie thence eastward along the shore of the Lake to the Niagara River. Then down the River to Lake Ontario, then northward along the shore of the Lake to the River Rouge east of Toronto then up that River to the dividing ridge to the head waters of the River Thames then southward to Long Point the place of the beginning.

-Rev. Peter Jones, Chief of the Mississaugas of the Credit (February 13, 1855)



# Municipalities within Mississaugas of the Credit Treaty Lands and Territory

This is Exhibit "B" to the affidavit of R. Stacey Laforme,  
affirmed before me on December 2, 2022



---

Alexander DeParde

A Commissioner for Taking Affidavits



# Mississaugas of The New Credit First Nation

2789 Mississauga Rd.,  
R.R. 6 Hagersville, Ontario N0A 1H0

Tel. 1-905-768-1133  
Fax 1-905-768-1225

April 6, 2015

*Advance copy sent by Fax: 613-996-9736*

The Honourable Bernard Valcourt  
Aboriginal Affairs and Northern Development Canada  
Terrasses de la Chaudière  
10 Wellington, North Tower  
Ottawa, Ontario  
K1A 0H4

*Advance copy sent by Fax: 416-314-2701*

The Honourable David Zimmer  
MINISTER'S OFFICE  
Ministry of Aboriginal Affairs  
Suite 400  
160 Bloor St E  
Toronto ON M7A2E6

Dear Sirs:

Re: The Mississaugas of the New Credit First Nation: Unextinguished  
Aboriginal Title To All Water In Our Traditional Territory and to the  
Rouge River Valley Tract

The Mississaugas of the New Credit First Nation (MNCFN) are the descendents of the "River Credit" Mississaugas. At all times from the conquest of the French in 1759, from the first Treaty taken with the Mississaugas in 1764 at Niagara, through to the land surrenders of the 19<sup>th</sup> century, the British Crown recognized the Mississaugas as the Indians with title to what is now most of southern Ontario.

Based on descriptions from the Rev. Peter Jones (a River Credit member) from 1848 and 1855, and from the "Paper Talk" sent to the Governor General by Chiefs Joseph Sawyer and John Jones in 1844, the River Credit territory extends from the Rouge River Valley in the east, across to the headwaters of the Thames River, down to Long Point on Lake Erie and back along the shores of Lake Erie, the Niagara River and Lake Ontario to the Rouge River Valley.

*We hereby assert and put all concerned on notice that we have unextinguished aboriginal title to all water in our traditional territory.* At no time have we or our ancestors surrendered our aboriginal title to the water in our lands. The many Treaties that we signed with the British Crown are silent on water, but our water was discussed with representatives of the Crown. Our ancestors were told that the Crown was not interested in our water and that the Treaties dealt only with our land.

On July 31, 1805, Chief Quenepenon of the River Credit reminded William Claus, Deputy Superintendent General Department of Indian Affairs (and the government official who led the 1805 negotiations with the Mississaugas) that in earlier treaties they had been told: "We do not want the water, we want the land" (Proceeding of a Meeting with the Mississaugues at the Credit River, 31<sup>st</sup> July, 1805, PAC, RG 10. Vol. 1 pp 290-292).

The necessary research is well under way and we will be submitting a claim to Canada and Ontario to all water, land under water and floodplains, in our traditional territory. In the meantime the Crown "duty to consult" applies to all water, land under water and floodplains, contained in all of our traditional territory and will continue to apply until this matter is resolved.

In addition we will shortly be submitting a claim to Canada and Ontario to the Rouge River Valley Tract (RRVT). The RRVT lies to the east of the Toronto Purchase Treaty and it does not form part of any other Treaty or land surrender entered into by MNCFN and its predecessors.

The RRVT was included, although perhaps only partially, in the "Gunshot Treaty" in 1788. The Gunshot Treaty is invalid and was considered as such by successive governments in what is now Ontario. The RRVT does fall within the boundaries of the 1923 Williams Treaty, but MNCFN is not a signatory to that Treaty. MNCFN leaders consistently complained that they

had never surrendered their lands east of Toronto Purchase and further that they had never been paid for those lands.

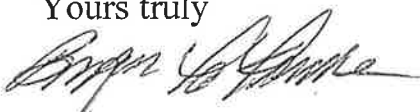
The RRVT claim is based on the fact that the Rouge River Valley Tract forms part of the territory of the direct ancestors of MNCFN and the fact that the Rouge River Valley Tract has never been lawfully surrendered by MNCFN or its ancestors.

*As a result MNCFN hereby asserts that it maintains unextinguished aboriginal title to the Rouge River Valley Tract.* Canada and Ontario need to negotiate a Treaty or Agreement that deals with the MNCFN's interest in the RRVT.

In the meantime the Crown "duty to consult" applies to all land, water, land under water and floodplains, contained in the RRVT and will continue to apply until this matter is resolved.

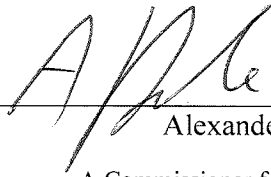
Representatives of MNCFN would be pleased to meet with you to discuss these issues.

Yours truly



Chief Bryan LaForme

This is Exhibit "C" to the affidavit of R. Stacey Laforme,  
affirmed before me on December 2, 2022



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Alexander DeParde

A Commissioner for Taking Affidavits





4 ca 4 livres  
p<sup>r</sup> les outo gavo  
si nago



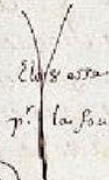
heronhiataka  
chef du auto.



mechayon  
chef de la montagne



Kilesis Kingie  
p<sup>r</sup> les Kika Kori



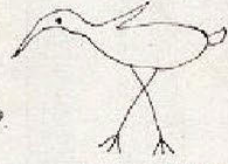
Elasasta  
p<sup>r</sup> la fourche



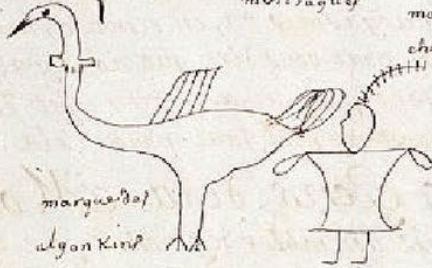
marque de  
méli saquef



marque de  
amkoi  
chef mahingari



marque de  
Sautant  
chef Gabanque



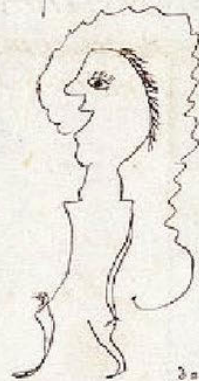
marque de  
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de pan gicheat



marque de  
chachiro allé  
chef du village

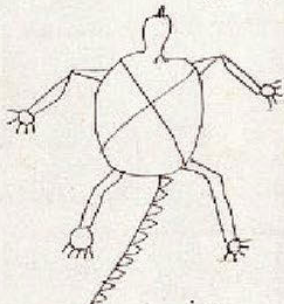


marque de  
8 tiline. chef

marque de  
village  
semblable à la rivière  
s<sup>te</sup> Joseph.



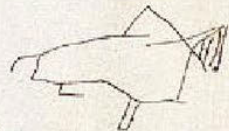
marque de  
village  
de Kouera Kouitanon



marque de  
village  
de Peauria



marque de  
village de  
Tapeurava



marque de  
village de  
Moussouana



Et vous y mites des racines et des feuilles pour que nous y fusions  
a l'arbre, nous esperons presentement que tout le monde entend  
ce que vous dites, qu'on ne touchera point a cet arbre, pour nous,  
nous vous asurons, par ces quatre colliers que nous suivrons  
tout ce que vous auez reglé; nous vous presentons deux prisonniers  
que voicy et nous vous rendrons les autres que nous auons, Nous  
esperons ausy presentement que les portes sont ouuertes pour  
la paix, qu'on nous renuoyera le reste des nostres,

### Les Hurons,

Nous voila icy comme vous l'auetz demandé, nous vous presentons  
douze prisonniers, dont cinq veullent retourner avec nous, pour  
les sept autres vous en feretz ce qu'il vous plaira, nous vous  
remercions de la paix que vous nous auez procurée et nous  
la ratifions avec ioye,

### Jean le blanc outaouac du Sable,

Je vous ay obey mon pere ausy tost que vous m'auetz demandé  
en vous ramenant deux prisonniers dont vous estes le maistre  
quand vous m'auetz commandé d'aller ala guerre ie l'ay fait,  
et a present que vous me le deffendetz iy obey, ie vous demande  
mon pere par ce collier que les iroquois dellient mon corps  
qui est chez eux, et qu'il me le renuoyent (C'est adire les gens  
de csa nation)

### Sargouessy outaouac Sinago,

Je n'ay pas voulu manquer a vos ordres mon pere quoique ie  
nusse point de prisonniers, Cependant voila une femme et un  
enfant que i'ay rachoppé de vous s'alez ce qu'il vous plaira,  
et voila un calumet que i'ay donné aux iroquois pour fumer comie  
freres quand nous nous rencontrerons.

### Chichicatata Chef des Miamis

Je vous ay obey mon pere en vous ramenant 8 prisonniers Iroquois  
pour en faire ce qu'il vous plaira, si i'auois eu des Canots, ie vous  
en aurois amené d'auantage, quoy que ie ne voye point icy des  
miens qui sont chez les iroquois, ie vous rameneray ce qui m'en  
reste, si vous le souhaitez, ou ie leur ouuriray les portes pour qu'ils  
s'en retournent,

### Oranguisset pour Les Sakis,

Je ne fais qu'on mesme corps avec vous mon Pere, voila un  
prisonnier Iroquois que j'auois fait a la guerre, souffrez qu'on vous  
le presentant ie luy donne un calumet pour emporter chez les  
Iroquois et fumer quand nous nous rencontrerons, ie vous remercie



De ce que vous eclairez le soleil qui estoit obscure depuis la guerre

### Oranguisset Chef des Lotrouatamis,

Je ne vous seray point un long discours mon pere, ie n'ay plus que deux prisonniers que ie mets a vos deux castels pour en faire ce qu'il vous plaira, voila un calumet que ie vous presente pour que vous le gardiell, ou que vous le donniell a ces deux prisonniers afin qu'ils fument dedans chés eux, ie suis toujours prest a vous obcir iusqu'a la mort,

### Misgersa Chef Ontagamis,

Je n'ay point de prisonniers a vous rendre mon pere, mais ie vous remercie du beau jour que vous donniell a toute la terre par la paix, pour moy ie ne perdray iamais cette clarte,

### Les Markoutins

Je ne vous amene point d'elave iroquois par ce que ie n'ay pas esté en party contre eux depuis quelque temps, m'estant amuse a faire la guerre a d'autres nations, mais ie suis venu pour vous obcir et vous remercie de la paix que vous nous procuriell,

### Les folles auoines

Je suis seulement venu mon pere pour vous obcir et embrasser la paix que auell faite entre les Iroquois et nous,

### Les Sauteurs et les Puants

Je vous aurois amene mon pere des elaves iroquois si ie n'auois eu, voulant vous obcir en ce que vous m'ordonniell, ie vous remercie de la clarte que vous nous donniell et ie souhaite quelle dure,

### Les Nepissingues

Je n'ay pas voulu manquer a me rendre icy comme les autres pour c'ouster vostre voix, i'auois un prisonnier iroquois l'anné passee que ie vous ay rendu, voila un calumet que ie vous presente pour le donner aux iroquois si vous le souaitte afin de fumer ensemble quand nous nous rencontrerons,

### Les Algonquins

Je n'ay point de prisonniers a vous rendre mon pere, l'Algon<sup>quin</sup> est un de vos enfans qui a tousiours esté a vous, et qui y sera tant qu'il viura, ie prie le maistre de la vie que ce que vous faites aujourd'huy dure,

### La Mikois

N'ayant point d'autre volante que la vostre jobey a ce que vous ven ell de faire,



## Les Abenakis,

Quoy que ie parle des Derniers ie ne suis pas moins auiou  
mon pere, vous sçavez que ie vous ay tousiours esté attaché  
ie n'ay plus de haches vous l'avez mise dans une fosse l'année  
derniere et ie ne la reprendray que quand vous me l'ordonner

## Les Gens Du Sault

Vous n'ignorez pas vous autres Iroquois que nous ne  
soyons attachés a nostre pere nous qui demeurons avec luy  
et qui sommes dans son sein, vous nous enuoyaste un collier  
il y a trois ans pour nous inviter a vous procurer la paix  
nous vous en enuoyasmes un, en reponse, nous vous donnâmes  
encorre celuy cy pour vous dire que nous y avons travaillé  
nous ne demandons pas mieux quelle bit de Durée, faite  
aussy devoyre l'osse ce qu'il faut pour cela,

## Les Gens de la Montagne

Vous avez fait assembler icy nostre pere toutes Les  
Nations pour faire un amas de haches et les mettre  
dans la terre, avec la vostre, pour moy qui n'en auois pas  
d'autre, ie me rejouy de ce que vous faites auiourd'huy, et  
l'Inuite Les Iroquois a nous regarder comme leurs freres &



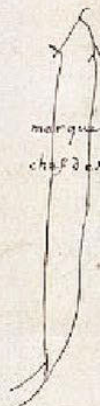
gens de la  
montagne



Touronguion, son exon  
son montan, p<sup>r</sup> les anneaux



Garon hiaron  
Goyogain



marque du rat  
chef des hurons



la brochet



marcadoue

p<sup>r</sup> les saouaste du sable, abenakis de lacaden



aucune Broüillerie, les vns avec les autres, et pour que cette  
 paix ne puisse estre troublée, ie repete ce que s'ay déjà dit  
 dans le traité que nous auons fait, que s'il arriuoit que  
 quelqu'un de mes enfans en frapast un autre, celui qui auroit  
 esté frapé ne se vengera point, ny par luy ny par aucun  
 de sa part, mais il viendra me trouuer pour que ie luy en-  
 fasse faire raison, vous declarant que, si l'offencant  
 refusoit d'en faire vne Satisfaction raisonnable, ie me ioindro  
 avec mes autres alliés à l'offensé pour luy Contraindre  
 ce que ie ne croit pas qui puisse arriuer, par l'obeissance  
 que me doiuent mes enfans qui se resouuiendront de ce que  
 nous arrestons presentement ensemble, et pour qu'ils ne  
 puissent l'oublier, j'attache mes paroles aux colliers que  
 ie vais donner a chacune de vos nations afin que les  
 anciens les fassent excuter par leurs jeunes gens, ie vous  
 inuite tous a fumer dans ce calumet de paix ou ie comen-  
 ce le premier, et a manger de la viande, et du bouillon que  
 ie vous fais preparer pour que l'aye comme un bon pere  
 la Satisfaction de voir tous mes enfans reunis,  
 Je garderay ce calumet qui m'a esté presenté par les  
 miamis afin que ie puisse vous faire fumer quand  
 vous viendrez me voir,

Apres que toutes les nations cy dessus eurent entendu  
 ce que monsieur le Cheualier de Callieres leur dit, ils  
 repondirent comme il suit,

### Le Chef des KWKAKONS

Je n'ay pas voulu manquer mon pere ayant sçu que vous  
 me demandiez les prisonniers des Iroquois, a vous les amena  
 en voila quatre que ie vous presente pour en faire ce qu'il  
 vous plaira, C'est avec cette porcelaine que ie les ay deliés,  
 et voicy vn calumet que ie presente aux iroquois pour fumer  
 ensemble quand nous nous rencontrerons, ie me rejouy de  
 ce que vous auez vny la terre qui estoit bouluersée, et ie  
~~me reioy~~ souscrit volontiers atout ce que vous auez fait,

### Les Iroquois,

Nous voila assemblez, nostre pere comme vous l'auéz  
 souhaité, vous plantates l'année derniere un arbre de paix





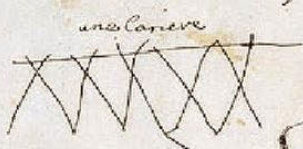
marque du village de Maroua



un chicot et trois ralis



marque du village de Kas Katta



une canive

marque du village de Oulatanon

marque du village de pouts atays



marque du village



marque du chef



marque de Sakis



marque du village



marque de Kinetou an chef



marque de Atagamis



marque du village de pout Sabonh



marque de maloum chef pait ches d'abant



marque du village nypyna Coulcain chef d'abant

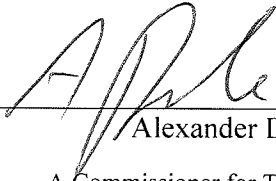


milchi kana d'abant



Signe: Le Gouverneur de Galline, Bouzan Champney et autres,

This is Exhibit "D" to the affidavit of R. Stacey Laforme,  
affirmed before me on December 2, 2022



---

Alexander DeParde

A Commissioner for Taking Affidavits

*Deed from the Five Nations to the King of their Beaver Hunting Ground.*

[New-York Papers. Bundle, P. Q ; Q 49.]

To all Christian & Indian people in this parte of the world and in Europe over the great salt waters, to whom the presents shall come—Wee the Sachims Chief men, Capt<sup>ns</sup> and representatives of the Five nations or Cantons of Indians called the Maquase Oneydes Ounnandages and Sinnekes living in the Government of New Yorke in America, to the north west of Albany on this side the Lake Cadarachqui sendeth greeting—Bee it known unto you that our ancestors to our certain knowledge have had, time out of mind a fierce and bloody warr with seaven nations of Indians called the Aragaritkas<sup>1</sup> whose Chief cõmand was called successively Chohahise—The land is scituate lyeing and being northwest and by west from Albany beginning on the south west<sup>2</sup> side of Cadarachqui lake and includes all that waste Tract of Land lyeing between the great lake off Ottowawa<sup>3</sup> and the lake called by the natives Sahiquage and by the Christians the lake of Swege<sup>4</sup> and runns till it butts upon the Twichtwicks and is bounded on the right hand by a place called Quadoge<sup>5</sup> conteigning in length about eight hundred miles and in bredth four hundred miles including the country where the bevers the deers, Elks and such beasts keep and the place called Tieugsachrondio, alias Fort de Tret or wawyachtenok and so runs round the lake of swege till you come to place called Oniadarondaquat which is about twenty miles from the Sinnekes Castles which said seaven nations our predecessors did four score years agoe totally conquer and subdue and drove them out of that country and had peaceable and quiet possession of the same to hunt beavers (which was the motive caused us to war for the same) for three score years it being the only chief place for hunting in this parte of the world that ever wee heard of and after that wee had been sixty years sole masters and owners of the said land enjoying peaceable hunting without any internegotion, a remnant of one of the seaven nations called Tionondade whom

<sup>1</sup> Hurons.

<sup>2</sup> North west. See next page.

<sup>3</sup> Lake Huron.

<sup>4</sup> Lake Erie.

<sup>5</sup> At the head of Lake Michigan. *Mitchell's Map of North America*, 1755. Now, Chicago, according to *Map of the British Dominions in North America*, 1763, prefixed to *Charlevoix's Voyages*, 8vo., Dublin, 1766. — En.






wee had expelled and drove away came and settled there twenty years agoe disturbed our beaver hunting against which nation wee have warred ever since and would have subdued them long ere now had not they been assisted and succoured by the French of Canada, and whereas the Governour of Canada aforesaid hath lately sent a considerable force to a place called Tjeughsaghrondie the principall passe that commands said land to build a Forte there without our leave and consent, by which means they will possess themselves of that excellent country where there is not only a very good soile but great plenty of all maner of wild beasts in such quantities that there is no maner of trouble in killing of them and also will be sole masters of the Boar<sup>1</sup> hunting whereby wee shall be deprived of our livelyhood and subsistance and brought to perpetual bondage and slavery, and wee having subjected ourselves and lands on this side of Cadarachqui lake wholly to the Crown of England wee the said Sachims chief men Capt<sup>ns</sup> and representatives of the Five nations after mature deliberation out of a deep sence of the many Royall favours extended to us by the present great Monarch of England King William the third, and in consideration also that wee have lived peaceably and quietly with the people of albany our fellow subjects above eighty years when wee first made a firm league and covenant chain with these Christians that first came to settle Albany on this river which covenant chain hath been yearly renewed and kept bright and clear by all the Governours successively and many neighbouring Governm<sup>ts</sup> of English and nations of Indians have since upon their request been admitted into the same. Wee say upon these and many other good motives us hereunto moveing have freely and voluntary surrendered delivered up and for ever quit claimed, and by these presents doe for us our heires and successors absolutely surrender, deliver up and for ever quit claime unto our great Lord and Master the King of England called by us Corachkoo and by the Christians William the third and to his heires and successors Kings and Queens of England for ever all the right title and interest and all the claime and demand whatsoever which wee the said five nations of Indiaus called the Maquase, Oneydes, Onnondages, Cayouges and Sinnekes now have or which wee ever had or that our heirs or successors at any time hereafter may or ought to have of in or to all that vast Tract of land or Colony called Canagariarchio beginning on the northwest side of Cadarachqui lake and includes all that vast tract of land lyeing between the great lake of Ottawawa and the lake called by the natives Cahiquage and by the Christians the lake of Swege and runs till it butts upon the Twichtwicks and is bounded on the westward by the Twichtwicks by a place called Quadoge conteining in length about eight hundred miles and in breath four hundred miles including the Country where Beavers and all sorts of wild game keeps and the place called Tjeughsaghrondie alias Fort de tret or Wawyachtenock and so runs round the lake of Swege till you come to a place called Ouiadarundaquat which is about twenty miles from the Sinnekes castles including likewise the great falls oakinagaro, all which [was] formerly posest by seaven nations of Indians called the Aragaritka whom by a fair warr wee subdued and drove from thence four score years agoe bringing many of them captives to our country and soe became to be the true owners of the same by conquest which said land is scituate lyeing and being as is above expressed with the whole soyle the lakes the rivers and all things pertaining to the said tract of land or colony with power to erect Forts and castles there, soe that wee the said Five nations nor our heires nor any other person or persons for us by any ways or means hereafter have claime challenge and demand of in or to the premises or any parte thereof alwayes provided and it is hereby expected that wee are to have free hunting for us and the heires and descendants from us the Five nations for ever and that free of all


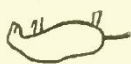




<sup>1</sup> Sic. quæ Beaver. — Ed.

disturbances expecting to be protected therein by the Crown of England but from all the action right title interest and demand of in or to the premises or every of them shall and will be utterly excluded and debarred for ever by these presents and wee the said Sachims of the Five Nations of Indians called the Maquase, Oneydes, Onnandages, Cayouges and Sinnekes and our heires the said tract of land or Colony, lakes and rivers and premises and every part and parcell thereof with their and every of their appurtenances unto our souveraigne Lord the King William the third & his heires and successors Kings of England to his and their proper use and uses against us our heires and all and every other person lawfully claiming by from or under us the said Five nations shall and will warrant and for ever defend by these presents— In Witness whereof wee the Sachims of the Five nations above mentioned in behalf of ourselves and the Five nations have signed and sealed this present Instrument and delivered the same as an Act and deed to the Hon<sup>ble</sup> John Nanfan Esq<sup>r</sup> Lieut' Gov<sup>r</sup> to our Great King in this province whom wee call Corlaer in the presence of all the Magistrates officers and other inhabitants of Albany praying our Brother Corlaer to send it over to Carachkoo our dread souveraigne Lord and that he would be graciously pleased to accept of the same Actum in Albany in the middle of the high street this nineteenth day of July in the thirteenth year of His Maj<sup>ty</sup>'s reign Annoque Domini 1701.




## SINNEKES SACHIMS

Tehonwaren		genie (L. s.).
Sonahso		wanne (L. s.).
Tosoquat		hoa (L. s.).




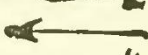

## MAQUASE SACHIMS

Tsina		go (L. s.).
Onucher		anorum (L. s.).
Teoni		ahigarawe alias Hendrik (L. s.).
Tirogaren		alias Cornelis (L. s.).
Sinon		quireso (L. s.).
Tanoch		rachhoss (L. s.).




## CAYOUGES SACHIMS

Sodsio		wanne (L. s.).
Thodsino		jago—(L. s.).
Nijuch		sagentisquoa (L. s.).

## ONNANDAGE SACHIMS

Tegach		nawadiqua (L. s.).
Kach		wadochon (L. s.).
Taga		tsehede (L. s.).
Sade		ganasttie (L. s.).
Ach		rireho (L. s.).

## ONEYDE SACHIMS

Dega		ronda (L. s.).
Canada		gariaz (L. s.).
Tio		rachkoe (L. s.).

## LONDON DOCUMENTS: XIV.

911

Sealed and delivered in the presence of us

P<sup>r</sup> Schuyler

J Jansen Bleeker Mayor

Joh<sup>s</sup> Bleeker Recorder

John Abeel Alderman

Johannes Schuyler Alder<sup>n</sup>David Schuyler Alder<sup>n</sup>

Wesselis ten Broek Alderman

Johannes Roseboom Alderman

this is a true Copy

(Signed). JOHN NANFAN

Johannes Cuyler Alderman

Dyrk Wessels justice

James Weemes

Jonathan Broadhurst high Sheriff

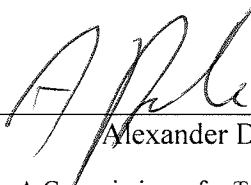
M. Clarkson Secretary

S Clows Surveyor

R<sup>r</sup> Livingston Secretary for the Indian affaresJohn Baptist van Eps } Interp<sup>tes</sup>

Lawrence Claese }

This is Exhibit "E" to the affidavit of R. Stacey Laforme,  
affirmed before me on December 2, 2022



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Alexander DeParde

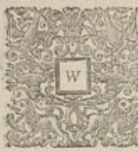
A Commissioner for Taking Affidavits





By the KING,  
A P R O C L A M A T I O N.

GEORGE R.



WE have taken into Our Royal Consideration the extensive and valuable Acquisitions in America, secured to Our Crown by the late Definitive Treaty of Peace, concluded at Paris the Tenth Day of February last; and being desirous, that all Our loving Subjects, as well of Our Kingdoms as of Our Colonies in America, may avail themselves, with all convenient Speed, of the great Benefits and Advantages which must accrue therefrom to their Commerce, Manufactures, and Navigation: We have thought fit, with the Advice of Our Privy Council, to issue this Our Royal Proclamation, hereby to publish and declare to all Our loving Subjects, that We have, with the Advice of Our said Privy Council, granted Our Letters Patent under Our Great Seal of Great Britain, to erect within the Colonies and Islands ceded and confirmed to Us by the said Treaty, Four distinct and separate Governments, styled and called by the Names of *Quebe, East Florida, West Florida, and Grenada*, and limited and bounded as follows; *viz.*

First. The Government of *Quebe*, bounded on the *Labrador Coast* by the River *St. John*, and from thence by a Line drawn from the Head of that River through the Lake *St. John* to the South End of the Lake *nigh Pigie*; from whence the said Line crossing the River *St. Lawrence* and the Lake *Genesee* in Forty five Degrees of North Latitude, passes along the High Lands which divide the Rivers that empty themselves into the said River *St. Lawrence*, from those which fall into the Sea; and also along the North Coast of the *Bay des Chaleurs*, and the Coast of the Gulf of *St. Lawrence* to *Cape Rogen*, and from thence crossing the Mouth of the River *St. Lawrence* by the West End of the Island of *Anticosti*, terminates at the aforesaid River of *St. John*.

Secondly. The Government of *East Florida*, bounded to the Westward by the Gulf of *Mexico*, and the *Apalachicola River*; to the Northward, by a Line drawn from that Part of the said River where the *Catahouchee* and *Five Rivers* meet, to the Source of *St. Mary's River*, and by the Course of the said River to the *Atlantic Ocean*; and to the Eastward and Southward, by the *Atlantic Ocean*, and the Gulf of *Florida*, including all Islands within Six Leagues of the Sea Coast.

Thirdly. The Government of *West Florida*, bounded to the Southward by the Gulf of *Mexico*, including all Islands within Six Leagues of the Coast from the River *Apalachicola* to Lake *Panama*; to the Westward by the said Lake, the Lake *Manapoa*, and the River *Missippi*; to the Northward, by a Line drawn due East from that Part of the River *Missippi* which lies in *Twenty one Degrees North Latitude*, to the *Atlantic Ocean*, or *Chalabancary*; and to the Eastward by the said River.

Fourthly. The Government of *Grenada*, comprehending the said Name, together with the *Carriacou*, and the Islands of *Dominica, St. Vincent, and Tobago*.

And, to the End that the open and free Liberty of Our Subjects may be extended to and carried on upon the Coast of *Labrador* and the adjacent Islands, We have thought fit, with the Advice of Our said Privy Council, to put all that Coast, from the River *St. John's* to *Hudson's Straights*, together with the Islands of *Anticosti* and *Madolias*, and all other smaller Islands lying upon the said Coast, under the Care and Inspection of Our Governor of *Newfoundland*.

We have also, with the Advice of Our Privy Council, thought fit to annex the Islands of *St. John's*, and *Cape Breton* or *St. Peter's*, with the lesser Islands adjacent thereto, to Our Government of *New Brunswick*.

We have also, with the Advice of Our Privy Council aforesaid, annexed to Our Province of *Georgia* all the Lands lying between the Rivers *Savannah* and *St. Mary's*.

And whereas it will greatly contribute to the speedy settling Our said new Governments, that Our loving Subjects should be informed of Our paternal Care for the Security of the Liberties and Properties of those who are and shall become Inhabitants thereof; We have thought fit to publish and declare, by this Our Proclamation, that We have, in the Letters Patent under Our Great Seal of Great Britain, by which the said Governments are constituted, given express Power and Direction to Our Governors of Our said Colonies respectively, that in form as the State and Circumstances of the said Colonies will admit thereof, they shall, with the Advice and Consent of the Members of Our Council, summon and call General Assemblies within the said Governments respectively, in such Manner and Form as is used and directed in those Colonies and Provinces in America, which are under Our immediate Government; and We have also given Power to the said Governors, with the Consent of Our said Councils, and the Representatives of the People, to be summoned as aforesaid, to make, constitute, and ordain Laws, Statutes, and Ordinances for the Publick Peace, Welfare, and Good Government of Our said Colonies, and of the People and Inhabitants thereof, as near as may be agreeable to the Laws of *England*, and under such Regulations and Restrictions as are used in other Colonies; And in the mean Time, until such Assemblies can be called as aforesaid, all Persons inhabiting in, or referring to Our said Colonies, may continue in Our Royal Protection for the Enjoyment of the Benefit of the Laws of Our Realm of *England*; for which Purpose We have given Power under Our Great Seal to the Governors of Our said Colonies respectively, to erect and constitute, with the Advice of Our said Councils respectively, Courts of Judicature and Publick Justice, within Our said Colonies, for the hearing and determining all Causes, as well Criminal as Civil, according to Law and Equity, and as near as may be agreeable to the Laws of *England*, with Liberty to all Persons who may think themselves aggrieved by the Sentences of such Courts, in all Civil Cases, to appeal, under the usual Limitations and Restrictions, to Us in Our Privy Council.

We have also thought fit, with the Advice of Our Privy Council as aforesaid, to give unto the Governors and Councils of Our said Three New Colonies upon the Continent, full Power and Authority to settle and agree with the Inhabitants of Our said New Colonies, or with any other Persons who shall resort thereto, for such Lands, Tenements, and Hereditaments, as are now, or hereafter shall be in Our Power to dispose of, and them to grant so any such Person or Persons, upon such Terms, and under such moderate Quit-Rents, Services, and Acknowledgments as have been appointed and settled in Our other Colonies, and under such other Conditions as shall appear to Us to be necessary and expedient for the Advantage of the Grantees, and the Improvement and Settlement of Our said Colonies.

And whereas We are desirous, upon all Occasions, to testify Our Royal Sense and Approbation of the Conduct and Bravery of the Officers and Soldiers of Our Armies, and to reward the same, We do hereby command and empower Our Governors of Our said Three New Colonies, and all other Our Governors of Our several Provinces on the Continent of *North America*, to grant, without Fee or Reward, to such Reduced Officers as have served in *North America* during the late War, and to such Private Soldiers as have been or shall be disbanded in *America*, and are actually residing there, and shall personally apply for the same, the following Quantities of Lands, subject at the Expiration of Ten Years to the same Quit-Rents as other Lands are subject to in the Province within which they are granted, as also subject to the same Conditions of Cultivation and Improvement; *viz.*

To every Person having the Rank of a Field Officer, Five thousand Acres.—To every Captain, Three thousand Acres.—To every Subaltern or Staff Officer, Two thousand Acres.—To every Non-Commission Officer, Two hundred Acres.—To every Private Man, Fifty Acres.

We do likewise authorize and require the Governors and Commanders in Chief of all Our said Colonies upon the Continent of *North America*, to grant the like Quantities of Land, and upon the same Conditions, to such Reduced Officers of Our Navy, of like Rank, as served on Board Our Ships of War in *North America* at the Times of the Reduction of *Louisbourg* and *Quebe* in the late War, and who shall personally apply to Our respective Governors for such Grants.

And whereas it is just and reasonable, and essential to Our Interest and the Security of Our Colonies, that the several Nations or Tribes of *Indians*, with whom We are connected, and who live under Our Protection, should not be molested or disturbed in the Possession of such Parts of Our Dominions and Territories as, not having been ceded to, or purchased by Us, are reserved to them, or any of them, as their Hunting Grounds; We do therefore, with the Advice of Our Privy Council, declare it to be Our Royal Will and Pleasure, that no Governor or Commander in Chief in any of Our Colonies of *Quebe, East Florida, or West Florida*, do presume, upon any Pretence whatever, to grant Warrants of Survey, or pass any Patents for Lands beyond the Bounds of their respective Governments, as described in their Commissions; as also, that no Governor or Commander in Chief in any of Our Colonies or Plantations in *America*, do presume, for the present, and until Our further Pleasure be known, to grant Warrants of Survey, or pass any Patents for any Lands beyond the Heads or Sources of any of the Rivers which fall into the *Atlantic Ocean*, to the West and North West, or upon any Lands whatever, which, not having been ceded to Us as aforesaid, are reserved to the said *Indians*, or any of them.

And We do further declare it to be Our Royal Will and Pleasure, for us present as aforesaid, to be observed under Our Sovereignty, Protection, and Dominion, for the Use of the said *Indians*, all the Lands and Territories not included within the Limits of Our said Three New Governments, or within the Limits of the Territory granted to the *Hughes Bay Company*, as also all the Lands and Territories lying to the Westward of the Sources of the Rivers which fall into the Sea from the West and North West, as aforesaid; and We do hereby strictly forbid, on Pain of Our Displeasure, all Our loving Subjects from making any Purchase or Settlements whatever, or taking Possession of any of the Lands above reserved, without Our special Leave and Licence for that Purpose first obtained.

And We do further strictly enjoin and require all Persons whatever, who have either wilfully or inadvertently settled themselves upon any Lands within the Countries above described, or upon any other Lands, which, not having been ceded to, or purchased by Us, are still reserved to the said *Indians* as aforesaid, forthwith to remove themselves from such Settlements.

And whereas great Frauds and Abuses have been committed in the purchasing Lands of the *Indians*, to the great Prejudice of Our Interests, and to the great Dissatisfaction of the said *Indians* in order therefore to prevent such Irregularities for the future, and to the End that the *Indians* may be convinced of Our Justice, and determined Resolutions to remove all reasonable Cause of Discontent, We do, with the Advice of Our Privy Council, strictly enjoin and require, that no private Person do presume to make any Purchase from the said *Indians* of any Lands reserved to the said *Indians*, within those Parts of Our Colonies where We have thought proper to allow Settlement; but that if, at any Time, any of the said *Indians* should be inclined to dispose of the said Lands, the same shall be purchased only for Us, in Our Name, at some Publick Meeting or Assembly of the said *Indians* to be held for that Purpose by the Governor or Commander in Chief of Our Colonies respectively, within which they shall lie; and in case they shall lie within the Limits of any Proprietary Government, they shall be purchased only for the Use and in the Name of such Proprietaries, conformable to such Directions and Instructions as We or they shall think proper to give for that Purpose: And We do, by the Advice of Our Privy Council, declare and enjoin, that the Trade with the said *Indians* shall be free and open to all Our Subjects whatever, provided that every Person, who may incline to trade with the said *Indians*, do take out a Licence for carrying on such Trade from the Governor or Commander in Chief of any of Our Colonies respectively, where such Person shall reside; and also give Security to observe such Regulations as We shall at any Time think fit, by Ourselves or by Our Commissioners appointed for that Purpose, to direct and appoint for the Benefit of the said Trade; and We do hereby authorize, enjoin, and require the Governors and Commanders in Chief of all Our Colonies respectively, as well Those under Our immediate Government as Those under the Government and Direction of Proprietaries, to grant such Licences without Fee or Reward, taking especial Care to insert therein a Condition, that such Licence shall be void, and the Security forfeited, in case the Person, to whom the same is granted, shall refuse or neglect to observe such Regulations as We shall think proper to prescribe as aforesaid.

And We do further expressly enjoin and require all Officers whatever, as well Military as Those employed in the Management and Direction of *Indian* Affairs within the Territories reserved as aforesaid for the Use of the said *Indians*, to seize and apprehend all Persons whatever, who, standing charged with Treasons, Misdemeanors of Treason, Murders, or other Felonies or Misdemeanors, shall fly from Justice, and take Refuge in the said Territory, and to send them under a proper Guard to the Colony where the Crime was committed of which they stand accused, in order to take their Trial for the same.

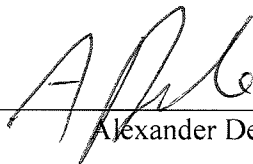
Given at Our Court at *Saint James's*, the Seventh Day of *October*, One thousand seven hundred and sixty three, in the Third Year of Our Reign.

G O D save the K I N G.

L O N D O N :

Printed by *Mark Baskett*, Printer to the King's most Excellent Majesty; and by the Assigns of *Robert Baskett*. 1763.

This is Exhibit "F" to the affidavit of R. Stacey Laforme,  
affirmed before me on December 2, 2022



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Alexander DeParde

A Commissioner for Taking Affidavits

No. 381.

Copy of a copy

To all Persons whom these presents may Concern; We the Sachems and Chiefs of the Chippeweighs & Missasagas inhabiting at and near *Wegh-queta*, at the head of Lake Ontario in the vicinity of Niagara, on behalf of ourselves and all our people here convened by Colonel Guy Johnson, His Majesty's sole agent and Superintendent of the Six united Nations of Indians and their Confederates, send greeting—Whereas the Chiefs of the Six Nations & several of our then Chiefs, did in the month of August in the year one thousand seven hundred and sixty four, at this place, in the presence and at the desire of Sir William Johnson Bart. deceased, Our late superintendent, enter into a treaty for the ceding to His Majesty King George the third, a certain tract of land on the West side of the Straits leading from Lake Erie to Lake Ontario, which cession was not then fully arranged and finally executed by us, and whereas we have now been summoned to attend at this place to make and perfect a cession of the same, and of such other lands, as have been required by Colonel Johnson to be ceded to the King, agreeable to orders received for that purpose, all which we have had fully explained to us by the said Colonel Johnson, and have duly considered the same—Now THEREFORE Know Ye, That we the said Sachems and Chiefs of the before mentioned Nations, all well through our own Zeal Loyalty and attachment to His Majesty as in consideration of a handsome present to, us made by our said Superintendent Colonel Johnson in the part and on behalf of his said Majesty, the receipt whereof we do acknowledge; We the said Indians have for ourselves, Heirs and Successors, granted, bargained, sold, released and confirmed, and by these presents do grant, bargain, sell, release and confirm to our said Sovereign Lord King George the third, All that certain Tract of land situate on the West side of the said Strait or River, leading from Lake Erie to Lake Ontario, Beginning at a large white oak tree, forked six feet from the ground, on the bank of the said Lake Ontario, at the distance of four English miles measured in a straight line, from the West side of the bank of the said Strait, opposite to the Fort of Niagara and extending from thence by a Southerly course to the Chipeweigh River, at the distance of four miles on a direct line from where the said River falls into the said strait above the great Fall of Niagara. or such a line as will pass at four miles West of the said Fall in its course to the said River and running from thence by a Southeasterly course to the Northern Bank of Lake Erie at the distance of four miles on a straight line, Westerly from the Post called Fort Erie, thence Easterly along the said Lake by the said Post, and Northerly up the West side of the said strait to the said Lake Ontario, thence Westerly to the place of beginning; together with all the hereditaments and appurtenances to the same belonging or in anywise appertaining; and also all our estate Right, Title, property, possession, claim or demand in law or equity in or to the same or any part thereof. To have and to hold, the whole lands and premises hereby granted, bargained, sold, released and confirmed as aforesaid with the hereditaments and appurtenances thereunto belonging unto our said Sovereign Lord King George the third, His heirs and successors and to and for his and their own proper use & behoof forever.—In witness whereof we the Chiefs of the said Chipeweighs & Missisagas have hereunto set our marks and seals the ninth day of May One thousand seven hundred and eighty-one. in the twenty first year of His Majesty's reign.

The mark of Nanibizure a Chipeweigh	SWAN	[L.S.]
The mark of Paghquan a Missisaga	BEAR	[L.S.]
The mark of Wabicanine a Missisaga	EAGLE	[L.S.]

The mark of Minaghquat  
a Missisaga

DUCK

[L.S.]

Sealed and delivered in the presence of

(The word (have) between the 7th & 8th Lines, and the word (all) between the 18th & 19th lines, being first interlined,) as also the following words between the 15 & 16 Lines, Viz. or such a line as will pass at four miles West of the said Fall, in its course to said River.

(Signed)

ANDREW PARKE, *Capt. in the King's or 8th Regt.*

WM. POTTS *Capt. in the King's or 8th Regt.*

JOHN DEASE—*depy. Agent of Indian Affairs.*

ALEXR. McKEE *Depy. Agent of Indian Affairs.*

I certify that the above Instrument was fully explained to the Indians, and executed in my presence, and a consideration, amounting to about 300 suits of clothing given to them.

(sgd) G. JOHNSON, *Col. &*  
*Superintendent*

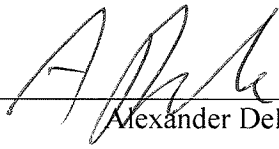
Copied from an Original  
in the Council Office.

Endorsed  
9th May, 1781—  
5—

Furnished by Dept of Crown Lands Toronto, under cover of letter of the 21st. of  
Oct. 1896.  
File 175.258.



This is Exhibit "G" to the affidavit of R. Stacey Laforme,  
affirmed before me on December 2, 2022



Alexander DeParde

A Commissioner for Taking Affidavits

## No. 3.

J. GRAVES SIMCOE.

THIS INDENTURE made at Navy Hall in the County of Lincoln, in the Province of Upper Canada on the seventh day of December in the year of Our Lord one thousand seven hundred and ninety-two, between Wabakanyne, Wabanip, Kautabus, Wabaninship and Nattoton, on the one part, and Our Sovereign Lord George the Third, by Grace of God of Great Britain, France and Ireland, King Defender of the Faith, &c., &c., on the other part.

Whereas, by a certain indenture bearing date the twenty-second day of May, in the year Our Lord one thousand seven hundred and eighty-four, and made between Wabakanyne, Nannibosure, Pokquawr, Nanaughkawestrawr, Peapamaw, Tabendau, Sawainchik, Peasanish, Wapamanischigun, Wapeanojhqua, Sachems and War Chiefs and Principal Women of the Messissague Indian Nation on the one part, and Our said Sovereign Lord George the Third, King of Great Britain, France and Ireland, &c., &c., the other part.

It was witnessed that the said Wabakanyne and the said Principal Chiefs and Women above named for and in consideration of the sum of eleven hundred and eighty pounds, seven shillings and fourpence of lawful money of Great Britain, to them the said Wabakanyne, Sachems, War Chiefs and Principal Women in hand well and truly paid did grant, bargain, sell, alien, release and confirm unto His said Majesty, His Heirs and Successors, all that tract or parcel of land lying and being between the Lakes Ontario and Erie, beginning at Lake Ontario four miles south westerly from the point opposite to Niagara fort, known by the name of Messissague Point, and running from thence along the said lake to the creek that flows from a small lake into the said Lake Ontario known by the name of Washquarter; from thence a north westerly course until it strikes the River La Tranche or New River; thence down the stream of the said river to the part or place where a due south course will lead to the mouth of Cat Fish Creek emptying into Lake Erie, and from the above mentioned part or place of the aforesaid River La Tranche following the south course to the mouth of the said Cat Fish Creek; thence down Lake Erie to the lands heretofore purchased from the Nation of Messissague Indians; and from thence along the said purchase to Lake Ontario at the place of beginning as above mentioned, together with the woods, ways, paths, waters, watercourses, and appurtenances to the said tract or parcel of land belonging. To have and to hold unto Our said Sovereign Lord the King, His Heirs and Successors for ever, as in and by the said Indenture will more fully and at large appear.

And whereas at the time of executing the said Indenture the boundaries of the said parcel of land were on one side described by an imaginary line running from the small Lake Washquarter in a north-west course until it strikes the river, but from an actual survey it has been discovered that a line from the said Lake Washquarter carried on in a north-westerly course will not strike the said River La Tranche.

And whereas it is necessary and expedient that the boundary lines of the said parcel of land should be more accurately laid down and described.

NOW THIS INDENTURE WITNESSETH, and the said Wabakyne, Wabanip, Kautabus, Wabaniship and Mattotow do hereby acknowledge and declare that the true and real description of the said tract or parcel of land so bargained, sold, aliened and transferred by and to the parties aforesaid is all that tract or parcel of land lying and being between the Lake Ontario and Erie beginning at Lake Ontario four miles south-westerly from the point opposite to Niagara fort known by the name of Messissague Point and running from thence along the said lake to the creek that falls from a small lake known by the name of Washquarter into the said Lake Ontario, and from thence north forty-five degrees, west fifty miles; thence south forty-five degrees, west twenty miles; and thence south until it strikes the River La Tranche; then down the stream of the said river to that part or place where a due south course will lead to the mouth of Catfish Creek emptying into Lake Erie, and from the above mentioned part or place of the aforesaid River La Tranche following the south course to the mouth of the said Catfish Creek; thence down Lake Erie to the lands heretofore purchased from the said nation of Messissague Indians; and from thence along the said purchase to Lake Ontario at the place of beginning as above mentioned, together with all the woods, ways, paths, waters, water courses and appurtenances thereunto belonging. And therefore the said Wabakanyne, Wabanip, Kautabus, Wabaniship and Mattotow for and in consideration of the said sum so advanced as aforesaid and for the further consideration of five shillings of lawful money of Great Britain to them the said Wabakanyne, Wabanip, Kautabus, Wabaniship and Mattotow in hand duly paid at and before the sealing and delivering of these presents and for the better ratifying and confirming of the heretofore recited Indenture have granted, bargained, sold, and confirm, and by these presents do grant, bargain, sell and confirm to His Britannick Majesty, His heirs and successors, all that tract or parcel of land lying and being between the Lakes Ontario and Erie, beginning at Lake Ontario four miles south-westerly from the point opposite to Niagara fort, known by the name of Messissague Point, and running from thence along the said lake to the creek that falls from a small lake known by the name of Washquarter into the said Lake Ontario; and from thence north forty-five degrees west fifty miles; thence south forty-five degrees west twenty miles; and thence south until it strikes the River La Tranche; then down the stream of the said river to that part or place where a due south course will lead to the mouth of Catfish Creek emptying into Lake Erie and from the above mentioned part or place of the aforesaid La Tranche following the south course to the mouth of the said Catfish Creek; thence down Lake Erie to the lands heretofore purchased from the Nation of Messissague Indians; and from thence along the said purchase to Lake Ontario at the place beginning as above mentioned, together with all the woods, ways, paths, waters, water courses and appurtenances thereunto belonging.

To have and to hold all and singular the said tract or parcel of land with its appurtenances unto His Britannick Majesty, His heirs and successors forever.

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

IN WITNESS WHEREOF the Chiefs on the part of the Messissague Nation and His Excellency John Graves Simcoe, Esqr., Lieutenant Governor of the said Province,

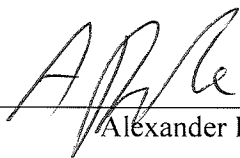
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&c., &c., &c., on the part of His Britannick Majesty have hereunto set their hands and seals the day and year first above written in the presence of

JOHN BUTTER,	[L.S.]	WABAKANYNE,	[L.S.]	(totem)
R. HAMILTON,	[L.S.]	WABANIP,	[L.S.]	(totem)
ROBT. KERR.	[L.S.]	KAUTABUS,	[L.S.]	(totem)
PETER RUSSELL,	[L.S.]	WABANINSHIP,	[L.S.]	(totem)
JOHN MCGILL,	[L.S.]	MATTOTOW,	[L.S.]	(totem)
DAVID WILLIAM SMITH,	[L.S.]	J. GRAVES-SIMCOE,	[L.S.]	

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This is Exhibit "H" to the affidavit of R. Stacey Laforme,  
affirmed before me on December 2, 2022



Alexander DeParde

A Commissioner for Taking Affidavits

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No. 3 $\frac{3}{4}$ .

To all persons to whom these presents shall come, GREETING :

Know ye, that we Wabakanyne, Tabandan, Wabanip, Wanipanant, Okemapenes, and Potakquan, Sachems and Chief Warriors and principal women of the Messissague nation of Indians in the Province of Upper Canada, for and in consideration of the sum of one hundred pounds good and lawful money of the said Province to us in hand well and truly paid before the ensealing and delivery hereof, on the part and behalf of His Britannick Majesty, have given, granted, bargained, sold, aliened, released, conveyed, and confirmed, and by these presents, Do give, grant, bargain, alien, release, convey and confirm unto His said Britannick Majesty, and to His heirs and Successors forever, a certain tract or parcel of Land, butted and bounded as follows, to wit, Beginning at the outlet (so called) between Burlington Bay and Lake Ontario, and thence extending down the said Lake on the North shore thereof about one mile or more to a Creek, falling into the said Lake, called by the said Messissague Indians Lamabinnecon; thence running north forty five degrees west parallel with the former purchase line from the said outlet and carrying the full breadth between the said lines, full so far as to contain Three thousand four hundred and fifty acres.

To have and to hold the said granted and bargained premises, with all the privileges and appurtenances thereof, to His said Britannick Majesty and to His Successors, to His and their own proper use, benefit and behoof forever, we the aforesaid Sachems, Chief Warriors and Principal women, hereby engaging to warrant and defend the said granted premises against all claims and demands by, from or under us or any others of the Messissague Nation.

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In Witness whereof we the said Sachems and Chief warriors and principal women of the said Mississague nation, have hereunto set our hands and seals this twenty-fourth day of October in the year of Our Lord one thousand seven hundred and ninety-five.

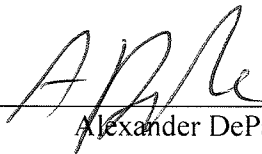
Signed, sealed and delivered, }  
 in presence of us. }

JOHN BULLER, *Adjutant.*  
 R. H. SHEAFFE, *Captain 5th Regt.*  
 J. M. MASOR, *Lieut. 5th Foot.*  
 WM. GAINFORT, *Ens. 15th Regt.*  
 W. JOHNSON CHEW, *Indian Dept.*  
 A. JONES, *D.P.S.*

WABAĀANYNE,	[L.S.]	(totem)
WABANIP,	[L.S.]	(totem)
WANAPENANT,	[L.S.]	(totem)
TABANDAN,	[L.S.]	(totem)
OKAMAPENES,	[L.S.]	(totem)
PATOPKQUAN,	[L.S.]	(totem)

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This is Exhibit "I" to the affidavit of R. Stacey Laforme,  
affirmed before me on December 2, 2022

A handwritten signature in black ink, appearing to read "A. DeParde", is written over a horizontal line.

Alexander DeParde

A Commissioner for Taking Affidavits



## No. 8.

To all to whom these presents may come, GREETING :

WHEREAS we the Principal Chiefs, Warriors and People of the Mississague Nation of Indians being desirous for a certain consideration hereinafter mentioned of selling and disposing of a certain parcel or tract of Land, situate, lying and being at the head of Lake Ontario (as surveyed by Mr. Augustus Jones, Deputy Provincial Surveyor) unto His Britannic Majesty King George the Third, our Great Father. Now know ye, that we the said Principal Chiefs, Warriors and People of the Mississague Nation for and in consideration of the sum of seventy-five pounds two shillings and sixpence Quebec Currency value in goods estimated according to the Montreal price, now delivered to us, the receipt whereof we hereby acknowledge, Have given, granted, sold, disposed of and confirmed and by these presents do give, grant, sell, dispose of and confirm forever, unto William Claus, Esq., Superintendent of Indian Affairs, on behalf of his said Britannic Majesty King George the Third, his heirs and successors all that parcel or tract of land situate and lying as aforesaid. Beginning on the the North Bank of Burlington Bay in the limit between the lands heretofore purchased from the Mississagues and the lands intended to be purchased from the Mississagues for Capt. Joseph Brant, that being the south-eastern angle of the the Township of Flamborough East, then north forty-five degrees west along the purchase line, two hundred and eighty-eight chains more or less; then north forty-five degrees east one hundred and twenty chains; then south forty-five degrees east to the mouth of a small creek (which empties itself into Lake Ontario) called by the Indians Lamabinicon; then westerly along the shore of Lake Ontario to where the Sandy Beach (otherwise called the north neck) joins to the mainland; then along the eastern shore of the said Beach to the outlet from the Little Lake or Burlington Bay as aforesaid; and then north forty-five degrees west to the place of beginning, containing three thousand four hundred and fifty acres may there be more or less. To have and to hold the said parcel or tract of land together with all the woods and waters thereon situate lying and being to the said William Claus, Esq., Superintendent of Indian Affairs, for and on behalf of His said Britannic Majesty King George the Third, His heirs and successors forever, free and clear of and from all claims, rights, privileges or emoluments which we the said Chiefs, Warriors and people of the Mississague Nation might have before, the execution of these presents and free and clear of any pretended claim which our children or descendants may hereafter make to the same. Hereby renouncing and forever absolving ourselves our children descendants and posterity of all title to the said parcel or tract of land, the soil, woods and waters thereof in favour of the said William Claus, Esq., Superintendent of Indian Affairs, for and on behalf of His said Britannic Majesty, His heirs and successors forever.

In Witness Whereof we have for ourselves and the rest of our nation, hereunto set our respective marks and seals this twenty-first day of August in the thirty-seventh year of the reign of King George the third. Having first heard this instrument openly read and rehearsed in our own language and fully approved by ourselves and our Nation, and in the year of our Lord one thousand seven hundred and ninety-seven.

Present at the execution and delivery of this } instrument and Witnesses thereto, }	W. CLAUS, <i>Supt. I.A., on behalf of</i> <i>the Crown</i> [L.S.]
ROBT. NELLES. } GEORGE CHISHOLM. }	<i>Commissioners on behalf of the</i> <i>Province of Upper Canada.</i>

HOWARD DOUGLAS, <i>Lt. R.A.</i>	}	WABANIP (totem)	[L.S.]
JOHN BRONHEAD, <i>Lieut. 24th Regt.</i>		QUANIBBENON (totem)	[L.S.]
W. JOHNSON CHEW, <i>Indn. Dept.</i>		POTAQUAN (totem)	[L.S.]
J. B. ROUSSEAUX, <i>D.R.</i>		OKEMABENASSE (totem)	[L.S.]
		WABANOSEH (totem)	[L.S.]
		TABANDON (totem)	[L.S.]


We do hereby certify that the following goods were delivered in our presence to the Mississague Nation subscribers to the within Deed being the consideration therein mentioned, as sent from the General Indian Store by order of the Commander in Chief, viz.:

	£	s.	d.
Blankets of 2 points, Thirty-two at 12s. per pair.....	9	12	0
do 1½ do Twenty-two at 9s. 9d. per pair.	5	7	3
do 2½ do Thirty-six at 16s. 6d. do ..	14	17	0
Two Pieces Blue Strouds containing Forty-one and three quarter yards at 97s. 6d. per piece.....	14	10	0
Two Pieces Black Strouds containing Forty and three quarter yards at 97s. 6d. per piece .....			
Three Pieces Linen 25 yards each is seventy five yards at 53s. 4d. per piece.....	8	0	0
Five Pieces Calico 18 yards each is ninety yards at 42s. per piece.....	10	10	0
Nine dozen Butchers Knives at 4s. 6d. per dozen.....	2	0	6
Forty seven pounds of Brass Kettles at 2s. 3d. ....	5	5	9
	£75	2	6
Quebec Currency.....			

Amounting in the whole to seventy-five pounds two shillings and six pence  
Quebec Currency.

ROBERT NELLES.	}	<i>Commissioners on the part of the Province of Upper Canada.</i>
GEORGE CHISHOLM.		
HOWARD DOUGLAS, <i>Lt. R.A.</i>		
JOHN BRONHEAD, <i>Lt. 24th Regt.</i>		

This is Exhibit "J" to the affidavit of R. Stacey Laforme,  
affirmed before me on December 2, 2022



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Alexander DeParde

A Commissioner for Taking Affidavits

## No. 13

THIS INDENTURE made at the Carrying Place, head of the Bay of Quinté, the twenty-third day of September, in the year of Our Lord one thousand seven hundred and eighty seven, Between

and the Honble Sir John Johnson, Bart., for and in behalf of our Sovereign Lord the King, witnesseth that the said above mentioned

Principal Chiefs and War Chiefs as aforesaid, for and in consideration of the sum of

to them in hand well and truly paid by the Honble Sir John Johnson aforesaid, at or upon the sealing and delivery of these presents the receipt whereof they the said

doth hereby acknowledge, and thereof and therefrom and from every part or parcel thereof doth acquit, release, exonerate and for ever discharge Our Sovereign Lord the King His heirs and successors and every of them, by these presents hath granted, bargained, alienated, released and confirmed and by these presents doth grant, bargain, sell, alienate, release and confirm unto Our Sovereign Lord the King and to His heirs and successors all that tract or parcel of land laying and being

together with the woods, ways, paths, waters, watercourses, advantages, emoluments and hereditaments whatsoever to the said tract or parcel of land situated as above mentioned belonging or in any wise appertaining or which to and with the same now are or at any times heretofore have been held, used occupied, accepted, reputed taken or known as part, parcel or member thereof or any part thereof, and the issues and profits of all and singular the said premises and every part and parcel thereof, with the appurtenances and also all the estate, right, title, interest, property, claim and demand whatsoever of them the said

in and to all and singular the said premises above mentioned and of, in and every part and parcel thereof with the appurtenances, to have and to hold all and singular the said tract or parcel of land, hereditaments and premises above, in and by these presents released and confirmed and every part and parcel thereof with the appurtenances unto Our Sovereign Lord the King His heirs and successors for ever, and to and for no other use intent or purpose whatsoever, and the said

for themselves their heirs and successors doth covenant, grant, promise and agree to and with Our Sovereign Lord the King, His heirs and successors that they the said

now are the true, lawful and rightful owners of all and singular the said tract or parcel of land, hereditaments and premises above mentioned and of every part or parcel thereof with the appurtenances and also that the said

at the time of sealing and delivery of these presents are lawfully and rightfully seized in their own right of a good, sure, perfect, absolute and indefeasible estate of inheritance in fee simple of and in all and singular the said premises above mentioned with the appurtenances, without any manner of condition, limitation of use or uses or matter, cause or thing whatsoever to alter, change, charge or determine the same. And also that His Majesty, His heirs and successors shall and may at all times for ever hereafter peaceably and quietly have, hold, occupy, possess and enjoy all and singular the said tract or parcel of land, hereditaments and premises aforesaid with the appurtenances and every part or parcel thereof without trouble, hindrance or molestation, interruption or disturbance of them the said

their heirs or successors or any other person or persons lawfully claiming or to claim by, from or under them or any of them, and that freed, discharged and kept harmless and indemnified of, from, and against all former and other gifts or grants whatsoever.

IN WITNESS Whereof we have hereunto set our hands and seals the day and date above mentioned.

Witness present: JOHN COLLINS, LOUIS PROTLE, NATHNL LINES, <i>Interpr.</i> ,	{	WABUKANYNE, (totem)	[L.S.]
		NEACE, (totem)	[L.S.]
		PAKQUAN, (totem)	[L.S.]

A true copy.

P. SELBY, *Asst.-Sec'y., I. A.*

THIS INDENTURE made at the River Credit on Lake Ontario on the first day of August, in the year of Our Lord one thousand eight hundred and five, between William Claus, Esquire Deputy Superintendent General and Deputy Inspector General of Indians and of their affairs, for and in behalf of our Sovereign Lord the King of the one part, and the Principal Chiefs, Warriors and people of the Mississague Nation of Indians for and in the name of the said Nation of the other part.

Whereas, on the twenty-third day of September, in the year of Our Lord one thousand seven hundred and eighty-seven, at the Carrying Place at the head of the Bay of Quinté it was agreed between the Honorable Sir John Johnson, Baronet, on the part of Oursaid Lord the King, and Wabukanyne, Neace, and Pakquan, Principal Chiefs and War Chiefs of the said Mississague Nation, two of which said Chiefs, that is to say Wabukanyne and Neace are now dead, that they the last mentioned Principal Chiefs would for divers good and valuable considerations received by them for and on account of their said Nation from Our said Lord the King duly convey all their right and title to a certain tract or parcel of land hereinafter described to Our said Lord the King, His heirs and successors forever.

And whereas in pursuance of that agreement a certain Instrument hereunto annexed was made at the said Carrying Place, bearing date the day and year last aforesaid, signed and sealed by the said Wabukanyne, Neace, and Pakquan, for the purpose of conveying the said tract or parcel of land to Our said Lord the King, His heirs and successors as aforesaid, which said Instrument did not ascertain or describe the parcel or tract of land meant and intended to be conveyed thereby and was and is in other respects defective and imperfect.

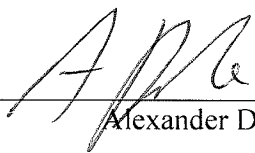
NOW THIS INDENTURE WITNESSETH, that for carrying into execution the said agreement made on the said twenty-third day of September, one thousand seven hundred and eighty-seven, and in consideration thereof and for the more effectually securing and conveying to Our said Lord the King the said tract or parcel of land so agreed to be conveyed to him as aforesaid, and for the consideration of ten shillings of good and lawful money in hand paid to them by the said William Claus, Esquire, for and on account of Our said Lord the King, the receipt whereof by the said Principal Chiefs, Warriors and people of the Mississague Nation as aforesaid is hereby acknowledged, have granted, bargained, aliened, released and confirmed and by these presents do grant, bargain, alien, release and confirm unto Our Sovereign Lord the King, His heirs and successors, all that tract or parcel of land commencing on the east bank of the south outlet of the River Etobicoke; thence up the same, following the several windings and turnings of the said river to a maple tree blazed on four sides at the distance of three miles and three-quarters, in a straight line from the mouth of the said river; thence north twenty-two degrees west twenty-four miles and one-quarter; then north sixty-eight degrees east fourteen miles; then south twenty-two degrees east twenty-eight miles, more or less, to Lake Ontario; then westerly along the water's edge of Lake Ontario to the eastern bank of the south outlet of the River Etobicoke, being the place of beginning, containing Two hundred and fifty thousand, eight hundred and eighty acres, together with all the woods and waters thereon, lying and being and all the advantages, emoluments and hereditaments whatsoever to the said tract or parcel of land belonging or in anywise appertaining and the issues and profits of all and singular the said premises and every part and parcel thereof with the

appurtenances. And also all the estate, right, title, interest, property, claim and demand whatsoever of them the said Principal Chiefs, Warriors and people of the Mississague Nation for themselves and for and in the name of their whole Nation in and to all and singular the said premises and every part and parcel thereof with the appurtenances, save and except the fishery in the said River Etobicoke, which they the said Chiefs, Warriors and people expressly reserve for the sole use of themselves and the Mississague Nation. To have and to hold all and singular the said tract or parcel of land, hereditaments and premises in and by these presents released and confirmed unto Our Sovereign Lord the King, His heirs and successors forever, and to and for no other use, intent or purpose whatsoever. And also that His Majesty, His heirs and successors as aforesaid shall and may at all times for ever hereafter peaceably and quietly have, hold, occupy, possess and enjoy all and singular the said tract or parcel of land with the appurtenances and every part and parcel thereof without trouble, hindrance, molestation, interruption or disturbance of them the said Principal Chiefs, Warriors and people of the Mississague Nation or any of them, their heirs or successors or any other person or persons lawfully claiming or to claim by, from or under them or any of them.

IN WITNESS WHEREOF, we have hereunto affixed our marks and seals the day and year above written, having first heard this Instrument openly read and rehearsed in our own language and fully approved by ourselves and our Nation.

Present at the execution and delivery of this Instrument, and witnesses thereto:	WM. CLAUS, <i>Depy. Supt. Genl., on behalf of the          Crown.</i>	[L.S.]
J. W. WILLIAMS, <i>Capt. 49th Regt.,</i>	CHECHALK, (totem)	[L.S.]
JNO. BEACKENBURY, <i>Ens. 49th Regt.,</i>	QUENEPENON, (totem)	[L.S.]
P. SELBY, <i>Asst. Secy. I. A.</i>	WABUKANYNE, (totem)	[L.S.]
J. B. ROUSSEAUX.	OKEMAPENESSE, (totem)	[L.S.]
	WABENOSE, (totem)	[L.S.]
	KEBONECENCE, (totem)	[L.S.]
	OSENEGO, (totem)	[L.S.]
	ACHETON, (totem)	[L.S.]

This is Exhibit "K" to the affidavit of R. Stacey Laforme,  
affirmed before me on December 2, 2022



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Alexander DeParde

A Commissioner for Taking Affidavits



No. 14.

LIEUTENANT GOVERNOR'S OFFICE,  
YORK, 12th September, 1806.

SIR,—I am directed by His Excellency the Lieutenant Governor to transmit you herewith the deed of conveyance and release for the lands purchased from the Mississagua Indians for the use of His Majesty in the Home District, dated the 6th September, 1806, to which is annexed a plan of the same; also a lease of the above tract from the Indians for one year, dated the 5th September, 1806, the receipt of which you will please to acknowledge.

I have the honor to be, Sir,  
Your most obedient servant,

JOHN SMALL, Esq.,  
&c., &c., &c.

WM. HATTON, *Secretary*.

THIS INDENTURE, made the fifth day of September, in the Year of Our Lord one thousand eight hundred and six, between Chechalk, Quenepenon, Wabukanyne, Okemapenesse, Wabenose, Kebonecence, Osenego, Acheton, Patequan and Wabakagego, Principal Chiefs, Warriors and people of the Missisague Nation of Indians of the one part and His Majesty George the Third, by the Grace of God of the United Kingdom of Great Britain and Ireland King, Defender of the Faith, of the other part. Witnesseth: that the said Chechalk, Quenepenon, Wabukanyne, Okemapenesse, Wabenose, Kebonecence, Osenego, Acheton, Patequan and Wabakagego in consideration of five shillings apiece of lawful money of Great Britain to them in hand paid by His said Majesty at or before the ensealing and delivery of those presents (the receipt whereof is hereby acknowledged) and for other good causes and considerations them the said Chechalk, Quenepenon, Wabukanyne, Okemapenesse, Wabenose, Kebonecence, Osenego, Acheton, Patequan and Wabakagego, hereunto specially moving, have bargained, and sold, and by these presents do, and each of them doth bargain and sell unto His said Majesty, His heirs and successors, all that parcel or tract of land situate in the Home District of the Province of Upper

Canada, containing by admeasurement eighty-five thousand acres, be the same more or less, together with all the woods and waters thereon lying and being, which said eighty-five thousand acres of land are butted and bounded or may be otherwise known as follows, that is to say :

Commencing at the eastern bank of the mouth of the River Etobicoke, being on the limit of the western boundary line of the Toronto purchase in the year of Our Lord, one thousand seven hundred and eighty-seven; then north twenty-two degrees west six miles; then south thirty-eight degrees west twenty-six miles, more or less, until it intersects a line on a course north forty-five degrees west produced from the outlet at Burlington Bay being the north-eastern boundary line of the Township of Flamborough East, and of the purchase in the year of Our Lord one thousand seven hundred and ninety two; then along the said line south forty-five degrees east two hundred and thirty-three chains and fifty-eight links, more or less, to the lands granted to Captain Joseph Brant; then north forty-five degrees east one hundred and twenty-seven chains, to the northerly angle of said lands; then south forty-five degrees east two hundred and ninety-three chains, more or less, to Lake Ontario; then north-easterly along the water's edge of said lake to the eastern bank of the River Etobicoke, the place of beginning; and the reversion and reversions, remainder and remainders, yearly and other rents, issues and profits thereof and of every part and parcel thereof, to have and to hold the said parcel or tract of land and all and singular other the premises hereinbefore mentioned, or intended to be bargained and sold, and every part and parcel thereof, with their and every of their rights, members and appurtenances, unto His said Majesty, His heirs and successors, from the day next before the day of the date of these presents for and during and unto the full end and term of one whole year from thence next ensuing and fully to be completed and ended. Yielding and paying therefor unto the said Chechalk, Quenepenon, Wakanyne, Okemapenesse, Wabenose, Kebonecence, Osenego, Acheton, Patequan and Wabakegego the yearly rent of one peppercorn at the expiration of the said term if the same shall be lawfully demanded.

To the intent and purpose that by virtue of these presents and of the statute made for transferring uses into possession His said Majesty may be in the actual possession of the premises, and be thereby enabled to take and accept a grant and release of the freehold reversion and inheritance of the same premises and every part and parcel thereof to him His said Majesty, His heirs and successors, to the uses to be declared by another Indenture, intended to bear date the next day after the day of the date hereof.

IN WITNESS WHEREOF, the parties first above named have to these presents set and put their hands and seals the day and year first above written.

Signed, sealed and delivered in the presence of us:		WM. CLAUS, <i>D.S.G.</i> ,	
D. CAMERON,	} <i>Com's. on behalf of the Prov.</i>	<i>On behalf of the Crown.</i> [L.S.]	
DONALD MACLEAN,		CHECHALK, (totem) [L.S.]	
GEO. R. FERGUSON,	} <i>Capt. Canadian Regt.,</i>	QUENEPENON, (totem) [L.S.]	
WM. L. CROWTHER,		WABUKANYNE, (totem) [L.S.]	
JAMES DAVIDSON,	} <i>Lieut. 41st Regt., Hospital Staff,</i>	OKEMAPENESSE, (totem) [L.S.]	
H. M. SMITH.		WABENOSE, (totem) [L.S.]	
P. SELBY,	} <i>Asst. Secy. I.A.,</i>	KEBONECENCE, (totem) [L.S.]	
J. B. ROUSSEAU,		OSENEGO, (totem) [L.S.]	
DAVID PRICE,	} <i>Interpreter.</i>	ACHETON, (totem) [L.S.]	
		PATAQUAN, (totem) [L.S.]	
		WABAKAGEGO, (totem) [L.S.]	

THIS INDENTURE, made the sixth day of September, in the year of Our Lord one thousand eight hundred and six, between Chechalk, Quenepenon, Wabukanyne, Okemapenesse, Wabenose, Kebonecence, Osenego, Acheton, Patequan and Wabakegego, the Principal Chiefs, Warriors and people of the Mississagua Nation of Indians of the one part, and His Majesty George the Third, by the Grace of God of the United Kingdom of Great Britain and Ireland, King, Defender of the Faith, of the other part, witnesseth: that for and in consideration of the sum of one thousand pounds of lawful money of Upper Canada to the said Chechalk, Quenepenon, Wabukanyne,

Okemapennesse, Wabenose, Kebonecence, Osenego, Acheton, Patequan and Wabakegego, in hand well and truly paid by His said Majesty at or before the en sealing and delivery of these presents, the receipt whereof they the said Chechalk, Quenepenon, Wabukanyne, Okemapennesse, Wabenose, Kebonecence, Osenego, Acheton, Patequan and Wabakegego do hereby acknowledge, and from the same and every part thereof do severally and respectively acquit, release and discharge His said Majesty, His heirs and successors forever by these presents.

They the said Chechalk, Quenepenon, Wabukanyne, Okemapennesse, Wabenose, Kebonecence, Osenego, Acheton, Patequan and Wabakegego, have and every of them hath granted, bargained, sold, aliened, released and confirmed, and by these presents do and every of them doth grant, bargain, sell, alien, release and confirm unto His said Majesty (in his actual possession now being by virtue of a bargain and sale to him thereof made by the said Chechalk, Quenepenon, Wabukanyne, Okemapennesse, Wabenose, Kebonecence, Osenego, Acheton, Patequan and Wabakegego, in consideration of five shillings apiece, by Indenture bearing date the day next before the day of the date of these presents for the term of one whole year, commencing from the day next before the day of the date of the same Indenture of bargain and sale and by force of the statute made for transferring uses into possession) and to his Heirs and successors—all that parcel or tract of land situate in the Home District of the Province of Upper Canada, containing by admeasurement eighty-five thousand acres, be the same more or less, together with all the woods and waters thereon lying and being under the reservations hereinafter expressed; which said eighty-five thousand acres of land are butted and bounded or may be otherwise known as follows, that is to say: Commencing at the eastern bank of the mouth of the River Etobicoke, being on the limit of the western boundary line of the Toronto purchase in the year of Our Lord one thousand seven hundred and eighty-seven; then north twenty-two degrees west six miles; then south thirty-eight degrees west twenty-six miles, more or less, until it intersects a line on a course north forty-five degrees west produced from the outlet at Burlington Bay, being the north-eastern boundary line of the Township of Flamborough East, and of the purchase in the year of Our Lord one thousand seven hundred and ninety-two; then along the said line south forty-five degrees east two hundred and thirty-three chains and fifty eight links more, or less, to the lands granted to Captain Joseph Brant; then north forty-five degrees east one hundred and twenty-seven chains to the northerly angle of said lands; then south forty-five degrees east two hundred and ninety-three chains more or less to Lake Ontario; then north-easterly along the water's edge of said lake to the eastern bank of the River Etobicoke, the place of beginning. And the reversion and reversions, remainder and remainders, yearly and other rents, issues and profits thereof; and also all the estate, right, title, inheritance, use, trust, possession, property, claim and demand whatsoever of them the said Chechalk, Quenepenon, Wabukanyne, Okemapennesse, Wabenose, Kebonecence, Osenego, Acheton, Patequan and Wabakegego, and every of them in, to, or out of the same premises and every or any part thereof—except and always reserved out of this present grant unto the said Chechalk, Quenepenon, Wabukanyne, Okemapennesse, Wabenose, Kebonecence, Osenego, Acheton, Patequan and Wabakegego and the people of the Missisagua Nation of indians, and their posterity for ever—the sole right of the fisheries in the Twelve Mile Creek, the Sixteen Mile Creek, the River Credit and the River Etobicoke, together with the lands on each side of the said creeks and the River Credit as delineated and laid down on the annexed plan, the said right of fishery and reserves extending from the Lake Ontario up the said creeks and River Credit the distance hereinafter mentioned and described and no further.

And the right of fishery in the River Etobicoke from the mouth of the said river to the allowance for road between the first and second concessions south side of Dundas street, and no further.

The reserve on the River Credit commencing on Lake Ontario at a white oak squared post, piled with stones, and standing at the distance of one mile north-easterly from the centre of the said river at the first bend thereof; then north sixty-nine degrees west one hundred and ninety-six chains; then south sixty-four degrees west one hundred and fifty-five chains; then north forty-five degrees west one

hundred and seventy-seven chains, more or less, to the rear boundary of the purchase line; then along said purchase line, and crossing the said river south thirty-eight degrees west two miles, or one hundred and sixty chains, to the western boundary line of said Reserve; then south forty-five degrees east two hundred and seventy chains; then north sixty-four degrees east one hundred and ninety-one chains; then south sixty-nine degrees east sixty-three chains, more or less, to Lake Ontario at another white oak squared post standing on the bank of said lake at the distance of two miles south-westerly from the place of beginning; then along the water's edge of Lake Ontario north easterly to the place of beginning. The reservation on the Sixteen Mile Creek, commencing on the shore of Lake Ontario at an oak post squared and marked "M.I.R. N. 45° W."—at the distance of forty chains north easterly from the centre of said creek; then north forty-five degrees west one hundred and eighteen chains, more or less, to the allowance for road between the second and third concession south of Dundas street; then south thirty-eight degrees west and crossing the said creek one mile to the western boundary line of said reservation: then south forty-five degrees east one hundred and twenty-four chains more or less to Lake Ontario, at a large black ash tree (two trunks issuing from one root) marked "M. I. R., N. 45° W.;" then north-easterly along the water's edge to the place of beginning. And also all the waters and low grounds lying between the high banks on both sides of said creek extending from the southern boundary of the allowance for road between the aforesaid second and third concessions to the southern boundary of the allowance for road between the first and second concessions south of Dundas street—and no further. And the reservation on the Twelve Mile Creek—commencing on the shore of Lake Ontario at a post squared and marked "M.I.R. N. 66° W.," at the distance of forty chains north-easterly from the centre of said creek; then north sixty-six degrees west one hundred and seven chains; then north thirty-six degrees west fifty-seven chains more or less to the southern boundary of the allowance for road between the second and third concessions south of Dundas street; then south thirty-eight degrees west one mile, crossing said creek to the western boundary line of said reservation; then south thirty-six degrees east fifty-seven chains; then south sixty-six degrees east one hundred and seventeen chains, more or less to Lake Ontario; then north-easterly along the water's edge to the place of beginning. And also the waters and low grounds lying between the high banks on each side of the said creek, extending from the southern boundary of the allowance for road between the second and third concessions before mentioned to the southern boundary of the allowance for road between the first and second concessions south of Dundas street, and no further: To have and to hold the said parcel or tract of land and all and singular other the premises mentioned to be hereby granted and released as aforesaid with their and every of their appurtenances unto His said Majesty, His heirs and successors, to the use of His said Majesty, His heirs and successors for ever.

IN WITNESS WHEREOF, the said parties first above named have to these presents set and put their hands and seals the day and year first above written.

Signed, sealed and delivered in the }  
presence of us :

D. CAMERON,	} Commissioners on behalf of the Province,	W. CLAUS, <i>D.S.G.</i> ,	[L.S.]
DONALD MACLEAN,		on behalf of the Crown.	
H. M. SMITH,	}	CHECHALK, (totem)	[L.S.]
GEO. R. FERGUSON,		QUENEPENON, (totem)	[L.S.]
<i>Capt. Canadian Regiment,</i>		WABUKANYNE, (totem)	[L.S.]
PETER SELBY, <i>Asst. Secy. I. A.,</i>		OKEMAPENESSE, (totem)	[L.S.]
J. B. ROUSSEAU,		WABANOSE, (totem)	[L.S.]
WM. M. CROWTHER, <i>Lieut. 41st Regt.,</i>		KEBONCENCE, (totem)	[L.S.]
JAMES DAVIDSON, <i>Hospital Staff,</i>		OSENEGO (totem),	[L.S.]
DAVID PRICE, <i>Interpreter.</i>		ACHETON, (totem)	[L.S.]
		PATEQUAN, (totem)	[L.S.]
		WABAKAGEGO, (totem)	[L.S.]

## A.

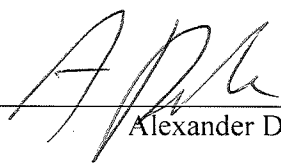
WE do hereby certify that the following goods were delivered in our presence to the Mississagua Nation, subscribers to the within deed, being the consideration therein mentioned, viz. :—

Articles.	Quantity.	Amount in Province Currency.
		£ s. d.
Ball and shot. ....	Nineteen hundred weight : 14 cwt. at 54/6 ; 5 cwt. at 56/.....	52 3 0
Blankets of 1 point.....	Thirty-one pairs, at 10/6 per pair.....	16 5 6
do 1½ do .....	Thirty-six pairs, at 11/10 do .....	21 6 0
do 2 do .....	Thirty-nine pairs, at 14/ do .....	27 6 0
do 2½ do .....	Seventy pairs, at 20/3 do .....	70 17 6
do 3 do .....	Fifty-two pairs, at 29/11 do .....	77 15 8
Calico .....	Seventeen pieces, 306 yards, at 53/ per piece.....	45 1 0
Caddee.....	Three hundred and fifteen yards, at 3/10 per yard.....	60 7 6
Cloth, broad.....	Forty-nine yards : 24 yards at 14/ ; 25 yards at 17/6 per yard....	38 13 6
Flints .....	One thousand.....	0 19 7
Guns, common.....	Fifty-two, at 28/ each.....	72 16 0
do chiefs' .....	Eighteen, at 56/ each.....	50 8 0
do rifled.....	Sixteen, at 77/ each.....	61 12 0
Gunpowder.....	Three hundred and seventy-five pounds, at 203/ per barrel.....	38 1 3
Hats, plain.....	Sixty-three, at 4/9 each.....	14 19 3
do laced.....	Fifteen, at 10/3 each.....	8 8 9
Hooks, fishing.....	Seven gross, at 5/8 per gross.....	1 19 8
Handkerchiefs, silk.....	Four dozen, at 50/ per dozen.....	10 0 0
Hoes.....	Two hundred, at 2/6 each.....	25 0 0
Harrow pins.....	Thirteen, 65½ pounds, at 8½d. per lb.....	2 6 2½
Kettles, brass.....	Two hundred eighty and three-quarter pounds at 3/6.....	49 2 7½
Knives, butchers'.....	One and a-half gross, at 50/ per gross.....	3 15 0
Linen .....	Two hundred and fifty-four yards, at 2/10 per yard.....	35 19 8
Looking glasses.....	Seven dozen, at 5/7 per dozen.....	1 19 1
Molton.....	Nine pieces, two hundred and seventy yards, at 81/ per piece.....	36 9 0
Ploughshare, Coulter hook and swivel. ....	One, 37½ pounds, at 7½d. per lb.....	1 3 3½
Ribbon.....	Fifty-two pieces, 18 yards each : 22 ps. at 8/10 ; 30 at 9/10 p. piece.	24 9 4
Serge, embossed.....	Two hundred and ninety-seven yards, at 2/5 per yard.....	35 17 9
Strouds.....	Fifteen pieces, 331½ yards, at 109/ per piece.....	81 15 0
Steels, fire .....	Five gross, at 5/7 per gross.....	1 7 11
Scissors.....	Seven and a-half dozen, at 8/4 per dozen.....	3 2 6
Tobacco, carrot.....	Four hundred and eighty-six pounds, at 11d. per pound.....	25 5 6
Thread.....	Five pounds, at 5/7 per pound.....	1 7 11
Vermillion.....	Twenty-two pounds, at 4/11 per pound.....	5 8 2
	Amounting in the whole to one thousand pounds, nine shillings and one penny three farthings, Province currency.....	£1,000 9 1¾

RIVER CREDIT, September, 1806.

D. CAMERON,  
DONALD MACLEAN, } Commissioners on behalf of the Province,  
GEO. R. FERGUSON, Capt. Canadian Regiment,  
WM. L. CROWTHER, Lieut. 41st Regiment,  
JAMES DAVIDSON, Hospital Staff.

This is Exhibit "L" to the affidavit of R. Stacey Laforme,  
affirmed before me on December 2, 2022



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Alexander DeParde

A Commissioner for Taking Affidavits

## No. 19.

ARTICLES OF PROVISIONAL AGREEMENT, entered into on Wednesday, the twenty-eighth day of October, 1818, between the Honorable William Claus, Deputy Superintendent General of Indian Affairs on behalf of His Majesty, of the one part, and Adjutant, Chief of the Eagle Tribe, Weggishigomin of the Eagle Tribe, Kawwahkitahqubi of the Otter Tribe, Cabibonike of the Otter Tribe, and Pagitaniquatoibe of the Otter Tribe, Principal Men of the Mississagua Nation of Indians inhabiting the River Credit, Twelve and Sixteen Mile Creeks, on the north shore of Lake Ontario, within the Home District, of the other part, Witnesseth : that for and in consideration of the yearly sum of five hundred and twenty-two pounds ten shillings Province currency in goods at the Montreal price to be well and truly paid yearly and every year by His said Majesty to the said Mississagua Nation inhabiting and claiming the said tract, which may be otherwise known as follows : "A tract of land in the Home District, called the Mississagua tract," bounded southerly by the purchase made in 1806 ; on the east by the Townships of Etobicoke, Vaughan and King ; on the southwest by the Indian purchase, extending from the outlet at Burlington Bay, north

forty-five degrees west fifty miles, and from thence north seventy-four degrees east or thereabout to the north-west angle of the Township of King, containing by computation six hundred and forty-eight thousand acres; and the said Adjutant, Weggishigomin, Cabibonike, Pagitaniquatoibe and Kawahkitahquebi, as well for themselves as for the Mississagua Nation inhabiting and claiming the said tract of land as above described, do freely, fully and voluntarily surrender and convey the same to His Majesty without reservation or limitation in perpetuity. And the said William Claus, on behalf of His Majesty does hereby, promise and agree to pay to the said Nation of Indians inhabiting as above mentioned, yearly and every year for ever the said sum of five hundred and twenty two pounds ten shillings currency in goods at the Montreal price, which sum the said Principal Chiefs and people, parties hereunto, acknowledge as a full consideration for the lands hereby sold and conveyed to His Majesty.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals on the day first above mentioned in the Township of Toronto.

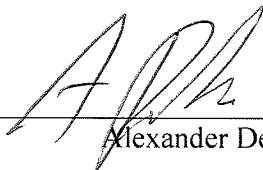
Signed sealed and delivered in the }  
presence of

J. GIVINS,  
*Supt. Indian Affairs,*  
WM. HANDS, JR.,  
*Clerk Indian Dept.,*  
WM. GRUET,  
*Intr. Indian Dept.*

{ W. CLAUS, *D. S. G.*  
*on behalf of the Crown.* [L.S.]  
ADJUTANT, (totem) [L.S.]  
WEGGISHGOMIN, (totem) [L.S.]  
CABIBONIKE, (totem) [L.S.]  
PAGITANIKUATOIBE, (totem) [L.S.]  
KAWAHKITAHAQUIBE, (totem) [L.S.]



This is Exhibit "M" to the affidavit of R. Stacey Laforme,  
affirmed before me on December 2, 2022



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Alexander DeParde

A Commissioner for Taking Affidavits

## No. 22.

THIS INDENTURE, made the twenty-eighth day of February, in the year of Our Lord one thousand eight hundred and twenty, between Acheton, Newoiquequah, Woiqueshequome, Paushetawnouquitohe and Wabakagige, the Principal Chiefs, Warriors and people of the Mississagua Nation of Indians of the one part, and His Majesty George the Third, by the Grace of God of the United Kingdom of Great Britain and Ireland, King, Defender of the Faith, of the other part, Witnesseth: that for and in consideration of the sum of twenty shillings of lawful money of the Province of Upper Canada by His said Majesty to the said Acheton, Newoiquequah, Woiqueshequome, Paushetawnouquitohe and Wabakagige in hand well and truly paid at or before the sealing and delivery of these presents, the receipts whereof the said Acheton, Newoiquequah, Woiqueshequome, Paushetawnouquitohe, Wabakagige, do hereby acknowledge, and of and from the same and every part thereof do acquit, release and discharge His said Majesty, His heirs and successors for ever by these presents.

They the said Acheton, Newoiquequah, Woiqueshequome, Paushetawnouquitohe and Wabakagige, have and each of them hath granted, bargained, sold, released, surrendered, and forever yielded up, and by these presents do and each of them doth grant, bargain, sell, release, surrender, and forever yield up unto His said Majesty, His heirs and successors, all that parcel or tract of land situate, being and

lying in Township of Toronto, in the County of York, in the Home District and Province of Upper Canada and marked "D" on the plan of this Indenture annexed, being the easterly part of the Mississagua Indian Reserve on the River Credit, in the said Township of Toronto, which said parcel or tract of land is butted and bounded or may be otherwise known as follows, that is to say: Commencing in the southern boundary of the said reserve at a large white oak squared post, planted by Mr. Wilmot, Deputy Surveyor, in the year one thousand eight hundred and six, standing on the bank of Lake Ontario, one mile south-westerly from the said river; thence north sixty-nine degrees west sixty-three chains thirty-one links, more or less, to where the said boundary line forms the first angle; thence south sixty-four degrees west one hundred and ninety-one chains, more or less, to where the said boundary line forms the second angle; thence north forty-five degrees west twenty chains, more or less, to within the distance of fifty chains of the eastern limit of Dundas street; thence north thirty-eight degrees east parallel to Dundas street three hundred chains, more or less, to the intersection of the said line with the northern boundary line of the said reserve, produced on a course north sixty-nine degrees west from a squared white oak post planted in the year one thousand eight hundred and six by the said Deputy Surveyor, piled with stone, near the bank of Lake Ontario, one mile from the River Credit, at right angles from the general course to the first bend of the said river, which is north sixty-nine degrees west; thence along the said northern boundary line on a course south sixty-nine degrees east one hundred and eighty-five chains, more or less, to Lake Ontario at the last mentioned squared post; thence along the water's edge of the said lake to the place of beginning, containing by admeasurement four thousand acres, be the same more or less. And also all that certain other parcel or tract of land situate, lying and being in the said Township of Toronto and marked "F" on the plan of this Indenture annexed, being the western part of the Mississagua Indian Reserve on the River Credit in the aforesaid Township of Toronto, which said parcel or tract of land is butted and bounded, or may be otherwise known as follows, that is to say: Commencing in the southern boundary of the said reserve at the distance of fifty chains, on a course north forty-five degrees west from the western limit of Dundas street; thence north forty-five degrees west one hundred and fifty-one chains, more or less, to the eastern limit of the allowed for road in rear of the second concession, north of Dundas street, being the western boundary of the said reserve; thence along the western boundary aforesaid on a course north thirty-eight degrees east parallel to Dundas street, one hundred and sixty chains, more or less, to the northern boundary of the said reserve; thence south forty-five degrees east one hundred and fifty-one chains, more or less, until it intersects a line produced on a course north thirty-eight degrees east parallel to Dundas street from the place of beginning, containing by admeasurement two thousand four hundred acres, be the same more or less. And also all that other certain parcel or tract of land situate, lying and being in the Township of Trafalgar, in the County of Walton, in the District of Gore and Province of Upper Canada, marked "B" in the plan to this Indenture annexed, including the flats or low grounds in the second concession south of Dundas street, being the Mississagua Indian Reserve on the Sixteen Mile Creek in the aforesaid Township of Trafalgar, which said parcel or tract of land is butted and bounded, or may be otherwise known as follows, that is to say: Commencing on Lake Ontario on the northern boundary of the said reserve at a squared post marked "M.I.R., N. 45° W." planted by Mr. Wilmot, Deputy Surveyor, in the year one thousand eight hundred and six,—about half a mile north-easterly of the mouth of the said creek; thence north forty-five degrees west one hundred and eighteen chains, more or less, to the eastern limit of the allowed for road between the second and third concessions, south of Dundas street being the northerly angle of the said reserve; thence south thirty-eight degrees west seventy chains, more or less, to the flats or low grounds on the northerly side of the Sixteen Mile Creek; thence following the northerly edge of the said flats or low grounds to the allowance for road between the first and

second concessions, south of Dundas street; thence south thirty-eight degrees west (crossing the said creek) ten chains, more or less, to the edge of the flats or low grounds on the southerly side of the said creek; thence down the said creek along the southerly edge of the flats or low grounds aforesaid to the eastern limit of the allowance for road between the second and third concessions south of Dundas street; thence south thirty-eight degrees west four chains, more or less, to the westerly angle of the Mississagua Indian Reserve on the said creek; thence south forty-five degrees east along the southern boundary of the said reserve one hundred and twenty-three chains, more or less, to Lake Ontario, at a black ash tree having two bodies from the same root, marked "M.I.R., N. 45° W.;" thence north-easterly along the shore of Lake Ontario to the place of beginning; containing by admeasurement one thousand one hundred and twenty acres, be the same more or less. And also all that certain other parcel or tract of land situate, being and lying in the Township of Trafalgar aforesaid and marked "G" on the plan to this Indenture annexed, including the flats or low grounds in the second concession south of Dundas street, being the Mississagua Indian Reserve on the Twelve Mile Creek in the aforesaid Township of Trafalgar, which said parcel or tract of land is butted and bounded, or may be otherwise known as follows, that is: Commencing on Lake Ontario in the northern boundary of the said reserve at a squared oak post piled round with stone, marked "M.I.R., N. 66° W.;" planted by Mr. Wilmot, Deputy Surveyor, in the year one thousand eight hundred and six, about half a mile north-easterly from the mouth of the said creek; thence north sixty-six degrees west one hundred and seven chains, more or less, to where the said boundary line forms the first angle; thence north thirty-six degrees west fifty-seven chains, more or less, to the eastern limit of the allowance for road between the second and third concessions, south of Dundas street, where the said boundary line forms the second angle; thence south thirty-eight degrees west thirty-three chains more or less to the flats or low grounds on the northerly side of the said creek; thence following the northerly edge of the said flats or low grounds to the allowance for road between the first and second concessions, south of Dundas street; thence south thirty-eight degrees west crossing the Twelve Mile Creek ten chains, more or less, to the edge of the flats or low grounds on the southerly side of the said creek; thence down the said creek along the southerly edge of the flats or low grounds aforesaid unto the eastern limit of the allowance for road between the second and third concessions, south of Dundas street; thence south thirty-eight degrees west thirty-seven chains, more or less, to the westerly angle of the Mississagua Indian Reserve on the said creek; thence south thirty-six degrees east fifty-seven chains, to where the said boundary line forms the first angle; thence south sixty-six degrees east one hundred and seventeen chains, more or less, to Lake Ontario, at a post squared and marked M.I.R., N. 66° W.;" thence north-easterly along the shore of the said lake to the place of beginning; containing by admeasurement one thousand four hundred and twenty acres, be the same more or less. Together with all the woods and waters therein lying and being and all and singular the rights, privileges and appurtenances thereto belonging and especially all sole and exclusive rights of fisheries on the said Twelve and Sixteen mile Creeks and the said River Credit heretofore reserved to or possessed by the said Nation of Mississagua Indians. Saving and reserving, nevertheless, always to the said Acheton, Newoiquiquah, Woiqueshequome, Pausetawnouguetohe and Wabakagige and the people of the Mississagua Nation of Indians and their posterity for ever a certain parcel or tract of land containing two hundred acres, being part of the before-mentioned tract marked "D" heretofore described as the easterly part of the Mississagua or Indian Reserve on the River Credit, in the Township of Toronto aforesaid, which said two hundred acres of land are butted and bounded, or may be otherwise known as follows, that is to say: Commencing on the northerly side of the River Credit at the distance of about one mile and a quarter from the mouth of the said river; thence along the same (reckoning the distance by a straight course) forty chains; thence north nineteen degrees east fifty-five chains; thence south

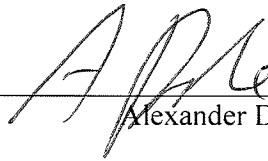
sixty-nine degrees east forty chains; thence south nineteen degrees west to the River Credit, the place of beginning. To have and to hold all and singular the several parcels or tracts of land above described marked "D" "F" "B" and "G" except as heretofore is excepted with their and every of their appurtenances as unto His said Majesty, His heirs and successors, upon the trust and to the intent that His said Majesty, His heirs and successors may out of the proceeds of the profits of the said Lands and premises arising from the sale or leasing or such other disposition of the same or any part thereof as to His said Majesty, His heirs or successors may seem meet, may make provision for the maintenance and religious instruction of the people of the Mississagua Nation of Indians and their posterity according to His Majesty's gracious intention.

IN WITNESS WHEREOF, the said parties first above named have to these presents set and put their hands and seals the day and year first above written.

Signed, sealed and delivered in }  
 presence of  
 J. GIVINS,  
*Supt. Indian Affairs,*  
 D. CAMERON,  
 N. COFFIN,  
 J. P. CATTY,  
*Lt. Royal Engineers Commanding,*  
 D. J. SKENE,  
*Lt. 68th Light Regiment,*  
 ARTHUR MAIR,  
*Ensign 68th Light Regiment,*  
 J. L. TIGHE,  
*H. Assist. Surg. to the Forces,*  
 ALEX. McDONELL,  
*Asst. Secy., I.A.*  
 WM. GRUET,  
*Interpreter Indian Department.*

W. CLAUS, *Dy. S. G. of I. A.,*  
*on behalf of the Crown.* [L.S.]  
 ACHETON, (totem) [L.S.]  
 NEVOIQUEQUAH, (totem) [L.S.]  
 WEIQUESQUOME, (totem) [L.S.]  
 PAUSHETAUNONQUITOHE, (totem) [L.S.]  
 WABAKAGIGO, (totem) [L.S.]

This is Exhibit "N" to the affidavit of R. Stacey Laforme,  
affirmed before me on December 2, 2022

A handwritten signature in black ink, appearing to read 'A DeParde', is written over a horizontal line.

Alexander DeParde

A Commissioner for Taking Affidavits

## No. 23.

THIS INDENTURE made the twenty-eighth day of February, in the year of Our Lord one thousand eight hundred and twenty, between Acheton, Newoiquequah, Woiqueshequome, Paushetaunouquitohe and Wabakagigo, the principal chiefs, warriors and people of the Mississagua Nation of Indians, of the one part, and His Majesty George the Third, by the Grace of God of the United Kingdom of Great Britain and Ireland, King, Defender of the Faith, of the other part Witnesseth: that for and in consideration of the sum of Fifty Pounds, Province Currency, of lawful money of the Province of Upper Canada, by His said Majesty to the said Acheton, Newoiquequah, Woiqueshequome, Paushetaunouquitoke and Wabakagigo, well and truly paid at or before the sealing and delivery of these presents, the receipt whereof they the said Acheton, Newoiquequah, Woiqueshequome, Paushetaunouquitoke and Wabakagigo, do hereby acknowledge, and of and from the same and every part thereof, do acquit, release and discharge His said Majesty, His heirs and successors, for ever by these presents. They, the said Acheton, Newoiquequah, Woiqueshequome, Paushetaunouquitoke and Wabakagigo, have, and each of them hath granted, bargained, sold, released, surrendered and for ever yielded up, and by these presents do and each of them doth grant, bargain sell, release, surrender and for ever yield up unto His said Majesty, His heirs and successors, all that parcel or tract of land situate, lying and being in the Township of Toronto, in the County of York, in the Home District and Province of Upper Canada, and marked "E" on the plan to this indenture annexed, being the central part of the Mississagua Indian Reserve on the River Credit, in the said Township of Toronto, which said parcel or

tract of land is butted and bounded, or may be otherwise known as follows, that is to say:—Commencing in the eastern limit of Dundas Street, in the southern boundary of the said Indian Reserve; thence south forty-five degrees east fifty chains; thence north thirty-eight degrees east parallel to Dundas Street, three hundred chains, more or less, to the northern boundary of the said Reserve; thence north sixty-nine degrees west twelve chains to where the said boundary line forms the first angle; thence south sixty-four degrees west one hundred and fifty-five chains, more or less, to where the said boundary line forms the second angle; thence north forty-five degrees west twenty chains, more or less, until it intersects a line north of Dundas Street and parallel thereto, produced on a course north thirty-eight degrees east at the distance of fifty chains on a course north forty-five degrees west from the western limit of Dundas Street; thence south thirty-eight degrees west parallel to the said street, one hundred and sixty chains, more or less, to the southern boundary line of the said Reserve; thence south forty-five degrees east fifty-one chains, more or less to the place of beginning; containing two thousand acres, more or less, together with all the woods and waters thereon lying and being and all and singular the rights, privileges and appurtenances thereto belonging. To have and to hold the said parcel and tract of land and premises with their and every of their appurtenances unto His said Majesty, His heirs and successors, to the use of His said Majesty, His heirs and successors forever.

IN WITNESS WHEREOF the said parties first above named have to these presents set and put their hands and seals the day and year first above written.

Signed, sealed and delivered in the presence of

J. P. CATTY, *Lieut. Royal Engrs., Comdg.*

ARTHUR MAIR, *Ens. 68 Light Regt.*

J. L. TIGHE, *H. Asst. Surg. to the Forces.*

D. J. SKENE, *Lieut. 68 Light Regt.*

D. CAMERON.

N. COFFIN.

J. GIVINS, *Supt. Indian Affairs.*

ALEX. McDONELL, *Asst. Secy. I. A.*

WM. GRUET, *Int'r. Indian Dept.*

W. CLAUS, *D. S. G. of I. A., on behalf of the Crown,*

ACHETON, (totem)

WEIQUESQUOME, (totem)

NEWOIQUEQUAH, (totem)

PAUSHETAUNOQUETOHE, (totem)

WABAKAGEGO, (totem)

[L.S.]

[L.S.]

[L.S.]

[L.S.]

[L.S.]

[L.S.]

Received the day and year within mentioned of His Majesty George the Third the sum of Fifty Pounds Province Currency, being in full of the consideration money within mentioned to be paid to us.

We say received the same by us.

Witness hereto:

J. P. CATTY, *Lt. Royal Engrs Comg.*

D. J. SKENE, *Lt. 68 Light Regt.*

ARTHUR MAIR, *Ens. 68th Light Regt.*

J. L. TIGHE, *H. Asst. Surg. to the Forces.*

D. CAMERON,

D. COFFIN,

ALEX. McDONELL, *Asst. Secy I.A.*

ACHETON (totem)

WEIQUESQUOME (totem)

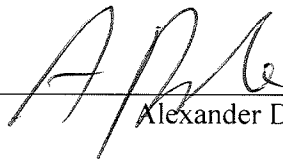
NEWOIQUEQUAH (totem)

PAUSHETAUNONQUETOKE (totem)

WABAKAGIGO (totem)



This is Exhibit "O" to the affidavit of R. Stacey Laforme,  
affirmed before me on December 2, 2022

A handwritten signature in black ink, appearing to read 'A DeParde', is written over a horizontal line.

Alexander DeParde

A Commissioner for Taking Affidavits

**MEMORANDUM OF UNDERSTANDING  
RECOGNITION OF INDIGENOUS RIGHTS  
AND SELF-DETERMINATION TABLE  
("MOU")**

**BETWEEN:**

**MISSISSAUGAS OF THE NEW CREDIT FIRST NATION  
as represented by its Chief  
("MNCFN")**

-and-

**HER MAJESTY THE QUEEN IN RIGHT OF CANADA  
as represented by the Minister of Indian Affairs and Northern Development  
("Canada")**

(hereinafter referred to collectively as the "Parties" and individually as a "Party")

**WHEREAS** MNCFN as the direct descendants of the Mississaugas of the Credit River, entered into a number of treaties with Canada between 1781 and 1820 with respect to various parts of MNCFN traditional territory;

**AND WHEREAS** MNCFN asserts to have and exercise Aboriginal and treaty rights throughout its traditional territory;

**AND WHEREAS** the Parties acknowledge and respect that the treaties between them reflect MNCFN's unique historical, cultural and spiritual relationship to its traditional territory and the special relationship with the Crown;

**AND WHEREAS** the Parties acknowledge that the heavy urbanization and industrialization of MNCFN traditional territory has created challenges for MNCFN's ability to exercise stewardship of the land and to rely on its traditional territory for its spiritual, cultural, and economic survival;

**AND WHEREAS** MNCFN has outstanding claims arising out of its treaty relationship with Canada, including an Aboriginal title claim to the Rouge River Valley Tract and an Aboriginal title claim to all water, land under water, and floodplains in its traditional territory;

**AND WHEREAS** MNCFN and Canada are committed to the process of reconciliation and acknowledge that reconciliation requires a renewed understanding of the treaty relationship between MNCFN and Canada and a new approach to its implementation;

**AND WHEREAS** MNCFN and Canada agree that consideration must be given to new concepts of governance, shared decision-making and economic models that will allow MNCFN

to preserve its First Nation culture and governance and to continue to be sustained by its traditional territory in modern and evolving ways;

**AND WHEREAS** representatives of MNCFN and Canada have met and agreed to establish a table with a view of exploring new approaches to understanding and implementing the treaties between MNCFN and Canada, and to the resolution of MNCFN's outstanding Aboriginal title claims.

**NOW THEREFORE the Parties agree as follows:**

1. The Parties will establish and participate in a Recognition of Indigenous Rights and Self-Determination Table (or "table").
2. The objective of the table will be to explore new approaches to understanding and implementing the treaties between MNCFN and Canada, new governance models, and the resolution of MNCFN's outstanding claims.
3. The Parties recognize that there may be value in having the Province of Ontario participate in the table, and will, if and where appropriate, encourage the Province of Ontario to contribute to the table's discussions as an active participant.
4. Unless the Parties otherwise agree, the table will have at least one meeting every six weeks from the date this MOU comes into force, and, subject to paragraph 12, the table's discussions will conclude by December 2018.
5. Each Party will determine who will represent it at the table.
6. The Parties will jointly select a suitable time and place for each meeting.
7. The Parties recognize that MNCFN requires reasonable capacity to participate in the process contemplated under this MOU. The Parties will work to develop a mutually-acceptable workplan and budget to support MNCFN's participation in the table. Any workplan, budget and funding agreement shall be consistent with the policies of the Department of Indigenous and Northern Affairs Canada.
8. Except for this paragraph 8 and paragraphs 9, 11 and 14, this MOU is not legally binding, is intended only as an expression of good will and political commitment, and does not create, amend, recognize, or deny any legal or constitutional right or obligation on the part of either Party.
9. Whether or not disclosed to members of MNCFN, to a third party or to the public,
  - a. this MOU (other than paragraphs 8, 9, 11 and 14),
  - b. all discussions of the table, and

- c. all records, information and communications that disclose the content of discussions or the content of a Party's positions or views

will be without prejudice to the legal rights of, and to the positions which may be taken by, any Party in any legal proceeding, negotiation or otherwise. Except for the purpose of enforcing paragraph 8, 9, 11 and 14, the Parties will not seek to admit, in a court of law or in any proceeding before a tribunal or board, evidence respecting this MOU or respecting any item mentioned in (b) or (c) of this paragraph 9.

10. The Parties will discuss the possibility of establishing a joint communications approach in relation to this MOU, which may include details on how and when the Parties would jointly inform the public or the media of the fact of this MOU and its contents.

11. Unless the Parties agree otherwise in writing,

- a. all discussions of the table will be held in camera and remain confidential,
- b. a Party will not disclose any records, information or communications that reveal the content of discussions or the content of the other Party's positions or views, and
- c. a Party will not disclose any records, information or communications of the table that reveal the content of the Party's own positions or views.

12. This MOU comes into force when signed and, subject to paragraph 13, will remain in effect until it is replaced by a subsequent agreement between the Parties.

13. Either Party may terminate this MOU on 30 days' written notice to the other Party.

14. Unless the Parties otherwise agree in writing, the provisions of paragraphs 8, 9, 11 and 14 will survive the term of this MOU.

[REMAINDER OF PAGE DELIBERATELY LEFT BLANK]

The MOU is signed and agreed to by the Parties on the dates set out below.

MISSISSAUGAS OF THE NEW CREDIT FIRST NATION

Per:



Chief R. Stacey Laforme  
Mississaugas of the New Credit First Nation

June 9, 2017  
Date

HER MAJESTY THE QUEEN IN RIGHT OF CANADA

Per:



Joe Wild  
Senior Assistant Deputy Minister  
Treaties and Aboriginal Government

June 9, 2017  
Date

This is Exhibit "P" to the affidavit of R. Stacey Laforme,  
affirmed before me on December 2, 2022



Alexander DeParde

A Commissioner for Taking Affidavits

**Consultation Protocol Agreement**

Between

**Mississaugas of the New Credit First Nation**

(“MNCFN”)

And

**Her Majesty the Queen in Right of Canada**

**as represented by the Minister of Indian Affairs and Northern Development Canada**

(“Canada”)

(collectively the “Parties” or individually a “Party”)

**WHEREAS** MNCFN are the direct descendants of the Mississaugas of the Credit River, whose ancestors have used and benefited from the land and waters of their Territory for countless generations;

**WHEREAS** MNCFN have entered into a number of treaties with Canada between 1781 and 1820 with respect to areas within MNCFN traditional territory;

**WHEREAS** MNCFN asserts unextinguished Aboriginal rights, including Aboriginal title to the waters, beds of waters, and foreshore in its Territory, and Aboriginal title to the Rouge River Valley (collectively the “Aboriginal Title Claims”);

**WHEREAS** MNCFN has submitted to Canada and Ontario the Aboriginal Title Claims for the negotiation of an agreement reconciling their Aboriginal Title Claims with the Crown;

**WHEREAS** a federal duty to consult may arise in relation to a proposed federal activity or decision that may have an adverse impact on the treaty rights or the Aboriginal rights including title claims of the MNCFN;

**WHEREAS** the Parties acknowledge that Canada’s duty to consult is grounded in the honour of the Crown and that the fundamental goal of consultation is reconciliation between the Parties;

**WHEREAS** the Parties acknowledge that a federal duty to consult and, where appropriate, accommodate, in relation to a proposed federal activity or decision will be informed by the historical context, including any cumulative effects, and the present realities;

**WHEREAS**, for MNCFN this context includes the heavy urbanization and industrialization of MNCFN’s Territory and the increasing and ongoing pressures and strains of cumulative development activities and decisions on the land and waters in MNCFN’s Territory;

**WHEREAS** MNCFN has established the Department of Consultation and Accommodation (“DOCA”) to engage with Canada, Ontario, and others in consultation and accommodation discussions on its behalf;

**WHEREAS** the Parties entered into discussions and signed a Memorandum of Understanding, Recognition of Indigenous Rights and Self-Determination Table on June 9, 2017, acknowledging the need for reconciliation and a renewed relationship between them;

**AND WHEREAS** further to those discussions the Parties wish to set out a process by which consultation and accommodation will be undertaken between them as part of this renewed relationship and based on a recognition of rights, respect, and in a spirit of partnership.

**NOW THEREFORE the Parties have reached agreement on the process for undertaking consultation and accommodation discussions (the “Consultation Protocol”):**

### **1. Purpose**

- 1.1. The Parties recognize that Canada has a duty to consult Indigenous people where it contemplates actions or decisions that may adversely impact their asserted or established Aboriginal or treaty rights.
- 1.2. The Parties recognize that consultation is an opportunity to promote reconciliation and build stronger long-term relationships between the Parties.
- 1.3. The Parties intend that the consultation process described in the Consultation Protocol be the preferred choice for consultation between Canada and the MNCFN.
- 1.4. For greater certainty, this Consultation Protocol does not prevent the Parties from agreeing to consultation independent of this process or concluding other consultation agreements.

### **2. Canada’s Participation**

- 2.1. Canada participates in the consultation process conducted pursuant to this Consultation Protocol through the federal departments and agencies responsible for the contemplated Project.
- 2.2. Where practicable, federal departments and agencies will adopt a coordinated approach regarding consultation and, where appropriate, accommodation in order to promote the effectiveness and efficiency of the process.
- 2.3. Where appropriate, Canada uses and relies to the extent possible on the processes of other parties (e.g. boards, industry, province) to assist it in fulfilling its duty to consult and, where appropriate, accommodate.
- 2.4. Where Canada intends to rely on the process of another party to assist it in fulfilling its duty to consult and, where appropriate, accommodate, Canada will provide timely notice to MNCFN of its intent and the parties will seek to come to a common understanding on how that process will contribute to the consultation activities described in this protocol.

### **3. Notice of Projects**

- 3.1. When Canada contemplates a proposed project, activity, development, or action (collectively a “Project”) that has the potential to impact MNCFN’s Aboriginal or treaty rights it shall provide written notice to MNCFN.
- 3.2. Written Notice shall be directed to the attention of the Consultation Manager at DOCA.
- 3.3. This Notice shall contain, to the extent reasonably available:
  - 3.3.1. A description of the Project;



- 3.3.2. Where applicable, a map of the Project identifying the location of the Project in relation to MNCFN reserve lands;
  - 3.3.3. Any technical or other reports, information, or studies prepared or provided in connection with the Project;
  - 3.3.4. Any initial assessment of identified potential impacts or effects of the Project by Canada;
  - 3.3.5. Contact information for the ministry, department, or other group, organization or proponent responsible for the Project;
  - 3.3.6. Timelines for the Project, including the identification of key milestones, description of the regulatory framework, decision-points and approvals related to the Project including guidelines and policies being relied on; and
  - 3.3.7. A copy of any preliminary assessment or other analysis of the potential impacts on MNCFN's rights, claims, or interests prepared by Canada.
- 3.4. This Notice shall be provided as soon as reasonably possible, and in all cases sufficiently in advance of a final decision so that MNCFN can have a meaningful opportunity to provide information and so that the Parties can fulfill the activities outlined in this Protocol.
- 3.5. For greater clarity, the imperative of providing early notice, as soon as reasonably possible, takes precedence over the Notice containing all information identified in section 3.3 and it is contemplated by the Parties that additional or supplementary information will be exchanged between them throughout the consultation process.
- 3.6. DOCA, on behalf of MNCFN, will respond to acknowledge receipt of this Notice within 30 days and it is agreed that this response is not intended or to be construed as an indication as to the sufficiency of information or a conclusion of the consultation process.
- 3.7. DOCA will be the primary point of contact between MNCFN and Canada on all matters concerning this Consultation Protocol.

#### **4. Consultation Process**

- 4.1. Upon receiving the Notice, DOCA will undertake an assessment of the Project and categorize it as either "Low Concern" or "High Concern".
- 4.2. A Low Concern Project means: as determined by DOCA, a Project of a routine or inconsequential nature that is unlikely to have an impact on the Aboriginal or treaty rights and claims of the MNCFN.
- 4.3. A High Concern Project means: as determined by DOCA, a Project other than a Low Concern Project.
- 4.4. Within 15 days of acknowledging its receipt of the Notice referred to in clause 3.6 DOCA will communicate the results of its assessment of the Project and its requirements for next steps based on its assessment.
- 4.5. For all High Concern Projects, a meeting between DOCA and Canada will occur no later than 30 days following DOCA providing Notice of its assessment, where the Parties will:
  - 4.5.1. Discuss the Project, and the sufficiency of the information provided to DOCA in the Notice;
  - 4.5.2. Discuss MNCFN's history, its rights, claims, and interests that may be impacted by the Project;

- 4.5.3. Discuss MNCFN's traditional knowledge, laws, values, and stewardship obligations, and how these can be considered and respected as part of the Project design, conditions, or approvals;
  - 4.5.4. Identify any gaps in information and identify a process to address those gaps, including by considering whether additional studies, environmental assessment criteria, monitoring, or other investigations are required;
  - 4.5.5. Discuss any capacity needs of MNCFN and identify a plan to meet those needs, including by engaging with proponents involved in the Project, federal departments and agencies; and
  - 4.5.6. Discuss the timeline for the Project and approvals by Canada related to it, in light of the need for MNCFN to engage with its members.
- 4.6. For all Low Concern Projects, a meeting between DOCA and Canada may be necessary and will occur at the request of either Party to discuss the application of this Protocol including Sections 5 and 6.
- 4.7. The Parties will consider opportunities to invite proponents, companies or other organizations involved in the Project to participate in such meetings, as appropriate.

#### **Consultations regarding Aboriginal Title Claims**

- 4.8. The Parties agree that any Projects that have the potential to impact MNCFN's Aboriginal Title Claims are High Concern Projects.
- 4.9. The Parties agree that, given the unique considerations that are involved in consultation over MNCFN's Aboriginal Title Claims, where requested by MNCFN, Canada will participate in consultation processes when impacts may result to MNCFN's asserted title rights, claims, and interests even where consultation or engagement is being undertaken primarily by a proponent or third party.

### **5. Elements for a Successful Resolution**

- 5.1. The Parties acknowledge that appropriate accommodation or interim protection measures will be informed by the historical context, including any cumulative effects, and the present realities.
- 5.2. The Parties further acknowledge that the perspective of MNCFN on the nature, scope, and extent of its rights and impact to those rights will be considered in designing a successful accommodation or interim protection measure.
- 5.3. The Parties agree that, accommodation discussions will be undertaken with an open mind, seeking creative and innovative solutions to resolve concerns and minimize impacts, and that discussions about appropriate accommodation measures will be discussed and considered for each Project.
- 5.4. The Parties agree that accommodation options to be considered may include cultural, environmental, or economic interests or agreements, as well as a role for MNCFN in decision-making related to a Project.
- 5.5. For all High Concern Projects, the Parties will meet within 60 days of the date of the meeting referred to in 4.5 and as necessary to discuss potential accommodation or interim protection measures, including:
  - 5.5.1. Environmental assessments, environmental monitoring and requirements of MNCFN in any environmental study, plan, or assessment processes;

- 5.5.2. Archaeological monitoring by MNCFN, including through the participation of its Field Liaison Representatives (“FLR”) in accordance with MNCFN Archaeological Standards and Guidelines;
- 5.5.3. Changes to the timing or location of Project activities to minimize impacts on MNCFN’s Territory, and its rights or interests or exercise of the same;
- 5.5.4. Any studies, assessments, or technical reviews that may be required to collect additional information about potential impacts, environmental, or other concerns;
- 5.5.5. Changes to the Project or any conditions that would be required as part of any approval related to the Project;
- 5.5.6. Any opportunities for MNCFN participation in the Project, including through employment opportunities, partnership, or impact benefit agreements; and
- 5.5.7. Other appropriate accommodation or protection measures that may be necessary.

## 6. Resolution

- 6.1. The Parties agree that the shared goal of the consultation process is a mutually satisfactory outcome that addresses MNCFN rights, claims, and interests in a way that allows decisions and projects to proceed efficiently and with minimal impacts.
- 6.2. The Parties agree that to advance this shared goal, no final decisions with respect to a Project will be made until the Parties have made best efforts at reaching a mutually satisfactory outcome.
- 6.3. The Parties will consider opportunities for relationship building agreements and ways for MNCFN to be involved in follow-up, ongoing monitoring and review of Projects, as possible.

## 7. General

- 7.1. Nothing in this Consultation Protocol shall be construed as recognizing, denying, creating, extinguishing, abrogating, derogating from or defining or interpreting any of MNCFN’s Aboriginal Title Claims or Aboriginal or treaty rights recognized and affirmed by section 35 of the *Constitution Act, 1982*.
- 7.2. Nothing in this Consultation Protocol is intended to alter or define the common law, or alter any statutory or regulatory requirement to which Canada is subject.
- 7.3. The Parties can agree to modify the timelines provided for under this Consultation Protocol for any particular Project, as required, by mutual agreement in writing.
- 7.4. This Consultation Protocol may be amended with the written consent of the Parties.
- 7.5. This Consultation Protocol will come into force on the date of its signature by both Parties and will continue in force unless terminated by one of the Parties.
- 7.6. Either Party may terminate this Agreement upon providing written notice to the other Party hereto that they are withdrawing.
- 7.7. At the request of either Party, the Parties shall meet annually to:
  - 7.7.1. Exchange information regarding the progress of existing or upcoming consultation activities to facilitate improved consultation processes and preparedness; and
  - 7.7.2. Discuss the application of this Consultation Protocol and provide any recommendations to senior officials that may improve this Consultation Protocol.

## **8. Funding provided by Canada**

- 8.1. The Parties recognize that MNCFN and DOCA will require financial capacity for their effective participation in the implementation of the Consultation Protocol and will endeavour to ensure that sufficient funding is made available.
- 8.2. Contribution funding as determined by the Department of Indian Affairs and Northern Development will be paid to MNCFN to support the activities of DOCA as related to this Consultation Protocol. Such funding will be provided based on an annual budget submitted by MNCFN and subject to annual appropriations by Canada.
- 8.3. Notwithstanding 8.2, each federal department and agency involved in consultation with MNCFN conducted under this Consultation Protocol will examine the requirements in connection with consultation relating to proposed Projects and, where appropriate, determine whether and how to fund the needs specific to the consultation and accommodation process.

## **9. Confidentiality**

- 9.1. This document is not confidential and may be made public.
- 9.2. In respect of any consultation conducted pursuant to this Consultation Protocol, records and information may be provided and received in confidence. In each case where information is intended to be provided, received and held in confidence, the Party providing the information shall so notify the other Party. Both Parties shall determine whether the records or information in question should be provided, received and held in confidence. If the Parties determine the records or information should be provided and received in confidence, the record shall so be marked to indicate it was provided and received in confidence. It is the intention of the Parties that such record and information be held in confidence, unless such disclosure is required by law.
- 9.3. Notwithstanding 9.2, any records and information provided in confidence to any department or agency consulting under this Consultation Protocol, shall be deemed to have been provided as confidential to the Government of Canada and may be shared freely amongst federal departments and agencies for the purposes of consultation, unless otherwise agreed in writing.
- 9.4. Nothing in this section of this Consultation Protocol is intended to prevent any Party from tendering records or information as evidence in a court of law or in other legal proceedings when the record or information is relevant to an issue of whether a duty to consult was or was not met.
- 9.5. Unless otherwise stipulated by a Party, documents and information, whether received in confidence or otherwise for the purposes of one consultation, may be used by Canada for the purposes of other consultations with MNCFN. In such a case, Canada shall verify with DOCA that the document or information is relevant and complete as regards the other consultation(s).

## **10. Parties May Proceed Without Prejudice**

- 10.1. Notwithstanding any other provision of this Consultation Protocol, the Parties to a consultation process under this Consultation Protocol may agree that, at any time before or during the consultation, discussions may be held and information exchanged until further notice on a without prejudice basis in order to permit frank, cooperative, and solution oriented interaction without concern for the legal significance of admissions, concessions, positions, and discussions for the period of time specified or agreed upon.

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**This Agreement is signed and agreed to by the Parties on the dates set out below.**

**Mississaugas of the New Credit First Nation**

Per:

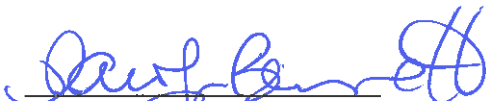


R. Stacey Laforme  
Chief, Mississaugas of the New Credit First Nation

Date: SEPTEMBER 6, 2018

**Her Majesty the Queen in Right of Canada**

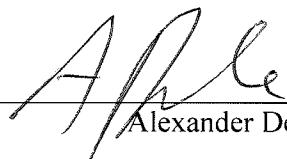
Per:



Carolyn Bennett  
Minister of Indian Affairs and Northern Development

Date: SEPTEMBER 6, 2018

This is Exhibit "Q" to the affidavit of R. Stacey Laforme,  
affirmed before me on December 2, 2022



Alexander DeParde

A Commissioner for Taking Affidavits

**PRELIMINARY AGREEMENT TO ADVANCE RECONCILIATION  
AND ESTABLISH A RENEWED RELATIONSHIP**

between

**Mississaugas of the Credit First Nation**

**("MCFN")**

and

**Her Majesty the Queen in Right of Canada**

**as represented by the Minister of Crown-Indigenous Relations**

**("Canada")**

(collectively the "Parties" or individually a "Party")

**WHEREAS** MCFN is the direct descendant of the "River Credit" Mississaugas whose ancestors have used and benefited from the land and waters of their traditional territory for countless generations;

**WHEREAS** MCFN holds inherent rights, by virtue of being the direct descendant of the Mississaugas that owned and governed the lands and waters of their traditional territory prior to the Crown's assertion of sovereignty;

**WHEREAS** MCFN have entered into a number of treaties with the Crown between 1781 and 1820 with respect to various parts of MCFN's traditional territory and establishing treaty rights over the same;

**WHEREAS** MCFN also asserts unextinguished Aboriginal rights, including Aboriginal title to the waters, beds of waters, and foreshore in its traditional territory, and Aboriginal title to the Rouge River Valley (collectively the "Aboriginal Title Claims");

**WHEREAS** section 35 of the *Constitution Act, 1982* states that "the existing aboriginal and treaty rights of the aboriginal peoples of Canada are hereby recognized and affirmed" and MCFN has Aboriginal and treaty rights within the meaning of section 35;

**WHEREAS** MCFN's inherent, Aboriginal, and treaty rights (collectively "MCFN's Rights") reflect its unique historical, cultural, spiritual, and economic relationship to its traditional territory;

**WHEREAS** MCFN's Rights fundamentally entitle it to be stewards of its traditional territory, to sustain it and continue to be sustained by it in modern and evolving ways;



**WHEREAS** in 2015 and 2016 MCFN submitted to Canada and Ontario the Aboriginal Title Claims for the negotiation of an agreement reconciling these Aboriginal Title Claims with the Crown;

**WHEREAS** on June 9, 2017, MCFN and Canada signed a Memorandum of Understanding on Recognition of Indigenous Rights and Self-Determination Table (the "MOU") that established a discussion process to explore new approaches to understanding and implementing the treaties between MCFN and Canada, new governance models, and the resolution of MCFN's outstanding claims;

**WHEREAS** the Parties are committed to a process of reconciliation and establishing a renewed nation-to-nation and government-to-government relationship between them, based on a recognition of rights, respect, and in a spirit of partnership and collaboration;

**WHEREAS** the Parties recognize that reconciliation requires change, including for MCFN to live in a strong, healthy, and thriving community that is self-sufficient and not marginalized, regulated, or administered under the *Indian Act* and similar instruments;

**WHEREAS** the Parties recognize the need for MCFN to continue to be sustained by and benefit from their traditional territory, while continuing to sustain and preserve the lands and waters of their traditional territory for future generations;

**WHEREAS** the Parties acknowledge that the heavy development, urbanization, and industrialization of MCFN's traditional territory has created challenges for MCFN's ability to exercise its stewardship of the land and waters of its traditional territory and to rely on its traditional territory for its continued cultural, spiritual, and economic survival;

**WHEREAS** the Parties also acknowledge that actions and decisions with respect to the further development of lands and waters in MCFN's traditional territory have the potential to impact upon the Aboriginal Title Claims and MCFN's Rights;

**AND WHEREAS** the Parties may consider Interim Measures when discussing MCFN's asserted rights and claims;

**WHEREAS** Canada has recently adopted approaches to forge new relationships with Indigenous peoples based upon the recognition, affirmation and implementation of rights, respect, cooperation, and partnership, including commitments to:

- a) implement the *United Nations Declaration on the Rights of Indigenous Peoples*, which sets out the minimum standards for the survival, dignity and well-being of Indigenous peoples;
- b) implement the Truth and Reconciliation Commission's 94 Calls to Action; and



- c) negotiate treaties, agreements or other constructive arrangements that are consistent with the understanding that section 35 of the *Constitution Act, 1982* contains a full box of rights.

**THEREFORE**, the Parties agree as follows:

**Definitions**

“Aboriginal Title Claims” means the asserted MCFN Aboriginal title claims that have or will be submitted to Canada and Ontario for the negotiation of a resolution, including for greater certainty the Aboriginal title claim to the water, beds of water and the lands under water that was submitted to Canada on September 21, 2016 and the Aboriginal title claim to the Rouge River Valley Tract that was submitted to Canada on July 13, 2015.

“Preliminary Agreement” means this agreement.

“Incremental Agreements” means those agreements contemplated under 5.2 of this Preliminary Agreement.

“Interim Measures” means those agreements contemplated by section 5.1 of this Preliminary Agreement.

“Main Table” means the regular meetings of the Negotiators contemplated under section 3.6 of this Preliminary Agreement.

“MCFN” means the Mississaugas of the Credit First Nation.

“MCFN Rights” means MCFN’s asserted inherent, Aboriginal, and treaty rights that are recognized and protected within the meaning of section 35 of the *Constitution Act, 1982*.

“MOU” means the Memorandum of Understanding of Indigenous Rights and Self-Determination Table between MCFN and Canada that was mutually agreed to and signed on June 9, 2017.

“Negotiation Process” means the mutually agreeable process set out within this Preliminary Agreement.

“Principals” means the Chief and Council of the Mississaugas of the Credit First Nation and the Minister of Crown-Indigenous Relations.

“Purpose” means the purpose as set out in section 1.1 of this Preliminary Agreement, including the underlying rationale for entering into this Preliminary Agreement that the Parties hope to achieve agreements reached under this Preliminary Agreement, whether interim, incremental or final.

“Shared Principles” means the mutually agreed-to principles as set out in section 2.1 of this Preliminary Agreement that will guide the overarching goals of the Parties that they consider and advance through any arrangements or agreements reached under this Preliminary Agreement, whether interim, incremental or final.

## **1 Purpose**

1.1 The Parties agree that the Purpose of this Preliminary Agreement is to establish a Negotiation Process to:

1.1.1 Jointly develop a renewed nation-to-nation and government-to-government relationship between the Canada and MCFN that advances reconciliation between the Parties consistent with the purpose of section 35 of the *Constitution Act, 1982*; and

1.1.2 Engage in without-prejudice, non-binding discussions to reach shared understandings on:

a) renewing concepts of governance, including incremental approaches for MCFN to adopt new forms of governance outside of the *Indian Act*;

b) innovative approaches to implementing MCFN’s Rights in modern and evolving ways, including through shared-decision making and a renewed fiscal relationship that works toward MCFN having fair and ongoing access to their lands, territory and resources to support its traditional economies and to share equitably in the wealth generated from those lands and resources; and

c) MCFN’s Aboriginal Title Claims.

1.2 For greater certainty, the purpose of this document is to guide discussions in the development of a Term Sheet (or multiple Term Sheets if the Parties so agree) for issues identified in this Preliminary Agreement. If the Parties are able to develop a mutually acceptable Term Sheet through discussions, both Parties will then take measures aimed at obtaining a formal negotiation mandate.

1.3 The Parties agree that this Purpose can be advanced through reaching future arrangements or agreements between them on, among other things, potential accommodation measures, stewardship, or interim protection measures designed to protect MCFN’s Rights, claims, and interests.

## **2 Shared Principles**

2.1 The Parties agree that the following Shared Principles will inform the Negotiation Process of future arrangements or agreements between them:

2.1.1 Recognition and respect for MCFN’s Rights, including MCFN’s Aboriginal and treaty rights as protected by section 35 of the *Constitution Act, 1982*;

- 2.1.2 Collaboration and partnership in developing approaches that reflect a renewed nation-to-nation and government-to-government relationship between the Parties;
  - 2.1.3 Commitment to work toward MCFN exercising a greater role in decision-making over developments, actions, and decisions that affect it and the lands and waters of its traditional territory;
  - 2.1.4 Seeking opportunities to improve the cultural, social, and economic well-being and sustainability of MCFN, now and into the future;
  - 2.1.5 Commitment to environmental protection, including by mitigating impacts, balancing economic development with sustainable environmental practices, and respecting MCFN's stewardship obligations over the lands and waters within its traditional territory; and
  - 2.1.6 Willingness to establish flexible, innovative, and novel approaches to resolving disputes and increasing shared understandings between the Parties.
- 2.2 The Parties recognize that how these Shared Principles will be advanced will be determined through the Negotiation Process established under this Preliminary Agreement.

### **3 Negotiation Process**

- 3.1 The Parties commit to engaging in an interests-based, results-oriented Negotiation Process that fosters an open exchange of ideas, the discussion of interests, and the joint analysis of issues. As a general principle, informal discussions are encouraged.
- 3.2 Any statements made during the Negotiation Process, whether written or oral, will be without prejudice and will not be attributable to any Party.
- 3.3 Each Party will be responsible for determining who will represent it in the Negotiation Process. Each Party's representative will be responsible for the conduct and coordination of their participation in all negotiations and keeping their respective Principals updated throughout the negotiations.
- 3.4 The Parties will jointly determine and agree to a schedule of negotiation meetings and the locations of those meetings.
- 3.5 Unless otherwise agreed to by the Parties, the negotiations will not be formally chaired. Prior to beginning negotiations on any subject matter, the Parties will each make a presentation of their interest in relation to that subject matter. Roles and responsibilities of the Parties will be determined on the basis of the subject matter and the interests presented.
- 3.6 Negotiations will be conducted at a Main Table. The Main Table will be responsible for:
  - 3.6.1 Managing the Negotiation Process including work planning and setting of priorities;

- 3.6.2 Negotiation of any arrangements or agreements to be brought to the Parties for their consideration;
  - 3.6.3 Implementing and managing information sharing amongst the Parties throughout the Negotiation Process; and
  - 3.6.4 Implementing dispute resolution mechanisms, as agreed.
- 3.7 The Parties, or their representatives in the Negotiation Process, may establish ad hoc working groups to research, report on, or inquire into specific issues or concerns, as they deem fit. Any such working groups will report to the Main Table.

#### **4 Engaging in a Results-Oriented Negotiation Process**

- 4.1 The Parties are committed to focusing their respective efforts and resources on negotiating arrangements that are timely, results-oriented, and aimed at achieving shared and balanced solutions that address the Purpose and advance the Shared Principles of this Preliminary Agreement.
- 4.2 The Purpose of the Negotiation Process as set out in section 1.1 shall be realized through future agreements or arrangements, which the Parties recognize, may be comprised of a series of agreements or arrangements that effectively achieve the Purpose and Shared Principles of this Preliminary Agreement.
- 4.3 Any such agreements or arrangements shall be, at the discretion of the Parties, set out in writing and may form an addendum to this Preliminary Agreement.
- 4.4 ~~While not intended to be exhaustive, the Parties have identified a series of subject matters that may be discussed as part of the Negotiation Process, which are listed in the Appendix.~~
- 4.5 In order to achieve timely results towards advancing reconciliation and fulfilling the Purpose of the Negotiation Process, the Parties may seek approvals for the following types of arrangements or agreements over the course of the negotiations:
  - 4.5.1 Interim Measures: Measures intended to protect the interests of MCFN during negotiations.
  - 4.5.2 Incremental Agreements: Agreements on individual or a group of matters listed in the Appendix in advance of, or in lieu of, a single, comprehensive final agreement.

#### **5 Initial Discussions**

- 5.1 The Parties will focus their initial efforts, discussions, and resources and make best efforts on reaching the following Interim Measures or agreements within 1 year of the signing of this Preliminary Agreement:
  - 5.1.1 A Consultation Protocol Agreement; and

- 5.1.2 Interim Protection Measures agreements and/or processes that aim to protect and preserve MCFN's Rights.
- 5.2 The Parties will focus their initial efforts, discussions, and resources and make best efforts on reaching the following Incremental Agreements within 2 years of the signing of this Preliminary Agreement:
- 5.2.1 to fulfilling MCFN's governance objectives and advancing how MCFN's governance can be further recognized and respected within Canada's evolving system of cooperative federalism as a distinct order of government;
- 5.2.2 to implementing MCFN's Rights, including stewardship rights and responsibilities over its traditional territory through flexible and innovative arrangements such as co-management or joint decision-making processes;
- 5.2.3 respecting financial arrangements and economic initiatives that achieve a renewed fiscal relationship that enables MCFN to have fair and ongoing access to their lands, territory and resources to support its traditional economies and to share equitably in the wealth generated from those lands and resources; or
- 5.2.4 other constructive arrangements that aim to recognize MCFN's Rights and reconcile MCFN's Aboriginal Title Claims with the assertion of Canadian sovereignty, including exploring the following approaches: (1) the transfer of existing federal and/or provincial lands; (2) the acquisition of lands in urban areas; and (3) the resources to enable MCFN to acquire additional lands.
- 5.3 With respect to section 5.2.4., Canada will explore a request to transfer some or all acquired lands to reserve status, subject to Canada's Additions to Reserve Policy.

## **6 Funding and Capacity**

- 6.1 The Parties recognize that MCFN requires reasonable capacity to participate in the Negotiation Process contemplated under this Preliminary Agreement. Subject to federal eligibility and program requirements, MCFN may access federal funding established to support the participation of Indigenous groups in negotiations with Canada.
- 6.2 In the course of the discussions pursuant to this Preliminary Agreement, the Parties will work to develop a mutually-acceptable work plan that: a) will identify actions the Parties will carry out and establish target dates to advance their objectives; b) will indicate how frequently the Parties intend to meet; and, c) can serve as the basis for an annual funding proposal by MCFN to Canada.

## **7 Involvement and Participation of Ontario**

- 7.1 The Parties recognize the importance of having Ontario participate in a process to advance reconciliation with MCFN and agree that Ontario shall be invited as an observer or as an

active participant to negotiation meetings held under the auspices of this Preliminary Agreement, as appropriate and agreed to between the Parties.

- 7.2 The Parties also agree that Ontario may become a participant in the Negotiation Process where it indicates its willingness to become involved as a participant, whether on a specific subject matter, Interim Measure, or any agreement or arrangement being discussed and negotiated between the Parties. Where MCFN, Canada, and Ontario agree, this Preliminary Agreement may be amended to include Ontario as a party.
- 7.3 For greater certainty, it is the position of Canada that where provincial jurisdiction may be affected, the negotiation of an agreement will require the participation of Ontario.

## **8 Communications and Public Awareness**

- 8.1 The Parties agree to develop mutually-agreeable communication materials or other joint materials or information for the public regarding the status or content of the Negotiation Process, as required.
- 8.2 No Party shall speak on behalf of any other Party without prior written agreement.
- 8.3 MCFN is responsible for engagement with its community members, including as related to establishing processes to keep its members informed regarding the Negotiation Process.
- 8.4 Where appropriate, Canada will consult other Indigenous groups whose credibly asserted or established Aboriginal or treaty rights may be affected by arrangements or agreements negotiated under this Preliminary Agreement.

## **9 General**

- 9.1 Nothing in this Preliminary Agreement shall be construed so as to add to or create new Aboriginal or treaty rights, to affect the interpretation of, or to abrogate or derogate from the protection provided for the Aboriginal and treaty rights of MCFN, as an Aboriginal peoples of Canada, as recognized and affirmed by section 35 of the *Constitution Act, 1982*.
- 9.2 For greater certainty, nothing in this Preliminary Agreement will prevent Canada from undertaking consultations related to section 35 of the *Constitution Act, 1982*.
- 9.3 Nothing in this Preliminary Agreement, or the discussions pursuant to it, is intended or shall be construed as to constitute Crown consultation or accommodation or to fulfill any constitutional duty or obligation that may be owed by Canada to MCFN.
- 9.4 Nothing in this Preliminary Agreement creates any legally enforceable obligations.
- 9.5 For greater certainty, notwithstanding section 9.4, the Parties are able to rely upon and enforce the without prejudice and confidential nature of these discussions as set out in section 3.2 and section 9.



- 9.6 All discussions conducted under this Preliminary Agreement, and all related documents are confidential to the Parties, and shall not be disclosed except as may be required by law or as agreed upon by the Parties in writing.
- 9.7 All discussions conducted under this Preliminary Agreement, and all related documents are subject to settlement privilege and without prejudice to the legal positions the Parties may have or may take in any legal proceeding and shall not be disclosed except as may be required by law or as agreed upon by the Parties in writing.
- 9.8 The specific content of meetings and discussions, including the Parties' views, positions, and proposals, shall not be disclosed except as may be required by law or as agreed upon by the Parties in writing.
- 9.9 This Preliminary Agreement replaces the Memorandum of Understanding between MCFN and Canada that was signed on June 9, 2017.
- 9.10 Unless the Parties otherwise agree in writing, the without prejudice and confidential nature of these discussions as set out in section 3.2 and section 9 will survive the conclusion of the Negotiation Process between the Parties established pursuant to this Preliminary Agreement.
- 9.11 This Preliminary Agreement may be amended with the written consent of the Parties.
- 9.12 This Preliminary Agreement may be executed in two or more counterpart copies, all of which counterparts shall have the same force and effect as if the Parties had executed a single copy of this Preliminary Agreement. Executed copies may be emailed in PDF format, and, upon receipt, shall be deemed originals and binding upon the Parties on the date it was last signed by both Parties. Without limiting or otherwise affecting the validity of executed copies that have been emailed in PDF format, the Parties will use their best efforts to deliver originals as promptly as possible after execution.

[Remainder of page left deliberately blank]

This Agreement is signed and agreed to by the Parties on the dates set out below.

**Mississaugas of the Credit First Nation**

Per:



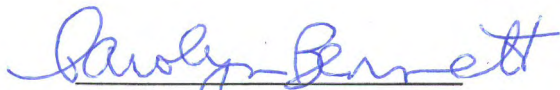
R. Stacey Laforme

Chief, Mississaugas of the Credit First Nation

Date Aug 27/19

**Her Majesty the Queen in Right of Canada**

Per:



Carolyn Bennett

Minister Crown-Indigenous Relations

Date AUG 28 2019

**Appendix – List of Subject Matters for the Negotiation Process**



## **Appendix– List of Subject Matters for the Negotiation Process**

The following subject matters may be discussed between the Parties under the Preliminary Agreement. It is understood that this list is not intended to be exhaustive of matters to be discussed between the Parties or limit the Parties from discussing any other matters necessary to achieve the objectives of the Preliminary Agreement. The Parties may revise this Schedule as required to reflect the status of their discussions.

### **1. Resolution of MCFN Asserted Claims**

- Explore procedural arrangements relating to the expeditious resolution of MCFN's asserted claims
- Identifying opportunities for joint research and analysis to support negotiations or resolution of MCFN's asserted claims
- Explore potential arrangements or agreements for full or partial settlement of MCFN's asserted claims (including arrangements or agreements related to WaterfrontTO)

### **2. Acquisition or Transfer of Lands as a Potential Resolution of MCFN Asserted Claims**

- Explore potential lands for transfer to MCFN as part of settlement of asserted claims (including lands currently held federally, provincially, or privately)
- Explore opportunities for joint study for identification and valuation of lands

### **3. Mechanisms to Recognize and Implement MCFN Stewardship Rights**

- Explore with a goal to establishing mechanisms and agreements under the federal environmental assessment legislation for MCFN central involvement in regional impact assessment
- Explore with a goal to establishing mechanisms for MCFN participation in regional environmental study and monitoring
- Explore models and establish mechanisms and arrangements for MCFN environmental regulation enforcement (e.g. park wardens program, water guardians etc.)
- Explore economic and stewardship opportunities relating to environmental remediation projects within MCFN territory

### **4. Renewed Fiscal Relationship**

- Explore new governance capacity funding arrangements
- Explore new models that give effect to a renewed nation-to-nation and government-to-government fiscal arrangement, including potential for revenue sharing

### **5. Advancing MCFN Governance Institution and Instruments**

- Support for development of MCFN government, governance institutions and instruments (e.g. development of land and water codes, constitution, new governance departments, lands, admin of justice, education, social etc.)
- Support for MCFN territory-wide cultural initiatives

### **6. Advancing Broader Nation-Level Governance Discussions**

- Support for ongoing discussions with other Mississauga Nations to explore collective governance approaches

Six Nations of the Grand River - and - The Attorney General of  
Band of Indians Canada et al.  
(Plaintiff) (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

**AFFIDAVIT OF R. STACEY LAFORME**

**PAPE SALTER TEILLET LLP**  
546 Euclid Avenue  
Toronto, ON M6G 2T2

**Nuri Frame (LSO #60974J)**  
Tel.: 416-916-1593  
Fax: 416-916-3726  
nframe@pstlaw.ca

**Alexander DeParde (LSO #77616N)**  
Tel.: 416-238-7013  
adeparde@pstlaw.ca

Lawyers for the Proposed Intervenor  
Mississaugas of the Credit First Nation

Court File No. CV-18-594281-0000

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

BETWEEN:

**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

**AFFIDAVIT OF JOHN A. WILSON**

Affirmed on February 28, 2023

I, JOHN A. WILSON, a law clerk at the law firm of Pape Salter Teillet LLP, in the City of Toronto, Province of Ontario, AFFIRM THAT:

1. I am a law clerk at the law firm of Pape Salter Teillet LLP, legal counsel for the Mississaugas of the Credit First Nation ("MCFN"). As such, I have personal knowledge of the matters to which I hereinafter depose, except where stated to be on information and belief, and where so stated, I believe them to be true.
2. On January 6, 2022, Nuri Frame, Partner at Pape Salter Teillet LLP, sent a letter to the Honourable Justice Sanfilippo, case management judge in *Six Nations of the Grand River Band of Indians v The Attorney General of Canada and His Majesty the King in Right of Ontario*, Court File No. CV-18-594281-0000 (the "Action"). A true copy of the January 6 letter from N. Frame to the Honourable Justice Sanfilippo is attached to this affidavit as **Exhibit "A"**.

3. On January 17, 2022, Olga Scolieri, judicial assistant to the Honourable Justice Sanfilippo, responded to Mr. Frame via email. A true copy of the January 17 email from O. Scolieri to N. Frame and others is attached to this affidavit as **Exhibit “B”**.
4. On January 24, 2022, the Honourable Justice Sanfilippo signed a Case Management Endorsement relating to a case management conference in the Action held on January 20, 2022. A true copy of the January 24 Case Management Endorsement is attached to this affidavit as **Exhibit “C”**.
5. On March 2, 2022, the Honourable Justice Sanfilippo signed a Case Management Endorsement relating to a case management conference in the Action held on March 1, 2022. A true copy of the March 2 Case Management Endorsement is attached to this affidavit as **Exhibit “D”**.
6. On May 4, 2022, Pape Salter Teillet LLP was provided copies of certain expert reports prepared on behalf of the plaintiff Six Nations of the Grand River Band of Indians. These expert reports include:
  - a) a report prepared by Jon Parmenter, Department of History, Cornell University entitled, “*Tehontatenentsonterontahkhwa*, ‘They Hold Each Other By the Arm’: The Covenant Chain Relationship between the Haudenosaunee and the English Crown from Its Origins to the Haldimand Proclamation of 1784,” dated March 2022 (the “Parmenter Report”);

- b) a report prepared by Alan Taylor, Corcoran Department of History, University of Virginia entitled, “Historical Report in the case of Six Nations of the Grand River v. The Attorney General of Canada and Her Majesty the Queen in Right of Ontario, Ontario Superior Court of Justice File No. CV-18-594281,” dated March 28, 2022 (the “Taylor Report”);  
and
  - c) a report prepared by Dr. Reginald Good entitled, “Report on the Genesis and Significance of the Haldimand Proclamation, 1784,” dated March 30, 2022 (the “Good Report”).
7. A table containing excerpts of the Parmenter Report, Taylor Report, and Good Report is attached as **Exhibit “E”**.
  8. On June 8, 2022, the Honourable Justice Sanfilippo signed a Case Management Endorsement relating to a case management conference in the Action held on June 7, 2022. A true copy of the June 8 Case Management Endorsement is attached to this affidavit as **Exhibit “F”**.
  9. On September 28, 2022, the Honourable Justice Sanfilippo signed a Case Management Endorsement relating to a case management conference in the Action held on September 6 and 23, 2022. A true copy of the September 28 Case Management Endorsement is attached to this affidavit as **Exhibit “G”**.

10. I make this affidavit in support of the MCFN's motion for leave to intervene, and for no improper purpose.

**AFFIRMED BEFORE ME** in person on the 28<sup>th</sup> day of February 2023 in the City of Toronto, Province of Ontario.



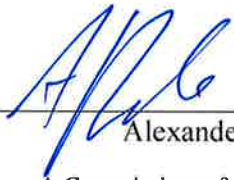
**Alexander DeParde**  
**LSO #77616N**

A Commissioner for Taking Affidavits



**JOHN A. WILSON**

This is Exhibit "A" to the affidavit of John A. Wilson,  
affirmed before me on February 28, 2023



---

Alexander DeParde

A Commissioner for Taking Affidavits

**PAPE  
SALTER  
TEILLET** LLP BARRISTERS AND SOLICITORS

January 6, 2022

VIA EMAIL  
olga.scolieri@ontario.ca

The Honourable Justice Andrew A. Sanfilippo  
c/o Olga Scolieri, Judicial Assistant to the Honourable Justice Andrew A. Sanfilippo  
Superior Court of Justice  
Judges Administration, Toronto Region  
361 University Ave.  
Toronto, Ontario M5G 1T3

Attention: Ms. Olga Scolieri

Dear Ms. Scolieri:

**Re: *Six Nations of the Grand River Band of Indians v. The Attorney General of Canada and Her Majesty the Queen in Right of Ontario***  
**(Court File No. CV-18-594281-0000)**

---

We are counsel to Mississaugas of the Credit First Nation (“MCFN”). We ask that you place a copy of this letter before the Honourable Justice Sanfilippo, case management judge in the above-captioned proceeding (the “Six Nations Action”).

We understand that a case conference in the Six Nations Action has been scheduled for January 20, 2022. We write to respectfully request an invitation to attend this case conference as observers.

The Six Nations Action has the potential to adversely impact MCFN’s Aboriginal and treaty rights protected by s. 35 of the *Constitution Act, 1982* (“MCFN Section 35 Rights”). As such, MCFN has been monitoring the Six Nations Action to determine whether it may be necessary to seek leave to intervene as a party under Rule 13.01 of the *Rules of Civil Procedure*. We wish to attend and observe the case conference to further understand whether intervention may be necessary.

The amended pleadings—in their current form—provide some comfort to MCFN that the issues in the Six Nations Action will not require this Honourable Court to make determinations that could impact MCFN Section 35 Rights; this is why MCFN has not previously sought leave to intervene. We have, however, been advised that the scope of issues may expand—through written responses to discovery questions, expert reports, or the further amendment of pleadings—in ways that could result in issues being adjudicated that will or may adversely impact MCFN Section 35 Rights. Among other things, we understand that the Plaintiff may now be seeking relief beyond the damages and compensation claimed in the pleadings. We understand the Plaintiff’s expanded claims may include claims for title to land in MCFN’s



traditional territory, including to the bed of the Grand River. We further understand that the Plaintiff may put in issue the scope and content of its rights, if any, under the 1701 Nanfan Deed, including whether such rights are protected by s. 35 of the *Constitution Act, 1982*. The 1701 Nanfan Deed deals directly with MCFN's traditional territory, and any determination of the Plaintiff's rights thereunder would be very likely to adversely impact MCFN Section 35 Rights.

Our attendance at the January 20, 2022 case conference will assist us in ascertaining how, if at all, the issues in the Six Nations Action may expand beyond those expressly pleaded to ensure MCFN can act promptly to seek leave to intervene under Rule 13.01 to protect its MCFN Section 35 Rights and interests, if necessary. We look forward to the Honourable Justice Sanfilippo's response to our request to attend the January 20, 2022 case conference as observers.

Sincerely,



Nuri G. Frame

c.c. Ben A. Jetten & Iris Antonios, *Blake, Cassels & Graydon LLP*  
Anusha Aruliah & Michael McCulloch, *Department of Justice Canada*  
Manizeh Fancy & David Feliciant, *Ministry of the Attorney General*

This is Exhibit "B" to the affidavit of John A. Wilson,  
affirmed before me on February 28, 2023

A handwritten signature in blue ink, appearing to read 'A. DeParde', is written over a horizontal line.

Alexander DeParde

A Commissioner for Taking Affidavits

**From:** Scolieri, Olga (JUD) <Olga.Scolieri@ontario.ca>  
**Sent:** Monday, January 17, 2022 9:13 AM  
**To:** Alex DeParde  
**Cc:** Nuri Frame; ben.jetten@blakes.com; iris.antonios@blakes.com; Anusha.Aruliah@justice.gc.ca; Michael.McCulloch@justice.gc.ca; Fancy, Manizeh (MAG); Feliciant, David (MAG)  
**Subject:** RE: Six Nations of the Grand River Band of Indians v. The Attorney General of Canada and Her Majesty the Queen in Right of Ontario (Court File No. CV-18-594281-0000)

Good morning counsel,

The following is being sent on behalf of the Honourable Justice Sanfilippo:

"I have been provided with Mr. Neil G. Frame's letter of January 6, 2022 requesting an invitation to attend at the Case Management Conference scheduled to take place in the above-referenced Action on January 20, 2022. Mr. Frame's letter does not state whether he has conferred with the parties to this Action and sought their consent to his client's participation in the Case Management Conference, as would be consistent with the principles of Case Management.

I will not grant Mr. Frame's request at this time. Mr. Frame may raise his request with the parties, and I will hear from the parties, at the next Case Management Conference, on their positions in regard to Mr. Frame's request."

Thank you.

*Olga Scolieri*

Judicial Assistant  
 Superior Court of Justice (Ontario)  
 Court House  
 361 University Avenue  
 Toronto, Ontario M5G 1T3  
 Phone: 416-327-5303/Fax: 416-327-5417  
 e-mail: [Olga.Scolieri@ontario.ca](mailto:Olga.Scolieri@ontario.ca)

---

**From:** Alex DeParde <ADeParde@PSTLaw.ca>  
**Sent:** Thursday, January 6, 2022 10:59 AM  
**To:** Scolieri, Olga (JUD) <Olga.Scolieri@ontario.ca>  
**Cc:** Nuri Frame <NFrame@PSTLaw.ca>; ben.jetten@blakes.com; iris.antonios@blakes.com; Anusha.Aruliah@justice.gc.ca; Michael.McCulloch@justice.gc.ca; Fancy, Manizeh (MAG) <Manizeh.Fancy@ontario.ca>; Feliciant, David (MAG) <David.Feliciant@ontario.ca>  
**Subject:** Six Nations of the Grand River Band of Indians v. The Attorney General of Canada and Her Majesty the Queen in Right of Ontario (Court File No. CV-18-594281-0000)

**CAUTION -- EXTERNAL E-MAIL - Do not click links or open attachments unless you recognize the sender.**

Dear Ms. Scolieri,

We are counsel to Mississaugas of the Credit First Nation.

Please find attached correspondence of today's date regarding the above-noted proceeding. We would be grateful if you would place a copy of this correspondence before the Honourable Justice Sanfilippo.

Kindly acknowledge receipt of this email and its attachment.

If there is any issue with the transmission of the attachment, please do not hesitate to contact me at 647-979-1006.

Sincerely,

**Alex DeParde**

Associate

**PAPE  
SALTER  
TEILLET** LLP BARRISTERS AND SOLICITORS

PAPE SALTER TEILLET LLP · 546 Euclid Avenue, Toronto, Ontario M6G 2T2 Canada  
C 647.979.1006 · F 416.916.3726 · [adeparde@pstlaw.ca](mailto:adeparde@pstlaw.ca) · [www.pstlaw.ca](http://www.pstlaw.ca)

This email communication may be **CONFIDENTIAL AND LEGALLY PRIVILEGED**. If you are not the intended recipient, please notify me at the telephone number shown above or by return email and delete this communication and any copy immediately. Do not forward, reproduce or copy this email or its contents. Thank you.

This is Exhibit "C" to the affidavit of John A. Wilson,  
affirmed before me on February 28, 2023



---

Alexander DeParde

A Commissioner for Taking Affidavits

**COURT FILE NO.:** CV-18-594281-0000  
(Formerly Court file no.: 406/95)  
**DATE:** 20220124

**SUPERIOR COURT OF JUSTICE - ONTARIO**

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

**AND:**

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

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

**COUNSEL:** *Iris Antonios, Max Shapiro and Rebecca Torrance* for the Plaintiff

*Anusha Aruliah, Maria Vujnovic, Edward Harrison and Hasan Junaid* for the  
Defendant the Attorney General of Canada

*Manizeh Fancy, Insiyah Kanjee, Catherine Ma, David Feliciant, Shima Heidari  
and Julia McRandall* for the Defendant Her Majesty the Queen in Right of Ontario

**HEARD**

**(By videoconference):** January 20, 2022

**CASE MANAGEMENT ENDORSEMENT (REVISED)**

[1] In advance of the Case Management Conference conducted on January 20, 2022, the parties filed Case Management Memoranda that showed a difference in approach to the continued preparation of this action for adjudication. The Plaintiff proposed to address the action items specified in the Case Management Endorsement of July 20, 2021 (“July 2021 CM Endorsement”), including the status of the preparation of this action for trial; the scheduling of a Pre-Trial Conference, including through the filing of a “Certification Form to Set Pre-Trial and Trial Dates” and a “Timetable for Service of Expert Reports”; and the preparation of the trial data base and tools for the trial judge, including an agreed statement of facts, joint chronology and glossary.

[2] The Defendants submitted that there is a more fundamental, foundational issue that must be addressed pertaining to the scope of the action, the nature of the claims and the character of the relief being sought. The Defendants submitted that their interpretation of the Plaintiff’s responses to interrogatories is that the Plaintiff is purporting to advance claims and relief beyond that specifically pleaded in the Plaintiff’s Amended Statement of Claim. The Plaintiff disagreed, and contended that the Defendants are seeking to delay the orderly progression of this action to trial, including the delivery of their expert reports in accordance with the Expert Report Timetable, which the Defendants denied.

[3] The Defendants contended that the scope of the Plaintiff's claims requires precise identification at this time, principally for two reasons. First, the Defendants are entitled to know the case that they will be required to meet at trial, as a matter of trial fairness, and for the reasons explained by the Supreme Court in *Lax Kw'alaams Indian Band v. Canada (Attorney General)*, 2011 SCC 56, at para. 43: “[p]leadings not only serve to define the issues but give the opposing parties fair notice of the case to meet, provide the boundaries and context for effective pre-trial case management, define the extent of disclosure required, and set the parameters of expert opinion.”

[4] Second, the Defendants submitted that if the Plaintiff seeks relief beyond that claimed, there may be interested parties who may seek to speak to their role or interest in the expanded issues. The Defendants stated that it would be inefficient, from a standpoint of trial management, for such issues to be left to trial, and contended that they must be dealt with in the pre-trial stage through case management. The Defendants referred to communications delivered by lawyers for Haudenosaunee Development Institute, and by the lawyers for Mississauga of the Credit First Nation who have asked to observe the Case Management Conferences as part of their consideration of a possible motion to intervene.

[5] It would be inefficient for the parties to argue at trial whether a claim sought to be advanced by the Plaintiff has been properly pleaded and is thereby within the scope of claims to be adjudicated. The parties require clarity and certainty of the claims that will be presented for adjudication. There is a disagreement regarding whether that has been achieved resulting, according to the Defendants, from answers provided by the Plaintiff during the discovery process. In my view, the parties must identify and define the issues requiring adjudication which, according to the Plaintiff, arise expressly from the Amended Statement of Claim.

[6] This step was contemplated as part of the preparation of this action for trial, specifically in the Case Management Endorsement of May 25, 2020, wherein the trial was bifurcated into phases, reserving, to the pre-trial stage, the precise refinement or definition of the issues to be presented for adjudication in each phase.<sup>1</sup>

[7] For these reasons, I will direct that the parties identify and list the issues to be determined during the first phase of this trial, specifically, “Phase 1 - Liability”. This will allow for further

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<sup>1</sup> *Six Nations of the Grand River Band of Indians v. The Attorney General of Canada*, 2020 ONSC 3230, at paras. 12-13: “Recognizing that the parties have an agreement on bifurcation of this action into phases for determination at trial, acknowledging that ultimately the decision concerning the manner by which the trial will proceed will be made by the trial judge, and keeping in mind that the purpose of case management is to prepare the action for trial in the most efficient manner possible, I concluded as follows: this action shall be organized for a bifurcated trial, on consent, divided into Phase 1 liability and Phase 2 remedies and crossclaims, subject to the direction of the trial judge and reserving to all parties further submission and consideration on subdivision of Phase 1 and Phase 2 after the parties advance this action to the pre-trial stage, being after April 30, 2021.” Also, Order at para. 17(2).

consideration and submission on the foundation of the claims with the scope of this action as currently pleaded.

[8] Regarding the request by the lawyers for the Mississauga of the Credit First Nation to observe the Case Management Conferences in this action, the Defendants consented to this party's request while the Plaintiff has the request under continued consideration. This issue will be brought forward to the next Case Management Conference to allow the Plaintiff an opportunity to formulate its position on this request and, if opposed, for the Defendants to make submissions. However, should the Plaintiff, in the interim, consent to the lawyers for the Mississauga of the Credit First Nation observing the next Case Management Conference, the Plaintiff shall so state in their next Case Management Memorandum and the lawyers for this non-party will be provided with video coordinates to observe the next Case Management Conference.

[9] The other issues brought by the parties for consideration at case management, including Pre-Trial Conference, possible impact of the pandemic on remaining evidence gathering and documentary production, and timing of expert reports consistent with the Expert Report Timetable, may be brought forward to the next Case Management Conference to be addressed once issues pertaining to the scope of the action are first considered.

#### **A. Specific Case Management Directions**

[10] On the basis of the issues addressed at the Case Management Conference, and having provided the parties with notice under Rule 50.13(6), I direct as follows:

- (a) The Plaintiff shall, by February 3, 2022, deliver to the Defendants a list of issues to be adjudicated at trial under "Phase 1 - Liability", referencing the paragraph(s) in the Amended Statement of Claim on which they are based.
- (b) The Defendants shall, by February 17, 2022, deliver to the Plaintiff their comment, modifications, or proposed amendments to the Plaintiff's list of issues to be adjudicated at trial under "Phase 1 - Liability".
- (c) The parties are encouraged to confer and discuss their positions as set out in the materials exchanged pursuant to paragraphs 10(a) and 10(b), above, and shall then deliver, by 1:00 p.m. on February 23, 2022, a Case Conference Memorandum, of no more than four pages in length, setting out the issues to be address at the next Case Management Conference. If the parties should agree, they may deliver a joint Case Conference Memorandum. The parties shall attach, to their Case Conference Memorandum, the materials exchanged pursuant to paragraphs 10(a) and 10(b), above, together with any refinement to those materials resulting from further discussions.
- (d) The next Case Management Conference shall be conducted on February 25, 2022 at 2:00 p.m., by video conference, using video connection coordinates that will be provided by the Court.



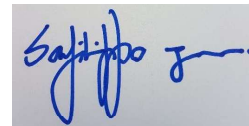
- (e) In addition to the issues arising from the list of issues to be set out for the “Phase 1-Liability” trial, the parties shall be prepared to speak to the following at the next Case Management Conference:
- (i) Non-party participation as observer(s) at the Case Management Conferences, for the purpose of their assessment of possible intervention, including process for any motion(s) for intervention.
  - (ii) Any issues caused by the ongoing pandemic to the existing timetable for the development of this action for trial.
  - (iii) Those matters set out in paragraph 5(d) of the July 2021 CM Endorsement.
- (f) Notwithstanding sub-paragraph 10(e)(i), if the Plaintiff consents to the lawyers for the Mississauga of the Credit First Nation observing the next Case Management Conference, the Plaintiff shall so state in their Case Management Memorandum and the lawyers for this non-party will be provided with video coordinates to observe the next Case Management Conference.

## **B. General Case Management Directions**

[11] Any party who seeks to address an issue identified in this action between now and the next scheduled case conference of February 25, 2022 and who considers that a case conference would assist in expeditious and efficient handling of any such issue, may request the urgent scheduling of a case conference by email to my judicial assistant, having first canvassed with all counsel their availability for such a case management conference and their concurrence with the out-of-court communication, in accordance with Rule 1.09.

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

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



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A.A. Sanfilippo J.

**Date: January 24, 2022 (Revised)**

This is Exhibit "D" to the affidavit of John A. Wilson,  
affirmed before me on February 28, 2023



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Alexander DeParde

A Commissioner for Taking Affidavits

**COURT FILE NO.:** CV-18-594281-0000  
(Formerly Court file no.: 406/95)  
**DATE:** 20220302

**SUPERIOR COURT OF JUSTICE – ONTARIO**

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

Plaintiff

**AND:**

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

Defendants

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

**COUNSEL:** *Iris Antonios, Max Shapiro and Rebecca Torrance* for the Plaintiff  
*Anusha Aruliah, Maria Vujnovic, Hasan Junaid and Katarina Longo* for the  
Defendant the Attorney General of Canada  
*Manizeh Fancy, Insiyah Kanjee, Catherine Ma, David Feliciant, Shima Heidari*  
*and Julia McRandall* for the Defendant Her Majesty the Queen in Right of Ontario

**HEARD**

**(By videoconference):** March 1, 2022

**CASE MANAGEMENT ENDORSEMENT**

[1] A Case Management Conference was conducted on March 1, 2022 in this action, as provided by the Case Management Endorsement of January 24, 2022 (the “January 2022 CM Endorsement”).

**A. Matters Addressed at Case Management**

**(a) The Issues List**

[2] In accordance with sub-paragraphs 10(a) and 10(b) of the January 2022 CM Endorsement, the parties completed, by February 17, 2022, their exchange of lists of issues to be adjudicated at the first phase of the trial in this action, referred to as “Phase 1-Liability”. In accordance with sub-paragraph 10(c) of the January 2022 CM Endorsement, the parties filed their lists as addendums to their Case Management Memorandums.

[3] The Issue List filed by the Plaintiff, Six Nations of the Grand River Band of Indians, contains 59 issues for determination during the Phase 1-Liability trial. The Defendant, the Attorney General of Canada (“Canada”) did not add any issues to this list. The Defendant, Her Majesty the Queen in Right of Ontario (“Ontario”) added two additional issues.

[4] Canada and Ontario proposed the restatement or refinement of certain of the issues framed by the Plaintiff, and submitted some overlap. Canada submitted that the Plaintiff’s List of Issues raised issues that have not been pleaded, specifically referring to proposed issues #10, 19, 23, 47 and 49. Ontario was largely aligned with this submission but went further and submitted that elements of proposed issues #1, 2, 3, 28, 38 and 42 are also not pleaded in the Further Amended Statement of Claim.

[5] The Plaintiff disagreed, submitting that all the issues that it proposes to list for adjudication in the Phase 1-Liability trial are pleaded in the Further Amended Statement of Claim. The Plaintiff submitted, as well, that Six Nations is prepared to meet and confer with the Defendants on the Issues List but that this is more efficiently conducted after the Plaintiff’s delivery of their expert report, currently scheduled to be completed by April 1, 2022. Canada and Ontario agreed that the further development of the Issues List is best conducted after Six Nations delivers its expert report.

[6] On the consent of the parties, I will direct that the Issues List be preserved for further development at the next Case Management Conference, which will be conducted after Six Nation’s delivery of its expert report.

#### **(b) Observation of Case Management Conferences by Non-Parties**

[7] At the last Case Management Conference, Canada and Ontario consented to the request by the Mississaugas of the Credit First Nation to observe the Case Management Conferences in this action. Six Nations took this issue under consideration, to be brought forward to the next Case Management Conference: January 2022 CM Endorsement, para. 10(e)(i).

[8] Six Nations submitted that it does not consent to having non-parties attend and observe the Case Management Conferences in this action. Six Nations refutes the assertion that its claims have expanded beyond those that have been pleaded in the Further Amended Statement of Claim, submitting that the scope of the claims that Six Nations has advanced are discernable from its pleading, and submitted that the participation by non-parties would be inconsistent with the purposes and objectives of case management.

[9] The parties concurred that further consideration of non-party attendance at case management should be deferred until the completion of the development of the Issues List. The parties shall speak to this issue further at that time.

#### **(c) Modification of Timetable**

[10] Six Nations and Canada have jointly retained surveyors for the purpose of delineating lands that have been flooded. The surveyors are expected to be in a position to complete their report by

June 30, 2022. Six Nations and Canada seek an entry in the 2021 Revised Expert Report Timetable<sup>1</sup> for the completion of this report.

[11] Ontario submitted that it would require timetable scheduling for the delivery of any responding report and requested six months for this step.

[12] On the consent of the parties, the Expert Report Timetable will be modified to include the deadline of June 30, 2022 for the delivery by Six Nations and Canada of the surveyors' report, and a deadline of January 6, 2023 for the delivery by Ontario of any responding report to the surveyors' report.

#### **(d) Impediments Resulting from Limitation in Access to Archives**

[13] Canada submitted that access to archival resources in Ottawa has been hampered throughout the pandemic, wherein appointments were limited to 3-hour sessions with a maximum of 4 appointments per week, and even then, only depending on availability. Canada submitted that this was exacerbated by events in Ottawa in January and February 2022. Canada stated that the archives were closed on January 28, 2022, and that researchers can resume access on March 8, 2022. The parties submitted that this could have an impact on completion of their archival research and thereby also on completion of expert analysis.

[14] The parties did not seek any relief in regard to this limitation in access to archival resources, at this time, but caution that it has the potential to impact timetable requirements. The parties may bring this issue forward at a future case management conference, as they are advised.

#### **A. Specific Case Management Directions**

[15] On the basis of the issues addressed at the Case Management Conference, and having provided the parties with notice under Rule 50.13(6), I direct as follows:

- (a) The parties shall preserve the draft Issues List as currently developed, including the comments made by all parties in relation to this draft, for further consideration and development after Six Nations delivers its expert report, on or by April 1, 2022.
- (b) The parties shall be prepared to address, at the next Case Management Conference, the draft Issues list, its refinement and further development, and the submissions made by the Defendants that certain of the issues are not properly pleaded in the Further Amended Statement of Claim. The parties are encouraged to confer and discuss the

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<sup>1</sup> The 2021 Revised Expert Report Timetable is set out in the Case Management Endorsement of June 16, 2020 (*Six Nations of the Grand River Band of Indians v. The Attorney General of Canada*, 2020 ONSC 3747), as modified by the Case Management Endorsement of July 20, 2021.

Issues List after Six Nations delivers its expert report, in anticipation of, and preparation for discussion at the next Case Management Conference.

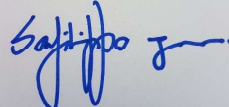
- (c) The parties shall bring forward to the next Case Management Conference, and be prepared to address, non-party participation as observer(s) at the Case Management Conferences, for the purpose of their assessment of possible intervention, including process for any motion(s) for intervention.
- (d) The 2021 Revised Expert Report Timetable, as initially set out in the Case Management Endorsement of June 16, 2020 and modified in the Case Management Endorsement of July 20, 2021, shall be revised to include the following:
  - (i) Six Nations and Canada shall, by June 30, 2022, deliver their Joint Surveyors' Report.
  - (ii) Ontario shall, by January 6, 2023, deliver any responding report to the Joint Surveyors' Report.
- (e) All other terms of the 2021 Revised Expert Report Timetable shall remain in effect.
- (f) The next Case Management Conference shall be conducted on June 7, 2022, at 9:30 a.m., by video conference, using video connection coordinates that will be provided by the Court.
- (g) The parties shall, by June 3, 2022, at 4:00 p.m., deliver a Case Management Memorandum, of no more than four pages in length, as well as any attachments, setting out the issues to be addressed at the next Case Management Conference. If the parties should agree, they may deliver a joint Case Management Memorandum.

#### **B. General Case Management Directions**

[16] Any party who seeks to address an issue identified in this action between now and the next scheduled case conference of June 7, 2022 and who considers that a case conference would assist in expeditious and efficient handling of any such issue, may request the urgent scheduling of a case conference by email to my judicial assistant, having first canvassed with all counsel their availability for such a case management conference and their concurrence with the out-of-court communication, in accordance with Rule 1.09.

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

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



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A.A. Sanfilippo J.

**Date: March 2, 2022**

This is Exhibit "E" to the affidavit of John A. Wilson,  
affirmed before me on February 28, 2023



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Alexander DeParde

A Commissioner for Taking Affidavits



**ISSUE 1:** Selection of excerpts from Plaintiff’s expert reports that have been identified by Mississaugas of the Credit First Nation (“MCFN”) as relating to “the historic use, occupation, and control of what is now southern and southwestern Ontario by Anishinaabeg—including MCFN—and Haudenosaunee peoples, and rights, title, or Crown duties flowing therefrom” (Issue 1 in the MCFN notice of motion dated October 27, 2022 (“Notice of Motion”), at para 29(a)).<sup>1</sup>

<b>No. Report</b>	<b>Page Excerpt No.</b>	
<p>1. Dr. Reginald Good, “Report on the Genesis and Significance of the Haldimand Proclamation, 1784” dated March 30, 2022 (“Good Report”)</p>	<p>7</p>	<p><b>Summary of Conclusions</b></p> <p>13. The Six Nations chose the Haldimand Proclamation lands, with Haldimand’s concurrence, for the following reasons:</p> <p>14. First, Iroquoian peoples - whom the Six Nations had conquered and absorbed - had exercised customary hunting and ancillary rights “without restriction from time immemorial” in the Grand River Valley.<sup>4</sup></p> <p>15. Second, the Grand River Valley was located within the geographical boundaries of particular hunting grounds, reserved for the Six Nations exclusive use under the Albany Treaty of 1701. The Crown had promised to protect the Six Nations use of such lands for hunting and ancillary purposes. The lands that were the subject of the Albany Treaty of 1701 are graphically depicted in Appendix A: Map of lands that were the subject of the Albany Treaty of 1701.</p> <p>16. Third, Ojibwa Indians historically known to the British as Mississaugas, with whom the Six Nations shared the use of the Grand River Valley from approximately 1701, concluded a tripartite treaty with the Six Nations and the Crown on or about 22 May 1784. By this treaty the Mississaugas quit-claimed their interest in particular lands, including those selected by the Six Nations as relocated sovereign territory following the American Revolution; and the Mississaugas undertook to cease exercising customary hunting and ancillary rights on the lands selected by the Six Nations allies as relocated sovereign territory for the settlement of Six Nations allies following the American Revolution.</p>

<sup>1</sup> Excerpts in these tables may relate to more than one issue.

**No. Report** **Page Excerpt**  
**No.**

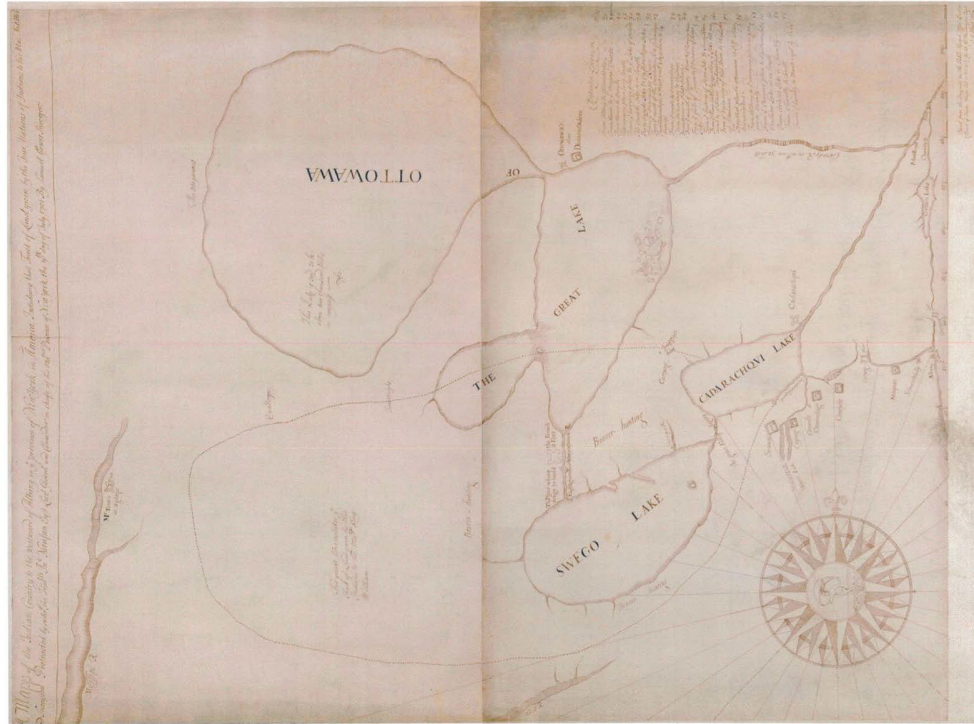
<sup>4</sup> New York State Library, Manuscript # 13350-51, "Account of the descriptions given by Mr. Norton Concerning his Country[,] customs & manners," n.d. (SN05914).

2. Good Report

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**Appendices**

**Appendix A: Map of lands that were the subject of the Albany Treaty of 1701 (SNI7006)**



No. Report	Page Excerpt No.	
3.	<p>10-12</p> <p><b>Extending the Metaphorical Longhouse of the Hodenosaunee Confederacy to Incorporate all Iroquoian Peoples and all Iroquoian Homelands, 1634 - 1666</b></p> <p>32. From approximately 1634 to 1666 the Hodenosaunee further extended their terrestrial space through use and occupancy of peripheral lands. They incorporated these peripheral lands, and the people who occupied them, into Hodenosaunee polity through a “self-proclaimed policy of ‘one people one land’”.<sup>17</sup></p> <p>33. By 1666, the boundaries of Hodenosaunee sovereign territory extended “to the North end of Lake Michigan, Lake Huron, the Ottawa River down to Montreal from the Mouth of the River Sorrel to Lake Champlain, from thence to Lake George, Fort Edward and to Albany”.<sup>18</sup> This territory included the entire Grand River Valley.</p> <p>34. Father Lalemant, a Jesuit missionary, remarked in 1660 that this policy was so effective that by that time “the largest and best part” of the Hodenosaunee was composed of “aggregations of different tribes whom they have conquered”.<sup>19</sup></p> <p>35. In or about 1662 René Cuillierier, a French Canadian who had been captured and adopted into the Hodenosaunee, admitted that “[t]he lands of which they [the Hodenosaunee] are masters stretch out as far as they want ... They are always in extensive communication with one another.”<sup>20</sup></p> <p>36. The Hodenosaunee exerted their sovereignty over their extended territorial space by three means.</p> <p>37. First, the Hodenosaunee exerted their sovereignty by freely moving as hunters, traders, and warriors throughout the former homelands of recently conquered and/or adopted Iroquoian nations.<sup>21</sup> This movement necessitated the establishment of seasonal communities - referred to in European accounts as hunting lodges and fishing camps - as well as cemeteries.</p> <p>38. Second, by controlling the movement of anyone other than Hodenosaunee people at the periphery of this space (“door-keeping”) and along passages through it. In particular, the</p>	<p>Good Report</p>

Hodenaunee controlled fur-trade traffic at the periphery of, and through, their extended territorial space.<sup>22</sup>

39. Third, the Hodenaunee exerted their sovereignty over their extended territorial space by establishing permanent and semi-permanent villages on the north and west sides of Lake Ontario by 1670.<sup>23</sup>

40. The ideological imperative for extending Hodenaunee sovereign terrestrial space is derived from ideas embedded in the Peacekeeper Epic. The Peacekeeper Epic is the Hodenaunee founding narrative. It “establishes crucial protocols for the regulation and inspiration” of Hodenaunee behaviour.<sup>24</sup> These protocols provide a template for transforming a geographical space from one of intergroup hostility to one of peaceful coexistence and freedom of mobility under negotiated terms.<sup>25</sup>

41. The timing, targets, and tactics involved in extending Hodenaunee sovereign terrestrial space, through use and occupancy of peripheral lands, was influenced by a variety of factors including:

- a) a desire to replace significant population losses, resulting from “unrelenting waves of epidemic diseases (outbreaks occurred roughly once every three years between 1634 and 1700)”, with adoptees from other Iroquoian nations;<sup>26</sup>
- b) a disruption in the military-political balance between the Huron and the Hodenaunee confederacies, resulting from the establishment of European trading centres at Montreal and Albany, which provided an opportunity for the Hodenaunee to extend their hegemony through traditional Neutral territory to traditional Huron territory;<sup>27</sup>
- c) a desire to appropriate the spatial centre between competing British and French colonial empires in the lower Great Lakes area in order to turn the presence of these respective empires to the advantage of the Hodenaunee.<sup>28</sup>

- d) a desire to maintain and increase access to beaver habitats for the purpose of supplying European markets with beaver skins and obtaining European trade goods;<sup>29</sup> and
- e) a desire to control communications links between Indigenous traders of beaver pelts originating in beaver habitats north and west of Lake Huron and Georgian Bay, and European trading centres at Montreal and Albany, in order to dominate and profit from all Indigenous trade in beaver pelts.<sup>30</sup>

42. The Hodenosaunee did not distinguish traditional territory and conquered lands when they expressed to Europeans their own understanding of the extent of Hodenosaunee territorial space and the need to protect it from encroachments by hostile European and Indigenous nations. For example, at a meeting with French emissaries in 1700 a Hodenosaunee speaker asserted that the land north of Lake Ontario “was the place where we do our hunting since the beginning of the world.”<sup>31</sup>

<sup>17</sup> Isaac Jogues, “Of Incursions by the Hiroquois, and the Captivity of Father Jogues,” 30 June 1643, in Reuben Gold Thwaites, ed., *The Jesuit Relations and Allied Documents* (Cleveland: Burrows, 1898), pp.271-97 at p. 297 (R7197). Capitalization added. The entire sentence, from which this excerpt is taken, reads as follows: “The design of the Iroquois, as far as I can see, is to take, if they can, all the Hurons; and, having put to death the most considerable ones and a good part of the others, to make of them both but one people and only one land.” See also Neal Ferris, *The Archaeology of Native Lived Colonialism: Challenging History in the Great Lakes* (Vancouver: UBC Press, 2011), pp.114-36 at p.117 (R7128).

<sup>18</sup> Albert Corey, director, *The Papers of Sir William Johnson*, 14 Vols. (Albany: University of the State of New York, 1951), 10:957-72 at 971-72, Six Nations minutes, 5-22 December 1763 (SN05772).

<sup>19</sup> Quoted in Neal Ferris, *The Archaeology of Native Lived Colonialism: Challenging History in the Great Lakes* (Vancouver: UBC Press, 2011), pp.114-36 at p.117 (R7128).

<sup>20</sup> Quoted in Jon Parmenter in *The Edge of the Woods* (East Lansing: Michigan State University Press, 2010), p.77 (R7191).

- <sup>21</sup> Jon Parmenter in *The Edge of the Woods* (East Lansing: Michigan State University Press, 2010), p.152 (R7191).
- <sup>22</sup> Jon Parmenter in *The Edge of the Woods* (East Lansing: Michigan State University Press, 2010), pp.157 and 185-186 (R7191).
- <sup>23</sup> Victor Konrad, “An Iroquois frontier: the north shore of Lake Ontario during the late seventeenth century,” *Journal of Historical Geography*, 7(1981), 129-144 at p.133 (R7161). See also Jon Parmenter in *The Edge of the Woods* (East Lansing: Michigan State University Press, 2010), p.187 (R7191); and Neal Ferris, *The Archaeology of Native Lived Colonialism: Challenging History in the Great Lakes* (Vancouver: UBC Press, 2011), pp.114-36 at pp.117-18 (R7128).
- <sup>24</sup> Jon Parmenter in *The Edge of the Woods* (East Lansing: Michigan State University Press, 2010), p.xlv (R7191).
- <sup>25</sup> Jon Parmenter in *The Edge of the Woods* (East Lansing: Michigan State University Press, 2010), p.xlv (R7191).
- <sup>26</sup> Jon Parmenter in *The Edge of the Woods* (East Lansing: Michigan State University Press, 2010), p.289 (R7191).
- <sup>27</sup> Abraham Rotstein, “The Mystery of the Neutral Indians,” in Roger Hall, William Westfall, and Laurel Seton MacDowell, eds., *Patterns of the Past: Interpreting Ontario's History* (Toronto and Oxford: Dundurn Press, 1988), pp.11-36 (R6591).
- <sup>28</sup> Jon Parmenter in *The Edge of the Woods* (East Lansing: Michigan State University Press, 2010), ppxxxiv-xxxv (R7191).
- <sup>29</sup> Jon Parmenter paraphrases a report made by a Hodenosaunee chief on 31 December 1634 as follows: “the Iroquois [Hodenosaunee] desire for beaver-hunting grounds motivated their recent peace negotiations with the Wendats”: Jon Parmenter in *The Edge of the Woods* (East Lansing: Michigan State University Press, 2010), p.43 (R7191). For the location of prime beaver habitats north of Lakes Ontario and Erie, in which the Hodenosaunee hunted after 1666, see Henri Abraham Chatelaine, “Carte particulière du Fleuve Saint Louis dressée sur les lieux avec les noms des sauvages du pays, des marchandises qu'on y porte & qu'on en reçoit & des animaux, insectes, poissons, oiseaux, arbres & fruits des parties septentrionales et méridionales de ce pays,” in Henri Abraham Chatelaine, *Atlas Historique*, Volume VI, Number 23, Page 91. [Amsterdam: Chez les Freres Châtelain Libraires, 1719] (SN16984).

No. Report	Page Excerpt No.	
		<p><sup>30</sup>Timothy Shannon, <i>Iroquois Diplomacy on the American Frontier</i> (New York: Penguin, 2008), pp. 63-64.</p> <p><sup>31</sup>Quoted in J.A. Brandao and William Starna, "The Treaties of 1701: A Triumph of Iroquois Diplomacy," <i>Ethnohistory</i> 43, 2 (Spring 1996), 209-44 at p.211 (R7188).</p>
4.	58	<p><b>The Six Nations During the American Revolution</b></p> <p>231. One of the "Coercive Acts" passed by Great Britain in 1774 was the <i>Quebec Act</i>, which received royal assent on 22 June 1774.<sup>191</sup> Certain disaffected American colonists considered the <i>Quebec Act</i> to be intolerable because it enlarged the province of Quebec to include, among other areas, western New York (present-day southern Ontario) and the reserved Indian territory west of the Proclamation Line; made the Proclamation Line more permanent by enshrining it in a statute; and placed the Indian territory under the protection of Quebec's "tyrannical" government, which was motivated and equipped to prevent settlers and land speculators from the Thirteen Colonies from crossing the Proclamation Line into Indian territory.<sup>192</sup></p> <hr/> <p><sup>191</sup> For a graphical depiction of the boundaries of the colony of New York on the eve of the passing of the <i>Quebec Act</i> see: Seymour I Schwartz and Ralph E. Ehrenberg, eds., <i>The Mapping of America</i>. Edison, New Jersey: Wellfleet Press, 2001, p.184, Plate 111, Bernard Romans, "The Colony of New York and Its Surroundings," c.1774 (R7239). On this map the northern boundary is fixed according to the "King's Order 20 July 1764" (referring to a Privy Council order of 20 July 1764, which fixed the boundary line between the colonies of New York and New Hampshire at "the forty-fifth degree of Northern Latitude"). The following text is written across the peninsula north of Lakes Erie and Ontario and south of the forty-fifth degree of northern latitude: "Ind Confederates July 19, 1701, at Albany surrendered this their Bever Hunting Country to the English to be defended by them for the said Confederates their Heirs and Successors for ever and the same was confirmed Sept 14 1726 when the Senecas, Cauigas and Onondagas Surrendered their Habitations from Onyahega to Oswego and Sixty Miles of Land to the English for the same use and purpose."</p> <p><sup>192</sup> United States, Continental Congress, <i>Journals of the Continental Congress, 1784-1789</i> (Washington: 1904-1937), minutes under date of 14 October 1774, 1:72 (SN05835). The</p>

No. Report	Page Excerpt No.
5.	Continental Congress was a legislative body that met for about six weeks in 1774 for the purpose of addressing the fraying relationship between Britain and the American colonies.
Alan Taylor, "Historical Report in the case of Six Nations of the Grand River v. The Attorney General of Canada and Her Majesty the Queen in Right of Ontario, Ontario Superior Court of Justice File No. CV-18-594281," dated March 28, 2022 ("Taylor Report").	4-5
	<p><b>QUESTIONS ADDRESSED (With summary answers):</b></p> <p>7) Why did the Six Nations and Chief Joseph Brant request Governor Haldimand to allocate or grant to the Six Nations lands in the Grand River Valley following the American Revolution? If the Six Nations had a prior connection to the Grand River Valley, please describe it.</p> <p><i>During the 1640s and 1650s the Six Nations had conquered and absorbed the Wendat-Petun and Neutral peoples who had possessed what is now southern Ontario including the Grand River Valley. Thereafter, Haudenosaunee peoples exploited the region for hunting, fishing, gathering, and some horticulture. During the 1680s and 1690s, however, Anishinabeg people known as Mississaugas challenged the Haudenosaunee there. In 1701 the two groups made peace and agreed to share the region. In 1784, when Haldimand prepared to grant the Grand River Valley to the Six Nations, he sought to purchase the Mississaugas' title to that region. The request puzzled them for, as they explained, the Haudenosaunee already held an equal share to the valley. In seeking a land grant from Haldimand, the Six Nations chiefs sought a title that would protect them against intrusion by settlers - not against their Mississauga brethren. For full protection of their rights, they needed the freehold title of a Crown patent. Such a title would enable them to lease or sell lands for an endowment. In his haste, Haldimand issued a preliminary grant, with a commitment that the colonial government eventually would perfect the title with a deed. Most of the Six Nations wanted to settle at the Grand River Valley because of its abundant resources, fertile soil, and proximity to other Native nations, both to the west around Detroit and to the east at Buffalo Creek, where the Senecas preferred to remain. At Grand River, the Haudenosaunee could prosper and preserve their sovereign autonomy and diplomatic clout within a broad network of Native peoples dwelling around the Great Lakes. In 1784, Haldimand made the grant because he appreciated both the wartime sacrifices of the Six Nations and their continuing importance to British diplomatic efforts to rally First Nations to resist American expansion westward and northward. See paragraphs 69-92.</i></p>



6.	Taylor Report	12	<p><b>REPORT:</b></p> <p>(1) During the early eighteenth century in the northern colonies of British America, imperial officials sustained an alliance with a confederation of Native peoples who called themselves Haudenosaunee but were known to outsiders as the Iroquois or as the Five Nations. In 1722, when Tuscaroras joined, the confederation became the Six Nations. During the later eighteenth and early nineteenth centuries, the terms Five Nations and Six Nations were interchangeable. Speaking kindred languages of the Iroquoian family, the Six Nations consisted of Mohawks, Oneidas, Tuscaroras, Onondagas, Cayugas, and Senecas. Their collective domain extended westward from the Hudson River to the shores of Lake Erie, and from the Ottawa River on the north into Pennsylvania to the south. Occupying the Mohawk Valley of New York, the Mohawks guarded the “eastern door” of the confederacy: the key position for negotiating with British colonial officials based in the Hudson Valley. Senecas held the “western door” and composed about half of the Haudenosaunee population of 10,000 in 1750. In the middle, Onondagas kept the “council fire,” where chiefs from the member nations met to maintain internal peace, conduct condolence ceremonies, and coordinate relations with outsiders.<sup>1</sup></p> <hr/> <p>1. William Tryon, “Report . . . on the Province of New York,” in E. B. O’Callaghan, ed., <i>The Documentary History of the State of New York</i> [DHSNY hereafter], 4 vols. (Albany: Weed, Parsons &amp; Co., 1849-51), vol. 1:501-23; William N. Fenton, <i>The Great Law and the Longhouse: A Political History of the Iroquois Confederacy</i> (Norman: University of Oklahoma Press, 1998), 4-9, 19-20; Paul Williams and Curtis Nelson, “Kaswentha,” Paper prepared as part of the Research Program of the Royal Commission on Aboriginal Peoples, January 1995, 32-33.</p>
7.	Taylor Report	59-60	<p><b>GRAND RIVER</b></p> <p>(82) Haudenosaunees had long claimed the Grand River and its valley as their own. Prior to 1650, the valley and its hinterland belonged to an independent Haudenosaunee people known as the Attiwendaronk, or Neutrals, because they declined to assist the confederacy (then of five nations) in its war with the Wendat (or Huron) and Petun peoples who lived to the north near Georgian Bay. During the late 1640s, the Haudenosaunee confederation crushed the Wendat-Petun and absorbed by adoption most of the survivors. During the early 1650s, the Five Nations did the</p>

same to the Neutrals. Through these two great victories, the Five Nations acquired sovereignty over the region north and west of Lake Ontario, including the Grand River Valley. They exercised that possession by hunting, fishing, gathering, and gardening in bands often led by the descendants of the adopted captives.<sup>79</sup>

(83) During the 1690s, Algonquian-speaking Mississaugas, a branch of the Anishinabeg people, pressed eastward into the former domains of the Wendat, Petun, and Attiwendaronk. The Mississaugas joined a coalition of western Natives and the French in war against the Five Nations. In 1700-1701 at Montreal, the Haudenosaunee confederacy made peace with the Mississaugas and their allies. Haudenosaunees and Mississaugas agreed to share the previously contested lands and waters lying north and west of Lake Ontario. Both peoples endorsed the Haudenosaunee metaphor of a “Dish with One Spoon,” which meant a land where both could hunt, fish, gather, and cultivate freely and peacefully.<sup>80</sup>

79. Neal Ferris, *The Archaeology of Native-Lived Colonialism: Challenging History in the Great Lakes (Tucson: University of Arizona Press, 2009), 115-37; Hill, Clay We Are Made Of, 93-94, 139, 270n24; Parmenter, Edge of the Woods, 71-96.*

80. Hill, *Clay We Are Made Of*, 43, 100-103; J. Parmenter, *Edge of the Woods*, 24, 54-55, 64-65, 259, 261-64, 270; Williams and Nelson, “Kaswentha,” 22-24, 90-93, 117-25

<p>8. Jon Parmenter, "Tehontatenontsontarontahkhwa, 'They Hold Each Other By the Arm': The Covenant Chain Relationship between the Haudenosaunee and the English Crown from Its Origins to the Haldimand Proclamation of 1784," dated March 26, 2022 ("Parmenter Report")</p>	<p>274-347</p>	<p>4) Please list and describe historical maps of significance for outlining the areas of lands used by the Five/Six Nations, including if applicable in the Grand River Valley in what is today southern Ontario. Please include a discussion of the "Clowes Map" of 1701 and the "Mitchell Map" of 1755.</p> <p>4) Response</p> <p><u>KEY TAKEAWAY POINTS</u></p> <ul style="list-style-type: none"> <li>• Notwithstanding the limitations of historic maps, they can, when analyzed in tandem with other lines of historical evidence, illuminate Indigenous peoples' past experiences in, use, and understandings of particular territories.</li> <li>• Historical maps produced from 1667 to 1775 depict both Haudenosaunee occupancy and use of land in modern southern Ontario.</li> <li>• Maps depicting Haudenosaunee occupancy of modern southern Ontario generally refer to nine discrete settlements established along the north shore of Lake Ontario after 1667. These are known as "Iroquois du Nord" settlements: year-round, self-sufficient Haudenosaunee settlements that also served as way-stations for Haudenosaunee hunters seeking to exploit hunting territories in modern southern Ontario and points west. Eight of the settlements persisted until 1687. After 1701, the Haudenosaunee established a ninth opposite French Fort Frontenac (near modern Kingston, ON) that persisted until circa 1752.</li> <li>• Several of the maps depicting Haudenosaunee occupancy of modern southern Ontario refer to Haudenosaunee settlement in proximity to the Grand River circa 1667-1687, routes of access to and from Lake Ontario to the Grand River, and the use by the Haudenosaunee of lands bordering the Grand River for hunting.</li> <li>• The 1755 "Mitchell Map" of North America has remained influential since the time of its publication as evidence of British understandings of North America circa 1755. Mitchell charted the British empire in North America as based on Haudenosaunee alliance, trade,</li> </ul>
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and prior conquests – their abundant presence on this map indicates just how important the British regarded their partners in the Covenant Chain on the eve of the Seven Years’ War in North America. The Mitchell Map contains substantial evidence concerning lands used by the Haudenosaunee for hunting, trapping, fishing, harvesting and trading in the Grand River Valley.

...

Historical cartography constitutes a significant and often-overlooked line of evidence that can assist efforts to comprehend past patterns of land use by Indigenous peoples. Scholars analyze representations of Indigenous nations’ residency and resource exploitation on historic maps to assess change over time in European intruders’ understanding of those phenomena in comprehensive, descriptive terms.<sup>505</sup> The best historical cartographic research takes into account recent critical scholarship that has debunked the long-assumed “representational neutrality” of maps.<sup>506</sup>

Recognition of the limits of cartographic evidence for understanding historic land use by Indigenous peoples must precede any substantive discussion of a particular case study. Europeans drew the vast majority of maps depicting Indigenous nations available today for historical analysis. Mapping played a significant role in the broader process of Europeans’ territorial dispossession of Indigenous nations by representations of North American land in ways useful to colonizers through scale, projection, selection, areal coverage, and symbolism.<sup>507</sup> Maps have also reinforced European proprietary concepts such as the notion of exclusive possession, which corresponds well to the visual geometry employed in modern cartography. We are trained to expect to see discrete groups of people “filling up,” through their residency and use patterns, a bounded, territorial space.<sup>508</sup> Blank spaces on maps feed easily into terra nullius perceptions of “empty” territory free for the taking by colonizers.<sup>509</sup> Information on historic maps also tended to lag behind circumstances “on the ground” at a particular moment of time given the technology available during the seventeenth and eighteenth centuries. Therefore it cannot be taken for granted that an individual historic map provides independent, unequivocal “proof” of Indigenous use of particular areas of land at a given point of time in the past. We must subject historic maps to contextual scrutiny as we would any other primary source and identify patterns of data that, considered holistically with other lines of

evidence, illuminate Indigenous peoples' past experiences in, and understandings of particular territories.

In this response I will consider two primary categories of historic maps depicting lands used by the Haudenosaunee in modern southern Ontario from 1650 to 1780: 1) seventeenth- and eighteenth-century maps depicting Haudenosaunee **occupancy** in what is now southern Ontario, and 2) eighteenth-century maps depicting Haudenosaunee **use** of southern Ontario (principally for hunting). The discussion of eighteenth-century maps will include detailed commentary on the Clowes (1701) and Mitchell (1755) maps.

Maps Depicting Haudenosaunee Occupancy of Modern Southern Ontario, 1670-1755

After 1667, the Haudenosaunee established nine settlements in what is now southern Ontario as part of a comprehensive strategy of expansion in their hunting and trading activities with the settler colonial regimes of England and France. Referred to by the French as the “Iroquois du Nord,” these settlements arose from opportunities deriving from the prior Haudenosaunee dispersal of the Algonquins,<sup>510</sup> Nipissings,<sup>511</sup> Wendats,<sup>512</sup> Petuns,<sup>513</sup> Neutrals, and Wenros<sup>514</sup> from modern southern Ontario and constituted a northward projection of satellite communities peopled by families and clan segments from all constituent nations of the League. Residents of these communities (which spanned the shore of Lake Ontario from approximately modern Kingston to Hamilton, and were often located at the mouths of rivers providing access to interior hunting grounds) practiced matrilineal residency, built longhouses, planted traditional crops, and maintained connections with existing League national towns (in modern upstate New York) based on ties of kinship and economic reciprocity.<sup>515</sup>

Table 1, List of Haudenosaunee Settlements in Modern Southern Ontario <sup>516</sup>

Name of Settlement	Dates of Occupation	Mappings
Quintio	1665-1680 <sup>517</sup>	Bernou (1680) Coronelli (1688) Jefferys (1755)
Quinaouataoua	1667-1687 <sup>518</sup>	Galinée (1670) Raffeix (1688) de l'Isle (1718) Bellin (1744) Jefferys (1755) Mitchell (1755)
Ganerské	1667-1687 <sup>519</sup>	Bernou (1680) Raffeix (1688) Senex (1710) de l'Isle (1718) Poppo (1733) Bellin (1744) Jefferys (1755) Mitchell (1755)
Quinté	1667-1687 <sup>520</sup>	Bernou (1680) Raffeix (1688) Lahontan (1703) Senex (1710) de l'Isle (1718) Chatelain (1719) Moll (1720) Bellin (1744) Evans (1755) Jefferys (1755) Mitchell (1755)
Ganneious	1667-1687 <sup>521</sup>	Bernou (1680) Raffeix (1688)

			<p>Lahontan (1703)                  Senex (1710)                  de l'Isle (1718)                  Chatelain (1719)                  Moll (1720)                  Popple (1733)                  Bellin (1744)                  Jefferys (1755)                  Mitchell (1755)</p>
Ganestiquiagon		1669-1687 <sup>522</sup>	<p>Galinée (1670)                  Bernou (1680)                  Raffex (1688)                  Coronelli (1688)                  Senex (1710)                  de l'Isle (1718)                  Bellin (1744)                  Jefferys (1755)</p>
Teiaigon		1673-1687 <sup>523</sup>	<p>Bernou (1680)                  Raffex (1688)                  Coronelli (1688)                  Senex (1710)                  de l'Isle (1718)                  Popple (1733)                  Bellin (1744)</p>
Ganneious II		1676-1687 <sup>524</sup>	
Cataragui		1701-c.1752 <sup>525</sup>	de Léry (1720)

Historians describe the “Iroquois du Nord” villages as self-sufficient settlements that also served as way-stations for hunters from traditional Haudenosaunee homelands seeking to exploit hunting territories in modern Ontario (and points west) and possibly also sites for conducting the trade of other Indigenous nations (such as the Anishinaabe) residing in the upper Great Lakes to Albany (which required secure passage through Haudenosaunee homelands).<sup>526</sup> The Sulpicians established Catholic missions at Quinté (1668) and Teiaigon (1676).<sup>527</sup> The 1687 French

campaign led by the Marquis de Denonville against the Senecas<sup>528</sup> led to the end of permanent residency at most (though not all) of the north shore settlements. Haudenosaunee people reoccupied the vicinity of the former site of Quinté after the French re-establishment of Fort Frontenac in 1695.<sup>529</sup> This settlement, referred to as Cataragui, persisted until at least 1725, and French documentary sources associated with Fort Frontenac attest to the ongoing regional presence of the “Iroquois of the Lake” until at least 1752.<sup>530</sup>

Historical geographer Victor Konrad pioneered cartographic analysis of the “Iroquois du Nord” in his seminal 1981 study. He relied exclusively on French-authored maps, discussing twenty-four maps dating from 1666 to 1752 (six of which postdated 1703).<sup>531</sup> Rather than replicate Konrad’s sample, I have identified twelve maps dating from 1670 to 1755, drawn by French and English cartographers, to address the question of how Haudenosaunee occupancy of modern southern Ontario during the seventeenth and eighteenth centuries has been represented cartographically.



Map 1. René de Bréhan de Galinée, Carte du Lac Ontario et des habitations qui l'Environne Ensemble le Pays (1670)<sup>332</sup>

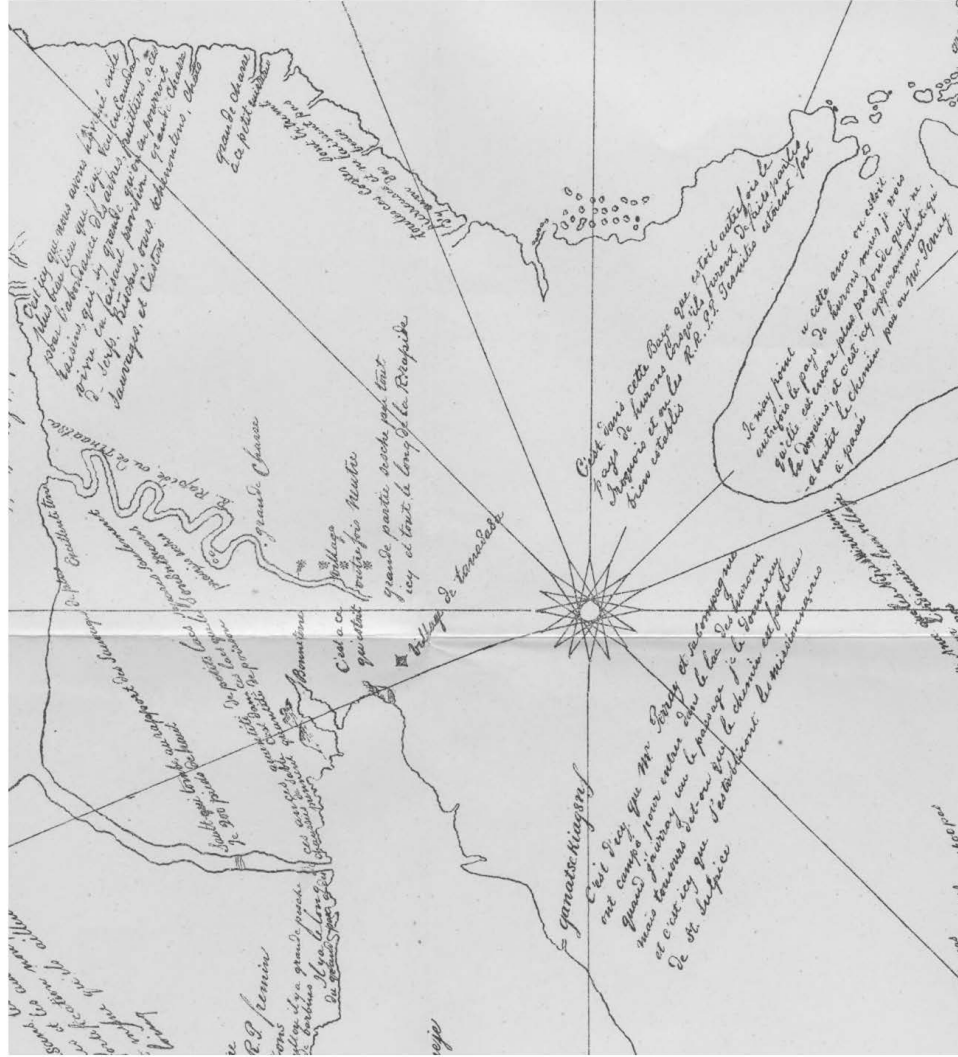


Figure 5, Detail of Galinée (1670) Map

This is the first map of the Great Lakes beyond Lake Ontario based on personal observation. Oriented with north at the bottom of the map, it depicts the route followed by Sulpician missionaries François Dollier de Casson and René de Bréhan de Galinée during a 1669-70 exploration of the lower Great Lakes.<sup>533</sup> The map documents only the southwestern portion of the “Iroquois du Nord” settlements extant at the time, as the missionaries traveled westward across the Niagara River into modern Ontario, and only mapped their journey as far east along the north shore of Lake Ontario as “Ganatsékiagonna” [i.e., Ganestiquiagon] which Coyne associated with modern Bowmanville, Ontario. The map also locates “tanada8a” [i.e., Quinaouataoua] in the vicinity of contemporary Westover, Ontario, and makes several references not only to the “Rapid” or “Tinaouataoua” River [i.e., the Grand River], but also the presence of “a former Neutral village” nearby along the Grand River as well as several references to the quality of the “hunting grounds” along the Grand River (Coyne associated some of these “hunting grounds” with the contemporary “Burford Plains”). The map also refers to modern Matchedash Bay as “formerly the country of the Hurons, when they were defeated by the Iroquois” and notes, below the modern location of Detroit, a stone marked with human figures “which the Iroquois looked upon as a great chief, and to which they offered sacrifices when going this way to war.” The missionaries “broke it up and threw it into the water.”<sup>534</sup>

Map 2. Claude Bernou, Carte des Grand Lacs (1680)<sup>535</sup>

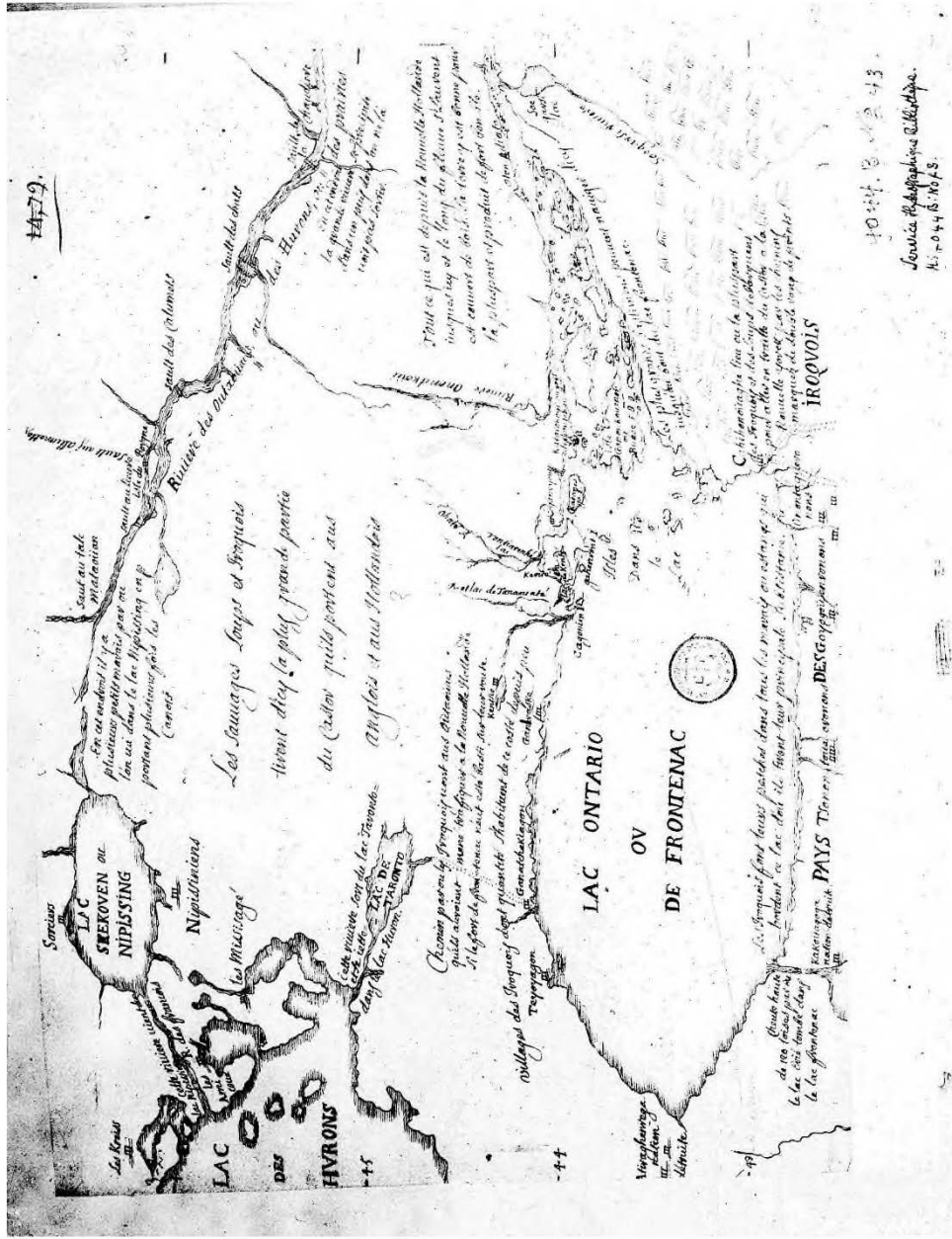


Figure 6, Detail of Bernou (1680) Map

This is a text-rich map with significant content relative to the “Iroquois du Nord.” Bernou depicts along the north shore of Lake Ontario the following “villages des Iroquois dont quantité s’habituent de ce costé depuis peu”: “Teyayagon,” “Ganatchekiagon,” “Gandraske,” “Kentio,”

“Kenté,” and “Gaineyouss.” In the interior of the map appears the phrase: “Les sauvages Loups et Iroquois tirent d’icy la plus grande partie du castor qu’ils portent aux Anglois et aux Hollandois” [i.e., the Mahicans and Haudenosaunee get most of their beaver from here, which they bring to the English and the Dutch], a clear reference to the proximity of viable hunting grounds to the north shore settlements. Bernou also denoted the portage between Ganestiquiagon and “Lac de Taronto” (i.e. Lake Simcoe) as the “Chemin par ou les Iroquois vont aux Outaouacs qu’ils avoient mene trafiquer a la Nouvelle Hollande si le fort de Frontenac n’eut esté basti sur leur route” [i.e., the route by which the Haudenosaunee traveled to the Odawas whom they escorted to trade with the Dutch of New York prior to the construction of Fort Frontenac on that route], indicative of the trade linkages facilitated by Haudenosaunee residency on the north shore of Lake Ontario.

Map 3. Pierre Raffeix, Le Lac Ontario avec les lieux circonvoisins et particulièrement les cinq Nations Iroquoises (1688)<sup>536</sup>

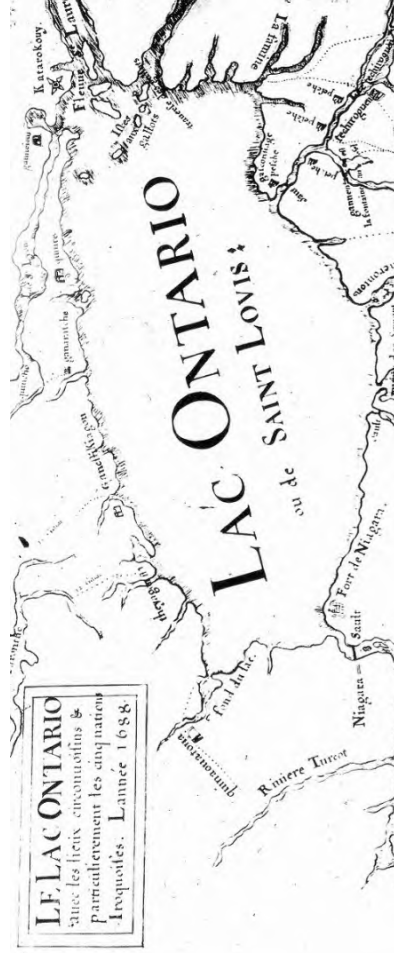


Figure 7, Detail of Raffeix (1688) Map

This map makes clear the strategic importance of “Iroquois du Nord” settlements along routes leading from Lake Ontario to hunting territories located to the north and west.<sup>537</sup> The map depicts “quinaouataoua” (with a portage leading to the “Riviere Turcot” [i.e., the Grand River], theyagon,” “Ganestikiagon,” “ganaratche,” “quinté,” and “ganneious.”

Map 4. Vincenzo Coronelli, Partie occidentale du Canada ou de la Nouvelle France ou sont les Nations des Illinois de Tracy les Iroquois et plusieurs autres peuples (1688)<sup>538</sup>



Figure 8, Detail of Coronelli (1688) Map

Coronelli, an Italian Franciscan scholar who spent the years 1681 to 1683 in Paris preparing globes for King Louis XIV, gained access to a wealth of documents related to French exploration of North America which enabled him, with the aid of “an army of assistants and correspondents,” to complete several maps of Canada. Noted for his finely engraved plates, engaging details, descriptive texts, and incorporation of imagery, Coronelli’s map (as it pertained to modern southern Ontario) emphasized rivers and portages rather than Indigenous placenames.<sup>539</sup> Notwithstanding the abundant resources available to him, Coronelli depicted only “Teiaiaagon, aux Iroquois,” “Canatchekiagon,” and “Kentio.”<sup>540</sup>

Map 5. Louis Armand de Lom d'Arce, Baron de Lahontan, *Carte générale du Canada* (1703)<sup>541</sup>



Figure 9, Detail of Lahontan (1703) Map

This map is significant for its depiction of Haudenosaunee beaver hunting grounds in modern southern Ontario. At four different locations (near modern Windsor, Hamilton, Barrie, and Kingston) Lahontan's map denotes "Chasse de castor des yroquois," indicating Haudenosaunee proprietorship of southern Ontario.<sup>542</sup> Of the "Iroquois du Nord" villages, only "Ganeous" and "Kente" are depicted.



Map 6. John Senex, North America, Corrected from the Observations Communicated to the Royal Society at London, and the Royal Academy at Paris (1710)<sup>543</sup>



Figure 10, Detail of Senex (1710) Map

This map, based in part on Guillaume de l'Isle's Carte du Canada ou de la Nouvelle France (1703), represents the most ambitious English mapping of North America and the most sophisticated depiction of the Great Lakes presented to an English audience to date. Offering a compelling example of the power cartographers held over the destinies of distant lands in a context of competing imperial claims, Senex's replication of de l'Isle's territorial conventions throughout the map leads to its powerful advocacy for French political domination of much of North America notwithstanding its English authorship.<sup>544</sup> The map depicts five of the "Iroquois du Nord" villages: "Teiaigon," "Gandastiagono," "Grandarasque," "Kente," and "Ganceioust."

Map 7. Guillaume de l'Isle, Carte du Canada ou de la Nouvelle France et des decouvertes qui y ont été faites (1718)<sup>545</sup>



Figure 11, Detail of de l'Isle (1718) Map

Guillaume de l'Isle's 1718 map marked a watershed in the cartography of the North American continental interior. In the view of historian Conrad Heidenreich, de l'Isle represented extensive French official imperial boundaries "to the minutest detail" and circumscribed English possessions to east of the Appalachian mountain range.<sup>546</sup> In modern southern Ontario, de l'Isle denoted the Wendat, Petun, and Neutral nations as "destruite [i.e., destroyed]" and he represented six of the "Iroquois du Nord" settlements: "Quinaouotoua," "Teiaigon," "Gandastiago," "Ganadarasque," "Kinté," and "Ganeioust."



Map 8. Herman Moll, A New Map of the North Parts of America Claimed by France under ye Names of Louisiana, Mississippi, Canada, and New France, with ye Adjoining Territories of England and Spain<sup>547</sup>

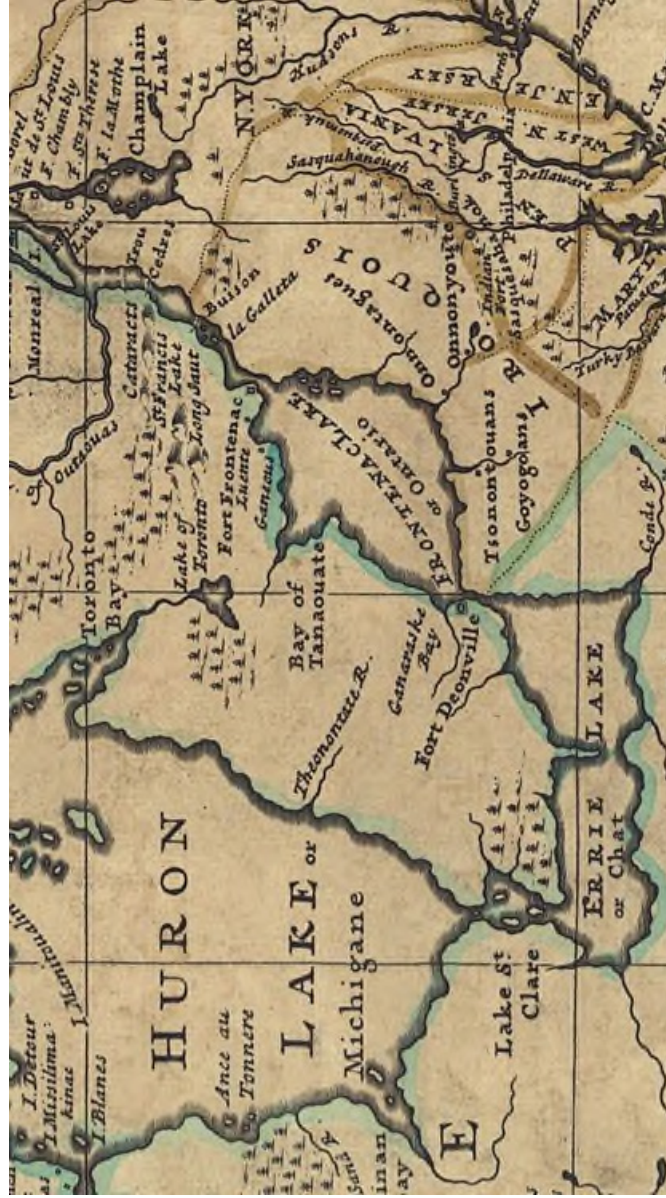


Figure 12, Detail 1 of Moll (1720) Map

Drawn in response to aggressive French cartographic representations of their empire in North America, Moll's map left modern southern Ontario largely devoid of "Iroquois du Nord" settlements, identifying only "Ganious" and "Quente."

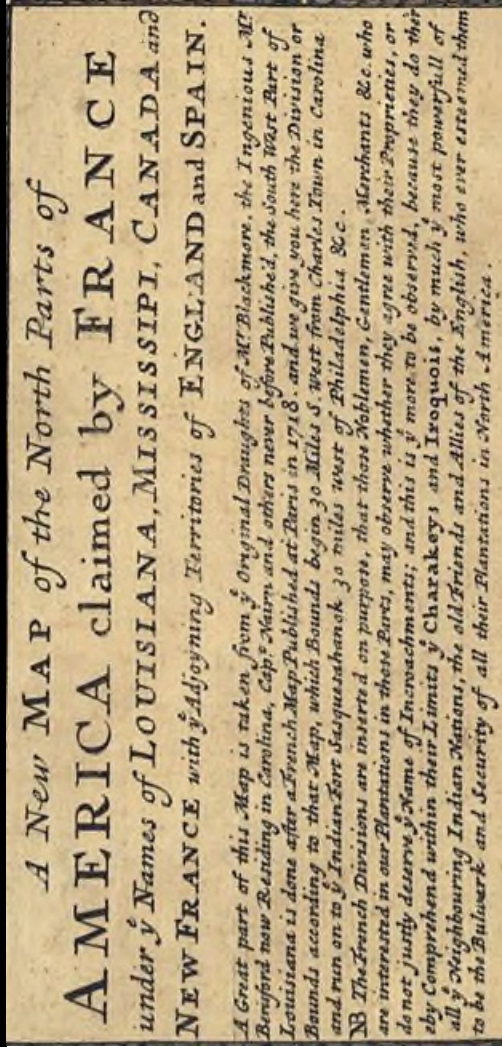


Figure 13, Detail 2 of Moll (1720) Map

Moll's key critique of French cartography is detailed in this inscription on the map, which identifies the incorporation by the former of the territories of the Haudenosaunee and Cherokee into Louisiana as an illegitimate "Incroachment," since those nations represented, in his view "old Friends and Allies of the English, who ever esteemed them to be the Bulwark and Security of all their Plantations in North America." This constituted an early example of English usage of trade and diplomatic alliances with Indigenous nations as the basis for territorial claims vis-à-vis the French in North America – an important theme in much of the subsequent cartographic record.<sup>548</sup>

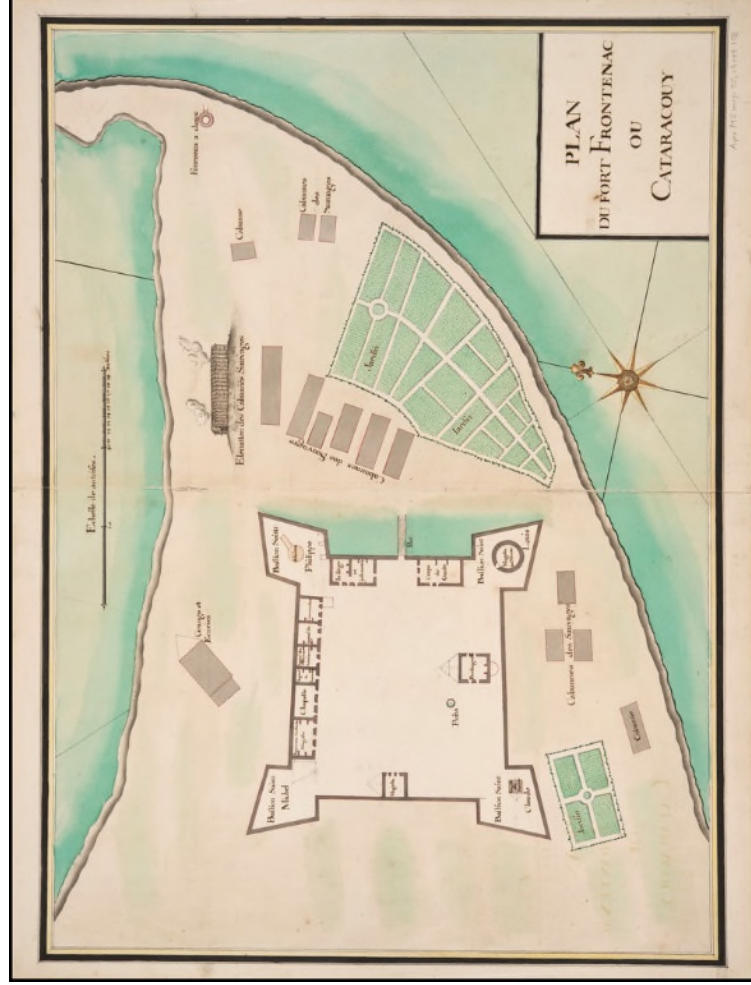
Map 9. Gaspard-Joseph Chaussegros de Léry, Plan du Fort Frontenac ou Cataracouy (1720).<sup>549</sup>

Figure 14, de Léry (1720) Map

This map depicts the “cabannes des Sauvages” and associated “jardin” of the “Iroquois du Nord” settled in proximity to Fort Frontenac. Known as Cataracouy, this settlement was established after 1701 and while Haudenosaunee settlement did not appear on de Léry’s subsequent Plan du Fort Frontenac (1726), the presence of Haudenosaunee individuals in the area is documented in French sources until 1752.<sup>550</sup> The “elevated” depiction of the “Cabannes de Sauvages” on the map clearly resembles the traditional bark longhouse architecture of the Haudenosaunee.<sup>551</sup>



Map 10. Henry Popple, A Map of the British Empire in North America with the French and Spanish Settlements Adjacent Thereto (1733)<sup>552</sup>



Figure 15, Detail of Popple (1733) Map

Popple’s map, drawn in consultation with Great Britain’s Board of Trade for the purpose of adjudicating boundary disputes with the French and Spanish in North America,<sup>553</sup> is another example of an English map that leaves modern southern Ontario largely blank save for outdated depictions of the Neutral nation and three of the “Iroquois du Nord” settlements: “Tejajagon,” a mis-placed (too far east) “Quandarasque,” and “Gonejou.”

Map 11. Jacques Nicolas Bellin, Carte des Lacs du Canada (1744)<sup>554</sup>

Figure 16, Detail of Bellin (1744) Map

Bellin’s map provides a wealth of detail related to the question of Haudenosaunee occupancy and use of modern southern Ontario. Seven of the “Iroquois du Nord” settlements appear: “Quinaouatoua,” with a portage marked from that settlement to the “R. d’Ursé ou la Grand Riviere,” “Tejajagon” and “Gandat Siagon,” with their respective portage routes to Lake Simcoe, “Ganaraske,” “Kente,” “Gannejouts,” and the novel depiction of a settlement named “Tannaouté,” west of Ganneious on Napanee Bay, possibly near modern Belleville, Ontario.<sup>555</sup> The map also portrays the “Ancien Pays des Hurons,” and in the contemporary Bruce Peninsula marks the former sites of Wendat villages [“Ici étoient répandues plusieurs Bourgades de Hurons” (i.e., “Here were scattered several Wendat villages”)], it marks the Neutrals and Petuns as “Detruite,” and it places a Mississauga village on the modern Ontario shoreline north of Lake St. Clair (near modern Sarnia).<sup>556</sup> Bellin’s map, one of the first to appear in the post-1744 context of elevated Anglo-



French imperial rivalry in North America that demanded more precise maps for strategic purposes, proved highly influential on subsequent cartographers, including John Mitchell.<sup>557</sup>

Map 12. Thomas Jefferys, North America (1755)<sup>558</sup>



Figure 17. Detail of Jefferys (1755) Map

Jefferys's map followed closely the 1746 map of d'Anville in its depiction of modern southern Ontario.<sup>559</sup> It locates a large ethnonym for "Iroquois" in the interior country north of Lake Ontario and depicts the "Iroquois du Nord" settlements of "Tinaouatoua," "Gandatskiagon," "Gonaraske," "Kentsio," "Kente," and "Ganeiou." West of Ganeiou appears the "Tanaouate R[iver]."

European cartographers continued to depict "Iroquois du Nord" settlements on maps long after they ceased to function as permanent, year-round Haudenosaunee settlements (with the noteworthy exception of de L ry's representation of the Catarqui settlement adjoining Fort Frontenac circa 1720). Notwithstanding the asynchronous nature of these representations, these maps provide a

consistent visual record of Haudenosaunee occupancy and use of modern southern Ontario during the seventeenth and eighteenth centuries that can be used in tandem with documentary sources to better understand the nature and function of those settlements.

The reasons for the late seventeenth-century decision of the Haudenosaunee to relocate most of their population from the “Iroquois du Nord” settlements to traditional homelands south of Lake Ontario has been a matter of debate among historians. Leroy Eid and Peter Schmalz contend that the Haudenosaunee abandoned their settlements on the north shore as the result of military defeat at the hands of the Anishinaabe, the latter of whom, in their view, colonized former Haudenosaunee territory.<sup>560</sup> Konrad, in two related studies, argues for a more nuanced understanding of the process of Haudenosaunee settlement retrenchment. According to Konrad, the Algonquian-speaking Anishinaabe nations “filled the void on the north shore only at the pleasure of the Iroquois.”<sup>561</sup> Konrad cites<sup>562</sup> a June 30, 1700 speech by Onondaga leader Teganissorens at Albany, in which he related the substance of a conference held at Onondaga with “five Dowaganhaes” from “three Nations”:

“Some of the Dowaganhaes having had a conference with our Indians att their hunting this last winter, concluded to desert their habitations and to come and live and settle upon ye Lake of Cadarachqui, near the Sinnekes country att a place called Kanatiochiage and accordingly they are come and settled there & have sent five of their people to Onnondage to treat, being sent from three Nations who are very strong having sixteen castles. They say, Wee are come to acquaint you that wee are settled on ye North side of Cadarachqui Lake near Tehojachiage [i.e., Teiaiagon] where wee plant a tree of peace and open a path for all people, quite to Corlaer’s house, where we desire to have free liberty of trade; wee make a firme league with ye Five Nations and Corlaer and desire to be united in ye Covenant Chain, our hunting places to be one, and to boile in one kettle, eat out of one dish, & with one spoon, and so be one; and because the path to Corlaers house may be open & clear, doe give a drest elke skin to cover ye path to walk upon.”<sup>563</sup>

Teganissorens reported the reply of the Haudenosaunee as follows:

“Wee are glad to see you in our country and doe accept of you to be our friends and allies and doe give you a Belt of Wampum as a token thereof that there may be a perpetual

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			<p>peace and friendship between us and our young Indians to hunt together in all love and amity. Lett this peace be firm and lasting, then shall wee grow old and grey headed together; else ye war will devour us both. Brethren, Wee open a path for you to goe quite to Corlaer's house where you shall have equal liberty of egress and regress to trade and merchandize as wee our selves. Wee doe again invite you to trade in our brother Corlaer's house where you will be civilly treated, and in your passage thither you shall be well received and treated by us in our Castles. Wee throw away ye hatchet of war and bury itt in ye ground and doe make a perpetuall peace &amp; let those dye that first break itt.<sup>564</sup></p> <p>In his concluding remarks, Teganissorens noted that the five 'Dowaganhae messengers' could not be persuaded to continue eastward from Onondaga to Albany at that time, citing their fear of "evil minded Indians who in their drink might kill them."<sup>565</sup></p> <p>...</p>
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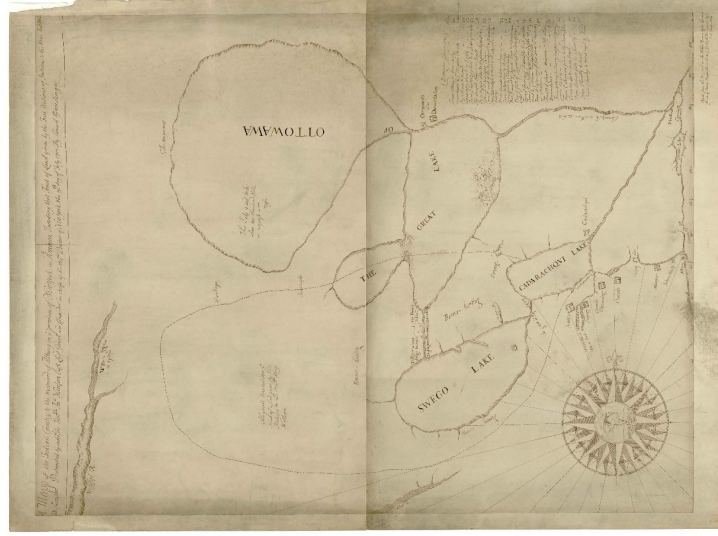
Maps Depicting Haudenosaunee Use of Modern Southern Ontario, 1701-1780Map 13. The “Clowes Map” (1701)<sup>589</sup>

Figure 18, 1884 James A. Burt Tracing of Clowes Map (1701)

The Clowes Map is associated with the July 19, 1701 deed signed at Albany<sup>590</sup> by members of the Haudenosaunee in which they made a provisional offer to King William III to place their “beaver hunting grounds” in the Great Lakes region under the protection of the English Crown. While some regard the deed as a “significant cession of land,”<sup>591</sup> it is my opinion that the terms of the deed were never properly performed by the Crown, which “effectively nullified” any implication of actual surrender of territory by the Haudenosaunee.<sup>592</sup> Therefore, the Clowes Map is best understood as a representation of the southwestern portion of hunting territories claimed by the Haudenosaunee in 1701, and as such it should be analyzed in tandem with the

contemporaneous “Dish with One Spoon” treaty with the Anishinaabe (discussed above) which encompassed the northeastern portion of hunting territories claimed by the Haudenosaunee at that time.

The Clowes Map is oriented unusually, with west at the top of the map instead of at the left. It depicts the four lower Great Lakes (excluding Lake Superior) bounded by Lake Champlain, the Straits of Mackinac, and portions of the Mississippi and Ohio Rivers. As the most recent scholarly analysis of the map by Richard Laprairie notes, the “key feature” of the map is the dashed (given as “prickt” on the map itself) line delineating the boundary of the tract of land the Haudenosaunee offered for Crown protection.<sup>593</sup> Within that boundary, the map identifies three discrete locations for “beaver hunting” that correspond (approximately) to: 1) modern northwest Ohio, 2) an area between the south shore of Lake Erie and the approximate location of the Ohio River in modern north-central Ohio, and 3) modern Ontario southwest of Toronto [i.e., the peninsula surrounded by lakes Ontario (“Cadarachqui”), Erie (“Swego”) and Huron (depicted as linked with Lake Michigan as “Great Lake of “Ottowawa”)]. Significantly, the section of modern southern Ontario depicted as within Haudenosaunee “beaver hunting” territory on the Clowes Map includes a representation of the Toronto “Carrying Place,” or portage along the Humber River, the “great Fall of Jagara” [i.e., Niagara Falls] and a “Swego R[iver]” at a point draining into Lake Erie that would correspond to the Grand River.



Figure 19, Detail of 1884 Burt Tracing of Clowes Map (1701)  
(N.B. image rotated 90 degrees counterclockwise to depict north at top)

Laprairie states that the Clowes Map was likely dictated by Haudenosaunee individuals in attendance at the signing of the deed on July 19, 1701.<sup>594</sup> The map bears significant resemblance in

both its geographical coverage and modes of cartographic representation to a map dictated by Onondagas to Robert Livingston, New York's Secretary of Indian Affairs, at Albany on March 12, 1697.<sup>595</sup> Therefore, we should regard the Clowes Map as a geographical expression by the Haudenosaunee of a portion of the territory they used for resource exploitation “that highlights the impending threat posed by a French fort [i.e., Fort Pontchartrain at modern Detroit] being built in the very center of their hunting grounds.”<sup>596</sup>

The Haudenosaunee dictated the Clowes Map for the contemporary purpose of relating a visual understanding of the southwestern portion of their traditional “beaver hunting” territory (to accompany the written text of the deed) to their English interlocutors at Albany on June 19, 1701 at Albany. Contrary to assertions that this amounted to a cession of that territory to the English Crown, the Clowes Map depicted lands that the Haudenosaunee offered conditionally for Crown protection. Considered in relation to their arrangements in the “Dish with One Spoon” treaty their motivation for offering these lands for Crown protection becomes clear. The lands bounded by the “prickt” line on the Clowes Map border lie immediately west of the territory defined by the “Dish with One Spoon” treaty.<sup>597</sup> At least two of the Seneca signatories of the July 19, 1701 deed at Albany had been intimately involved since July 1699 with the negotiation of the “Dish with One Spoon” treaty ratified at Montréal on August 4, 1701.<sup>598</sup>

The Haudenosaunee likely believed that the geographic distance of the “beaver hunting” grounds depicted on the Clowes Map<sup>599</sup> from the core of French settlement in the St. Lawrence River Valley would have made the idea of assuming protection of those lands on behalf of the Haudenosaunee more attractive to their English Covenant Chain allies than would have been the case with the region east of modern Toronto (which the Haudenosaunee attended to in the “Dish with One Spoon” treaty). In the immediate context, that protection would have meant direct English military interference with the French construction of Fort Pontchartrain at modern Detroit.<sup>600</sup> Brandão and Starna suggest that the 1701 deed represented an attempted conveyance of territory that “the Iroquois were having difficulty controlling” at that time,<sup>601</sup> but it is better understood as an assertion of a Haudenosaunee territorial claim to lands that were never fully ceded owing to the non-execution of the provisional terms of the deed by the English Crown. Instead of writing off the map as forgotten or rendered obsolete,<sup>602</sup> we should recognize the Clowes Map as the visual record of a Haudenosaunee initiative to secure Crown protection for a discrete

area of their claimed hunting territory they perceived to be threatened by the French trespass at Détroit.

Map 14. Henri Abraham Chatelain, Carte particulière du Fleuve Saint Louis dressée sur les lieux avec les noms des sauvages du país, des marchandises qu'on y porte & qu'on en recoit & des animaux, insectes, poissons, oiseaux, arbres & fruits des parties septentrionales et méridionales de ce país (1719) <sup>603</sup>



Figure 20, Detail of Chatelain (1719) Map

Chatelain, a Huguenot pastor born in Paris, is commonly identified as a Dutch cartographer.<sup>604</sup> This map appears in the sixth volume of his seven-volume Atlas Historique (published in Amsterdam, 1705-1720). While Chatelain's reliance on prior French maps by de l'Isle is apparent, the map offers several noteworthy details in its depiction of Haudenosaunee use of lands in modern southern Ontario. Markings denoting "chasse de castor des yroquois" [i.e., Haudenosaunee beaver

hunting] appear throughout modern southern Ontario, both west and east of modern Toronto, ranging from modern Windsor to the shores of the Ottawa River west of the current location of Ottawa – the author does not extend the range of Haudenosaunee hunting territory anywhere inside the modern boundaries of the United States. An unnamed Indigenous settlement marked with a cross near the portage between the Grand River and Lake Ontario evokes earlier cartographic representations of the “Iroquois du Nord” settlement of Quinaouataoua. “Ganneous” and “Kente” are indicated (asynchronously) on the north shore of Lake Ontario, along with notations for the “Baye de ganaraske” and “B. de Tanaouate.” An asynchronous settlement of “Teonontateronons Apelles Hurons” [i.e., Tionnontaté Wendats] appears southwest of Lake Simcoe, sandwiched between two indications of “chasse de castor des yroquois.” Intriguingly, the map suggests the possible familiarity of its author with the Clowes Map, given the aggressive boundary depicted for New France, which transfers the lands west of Irondequoit Bay in modern New York, and those along the south shore of Lake Erie and all points west (represented as Haudenosaunee “beaver hunting” grounds in the Clowes Map) to French jurisdiction. The author depicts a highly constrained version of Haudenosaunee homelands (“Pais de Iroquois”) in modern upstate New York. This relatively little-known map suggests a French “answer” of sorts to the Clowes Map given its depiction of a reduced range of Haudenosaunee “beaver hunting” grounds that roughly follows the boundary delimited by Clowes but locates those hunting grounds entirely within New France. The author justifies the southern border of New France on the map by associating it with a war path (roughly following the Allegheny, Ohio, and Mississippi rivers) employed by French-allied Indigenous nations in Illinois and the Haudenosaunee during their respective military campaigns.<sup>605</sup>



Map 15. Cadwallader Colden, A Map of the country of the Five Nations, belonging to the province of New York; and of the lakes near which the nations of far Indians live, with part of Canada (1724)<sup>606</sup>

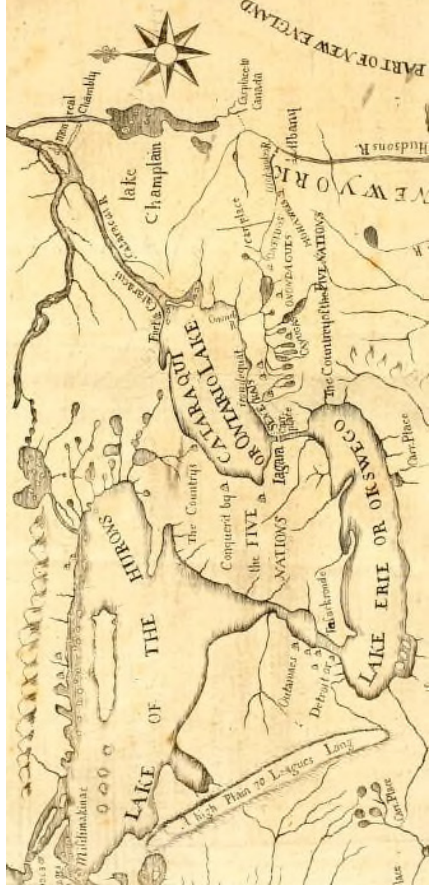


Figure 21, Detail of Colden (1724) Map

This map reflects the enhanced geographical ambitions among British colonial authorities in New York following the 1713 Treaty of Utrecht, which conferred new territory and commercial rights in North America to the Crown. Imperial-minded New Yorkers believed that their province's inland waterways providing access to the Great Lakes and its status as the primary representative of the Crown in the Covenant Chain alliance with the Haudenosaunee might combine to promote an expansion program – one that would be spearheaded by a reorientation of the colony's fur trade along an east-west axis, connecting Albany to the Indigenous peoples of the upper Great Lakes and Ohio Valley.<sup>607</sup> Antagonized by the post-1713 efforts of the French to check British ambitions in the North American interior, which included the cartography of de l'Isle (reviled by New Yorkers not only for its constricted representation of British colonial holdings in North America but also for its aggressive depiction of comparatively vast French proprietorship of the Great Lakes region), New York Surveyor-General Cadwallader Colden worked with New York Colonial Governor Robert Burnet (1720-1728) to assert competing British claims to trans-Appalachian region based on the prior "conquests" of their Haudenosaunee allies.<sup>608</sup>

Colden employed a copied extract from the 1718 de l'Isle map as the basis of his 1724 map. The title of his map ("Country of the Five Indian Nations Belonging to the Province of New York"), claimed for Great Britain all land then occupied and previously "conquered" by the Iroquois, thereby asserting British dominance over an area with no British settler population present.<sup>609</sup> True to its 1701 predecessor (the Clowes Map), Colden's 1724 map depicts the "Countrys Conquer'd by the Five Nations" wholly within modern southern Ontario, west of modern Toronto. No other Indigenous population is represented anywhere in modern Ontario on this map, but there are "Outawaes" depicted in southeastern lower Michigan, "Outaouaes or Necariages" at Michilimackinac, and "Miamis or Tightwis" on the upper branches of the Wabash River. French Fort Frontenac ("Cadaracui") appears, but Detroit is marked only by its Haudenosaunee identifier: "Tusakronde."

Colden's 1724 map formalized and publicized the way in which British imperial officials had come to regard the Covenant Chain alliance as enhancing the Crown's geographical claims *vis-à-vis* France in North America. For the next half-century, New York political authorities "repeatedly reminded their superiors in London" of the crucial nature of their alliance with the Haudenosaunee to the collective security of British North America as a whole.<sup>610</sup> The seed of this idea, planted by the Haudenosaunee in their 1701 proposal to place a portion of their hunting territory in the lower Great Lakes under Crown protection, blossomed into a fundamental tenet of Crown policy in North America after 1724. The actual maps, however, took some time to catch up. In a February 14, 1738 letter to Board of Trade, Colden continued to lament the "pretensions" of French cartography with respect to North American geography, which included their assertion of claims to "the countries of the five nations depending on New York." He further bemoaned the "servile" copying of French maps by English cartographers who "mark out the boundaries between the English and the French with the same disadvantage to the English that the French do."<sup>611</sup>



Map 16. Lewis Evans, A general map of the middle British Colonies, in America; viz Virginia, Maryland, Delaware, Pensilvania, New-Jersey, New-York, Connecticut, and Rhode Island: of Aquanishuonig, the country of the Confederate Indians; comprehending Aquanishuonig proper, their place of residence, Ohio and Triuxoxruntie their deer-hunting countries, Couxsaxträge and Skaniadaráde, their beaver-hunting countries; of the Lakes Erie, Ontário and Champlain, and of part of New-France: wherein is also shewn the antient and present seats of the Indian Nations (1755)<sup>612</sup>



Figure 22, Detail of Evans (1755) Map

Welsh-born Pennsylvania surveyor and mapmaker Lewis Evans's primary purpose with his 1755 map was to demonstrate the proximity of extant settlements in his home colony to the Ohio River Valley (via the Susquehanna River) as a means of challenging New York's claim on imperial attention via the argument that the best route to the interior ran through Haudenosaunee homelands.<sup>613</sup> Notwithstanding that motive, his map offers much to consider in terms of its representation of Haudenosaunee use of territory outside of their traditional homelands. Evans had

personal experience of travel in Haudenosaunee territory proper, having participated in a 1743 diplomatic embassy from Pennsylvania to Onondaga.<sup>614</sup> The map denotes Haudenosaunee territory as “Aquanishuonigy,” and extends it in a vast arc from the Wabash River at the far left edge of the map to a point southeast of Lake Champlain. Within that sweep of territory, Evans identified four ranges of Haudenosaunee hunting grounds: deer hunting in “Tiixsoxrúntie” (modern northwestern Ohio and southeastern lower Michigan from the Maumee River to the so-called “thumb” of the modern State of Michigan bordering Lake Huron),<sup>615</sup> and “Ohio” (modern north-central Ohio), and beaver hunting in “Couxsaxrage” (modern northern New York State ranging from northeast of Oswego to the western shore of Lake Champlain), and in “Skaniadaráde” (modern southern Ontario extending from the Detroit River to just west of Fort Frontenac). In the center of the map’s rendering of modern southern Ontario there is a reference to the July 19, 1701 Nanfan Treaty:

“The Confederates,<sup>616</sup> July 19, 1701, at Albany, surrendered this their Beaver-Hunting Country to the English, to be defended by them, for the said Confederates, their Heirs and Successors forever. And the same was confirmed Sept. 14, 1726, when the Senecas, Gaiúgas, and Onondágas Surrender’d their Habitations from Cayahoga [i.e., the Cuyahoga River] to Oswego, and Sixty Miles Inland to the same, for the same use.”

Within the bounds of modern southern Ontario, the map depicts settlements of “Outáwas” and “Poutewatámis” along the eastern shore of the Detroit River, and two settlements of “Sissisagoes” [i.e., Mississaugas] along the east shore of the St. Clair River north of modern Walpole Island. Significantly, Evans depicts these settlements as within the shaded area encompassed by Haudenosaunee-controlled “Skaniadaráde.” An asynchronous representation of the “Iroquois du Nord” settlement of “Kenté” also appears in the vicinity of modern Napanee, Ontario.

Evans published a pamphlet<sup>617</sup> to accompany his map in which he provided a rationale for his depiction of the extensive territorial claims of the Haudenosaunee. He cited prior Haudenosaunee conquests of the Shawnees, Eries, and Illinois as the basis for Haudenosaunee proprietorship over land south of Lake Erie to the Ohio River, and west to “Lake Illinois” (which is not depicted on his map).<sup>618</sup> The Haudenosaunee dispersal of the Wendats during the seventeenth century, for Evans, accounted for why “all that Peninsula between the Lakes Michigan, Huron, and Erie [i.e., the

modern State of Michigan] is become the Property of the Confederates [i.e., the Haudenosaunee].”<sup>619</sup> In regard to modern southern Ontario, Evans stated:

“The Peninsula of S K A N I A D A R A D E, which lies on the North Side of Lake Erie, has long been subjected to the superior Arms of the Confederates; its antient Inhabitants, called by the French, Hurons, from the beastly shapes of their heads, and nearly related to the Raarondacks, who do not trim their hair in the sprightly form of the other Savages, are almost extinct. But the country all along the South Side of the Outawais [i.e., Ottawa] River, for a considerable Extent, belongs to those Remains of Algonkins, the Outawais, Nipissings, &c. who by the Assistance of the French have escaped the Fate of most other Nations, who have had Occasion to contend with the Confederates.”<sup>620</sup>

This sense of a distinction between the forms of Haudenosaunee proprietorship over modern southwestern Ontario vis-à-vis eastern and northern Ontario aligns with an understanding of the relationship between the lands encompassed by the “Dish with One Spoon” treaty and the lands provisionally decided by the Haudenosaunee to the Crown in July 1701. Evans conceded that French

“Possession of Fort Frontenac at the [1697] Peace of Ryswick, which they attained during their War with the Confederates, gives them an undoubted Title to the Acquisition of the North West Side of the St. Laurence River from thence to their Settlement at Montreal. But the Confederates still preserved their Right to the other Side, fully to Lake St. Francis, leaving the rest to Montreal as a Boundary.”<sup>621</sup>

Yet few of Evans’s Anglo-American contemporaries shared his opinion equating the presence of French military installations with a secure French claim to surrounding territory. John Bartram, for example (who had accompanied Evans to Onondaga in 1743), argued that the French forts on the Great Lakes:

“can give them no title against the original inhabitants or the five nations, Conquerors of all the adjacent nations, so it is difficult to conceive by what arguments these small posts,

			<p>inhabited by no subjects of France but soldiers, can be extended to mark any possession beyond the reach of their guns, or land actually cultivated.”<sup>622</sup></p> <p>An unsigned letter published in the January 5, 1756 issue of the <u>New-York Mercury</u> also criticized Evans’s opinion that the mere presence of Fort Frontenac conveyed legitimate French possession of the north shore of Lake Ontario and the St. Lawrence River from Fort Frontenac to Montréal.<sup>623</sup></p> <p>Evans promoted the essential nature of the Haudenosaunee alliance for English concerns in the latter’s rivalry with France, but did so in a way that largely elided the colony of New York. His map depicted a continental interior controlled by the Haudenosaunee, implying that they were all that stood between the Anglo-American colonies and the expansionist ambitions of the French. Evans’s map was published as a single-sheet map (49cm x 67cm) at Philadelphia in June 1755, and notwithstanding its overall cartographic quality and significant imperial messaging, it came to be overshadowed by John Mitchell’s massive eight-sheet map published in London that same year.<sup>624</sup></p>
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Map 17. John Mitchell, A map of the British and French dominions in North America with the roads, distances, limits, and extent of the settlements, humbly inscribed to the Right Honourable the Earl of Halifax, and the other Right Honourable the Lords Commissioners for Trade & Plantations (1755)<sup>625</sup>



Figure 23, Detail of Mitchell (1755) Map

John Mitchell, a native of Virginia, drew a draft map of the British North American colonies in 1750 that so impressed George Montagu Dunk, the Second Earl of Halifax and President of the British Board of Trade, that the latter provided Mitchell with access to official records in order to produce a revised map that was published in 1755.<sup>626</sup> Printed in eight sheets, the assembled version of the map measured 136cm x 195cm, which left ample room for textual descriptions and explanations of various features – particularly those that were politically disputed. Mitchell’s pro-British bias is obvious in the map, and it continues the trend initiated by Colden in 1724 of “piggybacking” British territorial claims onto those of their Haudenosaunee allies in the Covenant Chain.<sup>627</sup> While recent scholarship emphasizes aspects of Mitchell’s map that reflected his “fantasy

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		<p>of [British] dominion,<sup>628</sup> it has nevertheless remained influential as evidence of British understandings of North America at the time of its publication.<sup>629</sup> Careful analysis of the map indicates its status as an important source for understanding contemporaneous perspectives on Haudenosaunee land use in and nearby modern southern Ontario (including the Grand River Valley).</p> <p>Mitchell, like his contemporary Evans, employed an expansive toponym for the Haudenosaunee, “Iroquois,” which extended from modern southwestern Pennsylvania to the south shore of the St. Lawrence River. The map represents French forts St. Frédéric (Crown Point, New York), Niagara, and Duquesne (Pittsburgh) as encroachments on Haudenosaunee (and, via the Covenant Chain alliance, British) territory and provides numerous textual descriptions detailing the historical basis for the claims advanced. Mitchell charted an empire based on Haudenosaunee alliance, trade, and prior conquests – their abundant presence on this map indicates just how important the British regarded their partners in the Covenant Chain on the eve of the Seven Years’ War in North America.<sup>630</sup></p>
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74 M. H. Edney

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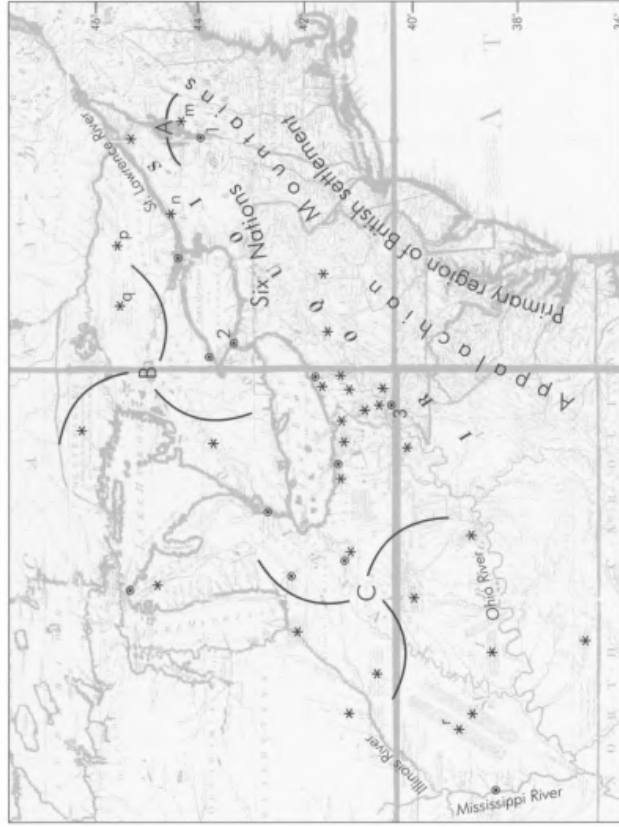


Fig. 2. Drawing based on John Mitchell's *Map of the British and French Dominions in North America* (see Fig. 1) to show the geographical features and locations of political importance mentioned in the text. 'Six Nations': core area occupied by the Iroquois in the middle of the eighteenth century; 'IROQUOIS': the broad region supposed by Mitchell to be then inhabited by the Iroquois. Letters and lines indicate further extensions to Iroquois territory: A, area around Lake Champlain supposedly formerly inhabited by the Iroquois; B and C, areas that Mitchell understood as having been conquered by the Iroquois over the previous century. Asterisks indicate Mitchell's annotations concerning the history of the Iroquois and English settlement: those quoted in the text are indicated by the letters 'm'. etc. Dots are French forts that 'encroached' on Iroquois-British territory; the key ones are: 1, Fort St Frédéric (Crown Point); 2, Fort Niagara; 3, Fort Du Quesne.

Figure 24, Edney Diagram of Depictions of Haudenosaunee on Mitchell Map (1755)<sup>631</sup>

Historian Matthew Edney's rendering of Mitchell's representation of the Haudenosaunee on the 1755 Mitchell map breaks down their core settlement area (A) and areas of conquest (B) and (C). I will concentrate on the contents of the map depicted in area (B) (modern southern Ontario) with some attention to pertinent content in area (C). Beginning at the Detroit River, Mitchell documents two villages: a settlement of "Utawas" [i.e., Odawas] on the east shore of the Detroit River and a settlement of "Messissagues" [i.e., Mississaugas] along the east shore of the St. Clair River north of Lake St. Clair. Immediately to the east of the Mississauga village appears a

reference to “Antient Hurons, Conquer’d and expell’d by the Iroquois Ann. 1650 ever since which time they have been in Possessn. of this Country.” The coverage of this text extends over an area roughly akin to modern Sarnia, Ontario to Lake Simcoe. Slightly to the southeast, Mitchell includes the former “Iroquois du Nord” settlement of “Quinàtoua” [i.e., Quinaouataoua] along a portage from Lake Ontario to the “Urse [i.e., Grand] River.” Moving east to the north shore of Lake Ontario, Mitchell denotes French Fort Toronto [i.e., Rouillé] and then represents (asynchronously) the former “Iroquois du Nord” settlements of “Tegaogon,” “Ganaraské,” “Kenté,” “Tannaouté,” and “Ganeydoes,” all west of Fort Frontenac. Above these village depictions along the northern Lake Ontario shoreline appears the descriptive annotation “Northern Iroquois,” which extends from an area north of Toronto to the easternmost point of the Ontario peninsula (approximately modern Pointe-des-Cascades, QC). A thin line drawn from Lake Simcoe to that easternmost point is labeled: “Limits of Canada and the Iroquois according to De L’Isle Du Fer and other Geographers,” implying that the territory south of that line to the Lake Ontario shoreline belonged formerly to the “Northern Iroquois” (and as discussed above, would include some of the territory associated with the “Dish with One Spoon” treaty). Mitchell extended the “Bounds of the Six Nations” considerably further north to the south shore of the Ottawa River and then followed in a westerly direction with a thick red line, cutting north of Lake Nipissing to the “Luth River” emptying into Lake Huron just north of Manitoulin Island.<sup>632</sup> Within the limits of these boundaries, Mitchell portrays the “Messasagues” [i.e. Mississaugas] between the “Luth” and French rivers, noting that they were “Subdued by the Iroquois and now united with them making the 8th Nation in that League.”<sup>633</sup> Southeast of the map’s representation of Lake Nipissing and bordering a reference to “Antient Outaouaes, Expelled by the Iroquois” (near modern Ottawa, Ontario) appears the phrase:

“By the several Conquests here mentioned, the Territories of the Six Nations extend to the limits here laid down, which they have been in Possession of about 100 Years.”

Mitchell located the “Western Bounds of the Six Nations Sold and Surrendered to Great Britain” with a thick red line running south from “Quadoghe” (modern Chicago)<sup>634</sup> to the fork of the Illinois River as far south as Lake Pimiteoui (modern Peoria, Illinois). North of the Illinois River is a depiction of “Antient Villages of the Illinois destroy’d by the Iroquois,” and between the



Illinois and Wabash rivers is a notation locating “The Antient Eriez were extirpated by the Iroquois upwards of 100 years ago, ever since which time they have been in possession of Lake Erie.”<sup>635</sup>

Mitchell’s map implies that the Ohio River constituted the southern boundary of Haudenosaunee claims to territory, but that waterway is not denoted with the thick red lines associated with the northern and western boundaries described above. A thick red line does extend east from “Quadoghe” along the eastern Lake Michigan shoreline, through the Straits of Mackinac, and then down the western Lake Huron shoreline to encompass the modern State of Michigan in Haudenosaunee territory. Spanning the upper and lower peninsulas of Michigan is the ethnonym “Nicariages, united with the Six Nations and making the 7<sup>th</sup> Nation in that League” in support of that claim.<sup>636</sup> The red borderline then continues along the south shore of Lake Erie, where, east of Sandusky the “Canahogue” [i.e., Cuyahoga] River is annotated with the statement: “The seat of War, the Mart of Trade, & chief Hunting Grounds of the six Nations, on the Lakes & the Ohio.” The boundary proceeds eastward along the south shore of Lake Erie, down the Niagara River, along the south shore of Lake Ontario, and finally down the St. Lawrence River to a point south of Montréal Island marked by the following statement: “The Extent of the French Conquests and Settlements before their late Encroachment on Crown Point.” Notably, the map depicts “Irocosia” traversing Lake Champlain north of Crown Point (extending into modern Vermont) and refers to it as “The Original Country of the Iroquois and formerly so called.”

In sum, the Mitchell Map contains substantial content of significance concerning lands used by the Haudenosaunee for hunting, trapping, fishing, harvesting and trading in the Grand River Valley. The map depicts (asynchronously) the “Iroquois du Nord” settlement of Quinaouataoua and its location on a portage between Lake Ontario and the Grand River, indicating that area as a site of Haudenosaunee residency circa 1667-1687 (see Table 2 above). The depiction of modern southern Ontario on the map attributes its post-1650 proprietorship to the Haudenosaunee on the basis of their dispersal and integration of the Wendats from the Bruce Peninsula.<sup>637</sup> The annotation of “Quadoghe” on the map indicates Mitchell’s familiarity with the 1701 and 1726 Haudenosaunee deeds of their “beaver hunting” grounds, which sought to place these lands under Crown protection – we need accept neither Mitchell’s description of those deeds as “sales” nor his overzealous extension of the limits of that territory to recognize the way in which the map aligns with much of

the prior cartographic record concerning Haudenosaunee use and occupancy of modern southern Ontario.

Map 18. Bernard Romans, The Colony of New York and Its Surroundings (c.1774)<sup>638</sup>

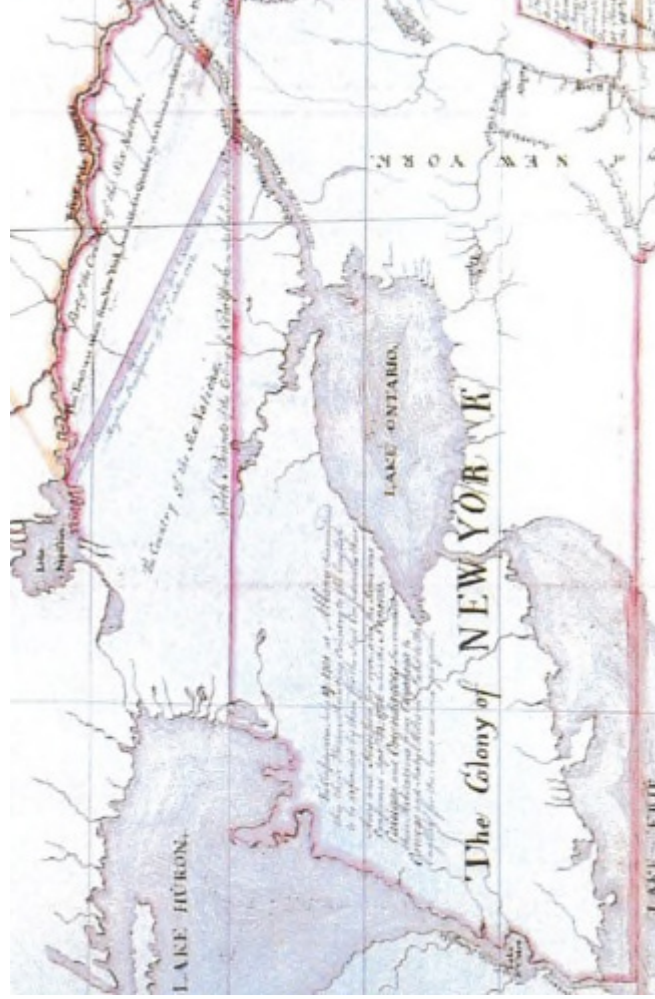


Figure 25, Detail of Romans (c.1774) Map

This little-known map is attributed to Bernard Romans, a Dutch immigrant to North America who served as Deputy Surveyor for the Southern District of British North America prior to relocating to Connecticut in 1775, when he switched allegiances and served with the Continental Army in the American Revolutionary War.<sup>639</sup> The map, which was likely drawn for Lord Dartmouth in 1774 (while Romans remained loyal to the Crown)<sup>640</sup> owes a heavy debt to Mitchell's (1755) precedent. Romans extended the northern boundary of the colony of New York along a line approximating that which Mitchell used to denote the French-claimed boundary between Canada and the "Northern Iroquois." North of this boundary, Romans essentially followed Mitchell's defined area of Haudenosaunee lands within the modern Province of Ontario south of

the Ottawa River and tracking westward to a river outlet into Lake Huron southwest of Lake Nipissing. In modern eastern Ontario Romans denoted lands “taken from New York and added to Quebec by the Boundary established in 1768.” In the portion of the map north of Lake Erie and west of Lake Ontario, Romans included the following text:

"Ind Confederates [i.e., the Haudenosaunee] July 19, 1701, at Albany surrendered this their Bever Hunting Country to the English to be defended by them for the said Confederates their Heirs and Successors for ever and the same was confirmed Sept 14 1726 when the Senecas, Cauigas and Onondagas Surrendered their Habitations from Onyahega to Oswego and Sixty Miles of Land to the English for the same use and purpose."

Romans’s inscription insofar as it alludes to the “protection” aspect of the 1701 Haudenosaunee deed to their “Beaver Hunting Country” in modern southern Ontario.

<sup>505</sup> E. Richard Hart, “Maps Showing Sinixt Territory, 1811-1846,” Cartographica 55.4 (2020): 219-40.

<sup>506</sup> J.B. Harley, “Maps, Knowledge, and Power,” in Paul Laxton, ed., The New Nature of Maps: Essays in the History of Cartography (Baltimore: Johns Hopkins University Press, 2001), 51-81; Mark Monmonier, How to Lie With Maps, 3<sup>rd</sup> ed. (Chicago: University of Chicago Press, 2018); Matthew Edney, Cartography: The Ideal and Its History (Chicago: University of Chicago Press, 2019); Kirsten Anker, “Aboriginal Title and Alternative Cartographies,” Erasmus Law Review 11 (2018): 14 (quote).

<sup>507</sup> Anker, “Aboriginal Title and Alternative Cartographies,” 15.

<sup>508</sup> Ibid., 19-21.

<sup>509</sup> Cole Harris, A Bounded Land: Reflections on Settler Colonialism in Canada (Vancouver: UBC Press, 2020), 232.

<sup>510</sup> Gordon M. Day and Bruce Trigger, “Algonquin,” in Trigger, ed., Northeast, 794; Peter Hessel, The Algonkin Nation: The Algonkins of the Ottawa Valley. An Historical Outline (Amprior, ON: Kichesippi Books, 1993), 57-58.

<sup>511</sup> Day, “Nipissing,” in Trigger, ed., Northeast, 789.

- <sup>512</sup> Conrad E. Heidenreich, “Huron,” in ibid, 387.
- <sup>513</sup> Charles Garrad and Heidenreich, “Khionontateron (Petun),” in ibid, 396.
- <sup>514</sup> Marian E. White, “Neutral and Wenro,” in ibid, 409-10.
- <sup>515</sup> Parmenter, Edge of the Woods, 128-30.
- <sup>516</sup> Ibid, 285.
- <sup>517</sup> Ibid, 384n106. On Rice Lake.
- <sup>518</sup> Ibid, 384n107. On the portage between the western end of Lake Ontario and the Grand River.
- <sup>519</sup> Ibid, 384n108. At the mouth of the Ganeraska River.
- <sup>520</sup> Ibid, 384n109. Near the isthmus of the Quinte Peninsula.
- <sup>521</sup> Ibid, 384n110. On Napanee or Hay Bay, on the Bay of Quinte.
- <sup>522</sup> Ibid, 385n113. Near the mouth of the Rouge River. This settlement is also depicted on a newly-discovered 1678 map by Jean-Baptiste-Louis Franquelin. See Rick Laprairie, “Toronto’s Cartographic Birth Certificate: Hiding in Plain Sight for 350 Years,” Ontario History 110.2 (2018): 155.
- <sup>523</sup> Parmenter, Edge of the Woods, 386n116. Near the mouth of the Humber River.
- <sup>524</sup> Ibid, 385n111. Near the isthmus of the Quinte Peninsula.
- <sup>525</sup> Ibid, 272-73, 366n117, 387n125. In proximity to Fort Frontenac (modern Kingston, ON).
- <sup>526</sup> Heidenreich and Robert W.C. Burger, “Native Settlement to 1847,” in Betty I. Roots, Donald A. Chant, and Heidenreich, eds., Special Places: The Changing Ecosystem of the Toronto Region (Vancouver: UBC Press, 1999), 68-71; Glenn Turner, The Toronto Carrying Place: Rediscovering Toronto’s Most Ancient Trail (Toronto: Dundurn, 2015), 41-45.
- <sup>527</sup> James Pritchard, “For the Glory of God: The Quinte Mission, 1668-1680,” Ontario History 65 (1973): 133-48.
- <sup>528</sup> Parmenter, Edge of the Woods, 182-200.
- <sup>529</sup> Lamontagne, trans., and Preston, ed., Royal Fort Frontenac, 188.
- <sup>530</sup> Nick Adams, “Iroquois Settlement at Fort Frontenac in the Seventeenth and Early Eighteenth Centuries,” Ontario Archaeology 46 (1986): 13-16 (quote p.16).
- <sup>531</sup> “An Iroquois Frontier: The North Shore of Lake Ontario during the Late Seventeenth Century,” Journal of Historical Geography 7.2 (1981): 130-32.

- <sup>532</sup> James H. Coyne, “Galinée’s Narrative and Map,” Ontario Historical Society Papers and Records 4 (1903): 78-89.
- <sup>533</sup> R. Louis Gentilcore and C. Grant Head, eds., Ontario’s History in Maps (Toronto: University of Toronto Press, 1984), 18.
- <sup>534</sup> Coyne, “Galinée’s Narrative and Map,” 81, 83 (quotes).
- <sup>535</sup> <https://collections.library.utoronto.ca/view/mdl:NMC6409> (accessed December 28, 2021).
- <sup>536</sup> [https://collections.library.utoronto.ca/view/mdl:NMC6413\\_1688](https://collections.library.utoronto.ca/view/mdl:NMC6413_1688) (accessed December 28, 2021).
- <sup>537</sup> Gentilcore and Head, Ontario’s History in Maps, 19.
- <sup>538</sup> <https://collections.library.utoronto.ca/view/mdl:NMC6411> (accessed December 28, 2021).
- <sup>539</sup> Chet van Duzer and Lauren Beck, eds., Canada Before Confederation: Maps at the Exhibition (Wilmington, DE: Vernon Press, 2017), 172-73 (quote p.173).
- <sup>540</sup> Gentilcore and Head, Ontario’s History in Maps, 20.
- <sup>541</sup> <https://numerique.banq.qc.ca/patrimoine/details/52327/2244747> (accessed December 28, 2021).
- <sup>542</sup> Raymonde Litalien, “The Mapmaker’s Source,” in Litalien, Jean-François Palomino, and Denis Vaugeois, eds., Mapping a Continent: Historical Atlas of North America, 1492-1814, trans. Kâthe Roth (Sillery, QC: Les Éditions de Septentrion, 2007), 96.
- <sup>543</sup> <https://jcb.lunaimaging.com/luna/servlet/detail/JCBMAPS~1~1~866~100130:North-America-corrected-from-the-ob> (accessed December 28, 2021).
- <sup>544</sup> <https://www.geographicus.com/P/AntiqueMap/northamerica2-senex-1710> (accessed December 28, 2021). See also Raymond Phineas Stearns, “Joseph Kellogg’s Observations on Senex’s Map of North America (1710),” Mississippi Valley Historical Review 23.3 (December 1936): 345-54.
- <sup>545</sup> <https://www.loc.gov/resource/g3400.ct003997/> (accessed December 29, 2021).
- <sup>546</sup> “Mapping the Great Lakes: The Period of Imperial Rivalries, 1700-1760,” Cartographica 18.3 (1981): 84-85 (quote p.85); Margaret Beck Pritchard and Henry G. Taliaferro, Degrees of Latitude: Mapping Colonial America (Williamsburg, VA: Colonial Williamsburg Foundation, 2002), 118; John Rennie Short, Cartographic Encounters: Indigenous Peoples and the Exploration of the New World (London: Reaktion, 2009), 41-44.
- <sup>547</sup> <https://www.loc.gov/item/2001624907/> (accessed December 28, 2021).
- <sup>548</sup> Pritchard and Taliaferro, Degrees of Latitude, 123; William P. Cumming, The Southeast in Early Maps 3<sup>rd</sup> ed. (Chapel Hill: University of North Carolina Press, 1998), 23.

- <sup>549</sup> <https://collections.leventhalmap.org/search/commonwealth:z603vm854> (accessed December 29, 2021).
- <sup>550</sup> Susan Bazely, “Historical Maps of Fort Frontenac 1673-1820,” Historic Kingston 36 (1988): 27, 30; Adams, “Iroquois Settlement at Fort Frontenac,” 13-16.
- <sup>551</sup> William J. Engelbrecht, Iroquoia: The Development of a Native World (Syracuse, NY: Syracuse University Press, 2003), 69-78.
- <sup>552</sup> <https://www.loc.gov/resource/g3300.ct007371/> (accessed December 29, 2021).
- <sup>553</sup> Martin Brückner, “The Spectacle of Maps in British America, 1750-1800,” in Brückner, ed., Early American Cartographies (Chapel Hill: University of North Carolina Press, 2011), 406-8.
- <sup>554</sup> [https://lib.msu.edu/branches/map/MSU-Scanned/North\\_America\\_Canada/100-1-A-1744-bellin/](https://lib.msu.edu/branches/map/MSU-Scanned/North_America_Canada/100-1-A-1744-bellin/) [accessed December 29, 2021].
- <sup>555</sup> The “Tanaouaté R[iver]” is depicted at this location, with no corresponding settlement, on Jean Baptiste Bourguignon d’Anville’s map Amerique Septentrionale (1746). See <https://collections.leventhalmap.org/search/commonwealth:3f462v07p> [accessed December 29, 2021]. The settlement of “Tannaouté” appears again on the Mitchell (1755) map (see discussion below).
- <sup>556</sup> Cf. Heidenreich and Burger, “Native Settlement to 1847,” 71, who identify three main Mississauga villages on Lake Ontario by the 1720s at “Kenté, Toronto, and Niagara, with a fourth on the shores of Lake Simcoe.”
- <sup>557</sup> Heidenreich, “Mapping of the Great Lakes: The Period of Imperial Rivalries,” 99-100.
- <sup>558</sup> <https://www.loc.gov/resource/g3300.ar002900/> (accessed December 29, 2021).
- <sup>559</sup> “Thomas Jefferys and the Mapping of North America” <https://oshermaps.org/special-map-exhibits/percy-map/jefferys-and-north-america> (accessed December 29, 2021).
- <sup>560</sup> Eid, “Ojibwa-Iroquois War: The War the Iroquois Did Not Win,” 297-324; Schmalz, Ojibwa of Southern Ontario, 18-34. See also Heidenreich and Burger, “Native Settlement to 1847,” 71, who interpret the Haudenosaunee concession of shared hunting on the north shore of Lake Ontario as mandated by weakness resulting from military defeat by the Anishinaabe. These authors regard the Nanfan Treaty of 1701 as “a desperate move by which the Iroquois hoped to gain English military support to regain or protect their northern hunting grounds.” In their view, the effort failed because the English Crown would not send troops overseas to assist their Haudenosaunee allies.



<sup>561</sup> “An Iroquois Frontier,” 142 (quote); cf. idem, “The Iroquois Return to Their Homeland: Military Retreat or Cultural Adjustment?” in Thomas E. Ross and Tyrel G. Moore, eds., A Cultural Geography of North American Indians (Boulder, CO: Westview Press, 1987), 206-8

<sup>562</sup> “An Iroquois Frontier,” 142n2; “The Iroquois Return to Their Homeland,” 211n83.

<sup>563</sup> NYCD 4: 694.

<sup>564</sup> Ibid.: 694-95.

<sup>565</sup> Ibid.: 695.

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<sup>589</sup> This image is a composite of two sheets of an 1884 tracing of the original Clowes Map by James A. Burt for Pittsburgh attorney and manuscript collector William M. Darlington. These images are used for the purpose of legibility (owing to deterioration of the original) and are available online at <https://digital.library.pitt.edu/islandora/object/pitt%3ADARMAP0377> (Sheet 1) and <https://digital.library.pitt.edu/islandora/object/pitt%3ADARMAP0378> (Sheet 2) (both accessed January 3, 2022). For the original Clowes Map, see “Map of the Indian country to the westward of Albany in ye province of New York in America, including that tract of land given by the Five Nations of Indians to His Majesty, his heirs and successors; protracted by the order of the Honorable John Nanfan Esq., Lieut. Governor and Commander in Chief of His Majesty’s Province of New York the 19th day of July 1701,” The National Archives, Great Britain, CO 700/NEW YORK15/NewYork15.

<sup>590</sup> NYCD 4: 888, 908-11.

<sup>591</sup> Richard Laprairie, “Reoriented Perspectives on the Clowes Map of 1701,” The Portolan No.91 (Winter 2014): 9.

<sup>592</sup> Parmenter, Edge of the Woods, 269.

<sup>593</sup> Laprairie, “Reoriented Perspectives,” 9.

<sup>594</sup> “Reoriented Perspectives,” 17-19. See also José António Brandão and William A. Starna,

“Some things may slip out of your memory and be forgott’: The 1701 Deed and Map of Iroquois Hunting Territory Revisited,” New York History 86.4 (2005): 429-30.

<sup>595</sup> Parmenter, Edge of the Woods, ix-x. Notably, many of the reckonings of distance on the “Distantia Locurum” on the Clowes Map refer to “carrying places” (or portages) between various

rivers and lakes, strongly indicating that the Haudenosaunee individuals relating the information had traversed the geography indicated by canoe travel.

<sup>596</sup> Laprairie, “Reoriented Perspectives,” 19.

<sup>597</sup> Cf. the persistent misunderstanding among historians that the lands encompassed by the July 19, 1701 deed of the Haudenosaunee to the English Crown were coterminous with the lands associated with the “Dish with One Spoon” treaty ratified at Montréal on August 4, 1701, repeated most recently in Shannon, “Iroquoia,” in Frederick E. Hoxie, ed., The Oxford Handbook of American Indian History (New York: Oxford University Press, 2016), 206.

<sup>598</sup> Parmenter, Edge of the Woods, 365n108.

<sup>599</sup> This would include an area roughly bounded by modern Rochester, New York; Toronto, Ontario; Saginaw Bay, Michigan; Chicago, Illinois; Cleveland, Ohio, then back to Rochester.

<sup>600</sup> Cadillac and the expeditionary force detailed to erect Fort Pontchartrain left Québec on May 8, 1701, and arrived at what is now the City of Detroit on July 24, 1701. See René Toujas, “The Extraordinary Career of the Gascon Lamothe-Cadillac, Founder of Detroit,” in Henry D. Brown et al., eds., Cadillac and the Founding of Detroit: Commemorating the Two Hundred and Seventy-Fifth Anniversary of the Founding of the City of Detroit on July 24, 1701 (Detroit: Wayne State University Press, 1976), 23.

<sup>601</sup> “Some things may slip out of your memory and be forgott’ ” 418.

<sup>602</sup> Cf. Gronim, “Geography and Persuasion,” 380.

<sup>603</sup> Chatelain, Atlas Historique, Volume 6 (Amsterdam: Chex les Freres Châtelaine Libraires, 1719), p.91, No.23. (SN16984).

<sup>604</sup> <https://www.britishmuseum.org/collection/term/BIOG213293> (accessed January 4, 2022).

<sup>605</sup> Underneath “Limites de Canada Selon Les François” on the map appears the following inscription: “Ces limites font justement la route que les ilinois, oumamiés, et autres sauvages tiennent allant faire la guerre aux yroquois par terre, de même celle que les yroquois suivent pour aller porter la guerre chez les nations sauvages les plus éloignees, jusqu au de la Missisipi” [i.e, these limits mark the route that the Illinois, Miamis, and other Indians use to make war on the Haudenosaunee by land, likewise used by the Haudenosaunee to carry war to the Indigenous nations as far west as the Mississippi River].

<sup>606</sup> <https://collections.library.yale.edu/catalog/2000038> (accessed January 4,2022). This map appeared as the frontispiece to a pamphlet printed by William Bradford at New York in 1724



entitled “Papers Relating to an Act of the Assembly of New York, for Encouragement of the Indian Trade &c. and for Prohibiting the Selling of Indian Goods to the French, viz. of Canada.” Its authorship is usually attributed to New York’s Surveyor-General Cadwallader Colden. A version of the map appeared in the second (1747) edition of Colden’s History of the Five Indian Nations [see <https://digital.library.cornell.edu/catalog/ss:544197> (accessed January 4, 2022)]. Cf. Gronim, “Geography and Persuasion,” 384n14, who suggests that there may be no cartographer for the original 1724 version of the map, alleging that the printer Bradford simply copied it from de l’Isle’s 1718 original, but the source she cites (NYCD 5: 577) refers only to New York Governor Burnet’s complaint of French encroachments on Haudenosaunee territory as depicted on the 1718 de l’Isle map and says nothing about authorship of the pamphlet.

<sup>607</sup> John M. Dixon, The Enlightenment of Cadwallader Colden: Empire, Science, and Intellectual Culture in British New York (Ithaca, NY: Cornell University Press, 2016), 63-64.

<sup>608</sup> Ibid., 65-71. See also NYCD 5: 591-630 for a 1721 report of the British Board of Trade to the Crown that adopts the perspective advocated by Colden and Burnet.

<sup>609</sup> Dixon, Enlightenment of Cadwallader Colden, 77.

<sup>610</sup> Gronim, “Geography and Persuasion,” 386.

<sup>611</sup> NYCD 6: 125. New York Governor Bellomont also voiced similar concerns in a November 28, 1700 letter to the Board of Trade regarding the aggressive nature of French territorial claims depicted on French maps and the urgent need for better English surveying to produce “correct maps of all these [English] plantations.” See NYCD 4: 796.

<sup>612</sup> <https://hdl.handle.net/digital/collection/p15150coll14/id/3142> (accessed January 4, 2022).

<sup>613</sup> Gronim, “Geography and Persuasion,” 389. The Pennsylvania Assembly commissioned the map in 1751. See William P. Cumming, British Maps of Colonial America (Chicago: University of Chicago Press, 1974), 23.

<sup>614</sup> Thomas Hallock, “Between Accommodation and Usurpation: Lewis Evans, Geography, and the Iroquois-British Frontier, 1743-1784,” American Studies 44.3 (2003): 124; Joel Kovarsky, “Lewis Evans’ Map of the Middle British Colonies,” Portolan 92 (Spring 2015): 30.

<sup>615</sup> Cf. the stylized “scrolled” inset at the upper left corner of the map, which by its shading would seem to indicate that these Haudenosaunee “deer hunting” grounds extended over most of the modern lower peninsula of the State of Michigan).

<sup>616</sup> In the midst of Lake Erie, text on the Evans map defines the “Confederates” as “formerly of 5, now of 7 Nations, called by the French Iroquois, consist of 1 Canüngaes or Mohocks, 2 Onoyouts [i.e., Oneidas], 3 Onondagaes, 4 Cayugaes, 5 Chenandoanes or Senecas, 6 Tuscaroras, 7 Sissisogas [i.e., Mississaugas]. Evans appears to have assumed that all alliances between the Haudenosaunee and other Indigenous nations automatically added the latter to the League, which was not necessarily the case. The map also contains a reference to lands near modern Sandusky, Ohio as follows: “These Parts were by the Confederates [i.e., the Haudenosaunee] allotted for the Wiandots when they were admitted into their League [i.e., the Haudenosaunee Confederacy].”

<sup>617</sup> Geographical, Historical, Political, Philosophical, and Mechanical Essays. The First, Containing an Analysis of a General Map of the Middle British Colonies in America; And of the Country of the Confederate Indians: A Description of the Face of the Country; The Boundaries of the Confederates, and the Maritime and Inland Navigations of the Several Rivers and Lakes Contained Therein, by Lewis Evans (Philadelphia: B. Franklin and D. Hall, 1755). References to this Analysis will be drawn from the facsimile reprint in Gipson, Lewis Evans, 141-76.

<sup>618</sup> Evans, Analysis, 156-57 (quote p.157).

<sup>619</sup> Ibid, 157.

<sup>620</sup> Ibid, 157-58.

<sup>621</sup> Ibid, 158.

<sup>622</sup> Bartram, Travels in Pensilvania and Canada (1751; reprint edition, Ann Arbor, MI: University Microfilms, 1966), 51-52.

<sup>623</sup> Evans, Answer, in Gipson, Lewis Evans, 177-218. See especially pp.179-80, 204-14.

<sup>624</sup> Kovarsky, “Lewis Evans’ Map,” 31-36.

<sup>625</sup> <https://www.loc.gov/item/74693169/> (accessed January 4, 2022).

<sup>626</sup> Matthew Edney, “John Mitchell’s Map of North America (1755): A Study of the Use and Publication of Official Maps in Eighteenth Century Britain,” Imago Mundi 60.1 (2008): 70-72; Beaumont, Colonial America & the Earl of Halifax, 123-26.

<sup>627</sup> Cf. Jennings, Ambiguous Iroquois Empire, 14n13 who claims (erroneously) that Mitchell’s map was based on Evans’s contemporaneous map.

<sup>628</sup> S. Max Edelson, The New Map of Empire: How Britain Imagined America Before Independence (Cambridge, MA: Harvard University Press, 2017), 36.

<sup>629</sup> Gentilcore and Head, Ontario's History in Maps, 38-39; Chet van Duzer and Lauren Beck, Canada before Confederation: Maps at the Exhibition (Wilmington, DE: Vernon Press, 2018), 212.

<sup>630</sup> Chad Anderson, "Rediscovering Native North America: Settlements, Maps, and Empires in the Eastern Woodlands," Early American Studies 14.3 (2016): 481.

<sup>631</sup> Edney, "John Mitchell's Map," 74.

<sup>632</sup> Mitchell also included a reference to "Antient Algonquins Extirpated by the Iroquois" north of the Ottawa River within modern Quebec but left that area outside the "Bounds of the Six Nations."

<sup>633</sup> Mitchell also denoted "Messasagues, removed hereabouts" in an area between the map's representations of Seneca and Cayuga homelands in modern western New York.

<sup>634</sup> At "Quadoghe," Mitchell included the statement: "So call'd by the Six Nations, ye Extent of their Territories and Bounds of their Deed of Sale to ye Crown of Great Britain 1701, renewed in 1726 & 1744." The mention of 1744 is an apparent reference to the cession by the Haudenosaunee of their territory north of the Ohio River to Virginia in the Lancaster Treaty of 1744, which Mitchell conflated with the 1701 and 1726 deeds of "beaver hunting" grounds to the Crown. See Edney, "John Mitchell's Map," 74.

<sup>635</sup> East of the Mississippi River near modern Kaskaskia, Illinois, Mitchell included another extensive statement referring to prior Iroquois conquests: "The Six Nations have extended their Territories to the River Illinois, ever since the year 1672, when they were subdued, and incorporated into the Antient Chaouanons [i.e., Shawnees], the Native Proprietors of these Countries, and the River Ohio; Besides which they likewise claim a Right of Conquest over the Illinois, and all the Missisipi [sic] as far as they extend. This is confirmed by their own Claims and Possessions in 1742, which includes all the Bounds here laid down, and none have ever thought fit to dispute them."

<sup>636</sup> This is the only mention of the Haudenosaunee with the modern State of Michigan on the map.

<sup>637</sup> Parmenter, Edge of the Woods, 70-75.

<sup>638</sup> Reproduced in Seymour I. Schwartz and Ralph E. Ehrenberg, eds., The Mapping of America (Edison, NJ: Wellfleet Press, 2001), 184, Plate 111.

<sup>639</sup> Steve Fisher, "Romans, Bernard," American National Biography (2000), <https://doi-org/10.1093/anb/9780198606697.article.1301420> (accessed January 5, 2022).

No. Report	Page Excerpt No.
	<sup>640</sup> Lincoln Diamant, <u>Bernard Romans, Forgotten Patriot of the Revolution: Military Engineer and Cartographer of West Point and the Hudson Valley</u> (Harrison, NY: Harbor Hill Books, 1985), 33-35.

**ISSUE 2:** Selection of excerpts from Plaintiff’s expert reports that have been identified by MCFN as relating to “the nature, scope, and meaning of agreements between Anishinaabeg—including MCFN—and Haudenosaunee peoples with respect to lands in what is now southern and southwestern Ontario” (Issue 2 in the MCFN Notice of Motion at para 29(b)).

No. Report	Page No.	Excerpt
1. Parmenter Report	274	<p><b>4) Please list and describe historical maps of significance for outlining the areas of lands used by the Five/Six Nations, including if applicable in the Grand River Valley in what is today southern Ontario. Please include a discussion of the “Clowes Map” of 1701 and the “Mitchell Map” of 1755.</b></p> <p>4) Response</p> <p><u>KEY TAKEAWAY POINTS</u></p> <p>...</p> <ul style="list-style-type: none"> <li>• Understanding the “Dish with One Spoon” treaty is crucial to the post-1700 history of Haudenosaunee use and occupancy of modern southern Ontario and the cartographic representations of same. The terms of the “Dish with One Spoon” treaty do not indicate a surrender of Haudenosaunee sovereignty over lands north of Lake Ontario in modern southern Ontario. Rather, they indicate a revised relationship to a portion of the north shore region that preserved rights of residency (i.e., the Haudenosaunee community established opposite Fort Frontenac after 1701) and use (hunting) through a peace treaty with Anishinaabe nations. The evidence also indicates that the terms of the “Dish with One Spoon” treaty applied to lands <u>east</u> of the mouth of the Credit River.</li> <li>• The “Clowes Map” was prepared for the purpose of depicting the provisional deed of Haudenosaunee “Beaver Hunting Grounds” to the English Crown on July 19, 1701. It is best understood as a representation of the southwestern portion of hunting territories claimed by the Haudenosaunee in 1701, and as such it should be analyzed in tandem with the contemporaneous “Dish with One Spoon” treaty with the Anishinaabe which encompassed the northeastern portion of hunting territories claimed by the Haudenosaunee at that time.</li> </ul>

2.	Parmenter Report	<p>303-314</p> <p>Konrad’s interpretation varies from the content in the original document. He identifies the visitors to Onondaga in June 1700 exclusively as Mississaugas (whereas delegates from three Anishinaabe nations are indicated clearly in the text), and contends (without supporting evidence) that “[o]ccupation of other former [Iroquois du Nord] sites [i.e., by Mississaugas] followed.”<sup>566</sup> Despite Konrad’s minor errors of interpretation of this particular document, he is correct in identifying it as the (written) origin of what has come to be known as the “Dish with One Spoon” treaty – an Indigenous agreement between the Haudenosaunee and their western Algonquian neighbors that pertained to the use of hunting territory in modern southern Ontario.</p> <p>Understanding the “Dish with One Spoon” treaty is crucial to the post-1700 history of Haudenosaunee use and occupancy of modern southern Ontario and the cartographic representations of same. The “Dish with One Spoon” is best understood as an example of one of the principles of the Haudenosaunee Great Law of Peace (or <u>Kayanarenkowa</u>)<sup>567</sup> that has been accepted by other Indigenous nations through treaties with the Haudenosaunee. In the tradition of the Great Law, the Peacemaker described the concept as follows:</p> <p>“Now we have completed the matter, we will have one dish, which means that we will all have equal shares of the game roaming about in the hunting grounds and fields, and then everything will become peaceful among all of the people; and there will be no knife near our dish, which means that if a knife were there, someone might presently get cut, causing bloodshed, and this is troublesome, should it happen thus, and for this reason there should be no knife near our dish.”<sup>568</sup></p> <p>This agreement to share hunting grounds originated among Haudenosaunee nations prior to European contact, and, according to Rick Hill (Beaver Clan, Tuscarora Nation, Haudenosaunee of the Grand River) involved three fundamental rules: 1) take only what you need, 2) always leave something in the dish for others, and 3) keep the dish clean.<sup>569</sup> The concept of the Dish with One Spoon has been documented in Haudenosaunee relations with other Indigenous nations since 1624.<sup>570</sup></p> <p>The negotiations that resulted in the June 1700 “Dish with One Spoon” Treaty at Onondaga began shortly after the withdrawal of most of the “Iroquois du Nord” from the north shore of Lake Ontario in February 1689, when the Senecas reported at Albany that they had “entered into a</p>
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Treaty of Peace and Alliance with the Wagenhaer Nation of Indians [i.e., Ojibwes] in behalf of themselves and the other 4 [Haudenosaunee] Nations” and the “Govt.” of New York. “Three Wagenhaers” attended the conference with the Senecas “to ratify the same” and “promised to use their best endeavours to bring the Jenendadees [i.e., Wendats of Tionnontaté] and Ottowawaes [i.e., Odawas] into the Alliance.”<sup>571</sup> On August 16, 1694 “Sadekawahtie Sachem of the Onondagas [i.e., Sadekenaktie]” related to New York authorities the terms [unspecified in the document] “of the Peace wch. the 5 Nations had concluded with the Dowangeshaws and the Deonondas.”<sup>572</sup>

Following the conclusion of the June 1700 negotiations at Onondaga, the Haudenosaunee treated at Montréal on September 3, 1700 with representatives from nineteen different nations. One of the wampum belts presented by the Haudenosaunee at this conference depicted a kettle, signifying the broader agreement among all parties “to make one joint kettle when we shall meet” in shared hunting grounds.<sup>573</sup> These arrangements were ratified on August 4, 1701, in the “Great Peace of Montréal,” accounts of which contained numerous references by the Haudenosaunee and other Indigenous nations to a portion of the territory north of Lake Ontario as shared hunting grounds (a “Dish with One Spoon”).<sup>574</sup>

The Haudenosaunee preserved an understanding of the “Dish with One Spoon” treaty ratified at Montréal in August 1701 and related that understanding to British colonial officials several times over the course of the eighteenth century. On April 7, 1757, Sir William Johnson received an account of a conference between the Haudenosaunee and the French that took place at Montréal in the autumn of 1756. The report reflected tensions between the Haudenosaunee and the French owing to the outbreak of the Seven Years War, and the unidentified Haudenosaunee speaker made a pointed contrast between the former support of the French for the “Dish with One Spoon” and the contemporary state of affairs. After opening with the assertion that notwithstanding their lack of writing they still remembered “all that has past between us having Good Memories,” the Haudenosaunee speaker stated:

“after the Warrs & troubles we togeth[e]r met you at this place where Every trouble was burred [i.e., buried] & a fire kindled here. Where was to Meet and Treat peaceably; you are daily now Working Dist[ur]bances and Seem to forget the old agreemt. &c: The Tree Semes To be falling. let it be now put up the Roots spread and the leaves flowrish as before. you formerly S[ai]d take the bool and this meat with this Spoon and let us Eat

always fri[e]ndly Together out of the one Dish but you now forget and have Separated the Indians very much So as they can[ 't well come Togeth[e]r to Eat out [of] this Dish which is very hard as we have child[re]n here & there Scat[te]red throug[h] ye Country by your Means.”<sup>575</sup>

On August 30, 1765, Daniel Claus, the Deputy Agent for the British Indian Department at Montréal, wrote to Sir William Johnson with the response of the Mohawks of Kahnawà:ke to speeches the latter had made to them at an earlier date. Claus recounted the response of the Mohawks of Kahnawà:ke to Johnson’s proposed plan of establishing boundaries between the hunting grounds of the Mohawks, Oneidas, and Onondagas as follows:

“they must beseech you as their Guide and Superintendant to interfere, as it might be productive of ill Consequences, and remind those nations of the old Agreement made before the French Governor many Years ago, in the Presence of Five Confederates, and all the other Nations in Canada – That when a general Peace was made, and concluded between these Nations, the Governor told them, that as they were become one body, and of one mind, the Woods, and Hunting Grounds could be no otherwise than common, and free to one nation as to another, in the same manner as a large Dish of Meat would be to a Company of People who were invited to eat it, when every Guest had liberty to cut as he pleased, wherefore they hoped you wou’d make these three Nations abide by that Agreement – and begged to recommend the Affair to your Mediation, as their Father, and Protector.”<sup>576</sup>

Two years later, on October 4, 1767, Claus reported another council with the Mohawks of Kahnawà:ke and Kanesatake in which the former expressed their desire to:

“renew the old Agree[m]ent made by their forefathers wch. was that all the Nations in Canada should enjoy a free hunting wherever they thought proper that there should be no claim of property of any particular Spot, but all Ind[i]ans in General should equally enjoy the Liberty of hunting in the woods [wherever they thought proper] wch. their wise forefather concerted & agreed upon in order to prevent Jealousies & Envy wch. they justly foresaw must produce Disputes & Quarrels & finally bring on their Destruction. And therefore gave them their advice to use the Wood[s] with the same freedom as they would



a Kettle with Victuals when invited to a feast and with one Spoon and one Knife eat all together sociably & without begrudging those that had a better appetite & eat more than others.”<sup>577</sup>

The Haudenosaunee preserved memory of the “Dish with One Spoon” treaty into the nineteenth century and participated in ceremonial renewals with their Anishinaabe partners. On January 21, 1840, at a council hosted by the Mississaugas of Credit River, Onondaga Chief John Buck (from Grand River) displayed an array of wampum belts and related the “memorials of the old treaties” that they represented. The first belt related to what Buck described as “the first treaty made between the Six nations and the Ojebways”:

“This treaty was made many years ago, when the great council was held at the east end of Lake Ontario. The belt was in the form of a dish or bowl in the centre, which the chief said represented that the Ojebways and the Six Nations were all to eat out of the same dish, that is, to have all their game in common. In the centre of the bowl were a few white wampums, which represented a beaver’s tail, the favourite dish of the Ojebways. At this council the treaty of friendship was made so strong that if a tree fell across their arms it could not separate them or cause them to unloose their hold.”

Another belt related by Buck referred to a renewal of the original treaty “where Buffalo [New York] is now situated,” a possible reference to the agreement in Seneca territory that was confirmed at Onondaga in June 1700.<sup>578</sup> The next day, “Anishinaabe ogimaa Musquakie (William Yellowhead)”<sup>579</sup> of Credit River made a reply to the Buck’s speech. Musquakie’s recitation of the Mississauga tradition of the agreement acknowledged that the Haudenosaunee “initiated the peace (‘made the road’)” and in doing so they requested that the Anishinaabe maintain four “council fires” [i.e., settlements] north of Lake Ontario as sites of governance for the new alliance.<sup>580</sup> Musquakie’s speech also included the statement that

“the right of hunting on the north shore of the Lake [i.e., Ontario] was secured to the Ojebways and that the Six Nations were not to hunt here only when they came smoke the pipe of peace with their Ojebway brethren.”<sup>581</sup>

This statement has been interpreted by Victor Lytwyn and Dean Jacobs as an assertion of Mississauga proprietorship over the territory north of Lake Ontario,<sup>582</sup> but it is important to note that Musquakie’s speech represented only a preliminary recitation of the Mississauga understanding of the agreement prior to discussion of its renewal.<sup>583</sup> In the record of the council, Mohawk Chief John Smoke Johnson from Grand River replied to Musquakie’s address, remarking on “the abundance of game and food” in the region encompassed by the Dish with One Spoon agreement (as a means of subtly revising Musquakie’s preliminary assertion of Mississauga proprietorship). Musquakie signaled his acceptance of Johnson’s revision with “two strings of white wampum” which the Six Nations chiefs accepted. The Six Nations and Mississaugas then “parted, shaking each other by the arm, which method was adopted by our forefathers when the treaty of friendship was first formed.”<sup>584</sup>

In 1883, the American-born ethnologist Horatio Hale recorded a description of the “Dish with One Spoon” treaty at Grand River. The traditional Haudenosaunee account documented by Hale referred to the treaty as originally concluded “two centuries ago” and “ever since religiously maintained.” The Haudenosaunee described the territorial division of the “Dish with One Spoon” treaty as follows:

“The southwestern portion, which had been the home of the Attiwandarons, remained as the hunting-ground of the Iroquois. North and east of this section, the Ojibways possessed the land. The new treaty, confirmed by the exchange of wampum belts and by a peculiar interlocking of the right arms, which has ever since been the special sign of amity between the Iroquois and the Ojibways, was understood to make them not merely allies, but brothers. As the symbol on one of the belts which is still preserved indicates, they were to be relatives who are so nearly akin that they eat from the same dish.”<sup>585</sup>

The “Dish with One Spoon” treaty of 1700-1701 resulted from nation-to-nation negotiations between the Haudenosaunee and Anishinaabe to clarify the question of pan-regional sovereignty. According to Neal Ferris, the resolution reached was “entirely consistent with Indigenous notions of sovereignty and territorial identity.” The notion of shared use of territory, reflected in the metaphor of the “Dish with One Spoon,” echoed pre-contact practices (which Ferris dates to 1000-

1400 C.E.) and in his view demonstrated “the antiquity and continuing viability into the eighteenth century of Indigenous concepts of nation, sovereignty, and territory.”<sup>586</sup>

Leanne Simpson, in her discussion of the Haudenosaunee-Anishinaabe “Dish with One Spoon” treaty, points out that “sharing territory for hunting did not involve interfering with one another’s sovereignty as nations.” Rather, the treaty was intended to “promote peaceful coexistence and it required regular renewal of the relationship through meeting, ritual, and ceremony.” Each party to the agreement understood that the notion of the shared “dish” between the two nations “was meant to preserve their nationhood, protect their territory, and maintain their sovereignty.”<sup>587</sup>

Anthony J. Hall identifies the concept of the “Dish with one Spoon” as an affirmation by the Indigenous nations party to the treaty of the strategic importance of a system of land tenure and property law for supporting self-governance. For Hall, the “Dish with One Spoon” constituted a form of Indigenous jurisdiction that could be juxtaposed against European claims of sovereign authority and ultimately served as a form of Indigenous resistance to the colonial transformation of the lands in question into real estate to be exploited by the settler population.<sup>588</sup>

Considered in the aggregate, the evidence of the “Dish with One Spoon” treaty suggests that we should take care not to always read notions of Westphalian territorial sovereignty back into the record of seventeenth- and eighteenth-century Indigenous political relations. The terms of the “Dish with One Spoon” treaty do not indicate a surrender of Haudenosaunee sovereignty over lands north of Lake Ontario in modern southern Ontario. Rather, they indicate a revised relationship to a portion of the north shore region that preserved rights of residency (i.e., the Haudenosaunee community established opposite Fort Frontenac after 1701) and use (hunting) through a peace treaty with Anishinaabe nations. The evidence also indicates that the terms of the “Dish with One Spoon” treaty applied to lands east of the mouth of the Credit River (i.e., the circa 1700 establishment of a settlement of “Dowaganhaes” near the former “Iroquois du Nord” settlement of Teiaigon, echoed in the 1840 recitation of Musquakie as the mouth of the Credit River).

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<sup>586</sup> “An Iroquois Frontier,” 142; cf. “The Iroquois Return to their Homeland,” 208, where the author asserts that the “Iroquois left [the north shore] gracefully and transferred their abandoned

habitations and lands on the north shore to the Mississauga in a treaty recorded by an English fur trader [sic].”

<sup>567</sup> Kayanaseh Paul Williams, Kayanarenkó:wa: The Great Law of Peace (Winnipeg: University of Manitoba Press, 2018), 339-44.

<sup>568</sup> Concerning the League: The Iroquois League Tradition as Dictated in Onondaga by John Arthur Gibson, Hanni Woodbury et al, ed. and trans., Algonquian and Iroquoian Linguistics Memoir No.9 (Winnipeg, Manitoba, 1992), 458-60. See also a variation of the concept in Arthur C. Parker, “The Constitution of the Five Nations, Or the Iroquois Book of the Great Law,” in Fenton, ed., Parker on the Iroquois (Syracuse, NY: Syracuse University Press, 1968), 45.

<sup>569</sup> Hill, quoted in Barb Nahwegabow, “Wampum Holds Power of Earliest Agreements,” Windspeaker 32.1 (April 2014): 20. See also Susan M. Hill, The Clay We Are Made Of: Haudenosaunee Land Tenure on the Grand River (Winnipeg: University of Manitoba Press, 2017), 42-43.

<sup>570</sup> Victor P. Lytwyn, “A Dish with One Spoon’: The Shared Hunting Grounds Agreement in the Great Lakes and St. Lawrence Valley Region,” in David H. Pentland, ed., Papers of the Twenty-Eighth Algonquian Conference (Winnipeg: University of Manitoba, 1997), 210-13.

<sup>571</sup> WA, 15. On the identity of these nations (“Waganhaer” as Ojibwe, “Jenendadees” as Wendats of Tionnontaté, and “Ottowawaes” as Odawas), see Colden, History of the Five Indian Nations, xlii; Elisabeth Tooker. “Wyandot,” in Trigger, ed., Northeast, 405 E.S. Rogers, “Southeastern Ojibwa,” in ibid, 769.

<sup>572</sup> WA, 26. See also Parmenter, Edge of the Woods, chs.5-6.

<sup>573</sup> NYCD 9: 717.

<sup>574</sup> Lytwyn, “‘A Dish with One Spoon’,” 216-18; Parmenter, Edge of the Woods, 257-73. It is important to note that the lands encompassed by the “Dish with One Spoon” treaty lay east and north of the lands referred to in the July 19, 1701 provisional deed of Haudenosaunee “Beaver Hunting” territory to the English Crown. See Alain Beaulieu and Roland Viau, The Great Peace: Chronicle of a Diplomatic Saga (Montréal: Éditions Libre Expression, 2001), 106-12.

<sup>575</sup> WJP 2: 705.

<sup>576</sup> Ibid 11: 918-19.

<sup>577</sup> Ibid 13: 431-32.

<sup>578</sup> Peter Jones, History of the Ojebway Indians, with Especial Reference to Their Conversion to Christianity (London: A.W. Bennett, 1861), 119; Lytwyn, “‘A Dish with One Spoon,’” 221-22.

<sup>579</sup> Bohaker, Doodem and Council Fire, 103.

<sup>580</sup> Bohaker identifies these as: Manitoulin Island, Parry Island in Georgian Bay, Minjikaning (where the waters of Lake Couchiching flow into Lake Simcoe), and at the mouth of the Credit River. See ibid, 107.

<sup>581</sup> Quoted in ibid, 105. See also Lytwyn, “‘A Dish with one Spoon,’” 221-22.

<sup>582</sup> “Naagan ge bezhigemkwaan: A Dish with One Spoon Reconsidered,” Ontario History 112.2 (2020): 200.

<sup>583</sup> Bohaker, Doodem and Council Fire, 105.

<sup>584</sup> Jones, History of the Ojebway Indians, 121-22 (quotes); Alan Corbiere, “Gidoonaaganinaa ‘Our Dish’: An Intertribal Treaty Encoded in Wampum,” Anishinabek News 19.9 (November 2007): 22. For evidence of wampum recitations of the “Dish with One Spoon” at Grand River in the late nineteenth and early twentieth centuries, see Lytwyn, “‘A Dish with One Spoon,’” 224-25.

<sup>585</sup> The Iroquois Book of Rites (1883; reprint ed., Ohsweken, ON: Iroqrafts, 1889), 91.

<sup>586</sup> The Archaeology of Native-Lived Colonialism: Challenging History in the Great Lakes (Tucson: University of Arizona Press, 2009), 119.

<sup>587</sup> “Looking After Gdoo-naaganinaa: Precolonial Nishnabeg Diplomatic and Treaty Relationships,” Wicazo Sa Review 23.2 (Fall 2008): 37-38 (quotes).

<sup>588</sup> The American Empire and the Fourth World: The Bowl with One Spoon, Volume 1 (Montréal and Kingston: McGill-Queen’s University Press, 2003), 423-24.

**ISSUE 3:** Selection of excerpts from Plaintiff’s expert reports that have been identified by MCFN as relating to “the legal status, interpretation, and effect of agreements between Six Nations or its predecessors and the Crown relating to lands within MCFN Territory, and whether such agreements are treaties within the meaning of [s]ection 35” of the *Constitution Act, 1982* (Issue 3 in the MCFN Notice of Motion at para 29(c)).

No. Report	Page No.	Excerpt
1. Good Report	6	<p><b>[Summary of Conclusions]</b></p> <p>9. The Six Nations confirmed the terms of this nation-to-nation agreement, in the spring of 1784, at a Six Nations meeting convened by Brant in the vicinity of Fort Niagara. At that meeting, Brant reported that Haldimand had invited the Six Nations allies to settle on a 12-mile-wide tract of land in the Grand River Valley, extending from the mouth to the source of the Grand River, and there maintain their sovereign governance under the protection of the Crown. The Six Nations entrusted the decision as to whether the Six Nations should accept Haldimand’s invitation and remove their settlements to relocated sovereign territory on the Grand River to the Six Nations matrons, with the understanding that the Six Nations would abide by their decision. The Six Nations matrons decided that the Six Nations should separate, for their mutual security, with part settling north of the Great Lakes, under Crown protection, and part settling south of the Great Lakes, without Crown protection.</p> <p>10. The majority of the Six Nations allies who had been displaced by the American Revolution, and were living in refugee villages in the Niagara River corridor – with the exception of the Senecas - accepted Haldimand’s invitation to settle on relocated sovereign territory in the Grand River Valley by moving there in the late 18th century.</p> <p>11. Both the Crown and the Six Nations allies who accepted the Crown’s invitation to settle on Haldimand Proclamation lands committed themselves to sustain their respective sovereignties in particular ways. The Crown undertook to protect the Six Nations in exercising their sovereignty over their relocated sovereign territory in the Grand River Valley, in perpetuity. In turn, the Six Nations agreed to maintain their military alliance with the Crown, and to actively defend British territory against any prospective hostile forces by both military and diplomatic means.</p>

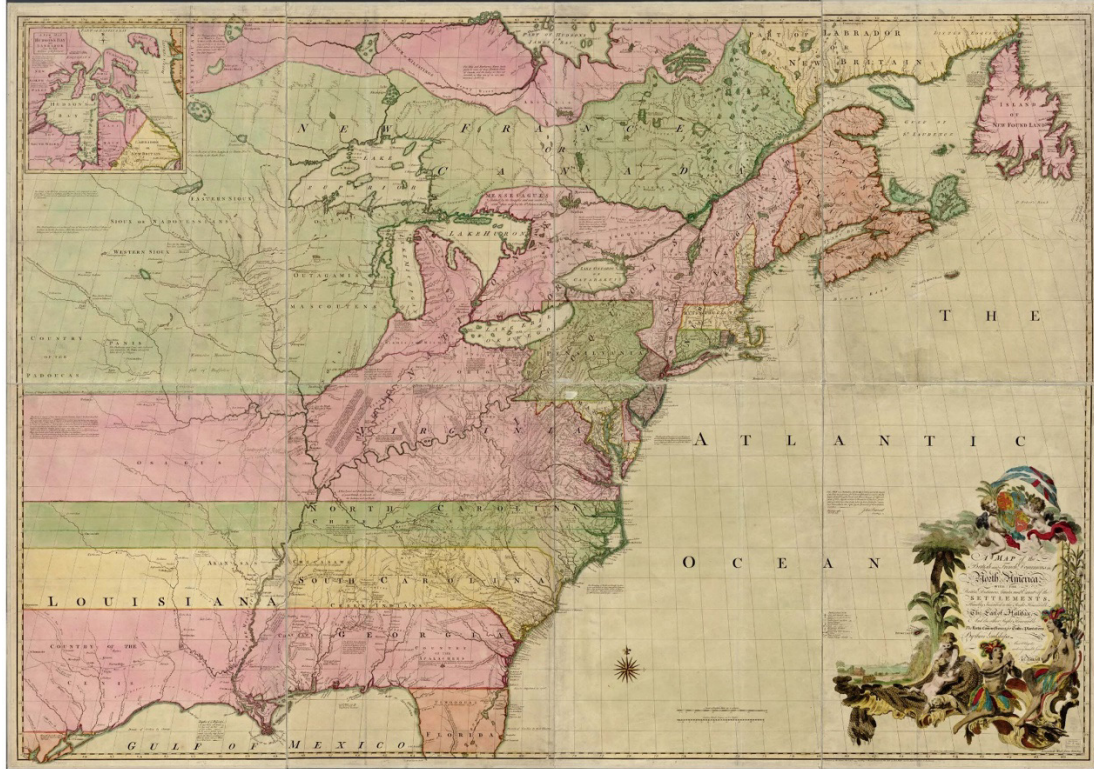
No. Report	Page No.	Excerpt
2.	Good Report	<p data-bbox="251 94 284 304">17-18</p> <p data-bbox="251 304 284 514"><b>[The Great Lakes Fur Trade]</b></p> <p data-bbox="251 514 284 2005">67. La Barre correctly understood from Dongan’s communication that Dongan claimed that the King of England asserted sovereignty over “all the country of the Iroquois [Hodensaunee],” including “all the vast extent of territory they have depopulated [between 1634 and 1666] along the Lakes Ontario, Erie, Huron, [and] Michigan, as far as the Illinois.”<sup>51</sup> This is the area north of Lakes Erie and Ontario, highlighted in red, in Appendix B: the circa 1755 edition of a map John Mitchell drew of British North America.<sup>52</sup></p> <p data-bbox="251 2005 284 2068">68. For their part, the Hodensaunee understood that the Crown was obligated to protect all Hodensaunee lands, including lands north of Lakes Erie and Ontario, pursuant to the Covenant Chain.</p> <hr/> <p data-bbox="251 2068 284 2100"><sup>51</sup> <i>Documents Relative to the Colonial History of the State of New York</i>, 9:263, extract of a letter from la Barre to the Marquis de Seignelay, 14 November 1684 (SN05758).</p> <p data-bbox="251 2131 284 2100"><sup>52</sup> Library of Congress Geography and Map Division, G3300 1755 .M51, John Mitchell, “A map of the British and French dominions in North America, with the roads, distances, limits, and extent of the settlements, humbly inscribed to the Right Honourable the Earl of Halifax, and the other Right Honourable the Lords Commissioners for Trade &amp; Plantations, circa 1755 (R7314). <a href="https://www.loc.gov/resource/g3300.np000009/">https://www.loc.gov/resource/g3300.np000009/</a>.</p>

No. Report  
Page Excerpt  
No.

3. Good Report

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Appendix B: Mitchell Map (R7314)





4.	Good Report	<p data-bbox="248 1003 280 1369"><b>The Albany Treaty of 1701</b></p> <p data-bbox="321 172 386 1369">72. A document was signed at Albany, on 19 July 1701, by 20 Hodenosaunee chiefs and New York Lieutenant-Governor and Commander-in-Chief John Nanfan.</p> <p data-bbox="427 113 646 1369">73. This document does not fit neatly into the nomenclature of British-Canadian jurisprudence because it conforms to Covenant Chain protocol, which was Indigenous in origin. Historically, various labels have been applied to it: contract;<sup>54</sup> treaty;<sup>55</sup> deed;<sup>56</sup> deed and treaty.<sup>57</sup> I have opted for the label “Treaty” because in <i>R. v. Ireland</i> (Ont.CJ,GD) 1990 the Court held that the document is a treaty within the meaning of s.88 of the <i>Indian Act</i>, which provides that provincial laws are subject to the terms of treaties between the Crown and First Nations.</p> <p data-bbox="686 172 873 1369">74. The Albany Treaty of 1701 was one component in a Hodenosaunee strategy to safeguard Hodenosaunee sovereign independence from both English and French imperial powers;<sup>58</sup> to preserve “a kind of equilibrium” in the military balance of power between English and French imperial powers;<sup>59</sup> and to maintain Hodenosaunee significance as a “factor in the [European] struggle for North America”.<sup>60</sup></p> <p data-bbox="914 193 946 1369">75. The Albany Treaty of 1701 placed certain Hodenosaunee lands under Crown protection.</p> <p data-bbox="987 142 1052 1369">76. By placing certain Hodenosaunee lands under Crown protection, the Hodenosaunee “greatly reduced the danger of a conflict with the French.”<sup>61</sup></p> <p data-bbox="1092 98 1352 1369">77. The lands that were the subject of the Albany Treaty of 1701 are graphically depicted in Appendix A. This document is a manuscript tracing of a map by Samuel Clowes, entitled “A Mapp of the Indian Country to the westward of Albany in y<sup>e</sup> Province of New-York in America Including that tract of Land given by the Five Nations of Indians to His Majesty, His Heirs and s\Successors. Protracted by Order of the Hon<sup>ble</sup> Jn<sup>o</sup> Nanfan, Esq<sup>r</sup> Lieurt. Governor and Commander in Chief of his Mat<sup>es</sup> Province of New York the 19<sup>th</sup> day of July 1701 By Samuel Clowes, Surveyor”.<sup>62</sup></p>
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78. The signing of the Albany Treaty on 19 July 1701 took place at a meeting convened for the purpose of strengthening and refreshing the Covenant Chain between the Hodensaunee and the British.<sup>63</sup>
79. A Hodensaunee delegation consisting of nine Mohawks, five Oneida, twelve Onondaga, four Cayuga and three Seneca came to Albany on 9 July 1701 at Nanfan’s invitation.<sup>64</sup> According to the minutes of the subsequent meeting of this delegation with Nanfan, all members of the Hodensaunee delegation were “Sachims” or civil chiefs of the Hodensaunee.<sup>65</sup>
80. Nanfan had extended an invitation to the Hodensaunee to meet with him in Albany because he believed that the probability of an imminent outbreak of a war between England and France made it “requisite to be well assured of the ffidelity of our ffive nations of Indians [the Hodensaunee]”.<sup>66</sup>
81. On 10 July 1701 the Hodensaunee delegation welcomed Nanfan, whom they addressed as “Brother Corlaer,” as the emissary of “His Maj<sup>ty</sup> of great Brittain”. They stated to Nanfan that “Wee hope you will continue the love and affection that former Governours sent by the Kings of England have had to us the Five nations [Hodensaunee].” Nanfan thanked the Hodensaunee for their greeting and assured them “not only of the favour and protection of the great King of England my Master [-] the demonstrations [i.e. presents] whereof you will finde before you goe hence [-], but of my rediness to serve you on all occasions[.]” Nanfan then proposed to speak to the Hodensaunee delegation the next day at the Court House and invited them to attend.<sup>67</sup>
82. The minutes of a meeting of the Hodensaunee delegation with Nanfan on 12 July 1701 are entitled “First days conference”.<sup>68</sup> Representing the British were – in addition to Nanfan – Robert Livingston (“his Maj<sup>ty</sup> Secretary for y<sup>e</sup> Indian affares” in New York<sup>69</sup>), Peter Schuyler (a long-serving member of the Executive Council of the colony of New York and a Commissioner appointed by the City of Albany for the Management of Indian Affairs), Jan Janse Bleeker (Mayor of Albany and a Commissioner appointed by the City of Albany for the Management of Indian Affairs), Johannes Bleeker (Recorder (Deputy Mayor) of Albany and a Commissioner appointed by the City of Albany for the Management of Indian Affairs), nine Aldermen of Albany, Captain James Weems (military officer who commanded a company of soldiers at Fort Albany), Jonathan

Broadhurst (Sheriff), Hendrick Hanse (former Mayor of Albany and a Commissioner appointed by the City of Albany for the Management of Indian Affairs) and three interpreters.<sup>70</sup>

83. Nanfan opened the “First days conference” on 12 July 1701 by remarking on the British King’s “Royall commission” appointing him “to succeed in the Govern<sup>t</sup> of this province” and assuring the Hodenosaunee “in the name of the great King of England my Master, not only of his kindness and protection, but of His Maj<sup>ty</sup>s particular favour and esteem” signified by a “considerable present he has been pleased to send from England for you ... as a marke of his Maj<sup>ty</sup>s favour.”<sup>71</sup>

84. On 12 July 1701 Nanfan proposed, as the first order of public business, to discuss with the Hodenosaunee delegation the continued “practices and wicked artifices” of French agents to “deceive and seduce you.” In particular, Nanfan wished to be informed of the “business and negotiation” of French agents “Mons<sup>r</sup> Marricour [Maricourt] and the Jesuit Bruy [Bruyas]” who “who have been lately in your Country att Onnonnage.”<sup>72</sup>

85. On 12 July 1701 Nanfan proposed, as the second order of public business, to discuss with the Hodenosaunee delegation “that matter of moment recommended by you soe highly” at a meeting convened on 26 August – 4 September 1700 for the purpose of strengthening and refreshing the Covenant Chain between the Hodenosaunee and the Crown: to make peace with Indian allies of the French, “whom the French have soe long employ’d to kill your people.”<sup>73</sup>

86. The Hodenosaunee delegation understood from Nanfan’s speech that, before the business of the conference proceeded, the British required them to acknowledge that the King of Britain sincerely was committed to fulfil his Covenant Chain obligation to love and protect the Hodenosaunee; and that the Hodenosaunee, likewise, sincerely were committed to fulfil their Covenant Chain obligation to love and protect the King. Onucheranorum, speaker for the Hodenosaunee delegation, responded to this requirement by addressing four matters.<sup>74</sup>

87. First, Onucheranorum acknowledged that Nanfan was the agent through whom the King of Britain intended to express his love towards, and protection of, the Hodenosaunee. Therefore, his appointment as governor of New York was evidence of the King’s “great care and love to us.”<sup>75</sup>

88. Second, Onucheranorum expected that Nanfan would fulfil the King's Covenant Chain obligation to protect the Hodenosaunee by taking action against the French and the Indian allies of the French "because wee meet with great difficulties dayly" from them.<sup>76</sup>

89. Third, Onucheranorum promised that the Hodenosaunee would "behave ourselves as such that may merritt his Majesties esteem by our faithfulness" to the Crown so long as Nanfan kept and maintained the "covenant chaine firme as the late Govr has done".<sup>77</sup>

90. Fourth, Onucheranorum asserted that Albany was the place where the Covenant Chain was regularly strengthened and refreshed. The current meeting was held for this purpose.<sup>78</sup> And the Hodenosaunee hoped to meet with Nanfan in Albany on future occasions for the same reason.

91. With respect to the first order of business proposed by Nanfan (the continued "practices and wicked artifices" of French agents to "deceive and seduce you" including, in particular, the "business and negotiation" of French agents "Mons<sup>r</sup> Marrisicour [Maricourt] and the Jesuit Bruy [Bryas]") Onucheranorum responded that "as often as the covenant chain has been renew'd itt has allways been agreed that neither party was to listen to any story's or falsehoods." Notwithstanding this agreement, Onucheranorum stated that "We have made strict enquiry among all our people and can learn nothing but what the people you sent thither [Bleeker and Schuyler] are privy to, and what they entred down in writing."<sup>79</sup>

92. With respect to the second order of business proposed by Nanfan (making peace with Indian allies of the French, "whom the French have soe long employ'd to kill your people") Onucheranorum responded that the Hodenosaunee had made peace with seven nations: Skighquan, Estjiage, Assisagh, Karhadage, Adgenauwe, Karrihael, Adirondax.<sup>80</sup> There remained six nations still at war with the Hodenosaunee "that wee know besides those wee doe not know."<sup>81</sup>

93. On 18 July 1701 Nanfan expressed his satisfaction with the public business that had been concluded with the Hodenosaunee. He formally "renew[ed], according to the ancient custome" the Covenant Chain on behalf of the Crown. He distributed the following presents to the Hodenosaunee as a token of the Crown's intention to keep the Treaty "clean and bright": "150 gunns, 25 kettles, 16 dozen knives, 25 looking glasses, 3 p<sup>s</sup> red and 3 p<sup>s</sup> blew strouds 2 p<sup>s</sup> duffels 1 p<sup>s</sup> blankets, 40 kegs of Rum, 1000 barrs lead, 200 bags powder[,]15 Ross Tobacco, 50 Hatchetts

50 shirts, 120 pair stockings, Gross pipes, 5 Vatts of bear 200 wheat loaves. This was given besides private presents of guns strouds Blankets shirts, powder lead etc to each particular Sachim”.<sup>82</sup>

94. Nanfan explained to the Hodenosaunee delegation that the gifts of “arms and ammunition” were intended to be used by the Hodenosaunee “to support and defend yourself’s”.<sup>83</sup> In Nanfan’s view, the Hodenosaunee should use these gifts to – for example - “hinder” the French from building a fort at Tjughsaghrondie (Detroit), as they contemplated to do.<sup>84</sup> In case “a Warr breaks out between us [the British] and the French,” Nanfan expected that the Hodenosaunee would not declare neutrality but actively serve the Crown’s interests and take directions from him as to how they should behave.<sup>85</sup>

95. On 19 July 1701 an unnamed speaker of the Hodenosaunee delegation assured Nanfan of the intention of the Hodenosaunee “to cleave close to you [the British]” in case war broke out between Britain and France, and “never to separate our interest nor affections from you.”. He also stated to Nanfan that the public business of the conference was not concluded until Nanfan undertook to acquaint the King of Britain of “the French of Canada’s incroaching upon our territories” and ensuring that “he will be pleased to take care to prevent it”.<sup>86</sup>

96. An unnamed speaker of the Hodenosaunee delegation stated that “Wee doe give and render up all that land where the Beaver hunting is which wee won with the sword eighty years ago to Coraghkoo our great king and pray that he may be our protector and defender there.”<sup>87</sup> Nanfan accepted this land, in trust, in the name of the Crown. This exchange reflects the understanding that the Hodenosaunee were entrusting certain of their lands to the Crown’s protection and that the Crown accepted this trust.<sup>88</sup>

97. Nanfan’s acceptance, in trust, of certain Hodenosaunee hunting grounds formally resolved all outstanding issues between the Hodenosaunee and the Crown and paved the way for the Hodenosaunee to strengthen and refresh the Covenant Chain.

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		<p>98. An unnamed speaker of the Hodenosaunee delegation then stated to Nanfan that “Wee doe renew the covenant chain and make itt bright and clear which has been kept soe by our ancestors for many years”.<sup>89</sup></p> <p>99. On 19 July 1701 Robert Livingston (“his Maj<sup>ty</sup> Secretary for y<sup>e</sup> Indian affares” in New York<sup>90</sup>) wrote a treaty text, which members of the Hodenosaunee delegation were given to understand accurately reflected an agreement they had made with Nanfan earlier the same day. However, the wording is clearly that of Livingston, who used British “quit-claim precedent” to express a cross-cultural, nation-to-nation agreement.<sup>91</sup></p> <p>100. Robert Livingston’s original text of the Albany Treaty of 1701 has not survived. However, the copy of record of Robert Livingston’s original text of the Albany Treaty of 1701, forwarded to the Board of Trade by Nanfan under cover of a letter dated 20 August 1701, was endorsed by Nanfan as a true copy.<sup>92</sup></p> <p>101. The Albany Treaty of 1701 stated in part that it was signed, sealed and delivered by three Seneca, six Mohawk, three Cayuga, five Onondaga, and three Oneida in the name of the Hodenosaunee, for the purpose of placing certain Hodenosaunee hunting grounds under Crown protection in consideration of the benefits the Hodenosaunee had derived from the Covenant Chain; and on the understanding that “wee are to have free hunting for us and the heires and descendants from us the Five nations for ever and that free of all disturbances expecting to be protected therein by the Crown” of Britain.<sup>93</sup></p> <p>102. The Albany Treaty of 1701 was accepted by Nanfan on the understanding that he would forward it to King William III, described as the Hodenosaunee’s “soveraigne Lord”<sup>94</sup></p> <p>103. Obviously, the reference to King William III as the Hodenosaunee’s “soveraigne Lord” did not reflect the terms orally agreed upon between the Hodenosaunee and Nanfan. The Hodenosaunee never would have agreed to relinquish their sovereignty.</p>
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		<p>104. Nanfan's subsequent statements indicate that the treaty text was in fact signed, sealed, and delivered; that Nanfan accepted its terms; and that Nanfan considered the terms to be mutually binding.<sup>95</sup></p> <p>105. The Albany Treaty of 1701 protected the exercise of Hodenosaunee sovereignty on conquered lands without “jeopardizing the neutrality recently established with the French or severing their diplomatic ties to Montreal”<sup>96</sup> in three ways, namely by:</p> <ul style="list-style-type: none"> <li>a) Staking out the boundaries of a fur-trading zone and enlisting Crown protection, as an additional layer of support of the inherent Hodenosaunee capacity to defend their mobility, hunting and trading rights from encroachments by the French and Indian allies of the French, within this zone;<sup>97</sup></li> <li>b) Providing the Crown with a diplomatic tool that the Crown could use in combination with other armaments of political persuasion to protect certain Hodenosaunee mobility, hunting and trading rights within a definite fur-trading zone from encroachments by the French and Indian allies of the French; and</li> <li>c) Partitioning Hodenosaunee “hunting places” between the Hodenosaunee and Indian allies of the French.<sup>98</sup></li> </ul> <p>106. Notwithstanding that the Albany Treaty of 1701 staked out the boundaries of a fur-trading zone and enlisted Crown protection of Hodenosaunee mobility, hunting and trading rights from encroachments by the French and Indian allies of the French, within this zone, the Hodenosaunee reserved the right to appoint part of the lands within this zone “for [the settlement of] their [Indian] allies and Dependents, these they want[ed] to congregate near them &amp; by that means increase their strength, Power and consequence.”<sup>99</sup> The Hodenosaunee also reserved the right to trade furs taken by them, within this zone, with the French at western French posts.<sup>100</sup></p> <p>107. The Albany Treaty of 1701 enabled the Hodenosaunee to remain neutral in military conflicts between rival European powers in North America from approximately 1701 until the conquest of Canada in 1760. By obtaining British protection under the 1701 Treaty the Hodenosaunee hoped to</p>
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counterbalance the strength of the French and “maintain themselves as a significant weight in the balance of power” between Britain and France in North America.<sup>101</sup>

<sup>54</sup> Jacob Nicolas Moreau, *A Memorial Containing A Summary View of Facts with their Authorities in Answer to the Observations Sent by the English Ministry to the Courts of Europe* (Philadelphia: James Chattin, 1757), pp.236-40, [William Braddock] to the Earl of Halifax, c April 1755 (R7195).

<sup>55</sup> Alexander C. Flick, director, *The Papers of Sir William Johnson*, 14 Vols. (Albany: University of the State of New York, 1939), 11: 894-95, William Johnson to John Vaughan, 15 August 1765 (R7172).

<sup>56</sup> James Sullivan, director, *The Papers of Sir William Johnson*, 14 Vols. (Albany: University of the State of New York, 1921), 1:853-56, Thomas Pownall to William Johnson, 16 August 1755 (R7163).

<sup>57</sup> Albert Corey, director, *The Papers of Sir William Johnson*, 14 Vols. (Albany: University of the State of New York, 1962), 13:40-41., Edward Braddock to William Johnson, 16 April 1755 (R7193).

<sup>58</sup> William J. Eccles, "Teganissorens," in Dictionary of Canadian Biography Vol. 2, pp. 619-623 (R7202).

<sup>59</sup> Edmund O'Callaghan, ed., *Documents Relative to the Colonial History of the State of New York*, 15 Vols. (Albany: Weed, Parsons, 1856), 7:953-78 at p.958, William Johnson, "A Review of the progressive state of Trade, Politics, and Proceedings of the Indians in the Northern district, with Some Hints humbly offered towards Establishing Some Regulations as may be enforced for preventing Abuses, and securing Tranquility of the Colonies," [22 September 1767] (R7364).

<sup>60</sup> Thomas Elliott Norton, *The Fur Trade in Colonial New York, 1686-1776* (Madison, Wisconsin: University of Wisconsin, 1974), p.39 (R7199).

<sup>61</sup> Thomas Elliott Norton, *The Fur Trade in Colonial New York, 1686-1776* (Madison, Wisconsin: University of Wisconsin, 1974), p.26 (R7207).

<sup>62</sup> PRO CO 700/ New York 15, Samuel Clowes, "Mapp of the Indian Country," 19 July 1701 (SN09717); University of Pittsburgh, Darlington Digital Library, <https://digital.library.pitt.edu/islandora/object/pitt:DARMAP0377>, J.A. Burt, manuscript tracing of Clowes' "Mapp of the Indian Country," 1884 (SN17006); NARA, RG279, ICC Docket no. 13-G,



Defendant's Exhibit No. 107, transcription of J.A. Burt's manuscript tracing of Clowes' "Mapp of the Indian Country," n.d. (SN05743).

<sup>63</sup> Edmund O'Callaghan, ed., *Documents Relative to the Colonial History of the State of New York*, 15 Vols. (Albany: Weed, Parsons, 1854), 4:896-97 (SN00021), "Conference of Lieutenant-Governor Nanfan with the Indians," 10 July 1701.

<sup>64</sup> *Ibid.* According to the minutes of this conference, "All the Sachims of the Five Nations (who arrived here yesterday) repaired to His Maj<sup>ty</sup>s Fort att Albany, and waited on the Hon<sup>ble</sup> John Nanfan Esq<sup>r</sup> Lieut. Gov<sup>t</sup> and told him they were heartily glad to see him in that station, and that His Maj<sup>ty</sup> of gret Brittain whom they call Coraghkoo had been pleased to pitch upon him to succeed the late Earle of Bellomont decess'd to be Gov<sup>t</sup> of this province that they were come upon His Hon<sup>rs</sup> message and had brought no presents with them now, being come only to congratulate His Honour in his Govern<sup>t</sup>". The minutes of the "First days conference" with Nanfan, on 10 July 1701, do not actually enumerate who was present: Edmund O'Callaghan, ed., *Documents Relative to the Colonial History of the State of New York*, 15 Vols. (Albany: Weed, Parsons, 1854), 4:896-97, "First days conference," (SN00021). Details of the Hodenosaunee delegation are taken from the minutes of the "Second days conference" with Nanfan on 12 July 1701: Edmund O'Callaghan, ed., *Documents Relative to the Colonial History of the State of New York*, 15 Vols. (Albany: Weed, Parsons, 1851), 4:897-99, "Second days conference," 14 July 1701 (SN00022). The "Names of the Sachems of the Five Nations" who attended the "Second days conference" with Nanfan (Corlaet) on 12 July 1701 were as follows: Mohawks: Onucheranorum (Speaker), Hendrick, Cornelis, Sinnonquirese, Joseph Sidgsihowanne, Tolo Quatho, Gideon, Awanay; Oneidas: Sayojochrachqua, Anagaranie, Arackkoniccko, Degarandagoo, Shagahawinitta; Onondagas: Degachnawadichqui, Tagojodda, Kanadgeharon, Sajades, Kachradogha, Canogrodon, Sadeganaktie, Kaniadaris, Pleharare, Adiadaronique, Diskaneracke, Ajadis; Cayugas: Conde, I Garagera, Towadicho, Tosinawejago; Senneecas: Tahaweragenni, Annaquaris, Sonochsowanne.

<sup>65</sup> Edmund O'Callaghan, ed., *Documents Relative to the Colonial History of the State of New York*, 15 Vols. (Albany: Weed, Parsons, 1854), 4:896-97, "Conference of Lieutenant-Governor Nanfan with the Indians," 10 July 1701 (SN00021).

<sup>66</sup> Edmund O'Callaghan, ed., *Journal of the Legislative Council of the Colony of New-York. Began the 9<sup>th</sup> Day of April, 1691; And Ended the 27 of September, 1743* (Albany: Weed, Parsons & Company, 1861), pp.157-58, Speech of Lieutenant-Governor Nanfan to the Assembly of New York, 19 August 1701 (R7212).

	<p><sup>67</sup> Edmund O'Callaghan, ed., <i>Documents Relative to the Colonial History of the State of New York</i>, 15 Vols. (Albany: Weed, Parsons, 1854), 4:896, "Conference of Lieutenant-Governor Nanfan with the Indians," 10 July 1701 (R 7208). Corlaer was a name the Hodenosaunee typically bestowed on successive British governors or lieutenant-governors, as the case may be, of New York. This ritual perpetuated the memory of Arent van Curler – an elusive figure in New Netherland Indian affairs – who played an important symbolic role in cultivating a treaty relationship between the Dutch and the Hodenosaunee: Allen W. Trelease, <i>Indian Affairs in Colonial New York: The Seventeenth Century</i> (Port Washington, N.Y., 1960), pp.116-17. The name was intended to remind governors that the Hodenosaunee expected them to live and act in a manner worthy of their namesake.</p> <p><sup>68</sup> Edmund O'Callaghan, ed., <i>Documents Relative to the Colonial History of the State of New York</i>, 15 Vols. (Albany: Weed, Parsons, 1851), 4:896-97, "First days conference," 12 July 1701 (SN00021).</p> <p><sup>69</sup> Lawrence Leder, ed., <i>The Livingston Indian Records, 1666-1723</i> (Gettysburg, Pennsylvania: Pennsylvania Historical Association, 1956), pp.180-83, "By his Excellency the Governour &amp; ca", 3 September 1700 (R7170).</p> <p><sup>70</sup> Edmund O'Callaghan, ed., <i>Documents Relative to the Colonial History of the State of New York</i>, 15 Vols. (Albany: Weed, Parsons, 1851), 4:896-97, "First days conference," 12 July 1701 (R00021); J. Munsell, <i>The Annals of Albany</i> (Albany: Joel Munsell, 1853), pp.132-33, "Att a Meeting of y<sup>e</sup> Gentlemen appointed for ye management of y<sup>e</sup> Indian Affairs, the 12th of May, 1701: Present, Coll. Pr. Schuyler, John Johnson Bleeker, Johannis Bleeker, Johannis Schuyler, Wessel ten Brock, Johannis Cuyler, David Schuyler, Joh. Roseboom, Maj. Dirk Wessels, Hend. Hanse, Lieut. John Bennet" (R7214).</p> <p><sup>71</sup> Edmund O'Callaghan, ed., <i>Documents Relative to the Colonial History of the State of New York</i>, 15 Vols. (Albany: Weed, Parsons, 1851), 4:896-97, "First days conference," 12 July 1701 (SN00021).</p> <p><sup>72</sup> Edmund O'Callaghan, ed., <i>Documents Relative to the Colonial History of the State of New York</i>, 15 Vols. (Albany: Weed, Parsons, 1851), 4:896-97, "First days conference," 12 July 1701 (SN00021).</p> <p><sup>73</sup> Edmund O'Callaghan, ed., <i>Documents Relative to the Colonial History of the State of New York</i>, 15 Vols. (Albany: Weed, Parsons, 1851), 4:896-97, "First days conference," 12 July 1701 (SN00021); Edmund O'Callaghan, ed., <i>Documents Relative to the Colonial History of the State of</i></p>
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		<p><i>New York</i>, 15 Vols. (Albany: Weed, Parsons, 1851 4:732-34, “Conference of the Earl of Bellomont with the Indians,” 26 August – 4 September 1700 (SN05741).</p> <p><sup>74</sup> Edmund O’Callaghan, ed., <i>Documents Relative to the Colonial History of the State of New York</i>, 15 Vols. (Albany: Weed, Parsons, 1851), 4:896-97, “First days conference,” 12 July 1701 (R7213).</p> <p><sup>75</sup> Edmund O’Callaghan, ed., <i>Documents Relative to the Colonial History of the State of New York</i>, 15 Vols. (Albany: Weed, Parsons, 1851), 4:896-97, “First days conference,” 12 July 1701 (R7213).</p> <p><sup>76</sup> Edmund O’Callaghan, ed., <i>Documents Relative to the Colonial History of the State of New York</i>, 15 Vols. (Albany: Weed, Parsons, 1851 4:727-46 at p.725, “Conference of the Earl of Bellomont with the Indians,” 26 August – 4 September 1700 (SN05741). Nanfan subsequently confirmed this understanding. On the third day of the conference Nanfan stated to the Hodenosaunce with respect to his obligations to the Hodenosaunce: “I will make itt my utmost study to deserve His Maj<sup>ty</sup>s gracious favour by defending and supporting you while itt shall please the great King my master to continue me in the Governmt neither shall I count itt any hardship to expose my person to the utmost hazard and fatigue for the Brethrens [Hodenosaunce’s] safety”: Edmund O’Callaghan, ed., <i>Documents Relative to the Colonial History of the State of New York</i>, 15 Vols. (Albany: Weed, Parsons, 1854), 4:900, “The third day’s conference,” 18 July 1701 (SN00023).</p> <p><sup>77</sup> Nanfan subsequently confirmed this understanding. On the third day of the conference Nanfan stated to the Hodenosaunce with respect to mutual obligations under the Covenant Chain: “The great King of England my master is soe much concern’d for your security that he hath been graciously pleased to give a considerable sum of money to be expended in building a stone Forte here and att Schenectady to defend you from the attempts of an Enemy.” In return, the King had a right to expect that the Hodenosaunce would render him “an inviolate fidelity and obedience” and that they would “continue in a steadfast affection and friendship” with their “brethren and fellow subjects” (the British in North America). “You can not give the King a better testimony of your Loyalty to him than by rejecting all Popish priests, that may come into your country and hindering the French to build forts upon your land, upon these terms I doe take upon me to assure you of the Kings fatherly care and protection of you and in token of His Maj<sup>ty</sup>s grace and favour to you I have brought you a present which he has sent to give you”: Edmund O’Callaghan, ed., <i>Documents Relative to the Colonial History of the State of New York</i>, 15 Vols. (Albany: Weed, Parsons, 1854), 4:900, “The third day’s conference,” 18 July 1701 (SN00023).</p>
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- <sup>78</sup> Nanfan subsequently confirmed this understanding. On the third day of the conference Nanfan stated to the Hodeosaunee with respect to the “Covenant chain wherein all His Majesties Christian subjects on this main of American and the Brethren [Hodeosaunee] are included”: “I am now coming to renew [it], according to the ancient custome, let that be kept clean and bright on your parts as itt is and shall be on ours, and then you need not fear butt all will be well and you shall never want powder and arms to defend yourselves and good security for your wives and children to retreat to upon occasions where they shall have provisions provided for them”: Edmund O’Callaghan, ed., *Documents Relative to the Colonial History of the State of New York*, 15 Vols. (Albany: Weed, Parsons, 1854), 4:900, “The third day’s conference,” 18 July 1701 (SN00023).
- <sup>79</sup> Edmund O’Callaghan, ed., *Documents Relative to the Colonial History of the State of New York*, 15 Vols. (Albany: Weed, Parsons, 1854), 4:898-99, “Second day’s conference,” 14 July 1701 (SN00022).
- <sup>80</sup> Edmund O’Callaghan, ed., *Documents Relative to the Colonial History of the State of New York*, 15 Vols. (Albany: Weed, Parsons, 1854), 4:898-99, “Second day’s conference,” 14 July 1701 (SN00022).
- <sup>81</sup> Edmund O’Callaghan, ed., *Documents Relative to the Colonial History of the State of New York*, 15 Vols. (Albany: Weed, Parsons, 1854), 4:898-99, “Second day’s conference,” 14 July 1701 (SN00022).
- <sup>82</sup> Edmund O’Callaghan, ed., *Documents Relative to the Colonial History of the State of New York*, 15 Vols. (Albany: Weed, Parsons, 1854), 4:900, “The third day’s conference,” 18 July 1701 (SN00023).
- <sup>83</sup> Edmund O’Callaghan, ed., *Documents Relative to the Colonial History of the State of New York*, 15 Vols. (Albany: Weed, Parsons, 1854), 4:900, “The third day’s conference,” 18 July 1701 (SN00023).
- <sup>84</sup> Edmund O’Callaghan, ed., *Documents Relative to the Colonial History of the State of New York*, 15 Vols. (Albany: Weed, Parsons, 1854), 4:900, “The third day’s conference,” 18 July 1701 (SN00023).
- <sup>85</sup> Edmund O’Callaghan, ed., *Documents Relative to the Colonial History of the State of New York*, 15 Vols. (Albany: Weed, Parsons, 1854), 4:900, “The third day’s conference,” 18 July 1701 (SN00023).

- <sup>86</sup> Edmund O'Callaghan, ed., *Documents Relative to the Colonial History of the State of New York*, 15 Vols. (Albany: Weed, Parsons, 1851), 4:904-06, "The fourth day's conference," 19 July 1701 (SN00024).
- <sup>87</sup> Edmund O'Callaghan, ed., *Documents Relative to the Colonial History of the State of New York*, 15 Vols. (Albany: Weed, Parsons, 1851), 4:904-06, "The fourth day's conference," 19 July 1701 (SN00024). The particular lands referenced in this statement were marked on a map drawn by a Hodenosaunee maker.
- <sup>88</sup> Edmund O'Callaghan, ed., *Journal of the Legislative Council of the Colony of New-York. Began the 9th Day of April, 1691; And Ended the 27 of September, 1743* (Albany: Weed, Parsons & Company, 1861), pp.157-58, Speech of Lieutenant-Governor Nanfan to the Assembly of New York, 19 August 1701 (R7212). "Coraghkoo" is a Mohawk name meaning "the great chief". The Hodenosaunee conferred the name Coraghkoo on successive Kings of Great Britain to signify their honorific adoption by the Hodenosaunee.
- <sup>89</sup> Edmund O'Callaghan, ed., *Documents Relative to the Colonial History of the State of New York*, 15 Vols. (Albany: Weed, Parsons, 1851), 4:904-06, "The fourth day's conference," 19 July 1701 (SN00024).
- <sup>90</sup> Lawrence Leder, ed., *The Livingston Indian Records, 1666-1723* (Gettysburg, Pennsylvania: Pennsylvania Historical Association, 1956), pp.180-83, "By his Excellency the Governour & ca", 3 September 1700 (R7170).
- <sup>91</sup> Mark D. Walters. "Brightening the Covenant Chain: Aboriginal Treaty Meanings in Law and History After Marshall", *Dalhousie Law Journal* (2001) 24:2, pp.75-138 p.78 (R7108).
- <sup>92</sup> Cecil Headlam, ed., *Calendar of State Papers. Colonial Series. America and West Indies. 1701* (1910; rpt. 1964 Vaduz: Kraus, 1964), pp.454-55, "Copy of an Instrument of Conveyance of a Tract of Land from the Five Nations to H[is] M[ajesty]", 19 July 1701 (R7217).
- <sup>93</sup> Ibid. These lands are described as: "that vast Tract of land or Colony called Canagariachio beginning on the northwest side of Cadarachqui lake [Lake Ontario] and includes all that vast tract of land lying between the great lake of Ottawawa [Lake Huron] and the lake called by the natives Cahiquage and by the Christians the lake of Swege [Lake Erie] and runs till it butts upon the Twichtwicks and is bounded on the westward by the Twichtwicks by a place called Quadoge conteigning in length about eight hundred miles and in breath four hundred miles including the Country where Beavers and all sorts of wild game keeps and the place called Tjeughshaghrondie alias Fort de tret [Detroit] or Wawyachtenock and so runs round the lake of Swege till you come

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	<p>to a place called Oniadarundaquat [Irondequoit] which is about twenty miles from the Sinnekes castles including likewise the great falls oakinagaro [Niagara Falls]”</p> <p><sup>94</sup> Edmund O'Callaghan, ed., <i>Documents Relative to the Colonial History of the State of New York</i>, 15 Vols. (Albany: Weed, Parsons, 1854), 4:908-11, “Deed from the Five Nations to the King of their Beaver Hunting Ground,” 19 July 1701 (SN05737).</p> <p><sup>95</sup> Edmund O'Callaghan, ed., <i>Journal of the Legislative Council of the Colony of New-York: Began the 9th Day of April, 1691; And Ended the 27 of September, 1743</i> (Albany: Weed, Parsons &amp; Company, 1861), pp.157-58, Speech of Lieutenant-Governor Nanfan to the Assembly of New York, 19 August 1701 (R7212); Edmund O'Callaghan, ed., <i>Documents Relative to the Colonial History of the State of New York</i>, 15 Vols. (Albany: Weed, Parsons, 1854), 4:888-89, John Nanfan to the Board of Trade and Plantations, 20 August 1701 (R7218); Edmund O'Callaghan, ed., <i>Documents Relative to the Colonial History of the State of New York</i>, 15 Vols. (Albany: Weed, Parsons, 1854), 4:915-16, John Nanfan to the Board of Trade, 24 September 1701 (SN05742).</p> <p><sup>96</sup> J.A Brandao and William A. Starna, “The Treaties of 1701: A Triumph of Iroquois Diplomacy, <i>Ethnohistory</i> 43 (Spring 1996), pp.209-44 at p.224 (R7188).</p> <p><sup>97</sup> Edmund O'Callaghan, ed., <i>Documents Relative to the Colonial History of the State of New York</i>, 15 Vols. (Albany: Weed, Parsons, 1854), 4:908-11, “Deed from the Five Nations to the King of their Beaver Hunting Ground,” 19 July 1701 (SN05737).</p> <p><sup>98</sup> Edmund O'Callaghan, ed., <i>Documents Relative to the Colonial History of the State of New York</i>, 15 Vols. (Albany: Weed, Parsons, 1855), 5:542-45 at p.545, “Journal of Messrs. Schuyler and Livingston’s Visit to the Senecas,” 3 June 1720 (R7167). Certain lands in the Ottawa Valley and westward, which had been conquered by the Hodenosaunee in the seventeenth century, were excluded from the boundaries of the fur-trading zone that the Hodenosaunee placed under British protection. Evidently the Hodenosaunee were willing to forgo asserting primary mobility, hunting and trading rights on these lands in favour of Indians allied with the French, provided that the Indians allied with the French recognized the primacy of Hodenosaunee mobility, hunting and trading rights in the fur-trading zone protected under British protection.</p> <p><sup>99</sup> Edmund O'Callaghan, ed., <i>Documents Relative to the Colonial History of the State of New York</i>, 15 Vols. (Albany: Weed, Parsons, 1856), 7:15-29 at p.18, Peter Wraxall, “Some Thoughts Upon the British Indian Interest in North America, More Particularly as it Relates to the Northern Confederacy Commonly Called the Six Nations,” 1755 (SN05739).</p>

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		<p><sup>100</sup> Timothy J. Shannon, “Iroquoia,” in <i>The Oxford Handbook of American Indian History</i>, ed. Frederick E. Hoxie (Oxford: Oxford University Press, 2016), pp.199-215 at p.206 (R7165).</p> <p><sup>101</sup> Thomas Elliott Norton, <i>The Fur Trade in Colonial New York, 1686-1776</i> (Madison, Wisconsin: University of Wisconsin, 1974), p.39 (R7199).</p>
5.	32-35	<p><b>[The Albany Treaty of 1726]</b></p> <p>119. William Burnet, who served as governor of New York from 1720 to 1728, also invited British diplomatic intervention in New York’s conflict with New France, with respect to the construction of a French fort at Niagara, by reminding the Board of Trade of Britain’s obligations under the Albany Treaty of 1701.</p> <p>120. Burnet stated to the Board of Trade on 16 October 1721 that “Niagara and a thousand miles further all round the Lakes, has been all along used by the five Nations as their Hunting Country after having subdued the old Inhabitants, before the French came into America, all which Right the five Nations [Hodensaunee] have conveyed to the Crown of Great Britain in these express words in their reply to Lieut Governor Nanfan at Albany July 19, 1701”. Burnet then recited the actual words spoken at the Albany Treaty of 1701 and stated that he could not see how the French could “pretend to invalidate this Title” which was now entrusted to the Crown.<sup>112</sup></p> <p>121. Although Burnet considered the Albany Treaty of 1701 to be mutually binding, he was not aware that the Hodensaunee had signed a treaty instrument – which instrument Burnet referred to as a “Deed”. This was because Robert Livingston had neglected to record a copy of the signed instrument in the minute books he kept of Indian Affairs transacted in the colony of New York.<sup>113</sup></p> <p>122. In order to strengthen Britain’s diplomatic bargaining position with France, with respect to New York’s argument that international law required that the French fort at Niagara should be dismantled, Burnet invited certain chiefs of the Seneca, Cayuga and Onondaga nations to clandestine treaty negotiations with him on 14 September 1726.<sup>114</sup></p> <p>123. Burnet extended this invitation because he did not know that a treaty document already had been signed by the Hodensaunee in 1701. But he was aware that an oral treaty had been negotiated and had read the minutes which recorded its terms. He considered the time favorable to</p>

persuade each of the constituent Hodenosaunee nations to sign a treaty document containing the terms that had been agreed upon at Albany in 1701.<sup>115</sup>

124. Burnet extended this invitation only to representatives of the Seneca, Cayuga and Onondaga nations. Burnet stated that he limited his invitation to these three nations because he feared that the Mohawk and Oneida nations would leak his plan to the French, who would then have an opportunity to undermine his treaty negotiations.<sup>116</sup> Burnet indicated that he planned to invite certain Mohawk and Oneida chiefs to sign onto the contemplated treaty at a subsequent date, which he had “no reason to doubt of their doing.”<sup>117</sup>

125. At Burnet's treaty negotiations with certain chiefs of the Seneca, Cayuga and Onondaga nations on 14 September 1726 Burnet stated that Britain was trying to persuade the French, by diplomatic means, to dismantle their fort at Niagara. Britain's bargaining hand would be strengthened if the Hodenosaunee would sign a deed placing certain of their lands -including lands at Niagara – under Crown protection, as they had proposed to do at Albany in 1701 and which Burnet mistakenly thought they had not done. Burnet proposed that the contemplated deed would either confirm the boundaries of the lands to which the Albany Treaty of 1701 applied; or extend the boundaries of the lands to which the Albany Treaty of 1701 applied, so as to include the respective national territories of the Seneca, Cayuga and Onondaga nations.<sup>118</sup> Burnet's intention was to obtain a signed document that could be shown to the French to prove that these lands were under British protection.

126. At Burnet's treaty negotiations with certain chiefs of the Seneca, Cayuga and Onondaga nations on 14 September 1726 the chiefs consulted among themselves and then stated to Burnet that they had decided to include their respective national territories in the contemplated deed, on the understanding that the King would then undertake to defend both their collective hunting grounds and particular national territories from the encroachments of the French. They then signed an instrument to this effect, which recited the original provisions of the Albany Treaty of 1701 and extended them to the national territories of the Seneca, Cayuga and Onondaga.<sup>119</sup>

127. The British and the Hodenosaunee regarded the Albany Treaty of 1726 as mutually binding.<sup>120</sup>



<sup>112</sup> Edmund O'Callaghan, ed., *Documents Relative to the Colonial History of the State of New York*, 15 Vols. (Albany: Weed, Parsons, 1855), 5:630-34, William Burnet to the Board of Trade, 16 October 1721 (R7225).

<sup>113</sup> Edmund O'Callaghan, ed., *Documents Relative to the Colonial History of the State of New York*, 15 Vols. (Albany: Weed, Parsons, 1856), 7:15-29 at p.16, Peter Wraxall, "Some Thoughts Upon the British Indian Interest in North America, More Particularly as it Relates to the Northern Confederacy Commonly Called the Six Nations," 1755 (SN05739). Wraxall stated with respect to the Albany Treaty of 1701 – which he referred to as a "Deed": "As the Indn Records are at Mount Johnson & I took no copy of the before metd Abstract [of the minutes of the conference whereat the said Deed was executed] ... The Deed is mentioned in the Records but not recorded." See also Peter Wraxall, *An Abridgment of the Indian Affairs Contained in Four Folio Volumes, Transacted in the Colony of New York, from the Year 1678 to the Year 1751*, ed. C.H. McIlwain (Cambridge, Massachusetts: Harvard, 1915), pp.39-41, Minutes of a conference with the Five Nations (Hodensaunee), 19 July 1701 (SN05738). Wraxall footnoted the statement "We desire ... that our Secretary may write an Instrument w<sup>ch</sup> we will Sign & Seal that it may be carried by him to the King" with the following editorial remark: "In the Contents of this Meeting is minuted the Deed of Surrender of this Land to the King dated the 19 July 1701. but no such Deed appears recorded." Peter Wraxall was Robert Livingston's successor as secretary of Indian affairs in the colony of New York: *ibid*.

<sup>114</sup> Edmund O'Callaghan, ed., *Documents Relative to the Colonial History of the State of New York*, 15 Vols. (Albany: Weed, Parsons, 1855, 5: 799-801), "At a Conference held at Albany," 14 September 1726 (SN05744). These Sachems are identified as follows: "two of the Sachims of the Sinnekes nam[e]d Kanakarighton & Thanintoronwee[,] three Sachims of Cayouge named Otsochkooree Dekanisoree & Aenjeerweerat [.] t[w]o Sachims of Onnonnage named Kachjaharoden & Sadeheenaghtie" : NAC, RG10, Vol.1819, p.169a, "At a Conference held at Albany," 14 September 1726 (R7226).

<sup>115</sup> Edmund O'Callaghan, ed., *Documents Relative to the Colonial History of the State of New York*, 15 Vols. (Albany: Weed, Parsons, 1855), 5:783-85, William Burnet to the Board of Trade, 4 December 1726 (R7226).

<sup>116</sup> Edmund O'Callaghan, ed., *Documents Relative to the Colonial History of the State of New York*, 15 Vols. (Albany: Weed, Parsons, 1855), 5:783-85, William Burnet to the Board of Trade, 4 December 1726 (R7226).

<sup>117</sup> Edmund O'Callaghan, ed., *Documents Relative to the Colonial History of the State of New York*, 15 Vols. (Albany: Weed, Parsons, 1855), 5:783-85, William Burnet to the Board of Trade, 4 December 1726 (R7226).

<sup>118</sup> Edmund O'Callaghan, ed., *Documents Relative to the Colonial History of the State of New York*, 15 Vols. (Albany: Weed, Parsons, 1855, 5: 799-801), "At a Conference held at Albany," 14 September 1726 (SN05744). These Sachems are identified as follows: "two of the Sachims of the Sinnekes nam[e]d Kanakarighton & Thanintoronwee[,] three Sachims of Cayouge named Otsochkooree Dekanisoree & Aenjeerweerat [,] t[w]o Sachims of Onnonnage named Kachjaharoden & Sadeheenaghtie" : NAC, RG10, Vol.1819, p.169a, "At a Conference held at Albany," 14 September 1726 (R7226).

<sup>119</sup> Edmund O'Callaghan, ed., *Documents Relative to the Colonial History of the State of New York*, 15 Vols. (Albany: Weed, Parsons, 1855, 5: 799-801), "At a Conference held at Albany," 14 September 1726 (SN05744). These Sachems are identified as follows: "two of the Sachims of the Sinnekes nam[e]d Kanakarighton & Thanintoronwee[,] three Sachims of Onnonnage named Otsochkooree Dekanisoree & Aenjeerweerat [,] t[w]o Sachims of Onnonnage named Kachjaharoden & Sadeheenaghtie" : NAC, RG10, Vol.1819, p.169a, "At a Conference held at Albany," 14 September 1726 (R7226). The said deed stated as follows: "To all People to whom this present Instrument of Writing shall Come. Whereas the Sachims of the five Nations [Hodensaunee] Did on the nineteenth day of July One thousand seven hundred and one, in a Conference held at Albany Between John Nanfan Esq<sup>r</sup> late Lieutenant Gov<sup>r</sup> of the Province of New York give and render up all their Land where the Beaver hunting is which they won with the Sword then Eighty Years ago to Corakhoos our great King praying that he might be their protector and defender there, for which they desired that their Secretary might then draw an Instrument for them to sign and Seal that it might be carried to the King as by the minutes thereof now in the Custody of the Secretary for Indian Affairs at Albany may more fully and <sup>at</sup> large appear. We Kanakarighton and Shanintsaronwee Sinneke Sachims Ottsaghkoree Dekanisoree and Aenjeerweeratt Cayuga Sachims Rachjakadoroden and Sadegeenaghtie Onnonnage Sachims of our own accord free and voluntary will do hereby Ratifye confirm Submit and grant And by these presents do (for ourselves Our heirs and Successors and in behalf of the whole Nations of Sinnekes Cayouges and Onnondages) ratifie confirm Submit and grant unto our most Sovereign Lord George

by the grace of God King of Great Britain France and Ireland Defender of the Faith &c<sup>a</sup> his heirs and Successors for ever all the said Land and Beaver hunting [referenced in the said Albany Treaty of 1701] to be protected and defended by his said Majesty his heirs and Successors to and for the use of Us Our heirs and Successors and the said three Nations and We do also of Our own accord free and Voluntary Will give render Submit and grant and by these presents do for Ourselves Our heirs and Successors give render Submit and Grant unto Our said Sovereign Lord King George his heirs and Successors for ever All that Land lying and being Sixty Miles distance taken directly from the Water into the Country Beginning from a Creek called Canahogue on the Lake Osweego all along the said Lake and all along the narrow passage from the said Lake to the Falls of Oniagara call'd Canagaraghe and all along the River of Oniagara and all along the Lake Castarackquis to the Creek called Sodoms to the Hill called Tegehunckserode belonging the Cayouges and from Tegehunckserode to the Creek call'd Cayhunchage belonging to the Onondages All the said Lands being of the breadth of Sixty English Miles as aforesaid all the way from the aforesaid Lakes or Rivers directly into the Country and thereby including all the Castles of the aforesaid three Nations with all the Rivers Creeks and Lakes within the said Limits to be protected and defended by his said Majesty his heirs and Successors for ever to and for our use and our heirs and Successors and the said three Nations in Testimony whereof we have hereunto set our marks and affix'd our Seals": PRO, CO30, Series 8, Vol.95, ff.48-50, Treaty signed by certain Seneca, Cayuga and Onondaga chiefs, 14 September 1726 (R7168). On 4 December 1726 William Burnet forwarded a copy of this Treaty to the Duke of Newcastle, together with a map "wherein the names of places mentioned in the Indian Deed of surrender are marked in red Ink": Edmund O'Callaghan, ed., *Documents Relative to the Colonial History of the State of New York*, 15 Vols. (Albany: Weed, Parsons, 1855), 5:803-04, William Burnet to the Duke of Newcastle, 4 December 1726 (SN05745); and CO700, New York 17, "A MAP of the Countrey of the FIVE NATIONS belonging to the Province of NEW YORK and of the LAKES near which the Nations of FAR INDIANS live with part of CANADA taken from the Map of the LOUISIANE done by M<sup>r</sup> DeLisle in 1718," n.d. (SN05746).

<sup>120</sup> Edmund O'Callaghan, ed., *Documents Relative to the Colonial History of the State of New York*, 15 Vols. (Albany: Weed, Parsons, 1855), 9:997-99, [Robert Walpole], "Memoir respecting Fort Niagara, presented to his Eminence, Cardinal de Fleury, 9<sup>th</sup> of May, 1727" (R7183). For evidence that Robert Walpole is the author of this memoir see Edmund O'Callaghan, ed., *Documents Relative to the Colonial History of the State of New York*, 15 Vols. (Albany: Weed, Parsons, 1855), 9:1006-07, Robert Walpole to the Keeper of the Seals, 22 June 1728 (R7185);

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		<p>Edmund O'Callaghan, ed., <i>Documents Relative to the Colonial History of the State of New York</i>, 15 Vols. (Albany: Weed, Parsons, 1855), 9:988, Board of Trade to the Duke of Newcastle, 21 December 1727 (R7184); Edmund O'Callaghan, ed., <i>Documents Relative to the Colonial History of the State of New York</i>, 15 Vols. (Albany: Weed, Parsons, 1855), 9:1006-07, Robert Walpole to the Keeper of the Seals, 22 June 1728 (R7185); Theodore Calvin Pease, <i>Anglo-French Boundary Disputes in the West, 1749-1763</i> (Illinois State Historical Library, 1936), pp.234-243, excerpts from a copy of the reply of the British ministry to the memoir communicated by M. le Duc de Mirepoix, sent to the court 7 June 1755 (R 7178); Edmund O'Callaghan, ed., <i>Documentary History of the State of New York</i>, 4 Vols. (Albany: Weed, Parsons, 1850), 2:410-12, "Report of the Board of Trade to the King," 11 December 1755 (R7166); Edmund O'Callaghan, ed., <i>Documentary History of the State of New York</i>, 4 Vols. (Albany: Weed, Parsons, 1850), 2:449-53, "Report on Preceding Petition [from Benjamin Franklin]", 1 June 1759 (R6537); Alexander C. Flick, director, <i>The Papers of Sir William Johnson</i>, 14 Vols. (Albany: University of the State of New York, 1939), 11: 894-95, William Johnson to John Vaughan, 15 August 1765 (R7172).</p> <p><b>[Preamble to the Indian Provisions of the Royal Proclamation of 1763]</b></p> <p><b>Section I</b></p> <p>190. The first section of the Indian Provisions alludes primarily to Indian lands west of a boundary line, which I refer to as the Proclamation Line, drawn along the watershed of the Appalachian mountain range, which were reserved for the exclusive use of the respective Indian nations that occupied them, under the protection of the Crown.</p> <p>191. The Indian lands lying west the Proclamation Line included the Six Nations beaver hunting grounds described in the Albany Treaty of 1701 and certain of the Six Nations national territories described in the treaty of 1726.</p> <p>192. The Indian lands lying west the Proclamation Line were "taken out of the Jurisdiction of the civil Governments" and placed directly under the Crown's sovereignty, protection, and dominion.<sup>165</sup> In the process of drafting the proclamation, the Board of Trade objected to a suggestion that certain of these lands in the Great Lakes area be placed under the jurisdiction of Quebec, stating that if such were done, "a Colour might be taken on some future Occasion, for supposing that Your Majesty's Title to it, had taken its Rise, singly from the Cessions made by</p>
6.	Good Report	50-51

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		<p>France”, when in fact “Title to the Lakes and circumjacent Territory as well as to the Sovereignty over the Indian Tribes, particularly of the Six Nations, rests on a more solid and even a more equitable Foundation” – that is, the Albany Treaty of 1701.<sup>166</sup></p> <p><sup>165</sup> Edmund O’Callaghan, ed., <i>Documents Relative to the Colonial History of the State of New York</i>, 15 Vols. (Albany: Weed, Parsons, 1856), 7:842-43, Board of Trade to William Johnson, 11 July 1766 (R7248). For a graphical depiction of the boundaries of all the “Lands Reserved for the Indians” west of the Proclamation Line, parts of which had been removed from the civil jurisdiction of certain American colonies and placed directly under the Crown’s sovereignty, protection, and dominion, see Library of Congress, Call Number G3301.R2 1765 .C3 Vault, “Cantonment of the forces in North America 11th. Octr. 1765” (R4986) with Library of Congress, Call Number G3400. 1762 .J4 Vault, Thomas Jeffreys, “A Map of Canada and the North Part of Louisiana with the Adjacent Countries,” c. 1762 (R4988). The effect of removing these lands from the civil jurisdiction of the colony of New York was of “suspending ... the powers of the royal governors within the territory reserved”: <i>Fletcher v. Peck</i>, 6 Cranch 87 (U.S.S.C., 1810, at 142, quoted in Mark D. Walters, “The Continuity of Aboriginal Customs and Government under British Imperial Constitutional Law as Applied in Colonial Canada, 1760-1860” (D.Phil. dissertation, Oxford, 1995), p.139, footnote 67.</p> <p><sup>166</sup> Adam Shortt and Arthur Doughty, eds., <i>Documents Relating to the Constitutional History of Canada, 1759-1791</i> (Ottawa: Public Archives of Canada, 1918), pp.124-26, Board of Trade to His Majesty the King, 5 August 1763 (R7247). See also Mark D. Walters, “The Continuity of Aboriginal Customs and Government under British Imperial Constitutional Law as Applied in Colonial Canada, 1760-1860” (D.Phil. dissertation, Oxford, 1995), pp.134-36.</p>
7.	Good Report	<p><b>[Negotiations Between Brant and Haldimand]</b></p> <p>286. Subsequently, as will be discussed below, Haldimand acceded to Brant’s proposal to dedicate an additional tract on the Grand River as relocated sovereign territory for Six Nations and allied Indians...</p>
8.	Good Report	<p>295. Brant later explained why he had applied to Haldimand for a tract of relocated sovereign territory on the Grand River in preference to one in the vicinity of Kingston: When “the Senecas and others at Buffalo Creek” learned of the original application for a grant of land in the vicinity of</p>

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		<p>Kingston on which to settle the Mohawks and others of the Six Nations, in or about 1784, “they upbraided us with having treated them unfairly” by choosing to settle far away from them.<sup>263</sup></p> <p><sup>263</sup> Newberry Library, (Indian Affairs) Ayer Mss.#654, pp.38-51, speech of Joseph Brant “on the part behalf of the five nations”, 28 July 1806 (SN15646). For an independent account of these events, which corroborates Brant’s statements, see Carl Benn, ed., <i>The Journal of Major John Norton 1816</i> (Toronto: The Champlain Society, 2011), pp.270-71 (R7024). In Norton’s account the Seneca are referred to as the Ondowaga. See Carl Benn, ed., <i>The Journal of Major John Norton 1816</i> (Toronto: The Champlain Society, 2011), p.283 for Norton’s reference to “the Senecas or Ondowaga” (R7025).</p>
9.	80	<p>311. The terms of the Haldimand Proclamation disclose that the lands on the Grand River, which had been selected by the Six Nations as relocated sovereign territory for Six Nations resettlement, had been – in the words of Samuel Jarvis, (Acting) Chief Superintendent of the Indian Department in Upper Canada from 1837 to 1845 - “granted to them [the Six Nations] by Treaty with the British Government”.<sup>280</sup></p> <p><sup>280</sup> NAC, RG10, Vol.508, pp.223-26, Samuel Jarvis to J.M. Higginson, 30 April 1844 (SN01324).</p>
10.	84	<p><b>[The Haldimand Proclamation]</b></p> <p><b>Term I</b></p> <p>328. Term I states that the land chosen as a “Retreat” (i.e. asylum) for the Six Nations would be “under His [the King’s] Protection” – not His Sovereignty. In other words, the land selected by the Six Nations as relocated sovereign territory for their resettlement would be under the Crown’s protection. This wording reflected the reciprocal responsibilities of the Crown and the Six Nations to sustain their respective sovereignties as defined in the principles of the Covenant Chain. The Crown’s obligation to protect all Indian lands is acknowledged in the Indian Provisions contained in the Royal Proclamation of 1763, which applied to the Haldimand Proclamation lands.<sup>298</sup></p>

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		<p><sup>298</sup> E.A. Cruikshank, ed., <i>The Correspondence of Peter Russell</i>, 3 Vols. (Toronto: Ontario Historical Society, 1935), 2:19-22, William Dummer Powell, Memorandum, 1 November 1797 (SN09965); NAC, RG1, E1, Vol. 47, pp.390-99 at pp.397-99, Six Nations minutes, 17 August 1803 (SN00276). Elsewhere, Frederick Haldimand paraphrased “the meaning of the Royal Proclamation of 7th October 1763”, with respect to the protection of Indian lands, as an expression of “His Majesty’s Gracious intention to prevent any fraudulent purchases from them and not to permit any of His Subjects to go to settle amongst them and to encroach on their hunting grounds which are intended to be reserved to their Sole use and benefit”: Alexander C. Flick, editor, <i>The Papers of Sir William Johnson</i>, 14 Vols. (Albany: University of the State of New York, 1933), 8:1136-37, Frederick Haldimand to William Johnson, 29 April 1774 (SN09967).</p>
<p><b>11.</b> Good Report</p>	<p>99-100</p>	<p><b>[The Haldimand Proclamation]</b></p> <p><b>Term VI</b></p> <p>382. Term VI states that the Beneficiaries of the Haldimand Proclamation were to enjoy the Haldimand Proclamation lands “for ever”.</p> <p>383. This term recognized, accepted and/or confirmed a treaty obligation that the Crown was required to fulfill – pursuant to the Covenant Chain between the Six Nations and the Crown – to protect Six Nations sovereignty and territory, in perpetuity.</p> <p>384. This term confirmed Frederick Haldimand’s undertaking to perpetually preserve the Haldimand Proclamation lands as relocated sovereign territory, under British protection, so that Six Nations allies living south of the Great Lakes could avail themselves of their share in the Haldimand Proclamation lands whenever they “may please to relinquish their Possessions in the United States and claim it”.<sup>354</sup></p> <p>385. This term confirmed Frederick Haldimand’s undertaking to protect the Six Nations relocated sovereign territory on the Grand River, under British protection “as long as an English man remains in this Province.”<sup>355</sup></p>

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		<p><sup>354</sup> NAC, Haldimand Transcripts, B-165, pp.8-15, Robert Mathews to Joseph Brant, 12 April 1784 (R7358); and E.A. Cruikshank, ed., <i>The Correspondence of Peter Russell</i>, 3 Vols. (Toronto: Ontario Historical Society, 1932), 1:131-36, Peter Russell to the Duke of Portland, 28 January 1797 (SN05875).</p> <p><sup>355</sup> NAC, Haldimand Transcripts, B-165, pp.8-15, Robert Mathews to Joseph Brant, 12 April 1784 (R7358).</p>
12.	Good Report 100-103	<p><b>The Significance of the Haldimand Proclamation</b></p> <p>386. When Frederick Haldimand issued the Haldimand Proclamation, on 25 October 1784, both Crown officials and the Six Nations regarded the Haldimand Proclamation as a binding, nation-to-nation agreement, designed to preserve the Covenant Chain between the Six Nations and the Crown for the purpose of sustaining the respective parties' sovereignties.</p> <p>387. For Crown officials, the significance of the Haldimand Proclamation was that it constituted the sole source of the Six Nations beneficial interest in the Haldimand Proclamation lands.</p> <p>388. For the Six Nations, the significance of the Haldimand Proclamation was that it dedicated the Haldimand Proclamation lands to the Six Nations sovereign jurisdiction.</p> <p><b>Crown Officials Views of the Haldimand Proclamation</b></p> <p>389. Frederick Haldimand and successive Crown officials consistently recognized the Haldimand Proclamation as a binding, nation-to-nation agreement – which they often referred to as a Treaty, or part of a Treaty.</p> <p>...</p> <p>392. On 28 April 1792 Simcoe described the Indian nations of the Great Lakes area to the secretary of state for the colonies, Henry Dundas, as “Free Nations” and “Indian Nations” whose right to sovereignty over their lands always had been recognized by the Crown and secured by treaties with the Crown, negotiated in the context of the Covenant Chain.<sup>359</sup> This reference to</p>



Indian sovereign territory recognized by the Crown and secured by treaties with the Crown included Haldimand Proclamation lands.

393. On 15 January 1793 Simcoe stated that the Haldimand Proclamation expressed “the intentions of the King your Father” to secure to the Six Nations “the true interests of yourselves” and “your Remotest Posterity” in the Haldimand Proclamation lands “in the most effectual manner”. By securing the “true interests” of the Six Nations and their “Remotest Posterity” in “the most effectual manner” Simcoe meant securing, by treaty, the Six Nations sovereign governance over the Haldimand Proclamation lands, in perpetuity, under the protection of the Crown.<sup>360</sup> This is the context in which Simcoe proposed the following term in the title deed that Simcoe drafted, for the purpose of fulfilling “the King’s benevolent intentions” to the Six Nations as expressed in the Haldimand Proclamation: The Six Nations “Chiefs Warriors Women and people of the Six Nations and their heirs” are to have “the full and entire possession Use benefit and advantage of the said District or Territory [the Haldimand Proclamation lands] to be held and enjoyed by them in the most free and ample manner and according to the several customs and usages of them the said Chiefs Warriors Women and people of the Six Nations and their heirs”.<sup>361</sup>

...

396. On 6 February 1823 William Claus attempted to deter the Six Nations from accepting a deed in fee simple for their Grand River lands by or through the Colonial Office - in substitution for the Haldimand Proclamation - by warning them that such action would annul their Treaty rights to sovereignty, as recognized and secured by the Haldimand Proclamation, and reduce their status to that of British subjects. Claus stated that the Six Nations “had hitherto been looked upon as allies and not as subjects of His Majesty and should this order be carried into execution a special enactment of the Imperial Parliament would become necessary ... to redeem them to the standard of the inhabitants of this Colony and subject to all their Laws & all their regulations.”<sup>365</sup>

397. In *R. v. Phelps* (1823) Robert Baldwin, a lawyer in Upper Canada who would subsequently be appointed Attorney-General for Canada (West), argued that “[t]he foundation of the title from General Haldimand is evidently a treaty, and as such must be recognized by the court, for all courts of justice will recognise treaties, as is constantly seen in cases of seizures, etc. The [Six Nations] Indians must be considered as a distinct, though feudatory people; they are not subject to

		<p>mere positive laws, to statute labour, or militia duty, though perhaps to punishment for crimes against the natural law, or law of nations. It may be considered as a ridiculous anomaly, but it appears from Vattel that these sort of societies, resident within and circumscribed by another territory, though in some measure independent of it, frequently exist, and that the degree of independence may be infinitely varied; and however barbarous these Indians may be considered, the treaty under which they migrated to and reside in this country is binding."<sup>366</sup></p> <p>398. On 15 September 1838 Lieutenant-Governor George Arthur acknowledged that the Covenant Chain between the Six Nations and the Crown was a treaty “as binding now on the part of England as when it was first made” and that it obligated the Crown to protect and defend the Haldimand Proclamation lands against encroachments by “squatters”.<sup>367</sup></p> <p>...</p> <p>400. On 30 August 1897 David Mills – who would be sworn in as Minister of Justice on 18 November 1897 and subsequently appointed a puisne judge of the Supreme Court of Canada in 1902– wrote a legal opinion for the government in 1897, in which he reasoned that the Haldimand Proclamation is a treaty because it is a nation-to-nation agreement between the Crown and the Six Nations, negotiated by “representatives of competent authority” (Haldimand and Brant, respectively).<sup>369</sup></p> <hr/> <p><sup>359</sup> E.A. Cruikshank, ed., <i>The Correspondence of Lieut. Governor John Graves Simcoe</i>, 5 Vols. (Toronto: Ontario Historical Society, 1923, 1:137-45), J. G. Simcoe to Henry Dundas, 28 April 1792 (R7117).</p> <p><sup>360</sup> Henry E. Huntington Library and Art Gallery, J.G. Simcoe Letterbook, pp.155-59, Simcoe’s Speech to the Six Nations, 15 January 1793 (SN05988); and E.A. Cruikshank, ed., <i>The Correspondence of Lieut. Governor John Graves Simcoe</i>, 5 Vols. (Toronto: Ontario Historical Society, 1923, 1:137-45), J. G. Simcoe to Henry Dundas, 28 April 1792 (R7117). Legal historian Mark Walters commented on a speech Simcoe directed to the Six Nations and allied Indians delivered in Upper Canada, on 22 June 1793 as follows: “Simcoe’s line of reasoning is, of course, quite remarkable. Not only did he insist that Indian sovereignty existed in Quebec up until 1783, but that this sovereignty was secured to the Indian nations by their ‘former Treaties’ with the</p>
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	<p>crown. In other words, Simcoe thought that the covenant chain constituted a treaty right to aboriginal sovereignty within the boundaries of the British colony of Quebec. Simcoe's views were not those of a renegade official: they were expressed in dispatches to imperial ministers of the crown who, for their part, approved them": Mark D. Walters. "Brightening the Covenant Chain: Aboriginal Treaty Meanings in Law and History After Marshall", <i>Dalhousie Law Journal</i> (2001) 24:2, pp.75-138 at pp.111-12 (R7108).</p> <p><sup>361</sup> E.A. Cruikshank, ed., <i>The Correspondence of Lieut. Governor John Graves Simcoe</i>, 5 Vols. (Toronto: Ontario Historical Society, 1924), 2:137-38, Lord Dorchester to J.G. Simcoe, 27 January 1794 (SN06021) and NAC, RG10, Vol.1840, IT 009, Indian Affairs Consecutive Number 4, unsealed title deed for part of the Haldimand Proclamation lands, 14 January 1793 (SN05947).</p> <p>...</p> <p><sup>365</sup> Alnwick Castle, Manuscripts of the Duke of Northumberland, Vol.68, ff.185-87, John Brant to the Duke of Northumberland, 6 June 1823, including Brant's recollection of the purport of a speech by William Claus dated 6 February 1823 (SN10039).</p> <p><sup>366</sup> I Taylor 47 at 52-53.</p> <p><sup>367</sup> Metropolitan Toronto Reference Library, Samuel Jarvis Papers, Box 61, pp.134-43 (SN15838).</p> <p>...</p> <p><sup>369</sup> SNRMS, SNLR, Box AO244, Film #194, "Memo. By Hon. David Mills Q.C.," 30 August 1897, pp.1-49 at. p.30C (SN06508).</p>	
13.	<p><b>Six Nations Views of the Haldimand Proclamation</b></p> <p>404. The Six Nations have long recognized the Haldimand Proclamation as confirmation, by the Crown, of their sovereign jurisdiction over the Haldimand Proclamation lands.</p> <p>...</p> <p>411. The Six Nations offered the following interpretation of the Haldimand Proclamation in or about March 1924, as follows: "The document itself is unilateral but is a most solemn offer in the name of the Crown to the Mohawks and all others of the Six Nations who may accept the same to take possession of the Grand River lands which had been acquired by the Crown for the purpose of the offer, and remove thereto and found a new Six Nations home where they may live for ever as allies of the British and under the promise of the British Crown to protect them ... The Six Nation</p>	<p>Good Report</p> <p>105, 107</p>

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		<p>people have always called the arrangement a treaty, and they have been right. A treaty is a compact between separate peoples, and the British and the Six Nations were separate in 1784".<sup>383</sup></p> <p>_____</p> <p><sup>383</sup> Deskaheh, <i>The Redman's Appeal for Justice: The Position of the Six Nations that they Constitute an Independent State</i>, March 1924 (SN06193).</p>
14.	Taylor Report 40	<p>[REVOLUTION]</p> <p>(48) Through the Haldimand Grant, the 1768 Treaty of Fort Stanwix remained foundational for the property rights of the Six Nations at Grand River. At Fort Stanwix they had stipulated that their lands were "their sole property and at their disposal both now, and so long as the sun shines." In order to have "the benefit of the sale of it," their land transactions in public council to others would remain good. After the American Revolution, the Crown agreed to compensate the Mohawks for lost lands with a tract that restored their traditional rights; the Six Nations understood that commitment as assuring them at Grand River of the same tenure as they had enjoyed in their former homeland as defined in the Treaty of Fort Stanwix with the Crown.</p>
15.	Taylor Report 60-61	<p>[GRAND RIVER]</p> <p>(84) In a parallel treaty made at Albany in 1701, the British Empire (through John Nanfan, the governor of New York) guaranteed Haudenosaunee sovereignty to the region north and west of Lake Ontario against French intrusions. In 1756, the New York secretary of Indian Affairs, Peter Wraxall, explained,</p> <p>That memorable and important act by which the Indians put their Patrimonial and conquered Lands under the Protection of the King of Great Britain, their Father, against the incroachments or Invasions of the French is not understood by them as a cession or Surrender as it seems to have been ignorantly or willfully supposed by some. They intended and look upon it as reserving the Property and Possession of the Soil to themselves and their Heirs. This Property the Six Nations are by no means willing to part with and are equally averse and jealous that any Forts of Settlements should be made</p>

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16.	62	<p>thereon by us or the French. These are their hunting Grounds, by the profits of which they are to maintain themselves and their Families.</p> <p>In 1755, the British military commander, General Edward Braddock, noted the French intrusion on that protectorate in violation of the 1701 Albany Treaty. Braddock authorized Johnson to assure the Six Nations that the British would “protect &amp; Secure the said Lands to them, their Heirs &amp; Successors for ever according to ye Intent &amp; Spirit of the Said Treaty.”<sup>81</sup></p> <p>81. Peter Wraaxall, <i>Some Thoughts Upon the British Indian Interest in North America</i>, in E. B. O’Callaghan, ed., <i>DRCHNY</i>, vol. 7: 18; Edward Braddock to Sir William Johnson, Apr. 16, 1755, in Sullivan et al., eds., <i>PSWJ</i>, vol. 13:40-41; Hill, <i>Clay We Are Made Of</i>, 103-105; Parmenter, <i>Edge of the Woods</i>, 268-69; Williams and Nelson, “Kaswentha,” 60-61, 112-16.</p> <p>(86) As brethren to the Mississauga, the Six Nations already held an equal right to the territory; and the British in the Albany Treaty of 1701 had guaranteed the Haudenosaunee possession of the vast region north and west of Lake Ontario. Consequently, Haldimand’s grant did not initiate, but instead enhanced, the Six Nations’ ownership to that valley by promising them a Crown title.<sup>83</sup></p> <p>83. Williams and Nelson, “Kaswentha,” 192.</p>	
17.	88, 91-94, 98-99, 101-102	<p>iii) The Montréal and Albany treaties of 1701</p> <ul style="list-style-type: none"> <li>• These treaties, negotiated in parallel by the Haudenosaunee, resulted in peace with New France and her Indigenous allies, and established the practice of Haudenosaunee neutrality in subsequent wars between England and France. The treaty at Albany on July 19, 1701 witnessed an initiative on the part of the Haudenosaunee to place a portion of their hunting territory under the protection of the English Crown via a provisional deed of their “Beaver Hunting Grounds” to the Crown.</li> </ul> <p>... Just over three weeks after Teganissorens’s speech at Onondaga, thirty-two League headmen from all Five Nations arrived in Albany on July 23, 1701 to confer with Lieutenant-Governor John</p>	

Nanfan, who had ascended to the role of the Crown's representative in New York after the passing of Governor Richard Coote, the Earl of Bellomont, the previous March. Nanfan, who like his predecessor believed that he could confirm the League's "obedience to his Majesty" with official presents, emphasized predictable themes in his formal welcome to the Haudenosaunee headmen. He assured his audience of the King's esteem for his "Brethren of the Five Nations," and urged them to repatriate Haudenosaunee people who had "deserted" to Canada and to oppose the French establishment at Detroit, the "principal pass" to the League's best "beaver hunting country." Nanfan argued that the terms of the Covenant Chain agreement precluded independent Haudenosaunee negotiations with New France, and claimed that he would issue directives about how the allied League nations were to behave in the event of a future Anglo-French conflict. He concluded by delivering a substantial present from the Crown, valued at £800 sterling (approximately equivalent to \$206,500 in 2022 USD), to the Haudenosaunee delegation on 29 July 1701.<sup>179</sup>

A senior Mohawk speaker named Onucheranorum offered the League's response to Nanfan the next day. In a gesture designed to check the potential for Callières's post at Detroit to upset the fragile balance achieved by the League's painstaking diplomacy with the indigenous nations of the upper Great Lakes, the speaker offered to donate to the English crown all the League's "Beaver hunting" lands between Iroquoia and Detroit (encompassing lands in what is now southwestern Ontario) that the Five Nations had won "with the sword eighty years ago." Onucheranorum made clear that the arrangements obligated King William to "protect and defend" the League's continued unimpeded access to the donated territory, and asked that New York's Indian Affairs Secretary Robert Livingston draft an appropriate "instrument" and deliver it personally to the king, so that the agreement would not be "laid aside and forgot."<sup>180</sup>

The "Deed from the Five Nations to the King of their Beaver Hunting Ground," drawn up by Livingston and signed by twenty different headmen from all five League nations on July 19, 1701, conveyed crucial information about Haudenosaunee leaders' sense of their seventeenth-century history of spatial expansion in the Great Lakes region and the legacy of that history for contemporary circumstances in eastern North America. The League signatories asserted their claim to an extensive portion of the eastern Great Lakes region (estimated by Nanfan at "800 miles long and 400 miles broad") on the basis of their mid-seventeenth century military victory over the

Wendats. The document attested that the Haudenosaunee had enjoyed "peaceable hunting" in the region for the previous six decades, and their claim to exclusive jurisdiction over the region as its "true owners" had been further strengthened by the incorporation of the majority of the Wendats as adoptees into League nations. Far from an outright surrender of territory to the "Crown of England," the deed signed at Albany represented a supplemental, parallel effort by League headmen to commit their Anglo-American allies to protecting what they had already achieved in separate, preliminary negotiations with the Upper Great Lakes nations and New France in 1700: "free hunting for us and the heirs and descendants from us the Five Nations forever."<sup>181</sup>

...

The Haudenosaunee treaties of 1701 with New France and New York arose not from a context of Haudenosaunee defeat, crisis or weakness after the mid-1690s, but rather from more than a half-century of League efforts to establish Iroquoia as a crucial, central space between French and Anglo-American settler populations on the periphery of their homelands. More than simply an "accident," or a "partial victory snatched from the jaws of defeat," these two treaties resolved a number of social, political, and economic issues generated by Haudenosaunee assertions of their sovereign nationhood in their relations with colonial governments and other Indigenous nations.<sup>186</sup>

What European observers identified as Haudenosaunee neutrality in 1701 might better be understood as the League's achievement of balance in its diplomatic relations with neighboring Native nations and settler colonies. What is particularly striking about the two treaties of 1701 is the degree to which they depended on the resolution of Indigenous issues via traditional practices: exchanges of captives, shared hunting agreements, and diversified trade relationships. Officials from settler colonies participated in but did not direct the proceedings at Albany or Montréal: that task fell largely to Haudenosaunee leaders, whose commitment to cultural ideas of *kaswentha*, the "tree of peace," and the "dish [or bowl, or plate] with one spoon" enabled them to shape a comprehensive vision of Iroquoia as a crucial, central space in eastern North America in 1701.

...

Authorities in New York also adopted a similarly solicitous attitude toward the Haudenosaunee after 1701. The terms of the League's 1701 conditional deed of their hunting grounds to England, which committed the Crown to protecting free Haudenosaunee movement in

the continental interior, had exposed the fallacy of English claims regarding the subordinate political status of the Five Nations. New York officials informed their counterparts in England that the health of the Covenant Chain alliance now depended on "yearly presents (or rather bribes)" issued to the League, without which it would be "impossible to secure them to the English interest." Although the Haudenosaunee accepted annual presents from the King of England and offered gifts of their own as a symbol of a sharing and respectful relationship, League leaders continued to exercise their right to independent negotiations with New France, thereby underscoring their hard-won diplomatic neutrality between competing European empires in North America.<sup>188</sup>

<sup>179</sup> NYCD 4: 881 ("obedience to his..."), 896-900 (all other quotes); WA, 38-39. The historical conversion of Nanfan's gift of £800 sterling in 1701 was obtained from Eric W. Nye, Pounds Sterling to Dollars: Historical Conversion of Currency, <https://www.uwyo.edu/numimage/currency.htm> (accessed February 19, 2022).

<sup>180</sup> NYCD 4: 904-6 (quotes); WA, 39-41; Brandão and Starna, "Some things may slip out of your memory and be forgott": The 1701 Deed and Map of Iroquois Hunting Territory Revisited," New York History 86 (2005): 417-33.

<sup>181</sup> NYCD 4: 888 ("800 miles long..."), 908-10 (all other quotes). At least two of the Seneca signatories of the July 30, 1701 Nanfan Treaty ("Tohowaragenni" and "Sonessowane") (see NYCD 4: 910) had been involved in parallel negotiations in New France since July 1699. See La Potherie, Histoire 2: 634 ("Tonaraguennion" and "Tsonhoastsuam"); NYCD 9: 708 ("Tonareng8enion" and "8hensi8an"). On August 1, 1701, these two Seneca headmen were noted among a group of "Five of the Principal Sachems of the Five Nations" (see NYCD 4:907).

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<sup>186</sup> Cf. Aquila, The Iroquois Restoration: Iroquois Diplomacy on the Colonial Frontier, 1701-1754 (Detroit, MI: Wayne State University Press, 1983), 45-69; Haan, "Covenant and Consensus," 53 ("accident"); Richter, Ordeal of the Longhouse, 361n44; Brandão and Starna, "The Treaties of 1701: A Triumph of Iroquois Diplomacy," Ethnohistory 43 (1996): 217; Alan Taylor, American Colonies (NY: Viking Penguin, 2001), 291 ("partial victory snatched..."); Richter, Facing East from Indian Country: A Native History of Early America (Cambridge, MA: Harvard University



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		<p>Press, 2001), 170-71; Gilles Havard, <u>The Great Peace of 1701: French-Native Diplomacy in the Seventeenth Century</u> (trans. Phyllis Aronoff and Howard Scott; Montréal and Kingston: McGill-Queen's University Press, 2001), 155, 262n49.</p> <p>...</p> <p><sup>188</sup> Robert Quarry to Sidney, Baron Godolphin, c. May 1702 (O.S.), Blathwayt Papers, BL 28 (quotes). On the historical significance presents in Crown treaty negotiations with the Haudenosaunee, see Henderson, <u>Treaty Rights in the Constitution of Canada</u>, 611-13. For a general overview of the Anglo-French conflict in North America, see Matt Schumann, "A Contest for Trade and Empire: England v. France, 1658-1783," in James G. Lacey, ed., <u>Enduring Strategic Rivalries</u> (Alexandria, VA: Institute for Defense Analyses, August 2014), ch.8.</p>
18.	Parmenter Report  138-140, 143, 145-146	<p>viii) The Haldimand Proclamation of 1784</p> <p>...</p> <p>The Haldimand Proclamation of 1784 is best understood in the context of over a century of prior Covenant Chain diplomacy between the Haudenosaunee and the English Crown. In specific terms, the Haldimand Proclamation of 1784 represents the deferred fulfillment by the British Crown of a portion of its commitments to the Haudenosaunee as articulated in the 1701 Nanfan Treaty. As discussed briefly above (and in more detail in Section 3 below), the terms of the July 19, 1701 deed of the southwestern portion of Haudenosaunee "Beaver Hunting" territory in the Great Lakes region, which included modern southern Ontario, were provisional in nature. The English Crown's claim to be the protector of that territory depended on the fulfillment of specific terms articulated by the Haudenosaunee at Albany on July 19, 1701. A supplementary deed negotiated by the Haudenosaunee with Governor Robert Burnet at Albany on September 14, 1726 did not contain specific terms reserved by the Haudenosaunee in exchange for Crown protection of their "beaver hunting grounds" and a portion of their homelands. Yet subsequent statements from both Haudenosaunee and Crown representatives indicated mutual recognition that, by 1759, the Crown had not fulfilled its obligation (as specified in the 1701 provisional deed) to protect its Haudenosaunee allies in the Covenant Chain. Therefore neither the 1701 provisional deed nor the 1726 deed could be considered binding insofar as it related to the Haudenosaunee placing the lands defined therein under Crown protection. In lieu of demonstrated action on the part of the Crown to take steps (beyond spoken or written rhetoric) to protect the territory in question, the</p>

		<p>Haudenosaunee understood themselves to retain sovereign jurisdiction over both their residential territories and their “Beaver Hunting” lands.</p> <p>...</p> <p>Crown authorities with the most direct experience of relations with the Haudenosaunee “on the ground” in North America recognized their status as sovereign allies of the Crown, not Crown subjects. In July 1701, the sovereign Haudenosaunee undertook a diplomatic initiative to secure Crown protection of their “beaver hunting grounds” in modern southern Ontario against the incursions of the French and other Indigenous nations. To understand the relationship between the concept of protection articulated in the 1701 and 1726 Haudenosaunee deeds of territory to the Crown within the context of the Covenant Chain alliance and the Haldimand Proclamation, we must revisit briefly the history of Haudenosaunee relations with the Crown during the three decades prior to 1784.</p> <p>...</p> <p>The Anglo-American delegates spent the afternoon of June 27, 1754 preparing the “draught of the General Speech” to be delivered to the Haudenosaunee. Echoing prior renewals of the Covenant Chain at Albany, the speech offered general condolences to the Haudenosaunee for those who had passed away “since the last interview in this place” so as to “take away sorrow from your hearts” and to enable the Haudenosaunee to “speak freely.” Stating their intent to “strengthen and brighten the chain of friendship,” the Anglo-American delegates offered a wampum belt as an attestation of “our disposition to preserve it strong and bright so long as the sun and moon shall endure.” Significantly, the record of the speech indicates an uncommonly detailed explanation of the “Chain Belt” given by the Crown’s representatives to the Haudenosaunee – New York Lieutenant-Governor James DeLancey proffered the belt and gestured toward its patterns and markings (which evoked the traditional framing of the relationship via linked arms) with the following explanation:</p> <p>“Brethren, This represents the King our common Father –this line represents his arms extended, embracing all the English and all the Six Nations – These represents [sic] the Colonies which are here present and those who desire to be thought present – These represents [sic] the Six Nations, and there is a space left to draw in the other Indians –</p>
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		<p>And in the middle is the line represented which draws us all in under the King our common Father.”</p> <p>Following this opening gesture, DeLancey’s speech recalled the terms of the July 19, 1701 provisional deed and the threat posed by the renewed campaign of French encroachments (i.e., the construction after 1753 of a chain of posts in the Ohio Valley) to those lands:</p> <p>“Your Fathers by their valour above one hundred years ago, gained a considerable Country, which they afterwards of their own accord put under the protection of the King of Great Britain. The French are endeavouring to possess themselves of this whole Country, altho’ they have made the most express Treaties with the English to the contrary.”<sup>290</sup></p> <hr/> <p><sup>290</sup> NYCD 6: 861-62 (quote p.862).</p>
<p><b>19.</b></p>	<p>176-179</p>	<p>Parmenter Report</p> <p>Historians have noted that despite the apparently “unequivocal” language of the Haldimand Proclamation, “thorny” questions regarding the nature and extent of the grant developed shortly after October 25, 1784.<sup>355</sup> One of these questions centers on Brant’s contention (echoed by subsequent Haudenosaunee persons) that the Haldimand Proclamation constituted Crown recognition of the sovereign nationhood of the Haudenosaunee. When considered in the context of 120 years of preceding Covenant Chain diplomacy, embodied in both day-to-day interactions and Crown treaties, there can be no question that the Haldimand Proclamation of 1784 embodied Crown recognition of the sovereign nationhood of the Haudenosaunee. The Haldimand Proclamation reflected three fundamental elements of that relationship: 1) the idea of mutual concern and support, 2) the concept of unity and shared sacrifice, and 3) the obligation (in this case, on the part of the Crown) to reconcile any “breach” that impacted the other party negatively.</p> <p>The Haldimand Proclamation invoked the language of the Crown’s “Protection” for its “faithfull Allies,” and left to the discretion of the Haudenosaunee the decision of whether or not to relocate to the tract of land along the Grand River reserved “for them &amp; their Posterity” for perpetuity. Brant’s conception of the nature of Haudenosaunee sovereign nationhood at Grand River was apparent in his autumn 1784 invitation to Haudenosaunee Confederacy leaders at</p>

Buffalo Creek (near modern Buffalo, New York) to relocate en masse to Grand River, where they could “once more live independente [sic] [of] Government.”<sup>356</sup>

The Haldimand Proclamation, considered in its immediate historical context, reflected delivery by the Crown on promises first made to the Haudenosaunee by Colonel Guy Johnson at Oswego in July 1775. Considered in its deeper historical context, we recognize that the promises made by Colonel Guy Johnson in July 1775 may be traced directly back to the 1701 request by the Haudenosaunee for Crown protection of their “Beaver Hunting Grounds” in modern southern Ontario. While the Haldimand Proclamation constituted only a small fraction of the lands encompassed in the July 19, 1701 Haudenosaunee provisional deed to the Crown (and depicted on the associated “Clowes Map,” as discussed in Section 4 below), the land allocated by the Crown to the Haudenosaunee in the Grand River Valley was part of a much deeper historical context involving the Crown’s recognition of Haudenosaunee sovereignty, and its obligation to provide protection for the Haudenosaunee within the Covenant Chain alliance. As a final point, it is noteworthy that the British Crown continued to recognize key underlying principles of the Covenant Chain alliance after 1784. In a January 23, 1793 letter to George Hammond, Great Britain’s Envoy to the United States, John Graves Simcoe, the Lieutenant-Governor of Upper Canada, cited a previous letter of Sir William Johnson to the Lords of Trade<sup>357</sup>:

“on which our System of Management of the Indians seems to me to have expressly been founded, and which states that as the Successors of the French, it is necessary, that we should supply the Wants of the Indians, as an acknowledgment to them, that we hold the Posts by their permission, from hence has arisen the constant Necessity that the Government of Canada has been under of supplying the Wants of any Assemblage of the Savages for any purpose whatever.”<sup>358</sup>

<sup>355</sup> Johnston, “Introduction,” xxxix (“unequivocal”); Surtees, “Iroquois in Canada,” 77 (“thorny”).

<sup>356</sup> Abler, ed., Chainbreaker, 168. Haudenosaunee leaders put Brant’s invitation to relocate from the United States to Canada to “the wisest middle age Indians woman [i.e., women, possibly clan matrons]” who determined at that time that Haudenosaunee people should continue to reside on both sides of the new “line Between America & Great Britain for it may be in future time that the cannadian may be obligde [sic] to be Removed or it may Drove off their lands, So the cannadian

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20.		<p>might have a share with us &amp;c., and if we [i.e., Haudenosaunee on the American side of the border] Should be Drove off or Deprived off our lands we shall have a Share with them.” See <u>ibid.</u> In other words, Haudenosaunee possession of lands in both British North America and the United States represented an important hedge against future security issues vis-à-vis either colonial government. See also Taylor, <u>Divided Ground</u>, 123.</p> <p><sup>357</sup> <u>Simcoe Correspondence 1: 277</u>. Simcoe did not specify the letter but evidence suggests it was Johnson’s November 10, 1763 dispatch to the Lords of Trade. See <u>NYCD 7: 572-80</u>.</p> <p><sup>358</sup> <u>Simcoe Correspondence 1: 277</u>.</p>
20.	180-273	<p><b>3) In your opinion from a historical perspective:</b></p> <p><b>a. Was what is referred to as the 1701 Nanfan Treaty the result of any discussions, exchanges, or negotiations? If so, who were the participants or parties to these discussions?</b></p> <p>3) a. Response</p> <p>The 1701 Nanfan Treaty resulted from a conference held at the “Courte House” in Albany, New York from July 10-21, 1701.<sup>360</sup> The parties to these negotiations were the English Crown and the Haudenosaunee Confederacy. British officials referred subsequently to the product of these negotiations as: “a Treaty of the Five Nations made at Albany on ye 19 day of July 1701,” and a “Deed &amp; Treaty” (General Edward Braddock, April 16, 1755);<sup>361</sup> “ye Deed by which ye English became guaranty to ye Indians for their Lands” (Thomas Pownall, August 16, 1755);<sup>362</sup> and a “Treat[y]” (Sir William Johnson, August 15, 1765).<sup>363</sup></p> <p><b>3) b. Did the parties designate representatives to discuss, negotiate, and/or finalize the 1701 Nanfan Treaty? If so, who were these representatives, what was their relationship to the party in question, and what authority did they have?</b></p> <p>3) b. Response</p> <p>New York’s Lieutenant-Governor John Nanfan served as the host of the conference and acted as the representative of the English Crown. The record of the conference identified Nanfan as “Lieut. Govr. and Commander in chiefe of the Province of New Yorke and territories depending thereon in America and vice Admiral of the same.”<sup>364</sup> Assisting Nanfan were a number of local</p>

civil and military officials from New York and Albany: Colonel Peter Schuyler of the New York Provincial Council; Jan Janse Bleeker, the Mayor of Albany; Johannes Bleeker, the Recorder of Albany; Aldermen Johannes Schuyler, David Schuyler, Johannes Abeel, Johannes Cuyler, Johannes Roseboom, and Wessel Ten Broek; Major Dyrk Wessells; Captain James Weems; Jonathan Broadhurst, the Sheriff of Albany; Hendrick Hanse; and three Interpreters: Jan Baptist van Eps, Lawrence Claese [i.e., Claessen], and Hilletie [van] Olinda. Robert Livingston, New York's Secretary of Indian Affairs recorded the minutes of the proceedings.<sup>365</sup> All these persons but Nanfan, the two military officers (Wessells and Weems) and the three interpreters comprised the Albany Commissioners of Indian Affairs, an advisory body appointed by the Governor of New York (via the Albany City Charter of 1686) to regulate the fur trade and assist in conducting Crown diplomacy with Indigenous nations.<sup>366</sup>

The Haudenosaunee representatives at the Albany conference were identified as “the Sachims of the Five Nations called the Maquase [i.e., Mohawks], Oneydes [i.e., Oneidas], Onondagoes [i.e., Onondagas], Cayouges [i.e., Cayugas], and Sinnekes [i.e., Senecas].”<sup>367</sup> On July 14, 1701, the second day of formal proceedings, above Secretary Livingston’s transcription of their response to Nanfan’s opening speech the previous day, the record of the negotiations provides a list of these “Sachims” broken down by individual nations. The nine Mohawk attendees were: “Onucheranorum” (designated as “Speaker”), “Hendrick,” “Cornelis,” “Simnonquirese,” “Joseph,” “Sidgisohowanne,” “Tolo Quatho,” “Gideon,” and “Awanay.”<sup>368</sup> The five Oneida attendees were: “Sayojochrachqua,” “Anagaranie,” “Arackkonickko,” “Degarandao,” and “Shagahwinitta.”<sup>369</sup> The twelve Onondaga attendees were: “Degachnawadichqui,” “Tagojodda,” “Kanadgeharon,” “Sajades,” “Kachradogha,” “Canogrodon,” “Sadeganaktie,” “Kaniadaris,” “Plebarare,” “Adiaronque,” “Diskaneracke,” and “Ajadis.”<sup>370</sup> The four Cayuga attendees were: “Conde,” “I Garagera,” “Towadicho,” and “Tosinawejago.”<sup>371</sup> The three Seneca attendees were: “Tahaweragenni,” “Annaquaris,” and “Sonochsowanne.”<sup>372</sup> Representation from all five constituent nations made this Haudenosaunee delegation an authoritative representation of the League – understood in the terminology of council proceedings as the “whole house.”<sup>373</sup> Mohawk Onucheranorum, whom Livingston identified as the designated Haudenosaunee “Speaker” for their statements of July 14 and July 19, 1701,<sup>374</sup> served as the “voice” of Haudenosaunee “principals”

		<p>who bore responsibility for the collective statements of the Haudenosaunee nations, even if they were not necessarily named in the proceedings or even physically present at the conference.<sup>375</sup></p> <p><b>3) c. What were the terms of 1701 Nanfan Treaty? Did these come to be finalized or formalized in any way, and if so, how?</b></p> <p>3) c. Response</p> <p><u>KEY TAKEAWAY POINTS</u></p> <ul style="list-style-type: none"> <li>• The conference at Albany that yielded the 1701 Nanfan treaty represented a model of English accommodation of Haudenosaunee diplomatic protocol in the Covenant Chain alliance.</li> <li>• On July 19, 1701, representatives of the Haudenosaunee made a provisional offer to place their “Beaver Hunting Grounds” in modern southern Ontario under the protection of the English Crown, subject to the fulfillment by the Crown of specific terms regarding the delivery of the deed to the Crown and direct acknowledgement of the deed by the King of England at that time.</li> <li>• The metes and bounds of the provisionally-deeded tract of Haudenosaunee “Beaver Hunting Grounds” in modern southern Ontario were described verbally in the written record of the treaty of July 19, 1701 and represented visually on a contemporaneously-produced map (the “Clowes Map”).</li> <li>• The terms of protection articulated by the Haudenosaunee and representatives of the English Crown in the 1701 Nanfan Treaty were, unlike much “protection talk” in early modern diplomacy, delineated with specificity and grounded in mutually-accepted terms of the Covenant Chain alliance.</li> </ul> <p>The conference at Albany that yielded the 1701 Nanfan treaty represented a model of English accommodation of Haudenosaunee diplomatic protocol in the Covenant Chain alliance. After greeting the Five Nations “Sachims” on July 10, 1701, one day after their arrival in Albany,</p>
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Lieutenant-Governor Nanfan announced himself as the successor to Richard Cooté, the Earl of Bellomont, who had passed away the previous March. The Haudenosaunee delegates replied with their congratulations and expressed their hope that Nanfan would “continue the love and affection that former Governors sent by the Kings of England have had to us the Five Nations.” Nanfan assured the Haudenosaunee delegates “not only of the favour and protection of the Great King of England,” but also pledged his personal “readiness to serve you on all occasions.”<sup>376</sup>

Since the English called the meeting [the Haudenosaunee delegates noted that they “were come upon His Hon[or]s message” (i.e., invitation)], Nanfan opened the formal proceedings on July 12, 1701 with a formal announcement of Bellomont’s passing.<sup>377</sup> In doing so, he observed Haudenosaunee protocol that “condolence law must be observed before any business is taken up.” As the party that “kindle[d] the fire,” the English bore responsibility for opening and concluding the conference. Nanfan began his propositions to the Haudenosaunee on July 12, 1701, and following customary Haudenosaunee practice, they deferred their responses by intervals of a day or more, permitting them to “sleep on” what had been proposed to them and counsel internally in order to achieve unanimity amongst themselves (“one mind”) prior to making their replies.<sup>378</sup>

Nanfan’s opening proposal of July 12, 1701, following his announcement of Bellomont’s death, consisted of five essential elements: 1) providing notification of a “considerable present” from the English Crown to the Haudenosaunee (to serve as a “marke” of His Majesty’s “favour and protection”); 2) a request for intelligence on the recently-reported activities of French emissaries at Onondaga; 3) a progress report on Haudenosaunee peace negotiations with “the Farr Nations of Indians whom the French have soe long employ’d to kill your people” [i.e., the “Dish with One Spoon” treaty discussed above]; 4) an expression of approval for their recent refusal to host a “popish priest in your country from the French,” followed by the promise of “protestant Ministers” to arrive “very soon,” and a warning that any decision on their part to host a Catholic missionary sponsored by the French would be considered by the English as “a total defection of your Loyalty to the English Crown”; 5) a request that the Haudenosaunee “prevaile upon” their “brethren who deserted you and went to the French” [i.e., the Mohawks of Kahnawà:ke and other Haudenosaunee settled in the St. Lawrence River valley] to return to their homelands.<sup>379</sup>

Two days later (July 14, 1701), the Haudenosaunee delegation made its reply to Nanfan. Their speaker, Onucheranorum, expressed the pleasure of “all our young people”<sup>380</sup> that “our Brother



Corlaer” [i.e., Nanfan] “is a young active man expert in warr” who would be able to assist them with the “great difficulties” they encountered “dayly from the French of Canada.” Onucheranorum reported that the Haudenosaunee were confident that Nanfan would “be carefull to keep and maintain the covenant chain firme” as his predecessor Bellomont had done and hoped that “wee may frequently see one another in this City the Generall place of Treaty of all the five nations.” He added an acknowledgement of the “great kindnesse” of the King of England and pledged to behave in a manner so as to merit his “esteem.” Onucheranorum then reported that the Haudenosaunee had denied the request of the French to post a Catholic missionary at Onondaga. He also denied that there had been any “private negotiations or underground darke dealings” with the French in Haudenosaunee territory, reminding Nanfan that “as often as the covenant chain has been renew’d itt has always been agreed that neither party was to listen to any story’s or falsehoods.” As for their “treaties” with the “Dowaganhaes and other Farr Indians,” Onucheranorum referred to a map (described as “a large skinne upon which the Castles are painted with whom wee have concluded a peace”) that had been given to twomessengers sent from Albany to Onondaga the previous month. Onucheranorum explained that the Haudenosaunee had made peace with “seaven nations” but that only the “two nearest nations” were painted on the skin map as they represented the “principall” names of those seven nations (listed as: “Skighquan, Estjage, Assisagh, Karhadage, Adgenauwe, Karihaet, and Adirondax”). Onucheranorum noted that the Haudenosaunee remained at war with six other nations of “Farr Indians” at that time and lamented on the inability of the Haudenosaunee to “prevaile” in their efforts to repatriate “our Indians debauched to Canada by the French.”<sup>381</sup>

Nanfan made his reply to the Haudenosaunee four days later, on July 18, 1701. He stated his pleasure with Haudenosaunee expressions of their “happines in being under the protection of soe glorious and puissant a Monarch” as King William III who would “support you against all his and your Ennemies.” He reported having examined the journal of the messengers sent from Albany to Onondaga in June 1701 and criticized the Haudenosaunee regarding the evidence therein of their having traveled to Canada to “complain when any of the farr Indians kill your people, you ought to defend yourselves like men and resist force with force.” Nanfan then wondered aloud about why the Haudenosaunee had not been more “zealous” in their opposition to the French construction of a

fort at “[j]ughshaghrondie ál[ia]s Wawyactenok [i.e., Détroit] the principle pass where all your Beaver hunting is.” Nanfan continued:

“You must not suffer it by any means. I am inform’d it is your Land and you have won itt with the sword at the cost of much blood, and will you let the French take it from you with one blow [?] You can never expect to hunt beaver any more in peace if you let them fortifie themselves att that principal pass, if you are minded to secure your posterity from slavery and bondage, hinder it. Remember how they gott Cadarachqui [i.e., Fort Frontenac] and what a plague that place has been to you ever since.”

Nanfan scorned the prospect of Haudenosaunee enjoying profitable trade at Détroit, assuring his listeners that they would receive “much better pennyworths” at Albany and urged them not to trust the promises of the French that any fort at Détroit would provide security for Haudenosaunee hunters. For emphasis, Nanfan renewed the Covenant Chain alliance with the Haudenosaunee on behalf of the English Crown and:

“all His Majesties Christian subjects on this main of America,” assuring the Haudenosaunee that they “shall never want powder and arms to defend yourselves and good security for your wives [sic] and children to retreat to upon occasions where they shall have provisions provided for them.”

Nanfan then announced the planned construction of a Crown-funded stone fort at Schenectady as a site of refuge for Haudenosaunee noncombatants in the event of an enemy attack and promised that those who sought security there would be “supplied with provisions and other necessaries.” He expressed hope that this would encourage the return of “those of the Five Nations gone to live att Canada” and congratulated the Haudenosaunee on their progress in peace negotiations with the “Farr Indians.” Just prior to delivering the royal presents to the Haudenosaunee, Nanfan reiterated that “You can not give a better testimony of your Loyalty” to the King of England “than by rejecting all Popish priests that may come into your country and hindering the French to build forts upon your land.” For Nanfan, these latter two criteria represented the “terms” of the King’s “fatherly care and protection.”<sup>382</sup>

The Haudenosaunee made their reply to Nanfan on July 19, 1701. They offered a formal condolence for Bellomont and then renewed the Covenant Chain, making it “bright and clear which as been kept soe by our ancestors for many years,” and metaphorically fastened the “chain to the hills which lye round this city of Albany, for trees rott and decay but the hill [sic] will remain unmoveable.” Onucheranorum stated that the renewed Covenant Chain would:

“reach from New York to Simmondwane or the Sinekes Country that all people that live under itt may be secure from all attempts of an ennemy – Wee would remove the end of the chain to Tiochsaghrondie or wawyachtenok [i.e., Détroit] were itt in our power, but the French would mock at itt for they have taken itt in possession already against our wills sending people thither to make a Forte, but wee hope they will be removed speedily.”

Following this opening, which surfaced the underlying context of the Covenant Chain alliance for these negotiations, Onucheranorum asked that Nanfan continue the English practice of sending “men of wisdom and understanding” into Haudenosaunee communities to “countermine” [sic] the actions of French emissaries. Then Onucheranorum made the following request:

“We desire that our Secretary Rob[er]t Livingston may be sent to Corachkoo the great King of England to acquaint how that the French inroach upon our territories by building a Forte att Tjughsaghrondie and to pray that our King may use all means to prevent itt, else we shall be tyed up, wee shall not be able to live, they will come nearer us every day with their Forts; Wee doe give and render up all that land where the Beaver hunting is which wee won with the sword eighty years ago to Coraghkoo our great King and pray that he may be our protector and defender there and desire our secretary [i.e., Livingston] may write and instrument which wee will signe and seale, that it may be carried by him to the King, wee fear if he does not goe, there is so much business, this will be only read layd aside and forgot, but if he goes wee are sure, wee shall have an answer.”

Responding in kind to Nanfan’s pointed remarks of the previous day, Onucheranorum expressed the collective surprise of the Haudenosaunee that their partner in the Covenant Chain alliance had done nothing to prevent the French from going “behind our Country” to erect the fort at Détroit. He wondered aloud if the reason for that neglect related to the English being “busy in your books

and maps (meaning that line should be run between the two Govern[men]ts).” This amounted to an allegation on the part of the Haudenosaunee that the developments at Déroit might have resulted from secret negotiations in Europe about a boundary in North America between French and English colonial possessions. Onucheranorum reminded Nanfan that:

“we have not power to resist such a Christian enemy, therefore wee must depend on you Brother Corlaer to take this case in hand and acquaint the great King with itt for what will become of us att this rate where shall wee hunt a beaver if the French of Canada take possession of our beaver country[?]”

Onucheranorum then moved to the subject of keeping the price of English trade goods “as cheap as formerly,” noting that many of the Haudenosaunee who had relocated to the St. Lawrence Valley did so on account of preferential pricing of trade goods by French authorities. The Haudenosaunee speaker also asked that Nanfan relocate to Albany in the event of war with France (“that you may be ready to assist and defend us”), assured him that the Haudenosaunee would no longer permit Catholic missionaries in their settlements, and lodged several complaints about the conduct of certain blacksmiths and traders. In response to the Crown present delivered by Nanfan the previous day, Onucheranorum punctuated twelve discrete points of his speech with symbolic gifts of beaver and otter pelts, yielding a total amount of 116 of the former and two of the latter. This portion of the day’s proceedings concluded with Nanfan offering solemn condolences for the loss of three Haudenosaunee individuals (two Onondagas and a Cayuga) with three wampum belts.<sup>383</sup>

Later on the same day, Secretary Livingston drafted a document entitled “Deed from the Five Nations to the King of their Beaver Hunting Ground.” This document followed the typical format of a land deed in English common law: it expressed the will of the Haudenosaunee, as proprietors of the land in question to “have freely and voluntar[il]ly surrendered delivered up and for ever quit claimed” to the English Crown, a tract of land in the lower Great Lakes region they defined as their “Beaver Hunting Ground.” The metes and bounds of the deeded tract (described in the text of the deed itself as “conteigning in length about eight hundred miles and in bredth four hundred miles”)<sup>384</sup> are less precise than the visual rendering that appears on the contemporaneously-produced “Clowes Map” (discussed above). More importantly, the deed provided the rationale for Haudenosaunee proprietorship over the portion of their hunting territory they were tentatively

placing under the protection of the English Crown, citing it as the product of their prior conquest of “a fierce and bloody warr with seaven nations of Indians called the Aragaritkas.”<sup>385</sup> The text of the deed went on to claim that the Haudenosaunee:

“did four score years agoe totally conquer and subdue and drove them [i.e., the “seaven nations” of “Aragaritkas”] out of that country and had peaceable and quiet possession of the same to hunt beavers (which was the motive which caused us to war for the same) for three score years it being the only chief place for hunting in this parte of the world that ever wee heard of and after that we had been sixty years sole masters and owners of the said land enjoying peaceable hunting without any internegotion[sic].”

Significantly, the deed also referred to the integration of captives from the conquered area into the various Haudenosaunee nations as buttressing Haudenosaunee claims to proprietorship. It referred to the deeded land as:

“formerly posest by seaven nations of Indians called the Aragaritka whom by a fair war we subdued and drove from thence four score years agoe bringing many of them captives to our country and soe became to be the true owners of the same by conquest.”

The deed then moved to explain the reasons for the decision of the Haudenosaunee to offer these hunting grounds for Crown protection, citing French sponsorship of attacks on Haudenosaunee beaver hunters in the defined tract by the Tionnontaté Wendats for the previous twenty years and the contemporary effort by the French to construct a fort at “Tjeughsaghrondie the principall passe that commands said land” without the “leave and consent” of its Haudenosaunee proprietors. The Haudenosaunee represented their decision to approach the Crown for protection of their “Beaver Hunting Ground” as the product of “mature deliberation” among their own leaders as well as:

“out of a deep sence of the many Royall favours extended to us by the present great Monarch of England King William the third, and in consideration that wee have lived peaceably and quietly with the people of Albany our fellow subjects above eighty years when wee first made a firm league and covenant chain with these Christians that first came to settle Albany on this river which covenant chain hath been yearly renewed and kept bright and clear by all the Governours successively and many neighbouring

		<p>Government]ts of English and nations of Indians have since upon their request been admitted into the same.”</p> <p>The deed rendered the placement of these lands under Crown protection conditional on the basis of this proviso articulated by the Haudenosaunee:</p> <p>“provided that wee are to have free hunting for us and the heires and descendants from us the Five nations [i.e., to the deeded lands] for ever and that free of all disturbances expecting to be protected therein by the Crown of England.”</p> <p>The deed concluded with the request of the Haudenosaunee that “our Brother Corlaer [i.e., Nanfan]” send the deed “over to Carachkoo [i.e., King William III]” in hopes “that he would be graciously pleased to accept of the same.” At the bottom of the document appear totemic signatures of the various Haudenosaunee “Sachims” assenting to the deed, and below that a list of the English officials present.<sup>386</sup> It is noteworthy that the list of signatories of the July 19, 1701 deed differs from the respective roll calls of attendees listed in the minutes of the conference proceedings on the dates of July 12 (English)<sup>387</sup> and July 14 (Haudenosaunee).<sup>388</sup> Evidence indicates that Secretary Livingston distinguished several of the Haudenosaunee signatories of the July 19, 1701 deed as “principal Sachims.”</p> <p>Two days after the signing of the deed, a delegation of “Five of the principal Sachims” of the Five Nations (each of whom had signed the July 19, 1701 deed),<sup>389</sup> requested a meeting with Lieutenant-Governor Nanfan at the “Forte” in Albany. Sadekenaktie served as the speaker for the Haudenosaunee delegation and expressed their concern that at “such publick conferences as wee now have had itt is very probable some things may slip out of your memory and be forgott.” He then took the opportunity to state more grievances regarding the conduct of the French since the 1697 peace, particularly the tendency of the latter to “inroach upon our Country” by constructing forts “around about us and penn us up.” Sadekenaktie blamed “one of our Indians called Orojadicka who has been two years among the French in Canada” for consenting to the re-establishment of Fort Frontenac, denying any such permission from “the Five nations” but citing it as an example of how “the French possesses [sic] themselves of our territories.” Fort Frontenac compounded the issue of the French constructing Fort Pontchartrain at Detroit for Sadekenaktie, since that French post represented “another principle passage which our Indians can not shun when</p>
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they come from their hunting.” Sadekenaktie argued that the reestablishment of Fort Frontenac added more urgency to:

“our publick propositions too [i.e., two] days agoe, so wee are againe come to intreat you to send over our secretary Rob[ert] Livingston with all speed to acquaint Corachkoa the great king of England how the French deale with us, he has been there formerly and knows all affairs, pray let there be a good large canoe (such as the English sayle with over the great salt waters) provided for him, that sayls well that wee may have an answer with all expedition, doe not defer itt till the fall or Winter till itt snows or till spring but lett him be sent forthwith and then wee are in hopes we shall have a good issue of our business.”

When asked by Nanfan “whether that letters writt by their Secreatary and sent by their brother Corlaer the Lieut. Governor to the King would not be sufficient,” Sadekenaktie replied adamantly that mere written correspondence would not suffice:

“what a Question is this, did wee not tell you in our publick propositions on Saturday [i.e., July 19, 1701] that it was concluded by all the Five nations that our Secretary Robt. Livingston should goe to the King, and did wee not then tell you his business; And wee are now come againe on purpose to insist that he may be dispatch’d to England in a good large Canoe that has good sayls to acquaint Corachkoo (meaning the great King) of our condition and what wee have done and how the French daily inroach upon us, and decoy our people away from us, and wee pray you to send us word when he is gone and when he returns for wee expect him againe in the spring.”

With this speech, Sadekenaktie made clear that the terms of the placement under Crown protection of the particular Haudenosaunee “Beaver Hunting” lands encompassed in the July 19, 1701 deed were conditional on Livingston’s personal delivery of their proposal to the King of England and their receipt of a formal, official response from the Crown. The Haudenosaunee clearly considered the matter to be of such significance as to warrant the direct attention of the King, their principal partner in the Covenant Chain alliance, and in this case they refused to settle for even written assurances from provincial English representatives of the Crown. The Haudenosaunee possessed the capacity to address infringements on their territory by other

Indigenous nations with either warfare or diplomacy, but confronted by the aggressive intrusion of the French at Detroit, they sought support from their English allies in the Covenant Chain. Time was also of the essence for the Haudenosaunee – they mandated an expected date for a reply from the Crown and in lieu of that the terms of the deed pertaining to the placement of a portion of their hunting territory under Crown protection, as far as the Haudenosaunee were concerned, would be null and void. Sadekenaktie punctuated this speech with “ten Beavers.” Nanfan replied with a vague promise to “consider of this their proposition” and to “doe any thing that was proper for him to doe for their ease, satisfaction, and future tranquility.”<sup>390</sup>

Protection, as a framework for inter-polity relations, enjoyed widespread usage in the early modern world. Empires employed the language of protection to extend their influence, to project authority, and to exact concessions from, or provide support to allied nations they offered to protect. Nations that sought protection from others could do so “without signalling their intention to cede sovereignty or abandon jurisdictional claims.” Historical scholarship on protection has emphasized its presence in contested territories and the premium many nations placed on ambiguity and imprecision in questions of the legal status of the protected and the responsibilities of the protector. It is clear, however, that in the case of the July 19, 1701 provisional deed of “Beaver Hunting Grounds” by the Haudenosaunee to the English Crown that the terms under which Crown protection was to be enacted were specifically defined and grounded in mutually-accepted terms of the Covenant Chain alliance. We should not assume the protection arrangements articulated by the Haudenosaunee and representatives of the English Crown at Albany on July 19, 1701 necessarily functioned to enhance English power at the expense of the Haudenosaunee. In fact, the terms of the provisional protection arrangement embodied by the July 19, 1701 deed offered a very powerful rhetorical weapon to the Haudenosaunee in the form of subsequent arguments that the Crown had not fulfilled the terms of the agreement and that as a result, the Haudenosaunee did not enjoy the benefits of the protection they sought in making the provisional deed of a portion of their hunting territory to the Crown.<sup>391</sup>



		<p><b>3) d. Did the terms include any exchanges of benefits or obligations? If so, please describe them.</b></p> <p><b>3) d. Response</b></p> <p><u>KEY TAKEAWAY POINTS</u></p> <ul style="list-style-type: none"> <li>• While the 1701 Nanfan treaty is often represented as a surrender of land by the Haudenosaunee to the Crown, careful review of the documentary evidence indicates that the Haudenosaunee understood their actions as a provisional placement of a portion of their hunting territory under Crown protection, contingent on the personal delivery of their proposal to the King of England by Robert Livingston and his return within a specified time with a formal acknowledgment of their offer by the Crown.</li> <li>• English colonial documents produced after July 19, 1701 consistently supported the legitimacy of Haudenosaunee claims to the “Beaver Hunting” territory they deemed provisionally to the Crown in 1701.</li> <li>• High-ranking Crown officials in both Great Britain and North America understood that the terms of the cession of land in the July 19, 1701 deed (as intended by the Haudenosaunee) was for the purpose of its “Protection” by the Crown and involved no transfer of sovereignty or ownership of territory to the Crown.</li> </ul> <p>The conference at Albany that yielded the 1701 Nanfan treaty witnessed a formal renewal of the Anglo-Haudenosaunee Covenant Chain alliance and an exchange of material goods (the Crown’s “present” to the Haudenosaunee and the reciprocal gift of animal peltry from the Haudenosaunee to the Crown). While the “Albany deed” signed on July 19, 1701 is often represented as a surrender of land by the Haudenosaunee to the Crown, careful review of the documentary evidence indicates that the Haudenosaunee understood their actions as a provisional placement of a portion of their hunting territory under Crown protection, contingent on the personal delivery of their proposal to the King of England by Robert Livingston and his return within a specified time with a formal acknowledgment of their offer by the Crown.<sup>392</sup> When Nanfan denied Livingston permission to travel to England in early September 1701 (the Secretary sought substantial</p>
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compensation in claimed arrears in his official salary and other non-reimbursed expenses) the Lieutenant-Governor had failed to fulfill all the terms of the deed from the standpoint of the Haudenosaunee. The “Beaver Hunting Ground” as defined in the July 19, 1701 deed was not placed under Crown protection at that time – the English had not fulfilled their side of the bargain, and from the standpoint of the Haudenosaunee the land remained their sovereign territory.<sup>393</sup>

Nanfan and other Anglo-American authorities, unsurprisingly, interpreted the deed in a less nuanced manner, representing it as an outright, permanent cession of a portion of Haudenosaunee-claimed territory to the Crown. Nanfan, who either willfully misrepresented the terms of the agreement or who simply did not comprehend them (though this seems less plausible in light of the July 21, 1701 speech of Sadekenaktie discussed above) claimed in an August 19, 1701 address to the New York Provincial Council that the Haudenosaunee had “Convey’d to the Crown of England a vast Tract of Land of great consequence for preventing their necessity of Submitting to the neighbouring power [i.e., France].”<sup>394</sup> In an August 20, 1701 letter to the Lords of Trade, Nanfan went further still, crediting himself for securing from the Haudenosaunee “a tract of land 800 miles long and 400 miles broad including all their beaver hunting” and for having “fix’d our Indians in their obedience to his Majesty.”<sup>395</sup>

Historians Brandão and Starna, in a 1996 peer-reviewed scholarly journal article, acknowledged the possibility that English officials regarded the 1701 deed as a “bona fide conveyance of property” but also noted that:

“no primary document exists that unequivocally supports such an interpretation, and the actions of the English subsequent to the signing of the deed are not those of a landholder with possessory or proprietary rights. There are no primary documents or historical studies that suggest in any way that the Five Nations believed that they had ceded their lands to the English [on July 19, 1701].”<sup>396</sup>

Although Brandão and Starna formulated their conclusions on the basis of negative evidence, documentary evidence does in fact exist to help us understand how the Haudenosaunee and the English regarded the terms of the July 19, 1701 deed. As will be seen with the discussion of cartographic sources below, English colonial documents produced after July 19, 1701 consistently supported the legitimacy of Haudenosaunee claims to the “Beaver Hunting” territory they decided

provisionally to the Crown in 1701. On July 13, 1702, New York Governor Lord Cornbury reprimanded a delegation of “farr Indians called Twightwigs [i.e., Miamis] and Dionondadees [i.e., Tionnontaté Wendats]” who had been escorted to Albany (to conduct trade) by the Haudenosaunee for the former having taken up residency “at Tjughsaghrondie a place where the French have built a Fort last year without leave of the 5 Nations who claim that Country.”<sup>397</sup> In a May 14, 1755 diplomatic exchange between the British government and their French counterparts on the matter of the boundary between French and English territorial holdings in North America, the British denied French claims to modern southern Ontario (and points west), arguing that the “Iroquois Five Nations have enjoyed without distinction the navigation” of Lakes Ontario, Erie, and the Niagara River and identified the Haudenosaunee as “by origin or by right of conquest legitimate proprietors of the Ohio River and its territory in question.”<sup>398</sup> Finally, in a June 1, 1759 Report on the matter of a petition submitted by Benjamin Franklin pertaining to the issue of fraudulent land transactions in Pennsylvania, the “Lords of the Committee of His Majesty’s most Honourable Privy Council for Plantation Affairs” included a detailed reflection on the 1701 Nanfan Treaty. Describing the initiative of the Haudenosaunee in making the proposal to place their lands under Crown protection as both “wise and prudent with regard to their own interests, and the most advantageous with regard to ours [i.e., those of Great Britain],” the Committee acknowledged that the deed originated in the desire of the Haudenosaunee for recognition of “the sole and absolute property” of the land that they “delineated upon Paper in the most precise manner the Limits of what they called their hunting grounds, comprehending the great Lakes of Ontario and Erie.” The deed was not without benefit to the Crown, as it would also “support Our [i.e., British] Rights against any Claim which the French might make, founded on the vague and uncertain pretence of unlimited Grants or accidental local discovery.” The Committee then expressed its regret that the Crown had failed to live up to its end of the bargain in 1701 in a lengthy commentary on eighteenth-century relations between the Crown and the Haudenosaunee:

“had the Judgement Zeal and Integrity of those, whose Duty it was faithfully to execute the Conditions of the Engagement, been equal to those of him who made it [i.e., Nanfan] the Indians might have been forever secured in Our Interest and all disputes with France about American Territory prevented; but by neglect of Government on one hand, and the enormous abuses of Individuals in the purchase of Lands on the other hand, all the solid advantages of this Treaty and concession were lost, and with them the memory even of

the Transaction itself. The Indians [i.e., the Haudenosaunee] were disobliged and disgusted, and many of them joined with the Enemy in the War which followed this Treaty, and disturbed our Settlements, whilst the French, to whom this Transaction pointed out what their pain should be, took every measure to get possession of the Country by Forts and Military Establishments; and altho' they were compelled at the Treaty of Utrecht [i.e., 1713] to acknowledge in express terms our Sovereignty over the Six Nations, yet finding We took no Steps to avail Ourselves of such a favorable declaration either by renewal of Our Engagement with the Indians, or taking measures to support Our sovereignty by forts erected in proper parts of the Country, they ceased not to pursue that Plan, in which they had already made so considerable a progress, and it was not 'till the year 1725, when they had by their Establishment at Niagara, secured to themselves the possession of Lake Ontario, that We saw too late our Error in neglecting the advantages which might have been derived from the Treaty of 1701. Mr. Burnet, who was then [i.e., circa 1725] Governor of New York, applied himself with great assiduity to recover the Interests and Affections of the Indians, as the only means of defeating the designs of the French, and such was the force of their inclination to live well with Us, and to renew the Antient covenant chain, as they express it, that they consented, Notwithstanding all the ill treatment they had suffered from Us, to enter into the same engagement [i.e., in 1726, see discussion below] as they had entered into in 1701, and a Treaty was accordingly concluded upon the same terms, and a new Deed, reciting the former executed by them. The Experience We had had of the mischiefs, which followed from a want of a proper regard and attention to our engagement in 1701, increased by the danger which now threatened Our Colonies from the daily and enormous encroachments of the French, ought to have been a Lesson to us to have been now more careful of our Interests but Yet the same avidity after the Possession of Indian Lands, aggravated by many other Abuses, still remain'd unchecked and uncontroll'd by any permanent Plan; no measures were taken to erect Forts in proper places, to secure the sovereignty of the Country, and to protect it against the attempts of Our Enemies, and it is to the same causes producing the same Effects, that We are now to impute. not only the present unsettled and declining State of Our Interests with the Indians, but also those disputes

			<p>with France concerning Limits and Territory which have involved Us in a most dangerous and critical War.”</p> <p>The Committee concluded by stating the reason for their extended “narrative of Facts” as a demonstration of:</p> <p>“how dangerous it may be to make Grants and Settlements of Indian Lands wch have been ceded for Protection and not Settlement, especially when all the Political advantages of such Cession may be Obtained without such Settlement.”<sup>399</sup></p> <p>This documentary evidence indicates that high-ranking metropolitan British officials during the eighteenth century recognized Haudenosaunee sovereignty over their lands, including those encompassed by the July 19, 1701 deed. They understood that the terms of the cession of land in the deed (as intended by the Haudenosaunee) was for the purpose of its “Protection” and involved no transfer of sovereignty or ownership of territory to the Crown.<sup>400</sup> They also demonstrated awareness that the Crown had failed to fulfill its obligations as described in the treaty and deed of 1701 and, as a result of that neglect, not only did the Haudenosaunee retain their sovereignty over the lands provisionally deeded in 1701 and 1726, the Crown had not enjoyed the full potential benefit of taking those lands into protection – support for its territorial claims in North America vis-à-vis those of France.<sup>401</sup></p> <p><b>3) e. If the terms of the 1701 Nanfan Treaty were finalized or formalized, what was the demonstrated intention of the parties at the time that the terms were finalized? Are there any records, documents, or maps which record or demonstrate the intention of the parties at the time these terms were finalized? If so, please describe them. Was there any subsequent conduct of each of the parties that reflected on their intentions in 1701? If so, please describe.</b></p> <p>3) e. Response</p> <p><u>KEY TAKEAWAY POINTS</u></p> <ul style="list-style-type: none"> <li>• Through the 1701 Nanfan Treaty the Haudenosaunee sought Crown protection of the southwestern portion of their “Beaver Hunting Grounds” to supplement the access they</li> </ul>
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			<p>secured to the northeastern portion of their hunting territories via the “Dish with One Spoon” treaty (ratified at Montréal on August 4, 1701).</p> <ul style="list-style-type: none"> <li>• The English, for their part, sought by the 1701 Nanfan treaty to secure the advantages of Haudenosaunee-facilitated trade with the nations residing west of the Haudenosaunee in the Great Lakes as a means of detaching those nations from their alliance to the French and bringing them into the English diplomatic orbit via the Covenant Chain. Crown protection of Haudenosaunee “Beaver Hunting Grounds,” as the English understood it <u>circa</u> 1701, would also enhance English territorial claims to the North American interior <u>vis-à-vis</u> those of the French.</li> <li>• The Haudenosaunee pressed the English Crown to fulfill all the terms of the July 19, 1701 provisional deed to their “Beaver Hunting Grounds” after 1701, but Crown representatives in both North America and England proved unwilling or unable to do so.</li> <li>• In lieu of demonstrated Crown intent to fulfill its promises of protection of Haudenosaunee hunting territories after 1701, the Haudenosaunee acted independently to secure their interests by negotiating shared rights of access to those lands with the Indigenous nations of the upper Great Lakes in exchange for the right to broker those nations’ access to English traders at Albany.</li> <li>• On September 14, 1726, the Senecas, Cayugas, and Onondagas signed a deed that placed not only Haudenosaunee “Beaver Hunting Grounds” (as delineated on July 19, 1701) but also portions of the respective homelands of these three Haudenosaunee nations under Crown protection.</li> <li>• After the outbreak of the Seven Years’ War in North America in 1755, Crown officials recalled prior Crown commitments of protection made to the Haudenosaunee in the deeds of July 19, 1701 and September 14, 1726 as a means of justifying their actions against the French in North America and of recruiting military support from their Haudenosaunee allies in the Covenant Chain.</li> </ul>
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The demonstrated intentions of the Haudenosaunee and English parties to the 1701 Nanfan Treaty are straightforward and may be established by the examination of relevant contextual evidence originating both prior to and after the negotiations of July 1701.

Through the 1701 Nanfan Treaty the Haudenosaunee sought Crown protection of the southwestern portion of their “Beaver Hunting Grounds” to supplement the access they secured to the northeastern portion of their hunting territories via the “Dish with One Spoon” treaty (ratified at Montréal on August 4, 1701). The English, for their part, sought to secure the advantages of Haudenosaunee-facilitated trade with the nations residing west of the Haudenosaunee in the Great Lakes as a means of detaching those nations from their alliance to the French and bringing them into the English diplomatic orbit via the Covenant Chain. Crown protection of Haudenosaunee “Beaver Hunting” territory, as the English understood it circa 1701, would also enhance English territorial claims to the North American interior vis-à-vis those of the French.

In a March 12, 1805 historical account related to an audience in the United Kingdom, Teyoninhokarawen (a.k.a. John Norton, an appointed Haudenosaunee chief resident at the Grand River Reserve) described the territory reserved for the Haudenosaunee in modern southern Ontario after the American Revolutionary War as “land over which they had been accustomed to hunt without restriction from time immemorial.”<sup>402</sup> Historical evidence enables us to date the origin of Teyoninhokarawen’s traditional account with more precision. From 1648 to 1653, the Haudenosaunee engaged in a sustained military campaign in modern southern Ontario, which led to the dispersal of fellow Iroquoian-speaking Wendats, Neutrals, and Petuns from the region and the integration of hundreds of captives from those nations into Haudenosaunee communities.<sup>403</sup> In a July 1712 conversation with Colonel Peter Schuyler at Onondaga, the “Sachems” of the Haudenosaunee recounted this history, noting that:

“after they had purchased from the Christ[i]ans Good Arms they conquered their Enemies & rooted them so that where they inhabited is now become a Wilderness.”<sup>404</sup>

As discussed above, land in modern southern Ontario did not remain “wilderness” for long, as the Haudenosaunee established year-round residency throughout this region after 1667.

The seven “Iroquois du Nord”<sup>405</sup> Haudenosaunee communities established in modern southern Ontario persisted until 1687, serving in part as a means of enabling all Haudenosaunee to undertake hunting in modern southern Ontario. This served Haudenosaunee economic purposes effectively, particularly given reports of the decline of beaver populations south of Lake Ontario after 1650. Yet it frustrated French colonial officials in Canada, who began complaining in 1670 of what they perceived as Haudenosaunee trespass into modern southern Ontario, a place “formerly inhabited by the Hurons [i.e., Wendats] our allies, whom they defeated or drove off; so that it may be said the Iroquois do all their hunting, at present, on our allies’ lands.” This, in their view, diverted beaver pelts that were the property of the French Crown to the English at Albany.<sup>406</sup>

In response to the Haudenosaunee, the French began arming their Indigenous allies in modern southern Ontario as a means of contesting Haudenosaunee hunting in that region. On August 5, 1684, Senecas complained to New York Governor Thomas Dongan that French-armed Indigenous rivals “knock our Bever-hunters on the head, and our Enemies carry the Bevers to Canada, that we would have brought to our Brethren [i.e., the English at Albany].”<sup>407</sup>

A month later, in a September 1684 meeting with Joseph-Antoine Le Febvre de La Barre, the Governor of New France, at La Famine,<sup>408</sup> Onondaga chief Otreouti, speaking as the “Voice of the five Iroquois Cantons,” voiced complaints regarding the reckless hunting practices of French-allied nations in the lower Great Lakes. “They came to hunt Beavers upon our Lands,” he reported,” and “contrary to the custom of all the Savages, have carried off whole stocks, both male and female.” These acts, in the eyes of Otreouti, amounted to “cut[ting] down the trees of Peace that serv’d for limits or boundaries to our Frontiers.” Otreouti also defended the right of the Haudenosaunee to escort Anglo-American traders into their hunting territories. “We are born Freemen,” he asserted:

“and have no dependence either upon the Onontio [i.e., the Governor of New France] or the Corlar [i.e., the Governor of New York]. We have a power to go where we please, to conduct who we will to the places we resort to, and to buy and sell where we think fit.”<sup>409</sup>

While the 1687 French military invasion of Seneca homelands romped the Haudenosaunee to relocate their “Iroquois du Nord” population in modern southern Ontario temporarily back to



homelands in modern upstate New York, they continuing to use the regions north and west of Lake Ontario for hunting. This alteration of patterns of Haudenosaunee use of the modern southern Ontario involved no surrender of sovereign authority over that territory on their part. To the contrary, two Onondaga speakers asserted in a March 2, 1700 speech to the Governor of Canada at Québec that lands on the north shore of Lake Ontario “c’est le lieu où nous faisons notre chasse depuis que le monde est monde” [i.e., the place where we do our hunting since the beginning of the world].<sup>410</sup>

Notwithstanding these assertions of proprietorship, the Haudenosaunee began looking to their English allies in the Covenant Chain for assistance in supporting their hunting activities in 1687. This was fully in keeping with the provisions for mutual defense and protection in the terms of that relationship, and should not be construed as an indication of weakness on the part of the Haudenosaunee. Rather, it was an initiative on the part of the Haudenosaunee to level the playing field in modern southern Ontario, where French-allied rival Indigenous nations were enjoying direct military support from New France and thereby impeding Haudenosaunee hunting, as the Mohawk “Sachim called Sindachsegie” explained to New York Governor Dongan on August 6, 1687:

“It is true, wee warr with the Farr Nations of Indians, because they kill our people & take them prisoners when wee go a Bever hunting and it is our Custome amongst Indians, to warr with one another; but what hath the Christians to doe with that to joine with either side or the other? Brethren, you tell us the King of England is a very great King, and why should you not joyne with us in a just cause, when the French joynes with our Enemies in an unjust cause; Brethren, wee see the reason of this, for the French would faine kill us all and when that is done, they would carry all the Bever trade to Canida, and the great King of England would loose the land likewise, and therefore, o Great Sachim beyond the Great Lake [i.e., the King of England, across the Atlantic] awake and suffer not those poor Indians that have given themselves and their Lands under your protection to bee destroyed by the French without cause.”

Sindachsegie reminded Dongan explicitly of the Crown’s obligation to protect its Haudenosaunee allies with this request, and also noted that Haudenosaunee efforts to keep “a path open for those

Farr Indians to come here to Albany,” which benefited New York merchants, had antagonized the French.<sup>411</sup>

By February 16, 1688, the Haudenosaunee amplified their request for English support, asking that Dongan “goe forwards and remove the French from Onyagra [i.e., Fort Conti at Niagara], Cataracque [i.e., Fort Frontenac], and Tyscharondia [i.e., Fort St. Joseph near modern Port Huron, Michigan].” They described these French installations as interfering with their access to “the place where wee goe a beaver hunting.”<sup>412</sup> With no English aid forthcoming, the Haudenosaunee opted to conduct their own independent military attack on the core of French settlement in the St. Lawrence River valley. The massive Haudenosaunee offensive of August 5-6, 1689 that began at Lachine (the western end of Montréal Island) and spread as far as thirty kilometers east, proved successful in achieving the temporary evacuation of those French forts.<sup>413</sup>

The French retaliated with offensive campaigns into Mohawk homelands in 1693 and Onondaga homelands in 1696.<sup>414</sup> On October 1, 1696, in the aftermath of the French invasion of Onondaga country, “Sanonguiese as Sachim of the Mohaques” made the following appeal on behalf of the Haudenosaunee to New York Governor Colonel Benjamin Fletcher at Albany:

“We desire that the Great King of England &c. has canoes [i.e., ships] of seventy gunns a piece and many forces, you may acquaint him that it is a great pity we should be so plagued with soo small an enemy as the French and Indians of Canida. We are not able of ourselves to destroy them. We are become a small people and much lessened by the warr [i.e., King William’s War, 1689-1697]. If the people of Virginia, Maryland, Pensilvania, the Jerseys, Connecticut & New England who have all put their hand into the Covenant Chain will joyne with the inhabitants of this place [i.e., New York], we are ready to go and root the French and all our enemyes out of Canida. He [i.e., Sanonguiese] then laid down a bundle of six Bever skins and on the outside thereof a draft [i.e., map] of the river of Canida [i.e., the St. Lawrence River] with the cheife places there of marked [a marginal note in the document identifies them as “Quebecq, Montreall, Troy rivier (i.e., Trois-Rivières)"] to show the smallnesse of the enemy and how seated upon Canida river; which they desire may be sent over & shown to the Great King.”

Sanonguaise added five more beaver pelts to defray the costs of the “paper penn & ink” that would be used to write a letter to the King on their behalf. Sanonguaise then “laid down” another six beaver pelts in support of his request for an answer as to whether the King of England would send ships to “distroy Canida or not” before “the next time the trees grow green, and if he will not send forces to distroy Canida then to send us word thereof that we may make peace [i.e., with the French] for ourselves.”<sup>415</sup>

Sanonguaise’s request fell on deaf ears. Notwithstanding a “Memorial” prepared in 1697 by the Crown’s Commissioners of Trade and Plantations in which that body contended that the Haudenosaunee “depended” on the colony of New York (as a means of bolstering English territorial claims in North America relative to those of France),<sup>416</sup> English authorities were unwilling to send material aid to the Haudenosaunee in North America while negotiating peace terms with the French to end King William’s War (also known as the War of the League of Augsburg) in Europe. Yet the Haudenosaunee request for English assistance in 1696 marked an important precedent for the terms of the conditional deed placing their “Beaver Hunting” territories under Crown protection in 1701, as witnessed by: the invocation of the Covenant Chain alliance as the justification for the request, the use of a map to identify locations of interest in North America, the desire for direct communication of the request to the Crown, and the imposition of a deadline for a response.

French-sponsored aggression by allied Indigenous nations against Haudenosaunee hunters continued to represent a problem for Covenant Chain diplomacy in 1700. In a June 30, 1700 meeting with the Commissioners of Indian Affairs at Albany a delegation of Haudenosaunee, with “Dekanissoore” [i.e., Teganissorens] as speaker, offered the:

“lamentable complaint that the Dowaganhaes or far Nations have now again kill’d many of our people att their hunting; all which is done by ye instigation of ye French as ye said far Indians themselves confess; nay some of ye said Nations have warned us to be upon our guard, for ye French charge them to doe itt.”

Teganissorens explained the predicament as follows:

“The French themselves declare they will not take ye hatchet out of ye Dowaganhaes hands till we come and submitt to the Governour of Canada, and make peace with him; which our great Brother Corlaer [i.e., the Governor of New York] forbids us to doe. This matter occasions a great distraction among us the Five Nations, for wee are told three years agoe there was a general peace [i.e., the Treaty of Ryswick] and wee should live now in quiet, our hands were tyed up from warring; but we have had little benefit of itt hitherto. The French had as good be in open warr with us as to sett their Indians to warr upon us continually. Therefore we desire that Corlaer may take some course with the Governour of Canada to prevent this, else our people will att last be so wearied out that they will be compell’d to comply with ye Governour of Canadaes demands.”

Teganissorens then reported that the Senecas had lost “fourty” people during the spring of 1700 – implying that these casualties occurred during their winter hunts outside of Haudenosaunee homelands– and noted that a Seneca “sachem” named “Awanano” had “his whole family kill’d last summer [i.e., 1699] hard by [i.e., in proximity to] the Sinnekes Castles.”<sup>417</sup> Significantly, Teganissorens then announced the conclusion of the preliminary negotiations of an independent Haudenosaunee peace treaty with the “Dowaganhaes” at Onondaga earlier in June 1700.<sup>418</sup> This indicates the decision of the Haudenosaunee to take independent steps to resolve the problem of French-sponsored interference with their access to claimed hunting territories while continuing to seek the assistance of their English allies in the Covenant Chain alliance.

English officials were well aware of the circumstances confronting the Haudenosaunee in North America prior to the negotiation of the Nanfan Treaty. The 1697 “Memorial” of the Commissioners of Trade and Plantations characterized “Onyagra” [i.e., Niagara] as the:

“most usual and convenient pass by which the Indian Traders and Hunters for Beavers and Peltry in the Inland Country (westward from the European Plantations) made their Road and Course to bring their furs to a market.”<sup>419</sup>

The English also knew at this time that:

“the only good Beaver hunting lyes in that part of the country where the Dowaganhas and those other Nations live, and thither our 5 Nations are forc’d to goe a beaver-hunting, which is one reason of that perpetual war between those Nations and ours.”<sup>420</sup>

On August 29, 1700, the Earl of Bellomont, New York’s colonial Governor, hosted a “private conference with two of the principall Sachems of each of the Five Nations of Indians, and one of the Protestant Maquase” at which he encouraged the Haudenosaunee to leverage the prospect of English trade at Albany as a means of securing peace with the “Dowaganhaes, Twichtwicks, Ottawawa & Dionondades and other remote Indians” with whom the Haudenosaunee remained (so far as Bellomont knew) at war. Bellomont believed that by bringing the western Indigenous nations into the Covenant Chain would enable the Haudenosaunee to “at all times without any sort of hazard goe a hunting into their country.”<sup>421</sup>

The Haudenosaunee made their reply the next day (August 30, 1700). The “same elleven Sachems” present on August 29 returned, but:

“brought one more from each Nation with them, alleading all businesse of moment was to be transacted by the Three Ensigns [i.e., clans] that the Five Nations consisted of, to witt, the Bear, the Wolf, and the Turtle; and therefore one from each of these tribes or ensigns in each Nation was to be present.”

“Sadeganaktie” [i.e., Sadekenaktie] served as the speaker delivering the Haudenosaunee reply to Bellomont. He explained that Haudenosaunee priorities concerning their foreign relations did not align exactly with those of the English, and that given the progress they had made to date in peace negotiations with the “Dowaganhaes and other remote Indians,” they planned to bring those to a conclusion before responding to Bellomont’s requests that they capture and deliver up to New York authorities any French Jesuits that came to Haudenosaunee communities and that they “draw back our Indians from Canada that are debauch’d thither.” Offering an insight into the status of “Dish with One Spoon” negotiations to date, Sadekenaktie reported that:

		<p>“there are severall of these remote Indians vizt. Stiagigroone, Assisagiroone, Odsidanawe, and several other Nations to the number of Sixteen that have already agreed to come and live among us.”</p> <p>According to Sadekenaktie, any overt aggression shown to French Jesuits by the Haudenosaunee would:</p> <p>“put a stop not only to the said treaty [i.e., the Dish with One Spoon treaty], but exasperate our people that are at Canada and obstruct their coming over to us.”</p> <p>In response to another request from Bellomont that the Haudenosaunee commit to sending 100 warriors to join a planned 100-man English garrison at fort the province of New York proposed to construct in Onondaga country in the event of war with France, Sadekenaktie demurred, citing the need to consult the “young men” who would perform that service. Bellomont expressed surprise, stating that “he thought the Sachems had the sole command of their young men without any controule [sic].” Sadekenaktie replied:</p> <p>“Wee have often proposed something to you and you have told us you would write to the King our Great Master about it, which gave us satisfaction and wee never importun’d you any more about it; and therefore pray bee satisfied with what wee have now answered.”<sup>422</sup></p> <p>On August 31, 1700, the final day of the conference, Bellomont assured the Haudenosaunee of the “King’s fatherly care and protection,” provided they refuse “all manner of correspondence with the Popish priests and Jesuits,” and delivered a substantial array of material goods to support the pledge of the Crown. Sadekenaktie replied with a renewal of the Covenant Chain and a reminder of the need for:</p> <p>“good regulation of the trade” at Albany and “goods sold cheap, that the remote Indians may see what pennyworths there is here; which will be a means to draw them hither.”</p>
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		<p>He also asked that Bellomont write to the King of England:</p> <p>“that the limitts and bounds may be establish’d between Us and the French of Canada to prevent all disputes and controversies, that each may know their bounds when wee are upon our own land and when wee are upon the French King’s land.”<sup>423</sup></p> <p>Evidence indicates that by the eve of the July 1701 negotiations between Crown representatives and the Haudenosaunee, the former possessed a grasp of the issues at hand, at least insofar as they affected English interests in North America. On May 13, 1701, Robert Livingston wrote a lengthy letter to the Lords of Trade on the relationship between the “defence and preservation of New York” and the “security of all the rest” of the Anglo-American colonies. Atop Livingston’s list of concerns was the perceived shift of Haudenosaunee allegiances toward the French and away from their English partners in the Covenant Chain alliance. Livingston did not elaborate on the reasons for increased French “influence” among the Haudenosaunee, but it is clear from the evidence that it related to the independent Haudenosaunee negotiations of the “Dish with One Spoon” treaty with Indigenous nations allied to New France. Far from a characterization of the Haudenosaunee as inherently weak, what concerned Livingston most in May 1701 was the potential loss of the Haudenosaunee as Crown allies who could be useful in defending New York’s provincial frontier (and, by extension, that of all the Anglo-American colonies) against the French:</p> <p>“Our Indians are diminish’d and much shaken from their former vigour and zeal against the French and ‘tis to be feared will make a totall defection to them, when they see the diligence and forwardness of the French, if not timely prevented by our early appearing with forces to their assistance on the frontiers.”<sup>424</sup></p> <p>Clearly, by May 1701, the persistent expressions of concern on the part of the Haudenosaunee over the previous thirteen years had finally sunk in – the time had come, in Livingston’s view, to take seriously the matter of the Crown’s promises of protection for its Haudenosaunee partners in the Covenant Chain alliance.</p> <p>Just as evidence originating prior to the negotiation of the 1701 Nanfan Treaty can provide insight into the demonstrated intentions of the English and Haudenosaunee at the time its terms were finalized, analysis of the documentary record subsequent to that event yields significant</p>
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information enabling a comprehensive understanding of Haudenosaunee and English perspectives on that treaty and the associated deed. On July 15, 1702, New York's newly-appointed royal governor Edward Hyde, Lord Cornbury, met with Haudenosaunee representatives at Albany. Cornbury renewed the Covenant Chain and, averring that he withheld "nothing from you of any News that comes from Europe," informed the Haudenosaunee about a pending war between England and France. He then delivered a substantial Crown present to the Haudenosaunee, which included "100 Gall[on]s of Rumm in 50 kegs" and "12 Casks of Beer." Alarmed at the prospect of so much liquor flowing so early in the proceedings:

"Sinnonquere a Maquase Sachim stood up and prayed that ye Rum given in ye present might be lodged somewhere till their Conference was over since they are now just begun and if their People shou[ld] fall a drinking they could be unfit for businesse, upon which it was ordered to be lodged in Mr. Livingstones seller [i.e., cellar]."<sup>425</sup>

The Haudenosaunee made their reply three days later, on July 18, 1702.<sup>426</sup> Mohawk "Sachim" Onucheranorum served again as speaker, reprising his role from the previous year's treaty that witnessed the signing of the provisional deed of Haudenosaunee "Beaver Hunting" land to the Crown. After offering condolences to Cornbury on the passing of King William III, Onucheranorum addressed what he considered a fundamental omission from Cornbury's opening address (taking care to direct his comments to the Commissioners of Indian Affairs so as not to offend the newly-arrived Governor):

"We speak now to our Brethren ye Sachims of Albany that is the Commissioners for ye Indian affairs and not to our Brother Corlaer [i.e., Cornbury] who is come over the sea, you know we said a great deal last year in our Publick Propositions when the Lieut. Governor [i.e., Nanfan] was here, and desired severall things to be done which if they had been comply'd withal, would have proved to our future advantage and welfare as well as yours, but we find by ye divisions and Partyes that has been among you you have minded nothing of what we so earnestly requested, and we have no answer from England to this day which we so much long'd for, you have thrown all our Propositions which we made last summer in the water at ye mouth of this [i.e., the Hudson] River."



Onucheranorum renewed the request made in the July 19, 1701 provisional deed in hopes that “our Great Queen Anne may have a true and right information of ye State of our Affaires,” and gave “10 Bevers” to support the request, noting bitterly that “we threw away severall Bevers last year” on the same matter. In response to Cornbury’s inquiry about “what Inroachments the French have made upon your country,” Onucheranorum named “Cadaraquoi” [i.e., Fort Frontenac]:

“which lyes on our side, and is built upon our Land, but we never see any care has been taken to remove them, they have on the oyr [i.e., other] end of us built, noe longer agoe than last year another Fort upon our Land without consent, at a Place called Tjughsaghrondie [i.e., Détroit] with high Pallisadoes, and have a garrison of a hundred briskmen in it.”<sup>427</sup>

The next day (July 19, 1702), a smaller delegation of “Ten Sachims of ye 5 Nations” comprised of “2 of each nation” spoke to Cornbury, Colonel Peter Schuyler, Major Dirck Wessells, and Captain Samuel Vetch. The unidentified Haudenosaunee speaker asked Cornbury to:

“take care that our Propositions may not be so sleighted and thrown in some hole, as they were last year, for we not only conveyed a considerable Tract of Land to ye King and delivered the deed to Capt[ai]n Nanfan, then Lieut. Governor, but acquainted him how that ye French inroached upon our country and prayed him to send a person over to ye King with ye said conveyance & named our Secretary Mr. Livingstone as a fitt Person who would have given His Majesty an account of all our affairs, how that ye French possesse themselves of our Country build Forts without our leave, & will penn us up that we shall not be able to hunt, but we see there is no notice taken of what we said, but our Proposition thrown in some Pitt disregarded. We pray that what we requested last year about that subject may be complied with and that Mr. Livingston Secretary for our affairs may be sent to acquaint ye Great Queen of England with ye state and condition of us and our Country and that ship with goods Sayles may be provided for him accordingly.”

Following this reiteration of the request for English fulfillment of the terms of the provisional deed of July 19, 1701, the Haudenosaunee reported on their own independent negotiations for peace with the “Dowaganhaes” who had resettled at “Tjughsaghrondie” [i.e., Détroit].<sup>428</sup>

Cornbury replied to the ten-man Haudenosaunee delegation on July 20, 1702, acknowledging his understanding of the nature of their complaint of non-response from the Crown to the provisional “conveyance of ye Tract of Land they made last year” [i.e., the July 19, 1701 deed]. He admitted that upon making inquiries “that their request has not been comply’d withall” but promised to fulfill all the terms they had specified: sending the deed to England, sending a person to deliver the deed to the Queen, and advising the Haudenosaunee of when that person left New York and when he returned from England.<sup>429</sup> Cornbury was unaware that Nanfan had in fact sent an official copy of the July 19, 1701 deed to England, where it was officially recorded and filed.<sup>430</sup> The problem, as the Haudenosaunee articulated repeatedly in July 1702, was that Nanfan had failed to comply with the other terms of their provisional placement of the southwestern portion of their “Beaver Hunting” territory under Crown protection – i.e., Livingston’s delivery of deed to the Crown and his return with an official response. The renewal of the request by the Haudenosaunee indicated their continued interest in seeing all the terms of the July 19, 1701 deed met, but it is clear that in their view that had not yet occurred. The description of independent Haudenosaunee peace negotiations with the “Dowaganaes” residing at Détroit in 1702 further indicates how, in lieu of the Crown protection they had long sought after, they had no choice but to look out for their own interests in their hunting territories.<sup>431</sup>

Despite Cornbury’s July 20, 1702 promise to the Haudenosaunee that the Crown would fulfill their terms outlined in the provisional deed of July 19, 1701, no direct response from the Crown to the Haudenosaunee was forthcoming.<sup>432</sup> In August 1703, Robert Livingston drafted a Memorial to the Lords of Trade in which he noted that the Haudenosaunee “have been very pressing on him to come over and give Your Lord[ships] an account of their condition,” and cited their “publick propositions Anno 1701 [i.e., July 19, 1701] and 1702.” Livingston went so far as to recommend the “taking of Canada” as the solution to the problem of increasing French influence among the Haudenosaunee, which he claimed had reduced New York’s “Indian Trade” to “not a fifth part so much as it was formerly.”<sup>433</sup> Notwithstanding Livingston’s ardent appeal, Crown authorities made no immediate response to his proposal for an invasion of New France.

In late May 1708 the Onondagas sent word to the Albany Commissioners of French plans to:

“build two forts one at Swegasie [i.e., Oswego] and the other at Otiagara [i.e., Niagara] & to place Garrisons in them which two places were the passes by which the five Nations

			<p>went to ye Principal hunting places for Bever. The consequences of which will be that the Bever hunting of ye Five Nations will intirely depend on the French, that the five Nations must either abandon their Country [or] wholly give themselves up to the French.”<sup>434</sup></p> <p>League leadership sent this alarming report in hopes of encouraging their “Bretheren” to make good on their promises of protection for Haudenosaunee hunting rights by pre-emptively erecting “Forts in the country of the Five Nations in such Places as may prevent these designs of the French.”<sup>435</sup> They met with a noncommittal response from Lord Cornbury, who promised only to relay the intelligence to the Provincial Council, which prompted Teganissorens to remind the New York Governor that the:</p> <p>“Sennekas and Onnondagagas [sic] have frequently given this Govern[men]t Informa[tion] when a storm threatened them from the French but could never obtain any relief or assistance but he hoped better care would be taken for the future.”<sup>436</sup></p> <p>In lieu of demonstrated Crown intent to fulfill its promises of protection of Haudenosaunee hunting territories, the latter acted independently to secure their interests by negotiating shared rights of access to those lands with the nations of the upper Great Lakes in exchange for the right to broker those nations’ access to English traders at Albany. In early 1708, representatives from all five Haudenosaunee nations met with a delegation of “far Indians” in Seneca country:</p> <p>“At this meeting the far Indians said they were of three Castles that were come to settle at Swego a place eight [sic] miles above Jagara [i.e., Niagara] [giving 4 Deer Skins) That there was a great fire kindled there the smoak of which may be seen far but they need not be surprised at it (Giving a large red stone Pipe w[h]ich is the greatest Token used by those Nations in their Treaties) &amp; desired that ye Sennekas &amp; ye rest of ye five Nations might be like Bretheren w[i]th them saying let us have one Bowel One [sic – missing word] &amp; one knife &amp; live in Friends[h]ip together. Let the Sennekas hearts be as ours are &amp; let us Plant &amp; let our wives &amp; Children live comfortably together. If any person or Nation shall do any harm to the five Nations we will join to revenge it. If any shall do us harm we shall acquaint the five Nations of it &amp; Crave their assistance. Let our hatchets &amp; arms be united for the Mutual assistance of each other, which Proposals were accepted of</p>
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in ye Gen[era]l Meeting [i.e., of the Haudenosaunee] & presents given as a token thereof.”<sup>437</sup>

On July 20, 1708, Teganissorens escorted a delegation of “several Indians that lived near Teuksagrandie where the French have a settlement call’d Detroit” to Albany, where the Onondaga leader secured access to English traders for the visiting delegation.<sup>438</sup> By the autumn of 1708 the combined efforts of the Albany Commissioners and Haudenosaunee to encourage this initiative yielded an embassy from “4 castles of ye far Indians called Waganhaes” to Onondaga “to Conclude a Peace with ye five Nations” and “ten Sachems of two Nations,” identified as the “Missiague’s [i.e., Mississaugas] and Nequequent,” doing the same at Albany.<sup>439</sup> On June 7, 1710, emissaries from the Albany Commissioners of Indian Affairs attended a “General Meeting” of the Haudenosaunee Confederacy at Onondaga and made an extensive report on the renewal of the peace between the Haudenosaunee and the “Waganhaes.” The Haudenosaunee leaders offered a wampum belt to the visiting delegates with the following words:

“The Path from the place where you live to Albany is beaten & made plain by this Belt and all molestation or trouble removed out of the way. If any other Nation would walk in this path who is not acquainted with it help him forward. You have a free & safe Passage to my Brother Corlaer [i.e., the English at Albany] to walk in it as you please without Molestation.”<sup>440</sup>

On July 14, 1709, New York’s Lieutenant Governor Richard Ingoldsby spoke to the audenosaunee to seek their assistance in a planned military invasion of Canada. He cited French encroachments on the “Rights and liberties” of the Haudenosaunee “by building Forts on your land and against your Wills Possessing the Principal passes & hunting places whereby all your hunting (your only support) was rendered not only precarious but Dangerous” as a justification for the enterprise.<sup>441</sup> The Haudenosaunee accepted a large present of military stores from Ingoldsby on July 14, 1709 and committed 443 warriors to accompany the expedition, but the effort collapsed when the promised naval support from England failed to arrive at Boston.<sup>442</sup> According to Cadwallader Colden, this left the Haudenosaunee “with a mean Opinion of our [i.e., English] Prudence & Conduct.”<sup>443</sup>

While working with New York officials to broker the access of upper Great Lakes Algonquian nations to Albany traders and pledging active military support to Crown campaigns against Canada, the Haudenosaunee also sought to remind English metropolitan authorities of the terms of the July 19, 1701 provisional deed. On April 20, 1710 the Mohawk chief “Tee Yee Neen Ho Ga Row” (i.e., Theyanoguin, a.k.a. Hendrick Tejonihokarawa), one of the signatories of the July 19, 1701 provisional deed, appeared before Queen Anne with three other so-called “Indian Kings.”<sup>444</sup> The delegation delivered a speech asserting the significance of a renewed attempt on the part of the Crown to conquer French Canada for the ability of the Haudenosaunee to enjoy “Free Hunting and a great Trade with Our Great Queen’s Children.” This represented an indirect but unmistakable reference to the terms of Crown protection implicit in the July 19, 1701 provisional deed.<sup>445</sup>

New York Governor Robert Hunter, in his first speech to the Haudenosaunee at Albany on August 16, 1710 addressed the issue of Crown protection for the Haudenosaunee. He encouraged the ongoing efforts of the Haudenosaunee to bring as many potential Indigenous nations as allies into the Covenant Chain so as to “strengthen your selves & us & weaken the enemy [i.e., French Canada].” He then requested confirmation from the Haudenosaunee of the request made by “those of your Nation who have lately been in England” for “a Garrison planted in one or more of your Castles” and assured the Haudenosaunee that Queen Anne would pay to have any Haudenosaunee settlement hosting a garrison or Anglican chapel “fortified for your Defense & Protection.” As a condition of that protection, Hunter requested that the Haudenosaunee “for the future receive no French priests or Emissaries amongst you or else we must not look upon you as sincere in your promise of keeping ye Cov[er]nan[t] Chain bright.”<sup>446</sup> Onondaga speaker “Kaqueeendero” [i.e., Aqueendaro, a.k.a. Sadekenaktie] made the Haudenosaunee reply three days later, welcoming on August 19, 1710 the prospect of “a Garrison of Soldiers planted in each of our Castles w[hic]h ly exposed to the Enemy.” He pledged that the Haudenosaunee would no longer receive Jesuits in their “Castles,” but noted that the presence of English troops and missionaries represented “the most effectual way to be rid of them.” In private discussions that followed the public conference, Sadekenaktie explained that the ongoing Haudenosaunee negotiations surrounding “the path for the Waganhaes through our Country to Albany where Corlaer and Quider dwell” represented an independent effort to resolve the problem of French officials inciting attacks on Haudenosaunee

hunters by the “far Indians” and reiterated the request of the Haudenosaunee for support from the Crown.<sup>447</sup>

English authorities in New York proved more willing to defend the Haudenosaunee from French incursions in the latter’s homelands than in their hunting territories. On May 1, 1711, Colonel Peter Schuyler learned while en route to Onondaga that Charles Le Moynes de Longueuil (a Canadian-born military officer whom Onondaga chief Teganissorens had adopted during peace negotiations in 1694)<sup>448</sup> had “Built a Blockhouse with loop holes for defense” at Onondaga and was commencing work on a chapel. Upon learning of Schuyler’s approach, Longueuil “retir’d to the lake [i.e., Onondaga Lake] where his canoes lay.”<sup>449</sup> Following a conference at Onondaga on May 8, 1711, in which the Haudenosaunee justified allowing Longueuil to build at Onondaga on the grounds of their weariness with the ongoing Anglo-French war in North America, Schuyler “reproved them for suffering the French to build a long house w[i]t[h] loop holes for defence & then went & pull’d it down.”<sup>450</sup> In October 1712 the English partially fulfilled the promise made by Hunter in 1711:

“a Stockadoed fort w[i]t[h] four Blockhouse [sic] placed in a manner of Bastions was built at Tionondoraque [i.e., Tionnonderoge] one of the Mohawk Castles & a Garrison of the Regulars tropps which Fort has ever since been call’d Fort Hunter.”<sup>451</sup>

The willingness of the Crown to extend protection to Haudenosaunee hunting territory became a prominent issue once more following the receipt of reports in 1716 of French traders present at Irondequoit and Niagara, further compounded by allegations of the Senecas asking the Governor of Canada to:

“send a Priest & a Smith [i.e., a blacksmith] into their Country to build a Fort among them and to put 30 men in it & promised if he would give a blanket for 2 Elk [sic] skins and a Gun for 3 elk skins that they would never more go to Albany to trade.”<sup>452</sup>

Although this was a hearsay account of the Senecas’ sentiments at that time, it caused much concern among the Albany Commissioners of Indian Affairs, who warned Governor Robert Hunter in September 1716 that a French “Garrison” in Seneca territory would mean that “the 5 Nations would be lost to this Gov[ernment].” Teganissorens denied any “knowledge or consent” of

the Senecas' alleged request of the French on the part of Haudenosaunee leadership in 1716,<sup>453</sup> but on July 6, 1719 "The Conassaró" [i.e., Teganissorens] reported French construction of "a Fort at Yagerah [i.e., Niagara] near the Great Falls" by the Albany Commissioners of Indian Affairs.<sup>454</sup> The Albany Commissioners tried to send Teganissorens with a belt of wampum to encourage the Senecas "to forbid the French to build at Oiagara [sic]," but the Onondaga chief demurred, stating that "he had only come in a private Condition and as a friend to Corlaer & therefore could not Carry any publick message." Instead, he suggested that the English send some men to:

"pull down the house at Oiagara as they had done with the House w[h]ich Mr. Longueille built at Onondaga [i.e., in 1711] he was sure it would be agreeable to the 5 Nations."

Notwithstanding this advice, Governor Hunter proceeded with his plans at time to "go on board [i.e., a ship] for England" and no response to Teganissorens appears in the English records.<sup>455</sup>

By May 1720, the Senecas had reportedly "consented not only to the building of the [French] House of Niagara but also engaged themselves to maintain it" and to defend it from any attack by the English of New York.<sup>456</sup> English officials, after nearly two decades of neglect, now recalled their own understanding of the terms of the July 19, 1701 provisional deed of Haudenosaunee "Beaver Hunting Grounds" to the Crown. In a May 13, 1720 conference at the "Sinnekes Castle," Myndert Schuyler and Robert Livingston of the Albany Commissioners of Indian Affairs expressed their "Concern" that the French:

"were now buissey at Onjagarae which ought not to be Consented or admitted to by the Brethren [i.e., the Haudenosaunee] Especially so near by you Cannot have forgott that the brethren of the five Nations about 22 years agoe [sic] to secure their Lands and hunting Places westward of them (Least others might Incroach on them) Assign'd Tonsagroende [i.e., Détroit] and those other places which the French now Endeavours to take Possession of To the Crown of Great Brittain to be held for you and Your Posterity."<sup>457</sup>

Four days later, the "Sachims of the Sinnekies, Cayouges and Oneyde and in behalf of the Mohoggs and onnondage Sachims" replied to Livingston and Schuyler. They acknowledged that:

“some years agoe the five Nations gave Trongsgroende [i.e., Detroit] Ierondoquet & onjagera and all other hunting Places westward to ye Crowne to be held for us and our posterity Least others might Incorach on us then wee also partition the hunting Places between us and the French Indians [i.e., the “Dish with One Spoon” treaty] but since then they are gone farr within the Limits and the french got more by settling Trongsgroende and we must Joyne our Opinion with yours that of wee suffer the french to settle at onjagera being the only way to ward hunting wee will be altogether shut and Debarred, of means for our lively hood.”

Sensing that the English might once more be interested in extending their protection to Haudenosaunce hunting territory the “Sachims” requested a representative from New York to accompany a delegation to Niagara to order the French to take down what they had “Erected” at Niagara. In response to criticism from Livingston and Schuyler about independent Haudenosaunce diplomacy with the French, the “Sachims” stated that they were always ready to “Consult and Advise” with the Crown’s representatives at Albany:

“but desire you’ll not be slack in you[r] Assistance as formerly whe[n] wee Required it So much that wee were Oblidged to fly for it for want of help at that time when the french burned Down our Castles and Destroyed our Corn [i.e., the 1687 Denonville expedition against the Senecas] therefore Lett us always lye in your thoughts and act the Brotherly part in giveing Assistance when Its needfull which wee promise shall not be wanted on our side to you.”<sup>458</sup>

In other words, the Haudenosaunce explained once more to English authorities that in lieu of direct diplomatic communication from the Crown accepting their deed and manifestation of the Crown’s protection of their beaver hunting lands via military assistance in ejecting the French from Detroit, the terms of the provisional deed of hunting territory offered to the Crown in 1701 remained unfulfilled, and they retained the capacity to act independently to protect their interests.

New York authorities complained loudly to metropolitan English officials about the French fort at Niagara. On June 9, 1720, Colonel Peter Schuyler wrote to the Lords of Trade expressing grave concern at the prospect of the French settling and securing “those passes through which the five Nations usually go to hunt, and the far Indians come to trade at Albany,” noting that “those



very Lands have been given in a publique & solemn manner by the five nations to the crown of Great Brittain many years agoe.”<sup>459</sup> On July 13, 1720, Schuyler wrote again to the Lords of Trade, forwarding a copy of the journal kept by Provincial Interpreter Lawrence Claesen (who accompanied “three Sachims of the Sinnekes” to Niagara in late May 1720. Claesen reported that the French claimed to have “leave” from the “young fighting men of the Sinnekis” for their “House at Octjagara” and that they refused to leave unless ordered to do so by the Governor of Canada. Claesen also noted that a “French Smith” was then residing at “Tjerondequatt” [i.e., Irondequoit], where he had been sent by the Governor of Canada “to work for the Sinnekies gratis.” Schuyler urged the Lords of Trade to raise the issue with the “Court of France,” arguing that the alleged French “trading house” at Niagara occupied “a Pass through which the five Nations Generally go to hunt & the farr Indians come trade at Albany.” Permitting the French to establish a “foothold” there might, in Schuyler’s opinion “prove of fatal consequence to His Majesties settlements on this Continent in general tho’ more immediately in this Province [i.e., New York].”<sup>460</sup>

A conference at Albany in late August 1720 initiated a pattern in Covenant Chain diplomacy that persisted for the next two decades. Anglo-American officials complained to the Haudenosaunee about the Senecas permitting the French to erect a fort “on your Land at Jagara which the brethren have many years agoe surrender’d to the Crown of Great Brittain to be Kept for them and their prosperity [sic].” The Haudenosaunee responded with offers to accompany an English force sent to Niagara to “pull it Down.”<sup>461</sup> In lieu of demonstrated English commitment, the Haudenosaunee simply refused to act against the French presence at Niagara.

New York Governor William Burnet, who arrived in the colony in September 1721, cited the 1713 Treaty of Utrecht (which, according to him, “conceded” the Haudenosaunee to England) in his correspondence with Canadian Governor Philippe de Rigaud, Marquis de Vaudreuil objecting to the French establishment at Niagara.<sup>462</sup> Yet in his correspondence with metropolitan English officials, he claimed that:

“Niagara and a thousand miles further all round the Lakes, has been long used by the Five Nations as their Hunting Country after having subdued the old Inhabitants, before the French came into America, all which Right the five Nations have conveyed to the Crown of Great Britain in these express words in their reply to Lieut[enant] Governor Nanfan at

Albany July 19, 1701: ‘We do give up and render all that land where the Bever Hunting is which we won in War eighty years agoe to Coraghkoe our Great King and pray that he may be our Protector and Defender there.’ And in that very Treaty the Indians complained of the French settling at the Detroit between Lake Erie & Lake Huron as an encroachment on the Land of their Beaver-hunting.”<sup>463</sup>

Unsuccessful in persuading the New York Assembly to fund the construction of an English fort at Niagara,<sup>464</sup> Burnet dispatched a party of Albany traders to Irondequoit in September 1722 with orders to construct a “trading house” there. The party, under the leadership of Colonel Abraham Schuyler, was to attempt to

“purchase a Tract of Land in ye Kings name, and to agree with ye Sinnekes for it, w[hic]h shall be paid by ye Publik in order yt it may be granted to Patent to those yt shal[ll] be ye first Settlers there for their incouragement.”<sup>465</sup>

Burnet’s proposal to make a purchase from the Senecas of land at Irondequoit that was part of the July 19, 1701 provisional deed indicates awareness on the part of New York colonial authorities that, contrary to public assertions, the terms of that deed had not been fully executed. The Senecas were not interested in selling land at Irondequoit to the English at that time, but by May 1723 Provincial Interpreter Lawrence Claessen reported that while the “Sachems of the Senecas” had denied his request to “build a Fort at Onjagara,” they had “given him leave to build a Trading House at Irondequat.”<sup>466</sup> Less than a month later, on June 5, 1723, the Albany Commissioners complained to the Haudenosaunee about their having granted the French “leave to build a Trading House at Kaskoghsago near Irondequat on land (say they) [i.e., the Commissioners] you long since resigned to the Crown of Great Britain.”<sup>467</sup>

Matters remained at an impasse for the next two years. In lieu of substantive demonstration of Crown protection, the Haudenosaunee would not accede to English requests to expel the French from the Niagara region. Burnet shifted to a strategy of encouraging the Haudenosaunee “to carry on the Trade with the Farr Indians through your Country” to Albany as a means of challenging the economic threat of the French presence at Niagara.<sup>468</sup> These efforts proved a modest success. In late May 1723, the Albany Commissioners welcomed a party of “Eighty Men besides Women &

Children” who had traveled from “monsieumackinac” [i.e., Michilimackinac, near modern Mackinac City, Michigan] to trade. Representatives from that party claimed to:

“have sent Calumets of Peace amongst the Six Nations and are empowered by their Several Tribes to desire that they may be joined as a Seventh Nation in the Covt & League of Peace & Unity with this Govt.”

The Commissioners enthusiastically “receive[d] them as the Seventh Nation” but in lieu of confirmation from the Haudenosaunee that gesture reflected more of a concern for optics at a heated political moment than a reflection of real change in the terms of the Covenant Chain alliance.<sup>469</sup>

Burnet related to the Lords of Trade in June 1723 the fruits of his effort to post a “Company” of men in Seneca country to help divert the interior fur trade away from Montréal and toward Albany. He explained that:

“as the Indians that come from the remote Lakes to go to Canada are commonly in want of Provisions when they come below the falls of Niagara, they are obliged to supply themselves in the Sinnekes Country where our people are then they may take their choice where they will go and trade which considering the experiences they have now had of the cheapness of Goods in this Province, we need not fear will be universally in our favor.”<sup>470</sup>

Yet by September 15, 1724 Burnet reached the conclusion that “a good Block House at the mouth of the Onnondages River” [i.e., modern Oswego, New York] would be necessary to divert the “great Beaver Trade” of the “Far Indians” to Albany via Haudenosaunee homelands. He expressed his appreciation to the Haudenosaunee for having “made the Path open for the far Indians to come and trade with our People, among you, and to come through to Albany,” and asked that they “continue to keep the Path swept and clean for all farr Indians to come and trade with our People” once the English built their “house next spring among the Onnondages.”<sup>471</sup> The Haudenosaunee offered preliminary “consent” for the “Block House” Burnet sought to build at Oswego two days later, but expressed their concern about the potential for extortionate pricing of trade goods at the planned outpost, warning that it would “be of no use” to the Haudenosaunee unless prices were on par with those offered at Albany. The Haudenosaunee proposed an alternate site for the

“Blockhouse” at the “end of Oneide Lake,” but Burnet rejected that suggestion on the grounds that the “far Indians pass only by the mouth of the [Oswego] River and do not come up to the Oneides Lake.” The Governor also warned the Haudenosaunee not to expect prices at Oswego on par with those of Albany since such arrangements made no allowance “for the trouble of Carrying” trade goods to the Lake Ontario shore. On September 20, 1724, Teganissorens issued formal approval from the Haudenosaunee for the proposed “Block House” at Oswego and expressed their hope that Burnet “may get many Beavers in that Trap.”<sup>472</sup>

The French viewed English plans for a post at Oswego as a direct threat to their trading interests in the upper Great Lakes. Metropolitan authorities in Paris resolved in May 1726 to construct a “stone house at Niagara,” supported by “two barks” [i.e., barques, sailing ships of three or more masts] to patrol Lake Ontario and “prevent the Indians carrying their peltries to the English.”<sup>473</sup> The response of the English to this development once more brought the question of the Haudenosaunee placing their “Beaver Hunting Grounds” under Crown protection to the forefront of Covenant Chain diplomacy.

On September 7, 1726 Burnet convened a “private conference”<sup>474</sup> at Albany with “two Sachims of each of the Six<sup>475</sup> Nations.” This meeting occurred prior to the “publick” proceedings and took the form of an interrogation of the Haudenosaunee by Burnet, who sought “the truth of all what has passed between them and the French in relation to the Building or Settlement at Niagara.” “Ajewachtha an Onnondage” served as the “Speaker,” (or, more accurately, the respondent) for the Haudenosaunee. He pledged to tell Burnet the truth “and not conceal it for we are one heart and mind with you, and why should we dissemble[?]” Ajewachtha reported that the Onnondagas had given the French “leave for building at Niagara” in a 1725 meeting with Charles Le Moyne de Longueuil. Ajewachtha attested that the Onnondagas “being prevail’d upon by Fair speeches and promises” from Longueuil consented to his request for a “bigger house” at Niagara and “Vessels in Cadaracqui lake” [i.e., Lake Ontario] and in doing so they “rejected” a wampum belt sent to Onondaga by the Senecas requesting that no consent be given for any French installation “at Niagara or at Ochsweweke [i.e. Lake Erie] or elsewhere on their land.”<sup>476</sup>

After this introductory comment, the record of the meeting reads as the transcript of an interrogation – Burnet peppered Ajewachtha with questions, and the latter responded. Ajewachtha reported that Longueuil expected the Haudenosaunee to “sit still and smoke their Pipe[s]” in the

event of war between England and France in the vicinity of “Cadaraqui Lake” but refused to commit to mandating the same neutrality of the “far Indians” and other “Indians in Canada” in the event of war. Burnet then asked whether “the Land at Niagara belongs to the Onondagoes, or to the Sinnekes, or to all the Six Nations?” Before Ajewachtha could respond a “Sinneke Sachim named Kanaharighton [i.e., Cagenquarichten or Blewbeck]<sup>477</sup> said the land at Niagara belonged to their Nation particularly.” The “Sachims of the other five Nations” confirmed Seneca proprietorship not only of the Niagara region but also “the land opposite to it on the other side of Cadarachqui Lake.” Burnet elicited from Ajewachtha several statements of regret for the Onondagas having consented not only to the French stone fort at Niagara, on Seneca land, but also doing so without the knowledge of the other Haudenosaunee nations. The Governor then asked the Haudenosaunee whether they found the French fort at Niagara “prejudicial” to their hunting or to “the far Indians coming to them.” If so, he offered to “represent” their complaint to the English Crown. That opened the door for Ajewachtha to emerge from the rhetorical corner into which Burnet had painted him:

“We do not only complain against the proceedings of the French in fortifying Niagara on our Land contrary to our inclination and without our consent, to pen us up from our chief hunting place, but we also humbly beg and desire that Your Excellency will be pleased to write to His Majesty King George that he may have compassion on us, and write to the King of France to order his Governour of Canada to remove the building at Niagara, for we think it very prejudicial to us all.”<sup>478</sup>

The “publick” portion of the conference opened on September 9, 1726 with a lengthy speech from Burnet on the history of French hostility toward the Haudenosaunee in which he quoted pithy passages from La Potherie’s four-volume Histoire de l’Amérique Septentrionale (1722). That opening set the stage or Burnet’s subject of primary concern: the French construction of “a strong House of Stone or a Fort at Niagara.” He sought to ascertain whether that structure interfered with Haudenosaunee access to hunting grounds or hindered them from “going freely among the far Nations of Indians as well as those Indians having full liberty to come into Your Country on account of Trade.” If so, Burnet promised to inform the King of England that the French establishment of Fort Niagara constituted a violation of the protections of free trade for Indigenous nations in North America embodied in Article 15 of the 1713 Treaty of Utrecht. Burnet predicted

that would lead to the King of France ordering Fort Niagara “pulled down,” after which event the Haudenosaunee could expect to “sleep quietly and undisturb’d in your Villages.”<sup>479</sup>

“Kanakarighton a Sinneke Sachim” replied to Burnet on behalf of the Haudenosaunee on September 13, 1726. He denied the claim made by Longueuil that the “Six Nations” had consented to the “House or Fort” at Niagara, claiming that they had in fact told the French as recently as July 14, 1726 “to desist from making any building there.” For rhetorical emphasis, Cagenquarichten exclaimed that “[w]e speak now in the name of all the Six Nations and come to you howling” – he requested that Burnet write to the King of England as he had offered to do, informing him “that the Six Nations desire that the Fort at Niagara may be demolished.” He added a belt of wampum to this request “as a token that you [i.e., Burnet] not be negligent to write to the King, the sooner the better, and desire that the letter may be writ very pressing.”<sup>480</sup>

Burnet made an immediate reply to the Haudenosaunee on September 13, 1726, promising to “write to the King my Master in a pressing manner, that he may perswade the King of France to order the Fort at Niagara to be pulled down.”<sup>481</sup> The next day (September 14, 1726), Burnet hosted a council with:

“two Sachims of the Sinnekes named Kanakarighton and Thanintoronwee, three Sachims of Cayouge named Otsochkooree, DeKanisoree and Aenjeweerat [and] two Sachims of the Onnondage named Kachjakarodon and Sadekeenaghtie.”

Citing the public complaint made by the Haudenosaunee about the French encroachment on their land at Niagara, and the expectation of the Haudenosaunee that the English Crown would “protect them in the quiet Enjoyment of their own lands,” Burnet advised the “Sachims” that:

“[i]t would be proper for them to do at this time what they proposed to do 25 years ago, which was to submit and give up all their hunting Country to the King, and to sign a Deed for it, which however has not been done, and perhaps for that reason their proposal at that time has not been so well remembered as it would have been if they had signed such a Deed, Therefore His Excellency [i.e., Burnet] proposed that they should now sign a Deed confirming that proposal, and likewise submitting and giving up all their Land adjoining to the Lake of Oswego [i.e., Lake Erie] and narrow Passage between it and the Lake

Cadarachqui [i.e., Lake Ontario] [and also all the Land along the said Lake Catarachqui (sic)] thirty miles from the Water of the said lakes and Rivers directly into the Country so as to leave their castles [i.e., settlements] out of it, or sixty miles into the Country so as to include all their Castles and country.”<sup>482</sup>

Burnet’s statement reflected his awareness that the provisional surrender of territory for Crown protection by the Haudenosaunee on July 19, 1701 had not been fulfilled. The land in question (which included the Niagara region) was not under Crown protection as of September 14, 1726, hence his request for a new deed. He appeared to blame the Haudenosaunee for these circumstances, alleging their failure to sign the deed in 1701, though that probably surprised at least two of the Onondaga “Sachims” present that day - “Sadekeenaghtie” [i.e., Sadekenaktie] and “Kachjakoarodon” both signed the July 19, 1701 deed.<sup>483</sup> Burnet’s proposal of September 14, 1726 offered the Haudenosaunee “Sachims” present a choice of terms: either a revised version of the provisional 1701 deed to “Beaver Hunting” grounds (with additional land added between Lake Ontario and Haudenosaunee homelands) or an even more extensive deed that included the content of the first option and added territory from the south shore of Lake Ontario sixty miles inland, allegedly encompassing the entire homelands of the Senecas, Cayugas, and Onondagas. The latter geographical description actually only represented the northern portions of those nations’ territories but would have been understood as a crucial area for defense in light of the routes taken by French expeditionary forces during the invasions of Seneca country in 1687 and of Onondaga country in 1696. The Haudenosaunee delegates chose the latter option encompassing “all their Castles, and that they would then Expect that His Majesty would be pleased to defend them from the Incroachments of the French.” Burnet then hedged on the terms of Crown protection, stating that:

“whilst it is peace His Majesty could use no harsh measures against the French, but only require them to stand to the Treaties concluded between the two Crowns, but in time of War that he would protect and defend them against all attempts and Incroachments whatsoever to be offered by the French.”<sup>484</sup>

The September 14, 1726 “Deed in Trust from three of the Five Nations of Indians to the King” opened with an explicit reference to the terms of the July 19, 1701 agreement by which the Haudenosaunee:

“did... Give and Render up all their Land where the Beaver Hunting is which they won With the Sword then Eighty Years Ago to CORACKOO our Great King Praying that he might be their Protector and Defender there. For which they desired that their Secretary might then draw an Instrument for them to Sign & Seal That it might be Carried to the King as by the minutes thereof now in Custody of the Secretary for Indian Affairs at Albany may more fully and at Large appear.

The September 14, 1726 deed continued with an attestation of the Seneca, Cayuga, and Onondaga signatories of their desire to grant to the Crown “all the Said Land and Beaver Hunting” described in the July 19, 1701 provisional deed and then added an additional tract extending:

“Sixty miles distance taken Directly from the water into the Country Beginning from a Creek Call’d Canahogue [i.e., the Cuyhoga River at modern Cleveland, Ohio] on the Lake Oswego [i.e., Lake Erie] all along the said lake and all along the narrow passage from the said Lake to the Falls of Oniagara Called Cahaqueraghe and all along the River of Oniagra and all along the Lake Cadarackquis [i.e., Lake Ontario] to the Creek Called Sodoms [i.e., Sodus] belonging to the Senekes and from Sodoms to the hill Called Tegerhunkserode Belonging to the Cayouges, and from Tegerhunkseroda [sic] to the Creek Called Cayhunghage [i.e., the Salmon River, at modern Pulaski, New York] Belonging to the Onnondages.”

The deed concluded with the statement that all the lands described were “to be protected and Defended by his said Majesty and his heirs and Successors for Ever To and for Our USE our heirs & Successors and the Said Three Nations.” The “Sachims” present then marked and “sealed” the deed with totemic clan signatures.<sup>485</sup>

Unlike the July 19, 1701 provisional Haudenosaunee deed (which should be understood as reflecting both the “propositions” submitted in council by the Haudenosaunee and that date and the deed drafted later that day), the September 14, 1726 deed from the Senecas, Cayugas, and



Onondagas contained no explicit conditional terms.<sup>486</sup> Notwithstanding that omission from the text of the document, the deed represented no forced capitulation on the part of the Haudenosaunee – they had simply enlisted the prospect of British protection in an effort to discourage any further incursion by the French in Haudenosaunee territory.<sup>487</sup> It is apparent that Burnet recognized the need for British actions to follow words for the deed to have any meaning. In his December 4, 1726 report on the September conference with the Haudenosaunee, Burnet asked the Lords of Trade to take the proceedings “into Your serious consideration” and urged them to “make a full Representation” of the conference to the King so that “strong Instances may be made to the Court of France for a Redress” of the encroachment on Haudenosaunee territory represented by Fort Niagara. Burnet continued:

“Your Lordships will observe that I have undertaken for this [i.e., a promise to the Haudenosaunee to write to the King in hopes of encouraging a diplomatic resolution to Fort Niagara in Europe], which I thought I might lawfully do, but that I have not offered to undertake for the success [i.e., he made no guarantee that Fort Niagara would be demolished] for nothing has had a worse effect with our Indians, than promising and not performing, they remember exactly what is told them from time to time, and have often complained that they have not been supported according to our promises, with I fear too much truth and reason. It will give them Very disadvantageous impressions of our strength and inclination to protect them, if the find that the French may do what they please, and that we give them no relief, and can obtain no redress for them, which makes me depend on Your Lordships goodness in stating their case so as to obtain what they desire, and what so highly concerns the British Interest.”

Burnet claimed that the deed of September 14, 1726 represented “more than ever was obtained of them before, which was to surrender and submit all the land they live in, by an Instrument signed and sealed, to his Majesty.” He attributed his achievement to a combination of Haudenosaunee fear of the French and “the hopes they had of our protection.” He explained away the absence of the Mohawks and Oneidas from the deed on the basis of their living “nearest to us, and do not reach to the French lake, and therefore there was no occasion to mention it to them.” Burnet further claimed, perhaps disingenuously, that inclusion of the Mohawks and Oneidas in the conference of September 14, 1726 risked the leak of the arrangements in the deed to the French,

and that justified, in his view, negotiating “with a few of the cheif and most trusty of the three nations who border upon the lakes.”<sup>488</sup> He concluded his report of the conference by noting his enclosure of a map “wherein the names of places mentioned in the Indian deed of surrender are marked in red Ink.”<sup>489</sup>

English imperial authorities received Burnet’s request and cited the September 14, 1726 Haudenosaunee deed as justification for moving the matter of Fort Niagara to the level of formal diplomatic negotiations with France. The two European nations exchanged official arguments in 1727 and 1728 but reached no resolution of the matter.<sup>490</sup> Fort Niagara remained in place, and English colonial authorities made no report on the failed effort of their metropolitan counterparts to obtain redress for this French trespass on Haudenosaunee “Beaver Hunting” lands.

Nine years later, the subject of Crown protection of Haudenosaunee hunting grounds in the Niagara region surfaced in a conference hosted by New York Governor George Clarke at Albany. On June 27, 1737 Clarke responded to a report that the Haudenosaunee had granted permission for a French post at Irondequoit with unusual vitriol:

“I am told you have given Leave to the French to build a House at Tierondequat; it is a thing so far beyond belief that I could give no Credit to it; on the first report but it is now so Confidently Affirmed that I can no longer Doubt of it. I came hither to Renew to Brighten & to Strengthen the Covenant Chain but till you Come to a resolution to revoke that Leave which you have given to the French and give me your positive and faithful promise not to suffer any Frenchman to build in your Country I cannot speake on that head for what Confidence Can we place in Men who keep not their faith with us; the Great King your Father Glories in a strict Observance of his Treaties with his Breth[r]en of all Nations and he Expects the like from them but when they Warp from their Promise he disclaims their friendship as unworthy of his. Tell me therefore before I speak of Renewing the Covenant Chain what you Intend, you know well that about thirty Six winters ago [i.e., 1701] you gave those Lands to the Great King of England your father to hold & Protect them for you and you know too that Eleven Winters ago [i.e., 1726] you Acknowledged and Confirmed that Gift if your Memories fail you We Cannot forgett it. We Comitted it to writing which time cannot wear out now having in that solemn manner put it into the hands of our King your Father you cannot without his Consent suffer a

		<p>french man or any other but subjects of the great King of England to build on it unless you resolve to throw off his Protection and Friendship.”<sup>491</sup></p> <p>Later the same day, an unnamed Haudenosaunee speaker made a similarly-spirited reply to Clarke:</p> <p>“Brother Corlaer, You spoke very fierce and roughly to us and We hope you will give us the same Liberty. We shall likewise tell you your faults. You tell us you Committ your Affairs to Writing which we do not and so when you look to your Books you know what passed in former times but we keep our Treaties in our heads and therefore shall begin with what passed long ago.</p> <p>Brother Corlaer, At the time when the French built a House at Iagara [i.e., Niagara] the Governor [i.e., Governor Burnet] Asked us in a publick meeting [i.e., September 9, 1726] why we suffered it &amp; did not Demolish it. We answered that we were not able to do it but desired of the Governor to write to the King about it which he promised to do but We have never heard more about it; So think that they who write are as forgetfull as We who do not write for this We Can Remember and think the Governour should at least acquainted us with what Answer he had. Brother Corlaer, You have told us that We have probably forgott what past in former times but our Ancestors have handed down to us from Father to Son what has happened both in the Dutch and English times there has been a Book but perhaps that Book has been destroyed.”</p> <p>The Haudenosaunee speaker assured Clarke that “the French shall not settle on any of our Lands.”<sup>492</sup></p> <p>Following this exchange of “tough talk,” the conference adopted a more amicable tone.<sup>493</sup> Behind the scenes, however, Clarke maneuvered to make a direct purchase of lands at Irondequoit, ostensibly to construct a fort that would pre-empt further French efforts to occupy the area. This endeavor represents another tacit acknowledgment on the part of a Crown official that the terms of the 1726 Haudenosaunee surrender of lands to the Crown for protection remained unfulfilled. Concerned that Clarke’s initiative reflected a desire to set himself up in the fur trade at Irondequoit (and thereby add to the stiff competition they already faced from Oswego), the Albany</p>
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Commissioners (many of whom made their living as fur traders), thwarted the Governor's plans. The Commissioners arranged for Interpreter Laurence Claessen to represent the terms of Clarke's proposed purchase as encompassing all Haudenosaunee lands on the south shore of Lake Ontario from Oswego to Niagara for the purpose of opening them to British settlement. Predictably, the Haudenosaunee answered Claessen:

“with a good deal of heat that they would not sell it, that wherever the Christians settled their hunting was destroyed for the Bever & Deer &c. Fled from the places they were Disturbed.”

Claessen earned Clarke's wrath for this “mistake,” which ended the latter's hopes for a Crown purchase of that portion of Haudenosaunee territory.<sup>494</sup>

Notwithstanding the inability of Crown officials to eject the French from Niagara, evidence indicates that they remained conscious of the commitments entailed in the 1701 and 1726 deeds and referred to them frequently after England once more went to war with France in North America in 1755. British General Edward Braddock, in an April 16, 1755 letter to Colonel William Johnson (who had just been appointed the Crown's Superintendent of Indian Affairs for the Northern Department in North America), ordered Johnson to “produce to the Indians of the Six Nations a deed” (evidently a fresh copy of the 1726 deed) that would be delivered to him and to “recite” Braddock's “Instructions” thereupon to the Haudenosaunee. Braddock's statement to the Haudenosaunee referred to both the July 19, 1701 and September 14, 1726 deeds and described how those documents placed the territories defined therein under Crown protection, “to be defended by his saied [sic] Majesty his Heirs and Successors for ever.” Citing the French construction of:

“Strong Forts with[in] ye Limits of ye saied Land, contrary to the Purport of the (saied) Covenant Chain of ye Saied Deed & Treaty, You are in my Name to Assure the Saied Nations that I am come by his Majesty's Order to destroy all ye saied Forts & to build such others as shall protect & Secure the saied Lands to them their Heirs & Successors for ever according to ye Intent and Spirit of the Saied Treaty & therefore call upon them to take up the Hatchet & Come & take Possession of their own Lands.”<sup>495</sup>

On May 20, 1755, the Crown's instructions to Sir Charles Hardy, the incoming Governor of New York, also quoted the terms of the "solemn Deed" of 1726 and ordered Hardy to "give the most explicit assurances" to the Haudenosaunee of the King's:

"Resolution inviolably to Observe the said Treaty on his Part, and to defend and support them in the quiet Possession of their said hunting Grounds; And you are not upon any Pretence whatsoever to grant Lands to any Person whatever within the Limits described in the said Deed, but to use Your utmost Endeavours to prevent any Settlements being made within the same."<sup>496</sup>

Sir William Johnson, in one of his first formal conferences with the Haudenosaunee following his appointment as Crown Superintendent on June 24, 1755, opened by reciting a lengthy history of French misconduct toward the Haudenosaunee. He then referred to the prior decision of the Haudenosaunee to seek Crown protection, asking rhetorically:

"in order to secure yourself from their [i.e., French] treacherous encroachments, did you not put all your lands under the protection and dominion of the Great King of England your Father, by a solemn deed in writing signed your Great Men of Each Nation, and which the books [i.e., the "Four folio Volumes of the Records of Indian Affairs" kept at Albany] now before me testify?"<sup>497</sup>

The most comprehensive and accurate representation of English understanding of the meaning and obligations entailed in the Haudenosaunee deeds of 1701 and 1726 appeared in Peter Wraxall's 1755 essay "Some Thoughts Upon the British Indian Interest in North America, More Particularly as it Relates to the Northern Confederacy Commonly Called the Six Nations."<sup>498</sup> Wraxall noted that the records of the Albany Commissioners of Indian Affairs (with which he was intimately familiar, having consulted them for the preparation of his 1751 Abridgment) contained many references to the Haudenosaunee protesting French encroachments to their English partners in the Covenant Chain, but:

"the five nations finding their representations and admonitions ineffectual and the French making uninterrupted Strides upon their Lands and hunting Grounds At a public meeting

			<p>(I think) with Lt Govr Nanfan at Albany, They put all their Patrimonial Lands and those obtained by conquest under the Protection of the King of Great Britain, to be by him secured for the use of them and their heirs against the encroachments and ambitious designs of the French.”<sup>499</sup></p> <p>He then referred to the Nanfan deed as:</p> <p>“That memorable and important act by which the Indians [i.e., the Haudenosaunee] put their Patrimonial and conquered Lands under the Protection of the King of Great Britain their Father against the incroachments or Invasions of the French is not understood by then as a cession or Surrender as it seems to have been ignorantly or willfully supposed by some, they intended and look upon it as reserving the Property and Possession of the Soil to themselves and their Heirs. This Property the Six Nations are by no means willing to part with and are equally averse and jealous that any Forts or Settlements should be made thereon either by us or the French. These are their hunting Grounds, by the profits of which they are to maintain themselves and their Families, they are therefore against any settlements because the consequence would be the driving away Game &amp; destroying their Livelyhood and Riches. Besides, part of these Lands, they have appointed for their allies and Dependents, these they want to congregate near them &amp; by that means increase their strength, Power and consequence.”<sup>500</sup></p> <p>While Wraxall persisted in his confusion of the geography associated with the 1701 and 1726 deeds, he nevertheless clearly recognized that the “Surrender” of territory on the part of the Haudenosaunee was not a transfer of sovereign proprietorship to the Crown.</p> <p>Wraxall next noted that the failure of the English Crown to date to fulfill its commitments made in the deed (actually the two deeds of 1701 and 1726) had left the Haudenosaunee concerned that if either the English or French achieved military dominance over the other in North America, the victor would soon assert arbitrary control over the Haudenosaunee. He urged the Crown to act:</p> <p>“Could they [i.e., the Haudenosaunee] depend upon our destroying the French Forts &amp; Settlements and erecting none of our own in their room but leave those Lands quite free to them, I am inclined to believe, that not only the Six Nations, but most nations of</p>
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Indians in those parts might be brought to join us upon this plan, very soon would the French be then either totally demolished or reduced to the necessity of abandoning their various encroachments. But the Indians suspect we have different views; that to restore their Lands to their natural state and deliver 'em over to them as Proprietors of the soil are not the ends we aim at."<sup>501</sup>

Wraxall made the stakes of the issue clear:

"That the Indians be remedied and satisfied with regard to their complaints about their Lands particularly those Grants & Patents mentioned in the former part of these Papers, and that no Patents for Lands be hereafter Granted but for such as shall be bought in the presence of the superintendent at public meetings and the sale recorded by His Majesty's Sec[retar]y for Indian Affairs. No one point will be of more beneficial consequence that this and unless it be put upon some satisfactory footing, it will be utterly impossible to establish the confidence of the Indians, to defeat the measures of the French, and to secure these colonies from the ravages to which they will be subjected. If this is not done, we shall vainly project Expedients, waste our Treasure, and the Indians will infallibly quit our Alliance.

Wraxall reiterated that fulfillment of prior promises of Crown protection of Haudenosaunee hunting territories, and abandoning the notion that the deeds of 1701 and 1726 constituted permanent "surrenders" represented crucial steps in restoring the Covenant Chain relationship to its former good standing. By "relinquishing these claims, assuring them that we would in no manner invade their Hunting Grounds but secure them to them and their use," the English might be able to obtain the assistance of the Haudenosaunee in "demolishing [the French forts at] Niagara & Cadaraqui," with the attendant benefits of greater mutual security and improved terms of trade for both parties.<sup>502</sup>

The outbreak of the Seven Years' War in North America marked a crucial inflection point for promoting consciousness on the part of Anglo-American officials of both the sovereign status of their Haudenosaunee allies in the Covenant Chain and the Crown's obligation, under the terms of that alliance, to provide protection to the Haudenosaunee. Writing in 1756, Pennsylvania surveyor Lewis Evans noted (in a reference to the disputed terms of Article 15 of the 1713 Treaty of

Utrecht) that while Europeans debated the question of Haudenosaunee subjecthood to either the French or English crowns, Britons in the colonies understood that the Haudenosaunee retained their inherent sovereignty in the Covenant Chain alliance. The colonists, according to Evans, knew:

“That they [i.e., the Haudenosaunee] are not subject to our Laws; That they have no Magistrates appointed over them by our King; That they have no representatives in our Assemblies; That their own Consent is necessary to engage them in War on our Side; But that they have the Power of Life and Death, Peace and War, in their own Councils, without being accountable to us. Subjection is what they are unacquainted with, even in their own State; there being no such Thing as coercive Power among them; Their Chiefs, are such only in Virtue of their Credit and not their Power. They may indeed, with as much or greater Propriety, be said to be Subjects to the King of Great Britain as to their own Chiefs, because of their Dependance upon Him [i.e., the Crown] for Protection, especially against the French.”<sup>503</sup>

Similarly, as discussed above, the Committee of the Privy Council acknowledged in June 1759 the shortcomings of the Crown’s commitment to protection of its Haudenosaunee partners in the Covenant Chain since the 1701 Nanfan Treaty and recommended prioritizing “Protection” of Indigenous allies’ lands over promoting “Settlement” of those lands by colonists.<sup>504</sup>

<sup>360</sup> NYCD 4: 896-911 (quote p.896).

<sup>361</sup> WJP 13: 40-41.

<sup>362</sup> Ibid 1: 854.

<sup>363</sup> Ibid 11: 895.

<sup>364</sup> NYCD 4: 896.

<sup>365</sup> Ibid: 896-97.

<sup>366</sup> Parmenter, "Onenwahatirighsi Sa Genthō Skaghnuhtudigh'," 238-39.

<sup>367</sup> NYCD 4: 896.



		<p><sup>368</sup> <u>Ibid</u>: 897. The “Hendrick” referred to in the context of the 1701 deed is the more senior Hendrick Tejonohokarawa (fl. 1660-1735).</p> <p><sup>369</sup> <u>Ibid</u>: 898.</p> <p><sup>370</sup> <u>Ibid</u>.</p> <p><sup>371</sup> <u>Ibid</u>.</p> <p><sup>372</sup> <u>Ibid</u>.</p> <p><sup>373</sup> Fenton, “Structure, Continuity, and Change in the Process of Iroquois Treaty-making,” in Jennings et al, eds., <u>History and Culture of Iroquois Diplomacy</u>, 24.</p> <p><sup>374</sup> <u>NYCD 4: 897-99</u>, 904-6. On July 21, 1701, Livingston designated “Sadeganaktie – Sachim of Onnondage” [i.e., Sadekenaktie] as the “Speaker” of a Haudenosaunee delegation that did not include the Mohawks (<u>ibid</u>: 907).</p> <p><sup>375</sup> Fenton, “Structure, Continuity, and Change,” 24.</p> <p><sup>376</sup> <u>NYCD 4: 896</u>. Cf. the abbreviated version of the record of negotiations from July 14-21, 1701 in <u>WA</u>, 38-42.</p> <p><sup>377</sup> <u>NYCD 4: 896</u>.</p> <p><sup>378</sup> Fenton, “Structure, Continuity, and Change,” 24.</p> <p><sup>379</sup> <u>NYCD 4: 897</u>.</p> <p><sup>380</sup> This should be understood as a reference to the male warrior population.</p> <p><sup>381</sup> <u>NYCD 4: 897-99</u> (quotes pp. 898-99). For the delivery of the skin map to the messengers sent to Onondaga in June 1701, see <u>ibid</u>: 894.</p> <p><sup>382</sup> <u>Ibid</u>: 899-901 (quotes). For the journal of the messengers sent from Albany to Onondaga, see <u>ibid</u>: 889-95. The “present” delivered to the Haudenosaunee at Albany on July 18, 1701 consisted of: “150 gunns, 25 kettles, 16 dozen knives, 25 looking glasses, 3 p[iece]s red and 3 p[ieces] blew strouds 2 p[iece]s duffels 1 p[iece] blankets, 40 kegs of Rum, 1000 barrs lead, 200 bags powder, 15 rolls Tobacco, 50 Hatchetts 50 shirts, 120 pair stockings, [1] Gross pipes, 5 vatts of Bear [i.e., beer], 200 wheat loaves” and “private presents of gunns strouds Blankets shirts, powder lead, etc. to each particular Sachim” (<u>ibid</u>: 901).</p> <p><sup>383</sup> <u>Ibid</u>: 904-6 (quotes). Prior to 1701, the Haudenosaunee had demonstrated a willingness to place potentially contested lands within their jurisdiction under Crown protection, which to their minds</p>
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enlisted the resources of their Covenant Chain allies in ensuring the preservation of their interests in those areas. See Colden, History, 43-46; Parmenter, Edge of the Woods, 170- 72, 252-53.

<sup>384</sup> NYCD 4: 908.

<sup>385</sup> An annotation added to the document identifies the “Aragaritkas” as “Hurons” [i.e., Wendats]. See ibid: 908n1. Cf. WA, 39, where Wraxall opined that “some of” the names comprising the seven nations to whom the Haudenosaunee referred “are divisional Names of the Dowaganhaes nation – more properly called Castles [i.e., names for settlements].” Cf. also José Antonio Brandão and William A. Starna, “The Treaties of 1701: A Triumph of Iroquois Diplomacy,” Ethnohistory 43.2 (1996): 226, where the authors contend, on the basis of linguistic evidence, that the “seven Nations” referred to in the deed included the Wendats (“Aragaritkas”), and the “Eries, Neutrals, Wenros, Petuns (Tionondade),” the Mascoutens, “and other Indian groups attacked and dispersed by the Iroquois in the seventeenth century.” For Brandão and Starna, the home territories of these nations “defeated or dispersed by the Iroquois” align with their reading of the territory encompassed by the July 19, 1701 deed: Wendat tribal homelands between Lake Simcoe and the southeast shore of Georgian Bay, those of the Petuns southwest of the Wendats and directly south of Georgian Bay, those of the Wenros and Neutrals west and southwest of Lake Ontario, those of the Eries south of Lake Erie, and those of the Mascouten in the Lower Peninsula of Michigan. The claim of the authors (ibid, 227) that the northern boundary of the July 19, 1701 deed ran north from modern Toronto to include all of former Wendat homelands and all of the modern Lower Peninsula of Michigan south of the Straits of Mackinac is not supported by the visual evidence of the Clowes Map. Cf. also Lytwyn’s criticism of Brandão and Starna’s constrained interpretation of the boundaries of the July 19, 1701 deed, arguing instead for a literal reading of the mileage stated in the deed on the basis of a dubious assumption that a reference to “elk” in the document actually meant “moose.” See “A Dish with One Spoon,” 218n11).

<sup>386</sup> NYCD 4: 908-10. For a discussion of captive adoption as a means of securing Haudenosaunee territorial claims during the seventeenth century, see Parmenter, Edge of the Woods, xxxvi, 15, 57.

<sup>387</sup> Thirteen of the seventeen English representatives present on July 12, 1701 are recorded as signing the deed on July 19, 1701. Aldermen Johannes Roseboom and Wessel Ten Broek, Hendrick Hanse, and interpreter Hiletie van Olinda did not sign the July 19, 1701 deed. Additional English signatories of the July 19, 1701 deed who were not recorded present on July 12 were: “M. Clarkson Secretary” and “S Clows Surveyor” [the latter of whom authored the map of the deed discussed below]. Cf. NYCD 4: 896, 911.

<sup>388</sup> The order in which the names of the twenty Haudenosaunee signatories appear on the July 19, 1701 deed differed from the east-west [i.e., Mohawk, Oneida, Onondaga, Cayuga, Seneca] national rendering of thirty-three “Sachims” present on July 14, 1701. Nine of the twenty Haudenosaunee signatories of the July 19, 1701 deed were not recorded as present on July 14, 1701. Three Seneca signatories appear at the top left of the list of July 19, 1701 deed signatories. Two were recorded present on July 14: [“Tehonwaragenie” (cf. “Tahawerageni on the July 14 list) and “Sonahsowanne” (cf. “Sonochsowanne” on the July 14 list). The third Seneca signatory of the July 19 deed was “Tosoquathoa.” Three Cayuga signatories appear at the top right of the list of July 19, 1701 deed signatories. One was recorded present on July 14: [“Thodsinohago” (cf. “Tosinawejago” on the July 14 list). The other two Cayuga signatories of the July 19 deed were: “Sodsiowanne” and “Nijuchsagentsiquoa.” Six Mohawk signatories appear in the left column of the list, beneath the Seneca signatories. Four were recorded present on July 14: “Onucheranorum,” “Teoniahigarawe alias Hendrik” (cf. “Hendrick” on the July 14 list), “Tirogaren alias Cornelis” (cf. “Cornelis” on the July 14 list), and “Sinonquiroso” (cf. “Sinnonquirose” on the July 14 list). The other two Mohawk signatories of the July 19 deed were: “Tsinago” and “Tanochrachhoss.” Five Onondaga signatories appear to the right of the Mohawks listed, underneath the Cayuga signatories. Three were recorded present on July 14: “Tegachnawadiqua” (cf. “Degachnawadischqui” on the July 14 list), “Kachwadochon” (cf. “Kackradogha” on the July 14 list), and “Sadeganastie” (cf. “Sadeganaktie” on the July 14 list). The other two Onondaga signatories of the July 19, 1701 deed were: “Tagatschede,” and “Achrireho.” Finally, three Oneida signatories appear underneath the Onondaga list. One was recorded present on July 14: “Degaronda” (cf. “Degarondagoo” on the July 14 list). The other two Oneida signatories of the July 19, 1701 deed were: “Canadagariaz” and “Tiorachkoe.” Cf. *ibid*: 897-98, 910.

<sup>389</sup> They are listed as: “Sadeganaktie – Sachim of Onnondage Speaker, Canadagariesk of Oneydes, Sadgeowanne of Cayouges, Tohowarageni [and] Sonesowanne Sinnekes.” *Ibid*: 907. Cf. from the July 19, 1701 list: “Sadeganastfie,” “Canadagariaz,” “Sodsiowanne,” “Tehonwarengenie,” and “Sonahsowanne” (*ibid*: 910). No Mohawks were recorded as present at this meeting.

<sup>390</sup> *Ibid*: 907-8. Hilletie van Olinda, who had not signed the July 19, 1701 deed, served as the interpreter for this meeting. Note that Sadekenaktie’s speech occurred prior to the Haudenosaunee re-establishing their own settlement on the north shore of Lake Ontario in proximity to Fort Frontenac. Sadekenaktie’s depiction of Fort Frontenac as a potential site of diversion of Haudenosaunee-procured peltry from the north shore of Lake Ontario from Albany would certainly have caught the attention of Secretary Livingston, who had expressed such concerns as

recently as April 1700. See ibid: 651. In October 1700, English officials in Albany received intelligence of an offer by the Governor of Canada to the Haudenosaunee to send a blacksmith to Fort Frontenac who shall “make everything for you, & also all necessary merchandize fit for your trade.” Callières also offered to accept “Moose & Elk skins” in addition to beaver from Haudenosaunee hunters and, in recognition of the “Dish with One Spoon” treaty, promised that “if ye remote Indians have a mind to trade w[i]th your people I will not hinder it.” See ibid: 799.

<sup>391</sup> Lauren Benton and Adam Clulow, “Introduction,” in Benton, Clulow, and Bain Attwood, eds., Protection and Empire: A Global History (Cambridge: Cambridge University Press, 2017), 1-4; idem, “Webs of Protection and Interpolity Zones in the Early Modern World,” in ibid, 58 (quote), 63; Annabel Brett, “Protection as a Political Concept in English Political Thought, 1603-51,” in ibid, 107.

<sup>392</sup> Cf. Jennings et al, eds., History and Culture of Iroquois Diplomacy, 165; Shannon, Iroquois Diplomacy on the Early American Frontier (New York: Viking, 2008), 62.

<sup>393</sup> Parmenter, Edge of the Woods, 269-73.

<sup>394</sup> O’Callaghan, ed., Journal of the Legislative Council of the Colony of New-York, Began the 9th Day of April, 1691; and Ended the 27th of September 1743 (Albany: Weed, Parsons, and Son, 1861), 157.

<sup>395</sup> NYCD 4: 888.

<sup>396</sup> “The Treaties of 1701: A Triumph of Iroquois Diplomacy,” 243n134.

<sup>397</sup> NYCD 4: 981. No response from the Miamis or Wendats is recorded.

<sup>398</sup> Theodore C. Pease, ed., Anglo-French Boundary Disputes in the West, 1749-1763, IHC 27 (Springfield, IL: Illinois State Historical Library, 1936): 235,242.

<sup>399</sup> O’Callaghan, ed., Documentary History of the State of New York (4 vols., Albany, NY: Weed, Parsons & Co., 1849-53) 2: 447-53 (quotes pp.449, 452-53). The members of the Committee were listed as “Dunk Halifax [i.e., the Earl of Halifax], James Oswald, Soame Jenyns, and W[ilia]m Sloper.” They noted at the end of their Report that the British capture of French Fort Duquesne [at modern Pittsburgh] in November 1758 meant that “a great and valuable part of the Country included in the Deeds of 1701 and 1726 have been recovered to the Dominion of the Crown of Great Britain” but also claimed no knowledge of “the negotiations with the Indians in consequence of it” and therefore expressed uncertainty as to “what measures may be proper to pursue to secure the Dominion of this part of His Majesty’s territories and fix the Indians in Our Interest,”

indicating their conviction that any substantive claim of “Dominion” would require the consent of Indigenous proprietors of the lands in question.”

<sup>400</sup> Cf. the assertion of Andrew D. Beaumont that British Crown officials viewed the Haudenosaunee as merely an “extension of Britain’s sphere of influence on the [North American] continent, comprising quasi-autonomous ‘middle-men’ whose continuing support was purchased in costly ritualistic treaties” (see Colonial America and the Earl of Halifax, 1748-1761 (Oxford: Oxford University Press, 2015, 122). Beaumont represents the relationship between Crown expenditures on behalf of the Haudenosaunee and the Crown’s alleged exaggeration of the relative importance and strength of the Haudenosaunee as a mere tautology, in which each phenomenon simply reinforced the other. The evidence indicates that Crown officials possessed a greater awareness of the history of Covenant Chain relations than they are credited with by Beaumont.

<sup>401</sup> Cf. the claim of Donald H. Kent that the British were aware “that there was nothing real about the claim that the Six Nations owned to land in the area [i.e., of the 1701 deed] on the basis of conquest” and that those claims “should not be taken seriously.” See Iroquois Indians I: History of Pennsylvania Purchases from the Indians (New York: Garland Publishing, 1974), 185-86 (quotes). Kent’s study was prepared as contract research for the United States Indian Claims Commission. He cites only one source (partially) in support of his argument, a letter from General Thomas Gage to Sir William Johnson dated October 7, 1772 (found in WJP 12: 994-95). In the letter, Gage paraphrased the fundamental “Principle” asserted by others “that the Six Nations having conquered such and such Nations, their Territory belongs to them, and the Six Nations being the Kings Subjects which by treaty they have acknowledged themselves to be, those lands belong to the King.” Gage then expressed his personal opinion that it served the Crown “Interest to lay down such principles especially when we were squabbling with the French about Territory.” Finally, Gage professed his personal doubt that “Indians made War for the sake of Territory like Europeans,” but in a crucial passage at the end of the letter (neglected by Kent) he stated: “As for the Six Nations having acknowledged themselves Subjects of the English, that I conclude must be a very gross Mistake and am well satisfied were they told so, they would not be well pleased. I know I would not venture to treat them as Subjects, unless there was a Resolution to make War upon them, which is not very likely to happen, but I believe they would on such an attempt, very soon resolve to cut out Throats.” In an example of the genealogy of errors in historical scholarship, Leroy Eid quoted Kent’s interpretation uncritically in 1979 (see “Ojibwa-Iroquois War,” 316).

<sup>402</sup> “Account of the descriptions, given by Mr. Norton Concerning his County customs & manners, 12 March 1805,” New York State Library (Albany) Manuscript #13350-51, p.1 (quote)(SN05914);

Carl Benn, ed., A Mohawk Memoir from the War of 1812: John Norton – Teyoninhokarawen (Toronto: University of Toronto Press, 2019), 60-61.

<sup>403</sup> Parmenter, Edge of the Woods, 71-82. See also Heidenreich’s discussion and visual rendering of what he refers to as the “Great Dispersions” in “The Great Lakes Basin, 1600-1653,” in R. Cole Harris, ed., Historical Atlas of Canada, Vol.1, From the Beginning to 1800 (Toronto: University of Toronto Press, 1987), 84-85, and Plate 35.

<sup>404</sup> WA, 95.

<sup>405</sup> The “Iroquois du Nord” communities were Haudenosaunee settlements in modern southern Ontario, located principally along the north shore of Lake Ontario, occupied after 1667. The Haudenosaunee reestablished one of these communities opposite French Fort Frontenac (near modern Kingston, ON) after 1701 that persisted until the early 1750s.

<sup>406</sup> NYCD 9: 64-65, 80 (quote p.80); Colden, History, 60. The French acknowledged the Haudenosaunee dispersal of Indigenous populations from modern southern Ontario but refused to recognize that military victory as conferring territorial rights, preferring to rest their claim on rights of prior discovery rather than their Wendat (and other Indigenous) allies, whom they could not or would not support militarily against the Haudenosaunee prior to the 1680s. See Robert J. Surtees, “The Iroquois in Canada,” in Jennings et al, eds., History and Culture of Iroquois Diplomacy, 71.

<sup>407</sup> Colden, History, 49-50 (quote p.50).

<sup>408</sup> Located at the outlet of the Salmon River on the south shore of Lake Ontario near modern Selkirk Shores State Park in Oswego County, New York. See Parmenter, Edge of the Woods, 350n104.

<sup>409</sup> This paragraph is adapted from Parmenter, Edge of the Woods, 176-78. Cf. Colden, History, 56-59.

<sup>410</sup> Claude-Charles Le Roy, dit Bacqueville de La Potherie, Histoire de l’Amerique Septentrionale (4 vols., Paris: Jean-Luc Nion et François Didot, 1722) 4: 179.

<sup>411</sup> NYCD 3: 442.

<sup>412</sup> Ibid: 536. For the locations of these French posts, each of which had been abandoned by 1689, see William J. Eccles, Canada Under Louis XIV, 1663-1701 (Toronto: McClelland and Stewart, 1978), 106-8; Tanner, ed., Atlas of Great Lakes Indian History, Map 6 (pp.32-33); Heidenreich, “Re-Establishment of Trade, 1654-1666,” in Harris, ed., Historical Atlas of Canada 1, Plate 37.

<sup>413</sup> Parmenter, Edge of the Woods, 206-9; Brandão, “Your fyre shall burn no more”: Iroquois Policy toward New France and Its Native Allies to 1701 (Lincoln: University of Nebraska Press, 1997), 125-29.

<sup>414</sup> Parmenter, Edge of the Woods, 224-26, 246-47.

<sup>415</sup> NYCD 4: 237-38. Sanonguirese was one of the three Mohawk signatories of the July 19, 1701 deed.

<sup>416</sup> Ibid 5: 75. The 1697 Memorial also exaggerated the military strength of the Haudenosaunee:

“The said five Nations being the most warlike in those parts of the world, held all their neighbouring Indians in a manner of Tributary subjection, they went sometimes as far as the South Sea, the North West Passage, and Florida, to war, and extended also their conquests over that part of the Country now called Canada.”

<sup>417</sup> Ibid 4: 693-94. On July 18, 1700, a Haudenosaunee delegation complained to Louis-Hector de Callières, the Governor of Canada, of the loss of “55 of our people” during the previous winter’s hunt at the hands of the “Outta8es towards Detroit,” the Illinois “on the river Oyoque” [i.e., Ohio River] and the Miamis “in the river Choueguen” [possibly the Oswego River, which may refer to the attack in proximity to Seneca homelands described by Teganissorens]. See ibid 9: 708-9.

<sup>418</sup> NYCD 4: 694. This refers to the “Dish with One Spoon” treaty negotiations at Onondaga (see discussion above).

<sup>419</sup> Ibid 5: 75.

<sup>420</sup> Ibid 4: 796.

<sup>421</sup> Ibid 4: 735.

<sup>422</sup> Ibid: 736-38. Annotation in the published version of the document identified the “Stiagigroone” as the “Estiaghicks, which, according to Colden, was the Iroquois name for the Sauteurs, or Indians around the Falls of St. Mary; Roone meaning simply ‘men,’ being a termination used by the Iroquois to designate Indians of the Algonkin family.” The “Achsisaghecks” are identified as “Missiagues” per “Colden” (ibid: 737n).

<sup>423</sup> Ibid: 739-41.

<sup>424</sup> Ibid: 870-79 (quotes pp.870, 878).

<sup>425</sup> Ibid: 982-84 (quotes pp.983, 984).

<sup>426</sup> At least six of the twenty Haudenosaunee signatories to the July 19, 1701 deed were recorded present on July 18, 1702. Four Mohawks [“Onuncheranorum,” “Simnonquirese,” “Tanoghratask

(cf. “Tanochrachhoss” on the July 19, 1701 deed), and “Hendrick<sup>27</sup>], one Onondaga [“Sadekanaktie”], and one Cayuga [“Sodsiowanne”]. Cf. ibid.: 910, 985-86.

<sup>427</sup> Ibid.: 986-87.

<sup>428</sup> Ibid.: 988-89.

<sup>429</sup> Ibid.: 989-90.

<sup>430</sup> Brandão and Starna, “Some things may slip out of your memory and be forgott’,” 421-24.

<sup>431</sup> These efforts included: 1) negotiating terms for French access to travel through the Niagara River en route to Detroit and other interior posts after 1702 [see NYCD 9: 746-48; Donald H. Kent, Iroquois Indians II: Historical Report on the Niagara River and the Niagara River Strip to 1759 (New York: Garland Press, 1974), 43-45]; 2) concluding terms of peace with western Algonquian nations that permitted the latter use of Haudenosaunee-claimed hunting territories in exchange for the Haudenosaunee facilitating the access of those nations to English traders at Albany after 1707 (see WA, 52; Colden, “Continuation,” 361, 364-65, 367, 370-72, 383-87, 401-3, 409-12, 414, 420, 423-25, 430-32) ; 3) negotiating terms with the French for trade and residency in the Niagara region after 1716 (see Kent, Iroquois Indians II, 69-83).

<sup>432</sup> Richter, Ordeal of the Longhouse, 361-62n47.

<sup>433</sup> NYCD 4: 1067-68.

<sup>434</sup> Colden, “Continuation,” 365-66.

<sup>435</sup> Ibid., 366.

<sup>436</sup> Ibid., 367.

<sup>437</sup> Colden, “Continuation,” 364-65.

<sup>438</sup> Ibid., 367.

<sup>439</sup> Ibid., 370-71.

<sup>440</sup> Ibid., 381-87 (quote p.385). In 1712 Colden noted that some Mississaugas had settled among the Senecas (ibid., 409-10), and Teganissorens reported renewals of the peace by the Senecas at Albany on August 29, 1715 (ibid., 420- 21).

<sup>441</sup> Ibid., 374.

<sup>442</sup> Ibid., 376-80; Parmenter, “After the Mourning-Wars: The Iroquois as Allies in Colonial North American Campaigns, 1676-1760,” WMQ 3d. Ser., 64 (2007): 53-54.

<sup>443</sup> Colden, “Continuation,” 380.



- <sup>444</sup> Hinderaker, “The ‘Four Indian Kings’ and the Imaginative Construction of the First British Empire,” WMQ 3d. Ser., 53 (1996): 490; William B. Hart, “For the Good of Their Souls”: Performing Christianity in Eighteenth Century Mohawk Country (Amherst: University of Massachusetts Press, 2020), 94-101.
- <sup>445</sup> Quoted in Richmond P. Bond, Queen Anne’s American Kings (Oxford: The Clarendon Press, 1952), 94.
- <sup>446</sup> Colden, “Continuation,” 390.
- <sup>447</sup> Ibid, 391-94.
- <sup>448</sup> Céline Dupré, “LE MOYNE DE LONGUEUIL, CHARLES, Baron de Longueuil (d.1729),” in Dictionary of Canadian Biography, vol. 2, University of Toronto / Université Laval, 2003–, [http://www.biographi.ca/en/bio/le\\_moyne\\_de\\_longueuil\\_charles\\_1729\\_2E.html](http://www.biographi.ca/en/bio/le_moyne_de_longueuil_charles_1729_2E.html) (accessed January 11, 2022).
- <sup>449</sup> Colden, “Continuation,” 399.
- <sup>450</sup> Ibid, 399-402 (quote p.402).
- <sup>451</sup> Ibid, 411. See also John Wolfe Lydekker, The Faithful Mohawks (New York: MacMillan, 1938), 32-34.
- <sup>452</sup> Colden, “Continuation,” 424.
- <sup>453</sup> Ibid.
- <sup>454</sup> NYCD 5: 528-29 (quotes p.528).
- <sup>455</sup> Colden, “Continuation,” 432.
- <sup>456</sup> NYCD 5: 588.
- <sup>457</sup> Ibid: 543. The “Seneca Castle” was the eastern Seneca town of “Simnondowaene” (ibid: 544). Cf. Kurt A. Jordan, The Seneca Restoration, 1715-1754: An Iroquois Local Political Economy (Gainesville: University Press of Florida, 2008), 100.
- <sup>458</sup> NYCD 5: 545. Schuyler and Livingston departed Seneca country on May 23, 1720. Their journal (ibid) notes that on May 24, 1720 “Lawrance Clase Interpreter was to set out with the Appointed Indians for Onjagera.” <sup>459</sup> Ibid: 541.
- <sup>460</sup> Ibid: 549-51 (quotes pp.549, 550); Colden, “Continuation,” 432-43.
- <sup>461</sup> NYCD 5: 564 (quote); WA, 128-30.

<sup>462</sup> NYCD 9: 899.

<sup>463</sup> Ibid 5: 633. Burnet argued further that the “Title of the 5 Nations or Iroquois as the French call them to their hunting country appears by the Maps of the French Travellers as Baron la Honton & Pierre Hennequin in those countrys where in several parts it is marked Chasse des Iroquois and in the late French Map of the Louisiana published in 1718 [i.e., the de l’Isle map] there is in one place marked Nation detruite par les Iroquois. I can not see what the French can pretend to invalidate this Title tho’ by their unwearied application, they have been continually making encroachments on this hunting country of the five Nations & small settlements in the best spots of it particularly at le Detroit before mentioned which is the richest spot of all.” See ibid: 633-34.

<sup>464</sup> NYCD 5: 579-80; WA, 133-34.

<sup>465</sup> LJR, 232-35 (quote p.234).

<sup>466</sup> WA, 144. Wraxall added a note to this entry: “It is not hence evident that the French deemed those Places above mentioned [i.e., Niagara and Irondequoit] to be the Country of the 5 Nations. [T]hat they are so I put down as a Fact apparent from many passages in these Abstracts & also that they were annexed to the Crown of Great Britain by a Solemn Surrender from the 5 Nations in 1701.” See ibid, 144n1.

<sup>467</sup> Ibid, 147 (emphasis in original).

<sup>468</sup> NYCD 5: 666.

<sup>469</sup> WA, 144-45. Wraxall, a supporter (after the fact) of Burnet’s policies, opined in 1751: “[T]he surprizing concourse of the Farr Indians to Albany who formerly traded with the French, since the prohibition of the trade to Canada, is an irrefragable Proof of the great advantage of that prohibition & as Trading is the Only Cement to bind the Indians to our Interest, if proper methods had been taken to fix & extend this Chan[n]el of Trade, & a Vigorous opposition made to the French at this propitious Juncture, it appears to me the French might have been drove back to their proper Limits in Canada & have been ever rendered incapable of disturbing the British Settlements in N. America.” (See ibid, 145n1).

<sup>470</sup> NYCD 5: 685.

<sup>471</sup> Ibid: 715-16.

<sup>472</sup> Ibid: 718-20.

<sup>473</sup> Ibid 9: 752-53 (quotes p.752).

<sup>474</sup> Ibid 5: 784.

<sup>475</sup> On May 21, 1723, Interpreter Lawrence Claessen reported to the Albany Commissioners that the Tuscaroras “are received to be a Sixth Nation” by the Haudenosaunee. See WA, 144.

<sup>476</sup> NYCD 5: 786-87.

<sup>477</sup> Jennings et al, eds., *History and Culture of Iroquois Diplomacy*, 232.

<sup>478</sup> Ibid: 787-90.

<sup>479</sup> Ibid: 791-93. Burnet’s rendering of Article 15 of the 1713 Treaty of Utrecht reflected the English version of the text which referred to the Haudenosaunee as “Subject to the Dominion of Great Britain” (ibid: 792). The French version of Article 15 did not accept the English assertion of sovereignty over the Haudenosaunee. See also ibid: 785; Miquelon, “Ambiguous Concession,” 478, 486.

<sup>480</sup> NYCD 5: 794-95.

<sup>481</sup> Ibid: 797.

<sup>482</sup> Ibid: 799.

<sup>483</sup> Ibid. Cf. “‘Sadeganasttie’ and “‘Kachwadochon” on the July 19, 1701 deed (ibid 4: 910). Peter Wraxall noted in his 1751 Abridgment of the Records of the Albany Commissioners of Indian Affairs that the July 19, 1701 “Deed of Surrender” was entered in the Minutes of the meeting but “no such Deed appears recorded.” See WA, 40n3. In 1755, Wraxall reiterated this point and added that he had seen a copy of the deed Governor Burnet “obtained” [i.e., in 1726, but his self-admitted memory of the latter was incorrect, since he claimed it was “confined to their Patrimonial [i.e., homelands] and doth not extend to their conquered Lands.” See NYCD 7: 16.

<sup>484</sup> NYCD 5: 799-800.

<sup>485</sup> Ibid: 800-1. See also Burnet’s description of Haudenosaunee “hunting Country” as lying “between the three lakes Ontario, Erie, and Huron as they are called in the French Maps” (ibid: 784). The signatories of the September 14, 1726 deed were: Onondaga “Kachjadorodon,” who signed as “Tribe of the Deer”; Onondaga “Sadegeenaghtie” [i.e., Sadekenaktie] who signed as “tribe of the Wolf”; Cayuga “Ottsoghkoree,” who signed as “tribe of the Bear”; Cayuga “Dekanisoree,” who signed as “tribe of the Wolf”; Cayuga “Aenjeweeratta,” who signed as “tribe of the Turtle”; Seneca “Kanakarighton” [i.e., Cagenquarichten] who signed as “tribe of the Plover”; and Seneca “Thanintsaronwee,” who signed as “tribe of the Beaver.” The deed was recorded in the Secretary’s Office of the Province of New York on November 9, 1726 and entered into Patent Book No.13. See ibid: 801n.

<sup>486</sup> Cf. NYCD 4: 905, 908-11; 5: 800-1.

<sup>487</sup> Daniel Ingram, “A Year at Niagara: Negotiating Coexistence in the Eastern Great Lakes, 1763-1764,” in Charles Beatty-Medina and Melissa Rinehart, eds., Contested Territories: Native Americans and Non-Natives in the Lower Great Lakes, 1700-1850 (East Lansing: Michigan State University Press, 2012), 11.

<sup>488</sup> Ibid: 784. Burnet’s claim that the Mohawks and Oneidas constituted a security risk seems suspicious given the regular communications at that time between the Senecas and the French at Niagara. He claimed later in his report (ibid: 785) that when the fort at Oswego was completed in the following spring that he would convene another conference and arrange for all the Haudenosaunee to “publicly confirm the Instrument that some of them have signed, which I have no reason to doubt of their doing.” Yet there is no record of a subsequent confirmation of the September 14, 1726 deed by the Mohawks or the Oneidas, which suggests that they may have been deliberately excluded by Burnet in order to keep their homelands open to potential purchase and settlement by non-Indigenous third parties in a manner that the lands of the Senecas, Cayugas, and Onondagas would not have been as a result of the terms of the September 14, 1726 deed. In 1765, Sir William Johnson described the islands of the Niagara River as “within the District secured by the Treaties in 1701 and 1726 to the Indians, and their Posterity, his Majesty may object to its becoming private Property – and I know that since the Reduction of Niagra [i.e., the British capture of 1759] some Gentlemen who had a Grant of 10,000 Acres near Little Niagara from [General] Sir Jeffrey Amherst (till his Majesty’s pleasure was known) were obliged afterwards to relinquish it.” See WJP 12: 895.

<sup>489</sup> NYCD 5: 804. This map was based on de l’Isle’s 1718 map and is found at The National Archives (UK), CO700/NewYork17. Cf. a subsequent variation of this map in the same repository at MPG 1/958.

<sup>490</sup> NYCD 9: 988, 996-99, 1006-7. The dispute over Fort Niagara continued into the 1750s, and was not resolved until the English captured it in 1759. See DHNY 2: 410-12; Pease, ed., Anglo-French Boundary Disputes, 234-43.

<sup>491</sup> NYCD 6: 99-100.

<sup>492</sup> Ibid: 100-1.

<sup>493</sup> Ibid: 102-8.

<sup>494</sup> NYCD 6: 107-8 (“with a good deal...,” p.108); MACIA-LAC, July 1, 1737, RG10, 1820: 117a-118 (“mistake,” p.118) (reel C-1220). Cf. a variant version of these minutes in MACIA-LAC, July

1, 1737, RG10, 1821: 16-17 (reel C-1221). See also WA, 206-7; Edith M. Fox, Land Speculation in the Mohawk Country (Ithaca, NY: Cornell University Press, 1949), 44-46.

<sup>495</sup> WJP 13: 40-41. For Johnson's appointment, see NYCD 6: 965. Braddock's statement reflects the intent of the Crown at that time to fulfill the terms of both the 1701 and 1726 Haudenosaunee deeds. His comment urging the Haudenosaunee to "take possession of their own lands" should be read as an effort to inspire their military participation in tandem with Crown forces to eject the French from illegitimate trespasses into Haudenosaunee-claimed territory. These terms represented the exact fulfillment of what the Haudenosaunee first requested in 1701.

<sup>496</sup> WJP 1: 528-29 (quotes p.529).

<sup>497</sup> NYCD 6: 965, 969-70 (quotes). It is noteworthy that Johnson appeared here to elide the terms of the 1701 and 1726 deeds. As discussed above, the 1701 provisional deed was signed by all constituent nations of the Haudenosaunee League, but encompassed only the southwestern portion of Haudenosaunee "Beaver Hunting" grounds in the Great Lakes region (including modern southern Ontario). The 1726 deed included the "Beaver Hunting" grounds provisionally deed in 1701, as well as a portion (sixty miles inland from the shores of lakes Erie and Ontario) of Seneca, Cayuga, and Onondaga homelands. Those of the Mohawks and Oneidas were not included in the 1726 deed. Johnson was not alone in this tendency to confuse the precise nature of Haudenosaunee territorial claims. In a circa early 1750 draft letter to Massachusetts Governor William Shirley, Colden claimed to be unable to find "Authentic proofs" of the extent of "Conquer'd lands" referred to in the 1726 Haudenosaunee deed to the Crown (see Letters and Papers 9: 52-53) but elsewhere he defined the total area of Haudenosaunee conquered territory as encompassing an area of 1,200 x 600 miles in the upper Great Lakes. This may represent an allusion on the part of Colden to the combined territory encompassed by the 1701 provisional deed and that of the "Dish with One Spoon" treaty. See Colden, History, 23.

<sup>498</sup> NYCD 7: 15-31. Wraxall served as William Johnson's Secretary. The first draft of this essay was enclosed in a letter from Wraxall to Johnson dated January 9, 1755 (ibid: 14). Subsequent internal evidence suggests that the published version post-dated August 8, 1755 (ibid: 29).

<sup>499</sup> Ibid: 16. There is a marginal note on this page of the document associated with the tentative mention of Lieutenant Governor Nanfan that explains Wraxall's inaccurate rendering in this document of both the July 19, 1701 provisional deed and the September 14, 1726 deed. Wraxall represents the provisional deed negotiated with Nanfan [i.e., in 1701] as encompassing the "Patrimonial" lands (i.e. areas of settlement) in addition to "those obtained by Conquest" (of

which only the southwestern portion was included in the July 19, 1701 provisional deed), but he was working from memory at the time of writing the 1755 essay and as a result here misrepresented some of its content, as well as that in the September 14, 1726 deed negotiated by Burnet: “As the Indian Records at Mount Johnson [i.e., William Johnson’s residence in what is now the town of Amsterdam, Montgomery County, New York] & I took no copy of the before ment[ione]d Abstract [i.e., entry in the original records] I can not be positive as to the name [i.e., Nanfan], the particulars of this affair are contained in the Abstract. The Deed is ment[ione]d in the Records but not recorded. The Deed obtain[e]d by Gov Burnet a copy of which I have seen doth not come up to the Terms of their speech at this period & if I remember right is confined to their Patrimonial and doth not extend to their conquer[e]d Lands.”

<sup>500</sup> Ibid: 18.

<sup>501</sup> Ibid. It is important to point out here that the skepticism of thenHaudenosaunee regarding the presence of either French or English forts in their claimed territory represents a reflection of the context at the time of Wraxall’s writing (1755), and not necessarily that of July 1701, when the evidence indicates that the Haudenosaunee would not necessarily have been opposed to an English fort replacing that of the French at Niagara. Later in the document Wraxall advocated for the construction, with Haudenosaunee consent, of “wooden Forts at each of their Chief Towns or Castles where they are not already built, and some Cannon to be mounted in each” (ibid: 26) and for a regiment of Crown troops to serve as a garrison for Albany, Schenectady, and forts Edward, William Henry, and Oswego (ibid: 27).

<sup>502</sup> Ibid: 28. Wraxall also believed that if this were done, and the French confined to “their proper bounds of Canada,” the English might subsequently be able, via “a prudent and politic management” of relations with the Haudenosaunee, to “obtain the liberty of building Forts and gradually possess ourselves of the valuable country on the south side of Lake Erie” (ibid).

<sup>503</sup> Evans, Geographical, Historical, Political, Philosophical and Mechanical Essays, Number II. Containing, A Letter Representing the Impropriety of Sending Forces to Virginia. The Importance of Taking Fort Frontenac; And that the Preservation of Oswego was Owing to General Shirley’s Proceeding thither. And containing Objections to those Parts of Evans’s General Map and Analysis, which relate to the French title to the Country, on the North-West side of St. Lawrence River, between Fort Frontenac and Montreal &c. Published in the New York Mercury, No.178, Jan. 5, 1756. With an Answer To so much thereof as concerns the Public; and the several Articles set in a just Light. By Lewis Evans (Philadelphia: Printed by the Author, 1756). References to this

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		<p><u>Answer</u> are drawn from the facsimile reprint in Evans, <u>Answer</u>, in Lawrence H. Gipson, <u>Lewis Evans</u> (Philadelphia: Historical Society of Pennsylvania, 1939), 208.</p> <p><sup>504</sup> <u>DHNY 2: 453-53</u> (quotes p.453).</p>
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**ISSUE 4:** Selection of excerpts from Plaintiff’s expert reports that have been identified by MCFN as relating to “the interpretation of treaties and agreements entered into between MCFN and the Crown, and Crown duties flowing therefrom” (Issue 4 in the MCFN Notice of Motion at para 29 (d)).

No. Report	Page Excerpt No.	
1. Good Report	81-82	<p><b>The Haldimand Proclamation</b></p> <p>317. As described earlier, in my discussion of the Six Nations in the American Revolution, the Crown undertook to provide replacement lands for the Six Nations if the conflict terminated unfavourably to the British and the Six Nations were forced to abandon their settlements entirely.</p> <p>318. As reviewed in the preceding section, Haldimand initially offered to fulfill this undertaking by providing the Six Nations with land for resettlement in the vicinity of Kingston. Brant, on behalf of the Six Nations, instead requested a tract in the Grand River Valley extending from “the mouth of Grand River 12 miles wide and as long as the head of the River.”<sup>287</sup> Haldimand agreed to issue a “Deed” to the Six Nations for “the Tract required” by Brant. Haldimand then instructed John Johnson to take steps to extinguish the interest of the Mississaugas in a tract of Country between Lakes Ontario, Erie and Huron. Haldimand intended to grant part of these lands to the Six Nations. The rest he intended to reserve for the settlement of Loyalists and other purposes.<sup>288</sup></p> <hr/> <p><sup>287</sup> Thomas Abler, ed., Chainbreaker: The Revolutionary War Memoirs of Governor Blacksnake as told to Benjamin Williams. Lincoln, Nebraska: University of Nebraska Press, 1989, pp.167-69 (SN17001).</p> <p><sup>288</sup> British Museum, Additional Manuscripts 21829, pp.67-69, Robert Mathews, “Substance of Captain Brant’s Wishes respecting forming a Settlement of the Mohawk &amp; others of the Six Nation Indians upon the Grand River &amp;c.” [n.d.] with Haldimand’s answer thereto, [n.d.] (SN05870). The estimated date of 15 March 1784 is extrapolated from British Museum, Additional Manuscripts 21723, ff.39-40, Frederick Haldimand to John Johnson, 15 March 1784 (SN05999). On 23 March 1784 Frederick Haldimand transmitted to John Johnson “the Substance of Joseph Brant’s requisitions with my answer thereto”: Gilcrease Museum Archives, Haldimand Papers, Frederick Haldimand to John Johnson, 23 March 1784, transmitting “the Substance of Joseph Brant’s requisitions with my answer thereto” (SN14736).</p>



No. Report	Page Excerpt No.	
2. Good Report	<p data-bbox="248 321 280 1375"><b>[The Haldimand Proclamation]</b></p> <p data-bbox="321 415 354 457"><b>Term II</b></p> <p data-bbox="386 499 500 1375">329. Term II states that Haldimand purchased, in the name of the Crown, a certain Tract of land “from the Indians situated between the Lakes Ontario, Erie, &amp; Huron” at “the earnest Desire of many of these His Majesty’s faithfull Allies”.<sup>299</sup></p> <p data-bbox="532 499 841 1375">330. What the Crown actually purchased was a quit-claim from the Mississaugas, with whom the Six Nations had shared the use of the Grand River Valley from approximately 1701.<sup>300</sup> Agents or servants of the Crown concluded a tripartite treaty with the Six Nations and the Mississaugas on or about 22 May 1784. By this treaty, the Mississaugas quit-claimed all their interests in particular lands, including those selected by the Six Nations as relocated sovereign territory for their resettlement following the American Revolution. Pursuant to this treaty, the Mississaugas undertook to cease exercising customary hunting and ancillary interests within the area selected by the Six Nations as relocated sovereign territory for their resettlement.<sup>301</sup></p> <p data-bbox="873 499 1409 1375">331. On its face, term II appears to state that the purchase of the Mississauga quit-claim of their interest in the Haldimand Proclamation lands was made at “the earnest Desire of many of these His Majesty’s faithfull Allies”.<sup>302</sup> This reading of term II would not reflect what actually happened. The oral history of the Mississaugas, as recorded on or about 26 November 1850, explicitly states that the Mississaugas did not want to be paid for their interest in the “Grand River tract”, which the Six Nations selected for their resettlement.<sup>303</sup> According to a first-hand account of the treaty negotiations concluded on or about 22 May 1784, recorded after the fact in the Mohawk language by Mohawk chief David Hill, the Deputy Superintendent of the Six Nations, John Butler, opened the negotiations by stating to the Mississaugas that Haldimand and Johnson recommended that they relinquish their interest in the lands required by the Six Nations, by selling it to the Crown, so that the Six Nations may “possess it forever without any molestation or claim from whomsoever”. In other words, the Mississauga quit-claim was purchased at the behest of Frederick Haldimand and John Johnson, not “His Majesty’s faithfull Allies”, for the purpose of extinguishing all interests – including hunting and fishing interests - that that Mississaugas asserted on those lands.<sup>304</sup></p>	84-86

332. A credible explanation is that this section is awkwardly worded, and that Haldimand intended it to state that: pursuant to “the earnest Desire of many of these His Majesty’s faithfull Allies” that the Crown dedicate certain lands in the Grand River Valley as relocated Six Nations sovereign territory, Haldimand extinguished, by purchase, the interest of the Mississaugas in these lands.<sup>305</sup>

333. The term “His Majesty’s faithful Allies” indicates that the contemplated Beneficiaries of Haldimand’s Proclamation were not British subjects. This language is consistent with the principles of the Covenant Chain, whereby the Crown and the Six Nations mutually committed themselves to sustain their respective sovereignties.

334. This language is also consistent with language that Frederick Haldimand used elsewhere to refer to the sovereign status of the Six Nations. On 12 April 1784, for example, Robert Mathews - at Haldimand’s behest – recommended to Brant that the Six Nations tell Commissioners, appointed by Congress to negotiate a peace treaty with the Six Nations, that the Six Nations were “a Free & Independent People” occupying a “Country” given to them by the Great Spirit, prepared to negotiate on equal terms with another “Free and Independent People” (the Americans).<sup>306</sup>

335. The Haldimand Proclamation dedicates Haldimand Proclamation lands as Six Nations relocated sovereign territory.

<sup>299</sup> NAC, RG10, Vol.1846, IT 250, Certified Copy of “the Record of the Original Grant as entered in Lib A folio 8 (manuscript),” Frederick Haldimand proclamation, 25 October 1784 (SN06149); F. Douglas Reville, *History of the County of Brant* (Brantford: The Hurley Printing Company, 1920), plate opposite p.34 (SN05871).

<sup>300</sup> For references to this shared use see J.A Brandao and William A. Starna, “The Treaties of 1701: A Triumph of Iroquois Diplomacy, *Ethnohistory* 43, 2 (Spring 1996), pp.209-44 (R7188); and Victor P. Lytwyn, “A Dish with One Spoon: The Shared Hunting Grounds Agreement in the Great Lakes and St. Lawrence Valley Region,” *Papers of the Twenty-eighth Algonquian Conference*, 28 (1997), pp.210-27 (R7189). For evidence that there were large regions in the Great Lakes and northern Plains area, during the period 1620-1830, where territorial sharing by members of different Indian nations was the rule, rather than the exception, see Patricia Albers and Jeanne Kay, “Sharing the Land: A Study in American Indian Territoriality.” In Thomas E. Ross and Tyrel G.

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		<p>Moore, ed. <i>A Cultural Geography of North American Indians</i> (Boulder, Colorado: Westview Press, 1987), pp.47-91 (R7157).</p> <p><sup>301</sup> NAC, RG10, Vol.389, pp.221-22, William Chisholm, George Chisholm Sr., John Chisholm, George Chisholm [Jr.] to William Kerr, 12 March 1840 (SN00970). In this letter Chisholm provided the following credentials to establish the credibility of his statement: “In former days, the Head of Lake Ontario, was a place of great resort for the Mississaguas – And my Father having settled at that place, at a very Early period – indeed he was one of the first Settlers. – our communication and intercourse with the Mississagua Indians has been long and intimate. – In fact, my two Brothers, and myself grew up with them, consequently, we Early became acquainted with their language, manners and Customs – So much so, that at the present day, the Mississagua Nation, Consider my Fathers family – as part, and parcel of their Nation.”</p> <p><sup>302</sup> NAC, RG10, Vol.1846, IT 250, Certified Copy of “the Record of the Original Grant as entered in Lib A folio 8 (manuscript),” Frederick Haldimand proclamation, 25 October 1784 (SN06149); F. Douglas Reville, <i>History of the County of Brant</i> (Brantford: The Hurley Printing Company, 1920), plate opposite p.34 (SN05871).</p> <p><sup>303</sup> Peter Jones, <i>History of the Ojebway Indians</i>, (London: A.W. Bennet, 1861), pp.209-13, Peter Jones, “An Address delivered on the occasion of the re-interment of the celebrated Captain Joseph Brant,” [26 November 1850]. (SN05917).</p> <p><sup>304</sup> NAC, RG10, Vol.2358, f.72566, David Hill to [Daniel] Claus, 29 May 1784 (SN05922).</p> <p><sup>305</sup> NAC, RG10, Vol.1846, IT 250, Certified Copy of “the Record of the Original Grant as entered in Lib A folio 8 (manuscript),” Frederick Haldimand proclamation, 25 October 1784 (SN06149); F. Douglas Reville, <i>History of the County of Brant</i> (Brantford: The Hurley Printing Company, 1920), plate opposite p.34 (SN05871).</p> <p>NAC, Haldimand Transcripts, B-165, pp.8-15, Robert Mathews to Joseph Brant, 12 April 1784 (R7358).</p>
3.	Good Report 86-87	<p><b>[The Haldimand Proclamation]</b></p> <p><b>Term III</b></p> <p>336. Term III extends an invitation, “in His Majesty’s name”, to allies of the “Mohawk Nation and such others of the Six Nations Indians as wish to settle in that Quarter, to take possession of and</p>

settle upon the Banks of the River commonly called Ouse or Grand River, running into Lake Erie".<sup>307</sup>

337. The words "that Quarter" refer to the territory quit-claimed by the Mississaugas on 22 May 1784. It is my opinion, based on my review of the historical record, that Haldimand assumed that this territory encompassed the area described in Term IV as "Six Miles deep from each Side of the [Grand] River beginning at Lake Erie, & extending in that Proportion to the Head of the said [Grand] River". This assumption is based on the facts that a) Brant, in the presence of John Johnson had required Frederick Haldimand to dedicate a 12-mile-wide tract of land in the Grand River Valley, extending from the mouth to the source of the Grand River, as relocated sovereign territory for the Six Nations and allied Indians;<sup>308</sup> b) Haldimand had acceded to Brant's requirement;<sup>309</sup> and c) John Johnson subsequently stated "that he could in honour declare that the whole River was purchased & intended for the Five Nations as described in the Grant [the Haldimand Proclamation]" for he issued the instructions to John Butler, on which basis Butler had negotiated the purchase on 22 May 1784.<sup>310</sup> Lieutenant-Governor Peregrine Maitland expressed a different opinion. On 22 February 1821 he stated that: "It was obvious that he [Haldimand] supposed the purchase from the Indians extended to the source of the Grand River and that this source was south of the line tracing upon the map [depicting] the limits of the purchase and which did not show the course of the [Grand] River."<sup>311</sup> I have made a diligent search for the map referenced by Maitland, without success, and therefore am not in a position to comment on its significance.

<sup>307</sup> NAC, RG10, Vol.1846, IT 250, Certified Copy of "the Record of the Original Grant as entered in Lib A folio 8 (manuscript)," Frederick Haldimand proclamation, 25 October 1784 (SN06149); F. Douglas Reville, *History of the County of Brant* (Brantford: The Hurley Printing Company, 1920), plate opposite p.34 (SN05871).

<sup>308</sup> NAC, RG10, Vol.491, pp.29952-53, John Johnson to Col. Darling, 24 June 1821 (SN05812).

<sup>309</sup> British Museum, Additional Manuscripts 21829, pp.67-69, Robert Mathews, "Substance of Captain Brant's Wishes respecting forming a Settlement of the Mohawk & others of the Six Nation Indians upon the Grand River &c." [n.d.] with Haldimand's answer thereto, [n.d.] (SN05870); NAC, RG8, Vol.254, pp.172-79 and 180-81a, John Norton, "Memorial for the Six Nations settled on the Grand River in Upper Canada, North America, Humbly presented to the British Government by John Norton, one of their adopted Chiefs, in their name and by their desire," c.1804 (SN04686);

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4.	88-89	<p>and Thomas Abler, ed., <i>Chainbreaker: The Revolutionary War Memoirs of Governor Blacksnake as told to Benjamin Williams</i> (Lincoln, Nebraska: University of Nebraska Press, 1989), pp.167-69 (SN17001).</p> <p><sup>310</sup> PRO, CO42, Vol.369, ff.253-54, John Brant and Robert Kerr to Robert Wilmot-Horton, 15 April 1822 (SN06034). In this letter Brant and Kerr stated that “Sir John [Johnson] assured us that he could in honor declare that the whole River was purchased &amp; intended for the Five Nations as described in the Grant, for he negotiated the purchase.”</p> <p><sup>311</sup> NAC, CO42, Vol.366, ff.37-41, Peregrine Maitland to Lord Bathurst, 22 February 1821 (SN06000).</p> <p><b>[The Haldimand Proclamation]</b></p> <p><b>Term IV</b></p> <p>340. Term IV describes the extent of the territory that the Haldimand Proclamation allotted to those Indians who accepted Haldimand’s invitation to settle in the Grand River Valley, which invitation the Haldimand Proclamation extended in the King’s name. The territory consisted of “Six Miles deep from each side of the River beginning at Lake Erie, and extending in that proportion to the Head of the said River”.</p> <p>341. Term IV confirmed Haldimand’s agreement to dedicate, as relocated sovereign territory for the settlement of Six Nations allies, a tract “12 miles wide”, including within those boundaries all land (including land covered by water) sufficient for the Six Nations “Residence and hunting Ground and fishing [in the] Rivers and Creeks and all water privillages and trapping privillages in the pon[d]s, &amp;c.”<sup>313</sup> The intention of the Crown was to accede to the request put forward by Brant, on behalf of the Six Nations, for a tract of land encompassing the Grand River Valley. It is clear from contemporaneous documents setting out the substance of the discussions, between Brant and Haldimand, that Haldimand intended the phrase “Six Miles deep from each side of the River” to express the concept of a tract 12 miles wide, which straddled the Grand River. This understanding was confirmed in or about 1791 when the lower part of the territory allocated to the Six Nations was surveyed. This survey described the tract as bounded by two parallel lines, twelve miles apart, straddling a straight centre line approximating the centre of the Grand River. Neither Brant nor Haldimand expressed any intention in their negotiations to divide the tract into two separate halves</p>

which excluded the river. To the contrary, their intention was for the tract to be 12 miles wide inclusive of all land covered by water, including the Grand River.

342. The term “Head of the said River” unambiguously refers to the source of the Grand River. William Claus, Deputy Superintendent General/Deputy Inspector-General of the Indian Department in Upper Canada, stated on 10 April 1819, that “My own conception of the ‘head of the said River’ is its source, and I am well convinced that it is that of every Indian on the Grand River.”<sup>314</sup> John Johnson, subsequently gave his “[t]estimony in favour of their [Six Nations] Grant [from Frederick Haldimand] being from the mouth of the River to its source as requested [of Frederick Haldimand] by the late Captain Brant in my presence.”<sup>315</sup> The source of the Grand River was the crest of the watershed between Lakes Erie and Ontario on the one hand, and Lake Huron and Georgian Bay on the other hand.<sup>316</sup>

343. The Haldimand Proclamation does not qualify the term “Head of the said River” by, for example, stating that it is limited by the terms of the tripartite treaty of 22 May 1784, between the Crown, Six Nations, and Mississaugas, by which treaty the Mississaugas quit-claimed their interest in particular lands, including those selected by the Six Nations as relocated sovereign territory for their resettlement.

344. In any case, on 22 May 1784 the Mississaugas quit-claimed their interest in the entire Grand River Valley, including the source of the Grand River. This is evident from Appendix D: “Sketch of Upper Canada”. This map, which Simcoe endorsed on 10 March 1792, had been prepared for the purpose of illustrating where the Crown had extinguished, by purchase, the “Indian Title” in Upper Canada. The entire Grand River Valley is included in the area where the Indian title is described as being “extinct by British purchases”.<sup>317</sup>

345. John Johnson subsequently acknowledged that the Mississaugas quit-claim of 22 May 1784 included all the lands that Haldimand orally had agreed to dedicate as relocated sovereign territory for the settlement of Six Nations allies, that is, a 12-mile-wide tract of land in the Grand River Valley, extending from the mouth to the source of the Grand River. Johnson stated “that he could in honour declare that the whole River was purchased & intended for the Five Nations as described in

the Grant [the Haldimand Proclamation]” for he issued the instructions to John Butler, on which basis Butler negotiated the purchase on 22 May 1784.<sup>318</sup>

346. To understand Term IV, and the extent of lands included in the Haldimand Proclamation, it is crucial to understand the difference between the Mississauga quit-claims of 1784 and 1792, as will be discussed below.

<sup>313</sup> Thomas Abler, ed., Chainbreaker: The Revolutionary War Memoirs of Governor Blacksnake as told to Benjamin Williams. Lincoln, Nebraska: University of Nebraska Press, 1989, pp.167-69 (SN17001).

<sup>314</sup> NAC, RG7, G14, Vol.1, pp.430-33, William Claus to Peregrine Maitland, 10 April 1819 (SN05946).

<sup>315</sup> NAC, RG10, Vol.491, pp.29952-53, John Johnson to Col. Darling, 24 June 1821 (SN05812).

<sup>316</sup> Deputy Provincial Surveyor Mahlon Burwell stated in or about 1827 that the source of the Grand River was located “nearly upon the summit level of the lands between Lake Ontario and Lake Huron”: Quoted in Archibald Blue, "Colonel Mahlon Burwell," *The Canadian Institute*, New Series 1(1898), 41-56 at p.54 (R7311).

<sup>317</sup> PRO, MPG 91, reprinted in R. Louis Gentilcore and C. Grant Head, *Ontario's History in Maps* (Toronto: University of Toronto Press, 1984), p.81, plate 4.1 (SN05931). This map is endorsed by Simcoe and included by Simcoe in a letter that he wrote to Henry Dundas on 10 March 1792: in E.A. Cruikshank, ed., *The Correspondence of Lieut. Governor John Graves Simcoe*, 5 Vols. (Toronto: Ontario Historical Society, 1923), 1:118-19, Simcoe to Dundas, 10 March 1792 (SN05932).

<sup>318</sup> PRO, CO42, Vol.369, ff.253-54, John Brant and Robert Kerr to Robert Wilmot-Horton, 15 April 1822 (SN06034). In this letter Brant and Kerr stated that “Sir John [Johnson] assured us that he could in honor declare that the whole River was purchased & intended for the Five Nations as described in the Grant, for he negotiated the purchase.”

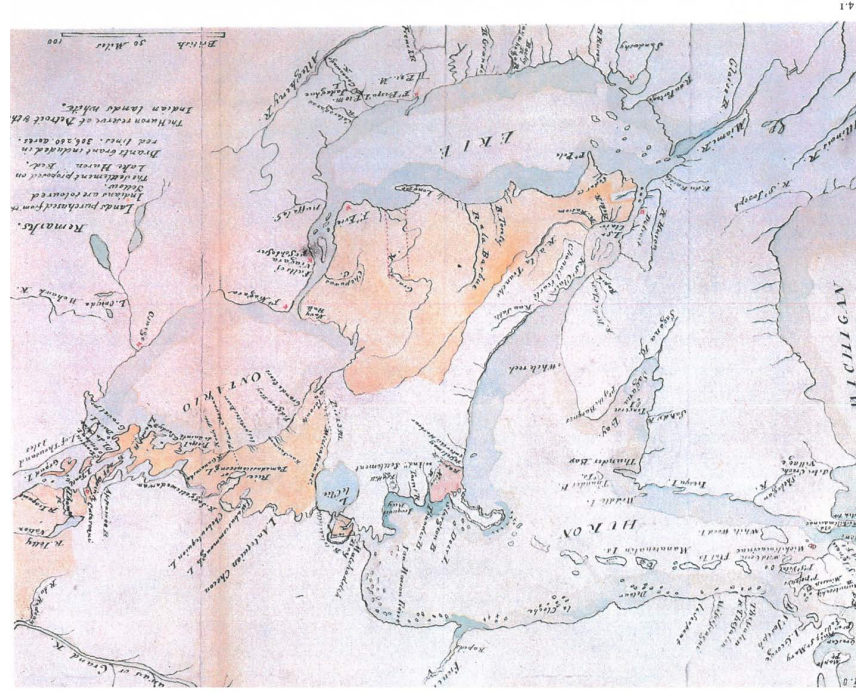
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Appendix D: "Sketch of Upper Canada" (SN05931)



6. Good Report

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The Mississaugas Quit-Claim of 22 May 1784

347. On 23 March 1784 Haldimand instructed Johnson to make a purchase of the Mississaugas interest in "a Tract of Land between the Head of Lake Ontario, Lake Erie and Huron" in consequence of Joseph Brant's application for a grant of land, from the mouth to the source of the Grand River, for "the Mohawks and some of the other Indian Nations".<sup>319</sup>



348. The Crown extinguished the Mississaugas interest in the Haldimand Proclamation lands in the context of a tripartite treaty with the Six Nations, Mississaugas and the Crown concluded on or about 22 May 1784.<sup>320</sup>

349. On 29 May 1784 Mohawk war chief David Hill wrote a first-hand account of these treaty negotiations, in the Mohawk language. Hill stated in part that John Butler, to whom John Johnson had delegated responsibility to represent the Crown in the tri-partite treaty negotiations, described the lands that “Gen. Haldimand and Sir John Johnson” wished the Mississaugas would “relinquish to the Six Nations”.<sup>321</sup>

350. John Butler was Deputy Superintendent of the Six Nations.

351. The “place and extent” of lands described by Butler refers to lands – including lands covered by water - which Brant required the Crown grant to the Six Nations by deed, and to which requirement Haldimand orally acceded on or about 15 March 1784.<sup>322</sup>

352. In 1784 Brant referred to the Haldimand Proclamation lands as a tract 12 miles wide, including all lands (including lands covered by water) extending from the mouth of the Grand River to the source of the Grand River. The source of the Grand River is the crest of the watershed between Lakes Erie and Ontario on the one hand, and Lake Huron and Georgian Bay on the other hand.<sup>323</sup>

353. The source of the Grand River was located within the traditional hunting grounds of the Credit River Mississaugas. Peter Jones, Chief of the Credit River Mississaugas, stated on 13 February 1855 that Credit River Mississaugas territory commenced “at Long Point on Lake Erie, thence eastward along the shore of the lake to the Niagara River, then down the river to Lake Ontario, then northward along the shore of the lake to the River Rouge east of Toronto, then up that river to the dividing ridges between lakes Ontario and Simcoe, then along the dividing ridges to the head waters of the River Thames, then southwards to Long Point the point of beginning.”<sup>324</sup>

354. Wabakanine, head chief of the Mississaugas in 1784, had told Joseph Brant in 1784 that: “The whole country is before you, choose you a tract for yourselves, and there build your wigwams and plant your corn.”<sup>325</sup>

355. The Six Nations chose the entire Grand River Valley, as indicated in the statement of Chainbreaker, a Seneca chief, quoted above.

356. It is inconceivable that the Six Nations would have excluded the headwaters of the Grand River from the tract they selected as relocated sovereign territory. The Six Nations were aware of the extent of the Grand River because “from time immemorial”<sup>326</sup> they – and the Iroquoian peoples whom the Six Nations had conquered and absorbed – had hunted all “along the [Grand] River to its source” where it was “well known that the best hunting grounds for Deer, Bear, Fish and game” were located.<sup>327</sup>

357. During the tripartite negotiations of 1784 the Mississauga delegates responded to John Butler’s description of the lands, in which Haldimand and Johnson wished they would relinquish their interest to the Six Nations, by addressing the Six Nations delegates as follows:

““We have heard what Gen. Haldimand and Sir John Johnson had to say – and we have duly considered thereupon, for we remember what passed after the war before last – when in the spring of 1761 the late Sir W. Johnson kindled a Council fire at this place, and established a permanent friendship and unanimity with all Indian nations under his superintendency, advising them not to quarrel or fall out with one another, and clearing up the path of peace between them and all the Indian nations – and keep the Council fire burning at this place Niagara. For which reason we have cheerfully considered your situation, Brothers of the Six Nations, and make you hereby a present of the lands you pointed out to us.”<sup>328</sup>

358. All parties to the tri-partite treaty understood that, by these words, the Mississaugas were relinquishing their interest in the entire tract required by the Six Nations as their relocated sovereign territory, including the headwaters of the Grand River.

359. Mohawk Chiefs Robert Kerr and John Brant (Joseph Brant’s son) stated to the colonial secretary, Lord Bathurst, on 31 January 1822: at a tripartite treaty in May 1784 - involving the Six

Nations, Mississaugas, and the Crown - “the whole extent of the lands comprised within the words of the grant [i.e. Haldimand Proclamation] of 1784 was delivered into our [the Six Nations] actual possession by the Chippeways [i.e. Mississaugas] with expressly understood reference to the intended cession of it to us by the King of England”.<sup>329</sup>

360. The Mississaugas undertook to cease exercising customary hunting and ancillary rights on the lands selected by the Six Nations as relocated sovereign territory. Pursuant to this undertaking, Mississauga chiefs instructed men of their nation, “when going out to hunt, to be careful, and not to trespass upon the Tract of Land they had given for the use of the Six Nations, along the Banks of the Grand River.”<sup>330</sup>

361. On 22 May 1784 certain Mississauga chiefs signed a quit-claim to certain lands, in favour of the Crown, which all parties to the tri-partite treaty understood included the lands that the Six Nations had chosen for their relocated sovereign territory.

362. The language used to describe the lands that were the subject of the instrument signed by certain Mississauga chiefs on 22 May 1784 reflected the language used in the document, attributed to Robert Mathews, entitled “Substance of Captain Brant’s Wishes respecting forming a Settlement of the Mohawk & others of the Six Nation Indians upon the Grand River &c.” [n.d.] with Haldimand’s answer thereto, [n.d.]<sup>331</sup>

363. The document stated that the Six Nations had chosen for their relocated sovereign territory “a tract of land consisting of about six miles on each side of the Grand River, called Oswego [by the Six Nations] running from the River LaTranchee [Thames River] into Lake Erie”.<sup>332</sup> This language – which is clearly that of the author of the document, rather than Joseph Brant – describes the location of the Grand River is it was represented on contemporary maps drawn by credentialled cartographers of European origin or descent.<sup>333</sup> It did not purport to exclude from the tract in the Grand River Valley, selected by the Six Nations for their relocated sovereign territory, that portion of the Grand River Valley lying north-west of the intersection of the respective watersheds of the Grand and LaTranche (Thames) Rivers.

<sup>319</sup> PRO, CO42, Vol.46, f.212, Frederick Haldimand to Lord Sidney, 16 July 1784 (R7021); Gilcrease Museum Archives, Haldimand Papers, item 29,4016.5135, Frederick Haldimand to John Johnson, 23 March 1784 (SN14736); and NAC, RG 10, Vol. 491, pp. 29951-53, John Johnson to Col. Darling, 24 June 1821 (SN05812).

<sup>320</sup> British Museum, Additional Manuscripts 21,834, ff.231-232, “A Meeting held at Niagara 22 May 1784 with the Mississagas, the Chiefs and Warriors of the Six Nations, Delawares &c.”, 22 May 1784 (SN05921); and Provincial Archives of Ontario, RG1, A-I-1, Vol.2, f.145, Mississaugas quit-claim, 22 May 1784 (SN05926).

<sup>321</sup> NAC, RG10, Vol.2358, f.72566, David Hill to [Daniel] Claus, 29 May 1784 (SN05922).

<sup>322</sup> British Museum, Additional Manuscripts 21829, pp.67-69, Robert Mathews, “Substance of Captain Brant’s Wishes respecting forming a Settlement of the Mohawk & others of the Six Nation Indians upon the Grand River &c.” [n.d.] with Haldimand’s answer thereto, [n.d.] (SN05870). The estimated date of 15 March 1784 is extrapolated from British Museum, Additional Manuscripts 21723, ff.39-40, Frederick Haldimand to John Johnson, 15 March 1784 (SN05999). On 23 March 1784 Frederick Haldimand transmitted to John Johnson “the Substance of Joseph Brant’s requisitions with my answer thereto”: Gilcrease Museum Archives, Haldimand Papers, Frederick Haldimand to John Johnson, 23 March 1784, transmitting “the Substance of Joseph Brant’s requisitions with my answer thereto” (SN14736).

<sup>323</sup> Deputy Provincial Surveyor Mahlon Burwell stated in or about 1827 that the source of the Grand River was located “nearly upon the summit level of the lands between Lake Ontario and Lake Huron”: Quoted in Archibald Blue, “Colonel Mahlon Burwell,” *The Canadian Institute*, New Series 1(1898), 41-56 at p.54 (R7311).

<sup>324</sup> Canada. Department of Indian Affairs. Mississaugas of the Credit. Toronto: Warwick Brothers and Rutter, 1895, pp.38-39. NAC, RG10, Vol.2357, f.72,566, Peter Jones to Solomon Chesley, 13 February 1855 (SN05916).

<sup>325</sup> Peter Jones, *History of the Ojebway Indians*, (London: A. W. Bennet, 1861), pp.209-13, Peter Jones, “An Address delivered on the occasion of the re-interment of the celebrated Captain Joseph Brant,” n.d. (SN05917).

<sup>326</sup> New York State Library, Manuscript # 13350-51, “Account of the descriptions given by Mr. Norton Concerning his Country[.] customs & manners,” n.d. (SN05914).

<sup>327</sup> NAC, RG10, Vol.2178, file 36,539-1, pt.2, William Peterson, “Tabulated Memorandum,” n.d. (SN06148).

<sup>328</sup> NAC, RG10, Vol.2358, f.72566, David Hill to [Daniel] Claus, 29 May 1784 (SN05922). For the minutes of the meeting at Niagara on 28 July 1761, referenced in this reply, see: James Sullivan, director, *The Papers of Sir William Johnson*, 14 Vols. (Albany: University of the State of New York, 1921), 3:428-503 at pp.454-48, “Niagara and Detroit Proceedings, July-September, 1761” (R7353).

<sup>329</sup> PRO, CO42, Vol.369, ff.222-30, Robert Kerr and John Brant to Lord Bathurst, 31 January 1822 (SN05912).

<sup>330</sup> NAC, RG10, Vol.389, pp.221-22, William Chisholm to William J. Kerr, 12 March 1840 (SN00970). In this letter Chisholm provided the following credentials to establish the credibility of his statement: “In former days, the Head of Lake Ontario, was a place of great resort for the Mississaguas – And my Father having settled at that place, at a very Early period – indeed he was one of the first Settlers. – our communication and intercourse with the Mississagua Indians has been long and intimate. – In fact, my two Brothers, and myself grew up with them, consequently, we Early became acquainted with their language, manners and Customs – So much so, that at the present day, the Mississagua Nation, Consider my Fathers family – as part, and parcel of their Nation.”

<sup>331</sup> British Museum, Additional Manuscripts 21829, pp.67-69, Robert Mathews, “Substance of Captain Brant’s Wishes respecting forming a Settlement of the Mohawk & others of the Six Nation Indians upon the Grand River &c.” [n.d.] with Haldimand’s answer thereto, [n.d.] (SN05870).

<sup>332</sup> British Museum, Additional Manuscripts 21829, pp.67-69, Robert Mathews, “Substance of Captain Brant’s Wishes respecting forming a Settlement of the Mohawk & others of the Six Nation Indians upon the Grand River &c.” [n.d.] with Haldimand’s answer thereto, [n.d.] (SN05870). For reference to the La Tranche having been renamed Thames see: Provincial Archives of Ontario, Ontario Ministry of Natural Resources, Crown Survey Records, Instructions to Surveyors, Book 2, pp.45-46, David Smith to Augustus Jones, [1 April], 1792.

<sup>333</sup> See, for example, John Mitchell [with ms additions by Richard Oswald], “A Map of the British Colonies in North America with the Roads, Distances, Limits and Extent of the settlements” in R. Louis Gentilcore and C. Grant Head, eds., *Ontario’s History in Maps* (Toronto: University of Toronto Press, 1984), plate 2.13 (SN05736). The editors of *Ontario’s History in Maps* refer to this map as the most influential map of North America in the eighteenth century. See also NAC, NMC 20217, Lewis Evans, “Map of the Middle British Colonies, in America” (Philadelphia: James

No. Report	Page Excerpt No.	
7.	93-98	<p data-bbox="245 520 316 1375">Turner, 23 June 1755); and PAO, RG1-2-2, Vol.65, p.385, “Map annexed to the foregoing surrender,” 19 May 1790 (SN09715)</p> <p data-bbox="326 520 358 1375"><b>The Mississaugas Quit-Claim of 7 December 1792</b></p> <p data-bbox="397 520 469 1375">364. On 21 August 1791 the old province of Quebec formally was divided into the Provinces of Upper and Lower Canada.</p> <p data-bbox="508 520 920 1375">365. John Graves Simcoe was the first lieutenant of Upper Canada. One of his first priorities was to address disputes with respect to the extinguishment of Indian title in Upper Canada, which Simcoe feared “might be the ruin of this Province”.<sup>334</sup> These disputes had arisen on account of “incompetence, sloppiness, and the pursuit of personal gain” on the part of servants or agents of the Crown.<sup>335</sup> In 1792, during the course of addressing these disputes, the Crown solicited a quit-claim from the Mississaugas, without regard to the Haldimand Proclamation and without consulting the Mississaugas about the meaning of the boundary described as a “North West Course” in the 1784 quit-claim.<sup>336</sup> The drafters of the 1792 quit-claim arbitrarily ran the “North West Course” on a 45 degree angle from Burlington Bay, thereby omitting the headwaters of the Grand River. And they did not attach a map to the legal description, which would have alerted the Mississaugas to the discrepancy between the 1784 and 1792 quit-claims.</p> <p data-bbox="959 520 1339 1375">366. Joseph Chew – secretary to the Indian Department – warned Simcoe, that there might be a problem with the description of the north-western boundary of the Mississaugas quit-claim signed in 1784. On a copy of the surrender Chew made for Simcoe on 13 February 1792, Chew wrote: “N.B. Sir John Johnson apprehended A Mistake was made in Mentioning a North West Course which he thinks would not strike the River La Tranche and believes it should have been South West.”<sup>337</sup> Johnson’s understanding may have been based on a letter written by John Dease, deputy agent in the Indian Department for the Middle District of British North America, to John Johnson, on 18 September 1784. Dease wrote that he had “some messages from the Mississaugas respecting the sale of their lands,” and that he was given to “understand that there were some geographical errors happened on that occasion, by running the line further north-west than they intended.”<sup>338</sup></p> <p data-bbox="1378 520 1481 1375">367. Johnson may have interpreted Dease to say that the line from Burlington Bay ran too far <i>North</i>. Dease actually meant that the line from Burlington Bay ran too far <i>West</i>. In other words, the lands in which the Mississaugas could validly execute a quit-claim were limited to their traditional</p>

hunting grounds. Traditional Mississauga hunting grounds did not extend as far West as the Thames River proper. It extended only to the edge of the Grand River watershed.<sup>339</sup> Therefore, the western perimeter of the Grand River watershed constituted the legitimate western boundary of their quit-claim.

368. That the western perimeter of the Grand River watershed constituted the western perimeter of traditional hunting grounds of the Mississaugas is corroborated by a report made by Deputy Provincial Surveyor Augustus Jones and communicated by Deputy Provincial Surveyor William Chewett to J.G. Simcoe's secretary, E.B. Littlehales, for Simcoe's information on 31 August 1794. According to this report, certain "Mississaugas and Chippewas" who claimed traditional hunting grounds in the Thames River watershed stated that the traditional hunting grounds of "Wabaconing" [alias Wabakanine], head chief of the Mississaugas "did not extend beyond the Grand River" watershed and – consequently – that the quit-claim Wabakanine agreed to in 1784 did not extinguish the interest of all Chippewas and Mississaugas in any hunting grounds west of the Grand River watershed.<sup>340</sup>

369. Based on my review of the historical record, the Crown's misunderstanding about the significance of the Mississauga quit-claim of 1784 to certain hunting grounds west of the Grand River watershed, arose from the fact that the Mississaugas were not the only Ojibwa community with an interest in these hunting grounds.<sup>341</sup> Consequently, the Mississaugas quit-claim of 1784 did not extinguish all Ojibwa interests in them.

370. On 17 March 1792 Simcoe asked David Smith, acting surveyor-general of Upper Canada, to determine whether a line could be drawn in a "North West Course" from "the Waghquata Lake" to the Thames River.<sup>342</sup>

371. Smith directed Augustus Jones to survey a straight line "commencing at the Outlet of Burlington Bay, thence a North Course 45° to the Westward – until you strike the Heads or Sources of the River La Tranche, now Thames [River]." If that line did not "fall on the said Sources," Jones was to "branch off from the said Boundary Line, with such offsets, as may complete a semicircle ... till you meet the Heads of the said River La Tranche, now Thames [River]."<sup>343</sup> These instructions were issued without consulting the Mississaugas.

372. Augustus Jones' survey map of the North-West boundary line has not been found. However, David Smith's "[Survey] Plan for setting apart ... Eighteen Townships in the County of Lincoln," probably incorporates some features from it.<sup>344</sup> This map is reproduced in Appendix F: David Smith Survey Plan, n.d. It depicts survey lines running from Burlington Bay, around the headwaters of the Grand River, to the Thames River.

373. On 7 December 1792 J.G. Simcoe authorized a renewal of the Mississaugas quit-claim of 1784, in order to describe its boundaries with more particularity and accuracy as the case may be.<sup>345</sup> Simcoe stated that the Mississaugas themselves considered the quit-claim of 22 May 1784 invalid because they had not been compensated for the loss of their interest, as stipulated in the instrument that they signed on that occasion.<sup>346</sup> For this reason, in 1792 the Mississaugas were willing to sign a currently dated instrument, which both Simcoe and the Mississaugas understood to constitute a validation of the Mississaugas 1784 quit-claim. The legal description in the 1792 quit-claim omitted the headwaters of the Grand River. And a map was not attached to the legal description, which could have alerted the Mississaugas to the discrepancy between the 1784 and 1792 quit-claims. I have found no contemporaneous documents indicating that the Mississaugas were aware of the omission of the headwaters of the Grand River from the 1792 quit-claim when they signed it.

374. The boundaries of the Mississaugas quit-claim of 7 December 1792 are depicted in Appendix E, "Plan Showing the different Surrenders made by the Indians in Upper Canada to the Crown".<sup>347</sup> Unfortunately, the Grand River is not marked on this map of Upper Canada.

375. On 22 May 1784 the Mississaugas quit-claimed their interest in the entire Grand River Valley, including the source of the Grand River. This is evidence by contemporary records of the tripartite treaty negotiations of 1784, in which the Mississaugas quit-claimed their interest in those lands; the oral history of the Six Nations and the Mississaugas recounting the tripartite treaty negotiations of 1784; an affidavit signed by John Johnson, who issued instructions to John Butler to negotiate the purchase of the Mississaugas interest in those lands; and Appendix D: "Sketch of Upper Canada". This map, which Simcoe endorsed on 10 March 1792, depicts "where the Indian Title is extinct by British purchases & where it exists in its original possessors." The entire Grand River Valley is included in the area where the Indian title is described as being "extinct by British purchases".<sup>348</sup>



376. The only quit-claim that is relevant to the discussion as to whether or not the Haldimand Proclamation lands include the headwaters of the Grand River is the Mississauga quit-claim of 1784, which occurred months before Haldimand issued his proclamation. The extent of the Mississauga quit-claim of 1792 is irrelevant to this discussion because the boundaries of the Mississauga quit-claim of 1792 are different from the boundaries of the Mississauga quit-claim of 1784. The 1784 quit-claim included the headwaters of the Grand River.<sup>349</sup> It appears the Crown also intended to include the headwaters of the Grand River in the 1792 quit-claim but did not draw up an instrument that reflected this intention. In my opinion, this likely happened because the Mississauga were not consulted about the course of a north-west line referenced in the 1784 quit-claim before surveying instructions were issued. As a result, the straight north-west boundary of the 1792 quit-claim followed a different course than the curved north-west boundary of the 1784 quit-claim. For contemporaneous evidence that the Crown intended the quit claim of 1792 to include the headwaters of the Grand River, see Appendix F: David Smith Survey Plan, n.d., and my discussion of it earlier in this section (David Smith being the acting surveyor general).<sup>350</sup>

<sup>334</sup> Kerry Abel, "The Simcoes and the Indians", in Myra Rutherdale, Kerry Abel, and P. Whitney Lackenbauer, eds., *Roots of Entanglement: Essays in the History of Native-Newcomer Relations* (Toronto: University of Toronto Press, 2018), pp.17-48; and E.A. Cruikshank, ed., *The Correspondence of Lieut. Governor John Graves Simcoe, 5 Vols.* (Toronto: Ontario Historical Society, 1925), 3:51, J.G. Simcoe to Lord Dorchester, 9 [29?] September 1794 (R7367).

<sup>335</sup> Kerry Abel, "The Simcoes and the Indians", in Myra Rutherdale, Kerry Abel, and P. Whitney Lackenbauer, eds., *Roots of Entanglement: Essays in the History of Native-Newcomer Relations* (Toronto: University of Toronto Press, 2018), pp.17-48 at pp.26-27 (SN16990).

<sup>336</sup> Kerry Abel, in a book chapter entitled "The Simcoes and the Indians", contextualizes the need to settle disputes respect to the extinguishment of Indian title to certain lands in Upper Canada, which J.G. Simcoe feared "might be the ruin of this Province" (Upper Canada): Myra Rutherdale, Kerry Abel, and P. Whitney Lackenbauer, eds., *Roots of Entanglement: Essays in the History of Native-Newcomer Relations* (Toronto: University of Toronto Press, 2018), pp.17-48 (SN16990); and E.A. Cruikshank, ed., *The Correspondence of Lieut. Governor John Graves Simcoe, 5 Vols.* (Toronto: Ontario Historical Society, 1925), 3:51, J.G. Simcoe to Lord Dorchester, 9 [29?] September 1794 (R7367).

<sup>337</sup> Provincial Archives of Ontario, F 47-1-1-1 (Simcoe Family Papers), Joseph Chew, “A true copy from the original deed,” 13 February 1792 (R7371). See also Provincial Archives of Ontario, RG1, A-1-1, Vol.2, pp.104-05, John Johnson to John Collins, 25 March 1791 (SN06384). In this letter Johnson states, “If I recollect right, the Course running from the head of Lake Ontario to the River La Tranche [present-day Thames River] is wrongly Expressed in the Deed [the Haldimand Proclamation], as by Running a North West Course it is thought it will not intersect any part of that River, and the Intention was that it Should.”

<sup>338</sup> British Museum, Additional Manuscripts 21763, f.348, John Dease to John Johnson, 18 September 1784 (SN06067).

<sup>339</sup> Historians agree that the location of distinct geographies— such as major drainages, watersheds and shore lines - typically delineated the boundaries of Indigenous territories in the northeastern woodlands.

<sup>340</sup> J.G. Simcoe in E.A. Cruikshank, ed., *The Correspondence of Lieut. Governor John Graves Simcoe*, 5 Vols. (Toronto: Ontario Historical Society, 1925), 3:24, William Chewett to E.B. Littlehales, 31 August 1794 (R7369).

<sup>341</sup> The Ojibwa of the Thames River watershed permitted Ojibwa throughout present day south-western Ontario – including the Mississaugas - to hunt deer within their traditional hunting grounds, on “the Shores of Lake Erie,” every winter when the deer population was large enough to sustain a surplus population. Snow did not “fall so deep” on the north shore of Lake Erie as it did elsewhere in present day south-western Ontario and, as a result, the deer population from various major watersheds congregated there in the fall “to avoid being taken by the Wolves during the deep snow[falls]” occurring during the winter in other habitats: Quoted in Archibald Blue, “Colonel Mahlon Burwell,” *The Canadian Institute*, New Series 1(1898), 41-56 at pp.52-53 (R7311).

<sup>342</sup> Provincial Archives of Ontario, RG1, A-1-6, Vol.1, Simcoe to David Smith, 17 March 1792 (SN06175).

<sup>343</sup> Provincial Archives of Ontario, Ontario Ministry of Natural Resources, Crown Survey Records, Instructions to Surveyors, Book 2, pp.45-46, David Smith to Augustus Jones, [1 April], 1792 (SN06176).

<sup>344</sup> [David Smith], “[Survey] Plan for setting apart ... Eighteen Townships in the County of Lincoln,” n.d., in G.C. Paterson, “Land Settlement in Upper Canada, 1783-1840,” *Sixteenth Report, Ontario Department of Archives* (Toronto: Legislative Assembly of Ontario, 1921), p.49 (SN06188).

<sup>345</sup> The quit-claim instrument of 1792 explained that “at the time of executing the said Indenture [of 1784] the boundaries of the said parcel of land were on one side described by an imaginary line running from the small Lake Washquarter [present-day Burlington Bay] in a north-west course until it strikes the river [La Tranche, present-day Thames River], but from an actual survey [run North 45° West] it has been discovered that a line from the said Lake Washquarter carried on in a north-westerly course will not strike the said River La Tranche.” Consequently, “it is necessary and expedient that the boundary lines” of the land quit-claimed in 1784 “be more accurately laid down and described.” The revised description of the Northern boundary read as follows: a Line running from present-day Burlington Bay “north forty-five degrees west fifty miles; thence south forty-five degrees west twenty miles; and thence south until it strikes the River La Tranche.” NAC, RG10, IT-005, Indian Affairs Consecutive Number 3, 7 December 1792 (SN06015). See Appendix F: ‘Plan Showing the different Surrenders made by the Indians in Upper Canada to the Crown’, for the boundaries of this surrender: extract from “Plan Showing the different Surrenders made by the Indians in Upper Canada to the Crown”: Province of Canada, *Journals of the Legislative Assembly*, (Toronto: Queen’s Printer, 1847), Appendix T, “Report of the Affairs of the Indians in Canada,” Section III, Appendix No.70 (SN09964). For reference to the La Tranche having been renamed Thames see: Provincial Archives of Ontario, Ontario Ministry of Natural Resources, Crown Survey Records, Instructions to Surveyors, Book 2, pp.45–46, David Smith to Augustus Jones, [1 April], 1792 (SN06176).

<sup>346</sup> E.A. Cruikshank, ed., *The Correspondence of Lieut. Governor John Graves Simcoe*, 5 Vols. (Toronto: Ontario Historical Society, 1923), 2:56-65, at p.59, J.G. Simcoe to Henry Dundas, 20 September 1793 (SN05985).

<sup>347</sup> Province of Canada, *Journals of the Legislative Assembly*, (Toronto: Queen’s Printer, 1847), Appendix T, “Report of the Affairs of the Indians in Canada,” Section III, Appendix No.70 (SN09964).

<sup>348</sup> PRO, MPG 91, reprinted in R. Louis Gentilcore and C. Grant Head, *Ontario’s History in Maps* (Toronto: University of Toronto Press, 1984), p.81, plate 4.1 (SN05931). This map is endorsed by Simcoe and included by Simcoe in a letter that he wrote to Henry Dundas on 10 March 1792: in E.A. Cruikshank, ed., *The Correspondence of Lieut. Governor John Graves Simcoe*, 5 Vols. (Toronto: Ontario Historical Society, 1923), 1:118-19, Simcoe to Dundas, 10 March 1792 (SN05932).

<sup>349</sup> PRO, MPG 91, reprinted in R. Louis Gentilcore and C. Grant Head, *Ontario’s History in Maps* (Toronto: University of Toronto Press, 1984), p.81, plate 4.1 (SN05931). This map, which is

No. Report	Page Excerpt No.	
		<p>reproduced in Appendix F: “Sketch of Upper Canada”, is endorsed by Simcoe and included by Simcoe in a letter that he wrote to Henry Dundas on 10 March 1792: in E.A. Cruikshank, ed., <i>The Correspondence of Lieut. Governor John Graves Simcoe</i>, 5 Vols. (Toronto: Ontario Historical Society, 1923), 1:118-19, Simcoe to Dundas, 10 March 1792 (SN05932).</p> <p><sup>350</sup> The Survey Plan depicts survey lines running from Burlington Bay, around the headwaters of the Grand River, to the Thames River. For contrary evidence, see E.A. Cruikshank, ed., <i>The Correspondence of Lieut. Governor John Graves Simcoe</i>, 5 Vols. (Toronto: Ontario Historical Society, 1926), 4:182-83, Lord Dorchester to Simcoe, 25 January 1796 (SN06031). In this letter, Dorchester asked Simcoe “by what authority a [North-West] line was run [across Six Nations’ lands] so as to narrow their limits ... I must say such Proceedings was very indiscreet.”. In my opinion, this quotation indicates that Dorchester was opposed to restricting the boundaries of the Haldimand Proclamation lands to the area of the Mississauga quit-claim of 1792 because the straight line described in the 1792 quit-claim excluded the headwaters of the Grand River contrary to Haldimand’s intention.</p>
8.	Good Report	<p><b>Six Nations Views of the Haldimand Proclamation</b></p> <p>407. On 27 February 1836 the Six Nations stated to Lieutenant-Governor Francis Bond Head that they considered the Haldimand Proclamation to be part of the Covenant Chain “which binds us in alliance with the King.” It confirmed the tripartite treaty of 1784, where the Mississauga quit-claimed their interest in the Grand River Valley. It dedicated the Haldimand Proclamation lands as Six Nation relocated sovereign territory and invited the Six Nations as “Allies of the King of Great Britain” to settle there and maintain their sovereign governance there. It obligated the Crown to ensure that the governance of Haldimand Proclamation lands would always remain “altogether under the Control of the Six Nations”.<sup>378</sup></p> <p><sup>378</sup> NAC, RG10, Vol.109, pp.119-29, Six Nations petition to Francis Bond Head, 27 February 1836 (SN00753).</p>

Appendix E: "Plan Showing the different Surrenders made by the Indians in Upper Canada to the Crown" (SN09964)



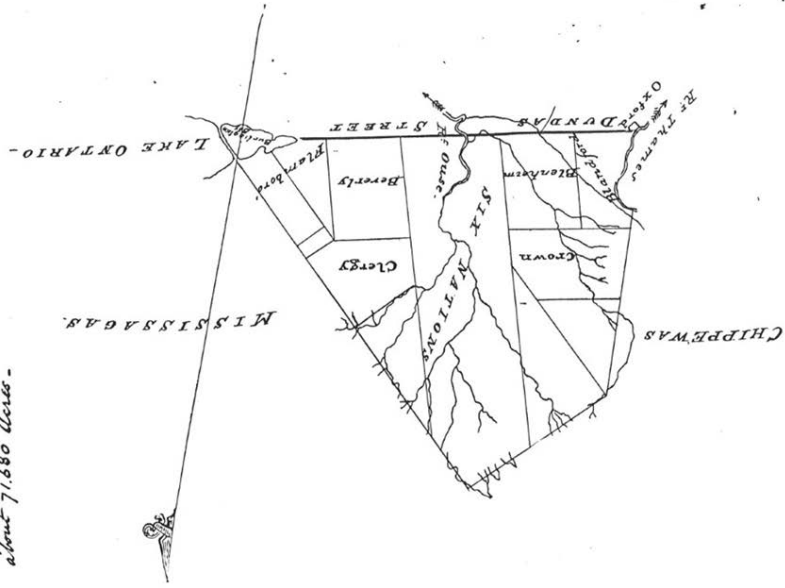
10. Good Report

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Appendix F: David Smith Survey Plan, n.d. (SN06188)

1921 IN UPPER CANADA 49

*Plan for setting apart one Sixteenth of Land for the Crown, equal to one Sixteenth, set apart for the Protestant Clergy, of Eighteen Townships in the County of Simcoe, containing about 71,880 Acres.*



No. Report	Page Excerpt No.	
11. Taylor Report	11	<p><b>[KEY EVENTS]</b></p> <p><b>May 1784</b> Indian Department purchases Mississauga quit claim to the Grand River Valley for transfer to the Six Nations</p> <p><b>Dec. 1792</b> The new governor of Upper Canada, John Graves Simcoe, secures a new deed from the Mississaugas to increase Crown control over land between the Head of the Lake and the Thames River; this deed arbitrarily limits the upper bounds of the Six Nations' Grand River tract, contrary to Haldimand's grant of 1784</p>
12. Taylor Report	30-33	<p style="text-align: center;">NIAGARA</p> <p>(32) In February 1764, Johnson began planning to hold peace councils with the many Native peoples of the Great Lakes country. In reports to his superiors, Johnson explained that, by treating them as sovereign peoples, he would secure a "Treaty of Offensive and Defensive Alliance." Johnson would assure them, "That we will make no settlements or Encroachments contrary to Treaty, or without their permission . . . &amp; duly observe our Engagements with them."<sup>33</sup></p> <p>(33) In July 1764 at Niagara, Johnson convened the first peace council, attracting about two thousand Natives from twenty-four nations: "a greater number, than ever assembled in one body, on the like or any other occasion," he noted. Johnson made peace with two nations that had joined the uprising: the Wyandot (or Huron) and western Senecas (or Chenusios). Then Johnson did something even more important in Native eyes: he renewed the Covenant Chain with the Six Nations and their Anishinabeg allies around the Great Lakes. Disavowing the uprising, they offered to assist British diplomacy to restore peace.<sup>34</sup></p> <p>(34) At the Niagara council, Johnson recognized Native power by providing generous provisions (worth £25,000, New York currency) and lavish presents (£38,000 sterling), unprecedented amounts for a council meeting. In his report to superiors, Johnson justified the expense as essential "to possess our Out Posts, Trade, etc., securely, it cannot be done for a Century by any other means, than that of purchasing the favour of the numerous Indian Inhabitants." To culminate the renewal, Johnson presented an especially large and vivid wampum belt emblazoned with the year 1764. By formally delivering this wampum belt in public council, Johnson conveyed</p>

the British respect for Natives' distinct sovereignty. In response, an Anishinabeg chief politely but pointedly told Johnson, "I exhort you to hold fast by it, to remember what has been said, and to abide by your Engagements."<sup>35</sup>

(35) The attending peoples long remembered and celebrated the Niagara council of 1764 for assuring their sovereignty as British allies. The Niagara council made a powerful impression because of the large attendance, the impressive wampum belt, and Johnson's generous presents and recognition of Native importance.

(36) To preserve the spirit of 1764, First Nations brought that wampum belt to subsequent councils with imperial officials. In 1818 at Drummond Island in Lake Huron, an Indian department official reported meeting with the Anishinabeg, with Ocaitau as their speaker: "Holding the Belt of 1764 in his hand, he said: 'Father, This my ancestors received from our Father, Sir. W. Johnson . . . at the crooked place [Niagara].'" As Ocaitau recalled, Johnson had presented the belt "that we may all be brethren united, and hope[d] our friendship will never cease . . . and your families shall never be in want." In 1836, at a council with Sir Francis Bond Head, the lieutenant governor of Upper Canada, First Nations' chiefs again displayed the wampum belt given to them by Johnson in 1764. They interpreted it, he marveled, "with an accuracy and retention of meaning, which is quite extraordinary." Struggling to find a bureaucratic record of that treaty, Bond Head conceded that the colonial archive could not match the oral traditions of Natives when bolstered by a wampum belt: "On our part, little or nothing documentary exists."<sup>36</sup>

(37) In 1764, Niagara set the stage for subsequent treaty councils, during 1765-1766, that restored peace throughout the Great Lakes and Ohio Valley. These councils culminated at Oswego in July 1766, when Pontiac embraced the alliance offered by Johnson. The treaties allowed the British to reoccupy their burned-out forts, fur traders to resume their business, and settlers to reclaim frontier farms. Johnson explained "that if we desire to keep our out posts, Convoys and Traders in safety, we must show favours to these Indians, . . . for, otherwise all these are in their power, as well as the Frontier Inhabitants." To persist in the continental interior, the British needed to maintain and extend the Covenant Chain network of alliances.<sup>37</sup>



No. Report	Page Excerpt No.	
		<p>33. Sir William Johnson to Thomas Gage, Feb. 19, 1764, in Sullivan et al., eds., <i>PSWJ</i>, vol.4:332 (“Treaty” and “That we will”).</p> <p>34. Sir William Johnson to Lords of Trade, Aug. 30, 1764, O’Callaghan, ed., <i>DRCHNY</i>, vol. 7:648-50 (“greater number”); Johnson, Council at Niagara, July 17 – Aug. 4, 1764, in Sullivan, et al., eds., <i>PSWJ</i>, vol. 11: 276-301; John Borrows, “Wampum at Niagara: The Royal Proclamation, Canadian Legal History, and Self-Government,” in Michael Asche, ed., <i>Aboriginal and Treaty Rights in Canada: Essays on Law, Equity, and Respect for Difference</i> (Vancouver: University of British Columbia Press, 1997): 155-72; Parmenter, “Pontiac’s War,” 631-32; Dussault, et al, <i>Report of the Royal Commission on Aboriginal Peoples</i>, vol. 1: 116.</p> <p>35. Sir William Johnson to Lords of Trade, Aug. 30, 1764, in O’Callaghan, ed., <i>DRCHNY</i>, vol. 7: 648-50 (“to possess”); Borrows, “Constitutional Law,” 23-25; Hill, <i>Clay We Are Made Of</i>, 85-86; Williams and Nelson, “Kaswentha,” 7. Sir William Johnson, Indian Congress at Niagara, July 17 – Aug. 4, 1764, in Sullivan et al., eds., <i>PSWJ</i>, vol. 11: 278-324, unnamed Anishinabeg chief quoted on 331 (“I exhort”); Johnson to Cadwallader Colden, Aug. 23, 1764, in Sullivan et al., eds., <i>PSWJ</i>, vol. 4: 511.</p> <p>36. Sir Francis Bond Head quoted in Borrows, “Constitutional Law,” 28n108; Williams and Nelson, “Kaswentha,” 39-41; Captain Thomas G. Anderson and Ocaitau quoted in Borrows, “Wampum at Niagara,” 166 (“Holding the Belt” and “Father”).</p> <p>37. Sir William Johnson to the Earl of Halifax, Aug. 30, 1764, Ouabache Chiefs, speech, Aug. 30, 1765, and Pontiac, speech, July 29, 1766, in O’Callaghan, ed., <i>DRCHNY</i>, vol. 7: 647 (“that if we desire”), 784, and 866; Parmenter, “Pontiac’s War,” 634-39; White, <i>Middle Ground</i>, 306-7.</p>
13.	Taylor Report 58-59	<p>[HALDIMAND]</p> <p>(81) In March 1784, Brant and another Mohawk representative, Captain David Hill, returned to Quebec to meet with Haldimand. Endorsing Brant’s selection of Grand River as “<i>much</i> to be desired,” Haldimand “promised him every encouragement in my Power towards the success of it.” He noted that the other Six Nations preferred Grand River and “are not inclined to remove to the Bay of Quinte.” Haldimand directed Sir John Johnson to purchase from the Mississaugas six miles on each side of the Grand River from the mouth to the source. The governor also agreed to build at</p>

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		<p>Grand River a church, mills, and school, as well as provide clothing and farm tools. In addition, Haldimand assured the leading Mohawks, including Joseph and Molly Brant, of financial compensation for their confiscated personal property in the Mohawk Valley. Johnson thought that these measures would “Counteract Mr. Schuyler’s endeavours to draw them Back to their Old Settlements.”<sup>78</sup></p> <hr/> <p>78. Frederick Haldimand to Sir John Johnson, Mar. 15, 1784 (“<i>much</i>,” “promised” and “are not inclined”), Haldimand Papers, MG 21, mss 21, 723: 39-40 [SN05999]; Haldimand to Johnson, Mar. 23, 1784, MG 19 F2 (Sir John Johnson Papers), vol. 3, LAC [SN00126]; Johnson to Haldimand, Apr. 8, 1784 (“Counteract”), MG 21 (Haldimand Papers) #21,775, p. 272, LAC; Haldimand to Johnson, Apr. 12, 1784 [SN00129]; Johnson, “Outline of Early Settlement in the Grand River,” 48-50; Haldimand to Johnson, Apr. 22, 1784, RG 10, vol. 15: 121, LAC [SN00130]; Haldimand to Arent Schuyler de Peyster, Nov. n.d., 1784, in <i>Johnston</i>, ed., <i>Valley of the Six Nations</i>, 51-52.</p>
14.	Taylor Report 61-62	<p>[GRAND RIVER]</p> <p>(85) In May 1784, on instructions from Sir John Johnson, deputy superintendent John Butler met the Mississaugas in council to purchase the Grand River and its valley on behalf of the Six Nations. The request puzzled the Mississaugas, who reiterated that they and the Six Nations shared sovereignty over the watershed of the Grand River. The Mississauga spokesman, Pokquan, assured Butler, “We the Mississagas are not the owners of all that Land laying between the three Lakes, but we have agreed and are willing to transfer our right of soil &amp; property to the King our Father, for the use of his people, and to our Brethren the Six Nations. . . . We are Indians, and consider ourselves and the Six Nations to be one and the same people, and agreeable to a former and mutual agreement, we are bound to help each other.”<sup>82</sup></p> <hr/> <p>82. Pokquan speech, Mississauga Council with the Six Nations and John Butler, May 22, 1784, in Charles M. Johnston, ed., <i>The Valley of the Six Nations</i>, 47; David Hill to Daniel Claus, May 29, 1784, RG 10, vol. 2358, part 1, LAC [SN05922]; Peter Jones to the Indian Department, Feb. 13, 1855, in Canada Department of Indian Affairs, <i>Mississaugas of the Credit</i> (Toronto: Warwick Brothers and Rutter, 1895), 38 [SN05916]; Hill, <i>Clay We Are Made Of</i>, 143-45.</p>

15.	Taylor Report	63-65	<p>(88) A day later, October 25, Haldimand granted the Grand River and its valley to the Six Nations, with priority to the Mohawks, “in Consideration of the early Attachment to His Cause manifested by the Mohawk Indians, &amp; of the Loss of their Settlement they thereby sustained.” The governor added that the tract would offer “a Safe &amp; Comfortable Retreat for them &amp; others of the Six Nations who have either lost their Settlements within the Territory of the American States, or wish to retire from them to the British.” Haldimand allocated “Six Miles deep from each Side of the [Grand] River beginning at Lake Erie, &amp; extending in that Proportion to the head of the said River, which them &amp; their Posterity are to enjoy for ever.” The grant included the river as essential to any Native possession, given the centrality of water transit and fishing to their way of life. Indeed, the Mississauga quitclaim of May 22, 1784 to the Crown for the Six Nations specifically included all “Woods, Ways, Paths, Waters, Water Courses, advantages, Emoluments, and Hereditaments Whatsoever, to the said tract.” In a hurry, with his departure looming and many other matters to deal with, Haldimand lacked time to effect a legal deed approved by his colony’s council under an official seal: the sort of patent that the Six Nations expected. Instead, Haldimand’s grant served as a contract that his successors would make good by providing a full legal title to the Six Nations.<sup>85</sup></p> <p>(89) For want of prior surveys, the Crown failed clearly to define the bounds of the Mississauga quitclaim to the upper reaches of the valley secured in May 1784. That quitclaim merely said that the northern boundary of the Mississauga cession ran from the small lake “known by the named of Waghquata” on the east via “a North West Course until it strikes the River La Tranche” (now the Thames). In fact, the La Tranche (Thames) lay southwest of the Waghquata Lake. But the Grand River headwaters <b>did</b> lie to the northwest of Waghquata, indicating the Mississauga intent to accommodate the Six Nations by a boundary that would curve in that direction before dipping back southwestward to reach the La Tranche (Thames). But colonial officials later asserted that the Mississauga intended a direct, straight line, which would thereby deny the headwaters area to the Haudenosaunee. These subsequent officials alleged that Haldimand could only grant what the Crown possessed at that time. In fact, long before 1784, the Six Nations shared with the Mississauga ownership to the entire Grand River Valley from mouth to source. The Crown had recognized the Six Nations ownership to the region in the Treaty of Albany of 1701 and British commanders, including Sir William Johnson, had reiterated that recognition to win Six Nations’ support against the French during the Seven Years War of the late 1750s. Moreover, in</p>
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		<p>March 1784, two months before the Mississauga quitclaim, Haldimand had agreed with Brant, acting on behalf of the Six Nations, that the tract would extend to the source of the Grand River. For Johnson’s instruction in securing the quitclaim, on March 23, 1784, Haldimand provided a copy of his negotiated agreement with Brant.<sup>86</sup></p> <hr/> <p>85. Mississauga quitclaim to the Crown, May 22, 1784, in Johnson, ed., <i>Valley of the Six Nations</i>, 48 (“Woods, Ways”); Frederick Haldimand, “Proclamation,” Oct. 25, 1784, in Johnston, ed., <i>Valley of the Six Nations</i>, 50-51; Robert Mathews to John Stuart, Oct. 30, 1784, MG 21 (Haldimand Transcripts), vol. B-64: 370-71, LAC.</p> <p>86. Mississauga quitclaim to the Crown, May 22, 1784, in Johnson, ed., <i>Valley of the Six Nations</i>, 48 (“Waghquata” and “North West Course”); John Dease to Sir John Johnson, Sep. 18, 1784 [SN06067]; Peregrine Maitland to Earl of Bathurst, Feb. 22, 1821, MG 11, Colonial Office 42, vol. 366: 37-41, LAC [SN06000]; Robert Mathews, “Substance of Captain Brant’s Wishes respecting forming a Settlement of the Mohawk &amp; others of the Six Nation Indians upon the Grand River &amp;c.” [n.d.] with Haldimand’s answer [n.d.] British Museum, Additional Manuscripts 21829: 67-69, [SN05870]; Haldimand to Johnson, Mar. 23, 1784, MG 19 F2 (Sir John Johnson Papers), vol. 3, LAC [SN00126].</p>
16.	Taylor Report 65-66	<p>(91) In November 1808, Alexander McDonell, the speaker of the Upper Canada assembly, recognized the Haudenosaunee right to the headwaters area per the Haldimand grant. McDonell advised the Earl of Selkirk, who was interested in buying Haudenosaunee title to the upper reaches of the River: “This Tract has not as yet been purchased by the Crown, from the Chippawas [an alternative name for the Missisaugas], but it must be whenever the Six Nations require it.”<sup>88</sup></p> <hr/> <p>88. Alexander McDonell to Earl of Selkirk, Nov. 28, 1808, in Johnston, ed., <i>Valley of the Six Nations</i>, 177. For efforts to deny the upper reaches of the river to the Six Nations, see George Hillier to McDonell, Mar. 31, 1819, Six Nations Council with William Claus, July 4, 1819, and Lord Bathurst to the Chiefs of the Six Nations, Sept. 28, 1821, in Johnston, ed., <i>Valley of the Six Nations</i>, 66-69; Williams and Nelson, “Kaswentha,” 189-99.</p>

17. Taylor Report

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81

[SIMCOE]

(113) To increase the land available for colonial settlement, and reduce Six Nations' autonomy, Simcoe sought to squeeze the Grand River tract. The governor especially wanted to secure the key transit corridor between the Head of Lake Ontario and the Thames River (as he renamed the former La Tranche River) to the west, a corridor interrupted by the upper reaches of the Haldimand Grant. To that end, Simcoe misinterpreted a survey map made in 1791 by Augustus Jones on behalf of the Land Board of the Nassau District. Limited in purpose to defining the bounds between that one district and the Grand River tract, the survey did not continue further upstream to include the full length of the valley. Meeting with the Six Nations chiefs, the Land Board recognized that, in Jones's words, "their claims were fully understood to extend in that direction to the said Head or Source of the River." But Simcoe misread the survey map as limiting the entire Grand River tract to just 306,260 acres: about a third of what Haldimand had committed to the Six Nations. In March 1792 from Montreal (before he had reached Upper Canada), Simcoe included that misreading in a larger map of the new colony sent to Lord Dundas.<sup>110</sup>

(114) Eighteen months later, Simcoe confessed to Dundas that he had erred in March 1792 because the full extent of the Six Nations claim "was unknown to me until at a public Council Captain Brant produced the promise under the hand of General Haldimand." That council took place in January 1793. Simcoe added that in March 1792, "I had of course supposed that the Boundary of the Six Nations had not extended so far to the Northwards."<sup>111</sup>

(115) Simcoe deepened the official confusion over the tract's upper limits by extracting a new deed from the Mississaugas on December 7, 1792. It gave an arbitrary new precision to the course of the line from the Head of Lake Ontario to the Thames River as "North Forty five degrees West fifty miles, thence South forty-five degrees West Twenty Miles and thence South until it strikes the River La Tranche." This boundary served Simcoe's prime purpose: to secure for the Crown an overland transit corridor from Lake Ontario, on the east, to the La Tranche/Thames on the west. But Simcoe did so at the expense of the Six Nations. To this new deed council with the Mississaugas, he did not include the Six Nations chiefs, although they had been key parties in the May 1784 transfer. Nor did he coordinate this land cession council with the superintendent of Indian Affairs, Sir John Johnson, as required by the Royal Proclamation of 1763 and by Lord Dorchester's instructions. Secured in an irregular manner, the new deed violated the Haldimand

Grant by imposing bounds that reassigned the headwaters of the Grand River to the Mississaugas. By his own later admission, Simcoe did not know the full extent of the Haldimand Grant when he made his deed with them in December 1792.<sup>112</sup>

(116) In January 1793, a month after securing the new deed from the Mississaugas, Simcoe convened the Six Nations chiefs in public council at Niagara. They had requested the meeting to receive a deed that would offer them a freehold title for the full tract defined by Haldimand's Grant. But Simcoe's proposed deed reduced the bounds by defining the upper limit as "to the utmost extent of the said River as far as the same has been purchased by Us and as the same is bounded and limited in a certain Deed made to us by the Chiefs and people of the said Mississague Nation." By this he meant, the deed he had secured in December 1792. Simcoe's convoluted language contrasted with Haldimand's plain statement in 1784 that the tract extended to the source of the river. With this proposed deed, Simcoe launched the prolonged official effort to deprive the Six Nations of the upper third of the valley by delimiting the Mississauga cession of May 1784.<sup>113</sup>

110. John Graves Simcoe to Henry Dundas, March 10, 1792, in Cruikshank, ed., *Correspondence of Simcoe*, vol. 1: 118-19; Augustus Jones to John Brant and Robert Kerr, June 2, 1821 ("their claims"), MG 11, Colonial Office 42, vol. 368: 153-54, LAC [SN05977].

111. John Graves Simcoe to Henry Dundas, Sept. 20, 1793, and Simcoe to Lord Dorchester, Dec. 6, 1793, in Cruikshank, ed., *Correspondence of Simcoe*, vol. 2: 56-65 ("was unknown"), and 114-16 ("I had").

112. Mississauga deed to the Crown, Dec. 7, 1792, RG 10, IT-005, Indian Affairs #3, LAC [SN06015]; Lord Dorchester to Sir John Johnson, Dec. 24, 1794 [SN00176].

113. Joseph Brant to John Graves Simcoe, Dec. 13, 1792, [SN05957]; Simcoe speech, Jan. 15, 1793 ("Brothers"), Simcoe Letterbook, 156-59, Huntington Library [SN05988]; Simcoe, "Patent of the Grand River Lands, Jan. 14, 1793, in Johnston, ed., *Valley of the Six Nations*, 73-74 ("utmost extent"); Brant, speech, Nov. 24, 1796, in Cruikshank, ed., *Correspondence of Russell*, vol. 1: 91-96; Elizabeth Elbourne, "Broken Alliance: Debating Six Nations' Land Claims in 1822," *Cultural and Social History*, vol. 9, issue 4 (2012): 498.

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18. Taylor Report	89	<p>(129) In 1794, Simcoe encouraged a favored land speculator, William Berczy, to buy Grand River land from Brant in order to draw Berczy and about 100 families of German immigrants away from their initial settlement in western New York. Anticipating war with the United States as imminent, Simcoe hoped to strengthen Upper Canada while weakening the American frontier settlements. The governor did so although Berczy's partners included American land speculators of the sort that Simcoe usually dreaded as security threats. When Berczy would not meet Brant's high price, Simcoe instead arranged for the Germans to settle east of Grand River along Yonge Street on a tract purchased from Mississaugas.<sup>126</sup></p> <hr/> <p>126. William Berczy to Timothy Green, Aug. 1794, in John Andre, <i>Infant Toronto as Simcoe's Folly</i> (Toronto: Centennial Press, 1971): 174; John Graves Simcoe to Henry Dundas, Sept. 20, 1793, and Simcoe to Lord Dorchester, Mar. 16, 1794, in Cruikshank, ed., <i>Correspondence of Simcoe</i>, vol. 2: 59, and 189-91; Ronald J. Stagg, "William Berczy," <i>Dictionary of Canadian Biography</i>, vol. 5.</p>
19. Taylor Report	91-92	<p>(134) Nonetheless, Simcoe opposed letting Six Nations chiefs choose the buyers to their lands. William Dummer Powell reported, "This transaction was no sooner made known to the Governor than the proclamation of 1763 occurred to him, as precluding private purchases, and the Contravention was treated as Treason." Casting the colony's Natives as "most troublesome and presumptuous, particularly at the Grand River," Simcoe insisted that their management of land sales would prevent "all regular settlement in its <i>Vicinity</i>" by encouraging "that which is clandestine, illegal, and most dangerous." He belatedly cited the Royal Proclamation as precluding land sales to private buyers by First Nations. Previous contention over Grand River title had pivoted on the meaning of the Haldimand Grant without invoking the Royal Proclamation. Indeed, a year before the Proclamation had been no obstacle when Simcoe promoted Berczy's land bid with the Six Nations. Nor had that proclamation guided Simcoe's December 1792 transaction with the Mississauga chiefs. In 1795, he belatedly invoked a narrow reading of the Royal Proclamation because it had become convenient to his effort to block land transactions negotiated by the Six Nations.<sup>131</sup></p> <hr/>

No. Report	Page Excerpt No.	
20.	Taylor Report 93-94	<p>131. John Graves Simcoe to Lord Dorchester, Dec. 22, 1795, in Cruikshank, ed., <i>Correspondence of Simcoe</i>, vol. 4: 164; William Dummer Powell, “Memoir,” Nov. 26, 1797, in Cruikshank, ed., <i>Correspondence of Russell</i>, vol. 2:20.</p> <p>(137) Simcoe could have followed Sir William Johnson’s precedents if he had been inclined to cooperate with the Six Nations to sustain their autonomy as allies. He might have convened them in council with the superintendent, Sir John Johnson, and the buyers to supervise the final transactions. Instead, Simcoe recast the proclamation to claim a government monopoly to buy land from Natives – on the pretext that the government could best protect Indians from themselves. By acting unilaterally as governor, he also meant to eliminate any supervisory role for the Indian Department superintendent – as Simcoe had done in his December 1792 deal with the Missisauagas.</p> <p>(138) Although the Royal Proclamation was supposed to protect the interests of Native peoples, Simcoe perverted that intent by imposing a narrow, new reading of the proclamation. By asserting a Crown monopoly to buy and hold Native lands, Simcoe prevented the Six Nations from seeking the best land deals in a competitive market. Instead, he and his successors as governor meant to control who obtained Native lands. The new assertion of a Crown monopoly to manage Native land contradicted the mutual sovereignty conveyed by Sir William Johnson at the treaty council held at Niagara in 1764.<sup>134</sup></p> <p>134 For an example of such self-interested land grants, see Executive Council Minutes, Apr. 15, 1800, Purchasers in Norwich and Dereham, in “Report on Petition of N. Cozens,” <i>Appendix to the Journal of the House of Assembly of Upper Canada, of the Second Session of the Twelfth Provincial Parliament</i> (Toronto: William Lyon Mackenzie, 1836). [From website <a href="http://Canadiana.ca">Canadiana.ca</a> by CRKN] No. 37, p. 60.</p>
21.	Parmenter Report 121-131	<p>v) The Niagara Treaty of 1764</p> <ul style="list-style-type: none"> <li>• This treaty concluded peace between the English Crown and the Indigenous nations involved in Pontiac’s War (1763-64). It also witnessed the ratification of the English Crown’s Proclamation of 1763 by the assembled Indigenous nations (including the Haudenosaunee).</li> </ul>



Haudenosaunee neutrality faced another significant challenge during King George's War (a.k.a. the War of Austrian Succession, 1744-1748) in eastern North America, but League negotiators passed the test with flying colors – their diplomacy was at the forefront of reasons why the Anglo-French conflict ended in stalemate in its North American theater.<sup>235</sup> Meeting in November 1748 with Governor Roland-Michel Barrin de la Galissonnière in the Château St. Louis in Québec, a "solemn deputation" of eighty Haudenosaunee headmen explained to La Galissonnière their reasons for remaining neutral, and their refusal to be considered "subjects" of either crown. The Canadian governor was so impressed that he had the Haudenosaunee leaders affix their marks to a paper copy of the speech. To the French, this document represented a politically useful Haudenosaunee declaration of independence to be deployed in postwar peace negotiations with England, but to the Haudenosaunee the November 1748 meeting meant that their own, long-cultivated status of diplomatic neutrality had been once more recognized in concrete fashion and willingly endorsed by one of their European colonial neighbors.<sup>236</sup>

Haudenosaunee neutrality later played a critical role in the diplomacy that ended the military phase of the Seven Years' War. In 1760, the League sent 706 men, women, and children to accompany British General Sir Jeffery Amherst's campaign up the St. Lawrence River valley to Montréal<sup>237</sup> - another impressive showing, but one that had Haudenosaunee rather than Anglo-American interests at heart. As Amherst's force advanced up the St. Lawrence River, League delegates mediated a peace agreement between Sir William Johnson and the Haudenosaunee settled at Oswegatchie on August 18, 1760.<sup>238</sup> Significantly, this treaty promised the residents of Oswegatchie the same rights and privileges they had enjoyed as allies of New France, protection of their aboriginal territory and possessions, and free exercise of the Catholic religion in exchange for their withdrawal from active military support of the French.<sup>239</sup> Once this agreement was complete, all but 175 of the League warriors returned home – an unmistakable indication of the priorities determining their involvement on the campaign.<sup>240</sup> On September 1, 1760, Captain John Knox reported that "Sir William Johnson and his Myrmidons went to Hasquesashnagh, a small Indian village of the five nations, to smoke the pipe of peace, and to assure them of our protection, upon their future good behavior."<sup>241</sup> A similar treaty to the one negotiated at Oswegatchie was concluded at Kahnawā:ke on September 6, 1760,<sup>242</sup> and two days later, only eighty-five of the 706 League

warriors who set out on the expedition remained to march into captured Montréal with Johnson and Amherst.<sup>243</sup>

The Haudenosaunee presence with the conquering British army put them in the right place at the right time to see to the security of the Laurentian communities as well as to the protection of broader Haudenosaunee rights. Article Forty of the 1760 Agreement of Surrender of Canada to Great Britain guaranteed that the Indian allies of New France would be "maintained in the lands they inhabit," and that "they shall not be molested...for having carried arms and served his Most Christian Majesty [Louis XV]."<sup>244</sup> One week after the formal surrender of Canada, in a final peace treaty negotiated by Sir William Johnson with the Mohawks of Kahnawá:ke, the Haudenosaunee ended their Seven Years' War with their neutrality (and attendant capacity for free movement and free trade) intact.

In the immediate aftermath of the Seven Years' War, the orientation of British colonial diplomacy with Indigenous nations in North America turned to the protection of Native lands from increasing settler encroachment and speculation. British concern for protection of the integrity of Native territory (encompassing both settlements and claimed areas for resource procurement) arose from explicit promises made during the Seven Years' War to provide a "large and extensive Trade" for Native nations in exchange for the withdrawal of the latter's military assistance to New France.<sup>245</sup> The Royal Proclamation of 1763 came about as a result of prior treaty commitments and is best understood as a document shaped by contemporary British consciousness of Native peoples' status as independent nations.<sup>246</sup> Intended to alleviate the prospect of future conflict between colonial settlers and indigenous nations, the Royal Proclamation formalized the commitment specified in Article 40 of the 1760 surrender of Canada by delineating boundaries and defining jurisdictions between indigenous nations and the Crown. The Proclamation expressly prohibited colonial governments or subjects from: 1) surveying or granting any unceded Native land; 2) permitting settlement on Native land (defined as all land west of the Proclamation's settlement boundary line); and 3) arranging private purchases of land – instead, an official system of public purchases would provide the vehicle for the extinction of Native title.<sup>247</sup> Significantly, as legal historian John Borrows points out, while the Proclamation "reinforced First Nation preferences that First Nation territories remain free from European settlement or imposition, it also opened the door to the erosion of those same preferences" by inserting claims of British dominion and sovereignty

over the territories occupied by Indigenous nations. In other words, British imperial authorities sought to have their cake (enhancing security by convincing Native people that their land base and jurisdiction were protected) and to eat it, too (increasing the political and economic power of Great Britain relative to Indigenous and other European nations with claims of dominion over Indigenous homelands).<sup>248</sup>

Colonial authorities in direct contact with Indigenous nations in North America (to say nothing of Indigenous nations themselves) understood, interpreted, and represented the Proclamation differently. Sir William Johnson, the Crown Superintendent for Indian Affairs in the Northern Department, took great pains to track the arrival of the Proclamation in North America.<sup>249</sup> On December 24, 1763, Johnson declared the Royal Proclamation in effect in the territories of the Six Nations and their allies, and in January 1764 he made explicit assurances to the Mohawks that no lands would be taken or purchased from them without their consent while also promising the delivery of printed copies of the Royal Proclamation to the various Haudenosaunee communities.<sup>250</sup> At least one copy of the Royal Proclamation found its way to Akwesasne – community leaders produced the document on at least three different occasions in negotiations with British and American colonial officials from 1769 to 1795.<sup>251</sup>

Johnson made a formal presentation of the Royal Proclamation of 1763 to the Haudenosaunee and other Indigenous nations for affirmation at the 1764 Treaty of Niagara. Johnson described the purpose of the meeting at Niagara, where the Proclamation would be formally presented, as the negotiation of a "Treaty of Offensive and Defensive Alliance" in which the British would:

“assure them [the Indians] of a Free Fair & open trade, at the principal Posts, & a free intercourse, & passage into our Country, that we will make no Settlements or Encroachments contrary to Treaty, or without their permission. That we will bring to justice any persons who commit Robberys or Murders on them & that we will protect & aid them against their & our Enemies, & duly observe our Engagements with them.”<sup>252</sup>

Borrows argues convincingly that this statement by Johnson (which notably echoed earlier treaties based on the kaswentha agreement), confirmed the Royal Proclamation as a treaty, insofar as the Haudenosaunee "approved terms of the Proclamation which encompassed more than a system of land allotment, including express guarantees of First Nations sovereignty."<sup>253</sup> The Royal

Proclamation's explicit language defining Native territory as "Hunting Grounds" represented acknowledgment of Indigenous peoples' unhindered capacity to travel and trade in their defined homelands, and the subsequent Treaty of Niagara recognized their capacity to travel and trade to (and at) colonial destinations.

In addition to the Haudenosaunee, representatives of twenty-three other Indigenous nations from a region encompassing Nova Scotia, Hudson's Bay, and the Mississippi River attended the 1764 Niagara treaty.<sup>254</sup> Johnson made a priority of communicating the terms of the Proclamation according to Native peoples' familiar diplomatic forms, citing in particular the need for "a very large [wampum] belt with some remarkable and intelligible figures thereon."<sup>255</sup> Significantly, the "great Covenant Chain" belt Johnson presented at the conference was described in the original record as "23 Rows broad, and the Year 1764 worked upon it, worth above £30."<sup>256</sup> Nineteenth century Ojibwa oral tradition recorded the use by Indigenous delegates of a Two-Row wampum belt to reflect their understanding of the Royal Proclamation as confirming the terms of their relationship with the British colonial population. The Proclamation's provision that "the several nations...with whom we are connected...should not be molested or disturbed" reflected the Two-Row wampum belt's denotation of each nation pursuing its own path while living beside one another in peace and friendship.<sup>257</sup> That sentiment was echoed by Johnson's subsequent explicit assertion that the 1764 Treaty of Niagara in no way represented an assertion of Crown sovereignty over Indigenous nations. In an October 31, 1764 letter to Gage, Johnson not only asserted that "the very Idea of Subjection would fill them [i.e., the Six Nations] with horror," he also provided personal testimony of how records of prior treaty conferences that he had attended had been subsequently modified to include acknowledgements of Native subjection that were never mentioned publicly in the conference proceedings. Johnson pointed out that these discrepancies were "not well known" among imperial officials but warned that any attempt to enforce a claim of Native submission to the Crown "must lay the foundation of greater Calamities than has [sic] yet been experienced" by British authorities in North America.<sup>258</sup> Johnson's unambiguous commentary helps us to appreciate contemporary understanding of the Treaty of Niagara as providing comprehensive Crown protection for the sovereignty and jurisdictional rights of the Indigenous nations party to the agreement.

<sup>235</sup> Parmenter, "Neutralité active des Iroquois durant la guerre de la Succession d'Autriche," Recherches Amérindiennes au Québec 32.1 (2002): 29-37.

<sup>236</sup> "Procès-verbal d'une aemblée tenue au château Sain-Louis avec les députes Iroquois [2 November 1748]," LAC, AC, C11A, 92: ff.172-75; La Galissonnière à Maurepas [8 November 1748]," LAC, AC, C11A, 91: ff.248-250v; Antoine-Louis Rouillé à La Jonquière [4 May 1749], LAC, AC, B, 89: ff.268-269v; William J. Eccles, "Sovereignty-Association, 1500-1783," in Eccles, Essays on New France (Toronto: Oxford University Press, 1987), 170.

<sup>237</sup> "Return of the Men, Women, and Children of the Six Nations of Indians Under the Command of Sir William Johnson, Bart., at Oswego, 5 August 1760," Great Britain, Public Record Office, War Office Papers, Class 34, vol. 39; John Knox, An Historical Journal of the Campaigns in North America for the Years 1757, 1758, 1759, and 1760 [1769; rpt., 3 vols., ed. Arthur G. Doughty (Toronto: The Champlain Society, 1914-16) 3: 91.

<sup>238</sup> James Abercrombie to Earl of Loudoun, 6 August 1760, Earl of Loudoun Papers, Huntington Library, LO 6259; WJP 3: 273; Knox, Historical Journal 2:533.

<sup>239</sup> Daniel Claus to Sir William Johnson, 8 September 1764, LAC, RG10, 7: 184; John Thompson, "The Treaties of 1760: Mohawk Pacts with the British Reverberate Across Two Centuries," The Beaver 76.2 (April-May 1996): 23-28; Alain Beaulieu, "Les garanties d'un traité disparu: le traité d'Oswegatchie, 30 août 1760," Revue Juridique Thémis 34 (2000): 369-408. See also the discussion of terms of an affiliated agreement concluded with the Wendats of Lorette in 1760 in Jaenen, "Some Unresolved Issues: Lorette Hurons in the Colonial Context," in A.J.B. Johnston, ed., Essays in French Colonial History: Proceedings of the 21st Annual Meeting of the French Colonial Historical Society (East Lansing, MI: Michigan State University Press, 1997), 111-25.

<sup>240</sup> WJP 13: 188-90.

<sup>241</sup> Knox, Historical Journal 2: 556. To date, no record of a formal treaty signed at Akwesasne on this date has been found, but the terms of the agreement as described by Knox align with what we know of the affiliated treaties at Oswegatchie and Kahnawà:ke. Knox's reference to "Myrmidons" alludes to the elite warriors commanded by Achilles in Homer's Iliad.

<sup>242</sup> H.-R. Casgrain, éd., Collection des Manuscrits du Maréchal de Lévis (12 vols., Montréal and Québec, 1889-1895) 1: 303-4; 11: 257-58.

<sup>243</sup> WJP 10: 251-54; 13: 173-78.

<sup>244</sup> NYCD 10: 1117.

<sup>245</sup> Sylvester K. Stevens et al, eds., The Papers of Henry Bouquet (6 vols., Harrisburg: Pennsylvania Historical and Museum Commission, 1951-94) 2: 621-22 (quote p.622); WJP 10: 362, 511.

<sup>246</sup> John Borrows, "Wampum at Niagara: The Royal Proclamation, Canadian Legal History, and Self-Government," in Michael Asch, ed., Aboriginal and Treaty Rights in Canada: Essays on Law, Equality, and Respect for Difference (Vancouver: UBC Press, 1997), 155.

<sup>247</sup> WJP 10: 976-85. An excellent discussion of the planning behind the Proclamation appears in Jack Stagg, Anglo-Indian Relations in America to 1763 and an Analysis of the Royal Proclamation of 7 October 1763 (Ottawa, ON, 1981), 284-369. See also Jack M. Sosin, Whitehall and the Wilderness: The Middle West in British Colonial Policy (Lincoln, NE, 1961), 27-53.

<sup>248</sup> Borrows, "Wampum at Niagara," 160. Note the subtle insertion of the phrases "Our Protection" and "Our Dominion and Territories" in the following statement in the Proclamation regarding Crown protection of Native territory: "the several Nations or Tribes of Indians, with whom we are connected, and who live under Our Protection, should not be molested or disturbed in the Possession of such Parts of Our Dominion and Territories as, not having been ceded to or purchased by Us, are reserved to them...as their Hunting Grounds." See WJP 10: 982-84.

<sup>249</sup> WJP 4: 255.

<sup>250</sup> WJP 10: 976; 11: 31, 34.

<sup>251</sup> WJP 4: 255; 10: 973-76; 11: 29-31; "Minutes of the Proceedings with the Indians of the Village of St. Regis respecting their claim to the Track [sic] of Land from a Creek a little above the Long Sault to River Raisins six leagues in depth," 1-2 April 1784, LAC, RG10, 1833: 134-41 (reel C-1223); "Copy of the Proceedings of the St. Regis Indians &c. with the Commissioners of the State of New York, March 11, 1795," in Superintendent of Indian Affairs in the Northern District of North America Fonds (1753-1829), LAC, MG19 F35, Ser.2, Lot 701, pp.1-7 (reel H-2944).

<sup>252</sup> WJP 4: 328 (quote); 11: 278-324.

<sup>253</sup> Borrows, "Wampum at Niagara," 161-62 (quote p.162).

<sup>254</sup> WJP 2: 278-81, 481, 511-14; "A List of the Different Indian Nations That Met Sir William Johnson at Niagara, July 1764, to Make Peace in Behalf of Their Tribes, Enclosed in a Letter from Colonel Joseph Goldthwait to Dr. [Ezra] Stiles, A.D., 1766," Massachusetts Historical Society Collections ser.1, 10 (1809): 121-22.

<sup>255</sup> WJP 4: 330-31.

<sup>256</sup> WJP 11: 309-10.

			<p><sup>257</sup> Borrows, "Wampum at Niagara," 163-65, 263n78.</p> <p><sup>258</sup> <u>WJP 11: 394-95</u> (quotes p.395).</p>
22.	Parmenter Report	166-167	<p>viii) The Haldimand Proclamation of 1784</p> <p>In March 1783 Brant provided Haldimand with a clear sense of what the Haudenosaunee believed they were due. He submitted to Haldimand his "Wishes Respecting Forming a Settlement on the Grand River." The document, which is only a transcript of the "Substance" of Brant's statement, recommended that the Crown:</p> <p style="padding-left: 40px;">"purchase from the Mississague, or proprietors, a tract of land consisting of about six miles on each side of the Grand River, called Oswego running from River LaTranche [i.e., the Thames River] into Lake Erie for the use of the Mohawks and such of the Six Nations as are inclined to join them in that settlement."</p> <p>Brant further requested Crown indemnification of the Mohawks' wartime losses of personal property ["faithfully ascertained" to amount to £16,000 (New York currency)], along with assistance with relocation expenses and "a reasonable quantity of Provisions" until their settlements at the Grand River "shall be in some forwardness."<sup>334</sup> Haldimand's reply stated his intention of having Indian Department Superintendent Sir John Johnson: "purchase a Tract of Country between the three Lakes Ontario, Erie, and Huronone of which the Tract required by the Mohawks for the Six Nations will be granted to them by a Deed." He also pledged to recommend the requested financial indemnification to the Crown and advanced £1,500 (New York currency) toward that objective and made a general promise that the Haudenosaunee would be "furnished with every aid that can be given for the speedy and happy re-establishment of such of the Six Nations as have been driven from their former Habitation."<sup>335</sup></p> <hr/> <p><sup>334</sup> <u>Ibid.</u>, 44. For Brant's personal familiarity with the Grand River region, see Johnston, "Introduction," xxxvi-xxxvii.</p> <p><sup>335</sup> Johnston, ed., <u>Valley of the Six Nations</u>, 45. In 1775, the average exchange rate of Pounds (New York currency) to Pounds Sterling was 1.7155:1. See McCusker, <u>Money and Exchange in Europe and America, 1600-1775</u>, 165. This would make the award of £16,000 (NY) roughly equivalent £9,327 (Sterling) or to \$1,623,946 in 2022 USD, per Nye, <u>Pounds Sterling to Dollars</u>,</p>

			<p><a href="https://www.uwyo.edu/numimage/currency.html">https://www.uwyo.edu/numimage/currency.html</a> (accessed January 20, 2022). Using the same methodology and sources, the advance of £1,500 (NY) was equivalent to £874 (Sterling) or \$152,174 in 2022 USD. Cf. Brant's autumn 1784 claim to Haudenosaunee leaders that he had received "300,000 of Gold money already paid over to us" from Crown authorities. See Thomas Ablar, ed., <u>Chainbreaker: The Revolutionary War Memoirs of Governor Blacksnake as Told to Benjamin Williams</u> (Lincoln: University of Nebraska Press, 1989), 167.</p>
23.	Parmenter Report	172-175	<p>Back in Canada, the efforts of the Crown to identify tracts of land on which to settle Haudenosaunee refugees continued. Longstanding community divisions in the Mohawk Nation influenced the relocation of one group (identified as Lower Mohawks owing to their former residency at Tiononderoge or Fort Hunter) under the leadership of John Deserontyon<sup>343</sup> to the Bay of Quinté, and another under Brant (identified as Upper Mohawks owing to their former residency at Canajoharie) to Grand River.<sup>344</sup> Brant favored the Grand River location for two key reasons: 1) its proximity to the Senecas, who remained on traditional homelands in modern western New York; and 2) its proximity to allied Algonquian nations in the Great Lakes. Haldimand eventually came to agree with Brant's view that the Grand River location held the greatest promise as a refuge for all the Haudenosaunee, but he respected the wishes of Deserontyon's group to relocate to the Bay of Quinté.<sup>345</sup></p> <p>Haldimand issued orders for Indian Department officers to make the requisite purchase of the "Tract of Country" located "between Lakes Ontario, Erie &amp; Huron" on March 23, 1784.<sup>346</sup> Lieutenant-Colonel John Butler hosted a delegation of Mississaugas<sup>347</sup> and Haudenosaunee at Fort Niagara on May 22, 1784. After receiving Butler's request for the purchase, Mississauga chief Pokquan stated that while the Mississaugas were "not the owners of all that Land laying between the three Lakes," they were willing to:</p> <p style="padding-left: 40px;">"transfer our right of Soil &amp; property to the King our Father, for the use of his people, and our Brethren the Six Nations from the Head of the Lake Ontario or the Creek Waghquata, to the River La Tranche [Thames River], then down that River until a South course will strike the Mouth of Catfish Creek on Lake Erie, this tract of Land we imagine will be quite sufficient both for the Kings people, and our Brethren the Six Nations, who may with to settle and hunt thereon."<sup>348</sup></p>



It is imperative to point out that the Crown purchase from the Mississaugas on May 22, 1784 was not solely for the benefit of the Haudenosaunee, but also included lands that would be set aside for Loyalists. Brant made clear in March 1783 that he welcomed the prospect of Loyalists settling near his proposed “Settlement on the Grand River.”<sup>349</sup> Pokquan stated on May 22, 1784 that the Mississaugas “consider ourselves and the Six Nations to be one and the same people, and agreeable to a former, and mutual agreement, we are bound to help each other.”<sup>350</sup> The Mississaugas’ surrender of land in modern southern Ontario to the Crown on May 22, 1784 entailed a tract far larger than that which was eventually granted along the Grand River to the Haudenosaunee,<sup>351</sup> and therefore we should not read into that purchase any intent on the part of Crown authorities regarding a perceived need to clear Mississauga title to the Grand River tract prior to deeding that land to the Haudenosaunee.<sup>352</sup>

<sup>343</sup> M.E. Herrington, “Captain John Desrouty and the Mohawk Settlement at Deseronto,” *Queen’s Quarterly* 29 (1921): 165-80. See also Ann Hunter, “Tiononderogue: The Struggle for a Mohawk Town, 1686-1797,” *Iroquoia: The Peer-Reviewed Journal of the Conference on Iroquois Research* 1 (2015): 61-80.

<sup>344</sup> Surtees, “Iroquois in Canada,” 73; Taylor, *Divided Ground*, 121-22; Hart, “For the Good of Their Souls”, 189-91, 215, 222-24.

<sup>345</sup> Johnston, “Introduction,” xxxvii; *idem*, ed., *Valley of the Six Nations*, 46, 49-50. Cf. Brant’s *circa* July 1783 statement that there was no need for the Crown to make a purchase from the Mississaugas for lands in modern southern Ontario near the Bay of Quinté because the Haudenosaunee were “proper owners of that ground.” Quoted in Surtees, “Indian Land Cessions in Ontario, 1763-1862: The Evolution of a System” (Ph.D. diss., Carleton University, 1983), 57. See also Kelsay, *Joseph Brant*, 556, 718n12.

<sup>346</sup> Johnston, ed., *Valley of the Six Nations*, 45.

<sup>347</sup> An Algonquian-speaking nation indigenous to the upper Great Lakes who were affiliated with the Anishinaabe. See Donald B. Smith, “Who are the Mississauga,” *Ontario History* 67 (1975): 211-22. Following historian Heidi Bohaker, I have adopted the contemporary ethnonym “Anishinaabe” as a reference to Indigenous nations of the upper Great Lakes region identified variously in historical documents as Algonquin, Ojibwe (Ojibwa, Chippewa), Odawa (Ottawa),

Mississauga, Nipissing, and Potawatomi. See Bohaker, Doodem and Council Fire: Anishinaabe Governance through Alliance (Toronto: University of Toronto Press, 2020), xv.

<sup>348</sup> Johnston, ed., Valley of the Six Nations, 47.

<sup>349</sup> Ibid., 44. See also Faye V. Whitfield, “The Initial Settling of Niagara-on-the-Lake, 1778-1784,” Ontario History 83 (1991): 13-14.

<sup>350</sup> Johnston, ed., Valley of the Six Nations, 47. This was a reference to the “Dish with One Spoon” treaty.

<sup>351</sup> Ibid., 48.

<sup>352</sup> This issue has represented a persistent misconception in scholarship since the nineteenth century. Writing in 1895, the amateur anthropologist David Boyle claimed, on the basis of hearsay evidence, that the Haudenosaunee had been dispersed from modern Ontario after a “great battle” with the “Ojibwas,” and asserted that “it is well known that when Canada became British all the Indians with whom the imperial and provincial governments had to deal in what is now Ontario were Algonkians.” See Notes on Primitive Man in Ontario, Being an Appendix to the Report of the Minister of Education for Ontario (Toronto: Warwick Bros. and Butter, Printers, 1895), 14. In 1979, Leroy Eid cited Boyle’s 1895 statement in support of his claim that “by every standard the most important historical proof” of his so-called “Ojibwa thesis” (positing an outright Anishinaabe expulsion of the Haudenosaunee from modern southern Ontario during the late seventeenth century) was that “the British government had to buy land in modern Ontario from the

Mississaugas in order to relocate the Iroquois loyal to the Crown. The Mississaugas were paid 1,180 pounds [sic] for the lands they ceded at a council attended by the British and Six Nations officials.” See “The Ojibwa-Iroquois War: The War the Iroquois Did Not Win,” Ethnohistory 26.4 (1979): 315. Peter Schmalz echoed Eid in 1991, stating that in 1784 “the British had to pay the Ojibwa [sic] £1180 for land on the Grant River in order to settle the Iroquois displaced by the American Revolution. It was only natural that to the victors went the spoils of war.” See Schmalz, The Ojibwa of Southern Ontario (Toronto: University of Toronto Press, 1991), 32 (quote), 275-76n27. Despite these assertions of subsequent historians, it is not clear that either the Mississaugas or Haudenosaunee understood the arrangements in that manner. The qualification on the extent of Mississauga ownership of land in modern southern Ontario and the allusion to the “Dish with One Spoon” treaty by the Mississaugas on May 22, 1784 represent important challenges to the notion of the Mississaugas being rewarded by the Crown for prior “spoils” deriving from past conflicts with the Haudenosaunee. Cf. Kelsay’s claim that Haldimand regarded the May 22, 1784 purchase from

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the Mississaugas as simply an expedient to satisfy people “on the spot” which he intended to grant to the Haudenosaunee. See Joseph Brant, 349. A more accurate interpretation of the transaction would be that the Mississaugas made a general surrender of a large tract in modern southern Ontario to the Crown, a portion of which the latter would use to settle Loyalists, and another that would be deeded to the Haudenosaunee. The Haudenosaunee made no objection in May 1784 to the Mississaugas receiving relatively modest compensation for lands in modern southern Ontario that would subsequently be allocated to Loyalist settlers. The attitude of the Haudenosaunee and Mississaugas toward one another is also reflected in the 1848 grant by the Haudenosaunee of 6,000 acres in the southeast corner of their Grand River tract to the Mississaugas of the New Credit. The New Credit band, having been forced to surrender its reserved lands, sought refuge at Grand River via an “effectual” appeal to the “Dish with One Spoon” treaty and its associated wampum belt. See Hale, Iroquois Book of Rites, 91-92 (“effectual,” p.91); Sally M. Weaver, “Six Nations of the Grand River, Ontario,” in Trigger, ed., Northeast, 527; Surtees, “Iroquois in Canada,” 78-79.

This is Exhibit "F" to the affidavit of John A. Wilson,  
affirmed before me on February 28, 2023



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Alexander DeParde

A Commissioner for Taking Affidavits

**COURT FILE NO.:** CV-18-594281-0000  
(Formerly Court file no.: 406/95)  
**DATE:** 20220608

**SUPERIOR COURT OF JUSTICE – ONTARIO**

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

Plaintiff

**AND:**

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

Defendants

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

**COUNSEL:** *Iris Antonios, Max Shapiro, Robert Janes and Rebecca Torrance* for the Plaintiff  
*Anusha Aruliah, Maria Vujnovic, Edward Harrison, and Sarah Kanko* for the  
Defendant the Attorney General of Canada  
*Manizeh Fancy, David Feliciant, Catherine Ma, Insiyah Kanjee, Shima Heidari,*  
*Julia McRandall and Lina Chaker,* for the Defendant Her Majesty the Queen in  
Right of Ontario

**HEARD**

**(By videoconference):** June 7, 2022

**CASE MANAGEMENT ENDORSEMENT**

[1] A Case Management Conference was conducted in this action on June 7, 2022, as provided by paragraph 15(f) of the Case Management Endorsement of March 1, 2022 (the “March 2022 CM Endorsement”).

**A. Matters Addressed at Case Management**

[2] The March 2022 CM Endorsement directed, in paragraph 15(b) that the parties be prepared to speak to the refinement and further development of the Issues List, building on the proposed Issues Lists submitted by the parties at the last Case Management Conference. This was predicated on the anticipated delivery by the Plaintiff, Six Nations of the Grand River Band of Indians, of

their expert reports by April 1, 2022, in accordance with the 2021 Revised Expert Report Timetable, as modified by the March 2022 CM Endorsement.<sup>1</sup>

[3] The Plaintiff has delivered 11 expert reports: 8 served on April 1, 2022, one served on May 30, 2022 and another served on June 3, 2022. The Plaintiff expects to serve 3 further expert reports by June 30, 2022, to complete the Plaintiff's intended delivery of 14 expert reports.

[4] The Plaintiff reported that the expert reports cite some 2,361 documents that are identifiable within the parties' productions, and about 1,245 primary source documents that originated in various archives but are not represented in the parties' productions. Of these documents, the Plaintiff has now produced 976 primary source documents to the Defendants and anticipates completing the production of the remaining primary source documents by June 30, 2022. The Plaintiff is also in the process of preparing for disclosure approximately 370 secondary source documents that the Plaintiff's experts have referred to but are not within the parties' productions. The Plaintiff will deliver these to the Defendants by June 30, 2022.

[5] Six Nations agreed with the submissions by the Defendant, the Attorney General of Canada ("Canada") and the Defendant Her Majesty the Queen in Right of Ontario ("Ontario") (collectively, the "Defendants"), that the further development of the Issues List is best addressed upon the Plaintiff completing the delivery of their expert reports and the additional supporting documents.

[6] The 2021 Revised Expert Report Timetable requires that the Defendants deliver their expert reports by October 3, 2022. This provided the Defendants with 6 months for the Defendants to respond after the Plaintiff's deadline for the delivery of the Plaintiff's expert reports (April 1, 2022). The Plaintiff is prepared to agree to a commensurate extension of time for the Defendants to respond to the Plaintiff's expert reports – measured by the extent of time by which the Plaintiff exceeded their deadline – if required.

[7] The Defendant, Canada, submitted that Canada's experts are making all reasonable efforts to meet the October 3, 2022 deadline for the delivery of defence reports, but that one of Canada's experts is not expected to complete in time by reason of illness. Canada submitted that there is a considerable amount of evidence raised by the Plaintiff's reports that requires consideration, including those parts of the supporting documentary evidence that are additional to the parties' current productions. Canada stated that the parties will be in a better position to address the Issues

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<sup>1</sup> *Six Nations of the Grand River Band of Indians v. The Attorney General of Canada*, 2020 ONSC 3747, at para. 29, as modified by the Case Management Endorsement dated July 20, 2021 at para. 2 (the "2021 Revised Expert Report Timetable"), as modified by the March 2022 CM Endorsement at para. 15(d) (to establish deadlines for Joint Surveyor's Report).

List, and to formalize the timing of further expert reports, once the Defendants have received all the Plaintiff's expert reports.

[8] The Defendant, Ontario, submitted that it requires additional time to respond to the 14 expert reports delivered, or anticipated shortly to be delivered, by the Plaintiff. Ontario submitted that the Plaintiff's expert reports delivered to date are cumulatively more than 1,100 pages in length and include over 3,000 citations or footnote references, with newly produced documents beyond the parties' production database. Ontario submitted that most of its experts will generally be on a schedule to deliver their reports within six months of receiving all the Plaintiff's expert reports, which would align with the protocol set out in the 2021 Revised Expert Report Timetable, but that Ontario has timing concerns with two of its expert witnesses. One of Ontario's experts has stated that a report cannot be finalized until June 2023, due to commitments in other active litigation; and a second expert requires until April 2023 due to challenges in research and document access related primarily to the COVID pandemic.

[9] Ontario renewed its concern that the nature of the claims and the character of the relief sought by the Plaintiff may be extending beyond the scope of the Plaintiff's pleadings.

[10] Considering the agreement of all parties that further development of the Issues List and any revision to the 2021 Revised Expert Report Timetable requires completion of delivery of the Plaintiff's expert reports, these issues will be held down pending the Plaintiff's delivery of their further anticipated reports by June 30, 2022. The Defendants submitted that they require one month to consider the Plaintiff's expert reports and assess the impact of this expert evidence on the Issues List and on the timetable requirements for delivery of certain of their responding expert reports. The Plaintiff was content that the Defendants be provided with this time and require one month to then assess the Defendants' positions. The parties will then return to Case Management to speak to the 2021 Revised Expert Report Timetable and the Issues List.

[11] All parties recognize that the 2021 Revised Expert Report Timetable is an integral part of the development of this action for adjudication. All parties thereby recognize the importance of continuing to work toward achieving the objectives set out in the 2021 Revised Expert Report Timetable, notwithstanding that they will be heard, at the next Case Management Conference, on an extension of the time periods set out in the 2021 Revised Expert Report Timetable to address the Plaintiff exceeding the time stipulated for the delivery of the Plaintiff's expert reports, and timing concerns affecting certain of the Defendants' experts.

[12] The Defendants reported on receipt of notification of a potential motion by a non-party, Haudenosaunee Development Institute ("HDI") for leave to intervene in this action. The Defendants submitted that this would require scheduling, should the motion be advanced. Should a motion be brought for intervention, the parties may request that the next Case Management Conference be brought forward to address scheduling for the hearing of this motion, as necessary, with the involvement of the moving party: Rule 50.13.

[13] Last, the Plaintiff reported that the parties have established a working group to assemble the documents required for trial. Ontario submitted that counsel for all parties have engaged in continuous discussions relating to a Joint Book of Documents, but that this work cannot advance fully until all expert reports are delivered, together with all supporting documentation. Ontario submitted that the process of compiling electronic Joint Books of Documents for trial purposes could take three months.

### **B. Specific Case Management Directions**

[14] On the basis of the issues addressed at the Case Management Conference, and having provided the parties with notice under Rule 50.13(6), I direct as follows:

- (a) Notwithstanding the requirements of the 2021 Revised Expert Report Timetable, the Plaintiff shall, by June 30, 2022, complete the delivery of their expert reports.
- (b) The Plaintiff shall, by June 30, 2022, deliver to the Defendants the further and additional documents supporting the Plaintiff's expert reports that are not contained within the parties' productions.
- (c) The parties shall be prepared to address, at the next Case Management Conference, the further development of the Issues List.
- (d) The Defendants may seek revision of the 2021 Revised Expert Report Timetable at the next Case Management Conference, following the completion of the Plaintiff's delivery of expert reports, in accordance with the process set out immediately below.
- (e) The Defendants, Canada and Ontario shall, by July 29, 2022, deliver to the Plaintiff their position on: (i) proposed revision to the 2021 Revised Expert Report Timetable; (ii) further development or refinement of the Issues List, including identification of any issues said to be outside the scope of the action, as pleaded.
- (f) The Plaintiff shall, by August 26, 2022, deliver to the Defendants their responding position on: (i) the Defendants' proposed revision to the 2021 Revised Expert Report Timetable; (ii) the Defendants' proposed further development or refinement of the Issues List, including identification of any issues said to be outside the scope of the action, as pleaded.
- (g) The next Case Management Conference shall be conducted on September 6, 2022, at 1:00 p.m., by video conference, using video connection coordinates that will be provided by the Court.
- (h) The parties shall, by September 1, 2022, at 1:00 p.m., deliver a Case Management Memorandum, of no more than four pages in length, as well as any attachments, setting out the issues to be addressed at the next Case Management Conference. If the parties should agree, they may deliver a joint Case Management Memorandum. The



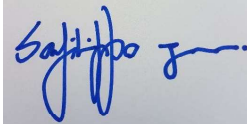
parties' Memorandums should include copies of the written submissions set out in paragraphs 14(e) and (f), immediately above. The Plaintiff's Memorandum should set out a list of the expert reports delivered and the timing of their delivery, to frame submissions on the anticipated responding reports and their timing.

- (i) The parties are encouraged to continue their collaborative effort at development of the electronic joint database for use at trial, in the form of electronic Joint Document Books.
- (j) Any party who seeks to address an issue identified in this action between now and the next scheduled case conference of September 6, 2022 at 1:00 p.m. and who considers that an earlier case conference would assist in expeditious and efficient handling of any such issue, may request the urgent scheduling of a case conference by email to my judicial assistant, having first canvassed with all counsel their availability for such a conference and their concurrence with the out-of-court communication, in accordance with Rule 1.09. The party requesting the urgent case conference shall submit: (i) a list of three dates and times on which counsel for all parties are available to attend; and (ii) a memorandum of no more than two pages setting out the basis for the request and listing the issues to be addressed.

### C. General Case Management Directions

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

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

 Digitally signed by Andrew Sanfilippo  
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Date: 2022.06.08 09:44:11 -04'00'

A.A. Sanfilippo J.

**Date: June 8, 2022**

This is Exhibit "G" to the affidavit of John A. Wilson,  
affirmed before me on February 28, 2023



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Alexander DeParde

A Commissioner for Taking Affidavits

**COURT FILE NO.:** CV-18-594281-0000  
(Formerly Court file no.: 406/95)  
**DATE:** 20220928

**SUPERIOR COURT OF JUSTICE – ONTARIO**

**RE:** 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

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

**COUNSEL:** *Iris Antonios, Max Shapiro, Rebecca Torrance, and Robert Janes*, for the Plaintiff  
*Anusha Aruliah, Maria Vujnovic, and Tanya Muthusamipillai*, for the Defendant  
the Attorney General of Canada  
*Manizeh Fancy, David Feliciant, Christine Perruzza, Shima Heidari, Julia  
McRandall, Catherine Ma, and Lina Chaker*, for the Defendant His Majesty the  
King in Right of Ontario

**HEARD**

**(By videoconference):** September 6 and 23, 2022

**CASE MANAGEMENT ENDORSEMENT**

[1] This Case Management Conference began on September 6, 2022 and was continued on September 23, 2022, to address two issues: (a) the request by the Defendants, the Attorney General of Canada (“Canada”) and His Majesty the King in Right of Ontario (“Ontario”) to extend the time for delivery of their expert reports; and (b) the ongoing clarification of the issues raised by the Plaintiff, Six Nations of the Grand River Band of Indians (“Six Nations”) through its Amended Statement of Claim, and thereby to be determined at trial. By the continuation of this Conference Management Conference, a third issue had emerged: the provision of a litigation expert report to a non-party.

**A. The Expert Report Timetable**

**(a) Background**

[2] The Expert Report Timetable was established at the Case Management Conference of June 12, 2020, and was set out in the Case Management Endorsement of June 16, 2020 at para. 29,<sup>1</sup> as follows:

- (a) The Plaintiff shall deliver their expert reports by November 1, 2021.
- (b) The Defendants shall deliver their expert reports by April 1, 2022.
- (c) The Plaintiff shall deliver any reply expert reports by June 30, 2022.
- (d) The parties shall complete a compilation of all expert reports and supporting documents by July 31, 2022.

[3] The Case Management Endorsement of June 29, 2021, noted that this Expert Report Timetable would allow for the scheduling of the trial of this action in the Fall of 2022, and that the Court made available January 30, 2023 for the trial.

[4] This Expert Report Timetable was revised through agreement of the parties set out in a Joint Case Management Memorandum of July 16, 2021, further to discussions conducted at the Case Management Conference of June 29, 2021, and then implemented in the Case Management Endorsement of July 20, 2021. Six Nations made clear that it was prepared to proceed with the Expert Report Timetable without revision, but consented to the revisions sought by the Defendants, submitting that it was unlikely that Six Nations would consent to any further extensions. The “Revised Expert Report Timetable” of July 20, 2021 provides as follows:

- (a) The Plaintiff shall deliver their expert reports by ~~November 1, 2021~~ April 1, 2022.
- (b) The Defendants shall deliver their expert reports by ~~April 1, 2022~~ October 3, 2022.
- (c) The parties shall complete a compilation of all expert reports and supporting documents by ~~July 31, 2022~~ January 15, 2023.
- (d) The Plaintiff shall deliver any reply expert reports by ~~June 30, 2022~~ February 28, 2023.
- (e) The parties shall complete a compilation of all reply expert reports and supporting documents by March 15, 2023.
- (f) This proposed Expert Report Timetable would allow for the scheduling of the trial of this action on April 3, 2023.

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<sup>1</sup> *Six Nations of the Grand River Band of Indians v. The Attorney General of Canada*, 2020 ONSC 3747.

[5] At the Case Management Conference of March 1, 2022, Six Nations and Canada stated that they had jointly retained surveyors for the purpose of delineating lands that have been flooded (the “Joint Surveyors’ Report”) and expected to be in a position to deliver this report by June 30, 2022. On the consent of the parties, the Revised Expert Report Timetable was modified to include: (i) the deadline of June 30, 2022 for the delivery by Six Nations and Canada of their Joint Surveyors’ Report; and (ii) a deadline of January 6, 2023 for the delivery by Ontario of any responding report to the Joint Surveyors’ Report.

### **(b) Status of Delivery of Expert Reports**

[6] At the Case Management Conference of June 7, 2022, Six Nations reported that it had served 11 of its 14 expert reports,<sup>2</sup> and that three further expert reports would be delivered by June 30, 2022. Canada reported, at that time, that Canada’s experts were making all reasonable efforts to meet the October 3, 2022 deadline for the delivery of defence reports, but that one of Canada’s experts was not expected to complete his report in time by reason of illness. Ontario submitted that it required additional time to respond to the Plaintiff’s expert reports due to several factors, including challenges in research and document access related primarily to the covid-19 pandemic, and the sheer volume of material relied on by the Plaintiff’s experts, including some documents said to have been newly delivered. Six Nations stated that, if required by the Defendants, they were prepared to a “commensurate extension” of time for the Defendants to respond to the Plaintiff’s expert reports, measured by the extent of time by which the Plaintiff exceeded their deadline.

[7] The Defendants were directed to bring forward, at the next Case Management Conference, any issue pertaining to delivery of their expert reports understanding that, by then, all the Plaintiff’s expert reports would have been delivered. Indeed, by the time of the Case Management Conference of September 6, 2022, Six Nations had delivered their remaining three expert reports, on June 16, 2022, June 28, 2022, and June 30, 2022. Canada and Ontario had not delivered any expert reports.

[8] Canada submitted, at the Case Management Conference of June 8, 2022, that it would be able to deliver all of its expert reports except one by the deadline of October 3, 2022. In its Case Management Memorandum delivered in advance of the September 6, 2022 Case Management Conference, Canada submitted that: “While Canada expects to be able to provide some of its experts’ reports by October 3, 2022, an extension until April 28, 2023 will allow for the remainder of its reports to be provided.”

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<sup>2</sup> Eight of the Plaintiff’s expert reports were served on April 1, 2022 in compliance with the Revised Expert Report Timetable, and one expert report was served by the Plaintiff on each of the following dates: April 6, 2022; May 30, 2022; June 3, 2022.

[9] Ontario stated that it will not be able to deliver any expert reports by the October 3, 2022 deadline established by the Revised Expert Report Timetable and sought an extension for all of its reports to April 28, 2023, except for one expert report that will not be finalized until June 2023.

**(c) The Parties' Positions**

[10] Six Nations submitted that as it served eight of its expert reports on time, and served six further expert reports on a rolling basis from April 6, 2022 to June 3, 2022, at most some two to three months after its deadline, that any extension required by the Defendants should be no more than the same two to three month period. Six Nations stated that, at most, such a "commensurate extension" would be fair and reasonable for only those reports that the Defendants are unable to serve on time. Six Nations stated that any further extension would be unfair and unreasonable.

[11] The Plaintiff and Canada sought an extension of time to November 2022 to serve the Joint Surveyors' Report, which Ontario did not oppose, on the agreement that Ontario would receive a commensurate extension of time to deliver its report responding to the Joint Surveyors' Report.

[12] Ontario emphasized that Ontario has submitted in Case Management since at least February 2022 that there were concerns and challenges to Ontario's delivery of expert reports by its deadline of October 3, 2022. These include: (a) historical documentation required by Ontario's experts was at times inaccessible, or had reduced accessibility due to the covid-19 pandemic; (b) disruptions caused by the pandemic, impacting the timing required for Ontario's experts to complete their expert reports; (c) the voluminous scope and breadth of the Plaintiffs' expert reports; (d) the production and use by Six Nation's experts of documents that were allegedly not within the documentary production database; (e) Six Nations' late delivery of certain of their reports, including the extension required for the Joint Surveyor's Report.

[13] Ontario submitted that except for one of its experts, Dr. Alexander Von Gernet, all the experts retained by Ontario will be able to deliver expert reports by April 30, 2023. Ontario stated that Dr. Von Gernet will not be able to deliver an expert report until June 30, 2023 due to current professional obligations and personal circumstances beyond his control. Ontario emphasized that an extension to April 30, 2023 would be only some 3-4 months beyond the commensurate extension stated by Six Nations in its alternative submission, and is required to ensure trial fairness. Ontario submitted that the expert reports are to assist the trial judge, and that every effort should be made in case management to ensure that all available evidence is ready for the trial.

[14] At the Case Management Conference of September 6, 2022, Canada stated that it will be able to deliver "some of its expert reports" by October 3, 2022, but otherwise supported Ontario's proposed revision to the Revised Expert Report Timetable. Canada pointed to the Plaintiff's service of expert reports beyond the time provided by the Revised Expert Report Timetable, and supported Ontario's submission that the extension is appropriate based on the volume and complexity of Six Nation's reports.

[15] Canada also emphasized that the timetable considerations, including any projected or targeted trial date, may be affected by other factors, such as the pending motion by the Haudenosaunee Development Institute (“HDI”) for intervention, joinder and a representation order, and other circumstances that have been identified through the case management process. Canada submitted that a suitable extension of time for the Defendants to properly address the Plaintiff’s expert reports is fair, necessary, reasonable, and practical.

[16] Both Ontario and Canada committed that, if granted an extension to April 30, 2023 for the delivery of Defence Expert Reports, they would not seek any further revision to the Expert Report Timetable, absent truly exceptional circumstances currently unforeseen and unforeseeable. Both Ontario and Canada stated that, with this exceptionally limited qualification, their experts will be able to complete their expert reports in time for service by April 30, 2023, subject only to Ontario’s expert, Dr. Von Gernet, whose report would be served by June 30, 2023.

#### **(d) Analysis - The Second Revised Expert Report Timetable**

[17] The parties’ competing positions regarding revision to the Revised Expert Report Timetable must be analysed in the context of the objective, commonly shared by all parties, of a fair and just trial process. Six Nations seeks a schedule that will allow for the earliest possible trial date and emphasized the age of this action. Six Nations strongly opposed any change to the Revised Expert Report Timetable and any compromise of the objective of a trial in the second quarter of 2023. Fairness to Six Nations in achieving the earliest possible trial date must be balanced with fairness to the Defendants in presenting the expert evidence that they consider to be required for a just determination of the issues raised by this action.

[18] All parties have sought extensions to the Expert Report Timetable. Six Nations is correct that the extension that Six Nations sought, and the deadline that Six Nations missed, were modest when compared to the extensions sought by the Defendants. However, the nature and scope of the expert evidence required by the Defendants depends, at least in part, on the expert evidence adduced by Six Nations.

[19] I considered Six Nation’s submission that a “sequenced” or staggered timetable for delivery of the remaining expert reports could allow for defence expert reports to be served on a rolling basis as other litigation steps are ongoing, and reply reports sequenced or staggered thereafter, in the period leading to trial, or during trial. While this approach would serve Six Nation’s objective of the earliest trial date it would, in my determination, add unnecessary complication to the trial of this already complex action. I do not accept this type of timetable, as it would not result in an orderly development of this action for trial.

[20] In my view, effective case management requires that, where possible and practical, the development of the action in its pre-trial stage must minimize the potential for complications at trial by maximizing efficiencies. Notwithstanding the able submissions by counsel for Six Nations in opposition to any revision of the Revised Expert Report Timetable, including objection to any revision that extends the projected trial date, I am prepared to grant an extension of time for the

Defendants' delivery of their expert reports. However, this extension relies on commitments made by the Defendants that they will not seek any further extensions for delivery of their expert reports barring truly exceptional circumstances.

[21] The revision to the Revised Expert Report Timetable will cause the projected trial date to be moved from second quarter of 2023 to first quarter of 2024. However, I have concluded that the delay in proceeding to trial must be balanced against ensuring that all the required expert reports are in place prior to the start of trial.

[22] In revising the Revised Expert Report Timetable, I see no reason why Canada should not deliver the expert reports that Canada has ready for service by October 3, 2022. It is unclear how many of Canada's expert reports are ready for delivery now, but those that Canada has available now should be served by the original deadline of October 3, 2022. I will revise the remaining elements of the Revised Expert Report to adapt to the revised timing for delivery of the Defendants' reports. To balance fairness to Six Nations, Six Nations shall be at liberty to seek any extension to the timing for delivery of its reply reports as it considers necessary, upon receipt and consideration of the Defendants' expert reports.

[23] On these reasons, the Revised Expert Report Timetable shall be further revised as follows (deletions shown by ~~striketrough~~, addition by underlining):

- (a) ~~The Plaintiff shall deliver their expert reports by April 1, 2022.~~
- (a) The Defendants Canada shall deliver their expert reports by October 3, 2022 those expert reports that Canada has ready and prepared for service at that time.
- (b) Apart from paragraph (a), immediately above, the Defendants shall deliver all their expert reports by no later April 30, 2023, except the report expected to be delivered by Ontario as authored by Dr. Von Gernet, which shall be delivered by no later than June 30, 2023. Subject to any further Order of this Court, there shall be no revision to the deadline now established for delivery of the Defendants' expert reports except in exceptional circumstances.
- (c) Six Nations' and Canada's Joint Surveyors' Report shall be delivered by November 30, 2022, and Ontario's responding report shall be delivered by April 30, 2023. Ontario may speak to an extension for the delivery of a responding report to the Joint Surveyors' Report if necessary but absent exceptional circumstances, the deadline for delivery of Ontario's responding report to the Joint Surveyors' Report shall not exceed June 30, 2023.
- (d) The parties shall complete a compilation of all expert reports and supporting documents (except reply reports and supporting documents) by ~~January 15, 2023~~ July 31, 2023.



- (e) The Plaintiff shall deliver any reply expert reports by ~~February 28, 2023~~ November 20, 2023, but is at liberty to request a further extension at least commensurate with extensions of time provided for the delivery of expert reports by the Defendants.
- (f) The parties shall complete a compilation of all reply expert reports and supporting documents by ~~March 15, 2023~~ December 31, 2023.
- (g) This proposed Expert Report Timetable would allow for the scheduling of the trial of this action on ~~April 3, 2023~~ a date after January 1, 2024. The parties may speak to the scheduling of the trial date at Case Management upon completion of the delivery of the Defendants' expert reports on June 30, 2023.

## **B. The Issue List**

[24] From the earliest days of the Case Management of this action in 2018, the parties have worked on the development of an Issues List for use at trial.<sup>3</sup> This process has been paused at times but has produced agreement on the identification of many issues, although disagreement on others. Through this process, the parties have developed detailed issues lists, but disagreement persists on the full list of issues and whether certain of the issues are properly founded in the current pleadings.

[25] At the Case Management Conference of January 20, 2022, the Defendants submitted that their interpretation of the Plaintiff's responses to interrogatories was that the Plaintiff was purporting to advance claims and relief beyond that pleaded in the Plaintiff's Amended Statement of Claim. The Defendants contended that the scope of the Plaintiff's claims requires precise identification, both as a matter of trial fairness, so that the Defendants know the case that they have to meet, and for trial efficiency, to avoid the necessity of myriad trial rulings regarding whether certain claims have been pleaded.

[26] After reviewing the Plaintiff's expert evidence, Canada correlated the expert evidence against its issues list, together with the Plaintiff's answers to written examination for discovery and submitted that Canada identified unpleaded claims. Canada prepared Charts to illustrate the allegedly unpleaded claims.<sup>4</sup> Canada submitted that motion practice may be required to determine whether the issues sought to be advanced by Six Nations properly arise from its pleading.

[27] Ontario submitted that this action raises 14 "Discrete Claims for which Relief is Sought", but that clarity is required regarding claims and allegations that Ontario considered were either unpleaded or insufficiently particularized in the Amended Statement of Claim. Ontario pointed to

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<sup>3</sup> See, 2nd Case Management Conference Endorsement, heard March 26, 2018, issued March 29, 2018, at para. 5(b).

<sup>4</sup> Canada Case Management Memorandum of September 1, 2022, Appendix "A" (Canada's List of Pleaded Claims/Issues – Correlated); Appendix "B" (Canada's List of Unpleaded Claims - Source: Discoveries); Appendix "C" (Canada's List of Unpleaded Claims - Source: Plaintiff's Expert Reports).

responses to written interrogatories that, in Ontario's view, do not allow the Defendants to understand the scope of the claims advanced by Six Nations. Ontario prepared a 10-page chart with 46 areas of inquiry, referred to by the parties as the "Schedule "D" Chart"<sup>5</sup>, that Ontario has asked Six Nations to answer to clarify the basis in the pleadings for the claims asserted by Six Nations and the issues raised by them for trial.

[28] Six Nations submitted that disagreement related to whether claims are properly pleaded and thereby raise issues for determination at trial, should be left to the trial judge, although they could be identified prior to trial by the parties' delivery of notices of objection to evidence that they consider is beyond the pleadings. Six Nations also submitted that the parties could exchange demands for particulars as a tool to continue the development of the issue list.

[29] Six Nations, Canada and Ontario agree that the issue list requires further development for the purposes of the trial but disagree regarding the process most efficient to clarifying the claims that arise from the pleadings and the issues that thereby require determination. The tools identified by Ontario and Six Nations – the use of the Schedule "D" Chart or the use of demands for particular – would provide clarity on the claims advanced and the issues list, as would further use of Requests to Admit. I am not persuaded that motion practice is required to define the issues list because, in my view, the identification of claims and issues can be efficiently refined in case management.

[30] Having fully canvassed the parties' positions on the continued development of an issue list for trial, and noting that all parties recognize the continued importance of pre-trial refinement of the claims advanced and the issues arising from them, I will afford the parties additional time to consider and confer on the most efficient process to clarify the claims advanced in this action and develop the list of issues that will be presented for adjudication. The parties shall be prepared to speak to this issue further at the next case management conference.

### **C. Provision of Litigation Reports to Non-Parties**

[31] Six Nations reported that it had come to their attention that a counsel for a non-party was provided with at least one of the Plaintiff's expert reports. Upon inquiry to the Defendants, Six Nations was advised that Ontario had shared reports with counsel for a non-party. Six Nations submitted that Ontario should not have disclosed its expert reports with a non-party without Six Nation's knowledge and consent, and without first raising the issue in case management.

[32] Ontario submitted that the litigation expert report is not subject to a deemed undertaking rule. However, had Ontario notified Six Nations of its intention to deliver any of their litigation expert reports to a non-party in advance of trial, Six Nations would have had an opportunity to consider and to have raised, at case management, any terms that Six Nations considered appropriate for the provision of any litigation expert reports to non-parties. This could have been

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<sup>5</sup> Schedule "D" to Ontario's Case Management Conference Memorandum of September 6, 2022.

in the nature of a protective order to provide protection to the disclosure of documents considered confidential, in this case litigation expert reports, pending the trial: *Behold Control Equipment Inc. v. Race Mechanical Systems Inc.*, 2020 ONSC 4643.

[33] Any party may bring forward, to the next case management conference, any terms that they consider to be necessary to provide protection to the disclosure of litigation expert reports produced in this action pending the trial of this action.

#### **D. Specific Case Management Directions**

[34] I order as follows:

1. The parties shall deliver their expert reports in accordance with the following timetable, which will be referred to as the “Second Revised Expert Report Timetable”:
  - (a) Canada shall deliver by October 3, 2022 those expert reports that Canada has ready and prepared for service at that time.
  - (b) Apart from paragraph (a), immediately above, the Defendants shall deliver all their expert reports by no later April 30, 2023, except the report expected to be delivered by Ontario as authored by Dr. Von Gernet, which shall be delivered by no later than June 30, 2023. Subject to any further Order of this Court, there shall be no revision to the deadline now established for delivery of the Defendants’ expert reports except in exceptional circumstances.
  - (c) Six Nations’ and Canada’s Joint Surveyors’ Report shall be delivered by November 30, 2022, and Ontario’s responding report shall be delivered by April 30, 2023. Ontario may speak to an extension for the delivery of a responding report to the Joint Surveyors’ Report if necessary but absent exceptional circumstances, the deadline for delivery of Ontario’s responding report to the Joint Surveyors’ Report shall not exceed June 30, 2023.
  - (d) The parties shall complete a compilation of all expert reports and supporting documents (except reply reports and supporting documents) by July 31, 2023.
  - (e) The Plaintiff shall deliver any reply expert reports by November 20, 2023, but is at liberty to request a further extension at least commensurate with extensions of time provided for the delivery of expert reports by the Defendants.
  - (f) The parties shall complete a compilation of all reply expert reports and supporting documents by December 31, 2023.
  - (g) This proposed Expert Report Timetable would allow for the scheduling of the trial of this action on a date after January 1, 2024. The parties may speak to the

scheduling of the trial date at Case Management upon completion of the delivery of the Defendants' expert reports on June 30, 2023.

2. At the next Case Management Conference, the parties shall be prepared to speak to the following:
  - (a) The process required for identification of the claims raised by the pleadings and the list of issues requiring determination at trial.
  - (b) Any terms that any party considers necessary to provide protection to the disclosure of litigation expert reports produced in this action pending trial.
  - (c) Any other issue that any party considers necessary to efficiently advance this action to trial.
3. The parties will be notified of the date for the next Case Management Conference.

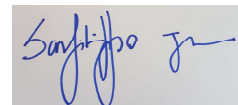
#### **E. General Case Management Directions**

[35] Broad application of Rule 50.13 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, will be used to address and resolve matters raised at case conference, in circumstances where this is possible. Counsel ought to expect that procedural orders and directions will be made at case conferences, in accordance with Rule 50.13(6), on informal notice of the issue to be addressed.

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

#### **Change in Case Management**

[37] By reason of my assignment to the Toronto Region's Estates Team, the ongoing Case Management of this action will be re-assigned to a Judge in the Toronto Region's Civil Team. The parties will be notified of the Civil Team Judge who will be appointed Case Management Judge for this action. I extend my thanks to all the lawyers who have been involved in the Case Management of this action over the past four years for their professionalism in the development of this action through case management.



Digitally signed by Andrew Sanfilippo  
DN: c=ca, st=on, o=Government of  
Ontario, ou=People,  
serialNumber=DSAP466376,  
cn=Andrew Sanfilippo  
Date: 2022.09.28 20:11:05 -04'00'

A.A. Sanfilippo J.

**Date: September 28, 2022**

Six Nations of the Grand River - and - The Attorney General of  
Band of Indians Canada et al.  
(Plaintiff) (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

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Six Nations of the Grand River Band of  
Indians  
(Plaintiff)

v. The Attorney General of Canada  
et al.  
(Defendants)

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

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**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
**PROCEEDING COMMENCED AT**  
Toronto

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**MOTION RECORD**

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