

# **A SHORT HISTORY OF THE SIX NATIONS OF THE GRAND RIVER**

By Garry Horsnell

6th Edition  
April 10, 2011  
(With Appendices)

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# **A SHORT HISTORY OF THE SIX NATIONS OF THE GRAND RIVER**

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## **Introduction**

The following is a short history of the North American Indian people who occupy the Six Nations of the Grand River reserve near Brantford, Ontario. The document contains some background, some history, appendices with wording from various historical documents and a list of questions.

## **A Little Background**

The group of people who belong to what we now call the Six Nations (Iroquois) Confederacy originally consisted of only five Indian bands, the Seneca, the Mohawk, the Cayuga, the Onondaga and the Oneida (1). For centuries, their principle homeland was south of Lake Ontario in the Mohawk valley and Finger Lakes region of what is now upper New York State, U.S.A.

Some historians say the five Iroquois nations formed their confederacy around 1459. Recent research suggests, however, they may have formed it as early as 1142 around the time of a solar eclipse (2).

When the Five Nations Iroquois formed their confederacy, they agreed to abide by the Great Law of Peace (3). According to the Great Law, a Grand Council was established, which included 50 Grand Council chiefs. The Onondaga were allowed 14 chiefs, the Cayuga 10 chiefs, the Oneida 9 chiefs, the Mohawk 9 chiefs and the Seneca 8 chiefs. The Grand Council chiefs had to reach consensus when making a decision, which affected the confederacy, and the tradition continues to this day.

Sometime between 1712 and 1722, after skirmishes and battles with colonists from Europe, the Iroquoian Tuscarora Indians moved north from North Carolina to join the Five Nations Iroquois in New York to form the confederacy of six Iroquois nations we now call the Six Nations (1).

The Tuscarora do not have chiefs on the Grand Council. The Tuscarora are represented by Oneida chiefs on the Grand Council.

## **History Beginning 1600s**

**1600s** - The Five Nations Iroquois tended to ally themselves with Dutch and British colonists but fought against French colonists and their aboriginal allies, the Algonquin and the Huron.

**1613** - The Five Nations Iroquois made a peace and friendship alliance, called the Two Row Wampum agreement (4), with Dutch settlers in what is now New York State. Basically, they agreed that the aboriginals and the Dutch colonists would share the land but live apart and rule their people separately like people in two separate vessels traveling in parallel down a river.

**Mid 1600s** - During the mid-1600s, the Five Nations Iroquois fought with and defeated the Mahican Indians to the east, the Susquehanna Indians to the south and the Erie, the Miami, the Illinois and other Indian bands to the west to conquer a large area south of the Great Lakes as far west as what is now Chicago, Illinois to gain control of the fur trade with European settlers. The Five Nations Iroquois also

entered what is now southwestern Ontario in the mid-1600s to kill, conquer and disperse the indigenous Neutral, Petun (Tionontati) and Huron (Wendat or Wyandot) Indians who were Iroquoian people but not part of the Five (later Six) Nations Confederacy (1).

**1677** - Five Nations Confederacy chiefs began talks with representatives from the British colonies of North America about peace and friendship alliances, called Covenant Chain agreements (5). Like the Two Row Wampum agreement, the Covenant Chain agreements basically said the Five Nations Iroquois and the British colonists would be allies and share the land but live apart and rule their people separately. The agreements were shaky and talks went on for decades until they eventually fell apart in 1753 when the Mohawks said the Covenant Chain was broken. The Covenant Chain was renewed, however, under Sir William Johnston in 1755, when the British were fighting the French during the French and Indian War.

**Late 1690s** - A united force of Ottawa, Potawatomis and Ojibwa (mainly Mississauga) Indians drove the Five Nations Iroquois out of southwestern Ontario (6) and various reports say they were gone by 1700.

The following excerpt from a 2003 Indian Claims Commission (7) report describes that history.

*"Beginning in 1695, the Ojibwas went on the offensive against the Iroquois Confederacy, in part to avenge the raids of the 1650s, and in part to eliminate the Iroquois as middlemen in the trade with the English. In the course of this conflict, the Mississaugas began to penetrate into southern Ontario to engage in battles with the Iroquois. By 1700, the Mississaugas had succeeded in expelling the Iroquois and taken control of the north shore of Lake Ontario. In that year, representatives of the Mississaugas and other Ojibwa groups travelled to Onondaga, the capital of the Iroquois Confederacy, with an offer of peace. In exchange for the Confederacy's recognition of the Mississaugas' territorial control, and an agreement to allow them direct access to English fur traders, the Mississaugas offered to cease hostilities. The offer of peace was accepted in June 1700, and as a result, the Mississaugas secured their control of the territory between Lake Huron and Lake Ontario. They would occupy these lands until the land cessions of the late 18th and early 19th centuries confined them to a very small proportion of their former territory."*

### **1701 Nanfan Treaty (Deed)**

**July 1701** - In a move possibly to regain some control over land the Five Nations Iroquois had rendered to the Mississauga Indians and to get British protection, 20 chiefs from the Five Nations signed or placed their marks (totems) on the so-called Nanfan Treaty (8) named after Sir John Nanfan who was then acting Governor of the British Province of New York. In that agreement, the Five Nations said "*we...surrender, deliver up and forever quit claim*" to a huge tract of land, which they said they had conquered, to "*our great Lord and Master the King of England*" on condition the British would allow Five Nations people to hunt on that land forever (See Appendix 1, Nanfan Treaty).

The parcel of land, which the Five Nations surrendered, was outside of their traditional homeland. The area was about 800 miles long running from the Niagara Falls region to Chicago and was about 400 miles wide.

A quote from the Nanfan Treaty says it included "*all that vast Tract of land or Colony called*

*Canagariarchio* (beaver hunting ground) *beginning on the northwest side of Cadarachqui lake* (now Lake Ontario) *and includes all that vast tract of land lying between the great lake of Ottawawa* (now Lake Huron) *and the lake called by the natives Cahiquage and by the Christians the lake of Swege* (now Lake Erie)”

It also said “*and so runs round the lake of Swege* (now Lake Erie)”.

So, it included land between Lake Huron and Lake Erie or what is now southwestern Ontario.

In addition, the 20 Six Nations chiefs signed or placed their marks (totems) on the Nanfan agreement, which twice said the Five (later Six) Nations Iroquois were subjects of the Crown.

Here are the quotes.

*“wee having subjected ourselves and lands on this side of Cadarachqui lake wholly to the Crown of England”*

*“wee have lived peaceably and quietly with the people of Albany our fellow subjects”*

The so-called Nanfan Treaty may, however, be questionable as treaty and as it pertains to land in what is now southwestern Ontario.

First, the Nanfan document is entitled “*A Deed from the Five Nations to the King, of their Beaver Hunting Ground*” so it may have been more of a land transaction than a treaty. Second, not 50 according to tradition and the Iroquois Great Law, but only 20 chiefs signed the Nanfan Treaty (deed). Third, the French did not accept the Nanfan agreement. The French had Catholic missions in area and didn’t think the Iroquois had the right to surrender that land. Fourth, the Five Nations Iroquois were not in control of the land in what is now in southwestern Ontario at the time of the Nanfan agreement. The Ojibwa and their allies had driven the Five Nations Iroquois out of southwestern Ontario before the so-called Nanfan Treaty and the Five Nations Iroquois had given control of that land to the Mississauga Indians in June 1700, a year before the so-called Nanfan Treaty.

Nevertheless, the British seemed to accept the Nanfan agreement and Six Nations people use it even today to protect their hunting rights in southwestern Ontario.

If, then, the Nanfan Treaty stands, is really valid and says Five (later Six) Nations people are subjects of the Crown, that would suggest no later agreement between the Five (now Six) Nations Iroquois and the Crown could be considered a treaty because the Crown does not make treaties with its own subjects.

**August 1701** - On August 4, 1701, against the wishes of the British, the Five Nations Iroquois made peace with the French and their aboriginal allies. The pact was called the Montreal Treaty (9) or Great Peace of Montreal.

**1712 to 1722** - Sometime between 1712 and 1722 (depending upon the reference), the Tuscarora migrated from North Carolina to join the Five Nations in New York and form the confederacy we now know as the Six Nations (1).

**1754 to 1763** - Between 1754 and 1763, the British and French fought what was called the French and Indian War (10) in North America, which led to the Seven Years War in Europe. Though the Five Nations Iroquois had made peace with the French in 1701, they tended to side with the British in this war against the French and their aboriginal allies.

Eventually, British General Wolfe defeated French General Montcalm in 1759 on the Plains of Abraham near Quebec City. The British took Montreal in 1760 and the war finally ended with the Treaty of Paris on February 10, 1763. As a result, Britain got Florida, Quebec and all French territory east of the Mississippi River with the exception of two small islands, St. Pierre and Miquelon, near the mouth of the St. Lawrence River.

### **1763 Royal Proclamation**

**1763** - After the French and Indian war, aboriginals in North America complained to the British Crown about land speculators cheating Indians out of land in Indian Territory, about non native squatters in Indian Territory and about colonial expansion into Indian Territory. In addition, an Ottawa (Odawa) Indian chief named Pontiac organized an Indian rebellion and Pontiac and his Indian allies began attacking British forts in Michigan and the Ohio valley in May, 1763.

To help quell the rebellion, to calm the aboriginals, to address their complaints and to maintain order, King George III of Britain issued a Royal Proclamation (11) on October 7, 1763 in which the Crown defined Indian Territory in North America and reserved “*Sovereignty, Protection and Dominion*” over that Indian Territory.

Here is the quote from the 1763 Royal Proclamation.

*“And We do further declare it to be Our Royal Will and Pleasure, for the present as aforesaid, to reserve 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 Hudson's 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.”*

The Royal Proclamation also told non native colonists in North America to vacate Indian Territory and told aboriginals, if they wanted to dispose of land from Indian Territory, they should only sell it to the Crown (See Appendix 2, Royal Proclamation).

British resistance and the Royal Proclamation seemed to work and Pontiac finally signed a peace treaty with the British at Fort Ontario on July 25, 1766.

The Royal Proclamation was probably a reasonable approach at the time. If the Crown had not reserved “*Sovereignty, Protection and Dominion*” over Indian Territory, Indian chiefs and leaders would have had to stop their people from selling land and would have had to get their people to remove non native squatters. That would have led to more bloodshed as the British tried to protect colonists.

In addition, without reserving “*Sovereignty, Protection and Dominion*” over Indian Territory, the Crown would not have been able to tell its non native subjects to vacate Indian Territory, would not have been able to tell Indians they could only sell land to the Crown and would not have been able to protect the Indians. Hopefully, people understand that.

Aboriginals in North America, including the Six Nations Iroquois, seemed to like the Royal Proclamation. In fact, Section 25 of the Canadian 1982 Constitution Act contains a reference to the Royal Proclamation and Six Nations activists often refer to it in their current claims about land.

It would seem, however, the 1763 Royal Proclamation would have broken any Two Row Wampum and Covenant Chain agreements (to live apart and rule separately) when the Royal Proclamation announced “*Sovereignty Protection and Dominion*” over Indian Territory and told aboriginals, including the Iroquois, how and to whom they could sell land. In other words, the Covenant Chain should have been broken when the Crown took over and set rules for both colonists and Indian bands.

There is also a question about whether the 1763 Royal Proclamation would have or should have applied to land the Five (later Six) Nations Iroquois had already surrendered to the Crown according to the Nanfan Treaty (deed) of 1701. Why would conditions in the Royal Proclamation apply to that land if it had been surrendered to the Crown in 1701 and was no longer Indian Territory?

Regardless, the Royal Proclamation angered European settlers in North America because it hampered their ability to expand westward.

**1774** - Worried about rebellion and to keep French colonists from siding with Americans, the British parliament passed the Quebec Act (12) in 1774. It appeased the French and it extended the British Province of Quebec through what is now Ontario into the Ohio River valley (See Appendix 3, Quebec Act).

In fact, Quebec was extended through the beaver hunting ground territory the Five (later Six) Nations Iroquois had surrendered to the British Crown according to the Nanfan Treaty (deed) in 1701.

The Quebec Act, however, angered American colonists. Already upset with the Royal Proclamation and taxation without representation, the Quebec Act, with its extension of Quebec into the Ohio valley, made it even more difficult to expand westward so the colonists revolted a year later in 1775.

**1775** - The American Revolution began (13). During the American War of Independence, Mohawk leader Joseph Brant and some Six Nations warriors helped the British fight against American revolutionaries. The Seneca, Mohawk, Cayuga and Onondaga tended to side with the British. Many Oneida and Tuscarora, however, sided with the Americans.

Likely worried about how Six Nations people would be treated if the Americans were to win the war, Joseph Brant traveled to Britain in 1775 where he appealed to the British Crown for some land upon which he and his Six Nations followers could settle under British protection.

**1779** - Major-General John Sullivan and his American militia took what is now upper New York State and burned all of the Six Nations villages they could find forcing many aboriginals to flee.

**1783** - The Americans won their revolution and the war ended with another Treaty of Paris. That treaty established the borders between the American States and British territory and Britain kept that part of Quebec, which was north of the middle of the St Lawrence River, Lake Ontario and Lake Erie.

**1784** - After the American Revolution, Mohawk leader Joseph Brant asked Sir Frederick Haldimand, the Governor-in-Chief of Quebec and British North America, to keep the Crown's promise of land for Six Nations people. Governor Haldimand agreed and arranged to purchase, from the Mississauga Indians, some land Six Nations people could occupy along the Grand River in what was then a part of Quebec.

**May 22, 1784** - The Ojibwa Mississauga Indians agreed and on May 22, 1784 the Mississauga Indians did "*grant, bargain, sell, alien, release, and confirm*" to the British Crown "*forever*", for the sum of "*1,180 pounds, seven shillings and fourpence of lawful money of Great Britain*", a huge tract of land, including land along the Grand River, in what was then a part of the British Province of Quebec, now southwestern Ontario (14). That purchase, on May 22, 1784, is now called the 1784 Between the Lakes Purchase and, after that purchase, the land along the Grand River became Crown owned land.

As soon as the Crown purchased that land from the Mississauga Indians, the land transfer conditions in the 1763 Royal Proclamation should have been extinguished on that land because the land transfer conditions in Royal Proclamation apply to Indian Territory, not to land owned by the Crown.

### **1784 Haldimand Document**

**October 25, 1784** – After purchasing the land from the Mississauga Indians, Governor Haldimand issued a document (15) on October 25, 1784 inviting Joseph Brant and his Six Nations followers to move from the "*American States*" to the "*British*" and "*to take possession of*" (occupy) part of the Mississauga purchase six miles wide on each side of the Grand River from mouth to source, which is now known to be near what is now Dundalk, Ontario (See Appendix 4, Haldimand Document 1784).

The wording to the October 25, 1784 Haldimand document is available on the internet. A photograph of the original October 25, 1784 Haldimand document is presented between pages 34 and 35 in the 1920 (first printing) of the F. Douglas Reville book called History of the County of Brant and the wording to the Haldimand document is presented on pages 50-51 in the 1964 C. M. Johnston book The Valley of the Six Nations published by the Champlain Society, Toronto and is printed in Appendix B of the 1974 Ontario High Court case Isaac et al. v. Davies et al.

Some people call Haldimand's October 25, 1784 announcement the Haldimand Proclamation but it was not an official proclamation. In fact, an archivist at Library and Archives Canada has said it was not presented in public on 3 separate occasions as required by Crown rules and instructions for official proclamations.

Moreover, Haldimand's October 25, 1784 announcement is not listed as proclamation in a list of Haldimand's proclamations presented in the 1906 Fourth Report of the Bureau of Archives for the Province of Ontario (16). According to information on page 128 of that report, Governor Haldimand issued his last official proclamation on March 8, 1784.

Some people call Haldimand's October 25, 1784 document a treaty but it is not. Haldimand's



document was a unilateral announcement from an agent of the Crown, the Governor. That document was only signed by Governor Haldimand and his secretary R. Mathews. It was not signed by any Six Nations person so it was not a treaty in any conventional sense of the term.

Nevertheless, some Six Nations people now claim Six Nations chiefs didn't understand the British system so Haldimand's announcement should be considered a treaty. That, however, is somewhat disingenuous. By 1784, the Iroquois were used to signing treaties. Crown officials and Six Nations chiefs had signed the 1701 Nanfan document. French officials, Six Nations chiefs and other Indian chiefs had signed the 1701 Treaty of Montreal and Six Nations chiefs had signed other agreements in the 1700s.

In addition, when the Mississauga Indians sold (ceded) the land along the Grand River to the British on May 22, 1784, Crown officials and Mississauga chiefs signed the documents in the presence of Joseph Brant and Six Nations chiefs. Six Nations chiefs, especially the well-educated Joseph Brant, knew what a treaty was and knew both sides had to sign. Brant and the Six Nations chiefs knew they hadn't signed the Haldimand document. They likely knew it was different and not a treaty.

Some people have called Haldimand's October 25, 1784 document a deed but it was not a deed for land from the Crown to the Six Nations.

According to an archivist at Library and Archives Canada, the Crown had certain rules, instructions and procedures at that time in history for transferring land from the Crown to other parties.

First, people had to make a request or apply for land from the Crown. Mohawk leader Joseph Brant basically did that when in 1775 he appealed to King George III of Britain and later appealed to Quebec Governor Haldimand for land in Quebec under British protection.

If the request or application for land from the Crown was accepted, an agent of the Crown, like a governor, would issue a License of Occupation (also known as a Ticket of Location), which was basically an announcement allowing people to occupy a parcel of land until an official survey could be done to establish the legal boundaries of that land. The survey could be done in conjunction with the License of Occupation or later but eventually the people would have to settle within the surveyed parcel of land. Once the official survey was completed and, if the people met the criteria for obtaining land, an agent of the Crown, like a governor, would issue a letter patent, a deed, with the Great Seal of the Province attached to make the land transfer legal.

Research shows Governor Haldimand applied his own seal-at-arms to his 1784 announcement. He did not apply the Great Seal of the Province of Quebec to that document so Haldimand's document was not a patent or a deed.

In fact, in the 1835 Jackson v. Wilkes court case (17), a King's Bench justice said "*We have ascertained that there was a great seal in use in the Province of Quebec in 1784, when the instrument of General Haldimand bears date; that grants of land, of which few were made by the British Government before the year 1795, were made by letters patent under the great seal, and that it has been uniformly held in the courts of Lower Canada that grants of the waste lands of the Crown could not be made in any other manner*". The justice also said the 1784 Haldimand instrument was no more than a "*mere license of occupation*". In other words, the Haldimand announcement was simply a

license from the Governor of Quebec for Six Nations people to occupy Crown owned land until a final, legal land transfer could be made.

Research also shows Governor Haldimand made the mistake, in his 1784 document, of letting Six Nations people to occupy land the Crown had not purchased at the north end of the Grand River from the Mississauga Indians. In other words, the Haldimand announcement (document) was flawed.

Nevertheless, Joseph Brant and the Six Nations chiefs believed Governor Haldimand had given the land outright to the Six Nations. That led to many arguments about who owned the land.

*After 1784* - European settlers began to squat and buy land on the Haldimand tract. That was easy because the 1763 Royal Proclamation should probably not have applied to land in southwestern Ontario after the Five (later Six) Nations Iroquois surrendered that land to the Crown according to the Nanfan Treaty (deed) in 1701 and because the 1763 Royal Proclamation would have been extinguished on land along the Grand River as soon as the Mississauga Indians sold (ceded) it to the British on May 22, 1784.

Furthermore, Joseph Brant encouraged European settlers to the Haldimand tract thinking they could teach Six Nations people modern farming techniques and other modern ways.

*1785* - Brant leased out parcels of land (Brant leases) in the areas around what are now Cainsville and Brantford, Ontario to John Smith and John Thomas for helping to build the Mohawk Chapel. In fact, Brant gave John Thomas a 999 year lease (18) for 200 acres of land near Cainsville for eighty pounds New York currency paid to Brant.

*1788* – Brant leased out land near the present day town of Cainsville near Brantford to more non native British Loyalists. That land is now referred to as the Johnson Settlement (19).

*1785 to 1791* - Concerned about losing land, the Six Nations Council members approached Crown representatives on numerous occasions to stop the encroachments and land transactions.

In 1791, the British parliament passed the Constitutional Act, which divided the British Province of Quebec into Upper and Lower Canada. Upper Canada would eventually become Ontario.

John Graves Simcoe, the first Lieutenant Governor of Upper Canada, investigated the Six Nations concerns. Among other things, he found that Haldimand had mistakenly allowed the Six Nations to occupy land beyond the northern boundary of the land the British had actually purchased from the Mississauga Indians on May 22, 1784.

### **1793 Simcoe Patent**

*1793* - To correct Haldimand's mistakes, Governor Simcoe offered the Six Nations a letter patent (20), a deed, in 1793 which would have allowed them to occupy a strip of land six miles wide on each side of the Grand River from its mouth at Lake Erie to the northern boundary of the land the British had actually purchased from the Mississauga Indians on May 22, 1784. That northern boundary is at the north end of the Nichol block just north of the present day town of Elora, Ontario (See Appendix 5, Simcoe Patent 1793).

The Simcoe Patent was again a unilateral announcement from an agent of the Crown. It was not signed by any Six Nations person and it was not treaty. It was basically a deed to land from the Governor and it did receive the Great Seal.

And, for Governor Simcoe to have offered that patent (deed) for land along the Grand River, that land must have been Crown land at that time.

The Simcoe Patent, however, had conditions. It told non native settlers to vacate land occupied by the Six Nations, told the Six Nations that the remaining land was for their “*entire possession*” and told them that, if they wanted to lease or sell that land, they should only lease or sell it to the Crown otherwise the transactions would be null and void and the land would “*resume*” (revert) to the Crown.

Although the land transaction conditions in the Simcoe Patent were similar to those in the King’s proclamation of 1763, Joseph Brant and the Six Nations chiefs refused to accept the Simcoe Patent because they didn’t like its conditions and because it didn’t give the Six Nations the same amount of land Governor Haldimand had said they could occupy.

In fact, in an address to William Claus (21) from Indian Affairs on November 24, 1796, Joseph Brant said “*it does not appear from this grant we are entitled to call these lands our own*”. Brant also said “*of this Deed we could not accept*”.

There is also a report (22), which says Joseph Brant had appeared with painted face at the seat of government where he said he would “*dig up the tomahawk*” and threatened he “*would come down upon the government with 10,000 warriors*” if the Simcoe Patent were ever mentioned again.

The original Simcoe Patent is now stored at Library and Archives Canada. The Six Nations did not accept or take hold of the Simcoe letter patent (deed) so the land remained Crown owned land or Crown land.

**1796** - Upset with the Simcoe Patent, in need of money and because Brant and the chiefs insisted the Six Nations owned the land, 35 chiefs from the Six Nations granted Joseph Brant power of attorney (23) to sell land from the Haldimand tract along the Grand River.

**1798** - Joseph Brant sold huge blocks of land (24) totaling about 350,000 acres along the Grand River north of Brantford to European settlers.

According to the Simcoe Patent, those land transactions should have been null and void and the land should have reverted to the Crown. Apparently, however, the Crown stepped in at the last minute to obtain from the Six Nations a surrender of that land before transferring it to the colonists.

As time passed, various groups of Six Nations chiefs at various times surrendered the use of various parcels of Crown land along the Grand River back to the Crown for sale (See Appendix 6).

**1812** - The War of 1812 began (25). During that war, Six Nations people, the Shawnee leader Tecumseh and other aboriginals helped the British protect Canada and fight the Americans.

**1814** - After the war, the Crown was still unable to enforce the Simcoe Patent, remove squatters effectively or stop Six Nations people from selling land.

**1830** - Twenty eight Six Nations chiefs surrendered to the Crown the use of 807 acres of land called the Brantford Town Plot, which is now the downtown area of the City of Brantford, Ontario (26).

**1835** - Fifteen Six Nations chiefs in 1835 did "*surrender and yield up*" to the Crown (27) use of all land Joseph Brant had ever "*granted, demised or leased*" along the Grand River "*to any person or persons*".

Nevertheless, disputes about land along the Grand River continued.

### **1841 Agreement**

**1841** - With all the disputes and difficulties managing land along the Grand River, the Crown suggested it would be better if the Six Nations settled in a smaller area where it would be easier to control the land. On January 18, 1841, six important chiefs from the Six Nations of the Grand River signed a general surrender of land (28) and agreed that Six Nations people would settle on a smaller reserve (now approximately 46,000 acres) south of Brantford, Ontario.

In the proposals, the Crown said it would manage any land outside of the reserve that the Six Nations had not already relinquished and put any money from the sale or lease of that land into a trust fund for the Six Nations.

However, within months of that 1841 surrender, some Six Nations people protested and petitioned against the surrender claiming the chiefs had not been given enough time to deliberate.

Then, in 1841, John (Smoke) Johnson, a senior Six Nations chief and signatory to the 1841 agreement (surrender), sent a letter to Crown representatives (29). In it, he said "*We (the Chiefs) disclaim any participation in the petition drawn up by Mr. Mackenzie*" and "*We particularly wish that Mr. Mackenzie's petition not be attended to...etc.*" Chief Johnson disagreed that the chiefs had not had sufficient time to deliberate and said "*That is not the case, for we had nine days altogether to deliberate on the Chief Superintendents proposals*".

**1843** - Nevertheless, some Six Nations leaders said they wanted certain lands to be leased not sold. On October 4, 1843 the government issued an Order-in Council (30), which said certain lands, such as the Eagle's Nest tract, were to be let out for short term leases.

**1844** - On February 7, 1844 the Chief Superintendent of Indian Affairs confirmed in a letter (31) to the Six Nations that according to their wishes certain lands, such as the Eagles Nest Tract, would be set out for short term leases and not sold.

Apparently, however, the Crown and some if not many Six Nations chiefs still thought it would be better to let the Crown sell the land outside of the proposed reserve so Crown representatives continued to meet with Six Nations chiefs to resolve the matter.

## 1844 Agreement

Finally, on Wednesday, December 18, 1844, David Thorburn, the Commissioner of Indian Affairs, obtained an agreement with 45 chiefs from the Six Nations of the Grand River. Those 45 chiefs signed a document in which they unanimously agreed they would accept a reserve south of Brantford and unanimously agreed the Crown could sell land outside of the reserve (32).

That original hand written 1844 document is stored at Library and Archives Canada in Ottawa, Ontario RG 10, Reel C-1149, Volume 44, pages 83269-83279 (See Appendix 7, Surrender of 1844).

Here are some quotes from the 1844 agreement (use of land surrender).

*“He (meaning Commissioner David Thorburn of Indian Affairs) desires that it should be clearly understood that no Indian be compelled to remove from his present location the doing so to be an act of his own and when he wishes to settle on the Reserve his improvements to be sold for his own benefit.”*

*“On the other part of their answer that the lands on the north side of the River known as the Oxbow, Eagle’s Nest, Martin and Johnson settlements be leased and not sold. From this answer they unanimously recede and therefore agree that the same be sold.”*

*“The Chiefs would further recede from that part of their former answer that such portions of Lots as the Commissioner might judge not to be useful or necessary on which an Indian resides might be sold and therefore desire that any lot whereon an Indian resides out of the general Reserve no part of it be sold while it is so occupied but on the lot becoming vacant the same to be sold and not reserved.”*

In a letter dated January 9, 2009, Chuck Strahl, the federal Minister of Indian and Northern Affairs Canada said *“the Government of Canada’s position is that the surrender of 1844 is valid”*.

The 1841 agreement mentioned putting money into trust but in the 1844 agreement there is no section, which specifically says money from the sale of land outside of the reserve would be put into trust for the Six Nations.

Nevertheless, the Canadian government (the Crown) now says it promised to put money from the sale of land outside of the reserve into a trust fund for the Six Nations. That suggests the Canadian government must feel the 1844 agreement is an amendment to or a confirmation of the 1841 agreement (surrender) rather than an entirely new agreement (surrender).

**1845** - At a meeting between Commissioner Thorburn and 51 chiefs from the Six Nations of the Grand River in January 1845, the chiefs again expressed their consent (33) to let the Crown sell the Oxbow, Eagles Nest, Johnson settlement and Martin settlement lands.

**1846** - Six Nations petitioners, in an 1846 petition (34) about the Burtch tract and other issues, admitted the Six Nations chiefs had agreed to let the Crown sell the Oxbow, Eagles Nest, Johnson settlement and Martin settlement lands.

**1848** - Documents (35) show that Six Nations chiefs agreed the Crown could sell land from the Burtch

tract.

**1850** - Lord Elgin, then Governor General of Canada, proclaimed (36) in 1850 an Act, which is now commonly called the Indian Protection Act. Apparently, that Act either describes or has schedules (attachments) describing the size and boundaries of Indian reserves in Upper and Lower Canada in 1850. That, apparently, included a description of the Six Nations of the Grand River reserve after all agreements had been made through the 1840s.

**1867** - Ontario (Upper Canada), Quebec (Lower Canada), New Brunswick and Nova Scotia formed a confederation. According to Section 91, subsection 24 of the Constitution Act of 1867 and the 1982 revision, the Canadian federal government has responsibility for “*Indians, and lands reserved for the Indians*”.

**1876** - The Canadian parliament passed the Indian Act. It was rewritten in 1951 and revised in 1985.

**1924** - Duncan Campbell Scott, the Deputy Superintendent of Indian Affairs, obtained Cabinet approval requiring Indian bands to elect band councils.

**1960** - Under Prime Minister John Diefenbaker, aboriginals were given the right to vote in Canadian elections without having to give up their treaty rights or aboriginal status.

**1995** - The Six Nations of the Grand River Elected Band Council took the Canadian federal government and the Ontario provincial government to court (37) over a number of claims and presented a statement of claim for monies owing the Six Nations. That case is Court File No. 406/95 under Justice James Kent in the Ontario Court of Justice (General Division) in Brantford, Ontario.

Crown lawyers then presented a statement of defense. In it, the Crown used the 1844 agreement and other documents to rebut a number of the Six Nations claims. After Crown lawyers presented the Crown’s statement of defense, the parties agreed to put the case in abeyance (on hold) in favour of negotiations.

Negotiations began but were escalated in 2006 after Six Nations protesters occupied the Douglas Creek Estates, in Caledonia Ontario.

Many Six Nations people still continue to believe they were never British subjects. Many say they are not Canadian citizens and many believe the Six Nations owns the land on the Haldimand tract. Some court cases, however, refute those contentions.

**1959** - In an Ontario High Court case, Logan v. Styres et al (38) the judge said “*Those of the Six Nations, so settling on such lands, together with their posterity, by accepting the protection of the Crown then owed allegiance to the Crown and became subjects of the Crown. Thus the said Six Nations Indians from having been faithful allies of the Crown became, instead, loyal subjects of the Crown.*”

**1974** - In another case, Isaac et al v. Davey et al (39), which was upheld in the Supreme Court of Canada, it was made quite clear who owns the Haldimand now Simcoe tract when the judge said “*Since I have concluded that the tract in question is vested in the Crown ... etc.*”

**2006** - On February 28, 2006, Six Nations activists protested, entered, occupied and said they were reclaiming the Douglas Creek Estates (DCE) land in Caledonia. They then began protesting and stopping development on third-party land at various other sites along the Grand River including in Brantford, Ontario so the City sought an injunction to stop Six Nations activists from interfering with development within the City.

**2009** - Two reports were submitted in 2009 to Justice Arrell in the Brantford injunction case. One was an Amicus report and the other was a report from Joan Holmes & Associates Inc., a company that researches historical documents pertaining to aboriginal history, treaties and surrenders.

Section 99 of the 2009 Amicus Report (40) says “*Canadian courts have held that the Haldimand Proclamation and the Simcoe Patent essentially conferred upon the Six Nations personal and usufructuary rights and not a conveyance of land in the English sense*”.

Essentially, that means the Crown simply allowed Six Nations people to enter, occupy and use land the Crown had bought and paid for along the Grand River. The Six Nations did not get title to that land and do not own the land. Basically, the Six Nations occupies Crown land along the Grand River at the discretion of the Crown.

In the Holmes Report, Section 1 addresses the 1841 surrender. Section 2 addresses an 1843 Six Nations petition to lease the Oxbow, Eagle’s Nest, Martin and Johnson settlement lands. Section 4 addresses the 1844 agreement (surrender), which shows Six Nations chiefs changed their minds and 45 chiefs agreed the Crown could sell the Oxbow, Eagle’s Nest, Martin and Johnson settlement lands. Section 7 provides references to 1845 documents, which show Six Nations chiefs accepted their 1844 agreement with the Crown to sell those lands. Section 11 provides references to 1846 documents, which show the Six Nations admitted the Crown could sell those lands. Section 14 provides references to March 1848 documents, which show Six Nations chiefs agreed the Crown could sell land from the Burtch tract.

There is also a 2009 supplementary to the Holmes Report. In conclusion, Holmes said “*the historical documents cited above dating from the 1840s indicate that the Six Nations Chiefs in Council expressed the intention to reserve particular lands for their exclusive use and surrendered the remainder for sale. As indicated in the report on the Council of 18 December 1844 and reiterated in the petitions of 2 August 1845 and 18 February 1846, they agreed to surrender for sale the lands in the Martin and Johnson settlements, the Oxbow tract and the Eagles Nest tract, with the exception of a 200-acre block variously described as being in the vicinity of the Mohawk mission or school*”.

Early proposals had suggested a 20,000 acre reserve. Six Nations people, however, petitioned for an extra 35,000 acres. Eventually, the Crown and the Six Nations reached an agreement. The Crown gave the Six Nations a 19,000 hectare (49,680 acre) reserve and the final boundaries of that reserve were set.

In the Holmes Report, Section 17 refers to an 1850 Act and a proclamation from Lord Elgin who was Governor General of Canada in 1850.

The 1850 Act to which Holmes refers is called the Indian Protection Act for short. Its full title is "An Act for the Better Protection of the Lands and Property of Indians in Lower Canada and An Act for the

protection of Indians in Upper Canada from imposition, and the property occupied or enjoyed by them from trespass and injury".

Lord Elgin proclaimed the Indian Protection Act in 1850. Apparently, that Act either describes or has schedules (attachments) describing the size and boundaries of Indian reserves in Upper and Lower Canada in 1850. That, apparently, included a description of the Six Nations of the Grand River reserve after all agreements had been made through the 1840s.

Queen Victoria was Queen of the United Kingdom of Great Britain and Ireland and Queen of Canada at that time so she (the Crown) would have had to have approved that 1850 Act.

In effect, Queen Victoria (the Crown) would have had to have approved the 1850 Indian Protection Act, which described the size and boundaries of Indian reserves in Upper and Lower Canada in 1850 including the size and boundaries of the Six Nations of the Grand River reserve after agreements and surrenders had been made through the 1840s.

If the Crown was and is in charge and if Queen Victoria (the Crown) didn't reject the 1850 Indian Protection Act and gave it Royal Assent, she must have been satisfied that Crown rules and instructions were followed when agreements were made between the Crown and Indian bands and the Act would have superseded all other agreements with the Six Nations and set the final size and boundaries of the Six Nations of the Grand River reserve in 1850.

The 1844 agreement (surrender), Lord Elgin's proclamation of the 1850 Indian Protection Act, which established the final size and final boundaries of the Six Nations of the Grand River and other reserves, and its Crown approval, would suggest that land outside of the reserve including the Oxbow, Eagle's Nest, Martin settlement, Johnson settlement and Burtch lands were surrendered for sale.

The southern most boundary of the current reserve is near Oneida Road. The boundary is north of the Douglas Creek Estates (DCE) land and other land along the Plank Road (now highway 6) through Caledonia. The 1840's agreements between the Six Nations and the Crown, Lord Elgin's proclamation of the 1850 Indian Protection Act, which established the final size and final boundaries of the Six Nations of the Grand River and other reserves, and its Crown approval, would also suggest the Plank Road land including the DCE land was surrendered for sale.

## **Six Nations Relationship to the Crown**

There is no doubt that Six Nations people have been allies of the Crown. Many have fought for the British and helped to defend what is now Canada. Canadians should appreciate the support of the Six Nations people and always be grateful they have sacrificed for the Crown.

Nevertheless, the relationship between the Crown and the Six Nations of the Grand River is not the same as the relationship between the Crown and the Indian bands indigenous to what is now Canada.

The Indians indigenous to most of mainland British Columbia, with the exception of those in the northeast corner of mainland British Columbia, unlike the Six Nations Iroquois did not make treaties to sell (cede) their land to the Crown.



In the 1850 Robinson Huron Treaty, the 1850 Robinson Superior Treaty and the 11 numbered treaties across western Canada and into northeastern British Columbia, the aboriginals, indigenous to what is now Canada, sold (ceded) to the British Crown all of the land “*save and except*” the parcels of land the indigenous Indian bands chose to keep (reserve) for themselves. Those lands are now called Indian reserves because the Indians reserved those lands for themselves.

The Six Nations, however, did not sell all of the land in what is now southwestern Ontario to the British with the exception of the land along the Grand River.

Mohawk leader Joseph Brant and his Six Nations followers moved from their traditional homeland in what is now upper New York State, U.S.A. onto land the Five (later Six) Nations had surrendered to the British Crown according to the 1701 Nanfan Treaty, onto land the British Crown had paid the Mississauga Indians for on May 22, 1784 and onto land that was already part of the British Province of Quebec, later Upper Canada and now southwestern Ontario.

Basically, Mohawk leader Joseph Brant and his Six Nations followers were similar to other British loyalists who were allowed to move from the American States into the British Province of Quebec after the American Revolution and were different from the indigenous Indian bands, which already lived on land in what is now Canada.

The Six Nations did not receive and actually refused to accept a deed and title for land along the Grand River so the land remained Crown owned land and the Six Nations were simply allowed to occupy and use the Crown’s land along the Grand River at the discretion of the Crown.

### **More about the Douglas Creek Estates (DCE) land in Caledonia, Ontario**

The Douglas Creek Estates (DCE) land in Caledonia, Ontario is a plot of land, which borders what was originally called the Plank Road (now Highway 6), which runs between Hamilton and Port Dover, Ontario.

According to the Six Nations very own 2003 claims booklet called “Land rights, Financial Justice, Creative Solutions”, Claim 16 about Oneida Township (41) says *"June 24, 1842 - In a petition of the Chiefs of the Six Nations, they reserved for their future residence all the lands on the south side of the Grand River lying between the Township of Cayuga and Burtch's Landing (includes Oneida Township) except a tier of lots on each side of the contemplated Plank Road and on the north side of the Grand River, land presently occupied by the Six Nations"*.

In addition, the 4th item in an 1843 report to the Executive Council of government (42) says *"The Chiefs further represent that they are desirous that the reservation for their future residence be on the south side of the Grand River of all of the lands excepting a tier of lots on each side of the contemplated Plank road leading from Hamilton to Port Dover"*. That seems to confirm the information in the June 24, 1842 petition that the Six Nations chiefs were willing to give up the land on each side of the Plank Road as early as 1842.

Also, the Canadian federal government says the Six Nations surrendered use of the land on each side of the Plank Road (now Hwy 6) between Hamilton and Port Dover, including the DCE land, for sale in the 1840s.

Furthermore, the 2006 Michael Coyle report (43) to the Canadian government says the Six Nations and the Crown were negotiating settlements to Six Nations claims in 2005.

Nevertheless, on February 28, 2006 a group of Six Nations protesters and activists stalled and stopped development on the DCE.

The Henning brothers, who were the owners of the DCE land and who were building houses on the DCE land, then sought an injunction to clear the Six Nations protesters from the DCE land.

In March 2006, Superior Court Justice Marshall issued a court order (44) for Six Nations activists to leave the DCE land but they disobeyed the court order and refused to leave.

On April 20, 2006, the Ontario Provincial Police (OPP) raided the DCE land to remove the Six Nations activists but they resisted. The raid failed. The activists remained and illegally took over the DCE land.

In May 2006, the Ontario government unilaterally issued a zoning order (45) so the Henning brothers could no longer build on their DCE land. Without the ability to continue building houses on their land, the Henning brothers had the choice of going bankrupt or selling their land. The Ontario government then offered to buy the land from the Henning brothers. Basically, having been forced to become willing sellers, the Henning brothers sold their DCE land to the Ontario government.

After buying the DCE land, the Ontario the government told Six Nations activists they could stay on the Crown owned DCE. Some have been there since and each February 28 Six Nations people celebrate the anniversary of the date they took over, or as they say reclaimed, the DCE land.

That history raises some questions.

The Ontario government bought the DCE land. The Ontario government says it stands by its land titles system and now says it owns the DCE land.

If that is the case, wouldn't Ontario government lawyers have done a title search to show the Six Nations validly surrendered use of the DCE land back to the Crown in the 1840s and that all land transactions thereafter were legitimate without liens or claims?

And, if the Ontario government cannot show that the Six Nations validly surrendered use of the DCE land back to the Crown in the 1840s, how can the Ontario government now say it legally bought and legitimately owns the DCE?

## **Consulting with the Six Nations of the Grand River**

Many Six Nations activists and protesters have stalled or stopped development and construction at various sites along the Grand River outside of the reserve on third-party land owned by developers. The activists claim the Crown, developers and municipalities must consult with the Six Nations before development occurs.

Canadian courts in some cases have, in fact, ruled the Crown must consult with aboriginal bands. The

cases include, among others, the Haida (46) and the Delgamuukw (47) cases in British Columbia, the Peguis (48) case in Manitoba and the Mikisew (49) case in Saskatchewan.

In the Peguis case, Federal Court Justice Douglas Campbell said “*Canada had a legal duty to consult on its decision to dispose of surplus federal lands at Kapyong Barracks*”.

In the Haida case, the Supreme Court of Canada said the Crown had a duty to consult with the Indian band and it makes sense that the Crown should consult with Indian bands in British Columbia about development on their land because many have not sold, surrendered or ceded their lands to the Crown.

However, in the Haida case, the Supreme Court also said “*Third parties cannot be held liable for failing to discharge the Crown’s duty to consult and accommodate. The honour of the Crown cannot be delegated, and the legal responsibility for consultation and accommodation rests with the Crown. This does not mean, however, that third parties can never be liable to Aboriginal peoples.*”

Furthermore, section 48 of the Haida case says “*This process does not give Aboriginal groups a veto over what can be done with land pending final proof of the claim. The Aboriginal “consent” spoken of in Delgamuukw is appropriate only in cases of established rights, and then by no means in every case. Rather, what is required is a process of balancing interests, of give and take*”.

So, the Crown must consult when there is a need but aboriginal bands do not have veto power over what can be done with the land, including development, pending final proof of claim.

The Crown includes the Canadian federal government (the big Crown) and Provincial governments (the little Crown). Private builders, developers and municipalities (villages, towns, cities and counties) are not the Crown.

In fact, the City of Brantford, for example, is actually a corporation. It is the Corporation of the City of Brantford. It is not the Crown and it is not the Six Nations. It is a third party.

Nevertheless, some Six Nations activists claim the City of Brantford is a creature of the Crown and must therefore consult with the Six Nations.

If, however, the City of Brantford is a creature of the Crown, it cannot be the Crown just like a child, who is a creature of its mother and father, cannot be its mother or father. If the City of Brantford is not the Crown, the City should not be obliged to consult with the Six Nations.

Furthermore, the cases in which courts said the Crown had a duty to consult with an Indian band involved disputes where an Indian band had never made a treaty to cede land to the Crown, as in British Columbia, or disputes over the use of federal land or Provincial Crown land.

To my knowledge, however, the Supreme Court of Canada has never said the Crown must consult with an Indian band about development or construction outside of a reserve on land owned by a third party other than an Indian band or the Crown.

In fact, there have been a number of cases when Ontario Superior Court Justices have said third-party landowners/developers had a right to build on their land, ordered Six Nations protesters to stop

interfering with construction and did not tell anyone to consult with the Six Nations.

In 2006, Justice Marshall ordered Six Nation protesters to leave the Douglas Creek Estates in Caledonia, Ontario (44). In 2008, Justice Arrell ordered Six Nations protesters to stop interfering with construction at the Kingspan site in Brantford, Ontario (50). In 2008, Justice Ramsay ordered Six Nations protesters to stop interfering with construction at a site in Cayuga, Ontario (51). In 2009, Justice Henderson ordered Six Nations protesters to stop interfering with construction at the Voortman site in Hagersville, Ontario (52). None of those Justices said the third-party landowner, the Crown or the municipality had to consult with the Six Nations about development on third-party land and one can probably be assured that, if there had been a need to consult, the Justices would have said so.

In addition, Superior Court Justice Arrell, in the Brantford injunction case, told the Ontario government (the little Crown) not the municipality, the City of Brantford, to arrange consultation with the Six Nations. Justice Arrell, in his order (53), said *"This court further orders that Ontario, no later than Friday April 3, 2009, initiate, arrange and commence meaningful consultation, negotiation, accommodation and reconciliation among the competing interests of the City of Brantford, the Haudenosaunee people and itself"*.

And, Justice Arrell probably ordered Ontario to consult out of courtesy rather than necessity and to cover all bases in case of an appeal.

Furthermore, Justice Arrell favoured the 2009 Holmes report and in Section 54 of his 2010 decision he concluded *"that the claim for title, or the return of these lands to the respondents, is exceedingly weak"* and, in Section 58 of his decision, he said this court *"does not need to make any decision on the somewhat doubtful issue of whether a municipality is 'the Crown' and whether a municipality indeed has a duty to consult"*. That further suggests it is doubtful the City of Brantford is the Crown and doubtful it needs to consult with and accommodate the Six Nations especially when the Supreme Court of Canada has said Indian bands do not have a veto.

There is also an agreement called the Grand River Notification Agreement (GRNA). The federal government, the Ontario government, the Six Nations of the Grand River, the City of Brantford and others are parties and signatories to that agreement but section 9 (a) of the GRNA says *"This Agreement is not legally binding on any of the Parties"* (See Appendix 8, Excerpts from GNRA).

The nature of the GRNA agreement suggests the parties should notify each other out of courtesy, which could include talks about development in one community that could impact on another, but are not legally obliged to do so.

And, if it is not legally binding to notify, why would a municipality have to consult with the Six Nations?

In addition, the Six Nations Elected Band Council took the Canadian federal government and the Ontario provincial government to court in 1995 and filed a statement of claim. According to the claim (54), the Six Nations wanted an accounting of money and it wanted the Crown *"to replace all assets or the value thereof which ought to have been received or held by the Crown on behalf of the Six Nations"*. The *"value thereof"* means money so the Six Nations issue is about money, not land.

The Canadian federal government has said it will pay money to settle any valid Six Nations claim. The Ontario provincial government has said it stands by its land titles system and the Canadian federal government and the Ontario provincial government have both said they will not expropriate any third-party land to give to the Six Nations in settlement of any Six Nations claim.

So, the Six Nations claims and settlements involve money, not land and certainly not third-party land.

So, why are Six Nations activists interfering with construction on third-party land owned by developers and why would anyone be obliged to consult with the Six Nations of the Grand River about development on third-party land the Six Nations did not ask for and will not get in settlement of any claim?

If, however, the Six Nations still believes the Crown, municipalities and developers are obliged to consult with the Six Nations about development on third-party land along the Grand River outside of the reserve, perhaps the Six Nations should take the case to court and all the way to the Supreme Court of Canada if necessary to get a final ruling.

## **Comments and Conclusions**

It is unfortunate that Mohawk leader Joseph Brant and his Six Nations followers did not fully understand the situation they were getting into when they moved from their traditional homeland in what is now upper New York State, U.S.A. onto land along the Grand River in what was then a part of the British Province of Quebec, now southwestern Ontario.

The British paid the Ojibwa Mississauga Indians for that land on May 22, 1784 so Brant and his Six Nations followers moved onto land along the Grand River the Crown already owned.

The problems between the Crown and the Six Nations of the Grand River seem to stem from Governor Haldimand's use of the word "*possession*" in his 1784 document. Possession means to own but it also means to occupy and, in British property law, to take possession of land means to occupy land, not to own it.

It seems, however, Joseph Brant and the Six Nations chiefs erroneously thought the Six Nations owned the land but it is highly unlikely that Governor Haldimand or the Crown intended to give that land to the Six Nations so it could have its own sovereign territory or country, which was separate, unique and distinct from what was then the British Province of Quebec.

In fact, the Crown was not in the habit of giving away land at that time in history. It was in the habit of acquiring land.

Furthermore, the Crown did not give the Six Nations title in fee simple to the land along the Grand River. In fact, Joseph Brant and the Six Nations chiefs refused to accept a limited deed (the Simcoe Patent) to some of that land.

Essentially, the Crown controls and rules the land it owns and, by entering and occupying Crown owned land at the discretion of the Crown, the Six Nations people became subject to the Crown's rules, regulations and laws.

To my knowledge, people don't automatically own the rights to minerals under their land and the Crown can expropriate their land with proper compensation whenever it feels it is necessary. The government (the Crown), for example, expropriated farmland for an airport it planned near Pickering, Ontario and that was from people who had deeds and title to their land in an area outside of the Haldimand tract.

After Joseph Brant and other Six Nations people granted, leased and sold Crown land along the Grand River to non natives against the wishes of the Crown and after many disputes about the land and who controlled it, the Crown proposed that the Six Nations people move to a smaller reserve and sell the land outside of that reserve.

Most likely, the Crown could have unilaterally appropriated some of its own land along the Grand River and given the Six Nations some money or the Crown could have told the Six Nations to leave altogether that Crown owned land but the Crown didn't do that. It extended courtesy, took the time and made the effort through the 1840s to negotiate with Six Nations chiefs and induce (persuade) and convince them it would be in the best interests of the Six Nations to move to a smaller, more compact reserve and to sell the land outside of that reserve for the benefit of the Six Nations and, having already sold land when the Six Nations needed money, many Six Nations chiefs agreed.

There is plenty of evidence that the Six Nations do not own all of the land on the Haldimand tract along the Grand River. The Mississauga Indians ceded "*forever*" the land along the Grand River to the Crown on May 22, 1784. The Crown paid the Mississauga Indians for that land. The Six Nations did not get and actually refused title (the Simcoe Patent) to some of that land. The Six Nations lost land when the Crown learned it had not purchased all of the land along the Grand River, when Joseph Brant granted and sold land and when Six Nations chiefs surrendered use of the land back to the Crown at various other times including 1844 and 1848, when 45 or more chiefs surrendered land.

Over the years, the Six Nations people have lost most of the land on the Haldimand tract until now they occupy about 4.8% of the land Haldimand originally said they could occupy.

Nevertheless, the Canadian federal government (the Crown) has said it held and holds reserve land along the Grand River in trust for the Six Nations. The Crown also seems to agree it promised to put money from the sale of land outside of the current reserve into trust for the benefit of Six Nations.

However, as of May 31, 2004, the trust fund contained only \$2.3 million, which is pittance considering the amount of land that must have been sold or leased, and many Six Nations people want to know where the money went.

Some of the money from the trust fund was invested in the 1800s in the Grand River Navigation Company and an early Welland canal project, both of which went bankrupt.

The Six Nations also claim that the government borrowed money from the Six Nations trust fund to help build the QEW highway, parts of McGill University in Montreal and Osgoode Hall Law School at the University of Toronto. According to the Six Nations, those loans have never been repaid along with the interest.

Given the history, the issues should probably be about money rather than land and it seems the Crown might owe the Six Nations a lot of money.

The whole business is dog's breakfast of invasions, wars, defeats, displacements of indigenous people, nebulous treaties, varied proclamations, broken promises, dubious land deals, questionable money transactions, half-truths, misunderstandings, incongruities, claims and counter-claims. It also appears that the Six Nations and the Crown have been less than clear and forthright with each other.

To this day, the Six Nations and the Crown argue about sovereignty, land on the Haldimand tract and monies owed to the Six Nations with little evidence that the disputes will be resolved to the complete satisfaction of either side any time soon.

The history and relationship between the people of the Six Nations of the Grand River and the Crown reveals many inconsistencies and incongruities and raises many questions (See Appendix 9).

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- 32) 1844 Agreement (surrender): Library and Archives Canada, RG 10, Reel C-1149, Volume 44, pages 83269 – 83279. A hand written copy and a printed version can be viewed online at <http://www.numberswatchdog.com/> under Useful Information, Historical Research.
- 33) 1845 Consent to Sell Land: Report from Joan Holmes & Associates Inc. (Holmes Report), 2009, to Justice Harrison Arrell in Brantford, Ontario injunction case, pages 6-9.
- 34) 1846 Admission to Sell Land: Report from Joan Holmes & Associates Inc. (Holmes Report), 2009, to Justice Harrison Arrell in Brantford, Ontario injunction case, pages 9-12.
- 35) 1848 Agreement to Sell Burtch Land: Report from Joan Holmes & Associates Inc. (Holmes Report), 2009, to Justice Harrison Arrell in Brantford, Ontario injunction case, pages 12-14
- 36) 1850 Proclamation: Report from Joan Holmes & Associates Inc. (Holmes Report), 2009, to Justice Harrison Arrell, Brantford, Ontario Injunction case, pages 14-15.
- 37) 1995 court case: Six Nations of the Grand River Band of Indians v. Her Majesty the Queen in the Right of Canada and Her Majesty the Queen in the Right of Ontario, Ontario Court of Justice (General Division), Brantford, under Justice James Kent, Court File No. 406/95.
- 38) Logan v. Styres et al, Ontario High Court, 1959  
On internet at <http://library2.usask.ca/native/cnlc/vol05/261.html>
- 39) Isaac et al v. Davey et al, Ontario Court of Appeal, 1974. This document is interesting because it refers to the 1774 Quebec Act and contains the 1763 Royal Proclamation, the 1784 Haldimand document (instrument) and the 1793 Simcoe Patent as appendices.  
On internet at <http://library2.usask.ca/native/cnlc/vol09/115.html>
- 40) Amicus Report, 2009, to Justice Harrison Arrell, Brantford injunction case, Ontario, Section 99, page 39.
- 41) Six Nations Claims Booklet: Six Nations of the Grand River, 2003; Land Rights, Financial Justice, Creative Solutions, Claim 16, page 23.
- 42) Report to Executive Council: The Committee of Council, 1843; Library and Archives Canada, RG 10, Vol. 717, pages 232 -238.
- 43) Michael Coyle Report: Coyle, M. 2006; Results of Fact-Finding on Situation at Caledonia. Michael

Coyle, Assistant Prof., Faculty of Law, University of Western Ontario.

- 44) Marshall DCE Injunction: Henco Industries Limited v. The Haudenosaunee Six Nations Council et al, March 28, 2006; Ontario Superior Court of Justice, Cayuga, Ontario, Mr. Justice Marshall, Court File No. 48/2006.
- 45) DCE Zoning Order: Ontario, May 8, 2006; Minister's Zoning Order 200/06 for Lands in Caledonia, Haldimand County, on May 8, 2006, and filed with the Registrar of Regulations as O. Reg. 200/06 on May 17, 2006.
- 46) Haida Court Case: Haida Nation v. British Columbia (Minister of Forests), [2004] 3 S.C.R. 511, 2004 SCC 73.  
On internet at <http://csc.lexum.umontreal.ca/en/2004/2004scc73/2004scc73.html>
- 47) Delgamuukw Court Case: Delgamuukw v. British Columbia, [1997] 3 S.C.R. 1010  
On internet at <http://csc.lexum.umontreal.ca/en/1997/1997scr3-1010/1997scr3-1010.html>
- 48) Peguis Court Case: 2009, Federal Court, Ottawa Ontario, T-139-08, Citation 2009 FC 982  
<http://decisions.fct-cf.gc.ca/en/2009/2009fc982/2009fc982.html>
- 49) Mikisew Court Case: Mikisew Cree First Nation v. Canada (Minister of Canadian Heritage), [2005] 3 S.C.R. 388, 2005 SCC 69.  
On internet at <http://www.canlii.org/en/ca/scc/doc/2005/2005scc69/2005scc69.html>
- 50) Kingspan Case: Kingspan Insulated Panels Ltd. v. Haudenosaunee Confederacy of Mohawk et al, 2008; Ontario Superior Court of Justice, Brantford, Mr. Justice Arrell, Court File CV-08-325.
- 51) Cayuga Court Case: 1536412 Ontario Ltd. v. Members of the Haudenosaunee Development Institute et al., 2008, Ontario Superior Court of Justice, Court File No. 82/2008
- 52) Hagersville Court Case: John Voortman & Associates v. The Haudenosaunee Confederacy Chiefs Council et al., 2009, Ontario Superior Court of Justice, Court File No. 09/8301
- 53) Brantford Injunction: The Corporation of the City of Brantford v. Ruby Montour et al, 2009; Ontario Superior Court of Justice, Brantford, Mr. Justice Arrell, Court File CV-08-334.
- 54) Six Nations Statement of Claim: Amended Statement of Claim, March 7, 1995; Six Nations of the Grand River Band of Indians v. The Attorney General of Canada and Her Majesty the Queen in the Right of Ontario (Associated with Court File No. 406/95, Ontario Court of Justice (General Division), Brantford, under Justice James Kent).

Other sources of information include the Woodland Cultural Center, 184 Mohawk St. W., Brantford, Ontario, the Brantford Museum, Indian and Northern Affairs Canada and Library and Archives Canada.

Information about Canadian Confederation, the Constitution Act, the Indian Act, elected band councils and the aboriginal right to vote is available on the internet.

Other information was obtained during conversations with status Six Nations aboriginals including my sister-in-law and in conversations with people at the Six Nations Confederacy.

**NOTE:**

1. Indian Treaties and Surrenders, Volume 1 is available on the internet at Early Canadiana Online. It is at the following website, <http://www.canadiana.org/view/91942/0002> . Simply click the arrow to the right of the box that says Title Page, near the top right, and then choose page of interest.
2. The 1964 C. M. Johnston book The Valley of the Six Nations is available on the internet. It is at the following website  
[http://link.library.utoronto.ca/champlain/item\\_record.cfm?Idno=9\\_96899&lang=eng&query=9\\_96899&searchtype=Bibrecord&startrow=1&Limit=All](http://link.library.utoronto.ca/champlain/item_record.cfm?Idno=9_96899&lang=eng&query=9_96899&searchtype=Bibrecord&startrow=1&Limit=All)
3. The 1920 F. Douglas Reville book History of the County of Brant is available on the internet. It is at the following website.  
<http://brantford.library.on.ca/genealogy/pdfs/reville1.pdf>

## APPENDIX 1

### NANFAN TREATY OF 1701

#### A DEED FROM THE FIVE NATIONS TO THE KING, OF THEIR BEAVER HUNTING GROUND, MADE AT ALBANY, NEW YORK, JULY 19, 1701

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, Captns and representatives of the Five nations or Cantons of Indians called the Maquase Oneydes Onnandages and Sinnekes living in the Government of New York 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 whose Chief c?d was called successively Chohahise — The land is scituate lyeing and being northwest and by west from Albany beginning on the south west side of Cadarachqui lake and includes all that waste Tract of Land lyeing between the great lake off Ottowawa and the lake called by the natives Sahiquage and by the Christians the lake of Swege and runns till it butts upon the Twichtwichts and is bounded on the right hand by a place called Quadoge 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 internegation, a remnant of one of the seaven nations called Tionondade whom 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 them 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 Tjeughsaghronde 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 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 Captns 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 Governmts 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 Indians 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 containing 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 Oniadarundaquat 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 meanes 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 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 uterly excluded and debarred for every 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 forever 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 Honble John Nanfan Esqr Lieut 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 Majty's reign Annoque Domini 1701.**

*Source: "A Century of Lawmaking for a New Nation: U.S. Congressional Documents and Debates, 1774 - 1875" U. S. Serial Set, Number 4015 beginning at page 552. Available "on line" from the American Library of Congress (alc.gov)*

## **Definitions**

Maquase = Mohawk; Lake Cadarachqui = Lake Ontario; Aragaritkas = Huron and Tionontati  
Lake Ottowata = Lake Huron; Lake of Swege = Lake Erie; Twichtwicks = Miami Indians in Ohio  
Tieugsachrondio/Fort deTret/Wawyachenok = Fort Detroit

Tionondade = Huron/Tionontati (Petun) Indian Confederacy; Boar = Beaver  
Great falls Oakinagaro = Niagara Falls; Canagariarchio = beaver hunting ground

## APPENDIX 2

### THE 1763 ROYAL PROCLAMATION

October 7, 1763

BY THE KING, A PROCLAMATION  
GEORGE R.

Whereas 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 10th Day of February last; and being desirous that all Our loving Subjects, as well of our Kingdom 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 Countries and Islands ceded and confirmed to Us by the said Treaty, Four distinct and separate Governments, styled and called by the names of Quebec, East Florida, West Florida and Grenada, and limited and bounded as follows, viz.

First--The Government of Quebec 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 Nipissim; from whence the said Line, crossing the River St. Lawrence, and the Lake Champlain, in 45. 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 Baye des Chaleurs, and the Coast of the Gulph of St. Lawrence to Cape Rosieres, and from thence cross- ing the Mouth of the River St. Lawrence by the West End of the Island of Anticosti, terminates at the aforesaid River of St. John.

. . . . 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 Quebec, 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 other Colonies or Plantations in America do presume for the present, and until our further Pleasure be known to grant Warrants of Survey, or pass Patents for any Lands beyond the Heads or Sources of any of the Rivers which fall into the Atlantic Ocean from the West and North West, or upon any Lands whatever, which, not having been ceded to or purchased by 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 the present as aforesaid, **to reserve 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 Hudson's 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 Purchases or Settlements whatever, or taking Possession of any of the Lands above reserved, without our especial 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 seated 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 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 Resolution 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 public Meeting or Assembly of the said Indians, to be held for that Purpose by the Governor or Commander in Chief of our Colony 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 License 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 Commissaries to be appointed for this Purpose, to direct and appoint for the Benefit of the said Trade:

. . . . Given at our Court at St. James's the 7th Day of October 1763, in the Third Year of our Reign.

### APPENDIX 3

#### THE 1774 QUEBEC ACT

14 George III, c. 83 (U.K.)

An Act for making more effectual Provision for the Government of the Province of Quebec in North America.

"WHEREAS his Majesty, by his Royal Proclamation bearing Date the seventh Day of October in the third Year of his Reign, thought fit to declare the Provisions which had been made in respect to certain Countries, Territories, and Islands in America, ceded to his Majesty by the definitive Treaty of Peace, concluded at Paris on the tenth day of February, one thousand seven hundred and sixty-three: And whereas, by the Arrangements made by the said Royal Proclamation a very large Extent of Country, within which there were several Colonies and Settlements of the Subjects of France. who claimed to remain therein under the Faith of the said Treaty, was left, without any Provision being made for the Administration of Civil Government therein; and certain Parts of the Territory of Canada, where sedentary Fisheries had been established and carried on by the Subjects of France, Inhabitants of the said Province of Canada under Grants and Concessions from the Government thereof, were annexed to the Government of Newfoundland, and thereby subjected to Regulations inconsistent with the Nature of such Fisheries:" May it therefore please your most Excellent Majesty that it may be enacted; and be it enacted by the King's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same. **That all the Territories, Islands and Countries in North America belonging to the Crown of Great Britain, bounded on the South by a Line from the Bay of Chaleurs along the High Lands which divide the Rivers that empty themselves into the River Saint Lawrence from those which fall into the Sea to a Point in forty-five Degrees of Northern Latitude. on the Eastern Bank of the River Connecticut keeping the same Latitude directly West through the Lake Champlain, until, in the same Latitude. it meets the River Saint Lawrence: from thence up the Eastern Bank of the said River to the Lake Ontario; thence through the Lake Ontario and the River commonly call Niagara and thence along by the Eastern and South-eastern Bank of Lake Erie following the said Bank, until the same shall be intersected by the Northern Boundary, granted by the Charter of the Province of Pennsylvania in case the same shall be so intersected: and from thence along the said Northern and Western Boundaries of the said Province, until the said Western Boundary strike the Ohio: But in case the said Bank of the said Lake shall not be found to be so intersected, then following the said Bank until it shall arrive at that Point of the said Bank which shall be nearest to the North-western Angle of the said Province of Pennsylvania, and thence by a right Line, to the said North-western Angle of the said Province; and thence along the Western Boundary of the said Province, until it strike the River Ohio; and along the Bank of the said River, Westward, to the Banks of the Mississippi, and Northward to the Southern Boundary of the Territory granted to the Merchants Adventurers of England, trading to Hudson's Bay; and also all such Territories, Islands, and Countries, which have, since the tenth of February, one thousand seven hundred and sixty-three, been made Part of the Government of Newfoundland, be. and they are hereby, during his Majesty's Pleasure, annexed to, and made Part and Parcel of, the Province of Quebec, as created and established by the said Royal Proclamation of the seventh of October, one thousand seven hundred and sixty-three.**

"II. Provided always, That nothing herein contained, relative to the Boundary of the Province of Quebec shall in anywise affect the Boundaries of any other Colony.

"III. Provided always, and be it enacted, That nothing in this Act contained shall extend, or be construed to extend to make void, or to vary or alter any Right, Title or Possession, derived under any Grant, Conveyance, or otherwise howsoever, of or to any Lands within the said Province, or the Provinces thereto adjoining; but that the same shall remain and be in Force, and have Effect, as if this Act had never been made.

"IV. And whereas the Provisions, made by the said Proclamation, in respect to the Civil Government of the said Province of Quebec, and the Powers and Authorities given to the Governor and other Civil Officers of the said Province, by the Grants and Commissions issued in consequence thereof, have been found, upon Experience, to be inapplicable to the State and Circumstances of the said Province, the Inhabitants whereof amounted, at the Conquest, to above sixty-five thousand Persons professing the Religion of the Church of Rome, and enjoying an established Form of Constitution and System of Laws, by which their Persons and Property had been protected, governed, and ordered, for a long Series of Years, from the first Establishment of the said Province of Canada;" be it therefore further enacted by the Authority aforesaid. That the said Proclamation, so far as the same relates to the said Province of Quebec, and the Commission under the Authority whereof the Government of the said Province is at present administered, and all and every the Ordinance and Ordinances made by the Governor and Council of Quebec for the Time being, relative to the Civil Government and Administration of Justice in the said Province and all Commissions to Judges and other Officers thereof, be, and the same are hereby revoked, annulled, and made void, from and after the first Day of May, one thousand seven hundred and seventy-five.

"V. And, for the more perfect Security and Ease of the Minds of the Inhabitants of the said Province," it is hereby declared, That his Majesty's Subjects, professing the Religion of the Church of Rome of and in the said Province of Quebec. may have, hold, and enjoy, the free Exercise of the Religion of the Church of Rome, subject to the King's Supremacy, declared and established by an Act, made in the first Year of the Reign of Queen Elizabeth, over all the Dominions and Countries which then did, or thereafter should belong, to the Imperial Crown of this Realm; and that the Clergy of the said Church may hold, receive, and enjoy, their accustomed Dues and Rights, with respect to such Persons only as shall profess the said Religion.

"VI. Provided nevertheless, That it shall be lawful for his Majesty. his Heirs or Successors, to make such Provision out of the rest of the said accustomed Dues and Rights, for the Encouragement of the Protestant Religion, and for the Maintenance and Support of a Protestant Clergy within the said Province, as he or they shall from Time to Time think necessary and expedient.

"VII Provided always and be it enacted, That no Person professing the Religion of the Church of Rome, and residing in the said Province. shall be obliged to take the Oath required by the said Statute passed in the first Year of the Reign of Queen Elizabeth, or any other Oaths substituted by any other Act in the Place thereof; but that every such Person who, by the said Statute, is required to take the Oath therein mentioned, shall be obliged, and is hereby required, to take and subscribe the following Oath before the Governor, or such other Person in such Court of Record as his Majesty shall appoint, who are hereby authorized to administer the same; *videlicet*,

"I A.B. do sincerely promise and swear, That I will be faithful, and bear true Allegiance to his Majesty King George, and him will defend to the utmost of my Power, against all traitorous Conspiracies, and Attempts whatsoever, which shall be made against his Person, Crown and Dignity; and I will do my utmost Endeavor to disclose and make known to his Majesty, his Heirs and Successors, all Treasons, and traitorous Conspiracies, and Attempts, which I shall know to be against him, or any of them; and all this I do swear without any Equivocation, mental Evasion, or secret Reservation, and renouncing all Pardons and Dispensations from any Power or Person whomsoever to the contrary. So help me GOD."

And every such Person, who shall neglect or refuse to take the said Oath before mentioned, shall incur and be liable to the same Penalties, Forfeitures, Disabilities, and Incapacities, as he would have incurred and been liable to for neglecting or refusing to take the Oath required by the said Statute passed in the first Year of the Reign of Queen Elizabeth.

"VIII. And be it further enacted by the Authority aforesaid, That all his Majesty's Canadian Subjects within the Province of Quebec the religious orders and Communities only excepted may also hold and enjoy their Property and Possessions, together with all Customs .and Usages relative thereto, and all other their Civil Rights in as large ample, and beneficial Manner. IS if the said Proclamation, Commissions, Ordinances, and other .Acts and Instruments. had not been made, and as may consist with their Allegiance to his Majesty, and Subjection to the Crown and Parliament of Great Britain; and that in all .Matters of Controversy, relative to Property and Civil Rights, Resort shall be had to the Laws of Canada, as the Rule for the Decision of the same; and all Causes that shall hereafter be instituted in any of the Courts of Justice, to be appointed within and for the said Province by his Majesty, his Heirs and Successors. shall, · with respect to such Property and Rights, be determined agreeably to the said Laws and Customs of Canada, until they shall be varied or altered by any Ordinances that shall. from Time to Time, be passed in the said Province by the Governor, Lieutenant Governor, or Commander in Chief, for the Time being, by and with the Advice and Consent of the Legislative Council of the same, to be appointed in Manner herein-after mentioned .

"IX. Provided always, That nothing in this Act contained shall extend, or be construed to extend, to any Lands that have been granted by his Majesty or shall hereafter be granted by his Majesty, his Heirs and Successors, to be holden in free and common Soccage.

"X. Provided also, That it shall and may be lawful to and for every Person that is Owner of any Lands. Goods, or Credits, in the said Province and that has a Right to alienate the said Lands, Goods, or Credits, in his or her Lifetime, by Deed of Sale, Gift, or otherwise, to devise or bequeath the same at his or her Death by his or her last Will and Testament; any Law, Usage, or Custom, heretofore or now prevailing in the Province, to the contrary hereof in any-wise notwithstanding; .such Will being executed either according to the Laws of Canada, or according to the Forms prescribed by the Laws of England.

"XI. And whereas the Certainty and Lenity of the Criminal Law of England, and the Benefits and Advantages resulting from the Use of it, have been sensibly felt by the Inhabitants, from an Experience of more than nine Years, during which it has been uniformly administered:" be it therefore further enacted by the Authority aforesaid. That the same shall continue to be administered, and shall be observed as Law in the Province of Quebec, as well in the Description and Quality of the Offence as in the Method of Prosecution and Trial; and the Punishments and Forfeitures thereby inflicted to the Exclusion of every other Rule of Criminal Law. or Mode of Proceeding thereon, which did or might

prevail in the said Province before the Year of our Lord one thousand seven hundred and seventy-four; any Thing in this Act to the contrary thereof in any respect notwithstanding; subject nevertheless to such Alterations and Amendments as the Governor, Lieutenant-governor, or Commander in Chief for the Time being, by and with the Advice and Consent of the legislative Council of the said Province, hereafter to be appointed, shall, from Time to Time, cause to be made therein, in Manner hereinafter directed.

*"XII. And whereas it may be necessary to ordain many Regulations for the future Welfare and good Government of the Province of Quebec, the Occasions of which cannot now be foreseen, nor, without much Delay and Inconvenience, be provided for, without intrusting that Authority, for a certain Time, and under proper Restrictions, to Persons resident there, and whereas it is at present inexpedient to call an Assembly;" be it therefore enacted by the Authority aforesaid, That it shall and may be lawful for his Majesty, his Heirs and Successors, by Warrant under his or their Signet or Sign Manual, and with the Advice of the Privy Council, to constitute and appoint a Council for the Affairs of the Province of Quebec, to consist of such Persons resident there, not exceeding twenty-three, nor less than seventeen, as his Majesty, his Heirs and Successors, shall be pleased to appoint, and, upon the Death, Removal, or Absence of any of the Members of the said Council, in like Manner to constitute and appoint such and somany other Person or Persons as shall be necessary to supply the Vacancy or Vacancies; which Council, so appointed and nominated, or the major Part thereof; shall have Power and Authority to make Ordinances for the Peace, Welfare, and good Government, of the said Province, with the Consent of his Majesty's Governor, or, in his Absence, of the Lieutenant-governor, or Commander in Chief for the Time being.*

**[This section was repealed by The Constitutional Act, 1791]**

"XIII. Provided always, That nothing in this Act contained shall extend to authorize or empower the said legislative Council to lay any Taxes or Duties within the said Province, such Rates and Taxes only excepted as the Inhabitants of any Town or District within the said Province may be authorized by the said Council to assess, levy, and apply, within the said Town or District, for the Purpose of making Roads, erecting and repairing publick Buildings, or for any other Purpose respecting the local Convenience and Oeconomy of such Town or District.

"XIV. Provided, also and be it enacted by the Authority aforesaid, That every Ordinance so to be made, shall, within six Months, be transmitted by the Governor, or, in his Absence, by the Lieutenant-governor. or Commander in Chief for the Time being, and laid before his Majesty for his Royal Approbation; and if his Majesty shall think fit to disallow thereof, the same shall cease and be void from the Time that his Majesty's Order in Council thereupon shall be promulgated at Quebec.

"XV. Provided also, That no Ordinance touching Religion. or by which any Punishment may be inflicted greater than Fine or Imprisonment for three Months shall be of any Force or Effect, until the same shall have received his Majesty's Approbation.

"XVI. Provided also, That no Ordinance shall be passed at any Meeting of the Council where less than a Majority of the whole Council is present, or at any Time except between the first Day of January and the first Day of May, unless upon some urgent Occasion, in which Case every Member thereof resident at Quebec. or within fifty Miles thereof, shall be personally summoned by the Governor or in his

absence by the Lieutenant-governor, or Commander in Chief for the Time being, to attend the same.

"XVII. And be it further enacted by the Authority aforesaid, That nothing herein contained shall extend. or be construed to extend. to prevent or hinder his Majesty, his Heirs and Successors, by his or their Letters Patent under the Great Seal of Great Britain, from erecting, constituting, and appointing, such Courts of Criminal, Civil, and Ecclesiastical Jurisdiction within and for the said Province of Quebec, and appointing, from Time to Time, the Judges and Officers thereof, as his Majesty, his Heirs and Successors, shall think necessary and proper for the Circumstances of the said Province.

"XVIII. Provided always, and it is hereby enacted, That nothing in this Act contained shall extend. or be construed to extend, to repeal or make void, within the said Province of Quebec, any Act or Acts of the Parliament of Great Britain heretofore made, for prohibiting, restraining, or regulating the Trade or Commerce of his Majesty's Colonies and Plantations in America; but that all and every the said Acts and also all Acts of Parliament heretofore made concerning or respecting the said Colonies and Plantations, shall be, and are hereby declared to be, in Force, within the said Province of Quebec, and every Part thereof.

## APPENDIX 4

### THE 1784 HALDIMAND DOCUMENT (INSTRUMENT)

Frederick Haldimand, Captain General and Governor General in Chief of the Province of Quebec and Territories depending thereon, &c &c &c General and Commander in Chief of His Majesty's Forces in said Province and the Frontiers thereof &c &c &c.

Whereas His Majesty having been pleased to direct that in consideration of the early attachment to his cause manifested by the Mohawk Indians, and of the loss of their settlement which they thereby sustained that a convenient tract of land under his protection should be chosen as a safe and comfortable retreat for them and 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 -- I have at the earnest desire of many of these His Majesty's faithful Allies purchased a tract of land from the Indians situated between the Lakes Ontario, Erie and Huron and I do hereby in His Majesty's name authorize and permit the said Mohawk Nation and such others of the Six Nation Indians as wish to settle in that quarter to take possession of and settle upon the Banks of the River commonly called Ours [Ouse] or Grand River, running into Lake Erie, allotting to them for that purpose 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, which them and their posterity are to enjoy for ever.

Given under my hand and seal at arms, at the Castle of St Lewis at Quebec, this twenty-fifth day of October one thousand seven hundred and eighty-four and in the twenty-fifth year of the reign of Our Sovereign Lord George The Third by the Grace of God of Great Britain, France and Ireland, King, Defender of the Faith and so forth.

Fredk Haldimand  
By His Excellency's Command  
R. Mathews

## APPENDIX 5

### THE 1793 SIMCOE PATENT

J. GRAVES SIMCOE.

George the third by the Grace of God of Great Britain, France and Ireland, King, Defender of the Faith and so forth. To all to whom these presents shall come Greeting--Know ye that whereas the attachment and fidelity of the Chiefs, Warriors and people of the Six Nations to Us and our Government has been made manifest on divers occasions by their spirited and zealous exertions and by the bravery of their conduct and We being desirous of showing our approbation of the same and in recompense of the losses they may have sustained of providing a convenient Tract of Land under our protection for a safe and comfortable Retreat for them and their posterity Have of our special Grace certain Knowledge and mere motion given and granted and by these presents Do Give and Grant to the Chiefs, Warriors, Women and people of the said Six Nations and their heirs for ever All that District or Territory of Land being parcel of a certain district lately purchased by us of the Mississague Nation lying and being in the Home District of Our Province of Upper Canada, beginning at the mouth of a certain River formerly known by the name of Ours or Grand River now called the River Ouse where it empties itself into Lake Erie and running along the Banks of the same for the space of six miles on each side of the said River or a space co-extensive therewith conformably to a certain survey made of the said Tract of Land and annexed to these presents and continuing along the said River to a place called or known by the name of the forks and from thence along the main stream of the said River for the space of six miles on each side of the said stream or for a space equally extensive therewith as shall be set out by a survey to be made of the same 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, bearing date the seventh day of December in the year of our Lord one thousand seven hundred and ninety-two to Have and to Hold the said District or Territory of Land so bounded as aforesaid of Us our Heirs and successors to them the Chiefs Warriors Women and people of the Six Nations and to and for the sole use and behoof of them and their heirs for ever freely and clearly of and from all and all manner of Rents, fines and services whatever to be rendered by them or any of them to Us or Our Successors for the same and of and from all conditions stipulations and agreements whatever except as hereinafter by Us expressed and declared Giving and Granting and by these presents confirming to the said Chiefs Warriors Women and people of the Six Nations and their heirs the full and entire possession Use benefit and advantage of the said District or Territory 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 said Six Nations Provided always and be it understood to be the true intent and meaning of these presents that for the purpose of assuring the said Lands as aforesaid to the said Chiefs Warriors Women and people of the Six Nations and their heirs and of securing to them the free and undisturbed possession and enjoyment of the same.

IT IS OUR ROYAL WILL AND PLEASURE that no transfer, alienation conveyance sale gift exchange lease property or possession shall at any time be made or given of the said District or Territory or any part or parcel thereof by any of the said Chiefs Warriors Women or people person or persons whatever other than among themselves the said Chiefs Warriors Women and people, but that any such transfer alienation conveyance sale gift exchange lease or possession shall be null and void and of no effect whatever. And that no person or persons shall possess or occupy the said District or



Territory or any part or parcel thereof by or under pretence of any such alienation Title or conveyance as aforesaid or by or under any pretence whatever under pain of our severe displeasure **And that in case any person or persons other than them the said Chiefs Warriors Women and people of the said Six Nations shall under pretence of any such title as aforesaid presume to possess or occupy the said District or Territory or any part or parcel thereof that it shall and may be lawful for us our Heirs and Successors at any time hereafter to enter upon the Lands so occupied and possessed by any person or persons other than the people of the said Six Nations and them the said intruders thereof and therefrom wholly to dispossess and evict and to resume the part or parcel so occupied to Ourselves, our heirs and successors** Provided always that if at any time the said Chiefs Warriors Women and people of the said Six Nations should be inclined to dispose of and surrender their use and interest in the said District or Territory or any part thereof the same shall be purchased for Us, our Heirs and Successors at some public meeting or assembly of the Chiefs Warriors and people of the said Six Nations to be holden for that purpose by the Governor, Lieutenant-Governor or person administering Our Government in our Province of Upper Canada, IN TESTIMONY whereof, We have caused these our Letters to be made patent and the great seal of our said Province to be hereunto affixed.

Witness; John Graves Simcoe, Esquire, Lieutenant-Governor and Colonel commanding our forces in Our said Province.

Given at Our Government House at Navy Hall this fourteenth day of January in the year of our Lord, One thousand seven hundred and ninety-three, in the thirty-third year of Our Reign.

APPENDIX 6

LIST OF SIX NATIONS SURRENDERS

S—(Continued.)		No.	Page.	Vol.
<b>SIX NATION INDIANS—</b>				
25th Oct., 1784.	Grant by Governor Haldimand. Dunn, Sherbrooke, Moulton, Canborough, North and South Cayuga, Oneida and Seneca Townships, Haldimand County; Tuscarora, Onondaga, Brantford and South Dumfries Townships, Brant County; North Dumfries, Waterloo and Woolwich Townships, Waterloo County; Pilkington and Nichol Townships, Wellington County. For Six Nation Indians.	106	251	I
14th Jan., 1798.	Grant by Lt. Gov. Simcoe. Dunn, Sherbrooke, Moulton, Canborough, North and South Cayuga, Oneida and Seneca Townships, Haldimand County; Tuscarora, Onondaga, Brantford and South Dumfries Townships, Brant County; North Dumfries, Waterloo and Woolwich Townships, Waterloo County; Pilkington and Nichol Townships, Wellington County.	4	9	I
20th May, 1796.	Two thousand acres on Grand River. To Nancy Kerr and Mary Margaret Kerr.	42	10	I
15th Jan., 1798.	South Dumfries Township, Brant County; North Dumfries, Waterloo and Woolwich Townships, Waterloo County; Pilkington and Nichol Townships, Wellington County.	9	23	I
5th Feb., 1798.	Moulton and Canborough Townships, Haldimand County; South Dumfries Township, Brant County; North Dumfries, Waterloo and Woolwich Townships, Waterloo County; Pilkington and Nichol Townships, Wellington County.	10	25	I
13th Mar., 1800.	Four thousand acres at mouth of Grand River. To Lt. Gov. Gore. For William Dickson.	188	107	II
3rd Aug., 1826.	West part of North Cayuga Township, Haldimand County (15,360 acres). For Hon. William Claus.	99	241	II
4th Aug., 1826.	Fourteen hundred acres on Grand River, Haldimand County. For Jennima Stewart and Sarah Ruggles.	284	69	I
19th Apr., 1830.	Part of City of Brantford, Brantford Township, Brant County (807 acres).	30	76	I
19th Apr., 1831.	Part of North Cayuga Township, Haldimand County (20,670 $\frac{1}{2}$ acres).	31	79	I
18th May, 1831.	By Catherine Claus, John Johnson Claus and Warren Claus, executrix and executors of Hon. William Claus. Part of Moulton Township, Haldimand County (30,800 acres). To Hon. James Baby, Hon. John Henry Dunn and Hon. George Herchmer Markland.	65	152	I
6th June, 1831.	By John Johnson Claus. Lots 12, 15 and 18, Con. 4, Lots 13, 14, 15, 16, 18 and 25, Con. 5; Lots 14, 15, 17, 18 and 19, Con. 6, East Hawkesbury Township, Prescott County.	32	80	I
6th June, 1831.	By John Johnson Claus. Lots 16, 18, 19 and 21 and south $\frac{1}{2}$ of 14, Con. 4, Innisfil Township, Simcoe County.	33	82	I
6th June, 1831.	By Catherine Claus. Lots 13, 14, 15, 16, 18 and 20, Con. 3, East Hawkesbury Township, Prescott County.	34	84	I
8th Feb., 1834.	Dunn Township and parts of Moulton, Canborough and Cayuga, Haldimand County.	38	91	I
26th Mar., 1835.	Confirming leases granted by Captain Joseph Brant.	39	94	I
2nd April, 1835.	Part of Brantford Township, Brant County (48,000 acres).	40	96	I
29th Aug., 1837.	South $\frac{1}{2}$ of Lot 51, Con. 2, Brantford Township, Brant County. For Rachel Parker.	194	116	II
21st Feb., 1840.	Part of Canborough Township, Haldimand County (100 acres). For Aaron Helmer.	193	115	II
18th Jan., 1841.	All their lands not previously surrendered except reserve mentioned.	50	119	I
3rd June, 1844.	By Hon. John Henry Dunn and Hon. George Herchmer Markland. Lots 13, 14, 15, 16, 18 and 20, Con. 3; Lots 12, 15 and 18, Con. 4; Lots 13, 14, 15, 17, 18 and 19, Con. 6, East Hawkesbury Township, Prescott County; Lots 16, 18, 19 and 21, and south $\frac{1}{2}$ of 14, Con. 4, Innisfil Township, Simcoe County.	53	125	I
10th Aug., 1849.	By Reynold and Benjamin Rogers. Lots 21, 22, and 12 acres of north $\frac{1}{4}$ of 20, Con. 2, Townsend Township, Norfolk County; and south $\frac{1}{2}$ of Lots 28 and 29, Con. 1, Tuscarora Township, Brant County; with mills, buildings, &c.	634	173	I
21st Apr., 1865.	South-east corner of south $\frac{1}{2}$ of Lot 26, Con. 3, Tuscarora Township, Brant County (5 acres). For Church of England church, with parsonage and burial ground.	104	248	I
21st Sep., 1865.	Part of Tuscarora Township, Brant County, and part of Oneida Township, Haldimand County. For public road.	105	250	I
26th Mar., 1867.	Lot 21, twelve acres of Lot 20, and north-east part of Lot 22 (62 acres), Con. 2, Townsend Township, Norfolk County.	108	253	I
<b>SIXTEEN MILE CREEK—</b>				
See "Trafalgar Township."				
<b>SMITH TOWNSHIP, PETERBOROUGH COUNTY—</b>				
5th Nov., 1818.	By Chippewa Indians. Provisional surrender. The Township.	20	48	I

Source: Indian Treaties and Surrenders, 1891 (reprinted 1996), Queen's Printer, Volume 1, page lii.

## APPENDIX 7

### THE 1844 AGREEMENT BETWEEN THE SIX NATIONS OF THE GRAND RIVER AND THE CROWN

#### INTRODUCTION

The following is a printed version of an 1844 hand written document from Library and Archives Canada, RG 10, Vol. 144, pp. 83269-83279, Reel C-1149.

Hand written words, which could not be deciphered, are replaced with an underline followed by a question mark.

#### PRINTED VERSION (Deciphered July 20, 2008)

Page 83269, RG 10, Vol. 144, Public Archives Canada

13<sup>th</sup> Dec 1844

The Commissioner is instructed by Command of his Excellency the Governor General to bring under the reconsideration of the Chiefs of the Six Nations of Indians in Council the lands to be set apart as a territory for the future residence of them selves and their people and the leasing or selling of such parts of their lands on the Grand River known as the Oxbow, Eagles Nest, Martin and Johnson settlements.

While his Excellency is desirous that their choice should be free on the reserve as he does that it should be in all other matters connected with their own property yet he does not consider that their interest would be promoted in extending the tract to become their future \_\_\_? residence from the west side of the Plank Road to Burtch's Landing or that of leasing of the places aforementioned.

But his Excellency believes that it would promote the welfare of the tribes by having the reserve confined to the Township of Tuscarora (according to the boundary about to be established. A sketch of which is herewith submitted).

Page 83270, RG 10, Vol. 144, Public Archives Canada

He desires that it should be clearly understood **that no Indian be compelled to remove from his present location the doing so to be an act of his own and when he wishes to settle on the Reserve his improvements to be sold for his own benefit.**

His Excellency desires that the Commissioner point out to their council the advantages that their people would derive in concurring in his views to that expressed in their answers in the propositions originally put on the 17<sup>th</sup>, 24<sup>th</sup> & 31<sup>st</sup> Oct. last.

The Commissioner fully concurs in the views of His Excellency because he believes that the Tuscarora Township as shown on the sketch would prove sufficiently extensive to produce all the necessaries of their daily requirements and thereby procure an enlargement of their funds without diminishing as they would be in carrying into effect their wish as previously expressed there on.

He is therefore anxious that the subject should receive a mature and careful consideration of the whole of the Chiefs in Council

Page 83271, RG 10, Vol. 144, Public Archives Canada

and for that purpose they are now assembled.

/ 18<sup>th</sup> Dec 44

Upon the foregoing proposition of the Commissioner, the Chiefs of the Six Nations do agree to make the following reply the same having been duly and maturely considered in Council on the 13<sup>th</sup> Dec last and again this 18<sup>th</sup> day of the same month and now answer that they are unanimous in adhering to their answer to the commissioner of the 31<sup>st</sup> Oct last that the lands on the south side of the River from that which is deeded at Burtch's Landing down to the west side of the Plank Road except the tier of lots adjoining the said Road as previously reserved and confirmed by Order in Council of the 4<sup>th</sup> Oct. 1843. **On the other part of their answer that the lands on the north side of the River known as the Oxbow, Eagle's Nest, Martin and Johnson settlements be leased and not sold.**

Page 83272, RG 10, Vol. 144, Public Archives Canada

**From this answer they unanimously recede and therefore agree that the same be sold.**

The chiefs further desire that there be reserved at or near the Mohawk School two Hundred acres of land for the use of the said school so that the Scholars may then be Ensured agricultural pursuits.

They also desire that the Indian cleared lands on the north side may be exchanged for those on the south side thus recompensing the possessors of improvements from Burtch's to Lot No. 72 on the River.

They do not think that the squatters on the other part of lands they now desire for their future residence ought in future to complain in having to lease the improvements they have made without a recompense in as much as they squatted without permission and much offend the wish of the Indians as well

Page 83273, RG 10, Vol. 144, Public Archives Canada

as against their interest nevertheless they are desirous that justice may be done (X) to all such squatters for their improvements. (NB the X = portion written along the left hand side of page 83273)

The Six Nations are desirous that 3,600 acres of land may also be reserved for the Tuscarora Tribe on the north side of the River in the Township of Onondaga in and around the Church and mission establishment of the New England Companies provided that such Reserve may not be prejudicial to their reserve on the south side the River as here on desired.

The Nations present declare that due notice to their people was had of the time place and object of their meeting in Council on the 13<sup>th</sup> last as well as of today and believe this their answer to the Commissioner is the wish of the Six Nations without a dissent.

Page 83274, RG 10, Vol. 144, Public Archives Canada

The Chiefs would further recede from that part of their former answer that such portions of Lots as the Commissioner might judge not to be useful or necessary on which an Indian resides might be sold and **therefore desire that any lot whereon an Indian resides out of the general Reserve no part of it be sold while it is so occupied but on the lot becoming vacant the same to be sold and not reserved.**

The Nations adhere to their former desire that for the reserve an Intact deed be granted Onondaga Council House on the Gr<sup>d</sup> River District of Gore 18<sup>th</sup> Dec 1844.

We certify that the Six Nations now

Page 83275, RG 10, Vol. 144, Public Archives Canada

present gave the foregoing as their unanimous answer to the commissioner each paragraph having been \_\_\_\_\_? put to them through their Interpreter Jacob Martin.

Jas Winniett  
David Thorburn, Commissioner

#### **TRANSCRIBER'S COMMENTS**

The remainder of page 82375 contains the signatures of Chiefs and principal men of the Six Nations.

Page 83276, RG 10, Vol. 144, Public Archives Canada contains a continuation of the signatures of the Six Nation Chiefs.

By my count, pages 83275 and 83276 contain 45 signatures of Six Nations' Chiefs and principal men.

In the right hand column on page 83276 beside the list of Chiefs' signatures it says "I certify to the signatures of the chiefs the same acknowledged in my presence"

That certification is signed D. Thorburn, Com<sup>f</sup>

#### **AN ACCOUNT OF MEETINGS LEADING TO THE 1844 AGREEMENT DOCUMENT**

Page 83277, RG 10, Vol. 144, Public Archives Canada

Onondaga Council House

Friday the 13th, Decr, 1844

Pursuant to Notice through Major Winniett  
L.S.A The Council met at 11 O'Clock A.M.

Present            David Thorburn Commissioner  
"                    James Winniett Esquire L.S.A.

" Fifty Chiefs of the Six Nations Indians

That is of the

Upper and Lower Mohawks	14
Cayugas	12
Tuscaroras	6
Onondagas	6
Oneidas	4
Delawares	4
Senecas	2
Nanticoke	2
-----	
50 Chiefs	

After the Role of the Chiefs were taken the Council was opened by the Chief Echo the Firekeeper. When the interpreter Jacob Martin informed the Commissioner that the Chiefs were ready to hear what he had to lay before them

The Commissioner then submitted the subject and read the same being put through the Interpreter by paragraphs. After the reading numerous Interrogations and Explanations took place after which the Chiefs requested an adjournment of the Council till the Wednesday next to enable them to deliberate in order to reply. The Minute of Submission and the map of the proposed Reserve of the Township of

Page 83278, RG 10, Vol. 144, Public Archives Canada

Tuscarora they desired the perusal of which request on the part of the Commissioner was acceded to and agreed on that the Council do stand adjourned till 10 O'Clock A.M. on Wednesday next the 18th Instant for the purpose stated.

Wednesday the 18th Decr 1844

The Council met pursuant to adjournment

Present	David Thorburn Commr	
"	James Winniett Esqr. L.S.A	
"	Forty Seven chiefs Viz. of the	
	Upper and Lower Mohawks	13
	Cayugas	9
	Tuscaroras	7
	Onondagas	6
	Oneidas	4
	Delawares	4
	Senecas	2
	Nanticokes	2
		-----
		47 Chiefs

After the above Role was taken the Chief Buck opened the Council and Henry Brant one of the

Mohawk Chiefs appointed to deliver the answer of the Six Nations. He recited the early \_\_\_\_\_? of their Nations with the British Government and their implicit reliance on the Justice and good faith of the Government and reviewed the grant of their Lands and their repeated acts of surrendering portions of it at

Page 83279, RG 10, Vol. 144, Public Archives Canada

the request of the Government. But on the present occasion they did not think that it would be for the benefit of their posterity to surrender all their Lands except those in the proposition in the Township of Tuscarora. The Comr and Superintendent endeavoured to persuade them of their \_\_\_\_\_? that it was neither for themselves or their posterity's interest that to secure the land they desired for an exclusive Indian settlement their funds would be materially affected in paying the present possession for their Improvements and to them they would not be of a like value as to the White settler.

Their answers were taken down by the Commissioner and each read and recited to the Council by the Interpreter and assented to by their Speaker as the unanimous wish of the Six Nations after which the respective Chiefs confirmed the same by their signature before the rising of the Council.

#### **TRANSCRIBER'S COMMENTS**

The 1844 document said, on Public Archives Canada page 83270, "He desires that it should be clearly understood that no Indian be compelled to remove from his present location the doing so to be an act of his own and when he wishes to settle on the Reserve his improvements to be sold for his own benefit."

It also said, at the bottom of page 83271 and continuing on page 83272, "On the other part of their answer that the lands on the north side of the River known as the Oxbow, Eagle's Nest, Martin and Johnson settlements be leased and not sold. From this answer they unanimously recede and therefore agree that the same be sold."

Therefore, the 1844 agreement between the Crown and 45 Chiefs and principal men of the Six Nations of the Grand River shows that the Six Nations Chiefs and principal men agreed, on Wednesday December 18, 1844, that the Crown could sell the land on the Oxbow and Eagle's Nest tracts and on the Martin and Johnson settlements.

The document also said, on page 83274, "that any lot whereon an Indian resides out of the general Reserve no part of it be sold while it is so occupied but on the lot becoming vacant the same to be sold and not reserved."

## APPENDIX 8

### EXCERPTS FROM GRAND RIVER NOTIFICATION AGREEMENT

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AGREEMENT DATED THIS THIRD DAY OF OCTOBER 2003 AMONG: SIX NATIONS OF THE GRAND RIVER ("Six Nations"), MISSISSAUGAS OF THE NEW CREDIT ("New Credit"), THE CORPORATION OF THE CITY OF BRANTFORD, THE CORPORATION OF THE COUNTY OF BRANT, THE CORPORATION OF THE TOWN OF HALDIMAND, GRAND RIVER CONSERVATION AUTHORITY ("GRCA"), HER MAJESTY THE QUEEN IN RIGHT OF CANADA, as represented by the Minister of Indian Affairs and Northern Development ("Canada"), AND HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO, as represented by the Minister Responsible for Native Affairs ("Ontario").

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The following is an excerpt from Section 9 of the Grand River Notification Agreement.

#### **No Legal Effect**

**9. (a) This Agreement is not legally binding on any of the Parties,** nor will it affect the legal rights or obligations of the Parties or any other persons, nor will it affect the validity of any act of any of the Parties, nor will it affect the legal position of any of the Parties, or be admissible in evidence in any current or future legal proceeding, nor will it create any legal obligations, duties or rights.

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A copy of the entire agreement or any renewal should be available from any one of the signatories.



## APPENDIX 9

### INCONSISTENCIES, INCONGRUITIES AND QUESTIONS

The history reveals numerous inconsistencies and incongruities and raises many questions.

1. Many Six Nations people claim they are indigenous and have aboriginal title to what is now southwestern Ontario. But, are they really indigenous if their traditional homeland is south of Lake Ontario in what is now upper New York State, U.S.A. and if they entered what is now southwestern Ontario to kill, conquer and disperse the Neutral, Petun (Tionontati) and Huron Indians who were living there before the Five Nations Iroquois invaded?
2. If the Ojibwa Mississauga Indians drove the Five Nations Iroquois out of what is now southwestern Ontario in the 1690s and controlled the area for over eighty years until Governor Haldimand purchased land from them on May 22, 1784, why wouldn't the Mississauga Indians claim aboriginal title?
3. Is the government bound to the so-called Nanfan Treaty (deed) of 1701 if the Five Nations misrepresented the facts and neglected to tell the British that the Ojibwa and their allies had driven the Five Nations Iroquois from southwestern Ontario in the 1690s?
4. If, in the 1763 Royal Proclamation, the British Crown defined Indian Territory in North America, took "*Sovereignty, Protection and Dominion*" over Indian Territory, told colonists in North America to vacate Indian Territory and told aboriginals that, if they wanted to sell land from Indian Territory, they should only sell it to the Crown, wouldn't that have broken any Two Row Wampum and Covenant Chain agreements between the Six Nations and the British to rule their people separately?
5. If the Six Nations surrendered land, including land in what is now southwestern Ontario, to the British according to the so-called Nanfan Treaty (deed) in 1701 and if the Crown and the Iroquois Confederacy considered that treaty (deed) valid, should the 1763 Royal Proclamation have applied to that land, which had already been surrendered to the Crown?
6. Why did the British purchase (Haldimand's own word) a huge section of southwestern Ontario from the Mississauga Indians if the British already had control of the area according to the Nanfan Treaty (deed)?
7. Some Six Nations activists and supporters say the Six Nations has aboriginal title to the land along the Grand River. If that is the case, why did Joseph Brant appeal to the British King and Governor Haldimand for land and why did the British buy the land along the Grand River from the Mississauga Indians for the Six Nations? Why didn't the Six Nations simply move onto that land if they thought it was theirs?
8. Wouldn't the land transaction conditions in the 1763 Royal Proclamation have been extinguished on the land along the Grand River as soon as the British bought that land from the Mississauga Indians and as soon as that land became Crown land?

9. Why did Haldimand say the Six Nations were “*to take possession*” of the Haldimand tract but never provide them with formal title or a deed to the land? Why did Haldimand grant them land, which extended beyond the northern boundary of the land the Crown had purchased from the Mississauga Indians?
10. The Haldimand Proclamation does not contain the mark or signature of any aboriginal so why do Six Nations people continually tell us it was a treaty or a deed when it was neither? It was simply a unilateral announcement from an agent of the Crown.
11. What was the intention of Haldimand’s document (instrument)? Did Haldimand or the Crown actually intend to give the Six Nations the land along the Grand River as a separate, sovereign country utterly distinct from the Province of Quebec? It seems highly unlikely.
12. Why did Simcoe say that the land along the Grand River, which he granted the Six Nations, was for their “*entire possession*” and then tell them they could only sell or lease that land to the Crown?
13. If the Haldimand document (instrument) was not a treaty or a deed, if it was not properly finalized, if it had mistakes and if the Six Nations refused to acknowledge or accept the Simcoe Patent (deed) to land along the Grand River, how can the Six Nations now say they own the land along the Grand River?
14. If the British bought the land from the Mississauga Indians simply to allow Six Nations people to occupy Crown land, as some people suggest, why would the Crown need to buy back or lease back its own land?
15. Some Six Nations people say the land purchase from the Mississauga Indians did not meet conditions in the 1763 Royal Proclamation but why would Royal Proclamation conditions apply to land the Five (later Six) Nations had already surrendered to the Crown according to the Nanfan Treaty (deed) of 1701?
16. Some Six Nations people say that surrenders of land along the Grand River from the Six Nations to the Crown did not meet conditions in the 1763 Royal Proclamation but why would Royal Proclamation conditions apply to land the Five (later Six) Nations had surrendered to the Crown according to the Nanfan Treaty (deed) of 1701 and to land the Crown had purchased from the Mississauga Indians?
17. When Joseph Brant sold blocks of land north of Brantford to colonists in 1798, the Crown stepped in to obtain from the Six Nations a surrender of that land before transferring it to the colonists. Why would the Crown require a surrender of that land if Brant and the chiefs had refused to accept the 1793 Simcoe Patent (deed) and if land transaction conditions in the 1763 Royal Proclamation did not apply?
18. Six Nations people often claim that some agreements, land sales and land surrenders are invalid because they don’t contain the signatures or marks of all 50 chiefs as required by their tradition. If that is so, why do Six Nations people consider valid the Nanfan Treaty (deed), which contains the signatures or marks of fewer than 50 chiefs, while considering invalid other agreements, which

contain the signatures or marks of fewer than 50 chiefs?

19. Why do some Six Nations people say the Six Nations never surrendered or quit claim to land on the Haldimand tract when there is plenty of evidence they did including the 1844 agreement?
20. The Haldimand document and the Simcoe Patent do not mention annuities to the Six Nations. They were expected to sustain themselves on the land along the Grand River. So, why does the Canadian government send taxpayers' money through Indian and Northern Affairs Canada (INAC) to the Six Nations of the Grand River reserve?
21. Why do Six Nations people think that the federal government has not lived up to its financial obligations when each year the Six Nations receives funding from INAC? Private auditor's reports show, for example, that the Six Nations of the Grand River received \$35.1 million in 2004 and \$32.5 million in 2005 from INAC. The total has probably reached billions of dollars since the reserve began. Six Nations people also get free education through college and university and free health-care. Those who live and work on the reserve don't pay income taxes and, with status cards, they don't pay the HST if they buy products and services on the reserve or have them delivered to the reserve so they get to keep more of their hard earned money. Why isn't that considered the way the federal government handles and distributes the money it is supposed to keep in trust?
22. If the Haldimand document (instrument) and the Simcoe Patent did not give the Six Nations title to the land along the Grand River in fee simple and if that land was Crown land, why couldn't the Crown simply appropriate its own land, if and when needed, with appropriate compensation (money) to the Six Nations for loss of use of that land?
23. Six Nations people say the British did not conquer the Six Nations but rather made treaties and agreements with the Six Nations so they are simply allies and not British subjects or Canadian citizens. However, if rebel British colonists defeated, burned out and drove the Six Nations people from their traditional homeland in New York, why aren't they simply considered refugees who fled to British controlled now Canadian territory? If they are not Canadian citizens, why do we give them the right to vote in Canadian elections?
24. When it comes to the dispute over the Douglas Creek Estates land near Caledonia, Ontario, the Crown bought that land as part of the Mississauga purchase in May, 1784. It bought that land again from the Six Nations in the 1840s, when the Crown wanted to extend the Plank Road (now highway 6) through the Simcoe tract and it bought the land again in 2006 when the Ontario government bought it for about \$12 million during the recent flare-up. How many times will the government use taxpayer's money to buy that land?
25. If the Canadian federal government in 1924 made Indian bands elect band councils and if the Six Nations Elected Band council took the Canadian federal government and the Ontario provincial government to court in 1995 over Six Nations claims, why did Canadian governments decide to include unelected members of the Six Nations Confederacy in negotiations over Six Nations Elected Band Council claims?
26. If the Five (Later Six) Nations surrendered the land along the Grand River as part of the land it surrendered to the Crown in the 1701 Nanfan Treaty (deed); if the Crown paid the Mississauga

Indians for the land along the Grand River; if the Six Nations did not get title in fee simple to that land and if the Crown sets the laws, rules and instructions for the land it owns, why do Six Nations people think they should tell the Crown how that land should be managed rather than the reverse?