

INTERNATIONAL COURT OF JUSTICE, THE HAGUE  
THE NETHERLANDS

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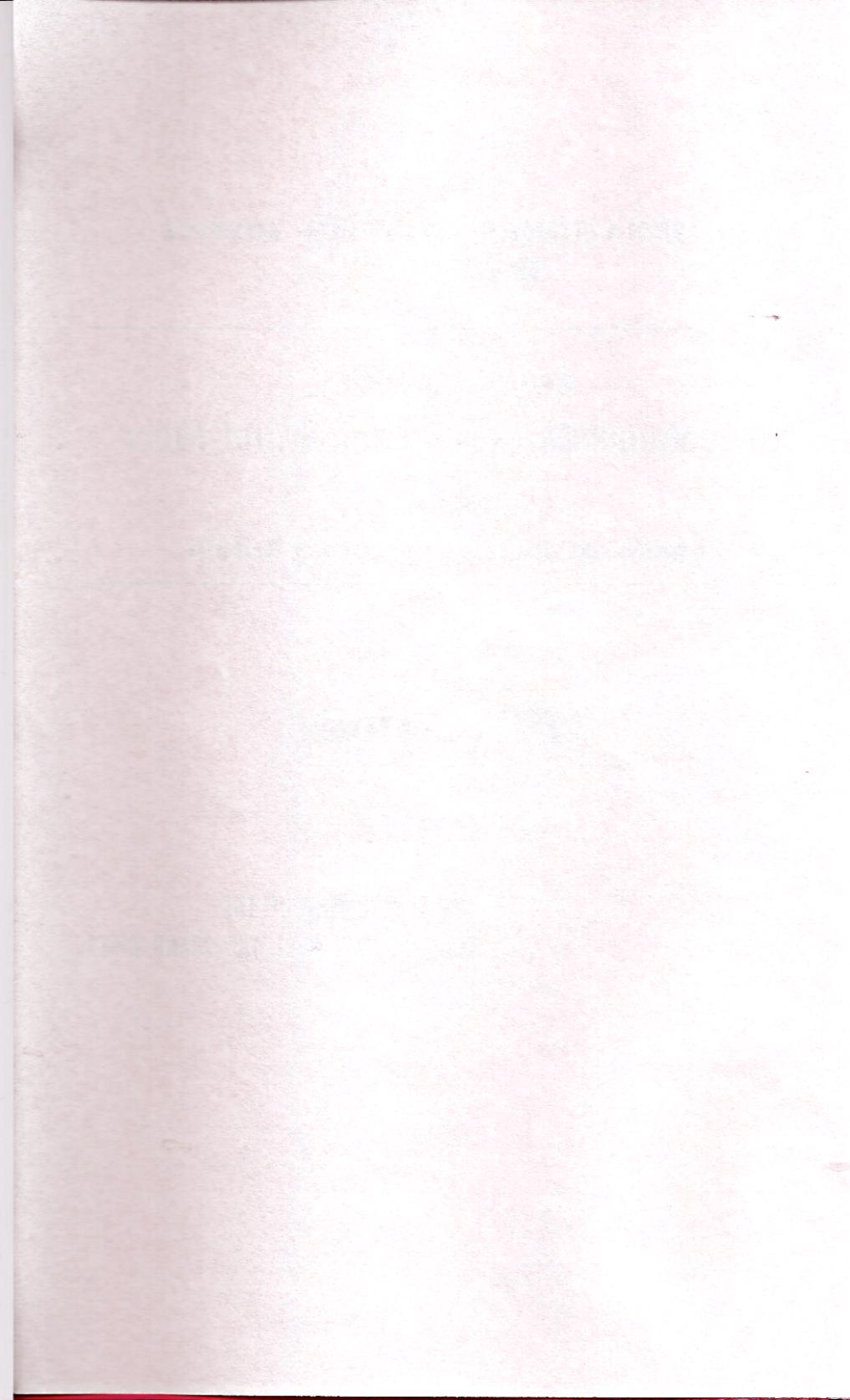
APPLICATION OF  
The Mohawk Nation of the Grand River  
against  
Canada, as successor of Great Britain

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APPLICATION

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THE GOVERNMENT OF THE  
MOHAWK NATION OF THE GRAND RIVER



**INTERNATIONAL COURT OF JUSTICE, THE HAGUE  
NETHERLANDS**

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**Application of the Mohawk Nation  
of the Grand River**

**AGAINST**

**CANADA, as successor of GREAT BRITAIN**

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**JURISDICTION**

The jurisdiction of this Court is invoked under article 35 (2) and 36 (2) of the Statute of the International Court of Justice.

**STATEMENT OF THE CLAIM**

This claim arises from the violation of Canada, as successor of Great Britain of the Treaty of 25 October, 1784 between Great Britain and the Mohawk Nation (known as the Haldimand Agreement). In 1793 a unilateral declaration was made by the then Governor Simcoe (known as the Simcoe Deed) which sought to abrogate the Haldimand Treaty. This Simcoe Deed is without validity and has never been accepted by the Mohawk Nation or the Six Nations (Iroquois) Confederacy, the federation of which the Mohawk Nation is a member.

The specific purpose of the Haldimand Agreement was to set aside territories for a permanent home for the Mohawk Nation and others of the Six Nations (Iroquois) Confederacy for their faithful services as allies of Great Britain in the American revolutionary war.

Recognizing these facts, the British Government in 1886 recommended as a solution to the present dispute the setting up of a committee of arbitration of three independent and impartial persons, one to be selected by the Governor General, one by the Indians and the third either by the parties or nominated by the Secretary of State. This and other recommendations were not implemented by the Canadian Government and as a result this dispute remains unsolved though it has been under continued examination for more than one hundred and fifty years.

## THE LAW

### I. THE HALDIMAND TREATY CANNOT BE ABROGATED WITHOUT THE CONSENT OF THE MOHAWK NATION AND THE SIX NATIONS (IROQUOIS) CONFEDERACY.

Mr. Frank Oliver stated in the House of Commons of Canada:

But there are band of the Six Nations Indians located on the Grand River in Ontario who, I maintain, are in a different legal position from any Indian bands who are native of the country. These Indian bands on the Grand river had their original home in the United States. At the close of the war of the revolution they emigrated to Canada and were given lands under a special treaty, not as subjects of Great Britain, but as allies of Great Britain, and I maintain that the holding of these Six Nations Indians on the Grand River is of such a kind that this parliament has no right to interfere with it. I admit that parliament has the power to interfere with the rights of Indians under treaty made with this government, but I say that this parliament has no right to interfere with a treaty made between the imperial government and the Six Nations Indians.

(House of Commons, May 11, 1914, Hansard, page 3537)

This statement was quoted with approval by Blackmore in the House of Commons, Debates, May 17, 1951, page 3111.

On April 5, 1909, the Minister of Interior of Canada wrote the following Letter to Chief Johnston, Deputy Speaker of the Six Nations Council:

Dear Sir:

The letter of the Council of the Six Nations dated February 23, 1909 which was read to me in the presence of the Deputy Superintendent-General on March 25th by Chief A.G. Smith, is before me, and, I beg to reply in the terms of our conversation of that date so that my reply may be on record.

It is the policy of the Canadian Government, as I understand it to recognize the relations with the Six Nations Indians of the Grand River as being on a different footing from those with any of the other Indians of Canada. The Six Nations Indians of the Grand River came to Canada under Special Treaty as the allies of Great Britain, and the policy of the Canadian Government is to deal with them having that fact always in view.

It is no part of the intention of the Department to take any official action except through recognized tribal authority of the Six Nations.

Frank Oliver

On 13 June, 1922, the Superintendent-General of Indian Affairs of Canada submitted a proposal in writing to the Councils of the Six Nations offering to appoint a Royal Commission to inquire into the affairs of the Six Nations Indians, such commission to consist of three judges of the Supreme Court of Ontario, one to be selected by the Government, one by the Council of the Six Nations, and the third by the judges selected by the Government and the Council. The Canadian Government and the Indians were to be bound by the decisions of the Commission and to be represented by Canadian counsel. The Indians agreed to arbitration in principle but did not agree that the three members of the Commission be selected from judges in the Supreme Court of Ontario, a Province directly interested in the dispute. They also objected to the restriction of their selection of counsel and insisted on their right to select counsel of a nationality other than Canadian. They also expressed a desire to share in the expense of arbitration.

The position of the Indians is clearly explained in the following petition to the British Government:

25 August, 1921

Secretary of State  
Colonial Office  
London

Our People are still domiciled on the remnant of the Grand River Country as the asylum to which we were invited by the King George III in the year 1784 in fulfilment of his promise made through Sir Guy Carlton to recompense us for all losses to be sustained in allying ourselves with the British in the revolution of the British Colonies in America. In assurance of our future rights in that asylum, Governor Frederick Haldimand places in our hands his certification in the name of the King under date of October 25, 1784, the original of which I bear with me. Under that assurance we accepted that asylum, and have ever since as a separate people possessed the present remnant of that domain.

DESKAHEH

(Portion of the Petition made in 1921)

Petition and Case of the Six Nations of the Grand River

25 August, 1921

Presented to Colonial Office.

Your Majesty:

In the early days our people of the Six Nations called the King "Father" but they are no longer children of the forest. I come on a mission from them. They send me to ask the exercise of your protection. Two hundred and fifty seven years ago the King and our people entered into a covenant of perpetual friendship. We promised our services as allies in all cases of his danger, and he promised protection to us in ours. I bear with me our sacred records of these compacts. The King promised always to hear us when we would appeal to him. When long ago the American colonists revolted, the King then promised, if we took up the hatchet against them, that he would make good all losses which we might suffer. Our people then fought by his side; our old homelands were then invaded by the enemy. At the end of that war the King lost his dominion south of the Great Lakes, and the enemy hold possession of much of our lands. The King then offered us asylums at the Grand River on the north of Lake Erie, and at the Bay of Quinti on the north of Lake Ontario. About half of the Six Nations people, under the leadership of Captain Joseph Brant of the Mohawks, electing to accept the King's promise to continue his protection, settled there and received his special assurance that they would have the right as a separate people to live there forever according to their own customs. Their brethren who preferred to make peace with the U.S.A. and accept its promise of protection, returned to the ancient Six Nations lands from which they had fled on the South of the Lakes. We still have at the Grand River a small domain of Sixty Square miles, and within it we have since maintained self-government in the domestic affairs of our people. We have never since our settlement there accepted any protector in place of the British King, nor have we consented to become subject in home affairs to the Dominion of Canada. Nevertheless, the Dominion Government has of late sought to invade our independent rights by Parliamentary measures, or through administrative policies disrespectful of us, and of a sort increasingly offensive and ever more threatening to our separate existence. It is its present policy to reduce us to subjection to its will enforced by civil administration through the Dominion Indian Department.

Holding in trust for us large sums of money, the proceeds of sales of parts of our domain, the Indian Department renders us no account of these funds, but pays over or holds the income and make charges against it according to its own will.

Officials have presumed to grant leases to outsiders of farm lands of our members without asking our leave, and in this way strangers have come to live in our midst.

We know by the bitter experience of our kinsmen what it means when white men get foothold on Indian lands; that foothold is never taken off, and, after a time, the Indians are heard of no more. We do not wish to be destroyed as a separate people. We have the same love for our heritage that the Great Spirit implanted in other peoples, and we have an equal right to hold fast to ours. We have surely done nothing to forfeit our natural rights, nor our right under the Royal Pledge to continued protection at the hands of the Crown against aggression by outsiders, making no exception.

As early as 18 April, 1811, the Indians of the Six Nations in the Grand River submitted the following appeal to the Superintendent General of Indian Affairs:

Brother: We this day have met in Council to consult each other, and to collect and express our opinions one towards the other, upon the calamitous situation in which we find ourselves placed, by the unexamplified and wanton cruelty which has been exercised to the faithful supporters of their Father across the great water, by his agents for these many years past.

Brother: We felt proud to be called the allies of so great a King; and the Mohawks have not forgotten the great sacrifice they have made, when they took up the hatchet to fight his battles. They look back to the fertile fields which they have abandoned, and which they moistened with the blood of many of their most brave warriors.

Brother: We thought when the servant of our Father (Governor Haldimand) gave us in his name, the lands upon the Grand River that we should be secure and without interruption enjoy it as our own.

Brother: In this we have been most egregiously deceived, and to our great surprise and grief, we find ourselves by the contrivance of artful, faithless and wicked men, strip of our property. What little is yet left us we are denied the lawful right of controlling or disposing of without master's leave.

Brother: We are determined no longer to be asleep, nor give up our just rights to children, and base selfish men and their wicked advisers.

Brother: We have often requested you to give us an answer concerning our money, which you, among others, many years ago received in trust for us, arising from the lands which we resigned to the King's Government according to their desire.

Brother: We have been told again and again that it was sent to England; but that is all we have heard of it. Promises and empty words will not satisfy us; it is time to have a direct answer, one way or the other; tell us no more tales, for on them we cannot be fed or clothed.

Brother: You continually advised us to be on one mind, yet at the same time you have spared no pains to create jealousies and distrust among us, and that by a partial distribution of the presents which our Father intended should be justly and equitable distributed to all.

Brother: In all this we do not see that honour and sincerity which we had a right to expect from you.

Brother: We call upon you to look back to the promises made to us, and the way we (and a great number of Chiefs who have gone to their Fathers, and are here no more) have conducted ourselves since our first connection with our Father the King. We have acted like men, honourable and unsuspecting; and should it happen, through your fault that our hands should unlock, we think your fingers would straighten first.

Brother: As respects the white people on the Grand River, they were placed there by our forefathers and ourselves; and according to the rules of Christianity, we cannot pull to pieces what has been solemnly past and done.

Brother: We respect our word, when once pledged, and we cannot think of disturbing the greatest of the meanest among them; we will not make a God of one man and a beast of another.

Brother: We further understand that the sale of the Stedman Township, so called, is about to be completed; we feel satisfied at this, but should have been more so, had it been done years ago, according to our wishes.

Brother: It is expected that your word of honour will be binding upon you in regard to Mr. Augustus Jones, whom we named as purchaser (and no other person) on the 26th November 1808, and who was accepted by yourself.

Brother: we also expect that the money, which may be raised on the sale of this township may not be sent to England, like the former, but that it should be at our disposal; for we think we can make better use of it.

Brother: We apply to you as the person appointed to watch over our interest as your own, and not suffer us to be imposed upon. It is very true we are ignorant, but is it a sufficient reason that because we are aboriginal inhabitants of the wilderness, and not so learned in the arts of white men, that we should be plundered, and our rights trodden under foot?

Brother: We demand of you that only to which we think we have a claim, namely, justice; and if it cannot be found here, we have been led to believe it may be obtained from our Father, the King, whom we think must be the fountain of justice.

(W.H. Smith: Canada, Past and Present, Toronto,  
Vol. 1, pp. 176-177)

## II. THE REBUTTAL OF THE CANADIAN CONTENTION THAT HALDIMAND CONVEYED MORE THAN HE PURCHASED FOR THE PURPOSE OF THE TERMS OF THE HALDIMAND TREATY

On December 6, 1963 after negotiations with the Canadian Government on the claim which is the subject matter of the present dispute, the Honorable Minister of Citizenship wrote:

The Haldimand document first mentions that a tract of land had been purchased and then goes on to authorize the Six Nations to settle and take possession of the portion six miles on each side of the River Ouse or Grand, extending from the river's mouth to its head. After the tract was surveyed, it was found that the head of the river lay outside of the tract purchased and the later grant by Lord Simcoe was confined to land actually purchased, extending from the mouth of the river to the northern boundary of what is now the Township of Nichol. The land purchased did not extend further north.

The Haldimand Treaty stated: "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 Hurons".

While the Haldimand Treaty did not specify the Indians from whom purchase was made except to refer to the location of the tract, the Simcoe Deed mentioned the Missisagua Nation of Indians as the sole source of the purchase.

The Canadian Minister of Citizenship in his above-mentioned letter which sums up the Canadian Government position states:

It is evident from the proclamation annexed to your note, that the land which General Haldimand intended to assign to the Indian Nations was that which the Colonial Government had a few months before purchased from other Indian Nations resident within the Province of Canada and that whatever disposition he may be presumed to have had to confer advantages on the Five Nations by giving them lands belonging to His Majesty, he could not intend (for he had not the power) to make over any Indian lands to which His Majesty had not then acquired a title. The description therefore of the land which is given in the close of the proclamation must be taken with reference to what the King had at the time the power to grant.

.....As the course of the Ouse or Grand River became known, it was found that the head of the river was not within the purchase made from the Chippawas in 1784 and that that purchase therefore did not comprise the lands to which the Five Nations now lay claim.

The discrepancy between the Simcoe Deed and the Haldimand Agreement is recognized by the Canadian Government but was never satisfactorily explained. The significant fact is that the Simcoe Deed refers to a purchase from the Mississagua Indian Nation, while the Haldimand Agreement refers to "Indians situated between the Lakes Ontario, Erie, and Huron" and the two documents above contained in the letter of the Minister of Citizenship of Canada refer to the purchase from the Chippawa Indians.

Further search in this matter has clearly established that Haldimand had purchased land for the purpose of the settlement of the Six Nations Indians from more than one Indian Nation. His very words "Indians situated between the Lakes Ontario, Erie and Huron" clearly refer to more than one Indian Tribe. This is proved by documents from the Session Report, issued by the Department of State, Ottawa, on 15 June, 1887 pursuant to an order of the House of Commons dated 2 May, 1887. The pertinent document reads:

**Memorandum by Douglas Brymner, Historical Archives, Ottawa, 31 May, 1887**

On the 8th of May, Colonel John Butler, Deputy Superintendent General of Indian Affairs wrote to Mayor Mathews, Military Secretary:

I have received H.E.'s speech through Sir John Johnson, which I have delivered to the Indians. I also received orders to purchase all the lands between the three lakes, Huron, Erie and Ontario, in consequence of which I have sent for the Mississagwas and Chippawas. A few of the former are already here, and the chiefs of them tell me that a part of the tract only belongs to the two Nations, that the other part is the property of the Hurons, and than Michillimakinak, and to the northwards, a part belongs to the Indians that hunt near Cataraqai.

In Archives, Ser. B., vol. 169, p. 131 in the following letter from Haldimand to Sir John Johnson dated 23 March 1784, the subject of the settlement of the Mohawks and others of the Six Nations upon the Grand River appears:

That His Excellency the Commander in Chief should give the Superintendent and Inspector General of Indian Affairs, instructions and empower Lieutenant Colonel Butler to purchase from the Mississagua, or proprietors, a tract of land consisting of about six miles on each side of the Grand River called Oswego running from the River La Tranche into Lake Erie, for the use of the Mohawks and such of the Six Nations as are inclined to join them in that settlement. Col. Butler is fully acquainted with the views and inclinations of Capt. Brant and the Mohawks respecting settlement, and only waits the General's approbation to make the purchase, the sooner this can be done the better as they would remove at this spring. Time enough to plant corn and Capt. Brant would propose that some of this party be sent off upon this business to Colonel Butler as soon as he returns to Montreal.

Sir John Johnson will be instructed to purchase the tract of country between the three lakes, Ontario, Erie and Huron, one of which the tract required by the Mohawks for the Six Nations will be granted to them by deed. The rest will be reserved for Loyalists or any other future purpose.

It is evident that Haldimand was fully aware of the ownership of the tract of land which he granted to the Six Nations Indians.

On June 27, 1883, the Department of Crown Lands, Ontario (Survey's Branch, Toronto), reported that a thorough search had been made among the records of the Department without eliciting any explanation regarding the cause for the issue of the Haldimand Agreement and the Simcoe Deed. It is interesting to note that the Simcoe Deed was never found, while the Haldimand Agreement was found and registered, (session Report, supra).

The argument, therefore, that Haldimand intended to convey what he purchased from either the Mississagwas or the Chippawas Indians cannot be the correct interpretation of

the Haldimand Agreement as the documents referred to above pointed out that no mistake was made in the conveyance, that Haldimand and his officers were fully aware that the land in question did not belong to one Indian Nation.

Furthermore, the contention of the Canadian Government that the course of the Grand River was unknown at the time of the conclusion of the Haldimand Treaty in 1784 is without validity. A map prepared by Patrick McNiff in Detroit in May 1791 from actual surveys made in 1789, 1790 and 1791 shows the land of the Six Nations and the Mohawk Nation on the Grand River as described in the Haldimand Treaty. In this map, the area is entitled "Tract of Land belonging to the Indians of the Six Nations" and a statement there reads "About 36 miles on this River is a settlement of Mohawk Indians under the direction of Capt. Joseph Brant they have here excellent farms, well stocked good horses and a large and grist mill."

The Haldimand Agreement was made at the suggestion of the Six Nations Indians in land previously occupied and conquered by them and accordingly was well known to them and to General Haldimand. A map entitled, "A map of the countries of the five nations" done by De Sisle in 1718 shows the Five (later Six) Nations to occupy the area of the Grand River and the words "conquered by the five nations" appearing therein. Historically, the Six Nations (Iroquois) came from the St. Lawrence Valley, and lived near Montreal. The date of formation of the Five Nations is 1539, and their ancient seat was on the banks of the St. Lawrence. The Iroquois invaded Canada and defeated the Hurons in a great battle near Quebec. Since the Grand River is adjacent to territories of the Iroquois according to a map prepared and subscribed by Guy Johnson in 1771 to William Tryon, Captain General and Governor in Chief of the Province of New York, it is submitted that the Iroquois, from the year 1718 and at least through the year 1771 were in control of the territories described in the Haldimand Agreement. According to Guy Johnson's map, the Missasagua were in control of the area near Toronto and not in the area bound by Lake Huron, Lake Erie (or Okswego), and Lake Ontario (or Cataraqui).

The lengthy negotiations that preceded the conclusion of the Haldimand Agreement are indicative that the contracting parties knew exactly the subject matter of their agreement. In the Session Report, *supra*, appears a letter dated 24 March, 1784 from Haldimand to Sir John Johnson informing him of Joseph Brant's desire to settle the Six Nations on a tract of land six miles on each side of the Grand River, called Oswego, running from the River La Tranch (now Thanes) into Lake Erie and also authorizing him to give directions to Lieutenant Colonel Baker, who was fully acquainted with the views of Captain Brant and the Mohawks, to purchase the tract of country between Lakes Ontario, Erie and Huron. On December 10, 1797, it was Brant who complained in a letter to Captain Green, Session Report, *Supra*, pp.6-7 that the "movements of Governor Simcoe in attempting to curtail our lands to one-half of the rivér, and recollecting our deed from Governor Haldimand to be unequal to his first promises."

Consequently, Captain Brant who had conducted the negotiations on behalf of the Indians with General Haldimand and who proposed the specific territories was the first to attack the Simcoe Deed as an attempt to invalidate the Haldimand Agreement. No reason was given in the preamble or the text of the Simcoe Agreement as to the alleged mistake in the Haldimand Treaty.

The Simcoe Deed, if it was an attempt to rectify a mistake in the Haldimand Agreement would have specifically stated these alleged defects rather than make a completely new deed following some of the wording of the Haldimand Agreement with changes regarding the territories. No mention was made that the Haldimand Agreement was superseded or abrogated.

A letter from Sir Peregrine Maitland to Earl Bathurst, which appears in the 1896 Archives Reports confirms two significant points:

1) officials of the British Government sanctioned the "pretension of these tribes to the full extent of the course of the Grand River, and that a draft of a patent designed by Lord Dorchester gives to the Indians the full extent of six miles on each side of the Grand River from its mouth to its source."

2) The Simcoe Deed is "an apparent grant under the seal of this province, signed by Lieutenant Governor Simcoe, but was never registered, never audited. It is evident from these deficiencies that it was proposed for some event which never took place, was never

delivered but kept as an escrow of a private conveyance supposed to be useless and invalid until sanctioned by the fiat of the Attorney General, Registration, Audit and Delivery ... That this patent was unknown to the Attorney General is obvious from the case subsequently stated by him for an opinion on the legality of any grant to the Indians with power of alienation."

By Treaty dated the 25th of October, 1784, under the hands and seal of arms of Sir Frederick Haldimand, the Captain General and Governor in Chief of the Province of Quebec and Territories depending therein, the Mohawk Nation and such other of the Six Nations as wished to settle in that quarter were authorized and permitted to take possession of and settle upon the banks of the river commonly called Grand River running into Lake Erie, allotting to them for that purpose six miles deep on each side of the River, beginning at Lake Erie and extending in that proportion to the head of said river, which they and their posterity were to enjoy forever. That the Six Nations of Indians, from time to time, by deeds surrendered to the Crown that portion of said lands so granted to them from Lake Erie to the north boundary of the township of Nicol, in the country of Wellington, excepting thereout lands in the township of Tuscarora, Oneida, Onondaga and Brattford, which were held and occupied by petitioners.

That the head of the Grand River is in the 4th concession of the township of Melanchthon, a distance of about forty miles from the north-boundary of the said township of Nicol.

That the Six Nations had not at any time surrendered a right to the lands between the said north boundary of the township of Nicol and the head of the said Grand River, nor had they been allowed or granted any other lands in lieu thereof, nor had they been paid or allowed any sum for the value of the said lands, but the said lands have been taken by the Crown and sold, and the right and title of petitioners to the same had been ignored.

That the Six Nations believe that they were justly entitled to the said lands in question which they claim according to the reading of the said Treaty as the only instrument they always recognized, as evidenced by their actions whenever the Six Nations surrendered land to the Crown, even subsequent to the issuing of the Simcoe Deed, which the Canadian Government endeavored to put forward in place of the Haldimand Treaty.

It is therefore the prayer humble desire of your petitioner that this Honorable Court do fully investigate the said dispute now presented before you and that the Honorable Court recognizes and declares the rights of the Mohawk Nation and others of the Six Nations on the Grand River to the territories allocated to them by the Haldimand Treaty and that said Treaty is valid and that the Simcoe Deed is null and void, and that Canada has violated its international obligations arising out of the Haldimand Treaty and to adjudge that petitioners are entitled to damages for the violation of this Treaty and to adequate, fair and prompt compensation for lands taken without their consent in violation of said treaty, and for any other relief as the Court may deem proper, and your petitioners in duly bound will ever pray.

Agent of the Mohawk Nation  
of the Grand River.

The undersigned, an official authorized by the Mohawk Nation of the Grand River Country to administer oath deposes and says that before me came Chief Melvin Hill, a Mohawk Chief duly known to me, and subscribed his name to the within application to the International Court of Justice and duly executed the same under the seal of the Nation.

December, 1966

Secretary of the Mohawk Nation

# MOHAWK NATION OF GRAND RIVER

Registrar  
International Court of Justice  
The Hague  
Netherlands

November 16, 1966

Sir:

Application of The Mohawk Nation of The  
Grand River, against Canada, as successor  
of Great Britain

I have the honour to communicate to you the name of our  
Agent and Counsel in the above-entitled dispute:

Agent: J. Kelvin Hill, Mohawk Chief  
A. R. #6  
Hagersville, Ontario  
Canada

Counsel: Dr. Omar Z. Ghobashy  
15 Park Row  
New York, New York 10038  
U. S. A.

Respectfully submitted,

Chiefs: *James Squire Hill* James Squire Hill Agh-Rengh-Reh  
-Go-Wah.  
*Seymour Hill* Seymour Hill A-Yonk-Wha  
-Thah.  
*Ivan Maracle* Ivan Maracle Sha-Ren-Ho-Wa-  
Neh.

Sworn to before me this sixteenth day of November in the  
year of our Lord Nineteen hundred and sixty-six

*Arthur Anderson*  
Arthur Anderson, Secretary  
Mohawk Nation of Grand River

Registrar  
International Court of Justice  
The Hague Netherlands

December, 1966

Sir: We have the honor to communicate to you the declaration of  
the Mohawk Nation pursuant to United Nations Security Council  
resolution dated October 15, 1966, accepting the jurisdiction  
of the International Court of Justice, in accordance with the  
Charter of the United Nations and with the terms and subject  
to the conditions of the Statute and Rules of the Court,  
and undertake to comply in good faith with the decision or  
decisions of the Court and to accept all obligations of a  
member of the United Nations under article 94 of the Charter.

This Declaration is particular and is solely related to  
the dispute between our Nation and the Government of  
Canada as successor of Great Britain, on the claim of  
our Nation for compensation for the unlawful taking of  
land in violation of the Haldimand Treaty between the  
Mohawk Nation and Great Britain dated October 25, 1784.

Accept, Sir, the assurance of our highest esteem and  
considerations.

Respectfully yours,

Chiefs

COUR INTERNATIONALE  
DE JUSTICE  
LA HAYE

INTERNATIONAL COURT  
OF JUSTICE  
THE HAGUE

44350

23 January 1967

Chief Melvin Hill,  
Mohawk Chief,  
R.R. # 6,  
Hagersville,  
Ontario,  
CANADA.

AIRMAIL

Sir,

I have the honour to inform you that in a letter dated 30 December 1966, which bears the heading "Application of the Mohawk Nation of the Grand River against Canada" and is signed by James S. Hill, Seymour Hill and Ivan Maracle, it is stated that "all correspondence in this case should be mailed to" your address.

Accordingly, and since no other postal address is given by the above-mentioned signatories, I now write to you to acknowledge receipt of the following documents:

A communication dated 16 November 1966 and signed by Chiefs James Squire Hill, Seymour Hill and Ivan Maracle, informing me inter alia of your appointment as Agent in an alleged dispute between The Mohawk Nation of the Grand River and Canada, "as successor of Great Britain";

A declaration dated 19 December and signed by yourself, in which reference is made to the said dispute and to the Resolution of 15 October 1946 of the Security Council of the United Nations relating to the conditions upon which the International Court of Justice shall be open to a State which is not a party to the Statute of the Court;

The letter of 30 December 1966 referred to in my opening paragraph;

The document therein referred to, being entitled "Application of the Mohawk Nation of the Grand River", which bears your signature as attested by one Arthur Anderson described as the Secretary of the Mohawk Nation.

Upon perusal of the above documents, all of which were received in the Registry of the Court on 9 January 1967, I sought instructions from the President of the Court by whom I am now directed to draw attention to the provisions of Article 35, paragraph 5, of the Rules of Court and to suspend further action with reference to the documents listed above pending instructions from the Court before which the documents will be laid.

I have the honour to be,

Sir,

Your obedient Servant,

*S. Agnew*

Registrar.

COUR INTERNATIONALE DE JUSTICE

PALAIS DE LA PAIX LA HAYE PAYS-BAS  
TELEGR. INTERCOURT LA HAYE. TELEPHONE 392344

INTERNATIONAL COURT OF JUSTICE

PEACE PALACE THE HAGUE NETHERLANDS  
CABLES INTERCOURT THE HAGUE TELEPHONE 392344

45033

Chief Melvin Hill,  
Mohawk Chief,  
R.R. 6,  
Hagersville,  
Ontario,  
Canada.

26 May 1967

AIRMAIL

Sir,

Further to my letter of 23 January 1967, I am directed to draw your attention to paragraph 1 of Article 34 and to Article 35 of the Statute of the Court, and to inform you that the letter dated 30 December 1966, of which you were a signatory, and the documents attached thereto do not call for any action.

I have the honour to be,

Sir,

Your obedient Servant,



Registrar

H.E. The Registrar  
International Court of Justice  
Peace Palace  
The Hague  
Netherlands

September 25, 1967

Re: Application of the Mohawk  
Nation against Canada

Your Excellency:

I have the honor to refer to your communication dated 45033 dated 26 May 1967 to the agent of the applicant in the above-entitled proceeding.

Upon careful examination of your letter, I am directed by the agent of the Mohawk Nation to seek clarification on the appropriate procedure pursuant to the Statute and Rules of the Court which were adopted by your office in this case, particularly:

- 1) Whether a decision is made in this case under Articles 35(2), 36 (a) of the Statute and Article 36 of the Rules of the Court.

- 2) Whether any preliminary objection is made by the Government of Canada under Article 62 of the Rules of the Court.
- 3) Whether the Court is competent to decide when a State is not a State without objection by respondent and under what rule such action is taken, and whether there is any specific requirements for statehood set up by the Court.
- 4) Whether an applicant is afforded an opportunity to prove its statehood if there is an objection raised by the Court on its own initiative.
- 5) I wish to bring to the consideration of the Court the fact that the Mohawk Nation and the Six Nations Iroquois Confederacy have all the necessary elements of statehood under international law, and such status is clearly recognized in treaties and national court decisions and by international tribunals. If further documentation or additional memorandum of law on the question of statehood alone is required, I will be prepared to submit them.

Trusting that the issues raised in this letter will receive your kind attention and will be brought for consideration by the Court,

Sincerely,

Orar Z. Ghobashy  
Counsel for  
Mohawk Nation of the Grand River



Telecommunications

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KEITH MELVIN HILL  
RR6 HAGERSVILLE ONT

458089REFERENCE YOUR LETTER 23 NOVEMBER IN WHICH YOU ANNOUNCE PLANNED VISIT THE HAGUE HAVE TO STATE THAT UNTIL I AM IN POSITION TO REPLY DR GHOBASHYS LETTER 25 SEPTEMBER CANNOT ADD ANYTHING TO WHAT SAID IN MY LETTER 26 MAY STOP YOUR LETTER BEING LAID BEFORE PRESIDENT

AQUARONE  
REGISTRAR INTERCOURT

1020AM B

H. J. Clarke, general manager • directeur général, Toronto

6122b (6-67)

Application of the Mohawk Nation of the Grand River  
Against Canada

H.E. The Registrar  
International Court of Justice  
The Hague  
Netherlands

May 3, 1968

Your Excellency:

I have the honor to refer to your cable to Chief Melvin Hill dated December 4, 1967 which reads as follows:

458089 REFERENCE YOUR LETTER 23 NOVEMBER IN WHICH YOU ANNOUNCE PLANNED VISIT THE HAGUE HAVE TO STATE THAT UNTIL I AM IN POSITION TO REPLY DR GHOBASHYS LETTER 25 SEPTEMBER CANNOT ADD ANYTHING TO WHAT SAID IN MY LETTER 26 MAY STOP YOUR LETTER BEING LAID BEFORE PRESIDENT AQUARONE REGISTRAR INTERCOURT

I have received many inquiries from the Government of the Mohawk Nation, and I therefore, respectfully request any information or the decision taken in this matter.

In order to prove the legal status of the Mohawk Nation as a State under international law, I am enclosing a copy of a Treaty between the United States and the Mohawk Nation dated April 27, 1798.

Sincerely

Omar Z.Ghobashy  
Counsel for the Mohawk Nation

COUR INTERNATIONALE DE JUSTICE

PALAIIS DE LA PAIX LA HAYE PAYS-BAS  
TELEGR. INTERCOURT LA HAYE. TELEPHONE 392344

INTERNATIONAL COURT OF JUSTICE

PEACE PALACE THE HAGUE NETHERLANDS  
CABLES. INTERCOURT THE HAGUE. TELEPHONE: 392344

Dr. Omar Z. Ghobashy,  
Attorney at Law,  
15 Park Row,  
New York, N.Y. 10038,  
United States of America.

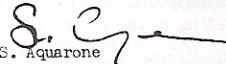
46652 6 May 1968

AIRMAIL

Dear Sir,

In reply to your letter of 25 September 1967 written with reference to my communication of 26 May 1967 addressed to Chief Melvin Hill, I am now to state that there is nothing to be added to my above-mentioned communication.

Yours faithfully,

  
S. Aquarone  
Registrar

## COMMENTARY ON THE SHELDON CASE

Much emphasis was laid to the Sheldon decision (*Sheldon v. Ramsay et al* (1852) 9 U.S. (Q.B.R.) 105 in the position of the Canadian Government. We reproduce in this section the Point appearing in the Memorandum of Law to the Canadian Government on this case.

### II. THE SHELDON CASE IS NOT APPLICABLE OR CONTROLLING IN THE CLAIM OF THE SIX NATIONS

A careful examination of the case of *Sheldon v. Ramsay et al* (1852) 9 U.S.Q.B.R. 105 revealed the following facts:

1. The question of the claim of the Six Nations in the Grand River Reservation was not the issue before the Court. The Chiefs of the Six Nations were not a party to this case, no brief or argument was presented on their behalf.

2. If the Canadian Government based its answer on some parts of this case, it must accept all parts, though erroneous. For example, the case stands for the proposition that the Haldimand Agreement did not pass any legal interest for want of a grantee or grantees, properly described and capable of holding. These are the words of the Court:

General Haldimand could not have incorporated the Six Nations of Indians, if he had attempted to do it expressly by an instrument under his seal at arm, and still less could he do it in such a manner incidentally and indirectly by implication. A grant "to the Mohawk Indians, and such others of the Six Nations as might wish to settle on the Grand River, of a tract of land, to be enjoyed by them and their posterity forever," could not have the effect upon any principle of the law of England of vesting a legal estate in anybody. It could amount to nothing more than what it was well understood and intended to be, a declaration by the government that it would abstain from granting those lands to others, and would reserve them to be occupied by the Indians of the Six Nations. It gave no estate in fee, or for life, or for a term of years, which the Indians could individually or collectively transmit.

If this contention is true and accepted by the Canadian Government, the same would apply to the Simcoe Deed, for it does give and grant to the Chiefs, Warriors, Women and People of the Six Nations and their heirs forever, all that district or territory of land being parcel of a certain district lately purchased by us of the Mississagua Nation etc. If the Six Nations Indians were unincorporated and incapable of receiving a grant under the Haldimand Agreement, then the same applied to the Simcoe Deed.

The proposition of the lack of capacity of the Six Nations has no support in history, for many treaties were concluded with the Six Nations and the separate Tribes. These are some of these treaties:

1. Treaty of friendship between France and the Six Nations in 1701.

(Lawrence Henry Gipson, *The British Empire before the American Revolution, 1748-1754* (New York, 1942), p. 77

2. The Treaty of Fort Stanwix of 5 November 1768 which fixed the boundary between the British and Indian territories. (7 Stat. 44)

3. A Treaty held under the authority of the United States in 1797 with the Mohawk Nation of Indians residing in the province of Upper Canada.

(A compilation of all Treaties between the United States and the Indian Tribes - now in force as Laws (Washington, 1873) pp. 50-51)

4. Treaty between the Six Nations and the United States on November 11, 1794, at Konndaga, New York.

(Indian Affairs, Laws and Treaties, Vol. II, compiled and edited by Charles J. Kappler, Washington, 1904)

5. Treaty between the United States and the Seven Nations of Canada in the City of New York, signed on March 20, 1797, and ratified on April 27, 1798.

In the Sheldon case, the only relevant question before the court was the validity of Indian Surrenders relying on the Haldimand Agreement, and this case stands more in support of the invalidity of all surrenders by Joseph Brant which had referred to the Haldimand Agreement. No surrender referred to the Simcoe Deed, and Brant complained against the Simcoe Deed, and it is evident that the Six Nations Indians did not recognize this deed. Therefore, if the Sheldon case is accepted as the guiding rule for the Six Nations claim, the Six Nations Indians will be entitled to compensation for lands that were surrendered by Joseph Brant and not recognized as valid by the Sheldon case. In other words, the case neither recognizes the Haldimand Agreement as a Deed, nor the surrenders made by Joseph Brant on behalf of Six Nations Indians. The Canadian Government raised doubts on the validity of the Haldimand Agreement, but recognizes all surrenders made in reliance therein by Brant. Under these circumstances, the Canadian Government, cannot rely on this case, unless it is accepting all the holding in the case. If it is to be inferred that the Canadian Government does not recognize the surrenders for reasons stated in the Sheldon case, (then and at this point the Six Nation Indians may prepare their claim on a different basis, for) it is submitted that in either case the Indians would be entitled to compensation (and not restitution,) and it may not make much difference if the compensation is for lands illegally surrendered or for the discrepancy between the Haldimand Agreement and the Simcoe Deed.

It is recognized however that the Honorable Minister was very careful not to rely completely on the Sheldon case but used it as an illustration of some interpretation of the documents involved in the claim of the Six Nations. The Minister wrote that "in 1852, some legal aspect of the matter was considered by a competent court of law in the case of Sheldon".

The Court in the Sheldon case did not rule that the Haldimand Agreement or Proclamation was invalid but that the lands reserved under it to the Six Nations Indians were inalienable. The following quotation may throw some light on the reasons behind the Court's decision:

The lands set apart by General Haldimand for the Six Nations Indians.

... It is a matter of history, as is well known, that the British Government were originally the proprietors of the lands on the Grand River, and that these lands were set apart by General Haldimand, the then Governor of the province of Quebec, in order to permit the Mohawk Indians, and others of the Six Nations, who had lost their settlements situated within the American States, in consequence of their adherence to the British standard, to take possession of, and to settle upon them, and which they and their posterity were to enjoy forever. The fee simple in the lands was in the first instance vested in the commissioners; and one question is, whether the crown had divested itself of that interest, or only permitted the Indians the use and enjoyment of the lands - the crown acting in fact in the light of a parent and guardian of them, as it were, for these tribes ...

the lands, as appears from the document under which the tribes claim title to them, show that they belonged to the British Government.

Sheldon v. Ramsay, Supra, pp. 133-134

Again the Court as it appears above, clearly stated that the land reserved to the Indians by the Haldimand Agreement was crown property, which contradicts the position taken in the documents accepted and referred to in the Minister's letter. The court

assumed that the whole tract of land was British crown land by purchase and not by purchase and that Haldimand simply permitted the Indians of the Six Nations to take possession of the land and remain tenants - at - will to the crown. If this was the case, then the acceptance of the British Government of Indian surrenders under the Haldimand Agreement by Joseph Brant were the most puzzling. This is another defect in the above case which makes it inapplicable in the present claim of the Six Nations.

In other cases, particularly the most recent case of Verna Logan v. Clifford E. Styres, R. J. Stallwood and the Attorney General of Canada, decided on 3rd September, 1959, by the Supreme Court of Ontario,

the Court held that:

The Haldimand document is not a Treaty but a Deed and that the purpose of the Simcoe Deed "would seem to be to confirm the grant already made by the Haldimand Deed."



Ottawa (4)  
August 2, 1963.

Dear Mr. Anderson:

The Prime Minister has asked me to acknowledge your letter of July 25, and to thank you for sending him your Brief for the Six Nations "Iroquois" Confederacy.

Since your material is of interest to Mr. Pearson's colleague, the Honourable Guy Favreau, your petition has been forwarded to him for attention.

With best wishes,

Yours sincerely,

*Mary E. Macdonald*  
Mary E. Macdonald  
Executive Assistant

Mr. Arthur Anderson Sr.,  
Six Nations Iroquois Confederacy,  
Ohsweken, Ontario.

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CANADA  
MINISTER OF CITIZENSHIP AND IMMIGRATION

OTTAWA 4, August 9, 1963.

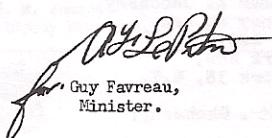
Mr. Melvin Hill,  
Six Nations Indian Reserve,  
Ohsweken, Ontario.

Dear Mr. Hill:

The Prime Minister, the Right Honourable Lester B. Pearson, has referred to me for attention the petition signed by yourself on behalf of the Six Nations Council, dated July, 1963.

This document, together with attachments, is under study by the appropriate officials of the Indian Affairs Branch. When the study has been completed and the official records with respect thereto have been reviewed, I will write you again.

Yours sincerely,



Guy Favreau,  
Minister.



Office of the Leader of the Opposition  
Cabinet du Chef de l'Opposition

Ottawa,  
August 12th, 1963.

Mr. Arthur Anderson,  
Secretary,  
Six Nations "Iroquois" Confederacy,  
Ohsweken,  
Ontario.

Dear Mr. Anderson,

Before leaving for Prince Albert  
Mr. Diefenbaker asked me to thank you for

sending him a copy of the Petition and Brief you have presented to the Prime Minister.

As you know, Mr. Diefenbaker has always worked for the upholding of the rights of the Indians, and he read the Brief with the greatest interest.

Yours sincerely,

*Marjorie R. Pound*

(Miss) M.R. Pound  
Personal Secretary.



OFFICE OF  
MINISTER OF CITIZENSHIP AND IMMIGRATION

Ottawa 4, September 10, 1963.

Mr. Omar Z. Ghobashy,  
Attorney at Law,  
Suite 420,  
15 Park Row,  
New York 38, N.Y.

Dear Mr. Ghobashy:

The Minister, the Honourable Guy Favreau, has asked me to acknowledge the receipt of your letter of August 30, 1963, concerning the desire of the Chief of the Six Nations Confederacy "Iroquois" to meet with an official of this Department in order to discuss their claim.

The Minister has indicated that in view of his heavy commitments he will, unfortunately, be unable to personally see you and the Indian representatives but he has asked Colonel H.M. Jones, the Acting Deputy Minister of this Department, to receive you and the group on his behalf. Therefore, Colonel Jones will, no doubt, be writing to you in the near future in order to arrange for a meeting at a mutually convenient time.

As requested, I am enclosing a copy of an address made by the Honourable Guy Favreau in Winnipeg on August 15, 1963.

Yours very truly,

*A. Nault*

A. Nault,  
Administrative Secretary.

Encl.



CANADA  
DEPUTY MINISTER  
OF  
CITIZENSHIP AND IMMIGRATION

Ottawa 4, September 16, 1963.

Dear Mr. Ghobashy:

I refer to your letter of August 30 addressed to the Honourable Guy Favreau, Minister of this Department, concerning the desire of the Chiefs of the Six Nations Confederacy "Iroquois" to meet with him or members of the Department to discuss their claim.

As the Administrative Secretary, Mr. A. Nault, indicated to you in his reply of September 10, Mr. Favreau has asked me to receive you and the Chiefs on his behalf.

If you would care to suggest alternative dates other than during the period, October 7 to October 14, and not before September 23, I shall be most pleased to confirm a day for our meeting here.

Yours sincerely,

*H. M. Jones*  
H. M. Jones,  
Acting Deputy Minister.

INDIAN AFFAIRS  
BRANCH



OFFICE OF THE  
DIRECTOR  
32/30-3

DEPARTMENT OF CITIZENSHIP AND IMMIGRATION

Ottawa 4, October 25, 1963.

Mr. Melvin Hill,  
Six Nations Indian Reserve,  
R. R. 6,  
Hagersville, Ontario.

Dear Mr. Hill:

I refer to your letter of October 10, 1963, addressed to the Acting Deputy Minister, Col. H. M. Jones, concerning the meeting you had with him on September 30 last.

Information relating to the matter you discussed with Col. Jones has been compiled and is now being reviewed. I expect you will be receiving word before long.

Yours sincerely,

*J. H. Gordon*  
J. H. Gordon,  
Acting Director.

CANADA  
DEPUTY MINISTER  
OF  
CITIZENSHIP AND IMMIGRATION

Ottawa 4, Canada,  
September 24, 1963.

Dear Mr. Ghobashy:

In reply to your letter of September 19th, this is to advise you that I will be pleased to meet you and the Chiefs who will be accompanying you, in my office on Monday, September 30th, at 2:00 p.m.

My office is situated in the Citizenship Building at the corner of Elgin and Slater Streets, just opposite the Lord Elgin Hotel. The room number of the office is 304.

Yours sincerely,

Via Airmail

Mr. O. Z. Ghobashy,  
Attorney at Law,  
Suite 420,  
15 Park Row,  
New York 38, N.Y.

  
H. M. Jones,  
Acting Deputy Minister.

Honorable H. M. Jones  
Acting Deputy Minister  
of Citizenship and Immigration  
Ottawa 4, Canada

28 October, 1963

Dear Mr. Jones:

When I had the privilege of meeting with you on September 30 last, you stated that a reply to the Indians' claim in the Grand River Reserve would be sent to Chief M. Hill. I have received a letter from the Reservation that as of October 21, they have not received your communication.

I am personally satisfied, due to the impression left with me, that the delay is due to your further study and interest in the case in the light of representation made at your office.

I do hope that I will in a position very shortly to examine your answer, and if need be, submit a further memorandum.

Both of us are interested that justice be accorded the Indians of the Grand River, and I am very confident that our exchange of views on this claim will lead to a satisfactory conclusion.

I wish again to thank you for the kindness and patience shown to us during our visit to you.

Sincerely

Omar Z. Ghobashy



32/30-3

DEPARTMENT OF CITIZENSHIP AND IMMIGRATION

OTTAWA 4, November 15, 1963.

Mr. Omar Z. Ghobashy,  
Attorney at Law,  
Suite 420,  
15 Park Row,  
New York 38, N.Y.,  
U. S. A.

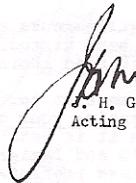
Dear Mr. Ghobashy:

Your letter of October 29, addressed to Mr. H. M. Jones, has been referred to me for reply. Colonel Jones recently retired from the service.

We had written to Mr. Melvin Hill shortly after his communication with you.

I enclose a copy of our letter to Mr. Hill, which is self-explanatory.

Yours sincerely,



J. H. Gordon,  
Acting Director.

C O P Y

Mr. Melvin Hill,  
Six Nations Indian Reserve,  
R. R. 6,  
Hagersville, Ontario.

32/30-3(Adm.1)

JDD/gm

Dear Mr. Hill:

OTTAWA 4, October 25, 1963.

I refer to your letter of October 10, 1963, addressed to the Acting Deputy Minister, Col. H. M. Jones, concerning the meeting you had with him on September 30 last.

Information relating to the matter you discussed with Col. Jones has been compiled and is now being reviewed. I expect you will be receiving word before long.

Yours sincerely,

J. H. Gordon,  
Acting Director.



House of Commons  
Canada

Ottawa  
November 12, 1963

Mr. Arthur Anderson,  
Secretary,  
Six Nations "Iroquois" Confederacy,  
Grand River Country,  
OHSWEKEN, ONT.

Dear Mr. Anderson:

This letter is further to the one which my secretary sent to you on July 31st regarding the petition and brief which you sent to Mr. Pearson and which related to the Haldimand Treaty of 1784.

I hope you will excuse my delay in replying to you personally but I have been virtually swamped with an accumulation of work and I wanted to read thoroughly through your presentation.

It seems to me that perhaps the best course to follow would be that of presenting your contentions before the Indian Claims Commission when it is established. I have asked the Minister of Citizenship and Immigration just when Parliament might be expected to have presented to it the Bill to establish the Indian Claims Commission and was told that it should be before the end of this month.

As soon as that Bill is presented to Parliament I'll take the liberty of sending you a copy so that you may see what the construction of the Commission will be.

I hope that this is a satisfactory reply to your letter and the copy of the submission which you had made to the Prime Minister.

Yours sincerely,

Frank Howard, M.P.

FH:br



32/30-3

DEPARTMENT OF CITIZENSHIP AND IMMIGRATION

Ottawa 4, December 18, 1963.

Mr. Omar Z. Ghobashy,  
Attorney at Law,  
Suite 420,  
15 Park Row,  
New York 38, N.Y.,  
U. S. A.

Dear Mr. Ghobashy:

Further to my letter of November 15, I attach herewith for your information a copy of the Minister's letter to Mr. Melvin Hill, Six Nations Indian Reserve, dated December 6.

Yours sincerely,

J. H. Gordon,  
Acting Director.



MINISTER OF CITIZENSHIP AND IMMIGRATION

Ottawa 4, December 6th, 1963.

Mr. Melvin Hill,  
Six Nations Indian Reserve,  
Ohsweken, Ontario.

Dear Mr. Hill:-

I refer to my letter of August 9, 1963, regarding the petition you sent to the Prime Minister, and to the meeting you had with Colonel H.M. Jones, Acting Deputy Minister of this Department, on Monday, September 30, in company with your legal counsel, Mr. Omar Z. Ghobashy of New York City.

The petition and representation made before Colonel Jones have now been carefully considered by the Department and the official records pertaining thereto reviewed.

The records disclose that this matter has been raised many times before. In brief, the traditional Indian claim has been that the Haldimand proclamation made a commitment for more land than what was actually made available pursuant thereto. The Haldimand document first mentions that a tract of land had been purchased and then goes on to authorize the Six Nations to settle and take possession of the portion six miles on each side of the River Ouse or Grand, extending from the river's mouth to its head. After the tract was surveyed, it was found that the head of the river lay outside of the tract purchased and the later grant by Lord Simcoe was confined to land actually purchased, extending from the mouth of the river to the northern boundary of what is now the Township of Nichol. The land purchased did not extend further north.

As long ago as 1821, your forefathers sent a delegation to Great Britain to acquaint His Majesty's Government with their claim through the then Colonial Secretary. Again, in 1852, some legal aspect of the matter was considered by a competent court of law in the case of Sheldon vs. Ramsay et al (1852) 9 U.C.Q.B.R. 102.

Notwithstanding the refutation of the early claims for additional land, the Indians renewed their appeals and in 1889 the claim was presented to the Colonial Secretary. The case was carefully investigated by Lord Knutsford who came to the conclusion that the claim had no foundation but if the Indians desired to prosecute it further their proper remedy was in the Canadian law courts.

In 1920 the Six Nations Council authorized John S. Ewart, K.C. to investigate the validity of this claim. His opinion was that the claim was not one of a legal character, because even if Haldimand had intended to grant lands to the Indians, beyond the Nichol line, such action was beyond his power and, therefore, illegal and of no effect.

Your claim now, as in the earlier instances mentioned above, is based entirely upon the interpretation of the proclamation of General Haldimand dated October 25, 1784. The Departmental officers in reviewing the records find that much has been said and written about this document but it is evident that the legal and official interpretation placed thereon is in conflict with the views advanced on your behalf.

I am attaching copies of two official documents which are deemed particularly pertinent on the point in issue and both were prepared when the matter was first raised, some 140 years ago, namely:

1. A report dated February 22, 1821, prepared by the Governor of Upper Canada to the Colonial Secretary on the eve of the Indian delegation leaving for England to present this matter for consideration of His Majesty's Government.
2. A letter dated September 28, 1821, from the Colonial Secretary, Lord Bathurst, to Messrs. Robert J. Kerr and John Brant.

These two documents along with the court decision in the case of Sheldon vs. Ramsay et al (previously mentioned) very forcefully refute the validity of the Indians' claim for more land up the Ouse or Grand River and beyond what had been purchased from the Chippawa Indians for this purpose.

Colonel Jones has advised me that when you were here on September 30, mention was made of reports concerning the United States and British Claims Arbitration, Cayuga Indians. Copies of these reports are on hand in the Department and would be open to perusal by you or your legal counsel should you wish to see them here. A copy of Sessional Paper No. 208, 1887, which relates specifically to the claim to land under the Haldimand proclamation, is also on hand in the Department and would also be available for your perusal here.

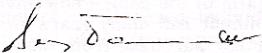
Documents referred to in the House of Commons Debates, April 9, 1888, were also mentioned during your meeting with Colonel Jones. These documents, however, were concerned with the claim of the Six Nations Indians to compensation for flooded lands and would not be related to your present claim. In any case, the documents were destroyed by fire in 1916.

While I could not hold out any hope to you that your claim can be resolved in your favour, I note that your legal counsel, Mr. Ghobashy, intimates that further representations might be in order, and I would respectfully suggest that you have him consider the matter in light of the court's decision in Sheldon vs. Ramsay et al and the information contained in the copies of the documents enclosed.

The law report regarding the court's decision, Volume 9, Upper Canada Queen's Bench Reports, should be available to him in one of the law libraries in his city.

I should add that legislation is soon to be introduced in the House of Commons for the establishment of an Indian Claims Commission. At such time as the Commission is established you may want to consider whether your claim should be referred thereto.

Yours sincerely,



Guy Favreau  
Minister.

COPIED FROM 1896 ARCHIVES REPORTS

(Archive, series M. vol. 115 p. 131)

No. 3 – Lord Bathurst to Messrs. Robert J. Kerr and John Brant

Downing Street, 28th September, 1821.

Gentlemen: – I have the honour to acknowledge the receipt of the letter which you addressed to me on the 7th instant, transmitting an official note in which you complain of a decision of the Colonial Government of Upper Canada, with respect to the extent of lands which ought to be permanently reserved for the Five Indian Nations who settled in the Province at the close of the first American war.

As the Indian nations rest their claims entirely upon the terms used by General Haldimand in his proclamation of the 25th October, 1784, I shall confine myself to a statement of the reasons which convince me that it was never the intention of that officer to grant them the extent of territory to which they now lay claim of six miles on each side of the Ouse or Grand River, from its mouth to its source and that the proclamation does not warrant such a claim.

It is evident from the proclamation annexed to your note, that the land which General Haldimand intended to assign to the Indian nations was that which the Colonial Government had a few months before purchased from other Indian nations resident within the Province of Canada and that whatever disposition he may be presumed to have had to confer advantages on the Five Nations by giving them lands belonging to His Majesty, he could not intend (for he had not the power) to make over any Indian lands to which His Majesty had not then acquired a title. The description therefore of the land which is given in the close of the proclamation must be taken with reference to what the King had at the time the power to grant. It must be considered with reference to the general inaccuracy and contradictions of all geographical descriptions of America at the time, when the country was unsurveyed and unknown and when information as to the course of the rivers was derived either from reports of individuals, or from the source which afterwards proved altogether incorrect.

As the course of the Ouse or Grand River became known, it was found that the head of the river was not within the purchase made from the Chippawas in 1784 and that that purchase therefore did not comprise the lands to which the Five Nations now lay claim. I do not find indeed any claim of the nature now advanced by the Five Nations of this land, until the Colonial Government had many years afterwards, with a view to the settlement of emigrants, made a further purchase from these Indians which put His Majesty in possession of the land lying between the head of the Grand River and that purchased in 1784, which is the subject of your present application.

Under these circumstances His Majesty cannot but consider the Colonial Government justified in allotting to settlers, instead of reserving for your use, such part of the land now claimed by you as was not purchased in 1784 from the Chippawas. That the Indian nations never had originally in contemplation any grant so extensive as that for which you now contend is evident from the proceedings which took place in the colony in 1791, respecting the limits of the Indian lands and the agreement signed by Captain Brant and the other chiefs.

The intentions of General Haldimand must have been at that time perfectly well known; the extent of the Grant was then the subject of discussion and the chiefs of the Nations voluntarily acquiesced in an arrangement which excluded the claim now under consideration. I have only further to add that in coming to a decision upon this claim, adverse to the views which appear now to be entertained by the Chiefs of the Five Nations, His Majesty does not in any degree undervalue either the original services which led to the settlement of these Nations in the British Province, or those which they have subsequently rendered. The present question (as you have correctly stated in your interview with Mr. Goulburn) depends entirely upon the meaning of General Haldimand's proclamation. For the reasons I have stated and others arising out of contemporary documents, to which I have not adverted, that proclamation cannot warrant the claim which has been advanced and His Majesty has only, without reference to the merits of the parties, to approve of the decision upon this point to which the Governor of Canada has already come.

I have the honour, &c.,  
BATHURST.

**COPIED FROM 1896 ARCHIVES REPORTS**

(Archives, series Q, vol. 329, p. 47)

**NOTE A – INDIAN LANDS ON THE GRAND RIVER**

**No. 1 – Sir Peregrine Maitland to Earl Bathurst**

Upper Canada, York, 22nd February, 1821.

My Lord, – Being informed that a delegation from the five nations of Indians on the Grand River is about to proceed to Europe in order to prefer to your Lordship a complaint that the promise held out to them by General Haldimand has not been fulfilled, but that part of the land designed for their use has been subtracted and applied to settlement of white people, I have the honour to present to your Lordship a concise relation which may apprise Your Lordship of the merits of this complaint.

The several tribes of Indians inhabiting the province of New York took different sides in the revolutionary war and such of them as joined the King's colonies came to Canada at the peace of 1783.

As lands were granted to other loyal adherents, a purchase was made from the natives for the accommodation of these Indian refugees and notice of this purchase was given to them in a letter from Sir Frederick Haldimand, commander of the forces in 1784, describing it as a tract of six miles on each side of the Grand River from its mouth to its source, and stated by the General to have been then recently bought from the Chippawas.

This description, however, was vague and indiscriminate for the source of the river was unknown and its course was winding. In fact, the purchase from the Chippawas did not extend to the source of the river, which turned out to be much further removed from its mouth than was first supposed and reported. The land, however, six miles on each side of the Grand River was by this document devoted to the use of the nations or tribes of Indians and their posterity.

Such a dedication was sufficient, for their habits required no further formality; they were incapable of taking a regular grant; they had no capacity to sell or lease or to circumscribe the possession allotted by Government to them or their posterity.

Some, however, of each of these tribes remained on their own lands in the United States and treated with that Government or licensed individuals for the sale of those lands in the produce of which sale that part of the tribes removed to Canada participated and the sum received may form some estimate of what they pretended to have lost.

This permission to sell land belonging to themselves in the United States suggested to Joseph Brant, and some few white adherents, the idea of disposing of the territory in this province which they were only permitted to occupy. Its boundaries had been settled and adjusted by a formal act of the tribes with commissioners in behalf of the Crown and the neighbouring district of Nassau and were simplified by a line drawn from one point to another in the Grand River and an extent of six miles on each side of that line.

The record of this Act, with a diagram explanatory, was lodged in the office of the Surveyor General and might appear conclusive on this subject, yet His Majesty's servants have been induced to sanction the pretension of these tribes to the full extent of the course of the Grand River.

A draft of a patent designed by Lord Dorchester gives to the Indians the full extent of six miles on each side of the Grand River from its mouth to its source.

A patent under seal of the province of Upper Canada was signed by Lieut. Governor Simcoe, limiting the six miles on each side of the river to the extent of the purchase from the Chippawas.

It imports the present administration to show that there exists no more formal title in favour of the Five Nations than the letter from Sir Frederick Haldimand. That the description of the tract in the letter was a misconception is evinced from the fact, that the purchase from the Nations therein referred to did not extend to the source of the Grand River, and more than was bought could not be given.

The lands towards the source of the Grand River remaining unconceded, have recently been purchased from the natives and laid out in townships for the accommodation of the provincial Militia and European emigrants, who are already settled in large numbers upon the ground now claimed by the Five Nations as a gift from the Crown.

The copy of a supposed grant limited only by the source of the river may be referred to by the delegates, but is only the project of a patent never completed.

There is indeed an apparent grant under the seal of this province, signed by Lieut. Governor Simcoe, but it was never registered, never audited. It is evident from these deficiencies that it was proposed for some event which never took place, was never delivered but kept as an Escrow of a private conveyance supposed to be useless and invalid until sanctioned by the fiat of the Attorney General, Registration, Audit and Delivery.

That this patent was unknown to the Attorney General is obvious from the case subsequently stated by him for an opinion on the legality of any grant to the Indians with power of alienation.

It may be also shown by the Delegates, that this Government did not consider the extent of the Six Nations territory as bounded by the act of the chiefs conjointly with the commissioner of the Nassau District, since it accepted from these Nations a surrender of territory beyond that demarcation, as part of the Royal Bounty bestowed upon them, in order to be regranted to the individuals named by them as purchasers for valuable considerations.

It is not only true that such a form of surrender does exist, but also that in conformity to its object, grants of the tracts so surrendered were made by the provincial Government to the individuals named in express defiance of His Majesty's commands signified by His Secretary of State on the particular occasion.

A transaction effected under the operation of terror or delusion, or from any less excusable motive, can never be cited as favourable to the parties immediately concerned, however it may be sustained in regard of strangers acquiring supposed Rights under the apparent sanction of a legal act of the Government.

Such irregularities speak volumes as to the influence acquired by these Tribes over the Councils of His Majesty's provincial Government, yet the actual administration entered not into useless investigation of the past. It was willing to admit that the tract designed for the use of the Five Nations should be deemed to extend to the most northern point of the purchase declared by Sir Frederick Haldimand to have been made for their use, but when it is ascertained by the Records of the Indian department and all other documents respecting the purchase that it did not extend to the whole course of the River and that the land within the limit of that course, required for the accommodation of settlers, was still to be purchased, there was no further hesitation as to the error in Sir Frederick Haldimand's communication. It was obvious that he supposed the purchase from the Indians extended to the source of the Grand River and that this source was south of the line tracing upon the map the limits of the purchase and which did not show the course of the River.

If the instrument had been more formal and clothed with all legal solemnities it could not have given more than there was to give.

So much is offered as to the actual claim of Right by the Five Nations. The equity of their pretension to further indulgence remains to be considered. Each of these Tribes possessed in the old provinces considerable extent of hunting ground and village seats in which they resided with their families when not engaged in the hunt. So much they forfeited by expatriation, supposing them to have retained no interest in the lands abandoned.

Their fellow sufferers amongst the white people were grateful for the land assigned to them in Canada and the aid afforded to re-establish themselves.

The grant of land to each family was from one to three hundred acres, increasing with their Military Rank to three thousand.

One year's provisions and some tools of husbandry were added, and the liberality of the Crown was lauded by these people as without example. They have become a thriving and loyal colony.

The tract of land assigned to the five Nations of Indians, who to the amount of eight hundred families emigrated to Canada was in block, the manner best adapted to their capacity for enjoying it as hunters - subdivided it would have afforded to each family nine hundred and seventy acres.

Arms, ammunition and clothing were and still are supplied to them, to procure protection with these means is to them a source of health and enjoyment.

If the Indians have restricted their hunting ground by sales to the white people which they have done to the extent of Three hundred and fifty-six thousand acres, is it reasonable to listen to their pretension for a more extensive grant?

I have, &c.,  
P. MAITLAND.



CANADA  
MINISTER OF CITIZENSHIP AND IMMIGRATION

Mr. Melvin Hill,  
R. R. 6,  
Hagersville, Ontario.

Ottawa 4, May 11, 1964.

Dear Mr. Hill:

I acknowledge receipt of your letter of April 18 which was accompanied by your interesting brief on a land claim of the Six Nations.

As you may know, the Government has introduced an Indian Claims Bill to establish a Commission to hear and determine claims which may be brought by Indian bands against the Crown. This Bill, a copy of which is enclosed, was sent to Indian bands and organizations for study and comment. After these have been reviewed, it is the intention to re-introduce the Bill with such changes as may be deemed appropriate.

Under these circumstances, I doubt if a meeting with you and your attorney would serve any useful purpose at this time as in any event I could only suggest that the Six Nations consider bringing the claim in question before the Claims Commission when it is established.

Yours sincerely,

  
René Tremblay.

CANADA  
MINISTER OF CITIZENSHIP AND IMMIGRATION

Mr. Melvin Hill,  
R. R. 6,  
Hagersville, Ontario.

Ottawa 4, June 23, 1964.

Dear Mr. Hill:

I refer to your further petition of May 27 concerning a land claim of the Six Nations.

Certainly I have no desire to leave the impression that the Canadian Government is not in any way prepared to continue to examine this case. While it is the intention to establish an Indian Claims Commission for just such claims as this one and

while I would advise the Six Nations Indians to consider bringing their claims before the Commission when it is established, I shall have the case you have brought to our attention reviewed again.

You will appreciate that this review will take some considerable time and the Department could not be ready for a meeting this month. However, as soon as it has been completed, I shall write to you again and, if still thought desirable, a meeting can be arranged after you have considered any further comments that may be made.

Yours sincerely,

*René Tremblay*  
René Tremblay.



Ottawa 4, September 16, 1964.

Mr. Melvin Hill,  
R.R. 6,  
Hagersville, Ontario.

Dear Mr. Hill:

This refers to my letter of June 23 replying to your petition of May 27 concerning a land claim of the Six Nations Indians.

I have now had the case you brought to our attention reviewed again and on the basis of this review I am unable to add to the advice given to you by my predecessor, the Honourable Guy Favreau.

As I mentioned in my letter of June 23, it is the intention to establish an Indian Claims Commission for just such claims as this one, and I would repeat my suggestion that the Six Nations Indians consider bringing their claims before this Commission when it is established.

You asked if you could discuss this matter with me. I would be glad to do this if there were some prospect of concrete steps that might be taken now. However, having in mind our position as explained to you in the past and the purpose of the proposed Indian Claims Commission I doubt very much if the claim could be advanced through further discussion at this time.

Yours sincerely,

*René Tremblay*  
René Tremblay.

current Session of Parliament. You may know that a previous Bill received first reading in December 1963 and was subsequently brought to the attention of Indian bands across the country for their views and suggestions as to the adequacy of its provisions. As a result of this survey and further study and consideration the new Bill to be introduced will embody a number of appropriate changes.

In view of the Indian Claims legislation which I hope to see brought in in the near future, I cannot see the Department embarking on alternative means of treating with Indian claims. However, my door is always open to Indians who feel that they must see me; and if this is the case with the group you represent I would be prepared to meet with you.

I could not see you until after the Easter week-end, but if you would suggest two or three dates following that time I would be glad to confirm one or the other if at all possible.

Yours sincerely,

  
John R. Nicholson.



Omar Z. Ghobashy Esq.,  
Attorney-at-Law,  
Suite 1216,  
15 Park Row,  
NEW YORK 38, N.Y.

April 27, 1965.

Dear Mr. Ghobashy:

Re: Claim of the Six Nations Indians  
- Grand River Reservation

This will acknowledge and thank you for your letter of the 20th inst. regarding your proposed visit. I now very much regret that, due to commitments here in Ottawa and out-of-town engagements during the coming month, it will not be possible for me to see you until the beginning of June. I would suggest 9:30 A.M. on either June 1st or 2nd. I look forward to hearing from you as to which date it will be possible for you to come to Ottawa.

Yours sincerely,

  
John R. Nicholson

**MEMORANDUM IN REPLY TO LETTER DATED MAY 11, 1964  
from The Honorable Rene Tremblay, Minister of Citizenship and  
Immigration.**

Re: Claim of Six Nations in Grand River Reservation

1. This matter was discussed with the Indian Affairs Department, and only after an exhaustive study by the Canadian Government, a reply was made by the former minister of citizenship.
2. The Canadian Government position was carefully examined and new representation is made based on the historical facts and evidences.
3. The Canadian Government takes a new position, that is not to continue the examination of this case, pending the passage of a bill. We believe, that it is the responsibility of the Citizenship Department to examine the Indian Claim and make a determination on it based on conclusive evidence rather than advocate a different course of action to submit the case to a Commission that may be established in the future.
4. We do not know what form the bill will take, and whether under its rules and procedure, the present claim can be presented. It is therefore premature to say that the Six Nations consider bringing this claim before the Claims Commission to be established.
5. We urge the Citizenship Minister to reconsider his position, to order a reply to our new memorandum of law, which raises new points of law and facts, and then authorize a representative to meet with a delegation of the Six Nations and their attorney in June, 1964. This method is not inconsistent with the possibility of submitting the claim to the Indian Claims Commission if established, and if its rules permit the submission of such claim and if the Indians so decide.
6. In the absence of the Indians, Claim Commission, the matter can be as indeed it has been discussed between the Indians and the Indian Affairs Department. Otherwise, what the Minister in fact is advocating is that relationship between the Indians and the Canadian Government regarding claims cease forthwith pending the establishment of a new machinery. This position is unacceptable to the Six Nations Indians.
7. On the advise of counsel, we presented our claim to the Government, stating from the outset that if the Canadian Government convinced us legally that our claim is not justified, we will abandon our claim. Now, after we have submitted our views, received the Government's comments, and submitted our reply, we are faced with a new situation in which the Government, it seems to us, having been convinced of the seriousness of our claim, its uncontradicted evidence, and documents in support thereof, has decided to discontinue our limited contact with the Canadian Government on this issue.
8. As the Minister fully knows, these claims are not suitable for judicial litigation, and that is the very reason for the establishment of an Indian Claims Commission. But, in the meantime, the Indians must be allowed the right to appeal to the Government of Canada and to seek administrative redress.

27 May, 1964

PUBLIC ARCHIVES OF CANADA

Extract from INDIAN TREATIES AND SURRENDERS

Vol.1, p.251.

FREDERICK HALDIMAND, Captain General and Governor in  
Chief of the Province of Quebec and Territories  
depending thereon, &c., &c., &c., General and Com-  
mander 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 faith-  
ful 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  
Nations Indians as wish to settle in that quarter to  
take possession of and settle upon the banks of the  
river commonly called 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.

FREDERICK HALDIMAND.  
By His Excellency's command.  
R. MATHEWS.

Registered 20th March, 1795)  
Wm. Jarvis. }

Provincial Registrar's Office,  
Quebec, 23rd June, 1862.

I hereby certify the within to be a true and faithful copy of the record of the original grant, as entered in Lib.A., Folio 8 (manuscript)

(Signed) WM. KENT,  
Deputy Provincial Registrar.

Department of Public Archives  
of Canada, Ottawa, this  
twenty-fifth day of June, 1891.

I certify the above document to be an extract from  
"Indian Treaties and Surrenders," Vol. I. p. 251.

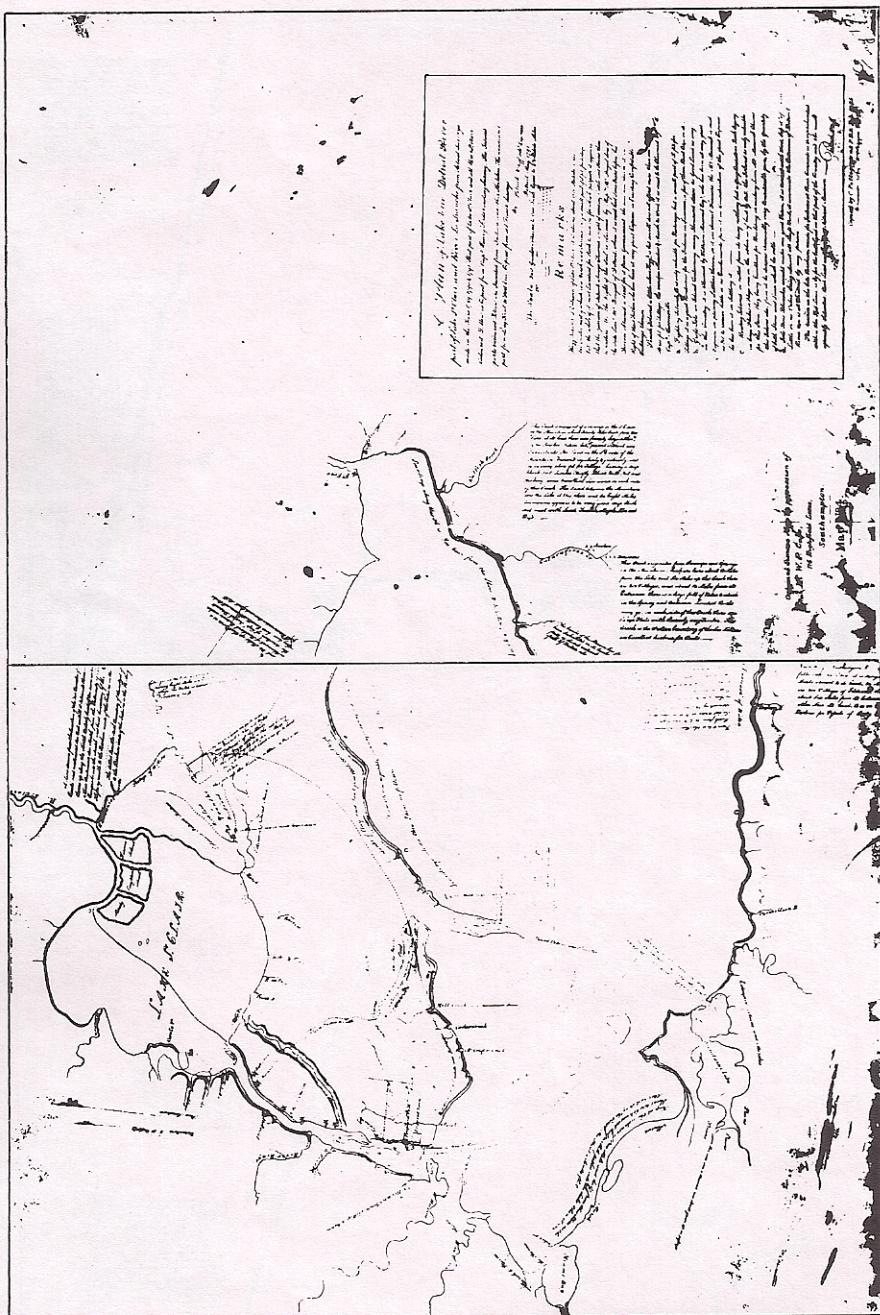
John R. Donaldson  
Deputy Minister.

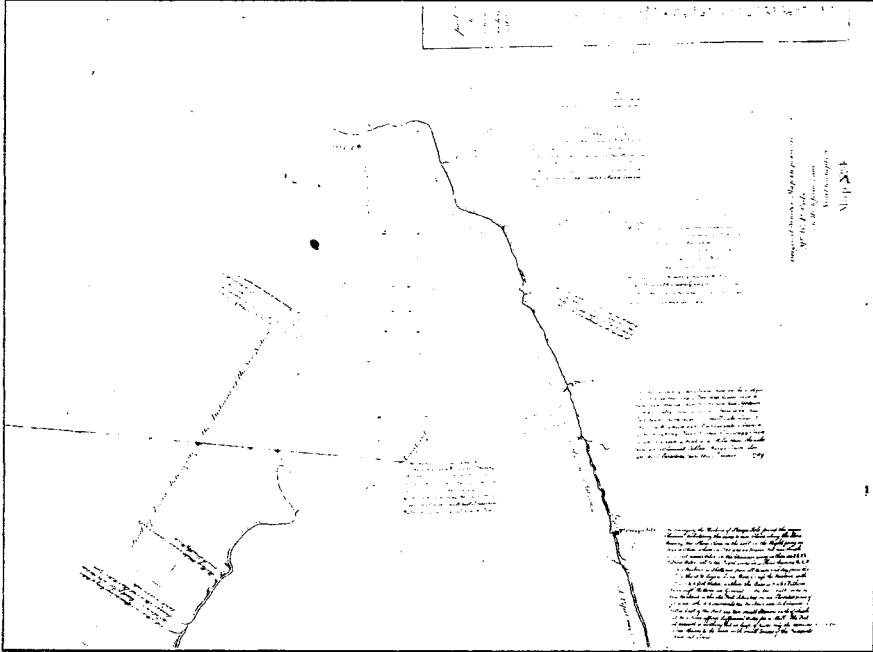
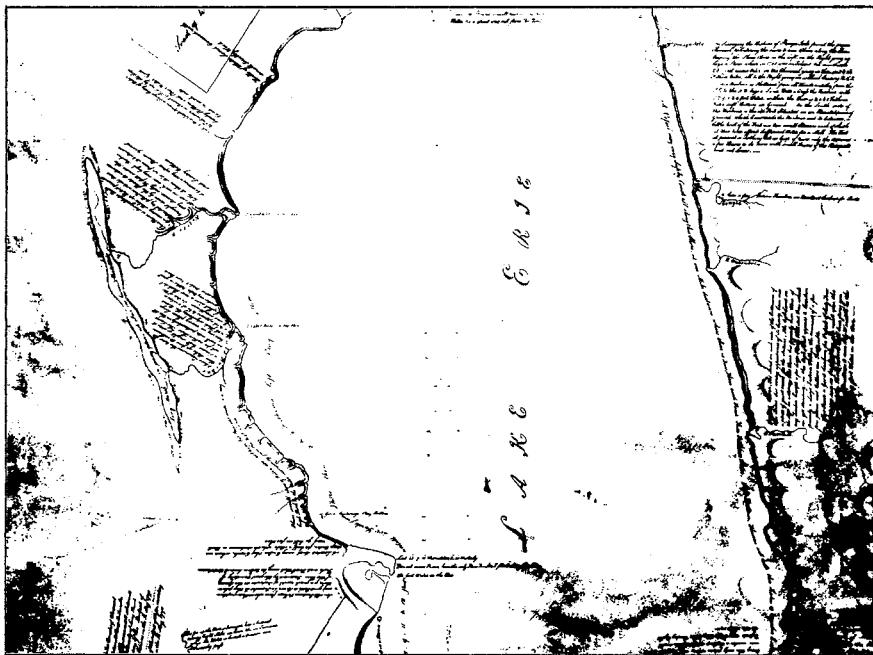
President of Calumet & St. Ignatius and Governor of Mich.  
of the Province of Upper and Lower Canada & of the Island of Newfoundland, in which  
the Province of Lower and Upper Canada and Newfoundland, or Nova  
Scotia, New Brunswick and Prince Edward Island and the Island of Newfoundland, &c.

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By the Committee on  
Religious Liberty.





Frederick Haldimand Captain General and Governor in  
of the Province of Quebec and Territories depending thereon & General and Commissioner in the  
His Majestys Service in said Province and the Frontiers thereof for His Maj.

Whereas His Majestys having been pleased to direct that in consideration of the  
right to be continued manifested by the Mohawk Indians ~~in their~~ <sup>the</sup> Life of their Nation which by the Treaty of  
that of Sand under His protection should be chosen as a safe and comfortable Retreat for them and others of their  
either lest their Settlements within the Territory of the American States, or wish to retire from them to the British  
land of many of them His Majestys faithful Allies purchased a Tract of Land from the Indians situated between  
the River of Karen, And I do hereby in His Majestys Name Authorise and permit the said Mohawk Nation and such other  
Indians as with to settle in that Quarter, to take possession of and settle upon the Banks of the River commonly called  
running into Lake Erie allotting to them for that purpose six Miles deep from each side of the River beginning at Lake Erie  
and proportionate to the Head of the said River which them and their Posterity are to enjoy for ever.

Given under my Hand and Seal  
at the Castle of St. Johns at Three in the afternoon of October One thousand Seven hundred and Eighty  
and in the Twenty fifth year of the Reign of our Sovereign Lord George the Third by the Grace of God of Great Britain King  
and King Defender of the Faith and soforth.

By His Excellency  
R. Mathews

Thos. H. Edmunds

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*The Claim of the  
Mohawk Nation  
of the Grand River*

**UNDER  
THE HALDIMAND AGREEMENT**

**COMPILED BY**

**Omar Z. Ghobashy, J. D., Ph. D.  
Counsel for the Mohawk Nation**