

D O C U M E N T I N G

P R E - C O N F E D E R A T I O N

C L A I M S

February 17, 1992

**CROWN TRUST
SUMMARY STATEMENTS OF HISTORICAL DOCUMENTATION**

On October 7, 1763, the British Crown issued a Royal Proclamation which created four governments to make laws, statutes, and ordinances in America, agreeable to the Laws of England. Thus Quebec, E. Florida, W. Florida & Granada Governments were created.

The British Crown ordered that lands possessed by Indians and their hunting grounds were to be reserved for the Indians. Regulations were issued regarding the disposition of the said reserved lands and trade with Indians. It was also ordered that Indians and lands reserved for Indians were to be under British sovereignty, protection, and dominion for the present and until Britain ordered otherwise.
(PAC, RG 10 Vol. 660, Pgs. 89 - 99)

Instructions issued on December 7, 1763, stated that the British Crown had commissioned and constituted a Captain General and Governor in Chief in and over the Province of Quebec who was empowered to nominate eight inhabitants of the Province of Quebec to assist in the administration of government. Britain also appointed a Lieutenant Governor, Chief Justice, and Surveyor of Customs to this new Council. Also all laws or ordinances for levying money or imposing fines, forfeitures or penalties is reserved for the British Crown for the public use and the support of the government of the Province.

The Captain General and Governor in Chief was ordered to punctually enforce the regulations issued in the Royal Proclamation of October 7, 1763, specifically in relation to Indians and land reserved for Indians. He was also empowered to appoint a person or persons to meet with the Indians to promise and assure the Indians of British protection and friendship.
(PAC, Constitutional Documents Canadian Archives - Sessional Papers No. 18, 6-7 Edward VII., A. 1907, Pgs. 181 - 205)

Once again, in 1768, the British Crown ordered the Captain General and Governor in Chief of the Province to punctually enforce the regulations issued in the Royal Proclamation of October 7, 1763, specifically in relation to Indians and lands reserved for Indians.
(Fourth Report of the Bureau of Archives for the Province of Ontario, 1906, Pgs. 33 - 53, Hamilton Public Library R971.3 On82 Cana)

On January 3, 1775, Guy Carleton, Captain General and Governor in Chief of the Province, is instructed as Administrator of the Government as to the appointment of three (3) or more Trustees as qualified to carry out the trust of the Crown and as a Trustee for the Indians, to make public, the rules and regulations

January 3, 1775, cont'd.

as relates to Indians as directed by the Royal Proclamation of October 7, 1763, and subsequent Royal Instructions and Regulations.

(Fourth Report of the Bureau of Archives for the Province of Ontario, 1906, Pgs. 58 - 74, Hamilton Public Library R971.3 On82 Cana)

In accordance with the Order-in-Council of December 28, 1774, on **January 3, 1775**, the Captain General and Governor in Chief of the Province issued instructions for the future management of Indian Affairs as referred to in Article 32 of the **January 3, 1775** Instructions.

The regulations and restrictions regarding the disposition of lands belonging to Indians and trade, as now issued, were to be enforced. Also, the British Crown appointed one general Agent or Superintendent to conduct all public affairs relating to Indians in the Northern District and another for the Southern District. Each Agent or Superintendent was allowed three deputies to assist. The British Crown also appointed a Commissary, Interpreter and Smith, to reside at each post in the Northern District.
(Fourth Report of the Bureau of Archives for the Province of Ontario, 1906, Pgs. 74 - 79, Hamilton Public Library R971.3 On82 Cana)

The lands known as ? consisted of ? acres in ? Township being a portion of the lands granted to the Six Nations Indians by the **October 25, 1784**, Haldimand Proclamation, as compensation for their alliance with the British during the American War of Independence.
(Registered in Department of Indian Affairs as X15173D)

On **August 23, 1786**, the British Crown issued instructions to Lord Dorchester, Captain General and Governor in Chief of the Province, affirming that the rules and regulations affecting Indians in the Colonies are directed by the Royal Proclamation of October 7, 1763.
(Fourth Report of the Bureau of Archives for the Province of Ontario, 1906, Pgs. 135 - 153, Hamilton Public Library R971.3 On82 Cana)

As relates to their sworn trust for Indians, the British Crown on **September 16, 1791**, issued instructions to Lord Dorchester, Captain General and Governor in Chief of Upper and Lower Canada, directing that the administration of Indians are to be consistent with the Royal Proclamation of October 7, 1763.
(Constitutional Documents Canadian Archives - Sessional Papers No. 18, 3 George V., A. 1913, Pgs. 33 - 48, Hamilton Public Library R342.71 C16 Ca)

On October 15, 1792, the British Crown passed an Act entitled, "An Act to repeal certain Parts of an Act, passed in the fourteenth year of his Majesty's Reign, intituled, An Act for make more effectual Provision for the Government of the Province of Quebec in North America and to introduce the English Law as the Rule of Decision in all matters of Controversy, relative to Property and Civil Rights," 32 Geo. III, c. 1. English Law was ordered to apply to property and civil rights in Upper Canada only.

(Statutes relating to Upper Canada, National Library of Canada, Restricted microfilm reels YP2.4 FM3)

To clarify any misgivings as to the nature and intent of the Haldimand Proclamation of October 25, 1784, on January 14, 1793, John Graves Simcoe, Lieutenant Governor and Colonel Commanding the Forces in the Province, issues to Six Nations the Simcoe Patent, confirming to Six Nations the lands as described in the Haldimand Proclamation. In addition, the Simcoe Patent specifies that Six Nations can surrender and dispose of their land to the Crown only, as their Trustee and Administrator. Furthermore, any other such leases, sales or grants of this tract to people other than Six Nations shall be unlawful and such intruders shall be evicted.

(Indian Treaties & Surrenders, Vol. I, No. 4, Pgs. 9 - 10, Simcoe Patent)

Instructions as issued by Lord Dorchester under His Excellency's command to the Superintendent General and Inspector General of Indian Affairs dated December 24, 1794, directs very specific regulations to be followed for the legal alienation of any Indian lands. These instructions specifically direct that, "No lands are therefore to be purchased of the Indians, but by the Superintendent General and Inspector General of Indian Affairs, or in his absence by the Deputy Superintendent General, or a person specially commissioned for that purpose by the Commander in Chief."

(PAC, RG 10 Vol. 789, Pgs. 6768 - 6770)

In a formal notice to the Public, the Chief Superintendent of Indian Affairs gave notice on May 5, 1796, that unless a lease for any lands of the Six Nations Indians is first sanctioned by the Crown, that the lease would be declared void.

(PAC, RG 8 Vol. 249-1, Pgs. 87 - 88)

Royal Instructions of December 15, 1796, are directed to the Governor, Lieutenant Governor or person administering the Government of Upper Canada, to take upon the conduct and management of concerns with the said Indians within the Province of Upper Canada.

(PAC, RG 10 Vol. 1, pp. 1 - 525, Pgs. 27 - 30)

As relates to the legal alienation of Indian lands, specifically Six Nations, the Duke of Portland directs President Russell on March 10, 1797, that Six Nations are positively restricted from alienating or disposing of their lands to any other than the Crown.

(PAC, RG 1 E1 Vol. 49, Pgs. 142 - 145)

On May 10, 1797, Portland directs President Russell that the Indian Department of Upper Canada is under his control and that His Majesty's Instructions as relates to the Indian Department are his duty to perform.

(PAC, RG 7 G1 Vol. 53-1, Pgs. 68 - 69)

In General Prescott's Orders of October 9, 1797, to President Russell, he directs that the Instructions for the Government of the Indian Department are to remain in full force.

(PAC, RG 10 Vol. 27, Pgs. 15614 - 15616)

In a letter of December 19, 1797, President Peter Russell the Administrator of Upper Canada advises Captain Joseph Brant that Deputy Superintendent of Indian Affairs, Captain Claus, has been authorized to receive the surrender from Five Nations on behalf of the King.

(The Russell Papers, 1797-1798, Vol. II, Pgs. 88 - 89, Ontario Historical Society, C. 1206, pp. 219-220, Hamilton Public Library)

Order-in-Council of February 5, 1798, approves the appointment of three (3) Trustees, namely, William Claus, the Deputy Superintendent General of Indian Affairs; D. W. Smith, Surveyor General of Upper Canada; and Alexander Stewart Esquire, Barrister at Law, as Trustees authorized by the Six Nations Indians.

(Registered in Department of Indian Affairs as X019590D)

On April 10, 1801, Lieutenant General Peter Hunter gave explicit orders to the Superintendent General and Inspector General of Indian Affairs that all former Orders and Instructions for the Government of the Indian Department are to be strictly obeyed and followed in regard to the services for Upper Canada.

(PAC, RG 10 Vol. 10, Pgs. 9478 - 9480)

On November 10, 1802, the Lieutenant Governor in Council gave formal notice that no leases will be admitted or allowed by or under authority of an Indian Nation.

(PAC, RG 1 E1 Vol. 47, Pg. 251)

On June 16, 1803, the Lieutenant Governor of the Province issues orders to investigate the trusts and authority by which the Executive Government acted on behalf of Six Nations.

(PAC, RG 1 E1 Vol. 47, Pgs. 291 - 293)

On June 24, 1803, the Executive Council reported to the Lieutenant Governor of the Province the results of their investigation into the trust and authority by which the Executive Government acted on behalf of Six Nations.
(PAC, RG 1 E1 Vol. 47, Pgs. 301 - 309)

Deputy Superintendent General William Claus's speech of August 17, 1803, shows that the Proclamation of October 7, 1763, was still in force as it was read and explained to Six Nations at this time.
(PAC, RG 1 E1 Vol. 47, Pgs. 397 - 399)

Order-in-Council of May 18, 1804, refers to the June 24, 1803, Order-in-Council but further adds and defines the role of the Trustees on behalf of the Government for Six Nations and the continuance of three (3) Trustees at all times on behalf of the Six Nations Indians.
(PAC, RG 1 E1 Vol. 47, Pgs. 380 - 385)

On April 10, 1805, Lieutenant Governor Peter Hunter, with the consent of the Executive Council, once again gave Public Notice to persons occupying lands of the Crown without any licence, title, or right derived from the Crown, to quit and remove from the same.
(PAC, RG 1 E1 Vol. 48, Pgs. 121 - 122)

As a result of a January 4, 1812, protest by the Six Nations Council, the Executive Council on January 14, 1812, unanimously recommended that the Laws respecting white people residing on Indian lands within the Province without a licence be enforced.
(PAC, RG 1 E1 Vol. 50, Pgs. 19 - 25)

On February 1, 1812, Isaac Brock, President of the Executive Council, issued a Proclamation against white people residing on Indian land and in particular at the Grand River.
(PAC, RG 1 E1 Vol. 50, Pgs. 26 - 27)

By His Excellency's Command, the Commander of the Forces issued instructions for the Good Government of the Indian Department dated May 1, 1812, to Sir John Johnson, Superintendent General and Inspector General of Indian Affairs, affirming the specifics required to be followed for the legal alienation of Indian lands. Sections 32, 33, and 34 defines the specifics that must be followed for the legal alienation of Indian lands.
(PAC, RG 8 Vol. 271, Pgs. 28 - 39)

In a letter of October 20, 1817, Deputy Superintendent General William Claus explains his role as Trustee as acts under the immediate and direct orders of the Government of Upper Canada,

October 20, 1817, cont'd.

making the transactions on behalf of Six Nations as acts of the Government.

(PAC, RG 5 A1 Vol. 34, Pgs. 16170 - 16172)

Under direction from the Governor in Chief and Commander of the Forces, on December 8, 1826, Lieutenant H. C. Darling explains that Colonel Claus could not receive a piece of land from Six Nations as remuneration for his Services as a Trustee being his duty as Chief Guardian on behalf of the King.

(PAC, RG 10 Vol. 19, Pgs. 13780 - 13781)

On April 2, 1830, James Baby, Inspector General of Public Provincial Accounts; John H. Dunn, Receiver General of His Majesty's Revenue; and George Herchmer Markland, Member of the Executive and Legislative Councils of Upper Canada, were advised of their appointment by the Lieutenant Governor as Trustees for Six Nations.

(PAC, RG 7 G 16-C, Vol. 23, Pg. 2)

On May 14, 1830, the Executive Council reported to the Lieutenant Governor of the Province the results of their examination into the history and present state of the trusts created for Six Nations.

(PAC, RG 10 Vol. 717, Pgs. 1 - 26)

On November 20, 1835, William Hepburn, the Acting Trustee for Six Nations, issued a notice that all persons in possession of Six Nations lands are to report to the Trustees of the said Indians so leases might be granted.

(PAC, RG 10 Vol. 458, Pg. 82)

On January 31, 1839, Lord Durham, the Governor General of the British North American Provinces, reports on the neglect and violation of the Crown's Trust to Six Nations. The Report also shows that Instructions, specifically dated 1763, 1775, and 1786, were used as the law of the land.

(Lord Durham's Report on the Affairs of British North America, C.P. Lucas, Oxford 1912, Vol. III, Pgs. 53 & 57 - 58, Hamilton Public Library R971.054, D934L Cana)

On May 11, 1839, the British Crown passed an Act entitled, "An Act for the protection of the lands of the Crown in this Province, from trespass and injury," 2 Victoria, c. 15.

The Lieutenant Governor of the Province of Upper Canada was empowered to appoint two or more commissioners to investigate and take action against people unlawfully in possession of Indian lands and ungranted Crown lands in the Province of Upper Canada. Also, all money and fines collected, after deducting expenses, were to be paid to the Receiver-General and accounted for as part of the hereditary revenues of the Crown in the Province of Upper

May 11, 1839, cont'd.

Canada or appropriated for the benefit of the Indians in the Province of Upper Canada.

(Revised Statutes of Upper Canada, Vol. I, Public Acts, Pgs. 968 - 971, Hamilton Public Library R346.2 On76 Vol. 1)

On October 21, 1839, the Chief Superintendent of Indian Affairs was informed that commencing June 30, 1839, the three (3) Crown-approved Trustees (Baby, Dunn & Markland) were dismissed by the Lieutenant Governor with the Trusteeship being transferred to the Indian Department.

(Registered in Department of Indian Affairs as X019639D)

In 1840, the British Crown passed an Act entitled, "An Act to Re-unite the Provinces of Upper and Lower Canada, and for the Government of Canada," Imp. Act 3, 4 V. c. 35, also known as the Union Act. This Act re-united the Provinces of Upper and Lower Canada creating the Province of Canada. This also created one Legislative Council and Assembly of Canada to make laws for the Province of Canada. Also, all laws, statutes, and ordinances previously passed (unless repealed in this Act) were to remain in force.

(Consolidated Statutes of Canada, 1859, Pgs. 19 - 31, Hamilton Public Library)

On June 30, 1860, the British Crown passed an Act entitled, "An Act respecting the Management of the Indian Lands and Property," 23 Victoria, c. 151.

The Commissioner of Crown Lands was made the Chief Superintendent of Indian Affairs. All lands reserved for Indians were to be reserved and held the same as before the passing of this Act. Also, the Governor in Council was empowered to direct the general management of Indian lands, money, and property.

(Consolidation of Indian Legislation, Vol. I, Pgs. 145 - 146, Six Nations Land Research A-XII-4)

On March 29, 1867, the British Crown passed the British North America Act, also known as the Constitution Act. The Province of Canada was changed into the Province of Quebec (which at one time was the Province of Lower Canada), the Province of Ontario (which at one time was the Province of Upper Canada) and the Provinces of Nova Scotia and New Brunswick were added to create the Dominion of Canada. This Act created the Parliament of Canada and Provincial Legislatures of which the executive government and authority of and over Canada was to continue to be vested in the Queen.

Section 91 (24). The British Crown, which placed Indians under its sovereignty and protection by its Royal Proclamation of October 7, 1763, transferred its legislative authority for Indians and lands reserved for Indians to the Parliament of Canada.

March 29, 1867, cont'd.

Section 111. As the British Crown ordered that Canada is liable for all prior debts and liabilities of each province, any Indian claims originating with the provinces are transferred to the Parliament of Canada.

Section 112. In order to protect the Parliament of Canada financially, the British Crown ordered that Ontario and Quebec would be liable to Canada for any debts over a stipulated sum. Therefore, any amount over the said sum would be a claim of the Parliament of Canada against Ontario and Quebec and not an issue Six Nations is obligated to substantiate.

Section 139. The British Crown by ordering that any proclamations issued are to be enforced, whether relating to the Province of Canada, or the Province of Upper Canada, or the Province of Lower Canada, subsequently makes the Royal Proclamation of October 7, 1763, enforceable.
(Encyclopedia Canadian, 1970, Volume 2, Pgs. 93 - 105)

In 1982, the Constitution Act was issued. It included the Canadian Charter of Rights and Freedoms, the Canada Act 1982, the BNA Act 1867 now called the Constitution Act 1867, and other Constitution Acts 1867 to 1975. This Act orders that the Constitution of Canada is the supreme law of Canada and any law that is inconsistent with the provisions of the Constitution is, to the extent of inconsistency, of no force or effect.

Section 25. Ordered that any aboriginal, treaty or other rights or freedoms of the aboriginal people of Canada, including those recognized by the Royal Proclamation of October 7, 1763, and those obtained by land claims settlements, are not repealed or taken away.

Section 26. Guarantees that any other rights and freedoms not included in this Act, but exist in Canada, are not denied.

Section 35 (1). Any existing aboriginal and treaty rights of the aboriginal people of Canada are recognized and affirmed.

Section 35 (2). Aboriginal people of Canada is defined as Indians, Inuits, and Metis of Canada.
(Constitution Act, 1982)