

INFORMATION SHEET

The plaintiff, the Six Nations of the Grand River, is bringing a motion to be heard in the Superior Court of Justice at the Courthouse in Brantford, 70 Wellington Street, commencing Monday, May 17, 1999 at 10:00 in the morning. The motion is being brought against the defendants Canada and Ontario.

The Motion

The particular motion to be heard commencing May 17, 1999 seeks various orders including:

- (a) Orders requiring the defendants to provide answers to interrogatories (written discovery questions), which are responsive, unambiguous, complete and provided in the required format;
- (b) Orders requiring the defendants to provide particulars of the allegations made in the defendants' statements of defence, being particulars necessary for the purposes of conducting a focused discovery and avoiding surprise at trial;
- (c) Orders requiring the defendants to produce all of the documents the defendants are required to produce by the Rules of Civil Procedure.

The motion is brought by the plaintiff, Six Nations, as part of the plaintiff's efforts to move the litigation to a conclusion within a reasonable period of time.

The Nature of the Action

The members of the plaintiff Band are the descendants of those Six Nations Indians who remained loyal to the British Crown during the American War of Independence and who accepted the Crown's promise of a reserve on the Grand River in recognition of that loyalty. The plaintiff (the Six Nations) is that collective group and represents past, present and future generations of that group as a community.

In order to honour that promise the then Governor of Canada, Sir Frederick Haldimand issued a Proclamation (the "Haldimand Proclamation") dated October 25, 1784 authorizing the plaintiff to take possession of and settle on the Banks of the Grand River allocating to them the lands extending for six miles on either side of the River beginning at Lake Erie and extending in that proportion to the head of the Grand River which the Six Nations and their descendants were to enjoy forever. This tract of land (the "Haldimand Proclamation Lands") consisted of approximately 950,000 acres. The Six Nations necessarily abandoned their ancestral lands in what is now New York State in order to relocate on the Haldimand Proclamation Lands.

The plaintiff takes the position that the Haldimand Proclamation created the same interest and rights with respect to the Grand River Lands for the benefit of the Six Nations as they had enjoyed with respect to their ancestral lands in New York State.

It is therefore alleged that the Imperial Crown became subject to the same fiduciary (trust-like) obligations to the plaintiff as the Crown owed to the Six Nations prior to the American War of Independence when the Six Nations occupied their ancestral lands in New York State, and the same fiduciary obligations as the Crown owed and continues to owe to the other Indians of Canada.

It is alleged that, as is the case for all other aboriginal titles in Canada, the Six Nations' interest in the Haldimand Proclamation Lands was and is a communal interest which cannot and could not be transferred or conveyed except by way of a surrender of that interest to the Crown. Accordingly, no one can or could have obtained title to the Haldimand Proclamation Lands or any part thereof, except through a grant from the Crown.

At the present time Canada holds title to the Six Nations Reserve near Brantford, Ontario for the use and benefit of the plaintiff and that Reserve consists of approximately 45,506 acres of land, which is less than 5% of the area of the Haldimand Proclamation Lands.

In the late 1700's and early 1800's, by reason of various Crown grants, sales, leases, permits or other dispositions, 95% of the Haldimand Proclamation Lands became occupied by persons who were not representatives of or members of the plaintiff. The vast majority of these transactions occurred between 1784 and 1850.

The plaintiff pleads in its statement of claim that many of these transactions (i.e. the acts and omissions of the Crown) violated the Crown's fiduciary duty to the plaintiff and were characterized by:

- (a) dispositions made without the consent of the plaintiff; and
- (b) dispositions made without obtaining any or fair compensation to be held and invested for the benefit of the plaintiff in lieu of the lands which the Crown alienated.

The plaintiff's case is that the Crown was at all material times and is now under a fiduciary duty to the plaintiff ("the beneficiary") to manage the assets held by the Crown for the benefit of the plaintiff in a "trust-like" manner as a fiduciary is required in law to do. One of the most significant of the obligations of a fiduciary is the obligation to account to the beneficiary for the fiduciary's management of the assets held by the fiduciary, i.e. the Six Nations' interest in the Haldimand Proclamation Lands, or the money obtained or which ought to have been obtained in return for the grant of title to those lands to strangers to the fiduciary relationship, or for allowing such strangers to enjoy rights in those lands that the Crown was honour bound to hold for the exclusive benefit of the Six Nations.

The plaintiff's case is that the Crown has never provided the accounting the plaintiff was and is entitled to.

The Claim in the Action

In its action, the Six Nations claims:

- (a) a declaration that the defendants Canada and Ontario, or one of them, is obliged to account to the plaintiff for all property, interests in property, money or other assets which were or ought to have been received, managed or held by the defendants or either of them, or by others for whom they are in law responsible (collectively, the Crown) for the benefit of the Six Nations of the Grand River ("the Six Nations");
- (b) a declaration that the defendants or one of them must restore to the Six Nations' Trust all assets which were not received but ought to have been received, managed or held by the Crown for the benefit of the Six Nations, or the value thereof;
- (c) compensation for the Crown's failure to discharge the Crown's fiduciary obligations to the Six Nations in and about the management of assets which were or ought to have been received, managed and held for the benefit of the Six Nations.



Six Nations

land claims research

Date:	<u>Litigation Event/Activity</u>
Dec. 23/94	Notice of Action served on Ontario as required by the Proceedings against the <i>Crown Act</i> (Ontario).
Dec. 28/94	Notice of Action served on Canada.
Feb. 22/95	Ontario's Demand for Particulars re Notice of Action.
March 6/95	Response to Ontario's Request for Particulars.
March 7/95	Statement of Claim Issued.
April 19/95	Motion before Mr. Justice Kent in Brantford (partially heard - continued in May).
May 25/95	Motion before Mr. Justice Kent; Order providing that Statements of Defence to be delivered by June 30, 1995 subject to further Court order extending the time upon motion by the defendants.
June 29/95	Order made designating Mr. Justice Kent to hear all pre-trial motions.
June 29/95	Motions by Ontario and Canada to extend the time for delivery of defences heard by Mr. Justice Kent. Order providing Interim extensions to September 15, 1995 and motions to extend to be heard before then.
Sept. 15/95	Order requiring defences to be submitted by December 15, 1995.
Oct. 11/95	Canada's first Demand for Particulars.
Oct. 31/95	Response on behalf of Six Nations to Canada's first Demand for Particulars.
Nov. 21/95	Amendments to Statement of Claim re Talbot Road lands and re Brantford lands.
Dec. 5/95	Canada's second Demand for Particulars.
Dec. 5/95	Canada's third Demand for Particulars.
Dec. 7/95	Response on behalf of Six Nations to Canada's second Demand for Particulars.
Dec. 15/95	Response on behalf of Six Nations to Canada's third Demand for Particulars.

Dec./95	Consent Order extending the time for Canada's Statement of Defence to January 15, 1996 and Ontario's Statement of Defence to January 22, 1996.
Jan. 15/96	Canada's Statement of Defence.
Jan. 22/96	Ontario's Statement of Defence and Crossclaim.
Jan. 26/96	Six Nations' Demand for Particulars to Canada.
Jan. 31/96	Six Nations' Demand for Particulars to Ontario.
March 14/96	Canada's Reply to Demand for Particulars.
April 19/96	Ontario's Reply to Demand for Particulars.
May 2/96	Six Nation's further Demand for Particulars to Ontario.
May 8/96	Six Nation's further Demand for Particulars to Canada.
May 17 & 22/96	Canada's and Ontario's further Replies to Demands for Particulars.
July 25/96	Reply to pleading delivered on behalf of Six Nations.
Summer, 1996	Order made for delivery of Affidavits or Lists of Documents by November 15, 1996 and allowing written discovery as well as oral discovery.
Oct. 25/96	Order of Justice Kent extending date for delivery of Affidavit of Documents.
Nov. 15/96	Affidavit/Lists of Documents delivered by all parties.
Since Then	Review and analysis of documents produced.
July 5/97	Three Requests to Admit Documents served on behalf of Six Nations on both Canada and Ontario, respectively, regarding all documents listed in the Affidavits or List of Documents of the parties to the action.
Aug./97	Responses to Request to Admit documents received from each of Canada and Ontario admitting the authenticity of all documents listed by each of the parties to the action.
Aug 15/97	Six Nations retains services of expert accountant.
Oct. 7/97	Canada's Statement of Defence and Counterclaim to Ontario's crossclaim delivered.
July 6/98	Request to Inspect Documents served on Canada.
July 13/98	Order made by the Federal Court discontinuing <i>Miller v. The King</i> .
July 16/98	Canada replies to Request to Inspect Documents.

July 21/98	Supplementary Affidavit of Documents served on both Canada and Ontario.
July 23/98	Requests to Admit the truth of certain facts served on behalf of Six Nations on both Canada and Ontario.
July 23/98	Questions on Written Examination for Discovery (Set No. 1) served on behalf of Six Nations on both Canada and Ontario (differing questions to each Defendant).
Aug 6/98	Ontario responds to Request to Admit served July 23/98.
Aug 31/98	Canada responds to Request to Admit served July 23/98.
(Sept 11/98)	(Six Nations' legal representatives meet with Department of Justice representatives at the offices of Blake, Cassels & Graydon. Ontario's legal representative declines attending).
Sept 15/98	Ontario answers Questions on Written Examination for Discovery served July 23/98 (but the questions and answers are not in the proper format according to the Rules of Practice).
Sept 24/98	Questions on Written Examination for Discovery (Set No. 1) reissued to Canada and Ontario.
Sept 24/98	Questions on Written Examination for Discovery (Set No. 2) served on behalf of Six Nations on both Canada and Ontario.
Sept 24/98	Request to Admit served on behalf of Six Nations on both Canada and Ontario.
(Sept 25/98)	Delivered to the Honourable Jane Stewart, Minister of Indian Affairs, copies of the Request to Admit served on behalf of Six Nations on both Canada and Ontario on July 23, 1998 and the responses of both defendants to the Request to Admit.
Oct 8/98	Ontario responds to Request to Admit served Sept 24/98.
Oct 9/98	Ontario answers Questions on Written Examination for Discovery (Set No. 2) served Sept 24/98.
Oct 16/98	Canada answers Questions on Written Examination for Discovery (Set No. 1) served July 23/98.
Oct 26/98	Ontario renews offer to settle.
Nov 26/98	Canada answers Questions 5 and 6 of Written Examination for Discovery (Set No. 1) served July 23/98.
Dec 1/98	Six Nations' Demand for Particulars served on Canada and Ontario (differing demand to each defendant).
Dec 17/98	Six Nations retains services of expert historian.

Dec 23/98	Canada refuses to answer Demand for Particulars served Dec 1/98.
Dec. 24/98	Canada delivers Supplementary Lists of Documents Nos. 1 and 2.
Mar. 11/99	Six Nations' Notice of Motion, returnable May 17/99, served on Canada and Ontario.
Apr. 22/99	Ontario Answers to Questions (Set No. 1) on Written Examination for Discovery.
May 3/99	Canada responds to Request to Admit of September 24, 1998.
May 5/99	Affidavit of Susan Winger, Litigation Project Manager, Litigation Management Branch, DIAND.
May 12/99	Canada serves its Factum to Motion
May 13/99	Canada serves its Responding Motion Record.
May 17-21/99	Motion, returnable in Brantford, Ontario before Kent, J.
Jul 27/99	Reasons of Kent, J ordering Canada to provide complete and proper answers to written Examination for Discovery.
Aug 17/99	Canada serves Notice of Motion seeking leave to appeal decision of Kent, J.
Oct 14/99	Motion for Leave to Appeal of Kent, J returnable in Toronto, Ontario before Lane, J.
Oct 18/99	Endorsement of Lane, J granting Canada leave to appeal to the Ontario Divisional Court.
Oct 25/99	Canada serves Notice of Appeal to Ontario Divisional Court.
Apr 10-12/00	Appeal heard in Ontario Divisional Court.
Apr 12/00	Reasons of Divisional Court dismissing Canada's Appeal.
Apr 25/00	Endorsement and Order of Kent, J for Canada to comply with Kent, J's original order and provide complete answers by June 12, 2000.
Apr 27/00	Canada serves Notice of Motion seeking leave to appeal the order of the Ontario Divisional Court to the Ontario Court of Appeal.
May 16/00	Canada serves Notice of Motion to stay the April 25, 2000 order of Kent, J pending disposition of the Appeal to the Ontario Court of Appeal.
May 19/00	Motion to stay the April 25, 2000 order heard in the Ontario Court of Appeal before Finlayson, J dismissing Canada's Motion sine die.
Jun 12/00	Canada delivers "Answers on Written Examination For Discovery (Amended); and "Reply to Demand for Particulars".

Jul 7/00	Further Ruling Re: Costs
Jul 18/00	Canada's motion for leave to appeal to Ontario Court of Appeal is dismissed With costs.
Jul 27/00	Six Nations' Notice of Motion, returnable Sep 11/00, served on Canada and Ontario to enforce Kent, J's Order of July 27/99.
Sept 11/00	Motion adjourned, sine die, with costs on a solicitor and his/her client basis, to allow Canada to deliver new answers by October 17, 2000

* Last updated Sept 15, 2000

