LAND RIGHTS

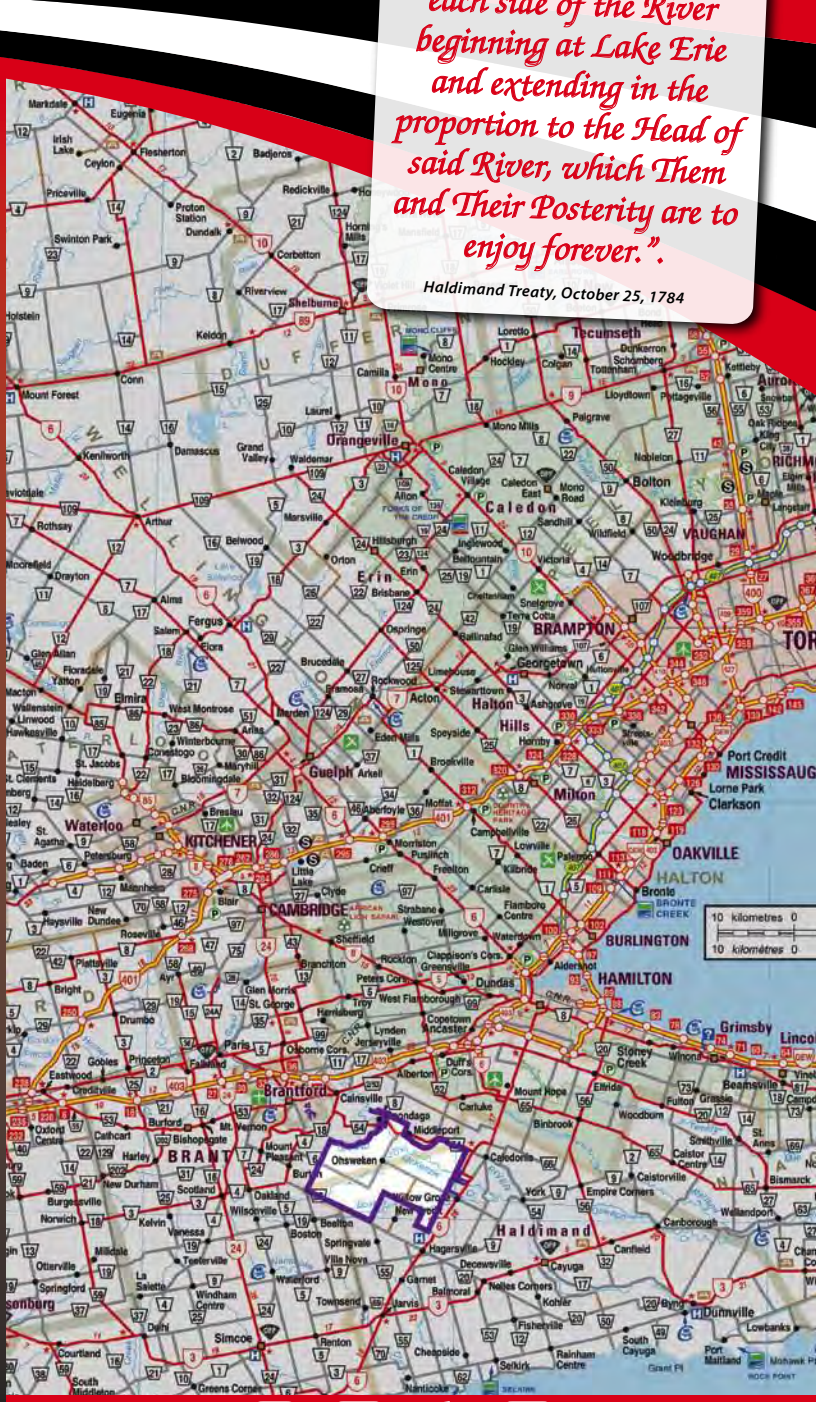
A GLOBAL SOLUTION

FOR THE SIX NATIONS OF THE GRAND RIVER

..."Six Miles deep from each side of the River beginning at Lake Erie and extending in the proportion to the Head of said River, which Them and Their Posterity are to enjoy forever.".

Haldimand Treaty, October 25, 1784

1784



2010

SUMMARY - SIX NATIONS LAND RIGHTS ISSUES - JUNE 2010

- Six Nations of the Grand River is the largest First Nation community in Canada with some 24,000 citizens living on approximately 46,000 acres in Southern Ontario. Less than 5% is all that remains from our original 950,000 acre land grant from our 1784 Haldimand Treaty.
- We returned to Canada and settled along the Grand River as a result of our 1784 Haldimand Treaty with the British Crown in recognition of our role as allies during the American Revolution. We were again called upon to defend Upper Canada when Americans invaded during the War of 1812.
- Our title to this land is an area 6 miles wide on each side of the Grand River for a distance of 186 miles (2,232 square miles), which we call Six Nations of the Grand River Territory. The unresolved land rights throughout our Territory impedes the governance of 38 municipalities and 900,000 persons within the Grand River watershed.
- Our 1701 Fort Albany (Nanfan) Treaty with the Crown also recognized our rights to the natural resources throughout a large area of land in southern and central Ontario.
- Six Nations of the Grand River is seeking Justice. We have pre-confederation treaties with the Crown that have not been lived up to. Six Nations land rights are based on those treaties, which are recognized and protected by Canada's Constitution.
- Under the 1784 Haldimand Treaty of … the Six Nations and their posterity to enjoy forever… and in the modern context the Spirit and Intent of this Treaty is our "perpetual care and maintenance" of the Six Nations people now and to the seventh generation. We can not, and will not negotiate away our constitutionally recognized treaty rights.
- Within the original land grant along the Grand River, Six Nations entered into long term leases to provide income for our perpetual care and maintenance. There were very few outright legal sales of our land. 90% of the leased land has never been paid for or paid to Six Nations.
- Six Nations was engaged in land rights negotiations for the return of substantial parts of our original grant. This process has broken down and no progress has been made for the past four years the resolution of Six Nations land rights in the 1784 Haldimand Treaty Lands.
- The Specific Claims Tribunal Act, which was passed in 2008 does not deal with claims over $150 million. A process to deal with large claims was promised but withdrawn by the federal government.
- The "extinguishment" requirement in the current federal approach, "to achieve certainty," does not allow us to continue to enjoy the same forever, as provided in the Treaty and is therefore unacceptable. We reiterate that we can not and will not sign away our children's future.
- We know and understand that Canada does not have enough money (Billions) to bring these historic land issues to resolution under the existing land claims policies. However, a continual yearly flow of financial transfers to the Six Nations, based on the spirit and intent of the 1784 Haldimand Treaty will allow the community to enjoy these benefits i.e. health, education, social well being, housing etc.
- A new perpetual care and maintenance mechanism needs to be established that allows us to share the economic privileges of our lands and resources with our neighbours and which allows for certainty on all sides. There is no need for the prerequisite of extinguishment to achieve certainty.
- Joint venturing and partnering with developers, municipalities, Ontario and Canada will allow us to share in the benefits of the 1784 Haldimand Treaty lands. We have an alternative "global approach" to a settlement of our land rights issues, which we need the federal government to sign on to.
- Six Nations is seeking fair and just settlement including return of lands and compensation for loss of use of our lands and resources including resource revenue sharing for lands within the original treaty lands – Treaty Land Entitlement.
- Six Nations is seeking a special House of Commons or Senate study on the Large Specific Claims process and in particular using Six Nations as a test case to review why there has been no federal Large Claim process produced and the reasons for the failure of current federal approach to large claims.

LAND RIGHTS
A GLOBAL SOLUTION
FOR THE SIX NATIONS OF THE GRAND RIVER

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SIX NATIONS LAND RIGHTS SUMMARY

"Perpetual Care and Maintenance"

June 2010

THE BIG PICTURE

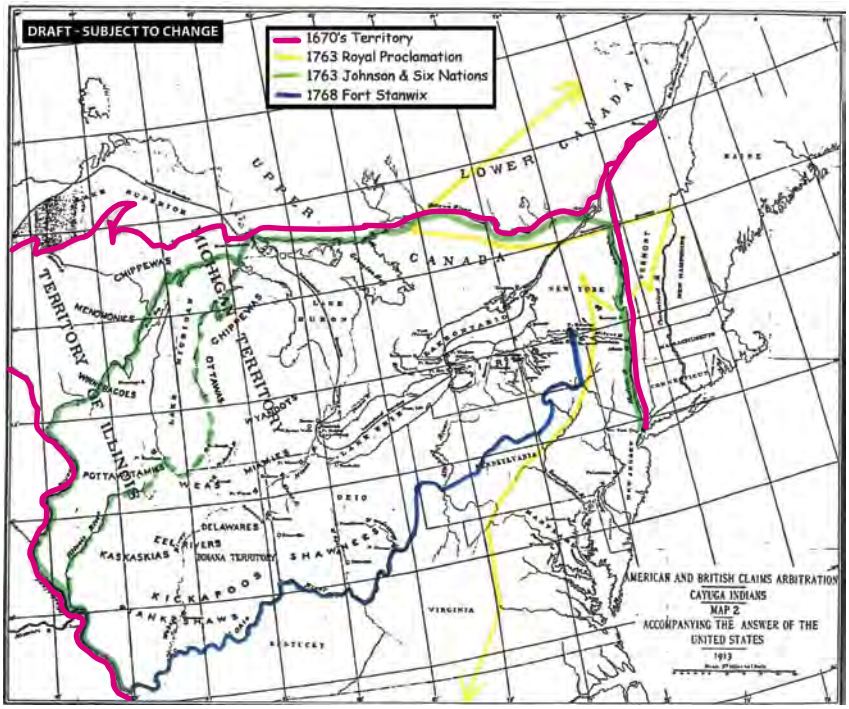
In 1983, the Six Nations Elected Council appeared before the Parliamentary Task Force on Indian Self-Government. We then stated self-determination, Indian Government, and special relationships are empty words unless there are the resources to make them real. The resources of which we speak are those to which we are legally entitled. Revenue sharing and resolving our land rights issues are major components for us to perpetually resource our government.

In 1996, a Royal Commission on Aboriginal Peoples reported to the Federal Government and proposed solutions for a new and better relationship between Aboriginal peoples and the Canadian Government including the recognition of the right to Self-Government. The Royal Commission recognized the inherent right to Self-Government as an *"existing"* Aboriginal and treaty right as recognized and affirmed by *Section 35(1) of Canada's Constitution Act, 1982*.

The Federal Government has since recognized the right of self-government as an existing inherent Aboriginal and treaty right within *Section 35 of Constitution Act, 1982.*

THE 1701 FORT ALBANY (NANFAN) TREATY LANDS

In 1701, the Imperial Crown entered into treaty with Five Nations (later became the Six Nations) in which the Crown undertook to protect from disturbance or interference a large portion of lands the Six Nations had obtained from the Huron by conquest. This Treaty would ensure Six Nations' right to exercise freely the right to pursue their economic livelihood utilizing the natural resources contained in the said Treaty Lands throughout central and southwestern Ontario.



Six Nations interpretation of their Traditional Hunting Territory of North America

Our Treaty Rights as affirmed by the 1701 Fort Albany Treaty are protected under *Section 35(1) of Canada's Constitution Act, 1982* and as such are subject to the Crowns' (Canada and Ontario) duty to consult and accommodate our broad range of interests. In addition to our undisturbed right to hunting and fishing, that consultation and accommodation includes Six Nations participation in environmental monitoring and revenue sharing by others intending to develop on and exploit any resources from within our 1701 Fort Albany Treaty lands.

THE SIX NATIONS 1784 HALDIMAND TREATY

(l) Lands granted by Haldimand Treaty and (r) Copy of Haldimand Treaty of October 25, 1784

The Haldimand Treaty of October 25, 1784, promised a tract consisting of approximately 950,000 acres within their Beaver Hunting Grounds along the Grand River to the *"Mohawk Nation and such others of the Six Nations Indians as wish to settle in that Quarter"* in appreciation of their allegiance to the King and for the loss of their settlements in the American States. They were *"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 said River, which Them and Their Posterity are to enjoy forever".*

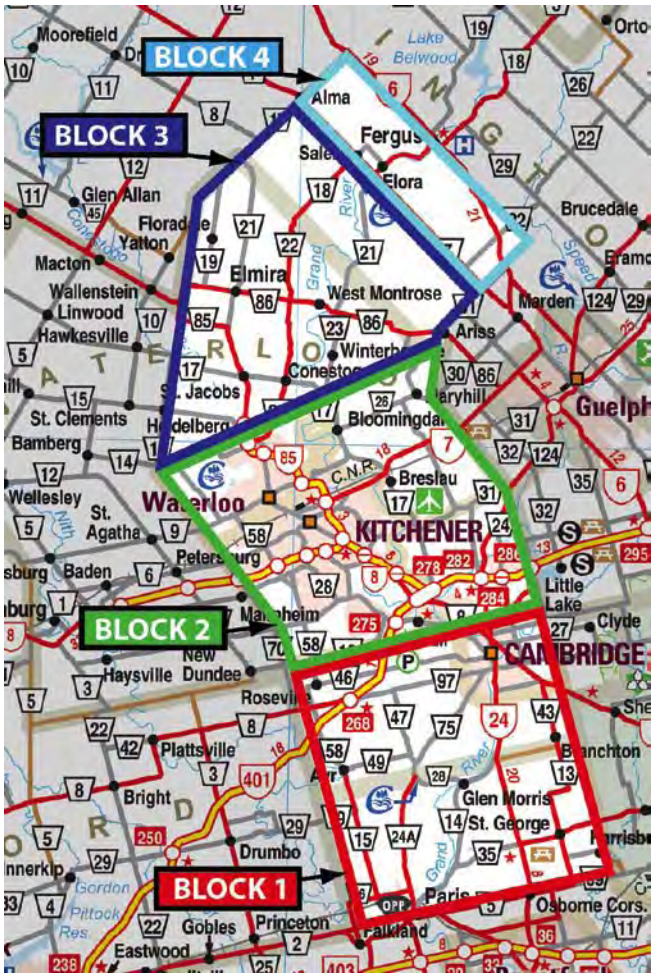
From 1784 to the present date, 275,000 acres of lands up to the source of the Grand River remains an outstanding treaty land entitlement to the Six Nations people. In addition, compensation for the 225-year loss of use and enjoyment of these lands require redress.

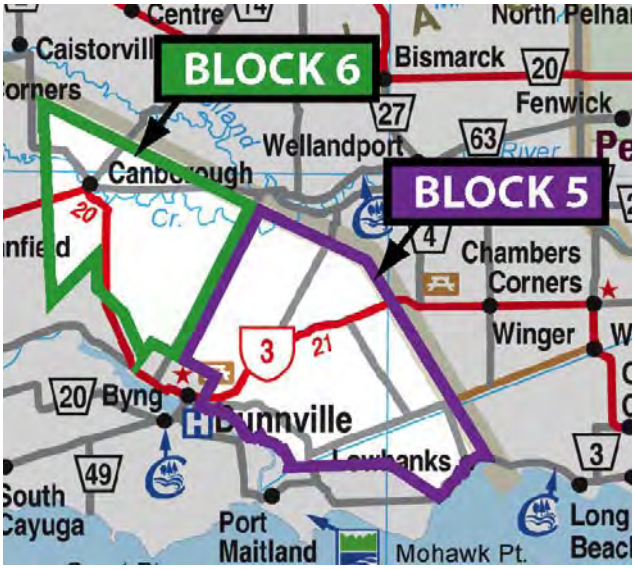
The 1784 Haldimand Treaty unequivocally promised that a tract of land six miles deep on each side of the Grand River from the rivers mouth to its source was to be laid out for Six Nations and their posterity to enjoy forever. However, the Six Nations Tract as laid out is only 960 chains (12 miles) in total width with the area of the Grand River meandering between its outer limits. The area equal to the area of the Grand River remains an outstanding treaty land entitlement to the Six Nations people.

275,000 acres outstanding treaty entitlement

On February 26, 1787 the Six Nations agreed to allow farms to be used by certain individuals in parts of Seneca and Cayuga Townships and never to be transferred to any other whomsoever. Between 1835 and 1852, twenty-one Crown Letters Patent were issued to third parties without the lands being duly surrendered or any compensation being paid.

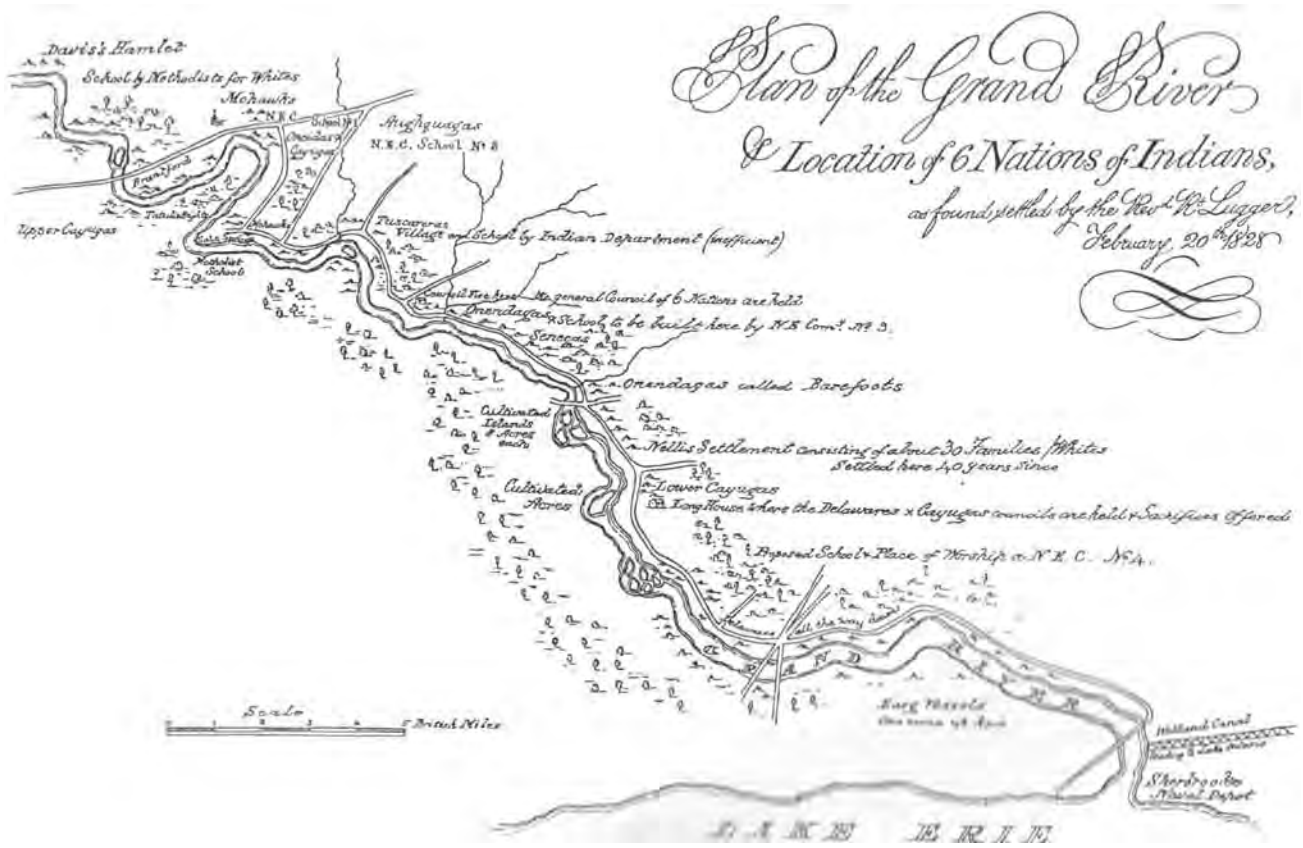
In 1796, Six Nations agreed to share 302,907 acres (Blocks 1, 2, 3 and 4) with settlers on condition that a continual revenue stream be derived from these lands for 999 years to be dedicated for Six Nations "perpetual care and maintenance". Records show the Crown used those revenues to finance operations in developing Canada with little or no return to Six Nations. For those agreements to be honoured, Canada must restore with interest the monies it used for purposes other than Six Nations perpetual use and benefit for the past 214 years. We must also define the terms by which Six Nations will continue to allow persons to share these lands for the next 786 years.





Two other tracts of land, Block 5 (30,800 acres) and Block 6 (19,000 acres) must either be returned to Six Nations and compensation commensurate to our loss of use or perpetual care and maintenance agreements need to be honoured similar to satisfactory arrangements for Blocks 1-4. In June 2007, Canada concludes lands in Etobicoke were used to secure the block 5 mortgage.

Etobicoke sites (l) area of Jane Street and Finch Avenue intersection, (r) Islington Avenue and Albion Road intersection



Locations of Six Nations Settlements along Grand River, 1828

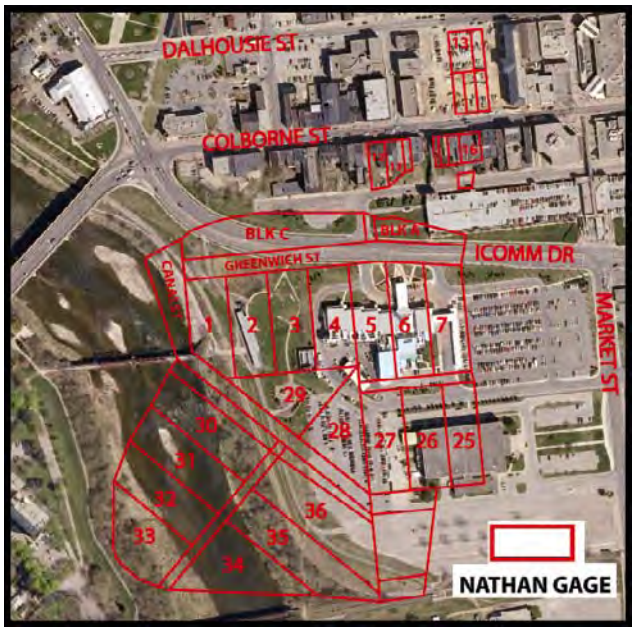
By Statute of January 19, 1824, the Welland Canal Company was incorporated to construct the Welland Canal. The Statute provided that Six Nations was to be compensated if any part of the Welland Canal passed through Six Nations lands or damaged the property or possessions of Six Nations. It was determined that 2,500 acres of Six Nations lands were flooded between 1829 and 1830 with no compensation being paid for the flooded lands to date. Government records also reveal that Six Nations funds were used to finance operations of the Welland Canal Company.

William Claus was Deputy Superintendent for Six Nations at Fort George from October 1796 to September 30, 1800. He then was appointed Deputy Superintendent General for Indian Affairs for Upper Canada a post that he held until his death on November 11, 1826. His son John Claus was then appointed a Trustee for Six Nations by the Lieutenant Governor. On May 14, 1830, the Executive Council of Upper Canada determined a debt of about £5,000 was owed Six Nations from the Claus Estate. In 1831, 900 acres in Innisfil Township and 4,000 acres in East Hawkesbury Township were set aside for the use and benefit of Six Nations to satisfy the debt of the Claus estate. The heirs of William Claus fought against this settlement by the Crown. The Crown used Six Nations funds to pay for its endeavours to obtain a settlement with the Claus heirs; legal fees, court costs, land taxes and a cash settlement. In addition, Six Nations unfettered use of these lands has been outstanding since 1831.

The purported land alienations of the Town Plot of Brantford (April 19, 1830) and part of the Township of Brantford (April 2, 1835) to resolve the problem of squatters on Six Nations lands are deemed by Six Nations as void as their purpose was never fulfilled. Failure to have the alienations deemed as

invalid will result in a lot-by-lot analysis having to be done to determine if full and fair compensation was paid for each transaction and held in trust for the continued use and benefit of the Six Nations Indians. On February 25, 2009, Canada agreed with Six Nations that the 20 acres of the Nathan Gage Lands within the Town Plot of Brantford, were intended for leasing purposes and have never been paid for.

Approx. current value w/interest	6 % Compound
	$96,214,013.74
	8 % Compound
	$2,308,233,130.03
	10 % Compound
	$52,239,343,959.40



Nathan Gage Lands (20 acres) within Townplot of Brantford.

By agreement on September 28, 1831, Six Nations would consent to a land transaction to allow for the construction of the Talbot Road from Canborough Township to Rainham Township (North Cayuga Township) upon condition an Indian Reservation would be made for Six Nations of two miles back on each side of the Grand River where the Talbot Road would cross the Grand River. The terms of this condition was not honoured in the purported surrender for the area.

By Statute of January 28, 1832, the Grand River Navigation Company was incorporated to make the Grand River more navigable from the works of the Welland Canal to Brantford. Between March 10, 1834 and 1847 recorded transfers show more than £44,292 ($177,168.00) was taken from Six Nations Trust Funds by Crown Agents and invested in the Grand River Navigation Company through stock purchases; contrary to protests of Six Nations. An additional amount yet to be determined was collected from the Government controlled sale of Six Nations lands and used to pay the day-to-day operating and maintenance expenses of the Grand River Navigation Company without being deposited into the Six Nations Trust. In addition, free Crown Grants were issued to the Grand River Navigation Company for 368 7/10 acres in 1837 as well as for lands elsewhere and at various periods of time.

Against the wishes of Six Nations, the Crown constructed the Hamilton/Port Dover Plank Road through the Townships of Seneca and Oneida. A leasing arrangement for one half mile on each side of the road was sanctioned by the Chiefs in 1835. Lease rentals remain in arrears since 1835 for the leasing of 7,680 acres crossing these townships. In addition, payment for the Hamilton/Port Dover Plank Road remain in arrears since March 1834.

To further augment a continual source of revenue for Six Nations, agreements were confirmed and ratified by the Crown in 1843 that 11,500 acres in four separate locations in and around the City of Brantford would be let at short term leases renewable every 21 years. Six Nations does not receive rental monies from these lands nor have we enjoyed the unfettered use of these lands.

Samuel P. Jarvis, the Chief Superintendent of Indian Affairs, again attempted to address the issue of squatters throughout our lands and the failure by the Crown to legally protect our interests by land relocation. All lands on the south side of the Grand River (Burtch Tract, Tuscarora Township, Oneida

Township, and parts of North and South Cayuga Townships) from Brantford Township to Dunn Township were assured to Six Nations for their future residence. Six Nations unfettered use of all these lands remains outstanding. The said lands need to be restored to us in addition to our present day land holdings in Onondaga, Tuscarora and Oneida Townships. Failing that, the entire Townships of Onondaga and Seneca need to be restored to Six Nations as the conditions of the promises made for the relocation of our people was not adhered with.

Thousands of acres of Six Nations land leases have expired with no compensation being collected. Financial compensation and/or the return of these lands to Six Nations must be acted on.

Thousands of acres of Six Nations lands legislated away, expropriated, flooded and used by the Crown require to be returned, replacement lands provided, or satisfactory compensation made to Six Nations.

Lands that have been excluded from purported surrenders, lands that have no payments being made and lands that have "free" Crown Letters Patents issued need to be returned to Six Nations or alternative forms of just compensation made.

Compensation for all natural resources on lands throughout the Six Nations 1784 Haldimand Treaty and the 1701 Fort Albany lands must be addressed to Six Nations satisfaction.

PURPORTED LAND ALIENATIONS

A complete determination on the validity of all purported surrenders must be made.

- Did all 50 Chiefs of the day understand the written and spoken English language,
- Did all 50 Chiefs willingly consent and actually sign the purported surrender documents at a public council;
- Were the required descriptive plans attached to the surrender document;
- Were all the terms and conditions fulfilled (including inducing promises) of surrenders determined valid;
- Was full, fair, and complete compensation properly obtained and used for the sole use and benefit of the Six Nations Indians;
- Was complete and just compensation received for all the natural resources upon and under the lands at issue; and
- Were protests made against such arbitrary actions of the Crown properly resolved to Six Nations understanding and satisfaction.

More than 10,000 land transactions on a lot-by-lot basis will have to be analyzed to determine whether complete and just compensation was received for lawfully surrendered lands and all natural resources and whether all the proceeds were properly credited and used for Six Nations continual care and benefit.

SIX NATIONS MONIES

Our research has revealed that the Crown's management of the Six Nations Trust or permitting it to be managed was inconsistent with the standards of conduct required by the Crown's fiduciary obligations to the Six Nations.

Six Nations funds intended for Six Nations perpetual care and maintenance were invested in financial institutions in London, England and Scotland without an accounting. Banks here in York, Gore and elsewhere held Six Nations monies without an accounting to Six Nations. Crown appointed Indian

Agents were dismissed for negligence and theft of Six Nations funds without the trust being made whole. Government inquiries reveal that funds intended to be paid remain outstanding and/or are missing from the Six Nations Trust.

A complete analysis and audit of all Six Nations Trust funds is required to determine if all funds from proper land sales were for full and fair compensation and were properly used for the continual care and benefit of the Six Nations Indians.

EXAMPLES OF THE CROWNS MISUSE OF SIX NATIONS TRUST MONIES

In 1820, £187.10.0 ($750.00) of Six Nations monies was invested in Upper Canada Bank Stock. This was increased in 1859 to £200 ($800.00).

Approx. current value w/interest	6 % Compound	8 % Compound	10 % Compound
	$48,214,277.56	$1,681,027,452.67	$54,912,528,724.94

In 1834, £1,000 ($4,000.00) of Six Nations monies was used to offset the Governments debt with no record of repayment.

Approx. current value w/interest	6 % Compound	8 % Compound	10 % Compound
	$113,734,514.46	$3,052,396,571.18	$77,120,987,020.04

In 1835, £300 ($1,200.00) of Six Nations monies was loaned to the Brantford Episcopal Church with no record of repayment.

Approx. current value w/interest	6 % Compound	8 % Compound	10 % Compound
	$32,189,013.53	$847,887,936.44	$21,032,996,460.01

In 1836, £600 ($2,400.00) of Six Nations monies was used by the Cayuga Bridge Company with no record of repayment.

Approx. current value w/interest	6 % Compound	8 % Compound	10 % Compound
	$60,733,987.79	$1,570,162,845.26	$38,241,811,745.48

In 1845, £3,679.7.9 ($14,717.58) of Six Nations monies was used to cover the Governments debt with no record of repayment.

Approx. current value w/interest	6 % Compound	8 % Compound	10 % Compound
	$220,446,990.28	$4,816,771,677.01	$99,455,649,125.37

Between, 1845-1847, £4,200 ($16,800.00) of Six Nations monies was used to cover the Country's war loss debt with no record of repayment.

Approx. current value w/interest	6 % Compound	8 % Compound	10 % Compound
	$223,957,349.93	$4,713,911,514.90	$93,824,652,053.34

In 1846, £200 ($800.00) of Six Nations monies was used by the Desjardin Canal Company with no record of repayment.

Approx. current value w/interest	6 % Compound	8 % Compound	10 % Compound
	$11,304,513.85	$242,429,735.05	$4,914,624,631.37

In 1846, £2,000 ($8,000.00) of Six Nations monies was used by the Erie & Ontario Railroad Company with no record of repayment.

Approx. current value w/interest	6 % Compound	8 % Compound	10 % Compound
	$113,045,138.54	$2,424,297,350.52	$49,146,246,313.65

In 1846, £200 ($800.00) of Six Nations monies was transferred to the Simcoe District with no record of repayment.

Approx. current value w/interest	6 % Compound	8 % Compound	10 % Compound
	$11,304,513.85	$242,429,735.05	$4,914,624,631.37

In 1846, £4,412.10.0 ($17,650.00) of Six Nations monies was transferred to the City of Toronto with no record of repayment.

Approx. current value w/interest	6 % Compound	8 % Compound	10 % Compound
	$249,405,836.90	$5,348,606,029.59	$108,428,905,929.50

In 1846 and 1847, £2,900 ($13,100.00) of Six Nations monies was used to build roads in York with no record of repayment.

Approx. current value w/interest	6 % Compound	8 % Compound	10 % Compound
	$174,633,409.77	$3,675,728,621.74	$73,160,889,398.73

In 1847, £2,250 ($9,000.00) of Six Nations monies was used by the Welland Canal Company with no record of repayment.

Approx. current value w/interest	6 % Compound	8 % Compound	10 % Compound
	$119,977,151.75	$2,525,309,740.13	$50,263,206,457.14

In 1847, £250 ($1,000.00) of Six Nations monies was transferred to the Law Society of Upper Canada with no record of repayment.

Approx. current value w/interest	6 % Compound	8 % Compound	10 % Compound
	$13,330,794.64	$280,589,971.13	$5,584,800,717.46

In 1847, £2,000 ($8,000.00) of Six Nations monies was transferred to McGill College with no record of repayment.

Approx. current value w/interest	6 % Compound	8 % Compound	10 % Compound
	$106,646,357.11	$2,244,719,769.00	$44,678,405,739.68

In 1849, £3,900 ($15,600.00) of Six Nations monies was transferred for the debts of Public Works again in 1858; £11,000 ($44,000.00) was transferred to Public Works with no record of repayment.

Approx. current value w/interest	6 % Compound	8 % Compound	10 % Compound
$15,600 (1849)	$185,084,012.43	$3,752,746,527.39	$72,002,389,415.19
$44,000 (1858)	$522,031,829.93	$10,584,669,692.65	$203,083,662,453.11

Between 1849-1851, £15,600 ($62,400.00) of Six Nations monies was transferred to address the Public Debt with no record of repayment.

Approx. current value w/interest	6 % Compound	8 % Compound	10 % Compound
	$658,896,448.66	$12,869,501,122.75	$238,024,427,818.82

In 1851, £2,000 ($8,000.00) of Six Nations monies was used by the Municipal Council of Haldimand with no record of repayment.

Approx. current value w/interest	6 % Compound	8 % Compound	10 % Compound
	$84,473,903.67	$1,649,936,041.38	$30,515,952,284.46

In 1852, £7,000 ($28,800.00) of Six Nations monies was invested in the Upper Canada Building Fund with no record of repayment.

Approx. current value w/interest	6 % Compound	8 % Compound	10 % Compound
	$286,892,503.05	$5,499,786,804.59	$99,870,389,294.61

Between 1853 and 1857, £77,531.13.4 ($310,124.68) of Six Nations monies was used to operate Upper Canada. This debt was assumed by the Province in 1861 with no record of repayment to Six Nations.

Approx. current value w/interest	6 % Compound	8 % Compound	10 % Compound
	$2,308,520,389.24	$40,306,113,049.92	$667,755,015,006.17

In 1854, £28,400 ($113,600.00) of Six Nations monies was invested in Montreal Turnpike Trust Bonds with no record of repayment.

Approx. current value w/interest	6 % Compound	8 % Compound	10 % Compound
	$1,007,148,041.82	$18,598,768,438.79	$325,564,629,931.93

In 1861, £1,782 ($7,128.00) of Six Nations monies was used by the District of Niagara with no record of repayment.

Approx. current value w/interest	6 % Compound	8 % Compound	10 % Compound
	$42,028,279.86	$680,937,510.44	$10,482,811,575.83

Total of the above examples of the 'Crowns Misuse of Six Nations Trust Monies '.

Present Day - 2010

6 % Compound	8 % Compound	10 % Compound
$6,593,999,258.61	$127,608,728,137.58	$2,372,979,606,728.20

Recalculated as of 1994 (filing of Notice of Action against Crown in right of Canada and the Crown in the Right of Ontario seeking a full accounting of Six Nations lands and monies.)

6 % Compound	8 % Compound	10 % Compound
$2,595,703,302.96	$37,247,771,320.95	$516,429,501,059.91

Recalculated as of 2020

6 % Compound	8 % Compound	10 % Compound
$11,808,848,383.29	$275,497,673,046.42	$6,154,897,962,922.35

With these examples of Six Nations funds being misappropriated are legal debts against the treasury of Canada until resolved and the compounding cost of further delaying settlements makes Canada's one time payment policy unattainable. So why does Canada continue to mask negotiations using a redundant settlement and extinguishment policy knowing that it will not work?

LITIGATION DRIVEN BY DESPERATION

It was evident that through twenty years of research, Six Nations was merely stockpiling validated "Land Claims" under Canada's Specific Claims Policy. Canada's arbitrary and undefined discount factors were unacceptable not only to the Six Nations Elected Council (SNEC) but to many First Nations across Canada. The most offensive term was the prerequisite for extinguishment of our children's rights to the lands at issue.

Enough was enough. The Six Nations of the Grand River as represented by the SNEC filed a Statement of Claim on March 7, 1995 against Canada and Ontario (Court File 406/95) regarding the Crowns' handling of Six Nations' property before and after Confederation. Six Nations is seeking from the Crown a comprehensive general accounting for all money, all property under the 1784 Haldimand Treaty and for other assets belonging to the Six Nations and the manner in which the Crown managed or disposed of such assets. Six Nations is further seeking an order that the Crown must replace all assets or value thereof, which ought to have been received or held by the Crown, plus compound interest on all sums, which the Crown should have received but failed to receive or hold for the benefit of the Six Nations.

In 2004, the SNEC of the day placed this litigation in abeyance with hopes that exploratory discussions with Canada would prove successful. Those discussions have gone nowhere. Consequently, on April 27, 2009, the SNEC gave notice to Canada and Ontario that the 1995 litigation would be taken out of abeyance as of August 4, 2009.

THE LEGAL DUTY TO CONSULT AND ACCOMMODATE SIX NATIONS

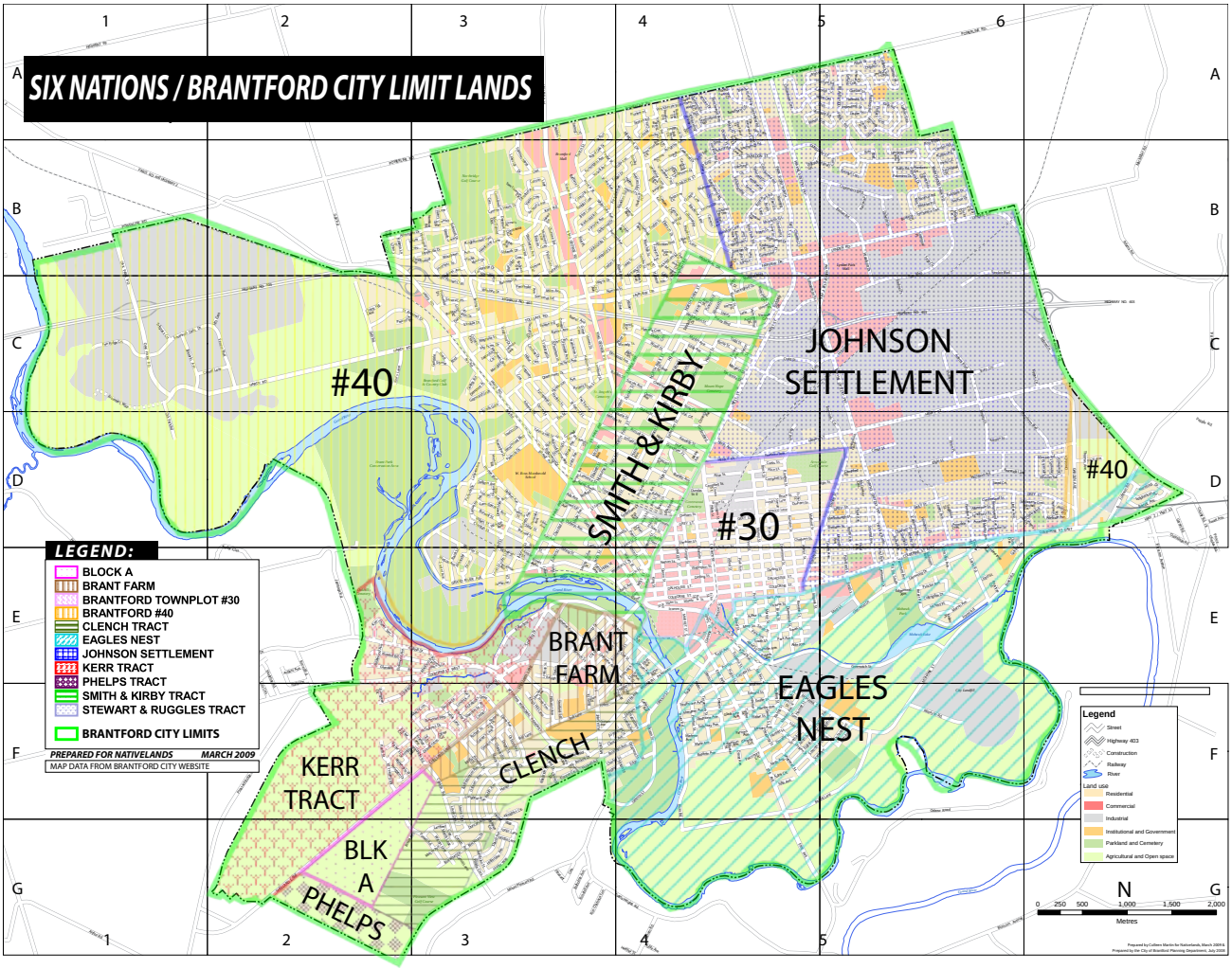
The legal duty for the Crown to consult with First Nations arises from the protection of Aboriginal and treaty rights set out in *Section 35(1) of the Constitution Act, 1982*. The purpose of such protection has been interpreted by the Supreme Court of Canada as "the reconciliation of the pre-existence of Aboriginal societies with the sovereignty of the Crown". Accordingly, the duty to consult is an aspect of the reconciliation process, which flows from the historical relationship between the Crown and Aboriginal people and is "grounded in the honour of the Crown".

The duty *"arises when the Crown has knowledge, real or constructive, of the potential existence of the Aboriginal right or title and contemplates conduct that might adversely affect it"*. The Crown's duty to consult is proportionate to the strength of the Aboriginal claim that has been asserted; it is not a duty to agree, nor does it give First Nations a right to veto, but rather requires *"good faith on both sides"* and requires the Crown to make a *bona fide* commitment to the principle of reconciliation over litigation.

The Crowns are fully aware of Six Nations interests throughout the Six Nations treaty lands and as a result the SNEC has established a policy for obtaining free, prior, and informed consent from Six Nations. SNEC requires that the Crown, all proponents, and municipalities consult with SNEC in good faith in order to obtain its free and informed consent on behalf of the Six Nations of the Grand River prior to SNEC approval of any project potentially affecting Six Nations' interest. SNEC expects that effective mechanisms shall be provided by the Crown and/or proponents for just and fair redress for any significant development activities and all parties shall take appropriate measures to mitigate adverse environmental, economical, social, cultural, or spiritual impacts.

SNEC supports development that benefits the people of Six Nations and is conducted in a manner that is cognizant and respectful of the water, air, land rights, and interests of the people of Six Nations. SNEC fully expects all proponents, municipalities, and the Crown to respect this policy.

On August 27, 2009, SNEC commenced legal proceedings (Court File No. CV-08-361454) seeking a declaration against the Corporation of the City of Brantford and the Crown in Right of Ontario. As a result of the Province's delegated statutory authority, it has a constitutional duty to engage in meaningful good faith consultation with the Six Nations of the Grand River. Including, where appropriate, to negotiate satisfactory interim accommodation before considering or undertaking any material exercise or purported exercise of any statutory powers of decision by Brantford, the Province, or any of their delegates, which potentially affect the *bona fide* interests of the Six Nations of the Grand River. This matter continues to be before the courts.



Nature of Six Nations Rights within the city of Brantford

In the meantime, risk-taking development continues on lands where Six Nations rights are unresolved with little or no meaningful consultation and accommodation taking place. Land Protectors from Six Nations continue to stop development throughout the Haldimand Tract pressing for justice and continue to be arrested for their actions.

THE UNITED NATIONS DUTY TO CONSULT AND ACCOMMODATE

On September 13, 2007, the United Nations General Assembly adopted the *United Nations Declaration on the Rights of Indigenous Peoples*. This followed more than twenty years of discussions with Indigenous representatives and Countries within the UN system.

The relevant articles of Convention 169 on the duty to consult with Indigenous Peoples are:

Article 26

1. Indigenous peoples have the right to the lands, territories, and resource which they have traditionally owned, occupied or otherwise used or acquired.
2. Indigenous peoples have the right to own, use, develop and control the lands, territories and resources that they possess by reason of traditional occupation or use, as well as those which they have otherwise acquired.
3. States shall give legal recognition and protection to these lands, territories and resources. Such recognition shall be conducted with due respect to the customs, traditions and land tenure systems of the indigenous peoples concerned.

Article 27

States shall establish and implement, in conjunction with indigenous peoples concerned, a fair, independent, impartial, open and transparent process, giving due recognition to indigenous people's laws, traditions, customs and land tenure systems, to recognize and adjudicate the rights of indigenous peoples pertaining to their lands, territories and resources, including those which were traditionally owned or otherwise occupied or used. Indigenous peoples shall have the right to participate in this process.

Article 32

1. Indigenous peoples have the right to determine and develop priorities and strategies for the development or use of their lands or territories and other resources.
2. States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free and informed consent prior to approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources.

States shall provide effective mechanisms for just and fair redress for any such activities, and appropriate measures shall be taken to mitigate adverse environmental, economic, social, cultural or spiritual impact.

ONTARIO'S ROLE

On Thursday, February 21, 1991, Elected Chief William K. Montour appeared before the Standing Committee on Aboriginal Affairs in hearings on the Oka Crisis and stated our position concerning Ontario's participation:

> *"With the Provincial Government's tax and land base, and populace having benefited most from these transactions, Provinces must be more active in claims resolutions. The "Ontario Supports Native Land Claims Settlements in Ontario as long as the Federal Government pays" attitude contributes nothing to the process."*

Throughout the discussions over the last FOUR YEARS, the Province of Ontario adamantly states its position of standing behind their land registry system to protect the land interests of the Ontario Populace. We understand that position albeit in many cases we know that title has evolved from the "proceeds of crime".

And all the while Six Nations Land Rights remain unresolved the Crown in Right of Ontario and municipalities profit at not having justice served to the Six Nations Peoples via the following examples;

Monies collected by Municipalities Entirely within the Haldimand Tract

2006 population of municipalities:
659,076 (2006 Statistics Canada)

Property taxes (including grants in lieu) of municipalities entirely within Tract:
$526,045,536.00

Estimates of Provincial Revenues within Haldimand Tract

1. Land Transfer Tax	$ 68,000,000.00
2. Gasoline Tax	$118,000,000.00
3. Fuel Tax	$ 36,000,000.00
4. Retail Sales tax	$848,000,000.00
5. Tobacco Tax	$ 56,000,000.00
Estimated Total	**$1,126,000.000.00**

The estimates for provincial personal and corporate income taxes are $1.225 billion, and $848 million respectively.

The total estimated annual return to municipalities and provincial coffers is $3,725,045,536.00 from the Haldimand Tract lands were Six Nations interests remain outstanding.

Six Nations must also remind Ontario that our interest in these outstanding lands and resources do not transfer free and clear to Ontario.

Section 109 of the Constitution Act, 1982

> *"All Lands, Mines, Minerals, and Royalties belonging to the several Provinces of Canada ..... at the Union.... shall belong to the several Provinces.... subject to any Trusts existing in respect thereof, and to any Interest other than that of the Province in the same".*

Therefore, any interest Ontario purports to have over the lands in the 1784 Haldimand Treaty Lands or throughout our 1701 Fort Albany lands are subject to Six Nations unresolved land rights being resolved first. Therefore, it is Six Nations position that if meaningful consultation and accommodation is to take place, Ontario must be an active participant and a signatory to all accommodation agreements.

INDIAN COMMISSION OF ONTARIO

In 1978, the Indian Commission of Ontario was created by the Governments of Canada and Ontario and the First Nations Chiefs within Ontario. It was an independent neutral authority to assist all parties to negotiate solutions to issues of concern. One of the key elements of this commission was successfully addressing and settling land claims issues where Canada, Ontario and one or more First Nations shared an interest.

Due to petty and political differences between Canada and Ontario, the Order's in Council required to continue the Indian Commission of Ontario after March 31, 2000 were not renewed and the Indian Commission of Ontario was dissolved.

1986 LANDS AGREEMENT

The 1986 Indian Lands Agreement Legislation was created through the facilitation of the Indian Claims Commission of Ontario. The 1986 Indian Lands Agreement was and is still a valuable piece of legislation that can be used today to put in place agreements required to achieve a *"global settlement"* with Six Nations.

THE WELLAND CANAL EXPERIENCE

- If Six Nations had agreed to allow their lands to be flooded by the works of the Welland Canal;
- If Six Nations had received full and fair compensation for the 2,500 acres;
- If the full and fair compensation was deposited to the Six Nations Trust Account for the sole use and benefit of the Six Nations of the Grand River;
- If the Crown managed the financial assets from the Welland Canal flooding in a manner consistent with standards of conduct required by the Crown's fiduciary obligations to Six Nations and to the satisfaction of Six Nations;
- If the Crown can account to Six Nations where the assets from this investment are today; and
- If all of these things happened (which the Crown failed to do), the flooding of 2,500 acres of Six Nations lands by the Welland Canal Company would not be an issue today.

The "what ifs" aside, the Welland Canal flooding of 2,500 acres of Six Nations lands is a legal liability against the Crown. Bringing this issue forward 178 years later for Six Nations to receive true justice without arbitrary discount factors, etc., independent experts verified an amount of $1.2 billion; a sum we all know Canada and Ontario cannot afford. Being restricted by a one time extinguishment cash out settlement offer make this less appealing for us and insurmountable for Crown negotiators. So why continue down this path when we all know the Welland Canal flooding was deemed by Canada as one of their easier breaches to redress? For the above reasons we cannot.

THE GLOBAL APPROACH

Over the past four years, basic issues remain unsolved and frustration is growing in the Six Nations community and our neighbouring municipalities.

While government communications state that respectful negotiations and just solutions are roads to settlements, the Crowns only apparent mandate is to keep the situation calm and keep hope alive.

With no foreseeable breakthrough in the future and with more claims being validated, the Six Nations of the Grand River will take initiatives to put some strong new proposals before Canada and Ontario.

SNEC proposes that:

- Until claims are resolved between Six Nations and Canada, partnerships and resource sharing agreements with corporations, interest groups and Ontario must be utilized as an interim measure;
- Increased Six Nations Land Base;
- Entitlements promised in the 1784 Haldimand Treaty be honoured;

- Conditions by which Six Nations agreed to share the use of our land be honoured;
- Inclusion of Six Nations in the sharing of resources and economic partnering within our traditional lands;
- Agreements securing Six Nations perpetual care and maintenance to our standard commensurate with Six Nations ongoing needs must be protected by Section 35 of Canada's Constitution; and
- With 950,000 acres at issue and tens of thousands of land and financial transactions requiring redress, a much more efficient resolution process is required. A process that will require a global approach if justice is going to be properly served.

The premise for this to work would require:

- The removal of Canada's underlying conflict of interest through a truly independent mechanism, which would report directly to Parliament;
- Mediators to ensure good faith negotiations by providing appropriate mechanisms for dispute resolution; and
- Establishment of a neutral tribunal to resolve legal disputes if negotiations have reached an impasse. The neutral tribunal will have the authority to make binding decisions on the validity of grievances, compensation criteria and innovative means of resolving outstanding grievances.

OTHER FISCAL ARRANGEMENTS

In 1983, Six Nations proposed for the financial stability of our Government new fiscal arrangements needed to be established, such as:

- Income tax now paid by our citizens should be earmarked for our Haudenosaunee Six Nations Government. The same would hold true for Native owned businesses in our territory presently paying taxes to Canada and/or Ontario. These funds need to be earmarked for our Government;
- A return to us of all Provincial GST/PST (HST) paid by our membership or better guaranteeing our exemption;
- A percentage of the General Resource Development;
- A percentage of the Gross National Product; and
- A percentage of funds currently supporting Indian and Northern Affairs Canada.

Six Nations is further proposing that a sustainable guaranteed share of the resources within the Haldimand Tract and 1701 Lands also be a part of our Governments' economic stability with Section 35 of Canada's Constitution guarantee and protection.

It is proposed that an analysis be undertaken to determine and identify:

- All licenses, permits, fees, fines, leases, and other government's revenue;
- Municipal Property Tax Revenues;
- Municipal Grants in Lieu of Taxes;
- All Development Charges (Residential and non-Residential);
- Taxes - Personal Income, Federal and Provincial Retail Sales, Corporations, Employer Health, Gasoline, Land Transfer, Tobacco, Fuel and other taxes;
- Ontario Health Premiums;
- Electricity Payments;

- Stumpage Fees;
- Border Crossing Rights;
- Mining and gravel royalty fees; and
- Federal and Provincial Transfer Payments and Grants.

Other Government infrastructures in the Haldimand Tract requiring analysis:

- All provincial and municipal roads and highways;
- Railway rights of way;
- Hydro and distribution line rights of way and hydro stations;
- Oil and gas line rights of way;
- Telephone and cable line rights of way;
- Water pipelines and water management works;
- Sewage pipelines and sewage management works;
- Land fill sites;
- Parks and recreation works; and
- Armories, post offices, and other federal properties.

NEGOTIATION OR CONFRONTATION: IT'S CANADA'S CHOICE


SENATE SÉNAT

NEGOTIATION OR CONFRONTATION: IT'S CANADA'S CHOICE

Final Report of the Standing Senate Committee on Aboriginal Peoples Special Study on the Federal Specific Claims Process

Oka, Ipperwash, Caledonia.

Blockades, masked warriors, police snipers.

Why?

Canada's failure to address and resolve the legitimate claims of First Nations.

Imagine your new neighbour comes into your backyard and fences off half of it. Then he sells it to someone down the street. This new neighbour tells you he got a good deal but he won't say how much he got. Then, he says that he'll take care of the cash – on your behalf, of course.

Maybe he even spends a little on himself.

You complain. He denies he did anything wrong.

What would you do? Go to the proper authorities? Turns out that the authorities and their agencies work for him.

Sue him? He tells you that none of the lawyers can work for you – he's got every one in town working for him. When he finally lets a lawyer work for you – it turns out that he can afford five of them for every one you can afford.

Finally he says: Okay, I'm willing to discuss it. But first you have to prove I did something wrong. Oh, and I get to be the judge of whether you've proved it. And, if you do prove it, I get to set the rules about how we'll negotiate. I'll decide when we've reached a deal and I'll even get to determine how I'll pay the settlement out to you. Oh, and I hope you're in no rush because this is going to take about twenty or thirty years to settle.

Sounds crazy?

Welcome to the world of Indian Specific Claims. Specific Claims arose when Canada and its agents failed to live up to Canada's responsibilities in connection with First Nations' lands, monies and assets. In some cases Canada didn't give them the land they were promised in the treaties. In some cases, they got the land only to have it taken away again – in a way that violated Canada's own rules. In other cases, federal employees actually stole Indian land, money or other assets.

Until the 1950s, First Nations were prohibited by law from hiring lawyers to pursue these claims – many of which date back 70, 100 or 200 years. Since then impoverished Indian communities have had to fight the federal government in court or else persuade it to acknowledge the claim and negotiate a settlement. Currently, everything is done on Canada's terms and the government is both defendant and judge.

With few resources allocated to find solutions, it can often take twenty or more years from the time a First Nation comes forward with a claim to finally reaching a settlement.

Despite the amazing hurdles, almost 300 claims have been settled. In every case where they have been settled, it has meant an immediate improvement in the lives of First Nations people. It has also strengthened relations between Canada and those First Nations and between those First Nations and the communities that surround them. Settling outstanding claims is not only the just thing to do, it is the smart thing.

Close to 900 claims sit in the backlog. Things are getting worse rather than better. First Nations have been patient – incredibly patient – but their patience is wearing thin.

The choice is clear.

Justice, respect, honour.

Oka, Ipperwash, Caledonia.

Canada is a great nation in the world but Canada will only achieve true greatness when it has fulfilled its legal obligations to First Nations.

Gerry St. Germain, P.C. *(Chair)* Nick G. Sibbeston *(Deputy Chair)*

(Excerpt from *Final Report of the Standing Senate Committee on Aboriginal Peoples - Special Study on the Federal Specific Claims Process - December 2006)*

LAND RIGHTS
A GLOBAL SOLUTION
FOR THE SIX NATIONS OF THE GRAND RIVER

CONTACT INFORMATION

Six Nations Lands & Resources Department
2498 Chiefswood Road, P.O. Box 5000 · Ohsweken, ON N0A 1M0

Ph. : 519-753-0665 · Fax : 519-753-3449 · Web: www.sixnations.ca · Email: info_lands@sixnations.ca