UNIVERSITY AND ACADEMIC

Exclusive Use and Enjoyment: a Study Brief

Occupation or grant; collective or person by person; consult or obey.

Learning outcomes

By the end, a student will be able to	Level (Bloom)
Define exclusive use and enjoyment as the Nation uses the terms	Remember
Explain how s. 109 and s. 52 are said to lock the interest	Understand
Contrast the s. 35 path (occupation, collective, consultation) with the s. 109 path (grant, persons, observance)	Analyze
Analyse the claim that the class is not a collective or body politic	Analyze
Evaluate whether a duty to observe differs from a duty to consult	Evaluate

Overview

The Nation distinguishes two lanes. The band’s lane runs through s. 35: an Aboriginal right proved by occupation, held collectively, subject to consultation and justified infringement, ending in compensation. The Mohawk lane runs through s. 109: a deed of gift in 1784, an interest other than the Province’s, a burden on its title (St Catharines), freed only by a surrender (Seybold) the class never made, upheld by s. 52. It ends in the land locked to the class.

Primary sources

The Haldimand Pledge, 7 April 1779

“I do hereby ratify the same”

The Haldimand Proclamation, 25 October 1784

“which them and their posterity are to enjoy for ever”

The minute of 24 December 1791

“the faith of Government is pledged to the Mohawk chiefs for the two tracts”

Canadian Archives, Series Q, vol. 329, p. 12.

Constitution Act, 1867, s. 109

“subject to any Trusts existing in respect thereof, and to any Interest other than that of the Province in the same”

Constitution Act, 1982, s. 52

“The Constitution of Canada is the supreme law of Canada”

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Three readings

	Canada and the courts	The Six Nations of the Grand River	The Mohawk Nation of Grand River
Source of the right	Aboriginal or treaty right, s. 35	Aboriginal and treaty rights; the Haldimand claim	A Crown grant, s. 109
Who holds it	A collective	The community	Persons and their posterity
The Crown's duty	Consult; justify infringement	Consult and compensate	Observe; no surrender, no loss

Historiography

Writing on Indigenous land in Canada since Calder has run almost wholly through s. 35 and the test of occupation. The s. 109 line, from St Catharines to Seybold, has been read mostly as a federal–provincial question. The Nation joins them: it reads s. 109's second clause as protecting an Indigenous class's Crown-derived interest, outside s. 35 altogether.

Discussion questions

1. What is the difference between occupation and enjoyment as sources of a right?
2. Why does it matter whether the right is held by a collective or by persons?
3. What does the second clause of s. 109 protect, if not a trust?
4. Can the Crown owe a duty to observe without first consulting? What is the difference?
5. What would "locked to the land" mean for a highway, a pipeline or a farm?
6. **Apply.** A provincial agency plans a new road across the Tract. Under each lane, what must it do?

Further reading

In Chicago style (17th ed.), bibliography form.

Mohawk Nation of Grand River. *The Acquired Territory Doctrine*. National Books II. Grand River Territory, Ohsweken: Mohawk's Printer for Grand River, 2026.

Mohawk Nation of Grand River. *Lands and the Tract*. National Books IV. 2026.

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Assignment brief

Choose one prompt

A	In 1,500 words, compare the s. 35 path and the s. 109 path for the Grand River, and assess which better fits the instruments. Quote at least three sources.
B	What does the second clause of s. 109 protect, if not a trust? Answer in an argued essay.
C	Apply. A provincial agency plans a new road across the Tract. Under each lane, what must it do? Write it as an argued essay that applies the readings.

Requirements

- An argument: a thesis stated in the first paragraph and defended throughout.
- At least three primary sources from the list below, quoted precisely and read in their context.
- At least two secondary sources, one of them from outside the Nation’s own books.
- The strongest objection to your thesis, stated fairly, and your answer to it.
- Footnotes and a bibliography in Chicago style (17th ed.).
- 1,500 words, 10 per cent either way, not counting notes and bibliography.

Sources you must use

- The Haldimand Pledge, 7 April 1779
- The Haldimand Proclamation, 25 October 1784
- The minute of 24 December 1791
- Constitution Act, 1867, s. 109
- Constitution Act, 1982, s. 52

A suggested structure

- Introduction: the question, why it matters, and your thesis.
- Context: the instruments and events, briefly, in order.
- Analysis: the sources, read closely, one claim at a time.
- The objection: the best case against you, and your reply.
- Conclusion: what follows, and what remains open.

Timeline

- Week 1: choose a prompt; read the primary sources; write a one-paragraph proposal.
- Week 2: research the secondary sources; draft an outline with your thesis and the objection.
- Week 3: write the full draft; exchange with a peer for written comments.
- Week 4: revise and submit.

Format and submission

Twelve-point type, double-spaced, page numbers, your name and the prompt on the first page. Submit as your instructor directs; this sheet can also be filled in online for the discussion questions.

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Integrity

Your work must be your own. Quote and cite every source. If you use an AI tool for any part of the work, say which and how, in a note at the end.

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For the instructor: standards met

Universal competencies	Identify key facts and claims; Understand perspective and point of view; Analyse and evaluate evidence; Apply: what does this mean for us?. The same everywhere, whatever the curriculum.
Learning outcomes	Five outcomes with Bloom’s verbs, each matched to an activity.
Reconciliation	TRC Calls to Action 62 and 63.
Rights in education	UNDRIP arts. 14 and 15; art. 26 on lands “otherwise used or acquired”.
Primary-source practice	Each instrument and statute quoted and attributed; readings tested against them.
Citation	Chicago Manual of Style, 17th edition.
Balance	Three readings side by side; the brief names its own position.
Time	One seminar of about two hours; the assignment over a week.

Assessment: the assignment

	Excellent	Good	Adequate	Needs work
Use of sources	Three or more primary sources, quoted precisely and read in context	Three, quoted accurately	Fewer, or quoted loosely	Missing or misread
Analysis	Weighs the readings against the documents and shows what turns on the difference	Compares the readings clearly	Describes them	Restates one
Argument	A clear judgment that answers the strongest objection	A clear, supported judgment	Thinly supported	No clear judgment
Writing and citation	Precise; Chicago style throughout	Clear; minor slips	Some unclear passages	Hard to follow

This brief states the Mohawk Nation of Grand River’s position alongside others. It is for study, not legal advice.

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