MOHAWK NATION OF GRAND RIVER

Exclusive Use and Enjoyment

Not occupation, not a collective: an interest held person by person, locked to the land until the class surrenders it, and the class can never be gathered to do so.

The companion to Acquired Territory: two pathways; the lock; the promise of 1779 and to whom; the Declaration; territory in depth

TWO PATHWAYS THROUGH THE SAME COURTROOM

How to read it: *two lanes from the same land. The upper lane is the band's, by section 35; the lower is the Mohawk class's, by sections 109 and 52. Follow each to where it ends.*

The band's lane: Six Nations of the Grand River

s. 35	occupation	a collective	consultation	justification	settlement
an Aboriginal right	proven by the past	the people as one	talks over a claim	the Crown may infringe	money for land

a duty to consult; it ends in compensation

The Mohawk lane: the class and its posterity

1784	s. 109	St Catherine's	Seybold	0 surrenders	s. 52
the deed of gift	Ontario takes subject to it	a burden on the Crown's title	only a surrender frees it	by the class, ever	the supreme law holds it

a duty to obey; it ends in the land locked to the class

Consult, or obey? Section 35 asks the Crown to consult. Sections 109 and 52 ask it to observe: a duty imposed by law (McAteer, 2014). An official who fails it commits, as the Nation holds, a breach of trust, an offence under the Criminal Code, s. 122.

THE LOCK: HOW IT WAS LOCKED

How to read it: *read down each column, then across. Each small lock is a step: set in 1779, closed in 1784, made fast in 1791, constitutionalized by section 109 against the Province in 1867. Beside them, the words of section 109 that hold it.*

1779 the Pledge, ratified
"I do hereby ratify the same": to restore "some of the Mohawks" of Canajoharie, Tikondarago and Aughgugo, at the Crown's expense, "to the state they were in before the wars broke out". Ratification is what usually makes a treaty: the lock was set, waiting for the land.

1784 the Proclamation
The land given by deed of gift, "which them and their posterity are to enjoy for ever". Locked.

1791 the faith pledged, and confirmed
To uphold the honour of the Crown: "the faith of Government is pledged to the Mohawk Chiefs" (Land Board of Niagara, minute of 24 December 1791). Made fast.

1867 s. 109 constitutionalized it
Section 109 of the British North America Act constitutionalized the Proclamation against the Province: its lands came to it subject to an interest other than its own. The words are at the right.

1888 St Catherine's
Shows how the encumbrance exists: the Province holds its lands subject to an interest other than its own, and that interest is unextinguished.

1903 Seybold
The trigger: only a valid surrender, by those who hold the interest, frees the Province's title. None has been made.

For ever the unborn
The interest runs by blood, hereditary: the posterity not yet born hold it already, and no one alive can surrender for them.

Before 1867 the Tract was none of the Province's business: the Union of 1841 never held it. The interest came through as one other than the Province's, or was never in the Union at all.

BNA ACT, 1867, S. 109

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

The lock is the second clause: an interest other than the Province's. Not a trust: a trust would bring the land under the Indian Act.

And that only if it ever passed to the Province at all: the Tract was set apart in 1784 and acquired by the class, never part of the Union, never dedicated to the Province.

THE PROMISE OF 1779, AND TO WHOM

How to read it: *left to right: who promised, what, to whom, and on to whom it runs; beneath, what the promise is not.*

THE PLEDGE

Quebec, 7 April 1779

Frederick Haldimand, under his hand and seal: to restore them, at the Crown's expense, to the state they were in before the war.

Canajoharie
Tikondarago
Aughgugo

"some of the Mohawks" who stood with the Crown

their posterity, the unborn too

NOT A COLLECTIVE **NOT A BODY POLITIC** **NOT A TRUST**

NAMED PERSONS, AND THEIR POSTERITY

Doe d. Jackson v. Wilkes: the Six Nations are no body politic. No trust, so no cestui que trust: no beneficiary holding through another. The promise ran to people, and runs to their children for ever.

The original intention: *restore those who lost their villages for the Crown to where they stood before the war; 1784 kept it.*

THE DECLARATION'S ARTICLES

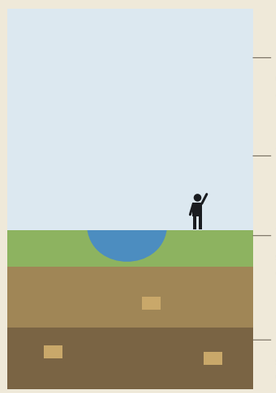
How to read it: *each article by its number; 26, in gold, is the key: it names land a people has* **acquired**, *not only occupied.*

26	lands, territories and resources owned, occupied or otherwise used or acquired; to own and control them, with legal recognition	**8**	no action that dispossesses a people of its lands
25	the bond with lands and waters, for those to come	**27**	a fair process to recognise those rights
28	restitution for lands taken without consent	**32**	consent before projects touch lands, minerals, waters
37	treaties and agreements honoured	**40**	disputes decided by just and fair procedures

Canada has bound itself by statute to align its laws with it: **S.C. 2021, c. 14.**

TERRITORY, IN DEPTH

How to read it: *a block cut from the Tract; acquiring territory is acquiring sovereignty over every layer (Island of Palmas, 1928). A state needs a defined territory (Montevideo Convention, 1933, art. 1).*



The air
Chicago Convention, 1944, art. 1: complete and exclusive sovereignty over the airspace above a territory

The waters
UNCLOS, 1982, art. 2: the waters, the bed beneath and the air above

The land
six miles deep from each side of the river; no territory acquired by force (UN Charter, art. 2(4); Friendly Relations, 1970): this came by deed of gift

Below
s. 109: mines and minerals pass to the Province subject to any interest other than its own

The companion to Acquired Territory and to Book II, The Acquired Territory Doctrine; see also The Four Instruments, The Tract and The Grand.

This poster states the Nation's position. Sources: St Catherine's Milling (1888); Ontario Mining v. Seybold (1903); the Constitution Acts, 1867 s. 109 and 1982 ss. 35, 52; UNDRIP arts. 8, 25–28, 32, 37, 40; S.C. 2021, c. 14; Chicago Convention, 1944; UNCLOS, 1982.

MOHAWK NATION OF GRAND RIVER
SECRETARIAT

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