UNIVERSITY AND ACADEMIC

Outside the Act: a Study Brief

Two registers, three readings, and the instruments behind them.

Learning outcomes

By the end, a student will be able to	Level (Bloom)
Distinguish a Crown grant to a class of persons from an Aboriginal right held by a collective	Analyze
Trace the Grand River lands from the Proclamation of 1784 to a reserve under the Indian Act	Understand
Interpret s. 109 of the Constitution Act, 1867 as naming two different burdens	Apply
Compare the positions of Canada, the Six Nations of the Grand River and the Mohawk Nation of Grand River	Analyze
Judge which reading the primary sources best support, and defend the judgment in writing	Evaluate

Overview

The Indian Act (1876) asks whether a person is an “Indian” and treats reserve land as held by the Crown for a band. The Mohawk Nation of Grand River asks a different question: whether a person descends from “some of the Mohawks” of three villages to whom the Crown pledged its faith in 1779 and granted land in 1784. On its account the two registers overlap but answer to different law. At the Grand River the road divided in 1793: the Six Nations took the Simcoe Patent and came, in time, under the Act; the Mohawk class refused it and stands on the earlier grant.

Primary sources

The Haldimand Pledge, 7 April 1779

“to restore them … to the state they were in before the war”

Ratifying Carleton’s promise to “some of the Mohawks” of Canajoharie, Tikondarago and Aughgugo.

The Haldimand Proclamation, 25 October 1784

“in consideration of the early attachment to his cause manifested by the Mohawk Indians … which them and their posterity are to enjoy for ever”

Order in Council, 9 November 1789 (Dorchester)

“without any diminution”

On the Crown’s duty to carry the promise into execution.

Simcoe’s Proclamation, 6 April 1796

“such registry has not been generally made”

Sending claimants of the distinction U.E. before the magistrates to be ascertained on oath.

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”

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Indian Act, s. 2 (reserve)

“a tract of land, the legal title to which is vested in Her Majesty, that has been set apart … for the use and benefit of a band”

Three readings

	Canada and the courts	The Six Nations of the Grand River	The Mohawk Nation of Grand River
The 1784 grant	To the Mohawk and others of the Six Nations, read with the 1793 Patent	A treaty grant to the Six Nations, six miles from source to mouth; much of it taken wrongly	A deed of gift to a class: “some of the Mohawks” and their posterity
The 1793 Patent	A Crown grant to the Six Nations: title in the Crown (Isaac v. Davey)	Accepted in part; the basis of many claims	Refused by the Mohawk class; it binds those who took it
The land today	A reserve of the Six Nations band	A reserve, and claims to the rest of the Tract	Acquired territory, never ceded, preserved by s. 109 as an “interest other than that of the Province”
Who holds it	The band	The Six Nations as a people	Persons and their descendants, found by the Crown’s own U.E. registry

Historiography

Older histories wrote the Grand River story as a Six Nations story, with Brant at its centre; more recent work attends to council politics, the surrenders, and the Crown’s management of the funds. The Mohawk Nation of Grand River reads the record from the instruments outward: it asks whom each document names, and treats the Pledge, the Proclamation, the Dorchester Order and the 1796 registry as one chain. A student should test each reading against the documents themselves.

Discussion questions

1. Is the Proclamation’s phrase “the Mohawk Nation and such others of the Six Nation Indians” a grant to two groups, or to one? What turns on the answer?

2. Section 109 names “any Trusts” and “any Interest other than that of the Province”. Why does it matter which one an Indigenous interest is called?

3. Can a collective surrender land that was granted to persons and their posterity? What would a valid surrender require?

4. The U.E. registry of 1789 and 1796 identifies people by descent and oath. Is that a better or worse test of membership than community acceptance under R. v. Powley?

5. UNDRIP art. 26 protects lands “traditionally owned, occupied or otherwise used” and lands “otherwise acquired”. Which describes the Grand River lands?

6. **Apply.** Choose a current question on the Grand River, of land, building, water or jurisdiction. Which of the three readings would decide it, and how would the answer change under each?

Further reading

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

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Canada. *Indian Treaties and Surrenders from 1680 to 1890*. 2 vols. Ottawa: Queen’s Printer, 1891.

Johnston, Charles M., ed. *The Valley of the Six Nations: A Collection of Documents on the Indian Lands of the Grand River*. Toronto: Champlain Society, 1964.

Kelsey, Isabel Thompson. *Joseph Brant, 1743–1807: Man of Two Worlds*. Syracuse: Syracuse University Press, 1984.

Smith, Donald B. *Sacred Feathers: The Reverend Peter Jones (Kahkewaquonaby) and the Mississauga Indians*. Toronto: University of Toronto Press, 1987.

Mohawk Nation of Grand River. *The Indian Act and the Loyalist Mohawk Posterity*. National Books III. Grand River Territory, Ohsweken: Mohawk’s Printer for Grand River, 2026.

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Assignment brief

Choose one prompt

A	In 1,500 words, compare how two of the three readings treat the 1793 Patent. Quote at least three primary sources and say which reading the documents best support, and why.
B	Assess the claim that, because the class's interest is not a trust, it falls outside s. 91(24) and the Indian Act altogether. Answer in an argued essay.
C	Choose one of the three ends compared on the poster and argue whether it could have been avoided. 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
- Order in Council, 9 November 1789 (Dorchester)
- Simcoe's Proclamation, 6 April 1796
- Constitution Act, 1867, s. 109
- Indian Act, s. 2 (reserve)

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.

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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.

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 written with Bloom's verbs, from understanding to evaluation, each matched to an activity: the readings table (compare), the sources (interpret), the discussion (analyze), the assignment (evaluate).
Reconciliation	Truth and Reconciliation Commission, Calls to Action 62 and 63: age-appropriate curriculum on treaties and Aboriginal peoples' historical and contemporary contributions, and building understanding, empathy and mutual respect.
Rights in education	UN Declaration on the Rights of Indigenous Peoples, art. 15: the dignity and diversity of Indigenous cultures, histories and aspirations appropriately reflected in education; art. 14 on education.
Primary-source practice	Each source is quoted, dated and attributed; students test the three readings against the documents, not against each other.
Citation	Chicago Manual of Style, 17th edition, bibliography form.
Universal Design for Learning	More than one way in (sources, table, discussion) and more than one way to respond (written assignment, seminar discussion).
Balance	Three readings set side by side; the brief names its own position.
Time	One seminar of about two hours, with the assignment set as a week's work.

Assessment: the assignment

	Excellent	Good	Adequate	Needs work
Use of sources	Three or more primary sources, quoted precisely and read in context	Three sources, quoted accurately	Fewer sources, or quoted loosely	Sources missing or misread
Analysis	Weighs both readings against the documents and explains what turns on the difference	Compares the readings clearly	Describes the readings	Restates one reading
Argument	A clear, defended judgment that answers objections	A clear judgment with support	A judgment with thin support	No clear judgment
Writing and citation	Precise prose; Chicago style throughout	Clear prose; minor citation slips	Some unclear passages; inconsistent citation	Hard to follow; citations missing

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

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