LAW SCHOOL

The Grand: a Case Brief

Does a grant from each side of the river carry the river and its bed?

The issue

Does the Proclamation of 1784, granting six miles “from each side of the river … to the head”, include the bed and waters of the Grand River; and how does Ontario’s statutory presumption about the beds of navigable waters apply to a grant made before it?

The instruments

Instrument	Date	What it does
Haldimand Proclamation	25 Oct 1784	Six miles from each side, lake to head
Jones’s plan	c. 1801	“continues up the main branch to its source”
Beds of Navigable Waters Act	RSO 1990, c B.4	Presumes beds of navigable waters not granted unless expressly
Canadian Heritage River	1994	The Grand designated

The statutes

Beds of Navigable Waters Act, RSO 1990, c B.4, s 1.

Canadian Navigable Waters Act, RSC 1985, c N-22.

Constitution Act, 1867 (UK), 30 & 31 Vict, c 3, s 109.

The cases

R v Nikal, [1996] 1 SCR 1013

The bed of a river running through a reserve was held not to be part of the reserve; the common law presumption of ownership to the middle of the stream did not apply in the circumstances.

St Catharines Milling and Lumber Co v R, (1888), 14 App Cas 46 (PC)

The Province takes subject to an interest other than its own.

R v Marshall, [1999] 3 SCR 456

Historical instruments are read in their context.

The arguments

	For the Crown	For the class
The words	Land “from each side”: the river is the boundary, not the grant	The river is the axis of the grant; land on both sides of it carries it
The statute	The bed is presumed the Crown’s (Beds of Navigable Waters Act)	A provincial presumption cannot cut down a grant preserved by s 109
Nikal	A riverbed through a reserve is not part of it	Nikal turned on its own facts and documents; the grant here runs “to the head”
Context	A grant of land for settlement	A grant to restore a riverside people (Marshall)

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Weak points to test

For the class: Nikal; the usual reading of “from each side” as a boundary. For the Crown: the statute post-dates the grant; s 109; the grant’s purpose, a river people restored to a river.

Briefing note

A provincial ministry receives an application to take water from the Grand for a new subdivision. In 150 to 200 words, advise the ministry: whether the class’s interest bears on the water and the bed, and what it should do before deciding. Write it as a briefing note: purpose, background, considerations, recommendation.

Moot problem

Members of the Register seek a declaration that the 1784 grant includes the bed and waters of the Grand River, and that water-taking permits on the Tract require the class’s licence. The Crown relies on the Beds of Navigable Waters Act and Nikal.

For the applicants: the grant’s words and purpose, Jones’s plan, s 109. **For the Crown:** the statute, Nikal, and the river as a boundary. **For both:** how a later statute applies to an earlier grant.

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A worked outline: IRAC

Step	For the applicants
Issue	Does the grant include the bed and waters of the Grand?
Rule	The Proclamation read in context (Marshall); s 109; the Beds of Navigable Waters Act and its limits.
Application	The grant runs from each side “to the head”: the river is its axis; a later provincial presumption cannot cut down an interest preserved by s 109.
Conclusion	A declaration that the grant includes the river and its bed.

The Crown’s outline runs the same four steps the other way. Students draft it themselves.

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Written assignment: memorandum of argument

The task

Write the memorandum of argument for one side of the moot on this sheet: the applicants or the Crown, as your instructor assigns. Then argue it.

Requirements

- 2,500 words, not counting the list of authorities.
- Every authority cited in McGill Guide form, with pinpoints.
- At least six authorities, including at least two not on this sheet.
- Meet the other side’s best argument in Part III, not just your own case.
- Only facts set out in the moot problem; no new facts.

Structure

- Part I, the facts: a neutral statement, no more than two pages.
- Part II, the issues: each as a single question.
- Part III, the law and argument: issue by issue, the rule, its application, and the other side’s answer met.
- Part IV, the order sought: precisely worded.
- Part V, the list of authorities: statutes, then cases, then secondary sources.

Timeline

- Week 1: research; a one-page outline of your issues and authorities.
- Week 2: the full memorandum, exchanged with the other side.
- Week 3: oral argument.

Oral argument

Fifteen minutes a side, two minutes’ reply for the applicant. Expect questions from the bench from the first minute; the marking guide on the instructor’s page applies.

Integrity

Your memorandum must be your own. If you use an AI tool for research or drafting, verify every authority against the reports and say so in a note; an invented citation fails the assignment.

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The Grand: a Case Brief

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.
TRC Call to Action 28	Property and water law, and the history of Aboriginal–Crown relations.
National Requirement	Problem-solving, legal research, and oral and written communication.
Citation	The McGill Guide; pinpoints left for students to supply.
Method	IRAC; a briefing note to a ministry; a moot on a declaration.
Balance	The arguments both ways and their weak points; the brief names its own position.
Time	One class of 90 minutes; the moot as a separate session.

Marking guide: the moot

	Outstanding	Strong	Competent	Weak
Law	Every authority on point, accurately stated and pinpointed	Main authorities correct	Some missed or loose	Wrong or absent
Analysis	Applies the law to the facts and meets the other side's best point	Applies the law clearly	Applies it in part	States law without applying it
Structure	A clear road map, followed throughout	Clear and mostly followed	Some drift	Hard to follow
Advocacy	Answers the bench directly and returns to the theory	Answers well	Answers with difficulty	Avoids the questions

This brief sets out the Mohawk Nation of Grand River's position beside others, for study and argument. The case summaries are for teaching: read the reports. It is not legal advice.

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