LAW SCHOOL

The Three Villages: a Case Brief

Who is the grantee, and how a descendant proves it.

The issue

Who is the grantee of the Proclamation of 1784: the Six Nations as one collective, or the Mohawks of three villages named in the Pledge of 1779 and their posterity, with others admitted under them? And by what evidence may a descendant today prove a line to one of those villages?

The instruments

Instrument	Date	What it does
Carleton’s promise	1775	Losses in the war to be replaced
Haldimand Pledge	7 Apr 1779	Names the Mohawks of Canajoharie, Tikondarago and Aughuago
Haldimand Proclamation	25 Oct 1784	“the said Mohawk Nation and such others of the Six Nation Indians”
Brant’s census	1785	548 Mohawks among 1,843
Grand River Council	1805	The grant first meant for those who lost their lands, then extended

The statutes

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

Indian Act, RSC 1985, c I-5, s 2 (“band”).

Evidence Act, RSO 1990, c E.23.

The cases

R v Marshall, [1999] 3 SCR 456

Historical instruments with Indigenous peoples are read in their context, with extrinsic evidence of what was meant, not by their words alone.

Delgamuukw v British Columbia, [1997] 3 SCR 1010

Oral histories are admissible and must be placed on an equal footing with documentary evidence.

Mitchell v MNR, 2001 SCC 33

Oral history is admissible but must meet the ordinary tests of usefulness and reasonable reliability.

R v Powley, 2003 SCC 43

Membership in a rights-bearing community is shown by self-identification, ancestral connection and community acceptance.

Isaac v Davey, (1974), 5 OR (2d) 610 (CA)

The Grand River lands read as a reserve and the Six Nations as a band.

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The arguments

	For the Crown	For the class
The grantee	One people: the Mohawk and others, later the Six Nations band	The Mohawks named in 1779; others came in under them (the Council, 1805)
Reading the grant	Its words name a nation and others alike	Read in context (Marshall): the Pledge defines whom the grant keeps faith with
Membership	Band or community (Powley)	Descent from a named village, by either sex, proved by record and oath
Proof	Old records thin; community acceptance required	Claims, rolls, census, baptisms and oral history together (Delgamuukw, Mitchell)

Weak points to test

For the class: the Proclamation's own "such others"; the long practice of one community under one name. For the Crown: why the Pledge names villages at all; the Council's own recollection of 1805; whether Powley's community test can apply to a grant to persons.

Briefing note

A registrar of the Nation receives an application tracing a line to Tikondarago through four generations, two of them through women, with one gap filled by a family's oral account. In 150 to 200 words, advise the registrar: what the evidence must show, how to weigh the oral account, what to record, and when to refer the line for an oath. Write it as a briefing note: purpose, background, considerations, recommendation.

Moot problem

The applicant seeks a declaration that she is of the posterity of the Mohawks of Canajoharie named in the Pledge of 1779, and so of the class to whom the 1784 grant was made. The Crown says the grant was to the Six Nations as one people, and that membership is a matter for that community.

For the applicant: the Pledge, the Proclamation read in context, the 1805 recollection, and her evidence of descent. **For the Crown:** the grant's words, the long practice, and Powley. **For both:** the standard of proof for a line two centuries long, and the weight of oral history.

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A worked outline: IRAC

Step	For the applicant
Issue	Is the applicant of the class to whom the 1784 grant was made?
Rule	The Pledge and the Proclamation read in context (Marshall); the evidence of descent, documentary and oral (Delgamuukw, Mitchell).
Application	Her line is proved to Canajoharie by record and account; the Pledge names that village; the grant kept faith with it.
Conclusion	A declaration that she is of the posterity of the class.

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 applicant 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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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	The history of Aboriginal–Crown relations, treaty and grant interpretation, and evidence of Indigenous history.
National Requirement	Problem-solving, legal research, and oral and written communication, within evidence and constitutional law.
Citation	The McGill Guide; pinpoints left for students to supply.
Method	IRAC; a briefing note to a registrar; 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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