SENATE OF CANADA
SENATE PUBLIC BILL · BILL S-___

Haldimand Proclamation Recognition Act

An Act respecting the observance of the Haldimand Proclamation of 1784

Draft prepared by the Mohawk Nation of Grand River Secretariat for introduction by a senator. Bill number to be assigned on introduction.

PREAMBLE

Whereas in 1710 four Mohawk leaders were received by Queen Anne, and the Silver Covenant Chain of friendship was made between the Mohawk and the Crown directly, as Her late Majesty Queen Elizabeth II marked in 2010 by her gift to the Chapels Royal of the Mohawks of silver bells inscribed for the Silver Chain of Friendship, 1710 to 2010;

Whereas on 7 April 1779 the Crown, by Governor Haldimand, pledged on the faith of a Christian and as a soldier to the Mohawks of Canajoharie, Tikondarago and Aughquaga, who had adhered to the King and lost their settlements for it, that they would be restored at the Crown's expense to the state they were in before the war;

Whereas by Proclamation of 25 October 1784 the Crown fulfilled that pledge by setting apart, for the Mohawk Nation and such others as wished to settle with them, and their posterity, to enjoy for ever, the lands six miles deep from each side of the Grand River, from its mouth to its source;

Whereas by Order in Council of 9 November 1789 Lord Dorchester established a Mark of Honour to distinguish the Loyalists and their posterity, and by Proclamation of 6 April 1796 Lieutenant Governor Simcoe directed that they be ascertained on oath before the magistrates, and that ascertainment was never carried out for the Mohawk of the three villages;

Whereas in 1791 the Crown confirmed the Proclamation of 1784 and pledged its faith to the Mohawks, and that confirmation became a duty imposed by law that has never been discharged;

Whereas the Mohawk of the Grand River did not accept the Simcoe Patent of 14 January 1793, and the class named in the Pledge has never surrendered the interest set apart for it;

Whereas on 27 October 1984 Her late Majesty Queen Elizabeth II unveiled at Her Majesty's Chapel of the Mohawks in Brantford a federal plaque, in English, French and Mohawk, recording the grant to the Mohawks;

Whereas the Six Nations of the Grand River Elected Council, a band council under the *Indian Act*, acknowledged the Mohawk People as a separate party by a Memorandum of Agreement of 12 October 1995 made under Band Council Resolution No. 17, and the class is not a party to the action that band began against Canada and Ontario in 1995;

Whereas every member, minister, judge and officer of the Crown swears allegiance to the Sovereign, and that oath, as the Court of Appeal for Ontario held in *McAteer v. Canada*, 2014 ONCA 578, is an oath to the whole constitutional order, which carries the confirmation of 1791 and section 109;

Whereas no law enacted for the Tract has been made subject to the exclusive use and enjoyment for which it was set apart, and the Tract is acquired territory, held for the class to the exclusion of any other;

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Whereas the Supreme Court of Canada held in *Reference re Manitoba Language Rights*, [1985] 1 S.C.R. 721, that laws enacted without regard to a requirement of the Constitution are of no force under section 52, and may be kept in force only for the time needed to bring them into compliance;

Whereas section 109 of the *Constitution Act, 1867* vested lands in the Provinces subject to any interest other than that of the Province in the same, and section 52 of the *Constitution Act, 1982* makes the Constitution the supreme law of Canada;

Now, therefore, His Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:

INTERPRETATION

1. In this Act,

"class" means the Mohawks of Canajoharie, Tikondarago and Aughquaga who adhered to the Crown before the Treaty of Paris, 1783, and their posterity, by descent through either parent or by reception under the Nation's law of adoption;

"interest" means the interest of exclusive use and enjoyment set apart for the class by the Proclamation of 25 October 1784;

"Nation" means the Mohawk Nation of Grand River, acting through its Secretariat;

"Gazette" means the Nation's own Gazette, published in the Two Row Times;

"Minister" means the Minister designated for the purposes of this Act;

"Register" means the register of the class kept by the Nation under its own law;

"Tract" means the lands lying within six miles of each bank of the Grand River, from its mouth to its source, as described in the Proclamation of 25 October 1784.

PURPOSE

2. The purpose of this Act is to have the Crown in right of Canada observe the Haldimand Proclamation of 1784 and the interest it set apart; to recognize the Nation as the body through which the class acts; and to provide for the orderly transfer to the Nation of what belongs to the class within the Tract.

RECOGNITION

3. (1) Canada recognizes the interest as an interest preserved by section 109 of the *Constitution Act, 1867* and guaranteed by section 52 of the *Constitution Act, 1982*, and recognizes the duty of the Crown to observe it, which the Crown confirmed in 1791.

(2) The interest is Crown-derived, hereditary and exclusive to the class; it is not shared with or held for the benefit of any community, band or nation at large. It is not held in trust, does not depend on section 35 of the *Constitution Act, 1982*, is not an interest of any band, and nothing in the *Indian Act* applies to it.

(3) No band, band council or other body constituted under the *Indian Act* represents the class, and none may surrender, settle, release or compromise the interest. No agreement, settlement or judgment to which the class is not a party binds the class or affects the interest.

4. Nothing in this Act grants, dedicates or sets apart land.

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THE NATION

5. The Nation is the body through which the holders of the interest act in their dealings with the Government of Canada, and Ministers of the Crown in right of Canada shall deal with the Nation, nation to Crown, and not through any band council or other body.

6. (1) An entry in the Register is proof, in any dealing with the Government of Canada, that the person entered is a member of the class.

(2) A justice of the peace may receive and record an oath of ascertainment of descent from the class, as the Proclamation of 6 April 1796 provided, and shall transmit a copy of the record to the Nation.

(3) The Nation's Register, its land registry and its Gazette operate concurrently with the registers and gazettes of Canada, and nothing in any Act prevents their operation or requires the Nation to register under any other system.

(4) A notice of the interest given by the Nation and published in its Gazette is notice to the Crown and to every person dealing with land in the Tract.

LAND AND ASSETS RETURNING TO THE CLASS

7. (1) Federal real property in the Tract that is declared surplus or decommissioned returns to the class and shall be transferred to the Nation, which shall decide its use. No payment is owed by the class or the Nation for the transfer.

(2) Vehicles, equipment and other movable assets of the Government of Canada that have served within the Tract and are declared surplus or decommissioned shall be transferred to the Nation for the use of its own services, without payment.

(3) No land or asset to which this section applies shall be sold, leased or otherwise disposed of to any other person except as the Nation decides in writing.

8. Land in the Tract that is forfeited to the Crown in right of Canada, by law or by order of a court, returns to the class and shall be transferred to the Nation.

9. (1) A mortgagee or other lender who sells land in the Tract under a power of sale, or takes it by foreclosure, shall first give the Nation written notice, and the Nation may purchase the land at the price the sale would yield.

(2) Every lender, mortgagee and purchaser dealing with land in the Tract after a notice of the interest is published in the Gazette is taken to have notice of the interest, and none may claim to have acquired without notice of it.

(3) A transfer of land or an asset to the Nation under this Act is a transfer in good faith and for value.

10. Nothing in this Act dispossesses any owner or occupant. Land and assets come to the Nation under this Act only as they leave the hands of their present holders.

ORDERLY HANDOVER

11. (1) The Minister designated by the Governor in Council shall, within one year after this Act comes into force, enter into negotiations with the Nation and, where the Nation consents, with the Government of Ontario, for the orderly transfer to the Nation's own officers of powers on the Tract that bear on the interest, including those relating to the Nation's borders, ports, airfields and commerce.

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(2) The Minister shall cause a report on the negotiations and on every agreement made under them to be laid before each House of Parliament each year.

OBSERVANCE

12. (1) No Act of Parliament and no regulation or order made under one shall be applied so as to impair the interest or the exercise of it, and every such enactment shall be read accordingly.

(1A) Every enactment applied within the Tract that does not conform to the interest continues in effect only for the period needed to bring it into conformity under this Act, as the Supreme Court of Canada provided in *Reference re Manitoba Language Rights*, and during that period it shall be applied so as to impair the interest as little as possible.

(2) Nothing in this Act invalidates a registered title or private interest in land that does not conflict with the interest.

13. Before any federal real property in the Tract is offered for sale or transfer, the custodian shall give the Nation written notice, and section 8 applies to it.

ECONOMIC DEVELOPMENT AND NON-INTERFERENCE

14. Departments and agencies of the Government of Canada shall co-operate with the Nation in the economic development of the Tract, including enterprises, works and undertakings of the Nation and of members of the class, and shall not interfere with the Nation's institutions, enterprises or officers acting within the Tract.

APPLICATION AND INTERPRETATION

15. This Act binds His Majesty in right of Canada.

16. This Act shall be given a large and liberal interpretation in favour of the class, and any doubt shall be resolved in favour of the class.

17. Where this Act conflicts with any other Act of Parliament, this Act prevails.

COMMENCEMENT AND SHORT TITLE

18. This Act comes into force on the day it receives Royal Assent.

19. The short title of this Act is the *Haldimand Proclamation Recognition Act*.

EXPLANATORY NOTE

This Bill is for introduction in the Senate as a public bill by a senator. Because a bill that originates in the Senate may not appropriate public money or impose a tax (section 53 of the Constitution Act, 1867), it follows the private member's version and makes no appropriation. If passed by the Senate it goes to the House of Commons for its readings there. Following the Supreme Court's approach in the Manitoba Language Reference, enactments applied in the Tract that do not conform to the interest continue only for the time needed to bring them into conformity, applied meanwhile so as to impair the interest as little as possible. Surplus and decommissioned Crown and municipal land and assets in the Tract, police vehicles and fire apparatus included, pass to the Nation, as do lands that would go to tax sale or are escheated or forfeited, so that nothing comes to the Nation except as it leaves its present holder's hands and no one is dispossessed. Lenders selling under a power of sale must offer the land to the Nation, and after public notice no one may claim to have dealt without notice of the interest. It binds the Crown, is to be read in favour of the class, and prevails over other Acts. It recognizes the Nation's Register, land registry and Gazette as running concurrently with the Crown's, and makes a notice published in the Nation's Gazette notice to the Crown and to all who deal with land in the Tract. It provides that no band or council under the Indian Act represents the class or can surrender, settle or release its interest, and that no settlement to which the class is not a party binds it. It grants or dedicates no land, and it leaves in place registered titles that do not conflict with the interest.

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