



# MOHAWKS OF THE BAY OF QUINTE

## KENHTEKE KANYEN'KEHÁ:KA

TYENDINAGA MOHAWK COUNCIL,  
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### CLARIFICATIONS ON MISCONCEPTIONS REGARDING PARTIAL SETTLEMENT AGREEMENT

Chief and Council understand there are some misconceptions among MBQ members regarding the proposed Culbertson Tract Partial Settlement Agreement. This post is intended to clarify those misconceptions, which are in bold and then corrected below.

1. **The MBQ Band Council will receive the compensation.**

None of the money is going to the Band Council. A small portion is going to a trust to handle the acquisition of the land and remainder is going to an interest-bearing account at BMO. These remaining funds will be held while membership consultation takes place to decide what to do with it. Options may include but are not limited to education bursaries, housing subsidies, infrastructural improvements, capital acquisitions, creation of a trust, or a per capita distribution.

2. **If members vote in favour of the agreement, the members of the MBQ will have authorized the surrender of the 'Fee Simple title' of these lands to the Canadian government via a third party Trustee.**

A successful vote will not have the members surrendering anything. Rather, the existing fee simple title will be extinguished, and the land will be confirmed as reserve. This land will be administered and controlled in the same manner as the rest of the reserve: as land reserved under the Simcoe Deed.

3. **The voting threshold is 12.5% + 1 of the registered members.**

In fact, the voting threshold is 25% + 1 of the registered members of voting age need to vote "YES" and the "YES" votes need to be the majority of the votes. This is a standard threshold in specific claim settlements when no land is being surrendered.

- 4. The MBQ Band Council is attempting to trick the members to relinquish everyone's share of the settlement monies to the Indian Act Band Council, rather than following the customary act of equally dividing the proceeds of collective wealth among the heirs of the Simcoe Deed.**

Per capita distributions are sometimes used to divide settlement funds among a First Nation's members, though not always. Loss of use compensation represents a First Nation's past, collective losses and are not necessarily paid to the generation alive when the settlement is made; it is also for future generations. In this case, Chief and Council decided to have the money held in an account while membership consultation takes place to decide what to do with it. Options may include but are not limited to education bursaries, housing subsidies, infrastructural improvements, capital acquisitions, creation of a trust, or a per capita distribution.

- 5. Canada's position in this partial settlement is that the lands are no longer subject to the Simcoe Deed or form part of the Tyendinaga Mohawk Territory.**

This is an accurate representation of Canada's position. Canada believes that, since it unilaterally converted the reserve to fee simple land with a patent in 1837, its reserve status was extinguished, and it needs to be added to the existing reserve to finalize the settlement. MBQ's position is that, since the patent was issued without any surrender, it was in breach of the Simcoe Deed and the land never ceased being reserve. Successful ratification of this agreement does not mean Canada's position will affect the lands, the balance of the Culbertson Tract negotiations, or any of MBQ's future land claims.

- 6. The terms of the settlement attempt to protect Canada from the legal consequences of breaking the Simcoe Deed, as the MBQ Band Council agrees to indemnify and forever save Canada harmless from any proceeding brought by any Person.**

Canada is paying out compensation specifically because it acknowledged breaching the Simcoe Deed. This partial settlement was negotiated to compensate MBQ for that breach.

Indemnity clauses are standard in every settlement agreement. The paying party wants to be assured that it only has to make one payout for its one breach of an aggrieved party's rights. A party cannot make payouts for the same breach more than once; this would mean it would overpay. If a third party speaks up at a later date to say it has rights to the land and is owed a portion of the compensation, the paying party is not liable to pay twice. Instead, the third party is owed a portion of what was already paid.

In this case, Canada will pay compensation to MBQ. If another First Nation successfully claims rights in the land, MBQ may have to pay a portion of its compensation to that other First Nation. Canada is not liable to pay twice. But this is unlikely to ever happen. Canada has consulted with other potentially interested First Nations and all have indicated they have no interest in the land.

- 7. The Bay of Quinte Mohawks living at Six Nations, the Walker Mohawks, Lower Mohawks, Upper Mohawks, and all the other Mohawks who lost their lands in the war against the Americans, have a direct interest in the lands at the Bay of Quinte. This includes the Confederacy Chiefs Council, the Rotiskenrakehte or warriors society, the various clan councils of the Mohawks who continue to practice their customary government and still adhere to their clan system, and potentially others of the various Six Nations as well as the Lenape who were allies of the Mohawks in the American revolution.**

The Simcoe Deed does refer to the Six Nations in granting the Mohawk Tract. However, the Order-in-Council made on the same date as the Simcoe Deed specifies that the Tract was reserved for the Mohawk Indians settled on the Bay of Quinte.

- 8. In violation of the Simcoe Deed, the vote will be held online without any public consultation or in-person meetings.**

The settlement agreement was negotiated with Canada by Chief and Council pursuant to its mandate from the members. Since Chief and Council do not have authority to accept the settlement agreement, it cannot be finalized until it has been successfully voted on by the MBQ membership.

Zoom meetings are held to inform members of the proposed partial settlement and to answer any questions. Unfortunately, in-person meetings were not possible due to COVID-19 restrictions.

This settlement process is not in violation of the Simcoe Deed. The Simcoe Deed requires a public meeting of the "Chiefs, Warriors, Women and People" if land is being surrendered to Canada. This partial settlement is not surrendering any land. Rather, it is extinguishing the existing fee simple title and confirming the land as reserve.

9. **By trying to ensure a “YES” vote on the partial settlement, MBQ Band Council, legal counsel, and OneFeather are engaged in fraud and collusion.**

This partial settlement was negotiated by Chief and Council, with the advice of legal counsel, for over 17 years. Canada’s offer was reviewed and determined to be reasonable. Since Chief and Council, with legal counsel, negotiated and support the agreement, it is entirely acceptable for it to advocate for a positive vote as any political body would.

The decision on whether to accept the proposed settlement remains with the members.

OneFeather remains an independent party to administer the vote and distribute information materials. OneFeather cannot, however, influence the vote and any evidence to that effect would negate the vote.

If the vote fails, it is also entirely appropriate to return to the negotiation table to determine how to secure a successful vote. Again, the decision on whether to accept the proposed settlement remains with the members.

**\*\*\*\* REMINDER \*\*\*\***

**IN PERSON VOTING**

**AT**

**QUINTE MOHAWK SCHOOL**

**1624 YORK ROAD**

**SATURDAY, OCTOBER 16, 2021**

**9:00 AM – 8:00 PM**