



## Isaac vs Davey Summary

The factual underpinning of the case started in the summer of 1969 when the Confederacy Chiefs and their supporters took control of the old Council Building. The Elected Council of the day brought an injunction proceeding in the Supreme Court of Ontario at Brantford restraining them from occupying the Council House.

Burton Kellock, Q.C. was retained by the Elected Council to prosecute the injunction. The Confederacy Chief's lawyers argued that the Elected Council did not have a right to possess the building because the Indian Act did not apply to Six Nations. They argued that Six Nations was not an Indian Reserve because the Haldimand Proclamation or Deed gave the land free and clear to the Mohawks and others of the Six Nations outright and the Crown did not have underlying title in accordance with the Indian Act. Justice Osler agreed with the Confederacy Chief's and said that because it was an outright grant, the Crown did not have underlying title and the Indian Act did not apply. Therefore the Order-in-Council of 1924 putting the elected system in place was invalid and there was no basis for an injunction. The Elected Council appealed the decision.

The nature of Indian Title became an issue at the Ontario Court of Appeal. Whether the Royal Proclamation of 1763 applied to the Haldimand Grant was to be determined.

The Ontario Court of Appeal said that the Royal Proclamation did apply to the lands that remained from the Haldimand Proclamation and that the Crown had underlying title in accordance with the Royal Proclamation and the Indians merely had a right to possess their traditional lands until they surrendered it to the Crown. Therefore the Council was entitled to an injunction to restrain the Chiefs and their supporters. The Chiefs appealed the decision.

The Supreme Court of Canada in its decision in 1977 ruled in favour of the Elected Council. The Court said that it did not need to decide the question of Indian title at Six Nations but they would not make a determination as to whether the reasoning of the Ontario Court of Appeal was correct. Instead it said that the Indian Act applied because the Crown did hold monies in trust for Six Nations, which was one of the definitions of a "Band" in the Act. Therefore the Order-in-Council of 1924 was valid and the elected system was properly put in place. Since the Supreme Court did not overrule the decision of the Ontario Court of Appeal it means that the Crown has underlying title to the Six Nations Territory.

Justice Martland agreed with others of the Court but also said that if it was necessary to rule on the title issue then in his opinion Six Nations meets the definition of a "Special Reserve" within the meaning of section 36 of the Indian Act and an injunction is still appropriate.

The result is that the Elected Council won the case.