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Bob Aaron

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Toronto subject to native land claim

Indians say 1787 land surrender was invalid

Government will bail us out with our own money

So you think you have good title to your home in Toronto?

Think again.

When I wrote about the legal implications of the Caledonia native land dispute in this column two weeks ago, I wondered in print "what would have happened if the Haldimand grant had been for an area of 10 km on each side of Toronto's Don River instead of the Grand River, and if a group of protestors blockaded the Don Valley Parkway in violation of a court order?"

It turns out that a huge portion of the City of Toronto is in fact subject to a valid native land claim, which affects the title to millions of Toronto properties. I was reminded of this claim when I received an email from Stanley Dantowitz, a law clerk at Borden Ladner Gervais LLP in Toronto.

"An aboriginal land claim in the present city of Toronto (and to the north and east of it) is not as remote a possibility as some may believe," Dantowitz wrote.

He referred me to the website of the federal Indian Claims Commission (<http://www.indianclaims.ca/>) where I obtained and read the 42-page report on the Toronto Purchase Claim made by the Mississaugas of the New Credit First Nation. (http://www.indianclaims.ca/download/pdfreports/PDFClaimsReports/English/Mississauga_English.pdf)

The report was issued by commissioner Daniel J. Bellegarde in June 2003 and makes fascinating reading.

In the 1780s, the British colonial authorities in this area became interested in a tract of land on the north shore of Lake Ontario, which included the "Carrying Place" of Toronto. A meeting was eventually held in 1787 between Sir John Johnson, the chief superintendent of Indian affairs, and three native chiefs.

The parties concluded the meeting by signing an Indian surrender of lands "on the north side of Lake Ontario." The surrender document was essentially a blank signed deed of Indian land in favour of the Crown, and the intention was that the dimensions would be inserted in the deed when the land was later surveyed.

A year later, British surveyors arrived and ran into a dispute with a local Mississauga chief who claimed that the natives had not sold any land east of the Don River.

The British officials then began to have serious doubts about the validity of the 1787 Toronto Purchase surrender, and in 1805 an attempt was made to rectify it.

That year, a new Toronto Purchase agreement was signed. Although it was portrayed as a simple affirmation of the 1787 transaction, the record shows that the boundaries were much larger than those intended by the British to be in the earlier deed.

The Indian chiefs who signed it received the magnificent sum of 10 shillings in total for their co-operation in signing over 392 square miles of land.

In 1998, the Mississaugas of New Credit First Nation filed a land claim alleging that the government in 1805 failed to inform them that the 1787 surrender was invalid.

They also assert that the second surrender in 1805, intended by the government to ratify the 1787 purchase and validate the surrender, included more land than was originally agreed to by the First Nation in the 1787 surrender.

The 1805 surrender, for example, included the Toronto Islands, which the First Nation claims were explicitly excluded from the 1787 surrender. The First Nation also claims that they never accepted the boundaries laid out under the 1805 surrender.

In 2002, Robert Nault, then minister of Indian Affairs, informed the chief of the Mississaugas of the New Credit First Nation that the Canadian government accepted that the circumstances surrounding the 1805 surrender constituted a breach of a lawful obligation of the government.

The basis of the decision was that the agreement between the Indians and the Crown had not been fulfilled.

Since 2003, negotiators have been trying to agree on what constitutes fair cash compensation for the losses to the First Nation as a result of the 1805 Toronto Purchase.

A government statement at the time announced that the current ownership of that land is not in question and is not at issue in the claim.

Fortunately, no one is blockading the Don Valley Parkway over the 1805 land surrender. Court orders are not being violated and everyone is behaving civilly. Ultimately, it seems that blame will fall where it should — at the hands of the government.

Too bad the Caledonia natives couldn't settle their land claim in the same way.

Now it seems that those of us who own property in Toronto don't really have good title to it, but the government is going to bail us out with our own money.

I wonder how much all of Toronto is worth, from the Don River to the Etobicoke Creek? Maybe the British should pay the claim, since they created the problem in the first place.

Bob Aaron is a Toronto real estate lawyer. He can be reached by email at bob@aaron.ca, phone 416-364-9366 or fax 416-364-3818. Visit the column archives at <http://www.aaron.ca/>.



