

By E-mail and Courier

Todd Weiler
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January 16, 2006

Messer's Nariman, Anaya & Crook
c/o Mr. Ucheora Onwuamaegbu
International Centre for Settlement of Investment Disputes
World Bank
1818 H Street, N.W.
Washington D.C.
20433

Dear Members of the Tribunal:

**Re: Statement of Clarification re: Evidence of Arthur Montour's Nationality
Grand River Enterprises et al v. USA (NAFTA/UNCITRAL Proceeding)**

On October 26, 2005, this Tribunal directed the parties to identify the evidence upon which they will rely in respect of proving Arthur Montour Jr.'s nationality. It also clarified that the question of Arthur Montour's nationality would not be decided at the preliminary hearing.

At pages 51-52 of its Memorial, the Respondent has put forward legal arguments in support of its contention that Arthur Montour has not provided sufficient evidence to demonstrate his Canadian nationality. The Respondent's arguments include an inference that Arthur Montour Jr.'s current country of residency may affect his nationality under the NAFTA.¹

¹ At paragraph 33 of its Award on Jurisdiction, the Tribunal in *Feldman v. Mexico*, found at Tab 1 of the Claimants' Book of Authorities, addressed this very issue, stating: "... the Tribunal deems it appropriate to recall that, under general international law, citizenship rather than residence or any other geographic affiliation is the main connecting factor between a state and an individual. Residence, even permanent or otherwise authorised or officially certified residence, only fulfils a subsidiary function which, as a matter of principle, does not amount to, or compete with, citizenship. In particular, in matters of standing in international adjudication or arbitration or other form of diplomatic protection, citizenship rather than residence is considered to deliver, subject to specific rules, the relevant connection." That case involved a US citizen with a claim against Mexico who had maintained residence in Mexico for nearly two decades, having fathered four children there.

The Claimants have already provided a letter from the Membership Registrar of the Mohawk Council of Kahnawáke attesting to the birth of Arthur Montour in Montreal, Quebec, on June 8, 1972. The Mohawk Council of Kahnawáke is the governing body for the Kahnawáke Mohawk Territory, which is one of the seven communities which comprise the larger Mohawk Nation.² The Membership Registrar is the Council official responsible for such matters, despite inferences made by the United States to the contrary in its Memorial.³

Nonetheless, in order to put the matter to rest Arthur Montour Jr.'s mother has travelled to Quebec City and obtained a birth certificate for him from the Province of Quebec. A copy of that certificate has been attached to this statement.

In response to the Tribunal's direction, the United States has actually not indicated that it is planning to provide any evidence to challenge the fact that Arthur Montour is a national of Canada. It merely indicates, at pages 5 and 51 to 52 of its Memorial, that a social security number has been issued by the United States to an individual named Arthur Montour. The Respondent neglects to mention, however, that the United States issues social security numbers both to aliens as well as to any Canadian-born member of the Six Nations working in the United States.

Should the Respondent elect to maintain its objection to the evidence demonstrating the nationality of Arthur Montour Jr., the Claimants will lead evidence demonstrating how – both under its own law and pursuant to Article III of the 1794 *Jay Treaty* and Article 9 of the 1814 *Treaty of Ghent* – the United States is obliged to permit Canadian-born members of the Six Nations to pass unfettered across the US-Canada frontier and accordingly reside anywhere in Six Nations territory.

If necessary, the Claimants are also prepared to provide the Tribunal with copies of Canadian laws respecting citizenship and nationality, as well as an explanation of how they apply to Arthur Montour. These laws indicate, unsurprisingly, that Canada bestows its nationality on most individuals born in the territory of Canada – such as Arthur Montour.⁴ Attached to this correspondence is also a certificate

The Claimants can also provide evidence from Arthur Montour that will explain how, in recognition and celebration of his Indian identity, he has refrained from obtaining a passport from the country of his birth, Canada. Obviously, the fact that Arthur Montour does not possess a Canadian passport in no way makes him any less Canadian, under applicable law.

² The Mohawk Nation is part of the larger Iroquois Confederacy.

³ The Claimants note, however, that the Respondent has actually not elected to lead evidence questioning the validity of the Membership Registrar's role, as an official of the Mohawk Council of Kahnawáke, or the *bona fides* of her providing evidence respecting Arthur Montour's birth.

⁴ There are some limited exceptions to this rule, such as children born to diplomats concurrently serving in missions located on Canadian territory.

Finally, if necessary Arthur Montour will also explain that he has chosen to reside in the territory of the Six Nations of the Iroquois Confederacy, which is located on both sides of the so-called border between Canada and the United States. That the United States believes the land upon which Arthur Montour resides falls exclusively under its territorial jurisdiction – and that his living there might somehow involuntarily bestow American nationality on him – is part and parcel of the same ignorance and bias that forced the Claimants to launch this arbitration in the first place.

Sincerely,

A handwritten signature in black ink, appearing to read 'Todd Weiler', written in a cursive style.

Todd Weiler

Co-counsel to Grand River Enterprises
Six Nations, Ltd., Jerry Montour,
Kenneth Hill and Arthur Montour, Jr.

cc.

Leonard Violi
Chantell Mainnes Montour
Mark Clodfelter
Andrea Menaker



Birth Certificate

Document N°
MC A536683 02

Surname
Montour

Given name(s)
**Arthur
Barry
Akwiralonton**

Sex
Male

Place of birth
Montréal

Date of birth
Y M D H M
1972 06 08

Father
**Montour
Kakwirakeron Arthur**

Mother
**Cooper
Elverna Mae**

Registration N°
1197204602093

Date of issue
Y M D
2006 01 12

Certified

Acting Registrar of Civil Status

Lily Vallée
Lily Vallée

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