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Great White Father Knows Best: Oka and the Land Claims Process

J.R. Miller

In their 1961 presentation to the Joint Committee of the Senate and House of Commons on Indian Affairs, the Oka Indians made a simple request:

> The Oka Indians wish that the Oka lands be given the status of a reserve. It has all the characteristics of it, with a resident agent of the Department, but it has not the legal status that would enable the band to have a perpetual use vested in it for their enjoyment and that of their children and descendants. What future is there for the Oka Indian?[1]

Nothing was done about the Indians' request through the 1960s, Indian and Northern Affairs Canada taking the view that there was no serious problem because Ottawa was administering the Mohawk lands at Kanesatake as though they were a properly established reserve.[2] As the 1970s opened, there was "still a widespread feeling among Indian people that the problems of Oka are far from settled."[3]

As Canadians know all too well in 1991, the "widespread feeling among Indian people" was justified, while Ottawa's complacent self-confidence was not. Through the 1970s and 1980s the dispute over title to lands occupied by Mohawk Indians adjacent to the Quebec town of Oka went from bad to worse. The Indians took advantage of a new land claims process that the federal government had devised after the pivotal Calder decision of 1973; they registered a demand, not for the recognition of the lands at Kanesatake as a "reserve," as had been requested in 1961, but as unsurrendered land held by Aboriginal title. When that comprehensive claim was rejected in 1975 by the Office of Native Claims (ONC), the Kanesatake Mohawk then initiated another claim, a specific claim to the lands. This, too, was rejected by the federal authorities in 1986. However, the federal minister of Indian Affairs offered to look for alternative methods of redressing the band's grievance. The federal government "recognized that there is an historical basis for Mohawk claims related to land grants in the 18th century." In 1989 Ottawa proposed a framework agreement for bringing about land reunification.[4] That was

rejected by the Kanesatake Indians because it did not seem likely to produce enough land to meet their needs and it appeared not to address either "the long standing problems or unique character of Kanesatake."[5]

Through the later 1980s the unresolved issue of title to the lands occupied by Mohawk on Lake of Two Mountains rapidly degenerated. On the Indian side, rising frustration was exacerbated by the growing influence of a new form of Native militancy, the Warrior Society. On the non-Native side, impatience and acquisitiveness combined to produce an attack on a disputed piece of land. In the Euro-Canadian community there was growing exasperation that the continuing dispute over lands adjacent to Oka was thwarting development. Specifically, a plan to expand a privately owned nine-hole golf course to eighteen holes by acquiring and incorporating a forested tract that the municipality owned, but that the Indians claimed as their own, became a source of contention. In preparation for a confrontation over the disputed land some Kanesatake Mohawk erected barricades in the contested area on 11 March 1990. In due course, the town and golf club decided to proceed, securing an injunction from Quebec's Superior Court on 26 April. The Mohawk ignored the court order. A second injunction procured on 26 June was also rejected by the Indians. And on 10 July Mayor Ouellette requested Quebec's provincial police force to enforce the injunction by tearing down the roadblock. An assault by one hundred police officers the next day resulted in an exchange of gunfire, the death of a police corporal, and an eleven-week stand-off that involved Mohawk, police and 2,500 Canadian soldiers at Kanesatake and Kahnewake. The last of the hold-out Warriors, their Mohawk supporters and a few journalists walked out to waiting army and police on 26 September 1990. Canada, Quebec and the Mohawk of Kanesatake are still evaluating the consequences.

How did a dispute over a relatively small parcel of land culminate in violence, death and a demoralizing confrontation in a country that prides itself on acceptance of diversity, pursuit of accommodation and a long tradition of peaceful compromise? Much of the commentary since the end of the Oka crisis has concentrated on specific, local, immediate factors. The Mohawk Warrior Society is portrayed either as a collection of righteous militants pursuing a sacred constitutional principle or as a band of goons. The local residents of Oka and Châteauguay are long-suffering neighbours or red-necked hooligans. The Sûreté du Québec are uniformed thugs or inexperienced law-enforcement officers trying to mediate in a hopelessly polarized situation. Quebec is either the most tolerant and generous of provinces in its treatment of Aboriginal peoples or the home of a nationality becoming increasingly unwilling to permit dissent by distinctive ethnic and racial minorities. Ottawa is to blame

either for mollycoddling the Mohawk with promises of accommodation after their claims were rejected, or for failing to act decisively after the rejection of the second, specific claim in 1986 to acquire and transfer to the Indians enough lands to accommodate their wishes. Where in this welter of charges and counter-charges do the roots of the exceptional and lamentable eleven-week stand-off at Kanesatake lie?

The origins of the events of the summer of 1990 at Oka lie in none of the immediate and local factors on which attention has focused since late September 1990. Rather, the violence over the land dispute at Oka is the product of an attitude or disposition on the part of the government of Canada that stretches back at least a century and a half—an outlook that it knows best what serves the interests of Indigenous peoples and that it alone can solve their problems. The implication of this, of course, is that the same sort of confrontation and possibly violence that disfigured life in Kahnewake and Kanesatake in 1990 can—and are likely to—happen elsewhere. If the real reason for the trouble is a long-standing approach by the federal government to relations with Native peoples, and if the origins of the violence lie not in specific and local factors but in national policy, then obviously there is great potential for a repetition of the Oka tragedy in other parts of the country where there is competition for land and resources between the First Peoples and the newcomers. To understand better both the general nature of the Oka problem and its potential to recur elsewhere, it is necessary to consider the aged, extensive and alarming roots of the conflict.

Prior to the invasion of the valley of the St. Lawrence by Europeans in the sixteenth century, the territory near what the intruders would call the Lac des Deux Montagnes, or Lake of Two Mountains, was used by some of the Indigenous people who are known to scholars as the St. Lawrence Iroquoians. In the opinion of the Assembly of First Nations there had been Aboriginal presence at Kanesatake since at least 1000 years before the birth of Christ, and in the seventeenth century the Five Nations "took the land from the french [sic] in retaliation for Champlain's raid on their territory."[6] Non-Native scholars hold that sometime in the latter part of the sixteenth century, between the explorations of Jacques Cartier and Samuel de Champlain, the so-called "St. Lawrence Iroquoians" withdrew from the St. Lawrence region, abandoning the area to a variety of Algonkian peoples. These dwellers of the Ottawa River valley, being nomadic hunter-gatherers, extensively used the territory in which Oka was later established. They travelled over it, fished in its waters, and hunted in its nearby woods. In general, there was little or no permanent occupation of the lands on the north side of Lake of Two Mountains by Indian groups.

By a grant in 1717, confirmed in 1718, a tract of land three and one-half leagues in front and three leagues deep was set aside by the French crown for the Gentlemen of St. Sulpice of Paris as a refuge for a mixed group of Indians to whom they had been ministering since the 1670s. (The parcel of land was augmented by an additional grant by the crown that was made in 1733 and confirmed in 1735.[7]) This mixed group of Nipissing, Algonkin and Mohawk had in 1696 reluctantly transferred from the Mission de la Montagne near Ville Marie (later Montreal) to the Sault au Recollet on the north side of Montreal Island as European settlement of the future Montreal began to present obstacles to successful evangelization of these mission Indians. But even the more northerly Sault au Recollet eventually came within the pernicious ambit of European influence, and the Sulpicians once more became anxious to move their charges to a more remote and less morally menacing location. Again with reluctance, the Indians relocated, being persuaded by the missionaries that the move was for their own good. The French, whose concept of divine-right kingship entailed a belief in the crown's ownership of all lands in New France, purported to grant the land on Lake of Two Mountains "in order to transfer there the mission of the said Indians of Sault au Recollet" on "condition that they shall bear the whole expense necessary for removing the said mission, and also cause a church and a fort to be built there of stone at their own cost, for the security of the Indians. ..."[8] In 1743 there were approximately 700 Indians—mostly Six Nations Iroquois and Huron, but also including Algonkin and Nipissing—at the Lake of Two Mountains mission.[9]

Title to the lands to which the mixture of Mohawk and Algonkians repaired on Lake of Two Mountains was never free from challenge. Neither the terms of the Capitulation of Montreal nor the Royal Proclamation provided much protection to the Indian occupants. The Capitulation promisingly stated that the "Indian allies of his most Christian Majesty [France], shall be maintained in the Lands they inhabit; if they chuse to remain there; they shall not be molested on any pretence whatsoever, for having carried arms, and served his most Christian Majesty; they shall have, as well as the French, liberty of religion, and shall keep their missionaries."[10] The Royal Proclamation of 1763, whose definition of "Hunting Grounds" reserved for Indians did not include the area around the Lake of Two Mountains because it lay within Quebec, also contained provisions regulating purchase of Indian lands within existing colonies. However, this protection did not apply to the Oka lands either, because they were held by Europeans to have been allocated by seigneurial grant.[11] A brief and ineffective claim by Lord Jeffrey Amherst was laid after the transfer of Quebec to British rule in the period

1760-63. The so-called "conqueror of Montreal" argued that these lands should be given to him, inasmuch as the provisions of the Capitulation of Montreal, while they guaranteed free exercise of the Roman Catholic religion, explicitly excluded the Sulpicians from their protections of conscience, custom and lands. However, the British authorities saw no more reason to humour Amherst's pretensions to Sulpician or Indian lands than they did his preposterous desire for the Jesuits' estates.[12]

Amherst's claim came to nothing, but tension soon developed between the Sulpicians and their Indian charges over use of and title to the lands on which Natives and clerics resided. By 1781 a disagreement between the priest and Indians over division of revenue from non-Indians who kept their cattle on the lands at Oka led the Sulpicians to state bluntly that the Indians had no right to the lands. The resulting confrontation led the Natives to present their claims to the British authorities in 1781, 1787 and 1795.[13] The Indians' case rested on several bases. They had once possessed, they said, a document granting them the lands on Lake of Two Mountains, but they had surrendered it for safekeeping to the priests, who now denied all knowledge of it. Moreover, during the Seven Years' War their representatives had met with British Indian Superintendent Sir William Johnson at Oswegatchie to promise not to fight the British, and to receive confirmation of "our lands as granted by the King of France." They had a wampum belt that recorded their possession of the lands. When General Guy Carleton, on a visit, had asked who owned uncultivated lands on the north shore of the lake, the Indians had told him "that they belonged to the Indians of the Lake." No one contradicted them. Finally, they had been told during the American Revolutionary War that if they fought with the British they would "fight for your Land and when the War is over you shall have it." All these—missing deed, their own record of taking the land, Johnson's assurance, the lack of contradiction when they said the lands were theirs and British promises during the American Revolution—constituted good and sufficient "title" for the Indians on the Lake of Two Mountains.

The Indians' position and other factors began seriously to cloud the Sulpicians' title to the properties at Oka. In particular, in the early decades of the nineteenth century the view increasingly took hold that the Sulpicians' legal position was weak for a technical legal reason. The original seigneurial grant of 1717-18 (expanded by an additional grant in 1733-35) had been made to the Sulpicians of Paris, who transferred their rights to the Sulpicians of Montreal in 1784.[14] But since the Canadian missionary body had no legal existence—that is, it was not legally incorporated by positive law—the Order was legally barred from possessing estates in mortmain, or inalienable tenure. A challenge was raised in 1763

to the Sulpicians' title by an Indian's sale of property to a newcomer, but on that occasion the Governor upheld the order's claim and dispossessed the would-be purchaser.[15] In 1788 the Indians of Oka themselves raised the issue directly with the crown, claiming title to the lands on which they were located. However, Lord Dorchester's council concluded, on the advice of the colonial law officers, "That no satisfactory Evidence is given to the Committee of any Title to the Indians of the Village in Question, either by the French Crown or any Grantee of that Crown."[16] However, no evidence was adduced that either law officers or councillors had made any effort to ascertain what were the bases of the Indians' claim. The abrupt rejection of their case did not deter the Indians, and the dubious quality of the Sulpicians' title was regularly highlighted by a number of petitions from the Aboriginal inhabitants of Oka for the granting of title to them.[17]

Further complications developed in the nineteenth century, especially during a period of heavy settlement following the War of 1812. Often lands were granted to non-Native settlers in the lower Ottawa Valley without consideration of or compensation for the long-standing use of the territory for hunting by Algonkin and Nipissing with ties to Oka.[18] These encroachments led the Algonkin and Nipissing of Lake of Two Mountains in 1822 to register a claim to land on both sides of the Ottawa River from a point above the seigniory on Lake of Two Mountains as far north as Lake Nipissing.[19] The claim was rejected by British officials in 1827 even though the Superintendent General of Indian Affairs, Sir John Johnson, strongly supported their position, and was again dismissed by the Executive Council of Lower Canada in 1837.[20]

Still the Sulpicians were obviously worried. In June 1839 the superior of the seminary made a proposal to the Indians that was designed to regularize the Order's claim. The Indians' rights to use, expand, dispose of or build on the particular plots would be guaranteed, and the Sulpicians would continue to provide the Indians with wood, though it might be cut only where the priests said. The Indians of Oka accepted this proposition.[21] Nonetheless, in order to resolve any technical difficulty and remove any cloud on the title, the legislature in 1840 (reconfirmed in 1841) passed "An Ordinance to incorporate the Ecclesiastics of the Seminary of Saint Sulpice of Montreal, to confirm their title to the Fief and Seigniory of the Island of Montreal, the Fief and Seigniory of the Lake of the Two Mountains, and the Fief and Seigniory of Saint Sulpice, in this Province; to provide for the gradual extinction of Seigniorial Rights and Dues within the Seigniorial limits of the said Fiefs and Seigniories, and for other purposes."[22] The fact that the representative assembly had been suspended following the Rebellion of 1837-38 in Lower Canada

meant that the critical measure could be passed by a small, appointed council. No doubt the authorities wished to reward the Sulpicians for their ostentatious and vocal loyalty during the troubled times in the Lake of Two Mountains region. No one bothered to note that the Indians at Oka had refused to join or aid the *Patriotes*, though pressed to do so.[23]

Legislative disposition of the question of title did nothing to still the rivalry and tension between Indians and priests at Oka. One basis for the quarrel was the Indians' view that the land was truly theirs, and that the Sulpicians were merely trustees for their lands. This fundamental difference of opinion was exacerbated by friction over access to resources in and on the territory, and the conflict worsened steadily through the nineteenth century because of the increasing pressure of settlement in the area. A further complication arose from the fact that different Indian groups at Kanesatake used the territory differently. While the Iroquois at Oka were inclined towards agriculture on lands made available to them by the Sulpicians without charge, the Algonkin and Nipissing tended more to rely upon a hunting economy for which they extensively used a large area of the Ottawa Valley, returning to the Oka area only for two months in the summer. Not surprisingly, then, it was these Algonkian groups that felt more severely the negative impact of inrushing settlers and lumber firms. Their petition to Lord Dalhousie in 1822 began by noting "That in Consequence of the Increase of Population and the Number of New Settlements on the Lands in which they were accustomed to hunt and the Game getting Scarcer in Consequence thereof" they were being hard-pressed.[24]

The depletion of furs in the region severely affected the economic position of the Algonkians.[25] Major General Darling, Military Secretary to Governor General Dalhousie, had observed in the late 1820s that Algonkin and Nipissing presented "an appearance of comparative wealth and advancement in civilization," while the conditions in which the Iroquois lived "bespeak wretchedness and inactivity in the extreme."[26] By the 1840s the condition of the Iroquois was still "far from prosperous" because of their reliance on an uncertain horticulture. But that of the Algonkin and Nipissing had become "still more deplorable":

> ...their hunting grounds on the Ottawa, which were formerly most extensive, abounding with deer, and other animals, yielding the richest furs, and which their ancestors had enjoyed from time immemorial, have been destroyed for the purposes of the chase. A considerable part has been laid out into townships, and either settled or taken possession of by squatters. The operations of the lumber-men have either destroyed or scared away the game

> throughout a still more extensive region, and thus, as settlement advances, shey [*sic*] are driven further and further from their homes, in search of a scanty and precarious livelihood. Their case has been often brought before the Government, and demands early attention.[27]

The Algonkin responded to these adverse changes in some cases by migrating to the Golden Lake area west of Bytown, and in others by shifting into a trade in wood for local markets.[28] Their increasing use of the forest resources brought them into conflict with the Sulpician seigneurs, who eventually prohibited free access to wood for commercial purposes.[29]

Denominational conflict soon worsened the situation. The Mississauga minister Peter Jones visited the Lake of Two Mountains settlement in 1851 at the request of his church to try to convert the Indians there to Protestantism.[30] Jones's mission did not enjoy immediate success, but the Methodists continued to proselytize in the area by means of itinerant missionaries. After the Methodists established a mission at Oka in 1868 a large number of the Iroquois in particular converted to Methodism in a symbolic act of rejection and defiance.[31] (Such behaviour has parallels elsewhere: the Catholicism of the Micmac in the eighteenth century was a badge of their alliance with the French, as well as a creed.) Not surprisingly, given the Sulpicians' view of themselves as owners of the lands and the strong religious feelings of the time, the Order attempted to stomp out Protestantism among the Indians. As early as 1852 Bishop Bourget of Montreal had excommunicated four of the leaders of the Mohawk Indians.[32] In the 1870s the Sulpicians applied pressure by demanding that the Methodist chapel that the Indians and their supporters had erected be torn down and the ringleaders among the Indians be arrested. By court order the Methodist chapel was dismantled in 1875. Bad feelings degenerated to the point that in June 1877 a fire of mysterious origins destroyed the Catholic church at Oka. The ensuing criminal prosecution of Methodist Indians embroiled the mission inhabitants and large numbers of non-Natives in Quebec and Ontario in bitter controversy for years. The quarrel even attracted the disapproving attention of the Aborigines Protection Society in London and led to inquiries from the Colonial Office.[33] The destruction, threat of violence and growing political complications finally pushed the government of Canada towards action on the troubled Oka situation.

By the 1870s there was a well-established governmental tradition of trying to solve the Oka problem by either or both of two means: relocating the Indians or resolving the dispute by litigation. In 1853,

"16,000 acres of land, in Dorchester, North River, in rear of the Township of Wexford, have been set apart for the Iroquois of Caughnawaga and Two Mountains," and similar provision of new lands was made at Maniwaki for the Algonkians from Oka in 1853.[34] Many of the Algonkin, seeking new lands for hunting and trapping, removed to the Maniwaki area, but the Iroquois stayed at Oka.[35] As the Oka problem heated up in the late 1860s and 1870s, Ottawa was tempted to repeat such a "solution" elsewhere. Neither the federal government of Alexander Mackenzie (1873-78) nor those of Sir John Macdonald (1867-73, 1878-91) wanted to grapple seriously with the issue. There were many reasons for their attitude. First, Canadian governments of the nineteenth century could not conceive of Indians having title to lands once Europeans had intruded into an area and begun to use the resources. Furthermore, by the mid-1870s Ottawa was experiencing considerable difficulties in dealing with the settler society of British Columbia. The government there was recalcitrant and obdurate in its refusal to honour its pledges, made in the agreement by which it united with Canada in 1871, to appropriate land for Indians in that province.[36] No federal government wanted quarrels with other provinces, especially the large and powerful province of Quebec, with its French and Catholic majority and its prickly sensitivity on questions of religion and provincial rights. Consequently federal governments avoided dealing with the Oka issue head-on.

Remonstrances by both the Algonkin and Iroquois at Oka in 1868 quickly turned Ottawa's thought to the possibilities of removal.[37] The Indians' demand in a petition that they "should have the same privileges as enjoyed by white people" evoked an interesting response, one that captured perfectly the government's thinking about Indians:

> ...the Indians cannot have the same privileges as the white man, as long as the law remains as it is, but it is the intention of the Department to submit a scheme by which Indians could, under certain conditions and with certain qualifications, obtain their emancipation, and become, to all intents and purposes, citizens, as the white men are. But in order that such a measure may obtain the sanction of Parliament, and become law, Indians must not violate the law of the land, nor throw, otherwise, obstacles in the way. They must respect property, be content with their present condition, and be sure that the disposition of the Government is to improve their condition, elevate them in their social position, and prepare them for a complete emancipation.[38]

The petitioners were told that their complaints against the Sulpicians were

not well founded, and an order-in-council reconfirming federal government support for the seminary's title was passed.[39] The Under-Secretary of State also informed the Indian complainants that "The government has your welfare at heart."[40] The removal in 1869 of some of the Oka Indians to the upper Ottawa eased the problem temporarily. However, the increasing religious animosity of the 1870s, which threatened to bring on an extended Catholic-Protestant clash as White Methodists rallied to their Red brothers' cause,[41] made it tempting to get the Methodist Indians away from Oka.

By 1877, with the Indians at Oka claiming that they owned the land and resorts to violence becoming increasingly common, matters had come to a head.[42] The government launched an investigation by the Reverend William Scott, a Methodist clergyman and father of a future deputy superintendent general of Indian Affairs, that upheld the position of the seminary.[43] The department also initiated steps in 1879 to remove many of the aggrieved Indians from Oka to the Muskoka district of Ontario. The establishment of the Gibson reserve, and removal of Oka Indians to it, turned out not to be the total solution that the government sought. Agreement was reached in 1881 for the province of Ontario to supply, and for the Sulpicians to pay for, sufficient land in the township of Gibson to settle 120 families numbering about 500 persons, and in 1882 some of the Oka Indians settled at Gibson.[44] However, nothing like the expected number relocated. Only about one-third of the Oka Indians moved, and not all of those stayed for long at Gibson.[45] The stay-at-homes remained obdurate even though the ever-helpful Reverend Scott remonstrated with them: "By moral suasion alone the Department endeavours to accomplish what is deemed best for you."[46] Since most of the Indians remained on the lands near the Sulpician mission, the Oka land dispute continued to fester during the 1880s and 1890s. The Methodists' continuing interest in the issue, during a time when there was a sufficiently large number of other irritants concerning creed and language, ensured that successive governments in this period remained sensitive to the matter, even if they did nothing effective about it.[47]

Sporadically throughout the 1870s and 1880s Ottawa explored the possibility of resolving the Oka dispute by its other preferred method, litigation. As early as January 1873 Joseph Howe, minister responsible for Indian matters, extended an offer to a Methodist clerical champion of the Oka Indians to have the government "pay the cost of the Defense" of "the Indian to whom you refer as having been imprisoned for cutting wood at Oka." The government, according to Howe, was "prepared to carry the case if necessary before the highest tribunals in order that the questions in controversy between the Two Mountains Indians and the Gentlemen

of the Seminary may be judicially investigated and set finally at rest."[48] Apparently nothing came of this proposal, nor of another effort of the department in 1882 to settle the dispute with a test case before the courts. Although Ottawa offered to pay the costs, in 1882 the parties could not agree on facts to submit to the courts.[49] And so, amid bickering and sectarian strife, the Oka question lumbered on, unresolved, through the 1880s and 1890s.

By 1903 the Laurier government had tired of the dispute and its attendant political liabilities. Religious passions remained strong in the new century, and during the first decade the dispute at Oka over wood-cutting continued to cause friction and political embarrassment for the government. In 1902, for example, Prime Minister Laurier arranged to have an Indian Affairs officer despatched to Oka, where the "Indians are becoming threatening," because "I am under great obligation to the Superior of the Sulpicians, Father Colin."[50] Petitions and confrontations continued steadily. Finally, in 1903 a representative of the government suggested to prominent Toronto lawyer N.W. Rowell, who represented the Methodist legal interest in the Oka affair, that "they were anxious that the matter should be settled, and were prepared that a stated case should be agreed upon between the Seminary and the Indians, and the matter referred to a Court for adjudication, the Department paying the expenses of the litigation." Official thinking was that "the Indians have a certain right of possession or use in the property," but the precise nature and extent of those rights or interests were not clear. It was best, therefore, to refer the contentious and complex matter to the courts at public expense.[51] Not for the last time, Indian Affairs opened its files to counsel for each side, and not for the last time Indian land claims litigation proved a boon to the historical research industry. The Rowell firm, no doubt making good use of taxpayers' dollars, despatched a legal researcher to Paris to uncover documents that might strengthen the Indians' argument that they were the true owners of the lands at Oka.[52]

Thus began the celebrated case of *Angus Corinthe* et al v. *The Ecclesiastics of the Seminary of St. Sulpice of Montreal*, which eventually emerged from the bowels of the Judicial Committee of the Privy Council in 1912.[53] The Indians' argument combined a number of propositions. The Sulpicians' interest in the lands was only that of a "trustee for the Plaintiffs"; and the Indians "have from time immemorial" enjoyed the right to use the commons, cut firewood and pasture stock. As their formal argument to the Privy Council put it, they claimed "to be the absolute owners by virtue of the unextinguished Aboriginal title, the Proclamation of 1763, and possession sufficient to create title by prescription [tradition]. Alternatively, the Indians have claimed qualified title under the French

grants." The respondents, the Sulpicians, "rely mainly on these statutory titles and claim that under these titles, they are the absolute owners of the Seigniory of the Lake of Two Mountains and not merely the owners in trust for the Indians." In the unlikely event that the high court found that eighteenth-century Indians had possessed some form of title or interest, the present Oka claimants "could not be their representative as the Appellants are the chiefs of the Iroquois tribe only, and the Iroquois tribe's territory was far from the Island of Montreal and the Lake of Two Mountains." The Algonkin, who were closest to the land in the eighteenth century, were not, the seminary's factum pointedly argued, suing.

The Corinthe appeal to the Privy Council epitomized the principal features of land claims, which at the beginning of this century were in a most rudimentary state. The Indians relied both on an embryonic notion of Aboriginal title ("from time immemorial" they had used the resources of the tract) and British common law (the Sulpicians exercised title "merely as trustee" for the Indians). The latter argument was buttressed with their oral tradition, which in many instances was supported by documents recently unearthed in Paris. Counsel for the Sulpicians similarly argued a two-part case. The Order was the proper owner by virtue of the original grant, and, in the event that there could be any dispute about that point, their title had been clarified, recognized and confirmed by legislative action in 1841.

The judgment—in favour of the Sulpicians—similarly represented the limited nature of Indigenous peoples' legal title eighty years ago. Speaking for the Privy Council, Lord Chancellor Viscount Haldane ruled that "Their Lordships thought that the effect of this [1841] Act was to place beyond question the title of the respondents [Sulpicians] to the Seigniory, and to make it impossible for the appellants to establish an independent title to possession or control in the administration... neither by aboriginal title, nor by prescription, nor on the footing that they were *cestuis que trustent* of the corporation, could the appellants assert any title in an action such as that out of which this appeal had arisen." However, the court did note that a condition of the 1841 legislative confirmation of Sulpician title had created what in common law parlance would be a charitable trust, an obligation to care for the souls and instruct the young of the Indians at Oka, and that there might be means by which the Indians through governments could force the priests to honour those requirements. In the opinion of the Methodists' legal advisor, given the unlikelihood of the province of Quebec's interesting itself in the matter on behalf of the Indians, serious consideration should be given to pressing

Ottawa, "the guardian of the indians [*sic*] of Canada," to compel the Sulpicians to honour their obligations.[54]

The Judicial Committee's ruling, though perhaps appearing odd after the Supreme Court of Canada's finding in the 1990 Sparrow case, is understandable in the context of its times. Legally, the negative finding rested on the propositions enunciated in the important St. Catharines Milling case of 1889. In that instance the Privy Council had ruled that there was such a thing as Aboriginal title, but that it constituted merely a usufructuary right and that it was "dependent on the goodwill of the Sovereign."[55] This was a view of Indigenous people's rights that, like the federal government's decision to remove some of the Oka Indians to Gibson township, might reasonably by summed up as the view that the Great White Father knew best what was in the interests of his Red-Skinned Children. It assumed that Aboriginal title was limited to use because title inhered in the Crown, and it posited that the head of state could remove what it had graciously granted ("dependent on the goodwill of the Sovereign"). The implication of this latter point, obviously, was that parliament and the legislatures, of which the Crown was a part, of course, could also unilaterally extinguish even this limited Aboriginal title. And, with very few and limited exceptions, Indians could not vote for representatives to sit in those chambers.[56] That is what the Judicial Committee held had occurred in the case of the Oka lands by the 1841 statute.

The entire doctrine of a limited Aboriginal title that was dependent on the will of the majority population's political representatives was consistent with the approach that Ottawa took in Indian affairs. The government's assumption was that Indians were in a state of tutelage, were legally "wards" of Ottawa, and were to be encouraged and coerced by a variety of policies to grow into full Euro-Canadian adulthood. In the meantime, they were legally infantile; Great White Father knew best. The Privy Council decision in the Oka land case in 1912 was completely consistent with these legal and policy positions.

Needless to say, the Indians of Oka accepted neither the ruling nor the doctrine of Aboriginal infantilism that underlay it. In the immediate aftermath of the court ruling their chief "states that it will not be possible to restrain the people longer, as he has been holding them in check pending the judgment of the court in the matter."[57] Methodist petitioning of the federal government resulted in no observable consequences,[58] and at Oka conditions reverted to the state that had prevailed before the decision to take the Corinthe case through the courts. The principal reason for Ottawa's inaction was the fact that the legal advice it had received was that the Privy Council decision placed no

particular obligations on either the Sulpicians or the federal government.[59] The Indians kept complaining to Ottawa after 1912, especially when the Sulpicians from time to time sold off part of the disputed lands.[60] For example, when the Sulpicians were unable to repay $1,025,000 they had borrowed in 1933 from the province of Quebec, the Order handed over one hundred lots to the province, which much later transferred some of the plots to the municipality of Oka for one dollar.[61] In the 1930s the Sulpicians sold their rights to a considerable area, including lands the Indians considered theirs, to a Belgian company that began to enforce its proprietary rights on the Indians with consequent friction.[62] As a result of these occasional sales, settlement at Oka came to resemble a racial checkerboard: Whites and Mohawk lived side by side. Moreover, since the lands at Oka that the Mohawk occupied were not a formal or legal "reserve" within the meaning of the *Indian Act*, Indian control was even more tenuous than it otherwise would have been.[63]

The next phase came to a head in 1945. Sulpician land sales having occasioned considerable Mohawk disquiet during the 1930s, Ottawa intervened in a bumbled effort to resolve the dispute and lower the tension between Indians and clergy. Again without consulting the Indians involved, the federal government negotiated an agreement with the Sulpicians, who were nearly bankrupt, to purchase land for the remaining Mohawk at the mission.[64] Although this had the immediate effect of lowering the temperature of the quarrel, it by no means cleared up the underlying dispute over ownership of the whole tract. Non-Indians assumed that the sale meant that Indians in future would confine themselves to their small, scattered plots, which totalled 1556 acres.[65] The descendants of Indians who believed they once had possessed more than sixty-four square miles now found their holdings reduced to two and one-half square miles. As a western member of Parliament observed in 1961, "They certainly did get gypped, did they not?"[66] Moreover, since the government failed to follow the terms of the *Indian Act* by setting the purchased lands aside by order-in-council as a reserve for the benefit of the Indians, this newly acquired parcel still was not legally a reserve. In law it remained merely a settlement, an anomalous status that did nothing to reassure the Indians.

By the end of the 1950s, as noted at the outset, the dispute was becoming troublesome once again. In 1959 the municipality of Oka used a private member's bill in Quebec's legislature to establish a nine-hole golf course on some land that the Mohawk claimed as their own.[67] The town knew that such action was a legal possibility because Indians Affairs had thoughtfully announced in 1958 that the Indians' land at Oka was not a legal Indian reserve. "These lands do not comprise an Indian Reserve. ...

The right to occupy the individual parcels became involved over the years, and the Indian affairs branch has been attempting to straighten these matters out. The work is nearing completion."[68] Oka's ability to secure the special legislation was perhaps explained by the fact that the municipality and the tract in question lay in the premier's constituency.[69] Perhaps the same factor also explains why the Indians who resided at Oka were given no notice of the private measure and no opportunity to argue against it.[70] In any event, the private member's bill transferred some "common lands" that the Indians had long used for wood-cutting and cattle-grazing into land destined for recreation. "What was once reserved for Indian use and profit is now reserved for golf," noted their lawyer.[71] As the Indians said themselves, "We also consider the building of the clubhouse directly adjacent to our graveyard a desecration and an insult to our sensibilities."[72]

Once the private member's bill was passed, the Kanesatake Mohawk tried to resist. The Indians asked Ottawa to disallow the private Quebec statute, but John Diefenbaker's government refused.[73] The Mohawk remonstrated about the unsatisfactory status of their limited holdings before the Joint Parliamentary Committee in 1961, telling the parliamentarians that "We want tribal ownership of land, not the individual ownership which the white man favours."[74] Once more their protests had no apparent effect.[75] The Joint Committee considered their protests in 1961 and recommended establishing an Indian claims commission, such as the United States had, to deal with the British Columbia and Oka land questions. However, not even this could move either the bureaucratic or political levels of government to action.[76] Whatever Ottawa was doing in an attempt "to straighten these matters out" in any event was overtaken and rendered irrelevant in the 1970s.

As a result of the Nishga or Calder case in 1973, a new chapter on Inuit and Indian land claims opened. Prior to the court's finding that there was such a thing as Aboriginal title and that it extended well beyond the limited version that the Privy Council had defined in the St. Catharine's Milling case, the Prime Minister had rejected the notion. In Pierre Trudeau's view, "We can't recognize aboriginal rights because no society can be built on historical 'might-have-beens'."[77] However, in the Nishga case six of seven supreme court justices gave powerful support to the concept of Aboriginal title, while rejecting the Nishga suit itself. Three of the judges found that legislative action in British Columbia had extinguished Aboriginal title, while the other three did not agree. (The seventh judge found against the plaintiff on a technical point.) In the wake of the Calder decision Trudeau had to recognize that he faced a much more powerful adversary than some mere historical might-have-been

in this Aboriginal title. He reportedly responded, "Perhaps you had more legal rights than we thought you had when we did the white paper."[78] Given the fact that the ramifications of Aboriginal title were enormous in an era when the Cree of Quebec were battling the James Bay hydroelectric project and a variety of Native groups in the Mackenzie Valley were voicing opposition to northern energy development, some concessions were essential. Trudeau and his government, already battered by the First Peoples' united and vehement rejection of the White Paper of 1969, backed away from the prime minister's rarefied individualist notions and prepared to deal with Aboriginal land claims on a collective, systematic basis.[79] In August 1973 Indian Affairs Minister Jean Chrétien announced that a new policy would soon be forthcoming.

Beginning in July 1974, Ottawa set up a claims resolution process. Government now recognized two categories of Indian claims, comprehensive and specific. Comprehensive claims were based on the contention that the claimant had an unextinguished Aboriginal right through possession of a territory since time immemorial. The Nishga case would have been such a comprehensive claim. Specific claims, which might be about a variety of topics including land, were demands for redress based on an argument that commitments or legal obligations on the part of the government to Indian groups had not been carried out fully and properly. The government would assist in the development of claims cases by funding research by Indian organizations. And an Office of Native Claims (ONC) would become the focal point in Indian Affairs for the claims resolution process for both comprehensive and specific claims. The ONC would investigate claims lodged by Indian organizations and advise the Indian Affairs minister on their strength. If it so advised and Indian Affairs accepted the advice, the claim could then be negotiated. In these negotiations the Office of Native Claims would represent the federal government, and, following conclusion of an agreement, the ONC would help to implement and monitor compliance with the claim settlement. Finally, the office was also responsible for formulating policies covering the Native claims area.

The claims resolution policy of 1973-74 had a chequered history, largely because it was—and remains—seriously flawed. First and foremost, it was, as usual, the product of the Ottawa bureaucracy. Since it had not resulted from consultation and negotiation, it was the object of suspicion and contained elements that were unacceptable to the Native organizations. Some of these problems concerned the criteria by which Ottawa decided if claims were valid. For example, for comprehensive claims it was necessary to demonstrate that the claim emanated from an organized group, that the group had occupied the territory in question

exclusively and continuously from pre-contact times (from time immemorial) to the present, and that the claimant could demonstrate it was the legitimate descendant and representative of the original occupiers. Such criteria ignored both pre- and post-contact migrations of Native groups in response to environmental, economic and military factors. It appeared to rule out, for example, the claim of the Inland Tlingit to the territory in northern British Columbia and southern Yukon that they occupied in the late twentieth century because that group had migrated there in the nineteenth century.[80] And, of course, it worked against the arguments of a group such as the Oka Indians, who had been contending since at least 1781 that the land they occupied was theirs, because those Indians had taken up residence on the land they now claimed well after the European arrived.

Other difficulties stemmed largely from the legalistic approach that the Ottawa bureaucracy took to the claims resolution process. The governing principle in the ONC's evaluation of specific claims was the doctrine of "lawful obligation," a narrow gate through which not all worthy cases could squeeze. And government representatives proved themselves prone to argue technical objections, such as invalidity of oral history evidence and the doctrine of laches (barrier to litigation by passage of time). Such approaches were to be expected from a bureaucracy, but they caused enormous problems. As early as 1980 it was noted that bands and organizations were choosing litigation over negotiation with the Office of Native Claims.[81] The inordinately slow pace of Ottawa's work and the backlog that inevitably developed also contributed greatly to disenchantment with the claims resolution process. Since Ottawa limited the number of comprehensive claims negotiations in which it would engage at any one time, a log-jam quickly developed. In 1981 a review of the comprehensive claims resolution process noted that the James Bay and Northern Quebec Agreement was the only such dispute that had been resolved. Thirteen others were in various stages of negotiation.[82] By 1985 a task force set up to review the comprehensive claims process noted that there were six comprehensive claims under negotiation, another fifteen (thirteen of them in British Columbia) that had been accepted by the department and awaited negotiation, seven that were under review and several more that were expected. As the assessors noted, "in spite of more than a decade of negotiating, little progress has been made in the settlement of claims." The task force chair, Murray Coolican, pointed out that "At the current rate of settlement it could be another 100 years before all the claims have been addressed."[83] Things were no better in the area of specific claims: at the end of December 1981, twelve specific claims had been resolved, and 250 more awaited resolution.[84]

The problems with the claims resolution process stemmed from more than just the slow pace and consequent frustration. Many Indian groups objected to the two-fisted role played by Indian and Northern Affairs after the process was formalized in 1973-74. The bureaucracy that granted funds for claims research was the same body that decided how much money would be available to bands and other organizations for a variety of social, political and economic activities. Many suspected that the arrangement was designed to discourage claimants from pressing their cases too aggressively. Moreover, since the Office of Native Claims both decided which claims were to be accepted for negotiation and then bargained on behalf of the federal government, the process was clearly in contravention of a major tenet of natural justice. If it was true that no one should be judge in his or her own cause, what did one say about the Canadian claims process? More generally, all the high cards were dealt to the government in this unequal game:

> Without exception, an aboriginal party has few resources other than the intelligence, commitment, and skill of its leaders, who must sit across the table from the representatives of the Government of Canada, with their apparently overwhelming resources and power. The government decides which claim is accepted, how much money will be made available to the claimant group for research and negotiation, when negotiations will begin, and the process for negotiations. Except where court action threatens a major development project, the government's patience for negotiation appears unlimited. It is hardly surprising that aboriginal groups have little confidence in the fairness of the process, or in the government's desire for early settlements.[85]

Delay, the double role of Indian Affairs and lack of progress all added up to a claims process that engendered suspicion and opposition in equal parts.

Because of these discontents, the claims resolution process has been under scrutiny through most of its existence. As early as April 1975, claims issues were part of the agenda of a joint National Indian Brotherhood (NIB) / Indian Affairs committee, a consultation that ended abruptly in 1978 when the NIB pulled out in protest.[86] A review of the comprehensive claims procedures led to a restatement of policy under the title of *In All Fairness* in 1981. This document showed little evidence of influence from the Native community, and it embodied no new thinking in any event.[87] In December of the same year *Outstanding Business*, a revised statement of specific claims policy, modified arrangements in this

area slightly. Although this document observed that "Indian representatives all stated, in the strongest of terms, that Indian views must be considered in the development of any new or modified claims policy," there were few signs that Ottawa paid much attention.[88] The adoption of the Charter of Rights and Freedoms, with its clause recognizing and affirming "existing aboriginal and treaty rights" caused more uncertainty in the Native community about the land claims process.

Above all, Ottawa's constant search for and insistence upon extinguishment of all Aboriginal rights as part of claims resolution became particularly ominous. As the *Report of the Task Force on Comprehensive Claims Policy* (Coolican Report) noted, there were other Aboriginal rights—such as self-government, for example—that were not necessarily integral to a land claim. Why should Inuit and Indians give up whatever other Aboriginal rights they had to get their comprehensive claim settled?[89] When a parliamentary committee, known usually as the Penner Committee, supported First Nations' views on self-government in 1983 by advocating *recognition* of that right, the arguments against accepting extinguishment of Aboriginal rights in order to get a comprehensive claims settlement were strengthened still further.

An abortive attempt to come to grips with these objections was made in 1985 in the task force on Comprehensive Claims Policy. Although Chief Gary Potts of the Teme-Augama Anishnabai noted that this inquiry "marks the first time since 1763 that government has made an effort to hear from the First Nations of Canada" concerning treaty-making and claims, there was little evidence that that hearing led to acceptance.[90] The task force condemned the slow pace of comprehensive claims negotiations, blamed government insistence on extinguishment for much of the problem, and called for a new comprehensive claims policy that would speed up the process and largely shunt aside the troublesome extinguishment issue. However, the *Comprehensive Land Claims Policy* that emerged in 1986, though it claimed later to have dropped its aim of "blanket extinguishment," offered nothing concrete to avoid the problem. When all the verbiage was stripped away, Indian and Northern Affairs still had not committed itself to drop extinguishment, persisted in talking about "granting" rather than "recognizing" self-government and was still reserving for itself the role of judge of whether or not a comprehensive claim was worthy of proceeding to negotiation.[91] By the later 1980s the major difference in Ottawa's claims resolution process was one of structure: the Office of Native Claims had been replaced in the middle of the decade by a Comprehensive Claims Branch and a Specific Claims Branch.

In light of the unsatisfactory nature and evolution of the federal government's land claims procedures after 1973, the bitter disappointment

of the Oka Indians is easier to understand. They, after all, had always been treated like credulous and dependent children for whom others–Sulpicians, legislature, Methodist clerics, judicial committee and certainly Indian and Northern Affairs Canada–knew best what was in their interest. After 1974 they found themselves enmeshed in a claims resolution process that was unilaterally created and largely operated by the Great White Father in Ottawa. Given the history of Oka-Kanesatake, it was not surprising that the comprehensive land claim that they launched early in 1975 was rejected a few months later.

On the advice of the department of justice, the Office of Native Claims found that the comprehensive claim of the Mohawk of Akwesasne (St. Regis), Kahnewake (Caughnawaga) and Kanesatake to a large portion of southwestern Quebec did not rest on unextinguished Aboriginal title. If the Mohawk had possessed the land being claimed when Europeans arrived (and the expert in the justice department was inclined to doubt that they had), they had since lost it or given it up. "[I]f the claimants ever did have aboriginal title to the land in question, this title has long been extinguished by the dispositions made of the land under the French regime, by the decision of the Sovereign, after the cession [Conquest], to open the territory to settlement and by the grants made over the years pursuant to this policy." The justice department also believed that the lands the Mohawk were claiming had not been protected by the Royal Proclamation of 1763. In short, "the native title alleged by the claimants, if it ever existed, was extinguished, first by the French Kings at least with respect to the grants made by them, and, after the cession, by the Sovereign by the exercise of complete dominion over the land adverse to the right of occupancy of the Indians." However, the same opinion that dismissed the extensive Mohawk comprehensive claim explicitly stated that it did not apply to any "specific claims which the Mohawks of Oka, St. Regis, and Caughnawaga may have with respect to lands contiguous or near their existing reserves."[92]

Such reasoning, which showed that in some respects the federal government had not advanced beyond the 1912 judicial committee rationale that was based on the 1889 ruling on St. Catharine's Milling, ignored several facts. Iroquoians had undoubtedly ranged through and extracted resources from the region at the time of European contact. Particularly the Algonkin and Nipissing at Oka had until at least the 1820s regularly hunted, trapped and fished in the lower Ottawa Valley from their base at the settlement. Finally, Ottawa has accepted or seems prepared to accept claims from other groups whose records of occupation are no lengthier than that of the Indians at Oka. For example, the Golden Lake band of Algonkin in Ontario are proceeding with a comprehensive claim

despite the fact that many of them are the descendants of migrants from Oka.[93] Nevertheless, Ottawa rejected the Mohawk comprehensive claim that included lands at Kanesatake-Oka.

The Kanesatake Indians' specific claim fared no better. Lodged in June 1977, it languished until October 1986, when its contention that the Kanesatake Mohawk had an interest in the territory that should be addressed was rejected. Since "the Oka Band has not demonstrated any outstanding lawful obligation on the part of the Federal Crown," Indian and Northern Affairs would not accept the claim for negotiation. However, Ottawa "recognized that there is an historical basis for Mohawk claims related to land grants in the 18th century," and "I [minister Bill McKnight] am willing to consider a proposal for alternative means of redress of the Kanesatake Band's grievance. ..."[94] As noted earlier, efforts to carry out a land consolidation scheme at Kanesatake failed in 1989-90. This last attempt at resolution fell afoul of fears that Ottawa was not willing to go far enough to meet Mohawk needs, of divisions within the Kanesatake community and of the impatience of a municipality and a golf club that wanted to expand the existing course by annexing lands that the Mohawk considered theirs. The result, of course, was the violence of the summer of 1990.

Subsequent to the eleven-week confrontation at Kanesatake, Ottawa behaved in its usual consistently inconsistent fashion. While speaking to the Federation of Saskatchewan Indian Nations in August on the error of using confrontation and violence, the minister of Indian and Northern Affairs Canada, Tom Siddon, observed helpfully that "while our specific claims process *is* working, it is *not* working to the satisfaction of Indian people or myself."[95] In September 1990, Siddon lectured Indian leaders assembled in Ottawa on how they would have behaved during the crisis had they been responsible, good little Indian leaders.[96] Having twice rejected Mohawk land claims, the minister announced during the stand-off at Kanesatake that Ottawa would purchase and hand over to the aggrieved Indians the terrain in question. Once Ottawa had acquired some, but not all, of the disputed land in the autumn of 1990, the minister's representatives proceeded to become embroiled in a frustrating round of talks that led nowhere. By February 1991 the minister, appearing before the Commons committee on Aboriginal affairs, argued that the villain in the Oka story was the traditional system of government by chiefs selected by the clan mothers, a system that one of his predecessors had agreed to have restored in 1969. "Since 1986, clan mothers have appointed six different councils at Kanesatake," with resulting instability. The indecisiveness that resulted from traditional Mohawk governance, said Siddon, had made it impossible for the federal negotiator, in spite of

eighteen meetings with the band council and municipality after 1989, to reach an agreement. That was why there had been violence, destruction, and death at Oka in the summer of 1990.[97]

The real explanation of the Oka tragedy is not clan mothers. Rather it is the Great White Father, or more precisely the attitude that has long prevailed in Ottawa that government is a paternalistic and benevolent agent that knows better than anyone else what is best for its Red Children. This attitude is indistinguishable from that of the Sulpicians and French government officials who in the seventeenth and eighteenth centuries shifted Algonkin, Nipissing and Mohawk groups from La Montagne to Sault au Recollet to Oka. It underlay the rejection of repeated Oka Indian demands from the 1780s to the 1830s to regularize their title. It accounted for the legislative fiat of 1841 that registered the Sulpicians' title to the disputed lands, a unilateral declaration that was upheld in the Corinthe case in 1912 and, in part, in Ottawa's rejection of the comprehensive land claim of the 1970s. The assumption that Ottawa knew best accounted, too, for the repeated efforts to resolve the controversy at Oka by removing some or all of the Indians—to Maniwaki, to Gibson, anywhere away from the political flashpoint of the moment. And, finally, these attitudes explained the repeated failure of bureaucrats and politicians to respond to Indian petitions to the Governor in the nineteenth century, to the joint parliamentary inquiry of the 1940s, and to the inquiry of 1961 that something be done to clear up the mess of the land dispute at Oka-Kanesatake.

The Great White Father in Ottawa is responsible for the Oka crisis, and for the larger mess of the land claims resolution process across the country. Procedures decided on in Ottawa and imposed on Aboriginal organizations have responded to bureaucratic imperatives and ignored Native needs. The continuing, futile attempt to impose a doctrine of extinguishment on Aboriginal rights in the comprehensive claims process is the clearest, most egregious example of that attitude. In spite of repeated demands of Indian and Inuit organizations, in spite of the collapse in 1990 of the tentative Dene-Métis comprehensive claim agreement, in spite of the Sparrow and Sioui decisions of 1990, and in spite of the 1982 Charter of Rights and Freedoms, Ottawa refuses to drop a requirement that stands in the way of clearing up an enormous backlog. Why? Presumably because Ottawa—the Great White Father—knows best.

Just ask the people at Oka.

Notes

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2 Throughout this paper the contemporary designation, Indian and Northern Affairs Canada, is used for a department or branch that has been known by various titles since 1880.

3 Treaties and Historical Research Centre [hereinafter THRC], Indian and Northern Affairs Canada, document 0-44, "Land Title at Oka [1973]."

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15 *Decision of General Gage, Military Governor, 4 November 1763, G.M. Mathieson's "Blue Book," RG 10, vol. 10,024.

16 *Report of a Committee of the Whole Council, 21 April 1789, ibid.

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19 National Archives of Canada [NA], RG 10, Series A3 (Administrative Records of the Military 1677-1857), vol. 492, pp. 30248-51, claim of Algonkin and Nipissing chiefs, Lake of Two Mountains, 22 July 1822, in form of petition to Lord Dalhousie.

20 *John Johnson to Colonel Darling, April 1823; Darling to Oka Indians in council at Caughnawaga, 5 Oct. 1827; and Report of a Committee of the Executive Council, 13 June 1837 – all in Mathieson's "Blue Book."

21 *"Propositions made by Messire Quiblier, Superior of the Seminary of Montreal, to the Iroquois Tribe stationed at the Lake of the Two Mountains, and accepted by them... 11 June 1839," by Father Quiblier, enclosed in D.C. Napier to Governor General, 18 July 1839, ibid.

22 2 Vict., c. 50, 8 April 1839; 3 Vict., c. 30, 8 June 1840; 4 Vict., c. 42 [1841] of Consolidated Statutes of Lower Canada 1861. See the memorandum re "Oka Indians" by A.E. St. Louis, Indian Affairs Branch, 26 May 1948, in THRC, document K-59, "Oka 1881-1950."

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48 NA, RG 10, Red Series, vol. 2029, file 8946, (draft) Joseph Howe to Rev. John Borland, 24 Jan. 1873.

49 *Ibid., vol. 2035, file 8946-4, unidentified, unsigned memorandum, 13 Oct. 1890; Daniel, *Claims*, pp. 79 and 172, n. 5.

50 NA, MG 26 G, Sir Wilfrid Laurier Papers, vol. 791G, 225747, (copy) W. Laurier to Clifford Sifton, 17 Nov. 1902.

51 United Church of Canada Archives [UCA], A. Carman Papers, box 11, file 59, N.W. Rowell to Rev. Dr. Henderson, 1 Aug. 1903; enclosed with Rowell to Rev. Dr. Carman, 1 Aug. 1903.

52 I.S. Fairty, "Reminiscences [1947]," The Law Society of Upper Canada *Gazette*, 12, no. 3 (Sept. 1978): 257-8; Daniel, *Claims*, p. 82.

53 Unless otherwise noted, this treatment of the case relies upon: *Dominion Law Reports*, 5, "Corinthe et al. v. Seminary of St. Sulpice of Montreal," 263-8; and Factums (see note 13).

54 UCA, T.E.E. Shore Papers (accession 78.093C), box 3, file 57, N.W. Rowell to Rev. T.E.E. Shore, 2 Oct. 1912.

55 B. Morse, ed., *Aboriginal Peoples and the Law: Indian, Metis and Inuit Rights in Canada* (Ottawa: Carleton University Press, 1985), p. 58 (Lord Watson).

56 The 1885 Franchise Act extended the franchise in federal elections to Indians east of Manitoba. The provision was repealed in 1898.

57 Shore Papers, box 3, file 57, N.W. Rowell to T.E.E. Shore, 2 Oct. 1912.

58 Ibid., (copy) T.E.E. Shore to Col. S. Hughes, 26 Nov. 1912.

59 *RG 10, Red Series, vol 2032, file 8946X, part 3, E. Lafleur, "Opinion as to the Rights of the Iroquois and Algonquin Indians of Oka," 21 June 1916.

60 *Records of Indian Affairs, file 373/1-1, Bernard Bourdon to W.M. Cory, Jan. 1951.

61 *Ibid., file 373/3-8, Memorandum by G. Boudreault, 18 April 1969.

62 *Ibid., file 373/1-1, Royal Werry to W.J.F. Pratt, 16 March 1938. The federal minister did criticize the seminary's disposal of property that the Indians used at one point, but the context suggested that the protest was a bargaining ploy aimed at reducing the amount that the Sulpicians wanted for their lands at Oka. See T.A. Crerar to Sulpicians, 10 Dec. 1941, in *Minutes of Proceedings and Evidence*, pp. 31-2.

63 Although Bartlett, *Indian Reserves in Quebec*, p. 6, refers to the "reserve at Oka," it was not and is not now a reserve because the lands have never been "set aside by Order-in-Council as a reserve for the benefit" of the Indians. Daniel, *Claims*, p. 83.

64 Their lawyer later claimed that the Indians were not informed of the 1945 transaction until 1957. See *Records of Indian Affairs, file 373/30-2-16, Emile Colas to Ellen L. Fairclough, 9 Feb. 1960.

65 Emile Colas, counsel for Oka Indians, *Minutes of Proceedings and Evidence*, pp. 14, 34.

66 Mr. F.G. Fane, ibid., p. 34.

67 *Statutes of the Province of Quebec, 8-9 Elizabeth II, c. 181, *An Act respecting the Corporation of Oka*, 18 Dec. 1959.

68 Minister of Citizenship and Immigration to attorney for the Oka Indians, 27 May 1958, quoted in *Minutes of Proceedings and Evidence*, p. 15.

69 Assembly of First Nations, "Kanesatake Background & Chronology"; Joint Committee, *Minutes of Proceeding and Evidence*, p. 14.

70 Oka Chiefs to Joint Committee of Senate and House of Commons on Indian Affairs, 20 April 1961, *Minutes of Proceedings and Evidence*, p. 319.

71 Ibid., p. 14.

72 Oka Chiefs to Joint Committee of Senate and House of Commons on Indian Affairs, ibid., p. 319.

73 Ibid., p. 18; *Records of Indian Affairs, file 373/30-2-16, Guy Favreau, Assistant Deputy Minister of Citizenship and Immigration, to Emile Colas, 9 August 1960.

74 Joint Committee, *Minutes of Proceedings and Evidence*, p. 14. Their lawyer also took pains to explain that the Indians did not regard themselves as Canadian citizens, did not recognize Canadian law, and especially did not accept the validity of the Indian Act. Ibid., pp. 23-5.

75 Ibid., p. 14; Document 0-44, "Land Title at Oka [1973]."

76 Joint Committee, *Minutes of Proceedings and Evidence*, pp. 614, 615.

77 Don Purich, *Our Land: Native Rights in Canada*, (Toronto: Lorimer, 1986), p. 52.

78 P.E. Trudeau as quoted by Flora MacDonald, M.P., 11 April 1973, House of Commons *Debates*, p. 3207.

79 On Trudeau, Aboriginal rights, and claims see J.R. Miller, *Skyscrapers Hide the Heavens: A History of Indian-White Relations in Canada* (Toronto: University of Toronto Press, 1989), pp. 224, 254-6.

80 Catharine McClellan, *My Old People Say: An Ethnographic Survey of Southern Yukon Territory* 2 vols., (Ottawa: National Museums of Canada, Publications in Ethnology no. 6, 1975), vol. one, pp. 45-50.

81 Daniel, *Claims*, p. 227.

82 *In All Fairness: A Native Claims Policy – Comprehensive Claims* (Ottawa: Supply and Services Canada, 1981), pp. 29-30.

83 *Living Treaties: Lasting Agreements*, Report of the Task Force To Review Comprehensive Claims Policy [Coolican Report], (Ottawa: Indian Affairs and Northern Development, 1985), 13: "Three claims have been rejected on the basis of their having been superseded by law." As of 15 March 1991, according to the deputy chief of the Treaties and Historical Research Centre, nineteen comprehensive claims awaited settlement. During the winter of 1990-91 the federal government "announced the lifting of the six-claim limit on the number of comprehensive claims the government will negotiate at any time" and moved to set up a task force on "how tripartite negotiations" with Native groups and provinces might proceed. INAC, *Transition*, Special Edition, February 1991.

84 *Outstanding Business: A Native Claims Policy – Specific Claims* (Ottawa: Indian Affairs and Northern Development, 1982), p. 13. "Twelve claims had been settled involving cash payments of some $2.3 million. Seventeen claims had been rejected and five had been suspended by the claimants. Negotiations were in progress on 73 claims and another 80 were under government review. Twelve claims had been filed in court and 55 others referred for administrative remedy (e.g., return of surrendered but unsold land)."

85 Coolican Report, p. 78.

86 Daniel, *Claims*, pp. 230-1.

87 *In All Fairness*, espec. p. 17.

88 *Outstanding Business*, p. 16. The document claimed, however, that Indians' "views have been taken into consideration by the government in developing new policy initiatives."

89 Coolican Report, pp. iii, 30, 40, 43. See also p. 14 *re* impact of constitution of 1982.

90 Ibid., p. ii.

91 *Comprehensive Land Claims Policy* (Ottawa: Supply and Services, 1986 [the title page nonetheless bears the date "1987"]), pp. 12, 18, 23. For the minister's claim that "blanket extinguishment" was dropped as a requirement in 1986, see his statement to the House of Commons in September 1990 in *Transition*, vol. 3, no. 12 (Dec. 1990), p. 3.

92 Paul Ollivier, Associate Deputy Minister, Department of Justice, to P.F. Girard, Office of Claims Negotiation, INAC, 26 Feb. 1975. A photocopy of this document, which was obtained by means of an application under the *Access to Information Act*, is in the possession of the author.

93 McCann-Magill, *Golden Lake Land Claim*, espec. pp. 11-12.

94 INAC press release, "An Overview of the Oka Issue," p. 3; Bill McKnight to Grand Chief Hugh Nicholas, 14 Oct. 1986, and R.M. Connelly, Specific Claims Branch, to Chief Nicholas, 10 May 1984. Photocopies of the McKnight and Connelly letters were obtained via the *Access to Information Act* and are in the author's possession.

95 *Transition*, vol. 3, no. 9 (Sept. 1990), p. 1.

96 *Globe and Mail*, 11 September 1990.

97 Ibid., 20 February 1991.