

The federal government rejected the Mohawk comprehensive claim on the following grounds:

1. The Mohawks could not assert aboriginal title as they had not maintained possession of the land since time immemorial. The land had been alternately and concurrently occupied by the Nipissing, Algonquin and Iroquois.
2. Any aboriginal title that may have existed had been extinguished first by the Kings of France with respect to the land grants made by them, including the seigneurial grant to the Seminary of St. Sulpice, and by the British Crown through the granting of title to others when lands were opened to settlement.

Before this Committee, the Department of Indian Affairs again stated its view that the fundamental weakness of the Mohawk land claim in the area of Oka is that the historical record, as the Department views it, fails to demonstrate exclusive Mohawk use of the territory since time immemorial—relative to other native people, as well as non-native people such as the Sulpicians. From the Mohawk perspective, the claims of Canadian governments and non-native settlers are at least equally flawed.

The Department's response to the Mohawk claim has also been expressed another way. The Department has described the Mohawks at Oka as descendants of the Iroquois, Algonquins and Nipissings (Information Sheet, July 1990 "Mohawk Band Government"). If this is the case, then there seems to be a question whether the indigenous people of Kanesatake could demonstrate traditional use and occupancy of the land not just as Mohawks but also as descendants of all aboriginal peoples who used that territory prior to and since the arrival of Europeans.

As an alternative argument to the comprehensive claim, Mohawks say that the Sulpician land grant was intended for the benefit of the indigenous people. Accordingly, the Sulpician Order was not free to sell any of this land without the consent of the native people concerned. This is regarded as a specific claims issue. Specific claims arise from allegations of government mismanagement of Indian lands. With respect to any specific claim in this region, the federal government essentially takes the position that the 1912 Privy Council decision is a full answer to the question of any outstanding legal obligation of the federal government.

In summary, Mohawk claims to land have been advanced on a number of grounds, each representing a separate legal argument but also related to one another:

1. territorial sovereignty flowing from status as a sovereign nation;
2. treaty rights;
3. the Royal Proclamation of 1763;
4. unextinguished aboriginal title under common law;