

**Land Back: The Mohawk
Council of Kahnawà:ke's
approach to the
resolution of land
grievances**

Presentation by Francis
Walsh, October 24, 2023

The Mohawk Territory of Kahnawà:ke



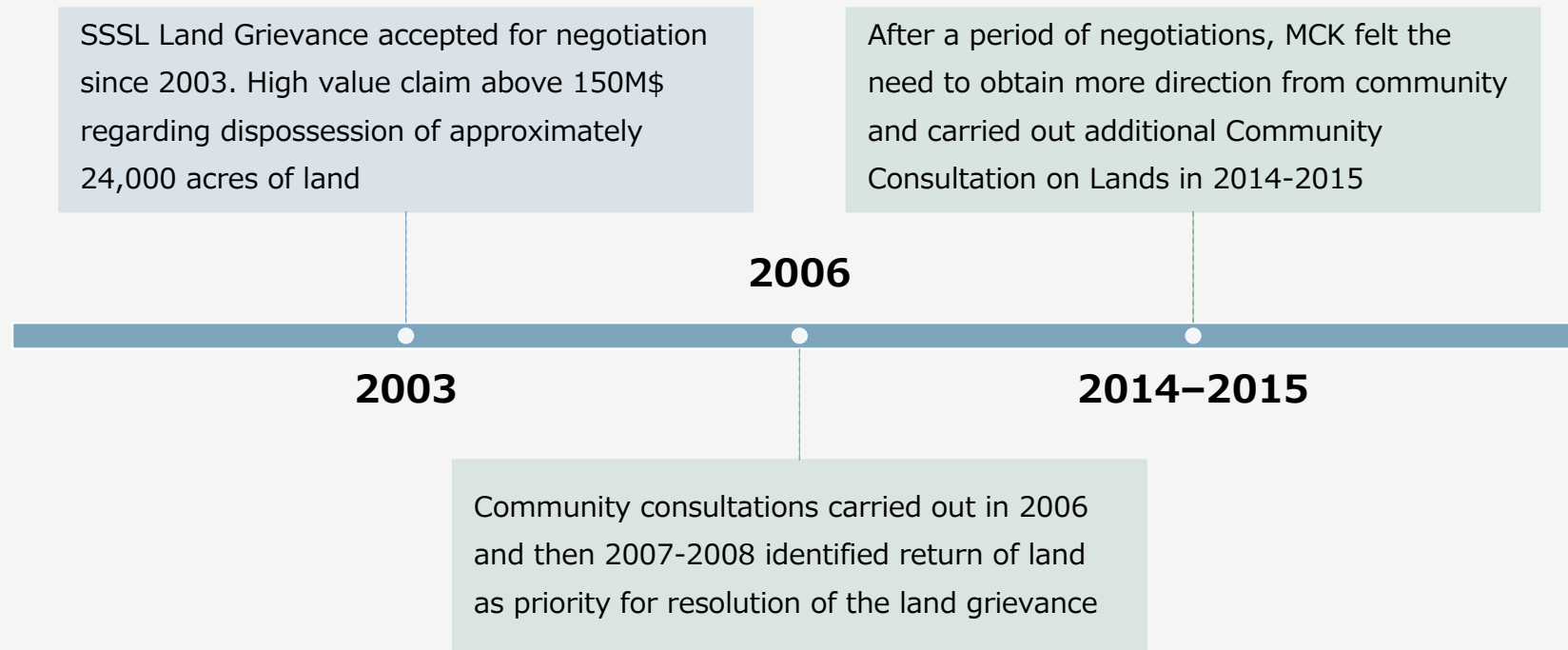
(source:
<https://decolonialatlas.files.wordpress.com/2015/02/montreal81.png>)

Map of the Seigneury of St. Louis (SSSL) Land Grievance and recently returned lands



(source: <https://newsinteractives.cbc.ca/longform/what-land-back-means-for-this-reclamation-camp-in-kahnawake/>)

SSSL Land Grievance: Community Consultation on Lands



Community Consultation on Lands



Methodology: Consultations carried out over the course of a couple of months. A community wide consultation session kicked off the engagement process and was followed by smaller focus groups, face to face meetings with individuals, families, community groups and organizations. Youth also engaged through the Kahnawà:ke Survival School (high school).



Meetings facilitated by elected chiefs, but information was gathered, synthesized and final report drafted independently of political leadership and facilitators.

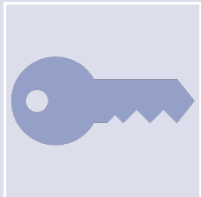
Community Consultation on Lands

- The Consultation on Lands Final Report has informed MCK's approach to SSSL land grievance negotiations. Key direction from the community:
- "The community said land is number one, money is a distant second" (Chief Mike Delisle)
- No release of Aboriginal rights/title

Community Consultation on Lands



Final Report remains internal to community.



Key issues discussed included: importance of return of lands within the SSSL, the possibility of acquiring replacement lands outside of the SSSL, the key attributes/potential uses of lands (i.e. location, suitability for cultural uses, economic development, applicable laws/jurisdiction)

SSSL Land Grievance Update

- Quebec not at the negotiation table, however several parcels of adjacent land held by the MTMD were returned to Kahnawà:ke within the context of the extension of Highway 30
- This resulted in municipalities taking legal action against Quebec, decision of Superior Court confirming provincial decree: *Municipalité régionale de comté de Roussillon c. Ministère des Ressources naturelles, 2017 QCCS 3744 (CanLII)*

Superiour Court Decision

- The provincial government has a duty to consult and accommodate Kahnawà:ke regarding the development of lands subject to a land claim that has only been accepted by the federal government (para. 21).
- In adopting the decree, the government was exercising political “Ministerial authority”, and no duty of procedural fairness or to consult was owed to the Municipalities affected, the only restriction on the exercise of this decision-making authority is to respect the applicable laws related to transferring lands in the domain of the state (paras. 130, 134).
- It is not necessary to resolve all the municipalities’ concerns prior to returning lands (para. 144).

SSSL Land Grievance Update

- Quebec Government still owes 211 acres of land to Kahnawà:ke as part of Highway 30 agreement (MCK refused to accept unilateral offer of 3.1M\$ instead of 211 acres)
- MCK and community continue to be vigilant regarding development of SSSL lands. Example: Chateauguay housing project and Highway 132 reconfiguration.



Community Consultation on Lands

Throughout the years has also helped inform MCK position on:

- Intervention in *Southwind*;
- Claims reform, and
- The implementation of UNDRIP to claims

MCK intervention in Southwind

- One of the objectives was to ensure that return of lands be acknowledged as a preferred remedy for illegal taking of Indigenous lands.
- MCK argued: Permanent land takings do not result in one-time losses that one-time payments are capable of compensating. Land bases are required for Indigenous Nations to exercise governance rights and to promote Indigenous languages and cultural traditions (MCK Factum, para. 24).



MCK Intervention in Southwind

From a Mohawk perspective, monetary compensation is a poor substitute for the restitution of land that is taken without consent. Equitable remedies must recognize the ongoing Indigenous proprietary interest and connection to land to achieve the objectives of reconciliation. This is consistent with the UNDRIP which emphasizes reliance on Indigenous laws and land tenure systems, and restitution “in the form of lands” that are “equal in quality, size and legal status” for the fair resolution of land grievances. (MCK Factum, para. 27)

To this effect, this Court should direct that equitable remedies based on the restitution of the Indigenous proprietary interest, including constructive trusts, should be favoured whenever possible (MCK Factum, para. 28).

Southwind Decision

Southwind Decision: When the Crown breaches its fiduciary duty, the remedy will seek to restore the plaintiff to the position the plaintiff would have been in had the Crown not breached its duty [...] When it is possible to restore the plaintiff's assets *in specie*, accounting for profits and constructive trust are often appropriate. (para. 68).



MCK action in claims reform process

- MCK attended the AFN regional dialogue sessions in 2019
- MCK developed a proposal for claims reform that was submitted to AFN, but also directly to Canada
- MCK calling for federal legislation to establish an independent claims commission that respects articles 27, 28 of UNDRIP. Commission oversees negotiations, explicitly including restitution/return of lands as part of remedies. Should have the authority to compel provinces/municipalities to participate in resolution process.
- MCK Calling for SCT mandate to be expanded in conformity with articles 27, 28 of UNDRIP.

MCK action in claims reform process

- On May 17, 2023, MCK sent a letter to then Minister Marc Miller expressing concern over the AFN-Canada claims reform process and lack of direct engagement with rights holders.
- Minister Miller responded that Canada is willing to engage with MCK on the topic of claims reform and a bilateral meeting was held to kickstart discussions on August 17, 2023.
- According to Canada: direct engagement with rights holders will be carried out by Canada, but only after a preliminary proposal is ready to be sent out for consultation.

MCK action on implementation of UNDRIP

- MCK heavily engaged in review of federal legislation and action plan.
- On subject of specific claims- MCK reiterated in correspondence with then Minister Lametti in December 16, 2022 that restitution must be at the forefront of the claims reform process, including the return of lands in accordance with article 28 of UNDRIP.
- Kahnawà:ke Community consultation on UNDRIP Action Plan also highlighted the need for Canada to engage directly with rights holders.