

# No turning back after Oka dispute, says native adviser

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Southam News

Aug 21/90

OTTAWA — Mohawk land claims in Quebec were rejected twice before natives resorted to armed insurrection, federal Indian Affairs Department records show.

Now they're back at the bargaining table.

Recent Supreme Court of Canada rulings, new-found political clout and increased militancy — witnessed in the armed barricades at Oka, Que., and across the country — have changed the rules forever, say native leaders and legal observers.

Instead of waiting years for Ottawa to negotiate land claims, natives are getting action "based on how much you can yell, how much noise can you make," said Robert Groves, special adviser to the Native Council of Canada which represents non-status Metis and Indians living off reserves.

"That's what happened at Oka."

As well, he said, Mohawks "are getting a lot of support spontaneously" from other native bands frustrated by fighting with Ottawa.

The government deals with only six claims at a time and there are more than 300 claims outstanding. Natives suggest there may be as many as 1,000 more being developed.

Since 1973, only 44 cases have been resolved.

"In the meantime, (native) communities are falling apart," Groves said.

While individual bands are becoming more autonomous, the federal government is scrambling to react, he added. "There's a bit of chaos on both sides."

Two Supreme Court of Canada decisions last May were "a turning point in land claims," said Haymar Foster, an associate law professor at the University of Victoria.

The Sparrow case involved a B.C. native who used a fishing net larger than allowed by law. The court ruled that aboriginal fishing, land and hunting rights superseded later laws limiting net size, in effect saying Ottawa must justify any laws that infringe on native aboriginal rights.

In the Sioui case, a native had been fined for cutting saplings for a "sweat lodge" religious ceremony in a Quebec park. The court ruled a 230-year-old treaty with Huron Indians took precedence over park laws enacted later, so Ottawa cannot create laws that overrule established treaties and agreements.

The decisions have given natives more legal ammunition while weakening the government's defences, Foster said.

And Manitoba New Democrat Elijah Harper's successful 11th-hour stand against the Meech Lake constitutional deal last June was a unexpected show of strength on the political front.

So it's no surprise, Foster said, that natives have also become increasingly aggressive in pursuing their land claims.

"What did we expect?" he asked. Natives have learned that governments "pay no attention until they start laying down in front of bulldozers."

Direct confrontation has proven effective.

In Alberta, for example, Lubicon Indians erected a blockade last year stopping access to 18 wells to draw attention to a 50-year-old claim to a larger reserve. Until then, the government considered the Lubicon claim merely an "anticipated claim" from an isolated community and there were no immediate plans to begin negotiations, Indian Affairs records show.

But the highly publicized blockade brought a quick start to talks that eventually involved Alberta Premier Don Getty. The talks broke off last month and the Lubicons are considering another barricade.

In Oka, the Mohawks made a land claim in 1975 for a large chunk of the province — basically "all of southern Quebec" including Quebec City, said Ian Potter, director general of comprehensive claims for Indian Affairs. It was rejected.

A later, smaller claim rejected in 1986 included the disputed land at Oka where natives have set up barricades.

In its summary of the status of land claims Indian Affairs listed the Mohawk claims as "resolved" after federal negotiators rejected them.

The claims did not meet one of the government's key criteria for aboriginal land — occupation of the territory since time immemorial.