LAW SCHOOL

Acquired Territory: a Case Brief

Occupation or grant; and whether a dedication can do what only a surrender can.

The issue

Is the Grand River Tract held under a Crown grant (acquired territory), to be analysed under s 109 rather than the occupation test of s 35; and can a dedication of highways by others bind an interest that only a surrender by the class can release?

The instruments

Instrument	Date	What it does
Mississauga purchase	1784	The Crown acquires the land
Haldimand Proclamation	25 Oct 1784	The deed of gift, to enjoy for ever
Constitution Act, 1867, s 109	1867	Provincial lands subject to the interest
Constitution Act, 1982, s 35	1982	Aboriginal and treaty rights recognized
Constitution Act, 1982, s 52	1982	The supreme law

The statutes

Constitution Act, 1867 (UK), 30 & 31 Vict, c 3, s 109.

Constitution Act, 1982, ss 35, 52.

Municipal Act, 2001, SO 2001, c 25, s 26 (highways).

The cases

Delgamuukw v British Columbia, [1997] 3 SCR 1010
Aboriginal title is proved by exclusive occupation at sovereignty, and may be infringed if justified.

Tsilhqot'in Nation v British Columbia, 2014 SCC 44
Aboriginal title declared for the first time; it confers the right to decide how the land is used, subject to justified infringement.

St Catharines Milling and Lumber Co v R, (1888), 14 App Cas 46 (PC)
Under s 109 the Province takes its lands subject to an interest other than its own, lifted only by surrender.

Ontario Mining Co v Seybold, [1903] AC 73 (PC)
A valid surrender frees the Province's title.

Chippewas of Sarnia Band v Canada (AG), (2000), 51 OR (3d) 641 (CA)
An unlawful surrender acknowledged, though relief against long-standing purchasers refused on equitable grounds.

Reference re Manitoba Language Rights, [1985] 1 SCR 721
Laws made without meeting a constitutional requirement are invalid; deemed valid only for a time while put right.

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The arguments

	For the municipality and the Crown	For the class
The test	Occupation (Delgamuukw, Tsilhqot'in)	The Crown's grant; occupation is the wrong question
The road	A dedicated highway under the Municipal Act	Dedication cannot give up what only a surrender can
The title	Provincial, by s 109	Provincial, subject to the interest (St Catharines)
The defect	None; titles are registered	Latent: no surrender (Seybold); s 52 governs

Weak points to test

For the class: the general treatment of Indigenous land as s 35 occupation; long public use; the Municipal Act's presumptions. For the municipality: why a Crown grant should be tested by occupation; who dedicated the road, and with what title.

Briefing note

A city solicitor asks whether a highway widening across land within six miles of the Grand needs anything beyond the Municipal Act. In 150 to 200 words, advise the solicitor: the s 109 question, the difference between dedication and surrender, and the risk. Write it as a briefing note: purpose, background, considerations, recommendation.

Moot problem

Members of the Register seek a declaration that the city's dedication of a highway across the Tract does not release the class's interest, and that the city must obtain the class's licence for the widening. The city relies on the Municipal Act and long public use.

For the applicants: the grant, s 109, Seybold, s 52. **For the city:** dedication, public use, and the occupation test. **For both:** whether occupation is the right test for a Crown grant.

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A worked outline: IRAC

Step	For the applicants
Issue	Does the dedication release the class’s interest, and must the city obtain its licence?
Rule	s 109; St Catharines; Seybold; s 52; the distinction between dedication and surrender.
Application	The land was granted by the Crown, not held by occupation; no surrender by the class; a dedication cannot do a surrender’s work.
Conclusion	A declaration, and an order that the class’s licence be obtained.

The city’s outline runs the same four steps the other way. Students draft it themselves.

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Written assignment: memorandum of argument

The task

Write the memorandum of argument for one side of the moot on this sheet: the applicants or the city, as your instructor assigns. Then argue it.

Requirements

- 2,500 words, not counting the list of authorities.
- Every authority cited in McGill Guide form, with pinpoints.
- At least six authorities, including at least two not on this sheet.
- Meet the other side’s best argument in Part III, not just your own case.
- Only facts set out in the moot problem; no new facts.

Structure

- Part I, the facts: a neutral statement, no more than two pages.
- Part II, the issues: each as a single question.
- Part III, the law and argument: issue by issue, the rule, its application, and the other side’s answer met.
- Part IV, the order sought: precisely worded.
- Part V, the list of authorities: statutes, then cases, then secondary sources.

Timeline

- Week 1: research; a one-page outline of your issues and authorities.
- Week 2: the full memorandum, exchanged with the other side.
- Week 3: oral argument.

Oral argument

Fifteen minutes a side, two minutes’ reply for the applicant. Expect questions from the bench from the first minute; the marking guide on the instructor’s page applies.

Integrity

Your memorandum must be your own. If you use an AI tool for research or drafting, verify every authority against the reports and say so in a note; an invented citation fails the assignment.

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For the instructor: standards met

Universal competencies	Identify key facts and claims; Understand perspective and point of view; Analyse and evaluate evidence; Apply: what does this mean for us?. The same everywhere, whatever the curriculum.
TRC Call to Action 28	Constitutional and property law (s 109, s 35, highways), and Aboriginal title compared (Delgamuukw, Tsilhqot'in).
National Requirement	Problem-solving, legal research, and oral and written communication.
Citation	The McGill Guide; pinpoints left for students to supply.
Method	IRAC; a briefing note to a city solicitor; a moot on a declaration.
Balance	The arguments both ways and their weak points; the brief names its own position.
Time	One class of 90 minutes; the moot as a separate session.

Marking guide: the moot

	Outstanding	Strong	Competent	Weak
Law	Every authority on point, accurately stated and pinpointed	Main authorities correct	Some missed or loose	Wrong or absent
Analysis	Applies the law to the facts and meets the other side's best point	Applies the law clearly	Applies it in part	States law without applying it
Structure	A clear road map, followed throughout	Clear and mostly followed	Some drift	Hard to follow
Advocacy	Answers the bench directly and returns to the theory	Answers well	Answers with difficulty	Avoids the questions

This brief sets out the Mohawk Nation of Grand River's position beside others, for study and argument. The case summaries are for teaching: read the reports. It is not legal advice.

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