LAW SCHOOL

# Dawn of Day: a Case Brief

*Which Crown? The divisibility of the Crown and a direct relationship.*

## The issue

Does the Mohawk relationship with the Crown, renewed by the royal visits and chieftainships, run to the Crown in right of Canada, the Crown in right of the United Kingdom, or the King personally; and can the Nation petition the King directly?

## The instruments

| Instrument | Date | What it does |
|---|---|---|
| Haldimand Proclamation | 1784 | “His Majesty’s” grant to the Mohawk |
| Prince Arthur made a chief | 1869 | A Crown prince received into the Mohawk order |
| Prince of Wales made a chief | 20 Oct 1919 | Dawn of Day; signs the council roll |
| Statute of Westminster | 1931 | The Dominions’ legislative independence |
| Canada Act 1982 | 1982 | Patriation |

## The statutes

*Statute of Westminster, 1931* (UK), 22 & 23 Geo V, c 4.

*Canada Act 1982* (UK), 1982, c 11.

## The cases

***R v Secretary of State for Foreign and Commonwealth Affairs, ex parte Indian Association of Alberta***, [1982] QB 892 (CA)
Obligations of the Crown to the Indian peoples of Canada had passed to the Crown in right of Canada.

***Black v Chrétien***, (2001), 54 OR (3d) 215 (CA)
Matters of the prerogative, such as honours, are largely not justiciable.

***Manitoba Metis Federation Inc v Canada (AG)***, 2013 SCC 14
The honour of the Crown governs its dealings with Indigenous peoples.

## The arguments

| | For the Crown in right of Canada | For the Nation |
|---|---|---|
| Which Crown | Obligations passed to Canada (ex parte Indian Association) | The relationship is with the King, renewed in person and by Mohawk law |
| The visits | Ceremonial, without legal effect | Acts of the Crown’s own family, entered in the Mohawk record |
| Petition | To Canadian ministers | To the King directly, as the Mohawk always have |
| Justiciability | Prerogative matters are not for the courts (Black) | The honour of the Crown is (MMF) |

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## Weak points to test

For the Nation: ex parte Indian Association squarely; the ceremonial character of honours. For the Crown: the visits' continuity after 1931 and 1982; the King as King of Canada still receiving the Mohawk.

## Briefing note

The Office of the Secretary to the Governor General receives a petition from the Nation addressed to the King. In 150 to 200 words, advise the office: how to route it, what the history suggests, and how to reply respectfully. Write it as a briefing note: purpose, background, considerations, recommendation.

## Moot problem

The Nation seeks a declaration that the Crown in right of Canada must transmit its petitions to the King without alteration, relying on the visits, the chieftainships and the honour of the Crown. Canada says petitions go to its ministers.

**For the Nation:** the relationship as lived; MMF. **For Canada:** ex parte Indian Association; Black v Chrétien. **For both:** what the divisibility of the Crown means for a relationship older than Canada.

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## A worked outline: IRAC

| Step | For the Nation |
|---|---|
| Issue | Must Canada transmit the Nation’s petitions to the King? |
| Rule | The honour of the Crown (MMF); the prerogative (Black); ex parte Indian Association. |
| Application | The relationship was made and renewed with the Crown’s family in person; honour requires that the Mohawk be heard by the King. |
| Conclusion | A declaration that petitions be transmitted without alteration. |

*Canada’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 Nation or canada, 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** | The history of Aboriginal–Crown relations, the divisibility of the Crown, and the prerogative. |
| **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 the Governor General’s office; 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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