LAW SCHOOL

The Tract: a Case Brief

Section 109, registered titles, and a class that never surrendered.

The issue

Is land within six miles of the Grand River, outside the reserve and held under registered title, subject to the interest the Proclamation of 1784 granted to the class and its posterity, preserved by s. 109; and if so, what does registration under the Land Titles Act do to it?

The instruments

Instrument	Date	What it does
Haldimand Proclamation	25 Oct 1784	Six miles from each side, mouth to head, “to enjoy for ever”
Simcoe Patent	14 Jan 1793	Six miles “or a space co-extensive therewith”; sale bound to the Crown; refused by the class
Jones’s plan	c. 1801	A straight centre line upstream; “continues up the main branch to its source”
Ridout’s plan	2 Feb 1821	About 674,910 acres; stopped at the purchase line
Surrender	1841	The general surrender by the chiefs in council

The statutes

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

Constitution Act, 1982, being Schedule B to the *Canada Act 1982* (UK), 1982, c 11, s 52.

Land Titles Act, RSO 1990, c L.5.

The cases

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, but relief against good-faith purchasers of long standing refused on equitable grounds.

City of Sherrill v Oneida Indian Nation of New York, 544 US 197 (2005)
In the United States, long-settled expectations barred reviving sovereignty over land long sold.

Mabo v Queensland (No 2), (1992), 175 CLR 1 (HCA)
In Australia, an interest in land can survive the Crown’s acquisition of sovereignty until validly extinguished.

Cowichan Tribes v Canada (AG), BCSC, 2025
A prior interest declared over lands held under registered fee simple titles. Citation to be supplied from the report.

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The arguments

	For the registered owner and the Crown	For the class
The grant	To the Six Nations, read through the Patent; much since surrendered	To the class and its posterity; preserved by s 109 as an interest other than the Province's
The surrenders	Made by the chiefs and accepted by the Crown	None by the class; a collective cannot surrender for persons it does not hold
Registration	The register is conclusive; good-faith purchasers protected (Chippewas of Sarnia)	Registration cannot defeat a constitutionally preserved interest (s 52); the defect is latent
Remedy	Equity bars disturbing settled titles (Sarnia, Sherrill)	The Nation does not seek to overturn titles that do not conflict; it seeks recognition and recording
Extent	As surveyed, to the Base Line	As granted, to the source

Weak points to test

For the class: the equitable bars in Sarnia and Sherrill; the Patent and the surrenders as the Crown's long practice; the extent beyond the Base Line. For the owner and the Crown: whether a collective surrender binds individuals and the unborn; whether s 109's second burden can be removed by registration; Mabo and Cowichan on interests surviving beneath titles.

Briefing note

A land registrar receives a notice that a parcel within six miles of the Grand is subject to the class's interest under the Proclamation of 1784. In 150 to 200 words, advise the registrar: what the notice is, what registering it would and would not do, what to record, and the risks either way. Write it as a briefing note: purpose, background, considerations, recommendation.

Moot problem

A member of the Register applies for a declaration that a vacant parcel within six miles of the bank, outside the reserve, is subject to the class's interest, and for an order that a notice of the interest be entered on the title. The registered owner and the Crown oppose.

For the applicant: the grant, s 109, the absence of the class's surrender, s 52. **For the respondents:** the Patent, the surrenders, the Land Titles Act, and the equitable bars. **For both:** the extent of the Tract, and the difference between overturning a title and recording an interest beneath it.

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A worked outline: IRAC

Step	For the applicant
Issue	Is the parcel subject to the class’s interest, and may notice of it be entered on the title?
Rule	The Proclamation; s 109 (St Catharines, Seybold); s 52; Mabo and Cowichan on surviving interests; the Land Titles Act.
Application	The parcel lies within six miles of the bank; the class never surrendered; registration cannot defeat a constitutionally preserved interest; recording it overturns no one’s title.
Conclusion	A declaration, and an order that notice be entered.

The respondents’ 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 applicant or the respondents, 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, Indian law and land law, and comparative law (Sherrill, Mabo).
National Requirement	Problem-solving, legal research, and oral and written communication, within property and constitutional law.
Citation	The McGill Guide; pinpoints left for students to supply.
Method	IRAC; a briefing note to a land registrar; a moot on a declaration and notice.
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 of about two hours.

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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