

**CANADA**  
**PROVINCE OF QUEBEC**  
District of Terrebonne

S U P E R I O R C O U R T

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No: 700-17-017482-216

**THE MOHAWKS OF KANESATAKE**, a community of the Kanien'kehà:ka nation and a band within the meaning of the *Indian Act*, RSC 1985, c I-5, having an establishment at 681 Rue Ste Philomène, Kanesatake Mohawk Territory, District of Terrebonne, Province of Quebec (J0N 1E0)

Applicant

v.

**THE MUNICIPALITY OF OKA**, a municipality within the meaning of the *Municipal Code*, CQLR C-27.1, having a principal establishment at 183, Rue des Anges, Oka, District of Terrebonne, Province of Quebec (J0N 1E0)

- and -

**THE ATTORNEY GENERAL OF QUEBEC**, on behalf of the Government of Quebec, maintaining an establishment at 1, Notre-Dame Street East, suite 4.100, Montreal, District of Montreal, Province of Quebec (H2Y 1B6)

Respondents

- and -

**THE ATTORNEY GENERAL OF CANADA**, on behalf of Her Majesty in Right of Canada, maintaining an establishment at Complexe Guy-Favreau, East Tower, 200, René-Lévesque Blvd. West, 5<sup>th</sup> Floor, Montreal, District of Montreal, Province of Quebec (H2Z 1X4)

- and -

**GREGOIRE GOLLIN**, a natural person domiciled and resident at 495 Brassard, St-Joseph-du-Lac, District of Terrebonne, Province of Quebec (J0N 1M0)

Mis-en-cause

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**APPLICATION FOR JUDICIAL REVIEW AND FOR DECLARATORY AND  
INJUNCTIVE RELIEF**

(Arts. 689 *et seq.* of the *Municipal Code of Quebec* and arts. 25, 49, 142, 509 *et seq.* and 529 *et seq.* of the *Code of Civil Procedure*)

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**TO ONE OF THE HONOURABLE JUDGES OF THE SUPERIOR COURT, SITTING IN  
AND FOR THE DISTRICT OF TERREBONNE, THE APPLICANT SUBMITS AS  
FOLLOWS:**

**Overview**

1. With the present proceeding, the Mohawks of Kanesatake seek to quash *Règlement numéro 2020-233 citant la forêt de la Pinède d’Oka comme site patrimonial* (hereinafter “heritage site by-law”), which was adopted by the Municipality of Oka on December 1, 2020 (public notice thereof being provided on December 3, 2020). This by-law has the effect of creating a “recognized heritage site,” within the meaning of the *Cultural Heritage Act*, CQLR c P-9.002, on seven lots of land that are part of the area known as “the Pines”. The recognition by a municipality of an area as a heritage site clothes the municipality with invasive and unparalleled powers of oversight and control over the use and management of these lands.
2. The heritage site by-law was adopted in bad faith, for an improper purpose, without the constitutionally required consultation of the Mohawks of Kanesatake, and in violation of Mohawk rights pursuant to the Treaty of Oswegatchie and of Mohawk ancestral rights and title. It is an abuse of power, unreasonable, and contrary to the honour of the Crown and to Canada’s commitments under the *United Nations Declaration on the Rights of Indigenous Peoples* and *The American Declaration on the Rights of Indigenous Peoples*. In sum, the by-law is illegal and must be quashed by this court.

**The Parties**

I. The Applicant

3. The Mohawks of Kanesatake are a community of the Kanien’kehà:ka (Mohawk) nation. Members of the community are known as Kanehsata’kehrónon.
4. Under Canada’s colonial legislation, the Mohawks of Kanesatake are categorized as a “band” within the meaning of the *Indian Act*, RSC c I-5.
5. The Mohawks of Kanesatake have the capacity of a natural person and may be a party to legal proceedings: s. 5, *Kanesatake Interim Land Base Governance Act*, SC 2001, c 8.

6. The Mohawks of Kanesatake are governed for certain purposes by the Mohawk Council of Kanesatake, which is a “band council” within the meaning of the *Indian Act*.

## II. The Respondents

7. The Respondent Municipality of Oka is a municipality established by provincial law. It is located on the shores of the Lake of Two Mountains (a body of water formed by the confluence of the Ottawa and St. Lawrence rivers), on lands that were granted by the King of France to the Sulpicians to be held in trust for the Mohawks of Kanesatake. This land grant is known as the Seigneurie of Lake of Two Mountains.
8. The Respondent the Attorney General of Quebec is charged with all litigation for and against the province of Quebec: s. 4(b), *Act respecting the Ministère de la Justice*, CQLR c M-19. In the present proceeding, it represents the Government of Quebec.

## III. The Mis-en-Cause

9. The Mis-en-Cause the Attorney General of Canada is responsible for “the regulation and conduct of all litigation for or against the Crown or any department, in respect of any subject within the authority or jurisdiction of Canada”: s. 5(d), *Department of Justice Act*, RSC 1985, c J-2. In the present proceeding, it represents Her Majesty in Right of Canada.
10. The Mis-en-Cause Grégoire Gollin is a natural person who “owns” more than half of the land that will make up the proposed heritage site and who has entered into a memorandum of understanding with the Mohawk Council of Kanesatake, adopted without prejudice to the rights of the Council, to transfer these lands to the control of the Mohawks.

## **The Context**

### I. The Reality of Mohawk Presence and Resistance to Colonialism

11. The Kanien’kehà:ka are a member of the Haudenosaunee (Iroquois Confederacy). They are known as the Keepers of the Eastern Door, for they protect the eastern edge of Haudenosaunee territory.
12. Kanien’kehà:ka territory extends throughout the state of New York, southern Quebec, eastern Ontario and beyond. This territory includes the lands presently known as “Oka”. Kanehsata’kehró:non have never surrendered their lands and continue to use this territory and assert their claims to it to this day.
13. Prior to the arrival of Europeans, the Haudenosaunee had a well-developed legal code, known as Kaianere’kó:wa (the Great Law of Peace). This code deals with matters ranging from foreign relations, to the rights of children, to the title and custody of land.

14. In the decades following the arrival of Europeans in North America, there was significant conflict between the Haudenosaunee and the French. Already during this time, a group of Kanien'kehà:ka were described as coming from Kanesatake.
15. Eventually, some Kanien'hehà:ka converted to Catholicism and began to live close to French settlements, particularly Montreal. In 1717, the King of France provided a seigneurial grant to the Sulpician Order of a tract of land to be known as the Seigneury of the Lake of Two Mountains, on the condition that these lands be used for the benefit of the Mohawks. The mission was established at Kanesatake, a pre-existing Mohawk site. The Seigneury was approximately 630 km<sup>2</sup> in size.
16. The Sulpicians began selling off the lands that they were meant to hold in trust for the Mohawks. As time went by, several non-Mohawk communities grew on lands that were formerly part of the Seigneury, one of which eventually came to be known as Oka.
17. This development and land sales took place despite the consistent and vocal opposition of the Mohawks of Kanesatake, who have always understood the terms of the original grant to the Sulpicians to mean that they are and remain the beneficial owners of the land, and that these rights exist in addition to the Aboriginal rights and title they hold as a result of their previous occupation of the lands.
18. The conflict over land that began when Sulpicians started selling the land to colonists has never ended. Over the centuries, Mohawks were attacked and beaten on many occasions for asserting their rights to the land. As just one example, a colonist who believed he owned the land on which a Mohawk resided would gather friends to assist him in physically and violently removing the Mohawks from their land.
19. Mohawks were also, on numerous occasions, jailed for asserting their rights: for example, in 1869 Chiefs Joseph O'nahsakèn:rat Swan, Kanrahtakén:iate, and Ohsennakén:rat were arrested and sent to jail in St-Scholastique for having delivered to the Seminary a notice ordering the Sulpicians to leave the lands and not return. They were held in jail for three weeks despite the fact that many Mohawks and non-Mohawks offered to post bail, and, eventually, they were acquitted of the charges against them.
20. Over the centuries, the Sulpicians and colonial authorities (including modern-day Canada and Quebec) have responded to Mohawk opposition to the sale and destruction of their lands with physical violence, legal actions, distorted histories and laws meant to minimize the Mohawk interest and their ability to fight back.
21. One of the main points of conflict between Mohawks, on the one hand, and the Seigneury, on the other, was the rights of Mohawks to a portion of the Seigneury known as "the Commons." Despite the Sulpicians' occasional sale of portions of the Commons, these

lands were, over the centuries following the establishment of the Seignury, used by the Mohawks to pasture cattle and to collect wood and medicinal plants.

22. Since the establishment of the Seignury, and up to and including the present day, the Mohawks have been unwavering in asserting their interest in the land; for hundreds of years, and despite the oppression, violence, and denials they have faced, their understanding of their rights has remained the same: the land was conceded through seigneurial grant under the civil law of the *Ancien Régime* to the Sulpicians, but for the use and benefit of the Mohawks.

## II. The Treaty of Oswegatchie and the Capitulation of Montreal

23. During the colonial conflicts between Britain and France in the 18<sup>th</sup> century, Kanehsata'kehró:non would sometimes fight alongside the French. These warriors were greatly respected and seen, by British and American authorities, as constituting a particularly imposing defence for the French colony.
24. During the Seven Years' War (also known in North America as the French and Indian War), which eventually led to the victory of Britain over France in North America, the British made extensive efforts to reach out to those Indigenous communities allied with the French, hoping to convince them to remain neutral.
25. On August 30, 1760, as the British prepared for what would prove to be the final siege of Montreal, Sir William Johnson met with representatives of several Indigenous nations and communities, including representatives of Kanesatake, at the community of Oswegatchie. At this meeting, the representatives of the Indigenous communities agreed to remain neutral in return for certain promises, including with respect to their continued peaceable enjoyment of the lands on which they resided.
26. The agreement between the parties was consecrated when Sir William Johnson gave to representatives of Kanesatake the Two Dog Wampum: this belt, which had been prepared by Kanehsata'kehró:non at the time of the arrival of the Sulpicians at the Lake of Two Mountains, depicted a dog at each end to signify the protection of Mohawk lands. Representatives of Kanesatake had given the belt to Sir William Johnson at a meeting earlier in the year, when the British Crown had first appealed for the aide of the Kanehsata'kehró:non in the Crown's war with the French.
27. In particular, as confirmed in later years, the British promised at Oswegatchie to "secure to us [the Indigenous parties] the quiet and peaceable possession of the lands we lived upon." For the Mohawks of Kanesatake, these lands included those lands now known as the Pines.

28. On September 8, 1760, the representatives of the French and British crowns in North America signed the Articles of Capitulation of Montreal. Article 40 of the Articles guarantees to the Indigenous peoples who had been allied with the French the continued possession and enjoyment of the lands on which they resided.
29. On September 15 and 16, 1760, at a conference held at Kahnawake between Sir William Johnson and the representatives of various Indigenous communities including Kanasatake, the Crown and the Indigenous nations that had been allied with France confirmed their commitment to the Treaty of Oswegatchie.
30. The British Crown's commitment to the protection of Indian lands was thereafter reaffirmed in the Royal Proclamation of 1763 and in the Treaty of Niagara in 1764. In particular the Royal Proclamation and subsequent instructions created the framework by which the Crown was obligated to follow a formal process for the proper taking of lands.

### III. The Commons, the Pines, and the Sale of the Remaining Lands to the Federal Government

31. In 1840, the Imperial Parliament enacted an Ordinance that was included in the Consolidated Statutes of Lower Canada of 1861 as Chapter 42, *An Act respecting the Seminary of St-Sulpice*. This Act provided, among other things, that the rights and obligations in favour of Her Majesty and others created by the original grant remained in force. As a consequence, the Crown retained the right of visitation in respect of the Seigneurie of St-Sulpice which entailed a right and an obligation to oversee the Seminary's obligations towards the Mohawk inhabitants. The Mohawk interests remained in fact.
32. In the 1880s, parts of the Commons were threatened with desertification due to over pasturing and the cutting of trees. The issue was so severe that during one night in 1886 the village became partially buried by an avalanche of sand. In response, the Mohawks and the colonists planted an estimated 100,000 trees in the area, mostly pines.
33. In 1936, the Sulpicians sold some of the remaining pieces of the Seigneurie to a Belgian company named "Institut Agricole Belge au Canada." The lands sold at this time included parts of the Commons, including parts of the Pines. The company began trying to prevent the Mohawks from cutting wood or pasturing their cattle in the Commons, but the Mohawks resisted these efforts and sought assistance from the federal government, though their requests were in vain.
34. By the early 1940s, almost none of the original Seigneurie was left – the Sulpicians had sold almost all of the lands. The remaining lands, on which resided the Mohawks, were held by the Sulpicians' holding company. At this time, the Sulpicians began requesting that the federal government purchase from them the remaining lands, since owning the last

scraps of the Seignery on which the Mohawks resided had become too “burdensome” for the religious order.

35. In 1945, the federal government purchased most of the lots actually occupied by Mohawks at the time, while denying the Mohawks had any Aboriginal or other cognizable legal interest to them.
36. The interest in lands that had been purchased by the Institut Agricole Belge au Canada, including portions of the Commons, was eventually transferred to the Municipality of Oka or to private owners.
37. At about this time, after hearing representations from delegates of the Mohawks of Kanésatake, a Parliamentary Committee identified the “Oka Indian Claim” together with the claims in British Columbia as the two priority areas in Canada requiring settlement. Since then, the Nisga’a Nation in British Columbia won a landmark judgment in the Supreme Court of Canada (the *Calder* case) and achieved the first modern treaty in British Columbia.

#### IV. Mohawks Defend the Pines Against the Municipality

38. In the late-1950s, the Municipality of Oka decided to raze a portion of the Pines to construct a private golf club, and obtained a private members’ bill from the Quebec National Assembly for this purpose. These lands continued to form part of the Commons and were still used by Kanéhsata’kehró:non for various communal purposes.
39. The Mohawks of Kanésatake protested this development and demanded the intervention of the federal government, which could have disallowed the Bill; however, the federal government did nothing.
40. In 1989, the Municipality of Oka began planning to raze more of the Pines to expand the golf course. In this case, the parts of the Pines that would be destroyed included the site of a Mohawk burial ground. The people of Kanésatake held peaceful marches to bring the issue to the attention of the public, but their protests went unheeded.
41. In the spring of 1990, members of Kanésatake occupied the site of the proposed golf course expansion, to prevent the Pines and the burial ground from being destroyed. The municipality sought and received two injunctions against the protestors, who nonetheless refused to leave.
42. The Sûreté du Québec eventually launched a raid to remove the Mohawks, but the Mohawks resisted and the raid failed. The Mohawks constructed barricades to protect themselves from further attack. At this point, the conflict became prominent on the national stage, and eventually the Canadian Armed Forces were called in.

43. The people of Kanesatake were besieged for 78 days before the military's final incursion. Throughout this time, Indigenous people throughout Canada protested in solidarity with the Mohawks of Kanesatake and organized to send necessary food and medical supplies across the lines.
44. Despite the intense suffering of the Mohawks during this period, their protest was a success to the extent that the Municipality of Oka was prevented from cutting down the Pines to expand its golf course.
45. A great deal of the above-reviewed history is discussed in the book *At the Woods' Edge: An Anthology of the History of the People of Kanehsatà:ke*, published by the Kanesatake Education Center, extracts of which are attached to the present as **Exhibit P-1**.

#### V. Negotiations with the Federal Government

46. On March 6, 1991, the Mohawks of Kanesatake and the Government of Canada concluded an agreement entitled "Agenda and Process for the Negotiations with the Community of Kanesatake." This document set out the process and priorities for addressing Kanesatake's claims. The Agenda established that the substantive issue with the highest priority was "the resolution of grievances of the Mohawks of Kanesatake related to the Seigneurie of the Lake of Two Mountains," which included as a first step the "[f]inal settlement of the Common Lands issue," the whole as appears from a copy of this Agenda, attached to the present as **Exhibit P-2**.
47. In 1994, the Mohawk Council of Kanesatake and the Government of Canada entered into a Memorandum of Understanding that, among other things, recommitted the parties to resolving Mohawks claims to the Seigneurie of the Lake of Two Mountains, the whole as appears from a copy of this MOU, attached to the present as **Exhibit P-3**.
48. Since this time, while there have been long periods where negotiations did not occur, the Mohawks have continued to negotiate with the Government of Canada with respect to their claims to the Seigneurie, including their claims to the Commons.
49. At different moments since the purchase of the remaining Mohawk lots from the Sulpicians in 1945, the Government of Canada has purchased from non-Mohawks lots that formed part of the Seigneurie in order to set these lands aside for use by the Mohawks. In particular, certain lots in the area were purchased following the events of 1990. However, these lands remain scattered and non-contiguous, and are often side-by-side or completely surrounded by lands under municipal jurisdiction. The total land base remains fractured and exceedingly small, as appears in a map prepared by Natural Resources Canada, attached to the present as **Exhibit P-4**.



## The Ecological Gift

50. In June of 2004, the Mis-en-Cause Grégoire Gollin purchased an interest in lands in the Municipality of Oka for the purposes of investment and real estate development. While Mr. Gollin was principally interested in a tracts of land on the northern and eastern edges of the village of Oka, the seller of these lands made it a condition of the sale that Mr. Gollin also purchase the seller's lands in the Pines.
51. Over the years, Mr. Gollin developed some of these lands into housing. However, some of his projects were vigorously protested by members of the Mohawk community, particularly his "Domaines des Collines" project which covers part of the area the Mohawks know as the "Small Commons."
52. At some time in recent years, Mr. Gollin was approached by the Municipality of Oka with a proposal that Mr. Gollin donate the Pines to the municipality as an "ecological gift."
53. The Ecological Gifts Program is a program established by the federal *Income Tax Act*, RSC 1985, c 1 (5<sup>th</sup> Supp). Under this program, an individual who donates ecologically sensitive land to a "qualified donee" (that is, certain public bodies and certain charities and non-profit organizations that are dedicated to the protection of the natural environment) receives both a charitable tax receipt in an amount equal to the fair market value of the land and an exemption from the capital gains tax that may otherwise have applied on the transfer of the property.
54. The recipient of an ecological gift under this program is required to protect the ecological value of the land in perpetuity. To ensure this is the case, the recipient is required to receive permission from Environment Canada for any work on or changes to the land.
55. Mr. Gollin did not accept the municipality's proposal. However, having become aware of the history of the area and the claims of the Mohawks in the context of Mohawk resistance to his residential development projects, he decided to approach the Mohawk Council of Kanesatake with a proposal that he donate the Pines to Kanesatake as an ecological gift.
56. The Mohawk Council was interested in the suggestion and, on or around the end of March, 2019, the Mohawk Council, with the assistance of the Nature Conservancy of Canada, filed on behalf of the community of Kanesatake, an application for funding to the Canada Nature Fund's Target 1 Challenge funding envelope (often referred to as the "Challenge Fund"), for funding to assist with an ecological gift for the creation of an "Indigenous protected area," the whole as appears from a copy of the funding application, attached to the present as **Exhibit P-5**.
57. On April 4, 2019, Mr. Gollin and the Mohawk Council of Kanesatake signed a "Declaration of Mutual Understanding and Agreement Between the Mohawks of Kanesatake and

Grégoire Gollin, Private Land Holder.” The Declaration set out a shared understanding and mutual agreement that, among other things, recognized the longstanding claims of the Mohawks and the parties’ desire “to formalize a relationship of collaboration inspired by reconciliation and remediation.” More specifically, the Declaration of Mutual Understanding:

- a. made clear that the agreements contained therein are subject to final approval by the Mohawk community as a whole; and are without prejudice to the interests of the Mohawks.
- b. stated that the parties would take immediate steps to transfer, by ecological gift, “the area of the Pines adjacent to Domaine des Collines (+/- 60 acres)” from Mr. Gollin to the community of Kanesatake;
- c. stated that the purpose of this gift is to “guarantee the protection and enhancement, in perpetuity, of this forest”;
- d. outlined a commitment by Mr. Gollin to “mak[e] all of his other vacant lands located in and around the community of Oka (+/- 150 acres) available to the Mohawks of Kanesatake, through the Crown’s assistance and facilitation,”

the whole as appears from a copy of the Declaration, attached to the present as **Exhibit P-6**.

58. The ecological gift described in the Declaration is to include several lots of land, including lot 5 699 026 (by far the largest part of the Pines) and 5 701 309.
59. The Mohawk Council of Kanesatake signed the Declaration on the understanding that the interest of third parties in lands forming part of the Seigneury is an artificial interest created by colonial law, and that this interest is inconsistent with underlying Mohawk title and historic rights. By the same token, the Council recognized that many of these lands were acquired by good faith purchasers, and that, in light of colonial law’s misguided insistence on enforcing these artificial interests, the quickest practical way to returning lands to Mohawk control, during the interim period while a global settlement of the issue is being negotiated, is to accept the transfer of these artificial interests from third parties when such opportunity presents itself.
60. The Mayor of Oka decried this agreement, alleging that:
  - a. the agreement could affect up to 95% of the “developable” lands of the municipality;

- b. it would result in the municipality being “enclavé” by Mohawk territory, a result which the Mayor, for some reason, found unacceptable;
- c. the land would merely be used for pot and cigarette shacks, or for illegal dumps;
- d. if the proposed land transfers were completed, there would be another Oka crisis, but this time it would be the non-Mohawk citizens of the municipality who would be mounting the barricades;

the whole as appears from press articles written in the summer of 2019, attached to the present as **Exhibit P-7**.

- 61. The Mayor’s comments were decried as racist and incendiary by other members of the municipal council, and were met with shock and opprobrium from Quebec’s Minister of Indigenous Affairs and the Prime Minister of Canada, the whole as appears from press articles written in the summer of 2019, attached to the present as **Exhibit P-8**.
- 62. On September 10, 2019, then-Minister of Environment and Climate Change Catherine McKenna wrote to the Grand Chief of Kanesatake to advise him that Environment Canada would provide funding of up to \$200,000 to complete the creation of an Indigenous protected and conserved area, the whole as appears from a copy of this letter, attached to the present as **Exhibit P-9**.
- 63. In the time since, the Mohawk Council of Kanesatake has been studying the ecological gifts process to ensure that the acceptance of such a gift would be consistent with the nature of the underlying Mohawk title to the land, such confirmation being a precondition to presenting the gift to the community for final approval.

#### **By-law 2020-233**

- 64. In 2020, prior to adopting the by-law that is at issue in these proceedings, the Municipality of Oka adopted a suite of by-laws to modify its planning program and zoning by-law with respect to portions of the Pines. These by-laws include the following:
  - a. *Règlement numéro 2016-148-2 modifiant le Règlement sur le plan d’urbanisme numéro 2016-148 afin d’inscrire la Pinède à l’intérieur d’une aire de conservation environnementale* (adopted in draft on January 14, 2020, and in final version on February 4, 2020);
  - b. *Règlement de concordance numéro 2016-149-9 modifiant le Règlement concernant le zonage numéro 2016-149 afin d’inscrire la Pinède à l’intérieur d’une zone de conservation environnementale* (adopted in draft on January 14, 2020, and in final version on February 4, 2020);

- c. *Règlement numéro 2016-148-3 modifiant le Règlement portant sur le plan d'urbanisme numéro 2016-148 afin d'inscrire la Pinède à l'intérieur d'une aire d'affectation du sol « Conservation environnementale (CON) »* (adopted in draft on September 1, 2020, and in final version on October 6, 2020);
- d. *Règlement de concordance numéro 2016-149-11 modifiant le Règlement concernant le zonage numéro 2016-149 afin d'inscrire la Pinède à l'intérieur d'une zone de « Conservation environnementale (CON) »* (adopted in draft on September 1, 2020, and in final version on October 6, 2020).

Prior to the adoption of these by-laws, the lots that contain the Pines had various zoning designations: some were zoned “Rural,” some “Résidentielle moyenne densité,” and some “Publique Communautaire.” Under these designations, development of the Pines was permitted. Copies of the by-laws and the various notices are attached to the present, as **Exhibit P-10**.

- 65. On September 1, 2020, the municipal council of Oka adopted a notice of motion of its intention to adopt, at a future municipal council meeting, a by-law entitled *Règlement numéro 2020-233 citant la forêt de la Pinède d'Oka comme site patrimonial*, the whole as appears from an extract of the minutes of the council meeting, attached to the present as **Exhibit P-11**.
- 66. On September 2, 2020, the municipality published a public notice of the adoption of the notice of motion. The notice advised readers that the planning advisory committee (in French “*comité consultatif d'urbanisme*”) would hold a “public consultation” on the by-law on October 19, 2020, the whole as appears from a copy of this notice, attached to the present as **Exhibit P-12**.
- 67. The draft by-law approved on September 1:
  - a. stated its object as the recognition of the Pines as a heritage site « *afin d'en assurer sa sauvegarde et sa mise en valeur dans l'intérêt public* »;
  - b. identified either six lots (s. 1.2) or seven lots (s. 4.1) as part of the heritage site. In s. 1.2, the draft by-law stated that six lots, four municipal lots (excluding the golf course) and two private lots, would be subject to the by-law. However, in s. 4.1, the draft by-law stated that it would affect four municipal lots, with a total surface area (excluding the golf course) of 390,560.65 square meters, and three private lots, with a total surface area of 663,909.7 square metres;
  - c. described the site as « *une forêt de pins blancs et d'épinettes plantée à l'initiative du Curé Daniel-Joseph Lefebvre en 1886* » and « *le cours d'eau Raizenne* »;

- d. provided the following reasons justifying the recognition of the Pines as a heritage site:
  - i. the historic value. According to the municipality, « *la Pinède d'Oka est un lieu associé à des événements marquant l'histoire locale* », including the fact that it is « *connu pour avoir été le lieu de la Crise d'Oka survenue en 1990* »;
  - ii. the « *valeur identitaire* ». According to the municipality, the Pines create a sense of belonging for the community, and offer a place for residents to be active and be in touch with nature;
  - iii. the landscape value. According to the municipality, the Pines look nice and can be seen from many different vantage points from within the town and beyond.
- e. established an obligation on the owner to maintain the heritage value of the Pines;
- f. established prohibitions on any work in the area, including the cutting of trees, construction of any kind, and the subdivision of the land, without first obtaining the authorization of the municipal council;
- g. established a duty to advise the municipality before making any modifications to the land, and gives the municipality the power to impose any conditions it sees fit with respect to such modifications;
- h. established penal provisions to provide for the enforcement of the above-described prohibitions,

the whole as appears from copy of the draft by-law as it was circulated to individuals following this decision, a copy of which is attached as **Exhibit P-13**.

68. The draft by-law included a map, as seen below:



As can be seen from the map, the site is divided in half by Rang de l'Annonciation – in general, the parts of the heritage site to the west of this road are “owned” by the municipality, and the parts to the east of this road are “owned” by Mr. Gollin. If we accept that the site is as described in s. 4.1 of the by-law, over 60% of the land in the site is owned by Mr. Gollin.

69. On October 8, 2020, the municipality issued a public notice advising interested persons that the public consultation regarding the heritage site by-law, to be held by the planning advisory committee on October 19, 2020, would now, due to the COVID-19 pandemic, be held via a web broadcast of the committee’s meeting. The public notice stated that interested persons could send written representations to the municipality prior to this consultation or interact with the committee by submitting comments in the chat box during the web broadcast, the whole as appears from a copy of this public notice, attached to the present as **Exhibit P-14**.
70. On October 16, 2020, the Mohawk Council of Kanasatake sent a letter to the Mayor and the members of the municipal council of Oka. This letter outlined the nature of Mohawk claims and the real history of the area in question. This letter also:

- a. highlighted that “there is no mystery as to why [the municipal council is] proposing this by-law: it is to ensure it will be the municipality of Oka, instead of Mohawks, that will make the decisions regarding the preservation of the Pines.” On this issue, the letter went on to state that “[w]hile we realize that you will say, to the people of Oka, to the media, and, most importantly, to yourselves, that these initiatives are about protecting a precious cultural and environmental resource, the fact is you are doing exactly what colonizers have always done: taking control of lands away from Indigenous peoples”;
- b. demanded, in light of the importance of the issue to Kanehsata’kehró:non and the fact that the proposed virtual “public consultation” would not allow the public to actually interact with the municipal council or the planning advisory committee, that this “public consultation” on the by-law be cancelled immediately and re-scheduled for a time when in-person gatherings would be permitted. On this issue, Council made the following point: “In any case, we do not understand the rush; the Pines have stood for over a century, why are you so desperate to push this through now? The answer to this question demonstrates that this by-law is not about protecting the Pines but rather about ensuring that the municipality will have control over them.”

The whole as appears from a copy of this letter, attached to the present as **Exhibit P-15**.

71. On October 19, 2020, in the early afternoon, legal counsel for the Mohawk Council of Kanesatake sent a letter to the planning advisory committee. This letter made the following points:
  - a. the continued existence of the Aboriginal rights and title, treaty rights, and rights in the Seigneury of the Lake of Two Mountains place significant limits on the powers of the municipality;
  - b. the constitutionally-required consultation of the Mohawks by the Crown had not taken place with respect to the by-law, and that the committee should suspend its consideration of the by-law until this had happened;
  - c. it is clear, based on the fact that the municipality’s power to recognize a heritage site is not new and that there is no threat to the Pines, that the true purpose of the by-law is to “ensure that, if the land is transferred to the Mohawks, the municipality will retain full control over what happens to these lands” and that this desire “is motivated by the belief, that has been expressed by the Mayor on many occasions, that the Mohawks are not responsible enough to take care of the land and will not protect it as promised [under the proposed ecological gift]”;

- d. the committee’s online “consultation” did not fulfill the conditions of the *Cultural Heritage Act* or the requirements of procedural fairness;
- e. the committee should cancel its consultation or, in the alternative, refuse to provide its opinion to the municipality in order to stall the process, or, in the further alternative, “it should strongly recommend that the municipality not adopt the by-law, on the grounds that it is unneeded to protect the land, that it is being adopted for an improper purpose, and that it is based on prejudice towards the Mohawk people,”

the whole as appears from a copy of this letter, attached to the present as **Exhibit P-16**.

- 72. That same evening, the planning advisory committee held its online meeting to discuss the heritage by-law. Many interested persons listened to the session and wrote comments and questions in the chat box, the vast majority of which challenged the municipality on its reasons for adopting the by-law or expressed the view that the municipality was behaving inappropriately towards the Mohawks. During the meeting, the Mayor, who was in attendance with the members of the committee despite the fact that he is not a member of the committee, stated, among other things, that the resistance to the project represented racism towards Oka citizens, that it was not the role of the municipality to account for or accommodate the rights and claims of the Mohawks, and the blatantly discriminatory claim that this heritage site recognition was necessary because Kanesatake could not be trusted to provide adequate protection to the Pines, the whole as appears from recording of the public consultation session, attached to the present as **Exhibit P-17**.
- 73. On or around November 30, 2020, the municipality posted on its website an agenda for the municipal council meeting of December 1, 2020. This agenda did not include the final approval of the heritage site by-law, the whole as appears from a copy of this agenda, attached to the present as **Exhibit P-18**.
- 74. On December 1, 2020, the municipal council held a meeting at which it adopted the final version of the heritage by-law despite the fact that the issue had not been on the agenda. While in most respects identical to the draft by-law, the final by-law did remove from the preamble the affirmation that the planning advisory committee had provided a favourable opinion regarding the heritage by-law; the preamble now merely states that an opinion had been received, the whole as appears from a copy of the by-law, attached as **Exhibit P-19**.
- 75. The final by-law is unclear regarding the actual size and coverage of the heritage site, since ss. 1.2 and 4.1 describe the site differently.



76. On December 3, 2020, the municipality issued a public notice regarding its adoption of the heritage by-law, the whole as appears from a copy of the notice, attached to the present as **Exhibit P-20**.

### **The By-law Must be Quashed**

77. The heritage by-law must be quashed because:
- a. it was adopted for an improper and discriminatory purpose. The purpose of the by-law is not to protect the Pines but, rather, to ensure that if the Pines are transferred to the Mohawks, the municipality will be able to assert plenary review and control over their use of the land. It is based on prejudiced ideas regarding Mohawks, it contravenes arts. 10 and 10.1 of the Quebec *Charter of Human Rights and Freedoms*, and it is completely out of keeping with the goals of the *Cultural Heritage Act*;
  - b. it was adopted in bad faith and is an abuse of power. It is the municipality that has always posed the biggest threat to the Pines; it has never been the protector of the forest. In fact, until the municipality became aware of the possibility that the Pines would be given to the Mohawks, it was perfectly content to allow development on these lands;
  - c. the consultation of the Mohawks required by the honour of the Crown did not take place. No representative of the Crown, that is, of the Government of Quebec, ever contacted the Mohawks regarding the proposed by-law, as it was constitutionally-required to do;
  - d. it is unreasonable, and therefore subject to be quashed: *Catalyst Paper Corp. v. North Cowichan (District)*, 2012 SCC 2;
  - e. it is a violation of international law and is based on the now-repudiated “doctrine of discovery.” The heritage by-law is contrary to the spirit and intent of articles 2, 3, 11, 18, 19, 25, 26, and 37 of the *United Nations Declaration on the Rights of Indigenous People* (which Canada has endorsed and which is the subject of Bill C-15, *An Act respecting the United Nations Declaration on the Rights of Indigenous Peoples*, introduced into Parliament on December 3, 2020) and relies on an approach, which is based on the doctrine of discovery, that presumes that the exercise of jurisdiction by representatives of the Crown is valid whereas the jurisdiction of Indigenous peoples must be proven. It is also contrary to the *American Declaration of the Rights of Indigenous Peoples*;
  - f. it is in violation of the Treaty of Oswegatchie. Mohawk possession and control of the Pines was guaranteed to them in that treaty; while the treaty has been endlessly

breached by colonial authorities, it has nonetheless been recognized by the Supreme Court of Canada and continues to be in force today. The municipality's by-law seeks to undermine and subvert the restoration of treaty lands to the Mohawks of Kanésatake, and it is therefore unconstitutional;

- g. it violates the Mohawks' Aboriginal right to govern their territory, and in particular the Pines, which are of a particular significance to the community given the presence of the remains of their ancestors, the contribution of the Mohawks to the planning and establishment of the Pines in the 19<sup>th</sup> century, the wealth of medicinal and sacred plants in the Pines, and the fact that the Pines stand on the Commons;
- h. it is impermissibly vague, since it identifies two distinct sizes of the heritage site and it is impossible to know which one is to govern;
- i. the municipality failed to respect the essential formalities imposed by law prior to adopting the by-law, including those imposed by the *Municipal Code* and the *Cultural Heritage Act*.

78. The present proceeding is well founded in fact and in law.

**FOR THESE REASONS, MAY IT PLEASE THE COURT TO:**

**GRANT** the present Application for Declaratory Judgment;

**QUASH AND DECLARE NULL** *Règlement numéro 2020-233 citant la forêt de la Pinède d'Oka comme site patrimonial*, adopted by the Municipality of Oka on December 1, 2020.

**DECLARE** that the Government of Quebec has failed to consult the Mohawks regarding the by-law;

**PROHIBIT** the Municipality of Oka from taking any further actions to limit or inhibit the transfer of the Pines to Mohawk control;

**GRANT** such other and further relief as to this Honourable Court may seem just;

**THE WHOLE** with legal costs in favour of the Applicant.

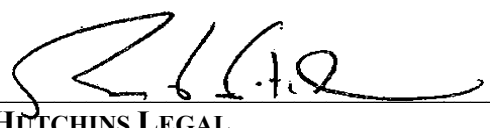
**THE WHOLE OF WHICH IS RESPECTFULLY SUBMITTED**

Montreal, January 4, 2021



**DIONNE SCHULZE**

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Attorneys for the Applicant

## SUMMONS

(articles 145 and following C.C.P.)

**TAKE NOTICE** that the Applicants have filed this originating application in the office of the court of the Superior Court in the judicial district of Terrebonne.

You must answer the application in writing, personally or through a lawyer, at the courthouse of St-Jérôme situated at 25, rue de Martigny Ouest, Saint-Jérôme (Québec), J7Y 4Z1, within 15 days of service of the application or, if you have no domicile, residence or establishment in Québec, within 30 days. The answer must be notified to the Applicants' lawyer or, if the Applicants are not represented, to the Applicants.

If you fail to answer within the time limit of 15 or 30 days, as applicable, a default judgement may be rendered against you without further notice and you may, according to the circumstances, be required to pay the legal costs.

In your answer, you must state your intention to:

- negotiate a settlement;
- propose mediation to resolve the dispute;
- defend the application and, in the cases required by the Code, cooperate with the Applicant in preparing the case protocol that is to govern the conduct of the proceeding. The protocol must be filed with the court office in the district specified above within 45 days after service of the summons or, in family matters or if you have no domicile, residence or establishment in Québec, within 3 months after service;
- propose a settlement conference.

The answer to the summons must include your contact information and, if you are represented by a lawyer, the lawyer's name and contact information.

You may ask the court to refer the originating application to the district of your domicile or residence, or of your elected domicile or the district designated by an agreement with the Applicants.

If the application pertains to an employment contract, consumer contract or insurance contract, or to the exercise of a hypothecary right on an immovable serving as your main residence, and if you are the employee, consumer, insured person, beneficiary of the insurance contract or hypothecary debtor, you may ask for a referral to the district of your domicile or residence or the district where the immovable is situated or the loss occurred. The request must be filed with the special clerk of the district of territorial jurisdiction after it has been notified to the other parties and to the office of the court already seized of the originating application.

If you qualify to act as a plaintiff under the rules governing the recovery of small claims, you may also contact the clerk of the court to request that the application be processed according to those

rules. If you make this request, the plaintiff's legal costs will not exceed those prescribed for the recovery of small claims.

Within 20 days after the case protocol mentioned above is filed, the court may call you to a case management conference to ensure the orderly progress of the proceeding. Failing this, the protocol is presumed to be accepted.

If the application is an application in the course of a proceeding or an application under Book III, V, excepting an application in family matters mentioned in article 409, or VI of the Code, the establishment of a case protocol is not required; however, the application must be accompanied by a notice stating the date and time it is to be presented.

The following exhibits are relied upon in the application and are available upon request.

<b>P-1:</b> Kanesatake Education Center, <i>At the Woods' Edge: An Anthology of the History of the People of Kanehsatà:ke</i>
<b>P-2:</b> Agenda and Process for the Negotiations with the Community of Kanesatake, March 6, 1991
<b>P-3:</b> Memorandum of Understanding between the Mohawk Council of Kanesatake and the Government of Canada, 1994
<b>P-4:</b> Map of Kanesatake interim land base, Natural Resources Canada
<b>P-5:</b> Application for funding to the Canada Nature Fund's Target 1 Challenge funding envelope, March 2019
<b>P-6:</b> Declaration of Mutual Understanding and Agreement Between the Mohawks of Kanesatake and Grégoire Gollin, Private Land Holder, April 4, 2019
<b>P-7:</b> Press articles regarding the reaction of the Mayor of Oka to the Agreement between Kanesatake and Grégoire Gollin written in the summer of 2019, in a bundle
<b>P-8:</b> Press articles regarding the response of other governments to the comments of the Mayor of Oka written in the summer of 2019, in a bundle
<b>P-9:</b> Letter from Minister of Environment and Climate Change Catherine McKenna to the Grand Chief of Kanesatake, September 10, 2019

**P-10:** Copies by-laws and public notices regarding the adoption of the following by-laws by the Municipality of Oka, in a bundle:

- *Règlement numéro 2016-148-2 modifiant le Règlement sur le plan d'urbanisme numéro 2016-148 afin d'inscrire la Pinède à l'intérieur d'une aire de conservation environnementale;*
- *Règlement de concordance numéro 2016-149-9 modifiant le Règlement concernant le zonage numéro 2016-149 afin d'inscrire la Pinède à l'intérieur d'une zone de conservation environnementale;*
- *Règlement numéro 2016-148-3 modifiant le Règlement portant sur le plan d'urbanisme numéro 2016-148 afin d'inscrire la Pinède à l'intérieur d'une aire d'affectation du sol « Conservation environnementale (CON) »;*
- *Règlement de concordance numéro 2016-149-11 modifiant le Règlement concernant le zonage numéro 2016-149 afin d'inscrire la Pinède à l'intérieur d'une zone de « Conservation environnementale (CON) ».*

**P-11:** Extract of the minutes of the municipal council meeting of September 1, 2020

**P-12:** Public notice issued by the Municipality of Oka regarding the adoption of the draft by-law, September 2, 2020

**P-13:** Copy of the draft by-law approved on September 1<sup>st</sup>, 2020

**P-14:** Public notice issued by the Municipality of Oka to inform the public that the public consultation regarding the heritage by law would be held online, October 8, 2020

**P-15:** Letter from Mohawk Council of Kanasatake to the Mayor and the members of the municipal council of Oka, dated October 16, 2020

**P-16:** Letter from legal counsel for the Mohawk Council of Kanasatake to the planning advisory committee, dated October 19, 2020

**P-17:** Recording of the public consultation session of October 19, 2020

**P-18:** Copy of agenda for the municipal council meeting of December 1, 2020

**P-19:** Copy of by-law entitled *Règlement numéro 2020-233 citant la forêt de la Pinède d'Oka comme site patrimonial* as adopted on December 1<sup>st</sup>, 2020

**P-20:** Public notice by the Municipality of Oka regarding the adoption of the heritage by-law

**CANADA**  
**PROVINCE OF QUEBEC**  
District of Terrebonne

SUPERIOR COURT

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No: 700-17-017482-216

**THE MOHAWKS OF KANESATAKE**, a community of the Kanien'kehà:ka nation and a band within the meaning of the *Indian Act*, RSC 1985, c I-5, having an establishment at 681 Rue Ste Philomène, Kanesatake Mohawk Territory, District of Terrebonne, Province of Quebec (J0N 1E0)

Applicant

v.

**THE MUNICIPALITY OF OKA**, a municipality within the meaning of the *Municipal Code*, CQLR C-27.1, having a principal establishment at 183, Rue des Anges, Oka, District of Terrebonne, Province of Quebec (J0N 1E0)

- and -

**THE ATTORNEY GENERAL OF QUEBEC**, on behalf of the Government of Quebec, maintaining an establishment at 1, Notre-Dame Street East, suite 4.100, Montreal, District of Montreal, Province of Quebec (H2Y 1B6)

Respondents

- and -

**THE ATTORNEY GENERAL OF CANADA**, on behalf of Her Majesty in Right of Canada, maintaining an establishment at Complexe Guy-Favreau, East Tower, 200, René-Lévesque Blvd. West, 5<sup>th</sup> Floor, Montreal, District of Montreal, Province of Quebec (H2Z 1X4)

- and -

**GREGOIRE GOLLIN**, a natural person domiciled and resident at 495 Brassard, St-Joseph-du-Lac, District of Terrebonne, Province of Quebec (J0N 1M0)

Mis-en-cause

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## NOTICE OF PRESENTATION

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TO:

**THE MUNICIPALITY OF OKA**, a municipality within the meaning of the Municipal Code, CQLR C 27.1, having a principal establishment at 183, Rue des Anges, Oka, District of Terrebonne, Province of Quebec (J0N 1E0)

AND

**THE ATTORNEY GENERAL OF CANADA**, on behalf of Her Majesty in Right of Canada, maintaining an establishment at Complexe Guy-Favreau, East Tower, 200, René-Lévesque Blvd. West, 5th Floor, Montreal, District of Montreal, Province of Quebec (H2Z 1X4)

AND

**THE ATTORNEY GENERAL OF QUEBEC**, on behalf of the Government of Quebec, maintaining an establishment at 1, Notre-Dame Street East, suite 4.100, Montreal, District of Montreal, Province of Quebec (H2Y 1B6)

AND

**GREGOIRE GOLLIN**, a natural person domiciled and resident at 495 Brassard, St-Joseph-du-Lac, District of Terrebonne, Province of Quebec (J0N 1M0)

TAKE NOTICE that the APPLICATION FOR JUDICIAL REVIEW AND FOR DECLARATORY AND INJUNCTIVE RELIEF will be presented before one of the honourable judges of the Superior Court, in **room B-1.04** of the St-Jérôme Courthouse located at 25, rue de Martigny Ouest, St-Jérôme (Québec), J7Y 4Z1, on **Friday, February 5, 2021 at 9 a.m.** or as soon as counsel may be heard.



GOVERN YOURSELVES ACCORDINGLY.

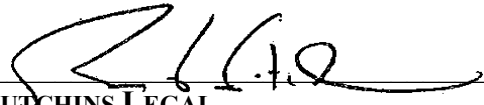
Montreal, January 4, 2021



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NO : 700-17-017482-216

SUPERIOR COURT

CANADA  
PROVINCE OF QUÉBEC  
DISTRICT OF TERREBONNE

THE MOHAWKS OF KANESATAKE

APPLICANT

v.

THE MUNICIPALITY OF OKA

- AND -

THE ATTORNEY GENERAL OF QUEBEC

RESPONDENTS

- AND -

THE ATTORNEY GENERAL OF CANADA

- AND -

GREGOIRE GOLLIN

MIS-EN-CAUSE

APPLICATION FOR JUDICIAL REVIEW AND FOR  
DECLARATORY AND INJUNCTIVE RELIEF

(ARTS. 689 ET SEQ. OF THE MUNICIPAL CODE OF QUEBEC AND  
ARTS. 25, 49, 142, 509 ET SEQ. AND 529 ET SEQ. OF THE CODE OF  
CIVIL PROCEDURE)

ORIGINAL

Me Nicholas Dodd  
Me Marie-Alice D'Aoust  
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BG4209

Dossier no : 7168-083