



*Tsi Nahò:ten Karihwanákere Nó:nen'k*

# PRESS RELEASE

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## Southwind Supreme Court of Canada decision

### For immediate release

**(Kahnawake – 20, Ohiarikhó:wa/July 2021)** The Mohawk Council of Kahnawà:ke (MCK) wishes to inform the community of the outcome of the MCK's intervention in the Southwind Supreme Court of Canada appeal ([view the decision here](#)).

This case was about how to calculate compensation for reserve lands that were set aside pursuant to a treaty and that were illegally flooded by the Crown for the purposes of a hydro project. The MCK intervened to provide our position on how compensation should be calculated when the Crown breaches its fiduciary duty to First Nations in the illegal taking or use of Indigenous lands.

The Court found in favor of the Lac Seul First Nation and found that the lower courts incorrectly assessed compensation owed to the First Nation because they used expropriation law as the primary basis to assess compensation.

In its decision, the Court also concluded that the lower courts incorrectly assumed that because Indian Act expropriation authority existed that Canada did not have an obligation to secure compensation that reflected the true value of the land to the project. The Court further found that the Crown had an obligation to consider the unique nature of the Indigenous interest in the land and the devastating impact of the flooding. On yet another point, the Court found that approach of the lower courts was inconsistent with the Honour of the Crown and achieving reconciliation. Finally, the Court found that the First Nation was entitled to compensation for the lost opportunity to negotiate an agreement reflecting the true value of the land to the hydro project.

"The MCK is pleased that the Court's decision supports certain arguments we advanced in our intervention," said Ratsénhaienhs Ross Montour, lead on the Indigenous Rights & Research portfolio. "Notably that the Crown's fiduciary duty is not solely based on the Indian Act, but rather, on pre-existing duties and that the content of the fiduciary duty must be defined by the nature of the Indigenous proprietary interest in lands, and not what the Indian Act permitted."

"The MCK supports the Court's finding that the Crown's duties included the obligation to first negotiate First Nations' consent for the use of the land, rather than simply relying on Indian Act expropriation authority," Montour continued. "The MCK also supports the Court's finding that, generally speaking, restitution of the plaintiff's assets is often an appropriate remedy for breaches of fiduciary duty, as this aligns with the community's views that returning illegally taken land be prioritized."

However, the MCK disagrees with the Court's interpretation that the Royal Proclamation provided a basis for the Crown's discretionary control of Indigenous lands as this is based on an incorrect reading of the proclamation and is also ultimately founded on the legally and morally indefensible Doctrine of Discovery.

The community can consult the MCK arguments in this case here: [https://www.scc-csc.ca/WebDocuments-DocumentsWeb/38795/FM190\\_Intervener\\_Mohawk-Council-of-Kahnawake.pdf](https://www.scc-csc.ca/WebDocuments-DocumentsWeb/38795/FM190_Intervener_Mohawk-Council-of-Kahnawake.pdf).