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Commons, Enclosure, and Resistance in Kahnawá:ke Mohawk Territory, 1850–1900



Abstract: Historical communities that have held lands in common have, without exception, had strict regulations for using those lands. This was true also in Kahnawá:ke, a Mohawk community near Montreal, where community leaders articulated and enforced customary land laws until the last decades of the nineteenth century. Although a few Mohawks contested these laws in the nineteenth century, the Canadian government undermined, dismantled, and replaced customary land law in the 1870s and 1880s. This article reveals the way the Canadian Department of Indian Affairs exacerbated resource and land shortages in its attempts to undermine Kahnawá:ke leaders, gain control of the land, and ultimately to disperse the community. It describes a chaotic transition from regulated common property to a form of private property under the Indian Act and argues that this transformation was part of a global enclosure movement that continues to this day. Nevertheless, the Canadian government was unable to bring its project to completion, in large part the result of effective resistance offered by Kahnawá:ke Mohawks. The article draws attention to the extraordinary nature of this successful Indigenous resistance to the Canadian state in the late nineteenth century.

Keywords: Indigenous, property, Mohawk, Canada, environment, colonialism, law

Résumé : À travers l'histoire, toutes les communautés qui ont détenu leurs terres en propriété commune ont instauré des règles strictes relatives à l'utilisation de ces terres. Il en alla de même à Kahnawá:ke, une communauté mohawke près de Montréal, où les dirigeants communautaires réussirent à énoncer et à appliquer leurs règles pour la gestion des terres coutumières jusqu'aux dernières décennies du dix-neuvième siècle. Si certains Mohawks contestèrent ces règles tout au long du dix-neuvième siècle, ce n'est qu'au cours des années 1870 et 1880 que les règles relatives à la gestion des terres coutumières furent remises en cause, abolies et remplacées. Cet article révèle comment le ministère canadien responsable des Affaires indiennes exacerba les pénuries de ressources et de terres dans le but de miner l'autorité des dirigeants Kahnawá:ke, de prendre le contrôle des terres et, finalement, de disperser la communauté. Il décrit la transition chaotique d'une propriété commune réglementée à une forme de propriété privée en vertu de la Loi sur les Indiens et fait valoir que ce changement s'inscrivait dans un mouvement mondial des enclosures qui perdure encore aujourd'hui. Toutefois, le gouvernement

canadien ne parvint pas à mener à terme son projet, en grande partie à cause de la résistance efficace opposée par les Mohawks de Kahnawá:ke. Cet article met en évidence le caractère extraordinaire de cette puissante résistance autochtone à l'État canadien à la fin du dix-neuvième siècle.

Mots clés : autochtones, propriété, Mohawks, Canada, environnement, colonialisme, droit

In the winter of 1884–5 about sixty men from Kahnawá:ke, a Mohawk community near Montreal, propelled boats of troops and supplies up the Nile River in Egypt. Along with other Indigenous and Canadian voyageurs, they had been recruited by the British military for their legendary river-piloting prowess and were part of an effort to provide military support to beleaguered British troops in Khartoum. At some point along the way they received urgent communications that a land redistribution was about to take place in Kahnawá:ke and that they should return immediately if they wished to take part. Clearly concerned by this news, the Mohawk voyageurs quickly finished the work their contracts required them to complete and boarded ships back to Canada.¹

At about the same time, Metis leaders Gabriel Dumont and Louis Riel set up a provisional government in what is today Saskatchewan, a government that was ultimately defeated by Canadian troops several months later. Although seemingly unrelated, the resistance to Canadian colonization of the Prairies and the return of Kahnawá:ke Mohawks (hereafter Kahnawakehró:non) from Egypt had one thing in common. Both were responses to the transfer of control over territory from Indigenous governments to the Canadian government, and the transformation of communally held lands into individually held, commodified rectangles.² This article details these transformations in Kahnawá:ke. It begins by summarizing what is known about Mohawk principles of customary nineteenth-century land tenure and resource management. It then explores the actions of the Department of Indian Affairs (DIA) to impose a new cadastre and legal framework, which resulted in a short period of chaotic resource exploitation. The article culminates in the DIA's imposition of the Walbank Survey, a kind of

1 Carl Benn, *Mohawks on the Nile: Natives among the Canadian Voyageurs in Egypt, 1884–1885* (Toronto: Natural Heritage Books, 2009); Louis Jackson, *Our Caughnawagas in Egypt* (Montreal: Wm Drysdale, 1885).

2 For more on the transatlantic context of the Metis Resistance, see Geoff Read and Todd Webb, “‘The Catholic Mahdi of the North West’: Louis Riel and the Metis Resistance in Transatlantic and Imperial Context,” *Canadian Historical Review* 93, no. 2 (2012): 171–95.

enclosure project designed to do away with the Mohawk commons, the territory governed under Mohawk customary law. In this context, *enclosure* does not necessarily refer to the literal bounding of land with fences, but to the construction of a market in discrete, bounded parcels of land to replace a regime that favours the well-being of the entire community.

COMMONS AND ENCLOSURE

Concurrent with the events detailed in this article, the northern Prairies were being subjected to one of the largest enclosure projects in global history. The 1885 military resistance of Indigenous peoples against the Canadian state in what is today Saskatchewan can be seen as a direct response to this enclosure; in the words of economic historian Irene Spry, it was “a last despairing attempt to protect the commons on which [Indigenous people] depended for their way of life.”³ The “great transformation” of the Prairies, and indeed the entire North American continent, was the transformation of common lands and resources into private property – the transformation of land-management regimes that promoted the collective good into state-managed regimes focused on the rights of property owners. The lands and resources of the Prairies before the 1870s can be described as a commons or as a network of commons, governed largely by Indigenous customary law and under the political control of Indigenous peoples.⁴ Although such common property regimes have been characterized by Garrett Hardin and others as ungoverned spaces in which self-interested individuals tend to over-exploit the land,⁵ users of commons around the world have carefully regulated their collective and individual actions to ensure sustainable use over long periods of time.⁶ Periods of chaotic open-access occur

3 Irene M. Spry, “The Great Transformation: The Disappearance of the Commons in Western Canada,” in *Man and Nature on the Prairies*, ed. Richard Allen (Regina: Canadian Plains Research Center, University of Regina, 1976), 41.

4 My use of the term *commons* to refer to land under Indigenous control and managed collectively should not be taken to mean that the term itself is rooted in Indigenous thought. The term is widely used in international literatures to refer to global processes that disinherit and uproot peoples who had previously governed themselves and their land under collective arrangements. For more on the environmental history of Indigenous peoples on the Prairies, see Theodore Binnema, *Common and Contested Ground: A Human and Environmental History of the Northwestern Plains* (Norman: University of Oklahoma Press, 2001).

5 Garrett Hardin, “The Tragedy of the Commons,” *Science* 162, no. 3859 (1968): 1243–8.

6 Daniel W. Bromley and Michael M. Cernea, *The Management of Common Property Natural Resources: Some Conceptual and Operational Fallacies*, vol. 57 (Washington, DC: World Bank, 1989); Elinor Ostrom, *Governing the Commons: The Evolution of Institutions for Collective Action* (Cambridge: Cambridge University Press, 1990).

only when collective governance structures break down and individual land users can exploit the land without considering the requirements of other users. On the northern Prairies, the transition from common to individual property regimes was characterized by such a breakdown, a chaotic period during which resources were free to all comers and, in the words of Spry, “were used without stint and beyond their natural power of renewal.”⁷ The ecological and cultural catastrophes of this period (the collapse of bison herds being the most spectacular and tragic) were not primarily due to the introduction of horses and guns, but to the influx of large numbers of people who did not care to know or obey the rules of the commons that predated their arrival.⁸ On the northern Prairies in the 1870s and 1880s, Indigenous peoples saw their lands taken, surveyed, and distributed to newcomers by the Canadian government, a government made up of men who saw common property regimes as backward and illegitimate. After losing nearly everything in the transition, they saw the establishment of a new legal and political framework that allowed newly arrived settlers, speculators, and companies to become wealthy on the basis of newly created property rights.⁹

Periods of open access have been observed around the world in the context of colonization and Indigenous dispossession. In New Zealand, for example, open-access conditions were created when European settlers offered individual Maori “owners” money for trees to be cut for

7 Spry, “Great Transformation,” 42.

8 On the U.S. side of the border, this influx of settlers was accompanied by a purposeful effort to eradicate the bison so as to destroy Indigenous peoples who relied on them. Andrew Isenberg, “Toward a Policy of Destruction: Buffaloes, Law, and the Market, 1803–83,” *Great Plains Quarterly* 12 (Fall 1992): 227–41.

9 Sarah Carter, *Lost Harvests: Prairie Indian Reserve Farmers and Government Policy* (Montreal and Kingston: McGill-Queen’s University Press, 1990); D. N. Sprague, *Canada and the Métis, 1869–1885* (Waterloo, ON: Wilfrid Laurier University Press, 1988); Frank Tough, “As their natural resources fail”: *Native Peoples and the Economic History of Northern Manitoba, 1870–1930* (Vancouver: UBC Press, 1996). Allan Greer has argued that the greatest part of Indigenous dispossession in North America was accomplished not by colonial enclosure, but by colonial commons that competed with or replaced Indigenous commons. Allan Greer, “Commons and Enclosure in the Colonization of North America,” *American Historical Review* 117, no. 2 (2012): 365–86. Likewise, the dispossession of Indigenous peoples on the Prairies occurred first through the expansion of a colonial commons of industrial hunters and ranchers, but on the northern Prairies this first wave of dispossession was followed almost immediately with the enclosure project of the Dominion Lands Survey and the creation of Indian reserves. In such short periods of transition, where the “colonial commons” existed for only one or two decades before enclosure, there was hardly time for new and old users to develop management norms that would lead to sustainable use. It is for this reason that *open-access conditions* is often a useful term to describe the transition from Indigenous commons to individualized private property.

timber. Individual Maoris were willing to sell trees at a quarter the rate of non-Maoris because it was easy for buyers to find another “owner” willing to sell if this one refused. In the words of legal historian Stuart Banner, “The difference was common ownership; each individual Maori timber owner would accept far less for a tree than he would have accepted had he been sure that the tree would not be sold by someone else tomorrow.”¹⁰ The monetization of land and wood in this context created open-access conditions that, in turn, reinforced colonists’ beliefs that the Maori were incapable of effective self-governance. Furthermore, open-access conditions and the accompanying despoliation of land gave the Maori additional incentive to sell land that had been devalued by logging. According to Banner, “The deterioration of tribal authority and the sale of land . . . each promoted the other. The more land was sold, the less the tribe could take on its traditional role of enforcing Maori property rights.”¹¹ The more difficult it became for Maori to enforce their property rights, the less valuable became their remaining lands, and the more likely they were to be sold. This article tells the story of one such uneven and chaotic transition from common land to a kind of private land tenure permitted by the Indian Act, but it is also about Mohawks’ remarkable success in resisting the imposition of the Canadian government’s vision of land ownership and citizenship.

KAHNAWÁ:KE LAND IN THE EIGHTEENTH AND NINETEENTH CENTURIES

Like other Indigenous communities in the St Lawrence valley, Kahnawá:ke possessed a land base that seemed relatively safe from acquisitive settlers in the context of the seigneurial system, and the lands conceded to French-Canadian farmers had the potential to produce substantial rents for the benefit of the community.¹² In practice, however, Kahnawá:ke was subject to unauthorized concessions by Jesuit missionaries, haphazard collection of rents by dishonest and incompetent Indian agents, and, increasingly over the nineteenth century, non-Native men who gained land rights through marriage but failed

10 Stuart Banner, “Two Properties, One Land: Law and Space in Nineteenth-Century New Zealand,” *Law & Social Inquiry* 24, no. 4 (1999): 847.

11 Ibid.

12 Seigneurial income rarely lived up to expectations because rent collection was inconsistent, but an English fur trader named John Long who lived in the Montreal region for seven years beginning in 1768 cited seigneurial rents as an important source of wealth (and also as an explanation for supposed expensive tastes and aversion to manual labour) in Kahnawá:ke. See John Long, *John Long’s Voyages and Travels in the Years 1768–1788* (1791; Chicago: Lakeside, 1922), 10.

to integrate into the community.¹³ Finally, in the decades following the abolition of the seigneurial system in 1854, the two-thirds of the seigneurie that had been conceded to non-Native farmers was transformed into private property and alienated from what became known as the “reserve.”¹⁴ The rest of the seigneurie, the approximately 12,000 acres (5,000 hectares) that make up the current reserve, had never been conceded, rented, stolen, leased, or sold. These lands had been managed by Mohawks according to their own rules since at least 1716 when the village was located permanently in its current location. From then until the latter half of the nineteenth century colonial authorities had very little say over what happened on these lands, and internal conflicts were largely resolved by Kahnawakehrónon and their chiefs.¹⁵

Kahnawá:ke customary law concerning land tenure was designed to allow as many community members as possible to have access to a piece of land for small-scale agriculture, as well as free firewood. According to Kahnawá:ke custom, any uncleared piece of land was available to the person who was willing to clear and cultivate it. That piece, in turn, became available to others if left uncultivated for three consecutive years. A person was not to claim more land than he or she could work without hired help, which meant, in effect, that land was not to be accumulated for individual commercial gain. Any Kahnawakehrónon had the right to cut trees for personal use (not for sale), regardless of where the tree stood, and no one had the right to stop another person from doing so. The exception to this rule was maple:

- 13 For a larger discussion of membership and colonialism, see Audra Simpson, “Captivating Eunice: Membership, Colonialism, and Gendered Citizenships of Grief,” *Wicazo Sa Review* 24, no. 2 (2009): 105–29. For more on Indigenous dispossession in Quebec, see Alain Beaulieu, “‘An equitable right to be compensated’: The Dispossession of the Aboriginal Peoples of Quebec and the Emergence of a New Legal Rationale (1760–1860),” *Canadian Historical Review* 94, no. 1 (2013): 1–27; Greer, “Commons and Enclosure in the Colonization of North America.”
- 14 For more on disputes and land claims concerning the Seigneurie of Sault Saint-Louis, see Arnaud Decroix, “Le conflit juridique entre les Jésuites et les Iroquois au sujet de la seigneurie du Sault Saint-Louis: analyse de la décision de Thomas Gage (1762),” *Revue Juridique Thémis* 41 (2007): 279–97; Gerald R. Alfred, “To Right Certain Wrongs: A Report on Research into Lands Known as the Seigniorie of Sault St Louis,” (Kahnawake: Seigniorie Office, 1995); Carmen Lambert, “History of Kahnawake Land Claims, Seigneurie of Sault-Saint-Louis” (paper prepared for the Confederation of Indians of Quebec, 1980).
- 15 Jan Grabowski, “French Criminal Justice and Indians in Montreal, 1670–1760,” *Ethnohistory* 43, no. 3 (1996): 405–29. The first case of a Mohawk taking an internal matter to a Montreal court was in 1796. See Denys Delâge and Étienne Gilbert, “La justice coloniale britannique et les Amérindiens au Québec, 1760–1820 – I. En terres amérindiennes,” *Recherches amérindiennes au Québec* 32, no. 1 (2002): 63–82.

actively tapped maple stands (sugar bushes) were considered the legal equivalent of cultivated land, and these trees were not to be cut. These customary laws form part of a list of twenty-one laws drawn up by Kahnawá:ke chiefs in 1801 in response to the first Mohawk individuals who challenged their authority by taking internal land disputes to colonial courts.¹⁶ The twenty-one laws were apparently rescinded in 1808, but the principles of the laws concerning land management continued to be asserted and enforced through the nineteenth century.¹⁷ The overarching goal of the Kahnawá:ke land practice regime appears to have been the maximization of access to land and resources to all community members while limiting the potential for individual commercial profit from the same. That is not to say that Mohawks were opposed to commerce – they most certainly were not – but their customary laws showed them to be opposed to the enclosure of their seigneurial lands and the commercialization of wood on those lands.¹⁸

- 16 “Règlements établis par les chefs du Sault Saint-Louis,” 26 Feb. 1801, pp. 9446–54, vol. 10, reel C-11000, RG10, Library and Archives Canada (LAC). For more on these laws and the context in which they were written down, see Daniel Rueck, “Enclosing the Mohawk Commons: A History of Use-Rights, Land-Ownership, and boundary-making in Kahnawá:ke” (PhD diss., McGill University, 2013); Denis Delâge and Alexandre Lefrançois, “Thomas Arakwenté: promoteur de la modernité dans la communauté iroquoise du Sault Saint-Louis (1791–1820),” in *Gouvernance autochtone: aspects juridiques, économiques et sociaux*, ed. Andrée Lajoie, 72–6 (Montréal: Les éditions Thémis, 2007); Donald Fyson, *Magistrates, Police and People: Everyday Criminal Justice in Quebec and Lower Canada* (Toronto: University of Toronto Press, 2006), 303–4.
- 17 “Statement of the Iroquois Chiefs of the Village of Sault St Louis,” 22 Dec. 1808, p. 9464, vol. 10, reel C-11000, RG10, LAC. For more on the continuity of these customary laws, see Rueck, “Enclosing the Mohawk Commons,” chaps 4–6.
- 18 It might come as a surprise that nineteenth-century textual sources, including petitions and letters written by Kahnawakehrón themselves, do not mention significant leadership roles for women on matters of land. Considering that Haudenosaunee women have been described in multiple sources as those responsible for land allocation and management, this silence in nineteenth-century texts is difficult to explain. The most important document in this regard for Kahnawá:ke is Joseph François Lafitau, *Moeurs des sauvages américains comparées aux mœurs des premiers temps*, 4 vols. (Paris: Chez Saugrain l’aîné et al., 1724). In the nineteenth century, even Joseph Doutre, a Montreal lawyer who wrote a substantial essay in 1852 on Kahnawá:ke politics, governance, and culture, discussed matrilineality and women’s economic roles without mentioning female farmers or gardeners (Joseph Doutre, “Les sauvages du Canada en 1852,” in *Institut-Canadien en 1855*, ed. J.L. Lafontaine, 190–225 (Montreal: Sénécal & Daniel, 1855). Nevertheless, oral histories indicate that many women continued to cultivate small fields throughout this period, and that they may have continued to play important leadership roles that were invisible to outsiders (personal communication with Haudenosaunee men and women from several communities, 2010–14).

Around 1800 it became apparent that not all Kahnawakehrón agreed with the customary land laws. A small number wanted a land tenure regime in line with Canadian norms, including clear individual title to surveyed lots, and the right to keep others from cutting trees on them. These dissidents, called “reformers” by historian Gerald Reid, tended to be at the centre of most conflicts surrounding land and wood during this period. A number of these dissidents were non-Native men (and their progeny) who had been adopted into the community, who were increasingly referred to as white, metis, or half-breed over the course of the nineteenth century.¹⁹ In the 1870s the DIA began to actively support these dissidents in the hope of transforming the way land was owned and managed.²⁰ Wood and land shortages during this period exacerbated tensions within the community, and the DIA was ready and willing to exploit the situation to its advantage. Department officials did their best to undermine the chiefs’ ability to enforce the customary laws, while the local government agent did little to enforce applicable Indian legislation. Exacerbating the problem was the newly passed Indian Act, which gave the DIA control over community finances, as well as the power to determine who had the right to land in Kahnawá:ke.²¹ Although the chiefs

- 19 Gerald Reid, *Kahnawá:ke: Factionalism, Traditionalism, and Nationalism in a Mohawk Community* (Lincoln: University of Nebraska Press, 2004). For more on membership, race, and gender in Kahnawá:ke and Iroquoia, see Audra Simpson, *Mohawk Interruptus: Political Life across the Borders of Settler States* (Durham, NC: Duke University Press, 2014); Matthieu Sossoyan, “Les Indiens, les Mohawks et les Blancs: Mise en contexte historique et sociale de la question des Blancs à Kahnawake,” *Recherches amérindiennes au Québec* 34, nos 1–2 (2009): 159–71; Marie Lise Vien, “‘Un mélange aussi redouté qu’il est à craindre’: race, genre et conflit identitaire à Kahnawake, 1810–1851” (MA thesis, Université du Québec à Montréal, 2013).
- 20 I use the concept of land “ownership” at times in this article to refer to specific rights of an individual or community to a particular piece of land. Kahnawá:ke leaders through much of the nineteenth century insisted on the collective sovereignty of the Kahnawá:ke nation over the Seigneurie of Sault St Louis, but also on individual rights to particular pieces of land as long as the owner met certain requirements. Even though customary law forbade buying and selling of land (except with the special permission of the chiefs), I use the word *ownership* or *tenure* to describe this relationship to a bounded piece of land. “Règlements établis par les chefs du Sault Saint-Louis,” 26 Feb. 1801, pp. 9446–54, vol. 10, reel C-11000, RG10, LAC.
- 21 Kahnawá:ke chiefs explicitly made the connection between the transfer of financial authority to the DIA and more frequent cases of wood infractions. In 1875 the chiefs wrote that since 1867, when the Crown took over management of community funds, they had “no power to chastise” those who broke laws. Chiefs Jarvis A. Dione, Joseph K. Delisle, Joseph T. Skey, and Thomas Asennase to Merideth, 14 May 1875, file 2764, vol. 1917, RG10, LAC. For more on Indian legislation and DIA priorities, see Duncan Campbell Scott, “Indian Affairs, 1867–1912,” in *Canada and Its Provinces*, ed. Adam Shortt and Arthur G. Doughty, 593–626 (Toronto: Glasgow, Brook, 1914); John L. Tobias, “Protection,

were still seen by most in the community as the legitimate government, people soon realized that the old mechanisms of legal enforcement had broken down and that they had not been replaced. In the context of this power vacuum, trees were cut at will by Mohawks and non-Mohawks, by night and by day, and often for sale. As a result of these open-access conditions, DIA officials claimed that Kahnawakehró:non were, like all Indians, incapable of governing themselves, which served as justification for further intervention.²²

At the request of the DIA, the federal government passed an order-in-council in 1876 specifically for Kahnawá:ke. In a direct attack on customary laws, it made trees the property of the owner of the land on which they grew and forbade logging on the property of others.²³ Kahnawá:ke chiefs were outraged and sent two representatives to Ottawa to protest. They pointed out that those who had requested the order-in-council represented a small minority of the community, and that many of those did not have legitimate title to their lands. Regardless, argued the chiefs, it was their jurisdiction, not that of individual Mohawks nor that of the DIA, to make decisions on how land was governed in Kahnawá:ke.²⁴ The protest fell on deaf ears, but the order-in-council turned out to be largely unenforceable because the department had no idea where lot boundaries ran or who was legally authorized to hold land in Kahnawá:ke. What did happen as a result of the order-in-council was that a number of Kahnawakehró:non rushed to erect fences around lands they claimed, believing (not unreasonably) that this would bolster their claims in the eyes of the department.²⁵ Many were flimsy branch-fences that served a symbolic function only.²⁶ As the problem of illegal woodcutting and land-grabbing continued to worsen, the

Civilisation, Assimilation: An Outline History of Canada's Indian Policy," in *Sweet Promises: A Reader on Indian-White Relations in Canada*, ed. J.R. Miller, 127–44 (Toronto: University of Toronto Press, 1991); E. Brian Titley, *A Narrow Vision: Duncan Campbell Scott and the Administration of Indian Affairs in Canada* (Vancouver: UBC Press, 1992).

- 22 For more on the 1870s in Kahnawá:ke, see Rueck, "Enclosing the Mohawk Commons," chap. 5.
- 23 Canada, order-in-council "for the protection from pillage of Timber on lands occupied by Indians on the Indian Reserve at Caughnawaga," 1 Jan. 1876.
- 24 Petition from Sose Taioronioté, Sose Kentarontie, Francis Athanrishon, Louis Tionakaron, Thomas Asennase, Peter Murray, and about eighty others to David Laird, secretary of the interior, 7 Feb. 1876, file 5555, vol. 1972, RG10, LAC.
- 25 Thomas A. Dawes to DIA, 2 Feb. 1877, file 5555, vol. 1972, RG10, LAC.
- 26 Petition from eighty-seven Kahnawakehró:non, n.d. [winter 1877–8], file 5555, vol. 1972, RG10, LAC. See also the case concerning Ignace Onniakoton, 1876–8, file 6411, vol. 1987, RG10, LAC.

department pressured the chiefs to authorize a cadastral survey that would define lots and owners, both on the ground and on paper. The DIA insisted that this was the only way to solve the crisis and made no secret of its hope that the old boundary lines would be eliminated, the entire reserve resurveyed, and the new lots redistributed among members. The chiefs consistently opposed any survey inside the boundaries of the unconceded portion of the seigneurie.²⁷ Just as consistently, they asked for the department to conduct a boundary survey that would address *their* concern about non-Native farmers who had been chipping away at the boundary of the reserve for decades.²⁸

FEDERAL LEGISLATION

The new DIA assertiveness of the 1870s and 1880s was made possible by changes to Indian legislation following Confederation – changes that empowered the department to act in more intrusive ways toward Indigenous communities. The 1876 Indian Act summarized, replaced, and updated all previous Indian legislation and was the foundation upon which all subsequent Indian policy was built. Most revisions to the Indian Act in subsequent decades strengthened the DIA's hand in its relationship to Indigenous communities. For example, the 1879 revision of the Indian Act gave the DIA power to allot reserve land, whereas this power had previously rested in community leaders.²⁹ More than half of the Indian Act concerned land and resource management. A key feature of the legislation was the “location ticket,” which was seen as a tool for putting Indians on the path away from communitarian values toward “enfranchisement” and private property. The legislation envisioned a time when reserves would be surveyed and cut up into individual lots. Each of these lots would then be assigned to individual members, and each of these would be given a location ticket as proof of his title to that lot. To be eligible for a

- 27 For some examples of department pressure to subdivide and chiefly resistance to the idea, see Vankoughnet to petitioners, 31 Dec. 1873, file 2764, vol. 1917, RG10, LAC; Cherrier to Vankoughnet, 25 May 1880, file 20,131, vol. 2109, RG10, LAC; Chiefs Jarvis A. Dione, Joseph K. Delisle, Joseph T. Skey, and Thomas Asennase to Merideth, 14 May 1875, file 2764, vol. 1917, RG10, LAC.
- 28 Two examples of the chiefs asking for a boundary survey: Chiefs Jarvis A. Dione, Joseph K. Delisle, Joseph T. Skey, and Thomas Asennase to Merideth, 14 May 1875, file 2764, vol. 1917, RG10, LAC; Cherrier to Vankoughnet, 25 May 1880, file 20,131, vol. 2109, RG10, LAC.
- 29 Tobias, “Protection, Civilisation, Assimilation,” 132–5.

location ticket, a person would have to be a literate, morally upright, debt-free male. If, after he was issued his location ticket, he improved and worked his land in an acceptable way, he could become “enfranchised,” lose his Indian status, and own the lot in the same manner as any Canadian.³⁰ It can thus be said that the Indian Act was designed to legally transform Indians into non-Indians en masse and to destroy Indigenous communities by having each enfranchised person take a part of the reserve from communities. The Walbank Subdivision Survey, as we shall see, was intended to enfranchise everyone at once and thus eliminate the Kahnawá:ke reserve. It can be seen as a test case for a widespread policy of reserve allotments in western Canada, and there are parallels with such actions taken in the United States.³¹

In the late 1870s, the Canadian government was trying to deal with a food and resource crisis on the Prairie West that was, in part, of its own making. Having actively supported dramatic immigration in non-Indigenous populations while undermining Indigenous peoples’ ability to exert control over resources, the Canadian government was obligated by treaty to provide for the needs of the suddenly impoverished nations. However, the DIA found that buying and shipping food to distant reserves was expensive and hurriedly drew up plans to subdivide reserves instead.³² Department officials claimed that dividing up reserves into small, individually owned lots would induce Native people to grow their own food and thus relieve the government of the expense of feeding them.³³ The larger motives for the subdivision survey in Kahnawá:ke are not clear in the government correspondence, but it is very likely that officials considered this survey in light of their priorities in the west.

LEAD-UP TO THE SUBDIVISION SURVEY

Kahnawá:ke chiefs frequently requested a survey that would define the boundary around the unconceded portion of the seigneurie, a border

30 Ibid., 132. The word *improvement* in this context generally referred to the cultivation of land and the construction of fences and buildings.

31 C. Joseph Genetin-Pilawa, *Crooked Paths to Allotment: The Fight over Federal Indian Policy after the Civil War* (Chapel Hill: University of North Carolina Press, 2012); Nicole Tonkovich, *The Allotment Plot: Alice C. Fletcher, E. Jane Gay, and Nez Perce Survivance* (Lincoln: Nebraska University Press, 2012).

32 Spry, “Great Transformation,” 26–31.

33 Carter, *Lost Harvests*, 81–3.

that had been left undefined for so long that no one knew exactly how much land had been lost to encroachment from neighbouring farmers. The DIA responded in 1875 by saying it was willing to initiate a boundary survey, but only in the context of a subdivision survey. The principal chiefs rejected this idea in a strongly worded petition asking the department to reconsider, stating that it was their duty to protect and represent those who would suffer most from such a subdivision. The lots that would be produced, they argued, would be small and of uneven quality, and, with the loss of the common wood and pasture resources, the community would no longer be viable.³⁴ The DIA turned a deaf ear to these arguments and continued to plan for subdivision, but did not act until the following decade.

In April 1880, the Kahnawá:ke council of chiefs again requested a boundary survey “that the lines of our property and of the Canadians which adjoins ours should be revised because it has been reported for many years that these neighbours have encroached on our land.”³⁵ This time the DIA responded positively to the request, but not before asking one more time if they would also want the interior of the reserve to be surveyed. Indian Agent George Cherrier responded with a definite no: “It is only the wish and intention of the Chiefs to run the lines around the Reserve.”³⁶ Tenders for the boundary survey were announced in June 1880; the contract was offered to William McLea Walbank, provincial land surveyor, in early August; and he and his staff were in the field by August 12.³⁷ In December 1880 Walbank declared all field operations for the boundary survey complete and wrote his final report.

It would seem then that Kahnawakehró:non scored a small victory in finally achieving a survey of their external borders, which put an end to further encroachment by neighbouring farmers. But the DIA did not intend to stop there. Walbank knew of the department’s interest in subdividing the reserve and thus suggested in his final report that a

34 Chiefs Jarvis A. Dione, Joseph K. Delisle, Joseph T. Skey, and Thomas Asennase to E.H. Meredith, 14 May 1875, file 2764, vol. 1917, RG10, LAC.

35 Council resolution signed by Joseph Williams, 12 Apr. 1880, file 20,131, vol. 2109, RG10, LAC.

36 Cherrier to Vankoughnet, 25 May 1880, file 20,131, vol. 2109, RG10, LAC.

37 File 20,131, vol. 2109, RG10, LAC. Walbank (1856–1909) was the son of lawyer and Conservative member of the Newfoundland House of Assembly who graduated from McGill University in 1877 with a degree in civil and mechanical engineering. In 1880, at the start of the boundary survey, he was twenty-four years old. “William McLea Walbank,” CA601, S139, ANQ, <http://pistard.banq.qc.ca>. Larry S. McNally “Pringle, Thomas,” *Dictionary of Canadian Biography Online*, www.biographi.ca.

subdivision was the logical next step. He also recommended himself as the person to carry it out. Walbank argued that a subdivision project would be in the interest of “civilizing” Mohawks but warned that it should be done very carefully. If Mohawks were given the same land rights as non-Natives too quickly, they would immediately sell their lots and within five years the whole reserve would be in the hands of whites. Instead, he suggested, “It might be beneficial to give rights to sell or exchange their lands with each other (with certain restrictions) and so by degrees educate them into the manners and customs of the more civilized people.”³⁸

The idea of subdivision was also raised the same year by James P. Dawes, a Lachine industrialist who had been hired by the DIA to arbitrate disputes over wood at Kahnawá:ke. He was frustrated by his inability to settle disputes as the result of what he saw as the lack of defined boundaries.³⁹ DIA officials agreed with Dawes and Walbank on the need for a subdivision survey but worried how Mohawks would react to having it imposed on them.⁴⁰ Zebulon A. Lash, solicitor of Indian Affairs, wrote to Dawes that subdividing the reserve would be “rather a difficult matter to arrange as the Reserve has been allowed to remain unsurveyed so long that it will no doubt cause considerable dissatisfaction when some of the land held by the present occupants is taken from them and given to others desirous of cultivating land but not having any to cultivate.”⁴¹ DIA officials did not have a plan for subdividing the reserve, so the plan was developed and carried out by Walbank. After his experience on the boundary survey, the DIA considered him a trusted expert on Kahnawá:ke.

THE SUBDIVISION SURVEY

In February 1882, Deputy Superintendent General Lawrence Vankoughnet sent a clerk named J.V. de Boucherville to Kahnawá:ke to

- 38 Correspondence between Walbank and the DIA, 1880–1, file 20,131, vol. 2109, RG10, LAC.
- 39 James P. Dawes to Lawrence Vankoughnet, 3 June 1880, file 21,156, vol. 2113, RG10, LAC.
- 40 The DIA was not forthright about the relationship between the subdivision survey and the expected construction of a Canadian Pacific Railway (CPR) bridge to span the St Lawrence River, which was built in 1885–7. Government and railway officials hoped that the Walbank Survey would “regularize” landholding in time to facilitate expropriation. Gerald Tulchinsky, “Across the Rivers with Steel: The First Decade of Dominion Bridge: 1882–1892,” unpublished manuscript, 1976, pp. 50–2, file 6, vol. 21, MG28 III 100, Dominion Bridge, LAC.
- 41 Zebulon A. Lash to James P. Dawes, 16 June 1880, file 21,156, vol. 2113, RG10, LAC.

inform the chiefs that the DIA intended to subdivide the unconceded portion of the seigneurie with the goal of issuing location tickets for each lot. "Under the present system," he explained, "it was very difficult to protect their individual holdings from trespass," and because he hoped "that at no distant date the band or such members thereof as might be deemed fit for the change contemplated would be enfranchised and that the survey of their individual locations on the Reserve was an essential preliminary to their enfranchisement." After the letter was translated into Mohawk and read to the chiefs, de Boucherville reported that they were content with the plan and that they hoped the survey would be carried out quickly.⁴² But there is no reason to believe that the chiefs were actually happy about the announcement, since they had consistently opposed any subdivision plan in previous years, and since the department regularly misrepresented the views of Indigenous leaders. At least some of the chiefs later decided to cooperate, but in view of their previous vociferous resistance as well as the colonial power relations at play, their cooperation should not be interpreted as agreement.⁴³

Vankoughnet informed Prime Minister John A. Macdonald in April 1882 that everything was in place to begin the survey, including the consent of the Indians (which was never given, nor needed according to the revised Indian Act), and recommended Walbank for the contract.⁴⁴ Walbank's barebones plan for the survey was accepted without serious scrutiny or concern. By June he had an office in Kahnawá:ke and three teams in the field, each one consisting of a surveyor and two Mohawk assistants.⁴⁵ He expected to complete the job in 1883, but after unexpected complications the work dragged into the following year.⁴⁶ It is not entirely clear from the archival correspondence how Walbank and his crews went about defining lot boundary lines, but the records do indicate that two chiefs were paid to help them meet with claimants and find boundary lines.⁴⁷ A small number of Mohawks had by this time acquired notarized deeds based on privately

42 De Boucherville to DIA, 11 Mar. 1882, file 27005-1, vol. 7749, RG10, LAC.

43 Robert M. Cover, "Violence and the Word," *Yale Law Journal* 95, no. 8 (1986): 1607. Nicholas Blomley, "Law, Property, and the Geography of Violence: The Frontier, the Survey, and the Grid," *Annals of the Association of American Geographers* 93, no. 1 (2003): 130.

44 Vankoughnet to Macdonald, 19 Apr. 1882, file 27005-1, vol. 7749, RG10, LAC.

45 Walbank to Vankoughnet, 22 June 1882; Walbank to Vankoughnet, 27 Sept. 1882, file 27005-1, vol. 7749, RG10, LAC.

46 Walbank to Vankoughnet, 20 Nov. 1882, file 27005-1, vol. 7749, RG10, LAC.

47 Council resolution, 20 May 1882, file 27005-1, vol. 7749, RG10, LAC.



FIGURE 1 “Plan of Kanawake reserve . . .” by William McLea Walbank, 1885 (after geo-referencing). Record no. 1492, LAC.

commissioned surveys, but a good portion of the reserve had never before been measured by a professional land surveyor.

In June 1884 Walbank began valuing existing lots and improvements (cleared and cultivated land, fences, and buildings).⁴⁸ He had been instructed to assign monetary value based on a land market in which only Mohawks could participate, which had the effect of greatly lowering valuations.⁴⁹ He completed the survey of existing lots that fall and produced a large, complex map that included three layers of information: existing lots, existing land uses, and projected lots.⁵⁰ Figure 1 is a geo-referenced scan of the map.

There is too much information embedded in this map to visualize all layers simultaneously in a meaningful way, so the included maps show one layer at a time. Figure 2 shows two such maps that were created from layers in the original map using Geographic Information

48 I employ the word *improvement* in several instances without quotation marks as a technical term with a particular meaning in the context of land valuation.

49 Vankoughnet to Walbank, 28 July 1884, file 27005-1, vol. 7749, RG10, LAC.

50 W.A. Austin Report, 25 Feb. 1887, file 27005-1, vol. 7749, LAC.

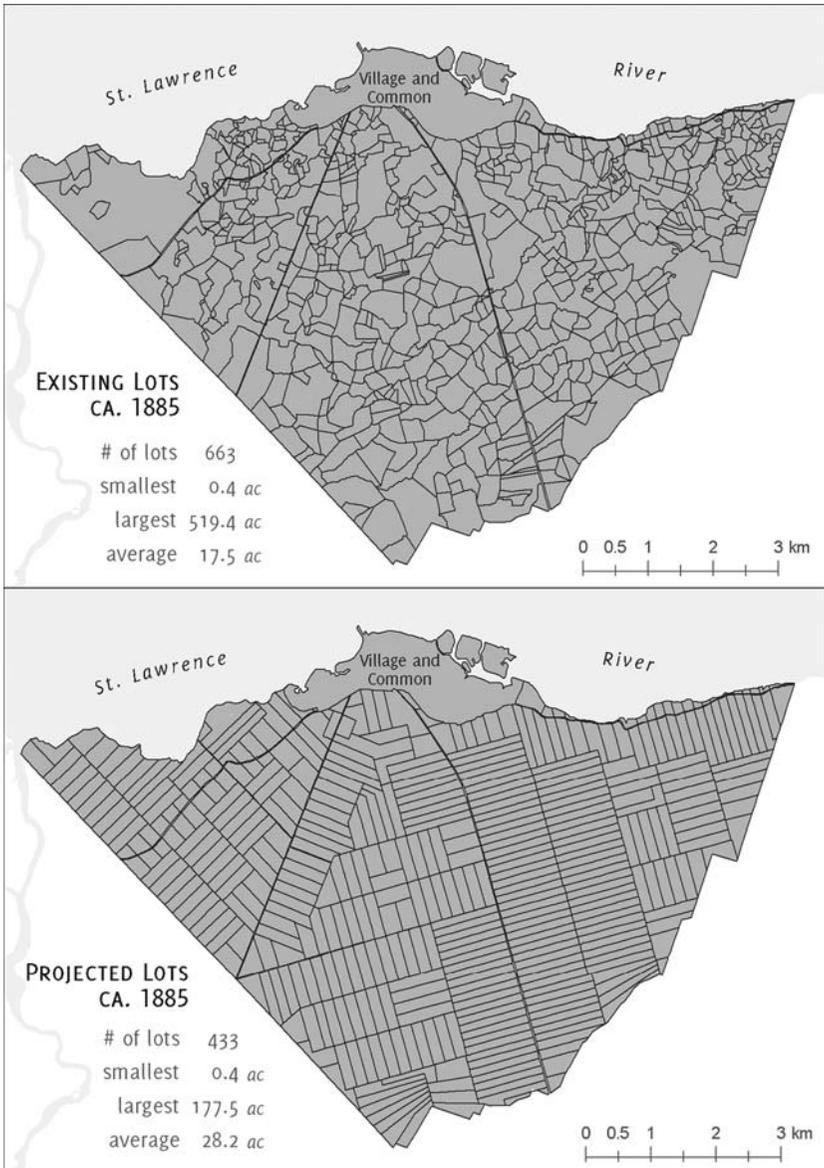


FIGURE 2 Maps of Kahnawá:ke showing existing and projected lots, ca. 1885. Map by Louis-Jean Faucher.

System (GIS) tools. The first map shows the boundary lines of lots as Walbank determined them to be in 1884–5, and the second shows the new property grid he planned to create by subdividing the reserve into rectangular lots.

Before designing the new grid, however, Walbank had to know how many lots would be needed. Each head of household would be assigned one of the new lots, but since there was no comprehensive membership list, Walbank set up a process by which anyone who claimed to be a head of household could present himself or herself to a tribunal made up of the chiefs, the agent, and Walbank himself. The tribunal was in operation from February until June 1885. Claimants' answers to a series of questions were used to judge whether or not the claimant would be considered a band member and a head of household. Aside from standard questions on names, birthdates, and birthplaces, claimants were asked many questions that reflected DIA concerns about race, monogamy, and land ownership.⁵¹

While the data set produced by this tribunal is valuable for learning about late nineteenth-century Kahnawá:ke, information gathered in this way is also problematic. Answers to most questions are written in standardized English phrases and never written in the hand of the claimant. For example, in response to the question, "How long have you resided on the reserve?" the standardized answer is "All my life" or "All my life except when at college," whereas one can imagine individuals giving a wide range of responses. Answers given in Mohawk, French, or English were distilled into standardized English responses. Also, considering Walbank's lack of empathy for those he judged less civilized, it is likely that many claims are not fairly represented in his workbooks. For example, Walbank confessed that he filled in answers to question ten for the claimants ("Do you hold any land on the Reserve; and how did you acquire such land?") because, in his words, "any information I might get from the individual Indians would be very unreliable and inaccurate."⁵² In addition, the questions do not take into account Mohawk conceptions of land tenure, and one can imagine the frustration and anger of people who were required to respond to poorly phrased questions. On the other hand, there is no reason to think Walbank set out to deliberately falsify information, and the involvement of the four chiefs on the tribunal provided local knowledge and accountability. They may not have had the full support of the community in cooperating with Walbank, but they were still

51 Caughnawaga Reference Books, 1885, vols. 8968–72, RG10-B-8-aj, LAC.

52 Walbank to Vankoughnet, 28 Feb. 1885, file 27005-1, vol. 7749, RG10, LAC.

subject to the kind of accountability that came with living among their constituents.⁵³

MOHAWK RESISTANCE AND FAILURE OF THE SUBDIVISION

The survey and associated bureaucratic processes took much longer than expected, and the longer they took the more overt became Mohawk discontent. However, the survey coincided with events that circumscribed their ability to resist. When Métis, Assiniboine, and Cree warriors rose up against Canadian occupation of their lands in March and April 1885, Canadian public opinion turned sharply against Indigenous peoples.⁵⁴ Mohawks surely took this antipathy into consideration as they registered their complaints about the survey that summer. In July 1885, only three months after the Indigenous provisional government on the Prairies had been crushed, some fifty Kahnawakehrónon sent the DIA a carefully worded petition expressing concern over the long duration and high cost of the subdivision survey and asked for an investigation into the matter. They wrote, “It is with anxiety that we look for the completion of said survey: we are inexpert in the nature of the work, but assuredly one acting faithfully should have finished it by this time, comparing to the small size of the Seignior.”⁵⁵ When the department asked Walbank about it, he dismissed those behind the petition as nothing but a few pesky agitators: “The complaint,” he wrote, “does not come from the respectable part of the tribe; but from some whom I have prosecuted for bringing intoxicants on the Reserve, and is composed of some fifty or sixty of the most troublesome men of the tribe, and who take no interest in any matters except opposing all progress.”⁵⁶

53 The council was made up of seven chiefs, but the DIA had refused to allow new chiefs to replace those who died. The four remaining chiefs in 1885 were Shatekaienton (Louis Beauvais), Karatoton (Thomas Jocks), Sakoientineta (Michael Montour), and Asennase (Thomas Deer). Historical anthropologist Gerald Reid has analyzed the responses of the chiefs to each claimant to better understand political rifts within the community. Reid, *Kahnawà:ke*, 40–5.

54 Sprague, *Canada and the Métis, 1869–1885*; Blair Stonechild and Bill Waiser, *Loyal till Death: Indians and the North-West Rebellion* (Calgary: Fifth House, 1997). It was also in 1885 that Canada outlawed the potlatch, a cultural event that was central to Indigenous societies along the Pacific coast. Douglas Cole and Ira Chaikin, *An Iron Hand Upon the People: The law against the potlatch on the Northwest coast* (Vancouver: Douglas & McIntyre, 1990).

55 Petition from about fifty Kahnawakehrónon to Vankoughnet, 7 July 1885, file 27005-1, vol. 7749, RG10, LAC.

56 Walbank to Vankoughnet, 27 July 1885, file 27005-1, vol. 7749, RG10, LAC.

The work of the tribunal was mostly complete in the fall of 1885, but final decisions on disputed claims were not released until the following summer.⁵⁷ In the meantime, Walbank was frustrated by the fact that he could not lay out the new property grid until all the disputed claims had been settled. He could mark out new roads that would serve as the basis for the new grid, but he could not mark out the new lots until he knew how many would be needed. This did not stop him from mapping out of the new rectangular lots on paper, approximately thirty acres each, and inviting each successful claimant to choose one.⁵⁸ In June 1886 he asked owners of existing lots to review the valuations he had given their land and improvements. These notices, written in both Mohawk and English, sparked another round of protests, this time mostly from large landowners. After two clandestine meetings in early June 1886, a group of Kahnawakehró:non sent the DIA a petition protesting the low land valuations and the high cost of the survey.⁵⁹ The concerns about low valuations were concerns of a minority who likely already thought of their land in monetary terms, individuals who stood to lose the most from deflated valuations. Perhaps realizing that it might be losing even the minority who usually supported DIA initiatives, the department denounced the petitioners and banned unauthorized public meetings.

Since they were no longer allowed to voice their complaints in public, Mohawks increasingly turned to other means. Walbank informed the DIA in September 1887 that his surveyor had been impeded by a number of Mohawks who had “offered obstruction to the running of the new lines of Lots; and also threatened personal violence.” He also reported the destruction of survey marks and the removal of pickets.⁶⁰ Walbank accused three men of these actions, two of whom could be identified in the survey data. The first was Thiretha (Peter Diome), for whom Walbank noted on his claimant form, “This man resides here upon his land which is very extensive, he refuses to attend here to make his statement.” Thiretha was listed as owning four lots totalling 194 acres, valued at \$1473 (figure 3).⁶¹

57 Walbank to Vankoughnet, 19 Oct. 1885, file 27005-1, vol. 7749, RG10, LAC.

58 Walbank's correspondence does not reveal how new lots were distributed among individuals. Considering the great differences between lots in soil quality, resource availability, improvements, and infrastructure, it is surprising that Walbank did not discuss his methodology.

59 Petition from a number of Kahnawakehró:non to Vankoughnet, 15 June 1886, file 27005-1, vol. 7749, RG10, LAC.

60 Walbank to Vankoughnet, 13 Sept. 1887, file 27005-1, vol. 7749, RG10, LAC.

61 Caughnawaga Reference Books, 1885, vols. 8968–72, RG10-B-8-aj, LAC. Thiretha (Peter Diome), claimant no. 577.

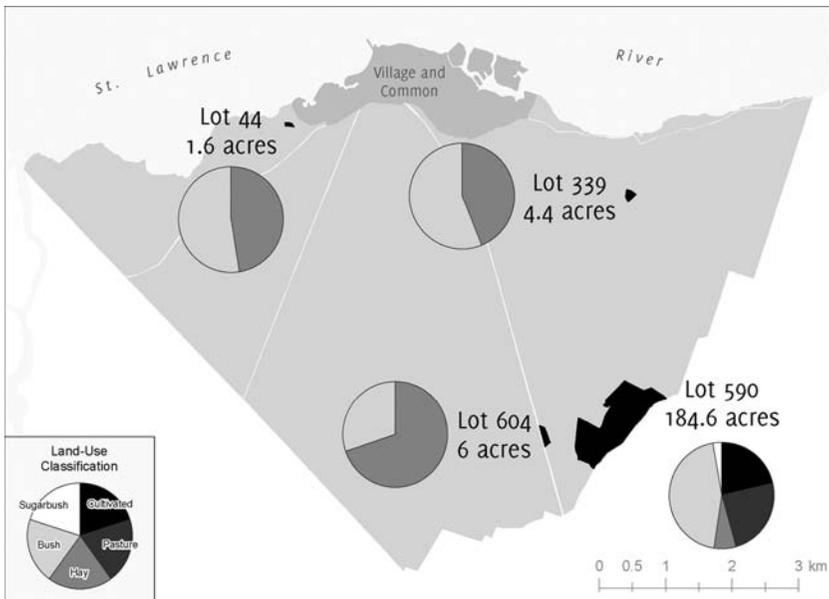


FIGURE 3 Map of Kahnawá:ke showing the lots owned by Thiretha (Peter Diome), ca. 1885, and Walbank's land-use classification for each. Map by Louis-Jean Faucher.

The second man was Kataratiron (Joseph Jacob), who is listed as owning an eighty-acre lot, of which a significant portion was cultivated, valued at \$1804 (figure 4).⁶² The high value of their lands meant that Thiretha and Kataratiron were two of the wealthiest landowners in Kahnawá:ke.⁶³

The third man, identified by Walbank as Dr Jacobs, could not be identified in the survey data, but it is worth noting that two of these men were land-rich while the third was a medical doctor.⁶⁴ For these men, the issue was not losing common access to firewood, but the

62 Caughnawaga Reference Books, 1885, vols. 8968–72, RG10-B-8-aj, LAC. Kataratiron (Joseph Jacob), claimant no. 210.

63 Reid, *Kahnawá:ke*, 24. Reid notes that in 1884 the top 5 per cent of landowners in Kahnawá:ke owned 31 per cent of the land in terms of value. The largest individual landowner in terms of value held lands valued at \$5,019.

64 It is possible this was the same Dr. Jacobs many Kahnawakehrónon remember as a medical doctor who accepted deeds as security for debts incurred for medical services and became land-rich as a result, but these data are not adequate to confirm it.

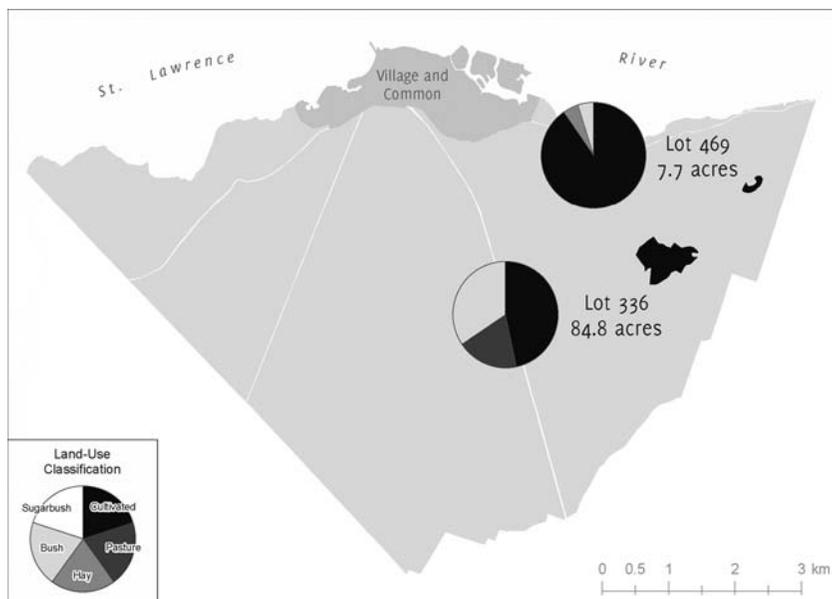


FIGURE 4 Map of Kahnawá:ke showing the lots owned by Kataratiron (Joseph Jacob), ca. 1885, and Walbank's land-use classification for each. Map by Louis-Jean Faucher.

imminent loss of property without adequate compensation.⁶⁵ These wealthier men were typically the class of Mohawks the DIA had sometimes been able to count as allies, and several years into the survey even these had been lost to the department.

One might have expected poor and landless Mohawks to support a project in which they would receive thirty acres, but there is little evidence of such. While the overt opposition came mostly from large landowners, there were also some small landowners who made it very clear that they did not want this change. A good example is Ohionkoton (Angus Jacob), who returned his notice with a defiant message in Mohawk: “*onen se8a8ensionson 8atkeri8aserako, Kenon8es nii tsi niio tsi 8akien. iatekatenninons nakon8entsia,*” which translates as, “Now you gentlemen. I answer. I like the way that I have. I do not sell my land”⁶⁶ (figure 5).

65 Walbank to Vankoughnet, 13 Sept. 1887, file 27005-1, vol. 7749, RG10, LAC.

66 Caughnawaga Reference Books, 1885, vols. 8968–72, RG10-B-8-aj, LAC. Translated by a contemporary interpreter, probably Owakenhen (Peter Stacey). Many thanks to Karhó:wane Cory McComber and Roy Wright for assisting me with the Mohawk-language transcription and confirming the contemporary translation as correct.

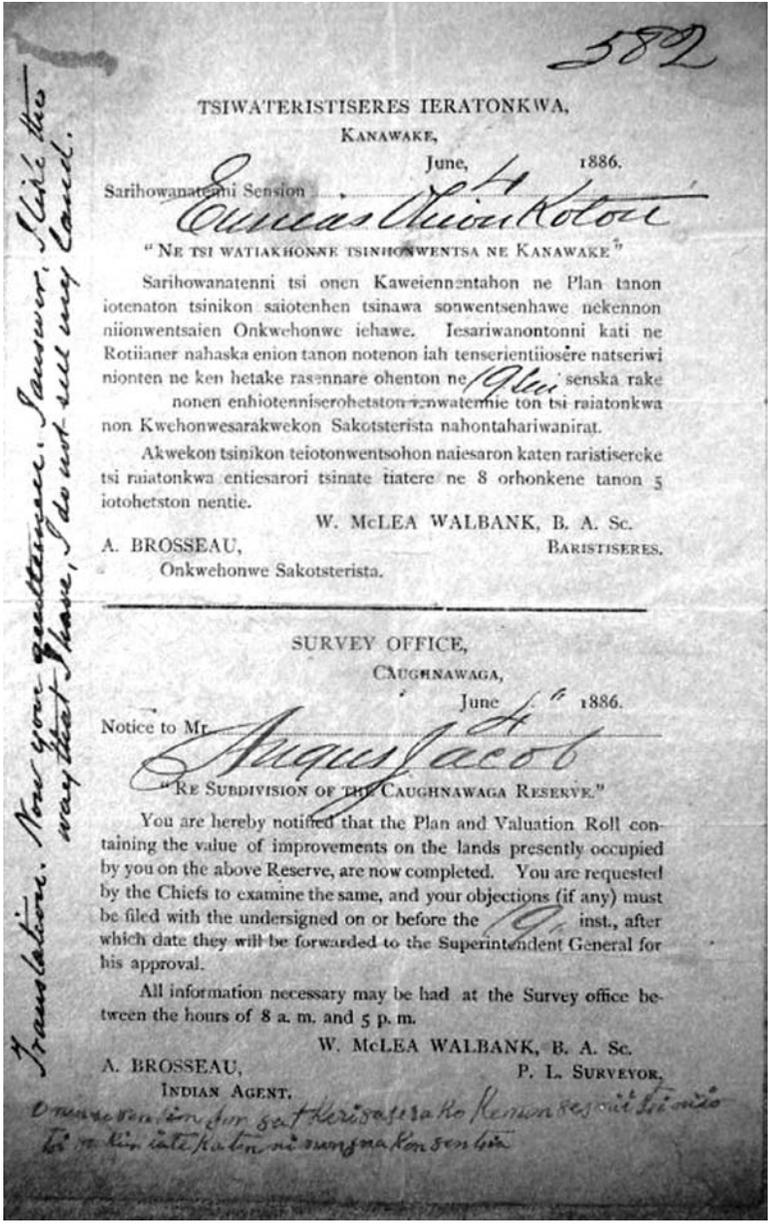


FIGURE 5 Written response (in red ink) of Ohionkoton (Angus Jacob) to Walbank's summons. Caughnawaga Reference Books, 1885, vols. 8968-8972, RG10-B-8-aj, IAC.

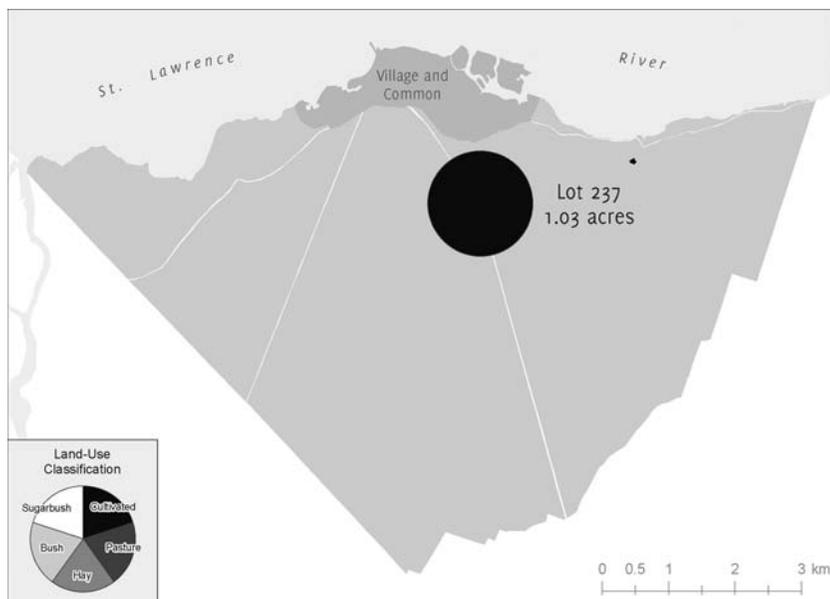


FIGURE 6 Map of Kahnawá:ke showing the lot owned by Ohionkoton (Angus Jacob), ca. 1885, and Walbank's land-use classification. Map by Louis-Jean Faucher.

Ohionkoton had also failed to appear for the tribunal interviews the previous year, so the reference books contain very little personal information about him, but he is listed as the owner of a 1.03 acre lot of cultivated land valued at \$13 (figure 6).⁶⁷ It is not known what motivated Ohionkoton to oppose the subdivision survey, but he and other land-poor Kahnawakehrónon were well aware that the new property arrangement included the criminalization of wood-cutting beyond one's lot, and that this would deprive them of free heating and cooking fuel.

In the fall of 1886 Walbank began the actual subdivision of the land, which aimed to make his map a reality. He had already assigned each of the 387 projected rectangular lots (see figure 2) to an individual owner, but he now had to find a way to make the transition happen. He knew it would be most difficult to reassign lots that included lands

67 Caughnawaga Reference Books, 1885, vols. 8968–72, RG10-B-8-aj, LAC. Ohionkoton's (claimant no. 582) personal information is not included in the reference books because he did not cooperate with the tribunal.



FIGURE 7 Detail of a part of the reserve territory of Kahnawá:ke, ca. 1885. Dark-grey boundary lines represent existing lot lines drawn by Walbank. Light-grey rectangles represent the projected lots. Map by Louis-Jean Faucher.

that were occupied and improved, so he started by subdividing the “Grand Park,” a 506-acre swampy area on the western side of the reserve known today as the “Big Fence.”⁶⁸ But how would the more valuable lands be transferred from old to new owners? Figure 7 visually represents the way almost every proposed new lot took in lands from more than one previously existing lot. One can only imagine the tragic comedy that would take place if such a redistribution were to take place. Roads and paths would cease to be useful, and barns would be separated from fields. The ecological, geographical, and cultural logics that had determined the original layout of the lots would become subservient to the bureaucratic logic of the rectangle and the grid. Since the department was legally obligated to compensate owners for improvements, owners of the old lots would need to be paid for buildings, cleared land, fences, sugar bushes, and orchards before new lots could be taken up by new owners. In theory, the compensation paid would be returned in the form of payments from new owners, but

68 Walbank to Vankoughnet, 10 Sept. 1886, file 27005-1, RG10, vol. 7749, LAC.

the sum needed immediately for a temporary fund was still staggering: \$50,000, according to Walbank's estimate – this at a time when the DIA was already facing serious questions about the \$15,000 spent on the survey, all of which had come from Kahnawá:ke band funds. According to Walbank's plan, owners of existing lots would be compensated, and owners of new lots would be indebted for any improvements found on the new lot. New owners would be required to pay this debt in instalments, and if they could not make their payments the DIA could lease out the lot to a third party until the debt was paid.⁶⁹ The largest landowners, on the other hand, would lose more improved land than they would gain and would thus end up with more money than land. They might well choose to use this money to purchase land from those who could not afford the payments, and the pre-survey inequality would thus be perpetuated. Walbank said that without the \$50,000 fund he was at an impasse, but the DIA informed him that no such money would be made available.⁷⁰

Upon hearing the department's refusal, Walbank staked out sixteen lots, lined up a new owner for each, and asked the DIA for a relatively small amount of money to compensate them for lots they would be giving up. The department refused.⁷¹ In July 1887 Walbank tried again, this time proposing to transfer just one title to one man who was willing to pay for the new lot if the department would grant him a location ticket.⁷² In this way Walbank intended to set a precedent, but the department refused to grant even one location ticket before that man had been compensated for the lots he would give up in exchange.⁷³ In other words, the DIA would not pay to compensate owners, nor would it allow new owners to take up lots. This left Walbank with no way forward. He stopped working on the subdivision fieldwork in December of 1887 and said he was "extremely glad to be finished with it." He went on to say, "It is one of the most difficult and unsatisfactory surveys one could possibly have."⁷⁴

69 Walbank to Vankoughnet, 29 Mar. and 18 May 1887, file 27005-1, vol. 7749, RG10, LAC.

70 Vankoughnet to Walbank, 21 May 1887, file 27005-1, vol. 7749, RG10, LAC.

71 Walbank to Vankoughnet, 18 May 1887; Vankoughnet to Walbank, 21 May 1887, file 27005-1, vol. 7749, RG10, LAC.

72 Caughnawaga Reference Books, 1885, vols. 8968–72, RG10-B-8-aj, LAC. Ohonwakerha (Louis Jocko) (claimant no. 143) was born in 1841. He was very active in purchasing land around the time of the survey, so it is hard to specify which lots were his. He is also listed as a disputed owner of lot 143.

73 Walbank to DIA, 4 July 1887; R. Sinclair to Walbank, 13 July 1887, file 27005-1, vol. 7749, RG10, LAC.

74 Vankoughnet to Walbank, 31 Dec. 1887; Walbank to Vankoughnet, 2 Jan. 1888, file 27005-1, vol. 7749, RG10, LAC.

The department's stonewalling of Walbank in the final phase of the subdivision could be interpreted to mean that officials did not understand the logic of his plan, but it is more likely that they simply saw the project as doomed. With the prime minister facing questions on the cost and duration of the survey in the House of Commons in 1887–9, the survey had taken on the appearance of a political boondoggle.⁷⁵ Cyrille Doyon, an independent Liberal member of Parliament representing Laprairie, was the most vocal critic of DIA actions in Kahnawá:ke. In 1890, after years of obscurantism on the matter, the government could no longer ignore Doyon's public demands for information on the costs, quality, and purpose of the survey. In a particularly poignant comparison, Doyon demanded that the government explain why this uncompleted survey had already cost \$1.80 per acre when the cost of the Dominion Lands Survey on the Prairies was \$0.04 per acre.⁷⁶ Although this comparison was hardly fair, the optics were bad. The government distanced itself from the subdivision project, the DIA refused to spend any new money on it, and it was never completed.

The finger-pointing began in earnest when it became clear that the subdivision would never take place. The department, seeking to shift blame away from its own officers, pointed out flaws in Walbank's work, and Walbank defended himself vigorously.⁷⁷ Both blamed the "Indians" for not cooperating. By 1891, the DIA had drained some \$22,000 from Kahnawá:ke band funds to pay for the survey.⁷⁸ The last payment to Walbank was accomplished through a feat of creative accounting involving loans from Temiskaming and Sarnia Chippewa band accounts.⁷⁹ Two years later, Vankoughnet reported to his superiors that the land redistribution had still not occurred, a fact for which he blamed the "Indians" who he claimed "cling" to their locations "and are unwilling to part with any portion thereof." Vankoughnet went on to claim that landless Mohawks who had previously complained about others occupying more land than they were entitled to, now showed "no special anxiety . . . to acquire the thirty acre allotments." Drawing on familiar tropes of the complaining, ungrateful, fickle

75 Canada, House of Commons, *Debates*, 15 June 1887; 28 Mar. 1888; 21 May 1888; 7 and 8 Mar. 1889.

76 Canada, House of Commons, *Debates*, 18 Mar. 1890, p. 2158.

77 Austin to acting deputy minister, 7 Sept. 1888, file 27005-1, vol. 7749, RG10, LAC.

78 Internal memo, 5 Feb. 1890, file 27005-1, vol. 7749, RG10, LAC.

79 R. Sinclair memo to deputy minister, 30 Jan. 1891, file 27005-1, vol. 7749, RG10, LAC.

Indian, Vankoughnet argued that Mohawks were either irrationally resistant to change or prone to frequent changes of mind.⁸⁰ There is no hint in Vankoughnet's report that the DIA might bear any blame for forcing an ill-conceived project on an unwilling community. Even at this late date, however, Vankoughnet had not given up on the land redistribution and recommended that Mohawks be given a deadline of September 30, 1893, for the "settlement of the land matters within the Reserve." Since it now appeared to Vankoughnet that it was "hopeless to expect . . . voluntary action," he recommended that the agent inform "those who have more land than they are entitled to" that they "must be prepared to part with the surplus land" and that those who "are without land, or who have an insufficient quantity" should be prepared to pay the agent for improvements on their new lots. He added that large landowners would be given first choice of lots.⁸¹ That Vankoughnet was promoting such an unrealistic idea as late as 1893 is an indication of either dishonesty or an utter disconnect from the real world. It was also the year he was forced into early retirement.⁸²

CONCLUSION

The land redistribution never took place, and the standardized thirty-acre lots on the map were never translated into reality. However, Walbank's map and data of the landholdings in 1885 became the basis for future real estate transactions in Kahnawá:ke, and today's cadastral map is very similar in appearance. In the context of Walbank's survey, Kahnawá:ke lot boundaries were mapped for the first time. They were not rectangular, but they were each assigned a number. One might have expected the DIA to use the Walbank data to expel interlopers and to create a list of band members and electors. But instead, the DIA focused on imposing an elected band council system (which operated

80 For more on these tropes and their histories, see John S. Lutz, *Makúk: A New History of Aboriginal-White relations* (Vancouver: UBC Press, 2008); Ian J. McNiven and Lynette Russell, *Appropriated Pasts: Indigenous Peoples and the Colonial Culture of Archeology* (Lanham, MD: AltaMira, 2005); Nancy Shoemaker, *A Strange Likeness: Becoming Red and White in Eighteenth-Century North America* (New York: Oxford University Press, 2004).

81 Vankoughnet to Mayne Daly, 14 Apr. 1893, file 27005-1, RG10, vol. 7749, LAC.

82 Douglas Leighton, "A Victorian Civil Servant at Work: Lawrence Vankoughnet and the Canadian Indian Department, 1874–1893," in *As Long as the Sun Shines and the Water Flows: A Reader in Canadian Native Studies*, ed. Ian A.L. Getty and Antoine S. Lussier, 104–19 (Vancouver: UBC Press, 1983).

without a list of band members for decades) and left Kahnawakehró:non mostly to their own devices in transferring and selling land for several decades.⁸³ The DIA involved itself in land transactions only to attempt resolution of difficult disputes, and it would often do so with reference to the Walbank map and data.⁸⁴ The Walbank data thus allowed for the prosecution of anyone who continued to cut wood on others' lots or claim new land by working it. In this way, the survey contributed significantly to the undermining of customary land practices, but its effects were not immediate. Well into the twentieth century, many Mohawks continued their customary land practices without reference to what Walbank had done.⁸⁵

In the uneven, unplanned, and sometimes chaotic ways described in this article, a territory that had once been governed according to communitarian customary law was transformed into one governed (imperfectly) according to the rules of Canadian Indian law. The transformation was supposed to facilitate capitalist exchange among Kahnawakehró:non, remove the roadblocks to the buying and selling of land, and eventually destroy the community as a legally distinct entity. The Walbank Survey failed in its most ambitious goals, but succeeded in creating a mapped landscape of bounded lots, owned by known individuals. These lots could then be transferred from one person to another in ways that were not substantially different from such transactions off-reserve. Walbank had facilitated the creation of a landscape where the resource and land rights of the community were much restricted, and the rights of the individual in regards to land were increased.

The Walbank Survey took place a hundred years after enclosure was mostly completed in Britain, but it can be viewed as a continuation of some of the same trends and forces.⁸⁶ The enclosure of the Mohawk commons had been underway throughout the nineteenth century in

83 The imposition of the band council system was officially voluntary, but Kahnawakehró:non were given no other real alternatives. See, Rueck, "Enclosing the Mohawk Commons," 305–13.

84 For an example of how Walbank's map was used in a later land dispute, see "Caughnawaga Agency – . . . Investigation into the Ownership of Property Known as Location 205 . . ." file 155,133, vol. 2774, RG10, LAC.

85 Rueck, "Enclosing the Mohawk Commons," chap. 7.

86 W.G. Hoskins, *The Making of the English Landscape* (London: Hodder and Stoughton, 1955); Robert P. Marzec, "Energy Security: The Planetary Fulfillment of the Enclosure Movement," *Radical History Review* 109 (2011): 83–99; J.M. Neeson, *Commoners: Common Right, Enclosure and Social Change in England, 1700–1820* (Cambridge: Cambridge University Press, 1993); E.P. Thompson, *Customs in Common* (New York: New Press, 1991).

Kahnawá:ke, with some individual Mohawks claiming exclusive ownership to lots in ways that were at odds with customary rules, but the Walbank Survey greatly accelerated this process. In the context of a geography of land tenure that had been in constant flux, the 1880s represented one moment in ever-changing land and property relations. Walbank's cadastre froze that particular moment in time and preserved and privileged the boundaries it demarcated.

Although the projected property grid never became reality, the survey had a lasting impact because it defined, numbered, mapped, categorized, and valued existing lots. The people of Kahnawá:ke were likewise defined, named, numbered, categorized, and valued. However, the success of the Canadian state in imposing its will on Kahnawá:ke should not be exaggerated. The refusal of many Kahnawakehró:non to abide by the constraints of the Indian Act, along with DIA ineptitude, meant that many post-1885 land transactions went unrecorded. In some cases those who inherited certain lots were never informed, or generations went by without anyone checking records for a lot. As a result, one major concern about land in Kahnawá:ke today is multiple ownership or "unsettled estates" – more than half of lots are owned by a number of people, often hundreds.⁸⁷ This is seen as a blessing by those who want to see undeveloped landscapes preserved, as there is no easy way to arrange for several hundred people to agree on selling or developing a lot, but it is seen by others as an impediment to development. In this way the Kahnawá:ke story no longer parallels the story of the Prairie West or the story of enclosure in England, where the enclosure of common lands created landed winners and impoverished losers. In Kahnawá:ke story is less clear-cut. While the Walbank Survey ended the local land regime and replaced it with a system of tenure more visible to the DIA, it did not destroy the community or dissolve the reserve, as foreseen by federal policy. The very survival of Kahnawá:ke and other Indigenous communities is testament to the ultimate failure of the Canadian state to impose its will, but also of the strength and resilience of this and other Indigenous communities in the face of tremendous pressure to cooperate, assimilate, and disappear.

87 Personal communication with a number of Kahnawakehró:non including A. Brian Deer on a number of occasions; Martha Montour, 20 July 2012; Stephen Bonspiel, 15 May 2013. See also, n.a., "This Is Indian Land: An Exhibit on the State of Kahnawake Lands" (Socio-Economic Development Program of the Mohawk Council of Kahnawake, [1982]).

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