

Could Caledonia become a constitutional crisis for Canada?

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The [occupation of the Douglas Creek Estates](#) has been going on for months -- since February, in fact. In the first days of the trouble, Justice David Marshall ordered the protesters removed.

They're still there. Meanwhile the provincial government has been negotiating to end the stand-off, while refusing to enforce the judge's orders.

Today, Justice David Marshall has weighed in. Now he is ordering the negotiations to end until his orders are executed and the protesters removed. Will the province listen? If the province refuses again and continues to negotiate, can an argument be made that the federal government has a constitutional obligation to get involved?

From the [Toronto Star](#) via [NealeNews](#):

A judge is ordering an end to negotiations between the province and aboriginal protesters over a contentious tract of land until the occupiers move off the property.

Superior Court Justice David Marshall says the talks must be suspended until the barricades come down at the Caledonia, Ont., housing development.

So now if provincial negotiators meet with the Natives, the government of the province of Ontario will be in violation of a court order. Presumably Public Safety and Security Minister Monte Kwinter could be held in contempt of court. Maybe even Premier Dalton McGuinty himself.

Will the negotiations continue, or will the government move to end this? Will the Six Nations demand that negotiations continue despite Justice Marshall's order? Or will they simply entrench themselves in?

Think about it. When you enter into negotiations over a dispute, one of the first things both sides do is freeze any activity in order to allow the negotiations to have a chance at succeeding. It's a good faith measure. But if there aren't any negotiations going on, and the government is not trying to enforce the law, what will keep the Natives from reinforcing their position, perhaps by grabbing some more land at the perimeter of the claim? With more land under their *de facto* control, they'd be in a stronger position should negotiations start up again, since they'd have more land to trade back as a price for *de jure* recognition of their claim.

Potentially worse, though, is the Ontario government proceeding with negotiations in defiance of the court order. Can the court enforce its will? The OPP has already shown itself unwilling to enforce court orders. If a provincial government is acting contrary to the will of the courts, the [federal government](#) might have a role to play under the POGG principle, and that could lead to some constitutional fireworks.

"Peace, Order, and Good Government", or [POGG](#), is a founding principle of the Canadian federation. In part, the principle allows, or even demands, that the federal government intervene in a provincial matter when the issue could be deemed an emergency with national implications:

Their Lordships do not doubt that some matters, in their origin local and provincial, might attain such dimensions as to affect the body [politic](#) of the Dominion, and to justify the Canadian Parliament in passing laws for their regulation or abolition in the interest of the Dominion. But great caution must be observed in distinguishing between that which is local or provincial, and therefore within the jurisdiction of the provincial legislatures, and that which has ceased to be merely local or provincial, and has become matter of national concern, in such sense as to bring it within the jurisdiction of the Parliament of [Canada](#).

That was written by Lord Watson of the Judicial Committee of the Privy Council in England in 1896, ruling on the case of the [Attorney General](#) for Ontario v. Attorney General for the Dominion, and the Distillers and Brewers' Association of Ontario.

Funny how, in Canada, beer can be the basis of a major constitutional ruling.

If a provincial government is seen to be repeatedly ignoring court orders, undermining said court while at the same time apparently losing control of a situation deemed illegal by that same court, and then compounding the problem by ordering the [police](#) to also ignore court orders, an argument could be made that under the POGG principle, the federal government has a duty to intervene. All that needs to be established is that the problem is no longer local or provincial, but has national implications. Justice Marshall would sign off on that in a heartbeat, I'm sure. We've already had trouble on other reserves, though those incidents seem to have been resolved. But one more flare-up outside of Ontario related to Caledonia, and Justice Marshall's orders still being ignored, and it's hard to think how the federal government could avoid becoming involved.

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