

# A Question of Sovereignty

## *Patricia Monture v. the Queen*

BY CYNTHIA GRAY

**A** Mohawk law school graduate filed a suit in Ontario's Supreme Court on 2 August 1988, stating that she should not have to take an oath of allegiance to the Queen because she is a member of a sovereign nation.

Patricia Monture, 29, is taking the Law Society of Upper Canada and the Attorney-General's office of Ontario to court over Sections 4 and 5 of the *Public Officers Act*, R.S.O. 1980, c. 415 as amended, and Rules 53 (4) and 51 under the *Law Society Act* which state that any person appointed to any office in Ontario or called as a barrister or admitted as a solicitor must declare the following oath:

*I... do swear that I will be faithful and bear true allegiance to Her Majesty Queen Elizabeth the Second (or the reigning Sovereign for the time being), her heirs and successors according to law. So help me God.*

Monture, who graduated from Queens University law school in May 1988, attended Osgoode Hall to complete her graduate work.

About a year and a half before she filed her suit, she was

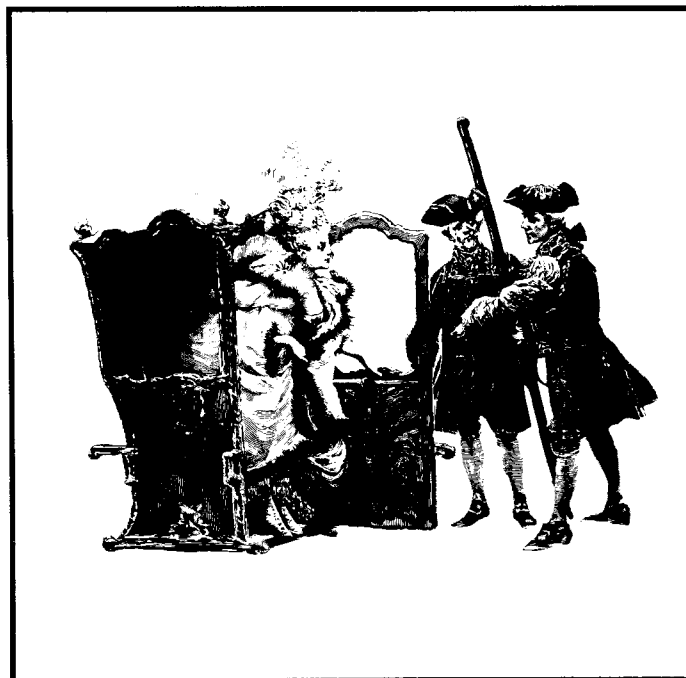
approached by a Mohawk elder, who asked her if she would take the oath. Until then, she had not thought about it seriously.

She considered her options: she could refuse to take the oath; take it without believing in it; or go to court to challenge the rules that say she must take the oath. She chose the last option because that is why she studied law in the first place — to make changes that will benefit aboriginal people.

She states that she is a member of a sovereign people, the Mohawk Nation, whose sovereignty has never been surrendered or extinguished. This sovereignty has been consistently recognized through treaties and historical custom, both pre-dating Confederation and continuing uninterrupted thereafter.

For Monture, the oath itself symbolizes many things that are wrong in the legal system in this country and with the structure of society in general. She says the Canadian system is inherently racist:

*Maybe it'd help if I began with my definition of what racism is. First of all, racism involves power and that's a concept — a part of racism that we don't often enough talk about. But it is a power*



dynamic. The second important thing is that racism doesn't involve intent. It's an excuse that's accepted at law, that you didn't intend to be racist. It's a state of being, it's a not-knowing, it's a not understanding.

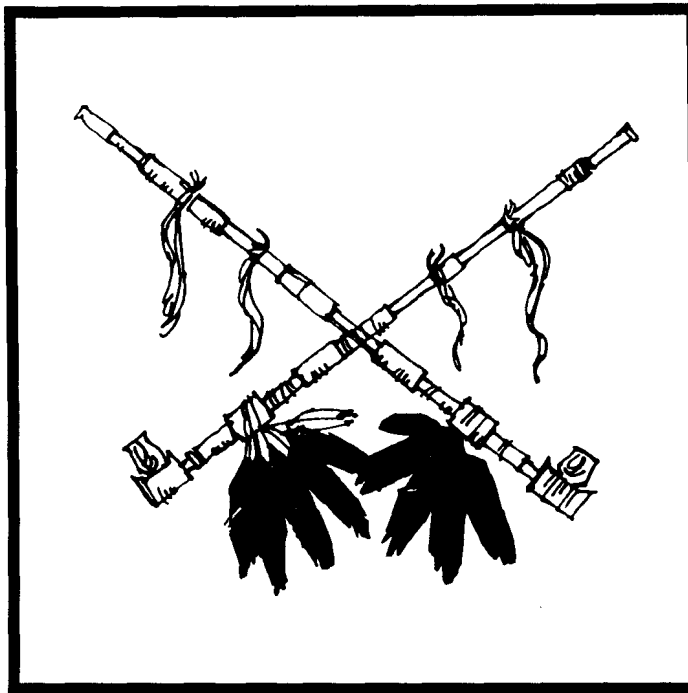
She cites some examples:

I sat through eight months of property law in first year law. It's a required course in most universities across the country, and we spent probably five of those eight months talking about land, talking about property law. There are two kinds of property laws: personal property (which could be things like houses, furniture in your house, cars) and real property (which is land). And in those five months that we talked about land, Indians weren't mentioned once.

I took a four-month land transaction class. We never once mentioned Indians or land claims in that class. The whole law school experience is just completely blind to the experience of First Nation people in this country. All those courses buy into this colonial mentality, that Canada began in 1760.

That accepts the fact that Columbus discovered America: well, I'm still trying to figure out how you can discover a place where people live! And the second footnote is, would the record please show, that Columbus was lost!

We knew it was here and this land has a history that goes way, way, way back before 1760, before the European systems of laws came from across the ocean and became entrenched here and suppressed our system of laws. There is no recognition and there is no respect that there are other traditions that came with



this land, and to me that's racism.

It's also about being blind to the existence and reality of other people, to what I perceive the truth to be. It's silencing entire nations of people; it's leaving them without a voice, without a history.

The aboriginal peoples of this land have a totally opposite philosophy concerning the land, says Patricia:

The whole notion that you can divide up land and own it to the exclusion of other people, one individual keeping out the rest of the world is foreign. The Creator gave that land to all aboriginal people and we are the caretakers of that land. When we die and go on to the spirit world or whatever happens to us next, our bodies go into that land, we are a part of that.

Mohawk people have a tradition of saying that we're responsible for the next seven generations and when you operate on a philosophy like that, when you're making a decision in council, you have to

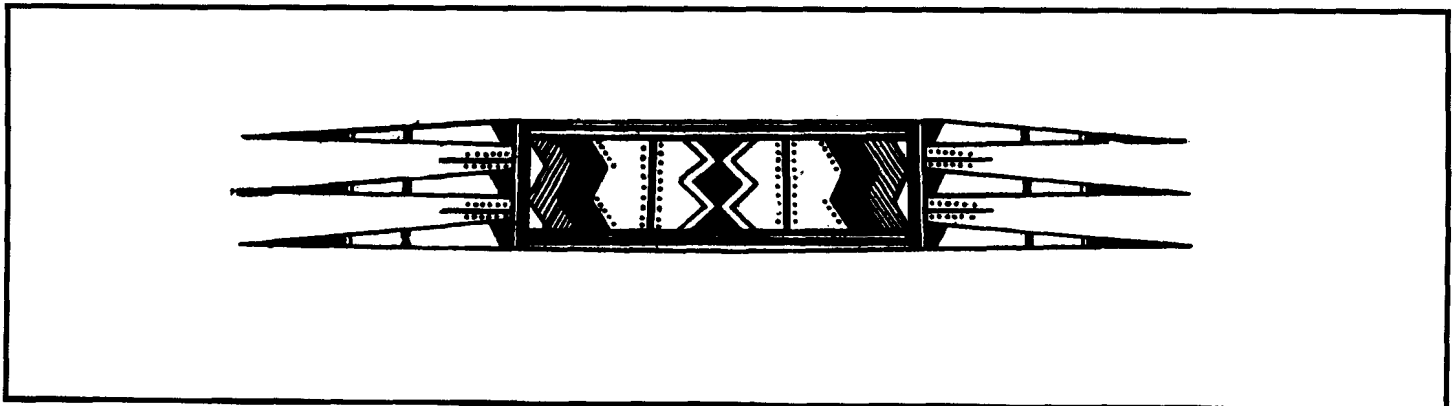
think of all those people who are unborn yet. To have a framework like that — I mean you can't set the concept of this is my personal piece of land in your pocket — I own it.

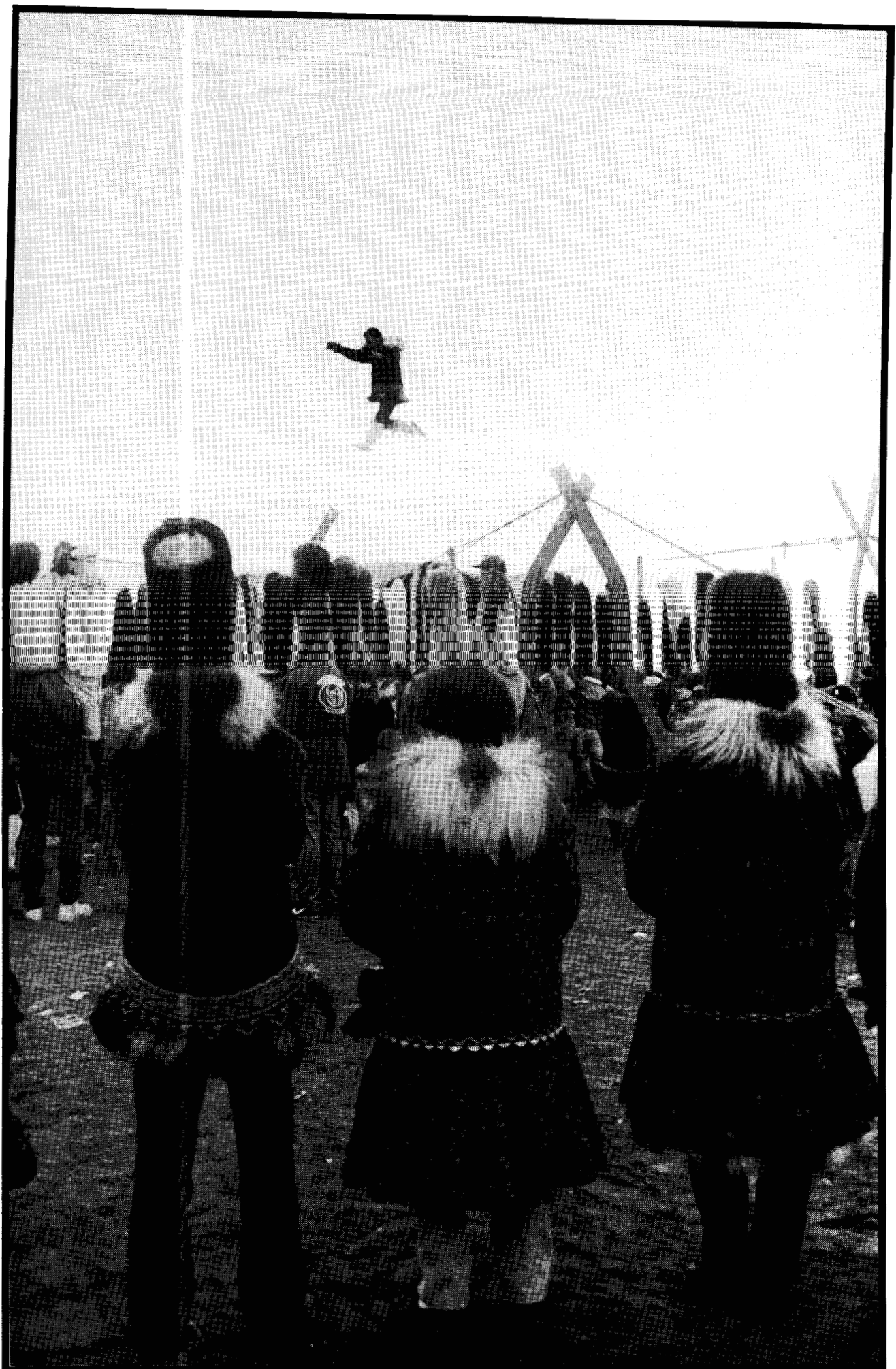
And I think that aboriginal people focus on more of our responsibility to Creation and our relationship with the animals, with the plant life, and the skies, the stars, all of Creation. That you're more concerned about how you as an individual fit into that. Not where, like some people think that they can control nature. Well, show me a man, Indian or white, who can stop the sun from coming up, and when you can show me that then maybe I'll start believing man can control nature.

Monture has two main objections to taking the oath. First, she is a member of a sovereign nation and will not swear allegiance to a foreign monarchy. "We don't have a Queen, we don't have a structure of society that is hierarchical."

Her other objection is with the form of the oath itself: "If you go look in the dictionary to see what an oath is, it involves concepts of punishment. So the philosophy behind that whole oath is of punitive to me, and it involves notions of punishment, and coercion and force." It's a philosophy that the dominant society is modelled around, as opposed to how traditional societies operate on consensus and co-operation, she says.

If Patricia Monture loses in this decision, she will take it to the Supreme Court of Canada. If she loses there, she will bring it before international tribunals. She expects it could take up to ten years before a final decision is reached.





Eskimo Blanket Toss celebrating successful whale hunt, during Nutukutuk in Barrow, Alaska, June 1988 *photograph BERNICE MORRISON*