

*out of  
order by 1*

~~April 1, 2004~~  
~~Jan 28, 2013~~  
~~Amended after Jan 31, 2012~~

Court File No. 21521/95

ONTARIO  
SUPERIOR COURT OF JUSTICE

BETWEEN:

CHIPPEWAS OF SAUGEEN FIRST NATION

Plaintiffs

- AND -

THE CORPORATION OF THE TOWNSHIP OF AMABEL,  
HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO,  
THE ATTORNEY GENERAL OF ONTARIO,  
HER MAJESTY THE QUEEN IN RIGHT OF CANADA,  
THE ATTORNEY GENERAL OF CANADA, BARBARA TWING,  
LARRY TWING, DAVID DOBSON, ALBERTA LEMON,  
SAUBLE BEACH DEVELOPMENTS CORPORATION,  
ESTATE OF WILLIAM ELDRIDGE, AND ESTATE OF  
CHARLES ALBERT RICHARDS

Defendants

**AMENDED**

**STATEMENT OF DEFENCE, COUNTERCLAIM AND CROSSCLAIM  
OF THE CORPORATION OF THE TOWNSHIP OF AMABEL  
(NOW REFERRED TO AS THE MUNICIPALITY OF SOUTH BRUCE  
PENINSULA) HEREINAFTER REFERRED TO AS "AMABEL" TO THE  
FRESH SECOND AMENDED STATEMENT OF CLAIM**

1. The Defendant, The Corporation of the Township of Amabel (hereinafter "Amabel) except as hereinafter specifically admitted denies each and every allegations contained in the Statement of Claim and puts the Plaintiff to the strict proof thereof.

2. The Defendant Amabel admits the allegations contained in paragraphs 3 and 9 2, 3, 4, 5, 8, 18, 19, 21 and 22 of the statement of claim in this action.
3. The Defendant Amabel has no knowledge of the allegations contained in paragraphs 4, 6, 7, 8 and 10 7, 11, 12, 13, 24 and 25 of the Plaintiffs statement of claim.
4. The Defendant Amabel says as a fact and the fact is that some of the lands described in Paragraph 5 of the Statement of Claim are privately owned and the title to these lands were conveyed by way of Crown patent. The Defendant Amabel does not have full particulars of these crown patents at the date of the delivery of this Statement of Defence.
5. Amabel denies the allegations contained in paragraphs 11, 12, and 13 6, 9, 10, 14, 15, 16, 17, 20 and 23 of the Statement of Claim in this action and puts the Plaintiffs to the strict proof thereof.
6. Amabel disputes the claim by the Plaintiffs that they are entitled to additional frontage along Lake Huron and states that, if they are entitled to any additional frontage, which is not admitted, this circumstance does not result from any act or omission by Amabel.
7. Amabel disputes the allegation that the original grants of land to the various Defendants, as referred to, do not go down to the water.
8. Amabel disputes the allegation that the Township, at any time, encroached on the reserve land of the Saugeen First Nation and puts the Plaintiffs to the strict proof of that allegation.

9. Amabel disputes the allegation that the land in question has been a point of contention since the original survey as suggested by the Plaintiffs and further disputes that the Plaintiffs have "constantly protested" against the use of the disputed land by Amabel.

10. Amabel has, at no time, unlawfully taken, granted or encouraged encroachment by private owners on these lands.

11. Amabel disputes the allegation that the Plaintiffs have lost the use of the disputed lands. The fact is that the Plaintiffs have always had the same use of the beach portion of these lands as does anyone else in the community.

6. 12. If the plaintiffs suffered damages, costs and expenses as alleged in paragraphs 11 and 13 of the statement of claim in this action, which is denied, the damages, costs and expenses were occasioned by the fault of the plaintiffs, were and are too remote for recovery, and were not the subject of reasonable or any steps by the plaintiffs to avoid or mitigate them. There can be no recovery in respect of such alleged damages, costs and expenses even if suffered and even if liability for them exists, both of which are denied. In the alternative, any recovery must be reduced by the degree of fault of the plaintiffs. Amabel pleads and relies upon the Negligence Act, R.S.O. 1990, c. N.1, s. 3 and its predecessors.

7. 13. The Defendant Amabel adopts the allegations contained in the statement of defence of Her Majesty the Queen in Right of Ontario and The Attorney General of Ontario contained in Paragraphs 9 to 65 inclusive.

8. 14. The Defendant Amabel adopts the allegations contained in the Statement of Defence filed by the Defendant Amabel in Action No. 44874/90 against Amabel commenced on January 18, 1990 by the Attorney General of Canada..

9. 15. The Defendant Amabel therefore asks that this action as against it be dismissed with costs.

### **COUNTERCLAIM**

10. 16. The Defendant, Amabel, the Plaintiff by counterclaim, repeats the allegations contained in its Statement of Defence as delivered herein.

11. 17. The Plaintiff by counterclaim , pleads that as a result of the facts alleged in its Statement of Defence, it is entitled to a declaration that the lands and premises referred to in the statement of Claim are the property of the persons who have Crown Patents or in the alternative the property of the Plaintiff by counterclaim and persons who have Crown Patents to the said lands.

12. 18. In the alternative, the Plaintiff by counterclaim states that as a result of the facts alleged in the statement of Defence, it is entitled to a declaration that the settlors in the vicinity, the inhabitants of the Township of Amabel, visitors, the public at large and individual members of the public are entitled to continue to use, occupy and enjoy the lands and properties claimed by the Plaintiff in this action, in the same manner as heretofore.

13. 19. The Plaintiff by counterclaim therefore claims:

- a) a declaration that the lands and premises referred to in the Statement of Claim are the property of the persons who have Crown Patents or in the alternative the

property of the Plaintiff by counterclaim and persons who have Crown Patents to the said lands;

- b) in the alternative, a declaration that the settlers in the vicinity, the inhabitants of the Township of Amabel, visitors, and the public at large are entitled as of right to continue to use, occupy and to enjoy the lands and property claimed by the Plaintiff in this action, in the same manner as heretofore;
- c) its costs of this counterclaim;
- d) such further and other relief as may seem just.

#### **CROSSCLAIM**

14. 20. The Defendant Amabel claims against the Defendants Her Majesty the Queen in right of Canada and The Attorney General of Canada (hereinafter "Canada");

- a) an order that any and all relief and costs to which this Court may find the plaintiffs entitled in the action is relief and costs against Canada only, or in the alternative, an order directing Canada to indemnify Amabel in the amount of any relief and costs for which this Court finds Amabel liable to the plaintiffs; and
- b) costs.

15. 21. Amabel repeats and relies upon, in the crossclaim, the contents of the statement of defence of Amabel.

16. 22. Any liability to the plaintiffs in the action, which is denied, is therefore a liability of Canada and not a liability of Amabel.

17. 23. Canada is therefore liable to Amabel for all or any part of the plaintiffs' claim for which the Court may find Amabel liable.

April 21, 2004

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