

30 Jan 2013

Court File No.: 03-CV-253768-CM3

ONTARIO SUPERIOR COURT OF JUSTICE

CHIPEWAS OF SAUGEEN FIRST NATION

Plaintiff

- and -

AMENDED THIS 30/12/2013
CONFORMEMENT À
RESTITUANT TO
THE ORDER OF
L'ORDONNANCE DU
DATED / FAIT LE
S/ [Signature]
THE CORPORATION OF THE TOWNSHIP OF AMABEL,
HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO,
HER MAJESTY THE QUEEN IN RIGHT OF CANADA,
THE ATTORNEY GENERAL OF CANADA, BARBARA TWINING,
LARRY TWINING, DAVID DOBSON, ALBERTA LEMON,
SAUBLE BEACH DEVELOPMENT CORPORATION,
ESTATE OF WILLIAM ELDRIDGE, and ESTATE OF CHARLES ALBERT RICHARDS
AND THE ATTORNEY GENERAL OF ONTARIO

Defendants

**AMENDED STATEMENT OF DEFENCE
OF THE ATTORNEY GENERAL OF CANADA**

The Attorney General of Canada (the "Attorney General"), on behalf of Her Majesty the Queen in Right of Canada, in answer to the plaintiff's statement of claim dated October 18th, 1995 and the plaintiff's Second Amended Statement of Claim ("the Amended Claim"), amended December 7, 2012, pleads and states as follows:

OVERVIEW

1. The plaintiff alleges that Saugeen Reserve #29, as described in the Treaty of October 13, 1854, is unceded land subject to aboriginal title and the inherent jurisdiction of the Chippewas of Saugeen First Nation. The plaintiffs further allege that a portion of the Reserve, known as part of Sauble Beach, was wrongfully occupied by the defendants and their predecessors from October 13, 1854, thereby denying the Saugeen First Nation the use of these

lands. The plaintiff claims damages for loss of use and occupation of these lands as a consequence of this wrongful occupation.

2. It is Canada's position that the lands in question (referred to as "Sauble Beach" for the purposes of this pleading) are included in the land reserved from surrender by the Saugeen Band, and therefore have formed a part of Saugeen Indian Reserve #29 since the 1854 Treaty. Canada's position is that the Crown in right of Ontario is responsible for any damages that may have been suffered by the plaintiff for loss of use and occupation of these lands.

DEFENCE TO SECOND AMENDED STATEMENT OF CLAIM

3. In response to paragraph 1(a) of the Amended Claim, the Attorney General has no knowledge of the name by which Sauble Beach is known to the Saugeen First Nation.

4. In response to paragraph 1(d) of the Amended Claim, it is Canada's position that the prerogative remedy of mandamus is not available against the Crown in Right of Canada in these proceedings.

5. The Attorney General admits the allegations of fact in paragraphs 2, 3, 5, 6, 7, 8, 9, 12, 13, 14, 15 (subject to having no knowledge of what the plaintiff means by its use of the word, "repeatedly"), 16 (but takes issue with the statement "in 1944 ... the federal Department of Indian Affairs changed its previous position"), 17 (subject to having no knowledge of what the plaintiff means by its use of the words, "almost" and "constantly"), 18, 21 and 22 of the Amended Claim.

6. The Attorney General denies the allegations of fact in paragraphs 6 and 10 of the Amended Claim, specifically that the Saugeen First Nation “were promised ... a valuable and treasured ... fishing ground” and that “their Fishing Grounds form part of the Reserve.”

7. The Attorney General has no knowledge of and does not admit the allegations of fact in paragraphs 4, 19, 20 and 25 of the Amended Claim

8. The Attorney General has no knowledge of and does not admit the allegations of fact in paragraph 11 of the Amended Claim and puts the plaintiff to the strict proof thereof.

9. With respect to the allegations of fact in paragraph 23 of the Amended Claim, the Attorney General admits that the plaintiff has lost the use and occupation of Sauble Beach, except in relation to the plaintiff's “Fishing Grounds.” Further, the Attorney General does not accept the quantification of damages that the plaintiff has suffered as a result of its loss of use and occupation of Sauble Beach.

10. With respect to the allegations of fact in paragraph 24 of the Amended Claim, the Attorney General denies that there was a fiduciary duty to protect the plaintiff's reserve lands. However, if there was such a duty, Canada discharged that duty to the best of its ability, in a reasonable fashion, and in accordance with the requisite and appropriate standards.

11. The Attorney General says that whatever damages the plaintiffs have suffered were not suffered because of any action or failure to act on the part of Canada.

12. The Attorney General denies that the Saugeen First Nation has suffered damage, costs and expenses "in the amount of \$25.000.0000" and puts the plaintiff to the strict proof thereof.

13. The Attorney General says that the action against him should be dismissed with costs.

March 3, 1997 January 29, 2013

Attorney General of Canada
Department of Justice
Ontario Regional Office
The Exchange Tower
130 King Street West
Suite 3400, Box 36
Toronto, Ontario
M5X 1K6

Per: Gary Penner (LSUC #36040R)
Tel: (416) 973-9268
Fax: (416) 973-2319

Solicitors for the Defendant,
The Attorney General of Canada

TO: **PAPE SALTER TEILLET**
Barristers & Solicitors
546 Euclid Avenue
Toronto, Ontario
M6G 2T2

Per: Nuri G. Frame
Jean Teillet

Tel: (416) 916-2989
Fax: (416) 916-3726

Solicitors for the Plaintiff

AND TO: **MINISTRY OF THE ATTORNEY GENERAL**

Crown Law Office, Civil
720 Bay Street
8th Floor
Toronto, Ontario
M5G 2K1

Per: Robert Ratcliffe

Tel: (416) 326-4128
Fax: (416) 326-4181

Solicitors for the Defendants, Her Majesty the Queen
in Right of Ontario and The Attorney General of Ontario

AND TO: **DONNELLY & MURPHY**

Barristers and Solicitors
18 The Square
Goderich, Ontario
N7A 3Y7

Per: Gregory F. Stewart

Tel: (519) 524-2154
Fax: (519) 524-8550

Solicitors for the Defendant,
The Corporation of the Township of Amabel

AND TO: **THE ALLIANCE OF KIRBY ROBINSON TRESLAN**

AND BRIAN BARRIE
Barristers and Solicitors
142 10th Street West, P.O. Box 730
Owen Sound, Ontario
N4K 5W9

Per: Brian Barrie

Tel: (519) 376-4930
Fax: (519) 376-4010

Solicitors for the Defendants, Barbara Twining,
Larry Twining and Alberta Lemon

AND TO: **SAUBLE BEACH DEVELOPMENT CORPORATION**
808 Main Street South
Sauble Beach, Ontario
N0H 2G0

Tel: (519) 422-1102
Fax: (519) 422-2532

Attention: Joseph Szewczyk

AND TO: **FINDLAY McCARTHY LLP**
Barristers & Solicitors
5500 North Service Road, Suite 703
Burlington, Ontario
L7L 6W6

Per: John Findlay

Tel: (905) 526-8943
Fax: (905) 526-8696

Solicitors for the Defendant, David Dobson

AND TO: **ESTATE OF WILLIAM ELDRIDGE**

AND TO: **ESTATE OF CHARLES ALBERT RICHARDS**