

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

BETWEEN:

THE CHIPPEWAS OF SAUGEEN FIRST NATION

Plaintiff

and

THE TOWN OF SOUTH BRUCE PENINSULA,  
HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO,  
HER MAJESTY THE QUEEN IN RIGHT OF CANADA,  
THE ATTORNEY-GENERAL OF CANADA,  
BRENDA JOAN ROGERS AND GARY MICHAEL TWINING  
AS EXECUTORS OF THE ESTATE OF BARBARA TWINING,  
DAVID DOBSON, ALBERTA LEMON,  
SAUBLE BEACH DEVELOPMENT CORPORATION,  
ESTATE OF WILLIAM ELDRIDGE,  
ESTATE OF CHARLES ALBERT RICHARDS

and

THE ATTORNEY GENERAL OF ONTARIO

Defendants

**FRESH AS AMENDED STATEMENT OF DEFENCE AND  
DEFENCES TO CROSSCLAIMS, WITH COUNTERCLAIM AND  
CROSSCLAIM, OF THE CORPORATION OF THE TOWN OF SOUTH  
BRUCE PENINSULA (FORMERLY THE CORPORATION OF THE  
TOWNSHIP OF AMABEL)**

1. The Defendant, the Corporation of the Town of South Bruce Peninsula (formerly the Corporation of the Township of Amabel, hereinafter referred to as the "Town"), has no knowledge in respect of the allegations contained in paragraphs 2 and 4-8 of the Fresh as Amended Third Amended Statement of Claim (the "Claim").

FILED THIS Jan 19/17 PURSUANT TO  
MODIFIÉ CE Jan 19/17 CONFORMÉMENT À  
 RÈGLE/LA RÈGLE 26.02 (        )  
 THE ORDER OF Justice Belobaba  
L'ORDONNANCE DU  
DATED / FAIT LE Jan 19/17  
REGISTRAR [Signature] GREFFIER  
SUPERIOR COURT OF JUSTICE COUR SUPÉRIEURE DE JUSTICE

2. Save as expressly hereinafter admitted, the Town denies all other allegations contained in the Claim, and denies that the Plaintiff is entitled to the relief sought in paragraph 1 thereof.

### **The Disputed Lands**

3. The Plaintiff, the Chippewas of Saugeen First Nation (“**Saugeen First Nation**”), claims, *inter alia*, a declaration that the lands described in paragraph 1(a) of the Claim (the “**Disputed Lands**”) were and continue to be reserved for the sole use and benefit of the Saugeen First Nation as part of Saugeen Indian Reserve No. 29 (the “**Reserve**”).

4. The Plaintiff claims that the Reserve’s eastern boundary extends to a point in Lot 31, Concession D in the Town, as opposed to a point in the vicinity of the road allowance between Lots 25 and 26, Concession D in the Town (the latter is referred to herein as the “**Current Boundary**”). The Current Boundary is where the Reserve’s eastern boundary was marked on the official survey of the Reserve in 1856, and where it has been marked on several surveys since.

5. The Disputed Lands, the lands between Lots 25/26 and Lot 31, are Sauble Beach, a sandy beach located along the shore of Lake Huron in Bruce County, Ontario. The Town lawfully owns part of Sauble Beach pursuant to Crown patent conveying good and valid title.

6. The portion of Sauble Beach owned by the Town (described below) is an important public and popular tourist destination. Sauble Beach is an integral and essential element of the Town’s identity and economic future.

### **The Treaty and the Rankin Survey**

7. On or about October 13, 1854, the Saugeen First Nation entered into a treaty with the Crown, Treaty 72, which surrendered parts of the Bruce Peninsula to the Crown and reserved other parts for the Saugeen First Nation.

8. The land reserved for the Saugeen First Nation is described in Treaty 72 as:

**[A]ll that block of land bounded on the west by a straight line running due north from the River Saugeen, at the spot where it is entered by a ravine, immediately to the west of the village, and over which abridge has recently been constructed, to the shore of Lake Huron; on the south by the aforesaid northern limit of the lately surrendered strip; on the east by a line drawn from a spot upon the coast at a distance of about (9-1/2) nine miles and a half from the western boundary aforesaid, and running parallel thereto until it touches the aforesaid northern limits of the recently surrendered strip ... [emphasis added]**

9. The Town pleads that the Current Boundary is the correct eastern boundary of the Reserve pursuant to Treaty 72.

10. In the alternative, Treaty 72 was amended on or about September 27, 1855, so that the western boundary of the Reserve was moved further west along the shore of Lake Huron. The amendment to Treaty 72 stated that it would give the Saugeen First Nation a “small increase of frontage on Lake Huron”, but did not specify how much increased frontage was to be given.

11. The Town pleads that the Current Boundary is the correct eastern boundary of the Reserve pursuant to Treaty 72, as amended.

12. The location of the Reserve’s eastern boundary as the Current Boundary was confirmed in an official, signed plan of the Township of Amabel (the “**Plan**”) (Indian Affairs Survey Record No. 862) completed by Public Land Surveyor Charles Rankin in or about May 1856.

13. The Plan and several subsequent plans show the northeast corner of the Reserve intersecting with Lake Huron in the vicinity of the road allowance between Lots 25 and 26 of Concession D. The Plan and subsequent plans do not show the Reserve as extending beyond Lot 26.

#### **The Saugeen First Nation Accepted the Plan**

14. The Town denies that the Saugeen First Nation has asserted since 1854 that the Disputed Lands form part of the Reserve and that the Disputed Lands were never surrendered by treaty or otherwise alienated.

15. In particular, the Town denies that the Saugeen First Nation expressed concerns regarding the location of the northeastern boundary of the Reserve or ownership of the Disputed Lands at any time before 1890, decades after the Plan was completed.

16. Rather, until the 1890s, the Saugeen First Nation recognized and accepted the Current Boundary as the correct eastern boundary of the Reserve, and recognized and accepted that the Disputed Lands had been surrendered to the Crown, seeking *license* from the Crown to use the Disputed Lands as fishing grounds. The Saugeen First Nation is now estopped from resiling from its recognition of the Current Boundary and its surrender of title to the Disputed Lands to the Crown.

#### **The Town's Ownership of the Disputed Lands**

17. The Town, a good faith purchaser for value without notice, is the registered owner in fee simple of lands that comprise part of Lots 26, 27, 28 and 29, Concession D, Town of South Bruce Peninsula, County of Bruce (the "**Town Lands**"), parts of which comprise part of the Disputed Lands.

18. The Town's estate in the Town Lands is grounded in the following Crown Patents granted to the Town's predecessors-in-title:

- (a) Crown Patent to a parcel of land composed of multiple lots including Lot 28 in Concession D, Township of Amabel, granted to James Henderson in 1857 (the "**Lot 28 Patent**");
- (b) Crown Patent to a parcel of land composed of three lots including Lots 27 and 29 in Concession D, Township of Amabel, granted to Hector McLean, Lachlan McLean and Hugh McLean in 1881 (the "**Lots 27 and 29 Patent**"); and
- (c) Crown Patent to a parcel of land composed of Lot 26 in Concession D, Township of Amabel, granted to John Wesley Huff in 1896 (the "**Lot 26 Patent**").

19. The remaining Disputed Lands are also grounded in Crown Patents, as follows:

- (a) Crown Patent to a parcel of land composed of Lot 30 in Concession D, Township of Amabel, granted to David Warnock in 1899 (the "**Lot 30 Patent**"); and
- (b) Crown Patent to a parcel of land composed of the south half of Lot 31 in Concession D, Township of Amabel, granted to Enoch B. Hunter in 1907 (the "**Lot 31 Patent**", together with the Lot 28 Patent, the Lots 27 and 29 Patent, the Lot 26 Patent and the Lot 30 Patent, the "**Town Crown Patents**").

20. The Defendants David Dobson ("**Dobson**") and Alberta Lemon and the Estate of Barbara Twining (through its executors Brenda Joan Rogers and Gary Michael Twining) (the "**Lemon and Twining Defendants**") claim title to lands that comprise part of Lot 26, traced to the above-noted

Lot 26 Patent. The Defendant Sauble Beach Development Corporation (“**SBDC**”) claims title to lands comprising part of Lot 30, traced to the above-noted Lot 30 Patent. All of these defendants (collectively, the “**Private Landowners**”) and the Town own their land pursuant to the Town Crown Patents.

21. The Town Crown Patents confer an indefeasible estate in the Disputed Lands to the grantees and their successors-in-title, including the Town and the Private Landowners, up to the shoreline of Lake Huron.

### **Subsequent History of the Disputed Lands**

22. The Town Crown Patents and the Plan have been continually, reasonably and lawfully relied upon by the Town and/or its predecessors in title since the Plan was completed in 1856 and the Town Crown Patents were issued between 1857 and 1907.

23. In the 1920s and 1930s, agents of the federal government investigated questions raised by the Saugeen First Nation regarding the boundary of the Reserve. The federal government resurveyed the eastern boundary of the Reserve and confirmed it to be the Current Boundary. The Town and/or the Town’s predecessors-in-title have reasonably relied on these affirmations and the title taken thereunder.

24. The federal government has repeatedly and consistently confirmed and assured the Town and its predecessors-in-title that the Reserve does not extend opposite Lots 26-34 and that the Town Crown Patents issued for these lots do not provide for a marine allowance along the shore of Lake Huron, the lots extending to the shore of Lake Huron. The Town and/or the Town’s predecessors-in-title have reasonably relied on these assurances.

### **Sauble Beach Today**

25. In accordance with the indefeasible title conveyed by the Town Crown Patents, and for well over 100 years, the Disputed Lands have been settled, residences and businesses have been constructed in the vicinity, and Sauble Beach has become an essential cultural, environmental, recreational and geographic feature of the Town.

26. Between 1970 and 1973, the Town purchased the Town Lands from various private landowners and developed and preserved Sauble Beach as an environmentally significant public beach and tourist area.

27. The Town has developed and prospered around Sauble Beach. Sauble Beach is the *sine qua non* of the Town. The economy and prosperity of the Town and the Town's very identity are intimately connected to Sauble Beach, and to public access to the beach.

### **The Disputed Lands Are Not Part of the Reserve**

28. The Disputed Lands do not now comprise, nor have they ever comprised, part of the Reserve. The Saugeen First Nation legally and validly ceded and surrendered the Disputed Lands to the Crown. The cession and surrender of the Disputed Lands was an absolute surrender, and was in accordance with the intention and understanding of the Saugeen First Nation.

29. The Town denies that it or its predecessors-in-title have ever encroached on any lands reserved to the Saugeen First Nation as part of the Reserve.

**The Town Crown Patents Cannot be Invalidated**

30. In the alternative, if any part of the Disputed Lands were not validly ceded or surrendered, which is not admitted but denied, the Plaintiff's claim for declaratory and other equitable relief should nonetheless be denied on equitable grounds, namely that the Town is a good faith purchaser for value without notice and that the Plaintiff has delayed in bringing this claim.

***The Town Is a Good Faith Purchaser***

31. If any part of the Disputed Lands was not validly ceded or surrendered and was reserved for the Saugeen First Nation as part of the Reserve, which is not admitted but denied, this circumstance did not result from any act or omission by the Town. Specifically:

- (a) The Town's title traces to the Town Crown Patents, which were granted over 100 years ago.
- (b) Agents of the federal government repeatedly provided assurances that Lots 26 to 31 extend to the shoreline of Lake Huron, i.e. that the Town Crown Patents include the Disputed Lands. The Town and the Private Landowners as well as their predecessors-in-title were entitled to and in fact did rely on these representations and assurances.

32. The Town and its predecessors-in-title acquired the Town Lands as good faith purchasers for value without notice, and the defence of good faith purchaser for value precludes the Plaintiff from asserting its claim against the Town and the Private Landowners.

33. At the time the Town Lands were purchased, neither the Plaintiff nor the federal government gave any notice to the Town and/or its predecessors of any dispute respecting title.



34. If the federal government erroneously conveyed title to the Town and/or its predecessors in title, which is not admitted but denied, the appropriate remedy is monetary compensation of Saugeen First Nation by the federal government, not the extinguishment of the Town Crown Patents and the confiscation of Sauble Beach from the Town.

***The Plaintiff's Delay Bars its Claim***

35. At all times since the 1850s, the Disputed Lands have been in the actual, continuous, open, notorious and visible possession of the Crown, grantees from the Crown, their successors-in-title, including the Town, and the public, and the Plaintiff and its predecessors have had full knowledge of this possession.

36. The Plaintiff initially raised concerns with respect to the Disputed Lands in the 1890s and has had legal counsel with respect to this matter since at least the 1950s, but did not initiate this claim until the 1990s.

37. By delaying well over 100 years before commencing this action, the Saugeen First Nation has acquiesced in the disposition of the Disputed Lands, and it is barred and estopped from now denying the Town's ownership. This lengthy delay has given rise to circumstances that make prosecution of the action unfair, and highly prejudicial to the legitimate expectations and interests of the Town and its residents.

38. The Town and its community have grown up around Sauble Beach. The Town and/or its predecessor have invested significantly, for decades, in the development and maintenance of Sauble Beach. Residents of the Town have built homes and businesses along the beach, and invested their own significant time and money into its maintenance and use. Sauble Beach is the

Town's *raison d'être*. It would be inequitable for the Court to disturb the established *status quo* given the vital importance of this land to the Town, other landowners and the public.

39. It would be unjust, and harmful to the long-term prosperity and identity of the Town and its residents, to declare that the Town has no proprietary interest in Sauble Beach. The equitable doctrines of laches and acquiescence therefore apply to preclude the Plaintiff from asserting its claim against the Town and the Private Landowners.

40. In addition, the Plaintiff knew or should have known of its claim against the Town and the Private Landowners more than 20 years before this action was commenced, and as such, the claims against the Town and the Private Landowners are statute-barred. The Town pleads and relies on *An Act respecting the limitation of Actions and Suits relating to Real Property, and the time of prescription in certain cases*, C.S.U.C. 1859, c. 88, ss. 1, 16 and 34, and the successors thereto, including the *Limitations Act*, R.S.O. 1990, c. L.15, ss. 4, 15 and 29, and the *Constitution Act*, 1867, s. 129.

41. The Town asks that this action be dismissed with costs.

**DEFENCE TO THE CROSSCLAIMS OF THE DEFENDANTS, SAUBLE  
BEACH DEVELOPMENT CORPORATION, DAVID DOBSON, BRENDA  
JOAN ROGERS AND GARY TWINING, AS EXECUTORS OF THE ESTATE  
OF BARBARA TWINING, AND ALBERTA LEMON**

42. Save as hereinafter expressly stated, the Town has no or incomplete knowledge of the allegations against Her Majesty the Queen in Right of Canada, the Attorney General of Canada, Her Majesty the Queen in Right of Ontario and the Attorney General of Ontario contained in the crossclaims of SBDC, Dobson, the Lemon and Twining Defendants (the “**Private Landowners’ Crossclaims**”).

43. Save as hereinafter expressly admitted, the Town denies each and every allegation against it contained in the Private Landowners' Crossclaims, with specific denial that SBDC, Dobson and the Lemon and Twining Defendants are entitled to any relief against the Town as set out in paragraphs 13, 27, and 17/21 of their respective crossclaims, and puts the Private Landowners to the strict proof thereof.

44. In its defence to the Private Landowners' Crossclaims, the Town repeats and relies upon the contents of its Statement of Defence.

45. The Private Landowners claim title to parts of the Disputed Lands as described in paragraph 20 above (the "**Private Landowners' Property**").

46. The Town denies that it has improperly levied property taxes or been unjustly enriched by the payment of property taxes with respect to the Private Landowners' Property.

47. The Town reasonably relied on the Town Crown Patents, surveys/plans, title documents, affirmations/assurances from agents of the federal government and/or representations from the Private Landowners and/or their predecessors-in-title for the belief that they were the owners of the Private Landowners' Property, including any portion comprising part of the Disputed Lands, and that such property, including any portion comprising part of the Disputed Lands, was part of the Town and therefore subject to municipal assessments, property taxes and by-laws applicable to property within the Town.

48. The Town provided municipal services to the Private Landowners and/or their predecessors-in-title, along with other property owners in the Town, on the basis of this reasonable belief that the Private Landowners' Property, including any portion comprising part of the

Disputed Lands, was part of the Town. The Town expended funds in providing these services. The Private Landowners and/or their predecessors-in-title received the benefit of these services. The Town has therefore not been enriched and there has been no corresponding deprivation. In the alternative, there is a juristic reason for any such enrichment/deprivation.

49. In the event the Plaintiff is successful in its claim and the Court declares that all or a portion of the Private Landowners' Property forms part of the Reserve (and is therefore not part of the Town), the Town will not have been unjustly enriched by the collection of property taxes, levies or other charges with respect to the Private Landowners' Property, and there is no basis to award damages against the Town.

50. In the alternative, the damages claimed by the Private Landowners are excessive. In the event the Plaintiff is successful in its claim and the Court declares only a portion of the Private Landowners' Property forms part of the Reserve, the Private Landowners' claims for damages in the amount of all property taxes paid to the Town with respect to the Private Landowners' Property is excessive and unwarranted.

51. The Town asks that the Private Landowners' Crossclaim be dismissed with costs.

### **COUNTERCLAIM**

52. The Town, the Plaintiff by Counterclaim, repeats and relies on the allegations contained in its Statement of Defence, above.

53. The Town pleads that as a result of the facts alleged in its Statement of Defence, it is entitled to a declaration that the Disputed Lands are the property of the persons whose title traces to the Town Crown Patents to Lots 26 to 31, Concession D, Township of Amabel.

54. In the alternative, the Town pleads that as a result of the facts alleged in the Statement of Defence, it is entitled to a declaration that the landowners in the vicinity, the inhabitants of the Town, visitors, the public at large and individual members of the public are entitled to continue to use, occupy and enjoy the Disputed Lands in the same manner as heretofore.

55. The Town therefore claims:

- (a) a declaration that the Disputed Lands are the property of the persons whose title traces to the Town Crown Patents to Lots 26 to 31, Concession D, Township of Amabel;
- (b) in the alternative, a declaration that the landowners in the vicinity, the inhabitants of the Town of South Bruce Peninsula, visitors, the public at large and individual members of the public are entitled to continue to use, occupy and enjoy the Disputed Lands in the same manner as heretofore;
- (c) its costs of this counterclaim; and
- (d) such further and other relief as may seem just.

### **CROSSCLAIM**

56. The Defendant, the Town of South Bruce Peninsula, repeats and relies on the allegations contained in its Statement of Defence and Counterclaim, above, and claims against the Defendants Her Majesty the Queen in right of Canada and The Attorney General of Canada (hereinafter “**Canada**”), and Her Majesty the Queen in Right of Ontario and The Attorney General of Ontario (hereinafter “**Ontario**”) for:

- (a) an order that any and all relief and costs to which this Court may find the Plaintiff entitled in the action is relief and costs against Canada and/or Ontario only, or in the alternative, an order directing Canada and/or Ontario to indemnify the Town in the amount of any relief and costs for which this Court finds the Town liable to the Plaintiff;
- (b) an order directing Canada and/or Ontario to indemnify the Town in the amount of any relief and costs for which this Court finds the Town liable to any of the Private Landowners with respect to their crossclaims against the Town;
- (c) in the event that this Court declares that the Disputed Lands are reserved for the sole use and benefit of the Plaintiff, damages for the cost of all improvements made by the Town to the Disputed Lands and for loss of future use and occupation of the Disputed Lands in the amount of \$100,000,000.00; and
- (d) its costs of this crossclaim.

57. The Town repeats and relies upon the contents of its Statement of Defence and its defences to the Private Landowners' Crossclaims as set out above.

58. As set out above, the Town's estate in the Town Lands can be traced to Town Crown Patents comprising Lots 26, 27, 28 and 29, Concession D, Town of South Bruce Peninsula, County of Bruce, which were granted to the Town's predecessors-in-title. The Town Crown Patents were issued by the predecessors of Canada and/or Ontario and are a confirmation that title to Lots 26, 27, 28 and 29, to the shoreline of Lake Huron, is held free and clear of any competing claims, and does not form part of the Reserve.

59. For over a century, the Town and its predecessors-in-title have relied on the Town Crown Patents as a valid source of title to the entirety of Lots 26-29, to the shoreline of Lake Huron.

60. In addition, as set out above, over the years, agents of the federal government repeatedly provided assurances that Lots 26 to 31 extend to the shoreline of Lake Huron. The Town as well as its predecessors-in-title were entitled to and in fact did rely on these representations and assurances.

61. The Town has levied taxes on and expended Town monies to provide services to Sauble Beach properties, including properties comprising part of the Disputed Lands, on the reasonable belief that these properties form part of the Town.

62. As such, the Town is entitled to be indemnified by Canada and/or Ontario for any damages awarded to the Plaintiff and/or the other Defendant Landowners.

63. In addition, since the Town acquired the Town Lands in the 1970s, the Town has developed and prospered around Sauble Beach as a public beach and tourist area. Sauble Beach is the *sine qua non* of the Town. The economy and prosperity of the Town, and the Town's very identity, are intimately connected to Sauble Beach, and to public access to the beach.

64. As such, if the Plaintiffs are successful in their claim, the Town is entitled to damages against Canada and/or Ontario for loss of future use and occupation of the Disputed Lands.

December ●, 2016

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THE CHIPPEWAS OF SAUGEEN FIRST NATION  
Plaintiff

-and-  
Defendants

THE TOWN OF SOUTH BRUCE PENINSULA et al.

Court File No. 03-CV-253768-CM3

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

PROCEEDING COMMENCED AT  
LONDON

**FRESH AS AMENDED STATEMENT OF DEFENCE,  
COUNTERCLAIM, CROSSCLAIM AND DEFENCE TO  
CROSSCLAIMS**

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