

AMENDED THIS / MODIFIÉ CE April 21/16 PURSUANT TO / CONFORMÉMENT A

RULE/LA RÈGLE 28.02

THE ORDER OF / L'ORDONNANCE DU Justice Balobabo

DATED / FAIT LE April 21/16

Court File No. 03-CV-253768-CM3

REGISTRAR / SHÉPPIER
SUPERIOR COURT OF JUSTICE / TRIBUNAL SUPÉRIEUR DE JUSTICE

ONTARIO

Y. Grant SUPERIOR COURT OF JUSTICE
Registrar

BETWEEN:

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

THIRD AMENDED STATEMENT OF CLAIM

TO THE DEFENDANTS

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the Plaintiffs. The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a statement of defence in Form 18A prescribed by the Rules of Civil Procedure, serve it on the plaintiff's lawyer or, where the plaintiff does not have a lawyer, serve in on the plaintiff, and file it, with proof of service, in this court office, WITHIN TWENTY DAYS after this statement of claim is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States

of America, the period for serving and filing your statement of defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

Instead of serving and filing a statement of defence, you may serve and file a notice of intent to defend in Form 18B prescribed by the Rules of Civil Procedure. This will entitle you to ten more days within which to serve and file your statement of defence.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

Date: October 18, 1995

Issued by: Y. Grant
Registrar
Local Registrar

Court House
80 Dundas Street
P.O. Box 5600
London, Ontario
N6A 2P3

SUPERIOR COURT
OF JUSTICE
393 UNIVERSITY AVE.
10TH FLOOR
TORONTO, ONTARIO
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DE JUSTI
393-AVE.
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TORONT
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TO: Jonathan C. Lisus & Laura M. Wagner
Lax O'Sullivan Lisus Gottlieb LLP
Barristers and Solicitors
Suite 2750, 145 King Street West
Toronto, Ontario M5H 1J8

Solicitors for The Town of South Bruce Peninsula

AND TO: Robert Ratcliffe & Richard Ogden
Ministry of the Attorney General Ontario
Crown Law Office, Civil Law
720 Bay Street, 8th Floor
Toronto, Ontario M5G 2K1

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

AND TO: Gary Penner & Barry Ennis
Department of Justice Canada
Ontario Regional Office, The Exchange Tower
130 King Street West, Suite 3400
P.O. Box 36
Toronto, Ontario M5X 1K6

Solicitors for Her Majesty the Queen in Right of Canada and Attorney General
of Canada

AND TO: Brian Barrie
The Alliance of Kirby, Robinson, Treslan and Brian Barrie
142 Tenth Street West, P.O. Box 730
Owen Sound, Ontario N4K 5W9

Solicitor for Alberta Lemon and Brenda Joan Rogers and Gary Michael
Twining as Executors of the Estate of Barbara Twining

AND TO: John Findlay
Findlay McCarthy PC
605 James Street North, Suite 303
Hamilton, ON L8L 1K1

Solicitor for David Dobson

AND TO: G. Edward Oldfield
Oldfield, Greaves, D'Agostino
Barristers and Solicitors
172 King Street South
P.O. Box 16580
Waterloo, Ontario N2J 4X8

Solicitor for Sauble Beach Development Corporation

CLAIM

1. The Plaintiff claims as against the Defendants:
 - a) a declaration that the entire portion of the valuable fish landing ground fronting on Lake Huron that was reserved from surrender by Saugeen First Nation in Treaty 72 and is known to Saugeen First Nation as “Chi- Gmiinh,” which includes a substantial portion of what is now called Sauble Beach, was and continues to be reserved for the sole use and benefit of the Chippewas of Saugeen First Nation (“Saugeen First Nation” or the “First Nation”), and today forms part of Saugeen Indian Reserve No. 29 (the “Reserve”);
 - b) a declaration that the Crown, as variously represented by the Defendants Canada and Ontario and their predecessors, breached its fiduciary duties to Saugeen First Nation;
 - c) a declaration that the Crown, as variously represented by the Defendants Canada and Ontario and their predecessors, breached its duties to Saugeen First Nation flowing from the honour of the Crown;
 - d) a declaration that no third parties have any interest in Chi-Gmiinh;
 - e) damages for breach of fiduciary duty, breach of duties flowing from the honour of the Crown, and loss of use and occupation of Chi-Gmiinh in the amount \$25,000,000.00 (or such other amount as this Honourable Court may fix);
 - f) pre-judgment interests and post-judgment interest pursuant to the *Courts of Justice Act*, R.S.O. 1990, c. C. 43 (as amended);
 - g) costs of this action; and
 - h) such further and other relief as this Honourable Court may deem just.

The Parties

2. The Plaintiff, Saugeen First Nation, brings this action on behalf of itself and all members of the First Nation.
3. The Defendant the Town of South Bruce Peninsula, previously known as the Corporation of the Township of Amabel, is a municipal corporation incorporated pursuant to the laws of Ontario and asserts an interest in a portion of Chi-Gmiinh.
4. The Defendant Her Majesty the Queen in right of Ontario and the Attorney General of Ontario ("Ontario") asserts radical or underlying title in portions of Chi-Gmiinh.
5. The Defendant Her Majesty the Queen in right of Canada and the Attorney General of Canada ("Canada") is the successor to the Province of Upper Canada and the Province of Canada, which represented the Crown as the Plaintiff's treaty partner in Treaty 45 ½ and Treaty 72, respectively.
6. The Defendants Brenda Joan Rogers and Gary Michael Twining as executors of the estate of Barbara Twining, Alberta Lemon, David Dobson, Sauble Beach Development Corporation, William Eldridge (through his estate), and Charles Albert Richards (through his estate) are individuals or corporations who claim an interest in various portions of Chi-Gmiinh.

Facts

7. Saugeen First Nation, then known as the "Saugeen Indians," entered into a treaty with the Imperial Crown of Great Britain on August 9, 1836 (Treaty 45 ½), resulting in the entire Bruce Peninsula being set aside for it as a reserve (the "Bruce Peninsula Reserve").
8. On October 13, 1854, Saugeen First Nation entered into a further treaty with the Imperial Crown (Treaty 72). Treaty 72 identified certain portions of the Bruce Peninsula Reserve to be surrendered, with the remainder of the Bruce Peninsula Reserve being reserved from surrender by Saugeen First Nation.
9. Saugeen First Nation reserved from surrender, *inter alia*, "about 9 ½ miles" of

frontage along Lake Huron, which included a valuable and treasured Saugeen First Nation fish landing ground: to wit, Chi-Gmiinh. The land is described in Treaty 72 as follows:

[A]ll of 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 a bridge 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 on 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 aforementioned northern limits of the recently surrendered strip... .
[Emphasis added.]

10. Since at least 1854, Saugeen First Nation has asserted that their fish landing ground forms part of the Reserve and that Chi-Gmiinh has never been surrendered by treaty, or otherwise alienated.

11. When lots in Amabel Township bordering the Reserve were originally patented, the lots were not given a "metes and bounds" description. Instead, the original lot descriptions are very vague. The lots that abut Chi-Gmiinh were identified as Lots 26-31, Concession D.

12. Third parties, including the purported owners of Lots 26-31, began to encroach on Chi-Gmiinh and became a cause of concern for Saugeen First Nation, who appealed to the federal Department of Indian Affairs for the protection of the Reserve. For well over a century, Saugeen First Nation repeatedly protested against encroachments on the Reserve, including encroachments on Chi-Gmiinh.

13. As a consequence of the wrongful occupation of Chi-Gmiinh, Saugeen First Nation has been denied and has lost the use and occupation of Chi-Gmiinh. As a result of this wrongful occupation of Chi-Gmiinh, Saugeen First Nation has suffered damages, costs and expenses.

14. The Crown, as variously represented by the Defendants Canada and Ontario and their predecessors, had and has a fiduciary duty to Saugeen First Nation to not permit any party other than the First Nation to use or occupy the Reserve, including Chi-Gmiinh, and to defend the interests of Saugeen First Nation should any other party attempt to use or occupy the Reserve. The Crown breached this duty by permitting and encouraging third parties to

use, occupy and claim a proprietary interest in Chi-Gmiinh and by failing to take the necessary steps to protect and preserve the interests of Saugeen First Nation.

15. The Crown, as variously represented by the Defendants Canada and Ontario and their predecessors, had and has duties to Saugeen First Nation flowing from the honour of the Crown. The Crown breached these duties by permitting and/or encouraging third parties to use, occupy and claim a proprietary interest in Chi-Gmiinh and/or by failing to take the necessary steps to protect and preserve the interests of Saugeen First Nation.

16. As a consequence of the breach of the duties owed by Canada and Ontario to Saugeen First Nation, and as a consequence of the loss of use and occupation of Chi Gmiinh, the First Nation has suffered damage, costs and expenses in the amount of \$25,000,000.00.

The Plaintiff proposes that this action be tried at Toronto, Ontario.

October 18, 1995

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Solicitors for the Plaintiff

**CHIPPEWAS OF SAUGEEN FIRST NATION
PLAINTIFF**

**and THE TOWN OF SOUTH BRUCE PENINSULA et al.
DEFENDANTS**

(Short title of proceeding)

Court File No: 03-CV-253768-CM3

**SUPERIOR COURT OF JUSTICE
(ONTARIO)**

**THIRD AMENDED STATEMENT OF
CLAIM**

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