

ONTARIO COURT OF JUSTICE  
(GENERAL DIVISION)

BETWEEN:

CHIEF RICHARD KAHGEE and BERNICE KAHGEE, HARRIET  
KEWAQUOM, LORNE MANDAWOUB, MARIE MASON, JAMES  
RITCHIE, RITA ROOT, MELVIN ROOTE, FRANK  
SHAWBEDEES, ARNOLD SOLOMON, CARL SOLOMON and  
CARMEN ROOTE on their own behalf and on behalf of the  
members of the CHIPPEWAS OF SAUGEEEN 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  
TWINING, LARRY TWINING, DAVID DOBSON, ALBERTA  
LEMON, SAUBLE BEACH DEVELOPMENT CORPORATION,  
ESTATE OF WILLIAM ELDRIDGE, and ESTATE OF  
CHARLES ALBERT RICHARDS

Defendants

**STATEMENT OF DEFENCE**

The Attorney General of Canada, on behalf of Her Majesty the Queen in Right of Canada, in answer to the plaintiff's statement of claim dated October 18th, 1995, pleads and states as follows:

1. He admits the allegations of fact in paragraphs 2, 3, 5, 6, 7 and the first sentence in paragraph 9 of the statement of claim.

2. He denies the allegations of fact in paragraph 8, the last sentence in paragraph 9, paragraphs 11, 12 and 13 of the statement of claim.
3. He has no knowledge of and does not admit the allegations of fact in paragraph 4 of the statement of claim.
4. He says in further response to paragraph 9 of the statement of claim that Action No. 44874/90 was brought by the Attorney General of Canada on the statutory basis and for the purpose recited in paragraph 2 of his statement of claim.
5. He says in response to paragraph 10 of the statement of claim that he adopts in this action the averments contained in paragraphs 3 - 13 of his statement of claim in action 44874/90 but does not adopt the exceptions set out in sub-paragraphs 10(a) and 10(b) of the statement of claim in this action.
6. He says in further response to paragraph 11 of the statement of claim that the plaintiffs have not been denied or lost the use of the lands as claimed therein, and that such lands, or most of them were fully available to the defendants to use throughout that period. He further says that, in any event, the plaintiffs have not suffered any damages as a result of the uses made of the lands in question throughout this period.

7. He says in further response to paragraph 12 that in the alternative that he had or has the fiduciary duty claimed, which is not admitted but expressly denied, he discharged that duty to the best of his ability, in a reasonable fashion, and in accordance with the requisite and appropriate standards.

8. He further says in the alternative that the plaintiffs have suffered any damages, which is not admitted but expressly denied, the damages claimed by them were not caused or contributed to by any act or omission of his or any act or omission for which he is responsible in law, but were caused by the plaintiff's and Her Majesty the Queen in Right of Ontario's failure to adequately and effectively establish, assert, or protect the entitlement to the land in question, or by the acts of the other defendants or persons currently unknown to him. He pleads and relies on the provisions of the *Negligence Act*, R.S.O. 1990, c. N-1.

9. He further says that any such losses, injuries and damages are too remote, unforeseeable and excessive and that the plaintiffs have failed to take all reasonable steps to mitigate such losses, injuries and damages, including their failure to adequately and effectively establish, assert, or protect the entitlement to the land claimed and to do so in a timely fashion.

10. He further says that the claim against him for damages for the loss of use and occupation of the lands in question is out of time and statute barred. He pleads

and relies on the *Crown Liability and Proceedings Act* R.S.C., c. C-38 and its predecessor *Crown Liability Act* S.C. 1952-53, c. 30, and the *Limitation Act*, R.S.O. 1990, c. L.15. He further pleads and relies on the equitable defences of laches, acquiescence, and analogy to the Statute of Limitations with respect to the claims as a whole.

11. He says that the action against him should be dismissed with costs.

March 3, 1997.

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