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Dec 7, 2012

AMENDED THIS Dec 7, 2012 PURSUANT TO
MODIFIÉ CE Dec 7, 2012 CONFORMÉMENT À
 RÈGLE/RÈGLE 28.02

THE ORDER OF Justice Balabaha
L'ORDONNANCE DU Dec 7, 2012
DATED / FAIT LE (M. Brenton)

Court File No. 03-CV-253768-CM3

REGISTRAR (M. Brenton)
SUPERIOR COURT OF JUSTICE GREFFIER
COUR SUPÉRIEURE DE JUSTICE

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:

CHIPPEWAS OF SAUGEEN FIRST NATION

Plaintiff

- and -

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, ESTATE OF CHARLES ALBERT RICHARDS AND
THE ATTORNEY GENERAL OF ONTARIO

Defendants

FRESH

SECOND 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.

IF YOU PAY THE PLAINTIFF'S CLAIM, and \$400.00 for costs within the time for serving and filing your statement of defence, you may move to have this proceeding dismissed by the court. If you believe the amount claimed for costs is excessive, you may pay the plaintiff's claim and \$100.00 for costs and have the costs assessed by the court.

Date: October 18, 1995

Issued by:

Local Registrar

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

TO: 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
Daniel Dobson
Sauble Beach Development Corporation
Alberta Lemon
Estate of William Eldridge
Estate of Charles Albert Richards

CLAIM

1. The Plaintiff claims as against the Defendants:
 - a) a declaration that the entire portion of the valuable fishing grounds fronting on Lake Huron known to the Saugeen First Nation as "Chi-Gmiinh" (and area now referred to as Sauble Beach), that were promised to the Plaintiff in Treaty No. 72, is now and has always been reserved for the sole use and benefit of the Chippewas of Saugeen First Nation ("Saugeen First Nation" or the "First Nation") as part of Saugeen Indian Reserve No. 29 (the "Reserve");
 - b) a declaration that the Defendant Her Majesty the Queen in Right of Canada holds Chi-Gmiinh on behalf of Saugeen First Nation for the use and benefit of the First Nation;
 - c) a declaration that no third parties have any interest in such lands;
 - d) an order of mandamus that a survey be produced that accurately reflects the language of the treaty, specifically that the boundary is 9 ½ miles from a spot on the coast as described Treaty No. 72;
 - e) an order that this Court shall retain jurisdiction over this matter until the above-ordered survey is completed to the satisfaction of the parties;
 - f) damages for loss of use and occupation of the lands in the amount \$25,000,000.00;
 - g) costs of this action; and
 - h) such further and other relief as this Honourable Court may deem just.
2. The Plaintiff, Saugeen First Nation, brings this action on behalf of itself and all members of the First Nation.

3. The Defendant, the Corporation of the Township of Amabel, now known as the Town of South Bruce Peninsula, 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, asserts a radical interest in portions of Chi-Gmiinh.
5. The Defendants, William Eldridge (through his estate), Charles Albert Richards (through his estate), Barbara Twining (through her litigation guardians Brenda Joan Rogers and Gary Michael Twinning), Larry Twining (through his estate), David Dobson, Alberta Lemon and Sauble Beach Development Corporation are individuals or corporations who claim an interest in various portions of Chi-Gmiinh.
6. This case is about recognizing the land that was reserved for Saugeen First Nation in Treaty No. 72 in 1854. The Saugeen First Nation were promised "about 9 ½ miles" of frontage along Lake Huron, which included a valuable and treasured Saugeen First Nation fishing ground. Failure to recognize this full entitlement and gradual encroachments by the Defendants have left Saugeen First Nation with approximately 8 miles of frontage along Lake Huron—1 ½ miles less than what was promised in the treaty. This is a simple case, based on the plain text of the Treaty and the rightful entitlement of the Saugeen First Nation to the lands promised by the Treaty.
7. Prior to August 9, 1836, the Saugeen Indians, the predecessors to today's Saugeen First Nation (previously known as the Saugeen Band), occupied vast areas of land in what is now known as southwestern Ontario, including their Fishing Grounds.
8. The Saugeen Indians made Treaties with the Imperial Crown of Great Britain on August 9, 1836 (Treaty No. 45 ½) and October 13, 1854 (Treaty No. 72), resulting in the reservation of a tract of land now known as the Reserve.
9. The area of land reserved for the Saugeen First Nation and that is the subject matter of this litigation is described in Treaty No. 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. The Saugeen First Nation has always asserted that their Fishing Grounds form part of the Reserve and that Chi-Gmīnh has never been surrendered by treaty, or otherwise alienated pursuant to the provisions of the *Indian Act*, R.S.C. 1985 C. 1-5 or any other statute.

11. The lakefront at the northern end of the reserve promised to the Saugeen First Nation was an important fishing ground for the Saugeen First Nation known as Chi-Gmīnh, meaning “sandy shore on water of the large bay”. This portion of the lakefront was just south of the mouth of the Sauble River and was a treasured fishery and a rich spawning ground. This portion of lakefront was also a key transportation route among Saugeen communities. Chi-Gmīnh is now referred to as Sauble Beach. By the 1890s, the fishery at this spot on Lake Huron had been destroyed by pollution and the traditional means of fishing used by the Saugeen First Nation, with nets, was prohibited by regulation at the same time; as a result Saugeen First Nation fishermen were forced to abandon their use of this ancient fishing ground.

12. Following the entering into of Treaty No. 72, the Saugeen First Nation reserve and what was to become Amabel Township were surveyed by a government surveyor named Charles Rankin. Charles Rankin planted a post at a spot approximately 9 ½ miles up the coast and marked that post “NE angle < Indian Reserve.” That post was marked in the middle of Lot 31 on the 1855 map of Amabel Township; a township plan prepared by Charles Rankin in 1855 also shows the northeast boundary of the Reserve being located in what is now Lot 31.

13. The existence of this post was confirmed by independent evidence provided by two engineers, Ridout and Schreiber, who were preparing a sounding chart of the mouth of the Sauble River and the adjoining coast in 1856. Their sounding chart identified the

post as being located in the middle of Lot 31 and stated "Post marked: N.E. angle of Saugeen reserve according to Treaty Boundary running south."

14. When lots in Amabel Township were originally patented between 1857 and 1907, the lots were not given a "metes and bounds" description. Instead, the original lot descriptions are very vague. For example, the description of Lot 31 is "by admeasurement sixty four acres be the same more or less." The lot descriptions do not indicate that the original grants go down to the water. The 1855 Amabel Township map also does not indicate that the original grants go down to the water.

15. Over time the descriptions of these lots changed. As the lots changed hands the patents granted by Ontario began, after 1927, to describe the lands as extending to the western limit of the lot, or to the high water mark. The purported owners of these lots began to encroach on the reserve land of the Saugeen First Nation and became a cause of concern for the Saugeen First Nation, who complained repeatedly to the federal Department of Indian Affairs for the protection of their treaty rights

16. In 1944, in response to queries from landowners, the federal Department of Indian Affairs changed its previous position and began to assure the landowners that the Saugeen First Nation reserve did not extend opposite Lots 26-34, thus encouraging and endorsing the encroachment of private landowners on Chi-Gmiinh and the reserve land of the Saugeen First Nation.

17. The exact boundary of the Saugeen First Nation on its northeastern point has been a point of contention almost since the original survey of the reserve was done in 1856. Since at least 1890, the Saugeen First Nation has constantly protested against encroachments, which at that time were noted as cottages and fish curing establishments.

18. Some of the Defendants or their predecessors have constructed structures on Chi-Gmiinh, including a seasonal chip stand constructed on a portion of what is now called Lot 26. Another portion of Lot 26 has been used by one of the Defendants as a seasonal parking lot.

19. In or around 1976 the Corporation of the Township of Amabel erected a changehouse on a portion of Chi-Gmiinh and has, over the years, used and encouraged public use of Chi-Gmiinh for township purposes, claiming right of ownership as against the Saugeen First Nation since at least that time.

20. The Defendant Township and the Defendant Her Majesty the Queen in Right of Ontario have unlawfully taken, granted, permitted and encouraged the encroachment by private landowners onto Chi-Gmiinh and have asserted that these unlawful encroachments are permissible and defensible.

21. Chi-Gmiinh is now identified on the Township plan as parts of Lots 26-31. Lot 26 has been subdivided and currently has four purported owners—three are private owners, Defendants Dobson, Twinning and Lemon, and the fourth is the Defendant Township. Lots 27, 28 and 29 purport to be owned by the Defendant Township pursuant presumably to Crown patents issued by Canada or Ontario. Lot 30 purports to be owned by the Defendant Sauble Beach Development Corporation. It is unknown if there is currently any purported owner of the relevant portion of Lot 31.

22. Not all portions of the privately-held lands on Lots 26-31 are at issue. In fact, only a very small portion of each of these lots encroaches on Chi-Gmiinh. No residences are constructed on any of the land that encroaches on Chi-Gmiinh. Chi-Gmiinh is only a small part of the lots owned by these Defendants.

23. As a consequence of the wrongful granting and occupation of Chi-Gmiinh by the Defendants and their predecessors, the Saugeen First Nation has been denied and has lost the use and occupation of Chi-Gmiinh from October 13, 1854. As a result of this wrongful granting and occupation of Chi-Gmiinh, Saugeen First Nation has suffered damages, costs and expenses as set out in paragraph 26, below.

24. The Defendants Her Majesty the Queen in Right of Canada and the Attorney General of Canada, had and have a fiduciary duty to the Saugeen First Nation to not permit any party other than the First Nation to use or occupy the reserve lands of the First Nation, including Chi-Gmiinh and to defend the interests of Saugeen First Nation should

any other party attempt to occupy or assert a proprietary interest in the reserve lands. The Defendants Her Majesty the Queen in Right of Canada and the Attorney General of Canada 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.

25. The Defendants Her Majesty the Queen in Right of Ontario and the Attorney General of Ontario have a fiduciary duty to the plaintiffs to not grant any party other than the First Nation rights and interests in the reserve lands of the First Nation, including Chi-Gmiinh. The Defendants Her Majesty the Queen in Right of Ontario and the Attorney General of Ontario have breached their duty to the Plaintiff by asserting a proprietary interest in Chi-Gmiinh, by purporting to grant interests in Chi-Gmiinh to third parties and by encouraging, supporting, aiding and defending those third parties and their purported proprietary interests in Chi-Gmiinh.

26. As a consequence of the breach of the duties owed by Canada and Ontario to the Saugeen First Nation, 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

PAPE SALTER TEILLET
Barristers and Solicitors
546 Euclid Avenue
TORONTO, Ontario
M6G 2T2
Jean Teillet (LSUC # 38047L)
Nuri G. Frame (LSUC # 60974J)
(416) 916-2989
Solicitors for the Plaintiff

Chippewas of Saugeen First Nation v. The Corporation of the Township of Amabel, et al.

Court File No. 03-CV-253768-CM3

ONTARIO
SUPERIOR COURT OF JUSTICE

Proceeding Commenced at London

ERSSH
**SECOND AMENDED
STATEMENT OF CLAIM**

Pape Salter Teillet
Barristers and Solicitors
546 Euclid Avenue
Toronto ON M6G 2T2
Jean Teillet (LSUC # 38047L)
Nuri G. Prame (LSUC # 60974J)
Tel: 416-916-2989

Solicitors for the Plaintiff

