

Court File No. 21521/95

ONTARIO COURT (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, CAROL SOLOMON
AND CARMAN ROOTE ON THEIR OWN BEHALF AND ON BEHALF OF THE MEMBERS
OF THE CHIPPEWAS OF SAULGEEN FIRST NATION**

Plaintiffs

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

Defendants

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 it 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 Plaintiffs claim as against the Defendants:
 - a) a declaration that the portion of Sauble Beach, in the Saugeen Peninsula, more particularly described in Schedule "A" (hereinafter referred to as the "Lands") which is now from time to time used or claimed by the Defendants other than Her Majesty the Queen in Right of Canada and the Attorney General of Canada is reserved for the sole use and benefit of the Chippewas of Saugeen First Nation as part of Saugeen Indian Reserve No. 29;
 - b) a declaration that the aboriginal title of the Plaintiffs subsists in the Lands and that the Defendant Her Majesty the Queen holds the said portion of Sauble Beach as a fiduciary of the Chippewas of Saugeen First Nation, according to the direction of the First Nation as expressed from time to time;
 - c) a declaration as to the true location of the east boundary and northern extent of Saugeen Indian Reserve No. 29 according to a plan of survey to be produced.
 - d) an order that this action be tried together with Action No. 44874/90 in this Honourable Court between the Attorney General of Canada and The Corporation of the Township of Amabel, and for directions with respect to the conduct of the two actions;

- e) Judgment for damages for loss of use and occupation of the lands in the sum of \$10,000,000.00;
- f) their costs of this action; and
- g) such further and other relief as this Honourable Court may deem just;

2. The Plaintiffs are the duly elected Chief and Council of the Chippewas of the Saugeen First Nation ("the Saugeen First Nation") and bring this action on their own behalf and on behalf of the Saugeen First Nation and all members of the First Nation.

3. The Defendant 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 the Lands.

4. The Defendant, Her Majesty the Queen in right of Ontario has from time to time asserted a radical interest in the Lands.

5. The Defendants, William Eldridge, Charles Albert Richards, Barbara Twining, Larry Twining, David Dobson, Alberta Lemon and Sauble Beach Development Corporation are individuals or corporations who claim an interest in various portions of the Lands.

6. The Saugeen First Nation is the descendant of the Saugeen Nation, the aboriginal owner from time immemorial of the Saugeen Territory comprising large portions of what is now Southwestern Ontario.

7. The Saugeen First Nation made Treaties with the Imperial Crown of Great Britain on August 9, 1836 and October 13, 1854, resulting in the reservation of a tract of land

now known as the Saugeen Reserve No. 29 ("the Reserve") from a purported cession of territory in the latter Treaty to the Imperial Crown.

8. For the purposes of these proceedings, the Plaintiffs do not acknowledge the general validity or fulfillment of the Treaties other than to the extent they described and withheld the Lands from any cession of the aboriginal title of the Saugeen First Nation. It is the position of the Saugeen First Nation that the Reserve as described in the Treaty of October 13, 1854 is unceded land subject to the aboriginal title and inherent jurisdiction of the Saugeen First Nation, and these proceedings are brought without prejudice to any other claims or proceedings which have been or may be brought to the invalidity or non-fulfillment of the Treaties referred to.

9. On January 18, 1990, the Defendant, the Attorney General of Canada commenced Action No. 44874/90 against the Defendant, The Corporation of the Township of Amabel in the Supreme Court of Ontario which seeks relief similar to that sought in these proceedings in relation to the Lands. The Saugeen First Nation is not a party to that action, although the action is effectively brought on its behalf.

10. The Plaintiffs adopt paragraphs 3 through 13 of the Statement of Claim in Action No. 44874/90 subject to the following exceptions: a) The Plaintiffs do not accept that the Lands are "held in trust by Her Majesty the Queen in Right of Canada for the sole use and benefit of the Saugeen Band" as claimed in that Action; b) the pleading in paragraphs 5 to 9 are subject to the exclusions in paragraph 8 above.

11. As a consequence of the wrongful occupation of the Lands by the Defendants and their predecessors, the Saugeen First Nation has been denied and has lost the use of the lands from October 13, 1854, to the date of recovery of the Lands and that the full particulars of the damages, costs and expenses suffered by the Saugeen First Nation will

be provided after they are calculated and in any event before Trial, in accordance with the Rules for Civil Procedure.

12. 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 Saugeen First Nation to use or occupy the unceded territory of the Saugeen First Nation, and the said Defendants have breached the aforesaid obligation by permitting the other Defendants to purport to have a proprietary interest in the lands and to have and continue to exclude the Saugeen First Nation from the lands.

13. As a consequence of the said breaches of fiduciary duty by the said Defendants, the Saugeen First Nation has suffered damage, costs and expenses, the full particulars of which will be provided after they are calculated, and in any event before Trial, in accordance with the Rules for Civil Procedure.

14. The Plaintiffs wish to participate in Action 44874/90 and will seek directions from this Honourable Court which will enable them to do so without unduly complicating or delaying the prosecution of the Action brought by the Attorney General of Canada.

The Plaintiffs propose that this action be tried at London, Ontario.

October 18, 1995

HARRISON, ELWOOD
Barristers and Solicitors
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LONDON, Ontario
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Solicitors for the Plaintiffs

SCHEDULE "A"

Those lands lying to the west of a line drawn by the course of the magnetic compass in the same manner as the original line run by Charles Rankin, Provincial Land Surveyor, in 1855, southerly from a spot on the coast of Lake Huron at the location of a post set by the said Charles Rankin to mark the northern terminus of the subject boundary distant 10.66 chains (703.56 feet) northerly along the said compass line from its intersection with the northern limit of the Road Allowance between Lots 31 and 30 of Concession D of the Township of Amabel; and continuing southerly along the western limit of the aforesaid Road Allowance, along the western limits of Lots 30 to 26, inclusive, of the said Concession D, and along the western limit of the Road Allowance between Lot 26 and Lot 25 of the said Concession D in all a distance of 113.23 chains (7473 feet) more or less to the retraced and re-established portion of the eastern boundary of Saugeen Indian Reserve No. 29 at its intersection with the southern limit of the aforesaid Road Allowance between the said Lot 26 and Lot 25 of Concession D of the said Township of Amabel.