

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

THE 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,
HARRY TWINING, DAVID DOBSON, ALBERTA LEMON,
SAUBLE BEACH DEVELOPMENT CORPORATION,
ESTATE OF WILLIAM ELDRIDGE,
ESTATE OF CHARLES ALBERT RICHARDS and
ATTORNEY GENERAL OF ONTARIO**

Defendants

AMENDED THIS PURSUANT TO
MODIFIED CE CONFORMÉMENT A
 RÈGLE 26.02
 THE ORDER OF MASTER BROTH
L'ORDONNANCE DU
DATED 14/11/14
LOCAL REGISTRAR
SUPERIOR COURT OF JUSTICE
GREATER LOCAL
COURT SUPERIOR OF JUSTICE

**FRESH AS AMENDED STATEMENT OF DEFENCE,
COUNTERCLAIM AND CROSSCLAIM
OF THE DEFENDANT, DAVID DOBSON**

1. The Defendant, David Dobson, denies the allegations contained in paragraphs 1, 3, 5, 20, 21, 23, of the Statement of Claim.
2. The Defendant, David Dobson, has no knowledge in respect of the allegations contained in paragraphs 4, 6, 7 to 19, 22, and 24 to 26 of the Statement of Claim.
3. The Defendant, David Dobson ("Dobson"), states that he is the registered owner in fee simple to land that comprises approximately 130 acres from Lakeshore Road to the shore of Lake Huron, more particularly described as Lot No. 26, Concession D, Township of Amabel,

County of Bruce (the "Dobson Property") and that his estate derives from a Crown Patent issued by the representatives of Her Majesty the Queen in Right of Canada or the Attorney General of Canada (referred to herein as the "Canada Crown Defendants"), in 1896 granted to John W. Huff, the predecessor in title of the Defendant, Dobson and that the said Crown Patent provides an estate in the land to the shoreline of Lake Huron.

4. On June 15, 1948, Harold Dobson, the predecessor in title to the Dobson Property, received written assurance from the Superintendent of the Indian Affairs Branch confirming the Crown Grant to the Dobson Property and stating that the said grant "did not provide for marine allowance along the shore of Lake Huron, the lots extending to the high water mark."

5. On October 30, 1968, the Defendant, Dobson, was assured by his sitting Member of Parliament that the Honourable Jean Chrétien, then the Superintendent General of Indian Affairs, that the Attorney General of Canada had received no claim from the Saugeen Band to the Dobson Property.

6. On November 15, 1968, the Defendant, Dobson, received written assurance from the Head of Land Surveys and Title Section for the Department of Indian Affairs and Northern Development that the Department "was not aware of any claim by the Saugeen Band of Indians to Lakeshore lands fronting his property" and that "there was no evidence of any continuing Indian interest in Lot 26, Concession D, Township of Amabel".

7. The Defendant, Dobson, states that from time to time over the past 50 years various individuals have approached him, or his predecessors in title attempting to assert a claim to the Dobson Property. At all times the Defendant, Dobson, or his predecessors, have resisted those claims and have been in possession of the Dobson Property and have openly and continually

utilized the Dobson Property to the full extent of its dimensions as described in the Crown Patent, including the use of the Dobson Property right up to the shoreline of Lake Huron.

8. The Defendant, Dobson, or his predecessors in title, have sought and received assurances from the Attorney General of Canada that they were legally and equitably entitled to the Dobson Property.

9. The Defendant, Dobson, states that he and his predecessors in title have protected their title to the Dobson Property and have openly and notoriously demonstrated their right to exclusive use of the property, in particular:

- (a) They have been levied property taxes by the Township of Amabel and its successor, the Town of South Bruce Peninsula, which have recognized their ownership in the Dobson Property and levied municipal taxes accordingly;
- (b) They have installed and maintained fences and posts and have controlled public use and access to the property posting signs proclaiming ownership, and from time to time to closed off public access, when necessary, to assert their exclusive right to the use of the property;
- (c) Dobson, as his father and uncle before him, has operated a beach and restaurant business called the "Crowd Inn" since the late 1940's and clearly publicly demonstrated the exclusive ownership to the use of the Dobson Property by the erection of a commercial building, the control of parking, the construction of a concrete pad and outdoor tables and the placement of railway ties to delineate the extent of public access, all on notice and in concurrence with the Township of

Amabel and its successor, the Town of South Bruce Peninsula, with respect to compliance with local municipal zoning and by-law requirements.

10. The Defendant, Dobson, acquired the Dobson Property as a purchaser in good faith for value, and without notice of any valid adverse claim, when he acquired the property by a Deed of Transfer dated July 5, 1983 for a purchase price of \$80,000.00 which was paid to and received by the vendor of the Dobson Property.

11. The Defendant, Dobson, pleads that the delay on the part of the Plaintiffs in asserting their claim against the Dobson Property gives rise to the equitable doctrines of laches and acquiescence which would deny the Plaintiff's claim for declaratory relief with respect to the Dobson Property.

12. Further, the Defendant, Dobson, pleads that he is a good faith purchaser for value of the Dobson Property which gives rise to an equitable doctrine that would deny the Plaintiffs' claim for declaratory relief with respect to the Dobson Property.

13. The Defendant, Dobson, pleads that the *Limitations Act, 2002*, R.S.O. 2002, c. 24, Sch. B, does not apply by virtue of subsection 2(1)(e) of the said Act, and that the Plaintiffs' claim against the Dobson Property has been extinguished by the application of sections 4, 15 and 29 of the *Real Estate Limitations Act*, R.S.O. 1990, c. L.15

14. The Defendant, Dobson, states that the Canada Crown Defendants are bound by the assurances provided by one of their agents.

15. The Defendant, Dobson, asks that this action be dismissed with costs payable on a substantial indemnity basis.

COUNTERCLAIM

16. The Defendant, Dobson, relies upon the facts set out in paragraph 1 to 15 above.
17. The Defendant, Dobson, counterclaims against the Plaintiffs for the following relief:
 - (a) A declaration that he is the legal and equitable owner, without reservation to any easement or other prescriptive right, of the Dobson Property;
 - (b) Alternatively, a declaration that the Plaintiffs are statute barred from asserting their claim or are estopped from asserting their claim by the operation of the equitable principles of laches and acquiescence or by other equitable grounds such as Dobson being a good faith purchaser for value;
 - (c) In the further alternative, damages against the Plaintiffs for unjust enrichment for the loss of use and occupation of the Dobson Property, and the maintenance of the Dobson Property and the improvements made thereof, in accordance with section 37 of the *Conveyancing and Law of Property Act*, R.S.O. 1990, c. 34
 - (d) For prejudgment and postjudgment interest on such damages calculated in accordance with the provisions of ss. 128 and 129 of the *Courts of Justice Act*; R.S.O. 1990, c. C.43
 - (e) For his costs of the counterclaim on a substantial indemnity scale; and
 - (f) For such other relief as this court deems just.

**CROSSCLAIM AGAINST THE DEFENDANTS,
THE TOWNSHIP OF AMABEL,
HER MAJESTY THE QUEEN IN RIGHT OF CANADA and
THE ATTORNEY GENERAL OF CANADA**

18. The Defendant, Dobson, relies upon the facts contained in paragraphs 1 to 15 above.

19. If the Plaintiffs are successful in their claim against him, the Defendant, Dobson crossclaims against the Canada Crown Defendants and the Township of Amabel (now the Town of South Bruce Peninsula) as follows:

20. The Defendant, Dobson, states that the Canada Crown Defendants had a duty to ensure that the Crown Patent from which he derived his title was issued properly and represented an absolute grant of estate in fee simple to the said Dobson Property and that such grant was made in complete compliance with any treaty obligations to the Plaintiffs.

21. The Defendant, Dobson, states that the issuance of the Crown Patent was a form of representation to the transfer of the Crown Patent that the title was absolute and not subject to any competing claims to the title.

22. The Defendant, Dobson, states that the Canada Crown Defendants owed a fiduciary duty to the Defendant, Dobson, or his predecessors in title, as good faith purchasers for value of the Dobson Property.

23. The Defendant, Dobson, states that his predecessors in title depended upon representations of the Canada Crown Defendants in purchasing the Dobson Property and that as a subsequent transferee of the Crown Patent that he should be able to rely upon such representation as transferee from his predecessors in title.

24. The Defendant, Dobson, states that his predecessors in title depended upon representations of the Canada Crown Defendants in purchasing the Dobson Property and that as a subsequent transferee of the Crown Patent that he should be able to rely upon such representation as transferee from his predecessors in title in accordance with section 5 of the *Conveyancing and Law of Property Act*.

25. The Defendant, Dobson, states that he and his predecessors in title had been represented by the Township of Amabel that the Dobson Property was within the said municipality and that it was subject to all municipal assessments, property taxes and by-laws that were applicable to property within the municipality.

26. If the Plaintiffs are successful in their claim against him, the Defendant, Dobson, claims as against the Canada Crown Defendants, the following relief:

- (a) damages in the amount of \$2,000,000.00 for the loss of the value of the Dobson Property as a result of the negligence, misrepresentation or breach of fiduciary duty of the Canada Crown Defendants and the Town of South Bruce Peninsula;
- (b) an order directing the Canada Crown Defendants to indemnify the Defendant, Dobson, for any amount of damages or costs for which this Court finds the Defendant, Dobson, liable to the Plaintiffs;

- (c) prejudgment and postjudgment interest payable pursuant to the provisions of ss. 128 and 129 of the *Court of Justice Act*;
- (d) his costs on a substantial indemnity basis; and
- (e) such further and other relief as this Court deems just.

27. If the Plaintiffs are successful in their claim against him, the Defendant, Dobson, claims as against the Defendant, the Township of Amabel and its successor the Town of South Bruce Peninsula damages in the amount of all property taxes, levies and other charges that the Defendant, Dobson, has paid to the Township of Amabel or Town of South Bruce Peninsula with respect to the Dobson Property.

January 31, 2013

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