

ONTARIO COURT (GENERAL DIVISION)

B E T W E E N:

THE ATTORNEY GENERAL OF CANADA

Plaintiff

-and-

THE CORPORATION OF THE TOWNSHIP OF AMABEL

STATEMENT OF DEFENCE AND COUNTERCLAIM

1. The Defendant, except as hereinafter specifically admitted, denies each and every allegation contained in the Statement of Claim and puts the Plaintiff to the strict proof thereof.

2. The Defendant has no knowledge of the allegations contained in paragraphs 3 - 9 inclusive of the Statement of Claim.

3. The Defendant denies the allegations contained in paragraph 10 of the Statement of Claim and says as a fact and the fact is that some of the lands described in this paragraph are privately owned and the title to these lands were conveyed by way of Crown Patent. The Defendant does not have full particulars of these Crown Patents at the date of the delivery of this Statement of Claim.

4. The Defendant denies the allegations contained in paragraph 11 of the Statement of Claim and says as a fact and the fact is that the Department of Indian Affairs and Northern Development advised abutting owners that they were not aware

of any claim being made to these lands by the Saugeen Band.

5. The Defendant admits that it erected a change house at Sauble Beach and says as a fact and the fact is that they relied on the Crown Patents referred to above and on correspondence from agencies of the Government of Canada in connection with the exact boundaries of the lands owned by the Saugeen Band.

6. In the alternative, the Defendant states that, for a period of over one hundred years, and continuing until the present time, settlers in the vicinity, the inhabitants of the Township of Amabel, visitors, the public at large and individual members of the public at large have used, occupied and enjoyed the beaches, banks, foreshore and sand dunes and plains of the property claimed by the Plaintiff in this action, fronting on and in the vicinity of Lake Huron, in an open, peaceable, legal, undisputed and uninterrupted manner.

7. The Defendant pleads that the settlers, inhabitants of the Township of Amabel, visitors, and the public at large have acquired an easement over the lands and premises claimed by the Plaintiff in this action, permitting them to continue to use and to enjoy as of right the lands and premises claimed by the Plaintiff in this action, in the same manner as heretofore.

8. Alternatively, the Defendant pleads that the settlers, inhabitants of the Township of Amabel, visitors and the public at large have obtained a licence by estoppel permitting them to use and to enjoy as of right the lands and properties

claimed by the Plaintiff in this action, in the same manner as heretofore.

9. Further, in the alternative, the Defendant pleads that there is a customary right which enures to the public at large, and to members of the public at large, to use and to enjoy the lands and properties claimed by the Plaintiff in this action, in the same manner as heretofore, and that this customary right cannot be revoked, cancelled, rescinded or affected in any way by the Plaintiff.

10. Further, in the alternative, the Defendant pleads that there is a public right to the user of the lands and premises claimed by the Plaintiff in this action, in the same manner as heretofore, for the purposes of recreation, and for the purposes of a public right-of-way, and the Defendant further pleads that the Plaintiff or his predecessors in title have dedicated the property to the public at large, or to the Defendant, for these purposes, or that they are deemed at law to have done so, and that such dedication has been accepted.

11. The Defendant therefore submits that this action should be dismissed as against it, with costs.

COUNTERCLAIM

12. The Defendant, the Township of Amabel, the Plaintiff by counterclaim, repeats the allegations contained in its Statement of Defence as delivered herein.

13. The Plaintiff by counterclaim, pleads that as a result of the facts alleged in its Statement of Defence, it is entitled to a declaration that the lands and premises referred to in the Statement of Claim are the property of the persons

who have Crown Patents or in the alternative the property of the Plaintiff by counterclaim and persons who have Crown Patents to the said lands.

14. In the alternative, the Plaintiff by counterclaim states that as a result of the facts alleged in the Statement of Defence, it is entitled to a declaration that the settlers in the vicinity, the inhabitants of the Township of Amabel, visitors, the public at large and individual members of the public are entitled to continue to use, occupy and enjoy the lands and properties claimed by the Plaintiff in this action, in the same manner as heretofore.

15. The Plaintiff by counterclaim therefore claims:

- (a) a declaration that the lands and premises referred to in the Statement of Claim are the property of the persons who have Crown Patents or in the alternative the property of the Plaintiff by counterclaim and persons who have Crown Patents to the said lands;
- (b) in the alternative, a declaration that the settlers in the vicinity, the inhabitants of the Township of Amabel, visitors, and the public at large are entitled as of right to continue to use, occupy and to enjoy the lands and property claimed by the Plaintiff in this action, in the same manner as heretofore;
- (c) it's costs of this counterclaim;
- (d) such further and other relief as may seem just.

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