

IN THE SUPREME COURT OF ONTARIO

B E T W E E N :

THE ATTORNEY GENERAL OF CANADA

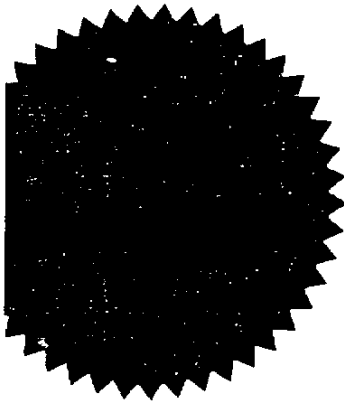
Plaintiff

- and -

THE CORPORATION OF THE TOWNSHIP OF AMABEL

Defendant

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STATEMENT OF CLAIM

TO THE DEFENDANTS

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the Plaintiff. 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.

Date.. JANUARY 18, 1990....

Issued by *W. H. Dunlop*
Local Registrar

Address of court office: *Dunlop*

145 Queen Street West
Toronto, Ontario

TO: The Corporation of the
Township of Amabel
R.R. No. 2
Hepworth, Ontario
MOH 1P0

CLAIM

1. THE PLAINTIFF CLAIMS:

- (a) a declaration that that portion of Sauble Beach, in the Saugeen Peninsula, which is now from time to time used by The Corporation of the Township of Amabel and which land is more particularly herein fully described, is held in trust by Her Majesty The Queen in Right of Canada for the sole use and benefit of the Saugeen Band, and that the Corporation of the Township of Amabel has no interest in such lands;
- (b) an order declaring the true location of the east boundary of Saugeen Indian Reserve #29 according to a plan of survey to be produced;
- (c) the costs of this action; and
- (d) such further and other relief as this Honourable Court may deem just.

2. This action is brought by the Attorney General of Canada pursuant to Section 5 of the Department of Justice Act,

R.S.C. 1985 c. J-12 on behalf of Her Majesty the Queen in Right of Canada for the purpose of asserting its rights over the lands hereinafter referred.

3. Prior to August 9, 1836, the Saugeen Indians occupied vast areas of land in what is now known as southwestern Ontario.

4. On August 9, 1836 the Saugeen Indians surrendered approximately 1,600,000 acres of the southern portion of its land to the Crown in Right of the United Kingdom, the terms of which surrender are set out in Treaty No. 45 1/2.

5. On October 13, 1854, the Saugeen Indians surrendered more of the territory which they occupied to the Crown in Right of the United Kingdom; specifically, a large portion of that land known as the Saugeen Peninsula in Lake Huron, while retaining to itself four tracts of land which now comprise the Saugeen Reserve.

6. The terms of the second surrender are set out in Treaty of Surrender of Land No. 72. The area of land retained by the Saugeen Band and which is the subject matter of this litigation is described in Treaty of Surrender of Land No. 72 as follows:

" . . . all 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 upon the coast at a distance of about (9 1/2) nine miles and half from the western boundary aforesaid and running parallel thereto until it touches the aforementioned northern limits of the recently surrendered strip . . ."

7. In early 1855, the Band, being aware of surveys being done on land abutting the tract of land which had been reserved from surrender, expressed concern to the Crown that the land was not being laid out in conformity with the Band's understanding of the reserve's boundaries. As a result of these concerns, a report was commissioned by the Crown which report resulted in an Order-in-Council dated September 25, 1855.

8. The Order-in-Council of September 28, 1855 provided that the description of the westerly boundary of the reserve should be as follows:

". . . be bounded instead by the Indian Path called the Copway Road which takes a northwesterly direction, as shown by the red line in the plan - this change will give the Saugeen Indians a small increase of frontage on Lake Huron, and will not interfere with the Town plot now laid out . . ."

9. The Saugeen Indians gave consent to the Order-in-Council, and consequently the western boundaries of the reserve were fixed by the Order-in-Council of September 28, 1855.

10. That portion of the frontage on Lake Huron now known commonly as Sauble Beach is included in the land reserved from surrender by the Saugeen Band and forms part of Saugeen Indian Reserve #29.

11. The Saugeen Band has always asserted that Sauble Beach is a part of Saugeen Indian Reserve #29 and that it 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 preceding statute.

12. In 1968 the Corporation of the Township of Amabel proposed a development of north Sauble Beach into a resort. The Saugeen Band continued to assert its claim to that portion of the beach where such development was proposed, which the Band considered to be part of its reserved land.

13. In 1976 the Corporation of the Township of Amabel erected a changehouse on the portion of Sauble Beach claimed by the Band as part of its reserve and has used and encouraged public use of the Beach area for township purposes, claiming

right of ownership as against the Saugeen Band, since at least that time.

The plaintiff proposes that this action be tried at Toronto, Ontario.

January 18, 1990

David Sgayias
DEPARTMENT OF JUSTICE
1 Front Street West
Suite 500
Toronto, Ontario
M5J 1A5

Per: Charlotte A. Bell, Q.C.
Tel: (416) 973-2240

Solicitor for the Plaintiff