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Court File No.: 03-CV-253768-CM3

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

THE CHIPPEWAS OF SAUGEEN FIRST NATION

Plaintiff
(Defendant by Counterclaim)

- 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,
ATTORNEY GENERAL OF ONTARIO**

Defendants
(Plaintiffs by
Counter/Crossclaim(s))

**CONSOLIDATED REPLY TO
THE STATEMENTS OF DEFENCE
AND
DEFENCE TO COUNTER-CLAIMS**

1. This is a Consolidated Reply by the Plaintiff Saugeen First Nation to the Statements of Defence, and the Defence of the Plaintiff Saugeen First Nation to Counterclaims (where applicable), of:

- a. The Sauble Beach Development Corporation (the "SBDC"),
- b. The Attorney General of Canada on behalf of Her Majesty the Queen in Right of Canada ("Canada"),
- c. Barbara Twining, Larry Twining, David Dobson, Albert Lemon (the "Private Landholders"),
- d. Her Majesty The Queen in Right of Ontario and the Attorney General for Ontario ("Ontario"), and
- e. The Corporation of the Township of Amabel, ("Amabel").

2. The Plaintiffs admit the allegations contained in the following paragraphs of the Statements of Defence:

- a. The SBDC: None
- b. Canada: None
- c. Private Landholders: None
- d. Ontario: 31, 32, 44
- e. Amabel: None

3. The Plaintiffs deny, and put the Defendants to strict proof thereof, the allegations contained in the following paragraphs of the Statements of Defence:

- a. The SBDC: 3-6, 8-10
- b. Canada: 6-11
- c. Private Land Holders: 3-5, 9-11
- d. Ontario: 5, 8, 10-19, 21-30, 33, 38 as it relates to Ontario's fiduciary capacity, 42, 48-54, the first sentence of paragraph 55, 57-59, 62-66
- e. Amabel: The first sentence of paragraph 4, 6-9

4. The Plaintiffs have no knowledge of the allegations contained in the following paragraphs of the Statements of Defence:
 - a. The SBDC: 7
 - b. Canada: None
 - c. Private Land Holders 6-8
 - d. Ontario: 20, 43, 45- 47, the last sentence of paragraph 55, 56, 61
 - e. Amabel: The second sentence of paragraph 4

5. The Plaintiffs view as irrelevant to this litigation the allegations contained in the following paragraphs of the Statements of Defence:
 - a. The SBDC: None
 - b. Canada: None
 - c. Private Land Holders: None
 - d. Ontario: 9, 34, 60
 - e. Amabel: None

6. The Plaintiffs take no position with regard to the allegations contained in the following paragraphs of the Statement of Defence:
 - a. The SBDC: None
 - b. Canada: None
 - c. Private Land Holders: None
 - d. Ontario: 35-37, 39-41
 - e. Amabel: None

7. The Plaintiffs adopt paragraphs 8 -12 of the Statement of Defence of the Attorney General of Canada to the Crossclaim of the Defendant Her Majesty The Queen in Right of Ontario dated 18 May 2004.

8. The Plaintiffs adopt paragraphs 2-3 of the Statement of Defence of the Attorney General of Canada to the Crossclaim of the Defendant The Corporation of the Township of Amabel dated 18 May 2004.
9. The Plaintiffs adopt paragraphs 3, 4, 9-21 of the Statement of Defence of the Attorney General of Canada to the Crossclaim of the Defendants Barbara Twining, Larry Twining, David Dobson and Albert Lemon dated 21 June 2004.
10. The Plaintiffs adopt paragraphs 2-4, 9-21 of the Statement of Defence of the Attorney General of Canada to the Crossclaim of the Defendant Sauble Beach Development Corporation dated 21 June 2004.

DETAILED RESPONSE TO PARTICULAR ALLEGATIONS

The SBDC

11. As to paragraph 3, while the title of the SBDC may be traced back to Crown Patent, the Statement of Claim of the Plaintiffs calls the validity of said Patent into question.
12. As to paragraph 4, the SBDC is or ought to be aware that the Plaintiffs were not involved in the companion action, other than by virtue of the action being brought on their behalf. They had no say as to against whom the action was to be brought.

13. As to paragraph 6, the Plaintiffs say that they and their predecessors were, at all material times, under a legal disability and relied upon their fiduciary, Canada, for relevant and discoverable information and appropriate action on their behalf.
14. As to paragraph 7, the Plaintiffs say that they have no knowledge of the facts alleged therein, that they are in any event *res inter alios acta* and do not give rise to the legal results pleaded.
15. As to paragraph 9, a press interview – the particulars of which are not provided in any event – is not tantamount to the actual pursuit of litigation although it may be informative, if accurately represented, as to the time the Plaintiffs, long under disability, were aware of their cause of action.

CANADA

16. As to paragraph 6, while both Canada and the SFN allege that the lands in question are and always have been reserved out of a purported cession of land treated as such by Canada (and Ontario), the SFN and its members have in fact been denied and lost the use of those lands at least from the time of settlement upon them by the mere presence of said settlement. The SFN has, in fact, suffered damage by not having the use of this valuable property.

17. As to paragraph 8, it was always open to Canada to commence litigation on behalf of the SFN, as it has in fact done in the companion litigation. That Canada waited until 1990 to assert that the land in question was in fact land which they say comprises part of the reserve on the basis of facts which were or ought to have been within their knowledge, possession and control from the time of the 1854 Treaty forward would indicate an omission for which Canada not only is responsible in law, but for which Canada has taken explicit responsibility. As such, the Plaintiffs say that Canada is estopped from arguing that they have not caused or contributed to the damages suffered by the Plaintiffs and is further estopped from arguing that it has no responsibility for any act or omission.

18. As to paragraph 10, the Plaintiffs say that the statutes pleaded therein have no application in the particulars of this action or, alternatively, are *ultra vires* pursuant to section 35 of the *Constitution Act 1982*. The Plaintiffs further say that equity does not favour the Crown in Right of Canada in this case in any way and that “analogy to the to the Statute of Limitations”, as pleaded in said paragraph 10, is not a defence in law or at equity.

PRIVATE LANDHOLDERS

19. As to paragraphs 6 & 8, see the comments as above at paragraph 14 herein.

20. As to paragraph 7, the Plaintiffs say that they have no knowledge of the assertions of claim referred to and deny that these amounted to assertions of claim or title for any relevant purpose. Reference to any correspondence between these defendants, or their predecessors, or any of them, and the defendants her Majesty the Queen in Right of Canada and Attorney General of Canada, is *res inter alios acta*.

ONTARIO

21. As to paragraph 19, the plaintiffs put Ontario to strict proof thereof and adopt, repeat and rely on the position of Canada with respect to this allegation, as above at paragraph 7 herein.

22. As to paragraphs 21 and 22, the Plaintiffs say that it does not lie in the mouth of Ontario as a fiduciary to plead a procedural bar to the plaintiff's constitutional rights.

23. As to paragraph 23, the Plaintiffs say that it does not lie in the mouth of Ontario to plead as such. The Plaintiffs have not alleged that Ontario is trespassing. In any event, the Plaintiffs say that the assertion by Ontario is, simply, bad law.

24. As to paragraph 24, the Plaintiffs say that this assertion is wrong both in fact and in law.

25. As to paragraphs 29 and 30, the Plaintiffs deny these allegations as a matter of law.

As of the date of this pleading, leave has been sought to appeal this issue to the Supreme Court of Canada. In any event, the Plaintiffs say that Ontario's pleading relates to a matter of procedure rather than substantive law and is capable of remedy if, indeed, the legislature does not intercede to abolish this archaic practice. Furthermore, the Plaintiffs say that the idea that a beneficiary of a fiduciary relationship might have to receive permission to seek a remedy (constitutional or otherwise) from the very fiduciary against whom the beneficiary wishes to take action fundamentally undermines the essence of the relationship. The Plaintiffs say that such a procedural threshold (or hurdle) to achieving a remedy is antithetical to the essence of the relationship and - in this case - the recognition afforded it by section 35 of the *Constitution Act 1982*. The Plaintiffs say that it is the *Constitution Act*, and not the *Rules of Civil Procedure* - ancient or otherwise - that form the supreme law of Canada.

26. As to paragraphs 38 and 39, the Plaintiffs say that, as a matter of law, the Crown is indivisible and that fiduciary obligations on the part of the Crown to Aboriginal peoples and First Nations are joint and several, irrespective of any constitutional arrangement or agreement on the part of the Province of Canada and Canada West as of the date of the treaty, and their successors Canada and Ontario, as to indemnification or succession.

DEFENCE TO COUNTER-CLAIMS

27. The Plaintiffs repeat and rely upon the contents of their Statement of Claim and their Consolidated Reply herein in relation to all Counterclaims.

Date: 19 August 2004

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