

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:

CHIPPEWAS OF SAUGEEN FIRST  
NATION

Plaintiff

– and –

THE TOWN OF SOUTH BRUCE  
PENINSULA, HER MAJESTY THE  
QUEEN IN RIGHT OF ONTARIO, HER  
MAJESTY THE QUEEN IN RIGHT OF  
CANADA, THE ATTORNEY GENERAL  
OF CANADA, BRENDA JOAN ROGERS  
AND GARY MICHAEL TWINING AS  
EXECUTORS OF THE ESTATE OF  
BARBARA TWINING, DAVID  
DOBSON, ALBERTA LEMON, SAUBLE  
BEACH DEVELOPMENT  
CORPORATION, ESTATE OF WILLIAM  
ELDRIDGE, ESTATE OF CHARLES  
ALBERT RICHARDS, and THE  
ATTORNEY GENERAL OF ONTARIO

Defendants

)  
)  
)  
) *Nuri G. Frame, Marc Gibson and Daniel  
Goudge*, for the plaintiff, Chippewas of  
) Saugeen First Nation

)  
)  
) *Jonathan C. Lisus, Andrew Winton, John  
Carlo Mastrangelo, Zain Naqi and David  
Ionis*, for the Defendant, The Corporation of  
) the Town of South Bruce Peninsula  
) (formerly The Corporation of the Township  
) of Amabel)

)  
)  
) *Robert Ratcliffe, Richard Ogden, Stephanie  
Figliomeni and James Shields*, for the  
) Defendants, Her Majesty the Queen in right  
) of Ontario and The Attorney General of  
) Ontario

)  
)  
) *Michael Beggs, Janet Brooks, Barry Ennis  
and Madeline Torrie* for the Defendants, Her  
) Majesty The Queen in right of Canada and  
) The Attorney General of Canada

)  
)  
) *G. Edward Oldfield*, for the defendants,  
) Sauble Beach Development Corporation and  
) David Dobson

)  
) **HEARD IN WRITING: JUNE 5, 2023**  
)  
)  
)

**VELLA J.**

## **SUPPLEMENTARY REASONS FOR JUDGMENT – PHASE 1**

[1] By Reasons released April 3, 2023, I issued various declarations, including at para. 696(c):

The entire portion of the valuable fish landing ground fronting on Lake Huron that was reserved from surrender by Saugeen First Nation in Treaty 72 and known to Saugeen First Nation as “*Chi-Gmiinh*”, which includes a substantial portion of what is now called Sauble Beach, was and continues to be reserved for the sole use and benefit of the Chippewas of Saugeen First Nation and today forms part of Saugeen Indian Reserve No. 29.

And at para. 696(d):

No third parties have any interest in *Chi-Gmiinh*, also known as the reserve portion of Sauble Beach.

[2] At para. 697, I indicated that I was considering declaring that the current family title owners (Defendants Alberta Lemon, The Estate of Barbara Twining, and David Dobson) would have a life interest in the Disputed Lots (as defined in the Reasons). As this issue had not been addressed at trial, I invited written submissions from the affected parties as to their respective positions on this possibility, and potential terms should a life interest be declared. In the meantime, the declaration at para. 696(d) was delayed pending my decision.

[3] I have now received fulsome written submissions on behalf of the Chippewas of Saugeen First Nation, the Lemon and Twining Families, David Dobson, and Canada.

[4] The Chippewas of Saugeen First Nation object to the issuance of any life interest in the Disputed Lots to the defendants, Alberta Lemon, the Estate of Barbara Twining and David Dobson (the “Landowners”). Canada supports this position.

[5] The Landowners would like to obtain a life interest in the Disputed Lots.

[6] The intent of my invitation was to provide an opportunity for these parties to fashion a potentially novel remedy in the spirit of reconciliation. That opportunity did not manifest in any resolution.

[7] I agree with the submissions of Saugeen and Canada that, having issued the declaration at para. 696(c), this court does not have jurisdiction to impose a proprietary interest in relation to any part of Indian Reserve No. 29 that is contrary to the *Indian Act*, R.S.C., 1985, c. I-5. In particular, ss. 38(1) and 39 of the *Indian Act* requires that no part of reserve land can be disposed of unless by surrender after a community vote by the First Nation. Other provisions of the *Indian Act* address encumbrances and dispositions of reserve land as well; see e.g., s. 28(2) which requires that “[t]he Minister may by permit in writing authorize any person for a period not exceeding one year, or

with the consent of the council of the band for any longer period, to occupy or use a reserve or to reside or otherwise exercise rights on a reserve”.<sup>1</sup>

[8] Reserve land is inalienable land, and that inalienability is protected by s. 35 of the *Constitution Act, 1982*.<sup>2</sup>

[9] Furthermore, the *Municipal Act, 2001*, S.O. 2001, c. 25, does not provide jurisdiction for a municipality to make by-laws in relation to reserve land. Matters involving reserve lands, including a First Nation’s authority to govern its own reserve land, go to the core of s. 91(24) of the *Constitution Act, 1867*:

The right to possession of lands on an Indian reserve is manifestly of the very essence of the federal exclusive legislative power under s. 91(24) of the *Constitution Act, 1867*. It follows that provincial legislation cannot apply to the right of possession of Indian reserve lands.<sup>3</sup>

Subsection 81(1) of the *Indian Act* specifically recognizes the First Nation’s jurisdiction to make by-laws in matters related to its reserve land. In any event, the *Municipal Act*, at s. 19(1) only permits municipalities to make by-laws within the municipality’s boundaries. The Disputed Lots are not within any municipal boundaries.

[10] I further find that a long-term suspension of a declaration of a constitutionally protected right, as would be the effect of granting life interests in this matter, is not justified. In this case, the immediate effect of the declaration will not undermine the purpose of my order, but an ongoing suspension of this declaration would in fact undermine the recognition of the Disputed Beach as reserve lands. This is not one of those exceptional situations in which a suspension of a declaration is warranted.<sup>4</sup>

[11] I am satisfied that the granting of a life interest in the Disputed Lots to the three defendant Landowners will also not advance reconciliation in the circumstances of this case.

---

<sup>1</sup> See *Indian Act*, ss. 37, 38, and 39.1; *Opetschesaht Indian Band v. Canada*, [1997] 2 S.C.R. 119, at paras. 52-53, 84-85, 88, and 94.

<sup>2</sup> Reasons, at para. 593, citing *Southwind v. Canada*, 2021 SCC 28, at para. 63; *Guerin v. The Queen*, [1984] 2 S.C.R. 335 at p. 382, and *Chippewas of Sarnia Band v. Canada* (2000), 51 O.R. (3d) 641, at para. 275 (C.A.).

<sup>3</sup> *Derrickson v. Derrickson*, [1986] 1 S.C.R. 285, at para. 41; see also *Delgamuukw v. British Columbia*, [1997] 3 S.C.R. 1010, at para. 179; *Canadian Western Bank v. Alberta*, 2007 SCC 22, at para. 61.

<sup>4</sup> *R v. Albashir*, 2021 SCC 48, at para. 87; *R v. Powley*, 2003 SCC 43, at para. 51.

[12] Accordingly, the temporary delay in the issuance of the declaration at paragraph 696(c) of the Reasons is terminated, and this declaration is effective immediately.

Vella, J.

---

Justice S. Vella

**Released: June 30, 2023**

**CITATION:** *Chippewas of Saugeen First Nation v. Town of South Bruce Peninsula et al.*, 2023 ONSC 3928

**COURT FILE NO.:** 03-CV-253768-CM3

**DATE:** 20230630

**ONTARIO**

**SUPERIOR COURT OF JUSTICE**

CHIPPEWAS OF SAUGEEN FIRST NATION

Plaintiff

– and –

THE TOWN OF SOUTH BRUCE PENINSULA, HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO, HER MAJESTY THE QUEEN IN RIGHT OF CANADA, THE ATTORNEY GENERAL OF CANADA, BRENDA JOAN ROGERS AND GARY MICHAEL TWINING AS EXECUTORS OF THE ESTATE OF BARBARA TWINING, DAVID DOBSON, ALBERTA LEMON, SAUBLE BEACH DEVELOPMENT CORPORATION, ESTATE OF WILLIAM ELDRIDGE, ESTATE OF CHARLES ALBERT RICHARDS, and THE ATTORNEY GENERAL OF ONTARIO

Defendants

---

**SUPPLEMENTARY REASONS FOR JUDGMENT**

---

Vella, J.

**Released: June 30, 2023**