



SAUGEEN OJIBWAY NATION

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SAUGEEN OJIBWAY NATION TRIAL COMING TO AN END

Closing arguments are set to begin on October 19, 2020, in two longstanding claims by the Saugeen Ojibway Nation (SON): a claim about its ownership of lands under water and a claim about the Crown's promise to protect some of SON's traditional homelands.

Closing arguments for both claims will be heard by the Ontario court virtually, due to pandemic restrictions in place restricting attendance numbers inside a courtroom. Beginning on October 19, 2020, at 10 a.m., the hearings will be available for live viewing via a YouTube link to be posted daily on https://www.oktlaw.com/services/cases/son_titleclaim/

SON is made up of two distinct First Nations – the Chippewas of Saugeen First Nation and the Chippewas of Nawash Unceded First Nation – that have a shared history and ancestry, and launched these two claims jointly against Canada and Ontario approximately 20 years ago.

The trial began on April 23, 2019, and is being presided over by Justice Wendy Matheson of the Ontario Superior Court. To date, the majority of the 97 days of trial has taken place in a Toronto courtroom, with some of the hearing taking place in the two First Nation communities in spring of last year.

SON's claim about ownership of lands under water is a claim about title to SON's traditional homelands that were not surrendered by treaty. SON's traditional homelands – or its territory (see attached map) – includes the Saugeen (Bruce) Peninsula and about 1 ½ million acres of land to the south of it, stretching from Goderich to Collingwood. It also includes the waters surrounding those lands. Those are the waters of Georgian Bay and Lake Huron, and SON is asking the court to recognize SON's 'Aboriginal title' to those waters.

Aboriginal title, in Canadian law, is an Indigenous land right that is recognized and protected by section 35 of the *Constitution Act, 1982*. While First Nations in Canada have successfully brought court claims about Aboriginal title to lands, this is the first time that the issue of Aboriginal title to waters will be decided by a court.

Like the title claim, SON's second claim is also about its relationship to its homelands. In 1836, the British Crown pressed SON to surrender 1.5 million acres of its lands south of Owen Sound. In exchange for those rich farming lands, the Crown made SON an important promise: to protect the Saugeen (Bruce) Peninsula for SON, forever. But, 18 years later the Crown came back for a

surrender of the Peninsula. The Crown said that they could no longer protect SON's remaining lands from settlers, and Treaty 72 was signed in 1854.

SON's claim is that the Crown could have protected the Peninsula and misled SON in the negotiations of a surrender of the Saugeen (Bruce) Peninsula. SON's claim is that this was a breach of the Crown's fiduciary duty. What SON is seeking is a declaration the Crown breached this duty. If successful, in a later phase of this claim, SON will be looking for recognition of its ownership interests in lands on the Saugeen (Bruce) Peninsula that are still owned by Ontario or Canada or have not been bought and paid for by third parties (so, municipal roads, for example), as well as compensation. This second claim is against Ontario and Canada, but also includes several municipalities that own open and unopened roads on the Saugeen (Bruce) Peninsula. Recently, SON brokered a settlement with one of them – Grey County. SON's claim is continuing against the remaining municipalities, as well as Ontario and Canada.

"Our relationship to our territory has always included our connection to the water," says Chief Greg Nadjiwon of Chippewas of Nawash Unceded First Nation. "As Anishinaabe, we have a responsibility to the lands and the waters in our territory. When we brought this claim 20 years ago, it was about and still is about seeking recognition of the importance of that continuing relationship."

Chief Lester Anoquot of Chippewas of Saugeen First Nation says: "For the Saugeen Ojibway, the trial drawing to a close is one step closer in our continuing battle to assert our rights and our responsibilities to our lands and to our waters. Those rights and responsibilities are central to who we are. We hope that the Crown will be held accountable for the responsibilities and obligations that they have to us and regardless of the outcome, commit to working cooperatively with us towards reconciliation."

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