



The Joint Chiefs and Councils
of the Saugeen Ojibway Nation

November 4, 2024

STATEMENT ABOUT TREATY CLAIM

Earlier last week, the Supreme Court of Canada denied the Saugeen Ojibway Nation's request to appeal lower court decisions about Ontario's and Canada's failure to keep their promises to protect the Saugeen Peninsula.

In 1994, Saugeen First Nation and the Chippewas of Nawash Unceded First Nation (together, the Saugeen Ojibway Nation) started a court claim about the treaty promises that the Crown (now Canada and Ontario) made to the Saugeen Ojibway Nation in 1836. The court claim argued that the Crown broke its treaty promises and so breached its honour and also its fiduciary obligations to the Saugeen Ojibway.

In 1836, SON agreed to Treaty 45 1/2, which opened up 1.5 million acres of its lands south of Owen Sound to the Crown for settlement by European newcomers. In exchange, the Crown made a treaty promise to protect the Saugeen (Bruce) Peninsula for the Saugeen Ojibway from the encroachments of 'whites', forever. But the Crown did not keep its promise, instead failing to respond to steady complaints from the Saugeen Ojibway about timber theft and individuals squatting on their lands. And 18 years later, the Crown came back, pushing the Saugeen Ojibway to allow settlers onto the Saugeen Peninsula, saying they could not protect the Saugeen Peninsula from white settlers and threatening the Saugeen Ojibway that if they did not agree, the Crown would take the land without their consent. In 1854, the Saugeen Ojibway reluctantly agreed and signed Treaty 72, which opened most of the lands on the Saugeen Peninsula for settlement.

The case went to trial in 2019, and a decision was released from the Ontario Superior Court in 2021. The trial judge found that the Crown broke its treaty promise and the honour of the Crown when it failed to protect the Saugeen Peninsula for the Saugeen Ojibway. The trial judge also found that the conduct of one of the Crown officials, T.G. Anderson breached the Crown's honour because he told the Saugeen Ojibway that the Crown would not keep its promises to protect their lands and would take them without their consent if they did not agree to open the lands to settlement.

But she found that the Crown did not have a fiduciary duty to keep its treaty promise. The Saugeen Ojibway argued that the Crown had a fiduciary duty here, mainly because of the clear treaty promise to protect the Saugeen Ojibway's lands for them forever. Fiduciary duties are special obligations that arise in relationships where one party relies on the other to act in their best interests. Canadian law has historically recognized that this relationship exists between the Crown and First Nations when it comes to protection or administration of reserve lands for example, because the Crown has undertaken to take care of interests like this for First Nations. In cases where there is a fiduciary duty, the Crown has to abide by strict standards of loyalty, honesty and putting the interests of the Indigenous group first.

The case went up to the Court of Appeal for Ontario in 2023, and they agreed with the trial judge's conclusions.

The appeal to the Supreme Court of Canada asked the Court to consider whether the lower courts were wrong to find the Crown had no fiduciary duty to keep this important treaty promise. With the Supreme Court denying the appeal, the next step for the Saugeen Ojibway will be moving ahead to seek remedies for the broken treaty promise and breach of the honour of the Crown in the remedies phase of the case. In a recent case called *Restoule v Canada*, the Supreme Court of Canada found that breaches of treaty rights and the honour of the Crown can lead to real remedies to repair what was lost. This case law means the Saugeen Ojibway should get meaningful remedies for the Crown's broken promises.

"It's disappointing that the Supreme Court isn't going to hear from us about the importance of the Crown keeping its treaty promises, about why it is a relationship that should be held to the high standard of a fiduciary obligation, but we will push forward to hold the Crown accountable for their wrongs," says Ogimaaa (Chief) Gregory Nadjiwon of the Chippewas of Nawash Unceded First Nation.

"We're hopeful from other recent developments in the law that there must be real efforts and action to make things right when the Crown has breached its honour. We hope that Canada and Ontario will work with us to come to a fair and just resolution," says Ogimaa (Chief) Conrad Ritchie of Saugeen First Nation. "We remain committed to seeking a remedy that reflects our longstanding relationship to our lands and is about making right what we lost."

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Ogimaa Gregory Nadjiwon
Chippewas of Nawash Unceded First Nation



Ogimaa Conrad Ritchie
Chippewas of Saugeen First Nation

Contact:

Janet Galant, Senior Manager, Saugeen Ojibway Nation Environment Office: (519) 373-6075

Cathy Guirguis, Lawyer, Olthuis Kleer Townshend LLP: (416) 981-9347