

**The Chippewas of Saugeen First Nation, et al v The Attorney General of Canada, et al
Defendants (Court File No.: 94-CQ-50872 CM)**

**Chippewas of Nawash First Nation and Saugeen First Nation v Attorney General of
Canada, et al (Court File No.: 03-CV-261134CM1)**

APPENDIX F - SUMMARY OF FINDINGS OF FACTS SOUGHT BY THE PLAINTIFFS

The following are the findings of fact being sought by SON, organized by chapter and as set out in the Final Argument of the Saugeen Ojibway Nation. This begins at chapter 4, as the first few chapters deal with general matters for which no findings of fact are sought.

4. THE SAUGEEN OJIBWAY NATION

- (a) Anishinaabe is the primary self-identifier of members of SON.
- (b) While SON members recognize distinctions between the Ojibway, Odawa and Pottawatomi, they treat these distinctions with some fluidity, and consider the Ojibway, Odawa and Pottawatomi to be one people, not three.
- (c) Any factionalism that may have existed at Nawash in the 19th century was primarily a result of religious division fueled by different Christian denominations and by Crown government policies rather than by cultural conflict between Pottawatomi and Ojibway.
- (d) The use of different names by Europeans of Anishinaabe groups in the historical record is not a reliable indicator that they refer to different groups.
- (e) SON's identity has been continuous since before the assertion of British sovereignty, in part by genealogical descent and in part by the normal process of

political succession, whereby persons join or leave the group in accordance with Anishinaabe customary law.

5. THE ANISHINAABEMOWIN LANGUAGE

- (a) Linguistically speaking, the local dialects of Anishinaabemowin spoken at Saugeen and Nawash lie on the boundary between the regional dialects known as “southeastern Ojibwe” and “Odawa”.
- (b) The vocabulary of the local dialects at Saugeen and Nawash is closest to the Odawa speaking community at Wikwemikong.
- (c) The relationship of the dialects spoken at Saugeen and Nawash to the dialects spoken in neighbouring communities indicates a long-term stability in the geographic locations of these communities, extending over centuries.
- (d) There is no detectable trace of the Pottawatomi language in the local dialects spoken at Saugeen and Nawash, indicating that the Pottawatomi who joined SON communities were absorbed by these Ojibwe/Odawa speaking communities.

6. THE WORLDVIEW OF THE ANISHINAABE

- (a) Traditional knowledge supports the conclusion that SON has been in SONTL forever.
- (b) SON has a deep spiritual connection to the lands and waters of SONTL.
- (c) Water is a central part of SON’s spiritual connection to SONTL.
- (d) SON’s relationship with water is an important part of their identity.
- (e) SON has a responsibility to protect and care for SONUTL.

- (f) Members of SON perform specific duties to care for and protect SONUTL, which have been passed down for generations.
- (g) The responsibilities SON has to protect and care for its water cannot be fulfilled by others.
- (h) SON hold strong obligations to protect, honour, and visit their dead, which they would not willingly give up and abandon.
- (i) The above characteristics of SON have existed for hundreds and possibly thousands of years, and were true prior to 1763.

7. THE SOCIAL STRUCTURE OF THE ANISHINAABE

- (a) Dodems (or “clans”) are significant markers of identity among Anishinaabe. They are descent units that link Anishinaabe to their families, community, and ancestors. Each Anishinaabe person is associated with the Dodem of his or her father. One is not permitted to marry a person of the same Dodems. One also has special obligations of hospitality to others of the same Dodem.
- (b) The band is the central political unit of Anishinaabe society. A band is a group of people that are politically and economically independent that occupy an area that is their own and to which they hold proprietary rights.
- (c) When faced with a situation that called for more resources than were available to the band, such as an external incursion by a possibly hostile group, local bands formed Alliances with other Anishinaabe bands to protect their lands. The Three Fires Confederacy was such an alliance of Anishinaabe bands of the upper Great

Lakes. Bands within the Three Fires Confederacy were independent and free to act on their own.

- (d) General Councils were loose alliances of Anishinaabe bands in southern Ontario that met on as needed basis, primarily in the mid-19th century. General Councils did not displace band authority to make decisions. Methodist missionaries and Methodist leaders had a significant role at these General Councils.
- (e) A Tribe is a form of temporary social organization. In a tribe, a temporary leader is chosen to lead a larger group for some specific purpose. Once the task is done, the tribal leader is no longer needed. The Pottawatomi existed as a tribe from the 1700s to the 1830s.

8. AN ANISHINAABE PATTERN OF SUBSISTENCE: LIVING OFF THE LAND AND WATER

348. SON's Fishery from 1836 to 1900:

- (a) SON continued to use the waters of SONUTL for fishing, both for subsistence and commercial purposes from 1836-1900;
- (b) To the extent that the fishery was more limited in the later decades of the 19th century, this was because of limits imposed on SON by the Crown through its new licensing regime; and
- (c) To the extent the fishery was more limited in the later decades of the 19th century, SON protested curtailments of their rights, and sought the restoration of their fishing grounds.

349. SON's Fishery in the 20th Century to Present:

- (a) SON continued to use the waters of SONUTL for fishing, both for subsistence and commercial purposes in the 20th century;
- (b) To the extent that the fishery was more limited in scope in the 20th century, it was because of limits imposed on SON by the Ontario regulatory regime and the adverse effect on the fishery by invasive species;
- (c) In the 20th century, SON protested and sought to press beyond the limits imposed on them by the Crown.
- (d) SON continues to fish throughout SONUTL today; this contemporary use gives an indication of the scope of their water territory historically.
- (e) Fishing remains one of the ways SON uses and occupies SONUTL, and serves as an indication that the waters of SONUTL are part of their territory; and
- (f) Fishing is one of the manifestations of SON's spiritual connection to SONUTL.

350. SON's Hunting, Trapping, Gathering from 1830 to the Present:

- (a) In the years leading up to 1854, SON was farming only a limited amount. Harvesting activities were required and heavily relied upon for their livelihood in this period.
- (b) In the years leading up to 1854, Crown officials were aware of the limited extent of SON's farming activities and their continued reliance on harvesting as a mechanism for survival.

- (c) It would have been culturally unthinkable to SON to give up hunting and harvesting after 1854, when Treaty 72 was concluded;
- (d) It was the intention of SON on entering Treaty 72 that they would be able to continue hunting and harvesting throughout the tract surrendered; it was also in their cultural and economic interests to continue doing so.
- (e) SON continues to hunt and harvest throughout SONTL;
- (f) Hunting and harvesting in SONTL remains an integral part of SON's culture and identity;
- (g) Continued hunting and harvesting throughout SONTL is not incompatible with present use by non-Indigenous residents.

9. ANISHINAABE TERRITORIAL USE CUSTOMARY LAW

- (a) At least from the time of European contact until the present, Anishinaabe customary law provided and provides that persons from outside the relevant local First Nation were required to seek permission to enter a First Nation's territory and failure to do so would risk being met with deliberate enforcement and consequences.
- (b) As an Anishinaabe community, SON shared the same customary law.
- (c) Anishinaabe territorial custom of requiring permission to enter a First Nation's territory applies equally to water spaces as to dry land.

10. SCOPE OF LAND AND WATER USE IN SONTL

- (a) The preservation of traditional Anishinaabemowin names of many locations within SONTL suggests long-term knowledge of these locations.

- (b) The past and present use of hunting and harvesting locations identified by SON community members throughout SONTL shows SON's long-term knowledge and use of the land.
- (c) The commercial fishing locations identified throughout SONUTL shows SON's ongoing use of SONUTL.

11. SON TERRITORIAL BOUNDARIES

- (a) The boundaries of the territory claimed are consistent with SON's traditional knowledge and practices, and consistent with Anishinaabe customs more generally.
- (b) The boundaries of the territory claimed are consistent with the practice of the U.S. in making treaties with Anishinaabe people located across Lake Huron from SON, and with U.S. practices in relation to Indigenous treaties in the upper Great Lakes more generally, which included the waters of the lakes up to the international boundary.
- (c) The boundaries of the territory claimed are drawn in a way that acknowledge the rights of neighbouring First Nations.

12. THE DISTANT PAST: GEOLOGICAL RECORD AND SON TRADITIONAL STORIES

- (a) Taken in total, SON's traditional stories suggest a substantially different physical environment from the one we see today.
- (b) The physical environment described in the traditional stories closely resembles events that took place over 8,000 years ago.

- (c) The traditional stories – whether they are etiological or containers of historical facts about past geological events – are evidence of a meaningful and deep connection between SON and the water and lands of SONTL.

13. ARCHAEOLOGY

- (a) The Odawa group on SONTL developed *in situ* prior to European contact.
- (b) This group is the same group as the Odawa who lived on SONTL following the Haudenosaunee conflict.
- (c) To the extent there was a dispersal of the Odawa from SONTL during the Haudenosaunee conflict, those Odawa returned by the late 1660s or 1670.
- (d) SON is continuous with the Odawa who developed *in situ*.
- (e) Water has always been important to SON and their ancestors.

14. EUROPEAN CONTACT ON GEORGIAN BAY (1615)

- (a) In 1615, the Odawa met Champlain with a great show of force and only allowed him entry to the territory once they had established positive relations.
- (b) Warriors from SON were part of the group of Odawa who met Champlain in 1615.
- (c) At the time of European contact, the only occupants of SONTL were the Odawa and (in the eastern part of SONTL) the Petun.

15. THE CONFLICT WITH THE HAUDENOSAUNEE (1648-1701)

- (a) SON participated in the conflict with the Haudenosaunee, and successfully drove the Haudenosaunee out of SONTL in the late 1690s.

- (b) SON occupied SONTL before the conflict with the Haudenosaunee and, if SON was displaced at all, SON returned to SONTL within one generation (or 20 years).
- (c) From 1701 to 1763, there was no disturbance of the Anishinaabe's occupation, control or use of southern Ontario, including SONTL.

16. BRITISH-ANISHINAABE RELATIONS IN THE MID-18TH CENTURY

515. Generally:

- (a) In the mid-18th century, the British treated Indigenous nations as allies or enemies, not as subjects;
- (b) Indigenous nations played a key role in the outcome of the Seven Years War;
- (c) During the Seven Years War, the British, who had alienated their Indigenous allies at the beginning of the war, shifted their approach to Indigenous alliances, as the British saw them as critical to British interests and fortunes in North America;
- (d) In the mid-18th century, the British sought to make alliances with the Anishinaabe, and made promises respecting free trade and royal protection in an attempt to secure these alliances; and
- (e) Indigenous nations, including SON, were not made aware of the British assertion of sovereignty in 1763.

516. First Nations' position on territorial ownership:

- (a) As the British began to occupy formerly French forts following the capitulation of Montreal, the Great Lakes Indigenous nations made it clear that they viewed the

land and water territory of the Great Lakes as theirs, and that the British would need permission to enter and use the land and water territory;

- (b) When these assertions were made, the British did not claim the territory was theirs, and sought permission to use the territory; and
- (c) The exchange of wampum belts is an indicator that a binding agreement has been made according to Indigenous, including Anishinaabe, protocols.

517. The Treaty of Detroit (1761):

- (a) The Treaty of Detroit set the terms for Britain's occupation of the formerly French forts and provided for trade on fair terms between Britain and the Indigenous nations; and
- (b) Following the Treaty of Detroit, Britain's Indigenous allies still had fears about Britain's true intentions with respect to Britain's occupation and use of territory and relationship with the Indigenous nations.

518. The Assertion of British Sovereignty (1760-1763):

- (a) In 1763, the British were not present in SONTL.

17. PONTIAC WAR (1763)

- (b) The Indigenous allies excluded the British from Lake Huron in 1763.
- (c) The British were not present in SONUTL during Pontiac's War or in 1763 at all.
- (d) The Anishinaabe controlled all of the access point to Lake Huron/Georgian Bay in 1763.

- (e) The Indigenous allies' military actions focused on maintaining control of water passages.
- (f) The Indigenous allies had shared goals throughout the conflict of defending their territory and maintaining or creating favourable trading relationships.
- (g) By the end of the summer of 1763, the Indigenous allies who had initially sought to expel the French shifted their goals to ensure territorial integrity and reopening trading ties with the British.
- (h) The Indigenous allies were successful in achieving the goals set out above in (e) and (f) in Pontiac's War.
- (i) SON participated in Pontiac's War as part of the Indigenous alliance.
- (j) The Indigenous alliance during Pontiac's War acted together to provide security to all of the Great Lakes Anishinaabe, including SON, to protect and control their land and water territory.

18. THE ROYAL PROCLAMATION (1763)

- (a) The Royal Proclamation was intended to reassure Indigenous people about their land rights and offer reassurance about their relationship with Britain.
- (b) The Royal Proclamation recognized the legitimacy of Indigenous nations' land rights, and demonstrated the importance of those rights from the British perspective.
- (c) The Royal Proclamation excluded British subjects from SONTL.

19. THE TREATY OF NIAGARA (1764)

- (a) Sir William Johnson had, and would have been perceived by the Indigenous nations present as having, the authority to bind the Crown.
- (b) The Western Nations present at Niagara had the authority to bind their membership into a treaty with the British Crown.
- (c) Sir William Johnson attended at Niagara with the intent to make binding obligations to the Western Nations at Niagara.
- (d) The Western Nations in turn intended to make binding commitments to Johnson;
- (e) The proceedings between Johnson and the Western Nations at Niagara were consistent with Anishinaabe treaty-making protocols. The ceremonial protocols followed during the process of concluding the agreement reflected the solemnity with which both sides approached the negotiation process.
- (f) Binding obligations were made between Britain and the Western Nations at Niagara and those obligations were as set out in the Final Argument of the Saugeen Ojibway Nation.
- (g) Through the Treaty of Niagara, the Western Nations granted the British permission to use their water territories for purposes consistent with facilitating trade, protection of Indigenous territory, and alliance.
- (h) SON was present at Niagara and part of the Treaty of Niagara.

20. THE RELATIONSHIP WITH THE BRITISH CROWN POST-1764

- (a) The Great Lakes Anishinaabe consented to the British using the waterways in the Upper Great Lakes from 1764 to 1812.
- (b) The British presence in the Upper Great Lakes was consistent with the permission granted by the Great Lakes Anishinaabe through the Treaty of Niagara to allow access to enter the Upper Great Lakes for purposes consistent with alliance, trade and the protection of Indigenous lands.
- (c) The Great Lakes Anishinaabe were not limited in their use of the Upper Great Lakes.
- (d) The relationship between the British and the Great Lakes Anishinaabe was an alliance relationship.
- (e) The British relied on the Great Lakes Anishinaabe for navigational assistance until at least the 1820s.
- (f) The British relied on the Great Lakes Anishinaabe for military assistance until at least the end of the War of 1812.
- (g) Up until at least the end of the War of 1812, the British would not have been able to maintain a presence in the Upper Great Lakes without the co-operation and assistance of the Anishinaabe.

21. CONTACT WITH EURO-CANADIAN FISHERMEN AND SETTLERS IN SONTL

- (a) From 1830 to 1854, SON exercised their rights to the fishery as owners by granting permission via leases to Euro-Canadians to use the fisheries on the basis of certain conditions.
- (b) From 1830 to 1854, SON asserted their rights as owners of the fisheries in SONUTL, and others, including the Crown and Euro-Canadian fishermen, shared this understanding, notwithstanding the fact that there were some encroachments on SON's rights.

22. TREATY 45 ½ (1836)

702. Significance of the Royal Proclamation (1763):

- (a) Crown officials operating between 1836 and 1854 understood that the Royal Proclamation was binding upon them;
- (b) Crown officials operating between 1836 and 1854 further understood that the Royal Proclamation bound the Crown to several core principles, including: 1) that land surrenders must be voluntary and uncoerced; and 2) that negotiators must be honest throughout the proceedings; and
- (c) Indigenous peoples in Upper Canada in between 1836 and 1854 understood the Royal Proclamation as a foundational guarantee of their rights to their land.

703. Events of the Treaty Council:

- (a) Lt. Gov. Bond Head asserted to SON that the Crown could not keep Euro-Canadian settlers off SONTL in order to press them to give up a significant amount of their lands (Treaty 45 ½ Lands);
- (b) SON was in a position of vulnerability when they entered Treaty 45 ½. This vulnerability was the a result of Bond Head’s assertion that Euro-Canadian settlers threatened their occupation of SONTL and that those settlers could not be stopped; and of Bond Heads threats to “cast them off” and discontinue presents if they did not agree to a surrender;
- (c) Lt. Gov. Bond Head’s initial proposal was that SON give up their entire territory and retire to Manitoulin Island. It was only when they rejected this proposal that he offered to allow them to remain on a reserve on the Peninsula; and
- (d) The Crown’s primary interests in entering Treaty 45 ½ was to create space for Euro-Canadian settlers by opening up the lands south of the Peninsula to settlement.

704. The Promise to Protect:

- (a) The promise to protect the Peninsula was understood by both SON and the Crown as the main consideration SON received at the conclusion of Treaty 45 ½;
- (b) Having their remaining land protected for them in the face of Euro-Canadian settlement was SON’s primary interest in entering Treaty 45 ½;
- (c) The intention of Treaty 45 ½ was that the land be protected for SON for a long time; and

- (d) The promise to protect the land for SON was understood to bind the Crown unless and until SON agreed, freely and without coercion, to release the Crown from that promise.

705. Setting aside the Peninsula *for SON*:

- (a) Manitoulin Island, not the Peninsula or SON territory more generally, was the focal point of the Crown's plans to create a general reserve prior to Treaty 45 and Treaty 45 ½;
- (b) Although SON and other Anishinaabe, with the support of the Methodists suggested they would prefer Saugeen as the site of any such general reserve, they had in mind the portion of SON's territory that was south of the Peninsula;
- (c) There is no evidence the Crown took or planned to take SON's preferences into account in their plans for creating a general reserve;
- (d) Neither the Crown nor SON understood the creation of a general reserve on the Peninsula to be a term or condition of Treaty 45 ½;
- (e) SON, the Indian Department and other senior Crown Officials behaved after Treaty 45 ½ as if Manitoulin Island was the only general reserve that had been created; and
- (f) It was intention of both the Crown and SON at Treaty 45 ½ that the Peninsula be protected for SON, not for the Anishinaabe or some other group of First Nations more generally.

23. SURVEY OF SON'S RESERVE ON THE PENINSULA

- (a) SON's reserve on the Peninsula was marked out by survey no later than July 1837.
- (b) In 1843, additional lands were added to that reserve to reflect SON's understanding of the boundary.

24. POTTAWATOMI MIGRATIONS IN THE 1830S AND 1840S

- (a) The Pottawatomi who moved to SONTL in the 1830s and 1840s did not outnumber or overwhelm the groups they joined in SONTL.
- (b) These Pottawatomi were accepted as new SON members, after some initial issues about adjustment and integration.

25. BETWEEN THE TREATIES (1836-1854)

737. Population growth and lands settlement in Upper Canada between 1836 and 1854:

- (a) Since 1849, the lands known as the Peninsula were part of an organized district or county. Specifically:
 - (i) In 1849, the Peninsula was part of the County of Waterloo
 - (ii) In 1851, the Peninsula was divided between the Counties of Bruce and Grey
- (b) The imperial and colonial governments played a role in encouraging settlement of new immigrants in Upper Canada, through promotion and investment of resources – including for example, providing free grants of land to encourage settlement in a certain direction.
- (c) Settlement happened in zones – that is, newcomers would settle in areas close to other settlers and existing settlements, resulting in settlement moving like a wave across Upper Canada.

738. The definition of “squatting”, its prevalence in Upper Canada between 1836 and 1854, and in respect of the Peninsula:

- (a) Squatting included the illegal occupation of lands for the purpose of setting up a semi-permanent or permanent settlement, and it could also refer to other forms of trespass on lands, such as for cutting timber or taking other resources without authorization to do so.
- (b) Encroachments, such as squatting, trespass and timber theft were prevalent in Upper Canada in the mid 19th century on Indian reserves and unceded Indian lands.
- (c) Squatting resulted in some benefit – such as squatters getting a head start on settlement of lands before they were opened up for sale, or getting paid out for improvements they had made on lands. This was the case in respect of the Peninsula in the mid 19th century. The effect of this was to encourage squatting on the Peninsula.

739. The historical state of the law regarding encroachments on Indian lands:

- (a) The 1839 Act made it illegal to trespass on, cause injury to or illegally possess Indian lands – which included lands reserved for Indians or lands not yet ceded by Indians.
- (b) The 1839 Act made it illegal for anyone to cut or take timber from Indian lands.
- (c) The 1839 Act provided that offenders could be fined or jailed.
- (d) The 1850 Act made it illegal to purchase or contract for sale of Indian lands without the authority and consent of the Crown.

- (e) The 1850 Act made it illegal to sell liquor to Indians and to reside upon, settle or occupy Indian lands.
- (f) The 1850 Act made it illegal to cut or take timber from Indian lands.
- (g) As of 1851, the provisions of the 1850 Act were proclaimed to be in force in respect of the Peninsula.

740. Encroachments on the Peninsula between 1836 and 1854:

- (a) There were widespread encroachments on the Peninsula by the early 1850s.
- (b) Starting in at least 1840, SON complained about these encroachments to Crown officials.
- (c) Senior Crown officials were aware of these encroachments.

26. THE CROWN'S CAPACITY TO PROTECT THE PENINSULA (1836-1854)

778. The Crown's capacity to locate squatters on the Peninsula:

- (a) Encroachments like squatting and timber theft were not activities that could be concealed easily.
- (b) Complaints to the Crown about encroachments on the Peninsula often noted the identity and location of the squatter/trespasser.
- (c) Taken together, this meant that the Crown could have located squatters and timber thieves on the Peninsula had it wished to do so.

779. The legal tools available to the Crown:

- (a) The Crown could have issued a notice that squatters would not receive any benefit from squatting on lands.
- (b) Under the Indian Act Protection Legislation, the following measures were available to the Crown
 - (i) appointment of two or more Commissioners who could then have done the following:
 - (A) received complaints and launched investigations into those complaints;
 - (B) issued notices to offenders and required offenders to leave the lands they were occupying;
 - (C) issued warrants to sheriffs to remove the offenders, to jail and/or fine offenders and to seize timber taken illegally.
- (c) T.G. Anderson was a commissioner that could have taken steps in the years leading up to 1854 to remove squatters, trespassers and any other offenders of the Indian Land Protection Legislation from the Peninsula, including issuing notices and warrants as described.
- (d) John McLean was a commissioner that could have taken steps in the years leading up to 1854 to remove squatters, trespassers and any other offenders of the Indian Land Protection Legislation from the Peninsula, including issuing notices and warrants as described.

780. Civilian law enforcement:

- (a) There were constables appointed and active in the Counties of Bruce and Grey in the years leading up to 1854. The Peninsula divided between these counties as of 1851.

- (b) Constables of those counties had the authority to carry out warrants and execute other legal actions on the Peninsula. In particular, constables could act to execute warrants and arrests under the Indian Land Protection Legislation. They also had the capacity to carry out warrants and conduct arrests.
- (c) If there were not enough constables in a county or district, local magistrates or justices of the peace could appoint more. This was typically done at the April session of the Court of Quarter Sessions.
- (d) T.G. Anderson and John McLean were justices of the peace (pursuant to the 1850 Act), and they would have been capable of appointing constables at a sitting of the Court of the General Quarter Sessions in Bruce or Grey Counties.
- (e) Two justices of the peace could appoint special constables if they determined that more law enforcement assistance was needed.
- (f) T.G. Anderson and John McLean, acting together, could have appointed special constables to assist with law enforcement on the Peninsula if needed.

781. Militia or military assistance:

- (a) The first step in curbing encroachments on the Peninsula would have been calling on civilian law enforcement, e.g. constables, sheriffs, etc., to execute warrants, arrests and evictions. Only if those actors were overwhelmed by or inadequate to the task would the assistance of the militia or military be sought.

- (b) In the years leading up to the surrender of the Peninsula in 1854, the governing law about the militia allowed the Governor General to call up men between the ages of 18-60 for service.
- (c) The population of Grey and Bruce counties in 1851 included men between the ages of 18-60.
- (d) Based on this and other examples from the mid 19th century of the militia being used to assist the civil power and in times of emergency, e.g. the Upper Canada Rebellion, the militia had the capacity to assist if it had been called up to do so in respect of protecting the Peninsula from encroachments.
- (e) A military officer in the mid 19th century would have responded to a request from a magistrate for assistance and would have followed orders to provide that assistance.
- (f) Based on this and other examples from the mid 19th century of the military being called in to assist the civil power, e.g. Mica Bay in 1849, to assist land surveyors on the Peninsula in 1855, there was capacity for the military to assist if it had been called in to do so in respect of protecting the Peninsula from encroachments.

782. What the Crown did (and did not) do prior to October 14, 1854:

- (a) The Crown did not refuse to give squatters on the Peninsula benefits from their improvements.
- (b) The Crown did not issue any notice warning squatters to remove from the Peninsula that was specific to the Saugeen reserve.

- (c) The Crown did not issue any warrants for, or make any arrests of, or remove any squatters from the Peninsula.
- (d) The Crown did not ask for the assistance of constables or special constables to protect the Peninsula for SON.
- (e) The Crown did not ask the sheriff to remove squatters from the Peninsula until after Treaty 72 was signed.
- (f) The Crown did not call up the militia or ask for assistance from the military in respect of protecting the Peninsula for SON.

27. PRESSURE FOR THE PENINSULA PRE-OCTOBER 1854

812. Crown policy for settlement of the colony:

- (a) Settlement of the colony was a primary objective of the Crown, and squatting was useful for advancing that objective.
- (b) The Crown's policies in respect of Indigenous peoples, including policies of civilization and assimilation, advanced the objective of the settlement of colony by removing Indigenous peoples as obstacles to such settlement and exploitation of lands through treaties and land surrenders.

813. The Half Mile Strip (1851):

- (a) SON stated they were adamantly opposed to a surrender of lands for the construction of a road from Saugeen to Owen Sound. Two days later, SON agreed to Treaty 67. There is no documentary evidence to suggest this was the result of negotiations or compromise.

- (b) Anderson as a Superintendent of Indian Affairs had the authority to remove Chiefs from their offices.
- (c) On June 26 and September 3, 1851, Anderson presided over meetings hearing complaints against two SON Chiefs. Chief Peter Kegedonce Jones faced charges that included opposition to the government, which included trying to “prevent the sale of a strip of land between Owens Sound and Saugeen”.
- (d) The surrender for the half mile strip, Treaty 67, was concluded after the Crown pressured SON to secure a surrender of those lands.

814. Other efforts to seek surrenders and/or sales of lands on the Peninsula in the years leading up to 1854:

- (a) The evidence shows that as early as 1852, Crown officials were pressuring SON to surrender or sell some or all of the Peninsula, which SON refused.
- (b) The evidence confirms that senior Crown officials agreed with the plan to secure a surrender of the entire Peninsula by June 28, 1854.

815. T.G. Anderson’s attempts to secure a surrender of the Peninsula in August 1854:

- (a) Anderson told SON that the government would not help SON to protect the Peninsula from encroachments.
- (b) Anderson told SON that the government had the power to take the Peninsula without SON’s consent and that he would be recommending the government do so immediately.

- (c) Anderson's statements were threats, meant to intimidate and bully SON into surrendering the Peninsula.
- (d) In response to Anderson's threats, SON made a counterproposal for a surrender of a portion of the Peninsula: a 60,000 acre inland wedge, which Anderson refused.
- (e) The Crown did not advise SON that they would not be acting on Anderson's threats.

28. TREATY 72: SURRENDER OF THE PENINSULA (OCTOBER 1854)

857. Oliphant's plan to fund the Indian department:

- (a) Prior to October 1854, Oliphant had devised a plan for cutting the costs of the Indian Department, and funding its operations with bands' money, including revenue SON was to receive from the sale of its lands
- (b) Oliphant's plan relied on securing a surrender of all of the Peninsula (save the reserves he proposed), and using money from the proceeds of the sale of lands on the Peninsula to make the Indian Department "self-sufficient".
- (c) Based on the above, SON seeks a finding of fact that Oliphant went into the treaty council of October 13, 1854, with the belief that a surrender of all of the Peninsula (save the reserves he proposed) was required to implement his plan.

858. Suitability of the Peninsula for farming:

- (a) Crown officials, including T.G. Anderson, knew that large parts of the Peninsula, particularly the northern half of the Peninsula, were not suitable for agriculture.

- (b) Oliphant knew (or should have known given his employees were aware) that large parts of the Peninsula were not suitable for agriculture.
- (c) There is evidence that this information was published and therefore was public knowledge.
- (d) As such, Oliphant knew (or should have known) that such lands on the Peninsula would not have been in demand by settlers.
- (e) The slow pace of land sales after the surrender of the Peninsula suggests that Anderson and Oliphant significantly overstated the demand for lands to SON.
- (f) Based on the above, SON seeks a finding of fact that at treaty council with SON on October 13, 1854, Oliphant lied to SON about the demand for lands on the Peninsula. In the alternative to finding that Oliphant lied, SON submits that Oliphant failed to take steps to inform himself of what was true and to convey that to SON.

859. Bullying SON into a surrender based on the threat of white settlers:

- (a) Neither Oliphant nor any other Crown official distanced themselves from the threats and statements made by Anderson to SON in August 1854 regarding the government taking their land without consent.
- (b) At the treaty council with SON on October 13, 1854, there is no evidence that there was discussion about the failure of any so-called general reserve, the failure of other First Nations coming to reside on the Peninsula, or as the result of SON needing money to pay its debts, nor is there any evidence that these factors were ever

identified at the treaty council as motivations for or reasons why SON should agree to the treaty.

- (c) At the treaty council with SON on October 13, 1854, Oliphant focussed on the threat of white settlers encroaching on the Peninsula. This was the primary reason he suggested SON should be willing to surrender the Peninsula.
- (d) At the treaty council with SON on October 13, 1854, Oliphant knew (or ought to have known) that there were measures – for example, writing to the sheriff as he did the very next day to keep squatters off the Peninsula – that could have been taken to protect the Peninsula.
- (e) As of and leading up to the treaty council with SON on October 13, 1854, there is no evidence that Oliphant inquired about what or directed any measures to be taken for the protection of the Peninsula from the encroachment of white settlers. In other words, there is no evidence of Oliphant inquiring into what was possible or not possible in respect of protecting the Peninsula.
- (f) Based on the above, SON seeks a finding of fact that at the treaty council with SON on October 13, 1854, Oliphant lied to SON when he said it was almost impossible to protect the Peninsula from encroachment of white settlers. In the alternative , SON submits that Oliphant failed to take steps to inform himself of what was true and to convey that to SON.

860. Oliphant's tactics to secure a surrender:

- (a) Oliphant did not send advance notice of the October 13, 1854, treaty council to SON.

- (b) Chief Madwayosh was opposed to Oliphant's proposal for surrender for all of the Peninsula (save the reserves Oliphant proposed) prior to and during the treaty council on October 13, 1854. This means that SON did not have consensus prior to and during the treaty council to accept Oliphant's proposal for surrender.
- (c) By starting the treaty council immediately upon the arrival of the Chiefs from Owen Sound and Nawash, Oliphant by design ensured that SON did not have an opportunity to speak in advance of the treaty council on October 13, 1854.
- (d) SON Chiefs and members present at the treaty council on October 13, 1854, only had approximately one hour to privately discuss Oliphant's proposal.
- (e) Based on the above, SON seeks a finding of fact that Oliphant engaged in sharp dealing and aggressive tactics to secure a surrender of the Peninsula.

29. TREATY 72: HARVESTING RIGHTS

- (a) It was the intention of SON on entering Treaty 72 that they would be able to continue hunting and harvesting throughout the tract surrendered, and it was in their cultural and economic interests to continue doing so.
- (b) The Crown's intention and the Crown's interests when Treaty 72 was concluded was that SON should continue hunting and harvesting over the surrendered tracts.

30. CROWN GOVERNMENT ORGANIZATION

- (a) In relation to SONTL, Canada and Ontario are the successors of the British Crown as it existed in 1763 and in 1854.

31. LAND HISTORY AFTER 1854

- (a) Portions of lands of SONUTL are now being used and managed by each of Canada and Ontario.

- (b) After Treaty 72, land subject to the Treaty was sold, but it sold at a slow pace.

- (c) Portions of the land subject to Treaty 72 are now in the hands of each of:
 - (i) Canada;
 - (ii) Ontario;
 - (iii) Each of the Municipal Defendants; and
 - (iv) Various private parties.