



SAUGEEN OJIBWAY NATION

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## **SAUGEEN OJIBWAY NATION TRIAL DECISION RELEASED**

The decision in two longstanding claims by the Saugeen Ojibway Nation (SON) was released today by Justice Wendy Matheson of the Ontario Superior Court.

SON is made up of two distinct First Nations – the Saugeen First Nation and the Chippewas of Nawash Unceded First Nation – that have a shared history and ancestry. SON launched their claims jointly against Canada and Ontario approximately 20 years ago. SON’s claims included: an Aboriginal title claim to parts of Lake Huron and Georgian Bay, and a claim that the Crown breached its promise to protect forever parts of the Saugeen (Bruce) Peninsula for SON.

The trial began on April 23, 2019 and concluded on October 23, 2020.

### **SON’s Title Claim**

SON’s title claim was about its traditional territory, which included parts of Lake Huron and Georgian Bay. While First Nations in Canada have successfully brought court claims about Aboriginal title to lands, this was the first time that the matter of Aboriginal title to waters was decided by a court.

Justice Matheson found that SON did not meet the test set out by Canadian law for Aboriginal title to the claimed areas in Lake Huron and Georgian Bay. Aboriginal title, in Canadian law, is an Indigenous land right that is recognized and protected by section 35 of the *Constitution Act, 1982*. The prevailing test calls for evidence about exclusive and sufficient use at the time that the British Crown asserted sovereignty. In this case, that date was 1763.

Although Justice Matheson agreed that there was a lot of evidence about SON’s historic presence on the Peninsula and on the waters for fishing and ceremonial practices, she decided that there was insufficient evidence of exclusive and sufficient use and occupancy of the whole area claimed in order to meet the test.

“We are disappointed that the court didn’t recognize our claim to our waters,” says Acting Chief Anthony Miptoon Chegahno of the Chippewas of Nawash Unceded First Nation. “As Anishinaabe, our connection to our water territory is extremely important and we will continue to exercise our responsibilities and assert our rights to our lands and waters.”

## **SON's Treaty Claim**

SON's Treaty Claim was also about its relationship to its homelands. In 1836, SON agreed to Treaty 45 ½, which surrendered 1.5 million acres of its lands south of Owen Sound to the Crown. 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 where SON surrendered most of the Peninsula.

Justice Matheson's decision agreed with SON that there was a treaty promise to protect the Peninsula for SON, and found that the Crown breached that treaty promise. She said that the Crown could have and should have done more to protect SON's lands on the Peninsula. Because it didn't, she found that the Crown breached its honour. Justice Matheson concluded that one of the Crown's negotiators, T.G. Anderson, breached the honour of the Crown by saying that the Crown would not honour its promise to protect the Peninsula.

SON also sought a declaration that Crown's failure to protect SON's lands and keep its treaty promise was a breach of the Crown's fiduciary duty, but Justice Matheson disagreed. She found that there was no fiduciary duty in addition to the Crown's obligation to honour its treaty promises.

"We are happy that the court affirmed the importance of the treaty promise the Crown made to our ancestors in 1836 to protect our lands, and held them to account for breaching that promise to us," says Chief Lester Anoquot of the Saugeen First Nation. "This has been long journey to hold the Crown accountable for its broken promises, and we hope that they will commit to working cooperatively with us towards reconciliation and resolution of these wrongs."

SON's Treaty Claim is being heard in phases. This phase was about declarations, and the second phase will be about remedies. The second phase will only take place after all appeals of the first phase are heard and decided. As remedy, SON seeks compensation and a recognition of its interests in lands on the Peninsula – particularly those owned by Ontario, Canada and the road allowances and shore road allowances owned by municipalities who are named as defendants in the Treaty Claim. The municipalities made arguments in phase 1 that they should be excluded from SON's Treaty Claim, but Justice Matheson ruled that this question is a matter for phase 2 of the Treaty Claim.

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