Pape Salter Teillet

PST Case Summary

Chippewas of Saugeen First Nation v South Bruce Peninsula

Analysis and implications of the Court of Appeal for Ontario's 2024 Decision*

Overview

On December 9, 2024, the Court of Appeal for Ontario issued its decision in a case between Chippewas of Saugeen First Nation and the Town of South Bruce Peninsula. It upheld a lower court ruling that the entire length of Chi-Gmiinh – a sandy stretch of Lake Huron shoreline known today as Saugeen Beach (formerly Sauble Beach) – is and always has been part of Saugeen Reserve No. 29 under the terms of an 1854 treaty.

The decision represented a complete victory for Saugeen First Nation after 170 years of fighting to protect land their ancestors chose to reserve for the use and benefit of their people. The case marks the first time in the history of Canada that a court has returned land to a First Nation that was wrongfully taken and sold by the Crown to third parties. (On August 28, 2025, the Supreme Court of Canada announced that it would not hear an appeal of the lower courts' decisions, settling this long-running case once and for all.)

Background

Chi-Gmiinh was at the heart of Saugeen First Nation's traditional territory long before it became a popular tourist destination. Located on the Bruce Peninsula – formerly known as the Saugeen Peninsula – the beach is on the shore of Lake Huron, where the Saugeen people have always lived. The area that includes Chi-Gmiinh is land they chose to reserve and protect for future generations when their original 2,000,000-acre (809,000-hectare) territory was carved down into small "postage stamp" reserves through successive treaties with the Crown during the 19th century.

The main Saugeen reserve was improperly surveyed in 1855. About 1.4 miles (2.2 km) of beach at the north end of Chi-Gmiinh – subsequently known as North Sauble Beach – was cut out of the reserve, contrary to the terms of what is now known as Treaty 72. The government of the day then proceeded wrongfully to patent and sell the lakefront land, despite repeated protests over many years from Saugeen First Nation. After a re-survey in the early 1970s, the Government of Canada recognized its error and began to support the Nation's claims. However, the Town of Amabel (now South Bruce Peninsula), when it became aware that the disputed stretch of shoreline should be included in Saugeen's reserve, moved to buy lots along North Sauble Beach – for $1 each. The federal government filed a lawsuit on Saugeen First Nation's behalf in 1990, and the Nation launched its own suit in 1995. The lawsuit was opposed by the Town of South Bruce Peninsula, the Government of Ontario and several private landowners, who collectively disputed the interpretation of Treaty 72 shared by Saugeen First Nation and the Government of Canada, the treaty partners.

After more than 30 years of litigation, the case went to trial in 2021.

Initial Judgment

On April 3, 2023, Justice Susan Vella of the Ontario Superior Court of Justice made the following declarations, all as requested by Saugeen First Nation:

— Saugeen and the Crown reserved the full extent of Chi-Gmiinh from surrender in Treaty 72, including North Sauble Beach.

— The Crown failed to act honourably when it cut North Sauble Beach out of the reserve.

— The Crown failed to fulfill its duty to protect Saugeen First Nation's reserve land.

— No one other than Saugeen First Nation has rights to any part of Chi-Gmiinh, including North Sauble Beach.

As Justice Vella summed up her conclusions (para. 693): "To achieve reconciliation means that the status quo must sometimes change. In the process of that change some will bear the brunt. Sometimes the hardship will be borne by Indigenous peoples and First Nations, and sometimes it will be borne by non-Indigenous Canadians. Change can be painful, much less, to echo the words of the Court of Appeal in Chippewas of Sarnia, 'uncomfortable'. However, in this case, change in the status quo is required to achieve justice and is the right step towards reconciliation."

The Town of South Bruce Peninsula, the provincial government and the private landowners immediately appealed that ruling.

Court of Appeal Decision

The Court of Appeal unanimously affirmed Justice Vella's ruling on all issues concerning the treaty rights of Saugeen First Nation, holding that:

— The correct approach to treaty interpretation is to look to the text of the treaty and then to the historical context surrounding it, in order to determine the mutual intentions of the treaty parties.

— Considering the text and context of Treaty 72, the parties intended that Saugeen would reserve from surrender the whole of Chi-Gmiinh, including North Sauble Beach.

— The court declarations by Justice Vella that Chi-Gmiinh is Saugeen's reserve land and that no one else has rights to it are clear, definite and just remedies that will help achieve reconciliation.

— Courts must consider the particular circumstances of each case when weighing Indigenous reserve rights and non-Indigenous property rights – and in this case, Saugeen's reserve right outweighs any private property rights.

In its decision, the Court of Appeal observed (para. 241): "There is no principled reason that a treaty-protected reserve interest of a First Nation should, in every case, give way to the property interest of a private purchaser, even an innocent, good faith purchaser for valuable consideration. Such an approach … fails to recognize the sui generis nature of Indigenous land interests and would not move us closer to reconciliation."

Generalizing from this specific decision: A courtroom is rarely, if ever, the place where reconciliation is achieved. But the courts do play an important role in enabling and encouraging Indigenous communities and the Crown along that journey. The effectiveness of the courts' facilitator role is evident in the declarations issued in this case. They clarify Saugeen First Nation's rights, make clear that the Crown infringed them and provide the opportunity to address those past wrongs.

Key implications

This was a unique case involving four governments and several private parties, as well as the intersection of public, private and Indigenous rights – all focused on a significant geographical landmark with a history of public use. And in a reconciliation milestone, the case also brought together Saugeen First Nation and the federal government on the same side, fighting to implement the agreed terms of their historical treaty. The courts responded by applying traditional legal principles, balancing the various rights engaged and ultimately making space for the modern exercise of First Nation self-government in a challenging context. Here are the main takeaways from the ruing:

— The Court of Appeal affirmed and applied the principles of treaty interpretation that have guided courts since the Marshall decision over 25 years ago. The Court rejected Ontario's argument that Saugeen First Nation did not intend to reserve North Sauble Beach in Treaty 72 and instead intended to reserve a much larger area at the other end of its reserve that was also not surveyed in 1855 – land that Saugeen First Nation did not ask for and has never received.

— The Court again applied established legal principles to confirm that private property rights are not absolute and, in the event of a conflict, must be balanced against constitutionally protected Indigenous treaty rights on a case-by-case basis. In this instance, no private residences were affected, and the private landowners had been using the beach for commercial purposes as a public parking lot. They will have an opportunity to seek financial compensation for their loss in a future second phase of the trial, which will deal with damages and compensation issues.

— First Nation self-government is consistent with the public interest: the ruling enables Saugeen First Nation to continue managing all of Sauble Beach after opening the first beach park on South Sauble Beach in the 1960s and taking over North Sauble Beach in April 2023.

**This summary highlights key points of the decision of the Ontario Court of Appeal in Chippewas of Saugeen First Nation v South Bruce Peninsula (Town), 2024 ONCA 884. The summary was prepared by Pape Salter Teillet LLP, legal counsel to Saugeen in this appeal, and reflects the opinions of the firm. It does not constitute legal advice.*

"The Court has recognized the importance of Sauble Beach to Saugeen First Nation, but we recognize that it is important to others as well, including as a tourist destination. We look forward to continuing the good work that we have done with our neighbours and partners over the past two summers to keep the beach a special place for everyone under Saugeen First Nation's jurisdiction."

– CHIEF CONRAD RITCHIE, SAUGEEN FIRST NATION