

**CITATION:** Six Nations of the Grand River Band of Indians v. The Attorney General of  
Canada et al., 2024 ONSC 3844

**COURT FILE NO.:** CV-18-00594281-0000

**DATE:** 20240705

**SUPERIOR COURT OF JUSTICE - ONTARIO**

**RE:** Six Nations of the Grand River Band of Indians, plaintiff

**AND:**

The Attorney General of Canada and His Majesty the King in Right of Ontario,  
defendants

**AND:**

Mississaugas of the Credit First Nation, intervener

**BEFORE:** J.T. Akbarali J.

**COUNSEL:** *Iris Antonios, Robert Janes, K.C., and Gregory Sheppard*, for the plaintiff

*Tania Mitchell, Patrice Robinson, Maria Vujnovic, Edward Harrison, Cameron Fiske, Tanya Muthusamipillai and Myra Sivaloganathan*, for the defendant The Attorney General of Canada

*Manizeh Fancy, David Feliciant, Geoff Hall, Bryn Grey, Lina Chaker and Serena Yun*, for the defendant His Majesty the King in Right of Ontario

*Nuri Frame, and Alex DeParde*, for the intervener Mississaugas of the Credit First Nation

**HEARD:** July 5, 2024

**ENDORSEMENT**

[1] At this case conference, we addressed the following issues:

- a. Agreed-upon expert report protocol;
- b. Delivery of documents underlying Ontario's expert reports;
- c. The order with respect to Canada's examination of certain witnesses out of court;
- d. A hybrid commissioner for the examination out of court; and
- e. Estimate of trial length.

### **Expert Report Protocol**

[2] The parties have agreed to a protocol with respect to delivery of expert reports. They have produced a portion of it to me. Subject to the availability of judicial resources, in particular for the contemplated pre-trial in December 2024, I approve the protocol set out at Tab A of Ontario's Case Conference Memorandum dated July 4, 2024. If the parties require an order approving an attached protocol, they may send me one for signature.

### **Production of Documents Underlying Ontario's Expert Reports**

[3] An issue has arisen with respect to the production of the documents underlying Ontario's report. Ontario advises that it expects to be able to deliver the documents underlying all reports but one by July 12, 2024, and it will deliver the documents underlying the last report as soon as possible. If production of those documents becomes an issue, I will address it at the next case conference.

### **Form of Order from Motion to Examine Witnesses out of Court**

[4] The parties have delivered a form of order arising out of Canada's motion to examine certain witnesses out of court. One clause was in dispute, relating to my determination that any party could seek costs with respect to the duplication of costs that would be incurred if the trial judge orders that the examinations taken out of court be played at trial. Ontario and Canada agreed that the duplication of costs could be sought only from Canada, while the plaintiff and MCFN did not consent to that limitation.

[5] In my view, the question of duplicated costs arises from the trial judge's decision to replay the video at trial. The trial judge's exercise of discretion to award costs may factor in the positions taken by the parties at trial on that issue. I see no reason to restrict the ambit of the trial judge's discretion. The parties can make whatever arguments about costs they consider appropriate at the time.

[6] Order to go in the form that I have signed.

### **Hybrid Commissioner**

[7] An issue has arisen with respect to the hybrid commissioner the parties have agreed will have a role in the out of court examinations. The parties hope to have a judicial officer act as commissioner, but judicial resources on the civil team in Toronto are thin and may not permit the allocation of a commissioner. The parties shall have further discussions and advise me of what, exactly, they would require of a judicial commissioner, and whether it may be a feasible alternative to engage an arbitrator to act as commissioner.

[8] At the same time, I shall explore what resources the court may be able to make available.

### **Estimate of Trial Length**

[9] The parties have prepared estimates of trial length which differ in significant measure. The parties agree, however, that they have reached the stage where further refinement of trial length

requires determining matters that are within the ambit of the trial judge, such as how to authenticate and admit documents, and how to lead evidence from the parties' experts. I will explore whether a trial judge can be identified.

**Next Case Conference**

[10] The next case conference in this matter shall take place on August 1, 2024 at 1 p.m. for two hours.

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J.T. Akbarali J.

**Date:** July 5, 2024