

Date Heard: January 29, 2025

Nature of Hearing (mark with an "X"):

Motion Appeal Case Conference Pre-Trial Conference Application

Format of Hearing (mark with an "X"):

In Writing Telephone Videoconference In Person

Relief Requested:

See below.

Disposition made at hearing or conference (operative terms ordered):

See below.

Brief Reasons, if any:

The plaintiff and Ontario provided very helpful memos in advance of today's case management conference.

First, the parties provided an update on the process leading toward the production of a joint book of documents. The parties advised that they have now reached an agreement on a protocol, but not a timetable. The parties will be discussing the timetable with Firestone Regional Senior Justice at a pre-trial conference to be held on January 28, 2025. The resulting timetable will be an important part of trial planning. Once it is in place, the parties should contact Theresa.finelli@ontario.ca so that we can schedule a further case management conference.

The plaintiff raised the issue of obtaining a trial date and a trial judge. I asked the parties how long they anticipated requiring for trial and when they would be ready to start trial. Without that information, I would be reluctant to seek the designation of a colleague as the trial judge.

The plaintiff stated that it estimated a trial lasting 330 sitting days and Canada estimated a trial of 430 days. I advised the parties that I will expect them to sharpen their pencils and to reduce their time estimates well below the current estimates. A trial lasting 430 sitting days would take approximately 2.5 calendar years to complete. I will need to be persuaded that a trial of that extraordinary length is required.

Moreover, I advised the parties that it is not a solution to simply convert oral evidence into written evidence. Such an approach unreasonably shifts the burden on to the trial judge hearing the case and does not advance the interests of justice.

The plaintiff indicated that would be ready to proceed to trial by March 2026. Ontario indicated that it was ready to go any time. Canada, however, indicated that it expected that the trial would not be ready to start until January 2027. In my view, Canada's estimate is not reasonable. It is difficult to understand how, at this point in the litigation, it would take a further two years to get ready for trial. Canada is encouraged to devote the necessary time and resources to get this trial ready to go in less than two years. We will discuss this issue again once the JBD timetable is confirmed.

The plaintiff indicated that it "intends to raise the issue of whether there should be separate hearings ordered under Rule 6.1.01" because a "separate trial of threshold issues could be an effective way to better allocate court time and encourage resolution of issues with judicial guidance." I offered my preliminary view that I was unlikely to grant such an order. Bifurcation of this dispute seems entirely counterproductive and contrary to the plaintiff's stated desire to get to trial speedily. The parties should focus on getting ready for the main trial, not bringing motions that will delay the commencement of the trial. If the plaintiff intends to advance this submission, I will timetable a case conference to determine the request.

Additional pages attached: Yes X No

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Signature of Judge