

ONTARIO  
SUPERIOR COURT OF JUSTICE

THE HONOURABLE

) WEONEDAY THE 5<sup>TH</sup> DAY OF  
) FEBRUARY , 2025

REGIONAL SENIOR JUSTICE S.E.  
FIRESTONE

BETWEEN:

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

Intervenor

ORDER

**Respecting the Authenticity and Admissibility of Documents and Timetable**

**for the Joint Book of Documents**

ON THE AGREEMENT of all parties, this Court makes the following order with respect to the authenticity and admissibility of documents and timetable for the Joint Book of Documents in this litigation:

1. THIS COURT ORDERS, subject to any further order of the Court, that the authenticity and admissibility of documents and the timetable for the Joint Book of

Documents in this litigation be governed by the Agreement as to Documents dated January 31, 2025 and signed by counsel for all parties. The Document Agreement is attached to this order as Schedule "A" and the timetable for the Joint Book of Documents as Schedule "B".

  
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REGIONAL SENIOR JUSTICE S.E.  
FIRESTONE

## **SCHEDULE “A”**

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

B E T W E E N :

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

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MISSISSAUGAS OF THE CREDIT FIRST NATION

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**AGREEMENT AS TO DOCUMENTS**

**Part I – Authenticity of Documents**

1. For purposes of this Agreement:

- a) “Historical Documents” are primary source documents or published primary source documents at least 40 years old as of the date this action was commenced (March 7, 1995), including those derived from published collections of archival documents and sessional papers even if such publications are less than 40 years old;
- b) “Authentic” and “Authenticity” have the meaning ascribed to them by Rule 51.01 of the *Rules of Civil Procedure*, recognizing that all the Historical Documents produced in the action are copies of Historical Documents; and
- c) A “Transcription” is a document prepared by or for a party to serve as a reproduction of a document for the purpose of this litigation.

2. Subject to the terms of this Agreement, the parties agree that Historical Documents produced by the parties or cited in an expert report served in this action as of the commencement of trial are deemed to be Authentic.

3. This Agreement does not apply to secondary source documents such as the texts, book excerpts, commentaries, and journal articles referred to by experts. The usual evidentiary rules apply for the admission of any such documents into evidence.

4. Notwithstanding the foregoing, any party may take the position that a document produced in this action or cited in an expert report may not be Authentic, should the party form the view that is the case. The parties will make best efforts to resolve any authenticity disputes before the start of trial. If the Authenticity of a Historical Document remains disputed, the following procedure shall apply:

- a) The party that intends to dispute Authenticity of a Historical Document shall provide reasonable advance notice to all parties of its intention, together with a summary description of the basis for its position.
- b) If Authenticity of a Historical Document is disputed, the party seeking to rely on the Historical Document shall be obliged to demonstrate its authenticity, and all parties shall be entitled to adduce evidence and make arguments to the trial judge on the issue of Authenticity of the disputed Historical Document, and the parties will request a ruling from the trial judge as to Authenticity.

5. The parties are not precluded from leading evidence to interpret, contradict, qualify, or contextualize the substance of a document or any part thereof, or from making an argument as to the interpretation, reliability, weight, legal effect, or materiality of a document, whether or not that document is deemed Authentic as provided herein or is admitted at trial as evidence of the truth of its contents.

6. Notwithstanding the foregoing, in the event that subsequent evidence comes to light calling into question the Authenticity of a document, including a document in the Joint Book of Documents, the parties are not precluded from challenging it at trial.

## Part II – Transcriptions

7. Transcriptions may be admitted as interpretive aids and relied upon by the parties and the judge at trial, provided that:

- a) the original document from which the Transcription has been made is admitted into evidence; and
- b) in the case of a conflict between the Transcription and the original document, the original document will be preferred.

8. The parties will make best efforts to resolve any Transcription disputes before the start of trial.

9. Where a Transcription has been included in the Joint Book of Documents and/or entered as an exhibit at trial, a party may dispute the accuracy of a particular Transcription

or part of a Transcription, in which case:

- a) The party that intends to dispute the accuracy of the Transcription shall make best efforts to provide reasonable advance notice to all parties of its intention, together with a summary description of the basis for its position.
- b) If the accuracy of the Transcription is disputed, all parties shall be entitled to adduce evidence and make arguments to the trial judge on the issue of the accuracy of the Transcription, and the trial judge will make a ruling as to its accuracy.

### **Part III – Joint Book of Documents**

10. The parties agree to compile a Joint Book of Documents (the “JBD”) and to jointly request that the trial judge mark the documents contained in it as exhibits and admit them into evidence at the start of trial.

11. The JBD will contain copies of the Historical Documents referenced in expert reports, except those Historical Documents that a party considers to be inadmissible, and such additional documents as may be agreed to by the parties, in accordance with a timetable appended as **Appendix A**. In any list(s) of documents the parties propose to include in the JBD, any documents which are not referred to in expert reports that have been served by the parties will be listed separately. The final JBD and corresponding index will be arranged in chronological order.

12. Subject to the other terms of this Agreement, unless the trial judge rules that a given document is not Authentic, the parties agree that documents in the JBD shall be deemed to be authentic and admitted into evidence and may be relied upon for the following purposes:

- a) As proof that the document was created by the indicated author on or about the date indicated and, where appropriate, that it was sent by the author and received by the intended recipient or recipients, on or about the dates indicated;
- b) As evidence of the state of mind of the author; and
- c) As evidence of the truth of their contents, recognizing that the trial judge will be obliged to consider and weigh the contents of a document in the context of other relevant evidence.

13. A party agreeing to the inclusion of a document in the JBD is not an admission that the content of the document is true or an admission of fact or an admission that the opinion of any expert citing the document is admissible, and does not derogate from paragraph 5 of this Agreement.

14. The parties will make reasonable efforts to avoid duplication where possible.

15. The parties will make reasonable efforts to include complete copies of documents.

16. The parties will make reasonable efforts to include legible copies of documents where possible. As contemplated by paragraphs 7 – 10 above, the parties will make reasonable efforts to include in the JBD Transcriptions of any handwritten documents or any other document that may be difficult to read.

17. Before finalizing the JBD, the parties will make best efforts to resolve any disputes about documents to be included in the Joint Book.

18. The JBD is not intended to act as a complete list of all documents to be tendered at trial. Any party may introduce a document in the ordinary course at trial, and no party shall object on the basis that it could have been included in the JBD, or otherwise did not form part of the JBD.

19. The parties agree to the following, having regard to the questions which arise in considering how documents in the JBD are to be treated for trial purposes (see *Girao v. Cunningham*, 2020 ONCA 260 at para. 33):

	Question	Answer
1.	Are the documents, if they are not originals, admitted to be true copies of the originals? Are they admissible without proof of the original documents?	Yes.
2.	Is it to be taken that all correspondence and other documents in the JBD are admitted to have been prepared, sent and received on or about the dates set out in the documents, unless otherwise shown in evidence at the trial?	Yes.
3.	Is the content of a document in the JBD admitted for the truth of its contents, or must the truth of the contents be separately established in the evidence at trial?	Documents in the JBD may be admitted as evidence of the truth of their contents, subject to paragraphs 5, 12, and 13 of this Agreement.
4.	Are the parties able to introduce into evidence additional documents not mentioned in the JBD?	Yes.
5.	Are there any documents in the JBD that a party wishes to treat as exceptions to the general agreement on the treatment of the documents in the JBD?	Yes; see Part II (Transcriptions) of this Agreement.
6.	Does any party object to a document in the document book, if it has not been prepared jointly?	Not applicable; the document book in this case will be prepared jointly.

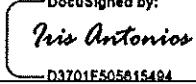
**Part IV – Miscellaneous**

20. For ease of the trial judge's navigation and cross-referencing, the parties agree that all exhibits – including those marked with a number and those marked for identification with a letter – will be placed in a concordance table that lists all other versions and/or extracts of the same exhibit, including documents that have already been marked as exhibits through the course of the Rule 36 evidence preservation process which the trial judge admits as evidence at trial.

21. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

Agreed on behalf of the parties to this action by their lawyers of record.

DATED AT TORONTO, ONTARIO this 31<sup>st</sup> day of January, 2025

  
\_\_\_\_\_  
Counsel for the Plaintiff  
Six Nations of the Grand River Band of Indians

DATED AT TORONTO, ONTARIO this 31<sup>st</sup> day of January, 2025

\_\_\_\_\_  
Counsel for the Defendant  
His Majesty the King in right of Ontario

DATED AT TORONTO, ONTARIO this 31<sup>st</sup> day of January, 2025

\_\_\_\_\_  
Counsel for the Defendant  
The Attorney General of Canada

DATED AT TORONTO, ONTARIO this 31<sup>st</sup> day of January, 2025

\_\_\_\_\_  
Counsel for the Intervenor  
Mississaugas of the Credit First Nation

**Part IV – Miscellaneous**

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Agreed on behalf of the parties to this action by their lawyers of record.

DATED AT TORONTO, ONTARIO this 31<sup>st</sup> day of January, 2025

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Counsel for the Plaintiff  
Six Nations of the Grand River Band of Indians

DATED AT TORONTO, ONTARIO this 31<sup>st</sup> day of January, 2025



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Counsel for the Defendant  
His Majesty the King in right of Ontario

DATED AT TORONTO, ONTARIO this 31<sup>st</sup> day of January, 2025



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Counsel for the Defendant  
The Attorney General of Canada

DATED AT TORONTO, ONTARIO this 31<sup>st</sup> day of January, 2025



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Counsel for the Intervenor  
Mississaugas of the Credit First Nation

## **SCHEDULE “B”**

**APPENDIX A**  
**Timetable for Joint Book of Documents**

January 31, 2025	Parties to finalize the Agreement as to Documents pursuant to the Endorsement of Justice Firestone dated January 17, 2025 ("Document Agreement"). Defined terms have the same meanings as in that agreement.
March 17, 2025	All parties to exchange lists of Historical Documents referenced in their respective expert reports to date for potential inclusion in the JBD.
May 16, 2025	All parties will advise each other of any documents identified for inclusion in the JBD that they have reviewed to date that they do not agree to being included in the JBD in accordance with paragraph 11 of the Document Agreement, sorted in chronological order with production numbers.  Where parties are objecting to the inclusion of documents based on reasons of legibility and/or completeness, the parties will make these reasons known at this time. This is intended to give all parties the opportunity to begin the process of identifying legible and complete copies of documents early in the process.
May 30, 2025	Defendants to deliver any proposed list of Historical Documents referenced in their expert reports which are due by April 30, 2025 for potential inclusion in the JBD.
August 15, 2025	Plaintiff to deliver any proposed list of Historical Documents referenced in its expert reports which are due by July 31, 2025 for potential inclusion in the JBD
September 15, 2025	All Parties will each deliver a list of any additional documents that they propose to include in the JBD in accordance with the Document Agreement, sorted in chronological order with production numbers.
September 19, 2025	Ontario to deliver a combined list of documents for potential inclusion in the JBD, sorted in chronological order with production numbers (the "Draft Combined List").
October 24, 2025	All parties will advise each other of any documents identified for inclusion in the JBD that they do not agree to being included in the JBD in accordance with paragraph 11 of the Document Agreement, sorted in chronological order with production numbers.  Where parties are objecting to the inclusion of documents based on reasons of legibility and/or completeness, the parties will make these reasons known at this time.

November 17, 2025	Where documents are objected to for reasons of legibility and/or completeness, parties may propose and provide substitute versions of those documents to be reconsidered for inclusion in the JBD.
November 24, 2025	<p>All parties will advise whether they are willing to accept substitute versions of documents in the JBD for documents that were previously rejected.</p> <p>Substitute documents on which all parties agree will be included in the JBD.</p> <p>Any documents which remain subject to an objection will not be included in the JBD and will instead be added to a Disputed Documents List.</p>
November 28, 2025	Ontario will deliver a final list of documents for inclusion in the JBD ("Final JBD List") and a final Disputed Documents List, both sorted in chronological order with production numbers.
<ol style="list-style-type: none"><li>1. This timetable is to be read in conjunction with the Document Agreement.</li><li>2. The parties will make reasonable efforts to include legible and complete copies of documents in the JBD where possible.</li><li>3. Where parties wish to include in the JBD Transcriptions associated with documents proposed for inclusion in the JBD, they will make best efforts to deliver those Transcriptions within 30 days from when the document they are associated with is identified for potential inclusion in the JBD.</li><li>4. Parties will make reasonable efforts to prepare a concordance identifying multiple versions of the same document which are included in the Final JBD List.</li><li>5. Removal of any document as a duplicate (de-duplication) will be at the discretion of the party whose expert relied on the document. A party who removes a document as a duplicate will maintain necessary concordance information for the removed duplicate in the concordance table to allow for cross-referencing between expert report footnotes and the version of the document that remains in the JBD.</li><li>6. The JBD will be in electronic format.</li><li>7. The parties will present the JBD to the trial judge for comment in advance of trial.</li></ol>	

Court File No: CV-18-00594281-0000

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**ONTARIO  
SUPERIOR COURT OF JUSTICE**

Proceeding Commenced at Brantford  
and Transferred to  
TORONTO

**ORDER**

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