

SUPERIOR COURT OF JUSTICE

The Honourable Mr. Justice) Tuesday, July 27, 1999
)
James C. Kent)

BETWEEN:

SIX NATIONS OF THE GRAND RIVER BAND OF INDIANS

Plaintiff

- and -

**THE ATTORNEY GENERAL OF CANADA
and
HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO**

Defendants

ORDER

THIS MOTION, made by the plaintiff, Six Nations of the Grand River Band of Indians ("Six Nations") for the following:

- (a) an order requiring the defendant, the Attorney General of Canada ("Canada") to provide responsive answers to all proper written discovery questions asked by the plaintiff that before March 11, 1999 (the date of the notice of motion) Canada has refused or failed to answer or that Canada has failed to properly answer because Canada's response either does not answer the question posed or only partly addresses the question posed, with all such answers to be provided by sworn affidavit by a duly informed representative of the defendant and in the format required by the order of October 25, 1996 in this action;

- (b) an order requiring the defendant Canada to provide particulars of the allegations made in its statement of defence as set forth in the plaintiff's demand for particulars to Canada delivered on December 1, 1998;
- (c) an order requiring the defendant Canada by a specified date to list and produce for inspection every document relating to any matter in issue in this action that is in Canada's possession, control or power pursuant to the *Rules of Civil Procedure* that as of March 11, 1999 (the date of the notice of motion) the defendant Canada has not listed and produced, in particular the documents described in Schedule C to the notice of motion of March 11, 1999;
- (d) an order that, in default of compliance with the orders sought above, the plaintiff may obtain without further notice an order striking out the statement of defence of the defendant Canada;
- (e) an order granting leave to amend paragraph 1 of the plaintiff's statement of claim;
- (f) an order granting the plaintiff its costs of the motion in respect of the relief sought in paragraphs (a), (b) and (c) above on a solicitor and client basis, payable forthwith; and
- (g) such further and other orders as may seem just;

was heard on May 17, 18, 19, 20 and 21, 1999.

ON READING the affidavit of Robert G. Maisey sworn March 11, 1999, and the exhibits thereto (contained in the Plaintiff's Motion Record, volumes 1 to 3), the affidavit of Susan Winger sworn May 5, 1999 and the exhibits thereto (contained in Canada's Responding Motion Record), the transcript of the cross-examination of Susan Winger held on May 5, 1999 and the exhibits thereto (contained in the Plaintiff's Motion Record, volume 4), the answers to undertakings upon the cross-examination of Susan Winger with attachments (contained in Canada's Responding Motion Record), the affidavit of Julie Tomaselli sworn May 12, 1999 and the exhibits thereto (contained in Canada's Responding Motion Record), the brief titled Authentic Documents and the brief titled Statements of Defence (Highlighted), and on hearing the submissions of counsel for the Six Nations, and of counsel for Canada,

1. THIS COURT ORDERS, on consent, that the plaintiff is granted leave to amend paragraph 1 of the Amended Statement of Claim by substituting paragraph 1 as shown on Schedule D to the notice of motion dated March 11, 1999.
2. THIS COURT ORDERS that the defendant Canada provide by October 18, 1999, or such other date as may be fixed by the court hearing the motion for leave to appeal from this order, responsive written answers to the following written discovery questions asked by the plaintiff:

- (A) Questions 2(a) and 2(b) of the plaintiff's written discovery questions to Canada (set no. 1 dated July 23, 1998 as reissued) with separate reference to each of paragraphs 3 to 10 inclusive, 12, 13, 15 and 17 (including all subparagraphs thereof) of the plaintiff's request to admit dated July 23, 1998;

- (B) Questions 3 to 6 inclusive (including all questions set out in subparagraphs thereof) of the plaintiff's written discovery questions to Canada (set no. 1 dated July 23, 1998 as reissued);

- (C) Questions 7(a) and 7(b) of the plaintiff's written discovery questions to Canada (set no. 2 dated September 24, 1998);

and that all of Canada's written answers be provided by sworn affidavit by a duly informed representative of Canada in the format required by the order of October 25, 1996.

3. THIS COURT ORDERS that Canada provide by October 18, 1999, or such other date as may be fixed by the court hearing the motion for leave to appeal from this order, full particulars of the allegations made in Canada's statement of defence as set forth in the plaintiff's demand for particulars to Canada delivered on December 1, 1998.

4. THIS COURT ORDERS that the defendant Canada produce to the plaintiff for inspection the factum or other document produced for court setting out the submissions of Canada's counsel in the case of *Regina v. Secretary of State of Foreign and Commonwealth Affairs*, [1982] Q.B. 892 (U.K.C.A.) affirmed [1982] Q.B. 937 (H.L.) or, if there was no factum or other document produced for court setting out the submissions of Canada's counsel in the proceedings, then production of the correspondence by the defendant Canada instructing Canada's counsel as to the submissions made in that case before the English Courts.

5. THIS COURT ORDERS that in the event of non-compliance with the orders set out in paragraphs 2, 3 and 4 above by October 18, 1999, or such other date as may be fixed by the court hearing the motion for leave to appeal from this order, the plaintiff may move with notice seeking a sanction against the defendant Canada; and

6. THIS COURT reserves a decision on costs of this motion, to be rendered by further order.

ENTRÉ EN BRANTFORD	
In Book No.	117
as Document No.	116
on	Oct 6 1999
by	DK
INSCRIT À BRANTFORD	
au livre n°	
comme document n°	
le	19
par	


