

COURT FILE NO.: 406/95

DATE: 20000707

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 HER MAJESTY THE QUEEN IN
RIGHT OF ONTARIO

Defendants

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) B.A. Jetten, for the Plaintiff
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) G.N. Penner, J. Batty, for the defendant,
) Canada
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) **HEARD:** 21 September, 1999

The Hon. Mr. Justice James C.Kent

FURTHER RULING RE COSTS

BACKGROUND:

[1] On 27 July, 1999 I delivered my ruling on a motion in this proceeding. On 13 October, 1999, I ruled that costs of the motion were be awarded to Six Nations to be fixed on a party and party assessment, payable forthwith, subject to a stay until a pending motion for leave to appeal and any appeal were determined. The stay is now terminated. This court must, in view of its

- 2 -

ruling decision, fix the party and party costs of Six Nations. Both Six Nations and Canada have provided the court with written submissions and extensive briefs to enable the court to determine an appropriate quantum in accordance with the directions made in my ruling of 13 October, 1999.

POSTIONS OF COUNSEL:

[2] The bill of costs of the solicitors for the plaintiff on a solicitor and client basis is in excess of \$240,000 plus disbursements of over \$12,000. Counsel for Six Nations argues that costs on a party and party basis should be fixed at \$135,160 plus \$10,953.85 for disbursements for a total of \$146,113.85. Counsel for Canada submits that the appropriate total should be \$47,105.10.

CONSIDERATIONS:

A. Cross-Examination of Susan Winger

[3] Counsel for both Canada and Six Nations have each submitted that their client should have costs of this cross-examination. Susan Winger was the deponent of an affidavit filed on behalf of Canada on the motion. Bearing in mind the result of that cross-examination, I have concluded that the appropriate disposition is that neither party should have costs of that cross-examination.

B. Ontario Related Work:

[4] Ontario was a respondent on the motion until an agreement was reached as between Six Nations and Ontario regarding the motion. It is impossible to divide with precision the time that

- 3 -

went into preparation. For example, the Six Nations factum for the motion was 86 pages long. A significant portion of the factum addressed background which touched both Ontario and Canada. Other issues addressed both defendants equally. I have concluded that a reduction beyond which counsel for Six Nations is prepared to concede must be made.

C. Work Not Attributable to Motion:

[5] Again, it is impossible to say with precision whether work done in preparation for a motion is exclusive to that motion. In a complex case such as this, all preparation is of assistance in the overall presentation of the case. Again, I have concluded that an amount greater than counsel for Six Nations is prepared to concede as a reduction must be allowed.

D. Hourly Rates:

[6] Canada questions whether \$200 or \$225 per hour on a party and party assessment is appropriate for senior counsel. There appears to be support for \$200 per hour. See *Rogers Cable Systems Ltd. v. Look Communications Inc. et al.* A decision of Nordheimer, J. of this court released 18 August, 1999.

E. Apportionment of Disbursements:

[7] With the exception of the disbursement for travel and accommodation for the two counsel previously ruled to be allowed as attending on the motion, the other disbursements should be

- 4 -

reduced by 50 per cent to reflect that to the point of resolution with Ontario there were two defendants. The disbursement portion of the party and party fixed costs is therefore fixed at \$6,149.36.

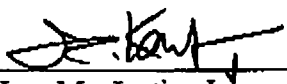
F. Other:

[8] Other less significant adjustments are called for such as an allowance for preparation time in hours before and after court by others than the two counsel in attendance to argue the motion during the week that the motion was being heard.

RESULT:

[9] Having taken into consideration the above noted matters and reflected upon the contents of the submissions and briefs presented to the court, I have concluded that costs payable forthwith to the plaintiff should be fixed at \$115,000 plus disbursements of \$6,149.36, totaling \$121,149.36.

Order accordingly.


The Hon. Mr. Justice James C. Kent

Released: July⁷, 2000

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Defendants

REASONS FOR RULING ON MOTION

The Hon. Mr. Justice James C. Kent

Released: July 7, 2000

COURT FILE NO.: 406/95
DATE: 20000708

ONTARIO

SUPERIOR COURT OF JUSTICE

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- and -

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ONTARIO**

Defendants

REASONS FOR RULING ON MOTION

The Hon. Mr. Justice James C. Kent

Released: July 8, 2000