

**SUPERIOR COURT OF JUSTICE - ONTARIO**

**RE:** 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

**BEFORE:** SANFILIPPO J.

**COUNSEL:** *Ben A. Jetten, Iris Antonios, Max Shapiro*, for the Plaintiff

*Michael McCulloch and Jennifer Roy*, for the Defendant the Attorney General of Canada

*Leonard Marsello, Jennifer Lepan and Noelle Spotton* for the Defendant Her Majesty the Queen in Right of Ontario

**HEARD:** March 26, 2018

**2<sup>ND</sup> CASE MANAGEMENT ENDORSEMENT**

**A. Background**

[1] The first case management conference in this action was conducted on January 31, 2018 (the "1<sup>st</sup> CM Conference"). Directions resulting from the 1<sup>st</sup> CM Conference were provided in the first case management endorsement rendered on February 23, 2018 (the "1<sup>st</sup> CM Endorsement"). By paragraph 17 of the 1<sup>st</sup> CM Endorsement, counsel for the plaintiff, Six Nations of the Grand River Band of Indians (the "Plaintiff"), was directed to prepare a compilation of all facts on which agreement has been reached by reason of the ten requests to admit delivered by the Plaintiff that have been responded to by the defendants, Attorney General of Canada ("Canada") and Her Majesty the Queen in Right of Ontario ("Ontario"), and the one request to admit that has been delivered by Canada and responded to by the Plaintiff and Ontario (the "Compilation of Agreed Facts").

[2] On March 23, 2018, the Plaintiff delivered the following:

- a) A chart, of 192 pages in length, detailing the admissions obtained through Requests to Admit delivered on July 23, 1998, September 20, 2012, December 18, 2013, August 27, 2014, September 23, 2015 (Revised June 1, 2016) and May 5, 2016 (the "RTA Admissions Chart");

- b) A chart, of 168 pages in length, detailing those facts sought to be admitted through Requests to Admit dated July 23, 1998, December 18, 2013, August 27, 2014, September 23, 2015 (Revised June 1, 2016) and May 5, 2016 in regard to which either Canada or Ontario, but not both, provided admission (the “RTA Partial Admissions Chart”)
- c) A chart, of 103 pages in length, detailing those facts sought to be admitted through Requests to Admit dated July 23, 1998, September 20, 2012, December 18, 2013, August 27, 2014 September 23, 2015 (Revised June 1, 2016) and May 5, 2016 but refused to be admitted by both Canada and Ontario (the “RTA Denial Chart”).
- d) A chart, of 15 pages in length, detailing the response to the Request to Admit delivered by Canada (the “Canada RTA Chart”)

[3] In addition, the Plaintiff, Canada and Ontario all delivered charts or summaries listing the issues that they each have identified as arising in this action and, in the case of Canada, a summary of the positions taken by Canada and the Plaintiff in relation to each such issue.

[4] The discussion at the second case management conference conducted on March 26, 2018 (the “2<sup>nd</sup> CM Conference”), focused on steps that will advance the development of this action for trial by continuing with the process of defining the facts capable of being admitted, which is well-underway through the use of Requests to Admit while, at the same time, working toward agreement on the identification and characterization of the issues raised by this action.

## **B. Specific Case Management Directions**

[5] Further to the discussions at the 2<sup>nd</sup> CM Conference, the following specific case management directions are provided:

### **Requests to Admit**

- (a) The Plaintiff has delivered two Requests to Admit that remain outstanding, being a Request to Admit delivered December 13, 2017 (the “December 2017 RTA”) and a Request to Admit delivered March 13, 2018 (the “March 2018 RTA”). The Plaintiff currently is planning the delivery of a further Request to Admit by May 15, 2018 (the “Plaintiff’s Further RTA”). The following timetable is implemented in regard to the Requests to Admit:
  - (i) Ontario will respond to the December 2017 RTA by May 15, 2018, provided that the Plaintiff promptly delivers the further file material and detail requested by Ontario. Canada will use its best efforts to similarly deliver its response to the December 2017 RTA by May 15, 2018;
  - (ii) The March 2018 RTA will be responded to by Ontario and Canada by November 13, 2018;
  - (iii) The Plaintiff’s Further RTA will be delivered by the Plaintiff by May 15, 2018. The timing for response to the Plaintiff’s Further RTA will be

addressed at the next case management conference once Canada and Ontario have had an opportunity to review its content and scope.

- (iv) The Plaintiff anticipates a final Request to Admit of a comprehensive, “clean-up” nature. The timing for the delivery of such a final Request to Admit will be addressed at the next case management conference.

### **Issue Identification**

- (b) The detailed list of issues provided by Ontario, dividing the issues into three categories and fourteen sub-categories, provides a template by which the development of a comprehensive categorization of issues may be achieved. The Plaintiff and Canada will provide input into this list of issues in order to determine whether agreement is capable of being achieved on the identification and characterization of the issues raised by this action and, if not, allow for consideration of how any disagreement might be addressed, as follows:
  - (i) Ontario will distribute to the Plaintiff and to Canada a version of its issue list in Word format;
  - (ii) The Plaintiff and Canada will each prepare a ‘Track Changes’ version of the issue list outlining their proposed additions and modifications and will, by May 15, 2018, distribute the ‘Track Changes’ versions to all parties;
  - (iii) The parties will, before the next case management conference, consider the additions and modifications proposed by others and take any instructions that they consider advisable in relation thereto. The objective is to advance to completion, at the next case management conference, a joint issue list.

### **Carry Forward Items**

- (c) The following agenda items from the 2<sup>nd</sup> CM Conference were not reached and will be addressed at the next case management conference. The parties are directed to be in a position to address these issues at that time:
  - (i) Transcriptions of historical source documents: Canada to provide update on the sharing of transcriptions;
  - (ii) Database issues: Parties to provide update on status of their databases of productions and transcriptions in light of very recent requests for assistance to the Plaintiff;
  - (iii) Staffing: Parties to advise of any changes to their respective teams.

### **Next Case Management Conference**

- (d) The next case management conference will be conducted, in person, on May 29, 2018 at 10:00 am, being amongst the dates canvassed and pre-cleared with all

counsel at the 2<sup>nd</sup> CM Conference. This will allow two weeks for completion of those steps required to be addressed after the receipt or exchange of materials by May 15, 2018, as outlined above. The location of this third case management conference will be provided as the date approaches.

### **Subsequent Case Management Steps**

- (e) The case management directions provided by 5(a), 5(b) and 5(c), above, are in anticipation of advancing the following subsequent case management steps:
- (i) Formulation of a set of agreed facts and identification of disputed facts in order that parties might give further consideration of their positions on facts currently denied. Parties will give ongoing consideration regarding whether further factual agreement might be reached or, alternatively, those steps that might be required to address the factual disputes so identified;
  - (ii) Compilation of an agreed list of issues that would provide a schematic or template of issues to be addressed at pre-trial and then adjudication at trial;
  - (iii) Identification of issues on which expert evidence will be adduced and identification of experts;
  - (iv) Identification of possible areas on which resolution might be capable of being considered, either directly or through mediation;
  - (v) In light of the age of the action, consideration of whether amendments may be required to the pleadings to reflect the parties' current positions.

All parties should keep these issues in mind as objectives to be advanced, going forward.

### **C. General Case Management Directions**

[6] The requirement of cooperation on procedural and scheduling matters so as to ensure there is a fair and just process for all, consistent with Rule 1.04 and with the principles of proportionality, fairness and efficiency set out in *Hryniak v. Mauldin*, 2014 SCC 7, [2014] 1 S.C.R. 87, is intended to remain in place throughout the case management of this action.

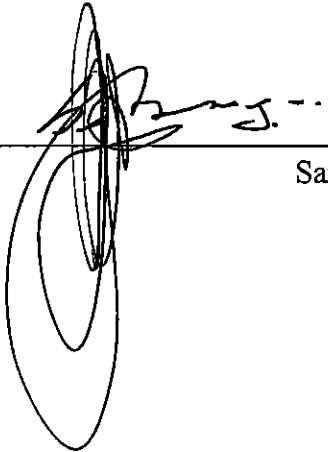
[7] Any party who seeks to address an issue identified in this action between now and the next scheduled case conference of May 29, 2018 and who considers that a case conference would assist in expeditious and efficient handling of any such issue, may request the scheduling of a further case conference by email to my judicial assistant, having first canvassed with all counsel their availability for such a case management conference.

[8] No motion may be brought in this action before being considered at a case conference.

[9] Broad application of Rule 50.13 will be used to address and resolve matters raised at case conference, in circumstances where this is possible. Counsel ought to expect that procedural

orders and directions will be made at case conferences, in accordance with Rule 50.13(6), on informal notice of the issue to be addressed.

[10] The requirement of preparation, issuance and entry of a formal order is hereby dispensed with in accordance with Rule 77.07(6).



Sanfilippo J.

**Date: March 29, 2018**