

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 and Iris Antonios*, for the Plaintiff

Carole Lindsay and Michael McCulloch, for the Defendant the Attorney General of Canada

Leonard F. Marsello, Tamara Barclay and Stephanie Figliomeni for the Defendant Her Majesty the Queen in Right of Ontario

HEARD: October 3, 2018

4TH CASE MANAGEMENT ENDORSEMENT (REVISED)

A. Background

[1] The fourth case management conference (“4th CM Conference”) was conducted in this action on October 3, 2018. This case conference was scheduled to be conducted on August 14, 2018, but was held down to today to allow for continued work by the parties on the construction of a joint issues list.

[2] The objective in the case management of this action is the continued preparation of this matter for trial in an efficient and timely manner, attentive to structural, evidentiary and process issues, with continued consideration of whether any discrete elements may be suitable for summary determination.

B. Matters Addressed at 4th CM Conference

Collaborative Discussions on Issues

[3] In accordance with the 3rd case management endorsement issued on June 29, 2018 (the “3rd CM Endorsement”), the parties continued with a collaborative effort to develop a consolidated issue list. On August 3, 2018, counsel for the plaintiff provided me with the version of the issues list circulated by Six Nations on May 15, 2018, the version of the issues list circulated by Ontario on June 20, 2018 and the version of the issues list circulated by Canada on July 30, 2018. To illustrate the discrepancies between the parties, counsel for the plaintiff

provided me with three documents that, through use of 'track changes', highlighted the differences between the parties in constructing a joint issues list. This showed that there were more areas of disagreement than agreement. On September 27, 2018, the plaintiff provided me with the plaintiff's Proposed Consolidation of Issues, being the plaintiff's current consolidated issue list.

[4] The counsel for the parties met to discuss the various versions and agreed that a joint list of issues cannot currently be agreed upon. While the lawyers identified some areas of common issue identification, the structuring of the issue, its detail and direction, could not be agreed upon.

[5] All are in agreement that there is no further benefit to be served in continuing the effort to construct a joint issue list, at this time. However, the process has served to identify and refine the issues advanced on behalf of each party, so that there is an enhanced understanding of the issues to be determined.

Identification of Discrete Issues

[6] In the place of development of a comprehensive issue list, counsel discussed the possibility of identifying discrete areas of Crown involvement that could be isolated and considered for partial summary judgment or determination by alternative dispute resolution. In the event that any such discrete areas were capable of early adjudication or determination, their resolution might foster similar handling of other or related issues, which would serve to narrow the overall scope of issues in this action.

[7] The identification, and possible early treatment of any such areas could also guide pleading amendment.

Issue Identification

C. Specific Case Management Directions

[8] Further to the discussions conducted at the 3rd CM Conference, I provide the following specific case management directions:

Issue List

- (a) No further steps need be taken in the development of a joint or consolidated issue list. The most recent issue lists prepared by each party will be preserved for ongoing reference;

Identification of Discrete Issue(s) for Severance

- (b) Counsel will assess whether there are discrete areas of Crown involvement, including discrete areas of alleged Crown mismanagement that may be capable of being separated from the remainder of the issues in this action and addressed individually, or possibly in conjunction with issues similar in nature. This process will be completed by December 7, 2018. Counsel are encouraged to share any such issues prior to the next case management conference to allow for meaningful discussion on this topic at the next case management conference.

Next Case Management Conference

- (c) The next case management conference will be conducted, in person, on **December 11, 2018 at 9:00 am**, being a date agreed upon as convenient to all counsel and available to the Court.
- (d) The location of this fifth case management conference will be provided as the date approaches. If counsel confer and agree that the next case management conference is more efficiently conducted by teleconference, they may communicate this by email to my judicial assistant in advance of the next case management conference.

Items to Address

- (e) The following items were addressed at the case management conference today and are carried forward to the next case management conference:
 - (i) The issue of leave to amend the current pleadings, and the timing of any such amendments;
 - (ii) The identification of areas or issues on which expert evidence may be adduced, and the timing of the retention of any such experts;
 - (iii) Any other issue that any party considers necessary for the efficient development of this action for adjudication, in whole or in part.

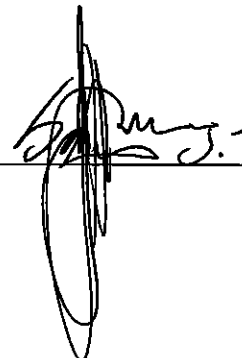
D. General Case Management Directions

[9] Any party who seeks to address an issue identified in this action between now and the next scheduled case conference of December 11, 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.

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

[11] 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.

[12] 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: October 4, 2018 (REVISED October 5, 2018)