

**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, Max Shapiro and Brittiny Rabinovitch*, for the Plaintiff

*Owen Young*, for the Defendant the Attorney General of Canada

*Manizeh Fancy, David Tortell and Stephanie Figliomeni* for the Defendant Her  
Majesty the Queen in Right of Ontario.

**HEARD:** April 25, 2019

**7<sup>TH</sup> CASE MANAGEMENT ENDORSEMENT**

**A. Background**

[1] The 7<sup>th</sup> Case Management Conference in this action was conducted today, in accordance with paragraph 15(c) of the 6<sup>th</sup> Case Management Endorsement dated March 22, 2019. At the request of the parties, made in accordance with paragraph 15(d) of the 6<sup>th</sup> CM Endorsement, this 7<sup>th</sup> CM Conference was conducted by teleconference.

**B. Matters Addressed at the 7<sup>th</sup> CM Conference**

***Ongoing Consideration of Discrete Issues for Resolution***

[2] In accordance with paragraph 6 of the 6<sup>th</sup> CM Endorsement, the parties reported that they met on April 4 and 16, 2019 for the purpose of discussing ways to achieve the common objective of efficiency in advancing the issue in this case to adjudication. They stated that progress has been made in these discussions and agreed that more time was required to work through the concepts that they have identified.

***Status of the Plaintiff's Requests to Admit***

[3] The Plaintiff advised that it had delivered the first of its Phase II Requests to Admit on March 25, 2019. The Plaintiff delivered two further Phase II Requests to Admit, which I will refer to as RTA II.2 and RTA II.3, on April 16, 2019. The Plaintiff projects delivering its six remaining Phase II Requests to Admit as follows: RTA II.4 (specific to Welland Canal Claim),

RTA II.5 (specific to GRNC Claim) and RTA II.6 by mid-May, 2019 and RTA II.7, RTA II.8 and RTA II.9 by early to mid-July, 2019.

[4] Canada stated that it would require 2-3 weeks for response to RTA II.1, RTA II.2 and RTA II.3, while Ontario submitted that it required until the end of August to respond to RTA II.1 and the end of September, 2019 to respond to RTA II.2 and RTA II.3.

[5] The Plaintiff's evidence gathering through the Requests to Admit is of long duration and it is important to the efficient development of this action that it be advanced to completion at the earliest opportunity. As such, at this stage I asked both Canada and Ontario to use their best efforts to respond to the Plaintiff's Phase II Requests to Admit within sixty days of receipt. To do so, the Plaintiff must provide any clarifications sought in relation to any such Request to Admit upon receipt.

[6] At the next case management conference, I will hear submissions from the defendants on their ability to meet this sixty day timeline for responding to all Phase II Requests to Admit, based on their experiences in responding to the Phase II Requests to Admit by then delivered. I will take into consideration any complications realized and set a reasonable timetable for response, accordingly.

### **C. Specific Case Management Directions**

[7] Further to the discussions conducted at the 7<sup>th</sup> CM Conference, I provide the following specific case management directions:

#### **Ongoing Meetings and Collaborative Consideration of Discrete Issues**

- (a) The parties shall continue with their ongoing consideration and assessment of ways by which this case may be efficiently advanced to adjudication through partial or staged adjudication, or constructing sequential phases for the structuring of the adjudication of the issues at trial, as part of the overall development of this action.
- (b) The Parties shall be prepared to report on the progress in these discussions at the next case management conference.

#### **The Requests to Admit**

- (c) The plaintiff will use its best efforts to deliver three of its remaining six Phase II Requests to Admit by mid-May 2019, and its final three Phase II Requests to Admit by early to mid-July 2019. The defendants will use their best efforts to respond to each Phase II Request to Admit within sixty days of receipt.
- (d) The parties shall be prepared to report on the progress of the delivery and response to the Phase II Requests to Admit at the next case management conference so that a timetable may then be implemented to address outstanding issues in relation to the Plaintiff's Requests to Admit.

### **The Next Case Management Conference**

- (e) The next case management conference will be conducted, in person, on **June 19, 2019 at 9:00 am**, being a date convenient to all counsel and available to the Court. Counsel are equally available at 5:00 pm that day, which should be reserved in the event that court scheduling requires that the case management conference be moved to the end of the day.
- (f) The location of this 8th 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.

### **Bring Forward Items**

- (g) In addition to the items specifically addressed already in this Endorsement, the following items are recorded from discussions at past case management conferences and carried forward to a future case management conference:
  - (i) The parties understand that there will be no delay in the ongoing evidence gathering and preparation of this case for determination in its entirety while other options are being considered. As such, the defendants are at liberty to bring forward any evidence gathering process that they consider advisable, whether in the form of Requests to Admit, written interrogatories or otherwise;
  - (ii) The issue of leave to amend the current pleadings, and the timing of any such amendments;
  - (iii) The identification of areas or issues on which expert evidence may be adduced, and the timing of the retention of any such experts;
  - (iv) 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**

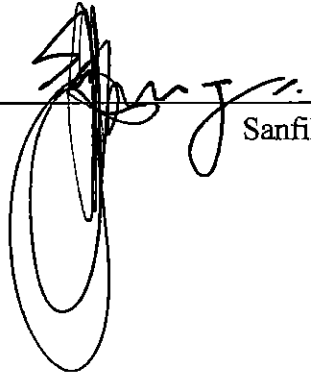
[8] Any party who seeks to address an issue identified in this action between now and the next scheduled case conference of **June 19, 2019** and who considers that a case conference would assist in expeditious and efficient handling of any such issue, may request the scheduling of a further case conference by email to my judicial assistant, having first canvassed with all counsel their availability for such a case management conference.

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

[10] 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.

[11] 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: April 25, 2019**