

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, Iris Antonios, Brittiny Rabinovitch and Rebecca
Torrance, for the Plaintiff*

Michael McCulloch, 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: June 19, 2019

8TH CASE MANAGEMENT ENDORSEMENT

A. Background

[1] The 8th Case Management Conference in this action was conducted on June 19, 2019, in accordance with paragraph 7(e) of the 7th CM Endorsement dated April 25, 2019. In accordance with paragraph 7(f) of the 7th CM Endorsement and on the agreement of the parties, this 8th CM Conference was conducted by teleconference.

B. Matters Addressed at the 8th CM Conference

Status of the Plaintiff's Ongoing Evidence Gathering through Requests to Admit

[2] The Plaintiff, Six Nations of the Grand River Band of Indians ("Six Nations"), provided an update on the status of the delivery of its Phase II Requests to Admit, termed as such because they are intended to parallel the nine initial Requests to Admit served by the Plaintiff, building on the nature of the responses provided to probe whether additional admissions may be achieved. These Phase II Requests to Admit explain their purpose in their standard introductory section: "This Request to Admit contains facts previously denied in the Request to Admit delivered by the Plaintiff on ... and which the Plaintiff believes may be "cleaned up" through further clarification or source documentation. Defined terms have the same meaning as set out in the original Request to Admit dated ..."

[3] Six Nations has to date delivered separately to each of the Attorney General of Canada (“Canada”) and the Attorney General of Ontario (“Ontario”) the following Phase II Requests to Admit:

- RTA II.1 – Served March 25, 2019 - Request to Admit Facts Describing Various Persons Identified in Certain Relevant Documents.
- RTA II.2 – Served April 16, 2019 – Request to Admit Facts regarding Governmental Organization of Indian Affairs.
- RTA II.3 – Served April 16, 2019 – Request to Admit Facts Regarding Certain Financial Transactions regarding Grand River Navigation Company.
- RTA II.4 – Served May 29, 2019 – Request to Admit Facts Regarding Grand River Navigation Company.
- RTA II.5 – Served May 29, 2019 – Request to Admit Facts Regarding Six Nations Lands Flooded as a Result of the Erection of the Dunnville Dam on the Grand River.
- RTA II.6 – Served June 12, 2019 – Request to Admit Facts Regarding Colonel William Claus and the Lands in Innisfil Township and East Hawkesbury Township.

[4] Unlike the Phase I Requests to Admit that were served jointly on Canada and Ontario, the Phase II Requests to Admit each constitute two separate Requests to Admit, served separately on Canada and Ontario, specifically and individually focusing on the nature of the response provided by each defendant to the admission sought.

[5] In addition, to facilitate the defendants’ consideration and response to each of these further requests to admit, the Phase II Requests to Admit provide footnote references to the documentary basis said to support the admission sought by the Plaintiff and, in some cases, the Phase II Request to Admit contains extracts or quotes from the source documents relied upon.

[6] The Plaintiff has three further Phase II Requests to Admit that it intends to deliver:

- RTA II.7 – Expected to be served the week of June 24, 2019 – Request to Admit Facts Regarding Hamilton and Port Dover.
- RTA II.8 – Expected to be served by July 31, 2019 – Request to Admit Facts Regarding January 1841 Events.
- RTA II.9 – Expected to be served by July 31, 2019 – Request to Admit Facts Regarding Events Following 1841.

[7] As such, by July 31, 2019, the Plaintiff expects to have completed all of its Requests to Admit.

[8] On June 14, 2019, Canada served its response to RTA II.1, RTA II.2 and RTA II.3.

[9] Ontario stated that it intended to respond to the Plaintiff's RTA II.1 and RTA II.2 by the end of day on June 19, 2019, and expected to respond to RTA II.3 by June 30, 2019.

[10] This leaves the issue of the time required by Canada and Ontario to respond to the Plaintiff's RTA II.4, RTA II.5 and RTA II.6 already served, as well as RTA II.7, RTA II.8 and RTA II.9, the last of which is expected to be served by July 31, 2019.

[11] Canada stated that it estimates requiring 60 days to respond to each of the remaining Phase II Requests to Admit. Ontario submitted that it requires 90 days to respond.

[12] The Phase II Requests to Admit delivered to Ontario tend to be longer and more involved than the Phase II Requests to Admit delivered to Canada, because of the nature of the responses provided in the Phase I Requests to Admit from which these are developed and due to the subject matter. Another factor that must be considered in addressing the amount of response time required by the defendants is that the Plaintiff intends to develop its last three Phase II Requests to Admit as equivalent to a form of written interrogatory, in that the Plaintiff will request a statement of position, or explanation of alternate version of those facts refused to be admitted. This is intended to take the place of, or reduce the volume of written interrogatories that the Plaintiff expects to follow the completion of the Request to Admit process.

[13] The defendants submitted that it is premature to offer up alternative versions of those elements refused to be admitted, particularly as expert input may in some cases be required. However, steps completed thoroughly now in the Plaintiff's evidence gathering through the Request to Admit process will lessen the volume of written interrogatories that might be required by the Plaintiff in its next phase of evidence gathering. As such, I am satisfied that it is appropriate and efficient to allow the defendant Canada 60 days to respond to each of the Phase II Requests to Admit, and Ontario 90 days. Each responding party is encouraged to provide its responses in phases or segments, rather than hold down its response until all issues raised by the Phase II Request to Admit is capable of being responded to, if it considers that this increases efficiencies.

[14] As the last of the Plaintiff's Phase II Requests to Admit is expected to be delivered by July 31, 2019, and as the maximum time currently scheduled for response is 90 days therefrom, the Plaintiff's evidence gathering through Request to Admit is expected to be concluded by October 31, 2019. This will allow the Plaintiff to complete its chart of the admissions received as a precursor to an Agreed Statement of Facts, and to focus on any areas on which it seeks to conduct written interrogatories.

[15] As stated in earlier Case Management Endorsements, 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.

Ongoing Consideration of Efficiencies in Structuring the Action for Adjudication

[16] The parties were directed in the 7th CM Endorsement to continue with their consideration and assessment of ways that this case may be efficiently prepared and organized for adjudication. This process is ongoing.

[17] The defendants are currently involved in a trial in an action brought by the Chippewas of Saugeen First Nation and the Chippewas of Nawash First Nation: court files no.: 94-CQ-50872CM and 03-CV-261134CM1. The defendants will consider whether the process and tools applied in that case to promote efficiency in adjudication might be useful in application to this case.

C. Specific Case Management Directions

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

The Requests to Admit

- (a) The plaintiff will use its best efforts to deliver its remaining three Phase II Requests to Admit, RTA II.7, RTA II.8 and RTA II.9, by July 31, 2019;
- (b) The defendant Canada will use its best efforts to respond to RTA II.4 and RTA II.5 by July 29, 2019 and to respond to RTA II.6 by August 12, 2019, being 60 days from the date of their service;
- (c) The defendant Ontario will use its best efforts to respond to RTA II.4 and RTA II.5 by August 29, 2019 and to respond to RTA II.6 by September 12, 2019, being 90 days from the date of their service;
- (d) The defendant Canada will use its best efforts to respond to RTA II.7, RTA II.8 and RTA II.9 within 60 days of their service;
- (e) The defendant Ontario will use its best efforts to respond to RTA II.7, RTA II.8 and RTA II.9 within 90 days of their service;
- (f) 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.

Ongoing Meetings and Collaborative Consideration of Discrete Issues

- (g) 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. The parties can consider the usefulness of agreed statements of fact, issues lists, compendiums of documents, agreements as to authenticity of documents and glossaries of terms in continued development of this action for trial.
- (h) The Parties shall be prepared to report on the progress in these discussions at the next case management conference.

The Next Case Management Conference

- (i) The next case management conference will be conducted, by teleconference, on **August 29, 2019 at 9:00 am**, being a date convenient to all counsel and available to the Court.
- (j) The call-in co-ordinates for this 9th CM Conference will be provided as the date approaches. If counsel confer and agree that the next case management conference is more efficiently conducted in person, they may communicate this by email to my judicial assistant in advance of August 29, 2019.

Bring Forward Items

- (k) In addition to the items specifically addressed already in this 8th CM 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.

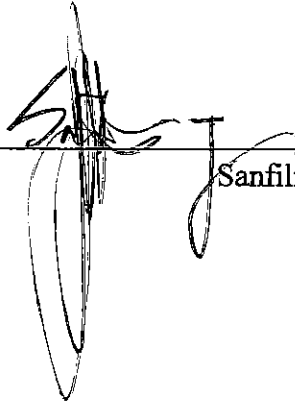
D. General Case Management Directions

[19] Any party who seeks to address an issue identified in this action between now and the next scheduled case conference of **August 29, 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.

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

[21] 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.

[22] 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: June 25, 2019