

COURT FILE NO.: CV-18-594281-0000

(Formerly Court file no.: 406/95)

DATE: 20190829

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

Michael McCulloch and Alexandra Colizza (articled student), for the Defendant
the Attorney General of Canada

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

HEARD: August 29, 2019

9TH CASE MANAGEMENT ENDORSEMENT

A. Background

[1] The 9th Case Management Conference in this action was conducted on August 29, 2019, by teleconference, in accordance with paragraphs 18(i) and 18(j) of the 8th CM Endorsement dated June 25, 2019.

B. Matters Addressed at the 9th CM Conference

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

[2] In advance of the 9th Case Management Conference, the Plaintiff, Six Nations of the Grand River Band of Indians ("Six Nations"), delivered a letter dated August 27, 2019, that explained the status of its delivery of its Phase II Requests to Admit. Since the 8th CM Conference, Six Nations delivered its seventh Phase II Request to Admit on June 27, 2019 ("RTA II.7"), its eighth Phase II Request to Admit on July 23, 2019 ("RTA II.8"), and its ninth and final Phase II Request to Admit on August 1, 2019 ("RTA II.9"). Six Nations has now completed the delivery of its Phase II Requests to Admit.

[3] The Plaintiff's nine Phase II Requests to Admit were delivered separately, and with separate, individualized substantive content, to each of the Attorney General of Canada ("Canada") and the Her Majesty the Queen in Right of Ontario ("Ontario").

[4] Six Nations confirmed that both Canada and Ontario have responded to the first three Phase II Requests to Admit, as follows:

- RTA II.1 – Served March 25, 2019 - Request to Admit Facts Describing Various Persons Identified in Certain Relevant Documents. Responded to by Canada on June 14, 2019 and by Ontario on June 24, 2019.
- RTA II.2 – Served April 16, 2019 – Request to Admit Facts regarding Governmental Organization of Indian Affairs. Responded to by Canada on June 14, 2019 and by Ontario on June 24, 2019.
- RTA II.3 – Served April 16, 2019 – Request to Admit Facts Regarding Certain Financial Transactions regarding Grand River Navigation Company. Responded to by Canada on June 14, 2019 and by Ontario on July 11, 2019.

[5] Six Nations reported that Canada has responded to the next four Phase II Requests to Admit within the sixty-day period that Canada committed to meet, while Ontario continues in preparation of its responses, having been provided with a longer period of ninety days for response for reasons set out in the 8th CM Endorsement. These Requests to Admit are as follows:

- RTA II.4 – Served May 29, 2019 - Request to Admit Facts Regarding Grand River Navigation Company. Responded to by Canada on July 29, 2019.
- RTA II.5 – Served June 12, 2019 – Request to Admit Facts regarding Colonel William Claus and the Lands in Innisfil Township and East Hawkesbury Township. Responded to by Canada on August 8, 2019.
- RTA II.6 – 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. Responded to by Canada on July 29, 2019.
- RTA II.7 – Served June 27, 2019 – Request to Admit Facts regarding Hamilton and Port Dover Road Lands. Responded to by Canada on August 22, 2019.

[6] This leaves two Phase II Requests to Admit delivered by Six Nations that have not yet been responded to by either Canada or Ontario as the time provided for the provision of these responses has not yet expired, as follows:

- RTA II.8 – Served July 23, 2019 – Request to Admit Facts regarding January 1841 Events.
- RTA II.9 – Served August 1, 2019 – Request to Admit Facts regarding Events following January 1841.

[7] The timing of the delivery by Six Nations of its Phase II Requests to Admit, and the responses provided to date by Canada and Ontario are largely in compliance with the schedules established in case management conference, with only a few modest extensions.

[8] Canada has confirmed its commitment to respond to the remaining Requests to Admit to which it owes a response, namely RTA II.8 and RTA II.9, within sixty days from the date of their service: specifically, September 23, 2019 and October 1, 2019, respectively.

[9] Ontario explained that will deliver its response to RTA II.6 imminently: today or tomorrow. However, due to its size and extent of detail, Ontario requires a thirty-day extension to respond to RTA II.4: extended from August 29, 2019 to Monday, September 30, 2019. Ontario is committed to delivering its response to the other outstanding Phase II Requests to Admit, namely RTA II.5, RTA II.7, RTA II.8 and RTA II.9 within ninety days from the date of their service.

[10] Even with these modest extensions of time for the response by Ontario to certain of the outstanding Phase II Requests to Admit, the Plaintiff's evidence gathering through Request to Admit is expected to be concluded by on or about November 1, 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

[11] 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

[12] The parties were directed in the 8th 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. Counsel for the parties intend to meet in November 2019, after the completion of the responses to the Phase II Requests to Admit, to discuss ways that 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.

C. Specific Case Management Directions

[13] Further to the discussions conducted at the 9th CM Conference, I provide the following specific case management directions:

The Requests to Admit

- (a) The defendant Canada will use its best efforts to respond to RTA II.8 by September 23, 2019 and to respond to RTA II.9 by October 1, 2019, being in each case 60 days from the date of their service;
- (b) The defendant Ontario will use its best efforts to respond to the Phase II Requests to Admit as follows:
 - (i) RTA II.6, by September 3, 2019;
 - (ii) RTA II.4, by September 29, 2019;
 - (iii) RTA II.5, by September 23, 2019;

- (iv) RTA II.7, by September 27, 2019;
- (v) RTA II.8, by September 23, 2019;
- (vi) RTA II.9, by November 1, 2019.

(c) At the next case management conference, the parties shall report on what is expected to be the conclusion of this evidence gathering process.

Meetings and Collaborative Consideration of Discrete Issues

- (d) The parties shall coordinate and conduct meetings in November 2019, on dates that they find to be mutually acceptable, to consider and discuss ways that this action 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 list, compendiums of documents, agreements as to authenticity of documents and glossaries of terms in continued development of this action for trial.
- (e) The Parties shall exchange and each deliver to me by the end of day on **November 28, 2019**, by email to my judicial assistant, a Memorandum setting out the following:
 - (i) Their submissions on the most efficient manner by which to structure and advance this case to adjudication;
 - (ii) Their proposed timetable, or schedule for advancing to completion the steps remaining to be completed to advance this case to trial, including any further evidence gathering, including any further documentary production, timing for expert reports, timing for setting action down for trial and pre-trial conferencing.
- (f) The Parties shall be prepared to address these issues at the next case management conference.

The Next Case Management Conference

- (g) The next case management conference will be conducted, in person, on **December 3, 2019 at 4:00 pm**, being a date convenient to all counsel and available to the Court. Counsel should be aware that, subject to the court calendar, this case management conference might be moved to slightly earlier to 3:30 pm or slightly later to 4:30 pm. The precise time and location will be notified to counsel in proximity to the next case management conference.

Bring Forward Items

- (h) In addition to the items specifically addressed already in this 9th 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.

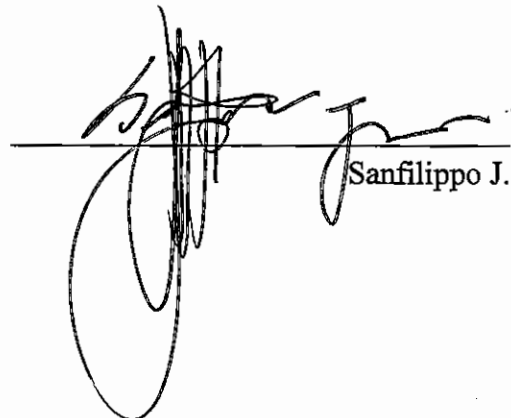
D. General Case Management Directions

[14] Any party who seeks to address an issue identified in this action between now and the next scheduled case conference of **December 3, 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.

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

[16] 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.

[17] 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: August 29, 2019