

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

(Formerly Court file no.: 406/95)

DATE: 20201125

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: A.A. SANFILIPPO J.

COUNSEL: *Ben A. Jetten, Iris Antonios and Naiara Toker*, for the Plaintiff

*Anusha Aruliah, Michael McCulloch, Tanya Muthusamipillai, Maria Vujnovic,
Edward Harrison, Rebecca Sewell and Katrina Longo*, for the Defendant the
Attorney General of Canada

Manizeh Fancy, David Tortell, Jennifer Lepan, Insiyah Kanjee and Catherine Ma,
for the Defendant Her Majesty the Queen in Right of Ontario

HEARD

By videoconference: November 24, 2020

CASE MANAGEMENT ENDORSEMENT

[1] The 14th Case Management Conference was initiated in this action on November 24, 2020, in accordance with paragraph 3(f) of the Case Management Endorsement of September 11, 2020 (the 13th CM Endorsement”).

[2] The parties reported that the procedural development of this action is progressing in accordance with the timetable established by paragraph 17(4) of the Case Management Endorsement of May 25, 2020 (*Six Nations of the Grand River Band of Indians v. Attorney General of Canada*, 2020 ONSC 3230) (the “Timetable”). In particular, the following steps have now been completed:

- (a) The Plaintiff delivered its Reply to the Amended Statements of Defence by September 30, 2020, in accordance with para. 17(4)(c) of the Timetable.

- (b) The Attorney General of Canada (“Canada”) delivered its Statement of Defence to Crossclaim by September 30, 2020, in accordance with para. 17(4)(d) of the Timetable.
- (c) The Plaintiff served its Supplementary Affidavit of Documents on October 8, 2020, in accordance with para. 17(4)(g) of the Timetable. This term called for parties to deliver any additional documentary production by November 30, 2020, and Canada indicated that it intends to produce further documents by November 30, 2020.
- (d) All parties served written examination questions by October 30, 2020, in accordance with para. 17(4)(h) of the Timetable.

[3] The Timetable provided, in para. 17(4)(i), for the parties to respond to the written examination questions by December 30, 2020. All parties spoke to challenges in meeting this deadline, due to the breadth and scope of the written examination questioning (thousands of questions), the task of responding to these questions in the historical context of this action and because certain of the questions call for research and investigation. The parties concurred that they would have a better understanding in 2-3 weeks of the timing required to respond to these written questions after they further advance their reviews.

[4] The possible variation of the Timetable to respond to written examination questioning was provided for by para. 17(5)(b) of the Timetable, which states that the parties may seek extensions of time to comply with paragraph 17(4)(i) of the Timetable “should the scope or volume of written questions, or the source of consultation or research required for their response, render the available time insufficient to provide full and fair response.”

[5] On the concurrence of the parties, this Case Management Conference was adjourned to allow the parties more time to proceed with their analysis of the written examination questioning and to assess the timing required. The parties may, at the next Case Management Conference, speak to the variation required to para. 17(4)(i) of the Timetable and the impact that it may have on the Timetable steps that follow.

[6] I encourage the parties to confer, in advance of the next Case Management Conference, to determine whether they can reach an agreement on any required variation to the Timetable to accommodate additional time to respond to written questioning. The parties should consider any potential impact that variation to the Timetable could have on the timetable for the delivery of expert reports, set out in para. 29(1) of the Case Management Endorsement of June 16, 2020 (*Six Nations of the Grand River Band of Indians v. Attorney General of Canada*, 2020 ONSC 3747) and, in turn, the impact that this could have on the ongoing preparation of this action for trial.

[7] This 14th Case Management Conference will be continued on December 10, 2020 at 9:15 am, a date convenient to the parties and made available by the Court. The continued Case Management Conference shall take place by video conference, using video coordinates that will be provided by the Court. Should the parties determine that they require more time for this

continued Case Management Conference than is available at a 9:15 am appointment, they may jointly request that the time be moved to 3:00 pm on December 10, 2020.

[8] Notwithstanding *Rule 59.05*, and in accordance with *Rules 77.07(6)* and 1.04, this order is effective from the date that it is made and is enforceable without any need for entry and filing, and without the necessity of a formal order.

A.A. Sanfilippo J.

Date: November 25, 2020