

CITATION: Six Nations of the Grand River Band of Indians v. The Attorney General of
Canada, 2020 ONSC 7714
COURT FILE NO.: CV-18-594281-0000
(Formerly Court file no.: 406/95)
DATE: 20201211

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 and Iris Antonios*, for the Plaintiff

Anusha Aruliah, Tanya Muthusamipillai, Maria Vujnovic and Edward Harrison,
for the Defendant the Attorney General of Canada

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

HEARD

By videoconference: December 10, 2020

CASE MANAGEMENT ENDORSEMENT

[1] The 14th Case Management Conference conducted on November 24, 2020 was adjourned to provide the parties with an opportunity to continue their analysis of the written examination questioning and to assess the timing required to respond to the written questions, understanding that the parties concurred that they required amendment to the timetable but required some time to consider the extent of the modifications: *Six Nations of the Grand River Band of Indians v. The Attorney General of Canada*, [2020] O.J. No. 5106, at paras. 5 and 6.

[2] The Case Management Conference continued today and addressed two issues: the parties' agreement for the amendment to the timetable; and, complications resulting from the documents produced by the Attorney General for Canada ("Canada") on November 27, 2020.

[3] I will address these issues in order.

A. Amendment to the Timetable

[4] The timetable for the development of this action for trial was established by paragraph 17(4) of the Case Management Endorsement of May 25, 2020¹, which I will refer to as the “Discovery Timetable”, and by paragraph 29(1) of the Case Management Endorsement of June 16, 2020², which I will refer to as the “Expert Report Timetable”.

[5] The parties proposed amendments to the Discovery Timetable. These amendments were provided for by paragraph 17(5)(b) of the Discovery Timetable, which stated that the parties may seek extensions of time to comply with the paragraph 17(4)(i) deadline of December 30, 2020 to answer written questions on discovery “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.”

[6] The parties do not seek any amendment to the Expert Report Timetable. This is important, as maintaining the Expert Report Timetable is necessary to ensure that this action remains on its current time projection for trial.

[7] On the consent of the parties, I direct that the Discovery Timetable be amended as follows:

“(4) The parties shall advance this action for trial in accordance with the following Timetable:

...

- (i) All parties shall answer any written questions on discovery by ~~December 30, 2020~~ February 26, 2021;
- (j) All parties may serve, by ~~January 29, 2021~~ March 19, 2021, any written questions on discovery that follow-up on answers provided to previous written questions on discovery (“Follow-Up Written Questions”);
- (k) All parties shall answer any Follow-Up Written Questions by ~~February 26, 2021~~ April 30, 2021;

¹ *Six Nations of the Grand River Band of Indians v. Attorney General of Canada*, 2020 ONSC 3230.

² *Six Nations of the Grand River Band of Indians v. Attorney General of Canada*, 2020 ONSC 3747.

- (l) ~~The parties may conduct any oral examinations, considered supplementary to the written examination questioning, by March 30, 2021;~~
- (m) The parties shall, by March 30, 2021, complete all documentary production further to their continuing obligation of documentary production in compliance with Rule 30.07;
- (n) Any party who seeks to schedule a motion for relief arising from the discovery process, including written and oral examinations for discovery and document production, shall do so by ~~April 30, 2021~~ May 7, 2021;
- (o) The parties shall complete a Joint Electronic Database of documentary productions by ~~April 30, 2021~~ June 30, 2021.”

[8] All other terms of the Endorsement of May 25, 2020 remain effective.

[9] The Expert Report Timetable remains effective. For ease of reference, it is as follows:

“(1) The parties shall deliver their expert reports in accordance with the following Timetable:

- (a) The Plaintiff shall deliver its expert reports by November 1, 2021;
- (b) The Defendants shall deliver their expert reports by April 1, 2022;
- (c) The Plaintiff shall deliver any reply expert reports by June 30, 2022;
- (d) The parties shall complete a compilation of all expert reports and supporting documents by July 31, 2022.”

[10] All terms of the Endorsement of June 16, 2020 remain effective.

B. Additional Document Production Issue

[11] Further to paragraph 17(4)(g) of the Discovery Timetable, the parties were required to deliver, by November 30, 2020, “any **additional documentary production** made necessary by any expansion in the scope of material documents resulting from the pleading amendments, to ensure ongoing compliance with *Rule 30.03*” [Emphasis added].

[12] In compliance with this additional documentary disclosure requirement, on November 27, 2020, Canada delivered approximately 4,000 documents to the Plaintiff. The Plaintiff contended that it is unable to understand, from this collection of documents, whether all or only a portion of these documents are additional documentary production, that is new documents produced for the

first time, or whether a portion of these documents are documents already produced in this action. This is material to the Plaintiff's answering of written questions (by February 26, 2021), its preparation of further written examination questioning (by March 19, 2021) and, indeed, the preparation of the Joint Electronic Database.

[13] Canada is continuing to investigate this issue. Specifically, it is determining the steps that would be required to ascertain which documents within those produced on November 27, 2020 are additional (new) documents, including 'near-duplicates', and which have already been produced in this action. Canada stated that it would be in a better position to speak to this issue by December 18, 2020.

[14] Accordingly, and on the consent of the parties, I will further adjourn this Case Management Conference, to re-convene on December 18, 2020, to hear from Canada on this issue in response to the production issue raised by the Plaintiff. I encourage the parties to confer in the meantime with the objective of formulating an acceptable solution. The parties recognize the importance of Canada specifying the "additional documents" that it produced on November 27, 2020 as distinct from already-produced documents.

[15] This Case Management Conference will be continued on December 18, 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. I direct the parties to provide a Case Management Memorandum, even by way of letter, outlining the status of their progress of this issue, jointly if consent has been reached, by 12:00 noon on December 17, 2020, by email to my judicial assistant.

[16] 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: December 11, 2020