

CITATION: Six Nations of the Grand River Band of Indians v. The Attorney General of Canada, 2021 ONSC 322

COURT FILE NO.: CV-18-594281-0000
(Formerly Court file no.: 406/95)

DATE: 20210114

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: *Iris Antonios and Rebecca Torrance*, for the Plaintiff

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

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

HEARD

(By videoconference): January 13, 2021

CASE MANAGEMENT ENDORSEMENT

[1] The 15th Case Management Conference was conducted on January 13, 2021, in accordance with paragraph 4 of the Case Management Endorsement dated December 17, 2020.

[2] The Plaintiff, Six Nations of the Grand River Band of Indians (“Six Nations”) requested an amendment to the Discovery Timetable that was initially implemented 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) and varied by paragraph 7 of the Case Management Endorsement of December 11, 2020 (*Six Nations of the Grand River Band of Indians v. The Attorney General of Canada*, 2020 ONSC 7714). The amendments sought by Six Nations were intended to provide more time to deliver written questions on discovery that arise from the delivery by the Attorney General of Canada (“Canada”) of some 4,000 documents on November 27, 2020, which I will refer to as the “Additional Documents”.

[3] The Defendants, Canada and Her Majesty the Queen in Right of Ontario (“Ontario”), did not dispute that additional time was required to address the Additional Documents, but questioned whether there ought to be an additional stage of written questions or whether the written questions arising from the Additional Documents could be combined within the stages prescribed by the current Discovery Timetable. There was only modest disagreement on the amount of additional time required for submission and response to written questions. In each instance, any modification to the timing deadline for delivery of written questions on discovery that follow-up on answers provided to previous written questions on discovery (“Follow-Up Written Questions”) and the answering of such questions will apply equally to all parties.

[4] I am satisfied that the time deadline for delivery of Follow-Up Written Questions and written questions that arise from the Additional Documents shall be April 23, 2021, and that the date for answering these questions shall be June 30, 2021.

[5] I thereby direct that the Discovery Timetable be amended as follows (deletions by double ~~striketrough~~; addition by double underline):

“(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~~ April 23, 2021, any written questions on discovery that follow-up on answers provided to previous written questions on discovery (“Follow-Up Written Questions”) as well as any written questions that arise from the Additional Documents produced by Canada on November 27, 2020;
- (k) All parties shall answer any Follow-Up Written Questions by ~~February 26, 2021~~ ~~April 30, 2021~~ June 30, 2021.”

[6] The remainder of the Discovery Timetable shall remain effective, as reproduced here for ease of reference:

- “(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.”

[7] Ontario raised broader concerns that I encouraged the parties to consider and confer upon, and bring forward to future case management conferences, as they consider necessary. First, Ontario submitted that the completion of the evidence gathering phase set out in the Discovery Timetable, scheduled to be completed in large part by June 30, 2021, may be delayed by the disruptions and challenges presented by the COVID-19 pandemic. Second, Ontario submitted that documentary production, document requests, written questioning and possible modification of admissions already provided through the Requests to Admit may be necessary throughout the Expert Report Timetable stage, as expert analysis and input is advanced. Third, the Joint Electronic Database that the parties are scheduled to complete by June 30, 2021 will require refinement for use at trial, both as parties add to it through the delivery of expert reports and input and as the parties continue to consider agreement on authenticity of documents for the purposes of trial.

[8] The parties will consider these issues in the context of their common objective to advance this action to adjudication in the most cost-efficient, effective and expeditious manner available, within the context of both the Discovery Timetable and the Expert Report Timetable which provide for the completion of all trial preparation steps by July 31, 2022.

[9] The next Case Management Conference shall be conducted on February 11, 2021 at 9:15 am, by videoconference, using video connection coordinates that will be provided by the Court.

[10] I direct the parties to provide a Case Management Memorandum, even in the form of a letter, either individually or if in agreement, jointly, by 1:00 pm on February 9, 2021, by email to my judicial assistant, setting out the issues that they seek to bring forward to the next Case Management Conference.

[11] In accordance with *Rules* 59.04(1), 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: January 14, 2021