

COURT FILE NO.: CV-18-594281-0000
(Formerly Court file no.: 406/95)
DATE: 20210429

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 Naiara Toker*, for the Plaintiff

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

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

HEARD

(By videoconference): April 29, 2021

CASE MANAGEMENT ENDORSEMENT

[1] The 18th Case Management Conference was conducted on April 29, 2021, in accordance with paragraph 5 of the Case Management Endorsement dated April 1, 2021.

[2] The Case Management Conference addressed two issues. First, the parties agreed that the May 7, 2021 deadline to schedule a motion for relief arising from the discovery process be removed from the Discovery Timetable. Second, the Plaintiff, Six Nations of the Grand River Band of Indians (“Six Nations”) sought the implementation of a timeline for the concordance of documents produced by the Attorney General of Canada (“AGC”).

[3] On the first issue, on the parties’ consent, I direct that para. 17(4)(n) of the Discovery Timetable, as provided in the Case Management Endorsement of May 25, 2020 (*Six Nations of the Grand River Band of Indians v. The Attorney General of Canada*, 2020 ONSC 7714), and as revised by para. 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), is deleted. The parties may bring forward to any Case Management Conference any request that they may have for the scheduling of a motion for relief arising from the discovery process.

[4] On the second issue, Six Nations explained that the documentary production by the AGC contains discrepancies in the use of the naming convention, causing problems in consistent document identification. Specifically, Six Nations stated that the AGC has changed its document naming protocol and that Six Nations has use of only the original production numbers. Six Nations stated that the discrepancy in the AGC's naming protocol is causing inefficiencies, and that Six Nations requires that the AGC provide a concordance to allow for consistent and effective access and reference to the AGC's documentary productions.

[5] Six Nations has discussed this issue with the AGC and has been advised that the issue is being addressed but submitted that a timeline ought to be imposed for AGC to complete its concordance of the documentary productions. Six Nations emphasized that the AGC's completion of the naming, coding and electronic management of the AGC documents, and its concordance with the existing document identifiers, could impact the timing of work by their experts.

[6] AGC stated that it has produced some 10,800 documents in the 25-year time period from 1996 to present and explained that its documentary production has taken place in different forms over time. This ranges from binders and boxes of hard copy documents in the early stages of this action to the transition to the current electronic platform which, the AGC explained, requires time-consuming manual assessment and re-coding by document management specialists. Considering the challenges presented by the ongoing pandemic, the AGC stated that it is not in a position to commit to a timeline for the completion of its ongoing document naming, coding and documentary concordance, but that it is using its best efforts and expects to advance this issue further over the next 60 days.

[7] The discussion at the Case Management Conference showed that the document concordance issue raised by Six Nations has been recognized by the AGC and is in the process of being addressed. The only disagreement was Six Nations' request for the imposition of a timeline for the AGC to complete this task, and the AGC's submission that the date for its completion is incapable of currently being forecast. All parties recognize the importance of completing this document management issue in readying this action for trial.

[8] The AGC shall continue to use its best efforts to complete the documentary concordance and management that it has underway on its documentary database, working toward the goal of completion by June 30, 2021, and in the event that this should not prove possible, the AGC shall report on its progress at the next Case Management Conference with an estimate of further time required, at which time this issue can be considered further.

[9] The Defendant Her Majesty the Queen in Right of Ontario ("HMORO") stated that it might need to speak to an extension to the Expert Report Timetable and, in particular, the requirement that the Defendants shall deliver their expert reports by April 1, 2022: Case Management Endorsement of June 16, 2020, *Six Nations of the Grand River Band of Indians v. The Attorney General of Canada*, 2020 ONSC 3747, at para. 29(1)(b). HMORO may bring this issue forward when it considers necessary.

[10] The next Case Management Conference shall be conducted on June 29, 2021 at 1:00 pm, by videoconference, using video connection coordinates that will be provided by the Court.

[11] The parties shall provide a Case Management Memorandum, even in the form of a letter, either individually or if in agreement, jointly, by 1:00 pm on June 25, 2021, by email to my judicial assistant, setting out the issues that they seek to bring forward to the next Case Management Conference.

[12] 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: April 29, 2021