

ONTARIO SUPERIOR COURT OF JUSTICE (TORONTO REGION)

CIVIL ENDORSEMENT FORM

(Rule 59.02(2)(c)(i))

BEFORE	Judge/Case Management Master Akbarali J.	Court File Number: CV-18-594281-0000Six NationsI
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Title of Proceeding:

..... Six Nations of the Grand River Band of Indians Plaintiff(s)

-v-

..... The Attorney General of Canada and Attorney General of Ontario Defendant(s)

Case Management: No Yes If so, by whom: Akbarali J. **No**

Participants and Non-Participants: *(Rule 59.02(2)(vii))*

Party	Counsel	E-mail Address	Phone #	Participant (Y/N)
1) Plaintiff	Iris Antonios, Max Shapiro, Gregory Sheppard, Roberts Janes	Iris.antonios@blakes.com ; max.shapiro@blakes.com ; Gregory.sheppard@blakes.com ; rjanes@jfkllaw.ca		
2) Defendant Canada	Anusha Aruliah, Tania Mitchell, Maria Vujnovic, Katrina Longo, Myra Sivaloganathan, Hasan Junaid	Anusha.aruliah@justice.gc.ca ; tania.mitchell@justice.gc.ca ; maria.vujnovic@justice.gc.ca ; myra.sivaloganathan@justice.gc.ca ; hasan.junaid@justice.gc.ca		
3) Defendant Ontario	Manizeh Fancy, David Feliciant, Christine Perruzza, Shima Heidari, Julia McRandall, Lina Chaker	Manizeh.fancy@ontario.ca ; ; David.feliciant@ontario.ca ; christine.perruzza@ontario.ca ; shima.heidari@ontario.ca ; Julia.mcrandall@ontario.ca ; lina.chaker@ontario.ca		
4) Proposed Intervener Haudenosaunee Development Institute	Tim Gilbert, Thomas Dumigan	tim@gilbertslaw.ca ; tdumigan@gilbertslaw.ca		
5) Proposed Intervener Mississaugas of the Credit First Nation	Alex DeParde and Alex Monem	adeparde@pstlaw.ca ; amonem@pstlaw.ca		
5) Proposed Intervener Men's Fire of the Six Nations Grand River Territory	Jeff Kauman	jeff@kaufman.law		

Date Heard: *(Rule 59.02(2)(c)(iii))* **November 7 and 15, 2022**

Nature of Hearing (mark with an "X"): *(Rule 59.02(2)(c)(iv))*

Motion Appeal Case Conference Pre-Trial Conference Application

Format of Hearing (mark with an "X"): (Rule 59.02(2)(c)(iv))

In Writing Telephone Videoconference In Person

If in person, indicate courthouse address:

Relief Requested: (Rule 59.02(2)(c)(v))

Case conference to address timetabling and process for motions to intervene as party interveners

Disposition made at hearing or conference (operative terms ordered): (Rule 59.02(2)(c)(vi))

Case conference to be held on December 12, 2022 for one day.

Costs: On a **N/A** indemnity basis, fixed at \$ _____ are payable
by _____ to _____ [when]

Brief Reasons, if any: (Rule 59.02(2)(b))

- 1) On November 7, 2022, I held my first case conference in this matter at which the parties listed on this endorsement, with the exception of the Mississaugas of the Credit First Nation, attended.
- 2) The action between the plaintiff and defendants has been extant for some 27 years, and, since 2019, was case managed by Sanfilippo J. On his transfer to the estates list in Toronto, I was appointed case management judge.
- 3) Shortly before Sanfilippo J.'s transfer, the action was nearing trial readiness. However, in approximately August 2022, the proposed party intervener, the Haudenosaunee Development Institute ("HDI"), indicated its intention to move to be included in the action as a party intervener and claimed to be the holder of the rights the plaintiff is advancing in this litigation.
- 4) Sanfilippo J. directed HDI to provide broad notice of its motion to intervene to various Indigenous groups and in various publications.
- 5) In advance of the first case conference I held on November 7, 2022, a number of responses were received to the notice, including from some groups seeking additional time to consider what, if any, position they wished to take with respect to HDI's motion. Others suggested the question of who the rights holder is should not be addressed in the Superior Court of Justice, but rather through Indigenous laws and legal orders. Still others denied the legitimacy of the HDI to speak for the Haudenosaunee broadly.
- 6) In addition, the Mississaugas of the Credit First Nation indicated their intention to seek to intervene as a party, and assert an interest in the claims advanced by the plaintiff.
- 7) I asked the parties to consider whether the court's traditional approach – notice, timetables, deadlines and an intervention motion – is the best process to respect and honour the Indigenous laws, legal orders, history and traditions that are engaged in the question of the identity of the rights holder. I was concerned that some people with a relevant perspective may have chosen not to engage with a court due to questions about the court's legitimacy to decide the identity of the rights holder.
- 8) I also directed that the additional time sought by the Indigenous groups who asked for it would be granted.
- 9) At the return of the case conference, the plaintiff proposed a timetable, some aspects of which the defendants considered unrealistic. However, HDI delivered submissions about crafting a process to hear submissions about the correct process to employ in this case that is respectful and inclusive of Haudenosaunee traditions. Unfortunately, due to the short time frame between this case conference and the one that proceeded it, HDI's submissions came late in the evening of November 14, 2022 and left insufficient time for the other parties to consider them, take instructions, and develop their positions. The plaintiff argues that, at the very least, it requires time to respond to the submissions of HDI, and no decision ought to be made about the issues raised in HDI's submissions without a full briefing.
- 10) Accordingly, I make the following directions:

- a) The motion dates for the intervention motion, originally scheduled for January 30 and 31, 2022 are vacated.
- b) A case conference shall take place on December 12, 2022 for one full day during which I will hear submissions on the process to be employed to address the issues of the proper parties to the litigation. The proceeding shall take place by zoom.
- c) Any written submissions the parties wish to file for the case conference shall be sent to my assistant by email at Yomattie.evans@ontario.ca by December 5, 2022. If the parties are able to agree in principle on a timetable, they shall provide it to me in advance of the case conference.
- d) HDI shall write to all the parties that responded to the notice ordered by Sanfilippo J. to advise that the court has vacated the motion dates previously scheduled, and will afford other interested parties the two months requested to consider their opinions. Moreover, it shall advise that the court will consider the process to be employed at a case conference scheduled for that purpose, and the process that is eventually determined shall be communicated to those parties once it has been determined.
- e) HDI shall provide a copy of the correspondence in paragraph c) above to all other parties to this case conference.

Additional pages attached: Yes No

November 15 , 20 **22**

Date of Endorsement (Rule 59.02(2)(c)(ii))

Signature of Judge/Case Management Master (Rule 59.02(2)(c)(i))