

CITATION: Six Nations of the Grand River Band of Indians v. The Attorney General of Canada and His Majesty the King in Right of Ontario, 2023 ONSC 1027

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

DATE: 20230210

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: Six Nations of the Grand River Band of Indians

AND:

The Attorney General of Canada and His Majesty the King in Right of Ontario

BEFORE: J.T. Akbarali J.

COUNSEL: *Iris Antonios, Max Shapiro and Gregory Sheppard*, for the plaintiff

Manizeh Fancy, David Felicient, Christine Perruzza, David Tortel, Catherine Ma, Jennifer Lapan, for the defendant His Majesty the King in Right of Ontario

Tania Mitchell, Anusha Aruliah, Sarah Kanko, Myra Sivaloganathan, Hasan Junaid, Katrina Longo, for the defendant The Attorney General of Canada

Dylan Gibbs and Colin Corruthers for the proposed intervener, Haudenosaunee Development Institute

Jeffrey Kaufman, for the proposed intervener, Men's Fire

Nuri Frame and Alex DeParde, for the proposed intervener, Mississaugas of the Credit First Nation

HEARD: February 10, 2023

CASE CONFERENCE ENDORSEMENT

[1] Today's case conference was held in follow up to the case conference I held on February 3, 2023: *Six Nations of the Grand River Band of Indians v. The Attorney General of Canada and His Majesty the King in Right of Ontario*, 2023 ONSC 909.

[2] In this endorsement, I address the following issues:

- a. Finalizing the content of the notice ordered in para. 29 of my December 14, 2022 endorsement: *Six Nations of the Grand River Band of Indians v. The Attorney General of Canada and His Majesty the King in Right of Ontario*, 2022 ONSC 7041.
- b. Adjustments to the timetable set out in para. 39 of my December 14, 2022 endorsement;

- c. Confidentiality concerns regarding expert reports appended to the as-yet-unfiled motion materials of the proposed intervener, Mississaugas of the Credit First Nation;
- d. The venue for the intervention motions of Haudenosaunee Development Institute and Men's Fire.

Notice

[3] My endorsement of December 14, 2022 contemplated the release of the notice in early January. The notice will now be released next week. As a result, a new day must be fixed for the date by which any other party wishing to participate in the motions to intervene to notify counsel for the parties and proposed parties. That new date shall be March 10, 2023, and the notice shall be updated to reflect it.

Timetable

[4] The delay in the notice and certain other obligations of counsel have led to the need to make minor amendments to the timetable I ordered on December 14, 2022. I amend the timetable as follows:

- a. Case conference to be held on March 17, 2023 at 10 a.m. by videoconference at which the parties, proposed parties, and any other party who has advised that it wishes to participate in the intervention motions shall attend for purposes of addressing the preparation and filing of any additional required materials. If no such other party indicates an intention to participate, the parties may vacate this date unless it is needed for any other purpose;
- b. Cross-examinations to be completed by March 24, 2023;
- c. Moving party factums to be delivered by April 10, 2023;
- d. Responding party factums to be delivered by May 1, 2023;
- e. Hearing of the motions of the Haudenosaunee Development Institute and Men's Fire shall take place at the Gathering Place by the Grand, in the plaintiff's community, on May 8-10, 2023;
- f. Hearing of the motion of the Mississaugas of the Credit First Nation to intervene shall take place at the courthouse in Toronto on May 12, 2023.

Confidentiality Concerns – Motion Material of Mississaugas of the Credit First Nation

[5] The Haudenosaunee Development Institute seeks a copy of the motion material of the Mississaugas of the Credit First Nation. The motion material is not yet publicly filed. The plaintiff has raised concerns because the motion material appends three of the plaintiff's expert reports prepared for trial, which were provided to the Mississaugas of the Credit First Nation by Ontario, not by the plaintiff.

[6] The plaintiff is concerned that making its expert reports available publicly in advance of trial may compromise the integrity of the trial process. The plaintiff and the Mississaugas of the Credit First Nation have agreed to attempt to resolve the plaintiff's concerns by considering whether a summary of the expert evidence would be sufficient for purposes of the intervention motion. If so, the Mississaugas of the Credit will amend its motion record and file the amended copy with the court.

[7] If no resolution can be reached, the plaintiff will have to move for a protective order. The parties shall advise me if a motion is necessary, in which case I will timetable one.

[8] At this stage, the Haudenosaunee Development Institute has no right to receive the expert reports for trial. I do not accept its contention that it is unfair that the Mississaugas of the Credit First Nation have them, while the Haudenosaunee Development Institute does not. The parties' bases for their intervention motions are different. I understand why the expert reports, or the scope of them, may be relevant to the motion brought by the Mississaugas of the Credit First Nation. However, I do not understand why they have any relevance to the motion of the Haudenosaunee Development Institute.

[9] In any event, counsel indicated it would consider providing a courtesy copy of some of the motion materials to the Haudenosaunee Development Institute, not including the expert reports. At some point soon, the Mississaugas of the Credit First Nation will have to file their motion materials, and what they consist of will be publicly available subject to any protective order the plaintiff seeks and obtains.

Venue

[10] It appears that progress is being made in arranging for the intervention motions of Haudenosaunee Development Institute and Men's Fire to take place on the Six Nations of the Grand River reserve. Ms Lapan, counsel for Ontario, is liaising with Court Services Division and the proposed venue to sort out what else is required. As necessary, I will assist in clarifying logistics.

[11] I have asked counsel to consider the requirements to hold the hearing at the venue that has been identified, having regard to the facilities the venue is able to provide. If necessary, I will release a further endorsement specifying the requirements to hold the hearing in the Six Nations community.

J.T. Akbarali J.

Date: February 10, 2023