

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 1794

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

DATE: 20230317

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 Tortell, Jennifer Lepad, and Julia McRandall, for the defendant His Majesty the King in Right of Ontario

Owen Young, Tania Mitchell, Hasan Junaid, Katrina Longo, Sarah Kanko, and Myra Sivaloganathan, for the defendant The Attorney General of Canada

Tim Gilbert, Colin Carruthers, Thomas Dumigan, Jack MacDonald, Dylan Gibbs, Jonathan Martin for the proposed intervener, Haudenosaunee Development Institute

No one appearing for the proposed intervener, Men's Fire

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

HEARD: March 17, 2023

SECOND CORRECTED CASE CONFERENCE ENDORSEMENT

[1] In this case conference endorsement, I address the following issues:

- a. Venue for the hearing of the intervention motions;
- b. Requests to participate in the intervention motion resulting from the distribution of the notice ordered in my endorsement of February 10, 2023;
- c. Filing a redacted version of the HDI's motion record;
- d. Evidentiary objections;
- e. Change to the Notice on the website; and

f. CaseLines directions.

Venue

[2] Unfortunately, while significant efforts were undertaken to arrange for a suitable venue on the Six Nations' reserve in which to hear the motions of HDI and Men's Fire, advice from the Six Nations police force indicates that from a practical and a resource perspective, it would be difficult to accommodate the hearing of the intervention motions within the community, particularly having regard to security. It does not appear that these challenges can be overcome.

[3] Ontario is attempting to determine whether suitable space could be found for the HDI and Men's Fire intervention motions in the Hamilton courthouse.

[4] At the same time, we have available two courtrooms in Toronto. The plaintiff will investigate whether it would be possible to livestream the hearing into the Six Nations community.

[5] The parties shall keep me updated on these issues by email. If necessary, a further conference will be scheduled to deal with any issues related to venue.

[6] If the HDI and Men's Fire motions are heard in Toronto and live-streamed, the motion of the Mississaugas of the Credit shall be heard in the same manner. If that option is not preferred or workable, the Mississaugas of the Credit motion shall proceed virtually on zoom.

[7] I confirm that the HDI and Men's Fire motions shall be heard together on May 8, 9 and 10, while the Mississaugas of the Credit First Nation's motion shall be heard on May 12, 2023, in Toronto (whether virtually or in person) for one day.

Requests for Participation

[8] The parties have received a few communications from people in response to either the first or second notice. Most are ambiguous and make no request to participate, so I do not deal with those.

[9] There is only one request to participate, from a Camron R. Martin, who describes himself as a 71-year-old male Grand Valley Mohawk. He sent an email indicating that he wanted an opportunity to speak at the motion.

[10] Mr. Martin does not appear to be represented, nor does he appear to be seeking to intervene. While we contemplated that the notice might lead to requests from others to intervene in the motion or in the proceeding, the notice itself referred to "participation". The opportunity to participate is exactly what Mr. Martin is looking for. Although such participation is not a regular part of the court's process, the purpose of the notice was to enhance the transparency of the litigation, and in particular, among the Indigenous communities affected. And of course, the court has inherent jurisdiction to control its own process. In my view, if appropriate, the court can hear from Mr. Martin notwithstanding that he is not a witness or a party, and that he does not seek to intervene. However, more information is needed to confirm the appropriateness of Mr. Martin's participation.

[11] Counsel for the plaintiff shall contact Mr. Martin to confirm that he is not seeking to intervene, and to enquire: (i) what topics he seeks to address; (ii) how much time he seeks; and (iii) how he wishes to, or is able to, participate (i.e. in person in Toronto, by zoom, etc.). Counsel shall advise me by email what they learn from Mr. Martin. Any other party to the motion may express their views about Mr. Martin's proposed participation by way of email to me. If necessary, I will convene a further case conference to address it.

HDI's Motion Record

[12] In volume 3 of HDI's motion record, they included a response to the first notice from an individual which included the individual's name and email address. The motion record was uploaded to the website being maintained for the litigation. The individual in question learned that their name and email address were available on the website and objected.

[13] The motion record volume in question has been replaced on the website with a version in which the individual's name and email address are redacted. The parties are content to proceed with the motion using the redacted motion record. The information redacted is not material to the issues on the motion, and redacting it is consistent with respect for the individual's privacy interests. Accordingly, the motion record shall include only the redacted volume 3.

Evidentiary Objections

[14] The parties advise that a number of evidentiary objections will be made to evidence filed on the intervention motions.

[15] To deal with these objections, when delivering their factums, the parties shall also deliver a chart that identifies with particularity the evidence they will argue is inadmissible at the motion. The charts shall also be uploaded to CaseLines.

[16] No motions to strike shall be brought. Rather, the admissibility issues shall be dealt with in the context of argument on the motions. I encourage the parties to focus on the controlling issues when identifying the evidence they will object to.

Change to Notice

[17] The parties seek my approval to make a minor change to the on-line notice to properly identify the dates for the intervention motion. Currently the notice states: "The court will hold a hearing on May 8, 2023 for four days where each group wanting to participate can make their arguments." To reflect the slight change in scheduling, they propose changing the wording to: "The court will hold a hearing on May 8-10 and 12, 2023 for four days where each group wanting to participate can make their arguments."

[18] I agree this change is appropriate and direct the parties to make it.

CaseLines Directions

[19] Finally, I indicated that I would arrange for two CaseLines bundles to be opened for the intervention motions.

[20] I make the following directions with respect to the electronic documents:

- a. All materials shall be uploaded to CaseLines by May 2, 2023. The parties must take care to ensure that their materials are uploaded into the correct bundle.
- b. All materials shall be hyperlinked, including references to the evidence and law in the factums, and references to exhibits in the affidavits. Links to the law in the factum should link to the portion of the decision on which counsel relies. Affidavits and/or exhibits to affidavits shall not be uploaded as separate documents in CaseLines but rather uploaded as part of a volume in a motion record.
- c. All indices must hyperlink to the documents described in them, and all documents must link back to the index of the volume in which they are contained. The parties must confirm that the hyperlinks are working on CaseLines, and specifically that in uploading the documents to CaseLines, the hyperlinks have not been scrubbed.
- d. The book of authorities shall consist of a hyperlinked index, and copies of any cases that are not available online.
- e. If any party seeks costs, the parties should attempt to agree on costs in advance of the motion, if possible. If not possible, costs outlines shall be uploaded by the outset of the motion.
- f. The parties shall, when listing on their Motion Confirmation Form the “Materials Filed and to be Relied on at the Hearing”, include CaseLines document numbers and page references for each document.
- g. The parties shall come prepared to argue the motion using CaseLines page numbers, and shall confer with each other to ensure all parties are using the same set of page numbers (i.e., either the master or the current). The parties may wish to use the “direct to” feature or presentation mode on CaseLines.
- h. The parties shall email a word copy of their factums, and a word copy of their proposed draft order to my assistant in advance of the motion.
- i. Once documents have been uploaded to CaseLines, they shall not be removed, even if to correct technical errors, without first confirming with my assistant that they may be removed.
- j. Unless they are relevant for some reason, affidavits of service shall not be uploaded into CaseLines.
- k. The parties are reminded that technical support for CaseLines is available by telephoning 1-800-290-9378.

1. Failure to comply with these requirements may result in the matter not proceeding at the designated time.

J.T. Akbarali J.

Date: March 17, 2023