

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

B E T W E E N:

SIX NATIONS OF THE GRAND RIVER BAND OF INDIANS

Plaintiff (Responding Party)

- and -

THE ATTORNEY GENERAL OF CANADA and HIS MAJESTY THE KING  
IN RIGHT OF ONTARIO

Defendants (Responding Parties)

- and -

MISSISSAUGAS OF THE CREDIT FIRST NATION

Moving Party

**TRANSCRIPT BRIEF OF THE PLAINTIFF (RESPONDING PARTY),  
SIX NATIONS OF THE GRAND RIVER BAND OF INDIANS**

**MOTION RETURNABLE MAY 12, 2023**

April 20, 2023

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**ONTARIO  
SUPERIOR COURT OF JUSTICE**

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MISSISSAUGAS OF THE CREDIT FIRST NATION

Moving Party

**TABLE OF CONTENTS**

<b><u>Tab No.</u></b>	<b><u>Document</u></b>	<b><u>Page No.</u></b>
<b>A.</b>	<b>Transcript of the Cross Examination of Chief Mark Hill on March 16, 2023</b>	<b>1</b>
<b>B.</b>	<b>Transcript of the Cross Examination of Chief R. Stacey Laforme on March 20, 2023</b>	<b>30</b>
1.	Exhibit 1: Notice of Examination of Chief R. Stacey Laforme dated March 2, 2023	147
2.	Exhibit 2: Letter from N. Frame to M. Shapiro dated March 14, 2023	152
3.	Exhibit 3: Memorandum of Mississaugas of the Credit First Nation (For December 12, 2022 Case Management Conference) dated December 5, 2022	154
4.	Exhibit 4: Letter from M. Shapiro to N. Frame and A. DeParde dated March 3, 2023	162

<b><u>Tab No.</u></b>	<b><u>Document</u></b>	<b><u>Page No.</u></b>
5.	Exhibit 5: Letter from N. Frame to M. Shapiro dated March 17, 2023	164
6.	Undertakings and Refusals on the Cross Examination of Chief R. Stacey Laforme	180

1  
2  
3  
4  
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File No. CV-18-594281-0000

ONTARIO

SUPERIOR COURT OF JUSTICE

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Plaintiff

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THE KING IN RIGHT OF ONTARIO

Defendants

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--- This is the Cross-Examination of MARK HILL,  
on his affidavit affirmed on February 6, 2023  
taken via Neesons, a Veritext Company's virtual  
platform, on the 16th day of March, 2023.

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Job No. ON5798237



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David Tortell, Esq., for the Attorney  
David J. Feliciant, General of Ontario

Also present:

Lonny Bomberry,  
& Tayler Hill,  
Six Nations

Reported by: Leila Heckert, CVR, RCP-M

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I N D E X

PAGE

WITNESS: MARK HILL  
CROSS-EXAMINATION BY: Mr. DeParde.....6

The following list of undertakings, advisements  
and refusals is meant as a guide only for the  
assistance of counsel and no other purpose.

INDEX OF UNDERTAKINGS

The questions/requests undertaken are noted by  
U/T and appear on the following page/line:  
None.

INDEX OF ADVISEMENTS

The questions/requests taken under advisement  
are noted by a U/A and appear on the following  
page/line: None.

INDEX OF REFUSALS

The questions/requests refused are noted by R/F  
and appear on the following page/line: 20/2.

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INDEX OF EXHIBITS

NO. /DESCRIPTION

PAGE

None.

1 -- Upon commencing at 11:17 A.M.

2 REPORTER'S NOTE: Whereupon the  
3 following was read to all participants:

4 THE REPORTER: As you all know,  
5 because we are using Zoom, we all need to take  
6 extra care not to speak over one another.

7 If more than one person is talking, it  
8 will cut out the audio for me. You may still be  
9 able to hear each other, but as I will have both  
10 incoming competing audio channels, one will  
11 likely be completely cut out.

12 I will do my best to interrupt only  
13 when appropriate, but often people won't  
14 remember exactly what they've just said, and it  
15 also breaks up your train of thought, so it's  
16 best to try to slow down and wait until the  
17 other person has finished speaking.

18 Would the witness please identify  
19 himself and spell your first and last name?

20 THE WITNESS: Mark Hill, M-A-R-K,  
21 H-I-L-L.

22 THE REPORTER: Our witness today is  
23 MARK HILL. I will now affirm the witness.

24 MARK HILL: AFFIRMED.

25 CROSS-EXAMINATION BY MR. DEPARDE:

1           1           Q.     Good morning, Mr. Hill. My name  
2           Alex DeParde. I am counsel for Mississaugas of  
3           the Credit First Nation. I know you've had  
4           quite a few of these examinations already and we  
5           don't have too many questions for you, so I'll  
6           try to it as brief as possible. I do appreciate  
7           you taking this time this morning.

8           A.     Thank you.

9           2           Q.     Before we start, as I'm sure you  
10          are aware by now, there's a court reporter here  
11          and they will be taking a written transcript of  
12          our examination today, and one of the results of  
13          that is that because the only record of this is  
14          going to be written, I just ask that if I ask  
15          you a question, you give me a verbal response  
16          because a nod just won't show up on the record.

17          A.     I understand.

18          3           Q.     And again, if you need to take a  
19          break, just let me know. I just ask that if  
20          I've asked you a question and you provide a  
21          response, then we can go to the break.

22          A.     Thank you.

23          4           Q.     So before we get started, I just  
24          want to note for the record that there are a  
25          number of individuals here who appear to be

1 observing from Six Nations. I think it's Owen  
2 Young, Tayler Hill, and Lonny Bomberry. Is that  
3 correct?

4 MR. JANES: So Tayler Hill and Lonny  
5 Bomberry, that's correct. Owen Young is not  
6 with our team. Owen Young is, I believe, with  
7 the federal team.

8 MR. DEPARDE: Understood. Thank you.  
9 Just for the record, I'd like to note that the  
10 matter of observers was not raised with us prior  
11 to this examination, and we didn't consent to  
12 it. That being said, we are not going to object  
13 to their attendance today so long as it's  
14 understood that they will stay on mute the  
15 entire time, their videos will stay off the  
16 entire time, and they won't participate in the  
17 chat or participate in the examination to any  
18 extent. Is that agreed?

19 MR. JANES: That is the understanding  
20 and that's agreed.

21 MR. DEPARDE: Thank you.

22 BY MR. DEPARDE:

23 5 Q. So Chief Hill, can I ask you who  
24 Mr. Lonny Bomberry is?

25 A. Yes. He's our director of lands

1 and resources.

2 6 Q. How long has he been director of  
3 lands and resources?

4 A. Oh, my gosh. Twenty plus years.

5 7 Q. A long time?

6 A. A long time.

7 8 Q. And what is his role in this  
8 action for Six Nations?

9 A. So he's been facilitating back  
10 and forth with our communication to council, our  
11 elected council, as well as our legal team.

12 9 Q. So it's fair to say that he's  
13 involved in the management of this action on a  
14 fairly day-to-day basis?

15 A. Yes.

16 10 Q. I'm going to ask the same  
17 questions about Mr. Hill.

18 MR. JANES: Miss.

19 MR. DEPARDE: Ms. Hill. My apologies.  
20 My apologies.

21 BY MR. DEPARDE:

22 11 Q. So who is Ms. Hill?

23 A. So she's, again, part of  
24 succession planning, so basically learning and  
25 observing Lonny's role.

1 12 Q. Understood. So the intention is  
2 that one day Ms. Hill will take over  
3 Mr. Bomberry's role --

4 A. Yes.

5 13 Q. -- when he's retired? Okay. And  
6 is Ms. Hill involved in the day-to-day  
7 management of this action?

8 A. Yes. Again, just more, I would  
9 assume, more, or rather say, more an observation  
10 level.

11 14 Q. Thank you for the clarification.  
12 So Chief Hill, do you have your  
13 affidavit with you today?

14 A. I do.

15 15 Q. That's great. And did you review  
16 the affidavit before we began today?

17 A. Yes.

18 16 Q. Did you find any errors that  
19 you'd like to correct?

20 A. No.

21 17 Q. So it's fair to say that your  
22 affidavit is true and correct to the best of  
23 your knowledge?

24 A. Yes.

25 18 Q. And because we are virtual, I see



1           that you and your counsel with you.

2                       Is there anybody else in the room with  
3 you that we can't see?

4                       MR. JANES: Mr. Sheppard who is also  
5 part of the legal team is here with us as well.

6                       MR. DEPARDE: Understood. Thank you.

7                       BY MR. DEPARDE:

8       19               Q. Do you have any notes with you,  
9 Chief Hill?

10                      A. No.

11       20               Q. I'd like to take you to your  
12 affidavit.

13                      A. Sure.

14       21               Q. And I'm on page 2 at paragraph 2.  
15 Are you there?

16                      A. I am, yes.

17       22               Q. You state you are the elected  
18 chief of the Six Nations elected Council of the  
19 Six Nations of the Grand River Band of Indians,  
20 correct?

21                      A. Yes.

22       23               Q. You say that you have been chief  
23 of the elected Council since November 2019,  
24 correct?

25                      A. That's correct.

1 24 Q. You state that from 2010 to 2019,  
2 you were a district elected councillor in the  
3 elected Council, correct?

4 A. Yes.

5 25 Q. So it's fair to say, Chief Hill,  
6 that you've been a member of elected leadership  
7 for Six Nations for about 13 years now?

8 A. That's correct.

9 26 Q. In your 13 years as an elected  
10 leader of Six Nations, you have never met with  
11 MCFN leadership regarding this lawsuit, correct?

12 A. That's correct.

13 27 Q. In your time as an elected leader  
14 for Six Nations, would it be fair to say that  
15 you were not aware of any other member of  
16 leadership from Six Nations having met with MCFN  
17 leadership regarding this lawsuit?

18 A. That's correct.

19 28 Q. In your 13 years as leadership,  
20 you have never written to MCFN leadership  
21 regarding this lawsuit. Is that correct?

22 A. That's correct.

23 29 Q. And would it also be fair to say  
24 that you're not aware of any other member of Six  
25 Nations leadership writing to MCFN leadership

1 regarding this lawsuit?

2 A. That's correct.

3 30 Q. In your 13 years of an elected  
4 leader for Six Nations, you've never called a  
5 member of MCFN leadership regarding this  
6 lawsuit? Is that correct?

7 A. No, that's not correct. I've had  
8 multiple phone conversations with the elected  
9 Chief Stacey Laforme.

10 31 Q. So I'd like to ask you a few  
11 questions about those conversations.

12 A. I might add that -- I should be  
13 specific that it's never really been  
14 conversations about this litigation or a court  
15 case, it's always been on other matters.

16 32 Q. So you've never called and had a  
17 phone conversation Mr. Laforme, my apologies,  
18 Chief Laforme regarding this action in  
19 particular?

20 A. No.

21 33 Q. But you often will have phone  
22 calls with Chief Laforme on other matters?

23 A. That's correct.

24 34 Q. What other matters would you have  
25 phone calls with Chief Laforme about?

1           A.    Community safety, there's been  
2 instances where most recent there's been, you  
3 know, community concern around criminal  
4 activity, policing issues, boundary issues,  
5 Internet connectivity, those types of matters,  
6 so other community matters.

7    35           Q.    So, Chief Hill, is it fair to say  
8 that Six Nations has never provided formal  
9 notice of this lawsuit to MCFN leadership?

10           A.    To my knowledge, no.

11    36           Q.    I'd like to take you back to your  
12 affidavit, Chief Hill.

13           A.    Sure.

14    37           Q.    Let's go to paragraph 18.

15           A.    Okay.

16    38           Q.    The second sentence you state:  
17                    "MCFN's Motion Record contains  
18 three expert reports delivered by the  
19 Band in support of the Band's claims."  
20 Correct.

21           A.    Yes.

22    39           Q.    And by "the Band" you are  
23 referring to Six Nations, correct?

24           A.    Yes.

25    40           Q.    I'm taking you now to

1 paragraph 19, second sentence you state:

2 "Ontario admitted the sharing of  
3 these expert reports with MCFN's  
4 lawyers without raising this first in  
5 a case conference. This required our  
6 lawyers to ask for a court direction  
7 that this not happen again."

8 Correct?

9 A. That's correct.

10 41 Q. Is it fair to say that it's your  
11 view that it's important that these reports not  
12 be shared with the public?

13 A. Sorry. Can you repeat that?

14 42 Q. So is it fair to say that it's  
15 your view or opinion or belief that it's  
16 important that the expert reports prepared by  
17 Six Nations that were shared by Ontario with  
18 MCFN's lawyers not be shared with the public?

19 A. That's not entirely my view, I  
20 wouldn't say.

21 43 Q. So what is your view?

22 A. I mean, I think this -- I want to  
23 go to the bigger picture of this litigation  
24 which a lot of our documents have been shared  
25 publicly. So that's why there's some confusion

1 in a sense because we have put as much as we can  
2 out in the public regarding this entire  
3 litigation.

4 44 Q. Right. And I think that it's  
5 fair to say there are some documents that have  
6 been filed with the Court. But the documents  
7 that I am speaking about in particular are the  
8 three expert reports that you referred to at  
9 paragraph 18 of your --

10 A. Right.

11 45 Q. -- affidavit. So my question  
12 really only pertains to those reports. So is it  
13 your view that it's important that those reports  
14 not be shared with the public --

15 A. Yes.

16 46 Q. -- at this stage? I'm back at  
17 paragraph 19, Chief Hill. On the third to last  
18 line you state:

19 "This event was also reported in  
20 our community."

21 Correct?

22 A. That's correct.

23 47 Q. And by "this event" you are  
24 referring to Ontario sharing three of Six  
25 Nations' expert reports with MCFN's lawyers,

1 correct?

2 A. Yes.

3 48 Q. And in the last sentence of  
4 paragraph 19, you referred to an article by  
5 Turtle Island News as demonstrating this event  
6 was reported in your community?

7 A. That's correct.

8 49 Q. I'd like to take you to that  
9 article.

10 A. Sure.

11 50 Q. It's at Exhibit A, and I believe  
12 the page number is page 9 to your affidavit?

13 A. Yep.

14 51 Q. Are you familiar with this  
15 article?

16 A. Yes.

17 52 Q. You've read it?

18 A. Yes.

19 53 Q. I'm going to take you to the  
20 second paragraph of this article. Are you  
21 there?

22 A. Yes.

23 54 Q. You would agree with me that  
24 Mr. Lonny Bomberry is interviewed for this  
25 article?

1 A. Yes.

2 55 Q. And that's the same Lonny  
3 Bomberry who is here and observing this  
4 cross-examination?

5 A. To be honest, I want to clarify.  
6 I don't know for sure that he was specifically  
7 interviewed, rather -- or if that was within a  
8 specific meeting in where reporters generally  
9 come. So I'm not sure. I can't speak  
10 specifically to if he was interviewed. The  
11 articles often are also looked at and developed  
12 from conversations, not necessarily having to be  
13 directly interviewed.

14 56 Q. It's fair to say, though, that  
15 this article contains quotes from Mr. Bomberry?

16 A. Yes.

17 57 Q. And that's the same Mr. Bomberry  
18 who's here today observing a cross-examination?

19 A. Yes.

20 58 Q. I'd like to go back to your  
21 comment about meetings with reporters. Can you  
22 provide a little bit more context about what  
23 meetings reporters would be at?

24 A. So they would be at any of our  
25 public meetings, so whether that would be at



1 general council, political liaison or general  
2 finance.

3 59 Q. And do you typically have public  
4 meetings about this litigation?

5 A. We have recently, yes, again to  
6 start to inform our community as well as the  
7 implementation of a specific website to this  
8 litigation. So basically, yes.

9 60 Q. And do you recall the particular  
10 public meeting that Mr. Bomberry would have  
11 provided these quotes at?

12 A. I don't recall.

13 61 Q. But it would have been in  
14 November 2022 or late October 2022?

15 A. That's what I'm assuming based  
16 upon the article date.

17 62 Q. So forgive me, but Mr. Bomberry  
18 is the lands and resources director for Six  
19 Nations?

20 A. That's correct.

21 63 Q. Let's go to paragraph 6 of the  
22 article, it's also on page 9.

23 A. Okay.

24 64 Q. The article quotes Mr. Bomberry  
25 as saying:

1 "Ontario released some of our  
2 expert reports to them, without our  
3 consent. We served the reports on  
4 Canada and Ontario, but have not filed  
5 in court, so they have them and  
6 Ontario gave them to (Mississaugas)  
7 First Credit First Nation before our  
8 court case comes up."

9 Is that correct?

10 A. That's what it reads, yes.

11 65 Q. Do you know how Mr. Bomberry  
12 became aware of that fact?

13 A. No, I am not.

14 66 Q. Would it have been in connection  
15 with his day-to-day management of this action?

16 MR. JANES: (Inaudible) --

17 MR. DEPARDE: Sorry. I'm having  
18 trouble hearing you.

19 MR. JANES: I think we're moving into  
20 solicitor-client privilege issues here.

21 Mr. Bomberry is within the Nation and you've  
22 heard the earlier testimony that he's involved  
23 in the day-to-day management of the litigation  
24 (inaudible) with the legal --

25 THE REPORTER: I'm sorry, Mr. Janes,

1           you need to come closer to the mic.

2           R/F           MR. JANES:  Sorry.  I'm saying that we  
3           are going to object on the basis that we're now  
4           moving into solicitor and client communications,  
5           at this point in time, as you discussed earlier  
6           that Mr. Bomberry is an employee of the Six  
7           Nations who is part of the team that is involved  
8           in managing the litigation with legal counsel.  
9           So we are now, I would suggest, moving into an  
10          area we are asking about communications that are  
11          likely dealing with solicitor-client  
12          communications.

13                       MR. DEPARDE:  I'll move on.

14                       BY MR. DEPARDE:

15       67           Q.     Chief Hill, is it fair to say  
16           that when Mr. Bomberry gave quotes for this  
17           article, he was speaking in an official capacity  
18           for Six Nations?

19                       A.     I'm then going back to, yes, he's  
20           our lands and resources director.

21       68           Q.     So it would be fair to say that  
22           his views that are expressed in this article are  
23           the views of Six Nations?

24                       A.     Yes.

25       69           Q.     Thank you, Chief Hill.  Those are

1 my questions.

2 A. Thank you.

3 MR. JANES: No re-examination.

4 (Whereupon this examination concludes  
5 at 11:31 A.M.)

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REPORTER'S CERTIFICATE

I, LEILA HECKERT, CVR, Certified  
Verbatim Reporter, certify;

That the foregoing proceedings were  
taken before me at the time and place therein  
set forth at which time the witness was put  
under oath by me;

That the testimony of the witness and  
all objections made at the time of the  
examination were recorded digitally by me and  
were thereafter transcribed;

That the foregoing is a true and  
accurate transcript of my shorthand notes so  
taken. Dated this 20th day of March 2023.



PER: LEILA HECKERT

CERTIFIED VERBATIM REPORTER

[& - area]

1

<b>&amp;</b>	<b>21</b> 10:14	<b>49</b> 16:8	<b>a</b>
<b>&amp;</b> 2:19	<b>22</b> 10:17	<b>5</b>	<b>a.m.</b> 5:1 21:5
<b>1</b>	<b>23</b> 10:22	<b>5</b> 7:23	<b>able</b> 5:9
<b>1</b> 6:1	<b>24</b> 11:1	<b>50</b> 16:11	<b>accurate</b> 22:15
<b>10</b> 8:16	<b>25</b> 11:5	<b>51</b> 16:14	<b>action</b> 8:8,13
<b>11</b> 8:22	<b>26</b> 11:9	<b>52</b> 16:17	9:7 12:18
<b>11:17</b> 5:1	<b>27</b> 11:13	<b>53</b> 16:19	19:15
<b>11:31</b> 21:5	<b>28</b> 11:19	<b>54</b> 16:23	<b>activity</b> 13:4
<b>12</b> 9:1	<b>29</b> 11:23	<b>55</b> 17:2	<b>add</b> 12:12
<b>13</b> 9:5 11:7,9	<b>29102</b> 22:19	<b>56</b> 17:14	<b>admitted</b> 14:2
11:19 12:3	<b>3</b>	<b>57</b> 17:17	<b>advisement</b>
<b>14</b> 9:11	<b>3</b> 6:18	<b>58</b> 17:20	3:17
<b>15</b> 9:15	<b>30</b> 12:3	<b>59</b> 18:3	<b>advisements</b>
<b>16</b> 9:18	<b>31</b> 12:10	<b>6</b>	3:7,16
<b>16th</b> 1:17	<b>32</b> 12:16	<b>6</b> 1:15 3:4 8:2	<b>affidavit</b> 1:15
<b>17</b> 9:21	<b>33</b> 12:21	18:21	9:13,16,22
<b>18</b> 9:25 13:14	<b>34</b> 12:24	<b>60</b> 18:9	10:12 13:12
15:9	<b>35</b> 13:7	<b>61</b> 18:13	15:11 16:12
<b>18-594281-0...</b>	<b>36</b> 13:11	<b>62</b> 18:17	<b>affirm</b> 5:23
1:1	<b>37</b> 13:14	<b>63</b> 18:21	<b>affirmed</b> 1:15
<b>19</b> 10:8 14:1	<b>38</b> 13:16	<b>64</b> 18:24	5:24
15:17 16:4	<b>39</b> 13:22	<b>65</b> 19:11	<b>agree</b> 16:23
<b>2</b>	<b>4</b>	<b>66</b> 19:14	<b>agreed</b> 7:18,20
<b>2</b> 6:9 10:14,14	<b>4</b> 6:23	<b>67</b> 20:15	<b>alex</b> 6:2
<b>20</b> 10:11	<b>40</b> 13:25	<b>68</b> 20:21	<b>alexander</b> 2:10
<b>20/2</b> 3:23	<b>41</b> 14:10	<b>69</b> 20:25	<b>anybody</b> 10:2
<b>2010</b> 11:1	<b>42</b> 14:14	<b>7</b>	<b>apologies</b> 8:19
<b>2019</b> 10:23	<b>43</b> 14:21	<b>7</b> 8:5	8:20 12:17
11:1	<b>44</b> 15:4	<b>8</b>	<b>appear</b> 3:13,18
<b>2022</b> 18:14,14	<b>45</b> 15:11	<b>8</b> 8:7	3:23 6:25
<b>2023</b> 1:15,17	<b>46</b> 15:16	<b>9</b>	<b>appreciate</b> 6:6
22:16	<b>47</b> 15:23	<b>9</b> 8:12 16:12	<b>appropriate</b>
<b>20th</b> 22:16	<b>48</b> 16:3	18:22	5:13
			<b>area</b> 20:10

[article - cross]

2

<p><b>article</b> 16:4,9                  16:15,20,25                  17:15 18:16,22                  18:24 20:17,22  <b>articles</b> 17:11  <b>asked</b> 6:20  <b>asking</b> 20:10  <b>assistance</b> 3:9  <b>assume</b> 9:9  <b>assuming</b> 18:15  <b>attendance</b>                  7:13  <b>attorney</b> 1:9                  2:13  <b>audio</b> 5:8,10  <b>aware</b> 6:10                  11:15,24 19:12</p>	<p><b>b</b></p> <p><b>b</b> 1:5  <b>back</b> 8:9 13:11                  15:16 17:20                  20:19  <b>band</b> 1:6 10:19                  13:19,22  <b>band's</b> 13:19  <b>based</b> 18:15  <b>basically</b> 8:24                  18:8  <b>basis</b> 8:14 20:3  <b>began</b> 9:16  <b>belief</b> 14:15  <b>believe</b> 7:6                  16:11  <b>best</b> 5:12,16                  9:22</p>	<p><b>bigger</b> 14:23  <b>bit</b> 17:22  <b>bomberry</b> 2:18                  7:2,5,24 16:24                  17:3,15,17                  18:10,17,24                  19:11,21 20:6                  20:16  <b>bomberry's</b> 9:3  <b>boundary</b> 13:4  <b>break</b> 6:19,21  <b>breaks</b> 5:15  <b>brief</b> 6:6</p>	<p><b>claims</b> 13:19  <b>clarification</b>                  9:11  <b>clarify</b> 17:5  <b>client</b> 19:20                  20:4,11  <b>closer</b> 20:1  <b>come</b> 17:9 20:1  <b>comes</b> 19:8  <b>commencing</b>                  5:1  <b>comment</b> 17:21  <b>communication</b>                  8:10  <b>communicati...</b>                  20:4,10,12  <b>community</b>                  13:1,3,6 15:20                  16:6 18:6  <b>company's</b>                  1:16  <b>competing</b> 5:10  <b>completely</b>                  5:11  <b>concern</b> 13:3  <b>concludes</b> 21:4  <b>conference</b>                  14:5  <b>confusion</b>                  14:25  <b>connection</b>                  19:14  <b>connectivity</b>                  13:5</p>	<p><b>consent</b> 7:11                  19:3  <b>contains</b> 13:17                  17:15  <b>context</b> 17:22  <b>conversation</b>                  12:17  <b>conversations</b>                  12:8,11,14                  17:12  <b>correct</b> 7:3,5                  9:19,22 10:20                  10:24,25 11:3                  11:8,11,12,18                  11:21,22 12:2                  12:6,7,23                  13:20,23 14:8                  14:9 15:21,22                  16:1,7 18:20                  19:9  <b>council</b> 8:10,11                  10:18,23 11:3                  18:1  <b>councillor</b> 11:2  <b>counsel</b> 3:9 6:2                  10:1 20:8  <b>court</b> 1:3 6:10                  12:14 14:6                  15:6 19:5,8  <b>credit</b> 2:11 6:3                  19:7  <b>criminal</b> 13:3  <b>cross</b> 1:14 3:4                  5:25 17:4,18</p>
---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

[cut - honest]

3

<p><b>cut</b> 5:8,11  <b>cv</b> 1:1  <b>cvr</b> 2:25 22:4</p>	<p><b>district</b> 11:2  <b>documents</b>                  14:24 15:5,6</p>	<p><b>expressed</b>                  20:22  <b>extent</b> 7:18  <b>extra</b> 5:6</p>	<p><b>g</b></p>
<p><b>d</b></p>	<p><b>e</b></p>	<p><b>f</b></p>	<p><b>general</b> 1:9                  2:14 18:1,1  <b>generally</b> 17:8  <b>give</b> 6:15  <b>go</b> 6:21 13:14                  14:23 17:20                  18:21  <b>going</b> 6:14 7:12                  8:16 16:19                  20:3,19  <b>good</b> 6:1  <b>gosh</b> 8:4  <b>grand</b> 1:6                  10:19  <b>great</b> 9:15  <b>gregory</b> 2:3  <b>guide</b> 3:8</p>
<p><b>d</b> 3:1  <b>date</b> 18:16  <b>dated</b> 22:16  <b>david</b> 2:13,14  <b>day</b> 1:17 8:14                  8:14 9:2,6,6                  19:15,15,23,23                  22:16  <b>dealing</b> 20:11  <b>defendant</b> 2:6  <b>defendants</b>                  1:11  <b>delivered</b> 13:18  <b>demonstrating</b>                  16:5  <b>deparde</b> 2:10                  3:4 5:25 6:2                  7:8,21,22 8:19                  8:21 10:6,7  <b>description</b> 4:2  <b>developed</b>                  17:11  <b>digitally</b> 22:12  <b>direction</b> 14:6  <b>directly</b> 17:13  <b>director</b> 7:25                  8:2 18:18                  20:20  <b>discussed</b> 20:5</p>	<p><b>e</b> 1:5,5,5 2:1,1                  3:1  <b>earlier</b> 19:22                  20:5  <b>elected</b> 8:11                  10:17,18,23                  11:2,3,6,9,13                  12:3,8  <b>employee</b> 20:6  <b>entire</b> 7:15,16                  15:2  <b>entirely</b> 14:19  <b>errors</b> 9:18  <b>esq</b> 2:2,3,4,6,7                  2:8,10,11,13  <b>event</b> 15:19,23                  16:5  <b>exactly</b> 5:14  <b>examination</b>                  1:14 3:4 5:25                  6:12 7:11,17                  17:4,18 21:3,4                  22:12  <b>examinations</b>                  6:4  <b>exhibit</b> 16:11  <b>exhibits</b> 4:1  <b>expert</b> 13:18                  14:3,16 15:8                  15:25 19:2</p>	<p><b>f</b> 3:22 20:2  <b>facilitating</b> 8:9  <b>fact</b> 19:12  <b>fair</b> 8:12 9:21                  11:5,14,23                  13:7 14:10,14                  15:5 17:14                  20:15,21  <b>fairly</b> 8:14  <b>familiar</b> 16:14  <b>february</b> 1:15  <b>federal</b> 7:7  <b>feliciant</b> 2:14  <b>file</b> 1:1  <b>filed</b> 15:6 19:4  <b>finance</b> 18:2  <b>find</b> 9:18  <b>finished</b> 5:17  <b>first</b> 2:11 5:19                  6:3 14:4 19:7,7  <b>following</b> 3:7                  3:13,18,23 5:3  <b>foregoing</b> 22:6                  22:14  <b>forgive</b> 18:17  <b>formal</b> 13:8  <b>forth</b> 8:10 22:8  <b>frame</b> 2:11</p>	<p><b>h</b></p>
			<p><b>h</b> 5:21  <b>happen</b> 14:7  <b>hear</b> 5:9  <b>heard</b> 19:22  <b>hearing</b> 19:18  <b>heckert</b> 2:25                  22:4,20  <b>hill</b> 1:14 2:19                  3:3 5:20,23,24                  6:1 7:2,4,23                  8:17,19,22 9:2                  9:6,12 10:9                  11:5 13:7,12                  15:17 20:15,25  <b>honest</b> 17:5</p>



[identify - nation]

4

<p><b>i</b></p> <p><b>identify</b> 5:18  <b>implementati...</b>                  18:7  <b>important</b>                  14:11,16 15:13  <b>inaudible</b> 19:16                  19:24  <b>incoming</b> 5:10  <b>index</b> 3:11,16                  3:21 4:1  <b>indians</b> 1:6                  10:19  <b>individuals</b>                  6:25  <b>inform</b> 18:6  <b>instances</b> 13:2  <b>intention</b> 9:1  <b>internet</b> 13:5  <b>interrupt</b> 5:12  <b>interviewed</b>                  16:24 17:7,10                  17:13  <b>involved</b> 8:13                  9:6 19:22 20:7  <b>island</b> 16:5  <b>issues</b> 13:4,4                  19:20</p>	<p><b>job</b> 1:25  <b>justice</b> 1:3</p> <p><b>k</b></p> <p><b>k</b> 5:20  <b>katrina</b> 2:7  <b>king</b> 1:10  <b>know</b> 5:4 6:3                  6:19 13:3 17:6                  19:11  <b>knowledge</b>                  9:23 13:10</p> <p><b>l</b></p> <p><b>l</b> 5:21,21  <b>laforme</b> 12:9                  12:17,18,22,25  <b>lands</b> 7:25 8:3                  18:18 20:20  <b>late</b> 18:14  <b>lawsuit</b> 11:11                  11:17,21 12:1                  12:6 13:9  <b>lawyers</b> 14:4,6                  14:18 15:25  <b>leader</b> 11:10,13                  12:4  <b>leadership</b> 11:6                  11:11,16,17,19                  11:20,25,25                  12:5 13:9  <b>learning</b> 8:24  <b>legal</b> 8:11 10:5                  19:24 20:8  <b>leila</b> 2:25 22:4                  22:20</p>	<p><b>level</b> 9:10  <b>liaison</b> 18:1  <b>likely</b> 5:11                  20:11  <b>line</b> 3:13,19,23                  15:18  <b>list</b> 3:7  <b>litigation</b> 12:14                  14:23 15:3                  18:4,8 19:23                  20:8  <b>little</b> 17:22  <b>long</b> 7:13 8:2,5                  8:6  <b>longo</b> 2:7  <b>lonny</b> 2:18 7:2                  7:4,24 16:24                  17:2  <b>lonny's</b> 8:25  <b>looked</b> 17:11  <b>lot</b> 14:24</p> <p><b>m</b></p> <p><b>m</b> 2:25 5:20  <b>made</b> 22:11  <b>majesty</b> 1:9  <b>management</b>                  8:13 9:7 19:15                  19:23  <b>managing</b> 20:8  <b>march</b> 1:17                  22:16  <b>mark</b> 1:14 3:3                  5:20,23,24  <b>matter</b> 7:10</p>	<p><b>matters</b> 12:15                  12:22,24 13:5                  13:6  <b>max</b> 2:4  <b>mcfn</b> 11:11,16                  11:20,25 12:5                  13:9  <b>mcfn's</b> 13:17                  14:3,18 15:25  <b>mean</b> 14:22  <b>meant</b> 3:8  <b>meeting</b> 17:8                  18:10  <b>meetings</b> 17:21                  17:23,25 18:4  <b>member</b> 11:6                  11:15,24 12:5  <b>met</b> 11:10,16  <b>mic</b> 20:1  <b>mississaugas</b>                  2:10 6:2 19:6  <b>mittell</b> 2:6  <b>morning</b> 6:1,7  <b>motion</b> 13:17  <b>move</b> 20:13  <b>moving</b> 19:19                  20:4,9  <b>multiple</b> 12:8  <b>mute</b> 7:14</p> <p><b>n</b></p> <p><b>n</b> 1:5 2:1 3:1  <b>name</b> 5:19 6:1  <b>nation</b> 2:11 6:3                  19:7,21</p>
<p><b>j</b></p> <p><b>j</b> 2:14  <b>janes</b> 2:2 7:4,19                  8:18 10:4                  19:16,19,25                  20:2 21:3</p>			

[nations - refusals]

<p><b>nations</b> 1:6                  2:20 7:1 8:8                  10:18,19 11:7                  11:10,14,16,25                  12:4 13:8,23                  14:17 15:25                  18:19 20:7,18                  20:23</p> <p><b>necessarily</b>                  17:12</p> <p><b>need</b> 5:5 6:18                  20:1</p> <p><b>neesons</b> 1:16</p> <p><b>never</b> 11:10,20                  12:4,13,16                  13:8</p> <p><b>news</b> 16:5</p> <p><b>nod</b> 6:16</p> <p><b>note</b> 5:2 6:24                  7:9</p> <p><b>noted</b> 3:12,18                  3:22</p> <p><b>notes</b> 10:8                  22:15</p> <p><b>notice</b> 13:9</p> <p><b>november</b>                  10:23 18:14</p> <p><b>number</b> 6:25                  16:12</p> <p><b>nuri</b> 2:11</p>	<p><b>objections</b>                  22:11</p> <p><b>observation</b> 9:9</p> <p><b>observers</b> 7:10</p> <p><b>observing</b> 7:1                  8:25 17:3,18</p> <p><b>october</b> 18:14</p> <p><b>official</b> 20:17</p> <p><b>oh</b> 8:4</p> <p><b>okay</b> 9:5 13:15                  18:23</p> <p><b>on5798237</b>                  1:25</p> <p><b>ontario</b> 1:2,10                  2:14 14:2,17                  15:24 19:1,4,6</p> <p><b>opinion</b> 14:15</p> <p><b>owen</b> 2:8 7:1,5                  7:6</p>	<p><b>particular</b>                  12:19 15:7                  18:9</p> <p><b>people</b> 5:13</p> <p><b>person</b> 5:7,17</p> <p><b>pertains</b> 15:12</p> <p><b>phone</b> 12:8,17                  12:21,25</p> <p><b>picture</b> 14:23</p> <p><b>place</b> 22:7</p> <p><b>plaintiff</b> 1:7 2:2</p> <p><b>planning</b> 8:24</p> <p><b>platform</b> 1:17</p> <p><b>please</b> 5:18</p> <p><b>plus</b> 8:4</p> <p><b>point</b> 20:5</p> <p><b>policing</b> 13:4</p> <p><b>political</b> 18:1</p> <p><b>possible</b> 6:6</p> <p><b>prepared</b> 14:16</p> <p><b>present</b> 2:17</p> <p><b>prior</b> 7:10</p> <p><b>privilege</b> 19:20</p> <p><b>proceedings</b>                  22:6</p> <p><b>provide</b> 6:20                  17:22</p> <p><b>provided</b> 13:8                  18:11</p> <p><b>public</b> 14:12,18                  15:2,14 17:25                  18:3,10</p> <p><b>publicly</b> 14:25</p> <p><b>purpose</b> 3:9</p>	<p><b>put</b> 15:1 22:8</p> <p style="text-align: center;"><b>q</b></p> <p><b>question</b> 6:15                  6:20 15:11</p> <p><b>questions</b> 3:12                  3:17,22 6:5                  8:17 12:11                  21:1</p> <p><b>quite</b> 6:4</p> <p><b>quotes</b> 17:15                  18:11,24 20:16</p> <p style="text-align: center;"><b>r</b></p> <p><b>r</b> 2:1 3:22 5:20                  20:2</p> <p><b>raised</b> 7:10</p> <p><b>raising</b> 14:4</p> <p><b>rather</b> 9:9 17:7</p> <p><b>rcp</b> 2:25</p> <p><b>read</b> 5:3 16:17</p> <p><b>reads</b> 19:10</p> <p><b>really</b> 12:13                  15:12</p> <p><b>recall</b> 18:9,12</p> <p><b>recent</b> 13:2</p> <p><b>recently</b> 18:5</p> <p><b>record</b> 6:13,16                  6:24 7:9 13:17</p> <p><b>recorded</b> 22:12</p> <p><b>referred</b> 15:8                  16:4</p> <p><b>referring</b> 13:23                  15:24</p> <p><b>refusals</b> 3:8,21</p>
<p style="text-align: center;"><b>o</b></p>	<p style="text-align: center;"><b>p</b></p> <p><b>p</b> 2:1,1</p> <p><b>page</b> 3:2,13,19                  3:23 4:2 10:14                  16:12,12 18:22</p> <p><b>paragraph</b>                  10:14 13:14                  14:1 15:9,17                  16:4,20 18:21</p> <p><b>part</b> 8:23 10:5                  20:7</p> <p><b>participants</b>                  5:3</p> <p><b>participate</b>                  7:16,17</p>		
<p><b>oath</b> 22:9</p> <p><b>object</b> 7:12                  20:3</p>			

[refused - try]

6

<p><b>refused</b> 3:22  <b>regarding</b>                  11:11,17,21                  12:1,5,18 15:2  <b>released</b> 19:1  <b>remember</b> 5:14  <b>repeat</b> 14:13  <b>reported</b> 2:25                  15:19 16:6  <b>reporter</b> 5:4,22                  6:10 19:25                  22:5,21  <b>reporter's</b> 5:2                  22:1  <b>reporters</b> 17:8                  17:21,23  <b>reports</b> 13:18                  14:3,11,16                  15:8,12,13,25                  19:2,3  <b>requests</b> 3:12                  3:17,22  <b>required</b> 14:5  <b>resources</b> 8:1,3                  18:18 20:20  <b>response</b> 6:15                  6:21  <b>results</b> 6:12  <b>retired</b> 9:5  <b>review</b> 9:15  <b>right</b> 1:10 15:4                  15:10  <b>river</b> 1:6 10:19  <b>robert</b> 2:2</p>	<p><b>role</b> 8:7,25 9:3  <b>room</b> 10:2</p> <hr/> <p><b>s</b></p> <hr/> <p><b>s</b> 2:1  <b>safety</b> 13:1  <b>saying</b> 18:25                  20:2  <b>second</b> 13:16                  14:1 16:20  <b>see</b> 9:25 10:3  <b>sense</b> 15:1  <b>sentence</b> 13:16                  14:1 16:3  <b>served</b> 19:3  <b>set</b> 22:8  <b>shapiro</b> 2:4  <b>shared</b> 14:12                  14:17,18,24                  15:14  <b>sharing</b> 14:2                  15:24  <b>sheppard</b> 2:3                  10:4  <b>shorthand</b>                  22:15  <b>show</b> 6:16  <b>signature</b> 22:19  <b>six</b> 1:6 2:20 7:1                  8:8 10:18,19                  11:7,10,14,16                  11:24 12:4                  13:8,23 14:17                  15:24 18:18                  20:6,18,23</p>	<p><b>slow</b> 5:16  <b>solicitor</b> 19:20                  20:4,11  <b>sorry</b> 14:13                  19:17,25 20:2  <b>speak</b> 5:6 17:9  <b>speaking</b> 5:17                  15:7 20:17  <b>specific</b> 12:13                  17:8 18:7  <b>specifically</b>                  17:6,10  <b>spell</b> 5:19  <b>stacey</b> 12:9  <b>stage</b> 15:16  <b>start</b> 6:9 18:6  <b>started</b> 6:23  <b>state</b> 10:17                  11:1 13:16                  14:1 15:18  <b>stay</b> 7:14,15  <b>succession</b> 8:24  <b>suggest</b> 20:9  <b>superior</b> 1:3  <b>support</b> 13:19  <b>sure</b> 6:9 10:13                  13:13 16:10                  17:6,9</p> <hr/> <p><b>t</b></p> <hr/> <p><b>t</b> 1:5 3:13  <b>take</b> 5:5 6:18                  9:2 10:11                  13:11 16:8,19  <b>taken</b> 1:16 3:17                  22:7,16</p>	<p><b>talking</b> 5:7  <b>tania</b> 2:6  <b>tayler</b> 2:19 7:2                  7:4  <b>team</b> 7:6,7 8:11                  10:5 20:7  <b>testimony</b>                  19:22 22:10  <b>thank</b> 6:8,22                  7:8,21 9:11                  10:6 20:25                  21:2  <b>think</b> 7:1 14:22                  15:4 19:19  <b>third</b> 15:17  <b>thought</b> 5:15  <b>three</b> 13:18                  15:8,24  <b>time</b> 6:7 7:15                  7:16 8:5,6                  11:13 20:5                  22:7,8,11  <b>today</b> 5:22 6:12                  7:13 9:13,16                  17:18  <b>tortell</b> 2:13  <b>train</b> 5:15  <b>transcribed</b>                  22:13  <b>transcript</b> 6:11                  22:15  <b>trouble</b> 19:18  <b>true</b> 9:22 22:14  <b>try</b> 5:16 6:6</p>
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[turtle - zoom]

<b>turtle</b> 16:5 <b>twenty</b> 8:4 <b>types</b> 13:5 <b>typically</b> 18:3	<b>want</b> 6:24 14:22 17:5 <b>website</b> 18:7 <b>witness</b> 3:3
<b>u</b>	5:18,20,22,23 22:8,10
<b>u</b> 3:13,18 <b>under</b> 3:17 22:9 <b>understand</b> 6:17	<b>writing</b> 11:25 <b>written</b> 6:11,14 11:20
<b>understanding</b> 7:19	<b>x</b>
<b>understood</b> 7:8 7:14 9:1 10:6	<b>x</b> 3:1
<b>undertaken</b> 3:12	<b>y</b>
<b>undertakings</b> 3:7,11	<b>years</b> 8:4 11:7 11:9,19 12:3
<b>using</b> 5:5	<b>yep</b> 16:13 <b>young</b> 2:8 7:2,5 7:6
<b>v</b>	<b>z</b>
<b>verbal</b> 6:15 <b>verbatim</b> 22:5 22:21 <b>veritext</b> 1:16 <b>videos</b> 7:15 <b>view</b> 14:11,15 14:19,21 15:13 <b>views</b> 20:22,23 <b>virtual</b> 1:16 9:25	<b>zoom</b> 5:5
<b>w</b>	
<b>w</b> 1:5 <b>wait</b> 5:16	

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Court File No. CV-18-594281-0000

ONTARIO

SUPERIOR COURT OF JUSTICE

B E T W E E N:

SIX NATIONS OF THE GRAND RIVER BAND OF INDIANS

Plaintiff

- and -

THE ATTORNEY GENERAL OF CANADA and

HIS MAJESTY THE KING IN RIGHT OF ONTARIO

Defendants

- and -

MISSISSAUGAS OF THE CREDIT FIRST NATION

Moving Party

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--- This is the Cross-Examination of CHIEF R.  
STACEY LAFORME, on his affidavit affirmed December  
2, 2022, taken via Neesons, a Veritext Company's  
virtual Zoom platform, with all participants  
attending remotely, on the 20th day of March, 2023.

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A P P E A R A N C E S:

MAX SHAPIRO, Esq., for the Plaintiff

GREGORY SHEPPARD, Esq.,

BRITTANY TOWN, Esq.,

&

ROBERT JANES, Esq.,

TANIA MITCHELL, Esq., for the Defendant,

OWEN YOUNG, Esq., Attorney General of

KATRINA LONGO, Esq., Canada

DAVID TORTELL, Esq., for the Defendant,

DAVID FELICIAN, Esq., His Majesty the King

In Right of Ontario

NURI FRAME, Esq., for the Moving Party,

ALEXANDER DePARDE, Esq., Mississaugas of The

Credit First Nation

Also Present: Tayler Hill

Lonny Bomberry

REPORTED BY: Deana Santedicola, RPR, CRR, CSR

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I N D E X

WITNESS: Chief R. Stacey Laforme

PAGES

CROSS-EXAMINATION BY MR. SHAPIRO.....5 - 90

\*\*The following list of undertakings, advisements  
and refusals is meant as a guide only for the  
assistance of counsel and no other purpose\*\*

INDEX OF UNDERTAKINGS

The questions/requests undertaken are noted by U/T  
and appear on the following pages: 45:15, 77:3,  
77:11, 77:23, 79:21, 80:9, 81:23, 84:11, 87:3

INDEX OF ADVISEMENTS

The questions/requests taken under advisement are  
noted by U/A and appear on the following pages:  
[None]

INDEX OF REFUSALS

The questions/requests refused are noted by R/F and  
appear on the following pages: 51:10, 58:19,  
58:25, 59:8, 59:18, 59:22, 60:2, 60:12, 61:1,  
61:23, 62:10, 62:19, 62:24, 64:16, 65:1, 65:6,  
71:20, 79:10, 85:21, 86:4, 86:8, 86:15

1  
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10  
11  
12  
13  
14  
15  
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INDEX OF EXHIBITS

NO.	DESCRIPTION	PAGE/LINE NO.
Ex. 1	Notice of Examination for Chief Laforme, dated March 2, 2023....	7/24
Ex. 2	Letter dated March 14, 2023, from Mr. Frame to Mr. Shapiro...	8/16
Ex. 3	Document entitled "Memorandum of Mississaugas of the Credit First Nation (For December 12, 2022, Case Management Conference)", dated December 5, 2022.....	55/14
Ex. 4	Letter from Mr. Shapiro to Mr. Frame and Mr. DeParde, dated March 3, 2023.....	65/14
Ex. 5	Letter from Mr. Frame to Mr. Shapiro, dated March 17, 2023...	65/17

Job No. ON5782063



1 -- Upon commencing at 10:00 a.m.

2

3 CHIEF R. STACEY LAFORME; EAGLE FEATHER  
4 AFFIRMATION.

5 CROSS-EXAMINATION BY MR. SHAPIRO:

6 1 Q. Good morning, Chief Laforme. My  
7 name is Max Shapiro, and I am one of the lawyers  
8 for the Six Nations Band. I'll be asking questions  
9 this morning. Nice to meet you.

10 A. Good morning, Max. Nice to meet  
11 you as well.

12 2 Q. I take it you are located in your  
13 lawyer's conference room?

14 A. I believe this is his conference  
15 room. He doesn't invite me down much, so I can't  
16 swear to it, but yeah.

17 3 Q. We'll take his word for it that it  
18 is his conference room. There is no one else in  
19 the room with you; correct?

20 A. Correct.

21 4 Q. And the only screen you have in  
22 front of you is the one you are looking at right  
23 now with the video on?

24 A. Correct.

25 5 Q. You don't have any mobile phones

1 on?

2 A. No.

3 6 Q. And I see you have a number of  
4 documents in front of you. Can you let me know  
5 what is on the desk?

6 A. Sure. The first one is the Motion  
7 Record of the Mississaugas of the Credit First  
8 Nation for leave to intervene. The next one is the  
9 Ontario Further Amended Statement of Claim, the  
10 Plaintiff Documents, Chief Laforme  
11 Cross-examination, and the affidavit of R. Stacey  
12 Laforme, which is me.

13 So those are the documents that I have  
14 that are -- and of course, I have the Eagle Feather  
15 Affirmation.

16 7 Q. Thank you. And the affidavit you  
17 mentioned is the one that you affirmed on December  
18 2nd, 2022; correct?

19 A. Correct.

20 8 Q. I take it you have no corrections  
21 to that affidavit?

22 A. Not at this time, no.

23 9 Q. And you have no notes written down  
24 in front of you; correct?

25 A. No, I haven't done that since high

1 school.

2 10 Q. Great. Your lawyers are Mr. Frame  
3 and Mr. DeParde of the Pape Salter firm, right?

4 A. Yes.

5 11 Q. I take it they shared a Notice of  
6 Examination with you dated March 2nd; have you seen  
7 that?

8 A. I reviewed a number of  
9 correspondences. Is that the correspondence that I  
10 reviewed when I was reviewing the Statement of  
11 Claim?

12 12 Q. That may be more a question for  
13 your lawyer, but there is a Notice of Examination  
14 document, and we can pull it up, if that is  
15 helpful, Counsel.

16 MR. FRAME: It was provided to the  
17 Chief, and I will just give him a copy. It is in  
18 the collection of materials that we provided him at  
19 your request.

20 THE WITNESS: Yes, thank you. Yes, I  
21 do recognize this document, thank you.

22 MR. SHAPIRO: Thank you. I would like  
23 to please mark that document as Exhibit 1 today.

24 Ex. 1: Notice of Examination  
25 for Chief Laforme, dated March 2, 2023.

1 BY MR. SHAPIRO:

2 13 Q. Mr. Frame sent a March 14th letter  
3 responding to that notice which may be in that  
4 correspondence package. I am wondering if you have  
5 seen that either?

6 A. Yes.

7 14 Q. And let's give Mr. Frame a moment  
8 to show you, just in case. You are looking at a  
9 March 14th letter?

10 A. I am.

11 MR. SHAPIRO: I would like to please  
12 mark that as Exhibit 2.

13 And, Madam Reporter, we can provide you  
14 with electronic copies of all of the materials on  
15 the break or afterwards.

16 Ex. 2: Letter dated March 14,  
17 2023, from Mr. Frame to Mr. Shapiro.

18 BY MR. SHAPIRO:

19 15 Q. Chief Laforme, I understand you  
20 are a member of the Mississaugas of the Credit  
21 First Nation?

22 A. Correct.

23 16 Q. That is an Indigenous community of  
24 Anishinaabeg people?

25 A. Yes.

1       17                   Q.    It is also a Band under the Indian  
2                    Act?

3                    A.    It is.

4       18                   Q.    You'll understand that when I  
5                    refer today to "MCFN" or the "Mississaugas", that I  
6                    am referring to the Mississaugas of the Credit  
7                    First Nation, okay?

8                    A.    Yes, that is clear.

9       19                   Q.    Okay.  The MCFN I take it is  
10                   represented by an Elected Council?

11                   A.    Yes.

12       20                   Q.    You are the Elected Chief of that  
13                   Council?

14                   A.    I am.

15       21                   Q.    You have held that role since you  
16                   were elected as Chief in 2015?

17                   A.    This is going on my eighth year,  
18                   yes.

19       22                   Q.    You were an Elected Member of  
20                   Council before 2015; correct?

21                   A.    Correct.

22       23                   Q.    Between 1999 and 2015, I gather?

23                   A.    With one break in the middle.

24       24                   Q.    And when was that break?

25                   A.    I would be guessing, but I believe

1           it was in 2008 to 2010. I couldn't swear to it,  
2           but I believe that is what it was.

3           25                   Q.    So about a two-year break?

4                            A.    Yes.

5           26                   Q.    Okay. In your role as Chief and  
6           before that as Councillor, you know about the Six  
7           Nations of the Grand River Band of Indians?

8                            A.    Yes.

9           27                   Q.    The Six Nations is a community of  
10          Haudenosaunee people?

11                           A.    Correct.

12          28                   Q.    And the Six Nations have a Reserve  
13          near Brantford; correct?

14                           A.    Yes.

15          29                   Q.    MCFN has a Reserve called Reserve  
16          40B; correct?

17                           A.    I remember the 40. I am not sure  
18          if it was 40B, but probably.

19          30                   Q.    The MCFN Reserve is on lands that  
20          the Mississaugas occupy under an agreement with the  
21          Six Nations of the Grand River; correct?

22                           A.    Well, that is a complicated story.  
23          The lands of the Mississauga occupied currently as  
24          the Reserve portion was land surrendered or at  
25          least agreed to share with the Crown so that the

1 Six Nations could settle along the Grand after  
2 their troubles in the American Revolution, and then  
3 the Six Nations came to us when they heard we were  
4 being misplaced and offered us to settle there. So  
5 we came and settled there, and I can't recall the  
6 years. And that is sort of the history of how we  
7 got there.

8 31 Q. Thank you, and we'll get to some  
9 of the older history. I was referring to some of  
10 the more recent history. I take it there is an  
11 agreement in about 1900 regarding the Mississaugas'  
12 occupation of what is now called Reserve 40B; does  
13 that sound right?

14 A. I can't recall specifically. I  
15 know there is history around the Mississauga  
16 actually paying a sum of money to the Six Nations  
17 on the land as well during that time period, so --

18 32 Q. And that was in the early 1900s,  
19 right?

20 A. I don't recall the exact dates,  
21 sorry.

22 33 Q. The Six Nations Band is governed  
23 by an Elected Council; correct?

24 A. That is also an interesting  
25 question. The elected system is what I interact

1 with most often, yes.

2 34 Q. The Six Nations Band has an  
3 Elected Chief and Council just like the MCFN,  
4 right?

5 A. Correct.

6 35 Q. The current Six Nations Elected  
7 Chief is Chief Mark Hill?

8 A. Yes.

9 36 Q. I gather you know Chief Hill?

10 A. Yes.

11 37 Q. And you sometimes discuss  
12 community issues with Chief Hill, things like  
13 safety and crime and internet access?

14 A. Yes, there has been a number of  
15 occasions when we have discussed pressing issues  
16 from both sides of our Reserve and their Reserve.

17 38 Q. Let's talk about high level  
18 MCFN/Six Nations history, which is discussed in  
19 your affidavit. I take it from paragraph 10 of  
20 your affidavit -- and you may want to pull that  
21 document up at this point. I'll just give you a  
22 moment.

23 A. Okay, I have it in front of me.

24 39 Q. And if at any time you wish to  
25 review anything that I am referring to you, by all



1 means, just let me know. But what I am interested  
2 in here is I take it from paragraph 10 that the  
3 Haudenosaunee and Anishinaabeg peoples have had a  
4 complicated history; correct?

5 A. Yes.

6 40 Q. That complicated history goes back  
7 to the Beaver Wars in the 1600s; correct?

8 A. Yes.

9 41 Q. And I take it that conflict ended  
10 with the Dish with One Spoon Agreement in the year  
11 1700; correct?

12 A. The conflict itself ended previous  
13 to that, but the agreement called the Dish with One  
14 Spoon was the 1700s, yes.

15 42 Q. Thank you for clarifying. There  
16 was also an agreement in 1701 related to this  
17 called the Great Peace of Montreal; correct?

18 A. Correct.

19 43 Q. And I take it the Beaver Wars  
20 concerned lands that included lands that were later  
21 subject to the 1784 Haldimand Proclamation;  
22 correct?

23 A. Could you repeat that again,  
24 please?

25 44 Q. Sure. I take it that the Beaver

1 Wars concerned lands that were later the subject of  
2 the 1784 Haldimand Proclamation; correct?

3 A. Yes, the Beaver Wars covered a  
4 large area that would have covered that as well.

5 45 Q. Including in what is now called  
6 Ontario, modern day Ontario; correct?

7 A. Yes.

8 46 Q. And I understand from the history  
9 that both the Haudenosaunee and Anishinaabeg  
10 peoples claimed these lands?

11 A. Prior to the Beaver Wars, there  
12 were settlements of other Iroquois in Southern  
13 Ontario, the Huron, the Neutral, the Tobacco, and  
14 Anishinaabeg people that would come in to the lands  
15 prior to the wars, yes, so there was settlement  
16 here by other Indigenous people who we got along  
17 well with.

18 47 Q. And sometimes people got along,  
19 but also sometimes people did not get along, and  
20 that is where we see the reference to the Beaver  
21 Wars; correct?

22 A. The Beaver Wars is basically what  
23 drove the conflict.

24 48 Q. Right, so I understand there was  
25 an extended period of conflict in the 1600s, just

1 in terms of a time frame; is that right?

2 A. Yes.

3 49 Q. Okay. And the Dish with One Spoon  
4 Agreement provided a means of reaching peace to  
5 resolve that conflict; fair?

6 A. The Dish with One Spoon was a  
7 peace agreement.

8 50 Q. Right. And from the Mississaugas'  
9 perspective, you would say that agreement did not  
10 recognize the lands in modern day Ontario as  
11 Haudenosaunee lands; is that right?

12 A. Correct.

13 51 Q. Right. But it did, I think you  
14 would agree, permit the Haudenosaunee to travel  
15 over those lands?

16 A. Under conditions, yes.

17 52 Q. The conditions being that the  
18 Mississaugas would give permission, right?

19 A. Yes.

20 53 Q. The same for permitting the  
21 Haudenosaunee to harvest over these lands. They  
22 could do that but with the Mississaugas'  
23 permission?

24 A. And for a set purpose, yes.

25 54 Q. The purpose being harvesting or

1 farming?

2 A. That portion I am not fully aware  
3 of. My understanding was that it was more to allow  
4 crossing and transporting back and forth across the  
5 lands as opposed to actually taking up and  
6 harvesting and -- if you are talking about  
7 harvesting in the context of crops and that type of  
8 thing.

9 55 Q. And when you mean travel across  
10 the land, do you mean for the purpose of trading?

11 A. For the purpose of peace,  
12 friendship, making an agreement, possibly trading,  
13 yes.

14 56 Q. Okay, thank you. And if you could  
15 pull up paragraph 67 of your affidavit, I take it  
16 from this paragraph that there was you describe it  
17 as a renewal of the Dish with One Spoon Agreement  
18 in the 1800s; is that right?

19 A. It reflects about:

20 "[...] consistent with the  
21 renewal of our Dish with One Spoon  
22 agreement and in recognition of our  
23 ancestors' role in granting Six  
24 Nations their lands along [...] -  
25 Six Nations extended an invitation

1 to our people to come and live on  
2 their reserve in the Grand River  
3 Valley in the very lands they were  
4 granted under the Haldimand  
5 Proclamation of 1784. The tract of  
6 land to which we relocated is now  
7 our reserve - New Credit 40A."

8 So actually, the earlier question of  
9 40B is actually a reference to 40A.

10 57 Q. So going back to the question  
11 then, there was a renewal of the Dish with One  
12 Spoon Agreement in the 1800s? Let's just start  
13 there.

14 A. Yes.

15 58 Q. That is the right time frame,  
16 okay. And you read out a portion of this paragraph  
17 which said during that renewal, Six Nations:

18 "[...] extended an invitation  
19 to our people to come and live on  
20 their reserve in the Grand River  
21 Valley in the very lands they were  
22 granted under the Haldimand  
23 Proclamation of 1784."

24 And I take it from that sentence, by  
25 "their reserve", you are referring to the Six

1 Nations of the Grand River Reserve, right?

2 A. The document does refer to the Six  
3 Nations of the Grand River Reserve in that  
4 instance, yes.

5 59 Q. Right, and that is the Reserve  
6 that was created by the Haldimand Proclamation?

7 A. That is how the Six Nations came  
8 to settle that, yes, that's correct.

9 60 Q. And you then go on to state:  
10 "The tract of land to which we  
11 relocated is now our reserve - New  
12 Credit 40A."

13 And I take it you mean that tract of  
14 land was within the Haldimand Tract, right?

15 A. Yes.

16 61 Q. Okay, let's go back to paragraph 9  
17 of your affidavit, please. And it is a long  
18 paragraph. I'll give you a chance to read it, but  
19 I am interested in the sentence starting with "For  
20 example [...]", in the middle.

21 A. [Witness reviews document.]  
22 Okay, I have read it. Thank you.

23 62 Q. And just for the record, I'll read  
24 it out. It says:

25 "For example, and as I explain

1 in more detail below, our people  
2 entered into a treaty with the Crown  
3 in 1784 that paved the way for the  
4 Crown to grant Six Nations its lands  
5 in the Grand River Valley - the very  
6 lands that are the subject of the  
7 Action; [...]"

8 And I take it, Chief Laforme, that the  
9 reference here to "our people" refers to the  
10 Mississaugas?

11 A. Correct.

12 63 Q. I also I take it that the 1784  
13 Treaty that you are referring to is called the  
14 Between the Lakes Purchase; correct?

15 A. That is what the Crown refers to  
16 it as, yes.

17 64 Q. It is also what you refer to it  
18 as; correct?

19 A. Well, we refer to it as a Treaty,  
20 not a surrender. They refer to the words  
21 "surrender". We use "Treaty".

22 65 Q. The Between the Lakes Purchase or  
23 Treaty is discussed at paragraphs 44 to 47 of your  
24 affidavit, right?

25 A. Let me just get there.

1           66                   Q.    Sure.

2                            A.    Yes.

3           67                   Q.    Okay, so that instrument, I'll  
4                            call it, is the same one that is referenced back at  
5                            paragraph 9, the 1784 instrument?

6                            A.    Yes.

7           68                   Q.    Okay.  And when you say back at  
8                            paragraph 9 that there was a Treaty that "paved the  
9                            way for the Crown to grant Six Nations its lands in  
10                           the Grand River Valley", by that I take it you mean  
11                           that the Mississaugas surrendered certain lands to  
12                           the Crown, right?

13                           A.    We surrendered certain lands to  
14                           share with the Crown is our interpretation of it.

15           69                   Q.    So there was a surrender in 1784;  
16                           do I have that right?

17                           A.    Yes.

18           70                   Q.    And I think that is what you talk  
19                           about a little bit later in the affidavit at  
20                           paragraph 46, so why don't we go there.  And I will  
21                           just read it out for Madam Reporter.  It states:

22                                    "In 1784, our ancestors agreed  
23                           that they would transfer a tract of  
24                           land lying between Lake Erie and  
25                           Lake Huron, including 550,000 acres



1 along the Grand River that was later  
2 granted to Six Nations. This  
3 agreement was enshrined in the  
4 Between the Lakes Purchase treaty,  
5 which granted the Crown certain  
6 rights to our lands. After the  
7 Crown acquired rights to the Grand  
8 River Valley, it granted six miles  
9 on either side of the Grand River to  
10 Six Nations' ancestors under the  
11 Haldimand Proclamation of 1784."

12 Are you with me, Chief Laforme?

13 A. Yes.

14 71 Q. When you say "transfer" in the  
15 first part of this paragraph, that means surrender,  
16 right?

17 MR. FRAME: You are getting pretty  
18 close to asking for a legal conclusion, Max, so  
19 maybe we could try to not make this about  
20 interpreting -- legally interpreting what this  
21 instrument does.

22 BY MR. SHAPIRO:

23 72 Q. So I am not asking for a legal  
24 interpretation. I am asking for the witness's  
25 historical knowledge. When the witness uses the

1 word "transfer", Chief Laforme, that was a  
2 surrender of Mississaugas' lands to the Crown,  
3 right?

4 A. In the context of understanding  
5 the Mississaugas through the course of many  
6 Treaties, we understood that we were to share the  
7 lands and it was not to divest ourselves of those  
8 lands. So we consider our Treaties to be sharing.

9 However, in the instance of the Six  
10 Nations land, we were aware that some of the land  
11 was to go to Six Nations for their settlement,  
12 which is now the Haldimand Proclamation. So  
13 certainly that is the case.

14 73 Q. Right, so in this specific  
15 instance, leaving aside the wider history which I  
16 recognize is there, what happens is that there was  
17 a transfer of land in 1784 that later went to the  
18 Six Nations of the Grand River?

19 A. Yes.

20 74 Q. Okay. I would like to talk a  
21 little bit about how MCFN asserts claims, so we'll  
22 shift gears a little bit. You have mentioned and I  
23 take it that the MCFN has Treaties with the Crown,  
24 right?

25 A. Correct.

1           75                   Q.    It has commenced claims against  
2                            the Crown to enforce its rights under those  
3                            Treaties?

4                            A.    Correct.

5           76                   Q.    It has also commenced Court  
6                            actions to enforce its rights under those Treaties;  
7                            correct?

8                            A.    Also correct, yes.

9           77                   Q.    Could you please pull up the  
10                           Plaintiff's Responding Record at page 24, and this  
11                           one I might ask Ms. Town to put up on the screen,  
12                           please.

13                           And it is a document, just to help your  
14                           Counsel who I think is looking for it, called  
15                           "Current land claims".

16                           A.    Yeah, we found it.

17           78                   Q.    Okay, great.  So we are both  
18                           looking at an Ontario Government document called  
19                           "Current land claims"; are you with me?

20                           A.    Yes.

21           79                   Q.    And if I go down to the bottom of  
22                           the first page, I see a couple of references to the  
23                           Mississaugas of the Credit First Nation.  And if I  
24                           can summarize, and I am happy to let you review it,  
25                           I take it that the Mississaugas of the Credit have

1 advanced at least three claims that the Government  
2 of Ontario is investigating; do you see that?

3 A. Yes.

4 80 Q. There is one claiming Aboriginal  
5 title to land?

6 A. There is two land claims and  
7 another Aboriginal title to water that I see.

8 81 Q. So why don't we go one at a time,  
9 and if Ms. Town could put it up on the screen,  
10 there is one, the first claim is Aboriginal title  
11 to land, right?

12 I am just going to pause there and ask  
13 Madam Reporter to grant Ms. Town screen-sharing  
14 ability.

15 THE COURT REPORTER: It has been  
16 granted.

17 THE WITNESS: Yes.

18 BY MR. SHAPIRO:

19 82 Q. So page 24, please, and if you  
20 could just zoom that in, please, Ms. Town. Great.

21 So at the bottom of the page, there is  
22 a reference to a claim to Aboriginal title  
23 regarding land, right?

24 A. Yes.

25 83 Q. And then over the page, please,

1 the next entry is another claim to Aboriginal title  
2 to water; correct?

3 A. Yes.

4 84 Q. And the third claim is regarding  
5 Reserve land, right?

6 A. Yes.

7 85 Q. So a couple of questions on each.  
8 On the first claim to Aboriginal title  
9 to land, that covers a territory called the Rouge  
10 River Tract; correct?

11 A. Yes.

12 86 Q. Within that territory, there are  
13 First Nations other than the MCFN, right?

14 A. There has been a settlement of a  
15 claim within that area. I think it is believed it  
16 is the Williams Treaty Bands, so yes.

17 87 Q. The Six Nations Reserve is not  
18 within the Rouge River Tract; correct?

19 A. Correct.

20 88 Q. And the Haldimand Proclamation  
21 lands that we talked about a few moments ago are  
22 not within the Rouge River Tract; correct?

23 A. Correct.

24 89 Q. On the second claim, Aboriginal  
25 title to water, I take it this covers a territory

1           which is described as the "Region of northeastern  
2           Lake Erie and northwestern Lake Ontario"; is that  
3           right?

4                           A.    Yes, that is the statement here,  
5           yes.

6           90                   Q.    I see that is the statement, but  
7           from your knowledge, is that a correct statement?

8                           A.    Yes, when it comes to the  
9           clarification at the bottom, yes.

10          91                   Q.    What clarification is that?

11                           A.    That we are "asserting title to  
12          the waters, beds of waters, ground water and  
13          floodplains in their territory."

14          92                   Q.    Right. That territory includes  
15          First Nations and Bands other than the  
16          Mississaugas; correct?

17                           A.    I would assume so, yes.

18          93                   Q.    The Six Nations Band is one such  
19          Band whose Reserve is within the territory covered  
20          by the water claim, right?

21                           A.    Yes.

22          94                   Q.    You are not aware of the MCFN  
23          providing notice to the Six Nations Band about this  
24          water claim; correct?

25                           A.    That's correct.

1           95                   Q.    You are also not aware of the MCFN  
2           providing notice to any other Bands in the  
3           territory covered about the water claim; correct?

4                           A.    Correct.

5           96                   Q.    And that is because other Bands  
6           would not have expected to receive notice; fair?

7                           A.    I can't speak to what the  
8           assumption of other Bands are.

9           97                   Q.    You would agree me, though, that  
10          each Band can advance claims on its own behalf?

11                          A.    Yes.

12          98                   Q.    Each Band respects other Bands'  
13          ability to advance claims on their own behalf?

14                          A.    Yes.

15          99                   Q.    And Bands don't interfere with  
16          each other's claims against the Crown; fair?

17                          A.    I do not have a historically  
18          accurate depiction of the Court cases, so I  
19          couldn't answer that.

20          100                   Q.    The third claim listed on this  
21          document is a Reserve claim. You are not aware of  
22          the MCFN providing notice of that Reserve claim to  
23          other Bands; correct?

24                          A.    No, they are simply public  
25          filings, nothing specific to other Bands.

1           101                   Q.    Let's talk a bit more about the  
2                                   water claim.  I understand a Statement of Claim was  
3                                   issued regarding that claim in December 2020.  And  
4                                   you can take down the screen-sharing, Ms. Town.  Is  
5                                   that correct?

6                                   A.    Say that again, please?

7           102                   Q.    I take it that a Statement of  
8                                   Claim was issued about the water claim in 2020;  
9                                   does that sound right?

10                                  A.    I can't recall the exact dates, my  
11                                  apologies.

12           103                   Q.    That is okay.  Why don't we pull  
13                                  it up.  It is at page 43 of the Responding Record,  
14                                  and why don't we put that on the screen, please.  
15                                  You have that in front of you, Chief Laforme?

16                                  A.    The Statement of Claim, yes.

17           104                   Q.    Right, and the Plaintiff is the  
18                                  Chief and Council of the Mississaugas of the Credit  
19                                  First Nation on behalf of the Mississaugas of the  
20                                  Credit Band of Indians?

21                                  A.    Yes.

22           105                   Q.    The Chief there is you?

23                                  A.    Yes.

24           106                   Q.    We now see it on the screen.  The  
25                                  Defendants are the Governments of Canada and



1 Ontario, right?

2 A. Correct.

3 107 Q. And I understand this claim is  
4 about the recognition of Aboriginal title as it  
5 relates to water, beds of water and floodplains  
6 within a large area of Southern Ontario; is that a  
7 fair summary?

8 A. Yes.

9 108 Q. The MCFN didn't provide notice to  
10 the Six Nations Band about this claim before it was  
11 issued; correct?

12 A. That is correct.

13 109 Q. And it hasn't provided notice to  
14 the Six Nations Band since the claim was issued;  
15 fair?

16 A. I don't believe we have provided  
17 any direct statement of the claim to them.

18 110 Q. You didn't seek Six Nations'  
19 approval before it was issued; fair?

20 A. Yes.

21 111 Q. Nor did you seek input about the  
22 claim from Six Nations after the claim was issued?

23 A. Correct.

24 112 Q. If we could drop down to paragraph  
25 1 of that claim, I see it states that declarations

1 are by the Mississaugas regarding "water, beds of  
2 water, and floodplains in its territory, as set out  
3 in Schedule A"; correct?

4 A. Yes.

5 113 Q. And if we drop down to Schedule A,  
6 which is at the end of the pleading document, there  
7 is a map, which is 62 of the record. Do you see  
8 that, Chief Laforme?

9 A. Yes.

10 114 Q. And the map is called  
11 "Municipalities within MNCFN Treaty Lands", right?

12 A. Correct.

13 115 Q. There is a purple shaded area in  
14 the middle; do you see that?

15 A. Yes.

16 116 Q. That is described as territory  
17 relating to the Between the Lakes Treaty No. 3,  
18 right?

19 A. Yeah, yes.

20 117 Q. If you zoom into the middle of the  
21 purple area, and I will ask Ms. Town to go a little  
22 bit closer right into the middle, you see a  
23 reference to "Mississaugas of the Credit First  
24 Nation". That is your First Nation; correct?

25 A. Yes.

1 118 Q. And just above that, there is a  
2 reference to "Six Nations of the Grand"; correct?

3 A. Yes.

4 119 Q. That is the Six Nations of the  
5 Grand River Reserve, right?

6 A. Right.

7 120 Q. So I take it that the territory  
8 covered by MCFN's water claim includes everything  
9 in the purple area at least; correct?

10 A. The water claim includes  
11 everything within our traditional Treaty lands.

12 121 Q. So if we zoom back out on the map,  
13 it includes everything within the black --

14 A. Correct.

15 122 Q. -- dotted line; correct?

16 A. Yes.

17 123 Q. Including the Six Nations of the  
18 Grand River Reserve?

19 A. The Six Nations of the Grand River  
20 Reserve does fall within that area, yes.

21 124 Q. And despite the Six Nations  
22 Reserve falling within that area, I think you have  
23 told me the Mississaugas did not give notice to the  
24 Six Nations Band about this claim, right?

25 A. Correct.

1       125                   Q.    It did not name the Six Nations  
2       Band as a defendant, right?

3                           A.    Correct.

4       126                   Q.    You personally have not reached  
5       out to Six Nations Chief Mark Hill about this  
6       claim?

7                           A.    Correct.

8       127                   Q.    And you are not aware of other  
9       MCFN leadership reaching out to other elected Six  
10      Nations leadership about this claim; fair?

11                          A.    Fair.

12      128                   Q.    Could we go up to paragraph 22 of  
13      the Statement of Claim, and I will just read out a  
14      part of it:

15                                   "Water, but not the beds of  
16      water or floodplains, within the  
17      Plaintiff's territory was included  
18      in the written text of the following  
19      Treaties, entered into by the  
20      Mississaugas and the British Crown  
21      between 1781 and 1822:

22                                   a.    Treaty No. 3 (Between the  
23      Lakes Purchase) May 22, 1784 and  
24      December 7, 1792".

25                                   And I will stop there.

1 Chief Laforme, this is the same Between  
2 the Lakes instrument we talked about earlier;  
3 correct?

4 A. Yes.

5 129 Q. And it is referred in more detail  
6 at paragraph 23, going down the page, where it  
7 states:

8 "In May 1784, the Mississaugas,  
9 along with other First Nations  
10 entered into an agreement with the  
11 British Crown to transfer rights of  
12 soil and property to the King for a  
13 tract of land from the head of Lake  
14 Ontario to the Thames River, south  
15 to Lake Erie."

16 Correct?

17 A. Yes.

18 130 Q. The other First Nations referenced  
19 in paragraph 23 are the Six Nations of the Grand  
20 River; correct?

21 A. I am trying to situate myself  
22 within the document. You have to give me a second,  
23 please.

24 131 Q. No problem.

25 A. I am not an expert on this. I do

1 not know, sorry.

2 132 Q. So when in the Statement of Claim  
3 it is talking about other First Nations entering  
4 into an agreement in May 1784, you don't know who  
5 that means? I want to be fair to you, because  
6 earlier I think we had agreed that there were I'll  
7 call them interactions with the Six Nations in  
8 1784. That is what we were talking about earlier.  
9 I think this is the same thing, but I wanted to get  
10 your knowledge about that.

11 A. Well, it says -- so this is  
12 referring to the Between the Lakes Purchase where  
13 the Mississauga entered an agreement with the  
14 British Crown so that they could have settlement on  
15 the Between the Lake areas, correct, yes, okay,  
16 thank you.

17 133 Q. No problem. And so just to be  
18 clear, the other First Nations that are involved  
19 here are the Six Nations of the Grand River, right?

20 A. I don't know. I mean, in the  
21 context of the settlement, the Mississaugas, in my  
22 understanding, the Mississaugas were very much  
23 aware that the Crown wanted to settle the Six  
24 Nations along the Grand River through the  
25 Haldimand -- or through the Between the Lakes

1 Purchase, and we were okay with the settlement  
2 there.

3 134 Q. Okay. If this Statement of Claim  
4 ever goes to trial, presumably the MCFN will need  
5 to lead evidence about the Between the Lakes  
6 Purchase 1784 and Treaty No. 3 December 1792; fair?

7 A. If it was a trial, I would imagine  
8 so, yes.

9 135 Q. You would agree with me that these  
10 events involve the history of the Six Nations  
11 people as well as the history of the Mississaugas;  
12 fair?

13 A. In the context of settlement, yes.

14 136 Q. And I take it from this Statement  
15 of Claim that the Mississaugas are not claiming  
16 Reserve land in the Haldimand Tract; do I have that  
17 right?

18 A. Well, I am not an expert on how  
19 that would be termed or put forth from the legal  
20 perspective, but from my layman's perspective, we  
21 are not claiming Six Nations as Reserve land, yes.

22 137 Q. The claim is based on Aboriginal  
23 title, right?

24 A. Yes, correct.

25 138 Q. It is based on rights pre-existing

1 British Crown control of the highlighted area on  
2 the map that we looked at; correct?

3 A. Correct.

4 139 Q. A great deal of the land over  
5 which MCFN claims Aboriginal title is currently  
6 held by third parties, right?

7 A. Unfortunately, yes.

8 140 Q. There are private houses on some  
9 of that land?

10 A. Yes.

11 141 Q. Commercial buildings?

12 A. Correct.

13 142 Q. Farms?

14 A. Also correct, yes.

15 143 Q. And the MCFN is not seeking to  
16 displace the third parties from the lands covered  
17 by the claim, right?

18 A. Specific to individual claims  
19 would be different requests or requirements in the  
20 settlement of a case, so I could not say that each  
21 Treaty area would be treated the same. But if you  
22 are talking about one specific one...

23 144 Q. Let me put it another way. This  
24 claim is against the Crown, right?

25 A. Correct.



1       145                   Q.    It is not against private  
2                   homeowners; correct?

3                   A.    Yes.

4       146                   Q.    Not against private farmers or  
5                   businesses; correct?

6                   A.    That's correct.

7       147                   Q.    And it is not against Indian Bands  
8                   that are in the same territory; correct?

9                   A.    Correct.

10      148                   Q.    Regarding the Treaties under which  
11                   MCFN says it did not give up Aboriginal title, you  
12                   say that those Treaties did not have the effect  
13                   that the Crown says they had; fair?

14                   A.    Fair.

15      149                   Q.    You say that MCFN's title has not  
16                   been taken away, right?

17                   A.    Authority and jurisdiction remain  
18                   unrecognized.

19      150                   Q.    And because of that, you are  
20                   seeking remedies for the Crown interfering with  
21                   your Aboriginal title?

22                   A.    Yes.

23      151                   Q.    And so the case is not a fight  
24                   over the boundaries of lands that people have their  
25                   homes on, right?

1 A. Correct.

2 152 Q. And not a fight over the  
3 boundaries of farmland or businesses; correct?

4 A. Generally, no.

5 153 Q. If there are issues between the  
6 Crown and I'll call them third parties on the  
7 territory, that is not your problem, but that is  
8 the Crown's problem; fair?

9 A. Yes.

10 154 Q. And that is because the MCFN says  
11 all of its territory in that map area is subject to  
12 Aboriginal title, right?

13 A. Is that -- I don't know, is that  
14 the correct legal terminology for it?

15 155 Q. Let's leave aside the correct  
16 legal terminology. I'm asking in your layman's  
17 understanding as Chief. Simply put, the MCFN says  
18 that all of its territory covered by this claim is  
19 subject to Aboriginal title, right?

20 A. Correct.

21 156 Q. And because of that, you say the  
22 Crown is obliged to make things right with the  
23 Mississaugas, right?

24 A. Yes.

25 157 Q. Okay. I would like to shift gears

1 a little bit now and talk about the MCFN website.  
2 You are familiar with that, Chief Laforme?

3 A. To some extent.

4 158 Q. You would agree with me generally  
5 that materials posted to that website are accurate?

6 A. They should be accurate, yes.

7 159 Q. Six Nations included a couple of  
8 documents from that website in its Motion Record  
9 that I would like to take you to. The first  
10 document is at page 69 of the Responding Record,  
11 and it is entitled "Statement of Claim Submitted to  
12 the Government of Canada and the Government of  
13 Ontario". It is marked "Without Prejudice", and it  
14 has a March 31, 2015 date. Do you see that, Chief  
15 Laforme?

16 A. Yes.

17 160 Q. And this was posted on the  
18 Mississaugas' website; you are aware of that?

19 A. I am not -- I don't have exact  
20 knowledge of that, but yes, I am sure it was there.

21 161 Q. You have seen this document  
22 before, right?

23 A. Yes.

24 162 Q. And I take it, although it is  
25 called a Statement of Claim, this document was not

1           formally issued in a Court, right?

2                   A.    I don't believe it was formally  
3           issued in a Court, no.

4    163           Q.    What was the purpose of this  
5           document?

6                   A.    I am just trying to familiarize  
7           myself with the document.  As I said, I don't  
8           recall it being on the web, but it probably was.

9    164           Q.    You can take my word that --

10                   A.    Well, it was --

11    165           Q.    -- it was from the website.  Oh,  
12           sorry, go ahead.

13                   A.    It was probably educational,  
14           probably about the history.

15    166           Q.    It would have been approved for  
16           publication by the MCFN Council?

17                   A.    I would assume so, yes.

18    167           Q.    You would also assume it would be  
19           accurate, right?

20                   A.    I would hope so.  I would assume  
21           so, yes.

22    168           Q.    Fair enough.  A couple of  
23           paragraphs I just want to draw your specific  
24           attention to.

25                   Let's start with paragraph 34, and I

1 will give you a moment to read that, and if Ms.  
2 Town could zoom it up, I'll just read it out:

3 "In 1776 Joseph Brant and other  
4 Six Nations Indians supported the  
5 British in the American Revolution.  
6 By the Treaty of Paris (1783) the  
7 British gave control of their  
8 territory in upstate New York to the  
9 United States. When Six Nation  
10 members wanted to relocate to  
11 British territory following the  
12 American Revolution the British  
13 purchased land from the Mississaugas  
14 to accomplish this end. Land  
15 surrenders were taken from the  
16 Mississaugas to secure territory for  
17 Joseph Brant at the Grand River and  
18 other Six Nations Indians at the Bay  
19 of Quinte (Mohawks of Tyandenaga)."

20 And just pausing there, Chief Laforme,  
21 you would agree with me that this is a reference in  
22 the last sentence to the Six Nations of the Grand  
23 River?

24 A. Yes, it is a little disconcerting  
25 when it interjects the Mohawks of Tyandenaga into

1 the bracketed section, but you know, I am assuming  
2 the document is referencing the Six Nations as  
3 opposed to, you know, the surrender for the Bay of  
4 Quinte, yes.

5 169 Q. There are separate interactions  
6 with Six Nations that ended up at Grand River, and  
7 then Six Nations people that ended up at the Bay of  
8 Quinte; fair?

9 A. I don't know. I mean, it is in  
10 the document, but I do not know, sir.

11 170 Q. Fair enough. And so just to  
12 circle back to the question, the reference here to  
13 "territory for Joseph Brant at the Grand River",  
14 that is to the Six Nations of the Grand River;  
15 fair?

16 A. That is correct. When it comes to  
17 the other reference at the Bay of Quinte and the  
18 Mohawks of Tyandenaga, there are other Mississaugas  
19 that may not be of the Credit that may be  
20 referenced here, I am not sure.

21 171 Q. Okay. And Joseph Brant is a  
22 well-known historical Six Nations leader, right?

23 A. Yes.

24 172 Q. Was this document filed with  
25 either Ontario or Canada as a claim?

1                   A.    I do not know.  Maybe I should,  
2                   but I don't.

3    173               Q.    That is okay.  This isn't a memory  
4                   test.  If you don't know, you don't know.  You  
5                   mentioned one of its purposes was educational.  Do  
6                   you know if another one of its purposes was  
7                   intended to start negotiations with either Canada  
8                   or Ontario?

9                   A.    I am not sure.  It may have been  
10                  utilized to start negotiations.

11    174              Q.    It may have, but you are not sure  
12                  sitting here today?

13                  A.    Yeah, it may have.  You've got to  
14                  remember that I come across a lot of historical  
15                  information and a lot of different legal  
16                  interpretations and information to review, and so  
17                  whether it is directly linked to negotiations or  
18                  just a general one I couldn't speak to  
19                  definitively.

20    175              Q.    I appreciate that.  Thank you.

21                                Let's go down to paragraph 53, please,  
22                                and I will just read it out while everyone gets  
23                                situated:

24                                        "When it came time for the  
25                                        British to secure title to what is

1 now southern Ontario they did not  
2 rely on the Nanfan Deed; they took  
3 surrenders from the Mississaugas,  
4 including the land for the Six  
5 Nations Indians that relocated  
6 following the American Revolution  
7 (see paragraph 30 above)."

8 You would agree with me, Chief Laforme,  
9 that the reference to "Six Nations Indians" here  
10 means the Six Nations that later settled on the  
11 Grand River Valley?

12 A. Yes.

13 176 Q. And drop down to paragraph 55,  
14 please, and this reads:

15 "The great majority of southern  
16 Ontario is unlike the rest of  
17 Ontario and western Canada in that  
18 the Mississaugas did not enter into  
19 one treaty with the British Crown  
20 that dealt with all of their  
21 territory. Rather the Mississaugas  
22 entered into many different land  
23 cessions or treaties with the  
24 British Crown from 1781 to 1830.  
25 They are documented in Report 1 in



1 the section entitled 'Land Cessions,  
2 1781-1830' commencing at page 55."

3 Do you see that, Chief Laforme?

4 A. Yes.

5 177 Q. Do you know what the reference to  
6 "Report 1" is?

7 A. No, I'm sorry.

8 178 Q. We have searched for and have been  
9 unable to locate a copy of Report 1. Will you make  
10 inquiries and provide us with a copy, if you can  
11 obtain that report?

12 A. I would have to ask my lawyer. I  
13 don't see an issue, but I would have to ask the  
14 lawyer.

15 U/T MR. FRAME: We can certainly make  
16 internal inquiries, Max, but can't commit to  
17 providing anything based on, A, can we locate it,  
18 and B, is the document protected by any privilege,  
19 but provided we can locate it and it is not  
20 privileged, we will provide it.

21 BY MR. SHAPIRO:

22 179 Q. Thank you, Mr. Frame.

23 The second document that I wanted to  
24 draw your attention to in the Plaintiff's record  
25 from the Mississaugas' website is at page 126 of

1 the Motion Record. And, Chief Laforme, you can  
2 take my word that this was downloaded from the  
3 website, okay.

4 A. Okay.

5 180 Q. It is called "Aboriginal Title  
6 Claim to Water Within the Traditional Lands of the  
7 Mississaugas of the New Credit"; do you see that?

8 A. Yes.

9 181 Q. It is dated March 2015 and appears  
10 to have been authored by Joan Holmes Associates  
11 Inc.; do you see that?

12 A. Yes.

13 182 Q. You have seen this document  
14 before, right?

15 A. Oh, yes, I am positive I have.

16 183 Q. I take it this was not formally  
17 issued in a Court, right?

18 A. This looks to be background work  
19 that we would have commissioned from Joan Holmes.

20 184 Q. What was the purpose of this  
21 document?

22 A. It is 2015. I don't recall the  
23 direct purpose of it specifically.

24 185 Q. Do you know if it was ever a part  
25 of a claim filed with Ontario or Canada?

1                   A.    I do not know that directly.  
2                   Maybe parts of it were utilized for the water  
3                   claim.  I couldn't speak to it assuredly.

4    186                Q.    Was it ever filed in Court?

5                   A.    This specific document, I would  
6                   not be able to say a hundred percent, so I do not  
7                   know.

8    187                Q.    Fair to say, though, that it would  
9                   have been approved for publication by the MCFN  
10                  Council?

11                  A.    One would hope so, but yes.

12    188                Q.    And one would also hope that it  
13                  would be accurate from the Mississaugas'  
14                  perspective; fair?

15                  A.    Yes.

16    189                Q.    Can we pull up page 22 of that  
17                  document, which is page 148 of the record, and I am  
18                  just under the heading "Between the Lakes  
19                  Purchase".  Are you with me, Chief Laforme?

20                  A.    Yes.

21    190                Q.    And I am just going to read out a  
22                  passage:

23                                "In March 1784, Sir John  
24                                Johnson informed Governor Haldimand  
25                                that Mohawks and others under

1 Captain Joseph Brant and David Hill  
2 wished to settle on the Grand River,  
3 about 20 miles from the head of Lake  
4 Ontario. These people had supported  
5 the British in the Revolutionary War  
6 and had been displaced by the  
7 establishment of the American  
8 boundary.

9 Four days later Haldimand  
10 expressed support for the settlement  
11 of Six Nations Indians on the Grand  
12 River."

13 And I will stop there. You would agree  
14 with me, Chief Laforme, that this is a reference to  
15 the Six Nations of the Grand River?

16 A. Yes.

17 191 Q. And if we go down to page 23,  
18 there are a couple of further references to the Six  
19 Nations in the paragraph starting with "A copy of  
20 the original deed [...]" and the paragraph starting  
21 with "Crown officials [...]"

22 Take a moment to read those two, and I  
23 will ask you the same question.

24 A. [Witness reviews document.]

25 Okay.

1           192                   Q.    And the question is you would  
2                               agree with me that these are references to the Six  
3                               Nations of the Grand River; correct?

4                               A.    Yes.

5           193                   Q.    Let's go down to page 23 of this  
6                               report, page 157 of the record.  There is a  
7                               paragraph starting:

8                                        "On January 27, Lord Dorchester  
9                                       corresponded with Simcoe and advised  
10                                      that, in regard to the Grand River  
11                                      lands, the government intended to  
12                                      make the land grant as beneficial to  
13                                      the Six Nations as possible."

14                                     You would agree with me this is a  
15                                     reference to the Six Nations of the Grand River  
16                                     people?

17                                     A.    I have lost the place in here.  
18                                     What page are you on, again?

19           194                   Q.    Sorry, page 23 of the  
20                               report -- oh, pardon me, I misspoke, it's 31, and  
21                               it is 157 of the record.  My apologies.  It is the  
22                               middle paragraph starting "On January 27 [...]"

23                                     So the question is when it says that  
24                                     the events were intended to make the land grant as  
25                                     beneficial to the Six Nations as possible, that is

1 a reference to the Six Nations of the Grand River  
2 people; fair?

3 A. Yes.

4 195 Q. We can take this document down.

5 I would like to switch gears now and  
6 talk about MCFN's Court motion and to look at the  
7 Notice of Motion that was issued in this matter.  
8 It has an October 27th, 2022 date. Could you  
9 please pull that up.

10 Do you have that in front of you, Chief  
11 Laforme?

12 A. I do.

13 196 Q. I take it from paragraph 1 of the  
14 Notice of Motion that MCFN wishes to intervene as  
15 an added party with full rights of a party in the  
16 Six Nations action; is that right?

17 A. Yes.

18 197 Q. The MCFN is asking for this role  
19 in order to protect its rights and interests from  
20 its point of view?

21 A. Correct.

22 198 Q. Your lawyers have I am sure  
23 explained that intervening as an added party is  
24 something different than intervening as a friend of  
25 the Court. You understand that difference?

1 A. I do.

2 199 Q. The first, being an added party,  
3 is a broader role; and the second, as a friend of  
4 the Court, is a more limited role, fair?

5 A. Yes.

6 200 Q. And I take it that MCFN has  
7 decided that intervening as a friend of the Court  
8 would not be enough to protect its rights and  
9 interests?

10 R/F MR. FRAME: Yeah, this is into  
11 privileged stuff now, Max.

12 BY MR. SHAPIRO:

13 201 Q. I don't believe it is, Counsel.  
14 It is a question about the MCFN's decision. It has  
15 decided that intervening as a friend of the Court  
16 would not be enough and so has intervened or sought  
17 to intervene as a party; fair?

18 MR. FRAME: The second part is fair.

19 BY MR. SHAPIRO:

20 202 Q. The MCFN wants full party status  
21 to allow it to see the other parties' expert  
22 reports; correct?

23 A. I am not familiar with the whole  
24 process and how it unfolds.

25 203 Q. You want to put in evidence in the

1 Six Nations action; fair?

2 A. Yes.

3 204 Q. And you want to call witnesses at  
4 trial; fair?

5 A. Yes.

6 205 Q. So let's talk about what MCFN is  
7 not seeking, and there is a few documents I would  
8 like to take you to here, and so it may bounce  
9 around a little bit.

10 But I would like to pull up on the  
11 screen it is a Case Management Memo that your  
12 lawyers submitted to the Court dated December 5th,  
13 2022. I am not sure if your Counsel has that ready  
14 in the package, but if not, we can put it up on the  
15 screen, and I would ask Ms. Town to do that,  
16 please.

17 MR. FRAME: Do you mind giving me the  
18 date again, Max?

19 BY MR. SHAPIRO:

20 206 Q. December 5, 2022. Just give us a  
21 moment to find it for the screen.

22 So the memo is now up on the screen.  
23 Are we looking at the same document, Chief Laforme?  
24 Do you have that in front of you?

25 A. Yes.



1       207                   Q.    Okay, I would like to drop down to  
2                   paragraph 2.

3                   A.    Okay.

4       208                   Q.    And it says there:

5                                "MCFN does not seek damages for  
6                   itself, nor does it intend to  
7                   diminish compensation the Crown may  
8                   owe Six Nations."

9                   That is an accurate statement?

10                   A.    Yes.

11       209                   Q.    I take it the Mississaugas do not  
12                   intend to sue the Six Nations Band for money;  
13                   correct?

14                   A.    With regard to this claim, no,  
15                   certainly not.

16       210                   Q.    And certainly not they don't  
17                   intend to sue the Six Nations Band for land;  
18                   correct?

19                   A.    The issues we have would be with  
20                   the Crown.

21       211                   Q.    Right, and because of that, the  
22                   MCFN does not intend to seek any remedies if it is  
23                   allowed into this action about the Six Nations  
24                   Reserve, right?

25                   A.    I don't know that I could answer

1 that without legal discussion. Certainly we have  
2 no interest in the damages that the Six Nations  
3 have with regards to the land that may have been  
4 sold or stolen improperly and divested improperly.

5 However, I do have another Court case  
6 on the water claim that I would need to have  
7 correspondence with legal before I could make a  
8 broad statement.

9 212 Q. Let's leave aside the water claim.  
10 If the MCFN intervenes in the Six Nations action,  
11 you do not intend to seek any relief against the  
12 Six Nations Band in that action about the Six  
13 Nations Reserve; fair?

14 MR. FRAME: Max, I think you should --  
15 "relief" is a legal term of art, and I think, to be  
16 helpful to the Chief, if you could be clearer about  
17 what you are actually asking, because I think to  
18 the extent we are talking about how pleadings will  
19 be framed, that is really asking for a legal  
20 conclusion.

21 BY MR. SHAPIRO:

22 213 Q. Let's try it another way. The  
23 Mississaugas are not seeking anything about the Six  
24 Nations Reserve if they are granted intervention  
25 status in this case; fair?

1                   A.    As it regards the Haldimand  
2                   Proclamation of the specific date, I can't recall.

3                   214               Q.    I am not sure I understood that  
4                   answer, Chief Laforme.  The question was if you are  
5                   allowed to participate in the Six Nations action,  
6                   the Mississaugas will not be seeking anything about  
7                   the Six Nations Reserve; is that fair?

8                   A.    The land that the Mississaugas  
9                   agree to with the Crown, we will not be seeking  
10                  anything from Six Nations with regards to that.

11                  MR. SHAPIRO:  I would like to please  
12                  mark this memo as the next exhibit, which is  
13                  Exhibit 3.

14                  Ex. 3:  Document entitled  
15                  "Memorandum of Mississaugas of the  
16                  Credit First Nation (For December 12,  
17                  2022, Case Management Conference)",  
18                  dated December 5, 2022.

19                  BY MR. SHAPIRO:

20                  215               Q.    And I take it from your last  
21                  answer, Chief Laforme, that MCFN wants to see the  
22                  Crown held to its promises to the Six Nations;  
23                  fair?

24                  A.    Generally speaking, yes.

25                  216               Q.    The MCFN also wants to see the

1 Crown make good any wrongdoing they have committed  
2 upon the Six Nations?

3 A. Again, generally speaking,  
4 absolutely.

5 217 Q. MCFN is not here trying to  
6 minimize the size of the Haldimand Tract, right?

7 A. I am not sure I understand that  
8 question.

9 218 Q. The MCFN is not seeking to  
10 intervene to say that the Haldimand Tract is  
11 smaller than what the Six Nations says it is; fair?

12 A. I would need to consult with my  
13 lawyer on that because I know there are two  
14 different subject areas that speak on the size of  
15 the Haldimand Tract.

16 219 Q. You are not intervening in this  
17 action in order to take issue with the size of the  
18 Haldimand Tract, though; correct?

19 A. No, that is not why I am  
20 intervening, no.

21 220 Q. You are intervening to protect the  
22 Mississaugas' rights and interests? I think we  
23 talked about that a moment ago.

24 A. Correct, I am interested in  
25 protecting the history of my ancestors and the

1 future of my people.

2 221 Q. And you are not trying to reduce  
3 the Crown's obligations to the Six Nations at the  
4 same time; fair?

5 A. That is fair.

6 222 Q. You want to protect your title  
7 claims?

8 A. Yes.

9 223 Q. And you don't want to reduce the  
10 Six Nations' Reserve claim?

11 A. Once again, I cannot speak to the  
12 size of the Six Nations' Reserve claim because, as  
13 I understand, there are a couple of points of  
14 contention regarding that, the size of the claim  
15 itself, so I don't know about that.

16 224 Q. I put it to you, though, that it  
17 is of no harm to the Mississaugas if Six Nations is  
18 compensated because the Crown failed to set aside  
19 Reserve land for the Six Nations; you would agree  
20 with that?

21 A. Yes.

22 225 Q. If we drop down to paragraph 35 of  
23 the Notice of Motion, it says in the first sentence  
24 that:

25 "[...] MCFN would introduce

1 Elder and expert evidence on issues  
2 that engage its rights and interests  
3 [...]"

4 Do you see that, Chief Laforme?

5 A. I am just trying to find it again.

6 MR. FRAME: Give us a second, Max.

7 MR. SHAPIRO: No problem.

8 MR. FRAME: Paragraph 35, you said?

9 BY MR. SHAPIRO:

10 226 Q. Correct.

11 A. Yes, I am caught up to you, Max.

12 227 Q. Great. So I take it the MCFN has  
13 identified Elders that would provide evidence in  
14 the Six Nations case?

15 A. We are aware of and have Elders  
16 who have a good knowledge of the history.

17 228 Q. Are you able to tell me who they  
18 are?

19 R/F MR. FRAME: No, discussions about who  
20 may or may not be witnesses in this litigation is  
21 litigation privileged, Max.

22 BY MR. SHAPIRO:

23 229 Q. Have you obtained any written  
24 statements from the Elders mentioned here?

25 R/F MR. FRAME: Any research that we have

1 done in pursuance of this action is going to be  
2 privileged, Max.

3 BY MR. SHAPIRO:

4 230 Q. So that is an answer to a  
5 different question. The question was whether or  
6 not there are any written statements from the  
7 Elders mentioned here?

8 R/F MR. FRAME: We are not identifying who  
9 these Elders are, Max. We simply say that MCFN  
10 would introduce Elder evidence. It doesn't say  
11 that it would introduce evidence from specific  
12 identified Elders. And again, who the witnesses  
13 may or may not be that MCFN would call at trial is  
14 at this juncture privileged.

15 BY MR. SHAPIRO:

16 231 Q. Would the same answer apply if I  
17 asked about the experts referenced here?

18 R/F MR. FRAME: Yes, it would.

19 BY MR. SHAPIRO:

20 232 Q. Have you obtained any expert  
21 reports for use in this action?

22 R/F MR. FRAME: That is privileged.

23 BY MR. SHAPIRO:

24 233 Q. If the MCFN is allowed to  
25 participate in this action, does it plan to provide

1 evidence to either Canada or Ontario?

2 R/F MR. FRAME: Litigation strategy is  
3 privileged.

4 BY MR. SHAPIRO:

5 234 Q. Has the MCFN been asked to provide  
6 evidence in this action by either Canada or  
7 Ontario?

8 MR. FRAME: I imagine that is  
9 privileged as well.

10 MR. SHAPIRO: Are you taking the  
11 position that it is privileged or not?

12 R/F MR. FRAME: Yes, we are.

13 BY MR. SHAPIRO:

14 235 Q. Pull up paragraph 33 of the Notice  
15 of Motion. Just take a moment to review that.

16 A. [Witness reviews document.]

17 236 Q. I take it from this paragraph,  
18 Chief Laforme, that another reason why MCFN wants  
19 party status is that it says its Treaty partners,  
20 Canada and Ontario, would be bound by findings of  
21 fact or law made in the case; is that right?

22 A. That's correct.

23 237 Q. And MCFN understands that if it  
24 becomes an added party, it too would be bound by  
25 findings of fact and law made in the case?



1 R/F MR. FRAME: That calls for a legal  
2 conclusion.

3 BY MR. SHAPIRO:

4 238 Q. I don't agree, Counsel. This is  
5 from the Notice of Motion, which is presumably not  
6 privileged. It is a simple question. If MCFN is  
7 added as a party, it too will be bound by findings  
8 of fact and law in this case, just like the  
9 Crown's?

10 MR. FRAME: Could you tell me where in  
11 the Notice of Motion that is said?

12 BY MR. SHAPIRO:

13 239 Q. The second sentence of paragraph  
14 33 states:

15 "As defendants in the Action,  
16 MCFN's treaty partners - Canada and  
17 Ontario - would be bound by findings  
18 of fact and law in relation to these  
19 issues."

20 The question is if MCFN is added as a  
21 party, it too would also be bound by those same  
22 findings of fact and law; correct?

23 R/F MR. FRAME: The scope of the  
24 application of res judicata, collateral estoppel,  
25 issue estoppel and other doctrines to the

1 Mississaugas, should they be granted leave to  
2 intervene, is a legal question that the Chief is  
3 not going to answer.

4 BY MR. SHAPIRO:

5 240 Q. If the Mississaugas are added to  
6 this action and the Court finds, for example, that  
7 the Haldimand Proclamation was a Treaty, as Six  
8 Nations says it was, as a party the Mississaugas  
9 would be bound by that; correct?

10 R/F MR. FRAME: We are certainly not going  
11 to get into answering legal conclusions based on  
12 hypotheticals. We object. The Chief won't be  
13 answering.

14 BY MR. SHAPIRO:

15 241 Q. If the Court finds it necessary to  
16 uphold prior decisions to the effect that the  
17 Nanfan Deed of 1701 was a Treaty, as a party the  
18 MCFN would be bound by that; correct?

19 R/F MR. FRAME: The same objection, the  
20 same response.

21 BY MR. SHAPIRO:

22 242 Q. The same can be said for the Dish  
23 with One Spoon Treaty; correct?

24 R/F MR. FRAME: The same objection, and the  
25 same response.

1 BY MR. SHAPIRO:

2 243 Q. Chief Laforme, the lawyers  
3 exchanged a pair of letters on this topic, and I  
4 would like to pull up my March 3rd letter. You  
5 have seen this letter before?

6 A. Yes, I have.

7 244 Q. Your lawyer, Mr. Frame, sent a  
8 response on March 17th. Can we pull that up? And  
9 that is on the screen now. You have seen this  
10 before, Chief Laforme?

11 A. Yes.

12 245 Q. I am just going to read out the  
13 first paragraph, and if Ms. Town could blow it up  
14 further, it states:

15 "With respect to your inquiry  
16 regarding MCFN being bound by all  
17 findings of fact made by the Court,  
18 we find the question puzzling. The  
19 question of if, when, and to what  
20 extent a party will be bound by  
21 findings of fact made in a  
22 litigation in which they  
23 participated is a question of law  
24 that is addressed through various  
25 common law doctrines - such as res

1                   judicata, collateral estoppel, issue  
2                   estoppel, and abuse of process -  
3                   with which you are doubtless well  
4                   acquainted. These are not doctrines  
5                   that a party opts into or out of.  
6                   We can confirm that the common law  
7                   rules applicable to litigants in  
8                   Ontario are indeed applicable to  
9                   MCFN; in our view, no further  
10                  agreement or acknowledgment is  
11                  necessary or appropriate."

12                  Do you see that, Chief Laforme?

13                  A. I have.

14       246            Q. The MCFN adopts what your lawyers  
15                   say in this letter; correct?

16       R/F           MR. FRAME: Max, what does that even  
17                   mean? This is correspondence between Counsel  
18                   setting out legal issues. Asking if the MCFN  
19                   adopts legal principles such as the fact of the  
20                   doctrine of res judicata speaks to when a finding  
21                   of fact applies to a litigant. It is not a  
22                   reasonable question.

23                   BY MR. SHAPIRO:

24       247            Q. You instructed your lawyers to  
25                   send this letter; correct, Chief Laforme?

1 R/F MR. FRAME: That is obviously  
2 privileged.

3 BY MR. SHAPIRO:

4 248 Q. You agree with the contents of the  
5 letter, do you not, Chief Laforme?

6 R/F MR. FRAME: That calls for a legal  
7 conclusion.

8 MR. SHAPIRO: I'll take that as a  
9 refusal.

10 Let's please mark these two letters as  
11 Exhibits 4 and 5 respectively. The March 3rd  
12 letter is Exhibit 4, and the March 17th response is  
13 Exhibit 5.

14 Ex. 4: Letter from Mr. Shapiro  
15 to Mr. Frame and Mr. DeParde, dated  
16 March 3, 2023.

17 Ex. 5: Letter from Mr. Frame  
18 to Mr. Shapiro, dated March 17, 2023.

19 MR. SHAPIRO: I wonder if this might be  
20 an appropriate time for a ten-minute morning break.  
21 I don't have too much longer to get through, but  
22 there is a little bit left. Would that work for  
23 everyone?

24 MR. FRAME: That is fine with us.

25 MR. SHAPIRO: Madam Reporter, can we

1 resume with you at 11:30?

2 Thank you.

3 -- RECESSED AT 11:20 A.M.

4 -- RESUMED AT 11:30 A.M.

5 BY MR. SHAPIRO:

6 249 Q. You have seen the Six Nations  
7 Statement of Claim in their action against the  
8 Crowns, I take it, Chief Laforme?

9 A. I have.

10 250 Q. And you know that the Six Nations  
11 Band is not seeking any relief against the  
12 Mississaugas? The Mississaugas are not a  
13 defendant, right?

14 A. We are not a defendant in the  
15 case, per se, but we are concerned about any  
16 rulings or decisions that would impact our history  
17 or our rights into the future.

18 251 Q. I understand that. The question  
19 was a bit more basic. The Six Nations Band isn't  
20 seeking anything from the Mississaugas in their  
21 lawsuit; you are aware of that?

22 A. Yes.

23 252 Q. And if the Crown promised more  
24 land to the Six Nations than the Mississaugas  
25 agreed with, you would hold the Crown responsible

1 for that, right?

2 A. In the past, our process had been  
3 to always hold the Crown responsible.

4 253 Q. And as part of that process, you  
5 wouldn't seek damages from the Six Nations to  
6 compensate you. You would seek those from the  
7 Crown?

8 A. That is historically the way it  
9 goes, yes.

10 254 Q. And that is also the way that it  
11 will go if you are allowed to participate in this  
12 case; correct?

13 A. I would assume so.

14 255 Q. I thought I saw a confirmation to  
15 this effect at paragraph 77 of your affidavit. Why  
16 don't we pull that up. And I will just read it  
17 out:

18 "We support Six Nations' fight  
19 for justice. Our intent in  
20 participating in the Action - if our  
21 request to intervene is granted - is  
22 simply to ensure our history is  
23 honestly and accurately portrayed  
24 and that our constitutional rights  
25 and interests and connection to our

1 territory are not adversely impacted  
2 in the process. Anything less than  
3 seeking leave to intervene in this  
4 Action would fall short of our  
5 sacred responsibility to our  
6 people."

7 That is accurate?

8 A. That is absolutely correct.

9 256 Q. Right, and the same can be said  
10 about paragraph 9, if we flip earlier in the  
11 affidavit, and I will just read the first two  
12 sentences:

13 "We have always supported - and  
14 will always support - Six Nations'  
15 effort to hold the government of  
16 Canada and the government of Ontario  
17 accountable for their mismanagement  
18 and abuses relating to the lands  
19 granted to Six Nations under the  
20 Haldimand Proclamation of 1784. I  
21 believe our support of Six Nations  
22 in its pursuit of justice is  
23 consistent with a pattern of mutual  
24 respect between our peoples."

25 Those are both accurate statements,



1 right, Chief Laforme?

2 A. Yes.

3 257 Q. We can take down that affidavit  
4 from the screen. And at the time you swore your  
5 affidavit, Chief Laforme, I take it you had heard  
6 about the Six Nations action before, right?

7 A. Yes.

8 258 Q. You know that this case started  
9 back in 1995?

10 A. I do now.

11 259 Q. You know that this case has been  
12 the subject of media reporting in the community?

13 A. I have seen some media on it, yes.

14 260 Q. In some of the local news outlets?

15 A. I believe so.

16 261 Q. News outlets like the Two Row  
17 Times?

18 A. Yeah, I can't remember. I know  
19 there is two papers in the community that cover  
20 topics, but I really don't have much  
21 differentiation between the two.

22 262 Q. I'll suggest to you that those two  
23 papers are the Two Row Times and Turtle Island  
24 News. Those ring a bell?

25 A. Yeah, yes, they do.

1       263                   Q.    And there has been reporting in  
2                           those publications about this Court case?

3                           A.    Yes.

4       264                   Q.    And there has also been reporting  
5                           about this Court case in other publications like  
6                           the Brantford Expositor, for example?

7                           A.    There may have been.

8       265                   Q.    Also in other more national news  
9                           outlets like CBC and The Globe and Mail?

10                          A.    I can't speak if I saw anything  
11                          there.

12       266                   Q.    You are aware that the trial in  
13                           this action is currently set to commence in 2024,  
14                           right?

15                          A.    I have read that somewhere, yes.

16       267                   Q.    And so if MCFN is added as a  
17                           party, you'll be arriving late; you would agree  
18                           with me?

19                          A.    From the context of the timeline,  
20                          I would say, you know, that had we -- we were not  
21                          aware that it was in 1995, you said, when it began.

22                          I honestly can't remember when I became  
23                          aware of the case, to tell you the truth, which  
24                          is -- which kind of surprises me. But our interest  
25                          in the case as it developed has only become of

1 interest to us when it looked to be about impacting  
2 on our history and our rights. That is when we  
3 sort of took an interest in it. In that context,  
4 it hasn't been that long.

5 268 Q. And we'll get to that in a moment,  
6 but the question was for a case that started in  
7 1995 and is scheduled for trial in 2024, your  
8 request to participate is I would suggest late in  
9 the life of the action; you would agree with me?

10 A. In the timeline of when it started  
11 and when it is going to Court, we could be  
12 perceived as late for the action, but our interest  
13 in the case was -- we feel has moved along as  
14 quickly as it possibly could once we understood the  
15 pleading.

16 269 Q. And if you are allowed to  
17 participate, despite your late entrance to the  
18 case, you'll instruct your lawyers and experts and  
19 witnesses to meet that trial date in 2024; correct?

20 R/F MR. FRAME: We object to the question.  
21 Again, that is litigation strategy and it is  
22 privileged. We are not going to answer that  
23 question, Max.

24 BY MR. SHAPIRO:

25 270 Q. Let's try it another way. The

1 Mississaugas will not stand in the way of Six  
2 Nations' quest for justice by delaying the case if  
3 they are allowed to participate; fair?

4 A. Our intent has never been to cause  
5 delay, but to make sure that we are accurately  
6 represented, yes.

7 271 Q. And if you are allowed to  
8 participate, you are ready to get on with things  
9 quickly; fair?

10 A. That is very subjective,  
11 "quickly", the terminology, Max. We will do the  
12 best we can to get our ducks in a row and be  
13 prepared.

14 272 Q. I would like to talk about your  
15 involvement or your request for involvement and to  
16 pull up a letter from your lawyer to our former  
17 Case Management Judge. It is dated January 6,  
18 2022, and is at Exhibit A to the Clerk's affidavit  
19 in your record, Mr. Frame, page 134 of the Motion  
20 Record.

21 MR. FRAME: Yes, just give us a moment,  
22 Max.

23 MR. SHAPIRO: No problem.

24 MR. FRAME: That is January 6, 2022?

25 MR. SHAPIRO: Correct.

1 MR. FRAME: You've got it? Great, you  
2 beat me to it.

3 All right, we have it, Max.

4 BY MR. SHAPIRO:

5 273 Q. You have seen this letter before,  
6 Chief Laforme?

7 A. Yes.

8 274 Q. And there is a paragraph on the  
9 first page I would like some information on. It  
10 says:

11 "The amended pleadings in their  
12 current form provide some comfort to  
13 MCFN that the issues in the Six  
14 Nations Action will not require this  
15 Honourable Court to make  
16 determinations that could impact  
17 MCFN's section 35 rights. This is  
18 why MCFN has not previously sought  
19 leave to intervene." [As read.]

20 Do you see that there?

21 A. I see that, yes.

22 275 Q. So it is fair to say that by this  
23 point, this is January 6 of 2022, the MCFN was  
24 aware of the pleadings in the Six Nations action;  
25 correct?

1                   A.    Our lawyer would have some  
2                   understanding of the pleadings, perhaps.  I am not  
3                   sure specifically if I was aware of the pleadings.

4   276               Q.    The MCFN, though, was aware of the  
5                   amended pleadings mentioned in this letter, right?

6                   A.    Yes.

7   277               Q.    Right.  And as the letter says, at  
8                   this point MCFN was not concerned enough about the  
9                   pleadings to get involved; fair?

10                  A.    Fair.

11   278               Q.    Let's drop down a little bit  
12                  further in the letter where it reads:

13                                "We have, however, been advised  
14                               that the scope of issues may expand  
15                               through written responses to  
16                               discovery questions, expert reports  
17                               or the further amendment of  
18                               pleadings in ways that could result  
19                               in issues being adjudicated that  
20                               will or may adversely impact MCFN's  
21                               section 35 rights."  [As read.]

22                               Do you see that, Chief Laforme?

23                   A.    I do.

24   279               Q.    Where it says you have been  
25                   advised, the Mississaugas were advised that by

1 Ontario; correct?

2 A. I don't believe so.

3 MR. FRAME: I think you are getting  
4 into privileged communication with Mississaugas'  
5 Counsel here, Max.

6 BY MR. SHAPIRO:

7 280 Q. No one for the Six Nations advised  
8 you of this; fair?

9 A. Yes, fair.

10 281 Q. You were advised this by either  
11 Canada or Ontario; fair?

12 A. I would imagine this was a  
13 conversation with our solicitors.

14 282 Q. And your solicitors would have  
15 been advised by Canada or Ontario about the  
16 statements in this letter; fair?

17 A. I don't know this question on my  
18 solicitors on where they get their information,  
19 Max.

20 283 Q. Your solicitors were advised what  
21 is set out in this letter by Canada or Ontario and  
22 not by Six Nations; fair?

23 MR. FRAME: I think that question has  
24 already been answered, Max.

25 MR. SHAPIRO: What is the answer?

1 MR. FRAME: He said that he doesn't  
2 know where all of the information that was received  
3 in a privilege communication from their lawyers  
4 came from. He also said that they were not advised  
5 by Six Nations.

6 BY MR. SHAPIRO:

7 284 Q. So where it says here, "We have,  
8 however, been advised [...]", who advised the MCFN  
9 about what is set out in this letter?

10 MR. FRAME: This letter is signed by  
11 me, Max.

12 BY MR. SHAPIRO:

13 285 Q. And is the "we" there a reference  
14 to Counsel or the client or what? Do you need me  
15 to repeat the question?

16 A. Well, I didn't write the letter,  
17 so I am not sure who the "we" is in respect of,  
18 Max.

19 286 Q. So perhaps for Counsel, then, Mr.  
20 Frame, who advised?

21 MR. FRAME: I am not testifying here  
22 today, Max.

23 BY MR. SHAPIRO:

24 287 Q. Chief Laforme, will you ask your  
25 lawyer to let us know who advised him regarding the



1 information in the statement we just reviewed and  
2 to let us know?

3 U/T MR. FRAME: We'll review  
4 correspondence, and if there is a non-privileged  
5 response, we'll provide it, Max.

6 BY MR. SHAPIRO:

7 288 Q. I appreciate that. The question  
8 was, will you let us know who advised you of the  
9 information referenced in this letter? Will you do  
10 that?

11 U/T MR. FRAME: To the extent that  
12 information is non-privileged, we will provide an  
13 answer to that question, Max.

14 BY MR. SHAPIRO:

15 289 Q. The identity of the person  
16 communicating that information cannot be  
17 privileged, Mr. Frame, so there is a difference  
18 between who and then the substance of the  
19 information. I am interested in both, but in the  
20 first instance, the more simple question is who  
21 advised you of this information. Will you let me  
22 know?

23 U/T MR. FRAME: To the extent that we  
24 determine that that information is not  
25 privileged -- and again, if you are correct, Max,

1 that there is no chance it is privileged, then you  
2 will get the information, but my answer doesn't  
3 change.

4 BY MR. SHAPIRO:

5 290 Q. Okay. Further down in the letter,  
6 Chief Laforme, there is another sentence that says:

7 "Among other things, we  
8 understand that the Plaintiff may  
9 now be seeking relief beyond the  
10 damages and compensation claimed in  
11 the pleadings." [As read.]

12 Do you see that?

13 A. I see it.

14 291 Q. No one from Six Nations provided  
15 you or the MCFN with that understanding; correct?

16 A. Correct.

17 292 Q. That understanding was provided to  
18 you by either Canada or Ontario; correct?

19 A. No, that understanding would have  
20 been provided to us by our lawyers.

21 293 Q. And your lawyers' understanding  
22 about that would have been provided to them by  
23 Canada or Ontario; correct?

24 A. I can't speak to that.

25 MR. FRAME: The same responses, Max.

1 And yes, to the extent -- if you want to ask for  
2 information, to the extent that there is a  
3 non-privileged response that we can provide, we  
4 will do that. So feel free to ask.

5 BY MR. SHAPIRO:

6 294 Q. Sure. How did the Mississaugas  
7 come to understand that the Plaintiff may now be  
8 seeking relief beyond the damages and compensation  
9 claimed in the pleadings?

10 R/F MR. FRAME: Again, Mississaugas by way  
11 of privileged communication. We are not answering  
12 that question.

13 MR. SHAPIRO: Privileged communication  
14 with whom?

15 MR. FRAME: With me.

16 BY MR. SHAPIRO:

17 295 Q. So where it says "We understand  
18 the Plaintiff may now be seeking relief beyond the  
19 damages and compensation claimed in the pleadings",  
20 what is the source of that understanding?

21 U/T MR. FRAME: We'll make inquiries  
22 internally, and if there is a non-privileged  
23 response, we'll provide it.

24 BY MR. SHAPIRO:

25 296 Q. And you'll also let me know who

1 provided you with that understanding as part of  
2 that; correct?

3 MR. FRAME: And you asked that question  
4 already.

5 BY MR. SHAPIRO:

6 297 Q. That was in respect of a different  
7 statement. So I am extending that to this second  
8 statement. Are we on the same page?

9 U/T MR. FRAME: Yes, to the extent we have  
10 a non-privileged response, we will provide it to  
11 you.

12 BY MR. SHAPIRO:

13 298 Q. I am going to ask the same  
14 question about two more sentences, which I'll just  
15 read out for completeness. There is a sentence  
16 that says:

17 "We understand the Plaintiff's  
18 expanded claims may include claims  
19 for title to land in MCFN's  
20 traditional territory, including to  
21 the bed of the Grand River." [As  
22 read.]

23 And there is another sentence that  
24 states:

25 "We further understand that the

1 Plaintiff may put in issue the scope  
2 and content of its rights, if any,  
3 under the 1701 Nanfan Deed,  
4 including whether such rights are  
5 protected by section 35 of the  
6 Constitution Act 1982." [As read.]

7 Chief Laforme, you or your lawyers were  
8 not advised of either of those statements by anyone  
9 for Six Nations; correct?

10 A. I don't believe so, no.

11 299 Q. It is not that you don't believe  
12 so. It is that did not happen; correct?

13 A. I believe I have already answered,  
14 sir, I don't believe so. I mean, I am not the only  
15 point of contact for the Six Nations to potentially  
16 talk to someone, but as far as I know, that is  
17 correct.

18 300 Q. That is fair, thank you. And I  
19 will ask the same questions to Mr. Frame about  
20 these two statements and combine those with the  
21 prior undertaking given to take this away; is that  
22 fair, Counsel?

23 U/T MR. FRAME: Yeah, again, I am not  
24 answering questions today, Max, but we will -- to  
25 the extent there is a non-privileged response

1 consistent with the questions you asked earlier,  
2 including the who, as you have clarified in both  
3 previous instances, we'll provide you.

4 BY MR. SHAPIRO:

5 301 Q. Thank you. Chief Laforme, you are  
6 aware that Six Nations through its lawyers has  
7 asked the Mississaugas to deliver a draft pleading  
8 in this case?

9 A. I have seen the written  
10 correspondence between my legal team and your legal  
11 team, I believe it was, Max.

12 302 Q. And so you'll know from that that  
13 your lawyers on your behalf have declined to do  
14 that at this point; correct?

15 A. Yes, I am aware of the letters,  
16 yes.

17 303 Q. You are also aware that the  
18 Government of Ontario lawyers involved in this case  
19 shared three of the Six Nations' expert reports  
20 with your lawyers; correct?

21 A. I have never seen the expert  
22 reports.

23 304 Q. Your Notice of Motion mentions the  
24 expert reports; correct?

25 A. Where is that again, Max?

1           305                   Q.    It is in your Notice of Motion, if  
2                                    you want to pull it up, at paragraph 28.

3                                   A.    Yes, okay.

4           306                   Q.    That refreshes your memory about  
5                                    the expert reports?

6                                   A.    I know that there are expert  
7                                    reports, thank you. I have not seen the expert  
8                                    reports, but...

9           307                   Q.    They were provided to the MCFN,  
10                                   though, through its lawyers, right?

11                                  A.    The lawyers have not made expert  
12                                  reports available to me.

13           308                   Q.    So the lawyers have the expert  
14                                   reports and no one else at the Mississaugas has  
15                                   them?

16                                  A.    I certainly don't have them, and I  
17                                  am not aware of anybody at Mississaugas having  
18                                  them.

19           309                   Q.    You are aware, though, that the  
20                                   reports were provided to your lawyers in 2022,  
21                                   right?

22                                  A.    I believe it references a date in  
23                                  there that we just looked at, but...

24           310                   Q.    So I'll ask the question broadly  
25                                   then. When did your lawyers obtain the expert

1 reports mentioned at paragraph 28 of the Notice of  
2 Motion?

3 A. I don't know the date, unless you  
4 want me to look at the document again, because I  
5 didn't know the date. When the --

6 311 Q. Can you make inquiries perhaps  
7 with your lawyer and let us know?

8 A. The date that the lawyers received  
9 the information?

10 312 Q. Exactly.

11 U/T MR. FRAME: Yeah, that is fine, Max.  
12 We'll make internal inquiries as to the date or  
13 dates that Pape Salter Teillet was provided with  
14 the expert reports referenced in paragraph 28.

15 MR. SHAPIRO: Thank you. And my  
16 understanding is that it was sometime in the spring  
17 of 2022, but if that is different or incorrect, you  
18 can let me know.

19 MR. FRAME: As I said, we'll provide  
20 you the date or dates.

21 BY MR. SHAPIRO:

22 313 Q. Okay. Chief Laforme, you also  
23 know that Six Nations has asked to see the  
24 correspondence between Ontario's lawyers and your  
25 lawyers about those reports being shared; correct?



1 A. Yes.

2 314 Q. The Six Nations wants to know how  
3 that happened, right?

4 A. I believe that was the gist of  
5 some of the correspondence I saw.

6 315 Q. And on Friday, the 17th of March,  
7 in response to the latest request for that, your  
8 lawyers sent us an email. We can pull it up if you  
9 don't have it, but I'll just read it out:

10 "With respect to your request  
11 for correspondence between the  
12 MCFN's Counsel and Ontario's Counsel  
13 where the Plaintiff's expert reports  
14 were shared, any such correspondence  
15 is subject to litigation and/or  
16 common interest privilege. We will  
17 not be providing them." [As read.]

18 A. Yeah, I have that.

19 316 Q. The Mississaugas adopt their  
20 lawyer's answer to that effect?

21 R/F MR. FRAME: We are not having the Chief  
22 make a legal determination about the scope of  
23 common interest and litigation privilege.  
24 Objection, not going to answer.

25 BY MR. SHAPIRO:

1           317                   Q.    Fair to say then that still today  
2                           the Mississaugas are refusing to provide this  
3                           information?

4           R/F                   MR. FRAME:   That's correct.

5                           BY MR. SHAPIRO:

6           318                   Q.    They are refusing to share it with  
7                           the Six Nations?

8           R/F                   MR. FRAME:   We are not providing  
9                           privileged information, and we are asserting common  
10                          interest and litigation privilege over the  
11                          documents that are referenced in that email.

12                          BY MR. SHAPIRO:

13          319                   Q.    What is the MCFN's common interest  
14                          with Ontario regarding this Court action?

15          R/F                   MR. FRAME:   The Chief is not going to  
16                          provide a legal opinion on the scope of common  
17                          interest privilege in this cross-examination.

18                          MR. SHAPIRO:  Will you then provide  
19                          one, Counsel?

20                          MR. FRAME:   I am not being examined  
21                          today.

22                          BY MR. SHAPIRO:

23          320                   Q.    Then I am asking the question, and  
24                          you can either take it away or refuse it.  You have  
25                          asserted common interest privilege.  I am testing

1           that position. What is the MCFN's common interest  
2           with Ontario that is being asserted here?

3           U/T           MR. FRAME: We'll take that away and  
4           get back to you.

5                       BY MR. SHAPIRO:

6           321           Q. I would like to go to your  
7           affidavit, Chief Laforme, back to paragraph 11.

8                       A. Where is my affidavit now?

9                       Okay.

10          322           Q. And I will just read out the first  
11          sentence of that while you pull it up. It states:

12                       "Unfortunately, I believe that  
13                       in seeking justice for wrongs  
14                       committed against it by Canada and  
15                       Ontario, Six Nations has taken aim  
16                       at our people and put our history,  
17                       our rights, and our territory in its  
18                       crosshairs."

19                       Do you see that, Chief Laforme?

20                       A. No. Could you give me the page of  
21          that again?

22          323           Q. It is paragraph 11, page 25 of  
23          your Motion Record.

24                       A. Okay, sorry, I had the wrong  
25          document.

1 324 Q. No problem. Take a moment to  
2 refresh your memory.

3 A. [Witness reviews document.]  
4 Okay.

5 325 Q. You would agree with me, Chief  
6 Laforme, that no one for Six Nations has ever  
7 expressed to you that they have put the MCFN in its  
8 crosshairs; correct?

9 A. They have never made that  
10 statement to me.

11 326 Q. And you are not aware of them  
12 making that statement to anyone else, are you?

13 A. Not as it pertains to this case,  
14 no.

15 327 Q. Just like MCFN's intervention  
16 request is not intended to put Six Nations  
17 territory in its crosshairs; correct?

18 A. That's correct.

19 328 Q. The MCFN's intervention request is  
20 not taking aim at the Six Nations people or the Six  
21 Nations community; correct?

22 A. We are not.

23 MR. SHAPIRO: I am going to go off  
24 camera for two moments to consult with my team.  
25 Please bear with me.

1 [Brief Discussion Off The Record.]

2 MR. SHAPIRO: I am back, and I can let  
3 you know, Chief Laforme, that that concludes my  
4 questions for you today, subject to the  
5 undertakings and the refusals that your lawyer took  
6 away.

7 I appreciate your time, and I thank you  
8 for your time.

9 THE WITNESS: And thank you as well.

10 MR. FRAME: And we are just going to  
11 take two minutes while I go off camera while I  
12 consult with my colleagues as to whether there will  
13 be any re-examination today.

14 [Brief Discussion Off The Record.]

15 MR. FRAME: No re-examination on behalf  
16 of the Mississaugas of the New Credit.

17 MR. SHAPIRO: Thank you again very  
18 much. I think that concludes today's proceedings.

19 I am not aware of anyone else wanting  
20 to ask questions.

21 MR. YOUNG: No, nothing from Ontario,  
22 Max.

23 MR. SHAPIRO: And hearing nothing  
24 further from Canada, can we safely log off and let  
25 Madam Reporter go have lunch?

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MR. FRAME: Yes, thank you.

-- Adjourned at 11:56 a.m.

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REPORTER'S CERTIFICATE

I, DEANA SANTEDICOLA, RPR, CRR,  
CSR, Certified Shorthand Reporter, certify:

That the foregoing proceedings were  
taken before me at the time and place therein set  
forth, at which time the witness was put under oath  
by me;

That the testimony of the witness  
and all objections made at the time of the  
examination were recorded stenographically by me  
and were thereafter transcribed;

That the foregoing is a true and  
correct transcript of my shorthand notes so taken.

Dated this 24th day of March, 2023.



NEESONS, A VERITEXT COMPANY

PER: DEANA SANTEDICOLA, RPR, CRR, CSR

<b>&amp;</b>	<b>12</b> 4:12 7:12	<b>149</b> 37:15	<b>171</b> 42:21
<b>&amp; 2:5</b>	55:16	<b>14th</b> 8:2,9	<b>172</b> 42:24
<b>1</b>	<b>120</b> 31:7	<b>15</b> 8:19	<b>173</b> 43:3
<b>1</b> 4:4 5:6 7:23	<b>121</b> 31:12	<b>150</b> 37:19	<b>174</b> 43:11
7:24 29:25	<b>122</b> 31:15	<b>151</b> 37:23	<b>175</b> 43:20
44:25 45:6,9	<b>123</b> 31:17	<b>152</b> 38:2	<b>176</b> 44:13
50:13	<b>124</b> 31:21	<b>153</b> 38:5	<b>177</b> 45:5
<b>10</b> 7:2 12:19	<b>125</b> 32:1	<b>154</b> 38:10	<b>1776</b> 41:3
13:2	<b>126</b> 32:4 45:25	<b>155</b> 38:15	<b>178</b> 45:8
<b>100</b> 27:20	<b>127</b> 32:8	<b>156</b> 38:21	<b>1781</b> 32:21
<b>101</b> 28:1	<b>128</b> 32:12	<b>157</b> 38:25 49:6	44:24
<b>102</b> 28:7	<b>129</b> 33:5	49:21	<b>1781-1830</b> 45:2
<b>103</b> 28:12	<b>13</b> 8:2	<b>158</b> 39:4	<b>1783</b> 41:6
<b>104</b> 28:17	<b>130</b> 33:18	<b>159</b> 39:7	<b>1784</b> 13:21
<b>105</b> 28:22	<b>131</b> 33:24	<b>16</b> 8:23	14:2 17:5,23
<b>106</b> 28:24	<b>132</b> 34:2	<b>160</b> 39:17	19:3,12 20:5
<b>107</b> 29:3	<b>133</b> 34:17	<b>1600s</b> 13:7	20:15,22 21:11
<b>108</b> 29:9	<b>134</b> 35:3 72:19	14:25	22:17 32:23
<b>109</b> 29:13	<b>135</b> 35:9	<b>161</b> 39:21	33:8 34:4,8
<b>10:00</b> 5:1	<b>136</b> 35:14	<b>162</b> 39:24	35:6 47:23
<b>11</b> 7:5 87:7,22	<b>137</b> 35:22	<b>163</b> 40:4	68:20
<b>110</b> 29:18	<b>138</b> 35:25	<b>164</b> 40:9	<b>179</b> 45:22
<b>111</b> 29:21	<b>139</b> 36:4	<b>165</b> 40:11	<b>1792</b> 32:24
<b>112</b> 29:24	<b>14</b> 4:7 8:7,16	<b>166</b> 40:15	35:6
<b>113</b> 30:5	<b>140</b> 36:8	<b>167</b> 40:18	<b>17th</b> 63:8 65:12
<b>114</b> 30:10	<b>141</b> 36:11	<b>168</b> 40:22	85:6
<b>115</b> 30:13	<b>142</b> 36:13	<b>169</b> 42:5	<b>18</b> 9:4
<b>116</b> 30:16	<b>143</b> 36:15	<b>17</b> 4:21 9:1	<b>18-594281-0...</b>
<b>117</b> 30:20	<b>144</b> 36:23	65:18	1:1
<b>118</b> 31:1	<b>145</b> 37:1	<b>170</b> 42:11	<b>180</b> 46:5
<b>119</b> 31:4	<b>146</b> 37:4	<b>1700</b> 13:11	<b>1800s</b> 16:18
<b>11:20</b> 66:3	<b>147</b> 37:7	<b>1700s</b> 13:14	17:12
<b>11:30</b> 66:1,4	<b>148</b> 37:10	<b>1701</b> 13:16	<b>181</b> 46:9
<b>11:56</b> 90:3	47:17	62:17 81:3	<b>182</b> 46:13



<b>1822</b> 32:21	<b>2010</b> 10:1	<b>218</b> 56:9	<b>246</b> 64:14
<b>183</b> 46:16	<b>2015</b> 9:16,20,22	<b>219</b> 56:16	<b>247</b> 64:24
<b>1830</b> 44:24	39:14 46:9,22	<b>22</b> 9:19 32:12	<b>248</b> 65:4
<b>184</b> 46:20	<b>202</b> 51:20	32:23 47:16	<b>249</b> 66:6
<b>185</b> 46:24	<b>2020</b> 28:3,8	<b>220</b> 56:21	<b>24th</b> 91:18
<b>186</b> 47:4	<b>2022</b> 1:20 4:12	<b>221</b> 57:2	<b>25</b> 10:3 87:22
<b>187</b> 47:8	4:14 6:18 50:8	<b>222</b> 57:6	<b>250</b> 66:10
<b>188</b> 47:12	52:13,20 55:17	<b>223</b> 57:9	<b>251</b> 66:18
<b>189</b> 47:16	55:18 72:18,24	<b>224</b> 57:16	<b>252</b> 66:23
<b>19</b> 9:9	73:23 83:20	<b>225</b> 57:22	<b>253</b> 67:4
<b>190</b> 47:21	84:17	<b>226</b> 58:10	<b>254</b> 67:10
<b>1900</b> 11:11	<b>2023</b> 1:22 4:5,7	<b>227</b> 58:12	<b>255</b> 67:14
<b>1900s</b> 11:18	4:18,21 7:25	<b>228</b> 58:17	<b>256</b> 68:9
<b>191</b> 48:17	8:17 65:16,18	<b>229</b> 58:23	<b>257</b> 69:3
<b>192</b> 49:1	91:18	<b>23</b> 9:22 33:6,19	<b>258</b> 69:8
<b>193</b> 49:5	<b>2024</b> 70:13	48:17 49:5,19	<b>259</b> 69:11
<b>194</b> 49:19	71:7,19	<b>230</b> 59:4	<b>26</b> 10:5
<b>195</b> 50:4	<b>203</b> 51:25	<b>231</b> 59:16	<b>260</b> 69:14
<b>196</b> 50:13	<b>204</b> 52:3	<b>232</b> 59:20	<b>261</b> 69:16
<b>197</b> 50:18	<b>205</b> 52:6	<b>233</b> 59:24	<b>262</b> 69:22
<b>198</b> 50:22	<b>206</b> 52:20	<b>234</b> 60:5	<b>263</b> 70:1
<b>1982</b> 81:6	<b>207</b> 53:1	<b>235</b> 60:14	<b>264</b> 70:4
<b>199</b> 51:2	<b>208</b> 53:4	<b>236</b> 60:17	<b>265</b> 70:8
<b>1995</b> 69:9	<b>209</b> 53:11	<b>237</b> 60:23	<b>266</b> 70:12
70:21 71:7	<b>20th</b> 1:22	<b>238</b> 61:4	<b>267</b> 70:16
<b>1999</b> 9:22	<b>21</b> 9:15	<b>239</b> 61:13	<b>268</b> 71:5
<b>2</b>	<b>210</b> 53:16	<b>24</b> 9:24 23:10	<b>269</b> 71:16
<b>2</b> 1:20 4:5,7	<b>211</b> 53:21	24:19	<b>27</b> 10:9 49:8,22
5:12 7:25 8:12	<b>212</b> 54:9	<b>240</b> 62:5	<b>270</b> 71:25
8:16 53:2	<b>213</b> 54:22	<b>241</b> 62:15	<b>271</b> 72:7
<b>20</b> 9:12 48:3	<b>214</b> 55:3	<b>242</b> 62:22	<b>272</b> 72:14
<b>200</b> 51:6	<b>215</b> 55:20	<b>243</b> 63:2	<b>273</b> 73:5
<b>2008</b> 10:1	<b>216</b> 55:25	<b>244</b> 63:7	<b>274</b> 73:8
<b>201</b> 51:13	<b>217</b> 56:5	<b>245</b> 63:12	<b>275</b> 73:22

<b>276</b> 74:4	<b>30</b> 10:19 44:7	<b>34</b> 12:2 40:25	<b>51</b> 15:13
<b>277</b> 74:7	<b>300</b> 81:18	<b>35</b> 12:6 57:22	<b>51:10</b> 3:22
<b>278</b> 74:11	<b>301</b> 82:5	58:8 73:17	<b>52</b> 15:17
<b>279</b> 74:24	<b>302</b> 82:12	74:21 81:5	<b>53</b> 15:20 43:21
<b>27th</b> 50:8	<b>303</b> 82:17	<b>36</b> 12:9	<b>54</b> 15:25
<b>28</b> 10:12 83:2	<b>304</b> 82:23	<b>37</b> 12:11	<b>55</b> 16:9 44:13
84:1,14	<b>305</b> 83:1	<b>38</b> 12:17	45:2
<b>280</b> 75:7	<b>306</b> 83:4	<b>39</b> 12:24	<b>55/14</b> 4:14
<b>281</b> 75:10	<b>307</b> 83:9	<b>3rd</b> 63:4 65:11	<b>550,000</b> 20:25
<b>282</b> 75:14	<b>308</b> 83:13	<b>4</b>	<b>56</b> 16:14
<b>283</b> 75:20	<b>309</b> 83:19	<b>4</b> 4:16 5:21	<b>57</b> 17:10
<b>284</b> 76:7	<b>31</b> 11:8 39:14	65:11,12,14	<b>58</b> 17:15
<b>285</b> 76:13	49:20	<b>40</b> 10:17 13:6	<b>58:19</b> 3:22
<b>286</b> 76:19	<b>310</b> 83:24	<b>40a</b> 17:7,9	<b>58:25</b> 3:23
<b>287</b> 76:24	<b>311</b> 84:6	18:12	<b>59</b> 18:5
<b>288</b> 77:7	<b>312</b> 84:10	<b>40b</b> 10:16,18	<b>59:18</b> 3:23
<b>289</b> 77:15	<b>313</b> 84:22	11:12 17:9	<b>59:22</b> 3:23
<b>29</b> 10:15	<b>314</b> 85:2	<b>41</b> 13:9	<b>59:8</b> 3:23
<b>290</b> 78:5	<b>315</b> 85:6	<b>42</b> 13:15	<b>5th</b> 52:12
<b>29079</b> 91:21	<b>316</b> 85:19	<b>43</b> 13:19 28:13	<b>6</b>
<b>291</b> 78:14	<b>317</b> 86:1	<b>44</b> 13:25 19:23	<b>6</b> 6:3 72:17,24
<b>292</b> 78:17	<b>318</b> 86:6	<b>45</b> 14:5	73:23
<b>293</b> 78:21	<b>319</b> 86:13	<b>45:15</b> 3:12	<b>60</b> 18:9
<b>294</b> 79:6	<b>32</b> 11:18	<b>46</b> 14:8 20:20	<b>60:12</b> 3:23
<b>295</b> 79:17	<b>320</b> 86:23	<b>47</b> 14:18 19:23	<b>60:2</b> 3:23
<b>296</b> 79:25	<b>321</b> 87:6	<b>48</b> 14:24	<b>61</b> 18:16
<b>297</b> 80:6	<b>322</b> 87:10	<b>49</b> 15:3	<b>61:1</b> 3:23
<b>298</b> 80:13	<b>323</b> 87:22	<b>5</b>	<b>61:23</b> 3:24
<b>299</b> 81:11	<b>324</b> 88:1	<b>5</b> 3:4 4:14,20	<b>62</b> 18:23 30:7
<b>2nd</b> 6:18 7:6	<b>325</b> 88:5	5:25 52:20	<b>62:10</b> 3:24
<b>3</b>	<b>326</b> 88:11	55:18 65:11,13	<b>62:19</b> 3:24
<b>3</b> 4:10,18 5:17	<b>327</b> 88:15	65:17	<b>62:24</b> 3:24
30:17 32:22	<b>328</b> 88:19	<b>50</b> 15:8	<b>63</b> 19:12
35:6 55:13,14	<b>33</b> 11:22 60:14		<b>64</b> 19:17
65:16	61:14		

<p><b>64:16</b> 3:24  <b>65</b> 19:22  <b>65/14</b> 4:18  <b>65/17</b> 4:21  <b>65:1</b> 3:24  <b>65:6</b> 3:24  <b>66</b> 20:1  <b>67</b> 16:15 20:3  <b>68</b> 20:7  <b>69</b> 20:15 39:10</p>	<p><b>80:9</b> 3:13  <b>81</b> 24:8  <b>81:23</b> 3:13  <b>82</b> 24:19  <b>83</b> 24:25  <b>84</b> 25:4  <b>84:11</b> 3:13  <b>85</b> 25:7  <b>85:21</b> 3:25  <b>86</b> 25:12  <b>86:4</b> 3:25  <b>86:8</b> 3:25  <b>87</b> 25:17  <b>88</b> 25:20  <b>89</b> 25:24</p>	<p><b>able</b> 47:6 58:17  <b>aboriginal</b> 24:4                  24:7,10,22                  25:1,8,24 29:4                  35:22 36:5                  37:11,21 38:12                  38:19 46:5  <b>above</b> 31:1                  44:7  <b>absolutely</b> 56:4                  68:8  <b>abuse</b> 64:2  <b>abuses</b> 68:18  <b>access</b> 12:13  <b>accomplish</b>                  41:14  <b>accountable</b>                  68:17  <b>accurate</b> 27:18                  39:5,6 40:19                  47:13 53:9                  68:7,25  <b>accurately</b>                  67:23 72:5  <b>acknowledg...</b>                  64:10  <b>acquainted</b>                  64:4  <b>acquired</b> 21:7  <b>acres</b> 20:25  <b>act</b> 9:2 81:6  <b>action</b> 19:7                  50:16 52:1                  53:23 54:10,12                  55:5 56:17</p>	<p>59:1,21,25                  60:6 61:15                  62:6 66:7                  67:20 68:4                  69:6 70:13                  71:9,12 73:14                  73:24 86:14  <b>actions</b> 23:6  <b>actually</b> 11:16                  16:5 17:8,9                  54:17  <b>added</b> 50:15,23                  51:2 60:24                  61:7,20 62:5                  70:16  <b>addressed</b>                  63:24  <b>adjourned</b> 90:3  <b>adjudicated</b>                  74:19  <b>adopt</b> 85:19  <b>adopts</b> 64:14                  64:19  <b>advance</b> 27:10                  27:13  <b>advanced</b> 24:1  <b>adversely</b> 68:1                  74:20  <b>advised</b> 49:9                  74:13,25,25                  75:7,10,15,20                  76:4,8,8,20,25                  77:8,21 81:8  <b>advisement</b>                  3:16</p>
<b>7</b>	<b>9</b>		
<p>7 6:16 32:24  <b>7/24</b> 4:5  <b>70</b> 20:18  <b>71</b> 21:14  <b>71:20</b> 3:25  <b>72</b> 21:23  <b>73</b> 22:14  <b>74</b> 22:20  <b>75</b> 23:1  <b>76</b> 23:5  <b>77</b> 23:9 67:15  <b>77:11</b> 3:13  <b>77:23</b> 3:13  <b>77:3</b> 3:12  <b>78</b> 23:17  <b>79</b> 23:21  <b>79:10</b> 3:25  <b>79:21</b> 3:13</p>	<p><b>9</b> 6:23 18:16                  20:5,8 68:10  <b>90</b> 3:4 26:6  <b>91</b> 26:10  <b>92</b> 26:14  <b>93</b> 26:18  <b>94</b> 26:22  <b>95</b> 27:1  <b>96</b> 27:5  <b>97</b> 27:9  <b>98</b> 27:12  <b>99</b> 27:15</p>		
<b>8</b>	<b>a</b>		
<p><b>8</b> 6:20  <b>8/16</b> 4:8  <b>80</b> 24:4</p>	<p><b>a.m.</b> 5:1 66:3,4                  90:3  <b>ability</b> 24:14                  27:13</p>		

<p><b>advisements</b>                  3:6,15  <b>affidavit</b> 1:19                  6:11,16,21                  12:19,20 16:15                  18:17 19:24                  20:19 67:15                  68:11 69:3,5                  72:18 87:7,8  <b>affirmation</b> 5:4                  6:15  <b>affirmed</b> 1:19                  6:17  <b>ago</b> 25:21                  56:23  <b>agree</b> 15:14                  27:9 35:9 39:4                  41:21 44:8                  48:13 49:2,14                  55:9 57:19                  61:4 65:4                  70:17 71:9                  88:5  <b>agreed</b> 10:25                  20:22 34:6                  66:25  <b>agreement</b>                  10:20 11:11                  13:10,13,16                  15:4,7,9 16:12                  16:17,22 17:12                  21:3 33:10                  34:4,13 64:10  <b>ahead</b> 40:12</p>	<p><b>aim</b> 87:15                  88:20  <b>alexander</b> 2:17  <b>allow</b> 16:3                  51:21  <b>allowed</b> 53:23                  55:5 59:24                  67:11 71:16                  72:3,7  <b>amended</b> 6:9                  73:11 74:5  <b>amendment</b>                  74:17  <b>american</b> 11:2                  41:5,12 44:6                  48:7  <b>ancestors</b> 16:23                  20:22 21:10                  56:25  <b>anishinaabeg</b>                  8:24 13:3 14:9                  14:14  <b>answer</b> 27:19                  53:25 55:4,21                  59:4,16 62:3                  71:22 75:25                  77:13 78:2                  85:20,24  <b>answered</b>                  75:24 81:13  <b>answering</b>                  62:11,13 79:11                  81:24  <b>anybody</b> 83:17</p>	<p><b>apologies</b> 28:11                  49:21  <b>appear</b> 3:12,17                  3:22  <b>appears</b> 46:9  <b>applicable</b> 64:7                  64:8  <b>application</b>                  61:24  <b>applies</b> 64:21  <b>apply</b> 59:16  <b>appreciate</b>                  43:20 77:7                  89:7  <b>appropriate</b>                  64:11 65:20  <b>approval</b> 29:19  <b>approved</b>                  40:15 47:9  <b>area</b> 14:4 25:15                  29:6 30:13,21                  31:9,20,22                  36:1,21 38:11  <b>areas</b> 34:15                  56:14  <b>arriving</b> 70:17  <b>art</b> 54:15  <b>aside</b> 22:15                  38:15 54:9                  57:18  <b>asked</b> 59:17                  60:5 80:3 82:1                  82:7 84:23  <b>asking</b> 5:8                  21:18,23,24</p>	<p>38:16 50:18                  54:17,19 64:18                  86:23  <b>asserted</b> 86:25                  87:2  <b>asserting</b> 26:11                  86:9  <b>asserts</b> 22:21  <b>assistance</b> 3:8  <b>associates</b>                  46:10  <b>assume</b> 26:17                  40:17,18,20                  67:13  <b>assuming</b> 42:1  <b>assumption</b>                  27:8  <b>assuredly</b> 47:3  <b>attending</b> 1:22  <b>attention</b> 40:24                  45:24  <b>attorney</b> 1:9                  2:9  <b>authored</b> 46:10  <b>authority</b> 37:17  <b>available</b> 83:12  <b>aware</b> 16:2                  22:10 26:22                  27:1,21 32:8                  34:23 39:18                  58:15 66:21                  70:12,21,23                  73:24 74:3,4                  82:6,15,17                  83:17,19 88:11</p>
--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

89:19	<b>beds</b> 26:12 29:5	63:20	46:5
<b>b</b>	30:1 32:15	<b>boundaries</b>	<b>calls</b> 61:1 65:6
<b>b</b> 1:5 45:18	<b>began</b> 70:21	37:24 38:3	<b>camera</b> 88:24
<b>back</b> 13:6 16:4	<b>behalf</b> 27:10,13	<b>boundary</b> 48:8	89:11
17:10 18:16	28:19 82:13	<b>bracketed</b> 42:1	<b>canada</b> 1:9
20:4,7 31:12	89:15	<b>brant</b> 41:3,17	2:10 28:25
42:12 69:9	<b>believe</b> 5:14	42:13,21 48:1	39:12 42:25
87:4,7 89:2	9:25 10:2	<b>brantford</b>	43:7 44:17
<b>background</b>	29:16 40:2	10:13 70:6	46:25 60:1,6
46:18	51:13 68:21	<b>break</b> 8:15 9:23	60:20 61:16
<b>band</b> 1:6 5:8	69:15 75:2	9:24 10:3	68:16 75:11,15
9:1 10:7 11:22	81:10,11,13,14	65:20	75:21 78:18,23
12:2 26:18,19	82:11 83:22	<b>brief</b> 89:1,14	87:14 89:24
26:23 27:10,12	85:4 87:12	<b>british</b> 32:20	<b>captain</b> 48:1
28:20 29:10,14	<b>believed</b> 25:15	33:11 34:14	<b>case</b> 4:13 8:8
31:24 32:2	<b>bell</b> 69:24	36:1 41:5,7,11	22:13 36:20
53:12,17 54:12	<b>beneficial</b>	41:12 43:25	37:23 52:11
66:11,19	49:12,25	44:19,24 48:5	54:5,25 55:17
<b>bands</b> 25:16	<b>best</b> 72:12	<b>brittany</b> 2:4	58:14 60:21,25
26:15 27:2,5,8	<b>beyond</b> 78:9	<b>broad</b> 54:8	61:8 66:15
27:12,15,23,25	79:8,18	<b>broader</b> 51:3	67:12 69:8,11
37:7	<b>bit</b> 20:19 22:21	<b>broadly</b> 83:24	70:2,5,23,25
<b>based</b> 35:22,25	22:22 28:1	<b>buildings</b> 36:11	71:6,13,18
45:17 62:11	30:22 39:1	<b>businesses</b> 37:5	72:2,17 82:8
<b>basic</b> 66:19	52:9 65:22	38:3	82:18 88:13
<b>basically</b> 14:22	66:19 74:11	<b>c</b>	<b>cases</b> 27:18
<b>bay</b> 41:18 42:3	<b>black</b> 31:13	<b>c</b> 2:1	<b>caught</b> 58:11
42:7,17	<b>blow</b> 63:13	<b>call</b> 20:4 34:7	<b>cause</b> 72:4
<b>bear</b> 88:25	<b>bomberry</b> 2:21	38:6 52:3	<b>cbc</b> 70:9
<b>beat</b> 73:2	<b>bottom</b> 23:21	59:13	<b>certain</b> 20:11
<b>beaver</b> 13:7,19	24:21 26:9	<b>called</b> 10:15	20:13 21:5
13:25 14:3,11	<b>bounce</b> 52:8	11:12 13:13,17	<b>certainly</b> 22:13
14:20,22	<b>bound</b> 60:20,24	14:5 19:13	45:15 53:15,16
<b>bed</b> 80:21	61:7,17,21	23:14,18 25:9	54:1 62:10
	62:9,18 63:16	30:10 39:25	83:16

<b>certificate</b> 91:1 <b>certified</b> 91:4 <b>certify</b> 91:4 <b>cessions</b> 44:23 45:1 <b>chance</b> 18:18 78:1 <b>change</b> 78:3 <b>chief</b> 1:18 3:2 4:4 5:3,6 6:10 7:17,25 8:19 9:12,16 10:5 12:3,7,7,9,12 19:8 21:12 22:1 28:15,18 28:22 30:8 32:5 33:1 38:17 39:2,14 41:20 44:8 45:3 46:1 47:19 48:14 50:10 52:23 54:16 55:4,21 58:4 60:18 62:2,12 63:2 63:10 64:12,25 65:5 66:8 69:1 69:5 73:6 74:22 76:24 78:6 81:7 82:5 84:22 85:21 86:15 87:7,19 88:5 89:3 <b>circle</b> 42:12	<b>claim</b> 6:9 7:11 24:10,22 25:1 25:4,8,15,24 26:20,24 27:3 27:20,21,22 28:2,2,3,8,8,16 29:3,10,14,17 29:22,22,25 31:8,10,24 32:6,10,13 34:2 35:3,15 35:22 36:17,24 38:18 39:11,25 42:25 46:6,25 47:3 53:14 54:6,9 57:10 57:12,14 66:7 <b>claimed</b> 14:10 78:10 79:9,19 <b>claiming</b> 24:4 35:15,21 <b>claims</b> 22:21 23:1,15,19 24:1,6 27:10 27:13,16 36:5 36:18 57:7 80:18,18 <b>clarification</b> 26:9,10 <b>clarified</b> 82:2 <b>clarifying</b> 13:15 <b>clear</b> 9:8 34:18 <b>clearer</b> 54:16	<b>clerk's</b> 72:18 <b>client</b> 76:14 <b>close</b> 21:18 <b>closer</b> 30:22 <b>collateral</b> 61:24 64:1 <b>colleagues</b> 89:12 <b>collection</b> 7:18 <b>combine</b> 81:20 <b>come</b> 14:14 17:1,19 43:14 79:7 <b>comes</b> 26:8 42:16 <b>comfort</b> 73:12 <b>commence</b> 70:13 <b>commenced</b> 23:1,5 <b>commencing</b> 5:1 45:2 <b>commercial</b> 36:11 <b>commissioned</b> 46:19 <b>commit</b> 45:16 <b>committed</b> 56:1 87:14 <b>common</b> 63:25 64:6 85:16,23 86:9,13,16,25 87:1 <b>communicating</b> 77:16	<b>communication</b> 75:4 76:3 79:11,13 <b>community</b> 8:23 10:9 12:12 69:12,19 88:21 <b>company</b> 91:22 <b>company's</b> 1:20 <b>compensate</b> 67:6 <b>compensated</b> 57:18 <b>compensation</b> 53:7 78:10 79:8,19 <b>completeness</b> 80:15 <b>complicated</b> 10:22 13:4,6 <b>concerned</b> 13:20 14:1 66:15 74:8 <b>concludes</b> 89:3 89:18 <b>conclusion</b> 21:18 54:20 61:2 65:7 <b>conclusions</b> 62:11 <b>conditions</b> 15:16,17 <b>conference</b> 4:13 5:13,14
----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

<p>5:18 55:17  <b>confirm</b> 64:6  <b>confirmation</b>                  67:14  <b>conflict</b> 13:9,12                  14:23,25 15:5  <b>connection</b>                  67:25  <b>consider</b> 22:8  <b>consistent</b>                  16:20 68:23                  82:1  <b>constitution</b>                  81:6  <b>constitutional</b>                  67:24  <b>consult</b> 56:12                  88:24 89:12  <b>contact</b> 81:15  <b>content</b> 81:2  <b>contention</b>                  57:14  <b>contents</b> 65:4  <b>context</b> 16:7                  22:4 34:21                  35:13 70:19                  71:3  <b>control</b> 36:1                  41:7  <b>conversation</b>                  75:13  <b>copies</b> 8:14  <b>copy</b> 7:17 45:9                  45:10 48:19</p>	<p><b>correct</b> 5:19,20                  5:24 6:18,19                  6:24 8:22 9:20                  9:21 10:11,13                  10:16,21 11:23                  12:5 13:4,7,11                  13:17,18,22                  14:2,6,21                  15:12 18:8                  19:11,14,18                  22:25 23:4,7,8                  25:2,10,18,19                  25:22,23 26:7                  26:16,24,25                  27:3,4,23 28:5                  29:2,11,12,23                  30:3,12,24                  31:2,9,14,15,25                  32:3,7 33:3,16                  33:20 34:15                  35:24 36:2,3                  36:12,14,25                  37:2,5,6,8,9                  38:1,3,14,15,20                  42:16 49:3                  50:21 51:22                  53:13,18 56:18                  56:24 58:10                  60:22 61:22                  62:9,18,23                  64:15,25 67:12                  68:8 71:19                  72:25 73:25                  75:1 77:25                  78:15,16,18,23</p>	<p>80:2 81:9,12                  81:17 82:14,20                  82:24 84:25                  86:4 88:8,17                  88:18,21 91:14  <b>corrections</b>                  6:20  <b>corresponded</b>                  49:9  <b>corresponden...</b>                  7:9 8:4 54:7                  64:17 77:4                  82:10 84:24                  85:5,11,14  <b>corresponden...</b>                  7:9  <b>council</b> 9:10,13                  9:20 11:23                  12:3 28:18                  40:16 47:10  <b>councillor</b> 10:6  <b>counsel</b> 3:8                  7:15 23:14                  51:13 52:13                  61:4 64:17                  75:5 76:14,19                  81:22 85:12,12                  86:19  <b>couple</b> 23:22                  25:7 39:7                  40:22 48:18                  57:13  <b>course</b> 6:14                  22:5</p>	<p><b>court</b> 1:1,3                  23:5 24:15                  27:18 40:1,3                  46:17 47:4                  50:6,25 51:4,7                  51:15 52:12                  54:5 62:6,15                  63:17 70:2,5                  71:11 73:15                  86:14  <b>cover</b> 69:19  <b>covered</b> 14:3,4                  26:19 27:3                  31:8 36:16                  38:18  <b>covers</b> 25:9,25  <b>created</b> 18:6  <b>credit</b> 1:13 2:18                  4:11 6:7 8:20                  9:6 17:7 18:12                  23:23,25 28:18                  28:20 30:23                  42:19 46:7                  55:16 89:16  <b>crime</b> 12:13  <b>crops</b> 16:7  <b>cross</b> 1:18 3:4                  5:5 6:11 86:17  <b>crosshairs</b>                  87:18 88:8,17  <b>crossing</b> 16:4  <b>crown</b> 10:25                  19:2,4,15 20:9                  20:12,14 21:5                  21:7 22:2,23</p>
------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

23:2 27:16 32:20 33:11 34:14,23 36:1 36:24 37:13,20 38:6,22 44:19 44:24 48:21 53:7,20 55:9 55:22 56:1 57:18 66:23,25 67:3,7 <b>crown's</b> 38:8 57:3 61:9 <b>crowns</b> 66:8 <b>crr</b> 2:23 91:3 91:23 <b>csr</b> 2:23 91:4 91:23 <b>current</b> 12:6 23:15,19 73:12 <b>currently</b> 10:23 36:5 70:13 <b>cv</b> 1:1	65:15,18 72:17 91:18 <b>dates</b> 11:20 28:10 84:13,20 <b>david</b> 2:12,13 48:1 <b>day</b> 1:22 14:6 15:10 91:18 <b>days</b> 48:9 <b>deal</b> 36:4 <b>dealt</b> 44:20 <b>deana</b> 2:23 91:3,23 <b>december</b> 1:19 4:12,14 6:17 28:3 32:24 35:6 52:12,20 55:16,18 <b>decided</b> 51:7,15 <b>decision</b> 51:14 <b>decisions</b> 62:16 66:16 <b>declarations</b> 29:25 <b>declined</b> 82:13 <b>deed</b> 44:2 48:20 62:17 81:3 <b>defendant</b> 2:8 2:12 32:2 66:13,14 <b>defendants</b> 1:11 28:25 61:15 <b>definitively</b> 43:19	<b>delay</b> 72:5 <b>delaying</b> 72:2 <b>deliver</b> 82:7 <b>deparde</b> 2:17 4:17 7:3 65:15 <b>depiction</b> 27:18 <b>describe</b> 16:16 <b>described</b> 26:1 30:16 <b>description</b> 4:3 <b>desk</b> 6:5 <b>despite</b> 31:21 71:17 <b>detail</b> 19:1 33:5 <b>determination</b> 85:22 <b>determinations</b> 73:16 <b>determine</b> 77:24 <b>developed</b> 70:25 <b>difference</b> 50:25 77:17 <b>different</b> 36:19 43:15 44:22 50:24 56:14 59:5 80:6 84:17 <b>differentiation</b> 69:21 <b>diminish</b> 53:7 <b>direct</b> 29:17 46:23	<b>directly</b> 43:17 47:1 <b>disconcerting</b> 41:24 <b>discovery</b> 74:16 <b>discuss</b> 12:11 <b>discussed</b> 12:15 12:18 19:23 <b>discussion</b> 54:1 89:1,14 <b>discussions</b> 58:19 <b>dish</b> 13:10,13 15:3,6 16:17 16:21 17:11 62:22 <b>displace</b> 36:16 <b>displaced</b> 48:6 <b>divest</b> 22:7 <b>divested</b> 54:4 <b>doctrine</b> 64:20 <b>doctrines</b> 61:25 63:25 64:4 <b>document</b> 4:10 7:14,21,23 12:21 18:2,21 23:13,18 27:21 30:6 33:22 39:10,21,25 40:5,7 42:2,10 42:24 45:18,23 46:13,21 47:5 47:17 48:24 50:4 52:23
<b>d</b>			
<b>d</b> 3:1 <b>damages</b> 53:5 54:2 67:5 78:10 79:8,19 <b>date</b> 39:14 50:8 52:18 55:2 71:19 83:22 84:3,5,8,12,20 <b>dated</b> 4:5,7,14 4:17,21 7:6,25 8:16 46:9 52:12 55:18			



<p>55:14 60:16                  84:4 87:25                  88:3  <b>documented</b>                  44:25  <b>documents</b> 6:4                  6:10,13 39:8                  52:7 86:11  <b>dorchester</b>                  49:8  <b>dotted</b> 31:15  <b>doubtless</b> 64:3  <b>downloaded</b>                  46:2  <b>draft</b> 82:7  <b>draw</b> 40:23                  45:24  <b>drop</b> 29:24                  30:5 44:13                  53:1 57:22                  74:11  <b>drove</b> 14:23  <b>ducks</b> 72:12</p>	<p>85:20  <b>effort</b> 68:15  <b>eighth</b> 9:17  <b>either</b> 8:5 21:9                  42:25 43:7                  60:1,6 75:10                  78:18 81:8                  86:24  <b>elder</b> 58:1                  59:10  <b>elders</b> 58:13,15                  58:24 59:7,9                  59:12  <b>elected</b> 9:10,12                  9:16,19 11:23                  11:25 12:3,6                  32:9  <b>electronic</b> 8:14  <b>email</b> 85:8                  86:11  <b>ended</b> 13:9,12                  42:6,7  <b>enforce</b> 23:2,6  <b>engage</b> 58:2  <b>enshrined</b> 21:3  <b>ensure</b> 67:22  <b>enter</b> 44:18  <b>entered</b> 19:2                  32:19 33:10                  34:13 44:22  <b>entering</b> 34:3  <b>entitled</b> 4:10                  39:11 45:1                  55:14</p>	<p><b>entrance</b> 71:17  <b>entry</b> 25:1  <b>erie</b> 20:24 26:2                  33:15  <b>esq</b> 2:2,3,4,6,8                  2:9,10,12,13,16                  2:17  <b>establishment</b>                  48:7  <b>estoppel</b> 61:24                  61:25 64:1,2  <b>events</b> 35:10                  49:24  <b>evidence</b> 35:5                  51:25 58:1,13                  59:10,11 60:1                  60:6  <b>ex</b> 4:4,7,10,16                  4:20 7:24 8:16                  55:14 65:14,17  <b>exact</b> 11:20                  28:10 39:19  <b>exactly</b> 84:10  <b>examination</b>                  1:18 3:4 4:4                  5:5 6:11 7:6,13                  7:24 86:17                  89:13,15 91:11  <b>examined</b>                  86:20  <b>example</b> 18:20                  18:25 62:6                  70:6  <b>exchanged</b> 63:3</p>	<p><b>exhibit</b> 7:23                  8:12 55:12,13                  65:12,13 72:18  <b>exhibits</b> 4:1                  65:11  <b>existing</b> 35:25  <b>expand</b> 74:14  <b>expanded</b>                  80:18  <b>expected</b> 27:6  <b>expert</b> 33:25                  35:18 51:21                  58:1 59:20                  74:16 82:19,21                  82:24 83:5,6,7                  83:11,13,25                  84:14 85:13  <b>experts</b> 59:17                  71:18  <b>explain</b> 18:25  <b>explained</b>                  50:23  <b>expositor</b> 70:6  <b>expressed</b>                  48:10 88:7  <b>extended</b> 14:25                  16:25 17:18  <b>extending</b> 80:7  <b>extent</b> 39:3                  54:18 63:20                  77:11,23 79:1                  79:2 80:9                  81:25</p>
<p><b>e</b></p>			
<p><b>e</b> 1:5,5,5 2:1,1                  3:1  <b>eagle</b> 5:3 6:14  <b>earlier</b> 17:8                  33:2 34:6,8                  68:10 82:1  <b>early</b> 11:18  <b>educational</b>                  40:13 43:5  <b>effect</b> 37:12                  62:16 67:15</p>			

<b>f</b>	<b>familiarize</b>	51:2 55:16	65:15,17,24
<b>f</b> 3:21 51:10	40:6	57:23 63:13	71:20 72:19,21
58:19,25 59:8	<b>far</b> 81:16	68:11 73:9	72:24 73:1
59:18,22 60:2	<b>farmers</b> 37:4	77:20 87:10	75:3,23 76:1
60:12 61:1,23	<b>farming</b> 16:1	<b>flip</b> 68:10	76:10,20,21
62:10,19,24	<b>farmland</b> 38:3	<b>floodplains</b>	77:3,11,17,23
64:16 65:1,6	<b>farms</b> 36:13	26:13 29:5	78:25 79:10,15
71:20 79:10	<b>feather</b> 5:3	30:2 32:16	79:21 80:3,9
85:21 86:4,8	6:14	<b>following</b> 3:6	81:19,23 84:11
86:15	<b>feel</b> 71:13 79:4	3:12,17,22	84:19 85:21
<b>fact</b> 60:21,25	<b>feliciant</b> 2:13	32:18 41:11	86:4,8,15,20
61:8,18,22	<b>fight</b> 37:23	44:6	87:3 89:10,15
63:17,21 64:19	38:2 67:18	<b>foregoing</b> 91:5	90:1
64:21	<b>file</b> 1:1	91:13	<b>framed</b> 54:19
<b>failed</b> 57:18	<b>filed</b> 42:24	<b>form</b> 73:12	<b>free</b> 79:4
<b>fair</b> 15:5 27:6	46:25 47:4	<b>formally</b> 40:1,2	<b>friday</b> 85:6
27:16 29:7,15	<b>filings</b> 27:25	46:16	<b>friend</b> 50:24
29:19 32:10,11	<b>find</b> 52:21 58:5	<b>former</b> 72:16	51:3,7,15
34:5 35:6,12	63:18	<b>forth</b> 16:4	<b>friendship</b>
37:13,14 38:8	<b>finding</b> 64:20	35:19 91:7	16:12
40:22 42:8,11	<b>findings</b> 60:20	<b>found</b> 23:16	<b>front</b> 5:22 6:4
42:15 47:8,14	60:25 61:7,17	<b>four</b> 48:9	6:24 12:23
50:2 51:4,17	61:22 63:17,21	<b>frame</b> 2:16 4:8	28:15 50:10
51:18 52:1,4	<b>finds</b> 62:6,15	4:17,20 7:2,16	52:24
54:13,25 55:7	<b>fine</b> 65:24	8:2,7,17 15:1	<b>full</b> 50:15 51:20
55:23 56:11	84:11	17:15 21:17	<b>fully</b> 16:2
57:4,5 72:3,9	<b>firm</b> 7:3	45:15,22 51:10	<b>further</b> 6:9
73:22 74:9,10	<b>first</b> 1:13 2:18	51:18 52:17	48:18 63:14
75:8,9,11,16,22	4:11 6:6,7 8:21	54:14 58:6,8	64:9 74:12,17
81:18,22 86:1	9:7 21:15	58:19,25 59:8	78:5 80:25
<b>fall</b> 31:20 68:4	23:22,23 24:10	59:18,22 60:2	89:24
<b>falling</b> 31:22	25:8,13 26:15	60:8,12 61:1	<b>future</b> 57:1
<b>familiar</b> 39:2	28:19 30:23,24	61:10,23 62:10	66:17
51:23	33:9,18 34:3	62:19,24 63:7	
	34:18 39:9	64:16 65:1,6	

<b>g</b>	33:6 47:21	<b>granting</b> 16:23	<b>heading</b> 47:18
<b>gather</b> 9:22	59:1 62:3,10	<b>great</b> 7:2 13:17	<b>heard</b> 11:3 69:5
12:9	63:12 71:11,22	23:17 24:20	<b>hearing</b> 89:23
<b>gears</b> 22:22	80:13 85:24	36:4 44:15	<b>held</b> 9:15 36:6
38:25 50:5	86:15 88:23	58:12 73:1	55:22
<b>general</b> 1:9 2:9	89:10	<b>gregory</b> 2:3	<b>help</b> 23:13
43:18	<b>good</b> 5:6,10	<b>ground</b> 26:12	<b>helpful</b> 7:15
<b>generally</b> 38:4	56:1 58:16	<b>guessing</b> 9:25	54:16
39:4 55:24	<b>governed</b> 11:22	<b>guide</b> 3:7	<b>high</b> 6:25 12:17
56:3	<b>government</b>	<b>h</b>	<b>highlighted</b>
<b>getting</b> 21:17	23:18 24:1	<b>haldimand</b>	36:1
75:3	39:12,12 49:11	13:21 14:2	<b>hill</b> 2:20 12:7,9
<b>gist</b> 85:4	68:15,16 82:18	17:4,22 18:6	12:12 32:5
<b>give</b> 7:17 8:7	<b>governments</b>	18:14 21:11	48:1
12:21 15:18	28:25	22:12 25:20	<b>historical</b> 21:25
18:18 31:23	<b>governor</b> 47:24	34:25 35:16	42:22 43:14
33:22 37:11	<b>grand</b> 1:6 10:7	47:24 48:9	<b>historically</b>
41:1 52:20	10:21 11:1	55:1 56:6,10	27:17 67:8
58:6 72:21	17:2,20 18:1,3	56:15,18 62:7	<b>history</b> 11:6,9
87:20	19:5 20:10	68:20	11:10,15 12:18
<b>given</b> 81:21	21:1,7,9 22:18	<b>happen</b> 81:12	13:4,6 14:8
<b>giving</b> 52:17	31:2,5,18,19	<b>happened</b> 85:3	22:15 35:10,11
<b>globe</b> 70:9	33:19 34:19,24	<b>happens</b> 22:16	40:14 56:25
<b>go</b> 18:9,16	41:17,22 42:6	<b>happy</b> 23:24	58:16 66:16
20:20 22:11	42:13,14 44:11	<b>harm</b> 57:17	67:22 71:2
23:21 24:8	48:2,11,15	<b>harvest</b> 15:21	87:16
30:21 32:12	49:3,10,15	<b>harvesting</b>	<b>hold</b> 66:25 67:3
40:12 43:21	50:1 80:21	15:25 16:6,7	68:15
48:17 49:5	<b>grant</b> 19:4 20:9	<b>haudenosaunee</b>	<b>holmes</b> 46:10
67:11 87:6	24:13 49:12,24	10:10 13:3	46:19
88:23 89:11,25	<b>granted</b> 17:4	14:9 15:11,14	<b>homeowners</b>
<b>goes</b> 13:6 35:4	17:22 21:2,5,8	15:21	37:2
67:9	24:16 54:24	<b>head</b> 33:13	<b>homes</b> 37:25
<b>going</b> 9:17	62:1 67:21	48:3	<b>honestly</b> 67:23
17:10 24:12	68:19		70:22

<p><b>honourable</b> 73:15</p> <p><b>hope</b> 40:20 47:11,12</p> <p><b>houses</b> 36:8</p> <p><b>hundred</b> 47:6</p> <p><b>huron</b> 14:13 20:25</p> <p><b>hypotheticals</b> 62:12</p>	<p><b>index</b> 3:10,15 3:20 4:1</p> <p><b>indian</b> 9:1 37:7</p> <p><b>indians</b> 1:6 10:7 28:20 41:4,18 44:5,9 48:11</p> <p><b>indigenous</b> 8:23 14:16</p> <p><b>individual</b> 36:18</p> <p><b>information</b> 43:15,16 73:9 75:18 76:2 77:1,9,12,16,19 77:21,24 78:2 79:2 84:9 86:3 86:9</p> <p><b>informed</b> 47:24</p> <p><b>input</b> 29:21</p> <p><b>inquiries</b> 45:10 45:16 79:21 84:6,12</p> <p><b>inquiry</b> 63:15</p> <p><b>instance</b> 18:4 22:9,15 77:20</p> <p><b>instances</b> 82:3</p> <p><b>instruct</b> 71:18</p> <p><b>instructed</b> 64:24</p> <p><b>instrument</b> 20:3,5 21:21 33:2</p> <p><b>intend</b> 53:6,12 53:17,22 54:11</p>	<p><b>intended</b> 43:7 49:11,24 88:16</p> <p><b>intent</b> 67:19 72:4</p> <p><b>interact</b> 11:25</p> <p><b>interactions</b> 34:7 42:5</p> <p><b>interest</b> 54:2 70:24 71:1,3 71:12 85:16,23 86:10,13,17,25 87:1</p> <p><b>interested</b> 13:1 18:19 56:24 77:19</p> <p><b>interesting</b> 11:24</p> <p><b>interests</b> 50:19 51:9 56:22 58:2 67:25</p> <p><b>interfere</b> 27:15</p> <p><b>interfering</b> 37:20</p> <p><b>interjects</b> 41:25</p> <p><b>internal</b> 45:16 84:12</p> <p><b>internally</b> 79:22</p> <p><b>internet</b> 12:13</p> <p><b>interpretation</b> 20:14 21:24</p> <p><b>interpretations</b> 43:16</p> <p><b>interpreting</b> 21:20,20</p>	<p><b>intervene</b> 6:8 50:14 51:17 56:10 62:2 67:21 68:3 73:19</p> <p><b>intervened</b> 51:16</p> <p><b>intervenes</b> 54:10</p> <p><b>intervening</b> 50:23,24 51:7 51:15 56:16,20 56:21</p> <p><b>intervention</b> 54:24 88:15,19</p> <p><b>introduce</b> 57:25 59:10,11</p> <p><b>investigating</b> 24:2</p> <p><b>invitation</b> 16:25 17:18</p> <p><b>invite</b> 5:15</p> <p><b>involve</b> 35:10</p> <p><b>involved</b> 34:18 74:9 82:18</p> <p><b>involvement</b> 72:15,15</p> <p><b>iroquois</b> 14:12</p> <p><b>island</b> 69:23</p> <p><b>issue</b> 45:13 56:17 61:25 64:1 81:1</p> <p><b>issued</b> 28:3,8 29:11,14,19,22 40:1,3 46:17</p>
<b>i</b>			
<p><b>identified</b> 58:13 59:12</p> <p><b>identifying</b> 59:8</p> <p><b>identity</b> 77:15</p> <p><b>imagine</b> 35:7 60:8 75:12</p> <p><b>impact</b> 66:16 73:16 74:20</p> <p><b>impacted</b> 68:1</p> <p><b>impacting</b> 71:1</p> <p><b>improperly</b> 54:4,4</p> <p><b>include</b> 80:18</p> <p><b>included</b> 13:20 32:17 39:7</p> <p><b>includes</b> 26:14 31:8,10,13</p> <p><b>including</b> 14:5 20:25 31:17 44:4 80:20 81:4 82:2</p> <p><b>incorrect</b> 84:17</p>			

<p>50:7  <b>issues</b> 12:12,15                  38:5 53:19                  58:1 61:19                  64:18 73:13                  74:14,19</p>	<p>38:13 42:1,3,9                  42:10 43:1,4,4                  43:6 45:5                  46:24 47:1,7                  53:25 56:13                  57:15 66:10                  69:8,11,18                  70:20 75:17                  76:2,25 77:2,8                  77:22 79:25                  81:16 82:12                  83:6 84:3,5,7                  84:18,23 85:2                  89:3</p>	<p>73:6 74:22                  76:24 78:6                  81:7 82:5                  84:22 87:7,19                  88:6 89:3  <b>lake</b> 20:24,25                  26:2,2 33:13                  33:15 34:15                  48:3  <b>lakes</b> 19:14,22                  21:4 30:17                  32:23 33:2                  34:12,25 35:5                  47:18</p>	<p>21:6 22:2,7,8                  25:21 30:11                  31:11 36:16                  37:24 46:6                  49:11 68:18  <b>large</b> 14:4 29:6  <b>late</b> 70:17 71:8                  71:12,17  <b>latest</b> 85:7  <b>law</b> 60:21,25                  61:8,18,22                  63:23,25 64:6  <b>lawsuit</b> 66:21  <b>lawyer</b> 7:13                  45:12,14 56:13                  63:7 72:16                  74:1 76:25                  84:7 89:5  <b>lawyer's</b> 5:13                  85:20  <b>lawyers</b> 5:7 7:2                  50:22 52:12                  63:2 64:14,24                  71:18 76:3                  78:20,21 81:7                  82:6,13,18,20                  83:10,11,13,20                  83:25 84:8,24                  84:25 85:8  <b>layman's</b> 35:20                  38:16  <b>lead</b> 35:5  <b>leader</b> 42:22  <b>leadership</b> 32:9                  32:10</p>
<p><b>j</b></p>	<p><b>knowledge</b>                  21:25 26:7                  34:10 39:20                  58:16</p>	<p><b>land</b> 10:24                  11:17 16:10                  17:6 18:10,14                  20:24 22:10,10                  22:17 23:15,19                  24:5,6,11,23                  25:5,9 33:13                  35:16,21 36:4                  36:9 41:13,14                  44:4,22 45:1                  49:12,24 53:17                  54:3 55:8                  57:19 66:24                  80:19</p>	<p><b>known</b> 42:22</p>
<p><b>janes</b> 2:6  <b>january</b> 49:8                  49:22 72:17,24                  73:23  <b>joan</b> 46:10,19  <b>job</b> 4:25  <b>john</b> 47:23  <b>johnson</b> 47:24  <b>joseph</b> 41:3,17                  42:13,21 48:1  <b>judge</b> 72:17  <b>judicata</b> 61:24                  64:1,20  <b>junction</b> 59:14  <b>jurisdiction</b>                  37:17  <b>justice</b> 1:3                  67:19 68:22                  72:2 87:13</p>	<p><b>l</b></p>	<p><b>lands</b> 10:19,23                  13:20,20 14:1                  14:10,14 15:10                  15:11,15,21                  16:5,24 17:3                  17:21 19:4,6                  20:9,11,13</p>	<p><b>laforme</b> 1:19                  3:2 4:5 5:3,6                  6:10,12 7:25                  8:19 19:8                  21:12 22:1                  28:15 30:8                  33:1 39:2,15                  41:20 44:8                  45:3 46:1                  47:19 48:14                  50:11 52:23                  55:4,21 58:4                  60:18 63:2,10                  64:12,25 65:5                  66:8 69:1,5</p>
<p><b>k</b></p>	<p><b>katrina</b> 2:10  <b>kind</b> 70:24  <b>king</b> 1:10 2:13                  33:12  <b>know</b> 6:4 10:6                  11:15 12:9                  13:1 34:1,4,20</p>	<p><b>known</b> 42:22</p>	<p><b>known</b> 42:22</p>

<p><b>leave</b> 6:8 38:15                  54:9 62:1 68:3                  73:19  <b>leaving</b> 22:15  <b>left</b> 65:22  <b>legal</b> 21:18,23                  35:19 38:14,16                  43:15 54:1,7                  54:15,19 61:1                  62:2,11 64:18                  64:19 65:6                  82:10,10 85:22                  86:16  <b>legally</b> 21:20  <b>letter</b> 4:7,16,20                  8:2,9,16 63:4,5                  64:15,25 65:5                  65:12,14,17                  72:16 73:5                  74:5,7,12                  75:16,21 76:9                  76:10,16 77:9                  78:5  <b>letters</b> 63:3                  65:10 82:15  <b>level</b> 12:17  <b>life</b> 71:9  <b>limited</b> 51:4  <b>line</b> 4:3 31:15  <b>linked</b> 43:17  <b>list</b> 3:6  <b>listed</b> 27:20  <b>litigant</b> 64:21  <b>litigants</b> 64:7</p>	<p><b>litigation</b> 58:20                  58:21 60:2                  63:22 71:21                  85:15,23 86:10  <b>little</b> 20:19                  22:21,22 30:21                  39:1 41:24                  52:9 65:22                  74:11  <b>live</b> 17:1,19  <b>local</b> 69:14  <b>locate</b> 45:9,17                  45:19  <b>located</b> 5:12  <b>log</b> 89:24  <b>long</b> 18:17 71:4  <b>longer</b> 65:21  <b>longo</b> 2:10  <b>lonny</b> 2:21  <b>look</b> 50:6 84:4  <b>looked</b> 36:2                  71:1 83:23  <b>looking</b> 5:22                  8:8 23:14,18                  52:23  <b>looks</b> 46:18  <b>lord</b> 49:8  <b>lost</b> 49:17  <b>lot</b> 43:14,15  <b>lunch</b> 89:25  <b>lying</b> 20:24</p>	<p><b>made</b> 60:21,25                  63:17,21 83:11                  88:9 91:10  <b>mail</b> 70:9  <b>majesty</b> 1:10                  2:13  <b>majority</b> 44:15  <b>make</b> 21:19                  38:22 45:9,15                  49:12,24 54:7                  56:1 72:5                  73:15 79:21                  84:6,12 85:22  <b>making</b> 16:12                  88:12  <b>management</b>                  4:13 52:11                  55:17 72:17  <b>map</b> 30:7,10                  31:12 36:2                  38:11  <b>march</b> 1:22 4:5                  4:7,18,21 7:6                  7:25 8:2,9,16                  39:14 46:9                  47:23 63:4,8                  65:11,12,16,18                  85:6 91:18  <b>mark</b> 7:23 8:12                  12:7 32:5                  55:12 65:10  <b>marked</b> 39:13  <b>materials</b> 7:18                  8:14 39:5</p>	<p><b>matter</b> 50:7  <b>max</b> 2:2 5:7,10                  21:18 45:16                  51:11 52:18                  54:14 58:6,11                  58:21 59:2,9                  64:16 71:23                  72:11,22 73:3                  75:5,19,24                  76:11,18,22                  77:5,13,25                  78:25 81:24                  82:11,25 84:11                  89:22  <b>mcfn</b> 9:5,9                  10:15,19 12:3                  12:18 22:21,23                  25:13 26:22                  27:1,22 29:9                  32:9 35:4 36:5                  36:15 37:11                  38:10,17 39:1                  40:16 47:9                  50:14,18 51:6                  51:20 52:6                  53:5,22 54:10                  55:21,25 56:5                  56:9 57:25                  58:12 59:9,13                  59:24 60:5,18                  60:23 61:6,20                  62:18 63:16                  64:9,14,18                  70:16 73:13,18                  73:23 74:4,8</p>
	<p><b>m</b></p>		
	<p><b>madam</b> 8:13                  20:21 24:13                  65:25 89:25</p>		

<p>76:8 78:15                  83:9 88:7  <b>mcfn's</b> 31:8                  37:15 50:6                  51:14 61:16                  73:17 74:20                  80:19 85:12                  86:13 87:1                  88:15,19  <b>mean</b> 16:9,10                  18:13 20:10                  34:20 42:9                  64:17 81:14  <b>means</b> 13:1                  15:4 21:15                  34:5 44:10  <b>meant</b> 3:7  <b>media</b> 69:12,13  <b>meet</b> 5:9,10                  71:19  <b>member</b> 8:20                  9:19  <b>members</b> 41:10  <b>memo</b> 52:11,22                  55:12  <b>memorandum</b>                  4:10 55:15  <b>memory</b> 43:3                  83:4 88:2  <b>mentioned</b> 6:17                  22:22 43:5                  58:24 59:7                  74:5 84:1  <b>mentions</b> 82:23</p>	<p><b>middle</b> 9:23                  18:20 30:14,20                  30:22 49:22  <b>miles</b> 21:8 48:3  <b>mind</b> 52:17  <b>minimize</b> 56:6  <b>minute</b> 65:20  <b>minutes</b> 89:11  <b>mismanagem...</b>                  68:17  <b>misplaced</b> 11:4  <b>mississauga</b>                  10:23 11:15                  34:13  <b>mississaugas</b>                  1:13 2:17 4:11                  6:7 8:20 9:5,6                  10:20 11:11                  15:8,18,22                  19:10 20:11                  22:2,5 23:23                  23:25 26:16                  28:18,19 30:1                  30:23 31:23                  32:20 33:8                  34:21,22 35:11                  35:15 38:23                  39:18 41:13,16                  42:18 44:3,18                  44:21 45:25                  46:7 47:13                  53:11 54:23                  55:6,8,15                  56:22 57:17                  62:1,5,8 66:12</p>	<p>66:12,20,24                  72:1 74:25                  75:4 79:6,10                  82:7 83:14,17                  85:19 86:2                  89:16  <b>misspoke</b> 49:20  <b>mittell</b> 2:8  <b>mncfn</b> 30:11  <b>mobile</b> 5:25  <b>modern</b> 14:6                  15:10  <b>mohawks</b>                  41:19,25 42:18                  47:25  <b>moment</b> 8:7                  12:22 41:1                  48:22 52:21                  56:23 60:15                  71:5 72:21                  88:1  <b>moments</b> 25:21                  88:24  <b>money</b> 11:16                  53:12  <b>montreal</b> 13:17  <b>morning</b> 5:6,9                  5:10 65:20  <b>motion</b> 6:6 39:8                  46:1 50:6,7,14                  57:23 60:15                  61:5,11 72:19                  82:23 83:1                  84:2 87:23</p>	<p><b>moved</b> 71:13  <b>moving</b> 1:14                  2:16  <b>municipalities</b>                  30:11  <b>mutual</b> 68:23</p> <hr/> <p><b>n</b></p> <hr/> <p><b>n</b> 1:5 2:1 3:1  <b>name</b> 5:7 32:1  <b>nanfan</b> 44:2                  62:17 81:3  <b>nation</b> 1:13                  2:18 4:12 6:8                  8:21 9:7 23:23                  28:19 30:24,24                  41:9 55:16  <b>national</b> 70:8  <b>nations</b> 1:6 5:8                  10:7,9,12,21                  11:1,3,16,22                  12:2,6,18                  16:24,25 17:17                  18:1,3,7 19:4                  20:9 21:2,10                  22:10,11,18                  25:13,17 26:15                  26:18,23 29:10                  29:14,18,22                  31:2,4,17,19,21                  31:24 32:1,5                  32:10 33:9,18                  33:19 34:3,7                  34:18,19,24                  35:10,21 39:7                  41:4,18,22</p>
-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

<p>42:2,6,7,14,22                  44:5,9,10                  48:11,15,19                  49:3,13,15,25                  50:1,16 52:1                  53:8,12,17,23                  54:2,10,12,13                  54:24 55:5,7                  55:10,22 56:2                  56:11 57:3,10                  57:12,17,19                  58:14 62:8                  66:6,10,19,24                  67:5,18 68:14                  68:19,21 69:6                  72:2 73:14,24                  75:7,22 76:5                  78:14 81:9,15                  82:6,19 84:23                  85:2 86:7                  87:15 88:6,16                  88:20,21  <b>near</b> 10:13  <b>necessary</b>                  62:15 64:11  <b>need</b> 35:4 54:6                  56:12 76:14  <b>neesons</b> 1:20                  91:22  <b>negotiations</b>                  43:7,10,17  <b>neutral</b> 14:13  <b>never</b> 72:4                  82:21 88:9</p>	<p><b>new</b> 17:7 18:11                  41:8 46:7                  89:16  <b>news</b> 69:14,16                  69:24 70:8  <b>nice</b> 5:9,10  <b>non</b> 77:4,12                  79:3,22 80:10                  81:25  <b>northeastern</b>                  26:1  <b>northwestern</b>                  26:2  <b>noted</b> 3:11,17                  3:21  <b>notes</b> 6:23                  91:14  <b>notice</b> 4:4 7:5                  7:13,24 8:3                  26:23 27:2,6                  27:22 29:9,13                  31:23 50:7,14                  57:23 60:14                  61:5,11 82:23                  83:1 84:1  <b>number</b> 6:3 7:8                  12:14  <b>nuri</b> 2:16</p>	<p><b>objections</b>                  91:10  <b>obligations</b>                  57:3  <b>obliged</b> 38:22  <b>obtain</b> 45:11                  83:25  <b>obtained</b> 58:23                  59:20  <b>obviously</b> 65:1  <b>occasions</b> 12:15  <b>occupation</b>                  11:12  <b>occupied</b> 10:23  <b>occupy</b> 10:20  <b>october</b> 50:8  <b>offered</b> 11:4  <b>officials</b> 48:21  <b>oh</b> 40:11 46:15                  49:20  <b>okay</b> 9:7,9 10:5                  12:23 15:3                  16:14 17:16                  18:16,22 20:3                  20:7 22:20                  23:17 28:12                  34:15 35:1,3                  38:25 42:21                  43:3 46:3,4                  48:25 53:1,3                  78:5 83:3                  84:22 87:9,24                  88:4  <b>older</b> 11:9</p>	<p><b>on5782063</b>                  4:25  <b>once</b> 57:11                  71:14  <b>ontario</b> 1:2,10                  2:14 6:9 14:6,6                  14:13 15:10                  23:18 24:2                  26:2 29:1,6                  33:14 39:13                  42:25 43:8                  44:1,16,17                  46:25 48:4                  60:1,7,20                  61:17 64:8                  68:16 75:1,11                  75:15,21 78:18                  78:23 82:18                  86:14 87:2,15                  89:21  <b>ontario's</b> 84:24                  85:12  <b>opinion</b> 86:16  <b>opposed</b> 16:5                  42:3  <b>opts</b> 64:5  <b>order</b> 50:19                  56:17  <b>original</b> 48:20  <b>outlets</b> 69:14                  69:16 70:9  <b>owe</b> 53:8  <b>owen</b> 2:9  <b>own</b> 27:10,13</p>
	<b>o</b>		
	<p><b>oath</b> 91:7  <b>object</b> 62:12                  71:20  <b>objection</b> 62:19                  62:24 85:24</p>		



<b>p</b>	<b>paragraphs</b> 19:23 40:23	<b>pausing</b> 41:20	<b>place</b> 49:17
<b>p</b> 2:1,1	<b>pardon</b> 49:20	<b>paved</b> 19:3	91:6
<b>package</b> 8:4	<b>paris</b> 41:6	20:8	<b>plaintiff</b> 1:7 2:2
52:14	<b>part</b> 21:15	<b>paying</b> 11:16	6:10 28:17
<b>page</b> 4:3 23:10	32:14 46:24	<b>peace</b> 13:17	78:8 79:7,18
23:22 24:19,21	51:18 67:4	15:4,7 16:11	81:1
24:25 28:13	80:1	<b>people</b> 8:24	<b>plaintiff's</b>
33:6 39:10	<b>participants</b>	10:10 14:14,16	23:10 32:17
45:2,25 47:16	1:21	14:18,19 17:1	45:24 80:17
47:17 48:17	<b>participate</b>	17:19 19:1,9	85:13
49:5,6,18,19	55:5 59:25	35:11 37:24	<b>plan</b> 59:25
72:19 73:9	67:11 71:8,17	42:7 48:4	<b>platform</b> 1:21
80:8 87:20,22	72:3,8	49:16 50:2	<b>pleading</b> 30:6
<b>pages</b> 3:3,12,17	<b>participated</b>	57:1 68:6	71:15 82:7
3:22	63:23	87:16 88:20	<b>pleadings</b>
<b>pair</b> 63:3	<b>participating</b>	<b>peoples</b> 13:3	54:18 73:11,24
<b>pape</b> 7:3 84:13	67:20	14:10 68:24	74:2,3,5,9,18
<b>papers</b> 69:19	<b>parties</b> 36:6,16	<b>perceived</b>	78:11 79:9,19
69:23	38:6 51:21	71:12	<b>please</b> 7:23
<b>paragraph</b>	<b>partners</b> 60:19	<b>percent</b> 47:6	8:11 13:24
12:19 13:2	61:16	<b>period</b> 11:17	18:17 23:9,12
16:15,16 17:16	<b>parts</b> 47:2	14:25	24:19,20,25
18:16,18 20:5	<b>party</b> 1:14 2:16	<b>permission</b>	28:6,14 33:23
20:8,20 21:15	50:15,15,23	15:18,23	43:21 44:14
29:24 32:12	51:2,17,20	<b>permit</b> 15:14	50:9 52:16
33:6,19 40:25	60:19,24 61:7	<b>permitting</b>	55:11 65:10
43:21 44:7,13	61:21 62:8,17	15:20	88:25
48:19,20 49:7	63:20 64:5	<b>person</b> 77:15	<b>point</b> 12:21
49:22 50:13	70:17	<b>personally</b> 32:4	50:20 73:23
53:2 57:22	<b>passage</b> 47:22	<b>perspective</b>	74:8 81:15
58:8 60:14,17	<b>past</b> 67:2	15:9 35:20,20	82:14
61:13 63:13	<b>pattern</b> 68:23	47:14	<b>points</b> 57:13
67:15 68:10	<b>pause</b> 24:12	<b>pertains</b> 88:13	<b>portion</b> 10:24
73:8 83:2 84:1		<b>phones</b> 5:25	16:2 17:16
84:14 87:7,22			

<p><b>portrayed</b> 67:23  <b>position</b> 60:11 87:1  <b>positive</b> 46:15  <b>possible</b> 49:13 49:25  <b>possibly</b> 16:12 71:14  <b>posted</b> 39:5,17  <b>potentially</b> 81:15  <b>pre</b> 35:25  <b>prejudice</b> 39:13  <b>prepared</b> 72:13  <b>present</b> 2:20  <b>pressing</b> 12:15  <b>presumably</b> 35:4 61:5  <b>pretty</b> 21:17  <b>previous</b> 13:12 82:3  <b>previously</b> 73:18  <b>principles</b> 64:19  <b>prior</b> 14:11,15 62:16 81:21  <b>private</b> 36:8 37:1,4  <b>privilege</b> 45:18 76:3 85:16,23 86:10,17,25</p>	<p><b>privileged</b> 45:20 51:11 58:21 59:2,14 59:22 60:3,9 60:11 61:6 65:2 71:22 75:4 77:4,12 77:17,25 78:1 79:3,11,13,22 80:10 81:25 86:9  <b>probably</b> 10:18 40:8,13,14  <b>problem</b> 33:24 34:17 38:7,8 58:7 72:23 88:1  <b>proceedings</b> 89:18 91:5  <b>process</b> 51:24 64:2 67:2,4 68:2  <b>proclamation</b> 13:21 14:2 17:5,23 18:6 21:11 22:12 25:20 55:2 62:7 68:20  <b>promised</b> 66:23  <b>promises</b> 55:22  <b>property</b> 33:12  <b>protect</b> 50:19 51:8 56:21 57:6</p>	<p><b>protected</b> 45:18 81:5  <b>protecting</b> 56:25  <b>provide</b> 8:13 29:9 45:10,20 58:13 59:25 60:5 73:12 77:5,12 79:3 79:23 80:10 82:3 84:19 86:2,16,18  <b>provided</b> 7:16 7:18 15:4 29:13,16 45:19 78:14,17,20,22 80:1 83:9,20 84:13  <b>providing</b> 26:23 27:2,22 45:17 85:17 86:8  <b>public</b> 27:24  <b>publication</b> 40:16 47:9  <b>publications</b> 70:2,5  <b>pull</b> 7:14 12:20 16:15 23:9 28:12 47:16 50:9 52:10 60:14 63:4,8 67:16 72:16 83:2 85:8 87:11</p>	<p><b>purchase</b> 19:14 19:22 21:4 32:23 34:12 35:1,6 47:19  <b>purchased</b> 41:13  <b>purple</b> 30:13 30:21 31:9  <b>purpose</b> 3:8 15:24,25 16:10 16:11 40:4 46:20,23  <b>purposes</b> 43:5 43:6  <b>pursuance</b> 59:1  <b>pursuit</b> 68:22  <b>put</b> 23:11 24:9 28:14 35:19 36:23 38:17 51:25 52:14 57:16 81:1 87:16 88:7,16 91:7  <b>puzzling</b> 63:18</p> <p style="text-align: center;"><b>q</b></p> <p><b>quest</b> 72:2  <b>question</b> 7:12 11:25 17:8,10 42:12 48:23 49:1,23 51:14 55:4 56:8 59:5 59:5 61:6,20 62:2 63:18,19 63:23 64:22 66:18 71:6,20</p>
---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

<p>71:23 75:17,23                  76:15 77:7,13                  77:20 79:12                  80:3,14 83:24                  86:23  <b>questions</b> 3:11                  3:16,21 5:8                  25:7 74:16                  81:19,24 82:1                  89:4,20  <b>quickly</b> 71:14                  72:9,11  <b>quinte</b> 41:19                  42:4,8,17</p>	<p>68:11 70:15                  73:19 74:21                  78:11 80:15,22                  81:6 85:9,17                  87:10  <b>reads</b> 44:14                  74:12  <b>ready</b> 52:13                  72:8  <b>really</b> 54:19                  69:20  <b>reason</b> 60:18  <b>reasonable</b>                  64:22  <b>recall</b> 11:5,14                  11:20 28:10                  40:8 46:22                  55:2  <b>receive</b> 27:6  <b>received</b> 76:2                  84:8  <b>recent</b> 11:10  <b>recessed</b> 66:3  <b>recognition</b>                  16:22 29:4  <b>recognize</b> 7:21                  15:10 22:16  <b>record</b> 6:7                  18:23 23:10                  28:13 30:7                  39:8,10 45:24                  46:1 47:17                  49:6,21 72:19                  72:20 87:23                  89:1,14</p>	<p><b>recorded</b> 91:11  <b>reduce</b> 57:2,9  <b>refer</b> 9:5 18:2                  19:17,19,20  <b>reference</b> 14:20                  17:9 19:9                  24:22 30:23                  31:2 41:21                  42:12,17 44:9                  45:5 48:14                  49:15 50:1                  76:13  <b>referenced</b> 20:4                  33:18 42:20                  59:17 77:9                  84:14 86:11  <b>references</b>                  23:22 48:18                  49:2 83:22  <b>referencing</b>                  42:2  <b>referred</b> 33:5  <b>referring</b> 9:6                  11:9 12:25                  17:25 19:13                  34:12  <b>refers</b> 19:9,15  <b>reflects</b> 16:19  <b>refresh</b> 88:2  <b>refreshes</b> 83:4  <b>refusal</b> 65:9  <b>refusals</b> 3:7,20                  89:5  <b>refuse</b> 86:24</p>	<p><b>refused</b> 3:21  <b>refusing</b> 86:2,6  <b>regard</b> 49:10                  53:14  <b>regarding</b>                  11:11 24:23                  25:4 28:3 30:1                  37:10 57:14                  63:16 76:25                  86:14  <b>regards</b> 54:3                  55:1,10  <b>region</b> 26:1  <b>related</b> 13:16  <b>relates</b> 29:5  <b>relating</b> 30:17                  68:18  <b>relation</b> 61:18  <b>relief</b> 54:11,15                  66:11 78:9                  79:8,18  <b>relocate</b> 41:10  <b>relocated</b> 17:6                  18:11 44:5  <b>rely</b> 44:2  <b>remain</b> 37:17  <b>remedies</b> 37:20                  53:22  <b>remember</b>                  10:17 43:14                  69:18 70:22  <b>remotely</b> 1:22  <b>renewal</b> 16:17                  16:21 17:11,17</p>
<b>r</b>			
<p><b>r</b> 1:18 2:1 3:2                  3:21 5:3 6:11                  51:10 58:19,25                  59:8,18,22                  60:2,12 61:1                  61:23 62:10,19                  62:24 64:16                  65:1,6 71:20                  79:10 85:21                  86:4,8,15  <b>rather</b> 44:21  <b>reached</b> 32:4  <b>reaching</b> 15:4                  32:9  <b>read</b> 17:16                  18:18,22,23                  20:21 32:13                  41:1,2 43:22                  47:21 48:22                  63:12 67:16</p>			

<b>repeat</b> 13:23 76:15	11:12 12:16,16 17:2,7,20,25	<b>review</b> 12:25 23:24 43:16	56:6 60:21 66:13 67:1
<b>report</b> 44:25 45:6,9,11 49:6 49:20	18:1,3,5,11 25:5,17 26:19 27:21,22 31:5	60:15 77:3 <b>reviewed</b> 7:8 7:10 77:1	68:9 69:1,6 70:14 73:3 74:5,7 83:10
<b>reported</b> 2:23	31:18,20,22	<b>reviewing</b> 7:10	83:21 85:3
<b>reporter</b> 8:13 20:21 24:13,15 65:25 89:25 91:4	35:16,21 53:24 54:13,24 55:7 57:10,12,19	<b>reviews</b> 18:21 48:24 60:16 88:3	<b>rights</b> 21:6,7 23:2,6 33:11 35:25 50:15,19
<b>reporter's</b> 91:1	<b>resolve</b> 15:5	<b>revolution</b> 11:2 41:5,12 44:6	51:8 56:22 58:2 66:17
<b>reporting</b> 69:12 70:1,4	<b>respect</b> 63:15 68:24 76:17 80:6 85:10	<b>revolutionary</b> 48:5	67:24 71:2 73:17 74:21
<b>reports</b> 51:22 59:21 74:16 82:19,22,24 83:5,7,8,12,14 83:20 84:1,14 84:25 85:13	<b>respectively</b> 65:11	<b>right</b> 1:10 2:14 5:22 7:3 11:13 11:19 12:4 14:24 15:1,8 15:11,13,18 16:18 17:15 18:1,5,14 19:24 20:12,16 21:16 22:3,14 22:24 24:11,23 25:5,13 26:3 26:14,20 28:9 28:17 29:1 30:11,18,22 31:5,6,24 32:2 34:19 35:17,23 36:6,17,24 37:16,25 38:12 38:19,22,23 39:22 40:1,19 42:22 46:14,17 50:16 53:21,24	81:2,4 87:17 <b>ring</b> 69:24 <b>river</b> 1:6 10:7 10:21 17:2,20 18:1,3 19:5 20:10 21:1,8,9 22:18 25:10,18 25:22 31:5,18 31:19 33:14,20 34:19,24 41:17 41:23 42:6,13 42:14 44:11 48:2,12,15 49:3,10,15 50:1 80:21
<b>represented</b> 9:10 72:6	<b>response</b> 62:20 62:25 63:8 65:12 77:5 79:3,23 80:10 81:25 85:7		
<b>request</b> 7:19 67:21 71:8 72:15 85:7,10 88:16,19	<b>responses</b> 74:15 78:25		
<b>requests</b> 3:11 3:16,21 36:19	<b>responsibility</b> 68:5		
<b>require</b> 73:14	<b>responsible</b> 66:25 67:3		<b>robert</b> 2:6
<b>requirements</b> 36:19	<b>rest</b> 44:16		<b>role</b> 9:15 10:5 16:23 50:18 51:3,4
<b>res</b> 61:24 63:25 64:20	<b>result</b> 74:18		<b>room</b> 5:13,15 5:18,19
<b>research</b> 58:25	<b>resume</b> 66:1		
<b>reserve</b> 10:12 10:15,15,19,24	<b>resumed</b> 66:4		

<p><b>rouge</b> 25:9,18                  25:22  <b>row</b> 69:16,23                  72:12  <b>rpr</b> 2:23 91:3                  91:23  <b>rules</b> 64:7  <b>rulings</b> 66:16</p>	<p>28:4,14,24                  52:11,15,21,22                  63:9 69:4  <b>se</b> 66:15  <b>searched</b> 45:8  <b>second</b> 25:24                  33:22 45:23                  51:3,18 58:6                  61:13 80:7  <b>section</b> 42:1                  45:1 73:17                  74:21 81:5  <b>secure</b> 41:16                  43:25  <b>see</b> 6:3 14:20                  23:22 24:2,7                  26:6 28:24                  29:25 30:7,14                  30:22 39:14                  44:7 45:3,13                  46:7,11 51:21                  55:21,25 58:4                  64:12 73:20,21                  74:22 78:12,13                  84:23 87:19  <b>seek</b> 29:18,21                  53:5,22 54:11                  67:5,6  <b>seeking</b> 36:15                  37:20 52:7                  54:23 55:6,9                  56:9 66:11,20                  68:3 78:9 79:8                  79:18 87:13</p>	<p><b>seen</b> 7:6 8:5                  39:21 46:13                  63:5,9 66:6                  69:13 73:5                  82:9,21 83:7  <b>send</b> 64:25  <b>sent</b> 8:2 63:7                  85:8  <b>sentence</b> 17:24                  18:19 41:22                  57:23 61:13                  78:6 80:15,23                  87:11  <b>sentences</b> 68:12                  80:14  <b>separate</b> 42:5  <b>set</b> 15:24 30:2                  57:18 70:13                  75:21 76:9                  91:6  <b>setting</b> 64:18  <b>settle</b> 11:1,4                  18:8 34:23                  48:2  <b>settled</b> 11:5                  44:10  <b>settlement</b>                  14:15 22:11                  25:14 34:14,21                  35:1,13 36:20                  48:10  <b>settlements</b>                  14:12  <b>shaded</b> 30:13</p>	<p><b>shapiro</b> 2:2 3:4                  4:8,16,21 5:5,7                  7:22 8:1,11,17                  8:18 21:22                  24:18 45:21                  51:12,19 52:19                  54:21 55:11,19                  58:7,9,22 59:3                  59:15,19,23                  60:4,10,13                  61:3,12 62:4                  62:14,21 63:1                  64:23 65:3,8                  65:14,18,19,25                  66:5 71:24                  72:23,25 73:4                  75:6,25 76:6                  76:12,23 77:6                  77:14 78:4                  79:5,13,16,24                  80:5,12 82:4                  84:15,21 85:25                  86:5,12,18,22                  87:5 88:23                  89:2,17,23  <b>share</b> 10:25                  20:14 22:6                  86:6  <b>shared</b> 7:5                  82:19 84:25                  85:14  <b>sharing</b> 22:8                  24:13 28:4  <b>sheppard</b> 2:3</p>
<p><b>s</b></p>			
<p><b>s</b> 2:1  <b>sacred</b> 68:5  <b>safely</b> 89:24  <b>safety</b> 12:13  <b>salter</b> 7:3 84:13  <b>santedicola</b>                  2:23 91:3,23  <b>saw</b> 67:14                  70:10 85:5  <b>says</b> 18:24                  34:11 37:11,13                  38:10,17 49:23                  53:4 56:11                  57:23 60:19                  62:8 73:10                  74:7,24 76:7                  78:6 79:17                  80:16  <b>schedule</b> 30:3,5  <b>scheduled</b> 71:7  <b>school</b> 7:1  <b>scope</b> 61:23                  74:14 81:1                  85:22 86:16  <b>screen</b> 5:21                  23:11 24:9,13</p>			

<p><b>shift</b> 22:22                  38:25  <b>short</b> 68:4  <b>shorthand</b> 91:4                  91:14  <b>show</b> 8:8  <b>side</b> 21:9  <b>sides</b> 12:16  <b>signature</b> 91:21  <b>signed</b> 76:10  <b>simcoe</b> 49:9  <b>simple</b> 61:6                  77:20  <b>simply</b> 27:24                  38:17 59:9                  67:22  <b>sir</b> 42:10 47:23                  81:14  <b>sitting</b> 43:12  <b>situate</b> 33:21  <b>situated</b> 43:23  <b>six</b> 1:6 5:8 10:6                  10:9,12,21                  11:1,3,16,22                  12:2,6,18                  16:23,25 17:17                  17:25 18:2,7                  19:4 20:9 21:2                  21:8,10 22:9                  22:11,18 25:17                  26:18,23 29:10                  29:14,18,22                  31:2,4,17,19,21                  31:24 32:1,5,9                  33:19 34:7,19</p>	<p>34:23 35:10,21                  39:7 41:4,9,18                  41:22 42:2,6,7                  42:14,22 44:4                  44:9,10 48:11                  48:15,18 49:2                  49:13,15,25                  50:1,16 52:1                  53:8,12,17,23                  54:2,10,12,12                  54:23 55:5,7                  55:10,22 56:2                  56:11 57:3,10                  57:12,17,19                  58:14 62:7                  66:6,10,19,24                  67:5,18 68:14                  68:19,21 69:6                  72:1 73:13,24                  75:7,22 76:5                  78:14 81:9,15                  82:6,19 84:23                  85:2 86:7                  87:15 88:6,16                  88:20,20  <b>size</b> 56:6,14,17                  57:12,14  <b>smaller</b> 56:11  <b>soil</b> 33:12  <b>sold</b> 54:4  <b>solicitors</b> 75:13                  75:14,18,20  <b>sorry</b> 11:21                  34:1 40:12                  45:7 49:19</p>	<p>87:24  <b>sort</b> 11:6 71:3  <b>sought</b> 51:16                  73:18  <b>sound</b> 11:13                  28:9  <b>source</b> 79:20  <b>south</b> 33:14  <b>southern</b> 14:12                  29:6 44:1,15  <b>speak</b> 27:7                  43:18 47:3                  56:14 57:11                  70:10 78:24  <b>speaking</b> 55:24                  56:3  <b>speaks</b> 64:20  <b>specific</b> 22:14                  27:25 36:18,22                  40:23 47:5                  55:2 59:11  <b>specifically</b>                  11:14 46:23                  74:3  <b>spoon</b> 13:10,14                  15:3,6 16:17                  16:21 17:12                  62:23  <b>spring</b> 84:16  <b>stacey</b> 1:19 3:2                  5:3 6:11  <b>stand</b> 72:1  <b>start</b> 17:12                  40:25 43:7,10</p>	<p><b>started</b> 69:8                  71:6,10  <b>starting</b> 18:19                  48:19,20 49:7                  49:22  <b>state</b> 18:9  <b>statement</b> 6:9                  7:10 26:4,6,7                  28:2,7,16                  29:17 32:13                  34:2 35:3,14                  39:11,25 53:9                  54:8 66:7 77:1                  80:7,8 88:10                  88:12  <b>statements</b>                  58:24 59:6                  68:25 75:16                  81:8,20  <b>states</b> 20:21                  29:25 33:7                  41:9 61:14                  63:14 80:24                  87:11  <b>status</b> 51:20                  54:25 60:19  <b>stenographic...</b>                  91:11  <b>stolen</b> 54:4  <b>stop</b> 32:25                  48:13  <b>story</b> 10:22  <b>strategy</b> 60:2                  71:21</p>
---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

<p><b>stuff</b> 51:11  <b>subject</b> 13:21                  14:1 19:6                  38:11,19 56:14                  69:12 85:15                  89:4  <b>subjective</b>                  72:10  <b>submitted</b>                  39:11 52:12  <b>substance</b>                  77:18  <b>sue</b> 53:12,17  <b>suggest</b> 69:22                  71:8  <b>sum</b> 11:16  <b>summarize</b>                  23:24  <b>summary</b> 29:7  <b>superior</b> 1:3  <b>support</b> 48:10                  67:18 68:14,21  <b>supported</b> 41:4                  48:4 68:13  <b>sure</b> 6:6 10:17                  13:25 20:1                  39:20 42:20                  43:9,11 50:22                  52:13 55:3                  56:7 72:5 74:3                  76:17 79:6  <b>surprises</b> 70:24  <b>surrender</b>                  19:20,21 20:15                  21:15 22:2</p>	<p>42:3  <b>surrendered</b>                  10:24 20:11,13  <b>surrenders</b>                  41:15 44:3  <b>swear</b> 5:16                  10:1  <b>switch</b> 50:5  <b>swore</b> 69:4  <b>system</b> 11:25</p> <hr/> <p style="text-align: center;"><b>t</b></p> <hr/> <p><b>t</b> 1:5 3:11 45:15                  77:3,11,23                  79:21 80:9                  81:23 84:11                  87:3  <b>take</b> 5:12,17                  6:20 7:5 9:9                  11:10 12:19                  13:2,9,19,25                  16:15 17:24                  18:13 19:8,12                  20:10 22:23                  23:25 25:25                  28:4,7 31:7                  35:14 39:9,24                  40:9 46:2,16                  48:22 50:4,13                  51:6 52:8                  53:11 55:20                  56:17 58:12                  60:15,17 65:8                  66:8 69:3,5                  81:21 86:24                  87:3 88:1</p>	<p>89:11  <b>taken</b> 1:20 3:16                  37:16 41:15                  87:15 91:6,14  <b>talk</b> 12:17                  20:18 22:20                  28:1 39:1 50:6                  52:6 72:14                  81:16  <b>talked</b> 25:21                  33:2 56:23  <b>talking</b> 16:6                  34:3,8 36:22                  54:18  <b>tania</b> 2:8  <b>tayler</b> 2:20  <b>team</b> 82:10,11                  88:24  <b>teillet</b> 84:13  <b>tell</b> 58:17 61:10                  70:23  <b>ten</b> 65:20  <b>term</b> 54:15  <b>termed</b> 35:19  <b>terminology</b>                  38:14,16 72:11  <b>terms</b> 15:1  <b>territory</b> 25:9                  25:12,25 26:13                  26:14,19 27:3                  30:2,16 31:7                  32:17 37:8                  38:7,11,18                  41:8,11,16                  42:13 44:21</p>	<p>68:1 80:20                  87:17 88:17  <b>test</b> 43:4  <b>testifying</b> 76:21  <b>testimony</b> 91:9  <b>testing</b> 86:25  <b>text</b> 32:18  <b>thames</b> 33:14  <b>thank</b> 6:16 7:20                  7:21,22 11:8                  13:15 16:14                  18:22 34:16                  43:20 45:22                  66:2 81:18                  82:5 83:7                  84:15 89:7,9                  89:17 90:1  <b>thing</b> 16:8 34:9  <b>things</b> 12:12                  38:22 72:8                  78:7  <b>think</b> 15:13                  20:18 23:14                  25:15 31:22                  34:6,9 54:14                  54:15,17 56:22                  75:3,23 89:18  <b>third</b> 25:4                  27:20 36:6,16                  38:6  <b>thought</b> 67:14  <b>three</b> 24:1                  82:19  <b>time</b> 6:22 11:17                  12:24 15:1</p>
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17:15 24:8 43:24 57:4 65:20 69:4 89:7,8 91:6,7 91:10 <b>timeline</b> 70:19 71:10 <b>times</b> 69:17,23 <b>title</b> 24:5,7,10 24:22 25:1,8 25:25 26:11 29:4 35:23 36:5 37:11,15 37:21 38:12,19 43:25 46:5 57:6 80:19 <b>tobacco</b> 14:13 <b>today</b> 7:23 9:5 43:12 76:22 81:24 86:1,21 89:4,13 <b>today's</b> 89:18 <b>told</b> 31:23 <b>took</b> 44:2 71:3 89:5 <b>topic</b> 63:3 <b>topics</b> 69:20 <b>tortell</b> 2:12 <b>town</b> 2:4 23:11 24:9,13,20 28:4 30:21 41:2 52:15 63:13 <b>tract</b> 17:5 18:10,13,14	20:23 25:10,18 25:22 33:13 35:16 56:6,10 56:15,18 <b>trading</b> 16:10 16:12 <b>traditional</b> 31:11 46:6 80:20 <b>transcribed</b> 91:12 <b>transcript</b> 91:14 <b>transfer</b> 20:23 21:14 22:1,17 33:11 <b>transporting</b> 16:4 <b>travel</b> 15:14 16:9 <b>treated</b> 36:21 <b>treaties</b> 22:6,8 22:23 23:3,6 32:19 37:10,12 44:23 <b>treaty</b> 19:2,13 19:19,21,23 20:8 21:4 25:16 30:11,17 31:11 32:22 35:6 36:21 41:6 44:19 60:19 61:16 62:7,17,23	<b>trial</b> 35:4,7 52:4 59:13 70:12 71:7,19 <b>troubles</b> 11:2 <b>true</b> 91:13 <b>truth</b> 70:23 <b>try</b> 21:19 54:22 71:25 <b>trying</b> 33:21 40:6 56:5 57:2 58:5 <b>turtle</b> 69:23 <b>two</b> 10:3 24:6 48:22 56:13 65:10 68:11 69:16,19,21,22 69:23 80:14 81:20 88:24 89:11 <b>tyandenaga</b> 41:19,25 42:18 <b>type</b> 16:7 <hr/> <p style="text-align: center;"><b>u</b></p> <hr/> <b>u</b> 3:11,17 45:15 77:3,11,23 79:21 80:9 81:23 84:11 87:3 <b>unable</b> 45:9 <b>under</b> 3:16 9:1 10:20 15:16 17:4,22 21:10 23:2,6 37:10 47:18,25 68:19 81:3 91:7	<b>understand</b> 8:19 9:4 14:8 14:24 28:2 29:3 50:25 56:7 57:13 66:18 78:8 79:7,17 80:17 80:25 <b>understanding</b> 16:3 22:4 34:22 38:17 74:2 78:15,17 78:19,21 79:20 80:1 84:16 <b>understands</b> 60:23 <b>understood</b> 22:6 55:3 71:14 <b>undertaken</b> 3:11 <b>undertaking</b> 81:21 <b>undertakings</b> 3:6,10 89:5 <b>unfolds</b> 51:24 <b>unfortunately</b> 36:7 87:12 <b>united</b> 41:9 <b>unrecognized</b> 37:18 <b>uphold</b> 62:16 <b>upstate</b> 41:8 <b>use</b> 19:21 59:21
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[uses - zoom]

<p><b>uses</b> 21:25  <b>utilized</b> 43:10                  47:2</p>	<p>30:1,2 31:8,10                  32:15,16 46:6                  47:2 54:6,9</p>	<p><b>words</b> 19:20  <b>work</b> 46:18                  65:22</p>
<p><b>v</b></p>	<p><b>waters</b> 26:12                  26:12</p>	<p><b>write</b> 76:16  <b>written</b> 6:23                  32:18 58:23                  59:6 74:15                  82:9</p>
<p><b>valley</b> 17:3,21                  19:5 20:10                  21:8 44:11  <b>various</b> 63:24  <b>veritext</b> 1:20                  91:22  <b>video</b> 5:23  <b>view</b> 50:20 64:9  <b>virtual</b> 1:21</p>	<p><b>way</b> 19:3 20:9                  36:23 54:22                  67:8,10 71:25                  72:1 79:10  <b>ways</b> 74:18  <b>web</b> 40:8  <b>website</b> 39:1,5                  39:8,18 40:11                  45:25 46:3</p>	<p><b>wrong</b> 87:24  <b>wrongdoing</b>                  56:1  <b>wrongs</b> 87:13</p>
<p><b>w</b></p>	<p><b>went</b> 22:17  <b>western</b> 44:17  <b>wider</b> 22:15  <b>williams</b> 25:16  <b>wish</b> 12:24  <b>wished</b> 48:2  <b>wishes</b> 50:14  <b>witness</b> 3:2                  7:20 18:21                  21:25 24:17                  48:24 60:16                  88:3 89:9 91:7                  91:9</p>	<p><b>x</b></p>
<p><b>w</b> 1:5  <b>want</b> 12:20                  34:5 40:23                  51:25 52:3                  57:6,9 79:1                  83:2 84:4  <b>wanted</b> 34:9,23                  41:10 45:23  <b>wanting</b> 89:19  <b>wants</b> 51:20                  55:21,25 60:18                  85:2  <b>war</b> 48:5  <b>wars</b> 13:7,19                  14:1,3,11,15,21                  14:22  <b>water</b> 24:7 25:2                  25:25 26:12,20                  26:24 27:3                  28:2,8 29:5,5</p>	<p><b>witness's</b> 21:24  <b>witnesses</b> 52:3                  58:20 59:12                  71:19  <b>wonder</b> 65:19  <b>wondering</b> 8:4  <b>word</b> 5:17 22:1                  40:9 46:2</p>	<p><b>x</b> 3:1</p>
		<p><b>y</b></p>
		<p><b>yeah</b> 5:16                  23:16 30:19                  43:13 51:10                  69:18,25 81:23                  84:11 85:18  <b>year</b> 9:17 10:3                  13:10  <b>years</b> 11:6  <b>york</b> 41:8  <b>young</b> 2:9                  89:21</p>
		<p><b>z</b></p>
		<p><b>zoom</b> 1:21                  24:20 30:20                  31:12 41:2</p>

Court File No. CV-18-594281-0000

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

B E T W E E N:

SIX NATIONS OF THE GRAND RIVER BAND OF INDIANS

Plaintiff

- and -

THE ATTORNEY GENERAL OF CANADA and HIS MAJESTY THE KING  
IN RIGHT OF ONTARIO

Defendants

- and -

MISSISSAUGAS OF THE CREDIT FIRST NATION

Moving Party

**NOTICE OF EXAMINATION**

TO: Chief R. Stacey Laforme

YOU ARE REQUIRED TO ATTEND

By video conference

at the following location:

Zoom coordinates to be provided

on March 20, 2023 at 10 a.m. for:

Cross-examination on your affidavit affirmed December 2, 2022 (the "**Affidavit**").

If you object to the method of attendance, you must notify the other parties or their lawyers. If you and the other parties cannot come to an agreement on the method of attendance, one of the parties must request a case conference for the court to make an order under Rule 1.08(8).



YOU ARE REQUIRED TO PRODUCE at the examination the following documents and things (all paragraph references below are to the Affidavit):

1. Any communications between you and the Mississaugas of the Credit First Nation (“**MCFN**”) (including MCFN’s counsel), on the one hand, and representatives (including counsel) of the Haudenosaunee Development Institute, the Haudenosaunee Confederacy Chiefs Council, and/or members of the Haudenosaunee Confederacy, on the other hand, regarding this court action.
2. Any communications between you and the MCFN (including MCFN’s counsel), on the one hand, and representatives (including counsel) of the Attorney General of Canada (“**Canada**”) and His Majesty the King in Right of Ontario (“**Ontario**”) regarding this court action.
3. Whatever non-privileged documentation exists regarding the MCFN’s “decision to seek leave to intervene in this Action” referenced in paragraph 8, including any meeting minutes and Council resolutions regarding this decision and when it was taken.
4. Any documentation regarding when you and the MCFN first learned of this court action.
5. Copies of the “submitted claims” referenced in paragraph 31.
6. Any responses from Canada and Ontario to the April 6, 2015 letter at Exhibit B.

March 2, 2023

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SIX NATIONS OF THE GRAND  
RIVER BAND OF INDIANS  
Plaintiff

-and- THE ATTORNEY GENERAL  
OF CANADA et al.  
Defendants

-and- MISSISSAUGAS OF THE CREDIT  
FIRST NATION  
Moving Party

Court File No. CV-18-594281-0000

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at Brantford and transferred  
to Toronto

**NOTICE OF EXAMINATION**

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PAPE  
SALTER  
TEILLET LLP BARRISTERS AND SOLICITORS

March 14, 2023

Max Shapiro, Partner  
Blake, Cassels & Graydon LLP  
199 Bay Street  
Suite 4000 Commerce Court West  
Toronto, ON M5L 1A9

VIA EMAIL  
max.shapiro@blakes.com

Dear Max:

**Re: Notice of Examination of Chief Laforme, dated March 2, 2023**

We have conducted a search of our client's records and can advise we have found no non-privileged documents that are responsive to the requests set out in paragraphs 3, 4, 5, and 6 of the Notice of Examination of Chief Laforme, dated March 2, 2023 ("NOE").

The request in paragraph number 1 of the NOE for "any communications" between Mississaugas of the Credit First Nation ("MCFN") and representatives (including counsel) of the Haudenosaunee Development Institute, the Haudenosaunee Chiefs Council, "and/or members of the Haudenosaunee Confederacy" "regarding this court action" is overbroad and captures numerous communications on which your firm is the addressee, sender, or has been copied. Without being exhaustive, this includes correspondence on the pending intervention motions and materials relating to MCFN's counsel's participation at case management conferences. Moreover, "members of the Haudenosaunee Confederacy" is a broad and undefined class of persons and there is no basis on which MCFN could even determine if a particular piece of correspondence may be from a person who could be considered a member of this class. If there are particular such communications about which you wish to ask Chief Laforme, please identify them and, to the extent they exist and are non-privileged, we can have them ready at the examination.

The request in paragraph number 2 of the NOE for "any communications" between MCFN and representatives (including counsel) of Canada and Ontario "regarding this court action" is

TORONTO OFFICE

546 Euclid Avenue, Toronto, Ontario M6G 2T2

T 416.916.2989 · F 416.916.3726

VANCOUVER OFFICE

999 Canada Place, Suite 404, Vancouver, British Columbia V6C 3E2

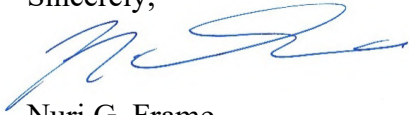
T 604.681.3002 · F 604.681.3050

EXHIBIT

2

overbroad and captures numerous communications on which your firm is the addressee, sender, or has been copied. Without being exhaustive, this includes correspondence on the pending intervention motions and materials relating to MCFN's counsel's participation at case management conferences. If there are particular such communications about which you wish to ask Chief Laforme, please identify them and, to the extent they exist and are non-privileged, we can have them ready at the examination.

Sincerely,



Nuri G. Frame

Partner

Pape Salter Teillet LLP

cc Iris Antonios, Laura Dougan, Rebecca Torrance, Gregory Sheppard, Brittany Town,  
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Manizeh Fancy, David Feliciant, Christine Perruzza, David Tortell, Jennifer Lepad, Julia  
McRandall, Catherine Ma, *Ministry of the Attorney General*



Court File No. CV-18-594281-0000

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

BETWEEN:

**SIX NATIONS OF THE GRAND RIVER BAND OF INDIANS**

Plaintiff

- and -

**THE ATTORNEY GENERAL OF CANADA and  
HIS MAJESTY THE KING IN RIGHT OF ONTARIO**

Defendants

---

**MEMORANDUM  
OF MISSISSAUGAS OF THE CREDIT FIRST NATION**  
(For December 12, 2022, Case Management Conference)

---

December 5, 2022

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**EXHIBIT**

**3**

**TO:** Madam Justice Akbarali  
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His Majesty the King in right of Ontario

## A. BACKGROUND

1. Mississaugas of the Credit First Nation (“MCFN”) is an Indigenous community of Anishinaabe people with Aboriginal and treaty rights within its territory, which extends from the Rouge River Valley in the east, across to the headwaters of the Thames River, down to Long Point on Lake Erie and back along the shores of Lake Erie, the Niagara River and Lake Ontario to the Rouge River Valley. MCFN’s territory encompasses the lands granted to Six Nations of the Grand River Band of Indians (“Six Nations”), or its predecessor, under the Haldimand Proclamation of 1784.

2. MCFN supports Six Nations’ decades-long effort to hold the Crown accountable for its abuses relating to the mismanagement of Six Nations’ lands. In Six Nations’ pursuit of justice, however, all parties plead and rely on MCFN’s history and rights. On October 27, 2022, MCFN delivered a notice of motion seeking leave to intervene as a party under Rule 13.01 to ensure its history, its rights, and its relationship with its territory are accurately portrayed and protected. MCFN does not seek damages for itself, nor does it intend to diminish compensation the Crown may owe Six Nations.

3. On November 15, 2022, MCFN attended its first case management conference in this action. That conference was held to address procedure for various intervention motions. In addition to the parties, also in attendance were Haudenosaunee Development Institute (“HDI”) and the Men’s Fire of the Six Nations Grand River Territory (“Men’s Fire”), who also seek leave to intervene under Rule 13.01, among other relief. The motions of HDI and Men’s Fire raise fundamental issues relating to the

authorization of the plaintiff to represent the rights-bearing collective on whose behalf the action is advanced.

4. On the eve of the November 15 case management conference, HDI delivered written submissions addressing concerns raised by the Honourable Justice Akbarali at a November 7, 2022, case management conference relating to crafting a process for the intervention motions that is respectful of Indigenous laws and legal orders. HDI submitted three elements must be considered: (1) increased openness and inclusion; (2) broad notice about the action and the issues it engages; and (3) meaningful engagement with Indigenous legal traditions.

## **B. SUBMISSIONS**

5. The elements HDI raises are important and must be considered as this Honourable Court crafts a respectful and decolonized process for the intervention motions and the action more broadly; however, fairness demands these elements must be considered in tandem, and not eclipse, the *Rules of Civil Procedure* that have governed the conduct of this action since its inception nearly 30 years ago.

6. The way these elements manifest themselves in relation to the intervention motions must reflect the unique nature of each motion, including the relief sought and the interests of each proposed intervenor in the action. Given the straightforward nature of MCFN's motion, a wholesale application of the modified procedures HDI proposes to the procedure applicable to MCFN's motion is unnecessary.

7. The basis for MCFN's motion rests on the fact that the parties expressly plead and rely on its history and its rights within its territory, including under section 35 of the *Constitution Act, 1982*; as well as on the content of certain expert reports prepared by Six Nations that similarly engage the history, rights, and interests of MCFN.

8. MCFN's motion—unlike those of HDI and Men's Fire—does not engage the representative authority of Six Nations to advance this action, nor does it question the composition of the rights-bearing collective on whose behalf Six Nations acts, which are issues this Honourable Court must inevitably engage with in disposing of the motions brought by HDI and Men's Fire. In those motions, broad and direct engagement with and notice to Haudenosaunee communities—as HDI suggests, and this Honourable Court has previously ordered—may well be appropriate. In MCFN's submission, however, such out-of-court engagement is not necessary for resolving MCFN's motion.

9. Simply put, MCFN's motion is distinct from those of HDI and Men's Fire. Its fair resolution does not require the fundamental modification of the procedure for motions set out in the *Rules of Civil Procedure*.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 5th day of December 2022.



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**Nuri Frame**

December 5, 2022

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Counsel for the Proposed Intervenor  
Mississaugas of the Credit First Nation

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

v. The Attorney General of Canada  
et al.  
(Defendants)

Toronto Court File No. CV-18-594281-0000  
(Originally Brantford Court File No: 406/95)

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**ONTARIO**

**SUPERIOR COURT OF JUSTICE  
PROCEEDING COMMENCED AT**

Toronto

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**MEMORANDUM  
OF MISSISSAUGAS OF THE CREDIT  
FIRST NATION**

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**PAPE SALTER TEILLET LLP**

546 Euclid Avenue  
Toronto, ON M6G 2T2  
Fax: 416-916-3726

**Nuri G. Frame (LSO #60974J)**

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Counsel for the Proposed Intervenor  
Mississaugas of the Credit First Nation





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 199 Bay Street  
 Suite 4000, Commerce Court West  
 Toronto ON M5L 1A9 Canada  
 Tel: 416-863-2400 Fax: 416-863-2653

March 3, 2023

**VIA E-MAIL**

**Max Shapiro**

Partner

Dir: 416-863-3305

max.shapiro@blakes.com

Reference: 00034539/000061

Nuri Frame/Alexander DeParde  
 Pape Salter Teillet LLP  
 546 Euclid Avenue  
 Toronto, ON M6G 2T2

**RE: *Six Nations of the Grand River Band of Indians v. Canada and Ontario*, Toronto Court File No. CV-18-594281**

**Pending Motion of the Mississaugas of the Credit First Nation (“MCFN”)**

Dear Counsel:

We write in follow up to our prior correspondence to again request that the MCFN deliver a pleading or to confirm that it does not intend to do so before its pending motion scheduled for May 12, 2023.

In light of the MCFN's prior representations to us and the Court to the effect that it does not intend to seek relief as against the Six Nations of the Grand River Band or a share of any compensation owed to Six Nations by the Crowns, we remain unconvinced that MCFN should be granted full party status in this action.

If the MCFN insists on seeking full party status rights on all of the issues set out in its Notice of Motion, which are much broader than the currently pleaded issues as between the parties, we request confirmation of the following by March 13, 2023. That date is one week before the scheduled cross-examination of Chief Laforme.

If the Court grants leave to add the MCFN as a party in this action, does the MCFN:

1. Agree and acknowledge that as a party it will be bound by all findings of fact made by the Court at trial, including (without limitation) regarding the legal status and effect of the 1784 Haldimand Proclamation and whether the lands granted under that proclamation are Six Nations reserve and/or treaty lands; and
2. Agree to abide by the current trial timetable which contemplates the start of trial in 2024.

24645716.1

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**EXHIBIT**

4



Counsel for the responding Crowns are copied.

Yours truly,

Max Shapiro

c: Tania Mitchell, Maria Vujnovic, Edward Harrison, Tanya Muthusamipillai, Katrina Longo, Hasan Junaid, Sarah Kanko, Myra Sivaloganathan, TOR Canada SNLT, *Department of Justice Canada*  
Manizeh Fancy, David Feliciant, Jennifer Lapan, Christine Perruzza, Catherine Ma, Julia McRandall, David Tortell, *Ministry of the Attorney General*  
Robert Janes, *JFK Law Corporation*  
Iris Antonios, Laura Dougan, Rebecca Torrance, Gregory Sheppard, Brittany Town, Louise James, *Blakes*

**PAPE  
SALTER  
TEILLET** LLP BARRISTERS AND SOLICITORS

March 17, 2023

VIA EMAIL  
(max.shapiro@blakes.com)

Max Shapiro, Partner  
Blake, Cassels & Graydon LLP  
199 Bay Street  
Suite 4000 Commerce Court West  
Toronto, ON M5L 1A9

Dear Max:

**Re: Pending Motion of the Mississaugas of the Credit First Nation (“MCFN”)**

---

Thank you for your letter of March 3, 2023.

With respect to your inquiry regarding MCFN being bound by all findings of fact made by the Court, we find the question puzzling. The question of if, when, and to what extent a party will be bound by findings of fact made in a litigation in which they participated is a question of law that is addressed through various common law doctrines—such as *res judicata*, collateral estoppel, issue estoppel, and abuse of process—with which you are doubtless well acquainted. These are not doctrines that a party opts into or out of. We can confirm that the common law rules applicable to litigants in Ontario are indeed applicable to MCFN; in our view, no further agreement or acknowledgement is necessary or appropriate.

With respect to timelines, we confirm, as we repeatedly have, that it is not our intention or desire to delay this action and we are committed to moving forward expeditiously if our motion for leave to intervene is granted. Given the complexities of the case, Six Nations’ continuing refusal to share its remaining expert reports to assist us in our preparations, the multiple proposed intervenors, and the uncertainty as to when the Court will issue a decision on the intervention motions, there will doubtless need to be direction from the case management judge with respect to the trial schedule. Once the intervention motions are decided, we look forward to participating in those discussions and working collaboratively with all counsel to ensure this matter moves forward without undue delay.

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T 604.681.3002

**EXHIBIT**

**5**

With respect to your request for a draft pleading, I believe that matter has been well canvassed in our previous correspondence, which is attached here for your convenience.

Sincerely,



Nuri G. Frame  
Partner  
Pape Salter Teillet LLP

- Encl. (1) Email from Blakes to PST (1 February 2023)  
(2) Email from PST to Blakes (5 February 2023)  
(3) Letter from Blakes to PST (6 February 2023)  
(4) Email from PST to Blakes (7 February 2023)  
(5) Email from Blakes to PST (8 February 2023)

cc Iris Antonios, Laura Dougan, Rebecca Torrance, Gregory Sheppard, Brittany Town,  
*Blakes, Cassels & Graydon LLP*

Robert Janes, K.C., *JFK Law Corporation*

Tania Mitchell, Anusha Aruliah, Maria Vujnovic, Hasan Junaid, Edward Harrison, Tanya Muthusamipillai, Katrina Longo, Sarah Kanko, Elizabeth Chan, Myra Sivaloganathan,  
*Department of Justice Canada*

Manizeh Fancy, David Feliciant, Christine Perruzza, David Tortell, Jennifer Lepad, Julia McRandall, Catherine Ma, *Ministry of the Attorney General*

**From:** Shapiro, Max <max.shapiro@blakes.com>  
**Sent:** Wednesday, February 1, 2023 4:44 PM  
**To:** Nuri Frame; Alexander DeParde  
**Cc:** Antonios, Iris; Robert Janes; Dougan, Laura; Torrance, Rebecca; Sheppard, Gregory; Town, Brittany  
**Subject:** Six Nations v Canada and Ontario - MCFN Motion - Request for Draft Pleading

Dear Nuri and Alex,

You will have seen the Gilberts letter attached to this CMC memo where HDI requested a draft pleading from Men's Fire. The Court also previously directed HDI to deliver a draft pleading, which HDI did last fall. Consistent with that, we request that MCFN deliver a draft pleading forthwith and that you please let us know when we can expect to receive it. Given where we are on the calendar, we reserve the right to respond to that document after the current February 6 deadline to put in responding materials.

Thanks,

Max

**Max Shapiro** (he, him, his)  
Partner  
[max.shapiro@blakes.com](mailto:max.shapiro@blakes.com)  
T. +1-416-863-3305

---

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---

**From:** Dylan Gibbs <dylan@gilbertslaw.ca>  
**Sent:** Wednesday, February 1, 2023 12:51 PM  
**To:** Evans, Pam (Yomattie) (MAG) <Yomattie.Evans@ontario.ca>  
**Cc:** Tim Gilbert <tim@gilbertslaw.ca>; Thomas Dumigan <tumigan@gilbertslaw.ca>; Jack MacDonald <jack@gilbertslaw.ca>; Aruliah, Anusha <Anusha.Aruliah@justice.gc.ca>; Mitchell, Tania (she; her | elle; la) <Tania.Mitchell@justice.gc.ca>; Junaid, Hasan <Hasan.Junaid@justice.gc.ca>; Kanko, Sarah (she; her | elle; la) <Sarah.Kanko@justice.gc.ca>; Sivaloganathan, Myra <Myra.Sivaloganathan@justice.gc.ca>; TOR Canada SNLT <TOR.CanadaSNLT@justice.gc.ca>; Fancy, Manizeh (MAG) <Manizeh.Fancy@ontario.ca>; Feliciant, David (MAG) <David.Feliciant@ontario.ca>; Perruzza, Christine (MAG) <Christine.Perruzza@ontario.ca>; Ma, Catherine (MAG) <Catherine.Ma@ontario.ca>; david.tortell@ontario.ca; McRandall, Julia (MAG) <Julia.McRandall@ontario.ca>; jennifer.lepan@ontario.ca; Nuri Frame <NFrame@PSTLaw.ca>; Alex DeParde <ADeParde@PSTLaw.ca>; Jeffrey Kaufman <jeff@kaufman.law>; Robert Janes <RJanes@jfkLaw.ca>; Antonios, Iris <iris.antonios@blakes.com>; Shapiro, Max <max.shapiro@blakes.com>; Dougan, Laura <laura.dougan@blakes.com>; Torrance, Rebecca <rebecca.torrance@blakes.com>; Town, Brittany <brittany.town@blakes.com>; James, Louise <louise.james@blakes.com>; Sheppard, Gregory <gregory.sheppard@blakes.com>; Longo, Katrina <Katrina.Longo@justice.gc.ca>

**Subject:** RE: Six Nations v Canada and Ontario - Court File No. CV-18-594281-0000 - Case Management Conference - Thursday, February 2, 2023, at 2 pm

External Email | Courrier électronique externe

Dear Ms. Evans,

Attached, please find the Haudenosaunee Development Institute's Memorandum for tomorrow's Case Management Conference. We would be grateful if you would bring this to the attention of the Honourable Justice Akbarali.

Best regards,

Dylan Gibbs

Dylan Gibbs - He/Him  
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Lawyers | Patent and Trademark Agents

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Recommended Firm 2322



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2022

**From:** Longo, Katrina <[Katrina.Longo@justice.gc.ca](mailto:Katrina.Longo@justice.gc.ca)>

**Sent:** February 1, 2023 12:24 PM

**To:** Evans, Pam (Yomattie) (MAG) <[Yomattie.Evans@ontario.ca](mailto:Yomattie.Evans@ontario.ca)>

**Cc:** Tim Gilbert <[tim@gilbertslaw.ca](mailto:tim@gilbertslaw.ca)>; Thomas Dumigan <[tdumigan@gilbertslaw.ca](mailto:tdumigan@gilbertslaw.ca)>; Jack MacDonald <[jack@gilbertslaw.ca](mailto:jack@gilbertslaw.ca)>; Dylan Gibbs <[dylan@gilbertslaw.ca](mailto:dylan@gilbertslaw.ca)>; Aruliah, Anusha <[Anusha.Aruliah@justice.gc.ca](mailto:Anusha.Aruliah@justice.gc.ca)>; Mitchell, Tania (she; her | elle; la) <[Tania.Mitchell@justice.gc.ca](mailto:Tania.Mitchell@justice.gc.ca)>; Junaid, Hasan <[Hasan.Junaid@justice.gc.ca](mailto:Hasan.Junaid@justice.gc.ca)>; Kanko, Sarah (she; her | elle; la) <[Sarah.Kanko@justice.gc.ca](mailto:Sarah.Kanko@justice.gc.ca)>; Sivaloganathan, Myra <[Myra.Sivaloganathan@justice.gc.ca](mailto:Myra.Sivaloganathan@justice.gc.ca)>; TOR Canada SNLT <[TOR.CanadaSNLT@justice.gc.ca](mailto:TOR.CanadaSNLT@justice.gc.ca)>; Fancy, Manizeh (MAG) <[Manizeh.Fancy@ontario.ca](mailto:Manizeh.Fancy@ontario.ca)>; Feliciant, David (MAG) <[David.Feliciant@ontario.ca](mailto:David.Feliciant@ontario.ca)>; Perruzza, Christine (MAG) <[Christine.Perruzza@ontario.ca](mailto:Christine.Perruzza@ontario.ca)>; Ma, Catherine (MAG) <[Catherine.Ma@ontario.ca](mailto:Catherine.Ma@ontario.ca)>; [david.tortell@ontario.ca](mailto:david.tortell@ontario.ca); McRandall, Julia (MAG) <[Julia.McRandall@ontario.ca](mailto:Julia.McRandall@ontario.ca)>; [jennifer.lepan@ontario.ca](mailto:jennifer.lepan@ontario.ca); Nuri Frame <[NFrame@PSTLaw.ca](mailto:NFrame@PSTLaw.ca)>; Alex DeParde <[ADeParde@PSTLaw.ca](mailto:ADeParde@PSTLaw.ca)>; Jeffrey Kaufman <[jeff@kaufman.law](mailto:jeff@kaufman.law)>; Robert Janes <[RJanes@jfkaw.ca](mailto:RJanes@jfkaw.ca)>; Antonios, Iris <[iris.antonios@blakes.com](mailto:iris.antonios@blakes.com)>; Shapiro, Max <[max.shapiro@blakes.com](mailto:max.shapiro@blakes.com)>; Dougan, Laura <[laura.dougan@blakes.com](mailto:laura.dougan@blakes.com)>; Torrance, Rebecca <[rebecca.torrance@blakes.com](mailto:rebecca.torrance@blakes.com)>; Town, Brittany <[brittany.town@blakes.com](mailto:brittany.town@blakes.com)>; James, Louise <[louise.james@blakes.com](mailto:louise.james@blakes.com)>; Sheppard, Gregory <[gregory.sheppard@blakes.com](mailto:gregory.sheppard@blakes.com)>

**Subject:** Six Nations v Canada and Ontario - Court File No. CV-18-594281-0000 - Case Management Conference - Thursday, February 2, 2023, at 2 pm

Dear Ms. Evans:

Please find attached the Attorney General of Canada's Case Conference Memorandum for the February 2, 2023 CMC. Would you kindly bring this to the attention of the Honourable Justice Akbarali?

Thank you,  
Katrina

---

**Katrina (Katie) Longo** (pronouns: she/her) |(pronoms: elle/la)  
Counsel | Avocate  
National Litigation Sector | Secteur national du contentieux  
Department of Justice Canada | Ministère de la Justice Canada  
Ontario Regional Office | Bureau régional de l'Ontario  
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**From:** Nuri Frame  
**Sent:** Sunday, February 5, 2023 4:56 PM  
**To:** Shapiro, Max  
**Cc:** Antonios, Iris; Robert Janes; Dougan, Laura; Torrance, Rebecca; Sheppard, Gregory; Town, Brittany; Alexander DeParde  
**Subject:** Re: Six Nations v Canada and Ontario - MCFN Motion - Request for Draft Pleading

Max:

Thanks for your email. We have considered your request that MCFN provide a draft pleading “forthwith,” and in advance of a ruling on our motion for leave to intervene. We decline your request and will not be providing any draft pleading at this time.

To our knowledge, there is no requirement under Rule 13.01, nor in the caselaw, that a proposed intervenor provide a draft pleading prior to being granted party status as a defendant. If you have any authority to support your request, please provide it. The former case management judge’s direction to HDI to provide a draft pleading was made in light of serious questions about the nature and scope of their proposed involvement in the proceeding, including whether HDI intended to be added as a plaintiff or a defendant, or intended to replace the plaintiff. Those issues do not arise with respect to the MCFN intervention. MCFN clearly proposes to be a defendant. As such, we do not consider the situation of HDI to be analogous to ours and we consider the order of the former case management judge directing HDI to provide a draft pleading to be inapposite. We will, of course, further consider your request once we have received Justice Akbarali’s case management endorsement with respect to HDI’s request for a draft pleading from Men’s Fire.

In advance of preparing any pleading—draft or otherwise—MCFN would also need to be provided with further materials from the parties. I note that Justice Akbarali’s case management endorsement of December 19, 2022 directed that “[b]y February 3, 2023, the plaintiff shall either deliver a response to the demand for particulars and to the written interrogatories ... or deliver an amended statement of claim.” We will obviously need to receive those materials in advance of drafting any pleading. We would also need to receive copies of any responses to demands for particulars provided previously in the case, along with responses to any interrogatories or requests to admit, and any expert reports that have been served. I note that Ontario’s recent case management memo makes clear that their most recent pleading was informed by both requests to admit and interrogatories in this case, some going as far back as 1995; MCFN would also need to have that information if and when we prepare a statement of defence.

Moreover, I confess that we were a bit surprised to receive this request now. Six Nations has emphasized repeatedly that its principal concern is that our intervention motion proceed expeditiously and we have tried to accommodate that interest. Given that, we struggle with the notion that Six Nations is requesting a draft pleading now, more than three months after we served our notice of motion, more than two months after we provided you with the substance of our motion record, and only a few days before Six Nations responding materials are due. It is not, in our view, reasonable for a party to both urge expediency while also waiting until the 11<sup>th</sup> hour to make a request of this sort and “reserv[ing] the right” to file late responding materials as a result of its own last-minute request.

Best,

Nuri

---

**Nuri G. Frame (He/Him)**



Partner

**PAPE  
SALTER  
TEILLET** LLP BARRISTERS AND SOLICITORS

Pape Salter Teillet LLP, 546 Euclid Avenue, Toronto, Ontario M6G 2T2 Canada · T 416.916.2989 x 1254 · F 416.916.3726 · C 416.460.5350 · [nframe@pstlaw.ca](mailto:nframe@pstlaw.ca) · [www.pstlaw.ca](http://www.pstlaw.ca)

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---

**From:** "Shapiro, Max" <max.shapiro@blakes.com>  
**Date:** Wednesday, February 1, 2023 at 4:43 PM  
**To:** Nuri Frame <nframe@pstlaw.ca>, Alexander DeParde <adeparde@pstlaw.ca>  
**Cc:** "Antonios, Iris" <iris.antonios@blakes.com>, Robert Janes <RJanes@jfkllaw.ca>, "Dougan, Laura" <laura.dougan@blakes.com>, "Torrance, Rebecca" <rebecca.torrance@blakes.com>, "Sheppard, Gregory" <gregory.sheppard@blakes.com>, "Town, Brittany" <brittany.town@blakes.com>  
**Subject:** Six Nations v Canada and Ontario - MCFN Motion - Request for Draft Pleading

Dear Nuri and Alex,

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Thanks,

Max

**Max Shapiro** (he, him, his)  
Partner  
[max.shapiro@blakes.com](mailto:max.shapiro@blakes.com)  
T. +1-416-863-3305

---

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---

**From:** Dylan Gibbs <dylan@gilbertslaw.ca>  
**Sent:** Wednesday, February 1, 2023 12:51 PM  
**To:** Evans, Pam (Yomattie) (MAG) <Yomattie.Evans@ontario.ca>  
**Cc:** Tim Gilbert <tim@gilbertslaw.ca>; Thomas Dumigan <tdumigan@gilbertslaw.ca>; Jack MacDonald <jack@gilbertslaw.ca>; Aruliah, Anusha <Anusha.Aruliah@justice.gc.ca>; Mitchell, Tania (she; her | elle; la)

<Tania.Mitchell@justice.gc.ca>; Junaid, Hasan <Hasan.Junaid@justice.gc.ca>; Kanko, Sarah (she; her | elle; la) <Sarah.Kanko@justice.gc.ca>; Sivaloganathan, Myra <Myra.Sivaloganathan@justice.gc.ca>; TOR Canada SNLT <TOR.CanadaSNLT@justice.gc.ca>; Fancy, Manizeh (MAG) <Manizeh.Fancy@ontario.ca>; Feliciant, David (MAG) <David.Feliciant@ontario.ca>; Perruzza, Christine (MAG) <Christine.Perruzza@ontario.ca>; Ma, Catherine (MAG) <Catherine.Ma@ontario.ca>; david.tortell@ontario.ca; McRandall, Julia (MAG) <Julia.McRandall@ontario.ca>; jennifer.lepan@ontario.ca; Nuri Frame <NFrame@PSTLaw.ca>; Alex DeParde <ADeParde@PSTLaw.ca>; Jeffrey Kaufman <jeff@kaufman.law>; Robert Janes <RJanes@jfkllaw.ca>; Antonios, Iris <iris.antonios@blakes.com>; Shapiro, Max <max.shapiro@blakes.com>; Dougan, Laura <laura.dougan@blakes.com>; Torrance, Rebecca <rebecca.torrance@blakes.com>; Town, Brittany <brittany.town@blakes.com>; James, Louise <louise.james@blakes.com>; Sheppard, Gregory <gregory.sheppard@blakes.com>; Longo, Katrina <Katrina.Longo@justice.gc.ca>

**Subject:** RE: Six Nations v Canada and Ontario - Court File No. CV-18-594281-0000 - Case Management Conference - Thursday, February 2, 2023, at 2 pm

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Dear Ms. Evans,

Attached, please find the Haudenosaunee Development Institute's Memorandum for tomorrow's Case Management Conference. We would be grateful if you would bring this to the attention of the Honourable Justice Akbarali.

Best regards,

Dylan Gibbs

Dylan Gibbs - He/Him  
Gilbert's LLP  
Lawyers | Patent and Trademark Agents

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Gilbert's LLP  
Recommended Firm 2322



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2022

**From:** Longo, Katrina <Katrina.Longo@justice.gc.ca>

**Sent:** February 1, 2023 12:24 PM

**To:** Evans, Pam (Yomattie) (MAG) <Yomattie.Evans@ontario.ca>

**Cc:** Tim Gilbert <tim@gilbertslaw.ca>; Thomas Dumigan <tdumigan@gilbertslaw.ca>; Jack MacDonald <jack@gilbertslaw.ca>; Dylan Gibbs <dylan@gilbertslaw.ca>; Aruliah, Anusha <Anusha.Aruliah@justice.gc.ca>; Mitchell, Tania (she; her | elle; la) <Tania.Mitchell@justice.gc.ca>; Junaid, Hasan <Hasan.Junaid@justice.gc.ca>; Kanko, Sarah (she; her | elle; la) <Sarah.Kanko@justice.gc.ca>; Sivaloganathan, Myra <Myra.Sivaloganathan@justice.gc.ca>; TOR Canada SNLT <TOR.CanadaSNLT@justice.gc.ca>; Fancy, Manizeh (MAG) <Manizeh.Fancy@ontario.ca>; Feliciant, David (MAG) <David.Feliciant@ontario.ca>; Perruzza, Christine (MAG) <Christine.Perruzza@ontario.ca>; Ma, Catherine (MAG)

<[Catherine.Ma@ontario.ca](mailto:Catherine.Ma@ontario.ca)>; [david.tortell@ontario.ca](mailto:david.tortell@ontario.ca); McRandall, Julia (MAG) <[Julia.McRandall@ontario.ca](mailto:Julia.McRandall@ontario.ca)>; [jennifer.lepan@ontario.ca](mailto:jennifer.lepan@ontario.ca); Nuri Frame <[NFrame@PSTLaw.ca](mailto:NFrame@PSTLaw.ca)>; Alex DeParde <[ADeParde@PSTLaw.ca](mailto:ADeParde@PSTLaw.ca)>; Jeffrey Kaufman <[jeff@kaufman.law](mailto:jeff@kaufman.law)>; Robert Janes <[RJanes@jfkllaw.ca](mailto:RJanes@jfkllaw.ca)>; Antonios, Iris <[iris.antonios@blakes.com](mailto:iris.antonios@blakes.com)>; Shapiro, Max <[max.shapiro@blakes.com](mailto:max.shapiro@blakes.com)>; Dougan, Laura <[laura.dougan@blakes.com](mailto:laura.dougan@blakes.com)>; Torrance, Rebecca <[rebecca.torrance@blakes.com](mailto:rebecca.torrance@blakes.com)>; Town, Brittany <[brittany.town@blakes.com](mailto:brittany.town@blakes.com)>; James, Louise <[louise.james@blakes.com](mailto:louise.james@blakes.com)>; Sheppard, Gregory <[gregory.sheppard@blakes.com](mailto:gregory.sheppard@blakes.com)>

**Subject:** Six Nations v Canada and Ontario - Court File No. CV-18-594281-0000 - Case Management Conference - Thursday, February 2, 2023, at 2 pm

Dear Ms. Evans:

Please find attached the Attorney General of Canada's Case Conference Memorandum for the February 2, 2023 CMC. Would you kindly bring this to the attention of the Honourable Justice Akbarali?

Thank you,  
Katrina

---

**Katrina (Katie) Longo** (pronouns: she/her) | (pronoms: elle/la)  
Counsel | Avocate  
National Litigation Sector | Secteur national du contentieux  
Department of Justice Canada | Ministère de la Justice Canada  
Ontario Regional Office | Bureau régional de l'Ontario  
120 Adelaide Street West, Suite #400  
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**Max Shapiro**

Partner

Dir: 416-863-3305

max.shapiro@blakes.com

February 6, 2023

**VIA E-MAIL**

Reference: 00034539/000061

Nuri Frame  
Alexander DeParde  
Pape Salter Teillet LLP  
546 Euclid Avenue  
Toronto, ON M6G 2T2

**RE: *Six Nations v. Canada and Ontario*, Toronto Court File No. CV-18-594281  
Mississaugas of the Credit First Nation (“MCFN”) Motion**

Dear Counsel:

This responds to your Sunday February 5, 2023 email in which the MCFN declined to provide a draft pleading.

We are surprised by MCFN’s position. MCFN has applied to be added to this case as a party and not merely as a friend of the court. Typically proposed parties define their role and position in the litigation by means of a draft pleading, as HDI has done.

We have considered MCFN’s motion record in light of your email and saw no reference in it to the effect that MCFN “clearly proposes to be a defendant”, as your email states, though that is a helpful starting point. If that is the case, MCFN should confirm the allegations in the plaintiff’s claim that it admits, denies, and has no knowledge of, whether it has a counterclaim, and whether it has crossclaims against the two defendant Crowns.

None of this information is contained in MCFN’s motion record. Based on the materials delivered, we find it difficult to discern what relevant issues MCFN proposes to address at the trial of this action. It appears that MCFN intends to raise, or to ‘keep the door open’ to potentially raising, a wide range of irrelevant or peripheral matters that are not actually raised in Six Nations’ claim and for which Six Nations has not sought judicial relief. For example, MCFN’s materials suggest that it intends to ask the court to make rulings on matters such as the existence of MCFN’s claimed Aboriginal title and Aboriginal rights; the effect (or non-effect) of various treaties on MCFN’s claimed Aboriginal rights and title; and the legal status of various instruments (such as the Nanfan deed) as treaties for the purpose of Section 35(1) of the *Constitution Act, 1982*. Further, while MCFN has articulated an interest in certain general historical matters, it has not identified what specific legal interests it says are potentially affected – notably, whether MCFN has any legal interest in the core questions in the Six Nations’ action about whether the Haldimand Proclamation is a treaty and created the Six Nations reserve. Based on 24632637.3



MCFN's materials, we are concerned that it intends to take the action far beyond the issues raised in the existing pleadings and into issues that are primarily of interest to MCFN in its dealings with the Crowns and which would not be legally affected by the relief sought in Six Nations' action. We are also concerned that this would have the effect of playing into the Crowns' hands of wishing to delay the action.

MCFN has had months, if not longer, to consider the operative statement of claim. Further, pursuant to the most recent 'main action' Case Management Endorsement of Justice Akbarali, the plaintiff delivered a draft Fresh as Further Amended Statement of Claim to the Crowns on Friday February 3, 2023. That draft, along with a version showing the proposed changes in underlined form that was also delivered to the Crowns, is enclosed. This draft pleading adds greater detail concerning the legal and factual basis for the relief sought by Six Nations. Please note, in particular, that – as with the prior pleading – no relief is sought in respect of the Nanfan instrument, Dish with One Spoon Treaty, and the status of MCFN Aboriginal rights or Aboriginal title. You have had the details of historical context evidence that we intend to lead in this regard since counsel for Ontario shared the experts reports from Drs. Good, Tayler, and Parmenter.

In the absence of a pleading that would allay some of these concerns, all of this leads Six Nations to the position that MCFN's motion should be dismissed. It appears that MCFN intends to significantly expand the scope of the litigation and to add issues at this point in the litigation that will significantly prejudice Six Nations' ability to prosecute this case in a just, timely, and cost-effective manner.

We would have thought that the opportunity to provide greater clarity on the scope and focus of MCFN's proposed intervention would have been welcome. That would also be consistent MCFN's statements to the Court to the effect that it is not seeking the delay the matter. Nevertheless, you are free to take the position that you will not deliver a draft pleading and we can take the matter up with the Case Management Judge. That said, we invite you to reconsider.

For authority on delivering a draft pleading, please see Justice Sanfilippo's August 26, 2022 Case Conference Endorsement at paragraphs 5-9, a copy of which is enclosed. You will note His Honour's discussion contains a complete answer to your suggestion that MCFN requires more materials in order to deliver a draft pleading (see paragraph 10, in particular). Six Nations is prepared to provide MCFN with the documents referenced in its pleading, which the Court previously directed be provided to HDI, if MCFN agrees to reimburse its reasonable fees and disbursements for doing so.

Yours truly,

Max Shapiro

Encls. August 26, 2022 Case Management Endorsement, February 3, 2023 Six Nations draft amended pleading (fresh and underlined)

c: Robert Janes, *JFK Law Corporation*  
Iris Antonios, Laura Dougan, Rebecca Torrance, Gregory Sheppard, Brittany Town, Louise James, *Blakes*

24632637.3

**From:** Nuri Frame  
**Sent:** Tuesday, February 7, 2023 2:23 PM  
**To:** Shapiro, Max  
**Cc:** Antonios, Iris; Robert Janes; Dougan, Laura; Torrance, Rebecca; Sheppard, Gregory; Town, Brittany; James, Louise; Reonegro, Elena; Alexander DeParde  
**Subject:** Re: Six Nations of the Grand River v Canada and Ontario - MCFN Motion

Max:

Thank you for your letter of February 6, 2023. As we consider your correspondence, we require some clarification.

In my email of February 5, 2023, I advised that, “[i]n advance of preparing any pleading—draft or otherwise—MCFN would also need to be provided with further materials from the parties,” specifically copies of responses to any demands for particulars, requests to admit, or interrogatories that have previously been served in the case. Your letter does not respond to this request specifically, beyond the last paragraph where you direct us to paragraph 10 of the August 26, 2022 case conference endorsement of Justice Sanfilippo, which you describe as “a complete answer to [our] suggestion that MCFN requires more materials in order to deliver a draft pleading.” The issue in paragraph 10 of the above-referenced case conference endorsement deals with HDI’s request for “the production of documents contained in the data base being assembled for the trial of this action.” That is a very different request from the one MCFN has made. We have not requested the parties’ productions or access to a database prepared for trial. We have requested responses to demands for particulars, requests to admit, and interrogatories in order to assist us in the preparation of our statement of defence; this is qualitatively (and quantitatively) different from HDI requesting access to a database containing the full production of all parties to the action.

Could you please confirm if we are correct in our understanding that Six Nations is: (a) insisting on its request for a draft statement of defence in advance of the hearing of MCFN’s motion; (b) insisting that it “reserves its right” to file late responding materials, not contemplated by the timeline ordered by Justice Akbarali, in response to that draft statement of defence; but (c) is refusing to provide MCFN with any responses to demands for particulars, requests to admit, or interrogatories previously served in this case that we require to assist us in our preparation of a statement of defence?

I look forward to your response to the foregoing.

Best,

Nuri

---

**Nuri G. Frame (He/Him)**

Partner

**PAPE  
SALTER  
TEILLET** LLP BARRISTERS AND SOLICITORS

Pape Salter Teillet LLP, 546 Euclid Avenue, Toronto, Ontario M6G 2T2 Canada · T 416.916.2989 x 1254 · F 416.916.3726 · C 416.460.5350 · [nframe@pstlaw.ca](mailto:nframe@pstlaw.ca) · [www.pstlaw.ca](http://www.pstlaw.ca)

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---

**From:** "Shapiro, Max" <max.shapiro@blakes.com>  
**Date:** Monday, February 6, 2023 at 2:17 PM  
**To:** Nuri Frame <nframe@pstlaw.ca>, Alexander DeParde <adeparde@pstlaw.ca>  
**Cc:** "Antonios, Iris" <iris.antonios@blakes.com>, Robert Janes <RJanes@jfkllaw.ca>, "Dougan, Laura" <laura.dougan@blakes.com>, "Torrance, Rebecca" <rebecca.torrance@blakes.com>, "Sheppard, Gregory" <gregory.sheppard@blakes.com>, "Town, Brittany" <brittany.town@blakes.com>, "James, Louise" <louise.james@blakes.com>, "Reonegro, Elena" <elena.reonegro@blakes.com>  
**Subject:** Six Nations of the Grand River v Canada and Ontario - MCFN Motion

Dear Nuri and Alex, please see the attached correspondence dated today, with attachments.

Best regards,

Max

**Max Shapiro** (he, him, his)  
Partner  
[max.shapiro@blakes.com](mailto:max.shapiro@blakes.com)  
T. +1-416-863-3305

---

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**From:** Shapiro, Max <max.shapiro@blakes.com>  
**Sent:** Wednesday, February 8, 2023 3:30 PM  
**To:** Nuri Frame  
**Cc:** Antonios, Iris; Robert Janes; Dougan, Laura; Torrance, Rebecca; Sheppard, Gregory; Town, Brittany; James, Louise; Reonegro, Elena; Alexander DeParde  
**Subject:** RE: Six Nations of the Grand River v Canada and Ontario - MCFN Motion  
**Attachments:** Six Nations - Demands for Particulars and Responses.zip

Dear Nuri,

Your note characterizes the situation differently than we would. On the draft pleading, the point is simple: MCFN should deliver one, and the sooner the better. We do not accept the position that your client would require “any responses to demands for particulars, requests to admit, or interrogatories” in order to plead. As Justice Sanfilippo noted in respect of HDI, if MCFN has decided that it requires involvement in this action, it must have determined, and should be able to set out the basis and scope of its proposed involvement. In paragraph 10 of the Endorsement to which we directed you, the Court concluded that HDI should be provided with the documents incorporated by referenced in the parties’ pleadings in order to plead. We have offered those documents to you (subject to MCFN agreeing to reimburse our reasonable fees and disbursements), and so far you have declined to take us up on that.

Since the demands for particulars and responses form part of the pleadings, we are happy to share them. Please see attached, along with a summary chart below.

We are not prepared to share all requests to admit and interrogatories since those do not form part of the pleadings, MCFN is a non-party, sharing them may violate the deemed undertaking rule, and you have not pointed us towards any authority that might support such a broad request.

If MCFN delays or declines to deliver a draft pleading before the motion, you can expect us to point that out to the Court. Likewise, if MCFN does deliver a draft pleading that raises issues that are different than what is set out in MCFN’s motion materials, you can reasonably expect us to respond. We do not accept that it would be ‘late’ to respond to something that has not yet been delivered.

Regards,

Max

**Max Shapiro** (he, him, his)  
 Partner  
[max.shapiro@blakes.com](mailto:max.shapiro@blakes.com)  
 T. +1-416-863-3305

No.	Document
1.	Ontario’s Demand for Particulars dated February 22, 1995
2.	Plaintiff’s Response to Ontario’s Request for Particulars dated March 6, 1995
3.	Canada’s First Demand for Particulars dated October 10, 1995
4.	Plaintiff’s Response to Canada’s First Demand for Particulars dated October 31, 1995
5.	Canada’s Second Demand for Particulars dated December 5, 1995
6.	Canada’s Third Demand for Particulars dated December 5, 1995
7.	Plaintiff’s Response to Canada’s Second Demand for Particulars dated December 7, 1995
8.	Plaintiff’s Response to Canada’s Third Demand for Particulars dated December 15, 1995
9.	Plaintiff’s Demand for Particulars to Canada dated January 26, 1996
10.	Plaintiff’s Demand for Particulars to Ontario dated January 31, 1996
11.	Canada’s Reply to Plaintiff’s Demand for Particulars dated March 14, 1996
12.	Ontario’s Reply to Plaintiff’s Demand for Particulars dated April 19, 1996
13.	Plaintiff’s Demand for Particulars to Canada dated December 1, 1998



14.	Plaintiff's Demand for Particulars to Ontario dated December 1, 1998
15.	Ontario's Particulars in Response to Demand for Particulars dated February 5, 1999
16.	Canada's letter response to Plaintiff's December 1, 1998 Demand for Particulars, dated April 28, 1999
17.	Canada's Response to Plaintiff's Demand for Particulars (undated, but delivered October 17, 2000)

**From:** Nuri Frame <nframe@pstlaw.ca>

**Sent:** Tuesday, February 7, 2023 2:23 PM

**To:** Shapiro, Max <max.shapiro@blakes.com>

**Cc:** Antonios, Iris <iris.antonios@blakes.com>; Robert Janes <RJanes@jfkllaw.ca>; Dougan, Laura <laura.dougan@blakes.com>; Torrance, Rebecca <rebecca.torrance@blakes.com>; Sheppard, Gregory <gregory.sheppard@blakes.com>; Town, Brittany <brittany.town@blakes.com>; James, Louise <louise.james@blakes.com>; Reonegro, Elena <elena.reonegro@blakes.com>; Alexander DeParde <aeparde@pstlaw.ca>

**Subject:** Re: Six Nations of the Grand River v Canada and Ontario - MCFN Motion

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Max:

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Could you please confirm if we are correct in our understanding that Six Nations is: (a) insisting on its request for a draft statement of defence in advance of the hearing of MCFN’s motion; (b) insisting that it “reserves its right” to file late responding materials, not contemplated by the timeline ordered by Justice Akbarali, in response to that draft statement of defence; but (c) is refusing to provide MCFN with any responses to demands for particulars, requests to admit, or interrogatories previously served in this case that we require to assist us in our preparation of a statement of defence?

I look forward to your response to the foregoing.

Best,

Nuri

---

**Nuri G. Frame (He/Him)**

Partner

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SALTER  
TEILLET** LLP BARRISTERS AND SOLICITORS

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---

**From:** "Shapiro, Max" <[max.shapiro@blakes.com](mailto:max.shapiro@blakes.com)>

**Date:** Monday, February 6, 2023 at 2:17 PM

**To:** Nuri Frame <[nframe@pstlaw.ca](mailto:nframe@pstlaw.ca)>, Alexander DeParde <[adeparde@pstlaw.ca](mailto:adeparde@pstlaw.ca)>

**Cc:** "Antonios, Iris" <[iris.antonios@blakes.com](mailto:iris.antonios@blakes.com)>, Robert Janes <[RJanes@ifklaw.ca](mailto:RJanes@ifklaw.ca)>, "Dougan, Laura" <[laura.dougan@blakes.com](mailto:laura.dougan@blakes.com)>, "Torrance, Rebecca" <[rebecca.torrance@blakes.com](mailto:rebecca.torrance@blakes.com)>, "Sheppard, Gregory" <[gregory.sheppard@blakes.com](mailto:gregory.sheppard@blakes.com)>, "Town, Brittany" <[brittany.town@blakes.com](mailto:brittany.town@blakes.com)>, "James, Louise" <[louise.james@blakes.com](mailto:louise.james@blakes.com)>, "Reonegro, Elena" <[elena.reonegro@blakes.com](mailto:elena.reonegro@blakes.com)>

**Subject:** Six Nations of the Grand River v Canada and Ontario - MCFN Motion

Dear Nuri and Alex, please see the attached correspondence dated today, with attachments.

Best regards,

Max

**Max Shapiro** (he, him, his)

Partner

[max.shapiro@blakes.com](mailto:max.shapiro@blakes.com)

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---

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**UNDERTAKINGS AND REFUSALS ON THE CROSS-EXAMINATION OF  
CHIEF R. STACEY LAFORME ON HIS AFFIDAVIT AFFIRMED DECEMBER 2, 2022  
(EXAMINED ON MARCH 20, 2023)**

*UT = undertaking; R = refusal*

**Examination by Plaintiff's Counsel**

	<b>PG.</b>	<b>Q.</b>	<b>CATEGORY</b>	<b>UNDERTAKING/REFUSAL</b>	<b>ANSWER (PROVIDED ON APRIL 6, 2023)</b>
1.	45	178	UT	To provide a copy of Report 1 referred to in paragraph 55 of the Statement of Claim Submitted to the Government of Canada and the Government of Ontario dated March 31, 2015, if it can be located and if it is not privileged.	Refused. The requested document is privileged.
2.	51	200	R	To answer whether the Mississaugas of the Credit First Nation (MCFN) has decided that intervening as a friend of the court would not be enough to protect its rights and interests.	Refused/unanswered.
3.	58	228	R	To answer who are the Elders that the MCFN has identified to provide evidence in this action.	Refused/unanswered.
4.	58-59	229-230	R	To answer whether the MCFN has obtained any written statements from the Elders referenced in paragraph 35 of the MCFN Notice of Motion.	Refused/unanswered.
5.	59	231	R	To answer who are the experts referenced in paragraph 35 of the MCFN Notice of Motion.	Refused/unanswered.

	<b>PG.</b>	<b>Q.</b>	<b>CATEGORY</b>	<b>UNDERTAKING/REFUSAL</b>	<b>ANSWER (PROVIDED ON APRIL 6, 2023)</b>
6.	59	232	R	To answer whether the MCFN has obtained any expert reports for use in this action.	Refused/unanswered.
7.	59-60	233	R	To answer whether the MCFN plans to provide evidence to either Canada or Ontario if it is allowed to participate in this action.	Refused/unanswered.
8.	60	234	R	To answer whether the MCFN has been asked to provide evidence in this action by either Canada or Ontario.	Refused/unanswered.
9.	60-61	237	R	To answer whether the MCFN understands that if it becomes an added party, it too would be bound by findings of fact and law made in the case.	Refused/unanswered.
10.	62	240	R	To answer whether, if the MCFN is added to this action and the Court finds that the Haldimand Proclamation was a treaty, the MCFN would be bound by that finding.	Refused/unanswered.
11.	62	241	R	To answer whether, if the MCFN is added to this action and the Court finds it necessary to uphold prior decisions to the effect that the Nanfan Deed of 1701 was a treaty, the MCFN would be bound by that finding.	Refused/unanswered.
12.	62	242	R	To answer whether, if the MCFN is added to this action and the Court finds that the Dish with One Spoon agreement was a treaty, the MCFN would be bound by that finding.	Refused/unanswered.

	<b>PG.</b>	<b>Q.</b>	<b>CATEGORY</b>	<b>UNDERTAKING/REFUSAL</b>	<b>ANSWER (PROVIDED ON APRIL 6, 2023)</b>
13.	64	246	R	To answer whether the MCFN adopts what their lawyers say in the letter from the MCFN's counsel to the plaintiff's counsel dated March 17, 2023.	Refused/unanswered.
14.	64-65	247	R	To answer whether Chief Laforme instructed his lawyers to send the letter from the MCFN's counsel to the plaintiff's counsel dated March 17, 2023.	Refused/unanswered.
15.	65	248	R	To answer whether Chief Laforme agrees with the contents of the letter from the MCFN's counsel to the plaintiff's counsel dated March 17, 2023.	Refused/unanswered.
16.	71	269	R	To answer whether the MCFN will instruct its lawyers, experts, and witnesses to meet the trial date in 2024, if allowed to participate in the action.	Refused/unanswered.
17.	76-78	287-289	UT	To answer who advised the MCFN of the information related to the potentially expanded scope of the issues in the action, referenced in the letter from the MCFN's counsel to Justice Sanfilippo dated January 6, 2022.	Counsel for the defendant His Majesty the King in Right of Ontario (Ontario) advised counsel for MCFN of the specified information in or around late fall 2021.
18.	79	294	R	To answer how the MCFN came to understand that the plaintiff may now be seeking relief beyond the damages and compensation claimed in the pleadings.	Counsel for the defendant His Majesty the King in Right of Ontario (Ontario) advised counsel for MCFN of the specified information in or around late fall 2021.

	PG.	Q.	CATEGORY	UNDERTAKING/REFUSAL	ANSWER (PROVIDED ON APRIL 6, 2023)
19.	79-82	295-300	UT	<p>To provide the source of the understandings, including who provided them, where the January 6, 2022 letter from the MCFN's counsel to Justice Sanfilippo says:</p> <p>“We understand the Plaintiff may now be seeking relief beyond the damages and compensation claimed in the pleadings”;</p> <p>“We understand the Plaintiff's expanded claims may include claims for title to land in MCFN's traditional territory, including to the bed of the Grand River”; and</p> <p>“We further understand that the Plaintiff may put in issue the scope and content of its rights, if any, under the 1701 Nanfan Deed, including whether such rights are protected by section 35 of the <i>Constitution Act, 1982</i>”</p>	Counsel for the defendant His Majesty the King in Right of Ontario (Ontario) advised counsel for MCFN of the specified information in or around late fall 2021.
20.	84	311-312	UT	To make internal inquiries and provide the date or dates that the MCFN's counsel was provided with the expert reports referenced in paragraph 28 of the MCFN Notice of Motion.	This information is contained at paragraph 6 of the Affidavit of John Wilson, affirmed February 28, 2023.
21.	85-86	316-318	R	To answer whether the MCFN adopts their lawyer's answer, as stated in an email from their counsel to the plaintiff's counsel dated March 17, 2023, that correspondence between the MCFN's counsel and Ontario's counsel where the plaintiff's expert reports were shared is subject to litigation and/or common interest privilege and will not be shared with the plaintiff.	Refused/unanswered.
22.	86-87	319-320	UT	To answer what is the MCFN's common interest with Ontario that is being asserted regarding this action.	MCFN and Ontario – as treaty partners – have a common interest in responding to the legal and factual allegations advanced in this proceeding.

SIX NATIONS OF THE GRAND  
RIVER BAND OF INDIANS  
Plaintiff (Responding Party)

-and- THE ATTORNEY GENERAL OF  
CANADA et al.  
Defendants (Responding Parties)

-and- MISSISSAUGAS OF THE  
CREDIT FIRST NATION  
Moving Party

Court File No. CV-18-594281-0000

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at Brantford  
and transferred to Toronto

**TRANSCRIPT BRIEF OF THE PLAINTIFF  
(RESPONDING PARTY)**

**MOTION RETURNABLE MAY 12, 2023**

**BLAKE, CASSELS & GRAYDON LLP**

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Suite 4000, Commerce Court West  
Toronto ON M5L 1A9

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Tel: 416-863-3349 / iris.antonios@blakes.com

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Tel: 250-405-3466 / RJanes@jfkllaw.ca

Lawyers for the Plaintiff