

**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 HER MAJESTY THE
QUEEN IN RIGHT OF ONTARIO**

Defendants

**FACTUM OF THE MOVING PARTY,
THE HAUDENOSAUNEE DEVELOPMENT INSTITUTE**
(Motion for Joinder/Intervention)

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PART I – OVERVIEW

1. This motion seeks an order permitting participation of the Haudenosaunee Confederacy Chiefs in this action. The Haudenosaunee Confederacy Chiefs Council (the HCCC) is the collective of Chiefs of the Haudenosaunee Confederacy that has been gathering at Ohsweken for more than 230 years. The HCCC is empowered by and responsible at Haudenosaunee law to protect the interests of all Haudenosaunee.

2. The HCCC seeks for those interests to be represented in this litigation through the Haudenosaunee Development Institute (the HDI), a delegate formed by the Chiefs and appointed for this intervention pursuant to Haudenosaunee law and practices.

3. HDI seeks two orders according to its delegation: (a) an order granting HDI leave to intervene as a party under Rule 13.01 or, alternatively, adding HDI by joinder under Rule 5.03; and (b) an order appointing HDI (i) as a representative of the Haudenosaunee Confederacy Chiefs Council and (ii) as a representative of the Haudenosaunee Confederacy, pursuant to Rule 10.01.

4. The plaintiff's action seeks relief flowing from the Crown's breach of its fiduciary and/or treaty obligations, including under the Haldimand Proclamation of 1784. The Haldimand Proclamation will be interpreted at trial. On this motion, the expert evidence before the Court is consistent: the Haldimand Proclamation concerns rights of the Haudenosaunee Confederacy. The plaintiff's elected Chief admits that rights under the Haldimand Proclamation extend to people beyond the plaintiff's band list. The plaintiff's expert evidence in the action characterizes the Haldimand Proclamation as reflecting promises *to the Haudenosaunee*. Despite the subject matter, the Haudenosaunee Confederacy does not have a voice in the litigation.

5. The plaintiff is an *Indian Act* band comprised of members on its band list. The band list is controlled by Crown-Indigenous Relations and Northern Affairs Canada. The plaintiff is not the

Haudenosaunee Confederacy. It does not (and does not purport to) represent the Haudenosaunee people, a group far outnumbering the plaintiff band. Instead, the plaintiff seeks the benefit of the Haldimand Proclamation for only its members, to the exclusion of about three quarters of the Haudenosaunee population.

6. Conversely, the Chiefs of the Haudenosaunee Confederacy have a responsibility to all Haudenosaunee people. They represent an important constituency that is not presently represented in the action: the Haudenosaunee people at large.

7. The expert evidence before the Court is that the Chiefs of the Haudenosaunee Confederacy are “never supposed to be the ones to deal with external affairs”. Historically and today, they speak with foreign governments, for example, through delegates. Pursuant to Haudenosaunee law and this centuries-old practice, the HCCC has selected HDI as a delegate in respect of this litigation. HDI should be added as a party to the action to represent Haudenosaunee interests accordingly.

PART II – FACTS

A. The Action Concerns the Haldimand Proclamation and 1701 Treaty

8. The within action was commenced by the Six Nations of the Grand River Band of Indians (the “**SNGR Band**”) against the Attorney General of Canada (“**Canada**”) and His Majesty the King in right of Ontario (“**Ontario**”). The action concerns the interpretation of several treaties.

9. First, interpretation of the Haldimand Proclamation of 1784 (the “**Haldimand Proclamation**”) will be an issue at trial.¹ The Haldimand Proclamation concerns 950,000 acres of land (the “**Haldimand Tract**”) in respect of which the Crown “*authorize[d] and permit[ed]*” the “*Mohawk Nation and such others of the Six Nations Indians as wish to settle*” to “*take possession*

¹ Cross-Examination of Chief Mark Hill [“*M. Hill Cross*”], qq 211-212, pp 47-49, Transcript Brief [“*TB*”], Tab G, p 460.

and settle upon” for “them and their posterity... to enjoy for ever”.² The action alleges mismanagement by the British Crown (and, later, the Governments of Canada and Ontario) of the Haldimand Tract lands and monies gained by their improper sale and disposition.

10. Second, interpretation of the Nanfan/Fort Albany Treaty of 1701 (the “**1701 Treaty**”) will be an issue at trial, as is apparent from the excerpts of the SNGR Band’s expert reports appended to the motion record of the Mississaugas of the Credit First Nation.³ The 1701 Treaty has been judicially interpreted as being between the Haudenosaunee Confederacy and the British Crown.⁴

B. The Plaintiff, the Six Nations of the Grand River Band of Indians

11. The SNGR Band is a “band” under the *Indian Act*. It is a creature of Canadian statute. It is comprised of people registered to its band list (the “**SNGR Band List**”), which is controlled by Crown-Indigenous Relations and Northern Affairs Canada, a department of the Government of Canada.⁵ There are approximately 28,000 members on the SNGR Band List today.⁶

12. Since the 1924 imposition of the *Indian Act*, there has been a “council of the band” at Grand River (the “**SNGR Band Council**”), sometimes referred to as the “elected council”.⁷ About 22,000 of the 28,000 people on the SNGR Band List are eligible electors for the SNGR Band Council.⁸

² Affidavit of Richard Wayne Hill Sr (Jun. 10, 2022) [“**R. Hill Sr Affidavit**”] at para 52, Haudenosaunee Development Institute [“**HDI**”] Motion Record [“**MR**”] Volume [“**Vol**”] 1, Tabs 3 & 3C, pp 196 & 231.

³ See, e.g., excerpt of Report by Dr. Reginald Good titled “*Report on the Genesis and Significance of the Haldimand Proclamation, 1784*” dated March 30, 2022, Ex E to John Wilson Affidavit, Mississaugas of the Credit First Nation [“**MCFN**”] MR, Tab 3E, pp 223-236.

⁴ See generally *R v Ireland*, [1990] OJ No 2365 (Ont. CJ Gen. Div.): the 1701 Treaty is a treaty between the British and the “Confederacy of Iroquois Indians” (i.e., the Haudenosaunee Confederacy).

⁵ M. Hill Cross, qq 34-37, pp 12-13, TB, Tab G, p 451.

⁶ Affidavit of Chief Mark Hill (Nov. 2, 2022) [“**M. Hill Affidavit**”] at para 38, Six Nations of the Grand River Band of Indians [“**SNGR Band**”] Responding MR, Tab 1, p 15.

⁷ R. Hill Sr Affidavit at paras 62-64 (see also paras 65-73 for the historical context of Canada’s imposition of the elected council at Grand River), HDI MR Vol 1, Tab 3, pp 198-202.

⁸ M. Hill Affidavit at para 38, SNGR Band Responding MR, Tab 1, p 15.

13. Turnout for SNGR Band Council elections has always been low.⁹ The current SNGR Band Council Chief was elected with only 700 votes in favour (*i.e.* about 3.2% of eligible electors), in an election where only 2,065 votes were cast—a record turnout.¹⁰ The unchallenged evidence is that many Haudenosaunee do not view any *Indian Act* elected council as legitimate, turning instead to the centuries-old Haudenosaunee Confederacy system of governance that operates to this day.¹¹

14. The SNGR Band Council is prosecuting the action. People not on the SNGR Band List have no say in the SNGR Band Council’s conduct; their interests are not represented in the action.¹²

C. The Haudenosaunee Confederacy a.k.a. the “Six Nations”

i. The Haudenosaunee Confederacy

15. The Haudenosaunee Confederacy or *Wisk Nihohnohwhentsiake*, also known as the “Five Nations”, “Six Nations”, or “Iroquois Confederacy”, is a confederacy of Nations formed in time immemorial as a result of the “Great Peace” between the Mohawk, Oneida, Onondaga, Cayuga, and Seneca Nations.¹³ The Tuscarora Nation later joined the Confederacy in about 1722.¹⁴ People of the Haudenosaunee Confederacy are “Haudenosaunee” or “Six Nations” people.¹⁵ Being Haudenosaunee is and always has been matrilineal.¹⁶

⁹ R. Hill Sr Affidavit at para 62, HDI MR Vol 1, Tab 3, p 198; Re-examination of Richard Hill Sr, q 643, pp 199-200, TB, Tab F, p 445.

¹⁰ Affidavit of Colin Martin (Aug. 31, 2022) at para 34 & Ex A, HDI 2nd Supplementary [“*Supp*”] MR, Tabs 1 & 1A, pp 11 & 13.

¹¹ Affidavit of Colin Martin (Aug. 31, 2022) at paras 33-34, HDI 2nd Supp MR, Tab 1, p 11; Richard Hill Sr Affidavit at para 64, HDI MR Vol 1, Tab 3, p 199; Cross-examination of *Tekarontake* Paul Delaronde [“*P. Delaronde Cross*”], qq 51 & 74-76, pp 26-27 & 42, TB, Tab H, pp 476 & 480.

¹² M. Hill Cross, qq 80-81 & 207-210, pp 20 & 47, TB, Tab G, pp 453 & 460.

¹³ R. Hill Sr Affidavit at paras 13-18, HDI MR Vol 1, Tab 3, pp 185-187.

¹⁴ R. Hill Sr Affidavit at para 21, HDI MR Vol 1, Tab 3, p 188.

¹⁵ R. Hill Sr Affidavit at paras 22-23, HDI MR Vol 1, Tab 3, p 188.

¹⁶ M. Hill Cross, qq 127-128, pp 28-29, TB, Tab G, p 455.

16. The Haudenosaunee have governed themselves pursuant to Haudenosaunee law (the “Great Law of Peace”) for countless generations, since prior to European contact.

ii. The SNGR Band is not Synonymous with the Haudenosaunee or “Six Nations”

17. Registration with any band (in Canada) or Tribe (in the United States) has no bearing on whether someone is Haudenosaunee—people are Haudenosaunee (or are of any of the Six Nations, *e.g.*, Mohawk, or Oneida, or Onondaga) regardless of any registration with any *Indian Act* band or United States tribe.¹⁷ There are Haudenosaunee with no colonial registration.¹⁸

18. The plaintiff, the SNGR Band, is not the “Six Nations” at large. It is not the Haudenosaunee Confederacy. It is a “band” within the meaning of the *Indian Act* and is only representative of the individuals on the SNGR Band List.¹⁹ Chief Mark Hill of the SNGR Band Council confirmed that the SNGR Band is only a subset of the Haudenosaunee people.²⁰ It accounts for no more than about 28,000 of well over 100,000 Haudenosaunee people today.²¹

iii. Haudenosaunee Governance, the HCCC, and “Bench-Based” Decision Making

19. The Haudenosaunee Confederacy has always had a governance structure comprised of Chiefs and Clan Mothers.²² Each Nation has between 8 and 14 “Clans”, each with a Clan Mother and a Chief selected by that Clan Mother—Chiefs are not “hereditary”.²³ Chiefs are the leaders of each Clan and speak to their interests at deliberative meetings of the Chiefs of each Nation.²⁴

¹⁷ M. Hill Cross, qq 126 & 129-131, pp 28-29, TB, Tab G, p 455.

¹⁸ P. Delaronde Cross, q 28, pp 14-15, TB, Tab H, p 473.

¹⁹ M. Hill Cross, qq 80-81, p 20, TB, Tab G, p 453.

²⁰ M. Hill Cross, q 183, p 41, TB, Tab G, p 458.

²¹ Affidavit of Colin Martin (Aug. 31, 2022) at paras 26 & 29, HDI 2nd Supp MR, Tab 1, pp 9-10; M. Hill Affidavit at para 38, SNGR Band MR, Tab 1, p 15; Affidavit of Gail-Ava Hill (Nov. 1, 2022) at para 6, SNGR Band MR, Tab 2, p 401; Affidavit of Aaron Detlor (Aug. 31, 2022) at paras 7-10, HDI 2nd Supp MR Tab 2, pp 21-22.

²² R. Hill Sr Affidavit at para 25, HDI MR Vol 1, Tab 3, p 189.

²³ R. Hill Sr Affidavit at paras 11-13, HDI MR Vol 1, Tab 3, pp 185-186; Cross-Examination of Richard Wayne Hill Sr [“**R. Hill Cross**”], q 591, p 186, TB, Tab F, p 422.

²⁴ R. Hill Sr Affidavit at para 12, HDI MR Vol 1, Tab 3, p 185.

20. Each Chief sits as a member of both their Nation Longhouse (*e.g.*, the collection of the Mohawk Chiefs) and of what is known as “Grand Council” (the collective of Chiefs of all Nations),²⁵ where issues are debated and decided upon.²⁶ Grand Council has been operating for centuries, since prior to European Contact in North America, and continues to operate today.²⁷

21. Since shortly after the American Revolutionary War, the Chiefs of the Haudenosaunee Confederacy have sat at two “council fires”: one at Onondaga, in present-day New York, known as the “**Grand Council**”, and one at Ohsweken, in present-day Ontario, known as the Haudenosaunee Confederacy Chiefs Council (the “**HCCC**”).²⁸

22. All Chiefs of the Haudenosaunee, no matter where they sit, have a responsibility to all Haudenosaunee, wherever they live, and “a Chief that’s stood up or condoled at Grand River [Ohsweken] has the same authority... as a Chief who’s stood up at Onondaga.”²⁹ Generally speaking, however, the HCCC deals with Haudenosaunee matters involving the Crown.³⁰

23. It is at the heart of the HCCC’s mandate to protect the interests of the Haudenosaunee. The HCCC has responsibility and authority to make decisions and resolutions concerning Haudenosaunee treaty rights and interests; it can also delegate this authority, and has historically been diligent in doing so, especially for treaty-related negotiations.³¹

24. Decision-making at the Grand Council and HCCC uses a system of three “benches”—the “Elder Brothers” (Mohawk and Seneca Chiefs), the “Younger Brothers” (Oneida and Cayuga

²⁵ Cross-Examination of Brian Doolittle [“**B. Doolittle Cross**”], qq 333-339, pp 73-74, TB, Tab B, p 144-145.

²⁶ R. Hill Sr Affidavit at paras 27-28, HDI MR Vol 1, Tab 3, p 189.

²⁷ R. Hill Sr Affidavit at paras 25-27, HDI MR Vol 1, Tab 3, p 189.

²⁸ R. Hill Sr Affidavit at paras 30-31, HDI MR Vol 1, Tab 3, p 190.

²⁹ R. Hill Cross, q 297, pp 111-112, TB, Tab F, p 423.

³⁰ R. Hill Sr Affidavit at para 32, HDI MR Vol 1, Tab 3, p 190.

³¹ R. Hill Sr Affidavit at paras 33-34, 39-42, HDI MR Vol 1, Tab 3, pp 191-193.

Chiefs, with the Tuscarora speaking through the Cayuga), and the “Fire Keepers” (Onondaga Chiefs).³²

25. HCCC meetings are open to the public and all Haudenosaunee people and held regularly on the first Saturday of each month.³³ Chiefs and Clan Mothers have a responsibility to attend HCCC meetings.³⁴ A decision of the HCCC is rendered upon agreement of all three benches; accordingly, HCCC decision-making requires representation from a minimum of three Nations.³⁵

iv. The Centuries-long Haudenosaunee-Crown Treaty Relationship

26. The Haudenosaunee Confederacy has had a centuries-long treaty relationship with the Crown. The foundation of all treaty relationships between the Haudenosaunee Confederacy and the Crown is the Two Row Wampum treaty made in or about 1613.³⁶

27. The relationship between the Haudenosaunee and the British was established as early as 1664; in or about 1667, the Crown and the Haudenosaunee established what is known as the “Silver Covenant Chain”, symbolizing a relationship of respect, friendship, unity of mind, and peace.³⁷

28. Well before 1701, the Haudenosaunee Confederacy had established settlements throughout modern-day southern Ontario including within the Haldimand Tract. In a manifestation of the Silver Covenant Chain, Chiefs representing the Haudenosaunee Confederacy entered into the 1701 Treaty whereby the British promised to protect Haudenosaunee hunting rights in perpetuity in a large area including all of present-day southwestern Ontario.³⁸

³² R. Hill Sr Affidavit at paras 35-37, HDI MR Vol 1, Tab 3, pp 191-192.

³³ R. Hill Cross, q 210, p 68, TB, Tab F, p 412.

³⁴ R. Hill Cross, qq 126, 129 & 145-148, pp 40-41 & 46-47, TB, Tab F, pp 405 & 407.

³⁵ R. Hill Sr Affidavit at para 35, HDI MR Vol 1, Tab 3, p 191; R. Hill Cross, qq 192-195, pp 61-63, TB, Tab F, pp 410-411.

³⁶ R. Hill Sr Affidavit at para 44, HDI MR Vol 1, Tab 3, p 194.

³⁷ R. Hill Sr Affidavit at para 45, HDI MR Vol 1, Tab 3, p 194.

³⁸ R. Hill Sr Affidavit at para 46, HDI MR Vol 1, Tab 3, p 194.

29. The conclusion of the American Revolutionary War in the late 1700s resulted in the loss of significant Haudenosaunee territory to the newly formed United States of America. British military leaders had promised compensation to the Haudenosaunee for their losses.³⁹ Frederick Haldimand for the Crown, in conjunction with Joseph Brant on behalf of the Haudenosaunee, took part in identifying suitable territory as such compensation—it is unchallenged that Brant’s expressed intent in identifying that suitable territory was that any such land would be obtained for the Haudenosaunee and revenues therefrom would be for the benefit of all Haudenosaunee people.⁴⁰ On October 25, 1784, Haldimand made the Haldimand Proclamation.⁴¹

D. The Haldimand Proclamation and the Six Nations Collective: Beyond Solely the Plaintiff

30. The evidence from all of the parties is consistent: the Haldimand Proclamation concerns the rights of more people than are represented by the plaintiff, the SNGR Band. Accordingly, the claims in the SNGR Band’s case concern more people than are represented by the current plaintiff.

31. The uncontested evidence is that under Haudenosaunee law, land is held in common for all Haudenosaunee who, regardless of where they live, are entitled to use of and residence upon all Haudenosaunee territories.⁴² Haudenosaunee land matters affect all Haudenosaunee.⁴³

32. The only expert evidence tendered on the intervention motions is that the Haldimand Proclamation is for the benefit of all Haudenosaunee.

33. HDI’s expert witness, Richard Wayne Hill, Sr., testified that “it is the citizens of the Haudenosaunee Confederacy—*i.e.* the Haudenosaunee—who are the beneficiaries of and/or

³⁹ R. Hill Sr Affidavit at para 49, HDI MR Vol 1, Tab 3, p 195.

⁴⁰ R. Hill Sr Affidavit at paras 50 & 53, HDI MR Vol 1, Tab 3, p 196.

⁴¹ R. Hill Sr Affidavit at para 52 & Ex C, HDI MR Vol 1, Tabs 3 & 3C, pp 196 & 231.

⁴² Affidavit of Colin Martin (Aug. 31, 2022) at para 24, HDI 2nd Supp MR, Tab 1, p 6.

⁴³ R. Hill Cross, q 292, p 109, TB, Tab F, p 422.

counterparty [to] the Haldimand Proclamation/Treaty”.⁴⁴ His evidence was unshaken on cross-examination, where counsel for the SNGR Band put it to Mr. Hill that the Haldimand Proclamation is only for the benefit of those that “*wish[ed] to settle*” at Grand River (*i.e.*, not the Haudenosaunee Confederacy at large); Mr. Hill’s evidence was to the contrary: “there is no deadline on this”.⁴⁵

34. Mr. Hill’s evidence is consistent with the SNGR Band’s expert evidence tendered in the action, which confirms that there is no temporal limit as to when members of the Six Nations (*i.e.* the Haudenosaunee) must “wish to settle” at in the Haldimand Tract—Haudenosaunee people can “avail themselves of their share... whenever they may please”:

[...] Six Nations allies living south of the Great Lakes could avail themselves of their share in the Haldimand Proclamation lands **whenever they “may please to relinquish their Possessions in the United States and claim it.”**

This term confirmed Frederick Haldimand’s undertaking to **protect the Six Nations relocated sovereign territory on the Grand River, under British protection “as long as an English man remains in this Province.”**⁴⁶ (*emphasis added*)

35. Mr. Delaronde, the expert witness put forward by Men’s Fire, characterizes the “true collective rights-holders in this action” as the Haudenosaunee people.⁴⁷ Regarding bands, he said:

This idea of Bands, and so on and so forth, and ownership and territorial rights, or whatever you want to call it, that is the *Indian Act*. That is still not us. No matter how hard they try to ram that down our throats, we do not have to accept that. We know who we are. We know how we look at this land. And **for anybody to say they and only they have the say on a certain part of our mother [the land], it is unacceptable to us.**⁴⁸ (*emphasis added*)

⁴⁴ R. Hill Sr Affidavit at para 53, HDI MR Vol 1, Tab 3, p 196; see also, *e.g.*, Affidavit of *Tekarontake* Paul Delaronde at para 26, Men’s Fire MR, Tab 3, p 59.

⁴⁵ R. Hill Cross, qq 513-514, pp 168-169, TB, Tab F, p 437.

⁴⁶ Excerpt from Report of Dr. Reginald Good titled “*Report on the Genesis and Significance of the Haldimand Proclamation, 1784*” dated March 30, 2022, Ex E to John Wilson Affidavit, MCFN MR Tab 3E, p 245.

⁴⁷ Affidavit of *Tekarontake* Paul Delaronde at para 1, Men’s Fire MR, Tab 3, pp 52-53.

⁴⁸ P. Delaronde Cross, q 44, pp 21-22, TB, Tab H, p 474-475.

36. The SNGR Band’s evidence contradicts its position that the sole beneficiary under the Haldimand Proclamation is the SNGR Band. The current Chief of the SNGR Band admits that rights under the Haldimand Proclamation are *not restricted to members of the SNGR Band*:

Q. And you told me that the Haldimand Proclamation is not -- that the rights under the Haldimand Proclamation are not limited to simply the people on the Band List?

A. Right.⁴⁹

37. The SNGR Band’s expert evidence in the action is consistent: the Haldimand Proclamation reflects promises *to the Haudenosaunee* (not the SNGR Band) in view of the treaty relationship *with the Haudenosaunee*:

The Haldimand Proclamation, considered in its immediate historical context, **reflected delivery by the Crown on promises first made to the Haudenosaunee** by Colonel Guy Johnson at Oswego in July 1775. Considered in its deeper historical context, we recognize that **the promises made by Colonel Guy Johnson in July 1775 may be traced directly back to the 1701 request by the Haudenosaunee** for Crown protection of their “Beaver Hunting Grounds” in modern southern Ontario. While the Haldimand Proclamation constituted only a small fraction of the lands encompassed in the July 19, 1701 Haudenosaunee provisional deed to the Crown (and depicted on the associated “Clowes Map,” as discussed in Section 4 below), **the land allocated by the Crown to the Haudenosaunee in the Grand River Valley was part of a much deeper historical context involving the Crown’s recognition of Haudenosaunee sovereignty, and its obligation** to provide protection for the Haudenosaunee **within the Covenant Chain alliance.**⁵⁰ (*emphasis added*)

38. It is no surprise that the evidentiary consensus is that the Haldimand Proclamation is not solely for the benefit of a single *Indian Act* band: it is from 1784. It predates Canada’s formation by 83 years and predates the *Indian Act*’s attempted displacement of the HCCC by 140 years. The

⁴⁹ M. Hill Cross, q 219, p 50, TB, Tab G, p 461; see also qq 213-214, p 49, TB, Tab G, p 460.

⁵⁰ See excerpt of Report of Dr. Jon Parmenter “*Tehontatenentsonterontahkhwa, ‘They Hold Each Other By the Arm’: The Covenant Chain Relationship between the Haudenosaunee and the English Crown from Its Origins to the Haldimand Proclamation of 1784*” dated March 2022, Ex E to John Wilson Affidavit, MCFN MR Tab 3E, p 258.

Haldimand Proclamation was not negotiated by or for the benefit of a to-be-determined “band list” controlled by the government and legislation of a foreign Country that did not yet exist.

E. Recent Recognition of the HCCC Despite its Historic Suppression by the Crown

39. In the face of efforts by the HCCC to address issues relating to land, jurisdiction, and trust fund mismanagement at the Federal level, Canada imposed the band council system upon the Haudenosaunee people at Ohsweken in 1924.⁵¹ In October 1924, the RCMP occupied the Council House to forcibly remove the HCCC and inaugurate the *Indian Act* system.⁵²

40. However, the HCCC continued to exist, and nearly 100 years later, Canada has come to formally recognize its historic suppression and ignorance of the HCCC—like other “traditional” Indigenous governments.⁵³

41. Canada has, through enactment of the *United Nations Declaration on the Rights of Indigenous Peoples Act* (“**UNDRIP Act**”), committed to Indigenous Peoples’ participation in decision-making matters, through their own representatives, using their own procedures, under their own representative institutions, and in line with their own customs, traditions, rules, and legal systems⁵⁴—**precisely** consistent with the recognition of HCCC and its delegate(s). Canada has correspondingly recognized “that the *Indian Act* is a colonial-era law designed to exert control over the affairs of First Nations, and... will never be fully aligned with [*UNDRIP*]”.⁵⁵

42. Both Canada and Ontario have expressly recognized the HCCC and its delegates as representative institutions for engagement where Haudenosaunee rights are concerned. Ontario’s

⁵¹ R. Hill Sr Affidavit at para 53, HDI MR Vol 1, Tab 3, p 199.

⁵² R. Hill Sr Affidavit at para 73, HDI MR Vol 1, Tab 3, p 202.

⁵³ Supp Affidavit of Brian Doolittle (Jul. 6, 2022) at para 12 & Ex E, HDI Supp MR, Tabs 1 & 1E, pp 4, 26.

⁵⁴ *United Nations Declaration on the Rights of Indigenous Peoples Act*, SC 2021, c 14, s 4(a), arts 18-19.

⁵⁵ See Draft Action Plan to Implement *UNDRIP Act* at 16, online at < https://www.justice.gc.ca/eng/declaration/ap-pa/ah/pdf/UNDA_Draft_Action_Plan.pdf>.

Ministry of Energy, Northern Development and Mines has, for example, recognized the need for engagement with the HCCC in line with the honour of the Crown and the duty to engage, and that engagement must take place through HDI, HCCC’s delegate.⁵⁶ Canada’s Ministry of Transport has similarly committed to “engage and consult with the HCCC through the HDI as its agent” including in respect of the creation of high frequency rail in the Toronto-Quebec corridor.⁵⁷

F. The Haudenosaunee Development Institute (“HDI”) and Delegation by the HCCC

i. HCCC’s Formation of HDI, and HDI’s Mandate and Finances

43. The Haudenosaunee Development Institute (“**HDI**”) was formed by the HCCC in 2007.⁵⁸ HDI is not incorporated under Ontario or Canadian Law.⁵⁹ Any authority exercised by HDI to represent the Haudenosaunee people is derived from the HCCC’s authority to represent the Haudenosaunee people.⁶⁰ Its status as a delegate of the HCCC is well known—HDI is a Haudenosaunee entity formed by the HCCC and which represents it where delegated.⁶¹

44. HDI’s primary mandate is to facilitate meaningful engagement with the HCCC in respect of Haudenosaunee lands.⁶² On behalf of the HCCC, HDI processes applications for development on Haudenosaunee lands and enters into agreements with organizations and governments to protect land rights and provide resources to further facilitate engagement with the HCCC.⁶³

45. HDI has been expressly recognized by both Canada and Ontario. See paragraph 42, above.

⁵⁶ Affidavit of Brian Doolittle (Jun. 10, 2022) [“**B. Doolittle Affidavit**”] at para 23 & Ex G, HDI MR Vol 1, Tabs 2 & 2G, p 22.

⁵⁷ B. Doolittle Affidavit at para 23 & Ex H, HDI MR Vol 1, Tabs 2 & 2H, p 22.

⁵⁸ B. Doolittle Affidavit at para 13, Ex B & C, HDI MR Vol 1, Tabs 2, 2B & 2C, pp 3, 36, & 38.

⁵⁹ Affidavit of Richard Saul (Feb. 6, 2023) [“**R. Saul Affidavit**”] at para 13, HDI Responding MR in Men’s Fire Motion, Tab 1, p 5.

⁶⁰ Affidavit of Aaron Detlor (Aug. 31, 2022) at paras 23-24, HDI 2nd Supp MR, Tab 2, p 25.

⁶¹ See, e.g., M. Hill Cross, qq 334-335, pp 72-73, TB, Tab G, p 466.

⁶² Supp Affidavit of Brian Doolittle (Jul. 6, 2022) at paras 4-5, HDI Supp MR, Tab 1, p 2; Affidavit of Aaron Detlor (Aug. 31, 2022) at para 24, HDI 2nd Supp MR, Tab 2, p 25.

⁶³ Affidavit of Brian Doolittle at paras 19-20, HDI MR Vol 1, Tab 2, p 26.

46. HDI's generation of revenue is critical—neither HCCC nor HDI is funded by the Crown, unlike institutions under the *Indian Act* system.⁶⁴ HDI's funds are used to further its engagement mandate and for various Haudenosaunee community initiatives.⁶⁵ For example, they have been directed toward, among other things, language programs, longhouse expenditures, daycare centres, salaries for community members, land for HCCC, HDI, and community use, and for litigation.⁶⁶ HDI's expenditures are approved by the HCCC.⁶⁷

47. HDI is audited annually, and the results of those audits presented to the HCCC Chiefs and Clan Mothers at a multi-day workshop.⁶⁸ All Chiefs and Clan Mothers have a standing invitation to weekly HDI staff meetings, and there is Chief/Clan Mother attendance at most such meetings.⁶⁹ Dissemination of information into the broader community is via Clan Mothers to their Clans.⁷⁰

48. All of HDI's financial statements since its formation (and those of corporations formed by HDI) have been produced on this motion.⁷¹

ii. The HCCC Appointed HDI to Represent Haudenosaunee Interests in this Action

49. On April 2, 2022, HCCC appointed HDI to represent the interests of the Haudenosaunee Confederacy in this litigation.⁷² This is reflected in HCCC Council minutes of April 2, 2022,⁷³ two

⁶⁴ See Affidavit of Gail Ava Hill at Ex R, SNGR Band Responding MR, Tab 3R, p 1124.

⁶⁵ R. Saul Affidavit at para 50, HDI Responding MR in Men's Fire Motion, Tab 1, p 13.

⁶⁶ R. Saul Affidavit at para 50, HDI Responding MR in Men's Fire Motion, Tab 1, p 13; Cross-Examination of Richard Saul, qq 256-257 & 316-318, pp 60 & 71, TB, Tab A, pp 16 & 19.

⁶⁷ B. Doolittle Cross, qq 164-167, p 31, TB, Tab B, p 134.

⁶⁸ R. Saul Affidavit at para 40, HDI Responding MR, Tab 1, pp 10-11.

⁶⁹ R. Saul Affidavit at paras 43-44, HDI Responding MR, Tab 1, p 11.

⁷⁰ R. Hill Cross, qq 311-313, pp 118-120, TB, Tab F, p 425.

⁷¹ R. Saul Affidavit at paras 15-18 & 23-25, HDI Responding MR in Men's Fire Motion, Tab 1, pp 5-7; Affidavit of Carol Fung (Apr. 10, 2023) [*"C. Fung Affidavit"*] at Ex B4-B6, HDI 5th Supp MR, Tabs 1B4-1B6, pp 19-314.

⁷² B. Doolittle Affidavit at paras 24-26, HDI MR Vol 1, Tab 2, pp 29-30.

⁷³ C. Fung Affidavit at Ex C1, HDI 5th Supp MR, Tab 1C1, pp 320-321.

letters from the HCCC to HDI in June and July 2022,⁷⁴ a July 25, 2022 HCCC press release,⁷⁵ and an April 6, 2022 letter from the HCCC to Canada’s Minister of Crown-Indigenous Relations.⁷⁶

50. Delegation by the Confederacy Chiefs is a core principle of Haudenosaunee Law.⁷⁷ The evidence from Mr. Delaronde, the expert witness tendered by Men’s Fire, was that *Chiefs “are never supposed to be the ones to deal with external affairs”* and that, instead, others are made a “bundle” (instructions) to go “deal with the outside” and “do whatever has to be done”, bringing information back for decisions to be made within the Circle Wampum.⁷⁸

51. That is precisely what has happened with HDI. It has been given instructions by the HCCC and tasked with intervening in this action to represent the interests of the Haudenosaunee.⁷⁹ HDI acts at the direction of the HCCC and under its authority—it communicates to the parties and the Court for the HCCC, it reports to the Chiefs and Clan Mothers, and has a direct responsibility to the Chiefs, Clan Mothers and Haudenosaunee Confederacy at large, pursuant to its delegation.⁸⁰

G. Broad Notice of HDI’s Motion

52. In addition to dissemination through the long-established participatory practices of the Haudenosaunee Confederacy (*e.g.*, open council meetings, dissemination through Clan Mothers),⁸¹ HDI gave broad written notice of its appointment and motion to intervene in late

⁷⁴ Supp Affidavit of Brian Doolittle (Jul. 6, 2022) at Ex A, HDI Supp MR, Tab 1A, p 8; C. Fung Affidavit at Ex C2, HDI 5th Supp MR, Tab 1C2, p 322.

⁷⁵ M. Hill Affidavit at Ex J, SNGR Band Responding MR, Tab 1J, p 241.

⁷⁶ Letter from *Hohahes* Leroy Hill (HCCC Secretary) to The Honourable Marc Miller dated April 6, 2022, B. Doolittle Affidavit at Ex I, HDI MR Vol 1, Tab 2I.

⁷⁷ R. Hill Affidavit at paras 34 & 39-42, HDI MR Vol 1, Tab 3, pp 191-193.

⁷⁸ P. Delaronde Cross, q 116, pp 88-89 (*emphasis added*), TB, Tab H, pp 491-492.

⁷⁹ Cross-Examination of Aaron Detlor (March 24, 2023), qq 569-571, pp 151-152, TB, Tab I, p 577.

⁸⁰ Cross-Examination of Aaron Detlor (March 24, 2023), qq 574-585, pp 155-157, TB, Tab I, p 578.

⁸¹ See, *e.g.*, R. Hill Cross, q 311, pp 118-119, TB, Tab F, p 425.

September 2022, as ordered by the Court on consent (the “**Notice**”).⁸² The Notice was given to the HCCC, Grand Council, Haudenosaunee longhouses, band/tribal councils in Haudenosaunee territories, and via publication in seven specific newspapers.⁸³ Similar notice was never provided, until early 2023, in respect of the plaintiff’s claim, and the details of its position (*i.e.*, in its expert reports) have never been provided other than to the defendants.

53. Recipients of the Notice were asked to advise if they wished to participate in HDI’s motion.⁸⁴ HDI received responses from eight individuals and entities, and only one (the “Men’s Fire of the Grand River Territory”) expressed an intention to participate in the motion.⁸⁵

54. Numerous respondents to the Notice emphasized the need for Haudenosaunee representation in the litigation. For example, both longhouses stated that Haudenosaunee involvement was necessary. The Mohawk Nation Council of Chiefs wrote:

We recognize the deep importance of the matter before the court to all Haudenosaunee. While the land involved is restricted to the Grand River Territory, we all share an interest in that land. **We are all going to be affected by the court’s findings of fact, law, principle and precedent.**⁸⁶

55. Both the Mohawk and Oneida Nation Longhouses (whose Chiefs are also part of the HCCC, and each of which had a Chief present at the HCCC’s April 2, 2022 Council)⁸⁷ did raise concerns, but HCCC has since been in contact with each to address those concerns and neither has

⁸² Affidavit of Thomas Dumigan (Sept. 26, 2022), HDI 3rd Supp MR, Tab 3, pp 14-15; Affidavit of Dylan Gibbs (Sept. 27, 2022), HDI 3rd Supp MR, Tab 4, pp 17-20; Affidavit of Jonathan Martin (Sept 30, 2022), HDI 3rd Supp MR, Tab 5, pp 22-37; Affidavit of Jonathan Martin (Oct 3, 2022), HDI 3rd Supp MR, Tab 6, pp 38-42.

⁸³ See Affidavit of Jonathan Martin (Sept 30, 2022), HDI 3rd Supp MR, Tab 5, pp 22-37 & Affidavit of Jonathan Martin (Oct 3, 2022), HDI 3rd Supp MR, Tab 6, pp 38-42.

⁸⁴ Endorsement of Justice Sanfilippo dated September 21, 2022, HDI 3rd Supp MR, Tab 1, p 7.

⁸⁵ Affidavit of Karizma Defreitas-Barnes (Nov. 3, 2022) [*“K. Defreitas-Barnes Affidavit”*] at Ex A-H, HDI 3rd Supp MR, Tabs 7A-7H, pp 48-98. (Responses were from 3 individuals, 2 band councils, 2 longhouses, and the Men’s Fire.)

⁸⁶ See K. Defreitas-Barnes Affidavit, HDI 3rd Supp MR, Tab 7E, p 83 (*emphasis added*). Similar comments were made by the Oneida Nation Council of Chiefs – see K. Defreitas-Barnes Affidavit, HDI 3rd Supp MR, Tab 7F, p 86.

⁸⁷ B. Doolittle Cross, qq 333-339, pp 73-74, TB, Tab B, pp 144-145.

expressed further opposition.⁸⁸ Only HDI, as appointed by the HCCC, has come forward to represent the interests of the Haudenosaunee in this action.

PART III – ISSUES

56. The issues before the Court on this motion are:

- (i) Should HDI, as delegated by the HCCC, be granted leave to intervene as a party to this proceeding, or be joined as a necessary party?
- (ii) Should the Court appoint HDI as representative, in this proceeding, of (a) the HCCC and (b) the Haudenosaunee Confederacy?

PART IV – LAW AND ARGUMENT

A. The Issue on this Motion is Party Status, not Determining the Collective Rightsholder

57. The issue on this motion is whether to grant party status to HDI, as appointed by the HCCC to represent the interests of the HCCC and the Haudenosaunee Confederacy.

58. The question on this motion is **not** whether the SNGR Band or the Haudenosaunee are, in fact, the proper collective under the Haldimand Proclamation. That is beyond the scope of this motion, and is a central issue for a trial. To determine the identity of the collective rightsholder under the Haldimand Proclamation—whether the citizens of the Haudenosaunee Confederacy, the SNGR Band, or otherwise—would be to interpret a treaty.

i. Interpretation of the Haldimand Proclamation Requires a Trial

59. Interpreting a treaty is a complex and, in this case, extremely consequential exercise. It requires the Court to consider the historical, political, and cultural context in which the treaty was negotiated, concluded, and committed to writing. A treaty, as a written document, records an

⁸⁸ Supp Affidavit of Aaron Detlor (Feb. 8, 2023) at paras 3-4, HDI 4th Supp MR, Tab 1, pp 1-2.

agreement that has already been reached orally and does not always record the full extent of the oral agreement. Words in a treaty must be interpreted in the sense that they would have been understood by the beneficiaries at the time of signing.⁸⁹ Identifying those beneficiaries—*i.e.* the collective holding the communal treaty rights—is a difficult exercise and may require a trial.^{90,91}

60. In this case, it does require a trial: fulsome evidence of this necessary context, intention, and understanding is complex and is not before Court. For example, HDI understands that the interpretation of the Haldimand Proclamation is the subject of numerous lengthy expert reports tendered in the main action but not provided to HDI or the HCCC. It would be inappropriate for the Court to engage in this consequential interpretative exercise on this motion, without a trial.

61. Accordingly, the SNGR Band’s suggestion that HDI’s motion should be dismissed because, it says, the band it is the sole rights holding collective (or that the claim is all about a “reserve”, to the same end) should be rejected. There is no question that the claims in the action flow, ultimately, from the Haldimand Proclamation, and to accept the SNGR Band’s position would be to interpret a 275-year-old treaty in an evidentiary vacuum on a paper record.

ii. The SNGR Band’s Position that the SNGR Band is Sole Beneficiary is Flawed

62. Even if the Court were to determine the beneficiaries of the Haldimand Proclamation on this motion (it should not), the evidence does not support the SNGR Band as sole beneficiary.

63. First, the SNGR Band’s position is inconsistent with evidence from **all parties** who tendered evidence on this motion, including the SNGR Band itself. See paragraphs 31 to 38, above: the only expert evidence is that the Haldimand Proclamation reflects a promise to, and is for the

⁸⁹ *R v Badger*, [1996] 1 SCR 771 at [para 52](#) (SCC); *R v Morris*, 2006 SCC 59 at [para 18](#).

⁹⁰ *William v British Columbia*, 2012 BCCA 285 at [para 51](#) [*William*], rev’d on other grounds in *Tsilhqot’in Nation v British Columbia*, 2014 SCC 44.

⁹¹ *Kelly v Canada (Attorney General)*, 2013 ONSC 1220 at [para 59](#).

benefit of, all Haudenosaunee, and the SNGR Band's Chief admitted that the beneficiaries under the Haldimand Proclamation are broader than the SNGR Band's membership.

64. Second, the SNGR Band's position presupposes, incorrectly, the rights at issue in the action, which flow from the Haldimand Proclamation, are necessarily vested with a "band". It is well-established that an *Indian Act* band is not necessarily the proper entity to assert a treaty right,⁹² and rights will not always be allocated along band lines.⁹³ The proper party with the standing to assert a treaty rights claim is the collective that is the rightsholder.⁹⁴

65. The perceived importance of "bands" has already been rejected by Canadian Courts. In *William*, the British Columbia Court of Appeal found that the Tsilhqot'in Nation was the collective, not any of the six different "bands" into which its people were later organized. Bands are a creation of federal bureaucracy, organizationally convenient for the Crown. They do not alter the identity of Indigenous people or affect their collective nature, which lies in shared language, customs, traditions, and historical experiences, regardless of later division into "bands".⁹⁵

[56] In British Columbia today, **the combined effect of the reserve creation process and the *Indian Act* has tended to magnify the importance of bands.** The judge discounted the idea that rights should be seen as being held at the level of the band:

[469] The setting aside of reserves and the establishment of bands was a convenience to government at both levels. The creation of bands did not alter the true identity of the people. Their true identity lies in their Tsilhqot'in lineage, their shared language, customs, traditions and historical experiences. **While band level organization may have meaning to a Canadian federal bureaucracy, it is without any meaning in the resolution of Aboriginal title and rights for Tsilhqot'in people.**

⁹² *Kelly v Canada (Attorney General)*, 2013 ONSC 1220 at [para 58](#), citing *Kwicksutaineuk/Ah-Kwa-Mish First Nation v British Columbia (Minister of Agriculture and Lands)*, 2012 BCCA 193 at [para 77](#).

⁹³ *William* at [para 148](#), rev'd on other grounds in *Tsilhqot'in Nation v British Columbia*, 2014 SCC 44.

⁹⁴ *Kelly v Canada (Attorney General)*, 2013 ONSC 1220 at [para 57](#).

⁹⁵ *William* at [paras 3, 56-57, 150 & 344](#), rev'd on other grounds in *Tsilhqot'in Nation v British Columbia*, 2014 SCC 44. See also *Xeni Gwet'in First Nations v British Columbia*, 2007 BCSC 1700.

66. Just like in *William*, the organization of Haudenosaunee people into separate “bands” and “tribes” is of no moment. Haudenosaunee people are Haudenosaunee regardless.⁹⁶

67. The SNGR Band’s suggestion that the claim in the action is purely “reserve-based” such that only the SNGR Band could have rights is without merit, and ignores the evidence as to the broad beneficiaries under the Haldimand Proclamation upon which the plaintiff’s claim is based. Adopting the SNGR Band’s position would extinguish the rights all Haudenosaunee people except those on the SNGR Band List, simply because today there happens to be an *Indian Act* reserve within the Haldimand Tract. Regardless, whether the Haldimand Proclamation established a “reserve”, and for whom, is a complex and consequential question beyond the scope of this motion.

B. HDI should be Joined as a Party or Granted Leave to Intervene as a Party

68. As part of the underlying action, the Court will have to determine, *inter alia*, the scope, meaning, and beneficiaries of the Haldimand Proclamation.^{97,98} The uncontroverted evidence on this motion is that the Haldimand Proclamation, which concerns land, is for the benefit of and concerns all Haudenosaunee; this is consistent with the plaintiff’s expert evidence in the action which characterizes the Haldimand Proclamation as reflecting promises *to the Haudenosaunee*.

69. The HCCC is the “arm” of the governance structure of the Haudenosaunee Confederacy that deals with Haudenosaunee matters involving the Crown and has done so for over 230 years.⁹⁹

It has the responsibility and authority to represent Haudenosaunee interests and has delegated HDI

⁹⁶ M. Hill Cross, qq 126 & 129-131, p 28-29, TB, Tab G, p 455.

⁹⁷ The plaintiff pleads that: (1) the Crown has repeatedly breached its fiduciary duties and treaty obligations to the Six Nations and should be held liable for those breaches; (2) the Haldimand Proclamation constitutes a treaty within the meaning of section 35 of the *Constitution Act*, 1982; (3) the Crown specifically breached its treaty obligations under the Haldimand Proclamation; and (4) the Six Nations have been deprived of their property rights by the Crown’s failure to fulfil its treaty obligations under the Haldimand Proclamation. See Further Amended Statement of Claim dated June 10, 2020, at paras 7, 15, 17, 23, & 82(d).

⁹⁸ M. Hill Cross, qq 211-212, pp 47-49, TB, Tab G, p 460.

⁹⁹ R. Hill Sr Affidavit at paras 26-29, HDI MR Vol 1, Tab 3, p 6.

to intervene in this litigation on its behalf (and therefore on behalf of the interests of the Haudenosaunee). HDI's participation, as delegate of the HCCC, can be achieved either by joinder under Rule 5.03 or intervention under Rule 13.01. HDI satisfies both tests.

i. HDI Satisfies All Three Criteria for Intervention Under Rule 13.01

70. Rule 13.01(1) provides that a person may seek leave to intervene as an added party if:

(i) they have an interest in the subject matter of the proceeding;

(ii) the person may be adversely affected by a judgment in the proceeding; or

(iii) there exists between the person and one or more of the parties to the proceeding a question of law or fact in common with one or more of the questions in issue in the proceeding.¹⁰⁰

71. These criteria are not conjunctive; only one must be met. Subsequently, the Court considers whether the intervention will unduly delay or prejudice the determination of the parties' rights.¹⁰¹

72. HDI, as delegate of the HCCC, satisfies *all three* criteria. **First**, the HCCC and the Haudenosaunee Confederacy **have an interest** in the subject matter. The action involves the interpretation of at least the 1701 Treaty and the Haldimand Proclamation, each reflecting agreements between the Crown and the Haudenosaunee Confederacy. The plaintiff has acknowledged the HCCC's interest, including by its purported efforts to work with the HCCC to present a side-by-side "united" front in respect of this litigation and, at one point, by its deference to the HCCC which "led negotiations with Canada" in respect of the issues in the action.^{102,103} The

¹⁰⁰ [Rules of Civil Procedure](#), RRO 1990, Reg 194, [r. 13.01\(1\)](#).

¹⁰¹ [Rules of Civil Procedure](#), RRO 1990, Reg 194, [r. 13.01\(2\)](#).

¹⁰² M. Hill Cross, qq 237 & 246, pp 53 & 55, TB, Tab G, pp 461-462.

¹⁰³ Affidavit of Gail Ava Hill at paras 28-29, SNGR Band Responding MR, Tab 3, pp 408-409.

plaintiff also admits there are disputes about interpretation of the Haldimand Proclamation, and that rights thereunder flow to people beyond the SGNR Band List; when asked whether the HCCC has an interest in this litigation, the plaintiff’s elected Chief testified “[w]e are all Haudenosaunee.”¹⁰⁴ It would be disingenuous for the plaintiff to claim the HCCC has no interest.

73. **Second**, the HCCC and the Haudenosaunee Confederacy **may be adversely affected** by a judgment in the action where Haudenosaunee treaties will be interpreted, especially given the proposed interpretation by the SNGR Band that it, one band, is the sole beneficiary to the exclusion of all other Haudenosaunee.

74. **Third, the subject matter of the action, both legally and factually, is the same** as in the century-old dispute between the HCCC (and Haudenosaunee Confederacy) and the Crown. The Haudenosaunee dispute with the Crown is based upon the same historical facts and alleged wrongs.

75. The bar for intervention is low. This is public interest litigation, involving a large collective of indigenous peoples and the Crown, concerning historical wrongs and constitutionally protected rights going back over 200 years. Courts have relaxed the rules governing motions for leave to intervene in constitutional cases like this, acknowledging a lighter burden on potential intervenors to ensure that “the court will have the benefit of various perspectives of the historical and sociological context...”¹⁰⁵ The scope of intervenors can be expanded to include everything that could reasonably assist the Court in reaching a decision.¹⁰⁶ The HCCC undoubtedly has a voice—both positionally and in evidence—that is capable of such assistance. Its perspective is critical.

¹⁰⁴ M. Hill Cross, q 237, p 55, TB, Tab G, p 461.

¹⁰⁵ *Authorson (Guardian of) v Canada (Attorney General)*, [2001] OJ No 2768 (Ont. CA) at [para 7](#).

¹⁰⁶ *Gitxaala v British Columbia (Chief Gold Commissioner)*, 2023 BCSC 29 at [para 26](#).

ii. No Undue Delay or Prejudice from HDI Intervention

76. Not only does HDI satisfy Rule 13.01(1), but its intervention will not unduly delay or prejudice the determination of the rights of the parties.

77. *No Undue Delay*: HDI's intervention will not unduly delay the determination of the rights of the parties to the proceeding. Rather, HDI's participation will enable finality and will avoid a multiplicity of proceedings on the exact same subject matter—a legitimate concern raised by counsel for Ontario in submissions to the Court as early as September 2022.

78. As it stands, any resolution of the action as between the Crown and the SNGR Band will not resolve the Crown's dispute with the Haudenosaunee Confederacy. Denying HDI's request to be added as a party to speak for the interests of the HCCC and Haudenosaunee Confederacy will likely cause *further* delay, necessitating a separate proceeding based on the same facts and issues.

79. The plaintiff alleges delay by the HCCC in taking steps to intervene, but any alleged delay is explained and justified. First, this action was dormant for a period and, at one point, the HCCC was *leading* negotiations with Canada in respect of the issues in the action, obviating the need to intervene.¹⁰⁷ Second, the undisputed evidence on the motion demonstrates the significant historic hurdles to intervention by the HCCC or on its behalf: **(1)** the HCCC has been historically ignored and suppressed by the Crown; **(2)** the HCCC (including through HDI) has been since 2007 working to both (i) regain the recognition of the Federal Government (successfully), following its historic suppression, and (ii) garner resources to advance Haudenosaunee interests in respect of land rights issues, such for the immensely complex action before the Court here; and **(3)** circumstances

¹⁰⁷ Affidavit of Gail-Ava Hill (Nov. 1, 2022) at paras 28-29, SNGR Band Responding MR, Tab 3, pp 408-409.

changed dramatically with the enactment of the *UNDRIP Act* in June 2021, which provides long overdue recognition and a framework for the HCCC to pursue this intervention.¹⁰⁸

80. Further, any alleged delay can be just as easily attributed to the plaintiff itself. The plaintiff has continuously refused to share documentary productions or expert reports from the underlying action. Without access to these materials, the HCCC and Haudenosaunee Confederacy are left in the dark, unless and until they are admitted as a party through intervention.

81. The position of the HCCC is and always has been that its Nation-to-Nation disputes with the Crown do not belong in Canadian Court. The HCCC perspective is clear: it “can’t just sit by idly and let the courts roll over [Haudenosaunee] interests.”¹⁰⁹

82. **No Prejudice:** HDI’s intervention will not prejudice the determination of the rights of the parties to the action. No party has led any evidence of prejudice, because there is none. Adding HDI as a party to the action will result in the just, most expeditious, and least expensive determination of the proceeding on its merits.

83. There is no evidentiary prejudice: the case is purely historical, with the pertinent facts occurring well over one hundred years ago. There are no direct witnesses, and therefore no issue with the health and availability of witnesses or fading memories of first-hand observations.

84. It is only denying HDI’s request that stands to cause prejudice. If Haudenosaunee interests are not represented in this action, the Crown will only resolve their dispute with the SNGR Band—not with the Haudenosaunee. Later adjudication of the same issues and facts will risk inconsistent findings on the interpretation of the Haldimand Proclamation and remedies for breaches thereof.

¹⁰⁸ Affidavit of Aaron Detlor (Aug. 31, 2022) at paras 35-37, HDI 2nd Supp MR, Tab 2, pp 29-30.

¹⁰⁹ R. Hill Cross, q 366, p 133, TB, Tab F, p 428.

iii. Alternatively, HDI should be Joined as a Necessary Party under Rule 5.03

85. In the alternative, this Court should join HDI pursuant to Rule 5.03, which provides for the mandatory joinder of every person “whose presence is necessary to enable the court to adjudicate effectively and completely on the issues in the proceeding”. A party is a “necessary person” if they are likely to be prejudiced by the order being sought in the proceeding. Where the proceeding will determine the rights of a person who is not a party, the person is entitled to be added so that their voice will be heard.¹¹⁰

86. The HCCC and Haudenosaunee Confederacy are necessary parties and must be joined to this action pursuant to Rule 5.03 for the reasons set out above. HDI has been appointed by the HCCC to represent those interests, and its joinder is appropriate.

C. HDI, through its appointment by the HCCC, is an appropriate representative of the citizens of the Haudenosaunee Confederacy in this litigation

87. Pursuant to Rule 10.01, HDI seeks appointment (i) at a minimum, as a representative of the HCCC, and (ii) as a representative of the Haudenosaunee Confederacy. Rule 10.01 is fact-specific and purposive. It is driven by the balance of convenience.¹¹¹

88. The scope of representation permitted by Rule 10 is broad,¹¹² and it is employed where several individuals have a similar claim, and the balance of convenience favours one party advancing the claim on behalf of the group.¹¹³ Rule 10.01 applies where it would be inconvenient for each member of the group to be individually served, even where the individuals *could* be

¹¹⁰ *Ontario Federation of Anglers and Hunters v Ontario (Minister of Natural Resources and Forestry)*, 2015 ONSC 7969 at [paras 10-11](#) (Ont. SCJ), cited with authority in *Abrahamovitz v Berens*, 2018 ONCA 252 at [para 44](#).

¹¹¹ *Paramount Pictures (Canada) Inc v Dillon*, [2006] OJ No 2368 (Ont. SCJ) at [para 21](#); *Police Retirees of Ontario Inc v OMERS*, [1997] OJ No 3086 at para 18 (Ont. CJ Gen. Div.).

¹¹² *Whiteduck v HMQ in Right of Ontario*, 2020 ONSC 5592 at [para 21](#) (Ont. SCJ).

¹¹³ *Attorney General for Ontario v Persons Unknown*, 2020 ONSC 6892 at [para 41](#) (Ont. SCJ).

ascertained or found.¹¹⁴ Rule 10.01 is to encourage an expeditious means of resolving contentious issues without the cost and expense associated with a Rule 12 class proceeding order.¹¹⁵

89. To determine whether a representation order is appropriate, a Court may also consider whether: (i) the collective of rights-bearers is capable of clear definition; (ii) there are issues of law or fact in common to all members of the collective; (iii) success on the petition means success for the whole collective so defined; and (iv) whether the proposed representatives adequately represent the interests of the collective.¹¹⁶ These are simply factors; this is not a stringent test.

i. The HCCC and the Haudenosaunee people are Proper Classes for Rule 10.01

90. ***Clear Definition of the Persons to be Represented:*** The groups of persons sought to be represented—either the HCCC or the people of the Haudenosaunee Confederacy—are capable of clear definition. The HCCC comprises the title-holding Chiefs of the Haudenosaunee Confederacy. Being Haudenosaunee is matrilineal—if someone’s mother is in a Clan, they themselves are in a Clan and are part of the Haudenosaunee Confederacy.¹¹⁷

91. ***Common issues of Law and Fact, and Common Success:*** Every Haudenosaunee person, including every Chief, shares the same common claim with every other Haudenosaunee person for the Crown’s breaches under the Haldimand Proclamation; these rights are collective.¹¹⁸

92. ***Service:*** The Haudenosaunee Confederacy numbers over 100,000 people. Individual service and participation is not feasible or practical. The HCCC is a Haudenosaunee governmental entity comprised of Chiefs and Clan Mothers that change over time—the HCCC has, for example,

¹¹⁴ [Police Retirees of Ontario Inc v OMERS](#), [1997] OJ No 3086 at paras 16-18 (Ont. CJ Gen. Div.).

¹¹⁵ [Police Retirees of Ontario Inc v OMERS](#), [1997] OJ No 3086 at para 18 (Ont. CJ Gen. Div.).

¹¹⁶ [Whiteduck v HMO in Right of Ontario](#), 2020 ONSC 5592 at [para 25](#) (Ont. SCJ).

¹¹⁷ Affidavit of Richard Hill at para 9, HDI Responding MR in Men’s Fire Motion, Tab 2, p 160; M. Hill Cross, qq 126-127, p 28, TB, Tab G, p 455.

¹¹⁸ [Slate Falls Nation v Canada \(Attorney General\)](#), [2004] OJ No 3860 (Ont. SCJ) at [para 94](#).

Chief titles which different individuals hold from time-to-time as sitting Chiefs pass and new Chiefs are “condoled”.¹¹⁹ The HCCC is not a group of people that is readily ascertained and served, nor is the service upon and participation of each title-holding Chief feasible or practical.

93. Further, and as a matter of longstanding Haudenosaunee law and custom, Chiefs do not directly handle external affairs such as the present dispute—they appoint delegates.¹²⁰

ii. UNDRIP Confirms HDI as a Proper Representative

94. HDI is a proper party to represent the HCCC or the citizens of the Haudenosaunee Confederacy under Rule 10.01. The HCCC has a responsibility to the entire Haudenosaunee Confederacy. The heart of the HCCC’s mandate is the protection of Haudenosaunee interests. The HCCC expressly appointed HDI to speak for these interests in this litigation, via intervention.

95. HDI’s appointment as a representative is directly supported by the *UNDRIP Act*, which came into force on June 21, 2021. The HCCC is empowered to determine its representative(s), as it has done here with HDI.¹²¹ The *UNDRIP Act* confirms HDI as an appropriate representative for the HCCC and the Haudenosaunee in the present litigation. Similar to how the *Indian Act* enabled Indian “bands” to pursue litigation,¹²² the *UNDRIP Act* enables HDI to sue and be sued, at least in the context of disputes involving Haudenosaunee rights and interests where it has been delegated.

96. Article 40 of UNDRIP requires that dispute resolution give due consideration of Haudenosaunee customs, traditions, rules, and legal systems:

Indigenous peoples have the right to access to and prompt decision through just and fair procedures for the resolution of conflicts and disputes with States or other parties, as well as to effective remedies for all infringements

¹¹⁹ R. Hill Sr Affidavit at para 12, HDI MR Vol 1, Tabs 3 & 3C, pp 185 & 231

¹²⁰ See paragraphs 23 & 50, above.

¹²¹ *UNDRIP Act*, s 4(a), arts. 18-19.

¹²² See e.g. *Lac des Mille Lacs First Nation v Canada (Attorney General)*, [2002] OJ No 1977 at para 13 (Ont. SCJ) [*Westlaw*], citing *Montana Band v R*, [1997] F.C.J. No. 1486 at paras 19-26 (Fed. Trial Div.).

of their individual and collective rights. **Such a decision shall give due consideration to the customs, traditions, rules and legal systems of the indigenous peoples concerned and international human rights.**

97. The custom, tradition, rule, and legal system in this case is the HCCC's practice of delegating others, in this case HDI, for specific purposes. That custom is owed deference.

98. Article 18 of UNDRIP lends further support to HDI as representative, as a "representative chosen" by the HCCC "in accordance with [its] own procedures":

Indigenous peoples have the right to participate in decision-making in matters which would affect their rights, **through representatives chosen by themselves in accordance with their own procedures**, as well as to maintain and develop their own indigenous decision-making institutions.

99. For the Court to require that the HCCC appoint representatives of its or the Crown's choosing is to force a forum of dispute resolution on the Haudenosaunee that flies in the face of the *UNDRIP Act*. Delegates of "traditional" Indigenous governments ought not to continue under legal disabilities. The HCCC should not have to vex individuals to act in a representative capacity in order that the collective legal interest of the Haudenosaunee Confederacy be protected.¹²³

iii. HDI Shares a Commonality of Interest with the Collective and is Solvent

100. HDI and its individual delegates, Aaron Detlor and Brian Doolittle, have a commonality of interest with the proposed collectives to be represented.¹²⁴

101. HDI is a creation and delegate of the HCCC. It acts at the HCCC's direction and instruction. As a result of its delegation HDI has, at Haudenosaunee law, a responsibility to the HCCC and the Haudenosaunee people at large. HDI's two "delegates", Aaron Detlor and Brian Doolittle, are each also Haudenosaunee, and share personally in the collective interests of all Haudenosaunee people.

¹²³ *Willson v British Columbia (Attorney General)*, 2007 BCSC 1324 at [para 54](#).

¹²⁴ *Police Retirees of Ontario Inc v OMERS*, [1997] OJ No 3086 at para 20 (Ont. CJ Gen. Div.).

102. The very existence of HDI, including its origins, foundations, core mandate, and the work it continues to this day, serves to advance Haudenosaunee rights like those at issue in this proceeding, all at the direction and instruction of the HCCC. HDI is regularly involved in matters before courts and tribunals on behalf of the HCCC in which Haudenosaunee rights and interests are at issue. Canada and Ontario Ministries routinely recognize HDI in land development matters as delegates of the HCCC, for engagement on behalf of the Haudenosaunee.¹²⁵

103. Questions of representation call for a purposive analysis—there is no requirement that a representative occupy a particular role or have a title to be considered.¹²⁶ HDI, like the organization seeking representative status in *Police Retirees*, is an established organization dedicated to the concerns of a specific group.¹²⁷ HDI’s intervention flows directly from its mandate by the HCCC.

104. Further, HDI is solvent with the financial resources necessary to permit it to litigate this complex matter and to pay costs if necessary.¹²⁸ HDI has already paid the costs of the SNGR Band on consent in respect of certain steps in this intervention to date. HDI’s presence in the litigation alleviates any concern regarding the Chiefs’ compliance and ability to satisfy a costs award.¹²⁹

105. The acrimonious nature of the HCCC’s relationship with the SNGR Band has been acknowledged by both parties.¹³⁰ The SNGR Band has tendered “evidence”, for example, seeking to undermine the reputation and legitimacy of HDI (predominantly consisting of newspaper

¹²⁵ Affidavit of Aaron Detlor (Aug. 31, 2022) at paras 33-34, HDI 2nd Supp MR, Tab 2, pp 28-29.

¹²⁶ *Whiteduck v HMO in Right of Ontario*, 2020 ONSC 5592 at [paras 52-57](#) (Ont. SCJ).

¹²⁷ *Police Retirees of Ontario Inc v OMERS*, [1997] OJ No 3086 at paras 21-24 (Ont. CJ Gen. Div.).

¹²⁸ A factor in favour of granting representation. See e.g. *Police Retirees of Ontario Inc v OMERS*, [1997] OJ No 3086 at para 25 (Ont. CJ Gen. Div.).

¹²⁹ *Police Retirees of Ontario Inc v OMERS*, [1997] OJ No 3086 at para 20.

¹³⁰ M. Hill Cross, q 258, pp 57-58, TB, Tab G, pp 462-463. See also Affidavit of Aaron Detlor (Aug. 31, 2022) at para 12, HDI 2nd Supp MR, Tab 2, p 22.

editorials). This “evidence”, however, is hearsay, irrelevant, and tells only one side of disputes outside the scope of this case. The Court should be reluctant to give this “evidence” any weight.

iv. For the Purpose of the Litigation, HDI is a Juridical Person

106. The SNGR Band stated it may oppose any representation order on the basis of HDI’s alleged legal status. That argument is the same one that historically prevented *bands*, like the plaintiff, to advance claims.¹³¹ It would be unfortunate for anyone to advocate for the advancement of Canadian law to the point that it recognizes bands as juridical entities, and then tell the Courts “*stop, that is far enough*”. The law must develop without slavishly following precedents established for associations of a different nature.¹³² The same applies here.

107. The argument is also without merit. Courts *have* found that unincorporated associations traditionally do not have capacity to sue, but that is qualified: “absent legislation providing otherwise, either expressly or by implication”.¹³³ Here, the *UNDRIP Act* provides for capacity.

108. Any concerns relating to HDI’s legal status and ability to represent the HCCC or the Haudenosaunee are more illusory than real. Practical consequences typically relevant for an entity seeking to be recognized as a juridical person are alleviated by HDI’s solvency and express mandate. HDI can satisfy an adverse costs award, and given its delegation by the HCCC, which speaks for the collective, HDI without question has appropriate and competent instruction.¹³⁴

109. Nearly twenty years ago, Justice Slatter (as he was then) in *Papaschase* posed the following, concluding that bands can sue in their own name: “If a band has a sufficient existence

¹³¹ See e.g. *Willson v British Columbia (Attorney General)*, 2007 BCSC 1324 at [paras 44-54](#).

¹³² *Commandant v Wahta Mohawks*, [2006] OJ No 22 at para 7 (Ont. SCJ).

¹³³ *Kelly v Canada (Attorney General)*, 2013 ONSC 1220 at [para 118](#) (Ont. SCJ), citing *Kwicksutaineuk/Ah-Kwa-Mish First Nation v British Columbia (Minister of Agriculture and Lands)*, 2012 BCCA 193 at [para 65](#).

¹³⁴ See paragraph 104 above; see e.g. *Kwicksutaineuk/Ah-Kwa-Mish First Nation v British Columbia (Minister of Agriculture and Lands)*, 2012 BCCA at [para 78](#).

to sign a treaty, why can it not sue to enforce the treaty?”¹³⁵ Reimagined in the context of the present litigation, the same logic applies: if the Haudenosaunee Confederacy Chiefs could delegate a party to negotiate the Haldimand Proclamation on their behalf, why can they not delegate HDI to sue to enforce the Haldimand Proclamation on their behalf?

PART V – ORDER REQUESTED

110. HDI respectfully requests that this Court issue an Order:

- (i) granting leave to HDI to intervene as an added party pursuant to rule 13.01 or, alternatively, joining it as a party pursuant to rule 5.03;
- (ii) appointing HDI as a representative (a) of the HCCC and (b) of the Haudenosaunee Confederacy, pursuant to rule 10.01(1);
- (iii) requiring the parties to, within 30 days, provide counsel for HDI all documents exchanged in the proceeding to date, inclusive of productions, discovery transcripts, expert reports, and orders and endorsements of the Court;
- (iv) requiring the parties to, within 45 days of HDI’s receipt of the documents referenced immediately above, attend a case conference to address and seek directions on outstanding procedural issues associated with HDI’s joinder or intervention as a party, including pleadings and any required amendments, the production of additional documents (if any), the discovery of additional witnesses (if any), and the timetable for delivery of outstanding expert reports (if any), and preparation for trial;
- (v) granting HDI its costs of the motion; and
- (vi) such further and other relief as counsel may advise and as this Honourable Court deems just.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 10th day of April, 2023.



GILBERT’S LLP

¹³⁵ [Papaschase Indian Band No. 136 v Canada \(Attorney General\)](#), 2004 ABQB 655 at [para 166](#).

SCHEDULE “A” – LIST OF AUTHORITIES

LEGISLATION AND REGULATIONS	
1.	<i>Constitution Act, 1982</i> , being Schedule B to the <i>Canada Act 1982 (UK)</i> , 1982, c 11
2.	<i>Rules of Civil Procedure</i> , RRO 1990, Reg 194
3.	<i>United Nations Declaration on the Rights of Indigenous Peoples Act</i> , SC 2021, c 14
CASE LAW	
4.	<i>Abrahamovitz v Berens</i> , 2018 ONCA 252
5.	<i>Attorney General for Ontario v Persons Unknown</i> , 2020 ONSC 6892 (Ont. SCJ)
6.	<i>Authorson (Guardian of) v Canada (Attorney General)</i> , [2001] OJ No 2768 (Ont. CA)
7.	<i>Commandant v Wahta Mohawks</i> , [2006] OJ No 22 (Ont. SCJ)
8.	<i>Gitxaala v British Columbia (Chief Gold Commissioner)</i> , 2023 BCSC 29
9.	<i>Kelly v Canada (Attorney General)</i> , 2013 ONSC 1220 (Ont. SCJ)
10.	<i>Kwicksutaineuk/Ah-Kwa-Mish First Nation v British Columbia (Minister of Agriculture and Lands)</i> , 2012 BCCA 193
11.	<i>Lac des Mille Lacs First Nation v Canada (Attorney General)</i> , [2002] OJ No 1977 (Ont. SCJ)
12.	<i>Ontario Federation of Anglers and Hunters v Ontario (Minister of Natural Resources and Forestry)</i> , 2015 ONSC 7969 (Ont. SCJ)
13.	<i>Papaschase Indian Band No. 136 v Canada (Attorney General)</i> , 2004 ABQB 655
14.	<i>Paramount Pictures (Canada) Inc v Dillon</i> , [2006] OJ No 2368 (Ont. SCJ)
15.	<i>Police Retirees of Ontario Inc v OMERS</i> , [1997] OJ No 3086 (Ont. CJ Gen. Div.)
16.	<i>R v Badger</i> , [1996] 1 SCR 771 (SCC)
17.	<i>R v Ireland</i> , [1990] O.J. No. 2365 (Ont. CJ Gen. Div.)
18.	<i>R v Morris</i> , 2006 SCC 59
19.	<i>Slate Falls Nation v Canada (Attorney General)</i> , [2004] OJ No 3860 (Ont. SCJ)
20.	<i>Willson v British Columbia (Attorney General)</i> , 2007 BCSC 1324
21.	<i>William v British Columbia</i> , 2012 BCCA 285
22.	<i>Whiteduck v HMQ in Right of Ontario</i> , 2020 ONSC 5592 (Ont. SCJ)
23.	<i>Xeni Gwet'in First Nations v British Columbia</i> , 2007 BCSC 1700

SCHEDULE “B” – TEXT OF STATUTES, REGULATIONS, AND BY-LAWS

Rules of Civil Procedure, RRO 1990, Reg 194

Joinder of Necessary Parties

General Rule

5.03 (1) Every person whose presence is necessary to enable the court to adjudicate effectively and completely on the issues in a proceeding shall be joined as a party to the proceeding.

Claim by Person Jointly Entitled

(2) A plaintiff or applicant who claims relief to which any other person is jointly entitled with the plaintiff or applicant shall join, as a party to the proceeding, each person so entitled.

Claim by Assignee of Chose in Action

(3) In a proceeding by the assignee of a debt or other chose in action, the assignor shall be joined as a party unless,

- (a) the assignment is absolute and not by way of charge only; and
- (b) notice in writing has been given to the person liable in respect of the debt or chose in action that it has been assigned to the assignee.

Power of Court to Add Parties

(4) The court may order that any person who ought to have been joined as a party or whose presence as a party is necessary to enable the court to adjudicate effectively and completely on the issues in the proceeding shall be added as a party.

Party Added as Defendant or Respondent

(5) A person who is required to be joined as a party under subrule (1), (2) or (3) and who does not consent to be joined as a plaintiff or applicant shall be made a defendant or respondent.

Relief Against Joinder of Party

(6) The court may by order relieve against the requirement of joinder under this rule.

[...]

Representation of an Interested Person Who Cannot Be Ascertained

Proceedings in which Order may be Made

10.01 (1) In a proceeding concerning,

- (a) the interpretation of a deed, will, contract or other instrument, or the interpretation of a statute, order in council, regulation or municipal by-law or resolution;
- (b) the determination of a question arising in the administration of an estate or trust;
- (c) the approval of a sale, purchase, settlement or other transaction;
- (d) the approval of an arrangement under the Variation of Trusts Act;
- (e) the administration of the estate of a deceased person; or

(f) any other matter where it appears necessary or desirable to make an order under this subrule,

a judge may by order appoint one or more persons to represent any person or class of persons who are unborn or unascertained or who have a present, future, contingent or unascertained interest in or may be affected by the proceeding and who cannot be readily ascertained, found or served.

Order Binds Represented Persons

(2) Where an appointment is made under subrule (1), an order in the proceeding is binding on a person or class so represented, subject to rule 10.03.

Settlement Affecting Persons who are not Parties

(3) Where in a proceeding referred to in subrule (1) a settlement is proposed and some of the persons interested in the settlement are not parties to the proceeding, but,

- (a) those persons are represented by a person appointed under subrule (1) who assents to the settlement; or
- (b) there are other persons having the same interest who are parties to the proceeding and assent to the settlement,

the judge, if satisfied that the settlement will be for the benefit of the interested persons who are not parties and that to require service on them would cause undue expense or delay, may approve the settlement on behalf of those persons.

(4) A settlement approved under subrule (3) binds the interested persons who are not parties, subject to rule 10.03.

[...]

Leave to Intervene as Added Party

13.01 (1) A person who is not a party to a proceeding may move for leave to intervene as an added party if the person claims,

- (a) an interest in the subject matter of the proceeding;
- (b) that the person may be adversely affected by a judgment in the proceeding; or
- (c) that there exists between the person and one or more of the parties to the proceeding a question of law or fact in common with one or more of the questions in issue in the proceeding.

(2) On the motion, the court shall consider whether the intervention will unduly delay or prejudice the determination of the rights of the parties to the proceeding and the court may add the person as a party to the proceeding and may make such order as is just.

United Nations Declaration on the Rights of Indigenous Peoples Act, SC 2021, c 14

4 The purposes of this Act are to

- (a) affirm the Declaration as a universal international human rights instrument with application in Canadian law
- (b) provide a framework for the Government of Canada's implementation of the Declaration.

Annex

United Nations Declaration on the Rights of Indigenous Peoples

[...]

Article 18

Indigenous peoples have the right to participate in decision-making in matters which would affect their rights, through representatives chosen by themselves in accordance with their own procedures, as well as to maintain and develop their own indigenous decision-making institutions.

Article 19

States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them.

[...]

Article 40

Indigenous peoples have the right to access to and prompt decision through just and fair procedures for the resolution of conflicts and disputes with States or other parties, as well as to effective remedies for all infringements of their individual and collective rights. Such a decision shall give due consideration to the customs, traditions, rules and legal systems of the indigenous peoples concerned and international human rights.

**Appendix 1 – Objections to Evidence in the Responding Motion Record of the
Six Nations of the Grand River Band of Indians**

No.	Para	Sentence	Basis	Excerpt
Affidavit of Mark Hill, affirmed November 2, 2022				
1	4	All	Opinion, argument (regarding identity of collective and effect of Haldimand Proclamation)	The Six Nations of the Grand River is the community of Haudenosaunee people who are Indians within the <i>Indian Act</i> and for whom the reserve on the Grand River (the “ Reserve ”) was created by the Crown. The Reserve was established when the Haldimand Proclamation set aside these lands for our ancestors who came to settle on the Haldimand Tract following the American Revolution. The Six Nations of the Grand River have lived on the Reserve ever since and have fought to protect the Reserve from being taken away by the Crown and settlers. This court case is among the efforts of the Six Nations of the Grand River to defend our Reserve and to gain compensation for the Reserve land that has been taken from our community.
2	11	All	Opinion, argument	This transparency is a key difference between what the community knows about the band’s dealings and what it knows about the dealings of the Confederacy Council and the Haudenosaunee Development Institute (“ HDI ”), none of which, to my knowledge, make the same detailed, comprehensive and easily accessible public disclosure of their financial affairs as is made by the Six Nations of the Grand River.
3	25	1	Opinion, hearsay	It is well known in our community that the Confederacy Council has been aware of Six Nations of the Grand River’s court case against Canada and Ontario since it began in the 1990s.
4	27	1	Opinion, hearsay	The Elected Council was created in 1924 under the <i>Indian Act</i> as it existed at the time because members of the Six Nations of the Grand River wanted to ability to choose their own representatives.
5	27	2	Opinion	The Elected Council later exited the <i>Indian Act</i> electoral framework and established its own election codes following community consultation and referenda, in which the Confederacy Council either refused to participate or never challenged.

No.	Para	Sentence	Basis	Excerpt
6	29	All	Opinion, hearsay	Elections for Chief and Council have typically had a low turnout of voters, though the results are generally well-accepted by the Six Nations of the Grand River community. This is the case even though some supporters of the Confederacy Council do not participate in Elected Council elections.
7	30	1 and 2	Opinion	Elected Council elections are no longer governed by the <i>Indian Act</i> . Beginning in 1995, following community consultation and a referendum, the Elected Council exited the <i>Indian Act</i> electoral system and elections occurred in accordance with a Six Nations of the Grand River election code (the “ 1995 Election Code ”).
8	38	4	Opinion, hearsay	It would be fair to say that those people simply have little to no personal interest in what occurs on the Reserve from time to time.
Affidavit of Gail Ava Hill, affirmed November 1, 2022				
9	1	1	Opinion	In this affidavit, I discuss the history of the Six Nations of the Grand River and how we are a distinct group within the wider Haudenosaunee Confederacy.
10	5	2	Opinion, argument (regarding identity of collective and effect of Haldimand Proclamation)	Six Nations of the Grand River is the community of Haudenosaunee people connected to and who live on the reserve at the Grand River that was created for our people by the Haldimand Proclamation (the “ Reserve ”).
11	5	3 and 4	Opinion, hearsay	Those of us who are members of Six Nations of the Grand River are proud Haudenosaunee people, but we are also our own community within the Haudenosaunee and have our own history and rights within the larger Haudenosaunee Confederacy. We are the people whose ancestors came and settled on the lands set aside for us by the Crown at the Grand River.
12	5	5	Opinion	Other Haudenosaunee people established their own reserves or reservations elsewhere in Canada and the United States and manage their own affairs on these reserves and reservations for their people.

No.	Para	Sentence	Basis	Excerpt
13	8	1	Opinion (if for truth of contents)	I have always understood the Haldimand Proclamation, a copy of which was produced by the Six Nations of the Grand River in this court case (together with a transcription) and is attached as Exhibit A , to refer to those members of the Six Nations who followed Joseph Brant to settle along the Grand River after the American Revolution.
14	8	2	Opinion (if for truth of contents)	I grew up understanding, and still understand, the Six Nations of the Grand River to be a distinct Haudenosaunee community, and the group of people for whom the Reserve described in the Haldimand Proclamation was set aside.
15	11	All	Opinion, hearsay	The Confederacy Council Chiefs were not democratically elected to the Six Nations community living on the Reserve. From the 1890s to 1924, many Six Nations members on the Reserve publicly advocated for an elected democratic government under the federal <i>Indian Act</i> as it existed at that time.
16	14	1	Opinion	It is important to understand that Six Nations of the Grand River is no longer governed by an elected council operating under the <i>Indian Act</i> .
17	15	All	Opinion	The referendum approved a new electoral system which was implemented outside of the provisions of the <i>Indian Act</i> , chosen by members of the Six Nations of the Grand River. To my knowledge, the Confederacy Chiefs did not challenge this process, challenge the validity of the referendum, or challenge the federal Order-in-Council removing the band from the <i>Indian Act</i> electoral system.
18	18	2 and 4	Opinion	The Elected Council has been the governing body of the Six Nations of the Grand River regarding all matters connected to the Reserve since then. [After 1924, the Confederacy Council was no longer recognized by the Canadian government as the governing body of the Six Nations of the Grand River.] The Elected Council is the only representative Six Nations of the Grand River body recognized by the Canadian government.
19	19	1	Opinion, hearsay	Since it was started, this court case has been public and well-known to the community and the Canadian public at large.

No.	Para	Sentence	Basis	Excerpt
20	20	2	Opinion	I have never heard or understood the Haudenosaunee Confederacy, Confederacy Council, or anyone else to claim that all Haudenosaunee Confederacy members are entitled to the Reserve that was set aside for the Six Nations of the Grand River, or to the claims related to the Crown having taken our Reserve lands and mismanaged our monies.
Affidavit of Helen Miller, affirmed November 1, 2022				
21	5	All	Opinion, hearsay	When HDI was formed, I do not recall, and am not aware of, the Confederacy Council, Mr. Doolittle, or Mr. Detlor consulting broadly in the community about it. At the time it was formed, HDI's purpose related to the Douglas Creek housing dispute near Caledonia. I later learned that at least part of HDI's purpose was to challenge the Elected Council's handling of claims relating to the Six Nations of the Grand River reserve.
22	7	1	Opinion, hearsay	HDI, Mr. Detlor and Mr. Doolittle are controversial within the Six Nations of the Grand River community.
23	8	1 and 2	Opinion, hearsay	Similar questions and concerns have been raised within the community about HDI's financial transparency, its assertion of rights in the Haldimand Tract, and insistence that accommodation money be paid to it. It is well known in the Six Nations of the Grand River community that HDI has made a significant amount of money through accommodation arrangements with developers and landowners on lands in the Haldimand Tract.
24	13	1	Opinion, hearsay	Little is publicly known about HDI's finances.

**Appendix 2 – Objections to Evidence in the Motion Record of the
Men’s Fire of the Six Nations Grand River Territory**

No.	Paragraph	Sentence	Basis	Excerpt
Affidavit of Wilfred Davey, affirmed January 6, 2023				
1	3	2	Opinion	The legitimacy of HDI as an organization and as a delegated representative of the Haudenosaunee remains in question.
2	4	All	Opinion, to the extent it characterizes allegations as fact	The ongoing class action legal dispute between Davey et al. and Hazel Hill et al., in the Superior Court of Ontario bearing action number 16-58391 concerns HDI operating in breach of trust and fiduciary duty.
3	5	1	Opinion, to the extent it characterizes allegations as fact	HDI is also alleged to have and continues to act negligently in representing themselves as caretakers for the Haudenosaunee people.
4	6	1	Opinion, hearsay	In the declaration of trust, through which HDI was established, a number of the Chiefs listed on the document are vacant titles.
5	12	1	Opinion, hearsay, argument	I am of the belief that there is an overwhelming amount of evidence to support the fact that a number of Chiefs who are purported beneficial owners of the shares of HDI are deceased and not aware of their purported “beneficial ownership”.
6	14	1	Opinion. Hearsay, argument	I am informed and do verily believe that funds have been wrongly misappropriated and/or converted by HDI and will continue to be used, thereby precluding the recovery of the funds properly belonging to the HCCC and the Haudenosaunee people.
7	15	2	Opinion, hearsay, argument	Funds meant to be used for the benefit of the Haudenosaunee community and people have been misappropriated and self-interestedly used for personal benefit and for the commercial interests of HDI contrary to HDI’s stated duties and obligations.

No.	Paragraph	Sentence	Basis	Excerpt
8	16	All	Opinion, hearsay, argument	HDI has also failed to consult and obtain approval from the Haudenosaunee people with respect to land lease agreements and to ensure that local stakeholders are aware of and supportive of their projects.
9	17	1 to 3	Opinion, hearsay, argument	Despite the duties and obligations of HDI, the Haudenosaunee community has no knowledge of what funds have been paid and to whom payments have been made from the various projects that HDI has taken on. Little to no information involving these projects has been made available by HDI, including the names of the projects or any details of the funds being derived from such projects. HDI's dealings with the Haudenosaunee community with respect to their management of land lease agreements and other projects have been characterized by a distinct lack of transparency.
10	18	All	Opinion, hearsay, argument	I verily believe that HDI is seeking to be a representative and intervene in this proceeding in order to divert funds for their own personal benefit and deprive the Haudenosaunee people of the benefits to which they are entitled. In particular, HDI has provided no accountability to the people of the following projects they were involved in allegedly on the people's behalf: Burch Restoration Project 350 acres, Solar Farm SRE GRS Holdings (Samsung) 800 acres of solar panels, Grand Renewable Energy (GRSLP), Enbridge Line 9 extension, Windmill Project Nanticoke to Sarnia, Nextra Energy Canada, Red Hill Valley extension Hamilton, Seneca Township Empire Homes, DCE Caledonia 350 acres of home development, Empire Homes in Hagersville 250 acres, and numerous quarries in southern Ontario. There very well could be other projects but due to HDI's lack of transparency the people remain in the dark about all HDI projects where they hold funds on behalf of the people.

No.	Paragraph	Sentence	Basis	Excerpt
11	20	1	Opinion, hearsay, argument	I am informed by Janace Henry, of the Community of Hagersville in Haldimand County, a Condoled Cayuga Ball Deer Clan Mother of the Haudenosaunee people at Six Nations reserve, and do verily believe that the letters and other evidence produced by HDI which purport that the Clan Mothers and HCCC had given their support for the authorization of HDI is not true and that the Clan mothers and Chiefs were never in unanimous agreement on the matter.
12	21	1	Opinion, hearsay, argument	I am informed by Janace Henry and do verily believe that Aaron Detlor sought to hijack the meetings of HCCC and announce without the support of the Clan Mothers, who certainly did not unanimously agree to anything, that documents were passed by the council in support of the authorization of HDI as a legitimate actor on behalf of and representative of the Haudenosaunee Confederacy.
13	22	All	Opinion, hearsay, argument	I am informed by Janace Henry and verily believe to be true that Shirley, another Clan Mother, travelled to the HDI offices to request to see the documents mentioned above. However, Shirley was denied access and ultimately did not receive the requested documents. HDI failed to live up to basic standards of accountability and transparency to the people it claimed to represent when forcing its own authorization through the HCCC without proper unanimous support of the Clan Mothers who are responsible for matters pertaining to the land.
14	23	3 to 5	Opinion, hearsay, argument	However, there is no substantial evidence that this meeting took place and was carried out according to the traditional Haudenosaunee laws of governance. This meeting was improperly carried out and does not comply with the requirements laid out in the Great Law for decisions that involve matters affecting the entirety of the confederacy and its people. There is no evidence of the requisite decision making from the Chiefs or the Clan Mothers at all.

No.	Paragraph	Sentence	Basis	Excerpt
15	25	All	Opinion, hearsay, argument	I am informed and do verily believe that there never was a proper meeting of the 50 Chiefs of the Grand Council to authorize HDI. Moreover, the people as a whole and the women and Clan Mothers of the Haudenosaunee were not consulted as is required by the processes laid out in the Great Law.
16	27	All	Hearsay, argument	Regarding the Mohawk Nation Council of Chiefs (“MNCC”), on about November 14 I spoke with one of the chiefs of the Mohawk Nation Council of Chiefs, and he has again never heard or seen or been made aware of any such letter sent on behalf of the MNCC. And would never have approved of any letter supporting HDI.
17	28	All	Opinion, hearsay	I also on the same day contacted the MNCC office, and spoke with x who informed me and I do verily believe that no such letter or the issues raised in the letter were on any agenda for the meeting or discussed at any meeting, which is a requirement of the MNCC in effect of any such issues. The MNCC needs to have a full vote of all of the chiefs to adopt any such positions [<i>sic</i>]
Affidavit of Paul Delaronde, affirmed January 6, 2023				
18	6	3	Opinion evidence outside expertise (conceded by counsel for Men’s Fire) ¹³⁶	The reserve created by the Crown only accounts for a small percentage of the original land area that was granted to the Six Nations of the Grand River by the Haldimand Proclamation.

¹³⁶ P. Delaronde Cross, q 49, pp 24-26, TB, Tab H, p 475.

SIX NATIONS OF THE GRAND RIVER BAND OF INDIANS
Plaintiff

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

Court File No. CV-18-594281

ONTARIO
SUPERIOR COURT OF JUSTICE
PROCEEDING COMMENCED AT
TORONTO

FACTUM OF THE MOVING PARTY, THE
HAUDENOSAUNEE DEVELOPMENT INSTITUTE
(Motion for Joinder/Intervention)

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