

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

**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

**FACTUM OF THE DEFENDANT**  
**THE ATTORNEY GENERAL OF CANADA**  
*(Respondent to the Motion of HDI returnable May 8-10, 2023)*

May 1, 2023

**ATTORNEY GENERAL OF CANADA**  
Department of Justice Canada  
Ontario Regional Office  
120 Adelaide Street West, Suite 400  
Toronto, ON M5H 1T1  
Fax: (416) 973-2319

Per: Owen Young (LSO 17656Q)  
Tel: (647) 309-9204  
Email: [Owen.Young@justice.gc.ca](mailto:Owen.Young@justice.gc.ca)

Per: Katrina Longo (LSO 78052H)  
Tel: (416) 459-3086  
Email: [Katrina.Longo@justice.gc.ca](mailto:Katrina.Longo@justice.gc.ca)

Per: Tania Mitchell (LSO 86028J)  
Tel: (613) 294-2604  
Email: [Tania.Mitchell@justice.gc.ca](mailto:Tania.Mitchell@justice.gc.ca)

Per: Hasan Junaid (LSO 61890L)  
Tel: (647) 525-0629  
Email: [Hasan.Junaid@justice.gc.ca](mailto:Hasan.Junaid@justice.gc.ca)

Per: Sarah Kanko (LSO 81502J)  
Tel: (647) 526-4757  
Email: [Sarah.Kanko@justice.gc.ca](mailto:Sarah.Kanko@justice.gc.ca)

Per: Myra Sivaloganathan (LSO 85296N)  
Tel: (437) 423-6697  
Email: [Myra.Sivaloganathan@justice.gc.ca](mailto:Myra.Sivaloganathan@justice.gc.ca)

Counsel for the Defendant  
The Attorney General of Canada

TO: **BLAKE, CASSELS & GRAYDON LLP**  
199 Bay Street, Suite 4000  
Toronto ON M5L 1A9  
Tel: 416-863-2400  
Fax: 416-863-2653

Per: Iris Antonios  
Tel: (416) 863-3349  
Email: [Iris.Antonios@blakes.com](mailto:Iris.Antonios@blakes.com)

Per: Max Shapiro  
Tel: (416) 863-3305  
Email: [Max.Shapiro@blakes.com](mailto:Max.Shapiro@blakes.com)

Per: Laura Dougan  
Tel: (416) 863-2187  
Email: [Laura.Dougan@blakes.com](mailto:Laura.Dougan@blakes.com)

Per: Rebecca Torrance  
Tel: (416) 863-2930  
Email: [Rebecca.Torrance@blakes.com](mailto:Rebecca.Torrance@blakes.com)

Per: Gregory Sheppard  
Tel: (416) 863-2616  
Email: [Gregory.Sheppard@blakes.com](mailto:Gregory.Sheppard@blakes.com)

Per: Brittany Town  
Tel: (416) 863-2583  
Email: [Brittany.Town@blakes.com](mailto:Brittany.Town@blakes.com)

AND TO: **JFK LAW LLP**  
1175 Douglas Street, Suite 816  
Victoria, BC V8W 2E1  
Tel: 250-405-3460  
Fax: 250-381-8567

Per: Robert Janes  
Tel: (250) 888-5269  
Email: [rjanes@jfkllaw.ca](mailto:rjanes@jfkllaw.ca)

Counsel for the Plaintiff  
Six Nations of the Grand River Band of Indians

AND TO: **CROWN LAW OFFICE – CIVIL**  
Ministry of the Attorney General  
720 Bay Street, 8th Floor  
Toronto, ON M7A 2S9  
Fax: 416-326-4181

Per: Manizeh Fancy  
Tel: (416) 578-7637  
Email: [Manizeh.Fancy@ontario.ca](mailto:Manizeh.Fancy@ontario.ca)

Per: David Feliciant  
Tel: (416) 605-2538  
Email: [David.Feliciant@ontario.ca](mailto:David.Feliciant@ontario.ca)

Per: Christine Perruzza  
Tel: (416) 399-6425  
Email: [Chistine.Perruzza@ontario.ca](mailto:Chistine.Perruzza@ontario.ca)

Per: David Tortell  
Tel: (416) 571-8235  
Email: [David.Tortell@ontario.ca](mailto:David.Tortell@ontario.ca)

Per: Julia McRandall  
Tel: (416) 571-0742  
Email: [Julia.McRandall@ontario.ca](mailto:Julia.McRandall@ontario.ca)

Per: Jennifer Lapan  
Tel: (416) 577-6936  
Email: [Jennifer.Lapan@ontario.ca](mailto:Jennifer.Lapan@ontario.ca)

Per: Aaron Grimes  
Tel: (647) 242-8176  
Email: [Aaron.Grimes@ontario.ca](mailto:Aaron.Grimes@ontario.ca)

Per: Brandon Fragomeni  
Tel: (416) 540-0411  
Email: [Brandon.Fragomeni@ontario.ca](mailto:Brandon.Fragomeni@ontario.ca)

Counsel for the Defendant  
His Majesty the King in right of Ontario

AND TO:

**GILBERT'S LLP**

Waterfront Innovation Centre  
125 Queen's Quay East, 8th Floor  
P.O. Box 19  
Toronto, ON, M5A 0Z6  
Tel: 416-703-1100  
Fax: 416-703-7422

Per: Tim Gilbert  
Tel: (416) 703-1100  
Email: [tim@gilbertslaw.ca](mailto:tim@gilbertslaw.ca)

Per: Colin Carruthers  
Email: [colin@gilbertslaw.ca](mailto:colin@gilbertslaw.ca)

Per: Thomas Dumigan  
Tel: (416) 703-3232  
Email: [tdumigan@gilbertslaw.ca](mailto:tdumigan@gilbertslaw.ca)

Per: Jack MacDonald  
Email: [jack@gilbertslaw.ca](mailto:jack@gilbertslaw.ca)

Per: Dylan Gibbs  
Email: [dylan@gilbertslaw.ca](mailto:dylan@gilbertslaw.ca)

Per: Jonathan Martin  
Email: [jmartin@gilbertslaw.ca](mailto:jmartin@gilbertslaw.ca)

Counsel for the Proposed Intervenor  
Haudenosaunee Development Institute (HDI)

AND TO: **JEFFREY KAUFMAN LAW PROFESSIONAL CORPORATION**  
15 Prince Arthur Avenue, Suite 200  
Toronto, ON M5R 1B2  
Tel: 416-400-4158  
Fax: 416-964-6662

Per: Jeffrey A. Kaufman  
Tel: (416) 400-4158  
Email: [jeff@kaufman.law](mailto:jeff@kaufman.law)

Counsel for the Proposed Intervenor  
Men's Fire of the Six Nations Grand River Territory (Men's  
Fire)

## TABLE OF CONTENTS

|   |    |
|---|----|
| The Overview .....  | 1  |
| Part I – Facts .....  | 1  |
| Part II – Issues.....   | 4  |
| Part III – Submissions .....  | 5  |
| A. The traditional and historical Haudenosaunee perspective should be heard<br>in this action ..... | 6  |
| B. Any representation order should be limited to representation of HCCC .....                       | 7  |
| C. Representation should be through intervention rather than joinder .....                          | 8  |
| Part IV – Nature of the Resolution Proposed .....   | 11 |
| Schedule A – List of Authorities .....  | 13 |
| Schedule B – List of Statutes.....  | 14 |

## **THE OVERVIEW**

1. This proceeding is a complex action consisting of numerous legal and equitable claims involving lands along the Grand River in southern Ontario and spanning more than two centuries. It is essential that the trial judge have all relevant perspectives before them in order to ensure a just adjudication of the issues. To that end, the record before the trial court should include the traditional and historical Haudenosaunee perspective at Grand River in respect of the claims, rights, and interests put forward in the action. A fair, just, and efficient manner of ensuring the Court has the benefit of that perspective, while also maintaining necessary control over the integrity and efficiency of the trial process, is not through joinder. The better alternative is to add a representative of holders of the traditional and historical Haudenosaunee perspective as a party intervenor, subject to specific parameters on the procedural and other rights of the representative.

## **PART I – FACTS**

2. This action was commenced in 1995 by the Six Nations of the Grand River Band of Indians. The plaintiff has sued Canada and Ontario for remedies in respect of the Haldimand tract, a strip of land of disputed dimensions running along the banks of the Grand River in Southern Ontario. The tract lies within the Between the Lakes Treaty of 1784, and is the subject of the Haldimand Proclamation of 1784 and the Simcoe Patent of 1792. The plaintiff's lawsuit seeks declaratory and pecuniary remedies in respect of the use and disposition

of lands and resources within the tract and the alleged mishandling of monies and investments associated with them.<sup>1</sup>

3. This litigation is not a representative action, but an action by the plaintiff as a band. The issues raised and remedies sought relate geographically and historically to the Haldimand Tract lands. Almost all of the claims are based on events or transactions that occurred in the more than 130-year period from 1784 to the early 1920s.<sup>2</sup> Although the plaintiff's proposed and outstanding amendments add new claims and theories of liability, they do not expand this fundamental geographic scope.<sup>3</sup>
4. The Haudenosaunee Confederacy Chiefs Council ("HCCC") is a Council of Chiefs and Clanmothers that conducts its affairs in accordance with the traditional cultural values, and the legal principles and processes of the customary law of the Haudenosaunee.<sup>4</sup> The Council is based at Grand River

<sup>1</sup> The Plaintiff's Further Amended Statement of Claim dated June 10, 2020 [Motion Record of the Haudenosaunee Development Institute Vol. II dated June 10, 2022, Affidavit of Carol Fung, affirmed June 10, 2022, Tab 4A, Ex. A].

<sup>2</sup> Plaintiff's Further Amended SOC at paras 14-73A [MR of HDI Vol. II, Affidavit of Carol Fung, affirmed June 10, 2022, Tab 4A, Ex. A].

<sup>3</sup> The Plaintiff's draft Fresh as Further Further Amended Statement of Claim dated February 3, 2023 [Supplemental Responding MR of the Plaintiff dated February 6, 2023, Supp. Affidavit of Elena Reonegro, affirmed February 6, 2023, Tab 3J, Ex. J].

<sup>4</sup> Ex. L to the Affidavit of Carol Fung, affirmed June 10, 2022 [MR of HDI Vol. II, Tab 4L]; Affidavit of Richard Wayne Hill Sr., affirmed June 10, 2022 at paras 25-28, 30-33 [MR of HDI Vol. I dated June 10, 2022, Tab 3]; Cross-Examination of Richard Wayne Hill Sr. on March 15, 2023 at QQ125-126, p 40; [continued on next page]



within the Haldimand Tract lands.<sup>5</sup> The evidence indicates that traditional Haudenosaunee law principles and processes were operating and guiding Council decisions within the Haldimand Tract lands at least through the period that is the subject of the majority of the claims made in this action.<sup>6</sup>

5. The Haudenosaunee Development Institute (“HDI”), a delegate of HCCC, has moved to be joined or to intervene as a party in this litigation. Aaron Detlor and Brian Doolittle are the directing minds of HDI.<sup>7</sup> HDI, including Detlor and Doolittle, are all delegates of and are directly responsible to the Chiefs and Clanmothers of HCCC.<sup>8</sup>

Affidavit of Paul Delaronde, affirmed January 6, 2023 at paras 7-16, [Amended Resp. MR of the Men's Fire of the Six Nations Grand River Territory dated January 9, 2023 [sic], Tab 3]; and the Cross-Examination of Paul Delaronde on March 20, 2023 at Q96, pp 56-60, and QQ99-101, pp 65-67.

<sup>5</sup> Affidavit of Richard Hill, affirmed June 10, 2022 at paras 30-32 [MR of HDI Vol. I, Tab 3]; and the Cross-Examination of Aaron Detlor on March 24, 2023 at QQ494-496, p 135, and QQ533-537, pp 143-144.

<sup>6</sup> Affidavit of Former Chief Gail Ava Hill, affirmed November 1, 2022 at paras 9-10 [Resp. MR of the Plaintiff, Tab 2]; Affidavit of Richard Hill, affirmed June 10, 2022 at paras 30-32 [MR of HDI Vol. I, Tab 3]; Richard Hill Cross-Exam at QQ264-268, pp 94-95, QQ272-273, pp 96-98; and the Affidavit of Paul Delaronde at paras 12-14 [Amended Resp. MR of Men's Fire, Tab 3].

<sup>7</sup> Affidavit of Aaron Detlor, affirmed August 31, 2022 at para 23 [2<sup>nd</sup> Supp. MR of HDI dated August 31, 2022, Tab 2]; Affidavit of Brian Doolittle, affirmed June 10, 2022 at para 7 [MR of HDI Vol. I, Tab 2]; Doolittle Cross-Exam at QQ130-142, pp 26-28, QQ163-164, p 31, and summarized at QQ197-199, p 36; and the Detlor Cross-Exam on Mar 24 at QQ329-332, pp 97.

<sup>8</sup> Affidavit of Aaron Detlor, affirmed August 31, 2022 at paras 23-25 [2<sup>nd</sup> Supp. MR of HDI, Tab 2]; Cross-Examination of Aaron Detlor on March 20, 2023 at QQ180, pp 50-51, and QQ214, pp 61-62; Detlor Cross-Exam on Mar 24 QQ486-491, pp 133-134, QQ544, p 145, and QQ577-579, pp 155-156; Doolittle Cross-Exam at QQ130-138, pp 26-27, QQ165-167, p 31, QQ172-173, p 32, QQ181-182, pp 33-34, and QQ201-205, pp 37-38; and the Factum of the Moving Party, HDI dated April 10, 2023 at paras 2 and 101.

6. HDI brought this motion seeking appointment as a representative under Rule 10.01(1), and involvement in this litigation either through joinder as a party under Rule 5.03, or intervention as an added party under Rule 13.01(1).<sup>9</sup> To the extent that the motion's request for relief could be read as HDI's seeking to intervene or be joined as a party in its own right, the evidence on this motion, including that of HDI, has been premised entirely on HDI being merely a delegate of HCCC.<sup>10</sup> There is no evidence that HDI itself has any other interest in this litigation.
  
7. The Men's Fire of the Six Nations Grand River Territory, a traditional Haudenosaunee group, has also sought to intervene, but only if the motion by HDI is allowed.<sup>11</sup>

## PART II – ISSUES

8. In Canada's submission, the question at the heart of HDI's motion is how best to facilitate and ensure that the traditional and historical Haudenosaunee perspective on the claims, rights, and interests put forward in the existing action is available to the trial court.

<sup>9</sup> [Rules of Civil Procedure, R.R.O 1990, Reg. 194](#), Rules [5.03](#), [10.01\(1\)](#), and [13.01\(1\)](#). See also the Amended Notice of Motion of HDI dated April 10, 2023 at para 1; and the HDI Factum at paras 110(i) and (ii).

<sup>10</sup> Affidavit of Aaron Detlor, affirmed August 31, 2022 at paras 22-25 [2<sup>nd</sup> Supp. MR of HDI, Tab 2]; Affidavit of Brian Doolittle, affirmed June 10, 2022 at paras 12-13, and 26 [MR of HDI Vol. I, Tab 2]; Ex. A at p. 8, to the Supp. Affidavit of Brian Doolittle, affirmed July 6, 2022 [Supp. MR of HDI dated July 6, 2022, Tab 1]; Detlor Cross-Exam on Mar 24 at Q544, p 145; and the Doolittle Cross-Exam at Q273, p 57.

<sup>11</sup> See the Amended Notice of Motion of MF dated February 6, 2023 at para 1 [Amended Resp. MR of Men's Fire, Tab 1].

### PART III – SUBMISSIONS

9. Canada's submissions are limited to providing the court with considerations with respect to (a) ensuring the trial judge has access to the traditional and historical Haudenosaunee perspective in order to fully adjudicate the claim; and (b) ensuring that the inclusion of this perspective is done in a manner that does not significantly prejudice the current parties or unduly delay or jeopardize the efficient conduct and effective resolution of the existing proceeding.
10. Canada makes no submissions, and takes no position, concerning the substantive or procedural validity of the designation of HDI or its principals Aaron Detlor or Brian Doolittle as delegates of HCCC as a matter of Haudenosaunee customary law.
11. Further, as to whether HDI's motion could be read as seeking to be joined as a party or added as a party intervenor in its own right, Canada only makes the observation that the evidence as well as the submissions of HDI indicate that HDI is not itself a holder of any rights or interests that are in issue in this action, and acts only as a delegate.<sup>12</sup>
12. Canada makes no submissions in respect of the Men's Fire motion.

<sup>12</sup> Where HDI argues it can pass the test under either [Rule 5.03](#) or [13.01](#), it does so only with reference to itself as a delegate of the HCCC and on behalf of Haudenosaunee interests – see the HDI Factum at paras 43, 69, 72, and 86. See also footnote 10.

13. As submitted by other participants on the motion, it is open to this court to dismiss HDI's motion. However, a reconciliatory outcome is also available to the court on the facts and the law. The court could appoint a representative to intervene in the action on behalf of HCCC only (without specifically including all people of the Haudenosaunee Confederacy regardless of their location). In doing so, the court could limit the role of the representative intervenor to providing the trial court with the traditional and historical Haudenosaunee perspective on the claims, rights, and interests put forward in the existing action. Through such an order the court could also set specific parameters defining the procedural rights of the intervenor.

**A. The traditional and historical Haudenosaunee perspective should be heard in this action**

14. The Supreme Court of Canada has repeatedly emphasized the importance of hearing and considering Indigenous perspectives when deciding cases affecting Indigenous peoples.<sup>13</sup>

15. As noted above, the majority of claims in this action relate to events or transactions occurring in the period from 1784 to the early 1920s, during a time when governance at Grand River was solely traditional in character.<sup>14</sup>

<sup>13</sup> *R. v. Van der Peet*, 1996 CanLII 216 (SCC), [1996] 2 SCR 507 at [paras 49-50](#) (re aboriginal rights); *R. v. Marshall*, 1999 CanLII 665 (SCC), [1999] 3 SCR 456 at [para 19](#) (re treaty rights); and *Tsilhqot'in Nation v. British Columbia*, 2014 SCC 44 (CanLII), [2014] 2 SCR 257 at, e.g., [paras 14, 32, 34, 81](#) (re aboriginal title). See also *Delgamuukw v. British Columbia*, 1997 CanLII 302 (SCC), [1997] 3 SCR 1010 at [para 84](#).

<sup>14</sup> See footnotes 2 and 6.

The traditional and historical Haudenosaunee perspective on the claims, rights, and interests at issue in this proceeding are relevant and could assist the trial judge in adjudicating such issues. It would serve to supplement, not supplant, the evidence brought forward by the plaintiff.

**B. Any representation order should be limited to representation of HCCC**

16. Fundamentally, what HDI seeks on this motion is the ability to act as a representative. The groups it seeks to represent are HCCC and, separately, all people of the Haudenosaunee Confederacy.
17. The evidence filed on this motion is that HCCC is the source of HDI's instructions.<sup>15</sup> There has been no evidence put forward that all people of the Haudenosaunee Confederacy are otherwise or independently instructing HDI.
18. This claim is, at its core, about land and transactions concerning the Haldimand Tract.<sup>16</sup> It is geographically and historically limited to lands along

<sup>15</sup> Affidavit of Aaron Detlor, affirmed August 31, 2022 at paras 23-24 [2<sup>nd</sup> Supp. MR of HDI, Tab 2]; Detlor Cross-Exam on Mar 20 at QQ179-180, pp 50-51; Detlor Cross-Exam on Mar 24 at QQ544, p 145, QQ569-571, pp 151-152, and QQ577-579, pp 155-156; and the Doolittle Cross-Exam at QQ130-131, pp 26-27, QQ165-167, p 31, QQ172-173, p 32, QQ181-182, pp 33-34, and QQ200-205, pp 37-38. See also the HDI Factum at paras 2 and 101.

<sup>16</sup> See, for example, Plaintiff's Further Amended Statement of Claim at paras 14-18 and 21-23 [MR of HDI Vol. II, Affidavit of Carol Fung, affirmed June 10, 2022, Tab 4A, Ex. A].

the Grand River. HCCC is based principally at Grand River.<sup>17</sup> There is no evidence that people of the Haudenosaunee Confederacy beyond the Grand River lands, including individuals in Oklahoma and Wisconsin,<sup>18</sup> have any unique perspective on the issues in the claim that would not be shared or otherwise put forward by HCCC. Accordingly, if the court were to appoint a representative, it should be on behalf of HCCC only.

19. The trial judge will be required to make various determinations about the Between the Lakes Treaty, the Haldimand Proclamation, and the Simcoe Patent, including the nature of any associated rights or interests of the plaintiff band and, potentially, others with links to the Grand River and Haldimand tract. It is true that at some point in the trial, the court may also be called upon to determine the full extent of the collective of affected rights-holders. A representative intervention order of the kind proposed in this factum would ensure that the perspectives of different elements of the collective are available to the trial judge. Were it to become necessary, an exhaustive determination of who comprises the rights-holding collective could be considered and addressed in a future remedies or other phase of the litigation.

**C. Representation should be through intervention rather than joinder**

20. Canada submits that the role of any representative party in this litigation should be as a party intervenor under Rule 13.01(1), rather than through

<sup>17</sup> See footnote 5.

<sup>18</sup> Amended Notice of Motion of HDI dated April 10, 2023 at para 25.

joinder as a party under Rule 5.03. It is an approach that would appropriately balance the benefit of providing the trial judge with an important traditional and historical perspective on the issues in this action, with other significant considerations such as overall fairness, proportionality, and the demands of reconciliatory justice.

21. Where, as here, a non-participant in the litigation seeks to join a decades-old action in which the existing litigants have spent considerable time and resources moving the action forward toward trial, the addition of a party as an intervenor under Rule 13.01(1), rather than through joinder under 5.03, would allow the Court to appropriately manage the nature and extent of that party's participation. It is an approach that would ensure that the intervenor could make productive contributions to the litigation without unfairly prejudicing the interests of existing litigants, and without causing unnecessary strain on judicial and litigation resources, or unduly delaying the adjudication of the proceeding.<sup>19</sup>
22. The need to balance such competing considerations is contemplated in the text of Rule 13.01 itself, which requires the court to consider potential delay or

<sup>19</sup> [Wesley v. Alberta](#), 2019 ABQB 925 at [paras 4, 45-50](#); and [Halpern v. Toronto \(City\) Clerk](#), 2000 CanLII 29029 (ON SCDC), [2000] OJ No 4514 (QL) at [paras 20-21](#).

prejudice that intervention may cause and allows the court to make “such order as is just” under the circumstances.<sup>20</sup>

23. Considerable judicial and litigation resources have already been expended in an effort to move this action forward since it was commenced in 1995.<sup>21</sup> The existing parties have engaged in motions, demands for particulars, requests to admit, production of documents, written examinations for discoveries, the retention of historical and other experts and preparation of experts’ reports, and case management conferences.<sup>22</sup>
24. To join a new party to the action with all of the procedural and substantive litigation rights of a full party at this stage, particularly one with interests similar to those of the plaintiff, would almost certainly significantly disrupt the litigation, putting at risk the right and ability of the existing plaintiff to frame and advance its own claim. This is particularly so where the proposed new party seeks to make its own additional claims that are different from, or inconsistent with, the claims of the existing plaintiff.<sup>23</sup>

<sup>20</sup> [Rules of Civil Procedure, R.R.O 1990, Reg. 194, Rule 13.01\(2\)](#).

<sup>21</sup> Affidavit of Former Chief Gail Ava Hill, affirmed November 1, 2022 at para 21 [Resp. MR of the Plaintiff, Tab 2], and see also Ex. I at Tab 2I, p 884.

<sup>22</sup> See Ex. I at pp 884-891 to the Affidavit of Former Chief Gail Ava Hill [Resp. MR of the Plaintiff, Tab 2I].

<sup>23</sup> See the Draft Statement of Defence, Counterclaim, and Crossclaim of the Intervenor delivered on September 9, 2022, Ex. No. 3 to the Doolittle Cross-Exam. See also, the relief sought by HDI in the Amended Notice of Motion of HDI and the HDI Factum at para 110.



**PART IV – NATURE OF THE RESOLUTION PROPOSED**

25. Canada does not seek a specific order on this motion. Rather, Canada proposes that, if a representation order is to be made, the court consider including or addressing the following:
- a. that any representative be added as an intervening party under a combination of Rules 10.01(1) and 13.01(1);
  - b. that the order be limited to the representation of HCCC only;
  - c. that the intervention be limited to providing the traditional and historical Haudenosaunee perspective on the claims, rights, and issues put forward in the existing action; and
  - d. that specific parameters be set to define the procedural and other rights of the represented intervenor, for example:
    - i. limited production;
    - ii. limited discovery, with leave;
    - iii. ability to adduce evidence at trial;
    - iv. ability to cross-examine, with leave;
    - v. ability to make final written and oral submissions;
    - vi. full access to the existing record; and
    - vii. any other such parameters that the court may consider appropriate and just.

26. Canada seeks no costs on this motion and asks that no costs be awarded against Canada.

ALL OF WHICH IS RESPECTFULLY SUBMITTED

Dated at Toronto this May 1, 2023.



---

**ATTORNEY GENERAL OF CANADA**  
Department of Justice Canada  
Ontario Regional Office  
120 Adelaide Street West, Suite 400  
Toronto, ON M5H 1T1  
Fax: (416) 973-2319

Per: Owen Young (LSO 17656Q)  
Tel: (647) 309-9204  
Email: [Owen.Young@justice.gc.ca](mailto:Owen.Young@justice.gc.ca)

Per: Katrina Longo (LSO 78052H)  
Tel: (416) 459-3086  
Email: [Katrina.Longo@justice.gc.ca](mailto:Katrina.Longo@justice.gc.ca)

Counsel for the Defendant  
The Attorney General of Canada

**SCHEDULE A – LIST OF AUTHORITIES**

1. [\*Delgamuukw v. British Columbia\*, 1997 CanLII 302 \(SCC\), \[1997\] 3 SCR 1010](#)
2. [\*Halpern v. Toronto \(City\) Clerk\*, 2000 CanLII 29029 \(ON SCDC\), \[2000\] OJ No 4514 \(QL\)](#)
3. [\*R. v. Marshall\*, 1999 CanLII 665 \(SCC\), \[1999\] 3 SCR 456](#)
4. [\*Tsilhqot'in Nation v. British Columbia\*, 2014 SCC 44 \(CanLII\), \[2014\] 2 SCR 257](#)
5. [\*R. v. Van der Peet\*, 1996 CanLII 216 \(SCC\), \[1996\] 2 SCR 507](#)
6. [\*Wesley v. Alberta\*, 2019 ABQB 925 \(CanLII\)](#)

## SCHEDULE B – LIST OF STATUTES

1. [Rules of Civil Procedure, R.R.O 1990, Reg. 194](#)

a. [Rule 5.03](#)

### **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. R.R.O. 1990, Reg. 194, r. 5.03 (1).

#### ***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. R.R.O. 1990, Reg. 194, r. 5.03 (2).

#### ***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. R.R.O. 1990, Reg. 194, r. 5.03 (3).

#### ***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. R.R.O. 1990, Reg. 194, r. 5.03 (4).

#### ***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. R.R.O. 1990, Reg. 194, r. 5.03 (5).

#### ***Relief Against Joinder of Party***

(6) The court may by order relieve against the requirement of joinder under this rule. R.R.O. 1990, Reg. 194, r. 5.03 (6).

b. [Rule 10.01\(1\)](#)

**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. R.R.O. 1990, Reg. 194, r. 10.01 (1).

c. [Rule 13.01\(1\) and \(2\)](#)

**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. R.R.O. 1990, Reg. 194, r. 13.01 (1).

(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. R.R.O. 1990, Reg. 194, r. 13.01 (2).

SIX NATIONS OF THE GRAND RIVER BAND OF INDIANS AND

ATTORNEY GENERAL OF CANADA

and

HIS MAJESTY THE KING IN RIGHT OF ONTARIO

Plaintiff

Defendants

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
Proceeding Commenced at Toronto

**FACTUM OF THE DEFENDANT**  
**THE ATTORNEY GENERAL OF CANADA**

Department of Justice Canada  
Ontario Regional Office  
120 Adelaide Street West, Suite 400  
Toronto, ON M5H 1T1

Per: Owen Young (LSO 17656Q) and  
Katrina Longo (LSO 78052H)  
Tels: O. Young: (647) 309-9204  
K. Longo: (416) 459-3086  
Emails: [Owen.Young@justice.gc.ca](mailto:Owen.Young@justice.gc.ca)  
[Katrina.Longo@justice.gc.ca](mailto:Katrina.Longo@justice.gc.ca)

Counsel for the Defendant  
The Attorney General of Canada

Counsel for the Plaintiff:  
[rjanes@jfkllaw.ca](mailto:rjanes@jfkllaw.ca)  
[Iris.Antonios@blakes.com](mailto:Iris.Antonios@blakes.com), et al.

Counsel for the Defendant  
His Majesty the King in right of Ontario:  
[Manizeh.Fancy@ontario.ca](mailto:Manizeh.Fancy@ontario.ca), et al.

Counsel for HDI:  
[tim@gilbertslaw.ca](mailto:tim@gilbertslaw.ca), et al.

Counsel for Men's Fire:  
[jeff@kaufman.law](mailto:jeff@kaufman.law)