

**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 HAUDENOSAUNEE DEVELOPMENT INSTITUTE

(Men's Fire Motion to Intervene Returnable May 8, 2023)

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PART I – OVERVIEW

1. The “Men’s Fire of the Six Nations Grand River Territory” is a small, undefined group of men that has, for years, been seeking to obstruct HDI’s legitimate operation as a delegate of the HCCC. It has done so by way of unfounded civil proceedings advancing the same allegations as in this motion, and its members have done so by physical assault. Men’s Fire’s has moved to intervene for the sole purpose of seeking dismissal of HDI’s motion. Its efforts are at best confused, at worst vindictive, and, in either case, meritless.

2. The Men’s Fire characterizes itself as championing transparency but refuses to identify itself or those for whom it claims to speak beyond vague, absurd, and contradictory generalities. The best it has done is to say it is “a collective of Haudenosaunee persons”, representing “all reserves and men from...across Turtle Island” and which is instructed “by Haudenosaunee persons in the community”. But it also admits it does not speak for the Men’s Council of Oneida of the Thames, for example. These assertions beg for answers to basic questions: what “Haudenosaunee persons”, what “men”, and what “community” does Men’s Fire purport to speak for?

3. Men’s Fire has not answered these basic questions despite being repeatedly asked since November 2022. It refused relevant questions seeking to clarify the issue on cross-examination, its counsel stating, “the status of the Men’s Fire is not an issue in this proceeding”.

4. Men’s Fire’s only specific evidence is that it is comprised of less than ten men from Six Nations of the Grand River, plus miscellaneous others coming from the reserves at Akwesasne, Tyendinaga, and Kahnawake. In an Ontario Court of Justice proceeding in which two individuals acting in the name of Men’s Fire were convicted of assault on HDI’s delegate, Mr. Detlor, the Court found as fact that “Men’s Fire has a very small active membership”. The HCCC has publicly clarified that this small group does not have any authority of the Chiefs or Clan Mothers. It is that

same small group of individuals behind the current motion, seeking once again to fulfil their stated goals of “diminish[ing] the influence of HDI” and “cutting the head off of HDI”.

5. Men’s Fire agrees with HDI that the Haudenosaunee people (*i.e.*, **all of them**, not some of them) are the collective rightsholder in this case. It also agrees that the issues should be determined by a representative of the Haudenosaunee, determined at Haudenosaunee law.

6. Men’s Fire professes allegiance to all Haudenosaunee and purports to uphold Haudenosaunee law surrounding land (*i.e.*, it concerns all Haudenosaunee, not some). Yet, in direct contradiction of its stated position, Men’s Fire vocally supports the plaintiff band and band council, which is (i) by its own admission, not representative of all Haudenosaunee, only of its band list—a small fraction of the Haudenosaunee—and (ii) “outside the circle wampum”, the very basis for Men’s Fire’s objection to HDI. Men’s Fire’s support of the band council demonstrates the insincerity of its objections to HDI and the HCCC. The practical effect of what Men’s Fire seeks is that the interests of the Haudenosaunee at large will be unrepresented in this case.

7. Men’s Fire’s motion seeks two things: (a) intervention as a party to HDI’s motion under Rule 13.01(1); and (b) intervention as a friend of the Court in the action under Rule 13.02, if HDI is granted leave to intervene in the action. To succeed on (a), Men’s Fire requires the Court to adopt an erroneous interpretation of Rule 13.01(1) that has been repeatedly rejected by the Court. Regarding (b), Men’s Fire has already confirmed it has nothing to add to the adjudication of the proceeding: it is fully aligned with and would take no position different than the plaintiff. It has no “important perspective distinct from the immediate parties” and its proposed involvement will do nothing to help the Court resolve any issues in this case, including things like “who is the collective rightsholder?”.

8. In any event, the only thing Men’s Fire seeks in its factum is the dismissal of HDI’s co-pending motion—it treats its intervention on HDI’s motion as a foregone conclusion. To seek dismissal of *HDI’s motion*, Men’s Fire (a) levels unfounded and serious allegations including fraud and (b) asks the Ontario Superior Court to rule on Haudenosaunee law, which its own witnesses say cannot be done. Worse, it asks the Ontario Superior Court to do so based upon a fundamental misapprehension of the common law rule in *Browne v Dunn*, which should be rejected outright.

9. The record is clear. Haudenosaunee interests are at issue and will be affected by the action. It does not appear that Men’s Fire disagrees. However, nobody but the HCCC, through its delegate HDI, has come forward to represent those interests. Lest the Court wish to pre-judge the issue of the collective rightsholder and jeopardize the rights of 80,000 Haudenosaunee people, HDI should be granted leave to intervene. The untenable but predictable objection of a handful of men that have been obstinately opposed to HDI for nearly a decade should be no bar to that.

PART II – FACTS

A. Men’s Fire’s Obscure Identity and Broad Representation Request

10. This motion relates to a request from “The Men’s Fire *of the Six Nations of the Grand River Territory*” for leave to intervene as an added party on the motion brought by HDI and for leave to intervene as a friend of the Court in the action if HDI is successful on its motion.

11. This raises the following simple questions: who is the Men’s Fire? Who does it represent, and on what basis? Counsel for Men’s Fire refused relevant questions on the issue of “who is the Men’s Fire” during Mr. Davey’s cross-examination, on the basis that “the status of the Men’s Fire is not an issue in this proceeding,” stating that Mr. Davey explained “...who the Men’s Fire is

under Haudenosaunee law...” Mr. Davey’s affidavit does not contain even this vague explanation provided during cross, nor does it contain any other explanation as to who the Men’s Fire is/are.¹

12. The only evidence before the Court is that the Men’s Fire comprises or represents between three and nine people. Only three individuals are identified by name as objecting to HDI’s motion: Wilfred Davey, Bill Monture, and Chuck Montour.^{2,3} This is consistent with the evidence from the other parties. The plaintiff’s elected Chief, Mark Hill, said of Men’s Fire’s membership “[a]ll I know is Wilfred Davey and Bill Monture Senior”.⁴ HDI’s evidence is that Men’s Fire is a group of individuals comprised of Wilfred Davey, Bill Monture and three to four others (namely, Bob Frank Jr., Lester Green, and Moe Sandy).⁵

13. This is also consistent with a previous finding of the Ontario Court of Justice, where—in a trial for an assault of HDI’s Mr. Detlor carried out by two individuals in the name of the Men’s Fire (described below)—Justice Bourque found the “Men’s Fire” to be a “small group of men on the reserve” with “a very small active membership”.⁶ Justice Bourque found that there was “no evidence at all that this group [Men’s Fire] consulted with the larger group of Clan Mothers or Clan Chiefs”.⁷ The evidence (or lack thereof) demonstrates the same to be true in this motion.

14. Despite this, the Men’s Fire seeks to expand its membership through vague generalities, like during the cross-examination of Mr. Wilfred Davey, where he testified that it would be a fair statement to say that “essentially Men’s Fire represents all reserves and men from [...] across Turtle Island”.⁸ At the same time, Mr. Davey also admits there are specific groups (ones he

¹ W. Davey Cross, qq 26-28, pp 9-11, Transcript Brief [“**TB**”], Tab E, pp 308-309.

² W. Davey Cross, q 215, pp 61-62, TB, Tab E, pp 321-322.

³ K. Defreitas-Barnes Affidavit (Nov. 3, 2022), Ex D, HDI 3rd Supp Motion Record [“**MR**”], Tab 7D, p 80.

⁴ M. Hill Cross, q 348, p 75, TB, Tab G, p 467.

⁵ A. Detlor Affidavit (Feb. 6, 2023) at para 5, HDI Resp MR, Tab 3, p 159.

⁶ [R v Green](#), 2017 ONCJ 705 at [para 9](#).

⁷ A. Detlor Affidavit (Nov. 3, 2022) at paras 18-23 & Ex D, HDI Resp MR, Tabs 3 & 3D, pp 162-163 & 190.

⁸ W. Davey Cross, qq 214 & 216, pp 60-62, TB, Tab E, pp 321-322.

describes as being “the Men’s Fire”) for whom the Men’s Fire does not speak, including the Men’s Council of Oneida of the Thames.⁹ Mr. Davey testified that the Men’s Fire are “the men on the outside of the circle [wampum], protecting the women and the children,” and a collective that was allegedly instructed by “the rest of the men” (the men in the Yokwenhasta across Turtle Island) to object to HDI’s motion.¹⁰

15. When asked if there was any documentation to demonstrate that instruction, Mr. Davey said the Men’s Fire provided HDI “with meetings, names and signatures from attendees”. He acknowledged “they may not be in [his] affidavit, but they’re in [the Men’s Fire] motion records, and it’s well over 50 to 60 each time [they] met”.¹¹ Contrary to Mr. Davey’s testimony, no such documents were provided to HDI, nor are they in the record.

16. Men’s Fire undertook to provide any such documents, and on Sunday, April 30, 2023—one and a half months after Mr. Davey’s cross-examination and one day before the due date for this factum—provided a document containing lists of alleged attendees for meetings it says were held from 2016 to 2018 (4-6 years before HDI brought its motion), and which, by Men’s Fire’s own admission, do not relate to HDI’s intervention.¹² The document contains no details of any meetings (only attendees) and confirms that most Men’s Fire meetings have fewer than 10 attendees (none more than 22, almost 7 years ago in August 2016), and all of the most recent meetings in 2018 having between 3 and 9 attendees.¹³

17. Men’s Fire’s membership is clearly relevant given Men’s Fire’s request for “representation status” in (the 1st) paragraph 5 of its notice of motion.¹⁴ During Mr. Davey’s examination, counsel

⁹ W. Davey Cross, qq 165-166 & 187-188, pp 46-47 & 52-53, TB, Tab E, pp 318-319.

¹⁰ W. Davey Cross, qq 26 & 34-35, pp 9-10 & 12, TB, Tab E, pp 308-309.

¹¹ W. Davey Cross, q 36, pp 12-13, TB, Tab E, p 309.

¹² Men’s Fire 2nd Supp MR, Tab 2, pp 12-30.

¹³ Men’s Fire 2nd Supp MR, Tab 2, pp 12-30.

¹⁴ W. Davey Cross, qq 63-65, pp 19-20, TB, Tab E, p 311.

for Ontario sought to explore whether Men’s Fire is in fact representing all of these individuals (spanning Turtle Island) and what it is seeking by way of its request for “representation status”.¹⁵

18. Men’s Fire “clarified” that it seeks “representation status” as a “lawful representative under the *Gayanashagowa*’ of the plaintiff individual members”.¹⁶ But this “clarification” creates more questions than it answers: if by “plaintiff” Men’s Fire is referring to: (a) the plaintiff band—it does not explain how, and it excludes approximately 80,000 Haudenosaunee people not on the SNGR Band’s band list; or (b) the Men’s Fire—then its position is circular, and it remains unclear who they purport or seek to represent. In any event, Men’s Fire’s does not pursue a representation order in its Notice of Motion or factum.

19. To the extent Men’s Fire purports to represent more than its small membership, the Court is left guessing as to who the Men’s Fire represents. Men’s Fire’s confusing suggestion that it represents the “plaintiff individual members” either supports HDI’s intervention (the current plaintiff is the incomplete collective HDI takes issue with) or is circular and of no assistance.

B. Men’s Fire’s Vehement Political Opposition to HDI and HCCC

20. There is no evidence of widespread opposition to HDI. There is evidence of the Men’s Fire’s opposition to HDI. That is merely the politically motivated opposition of between three and nine men at Six Nations of the Grand River.

21. Men’s Fire points to only two other sources that it argues demonstrate widespread “vocal” opposition to HDI and the HCCC in this proceeding: (a) a newspaper editorial by an unidentified author,¹⁷ which shows only that unknown author’s view; and (b) a letter from the Oneida “Men’s

¹⁵ W. Davey Cross, qq 216-225, pp 62-65, TB, Tab E, p 322.

¹⁶ Men’s Fire Answers to Undertakings at UT2, Men’s Fire 2nd Supp MR, Tab 1, p 8.

¹⁷ L. Gerry Affidavit (Feb. 24, 2023), Ex D, Men’s Fire Supp MR, Tab 1D, p 169.

Council” for whom Men’s Fire admits it does not speak, and whose objection (i) incorrectly assumes that HDI is “incorporated” and (ii) extends to the current plaintiff and band council.^{18,19}

22. HDI’s motion was widely publicized, and only Men’s Fire came forward. The sincerity of Men’s Fire’s opposition should be considered in view of its longstanding and resolute opposition to HDI and the HCCC, which it has acted upon through meritless litigation and violence.

i. Green and Monture Physical Assault on Mr. Detlor in the name of Men’s Fire

23. The Men’s Fire’s small membership has announced their opposition to HDI and the HCCC not just vocally, but violently, in an attempt to discredit and physically remove both Mr. Detlor and HDI from the Six Nations of the Grand River reserve. On April 26, 2016, two members of Men’s Fire (Lester Green and Bill Monture) assaulted Mr. Detlor during a meeting at HDI’s offices in Ohsweken by grabbing and pushing him, and causing some minor injuries, in order to remove Mr. Detlor from the Six Nations of the Grand River reserve.²⁰

24. Mr. Green and Mr. Monture were charged with and found guilty of assault. Justice Bourque found that they “represent[ed] a faction known as the Men’s Fire”.²¹ Men’s Fire’s affiant, Wilfred Davey (“Will Davies” in the Court’s reasons) was present at the assault, having prepared and handed to Mr. Detlor during the assault a letter containing “demands” of the Men’s Fire.²²

25. Mr. Green and Mr. Monture stated in their testimony that their motivation for the assault was to “wake the people up” and to “cut off the head of HDI”.²³ Justice Bourque found in that case that there was not, however, “any consensus of the people that Detlor needed removal” and that

¹⁸ W. Davey Affidavit (Jan. 6, 2023), Ex E, Men’s Fire MR, Tab 2E, p 47.

¹⁹ W. Davey Cross, q 188, pp 52-53, TB, Tab E, p 319.

²⁰ *R v Green*, 2017 ONCJ 705 at [para 1](#) & [72\(11\)](#).

²¹ *R v Green*, 2017 ONCJ 705 at [para 4](#).

²² A. Detlor Affidavit (Feb. 6, 2023) at para 22, HDI Resp MR, Tab 3, p 162; *R v Green*, 2017 ONCJ 705 at [para 56](#).

²³ *R v Green*, 2017 ONCJ 705 at [para 89](#).

the conflict was in the “context of a larger political struggle”, the assault and removal being an effort to “diminish the influence of the HDI”.²⁴

ii. Men’s Fire’s Co-Pending Stale Class Action

26. The Men’s Fire’s decision to bring its motion now is an effort to either gather evidence for, or effectively adjudicate, their dormant co-pending class action in Ontario on HDI’s motion. The unfounded allegations that Men’s Fire raises in this motion are the same.²⁵

27. The class action proceeding was commenced on August 16, 2016 in Ontario Superior Court File No. 16-58391. The plaintiffs, Mr. Davey and Bill Monture (*i.e.*, the same Bill Monture mentioned in paragraph 23 above) seek relief as proposed representatives of a proposed class against a number of defendants, including Mr. Detlor and HDI. The class action is stale. The plaintiffs have taken no steps to certify the class action since the claim was issued, and it is now subject to a pending motion to dismiss for delay.²⁶

iii. Denouncement of the Men’s Fire Membership by the HCCC

28. Because of the Men’s Fire’s actions and conduct, the HCCC formally and publicly denounced the group’s members through a public notice.²⁷ The HCCC expressly named a number of Men’s Fire members as “acting without and never ha[ving] the authority or sanctioning” of the Chiefs and Clan Mothers in their activities in Ohsweken and on the Six Nations reserve.²⁸ The HCCC’s notice states “that these individuals and their actions are not representative of the people or community of [Six Nations of the Grand River]”.²⁹

²⁴ *R v Green*, 2017 ONCJ 705 at [paras 87-88](#).

²⁵ W. Davey Cross, qq 84-87, pp 24-25, TB, Tab E, p 312.

²⁶ A. Detlor Affidavit (Nov. 3, 2022) at paras 12-17 & Ex B, HDI Resp MR, Tabs 3 & 3B, pp 160-161 & 179.

²⁷ A. Detlor Affidavit (Nov. 3, 2022) at para 24 & Ex E, HDI Resp MR, Tabs 3 & 3E, pp 163-164 & 216.

²⁸ A. Detlor Affidavit (Nov. 3, 2022) at para 24 & Ex E, HDI Resp MR, Tabs 3 & 3E, pp 163-164 & 216.

²⁹ A. Detlor Affidavit (Nov. 3, 2022) at para 24 & Ex E, HDI Resp MR, Tabs 3 & 3E, pp 163-164 & 216.

C. HDI's Nature and Operations

i. HDI was Formed by the HCCC to Facilitate Engagement

29. HDI is a formal, unincorporated organization established by the HCCC in 2007 to administer and facilitate engagement with the HCCC (and Haudenosaunee Confederacy) regarding Haudenosaunee lands.^{30,31} HDI was created to provide proponents a central portal to engage with the HCCC in respect of pending and proposed development and to access resources for proper engagement to take place.^{32,33} It acts in conjunction with the HCCC and other HCCC-sanctioned entities.³⁴

30. Since 2007, the HCCC (through HDI as a delegated representative) has been increasingly, and is now routinely, engaged in respect of land issues in Haudenosaunee territories, including by the Federal and Provincial Crowns, municipalities, and industry proponents in respect of development and infrastructure projects.³⁵

31. Through this engagement and related environmental and archaeological monitoring agreements reached in respect of development and infrastructure projects, the HCCC, through HDI as its representative, has been able to (a) regain some recognition historically suppressed by the Federal Government and (b) garner resources for the HCCC's use in respect of land rights issues.³⁶

32. HDI functions as a department of the Haudenosaunee Government (similar to a Ministry in the Canadian government).³⁷ It receives applications for proposed development on

³⁰ B. Doolittle (Jun. 10, 2022) at para 13, HDI MR Vol 1, Tab 2, p 24.

³¹ R. Saul Affidavit (Feb. 6, 2023) at paras 10-13 & Ex C, HDI Resp MR, Tabs 1 & 1C, pp 5-6 & 34.

³² B. Doolittle Affidavit (Jun. 10, 2022) at para 16, HDI MR Vol 1, Tab 2, p 25.

³³ B. Doolittle Affidavit (Jun. 10, 2022) at Ex B, HDI MR Vol 1, Tab 2B, p 37.

³⁴ B. Doolittle Affidavit (Jun. 10, 2022) at para 14, HDI MR Vol 1, Tab 2, p 25.

³⁵ A. Detlor Affidavit (Aug. 31, 2022) at para 33, HDI 2nd Supp MR, Tab 2, pp 28-29.

³⁶ A. Detlor Affidavit (Aug. 31, 2022) at para 34, HDI 2nd Supp MR, Tab 2, p 29.

³⁷ R. Saul Affidavit (Feb. 6, 2023) at para 12, HDI Resp MR, Tab 1, pp 4-5.

Haudenosaunee lands, which commence a process of engagement that ensures sufficient time and resources are available for that engagement to be meaningful.³⁸

33. HDI's process ensures the availability of resources for meaningful engagement, such as environmental and other engineers, archaeological staff, land use planners, architects, legal counsel, and other various experts including Haudenosaunee elders knowledgeable about Haudenosaunee history, medicines, plants, animals, and general harvesting.³⁹

ii. 243 Ontario and Ogwawihsta Dewahsnye

34. Seven years after HDI was established, HDI incorporated a company called 2438543 Ontario Inc. ("**243 Ontario**"). The original purpose of 243 Ontario was to establish a partnership to hold an investment within the Grand Valley Wind Farm project; as the other limited partners did not understand the Haudenosaunee system under which HDI was formed, 243 Ontario was created to facilitate the investment as entity the other partners would understand.⁴⁰

35. In or about 2017, HDI began acquiring off-reserve real property at the direction of the Chiefs and Clan Mothers, for use by the Chiefs, Clan Mothers, HDI, and members of the community. It did so through 243 Ontario since 243 Ontario could interface with the Ontario land registry system in a way that Haudenosaunee entities like the HCCC or HDI could not.⁴¹

36. Today, 243 Ontario continues to: (a) collect revenue from the Grand Valley Wind Farm project; (b) hold off-reserve property for use by the administration of the HCCC, as HDI's offices, and for affordable housing to community members; (c) lease farmland associated with these

³⁸ B. Doolittle Affidavit (Jun. 10, 2022) at para 19, HDI MR Vol 1, Tab 2, p 26.

³⁹ B. Doolittle Affidavit (Jun. 10, 2022) at para 20, HDI MR Vol 1, Tab 2, p 26.

⁴⁰ R. Saul Affidavit (Feb. 6, 2023) at paras 14-16, HDI Resp MR, Tab 1, p 5.

⁴¹ R. Saul Affidavit (Feb. 6, 2023) at para 17, HDI Resp MR, Tab 1, pp 5-6.

properties; and (d) since 2018, facilitate payroll HDI's approximately 60 employees, who are members of the Haudenosaunee community (it has a Business Number, while HDI does not).⁴²

37. HDI incorporated a not-for-profit company, Ogwawihsta Dewahsnye (“**Ogwawihsta**”) in 2016 at the direction of the HCCC.⁴³ It was created to provide financial services to HCCC entities including HDI and 243 Ontario, including facilitating payroll for HDI (before 243 Ontario took that role), and advising the HCCC on funding from HDI for cultural and educational initiatives.⁴⁴ Ogwawihsta's primary function today is to help secure and hold funding through different grant programs.⁴⁵ There is one such active agreement, for the Aboriginal Learning Initiative.^{46,47}

iii. HDI's Significant Financial Disclosure

38. Men's Fire alleges that HDI is not transparent or accountable. Despite the marginal (if any) relevance to HDI's motion, HDI provided extensive evidence on its financials, including where its money comes from and where it goes. **All of HDI's financial statements** since its formation (and those of corporations formed by HDI) have been produced on this motion.^{48,49}

39. HDI's revenues come primarily from monitoring agreements, where HDI receives funds and pays around 50 employees for archaeological, environmental, and pipeline monitoring in respect of land development projects (*i.e.*, to fulfil its duties as a delegate of the HCCC).⁵⁰

40. HDI also receives revenues from: (a) land leases from the HCCC to energy companies for energy projects; (b) the City of Hamilton to facilitate a project between the Haudenosaunee and

⁴² R. Saul Affidavit (Feb. 6, 2023) at para 18, HDI Resp MR, Tab 1, p 6.

⁴³ R. Saul Affidavit (Feb. 6, 2023) at paras 13 & 24, HDI Resp MR, Tab 1, pp 5 & 7.

⁴⁴ R. Saul Affidavit (Feb. 6, 2023) at para 24, HDI Resp MR, Tab 1, p 7.

⁴⁵ R. Saul Affidavit (Feb. 6, 2023) at para 25, HDI Resp MR, Tab 1, p 7.

⁴⁶ R. Saul Affidavit (Feb. 6, 2023) at para 25, HDI Resp MR, Tab 1, p 7.

⁴⁷ R. Saul Cross, qq 418-421, pp 94-95, TB, Tab A, p 7.

⁴⁸ R. Saul Affidavit (Feb. 6, 2023) at paras 15-18 & 23-25, HDI Resp MR, Tab 1, pp 5-7.

⁴⁹ C. Fung Affidavit (Apr. 10, 2023) at Ex B4-B6, HDI 5th Supp MR, Tabs 1B4-1B6, pp 19-314.

⁵⁰ R. Saul Affidavit (Feb. 6, 2023) at paras 56-58, HDI Resp MR, Tab 1, pp 14-15.

the City relating to environmental guardianship of the Red Hill Valley; and (c) farming revenue received from the Burtch Farm annual yield.⁵¹

41. HDI's funds go back into the community, consistent with HDI's terms of reference. HDI uses its funds as directed by the HCCC to: **(a)** pay the salaries of HDI employees (including monitors); **(b)** pay the operating expenses of the HCCC, including office and general expenses, travel, conferences, meetings, and workshops (the HCCC is not funded by the Crown); **(c)** fund a Historical Department which conducts historical research for the community, as directed by the HCCC; **(d)** support community language/cultural development projects, including language projects, daycare and longhouse expenses in the community; **(e)** fund and support the Haudenosaunee Resource Centre, which is responsible for the maintenance of the Haudenosaunee ceremonial calendar, education regarding Haudenosaunee practices, medicines, language, and legal and ethical obligations to one another and to the land;⁵² **(f)** maintain and upgrade the Old Council House in Ohsweken; and **(g)** invest capital into 243 Ontario to support the acquisition of off-reserve real property, including property used for HDI's operations, for HCCC administration, and three properties that are currently being renovated for the intended purpose of renting them out to members of the Haudenosaunee community to help alleviate the burden of on-reserve shortages and provide several families in the community with housing for a market-type rate.^{53,54}

⁵¹ R. Saul Affidavit (Feb. 6, 2023) at paras 61, 64, & 68, HDI Resp MR, Tab 1, pp 15-17.

⁵² C. Martin Affidavit (Aug. 31, 2022) at para 9, HDI 2nd Supp MR, Tab 1, pp 2-3.

⁵³ R. Saul Affidavit (Feb. 6, 2023) at paras 55-68 & 71, HDI Resp MR, Tab 1, pp 14-18.

⁵⁴ A. Detlor Cross (Mar. 20, 2023), qq 114-121, pp 35-36, TB, Tab I, p 503.

D. HDI's Appointment by the HCCC Pursuant to the Great Law of Peace

i. *HDI's Appointment by the HCCC to Intervene in this Proceeding*

42. Men's Fire and HDI agree that the Council of Chiefs of the Haudenosaunee Confederacy comprise the ultimate governing authority for the Haudenosaunee people.^{55,56}

43. The Chiefs of the Haudenosaunee Confederacy have sat at two "council fires" since the American Revolutionary War: 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**").⁵⁷ Chiefs at both council fires have the same responsibility and authority ("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")⁵⁸ although, generally speaking, the HCCC deals with Haudenosaunee matters involving the Crown, as in this case.⁵⁹

44. Men's Fire acknowledges that delegation by the Confederacy Chiefs is a core principle of Haudenosaunee Law, their expert testifying 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.⁶⁰ That is precisely what has happened with HDI.

45. HDI was appointed in open council of the HCCC pursuant to the centuries-old deliberation process of the Haudenosaunee Confederacy Chiefs—by agreement of all three "benches" of the

⁵⁵ P. Delaronde Affidavit (Jan. 6, 2023) at para 14, Men's Fire MR, Tab 3, p 56.

⁵⁶ R. Hill Sr Affidavit (Feb. 6, 2023) at para 55, HDI Resp MR, Tab 3, p 57.

⁵⁷ R. Hill Sr Affidavit (Jun. 10, 2022) at paras 30-31, HDI MR Vol 1, Tab 3, p 190.

⁵⁸ R. Hill Cross, q 297, pp 111-112, TB, Tab F, p 423.

⁵⁹ R. Hill Sr Affidavit (Jun. 10, 2022) at para 32, HDI MR Vol 1, Tab 3, p 190.

⁶⁰ P. Delaronde Cross, q 116, pp 88-89 (*emphasis added*), TB, Tab H, pp 491-492.

HCCC during open council.^{61,62} That is, the issue of HDI's appointment was considered first by the Elder Brothers (the bench comprised of the Mohawk and Seneca Chiefs), then by the Younger Brothers (the bench comprised of the Oneida and Cayuga Chiefs), and then again by the Elder Brothers, and then by the Fire Keepers (the Onondaga Chiefs).⁶³

46. The appointment decision was made in open council and then widely publicized, including in HCCC Council minutes of April 2, 2022,⁶⁴ an April 6, 2022 letter from the HCCC to Canada's Minister of Crown-Indigenous Relations,⁶⁵ two letters from the HCCC to HDI in June and July 2022,^{66,67} a July 25, 2022 HCCC press release,⁶⁸ and formally by order of this Court.^{69,70,71,72}

47. The only concerns about HDI's appointment raised by any Chiefs were from the Mohawk and Oneida Nation Longhouses⁷³ (the Chiefs of those Longhouses are also part of the HCCC, and each Longhouse had a Chief present at the April 2, 2022 Council).⁷⁴ Both Longhouses recognized "the deep importance of the issues before the Court to all Haudenosaunee",⁷⁵ and their initial concerns have since been addressed directly by the HCCC,⁷⁶ without further objection.

⁶¹ B. Doolittle Affidavit (Jun. 10, 2022) at paras 24-25, HDI MR Vol 1, Tab 2, p 29.

⁶² R. Hill Sr Affidavit (Jun. 10, 2022) at paras 35-37, HDI MR Vol 1, Tab 3, pp 191-192.

⁶³ R. Hill Sr Affidavit (Feb. 6, 2023) at para 57, HDI Resp MR, Tab 2, p 58.

⁶⁴ C. Fung Affidavit (Apr. 10, 2023) at Ex C1, HDI 5th Supp MR, Tab 1C1, pp 320-321.

⁶⁵ B. Doolittle Affidavit, Ex I, HDI MR Vol 1, Tab 2I, p 178.

⁶⁶ B. Doolittle Affidavit (Jul. 6, 2022) at Ex A, HDI Supp MR, Tab 1A, p 8.

⁶⁷ C. Fung Affidavit (Apr. 10, 2023) at Ex C2, HDI 5th Supp MR, Tab 1C2, p 322.

⁶⁸ M. Hill Affidavit (Nov. 2, 2022) at Ex J, Six Nations of the Grand River Band Resp MR, Tab 1J, p 241.

⁶⁹ T. Dumigan Affidavit (Sept. 26, 2022), HDI 3rd Supp MR, Tab 3, pp 14-15.

⁷⁰ J. Martin Affidavit (Sept 30, 2022), HDI 3rd Supp MR, Tab 5, pp 22-37.

⁷¹ D. Gibbs Affidavit (Sept. 27, 2022), HDI 3rd Supp MR, Tab 4, pp 17-20.

⁷² J. Martin Affidavit (Oct 3, 2022), HDI 3rd Supp MR, Tab 6, pp 38-42.

⁷³ K. Defreitas-Barnes Affidavit (Nov. 3, 2022) at Ex E & F, HDI 3rd Supp MR, Tabs 7E & 7F, p 83 & 86.

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

⁷⁵ K. Defreitas-Barnes Affidavit (Nov 3, 2022) at Ex E & F, HDI 3rd Supp MR, Tabs 7E & 7F, pp 83 & 86.

⁷⁶ A. Detlor Affidavit (Feb. 8, 2023) at paras 3-4, HDI 4th Supp MR, Tab 1, pp 1-2.

ii. *The Great Law is an Oral Tradition*

48. Both HDI and Men’s Fire’s experts agree that the Great Law is an oral tradition.^{77,78,79} It is maintained orally because the law is in wampum belts; not in any book.^{80,81} On cross-examination, Men’s Fire’s expert witness stated that, in reference to written versions of the Great Law, “...**no one should go by that.** It is only an introduction”.⁸² Despite the consensus that the Great Law is oral, the Men’s Fire relies on a written version of the Great Law to support its position that HDI’s appointment was illegitimate and that it—the Men’s Fire—is entitled to veto the HCCC’s appointment of HDI, and HDI’s intervention.

49. The version of the Great Law relied upon by the Men’s Fire is one published by “Gerald Murphy” in 2001 with copyright claimed by Portland State University.^{83,84} That version, which comprises “117 articles”, was originally prepared by an American anthropologist and is not an accurate statement of the Great Law.⁸⁵ That version is based upon a manuscript written by one Seth Newhouse, and has been rejected by the Chiefs of the Haudenosaunee Confederacy.⁸⁶

50. Men’s Fire’s insistence that the Great Law is an oral tradition, and simultaneous reliance on written versions to justify its intervention in the motion, underscore the inconsistency of its position throughout this motion. While the Court may not be able to rule on the true or correct

⁷⁷ R. Hill Cross, q 186, p 60, TB, Tab F, p 410.

⁷⁸ R. Hill Sr Affidavit (Feb. 6, 2023) at para 40, HDI Resp MR, Tab 2, p 54.

⁷⁹ P. Delaronde Cross, qq 62 & 100, pp 33 & 66, TB, Tab H, pp 477 & 486.

⁸⁰ R. Hill Cross, q 186, p 60, TB, Tab F, p 410.

⁸¹ P. Delaronde Cross, q 70, p 35, TB, Tab H, p 47.

⁸² P. Delaronde Cross, q 72, pp 36-37, TB, Tab H, p 478.

⁸³ P. Delaronde Affidavit (Jan 6, 2023) at para 11 & Ex A, Men’s Fire MR, Tabs 3 & 3A, pp 52 & 65.

⁸⁴ R. Hill Sr Affidavit (Feb. 6, 2023) at para 16, HDI Resp MR, Tab 2, p 47.

⁸⁵ R. Hill Sr Affidavit (Feb. 6, 2023) at paras 17-18, HDI Resp MR, Tab 2, pp 47-48.

⁸⁶ R. Hill Sr Affidavit (Feb. 6, 2023) at paras 19-22, HDI Resp MR, Tab 2, pp 48-49.

version of the Great Law (Men's Fire's Mr. Davey says it cannot),⁸⁷ it should consider the amorphous and irreconcilable nature of the Men's Fire argument, which evolves to suit its position.

51. In any event, Men's Fire's argument that Mr. Delaronde's evidence regarding the Great Law should be accepted to the exclusion of Mr. Hill's evidence rests solely on a misapprehension of the rule in *Browne v Dunn*, as discussed in more detail at paragraphs 76 to 79, below.

PART III – ISSUES

52. Men's Fire seeks to insert itself into the determination of HDI's motion, as part of its longstanding and open opposition to HDI. The issues on Men's Fire's motion are:

- (i) Should Men's Fire be granted leave to intervene as a party to HDI's motion?
- (ii) If Men's Fire is granted leave, should it be granted the relief it seeks—*i.e.*, the dismissal of HDI's co-pending motion?
- (iii) Should Men's Fire be granted leave to intervene in the action as a friend of the Court?

PART IV – LAW AND ARGUMENT

A. Men's Fire Should be Denied Leave under 13.01: It has no Interest in the Proceeding

53. Men's Fire's seeks extraordinary relief for which there is no precedent: it seeks to intervene as an added party on HDI's motion for leave to intervene and a representation order. Leave should not be granted; Men's Fire does not have a sufficient interest to justify intervention, even on the flawed approach it asks this Court to adopt.

⁸⁷ W. Davey Cross, q 193, p 54, TB, Tab E, p 320.

54. Men’s Fire seeks leave to intervene as an added party *on HDI’s motion* pursuant to Rule 13.01(1).⁸⁸ Rule 13.01(1) does not contemplate intervention on a motion. Rule 13.01(1) requires a person seeking to intervene as an added party establish that:

- (i) the person has 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 this proceeding.⁸⁹

55. Men’s Fire’s submissions on the issue of intervention as an added party appear at paragraphs 70-73 of its factum. It advances no position in respect of Rules 13.01(1)(b) or (c). Men’s Fire’s only basis for intervening is rule 13.01(1)(a): “that the Men’s Fire has sufficient interest in the subject matter *of the HDI motion* for intervention to be added as a party on the motion”.⁹⁰ This is the incorrect test for intervention as an added party—Men’s Fire does not assert an interest in the subject matter of the proceeding.⁹¹

56. While Courts have granted leave to intervene on a motion in limited circumstances, it has been said to be only permissible under the “most pressing and urgent necessity”.⁹² The approach the Court has adopted where a non-party seeks leave to intervene as an added party on a motion is to exercise the Court’s inherent jurisdiction to control its own process and exercise its authority

⁸⁸ Amended Notice of Motion of the Men’s Fire (Feb. 6, 2023) at para 1.

⁸⁹ *Rules of Civil Procedure*, RRO 1990, Reg 194, [r 13.01\(1\)](#).

⁹⁰ Moving Factum of the Men’s Fire at para 71 (*emphasis added*).

⁹¹ Men’s Fire relies on *Halpern v Toronto (City) Clerk*, [2000] O.J. No. 4514 (Ont. Div. Ct.) at para 15 as an authority for the test of whether a proposed intervenor has sufficient “interest in the subject matter” pursuant to Rule 13.01(1)(a). In this case, the Divisional Court was clear that, as provided by the language of the rule itself, a proposed intervenor must have an interest in the subject matter of the *proceeding*.

⁹² *Reichmann v Toronto Life Publishing Co.*, 36 C.P.C. (2d) 176 (Ont. HC) at para 7 [[Westlaw](#)].

under Rule 1.04(2) to apply a Rule—here, Rule 13.01(1)—by *analogy*.⁹³ When the Court considers Rule 13.01(1) by analogy, however, **the language and statutory requirements of the rule are unaffected**—Rule 13.01(1)’s clear language cannot be “maimed” to achieve a desired result.⁹⁴

57. Contrary to the approach advanced by Men’s Fire, reference to the term “proceeding” in Rule 13.01 must be interpreted in a manner consistent with the definition of “proceeding” in Rule 1.03(1)—*i.e.*, an “action or application”.⁹⁵ This approach upholds the interpretive integrity of the Rules while providing for intervention on a motion in limited cases.

58. Regardless, Men’s Fire has failed to articulate what its interest is beyond its own unproven claims about HDI’s authority, lack of transparency, and accountability.⁹⁶ Even if Men’s Fire’s concerns were legitimate—they are not—Men’s Fire’s assertion that these are “germane to the issues on the HDI motion” says nothing of interest in the subject matter of the *proceeding*. It has none. It says it does not take issue with the plaintiff’s position and rather takes issue “primarily and squarely with HDI’s intervention”.⁹⁷

59. Even on its own flawed approach to Rule 13.01, Men’s Fire’s claim for leave to leave to intervene is fatally flawed. Men’s Fire has asserted only an interest in the outcome of HDI’s motion (which is denied in any event), not its subject matter, and not the outcome of the proceeding. Court’s have repeatedly held that interest in the outcome of a proceeding, as opposed to its subject matter, is not the test under Rule 13.01(1)(a).⁹⁸

⁹³ *Finlayson v GMAC Leaseco Ltd. / GMAC Location Ltée*, [2007] O.J. No. 597 (Ont. SCJ) at [paras 23-26](#) [“*Finlayson*”], *aff’d* [2007 ONCA 557](#).

⁹⁴ *Finlayson* at [para 23](#), *aff’d* [2007 ONCA 557](#).

⁹⁵ *Finlayson* at [para 23](#), *aff’d* [2007 ONCA 557](#). See also *Crown Trust Co. v Rosenberg*, 39 D.L.R. (4th) 526 at paras 9-20 [*Westlaw*] (the Court declined to ascribe different meaning to the word “proceeding” under Rule 1.04(1)).

⁹⁶ Moving Factum of the Men’s Fire at para 73.

⁹⁷ W. Davey Cross, qq 180-182, pp 51, TB, Tab E, p 319. See also Men’s Fire Case Management Conference Memorandum dated February 2, 2023 at para 10.

⁹⁸ *Finlayson* at [paras 27-28](#), *aff’d* [2007 ONCA 557](#). See also *Goldentuler v Crosbie*, 2016 ONSC 989 at [paras 44-45](#).

A. If Leave to Intervene is Granted, Men's Fire Evidence and Position does not Justify Dismissal of HDI's Co-Pending Motion

60. Men's Fire makes a series of allegations, which it says should prevent HDI from obtaining the leave to intervene it seeks on its co-pending motion. Men's Fire's Notice of Motion alleges fraud, without particulars,⁹⁹ and its factum alleges as follows:

- (i) The “**Illegitimacy Argument**” that HDI was not “properly constituted” and it has, by incorporating a corporation, “relinquished its voice” and “forfeited its place in the circle wampum and no longer has any jurisdiction under Haudenosaunee law”;¹⁰⁰
- (ii) The “**Accountability Argument**” that HDI is not an appropriate representative because Men's Fire says it is not transparent and accountable;
- (iii) The “**Consensus Argument**” that, in appointing HDI to intervene in this case, the HCCC was required but failed to “submit the matter to the decision of their people”—Men's Fire says that “[d]ecisions regarding matters of great importance such as land rights, as are being addressed in this proceeding, should not be made solely by the Chiefs at the Grand Council but through consultation with the Clan Mothers and the people of their Clans”;¹⁰¹ and
- (iv) The “**Process Argument**” that the HCCC Council at which HDI was appointed was not properly carried out because, Men's Fire says, there was no “advanced notice” or an agenda circulated for the meeting, there were Chiefs who did not attend, and Men's Fire alleges that Clan Mothers were not involved.¹⁰²

⁹⁹ Men's Fire Amended Notice of Motion at paras 11-12, Men's Fire MR Tab 1, p 6.

¹⁰⁰ See, e.g., Moving Factum of the Men's Fire at paras 45 & 51.

¹⁰¹ See, e.g., Moving Factum of the Men's Fire at paras 28(h) & 30.

¹⁰² See, e.g., Moving Factum of the Men's Fire at paras 32-34 & 41.

61. Each of these arguments are meritless, and Men's Fire's position is incompatible with its support of the band and band council, as described immediately below.

i. Men's Fire's Illogical Support of the Band Council

62. As a preliminary matter, the allegations Men's Fire makes against HDI cannot be reconciled with its support of the Six Nations of the Grand River Band Council. Men's Fire "does not take issue with the current plaintiff's position, the current plaintiff being the band council" and is "not taking the lead away from band council".¹⁰³ These perplexing inconsistencies demonstrate the insincerity of the Men's Fire's objections to HDI, which are not based upon the legal or factual merits of any of the true issues in dispute and should be viewed with skepticism. For example:

- (i) Men's Fire says HDI is "outside the circle wampum" and has "relinquished its voice". Men's Fire's position is that band council should keep the "lead", yet its witnesses testified that the band council is "outside the circle",^{104,105}
- (ii) Men's Fire says the "Haudenosaunee people as a whole" must be consulted and represented¹⁰⁶ and that decisions should be made by the Haudenosaunee Chiefs, in consultation with the Clan Mothers and people of their Clans.¹⁰⁷ At the same time, Men's Fire's position advocates for consequential land rights to be determined by the Ontario Court with input only from the band council (which Chief Mark Hill confirmed represents only a fraction of Haudenosaunee people)¹⁰⁸ and the governments of Canada and Ontario.

¹⁰³ W. Davey Cross, q 180, p 51, TB, Tab E, p 319.

¹⁰⁴ W. Davey Cross, q 148, pp 43-44, TB, Tab E, p 317.

¹⁰⁵ P. Delaronde Cross, qq 74-75, p 42, TB, Tab H, p 480.

¹⁰⁶ Men's Fire Amended Notice of Motion at para 17, Men's Fire MR Tab 1, p 7.

¹⁰⁷ Moving Factum of the Men's Fire at para 30.

¹⁰⁸ M. Hill Cross, q 183, p 41, TB, Tab G, p 458.

63. Indeed, HDI’s and Men’s Fire’s positions are the same on critical issues on the merits:

| Issue | HDI’s Position | Men’s Fire Position |
|---|---|--|
| Collective | The people of the Haudenosaunee Confederacy are the true collective rights-holders in this action. ¹⁰⁹ | The Haudenosaunee people are the “true collective rights-holders in this action”, ¹¹⁰ rather than any <i>Indian Act</i> band. ¹¹¹ |
| A Haudenosaunee Representative is Necessary, not the Band Council | <p>Representation of the Haudenosaunee Confederacy’s interests in the action is necessary.¹¹² The Six Nations of the Grand River Band and band council are not representative of the Haudenosaunee,¹¹³ and are not representative of the collective rightsholders in the action.¹¹⁴</p> <p>The “Circle Wampum makes the line between traditional councils and elected councils clear and distinct; the traditional councils are the original governments of the Haudenosaunee communities/nations handling national affairs, while the elected councils are imposed systems of the <i>Indian Act</i>...”¹¹⁵</p> | <p>The issues in this proceeding must be determined by a representative of the Haudenosaunee, as established by Haudenosaunee law.¹¹⁶</p> <p>The SNGR Band Council is outside of the circle wampum.^{117,118}</p> <p>Men’s Fire’s expert testifies:</p> <p>“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 <i>Indian Act</i>. That is still not us. No matter how hard they try to ram that down our throats, we do not have to accept that.”¹¹⁹</p> |
| Action Concerns all Haudenosaunee | The SNGR Band represents a small fraction of the Haudenosaunee; at least 80,000 Haudenosaunee are unrepresented and do not have a voice in this litigation, despite being part of the collective. ¹²⁰ | It is “fundamental...that the rights of the people [the Haudenosaunee] are not trampled upon by determinations outside of Haudenosaunee law”. ¹²¹ The “Haudenosaunee people as a whole” must be consulted and represented. ¹²² |

¹⁰⁹ HDI Notice of Motion at paras 6 & 34, HDI MR Vol 1, Tab 1, pp 2 & 7-8.

¹¹⁰ P. Delaronde Affidavit at para 1, Men’s Fire MR, Tab 3, pp 52-53.

¹¹¹ P. Delaronde Cross, q 44, pp 21-22, TB, Tab H, pp 474-475.

¹¹² HDI Notice of Motion at para 51, HDI MR Vol 1, Tab 1, p 13.

¹¹³ HDI Draft Pleading at paras 59, 61, & 67, pp 15 & 17.

¹¹⁴ HDI Notice of Motion at paras 43-43 & 48-49, HDI MR Vol 1, Tab 1, pp 10 & 12.

¹¹⁵ HDI Notice of Motion at para 49, HDI MR Vol 1, Tab 1, p 12.

¹¹⁶ Men’s Fire Amended Notice of Motion at para 2, Men’s Fire MR Tab 1, p 3.

¹¹⁷ W. Davey Cross, q 148, pp 43-44, TB, Tab E, p 317.

¹¹⁸ P. Delaronde Cross, qq 74-75, p 42, TB, Tab H, p 480.

¹¹⁹ P. Delaronde Cross, q 44, pp 21-22, TB, Tab H, p 474-475.

¹²⁰ HDI Draft Pleading at paras 67-68, p 17.

¹²¹ Men’s Fire Amended Notice of Motion at para 5, Men’s Fire MR Tab 1, p 4.

¹²² Men’s Fire Amended Notice of Motion at para 17, Men’s Fire MR Tab 1, p 7.

| Issue | HDI's Position | Men's Fire Position |
|---|---|--|
| Negotiation and the Nation-to-Nation Relationship | <p>The issues in this case should be addressed by Nation-to-Nation negotiation and mediation, consistent with the Two Row Wampum and Silver Covenant Chain:</p> <p>“The Silver Covenant Chain must be polished, as it has numerous times throughout history. Nation-to-nation negotiation and/or mediation between the Haudenosaunee Confederacy and the Crown concerning the issues in this action is crucial...”¹²³</p> | <p>This matter does not belong in Ontario Court.¹²⁴</p> <p>The proper process for resolving these matters involves HCCC engaging the Crown directly, consistent with the obligations in the Silver Chain Covenant.¹²⁵</p> |
| Indian Act Band and Band Councils | <p>The division of the Haudenosaunee people into “bands” is of no import for the collective rights and interests of the Haudenosaunee. The Haudenosaunee are, regardless of any decision by the Canadian or American government to slot them into discrete “bands” and “tribes”, one collective.¹²⁶</p> <p>Elected councils (<i>i.e.</i>, band councils) are “imposed systems of the <i>Indian Act</i> in Canada and Federal Indian Law in the United States for the administration of colonial policies in each community”.¹²⁷</p> | <p>Men's Fire's expert evidence was:</p> <p>“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 <i>Indian Act</i>. 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”.¹²⁸</p> <p>“the <i>Indian Act</i> is, you know, an assimilation and termination policy that was designed by Canada to assimilate us and to have us relinquish our relation to the land...it is part of the Canadian system. It is part of Canada”.¹²⁹</p> |

¹²³ HDI Draft Pleading at para 92, p 25.

¹²⁴ P. Delaronde Cross, q 53, pp 27-29, TB, Tab H, p 476.

¹²⁵ Men's Fire Amended Notice of Motion at para 22, Men's Fire MR, Tab 1, p 9.

¹²⁶ HDI Draft Pleading at para 62, p 15.

¹²⁷ HDI Notice of Motion at para 49, HDI MR Vol 1, Tab 1, p 12.

¹²⁸ P. Delaronde Cross, q 44, pp 21-22, TB, Tab H, pp 474-475.

¹²⁹ P. Delaronde Cross, qq 74-75, p 42, TB, Tab H, p 480.

64. Notwithstanding the clear agreement on critical points, Men’s Fire remains staunchly opposed to HDI and in full support of the band and band council, whose position is antithetical to what the Men’s Fire’s says it stands for. While professing to uphold Haudenosaunee interests, Men’s Fire actively seeks to undermine them, risking significant collective costs to all of the at least 80,000 Haudenosaunee people who do not happen to be on the plaintiff’s band list.

ii. The Illegitimacy Argument: Men’s Fire’s Shifting Position

65. Men’s Fire’s opposition to HDI has been a case of shifting goalposts. Exemplary of its shifting opposition is the Illegitimacy Argument that HDI is “outside the circle wampum”.

66. Men’s Fire’s Notice of Motion dated November 7, 2022 alleges that HDI is not a “properly authorized” representative of the Haudenosaunee people for two reasons:¹³⁰

- (i) “questions arising” from Men’s Fire’s “ongoing legal dispute regarding the legitimacy of HDI”; and
- (ii) alleged “misrepresentation of Haudenosaunee law by HDI”.

67. Men’s Fire then served evidence two months later, on January 9, 2023. That evidence leveled new allegations against HDI, including that it cannot represent Haudenosaunee interests because it has left the “circle wampum” on account of being a “provincially incorporated entity” and has thus “forfeited [its] claims to authority within the Haudenosaunee Confederacy”.^{131,132} That material fundamentally misapprehends the “Declaration of Trust” which (a) did not form HDI, which predates the declaration of trust by 7 years, (b) did not form 243 Ontario,¹³³ and (c)

¹³⁰ Men’s Fire Amended Notice of Motion at para 4, Men’s Fire MR, Tab 1, p 4.

¹³¹ P. Delaronde Affidavit (Jan. 6, 2023) at paras 34-36, Men’s Fire MR, Tab 3, pp 61-62.

¹³² W. Davey Cross, q 40, p 15, TB, Tab E, p 310.

¹³³ Ontario corporations are “established” (*i.e.*, incorporated) when the incorporators sign the articles of incorporation and the Director endorses those articles: see, *e.g.*, *Business Corporations Act*, R.S.O. 1990, c. B.16, ss. [4\(1\)](#) and [6](#).

concerns Chief *titles*, not any specific individual Chief at a specific point in time;¹³⁴ a concept Mr. Davey understands, stating a “title doesn’t go to the grave, it goes back on the wall”.¹³⁵

68. The evidence adduced by HDI in response and on cross-examinations demonstrated that Men’s Fire misunderstood the nature and dealings of HDI: HDI is not a corporation established under Ontario law or otherwise. It is a Haudenosaunee entity formed under the law and jurisdiction of the HCCC that exercises control over two incorporated entities: 243 Ontario¹³⁶ and Ogwawihsta, a not-for-profit corporation¹³⁷. The formation of each was sanctioned by the HCCC.^{138,139} HDI explained it needed to incorporate those entities to interface with the Ontario land registry system and to facilitate funding to community groups.¹⁴⁰

69. Ultimately, Men’s Fire appears to have accepted it was mistaken (HDI is not 243 Ontario, or any other corporation) and changed tack again. It now says HDI has left the wampum circle by “becoming a corporate entity *by proxy*”, a concept and allegation that is simply unsupported in law or by any of the affiants’ evidence.¹⁴¹

70. Men’s Fire also now seeks to advance a new theory (raised for the first time in its factum), calling into question the propriety of the trust established by the Declaration of Trust.¹⁴² This allegation is meritless, irrelevant, and ostensibly is made in support of its co-pending and stale class action. Tellingly, Men’s Fire cites no authority for this new allegation, which is tainted by its clear misunderstanding of the document itself, for example: (1) the Declaration did not establish

¹³⁴ A. Detlor Affidavit (Feb. 6, 2023) at para 8, HDI Resp MR, Tab 3, pp 159-160.

¹³⁵ W. Davey Cross, q 117, pp 32-33, TB, Tab E, p 314.

¹³⁶ R. Saul Affidavit (Feb. 6, 2023) at paras 8-9 & 13-20, HDI Resp MR, Tab 1, pp 4-6.

¹³⁷ R. Saul Affidavit (Feb. 6, 2023) at paras 21-26, HDI Resp MR, Tab 1, p 7.

¹³⁸ R. Saul Affidavit (Feb. 6, 2023) at paras 10 & 11, HDI Resp MR, Tab 1, p 4.

¹³⁹ B. Doolittle Affidavit (Jun. 10, 2022) at paras 13-18, HDI MR Vol 1, Tab 2, p 24-26.

¹⁴⁰ R. Saul Affidavit (Feb. 6, 2023) at paras 23-26, HDI Resp MR, Tab 1, p 7.

¹⁴¹ Moving Factum of the Men’s Fire at para 51.

¹⁴² See, e.g., Moving Factum of the Men’s Fire at para 49.

243 Ontario; (2) the 50 shares were not held by Hazel Hill (a former Director of HDI), Ms. Hill merely appears to have signed on HDI's (the "undersigned") behalf; and (3) the beneficiaries are a clearly ascertainable group of people – namely, the holders of the chief titles at any point in time.

iii. The Accountability Argument: Men's Fire Ignores the Evidence

71. Men's Fire's Accountability Argument relies on innuendo and speculation, and ignores HDI's broad disclosure to date and the evidence.

72. Contrary to the vague assertions of the Men's Fire regarding HDI's financial secrecy, its own factum demonstrates the breadth of HDI's financial disclosure (paras 55-57, for example). Indeed, HDI has disclosed all financial statements going back to its formation in 2007, and the formation of 243 Ontario and Ogwawihsta. HDI has also explained in detail its sources of income and what its acquired funds and property are used for (see paragraphs 35-41, above).

73. Despite this broad disclosure, Men's Fire has failed to identify a single instance of its alleged financial impropriety or misappropriation of funds. Instead, Men's Fire says *give me more*—nothing short of a total forensic accounting would meet Men's Fire's unlimited standard of accountability and transparency. Despite that HDI has provided all of its financial statements, Men's Fire asserts that HDI has failed to disclose "any details" of the more than 215 projects HDI has been involved in, "including fees earned" and the individual salaries and fees earned by HDI's employees. Men's Fire's requests are disproportionate, intrusive, and irrelevant, and the totality of project revenue and salaries is in HDI's financial statements.

74. Other than HDI's allegedly inadequate financial disclosure, Men's Fire only alleges misuse of properties acquired by 243 Ontario.¹⁴³ That allegation is also unfounded.

¹⁴³ Moving Factum of the Men's Fire at paras 56-63.

75. The evidence is that 243 Ontario has acquired nine properties for HDI's operations, HCCC administration, and three which are currently being renovated for the intended purpose of renting them out to families in the Haudenosaunee community to help alleviate on-reserve shortages. The three properties for community housing were acquired in fiscal years 2021-2022 and 2022-2023; they are currently being renovated for that use.¹⁴⁴ Men's Fire's suggestion that HDI is operating in breach of trust if properties are not *immediately* available for use as community housing is absurd and, in any event, irrelevant to the matters in dispute on HDI's motion. Men's Fire also argues a condominium purchased by 243 Ontario and co-owned by Mr. Detlor is a "clear violation of HDI's stated land acquisition policies" and "evidently not an office space", ignoring the evidence that no one resides at this property, and it is being used in part as an office space to support HDI's operations in the Greater Toronto area.¹⁴⁵

iv. The Consensus and Process Arguments: Men's Fire's Flawed Reliance on Browne v Dunn

76. Men's Fire says its witness's evidence about the Great Law must be accepted wholesale, and HDI's qualified expert witness's evidence rejected outright. Men's Fire makes this argument relying entirely on a misapprehension of the rule in *Browne v Dunn*.

77. The rule in *Browne v Dunn* does not apply. The rule is to promote trial fairness.¹⁴⁶ The rule is to prevent ambushing a witness with *later* contradictory evidence that they cannot address.¹⁴⁷ This is not a trial; Men's Fire could have replied. There is no surprise. The Divisional Court has confirmed that where reply is available, the rule in *Browne v Dunn* is inapplicable.¹⁴⁸

¹⁴⁴ R. Saul Cross, qq 526-547, pp 122-125, TB, Tab A, p 32.

¹⁴⁵ R. Saul Cross, qq 413-415, pp 92-93, TB, Tab A, p 24.

¹⁴⁶ *R v MB*, 2009 ONCA 524 at [para 73](#).

¹⁴⁷ *R v MB*, 2009 ONCA 524 at [paras 72-73](#).

¹⁴⁸ *Mauti v Gibbs*, 2019 ONSC 3355 (Ont. Div Ct) at [para 33](#).

78. Indeed, leave to recall a witness is one of two options the Court has if it has determined the rule in *Browne v Dunn* has been contravened.¹⁴⁹ That remedy demonstrates the inapplicability of *Browne v Dunn* here: if Men’s Fire thought Mr. Delaronde needed to clarify his evidence or otherwise reply to Mr. Hill, it could have served additional evidence to do so. In fact, ***it did serve additional evidence***.¹⁵⁰ It chose not to address Mr. Hill’s testimony, of which it now complains.

79. Even if this were a trial, where surprise could conceivably be a factor, HDI would be under no obligation to cross-examine Mr. Delaronde on every point of conflict between Mr. Hill and Mr. Delaronde’s view of the Great Law.¹⁵¹ Mr. Hill and Mr. Delaronde are opposing expert witnesses and, naturally, their views differ; it is not incumbent on the cross-examiner to put to the opposing expert every single point of contention.¹⁵²

80. Men’s Fire’s objections based on the Great Law are also wrong on the facts.

81. First, Men’s Fire alleges that HDI’s appointment cannot stand because, it says, there was insufficient “notice” of the April 2, 2022 meeting. That ignores the expert evidence about the centuries-old oral tradition of the Haudenosaunee, and their participatory government process:

[...] being Haudenosaunee is a participatory form. If you are in the meetings, if you are in your clan meetings, you know what's going on. If you don't use that system, then, all of a sudden, you want everybody to tell you what's going on. It doesn't work that way. You have to go there. Your Clan Mother has to go there, and that's how you become informed. We don't issue bulletins or newsletters and go, Here’s the minutes of the meeting, you know, because we've maintained this oral tradition.¹⁵³

¹⁴⁹ [Curley v Taafe](#), 2019 ONCA 368 at para 31.

¹⁵⁰ Men’s Fire served its Supplementary Motion Record on February 24, 2023, after HDI served its responding materials on February 6, 2023.

¹⁵¹ [R v Quansah](#), 2015 ONCA 237 at para 86, citing *R. v. Verney*, (1993), 87 C.C.C. (3d) (Ont. C.A.) at 376.

¹⁵² [R v Quansah](#), 2015 ONCA 237 at para 82. See also [Wallace v Joughin](#), 2014 BCPC 73 at [para 221-222](#).

¹⁵³ R. Hill Cross, q 311, pp 118-119, TB, Tab F, p 425.

82. Second, Men’s Fire alleges that HDI’s appointment cannot stand because, it says, every single Haudenosaunee Chief had to be present at the April 2, 2022 Council meeting. This is misleading. Chiefs have an obligation to attend council, and their non-attendance is not a bar to decision-making provided there remains representation on each “bench” (the Elder Brothers, Younger Brothers, and Fire Keepers).^{154,155} Any Chiefs not present at a meeting where a decision was rendered in their absence are entitled to raise the matter to be addressed again at a subsequent Council through the same bench-based process as any other decision.¹⁵⁶ There is no indication that there have been any such efforts here, despite numerous Council meetings being held since April 2, 2022 (Council meetings are held on the first Saturday of each month).¹⁵⁷

83. Third, Men’s Fire alleges that HDI’s appointment cannot stand because, it says, there was no involvement of Clan Mothers at the April 2, 2022 Council meeting. This is wrong. Clan Mothers were at the meeting.¹⁵⁸

84. Finally, Men’s Fire alleges that “consensus” of the Haudenosaunee Confederacy is needed before any decision could have been made to appoint HDI in this matter.¹⁵⁹ That ignores (a) the bench-based decision-making process of the HCCC and (b) conflates the European concept of “consensus” with the Haudenosaunee concept of coming to “One Mind”, which is “very different”.¹⁶⁰ Coming to “one mind” is achieved using reason to come to a decision that the Chiefs will respect,¹⁶¹ through a deliberative process:

...under our system, you have to come to one mind. You express your displeasure, you try to argue for your point of view, but if the majority

¹⁵⁴ R. Hill Sr Affidavit (Feb. 6, 2023) at para 58, HDI Resp MR, Tab 2, p 58.

¹⁵⁵ R. Hill Cross, qq 126, 129 & 145-148, pp 40-41 & 46-47, TB, Tab F, pp 405 & 407.

¹⁵⁶ R. Hill Sr Affidavit (Feb. 6, 2023) at para 58, HDI Resp MR, Tab 2, p 58.

¹⁵⁷ R. Hill Cross, q 210, p 68, TB, Tab F, p 412.

¹⁵⁸ B. Doolittle Cross, q 630, p 131, TB, Tab B, p 159.

¹⁵⁹ See, e.g., Moving Factum of the Men’s Fire at para 34.

¹⁶⁰ R. Hill Cross, q 194, p 63, TB, Tab F, p 411.

¹⁶¹ R. Hill Cross, q 348, p 128, TB, Tab F, p 427.

opinion is, No, we are going to accept [something], then that's what happen[s].¹⁶²

B. Men's Fire Should not be Granted Leave to Intervene as Friend of the Court: It Will Not Make a Useful Contribution to the Proceeding

85. Men's Fire seeks leave to intervene as a friend of the Court under Rule 13.02 if HDI is granted leave to intervene in the action. Its singular focus on HDI's motion is fatal to its request for leave in the action.

86. Rule 13.02 of the *Rules of Civil Procedure* permits a person, with leave or at the invitation of the presiding judge or master, to "intervene as a friend of the court for the purpose of rendering assistance to the court by way of argument", without becoming a party to the proceeding.¹⁶³

87. This Court has emphasized that a proposed intervenor must offer a contribution that is distinct from the contributions made by the parties to the dispute; repetitious submissions provide no assistance to the Court.¹⁶⁴

88. Men's Fire should not be granted leave to intervene as a friend of the Court in this proceeding as it will not provide a contribution different from that of the existing parties.

89. Men's Fire's factum makes abundantly clear **its only contribution relates to HDI's motion**: "Men's Fire seeks to intervene in this proceeding as a friend of the court in order that it may be of use to the court in contributing to the resolution of *this motion*. The Men's Fire seeks to aid the court in resolving *this motion* by providing the court with the unheard voices of the community and its members...".¹⁶⁵ The issues for which Men's Fire offers its assistance as a friend

¹⁶² R. Hill Cross, q 258, pp 90-91, TB, Tab F, p 418.

¹⁶³ *Rules of Civil Procedure*, RRO 1990, Reg. 194, [r 13.02](#).

¹⁶⁴ *Kastner v Health Professions Appeal and Review Board*, 2022 ONSC 5553 at [para 33](#).

¹⁶⁵ Moving Factum of the Men's Fire at para 15 (*emphasis added*); see also paras 16, 71, 78, & 80.

of the Court are all related to HDI's motion to intervene—not the proceeding.¹⁶⁶ Those issues will be determined upon the resolution of HDI's motion and further submissions on these issues will not be useful whatsoever.

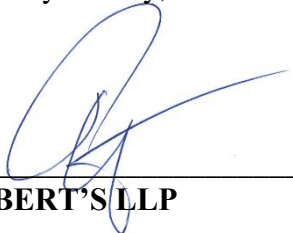
90. The Men's Fire has nothing to add on the merits of the action. If the Men's Fire is to contribute anything further, it will simply repeat the position of the plaintiff. The Men's Fire has confirmed that "the nature of the Men's Fire intervention motion is to object to the request of HDI and HDI's position that they are lawfully authorized to represent the plaintiffs in this proceeding, and *not to take a different position that the plaintiffs assert in this action*".¹⁶⁷

91. Men's Fire should not be granted leave to intervene in the action as a friend of the Court.

PART V – ORDER REQUESTED

92. HDI respectfully requests that this Court issue an Order dismissing the Men's Fire's motion in its entirety, with substantial indemnity costs on account of Men's Fire's allegations of fraud.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 1st day of May, 2023.



GILBERT'S LLP

¹⁶⁶ Moving Factum of the Men's Fire at para 7.

¹⁶⁷ Case Management Conference Memorandum of the Men's Fire, dated February 2, 2023 at para 10 (*emphasis added*).

SCHEDULE “A” – LIST OF AUTHORITIES

| LEGISLATION AND REGULATIONS | |
|------------------------------------|---|
| 1. | <i>Rules of Civil Procedure</i> , RRO 1990, Reg. 194 |
| 2. | <i>Business Corporations Act</i> , R.S.O. 1990, c. B.16 |
| CASE LAW | |
| 3. | <i>Curley v Taafe</i> , 2019 ONCA 368 |
| 4. | <i>Finlayson v GMAC Leaseco Ltd. / GMAC Location Ltée</i> , [2007] O.J. No. 597 (Ont. SCJ), aff’d 2007 ONCA 557 |
| 5. | <i>Goldentuler Estate v Crosbie</i> , 2016 ONSC 989 |
| 6. | <i>Kastner v Health Professions Appeal and Review Board</i> , 2022 ONSC 5553 |
| 7. | <i>Mauti v Gibbs</i> , 2019 ONSC 3355 (Ont. Div Ct) |
| 8. | <i>Reichmann v Toronto Life Publishing Co.</i> , 36 C.P.C. (2d) 176 (Ont. HC) |
| 9. | <i>R v Green</i> , 2017 ONCJ 705 |
| 10. | <i>R v MB</i> , 2009 ONCA 524 |
| 11. | <i>R v Quansah</i> , 2015 ONCA 237 |
| 12. | <i>Wallace v Joughin</i> , 2014 BCPC 73 |

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

Rules of Civil Procedure, RRO 1990, Reg 194

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.

13.02 Any person may, with leave of a judge or at the invitation of the presiding judge or associate judge, and without becoming a party to the proceeding, intervene as a friend of the court for the purpose of rendering assistance to the court by way of argument.

**Appendix 1 – Objections to Evidence in the Motion Record of the
Men’s Fire of the Six Nations Grand River Territory**

(Reproduced from HDI’s April 10, 2023 Factum)

| 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 Tekarontake Paul Delaronde, affirmed January 6, 2023 | | | | |
| 18 | 6 | 3 | Opinion evidence outside expertise (conceded by counsel for Men’s Fire) ¹⁶⁸ | 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. |

¹⁶⁸ 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 HAUDENOSAUNEE
DEVELOPMENT INSTITUTE**
(Men's Fire Motion to Intervene Returnable May 8, 2023)

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