

**CITATION:** Six Nations of the Grand River Band of Indians v. The Attorney General of Canada and His Majesty the King in Right of Ontario, 2023 ONSC 5138

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

**DATE:** 20230913

**SUPERIOR COURT OF JUSTICE - ONTARIO**

**RE:** Six Nations of the Grand River Band of Indians, plaintiff

**AND:**

The Attorney General of Canada and His Majesty the King in Right of Ontario, defendants

**AND:**

Mississaugas of the Credit First Nation, intervener

**BEFORE:** J.T. Akbarali J.

**COUNSEL:** *Iris Antonios, Max Shapiro, Robert Janes, K.C., and Laura Dougan*, for the plaintiff

*Tania Mitchell, Edward Harrison, Hasan Junaid, Tanya Muthusamipillai, Katrina Longo, and Myra Sivaloganathan*, for the defendant The Attorney General of Canada

*Manizeh Fancy, David Feliciant, Christine Perruzza, David Tortell, Jennifer Lapan, Julia McRandall, Aaron Grimes, David Hyun, and Serena Yun* for the defendant His Majesty the King in Right of Ontario

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

**HEARD:** September 11, 2023

**CASE MANAGEMENT CONFERENCE ENDORSEMENT**

[1] This case management conference was convened pursuant to my direction in my endorsement granting leave to the plaintiff to amend its pleadings: *Six Nations of the Grand River Band of Indians v. The Attorney General of Canada and His Majesty the King in Right of Ontario*, 2023 ONSC 4476, at para. 70(f).

[2] The main purpose of this case management conference was to address the timetable required to move this action towards trial. The parties reached significant agreement on the timetable, but departed with respect to certain steps, most of which deal with the delivery of expert reports.

(i) *MCFN's expert reports*

[3] The most significant point of departure between the parties relates to the date for delivery of the Mississaugas of the Credit First Nation's ("MCFN") expert reports. MCFN proposes to deliver its expert reports by May 1, 2024. Canada and Ontario are content with that proposal. The plaintiff proposes delivery of MCFN's expert reports by December 15, 2023.

[4] I direct that MCFN's expert reports be delivered by May 1, 2024, for the following reasons.

[5] First, this action is complex. MCFN has still not received all the documents it requires. It needs a realistic deadline.

[6] There is no point in setting a date for delivery of expert reports that will have to be extended because it is not possible for the experts to meet them. I note that the plaintiff proposes that MCFN have significantly less time to produce its reports than the plaintiff seeks to respond to them. In my view, the time the plaintiff requires is an indication of the time it will take its, and MCFN's, experts to prepare the reports.

[7] Second, I have directed that the defendants' reports that address the issues newly raised in the plaintiff's amended pleading be delivered by March 30, 2024. I have also directed that MCFN not duplicate evidence delivered by the defendants. It is most efficient for MCFN's reports to be due after the defendants' reports are in.

(ii) *Reports from defendants' experts who have been ill*

[8] Ontario has, for some time, raised the illness of one of its experts, Dr. Rousseau, as a factor impeding his ability to deliver a report in accordance with the schedule that had been set. Dr. Rousseau delivered an initial report in accordance with the most recent timetable. He has also delivered a supplementary report in reply to one of the plaintiff's experts, on July 31, 2023, about six weeks after delivery of the first report.

[9] There was some confusion amongst the parties as to whether leave was required for Ontario to deliver Dr. Rousseau's supplementary report. Although I had set a timetable for delivery of the defendants' expert reports on the issues which arose out of the previous version of the statement of claim, I referred to the fact that an expert who is ill would not be expected to produce a report on the same schedule.

[10] The supplementary report has now been delivered. It is not late, because it had not been subject to any particular deadline. Thus, no leave is required with respect to the delivery of this report. The plaintiff retains its right to object to the admissibility of the report, but not on the ground of late delivery. The plaintiff confirmed, in any event, that it would not rely on late delivery as a ground should it decide to challenge the admissibility of the report.

[11] Canada advises that one of its experts has also been ill, but has very recently been able to return to work. His report will cover both, issues arising out of the previous version of the statement of claim, and new issues arising from the amended pleading. The topic of this report will be financial and accounting systems in Upper Canada/Ontario, including case studies relating to certain claims made by the plaintiff. Canada advises it will deliver this report by January 31, 2024.

The plaintiff opposes the request, but indicates it might consent to an earlier date for delivery of the report.

[12] In my view, there is no prejudice to the plaintiff in permitting this expert to deliver their report by January 31, 2024. There will be outstanding reports from the defendants at that time in any event. The expert will be addressing important issues that will assist the court. And the illness of an expert is a reasonable explanation for not delivering the report earlier. The report will be both later than expected (with respect to the issues that pre-dated the pleadings amendment) and sooner than expected (with respect to the issues arising out of the pleadings amendment).

*(iii) Ontario's defence to Canada's cross-claim*

[13] In my reasons on the pleadings motion, I ordered the defendants to deliver their amended defences by September 15, 2023. Ontario seeks to have until January 15, 2024 to deliver its defence to Canada's crossclaim, if any. Canada consents to the proposed deadline.

[14] The plaintiff argues that the pleadings ought to close in 2023, and proposes a date for delivery of Ontario's defence to Canada's crossclaim in December 2023.

[15] There is no magic in the year end of December 2023. A defence to Canada's crossclaim will not affect the start of the trial. If the parties affected by the delivery of the defence to crossclaim are content with a January 15, 2024 date, I see no reason to force Ontario to deliver a defence to crossclaim two weeks earlier than it proposes to. This is especially so given that an earlier deadline would fall over the holiday period, when everyone should have an opportunity to nurture important relationships and take some time to support their own mental health.

*(iv) Timetable*

[16] For convenience, I reproduce the current timetable, including the determinations I have made above, and including the dates which have been agreed to by the parties:

- a. Defendants to deliver amended defences by September 15, 2023;
- b. MCFN to deliver its defence by September 29, 2023;
- c. Plaintiff to deliver amended reply, and Canada to deliver any amended defence and crossclaim to Ontario's crossclaim by October 31, 2023;
- d. Plaintiff and defendants to deliver any supplementary productions by November 30, 2023;
- e. Ontario to deliver its defence to crossclaim, if any, by January 15, 2024;
- f. Canada to deliver its expert report addressing financial and accounting systems in Upper Canada/Ontario, including case studies relating to certain of the plaintiff's claims, by January 31, 2024;

- g. Defendants to deliver any expert reports on which they rely arising from the 2023 pleadings amendment by March 30, 2024;
- h. Ontario to deliver its responding expert report to the joint surveyors' report by March 30, 2024;
- i. Plaintiff to deliver any reply expert reports to the defendants' responding expert reports delivered in 2023 (except the July 31, 2023 report of Dr. L. Rousseau) by March 30, 2024;
- j. MCFN to deliver its expert evidence by May 1, 2024;
- k. Plaintiff to deliver any reply expert reports to the defendants' expert reports arising from the 2023 pleading amendments, Canada's expert report on financial accounting systems, and the July 31, 2023 report of Dr. L. Rousseau, by July 30, 2024;
- l. Parties to deliver any responding expert reports to MCFN's expert evidence by September 30, 2024;
- m. Plaintiff and/or Canada to deliver any reply expert reports to Ontario's responding surveyor report by September 30, 2024.

[17] This schedule does not include (i) service of the trial record; (ii) the pre-trial conference; (iii) any trial management conference(s); or (iv) deadlines for the parties to compile expert reports and supporting documents for trial.

[18] In my view, it is preferable to revisit the timetable for those steps at the next case conference. In the meantime, I have asked counsel to consider what court resources would best serve the parties in a pre-trial conference. I have also agreed to make inquiries to determine at what stage a trial judge might be able to be identified. The answer to that question may impact not only the timing for any trial management conference(s), but also impact the efforts that need to be undertaken to prepare the documents for use at trial. Given this uncertainty, there is no pressing need to timetable the service of the trial record.

[19] The parties shall attend for a case management conference with me on January 19, 2024, at 10 a.m. for two hours, by videoconference. If there is a need to meet earlier, the parties may seek to schedule an earlier case management conference by emailing my assistant.

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J.T. Akbarali J.

**Date:** September 13, 2023