

CITATION: Six Nations of the Grand River Band of Indians v. The Attorney General of
Canada et al., 2024 ONSC 787

COURT FILE NO.: CV-18-00594281-0000

DATE: 20240206

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, Robert Janes, K.C, and Gregory Sheppard*, for the plaintiff

Tania Mitchell, Patrice Robinson, Maria Vujnovic, Edward Harrison, Cameron Fiske, Tanya Muthusamipillai, and Elizabeth Chan, for the defendant The Attorney General of Canada

Manizeh Fancy, David Feliciant, Geoff Hall, Bryn Gray, Adam Goldenberg, Jennifer Lapan, Julia McRandall, Aaron Grimes, and Linda Chaker, for the defendant His Majesty the King in Right of Ontario

Nuri Frame, Alex DeParde, Conner Sipa, and Troy Klassen, for the intervener Mississaugas of the Credit First Nation

HEARD: January 19, 2024

ENDORSEMENT

[1] At this case conference, we addressed the following issues:

- a. Taking evidence of certain witnesses in advance of trial;
- b. Timing for a pre-trial conference, and appointment of a pre-trial judge;
- c. Appointment of a trial judge;

- d. The plaintiff's intended motions to strike paragraphs from the defendants' and intervener's defences at the outset of trial;
- e. Potential sequencing, or bifurcation, of issues currently scheduled to be addressed during the liability phase of the trial;
- f. Provision of details about Ontario's recent pleading of Crown immunity.

Evidence of Certain Experts Before Trial

[2] Canada has identified three experts whose evidence it seeks to preserve in advance of trial. There is no real disagreement on whether the evidence should be preserved; the disagreement is about the terms of any order directing the taking of evidence before trial.

[3] I offered the parties some suggestions about ways to approach the challenges they have identified with respect to the terms. The parties shall continue discussions to attempt to reach a consent order, or at least to narrow the issues that require adjudication. They shall provide me with an update at the next case conference.

Pre-trial Conference Judge and Trial Judge

[4] I am making enquiries to determine when it is feasible for the court to appoint a pre-trial judge and a trial judge in these proceedings. The timing for doing so is affected directly by the lack of judicial resources available in Toronto. I will provide the parties with an update at our next case conference.

Motion to Strike

[5] The plaintiff has advised that it intends to bring a motion to stike portions of the defences delivered by the defendants and the intervener in response to its recently amended pleading. However, to keep the matter progressing towards trial, it wishes to bring its motion at the outset of trial, and seeks leave to do so.

[6] The plaintiff shall have leave to bring its motion to strike pleadings. It is up to the plaintiff when it seeks to bring the motion.

Sequencing/Bifurcation

[7] The plaintiff raised the possibility of sequencing, or bifurcating, issues in the liability phase which, in its view, would allow the trial to unfold in a more orderly and efficient manner. The defendants take the opposite view, and raise concerns about the confusion that sequencing or bifurcation could create.

[8] It may be possible for the parties to make progress on this issue with a pre-trial judge. If no agreement is forthcoming, a motion will be required if sequencing or further bifurcation is sought.

[9] If the plaintiff decides it wishes to bring a motion, it shall raise the issue in case management for discussion about the appropriate timing of, and appropriate judge to hear, the motion.

Crown Immunity Defence

[10] The plaintiff seeks further information about the defence of crown immunity, pleaded by Ontario. The plaintiff and Ontario disagreed as to whether the plaintiff was seeking particulars, and if so, whether the plaintiff requires particulars. In my view, the parties are getting distracted by semantics when the substantive issue is that the plaintiff does not understand where Ontario is going with its pleading of Crown immunity, and it wishes clarity. As this action nears its twentieth birthday, and a lengthy trial of great import not just to the parties, but to the country, approaches, I encourage the parties to cooperate to ensure that each party has clarity about the case that is going to trial, to make the trial as efficient and fair as possible.

[11] I have asked the plaintiff to put its questions about the defence into correspondence, and for Ontario to respond to the correspondence within thirty days.

Next Case Conference

[12] The next case conference is scheduled for February 16, 2024, at 10 a.m. for two hours.

J.T. Akbarali J.

Date: February 6, 2024