

**CITATION:** Six Nations of the Grand River Band of Indians v. The Attorney General of  
Canada et al., 2024 ONSC 1081

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

**DATE:** 20240221

**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:** *Robert Janes, K.C., Max Shapiro, and Brittany Town*, for the plaintiff

*Tania Mitchell, Maria Vujnovic, Edward Harrison, Cameron Fiske, Tanya Muthusamipillai, Elizabeth Chan, Myra Sivaloganathan, and Braelyn Rumble*, for the defendant The Attorney General of Canada

*Manizeh Fancy, David Feliciant, Geoff Hall, Bryn Gray, Jennifer Lepad, Julia McRandall, Adriana Forest, and David Hyun*, 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:** February 16, 2024

**ENDORSEMENT**

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

- a. Taking evidence of certain witnesses in advance of trial;
- b. Canada's missed deadline to deliver an expert report;
- c. Appointment of a pre-trial judge;
- d. Appointment of a trial judge;

- e. Trial presentation software;
- f. Ontario's Crown immunity defence;
- g. The litigation website.

### **Evidence of Certain Experts Before Trial**

[2] Since the last case conference, the parties have made significant progress on terms for an order to permit taking evidence of three of Canada's experts before trial, although some issues remain. The parties will continue efforts to negotiate a consent order and update me on the status of those efforts at the next case conference.

[3] To ensure that the evidence of the experts can be taken as intended later this calendar year, I schedule a one-day motion on May 24, 2024, to address Canada's motion for an order permitting the examination of three experts in advance of trial, and the terms thereof. If needed, a timetable for the motion shall be set at the next case conference.

### **Canada's Missed Deadline to Deliver an Expert Report**

[4] Canada has missed the deadline by which it was supposed to have delivered an expert report on financial and accounting systems in Upper Canada/Ontario. This is a report on which Ontario also intends to rely.

[5] At the case conference, Canada advised that the delays in producing the report relate to health issues that their expert has encountered. They are optimistic the report will be delivered in the next couple of months but are unable to commit to a timeline at the moment.

[6] At the appropriate time, Canada will move for leave to adduce this expert report on a proper record.

### **Pre-trial Conference Judge and Trial Judge**

[7] I have advised the parties of the current difficulties in obtaining the appointment of a pre-trial or a trial judge. We had a discussion about the different roles that I may be able to play. The parties shall discuss amongst themselves how I may best assist in advancing the litigation, and what steps, if any, ought to be taken in advance of trial to make best use of any delay in the commencement of trial that arises from scarce judicial resources.

[8] In the meantime, the parties shall prepare a timetable for the trial in order to get a guide for the length of time the trial is expected to take. The plaintiff shall prepare an initial timetable and deliver it to the defendants and intervener by February 26, 2024. The defendants and respondent shall add their input to the timetable by March 11, 2024.

[9] We shall review the timetable at the next case conference, after which I will make additional enquiries to determine when a trial judge and/or pre-trial judge may be able to be appointed.

### **Trial Presentation Software**

[10] The parties are considering litigation software to determine whether a different product would better meet the needs of this trial..

[11] I was asked to confirm whether the parties are limited to CaseLines (or its next iteration, Case Centre). On making enquiries, it appears that the parties should plan to use CaseLines as the trial presentation software. However, if there is functionality the parties require that is not in CaseLines, they should identify what functionality they seek, and I will make efforts to determine if it can be provided.

### **Crown Immunity Defence**

[12] As discussed at the last case conference, the plaintiff has written to Ontario to seek clarification about its Crown immunity defence. Ontario advises that it will respond within the thirty days I set for it to deliver its response.

### **The Litigation Website**

[13] The website created by the parties to keep interested Indigenous communities and other members of the public updated on the litigation is out of date. Counsel advises that they are engaged in updating it.

### **Next Case Conference**

[14] The next case conference is scheduled for March 25, 2024, at 10 a.m. for two hours.

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J.T. Akbarali J.

**Date:** February 21, 2024