

Dear Chiefs of the Williams Treaties First Nations:

The following provides a brief status report on the trial and related matters at this date.

Trial Issues:

First, attached is Justice Mandamin's decision on Canada's and Ontario's objection raised on April 28, 2014, to the admissibility of the testimony of Dr. Michael Thoms regarding a text written by Thomas Need and published in 1838 which described how the Mississauga enforced their proprietary rights through trespass laws.

As you may recall, Canada and Ontario objected to Dr. Thoms testimony by stating that he went beyond his expertise and provided a legal opinion or a legal conclusion.

Justice Mandamin agreed with the WTFN interpretation of Dr. Thom's testimony and concluded that Dr. Thoms was offering an explanation of what Thomas Need stated and that Dr. Thoms comments fall within his qualification as an expert on Anishinaabe customary law and the history of English fishery and game legislation.

In short, Justice Mandamin overruled the objection and the evidence remains admissible. This is an important victory since this evidence in as part of the narrative and proof of the nature of the Williams Treaties First Nation proprietary interests in the land.

Secondly, Dr. Thoms testified on July 14-16 on the 20 years before the Williams Commission, the Williams Commission itself and the evidence that the First Nations continued to hunt and fish for at least 10 years following the conclusion of the Williams Treaties, and these numbers only declined when the First Nations were faced with increasing prosecutions under the fish and game legislation.

During his testimony, Dr. Thoms filed a revised Map 29 and two new maps, one showing the Western Hunting Grounds over the Commissioner' original map and the other showing the watersheds in Clause 1. Based on a consent order with Canada and Ontario to file all of his maps as supplementary expert evidence, as they had originally be filed as demonstrative evidence. It was thought prudent to ensure they can also be used as expert evidence, since information that was not included in his original reports was contained in his maps. This order was approved by Justice Mandamin on July 22.

On July 22, the new reports, which are called the Replacement Reports, were filed as exhibits and also read into the record as the official version of the reports.

Pleading Issues and the Amended Statements of Defence

Pleadings:

The oral submissions on the ambiguity question were heard on July 17. The written submissions are attached. As you are aware, Canada and Ontario requested that Justice Mandamin clarify if the Plaintiffs are holding Canada responsible for conduct that occurred pre-1923 or only for

conduct that occurred in 1923. WTFN argued that the Statement of Claim is clear that the action is about the conclusion of the Williams Treaties in 1923 and not a series of separate causes of action arising from breaches to each of the pre-confederation treaties.

Justice Mandamin has said he will issue his decision at the end of July. It is likely he will say that the Plaintiffs can frame their case the way they want and that the scope of the action is as counsel represents it to be - arising from the conclusion of the Williams Treaties. Possibly he might allow Canada and Ontario to ask further particulars. This might not be necessary, however, his decision and also representations by Mr. Hutchins and Jessica during oral submissions will probably give Canada and Ontario the reassurances they were seeking about what is at issue in this action.

OFAH:

As you are aware, the WTFN won the motion brought by OFAH on the intervenor issue and whether the trial judge erred in his decision on the issue. The WTFN were awarded costs for the motion. OFAH then indicated that they intended to appeal to the Supreme Court. OFAH has applied to the Court for an assessment on costs submitted by WTFN. The next available date for such hearing is February 2015. For your information, Hutchins Legal Inc, has stated that there is a possibility of negotiating a settlement on costs with OFAH. HLI participated in the first pre-hearing conference call with the Court and OFAH regarding the Bill of Costs submitted for assessment. It seemed that counsel for OFAH was receptive to the idea of a settlement. However, it should be noted that based on counsel advice I agree that HLI should assess the willingness of OFAH to settle at costs submitted (meaning no motion and no additional expenses or delay on issue to WTFN) - should they not be willing to avoid motion and pay costs as submitted (30k) then instructions will be required from the Chiefs as to any entertainment of settlement discussions or move to full hearing. There is no guarantee that the full amount can be recovered, even if the Plaintiffs are successful at the hearing. There is always the possibility that the Court may award less, and the Plaintiffs will not be able to recover the costs associated with the preparation for and the hearing of the motion. I will forward further information as soon as available.

Trial Schedule:

Justice Mandamin is not available on the first week of September, as was originally scheduled. Instead, Dr. Thoms testimony will resume on September 8 and cross-examination will begin on the 8th or 9th.

Canada and Ontario filled-in a trial calendar for the next 12 months with their (very generous) estimates for the time they might require for cross. It is the understanding is that they are working with maximums and will be scaling back. Ontario has already said their estimates are based on questions they have prepared without reference to questions that Canada has prepared and that they will cut questions and their time for cross if Canada does end up asking those questions.

The proposed revised calendar is attached. Please note that it presents all maximums in time and will be narrowed and it is assumed the times will be cut in half per HLI.

Lay Witnesses

You may recall my previous correspondence regarding the identification and interviewing of lay witnesses in communities that participated in the reserve land selection process. Legal has commenced preparation of witnesses in four of the seven communities. I have been unsuccessful in contacting the participants for Alderville, Rama and Beausoleil. If Chief Monague, Chief Stinson Henry and Chief Marsden have any information as to how we might encourage participation that would be most appreciated.

Thanks and have a great day.

Karry Sandy McKenzie
Williams Treaties First Nations
Process Co-ordinator/Negotiator
8 Creswick Court, Barrie, ON L4M2J7
Tel: (705) 792-5087