CITATION: IIFN v. HMK

ONTARIO SUPERIOR COURT OF JUSTICE

CIVIL ENDORSEMENT FORM

(Rule 59.02(2)(c)(i))

BEFORE:	**Justice Justice MERRITT**	**Court File Number**: CV-20-00644545-0000 CV-20-00644545-00A1

Title of Proceeding:

ISKATEWIZAAGEGAN #39 INDEPENDENT FIRST NATION — Applicant(s)/ Plaintiff(s)

-v-

HIS MAJESTY THE KING IN RIGHT OF ONTARIO; THE CITY OF WINNIPEG — Respondent(s)/ Defendant(s)

Case Management:	**Yes** If so, by whom:	**No**

Participants and Non-Participants:*(Rule 59.02(2)((vii))*

Party	Counsel	E-mail Address	Phone #	Participant (Y/N)
1) ISKATEWIZAAGEGAN #39 INDEPENDENT FIRST NATION	Julian Falconer Asha James Jeremy Greenberg Christianne Labelle Amy Westland Isabelle Calderhead Jordan Tully	julianf@falconers.ca, ashajames@falconers.ca jeremyg@falconers.ca christiannel@falconers.ca awestland@wlpc.ca isabellec@falconers.ca jordant@falconers.ca		
2) HIS MAJESTY THE KING IN RIGHT OF ONTARIO DEFENDANT	Vanessa Glasser Ram Rammaya	Vanessa.glasser@ontario.ca Ram.rammaya@ontario.ca		
3) THE CITY OF WINNIPEG	Thor Hansell Michael Weinstein	thansell@mltaikins.com mweinstein@mltaikins.com		
4) ATTORNEY GENERAL OF CANADA	Lynn Marchildon Charles Maher	charles.maher@justice.gc.ca lynn.marchildon@justice.gc.ca		
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Date Heard: *(Rule 59.02(2)(c)(iii))*

Nature of Hearing (mark with an "X"): *(Rule 59.02(2)(c)(iv))*

☐	Motion	☐	Appeal	☒	Case Conference	☐	Pre-Trial Conference	☐ Application

Format of Hearing (mark with an "X"): *(Rule 59.02(2)(c)(iv))*

☐	In Writing	☐	Telephone	☒	Videoconference	☐	In Person

If in person, indicate courthouse address:

Relief Requested: *(Rule. 59.02(2)(c)(v))*

Case conference.

Disposition made at hearing or conference (operative terms ordered): *(Rule 59.02(2)(c)(vi))*

Costs: On a **N/A** indemnity basis, fixed at $ are payable by to [when]

Brief Reasons, if any: *(Rule 59.02(2)(b))*

In my endorsement of December 15, 2026 indicated that I was contemplating making an order requiring the parties to answer discovery questions to which they object (after putting their objection on the record) unless they object on the basis of solicitor-client communication privilege, litigation privilege or proportionality, in which case they would not be required to answer the question and all questions of relevance and admissibility of the evidence given in answer to discovery questions would be determined by the trial judge.

In my endorsement I indicated that I would not make the proposed order without allowing the parties an opportunity to make submissions.

Canada, Ontario and Winnipeg object to the proposed orders. They say that the Plaintiff has a history of asking improper questions. Justice Perell previously determined that 63 of the 67 refusals moved on by the Plaintiff with respect to the first round of examinations for discovery including all of the questions objected to by the City, were not proper questions and were not ordered to be answered. The City submits that if the right to object is taken away, the upcoming examinations will actually take longer and be less efficient and preparing for trial will be more difficult if the parties do no know what answers are admissible.

The Plaintiff is in favor of the order and says it will facilitate timely adjudication of this matter. The Plaintiff says it adjusted its approach in the second round of examinations for discovery after the benefit of having the order of

Perell J. The Plaintiff also submits that the principle of Reconciliation favours the proposed order as it allows for more open information exchange between the Crown, the City and the First Nation. As the Crown and other governments have historically kept and maintained records and information about Indigenous Nations in Canada, in the context of litigation between these entities, the Proposed Order supports the Nation-to-Nation relationship by allowing as much information as possible to be discovered. In historical cases such as this one, gathering all of the relevant information is key to arriving at a just determination at trial on all the merits of this important matter. For example, the Attorney General's *Directive on Civil Litigation Involving Indigenous Peoples, 2018* instructs counsel for Canada to "simplify and expedite the litigation as much as possible".

Canada submits the principle of reconciliation does not support the proposed order. Canada says it complies with the *Directive* and will continue to do so. Canada points out that in Quebec, the courts have interpreted Article 228 to mean that parties are permitted to refuse to answer questions that are so irrelevant that they are abusive.

Although it is not mandatory, the procedure I have proposed is contemplated by r. 34.12 which provides as follows:

> (1) Where a question is objected to, the objector shall state briefly the reason for the objection, and the question and the brief statement shall be recorded.
>
> (2) A question that is objected to may be answered with the objector's consent, and where the question is answered, a ruling shall be obtained from the court before the evidence is used at a hearing.

The Plaintiff has been expressing concerns about the delays this matter has faced for some time and the discovery process is a significant contributing factor.

Before I took over as case management judge the Plaintiff, Ontario and Winnipeg conducted examinations for discovery and this first round of examinations gave rise to a motion on 67 refusals before Perell J. who was then case managing the action.

After I took over as case management judge, there was a second round of examinations giving rise to more undertakings and refusals in April 2024 . A motion was scheduled for February 14, 2025 but had to be adjourned to May 14, 2025 as I was hearing a 10-week trial. On February 14, 2025 I conducted a case conference setting out a schedule for the exchange of material for the refusals motion.

With the benefit of the guidance provided by the order of Perell J., the parties were able to significantly reduce the number of refusals for which a ruling was sought. Even so, on the refusals motion the parties filed eight facta and after one day of argument it was apparent that two further days were required. It is worth noting that Canada was not yet a defendant at this time and therefore did not file a factum on the motion. The parties ultimately agreed that the continuation of the refusals motion should be adjourned until after the next round of examinations for discovery are held. Another 27 days of examinations for discovery are scheduled between January 19, 2026 and April 24, 2026.

The proposed order will significantly reduce the number of, if not eliminate refusals. It will prevent parties from making blanket refusals. It will allow the discoveries to proceed more quickly. It will reduce the need for refusals motions, reattendances, further refusals, and further motions and so on, by deferring the determination of relevance to the trial judge.

Ultimately questions of relevance and admissibility of evidence are always determined by the trial judge. If the parties require a ruling in advance of trial or at the outset of trial, they are free to bring motions regarding same before the trial judge who will be best positioned to determine questions of relevance. In any event, whether or not a question is ordered to be answered following an examination for discovery does not determine admissibility at trial.

The order I am proposing will not require any party to provide an explanation for their objections if they are based on relevance. If the objection is for relevance, the party will simply state that the objection based on relevance and

proceed to answer the question. I would expect that the number of objections based on privilege or proportionality will be relatively few and straightforward.

Order to go as follows:

1.If a party objects to answering a question, the party shall state the basis of the objection on the record. However, all questions will then be answered unless the objection is on the basis of solicitor-client communication privilege, litigation privilege or proportionality. The validity of the objection and the admissibility of the evidence will be a matter for the trial judge.

2.Only questions refused on the basis of privilege or proportionality will be the subject of a motion to compel answers.

3.This ruling applies to the examinations already completed in 2022 and 2024 and the examinations scheduled for 2025 and 2026 and going forward.

Additional pages attached: ☐ Yes ☐ No

January-16 , 2026

Date of Endorsement *(Rule 59.02(2)(c)(ii))*

Signature of Judge/Associate Judge *(Rule 59.02(2)(c)(i))*