In the Matter Of:

The Chippewas of Saugeen First Nation et al vs

Attorney General of Canada et al.

DAY 75 VOLUME 75

January 16, 2020

---

77 King Street West, Suite 2020
Toronto, ON M5K 1A2
1.888.525.6666 | 416.413.7755

1 ONTARIO

2 SUPERIOR COURT OF JUSTICE

3 B E T W E E N:

4 THE CHIPPEWAS OF SAUGEEN FIRST NATION, and THE CHIPPEWAS OF NAWASH FIRST NATION

5 Plaintiffs

- and -

6 THE ATTORNEY GENERAL OF CANADA,
HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO, THE
7 CORPORATION OF THE COUNTY OF GREY, THE
CORPORATION OF THE COUNTY OF BRUCE, THE
8 CORPORATION OF THE MUNICIPALITY OF NORTHERN
BRUCE PENINSULA, THE CORPORATION OF THE TOWN OF
9 SOUTH BRUCE PENINSULA, THE CORPORATION OF THE
TOWN OF SAUGEEN SHORES, and THE CORPORATION OF
10 THE TOWNSHIP OF GEORGIAN BLUFFS

Defendants

11 Court File No. 03-CV-261134CM1

12 A N D B E T W E E N:

13 CHIPPEWAS OF NAWASH UNCEDED FIRST NATION and SAUGEEN FIRST NATION

14 Plaintiffs

- and -

15

16 THE, ATTORNEY GENERAL, OF CANADA and HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO

17 Defendants

18 --------

19 --- This is VOLUME 75/ DAY 75 of the trial

20 proceedings in the above-noted matter, being

21 held at the Superior Court of Justice, 330

22 University Avenue, Courtroom 5-1 Toronto,

23 Ontario, on the 16th day of January 2020.

24 B E F O R E:

25 The Honourable Justice Wendy M. Matheson

1 A P P E A R A N C E S :

2	Renée Pelletier, Esq,	for the Plaintiffs,
3	& Jaclyn McNamara, Esq.,	the Chippewas of
4	& Cathy Guirguis, Esq.,	Saugeen First Frist
5	& Roger Townshend, Esq.	Nation, and the
6		Chippewas of Nawash
7		First Nation.
8		
9	Michael Beggs, Esq.,	for the Defendant,
10	& Michael McCulloch, Esq.,	Attorney General
11	& Barry Ennis, Esq.,	of Canada.
12	& Alexandra Colizza, Esq.	
13		
14	Peter Lemmond, Esq.,	for the Defendant,
15	& Richard Ogden, Esq.,	Her Majesty the
16	& Julia McRandall, Esq,	Queen in Right of
17	& David Feliciant, Esq.	Ontario.
18		
19	Jill Dougherty, Esq.	for the
20		Municipalities
21		
22		
23		
24		
25		

1 I N D E X

2 PAGE

3 Ruling on the Motion for Direction..........9681

4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

1 INDEX OF EXHIBITS

2 NO./ DESCRIPTION PAGE

3

4 NONE MARKED.

5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

1 --- Upon commencing at 10:03 a.m.
2 THE COURT: Morning, counsel. As you
3 know, counsel, I'm going to give oral reasons
4 for decision in relation to last week's motion.
5 After I conclude that process there
6 may be a short break, because I asked my office
7 to send an email out this morning saying that
8 the TMC would probably be at 11:00 so that
9 people phoning in can actually organize their
10 lives. And I do not anticipate that my oral
11 reasons for decision are going to take that
12 lengthy time. So that's the plan.
13 Madam Reporter, my oral reasons for
14 decision are as follows:
15 These are my reasons for decision on a
16 motion for directions regarding an order made on
17 February 25th, 2019, which I, in my reasons for
18 decision, call sometimes the "2019 order".
19 That order vacated an earlier
20 severance order and set out a new one, on
21 consent, and that order was made just prior to
22 the commencement of this trial. This trial
23 commenced in late April.
24 Issues have arisen about the severance
25 process, as set out in the 2019 order. The

1 motion for directions was heard January 8th,
2 2020, with all defendants seeking a variance of
3 that order.
4 The potential for changes to that
5 order is contemplated by the order itself. I
6 will get back to that.
7 The main focus of the issues before me
8 on this motion arise from the introduction of an
9 additional phase in the trial such that the
10 trial of these actions would be conducted in
11 three phases instead of two.
12 I have decided to vary the severance
13 process. In these reasons for decision I first
14 address some of the relevant background, then
15 the parties' positions and time estimates for
16 that new phase introduced in the 2019 order and,
17 lastly, the other issues raised on the motion.
18 Background:
19 The trial before me is a trial of two
20 actions. The first action was commenced in 1994.
21 The second action was commenced in 2003.
22 The first action is sometimes called
23 the "Treaty action". The main treaty referred to
24 in the first action is Treaty 72, a treaty
25 entered into in 1854.

1 The second action generally relates to
2 a claim in relation to the lake bed surrounding
3 the Bruce Peninsula. Although the lake bed
4 action is not totally divorced from the issues
5 on this motion for directions, the issues do
6 mainly relate to the Treaty action.
7 Accordingly, it was the Treaty action that was
8 the main focus of the argument before me.
9 For purposes of this motion I accept
10 the plaintiffs' summary of the scope of the
11 Treaty action. At paragraph 11 of the
12 plaintiffs' written submissions on the motion,
13 the plaintiff characterizes the scope of the
14 litigation as follows:
15 "The treaty part of this
16 litigation is based on an allegation
17 of a breach of fiduciary duty by the
18 Crown in the process leading up to
19 Treaty 72. The fiduciary duty alleged
20 is one arising from the general test
21 for fiduciary duty, and, in the
22 alternative, arising from the sui
23 generis fiduciary duty between the
24 Crown and Aboriginal peoples. The
25 plaintiffs say Treaty 72 - the

1 mechanism by which the Crown obtained
2 the lands on the Saugeen/Bruce
3 Peninsula - was the direct result of
4 the Crown's breach of its fiduciary
5 duty to the plaintiffs."
6 I go onto the plaintiffs' summary of
7 the hoped-for remedies in this trial of two
8 actions, as set out in paragraph 12 of the
9 plaintiffs' written submissions. That paragraph
10 states as follows:
11 "As a remedy, the Plaintiffs seek
12 to be put (insofar as that is
13 possible) in the position they would
14 have been in had the Crown properly
15 fulfilled its duty. The Plaintiffs
16 seek to accomplish this by the return
17 of land where this is legally
18 possible, plus compensation for the
19 value of land not returned, plus
20 compensation for the loss of the use
21 of the land from 1854 to the present,
22 less the proceeds of land sales that
23 were received by the Plaintiffs.
24 More specifically, in relation to
25 land, the Plaintiffs seek a

1 declaration that they are the
2 beneficial owners of the lands subject
3 to Treaty 72 which are not in the
4 hands of bona fide purchasers for
5 value of the legal estate without
6 notice".
7 In the first sentence of paragraph 13,
8 the Plaintiffs go on to explain as follows:
9 "It is the plaintiffs' position
10 that this could be accomplished by the
11 legal doctrines of constructive trust,
12 resulting trust or some sui generis
13 equivalent."
14 The focus of this motion for
15 directions by all parties is on the first of
16 those listed items, specifically constructive
17 trust.
18 I move to one aspect of this case that
19 has been relevant to this motion, specifically
20 what is not being put at issue by the plaintiff.
21 As submitted to me, the plaintiffs have decided
22 not to challenge compliance with Treaty 72 in
23 their liability case.
24 This does not necessarily answer the
25 question of whether evidence about steps taken

1 under Treaty 72 are relevant to the remedy phase
2 of this trial. At least some defendants submit
3 that they are.
4 For example, Canada pleads that having
5 accepted the benefits of Treaty 72, the
6 plaintiffs cannot now be asked to be put in the
7 position that they would have been in if they
8 had not entered into that treaty. Canada
9 submits, for example, that evidence of the sale
10 of the lands under the treaty for fair market
11 value and provision of the proceeds of those
12 sales to these First Nations is relevant to
13 remedy.
14 I'm going to give an overview of some
15 of the pre-trial steps that give rise to this
16 motion. In the first action, on consent, a
17 severance order was made by Justice Filer
18 entered March 10, 1997. With some exceptions
19 that order severed the liability issues in this
20 trial from the remedy issues. As a result the
21 trial was severed into what we now call "phases"
22 in this litigation.
23 Another order was made a few years
24 later, after the commencement of the second
25 action. On consent, Master Sproat ordered that

1 these two actions be heard together.
2 By a consent order in 2006 these two
3 actions were also ordered to be case managed
4 together.
5 Other case conference orders from 2006
6 show that the issue of severance was raised at
7 that time but not pursued in relation to the
8 second action.
9 I further note that five other actions
10 were commenced by the plaintiffs in the late
11 1980s, all of which were stayed in the 1990s.
12 Those actions, some are in the Superior Court
13 and some are in the Federal Court. The stay
14 orders generally provide that the actions are
15 stayed pending the final resolution of the 1994
16 Treaty action before me. Some of the stay
17 orders indicate that the stay is without
18 prejudice to certain defences, such as issue
19 estoppel and abuse of process, for example.
20 There is an agreed statement of fact
21 regarding those five actions before me, which
22 indicates that they were stayed because the
23 theory of the case advanced in those actions is
24 inconsistent with the two actions before me.
25 And it was clarified in oral

1 submissions that in those five actions it is
2 alleged, as part of the liability case, that
3 Treaty 72 was breached.
4 The two actions before me continued in
5 joint case management, most recently by Justice
6 Gans. And prior to the outset of this trial it
7 was Justice Gans who was case managing both
8 matters.
9 When I began trial management of these
10 actions in January of 2019 there was still a
11 severance order for the earlier action and no
12 severance order for the later action.
13 In this motion I'm told that around
14 that time it became apparent that the parties
15 did not agree on the interpretation of the
16 severance order of Justice Filer. That issue
17 was part of the ongoing case management process.
18 A new consent severance order was
19 granted by Justice Gans dated February 25, 2019,
20 sometimes called by me the "2019 order" in these
21 reasons. That order vacated the Filer order and
22 replaced it. It provided for severance of these
23 two actions but it is significantly different
24 than the Filer order.
25 It contemplates three phases to

1 complete this trial rather than two, and renames
2 the trial that was then about to commence as a
3 trial of Phase 1A, which remains mainly
4 liability, although there is some declaratory
5 relief contemplated to be determined in that
6 phase as well.
7 That 2019 order added a new phase that
8 it calls "Phase 1B". That phase seeks remedial
9 orders, including a constructive trust, over
10 certain parcels of land.
11 The 2019 order then also included what
12 it calls Phase 2, which is the balance of the
13 remedy trial.
14 Under the 2019 order, Phase 2 is to be
15 deferred until after all appeals regarding Phase
16 1 are exhausted and there is a final ruling.
17 That concept had been part of the Filer order,
18 however, under the 2019 order it now included
19 not only Phase 1A but also Phase 1B.
20 In the 2019 order, Phase 1B is
21 described as determining entitlement to
22 beneficial ownership of certain listed lands.
23 Seven specific parcels of land are listed in the
24 order, including provincial and federal lands
25 administered by Parks Canada, provincial Crown

1 land including lands administered as a
2 provincial park, a lake bed, a dam and a
3 cross-country ski club. These parcels are
4 described in the order as test cases.
5 Paragraph 8 of the 2019 order provides
6 that the discovery process regarding Phase 1B
7 may take place after the commencement of this
8 trial. Paragraph 9 of the 2019 order provides
9 that expert evidence regarding Phase 1B may be
10 served after the commencement of this trial.
11 This is a marked departure from the
12 ordinary rules, which require that discovery and
13 the exchange of expert reports precede the
14 scheduling of a trial and the conduct of a
15 trial. It has become apparent that the absence
16 of these steps, pre-trial, have created some of
17 the challenges that are now raised before me on
18 this motion.
19 As I alluded to earlier, paragraph 4
20 of the 2019 order provides that Phase 1 shall be
21 finally determined, including both Phases 1A and
22 B, before the trial moves on to a later stage.
23 As a result, it is apparent now that there will
24 be a long delay at least once and if not once
25 twice in the course of this 2019 order.

1 There are other differences between
2 the Filer order and the 2019 order. I won't
3 attempt to list them all. I do note one other
4 difference, which is that the Filer order
5 provided that the Phase 2 remedy could be
6 determined on a reference. There's no
7 particulars in the order about the procedural
8 choices that would be made for that reference.
9 As a result, it may or may not be in the form of
10 a trial before a judge under that order.
11 In short, there are substantial
12 changes between the Filer order and the 2019
13 severance order. I note that the 2019 severance
14 order also allows for further changes. In its
15 paragraph 10 it states as follows:
16 "This court orders that any party
17 may move to vary this order as it
18 pertains to the timing of the trial of
19 Phase 1B, including but not limited to
20 seeking an order adjourning said
21 issues to Phase 2."
22 Paragraph 11 of the 2019 order
23 provides as follows:
24 "This court orders that the
25 timing of the trial of Phase 1B shall

1 remain at the discretion of the trial
2 judge, including but not limited to
3 adjourning the issues covered in
4 paragraph 2(b) herein to Phase 2."
5 I received a copy of the 2019 order
6 shortly after its date in late February of 2019.
7 The order was then discussed at a trial
8 management conference in early March. At that
9 time I asked counsel a number of questions
10 regarding how much time it would take to
11 complete the various steps needed to prepare for
12 and conduct the trial of Phase 1B.
13 Counsel endeavoured to be helpful but
14 were careful to say they really didn't know. It
15 was apparent that since there had not yet been,
16 for example, production and discovery or
17 exchange of expert reports, the answers to my
18 questions really required more investigation.
19 As I mentioned, the 2019 order allowed
20 for those steps of production and discovery and
21 expert reports to occur during the trial of
22 Phase 1A. I am therefore not surprised that
23 counsel had not yet conducted those steps.
24 All agreed that they didn't expect the
25 same trial judge for Phase 1 and Phase 2 of the

1 trial given the delay to exhaust appeals from
2 Phase 1 of several years. However, the
3 plaintiffs submitted then and submit now that
4 they want the same trial judge for Phase 1A and
5 Phase 1B.
6 At the March trial management
7 conference I raised the question of whether the
8 parties did not want a decision until after both
9 of Phases 1A and B were completed, as
10 contemplated by the order. At least some of the
11 parties wanted to consider that position and I
12 asked them to do so.
13 As discussions unfolded the parties
14 also agreed that there was no prejudice in
15 deferring the discussion on Phase 1B until 2020.
16 This meant that there was time to get answers to
17 my questions about how long was needed to
18 prepare for and conduct the trial of Phase 1B.
19 I directed the parties to get working
20 on the investigations needed to answer those
21 questions, concurrently with the ongoing trial.
22 Again, this was consistent with the consent
23 order that contemplated that this sort of step
24 would take place during the trial.
25 That process proceeded, and along the

1 way I required that Canada and Ontario provide
2 the plaintiffs with a summary of the evidence
3 they intended to call regarding Phase 1B so that
4 the plaintiffs could consider the question of
5 what evidence they may wish to call. Those
6 summaries were provided as required by the end
7 of September of 2019.
8 A trial management conference on the
9 subject was scheduled for early January. Again,
10 the objective was to answer my questions
11 regarding the timing for trial readiness and the
12 trial itself, among any other issues. By email
13 dated October 28th I repeated what the specific
14 information I was requesting, as follows.
15 "1. Which steps does each party
16 submit are needed prior to the
17 commencement of the trial of Phase 1B
18 (such as discovery/expert reports)?
19 2. How much time is required for each
20 of those steps and in what sequence?
21 3. Who would be the testifying
22 witnesses (either specifically, or by
23 role or subject matter)?
24 4. What are the time estimates for
25 the trial evidence?”

1 In that email I also requested that
2 the parties provide the information in answers
3 to items (1) and (2) as soon as possible,
4 requesting it by the end of November, to
5 facilitate the planned trial management
6 conference in January.
7 On November 15th I received a letter
8 from plaintiffs' counsel indicating, among other
9 things, the following:
10 "It is evident that there are
11 again great differences in
12 interpretation of what is the proper
13 scope of Phase 1B. As a result, the
14 rough estimates by the parties of the
15 hearing time required for Phase 1B
16 range from about a week to about a
17 year."
18 That letter closes with the
19 observation that:
20 "Therefore, the Plaintiffs are
21 suggesting that a motion should be
22 scheduled."
23 The week following receipt of that
24 letter I held a trial management conference
25 about next steps given this situation. The

1 conclusion was that the plaintiffs would bring a
2 motion for directions to be heard at roughly at
3 the same time as the original January trial
4 management conference was scheduled for.
5 I set a schedule for the exchange of
6 positions, material and written submissions, all
7 to be exchanged and filed before December 20th,
8 2019, and the parties proceeded accordingly.
9 The motion was heard on January 8th,
10 2020. In accordance with my prior directions,
11 all parties had set out their positions on the
12 dispute that has now arisen with respect to the
13 2019 phasing order. The positions are set out
14 in their written submissions and for some
15 parties in court at the oral hearing, including
16 the requested time estimates.
17 I note that for most if not all the
18 parties those time estimates are still qualified
19 and uncertain.
20 I now move to discuss the issues on
21 the motion. First I will summarize the parties'
22 positions.
23 The plaintiffs ask that the 2009
24 phasing order stay in place. They submit that a
25 Phase 1B ruling would provide considerable

1 guidance about remedies, which could foster
2 negotiated solutions, at least for the majority
3 of the lands claimed. They submit that this
4 would take a modest amount of time.
5 The plaintiffs further submit that
6 certain of the evidence proposed mainly by
7 Canada, as part of their Phase 1B evidence, is
8 inadmissible and the time required is,
9 therefore, less than Canada's estimate. The
10 Plaintiffs have less difficulty with the
11 estimates put forward by Ontario.
12 The plaintiffs set out the proposed
13 steps in the litigation in accordance with the
14 2019 phasing order, generally as follows:
15 1. Completion of Phase 1A evidence
16 otherwise known as the trial I'm
17 conducting right now, estimated to
18 conclude in the spring of 2020.
19 2. Phase 1A final argument.
20 3. The trial of Phase 1B.
21 4. Phase 1B final argument.
22 5. Court decision for Phase 1,
23 including both Phase 1A and 1B.
24 6. Possibly appeals of Phase 1.
25 7. Attempts to negotiate Phase 2,

1 and;
2 8) The litigation of Phase 2, if
3 necessary --
4 An alternative of the plaintiffs is to
5 have a decision on Phase 1A followed by a
6 decision on Phase 1B. However, the plaintiffs
7 submit that there still ought to be no appeals
8 until both are completed and then the process of
9 exhausting appeals would take place.
10 All defendants take the position
11 overall that Phase 1B should be deferred and
12 tried in Phase 2.
13 I will first address the time
14 estimates of the parties that relate to these
15 positions.
16 Canada's time estimates are the
17 longest. Canada estimates that for its defence
18 at trial of Phase 1B it needs approximately 39
19 days. Canada then assumes that each other party
20 group would need about the same length of time,
21 giving rise to an overall estimate for the trial
22 of Phase 1B at 117 days, although in the course
23 of all of the argument a range did develop,
24 depending on various factors, of between 69 and
25 117 days.

1 Ontario's estimate for its defence of
2 Phase 1B is 10 to 15 days.
3 I should say, going back to Canada,
4 that Canada's submission was that it would take
5 until 2022 to become ready for that trial.
6 Ontario estimates that it would take
7 at least until July of 2021 to become ready for
8 the trial.
9 Ontario submits that it would need
10 expert evidence for this trial. And over the
11 course of all the argument, in the end most of
12 the parties, if not all of them, submit that it
13 is likely that the parties will be having expert
14 evidence.
15 The plaintiffs submit that Ontario's
16 evidence could be more streamlined but otherwise
17 they do not take significant issue with those
18 time estimates. The plaintiffs also submitted
19 that they would need about 10 to 15 days for
20 their evidence in Phase 1B, unless Canada was
21 permitted to proceed, as described in their
22 written submissions, with the more extensive
23 body of evidence. In that case, the plaintiffs
24 submit that they would need more time as well.
25 The five municipalities also asked

1 that Phase 1B be put into Phase 2. They
2 estimated the trial times for Phase 1B for the
3 five of them, in their factum, at 20 days but in
4 oral submissions allowed that it could be
5 shorter.
6 I have the following observations
7 about these estimates. I recognize that Canada
8 and Ontario have done significant work to
9 prepare their estimates and have given
10 significant detail about them. Yet they still
11 contain significant contingencies based on
12 unknowns. The plaintiffs have also endeavoured
13 to provide estimates but note that there are
14 contingencies based on unknowns. The
15 municipalities are doing what they can in an
16 uncertain situation that I will discuss later in
17 my reasons.
18 Taking all of this into account, even
19 the estimates at the low end would result in a
20 substantial delay and a long trial for Phase 1B.
21 By the "low end" I mean if I estimate 10 days of
22 evidence and submissions for each of the party
23 groups. This results in a 40-day trial for Phase
24 1B, at the earliest commencing in July of 2021,
25 which seems unlikely due to the need for expert

1 evidence and resulting likely reply expert
2 evidence.
3 The result a low-end estimate would
4 have the trial of Phase 1B commence at the
5 earliest in the latter half of 2021 and a
6 decision likely in 2022 at some point in time.
7 This causes a substantial delay in a decision of
8 any kind, because under the current order there
9 shall be no decision until after the conclusion
10 of Phase 1B.
11 I compare this to the reasonable
12 prospect of a judgment in Phase 1A either later
13 this year or early in 2021, given that the
14 evidence is expected to conclude this spring.
15 I also must take into account that,
16 based on the information before me, if Phase 1B
17 is included there is certainly the potential for
18 delays and other issues resulting in a much
19 longer wait time before any kind of judgment.
20 I, therefore, return to the subject of
21 my use of a low estimate. The main focus of the
22 arguments that more time will be required for
23 Phase 1B than contemplated by my low estimate
24 relates to the remedy of constructive trust. It
25 also relates to the question of the relevance of

1 evidence about compliance with the terms of
2 Treaty 72.
3 How Treaty 72 was reached is a
4 significant part of the plaintiffs' liability
5 case and generally relates to events leading up
6 to the signing of that Treaty. However, the
7 plaintiffs do not seek in this case to show that
8 Treaty 72's terms were breached after it was
9 entered into.
10 Very generally, Treaty 72 contemplated
11 that lands surrendered under that Treaty would
12 be sold and the principal amount would be paid
13 to the Indigenous people, as set out in the
14 Treaty.
15 Canada has acknowledged that in the
16 Treaty action the plaintiffs are not putting at
17 issue whether the sale of the lands, payment of
18 the monies into trust, or other steps taken
19 after the Treaty were fulfilled. However,
20 Canada submits that at least some of that
21 evidence will be needed to defend that
22 plaintiffs' claim for a constructive trust over
23 the claimed land.
24 There's no significant dispute between
25 the parties about the test for the entitlement

1 to a constructive trust. That test is
2 summarized at paragraph 228 of the reasons for
3 decision of Justice Cromwell in the case of Sun
4 Indalex Finance v. United Steel Workers, [2013]
5 1 S.C.R. 271. In that case at that paragraph
6 the Supreme Court cites its prior decision in
7 Soulos v. Korkontzilas, [1997] 2 S.C.R. 217, the
8 case relied upon by the plaintiffs on this
9 motion.
10 The test for constructive trust has
11 four conditions. Canada relies on two of them,
12 conditions 2 and 4. For this motion I find it
13 sufficient to focus on condition 4. As
14 described in the Sun Indalex case, that
15 condition is as follows:
16 "4. There must be no factors
17 which would render imposition of a
18 constructive trust unjust in all the
19 circumstances of this case; e.g. the
20 interest of intervening creditors must
21 be protected."
22 In the Soulos case itself, Madam
23 Justice McLachlin, as she then was, elaborated
24 on this as well in paragraph 34, toward the
25 second half of that paragraph, as follows:

1 "Finally it is informed by the
2 absence of an indication that a
3 constructive trust would have an
4 unfair or unjust effect on the
5 defendant or third parties, matters
6 which equity has always taken into
7 account. Equitable remedies are
8 flexible; their award is based on what
9 is just in all of circumstances of the
10 case."
11 Canada submits that, for example, the
12 sale of properties after the Treaty for fair
13 market value, and the provision of the proceeds
14 of sale to the First Nations, is potentially
15 relevant evidence when considering what is just
16 or unjust in all the circumstances under the
17 test for a constructive trust.
18 One of the arguments in response, put
19 forward by the plaintiffs, is that economic loss
20 is not part of the test for a constructive
21 trust. However, I find it more appropriate to
22 say it this way, as confirmed in these two
23 cases: economic loss is not necessarily required
24 to succeed in obtaining a constructive trust.
25 In the Soulos case the Supreme Court of Canada

1 said that that remedy may be available even if
2 no economic loss is established.
3 However, this does not mean that
4 evidence about the economic situation is
5 necessarily irrelevant to the test for a
6 constructive trust.
7 In response to this argument, the
8 plaintiffs submit that they will stipulate
9 perfect compliance with the terms of Treaty 72
10 for the purpose of this litigation. And,
11 therefore, compliance with that Treaty need not
12 be litigated.
13 However, that also does not remove the
14 potential relevance of evidence about the
15 individual parcels of land, their history, funds
16 paid and to whom, to be relevant to the
17 circumstances to be considered.
18 Canada submits that at least condition
19 (4) requires a wide examination of the
20 circumstances of these seven parcels and what
21 happened to them since 1854, including but not
22 limited to those financial matters.
23 I note that the detailed information
24 provided by Ontario regarding the majority of
25 the seven parcels readily shows that there may

1 be considerable evidence regarding the context
2 for each parcel, beyond the financial
3 information and the payments made, that are
4 relevant to that fourth element of the test.
5 Examples of potentially-relevant
6 matters in these particular parcels include the
7 following:
8 1. These parcels are not all isolated
9 lands; some are part of larger groups
10 of land that are used together for a
11 single purpose such as a park. This
12 expands the potential relevant
13 evidence to consideration of those
14 other parcels as well.
15 2. These lands have different
16 histories, including private sales
17 followed by public acquisitions for
18 specific public purposes.
19 3. These lands implicate third
20 parties, and;
21 4. These lands have a variety of
22 different uses that potentially raise
23 different considerations with respect
24 to what would or would not be just in
25 all the circumstances.

1 I note that I do not have evidence
2 before me that these seven parcels of land are
3 representative of a large number of other
4 properties in the claim area. The plaintiffs
5 submit they are but that is disputed, at least
6 by Canada. I accept that they may be to some
7 extent, based on plaintiffs' counsel
8 submissions, but I can only take that so far.
9 Thus, because of the need to take into
10 account what is just in all the circumstances,
11 it seems to me that the evidence relevant to
12 Phase 1B may be more extensive than that
13 contemplated by my low-end estimate. Bearing
14 all of this in mind it is likely that using the
15 low-end estimate, as I have done, is very
16 optimistic.
17 Given the current trial schedule and
18 experience thus far it also appears likely that
19 there would be unanticipated gaps in the
20 schedule leading up to and during a trial of
21 Phase 1B. It would be unlikely to assume that
22 it would proceed uninterrupted.
23 It therefore appears that the current
24 order would result in a lengthy gap between the
25 end of the trial of Phase 1A and the

1 commencement of the trial of Phase 1B. That gap
2 seems to be likely to be more than a year.
3 There would then be a lengthy trial of likely
4 more than two months before Phase 1B evidence
5 was complete.
6 In this regard, Ontario submits that
7 to be fairly heard as part of the trial of Phase
8 1 that Phase 1B needs to be heard within a
9 reasonable time and these estimates give rise to
10 a significant concern that the delay is simply
11 too long. I do not say that there would
12 inevitably be unfairness caused by the delay,
13 but the risk of an unfairness is heightened in
14 this situation.
15 I now move to other issues raised by
16 the parties in support of their positions.
17 The plaintiffs submit that the process
18 under the 2019 order would encourage settlement
19 and may lead to Phase 2 not being required. The
20 focus on the prospects of settlement is at least
21 one of the main arguments put forward by the
22 plaintiffs, and I agree, as a general matter,
23 that it is a good objective. The difficulty in
24 this case is that it is very speculative. It may
25 also be that a judgment on Phase 1A itself could

1 be extremely helpful in encouraging settlement
2 without the need to go to Phase 1B at all.
3 Further, as I have already mentioned,
4 incorporating Phase 1B will cause a lengthy
5 delay before there is any judgment at all; and
6 the unavailability of that judgment is not going
7 to necessarily foster a settlement.
8 As the trial judge I do not know, nor
9 should I, what is more or less likely in this
10 case to provoke a settlement. However,
11 ordinarily there are many possible factors,
12 including factors outside the litigation, that
13 could have that affect.
14 I have taken the plaintiffs' position
15 into account but I do not find that it
16 necessarily leads to a conclusion that Phase 1B
17 should proceed as contemplated in the 2019
18 order.
19 Another submission by the plaintiffs
20 is that if Phase 1B is adjourned to Phase 2,
21 Phase 2 will become too big. This perhaps is
22 better put by saying that Phase 2 would revert
23 back to what it was going to be anyway, because
24 before the 2019 order these seven parcels would
25 have been addressed in that phase.

1 The plaintiffs have commenced these
2 actions raising complex and important issues and
3 seeking substantial remedies. It will be a long
4 process to litigate these issues. I'm not
5 persuaded on the material before me that putting
6 these seven parcels back in Phase 2 will make it
7 bigger than it otherwise would have been.
8 The plaintiffs raise another issue
9 that relates to the impact of delay generally.
10 The plaintiffs submit that even if they win on
11 liability it could be many years before they get
12 a remedy. That may be so and I've taken that
13 into account. However, I'm not persuaded that
14 adding Phase 1B necessarily helps with this
15 problem. As I have already covered, it will
16 itself create a long delay before there is any
17 judgment at all.
18 The plaintiffs also raise an issue
19 with respect to continuity, given that the
20 evidence in Phase 1 will also form part of the
21 evidentiary record in Phase 1B and Phase 2.
22 They submit that it would be better to have the
23 same trial judge for Phase 1A and Phase 1B in
24 the circumstances.
25 However, the prospect of more than one

1 trial judge has formed part of the severance
2 order since the first order was made in 1997.
3 This is because both the original and the 2019
4 order contemplate a gap during which the parties
5 will exhaust all appeals and obtain a final
6 order. Both approaches contemplated this gap,
7 which could be a gap of many years. As a result
8 there has always been the prospect of more than
9 one trial judge.
10 In the trial management process before
11 this trial commenced, I confirmed this with the
12 parties in case it had an impact on the
13 selection of the trial judge for this part of
14 the trial. All confirmed their expectation that
15 given the need to exhaust appeals before the
16 then Phase 2 they did not expect to have the
17 same trial judge for Phase 2. Accordingly, even
18 under the 2019 order, there is going to be the
19 prospect of more than one trial judge.
20 I also note that the long delay to get
21 to Phase 1B, both getting it ready and the
22 length of the trial, itself lessens the chances
23 of the same trial judge for Phase 1B in any
24 event.
25 I next deal with one of the other

1 issues raised by the plaintiffs, which is the
2 potential impact of these issues on the five
3 stayed actions.
4 Plaintiffs counsel submits that there
5 may be an overlap between the issues in those
6 actions and the issues in the remedy stage of
7 this action, in the circumstance that the remedy
8 case includes evidence about compliance with
9 Treaty 72.
10 If there are going to be factual
11 findings regarding the fulfillment of Treaty 72
12 terms in either Phase 1B or Phase 2, even if for
13 remedy purposes, the plaintiffs submit that they
14 may wish to take steps in those other five
15 actions. I see this as a potential issue
16 whether or not there is a Phase 1B, given the
17 law on constructive trusts that I have just
18 reviewed.
19 However, it seems to me that it runs
20 in favour of the defendants' position that there
21 should be no Phase 1B because the
22 already-existing gap between Phases 1 and 2
23 leave open a period of time to try and address
24 those issues.
25 I then move to question of limitation

1 periods. The plaintiffs submit that if there's
2 a decision on liability but the limitation
3 periods remain open, the impact of the success
4 on liability and the ability to negotiate a
5 settlement will be diluted.
6 The current 2019 order provides that
7 some limitation periods will be dealt with in
8 Phase 1A and Phase 2, and plaintiffs' counsel
9 clarified in oral submissions that it is
10 expected that limitation periods can also be
11 raised in Phase 1B.
12 Given the plaintiffs' submission that
13 certain limitation periods will be relevant in
14 each of the stages, it's not clear to me what,
15 whether or how these issues will be addressed.
16 That will have to be the subject of final
17 argument. But it is not apparent that the
18 insertion of Phase 1B necessarily assists with
19 this situation.
20 There are a couple of other issues I'm
21 going to deal with now, raised by the
22 defendants.
23 Ontario raises a significant issue
24 regarding separating two remedy-focused trials,
25 specifically Phase 1B and Phase 2. There's no

1 question that Phase 1B and Phase 2 substantially
2 overlap in subject matter, the main differences
3 being that different parcels of land are being
4 addressed. Ontario submits that this creates a
5 potentially high risk of duplication,
6 inconsistent findings and inefficiencies.
7 The reasons I have already given
8 certainly suggest inefficiencies. For example,
9 some parcels of land listed for Phase 1B are
10 part of larger land group uses; and the other
11 surrounding land and its history and uses may be
12 relevant, to some extent, in Phase 1B. Yet
13 those lands are not being subject of remedial
14 orders in Phase 1B and will have to be
15 litigated, at least to some extent, in Phase 2.
16 Ontario therefore says, in short, that it would
17 create a myriad of problems to split the remedy
18 in two.
19 This problem is also illustrated by
20 the position of the municipalities. Unlike
21 Canada and Ontario, there is no allegation of
22 breach of fiduciary duty in the entering into of
23 Treaty 72 against any of the five
24 municipalities. Generally those five
25 municipalities are parties because they

1 currently own part of the land claimed by the
2 plaintiffs in these actions.
3 In their submission, they own that
4 land due to vesting under federal and provincial
5 legislation, and the land is mainly road
6 allowances which either remain open or have been
7 made into roads and highways.
8 The municipalities submit that this
9 situation puts them in a very difficult
10 position. It is not alleged that they did
11 anything wrong leading up to Treaty 72, yet they
12 are part of this very large litigation and their
13 lands may well be affected by the outcome.
14 The municipalities allege that under
15 legislation that binds them they have
16 established and maintained roads in the claim
17 areas and have expended very significant funds
18 to do it over a very long time.
19 As a result they are an active
20 participant in this trial while, at the same
21 time, trying to manage the burden of being in
22 this trial.
23 From what I have seen, the
24 municipalities have done an impressive job
25 co-ordinating with one another and with the

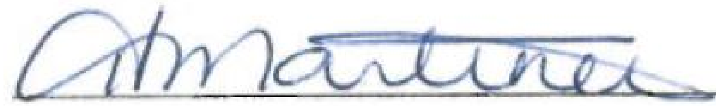
1 other parties to keep their participation to a
2 minimum while protecting their interests. They
3 only attend this Phase of the trial at critical
4 times and they submit that their main role will
5 be with respect to remedies, which is meant to
6 be at a later stage.
7 The seven parcels of land selected for
8 Phase 1B do not include property owned by the
9 municipalities, perhaps because of the above
10 circumstances. However, the municipalities
11 fairly submit on this motion that the overlap I
12 just mentioned between the two remedies phases
13 means that they will have to participate to some
14 degree in Phase 1B. This is because general
15 findings may be made in that phase that will
16 have an impact on Phase 2 of the trial.
17 This is an example of the potential
18 impact of the overlap between the two remedy
19 phases, and the resulting inefficiencies.
20 Bearing all the submissions in mind,
21 there does appear to be a reason for concern
22 that having two remedy phases may give rise to
23 problems, specifically overlap, duplication and
24 the potential for inconsistent findings.
25 Ontario and Canada also submit that a

1 finding on liability alone may itself narrow the
2 available remedies, which would be efficient.
3 It could shorten or eliminate the need for all
4 or part of the remedy phase, especially after
5 all appeals on liability are exhausted.
6 This concludes my discussion of the
7 main issues raised before me on this motion.
8 I have considered all of the material
9 and submissions, both written and oral, in the
10 exercise of my discretion under paragraph 11 of
11 the 2019 order.
12 As noted by the plaintiffs and other
13 parties: "it is in the interests of justice to
14 secure the just, most expeditious and least
15 expensive determination of this litigation on
16 its merits".
17 Bearing everything in mind, I conclude
18 that the 2019 order needs to be changed. In
19 that regard I note that the wording of paragraph
20 11 of that order allows for changes other than
21 simply adjourning Phase 1B to become part of
22 Phase 2. In that regard, I asked the parties
23 for their positions on leaving Phase 1B separate
24 but having it take place after the final
25 disposition of Phase 1A. The parties took

1 various positions on that question. For now it
2 is sufficient to say that a number of the issues
3 raised before me would still persist in that
4 situation.
5 However, I allow for the possibility
6 that the parties may be able to come up with
7 other ideas of how to streamline the remedy
8 stage, especially after liability is determined.
9 Before me it is apparent that a number
10 of the problems that now exist would have been
11 identified if the seven properties had been
12 looked into in detail before, rather than after,
13 the order was made.
14 I have taken the prospect of other
15 routes to address remedy into account in
16 changing the 2019 order.
17 I therefore order that Phase 1B shall
18 be adjourned to become part of Phase 2, subject
19 to further amendments that may be made to allow
20 for other processes to streamline remedy.
21 We have today a trial management
22 conference scheduled. At that conference I will
23 take counsel through the 2019 order to indicate
24 the changes that I think are required to
25 implement the order I just made, in order that

1 counsel can make submissions if they think those
2 changes need to be supplemented in some way,
3 after which a formal order will be signed.
4 I note that there is some other relief
5 sought in the material before me by the
6 plaintiffs, and I think the municipalities,
7 including with respect to admissibility of
8 evidence and clarifications. On review of those
9 requests I find that they need not be dealt with
10 given the order I've just made.
11 However, I wish to note that although
12 I have referred to aspects of the merits in my
13 reasons for decision, I make no final decision
14 regarding law or fact that relates to the merits
15 of this case as part of this motion for
16 directions.
17 Madam reporter, that concludes my oral
18 reasons for decisions.
19 Counsel, that took longer than I
20 expected but I see that we can still move to the
21 11 o'clock predicted time for the trial
22 management conference. So instead of a break
23 does anyone object to us proceeding or would
24 anyone like a very short break?
25 MR. TOWNSHEND: I would like a short

1 break.
2 THE COURT: We'll take a ten minute
3 break. And perhaps Ontario can send an email
4 out saying that the trial management conference
5 will start in ten minutes.
6 --- Whereupon the proceedings were
7 adjourned at 11:02 a.m.
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

1 REPORTER'S CERTIFICATE
2
3 I, HELEN MARTINEAU, CSR, Certified
4 Shorthand Reporter, certify;
5 That the foregoing proceedings were
6 taken before me at the time and place therein
7 set forth;
8 That the testimony of the witness and
9 all objections made at the time of the
10 examination were recorded stenographically by me
11 [Note: Not all quotes have been verified
12 against source document, but transcribed as
13 read into the record];
14 That the foregoing is a true and
15 accurate transcript of my shorthand notes so
16 taken. Dated this 22nd day of January 2020.
17
18

19
20 PER: HELEN MARTINEAU
21 CERTIFIED SHORTHAND REPORTER
22
23
24
25

(

(1) 9695:3
(2) 9695:3
(4) 9705:19

1

1 9689:16 9690:20 9692:25 9693:2 9694:15 9697:15,22,24 9703:5 9706:8 9708:8 9710:20 9712:22
10 9686:18 9691:15 9699:2, 19 9700:21
10:03 9681:1
11 9683:11 9691:22 9717:10,20 9719:21
117 9698:22,25
11:00 9681:8
11:02 9720:7
12 9684:8
13 9685:7
15 9699:2,19
15th 9695:7
1854 9682:25 9684:21 9705:21
1980s 9687:11
1990s 9687:11
1994 9682:20 9687:15
1997 9686:18 9703:7 9711:2
1A 9689:3,19 9690:21 9692:22 9693:4, 9 9697:15,19,23 9698:5 9701:12 9707:25 9708:25 9710:23 9713:8 9717:25
1B 9689:8,19, 20 9690:6,9 9691:19,25 9692:12 9693:5, 15,18 9694:3,17 9695:13,15 9696:25 9697:7, 20,21,23 9698:6,11,18,22 9699:2,20 9700:1,2,20,24 9701:4,10,16,23 9707:12,21 9708:1,4,8 9709:2,4,16,20 9710:14,21,23 9711:21,23 9712:12,16,21 9713:11,18,25 9714:1,9,12,14 9716:8,14 9717:21,23 9718:17

2

2 9689:12,14 9691:5,21 9692:4,25 9694:19 9697:19,25 9698:2,12 9700:1 9703:7, 12 9706:15 9708:19 9709:20,21,22 9710:6,21 9711:16,17 9712:12,22 9713:8,25 9714:1,15 9716:16 9717:22 9718:18
2(b) 9692:4
20 9700:3
2003 9682:21
2006 9687:2,5
2009 9696:23
2013 9703:4
2019 9681:17, 18,25 9682:16 9688:10,19,20 9689:7,11,14, 18,20 9690:5,8, 20,25 9691:2, 12,13,22 9692:5,6,19 9694:7 9696:8, 13 9697:14 9708:18 9709:17,24 9711:3,18 9713:6 9717:11, 18 9718:16,23
2020 9682:2 9693:15 9696:10 9697:18
2021 9699:7 9700:24 9701:5, 13
2022 9699:5 9701:6
20th 9696:7
217 9703:7
228 9703:2
25 9688:19
25th 9681:17
271 9703:5
28th 9694:13

3

3 9694:21 9697:20 9706:19
34 9703:24
39 9698:18

4

4 9690:19 9694:24 9697:21 9703:12,13,16 9706:21
40-day 9700:23

5

5 9697:22

6

6 9697:24
69 9698:24

7

7 9697:25
72 9682:24 9683:19,25 9685:3,22 9686:1,5 9688:3 9702:2,3,10 9705:9 9712:9, 11 9714:23 9715:11
72's 9702:8

8

8 9690:5 9698:2
8th 9682:1 9696:9

9

9 9690:8

A

a.m. 9681:1 9720:7
ability 9713:4
Aboriginal 9683:24
absence 9690:15 9704:2
abuse 9687:19
accept 9683:9 9707:6
accepted 9686:5
accomplish 9684:16
accomplished 9685:10
accordance 9696:10 9697:13
account 9700:18 9701:15 9704:7 9707:10 9709:15 9710:13 9718:15
acknowledged 9702:15
acquisitions 9706:17
action 9682:20,21,22, 23,24 9683:1,4, 6,7,11 9686:16, 25 9687:8,16 9688:11,12 9702:16 9712:7
actions 9682:10,20 9684:8 9687:1, 3,9,12,14,21,23, 24 9688:1,4,10, 23 9710:2 9712:3,6,15 9715:2
active 9715:19
added 9689:7
adding 9710:14
additional 9682:9
address

9682:14 9698:13 9712:23 9718:15

addressed 9709:25 9713:15 9714:4

adjourned 9709:20 9718:18 9720:7

adjourning 9691:20 9692:3 9717:21

administered 9689:25 9690:1

admissibility 9719:7

advanced 9687:23

affect 9709:13

affected 9715:13

agree 9688:15 9708:22

agreed 9687:20 9692:24 9693:14

allegation 9683:16 9714:21

allege 9715:14

alleged 9683:19 9688:2 9715:10

allowances 9715:6

allowed 9692:19 9700:4

alluded 9690:19

already-existing 9712:22

alternative 9683:22 9698:4

amendments 9718:19

amount 9697:4 9702:12

answers 9692:17 9693:16 9695:2

anticipate 9681:10

apparent 9688:14 9690:15,23 9692:15 9713:17 9718:9

appeals 9689:15 9693:1 9697:24 9698:7, 9 9711:5,15 9717:5

appears 9707:18,23

approaches 9711:6

approximately 9698:18

April 9681:23

area 9707:4

areas 9715:17

argument 9683:8 9697:19, 21 9698:23 9699:11 9705:7 9713:17

arguments 9701:22 9704:18 9708:21

arise 9682:8

arisen 9681:24 9696:12

arising 9683:20,22

aspect 9685:18

aspects 9719:12

assists 9713:18

assume 9707:21

assumes 9698:19

attempt 9691:3

Attempts 9697:25

attend 9716:3

award 9704:8

B

back 9682:6 9699:3 9709:23 9710:6

background 9682:14,18

balance 9689:12

based 9683:16 9700:11,14 9701:16 9704:8 9707:7

Bearing 9707:13 9716:20 9717:17

bed 9683:2,3 9690:2

began 9688:9

beneficial 9685:2 9689:22

benefits 9686:5

big 9709:21

bigger 9710:7

binds 9715:15

body 9699:23

bona 9685:4

breach 9683:17 9684:4 9714:22

breached 9688:3 9702:8

break 9681:6 9719:22,24 9720:1,3

bring 9696:1

Bruce 9683:3

burden 9715:21

C

call 9681:18 9686:21 9694:3, 5

called 9682:22 9688:20

calls 9689:8,12

Canada 9686:4,8 9689:25 9694:1 9697:7 9698:17, 19 9699:3,20 9700:7 9702:15, 20 9703:11 9704:11,25 9705:18 9707:6 9714:21 9716:25

Canada's 9697:9 9698:16 9699:4

careful 9692:14

case 9685:18, 23 9687:3,5,23 9688:2,5,7,17 9699:23 9702:5, 7 9703:3,5,8,14, 19,22 9704:10, 25 9708:24 9709:10 9711:12 9712:8 9719:15

cases 9690:4 9704:23

caused 9708:12

challenge 9685:22

challenges 9690:17

chances 9711:22

changed 9717:18

changing 9718:16

characterizes 9683:13

choices 9691:8

circumstance 9712:7

circumstances 9703:19 9704:9,16 9705:17,20 9706:25 9707:10 9710:24 9716:10

cites 9703:6

claim 9683:2 9702:22 9707:4 9715:16

claimed 9697:3 9702:23 9715:1

clarifications 9719:8

clarified 9687:25 9713:9

clear 9713:14

closes 9695:18

club 9690:3

co-ordinating 9715:25

commence 9689:2 9701:4

commenced 9681:23 9682:20,21

9687:10 9710:1 9711:11

commencement 9681:22 9686:24 9690:7, 10 9694:17 9708:1

commencing 9681:1 9700:24

compare 9701:11

compensation 9684:18,20

complete 9689:1 9692:11 9708:5

completed 9693:9 9698:8

Completion 9697:15

complex 9710:2

compliance 9685:22 9702:1 9705:9,11 9712:8

concept 9689:17

concern 9708:10 9716:21

conclude 9681:5 9697:18 9701:14 9717:17

concludes 9717:6 9719:17

conclusion 9696:1 9701:9 9709:16

concurrently 9693:21

condition 9703:13,15 9705:18

conditions 9703:11,12

conduct 9690:14 9692:12 9693:18

conducted 9682:10 9692:23

conducting 9697:17

conference 9687:5 9692:8 9693:7 9694:8 9695:6,24 9696:4 9718:22 9719:22 9720:4

confirmed 9704:22 9711:11,14

consent 9681:21 9686:16,25 9687:2 9688:18 9693:22

considerable 9696:25 9706:1

consideration 9706:13

considerations 9706:23

considered 9705:17 9717:8

consistent 9693:22

constructive 9685:11,16 9689:9 9701:24 9702:22 9703:1, 10,18 9704:3, 17,20,24 9705:6 9712:17

contemplate 9711:4

contemplated 9682:5 9689:5 9693:10,23 9701:23 9702:10 9707:13 9709:17 9711:6

contemplates 9688:25

context 9706:1

contingencies 9700:11,14

continued 9688:4

continuity 9710:19

copy 9692:5

counsel 9681:2,3 9692:9,13,23 9695:8 9707:7 9712:4 9713:8 9718:23 9719:1, 19

couple 9713:20

court 9681:2 9687:12,13 9691:16,24 9696:15 9697:22 9703:6 9704:25 9720:2

covered 9692:3 9710:15

create 9710:16 9714:17

created 9690:16

creates 9714:4

creditors 9703:20

critical 9716:3

Cromwell 9703:3

cross-country 9690:3

Crown 9683:18,24 9684:1,14 9689:25

Crown's 9684:4

current 9701:8 9707:17,23 9713:6

D

dam 9690:2

date 9692:6

dated 9688:19 9694:13

days 9698:19, 22,25 9699:2,19 9700:3,21

deal 9711:25 9713:21

dealt 9713:7 9719:9

December 9696:7

decided 9682:12 9685:21

decision 9681:4,11,14, 15,18 9682:13 9693:8 9697:22 9698:5,6 9701:6,7,9 9703:3,6 9713:2 9719:13

decisions 9719:18

declaration 9685:1

declaratory 9689:4

defence 9698:17 9699:1

defences 9687:18

defend 9702:21

defendant 9704:5

defendants 9682:2 9686:2 9698:10 9713:22

defendants' 9712:20

deferred 9689:15 9698:11

deferring 9693:15

degree 9716:14

delay 9690:24 9693:1 9700:20 9701:7 9708:10, 12 9709:5 9710:9,16 9711:20

delays 9701:18

departure 9690:11

depending 9698:24

detail 9700:10 9718:12

detailed 9705:23

determination 9717:15

determined 9689:5 9690:21 9691:6 9718:8

determining 9689:21

develop 9698:23

difference 9691:4

differences 9691:1 9695:11 9714:2

difficult 9715:9

difficulty

9697:10 9708:23
diluted 9713:5
direct 9684:3
directed 9693:19
directions 9681:16 9682:1 9683:5 9685:15 9696:2,10 9719:16
discovery 9690:6,12 9692:16,20
discovery/ expert 9694:18
discretion 9692:1 9717:10
discuss 9696:20 9700:16
discussed 9692:7
discussion 9693:15 9717:6
discussions 9693:13
disposition 9717:25
dispute 9696:12 9702:24
disputed 9707:5
divorced 9683:4
doctrines 9685:11
due 9700:25 9715:4
duplication 9714:5 9716:23
duty 9683:17, 19,21,23 9684:5,15 9714:22

E

e.g. 9703:19
earlier 9681:19 9688:11 9690:19
earliest 9700:24 9701:5
early 9692:8 9694:9 9701:13
economic 9704:19,23 9705:2,4
effect 9704:4
efficient 9717:2
elaborated 9703:23
element 9706:4
eliminate 9717:3
email 9681:7 9694:12 9695:1 9720:3
encourage 9708:18
encouraging 9709:1
end 9694:6 9695:4 9699:11 9700:19,21 9707:25
endeavoured 9692:13 9700:12
entered 9682:25 9686:8, 18 9702:9
entering 9714:22
entitlement 9689:21 9702:25
Equitable 9704:7
equity 9704:6
equivalent 9685:13
established 9705:2 9715:16
estate 9685:5
estimate 9697:9 9698:21 9699:1 9700:21 9701:3,21,23 9707:13,15
estimated 9697:17 9700:2
estimates 9682:15 9694:24 9695:14 9696:16,18 9697:11 9698:14,16,17 9699:6,18 9700:7,9,13,19 9708:9
estoppel 9687:19
event 9711:24
events 9702:5
evidence 9685:25 9686:9 9690:9 9694:2, 5,25 9697:6,7, 15 9699:10,14, 16,20,23 9700:22 9701:1, 2,14 9702:1,21 9704:15 9705:4, 14 9706:1,13 9707:1,11 9708:4 9710:20 9712:8 9719:8
evident 9695:10
evidentiary 9710:21
examination 9705:19
Examples 9706:5
exceptions 9686:18
exchange 9690:13 9692:17 9696:5
exchanged 9696:7
exercise 9717:10
exhaust 9693:1 9711:5, 15
exhausted 9689:16 9717:5
exhausting 9698:9
exist 9718:10
expands 9706:12
expect 9692:24 9711:16
expectation 9711:14
expected 9701:14 9713:10 9719:20
expeditious 9717:14
expended 9715:17
expensive 9717:15
experience 9707:18
expert 9690:9, 13 9692:17,21 9699:10,13 9700:25 9701:1
explain 9685:8
extensive 9699:22 9707:12
extent 9707:7 9714:12,15
extremely 9709:1

F

facilitate 9695:5
fact 9687:20 9719:14
factors 9698:24 9703:16 9709:11,12
factual 9712:10
factum 9700:3
fair 9686:10 9704:12
fairly 9708:7 9716:11
favour 9712:20
February 9681:17 9688:19 9692:6
federal 9687:13 9689:24 9715:4
fide 9685:4
fiduciary 9683:17,19,21, 23 9684:4 9714:22
filed 9696:7
Filer 9686:17 9688:16,21,24 9689:17 9691:2, 4,12
final 9687:15 9689:16 9697:19,21 9711:5 9713:16 9717:24 9719:13
finally 9690:21 9704:1

Finance 9703:4

financial 9705:22 9706:2

find 9703:12 9704:21 9709:15 9719:9

finding 9717:1

findings 9712:11 9714:6 9716:15,24

flexible 9704:8

focus 9682:7 9683:8 9685:14 9701:21 9703:13 9708:20

form 9691:9 9710:20

formal 9719:3

formed 9711:1

forward 9697:11 9704:19 9708:21

foster 9697:1 9709:7

fourth 9706:4

fulfilled 9684:15 9702:19

fulfillment 9712:11

funds 9705:15 9715:17

G

Gans 9688:6,7, 19

gap 9707:24 9708:1 9711:4, 6,7 9712:22

gaps 9707:19

general 9683:20 9708:22 9716:14

generally 9683:1 9687:14 9697:14 9702:5, 10 9710:9 9714:24

generis 9683:23 9685:12

give 9681:3 9686:14,15 9708:9 9716:22

giving 9698:21

good 9708:23

granted 9688:19

great 9695:11

group 9698:20 9714:10

groups 9700:23 9706:9

guidance 9697:1

H

half 9701:5 9703:25

hands 9685:4

happened 9705:21

heard 9682:1 9687:1 9696:2,9 9708:7,8

hearing 9695:15 9696:15

heightened 9708:13

held 9695:24

helpful 9692:13 9709:1

helps 9710:14

high 9714:5

highways 9715:7

histories 9706:16

history 9705:15 9714:11

hoped-for 9684:7

I

ideas 9718:7

identified 9718:11

illustrated 9714:19

impact 9710:9 9711:12 9712:2 9713:3 9716:16, 18

implement 9718:25

implicate 9706:19

important 9710:2

imposition 9703:17

impressive 9715:24

inadmissible 9697:8

include 9706:6 9716:8

included 9689:11,18 9701:17

includes 9712:8

including 9689:9,24 9690:1,21 9691:19 9692:2 9696:15 9697:23 9705:21 9706:16 9709:12 9719:7

inconsistent 9687:24 9714:6 9716:24

incorporating 9709:4

Indalex 9703:4,14

indicating 9695:8

indication 9704:2

Indigenous 9702:13

individual 9705:15

inefficiencies 9714:6,8 9716:19

inevitably 9708:12

information 9694:14 9695:2 9701:16 9705:23 9706:3

informed 9704:1

insertion 9713:18

intended 9694:3

interest 9703:20

interests 9716:2 9717:13

interpretation 9688:15 9695:12

intervening 9703:20

introduced 9682:16

introduction 9682:8

investigation 9692:18

investigations 9693:20

irrelevant 9705:5

isolated 9706:8

issue 9685:20 9687:6,18 9688:16 9699:17 9702:17 9710:8, 18 9712:15 9713:23

issues 9681:24 9682:7, 17 9683:4,5 9686:19,20 9691:21 9692:3 9694:12 9696:20 9701:18 9708:15 9710:2, 4 9712:1,2,5,6, 24 9713:15,20 9717:7 9718:2

items 9685:16 9695:3

J

January 9682:1 9688:10 9694:9 9695:6 9696:3,9

job 9715:24

joint 9688:5

judge 9691:10 9692:2,25 9693:4 9709:8 9710:23 9711:1, 9,13,17,19,23

judgment 9701:12,19 9708:25 9709:5, 6 9710:17

July 9699:7 9700:24

justice 9686:17 9688:5, 7,16,19 9703:3, 23 9717:13

K

kind 9701:8,19

Korkontzilas 9703:7

L

lake 9683:2,3 9690:2

land 9684:17, 19,21,22,25 9689:10,23 9690:1 9702:23 9705:15 9706:10 9707:2 9714:3,9,10,11 9715:1,4,5 9716:7

lands 9684:2 9685:2 9686:10 9689:22,24 9690:1 9697:3 9702:11,17 9706:9,15,19,21 9714:13 9715:13

large 9707:3 9715:12

larger 9706:9 9714:10

lastly 9682:17

late 9681:23 9687:10 9692:6

law 9712:17 9719:14

lead 9708:19

leading 9683:18 9702:5 9707:20 9715:11

leads 9709:16

leave 9712:23

leaving 9717:23

legal 9685:5,11

legally 9684:17

legislation 9715:5,15

length 9698:20 9711:22

lengthy 9681:12 9707:24 9708:3 9709:4

lessens 9711:22

letter 9695:7, 18,24

liability 9685:23 9686:19 9688:2 9689:4 9702:4 9710:11 9713:2, 4 9717:1,5 9718:8

limitation 9712:25 9713:2, 7,10,13

limited 9691:19 9692:2 9705:22

list 9691:3

listed 9685:16 9689:22,23 9714:9

litigate 9710:4

litigated 9705:12 9714:15

litigation 9683:14,16 9686:22 9697:13 9698:2 9705:10 9709:12 9715:12 9717:15

lives 9681:10

long 9690:24 9693:17 9700:20 9708:11 9710:3, 16 9711:20 9715:18

longer 9701:19 9719:19

longest 9698:17

looked 9718:12

loss 9684:20 9704:19,23 9705:2

low 9700:19,21 9701:21,23

low-end 9701:3 9707:13, 15

M

Madam 9681:13 9703:22 9719:17

made 9681:16, 21 9686:17,23 9691:8 9706:3 9711:2 9715:7 9716:15 9718:13,19,25 9719:10

main 9682:7,23 9683:8 9701:21 9708:21 9714:2 9716:4 9717:7

maintained 9715:16

majority 9697:2 9705:24

make 9710:6 9719:1,13

manage 9715:21

managed 9687:3

management 9688:5,9,17 9692:8 9693:6 9694:8 9695:5, 24 9696:4 9711:10 9718:21 9719:22 9720:4

managing 9688:7

March 9686:18 9692:8 9693:6

marked 9690:11

market 9686:10 9704:13

Master 9686:25

material 9696:6 9710:5 9717:8 9719:5

matter 9694:23 9708:22 9714:2

matters 9688:8 9704:5 9705:22 9706:6

Mclachlin 9703:23

means 9716:13

meant 9693:16 9716:5

mechanism 9684:1

mentioned 9692:19 9709:3 9716:12

merits 9717:16 9719:12,14

mind 9707:14 9716:20 9717:17

minimum 9716:2

minute 9720:2

minutes 9720:5

modest 9697:4

monies 9702:18

months 9708:4

morning 9681:2,7

motion 9681:4,16 9682:1,8,17 9683:5,9,12 9685:14,19 9686:16 9688:13 9690:18 9695:21 9696:2, 9,21 9703:9,12 9716:11 9717:7 9719:15

move 9685:18 9691:17 9696:20 9708:15 9712:25 9719:20

moves 9690:22

municipalities 9699:25 9700:15 9714:20,24,25 9715:8,14,24 9716:9,10 9719:6

myriad 9714:17

N

narrow 9717:1

Nations 9686:12 9704:14

necessarily 9685:24

9704:23 9705:5 9709:7,16 9710:14 9713:18

needed 9692:11 9693:17,20 9694:16 9702:21

negotiate 9697:25 9713:4

negotiated 9697:2

note 9687:9 9691:3,13 9696:17 9700:13 9705:23 9707:1 9711:20 9717:19 9719:4, 11

noted 9717:12

notice 9685:6

November 9695:4,7

number 9692:9 9707:3 9718:2,9

O

object 9719:23

objective 9694:10 9708:23

observation 9695:19

observations 9700:6

obtain 9711:5

obtained 9684:1

obtaining 9704:24

occur 9692:21

October 9694:13

office 9681:6

ongoing 9688:17 9693:21

Ontario 9694:1 9697:11 9699:6,9 9700:8 9705:24 9708:6 9713:23 9714:4, 16,21 9716:25 9720:3

Ontario's 9699:1,15

open 9712:23 9713:3 9715:6

optimistic 9707:16

oral 9681:3,10, 13 9687:25 9696:15 9700:4 9713:9 9717:9 9719:17

order 9681:16, 18,19,20,21,25 9682:3,5,16 9686:17,19,23 9687:2 9688:11, 12,16,18,20,21, 24 9689:7,11, 14,17,18,20,24 9690:4,5,8,20, 25 9691:2,4,7, 10,12,13,14,17, 20,22 9692:5,7, 19 9693:10,23 9696:13,24 9697:14 9701:8 9707:24 9708:18 9709:18,24 9711:2,4,6,18 9713:6 9717:11, 18,20 9718:13, 16,17,23,25 9719:3,10

ordered 9686:25 9687:3

orders 9687:5, 14,17 9689:9 9691:16,24 9714:14

ordinarily 9709:11

ordinary 9690:12

organize 9681:9

original 9696:3 9711:3

outcome 9715:13

outset 9688:6

overlap 9712:5 9714:2 9716:11,18,23

overview 9686:14

owned 9716:8

owners 9685:2

ownership 9689:22

P

paid 9702:12 9705:16

paragraph 9683:11 9684:8, 9 9685:7 9690:5,8,19 9691:15,22 9692:4 9703:2, 5,24,25 9717:10,19

parcel 9706:2

parcels 9689:10,23 9690:3 9705:15, 20,25 9706:6,8, 14 9707:2 9709:24 9710:6 9714:3,9 9716:7

park 9690:2 9706:11

Parks 9689:25

part 9683:15 9688:2,17 9689:17 9697:7 9702:4 9704:20 9706:9 9708:7 9710:20 9711:1, 13 9714:10 9715:1,12 9717:4,21 9718:18 9719:15

participant 9715:20

participate 9716:13

participation 9716:1

particulars 9691:7

parties 9685:15 9688:14 9693:8, 11,13,19 9695:2,14 9696:8,11,15,18 9698:14 9699:12,13 9702:25 9704:5 9706:20 9708:16 9711:4, 12 9714:25 9716:1 9717:13, 22,25 9718:6

parties' 9682:15 9696:21

party 9691:16 9694:15 9698:19 9700:22

payment 9702:17

payments 9706:3

pending 9687:15

Peninsula 9683:3 9684:3

people 9681:9 9702:13

peoples 9683:24

perfect 9705:9

period 9712:23

periods 9713:1,3,7,10, 13

permitted 9699:21

persist 9718:3

persuaded 9710:5,13

pertains 9691:18

phase 9682:9, 16 9686:1 9689:3,6,7,8,12, 14,15,19,20 9690:6,9,20 9691:5,19,21,25 9692:4,12,22,25 9693:2,4,5,15, 18 9694:3,17 9695:13,15 9696:25 9697:7, 15,19,20,21,22, 23,24,25 9698:2,5,6,11, 12,18,22 9699:2,20 9700:1,2,20,23 9701:4,10,12, 16,23 9707:12, 21,25 9708:1,4, 7,8,19,25 9709:2,4,16,20, 21,22,25 9710:6,14,20, 21,23 9711:16, 17,21,23 9712:12,16,21 9713:8,11,18,25 9714:1,9,12,14, 15 9716:3,8,14, 15,16 9717:4, 21,22,23,25 9718:17,18

phases 9682:11 9686:21 9688:25 9690:21 9693:9 9712:22 9716:12,19,22

phasing 9696:13,24 9697:14

phoning 9681:9

place 9690:7 9693:24 9696:24 9698:9 9717:24

plaintiff 9683:13 9685:20

plaintiffs 9683:25 9684:5, 11,15,23,25 9685:8,21 9686:6 9687:10 9693:3 9694:2,4 9695:20 9696:1, 23 9697:5,10,12 9698:4,6 9699:15,18,23 9700:12 9702:7, 16 9703:8 9704:19 9705:8 9707:4 9708:17, 22 9709:19 9710:1,8,10,18 9712:1,4,13 9713:1 9715:2 9717:12 9719:6

plaintiffs' 9683:10,12 9684:6,9 9685:9 9695:8 9702:4, 22 9707:7 9709:14 9713:8, 12

plan 9681:12

planned 9695:5

pleads 9686:4

point 9701:6

position 9684:13 9685:9 9686:7 9693:11 9698:10 9709:14 9712:20 9714:20 9715:10

positions 9682:15 9696:6, 11,13,22 9698:15 9708:16 9717:23 9718:1

possibility 9718:5

Possibly 9697:24

potential 9682:4 9701:17 9705:14 9706:12 9712:2, 15 9716:17,24

potentially 9704:14 9706:22 9714:5

potentially-relevant 9706:5

pre-trial 9686:15 9690:16

precede 9690:13

predicted 9719:21

prejudice 9687:18 9693:14

prepare 9692:11 9693:18 9700:9

present 9684:21

principal 9702:12

prior 9681:21 9688:6 9694:16 9696:10 9703:6

private 9706:16

problem 9710:15 9714:19

problems 9714:17 9716:23 9718:10

procedural 9691:7

proceed 9699:21 9707:22 9709:17

proceeded 9693:25 9696:8

proceeding 9719:23

proceedings 9720:6

proceeds 9684:22 9686:11 9704:13

process 9681:5,25 9682:13 9683:18 9687:19 9688:17 9690:6 9693:25 9698:8 9708:17 9710:4 9711:10

processes 9718:20

production 9692:16,20

proper 9695:12

properly 9684:14

properties 9704:12 9707:4 9718:11

property 9716:8

proposed 9697:6,12

prospect 9701:12 9710:25 9711:8, 19 9718:14

prospects 9708:20

protected 9703:21

protecting 9716:2

provide 9687:14 9694:1 9695:2 9696:25 9700:13

provided 9688:22 9691:5 9694:6 9705:24

provincial 9689:24,25 9690:2 9715:4

provision 9686:11 9704:13

provoke 9709:10

public 9706:17,18

purchasers 9685:4

purpose 9705:10 9706:11

purposes 9683:9 9706:18 9712:13

pursued 9687:7

put 9684:12 9685:20 9686:6 9697:11 9700:1 9704:18 9708:21 9709:22

puts 9715:9

putting 9702:16 9710:5

Q

qualified 9696:18

question 9685:25 9693:7 9694:4 9701:25 9712:25 9714:1 9718:1

questions 9692:9,18 9693:17,21 9694:10

R

raise 9706:22 9710:8,18

raised 9682:17 9687:6 9690:17 9693:7 9708:15 9712:1 9713:11, 21 9717:7 9718:3

raises 9713:23

raising 9710:2

range 9695:16 9698:23

reached 9702:3

readily 9705:25

readiness 9694:11

ready 9699:5,7 9711:21

reason 9716:21

reasonable 9701:11 9708:9

reasons 9681:3,11,13, 15,17 9682:13 9688:21 9700:17 9703:2 9714:7 9719:13, 18

receipt 9695:23

received 9684:23 9692:5 9695:7

recently 9688:5

recognize 9700:7

record 9710:21

reference 9691:6,8

referred 9682:23 9719:12

regard 9708:6 9717:19,22

relate 9683:6 9698:14

relates 9683:1 9701:24,25 9702:5 9710:9 9719:14

relation 9681:4 9683:2 9684:24 9687:7

relevance 9701:25 9705:14

relevant 9682:14 9685:19 9686:1, 12 9704:15 9705:16 9706:4, 12 9707:11 9713:13 9714:12

relied 9703:8

relief 9689:5 9719:4

relies 9703:11

remain 9692:1 9713:3 9715:6

remains 9689:3

remedial 9689:8 9714:13

remedies 9684:7 9697:1 9704:7 9710:3 9716:5,12 9717:2

remedy 9684:11 9686:1, 13,20 9689:13 9691:5 9701:24 9705:1 9710:12 9712:6,7,13 9714:17 9716:18,22 9717:4 9718:7, 15,20

remedy-focused 9713:24

remove 9705:13

renames 9689:1

render 9703:17

repeated 9694:13

replaced 9688:22

reply 9701:1

reporter 9681:13 9719:17

reports 9690:13 9692:17,21 9694:18

representative 9707:3

requested 9695:1 9696:16

requesting 9694:14 9695:4

requests 9719:9

require 9690:12

required 9692:18 9694:1, 6,19 9695:15 9697:8 9701:22 9704:23 9708:19 9718:24

requires 9705:19

resolution 9687:15

respect 9696:12 9706:23 9710:19 9716:5 9719:7

response 9704:18 9705:7

result 9684:3 9686:20 9690:23 9691:9 9695:13 9700:19 9701:3 9707:24 9711:7 9715:19

resulting 9685:12 9701:1, 18 9716:19

results 9700:23

return 9684:16 9701:20

returned 9684:19

revert 9709:22

review 9719:8

reviewed 9712:18

rise 9686:15 9698:21 9708:9 9716:22

risk 9708:13 9714:5

road 9715:5

roads 9715:7, 16

role 9694:23 9716:4

rough 9695:14

roughly 9696:2

routes 9718:15

rules 9690:12

ruling 9689:16 9696:25

runs 9712:19

S

S.C.R. 9703:5, 7

sale 9686:9 9702:17 9704:12,14

sales 9684:22 9686:12 9706:16

Saugeen/bruce 9684:2

schedule 9696:5 9707:17, 20

scheduled 9694:9 9695:22 9696:4 9718:22

scheduling 9690:14

scope 9683:10,13 9695:13

secure 9717:14

seek 9684:11, 16,25 9702:7

seeking 9682:2 9691:20 9710:3

seeks 9689:8

selected 9716:7

selection 9711:13

send 9681:7 9720:3

sentence 9685:7

separate 9717:23

separating 9713:24

September 9694:7

sequence 9694:20

served 9690:10

set 9681:20,25 9684:8 9696:5, 11,13 9697:12 9702:13

settlement 9708:18,20 9709:1,7,10 9713:5

severance 9681:20,24 9682:12 9686:17 9687:6 9688:11,12,16, 18,22 9691:13 9711:1

severed 9686:19,21

short 9681:6 9691:11 9714:16 9719:24,25

shorten 9717:3

shorter 9700:5

shortly 9692:6

show 9687:6 9702:7

shows 9705:25

signed 9719:3

significant 9699:17 9700:8, 10,11 9702:4,24 9708:10 9713:23 9715:17

significantly 9688:23
signing 9702:6
simply 9708:10 9717:21
single 9706:11
situation 9695:25 9700:16 9705:4 9708:14 9713:19 9715:9 9718:4
ski 9690:3
sold 9702:12
solutions 9697:2
sort 9693:23
sought 9719:5
Soulos 9703:7,22 9704:25
specific 9689:23 9694:13 9706:18
specifically 9684:24 9685:16,19 9694:22 9713:25 9716:23
speculative 9708:24
split 9714:17
spring 9697:18 9701:14
Sproat 9686:25
stage 9690:22 9712:6 9716:6 9718:8
stages 9713:14
start 9720:5
statement 9687:20
states 9684:10 9691:15
stay 9687:13, 16,17 9696:24
stayed 9687:11,15,22 9712:3
Steel 9703:4
step 9693:23
steps 9685:25 9686:15 9690:16 9692:11,20,23 9694:15,20 9695:25 9697:13 9702:18 9712:14
stipulate 9705:8
streamline 9718:7,20
streamlined 9699:16
subject 9685:2 9694:9,23 9701:20 9713:16 9714:2, 13 9718:18
submission 9699:4 9709:19 9713:12 9715:3
submissions 9683:12 9684:9 9688:1 9696:6, 14 9699:22 9700:4,22 9707:8 9713:9 9716:20 9717:9 9719:1
submit 9686:2 9693:3 9694:16 9696:24 9697:3, 5 9698:7 9699:12,15,24 9705:8 9707:5 9708:17 9710:10,22 9712:13 9713:1 9715:8 9716:4, 11,25
submits 9686:9 9699:9 9702:20 9704:11 9705:18 9708:6 9712:4 9714:4
submitted 9685:21 9693:3 9699:18
substantial 9691:11 9700:20 9701:7 9710:3
substantially 9714:1
succeed 9704:24
success 9713:3
sufficient 9703:13 9718:2
suggest 9714:8
suggesting 9695:21
sui 9683:22 9685:12
summaries 9694:6
summarize 9696:21
summarized 9703:2
summary 9683:10 9684:6 9694:2
Sun 9703:3,14
Superior 9687:12
supplemented 9719:2
support 9708:16
Supreme 9703:6 9704:25
surprised 9692:22
surrendered 9702:11
surrounding 9683:2 9714:11

T

Taking 9700:18
ten 9720:2,5
terms 9702:1,8 9705:9 9712:12
test 9683:20 9690:4 9702:25 9703:1,10 9704:17,20 9705:5 9706:4
testifying 9694:21
theory 9687:23
things 9695:9
time 9681:12 9682:15 9687:7 9688:14 9692:9, 10 9693:16 9694:19,24 9695:15 9696:3, 16,18 9697:4,8 9698:13,16,20 9699:18,24 9701:6,19,22 9708:9 9712:23 9715:18,21 9719:21
times 9700:2 9716:4
timing 9691:18,25 9694:11
TMC 9681:8
today 9718:21
told 9688:13
totally 9683:4
TOWNSHEND 9719:25
treaty 9682:23, 24 9683:6,7,11, 15,19,25 9685:3,22 9686:1,5,8,10 9687:16 9688:3 9702:2,3,6,8,10, 11,14,16,19 9704:12 9705:9, 11 9712:9,11 9714:23 9715:11
trial 9681:22 9682:9,10,19 9684:7 9686:2, 20,21 9688:6,9 9689:1,2,3,13 9690:8,10,14, 15,22 9691:10, 18,25 9692:1,7, 12,21,25 9693:1,4,6,18, 21,24 9694:8, 11,12,17,25 9695:5,24 9696:3 9697:16, 20 9698:18,21 9699:5,8,10 9700:2,20,23 9701:4 9707:17, 20,25 9708:1,3, 7 9709:8 9710:23 9711:1, 9,10,11,13,14, 17,19,22,23 9715:20,22 9716:3,16 9718:21 9719:21 9720:4
trials 9713:24
trust 9685:11, 12,17 9689:9 9701:24 9702:18,22 9703:1,10,18 9704:3,17,21,24 9705:6
trusts 9712:17

U

unanticipated 9707:19
unavailability 9709:6
uncertain 9696:19 9700:16
unfair 9704:4
unfairness 9708:12,13
unfolded 9693:13
uninterrupted 9707:22
United 9703:4
unjust 9703:18 9704:4,16
unknowns 9700:12,14
Unlike 9714:20

V

vacated 9681:19 9688:21
variance 9682:2
variety 9706:21
vary 9682:12 9691:17
vesting 9715:4

W

wait 9701:19
wanted 9693:11
week 9695:16, 23
week's 9681:4
wide 9705:19
win 9710:10
witnesses 9694:22
wording 9717:19
work 9700:8
Workers 9703:4
working 9693:19
written 9683:12 9684:9 9696:6,14 9699:22 9717:9
wrong 9715:11

Y

year 9695:17 9701:13 9708:2
years 9686:23 9693:2 9710:11 9711:7