

**ONTARIO
SUPERIOR COURT OF JUSTICE**

B E T W E E N:

THE HAUDENOSAUNEE DEVELOPMENT INSTITUTE

Plaintiff

and

GARLOW MEDIA d/b/a TWO ROW TIMES, JONATHAN GARLOW and
NAHNDA GARLOW

Defendants

NOTICE OF MOTION

The Defendants will make a motion to a Judge, on a date to be fixed by the court at 10:00 a.m., or as soon after that time as the motion can be heard.

PROPOSED METHOD OF HEARING: The motion is to be heard (*choose appropriate option*)

- In writing under subrule 37.12.1(1) because it is
[insert on consent, unopposed or made without notice];
- In writing as an opposed motion under subrule 37.12.1(4);
- In person;
- By telephone conference;
- By video conference.**

THE MOTION IS FOR

- (a) An Order staying the action as against Garlow Media d/b/a Two Row Times (“**Two Row Times**”), Jonathan Garlow, and Nahnda Garlow (collectively, the “**Defendants**”) pursuant to subrule 21.01(3)(a) of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194;
- (b) In the alternative, an Order dismissing the action against the Defendants pursuant to subrule 21.01(3)(b);
- (c) In the further alternative, an Order striking out the Statement of Claim pursuant to subrule 21.01(1)(b);
- (d) An Order granting the Defendants their costs of this motion; and
- (e) Such further and other relief as to this Honourable Court may deem just.

THE GROUNDS FOR THE MOTION ARE

A. The Parties

- (f) The Plaintiff, the Haudenosaunee Development Institute (“**HDI**”), is an entity formed in 2007 by the Haudenosaunee Confederacy Chiefs Council (the “**HCCC**”) pursuant to Haudenosaunee law, known as the Great Law of Peace (the “**Great Law**”).
- (g) While HDI operates as if it is a corporation, it is not an incorporated entity under the laws of Canada or Ontario or any other common law or civil law jurisdiction. Rather, as it pleads in its Statement of Claim, HDI is a creation of the HCCC under

the Great Law, acting pursuant to authority delegated to it by the HCCC. Moreover, as it has stated publicly, HDI only ever acts at the HCCC's express direction.

- (h) HDI is based in the community of Ohsweken, within the Six Nations of the Grand River reserve.
- (i) The Defendants, Jonathan Garlow and Nahnda Garlow are spouses and belong to the Rastawehserondah and Dehatgahtos clan families of the Kentyohkwahnákstha, which is the alliance of families that founded and continue to make up the Haudenosaunee Confederacy. As natural persons born into clan families of the Kentyohkwahnákstha, they are Indigenous people and members of the Haudenosaunee Confederacy. Mr. Garlow and Ms. Garlow are both descendants of the first families who settled at Grand River after the American Revolution, and, as such, are also band members of the Six Nations of the Grand River reserve. They continue to reside on Grand River Territory in the village of Caledonia.
- (j) The Defendant, the Two Row Times, is a sole proprietorship owned and operated by Jonathan Garlow. It is based in the community of Ohsweken within the Six Nations of the Grand River reserve. The Two Row Times operates as an independent news media organization reporting primarily on happenings within the Six Nations of the Grand River. It publishes articles through its website, www.tworowtimes.com, as well as free weekly print issues. Mr. Garlow is the publisher of the Two Row Times, and Ms. Garlow is the editor and a reporter.

B. The Haudenosaunee Confederacy, the HCCC, and the Great Law

- (k) The Haudenosaunee Confederacy was formed in time immemorial by the Peacemaker, uniting together distinct nations in a covenant of peace: the Mohawk, the Oneida, the Onondaga, the Cayuga, and the Senaca nations, and later the Tuscarora. These Six Nations created an alliance making up a single participatory democracy with shared values and an agreement to live at peace with one another.
- (l) The Haudenosaunee Confederacy is governed by the Great Law. All people belonging to the clan families within the Kentyohkwahnhákstha of the Haudenosaunee Confederacy, including Mr. Garlow and Ms. Garlow, are subject to the Great Law, as are all entities created under it, such as the HCCC and HDI.
- (m) The Great Law is a comprehensive legal system that sets out both the process for resolving disputes within the Haudenosaunee Confederacy and the substantive legal principles that apply to such disputes. In particular, the Great Law includes procedural mechanisms and substantive law for resolving disputes within the Haudenosaunee Confederacy that would be characterized as defamation claims under Ontario law.

C. HDI spurns the Great Law and embraces the Ontario court

- (n) On May 8, 2023, HDI commenced an action in the Ontario Superior Court of Justice (the “**Action**”), seeking, among other things, a declaration that the Defendants defamed HDI, damages in the amount of \$100,000 “for libel and defamation”, and \$50,000 in aggravated, exemplary, and/or punitive damages.

- (o) The Statement of Claim alleges that the Defendants defamed HDI in six articles published by the Two Row Times between February 22 and March 29, 2023. HDI alleges those articles contain false statements, the publication of which resulted in harm to HDI's reputation.
- (p) Notably, HDI commenced the Action in Toronto, Ontario, despite neither HDI nor the Defendants having any connection to Toronto, and not in Brantford, Ontario, the closest Superior Court location to the Six Nations of the Grand River reserve, where all the parties are based.
- (q) Prior to commencing the Action, HDI made no attempt to resolve its dispute with the Defendants under the Great Law, despite HDI itself being a creature of the Great Law (and having no legal status under Ontario law) and the Defendants each being subject to it. Instead, HDI retained legal counsel in Toronto, and, on March 27 and April 11, 2023, issued four libel notices demanding that the Two Row Times issue retractions and apologies for publishing the articles that are the subject of the Action.
- (r) On April 11, 2023, the Defendants responded to the libel notices in a letter to HDI's counsel that stated:

The issues you raised are matters that are internal to the families of the Kentyohkwahnhákshta. As such, we will follow up in our own community under the protocols of the Great Law.

Should you continue in this matter, it would be in direct violation of the Two Row Wampum treaty and nothing less than a deplorable act of colonial violence.

- (s) On March 27, 2023, the Defendants initiated the process to have this dispute with HDI determined in accordance with the Great Law. To date, HDI has failed to participate in the proceedings commenced by the Defendants pursuant to the Great Law.
- (t) Instead, HDI turned its back on the law of the Haudenosaunee Confederacy – the very law on which its existence rests – and strategically sought recourse under the law of Ontario by commencing the Action in the Superior Court of Justice.
- (u) As HDI has previously stated that it only acts pursuant to the HCCC’s express direction, it is presumed that the decision to ignore the Great Law and commence the Action in Superior Court was made in accordance with the HCCC’s direct instruction to do so – though HDI has refused to confirm this to be the case, despite the Defendants’ repeated requests that HDI do so.

D. The Superior Court of Justice should decline jurisdiction and stay the Action

- (v) Pursuant to subrule 21.01(3)(a), the Court should decline jurisdiction and stay the Action on the basis of *forum non conveniens*.
- (w) The Defendants have initiated a proceeding under the Great Law of the Haudenosaunee Confederacy regarding the same matters that are in dispute in the Action. The Defendants object to this dispute proceeding in the Ontario Superior Court of Justice and do not attorn to the jurisdiction of said court.
- (x) The proceeding commenced under the Great Law is better positioned to fairly and efficiently dispose of the dispute between HDI and the Defendants.

- (y) The proceeding commenced under the Great Law is comparatively more convenient and less expensive for the parties, as both HDI and the Defendants are domiciled within the Six Nations of the Grand River reserve and acknowledge that they are subject to the Great Law.
- (z) The proceeding commenced under the Great Law is also comparatively more convenient and less expensive for potential witnesses, many of whom are likely to be resident within the Six Nations of the Grand River reserve.
- (aa) The proceeding commenced under the Great Law is better positioned to interpret and apply the Great Law, as will be necessary given HDI's reliance on the Great Law for its legal status and authority.
- (bb) Staying the Action in favour of the proceeding commenced under the Great Law will avoid a multiplicity of proceedings with respect to the same dispute.
- (cc) Staying the Action in favour of the proceeding commenced under the Great Law will avoid the possibility of inconsistent decisions under Ontario law and the Great Law.
- (dd) Staying the Action in favour of the proceeding commenced under the Great Law will advance the fair and efficient working of the Canadian legal system by furthering judicial comity between the Ontario Superior Court of Justice and the Indigenous legal system of the Haudenosaunee Confederacy.

- (ee) Staying the Action in favour of the proceeding under the Great Law will result in greater fairness to the parties, all of whom acknowledge that they are subject to the Great Law.

E. In the alternative, the Action should be dismissed because HDI lacks the capacity to commence or continue the claim

- (ff) Strictly in the alternative, the Action should be dismissed pursuant to subrule 21.01(3)(b), on the basis that HDI lacks the capacity to commence or continue the Action.
- (gg) Though it conducts itself as if it were a corporation, HDI is not an incorporated entity under either Ontario or Canadian law or the laws of any other common law or civil law jurisdiction. It is a creature of the Great Law. As a result, for the purposes of Ontario law, HDI lacks its own legal personality.
- (hh) Only natural persons, corporations, or entities expressly authorized by statute to commence litigation have the capacity to commence and/or continue an action in the Ontario Superior Court of Justice.
- (ii) Therefore, as, under Ontario law, HDI is not a legal person, it lacks the capacity to commence and/or continue the Action, and the Action should be dismissed on that basis.

F. In the further alternative, the Statement of Claim should be struck for disclosing no reasonable cause of action

- (jj) In the further alternative, HDI's Statement of Claim should be struck without leave to amend, pursuant to subrule 21.01(1)(b), on the basis that the Statement of Claim does not disclose a reasonable cause of action.
- (kk) As stated above, the Statement of Claim alleges that HDI has been defamed by six articles published in the Two Row Times between February 22 and March 29, 2023, which the Statement of Claim alleges caused harm to HDI's reputation.
- (ll) Claims for defamation may only be asserted by entities with legal personality.
- (mm) As HDI lacks legal personality under Ontario law, it cannot assert a claim for defamation against the Defendants. Consequently, the Statement of Claim does not disclose a reasonable cause of action as against the Defendants. Such a defect is fundamental to HDI's claim against the Defendants and cannot be cured by amending the Statement of Claim.
- (nn) The Statement of Claim should be struck without leave to amend.
- (oo) The Defendants plead and rely on Rules 21.01(1)(b), 21.01(3)(a), 21.01(3)(b), and 37.01 of the *Rules of Civil Procedure*.
- (pp) Such further and other grounds as the lawyers may advise.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the motion:

- (a) The Statement of Claim;

- (b) The Affidavit of Nahnda Garlow, to be sworn or affirmed;
- (c) Such further and other evidence as the lawyers may advise and this Honourable Court may permit.

June 20, 2023

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THE HAUDENOSAUNEE
DEVELOPMENT INSTITUTE

Plaintiff

and GARLOW MEDIA D/B/A TWO ROW
TIMES et al.

Defendants

Court File No. CV-23-00699171-0000

ONTARIO
SUPERIOR COURT OF JUSTICE

Proceeding commenced at TORONTO

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