

Date: 20071003

Citation: 2007 FC 1015

Vancouver, British Columbia, October 3, 2007

PRESENT: The Honourable Mr. Justice Phelan

Docket: T-1254-92

BETWEEN:

CHIEF ERMINESKIN, LAWRENCE WILDCAT,
GORDON LEE, ART LITTLECHILD, MAURICE WOLFE,
CURTIS ERMINESKIN, GERRY ERMINESKIN, EARL ERMINESKIN,
RICK WOLFE, KEN CUTARM, BRIAN LEE, LESTER FRAYNN,
the elected Chief and Councillors of the Ermineskin Indian Band and Nation
suing on their own behalf and on behalf of all the other
members of the Ermineskin Indian Band and Nation

Plaintiffs

and

HER MAJESTY THE QUEEN IN RIGHT OF CANADA,
THE MINISTER OF INDIAN AFFAIRS AND NORTHERN DEVELOPMENT
AND THE MINISTER OF FINANCE

Defendants

Docket: T-1763-07

BETWEEN:

ERMINESKIN INDIAN BAND AND NATION

Plaintiff

and

HER MAJESTY THE QUEEN

Defendant

REASONS FOR INTERIM ORDER AND ORDER

[1] The Applicant, Ermineskin Indian Band and Nation, brought a motion under Court File No. T-1254-92 for an order in the nature of *mandamus* directing the Minister of Indian Affairs and Northern Development to pay out the Revenue Fund, including the Pigeon Lake Split for 2007. The motion was set down for a one-hour hearing on the regular motions day in Vancouver on October 1, 2007.

[2] On the preceding Friday counsel for the Respondent was only able to fax their Written Submissions. The full record of two volumes was filed in Court at the hearing of the motion.

[3] As a result of argument heard to date, it is apparent that the issues of fact and law between the parties are now more clear and more complex.

[4] The Applicant has not had an opportunity to respond to the Respondent's evidence particularly as to the Band's agreement to provide audited financial statements – a condition which the Respondent says prevents the payment of the Revenue Fund.

[5] There are issues as to the proper file and procedure to be followed to have this matter put before the Court. A procedure adopted under case management is not necessarily the appropriate procedure now that judgment has been rendered and is under appeal. There are significant issues of fact in dispute and the whole matter of the legal regime under which payment is to be made is deserving of a better hearing than time and circumstances permitted.

[6] Therefore, the Court will not render judgment at this time but will allow the parties to submit such further evidence and argument as they deem necessary. The Court makes the following Order.

ORDER

THIS COURT ORDERS that:

1. The style of cause is changed to reflect the true Plaintiffs and shall read:

Ermineskin Indian Band and Nation

and

Her Majesty the Queen

2. This matter shall be dealt with under Court File No. T-1763-07 and all material filed to date in regard to the motion shall be transferred to this Court file.
3. This matter shall, until otherwise ordered, be treated as an application, whether under s. 18 or s. 44 of the *Federal Courts Act* may be dealt with later and may be of no consequence as this matter will be case managed.
4. This matter shall be case managed and, in accordance with the Chief Justice's direction, Justice Phelan shall continue in this matter as the case management judge as well.

5. The Applicant shall have ten (10) days from the date of this Order to file such further and other evidence and submission, by way of supplemental record, as it deems necessary consistent with the Rules.
6. The Respondent shall have the same right to be exercised within ten (10) days of receipt of the Applicant's supplemental record (if any).
7. The Applicant shall have three (3) days thereafter to file a reply.
8. Upon completion of these steps or the expiry of the time limits, or at the request of a party, a case management conference will be held to order such further steps in order to complete this matter at any early date.
9. Any party may contact the Court at any time to request a conference to deal with any matter which may be necessary to efficiently and effectively complete this matter. If there are any immediate problems arising from this Order, the parties are to advise the Court forthwith.
10. Costs for the day shall be in the cause.

"Michael L. Phelan"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET: T-1254-92

STYLE OF CAUSE: CHIEF ERMINESKIN et al. v. HMQ et al.

DOCKET: T-1763-07

STYLE OF CAUSE: ERMINESKIN INDIAN BAND AND NATION
v. HMQ

PLACE OF HEARING: Vancouver, BC

DATE OF HEARING: October 1, 2007

REASONS FOR INTERIM ORDER AND ORDER: PHELAN J.

DATED: October 3, 2007

APPEARANCES:

Mr. Marvin Storrow (T-1254-92) FOR THE PLAINTIFF(S)
Ms. Priscilla Kennedy (T-1763-07)

Ms. Sheila Read (T-1254-92) FOR THE DEFENDANT(S)

SOLICITORS OF RECORD:

Blake Cassels & Graydon (T-1254-92) FOR THE PLAINTIFF(S)
Vancouver, BC

Davis LLP (T-1763-07)
Edmonton, AB

McLeod Dixon LLP (T-1254-02) FOR THE DEFENDANT(S)
Calgary, AB

John H. Sims, Q.C.
Deputy Attorney General of Canada