

**Date: 20070607**

**Dockets: A-477-06  
A-523-06  
A-530-06**

**Citation: 2007 FCA 220**

**CORAM: NOËL J.A.  
EVANS J.A.  
SHARLOW J.A.**

**BETWEEN:**

**A-477-06**

**MONTANA BAND et al.**

**Respondents (Plaintiffs)**

**and**

**HER MAJESTY THE QUEEN**

**Respondents (Defendants)**

**and**

**SAMSON BAND et al.**

**Respondents (Third Parties)**

**and**

**ERMINESKIN BAND et al.**

**Appellants (Third Parties)**

**-AND-**

**BETWEEN:**

**SAMSON CREE NATION et al.**

**Respondents (Plaintiffs)**

**and**

**HER MAJESTY THE QUEEN et al.**

**Respondent (Defendant)**

**and**

**MONTANA BAND et al.**

**Respondents (Third Parties)**

**and**

**ERMINESKIN CREE NATION et al.**

**Appellants (Third Parties)**

**-AND-  
BETWEEN:**

**ERMINESKIN CREE NATION et al.**

**Appellants (Plaintiffs)**

**and**

**HER MAJESTY THE QUEEN et al.**

**Respondents (Defendants)**

**and**

**MONTANA BAND et al.**

**Respondents (Third Parties)**

**and**

**SAMSON CREE NATION et al.**

**Respondents (Third Parties)**

**BETWEEN:**

**A-523-06**

**HER MAJESTY THE QUEEN**

**Appellant  
(Defendant)**

**and**

**MONTANA BAND, Chief Leo Cattleman, Marvin Buffalo, Rema Rabbit, Carl Rabbit and  
Darrell Strongman, suing on their own behalf and on behalf of all other members of the  
Montana Indian Band, all of whom reside on the Montana Reserve No. 139, in the Province of  
Alberta**

**Respondents  
(Plaintiffs)**

**SAMSON BAND, Chief Terry Buffalo, Clifford Potts, Frank Buffalo, Florence Buffalo, Dolphus Buffalo, Lawrence Saddleback, Larron Northwest, Nancy Yellowbird, Barb Louis, Keith Johnson, Rose Saddleback and Jim Omeasoo, Councillors of the Samson Band, sued on their own behalf and on behalf of the members of the Samson Band of Indians**

**and**

**ERMINESKIN BAND, Chief Gerald Robert Ermineskin, and Arthur Morris Littlechild, Earl Ted Ermineskin, Maurice Wolfe, Richard Leonard Lightning, Carol Margaret Wildcat, Carol Elizabeth Roasting, Glenda Rae White, Craig Alton Makinaw, Councillors of the Ermineskin Band, sued on their own behalf, and on behalf of the ERMINESKIN BAND OF INDIANS**

**Third Parties**

**BETWEEN:**

**A-530-06**

**SAMSON CREE NATION and Chief Terry Buffalo, Clifford Potts, Frank Buffalo, Florence Buffalo, Dolphus Buffalo, Lawrence Saddleback, Larron Northwest, Nancy Yellowbird, Barb Louis, Keith Johnson, Rose Saddleback and Jim Omeasoo, Chief Lena Cutknife, and Dolphus Buffalo, Florence Buffalo, Kurt Buffalo, Pat Buffalo, Cecile Crier, Patrick Cutknife, Walter Lightning, Barbara B. Lightning, George Montour Sr., Donna Potts Johnson, Rose Saddleback and Marvin Yellowbird and Chief Florence Buffalo, suing on their own behalf and on behalf of the member of the SAMSON CREE NATION, SAMSON BAND and SAMSON INDIAN BAND**

**Appellants**

**and**

**HER MAJESTY THE QUEEN and the ATTORNEY GENERAL OF CANADA**

**Respondents**

**and**

**MONTANA BAND and Chief Leo Cattleman, Marvin Buffalo, Rema Rabbit, Carl Rabbit and Darrell Frederick Strongman, Coldy Sr. and Dick Rabbit, suing on their own behalf and on behalf of all other members of the Montana Indian Band, all of whom reside on the Montana Reserve No. 139, in the Province of Alberta**

**Third Parties**

**and**

**ERMINESKIN BAND, Chief Gerald Robert Ermineskin, Arthur Morris Littlechild, Earl Ted Ermineskin, Maurice Wolfe, Richard Leonard Lightning, Carol Margaret Wildcat, Carol Elizabeth Roasting, Glenda Rae White, Craig Alton Makinaw, Councillors of the Ermineskin**

**Band, sued on their own behalf, and on behalf of the ERMINESKIN BAND OF INDIANS  
and ERMINESKIN CREE NATION**

**Third Parties**

Heard at Ottawa, Ontario, on June 7, 2007.

Judgment delivered from the Bench at Ottawa, Ontario, on June 7, 2007.

REASONS FOR JUDGMENT OF THE COURT BY:

NOËL J.A.

Date: 20070607

Dockets: A-477-06  
A-523-06  
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Citation: 2007 FCA 220

**CORAM:** NOËL J.A.  
EVANS J.A.  
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**BETWEEN:**

A-477-06

**MONTANA BAND et al.**

**Respondents (Plaintiffs)**

and

**HER MAJESTY THE QUEEN**

**Respondents (Defendants)**

and

**SAMSON BAND et al.**

**Respondents (Third Parties)**

and

**ERMINESKIN BAND et al.**

**Appellants (Third Parties)**

**-AND-  
BETWEEN:**

**SAMSON CREE NATION et al.**

**Respondents (Plaintiffs)**

and

**HER MAJESTY THE QUEEN et al.**

**Respondent (Defendant)**

**And**

**MONTANA BAND et al.**

**Respondents (Third Parties)**

**and**

**ERMINESKIN CREE NATION et al.**

**Appellants (Third Parties)**

**-AND-  
BETWEEN:**

**ERMINESKIN CREE NATION et al.**

**Appellants (Plaintiffs)**

**and**

**HER MAJESTY THE QUEEN et al.**

**Respondents (Defendants)**

**and**

**MONTANA BAND et al.**

**Respondents (Third Parties)**

**and**

**SAMSON CREE NATION et al.**

**Respondents (Third Parties)**

**BETWEEN:**

**A-523-06**

**HER MAJESTY THE QUEEN**

**Appellant  
(Defendant)**

**and**

**MONTANA BAND, Chief Leo Cattleman, Marvin Buffalo, Rema Rabbit, Carl Rabbit and  
Darrell Strongman, suing on their own behalf and on behalf of all other members of the  
Montana Indian Band, all of whom reside on the Montana Reserve No. 139, in the Province of  
Alberta**

**Respondents  
(Plaintiffs)**

**SAMSON BAND, Chief Terry Buffalo, Clifford Potts, Frank Buffalo, Florence Buffalo, Dolphus Buffalo, Lawrence Saddleback, Larron Northwest, Nancy Yellowbird, Barb Louis, Keith Johnson, Rose Saddleback and Jim Omeasoo, Councillors of the Samson Band, sued on their own behalf and on behalf of the members of the Samson Band of Indians**

**and**

**ERMINESKIN BAND, Chief Gerald Robert Ermineskin, and Arthur Morris Littlechild, Earl Ted Ermineskin, Maurice Wolfe, Richard Leonard Lightning, Carol Margaret Wildcat, Carol Elizabeth Roasting, Glenda Rae White, Craig Alton Makinaw, Councillors of the Ermineskin Band, sued on their own behalf, and on behalf of the ERMINESKIN BAND OF INDIANS**

**Third Parties**

**BETWEEN:**

**A-530-06**

**SAMSON CREE NATION and Chief Terry Buffalo, Clifford Potts, Frank Buffalo, Florence Buffalo, Dolphus Buffalo, Lawrence Saddleback, Larron Northwest, Nancy Yellowbird, Barb Louis, Keith Johnson, Rose Saddleback and Jim Omeasoo, Chief Lena Cutknife, and Dolphus Buffalo, Florence Buffalo, Kurt Buffalo, Pat Buffalo, Cecile Crier, Patrick Cutknife, Walter Lightning, Barbara B. Lightning, George Montour Sr., Donna Potts Johnson, Rose Saddleback and Marvin Yellowbird and Chief Florence Buffalo, suing on their own behalf and on behalf of the member of the SAMSON CREE NATION, SAMSON BAND and SAMSON INDIAN BAND**

**Appellants**

**and**

**HER MAJESTY THE QUEEN and the ATTORNEY GENERAL OF CANADA**

**Respondents**

**and**

**MONTANA BAND and Chief Leo Cattleman, Marvin Buffalo, Rema Rabbit, Carl Rabbit and Darrell Frederick Strongman, Coldy Sr. and Dick Rabbit, suing on their own behalf and on behalf of all other members of the Montana Indian Band, all of whom reside on the Montana Reserve No. 139, in the Province of Alberta**

**Third Parties**

**and**

**ERMINESKIN BAND, Chief Gerald Robert Ermineskin, Arthur Morris Littlechild, Earl Ted Ermineskin, Maurice Wolfe, Richard Leonard Lightning, Carol Margaret Wildcat, Carol Elizabeth Roasting, Glenda Rae White, Craig Alton Makinaw, Councillors of the Ermineskin**

**Band, sued on their own behalf, and on behalf of the ERMINESKIN BAND OF INDIANS  
and ERMINESKIN CREE NATION**

**Third Parties**

**REASONS FOR JUDGMENT OF THE COURT**  
**(Delivered from the Bench at Ottawa, Ontario, on June 7, 2007)**

**NOËL J.A**

[1] Given the decision of this Court dismissing the main appeals, the cost appeals in Court files A-477-06 and A-530-06 were rendered moot and were not pursued. They will accordingly be dismissed without costs.

[2] With respect to the Crown's cost appeal in Court file A-523-06, the Trial Judge gave reasons for her order. We are satisfied that she exercised her discretion judicially in the circumstances of this complex litigation. The Crown's cost appeal will accordingly be dismissed, with costs in favour of Montana Band.

[3] In conformity with the order of the Chief Justice consolidating these three appeals, these reasons will be filed in Court file A-477-06, with a copy being filed in Court files A-523-06 and A-530-06.

“Marc Noël”

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J.A



**FEDERAL COURT OF APPEAL**

**NAMES OF COUNSEL AND SOLICITORS OF RECORD**

**DOCKET:** A-477-06

**APPEAL FROM AN ORDER OF THE FEDERAL COURT (HANSEN, J.) DATED  
OCTOBER 27, 2006, IN DOCKET NO. T-2804-97.**

**STYLE OF CAUSE:** Ermineskin Cree Nation et al. v. Her  
Majesty the Queen et al.

**PLACE OF HEARING:** OTTAWA, ONTARIO

**DATE OF HEARING:** June 7, 2007

**REASONS FOR JUDGMENT OF THE COURT BY:** Noël, Evans, & Sharlow, JJ.A.

**DELIVERED FROM THE BENCH BY:** Noël, J.A.

**SOLICITORS OF RECORD:**

Blakes, Cassels & Graydon LLP  
Vancouver, British Columbia

FOR THE APPELLANT

John H. Sims QC  
Deputy Attorney General of Canada  
Edmonton, Alberta

FOR THE RESPONDENT,  
Her Majesty the Queen

Miller Thomson LLP Calgary, Alberta	FOR THE RESPONDENT, Montana Band et al.
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**FEDERAL COURT OF APPEAL**

**NAMES OF COUNSEL AND SOLICITORS OF RECORD**

**DOCKET:** A-523-06

**APPEAL FROM AN ORDER OF THE FEDERAL COURT (HANSEN, J.) DATED  
OCTOBER 27, 2006, IN DOCKET NO. T-617-85.**

**STYLE OF CAUSE:** Her Majesty the Queen v. Montana  
Band et al.

**PLACE OF HEARING:** OTTAWA, ONTARIO

**DATE OF HEARING:** June 7, 2007

**REASONS FOR JUDGMENT OF THE COURT BY:** Noël, Evans, & Sharlow, JJ.A.

**DELIVERED FROM THE BENCH BY:** Noël, J.A.

**APPEARANCES:**

Sheila Read FOR THE APPELLANT  
Krista Epton

Michael Bailey FOR THE RESPONDENT,  
Michael Aasen Montana Band et al.

**SOLICITORS OF RECORD:**

John H. Sims, QC FOR THE APPELLANT  
Deputy Attorney General of Canada  
Edmonton, Alberta

Miller Thomson LLP FOR THE RESPONDENT,  
Calgary, Alberta Montana Band et al.

**FEDERAL COURT OF APPEAL**

**NAMES OF COUNSEL AND SOLICITORS OF RECORD**

**DOCKET:** A-530-06

**APPEAL FROM AN ORDER OF THE FEDERAL COURT (HANSEN, J.) DATED  
OCTOBER 27, 2006, IN DOCKET NO. T-782-97.**

**STYLE OF CAUSE:** Samson Cree Nation et al. v. Her  
Majesty the Queen et al.

**PLACE OF HEARING:** OTTAWA, ONTARIO

**DATE OF HEARING:** June 7, 2007

**REASONS FOR JUDGMENT OF THE COURT BY:** Noël, Evans, & Sharlow, JJ.A.

**DELIVERED FROM THE BENCH BY:** Noël, J.A.

**SOLICITORS OF RECORD:**

Parlee McLaws LLP  
Edmonton, Alberta

FOR THE APPELLANT

John H. Sims QC  
Deputy Attorney General of Canada  
Edmonton, Alberta

FOR THE RESPONDENT,  
Her Majesty the Queen

Blakes, Cassels & Graydon LLP Vancouver, British Columbia	FOR THE RESPONDENT, Ermineskin Cree Nation
Miller Thomson LLP Calgary, Alberta	FOR THE RESPONDENT, Montana Band