

**Date: 20080430**

**Docket: A-326-07**

**Citation: 2008 FCA 163**

**CORAM: DÉCARY J.A.  
SHARLOW J.A.  
TRUDEL J.A.**

**BETWEEN:**

**EDNA BRASS, MARLENE BRASS, MAVIS BRASS, NICOLE BRASS, WANDA  
BREMNER, CAROL O'SOUP, FERNIE O'SOUP, GLEN O'SOUP, LUCY O'SOUP, LYNN  
O'SOUP, PERCY O'SOUP, PETER O'SOUP, SELWYN O'SOUP, AND GERALDINE  
WARDMAN EACH ON THEIR OWN BEHALF AND ON BEHALF OF ALL MEMBERS  
OF THE KEY BAND FIRST NATION**

**Appellants**

**and**

**KEY BAND FIRST NATION, THE CHIEF AND COUNCIL OF THE KEY BAND FIRST  
NATION, THE MINISTER OF INDIAN AFFAIRS AND NORTHERN DEVELOPMENT  
AND THE ATTORNEY GENERAL OF CANADA**

**Respondents**

Heard at Winnipeg, Manitoba, on April 30, 2008.

Judgment delivered from the Bench at Winnipeg, Manitoba, on April 30, 2008.

**REASONS FOR JUDGMENT BY:**

**DÉCARY J.A.**

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**Respondents**

**REASONS FOR JUDGMENT**

**(Delivered from the Bench at Winnipeg, Manitoba, on April 30, 2008)**

**DÉCARY J.A.**

[1] On October 4, 2005, a Settlement Agreement was negotiated between Canada and some First Nations under Canada's Specific Claims Policy relating to the unlawful alienation of the Pelly Highlands. One of these First Nations was the Key Band First Nation.

[2] Article 9 of the Settlement Agreement provided that the Agreement would be ratified by votes in each First Nation conducted in accordance with the Indian Referendum Regulations.

[3] Article 9.1 stipulates that ratification requires that “a majority (over 50%) of the Eligible Voters of each First Nation vote and a majority (over 50%) of the votes cast by the Eligible Voters of each First Nation are in favour . . .”

[4] Article 9.2 provides that the Minister, at the request of a First Nation, will call a second vote if a majority of Eligible Voters of that First Nation did not vote but that a majority of those who did vote, had voted in favour of the Agreement.

[5] A first vote was conducted by the Key Band First Nation on February 25, 2006 (the February vote). The vote was favourable to the Agreement but because a majority of Eligible Voters had not voted, the Key Band First Nation requested the Minister, pursuant to Article 9.2 of the Agreement, to call a second vote. The second vote was conducted on April 29, 2006 (the April vote) and the Agreement was ratified.

[6] The February vote was not challenged as permitted by section 22 of the Regulations nor was the Minister’s decision to order a second vote attacked in the Federal Court.

[7] On May 26, 2006, the appellants filed a Notice of Application for Judicial Review seeking an interlocutory injunction enjoining the respondents from taking any steps to implement the Agreement, an order declaring the April vote invalid and an order directing that a new vote be conducted.

[8] The application was dismissed by Phelan J. on June 1, 2007.

[9] The appellants appealed that decision to this Court. The Notice of Appeal refers solely to the April vote.

[10] In their memorandum of fact and law, the appellants abandon, for all practical purposes, their challenge to the April vote and attack, for the first time, the validity of the February vote on the basis of an allegation, not made previously, of corrupt practice.

[11] We are not prepared to hear argument concerning the validity of the February vote. The issue was not raised before the Federal Court, nor in the Notice of Appeal. Furthermore, the validity of the February vote is a question that arises from an entirely different set of circumstances which are not before the Court.

[12] The appeal shall therefore be dismissed with costs.

“Robert Décary”

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J.A.

**FEDERAL COURT OF APPEAL**

**NAMES OF COUNSEL AND SOLICITORS OF RECORD**

**DOCKET:** A-326-07

**(APPEAL FROM AN ORDER OF THE FEDERAL COURT DATED JUNE 1, 2007,  
DOCKET NO. T-892-06)**

**STYLE OF CAUSE:** Edna Brass et al v. Key Band First  
Nation et al

**PLACE OF HEARING:** Winnipeg, Manitoba

**DATE OF HEARING:** April 30, 2008

**REASONS FOR JUDGMENT OF THE COURT BY:** (DÉCARY, SHARLOW,  
TRUDEL JJ.A.)

**DELIVERED FROM THE BENCH BY:** DÉCARY J.A.

**APPEARANCES:**

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