

Date: 20040811

Docket:T-1254-92

Citation: 2004 FC 1109

CALGARY, Alberta, Wednesday, the 11th day of August, 2004.

Present: THE HONOURABLE MR. JUSTICE TEITELBAUM

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 Nations 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

REASONS FOR ORDER AND ORDER

[1] By oral motion, the plaintiff Ermineskin seeks to have the Court direct, pursuant to Rule 289, that additional material be added to the discoveries, which the defendant Crown had read into the record as evidence in their case. Those discovery read-ins have been marked as exhibit C-1089 in the trial of this action.

[2] Rule 289 provides as follows:

289. Qualifying answers - The Court may order a party who uses part of an examination for discovery as its own evidence to introduce into evidence any other part of the examination for discovery that the Court considers is so related that it ought not to be omitted.

[3] In *Canada (Minister of Citizenship and Immigration) v. Odynsky* (1999), 173 F.T.R. 295 (T.D.), MacKay J. described the purpose of this rule at paragraph 6:

This Rule is comparable to the Court's former Rule 494 (10) except that the former rule provided for the Court to act 'on the application of an adverse party', a limitation not included in the 1998 Rule. In my view, the current rule serves the same purpose as the former rule, a purpose I described in brief Reasons in *Oro Del Norte, SA v. Canada*, [1991] F.C.J. No. 986 (F.C.T.D.), as being:

to ensure that evidence from a transcript of examination for discovery which is read in as evidence at trial is placed in proper context so that it is seen and read fairly, without prejudice to another party that might arise if only a portion of the content relevant to a fair understanding of the evidence read in is given.

[4] The following is a list of the additional material put forward by the plaintiff Ermineskin that will be added to the Crown's discovery evidence (reference is by way of tab numbers in the binder that constitutes exhibit C-1089):

- (i) the letter from M. Storrow to A. Macleod, dated April 22, 2004, will be added to the Crown's tab 9; the Court is also in agreement with the Crown's submission that Mr. Minde submit, by affidavit or by official transcripts, within three weeks of today's date, evidence of the nature of his studies at Mount Royal College, failing which the said letter will not be permitted to be added as evidence;
- (ii) page 448, line 7 to page 453, line 12 will be added to the Crown's tab 22; and
- (iii) page 241, lines 14 to 19 will be added to the Crown's tab 85.

[5] All other requests for additional material by Ermineskin are denied.

[6] The Crown will inform the Court within seven days whether it will be withdrawing any read-ins and, if so, which ones.

ORDER

THIS COURT ORDERS that: the list of additional material put forward by the plaintiff Ermineskin that is to be added to the Crown's discovery evidence is as found in paragraph 4 of the Reasons for Order.

All other requests for additional material by the plaintiff Ermineskin are denied.

"Max M. Teitelbaum"

Judge

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FEDERAL COURT

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: T-1254-92

STYLE OF CAUSE: CHIEF JOHN ERMINESKIN ET AL v. HER MAJESTY

THE QUEEN ET AL

PLACE OF HEARING: CALGARY, ALBERTA

DATE OF HEARING: JULY 20, 2004

REASONS FOR ORDER

AND ORDER: THE HONOURABLE MR. JUSTICE TEITELBAUM

DATED: AUGUST 11, 2004

APPEARANCES:

J. MCARTHUR

FOR PLAINTIFFS

A. MACLEOD

C. HUNTER

FOR DEFENDANTS

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