

**Date: 20071015**

**Docket: T-66-86**

**Citation: 2007 FC 1054**

**Edmonton, Alberta, October 15, 2007.**

**PRESENT: The Honourable Mr. Justice Russell**

**BETWEEN:**

**SAWRIDGE BAND**

**Plaintiff**

**- and -**

**HER MAJESTY THE QUEEN**

**Defendant**

**- and -**

**CONGRESS OF ABORIGINAL PEOPLES,  
NATIVE COUNCIL OF CANADA (ALBERTA),  
NON-STATUS INDIAN ASSOCIATION OF ALBERTA  
and NATIVE WOMEN'S ASSOCIATION OF CANADA**

**Interveners**

**Docket: T-66-86-B**

**BETWEEN:**

**TSUU T'INA FIRST NATION**

**Plaintiff**

**- and -**

**HER MAJESTY THE QUEEN**

**Defendant**

- and -

**CONGRESS OF ABORIGINAL PEOPLES,  
NATIVE COUNCIL OF CANADA (ALBERTA),  
NON-STATUS INDIAN ASSOCIATION OF ALBERTA  
and NATIVE WOMEN'S ASSOCIATION OF CANADA**

**Interveners**

**REASONS FOR ORDER AND ORDER**

**THE MOTION**

[1] The Plaintiffs have brought a motion in writing pursuant to Rules 369 and 394 of the *Federal Courts Rules, 1998*.

[2] The Purpose of the motion is to have the Court settle the terms of, and pronounce judgment for, the Court's oral rulings of September 11, 2007.

[3] The Plaintiffs say this is necessary because they require a formal judgment in order to appeal the Court's September 11, 2007 ruling and "related Orders" to the Federal Court of Appeal.

[4] On October 3, 2007 the Court directed that the motion be heard in open Court in Edmonton on October 15, 2007.

## THE POSITION OF THE PARTICIPANTS

### The Plaintiffs

[5] In their notice of motion the Plaintiffs say they “wish to appeal this Court’s ruling of September 11, 2007, and related orders to the Federal Court of Appeal and require a formal judgment for this purpose.”

[6] In their written representations the Plaintiffs refer to Rules 393 and 394 but there is inadequate explanation as to how these rules might apply to the present situation, or why they require that the Court now issue a formal judgment on a draft order for a motion that the Court has not directed.

[7] In their *Reply To Interveners* at paragraph 7, in referring to the *Horii* case, the Plaintiffs say that a formal judgment is necessary because “the Plaintiffs are attempting to appeal this Court’s decision of September 11, 2007.”

[8] In their provisional notice of appeal dated September 18, 2007 (produced by the Interveners and not the Plaintiffs) it would appear that the Plaintiffs seek to appeal the Court’s rulings of September 11, 2007 “as well as the preceding and related Reasons for Order and Order... dated June 19, 2007, and Consequential Reasons for Order and Order of August 9, 2007 by which *inter alia* the Appellants’ motion for a mistrial was dismissed ... .”

### **The Crown**

[9] The Crown takes no position on whether the Court ought to issue a formal order and leaves it to the discretion of the Court. However, the Crown does not feel that Rule 394 is applicable because the Court did not direct one of the parties to prepare a draft order for endorsement.

[10] In addition, the Crown points out that if the Court does issue a formal order, the draft order submitted by the Plaintiffs needs a few adjustments to better reflect my oral reasons of September 11, 2007.

### **The Interveners**

[11] Generally speaking, the Interveners are in agreement with the position taken by the Crown, but also raise the following points of concern:

1. The Plaintiffs' motion is moot because they already have what they need to make an appeal in the form of detailed reasons, and the Plaintiffs have not explained or established the need for a formal judgment;
2. Because the Plaintiffs allege a reasonable apprehension of bias as a ground of appeal, it is not appropriate for the trial judge to act on matters that are encompassed by the reasonable apprehension of bias allegations;
3. The Court should not now deal with judgment and reasons because a Notice of Appeal has already been filed;

4. The Court should not settle the terms of an order in a manner that may affect a matter that will be put before the Court of Appeal, namely, the question of whether the Plaintiffs are out of time to appeal the Court's June 19 and August 9, 2007 orders.

### **The Plaintiffs' Reply**

[12] In their reply, the Plaintiffs submit, *inter alia*, that "the Court ought not to continue to hear and determine matters in these proceedings pending the determination of the proceedings before the Federal Court of Appeal, with the exception of the simple task of settling the terms of this Court's oral judgment of September 11, 2007."

### **REASONS**

[13] When this motion came before the Court on October 15, 2007 in Edmonton the Plaintiffs informed the Court that the Federal Court of Appeal had dismissed their motion for an extension of time to file a notice of appeal from my judgments of June 19, 2007 and August 9, 2007 and had further directed that the Plaintiffs' notice of appeal not be accepted for filing, thus rendering the present motion moot. As a consequence, the Court heard no further argument.

**ORDER**

**THIS COURT ORDERS THAT:**

1. The Plaintiffs' motion is dismissed for mootness.
2. The costs of this motion will be dealt with at the same time as the motion that the Court will hear concerning costs in accordance with the Court's orders of June 19, 2007 and August 9, 2007, failing which the costs of this motion will be in the cause.

"James Russell"

Judge

**FEDERAL COURT**

**NAME OF COUNSEL AND SOLICITORS OF RECORD**

**DOCKET:** T-66-86-A

**STYLE OF CAUSE:** **SAWRIDGE BAND v.  
HER MAJESTY THE QUEEN ET AL**

T-66-86-B  
**TSUU T'INA FIRST NATION (formerly the Sarcee  
Indian Band) v.  
HER MAJESTY THE QUEEN ET AL**

**PLACE OF HEARING:** Edmonton, Alberta

**DATE OF HEARING:** Motions submitted in writing

**REASONS FOR ORDER:** RUSSELL J.

**DATED:** October 15, 2007

**APPEARANCES:**

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