

Court File No. A-89-22

FEDERAL COURT OF APPEAL**BETWEEN:**

ESTATE OF FLORENCE BACKFAT

FEDERAL COURT OF APPEAL		D E P O S E
COUR D'APPEL FÉDÉRALE		
F I L E D	22-APR-2022	
	AGNES KARABA	
VANCOUVER, BC		1

Appellant

(Plaintiff in Court File Nos. T-365-01)

And:

ADRIAN STIMSON SR., CHIEF OF THE SIKSIKA NATION,
ON BEHALF OF HIMSELF AND ALL OTHER MEMBERS OF THE SIKSIKA NATION

Respondent

(Plaintiffs in Court File Nos. T-365-01)

And:

HER MAJESTY THE QUEEN IN RIGHT OF CANADA

Respondent

(Defendant in Court File No. T-365-01)

Notice of Appeal

TO THE RESPONDENTS:

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the appellant. The relief claimed by the appellant appears below.

THIS APPEAL will be heard by the Court at a time and place to be fixed by the Judicial Administrator. Unless the Court directs otherwise, the place of hearing will be as requested by the appellant. The appellant requests that this appeal be heard by videoconference or as soon as possible.

IF YOU WISH TO OPPOSE THIS APPEAL, to receive notice of any step in the appeal or to be served with any documents in the appeal, you or a solicitor acting for you must prepare a notice of appearance in Form 341A prescribed by the *Federal Courts Rules* and serve it on the appellant's solicitor or, if the appellant is self-represented, on the appellant, **WITHIN 10 DAYS** after being served with this notice of appeal.

IF YOU INTEND TO SEEK A DIFFERENT DISPOSITION of the order appealed from, you must serve and file a notice of cross-appeal in Form 341B prescribed by the [Federal Courts Rules](#) instead of serving and filing a notice of appearance.

Copies of the [Federal Courts Rules](#), information concerning the local offices of the Court and other necessary information may be obtained on request to the Administrator of this Court at Ottawa (telephone 613-992-4238) or at any local office.

IF YOU FAIL TO OPPOSE THIS APPEAL, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU.

April 14, 2022

Issued by: _____

Address of local office: 701 W Georgia St, Vancouver, BC V7Y 1K8

TO:

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APPEAL

THE APPELLANT APPEALS to the Federal Court of Appeal from the order of Mr. Justice Favel, dated March 29, 2022 by which the Court Ordered that:

1. Siksika's motion for approval of the Settlement Agreement is granted. The Settlement Agreement is approved.
2. The following actions, as they concern Siksika, are discontinued:
 - (a) Adrian Stimson Sr. et al v Attorney General of Canada, T-4242-71;
 - (b) Leo Youngman et al v Her Majesty the Queen, T-1067-87;
 - (c) Adrian Stimson Sr. et al v Attorney General of Canada, T-365-01;
 - (d) Adrian Stimson Sr. et al v Her Majesty the Queen, T-366-01;
 - (e) Adrian Stimson Sr. et al v Attorney General of Canada, T-368-01;
 - (f) Adrian Stimson Sr. et al v Attorney General of Canada, T-370-01;
3. The action brought by the Estate of Florence Backfat in T-365-01 is not discontinued.
4. The motions of the Estate of Florence Backfat and Mr. Pretty Young Man are dismissed.
5. There is no order as to costs.

THE APPELLANT ASKS that:

1. The Order granting the approval of the Settlement Agreement be set aside;
2. The Order discontinuing the action, Adrian Stimson Sr. et al v Attorney General of Canada, T-365-01 be set aside;
3. The Order dismissing the Motion of the Estate of Florence Backfat be set aside;
4. The matter be referred back to the Federal Court, with directions;
5. Costs of this Appeal; and
6. Costs of the underlying motion.

THE GROUNDS OF APPEAL are as follows:

Severance of the claim of the Estate of Florence Backfat

1. The Honorable Federal Court erred in severing the claim made by the Estate of Florence Backfat (“Estate”) in T-365-01 from the claim of the Siksika Nation;
2. Alternatively, and additionally, the Honorable Federal Court erred in relying on a statement made to the Honourable Court by counsel for Siksika, that the claim of the Estate will not be affected by the settlement approval, as evidence when that statement was directly contradicted by counsel for Canada, stating that the defence of settlement and any other defence available would be at Canada’s disposal should the Estate pursue the claim in its individual or representative capacity;
3. Alternatively, and additionally, the Honorable Federal Court also erred in failing to inquire into and determine Siksika Nation’s authority, as represented by the Chief and Council, to consent to the severing of the claim of the Estate from the claim of the Siksika Nation;
4. Alternatively, and additionally, the Honorable Federal Court erred in failing to inquire into and determine that the membership of the Siksika Nation, including the Estate, ratified and authorized the Siksika Nation, as represented by the Chief and Council, to compromise their individual claims against Canada;
5. Alternatively, and additionally, the Honorable Federal Court erred in concluding that the severance of the claims is not prejudicial to the Estate.

Rule 114 and Class Action Procedure

6. The Honorable Federal Court erred in holding that actions initiated under the *old* Rule 114 must remain representative actions after *new* Rule 114 in its amended form was reintroduced;

7. Alternatively, and additionally, the Honorable Federal Court erred in failing to differentiate the old Rule 114 from the amended new Rule 114;
8. Alternatively, and additionally, the Honorable Federal Court erred in holding that the application of Rule 114 is mandatory;
9. Alternatively, and additionally, the Honorable Federal Court failed to appreciate the relevance of the development of multiparty actions as described in detail by the Supreme Court of Canada in *Western Canadian Shopping Centres Inc v Dutton*, 2001 SCC 46 at paras 19-29;
10. Alternatively, and additionally, the Honorable Federal Court erred by departing from the authority of *Gill v Canada*, 2005 FC 192. The Honorable Federal Court incorrectly concluded that *Gill* provided transitional rules till such as the amended Rule 114 was reinstated and incorrectly dispensed with the requirement of a Rule 55 motion. Further, the Honorable Federal Court failed to appreciate the relevance of *Behn v Moulton Contracting Ltd.*, 2013 SCC 20 and *Horseman v Canada*, 2015 FC 1149;
11. Alternatively, and additionally, the Honorable Federal Court erred in failing to apply the preferability analysis test for determining if Rule 114 applies alone or if some or all of the class actions rules apply;

Collective vs Individual claims

12. The Honourable Federal Court failed to appreciate that each of the 6 (six) claims that were being sought to be discontinued are unique as each of the 6 claims raise issues of law and fact that are not common to each other and materially defer from each other;
13. Additionally, the Honorable Federal Court erred in finding that the pleadings in the Creosote Action contained only collective claims to the exclusion of individual claims of band members, despite finding that there were, in fact, individual claims contained therein;

14. Alternatively, and additionally, the Honorable Federal Court erred in finding that the Creosote Action was a collective claim, and yet severing from the collective claim the claim of the Estate who is a member of the collective;
15. Alternatively, and additionally, the Honorable Federal Court erred in finding that treaty claims can only be collective in nature;
16. Alternatively, and additionally, the Honorable Federal Court erred in finding that only a Chief and Council have standing to initiate collective claims;
17. Alternatively, the Honorable Federal Court failed to appreciate that a Chief and Council of a First Nation can represent both collective and individual claims;
18. Alternatively, and additionally, the Honorable Federal Court failed to appreciate that the membership of the Siksika Nation, including the Estate, never ratified the issue of collective versus individual claims;
19. Alternatively, the Honorable Federal Court failed to appreciate that a First Nation chief and council do not have standing to sever collective claims from individuals claims except without express authority from the membership;
20. Additionally, the Honorable Federal Court failed to appreciate that separating collective claims of a Nation from the individual claims of the Nation's band members, particularly in relation to a claim based on common issues of law and fact, is not tenable in Canadian Law (*Tataskweyak Cree Nation et al. v. Canada* (AG) 2021 MBQB 153;

Settlement Agreement

21. The Honorable Federal Court erred in making findings of facts on the terms of Global Settlement Agreement that are inconsistent with the plain meaning of the words of the Agreement;
22. Additionally, and alternatively, the Honorable Federal Court erred in holding that the Claims Litigations, as defined in Global Settlement Agreement, related to only collective claims;
23. Alternatively, and contrary to express language contained in the Global Settlement Agreement, the Honorable Federal Court erred in finding that the Global Settlement Agreement only applied to collective claims. In doing so the Honourable Federal Court failed to appreciate that both collective and individual members are explicitly mentioned throughout the Global Settlement Agreement; and
24. Additionally, and alternatively, the Honorable Federal Court failed in appreciating that a material departure from the terms of the Global Settlement Agreement, constituted a breach of the settlement agreement.

Fiduciary Interest and Conflict of Interest

25. The Honorable Federal Court erred in failing to identify that the Chief and Council created a clear conflict of interest by instructing their lawyers to sever the claim of the Estate, a member of the Siksika Nation, and a representative plaintiff, from the collective claim of the Siksika Nation in the Creosote Action, T-365-01;
26. The Honorable Federal Court erred further in in failing to identify that the Chief and Council created a further conflict of interest when they instructed their counsel to argue that the Claim Litigations, as defined in the Global Settlement Agreement, only related to collective claims and not individual claims, thereby

prioritising the claims of the collective over the claims of the individuals, including the representative plaintiff, the Estate;

27. Additionally, and alternatively, the Honorable Federal Court failed to identify that Chief and Council, and consequently the lawyers for the Nation, were both in a direct conflict of interest when they submitted to the Honourable Federal Court, on the afternoon of March 21, 2022, that they only represented the Nation, but not the individual band members;
28. Additionally, and alternatively, the Honorable Federal Court erred by holding that that Canada's fiduciary duties are only owed to Indian Bands collectively and not to individual members;
29. Additionally, and alternatively, the Honorable Federal Court erred by holding that that Chief and Council's fiduciary duties are only owed to the Nation collectively and not to individual members of the Nation;

Procedural Fairness and Due Process

30. The Honorable Federal Court erred in failing to permit the Estate of Florence Backfat to provide further submissions and evidence in relation to counsel for Siksika Nation's position in the hearing that they only represented that Nation but not its membership and further that the Global Settlement Agreement related only to collective claims and not individual claims, which was a departure from the Siksika Nations Motion material;
31. Alternatively, the Honourable Federal Court erred by relying on a contested assertion by counsel for the Siksika Nation raised for the first time during oral submissions without affording notice to the Estate or an opportunity to respond to the assertion through further evidence and submissions; and
32. Alternatively, and additionally, the Honorable Federal Court failed to identify the prejudice caused to members of the Siksika Nation by the submission made by counsel for the Siksika Nation to the Court regarding representation.

Dated at Vancouver, British Columbia, this 22nd day of April, 2022.



Erin Haupt, Counsel for the Appellant,
Estate of Florence Backfat

I HEREBY CERTIFY that the above document is a true copy of the original *issued out of* the Court on 04/22/2022.
Dated 04/25/2022.

Agnes Karaba