Court File No. A-87-22

FEDERAL COURT OF APPEAL

Between:

LEO PRETTY YOUNG MAN

Appellant (Applicant)

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-370-01 and T-366-01)

And:

ATTORNEY GENERAL OF CANADA

Respondent (Defendant in Court File No. T-370-01)

And:

HER MAJESTY THE QUEEN IN RIGHT OF CANADA

Respondent (Defendant in Court File No. T-366-01)

Notice of Appeal

TO THE RESPONDENT:

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.

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-

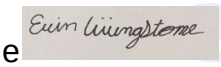
represented, on the appellant, WITHIN 10 DAYS after being served with this notice of appeal.

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 13, 2022

Issued by: Erin Livingstone 
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Date: 2022.04.21 13:42:00 -07'00'

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

TO:

Counsel for the Defendant, Her Majesty the Queen in Right of Canada	**Shane Martin** Department of Justice Canada 601, 606 4th Street SW Calgary, AB T2P 1T1 Tel: (604) 683-2466 Fax: (604) 683-4541 E-mail: Shane.Martin@justice.gc.ca
Counsel for the Plaintiff, Estate of Florence Backfat in (T-365-01)	**Erin Haupt** Harris & Brun 500 – 555 West Georgia Vancouver, BC V6B 1Z5 Tel: (604 683-2433 Fax: (604) 683-4541 E-maill: ehaupt@harrisbrun.com
Counsel for the Plaintiffs, Siksika Nation	**Elin Sigurdson and Peter Millerd** Mandell Pinder LLP Barristers and Solicitors Suite 422 – 1080 Mainland Street Vancouver, BC V6B 2T4 Tel: (604) 681-4146 Fax: (604) 681-0959 E-mail: elin@mandellpinder.com peter@mandellpinder.com

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 overturned.

2. The Order discontinuing the actions Adrian Stimson Sr et al v Her Majesty the Queen, T-366-01 and Adrian Stimson Sr et al v Attorney General of Canada, T-370-01 be overturned.

3. The Order dismissing the Motion of Mr. Pretty Young Man be overturned.

4. Siksika Nation forthwith disclose all documents in its possession concerning the actions Adrian Stimson Sr et al v Her Majesty the Queen, T-366-01 and Adrian Stimson Sr et al v Attorney General of Canada, T-370-01.

5. Costs of this Appeal.

THE GROUNDS OF APPEAL are as follows:

Errors in law

Mr. Justice Favel made the following errors in law:

1. In failing to consider that a representative action under Rule 114 of the Federal Courts Rules can include both collective claims and individual claims.

2. In holding that actions started under the old Rule 114 can continue without applying any class actions rules even without a Motion, pursuant to Rule 55, dispensing with the class action rules In doing so, the Court erred in law by departing from the authority of *Gill* v Canada, 2005 FC 192.

3. In failing to apply the appropriate legal test for determining if Rule 114 applies alone or if some or all of the class actions rules apply. Instead, the Court drew its conclusion from a reading of the pleadings and failed to appreciate that Rule 114 is permissive, not mandatory (see para 34).

4. In holding that the pleadings in the CPR Action, Cluny Action, and Creosote Action only contained collective claims to the exclusion of individual claims of Band Members, despite finding that there were, in fact, individual claims contained therein (paras 21 and 44).

5. The error in finding that none of the class action rules applied led the Court to make the following additional errors that serve to bar the Members of Siksika Nation who have personally suffered in their own unique ways from either Creosote poisoning or the flood of sewage from Cluny from bringing their own individual claims for injuries, damages, and loss:

    a. Holding that the Notice to members of the Global Settlement Agreement was sufficient even though nowhere is it mentioned that only collective claims were being settled to the exclusion of individual claims nor that individuals would become statute barred from bringing their own claims;

    b. Holding that an opt out notice was not required pursuant to Rule 334.21(1);

    c. Holding that rigorous Court oversite of the Global Settlement Agreement was not required, pursuant to Rule 334.29 (see *Heyder v Canada (Attorney General)* 2019 FC 1477 at paras 91-126; *Merlo v Canada*, 2017 FC 51 at para 16; and *Condon v Canada*, 2018 FC 522 at para 19);

    d. Holding that Mr. Pretty Young Man did not have standing to bring his Application pursuant to Rule 334.23(1), despite clearly being a class member and an individual personally affected by the Cluny flood; and

e. Failing to consider the fundamental differences between the 1910 Land Surrender on the one hand and the Creosote and Cluny Actions on the other hand with respect to the types of harm suffered by both individuals and the collective.

6. In holding that the actions in the Global Settlement Agreement are only for collective claims and not personal claims, despite the fact that individual claims are either explicitly mentioned or can be clearly inferred from the pleadings and despite the fact that the Court acknowledged this (at paras 57, 58).

7. In implicitly holding that Chief and Council cannot bring actions for both collective and individual claims.

8. In implicitly holding that a Band, despite the fiduciary duties owed to its Members, can commence a lawsuit only for collective interests to the exclusion and to the prejudice of its Band Members' individual interests.

9. In implicitly finding, without evidence, aside from a bare assertion made by Counsel for Siksika, that the Cluny and Creosote Actions were brought for the purpose of pursuing only collective claims to the exclusion of individual claims.

10. In implicitly finding that Chief and Council are able to instruct their legal counsel to bring actions only on the part of the Band as a whole to the exclusion and to the prejudice of its individual Members without informing any Members.

11. In severing the individual claims from the collective claims in the Cluny Action, CPR Action, and Creosote Action, which is untenable in law (see *Tataskweyak Cree Nation et al. v. Canada* (AG) 2021 MBQB 153).

12. In implicitly holding that treaty rights are only collective rights and do not include individual rights (paras 34, 37, and 47).

13. In implicitly finding that Canada's fiduciary duties are only owed to Indian Bands collectively and not to individual members (para 61).

14. In failing to consider the difference between individual and collective claims, leading to the further error of finding there are individual claims in the Cluny and Creosote Actions, but that they are collective in nature and are, therefore, collective claims (para 44).

15. In finding, without evidence, aside from a bare assertion from Counsel for Siksika, that the authorized representative of the Cluny and Creosote Actions contained in the Global Settlement Agreement represented the Nation as a whole and not individual Band members.

16. As the bare assertions made by Counsel for Siksika never formed part of their Motion Record and form an important issue in these matters, the Applicants, Leo Pretty Young Man and the Estate wrote to the Court asking for permission for the parties to bring evidence on this issue in another hearing prior to the Court rendering its decision. The Court erred in refusing this request.

17. In finding, without evidence, that the Chief of Siksika Nation was authorized by Members of Siksika Nation to enter into negotiations leading to the Global Settlement Agreement.

18. In failing to employ the appropriate test for determining whether the settlement agreement was reasonable (para 71). That test, the Court held, was that the Court should consider the following:

    a. the scope or extent of the information (about the Global Settlement Agreement);
    b. the notice provided to the membership;
    c. members' ability to participate and vote in a process that expresses their approval or disapproval of the settlement; and
    d. the main features of the settlement Agreement.

19. In the alternative, the Court erred in applying the first, second, and fourth considerations of its test for approval and discontinuance of the Actions.

20. As above, nowhere in the Motion Records of any of the parties is there any evidence to show that the Members who participated in the referendum were either told or had any idea that what they were voting for was to settle only the collective claims and not individual claims. The Court merely relied on a bare assertion by Counsel from Siksika during oral submissions. When the Court was asked for permission to bring evidence on this issue, the Court erred in refusing permission.

21. In failing to consider the prejudice that would result if those with individual claims were, unknown to themselves, not represented, never told that they were not represented, and never told to obtain their own independent legal counsel.

22. In failing to consider serious conflicts of interest that ought to preclude the Court from approving the Global Settlement Agreement, including:

    a. An inability for Counsel to fairly represent various parties in various actions due to their being grouped together in one Global Settlement Agreement that does not differentiate which action is settled for what amount;

b. Counsel for Siksika providing legal advice to Members of Siksika Nation without informing them that they were unrepresented and advising them to obtain their own legal advice;

c. Entering into a settlement agreement that clearly contemplates the settlement of individual claims and which Canada will use to defend itself against individual claims and, only afterwards, claiming not to represent those with individual claims;

d. Failing to protect the interests of those with individual claims or at least to ensure they were advised to retain their own legal counsel;

e. Entering into a settlement agreement with Canada without the legal authorization from the Members of Siksika to do so;

Errors in fact

1. Nil

Dated at Vancouver, British Columbia, this 13th day of April, 2022.

Mark G. Carter, Counsel for the Appellant, Leo Pretty Young Man

DuMoulin Boskovich LLP
1800 – 1095 West Pender Street
Vancouver, BC V5B 3B4

I HEREBY CERTIFY that the above document is a true copy of the original *issued out of* the Court on 14-APR-2022

Dated 21-APR-2022

Erin Livingstone

Digitally signed by Livingstone, Erin
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