



SEP 02 1997

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T-2243-93

BETWEEN:

**EDWARD ANDERSON, GARNET WOODHOUSE,
MARSHALL WOODHOUSE, ROBERT MCLEAN,
PATRICK ANDERSON, ORMAND STAGG and
GEORGE TRAVERSE on their own behalf and on
behalf of all members of the FAIRFORD FIRST NATION,
a body of Indians described as the Fairford Band
and declared to be a band for the purposes of the
Indian Act by P.C. 1973-3571,**

Plaintiffs,

- and -

**THE ATTORNEY GENERAL OF CANADA on behalf of
HER MAJESTY THE QUEEN in Right of Canada,**

Defendant.

REASONS FOR ORDER

ROTHSTEIN J.:

This is an application by the plaintiffs under Rule 480 for an order entitling the plaintiffs to proceed to trial without proving damages which would be left for a later reference. A previous application was made before Dubé J. which was rejected. However, there is now new evidence before the Court.¹ Specifically, the evidence is that the plaintiffs would be required to expend in the range of \$1.5 million to prove damages.

¹ Alternatives to expending this sum were suggested by defendant's counsel. Whether less costly alternatives are possible must be explored by the plaintiffs. Damages should be proven in the most efficient and least costly manner possible. Failure to do so may result in the plaintiffs not being compensated for their expended disbursements to prove damages even if they are successful at trial.

In this case, the plaintiffs say the defendant has a fiduciary duty to them and that the defendant has breached that duty and that damages flow therefrom. The defendant says there is no fiduciary duty but that if indeed there is, there has been no breach thereof. The reason is that the plaintiffs have received compensation for any losses they may have suffered through any actions of the defendant. The defendant says that the issues of damages and liability are inextricably linked in that the plaintiffs must quantify their damages in order that the compensation they received may be weighed against their damages. These, of course, are all issues for trial. The only issue here is whether the question of damages should be dealt with at trial or whether it may be left for a future reference.

The Court is faced with a dilemma. On the one hand, it is highly undesirable that the plaintiffs be required to expend an enormous amount of money to prove damages when liability has not yet been established. On the other, the defendant cannot be precluded from making a full and complete defence on the issue of liability.

The parties have proposed a joint recommendation to the Court to resolve this dilemma which the Court finds acceptable. The plaintiffs acknowledge they must establish, for purposes of liability

- (1) that the defendant owes them a fiduciary duty;
- (2) that the defendant has breached that duty;
- (3) that the plaintiffs have incurred damages by way of adverse effects to crystallize the breach;

- (4) that the damages far exceed the compensation that might be set off.

The defendant acknowledges that the plaintiffs need not strictly prove the quantum of damages at the liability stage of the proceedings. They require that they be entitled to adduce evidence relating to set off.

The Court is satisfied with this proposal and the parties may proceed as they have recommended. However, the Court's acceptance of the joint proposal is subject to further order of the Court upon application of either party or upon the Court's own motion should it become apparent to the parties or to the Court that the proposal proves to be unsatisfactory.

Marshall Rothstein

J U D G E

OTTAWA, ONTARIO

AUGUST 8, 1997

FEDERAL COURT OF CANADA
TRIAL DIVISION

NAMES OF SOLICITORS AND SOLICITORS ON THE RECORD

COURT FILE NO.: T-2243-93

STYLE OF CAUSE: EDWARD ANDERSON ET AL. v.
THE ATTORNEY GENERAL OF CANADA

PLACE OF HEARING: OTTAWA, ONTARIO

DATE OF HEARING: AUGUST 6, 1997

REASONS FOR ORDER OF THE HONOURABLE MR. JUSTICE ROTHSTEIN

DATED: AUGUST 8, 1997

APPEARANCES:

MR. E. ANTHONY ROSS FOR PLAINTIFFS

MR. CRAIG J. HENDERSON FOR DEFENDANT

SOLICITORS OF RECORD:

HARRIS & HARRIS
ETOBICOKE, ONTARIO FOR PLAINTIFFS

GEORGE THOMSON
DEPUTY ATTORNEY GENERAL OF CANADA
OTTAWA, ONTARIO FOR DEFENDANT

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