

Federal Court



Cour fédérale

**Date: 20130128**

**Docket: T-139-08**

**Citation: 2013 FC 86**

**Toronto, Ontario, January 28, 2013**

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

**BETWEEN:**

**LONG PLAIN FIRST NATION, PEGUIS FIRST  
NATION, ROSEAU RIVER ANISHINABE  
FIRST NATION, SAGKEENG FIRST NATION,  
SANDY BAY OJIBWAY FIRST NATION,  
SWAN LAKE FIRST NATION,  
COLLECTIVELY BEING SIGNATORIES TO  
TREATY NO.1 AND KNOWN AS "TREATY  
ONE FIRST NATIONS"**

**Applicants**

**and**

**HER MAJESTY THE QUEEN, REPRESENTED  
BY THE ATTORNEY GENERAL OF  
CANADA, THE HON. CHUCK STRAHL IN  
HIS CAPACITY AS MINISTER OF INDIAN  
AFFAIRS AND NORTHERN DEVELOPMENT,  
THE HON. VIC TOEWS IN HIS CAPACITY AS  
PRESIDENT OF TREASURY BOARD, THE  
HON. PETER MACKAY IN HIS CAPACITY  
AS MINISTER OF NATIONAL DEFENCE,  
THE HON LAWRENCE CANNON IN HIS  
CAPACITY AS MINISTER RESPONSIBLE  
FOR CANADA LANDS COMPANY**

**Respondents**

**REASONS AND ORDER AS TO COSTS**

[1] On December 13, 2012, I issued Reasons and a Judgment herein, as amended December 20, 2012; in which I allowed the Application of some, but not all, of the Applicants. I concluded by requesting submissions as to costs, which I have now received from each of the successful Applicants and the Respondents. These Reasons and Order deal with the matter of costs arising out of my Judgment herein.

[2] As a preliminary matter, I must deal with certain submissions made on behalf of the Applicant Peguis First Nation, as supported by an Affidavit of Judi Snook, a legal assistant in the offices of Peguis' solicitors, sworn January 15, 2013. That affidavit deals essentially with two things. One is statements purportedly made by Counsel for the Respondent to the Federal Court of Appeal during the hearing of the appeal from the decision of Justice Campbell, and whether those statements were a misrepresentation. The second is the purported conduct of the Respondent following the release of my Judgment herein.

[3] I will not permit the affidavit of Snook to be filed and will disregard any representations as to costs made on behalf of Peguis in respect of any matter raised in the Snook affidavit. Whether a misrepresentation was or was not made to the Federal Court of Appeal is not a matter for consideration by me in respect of costs. The conduct or alleged misconduct of a party after I have given Judgment is not a matter for consideration in respect of costs.

[4] Turning to relevant matters: the Judgment of Justice Campbell, 2009 FC 982, determined "...costs to the Applicant First Nations". The Federal Court of Appeal in its unanimous reasons,

2011 FCA 148 concluded that it would "...allow the appeal with costs, set aside the (Trial) Judge's decision...refer the matter back...for redetermination of the issues..."

[5] My understanding of the Federal Court of Appeal's decision is that:

- costs of the appeal were awarded to the Applicants (the Respondents before me).  
It appears that they have yet to be taxed. I will not deal with those costs in any way, by set-off or otherwise, in my Order here. I consider them to be a separate matter.
- the Order of Justice Campbell has been set aside; I view this as setting aside the Order as to costs made by him, as well as any other disposition made in his Judgment.

[6] At the hearing before me, reference was made to evidence that was in evidence before Justice Campbell, as well as to further evidence that was placed in the record at a time after the Court of Appeal released its decision. Therefore, it is appropriate that costs shall extend to costs related to the evidence placed in the record in the hearing before Justice Campbell, as well as the additional evidence added to the record in the hearing before me. However, given the disposition of the Court of Appeal, I find that it is not appropriate to award costs related to the preparation for or attendance at the hearing before Justice Campbell, or any services thereafter prior to the filing of the Notice of Appeal from his decision.

[7] The Applicants Long Plain, Peguis, Roseau River and Swan Lake have been successful in this Application. It is appropriate that they be awarded costs. The matter was a protracted and difficult one. The Respondents did not make the major concession that it had a duty to consult until their Counsel made that concession in its submissions before me. Had that concession been made earlier, substantial effort and evidence could have been saved. The Respondents failed to make full and candid disclosure of the documents relating to the decision at issue. This made the argument and decision difficult. Taking all of this into consideration, I find that each of the successful Applicants is entitled to costs, to be assessed at the middle of Column V, together with reasonable disbursements and applicable tax, if any.

[8] It would be preferable if the parties could each agree as to a lump sum, rather than tax the matter. If they choose to tax costs, that may be done by a taxing officer or directly to me.

**ORDER**

**FOR THE REASONS PROVIDED:**

**THIS COURT THEREFORE ORDERS that:**

1. The affidavit of Snook should not be received into evidence, and any submissions made on behalf of Peguis based on what is set out in that affidavit will be ignored;
  
2. Each of the Applicants Long Plain, Peguis, Roseau River and Swan Lake is entitled to costs to be assessed at the middle level of Column V, in accordance with these Reasons, together with reasonable disbursements and applicable tax, if any.

"Roger T. Hughes"

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Judge

Federal Court



Cour fédérale

**FEDERAL COURT**

**SOLICITORS OF RECORD**

**DOCKET:** T-139-08

**STYLE OF CAUSE:** LONG PLAIN FIRST NATION, ET AL v HER  
MAJESTY THE QUEEN

**WRITTEN SUBMISSIONS ON COSTS PURSUANT TO REASONS FOR JUDGMENT  
AND JUDGMENT, AS AMENDED, ISSUED DECEMBER 20, 2012 (2012 FC 1474)  
CONSIDERED AT TORONTO, ONTARIO**

**REASONS AND ORDER  
AS TO COSTS:** HUGHES J.

**DATED:** January 28, 2013

**COSTS SUBMISSIONS BY:**

J. R. Norman Boudreau

FOR THE APPLICANTS  
LONG PLAIN FIRST NATION

Jeffrey R. W. Rath  
Nathalie Whyte

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PEGUIS FIRST NATION

Harley Schachter  
Bill Haight  
Kara Bjornson

FOR THE APPLICANT  
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R. Ivan Holloway  
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FOR THE RESPONDENTS

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