Federal Court  Cour fédérale

Date: 20130227

Docket: T-2022-89
T-1254-92

Citation: 2013 FC 198

Vancouver, British Columbia, February 27, 2013

PRESENT: Roger R. Lafrenière, Esquire
Case Management Judge

BETWEEN:

CHIEF VICTOR BUFFALO ACTING ON HIS OWN BEHALF AND ON BEHALF OF ALL THE OTHER MEMBERS OF THE SAMSON INDIAN NATION AND BAND, AND THE SAMSON INDIAN BAND AND NATION

Plaintiffs

and

HER MAJESTY THE QUEEN IN RIGHT OF CANADA, THE MINISTER OF INDIAN AFFAIRS AND NORTHERN DEVELOPMENT, AND THE MINISTER OF FINANCE

Defendants

AND BETWEEN:

CHIEF JOHN ERMINESKIN, LAWRENCE WILDCAT, GORDON LEE, ART LITTLECHILD, MAURICE WOLFE, CURTIS ERMINESKIN, GERRY ERMINESKIN, EARL ERMINESKIN, RICK WOLFE, KEN CUTARM, BRIAN LEE, LESTER FRAYNN, THE ELECTED CHIEF AND COUNCILORS OF THE ERMINESKIN INDIAN BAND AND NATION SUING ON THEIR OWN BEHALF AND ON BEHALF OF ALL THE OTHER MEMBERS OF THE ERMINESKIN INDIAN BAND AND NATION

Plaintiffs

and

**HER MAJESTY THE QUEEN
IN RIGHT OF CANADA,
THE MINISTER OF INDIAN AFFAIRS
AND NORTHERN DEVELOPMENT,
AND THE MINISTER OF FINANCE**

Defendants

REASONS FOR ORDER AND ORDER

[1] The Defendants, Her Majesty the Queen in Right of Canada, the Minister of Indian Affairs and Northern Development, and the Minister of Finance (collectively referred to in these reasons as "the Crown") seek leave to amend the Crown's Amended Statements of Defence in two representative actions brought on behalf of the Samson Indian Band and Nation (Samson) in Court File No. T-2022-89 and the Ermineskin Indian Band and Nation (Ermineskin) in T-1254-92 (collectively referred to as "the Plaintiffs").

[2] The Crown's motion is brought pursuant to Rule 75 of the *Federal Courts Rules*, SOR/98-106 [*FCR*], which provides as follows:

75. (1) Subject to subsection (2) and rule 76, the Court may, on motion, at any time, allow a party to amend a document, on such terms as will protect the rights of all parties.	**75.** (1) Sous réserve du paragraphe (2) et de la règle 76, la Cour peut à tout moment, sur requête, autoriser une partie à modifier un document, aux conditions qui permettent de protéger les droits de toutes les parties.
(2) No amendment shall be allowed under subsection (1) during or after a hearing unless	(2) L'autorisation visée au paragraphe (1) ne peut être accordée pendant ou après une audience que si, selon le cas:

(*a*) the purpose is to make the document accord with the issues at the hearing;	*a*) l'objet de la modification est de faire concorder le document avec les questions en litige à l'audience;
(*b*) a new hearing is ordered; or	*b*) une nouvelle audience est ordonnée;
(*c*) the other parties are given an opportunity for any preparation necessary to meet any new or amended allegations.	*c*) les autres parties se voient accorder l'occasion de prendre les mesures préparatoires nécessaires pour donner suite aux prétentions nouvelles ou révisées.

[3] The Crown seeks leave to specifically reference ss. 39(1) and (2) of the *Federal Courts Act*, RSC 1985, c F-7 [*FCA*] and ss. 42, 43, 44, and 45(1)(g) of the *Ontario Limitations Act*, RSO 1980, c 240 [*OLA*] in its statements of defence in the two proceedings and to provide additional facts upon which its limitations defence is based. The Crown maintains that it is out of an abundance of caution that it seeks to formally amend its pleading in light of the position taken by the Plaintiffs in closing argument at the trial of the first two phases of the actions, as explained below.

[4] The motion is vigorously opposed by the Plaintiffs.

The Pleadings

[5] The underlying involve numerous claims by the Plaintiffs against the Crown relating to the Crown's management of oil and gas resources, the management of royalty and other trust monies and the provision of programs and services.

[6] Samson commenced its representative action by filing a Statement of Claim on September 29, 1989. The Crown filed its Statement of Defence on March 19, 1992. Samson amended its Statement of Claim on four occasions: September 30, 1994, December 18, 1998, March 30, 2000 and April 26, 2000. The Crown amended its Statement of Defence on December 19, 1994, February 1, 1999 and March 31, 2000.

[7] Ermineskin filed its Statement of Claim in 1992, and subsequently amended its pleading on September 30, 1994, October 23, 1998 and March 28, 2000. The Crown filed its Statement of Defence in 1992, and amended its pleading three times between 1992 and 2000.

[8] In both proceedings, the Crown's Statement of Defence and amendments pleaded the *Alberta Limitations of Actions Act*, RSA 1980, c L-15 (*ALAA*) and the *Federal Court Act* (now the *Federal Courts Act*); however, the pleadings were silent as to which sections of these Acts were being relied upon. Furthermore, the Crown's pleadings were silent with respect to the *OLA*.

[9] In its Reply, Samson addressed section 39 of the *FCA* and, among other things, pleaded:

> 35…
>
> c. Section 39 of the Federal Court Act and the Limitations of Actions Act of Alberta are inapplicable to Plaintiffs in respect to the claims, rights or causes of action of Plaintiffs as set forth in the Amended Statement of Claims in that:
>
> i. they do not constitute causes of action which may arise in any province between subject and subject; and
>
> ii. they constitute unique causes of action not contemplated by section 39 of the Federal Court Act which is unknown to private law.

> 36. In the alternative, if prescription and limitations of actions do apply, which is not admitted but denied, the Limitations of Actions Act of Alberta is not applicable in the within proceedings in that the situs of the Crown's fiduciary obligations to the Plaintiffs and the control and management in respect to at least the reserves, mineral rights and moneys interest of Plaintiffs, and any suits, claims, rights or causes of action arising therefrom are at Her Majesty's Seat of Government in Ottawa and Plaintiffs rely upon the laws relating to prescription and the limitations of actions in force in the Province of Ontario.

[10] The Ermineskin also addressed s. 39 of the *FCA* in paragraphs 16-16A of its Further Amended Reply and pleaded that s. 39 is not applicable to an action involving the aboriginal or treaty rights of the Plaintiffs and, if found to be applicable, s. 39 is unconstitutional in that it discriminates against Ermineskin contrary to s. 15 of the *Canadian Charter of Rights and Freedoms*. Ermineskin also pleaded:

> 16A. Further, or in the alternative, in reply to paragraph 44 and 45 of the Third Amended Defence, the Plaintiffs say that, even if, by virtue of section 39 of the *Federal Court Act*, provincial legislation periods applies to the Plaintiffs' causes of action in this case, which is denied, then the Alberta Act does not apply because:
>
> (a) the applicable legislation is that which would have applied had the action been brought in the courts of the province where the causes of action arose, and
>
> (b) the causes of action in the present case, or in the alternative some of the causes of action, did not arise in Alberta, but rather arose in Ontario, and thus the applicable legislation is that of Ontario and not that of Alberta, and
>
> (c) further, or in the alternative, if an action had been brought in the courts of a province, whether Alberta or Ontario or otherwise, no limitation period would have applied to the causes of action raised in this proceeding.

Procedural History of the Proceedings

[11] The Plaintiffs' claims relate to a long period of time, involve numerous Crown agencies and have required extensive documentary and oral discovery. The vast majority of documentary and oral discovery was conducted by the parties between 1992 and 2000.

[12] The parties agreed that issues to be determined at the trial would be divided into the following phases:

a. historical issues, including a determination of certain of the Plaintiffs' rights under Treaty 6;

b. money management issues, relating to the alleged mismanagement of the Plaintiffs' monies held in trust by the Crown;

c. oil and gas issues, relating to alleged mismanagement by the Crown of oil and gas resources on the Plaintiffs' reserve lands;

d. other oil and gas issues, including tax and regulated pricing issues;

e. per capita distribution issues; and

f. programs and services issues (in Samson's case only).

[13] It was initially contemplated by the parties that all the phases would be heard by Mr. Justice Teitelbaum (who is now retired). However, given the length and complexity of the trial, it became evident that certain phases would have to be heard by a different judge. On September 17, 2002,

Justice Teitelbaum ordered that he would only serve as the judge for the historical and money management phases and that the remaining phases would be heard by another judge.

[14] The trial before Justice Teitelbaum on the first two phases concluded in December, 2004. At that time, the first paragraph of the Crown's limitation defence in both the Samson and the Ermineskin actions read as follows:

> The Defendants plead and rely upon the provisions of the Limitations of Actions Act, RSA 1980, c L-15 and the Federal Court Act, RSC 1985, c F-7.

[15] The Crown also pleaded that:

a. a six-year limitation period applied;

b. additional causes of action were based on events which occurred more than six years before the filing of the amended versions of the Statements of Claim;

c. the Plaintiffs' claims were not for the recovery of an interest in land;

d. the Plaintiffs were aware or were reasonably able to inform themselves of the facts alleged in their Amended Statements of Claim; and

e. the doctrines of laches and acquiescence applied.

[16] During its written closing arguments, the Crown argued that s. 39(2) of the *FCA* might act as a bar to the Plaintiffs' claims. This section provides a limitation period for causes of action that

arise “otherwise than in a province.” Ermineskin submitted that the Crown’s pleadings of a limitation defence were inadequate. In response, the Crown moved before Justice Teitelbaum to amend its pleadings to include express reference to certain limitation provisions. Both Ermineskin and Samson opposed the amendments on the basis that the Crown had offered no explanation for the delay in raising the limitation defences and on the basis that the amendments would cause prejudice to the Plaintiffs as these defences were being raised just only after the completion of discoveries, but at the close of the trial and argument.

[17] Justice Teitelbaum heard the Crown’s motion to amend on January 20 and 21, 2005. The Crown tendered no affidavit evidence in support of its motion. Instead, the Crown took the position that its pleadings were “adequate" to raise the same limitation defences it sought leave to include in its amended pleadings. The Crown further argued that it was acting out of "an abundance of caution”.

[18] As an aside, I note that in an exchange between Mr. Hunter, Crown counsel, and Justice Teitelbaum, it was understood that the application to amend pertained only to the first two phases of the trial.

> **MR. HUNTER:** Different considerations, of course, would apply, with respect to any amendments that were – with respect to these or any other amendments as they might apply to subsequent phases of the trial.
>
> I do not think that you need to deal with that. I think that, it should be simply made clear that that would be dealt with by the case manager if one is appointed, or by a chambers judge or by the new trial judge.

> We simply would not want a judgment that says you cannot make this particular amendment and it affects all of the rest of the case, even though the circumstances are entirely different.
>
> **THE COURT:** To start with, I will tell you now, when you made your Application and as I said, I took it as a given and I think Mr. O'Reilly was right in saying what he said and I take what you say. I took it as a given that it only applied to the issue of money management [down] which is being claimed.

[19] Justice Teitelbaum ultimately allowed the Crown's application in part. He permitted the amendments referring to specific sections of *ALAA*, but denied the amendments relating to the *FCA* and the *OLA*, after concluding that there would be "clear prejudice" to both Ermineskin and Samson if the amendments relating to s.39(2) of the *FCA* and the *OLA* were allowed.

[20] On November 30, 2005, Justice Teitelbaum dismissed the Plaintiffs' claims in the first two phases of the proceedings. The Plaintiffs' appeal to the Federal Court of Appeal was dismissed on December 20, 2006, and their application for leave to appeal to the Supreme Court of Canada was dismissed on February 13, 2009. Throughout the appeal process, the Plaintiffs did not advance the remaining claims against the Crown.

[21] On October 20, 2010, counsel for the Crown provided copies of the Crown's proposed Amended Statements of Defence to counsel for Samson and Ermineskin, requesting their consent to the proposed amendments. The Plaintiffs indicated that they would not consent.

[22] To date Ermineskin, Samson and the Crown have identified and produced well over 100,000 documents. Between 1992 and 2000, the parties engaged in over 200 days of examinations for discovery of various deponents on behalf of the Crown and the Plaintiffs. The examinations have

resulted in over 20,000 pages of transcripts and thousands of exhibits. Additionally there have been over 6000 undertakings given by the parties relating to the oil and gas phase. Detailed answers have been given and reviewed for the majority of these undertakings.

[23] In anticipation of a case management conference to be held on November 18, 2010, counsel for the Plaintiffs suggested that a reasonable time frame to complete further discoveries on the oil and gas issues would be between two or three years.

Crown's Motion to Amend

[24] By the present motion filed on December 23, 2010, the Crown seeks leave to amend its statement of defence in the Samson action in the following manner:

> 47. The defendants plead and rely upon the provisions of The Limitation of Actions Act, RSA 1980, c L-15 and the Federal Court Act, RSC 1985, c F-7.
>
> 47A. The particular sections of the Alberta Limitation of Actions Act, RSA 1980, c L-15 include Sections 4(1)(e), 4(1)(g), 40 and 41. This amendment is made pursuant to an Order of this Honourable Court dated January 21, 2005.
>
> 47B. Further, as the Plaintiffs are seeking, *inter alia*, an accounting in respect of the various allegations being made against the Defendants, and any cause or causes of actions which may arise thereby relate to matters, lands and resources situated within the Province of Alberta, the Defendants additionally plead and rely upon Section 4(1)(c) of the Alberta Limitation of Actions Act, RSA 1980, c L-15, as incorporated by Subsection 39(1) of the Federal Court Act, RSC 1985, c F-7.
>
> 47C. In the alternative, with respect to all of the Plaintiffs' allegations relating to the management and administration of their oil and gas resources, or to the programs and services they have been provided, including those allegations which seek to impugn or

> challenge the applicability of any Federal legislation, regulations or policies of general application either to all Canadians, or to all Indians or Indian lands throughout Canada, any cause or causes of action arising thereby arose either in more than one province, or otherwise than in a province, and are statute-barred by section 39(2) of the Federal Court Act.
>
> 47D. In the further alternative, to the extent that any of the Plaintiffs' allegations relating to the management and administration of their oil and gas resources or their programs and services relate to matters which give rise to a cause or causes of action arising within the Province of Ontario, the Defendants plead and rely upon the provisions of the Ontario Limitations Act, RSO, c 240, including Sections 42, 43, 44, and 45(1)(g) thereof, as incorporated by Subsection 39(1) of the Federal Court Act, RSC 1985, c F-7.

[25] The Crown also seeks to add eight new subparagraphs to paragraph 50 which specify certain facts relating to the allegations contained in Samson's Amended Statement of Claim.

[26] In the Ermineskin action, the Crown seeks to amend paragraphs 44, 44A, 44B, 44C and 44D of its statement of defence, in Part V: Limitation of Actions, in the same way as in the Samson action. The Crown also seeks to add the same eight subparagraphs to paragraph 47 which specifies certain facts relating to the allegations contained in the Third Amended Statement of Claim.

[27] In support of its motion, the Crown tendered the affidavit of Lynda Sturney. Based on the contents of this affidavit, Ermineskin sought and obtained an order requiring the Crown to disclose all documents, including otherwise privileged documents, regarding the legal advice the Crown received in respect to the adequacy of its limitations defences in 2004: see *Ermineskin First Nation v Canada*, 2011 FC 1091.

[28] The Crown disclosed three documents to the Plaintiffs, including a memorandum from Macleod Dixon LLP (counsel for the Crown) to the Department of Justice dated December 17, 2004, which was written and sent after closing arguments were presented in the money management trial. The purpose of the memorandum was to address arguments made by the Plaintiffs during closing arguments that the Crown's limitations pleadings were inadequate and to propose that the Crown seek an amendment to its pleadings in that regard.

[29] In its memorandum, Macleod Dixon reviews the history of the limitations pleadings. It notes that certain legislative amendments were made to the *FCA* and the *Crown Liability and Proceedings Act* [*CLPA*] just prior to the filing of Ermineskin's Statement of Claim. The effect of these amendments was that provisions for limitations periods for actions against the Crown were transferred from the *FCA* to the *CLPA*. The memorandum reflects that both the Department of Justice, when initially filing the Statement of Defence, and Macleod Dixon, when filing amendments to the Statement of Defence between 1992 and 2000, overlooked this legislative change.

[30] The memorandum also notes that, in respect of the limitations period for an "action arising otherwise than in a province", Crown lawyers decided to pursue this limitations argument only while preparing closing arguments for the money management trial in 2004:

> In the course of preparing our written closing argument, however, we came to the view that it was quite arguable based on recent authority that in fact the proper limitation period is the independent federal one under subsection 39(2) of the same Act, and not a provincial limitation period incorporated under subsection 39(1). Cross examination of Ms. Sturney was completed on December 19, 2011.

[31] Ms. Sturney testified that there are no additional documents to disclose relating to the Crown's belief in the adequacy of its pleadings.

Legal Principles on a Motion for Leave to Amend

[32] The only issue before the Court is whether the Crown is entitled to amend its statement of defence pursuant to Rule 75 of the *FCR*.

[33] The oft-quoted test for amending pleadings is set out by the Federal Court of Appeal in *Canderel Ltd v Canada*, [1994] 1 FC 3 (FCA) [*Canderel*], at paragraph 9:

> With respect to amendments, it may be stated … that while it is impossible to enumerate all the factors that a judge must take into consideration in determining whether it is just, in a given case, to authorize an amendment, the general rule is that an amendment should be allowed at any stage of an action for the purpose of determining the real questions in controversy between the parties, provided, notably, that the allowance would not result in an injustice to the other party not capable of being compensated by an award of costs and that it would serve the interests of justice.

Analysis

[34] The parties agree that the Court has a broad discretion to grant or deny leave to amend a pleading.

[35] The Crown argues that since it is not disputed that the proposed amendments raise a reasonable defence, the Court need only focus on the prejudice that could arise to the Plaintiffs if leave to amend is granted. The Crown suggests that, absent serious prejudice, leave to amend must

be granted. I disagree. In exercising its discretion whether to grant leave to amend or not, the Court cannot simply apply a strict or formulaic test, but rather, must consider all relevant circumstances and factors to reach a just result.

[36] In *Merck & Co v Apotex Inc*, 2003 FCA 488 at paras 35-36, the Federal Court of Appeal held that the party seeking the amendment bears the burden to demonstrate that the addition of new defences serves the interest of justice. In evaluating whether a proposed amendment would serve the interests of justice, a multitude of factors may be considered. These factors include: (a) the timeliness of the motion to amend; (b) the extent to which the proposed amendments would delay the expeditious trial of the matter; (c) the extent to which a position taken originally by one party has led another party to follow a course of action in the litigation which would be difficult or impossible to alter; and (d) whether the amendments sought will facilitate the court's consideration of the true substance of the dispute on its merits.

[37] The Plaintiffs submit that a consideration of these factors indicates that the Crown's motion to amend should be denied.

[38] They point to what they categorize as "inexcusable delay" by the Crown in seeking to amend its pleadings. The Plaintiffs argue that the Crown is seeking to add substantive limitations defences and additional factual allegations to its Statement of Defence nearly two decades after it was initially filed in 1992. They submit that the Crown had ample opportunity to amend its pleadings, but failed to recognize the deficiencies until 2004. Between 1992 and 2005, the Crown's pleadings only disclosed a reliance on Alberta limitations periods. At no point during the lengthy

discovery phase did the Crown indicate that it intended to rely on Ontario limitations provisions or upon s. 39(2) of the *FCA*.

[39] The Plaintiffs submit that they will suffer prejudice by the addition of the new defences at this late stage of the proceedings. They say that considerable time and effort has gone into the discovery process, based on the state of the Crown's pleadings, through over 200 days of discovery between 1994 and 2000. In light of the nature and breadth of the amendments sought by the Crown, the Plaintiffs say that they would be required to conduct extensive additional discovery, unnecessarily complicating the proceedings and ultimately delaying the resolution of the litigation.

[40] The Plaintiffs concede that an order for costs may partially ameliorate the financial burden of revisiting and conducting extensive additional discoveries in respect of the proposed amendments; however they maintain that the inefficiency and delay occasioned by the Crown's amendments is simply too prejudicial to them. The Plaintiffs submit that granting leave to the Crown is not consonant with the interests of justice in guiding the litigation in a fair and efficient manner.

[41] The Plaintiffs further submit that the interests of justice engage broader considerations of fairness. According to the Plaintiffs, it would be unfair to allow the Crown to add substantive defences which seek to quash portions of the Plaintiffs' claims based on the Plaintiffs' delay in asserting their legal rights, given the extraordinary delay of the Crown in seeking to assert its legal rights.

[42] With respect to timeliness of a motion to amend, the nearer to the end of a matter that an amendment is sought, the more cautious a Court ought to be in granting the amendment: *Canderel*, *supra* at paragraphs 12 and 13. There must be a legitimate expectation that there will be an end to the litigation such that a seemingly endless series of amendments should be discouraged.

[43] An extensive discovery phase was undertaken by the parties with reference to the pleadings and in contemplation of all of the claims being adjudicated before Justice Teitelbaum at the trial that commenced in 2000. Although the Crown may be criticized for overlooking legislative amendments that were made to the *FCA* and the *CLPA* for so many years, it remains that the Crown has consistently maintained that the Plaintiffs' causes of action arose in Alberta. Since the Plaintiffs have denied the allegation, asserting instead that if any limitation period applies, some or all of the causes of action arose in Ontario, it was reasonable for the Crown to assume that their pleadings were sufficient on their face to raise all of the issues related to the *situs* of the causes of action.

[44] In any event, the Crown's delay cannot be viewed in isolation and must be considered in the context of the procedural history of the proceedings. I note that the two actions have moved forward over the past two decades at a glacial pace. The parties have also made a number of amendments to their pleadings over the years.

[45] Moreover, the Plaintiffs' argument that they have been prejudiced by the delay is undermined by the fact that throughout the appeal process, the Plaintiffs have not advanced the remaining claims against the Crown, which include the oil and gas claims, the oil export tax / regulated pricing claim, the per capita distribution claim and Samson's programs and services claim.

[46] I note that when Mr. Justice Teitelbaum denied the Crown leave to make amendments relating to s. 39(2) of the *FCA* and the *OLA*, his primary concern was that the Plaintiffs had not had an opportunity to discover the Crown on the particular allegations, and it was simply too prejudicial to the Plaintiffs to allow the amendments after the close of evidence. However, in the case at bar, none of the remaining phases have proceeded to trial. Document production by both parties is ongoing and examinations for discovery have not been completed. In fact, both Samson and Ermineskin have recently advised the Court that they will require at least two or even three years for the completion of discoveries. Any evidence that Samson or Ermineskin might require to advance their own positions on the Crown's limitations defence can be obtained before the commencement of the next trial.

[47] I conclude that the proposed amendments to the Crown's Statements of Defence will not result in any serious prejudice to the Plaintiffs as examinations for discovery have not yet been concluded and, to the extent that discovery of any additional evidence detailing the geographic location of relevant events is required, such discovery should be rather limited.

[48] The most compelling factor that tilts in the Crown's favour is that the issue of limitations is a real and important question that will have to be addressed at trial, with or without the proposed amendments. No useful purpose would be served by deferring the issue of sufficiency of the pleadings to the trial judge.

[49] Throughout the course of the first two phases of the actions, the Plaintiffs were aware that the Crown was relying upon a six-year limitation period and that there was a live issue concerning

the *situs* of the cause of action. Since the closing arguments in the money management phases of the trial in December of 2004, at the very latest, the Plaintiffs have been fully aware of the Crown's reliance upon s. 39(2) of the *FCA* as an alternative argument. It was apparent from the parties' pleadings as a whole, and in particular the Plaintiffs' Replies, that the limitations issues engaged s. 39 of the *FCA* and either the Alberta or Ontario limitations legislation incorporated thereby. In the end, there is no "radical change in the nature of the questions in controversy" occasioned by the proposed amendments, but merely other alternative legal arguments being advanced based on exactly the same facts already in issue between the parties.

[50] During the 2005 amendment application, Samson argued that it would be prejudiced by the Crown's proposed amendments – a position subsequently adopted by Ermineskin. However, no evidence or explanation is provided as to why Samson failed to explore in discovery the question of whether the Crown's alleged breaches occurred only in Ontario, when their own Reply alleged that very position. There is also no evidence that the Plaintiffs sought particulars of the Crown's limitation defence or ever relied on the Crown's limitation defence to their detriment. Paradoxically, the Plaintiffs themselves have already placed in issue the geographic location of events and their causes of action.

[51] Taking all the relevant factors into account, and being substantially in agreement with the Crown's submissions, which I adopt and make mine, I conclude that it is in the interests of justice that the issues raised in the Crown's proposed amendments be fully canvassed at trial. The Crown's motion will therefore be granted.

[52] As a general rule, a party seeking an amendment should bear the costs of the motion, particularly when the amendments are required due to inadvertence. However, the Plaintiffs resisted this motion for leave to amend on the merits, not just as to terms. In the circumstances, I conclude that there should be no order of costs of this motion.

ORDER

THIS COURT ORDERS that:

1. The Defendants are granted leave to amend their Statements of Defence as proposed in Appendix 2 to their Memorandum of Fact and Law.

2. There shall be no order as to costs of the Defendants' motion.

"Roger R. Lafrenière"

Case Management Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-2022-89 and T-1254-92
STYLE OF CAUSE:	CHIEF VICTOR BUFFALO et al v HMTQ et al (T-2022-89) CHIEF JOHN ERMINESKIN et al v HMTQ et al (T-1254-92)
PLACE OF HEARING:	Calgary, Alberta
DATE OF HEARING:	February 29, 2012
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DATED:	February 27, 2013

APPEARANCES:

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Mary E. Comeau Raymond Chartier	FOR THE DEFENDANTS IN T-2022-89 and T-1254-92

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