

**Date: 20090121**

**Docket: A-326-07**

**Citation: 2009 FCA 13**

**Present: PELLETIER J.A.**

**BETWEEN:**

**EDNA BRASS, MARLENE BRASS, MAVIS BRASS, NICOLE BRASS,  
WANDA BREMNER, CAROL O'SOUP, FERNIE O'SOUP, GLEN O'SOUP,  
LUCY O'SOUP, LYNN O'SOUP, PERCY O'SOUP, PETER O'SOUP,  
SELWYN O'SOUP and GERALDINE WARDMAN  
each on their own behalf and on behalf of all members of the Key Band First Nation**

**Appellants**

**and**

**KEY BAND FIRST NATION,  
THE CHIEF AND COUNCIL OF THE KEY BAND FIRST NATION,  
THE MINISTER OF INDIAN AFFAIRS AND NORTHERN DEVELOPMENT  
and THE ATTORNEY GENERAL OF CANADA**

**Respondents**

Dealt with in writing without appearance of parties.

Order delivered at Ottawa, Ontario, on January 21, 2009.

**REASONS FOR ORDER BY:**

**PELLETIER J.A.**

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**Respondents**

**REASONS FOR ORDER**

**PELLETIER J.A.**

[1] This is a motion brought by the appellants' solicitors seeking leave to withdraw as solicitors of record. The appellants are fourteen individuals, "each on their own behalf and on behalf of all members of the Key Band First Nation". The notice of motion seeking the removal of the solicitors from the record was served on one Myrna Bushie, who is not a party. The explanation offered is that Myrna Bushie was the designated liaison between the appellants and their counsel. Counsel who

had carriage of this matter on behalf of the solicitors of record deposes that he does not know any of the appellants personally and does not have addresses for them. Counsel further deposes that, based on his past experience, he believes that the said Myrna Bushie will communicate the contents of the notice of motion to the appellants.

[2] The motion is brought under Rule 125 of the *Federal Courts Rules* SOR/98-106 which provides as follows:

125. (1) Where a solicitor of record ceases to act for a party and the party has not changed its solicitor of record in accordance with rule 124, the Court may, on a motion of the solicitor, order that the solicitor be removed from the record.

125. (1) Lorsque l'avocat inscrit au dossier ne représente plus une partie et que celle-ci n'a pas effectué le changement conformément à la règle 124, la Cour peut, sur requête de l'avocat, rendre une ordonnance de cessation d'occuper.

[3] This rule allows a solicitor who has ceased to act for a party to be removed from the record if the solicitor's client has not appointed a new solicitor in accordance with Rule 124. Rule 125 does not deal with the withdrawal of counsel from a retainer in circumstances where leave of the court is required, nor with the removal of counsel at the instance of another party on the basis of conflict of interest. The rule is clear that the motion contemplated by the rule may only be brought by the solicitor who has ceased to act.

[4] It is not clear whether this is an application to be removed from the record after the solicitor of record has advised the appellants of his intention to cease acting for them and no other solicitor has been appointed, or whether the solicitors of record believe that leave of the court is required in order for them to withdraw as solicitors for the appellants. Assuming that the motion results from

the failure of the appellants to appoint new solicitors, the rules regarding service which appear at Rule 125(2) apply. Those rules do not contemplate service as it was effected here. Since there has been no response to the notice of motion, this is not a case where service can be validated pursuant to Rule 147. Consequently, consideration of this motion will be adjourned until the solicitors of record file proof of service in accordance with Rule 125(2).

"J.D. Denis Pelletier"

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J.A.

**FEDERAL COURT OF APPEAL**

**NAMES OF COUNSEL AND SOLICITORS OF RECORD**

**DOCKET:** A-326-07

**STYLE OF CAUSE:** Edna Brass et al  
v. Key Band First Nation et al

**MOTION DEALT WITH IN WRITING WITHOUT APPEARANCE OF PARTIES**

**REASONS FOR ORDER BY:** PELLETIER J.A.

**DATED:** January 21, 2009

**WRITTEN REPRESENTATIONS BY:**

Ivan Holloway  
Luke R. Bernas

FOR THE APPELLANT

James Jodouin

FOR THE RESPONDENT  
KEY BAND FIRST NATION  
ET AL

Karen Jones

FOR THE RESPONDENT  
THE ATTORNEY GENERAL OF  
CANADA

**SOLICITORS OF RECORD:**

D'Arcy & Deacon  
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FOR THE APPELLANT

Bainbridge Jodouin Cheecham  
Saskatoon, SK

FOR THE RESPONDENT  
KEY BAND FIRST NATION  
ET AL

John H. Sims, Q.C.  
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FOR THE RESPONDENT  
THE ATTORNEY GENERAL OF  
CANADA