

In the Court of Appeal of Alberta

Citation: B.H. v. Metis Settlements (Appeal Tribunal), 2008 ABCA 344

Date: 20081023

Docket: 0803-0204-AC

Registry: Edmonton

Between:

B.H.

Applicant

- and -

**Metis Settlements Appeal Tribunal and
Kikino Metis Settlement Council**

Respondents

Restriction on Publication: No one may publish the name of a child or his parent concerned in any judicial proceedings under the *Child Welfare Act*. See the *Child Welfare Act*, R.S.A. 1970, c. 45, s. 13(4).

**Oral Reasons for Decision of
The Honourable Madam Justice Ellen Picard**

Application for Leave to Appeal the Decision of the
Metis Settlements Appeal Tribunal
Dated June 27, 2008

**Oral Reasons for Decision of
The Honourable Madam Justice Ellen Picard**

[1] The applicant seeks leave to appeal a decision of the Metis Settlements Appeal Tribunal (“Tribunal”) regarding membership in the Kikino Metis Settlement. His membership application was refused by the Settlement due to insufficient evidence of his Canadian aboriginal status, and his appeal to the Tribunal was dismissed on the same basis.

[2] The background to this is that the applicant lived on the Kikino Settlement (“Settlement”) for three years, from ages 11 to 14. He states that he only left because he was apprehended by Social Services and he would still be living there but for that intervention. The applicant also told the Tribunal that his mother and brother were members of the Settlement but conceded that their circumstances were unique and that he would not be relying on their membership status to make his own case for membership.

[3] Pursuant to s. 76 of the *Metis Settlements Act*, R.S.A. 2000, c. M-14 (“*MSA*”), applicants seeking membership in a settlement must submit satisfactory evidence of their aboriginal ancestry. The applicant’s parents were classified as “white” on his American birth certificate, but he submits this was only because the United States has no classification for Metis, only for treaty and non-status Indians. The applicant relied on the following materials to prove his aboriginal ancestry:

1. A handwritten genealogical record, prepared by his mother on the basis of a family bible, which purports to show that his great, great great-grandparents were aboriginals from Upper Canada;
2. Unsworn statutory declarations signed by two Metis elders attesting to his aboriginal ancestry, although no supporting facts are set out in those declarations.

[4] The Tribunal was not satisfied that the applicant had provided sufficient evidence to confirm his Canadian aboriginal ancestry, finding that the genealogical record was not reliable because it was not supported by any independent documentation, and that the declarations by the elders lacked the requisite supporting facts which are, indeed, required by s. 76(b)(ii) of the *MSA*.

[5] The Tribunal’s decision states that the applicant conceded at the hearing that he was not relying on the membership of his mother and brother in the Settlement but the applicant now says he wants that to be considered and argues that this should be a basis for granting leave.

[6] A thorough review of the record and of the Tribunal’s decision in this case shows that the Tribunal had the evidence before it. The decision of the Tribunal characterized those memberships as “unique”. Evidence of the relationships would also, of course, have been in the genealogical record.

[7] In these circumstances, nothing in the *MSA* requires a finding of membership for the applicant on the basis of the membership of his mother and/or brother. This was a factual evidence assessment that the panel could weigh along with other evidence, the genealogical record and the statutory declarations.

[8] Section 204 of the *MSA* confers a limited right to appeal a decision of the Tribunal to this Court on questions of law or jurisdiction, but only after leave has been obtained. That is what the applicant, of course, seeks here. The test for leave is whether the applicant has established “a reasonably arguable point of law or jurisdiction which could reasonably affect the result”: *Paddle Prairie Metis Settlement v. Ridsdale*, 1998 ABCA 252, 219 A.R. 81 at para. 5. Applicants must also establish that the issues would be of interest or use to the Appeal Tribunal or the public in the future: *Gift Lake Metis Settlement v. Metis Settlements Appeal Tribunal*, 2008 ABCA 43 at para. 3.

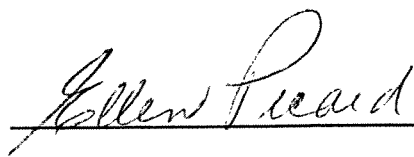
[9] The applicant wants this Court to re-consider the evidence that was before the Tribunal. He challenges the Tribunal’s findings with respect to the reliability of the evidence regarding his Canadian aboriginal ancestry; however, in doing so he is challenging questions of fact. The applicant has not raised any issues of law or jurisdiction, let alone any issues that could reasonably affect the results of the Tribunal’s decision that would be of interest or use to the Tribunal or the general public in the future.

[10] In the result, the applicant has failed to show any basis upon which I could grant leave and this application must therefore be dismissed.

Application heard on September 30, 2008

Reasons filed at Edmonton, Alberta
this 23rd day of October, 2008




Picard J.A.

Appearances:

J.L. Hutchison

for the Respondent Metis Settlement Appeal Tribunal

A.F. Jeffs for the Respondent Kikino Metis Settlement Council

Applicant In Person

IN THE COURT OF APPEAL OF ALBERTA

BETWEEN:

B. H.

Applicant

- AND -

METIS SETTLEMENTS APPEAL TRIBUNAL

AND

KIKINO METIS SETTLEMENT COUNCIL

Respondents

ORDER

BEFORE The Honourable Madam Justice) ON TUESDAY, THE 30th DAY OF
ELLEN PICARD) SEPTEMBER, 2008
JUSTICE IN CHAMBERS)
LAW COURTS BUILDING)
EDMONTON, ALBERTA)

UPON hearing the Applicant; AND UPON hearing Counsel for each of the Respondents;
IT IS HEREBY ORDERED THAT:


1. The Applicant's Application for Leave to Appeal from a decision of the Metis Settlements Appeal Tribunal, dated June 27, 2008 is dismissed;

A. WALTER

for REGISTRAR, COURT OF APPEAL

ENTERED this 10 day of November, 2008

S. Sturtevant
REGISTRAR OF THE COURT OF APPEAL
OF ALBERTA



Appeal No. 0803 0204 AC

IN THE COURT OF APPEAL
OF ALBERTA

BETWEEN:

B.H.

Applicant

- AND -

METIS SETTLEMENTS APPEAL TRIBUNAL

AND

KIKINO METIS SETTLEMENT COUNCIL

Respondents



ORDER

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