

In the Court of Appeal of Alberta

**Citation: Paddle Prairie Metis Settlement v. Alberta (Metis Settlements Appeal Tribunal),
2009 ABCA 178**

**Date: 20090508
Docket: 0803-0288-AC
Registry: Edmonton**

Between:

Paddle Prairie Metis Settlement

Applicant

- and -

**Metis Settlements Appeal Tribunal, Tom Parenteau,
Leo Parenteau and Ed Parenteau**

Respondents

**Reasons for Decision of
The Honourable Mr. Justice Peter Costigan**

Application for Leave to Appeal
the Decision of the Metis Settlements Appeal Tribunal
Dated the 29th day of September, 2008

**Reasons for Decision of
The Honourable Mr. Justice Peter Costigan**

[1] Paddle Prairie Metis Settlement (the “Settlement”) applies for leave to appeal a decision of the respondent Metis Settlements Appeal Tribunal (the “Tribunal”) which upheld the transfer of a Settlement lot and house to the respondent Leo Parenteau (“Leo”) and held that the Settlement did not have an effective interest in the lot or the house.

[2] Leave to appeal may be granted on a reasonably arguable question of law or jurisdiction which could reasonably affect the result so long as the question raises issues that will be of interest or use to the Tribunal or the public in the future: *B.H. v. Metis Settlements Appeal Tribunal*, 2008 ABCA 334 at para. 8, citing *Paddle Prairie Metis Settlement v. Ridsdale*, 1998 ABCA 252, 219 A.R. 81 at para. 5 and *Gift Lake Metis Settlement v. Metis Settlements Appeal Tribunal*, 2008 ABCA 43 at para. 3.

[3] The Settlement seeks leave to appeal on these four grounds:

- (1) Did the Tribunal err in interpreting the *Metis Settlements Land Registry Regulation*, Alta. Reg. 361/1991 (the “*Regulation*”) by concluding that the Settlement had no interest in the lot or house?
- (2) Did the Tribunal err in interpreting the *Regulation* by holding that it could not review a transfer of the affected land?
- (3) Did the Tribunal err in interpreting the descent of property provisions of the Metis Settlements General Council Land Policy (the “*Land Policy*”)?
- (4) Did the Tribunal fail to give adequate reasons for its decision?

[4] Robert Parenteau (the “deceased”) held title to the lot until he passed away in December 2004. The house on the lot was provided to the deceased by the Settlement pursuant to the terms of the Settlement Housing Program. The Settlement Housing Program provides, in part, that:

- in order to be eligible to receive a house under the Program, a member must be prepared to enter into an agreement that acknowledges the conditions of the Program;
- houses provided to senior citizen members cannot be sold;
- a member must notify the Settlement if the member intends to transfer or sell the member’s interest in a house received under the Program;

- the Settlement has the first option to purchase the member's interest in a house received under the Program; and
- members who receive an interest in land on which a house constructed under the Program is situated (pursuant to the descent of property provisions in the Land Policy and Land Management Bylaw) must fulfill all contractual obligations with the Settlement in relation to the house.

[5] On October 6, 2005, the respondent Tom Parenteau ("Tom"), land trustee for the deceased's estate, was registered as the title holder of the lot. Tom eventually transferred the lot and house to Leo, who was registered as the title holder of the lot on October 2, 2007.

[6] The respondent Ed Parenteau appealed the transfer of the lot to the Tribunal. The Settlement also objected to the transfer.

[7] At the Tribunal hearing, the Settlement asserted that it owned the house on the lot and that the house could not be transferred without its permission. The Settlement relied on s. 13 of the Settlement Housing Program which provides:

If a member is selling their interest in a unit received under the Settlement Housing Program, the Settlement has the first option to purchase the interest.

[8] The Tribunal dismissed the Settlement's objection in three paragraphs:

Unfortunately, the Settlement Council did not provide any further clarification as to what constitutes the "interest" over which the Settlement has the first right of purchase. Is the interest only the improvements, or the whole unit/house and underlying land? If it is the former, then the Settlement may indeed hold the underlying interest. However, if it is the latter, then the Settlement is in the untenable position of having the first right to buy back a house and land that it already owns.

In either event, all interests must be registered at the MSLR [Metis Settlements Land Registry] to be given effect (see section 104 of the *Metis Settlements Act*). In the case at hand, the MSLR shows that the Metis Title interest is held by Leo Parenteau. There does not appear to be any reservations, or limitations on that interest.

Other than the Settlement Housing Program, Settlement Council did not bring this Panel's attention to any parts of the Land Policy, or other legislation concerning the granting or holding of interests in Settlement lands.

[9] On the first ground of appeal, the Settlement says the Tribunal misinterpreted the *Regulation* by holding that the Settlement has no rights in respect of the lot and house because it has no registered interest in them. The Settlement argues that, under other land registration systems,

interests are not created by registration, they are created by instruments. According to the Settlement, registration simply establishes priority. The Settlement says s. 104 of the *Metis Settlements Act*, R.S.A. 2000, c. M-14 (the “*Act*”), which provides that any instrument registered under the *Land Titles Act*, R.S.A. 2000, c. L-4 has no effect unless registered under the *Regulation*, does not support the Tribunal’s conclusion. The Settlement argues that the precise nature of the Settlement’s interest, if any, in the lot and house and the effect of lack of registration under the *Regulation* are important issues.

[10] On the second ground of appeal, the Settlement argues that, although it is not clear from the Tribunal’s reasons, the Tribunal may have treated this matter as a dispute over priority. If that is the case, the Settlement says the Tribunal effectively abdicated its decision-making role by finding that the registered transfer of the lot ended the dispute. According to the Settlement, the Tribunal did not consider the issue before it which was whether Tom could transfer the lot and house to Leo over the objection of the Settlement.

[11] On the third ground of appeal, the Settlement says the Tribunal’s decision suggests that the descent of property provisions in the Land Policy trump interests in, or contractual obligations regarding, Settlement land created by a deceased member. The Settlement says this raises an important issue about how the provisions of the Land Policy ought to be interpreted.

[12] On the fourth ground of appeal, the Settlement argues that the Tribunal’s reasons are inadequate to illuminate the pathway to its conclusions.

[13] The Tribunal is the only respondent that filed materials in response to, and appeared at the hearing of, the Settlement’s leave application. It argued that the proposed grounds of appeal should be reviewed on the reasonableness standard and that they do not have a reasonable prospect of success if this standard is applied. The Tribunal advanced no argument on the merits of the issues raised by the proposed grounds of appeal but suggested, without specificity, that some of the issues may not have been raised before the Tribunal. It also sought guidance as to the scope of its involvement in the proposed appeal should leave be granted.

[14] The applicable standard of review on appeal may be a factor in assessing whether the proposed grounds of appeal are arguable. The Settlement says the grounds raise issues of statutory interpretation reviewable on the correctness standard. The Tribunal asserts that it was interpreting its enabling statute and, therefore, its decision should be reviewed on the reasonableness standard. In my view, the standard of review applicable to the proposed grounds of appeal is arguable and should not be determined at the leave stage in this case.

[15] The proposed grounds of appeal are arguable and could reasonably affect the result. They raise important issues of law relating to the creation, registration and enforcement of competing interests in land under the *Act*, the *Regulation*, the Land Policy and the Settlement Housing Program. I am unable to ascertain from the return the extent to which the grounds may raise fresh issues. I note that none of the parties were represented by legal counsel before the Tribunal and that the

record is sparse given the important issues raised in this application. The freshness of the issues may be a factor to be considered by the panel that hears the appeal but I am not satisfied that it is a basis for denying leave to appeal on this record. The test for leave to appeal is met on all four proposed grounds.

[16] The Tribunal points out that it may be the only respondent to argue the appeal and seeks guidance on the scope of its participation. Although the involvement of the tribunal appealed from is ordinarily limited, full participation may be granted where the appeal raises important issues that would benefit from more than a one-sided argument: *Elizabeth Metis Settlement v. Metis Settlements Appeal Tribunal*, 2004 ABCA 418 at para. 22.

[17] I grant leave to appeal on the grounds set out in para. 2 of these reasons. I direct that the Tribunal may file a full respondent's factum on all four grounds of appeal as well as the appropriate standard of review. Subject to a direction to the contrary from the panel assigned to hear the appeal, I direct that the Tribunal may address full oral argument. These directions may be reconsidered if other respondents decide to participate in the appeal.

Application heard on May 5, 2009

Reasons filed at Edmonton, Alberta
this 8th day of May, 2009

Costigan J.A.

Appearances:

D.R. Noel, Q.C.
for the Applicant

J.L. Hutchison
for the Respondent, Metis Settlements Appeal Tribunal

Respondent T. Parenteau (not present)

Respondent L. Parenteau (not present)

Respondent E. Parenteau (not present)