

Elizabeth Metis Settlement. v. Larocque, 1998 ABCA 192

Date: 19980615
Docket: 9603-0296-AC

IN THE COURT OF APPEAL OF ALBERTA

TRANSCRIPT OF ORAL REASONS
FOR DECISION OF THE HONOURABLE
MR. JUSTICE FOISY

IN THE MATTER OF THE *METIS SETTLEMENT ACT*, BEING
CHAPTER M-14.3 STATUTES OF ALBERTA, 1990;
AND IN THE MATTER OF AN APPLICATION FOR LEAVE TO APPEAL A
DECISION OF THE METIS SETTLEMENTS APPEAL TRIBUNAL
CANCELLING
A PROVISIONAL METIS TITLE TO 10 ACRES WITHIN THE N.W. 1/4
SECTION 27,
TOWNSHIP 58, RANGE 1, WEST OF THE 4TH MERIDIAN, HELD BY TAMMY
LAROCQUE COMPENSATION FOR THE ABOVE PARCEL OF LAND;

BETWEEN:

ELIZABETH METIS SETTLEMENT

Applicant

- and -

TAMMY LAROCQUE, RANDY CARDINAL AND
THE METIS SETTLEMENTS APPEAL TRIBUNAL

Respondents

APPEAL FROM THE METIS SETTLEMENTS APPEAL TRIBUNAL

APPEAL NO. 9603-0296-AC

COUNSEL:

C.M. Zukiwski
for the Applicant

P.E.J. Prentice
P. McClusky
for the Respondents

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[1] I am now prepared to render my decision. The remarks that I am about to make are limited of course to the application of this particular case. Circumstances change from case to case and the role of the Tribunal before this court may also change.

[2] *Northwestern Utilities Ltd. et al v. the City of Edmonton*, [1979] 1 S.C.R. 684 has been cited. The applicant argues that we start with that decision, meaning that normally a board is to appear in a consultative role and not to take an active part before this court. That is a policy consideration defined by the Supreme Court and, unless there is a valid reason for not doing so, should be followed.

[3] Firstly, I point to the fact that in *Northwestern Utilities, supra* the legislation was such that the Public Utilities Board only had a right to be heard. The statute here is much broader and provides that the Tribunal is to be made a respondent both before the court in a leave application and on an appeal. The Board is also entitled to be represented by counsel. This gives some reason to depart from the policy considerations of the Supreme Court in *Northwestern Utilities, supra*. I am supported in this conclusion by *Major Mack Hotel v. Liquor Licence Board (Ont.)* (1994), 76 O.A.C. 326.

[4] Further, I think a very important consideration in this matter is that the only respondent which has filed material and which has appeared before the court in this case is the Tribunal. The other two respondents have not filed any material and have not appeared before the court. It is obvious that barring something entirely unforeseen they will not be here today, and they will probably not be present when the leave application, and if leave is granted, the appeal is heard.

[5] In the result, it would mean that this court would receive argument and information from one side, that is from the applicant's side, and the proceeding would become in effect an *ex parte* proceeding. That is neither beneficial to the court nor fair to the other parties involved.

[6] Accordingly, I would distinguish *Northwestern Utilities, supra* and subsequent cases which have held that short of an *ab initio* jurisdictional dispute, boards and tribunals are not to fully participate.

[7] In this case and on these facts, I am of the view that the Tribunal should, at this level, and before a full panel of the court, if the matter proceeds to that level, be allowed to fully participate. And I so order.

APPEAL HEARD ON JUNE 4, 1998
at EDMONTON, Alberta