# In the Court of Appeal of Alberta

**Citation: Elizabeth Metis Settlement v. Metis Settlements Appeal Tribunal, 2004 ABCA 418**

**Date:** 20041222
**Docket:** 0403-0354-AC
**Registry:** Edmonton

**Between:**

**Elizabeth Metis Settlement**

Applicant

- and -

**Metis Settlements Appeal Tribunal**

Respondent

- and -

**Hazel Vicklund, Peavine Metis Settlement, Judy Willier and Minister of Justice and Attorney General of Alberta**

Other Parties

0403-0352-AC

**Between:**

**Minister of Justice and Attorney General of Alberta**

Applicant
(Intervener)

- and -

**Hazel Vicklund**

Respondent
(Appellant)

- and -

**Peavine Métis Settlement**

Respondent
(Respondent)

**- and -**

**Judy Willier**

Respondent
(Affected Party)

**- and -**

**Métis Settlements Appeal Tribunal**

Respondent

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

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Application for Leave to Appeal

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

[1] Both of these applications are for leave to appeal Metis Settlements Appeal Tribunal (MSAT) Order No. 160 confirming the decision of the Peavine Metis Settlement granting membership to Judy Willier. One applicant is the Minister of Justice and Attorney General of Alberta (the government), and the other is Elizabeth Metis Settlement. MSAT is the only respondent that has filed materials.

[2] These applications raise three issues:

1. Should leave to appeal be granted to the government?

2. Should leave to appeal be granted to Elizabeth Metis Settlement or should it be made a party to the government's appeal?

3. What role should MSAT play in the appeal?

**Test for leave to appeal**

[3] Section 204(1) of the *Metis Settlement Act*, R.S.A. 2000, c. M-14 says:

> 204 (1) An appeal from a decision of the Appeal Tribunal on a question of law or a question of jurisdiction lies to the Court of Appeal after leave to appeal has been obtained.

[4] The standard of review on an application for leave to appeal is "whether or not the applicant can establish a reasonably arguable point of law or jurisdiction which could reasonably affect the result": ***Paddle Prairie Metis Settlement v. Metis Settlement Appeal Tribunal*** (1998), 219 A.R. 81 at para. 5 (C.A.). The test has also been stated as "In order to be granted leave the applicants must raise serious and arguable points of law or jurisdiction": ***Paramount Resources Ltd. v. Metis Settlement Appeal Tribunal (ELLAP)*** (1999), 250 A.R. 233 at para. 4 (C.A.).

**Should leave to appeal be granted to the government?**

[5] The government has raised serious and reasonably arguable points of law with respect to MSAT's application of the *Charter*. Indeed MSAT and Elizabeth Metis Settlement do not challenge this conclusion.

[6] I grant the government leave to appeal on the following issues:

1. Did MSAT err in law in finding that s. 75(2)(a) of the *Metis Settlement Act* infringes upon s. 15(1) of the *Charter*?

2. Did MSAT fail to properly consider and apply subsection 15(2) of the *Charter* in its analysis?

3. Did MSAT err in its application of s. 1 of the *Charter*?

**Should leave to appeal be granted to Elizabeth Metis Settlement?**

[7] The decision appealed from is a decision respecting an application for membership to Peavine Metis Settlement. Elizabeth Metis Settlement is a separate settlement which submits it is adversely affected by MSAT's decision respecting the constitutionality of s. 75(2)(a) of the *Metis Settlements Act*. Elizabeth Metis Settlement therefore seeks leave to appeal the decision, or, in the alternative, seeks to be added as a party to the government's appeal.

[8] The applicant Elizabeth Metis Settlement adopts the government's grounds of appeal. In addition, it submits that MSAT erred in deciding this issue without notice to Elizabeth Metis Settlement, and that MSAT failed to consider s. 25 of the *Charter*.

[9] The *Metis Settlements Act* is silent on who may appeal a decision by MSAT. Elizabeth Metis Settlement submits in its written materials that it has standing to appeal on three bases.

[10] First, Elizabeth Metis Settlement submits that it should have been a party to the hearing before MSAT. This is the ground it emphasized in its oral submissions. Elizabeth Metis Settlement relies on the following section of the *Metis Settlement Act:*

> 84(1) On receipt of an appeal under section 83, the Appeal Tribunal must hold a hearing after giving everyone it considers affected by the appeal reasonable notice of the date, time and place of the hearing.

[11] Elizabeth Metis Settlement argues that it is affected by the decision that part of the *Metis Settlement Act* is unconstitutional and that therefore it should have been given notice of the hearing and should have been permitted to make representations on this issue.

[12] MSAT submits that the statute requires it only to give notice to everyone directly affected by the appeal. Otherwise, submits MSAT, every member of every Metis Settlement in Alberta would have been entitled to notice of the hearing.

[13] The effect of MSAT's decision on Elizabeth Metis Settlement is limited as MSAT's decision does not constitute binding precedent: see ***Cuddy Chicks Ltd. v. Ontario (Labour Relations Board)***, [1991] 2 S.C.R. 5. If an individual who is ineligible for membership because of s. 75(2)(a) of the *Metis Settlement Act* applies for membership to Elizabeth Metis Settlement, Elizabeth Metis Settlement can deny the application. If the applicant appeals, Elizabeth Metis Settlement will have access to a fresh hearing before MSAT on the constitutionality of s. 75(2)(a), and will be permitted to make representations at that time.

[14] I find that Section 84(1) did not entitle Elizabeth Metis Settlement to become a party to the hearing of this matter before MSAT, nor does it entitle Elizabeth Metis Settlement to appeal MSAT's decision.

[15] Second, Elizabeth Metis Settlement submits that it is an aggrieved party. It argues that it should be recognized by the court as an aggrieved party because the tribunal has adopted a rule of law that will adversely affect Elizabeth Metis Settlement. However, the authority it relies on, ***Mackie v. Wolfe*** (1995), 169 A.R. 309 (C.A.), is a case where this court said that the ground described supports an application for intervenor status. Standing to intervene is not the same as standing to appeal a decision.

[16] I find that Elizabeth Metis Settlement is not an aggrieved party because, as discussed above, it is not directly affected by MSAT's decision. Its concerns should be dealt with in an application to be made an intervener.

[17] Finally, Elizabeth Metis Settlement suggests that it has public interest standing. The court will not grant public interest standing where there is another reasonable and effective way to bring the issue before the court: see ***Canadian Council of Churches v. Canada (Minister of Employment and Immigration)***, [1992] 1 S.C.R. 236. As Elizabeth Metis Settlement acknowledges, this issue has already been brought before the court by the government. Therefore, I will not grant public interest standing.

[18] MSAT and the government accept that the concerns of Elizabeth Metis Settlement support a consideration of it as an intervener. I am not in a position to grant Elizabeth Metis Settlement intervener status at this hearing because applications for intervener status must be made before a panel of this court, not a single justice. Should Elizabeth Metis Settlement wish to act as an intervener in the government's appeal, it may apply to a panel of this court for intervener status. That would be the appropriate forum for the Elizabeth Metis Settlement to argue that the appeal be expanded to include the s. 25 *Charter* issue and the issue of whether the statute requires MSAT to give notice of a hearing such as this one to Metis Settlements who are not directly affected parties.

[19] Elizabeth Metis Settlement's application for leave to appeal and its application to be added as a party to the government's appeal are denied on the basis that it is not a proper party to the appeal. However, Elizabeth Metis Settlement may apply to a panel of this court for intervener status in the government's appeal.

**What role should MSAT play in the appeal?**

[20] MSAT, in its submissions, has requested guidance from the court with respect to its role in the appeal. Pursuant to s. 206 of the *Metis Settlement Act*, MSAT must be named as a respondent to the appeal and is entitled to be represented by counsel.

[21] In ***Northwestern Utilities Ltd. v. Edmonton (City)***, [1979] 1 S.C.R. 684 the Supreme Court of Canada adopted the policy that when a tribunal has a statutory right to be heard in an appeal of its decision, it should limit its argument to jurisdiction, as aggressive argument on the merits might undermine the tribunal's impartiality in future cases.

[22] Appeals from MSAT are not necessarily subject to this policy, as the statute requires that MSAT be named as a respondent and can be represented by counsel on appeals from its decisions. In this case, MSAT may be the only respondent making submissions at the appeal. The government, MSAT and Elizabeth Metis Settlement agree that this important appeal should not be in the nature of a one-sided proceeding. This appeal involves *Charter* issues and the court will require full representations on an adversarial basis. Therefore, MSAT may make full representations in this appeal. Should Elizabeth Metis Settlement be granted intervener status, it will be for that Court to define its role in the appeal. In coming to this decision I am assisted by the comments in ***Sheckter v. Alberta (Planning Board)*** (1979), 14 A.R. 492 (C.A.) and ***Elizabeth Metis Settlement v. Laroque*** (1998), 219 A.R. 36 (C.A.).

**Conclusion**

[23] I grant the government's application for leave to appeal. I deny Elizabeth Metis Settlement's application for leave to appeal or to be made a party to the appeal. MSAT may make full representations as a respondent in this appeal.

[24] Judy Willier, who was granted membership, and Hazel Vicklund, who appealed that decision should continue to receive notice of all proceedings in spite of the fact that they took no part in these applications.

Application heard on December 14, 2004

Reasons filed at Edmonton, Alberta
this 22nd day of December, 2004

Picard J.A.

**Appearances:**

T.R. Owen
for the Applicant Elizabeth Metis Settlement

R.S. Maurice
for the Respondent Metis Settlements Appeal Tribunal

M.A. Unsworth
for the Minister of Justice and Attorney General of Canada

S.K. Dhir
for Peavine Métis Settlement