Kikino Metis Settlement v Metis Settlements Appeal Tribunal, 2013 ABCA 151

On April 29, 2013, the Alberta Court of Appeal decided that the Metis Settlements Appeal Tribunal (MSAT) erred in its interpretation and application of the expression "substantial agreement" in Order 226 of August 31, 2011, and ordered that MSAT's decision be reversed and the matter returned for a rehearing.

The Court considered two specific questions:

1. Did MSAT err in law in relation to the level of deference owed to a Settlement Council decision in addressing an issue of descent under the *Land Policy?*
2. Did MSAT err in law in relation to the interpretation and application of the expression 'substantial agreement' as contained in section 7.13(1)(d) of the *Land Policy*?

The Court's decision was not unanimous. In the majority decision, the presiding judges found that it was not necessary to give a final answer on the first question, because MSAT dealt with a new and different issue than that considered by the Settlement Council. Furthermore, the majority decision concluded that MSAT's interpretation of 'substantial agreement' was unreasonable on the grounds that for an agreement to be substantial it would require more than a bare majority. In the view of the judges, a 'substantial agreement' would be one where there was agreement among all parties on the major issues with slight disagreements on minor questions. In addition to this, the Court found that even if MSAT were to be correct in its interpretation, its final decision was still inadequate because MSAT failed to implement the agreement.

The dissenting judge considered the same questions and found no issue with MSAT's lack of deference to the Settlement Council decision. In considering the second question, the judge agreed that MSAT was correct in its interpretation of "substantial agreement." However, since MSAT could not implement this agreement (unlike Settlement Councils, MSAT lacks the authority to subdivide land), MSAT should have followed either section 7.13(1)(e) or 7.13(1)(f) of the *Land Policy*. As such, the dissenting judge concluded that although MSAT may not have erred in the interoperation of 'substantial agreement,' it did err in its application.

> **Background:** Willie Pruden owned two quarter sections of land at Kikino Metis Settlement (KMS). He died without leaving estate instructions, meaning that his estate had to be distributed in accordance with an agreement reached by his six heirs (Willie had seven children, but one of them made no claim to the land, as he already owned the maximum amount of land allowed). On March 10, 2011, KMS decided upon a certain distribution of the estate. This decision was appealed to MSAT by three of the siblings. When the matter was brought to a hearing before a panel of MSAT, four of the six siblings reached an agreement on a distribution of the estate. MSAT interpreted this to constitute a 'substantial agreement' as per 7.13(1)(d) o the *Land Policy*. MSAT, however, found the 'substantial agreement' impractical and concluded that the estate be distributed based on the "principles underlying the agreement".