

In the Court of Appeal of Alberta

Citation: Martineau v. Metis Settlement Appeal Tribunal, 2004 ABCA 63

Date: 20040220
Docket: 0303-0279-AC
Registry: Edmonton

Between:

Cheryl Martineau

Respondent
(Respondent)
(Appellant)

- and -

Allan Martineau

Applicant
(Appellant)
(Respondent)

- and -

Paddle Prairie Metis Settlement

Respondent
(Respondent)
(Affected Party)

- and -

Metis Settlement Appeal Tribunal

Respondent

**Oral Reasons for Decision of
the Honourable Mr. Justice Côté**

Application for Leave to Appeal from Decisions 154
and 155 of the Metis Settlement Appeal Tribunal

**Oral Reasons for Decision of
the Honourable Mr. Justice Côté**

[1] This is an application by Allan Martineau to appeal from two different decisions, Nos. 154 and 155, of the Metis Settlement Appeal Tribunal. By statute that requires leave of a judge of a Court of Appeal.

[2] The application is out of time, but the statute permits me to extend time. It is readily conceded by Mr. Maurice, in a very fair way, that there is no evidence of prejudice; and he does not make much of the delay. It is alleged that the respondent Tribunal knew within the 45 days that leave would be sought, and indeed a Notice of Appeal was filed within that time. Accordingly, I extend time to seek leave to appeal.

[3] I can only give leave to appeal on a question of law or jurisdiction. The case law says that must be an arguable question, and one of some general interest to others. Otherwise there is little point in having the Court of Appeal consider the question a second time. There might be circumstances where something very important to the parties might be the subject of leave, but ordinarily it should be of general interest to the public, or the community, or of interest in other matters likely to arise in the future.

[4] I cannot see any general question of law or jurisdiction flowing from decision No. 154, which cancelled a Notice of Interest which Allan Martineau had filed. Therefore, I do not give leave there.

[5] It is also suggested that leave should be given from both decisions because there was inadequate notice to Allan Martineau of the matter pending before the Appeal Tribunal, and of the precise date of hearing, and the Tribunal denied a late application for an adjournment.

[6] Again, I cannot see any general question of law or jurisdiction that would be of interest or use to the public or the Tribunal in future, and, therefore, I reject that as a ground of appeal.

[7] That then leaves us with the question of the merits of decision No. 155, which sub-divided out from an allotment to Allan Martineau a comparatively small piece of land under and immediately surrounding a house which the Council had provided. I will give leave to appeal there, and I define the question of law as follows.

[8] Where there is an unexpired allotment of land, and the holder of the allotment has not objected to the Settlement Council's building a house on the allotment for some other person, and that has been done, has the Metis Settlement Appeal Tribunal the power to take away a portion of the allotment without compensation, and give it to one of the occupants of that house, if the holder of the allotment has committed no other breach of the terms of the allotment?

[9] It has been pointed out that the Metis Settlement Appeal Tribunal is not named as a respondent, though the legislation calls for it to be a respondent, and I will order it added as a respondent. Notice of the grant of leave to appeal should be given by Mr. Willier formally to Cheryl Martineau, and to the Paddle Prairie Metis Settlement.

[10] Costs of the application today will be left to be awarded by the panel which hears the appeal.

(Discussion with counsel.)

Côté J.A.:

[11] I believe that Notice of Appeal has already been filed. If you have not already done so, you should serve it on Cheryl Martineau and the Paddle Prairie Metis Settlement, and upon the Metis Settlement Appeal Tribunal.

(Further discussion with counsel re room to leave some other remedy.)

Côté J.A.:

[12] I do not want to go beyond the question I stated. The appeal will be confined to that question.

Application heard on February 18, 2004

Reasons filed at Edmonton, Alberta
this 20th day of February, 2004

Côté J.A.

Appearances:

W.L. Willier
for the Appellant Allan Martineau

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

Respondent (Respondent) (Appellant) Cheryl Martineau not represented

Respondent (Respondent) (Affected Party) Paddle Prairie
Metis Settlement not represented