

*Indexed as:*

**Paramount Resources Ltd. v.  
Metis Settlement Appeal Tribunal**

**IN THE MATTER OF Metis Settlement Act, S.A. 1991 Chap. M-143  
as amended; Metis Settlement Tribunal**

**Between**

**Paramount Resources Ltd., applicant, and  
Metis Settlements Appeal Tribunal, Metis Settlements General  
Council, Elizabeth Metis Settlement, Transwest Energy Inc.,  
Jordan Petroleum Ltd., Reserve Royalty Corporation, and  
Altagas Services Inc., respondents**

**And between**

**Elizabeth Metis Settlement, claimant, and  
Transwest Energy Inc., Jordan Petroleum Ltd., Reserve Royalty  
Corporations, Paramount Resources Inc. (sic) and Altagas  
Services, corporate respondents, and  
Metis Settlements General Council, respondent**

[1998] A.J. No. 1453

1998 ABQB 1102

Action No. 9801-13271

Alberta Court of Queen's Bench  
Judicial District of Calgary

**Wilkins J.**

December 21, 1998.

(14 pp.)

**Statutes, Regulations and Rules Cited:**

Metis Settlements Act, S.A. 1990, c. M-14.3, ss. 180, 184, 185(1), 186, 186(1), 187, 187(f1), 187(4), 189, 189(1)(f), 190(1)(o), 204, 204(1), 208.

*Indians, Inuit and Metis -- Lands -- Lease of lands -- Practice -- Appeals -- Metis Settlements Appeal Board (Alta.) -- Administrative law -- Judicial review -- Jurisdictional issues -- Bars -- Alternate remedy.*

This was an application by Paramount Resources for an order prohibiting the respondent Metis Settlement Appeal Tribunal from hearing an application submitted by the respondent Elizabeth Metis Settlement. The respondent Transwest Energy held mineral leases in the Settlement. The respondent

Reserve Royalty acquired all of the shares of Transwest. Paramount provided financing to Reserve for the share purchase. In return, Paramount received the right to a large block of mineral leases. These included the leases in the Settlement. At the time the leases were assigned to Paramount, a framework agreement was in place between Transwest, the Settlement and the Metis Settlements General Council. There was a further agreement between Transwest and the respondent Altagas Services governing the processing facilities for the leases. The Settlement and the General Council consented to this agreement. In the Altagas agreement, disputes were to be decided by the Tribunal. In the framework agreement, disputes were to be decided by a different Metis tribunal. The Settlement refused to consent to the assignment of the leases. It claimed that Transwest violated the framework agreement since it did not provide notice of the sale or an opportunity to bid. Paramount was unable to resolve this dispute with the Settlement. The Settlement then applied to have the dispute resolved by the Tribunal. This resulted in this application by Paramount.

HELD: Application dismissed. The issue of the Tribunal's jurisdiction to hear the Settlement's application was to be determined by the Tribunal. The legislature set up a comprehensive statutory scheme in the Metis Settlements Act to enable the Metis people to govern their own relationships in matters that concerned their land. The Act contained a privative clause. It clearly indicated the intent of the legislature that the Tribunal was to be shown deference by the court. The court was not entitled to lightly interfere with the Tribunal's right to determine its own jurisdiction. The Tribunal's jurisdiction had to be found in the Act. However, at this stage, it did not have to be proven that the Tribunal had jurisdiction. It sufficed if there was some ground which could give the Tribunal jurisdiction. There were grounds upon which the Tribunal could decide it had jurisdiction over the Settlement's application. The Act gave the Tribunal jurisdiction if all of the parties agreed in writing. Both agreements gave dispute-resolution jurisdiction to Metis-constituted tribunals. Although the agreements referred to different tribunals, the Act regarded the different tribunals as part of the Tribunal. The court was satisfied that the legislative regime in the Act provided an adequate alternative remedy to Paramount. In the event of an error in law or jurisdiction Paramount could resort to the appeal procedure of the Act. The court was therefore not entitled to exercise its discretion to prohibit the determination by the Tribunal of the exercise of its jurisdiction.

#### **Counsel:**

R.A. Coad, Q.C. and T.L. Campbell, for Paramount Resources Ltd.  
 P.E.J. Prentice and P.R. McCluskey, for Metis Settlements Appeal Tribunal.  
 T.R. Owen, for Elizabeth Metis Settlement.  
 G.N. Stapon, for Transwest Energy Inc., Jordan Petroleum Ltd. and Reserve Royalty Corporation.

### REASONS FOR JUDGMENT

**1 WILKINS J.:**-- This is an application for an order prohibiting the Metis Settlements Appeal Tribunal (the "Tribunal") from hearing an application dated September 15, 1998 submitted by the Elizabeth Metis Settlement (the "EMS"). The Tribunal has not decided whether or not it has jurisdiction to hear the application, nor has it made a decision on the merits of the application.

#### FACTS

**2** Transwest Energy Inc. ("Transwest") was the holder of mineral leases (the "Leases") relating to lands located within the EMS boundaries. In 1997 Transwest entered into a series of complex commercial transactions with several other corporations. Jordan Petroleum Ltd. ("Jordan") purchased all

of the shares of Transwest. Reserve Royalty Corporation ("Reserve") agreed to purchase all of Jordan's shares. Paramount Resources Ltd. ("Paramount") agreed to provide financing of \$71.68 million to Reserve to assist that company with its purchase of shares and in turn received the right to a large block of mineral leases including those on the EMS lands. All the Leases were assigned to Paramount in December 1997. At the time the Leases were assigned to Paramount, a Framework Agreement was in place between Transwest, the EMS, and the Metis Settlements General Council (the "Framework Agreement").

3 EMS refused to consent to the assignment of leases and novation in favour of Paramount alleging breaches by Transwest of the Framework Agreement for failure to provide notice of the sale or an opportunity to bid. Without acknowledging any breach of the agreement, Paramount attempted to negotiate a resolution of these concerns with the EMS but was unable to do so. EMS then brought an application to have this dispute resolved by the Tribunal. Paramount launched the present application to prohibit the Tribunal from undertaking any inquiry as to its jurisdiction or the merits of the application.

## ISSUES

4 The issues raised by this application are these:

1. Does the Tribunal have jurisdiction to hear the application by virtue of the legislation by which it was established?
2. Should the discretion of this Court be exercised in favour of Paramount to determine the question of the jurisdiction of the Tribunal before it has undertaken a hearing?

## BACKGROUND INFORMATION

5 The parties agree that for the purpose of this application Reserve, Jordan and Transwest are all bound by the Framework Agreement. Altagas, though named as a party to the application and represented at the hearing, made no submissions.

6 The Framework Agreement contains the following clauses:

7.2 Notice of Sale - If Transwest decides to sell the mineral leases it holds for the Settlement area, Transwest shall give the Settlement notice of the proposed sale and a full and equal opportunity to bid for the mineral leases.

7.3 Assignment - Transwest shall not assign or convey the rights given under this Agreement without first obtaining the written consent of the Settlement, such consent not to be unreasonably withheld.

7.11 Dispute Resolution - If a dispute arises under this Agreement and we are not able to resolve it, any one of us can refer the dispute to the Tribunal for final resolution by the Tribunal.

The Framework Agreement defines "Tribunal" as the "Metis Settlements Appeal Tribunal Existing Leases Land Access Panel" ("ELLAP").

7 In December 18, 1997, Transwest notified the EMS of its desire to transfer its interest on the Framework Agreement to Paramount. It advised that the transfer was a part of a corporate reorganization of Jordan and was not subject to the bidding process under clause 7.2 of the Framework Agreement. Transwest requested that EMS consent to the assignment, pursuant to clause 7.3. Transwest and Paramount executed a novation agreement on December 18, 1997, novating Paramount into the Framework Agreement. EMS has refused a request to consent to that novation.

8 On December 18, 1997, Paramount sent a letter to the EMS entitled "Notice of Purchase Opportunity". This letter advised that Transwest had disposed of its interests in the Leases to Paramount effective October 1, 1997. In this correspondence, Paramount said that although the opportunity to bid provision in the Framework Agreement may not apply in the circumstances, it was prepared to allow the EMS to acquire the interests in the Leases which Paramount had purchased. Paramount offered to sell the Leases for the sum of \$19,700,000, which was the amount which Paramount had attributed to those Leases in the acquisition from Transwest. The EMS responded with a counter-offer, and indicated that they wished to bid on a ten percent portion of the Leases. Further negotiations ensued, but eventually broke down.

9 There was a further agreement referred to in this application. In 1996, Transwest entered into an agreement with Altagas Services Inc. ("Altagas") which transferred the processing facilities of the Leases, including pipelines and a compressor station. The EMS and the General Council consented to this transfer, and entered into a separate Framework Agreement between Altagas, the EMS and the General Council (the "Altagas Agreement"), which contains the following clause:

7.9 Dispute Resolution - If a dispute arises under this Agreement and we are not able to resolve it, any one of us can refer the dispute to the Tribunal for final resolution by the Tribunal.

This agreement defines "Tribunal" as the Metis Settlements Appeal Tribunal.

10 This agreement may be relevant to the within motion because Altagas is named as a Respondent in the EMS application. In that application, the EMS alleges:

the Altagas Framework Agreement is ancillary to and in aid of the Framework Agreement with Transwest, and it is an implied term of both Framework Agreements that Altagas was the agent of Transwest for the purposes of exploring for, developing, operating and profiting from the Leases, and it is bound by the terms of the Transwest Framework Agreement.

#### STATUTORY FOUNDATION FOR THE METIS SETTLEMENTS APPEAL TRIBUNAL

11 It is necessary to consider an overview of the legislative structure of the Metis Settlements Appeal Board. The Legislature has developed a unique legislative regime which is intended to assist the Metis people in achieving self sufficiency and local autonomy [Bell, Alberta's Metis Settlements Legislation: An Overview of Ownership and Management of Settlement Lands (Regina: Canadian Plains Research Centre, 1994)]. Although there are several acts within this legislative regime, the governing legislation

in this case is the Metis Settlements Act, S.A. 1990, c. M-14.3 (the "MSA"). The MSA creates the Tribunal, defines its jurisdiction, and prescribes the powers and procedures of the Tribunal.

**12** Section 180 of the MSA establishes the Metis Settlements Appeal Tribunal. Section 189 of the MSA sets out the scope of the Tribunal's responsibilities. The provision which is relevant to this application is section 189(1)(f):

189. (1) The Appeal Tribunal

- (f) may decide differences or disputes between a settlement and one or more settlement members or persons who are not members if all parties involved in the difference or dispute agree in writing that the Tribunal should decide the matter.

**13** Section 184 of the MSA permits the Tribunal to set up panels, and details the membership of those panels. Section 185 (1) provides:

185 (1). A panel of the Appeal Tribunal may exercise and perform all the powers and duties of the Tribunal and a reference to the Tribunal in this Act or any other enactment is also a reference to a panel of the Tribunal.

**14** Sections 186 and 187 establish the Land Access Panel (LAP), and the Existing Land Leases Access Panel (ELLAP) respectively. Pursuant to section 186(1):

186 (1). The Metis Settlements Appeal Tribunal Land Access Panel is established.

- (2) The Land Access Panel consists of at least 3 members of the Appeal Tribunal appointed to the Panel by the Appeal Tribunal chairman with the concurrence of the Minister and the General Council.
- (3) The Land Access Panel is a panel of the Appeal Tribunal.

...

**15** Pursuant to section 187(1):

187(1). The Metis Settlements Appeal Tribunal Existing Leases Land Access Panel is established. ...

- (4) The Existing Leases Land Access Panel is a panel of the Appeal Tribunal and its members are members of the Appeal Tribunal, but
  - (a) a member of the Existing Leases Land Access Panel may not sit on other panels of the Appeal Tribunal unless the person is also appointed to the appeal Tribunal under section 180;
  - (b) members of the Existing Leases Land Access Panel are appointed for such term of office as the person appointing them specifies, but can be reappointed;
  - (c) the person appointing the panel member may terminate the appointment;
  - (d) panel members may resign by giving written notice to the Existing Leases Land Access Panel chairman, and the Existing Leases Land Access Panel chairman may resign by giving written notice to the Appeal

Tribunal chairman.

**16** Pursuant to section 187(4):

187(4). The Existing Leases Land Access Panel is a panel of the Appeal Tribunal and its members are members of the Appeal Tribunal...

**17** Reference should also be made to section 208 of the MSA:

208. Except as otherwise provided,

- (a) every decision of the Appeal Tribunal is final, and
- (b) no decision of the Appeal Tribunal may be questioned, reviewed, restrained or removed by prohibition, injunction, certiorari or any other process or proceedings in a court.

**17a** Section 204(1) sets out the process for reviewing any decision of the Tribunal:

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.

[The Court did not number this paragraph. QL has assigned the number 17a.]

## PARTIES' POSITIONS

### Paramount's Position

**18** Paramount takes the position that this Court should decide whether the Tribunal has jurisdiction to hear the EMS application. It argues that it is more convenient for the Court to make this determination as the only issue is one of statutory interpretation. Further, it is clear that there are no grounds upon which the Tribunal could take jurisdiction.

**19** Paramount's first argument is based on convenience, both procedural and practical. It suggests that it is procedurally convenient to have this Court determine whether the Tribunal has jurisdiction. When deciding whether the Court should exercise its discretion to grant prohibition, an important consideration is whether it is convenient to have a point of law determined before further expenses and effort are expended pursuing the issue before the tribunal. The facts in this case are uncontradicted and as such are not in dispute. The questions which need to be answered should be categorized as clear questions of law, and involve statutory and contractual interpretation. The Court is a proper forum within which to resolve these types of issues. As for practical convenience, the parties have already expended time and effort making submissions to the Court. Further, most of the parties or their counsel reside in Calgary, and it would be inconvenient to leave the city to make substantially the same submissions before the Tribunal. Therefore, Paramount concludes that it would be expedient and proper for the Court to make a decision on the issue of jurisdiction. Paramount argues it should not be obliged to go through a full hearing for the Tribunal to obtain a determination of the issue of jurisdiction.

**20** Paramount also says that the Court should grant the order prohibiting the Tribunal from hearing the EMS Application as there are no grounds upon which the Tribunal could take jurisdiction. As this is a statutory tribunal created by the MSA, its jurisdiction must be found within the four corners of that legislation. Paramount submits that the MSA does not give the Tribunal jurisdiction to hear the issues raised in the EMS application.

**21** Paramount concedes that the court must take a pragmatic and functional approach when interpreting statutory provisions which confer jurisdiction. In *U.E.S. Local 298 v. Bibeault*, [1988] 2 S.C.R. 1048, it was held that pragmatic and functional approach requires the Court to consider the following four factors:

- i) the purpose of the statute creating the tribunal;
- ii) the reason for the tribunal's existence;
- iii) the area of expertise of the tribunal's members; and
- iv) the nature of the problem before the tribunal.

**22** Paramount argues that the purpose of the MSA is to accommodate Metis aspirations of securing their land base, gaining local autonomy and achieving self-sufficiency. The reason for the Tribunal's existence is to deal with matters of membership in Metis settlements and access to land on Metis settlements. Paramount says that the MSA does not grant the Tribunal the jurisdiction to deal with all legal claims which may be connected to patented lands. It suggests that the EMS application involves issues which fall outside of jurisdiction granted to the Tribunal under the MSA, as it relates not to access to lands, but rather to the interpretation of a commercial arrangement related to the ownership of the mineral rights to lands. Paramount argues that the form and substance of the EMS application indicate that the issues raised are outside the jurisdiction of the Tribunal. The application in form states itself to be a statement of claim. The relief claimed by EMS is well beyond the power of the Tribunal to grant and far beyond anything the parties could be said to have anticipated in the dispute resolution provisions of the Framework Agreement.

**23** These issues are outside of the general jurisdiction which the Act gives to the Tribunal. Finally, the members of the Tribunal do not have special expertise in the area of interpretation of complex commercial agreements, which is the basis of the issues in this case. Having regard to all of the factors from *Bibeault*, supra, the Court should order that the Tribunal be prohibited from hearing the EMS application.

**24** Paramount indicates that since the MSA does not give the Tribunal inherent authority to deal with all legal issues involving the EMS, the Court must determine whether the Tribunal can take jurisdiction under specific provisions of the Act. It submits that the only provision which may give the Tribunal jurisdiction over the EMS application is section 189(1)(f), which provides that the Tribunal may decide differences or disputes between a settlement and one or more settlement members or persons who are not members if all parties involved in the difference or dispute have agreed in writing.

**25** Paramount says that the EMS application is outside the scope of section 189(1)(f). The relationship between Transwest and the EMS is governed by the Framework Agreement. As the Framework Agreement supercedes all previous agreements, (including the 1994 Framework Agreement referred to in the EMS application), the EMS must rely on its provisions to establish that the parties have agreed in writing to submit disputes to the Tribunal. This raises several issues: i) the parties have not agreed to send disputes to the Tribunal; they have agreed to send disputes to ELLAP; ii) not all of the parties to the application are all parties to the Framework Agreement; and iv) there is no dispute which would trigger the dispute resolution clause in the Framework Agreement.

- (i) Paramount says that the Framework Agreement does not refer disputes to the Tribunal, rather, disputes arising from the Agreement are to go to the Existing Leases Land Access Panel (ELLAP). Only the Altagas Framework Agreement refers disputes to the actual Metis Settlements Appeal Tribunal, and only Altagas and the EMS are parties to that

Agreement. As the EMS application is directed to the Tribunal, it is not made pursuant to the dispute resolving body stipulated in the Framework Agreement.

- (ii) Not all of the Respondents named in the EMS application are parties to the Framework Agreement. Transwest was a party to the Framework Agreement, and then assigned all of its interests to Paramount. Although Paramount was novated into this agreement by Transwest, the EMS refused to consent to the novation. If the EMS is correct and the novation was invalid, there are no grounds for saying that Paramount has agreed to send any matters to the Tribunal for resolution. It follows that if the novation was valid, Transwest is not a party to the agreement. Either way, not all of the parties have agreed in writing and the Tribunal cannot take jurisdiction.
- (iii) Paramount also argues that even if the parties have agreed to submit any disputes to the Tribunal, no difference or dispute has arisen which would trigger the dispute clauses. The elements which arise out of the Framework Agreement are whether there has been a breach of clause 7.2. The issues which have been raised in this regard are whether the Metis had a full "opportunity to bid" if there is a sale of the mineral leases; and whether there has actually been a sale which would trigger the bidding rights. Paramount says that the uncontroverted facts are that there was no sale of the Leases as they were part of a corporate reorganization, and in any event the Metis were given an opportunity to bid on the Leases. As there has been no breach of the Framework Agreement there is no dispute which would trigger the dispute resolution clause, and the Tribunal cannot take jurisdiction under section 189(1)(f) of the MSA.

**26** Transwest and Jordan support Paramount's submissions.

#### Reserve's Position

**27** Reserve adopts the arguments of Paramount and further states that no fair reading of the dispute resolution clause can give the Tribunal jurisdiction to grant the relief requested in the EMS application.

**28** Reserve points out that the authority of ELLAP is to be found in the provisions of Part 2 of the MSA dealing with patented lands. Division 7 of that part relates to ACCESS TO PATENTED LANDS. In section 114, ELLAP is authorized to consider matters relating to new or additional surface rights issues affecting existing mineral leases. Reserve argues that this is the only portion of the MSA which confers authority upon ELLAP to make decisions relating to settlement lands. That authority is limited to granting right of entry orders and determining compensation for access rights on lands the subject of existing leases.

**29** The provisions of Part 7 which establish the Tribunal and its panels, including ELLAP, do not confer any additional authority upon ELLAP.

**30** Reserve argues that the proper interpretation of both the MSA and the Framework Agreement leads to the conclusion that the dispute resolution provisions are restricted to access issues.

**31** The nature of the claims advanced by EMS in its application and the relief sought clearly fall within the historic jurisdiction of the superior courts of this province. Only clear and unequivocal language can remove that jurisdiction from the courts. The MSA does not contain such language nor



does it even purport to clothe the Tribunal or ELLAP with powers. The dispute resolution provision of the Framework Agreement must also be found to be insufficiently mandatory to give that jurisdiction to the Tribunal or ELLAP.

### The Tribunal's Position

**32** The Tribunal submits that when the jurisdiction of an administrative tribunal is in question, the starting point is to examine the legislative scheme that sets out the powers and limits on the tribunal's authority. It agrees that the Court should take a purposive and functional approach when interpreting the legislative provisions that govern a tribunal's jurisdiction.

**33** The Tribunal says that the legislative scheme clearly indicates that the legislature intended to confer broad authority on the Tribunal to determine the extent of its jurisdiction in the first instance. There is a comprehensive privative clause in section 208 of the MSA, which states that no decision of the Appeal Tribunal may be restrained or removed by prohibition or any other proceedings in a court. As such, the Tribunal argues that the Court cannot grant the Applicant's request for prohibition as the MSA specifically says that no decision of the Tribunal may be enjoined.

**34** Further, section 204 provides that the Tribunal's decision may be appealed to the Court of Appeal on a question of law or jurisdiction, with leave. The Tribunal argues that when these provisions are read in conjunction with one another it is clear that the legislature intends for the Tribunal to make the initial decision on its jurisdiction, which is subject to appeal if it errs in doing so. The Tribunal submits that the Court should give effect to the plain meaning of the privative clause and exercise its discretion to deny the Applicant's motion allowing the Tribunal to decide whether or not it has jurisdiction to hear the EMS application.

**35** Alternatively, if the Court finds that section 208 of the MSA does not expressly preclude Paramount from bringing an application for prohibition, the Court must decide whether the Court should exercise its discretion to grant prohibition.

**36** In *Canadian Pacific Ltd. v. Matsqui Indian Bank* (1995), 122 D.L.R. (4th) 129 (S.C.C.), the Court held that when determining whether or not to exercise its discretion to grant judicial review, regard should be had to the following:

- i) the legislative scheme which establishes the tribunal under review and the policy issues underlying that scheme;
- ii) whether the issue falls within the terms of reference;
- iii) whether the tribunal provides an adequate forum within which to resolve the issues in dispute; and
- iv) what appeal procedures are available.

**37** The Tribunal agrees that the purpose of the legislative scheme includes the goals to which Paramount has referred, but states that there are other objectives as well. Other goals of the legislative regime are to give significant control over Metis land to Metis people; to recognize the Metis tradition of collective ownership and consensus decision making; and to provide the Metis people with the tools and resources to strive towards economic independence. The Tribunal plays an important role in the furtherance of these purposes and functions, and the Court will undermine the legislative intention underlying the Metis Settlements legislative regime by placing limitations on the Tribunal.

**38** The Tribunal states that the issues fall within the terms of reference of the Framework Agreement, in that the parties have agreed that issues arising out of the Agreement should be submitted to the Tribunal. This will be further discussed below in the summary of the EMS's argument.

**39** The Tribunal submits that the third factor from *Matsqui*, supra, is also satisfied as the Tribunal is an adequate forum for the dispute. It has wide fact finding powers, and it has a broad remedial power pursuant to section 190(1)(o) of the MSA:

190 (1)The Appeal Tribunal may, in respect of any matter before it, ...

(o) provide any remedy that, in all the circumstances, fairness requires.

Further, the right of appeal in section 204 indicates that the Tribunal is an adequate alternative forum to resolve the dispute between these parties.

**40** The Tribunal submits that when all of these considerations are taken into account, the conclusion which ought to be reached is that this Court should not exercise its discretion to prohibit the Tribunal from deciding the question of jurisdiction.

**41** In addition, the Tribunal disputes Paramount's assertion that the only issues to be resolved are clear questions of law based on undisputed facts. It suggests that the complex nature of the commercial transactions and the legislative scheme of the MSA each give rise to a number of difficult legal issues. It also agrees with the EMS's submission discussed below that the facts are not clear, as there are internal inconsistencies in the affidavits filed by Paramount.

**42** The Tribunal argues that it has the powers to conduct a full hearing into all of the questions which arise. It also argues that the members of the Tribunal panels have the requisite expertise to deal with the types of issue raised in the EMS application. Pursuant to the MSA, members of Tribunal panels are appointees from a number of different groups. This gives the panels diverse backgrounds which enable them to deal with the many different issues which come before it. In any event, the MSA does not limit the sorts of issues which the Tribunal can hear, which indicates that the Legislature intends for the Tribunal to hear any matter which is referred to it under the MSA.

#### The EMS's Position

**43** The EMS takes the position that Transwest has agreed in writing to refer any disputes arising under the Framework Agreement to the Appeal Tribunal. As any rights claimed by Paramount in the Leases arise from an assignment of the interest of Transwest under the Framework Agreement Paramount is also bound by the dispute resolution clause in that Agreement which refers disputes exclusively to the Tribunal.

**44** The dispute resolution clause in the Framework Agreement does not restrict the scope of the type of dispute which may be referred to the Tribunal, and as such any dispute arising over the interpretation or application of the Agreement may be brought before it. The EMS submits that there are clearly differences or disputes which arise out of the Agreement. The Settlement has alleged breaches of the Transwest and Altagas Framework Agreements. The Applicants deny any such breaches. Herein lies a dispute which the parties have agreed must be resolved by reference to ELLAP.

**45** The EMS submits that the issues in dispute go beyond mere questions of law, and suggests that there are questions of fact in dispute as well. Although it has not challenged Paramount's evidence by way of cross examination or further affidavits, the EMS says that there are facts in dispute nonetheless, which is evident in Paramount's own evidence. For example, Paramount states that the opportunity to bid clause was not triggered because there was no sale of the assets, only a corporate reorganization. However, Exhibit "N" to the September 30, 1998 affidavit of Charles Morin, which is correspondence from Reserve to the EMS, indicates that "Transwest Energy Inc. sold its entire interest in the Agreement

and the lands, leases and wells pertaining thereto to Paramount Resources Ltd. effective October 1, 1997. ..." This contradicts Paramount's assertion that the opportunity to bid clause was not triggered as the Leases were not the subject of a sale. Counsel for the EMS also provided other examples of potential internal conflicts within Paramount's affidavit evidence which I do not propose to discuss, other to indicate that there are other alleged evidentiary conflicts.

**46** Both the Tribunal and the EMS submit that the Tribunal should not be prohibited from deciding whether it has jurisdiction over the EMS application.

## DISPOSITION

**47** I find that the issue of the Tribunal's jurisdiction to hear the application filed by the EMS should be determined by the Tribunal itself. It is clear that the legislature has set up a comprehensive statutory scheme to enable the Metis people to govern their own relationships in matters concerning their lands. The privative clause in section 208 is a clear indication that the legislative intent is that the Tribunal be shown deference by the Court, and that the Court should not lightly interfere with the Tribunal's right to determine its own jurisdiction.

**48** I agree that the Tribunal's jurisdiction must be found somewhere within the MSA. However, at this stage it need not be proven that the Tribunal has jurisdiction, rather, it suffices that there is some ground upon which may give the Tribunal jurisdiction over this matter. I find that there are grounds upon which the Tribunal may decide that it has jurisdiction over the EMS application.

**49** Section 189(1)(f) gives the Tribunal jurisdiction if all of the parties agree in writing. Altagas has agreed to refer disputes to the Tribunal in the Altagas Agreement. Clearly the EMS, Transwest (and by implication, Reserve and Jordan) agreed in the Framework Agreement to refer disputes to ELLAP. It may be that Paramount is bound by this provision by the assignment and novation agreement with Transwest. I need not decide that issue, as this is a question that the Tribunal will have to contend with in its determination of jurisdiction.

**50** Similarly it will be for the Tribunal to decide whether it or ELLAP has the jurisdiction to grant the relief claimed by the EMS. The Tribunal will have to decide whether a proper construction of the MSA and Framework Agreement necessarily limits ELLAP to disputes relating only to access to patented land matters.

**51** I do not accept Paramount's argument that as the Framework Agreement specifies ELLAP rather than the Tribunal as the forum for dispute resolution, the Tribunal itself has no jurisdiction to hear the present application directed to it. Section 185 of the MSA provides that a panel of the Tribunal has all of the same powers as the Tribunal, and any references to the Tribunal should be treated as references to the panel. Section 187(4) of the MSA states that ELLAP is a panel of the Tribunal. Reading the legislation as a whole, ELLAP, as a panel of the Tribunal, has the same powers as the Tribunal. Therefore, the parties have agreed to refer disputes to ELLAP, a panel of the Tribunal. The EMS application to the Tribunal can be found to be a reference to ELLAP.

**52** It is the conclusion of this Court that the legislative regime set out by the MSA and related enactments clearly provides an adequate alternative remedy to Paramount. That remedy is to make its submissions on jurisdiction to that Tribunal as part of the process to be undertaken by the Tribunal. In the event of an alleged error on a point of law or jurisdiction Paramount can then access the appeal procedure set out in the MSA.

**53** This is not an appropriate case for the Court of Queen's Bench to determine an issue of jurisdiction at the outset on judicial review as an adequate and effective right of appeal is statutorily provided.

**54** The words of Côté J.A. in a recent Memorandum of Judgment on this issue are compelling to this Court. In the case of *McManus et al v. Inspector Dunn et al* (9 December 1998) Calgary, 17252 (Alta. C.A.) he states:

There is a statutory right of appeal to the Law Enforcement Review Board here. What was earlier a discretion, appears in the later years to have hardened into a firm rule, that the courts will not entertain judicial review in the circumstance where the person seeking it would have an effective right of appeal to a different body, or to anybody.

**55** In addition it is the conclusion of this Court that the present application does not fall within the exception to that rule identified in the line of cases from *Bell v. Ontario Human Rights Commission*, [1971] S.C.R. 756. I find that this application cannot properly be said to only involve a consideration of a clear question of law, not dependent on particular facts which may permit the Court to exercise its discretion on judicial review even where an adequate remedy of appeal is otherwise provided.

**56** In this case there are multiple issues to be decided, such as:

1. Do the transactions described by Paramount constitute an assignment or conveyance by Transwest of rights under the Agreement?
2. Has EMS unreasonably withheld consent to such an assignment?
3. Is there a dispute between the parties to the Framework Agreement as defined in 7.11?
4. Is Paramount a party to the Framework Agreement by virtue of the assignment and novation agreement between Transwest and itself or by virtue of its claim to rights in the existing mineral leases on settlement lands?
5. Is there a principal/agency relationship between Altagas as operator and Transwest or Paramount as holder of mineral leases?

**57** There is conflict in the affidavit evidence filed on this application which precludes acceptance of the Paramount argument that the facts are undisputed. The description by Reserve in their letter to EMS dated March 31, 1998 indicates a sale by Transwest to Paramount of all its interests in the Framework Agreement and the lands, leases and wells pertaining thereto.

**58** There is no proper basis to exercise the discretion of this Court to prohibit the determination by the Tribunal of the limits of its own jurisdiction in the exceptional circumstance described in the *Bell v. Ontario Human Rights Commission* line of cases.

**59** I am not satisfied that the grounds for the remedy of prohibition sought by the Applicant have been established.

**60** Paramount's application is dismissed with costs to the Respondents.

WILKINS J.

cp/d/kjm/DRS