

Kikino Métis Settlement (appellant/respondent) v. Métis Settlements Appeal Tribunal (respondent/administrative tribunal) and Métis Settlements General Council and Métis Settlements Land Registry (not a party to the appeal/affected party/other party) and Ernest Pruden, Luke Pruden, Terrence Pruden and Barry Pruden (not a party to the appeal/affected party/respondents) and Sheila Pruden, Rocky Pruden and Loretta Pruden (not a party to the appeal/affected party/appellants)
(1103-0259-AC; 2013 ABCA 151)

Indexed As: Kikino Métis Settlement v. Métis Settlements Appeal Tribunal

Alberta Court of Appeal
Martin, Slatter and McDonald, J.J.A.
April 29, 2013.

Summary:

Pruden owned two quarter sections of land (farm quarter and home quarter) on the Kikino Métis Settlement. He died without leaving estate instructions under s. 7.6 of the Métis Settlements General Council Land Policy. Since Pruden's wishes were not known, and he did not have a spouse, his estate stood to be distributed in accordance with any agreement of his heirs, i.e., his seven children. The Council attempted to arrange a meeting of the potential heirs, or a mediation, in order to ascertain the wishes of the potential heirs, but those efforts were unsuccessful. The Council directed a distribution. Three heirs appealed to the Métis Settlements Appeal Tribunal. The Appeal Tribunal found that by the time the dispute reached it, there was a "substantial agreement" among the beneficiaries, which invoked s. 7.13(1)(d) of the Land Policy, because four out of six heirs had now agreed on a solution. While the Land Policy then dictated that the estate should be distributed in accordance with the "substantial agreement", the Appeal Tribunal concluded that the proposed distribution was impractical. The Appeal Tribunal concluded that the estate should be distributed based on the "principles underlying the agreement" and proposed its own distribution. The Council appealed.

The Alberta Court of Queen's Bench allowed the appeal.

Indians, Inuit and Metis - Topic 809

Personal or legal rights - General - Wills and estates - Pruden owned two quarter sections of land (farm quarter and home quarter) on the Kikino Métis Settlement - He died without leaving estate instructions under s. 7.6 of the Métis Settlements General Council Land Policy - Since Pruden's wishes were not known, and he did not have a spouse, his estate stood to be distributed in accordance with any agreement of his heirs, i.e., his seven children - The Council attempted to arrange a meeting of the potential heirs, or a mediation, in order to ascertain the wishes of the potential heirs, but those efforts were unsuccessful - The Council directed a distribution - Three heirs appealed to the Métis Settlements Appeal Tribunal - The Appeal Tribunal found that by the time the dispute reached it, there was a "substantial agreement" among the beneficiaries, which invoked s. 7.13(1)(d) of the Land Policy, because four out of six heirs had now agreed on a solution - While the Land Policy then dictated that the estate should be distributed in accordance with the "substantial agreement", the Appeal Tribunal concluded that the proposed

distribution was impractical - The Appeal Tribunal concluded that the estate should be distributed based on the "principles underlying the agreement" and proposed its own distribution - The Council appealed - At issue was, inter alia, whether the Appeal Tribunal erred in law in relation to the level of deference, if any, owed to a Council decision by the Appeal Tribunal in addressing an issue of descent of Métis title under the Land Policy - The Alberta Court of Appeal, per Slatter and Martin, J.J.A., found that it was not necessary, nor was it advisable, to give a final answer to this question - See paragraphs 9 to 14 - McDonald, J.A., stated that "[t]his court has not yet had the occasion to determine what is the proper standard of review to be employed by the Tribunal when hearing an appeal from a Council decision dealing with an issue of descent of Métis title under the Land Policy. In my view, little deference is owed by the Tribunal when dealing with this issue, thereby suggesting a standard of correctness" - McDonald, J.A., would have held that the Tribunal did not err in law when it accorded no deference to the decision of Council on the issue of descent of Métis title under the Land Policy - See paragraphs 41 to 55.

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McDonald, J.A., held that it was clear that the Tribunal's decision did not meet the standard of reasonableness - While the Tribunal's finding that the agreement proffered to it on the day of the hearing was indeed a "substantial agreement" within the meaning of s. 7.13(1)(d) of the Land Policy, its decision that it could not be implemented and that another result altogether be implemented was flatly contradictory and blatantly failed to implement the "substantial agreement" as found by it - See paragraphs 56 to 64.

Indians, Inuit and Métis - Topic 5403

Lands - General - Devolution of lands - [See both **Indians, Inuit and Metis - Topic 809**].

Indians, Inuit and Metis - Topic 6240.7

Government - Métis Nation - Métis Settlements Appeal Tribunal - [See both **Indians, Inuit and Metis - Topic 809**].

Cases Noticed:

Newton v. Criminal Trial Lawyers' Association (Alta.) et al. (2010), 493 A.R. 89; 502 W.A.C. 89; 2010 ABCA 399, rehd to. [para. 9].

New Brunswick (Board of Management) v. Dunsmuir, [2008] 1 S.C.R. 190; 372 N.R. 1; 329 N.B.R.(2d) 1; 844 A.P.R. 1; 2008 SCC 9, rehd to. [para. 10].

Alberta Teachers' Association v. Information and Privacy Commissioner (Alta.) et al., [2011] 3 S.C.R. 654; 424 N.R. 70; 519 A.R. 1; 539 W.A.C. 1; 2011 SCC 61, rehd to. [para. 49].

Spinks v. Law Enforcement Review Board (Alta.) et al. (2011), 505 A.R. 260; 522 W.A.C. 260; 2011 ABCA 162, rehd to. [para. 49].

R. v. Teskey (L.M.), [2007] 2 S.C.R. 267; 364 N.R. 164; 412 A.R. 361; 404 W.A.C. 361; 2007 SCC 25, rehd to. [para. 50].

Stemijon Investments Ltd. v. Canada (Attorney General) (2011), 425 N.R. 341; 2011 FCA 299, rehd to. [para. 50].

Jacobs Catalytic Ltd. v. International Brotherhood of Electrical Workers, Local 353 et al. (2009), 255 O.A.C. 201; 2009 ONCA 749, rehd to. [para. 50].

Counsel:

M.M. Conroy and E.L. Jackson, for the appellant;

J.L. Hutchison, for the respondent.

This appeal was heard on November 27, 2012, by Martin, Slatter and McDonald, J.J.A., of the Alberta Court of Appeal. The memorandum of judgment of the Court of Appeal was delivered on April 29, 2013, and included the following opinions:

Slatter, J.A. (Martin, J.A., concurring) - see paragraphs 1 to 22;

McDonald, J.A., concurring in the result in part - see paragraphs 23 to 64.

Appeal allowed.

Editor: Anick Ouellette-Levesque

Indians, Inuit and Métis - Topic 5403

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