

In the Court of Appeal of Alberta

Citation: Elizabeth Metis Settlement v Metis Settlements Appeal Tribunal, 2026 ABCA 236

Date: 20260713

Docket: 2503-0239AC

Registry: Edmonton

Between:

Elizabeth Metis Settlement

Applicant

- and -

**Metis Settlements Appeal Tribunal, Derek Anderson as litigation representative for the
Estate of Palma Anderson, Irene Zimmer, and Canadian Natural Resources Limited**

Respondents

**Reasons for Decision of
The Honourable Justice Tamara Friesen**

Application for Permission to Appeal

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[1] The Elizabeth Metis Settlement seeks to appeal a Metis Settlements Appeal Tribunal decision. The Appeal Tribunal found it had statutory authority to hear a surface lease compensation dispute between the Settlement and one of its members and ordered the Settlement to compensate the member.

[2] Permission to appeal is granted on the question set out below.

Background

[3] In 1999, the Elizabeth Metis Settlement entered into a surface lease agreement with Canadian Natural Resources Limited (CNRL) for a well-site and access road on a particular parcel of land. When Palma Anderson, a member of the Settlement, obtained a Provisional Metis title to the parcel in 2002, the surface lease agreement was not updated. Despite Ms Anderson's new interest, CNRL continued to make annual payments directly to the Settlement. In 2014, the Settlement began providing some annual compensation to Ms Anderson.

[4] Before her passing in 2024, Ms Anderson initiated an appeal to the Appeal Tribunal, alleging the Settlement owed her surface lease compensation for use of her lands between 2002 and 2013. As she had passed away before the hearing, her interests were represented at the Appeal Tribunal by her son, Derek Anderson.

[5] At the Appeal Tribunal hearing, the Settlement argued the Appeal Tribunal did not have authority to order it to pay compensation under either ss 119 or 121 of the *Metis Settlements Act*, RSA 2000, c M-14. The Appeal Tribunal agreed it did not have authority under ss 119 or 121, but found it did have authority pursuant to s 118(2).

[6] The Settlement argued that Elizabeth Metis Settlement Compensation Payment for Surface Rights Bylaw #2001-03 (Amended) and four Surface Rights Payment Policies (payment policies) governed surface rights payments and entitled it to keep the compensation paid by CNRL. The Appeal Tribunal rejected this argument. The Appeal Tribunal noted it had already determined Bylaw #2001-03 was invalid in its prior decision, Order 298. Further, interpreting the *Metis Settlements Act* and Metis Settlements General Council policy, the Tribunal concluded that the policies relied on by the Settlement were not bylaws and could not be relied on for the purpose of determining compensation payable to members. Settlements cannot take any action that is inconsistent with a Metis Settlements General Council policy. Because s 3.7 of the Metis Settlements General Council Mineral Projects Policy required a Settlement bylaw to divert

compensation from a member to a Settlement, and because no such bylaw had been validly passed by the Elizabeth Metis Settlement, Ms Anderson was entitled to some compensation.

[7] The Appeal Tribunal refrained from ordering the Settlement to pay out all the money it had received under the surface lease agreement; instead, considering Ms Anderson's delay in bringing her claim and the Settlement's financial challenges, the Appeal Tribunal ordered two years' worth of payments for the period Ms Anderson did not receive compensation. The Appeal Tribunal also repealed the four Surface Rights Policies relied on by the Settlement, and "confirmed" its prior finding that #2001-03 (Amended) was invalid and of no effect.

Legal Test for Permission to Appeal the Appeal Tribunal's Decision

[8] Section 204(1) of the *Metis Settlements Act* provides that an appeal from a decision of the Appeal Tribunal on a question of law or jurisdiction lies to the Court of Appeal after permission to appeal has been obtained. A judge hearing a permission to appeal application may grant permission, direct which persons or other bodies must be named as respondents to the appeal, specify the questions of law or jurisdiction to be appealed, and make an order as to costs, all pursuant to s 205. Finally, s 206 requires the Appeal Tribunal to be named as a respondent to the appeal if permission is granted.

[9] The test for permission to appeal requires applicants to identify questions of law or jurisdiction which are reasonably serious and arguable, could reasonably affect the result or be of interest or use to the eight Metis Settlements, the Metis Settlements Appeal Tribunal or the public in the future: *Noskey v Metis Settlements Appeal Tribunal*, 2022 ABCA 54 at para 5.

Analysis

[10] The Settlement argues permission to appeal should be granted on the questions of whether the Appeal Tribunal erred in its interpretation of s 118(2) of the *Metis Settlements Act*, whether it erroneously took jurisdiction, whether it erroneously ruled on the validity of the Settlement bylaw and other Settlement policies, and ultimately, whether it erred by ordering the Settlement to compensate Ms Anderson.

[11] The Settlement argues that while s 118(2) gives the Appeal Tribunal authority to make compensation orders, the statutory definition of compensation orders found in s 111(c)(i) limits the Appeal Tribunal to ordering "an operator" to pay compensation. As CNRL was the operator here, the Appeal Tribunal did not have the authority to order the Settlement to compensate Ms Anderson. Further, the Settlement argues that the Appeal Tribunal did not have authority under s 118(2) because per s 189(1)(f) of the *Act*, the Appeal Tribunal only has authority to hear disputes between a Settlement and a Settlement member if both agree in writing to take their matter before the Appeal Tribunal and there was no such agreement in this case. Without deciding on the merits of these arguments, I am satisfied that these are reasonably arguable questions of law as they

required the Appeal Tribunal to interpret their governing statute and further, that the outcome in this case would be affected if the Settlement succeeds on appeal.

[12] Further, this Court's determination on the various issues of statutory interpretation raised by the Settlement could have a significant impact on what matters may be heard by the Appeal Tribunal moving forward and would be of interest to members of all the Metis Settlements. The Appeal Tribunal stated it provides quasi-judicial services to Settlement members in a way that is both user-friendly and culturally appropriate. Members of all the Metis Settlements who have a surface lease compensation dispute with their Settlement have an interest in knowing whether the Appeal Tribunal can hear their claim or whether they need to take their dispute to court.

[13] The Settlement also argues that the Appeal Tribunal's analysis of the validity and applicability of Bylaw #2001-03 (Amended) and the payment policies compounded its jurisdictional error and resulted in an erroneous compensation award. The Settlement has not raised a reasonably arguable question of law in respect of the Appeal Tribunal's conclusion that Bylaw #2001-03 (Amended) was invalid and permission to appeal that issue is denied. The Tribunal's analysis on this point simply notes that it had already found the Bylaw to be invalid in its 2016 decision, Order 298. The Settlement's application for permission to appeal this aspect of the Tribunal's decision appears to be an attempted collateral attack on that prior decision; nothing in the Settlement's materials suggests it sought permission to appeal Order 298. Administrative decisions should be challenged "through the appeal or judicial review mechanisms that are intended by the legislature". The Settlement should not be permitted to "circumvent the appropriate review mechanism" by challenging the Appeal Tribunal's prior finding that the Bylaw was invalid in this proceeding: *British Columbia (Workers' Compensation Board) v Figliola*, 2011 SCC 52 at para 34. Parties and the public must be able to rely on the finality of administrative decisions: *Figliola* at paras 27-28, 34.

[14] The Settlement has also failed to articulate any independent arguable question of law with respect to the payment policies. This sub-issue was not explored deeply in the Settlement's materials, and I decline to grant permission to appeal on this point as a separate question as proposed by the Settlement. However, to the extent that the alleged statutory interpretation error on which permission was granted above engages questions related to the payment policies, the Settlement may argue this matter in that context.

Decision

[15] Permission to appeal is granted on the following question of law:

- (a) Did the Appeal Tribunal err in law in finding s 118(2) of the *Metis Settlements Act* gave it statutory authority to order the Elizabeth Metis Settlement to pay Ms Anderson surface lease compensation?

[16] The Appeal Tribunal and Derek Anderson as litigation representative for the Estate of Palma Anderson will be respondents on the appeal. While the late Palma Anderson was originally named as a respondent in this application, Derek Anderson was subsequently appointed litigation representative for her estate for the purpose of this proceeding. At the Appeal Tribunal, Irene Zimmer objected to being included as a respondent and made clear that her interests were not implicated. She did not file any submissions on this application, and I decline to make her a respondent on appeal. CNRL similarly did not file submissions or take a position at the hearing of this application, and additionally, their interests are not affected by the outcome. As such, CNRL will not be included as a respondent in the appeal. To the extent CNRL wishes to stay updated on this matter, the other parties can keep them apprised.

[17] The Settlement indicated it was seeking costs from all parties except CNRL. The Appeal Tribunal limited its submissions to the legislative scheme governing surface rights payments, an outline of the material facts of the case, the test for permission to appeal, and the standard of review if permission is granted. As the Appeal Tribunal did not argue the merits of its decision, the general rule against tribunals paying costs applies: *663073 Alberta Ltd v Alberta (Treasury Board)*, 2021 ABCA 430 at para 6. Similarly, given Ms Zimmer's objection to being included at the Appeal Tribunal and her lack of submissions on this application, I decline to order costs against her. Costs against the Estate of Palma Anderson, which did not contest this application, are left to be determined by the appeal panel.

[18] Rule 9.4(2)(c) is invoked, and the Court will prepare the resulting order or judgment.

Application heard on April 22, 2026

Reasons filed at Edmonton, Alberta
this 13th day of July, 2026

Friesen J.A.

Appearances:

T.R. Owen
for the Applicant

M.J. Redman
for the Respondent, Metis Settlements Appeal Tribunal

Respondent D. Anderson as litigation representative for the Estate of Palma Anderson (no appearance)

Respondent I. Zimmer (no appearance)

G.J. Ludwig, KC (no appearance)

A. Louie
for the Respondent, Canadian Natural Resources Limited