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Navigating tax law and Indigenous governance

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Law360 Canada (June 18, 2024, 2:32 PM EDT) -- **Introduction: Setting the legal stage**

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Recent jurisprudence has unveiled significant nuances in the legal frameworks governing Métis settlements in Alberta, particularly concerning taxation policies and their alignment with statutory authority. This article examines the *Canadian Natural Resources Limited v. Fishing Lake Métis Settlement,* 2024 ABCA 131, decision, shedding light on pivotal legal implications revolving around discriminatory tax treatment, procedural fairness and the overarching authority vested in the *Métis Settlement Act.*

The legal framework of the Métis Settlement Act

The *Métis Settlement Act* serves as the cornerstone of governance for Métis communities in Alberta. Enacted to facilitate self-governance and preserve Métis culture and identity, it empowers settlements to enact policies and bylaws under the Metis Settlements General Council (MSGC). Section 222 of the *Métis Settlement Act* delegates authority to the MSGC to formulate policies regarding property assessment and taxation, thereby guiding individual settlements' tax powers.

The evolution of taxation policies in Métis communities

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The taxation landscape within Métis settlements has undergone significant evolution over time. Initially, the *Business Property Contributions Policy* (BPCP) instituted a framework for property taxation, allowing settlements to impose property taxes based on land value assessments. This policy constrained tax rates to 130 per cent of the maximum mill rate applicable to similar property classes in neighbouring local government jurisdictions.

However, in 2018, the MSGC implemented substantial reforms by replacing the BPCP with the *Property Taxation Policy* and the *Property Assessment Policy*. These changes prioritized revenue generation for settlement expenditures and community services. The revised Tax Policy introduced a new method for calculating tax rates, tying them to the total budget divided by the assessed taxable base value.

Notably, s. 7(1) of the Tax Policy grants exemptions from taxation for properties owned or occupied by settlement members, including those held by member-owned corporations. Consequently, the taxable base of settlements appears markedly small, primarily comprising non-Métis businesses or residents.

Setting a new legal precedent: Canadian Natural Resources Limited v. Fishing Lake Métis Settlement

In a recent landmark decision, the Alberta Court of Appeal delivered a significant ruling in the case of *Canadian Natural Resources v. Fishing Lake Metis Settlement*. The case centred around tax policies adopted by the MSGC, which led to the differential treatment of settlement members and non-members, particularly in the realm of property taxation.

The appellants, who own and operate businesses within the Fishing Lake Métis Settlement, contended that the taxation policies of the MSGC, favouring settlement members and their businesses, contravened the common law principles of equality and were *ultra vires* or beyond the legal authority of the council. The root of their argument rested on the discriminatory nature of these policies, which significantly increased their property tax liabilities without consultation or notice. However, the MSGC argued that the *Métis Settlement Act* implicitly permitted such differential treatment to redress historical injustices against Métis peoples.

As such, the crux of the issue lies in determining the scope of the MSGC's authority in enacting tax policies and procedural fairness. In assessing the legality of the taxation policy under the *Métis Settlement Act*, the chambers judge considered the jurisprudential landscape established in *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65. Vavilov recognized reasonableness as the presumptive standard of review in administrative law matters, emphasizing deference to administrative decision-makers unless exceptional circumstances warrant otherwise.

Ultimately, the chambers judge sided with the MSGC, rationalizing that the tax policies constituted a reasonable exercise of delegated authority, thereby dismissing the appellants' claims. However, the Court of Appeal diverged from this stance, asserting that the tax policies indeed amounted to administrative discrimination beyond the purview of the *Métis Settlement Ac*t.

Significance of the appellate court's ruling

The significance of this ruling lay in the interpretation of the *Métis Settlement Act*'s intent and the intersectionality between Indigenous governance, provincial legislation and municipal taxation. The decision clarified the boundaries of taxation powers vested in settlement governments and underscored the importance of adhering to statutory frameworks established by provincial governments.

The Alberta Court of Appeal underscored the principle that governmental bodies, even those exercising self-governance like the MSGC, cannot wield discriminatory practices unchecked. Despite historical and constitutional considerations, the court reaffirmed the limits of Indigenous tax exemptions, particularly in the absence of explicit statutory provisions. The court clarified that while the *Métis Settlement Act* facilitates the power of taxation, "self-government is not in itself a licence to discriminate" (para 61). As such, the onus rests on the legislature to expressly authorize discriminatory treatment if deemed necessary. This ruling ultimately serves as a safeguard against overreach, ensuring that administrative actions remain tethered to statutory constraints.

Legal findings and implications

The court's rulings in the case delineated significant legal principles:

1. Statutory interpretation and administrative discrimination: The court analyzed the scope of authority vested in the MSGC under the *Métis Settlement Act*. It underscored the need for

explicit or implied authorization for discriminatory taxation practices, emphasizing the importance of statutory compliance.
2. Procedural fairness: The court underscored MSGC's procedural lapse in failing to notify the appellant of the tax policy changes. This breach of procedural fairness served as an alternate ground for setting aside the impugned policies. Nevertheless, the court refrained from delving into broader questions regarding legislative notice requirements, leaving the issue open for future deliberation.

Reflections

In essence, the Alberta Court of Appeal's decision in *Canadian Natural Resources Limited v. Fishing Lake Métis Settlement* sheds light on the intricate dynamics between administrative discretion, legislative intent and Indigenous self-governance. By reaffirming the primacy of statutory authorization in matters of taxation, the ruling underscores the importance of legal clarity and procedural fairness in shaping tax policies within Indigenous communities. The decision calls for a nuanced approach to balancing the interests of all stakeholders while upholding the rule of law and principles of fairness.

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