

Bill 30
Mr. Ducharme

METIS SETTLEMENTS AMENDMENT ACT, 2004

Chapter 25

(Assented to May 11, 2004)

HER MAJESTY, by and with the advice and consent of the
Legislative Assembly of Alberta, enacts as follows:

Amends RSA 2000 cM-14

1 The *Metis Settlements Act* is amended by this Act.

2 The following is added before section 1:

Recital

0.1 This Act is enacted

- (a) recognizing the desire expressed in the *Constitution of Alberta Amendment Act, 1990* that the Metis should continue to have a land base to provide for the preservation and enhancement of Metis culture and identity and to enable the Metis to attain self-governance under the laws of Alberta,
- (b) realizing that the Crown in right of Alberta granted land to the Metis Settlements General Council by letters patent and that the patented land is protected by an amendment to the *Constitution of Alberta* and by the *Metis Settlements Land Protection Act*,
- (c) in recognition that this Act, the *Constitution of Alberta Amendment Act, 1990*, the *Metis Settlements Land Protection Act* and the *Metis Settlements Accord Implementation Act* were enacted in fulfilment of Resolution 18 of 1985 passed unanimously by the Legislative Assembly of Alberta, and

- (d) acknowledging that the Government of Alberta and the Alberta Federation of Metis Settlement Associations made The Alberta-Metis Settlements Accord on July 1, 1989.

3 Section 1 is amended

- (a) by repealing clause (a);**
- (b) in clause (b) by striking out “established” and substituting “continued”;**
- (c) by adding the following after clause (h):**
 - (h.1) “general election” means the election that is held every 3 years as required under section 12;
- (d) by adding the following after clause (m.2):**
 - (m.3) “Selection and Review Committee” means the Metis Settlements Appeal Tribunal Selection and Review Committee established under section 185.1;

4 Section 9 is repealed and the following is substituted:

Term of office

9 The term of office of a councillor elected at a general election

- (a) starts at the beginning of the organizational meeting of the settlement council held after the general election at which the councillor is elected, and
- (b) ends when the successful candidates at the next general election are declared to be elected, unless the office becomes vacant earlier.

5 Section 10 is amended

- (a) in subsection (1) by striking out “an annual” and substituting “a general”;**
- (b) in subsection (2) by striking out “annual” and substituting “general”.**

6 Section 12 is repealed and the following is substituted:

Election day

12(1) A general election must be held every 3 years for each settlement council.

(2) General elections must be held on the first Monday in October in an election year, commencing in 2004.

7 Section 13 is amended by adding the following after subsection (3):

(4) Notwithstanding subsections (1) and (2), if the validity of an election of a councillor or a councillor's right to hold the office is contested, the issue is to be tried by the Appeal Tribunal instead of the Court of Queen's Bench, and for that purpose the Minister may make regulations

- (a) respecting the contesting of an election including, without limitation, regulations
 - (i) in respect of any matter dealt with in sections 126 to 145 of the *Local Authorities Election Act*, and
 - (ii) in respect of any matter in respect of which a rule of court may be made under section 147 of that Act;
- (b) providing that this subsection does not apply in respect of election disputes specified in the regulations.

8 Section 14 is amended by striking out "an annual" and substituting "a general".**9 Section 16(5) is amended by striking out "one year" and substituting "3 years".****10 Section 17(1)(b)(iii) is amended by striking out "by a Ministerial order".****11 Sections 18, 19, 20 and 20.1 are repealed.****12 Section 21 is repealed and the following is substituted:****Vacancies**

21 If a vacancy occurs on a settlement council

- (a) within 30 months after a general election, the vacancy must be filled by a by-election;
- (b) more than 30 months after a general election, the vacancy must be filled at the next general election.

13 Section 22 is repealed and the following is substituted:

By-elections

22 A person elected in a by-election holds office from the date the election result is declared until the end of the predecessor's term.

14 The following is added after section 23:

Review of election requirements

23.1 The Minister and the General Council shall, not later than December 31, 2005, review the procedure and requirements in respect of the election of councillors under this Act and may prepare, jointly or separately, recommendations, if any, for changes to the procedure and requirements.

15 Section 25(1)(q) is amended by striking out "by a Ministerial order".

16 Sections 26 and 27 are repealed and the following is substituted:

Duty to resign if disqualified

26(1) If a person is disqualified from remaining a councillor, the person must immediately resign.

(2) If the person does not resign, the settlement council or a settlement member who is eligible to vote at a general election may apply to the Appeal Tribunal for

- (a) an order determining whether or not the person is qualified to remain a councillor, or
- (b) an order declaring the person to be disqualified from being a councillor.

(3) The Appeal Tribunal may make an order, with or without costs,

- (a) declaring the person to be disqualified and the seat on the council to be vacant,
- (b) declaring the person to be qualified to remain a councillor, or
- (c) dismissing the application.

(4) An application must be made within 3 years after the date the disqualification of the councillor is alleged to have occurred.

(5) An application may be commenced or continued even though an election has been held between the time at which the disqualification is alleged to have occurred and the time at which the application is or was commenced and whether or not the councillor

- (a) resigns before or after the election,
- (b) was re-elected in the election,
- (c) was not re-elected or did not run in the election, or
- (d) has completed a term of office.

Inadvertence or genuine error

27 If the Appeal Tribunal finds that the councillor is disqualified, the Appeal Tribunal may nevertheless dismiss the application if it is of the opinion that the disqualification arose inadvertently or by reason of a genuine error in judgment.

17 Section 28(1) is amended by striking out “a judge” and substituting “the Appeal Tribunal”.

18 Section 29 is amended by striking out “the judge” and substituting “the Appeal Tribunal”.

19 Section 32(1) is repealed and the following is substituted:

Organizational meetings

32(1) The first meeting of a settlement council after a general election is its organizational meeting, which must be held within 14 days after the date of the general election.

20 Section 75 is amended

(a) in subsection (1) by adding “or (3.1)” after “subsection (2)”;

(b) by adding the following after subsection (3):

(3.1) In addition to the circumstances under subsection (2), an Indian registered under the *Indian Act* (Canada) or a person who is registered as an Inuk for the purposes of a land claims settlement may be approved as a settlement member if he or she meets the conditions for membership set out in a General Council Policy.

21 Section 90(1) is amended by striking out “A settlement member” and substituting “Unless a General Council Policy provides otherwise, a settlement member”.

22 Section 120(1) is repealed and the following is substituted:

Termination of right of entry order

120(1) On application to it the Land Access Panel may

- (a) terminate or amend a right of entry order made by it or the Existing Leases Land Access Panel if the Land Access Panel is satisfied that
 - (i) an existing mineral lease holder or operator is not using the right of entry order, or
 - (ii) there is good reason to terminate or amend the order,

or

- (b) if the application is by an existing mineral lease holder for additional surface access or amendment of a right of entry order, grant, terminate or amend a right of entry order as required.

23 The following is added after section 175:

Metis Settlements Ombudsman regulations

175.1(1) The Minister may make regulations

- (a) establishing the office of Metis Settlements Ombudsman and respecting the appointment of a person to the office, the term of appointment and the terms and conditions of appointment;

- (b) respecting the appointment of investigators and other staff for the Metis Settlements Ombudsman office;
 - (c) authorizing the Metis Settlements Ombudsman and investigators to perform all or any of the functions, powers and duties of an investigator or the Minister, or both, under sections 171 to 175 with respect to
 - (i) a settlement, or
 - (ii) an entity that is directly or indirectly controlled by a settlement council or by persons who are employees or officials of a settlement;
 - (d) respecting other matters that may be referred to the Metis Settlements Ombudsman;
 - (e) respecting the manner in which matters are to be referred to the Metis Settlements Ombudsman and by whom, and the process or processes for dealing with those matters, or authorizing the Metis Settlements Ombudsman to make rules governing referral and dealing with those matters;
 - (f) respecting reports of inspections, investigations, audits or matters referred to the Metis Settlements Ombudsman and to whom the reports are to be sent, including the Minister, the General Council, the Appeal Tribunal, settlement councils and settlement members;
 - (g) respecting who must pay the costs of an inspection, investigation, audit or other activity in which the Metis Settlements Ombudsman or an investigator is involved;
 - (h) respecting generally the internal management and operation of the office of Metis Settlements Ombudsman, or authorizing the Metis Settlements Ombudsman to make rules governing such matters.
- (2)** The Metis Settlements Ombudsman may carry out any additional inquiry or inspection or investigative functions referred to him or her by General Council Policy.
- (3)** Costs payable under the regulations made under this section constitute a debt due to the Crown and may
- (a) be collected in an action for debt, or

- (b) be deducted by the Minister from any money otherwise payable by the Government to the person liable to pay the debt.

Immunity

175.2 Neither the Metis Settlements Ombudsman nor an investigator or other member of the staff in the Metis Settlements Ombudsman office is personally liable for anything done or omitted to be done in good faith in the performance or purported performance of a function, power or duty under this Act.

Confidentiality

175.3 The Metis Settlements Ombudsman and investigators and other members of the staff in the Metis Settlements Ombudsman office shall treat all information coming into their possession in the course of performing their functions, powers and duties under this Act as private and confidential and shall not release that information except as permitted or required under any law in force in Alberta.

24 Section 176 is repealed and the following is substituted:**Improper management**

176(1) If, acting on the basis of a report received from the Minister or the Metis Settlements Ombudsman, and after a hearing, the Appeal Tribunal considers that the affairs of a settlement are managed in an irregular, improper or improvident manner, the Appeal Tribunal may, by order,

- (a) dismiss the settlement council or one or more councillors, employees or officials of the settlement, or
- (b) direct the settlement council or an employee or official of the settlement to take any action that the Appeal Tribunal considers proper in the circumstances.

(2) If a direction under subsection (1)(b) is not carried out, the Appeal Tribunal may, by order, dismiss the settlement council or one or more councillors, or an employee or official of the settlement.

(3) An order of the Appeal Tribunal under subsection (1)(a) or (2) must be published in The Alberta Gazette.

(4) The Appeal Tribunal shall forthwith advise the Minister in writing of any action taken by it under this section.

25 Sections 180 to 183 are repealed and the following is substituted:

Metis Settlements Appeal Tribunal continued

180(1) The Metis Settlements Appeal Tribunal is continued.

(2) The Appeal Tribunal consists of the following persons, who shall be appointed by the Minister on the recommendation of the Selection and Review Committee:

- (a) 3 full-time members, one of whom the Minister shall, on the recommendation of the Selection and Review Committee, appoint as chair;
- (b) 8 part-time members, each of whom must be a member of a different settlement.

(3) The full-time members other than the chair are vice-chairs.

(4) The appointments under subsection (2)(b) must be made

- (a) in accordance with the criteria, if any, established by General Council Policy, and
- (b) after the Selection and Review Committee has consulted with the settlement members of the settlement concerned as required under the regulations.

(5) The Minister may make regulations governing the manner in which the Selection and Review Committee must consult with settlement members for the purpose of making appointments under subsection (2)(b).

Executive Committee

181 The Appeal Tribunal chair and the vice-chairs constitute the Executive Committee of the Appeal Tribunal, and the Executive Committee has the power to act on behalf of the Appeal Tribunal in respect of anything relating to its administrative affairs.

Power of chair and vice-chair

182(1) The Appeal Tribunal chair may delegate any power, duty or function conferred or imposed on the chair to a vice-chair, but the chair retains authority to exercise or perform the power, duty or function.

(2) If the Appeal Tribunal chair does not preside at a meeting or proceeding of the Appeal Tribunal, the chair must designate a vice-chair to do so.

Term of office

183(1) The Appeal Tribunal chair holds office for 6 years and the other full-time members and the part-time members hold office for 4 years, but a member may be removed from office by the Minister on the recommendation of the Selection and Review Committee before the term expires.

(2) Members are eligible for reappointment.

(3) Notwithstanding the expiry of the term of a member, the member continues in office until his or her successor is appointed.

(4) A member other than the chair may resign by giving written notice to the chair.

(5) The chair may resign by giving written notice to the Selection and Review Committee.

(6) If a member of the Appeal Tribunal ceases to hold office before his or her term expires, the Minister, on the recommendation of the Selection and Review Committee, must appoint another person to fill the balance of the term, if in the opinion of the Selection and Review Committee there is a sufficient unexpired period to justify appointing a person to the balance of the term.

26 Section 184(2), (3) and (4) are repealed.**27 The following is added after section 185:****Selection and Review Committee**

185.1(1) The Metis Settlements Appeal Tribunal Selection and Review Committee is established.

(2) The Selection and Review Committee consists of 3 persons who are appointed as follows:

- (a) one person is to be appointed by the Minister;
- (b) one person is to be appointed by the General Council;
- (c) one person is to be appointed jointly by the members appointed under clauses (a) and (b).

(3) The appointments under subsection (2) must be made in accordance with the criteria, if any, established by General Council Policy.

- (4) If the General Council fails to make the appointment under subsection (2)(b) within 30 days after a request from the Minister to do so, the Minister may make the appointment.
- (5) If the 2 members appointed under subsection (2)(a) and (b) are unable to agree on a person to be appointed as the 3rd member under subsection (2)(c), the Minister or the General Council may apply to a judge of the Court of Queen's Bench and the judge shall appoint the 3rd member from a list of persons submitted by either or both of the persons referred to in subsection (2)(a) and (b).
- (6) A member is to be appointed for a term not exceeding 5 years and is eligible for reappointment.
- (7) The members shall appoint a chair from among them.
- (8) Notwithstanding the expiry of the term of a member, the member continues in office until his or her successor is appointed.
- (9) A member may resign by giving written notice to the Minister and the General Council.
- (10) If a vacancy occurs in the membership of the Selection and Review Committee, a person must be appointed in accordance with this section for the unexpired portion of the term of office.

28 Section 186 is amended by adding the following after subsection (2):

- (2.1) The Appeal Tribunal chair may designate one or more members of the Land Access Panel to sit as and exercise the powers of the Land Access Panel, and may cancel such a designation.

29 The following is added before section 188:

Overriding considerations

- 187.1** The Appeal Tribunal shall exercise its powers and carry out its duties with a view to preserving and enhancing Metis culture and identity and furthering the attainment of self-governance by Metis settlements under the laws of Alberta.

30 Section 188(2) is repealed and the following is substituted:

(2) Without limiting the generality of subsection (1), that subsection applies also in respect of the disposition of an appeal to the Appeal Tribunal where the right to appeal is given under this or any other enactment, a regulation, a General Council Policy or a by-law.

31 Section 189(1) is amended by adding the following after clause (g):

(g.1) must review a General Council Policy pursuant to a request in accordance with a General Council Policy under section 222(1)(jj);

32 Section 190(1) is amended by adding the following after clause (m):

(m.1) with respect to a matter referred to in section 189(1)(g.1), confirm, reverse or vary the General Council Policy or refer the matter back to the General Council, with or without suggestions or recommendations;

33 Section 191 is amended by adding the following after subsection (3):

(4) The Appeal Tribunal may waive or reduce a fee prescribed under subsection (3) if it considers that payment of the fee would impose a financial hardship on the person required to pay it.

34 Section 195 is repealed and the following is substituted:

Appeal Tribunal rules

195 The Executive Committee of the Appeal Tribunal may make rules

- (a) respecting the procedure for the conduct of the business of the Appeal Tribunal and the administration of its affairs in relation to its quasi-judicial functions under this Act;
- (b) respecting the process or procedure to be followed after receipt of an appeal or other matter coming before the Appeal Tribunal, including rules governing compulsory attempts to resolve the matter by one or more dispute resolution processes;

- (c) respecting the procedure to be followed at a hearing or a particular type or types of hearing;
- (d) respecting the ethical conduct of members of the Appeal Tribunal and disclosure of matters that may create a conflict of interest.

Joint hearings

195.1 If the Executive Committee of the Appeal Tribunal is of the opinion that it would be expedient or in the public interest to do so, the Appeal Tribunal may conduct a hearing, inquiry or investigation under this Act or participate in other proceedings in respect of matters relating to the purposes of this Act jointly or in conjunction with another board, commission or other body constituted in Alberta.

Application to Court for opinion

195.2 The Appeal Tribunal may, by originating notice, apply to a judge of the Court of Queen's Bench for an opinion on a question of law or a question of jurisdiction.

35 Section 217(1) is repealed.

36 Section 219 is amended

- (a) by repealing subsection (1)(a);
- (b) in subsection (2) by striking out "unanimous resolution or a".

37 Sections 222 and 223 are repealed and the following is substituted:

General Council Policies

222(1) The General Council, after consultation with the Minister, may make, amend or repeal General Council Policies

- (a) respecting the prohibition or the regulation and control of the sale, lease or other disposition of timber in settlement areas;
- (b) respecting the co-management of the subsurface resources of settlement areas and the distribution of the proceeds from exploration for, and development of, those resources;

- (c) respecting the means by which any right or interest in patented land may be created, the person or persons having authority to create it, the persons who may acquire the right or interest, and any conditions or restrictions attached to its creation, use or disposal;
- (d) respecting a financial allocation policy for the settlements, which may include a requisition on settlements to fund the General Council;
- (e) respecting whether and, if so, under what conditions the General Council may
 - (i) engage in commercial activities,
 - (ii) make investments other than those described in Schedule 2,
 - (iii) lend money,
 - (iv) make grants of money,
 - (v) guarantee the repayment of a loan by a lender to someone other than a settlement, or
 - (vi) guarantee the payment of interest on a loan by a lender to someone other than a settlement;
- (f) authorizing a settlement council to engage in some or all of the activities described in section 3(2);
- (g) respecting the consent of the General Council under section 7 of the *Metis Settlements Land Protection Act*, and any terms and conditions that must be met before consent is given;
- (h) providing for a levy to be imposed by settlement bylaw on the General Council in such form and manner as the Policy provides;
- (i) respecting the assessment or taxation, or both, of land, interests in land or improvements on land, in a settlement area, including rights to occupy, possess or use land in a settlement area;
- (j) permitting settlement bylaws to be made respecting the assessment and taxation of the fee simple or any lesser interest in patented land held by the General Council;

- (k) respecting the means by which the General Council may maintain, create, terminate and grant rights and interests in patented land;
- (l) respecting the allocation of patented land;
- (m) respecting the issuance of rights or interests in patented land and the reservations, exceptions, conditions or limitations in respect of the issuance of the rights or interests;
- (n) respecting the rescinding or termination of rights or interests in patented land;
- (o) respecting the eligibility of persons to be allocated rights or interests in patented land;
- (p) respecting appeals relating to the allocation of rights or interests in patented land;
- (q) respecting the circumstances under which an allocation may be refused;
- (r) respecting the disposition of rights or interests in allocated patented land;
- (s) respecting the disposition of rights or interests in patented land that are not allocated;
- (t) governing the location of utilities and public rights of way in a proposed subdivision and the minimum width and the maximum gradient of public rights of way;
- (u) respecting the devolution of estates and interests in patented land held by a settlement member on the death of the member whether the member dies testate or intestate;
- (v) providing that one or more of the *Administration of Estates Act*, the *Devolution of Real Property Act*, the *Dower Act*, the *Intestate Succession Act*, the *Ultimate Heir Act* and the *Wills Act* do not apply to specified interests in patented land that are held by settlement members;
- (w) respecting the entities in which a settlement or the General Council may establish accounts in addition to those permitted by this Act;

- (x) providing for fees, dues, charges or levies that may be imposed by settlement bylaw for
 - (i) anything provided or done by or on behalf of a settlement or for any service or assistance, or
 - (ii) any permit, approval, licence or other authorization, and providing for the administration and collection of the fees, dues, charges or levies;
- (y) respecting eligibility for membership in settlements for the purpose of section 75(3.1) and respecting termination of membership for the purpose of section 90(1);
- (z) respecting membership in settlements generally;
- (aa) respecting the taking of a census of settlement members or the population of settlement areas;
- (bb) respecting the notice required and procedures for General Council meetings or public or special meetings called by the General Council;
- (cc) defining financial interest for the purposes of this Act;
- (dd) providing for planning, land use and development of settlement areas, including the prohibition or regulation and control of the use and development of land and buildings;
- (ee) respecting the occupation or use of patented land that is not allocated to a person or in respect of which no person has exclusive right of possession;
- (ff) respecting the right of individuals who are not settlement members to reside in a settlement area and the duties associated with being a resident;
- (gg) respecting those matters that may, by this Act or any other enactment, be subject to a General Council Policy;
- (hh) respecting other matters considered by the General Council to be for the benefit of the settlements or settlement members;
- (ii) respecting the internal management and affairs of the General Council, including

- (i) the calling of, conduct of and procedure at its meetings,
 - (ii) the election of officers of the General Council, their eligibility, terms of office, disqualification and related matters,
 - (iii) matters related to conflict of interest of members of the General Council,
 - (iv) the functions, powers and duties of General Council officers and their executive decision-making and signing authority, both individually and collectively,
 - (v) the process and procedure for considering and voting on resolutions and policies, including public notice and consultation with settlement members, and
 - (vi) human resource policies for General Council staff;
 - (jj) authorizing, in accordance with prescribed criteria, a settlement council to request the Appeal Tribunal to review a General Council Policy where the settlement council considers that the settlement members of its settlement are unfairly disadvantaged by the Policy;
 - (kk) respecting the financial administration and management of funds received by and expended by the General Council;
 - (ll) establishing criteria for appointments to the Appeal Tribunal and the Selection and Review Committee;
 - (mm) respecting matters specified by the Minister by regulation.
- (2)** General Council Policies under subsection (1) or an amendment or repeal of them
- (a) must be approved by special resolution, and
 - (b) are subject to a veto by the Minister under section 224.
- (3)** Subsection (2)(a) applies to the amendment or repeal of General Council Policies whether they were made before or after the coming into force of this section.
- (4)** Subsection (1)(jj) applies only in respect of
- (a) a General Council Policy that is made, or

(b) an amendment to a General Council Policy that is made after the coming into force of this subsection.

38 Section 223.1 is amended by striking out “section 222(1)(z) or 223(1)(j)” and substituting “section 222(1)(mm)”.

39 Section 224(1) is amended by striking out “or 223”.

40 Section 229 is repealed and the following is substituted:

Ministerial regulations

229(1) The Minister may

- (a) at the request of the General Council, or
- (b) on the Minister’s own motion, where the Minister considers it appropriate to do so,

make a regulation respecting anything on which a General Council Policy may be made.

(2) A regulation made under subsection (1)(b) expires on the earliest of

- (a) the day on which it is repealed,
- (b) the coming into force of a General Council Policy in respect of the subject-matter of the regulation, and
- (c) 2 years after the regulation is made.

41 The following is added after section 232:

Self-governance advancement proposals

232.1(1) For the purpose of enabling the Metis to attain self-governance under the laws of Alberta, the General Council may, by special resolution, make proposals to the Minister for changes to this Act and the regulations that

- (a) are directed to the creation of a more effective and culturally appropriate structure for the self-governance of the settlements, and

(b) set out workable alternatives to structures, institutions or systems of self-governance provided in this Act and the regulations.

(2) The Minister shall consider the proposals and provide a response to the General Council with regard to them.

(3) The General Council may not make proposals under this section more frequently than once every 5 years.

42(1) Notwithstanding the expiry of a term of office of a councillor before the holding of the general election in 2004, the term of office of such a councillor is deemed not to have expired and continues until the successful candidates at that general election are declared to be elected, unless the office becomes vacant earlier.

(2) The term of office of a councillor who is in office on the coming into force of this section and whose term of office would, but for this subsection, have expired after the general election held in 2004, ends when the successful candidates at that general election are declared to be elected, unless the office becomes vacant earlier.

43 The persons who are members of the Appeal Tribunal on the coming into force of section 25 continue as members until they are reappointed or their successors are appointed under that section.

44 A proceeding under the *Metis Settlements Act* that was commenced before the coming into force of this section continues to its conclusion under that Act as if this Act had not been passed, and a member of the Appeal Tribunal retains jurisdiction for that purpose only, notwithstanding the expiry of his or her term of office.

45 A decision made or other action taken before the coming into force of this section by less than the full membership of the Land Access Panel is to be considered a decision made or action taken by the Land Access Panel.

46 All acts that

(a) were done by a settlement council in the purported exercise of the power of a subdivision approving authority under the

Metis Settlements Subdivision Regulation between April 1, 2002 and March 22, 2004, and

- (b) could properly be done by a subdivision approving authority,

are hereby validated, and settlement councils are deemed to have been subdivision approving authorities during that time.

47 Sections 3(b) and (d), 7, 10, 15, 16, 17, 18, 24, 25, 26, 27, 34 and 43 come into force on Proclamation.