

Federal Court  
of Appeal



Cour d'appel  
fédérale

**Date: 20120229**

**Docket: A-472-10**

**Citation: 2012 FCA 67**

**CORAM: SHARLOW J.A.  
DAWSON J.A.  
TRUDEL J.A.**

**BETWEEN:**

**CECIL BELLROSE**

**Appellant**

**and**

**HER MAJESTY THE QUEEN**

**Respondent**

Heard at Edmonton, Alberta, on February 14, 2012.

Judgment delivered at Ottawa, Ontario, on February 29, 2012.

REASONS FOR JUDGMENT BY:

DAWSON J.A.

CONCURRED IN BY:

SHARLOW J.A.  
TRUDEL J.A.

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**REASONS FOR JUDGMENT**

**DAWSON J.A.**

[1] At all material times the appellant, Mr. Bellrose, was an elected official of the Métis Nation of Alberta Association (MNAA). He was first elected in 1996 as vice-president of the Zone IV Métis Regional Council. From 2005 to 2011 he served as the elected President of the Zone IV Métis Regional Council. In each of the 2000, 2003, 2004 and 2005 taxation years, Mr. Bellrose claimed an exemption for a municipal officer's expense allowance under the *Income Tax Act*, R.S.C. 1985, c. 1 (5<sup>th</sup> Supp.) (Act) in the amount of one third of his remuneration from MNAA on the ground that his elected role with the Zone IV Métis Regional Council was equivalent to that of

an elected officer of an incorporated municipality. The Minister of National Revenue (Minister) reassessed Mr. Bellrose for each of these taxation years on the basis that he was not entitled at law to the exemption claimed.

[2] For reasons cited as 2011 TCC 32, a judge of the Tax Court of Canada dismissed Mr. Bellrose’s appeals from the reassessments. This is an appeal from the judgment of the Tax Court.

[3] On this appeal, the essence of Mr. Bellrose’s argument is that he is entitled to a tax-free allowance under subsection 81(3) of the Act as an officer of an incorporated municipality.

Subsection 81(3) of the Act provides:

<p>Where a person who is</p> <p>(a) <u>an elected officer of an incorporated municipality,</u></p> <p>(b) an officer of a municipal utilities board, commission or corporation or any other similar body, the incumbent of whose office as such an officer is elected by popular vote, or</p> <p>(c) a member of a public or separate school board or similar body governing a school district,</p> <p><u>has been paid by the municipal corporation</u> or the body of which the person was such an officer or member (in this subsection referred to as the person’s “employer”) <u>an amount as an</u></p>	<p>Lorsque l’une des personnes suivantes :</p> <p>a) <u>un conseiller élu d’une administration municipale dotée de la personnalité morale;</u></p> <p>b) un conseiller d’une commission ou société municipale de services publics ou de tout autre organisme administratif similaire qui est élu par la population;</p> <p>c) un membre d’une commission scolaire publique ou séparée ou de tout organisme similaire administrant un district scolaire,</p> <p><u>a reçu de la municipalité</u> ou de l’organisme dont il est conseiller ou membre (appelé « employeur » au présent paragraphe) <u>une allocation, au cours d’une année d’imposition, pour</u></p>
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allowance in a taxation year for expenses incident to the discharge of the person's duties as such an officer or member, the allowance shall not be included in computing the person's income for the year unless it exceeds 1/2 of the amount that was paid to the person in the year by the person's employer as salary or other remuneration as such an officer or member, in which event there shall be included in computing the person's income for the year only the amount by which the allowance exceeds 1/2 of the amount so paid to the person by way of salary or remuneration. [emphasis added]

les dépenses occasionnées par l'exercice de ses fonctions comme conseiller ou membre, l'allocation n'est pas incluse dans le calcul de son revenu pour l'année; toutefois, si elle dépasse la moitié du montant qui lui a été versé au cours de l'année par son employeur à titre de traitement ou autre rémunération comme conseiller ou membre, seul est inclus, dans le calcul de son revenu pour l'année, l'excédent de cette allocation sur la moitié du montant ainsi versé à titre de traitement ou de rémunération. [Non souligné dans l'original.]

[4] Mr. Bellrose argues that the Judge erred in his appreciation of the evidence by not giving sufficient weight to certain evidence. He also submits that the Judge committed a number of errors of law that caused the Judge to dismiss Mr. Bellrose's appeals.

[5] To properly consider Mr. Bellrose's submission, it is necessary to review the nature of the MNAA and the duties performed by Mr. Bellrose.

[6] The MNAA was incorporated under the *Societies Act*, R.S.A. 2000, c. S-14. Its objectives, as framed in its bylaws, are as follows:

- 1.1 To promote the cultural, economic, educational, political and social development of Métis in Alberta and Canada;
- 1.2 To stand as the political representative of all Métis in Alberta and to promote self-determination and self-government for Métis in Alberta and Canada;

- 1.3 To promote, pursue and defend aboriginal, legal, constitutional, and other rights of Métis in Alberta and Canada;
- 1.4 Re-establish land and resource bases;
- 1.5 To create awareness of the proud heritage of the Métis Nation of Alberta and to promote the history, values, culture, languages and spiritual traditions of the Métis Nation of Alberta;
- 1.6 To develop prosperity and economic self-sufficiency within the Métis Nation of Alberta;
- 1.7 To promote and ensure participation of Métis Elders, Métis Women, Métis Youth and Métis persons with disabilities in the educational, cultural, political and social development of the Métis Nation of Alberta.

[7] Approximately one ninth of the Métis people in Alberta live in Métis Settlements established under the Métis Settlements Accord. The balance of the Métis people live in other urban or rural communities. Mr. Bellrose submits that due to economic realities, social pressures, the abandonment of traditional lifestyles and various societal factors, members of the MNAA have fallen “through the cracks of modern Canadian society and its municipal forms of government”. The MNAA was formed in response to this situation. He points to the bylaws of the MNAA and submits that its governance, which includes provisions for Provincial, Regional and Local Councils, is sophisticated and on a par with the bylaws of any village, town or city in Alberta. In sum, he argues that through the MNAA “the Métis have formed a government best suited to meet the challenges they face.”

[8] Mr. Bellrose points to the fact that in June 2008, the government of Alberta entered into a Framework Agreement with the MNAA. The agreement aims to promote Métis economic and

community well-being and to improve Métis access to provincial services. In 2009, Alberta and the MNAA entered into a Framework Funding Agreement under which the MNAA received funding to implement the objectives of the Framework Agreement.

[9] Mr. Bellrose described his duties with the MNAA as follows:

2. I was first elected to my position, in the Métis Nation of Alberta, in the fall of 1996.
3. My first three terms were in the position of Vice President of Zone IV which covers an area of the Alberta/BC border to Waskateneau and from the Grand Prairie region to just north of Red Deer/Rocky Mountain House.
4. I served as President of Zone IV for the last two terms, which are 2005 – 2008 and 2008 – 2011.
5. I attended multiple meetings in Alberta in my capacity as President of Zone IV.
- ...
9. In a provincial perspective, my portfolio is Métis Rights and Registry for the Province of Alberta; and, this is a very broad office and obligation.
10. My job is to make recommendations to the Board of Governors of Métis National Council in respect of issues coming before this Métis Rights Panel.
11. I attend Provincial Council Meetings for the MNA bi-monthly, usually in Edmonton but also elsewhere in the Province of Alberta.

[10] Additional evidence was adduced which the Judge described in the following terms:

Karen Collins, a President of Métis Regional Council, Zone II, from Bonnyville, Alberta, testified on the appellant's behalf. She spoke of her duties as Zone II president, I infer that Ms. Collins' duties were similar to those of the appellant's. She has a modest office where she acts primarily as a liaison officer. Métis come to her office for assistance in completing forms and being directed and

referred to the likes of provincially assisted housing, school boards, rehab centres, children's aid, women's shelter, and the assistance with gambling and drug and alcohol problems.

She finds programs to address her constituents' needs. Her zone is funded by the Province of Alberta – a variable amount, but now approximately \$169,000 annually – from which she pays salaries, travel costs, office expenses and even advances \$50 plus or minus now and then in emergency circumstances. She traveled 400 kilometers to Edmonton in her truck for the hearing.

[11] The Judge was impressed with the evidence of Mr. Bellrose and Ms. Collins. The Judge wrote:

In conclusion, both the appellant and Ms. Collins were impressive witnesses. I admire and commend them for their good works amongst their fellow Métis in need. It is not exaggerated to state that they literally save lives. They are deserving tax payers.

[12] It is on the basis of this evidence that Mr. Bellrose argues that the MNAA is a *de facto* municipality on a par with other municipalities and similar bodies. It follows, he submits, that the exemption from taxation of an allowance given to an elected officer of a municipality was intended by Parliament to be extended to elected officials of his stature.

[13] Notwithstanding the submissions of counsel for Mr. Bellrose, I have not been persuaded that the Judge erred as Mr. Bellrose asserts.

[14] I begin by noting that the Judge carefully reviewed the evidence concerning the objectives, structure, membership and activities of the MNAA and the evidence that described Mr. Bellrose's

duties. The Judge correctly noted that the term “municipality” is not defined in the Act, and that it should be given its ordinary meaning: a community having and exercising the powers of self-government and providing the type of services customarily provided by such a body. The Judge reasoned that because the Zone IV Métis Regional Council does not have the powers of self-government and does not provide services that are typically provided by a municipality, Mr. Bellrose was not by virtue of his office entitled to a tax-free allowance under subsection 81(3) of the Act.

[15] I can detect no palpable and overriding error of fact or mixed fact and law, and no error of law in the Judge’s reasons. I agree with the Judge’s conclusion for the reasons that he gave.

[16] In so concluding, I have considered Mr. Bellrose’s argument that the Judge erred by relying upon the fact that the MNAA does not provide many of the services that are traditionally provided by a municipality. He points to the evidence establishing that the absence of services was only due to the lack of resources. In my view, the reason for the limitation on the capacity of the MNAA to provide services is not germane. A body that, for whatever reason, does not govern or provide municipal-like services cannot be said to be a municipality.

[17] Further, in my view the Judge did not err by failing to apply the principle, articulated in cases such as *R. v. Nowegijick*, [1983] 1 S.C.R. 29, that ambiguities in the interpretation of treaties and statutes relating to aboriginal peoples are to be resolved in favour of the aboriginal peoples. The Act is neither a treaty nor a statute directly related to aboriginal peoples.



[18] Nor, in my view, did the Judge err by failing to apply the connecting factors test as set out in *Williams v. Canada*, [1992] 1 S.C.R. 877. This test was developed to determine the *situs* of intangible personal property and has no application in the present context.

[19] Moreover, the Judge's rejection of the appellant's submissions with respect to *Williams* was not fatal to his analysis for the following reason. The Act is to be interpreted according to a textual, contextual and purposive analysis in order to find a meaning that is harmonious with the Act as a whole (*Canada Trustco Mortgage Co. v. Canada*, 2005 SCC 54, [2005] 2 S.C.R. 601 at paragraph 10). This required the Judge to consider a number of factors which are substantially the same as those which the appellant argued would have been relevant under the connecting factors test.

[20] I have also considered Mr. Bellrose's argument that the Judge erred "in applying a geographical standard to the definition of municipality when none exists within the [Act]". However, in Canada, the law of municipalities is premised upon a geographic standard. Certainly that is true of Alberta's *Municipal Government Act*, R.S.A. 2000 c. M-26, under which municipal districts, villages, towns, cities and specialized municipalities are to be formed "for an area". The present structure of the *Municipal Government Act* is inconsistent with a municipality not defined by a geographic area. It may be possible to envision a different legal model, in which a municipality may be established on some basis other than a geographic standard. However, as counsel for the Minister observed, legislative change would be required to permit such an outcome.

[21] Mr. Bellrose also placed some reliance upon paragraph 81(3)(b) of the Act. However, as the MNAA is not an incorporated municipality Mr. Bellrose is not by virtue of his position in the MNAA an officer of a municipal utilities board, commission or corporation or similar body.

[22] Finally, I have noted the Minister's argument that because the MNAA was incorporated under the *Societies Act*, R.S.A. 2000, c. S-14, by virtue of subsection 3(2) of that Act the MNAA cannot exercise the powers of local government that are granted to municipalities. In view of my conclusions above, it is not necessary for me to consider this argument and I decline to do so.

[23] It follows that I would dismiss the appeal with costs.

“Eleanor R. Dawson”

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J.A.

“I agree  
K. Sharlow”

“I agree  
Johanne Trudel”

**FEDERAL COURT OF APPEAL**

**NAMES OF COUNSEL AND SOLICITORS OF RECORD**

**DOCKET:** A-472-10

**STYLE OF CAUSE:** Cecil Bellrose v. Her Majesty the Queen

**PLACE OF HEARING:** Edmonton, Alberta

**DATE OF HEARING:** February 14, 2012

**REASONS FOR JUDGMENT BY:** Dawson J.A.

**CONCURRED IN BY:** Sharlow J.A.  
Trudel J.A.

**DATED:** February 29, 2012

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