

Before:

Metis Settlements Appeal Tribunal
Land Panel

Between:

Charles Ruben Gladue

Appellant

-and-

Fishing Lake Metis Settlement

Respondent

-and-

Metis Settlements General Council

Respondent

-and-

Metis Settlements Land Registry

Respondent

Concerning:

Oil and Gas Compensation Dispute

Hearing Date:

June 17, 2016

Decision Date:

October 24, 2016

DECISION

The Hearing – parties, place and date

MSAT Panel members:

Don Cunningham. Panel Chair
Phyllis Collins. Panel Member
Joyce Parenteau. Panel Member

Parties Present at the Hearing:

Charles Gladue, Appellant
Terry Parenteau. FLMS Council
Dwayne Laboucane. FLMS Council
Melissa Davie. Observer/Land Clerk
Garry Parenteau. FLMS Oil and Gas
Michelle Arrigoni. FLMS Oil and Gas

MSAT Staff Present:

Harry Cunningham. Dispute Resolution Officer

Place and Date of the Hearing:

Fishing Lake Community Hall
Fishing Lake Metis Settlement. Alberta
June 17, 2016

1.0 Context

[1] Here's the way oil and gas compensation payments¹ work on Fishing Lake Metis Settlement (FLMS): if a member holds a recognized interest² in settlement lands *before* an oil and gas development agreement is executed to do work on the land, the member who holds the recognized interest gets a certain percentage of the initial payment and annual compensation that follows. However, if the member gets his interest *after* the oil and gas agreement has been executed, or if the member loses his interest and gets a new interest after the agreement is already in place—even if the member gets the same type of interest that he had before—then that member does not get any compensation. It all goes to the Settlement.

[2] Charles Gladue (Charles) understands that this is how oil and gas payments work under FLMS's Compensation Bylaw. Charles also understands that under the normal application of the compensation rules, he is not entitled to oil and gas payments anymore because he lost the interest in the SE-05-057-01-4 (the land) that originally qualified him for compensation payments. What Charles is asking for is for the Appeal Tribunal to make an exception to the compensation rules. According to Charles, he allowed his temporary Provisional Metis Title (PMT) interest (the one that precedes the oil and gas agreement and work on the land) to expire on March 11, 2005 because he was "misled" by FLMS staff into thinking that he had to build a house on the land before he could convert his PMT interest to a permanent Metis Title interest.³ Since there was only some clearing, brushing and fencing done on the land, Charles did not apply for Metis Title before his PMT interest expired on March 11, 2005 and the compensation payments eventually stopped.

1.1 Evidence before the Panel

Charles Gladue

[3] Charles said that when he first got his PMT interest in the land he used it mainly for hunting, picking berries and gathering medicines. Charles said that some brushing/clearing and fencing had also been done on the land but that he did not apply to convert his PMT interest to a

¹ See the FLMS Oil and Gas Compensation Policy/Bylaws.

² Recognized interests include Metis Title, Provisional Metis Title and Allotment interests as per FLMS Surface Rights Compensation Bylaw #2006 -0163; and, apparently, as per its replacement bylaw, 019.

³ For those who are unfamiliar with the land holding framework on the Metis Settlements, there are different types of interests that members can hold (See the Metis Settlements General Council Land Policy [(GC-9201). The "best" is something called Metis Title and it basically gives its holder exclusive use and occupancy over the land. The next best thing is something called "Provisional Metis Title" and it basically gives its holder five years (plus another five if he needs it) to make sufficient "improvements" to the land to qualify for Metis Title.

full Metis Title before it expired on March 11, 2005 because he was "misled" by FLMS staff who told him that he had to build a house on the land before he could convert it to full Metis Title.

[4] Charles said that he did not read the Memorandum of PMT that he signed on March 20, 1995, (which sets out the five year term of the PMT and conditions for keeping it and converting it to a full Metis Title), nor did he read the Memorandum of PMT that he signed on August 9, 2010.

[5] Charles said that he did not receive any of the letters that his PMT interests were registered for a five year term, nor did he receive any of the expiry notices sent out to by the MSLR. He said that the MSLR should have tried harder to find him.

Fishing Lake Metis Settlement

[6] Councilors for FLMS said that Charles' original PMT interest expired on March 11, 2005 and that what Charles received in August 2010 (either by way of posting or a direct grant) was a new PMT interest and not a renewal or extension of the original PMT interest that was first granted in 1995.

[7] Councilors questioned its own Administration as to why Charles continued to receive annual compensation payments up to 2010: which was well after Charles' original PMT interest expired in March 2005. FLMS Administration replied that it was a mistake and that its practice is to now cross-reference payments against MSLR land search reports, which it can now access electronically.

[8] FLMS Administration confirmed that as set out in their Compensation Bylaws, members must have unbroken pre-existing interests in land to qualify for initial or annual oil and gas compensation payments.⁴

⁴ One exception is where an interest is received through an estate.

1.2 Findings of Fact

[9] Charles signed a *Memorandum of PMT* for the land on March 20, 1995.⁵ It includes the following relevant terms and conditions:

Memorandum of Provisional Metis Title

1 Possession

- (1) You have the exclusive right to use and occupy the land for 5 years, starting March 14, 1995 and ending March 12, 2000 as long as you are making improvements needed to get Metis Title.
- (2) If you have not received Metis Title to the land at the end of the first 5 year term, but in the Settlement's opinion you are productively using the land and have made satisfactory progress on improvements, you can renew this grant for one more 5 year term.

2 Conditions

- (1) The basic rules for keeping this grant are:
 - a. You must remain a resident member of the Settlement;
 - b. You can only use the land to build a house or operate a farm, ranch or an approved business.
- (2) Your PMT ends on the date specified in the notice unless before then you file a Notice of Appeal with the Appeal Tribunal.

6 Obtaining Title

- (1) While this grant is in effect you can claim the Metis Title to the land if
 - a. You have made the improvements required by by-law
- (2) In subsection (1) "by-law" means the settlement *Land Use Bylaw* in effect when the grant was given, or if the grant is renewed, the Land Use Bylaw in effect when the grant is renewed).

[10] The Metis Settlements Land Registry (MSLR) confirmed in a letter dated April 7, 1995 that Charles' PMT interest in the land was registered.⁶

[11] An oil and gas agreement was executed in March 1997, including the land where Charles held his PMT interest.⁷

⁵ See Tab 8 of the hearing package for this matter.

⁶ See Tab 9 of the hearing package.

⁷ See Tab 10 of the hearing package.

[12] Charles extended his original PMT interest to March 11, 2005 by signing off on an *Amendment to a Memorandum of PMT* on April 26, 2000.⁸ The renewed PMT interest was registered by the MSLR and a letter⁹ was sent to Charles at an address in Edmonton with the following notation:

Please be advised that the PMT for this parcel of land described above [SE 5-57-1-4] has been renewed. Please note, your PMT is for a term of 5 years and will expire March 11, 2005.

[13] Charles did not apply to convert his PMT interest to a full Metis Title interest before it expired on March 11, 2005.

[14] Charles received annual compensation payments of \$406 a year through to and including 2010.¹⁰

[15] Charles signed another Memorandum of PMT on August 9, 2010 (which except for the dates of the five year term from August 9, 2010 to August 9, 2015) has the exact same terms and conditions as the old Memorandum of PMT that Charles signed on March 20, 1995.¹¹ The renewed PMT interest was registered by the MSLR and a letter¹² dated August 25, 2010 was sent to Charles at General Delivery in Spathnow, Alberta, with the following notation:

Please be advised that the PMT for this parcel of land described above [SE 5-57-1-4] has been registered. Please note, your PMT is for a term of 5 years and will expire April 9, 2015.

[16] Charles renewed his new PMT interest and the MSLR sent a letter¹³ to Charles in Spathnow dated March 31, 2016 confirming that his PMT interest was renewed for a five year term, expiring August 9, 2020.

⁸ See Tab 15 of the hearing package.

⁹ See Tab 15 of the hearing package.

¹⁰ See Tab 18 of the hearing package.

¹¹ See Tab 17 of the hearing package.

¹² See Tab 17 of the hearing package.

¹³ See Tab 24 of the hearing package.

1.3 How the law applies to this matter

[17] The Appeal Tribunal has assumed jurisdiction over this matter under section 119 of the Metis Settlements Act¹⁴ (MSA). Section 119 provides that the Appeal Tribunal can amend a compensation order when it is satisfied that there has been a change of occupant. There is no appeal deadline in section 119, which simply calls on the Appeal Tribunal to make a finding of fact as to whether there is a change of occupant (and whether Charles qualifies for compensation under the FLMS Oil and Gas Compensation Bylaw), and this Panel is satisfied that it is right to assume jurisdiction in the matter now before us. Put another way, the Appeal Tribunal has been asked to determine if there has been a change of occupant, which triggers its jurisdiction under section 119 of the MSA.

[18] Charles's basic argument is that he should be treated as the same occupant who qualified for compensation when the oil and gas agreement was executed in 1997. He said that he let his qualifying PMT interest expire in 2005 because he was "misled" by FLMS staff into thinking that he would not qualify for the Metis Title interest that would have guaranteed his ongoing and unbroken pre-existing occupancy over the land and right to compensation payments under the FLMS Compensation Bylaw.

[19] With respect, we do not agree. The responsibility for the five year break in his interest/occupancy over the land in question rests with Charles, not FLMS staff.

[20] It was Charles' responsibility to review and know the terms of the Memorandum of PMT that he signed on March 20, 1995. These terms included the condition in section 3(1)(b) that he could "only use the land to build a house or operate a farm, ranch or business." Given that Charles said he was not using the land to operate a farm, ranch or business, it was only left to him to build a house on it.

[21] The Memorandum of PMT signed by Charles also sets out the criteria for claiming Metis Title while the PMT interest is in effect. Namely, one has to make improvements to the land. That a recognized improvement often includes the construction of a house is in keeping with the condition of use set out in section 3(1)(b), and also in keeping with the definition of improvements found in section 1.3 of the MSGC Land Policy, which reads as follows:

¹⁴ See Metis Settlements Act [RSA 2000, Chapter M-14].

1.3 Definitions

In this Policy

(b) **improvements** means changes people have intentionally made to the land in order to increase its usefulness, and includes all structures permanently attached to the land [According to the footnote attached to the improvements definition, "A 'structure' is anything built, for example houses buildings, water systems, and fences. A structure is 'permanently attached to the land' if all or part of it is buried in order to attach it to the land and keep it there for the foreseeable future.]

[22] That improvements could also include other intentional changes to the land meant to increase its usefulness—such as fencing—is also valid. but it is still for the holder of a PMT interest to do the work and show that he did the work. In the case at hand, we think it is more likely than not that Charles—who used the land for hunting and picking berries and medicines—did not make any discernable improvements to the land in the first 10 years that he held the PMT interest and that he did not bring any claim for Metis Title forward, because he did not have much to show for his initial holding of the PMT interest. That someone at the FLMS might have told him he needed to build a house to qualify for Metis Title may have also happened, but this should not have stopped him from submitting his claim for Metis Title in any event and especially if he had made lasting improvements to the land.

[23] Unfortunately, that Charles seems more interested in blaming others for the gap in his occupancy is also clear in his suggestion that the MSLR should have done a better job of tracking him down when it sent out its letters notifying him when his PMT interest was about to expire, or that it had expired, and which Charles claims not to have received because they were sent to the "wrong address." In this regard, it is worth pointing out section 75¹⁵ of the MSLR Regulation which clearly places the onus on those who have registered interests to keep their address up to date. It reads:

75(2) A registered owner or a claimant may at any time

- a. file with the Registrar a notice of change of address for service that is in Alberta, and
- b. direct the Registrar to change the address for service of the owner or claimant on entries relating to registered and recorded interests to the owner or claimant listed in the notice.

¹⁵ See Tab 2 in the hearing package, *Metis Settlements Land Registry Regulation*, AR 361/91..

[24] Finally, the fact that FLMS paid Charles compensation from 2005 to 2010 does not mean that Charles retained his PMT interest, or was the occupant of the land during that time. All that this shows is that FLMS made a mistake—which it has admitted to—and which it corrected once it was discovered. That FLMS does not make it a practice to seek any return from the recipients of such mistakes is perhaps something that Charles can take comfort in.

[25] Taken together, we are not convinced that Charles' occupancy was continuous from 1995. Put another way, Charles' current occupancy is based on the new PMT interest that was granted to him in 2010 and not from the original PMT interest granted in 1995 and he does not qualify for compensation under the FLMS Compensation Policy.

1.4 Decision

[26] Charles' appeal is dismissed.

Dated in the City of Edmonton, in the Province
of Alberta on this 24th day of October 2016.



Don Cunningham
Panel Chair

