

Order No. 133

File No. 03-0007-01

METIS SETTLEMENTS ACT

METIS SETTLEMENTS APPEAL TRIBUNAL

Between:

Clint Cunningham

Appellant

and

Peavine Metis Settlement

Respondent

Concerning a land dispute on
SW-26-79-16-W5M

DECISION

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The Hearing

Appeal heard by the following members of the Metis Settlements Appeal Tribunal:

Phyllis Collins, Panel Chair
Floyd Flett, Panel Member
Wayne Cardinal, Panel Member

Parties present at the hearing:

Clint Cunningham, Appellant
Carmen McDermott, Appellant's wife

Peavine Metis Settlement Council
Represented by: Iner Gauchier, Chair
Raymond Carifelle, Councillor
Chris Noskey, Councillor
Melvin Gauchier, Councillor
Arnold Gauchier, Councillor

Peavine Metis Settlement staff:
Dennis Cunningham, Administrator
Don Cunningham, Land & Membership Coordinator
Charlotte Cunningham, Land & Membership Assistant

MSAT staff:

Terri Quintal, Research and Development Officer

Place and date of the hearing:

Senior's Room, Community Services Building, Peavine Metis Settlement
November 28, 2001

Background

Clint Cunningham, a member of the Peavine Metis Settlement, was granted provisional Metis title (PMT) on land legally described as SW-26-79-16-W5M by Peavine Metis Settlement Council motion # 95:05:23:09 on May 23, 1995.

On January 16, 2001, the Metis Settlements Land Registry (MSLR) sent Clint a notice that his PMT was going to expire on April 2, 2001 unless Clint took action to keep it.

On March 26, 2001, 7 days before the expiration, Clint filled out and submitted an application to upgrade his PMT on SW-26-79-16-W5M to a Metis title. On his application, in answer to the question of what improvements had been made, Clint wrote that a roadway had been built. An oil company built the roadway to which he is referring. Clint also indicated on the application form that he is living on the Settlement, he did not owe the Settlement money and that he was not living on the land or operating a farm, ranch or business on the property. Clint did not get a reply from Council regarding his application for Metis title.

On May 18, 2001, Clint received another letter from the Registrar stating that his PMT expired on April 2, 2001. The letter also informed Clint of his right to appeal to the Tribunal within 60 days if he objected to the cancellation of his PMT.

Peavine Metis Settlement Council should have made a decision on Clint Cunningham's application to upgrade to Metis title within 45-days of receiving the application. Council did not make a decision on Clint's application for Metis title until June 25, 2001, 46 days after the 45-day deadline. In motion# 01:06:25:03 Peavine Council declined Clint's application for Metis title due to "lack of improvements completed". Clint claims that he was not notified about Council's decision to deny him Metis title.

Sections 5.2 4(a) and (b) of the General Council Land Policy, which deal with acquiring Metis title from the Settlement, state:

- (4) Within 45 days of receiving the application, the settlement council must either
 - (a) notify the applicant that the conditions for transferring Metis title have not been met, or
 - (b) provide the applicant with a transfer of Metis title.

The Tribunal did not receive any documents that indicate that Clint was informed of motion# 01:06:25:03 made by Peavine Settlement Council. Clint informed the Tribunal that he attempted to sort out the matter of his application with Council before appealing to the Metis Settlements Appeal Tribunal.

The Tribunal received Clint Cunningham's appeal letter on September 14, 2001.

On October 19, 2001, a Case Management Panel of the Tribunal met and decided to waive Clint's 30-day appeal period.

Section 8.1(2) of the Metis Settlements General Council Land Policy states:

8.1 Right to appeal

...

- (2) The appeal must be filed with the Appeal Tribunal, and a Notice of Appeal filed with the Registrar, within 30 days of the settlement council’s decision, or, if the settlement council did not make a decision, within 30 days of the date by which it was required to have made the decision.

The Tribunal finds jurisdiction to waive the appeal period under section 202 of the *Metis Settlements Act* which states:

202 When a matter before the Appeal Tribunal is, by this Act or any other enactment or by any rule or decision of the Tribunal, required to be done within a specified time and if the circumstances of the case in its opinion so require, the Tribunal may, with or without notice, extend the time so specified or waive the requirement whether or not the time has expired.

Jurisdiction

MSAT finds jurisdiction to hear this appeal in section 189(1)(b) of the *Metis Settlements Act*.

189(1) The Appeal Tribunal

...

- (b) must hear appeals and references and perform any other function given to it or required to be performed by it under the regulations, by-laws, or General Council Policies;

It further finds jurisdiction under sections 8.1 of the General Council Land Policy, which states:

8.1 Right to appeal

- (1) Wherever this Policy requires the General Council or a settlement council to make a decision related to the granting, transfer, or termination of interests in land in the settlement area, any person affected by the decision, or lack of a decision can appeal in writing to the Appeal Tribunal.

Evidence

Clint Cunningham’s Evidence

Clint Cunningham made the following points:

- Clint applied to upgrade to Metis title on March 26, 2001.
- There is discrimination on Peavine Settlement.
- Clint could not build his house on the SW-26-79-16-W5M because there is no power.
- Clint wants to give this land to his children.

- The Peavine Council was in Edmonton when Clint's application for Metis title was discussed.
- Peavine Council did not give Clint an explanation as to why he did not receive Metis title on the SW-26-79-16-W5M.
- Clint saw the minutes regarding his application for Metis title in the hearing package; he never received a copy from Council.
- An oil company built a road on the SW-26-79-16-W5M.
- Clint received a letter from the Metis Settlements Land Registry informing him that his provisional Metis title had expired.
- Clint indicated that he still had another five years to make improvements on the land.
- There is a right on the Settlement to farm and make improvements.

Carmen McDermott's Evidence:

- Clint had met with Council to try and resolve this matter.
- Clint did all the required paperwork.
- Clint had no idea that the land had been taken away.
- Clint and Carmen had asked the Settlement on numerous occasions if there was a land meeting in June; they were told that there was not a meeting in June.
- It is difficult to use the land because of the oil activity.

Peavine Metis Settlement's Evidence

Don Cunningham, Land and Membership Coordinator:

- There was never a land meeting scheduled for June 19, 2001.
- Clint Cunningham took possession of the SW-26-79-16-W5M on May 23, 1995.
- An application to convert an allocation was received at the Peavine Metis Settlement office on April 3, 1996, signed by Clint Cunningham.
- It took Clint almost a year to come in and sign his provisional Metis title paperwork.
- Clint's five-year provisional Metis title should have been valid from May 23, 1995, when Council approved his application, to May 22, 2000.
- Council passed motion # 01:06:25:03 on June 25, 2001, which cancelled Clint's provisional Metis title due to lack of improvements.

Dennis Cunningham, Administrator:

- Clint should have appealed to the Tribunal after receiving the May 18, 2001 letter from the Metis Settlements Land Registry.
- Expired land reverts back to the Settlement.
- Clint Cunningham's provisional Metis title was held for six years, he collected compensation during the six years.
- Settlement administration has been directed to invoice members properly.
- The Tribunal made a previous decision that made the date of the motion the date that the term of the provisional Metis title started.

- Requested that the Tribunal decide when Clint Cunningham's provisional Metis title began and ended.

Iner Gauchier, Peavine Metis Settlement Chair:

- Motion #01:06:25:03 may have been passed in error; Clint's land had already expired.
- The Metis Settlements Land Registry should be the respondent because they sent Clint the letter not the Peavine Metis Settlement.
- Mr. Gauchier submitted oil and gas compensation cheques from the Peavine Metis Settlement to Clint Cunningham as evidence.

Findings of Fact

- Motion # 95:05:23:09 granted Clint Cunningham provisional Metis title to the SW-26-79-16-W5M.
- Clint Cunningham's memorandum of provisional Metis title states that the term of the interest was from April 3, 1996 to April 2, 2001.
- Clint Cunningham's provisional Metis title on the SW-26-79-16-W5M was registered with the Metis Settlements Land Registry beginning April 3, 1996 and expiring April 2, 2001.
- Clint Cunningham submitted an application for Metis title on March 26, 2001, 7 days before the April 2, 2001 expiry date.
- Clint Cunningham specified on his application for Metis title that the only improvement was a roadway.
- During the hearing, Clint Cunningham was asked who built the roadway; he replied that an oil company had built the roadway.
- The General Council Land Policy sections 5.2(1) and (2) state:

5.2 Acquiring Metis title from the settlement

- (1) Any member who holds a parcel by provisional Metis title or by an allotment can apply at the settlement office for the Metis title to the parcel.
- (2) The settlement council must approve the transfer of Metis title to the applicant if:
 - (a) the applicant is a member who is living in the settlement area;
 - (b) the applicant has no overdue debts owed to the settlement;
 - (c) the applicant would, if the Metis title were transferred, not exceed the land holding limits;
 - (d) the applicant is living on the land or operating a business, farm or ranch on it; and
 - (e) the land has been improved
 - (i) by constructing a house or permanent business buildings on it, or
 - (ii) by fencing, clearing, cultivating, or otherwise working a significant part of the land to enhance its productive capacity.

- Peavine Council dealt with Clint Cunningham's application to upgrade to Metis title on June 25, 2001, 91 days after receipt of Clint's application, and 46 days after the 45-day deadline for making a decision on Metis title applications.
- Peavine Council denied Clint Cunningham's application to upgrade to Metis title through motion #01:06:25:03 due to lack of improvements.
- According to the General Council Land Policy:
 - 1.3(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
- There is oil and gas activity on the SW-26-79-16-W5M.
- Clint Cunningham received compensation cheques for oil and gas activity on the SW-26-79-16-W5M starting in July of 1997 and ending in June of 2000.
- The Settlement Administrator, a Council representative, the applicant, and a witness to the applicant's signature signed Clint Cunningham's memorandum of provisional Metis title, the memorandum states the terms of the title as starting on April 3, 1996 and ending on April 2, 2001. The memorandum was dated April 3, 1996.

The Decision

The Metis Settlements Appeal Tribunal confirms Council's decision not to grant Clint Cunningham Metis title, due to a lack of improvements, for land legally described as the SW-26-79-16-W5M.

Clint Cunningham's provisional Metis title started on April 3, 1996 and expired on April 2, 2001.

Reasons

Despite the lateness of Council's decision, the Panel found that Peavine Council motion #01:06:25:03, which declined Clint Cunningham's application for Metis title, was valid because Clint Cunningham did not meet the requirements to obtain Metis title. The Panel decided that changes made by an oil company are not improvements as defined in sections 5(2)(i) and (ii) of the Metis Settlements General Council Land Policy.

The Panel would like to address Peavine Council's delay in making a decision regarding Clint Cunningham's application to upgrade to Metis title. Clint Cunningham applied for Metis title, on March 26, 2001, 7 days before his provisional Metis title expired. Council, in order to fulfill their responsibilities, would have had to have made the decision whether to grant an upgrade 45 days after having received his application. Council did not make their decision within 45 days and as such did not follow the process set out in the Metis Settlements General Council Land Policy.

Council made reference during the hearing to a prior decision of the Metis Settlements Appeal Tribunal. The Tribunal decision to which Council is referring is MSAT Order No. 122, *Paul Carifelle v. Peavine Metis Settlement*. In that order, Mr. Carifelle's provisional Metis title was never registered with the Metis Settlements Land Registry, despite a motion having been passed that granted the interest. The Panel, when deciding Order No. 122, assumed that, lacking any paperwork, the 5-year term would have been registered on, or around the date of the motion. In Clint Cunningham's case, paper work was completed and sent to the Metis Settlements Land Registry. Therefore, the Panel decided that Clint Cunningham's provisional Metis title was valid from April 3, 1996 to April 2, 2001.

The Order

The Tribunal orders that:

- The Registrar of the Metis Settlements Land Registry cancel Clint Cunningham's interest in land legally described as SW-26-79-16-W5M.

Dated this ____ day of _____, 2002

Phyllis Collins, Panel Chair