

Order No. 135

File No. 03-0005-01

METIS SETTLEMENTS ACT

METIS SETTLEMENTS APPEAL TRIBUNAL

Between:

Lorna Carifelle

Appellant

and

Peavine Metis Settlement

Respondent

Concerning a land dispute on
SW-4-79-16-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:

Lorna Carifelle, Appellant

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

Peavine Metis Settlement Staff
Represented by: Dennis Cunningham, Administrator,
Don Cunningham, Land and Membership Coordinator
Charlotte Cunningham, Land and Membership Assisstant

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

Lorna Carifelle was registered as the holder of provisional Metis title (PMT) on SW-4-79-16-W5M on the Peavine Metis Settlement. The term of her interest was from November 8, 1994 to November 8, 1999. In September of 1999, the Metis Settlements Land Registry (MSLR) sent Lorna a letter informing her that her PMT would expire on November 8, 1999 unless it was renewed.

On November 10, 1999 Lorna applied at the Settlement office for Metis title (MT). On the application Lorna wrote that 10 acres had been cleared in 1995. Lorna also wrote that she planned to move a house and some cattle onto the land at her future husband's expense. She indicated that they (she and her future husband) planned to farm the land as part of their future business endeavors. Lorna also indicated on her application that she was living on the Settlement, was using the land for farming, ranching or a business and that she did not owe the Settlement any money.

On October 27, 2000, the MSLR sent Lorna another letter informing her that her PMT would be cancelled within 60 days after the date of the letter.

On July 17, 2001, the MSLR sent Lorna another letter informing her that they had cancelled her interest in SW-4-79-16-W5M.

Lorna informed the Tribunal that she had gone to the Settlement office numerous times to upgrade to MT. She said that she filled out the proper paper work but believes that her paperwork was not sent to Land Registry. Lorna did not receive any correspondence from the Settlement regarding her application. In addition, there are no Council minutes pertaining to Lorna's application for MT.

Lorna's PMT expired on November 8, 1999. The MSLR sent Lorna a letter dated July 17, 2001, informing her that her interest in the SW-4-79-16-W5M was cancelled. The Tribunal received Lorna's appeal letter on August 28, 2001. Ms. Carifelle informed the Tribunal that the reason she took so long to appeal the cancellation of her interest was because she had been attempting to sort the matter out with Council.

On October 19, 2001, a Case Management Panel (CMP) of the Metis Settlements Appeal Tribunal met and decided to waive Lorna Carifelle's appeal period in accordance with section 202 of the *Metis Settlements Act*, which states:

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.

The Tribunal finds jurisdiction to make this decision according to section 190(1)(m) of the *Metis Settlements Act*.

190(1) The Appeal Tribunal may, in respect of any matter before it,

...

- (m) refer a matter back to the settlement council, with or without suggestions or recommendations;

Evidence

Lorna Carifelle's Evidence

Lorna Carifelle made the following points:

- She cleared approximately 8-10 acres in 1995.
- She wants to buy some cattle.
- Her grandfather picked the land out for her.
- She was one of the first people to receive land in that area.
- She wants to pass the land along to her son.
- She did not do more improvements because the Council of the day told her not to do anything else to the land because she did not have Metis title.
- Everyone else in that area got Metis title when the oil came in.
- She wants to move her house there at her own expense.
- She went into the settlement office numerous times to upgrade and Council did not do anything with the land.
- She did not appeal until now because she was trying to work things out with Council.
- Lorna did not have a problem with this Council giving her the run around; it was the previous Council that gave her the run around.

- Lorna gave two or three applications to Jolene Mearon when Jolene was in the Land and Membership Department.
- When Lorna requested her land location from the Settlement office, she was given the wrong land description, written on Lorna's appeal letter is incorrect. The correct land description is the SW-4-79-16-W5M.

Peavine Metis Settlement Council's Evidence

Don Cunningham:

- Don had only been working as the Land and Membership Coordinator for about a month and a half when Lorna came in to inquire about her application.
- The Land and Membership Department was in disarray when Don Cunningham became the Land and Membership Coordinator and took over the department in 1999.
- Lorna came in to the office 2 days after her PMT expired.

Dennis Cunningham:

- The land description in Lorna's appeal letter to the Tribunal is incorrect.
- Lorna had a provisional Metis title on the SW-4-79-16-W5M.
- There was a fire in the area of Lorna's land a few years ago.

Iner Gauchier:

- Council has not granted Metis title in that area since 1999.

Raymond Carifelle:

- There was not a fire on Lorna's land.
- There is lots of willow and brush in the area that grows fast.
- It was the first time that he has seen Lorna's application for Metis title.

Findings of Fact

- The SW-4-79-16-W5M is the land in dispute, not the NW-29-78-15-W4M, Block 3, Lot 1A cited in Lorna Carifelle's appeal letter.
- Lorna Carifelle applied for Metis title on November 10, 1999.
- Section 5.2(4)(a) of the General Council Land Policy states:
 - 5.2 Acquiring Metis title from the settlement
 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 Peavine Council did not decide on Lorna's application for Metis title within the required 45 days.
- Council did not deal with Ms. Carifelle's application for Metis title.

- The Land and Membership Department of the Peavine Metis Settlement was not well organized when Don Cunningham took over as Land and Membership Coordinator in 1999.

The Decision

The Panel is referring this matter back to the Peavine Metis Settlement Council to review and decide upon.

Reasons

Lorna Carifelle submitted her paperwork to the Peavine Metis Settlement Council on November 10, 1999. The Council of the day did not deal with Ms. Carifelle's application for Metis title. Ms. Carifelle's application was either ignored by Council or, due to confusion in the office, the application was never presented to Council.

Recommendations

Council should consider the information written on the application as well as the information gathered from the MSAT hearing, when making their decision.

The Order

The Tribunal orders that:

- The Peavine Metis Settlement Council review and make a decision on Lorna Carifelle's application for Metis title.
- Council follow the process outlined in the *General Council Land Policy*, including timelines, when deciding on Ms. Carifelle's application for Metis title.
- The Peavine Metis Settlement Council considers the date of this order as the date that Ms. Carifelle's submitted her application.
- The Peavine Metis Settlement Council inform the Tribunal of their decision.
- Ms. Carifelle may, if she is unhappy with the decision of Council, appeal Council's decision to the Tribunal.

Dated this 18th day of January, 2002

Phyllis Collins, Panel Chair