

METIS SETTLEMENTS ACT

METIS SETTLEMENTS APPEAL TRIBUNAL

Between:

Robert L'Hirondelle

Applicant

-and-

East Prairie Metis Settlement

Respondent

-and-

Valery St. Cyr

Affected Party

Concerning a membership dispute.

DECISION

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The Hearing

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

Phyllis Collins, Panel Chair
Wayne Cardinal, Panel Member
Don Fleming, Panel Member

Parties present at the hearing:

Robert L'Hirondelle, Applicant

East Prairie Metis Settlement Council, Respondent

Represented by: Dennis Laboucan, Chair
Murielle L'Hirondelle, Councillor
Peter Patenaude, Councillor
Albert Quinn, Administrator
Violet Haggerty, Director of Land and Resources

Valery St. Cyr, Affected Party

Observers:

Steven St. Cyr, Valery St. Cyr's husband

MSAT staff present:

Sara Daniels, Executive Director/Tribunal Secretary
Terri Quintal, Research and Development Officer

Place and date of the hearing:

High Prairie Inn
High Prairie Alberta
April 17, 2002

Objections to the Panel:

The Panel Chair asked if there were objections to the panel; there were none.

Background

Valery St. Cyr is registered as an Indian under the *Indian Act*. Valery received status as an Indian through marriage in January 1985.

Valery St. Cyr became a member of the East Prairie Metis Settlement on September 15, 1983, under the *Metis Betterment Act*. In July of 1990, with the passage of the *Transitional Membership Regulation* under the *Metis Settlements Act*, membership in all the Metis Settlements was reviewed by both Settlement Council and the Minister. From this review, a list was prepared by the government which showed members on the records it maintained. A second list was prepared by each Settlement Council as to the members Council recognized. The two lists were compared and a person who was on both lists was placed into a “confirmed settlement member” category, regardless of their Indian status. In this way, people with Indian status who were recognized as Settlement members previous to 1990 became Settlement members under the *Metis Settlements Act*.

Valery was granted membership in the East Prairie Metis Settlement under the *Transitional Membership Regulation*. As such, she did not have to comply with the new membership criteria set out in Part 3, Settlement Membership, Division 1, Settlement Membership Applications in the *Metis Settlements Act*.

On November 13, 2000, Valery terminated her membership in the East Prairie Metis Settlement in accordance with section 89.1(1) of the *Metis Settlements Act* in order to apply for membership in the Peavine Metis Settlement, which she did not receive.

Valery St. Cyr then applied for membership in the East Prairie Metis Settlement. Valery received membership in the East Prairie Metis Settlement on August 20, 2001 through motion #2001:450/L.

On October 3, 2001, the Metis Settlements Appeal Tribunal received a letter from Robert L’Hirondelle asking for leave to appeal the granting of membership to Valery St. Cyr.

Robert L’Hirondelle cited the following as grounds for appeal:

- Valery St. Cyr:
 - is a registered treaty Indian as defined under the *Indian Act*.
 - was registered after the age of 18.
 - gave up her membership in East Prairie.
 - does not meet the eligibility as set out in section 75(1) and 75(2) of the *Metis Settlements Act*.

Jurisdiction

The Tribunal finds jurisdiction to hear this appeal under sections 83(2), 83(3) and 84(1) of the *Metis Settlements Act*.

83(2) If a settlement council approves an application for membership in a settlement, any member of the settlement may appeal in writing to the Appeal Tribunal within 45 days after the application was approved.

83(3) No settlement member may make an appeal under subsection (2) without the permission of the Appeal Tribunal.

On February 21, 2002, a Case Management Panel of the Metis Settlements Appeal Tribunal met and granted Robert L'Hirondelle permission to appeal.

84(1) On receipt of an appeal under section 83, the Appeal Tribunal must hold a hearing after giving everyone it considers affected by the appeal reasonable notice of the date, time and place of the hearing.

The Tribunal has jurisdiction to make this decision under section 190(1)(1) of the *Metis Settlements Act*.

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

...

(1) reverse the settlement council's decision...

Evidence

Robert L'Hirondelle's Evidence

- Valery was granted membership through Council motion, not the bylaw process.
- Council erred in granting Valery membership.
- Valery was granted membership before 1990 by being grandfathered in; she is an Indian.
- Nothing allows an individual back after they cancel their membership.
- I am appealing the process that Council used, Valery's application should have gone through the bylaw process.
- I have nothing against Valery personally, I just think the proper process should be followed.

Valery St. Cyr's Evidence

- I was born and raised in the East Prairie Metis Settlement.
- I cancelled my membership in East Prairie to apply for membership in Peavine.
- My husband was a member of Peavine.
- I left East Prairie for a couple of years to go to school.
- I did not get membership in Peavine, so we decided to move back to East Prairie.

- I was married when I was 19 years old to a man that had Treaty status, that is how I received status.
- I thought since I was a member before, I would not have a problem getting my membership back.
- Steven, my husband, is waiting for Council's decision regarding his application for membership in the East Prairie Metis Settlement.

Dennis Laboucan's Evidence

- Council looked at this application under the grandfather clause but the clause is vague.
- The *Act* does not mention anything about people who were grandfathered in reapplying for membership.
- Council did not think Valery would have to go through the bylaw process because she was grandfathered in.
- May be discriminatory because Metis women lose their rights to be Metis when they marry a treaty, Valery could have married a white man and then she would have been okay.
- Valery was born and raised in the Settlement.
- Valery only cancelled her membership so that she could apply in Peavine and live with her husband.
- Council made a decision to grant Steven St. Cyr membership in the East Prairie Metis Settlement.

Violet Haggerty's Evidence

- The Settlement does not have a list of people who were grandfathered in as members.
- A standard question that we ask all applicants is, "Are you registered as an Indian?" If they are, we ask for their white card (the card that that shows their treaty status).
- Valery provided her white card with her application.

Findings of Fact

- Valery St. Cyr was born and raised on the East Prairie Metis Settlement.
- Valery St. Cyr was a member of the East Prairie Metis Settlement until she cancelled her membership in November 2000.
- Valery St. Cyr became registered as an Indian under the *Indian Act*, when she got married in 1985.
- Valery St. Cyr became an Indian under the *Indian Act*, when she was over the age of 18.
- Valery St. Cyr cancelled her membership in the East Prairie Metis Settlement.
- Valery St. Cyr applied for and was granted membership in the East Prairie Metis Settlement through Council motion 01:450/L.

- *Metis Settlements Act*

75(1) 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 is not eligible to apply for membership or to be recorded as a settlement member unless subsection (2) applies.

75(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

- (a) the person was registered as an Indian or an Inuk when less than 18 years old.
- (b) the person lived a substantial part of his or her childhood in the settlement area,
- (c) one or both parents of the person are, or at their death were, members of the settlement, and
- (d) the person has been approved for membership by a settlement by-law specifically authorizing the admission of that individual as a member of the settlement.

- *Transitional Membership Regulation*

10(1) No person may file a claim for membership with the Appeal Tribunal under this Regulation unless the person is set out under the title “uncertain status” in the Interim Report or Final Report.

(2) Nothing in this Regulation prevents a person whose name is set out in the Interim Report or Final Report, or who loses a right to claim membership under this Regulation, from applying to become a settlement member under the *Act*.

- *Metis Settlements Act*

92 A person who is not a settlement member is not permitted to reside on patented land unless the person

- (a) is part of the immediate family of a settlement member...

Decision

The East Prairie Metis Settlement Council erred in granting Valery St. Cyr membership in the East Prairie Metis Settlement.

Reasons

Valery St. Cyr was granted membership in 1990 under the *Transitional Membership Regulation*. However, upon terminating her membership and then reapplying, she is subject to the criteria set out in the *Metis Settlements Act*.

After considering the *Transitional Membership Regulation* as a whole and in particular section 10(1) and (2), the panel concluded that the *Transitional Membership Regulation* was meant as a

tool to help with the transition between the *Metis Betterment Act* and the *Metis Settlements Act*, and was meant as a one-time arrangement. Once Valery St. Cyr cancelled her membership, she lost the right to claim membership under the *Transitional Membership Regulation*, and therefore her application for membership would have to be considered under the *Metis Settlements Act*.

As a person registered as an Indian under the *Indian Act*, when she was over the age of 18, Valery St. Cyr does not meet the criteria for membership as set out in section 75(2)(a) of the *Metis Settlements Act*.

As the spouse of a member, Valery St. Cyr's right to reside on the East Prairie Metis Settlement is not affected by this decision, as described in section 92(a) of the *Metis Settlements Act*.

Order

The Tribunal orders that:

- the Registrar of the Metis Settlements Land Registry cancel the membership of Valery St. Cyr.

Dated in the City of Edmonton in the Province of Alberta on the 16th day of May, 2002.

Phyllis Collins
Panel Chair