

Order No. 140

File No. 03-0003-02

METIS SETTLEMENTS ACT
METIS SETTLEMENTS APPEAL TRIBUNAL

Between:

Alexander Solomon Holmes

Applicant

-and-

Peavine Metis Settlement Council

Respondent

Concerning a land dispute on the SE-07-079-16-W5M.

DECISION

Case Management Panel Meeting

Decision made by the following members of the Metis Settlements Appeal Tribunal:

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

MSAT staff present:

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

Place and date of the meeting:

MSAT Board Room
Edmonton, Alberta
May 9, 2002

Background

Alexander Holmes was granted a provisional Metis title on SE-07-079-16-W5M on February 19, 1997. On December 3, 2001, Alexander Holmes applied for Metis title on the SE-07-079-16-W5M.

Mr. Holmes informed the Tribunal that he has not received any notice from Peavine Metis Settlement Council regarding his application to upgrade to Metis title.

Don Cunningham, Land and Membership Coordinator for the Peavine Metis Settlement, confirmed that the Peavine Metis Settlement Council has not dealt with Mr. Holmes' application for Metis title.

Jurisdiction

The Tribunal has jurisdiction to deal with this matter according to 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...

In addition, the Tribunal has jurisdiction to deal with this matter according to section 8.1(1) of the Metis Settlements General Council Land Policy.

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 decision, can appeal in writing to the Appeal Tribunal.

The Tribunal has 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...

Findings of Fact

- Alexander Holmes applied for Metis title on December 3, 2001.
- The Peavine Metis Settlement Council has not dealt with Mr. Holmes' application.

- According to section 5.2 (4)(a) and (b) of the Metis Settlements General Council Land Policy:

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 provide the applicant with a transfer to Metis title...

Decision

If the Peavine Metis Settlement does not make a decision regarding Mr. Holmes' application for Metis title, the matter will be taken to a hearing.

Reasons

The Peavine Metis Settlement did not follow the required procedure, as set out in section 5.2(4) of the General Council Land Policy, for making a decision on an application for Metis title.

Order

The Tribunal orders that:

- the Peavine Metis Settlement Council decide on Mr. Holmes' application for Metis title within 15 days of the signing of this Order.
- the Peavine Metis Settlement Council notify the Metis Settlements Appeal Tribunal, in writing, of their decision regarding Mr. Holmes' application for Metis title.

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

Phyllis Collins
Panel Chair