

***Metis Settlements Act***

**METIS SETTLEMENTS APPEAL TRIBUNAL**

Between:

**George Bellerose**

Appellant

-and-

**East Prairie Metis Settlement**

Respondent

-and-

**Tony Laboucan**

Affected Party

Concerning a Membership Dispute.

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**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:**

George Bellerose, Appellant  
Robert L'Hirondelle, Appellant's representative

East Prairie Metis Settlement Council, Respondent

Represented by: John Supernault, Chairperson  
Peter Patenaude, Vice-Chairperson  
Donna Grier, Councillor  
Murielle L'Hirondelle, Councillor  
Albert Quinn, Administrator

Tony Laboucan, Affected Party

### **MSAT staff present:**

Terri Quintal, Research and Development Officer  
Sara Daniels, Executive Director/Tribunal Secretary  
Linda Lewis, MSAT Contractor

### **Place and date of the Hearing:**

Room 302, High Prairie Inn  
High Prairie, Alberta  
July 15, 2002

### **Other matters at the hearing:**

The Panel Chair asked if there were any objections to the Panel; there were none. Tony Laboucan asked for an adjournment because he had not read the hearing package. Mr. Laboucan was denied because the appellant objected to an adjournment. Mr. Laboucan was granted a recess to allow him to read the hearing package.

## Background

On January 15, 2002, the East Prairie Settlement Council granted membership to Tony Laboucan through Bylaw EPMA025.

On March 1, 2002, the Tribunal received an appeal letter from George Bellerose. Mr. Bellerose was requesting permission to appeal the granting of membership to Tony Laboucan by the East Prairie Metis Settlement Council. Mr. Bellerose's original appeal letter did not meet the Tribunal's criteria for appealing the granting of membership, as a result, on March 4, 2002, the Tribunal sent Mr. Bellerose a letter informing him of the requirements for appeal letters. Mr. Bellerose was given 30 days, as per MSAT policy, to submit the proper appeal letter.

On April 3, 2002, the Tribunal received an appeal letter that met MSAT's criteria from George Bellerose. Mr. Bellerose requested permission from the Tribunal to appeal the granting of membership to Tony Ernest Laboucan.

Mr. Bellerose cited the following as grounds for appeal:

- Mr. Laboucan is considered an Indian under Article 6 of the *Indian Act* and cannot rely on Part 3, Division 1, Section 75(2) for eligibility,
- He [Tony Laboucan] does not comply with Part 3, Division 1, Section 75(2)(b) as he did not live a substantial part of his childhood in the settlement area, and
- He [Tony Laboucan] was not legally adopted by Archie Myers and Agnes Johnston, and therefore he does not comply with 75(2)(c). His biological parents are Michael Tallman and Pauline Laboucan, neither of whom are members of the East Prairie Metis Settlement.

On his application for membership in the East Prairie Metis Settlement, Tony Laboucan indicated that he was registered as an Indian before he was 18 years of age. The application asks how many years the applicant lived as a child on the Settlement; Tony stated that he did not live on the Settlement for most of his childhood. Tony also indicated that his mother, Pauline Laboucan, had been a member of the Settlement.

On April 19, 2002, a Case Management Panel of the Metis Settlements Appeal Tribunal met and granted George Bellerose permission to appeal.

83(2) and (3) 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.

## Jurisdiction

The Tribunal has jurisdiction to hear this appeal according to section 83(2) of the *Metis Settlements Act*, which states:

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.

## Evidence

### Appellant's Evidence

Robert L'Hirondelle made the following comments on behalf of George Bellerose:

- Tony does not qualify for membership because he did not live a substantial part of his childhood in the Settlement and neither of his parents were members of the settlement.
- This has nothing to do with Tony personally. Council made the wrong decision to approve his membership.
- Council did not do their due diligence on the membership application.
- If Council's decisions get overturned by the Tribunal, then maybe they will start making better decisions.
- A large part of the people living on the Settlement can't be members for one reason or another, we are not saying that they cannot live there because they don't have membership. They can live there and not be members.

### Respondent's Evidence

East Prairie Metis Settlement made the following comments:

John Supernault, Chairperson

- Council makes their own decisions; maybe we should be more thorough with the application.
- We feel from the heart that certain people should get membership and we are trying to make our system better.
- Council must ensure that administration lets us know if people qualify or not.

Murielle L'Hirondelle, Councillor

- If the proper process was in place this would not have come this far.
- There is no reason Tony can't live on the Settlement because he lives with a member.
- We should not have to put people in this position; it becomes a circus.

Albert Quinn, Administrator

- People can no longer get their name off of the Indian Registry list. There was federal legislation passed and you cannot take your name off the list.

## Affected Parties Evidence

Tony Laboucan made the following comments:

- I started a family here with Josephine Patenuade.
- My uncle [George Bellerose] wants to throw out everyone who is Treaty.
- George Bellerose said that Treaties are not allowed in the Settlement.
- I was treaty before I was eighteen; I had no choice.
- I consider East Prairie Metis Settlement my home.
- I applied to have my status changed but they said no.
- I have lived on the Settlement for six years.
- My legal guardians were not Settlement members.
- I don't bother anyone at the Settlement.
- I did not live any part of my childhood on the Settlement.
- I live the Metis way.

## Findings of Fact

- Tony Laboucan did not live a substantial part of his childhood in the Settlement.
- Pauline Laboucan, Tony Laboucan's mother, was a member of the East Prairie Metis Settlement from July 27, 1982 until October 18, 1983.
- Tony Laboucan was registered as an Indian before he was eighteen.
- Tony Laboucan resides on the East Prairie Metis Settlement with Settlement member Josephine Patenaude.
- *Metis Settlements Act* s.75(1) and s.75(2) state:

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 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 are or at the time of their death were, members of the settlement, and
- (d) the person has been approved for membership by a settlement bylaw specifically authorizing the admission of that individual as a member of the settlement.

## Decision

The East Prairie Metis Settlement Council erred in granting membership to Tony Laboucan; By-Law No. EPMA025 is in contravention of the *Metis Settlements Act*.

## Reasons

Section 75 (1) of the *Metis Settlements Act* states that an Indian who is registered as an Indian under the *Indian Act* is not eligible to apply for membership unless s.75(2) applies. Mr. Laboucan was registered as an Indian when he was less than 18, and he was approved for membership through a bylaw, s.75(2) does not apply to him because he did not live any part of his childhood on the settlement, nor are his parents currently members of the Settlement.

## Comments and Recommendations

As the common-law husband of a Settlement member, Tony Laboucan's right to reside on the East Prairie Metis Settlement is not affected by this decision, as described in s. 92(a) of the *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...

The East Prairie Metis Settlement By-Law No. EPMA025 does not accurately reflect the information that Tony Laboucan stated on his application for membership. Paragraph two of the East Prairie Metis Settlement By-Law No. EPMA025 states that:

Tony Ernest Laboucan was registered as an Indian when less than 18 years old, lived a substantial part of his childhood in the settlement area, and one or both of his parents are, or at the time of their death were, members of the settlement.

When writing membership bylaws, Settlement Councils need to ensure that the bylaw accurately reflects the information provided by the applicant.

## Order

The Tribunal repeals the East Prairie Metis Settlement By-law No. EPMA025 and thus East Prairie Metis Settlements decision to grant Tony Laboucan membership.

Dated in the City of Edmonton in the Province of Alberta on the 6<sup>th</sup> day of August 2002.

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Phyllis Collins  
Panel Chair