

Metis Settlements Act

METIS SETTLEMENTS APPEAL TRIBUNAL

Between:

George Bellerose

Appellant

-and-

East Prairie Metis Settlement

Respondent

-and-

Pamela Cunningham

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:

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

East Prairie Metis Settlement Council, Respondent

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

Pamela Cunningham, Affected Party
Karen Cunningham, Pamela Cunningham's Mother and Representative

MSAT staff present:

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

Place and date of the Hearing:

Room 302, High Prairie Inn
High Prairie, Alberta
August 19, 2002

Other matters at the hearing:

The Panel Chair asked if there were any objections to the composition of the Panel; there were none. However, Pamela Cunningham had an objection to Mr. Robert L'Hirondelle acting as Mr. Bellerose's representative, as Mr. Bellerose had not submitted anything in writing appointing Mr. L'Hirondelle. The Panel decided that, as is the Tribunal's practice, Mr. Bellerose was allowed to verbally appoint at the hearing Mr. L'Hirondelle as his spokesperson.

Background

On January 15, 2002, Pamela Cunningham was granted membership through Bylaw No. EPMA024 in the East Prairie Metis Settlement.

On March 11, 2002, the Tribunal received an appeal letter from George Bellerose. Mr. Bellerose requested permission from the Tribunal to appeal the granting of membership to Pamela Cunningham.

Mr. Bellerose cited the following as grounds for appeal:

- Ms. Cunningham is considered an Indian under Article 6 of the *Indian Act* and cannot rely on Part 3, Division 1, Section 75(2) for eligibility, and
- She [Pamela Cunningham] does not comply with Part 3, Division 1, Section 75(2)(b) as she did not live a substantial part of her childhood in the settlement area.
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Section 75(2) of the *Metis Settlements Act*

75(2) An Indian registered under the *Indian Act* (Canada) or a person who is registered as an Inuk for the purposes 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 bylaw specifically authorizing the admission of that individual as a member of the settlement.

On her application for membership in the East Prairie Metis Settlement, Pamela Cunningham indicated that she was registered as an Indian before she was 18 years of age and that she had resided on the Settlement for most of her childhood. The application asks how many years the applicant lived as a child on the Settlement; Pamela stated that she had lived there for 13 years.

Robert Emard, common-law husband to Pamela's Kohkum (grandmother), submitted a letter to the Tribunal, which supported Pamela's claim that she lived a substantial portion of her childhood on the Settlement.

Preliminary Decision

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

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 July 15, 2002, this appeal went to a hearing. Ms. Karen Cunningham asked for a 30-day recess in order to allow her to prepare for the hearing. The recess was granted and the hearing was reconvened on August 19, 2002.

Jurisdiction

The Tribunal has jurisdiction to hear this appeal according to s. 189(1)(a) and s. 83(2) of the *Metis Settlements Act*, which state:

189(1) The Appeal Tribunal

(a) must hear appeals and references and perform any function given to it under this *Act* or any other enactment...

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

George Bellerose made the following comments:

- After 1990 if you register as an Indian you cancel yourself out; it is in the *Act*.

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

- George Bellerose is appealing the claim that Pamela lived a substantial part of her childhood in the Settlement area.
- My four children Lisa 27, Lana 25, Justin 21, and Jordan 18 submitted written statements that Pamela did not ride the bus with them.
- My youngest son said he remembers her for a bit but not the entire year.
- My children don't remember seeing her at any of the youth events put on by the Settlement.
- I know that Robert Emard is a good guy and he is easy going but I think that he misunderstood what he signed.
- Robert Emard is very smart but he does not read or write.
- We are going by the fact that Pamela did not live a substantial part of her childhood in the Settlement.
- Just because I am their father does not mean that my children would sign these statements; they would not sign if they thought it was a lie.

Respondent's Evidence

John Supernault made the following comments:

- I object to Robert L'Hirondelle's evidence because they are his own children.
- The legislation fails in this area, the kids are registered as Indians and they did not decide on their own; this issue is on all Settlements.

Albert Quinn made the following comments:

- The word substantial is difficult.
- Substantial could have a different meaning depending on the circumstances.
- I would like the Panel to define substantial.

Affected Party's Evidence

Pamela Cunningham made the following comments

- From birth until the age of seven I lived with my Kohkum on the Settlement.
- I started to stay with my mom in High Prairie and spent the weekends in East Prairie.
- My mom moved to Edmonton and I went with her, again we went home on the weekends.
- We moved back and we lived with my Kohkum in East Prairie then my mother got married and we moved to Driftpile.

- My step-dad registered me when I was about fifteen, which was approximately June 8, 1996.
- My Kohkum passed away when I was thirteen.
- Between the ages of sixteen and eighteen I was in East Prairie most of the time living in my Kohkum's house.
- Currently I am living with my mother in East Prairie.
- I would estimate that throughout the years I have lived approximately 10 years on the Settlement.
- I put thirteen years on the application because I estimated weekends and holidays; thirteen was a rough estimate.

Karen Cunningham made the following comments on Pamela's behalf:

- There is nothing in the package that says that Robert L'Hirondelle is George Bellerose's spokesperson.
- I don't think that Bobby L'Hirondelle should be George's spokesperson.
- I object to Robert's children's statements because they are his children and they are not the same age as Pamela.
- My children do not participate in youth events on the Settlement.
- Pamela was not on the bus because my mother spoiled Pamela and she was driven to school most days.
- She did not ride the bus because the bus can be pretty rough with other kids.
- Robert Emard cannot read or write but he is not stupid, he has a mind of his own.
- If Robert Emard did not believe what was stated in the letter he would not have signed it.
- Robert Emard and my mother did not always live together, she moved into the new house and he continued to live in the old house.
- When I moved to Edmonton, my mom would not let Pamela go because she was mom's little girl.
- Mom would not let Pamela live with me in Edmonton until I found a place [that was suitable].
- East Prairie was Pamela's primary residence until she was in about grade 3.

- Pamela's biological father was a member of the East Prairie Metis Settlement, I am not sure if he is anymore.
- Pamela is not on the Band list in Driftpile, she is only on the general list in Ottawa.

Findings of Fact

- George Bellerose is appealing the granting of membership to Pamela Cunningham on the grounds that she is registered as an Indian and that she did not live a substantial part of her childhood in the Settlement area.
- Robert Emard was the common-law-husband of Pamela Cunningham's Kohkum.
- Robert Emard's letter supports the information that was presented by Pamela and Karen Cunningham at the hearing.
- Pamela Cunningham was granted membership in the East Prairie Metis Settlement through Bylaw EPMA024 on January 15, 2002.
- Pamela lived in the East Prairie Metis Settlement from childbirth until she was seven years old.
- Pamela moved back to the Settlement after living in High Prairie, Edmonton and Driftpile.
- Throughout her childhood, Pamela spent holidays and most weekends with her Kohkum in East Prairie.
- Pamela has always considered East Prairie Metis Settlement her home.
- Robert L'Hirondelle's children did not ride the school bus with Pamela Cunningham because her Kohkum drove her to school.
- Pamela was not at youth activities in the Settlement because her mother generally did not allow her children to participate in the gatherings.
- Pamela Cunningham lived approximately 9 years on the Settlement.
- Pamela was registered as an Indian under the *Indian Act* when she was less than 18 years old.
- Pamela's biological father was a member of the East Prairie Metis Settlement.
- Section 75(2) of the *Metis Settlements Act*.

75(2) An Indian registered under the *Indian Act* (Canada) or a person who is registered as an Inuk for the purposes for the purposes of a land claims settlement may be approved as a settlement member if

- (e) the person was registered as an Indian or an Inuk when less than 18 years old,
- (f) the person lived a substantial part of his or her childhood in the settlement area,
- (g) one or both parents of the person are, or at their death were, members of the settlement, and
- (h) 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

East Prairie Metis Settlement Council's decision to grant membership to Pamela Cunningham is upheld.

Reasons

The Panel upheld the East Prairie Metis Settlement Council's decision to grant Pamela Cunningham membership because the Panel is satisfied that Pamela Cunningham meets all of the requirements for membership. Mr. Bellerose did not establish to the Panel's satisfaction that Council erred in granting membership to Pamela Cunningham.

Comments

During the hearing, Mr. Albert Quinn asked the panel to define the word substantial. The term is difficult to define, as it can be interpreted numerous ways. The meaning of substantial as defined in the Concise Oxford Dictionary is "of real importance or value." This definition, in the Panel's view, suggests that substantial does not mean "all" but could be an amount considerably less. Thus, the Panel finds that 9 years plus weekends and holidays is of real importance or value, which, in turn, satisfies the Panel that Pamela Cunningham, has lived a substantial part of her childhood on the Settlement.

Dated in the City of Edmonton in the Province of Alberta on the 21st day of August 2002.

Phyllis Collins
Panel Chair