

Order No. 147

File No. 08-0001-02

***METIS SETTLEMENTS ACT***

**METIS SETTLEMENTS APPEAL TRIBUNAL**

Between:

**Regan Dean Collins**

Appellant

-and-

**Elizabeth Metis Settlement**

Respondent

Membership.

---

**DECISION**

---

**Table of Contents**

**THE HEARING** ..... 3

**BACKGROUND** ..... 4

**JURISDICTION** ..... 5

**SUMMARY OF EVIDENCE**..... 6

**APPELLANT’S REPRESENTATIVES**..... 6

**RESPONDENT’S EVIDENCE** ..... 6

**FINDINGS OF FACT** ..... 7

**DECISION** ..... 8

**REASONS**..... 8

**RECOMMENDATIONS**..... 9

**ORDER** ..... 9

## **The Hearing**

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

Lorne Dustow, Panel Chair  
Ken Allred, Panel Member  
John Brosseau, Panel Member

### **Parties present at the hearing:**

The Appellant was unable to attend the hearing. The Appellant submitted a letter stating that Denise Collins would represent him at the hearing.

Elizabeth Metis Settlement Council, Respondent

Represented by: Archie Collins, Chair  
Palma Anderson, Vice-Chair  
Victor Primeau, Treasurer  
Ambrose LePine, Administrator  
Anne Swan, Land & Membership Clerk

### **Witnesses:**

Lloyd Campbell  
Sylvia Desjarlais, Written submission  
Toots Collins, Written Submission

### **MSAT staff present:**

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

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

Elizabeth Metis Settlement Community Hall  
Elizabeth Metis Settlement  
February 14, 2003

At the request of the appellant the Tribunal agreed to a closed hearing.

### **Objections to the Panel:**

The Panel Chair asked if there were any objections to the composition or jurisdiction of the Panel. There were no objections.

## Background

On July 4, 2000, Regan Collins applied for membership in the Elizabeth Metis Settlement. On July 13, 2000, Mr. Collins was granted membership through Council Motion 00.07.13.04. The motion reads as follows:

Moved by Pam Anderson, seconded by Victor Primeau to approve Regan Collins' application for membership with a probationary period of one year, with no residency requirements, as he has been a resident of the Settlement since childhood.

Mavis Desjarlais, former Land and Membership Clerk for the Elizabeth Metis Settlement, sent Regan two separate letters dated August 24, 2000 and the other on September 19, 2000, informing him that he was granted probationary membership on July 10, 2000. The letters further state that Regan's name will be placed on the Settlement Members List as he is currently living in the Settlement area. Regan was given a twelve-month probationary period that was to start on the day his name was placed on the Settlement Members List. The letters also stated that Council could cancel Regan's membership within this probationary period if he stopped maintaining suitable living accommodations in the Settlement area, or ceased to be committed to living in the Settlement area and maintaining a peaceful community.

The Metis Settlements Land Registry did not receive the Membership Notice regarding Regan Collins until April 2, 2001, at which time Regan's name was added to the Settlement Membership List. Anne Swan, the current Land and Membership Clerk of Elizabeth Metis Settlement, informed the Tribunal that the paperwork regarding the granting of Regan's probationary membership was sent to the Metis Settlements Land Registry in March 2001.

On March 11, 2002, the Elizabeth Metis Settlement Council passed Motion 02.03.11.07, which says:

Resolved to cancel Regan D Collins application for membership, as he has not fulfilled the residency requirements of his probationary period.

On August 7, 2002, Ms. Swan informed the Tribunal that Regan Collins had not been advised of the Council meeting in which the possible termination of his probationary membership was going to be discussed.

On March 12, 2002, Anne Swan, Land and Membership Clerk for the Elizabeth Metis Settlement, sent Regan a letter on behalf of the Elizabeth Council concerning the termination of his probationary membership status. The letter reads as follows:

Your Probationary Membership in the Elizabeth Metis Settlement expires April 2, 2002.

Settlement Council reviewed your file March 11, 2002, and there was an objection to extending your probationary membership to full membership, as you have not been residing on the Settlement, this implies that you have abandoned your membership.

Notice of the Resolution of objection to continue your membership will be forwarded to the Metis settlement Transition Commission, Registrar and you will receive notice from them of the cancellation of Membership.

If you do not agree with this decision, you may appeal the matter by contacting the Metis Settlements Appeal Tribunal...

On April 25, 2002, Regan sent a letter to Elizabeth Council informing them that he had been living on the Settlement with his mother Denise Collins as well as with his Uncle Toots Collins. Regan further stated that the only reason he would have been off the Settlement was to find work.

On May 16, 2002, Elizabeth Council sent Regan a letter informing him that the termination of his membership would stand and that he could reapply for membership.

According to s. 88(2) of the *Metis Settlements Act* an individual has 30 days to appeal Council's decision to terminate their membership to the Metis Settlements Appeal Tribunal. The Elizabeth Metis Settlement Council passed Motion 02.03.11.07 on March 11, 2002. On March 13, 2002, a letter was sent to Regan Collins informing him of the termination of his probationary membership. Regan Collins' 30-day appeal period ended on April 11, 2002. The Tribunal received Regan Collins' appeal letter on July 29, 2002, 91 days after the 30-day appeal period had ended.

On August 13, 2002, a Membership Panel of the Tribunal met and decided to waive the 30-day appeal period because Mr. Collins was not given notice of the resolution nor was he given an opportunity to be heard before the voting on the resolution. The Tribunal has jurisdiction to waive the time period according to s. 202 of the *Metis Settlements Act*.

202 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**

The Tribunal has jurisdiction to hear this appeal according to section 88(2) and 89(1) of the *Metis Settlements Act*, which states:

88(2) The Settlement member may appeal the decision to terminate the membership to the Appeal Tribunal by sending a written notice of appeal to the Tribunal within 30 days of receipt of the bylaw or the resolution.

89(1) As soon as reasonably possible after receiving an appeal against a settlement membership termination 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.

## Summary of Evidence

### Appellant's Representatives

#### **Ms. Denise Collins presented the following evidence on behalf of Regan Collins.**

Ms. Collins testified that Regan Collins had resided on the Settlement during his probationary membership. She stated that Regan was determined to make his probationary period in order to gain full membership status. She also said that Regan had resided with her, as well as with Sylvia Desjarlais and Uncle Toots Collins, during the probationary year. Ms. Collins indicated that the Council might not have seen Regan around the Settlement because he was working.

In her testimony to the Panel, Ms. Collins said that Regan did not know he was supposed to go to the Settlement office and inform Council that he had been living on the Settlement. She further stated that if Council intends for individuals applying for membership to inform council of their whereabouts on the Settlement, then Council should inform people that it is a requirement of the probationary period.

#### **Toots Collins; written submission accepted as evidence by the Panel and read at the hearing by Denise Collins:**

Mr. Collins submitted that Regan lived with him in July, August and September of 2002. He also said that Regan lives with him when he needs a place to stay.

#### **Sylvia Desjarlais; written submission accepted as evidence by the Panel and read at the hearing by Denise Collins:**

Regan has lived with me for the past four years and continues to come home to my house when he finishes his off settlement jobs.

#### **Lloyd Campbell; witness for Regan Collins**

Mr. Campbell stated that the Council might not have seen Regan in the Settlement because he left work and went home. Mr. Campbell further submitted that Regan lived in the Settlement during the time that he worked on the road.

### Respondent's Evidence

#### **Archie Collins, Chair, Elizabeth Metis Settlement**

Archie Collins stated that Regan Collin's probationary membership was cancelled because he did not fulfill his probationary requirement. He said that he lives in the Settlement area and he has not seen Regan around. Archie Collins submitted that a person is a resident when they live in and are visible in the Settlement area. He further stated that it is not the responsibility of Council to chase people around to verify their whereabouts. Mr. Collins submitted that if an individual comes to the Settlement for one or two days then it is the individuals responsibility to go to the settlement office and inform the Council that they are still trying to complete their probationary period.

Mr. Collins also said that if Regan Collins had read the minutes regarding the granting of his probationary membership he may have been under the impression that he would not have to comply with a residency requirement. Archie Collins also submitted that it might have been a mistake that Regan Collins' probationary membership was passed without a residential requirement.

**Palma Anderson, Councillor, Elizabeth Metis Settlement**

Palma Anderson indicated that she had seen Regan at least once in the past year in the Settlement area.

**Ambrose LePine, Administrator, Elizabeth Metis Settlement**

Mr. LePine said that the minutes might not have been written properly; a mistake, which he feels, the Council and the administration will have to stand by. Mr. LePine stated that although he does not make the decisions he does sign his name to the documents. He further submits that because of the resolution stating that Regan did not have to fulfill the residency requirement there is only one decision to make.

**Anne Swan, Land and Membership Clerk, Elizabeth Metis Settlement**

Ms. Swan testified that the Metis Settlements Land Registry sent Regan a letter informing him that his probationary period would be expiring on April 2, 2002.

**Findings of Fact**

- On July 4, 2000, Regan Dean Collins applied for membership in the Elizabeth Metis Settlement.
- On July 13, 2000, the Elizabeth Metis Settlement Council passed motion 00.07.13.04 which said:
  - Moved by Pam Anderson, seconded by Victor Primeau to approve Regan Collins' application for membership with a probationary period of one year, with no residency requirements, as he has been a resident of the Settlement since childhood.
- On August 24, 2000 and September 19, 2000, Mavis Desjarlais, former Land and Membership Clerk for the Elizabeth Metis Settlement, sent Regan Collins a letter informing him that the Council had approved his application for membership.
- The Registrar of the Metis Settlements Land Registry added Regan Collins to the Settlement Membership List on April 2, 2001.
- On March 11, 2002, the Elizabeth Metis Settlement Council met and passed Motion 02.03.11.07 which stated:
  - Resolved to cancel Regan D Collins application for membership, as he has not fulfilled the residency requirements of his probationary period.
- Regan Collins was not notified, as required by s. 86(4)(a) and (b) of the *Metis Settlements Act*, that his probationary membership in the Elizabeth Metis Settlement was in jeopardy of being terminated.
- Section 86 of the *Metis Settlements Act*.

86(1) A settlement council may terminate the membership of a settlement member within the member's probationary period if the member

- (a) does not obtain or stops maintaining suitable living accommodation in the settlement area, or
- (b) ceases to be committed to living in the settlement area and maintaining a peaceful community.

(2) The termination of membership of a person under subsection (1) may be by resolution.

(3) If a settlement member is subject to a probationary period and membership is not terminated within that period, any future action to terminate the membership of the person must be taken under section 87.

(4) A settlement council may not pass a resolution or by-law to terminate the membership of a settlement member within the member's probationary period without giving the person

- (a) reasonable notice of the resolution or by-law to be considered, and
- (b) if the person requests it, an opportunity to be heard before the voting on the resolution or by-law.

- On March 12, 2002, Anne Swan, Land and Membership Clerk for the Elizabeth Metis Settlement, sent Regan Collins a letter informing him of the termination of his probationary membership.
- On April 25, 2002, Regan Collins sent Ambrose LePine, Administrator for the Elizabeth Metis Settlement, a letter explaining that he had been residing on the Elizabeth Metis Settlement during his probationary year.
- On May 13, 2002, the Elizabeth Metis Settlement Council met and discussed Regan Collins' letter of April 25, 2002.
- On May 16, 2002, Anne Swan, Land and Membership Clerk for the Elizabeth Metis Settlement, sent Regan Collins a letter informing him that the Council had reviewed his April 25, 2002 letter and that the Council stated that the termination would stand.
- On July 29, 2002, the Tribunal received Regan Collins' appeal letter.

### **Decision**

The Panel finds that the Elizabeth Metis Settlement Council erred in terminating the probationary membership of Mr. Regan Collins.

### **Reasons**

The Elizabeth Metis Settlement Council passed two motions relative to Regan Collins' membership application. The first motion indicated that his application was approved with a probationary period of one year and no residency requirements. Subsequently, the Council terminated his membership in the Settlement for the reason that he did not reside in the Settlement area during his probationary period. The Panel finds the Council's decision to finally terminate Mr. Collins' membership is inconsistent given the first motion.

Furthermore, Section 86(4) of the *Metis Settlements Act* states that a Settlement Council may not pass a resolution or bylaw to terminate a member without giving reasonable notice of the

resolution to be considered and an opportunity to be heard, if the member requests it, before the Council can vote on a resolution or by-law terminating the membership of the said settlement member. Mr. Collins' was not given any notice of the pending termination of his probationary membership nor an opportunity to address the concerns of the Council.

### **Recommendations**

When making a reference to a section of the *Metis Settlements Act* within a resolution Settlement Councils should cite the appropriate section of the *Act* in order to avoid future problems of interpretation.

When making decisions that may adversely affect a member, Councils should be cautious that they give that member the opportunity to be heard in accordance with the *Metis Settlements Act*.

### **Order**

The Panel orders that:

- The Registrar of the Metis Settlement Land Registry register Regan Dean Collins as a member of the Elizabeth Metis Settlement, effective April 2, 2002.

Dated in the City of Edmonton in the  
Province of Alberta on the 3<sup>rd</sup> day of  
April, 2003.

---

Lorne Dustow  
Panel Chair