

METIS SETTLEMENTS ACT
METIS SETTLEMENTS APPEAL TRIBUNAL

Between:

Hazel Vicklund

Appellant

-and-

Peavine Metis Settlement

Respondent

Shelly Willier

Affected Party

Concerning the Granting of Membership to Shelly Willier.

DECISION

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The Hearing

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

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

Parties present at the hearing:

Hazel Vicklund, Appellant

Barbara Cunningham, Appellants witness
Lawrence Cunningham, Appellant's witness

Peavine Metis Settlement Council, Respondent

Represented by: Richard B. Hajduk, Barrister & Solicitor
Iner Gauchier, Chair
Judy Hopkins, Administrator
Don Cunningham, Land & Membership
Karen Milsap, Land & Membership
Dennis Cunningham, Council's witness

Affected Party: Shelly Willier
Debbie Gauchier, Affected Party's witness
Madeline Gauchier, Affected Parties witness
Sharon Gauchier, Affected Parties witness

MSAT staff present:

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

Place and date of the Hearing:

High Prairie Inn
High Prairie, Alberta
Monday, February 24, 2003

At the request of the affected party 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 October 13, 2000, Shelly Willier applied for membership in the Peavine Metis Settlement. Ms. Willier indicated on her application for membership that she:

- Has never been a settlement member;
- Lived in Alberta for the five years immediately preceding the date of the application;
- Was registered as an Indian under the *Indian Act* before the age of 18;
- Spent 5 years of her childhood in the Settlement;
- Does not have a parent who is a Settlement member;
- Would be living on the Settlement with her grandmother, Madeline Gauchier;
- Is not a member of any other settlement;
- Is not in debt to the settlement; and
- Is committed to preserving a peaceful community.

On April 16, 2002, the Peavine Metis Settlement granted membership to Shelly Willier through bylaw #63/02. Bylaw #63/02 states:

Shelly Marilyn Willier was registered as an Indian when less than 18 years old, lived a substantial part of her childhood in the settlement area, and one or both of her parents are, or at their death were, members of the settlement.

On May 1, 2002, Hazel Vicklund, a member of the Peavine Metis Settlement, appealed the granting of membership to Shelly Willier.

Ms. Vicklund stated the following as grounds for her appeal.

- I [Hazel Vicklund] believe that both her parents are full Status at the Sucker Creek First Nation.
- I [Hazel Vicklund] do not believe that this person was raised here.

On July 8, 2002, Ms. Willier responded by letter to Ms. Vicklund's claim that she did not live a substantial part of her childhood on the Settlement. Ms. Willier wrote that she had lived on the Settlement until her mother moved to High Prairie to attend school in Grouard. From Grouard they moved to St. Albert because Ms. Willier's mother was attending the University of Alberta. At the age of fifteen, Ms. Willier moved back to the Settlement and lived with her grandmother until she was 17. Ms. Willier moved back to St. Albert to finish high school and possibly to attend the University of Alberta. Currently, Ms. Willier is employed at the Metis Settlements General Council.

On September 26, 2002, a Membership Panel of the Tribunal met and granted Ms. Vicklund permission to appeal the Peavine Metis Settlement Council's decision to grant membership to Shelly Willier, as the Tribunal received Ms. Vicklund's letter of appeal within the specified 45 days. The Tribunal granted Ms. Vicklund permission to appeal under s. 83(3) of the *Metis Settlements Act*.

Jurisdiction

The Tribunal has jurisdiction to hear this appeal according to section 83(3) and 84(1) 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.

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

84(1) After 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.

Summary of Evidence

Appellant's Evidence

Hazel Vicklund testified that the bylaw presented at the public meeting regarding the membership of Shelly Willier was misleading in that it stated that one or both of Ms. Willier's parents were members of the Settlement. Ms. Vicklund went on to say that it is common knowledge that Ms. Willier is treaty and that her parents were members of Sucker Creek and were not members of the Settlement. She also indicated that a parent is a mom or dad and that grandparents are not parents according to the *Act*.

Ms. Vicklund also stated that Ms. Willier had not lived a substantial amount of her childhood in the Settlement area. She indicated that had Ms. Willier's grandparents raised her she would have attended school on the Peavine Metis Settlement. Ms. Vicklund said she herself has been involved in elementary, junior high and adult level education in the Settlement and at no point did Ms. Willier ride the bus or attend school in Peavine. Ms. Vicklund also indicated that she does not believe that bedrooms are homes and the fact that Shelly had a room in her grandparent's house did not mean she made her home there.

Ms. Vicklund further submitted that the Council is inconsistent when approving memberships and that it is starting to affect lots of people. Ms. Vicklund said that she feels that the Council does not consider the human costs when they make decisions. She indicated that the people are starting to fight amongst themselves.

Ms. Vicklund also stated that before 1985 people married for Treaty Status. She further argued that people had a choice prior to 1985 to take their name off the Indian Registry.

Respondent's Evidence

Richard Hajduk, attorney for the Peavine Metis Settlement, submitted a copy of a written brief to the Appellant and the Panel, which he presented orally at the hearing.

Mr. Hajduk testified that it is irrelevant that the appellant believes that Ms. Willier's parents are full status at the Sucker Creek First Nation, as that does not determine that Ms. Willier is registered under the *Indian Act*. He stated that Ms. Willier's father is a person with registered *Indian Act* status. However, her mother should not be treated with having such status as she was entered in the Indian Register without her knowledge or consent by virtue of her marriage to a man with Indian Status. He indicated that it would be discriminatory to exclude women from membership in a Metis Settlement based on marital status or a legal status that they achieved involuntarily.

Mr. Hajduk submitted that 5 years is a substantial portion of Ms. Willier's childhood. He further stated that the Peavine Metis Settlement, including its Council, accepted as fact that Ms. Willier had lived a substantial part of her life on the Settlement.

Mr. Hajduk advised the Panel that there is a long-standing connection between Ms. Willier and the Peavine Metis Settlement. He indicated that Ms. Vicklund's grounds for appeal assume the word 'parent' in s. 75(2) of the *Metis Settlements Act* means only a mother and a father. Mr. Hajduk argued that the word 'parent' has no definition in the *Metis Settlements Act*, and as such should be broad enough to include a grandparent or other person who has stood in place of a parent to a child. Mr. Hajduk submitted that Ms. Willier's grandparents, who are members of the Peavine Metis Settlement and with whom she lived with for much of her life, stood in place of a 'parent'. As such, Ms. Vicklund's assumption that Ms. Willier's 'parents' are not members of the Peavine Metis Settlement is incorrect. Mr. Hajduk further submitted that it is typical in Aboriginal communities for grandparents to take an active role in raising their grandchildren.

Mr. Hajduk stated that Ms. Vicklund provided no valid information or facts but only submitted her common knowledge and that she had no basis for her comments. He said that Ms. Willier does identify with Metis culture and that her application was proper and that the membership of the Settlement approved it; thus satisfying s. 75 of the *Metis Settlements Act*.

Affected Party's Evidence

Shelly Willier, affected party, testified that she had resided on the Peavine Metis Settlement with her grandparents until she was three and a half years old. Ms. Willier stated that when her mother moved to High Prairie for educational purposes she was going back and forth between her mother and her grandmother's house; with more time being spent at her grandmother's house where she had her own room. When she turned five, Ms. Willier said she had to stay with her mother as she was going to start school. Ms. Willier informed the Panel that she continued to go to her grandmother's place almost every weekend and spent all her holiday time in Peavine.

In August of 1989, Ms. Willier's mother moved to St. Albert to attend the University of Alberta. Ms. Willier stated that she stayed mostly with her grandparents until she moved to St. Albert in 1991, where she started grade 6. Ms. Willier indicated that she continued to travel to the Settlement on holidays.

Ms. Willier said that she moved to Peavine to baby-sit for her aunt in June of 1994. During the time with her aunt she continued with her education through correspondence.

Ms. Willier said that her mother was living and working for the Peavine Metis Settlement in 1995. She also informed the Panel that her grandfather became ill at this time and that her mother was living with her grandparents in order to provide care for her grandfather.

Ms. Willier moved back to the Peavine Metis Settlement to live with her grandmother in 1996. During that time, Ms. Willier was continuing her grade 12 through correspondence. She moved back to St. Albert to complete her grade 12 studies and graduated in June of 1997.

Ms. Willier stated that she spent most of 1998 in Peavine and only returned to Edmonton when she was accepted to attend College. She graduated from her program in 1999 and returned to Peavine where she again resided with her grandmother.

Ms. Willier said she lived in Peavine until she was once again accepted to attend college in Edmonton. She graduated from that program in 2000 and found employment with the Metis Settlements General Council, where she is still employed.

Ms. Willier stated that Ms. Vicklund does not know her personally. She indicated that Ms. Vicklund did not submit any facts, only her 'common knowledge', that her parents are from the Sucker Creek First Nation or that she herself did not spend a substantial amount of her childhood in the Settlement. Ms. Willier informed the Panel that she has always been involved with community events on the Settlement and has represented Peavine in the Federation Cup and at various other Peavine Community events.

Affected Party's Witnesses

Debbie Gauchier

Debbie Gauchier, Shelly Willier's mother, testified that it is important that Shelly Willier has an identity and a belonging. Ms. Gauchier further indicated that Shelly has never lived in Sucker Creek and that her daughter was raised as a Metis. She also stated that Shelly might not have lived her whole life in Peavine Metis Settlement but that she does consider Peavine Metis Settlement her home.

Ms. Gauchier said that Ms. Willier missed a lot of school because she was spending all of her time with her grandparents on the Peavine Metis Settlement. She estimated that Ms. Willier spent 60 to 70 percent of her time in Peavine Metis Settlement. Debbie also submitted that Madeline Gauchier, Shelly Willier's grandmother, taught her lots of important things about sharing and her culture.

Madeline Gauchier

Madeline Gauchier, Shelly Willier's grandmother, testified that Ms. Willier had grown up in the Peavine Metis Settlement. She said that Shelly would return to the Settlement and live with her husband and herself. Mrs. Gauchier further submitted that if Shelly had not lived in the Settlement then she would not have been accepted for membership.

Sharon Gauchier

Sharon Gauchier, Shelly Willier's aunt, submitted that Ms. Willier lived with her in the Peavine Metis Settlement in 1994 and 1998.

Findings of Fact

- Shelly Marilyn Willier is registered as an Indian under the *Indian Act*.
- Shelly Marilyn Willier was registered as an Indian under the *Indian Act* on March 19, 1986, when she was less than 18 years of age.
- Shelly Marilyn Willier spent at least 5 years and numerous weekends and holidays living on the Peavine Metis Settlement.
- On April 16, 2002, Shelly Marilyn Willier was granted membership to the Peavine Metis Settlement through Bylaw # 63.
- On May 1, 2002, Hazel Vicklund appealed the Peavine Metis Settlements decision to grant membership to Shelly Willier.
- MSAT Order No. 144 said:
 - the term [substantial] 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 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.
- While living in the Peavine Metis Settlement, Shelly Willier was cared for by her grandparents.
- Madeline Gauchier, Ms. Willier's grandmother, is a member of the Peavine Metis Settlement.
- Neither of Ms. Willier's biological parents are members of the Peavine Metis Settlement
- Ms. Vicklund's appeal letter was received within the specified 45-day appeal period.

Decision

The Panel upholds the decision of the Peavine Metis Settlement to grant membership to Shelly Marilyn Willier.

Reasons

The Panel, when deciding on this matter applied the criteria set out in s. 75(2) of the *Metis Settlements Act* to the evidence provided in the hearing package as well as the information presented at the hearing.

Section 75(2) of the MSA allows for individuals that are registered as Indians under the *Indian Act* to become Settlement members. In order for a registered Indian to be granted membership in a Metis Settlement the individual has to satisfy all of the criteria set out in s. 75(2).

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 for when less than 18 years old;

Ms. Willier was registered as an Indian on March 19, 1986, when she was 7 years old, which satisfies the Panel that Ms. Willier was registered as an Indian under the age of 18.

(b) the person lived a substantial part of his or her childhood in the Settlement area.

Shelly Willier indicated on her membership application that she had lived approximately 5 years in the Peavine Metis Settlement. She further informed the Panel at the hearing that she continued to return to the Settlement for weekends and holidays. The Panel found that if Ms. Willier returned to the Settlement for all of her summer holidays and at least half of the weekends in the last 12 years, she would have spent another 2 and a half years living in the Settlement for a total of 7 and a half years. The Panel finds that 7 and a half years is a substantial part of an individual's childhood. It is apparent to the Panel that Ms. Willier considers the Peavine Metis Settlement her home.

(c) one or both parents of the person are, or at their death were, members of the settlement.

The Panel finds that it is a common occurrence on Settlements or in Aboriginal communities for children to live with and be raised by their grandparents. In *Families in Other Cultures*, Dr. Edward Van Dyke writes:

Amongst truly traditional Cree, a child who is born would not be raised exclusively by the categories of relative an English speaker would call 'mother' and 'father'. Many of the duties of 'mother' and 'father' would be addressed by other members of the Cree extended family.

For example, in many traditional Cree communities, the preference may be to have the child sheltered in the home of persons from the grand-paternal generation rather than to biological parents.

Note also that many of the duties a Euro-Canadian would expect to be performed for a child by 'mother' and 'father' are performed in a traditional Cree community by 'Granny' (Kokum)...The implication is that other relatives are performing the rightful duties of a 'mother' or 'father'. In reality, because the relationships between Cree family members are categorized and structured differently, the behaviours between family members in traditional Cree communities are not likely to resemble behaviours between family members in the context of Euro-Canadian cultures.¹

The Panel deems it appropriate to apply Dr. Van Dyke's aforementioned analysis of Aboriginal culture to Ms. Willier's situation. Although the Panel does not make a judgement on how "traditional" Shelly's upbringing or family was, the principle of inter-generational sharing of familial responsibilities in an Aboriginal environment is clearly at play in the dynamics within Ms. Willier's family.

In this respect, the grandparents took on the roles and responsibilities of the parents. Although Ms. Willier did not live her entire childhood with her grandparents she was left in their care for

¹ Van Dyke, Edward W., *Families In Other Cultures*, (Calgary, Alberta, Bear-Spike Holdings Ltd, 1988) at 13.

extended periods of time, as such the Panel is satisfied that Ms. Willier's grandparents, specifically her grandmother, acted as surrogate parents in the absence of her mother. Thus the Panel deems Madeline Gauchier to have satisfied 'parent' in s. 75(2)(c) of the *Metis Settlements Act*. The term parent in this situation needs to be interpreted broadly to include grandparent.

- (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.

Ms. Willier was granted membership through Bylaw #63. As such, the Panel finds that Ms. Willier satisfies s. 75(2)(d) of the *Metis Settlements Act*.

Recommendations

In the future when Settlement Councils are interpreting the *Metis Settlements Act* in a way that is not 'regular' they should inform the public at the meeting or in the bylaw. In this situation, the Council considered Ms. Willier's grandmother as having carried out a significant parenting role when they granted Ms. Willier membership and Council should have properly informed the members.

Dated in the City of Edmonton in the
Province of Alberta on the 17th day of
April, 2003.

Lorne Dustow, Panel Chair