

Order No. 149

File No. 03-0008-02

METIS SETTLEMENTS ACT
METIS SETTLEMENTS APPEAL TRIBUNAL

Between:

Alexander Solomon Holmes

Appellant

-and-

Peavine Metis Settlement

Respondent

Concerning a Land dispute on the SE-07-079-16-W5M

DECISION

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The Hearing

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

Lorne Dustow, Panel Chair
Joyce Parenteau, Panel Member
John Brosseau, Panel Member

Parties present at the hearing:

Alexander Solomon Holmes, Appellant

Peavine Metis Settlement, Respondent

Represented by: Iner Gauchier, Chair
Judy Hopkins, Administrator
Don Cunningham, Land & Membership
Karen Milsap, Land & Membership
Dennis Cunningham, witness for the Respondent

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

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 February 19, 1997, Alexander Holmes was granted a provisional Metis title to SE-07-079-16-W5M in the Peavine Metis Settlement. On December 3, 2001, Alexander Holmes applied to upgrade his provisional Metis title to a Metis title.

The Peavine Metis Settlement's form for application for Metis title requires that the applicant describe the improvements that have been made to the land. Mr. Holmes wrote that he had built a 10 foot x 12 foot cabin, an outhouse and a 40 foot walkway; had cleared approximately 5 acres; had cut a fence line all around the quarter; and had burnt 4 brush piles out of 15.

According to section 5.2 (4)(a) and (b) of the Metis Settlements General Council Land Policy, Settlement Councils are to make decisions on applications for Metis title within 45 days of receiving an application. The Peavine Metis Settlement Council did not make a decision on Mr. Holmes' application for Metis title within the required 45 days. The Council should have made a decision on Mr. Holmes' application by January 19, 2002.

On February 26, 2002, Harold Blyan, the Registrar for the Metis Settlements Land Registry, sent Mr. Holmes a letter informing him that his provisional Metis title to the SE-07-079-16-W5M had expired on February 18, 2002.

On April 17, 2002, Mr. Holmes appealed the Peavine Metis Settlement Council's lack of decision to the Tribunal.

On April 19, 2002, a Panel of the Tribunal met and issued an *interim ex parte* order (MSAT Order No.137). The panel ordered that:

The Metis Settlements Land Registry not conduct any transactions for land legally described as the SE-07-079-16-W5M until the matter regarding Mr. Holmes' application to upgrade to Metis title has been settled.

On May 16, 2002, a Land Panel of the Tribunal met and issued MSAT Order No. 140. Order No. 140 referred the decision of Mr. Holmes' application to upgrade to a Metis title back to the Peavine Metis Settlement Council to decide upon.

On June 7, 2002, the Tribunal received a facsimile copy of a letter dated June 3, 2002, which was sent to Mr. Holmes by Don Cunningham, Land and Membership Coordinator for the Peavine Metis Settlement, on behalf of the Peavine Metis Settlement Council. Mr. Cunningham informed Mr. Holmes that Council needed more proof that the land was being used productively and with satisfactory progress on improvements. The letter goes on to say that the improvements that Mr. Holmes had made on the quarter were not sufficient to warrant Metis title as per the Metis Settlements General Council Land Policy.

On June 27, 2002, Phyllis Collins, MSAT Panel Chair, sent Iner Gauchier, Chair of the Peavine Metis Settlement Council, a letter requesting clarification regarding the June 7, 2002 letter that was sent to Mr. Holmes. The Panel was unclear whether the Peavine

Metis Settlement Council denied Mr. Holmes a Metis title or if they were waiting for proof of improvements.

On October 29, 2002, the Peavine Metis Settlement Council met and decided that Mr. Holmes did not qualify for a Metis Title because he had not satisfied s. 5.2(2) (d) and (e) of the Metis Settlements Land Policy.

The Tribunal asked for the minutes from the October 29, 2002 meeting but did not receive them as they are still in draft format and have not been signed by the Peavine Council.

On November 15, 2002, Don Cunningham, Land and Membership Coordinator for Peavine Metis Settlement, sent Mr. Holmes another letter and informed him that Council had met and had decided not to grant him a Metis title to the SE-07-079-16-W5M. He further informed Mr. Holmes that he could appeal the Peavine Metis Settlement Council's decision to the Tribunal.

On December 9, 2002, the Tribunal received Mr. Holmes' appeal regarding the decision of the Peavine Metis Settlement Council not to grant him a Metis title to the SE-07-079-16-W5M.

Jurisdiction

The Tribunal has jurisdiction to hear this appeal according to section 189(1)(b) of the *Metis Settlements Act*, which states:

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;...

Section 8.1 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 a decision, can appeal in writing to the Appeal Tribunal.
- (2) The appeal must be filed with the Appeal Tribunal, and a Notice of Appeal filed with the Registrar, within 30 days of the settlement council's decision, or, if the settlement council did not make a decision, within 30 days of the date by which it was required to have made the decision.
- (3) There is no right of appeal if the proper documents are not filed with the Appeal Tribunal and the Registrar within the specified time limit.

Summary of Evidence

Appellant's Evidence

Alexander Holmes

Mr. Alexander Holmes testified that he had met the requirements for a Metis title according to s. 5.2 of the Metis Settlements General Council Land Policy (Land Policy). Mr. Holmes suggested that he qualified for Metis title because he had built a cabin, cleared approximately 5 to 10 acres, cut a fenceline and ran a salvage business on the land.

Mr. Holmes further stated that the Peavine Council had 45 days to respond to his application for Metis title and they did not. He said that if they had made a decision not to grant him Metis title he would have made more improvements in the last three months of his provisional Metis title interest. He said that he did not do any more improvements because the land had expired and he was unsure as to the status of his application.

Mr. Holmes stated that he did not remember writing "farming" on the original land application and indicated that he thought that perhaps the writing was different. Mr. Holmes said that when clearing the land he left some of the smaller spruce trees in order to sell them. He suggested that a tree farm could be farming, as the application did not indicate what sort of farming had to take place on the property.

Mr. Holmes informed the Panel that he was receiving oil and gas compensation for a lease site on the property. He further stated that he started clearing the land in 1996 for seismic work. Mr. Holmes indicated that he was paid for the slashing that he did on the land.

Mr. Holmes suggested that the Council works for the community and as such should help the community by letting people know what is required of members in order to be eligible for a Metis title. Mr. Holmes said that Council did not tell him what he had to do to meet the criteria for Metis title or what the Council considers improvements to be. He further stated that Council holds the members accountable for the Land Policy but do not apply it to themselves. He said that according to the Land Policy, Council should have made a decision on his application within 45-days of receiving it; they did not.

Respondent's Evidence

Iner Gauchier

Mr. Iner Gauchier testified that Mr. Holmes' Memorandum of Provisional Metis Title said the land was to be used for farming not a salvage business. He further stated that a salvage business was not the intended purpose of the land and as such the Council denied Mr. Holmes' application for Metis title.

Mr. Gauchier further submitted that Mr. Holmes did not indicate on his application for Metis title that he was operating a salvage business on the property and that in order for Council to decide on an application they need all of the information.

Mr. Gauchier submitted that the walkway that was built on the property was not on Mr. Holmes' property.

Don Cunningham

Mr. Don Cunningham testified that he had been out to the property to take pictures of Mr. Holmes' improvements for the Council. He submitted that the cabin is not a permanent structure on the property, as it is not permanently attached to the ground.

Don Cunningham pointed out that Mr. Holmes indicated on his application for Metis title that he was not living on the land nor was he using the land to farm, ranch or operate a business. He indicated that the original application was for farming and that Mr. Holmes was not farming the land. He said that Mr. Holmes had signed the document thus indicating that Mr. Holmes was aware of the intended purpose.

Don Cunningham said that he agreed with Mr. Holmes' comment about people being accountable to the processes laid out in the Land Policy. However, he indicated that the Land Policy also applied to the members and that members should also be accountable to the process. Mr. Cunningham felt that the Council had the right to make the decision that they did.

Dennis Cunningham

Mr. Dennis Cunningham stated that members scramble to make improvements to their provisional Metis titles when they are nearing the end of their term. He said that the MSAT has made decisions in the past that say that clearing land is not enough of an improvement to receive a Metis title. He further stated that people make last minute improvements on land that rightfully belongs to the Settlement. He felt that people should make improvements with the money they receive from oil and gas compensation.

Dennis Cunningham further submitted that Mr. Holmes' land lacked improvements and that the Council was justified in making the decision that they made.

Findings of Fact

- Mr. Holmes' Memorandum of Provisional Metis Title was registered for a 5-year period starting February 19, 1997 and ending on February 18, 2002.
 - The PMT does not indicate what purpose the land is to be used for.
 - There were no special conditions written on Mr. Holmes' PMT.
- Alexander Holmes submitted an application for a Metis title on December 3, 2001.
 - Mr. Holmes indicated on his application that he had built a 10 foot by 12 foot cabin, an outhouse, a 40 foot walkway, cleared approximately 5 acres, cut a fence line around the quarter and burnt 4 brush piles out of 15 as improvements to the property.
 - Mr. Holmes indicated on his application for Metis title that he was living in the settlement and was not living on the land or using the land for farming, ranching or a business, that he does not owe the settlement any money and that he does not hold another Metis title parcel.

- On April 17, 2002, Mr. Holmes sent a letter of appeal to the Metis Settlements Appeal Tribunal regarding the Peavine Metis Settlement Council's lack of decision regarding his application for Metis Title.
- On May 16, 2002, a Land Panel of the Metis Settlements Appeal Tribunal issued MSAT Order 140, which stated that if the Peavine Metis Settlement did not make a decision regarding Mr. Holmes' application for Metis title the matter would be taken to a hearing.
- On June 3, 2002, the Peavine Metis Settlement informed Mr. Holmes that Council reviewed his application and in the Council's opinion, they required additional proof that Mr. Holmes was productively using the land with satisfactory progress on improvements.
- On November 15, 2002, the Peavine Metis Settlement sent Mr. Holmes a letter informing him that Council had met and decided that Mr. Holmes did not meet the requirements to acquire a Metis title as per s. 5.2(2)(d) and (e) of the Metis Settlements General Council Land Policy.
- On December 9, 2002, Mr. Holmes appealed the Peavine Metis Settlement Council's decision not to grant him a Metis title to the SE-07-079-16-W5M.
- Section 5.2 (1), (2) and s. 4 of the Metis Settlements General Council Land Policy:

5.2 Acquiring Metis title from the settlement

- (1) Any member who holds a parcel by provisional Metis title or by an allotment can apply at the settlement office for the Metis title to the parcel.
- (2) The settlement council must approve the transfer of Metis title to the applicant if:
 - a) the applicant is a member who is living in the settlement area;
 - b) the applicant has no overdue debts to the settlement;
 - c) the applicant would, if the Metis title were transferred, not exceed the land holding limits;
 - d) the applicant is living on the land and operating a business, farm or ranch on it; or
 - e) the land has been improved
 - (i) by constructing a house or permanent business buildings on it, or
 - (ii) by fencing, clearing, cultivating, or otherwise working a significant part of the land to enhance its productivity.

...

- (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
 - (b) provide the applicant with a transfer of Metis title.
- Section 1.3(b) of the Metis Settlements General Council Land Policy defines improvements as:

Improvements means changes people have intentionally made to the land in order to increase its usefulness, and includes all structures permanently attached to the land⁴

⁴ A "structure" is anything built, for example houses, buildings, water systems, and fences. A structure is "permanently attached to the land" if all or part of it is buried in order to attach it to the land and keep it there for the foreseeable future. Things permanently attached to the structure are considered as part of the structure for this purpose.

Decision

The Panel upholds the Peavine Metis Settlement Council's decision not to grant Mr. Alexander Solomon Holmes a Metis title to the land legally described as SE-07-079-16-W5M.

Reasons

Mr. Holmes' application for Metis title satisfies s. 5.2 (a) to (c) of the Land Policy, as there was no dispute regarding this information. The crux of the dispute between Mr. Holmes and the Peavine Metis Settlement Council lies with s. 5.2(e)(i) and (ii) of the Land Policy. Section 5.2(e) of the Land Policy states that the land needs to be improved by constructing a house or permanent business buildings on it **or** by fencing, clearing, cultivating, or otherwise working a significant part of the land to enhance its productive capacity in order to qualify for a Metis title.

The Panel was not satisfied that the cabin erected by Mr. Holmes qualifies as a house or permanent business building as it is not 'permanently attached to the land.' Mr. Holmes indicated that he had cleared approximately 10 acres of land and that he had cleared the perimeter of the quarter to construct a fence. The Panel finds that he did not work a significant part of the land, which has a total land area of 160 acres, in order to satisfy s. 5.2 (e)(ii).

In conclusion the panel finds that although Mr. Holmes did construct a cabin as well as clearing approximately 10 acres of land, he does not satisfy all of the requirements laid out in s. 5.2(2) of the Land Policy to qualify for a Metis title.

Recommendations

The Panel would like to remind the Settlement Council and the administrative staff that the Metis Settlements General Council Land Policy outlines various processes that Council is to follow when dealing with applications for land interests. The Council should be conscious of such deadlines and make their decisions within the specified time period. The Settlement Council has a responsibility to the members to have a fair, orderly and transparent process.

In order to be seen as having a fair, orderly and transparent process, the Settlement Council should provide individuals with reasons as to why the Council made the decision that it did. The Settlement Council should also make efforts to educate members about the requirements of the *Metis Settlements Act*, the Metis Settlements General Council Land Policy, and any Settlement Bylaws and Policies.

Order

The Tribunal orders that:

- Mr. Alexander Holmes return the land to the Settlement within 60 days of the signing of this order, in no worse condition than he received it as per s. 5(1) of the Memorandum of Provisional Metis Title.
- Order 137 is lifted and that the Registrar of the Metis Settlements Land Registry cancels Mr. Holmes' provisional Metis title interest in the SE-07-079-16-W5M.

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

Lorne Dustow, Panel Chair