

Order No. 151

File No. 07-0002-02

METIS SETTLEMENTS ACT

METIS SETTLEMENTS APPEAL TRIBUNAL

Between:

Pamela Geneva Kozak

Appellant

-and-

Gift Lake Metis Settlement

Respondent

Membership

DECISION

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The Hearing

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

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

Parties to the hearing:

Pamela Kozak, Appellant.

Ms. Kozak submitted a written argument to the Panel at the onset of the hearing, which was read to the Respondent and the Panel by MSAT staff.

Gift Lake Metis Settlement, Respondent

Represented by: Hector Lamouche, Chair
Dale Anderson, Councillor
Glady Anderson, Councillor
Glenn Laderoute, Councillor
Sam Hall, Administrator
Pauline Smith, Land & Membership
Tina L'Hirondelle, Land & Membership

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
February 24, 2003

Objections to the Tribunal:

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

Background

On June 2, 1998, Pamela Kozak applied for membership in the Gift Lake Metis Settlement. Ms. Kozak indicated in the family information section of the application that her mother's heritage is Cherokee. Ms. Kozak provided a statutory declaration that she identified with Metis history and culture but did not provide the facts of her Canadian Aboriginal ancestry on the declaration.

On March 10, 1999, Pauline Smith, Land and Membership Clerk for the Gift Lake Metis Settlement, informed Ms. Kozak that Council had reviewed her application for membership and required proof of her ancestry.

On February 17, 2000 (should this be March 13, 2000?), Ms. Kozak sent the following documents to the Gift Lake Metis Settlement regarding her ancestry:

- A family tree certified by Ms. Kozak's Aunt Mildred Gerrard;
- Phyllis Kozak's (Pamela's mother) birth certificate; and
- An article from the Edmonton Journal.

On March 14, 2000, the Gift Lake Metis Settlement Council granted Ms. Kozak a 2-year probationary membership. Motion 14.0.03.14.00 reads as follows:

To approve Pamela Geneva Kozak's membership application subject to a probationary period of (2) years provided that Pamela Kozak continues to make her principle residency in the Settlement.

In a letter dated March 17, 2000, Pauline Smith, Land and Membership Clerk for the Gift Lake Metis Settlement, informed Ms. Kozak that her membership application had been approved with a probationary period of 2 years. Ms. Kozak was added to the membership list on April 28, 2000 and her two-year probationary period ran from that date.

On December 18, 2001, Sam Hall, Administrator for the Gift Lake Metis Settlement, sent a letter to Ms. Kozak informing her that her claim of Canadian Aboriginal ancestry was not "backed up" by the letter sent February 17, 2000 by her mother Phyllis Kozak. Mr. Hall goes on to say that the letter shows American Aboriginal ancestry and that s. 76 of the *Metis Settlements Act* (*Metis Settlements Act*) requires the applicant to have Canadian Aboriginal ancestry. Mr. Hall further informs

Ms. Kozak that Council will be reviewing her application and probationary membership on January 8, 2002, and that she is invited to attend the meeting to provide Council with evidence of her having Canadian Aboriginal ancestry. He further informs Ms. Kozak that based solely on the information provided in the application, Council could revoke her probationary membership.

On December 21, 2001, Sam Hall sent another letter to Ms. Kozak informing her of a meeting on January 15, 2002 in which her probationary membership would be discussed. Mr. Hall informed Ms. Kozak that she could present any further information on her Canadian Aboriginal ancestry at the meeting.

On January 15, 2002, Ms. Kozak sent Mr. Hall a memo, which stated:

The information has been archived but will be here in 4-6 weeks. It is proof I was here my claim starts June of 92 and part of 1993. Maybe up to 94 but for sure 92/93. When I receive this information I will photocopy and leave in your folder.

On January 15, 2002, Council discussed Ms. Kozak's application. The minutes read as follows:

7.2 Hearing on Pam Kozak's probationary membership

Sam Hall explained that Council wished the probationary member to provide more details on her Canadian aboriginal ancestry and also proof of her residence in Alberta for 5 years prior to 1998. This is part of the 2-year probationary review. The probationary member provided copies of birth certificates and a newspaper article. She undertook to provide more information on provincial residency and Canadian aboriginal origins within a reasonable time.

Motion 22.01.15.02

7.2 Hearing on Pam Kozak's probationary membership

That the issue regarding Pam Kozak's membership be tabled to the next meeting.

On January 29, 2002, Council met again to discuss Ms. Kozak's probationary membership. Motion 10.0.01.29.02 was passed and the issue was tabled until the next meeting

On February 11, 2002, Council met again to discuss the issue of Ms. Kozak's probationary membership. Motion 8.0.02.11.02 reads as follows:

That Council gives direction to the Administrator that a letter be sent to Pam Kozak advising her she must provide proof of Canadian Aboriginal Ancestry and Alberta residency. If proof is not received before the end of February acceptable to council her probationary membership will be cancelled.

On February 13, 2002, Mr. Hall wrote a letter to Ms. Kozak informing her that the Gift Lake Metis Settlement Council had reviewed her probationary membership on February 11, 2002, and decided that the requirement to show Canadian Aboriginal ancestry had not been sufficiently met. In addition to not proving Canadian Aboriginal ancestry, Ms. Kozak had not submitted proof of Alberta residency for 5 years prior to applying for membership. Ms. Kozak was informed that her probationary membership would be cancelled if she did not provide proof of both ancestry and residency by the end of February 2002.

On March 26, 2002, the Gift Lake Metis Settlement Council terminated Ms. Kozak's probationary membership and refused her application for membership because she had not provided Council with proof of Canadian Aboriginal ancestry to the satisfaction of Council. A membership notice form indicating termination was generated and sent to the Registrar of the Metis Settlements Land Registry on July 3, 2002.

On August 1, 2002, Harold Blyan, Registrar of the Metis Settlements Land Registry, wrote the Tribunal asking for direction on whether to cancel Ms. Kozak's probationary membership. Mr. Blyan indicated that the grounds for termination cited by the Gift Lake Metis Settlement Council were not grounds for termination according to the *Metis Settlements Act*.

On August 2, 2002, the Tribunal received Ms. Kozak's appeal letter.

As explanation for the late filing of her appeal, Ms. Kozak said that she did not receive a copy of the resolution to terminate her probationary membership from the Gift Lake Metis Settlement Council. Ms. Smith said she had drafted a letter but that the letter was not sent to Ms. Kozak. Ms. Smith further stated that the office had closed for a period of time and that she assumed that the remaining administrative staff would have mailed the letter to Ms. Kozak. The Panel concluded that, as Ms. Kozak was not notified of the termination of her probationary membership, as required in s. 86(4)(a) of the *Metis Settlements Act*, the 30-day appeal period in which to appeal the termination of her membership had not commenced.

Jurisdiction

The Tribunal has jurisdiction to hear this appeal according to s. 89(1) of the *Metis Settlements Act*, which states:

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.

Evidence

Appellant's Evidence

Pamela Geneva Kozak, written submission accepted as evidence by the Tribunal and read at the hearing by Terri Quintal, MSAT Staff.

Ms. Kozak wrote that she felt her evidence of being a Canadian Citizen with American Aboriginal ancestry should allow her to remain a member of the Gift Lake Metis Settlement. She further stated that she provided her mother's birth certificate and her grandmother's nationality, as well as proof of Alberta residency for the 5 years prior to her applying for membership.

Ms. Kozak also stated that the issue of her membership has gone on too long and that a decision on this matter should have been made long ago. She hoped that the Tribunal did not get the wrong impression that she was unable to attend or find her guilty and thus take away her membership.

Ms. Kozak further wrote that she would not take what is not hers but indicates that she would still like to be part of the community, take part in decision-making and live in the Settlement.

She also indicated that she does not have enough "aboriginal" in her to gain any benefits. She said that she pays to live just like everyone else.

Ms. Kozak wrote that she had read the *Act* and that s. 76 may not apply to her because her grandparents settled in Canada in the 1800's. She goes on to say that in order to settle in Canada you had to be a Canadian Citizen. She said that as her ancestors were Canadian citizens then that makes her family Aboriginal on the "Canadian part."

Ms. Kozak informed the Tribunal that aboriginal is defined as:

Existing in a place from the beginning; being the first or the original one.

And Metis is defined as:

Forming a cultural group distinct from both Europeans and Indians. A person of mixed blood. Especially a person of French and North American Indian.

Ms. Kozak indicated that she completed s. 79(1) of the *Metis Settlements Act*. She informed the Tribunal that she tried to provide Council with the information they had asked for and that she had met with Council to discuss her application. She also wrote that she did not receive a letter from the Council indicating that she had 45 days to appeal the Council's decision. She did however say that she received a letter from Sam Hall and Chris Lamouche.

Respondent's Evidence

Hector Lamouche provided the Tribunal with a written submission, which was accepted as evidence by the Tribunal and read at the hearing by Sam Hall, Gift Lake Metis Settlement Administrator:

Mr. Lamouche wrote that it is still the position of Gift Lake Council that an error had been made in the original motion to approve Ms. Kozak because there was no evidence of Canadian Aboriginal ancestry nor was there evidence that she had lived in Alberta for 5 years prior to submitting an application.

The letter further stated that the bottom line for the Council was that despite any administrative steps taken on the application, Ms. Kozak did not meet the requirements set out in Part 3 of the *MSA*.

Glady Anderson

Mr. Glady Anderson informed the Tribunal that he was not on Council at the time that the decision regarding Pamela Kozak's membership application was made. He did however want to say that he relied on the integrity of the local Council decisions even though he was not directly involved in the process.

Dale Anderson

Mr. Dale Anderson informed the Tribunal that he was not a Councillor at the time the decision was made. He said that the Council did not say that she had to provide her ancestry that she only had to live there for two years.

Sam Hall

Mr. Hall informed the Tribunal that the Council has the right to review an application for membership before the applicant is granted full membership. The Council looked at Ms. Kozak's application for membership and asked where the Canadian Aboriginal ancestry was. The Council was correcting the error made by the passing of the first motion.

Findings of Fact

- On June 2, 1998, Ms. Pamela Geneva Kozak applied for membership in the Gift Lake Metis Settlement
 - Ms. Kozak indicated on her application for membership that she had lived in Alberta for the five years immediately preceding the date of her application.
 - In the family information section of the application Ms. Kozak indicated that her mother's heritage was Cherokee.
 - Ms. Kozak did not provide any facts on the Membership Declaration or at any time, that she has Canadian Aboriginal ancestry;
- On March 10, 1999, Pauline Smith, Land and Membership Clerk for the Gift Lake Metis Settlement, wrote Ms. Kozak a letter informing her that Council reviewed her application and would like her to provide proof of her ancestry.
- On March 13, 2000, Ms. Kozak faxed Pauline Smith a copy of a family tree, indicating that her grandmother was a Cherokee Indian from Mississippi, certified by Ms. Kozak's Aunt Mildred Gerrard; Phyllis Kozak's (Pamela Kozak's mother) birth certificate; and an article from the Edmonton Journal as proof of her ancestry.
- On March 14, 2000, the Gift Lake Metis Settlement Council approved Ms. Kozak's application for membership with a 2-year probationary period.
- Ms. Kozak was added to the membership list on April 28, 2000 and the two-year probationary period ran from that date.
- On December 21, 2001, Sam Hall sent a letter to Ms. Kozak informing her of a meeting on January 15, 2002 in which her probationary membership would be discussed. Mr. Hall informed Ms. Kozak that she could present any further information on her Canadian Aboriginal ancestry at the meeting.
- On January 15, 2002, Ms. Kozak met with the Gift Lake Metis Settlement Council and informed them that she would provide more information regarding her Alberta residency as well as her Canadian Aboriginal ancestry.
- On January 15, 2002, Ms. Kozak sent Mr. Sam Hall a memo informing him that proof of her Alberta residency would be available in 4 to 6 weeks.
- On February 11, 2002, the Gift Lake Metis Settlement Council passed motion 8.0.02.11.02, which gave Mr. Hall direction to send Ms. Kozak a letter informing her that if the Council did not receive proof of her Canadian Aboriginal ancestry as well as her Alberta residency acceptable to the Council, before the end of February her probationary membership would be cancelled.
- On March 26, 2002, the Gift Lake Metis Settlement Council terminated Ms. Kozak's probationary membership through motion 18.03.26.02, as she did not provide proof of her Canadian Aboriginal ancestry to the satisfaction of Council
- The Tribunal received Ms. Kozak's appeal letter on August 2, 2002.

- On August 1, 2002, the Registrar of the Metis Settlements Land Registry applied to the Tribunal for direction as to whether to cancel Ms. Kozak's probationary membership as the Gift Lake Metis Settlement Council did not terminate her membership for the reasons stated in s. 86(1).

Decision

The Tribunal denies the appeal and reverses the original decision of the Gift Lake Metis Settlement Council to grant probationary membership to Pamela Geneva Kozak.

Reasons

Section 76 of the *Metis Settlements Act* outlines the information required to support an application for membership in a Metis Settlement,

76 Every application for membership in a settlement must be sent to the settlement office and must be accompanied by

- (a) a statutory declaration that
 - (i) the applicant has Canadian aboriginal ancestry, describing the facts on which the declaration is based, and
 - (ii) the applicant identifies with Metis history and culture;
- (b) one or more of the following:
 - (i) genealogical records as evidence that the applicant has aboriginal ancestry;
 - (ii) a statutory declaration of at least 2 Metis who are recognized as Metis elders that the applicant has aboriginal ancestry, describing the facts on which the declaration is made;
 - (iii) such other evidence satisfactory to the settlement council that the applicant has aboriginal ancestry; [emphasis added]

Section 78 of the *MSA* outlines the requirements that must be satisfied before membership can be granted,

78(1) An application for membership in a settlement can be approved only if the settlement council is satisfied that the applicant

- (a) is a person of Canadian aboriginal ancestry who identifies with Metis history and culture,
 - (i) has or will have suitable living accommodation in the settlement area, and
 - (ii) is committed to living in the settlement area and preserving a peaceful community. [emphasis added]

Ms. Kozak signed a Membership Declaration form but did not provide any information on the declaration or at any other time that proves that she does in fact have Canadian Aboriginal ancestry as is required by s. 76(a)(i) and s. 78(1)(a). Ms. Kozak did not satisfy the requirements for settlement membership detailed in the *Metis Settlements Act*. Instead the evidence clearly establishes that her aboriginal ancestry is American-Cherokee. The consequences of this, given

the requirements of the *MSA*, are that Ms. Kozak does not qualify for membership under the Act and the Gift Lake Metis Settlement Council therefore had no authority or jurisdiction to grant membership to Ms. Kozak, even on a probationary basis, and the original grant of probationary membership is therefore properly viewed as null and void from the outset. In other words, the motion granting Ms. Kozak membership was beyond the authority of the Council because it was granted in the absence of evidence, specifically the absence of proof of Canadian Aboriginal ancestry, which the *Metis Settlements Act* requires.

The Gift Lake Metis Settlement Council itself recognized the absence of evidence of Canadian Aboriginal ancestry and tried to correct its original error by first reviewing the application and asking for evidence of Canadian Aboriginal ancestry and then by terminating Ms. Kozak's probationary membership and refusing her application for membership when the required information was not provided. The Tribunal is of the opinion that there was no need for and strictly speaking, has been no termination or rescission of membership. This is because there is nothing to terminate. The decision to grant probationary membership was made beyond the authority of the Council (because it was made in the absence of evidence of Canadian aboriginal ancestry which the *MSA* requires) and that decision is therefore properly regarded as null and void from the outset.

However, even if the Council's decision to grant probationary membership is not void from the outset, the Tribunal is of the opinion that Section 86(1) of the *Metis Settlements Act* provides the Gift Lake Metis Settlement Council with the authority to terminate a person's membership within the probationary period on its own initiative under s. 86(4) (so long as notice of that intent and an opportunity to be heard is given to the affected person) and for reasons in addition to those specifically identified, including non compliance with the membership requirements established by the Act.

Section 86 of the *Metis Settlements Act* reads,

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.

In concluding that this section does not list the only grounds on which a settlement council can terminate a probationary membership, we are influenced by the absence of language like that

found in section 87 of the *Metis Settlements Act*. Section 87 states clearly that membership may be terminated only if certain identified circumstances exist. If the Legislature had intended to similarly restrict the grounds for termination during a probationary period to those specifically identified, arguably it would have said so expressly, just as it has done in s. 87.

At this point, the Panel would like to address the application for direction that it received from the Registrar of the Metis Settlements Land Registry. In the application for direction, the Registrar asked if a person's name must be removed from the membership list pursuant to s. 86(1) of the *Metis Settlements Act* if the reason for termination is not one of the reasons listed in s. 86(1). The Panel finds that in the case of Pamela Kozak, the Registrar must remove her name from the membership list. The Panel is satisfied that the language of the section is not specific to the reasons given in s. 86(1)(a) and (b).

In the end result, however, it is not strictly necessary for us to decide the issue of the Council's jurisdiction under section 86, as this Tribunal clearly has the jurisdiction under section 190 (1)(j) to make any decisions that the Council could have made and to confirm or reverse the Council's decision (ss. 190(1)(k) and (l)). Because the *Metis Settlements Act* clearly establishes Canadian Aboriginal ancestry as a requirement for settlement membership and Ms. Kozak has not provided any evidence of Canadian Aboriginal ancestry but instead has provided proof that her Aboriginal ancestry is American-Cherokee, we are of the opinion that her application for membership and her appeal must be denied.

Order

The Tribunal orders that the Registrar of the Metis Settlements Land Registry remove Pamela Geneva Kozak from the Settlement Members List.

Dated in the City of Edmonton in the
Province of Alberta on the 15th day of
May, 2003.

Lorne Dustow, Tribunal Chair