

Order No. 152

File No. 03-0007-02

METIS SETTLEMENTS ACT
METIS SETTLEMENTS APPEAL TRIBUNAL

Between:

Kerry M. Cunningham

Appellant

-and-

Peavine Metis Settlement

Respondent

Concerning a Land dispute on the NE-27-079-16-W5M

DECISION

Table of Contents

| | |
|------------------------------|----------|
| THE HEARING | 3 |
| BACKGROUND | 4 |
| JURISDICTION | 5 |
| SUMMARY OF EVIDENCE | 5 |
| APPELLANT'S EVIDENCE | 5 |
| RESPONDENT'S EVIDENCE | 7 |
| FINDINGS OF FACT | 8 |
| DECISION | 9 |
| REASONS | 9 |

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:

Kerry M. Cunningham, Appellant
Rene Cunningham Jr., witness for the Appellant
Rene Cunningham Sr., witness for the 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 Peavine Metis Settlement Council

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

Ms. Kerry Cunningham was granted a provisional Metis title (PMT) to the NE-27-079-16-W5M on the Peavine Metis Settlement. Ms. Cunningham's PMT started February 19, 1997 and ended on February 18, 2002. Other than the dates indicating when her PMT starts and ends, there were no other terms or special conditions outlined on the Memorandum.

On January 8, 2002, the Metis Settlements Land Registry (MSLR) sent Ms. Cunningham a letter informing her that her PMT was going to expire on February 18, 2002, unless it was renewed or upgraded.

On February 12, 2002, Ms. Cunningham applied to the Peavine Metis Settlement Council to have her PMT upgraded to a Metis title (MT). Section 5.2(2) of the Metis Settlements General Council Land Policy (Land Policy) lists conditions that must be satisfied in order to qualify to upgrade to MT.

As a requirement on the application for MT the applicant has to list the improvements that they have made on the land. Ms. Cunningham indicated on her application that she had cleared some land for farming.

On February 26, 2002, the MSLR sent Ms. Cunningham another letter informing her that her PMT would be cancelled unless she notified the Registry of her objection within 60 days of receipt of the letter. Ms. Cunningham contacted the Registrar of the MSLR by telephone and was informed to go to the Settlement office to inquire about the status of her application.

On April 29, 2002, Mr. Harold Blyan, Registrar of the MSLR, sent Ms. Cunningham a notice that her PMT interest in the NE-27-079-16-W5M had been cancelled.

On July 11, 2002, the Tribunal received Kerry Cunningham's appeal letter. Ms. Cunningham is appealing the Peavine Metis Settlement Council's lack of decision regarding her application to upgrade to Metis title.

The Peavine Council should have made a decision on Ms. Cunningham's application on or before March 29, 2002.

The Tribunal received Ms. Cunningham's appeal letter 73 days after the 30-day deadline expired.

On January 17, 2003, a Land Panel of the Tribunal met and decided to invoke 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.

The Panel decided to waive the 30-day appeal deadline because the Peavine Metis Settlement Council did not make a decision on Ms. Cunningham's application for Metis title within the allotted 45-days.

Jurisdiction

The Tribunal has jurisdiction to hear this appeal according to s. 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, bylaws or General Council Policies...

Metis Settlements General Council Land Policy

8.1 Right to appeal

- (1) Whenever 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 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 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

Kerry Cunningham testified that she applied for a Metis title but that she did not get a response from the Council. She indicated that she was going to farm the land. Ms. Cunningham informed the Panel that she had cleared some of the land.

Kerry also told the Panel that although her signature appeared on the Memorandum of Provisional Metis Title, she does not understand the terms and conditions to qualify for a Metis title.

Ms. Cunningham further informed the Panel that the Settlement posted the land as available before they made a decision regarding her application for Metis title. She said that she applied for a provisional Metis title on the posted land as well because she did not want to lose the quarter section. She also said that people were told by the Council was promising the land to the original owners if they reapplied. She also said that she was told that the Council was doing this for everyone in order to "clean-up" the land issues. Ms. Cunningham further stated that not only had the Council not given her an answer on her application for Metis title within the required time they had yet to give her answer on her application for provisional Metis title.

Ms. Cunningham informed the Panel that she was unaware that she owed any money to the Settlement for housing.

Rene Cunningham Jr.; witness for Kerry Cunningham

Rene Cunningham Jr. testified that he had cleared approximately 15 acres of the NE-27-079-16-W5M in 1999 or 2000. He was asked approximately how much money it cost to clear the 15 acres of land. Rene said that he did not charge Kerry but instead asked her for help cutting posts to build a house.

Rene Jr. said that it is important that Kerry not lose this land because she does not own any other land and that she lives on someone else's land. He further submitted that this could have been resolved between the Council and themselves and that this should have been dealt with at the Settlement. He said that perhaps if Kerry's application had been presented to the Council they would have made a decision on her application. He further informed the Panel that some people might have problems with his father but that it should not be taken out on his sister.

Rene Cunningham Sr.; witness for Kerry Cunningham

Rene Cunningham Sr. testified that when Kerry applied for the land there was no oil activity on the quarter section. He also stated that the oil companies were suppose to make roads to the property as part of an agreement and that oil companies sign 30 year agreements and that the agreement holds until the entire lease is cleaned up. He then stated for clarification that it was outside the Settlement that oil companies signed 30-year agreements and that the contract lasts until everything is off the property.

Mr. Cunningham Sr. inquired as to how Harold Blyan, Registrar of the Metis Settlements Land Registry, can cancel the title without coming out to the Settlement to view the land. He further said that a person [the Registrar] would have to come out to see the land in order to see that there is no road or power to the property and therefore no one can build a house there.

Mr. Cunningham Sr. indicated that it is the responsibility of the Council to inform the members in order to make sure they understand the processes.

In responding to a question regarding Ms. Cunningham applying for the land before it was posted, Mr. Cunningham Sr. informed the Panel that the dates may have been wrong and if they were then it was just a mistake because things were done when individuals were trying to operate within the new *Act*. Mr. Rene Cunningham Sr. said that he was unaware of the Metis Settlements General Council Land Policy and that Kerry would not understand what it meant.

Mr. Cunningham Sr. informed the Panel that the Settlement's housing policy only allows for three power poles when constructing a house. He believed that the Tribunal should investigate further because some people are getting Metis title with no improvements. He said that nobody explained what needed to be done to the land and that the hearing would have to be postponed in order for them to obtain a lawyer so that the policies could be explained.

Respondent's Evidence

Iner Gauchier; Chair, Peavine Metis Settlement

Iner Gauchier, Chair of the Peavine Metis Settlement, told the Panel that Kerry Cunningham's application was not presented to the Peavine Metis Settlement Council and as such they had not made a decision on her application to date.

Mr. Gauchier testified that it is not the Settlement Council's practice to go and physically examine the land. He said that the Council approves applications for Metis titles if the applicant is residing on the land.

Mr. Gauchier said that the NE-27-079-16-W5M is in the oil sector and that to his knowledge no one is farming in that area. He informed the Panel that members that hold title to land receive 100% of the compensation for surface access.

Mr. Gauchier also submitted that Ms. Cunningham signed the Memorandum of Provisional Metis Title and as such must have understood the terms and conditions listed on that document. He also informed the Panel that the Sherry Cunningham, Kerry Cunningham's sister, was the administrator for the Peavine Metis Settlement at the time that Kerry received her provisional Metis title.

Mr. Gauchier informed the Panel that there is a housing report that shows that Kerry Cunningham owes money to the Settlement for her house. He also asked the Panel to decide how the Settlement should deal with any compensation money that Kerry Cunningham may be entitled to for resource activity on the NE-27-079-16-W5M.

Don Cunningham; Land and Membership Coordinator, Peavine Metis Settlement

Mr. Don Cunningham provided the Panel with a chronology of the NE-27-079-16-W5M starting in 1996 when the land was first posted. Mr. Don Cunningham stated that Kerry Cunningham's application for the NE-27-079-16-W5M was received prior to the posting of the land. He further provided the Panel with dates of correspondence from the Metis Settlements Land Registry regarding the registration, pending cancellation and cancellation of Kerry Cunningham's interest. He also informed the Panel that the land was posted as available on June 10, 2002 until July 11, 2002 and the land was re-posted in September until November 29, 2002.

Mr. Don Cunningham said that there is always a question of improvements being done on the land and informed the Panel that the Peavine Metis Settlement has used aerial photos to determine land clearing.

Mr. Don Cunningham brought to the Panel's attention that it is up to the administration to present the applications to the Council but that as the Council is quite busy it is hard to meet with them within the required time periods.

Dennis Cunningham; witness for Peavine Metis Settlement

Dennis Cunningham informed the Panel that decisions are being made on a case-by-case basis. He said that there is a big backlog regarding applications for expiring interests in land. He said

that as the MSAT makes decisions regarding the granting of land people scramble to make improvements, perhaps by knocking down some trees, in order to qualify for Metis title. He further stated that interests in land expire and then the titleholders appeal to the MSAT.

Findings of Fact

- Kerry Cunningham's provisional Metis title to the NE-27-079-16-W5M was registered from February 19, 1997 until February 18, 2002.
- Aside from the conditions listed in s. 3 of all memorandums of provisional Metis title there are no other conditions listed on Ms. Cunningham Memorandum.
- On January 8, 2002, the MSLR sent Ms. Cunningham a letter informing her that her interest in the NE-27-079-16-W5M would expire on February 18, 2002, unless it was renewed.
- On February 12, 2002, Kerry Cunningham submitted an Application for Metis title to the NE-27-079-16-W5M.
 - Ms. Cunningham indicated that she had done some land clearing for farming as an improvement to the land.
 - Ms. Cunningham indicated that she is currently living in the Settlement, is using the land for farming, ranching or a business, does not owe money to the Settlement and does not have an interest in any other land in the Settlement area.
- On February 26, 2002, the MSLR sent Ms. Cunningham a letter informing her that her provisional Metis title interest in NE-27-079-16-W5M had expired and that the interest would be cancelled within 60 days of the date of the letter.
- On April 29, 2002, the MSLR informed Kerry Cunningham that her provisional Metis title interest in the NE-27-079-16-W5M had been cancelled.
- The Peavine Metis Settlement Council did not make a decision regarding Kerry Cunningham's application for Metis title because the application had not been presented to them.
- Rene Cunningham Jr. cleared approximately 15 acres out of 161 acres of the NE-27-079-16-W5M.
- Section 5.1, Metis Settlements General Council Land Policy.

5.1 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 owed 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 or operating a business, farm or ranch on it; and
 - (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 productive capacity.

- (3) A settlement may, by by-law, provide more details for the conditions set out in 5.2(2)(d) or 5.2(2)(e).
- (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.

Decision

The Panel finds that Kerry M. Cunningham does not qualify for a Metis title on land legally described as the NE-27-079-16-W5M on the Peavine Metis Settlement.

Reasons

The Panel finds that Kerry M. Cunningham does not satisfy all of the criteria set out in s. 5.2 of the Land Policy to upgrade to a Metis title. The Panel, when making its decision, applied the criteria set out in s. 5.2 of the Land Policy to the evidence submitted at the hearing. The Panel concluded that Kerry Cunningham complies with sections 5.2(2)(a) and (c) of the Land Policy. However she fails to meet the criteria for a Metis title as set out in s. 5.2(2)(d) and (e)(i) and (ii). Ms. Cunningham is not living on, or operating a farm, ranch or business on the land nor has she improved the land by constructing a house or permanent buildings on it. Although approximately 15 acres of the NE-27-079-16-W5M, was cleared, the Panel does not find 15 acres to be a substantial amount of the NE-27-079-16-W5M, which is 161 acres of land with no water bodies.

Dated in the City of Edmonton in the
Province of Alberta on the 8th day of
July, 2003.

Lorne Dustow, Panel Chair