

METIS SETTLEMENTS ACT
METIS SETTLEMENTS APPEAL TRIBUNAL

Between:

Ryck Chalifoux

Appellant

-and-

Settlement Council of Fishing Lake Metis Settlement

Respondent

-and-

Ross George Calliou

Affected Party

Descent of Property
900237-00-01 (SW-13-057-02-4)
and the NW-36-056-02-4.

DECISION

The Hearing

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

Randy Anderson, Panel Chair
Joyce Parenteau, Panel Member
Richard Anderson, Panel Member

Parties present at the hearing:

Ryck Chalifoux, Appellant
Irene Calliou, Appellant's Witness
Donna Shannon, Appellant's Witness

Fishing Lake Metis Settlement, Respondent
Represented by: Garry Parenteau, Chair, Settlement Council
Shirley Calliou, Land & Membership Clerk

Ross Calliou, Affected Party
Jeannette Calliou, Affected Party's Witness

MSAT staff present:

Terri Quintal, Research and Development Officer

Place and date of the Hearing:

Fishing Lake Metis Settlement Communiplex
Fishing Lake Metis Settlement, Alberta
July 10, 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

Brenda Margaret Calliou, a member of the Fishing Lake Metis Settlement, passed away on August 20, 2001. Ms. Calliou held the Metis title in land legally described as 900237-00-01 (SW-13-057-02-4) and an Allotment interest in the NW-36-056-02-4. In respect of the two interests, estate instructions were not filed with the Registrar of the Metis Settlements Land Registry (“Land Registry”).

By letter dated October 31, 2001, Land Registry confirmed the Allotment interest registered in the name of Brenda Calliou. The letter also advised the Settlement that estate instructions had not been filed with the Registrar and made reference to section 7.9(3) of the Metis Settlements General Council Land Policy (“Land Policy”):

“if the landholder dies without appointing a land trustee, the settlement is the land trustee unless the settlement council appoints someone else. Accordingly, please complete Form MSLR17 to transfer Ms. Calliou’s interest to the settlement as land trustee.”

The MSLR17 form was not submitted, as a result, the Settlement Council was not registered as the land trustee.

For the other parcel, 900237-00-01 (SW-13-057-02-4), Settlement Council was registered as the land trustee on January 10, 2002.

On April 2, 2002, Ross Calliou wrote a memo to Settlement Council informing the Council that the Court of Queen’s Bench had “officially declared” him Brenda Calliou’s common law husband. Mr. Calliou did not submit the Court Order to either the Settlement Council or the Tribunal. Mr. Calliou informed the Tribunal that he does not have a copy of the Order.

The Allotment interest in the NW-36-056-02-4 expired on June 2, 2002. Settlement Council attempted to renew the interest on August 16, 2002. Land Registry did not accept the renewal because MSLR17 form had not been submitted.

By letter dated August 26, 2002, Irene Calliou, Brenda Calliou’s mother advised Settlement Council of the following:

“our families wish to have the Trusteeship for Brenda Calliou’s estate transferred from the Fishing Lake Metis Settlement Council to Ryck Chalifoux . . . As a family we have sat down and discussed this matter at great length and feel that it is in the best interest of Colin Calliou [Brenda Calliou’s son] and the easiest for our family to ensure that the Estate will be properly cared for until Colin becomes of age and can look after his own affairs”

On January 7, 2003, the Fishing Lake Metis Settlement Council passed two motions:

Motion FLMSRCM006/03 Move that Fishing Lake Metis Settlement as Land Trustee transfer SW 13 57 2 W4M Plan # 900237 Lot 1 9.96 acres and interests to Ross Calliou. As no Estate instructions or last wishes were registered.

FLMSRCM007/03 Move that Fishing Lake Metis Settlement as Land Trustee transfer NW 36 56 2 W4M Allotment and improvements to Ross Calliou. As no Estate Instructions or last wishes were registered.

On January 7, 2003, Ryck Chalifoux, a member of the Fishing Lake Metis Settlement, appealed the decision of the Fishing Lake Metis Settlement Council to transfer Brenda Calliou's interests to Ross Calliou. In his appeal letter Mr. Chalifoux stated he was:

Appealing FLMS Council decision to transfer land interest from FLMS, as trustee, for the late Brenda Calliou (my sister) to Ross Calliou on Jan 7, 2003. Result - Would like to see interest held in trust until Colin Calliou (deceased's son) reaches the age of 18 - as we believe this is the rightful owner of the land and land interests. Disagree with Council; the comments made by the Council in the minutes taken by the recording secretary and the basis for this decision.

On February 13, 2003, Mr. Chalifoux sent the Tribunal a letter he had received from Donna Shannon. Ms. Shannon stated in the letter,

The common law relationship was never intended to cover the transfer of late Brenda Calliou's property or her house to Ross Calliou. She intended for her son to inherit the land and this is the deal that she made with her mother. I know because I was present when it was initially discussed.

On May 14, 2003, a Land Panel of the Tribunal met and decided to take Mr. Chalifoux's appeal to a hearing.

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 regulation, bylaws, or General Council Policies;

Additional jurisdiction is under s. 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.³⁷

³⁷Under section 202 of the Act, the Appeal Tribunal may extend the time in special circumstances and this could allow it to make sure people with real problems are heard.

Summary of Evidence

Appellant's Evidence

Ryck Chalifoux

Mr. Chalifoux stated he filed an appeal because he felt that the Fishing Lake Metis Settlement Council did not recognize Colin Calliou, Brenda Calliou's son, when they made the decision to grant Brenda Calliou's land interests to Ross Calliou. He said he filed an appeal solely on Colin's behalf. Mr. Chalifoux said he had approached the Council to have the Land Trusteeship be transferred to himself as he became concerned that the Council, as Land Trustee, had allowed Brenda's Allotment interest to elapse and be cancelled.

Mr. Chalifoux also disagreed with the statements made by the Council when they were discussing who should be the heir to Brenda's interests. Specifically, Council's discussion regarding the registration of Colin Calliou and that Ross gave up a house in order for Brenda to receive hers. Mr. Chalifoux believed the Fishing Lake Metis Settlement Council did not act appropriately as the Trustee for Brenda's interests and did not consider the interests of Colin when the decision was made to transfer the land to Ross Calliou as heir.

Ryck testified he did not dispute the relationship of Ross and Brenda. He filed the appeal on the basis Colin was excluded from the process. The family no longer cared about the house but they wanted the land to stay with Colin as the land was all Colin had left of his mother. Ross could move the house off the property if he wanted to. Mr. Chalifoux indicated Brenda, as a mother, would want to leave something to her child.

Donna Shannon

Ms. Shannon testified that in 1995 she had spent a reasonable amount of time at Irene Calliou's home and was privy to numerous conversations between Irene Calliou and Brenda Calliou regarding the transfer of 10 acres of land to Brenda. Ms. Shannon stated she specifically remembers a conversation between Irene and Brenda in which Irene stated she would transfer land to Brenda as long as she left the property to Colin. She attended the property with both Irene and Brenda and it was there that Ms. Shannon understood Brenda's intent was to leave the land to her son.

Ms. Shannon also made reference to the common law relationship between Ross and Brenda. They did not live together continuously through out the time they were dating and Ross had a long history of being gone. On several occasions she visited Brenda when she was living alone with her son, Colin. Ms. Shannon also informed the Panel that Brenda indicated on her student loan applications that she was not married and Colin was her only dependent.

Irene Calliou

Irene Calliou stated she transferred the land to Brenda Calliou on the agreement that the land was to go to her grandson, Colin Calliou. Irene indicated she helped Brenda pay for the house and furniture. She stated, in the end, everyone forgot about her grandson and Council did not care about the child.

Affected Party's Evidence

Ross Calliou

Ross Calliou testified he was living in Lloydminster with Brenda Calliou when she was attending school. He said she got her funding from Frog Lake and he was getting his funding from Unemployment Insurance and they attended school at the same time. He indicated there was the odd time he was incarcerated but that does not end a common law marriage. Brenda was listed as his common law wife when he was in jail. He indicated he was with her when she passed away.

Mr. Calliou further stated Brenda and he had received a loan from the Settlement and Mr. Chalifoux indicated on the application form that they were a common law couple. Mr. Calliou claimed everyone knows that common law is living together for 6 months regardless of having to be incarcerated. He stated that having to be away does not end a relationship and people carry on with the situation they are in. The only time he and Brenda were apart was when he was in prison. He said there was the odd time they would fight and he would leave for a couple of days or a week.

Mr. Calliou also said he gave up a house in order for a house to be built for Brenda. He applied for a house because he felt Council owed him a house. He turned down a house because the Council was going to grant one to Brenda instead and now he has no chance of having another house built for him. He offered to give the Allotment interest back to Brenda Calliou's family, however he wanted to keep the land the house was on.

Findings of Fact

- Brenda Calliou passed away on August 20, 2001.
- At the time of her death, Brenda Calliou held the Metis title in the land legally described as 900237-00-01 (SW-13-057-02-4) and an Allotment interest to the NW-36-056-02-4.
- Brenda Calliou did not file estate instructions with the Registrar of the Metis Settlements Land Registry in respect of 900237-00-01(SW-13-057-02-4) and the Allotment interest in the NW-36-056-02-4.
- Settlement Council of Fishing Lake Metis Settlement became the Land Trustee to the 900237-00-01 (SW-13-057-02-4).
- The Settlement Council of Fishing Lake Metis Settlement did not submit the MSLR17 form to become land trustee for Brenda Calliou's Allotment interest in the NW-36-056-02-4.
- Brenda Calliou's Allotment interest in the NW-36-056-02-4 expired on June 2, 2002.
- On January 7, 2003, Settlement Council passed two motions:
 - FLMSRCM006/03
Move that Fishing Lake Metis Settlement as Land Trustee transfer SW 13 57 2 W4M Plan # 900237 Lot 1, 9.96 acres and interest to Ross Calliou. As no Estate Instructions or last wishes were registered.
 - FLMSRCM007/03
Move that Fishing Lake Metis Settlement as Land Trustee transfer NW 36 56 2 W4M Allotment and improvements to Ross Calliou. As no Estate instructions or last wishes were registered.
- On January 7, 2003, Ryck Chalifoux appealed the decision of the Settlement Council of Fishing Lake Metis Settlement to the Metis Settlements Appeal Tribunal on behalf of Colin Calliou.

Decision

The Panel finds Ross George Calliou is the spouse of the deceased, Brenda Calliou, as defined in s. 7.2 of Metis Settlements General Council Land Policy.

The Panel decides Ross George Calliou, as the deceased's spouse, should receive the interests held by Brenda Calliou at the time of her death; the Metis title for the land legally described as 900237-00-01 (SW-13-057-02-4) and the Allotment interest in the NW-36-056-02-4.

The Panel confirms Settlement Council decision to transfer Brenda Calliou's Metis title for the land legally described as 900237-00-01 (SW-13-057-02-4) to Ross George Calliou.

The Panel finds Settlement Council erred in making Motion FLMSRCM007/03 to transfer Brenda Calliou's expired Allotment interest in the NW-36-056-02-4 to Ross Calliou.

Reasons

Part 7 of the Land Policy provides for the basic rules governing the transfer of a member's interests in land when he or she dies. Section 7.9(3) states, if an interest holder dies without appointing a land trustee, or if when the holder dies, and the person appointed is unable or unwilling to serve, the settlement is the land trustee unless the settlement council appoints someone else. Section 7.11 states, on application, the register must be change to show the land trustee as holder of the land interests of the deceased for the purpose of administering the estate.

With respect to the NW-36-056-02-4, the Panel finds Settlement Council accepted the responsibility as land trustee since Settlement Council did not appoint someone else. It is noted, Settlement Council did not apply to the Registrar of the Metis Settlements Land Registry to have the register changed to show Settlement Council as the holder of the land interest of the deceased.

Section 7.10 outlines the duties of the land trustee. The land trustee is responsible for administering the interest in accordance with estate instructions, settlement by-laws and the Land Policy. Ensuring interests remain in good standing is an important part of the responsibility. By allowing the Allotment interest in the NW-36-056-02-4 to expire, the Settlement Council failed to administer the estate properly. In this case, the land trustee should have applied to renew the Allotment or any extensions of it for 5 more years.

In coming to its decision, the Panel relied on s. 7.13 of the Land Policy. Section 7.13 provides that when making a decision regarding descent of property any determination of the question must be guided by the principles provided in s. 7.13(a) to (f), in a priority sequence. Therefore, each subsection only comes into affect if the matter is not resolved in the subsections ahead of it.

Section 7.13(1)(a) provides that as far as possible, and to the extent that they can be clearly determined, the last wishes of the deceased should be met. Although there was ample verbal evidence attesting to what it was the family wishes, there was not enough evidence presented to the Panel that those were the last wishes of Brenda Calliou. The Panel finds the last wishes of Brenda Calliou could not be clearly determined thereby enacting s. 7.13(b).

Section 7.13(b) states an interest must be transferred to the deceased's spouse if it can be registered in the spouse's name. The Land Policy defines spouse as, "An individual who at the time of the deceased's death was lawfully married to the deceased, or lived with the deceased as husband or wife and was treated as such by the community".

The Panel finds the Settlement Council for Fishing Lake Metis Settlement erred in passing motion FLMSRCM007/03 on two counts:

- Settlement Council was not registered as the land trustee; therefore, did not have the authority to transfer the interest.
- The interest had expired.

Order

In accordance with s. 51 of the Metis Settlements Land Registry Regulations, the Appeal Tribunal directs the Registrar of the Metis Settlements Land Registry to:

- Register the Metis title for the land legally described as 900237-00-01 (SW-13-057-02-4) in the name of Ross George Calliou.
- Register an Allotment interest in the NW-36-056-02-4 in the name of Ross George Calliou. This decision and the Memorandum of Allotment dated May 19, 1992 (Metis Settlements Land Registry ID No. 1-5000525), are to be filed as the supporting documentation. The expiry date for the interest: June 2, 2007.

The Appeal Tribunal directs Fishing Lake Metis Settlement to pay out any compensation payable, relative to 900237-00-01 (SW-13-057-02-4) and the Allotment interest in the NW-36-056-02-4, pursuant to any Agreement or Right of Entry Order to Ross George Calliou, as the heir to Brenda Calliou's estate. This is provided for in Section 3(2) of the Fishing Lake Metis Settlement in the Province of Alberta Surface Rights Compensation Distribution To Members By-law 2000-0116.

Dated in the City of Edmonton in the
Province of Alberta on the 15th day of
June 2004.

Randy Anderson, Panel Chair