

METIS SETTLEMENTS ACT

METIS SETTLEMENTS APPEAL TRIBUNAL

Between:

Cheryl Martineau

Appellant

-and-

Allan Martineau

Respondent

-and-

Paddle Prairie Metis Settlement

Affected Party

Concerning a Land dispute on the NW-19-103-21-W5M, Lot 1
(Plan 1-900297-00-01).

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
Richard Anderson, Panel Member

Parties to the hearing:

Cheryl Martineau, Appellant

Allan Martineau, Respondent

MSAT staff present:

Terri Quintal, Research and Development Officer

Place and date of the Hearing:

Council Chambers
High Level Town Office
High Level, Alberta
June 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.

Procedural Issues

Allan Martineau informed the Panel at the hearing that his lawyer was not able to attend the hearing. The Panel Chair asked Allan Martineau if he would like to proceed without counsel, he said he would proceed. Allan Martineau also informed the Panel that he was not able to receive his hearing package, and thus was not prepared for the hearing. Allan Martineau was provided a copy of the hearing package and asked if he would like a recess in order to become familiar with the case. Allan Martineau opted to continue without a recess.

Allan Martineau submitted evidence to the Panel, a copy of which was given to the appellant. After the Panel reviewed the evidence it found that the submissions did not have a bearing on the case before them.

Background

On March 19, 1993, Darrin Martineau was informed that his Settlement Housing application had been approved. Allan Martineau was instructed to meet with the Housing Co-coordinator to discuss a building location. Darrin Martineau was informed that the title to the land, on which the house was to be constructed, had to be in his name.

Darrin Martineau's house was constructed on the NW-19-103-21-W5M, Lot 1 to which his father, Allan Martineau, held an allocation interest. The house was constructed on land to which Darrin Martineau did not hold an interest in as is required by s. 8(c) of the Paddle Prairie Metis Settlement Housing Policy Program. Darrin Martineau and his mother Emma Martineau have homes on Lot 1, however both distance and the Boyer River separate them.

On June 30, 1995, Allan Martineau submitted an application to convert his allocation to the NW-19-103-21-W5M to an allotment. In the Proposed Use of the Land section of the application it asks, "What do you plan to do to the land and how will you be using it?" Allan Martineau wrote, "transfer to son Darrin." On the same day, Allan Martineau submitted an application to transfer his registered allotment to the NW-19-103-21-W5M, Lot 1 to his son Darrin Martineau. The transfer was never completed because Allan Martineau's wife Emma Martineau would not sign the Consent of Spouse form transferring the lot to Darrin Martineau. The interest was converted to an allotment that remained as an interest held by Allan Martineau.

On March 24, 2003, Cheryl Martineau, a member of the Paddle Prairie Metis Settlement, appealed to the Metis Settlements Appeal Tribunal to resolve a land matter between her father-in-law, Allan Martineau, and herself. Cheryl Martineau is asking the Tribunal to subdivide 20 ha off of the land legally described as the NW-19-103-21-W5M, lot 1 and then to transfer the subdivided portion, as a Metis title, into her name. Cheryl Martineau currently resides on the aforementioned land in a house constructed by the Paddle Prairie Metis Settlement for her deceased husband, Darrin Martineau.

In her appeal letter to the Tribunal Cheryl Martineau wrote that because of conflicts between Allan Martineau and herself, he would not transfer the land into her name. Cheryl Martineau goes on to say that Allan and Emma Martineau are fighting over the NW-19-103-21-W5M, Lot 1 as part of a divorce proceeding and that she wants to continue to reside in her home but wants the land on which her house is located to be in her name.

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; ...

8.2 of the General Council Land Policy

8.2 References

Any question or dispute as to the ownership or extent of an interest in land in a settlement area may be referred to the Appeal Tribunal for an advance ruling or for a decision.

Summary of Evidence

Appellant's Evidence

Cheryl Martineau informed the Panel that she would like the land surrounding the house to be transferred into her name. Cheryl Martineau submitted that as she is now paying for the house she wants the land surrounding the house to be in her name.

Respondent's Evidence

Allan Martineau testified that he had attempted to transfer the NW-19-103-21-W5M, Lot 1 (Plan 1-900297-00-01) to his son Darrin Martineau. He said that the transfer never happened because Darrin's mother Emma Martineau would not sign the transfer documents. Allan Martineau informed the Panel that his own father had given him the aforementioned property and that he in turn had attempted to give the land to Darrin Martineau. He further stated that at the time he was trying to transfer the property to Darrin Martineau as the family was farming the land together.

Allan Martineau said that he had previously told Cheryl Martineau that she could have the land that the house is on for her and her daughter to live on. He said that it was not the full 20 hectares of land, just the land immediately surrounding the house. He stated that he is no longer prepared to give up any of the land that the house is on. He wants it to go to Darrin Martineau's children in order to keep the land in the family.

Findings of Fact

- Cheryl Martineau was married to the late Darrin Martineau.
- Section 8(c) of the Paddle Prairie Metis Settlement Housing Policy #P005/91 states:
 - In order to be eligible to receive a housing unit or servicing under this program a person must;
 - (c) have either;
 - A Certificate of Metis Title;
 - A Provisional Certificate of Metis Title; or
 - Any other interest permitted by Settlement bylaw or General Council Policy.
- The Paddle Prairie Metis Settlement built a house for Darrin Martineau on the NW-19-103-21-W5M, Lot 1(Plan 1-900297-00-01), land to which he did not hold a registered interest in.
- Allan Martineau attempted to transfer the NW-19-103-21-W5M, Lot 1(Plan 1-900297-00-01) to his son Darrin Martineau however; his wife Emma Martineau would not sign the transfer form.
- Section 1.2 of the Owner/Occupant Agreement between the Paddle Prairie Metis Settlement and Cheryl Martineau states:
 - 1.2 The Member has an interest in land permitted by Settlement policy, by-law, or General Council Policy upon which the housing unit will be built.

Decision

The Panel finds that the Paddle Prairie Metis Settlement erred in constructing a house for Darrin Martineau on land that he did not have an interest in. Therefore, Paddle Prairie Metis Settlement is responsible for the subdivision of the NW-19-103-21-W5M, Lot 1 as determined in this Order.

The Panel denies Cheryl Martineau's request to have that portion of the NW-19-103-21-W5M, Lot 1 (approximately 20 hectares) surrounding her house registered as a Certificate of Metis Title.

The Panel grants Cheryl Martineau a provisional Metis title to that part of the NW-19-103-21-W5M, Lot 1 surrounding her house, which will consist of the minimum amount of land required to meet environmental and other relevant legislation, Settlement bylaws and policies.

Reasons

The Panel found that the Paddle Prairie Metis Settlement erred in constructing a house for Darrin Martineau as he did not meet all of the eligibility requirements laid out in s. 8(c) of the Paddle Prairie Metis Settlement Policy No. P005/91, the Settlement Housing Policy. Section 8 (c) states that in order to be eligible to receive a housing unit, the person must have either a Certificate of Metis Title, a Provisional Certificate of Metis Title or any other interest permitted by Settlement bylaw or General Council Policy. Darrin Martineau did not have an interest in the land. The Panel determined that, as the Paddle Prairie Metis Settlement did not follow its own housing policy, the Settlement has to arrange for the subdivision of the NW-19-103-21-W5M, Lot 1 in

order to resolve this dispute. Allan Martineau should not be penalized and lose a significant amount of property for the oversights made by the Paddle Prairie Metis Settlement.

On June 30, 1995, Allan Martineau submitted an application to convert his allocation to NW-19-103-21-W5M, Lot 1. On that same application, Allan Martineau indicated that he wants to transfer the land to his son Darrin Martineau. That did not happen as his wife; Emma Martineau refused to sign the transfer document. Had the transfer documents been signed the NW-19-103-21-W5M, Lot 1 would be in Darrin Martineau's name. If such were the case, it is reasonable to assume that, the title to the property would now be in Cheryl Martineau's name as Darrin Martineau's spouse. In any event, Cheryl Martineau has the right to use and enjoy her home. In order to be able to use and enjoy her home, the Panel finds that the land surrounding the home has to be held by Cheryl Martineau. As such, the Panel determined that Cheryl Martineau is entitled to the minimum amount of land required for the lot to comply with all appropriate legislation.

Order

The Tribunal orders that:

- The Paddle Prairie Metis Settlement, as the holder of Metis title, arranges for the subdivision approval and drafting of a survey plan of the NW-19-103-21-W5M, Lot 1 that immediately surrounds Cheryl Martineau's home. The area of the newly created parcel will meet the minimum amount of land required that would allow Cheryl Martineau access to the newly created lot and that will also comply with all appropriate legislation and Settlement land use policies and bylaws.
- The Paddle Prairie Metis Settlement Council grant Cheryl Martineau a provisional Metis title for the newly created subdivided lot on the NW-19-103-21-W5M, Lot 1.
- The 5-year term of Cheryl Martineau's provisional Metis title will start from the date the subdivision plan is filed with the Metis Settlements Land Registry and will end 5 years from that date.
- The Paddle Prairie Metis Settlement will have filed the required documentation for subdivision with the Metis Settlements Land Registry within 90 days of the date of this order.

Dated in the City of Edmonton in the
Province of Alberta on the 31st day of
July, 2003.

Panel Chair