

Order No. 157

File No. 03-0006-02

METIS SETTLEMENTS ACT
METIS SETTLEMENTS APPEAL TRIBUNAL

Between:

Rene Albert Cunningham, Jr.

Appellant

-and-

Peavine Metis Settlement

Respondent

Transfer of Metis Title – NE-28-079-16-5

DECISION

The Hearing

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

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

Parties present at the hearing:

Rene Albert Cunningham, Jr., Appellant

Peavine Metis Settlement, Respondent
Represented by: Richard Hajduk, Counsel for the Respondent

Gallery:

Settlement Council, Peavine Metis Settlement
Iner Gauchier, Chair
Dennis Cunningham, Councillor
Fred Cunningham, Councillor

Various Administration Staff, Peavine Metis Settlement

MSAT staff present:

Terri Quintal, Research and Development Officer
Vince Paniak, Executive Director/Tribunal Secretary

Place and date of the hearing:

Room 302, High Prairie Inn
High Prairie, Alberta
March 1, 2004

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

Rene Albert Cunningham, Jr. was granted a provisional Metis title to the NE-28-079-16-5 commencing May 29, 1995 and ending May 29, 2000.

By letter dated August 15, 2000, the Metis Settlements Land Registry notified Mr. Cunningham of the expiration of his provisional Metis title interest. The letter advised Mr. Cunningham his interest would be cancelled within 60 days after the date of the letter unless he notified Metis Settlements Land Registry of his objection to the cancellation. The letter also referenced s. 45 of the Metis Settlements Land Registry Regulation, which provides for making an application to the Metis Settlements Appeal Tribunal to hear his objection.

Mr. Cunningham contends he submitted an application for Metis title to the Peavine Metis Settlement in the spring of 2000, which he said he gave to the Land and Membership Clerk. The Settlement could not find a copy of the application. The Settlement neither confirmed nor denied the acceptance of the application. On July 8, 2002, Mr. Cunningham filed an appeal with the Metis Settlements Appeal Tribunal. He appealed Council's lack of decision regarding his application for Metis title.

In his letter, Mr. Cunningham states he telephoned the Settlement office numerous times and inquired about his application. Mr. Cunningham was told the Settlement Council had not reviewed his application. He says he waited patiently for the Council to decide on the application and tried to resolve the matter at the Settlement level. He indicated he only came to the Tribunal when he heard Settlement Council had posted the NE-28-079-16-5 as available land. Mr. Cunningham indicated he did not apply on the posting because he felt his application for Metis title should be dealt with before Council granted the quarter to someone else. Mr. Cunningham said he made improvements on the parcel by cutting posts and rails and started clearing the land to grow feed for a cattle or bison operation. Mr. Cunningham also requested a "freeze" be placed on the land immediately to allow time for the Tribunal to review his appeal.

On July 11, 2002, a Land Panel of the Tribunal met and invoked s. 190(3) of the *Metis Settlements Act*, and issued an interim ex parte decision. In MSAT Order No. 141, the Tribunal orders the Registrar of the Metis Settlements Land Registry to not make any amendments to the registry where the NE-28-079-16-5 is concerned until MSAT Order No. 141 is lifted.

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 waived the time requirement due to the uncertain status of the application.

On February 24, 2003, a Land Panel of the Tribunal convened to hear the matter. At the hearing, Mr. Cunningham presented his evidence to the Panel. The Settlement presented a lengthy evidence package to both Mr. Cunningham and the Panel. Mr. Cunningham asked for an adjournment in order to review the Settlement's evidence package. An adjournment was granted.

A hearing was held on March 1, 2004.

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;

It further finds jurisdiction 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

Mr. Cunningham contended he cleared and piled approximately 15 to 20 acres of the usable land on the quarter. Mr. Cunningham used the timber from the property to build a log house (on another piece of property) and for fence posts. He indicated he could not clear the entire area as part of the quarter is swampland and he is unsure where the boundaries of the quarter are. He indicated he might have cleared more land if the Settlement outlined the boundaries of his property. Mr. Cunningham informed the Panel he made improvements to the quarter when he had both money and time. He said there was a point when the land was not accessible because beavers had dammed a creek and flooded the road.

Respondent's Evidence

Mr. Hajduk, on behalf of Settlement Council, submitted Mr. Cunningham did not meet the requirements set out in s. 5.2 of the Land Policy, and as such, a Metis title should not be granted to him. He indicated clearing 15 to 20 acres of land was not a significant amount of the quarter section, and Mr. Cunningham had not made any other significant improvements to the property.

Mr. Hajduk submitted the Panel could renew the provisional Metis title for another 5 years, but asked the Panel to grant the provisional Metis title without the right to surface compensation.

Findings of Fact

- Mr. Cunningham held the NE-28-079-16-5 by provisional Metis title for five years, starting May 29, 1995 and ending May 29, 2000. The Memorandum of Provisional Metis Title does not specify a "purpose" or specific land use.
- On August 15, 2000, the Metis Settlements Land Registry sent a letter to Mr. Cunningham regarding the pending cancellation of his provisional Metis title. The letter referenced sections 30(1)(b) and 45 of the Metis Settlements Land Registry Regulation. Section 30(1)(b) allows a person to object to the cancellation within 60 days after the date of the letter. Section 45 allows a person objecting to the cancellation of an interest in land to appeal to the Metis Settlements Appeal Tribunal.
- On July 8, 2002, Mr. Cunningham filed an appeal concerning Settlement Council's lack of decision on his application for Metis title for the NE-28-079-16-5.
- Mr. Cunningham cleared some land and used the timber to build a house, which stands on another piece of property. At some point a beaver dam flooded the road, which hindered his access to the parcel.
- There was no evidence provided regarding the NE-28-079-16-5 being posted as "Available Land".

Decision

The Panel renews the provisional Metis title in NE-28-079-16-5, registered in the name of Rene Albert Cunningham, Jr., for one more 5 year term, starting May 30, 2004 and ending May 30, 2009.

Reasons

Although the Appellant could not substantiate his claim to have applied for a Metis title for this parcel, the Respondent did not dispute the claim. The Panel accepts his testimony that he submitted an application to the Settlement. It never came before the Settlement Council. If Mr. Cunningham's application for Metis title had been processed, in all probability Settlement Council would not have approved the transfer of Metis title.

Losing an interest in the land is a most serious matter and it is not something the Panel takes lightly. In our view, Mr. Cunningham productively used the land and made some progress on improvements during the term of the provisional Metis title.

The Panel, taking into consideration the improvements made by him, the uncertainty of the amount of usable land in the parcel, and given the circumstances around his application, has determined that fairness requires Mr. Cunningham retain an interest in the parcel.

At the hearing, it was suggested by Settlement Council that the Panel renew the provisional Metis title without the right to surface compensation. On the original provisional Metis title, Mr. Cunningham was entitled to resource compensation; the Panel finds no merit in denying the right to compensation. Settlement Council provided no compelling evidence to support this request.

In granting the renewal of the provisional Metis title for one more 5 year period, the Appeal Tribunal decides the matter in accordance with section 190(1)(j) of the *Metis Settlements Act*:

- 190(1) The Appeal Tribunal may, in respect of any matter before it,
 . . .
 (j) make any decisions that the settlement council could have made;

Recommendation

The Panel is concerned that Peavine Metis Settlement’s administration and the Settlement Council did not investigate Mr. Cunningham’s claim he made application for the transfer of Metis title or spend any time tending to the matter before the expiry of the provisional Metis title. It is only through the Appellant’s patience and persistence that he is receiving his just entitlement to the land.

The Panel strongly recommends the Settlement make a by-law setting out conditions to be met for the transfer of Metis title and for renewing a provisional Metis title. A by-law would provide a better understanding of conditions to be met. A by-law would also facilitate decision-making for Settlement Council. The bylaw should reflect the proportion of land available for improvement or revenue generation, as it relates to the entire quarter section.

Order

- The Appeal Tribunal hereby directs the Registrar of the Metis Settlements Land Registry to revise the register to show May 30, 2009 as the new expiry date for the provisional Metis title in the NE-28-079-16-5, the interest registered in the name of Rene Albert Cunningham, Jr.
- MSAT Order No. 141, issued against the NE-28-079-16-5, is no longer in effect as of the date of this Decision.

Dated in the City of Edmonton in the Province of Alberta on the 6th day of May, 2004.

Lorne Dustow, Panel Chair