

Order No. 159

File No. 08-0001-04

METIS SETTLEMENTS ACT

METIS SETTLEMENTS APPEAL TRIBUNAL

Between:

Tina Lanceleve

Appellant

-and-

Council of the Elizabeth Metis Settlement

Respondent

Membership Refusal

DECISION

The Hearing

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

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

Parties present at the hearing:

Tina Lanceleve, Appellant
Emile and Edna Blyan, Appellant Witnesses

Council of the Elizabeth Metis Settlement, Respondent

Represented by: Archie Collins, Chair
Palma Anderson, Vice-Chair
Victor Primeau, Councillor
Allan Wells, Councillor
Anne Swan, Land & Membership Clerk

MSAT staff present:

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

Place and date of the Hearing:

Administration Office
Elizabeth Metis Settlement, Alberta
April 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

On November 21, 2003, Tina Lanceleve submitted an application for membership to the Elizabeth Metis Settlement.

On the application for membership, Tina indicated she:

- Has never been a member of a settlement;
- Has lived in Alberta for the five years immediately preceding the date of the application;
- Is registered as an Indian under the *Indian Act*;
- Was registered as an Indian under the *Indian Act* prior to the age of 18;
- Lived in the Settlement for 24 years;
- Indicated one or both of her parents are members of the Settlement;
- Would be living at 179 Ranchero Drive on the Settlement;
- Is committed to living in the Settlement area;
- Is not currently a member of another Settlement;
- Is not in debt to the Settlement;
- Agrees to preserve a peaceful community;
- Wants to meet with Council before they consider her application;
- Has lived in Buffalo Lake from 1972-1975 and East Prairie from 1975-1979, 1979 to present in Elizabeth.

In a meeting held on December 16, 2003, the Elizabeth Council, without the attendance of the applicant, reviewed Ms. Lanceleve's application for membership. Through motion 03.12.16.08 the council denied Ms. Lanceleve's application as "she was not legally adopted and is a registered Indian."

In a letter dated December 17, 2004, Ms. Lanceleve was informed her membership application was refused. The letter cited the following reasons to deny Ms. Lanceleve membership:

76(b) and (c) and one or both parents of the person are, or at the time of their death were members of the Settlement.

75(1) a registered Indian under the *Indian Act*.

Another factor in Council decision was listing Edna and Emile Blyan as your parents on the membership application.

On January 27, 2004, the Metis Settlements Appeal Tribunal received Ms. Lanceleve's appeal letter. Ms. Lanceleve indicates she is appealing the Council's decision to refuse her membership. She cites the following as reasons for the appeal:

- Council's reasons for denial contain discrepancies and lack clarity;
- Emile and Edna Blyan have been her parents for the past 35 years;
- Her application was denied without an opportunity to meet with Council;
- She lived a substantial part of her childhood in the Settlement area.

Jurisdiction

The Tribunal has jurisdiction to hear this appeal according to section 83(1)(a) of the *Metis Settlements Act*, which states:

83(1) If a settlement council refuses or defers an application for membership, or an application is not considered or a decision is not made by the settlement council within the required time, the applicant may appeal in writing to the Appeal Tribunal

- (a) within 45 days after receiving notice of the refusal or deferral.

Summary of Evidence

Appellant's Evidence

Ms. Lanceleve submitted she did not agree with Council's decision regarding her application for membership. She indicated Council satisfied s. 76(b) and (c) of the *Metis Settlements Act*, which refer to proving ancestry and providing a return address. Ms. Lanceleve asked for clarity from the Council on whether her application for membership was denied for those reasons, or if it was a misquote.

Ms. Lanceleve indicated she was registered as an Indian under the *Indian Act* when she was an infant and she qualifies for membership under s. 75 of the *Metis Settlements Act*. Ms. Lanceleve does not agree with the Council's interpretation of s. 75 regarding their decision to deny her application for membership. Ms. Lanceleve indicated she satisfies the criteria for membership under the section. Ms. Lanceleve pointed out s. 75 does not specify 'biological parent'. Although Emile and Edna Blyan are not her biological parents nor did they formally adopt her, they raised her from an infant and she considers them her parents, a piece of paper makes no difference.

Mr. Emile Blyan said he and his wife received Ms. Lanceleve when she was 2 months old. He indicated although they did not go through the legal process of formally adopting her, they adopted her the 'Native way'. Mr. Blyan stated it is common among Native people to take custody of and raise other people's children. He stated he and his wife made a verbal agreement to adopt her. Ms. Lanceleve was given to them to raise by her grandmother. Mr. Blyan stated everyone on the Settlement knows Ms. Lanceleve is his daughter and he and his wife raised her without assistance. He stated he could try and adopt her now.

Ms. Edna Blyan stated Ms. Lanceleve's grandmother asked her if she would like to take care of the baby girl. She said she would, and that is how Ms. Lanceleve became their daughter. There was no government involvement; she was ours to raise.

Respondent's Evidence

Mr. Archie Collins indicated there is no dispute Emile and Edna Blyan raised Ms. Lanceleve. He indicated the Council had deliberated the meaning of 'parent' in s. 75(2)(c) of the *Metis*

Settlements Act. Mr. Collins stated the Council could not go against the law, and if the Blyan's did not formally adopt Ms. Lanceleve; Council would be breaking the law. Mr. Collins further submitted Council has to be careful about opening the doors for treaty members. He indicated once the precedent is set, other people will tend to follow.

Mr. Collins confirmed it is common in aboriginal communities to raise other relatives children, however, it is generally the grandparents or other family members who raise the child. He said because Ms. Lanceleve was not legally adopted, the Council interpreted parent to mean an individual's biological parent. With that definition, they decided Ms. Lanceleve did not satisfy the conditions of s. 75.

Mr. Allan Wells testified it is known to Council Ms. Lanceleve was raised in the Settlement area by the Emile and Edna Blyan. He confirmed Mr. Collins' concern of treaty members applying for Settlement membership. He concluded treaty applicants would still have to satisfy all the requirements of s. 75 of the *Metis Settlements Act* and generally, Council knows when people have not been raised on the Settlement.

Ms. Palma Anderson stated s. 75 (2) of the *Metis Settlements Act* requires applicant's still have to be approved by Settlement bylaw and processes need to be followed. Ms. Anderson stated Council deliberated with the meaning of parent in regards to the *Metis Settlements Act*.

Findings of Fact

- Tina Lanceleve was registered as an Indian under the *Indian Act* prior to the age of 18;
- Emile and Edna Blyan adopted Tina Lanceleve the 'Native way' with a verbal agreement;
- Emile and Edna Blyan did not legally adopt Tina Lanceleve;
- The Council accepted Emile and Edna Blyan raised Tina Lanceleve from infancy;
- Council refused Tina Lanceleve's application for membership because they interpreted parent to mean an individual's biological parent;
- Tina Lanceleve lived in the Settlement area since 1979

Decision

Emile and Edna Blyan are Tina Lanceleve's parents and thereby Tina Lanceleve satisfies the requirements of s. 75(2)(c) of the *Metis Settlements Act*.

Reasons

Mr. Blyan indicated it is common in Native communities to give children to other people to raise, without the formality of a legal adoption. He stated Ms. Lanceleve was adopted with a verbal agreement the 'Native way'. The Panel recognizes it is common in Aboriginal communities for children to be raised by individuals who are not their biological parents. The Panel determined, in this case, the definition of parent in s. 75(2)(c) of the *Metis Settlements Act*, needs to be interpreted broadly to include Emile and Edna Blyan as parents.

It was clear to the Panel, all parties agreed and accepted Emile and Edna Blyan raised Ms. Lanceleve as their daughter. The Council's concern was the interpretation of the word 'parent' as it relates to s. 75(2)(c) of the *Metis Settlements Act*. The Panel finds 'parent', particularly in Aboriginal communities, does not necessarily mean one's biological parent and can mean, if the circumstances permit, a person who provides for the child and takes on the roles and responsibilities of a parent.

Order

The Tribunal orders:

The Elizabeth Metis Settlement Council reconsider Tina Lanceleve's application for membership in view of the decision of the Tribunal to accept the evidence of the appellant that Emile and Edna Blyan are the adoptive parents of Tina Lanceleve and shall be considered as the parents within the meaning of section 75(2)(c) of the *Metis Settlements Act*.

Dated in the City of Edmonton in the
Province of Alberta on the 20th day of
May 2004.

(ORIG. SIGNED)

Lorne Dustow, Panel Chair