

METIS SETTLEMENTS ACT

METIS SETTLEMENTS APPEAL TRIBUNAL

Between:

BONNIE ANDERSON

Appellant

-and-

SETTLEMENT COUNCIL FOR EAST PRAIRIE METIS SETTLEMENT

and

LARRY DUANE SAWAN

Respondents

Relating to an Appeal Regarding Granting an Interest in Land

DECISION

The Hearing

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

Lorne Dustow, Panel Chair
Joyce Parenteau, Panel Member
Ken Allred, Panel Member

Parties present at the hearing:

Bonnie Anderson, Appellant
Mike Anderson, spouse of Appellant

Settlement Council for the East Prairie Métis Settlement, Respondent
Represented by:
 Ken L'Hirondelle, Councillor
 John Supernault, Councillor

Larry Duane Sawan, Respondent

Witness:
Violet Haggerty, Land & Membership Clerk/Conflict of Interest Committee member

MSAT staff present:

Russell Teed, Dispute Resolution Officer
Vince Paniak, Executive Director/Tribunal Secretary
Harry Cunningham, Dispute Resolution Officer

Place and date of the Hearing:

Room 300, High Prairie Inn
High Prairie, Alberta
November 24, 2004, 1:00 pm

Preliminary Issues

There were no objections to the composition or jurisdiction of the Panel.

Background

On November 28, 2003 the East Prairie Métis Settlement posted a "Notice of Available Land" for a parcel of land including a house on land legally described as 900078-00-01 (SW-15-071-15-5). There was an error in the legal description of the land in the posting and it was reposted on December 3, 2003.

On December 3, 2003 Bonnie Anderson, a member of the East Prairie Métis Settlement, applied for the posting.

Some council members were in a conflict of interest situation and as a result Council at a regular meeting passed a motion on February 3, 2004:

"to appoint Albert Quinn, Doug Bellerose and Violet Haggerty, Land & Membership Coordinator to the Conflict of Interest Committee and Margaret Desjarlais as the alternate."

On February 3, 2004 this Committee met, reviewed the applications, and chose Bonnie Anderson as the successful applicant to receive the land and the house.

A letter was written to Bonnie Anderson on February 5, 2004 advising that she was the successful applicant.

On February 17, 2004 Council, at a regular Council Land and Membership meeting determined that one of the committee members, Violet Haggerty, was in conflict of interest and therefore Council passed a motion:

"not to approve the Conflict of Interest Committee minutes due to the composition of the committee; one being in conflict."

They passed a further motion

"that the Conflict of Interest Committee issue be included in the Regular Council meeting agenda of March 2, 2004 for discussion and review."

On February 17, 2004 the East Prairie Metis Settlement wrote a letter to Bonnie Anderson advising that due to the conflict of interest the decision of the committee was not valid and that Council would be reviewing the matter. The letter was hand delivered on February 18, 2004.

On May 19 and 20, 2004 at a regular Council Land and Membership meeting, a motion was passed to appoint a new committee.

On June 3, 2004, Bonnie Anderson wrote a letter to the Administrator asking for a meeting regarding the posting. The Administrator responded in writing reaffirming the fact that the February 3, 2004 decision was invalid.

On June 21, 2004 at a regular Council Land and Membership meeting Council reviewed the posting applications and passed a motion to accept Larry Duane Sawan as the successful applicant for the land and the house.

This information was conveyed to Bonnie Anderson who on June 25, 2004 filed an appeal in writing with the Métis Settlements Appeal Tribunal.

Jurisdiction

The Tribunal has jurisdiction to hear this appeal according to section 189 (1) (b) of the *Métis Settlements Act*, which states:

189(1) The Appeal Tribunal

- (a) must hear appeals and references and perform any function given to it under this Act or any other enactment;*
- (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;*

and further under the Métis Settlements General Council Land Policy at section 8.1 which states:

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.

Summary of Evidence

Bonnie Anderson reiterated that she had applied for the land and house and that she was currently renting from another family and really needed a house of her own that she could fix up to her satisfaction. Bonnie Anderson and her husband have three children, one of whom is handicapped.

In response to a question from the Panel a series of motions passed by Council was tabled before the Panel. A motion of a special meeting of Council on October 7, 2003 stated:

"to appoint a Committee to deal with issues where there is an Absence of Quorum of Council Committee and the resolution drafted by Bill McElhanney will be adopted with the changes and posted for public."

Ken L'Hirondelle confirmed that Council was concerned about the potential conflict of interest of some of its members and passed the motion prepared by their lawyer to delegate the task of selecting the successful applicants for the land.

The resolution prepared by Bill McElhanney referred to in the motion reads as follows:

*WHEREAS East Prairie Council now counts only three members, due to the Decision of the Court of Queen's Bench declaring the May, 2003 Election invalid, thereby necessitating the withdrawal of two Councillors and an upcoming by-election;
AND WHEREAS decisions may be required which would require conflict disclosures pursuant to Section 39 of the Métis Settlements Act;
AND WHEREAS Section 49 of the Métis Settlements Act permits the Settlement Council to appoint committees which may, but need not, including Councillors and may delegate to a committee any of the Councils powers or duties, with or without conditions, except the power to make bylaws;*

THEREFORE BE IT RESOLVED THAT:

- 1. A notice be advertised in the East Prairie Newsletter and hand delivered to each household, indicating that a committee will be struck, in order to deal with matters pursuant to Section 39 of the Métis Settlements Act.*
- 2. Any member of the Settlement may apply for the positions on the committee, excepting those persons who are the immediate family of any of the sitting Councillors. Immediate family means spouse, father, mother, brother, sister and children.*
- 3. The committee will have no more than three people and may include Settlement Administrator and any required support staff, so long as members not included as administration constitute a quorum of the committee.*
- 4. All committee members must swear an oath of confidentiality.*
- 5. The committee must report its findings to the Settlement Council, but the **Committee decision will be final.** [Emphasis added]*
- 6. No honoraria will be paid to any member of this Committee.*

Violet Haggerty confirmed that she had sat on the committee and the conflict of interest alleged by Council was due to one of the applicants for the land may be her brother through adoption. She advised that she did not consider the potential of a conflict at the time and in retrospect was sincerely remorseful. The unsuccessful applicant (her brother through adoption) was ineligible to apply for the posting because he was not a resident member of the Settlement.

Duane Sawan advised that he was currently living in an "emergency trailer" with his family (spouse and two children) and that he could remain in the trailer for a maximum of three weeks. Duane Sawan has other land within the settlement.

It was also revealed that at the time the Council made the selection of Duane Sawan the application submitted by Duane Sawan and confirmed by the Co-ordinator of the Finance Department that Duane Sawan was in arrears with his payments to the Settlement. The Notice of Posting requires that "Eligible applicants must be . . . in good financial standing . . ." Duane Sawan is still in arrears.

Findings of Fact

Upon hearing the evidence, the Panel finds as follows:

- The Council for the East Prairie Métis Settlement delegated its authority to make a selection for the posting to a Conflict of Interest Committee composed of three persons.
- By virtue of the motion passed by Council they delegated their authority to the Committee and the decision of the Committee is final.
- The Committee met, reviewed the applications, and selected the person who met the criteria and the most need for the house.
- There were no allegations of conflict of interest made to the Committee until Council raised the matter after the fact.
- The alleged conflict involved a person who was clearly ineligible for the land and was hence unsuccessful.
- There is no evidence of a financial interest as set out in section 39 of the *Metis Settlements Act*.

Decision

The Métis Settlements Appeal Tribunal confirms the decision of the Conflict of Interest Committee dated February 3, 2004, which granted Bonnie Rose Anderson a Provisional Metis Title to lands legally described as 900078-00-01 (SW-15-071-15-5).

Reasons

The decision of the Conflict of Interest Committee was made in good faith and in accordance with the powers delegated to them by the Council. Their decision by virtue of their appointment was final and hence is binding on the Council for the East Prairie Métis Settlement. There were no challenges to the bias of the Committee by any applicant or any other person prior to or at the time of the meeting of the Committee.

Order

The Panel directs the Registrar of the Metis Settlements Land Registry to cancel Larry Duane Sawan’s registered Provisional Metis title interest for the lands legally described as 900078-00-01 (SW-15-071-15-5).

Further, the Panel directs the Registrar to register a Provisional Metis title interest in the name of Bonnie Rose Anderson for the lands legally described as 900078-00-01 (SW-15-071-15-5) effective February 3, 2004, the date The Conflict of Interest Committee chose Ms Anderson as the successful applicant to receive the land and house.

Dated at the City of Edmonton in the Province of Alberta on the 8th day of December, 2004.

Lorne Dustow, Panel Chair

Joyce Parenteau, Panel Member

Ken Allred, Panel Member

Recommendation

The Panel sympathizes with the applicant and the affected party both of whom are in need of adequate housing. In view of the fact that there is only one house and we have found that Bonnie Anderson was the successful applicant, we strongly recommend that the East Prairie Métis Settlement attempt to find housing for Duane Sawan at the earliest possible opportunity.

Conflict of interest is a very difficult issue in a small community such as East Prairie Métis Settlement where there are many family relationships. It is often very difficult for a Council to be totally independent in their decision making and it is often impractical to suspend governance because of the possibility of a conflict of interest. It is therefore very important for a Council (or Committee) to consider very carefully what a conflict of interest is, how it might apply to a given fact situation and what the perception of the conflict may be to the public at large. It is always wise to err on the side of fairness but a person in authority must not allow the potential of a conflict of interest to unduly render him or her unable to carry out their responsibilities. A reasonable solution in a small community is to declare any potential conflict up front; have the Chair ask if there are any concerns about the conflict; if there are, the person having the alleged conflict should excuse themselves while the remainder of the group review and debate the situation and decide whether they should recommend that the person should step aside from the issue before them. Ultimately however it is a personal decision to be made by the person who is alleged to have the conflict. Above all a Council or Committee must be seen to be fair in their decision making process.