

METIS SETTLEMENTS ACT

METIS SETTLEMENTS APPEAL TRIBUNAL

Between:

Yvonne Marie Boucher (Nee: Olsen White)

Appellant

-and-

Todd Baron White

Respondent

-and-

Settlement Council for Kikino Métis Settlement

Affected Party

Concerning a Land dispute on the Kikino Métis Settlement

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:

Yvonne Marie Boucher, Appellant

MSAT staff present:

Harry Cunningham, Dispute Resolution Officer
Russell Teed, Dispute Resolution Officer

Place and date of the Hearing:

Kikino Métis Settlement Hall
Kikino Métis Settlement, Alberta
December 08, 2004

Preliminary Issues:

The Panel was advised that Mr. Todd White would not be attending the hearing for personal reasons. Since he did not request an adjournment in writing one week prior to the hearing, the Panel decided to go ahead with the hearing.

The Kikino Métis Settlement did not send a representative to the hearing.

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

Background

On April 02, 2003 Yvonne Marie Boucher and Todd Baron White entered into a divorce agreement that was filed with the Court of Queens Bench by their lawyers. Part of the agreement States: Matrimonial Property: *The wife shall have the matrimonial home located on the Kikino Métis Settlement described as NE21/62/14/W4.* The house sits on 73.24 acres of land.

On June 03, 2003 Ms. Boucher had her lawyer send a letter to the Kikino Métis Settlement Attn: Floyd Thompson, Councillor, advising the Settlement that Ms. Boucher has exclusive possession of the matrimonial home located on the Kikino Métis Settlement.

On November 12, 2003 Ms. Boucher met with the Settlement Administrator, and gave him a copy of a blank Land Transfer Form with the divorce agreement attached. She attempted to have the land transferred to her following Métis Settlement Land Registry procedures. She said that it was her understanding that the Settlement had 14 days to send in the paperwork to land registry. Upon checking with the land registry two weeks later she was advised that they did not receive her transfer application. She then contacted the Settlement office and was advised that the documents were given to Council.

On December 11, 2003 the Settlement sent a letter to Ms. Boucher regarding her attempt to effect a land transfer. A portion of the letter stated, quote:

The Settlement Council discussed the matter with its legal advisor, who informed the Council that the Certificate of Acknowledgement by Spouse indicates that Todd White gave yourself the right to live in the domicile for as long as you live on the Settlement. Further it does not take away his ownership of the home and land base on his Métis Title, therefore you are unable to transfer your rights to another individual.

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 require to be performed by it under the regulations, by-laws or General Council Policies;*

It further finds jurisdiction under Section 8.1 of the Métis Settlements General Council Land Policy:

8.1 Right to Appeal

(1) Whenever this policy requires the General Council or the Settlement Council to make a decision related to granting, transfer, or termination of interest in land in the settlement area, any person affected by the decision, or lack of decision, can appeal in writing to the Appeal Tribunal.

Summary of Evidence

Appellant's Evidence

Ms. Boucher submitted to the panel that she has resided in the house for the last eleven years. The house was given to her by the divorce agreement, which Todd White signed voluntarily. She indicated that since the house is tied to the land she should get title to the land as well. She stated that Kikino Settlement Council told her that the house is not tied to the land. As it is now, she needs Todd White's permission before she can do anything with the land; she wants to have some horses however she can't even do that without the land.

Ms. Boucher stated that she is requesting that the land be transferred to her so she can have both the house and land. She referred to the certificate of acknowledgement that was signed by Todd White agreeing that she gets the property. Ms. Boucher also advised the panel that Todd White has other land within the Settlement.

Findings of Fact

- Mr. Todd White holds Métis title to a lot consisting of 73.24 acres of land, legal description, 900281-00-02, (NE-21-62-14-4) situated on the Kikino Métis Settlement.
- The house where Ms. Yvonne Marie Boucher resides is situated on that lot.
- On April 02, 2003 Ms. Yvonne Marie Boucher and Mr. Todd Baron White entered into a divorce agreement that gave the homestead to Ms. Yvonne Marie Boucher.
- Mr. Todd Baron White signed a Certificate of Acknowledgement by Spouse, which reads:

Consent to Spouse

I, Todd Baron White, being married to the above named, Yvonne Olsen White, do hereby give my consent to the disposition of our homestead made in this agreement and I have executed this document for the purpose of giving up my life estate and other dower rights in the said property given to me by the Dower Act, to the extent necessary to give effect to the said disposition.

Decision

The Panel confirms the validity of the Divorce Agreement and its applicability to the Appeal. The Panel finds Ms. Yvonne Marie Boucher has the right to have Métis Title to the 73.24 acres of land legally described as 900281-00-02 in NE-21-062-14-4.

Reasons

The Panel references Page 3 of the Divorce Agreement under the heading Matrimonial Property Ms. Yvonne Marie Boucher and Todd Baron White agreed in writing that Ms Boucher would have the home located on NE 21/62/14/W4TH.

The Panel references Page 10 of the Divorce Agreement under the heading Certificate of Acknowledgement by Spouse (section 2 c]) and again in the Consent to Spouse the term “homestead” is used in reference to the disposition of the home and to the Dower Act.

The General Council Land Policy, in Section 7.2, defines homestead as follows:

homestead means the parcel of land where the house in which the Métis Title holder lives is located;

The Dower Act also defines homestead in very similar terms:

- (e) "homestead" means a parcel of land
 - (i) on which the dwelling house occupied by the owner of the parcel as the owner's residence is situated, and
 - (ii) that consists of
 - (A) not more than 4 adjoining lots in one block in a city, town or village as shown on a plan registered in the proper land titles office, or
 - (B) not more than one quarter section of land other than land in a city, town or village.

The Panel finds that the homestead is the house and the parcel of land it is attached to, as defined above. There is no evidence indicating that the Divorce Agreement should be interpreted any other way. Mr. White gave up all his rights to the homestead by signing the Consent to Spouse that is attached to the Certificate of Acknowledgement by Spouse.

Order

The Tribunal directs the Registrar for the Métis Settlements Land Registry transfer the Certificate of Métis Title to the land legally described as 900281-00-02 (NE-21-062-14-4) from Todd White to Yvonne Marie Boucher.

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

Panel Chair