

Order No. 163

File No. 08-0001-04

METIS SETTLEMENTS ACT
METIS SETTLEMENTS APPEAL TRIBUNAL

Between:

Tina Lanceleve

Appellant

-and-

Settlement Council for Elizabeth Métis Settlement

Respondent

Concerning a Membership Appeal on the Elizabeth Métis Settlement

DECISION

The Hearing

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

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

MSAT staff present:

Russell Teed, Dispute Resolution Officer

Place and date of the Hearing:

MSAT Board Room, Edmonton, Alberta

May 19, 2005

As this was a Documentary Hearing, neither the appellant nor the respondent was present. The Panel did not receive any submissions disputing either the jurisdiction or the composition of the Panel. All affected parties received notice to provide their position to this Hearing. The Panel received no submissions as of the Hearing date.

Background

On May 20, 2004 MSAT issued Order No. 159 which stated:

“The Tribunal orders:

The Elizabeth Métis 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 *Métis Settlements Act*.”

Since MSAT Order No.159 was issued, the Elizabeth Métis Settlement Council, with respect to Tina Lanceleve’s membership application, took the following actions:

- August 23, 2004: First reading of the membership bylaw for Tina Lanceleve was completed.
- September 16, 2004: Second reading was completed.
- April 19, 2005: A public vote was held and the result was for accepting Tina Lanceleve as a member of the Elizabeth Métis Settlement.
- May 3, 2005: Council reviewed Ms. Lanceleve’s application.
- May 4, 2005: Council informed Ms. Lanceleve her membership application was put into a moratorium.

Jurisdiction

The Tribunal has jurisdiction to hear this appeal pursuant to Section 83(1) of the *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, or
- (b) within 45 days after the date the council should have made a decision.

Findings of Fact

- o MSAT Order No. 159 was issued May 20, 2004.
- o Elizabeth Settlement Council caused a membership bylaw to be prepared for Tina Lanceleve.
- o This bylaw was given First and Second readings by Council on August 23, 2004 and September 16, 2004, respectively.
- o At a public meeting held on April 19, 2005 the bylaw was approved by a vote of the membership.
- o On May 3, 2005 Settlement Council resolved to place Ms. Lanceleve's membership bylaw into moratorium.
- o On May 4, 2005 the Lands, Membership and Resources Clerk sent Ms. Lanceleve a letter on behalf of Council stating:

“...that your application be put into moratorium, due to circumstances arising at the General Council level.”

Decision

Pursuant to section 190(1) (e) and (j) of the *Act*, the Panel, in place of Settlement Council, approves the Third reading to Elizabeth Métis Settlement Bylaw No# 13J-04 effective June 10, 2005. The Panel declares Tina Lanceleve a probationary member of the Elizabeth Métis Settlement as set out in the Elizabeth Métis Settlement Bylaw No# 13J-04.

Reasons

When an appeal deals with membership, the Panel must consult Part 3 of the *Act*. Division 1 of Part 3 references Settlement Membership Applications. Section 75 (2) sets out the criteria by which a registered Indian may become a settlement member.

75(1) An Indian registered under the *Indian Act* (Canada) or a person who is registered as an Inuk for the purposes of a land claims settlement is not eligible to apply for membership or to be recorded as a settlement member unless subsection (2) or (3.1) applies.

- (2) An Indian registered under the *Indian Act* (Canada) or a person who is registered as an Inuk for the purposes of a land claims settlement may be approved as a settlement member if
- (a) the person was registered as an Indian or an Inuk when less than 18 years old,
 - (b) the person lived a substantial part of his or her childhood in the settlement area,
 - (c) one or both parents of the person are, or at their death were, members of the settlement, and
 - (d) the person has been approved for membership by a settlement bylaw specifically authorizing the admission of that individual as a member of the settlement.

Ms. Lanceleve's initial application in November of 2003 met with refusal by Council on technical grounds. An appeal by Ms. Lanceleve led to MSAT Order No. 159 in May of 2004, which clarified Ms. Lanceleve's eligibility for membership under section 75(2) of the *Act*. Council followed the Order to the extent shown in the background section of this Order. It took eleven months for this membership bylaw to come before the membership. Settlement bylaws come into force after a Third reading by Council. However, instead of finishing the process by giving Third reading, Council resolved to put this and other membership bylaws "into moratorium".

So what is the Panel to make of this resolution?

Council has the authority to approve, defer, or refuse a membership application (bylaw) as set out in the *MSA*, section 79 (2) and (3).

- 79(2) Within 45 days after considering an application, or any longer period agreed to by the applicant and the settlement council, the settlement council must send to the applicant a notice of its decision stating that the application
- (a) is approved,
 - (b) is deferred pending further information or compliance with specified conditions,
 - (c) is deferred because of a lack of suitable living accommodation,
 - (d) is approved for a stated probationary period, which cannot be longer than 2 years, or
 - (e) is refused.

- (3) When an application is deferred or refused, the notice must give reasons for the decision.

The resolution is definitely not approval, although the majority of voters at a public meeting gave their approval of the membership application (bylaw).

Perhaps Council equated the word *defer* with the word *moratorium*. *Moratorium* can be defined as "a temporary prohibition or suspension (of an activity)" (*The Concise Oxford Dictionary, ninth Edition*) and "a legally authorized period of delay in the performance of a legal obligation or the payment of a debt" (*Merriam-Webster On-line Dictionary*). The *Act* does not authorize Council to place postponements or delays on membership applications. Quite to the contrary, the *Act* specifies a 45-day time limit in which Council must decide on membership applications. If Council meant to defer the membership bylaw by placing it in a moratorium, it has no authority or jurisdiction to do so.

If Council meant to defer "due to the circumstances at the General Council level", it has no authority or jurisdiction to do so.

If Council intended to refuse the membership bylaw by failing to give it Third reading, it acts against the approval of Settlement members, and fails to give any valid reason for refusal.

In conclusion, Elizabeth Métis Settlement Council delayed this membership application for approximately one year since MSAT Order No. 159 was issued. Council has no authority to place a membership application in a moratorium. It has given no valid reason to defer or refuse the application. Therefore, the Panel finds for the appellant.

Membership Approval Order

This Order shall be forwarded to serve as notice to the Registrar of the Métis Settlements Land Registry, the Minister's delegated representative, for Tina Lanceleve's name to be added to the Membership list of Elizabeth Métis Settlement.

Comments

MSAT clarified the issue of Tina Lanceleve's parentage in MSAT Order No. 159. Elizabeth Métis Settlement Council agreed to reintroduce the bylaw based on that Order. Council has however delayed dealing with the bylaw for over one year and has placed the matter in "moratorium" for no stated reason. This unnecessary delay caused frustration and needless expense for all parties for no apparent reason. The Panel is concerned with the lack of action by the Elizabeth Métis Settlement Council in dealing expeditiously with this matter.

Dated in the Fishing Lake Metis Settlement
in the Province of Alberta on the 10th day
of June, 2005.

(Signed)

Panel Chair