

METIS SETTLEMENTS ACT

METIS SETTLEMENTS APPEAL TRIBUNAL

Between:

Tom Parenteau

Appellant

-and-

Paddle Prairie Métis Settlement

Respondent

-and-

Edward Parenteau

Affected Party

Concerning a Land Dispute on the Paddle Prairie Métis Settlement

DECISION

The Hearing

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

Lorne Dustow, Panel Chair
Randy Anderson, Panel Member
Harvey Anderson, Panel Member

Parties present at the hearing:

Tom Parenteau, Appellant
Edward Parenteau, Affected Party
Margaret Parenteau
Leo Parenteau
Susie Fisher
Ernestine Ridsdale

Paddle Prairie Métis Settlement, Respondent
Represented by: Greg Calliou, Councillor
Chris Calliou, Land & Membership Clerk

MSAT staff present:

Harry Cunningham, Dispute Resolution Officer
Karen Mustus, Oil and Gas Officer

Place and date of the Hearing:

Paddle Prairie Community Hall, Paddle Prairie Métis Settlement, Alberta
August 24th, 2005

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

Robert Parenteau, a member of the Paddle Prairie Métis Settlement, died on December 19, 2004. Mr Parenteau held Métis titles to lands legally described as SW-29-103-21-5 and SE-29-103-21-5. Mr Parenteau did not leave a will or estate instructions.

On February 07, 2005 Tom Parenteau, brother to the late Robert Parenteau, sent a letter to the Paddle Prairie Métis Settlement Council directed to Bob Ghostkeeper, requesting he be named as land trustee for the estate of Robert Parenteau.

On February 08, 2005 Darla Wanuch, Settlement Administrator, sent a letter to family members, Tom Parenteau, Octave Parenteau, Ambrose Parenteau, Susie Fisher-Parenteau, Leo Parenteau and Ernestine Ridsdale requesting that they go to the Settlement Administration Office to sign forms naming Tom Parenteau as Executor for Robert Parenteau's estate.

On February 14, 2005 Tom Parenteau, Susie Fisher, Ernestine Ridsdale, Ambrose Parenteau, and Leo Parenteau went to the Paddle Prairie Métis Settlement Office and signed a form titled, *Paddle Prairie Métis Settlement Release of Rights* as one of the Heirs of a deceased member agreeing that Tom Parenteau should be Land Trustee.

On February 22, 2005 at a Regular Council Meeting, Council for Paddle Prairie Métis Settlement enacted Resolution 502/05 in which they accepted trusteeship of the late Robert Parenteau's house and lands. On the same day Council enacted Resolution 503/05 granting the land and house to Edward Parenteau.

The Settlement Council did not submit MSLR form #17 to Métis Settlements Land Registry; as a result the Council was not registered as the land trustee.

On March 07, 2005 Tom Parenteau appealed Council's decision to MSAT.

On April 4, 2005, Chris Calliou, Land and Membership Clerk for the Paddle Prairie Métis Settlement sent a letter to Edward Parenteau, advising him of the limits of land a member of a settlement can hold as per Métis Settlements General Council Land Policy.

Edward Parenteau is the holder of two quarter sections of land legally described as NE-12-103-22-5 and NW-12-103-22-5.

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, by-laws or General Council policies;

It further finds jurisdiction under Section 8.1 of the General Council *Land Policy*, which states:

8.1 Right to Appeal

(1) Whenever this policy requires the General Council or a settlement council to make a decision related to 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

Appellant's Evidence:

Tom Parenteau stated the lands and the house of his late brother Robert Parenteau belong to the estate, and should not be severed, as they are improvements to the land. He indicated it was not fair for the Settlement Council for Paddle Prairie Métis Settlement to take trusteeship against the wishes of Robert's siblings. He believes the process was not done fairly. He wants to see a land trustee put in place and everything frozen until MSAT makes a decision on his appeal.

Respondent's Evidence:

Greg Calliou, speaking for the Settlement Council, said the Council was trying to be fair; Ed Parenteau does not have a proper home, so Council made a decision to give the house and land to Ed. He said the rest of the family have homes. Greg Calliou further stated the Settlement Council usually takes trusteeship in these cases, as there is a lot of land and house trading going on without the Settlement being advised. Greg says that the Settlement has exclusive jurisdiction where the house is concerned and give it to whomever they think needs it. He asked the tribunal to uphold the Settlement Council decision to be trustee and the awarding of the land to Edward Parenteau.

Evidence of Edward Parenteau:

Edward explained that he traded the land with Robert and that was how Robert got the land. He said that Robert wanted to give him the land and house.

Evidence of Leo Parenteau:

Leo said the land was originally his and he had to leave the Settlement for work. While he was away he had Robert look after his land. He was away from the Settlement for a long time and when he returned he had no land. He applied for other land when he returned, however he did not get it.

Evidence of Ernestine Ridsdale:

She stated Ed received a house and he left it. She stated it is not fair that the Settlement made the decision to give the land and house to Ed as the family had agreed to have Tom be land trustee.

Findings of Fact

Robert Parenteau held Métis title (MT) to land legally described as SW-29-103-21-5 and SE-29-103-21-5.

Robert Parenteau died on December 19, 2004 and left no estate instructions on file with the Métis Settlements Land Registry.

On February 14, 2005 a majority of the extended family of the late Robert Parenteau named Tom Parenteau as trustee for Robert's estate.

On February 22, 2005 Council for Paddle Prairie Métis Settlement enacted resolution 502/05 in which they assumed trusteeship of the late Robert Parenteau's estate.

On the same day Council for Paddle Prairie Métis Settlement enacted resolution 503/05 granting land legally described as SE-29-103-21-5 where the house is situated, to Edward Parenteau.

Ed Parenteau already has MT on 2 quarters of land.

On March 07, 2005 the Tribunal received a letter of appeal from Tom Parenteau appealing Council's decision to assume trusteeship for the estate of the late Robert Parenteau. He was further appealing Council's decision to award the land and house to Edward Parenteau contrary to the wishes of the majority of the extended family.

Decision

The Panel decides in favour of the appellant. Tom Parenteau is appointed land trustee for the lands described as SW-29-103-21-W5M and SE-29-103-21-W5M, held by the late Robert Parenteau in the form of Métis title.

Reasons

The Settlement Council was correct in its interpretation of the General Council (GC) *Land Policy* under section 7.9(3). When estate instructions are not on file, the settlement is the land trustee unless it appoints someone else. However, Council erred in several ways.

Council has a duty to be fair. Council failed to give notice to all siblings regarding its decision to take land trusteeship. This is despite the decision of the majority of the late Robert Parenteau's siblings to have Tom Parenteau be appointed land trustee. Instead, Council met with one sibling and made decisions in his favour without any consideration for the rest of the family. This action breaches a principle of natural justice, namely the right of all parties affected by an administrative decision to be heard by the decision-makers who are impacting their rights.

Council failed to apply to the Métis Settlements Land Registrar to have the register changed to reflect Council's trusteeship of the land, as set out in section 7.11 of the General Council (GC) *Land Policy*. When processes such as these are not followed, misunderstandings and confusion follow. The opportunity for the extended family to enter into the debate or appeal Council's decision was short-circuited.

Council failed to follow the trustee's duties set out in the GC *Land Policy* section 7.10. It appears to this Panel that Council presumed it could do as it wished with Robert's lands, as land trustee, since no estate instructions were filed. This is not the case. The land trustee holds the land as a steward, but does not hold it in the sense of having a MT or any other form of allotment that implies ownership.

As for Council's argument that the house belongs to the Settlement and can be allotted as necessary, this contradicts GC *Land Policy* subsections 1.3 (b) & (c), which state:

1.3 Definitions

In this Policy, (a) Act means the Métis Settlement Act,

(b) improvements means changes people have intentionally made to the land in order to increase its usefulness, and includes all structures permanently attached to the land⁴;

(c) land includes improvements;

Council failed to follow the principles set out in GC *Land Policy* section 7.13; specifically subsections (1)(a), (c), (d), & (f), therefore it failed to carry out its duties as a land trustee. Although section 7.13 is titled Guiding Principles it cannot be interpreted as being suggestions. It is part of the law regarding descent of property.

Council contravened section 3.4 of the GC *Land Policy* by granting Robert's land to Ed, who already had MT interests in 2 other quarter sections of land. Again, the restrictions on the amount of land one member may hold by MT is not a suggestion, but is the law.

Council was aware of the extended family's option regarding trusteeship of the late Robert's lands. Council disregarded the wishes of the majority of Robert's extended family with regard to appointing a land trustee and failed to follow the processes described in detail above.

Therefore, the Panel invokes *MSA section 190(1) (j) & (l)* and GC *Land Policy* section 7.10(3) which state:

MSA section 190(1) (j), (l)

The Appeal Tribunal may, in respect of any matter before it,

(j) Make any decisions that a settlement council could have made

(l) Reverse the settlement council's decision;

⁴ A "structure" is anything built, for example houses, buildings, water systems, and fences. A structure is "permanently attached to the land" if all or part of it is buried in order to attach it to the land and keep it there for the foreseeable future. Things permanently attached to the structure are considered as part of the structure for this purpose.

GC *Land Policy* section 7.10(3):

The settlement council can replace land trustees who fail to carry out their duties.

The Panel reverses the Council's decisions to accept land trusteeship and award Robert's land and house to Edward Parenteau. Further, the Panel finds that, as the land trustee, Council failed to carry out its duties and awards land trusteeship to Tom Parenteau.

Order

The Tribunal orders the Métis Settlements Land Registrar to register Tom Parenteau as land trustee for the lands described as SW-29-103-21-W5M and SE-29-103-21-W5M effective the date of the signing of this decision.

Dated in the City of Edmonton in the
Province of Alberta on the 3rd day of
October, 2005.

(Signed)

Lorne Dustow, Panel Chair