

METIS SETTLEMENTS ACT
METIS SETTLEMENTS APPEAL TRIBUNAL

Between:

Donald Aulotte

Appellant

-and-

William (Sam) Aulotte

Respondent

-and-

Hellen Johnston

-and-

Settlement Council for the Fishing Lake Metis Settlement

Affected Party

Concerning a Land Dispute Involving the SW-02-057-02-4

DECISION

The Hearing

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

Randy Anderson, Panel Chair
Joyce Parenteau, Panel Member
Harvey Anderson, Panel Member

Parties present at the hearing:

Donald Aulotte, **Appellant**
Ross Calliou, Witness for Appellant

William (Sam) Aulotte, Respondent
Dena Johnston, Witness for Respondent
Lydia Johnston, Witness for Respondent

Hellen Johnston (William (Sam) Aulotte's wife), Affected Party
Fishing Lake Metis Settlement, Affected Party
Represented by: Clifford Calliou, Councillor

Observers present:

Shane Cross
Blair Cardinal

MSAT staff present:

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

Place and date of the Hearing:

Fishing Lake Community Hall
Fishing Lake Metis Settlement, Alberta
1:00 pm, July 27, 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

On January 12, 2005 Sam Aulotte and Don Aulotte signed a Bill of Sale for the SW-02-057-02-4, House 32.

January 12, 2005

*To whom it may concern,
Sam Aulotte (signed) SW-2-57-24 H32
Sold my land To Donald Aulotte for the
Sum of \$500 paid 1/2 of it 250.00
now, the rest, on
Signed Don Aulotte (signed)*

On January 28, 2005 in a revised agreement, Sam Aulotte sold Don Aulotte a parcel of land located within the SW-02-057-02-4, not including the house or the land within the fenced area surrounding the house.

*I Sam Aulotte sold one
quarter of land (not including
house and surrounding fenced
land) to Donald Aulotte
Sum of \$700.00 paid in
full on this day January 28,
2005. SW-2-57-2 4*

*Seller Sam Aulotte (signed)
Buyer Don Aulotte (signed)
Witness Shane Cross (signed)*

Don Allotte filed his appeal with the Métis Settlements Appeal Tribunal (MSAT) on February 25, 2005.

MSAT investigated this appeal and it was confirmed by Don Allotte, Sam Allotte, and Sam's wife, Hellen Johnston, Don paid Sam three instalments of \$350, \$100 and \$250 for the land.

In June 2005, Don Allotte erected a fence on the parcel.

The Metis Settlements Land Registry Land Search Report currently indicates William Allotte as Métis title holder of land legally described as SW-02-057-02-4.

Jurisdiction

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

Responsibilities

189(1) the Appeal Tribunal

- ...
- (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 according to Section 8.2 of the Metis Settlements General Council Land Policy, which states:

8.2 References

Any question or dispute as to the ownership or extent of an interest in land in a settlement area may be referred to the Appeal Tribunal for an advance ruling or for a decision.

Summary of Evidence (only for in person Hearing)

Appellant's Evidence

Donald Allotte:

He would like the land transferred to him. Don indicated, because he has a Bill of Sale, the land is his. He has erected a fence and plans to move horses on to the property, because he feels he owns the property. He added the following:

- He has no additional land.
- The land where his mom lives is not large enough for the horses he has, so he bought the land from Sam.
- After he had given Sam the original \$250, he met Sam at the store. Sam should have told him he did not want to sell.
- When Don went to Sam's house, Sam shouldn't have taken the additional \$350 from Don. Sam should have said he did not want to sell the land and paid back the original \$250 to Don.
- He did Sam a favour by erecting fence and should not have to pay damages.

Ross Calliou (witness for Appellant):

- He thought the Bill of Sale was the end of the deal. Bill of Sale has always been good.
- The Settlement doesn't say procedures need to be followed.
- MSAT makes important decisions. There are others in the past with the same problem.

Respondent's Evidence**William (Sam) Allotte:**

William (Sam) Allotte felt pressured to sell the land. He wants to keep the land. He feels he doesn't owe Don Allotte any money because of the damage that Don made to the land when he erected a fence. He added he was warned by Donald's brother not to sell the land to Donald.

Affected Parties' Evidence**Hellen Johnston:**

She did not want Sam to sell the land. She noted she wants Sam to keep the land. Further, if the Panel determines they have to pay back money to Don in order to keep the land, they would pay him in instalments similar to how Don paid them for it. She added the following:

- The *Dower Act* says if a woman doesn't want her husband to sell, he can't.
- She was aware of the Bill of Sale.
- She did not want Sam to sign the Bill of Sale.
- She was not asked to sign the Bill of Sale.
- She was mad because she did not want the land sold.
- They use the land as a pasture, for berry picking and for the kids to go sliding etc.
- Not using the land now, but the past four years they have had a preacher come there for religious events.
- Donald lied when he said Hellen called his mom. His mom called her to say they should pay Donald back.
- If they have to, they are willing to give back the money back in instalments less the amount for the damage done to the land when Donald Allotte fenced part of the land.

Dena and Lydia Johnston (Daughters of and Witnesses for William (Sam) Allotte and Hellen Johnston):

- Their mom felt that she was forced to sign as a witness. There was nobody else to sign it. Their mom didn't want Sam to sign the Bill of Sale.
- Kelly Bowen kept phoning to get Sam to sign the Bill of Sale.
- The kids did not want Sam to sign the Bill of Sale.
- The kids thought they had no rights because they were not members.
- Their parents wanted to pay back the money, but they couldn't because Donald kept taking off.
- Don was seen blocking the road.

Fishing Lake Metis Settlement, Represented by Clifford Calliou, Councillor:

No paperwork was completed. The Settlement has no authority to deal with the transaction.

Decision

The Panel finds William (Sam) Aulotte retains his registered Metis title interest in the land legally described as SW-02-057-02-4.

William (Sam) Aulotte must repay Donald Aulotte \$700.

Reasons

The SW-0-057-02-4 is a homestead of William (Sam) Aulotte as defined in section 1 of the *Dower Act*.

Section 1 of the *Dower Act* states:

- (d) “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.

Donald Aulotte paid William (Sam) Aulotte \$700 for all the land within the SW-02-057-02-4, except for the land where the house is located and a portion surrounding the house, however, the homestead was not subdivided.

According to section 4 of the *Dower Act*, which addresses “Consent”, this prevents Hellen Johnston’s spouse, William (Sam) Aulotte, from selling the homestead without her consent.

The *Dower Act* states:

Consent

4(1) consent required for the disposition inter vivos of the homestead shall be contained in or annexed to the instrument by which the disposition is effected and whenever that instrument is produced for registration under the *Land Titles Act*, the consent shall be produced and registered with it.

(2) The consent in writing of the spouse of the married person to any disposition shall, in the prescribed form, state that the spouse consents to the disposition of the homestead and has executed the

consent for the purpose of giving up the life estate of the spouse and other dower rights of the spouse in the homestead to the extent necessary to give effect to the disposition.

(3) When the consent is contained in the instrument, the signature of the spouse to the instrument is a sufficient signature to the consent as well as to the instrument.

(4) The consent may be contained in or written or endorsed at the end of or at any place on the instrument and the signature of the spouse to the consent is a sufficient signature to the instrument as well as to the consent.

(5) When the consent is annexed to the instrument, the spouse shall sign both the consent and the instrument.

(6) The Registrar of Land Titles before registering a disposition of land that

- (a) does not purport to be consented to under this Act, and
- (b) is not accompanied with an order of the Court dispensing with the consent,

shall require an affidavit of the owner in the prescribed form supported by any other evidence by affidavit or otherwise that the Registrar may prescribe.

(7) Notwithstanding subsection (6), when the disposition is executed under a power of attorney, the party executing the disposition, if the party is acquainted with the facts, may make the affidavit.

Hellen Johnston witnessed a transaction. She did not consent to the sale of the homestead to Donald Aulotte. The sale was invalid because it offended the *Dower Act*.

The Panel feels it is only fair Donald Aulotte is repaid the money he gave to William (Sam) Aulotte in lieu of the invalid sale of land.

Order

The Tribunal orders:

William (Sam) Aulotte repay Donald Aulotte \$700 and provide proof of payment, in the form of receipts, copies of cheques or money orders. Proof of payment must be acknowledged by Donald Aulotte by January 31, 2006. If full payment of \$700 is not done by January 31, 2006, the Métis Settlements Appeal Tribunal shall file with the Court of Queen's Bench to have the Order enforced in accordance with the *Metis Settlements Act* as follows:

Enforcement of decisions

209(1) Appeal Tribunal decisions may, by leave of the Court of Queen's Bench, be enforced in the same manner as a judgment or order of the Court to the same effect.

(2) The Court of Queen's Bench may

- (a) direct that judgment may be entered, or
- (b) make orders

in the terms of the decision.

(3) The Court of Queen's Bench may make such orders as are necessary to give effect to the decision and to a judgment under subsection (2).

Dated in the City of Edmonton in the
Province of Alberta on the 30th day of
September, 2005.

(Signed)

Panel Chair