

***METIS SETTLEMENTS ACT***  
**METIS SETTLEMENTS APPEAL TRIBUNAL**

Between:

**Vernon Calliou**

Appellant

-and-

**Settlement Council for the Fishing Lake Métis Settlement, Thomas Cardinal,  
Kelly Bowen and Eva (Tina) Marie Shaw**

Respondents

- and -

**Tulliby Lake Stockmans Association**

Affected Parties

Concerning a Land Dispute Involving the NE-26-057-01-4 and SE-27-057-01-4

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**DECISION**

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## **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:**

Vernon Calliou, **Appellant**

Thomas Cardinal, Respondent  
Eva (Tina) Marie Shaw, Respondent  
Kelly Bowen, Respondent (arrived at 11:30 am)

Fishing Lake Métis Settlement, Respondent  
Represented by: Clifford Calliou, Councillor

### **Observers present:**

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  
11:05 am, 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 March 10, 1999:

- Thomas Cardinal wrote a letter to Fishing Lake Métis Settlement Council regarding the transfer of the NE-26-057-01-4 to Vernon Calliou.
- MSLR02 (Land Interest Transfer form) was completed by Thomas Cardinal and Vernon Calliou regarding a Provisional Metis title in the NE-26-057-01-4. The form was not signed by the Settlement Administrator.
- Vernon Calliou completed the Estate Instructions form for the NE-26-057-01-4.

On December 17, 1999 a Grazing Lease was signed on behalf of Thomas Cardinal. The agreement was between Thomas Cardinal and the Tulliby Lake Stockmans Association, which would see him paid rent for a period of one year commencing on December 1999 and ending on December 2000. Section 26-057-01-4 was included in the agreement.

On February 29, 2000 at a Fishing Lake Métis Settlement Special Council Meeting Motion# FLMSCM006/00 was carried to “Cancel Thomas Cardinal’s Allocation Interest in the NE-26-057-01-4 and SE-27-057-01-4”.

On November 8, 2000, according to the financial ledger provided to MSAT by the Fishing Lake Métis Settlement, the Settlement purchased improvements from Thomas Cardinal for the NE-26-057-01-4, SE-27-057-01-4 and three other quarters for \$800.

On November 9, 2000 Thomas Cardinal signed the following documents with regard to his Allocation interests, which included the NE-26-057-01-4 and SE-27-057-01-4:

- Full and Final Release form.
- Request to Cancel the Recording of an Interest form MSLR11.
- Affidavit under the Dower Act (Section 4), Form B.

Shirley Calliou completed an Affidavit of Witness for Thomas Cardinal’s Request to Cancel the Recording of an Interest for the NE-26-057-01-4 and SE-27-057-01-4.

On January 10, 2001 land legally described as SE-27-057-01-4 was posted as available land. On January 24, 2001, Tina Shaw applied for the Provisional Métis title. On February 6, 2001 at a Regular Council Meeting, Motion# FLMSRCM025/01 was passed unanimously to approve Tina Shaw’s application. On February 7, 2001 the Settlement notified Tina Shaw her application was approved.

On March 7, 2001, the Settlement posted a Provisional Metis title in the NE-26-057-01-4 as available land. On March 12, 2001, Kelly Bowen applied for the interest.

On March 27, 2001, Tina Shaw and the Settlement signed a Memorandum of Provisional Métis Title and a MSLR01 form (Request to Record or Register an Interest) for SE-27-057-01-4.

On April 4, 2001 at a Regular Council Meeting, Motion# FLMSRCMO93/01 passed 3 to 1 to approve Kelly Bowen's application for a Provisional Métis title on land legally described as NE-26-057-01-4. On April 10, 2001, Kelly Bowen and the Settlement signed a Memorandum of Provisional Métis title for NE-26-057-01-4. On November 5, 2001 the Métis Settlements Land Registry notified Kelly Bowen his Provisional Métis title was registered.

On November 20, 2001:

- Tina Shaw and the Tulliby Lake Stockmans Association made a Grazing Lease for the period commencing May 1, 2002 and ending November 20, 2002 for the SE-27-057-01-4.
- Kelly Bowen and the Tulliby Lake Stockmans Association made a Grazing Lease for two parcels, one of which was the NE-26-057-01-4, for the period commencing May 1, 2002 and ending November 20, 2002.

Thomas Cardinal, seller, and Vernon Calliou, purchaser, signed a Bill of Sale for improvements to the SE-27-057-01-4. The Bill of Sale is dated October 7, 2004.

*I Thomas Cardinal, sold the improvements to SE 27 57 1 W4M to Vernon Calliou for the sum of \$300.00, that's been paid in full. Payment and agreement was made on October 23, 1997.*

On November 17, 2004 Kelly Bowen and the Tulliby Lake Stockmans Association made a Grazing Lease for the period commencing May 1, 2005 and ending October 1, 2005. The NE-26-057-01-4 was included in the agreement.

On February 15, 2005 Vernon Calliou appealed to the Métis Settlements Appeal Tribunal.

On February 23, 2005 the Métis Settlements Land Registry received the November 9, 2000 paperwork from the Settlement (Request to Cancel the Recording of an Interest) regarding the NE-26-057-01-4 and SE-27-057-01-4. Thomas Cardinal's Allocations were cancelled.

On June 22, 2005, after an inquiry from MSAT, the Fishing Lake Métis Settlement land clerk faxed to MSAT a message noting the following:

*They signed Tina Shaw's application without making a motion and it was signed on May 3, 2005. RCM*

The current Metis Settlements Land Registry Land Search report for SE 27-057-01-4 shows the Fishing Lake Métis Settlement as holder of the Metis title and Eva Tina Marie Shaw as holder of a Provisional Metis title which expires February 5, 2006

The current Métis Settlements Land Registry Land Search Report for NE-26-057-01-4 indicates the Fishing Lake Métis Settlement as holder of the Métis title and Kelly Bowen as holder of a registered Provisional Métis title interest which expires on April 3, 2006.

According to Marvin George of the Tulliby Lake Stockmans Association, Vernon Calliou was paid rent for use of SE-27-057-01-4. Mr. George was unable to submit any agreement, dates, or proof of payment issued to Mr. Calliou at the time the Hearing Package was created.

### **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

- ...
- (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;

and according to Section 8.1 of the Métis Settlements General Council Land Policy, 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.
- (2) The appeal must be filed with the Appeal Tribunal, and a Notice of Appeal filed with the Registrar, within 30 days of the settlement council's decision, or, if the settlement council did not make a decision, within 30 days of the date by which it was required to have made the decision.
- (3) There is no right of appeal if the proper documents are not filed with the Appeal Tribunal and the Registrar within the specified time limit.<sup>1</sup>

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<sup>1</sup> Under section 202 of the Act, the Appeal Tribunal may extend the time in special circumstances and this could allow it to make sure people with real problems are heard.

## Summary of Evidence (for in-person Hearing)

### Appellant's Evidence

#### Vernon Calliou:

Vernon Calliou wants the NE-26-057-01-4 and SE-27-057-01-4 registered in his name. He is concerned the paper work was not submitted to the Métis Settlements Land Registry. He filled out the Estate Instructions to ensure his heirs would have land for the future. He is worried about his kids' future, and is stressed. He feels he deserves to be compensated for his stress.

He added the following:

- Herb Lehr was a witness that he used a Caterpillar Tractor on the land.
- Council lost his paperwork in the name of his girls.
- The Settlement led Tina (Shaw), Thomas (Cardinal) and Kelly (Bowen) along. It isn't their fault.
- He was not given notice.
- Even if he gets the land, he is going to sue because he is stressed.
- Tab 24, October 7, 2004, Bill of Sale is forged.
- He made improvements to the land, a fence.
- Hasn't been paid since 1999 for the gas well on the land.

### Respondent's Evidence

#### Thomas Cardinal:

- He lived on Settlement for 56 years.
- He originally had 12 quarters. He received them from his father.
- He lost land because he was not paying levies.
- He was paid for fence.
- He was paid for grazing.
- Feels Vernon Calliou can do what he wants with the land as he signed the NE-26-057-01-4 over to him and sold him the improvements to the SE-27-057-01-4.

#### Eva (Tina) Marie Shaw:

- She applied for the quarter section of land that was open. There were 6 quarters available. The Settlement map indicated nobody owned them.
- Three sides are fenced.
- She talked to Thomas Cardinal. He never mentioned the land was sold to Vernon Calliou.
- She heard Thomas lost his land because he didn't pay levies.

**Kelly Bowen:**

- Does not know where the quarter is located.
- He has land next to the quarter.
- Council is responsible for paperwork. Paperwork goes to Council for approval.
- If Vernon owns the land it is not our fault. It is Council's fault.
- When Kelly applied for the land, he was told Thomas did not own it anymore, because he didn't have livestock.

**Fishing Lake Métis Settlement, Represented by Clifford Calliou, Councillor**

- He was not on Council at the time of the Vernon Calliou and Thomas Cardinal transaction.
- Vernon came to him and he had to go through the paperwork available.
- There is a levy by-law.
- Regarding the process Council follows regarding levy fees: The Finance department sends out Bills to members.
- Re: Tina Shaw's application for available land (SE 27-057-1-4). Gabe made motion and Morris seconded it at the time and it was signed off at a later date. Tina's papers were not signed, so Council signed. Council was taking care of administrative stuff that was missed, completing the paperwork.
- The Settlement had a land co-op (10 members) this is how so many quarters were held.
- To the best of his knowledge, nobody lost land because they did not pay their land levies.
- Fishing Lake's land is all surveyed.

**Decision**

The Panel reverses Settlement Council's decision to grant Eva (Tina) Marie Shaw's a Provisional Métis title in SE-27-057-01-4.

The Panel reverses Settlement Council's decision to grant Kelly Bowen a Provisional Métis title in the NE-26-057-01-4.

The Panel grants Vernon Calliou Provisional Métis title interests in the lands legally described as NE-26-057-01-4 and SE-27-057-01-4 as of the date of this Order.

This Panel will not deal with annual compensation for surface access related to a right to work or develop minerals. This is the jurisdiction of a Land Access Panel.

### Reasons

When making this decision, the Panel considered all the circumstances in finding a fair remedy. The Panel believes Thomas Cardinal's testimony that he intended to transfer the NE-26-057-01-4 to Vernon Calliou. The Panel feels there were serious errors made by the Settlement relating to the transfer of land from Thomas Cardinal to Vernon Calliou. It is the Panel's position that if the Fishing Lake Métis Settlement had completed and submitted the required transfer forms to the Métis Settlements Land Registry, the NE-26-057-01-4 would have been registered to Vernon Calliou. It would not have been posted and ultimately granted to Kelly Bowen.

The Panel also believes Thomas Cardinal's testimony that he intended to sell, and did sell to Vernon Calliou, the improvements to the SE-27-057-01-4. It was not disputed that forms were completed by the parties but lost by the Settlement. It is the Panel's position that if the Fishing Lake Métis Settlement managed the transaction in a timely and proper manner the SE-27-057-01-4 would have been registered to Vernon Calliou, and not posted and ultimately granted to Eva (Tina) Marie Shaw.

The Panel feels if the Fishing Lake Métis Settlement had completed the required paperwork to transfer the NE-26-057-01-4 and SE-27-057-01-4 from Thomas Cardinal to Vernon Calliou, the land would have been registered in Mr. Calliou's name.

### Recommendation

The Panel recommends Settlement Council for Fishing Lake Métis Settlement ensures all land transactions are processed correctly, both by Land administration staff and Council. It is necessary this be done in a timely matter, while adhering to all related legislation, regulations, and policies and bylaws to prevent future disputes of this nature.

### Order

In accordance with section 51 of the Métis Settlements Land Registry Regulation, the Tribunal directs the Registrar of the Métis Settlements Land Registry to revise the registration of:

- the Provisional Métis title (ID No. 5008244), a registered interest in the SE-27-057-01-4, to show Vernon Calliou as the holder of the interest, and to revise the record to show the term as starting the date of this Order, and
- the Provisional Métis title (ID No. 5006607), a registered interest in the NE-26-057-01-4, to show Vernon Calliou as the holder of the interest, and to revise the record to show the term as starting of the date of this Order.

Dated in the City of Edmonton in the  
Province of Alberta on the 14<sup>th</sup> day of  
October, 2005.

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(signed)  
Randy Anderson, Panel Chair