

METIS SETTLEMENTS ACT
METIS SETTLEMENTS APPEAL TRIBUNAL

Between:

Fishing Lake Métis Settlement

Applicant

-and-

**Kelly Bowen, Gladys Calliou, Jean Anderson, Arlene Calliou, Peggy McGillis,
Darlene Callioux, Darren Calliou, Barry Jess, Clayton Trottier, Raymond Hayden,
Jennifer Crevier**

Affected
Parties

Concerning a House and Land dispute on the NE-14-057-02-4

DECISION

The Hearing

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

Randy Anderson, Panel Chair
John Brosseau, Panel Member
Harvey Anderson, Panel Member

Affected Parties present at the hearing:

Kelly Bowen
Gladys Calliou
Jean Anderson
Arlene Calliou
Peggy McGillis
Darren Calliou

Observers:

Blair Cardinal, Fishing Lake Métis Settlement Land & Membership Clerk

MSAT staff present:

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

Place and date of the Hearing:

Fishing Lake Métis Settlement Community Center
Fishing Lake, Alberta
February 2, 2006
1:00 pm

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 October 25, 2005 the Métis Settlements Appeal Tribunal (MSAT) received a letter of referral from the Council of Fishing Lake Métis Settlement, the land trustee. The letter indicated Council was referring the Kelly Bowen matter to the MSAT. Council could not come to a fair decision for Kelly.

Originally, on December 17, 2003 Kelly Bowen submitted an appeal to the Métis Settlements Appeal Tribunal. Kelly felt he was entitled to have his father's (Kenneth Donald Calliou) house and some land where the house is located (NE-14-057-02-4). Kenneth Calliou died without Estate Instructions on February 2, 2002.

After a failed mediation attempt by the Métis Settlement Appeal Tribunal, the affected parties Kenneth Calliou's mother (Gladys Calliou), and Kenneth Calliou's siblings informed the Settlement and MSAT they wanted NE-14-057-02-4 transferred to Gladys Calliou, at which time she would submit Estate Instructions for it.

Jurisdiction

The Tribunal has jurisdiction to hear this appeal according to section 1891(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 8.2 of the Métis 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

The following evidence was presented at the hearing and is in addition to that contained in the hearing package presented to the Panel and parties before the hearing.

Affected Parties' Evidence

Kelly Bowen (Ken Calliou's son):

- Kelly feels the house is his. Kelly says he is the next of Kin.
- Jean paid his dad (ken Calliou) \$10,000 for the field.
- Melinda (Ken's common law wife) is living in the affected house.
- Kelly told Melinda she would always have a place to stay.
- Ken and Melinda split up approximately 5 years before Ken Calliou died.
- Kelly did not want the whole quarter only what he needed for the house.
- Kelly says there is no proof the Bank statement submitted at the beginning of the Hearing was for the House and Land.
- Kelly stated the housing policy says you get 10 acres for a house.
- Law says cattle can't be kept by the creek.
- Kelly traded Clayton Trottier the house for another house and land with a barn etc., so he could put his 17 horses there.
- He did what he had to do to benefit him because he was told that he was trespassing and he needed to do something with the horses.
- He did not want to trade or sell the land but felt he had no choice because of the way he was being treated by the family. The family said he was trespassing.
- Kelly was going to go sign the papers at the Settlement to give Clayton Trottier the house. The deal could not go through because Clayton Trottier owed money to the Settlement.
- He did not have horses when he sold unrelated quarters.
- He did not sell the house to Ray Hayden. Clayton Trottier sold the house to Ray Hayden.
- Kelly lived in his truck for 4 months.
- Kelly has two kids.
- Kelly purchased a trailer from the Settlement.
- Arlene Calliou and Ray Hayden came to him to buy the house and he said no.

Peggy McGillis (Ken Calliou's sister):

- Peggy produced Bank statements and stated land was bought from Kenneth Calliou.
- Peggy is concerned Kelly was trying to sell the house and the land that has been in the family for 65 years. Kelly sold the 2 quarters Ken gave him. Kelly should have kept the land.

Arlene Calliou (Ken Calliou's sister):

- Kelly was given Land from Ken. Calliou. Kelly sold 2 quarters of land and the house to Clayton Trottier and Attempted to sell the house to Ray Hayden (her Ex-husband).
- If he wanted horses why would he sell the land (see Kelly's response).
- The land was never transferred to Barry or Jean.
- The house was never Kelly's.
- He went against what grandma wanted (keep the house and land in the family).

Jean Anderson (Ken Calliou's sister):

- Ken asked her to come home. She lived with Ken and raised Kelly.
- Clayton came to her to buy the house.
- She had the rails hauled from the bush for the Corals they built. Kelly tore the corals down and laughed about it.
- She paid Ken \$10, 000.
- The well and corals are near the house. She needs them for her cattle.
- Ken wanted the house to go to someone in the family who needs a place to live.
- Jean is living on and working the land.

Darren Calliou (Ken Calliou's brother):

- Ken had older boys from previous relationship (half brothers to Kelly). Kelly is not the only next of kin.
- The house was built for Tom Calliou and Ken Calliou. Ken wanted the two boys would get the house.

Gladys Calliou (Ken Calliou's mother):

- Wants to keep the land in the family.

Observer's Evidence

Blair Cardinal:

- Housing Policy says 10 acres go with houses.

Findings of Fact

- Métis Settlement Land Registry records indicate NE 14-057-2-4 held by Fishing Lake Métis Settlement as Land Trustee.
- The mother and siblings of Ken Calliou agreed the house was meant for someone in the family who needs a place to live. The land should stay in the family. It's been there for 65 years.
- The Settlement has no housing policy or bylaw to indicate 10 acres go with a house when one is granted to a member.

Decision

The Panel grants Kelly Bowen the house formerly owned by Kenneth Calliou and the approximate five acres of land where the house is located on the NE 14-057-02-4.

Reasons

The Fishing Lake Metis Settlement, as land trustee, holds a Metis title interest in the land legally described as NE-14-057-02-4. The Council of the Fishing Lake Metis Settlement referred this matter to The Metis Settlements Appeal Tribunal, because Council could not come to a decision on what was fair for Kelly Bowen with regards to his late father's house and land.

The affected parties in attendance at the hearing were asked if there was a dispute with the ownership of 155 acres of the 160 acres of land. All parties at the Hearing said no. Therefore the Panel decided to address only the remaining five acres of land and the house left by the late Kenneth Calliou.

Further, the affected parties also agreed the house was intended for a family member who needed a place to stay.

The Panel feels it is fair for Kelly Bowen to receive a portion of his late father's estate.

Panel Observation

The Panel suggests there be recognition of the family to approximately 65 years of historical and deep-seeded connection to this property. We recommend any future change of ownership to have the family have first right of purchase.

Order

The Tribunal orders that:

The Métis Settlements Land Registry will prepare and register a plan of subdivision of the land legally described as NE-14-057-02-4. The plan is to be according to the criteria set out in section 87 of the Métis Settlements Land Registry Regulation. The plan will show the boundaries of one approximately 5 acre lot situated in the southeast portion of this quarter surrounding the existing house, formerly owned by Kenneth Calliou, as shown in the sketch plan in Tab 5 of the Hearing package. This lot extends from the north boundary of the previously proposed Lot 1 pursuant to the proposed descriptive plan located in Tab 6 of the Hearing package attached from the Fishing Lake Métis Settlement/Kelly Bowen Hearing held February 2, 2006.

Further, the Tribunal directs the Métis Settlements Land Registry to register a Métis title interest in the name of Kelly Bowen for this new subdivided five acre lot in the NE-14-057-02-4.

Dated in the City of Edmonton in the
Province of Alberta on the 21st day of
March, 2006.

Randy Anderson, Panel Chair