

Before:

Metis Settlements Appeal Tribunal

Between:

Esther Auger

-and-

East Prairie Metis Settlement
and
Metis Settlements Land Registry

Concerning:

Provisional Metis Title for Plan 900079, Block 00, Lot 01 (NW-18-72-15-5)

Hearing Date & Place:

March 27, 2008, High Prairie, Alberta

Decision Date:

May 8, 2008

MSAT
Decision

Land Access Panel Members

Don Cunningham, Panel Chair
Allan Lamouche, Panel Member
Dorothy Anderson, Panel Member

Parties present at the hearing

Esther Auger, Appellant
Louis Haggerty, Chairman, East Prairie Metis Settlement Council
Shelly Auger, East Prairie Metis Settlement Council
Wade L'Hirondelle, East Prairie Metis Settlement Council
Robert L'Hirondelle, East Prairie Metis Settlement Council
Richard Hajduk, Legal Counsel for East Prairie Metis Settlement Council
Nitin Bhatia, Articling Student, Hajduk Gibbs
Harry Supernault, Administrator, East Prairie Metis Settlement
Karen L'Hirondelle, Assistant, East Prairie Metis Settlement
Raymond Supernault, East Prairie Metis Settlement
Alvina Cunningham, Peavine Settlement Member
Ron Raitz, Registrar, Metis Settlements Land Registry
Lisa Chartrand, Deputy Registrar, Metis Settlements Land Registry

MSAT staff present at hearing

Harold Robinson, Tribunal Secretary
Karen Mustus, Oil and Gas Officer
Russell Teed, Dispute Resolution Officer

Place and date of the hearing

High Prairie, Alberta
March 27, 2008

Issues/relief - what the appellant is asking for

1. *Does the Appellant still hold an interest in Plan 900079, Block 00, Lot 01 (NW-18-72-15-5)?* The appellant objected to the cancellation of her Provisional Metis Title (PMT), and is seeking an order affirming that she still holds an interest in the land.

1. Who holds an interest in Plan 900079, Block 00, Lot 01 (NW-18-72-15-5)

1.1 Applicable legislation – jurisdiction and decision-making criteria

The Metis Settlements Appeal Tribunal has assumed jurisdiction under Part 7, section 45, of the *Metis Settlements Land Registry Regulation*. It reads as follows:

45 A person who objects to

- (a) a recording or the cancellation of a recording,
- (b) the registration of an interest or a revision of a registration, or
- (c) any decision of the Registrar with respect to any action the Registrar is required or authorized to take under this Regulation

may apply to the Appeal Tribunal for an order requiring the Registrar to take any action the Registrar is required or authorized to take under this Regulation, and on hearing the application the Appeal Tribunal may make such an order and any further order it thinks proper.

1.2 Evidence before the Panel

The Appellant (Esther Auger) received a PMT in Plan 900079, Block 00, Lot 01 located at NW-18-72-15-5 on (approximately 80 acres or ½ of the property) on February 14, 1994.

The Metis Settlements Land Registrar mailed written notice (albeit to the wrong address) to the Appellant on March 19, 1999 indicating that her PMT had expired.

The Appellant applied for renewal of her PMT on June 8, 2000, but her application was not approved by East Prairie Metis Settlement Council.

The Appellant—who represented herself—testified that she was unaware of the conditions of holding a PMT interest. Conversely, she also testified that she did not have any money to move onto the land, or to improve it. She said that she has been effectively “homeless” for many years now and has been living in a trailer away from the Settlement.

She said that when she applied to the East Prairie Settlement Council for help to improve the land, they did not assist her. She also noted that documents were not being sent to the right

address. She testified that correspondence was being sent to Box 1XXX, instead of Box 1XYX,¹ which is her correct address.

East Prairie Metis Settlement Council—which was ably represented by legal counsel—drew the Panel’s attention to certain land interest transfer documents, including the transfer of land interest document signed by the Appellant on February 4, 1994, and the Appellant’s application to renew her PMT in particular. Their view is that the Appellant knew, or ought to have known, about the PMT requirements to improve land, and that she effectively knew about the expiry of her interest as of the date she applied to renew it (June 8, 2000).

Counsel for East Prairie added that Council has recently posted the land in question, which allows members—including the Appellant if she so desires—to apply for an interest in the land.

For its part, the Metis Settlements Land Registry testified that the last notice that was sent to the Appellant (dated September 7, 2007), was sent as a housekeeping exercise. As told to the Panel, the Registry is in the process of cleaning up old files where notices may have been sent out some years ago, but the titles have not yet been updated to reflect those changes.

To this, Counsel for East Prairie argued that where an interest has lapsed, the Registrar’s delay in updating the title does not create any rights or interests that have already expired.

1.3 Findings of Fact

- The Appellant signed a Transfer of Land Interest document on February 4, 1994 for 80 acres located at NW–18–72–15–5.
- The Appellant was awarded a PMT interest in Plan 900079, Block 00, Lot 01 (the 80 acres) located at NW–18–72–15–5 on February 14, 1994.
- The Metis Settlements General Council Land Policy, *Policy GC-9201* sets out the rules for obtaining, keeping, and losing interests (including PMT interests) in Settlement lands.
- The Land Policy is a public document and available to all Settlement members.
- The Memorandum of Provisional Metis Title for NW–18–72–15–5 dated February 14, 1994, was signed by the original interest holder, Frank James Andrews, but not signed by the Appellant.
- The Memorandum’s terms and conditions mirror the terms and conditions set out in the Land Policy, including:
 - that the Appellant, amongst other things, remain a resident member of the Settlement, use the land to build a house, or operate a farm, ranch or approved business; and
 - that Appellant’s PMT interest was in effect for the standard term of five years [until February 13, 1999.] On this date, and in keeping with the standard terms and conditions of PMT interests under the Land Policy, the Appellant could claim Metis Title, or request a five year renewal providing improvements were made and other conditions were met sufficiently to satisfy Settlement Council to grant Metis Title or grant a five year renewal of the PMT interest.

¹ Box number redacted to maintain Appellant’s privacy.

- The Appellant applied in writing to the Settlement on July 3, 1995 to build a road into the land and to also pay for the set-up of a trailer on the land.
- A road was not built, nor was funding provided to set up a trailer on the land.
- The Appellant did not make any improvements to the land.
- The MSLR wrote to the Appellant (at the wrong Box number) on March 19, 1999, notifying her that her PMT interest in the land “appears to have expired on February 13, 1999.” The letter also reads that Appellant had “60 days... to object to the cancellation.”
- The Appellant applied to renew her PMT interest in the land on June 8, 2000.
- Council, by way of motion 2000:546/1 elected to “defer the PMT renewal request on NW-18-72-15-5, Plan 900079. Block 00. Lot 01 until a bylaw is drafted.”
- The Settlement did not draft a bylaw.
- The Appellant received another notice dated September 7, 2007 from the MSLR indicating that her PMT interest “appears to have expired on February 3, 1999.” The MSLR letter read that her PMT interest on title would be cancelled unless she notified the Appeal Tribunal within 60 days of her objection to the cancellation.
- The Appellant wrote to the Appeal Tribunal on November 2, 2007 to object to the cancellation of her PMT interest.

1.4 Analysis / Reasons

The Government of Alberta and the Metis Settlements of Alberta agreed in 1989 through the *Alberta-Metis Settlements Accord*, that the Settlements should be self-governing. This enduring commitment led to the joint development of the *Metis Settlements Act*, (the Act) and other key statutes. The Act is important because, amongst other things, it enables the Settlements to work with the Minister of Aboriginal Relations to make laws at a collective level (called General Council Policies and regulations), as well as for Settlement Councils to make legally binding bylaws.

The job of the Metis Settlements Appeal Tribunal is to interpret relevant statutes, General Council Policies/laws and regulations, and local bylaws in order to resolve disputes arising from the application of those laws. In this regard, the Appeal Tribunal is bound to consider Metis culture and identity when resolving disputes.

In the case at hand, General Council passed a policy, called the Metis Settlements General Council Land Policy, *Policy GC-9201*, which sets out different types of land interests and the rules for obtaining, transferring, or sometimes losing those interests. Of interest to the Panel today are the rules set out for Provisional Metis Title.

In this regard, section 2.5 of the Land Policy reads that the nature of PMT is “to enable the member to use the land and make improvements to the extent needed to obtain Metis Title.”

The Land Policy also sets out the framework for a Memorandum of Provisional Metis Title, including basic conditions such as remaining a resident member of a Settlement, using the land to build a house, or operate a farm, ranch or an approved business. The Memorandum document sets out limits on possession as well.

As set out in the Memorandum of Provisional Metis Title for the land in question, the limit was five years to make improvements, with the *possibility* (which is not the same as a guarantee) of a five year renewal at the end of the term, if Council is satisfied that the land is being used and sufficient progress on improvements have been made.

In the Panel's view, when rules are set out in General Council Policies, they bind all Settlement members and members are taken to know the law. In the case at hand, the rules for obtaining a PMT interest and losing that interest are clearly set out in a General Council Policy, which has been in place since 1992 and is readily available to Settlement members through the Alberta Queen's Printer and the Metis Settlements General Council.

The Land Policy sets out the purpose of granting a PMT interest. The purpose is to promote improvements to the land. When improvements are made, interest holders are in a position to claim full Metis Title or renew the PMT for one more 5 year term.

In the Panel's view, though the Appellant did not sign the Memorandum of PMT, there can be no doubt that she was aware of the *type* of interest (PMT) she held in Plan 900079, Block 00, Lot 01 located at NW-18-72-15-W5M. Certainly, she was aware of the type of interest (*PMT*) held when she signed the "Transfer of Land Interest" document on February 4, 1994, which clearly sets out that she applied to transfer the PMT interest to her name.

In the Panel's view, the Appellant was also aware of the need to improve the land in order to maintain, and perfect, her interest. We base this finding on the Appellant's own application to East Prairie Settlement Council of July 3, 1995 to build a road into the land and to also pay for the set-up of a trailer on the land. Our assessment—that the Appellant knew, or ought to have known that PMT interests call for improvements—is further bolstered in her application of June 8, 2000 to "Renew a PMT/Amend...Memorandum of Provisional Metis Title," which clearly sets out that PMT interests are dependent on "making the improvements needed to get Metis title."

The Panel also considered the Appellant's own testimony that she did not make improvements because of "financial reasons." In the Panel's opinion, this indicates that the Appellant was aware of the need to make improvements in order to maintain her PMT interest.

While the Panel does not doubt the truthfulness of the Appellant's testimony concerning her dire financial circumstances, the Panel does not believe this exempts PMT holders from trying to improve their land. Nor does Council's refusal to grant assistance to the Appellant exempt her from finding other ways to improve the land.

With respect to the question of renewal of PMT interests at the end of the five year term, it should be noted that these are not automatic or rubber-stamp exercises. According to the Land Policy, applications for renewal are to be considered on a case-by-case basis. Specifically, the PMT holder must provide evidence of improvements sufficient to satisfy Council that effort has been made and that an extension should be granted so the PMT holder can finish his/her work. In the case at hand, no improvements were made and Council was entirely within its purview to

not accept the Appellant's application for renewal at the end of the five year term; which is what happened in this case.

Taken together, the Appellant did not do what was needed to retain her PMT interest. As set out in the Memorandum of Provisional Metis Title, her interest expired on February 13, 1999.

The Panel also accepts East Prairie Settlement Council's assertion that the notice of cancellation sent out by the Metis Settlements Land Registry does not act to revive the Appellant's expired interest. Nor does the lapse of time between the first notice of cancellation of March 19, 1999 and the second notice of cancellation of September 7, 2007 create any other rights of revival for the same reason that if the first notice could not revive an expired interest, neither can the second notice.

Finally, with respect to the action of the East Prairie Settlement Council of posting the land in question before this matter was decided by the Tribunal, the Panel is of the opinion that such action could have led to unnecessary complications had the Panel decided this matter differently. We therefore encourage all parties to respect the Tribunal's role in resolving disputes, and to exercise restraint and patience in relation to all appeals before the Metis Settlements Appeal Tribunal.


1.5 Decision

The Appellant's PMT interest in Plan 900079, Block 00, Lot 01 (NW-18-72-15-5) expired on February 13, 1999.

1.6 Order

As authorized through section 45, of the *Metis Settlements Land Registry Regulation*, the Metis Settlements Appeal Tribunal hereby orders Metis Settlements Land Registry to cancel the Appellant's PMT interest in Plan 900079, Block 00, Lot 01 (NW-18-72-15-5) effective February 13, 1999.

Dated in the City of Edmonton in the Province
of Alberta on the 8th day of May, 2008.


Don Cunningham, Panel Chair