

Before:

Metis Settlements Appeal Tribunal  
Land Panel

Between:

Rose Marie Cunningham, Appellant

-and-

Archie Collins, Respondent  
Peavine Metis Settlement, Respondent

Concerning:

Interests in the NW-10-79-16-5

Hearing Date:

May 14, 2008

Decision Date:

June 27, 2008

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**D e c i s i o n**

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**Land Panel Members**

Allan Lamouche, Panel Chair  
Stan Delorme, Panel Member  
Violet Haggerty, Panel Member

**Parties present at the hearing**

Rose Marie Cunningham, Appellant  
Archie Collins, Respondent  
Glenna Cunningham, Council Member, Peavine Metis Settlement  
Dale LeClair, Administrator, Peavine Metis Settlement  
Carmen McDermott, Land & Membership Assistant, Peavine Metis Settlement  
Violet Noskey, Peavine Metis Settlement Administration

**MSAT staff present at hearing**

Karen Mustus, Oil and Gas Officer

**Place and date of the hearing**

High Prairie, Alberta  
May 14, 2008

## Issue/relief - what the parties want

1. *Interest in land*: The Appellant, Rose Marie Cunningham, requested that the Tribunal reverse Peavine Settlement Council's grant of Metis Title in the NW-10-79-16-5 to Archie Collins.

### 1. Interest in land in the NW-10-79-16-5

#### 1.1 Applicable legislation – jurisdiction and decision-making criteria

This appeal turns on the question of whether the granting of Metis Title to Archie Collins was done according to the rules for granting interests in Settlement lands.

With respect to the question of jurisdiction, Section 8.1 of the Metis Settlements General Council Land Policy [Policy GC-P9201] sets out the Tribunal's authority to determine interests in land. It reads as follows:

##### 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 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.

The Appeal Tribunal received a written appeal from the Appellant within 30 days of Peavine Settlement Council's decision to grant Archie Collins Metis Title in the NW-10-79-16-5. This, in conjunction with the Notice of Appeal that was filed with the Registrar, gives this Panel the required authority to decide this matter.

#### 1.2 Evidence before the Panel

According to the Appellant, Settlement Councils are bound under the Land Policy to provide at least 14 days public notice of available land before granting any new interests in land. She told the Panel that the NW-10-79-16-5 was not posted before being granted to Archie Collins by Settlement Council on December 6, 2007, and the failure to post it means that the grant should be undone.

The Respondent, Archie Collins, said that he has had an interest in the land going back before the signing of the Accord. He did not provide any documents to support this claim.

The Respondent Settlement Council conceded that the NW-10-79-16-5 had not been posted before granting Metis Title to the Respondent on December 6, 2007.

### **1.3 Findings of Fact**

- The Metis Settlements Land Registry (MSLR) Land Search Report—which was contained in the hearing package—shows that Peavine Metis Settlement was the principle land interest holder for the NW-10-79-16-5 and neither the Appellant nor the Respondent Archie Collins had any registered interests in the NW-10-79-16-5.
- No notice was given to the public of the availability of the NW-10-79-16-5 before Metis Title interest was granted to Archie Collins.

### **1.4 Analysis / Reasons**

The *Alberta-Metis Settlements Accord* of 1989 vested the Metis Settlements of Alberta with self-governance authority. A key aspect of this authority is the passage of laws by the Metis Settlements General Council and local Settlement Councils concerning interests in Settlements lands. To this end, the Metis Settlements General Council passed a policy, called the Metis Settlements General Council Land Policy, [Policy GC-P9201], setting out different types of land interests as well as rules for obtaining, upgrading, transferring, or sometimes losing those interests.

Of interest to this Panel are the rules set out for granting interests in Settlement held land.

In this regard, Part 4 of the Land Policy provides “guidelines for fair and orderly procedures when granting new interests in Settlement held land.” Given that the granting of Metis Title to Archie Collins did not involve the upgrading of Provisional Metis Title or allotment interests, the Peavine Metis Settlement Council was duty-bound to provide public notice of the availability of the interest and the application requirements. This duty is set out in sections 4.2 and 4.3 of the Land Policy, which are set out below for ease of reference:

#### **4.2 Making Settlement held land available**

The Settlement Council can decide, in accordance with this Policy and Settlement by-laws:

- (a) what parcels of Settlement held land should be made available for use or development;
- (b) the purposes for which they should be made available; and
- (c) the type of interest that should be granted or transferred to enable the desired use or development.

**4.3 Notice of available land**

- (1) If the Settlement Council decides that an interest in Settlement held land should be made available, it must provide at least 14 days public notice of the availability of the interest and the application requirements.
- (2) The notice must state, for each parcel in which an interest is to be made available:
  - (a) the legal description of the parcel;
  - (b) the interest being offered, including any conditions or limitations on the interest;
  - (c) the purpose for which the interest is being made available;
  - (d) the deadline for submitting an application;
  - (e) the persons who are eligible to apply for the interest; and
  - (f) any special conditions that must be met as part of the application.

These sections are in the Land Policy to ensure fair and orderly transfers of land interests. The failure to give public notice of the available interest is a critical breach of the rules and makes the grant of Metis Title in the NW-10-79-16-5 to the Respondent improper and unfair. In these circumstances, this Panel believes it appropriate to apply its remedial powers under section 190(1)(l) of the *Metis Settlements Act* [R.S.A. 2004] to reverse the Settlement Council's decision to grant Archie Collins Metis Title in the NW-10-79-16-5.

For clarity, this Panel has not made a finding on whether it is appropriate for the Respondent to ultimately be granted an interest in the land. Our finding simply stands for the principle that the rules and processes for granting interests in the land as set out in the Land Policy should be followed. The Respondent, along with the Appellant, may apply for the land—along with anyone else who may meet the applicable conditions—if and when it is posted by Peavine Settlement Council.

**1.5 Decision**

The Appellant's appeal is granted. Accordingly, the Registrar for the Metis Settlements Land Registry and parties to this matter are hereby notified that the grant of Metis Title in the NW-10-79-16-5 to the Respondent Archie Collins by Peavine Metis Settlement Council is reversed.

Dated in the City of Edmonton in the Province of Alberta on the 27<sup>th</sup> day of June 2008.

A handwritten signature in cursive script, appearing to read 'Allan Lamouche', written over a horizontal line.

Allan Lamouche, Panel Chair