

Before:

Metis Settlements Appeal Tribunal
Land Panel

Between:

Glenna Cunningham
Georgina Cunningham
Albert Cunningham Jr., Appellants

-and-

Peavine Metis Settlement, Respondent

Concerning:

Applications for Metis Title

Hearing Date:

May 15, 2008

Decision Date:

June 27, 2008

D e c i s i o n

Land Panel Members

Stan Delorme, Panel Chair
Dorothy Anderson, Panel Member
John Brosseau, Panel Member

Parties present at the hearing

Glenna Cunningham, Appellant
Georgina Cunningham, Appellant
Albert Cunningham Jr., Appellant
Dennis 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
Claude Cunningham, Land & Membership Coordinator, Peavine Metis Settlement
Lisa Chartrand, Registrar, Metis Settlements Land Registry

MSAT staff present at hearing

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

Place and date of the hearing

High Prairie, Alberta
May 15, 2008

Issue/relief - what the parties want

1. *Acquiring Metis Title from the Settlement - compensation relating to oil and gas activity.* The Appellants, Glenna Cunningham, Georgina Cunningham and Albert Cunningham Jr. requested the Tribunal to approve their respective applications for Metis Title in lands each of them held by Provisional Metis Title. The Appellants also wish to receive compensation for oil and gas activity that would have been paid them had Council approved their applications for Metis Title when submitted. (The Appellants agreed to have their matters heard and decided as one because their issues and fact patterns are similar).

1. Acquiring Metis Title - Compensation

1.1 Applicable legislation – jurisdiction and decision-making criteria

This matter was effectively brought before the Appeal Tribunal as a reference. Both the Appellants and Respondent openly requested the Tribunal to clarify what interests were held by the Appellant, and the effective date of those interests. Accordingly, this Land Panel is assuming authority under section 8.2 of the Metis Settlements General Council Land Policy [Policy GC-P9201], which reads as follows:

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. [A footnote to section 8.2 reads that section 189 of the Act sets out the conditions under which a dispute or reference can be made to the Appeal Tribunal].

The relevant part of section 189(1) of the *Metis Settlements Act* (the Act) [R.S.A. 2004] is set out below:

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.

For clarity, section 8.2 of the Policy clearly sets out a key appeal function of the Tribunal—which is to hear references and settle questions of interests in Settlement lands—while section 189(1)(b) of the Act calls on the Tribunal to fulfill all appeal functions named in General Council Policies.

1.2 Evidence before the Panel

The Appellants testified that they applied to have their respective Provisional Metis Title (PMT) interests upgraded to full Metis Title, but that no decisions were made with respect to their

applications. They testified that they met the conditions for acquiring Metis Title (these conditions are set out later in this decision).

Glenna and Albert added that their original PMT interests were deemed expired by the Metis Settlements Land Registry as they waited for Council to process their applications for Metis Title.

The Appellants also indicated that they wish to receive compensation for oil and gas activity on lands for the period their interests were intact.

The Respondent Peavine Metis Settlement was ably represented by its Administrator, Dale LeClair. Through him, the Respondent made it clear that it wished the Tribunal to determine the question of the Appellants' land interests. At the hearing, the Respondent concurred with the Appellants that they had met the conditions for acquiring Metis Title. The Respondent also agreed with the Appellants that if the Tribunal rules that their applications for Metis Title be granted effective from the dates of application, compensation should follow along the lines it would have had there been no interruption in their respective land holdings.

On this last point, the Respondent testified that there were problems in management, which resulted in a number of applications for Metis Title not being heard by Council, including these applications. In the Respondent's opinion, while Council's ability to correct these alleged oversights is limited, the Tribunal enjoys corrective powers under the Act that the Respondent would follow with if so ordered.

1.3 Findings of Fact

- Glenna Cunningham applied on February 15, 2002 to upgrade her PMT interest in NE-25-79-16-5 to Metis Title.
- Settlement Council was not made aware of Glenna Cunningham's application for Metis Title.
- Georgina Cunningham applied on May 28, 2003 to convert her PMT interest in SW-36-79-16-5 to Metis Title.
- Settlement Council was not made aware of Georgina Cunningham's application for Metis Title.
- Albert Cunningham Jr. applied to upgrade his PMT interest in NW-29-79-16-5 to Metis Title before the recorded expiry date of May 6, 2001.
- Settlement Council was not made aware of Albert Cunningham Jr.'s application for Metis Title.
- The conditions for acquiring Metis Title are set out in section 5.2 of the Metis Settlements General Council Land Policy [GC-P9201] and include the following:

5.2 Acquiring Metis title from the Settlement

(2) The Settlement Council must approve the transfer of Metis Title to the applicant if:

- (a) the applicant is a member who is living in the Settlement area;

- (b) the applicant has no overdue debts owed to the Settlement;
 - (c) the applicant would, if the Metis Title were transferred, not exceed the land holding limits;
 - (d) the applicant is living on the land or operating a business, farm or ranch on it; and
 - (e) the land has been improved
 - (i) by constructing a house or permanent business buildings on it, or
 - (ii) by fencing, clearing, cultivating, or otherwise working a significant part of the land to enhance its productive capacity.
- The Appellants and Respondent Settlement Council affirmed that the conditions for acquiring Metis Title were met.

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 Land Policy, [Policy GC-P9201], came into effect on June 28, 1992, which set out different types of land interests as well as rules for acquiring, transferring, or sometimes losing those interests.

Of interest to this Panel are the rules set out for acquiring Metis Title and whether the facts support the Appellants' claims for Metis Title.

As set out above, the conditions for acquiring Metis Title are set out in section 5.2 of the Land Policy. In short order, applicants must prove their membership, residency in the Settlement area, that they don't owe any debts to the Settlement, and that they will not exceed the land holding limits set out in the Land Policy. They must also show that they are either living on the land or operating a business, farm or ranch on it, and that the land has been improved.

According to the Appellants—and as supported by the Respondent Settlement Council and Metis Settlements Land Registry documents contained in the information kits compiled and used at the hearing—the conditions set out in section 5.2 of the Land Policy were met. Given the consistency of the evidence before us, (Appellant's testimony, confirmation by Respondent, and supporting documents from the Land Registry), this Panel is satisfied that the conditions for acquiring Metis Title were met by each Appellant.

As further set out in section 5.2 of the Land Policy, when the conditions for acquiring Metis Title are met, Settlement Council must approve the transfer of Metis Title. Given that the Tribunal is applying its remedial powers under section 190 of the Act to make decisions that Settlement Council could have made, the Tribunal accepts that it is bound by the Land Policy to grant Metis Title to the Appellants.

The Panel is also of the opinion that the transfer of Metis Titles should be made effective from the dates set out in the Appellants' application forms, and prior to the expiry dates of their PMT

interests. Finally, the Panel is of the opinion that compensation from oil and gas activity that would have normally flowed to the Appellants had their applications for Metis Title been processed when originally submitted be restored by the Peavine Metis Settlement.

1.5 Decision


The Appellants' appeals are granted.

- Glenna Cunningham's application for Metis Title in NE-25-79-16-5 is approved effective February 15, 2002;
- Georgina Cunningham's application for Metis Title in SW-36-79-16-5 is approved effective May 28, 2003; and
- Albert Cunningham Jr.'s application for Metis Title in NW-25-79-16-5 is approved effective May 5, 2001.

The Registrar of the Metis Settlements Land Registry is directed to register the Metis Titles interests as set out above, and to correct any discrepancies in interest (i.e. correct any recorded of expiry of interests) that may have been entered on title.

Finally, Peavine Settlement Council is directed to pay out compensation to the Appellants for oil and gas activity on the said lands, which would have properly been paid if their respective applications for Metis Title were processed in a timely manner. If the parties cannot agree as to the amount of compensation to be paid, any one of them may apply to the Tribunal within six months of today's decision date to determine the amount to be paid.

Dated in the City of Edmonton in the Province of Alberta on this 27th day of June 2008.



Stan Delorme, Panel Chair