

Before:

Metis Settlements Appeal Tribunal

Between:

Lisa Michelle Calliou, Clifford Calliou,
and
Brian Taylor

-and-

Metis Settlements General Council, Fishing Lake Metis Settlement,
Canadian Natural Resources Limited, Conoco Canada Resources Limited,
and
Husky Oil Operations Limited

Concerning:

Compensation Payable in Respect of
Right of Entry Order Nos. E31/79, E871/79 and E417/81

Hearing Date & Place:

April 24, 2008, Fishing Lake Metis Settlement, Alberta

Decision Date:

July 25, 2008

MSAT
Decision

Land Access Panel Members

Allan Lamouche, Panel Chair
Don Cunningham, Panel Member
Violet Haggerty, Panel Member

Parties present at the hearing

Clifford Calliou, Appellant
Lisa M. Calliou, Appellant
Brian Taylor, Appellant
Janice Agrios, Counsel for Fishing Lake Metis Settlement
Ross Daniels, Councillor for Fishing Lake Metis Settlement
Arlene Calliou, Director of Natural Resources for Fishing Lake Metis Settlement
Howard Sniderman, Counsel for Metis Settlements General Council
Peggy McGillis, Advocate for Jenna Crevier
Jenna Crevier, Affected Party

MSAT staff present at hearing

Harold Robinson, Tribunal Secretary
Karen Mustus, Oil and Gas Officer
Janet Hutchison, Counsel for the Metis Settlements Appeal Tribunal
Lori Gerrits, Court Reporter

Place and date of the hearing

Fishing Lake Metis Settlement, Alberta
April 24, 2008, 10:00 a.m.

Issues/relief - what the parties want

1. *Distribution of compensation* - The Appellants, Clifford Calliou, Lisa Michelle Calliou, and Brian Taylor, want more of the incoming compensation for Right of Entry Orders (REOs) E31/79, E871/79 and E417/81.
2. *Change of existing mineral lease holder* – The Respondent Canadian Natural Resources Limited wants REO E31/79 changed to reflect that it is the existing mineral lease holder.

These issues will be dealt with in the order outlined above.

1. Distribution of compensation

1.1 Applicable legislation – jurisdiction and decision-making criteria

This matter deals with new occupants and payment of compensation to those occupants. Accordingly, this Land Access Panel assumed jurisdiction to decide this matter under section 119 of the *Metis Settlements Act* [R.S.A. 2004]. Section 119 reads as follows:

119 The Land Access Panel may, without a hearing, amend a compensation order or right of entry order, regardless of who made it, with respect to a person named in it

- (a) when the Panel is satisfied that there has been a change of existing mineral lease holder or operator, or
- (b) when the Panel is satisfied that there has been a change of occupant and compensation should properly be paid to a new occupant.

1.2 Evidence before the Panel

Clifford Calliou

Clifford Calliou said he was working in Paddle Prairie when the lease agreement was executed and roads were built on SE-35-057-01-4.

In response to a question from the Panel about the \$3,950.51 payment in 1995, Clifford confirmed he signed an agreement to accept that amount till 1995.

He is not challenging any bylaws, except to say bylaws cannot be applied retroactively. He confirmed he gave two quarter sections of land affected by an access road to his son, Brian Taylor.

Lisa Michelle Calliou

Lisa Calliou said she inherited the SW-28-057-01-4 from her grandfather. She moved back to the Settlement in 1996 and the land was transferred to her in 1996 or 1997. She initially held an Allotment and when she renewed her land in 2005 she applied for and was approved for a Provisional Metis Title. Her grandmother was the Land Trustee and Lisa indicated she was not sure whether her grandmother received any compensation. Lisa indicated Husky has been

paying her directly. If CNRL and Conoco paid to the Settlement, it was not dispersed to her. She is not sure if she is entitled to compensation.

Brian Taylor

Brian Taylor testified his Dad gave him the SW-34-57-01-4 and NW-34-57-01-4. He said he has only received one payment of \$1,200.00 since taking ownership of the lands.

Brian Taylor also said he does not agree with the Settlement's calculation of the length of the road. According to his calculations, which he based on the area he claims the road takes up, the length should be calculated at 1.1 kms, not 0.2 km.

Fishing Lake Metis Settlement Council (FLMS)

FLMS was represented by legal counsel, Janice Agrios. At the hearing, she distributed and commented on a document titled *MSAT Hearing Memo*. The *Memo* set out the Settlement's position in relation to compensation payable to Clifford Calliou, Brian Taylor, and Lisa Calliou. In presenting the subject matter of the *Memo*, however, Ms. Agrios indicated there were a number of calculation errors, which she spoke to orally. She also committed to supplying the Panel and parties to the hearing with a *Revised Memo* confirming the corrections for everyone's review.

The *Revised Memo* was received by MSAT on May 14, 2008. MSAT forwarded the *Revised Memo* to all parties on May 26, 2008 with a deadline of June 9, 2008 to provide MSAT with any concerns in writing that they may have with the *Revised Memo*.¹

The Settlement's position, as outlined at the hearing and affirmed in writing on May 14, 2008, is as follows:

- Fishing Lake Metis Settlement has had bylaws in place since 1994 setting out rules for the distribution of compensation between the Settlement and members.
- As set out in the latest version, *FLMS in the Province of Alberta Surface Rights Compensation to Members Bylaw 2000-0116* the relevant parts of the Bylaw reads as follows:

Distribution of Compensation

3(1) If, there is no Occupant on lands affected by an Agreement or Right of Entry Order, then the Settlement is entitled to 100% of the compensation payable pursuant to the Agreement or Right of Entry Order.

(2) If an occupant acquires lands affected by an Existing or pending Agreement or Right of Entry Order, then the Occupant is not entitled to any of the Compensation payable pursuant to the Agreement or Right of Entry Order, except in the case of the following:

- (a) an estate, then any compensation payable will be payable to the heir in accordance with section 3.4 [sic], and

¹ MSAT did not receive any correspondence from any of the parties raising concerns with the *Revised Memo*.

(b) a transfer within family, then any compensation payable will be payable to the transferee in accordance with section 3.4 [sic].

(3) A Settlement Member who does not reside in the Settlement area is not entitled to any compensation payable pursuant to an Agreement or Right of Entry Order as set out in the Leave of Absence Bylaw No. FLMS 970099.

(4) Compensation payable by an Operator, including accrued interest, is allocated by the Settlement Council to the Occupant as follows:

(a) the Occupant receives 80% of the initial payment;

(b) the Occupant receives 20% of the annual payment, and

(c) the Occupant receives 50% of any arrears paid in respect of past special damages or access or pursuant to a pre-existing Agreement or Right of Entry Order;

(d) the Occupant receives 50% of any increase in annual payments pursuant to a pre-existing Agreement or Right of Entry Order.

- Counsel for FLMS said that if the Bylaw was properly applied, compensation should be distributed as follows:

(a) Clifford Calliou

REOs E31/79 and E871/79 – Clifford Calliou became an occupant *after* the REOs were executed. According to section 3(1) of *FLMS in the Province of Alberta Surface Rights Compensation to Members Bylaw 2000-0116*, he is not entitled to any compensation. However, FLMS will not seek repayment of any compensation “wrongly” paid to Clifford Calliou in the past.

(b) Lisa Michelle Calliou

REO E31/79 – Lisa Michelle Calliou became an occupant through an estate interest that preceded REO E31/79. As adjusted against payments already made totalling \$377.60, FLMS calculates the outstanding arrears owing to Lisa Michelle Calliou to be \$907.15 as of May 2008.

REO E417/81 – Lisa Michelle Calliou became an occupant through an estate interest that preceded the REO E417/81. As adjusted against a payment already made totalling \$1,212.50 on May 5, 2005, FLMS calculates the outstanding arrears owing to Lisa Michelle Calliou to be \$970.00 as of May 2008.

(c) Brian Taylor

REO E417/81 – Brian Taylor became an occupant through a transfer within family of a land interest that preceded REO E417/81. As adjusted against

payments already made totalling \$1,320.00, FLMS calculates the outstanding arrears owing to Brian Taylor to be \$120.00 as of May 2008.

Other relevant evidence before the Tribunal (hearing kit)

- Right of Entry Order E31/79 was granted for a well site (Legal Subdivision 7-35-57-1-4) and a roadway on July 11, 1979. Compensation Order E231/81 applies to this REO.
- Right of Entry Order E871/79 was granted for a well site (Legal Subdivision 12-27-58-1-4) and a roadway on July 31, 1979. Compensation Order E944/81 applies to this REO.
- On March 4, 1981, Right of Entry Order E417/81 was granted for a well site (Legal Subdivision 9-4-58-1-4) and a roadway on March 4, 1981. Compensation Order E2693/84 applies to this REO.
- The hearing kit contained printouts of Metis Settlements Land Registry documents showing the types of land interests held by the Appellants and when those interests took effect.

1.3 Findings of Fact

- The Appellants did not challenge the *FLMS in the Province of Alberta Surface Rights Compensation to Members Bylaw 2000-0116* concerning the distribution of compensation received in relation to oil and gas projects.
- The Metis Settlements Land Registry contains reliable recordings setting out the types of land interests held by the Appellants and the dates those interests took effect. The following recordings are relevant:

Clifford Calliou

Right of Entry Orders E31/79 and E871/79 – Clifford Calliou obtained interests in the affected parcel on January 19, 1981 after Right of Entry Orders E31/79 and E871/79 were issued.

Lisa Michelle Calliou

Right of Entry Order E31/79 – Original land interest held by Thomas Calliou, who was Lisa Michelle's grandfather. The record shows that he received his interest on April 20, 1964, before Right of Entry Order E31/79 was issued.

Right of Entry Order E871/79 - Original land interest held by Thomas Calliou, who was Lisa Michelle's grandfather. The record shows that he received his interest on April 20, 1964, before Right of Entry Order E871/79 was issued.

Right of Entry Order E417/81 – Original land interest held by Thomas Calliou, who was Lisa Michelle's grandfather. The record shows that he received his interest on April 20, 1964, before Right of Entry Order E417/81 was issued.

Brian Taylor

Right of Entry Order E417/81 – Original land interest held by Clifford Calliou, who is Brian Taylor’s father. The record shows that Clifford Calliou received his interest on January 19, 1981, before Right of Entry Order E417/81 was issued.

- Fishing Lake Metis Settlement paid compensation to the Appellants in the amounts indicated in its submission.

1.4 Analysis / Reasons

The Government of Alberta and the Metis Settlements of Alberta agreed in 1989 through the *Alberta-Metis Settlements Accord* (the Accord), that the Metis 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 Appeal Tribunal considers Metis culture and identity when resolving disputes and 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 Panel’s view, when laws are made by the Metis Settlements General Council or Settlement Councils, they should be followed.² To find otherwise would be to undermine the principles of respect, consistency, and fairness envisioned under the Accord self-governance framework.

In the case at hand, the question before us is how *FLMS Surface Rights Compensation to Members Bylaw 2000-0116* affects compensation payments to the Appellants. The rules set out in the Bylaw, compensation is distributed to a member only if that occupant can demonstrate that he or she became an occupant (i.e. held a registered interest or was in actual possession of the land) before a surface agreement, or Right of Entry Order, was being negotiated or put into place. There are two exceptions to this rule.

The first involves the receipt of an interest in land through an estate/will where the original interest came before the surface agreement or Right of Entry Order. The second exception to the rule involves the transfer of a pre-existing interest between family members.

Interestingly, each component of the central rule and exceptions come into play in this matter.

The circumstances of Clifford Calliou’s land interests attract the central part of the rule. He received his land interests for the parcels from the Settlement *after* REOs E31/79 and E871/79 were negotiated and put into place. Since he did not receive his land interests through an estate

² An exception to this principle may occur when it is shown that a law was not passed properly, or that the law conflicts with a “higher” law. No such challenges were made in this case.

or a transfer from a family member, the Bylaw excludes him from receiving any further compensation in relation to these REOs and attendant Compensation Orders.

We do note and accept, that the FLMS is not seeking any return from Clifford Calliou of monies that have already mistakenly been paid to him. To insist on repayment would be a harsh application of the rule in circumstances where FLMS has never indicated to the Appellant that repayment might be pursued.

With respect to Lisa Michelle Calliou's circumstances, her land interests came to her through her grandfather's estate. As determined in our findings of fact, her grandfather's land interests preceded REOs E31/79, E871/79, and E417/81, which meets the requirements for first exception set out in the Bylaw. Accordingly, Lisa Michelle Calliou is entitled to compensation so long as the REOs remain in effect.

With respect to the third Appellant, Brian Taylor received his land through a transfer within family from his father, Clifford Calliou. As determined in our findings of fact, Clifford Calliou's interest in SW-34-57-1-4 preceded REO E417/81, which meets the requirements for the second exception set out in the Bylaw. Accordingly, Brian Taylor is entitled to compensation.

What remains in question is how much compensation is owed to Brian Taylor? The answer to this question turns on determining the length of road on his land. Mr. Taylor believes the calculation should be based on the area taken up by the road, for a total of 1.1 kilometres.

While at the hearing, Counsel for FLMS looked at the usage map for Mr. Taylor's land suggested that the length remain at 0.2 kilometres.

This Panel is accustomed to compensation formulas that base payment on length (as opposed to area) times an agreed-to rate-of-pay. To the extent that total area is factored in, it tends to come in as part of the negotiations over rate-of-pay. For example, the wider the road, the greater the rate-of-pay. Not hearing a good reason to change our approach, we remain predisposed to applying the same technique that Counsel for FLMS applied in determining the length of road. In doing so, however, our careful examination of the survey plan attached to and forming part of Right of Entry Order E417/81 indicates that the road's length is 0.53 kilometres long.

1.5 Decision

- Clifford Calliou received his land interests after REOs E31/79 and E871/79 were negotiated and executed. As applied on a go-forward basis from today's decision date, the *FLMS Surface Rights Compensation to Members Bylaw 2000-0116* acts to exclude Clifford Calliou from receiving any further compensation under REOs E31/79 and E871/79 and their corresponding compensation orders.
- Lisa Michelle Calliou is entitled to compensation because she meets exception 3(2)(a) (estate transfer of pre-existing land interest) of the *Compensation Bylaw 2000-0116*.
- Brian Taylor is entitled to compensation because he meets exception 3(2)(b) (family transfer of pre-existing land interest) set out in the *Compensation Bylaw 2000-0116*.

1.6 Order

1) Right of Entry Order E31/79 and Compensation Order E231/81 be and are hereby amended as to the style of cause by striking out the words “Her Majesty the Queen in Right of Alberta as Represented by the Minister of Municipal Affairs, Fishing Lake Metis Settlement Association No. 10, Clayton Trottier, Thomas Calliou and Sputinow Community Pasture Association” and by substituting the words “Metis Settlements General Council, Settlement Council for Fishing Lake Metis Settlement, Clifford Calliou, Lisa Michelle Calliou, and Brian Taylor” as Occupants therein;

2) Compensation Order E231/79 be further amended by striking out the compensation provisions and by substituting the following:

a) As of November 1, 2008 and so long as the said Order E31/79 is in effect until terminated or otherwise amended, for each year or portion thereof, the sum of \$3,975.00 to be paid on or before November 1 of each year thereafter is payable as follows:

i)	Fishing Lake Metis Settlement	\$ 3,832.25
ii)	Lisa Michelle Calliou	142.75*

* $\$236.00$ (New rate of compensation $0.8 \text{ km} \times \$295.00/\text{km}$) - $\$49.50$ (old rate of compensation) = $\$186.50 \times 50\% = \93.25
 $\$93.25 + \$49.50 = \$142.75$

3) Compensation Order E2693/83 is further amended by striking out the compensation provisions and by substituting the following:

a) As of November 1, 2008 and so long as the said Order E417/81 is in effect until terminated or otherwise amended, for each year or portion thereof, the sum of \$2,762.50 ($8.5 \text{ km} \times \325.00 (well site and portion of access road terminated), to be paid on November 1 of each year thereafter payable as follows:

i)	Fishing Lake Metis Settlement	\$2,373.88
ii)	Lisa Michelle Calliou	242.50*
iii)	Brian Taylor	146.12**

* $\$260.00$ (New rate of compensation $0.8 \text{ km} \times \$325.00/\text{km}$) - $\$236.00$ (old rate of compensation) = $\$24.00 \times 50\% = \12.00
 $\$12.00 + \$230.50 = \$242.50$

** $\$172.25$ (New rate of compensation $0.53 \text{ km} \times \$325.00/\text{km}$) - $\$120.00$ (old rate of compensation) = $\$52.25 \times 50\% = \26.12
 $\$26.12 + \$120.00 = \$146.12$

2. Change of Existing Mineral Lease Holder

2.1 Applicable legislation – jurisdiction and decision-making criteria

The Respondent Canadian Natural Resources Limited (CNRL) wants Right of Entry Order E31/79 changed to reflect that it is the existing mineral lease holder. Section 119 of the Act, which has already been set out above, gives this Land Access Panel the authority to make this change providing it is satisfied there is good reason to do so.

2.2 Evidence before the Panel

CNRL provided MSAT with documentation indicating that a change of existing mineral lease holder took place in 1994.

2.3 Findings of Fact

- CNRL has paid the annual compensation under this Order since 1994.

2.4 Analysis / Reasons

Taking into consideration the documentation provided in the hearing kit and FLMS not disputing that CNRL holds the interest, we are therefore satisfied that a change of existing mineral lease holder has taken place.

2.5 Decision

The application to amend Right of Entry Order E31/79 and Compensation Order E231/81 is granted.

2.6 Order

- 1) Right of Entry Order E31/79 and Compensation Order E231/81 be and are hereby amended as to the style of cause by striking out the words “Suncor Inc.” and by substituting the words “Canadian Natural Resources Limited” as Existing Mineral Lease Holder therein.

Dated in the City of Edmonton in the Province
of Alberta on the 25th day of July, 2008.



Allan Lamouche, Panel Chair