

Before:

Metis Settlements Appeal Tribunal

Between:

Ed Parenteau

-and-

Tom Parenteau and Leo Parenteau

-and-

Paddle Prairie Metis Settlement, Ernestine Risdale,
Ambrose Parenteau, Susie Parenteau Fischer

Concerning:

Land Dispute – transfer of estate property

Hearing Date & Place:

August 12, 2008 at Paddle Prairie Metis Settlement, Alberta

Decision Date:

September 29, 2008

MSAT

Decision

Land Access Panel Members

Don Cunningham, Panel Chair
Violet Haggerty, Panel Member
John Brosseau, Panel Member

Parties present at the hearing

Ed Parenteau, Appellant
Tom Parenteau, Respondent
Leo Parenteau, Respondent
Paddle Prairie Metis Settlement

- Greg Calliou, Chair
- Dion Lizotte, Councillor
- Leslie House, Councillor
- Reta Nooskey, Land & Membership Clerk
- Everett Lambert, Resource Coordinator

Joyce Parenteau, Member
Margaret Parenteau, Member
Gladys Parenteau, Member
Susie Parenteau Fischer, Member

MSAT staff present at hearing

Harold Robinson, Tribunal Secretary
Russell Teed, Dispute Resolution Officer

Place and date of the hearing

Paddle Prairie Metis Settlement, Alberta
August 12, 2008, 1:00 p.m.

Issue/relief - what the parties want

1. *Land dispute – transfer of estate property*: Ed Parenteau wants the Tribunal to overturn the Land Trustee's (Tom Parenteau's) grant of the land (10.3 acres, Plan 900447 Block 1, Lot 1 at SW-29-103-21-5) and improvement (house) to Leo Parenteau.

1. Land dispute – transfer of estate property

1.1 Applicable legislation – jurisdiction and decision-making criteria

The Metis Settlements General Council Land Policy [GC-P9201] creates a basic system of interests in Metis Settlement lands and principles governing how those interests can be gained, lost, or transferred. It also sets out criteria to resolve disputes relating to the acquisition, loss or transfer of land interests.

Section 8.2 of the Land Policy provides that any question or dispute as to the ownership or extent of an interest in land may be referred to the Appeal Tribunal. This section is to be read along with section 189 of the *Metis Settlements Act* [S.A. 2004], which sets out the conditions under which the Tribunal can properly assume authority over a land dispute. Of these conditions, one allows the Tribunal to assume authority where all the parties (disputants) agree in writing to the Tribunal resolving the matter.

In this regard, our records contain letters from the disputants (Ed Parenteau and Leo Parenteau, as well as the Paddle Prairie Metis Settlement) calling on the Tribunal to resolve the land dispute. In this Panel's view, the disputants' request in writing for the Tribunal to resolve the land dispute now before us satisfies the section 189 condition, and this Panel can properly assume authority over this matter.

This Panel also takes notice of section 7.12 of the Land Policy in so far as it relates to the Tribunal's authority to resolve disputes involving estates. In effect, section 7.12 of the Land Policy requires that the Land Trustee apply to Settlement Council when estate instructions are missing or are unclear, and that Settlement Council then refer the matter to the Appeal Tribunal. Upon reviewing the record for this matter in relation to the jurisdictional requirements, this Panel is satisfied that the Land Trustee applied to the Settlement Council for direction and that Settlement Council subsequently referred the matter to the Appeal Tribunal for decision.

1.2 Evidence before this Panel

The parties named below came to the hearing and spoke to this Panel about the history of this matter, their involvement, and how they wish to have the matter resolved. Certain information from the hearing package was also raised and reviewed by this Panel during the hearing.

Evidence of Ed Parenteau

- Ed Parenteau said that he lived in Robert Parenteau's house, and has lived in it for the last three and a half years.
- Ed Parenteau also said that he no longer had two quarters of land on the Settlement, because he has given one to his son.

Evidence of Tom Parenteau (Land Trustee)

- Tom Parenteau identified himself as the Land Trustee of Robert Parenteau's estate. He said he told Ed Parenteau that he could stay in the house so it would not be left unattended.
- Tom Parenteau also said that Ed's daughter "Pearl" had moved into the house and Ed moved out. According to Tom Parenteau, when Pearl left the house, Ed moved back in.
- Tom Parenteau said that he proceeded to have the land subdivided while Ed was living in it with the intent of giving the land to Leo Parenteau, because Leo did not have any land on the Settlement.
- Tom Parenteau also stated that he made it clear to Ed that if he wanted to have the house, he would have to move it off the land in question (10.3 acres, Plan 900447 Block 1, Lot 1 at SW-29-103-21-5).

Evidence presented by the Settlement Council

- Settlement Council asserted that they own the house. They said that they do not allow persons to sell houses. According to Council, members can only sell the improvements they have made.
- They also told this Panel that Leo Parenteau already has a [different] house on the Settlement.
- Additionally, they said that while money has been set aside in the Paddle Prairie budget to move the house if necessary, they would rather not have to spend money to move the house from Block 1, Lot 1 at SW-29-103-21-5 to another location.

Evidence presented by Leo Parenteau

- He lives in a house on the Settlement but does not have title to the land on which the house is located.

Extracts from the hearing package

- Paddle Prairie Metis Settlement Council resolution number 088/06 (dated May 29, 2006) to approve the subdivision and land transfer between Tom Parenteau and Leo Parenteau on the SW-29-103-21-W5 (10 acres) [*sic*].
- Paddle Prairie Metis Settlement Council resolution number 107/06 (dated June 26/06) to approve the May 29/06 minutes with the correction to exclude 10 acres on Resolution 088/06.
- A letter from Paddle Prairie Metis Settlement Administration reads that "Council may register an objection to the transfer if they feel it goes against the General Council Land Policy or any local land use or management bylaws or policies"
- Paddle Prairie Metis Settlement Council minutes for September 10, 2007, read that "Council has objected to transfer of land SW-28-103-21W5M 900447-01-01 between Tom Parenteau

and Leo Parenteau until such time as the issue of the house is resolved. All parties should be in attendance at the meeting.”

- Ernestine Risdale, Ambrose Parenteau and Susie Parenteau Fischer, siblings of the late Robert Parenteau, gave letters to Tom Parenteau between August 9 and 11, 2007 asking that the 10 acres—plus improvements—go to Leo Parenteau.
- Metis Settlement Land Registry (MSLR) records show that Leo Parenteau is the Metis Title holder of the land legally described as 900447-01-01 (a 10.23 acre lot). This interest was registered on October 2, 2007.
- The rules for the Settlement Housing Program were discussed at the hearing and made available for this Panel’s review.

1.3 Findings of Fact

The following findings are based on this Panel’s assessment of what is relevant, true (on the balance of probabilities) and reliable.

- Tom Parenteau was named in MSAT Order 165 dated October 3, 2005 as the Land Trustee for Robert Parenteau’s estate lands described as SW-29-103-21-W5M and SE-29-103-21-W5M.
- MSLR records indicate that Tom Parenteau was registered as Land Trustee—and as the Metis Title holder of Plan 900447-01-01 (a 10.23 acre lot)—as of October 6, 2005.
- MSLR records currently indicate Leo Parenteau is the Metis Title holder of the land legally described as 900447-01-01 (a 10.23 acre lot). His interest was registered October 2, 2007.
- On December 10, 2007, Ed Parenteau appealed to MSAT for the transfer of the 10.23 acres.
- On May 13, 2008, MSAT received a letter from Paddle Prairie Metis Settlement Chair, Greg Calliou, asking that the Tom Parenteau and Ed Parenteau matter be reheard.
- On June 16, 2008, MSAT received a submission from Paddle Prairie Metis Settlement.
- On June 17, 2008, MSAT received a submission from Leo Parenteau.
- On June 26, 2008, MSAT received a submission from Leo Parenteau.
- No evidence was presented to demonstrate that Settlement Council’s objections were based on either General Council Land Policy, or the Settlement Housing Program.
- Ernestine Risdale, Ambrose Parenteau and Susie Parenteau Fischer, siblings of the late Robert Parenteau, gave letters to Tom Parenteau between August 9 and 11, 2007 asking that the 10 acres—plus improvements—go to Leo Parenteau.

1.4 Analysis / Reasons

The Appellant, Ed Parenteau, wants to overturn the Land Trustee's decision to grant Leo Parenteau the land—and, in effect, the house—located on 10.3 acres on Block 1, Lot 1 at SW-29-103-21-5 (Plan 900447).

In this Panel's opinion, once an interest has been registered in the MSLR, it is right and proper to apply the principle of "regularity" to the interest. Meaning, the registered interest is to be deemed as properly made and binding unless the Appellant can show that the Land Trustee did not follow the Land Policy or other legislated rules for assuming responsibility over estate property, and awarding that property.

In this regard, the Appellant did not bring this Panel's attention to any of the rules or any breaches for assuming responsibility over estate property or for awarding that property. Rather, he simply pointed out his usage and need for the property.

The Appellant's failure to identify the applicable rules, or breaches of those rules—even in lay terms—means that this Panel cannot find in his favour. However, before making a final decision on the matter, this Panel will first consider the submissions of Settlement Council, which was named as a party in this matter.

In this regard, it was intimated by Council at the hearing that the Land Trustee could not grant the house to anybody without first securing Council's permission, because [most] houses on the Settlement are owned by the Settlement, and not the members. In the Council's mind, all that members "own" are the improvements they make to the property. To bolster this position, Settlement Council drew this Panel's attention to section 13 of the *Settlement Housing Program*, which reads that "If a member is selling their interest in a unit received under the Settlement Housing Program, the Settlement has the first option to purchase the interest."

Unfortunately, the Settlement Council did not provide any further clarification as to what constitutes the "interest" over which the Settlement has the first right of purchase. Is the interest only the improvements, or the whole unit/house and underlying land? If it is the former, then the Settlement may indeed hold the underlying interest. However, if it is the latter, then the Settlement is in the untenable position of having the first right to buy back a house and land that it already owns.

In either event, all interests must be registered at the MSLR to be given effect (see section 104 of the *Metis Settlements Act*). In the case at hand, the MSLR shows that the Metis Title interest is held by Leo Parenteau. There does not appear to be any reservations, or limitations on that interest.

Other than the *Settlement Housing Program*, Settlement Council did not bring this Panel's attention to any parts of the Land Policy, or other legislation concerning the granting or holding of interests in Settlement lands.

Though it is not necessary to go any further, this Panel feels it is important to use this opportunity to illuminate those sections of the Land Policy that bind Land Trustees when making decisions about estate property. These include section 7.10(1), which reads as follows:

The Land Trustee holds the deceased's interest only for the purpose of dealing with the land according to the Estate instructions, settlement by-laws, and this policy.

Where there are no estate instructions, or no settlement by-law, the Land Trustee is bound by the Land Policy guiding principals in section 7.13(1)(d), which reads as follows:

If it is not possible to get an agreement from the persons on the heirs list, but, in the opinion of the body making the decision, there is substantial agreement among the adult members of the deceased's family as to what should be done with the interest, that agreement should be followed.

and sub-section 7.13 (2), which reads:

In this section "deceased family" means the adult members of the deceased's immediate family, if there are any, and otherwise the adult members of the deceased's extended family.

The Land Trustee, Tom Parenteau, considered the opinions of the adult members of the deceased's family as required under the Land Policy. In this Panel's opinion, Tom Parenteau carried out his duties as Land Trustee with great care and diligence, and he is to be commended for his efforts with respect to his late brother's estate.

1.5 Decision

Neither the Appellant, nor the Settlement Council, showed that the Land Trustee erred in granting the land (10.3 acres, Plan 900447 Block 1, Lot 1 at SW-29-103-21-5) and attached house to Leo Parenteau. Accordingly, the Appellant's application to overturn the Land Trustee's decision is denied.

Dated in the City of Edmonton in the Province
of Alberta on the 29th day of September, 2008.


Don Cunningham, Panel Chair