

Before:

Metis Settlements Appeal Tribunal

Between:

Lawrence Ladouceur,

Appellant

-and-

Buffalo Lake Metis Settlement,
Alberta Energy Company Ltd., Rocky River Petroleum Ltd.,
and
Alberta-Pacific Forest Industries Inc.,

Respondents

Concerning:

Ownership of a road on SE-21-63-16-4

Hearing Date & Place:

September 3, 2008, Buffalo Lake, Alberta

Decision Date:

October 24, 2008

MSAT
Decision

Land Access Panel Members

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

Parties present at the hearing

Lawrence Ladouceur, Appellant
Glen Auger, Buffalo Lake Metis Settlement (BLMS) Council
Elmer Ghostkeeper, BLMS Council
Margaret Daniels, BLMS Administrator
Deana Auger, BLMS Finance
Dennis Reid, BLMS Public Works
Sandra Cardinal, representative, AlPac Industries Inc.
John Prevost, representative, Rocky River Petroleum Ltd.
Gloria Coles, BLMS member
Dean Howse, BLMS member

MSAT staff present at hearing

Harold Robinson, Tribunal Secretary
Russell Teed, Dispute Resolution Officer

Place and date of the hearing

Buffalo Lake Metis Settlement, Alberta
September 3, 2008

Issues/relief - what the Appellant is asking for

1. *Who “owns” the road that cuts diagonally across the SE-21-63-16-4?* The Appellant is seeking a declaration from this Panel that he owns the road in question.

1. Who owns the road on the SE-21-63-16-4

1.1 Applicable legislation – jurisdiction and decision-making criteria

The Tribunal’s general authority to deal with land disputes is set out in section 8.2 of the Metis Settlements General Council Land Policy (GC-P0201) and section 189(1)(c) of the Metis Settlements Act [R.S.A. 2004]. They read 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. [Also see footnote to section 8.2, immediately below]

[*Section 189 of the [Metis Settlements] Act sets out the conditions under which a dispute or reference can be made to the Appeal Tribunal.]

Responsibilities

189(1) The Appeal Tribunal

- (a) must hear appeals and references and perform any function given to it under this Act or any other enactment;
- ...
- (c) may perform other functions given to it;

The Land Access Panel is responsible for determining access questions and interests in land. Given this responsibility, and the importance of the question at hand, the Panel has elected to perform the function given to it by the Appellant of determining the extent of his interest in the road in question.

1.2 Evidence before the Panel

The Appellant said he purchased a Provisional Metis Title (PMT) interest in the SE-21-63-16-4 from Valerie LaRocque on April 11, 2003. In his opinion, anyone who goes on the road without his permission or a right of entry order is a “trespasser.”

The Appellant argued that a Settlement must first register its interest in a road before it can claim ownership over it. When invited to show the Panel where that requirement [for registration] is found in the *Metis Settlements Act*, or other legislation, the Appellant was unable to do so.

As set out in the Metis Settlements Land Registry report for the SE-21-63-16-4, the recording and expiry dates of the Appellant’s PMT interest are October 11, 2005 and October 31, 2009, respectively. The Appellant blamed the delay in recording his interest on the administration at Buffalo Lake Metis Settlement.

In answer to the question of who would be responsible should an accident occur on the road in question because of faulty maintenance, the Appellant thought that perhaps the oil and gas companies or the Settlement would be responsible. When asked whether he had purchased any insurance to cover such liabilities, he said that he has not purchased any insurance to cover possible accidents on the road, but would look into the matter later on.

The Appellant added that he was okay with his neighbour, Gloria Coles, using the road to access her property, which lies on the other side of his land.

The Respondent, Buffalo Lake Metis Settlement Council, brought several matters to the Panel's attention. Firstly, they said that the road in question has been used as a "traditional pathway" since at least the 1960s as a "short-cut" to get to Kikino, and to "Cardinal's Pasture" in particular. Over the years, the road has been built up from a dirt road to a gravelled road.

Secondly, they asserted that they have care and control over all roads in the Settlement area, unless those roads are provincial highways, or short driveways to a member's house.

Thirdly, they said Mr. Ladouceur's PMT interest only gave him limited interests in the land. In particular, they brought the Panel's attention to that part of the Memorandum of PMT, which reads: "This grant does not give you any rights to non-renewable resources, timber, roadways or the beds and shores of bodies of water or waterways."

For her part, the Appellant's neighbour, Gloria Coles, said that several cars go by her house every day on the road in question.

The representative from Alberta Pacific Ltd. did not give any evidence.

1.3 Findings of Fact

- The Appellant purchased Valerie LaRocque's PMT interest in the SE-21-63-16-4 on April 11, 2003.
- The Metis Settlements Land Registry report for the SE-21-63-16-4 shows recording and expiry dates of the Appellant's PMT interest of October 11, 2005 and October 31, 2009, respectively.
- The Metis Settlements Land Registry plan for SE-21-63-16-4 shows that the road in question runs across the Appellant's land, alongside four pipelines that also appear on the same plan.
- The Memorandum of PMT interest, which is signed by the Appellant on September 7, 2004, reads in section 2 that "this grant [of PMT interest] does not give you [the Appellant] any rights to non-renewable resources, timber, *roadways*, or beds and shores of bodies of water or waterways [*emphasis added*]."

1.4 Analysis / Reasons

In 1989, the Government of Alberta and the Metis Settlements of Alberta passed the *Alberta-Metis Settlements Accord*. This agreement said that the Settlements should be self-governing. This agreement enabled the passage of key provincial statutes, including the *Metis Settlements*

Act, which delegated authority to the Metis Settlements General Council to make laws at the collective level. These laws are called General Council Policies.

One of the first Policies passed at the collective level was the Metis Settlements General Council Land Policy, *Policy GC-9201*. This purpose of this Policy was to provide a basic system of interests in Metis Settlement land, establish the principles governing how those interests can be created and passed from one person to another, and to create a land management system that recognizes and balances the individual rights of the landholder and the collective rights of the Settlement as a Metis community.

It is this Policy—which was included in its entirety in the hearing package—to which the Panel first turns its attention.

Section 2.2 of the Policy creates a *Metis title* interest in all Metis Settlement land. The virtue of Metis title interest, and its derivative PMT interest, is that it can give its holder exclusive right and occupancy over the land. Indeed, it is this apparent right of exclusive use and occupancy upon which the Appellant is claiming “ownership” of the road, or at least the right to keep others from using or “trespassing” on it.

Upon full examination of the Policy, however, there appear to be exceptions and limitations to this apparent right that need to be understood and applied.

In full, section 2.2 of the Policy reads, “This Policy creates a **Metis title** interest in all Metis Settlement land, *except* for roads and the beds and shores of water bodies [*emphasis added*].” A footnote, which is to be considered as forming part of the Policy, reads, “Here ‘roads’ includes existing and future roads.”

To fill this *carve-out* from Metis title interest, the Metis Settlements General Council created a non-transferable “road title” interest. Specifically, section 2.7(1) of the Policy reads, “The Settlement holds a non-transferable **road title** interest in each road over which the Settlement Council has the right of direction, control and management.” A footnote is added that ties the interest directly to the *Metis Settlements Act*. It reads, “The Settlement Council may have direction, control and management of roads under section 109 of the Act.”

Section 109 of the *Metis Settlements Act*—which was also included in the hearing package and discussed at the hearing—reads as follows:

Highways

109 A Settlement has the direction, control and management of highways, roads, streets and lanes within the Settlement area that are not subject to the direction, control and management of the Crown in right of Alberta.

This statutory carve-out of road title interest from Metis title interest means that the basis of the Appellant’s claim—that he enjoys an exclusive right to use and occupy the land as a holder of a PMT interest—cannot be correct. In this Panel’s opinion, to the extent that the PMT interest gives its holder an exclusive right to use and occupy the land (which is in itself subject to other

limitations identified later in this decision), this right does not, and cannot, apply to *road title* interest, which is held by the Settlement.

In our view, the Appellant cannot be right in claiming to “own” the road. Certainly, he cannot be right in attempting to assert direction, control or management over the road, when the road title automatically belongs to the Settlement by virtue of the Policy and the Act.

Further, the Panel does not accept that a Settlement must first register a road before a road title interest can be said to exist. If registration were required, section 2.2 of the Policy would read that Metis title exists, except for *registered* roads.

To be fair, though, the Panel acknowledges there may be times (rare though they may be) when *road is not a road* as contemplated within the legislation, thereby leaving the Metis title interest whole and intact. Without making any definitive pronouncements on what those exceptions might be, the following examples are offered for purely illustrative purposes as to when a *road might not be a road*.

The first example could be when an entrance or access way is built exclusively by a member for his or her personal use. The second could involve instances when a brand new road is built, and the Settlement opts not to file a plan with the Registrar. Note, though, this second example is not to be confused with the argument that all roads must first be registered for road title interest to come into play.

Whatever the example, though, there are underlying public policy reasons for limiting such exceptions to the automatic carve-out of road title. These include maintaining good access throughout the Settlements, and the preferred position of the collective to manage liability issues pertaining to the maintenance of roads.

Finally, though, this Panel takes note that no evidence was presented to it that this is one of those times when a *road is not a road*.


Indeed, what evidence was presented on the construction and use of the road leads this Panel to conclude that even if there is no road title, the road in question has been used since its creation in the 1960s as a way for community members and others to get to and from Kikino. In this regard, the road (to which the Settlement holds road title), also has the additional trappings of a “traditional community pathway” under section 2.4(3) of the Policy. This effectively creates another exception limiting any rights of exclusive use and occupancy that the Appellant might otherwise enjoy if the Settlement didn’t already hold the road title interest.

Finally, the Panel agrees with Council’s submission that the Memorandum of PMT interest, which is signed by the Appellant, effectively stops him from claiming ownership or care and control over the road. In particular, section 2 of the Memorandum clearly indicates that the PMT grant does not give him any rights to roadways on the SE-21-63-16-4 and it is wrong for him to now assert otherwise.

1.5 Decision

The Appellant's appeal is dismissed.

Dated in the City of Edmonton in the Province
of Alberta on this 24th day of October, 2008.



Don Cunningham, Panel Chair

