

Before:

Metis Settlements Appeal Tribunal

Between:

Marilyn Lamouche and Dave Lamouche Jr., Appellants

-and-

Gift Lake Metis Settlement, Respondent

Concerning:

Application for Membership

Hearing Date:

January 21, 2009

Decision Date:

February 12, 2009

D e c i s i o n

Land Access Panel Members

Don Cunningham, Panel Chair
Thelma Chalifoux, Panel Member
John Brosseau, Panel Member

Parties present at the hearing

Marilyn Lamouche, Appellant
Dave Lamouche Sr., Appellant's father
David Drummond, Administrator GLMS
Hector Lamouche, Settlement Council Chair
Inier Cardinal, Council Member
Sherry Anderson, Council Member
Kelly Cunningham, Council Member
Ronnie Anderson, Council Member
Pauline Anderson, Settlement Member
Annette Tallman, Settlement Member
Keltie Lambert, MSGC Legal Counsel

MSAT staff present at hearing

Harold Robinson
Harry Cunningham

Place and date of the hearing

High Prairie, Alberta
January 21, 2009

Issue: (what the appellant wants)

1. *Review of membership application process:* The Appellants, Marilyn Lamouche and Dave Lamouche Jr., both want the Metis Settlements Appeal Tribunal to review their membership applications through the by-law process to ensure it is consistent with the Metis Settlements Act. The appellants are asking for a second opportunity to apply for their membership through the by-law process

1. Review of membership application process

1.1 Jurisdiction – the Panel’s authority to decide these appeals

The Panel’s authority to decide both appeals comes from section 83 of the *Metis Settlements Act* (the Act), [RSA 2004]. Section 83 reads as follows:

83(1) If a Settlement Council refuses or defers an application for membership, or an application is not considered, or a decision is not made by the Settlement Council within the required time, the applicant may appeal in writing to the Appeal Tribunal

- (a) within 45 days after receiving notice of the refusal or deferral, or
- (b) within 45 days after the date the council should have made the decision.

The Gift Lake Metis Settlement Council wrote to Marilyn Lamouche and Dave Lamouche Jr. on June 17th, 2008 advising both applicants that their applications for another membership by-law, was turned down by Council. Reasons for the refusal were cited in both letters. These reasons will be discussed later.

Marilyn Lamouche and Dave Lamouche Jr. both wrote to the Appeal Tribunal on June 25th, 2008 to appeal Council’s decision not to proceed with their membership applications. Both appeals were received by the Tribunal within 45 days of Council’s decision thus satisfying the requirements set out in section 83 of the Act. This Panel has the authority and responsibility to determine this matter.

1.2 Evidence before the Panel

Marilyn Lamouche attended the hearing with her father, Dave Lamouche Sr. who was representing Dave Lamouche Jr., who was not present. Council stated they had no objections to Dave Jr. being represented by his father. The Panel agreed with this arrangement but strongly recommended that the appellants should be present at a hearing that they initiated.

Marilyn Lamouche acknowledged that she was registered under the Indian Act before she was 18 years old. She was raised on the Gift Lake Metis Settlement and always called Gift Lake her home. She stated she finished in the top 100 finalists on Canadian Idol representing Gift Lake and has become somewhat of role model for the people of her settlement. She simply wanted the Settlement Council to reconsider their decision to deny her membership application through the by-law process again because there’s nothing in the Act to say she couldn’t keep trying.

Marilyn further stated she did not attend the July 10th, 2008 by-law meeting in Gift Lake because her grandmother suggested that she should not attend.

Dave Lamouche Sr. acknowledged that Dave Jr. was registered under the Indian Act before he turned 18. Dave Sr. stated that Dave Jr. was currently playing hockey in Okotoks, Alberta. Dave Sr. said his son has been playing competitive hockey and has always represented Gift Lake while growing up.

Dave Sr. stated that the Settlement Council didn't have the right to stop the application. He stated there was nothing in the Metis Settlements Act to say his children couldn't reapply.

Dave Sr. stated that the by-law membership application process for his children and other applicants was attempted on May 2nd, 2007 but that process was deemed flawed by the Settlement when all the applicants were lumped together under one by-law. The settlement administration received legal advice that each membership applicant should be voted on separately. The by-law membership application process was tried again on July 10th, 2007 with the same applicants. Dave Sr. stated the by-law process on July 10th, 2007 was also flawed citing section 55 (3) of the Metis Settlements Act as part of the reason. Dave Sr. claimed his children were not given the opportunity to speak on their own behalf at the public meeting.

Inier Cardinal, councillor for the Gift Lake Metis Settlement, said the will of the people spoke on the July 10th, 2007. It would be disrespectful to the community if the by-law process went through again. The Metis Settlement Act does not say whether the by-law process can go for another time. Inier further stated, that the membership by-law process could not be repeated over and over again until the applicant is successful.

Hector Lamouche, Chairman, of Gift Lake Council said the Council were working on improving the by-law process and how they conduct their public meetings dealing with membership applications.

Hector further stated that Settlement Council have brought back the same by-law to the public, in the same year, if the by-law was voted down the first time without changes to the by-law.

1.3 Findings of Fact

The following findings of fact are drawn from the testimony of the parties, and from the hearing packages, which were made available to the parties before and during the hearing.

- Marilyn Lamouche and Dave Lamouche Jr. were both registered under the Indian Act when they were less than 18 years old. Their applications for membership were processed under section 75 of the Metis Settlements Act. This section requires that all membership applicants who are registered under the Indian Act must go through the by-law process.

- Gift Lake Settlement Council agreed to set aside the results of the May 2nd, 2007 membership vote upon receiving legal advice that the by-law process was flawed. Specifically, it was wrong to vote for more than one membership applicant under one by-law. Each applicant was to be given a separate by-law number and voted on separately.
- Letters were sent to Marilyn Lamouche and Dave Lamouche Jr., respectively, on July 3rd, 2007 indicating that a membership voting day had been scheduled for July 10th, 2007. These letters, which contained the same wording, did not indicate that Marilyn Lamouche and Dave Lamouche Jr. had the right to speak or participate in the discussion at the public meeting regarding their membership applications.
- The public posting for the July 10th, 2007 public meeting to vote on Marilyn Lamouche and Dave Lamouche Jr. membership applications did not indicate that each applicant had the right to participate at the public meeting. Both, Marilyn and Dave Jr. were not informed of their right to participate or invited to speak at the July 10th, 2007 public meeting
- The Gift Lake public membership vote at the meeting on July 10th, 2007 was 76 for granting membership and 92 against for Marilyn Lamouche and 78 for granting membership and 88 against with 2 abstentions for Dave Douglas Lamouche Jr. thus both by-laws were defeated.
- Marilyn Lamouche and Dave Lamouche Jr. each wrote a letter to the Gift Lake Metis Settlement Council on April 2nd, 2008 advising them that they wished to apply for membership through the by-law process under section 75 of the Metis Settlements Act.
- The Gift Lake Settlement Council voted at a regular council meeting by way of motion number 06.16.06. 08 on June 16th, 2008 to deny Dave Lamouche Jr.'s request for membership through the by-law process citing the results of the May 2nd, 2007 and July 10th, 2007 membership by-law vote.
- The Gift Lake Council also voted on the same date by way of motion number 07. 16.06.08 to deny Marilyn Lamouche request for membership through the by-law process citing the results of the Membership by-law voting held on May 2nd, 2007 and July 10th, 2007 respectively
- The Gift Lake Settlement Council wrote letters to Marilyn Lamouche and Dave Lamouche Jr. dated June 17th, 2008 stating that their requests for membership through the by-law process were denied citing the results of the May 2nd, 2007 and July 10th, 2007 by-law vote respectively. Neither of these two letters provided any information about how, either Marilyn or Dave Jr. might appeal Council's decision.
- Marilyn Lamouche and Dave Lamouche Jr. write to MSAT on June 25, 2008.

1.4 Analysis / Reasons

The Panel in these matters wanted to ensure the membership by-law process was fair. The rules set out in the Act were reviewed and other legislation under the *Alberta Metis Settlements Accord*, General Council Policies and Settlement By-laws.

The Panel's focus was, whether both membership by-law processes were fair and consistent with the Metis Settlements Act.

The question of fairness or whether the by-law process was conducted fairly in these two membership applications was raised. The Gift Lake Council conceded the May 2nd, 2007 by-law membership/meeting was flawed when they grouped together all 13 membership applicants under one by-law. The Gift Lake Council decided it was serious enough to set aside the results of that public vote and to repeat the membership by-law process again on July 10th, 2007. The Gift Lake Settlement Council made an error when they relied on the outcome of the May 2nd, 2007 membership vote as a reason to deny both membership applications of Marilyn Lamouche and Dave Lamouche Jr.

The Panel was faced with the question as to whether the July 10th, 2007 membership by-law process/meeting was fair. Gift Lake Council addressed the flaw of the May 2nd, 2007 by allowing participants to vote on each member application separately. This confirms Gift Lake Council's commitment to improve their by-law making processes.

The Panel encourages Gift Lake Council to correct another critical flaw. They are encouraged to reference section 55(3) of the Act in their postings, letters to membership applicants and at public meetings which reads:

55(3) Persons affected by an issue under discussion at a public meeting have the right to participate in the discussion of the issue but may not vote on it unless they are Settlement members and eligible to vote on it.

This procedure does not absolve the applicants of their responsibilities to know the rules and procedures set out in the Act. Gift Lake cannot be held in error if the applicant or others affected by the process refuses or fails to speak at a public meeting.

The public meeting on July 10th, 2007 failed to meet the standards set out in the Act and deemed by the Panel to be unfair. The results of the July 10th, 2007 public vote should be set aside as were the results of the May 2nd, 2007 vote once the Gift Lake Council were made aware of the flawed process.

The other question the Panel had to look at was whether it was appropriate for a membership applicant to re-apply after being rejected at a by-law meeting. The Panel reviewed section 75 of the Act and found there are no restrictions as to the number of times an applicant can apply for membership through the by-law process.

The Panel also looked at section 60(4) of the Act which is a by-law prepared by way of a petition. If the by-law is defeated at a public meeting, the settlement Council may refuse to receive a petition of a similar nature made within one year of the date of the public meeting. The Panel recognizes this section is to be applied to the petition process, it seems reasonable to use this section as a guide in managing the frequency of applications for membership by the same person through the by-law process.

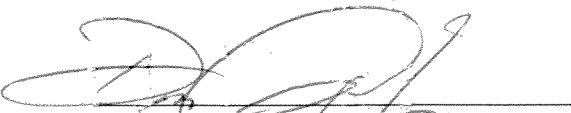
There is no direct limit on the number of times one can apply for membership; however the vote of the public must be respected as stated by a Gift Lake Council member. The legislation which permits applicants to apply more than once, must also be respected.

The Panel heard through testimony from members of the Gift Lake Council their desire to improve their by-law making process and their desire to apply fairness to this process. This would require the Council to inform membership applicants and others affected by these issues of their right to speak at a public meeting where membership by-laws are being voted on.

1.5 Decision

Marilyn Lamouche and Dave Lamouche Jr. are free to apply for membership through the by-law process again under Section 75 of the Metis Settlements Act. The Gift Lake Council cannot rely on the May 2nd, 2007 and the July 10th, 2007 membership votes as a reason for rejecting their applications for membership through the by-law process, plus more than one year has elapsed since the votes were conducted.

Dated in the City of Edmonton in the Province
of Alberta on the 12th day of February, 2009



Don Cunningham, Panel Chair