

Before:

Metis Settlements Appeal Tribunal
Land Panel

Between:

Judy Stuart, Appellant

-and-

Peavine Metis Settlement, Respondent

Concerning:

Application for Metis Title

Hearing Date:

February 3, 2009

Decision Date:

February 24, 2009

D e c i s i o n

Land Panel Members

Allan Lamouche, Panel Chair

Violet Haggerty, Panel Member

Dorothy Anderson, Panel Member

Parties present at the hearing

Judy Stuart, Appellant

Roger Cunningham, member, Peavine Metis Settlement

Hazel Vickland, member, Peavine Metis Settlement

Henry Carifelle, Council Member, Peavine Metis Settlement

Glenna Cunningham, Council Member, Peavine Metis Settlement

Violet Noskey, Interim Administrator, Peavine Metis Settlement

Carmen McDermott, Land & Membership Assistant, Peavine Metis Settlement

Claude Cunningham, Land & Membership Coordinator, Peavine Metis Settlement

MSAT staff present at hearing

Michael Gubbels, MSAT Investigating Officer

Place and date of the hearing

High Prairie, Alberta

February 3, 2009

Issue/relief - what the parties want

1. *Acquiring Metis Title from the Settlement* - The Appellant, Judy Stuart requested the Tribunal to approve her application for Metis Title on land legally described as NW 24-79-16-5.

1. Acquiring Metis Title

1.1 Jurisdiction – the panel’s authority to hear this appeal

The Metis Settlements General Council Land Policy and the Metis Settlements Act, set out the requirements that must be met before the Appeal Tribunal can assume jurisdiction over this matter. The sections relevant to the panel are as follows:

Metis Settlements General Council Land Policy

4.7 Decisions

- (1) The settlement council must provide notice of its decision on the granting of interests within 45 days of the posted deadline for applications.

8.1 Right to Appeal

- (2) The appeal must be filed with the Appeal Tribunal, and a Notice of Appeal filed with the Registrar, within 30 days of the settlement council’s decision, or, if the settlement council did not make a decision, within 30 days of the date by which it was required to have made the decision.

Metis Settlements Act

Time extensions

202 When a matter before the Appeal Tribunal is, by this Act or any other enactment or by any rule or decision of the Tribunal, required to be done within a specified time and if the circumstances of the case in its opinion so require, the Tribunal may, with or without notice, extend the time so specified or waive the requirement whether or not the time has expired.

1990 cM-14.3 s202

Whether this panel has the authority to decide the merits of this matter is explored in greater detail in the sections that follow.

1.2 Evidence before the Panel

(Appellant)

The appellant, Judy Stuart, submitted a Request for Posting of Available Land (NW 24-79-16-5) to the Settlement office on three different occasions (2004, 2005 and 2006). She testified that sometime in September, 2006, she paid a visit to the administration office and noticed that the

land was posted. Ms. Stuart indicated that the deadline for applications was October 26, 2006, and that she submitted her application on October 2, 2006.

Ms. Stuart informed the panel that her land application was ignored and that no decision was made by Council. Mr. Roger Cunningham and Ms. Vickland, both speaking on behalf of Ms. Stuart, said that this matter would not have been brought to the Appeal Tribunal had Council made a decision.

(Respondent)

The Land and Membership Coordinator for Peavine, Mr. Claude Cunningham, acknowledged that in 2006, the land in question was posted for Metis Title because the Council of the day had wanted to phase out PMT's. He added that some documents pertaining to transfers were filled out in advance of Council decisions, and that this explains why there is a Land Interest Transfer form without all required signatures. If approved by Council, what he would have done was have the member return to sign the required documents for registration.

It was acknowledged that Ms. Stuart applied for the land before the deadline. Council simply did not make a decision.

Mr. Claude Cunningham and Ms. McDermott also acknowledged that there are several similar situations affecting Township 79. Other land applications in this township were not dealt with by Council, in part due to high staff turnover, changes in Council, and uncertainty regarding oil and gas activity in the area.

Mr. Claude Cunningham stated that when the land in question was eventually posted in 2006, Council had committed to start resolving applications, but in this particular case, had simply failed to address Ms. Stuart's in a timely manner.

1.3 Findings of Fact

- Ms. Stuart requested three times for the land to be posted (2004, 2005 and 2006).
- The land was posted on September 26, 2006.
- The deadline for applications was October 26, 2006.
- The posting specified that qualified applicants must be "previous interest holders" of the land in question.
- Ms. Stuart submitted her application dated October 2, 2006.
- The deadline for Council decision was December 10, 2006, as per section 4.7 (1) of the MSGC Land Policy.
- The Right to Appeal deadline was January 9, 2007, as per section 8.1 (2) of the MSGC Land Policy.
- Ms. Stuart filed an appeal with MSAT on July 28, 2008 (approximately 200 calendar days past the Right to Appeal timeframe).

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 Settlement lands. To this end, the Metis Settlements General Council Land Policy, [Policy GC-9201], came into effect on June 28, 1992. It sets out different types of land interests as well as rules for acquiring, transferring, or sometimes losing those interests.

In the MSGC Land Policy are the guidelines for filing an appeal with the Appeal Tribunal after Council has made a decision, or failed to make a decision, following a posting of Notice of Available Land.

In considering Ms. Stuart's request to be granted Metis Title, this Land Panel referred to Sections 4.7(1) and 8.1(2) of the MSGC Land Policy. These sections set out criteria for filing appeals including timelines/deadlines for making appeals.

In this case the appellant did not submit her appeal within the prescribed Right to Appeal period. Therefore, it is the panel's opinion that it has no jurisdiction to consider granting Metis Title. To that end, the Land Panel considered Section 202 of the Metis Settlements Act, wherein authority is given to it to waive the Right to Appeal period if the appellant can demonstrate that special circumstances prevented her from acting within the 30-day timeframe. Using the direction provided in Section 202, this Land Panel determined that Ms. Stuart did not provide the evidence required to justify the use of this clause.

In the panel's view, when rules are set out in General Council policies that bind all Settlement members, those members are taken to know the law.

1.5 Decision

The appellant did not file her appeal in time. There are no special circumstances to justify extending the deadlines for appeal. Given that the conditions for filing an appeal were not met, this panel cannot make any decisions on this matter beyond finding that the criteria for filing the appeal were not met.

Dated in the City of Edmonton in the Province of Alberta on this 24th day of February 2009.



Allan Lamouche, Panel Chair