

Before:

Metis Settlements Appeal Tribunal Land Panel

Between:

Glenna Cunningham, Appellant

-and-

Peavine Metis Settlement, Respondent

Concerning:

Application for Metis Title

Hearing date:

February 03, 2009

Decision date:

March 9, 2009

Decision

Land Panel Members

Allan Lamouche, Panel Chair
Dorothy Anderson
Violet Haggerty

Parties present at the Hearing

Glenna Cunningham, Appellant
Hazel Vickland, Peavine Metis Settlement Member
Henry Carifelle, Council Member, Peavine Metis Settlement
Layne Gauchier, 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 the Hearing

Michael Gubbels, MSAT Investigating Officer

Place and date of the Hearing

High Prairie, Alberta
February 03, 2009

Issue/relief – what the parties want

1. *Application for Metis Title*: The Appellant, Glenna Cunningham, requested the Tribunal to approve her application for Metis Title for the land legally described as SE 09-79-16-W5M (the land).

1. *Application for Metis Title*

1.1 Jurisdiction – rights of appeal and the panel's authority to hear this appeal

The *Metis Settlements General Council Land Policy* [GC-P9201] and the *Metis Settlements Act* [RSA 2004], set out the application rules for Metis Title. They also set out the rules for appealing decisions, or the lack of a decision, to the Metis Settlements Appeal Tribunal.

Like most appeal provisions, the rules for making an appeal are *subject* and *time* sensitive. In this regard, the Appeal Tribunal must be satisfied that the matter is a subject/issue that it can deal with. It must also be satisfied that the timelines (deadlines) for filing an appeal have been met. If the timelines/deadlines for filing an appeal have not been met, the Appeal Tribunal can consider whether there are special circumstances present that justify extending the appeal deadlines.

These are jurisdictional considerations. Put another way, if either the subject or the appeal deadlines are not met, it is improper for the Appeal Tribunal to make a decision on whether the application should be granted.

The following rules set out the subject matter and appeal deadlines that the Appeal Tribunal must consider:

Metis Settlements General Council Land Policy (GC-P9201)

Part 4 – Granting Interests in Settlement Land

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 [emphasis added]*

- (3) There is no right of appeal if the proper documents are not filed with the Appeal Tribunal and the Registrar within the specified time limit. [a footnote, which forms part of the Policy is attached, and reads: Under section 202 of the Act, the Appeal Tribunal may extend the time in **special circumstances** and this could allow it to make sure people with real problems are heard, [emphasis added]].

Metis Settlements Act, RSA 2004

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.

The Appellant, Ms. Glenna Cunningham, did not file her appeal on time. There are no special circumstances to extend the appeal provisions. The Appellant has no right of appeal. It would therefore be improper for the Appeal Tribunal to determine whether the Appellant should be granted Metis Title in the land.

A detailed account of the evidence and our reasons is set out in the sections that follow.

1.2 Evidence before the panel

The Appellant told the panel that she was given the land in 1989. She said she applied for a conversion to a Provisional Metis title in 1995, which was approved.

She said she did not clear or improve the land because she had no equipment and no money to hire anyone to do it. She said that after 2000, she tried to get the Settlement Council to help her clear the land. She testified that Settlement Council told her on a number of occasions that they would deal with it. According to the Appellant, however, nothing was done. The Appellant did not provide any documents to back-up her allegations.

The Appellant added that she thought she still owned the land until she noticed it was posted in 2006. She said that she has never received any correspondence from the Settlement Office or the Metis Settlements Land Registry (MSLR) about the expiry of her Provisional Metis Title (PMT). As far as she was concerned, there was nothing at all going on with the land, especially since

there is no oil/gas activity on the land.

The Appellant admitted though that she is aware that her PMT expires in 5 years. However, she said she was “pretty sure” that she applied to extend her PMT, but, again, does not have any paper work (such as an application to renew PMT, for instance) to back this claim.

The Appellant acknowledged that she has interests in other Settlement lands, including land legally described as NE 25-79-16-5 and a parcel of 2.27 acres where she has her home.

Finally, it was confirmed that the Appellant applied for Metis Title in the land in question in 2006, but that no decision was made.

The Land and Membership Coordinator, Mr. Claude Cunningham, said that the Metis Settlements Land Registry (MSLR) would not know about Ms. Glenna Cunningham’s PMT because the paper work was never completed. He said that Settlement Council made a blanket resolution for conversion, but it was never followed up with the paper work that was required. As a result, the Appellant’s interest in the land was never registered. He also noted that the only improvements done on the land in question were the building of power lines by the Settlement. He said there is no oil/gas activity on the land.

A hearing package was also compiled and provided to the parties and made part of the hearing. Materials from the hearing package also form part of the evidence.

1.3 Findings of fact

The panel has considered the evidence, and finds the following matters to be relevant and more likely than not to be true:

- The Appellant had an allocation of land described as SE 09-79-16-W5M, which was recorded at MSLR on November 1, 1991.
- The Appellant applied for, and was approved by Settlement Council, to convert the *Allocation to a Provisional Metis Title* on April 10, 1995. This was filed at MSLR on May 19, 1995.
- The land was posted for Metis Title on September 26, 2006. The deadline for applications for Metis Title was October 26, 2006.
- The posting specified that eligible applicants must be a “previous interest holder”.
- The Appellant applied for the land in question on October 02, 2006. The application read that she was applying for the “purpose of farming, agriculture and traditional land use.” It also read that the Appellant “did not need any help from the settlement to develop the land.”
- Section 4.7(1) of the *MSGC Land Policy* requires that Council provide notice of its decision within 45 days of the posted deadline for application, or by December 10, 2006,

in the case at hand.

- Section 8.3 of the *MSGC Land Policy* requires that appeals to the Appeal Tribunal be filed within 30 days of Settlement Council's decision, or 30 days from the date they should have made the decision.
- The deadline for appealing Council's decision was January 9, 2007.
- The Appellant did not file her appeal with the Appeal Tribunal until November 8, 2007.

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.

As set out in section 1.1 above on jurisdiction, the Metis Settlements General Council also passed rules concerning what types of appeals can be made to the Appeal Tribunal, and timelines for making those appeals.

Before considering the Appellant's request to be granted Metis Title, this panel must first be satisfied that criteria for making an appeal have been met.

In this regard, the subject matter (application for Metis Title) is indeed something that the Appeal Tribunal is expected to address. This leaves us to consider whether the timelines for making an appeal have been met.

On the face of it, the Appellant should have filed her appeal with the Appeal Tribunal by January 9, 2007. Her appeal did not arrive at the Appeal Tribunal until November 8, 2007. This is well past the appeal deadline.

The panel considered whether an extension of the appeal deadline should be granted under section 8.1(3) of the *MSGC Land Policy* and 202 of the *Metis Settlements Act*. In this regard, it was for the Appellant to demonstrate that there were "special circumstances" that stopped her from filing her appeal on time. The Appellant did not provide any reliable evidence to show that she was stopped or unable to file her appeal in time. Accordingly, the Appellant has no right of appeal and the Appeal Tribunal cannot properly make a decision as to whether her application for Metis Title should be, or should not be, granted.

1.5 Decision

This Panel finds that the Appellant did not file her appeal in time and there are no special

circumstances to justify extending the deadlines for appeal. Given that the conditions for filing an appeal were not met, the Appellant has no right of appeal. Accordingly, this panel cannot determine whether or not the Appellant's application for Metis Title in the land should be granted.

Dated in the City of Edmonton in the Province
of Alberta on this 9th day of March 2009.

A handwritten signature in black ink, appearing to read 'Alan Lamouche', written over a horizontal line.

Alan Lamouche, Panel Chair