

Before:

Metis Settlements Appeal Tribunal Land Panel

Between:

Fred Auger, Appellant

-and-

Respondents:

Clifford Auger, Esther Auger, Solomon Richard Auger, Venice Rose Auger, Estate of Blair
Kevin Auger, Estate of Gilbert Jermie Auger, Bella Halcrow, Lydia Halcrow,
Roberta Halcrow, Lena Giroux, and East Prairie Metis Settlement

Concerning:

Gilbert Auger's Estate Instructions of April 28, 2003

Hearing date:

March 4, 2009

Decision date:

March 27, 2009

Decision

Land Panel Members

Don Cunningham, Panel Chair
Dorothy Anderson
John Brosseau

Parties present at the Hearing

Fred Auger, not present, (Appellant)
Clifford Auger, East Prairie Metis Settlement member (Respondent)
Robert L'Hirondelle, Chair, East Prairie Settlement Council (Respondent)
Keith Patenaude, Council Member, East Prairie Settlement (Respondent)
Wade L'Hirondelle, Council Member, East Prairie Settlement (Respondent)
Shelly Auger, Council Member, East Prairie Settlement (Respondent)
Louis Haggerty, Council Member, East Prairie Settlement (Respondent)
Richard Hajduk, LL.B, Legal Counsel for East Prairie Settlement Council (Respondent)
Harry Supernault, Administrator, East Prairie Metis Settlement (Respondent)
Marcel Auger, East Prairie Metis Settlement member

MSAT staff present at the Hearing

Michael Gubbels, MSAT Investigation Officer

Place and date of the Hearing

High Prairie, Alberta
March 4, 2009

Issue/relief – what the Appellant wants

1. *Gilbert Auger's Estate Instructions of April 28, 2003*: The Appellant, Fred Auger, wrote to the Tribunal on June 2, 2003 requesting that “the title of this land [NE 36-71-15-5] not be transferred [to Clifford Auger] as [otherwise] stated on [Gilbert Auger's] Estate Instructions of April 28, 2003.”

1. *Gilbert Auger's Estate Instructions of April 28, 2003*

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

The Metis Settlements Appeal Tribunal is a *quasi-judicial* dispute resolution body. This means it can only decide those matters given to it by legislation. Under the *Alberta-Metis Settlements Accord* of 1989, this legislation includes provincial statutes such as the *Metis Settlements Act*, and self-government legislation set out in Metis Settlements General Council Policies and Metis Settlement Bylaws.

Of relevance to this Panel are jurisdictional requirements (or the rights of appeal, and any applicable limits on those rights) set out in the *Metis Settlements General Council Land Policy* [GC-P9201]. The Land Policy is relevant because it sets out the basic rules governing the transfer of a member's interest in land when he or she dies. It also sets out the rules governing the referral of questions about estate instructions that are unclear or absent.¹ These rules read as follows:

Metis Settlements General Council Land Policy (GC-P9201)

Part 7 – Descent of Property

7.12 Referral to Council

- (1) The land trustee **must** [emphasis added] apply to the Settlement Council for direction
 - (a) if there are no estate instructions;
 - (b) if for any reason the estate instructions are uncertain or impossible to carry out, or
 - (c) if the interest held by the trustee has not been transferred to a person on the heirs list by the 21st anniversary of the deceased's death.

¹ For the record, Part 8 of the Land Policy [Appeals and References] was considered by this Panel. However, given that this matter was framed as an estate issue involving the validity of estate instructions, the specific referral provisions set out in 7.12 take precedence over the general appeal provisions involving land disputes set out in Part 8 of the Land Policy. [Footnotes form part of this decision].

- (2) On receiving an application for direction the Settlement Council can either decide who should receive the deceased's interest, or refer the matter to the Appeal Tribunal.

This Panel understands section 7.12 of the Land Policy to mean that questions about estate instructions—or the lack of estate instructions—are to be referred to Settlement Council. Once a matter has been referred to a Settlement Council, the Council may decide the matter itself, or transfer the matter to the Appeal Tribunal. Either way, the decision to resolve the dispute, or to transfer it to the Appeal Tribunal, is for Settlement Council to make and no one else.

In the case at hand, there is no evidence to show that this matter was referred to East Prairie Settlement Council by the land trustee. Nor is there any evidence showing that East Prairie Settlement Council asked for or intended for the Tribunal to decide this matter. Indeed, East Prairie Settlement Council made it very clear that they do not want the Tribunal to decide this matter. Accordingly, the criteria for transferring this matter to the Tribunal under section 7.12 of the Land Policy has not been met, and this Panel cannot take jurisdiction over the substance of the dispute.

The Panel is also mindful of the public policy and other statutory interpretations further negating the Tribunal's jurisdiction over this matter as submitted by East Prairie Settlement Council's Legal Counsel. (See Exhibit A: *Brief of Argument of the East Prairie Metis Settlement – Re: Jurisdiction*). However, having satisfied ourselves on the proper interpretation of the central referral criteria set out in section 7.12 of the Land Policy, there is no need to assess Counsel's submission any further.

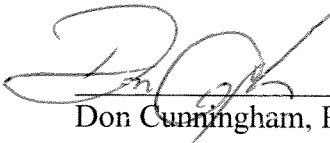
This Panel believes it appropriate, though, to also note that while much time has passed since this matter was originally brought to the Tribunal's attention, the passage of time does not cloak the Tribunal with jurisdiction over this matter. Nor do the calls of successive Tribunal Chairs to hear the matter create jurisdiction where none exists. The Tribunal's jurisdiction over estate disputes stands or falls on the proper interpretation of section 7.12 of the Land Policy; which has been duly considered as set out above.

Finally, this Panel also notes that the absence of the Appellant at the hearing on March 4, 2009 is lamentable, but not terminal to the fairness of our decision-making process. Good and proper notice of the date, time, and place of the hearing—which included a time-limited opportunity to name alternative dates—was couriered to his address. He refused its delivery. Further attempts were made by Tribunal staff to verbally notify him of the hearing date, time and place of hearing. Given these efforts, his absence ultimately went to the detriment of his application, and not to the detriment of the fairness of our process.

1.2 Decision

There is no evidence to show that this estate dispute was referred by the land trustee to Settlement Council for direction. Nor is there any evidence to show that East Prairie Settlement Council referred the matter to the Appeal Tribunal. In short, the referral requirements set out in section 7.12 of the Land Policy have not been met. Accordingly, the Appeal Tribunal cannot properly assume jurisdiction over the substance of this dispute, and declines to do so.

Dated in the City of Edmonton in the Province
of Alberta on this 27th day of March 2009.



Don Cunningham, Panel Chair