

Before:

Metis Settlements Appeal Tribunal  
Land Panel

Between:

Tanis Augier, Appellant

-and-

Buffalo Lake Metis Settlement, Respondent  
and  
LeRoy W. Augier, Respondent

-and-

Metis Settlements General Council,  
Edwin Augier, Margaret Araujo, Duane Couteriell,  
and  
Metis Settlements Land Registry, Other Parties

Concerning:

Land Dispute

Hearing date:

May 11, 2009

Decision date:

May 28, 2009

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**D e c i s i o n**

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**Land Panel Members**

Don Cunningham, Panel Chair  
Allan Lamouche  
Violet Haggerty

**Parties present at the Hearing**

Tanis Augier, Appellant  
LeRoy Augier, Respondent  
Margaret Araujo, Tanis Augier's aunt / LeRoy Augier's sister  
LeeAnn Joe, LeRoy Augier's sister  
Glen Auger, Council Member, Buffalo Lake Metis Settlement  
Leona Berard, Council Member, Buffalo Lake Metis Settlement  
Bruce Gordon, Council Member, Buffalo Lake Metis Settlement  
Horace Patenaude, Council Member, Buffalo Lake Metis Settlement  
Elmer Ghostkeeper, Council Member, Buffalo Lake Metis Settlement  
Lisa Chartrand, Registrar, Metis Settlements Land Registry  
Dustin Heron

**MSAT staff present at the Hearing**

Harold Robinson, Tribunal Secretary

**Place and date of the Hearing**

Edmonton, Alberta  
May 11, 2009

**Issue: (what the appellant wants)**

1. *Land dispute:* The Appellant, Tanis Augier, is appealing Buffalo Lake Metis Settlement as Land Trustees' decision (made in 2001) to transfer Metis Title for 900189 Block 00 Lot 01 (SE-30-063-16-W4M) (the land) to LeRoy Augier. Tanis Augier would like Metis Title in the land transferred to her name.

**1. Land Dispute**

**1.1 Applicable legislation – jurisdiction and decision-making criteria**

As set out in the *Alberta-Metis Settlements Accord* of 1989, the Government of Alberta and the Metis Settlements agreed that the Metis Settlements should be self-governing. It provided the means for making provincial and Settlement laws (Accord legislation) to promote good governance and orderly dealings amongst those who live in the Metis Settlements or otherwise deal with the Metis Settlements.

The Metis Settlements General Council Land Policy [GC-P9201] and the *Metis Settlements Act* (the Act) [RSA 2004], set out the rules for acquiring interests in Settlement lands. They also set out the rules for appealing decisions, or the lack of a decision, about interests in Settlement lands to the Metis Settlements Appeal Tribunal.

As set out in the Land Policy and the Act, an appellant's right of appeal is *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 an appellant proves to the Tribunal that he or she has met the subject and time requirements set out in the Accord legislation, then the Tribunal can find that he or she has a legitimate *right of appeal* that must or may be addressed. However, if either the subject or the time requirements are not met, the Tribunal cannot find that there is a legitimate right of appeal; which effectively limits the Tribunal's authority to make any findings beyond the first point of deciding that there is no legitimate right of appeal. Essentially, if the Tribunal decides there is no legitimate right of appeal, its jurisdiction to decide the matters in dispute also stops at that same point.

In the case at hand, applicable subject and time requirements are found in the following two pieces of Accord legislation:

Metis Settlements General Council Land Policy

**8.1 Right to Appeal**

- (1) Wherever this Policy requires the General Council or a Settlement Council to make a decision related to the granting, transfer, or termination of interests in land in the settlement area, any person affected by the decision, or lack of decision, can appeal in writing to the Appeal Tribunal.
- (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.
- (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.

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.

As further clarified in the sections that follow, the Appellant did not file her appeal on time. Nor is this Panel convinced on the balance of probabilities that there were any *special circumstances* present to warrant extending the appeal timelines. Accordingly, the Appellant does not have a legitimate right of appeal, and this Panel's jurisdiction is equally limited to this initial finding.

**1.2 Evidence before the Panel**

Tanis Augier (the Appellant)

The Appellant stated that she lived with her grandmother (Shirley Augier) from the age of one until her grandmother's passing in 1996. The Appellant said she was still a minor when her grandmother died and she went to live with her Aunt Emma for 1 year, and was later adopted by Susan Cardinal/Lamouche. She added that her family members told her that her grandmother wanted her to have the house and land, live in it and take care of it. She assumed the house/land would be put in her name when she turned 18 years old.

LeRoy Augier (the Respondent)

The Respondent stated he is the biological son of the deceased Shirley Augier. He felt that only he and his brother Edwin were eligible to get the house and land, because the other children of the deceased were not settlement members. He added that he's held Metis Title on the property for 10 years, and the house was built in 1991. He said he signed a repayment agreement with Buffalo Lake Metis Settlement in 2008, but told the Settlement Administrator that he would not be making any payments until this matter is settled. The Respondent also stated that he did not agree that MSAT could hear this case because the time frame to appeal had lapsed.

Buffalo Lake Metis Settlement Council (BLMS Council)

BLMS Council became land trustee for those Settlement land interests held by the late Shirley Augier as required by the rules set out in the Metis Settlements General Council Land Policy. They indicated that they transferred the land (and house) to the Respondent because he is the biological child of the late Shirley Augier. BLMS Council did not agree that the dispute could be decided by MSAT.

Documentary Evidence

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 and findings of fact set out below.

**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 original title holder to the land, Shirley Augier, passed away on February 16, 1996 and did not leave written estate instructions regarding the land, or with respect to the family house on the land.
- On September 30, 1999 Settlement Council for the Buffalo Lake Metis Settlement transferred Metis Title for 900189 Block 00 Lot 01 (SE-30-063-16-W4M) to the Respondent.
- The Metis Settlements Land Registry confirmed the transfer on March 27, 2001 when it sent a letter to the Respondent advising him that a Transfer of Metis Title was registered in his name as Plan 900189 Block 00 Lot 01 (SE-30-063-16-W4M). The Respondent was also provided with a certified copy of Metis Title in his name.
- The Appellant's application for membership to Buffalo Lake Metis Settlement was approved May 3, 2005. A letter was sent to her from the Metis Settlements Land Registry on January 10, 2006 advising her that her name had been added to the settlement members list.

- The Appellant submitted a proper application to MSAT on Sept 26, 2008 disputing the transfer of the land to the Respondent and requesting the Appeal Tribunal resolve the matter.

#### **1.4 Analysis / Reasons**

As set out in section 1.1 above on jurisdiction, the Government of Alberta and the Metis Settlements General Council passed rules concerning what types of appeals can be made to the Appeal Tribunal, and the 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 (land disputes and applications 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.

As set out in section 8.1(2) of the Land Policy, the Appellant should have filed her appeal within 30 days of the BLMS Council decision to grant the land to the Respondent. This means that the appeal should have been filed with MSAT by no later than October 30, 1999.

The Appeal Tribunal did not receive a proper written appeal from the Appellant until September 26, 2008. As set out in section 8.1(3) of the Land Policy, 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.

If the Land Policy stopped there, this would be the end of our analysis. However, the Land Policy also links to section 202 of the Act and provides that time limits can be extended in special circumstances to ensure that people with real problems are heard.

The question, then, is whether special circumstances are present that warrant extending the time limits for filing the appeal by approximately nine years from October 30, 1999 to September 26, 2008?

In this regard, the Panel considered the Appellant's minority status at the time the land transfer took place in 1999. While this status is a factor, the Panel was left to wonder why her guardians did not file an appeal on her behalf. Unfortunately, the evidence led by the Appellant does not give us sufficient information to say why no action was taken by her guardians, and we cannot speculate as to the reasons why no action was taken. It is only for us to find that no action was taken by her guardians to file and appeal when the right first arose.

In the event that we are wrong to place the onus for filing an appeal on the Appellant's guardians,


we think it appropriate to find that this responsibility fell to the Appellant when she reached the age of majority. For our purposes today, the Panel has effectively marked that date as January 10, 2006, which is the date when the Appellant became a member of Buffalo Lake Metis Settlement (and eligible to hold land in Buffalo Lake Metis Settlement). Unfortunately for the Appellant, a proper appeal was not received at MSAT until September 2008, or over two years from the date her responsibility for this matter came into play. In this regard, the Appellant failed to provide any evidence to the Panel as to why she did not file an appeal when she reached the age of majority, or otherwise became eligible to hold land.

On the whole, though, the Appellant should not take our findings as a repudiation of her testimony, or as disregard for the apparent and sad fraying of family ties, but only that this Panel treats waiving of limitation periods to be the exception, and not the rule.

### **1.5 Decision**

The Appellant has not filed her appeal within the legislated time limits. Furthermore, there are no special circumstances to warrant an extension to the time limits for filing an appeal. Accordingly, the Appellant does not have a right of appeal and this matter is dismissed.

Dated in the City of Edmonton in the Province  
of Alberta on this 28<sup>th</sup> day of May 2009.



Don Cunningham, Panel Chair