

Before:

Metis Settlements Appeal Tribunal
Land Panel

Between:

Gerald Ladouceur, Appellant

-and-

Buffalo Lake Metis Settlement, Respondent

and

Jerry Ladouceur – Affected Party

and

Dawn Auger – Affected Party

and

Metis Settlements Land Registry – Other Parties

Concerning:

Land Dispute

Hearing Date:

June 8, 2009 – 1:00 p.m.
Buffalo Lake Recreation Centre

Decision Date:

July 24, 2009

Decision

Land Panel Members

Allan Lamouche, Panel Chair
Dorothy Anderson, Panel Member
Violet Haggerty, Panel Member

Parties present at the Hearing

Gerald Ladouceur, Appellant
Florence Boucher, Appellant's wife
Jerry Ladouceur, Appellant's son
Dawn Auger, Affected party
Emma Auger, Dawn Auger's mother
Leona Berard, Council Member, Buffalo Lake Metis Settlement
Bruce Gordon, Chairperson, Buffalo Lake Metis Settlement
Elmer Ghostkeeper, Council Member, Buffalo Lake Metis Settlement
Glenn Auger, Council Member, Buffalo Lake Metis Settlement
Lisa Chartrand, Metis Settlements Land Registry

MSAT staff present at the Hearing

Michael Gubbels, Dispute Resolution Officer

Place and date of the Hearing

Buffalo Lake Metis Settlement Recreation Centre Board Room
June 8, 2009

Issue: (what the appellant wants)

1. *Land Dispute*: The Appellant, Mr. Gerald Ladouceur, wants the Tribunal land panel to grant him Metis Title to lands legally described as NW-28-63-16-W4 (the land).

1. Land Dispute

1.1 Applicable Legislation – jurisdiction and decision-making criteria

As set out in 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 Council decisions, or lack of decision, regarding interests in Settlement held lands to the Metis Settlements Appeal Tribunal.

As set out in the Land Policy and the Act, an appellant's right of appeal is *time* and *subject* sensitive. In this regard, the Appeal Tribunal must be satisfied that the matter is a subject that it can deal with. It must also be satisfied that the timelines/deadlines for filing an appeal have been met. If they 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 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 a legitimate right of appeal. Essentially, if the Tribunal decides there is no legitimate right to appeal, its jurisdiction to decide the matters in dispute also stops at that same point.

For this case, applicable subject and time requirements are found in the following accord legislation and General Council Policies.

Metis Settlements General Council Land Policy Part 8 – Appeals and References

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.

8.2 References

Any question or dispute regarding the ownership or extent of an interest in land in a settlement area may be referred to the Appeal Tribunal for an advance ruling or for a decision.

Metis Settlements Act Division 3 – Jurisdiction

189 (1)(a) Responsibilities

The Appeal Tribunal must hear appeals and references and perform any function given to it under this act or any other enactment.

Buffalo Lake Metis Settlement Bylaw No-001-02-03 Land Management Bylaw Part 5 – Provisional Metis Titles

5.3 Obtaining Metis Title

The holder of a provisional Metis Title can apply for Metis Title to their land at any time after they have made improvements to the land. The council may approve an application to obtain Metis Title in accordance with the following provisions:

- a) If a permanent dwelling unit has been constructed on the land AND the land owner is living on the land then the application may be approved. Any unit that is or was manufactured for a recreational vehicle or recreational purpose is not considered a permanent dwelling unit (i.e.: campers and recreational trailers).
- b) If lines have been cleared all the way around the parcel and at least 1 side of the parcel has been fenced, or if at least 2 sides of the parcel have been fenced.
- c) If at least 30% of the total area of the quarter section has been cleared, OR in the case of lots smaller than 20 acres in size, at least 60% of the total area has been cleared.

1.2 Preliminary Matter Brought Before the Panel

Mr. Glen Auger informed everyone present at the hearing that he is both a relative of Ms. Dawn Auger and a Council member for the Buffalo Lake Metis Settlement. He offered to excuse himself from the hearing should he be deemed to be in conflict of interest. The Panel chair asked all parties to respond to this issue and there were no objections to Mr. Auger attending the hearing. With no objections raised by other parties, the Panel Chair, Allan Lamouche, advised Mr. Auger that he could participate in the hearing.

1.3 Evidence Before the Panel

Mr. Gerald Ladouceur (the Appellant) stated that he is appealing “to get title to the land back.” He had asked for a road to be built to the land and has applied for housing but was never dealt with by Council. He testified that he became a member around 1975 or 1976 and lived in Buffalo Lake Metis Settlement (BLMS) for eight years.

The Appellant stated that he lived on his mother’s land in a trailer up until 1983 at which time he had to move because his mother sold her land. He said he owned the land in question prior to 1990. He said the land was in his name after he had applied for it but he did not have title to it. He said it was his signature on the Provisional Metis Title form in Tab 7 of the hearing package, but he was never given a copy.

The Appellant said that he has been making improvements over the years to the land and estimates that about 10 acres of it has been cleared. He said he presently lives at “the mission” which is just west of Lac La Biche, and that he has a leave of absence from BLMS. He said he tries to apply for a leave of absence every year but is unable to work with the Settlement people who are in control. He said he understood that a Provisional Metis Title (PMT) required him to make improvements to the land and that he knew his PMT was set to expire in 2005. He said he didn’t go back to the settlement office because he felt that he was being hassled by the office staff.

The Appellant said he has paid land levies many times since he has owned the land and that the last payment was made on July 20, 2007. He said he had transferred 10 acres of land to his son Mr. Jerry Ladouceur to build a house. The Appellant also indicated that his son has made improvements to the land. The Appellant added that the Settlement wanted him to subdivide 40 acres for Jerry and then that went up to 80 acres. He said that

the reason why he appealed to the Tribunal was because he wants to keep his land, build on it, and wants the land to stay in the family to be eventually divided among his grandchildren.

Respondent – Bruce Gordon (BLMS Chairman)

The Chairman of BLMS, Mr. Bruce Gordon, testified that the Appellant owes back taxes on land levies of \$150.00 not including this year's taxes. With regard to a Leave of Absence, Mr. Gordon said that BLMS records indicate that the Appellant left in 1984 and he has no leave of absence on file.

Mr. Gordon commented on the letter BLMS sent to the Appellant regarding the Settlement's request to subdivide the land (Tab 19 of the hearing package). He said that Council was not trying to take away land from the Appellant. They were asking him to subdivide 40 acres because the Settlement could do it affordably with a descriptive plan. He further stated that 10 acres would require a survey to be done at someone's expense.

Mr. Gordon added that Land Levy notices are sent out, and if they are not paid then programs and services are not provided. He said programs and services are available to resident members and Council requires a membership status check every once in a while. According to Mr. Gordon, the Appellant has not been a resident member in BLMS for 25 years and probably does not know how the Settlement functions with regards to policies and bylaws.

Mr. Gordon explained that the land management bylaws require that members must have 30 acres of land cleared in order to qualify for Metis Title. He noted that the Appellant only has 10 acres cleared. According to Mr. Gordon, once the PMT expired a second time, and sufficient improvements were not made, then Metis Title stayed with BLMS. He added that it is Settlement Council's decision if they want to post the land for allocation. He said the Appellant has not lived here for 25 years and is not a resident member. He said that members have to live on the settlement for 2 years before they have access to programs and services. He said that council has to follow the Settlement's policies and bylaws. He added that the Appellant's PMT expired on December 2005 and has not made any applications to the settlement office for Metis Title even though the letter sent to him from the Land Registry indicated for him to contact the settlement office.

Respondent – Leona Berard (BLMS Councilor)

Another councilor, Ms. Leona Berard, told the Panel that Gerald had filled out a form to apply for a PMT and he also had come in and met with Council to apply for Metis Title. However, there has been no formal application for Metis Title. She said a letter was sent to the Appellant to consider subdividing his land for his son Mr. Jerry Ladouceur because a house had been built on the land in 1999. She added that most people come in and apply to upgrade to Metis Title before their PMT's expire, or shortly after. She said the Appellant has never responded to this letter since it was sent to him.

Respondent – Elmer Ghostkeeper (BLMS Councilor)

A third Council member, Mr. Elmer Ghostkeeper, said the Appellant is asking The Metis Settlements Appeal Tribunal (MSAT) to award him Metis Title but only BLMS Council can award that. Just as Mr. Jerry Ladouceur's application for subdivision can only be received by the Council. In Mr. Ghostkeeper's opinion, MSAT should not have granted the Appellant an appeal because MSAT has no authority to grant Metis Title or subdivision. Applications have to be made to Council. BLMS still claims Metis Title to the land because conditions of the PMT were never met.

Respondent – Glenn Auger (BLMS Councilor)

A fourth Council member, Mr. Glenn Auger, said members have the opportunity to upgrade their PMT's to Metis Title even after they have expired, whether it is after five years or ten years we give them every opportunity. He said it is up to the members to do this, and Council cannot push anyone to apply for Metis Title – it is not Council's responsibility.

Documentary Evidence

A hearing package was compiled, provided to the parties, and made part of the hearing. Materials from the hearing package may form part of the evidence and findings of fact set out below.

1.4 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 is a member of Buffalo Lake Metis Settlement and has been since June 7, 1976.
- The Appellant lived in a trailer with his family on his mother's land at BLMS for eight years. In 1984 he moved to the mission near Lac La Biche where he and his wife have been living for 25 years.
- On December 21, 1994 the Appellant was granted a PMT for land legally described as NW-28-63-16-W4. The interest was granted for a period from January 1, 1995 to January 1, 2000 for farming.
- On June 13, 2000 the Appellant was granted an amendment to a Memorandum of Provisional Metis Title extending his PMT for another 5 years from January 2, 2000 to December 31, 2005.
- On October 24, 2005, the Metis Settlements Land Registry (MSLR) sent a letter to the Appellant advising him that the second 5 year term of his PMT interest for the land would expire on December 31, 2005.

- On August 29, 2006, MSLR sent a letter to the Appellant advising him that his PMT interest for the land expired and he had 60 days from the date of the letter to make an appeal.
- On September 28, 2006 the Appellant wrote a letter to MSLR objecting to his PMT cancellation. This letter was forwarded to MSAT on Oct 2, 2006 as a referral of an objection to be processed by the Appeal Tribunal.
- On April 16, 2007 the Appellant filled out a Request to Record or Register an Interest form (MSLR-01) for a Memorandum of Provisional Metis Title.
- On May 1, 2007 Council minutes show that BLMS Council discussed The Appellant's intent to upgrade to Metis Title. Following which, a letter was sent on May 2, 2007 to him from the BLMS Land/Membership Clerk (Ms. Leona Berard) asking him to deal with the matter of subdividing the land for his son Mr. Jerry Ladouceur, before they would consider his application for Metis Title.

1.5 Analysis/Reasons

As set out in section 1.1 of this decision, the Government of Alberta and the Metis Settlements General Council passed rules concerning what type 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, the Panel must first be satisfied that the criteria for making an appeal have been met. In this regard, land disputes and applications for Metis Title are subjects that the Appeal Tribunal is expected to address. This leaves us to consider if proper timelines have been met.

In this case, the Panel finds that the Appellant made his appeal or objection to the Metis Settlements Land Registry regarding cancellation of his PMT on time. According to the letter from MSLR sent to the Appellant (Tab 12 of the hearing package), he had 60 days from the date of Aug 29, 2006 to file an appeal. The Appellant wrote a letter to MSLR objecting to his PMT cancellation on Sept 28, 2006 (30 days).

The Panel must also consider whether a proper formal application for Metis Title was made by the Appellant to the BLMS Council. The Panel has reviewed all relevant documents in the hearing package and testimony provided at the hearing. The Panel finds that no formal application was ever made by the Appellant for Metis Title to the BLMS Council.

Although the Panel understands that the Appellant attended a Council meeting on May 1, 2007 where a discussion took place regarding upgrading his land to Metis Title, and subdividing his land for his son Mr. Jerry Ladouceur, the Appellant needed to do more than just raise his issue with Council; he needed to make himself aware of the MSLR regulations and MSGC Land Policy rules, and follow those regulations and rules.

The Land Panel now has to decide whether to award Metis Title. We have reviewed the Appellant's situation and find the following:

The Appellant held a PMT interest in the land for 10 years and has not met the conditions of the Memorandum of PMT which he signed on Dec 21, 1994. In particular, he has not met the conditions that he be a resident member. This is proven by his own testimony that he has lived at the mission near Lac La Biche for 25 years.

The Appellant also failed to meet other conditions. In particular he did not meet conditions set out in the BLMS Land Management bylaw that require a minimum of 30 acres need to be cleared, a permanent dwelling to be constructed, fence lines to be cleared, and at the very least one side of the ¼ section to be fenced. The Land Management bylaw was brought up at the hearing by the respondents and this bylaw was not contested by the Appellant or anyone else at the hearing.

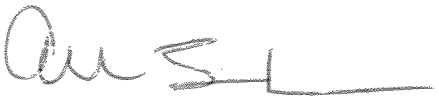
The Land Panel is of the opinion that members are responsible for learning and abiding by the rules that govern Metis Settlements, such as Metis Settlements Act, General Council Policies, and Local Settlement Bylaws.

1.6 Decision

The Appellant's request to grant him a Metis Title in the land legally described as NW-28-63-16-W4 is denied. As set out in the preceding sections, the Appellant did not meet the requirements set out in the General Council Land Policy or the Buffalo Lake Metis Settlement Land Management By-law No. 001-02-03.

It is further ordered that any issues Mr. Jerry Ladouceur and Ms. Dawn Auger have in reference to the land, be dealt with by the Buffalo Lake Metis Settlement Council according to the Metis Settlement General Council Land Policy and any other local By-laws and applicable Policies. This decision does not eliminate any future rights of appeal for either Ms. Dawn Auger or Mr. Jerry Ladouceur.

Dated in the City of Edmonton in the Province
of Alberta on the 24th day of July 2009



Allan Lamouche,
Panel Chair