

Before:

Metis Settlements Appeal Tribunal
Land Panel

Between:

Wayne Cardinal, Appellant

-and-

Floyd Thompson, Respondent

and

Kikino Metis Settlement, Respondent

Concerning:

Land Dispute

Hearing Date:

June 17, 2009
Metis Settlement Appeal Tribunal Offices

Decision Date:

September 16, 2009

D e c i s i o n

Land Panel Members

Don Cunningham, Panel Chair
Dorothy Anderson, Panel Member
Thelma Chalifoux, Panel Member

Parties present at the Hearing

Wayne Cardinal, Appellant
Floyd Thompson, Respondent
Council for Kikino Metis Settlement
 Represented by: Dean Thompson, Cory Cardinal, Greg Cardinal
Lawyer for Kikino Metis Settlement, W.M. McElhanney

MSAT staff present at the Hearing

Harry Cunningham, Dispute Resolution Officer

Place and date of the Hearing

Metis Settlements Appeal Tribunal Board Room, Edmonton, Alberta
June 17, 2009

Issue and summary of what the Appellant wants (Relief requested)

1. *Land Dispute*: The Appellant, Wayne Cardinal, is appealing Kikino Metis Settlement Council's decision to transfer a lot legally described as Lot 1 block 3 at SW-17-063-14-W4M from previous owner, Floyd Thompson, to the Kikino Metis Settlement. Mr. Wayne Cardinal would like the lot transferred as a lease to Kikino Wildlife Ranching Association.

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 as to 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.

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.

1.2 Evidence before the Panel

Appellant's Evidence

The Appellant, Kikino Wildlife Ranching Association (the Association) was represented by Mr. Wayne Cardinal. He questioned why Mr. McElhanney was representing Council for Kikino Metis Settlement. He said Mr. McElhanney represented the members of Kikino Metis Settlement

and he should not be representing one member, or council, at the cost or detriment of another member. He suggested this was a conflict of interest.

Wayne Cardinal submitted a letter from Theodore Cardinal, who also sits on the Board of the Association, to show that he did not bring this matter to MSAT on his own accord. Mr. Theodore Cardinal was unable to attend the hearing due to health reasons.

Mr. Cardinal said that the Association bought a lot and store from Floyd Thompson about 12 to 13 years ago for seventy five thousand dollars (\$75,000.00). He said that a bill of sale was executed; but that it is locked up in a filing system in the store and Council banned him from accessing the files belonging to Kikino Wildlife Ranching Association.

Mr. Cardinal also said that the interest for the lot could not be registered to the Association, so the Association tried to get a lease for the lot and were not able to get one because of Council changes. He said the Association has been trying since 1992 to get the lot registered as part of a lease. Mr. Cardinal did not provide any evidence why the appeal was not filed sooner.

Respondent, Floyd Thompson

The Respondent, Floyd Thompson, said he came to the hearing as a member of the Kikino Metis Settlement, not as Chairman of Kikino Council.

He said he has an issue with the Appellant's Appeal letter dated February 11, 2008 (at tab 16) in the hearing package. He said the last paragraph of the letter is wrong. In particular, he said there are no minutes of a Board meeting, nor is there any evidence that a motion was made by the Board to bring this matter to an MSAT hearing. He submitted that without a motion from Council or the Association Board, Wayne Cardinal does not have any legal standing to bring this issue before MSAT.

Floyd Thompson said he wanted it on record that he objected to the continuation of this hearing because, in his opinion, there is no evidence allowing Mr. Cardinal to bring this issue before the Tribunal.

Floyd Thompson said that when he started his business in Kikino, he did so as a member at large. He said he applied for and was granted a half lot by Council of the day for the business.

He said he sold his business, not the land, to a Settlement Entity (the Association) for about the amount of money indicated by Wayne Cardinal. He also said that he followed procedure, and it was his understanding that he could not sell his Metis Title, because a Metis Title holder cannot transfer that interest to an association.

Respondent, Kikino Metis Settlement

Mr. W.L. (Bill) McElhanney, LL.B spoke on behalf of Kikino Metis Settlement.

He said the Panel should ignore paragraphs 3, 4 and 5 contained in the letter in tab 16. He said that the contents of the letter are matters before the Courts and outside the scope of the Panel's jurisdiction.

Mr. McElhanney requested that documents in support of his submission be entered as evidence.

Mr. McElhanney said there is a distinction between an alleged transfer of land and lease application, and that the Panel should clarify this distinction. He added that the Panel's decision should clearly address whether the appeal is about a transfer of land, or an application of a lease.

Council member, Dean Thompson, also spoke for the Kikino Metis Settlement. He said there is a process in place for granting leases between member to member, or between the Settlement to member. He said that as a Settlement Councillor, he is there because there are 11 other Sections of land that are in question concerning the Kikino Wildlife Ranching Association.

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.

1.3 Findings of Fact

The Panel has considered the evidence, and finds the following matters to be true facts based on the balance of probabilities:

- Floyd Thompson obtained a lot (0.85 acres) from Kikino Metis Settlement as an Allocation under the old Act legally described as 900006-03-01 located at SW-17-063-14-4 registered at the Metis Settlements Land Registry November 1, 1991.
- On March 31, 1995, Floyd Thompson applied to the Kikino Metis Settlement to transfer the 0.85 acre lot as a Metis Title to himself under the new Metis Settlements Act.
- The Land Transfer Agreement was signed by the Kikino Metis Settlement administrator and a Council representative on March 31, 1995.
- On March 11, 1997 Floyd Thompson transferred the 0.85 acre lot legally described as 900006-03-01 located at SW-17-063-14-4 to the Kikino Metis Settlement. The transfer agreement was signed by the Kikino Metis Settlement administrator and Kikino Council representative on April 15, 1997.
- The deadline for appealing this matter was May 15, 1997.
- On February 11, 2008 Wayne Cardinal filed an appeal in writing to the Metis Settlements Appeal Tribunal appealing the transfer of the lot to the Kikino Metis Settlement.

1.4 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.

Section 8.1 (2) of the Metis Settlements General Council Land Policy reads that the Appellant should have filed an appeal within 30 days of the Kikino Metis Settlement Council's decision to transfer the lot back to the Kikino Metis Settlement. The appeal should have been filed no later than May 15th, 1997.

The Appeal Tribunal did not receive a proper written appeal from Wayne Cardinal until February 11th, 2008. Section 8.1 (3) of the Metis Settlements General Council Land Policy reads:

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.


The Panel also considered section 202 of the Metis Settlements Act. This allows the Panel to consider whether special circumstances are present to justify extending the time limit from April 15th, 1997 to February 11th, 2008. In this regard, the Appellant did not provide any clear or cogent evidence to explain why it took the Association ten years to file its appeal. As such, this Panel sees no special circumstances to warrant an extension of the appeal deadline.

1.5 Decision

The Appellant did not meet the requirement for filing an appeal with MSAT, therefore this matter is dismissed.

Having concluded that the Appellant missed the appeal deadline and that MSAT cannot assume jurisdiction over this matter, the Panel opted not to address any other issues raised in this appeal.

Dated in the City of Edmonton in the Province
of Alberta on the 16th day of September 2009


Don Cunningham
Panel Chair