

Before:

Metis Settlements Appeal Tribunal

Land Panel

Between:

Frank Pruden

Appellant

-and-

Buffalo Lake Metis Settlement
Metis Settlements General Council
Metis Settlements Land Registry

Respondent

Concerning:

Land Dispute

Decision Date:

Decided this 9th day of May, 2016

DECISION

The Hearing – parties, place and date

MSAT Panel members:

Phyllis Collins, Panel Chair
Ross Daniels, Panel Member
Cody Hodgson, Panel Member

Parties present at the hearing:

Frank Pruden, Appellant

Buffalo Lake Metis Settlement, Respondent
Archie Handel-Buffalo Lake Council
Horace Patenaude-Buffalo Lake Council, Chairman
Harold Blyan-Buffalo Lake Council, Vice Chair
Jenelle Durocher-Land and Membership Clerk
Lana Howse-Administrator

Walter Pruden – Observer

MSAT staff present:

BJ Simpson, Dispute Resolution Officer

Place and date of the Hearing:

Buffalo Lake Recreation Centre Gym
Buffalo Lake Metis Settlement, Alberta
March 23, 2016

1.1 Context

Frank Pruden is a member of the Buffalo Lake Metis Settlement. He wants the Appeal Tribunal to restore the allotment interests he says he held in the SW-25-063-16-4 and the NW-25-063-16-4 in the Buffalo Lake Metis Settlement. He claims the allotment interests were taken away without due process.

Frank's matter was heard on March 23, 2016 in the Buffalo Lake Metis Settlement gymnasium.

What follows is a summary of what we heard on March 23 and how we think the law (Metis Settlements General Council Land Policy and Metis Settlements Land Registry Regulation) applies to Frank's matter. In short, two allotment interests were registered in Frank's name effective April 1, 1995 so that he could farm, ranch or run a business on the two parcels mentioned above. As set out in the Metis Settlements General Council Land Policy, allotment interests are only good for 10 years, unless they are renewed for another five year period or converted to Metis Title interests.

Frank did not apply to renew the allotment interests before the 10 years was up and he already held the maximum amount of acres in Metis Title that a member can hold so he could not convert them to Metis Title. After sending out a notice to Frank's last known address that his allotment interests were set to expire and would be cancelled, the Metis Settlements Land Registrar (MSLR) cancelled the allotment interests.

1.2 Evidence before the Panel

An MSLR form (#11), *Request to Cancel the Recording of an Interest*, dated March 14, 1995, and a *Memorandum of Allotment* Form also dated March 14, 1995 show that Frank Pruden had an allocation interest in both the NW and SW-25-063-16-4 which he converted to allotment interests.

The signed *Memorandum of Allotment* shows that Frank was granted allotment interests in the lands effective from April 1, 1995 to March 29, 2005. Two letters; one for each parcel, dated May 29, 1995 addressed to Frank Pruden from the Metis Settlements Land Registry show that his Allotment interests for both parcels were registered.

Six years after his allotment interests had expired, the MSLR sent Frank notices in writing on October 7, 2011 that his allotment interests would soon be cancelled unless he objected. Frank did not pick up his mail, nor had he notified the MSLR that he had a new address, and the letters were returned to the MSLR "Returned Mail (Moved/Unknown)."

The MSLR sent two more letters to Frank (to an address in Kikino this time) on May 15, 2012 advising him that his registered allotment interests had been cancelled pursuant to Section 73(1) (a) (ii) of the Metis Settlements Land Registry Regulations.

Frank subsequently filed a Membership Notice Form 6A with the MSLR confirming his new mailing address in Kikino Metis Settlement, Alberta.

Following all this, Buffalo Lake Metis Settlement sent a letter to Frank's brother, Walter Pruden, advising him that Frank's allotment interests had expired a long time ago and that Council had approved Doreen Howse to cut the slough hay from those two quarters sections of land.

On September 24, 2014, Frank Pruden filed an appeal in writing with the Appeal Tribunal through his (then) lawyer; Shawn Beaver.

1.3 Findings of Fact

- Frank Pruden lived away from the Buffalo Lake Metis Settlement; on and off, since 1975. He left the Settlement to go find work. He resided in Edmonton for a short time and then moved to B.C. He's been there ever since.
- When Frank was asked about the *Metis Settlements Act* and the amount of land that a member is allowed to hold, Frank said that he was under the impression that the *Metis Betterment Act* still applied and a member could have as much land as the supervisor gave him.
- On March 14, 1995, Frank filled in the necessary forms to change his allocation interests in the lands to the new allotment interests recognized under the new Accord legislation. He also signed the *Memorandum of Allotment* forms showing that his allotment interests were only good for 10 years to March 29, 2005 (and another 5 year renewal period) providing he was using the lands for farming, ranching or running a business.
- Notice letters were sent to Frank's last known address by the MSLR as indicated, as well as confirmation that his allotment interests had been cancelled.
- Frank did not notify the MSLR that he objected to the cancellation of his allotment interests within sixty days of the notification letters being sent to him.

1.4 How the law applies to this matter

MSAT can decide matters when the matter falls within the scope of work that we do and when the person who wants us to do something, files his or her appeal on time.

As out in section 73 of the MSLR Regulation, Frank had sixty days to file an objection with the MSLR from the date the notification letters were sent to him and then some time after that to file an appeal with MSAT if he did not agree with the MSLR's response to his objection. This means that Frank should have filed an objection with the MSLR 60 days after the notification letters were sent to him on October 7, 2011. Of course, we know from the record that Frank did not object to the cancellation of his allotment interests until he filed his appeal with MSAT on September 24, 2014; which is far too late.

Nor can Frank convincingly argue that it was anybody's fault except his own that he did not receive the original notification letters in 2011. These were sent to the last known address given

to the MSLR and it is every member's responsibility to update the MSLR about their current mailing address, or to make other arrangements to receive mail in a timely fashion; which Frank failed to do.

Having failed to bring this matter before the Appeal Tribunal within the statutory deadlines, and not having provided a good reason why the appeal deadline should be extended, this matter is dismissed.

Before closing this matter, though, it bears saying that unless there is convincing evidence to the contrary, all members are taken to know what it is they are signing; including a *Memorandum of Allotment* that clearly show that allotment interests are only good for 10 years (unless renewed for another 5 year period or converted to Metis Title) and that they are only to be used for farming, ranching or running a business on. In this case, Frank signed *Memorandums of Allotment* clearly showing that his interests would expire on March 29, 2005. Arguably, his interest expired on March 29, 2005 and his failure to take any action before means that Buffalo Lake Metis Settlement was free to treat those same lands as unencumbered and certainly so after the allotment interests were formally cancelled by the Registry.

1.5 Decision

Frank's appeal is dismissed.

Signed in Edmonton, May 9th, 2016



Phyllis Collins