

Before:

Metis Settlements Appeal Tribunal

Land Panel

Between:

Bill Hudson and Mary Hudson

Appellants

- and -

**East Prairie Metis Settlement
and
Metis Settlements General Council**

Respondents

Concerning:

Compensation for Improvements Made on Settlement Lands

Decision Date:

September 8, 2016

DECISION

The Hearing – parties, place and date

MSAT Panel members:

Lorne Dustow, Panel Chair
Cody Hodgson, Panel Member
Ross Daniels, Panel Member

Parties present at the hearing:

Bill Hudson, Appellant
Ross Brooks, Legal Counsel for the Appellant
Peter Patenaude-Council for East Prairie Metis Settlement
Gerald Cunningham-Council for East Prairie Metis Settlement
Wade L'Hirondelle-Council for East Prairie Metis Settlement
Shelly Auger-Council for East Prairie Metis Settlement
Colette Duh-Council for East Prairie Metis Settlement
Richard Hajduk- Legal Counsel for East Prairie Metis Settlement
Violet Haggerty-Land Membership Clerk East Prairie Metis Settlement
Greg Calliou-Observer
Louis Haggerty-Observer
Iner Gauchier-Observer
Les Calcheson, Observer

MSAT staff present:

Harry Cunningham, Dispute Resolution Officer

Place and date of the hearing:

MSAT Offices, Suite 200, 10335 – 172 Street, Edmonton, Alberta
April 22, 2016

1.1 Context

[1] William (Bill) Hudson became a member of the East Prairie Metis Settlement (the Settlement) on April 15, 1985. As a member, Bill was allowed to hold *Metis Title* interest—i.e. *exclusive use and occupancy*—in settlement lands and the Metis Title interest in the NW 9-71-14-W5 (the land) was transferred to him on November 1, 1993. The Settlement had built a house on the land and Bill was awarded the house under the Settlement’s *Housing Program Policy* (the Housing Program) that was in place at the time.¹

[2] However, Bill’s membership in the Settlement (and his right to hold Metis Title) was terminated by the Metis Settlements Land Registrar on November 23, 2011 because Bill voluntarily registered as an Indian² under the Indian Act. Bill and his wife, Mary—whose membership was also subsequently terminated by MSAT Order 247 dated August 30, 2013—left East Prairie Metis Settlement in November 2013.

[3] This brings us to the issue at hand: Namely, Bill and the Settlement were not able to agree on the compensation to be paid to Bill for improvements made on the land, and Bill has now applied to this Tribunal under section 91(3) of the Metis Settlements Act³ (the Act) to determine what compensation should be paid for improvements to the land.

1.2 Evidence before the Panel

[4] The evidence before the Panel includes submissions made at the hearing by the parties, and/or information contained in the hearing kit.

[5] The purpose of the Housing Program (through which Bill was awarded the house and underlying Metis Title in the land) was to build new homes for needy members of the Settlement. When a house (and corresponding Metis Title interest) was awarded to a Settlement member under the Housing Program, it was expected that the Settlement would establish a housing registry to retain all records, including:

Housing Registry

5.3 files, including

- a) preliminary progressive and final inspection report,
- b) ...
- c) equity, repayment agreements
- d) ...
- e) ...

¹ See *East Prairie Metis Settlement Housing Program Policy EPP01 (1-13-94)*

² Bill was added to the federal registry for Indians on February 11, 2010.

³ *Metis Settlements Act* [RSA 2000, Chap M-14].

- f) All infrastructure improvements,
- g) ...
- h) Receipts for improvements made by the homeowner

[6] It does not appear that the Settlement maintained a distinct Housing Registry as contemplated in the Housing Program. As a consequence, record keeping and reporting is spotty at best and placed additional strain on the parties and on the Tribunal's inquisitorial process.

[7] For example, we could not find the final inspection report for the house, or any repayment agreement, or any evidence that Bill made any payments on the house. With respect to non-payment for the house, this was not an uncommon occurrence during the first 17 years of the Accord (1990 – 2007). Indeed, it is common knowledge amongst Settlement members that while the provincial transition payments of \$340 million were in play over the first 17 year of the Accord to set up Settlement infrastructure and governance systems, non-payment of monthly housing dues was the norm, not the exception. Meaning, houses were essentially being given away on the Metis Settlements.

[8] Other parts of the Housing Program worth noting are:

Selling

9.3 In addition, ***the Settlement shall purchase 100% of the appraised value of the improvements (such as finished basements, decks, fences, other buildings) made by the member.*** (Receipt would have to be included and filed in the housing registry within the homeowner's file.) [Emphasis added]

Other

11.1 ***Payments of utilities, taxes, maintenance and upkeep (such as electrical, furnace, hot water tank and all water and sewer related maintenance and repairs, replacement of windows, linoleum, carpets, painting) and all other repairs are the responsibility of the member*** for whom the housing unit was allocated unless covered under warranty by the contractors. [Emphasis added]

Bill Hudson's submissions

[9] Bill and his wife, Mary, said they wrote to the Settlement on September 4, 2013, requesting compensation for improvements made to the land in the amount of \$165,000.00. They faxed another letter to the Settlement dated January 10, 2014⁴ reaffirming their request and listing various improvements that they believed justified the amount being requested, including:

- Replace floors in living room and kitchen and other areas in 2004-05;
- Finish basement, including construction of bedroom and games room, drop ceiling and laundry room;

⁴ See letter from Bill and Mary Hudson to EPMS, dated January 10, 2014 [Hearing Package, Tab 4(b)]

- Remove closet in kitchen, add chair rail, custom blinds and valance;
- Replace water pump and pressure tank in 2010;
- Replace H.W.H w gas water heater in 2008;
- Renovate master bedroom in 2011, including custom wall and ceiling paneling, walk in closet, Jacuzzi tub and lighting and matching scones;
- Renovate master ensuite which “was not functional when we moved in.” Installed toilet, pedestal sink and vanity mirror;
- Installed new taps, toilet and shower doors in main bathroom in 2005 and installed medicine cabinet with lighting in 2010.

[10] Other work was also listed in their January 10th letter to the Settlement, including:

- Development of area closest to the house, including bringing in top soil and lawn seed;
- Knocking down trees and chopping up roots and bringing in top soil over many years;
- Constructed 7 rock gardens, including bringing in rock from Banff, Jasper, Vancouver Island, Fraser River and a Pallet of stone from Richard’s Lumber;
- Constructed a memorial garden in memory of son who passed away;
- Planting perennial flowers, shrubbery, and trees throughout the yard and driveway;
- Built playhouse for daughter and renovated it for grandchildren;
- Two sheds on property;
- Coral, plus 3 acres of fenced property;
- Built deck onto back of house with storage and seating; and
- Dug a dugout.

[11] The Settlement responded on January 21, 2014,⁵ with a counter offer of \$10,000.00. The counteroffer was rejected by the Hudson’s. On January 19, 2015, Bill—through his lawyers at Owen Law—made another offer.⁶ Breaking down the value of major improvements into three categories: materials, labour (at \$15/hr) and payments to experts, Bill estimated the value of improvements to be \$56,655.00. (See table 1.1, next page.)

⁵ See letter from the Settlement dated January 21, 2014 [Hearing Package, Tab 4(d)]

⁶ See letter from Owen Law dated January 19, 2015 [Hearing Package, Tab 4]

Table 1.1 Improvements Claimed by Bill Hudson

Project	Materials	Labour	Experts	Total
1. flooring 2004-05	0	3,000	0	3,000
2. basement bedroom	700	750	0	1,450
3. games room	1,250	480	600	2,330
4. shelving in laundry room	60	30	0	90
5. chair rail in kitchen	200	210	0	410
6. kitchen countertop	1,350	150	0	1,500
7. remove old closet in kitchen	100	300	0	400
8. replace water pump 2010	400	150	0	550
9. replace hot water heater 2008	0	0	900	900
10. renovate master bedroom	5,700	720	400	6,820
11. renovate master bathroom	1,150	120	650	1,920
12. renovate main bathroom	580	105	0	685
13. fencing and other land development	10,070	22,410	4,120	36,600
Totals as of Jan 19, 2015	21,560	28,425	6,670	\$56,655.00
Totals, as amended at hearing, Apr 22/16	6,911.46⁷	28,425	6,670	\$42,006.46⁸

[12] With this new offer in play, the parties attempted to mediate their dispute using the Appeal Tribunal's mediation services. The mediation failed and Bill referred the matter to the Appeal Tribunal on May 20, 2015 under section 91(3) of the Act.

[13] The hearing was held in Edmonton on April 22, 2016.

[14] At the hearing, Bill, through his lawyer, reiterated that he ought to be compensated for improvements made to the land. The main project headings did not change (see above), but a number of receipts were made available and reviewed by the parties.

[15] Following the review, a number of project line items were reduced or eliminated because Bill did not have receipts for materials, or because he had included such things as tools in his estimate, or because the Settlement had actually covered the costs of materials. As a result, the estimate for materials was reduced by \$14,648.54, or from \$21,560.00 to \$6,911.46.

⁷ (21,560.00 - 14,648.54) = 6,911.46

⁸ (56,655 - 14,648.54) = 42,006.46

[16] Unfortunately, the review of receipts and offsetting Settlement expenditures was not conducted on a project-by-project basis, so it is impossible to know exactly where to apply each reduction. The best that can be done in these circumstances is to take the percentage of the reduction of (67.94%) and apply it to each estimate for material costs. Accordingly, the materials for project 2 (flooring) is reduced from \$700 to \$224.42, and so on.

[17] Other than reducing the costs for materials, Bill maintained his claim for improvements as per the table 1.1, above. For clarity, on the day of the hearing, Bill assessed the value of improvements to the land to be:

1. Materials for house renovations/maintenance and land development	\$6,911.46
2. Value of own labour (at \$15/hour)	\$28,425.00
3. Payment to experts	\$6,670.00
Total	<u>\$42,006.46</u>

[18] In re-asserting his claim for \$42,006.46 for improvements, Bill disagreed with the Settlement's position that the costs for programs and services he received from the Settlement after he became a Registered Indian ought to be deducted from any value attributed to the improvements made to the land. He said that section 91(3) of the Act does not include that sort of plus-minus formula; it only calls on the parties to focus on the value of improvements made to the land.

[19] Bill is also seeking interest and costs. He argues that the Appeal Tribunal has authority to order interest and costs to be paid under section 191 of the Act. Bill is seeking costs and interest, in part, because he believes that the Settlement—through its elected Council—did not bargain in good faith.

[20] **East Prairie Metis Settlement**

At the hearing on April 22, 2016, the Settlement argued that Bill is not entitled to any compensation for any improvements that may have been made to the land. According to East Prairie, any improvements made by Bill were more than offset by the cost of Settlement programs and services “wrongly accessed” by Bill and his wife Mary after they became registered Indians, or after February 11, 2010 and July 13 1994⁹, respectively.

⁹ Mary became a registered Indian after she turned 18 years old, but before her membership in East Prairie Metis Settlement was approved on July 13, 1994. According to MSAT Order 247, this means that the bylaw approving her membership was illegal and MSAT ordered the Registrar to rescind her membership within 120 days of the issuance of Order 247. [See MSAT Order 247, Tab 4(a) of the hearing kit.]

[21] East Prairie submitted its ledgers showing monies paid to Bill and Mary, including payments for mileage, funeral expenses, annual rental for a well site on the land and emergency disaster services.¹⁰

[22] East Prairie also argued that even if there is no deduction for programs and services, it was the Settlement that provided the bulk of the materials for the projects listed by Bill. Furthermore, it questioned whether labour should be included in any estimate of compensation, and if it is, whether the figures can be verified or whether the baseline payment of \$15/hour is reasonable. Finally, East Prairie argued that to the extent experts were utilized, the experts were paid by the Settlement, not by Bill.

[23] East Prairie also submitted an “Appraisal Report of Country Residential Improvements¹¹” for the NW 9-71-14-W5 (Bill’s house and land), which was prepared by Viensco Land Services out of Camrose Alberta. The purported effective date of the valuation is November 30, 2013; based on a viewing date of July 30, 2015.

[24] The purpose of the Viensco report was to estimate the “contributory value” associated with the maintenance items and improvements completed during (Bill’s) occupancy (up to November 2013). As set out in the Viensco report, “contributory value” is most commonly used in real estate to refer to the contribution made by a particular feature or component to the value of the whole property. Different features in real estate may have vastly differing contributory values. For example, the contributory value of a backyard deck may be well below that of a secondary suite with a full kitchen. Contributory values may also be dependent on buyer preferences and the state of the economy.

[25] General and specific indicators were identified in the Viensco report, including:

General

- East Prairie Metis Settlement population is 345;
- The Settlement is located in west north Alberta, near High Prairie;
- The Settlement is one of eight Metis Settlements;
- The area is served by rail and has paved provincial highways and graveled secondary roads;
- The economy is based around primary agriculture, oil and gas and agricultural processing; and
- Most of the land within the Settlement boundary is native bush with small open areas, some utilized as pasture.

Specific

¹⁰ See East Prairie Metis Settlement Accounts for Mary Hudson and Bill Hudson, Tab 7.14 of the hearing kit.]

¹¹ See Tab 8, Hearing Package

- Attached wood deck; basement finished; main bathroom renovation; renovation of master bedroom; wood paneling, walk in closet, Jacuzzi tub (sitting in plain view midway in master bedroom); ceramic tiling; chandelier; wall sconces; fence around pasture; rock garden, perineal flowers; trees and removal of debris from land; and
- The house was in an unkempt condition following the Hudson's departure in November 2013 and a series of repairs were identified on the day (July 30, 2015) Viensco inspected the property. The suggested (and tabulated) repairs include: repairs to the second bedroom flooring and paint, master bedroom repairs; roof replacement, paint wood deck, yard repairs and clean up

[26] In terms of methodology, Viensco Land Services applied two different assessment approaches and then averaged (and rounded up) the estimates generated from each approach. The first estimate relied on the "the cost approach,"¹² which produced an estimated value of \$11,500.00 for the improvements. The second estimate was based on the "depreciated value approach"¹³ generating an estimate of \$10,000.00 for improvements. As indicated above, these values were averaged, and then rounded up to come up with the recommended final value for improvements of \$11,000.00.

1.3 Findings of fact

[27]

- Bill became a member of the East Prairie Metis Settlement on April 15, 1985.
- The house in question was built by the Settlement in 1991.
- Bill received the Metis Title interest in the NW-09-071-14-5 (the land) on November 1, 1993.
- Bill became a registered Indian on February 11, 2010.
- The Registrar removed Bill from the Metis Settlements membership list on November 23, 2011. Bill's Metis Title interest in the land was also terminated by the Metis Settlements Land Registrar shortly thereafter.
- Bill and Mary left the Settlement in November 2013.
- Viensco Land Services inspected the property in question on July 30, 2015.

¹² In the cost approach, a property is appraised by first estimating the land value as though vacant; estimating the reproduction cost of the building at the date of appraisal; deducting from the reproduction cost amounts for accrued depreciation, and adding the net value of the building to the land for the indication of value.

¹³ Estimated costs of repairs/improvements multiplied by rate of depreciation based on Marshall Swift depreciation chart, with an additional subtraction for necessary repairs for final total.

1.4 How the law applies to this matter

[28] Jurisdiction is not in dispute. This matter is properly before the Appeal Tribunal because the conditions for assuming jurisdiction over this matter were met. As required by section 91(3) of the Act, which is set out below for ease of reference, Bill's membership was terminated; Bill and the Settlement could not agree on compensation to be paid for improvements made on land held by Bill; and Bill referred the matter (for which there is no appeal deadline) to the Appeal Tribunal for a decision.

91(3) A settlement council and a person whose membership has been terminated may agree on the compensation to be paid to the former settlement member for improvements made on land held by the member and if they cannot agree either of them may refer the matter to the Appeal Tribunal. [RSA 2000, Chapter M-14]

[29] In addition to providing the requirements that must be met to assume jurisdiction over this matter, section 91(3) of the Act sets out the scope of our review. Namely, it is this Panel's job to determine what compensation is to be paid to Bill for improvements made on the land.

[30] There are two parts to this job. The first is to determine the time frame for compensation. The second is to determine what constitutes an improvement and what compensation should be paid for those things that count as improvements.

[31] In our view, the time frame starts with the date that Bill received his Metis Title interest in the land—which also corresponds with the date the house was granted to him through East Prairie's housing program—up to and including the date that his name was removed from the Settlement members list by the Minister's designate, (the Metis Settlements Land and Membership Registrar), which, by extension annulled his right to hold the Metis Title interest in the land.

[32] We think it is appropriate to define the timeline this way—and to tie the dates to actions of the Metis Settlements Registrar in his role as keeper of the Settlement members list and in his role in maintaining an updated registry of land interests—because when it comes to enforcing interests in land, it is the registration or cancellation of interests in land that is most important. Put another way, the Registrar's role and actions in updating the membership list and land registry are often more than merely administrative; they are determinative. Specifically, we look to the members list to determine who is a member and we look to the Land Registry to determine who holds an interest in Settlement lands. The maintenance of these platforms is the Registrar's responsibility and reliance on these platforms is right and proper and part of the foundation of good governance that comes from certainty and transparency.

[33] Applying this approach, the start date for improvements is November 1, 1993 (the date when Bill received and registered the Metis Title interest in the land).

[34] However, we have adjusted the end date by two years from November 23, 2011 (the date when Bill was removed from the members list by the Registrar and his right to hold the Metis Title interest effectively terminated) to November 2013. We have done this because it was assumed by all that Bill would simply transfer his Metis Title interest to his wife, Mary, only to discover that her membership was essentially invalid; which ultimately led to their departure from East Prairie in November 2013. That the Settlement has also marked November 2013 as the end date for improvements fits with this approach and with the Tribunal's responsibility to provide remedies that, in all the circumstances, fairness requires.¹⁴

[35] This leaves the second part of the job to do: Namely determine what is meant by "improvements" and how to best value them.

[36] In this regard, "improvements" are defined in the Metis Settlements Land Policy:

1.3(b) improvements means changes people have intentionally made to the land in order to increase its usefulness, and includes all structures permanently attached to the land⁴ [Metis Settlements Land Policy, (GC-P9201)]

[37] A foot note (#4) is attached to the definition to help enrich our understanding of "structures" that could count as improvements and what "permanently attached to the land" means. The foot note reads:

[Footnote 4] "A structure" is anything built, for example houses, buildings, water systems, and fences. A structure is "permanently attached to the land" if all or part of it is buried in order to attach it to the land and keep it there for the foreseeable future. Things permanently attached to the structures are considered as part of the structure for this purpose.

[38] While the Land Policy helps us understand that changes to the land that improve its usefulness, including permanent structures, such as houses and fences, count as improvements, the East Prairie Housing Program Policy (mentioned earlier), also provides some guidance. In section 9.3, we see that improvements include such things as finished basements and decks.

[39] Furthermore, in keeping with the mandate in section 91(3) of the Act to compensate former members for improvements made, section 9.3 of the Housing Program also requires that

¹⁴ See section 190(1)(o) of the Act: The Appeal Tribunal may, in respect of any matter before it, provide any remedy that, in all the circumstances, fairness requires.

when the Settlement reclaims ownership of the house and property, the Settlement pay for 100% of the appraised value of the improvements:

Selling

9.3 In addition, ***the Settlement shall purchase 100% of the appraised value of the improvements (such as finished basements, decks, fences, other buildings) made by the member.*** (Receipt would have to be included and filed in the housing registry within the homeowner's file.)
[Emphasis added]

[40] In defining what counts as an improvement, it is also worth noting what doesn't count. In this regard, part 11.1 of the Housing Program tells us that monies spent on maintenance and upkeep, such as replacing a hot water tank or maintaining the furnace does not count.

Other

11.1 ***Payments of utilities, taxes, maintenance and upkeep (such as electrical, furnace, hot water tank and all water and sewer related maintenance and repairs, replacement of windows, linoleum, carpets, painting) and all other repairs are the responsibility of the member*** for whom the housing unit was allocated unless covered under warranty by the contractors. **[Emphasis added]**

[41] Taken together, and applied to the claim before us, this Panel is of the view that the following changes to the property count as improvements:

Table 1.2 Changes/Improvements Recognized by MSAT Panel

Year	To the lower bi-level of the house	Cost Estimate
2004 (approx.)	<ul style="list-style-type: none"> • Construction of new basement bedroom, drop ceiling, built-in closet. • Construction of games room, with grooved pine wall paneling and a drop ceiling, cabinets to cover electrical work and mirrors floor to ceiling. • Construction of shelving unit in laundry room. 	TBD
Year	To the main level and upper bi-level of the house	Cost Estimate
2004 (approx.)	<ul style="list-style-type: none"> • Installation of new flooring throughout home, laminate and tile (not just maintenance or upkeep, but improvements). • Kitchen: <ul style="list-style-type: none"> ○ Construction of chair rail in kitchen. ○ Installation of new kitchen counters and tiling. ○ Removal of closet at kitchen entrance. • Main bathroom renovation. • Renovation of master bedroom, wall paneling, walk in closet, ceramic tiling, chandelier, wall sconces. • Installation of Jacuzzi tub in master bedroom. 	TBD
Year	To the area outside the house	Cost Estimate
2004 (approx.)	<ul style="list-style-type: none"> • Construct back deck. • Construct fence around pasture. • Construct rock garden, plant perennial flower and trees, remove debris from land. 	TBD
Total Costs		TBD
Value (after depreciation but before repairs)		TBD

[42] Assessing the costs and attributing a fair value to these improvements is the next step.

[43] In this regard, this Panel likes the “contributory value” approach articulated in the Vienco report. We like it because it provides a platform to consider not only the cost (depreciated or otherwise) of improvements as one indicator, but to also consider the underlying economic realities concerning property ownership and development on the Metis Settlements of Alberta.

[44] Starting with the underlying economic realities, it is common knowledge that the fee simple estate in Settlement lands may not be mortgaged, charged or given as security.¹⁵ Put another way, members cannot go to a bank and get a “regular mortgage” to buy or develop property on a Metis Settlement. While there are very good reasons for disallowing third parties to take out securities on Settlement lands (namely, that over time ownership of Settlement lands would effectively be transferred from the Metis Settlements General Council to the banks), the lack of access to standard lines of credit has a depressive effect on property values and related improvements made in the Metis Settlements.

[45] The other depressive factor is that the Metis Settlements General Council Land Policy contemplates that only Settlement Councils and members can hold Metis Title interests.¹⁶ So, unlike most other realty markets across Alberta and Canada—in which practically every property is open to offers from across Canada, and beyond—offers on Settlement properties can really only come from other members or the local Settlement Council. Meaning, instead of having access to a market of millions of potential buyers, the market size on East Prairie Metis Settlement is limited to its membership base (345 people), plus Settlement Council.

[46] Certainly, the failure of many Settlements, including East Prairie, to consistently collect payments from Settlement members for the houses awarded to them (as is the case here) has also had a depressive impact on property values. For example, had payments toward the actual cost of building a house on the Settlement been collected, that money could have been put into “sinking fund” or some other financial instrument or partnership that could then be used to guarantee certain baseline returns for authorized improvements. However, it is only recently that this type of approach is being utilized—such as East Prairie’s new partnership with Habitat for Humanity—and it will not have yet changed the underlying economic realities of property ownership or development on East Prairie Metis Settlement.

[47] All of this is to say that unless some new and inventive financial or legislative instruments being put into play—perhaps by the Metis Settlements General Council under its Policy making power in section 222(n) of the Act respecting the termination of rights or interests in patented land—the value of any improvements will almost always be much less than the cost of making them.

[48] In this regard, the Panel has elected to incorporate the cost estimates—which factors in materials, labour and requirements for expert assistance—from the Viensco report because the

¹⁵ See section 5 of the Metis Settlements Land Protection Act [RSA 2000, Chapter M-16].

¹⁶ See sections 2.3 and 3.4 of the MSGC Land Policy (GC-P-9201)

underlying methodology is sound and because it is presented in a manner that corresponds with the improvements made. Also, given the difficulty in matching up Bill's receipts to specific improvements and the significant change in Bill's estimated costs for materials and confusion over what was repaid by the Settlement, we simply cannot rely on Bill's receipts.

[49] Having assessed the costs of improvements, the authors of the Viensco report multiplied the costs by a 43% rate of depreciation based on the "Marshall Swift" depreciation chart for upgrades that are roughly half way through their estimated life. On the whole, this Panel does not disagree with Viensco's approach. Depreciation is a fact of life and while it may be argued that certain improvements will prove to be longer lasting, there is no strong reason to discard the application of the 43% depreciation rate (and 75% for the Jacuzzi tub which suffers from its placement in plain view in the master bedroom) to the current total, leaving the total value of improvements at \$16,931.00 (i.e. \$16,131.00 after 43% for depreciation + \$800.00 for tub after 75% reduction). (See Table 1.2.1, below.)

Table 1.2.1 Changes/Improvements with Costs Recognized by MSAT Panel

Year	To the lower bi-level of the house	Cost Estimate
2003 (approx.)	<ul style="list-style-type: none"> • Construction of new basement bedroom, drop ceiling, built-in closet. • Construction of games room, with grooved pine wall paneling and a drop ceiling, cabinets to cover electrical work and mirrors floor to ceiling. • Construction of shelving unit in laundry room. 	\$8,500.00, for all
Year	To the main level and upper bi-level of the house	Cost Estimate
2003 (approx.)	<ul style="list-style-type: none"> • Installation of new flooring throughout home, laminate and tile (not just maintenance or upkeep, but improvements). • Kitchen: <ul style="list-style-type: none"> ○ Construction of chair rail in kitchen. ○ Installation of new kitchen counters and tiling. ○ Removal of closet at kitchen entrance. • Main bathroom renovation. • Renovation of master bedroom, wall paneling, walk in closet, ceramic tiling, chandelier, wall sconces. • Installation of Jacuzzi tub in master bedroom. 	<p>\$8,000.00</p> <p>\$1,100.00</p> <p>\$2,000.00</p> <p>\$3,800.00</p> <p>\$3,200.00</p>
Year	To the area outside the house	Cost Estimate
2003 (approx.)	<ul style="list-style-type: none"> • Construct back deck. • Construct fence around pasture. • Construct rock garden, plant perennial flower and trees, remove debris from land. 	<p>\$2,600.00</p> <p>\$800.00</p> <p>\$1,500.00</p>
Total Costs		\$31,500.00
Value (after depreciation but before repairs)		\$16,931.00

[50] At this point, the authors of the Viensco report subtracted the estimated cost of repairs (\$10,750) from the total to identify the “contributory value” of the improvements. However, this Panel disagrees with the amount deducted. Our main point of departure is that some 20 months past from the day Viensco viewed the property on July 30, 2015 and when the Hudson’s left the property in the care of the Settlement in November 2013. In our view, a certain amount of degradation to the improvements occurred not because the original work was shoddy, but because the Settlement did not fully maintain the property after the Hudsons left. Accordingly, this Panel thinks it fair to reduce Viensco’s repair estimate by 25%.

[51] Furthermore, some of the repairs do not naturally attach themselves to the value of the improvements but to normal upkeep of the property (i.e. roof replacement for \$3500.00) and just as Bill could not claim other upkeep items as improvements (such as replacing the hot water tank); neither can the Settlement deduct them from the costs of the improvements.

[52] This means that to the extent that repairs ought to be deducted from the cost of improvements to arrive at truer figure concerning their overall value, we will subtract \$5,437.50¹⁷ from \$16,931.00 to arrive at an adjusted value for improvements of \$11,493.50, which will be rounded up to \$11,500.00 for ease of reference.

[53] As to the Settlement’s argument that further deductions should be made because Bill and Mary accessed Settlement programs and services after they became registered Indians; we do not agree. There is no wording or mechanism within section 91(3) or the MSGC Land Policy to suggest that programs and services ought to be factored in when determining the value of improvements.

[54] With respect to Bill’s request that client-solicitor costs and interest be assessed against East Prairie Metis Settlement, we do not agree with that either. East Prairie made a fair counter offer shortly after receiving Bill and Mary’s initial request for compensation. That this matter took some time to resolve has more to do with the fact that this is the very first time that section 91(3) of the Act has ever been adjudicated. On the whole, we believe that all the parties were doing their best to negotiate a resolution in circumstances where the formula for determining compensation was unknown.

[55] This Panel has done its job: we have identified what the improvements are and their value. However there is still work to do. Namely, the Metis Settlements General Council should develop a new policy under section 222(n) of the Act respecting the ways and means of

identifying and valuing improvements on the Metis Settlements upon the termination of underlying interests in land. This policy could include a table of recognized improvements and general value attributable to an improvement. Of course, the policy should include a "right of appeal" to this Tribunal; which is one of the hallmarks of good governance.

[56] In addition, as more and more interests are terminated with the enforcement of section 90 of the Act (automatic termination of members who voluntarily become registered Indians), special effort should be made by General Council to develop a financial instrument (something like a sinking or contingency fund) to offset the costs of compensating past members for their improvements. Furthermore, and lastly, we encourage all settlements to develop partnerships (like the one between East Prairie Metis Settlement and Habitat for Humanity) or programs that ensure a fixed payment schedule and a fixed return on properties on settlement lands.

1.5 Order

[57] The East Prairie Metis Settlement is directed to pay Bill Hudson \$11,500.00 for improvements made to the NW 9-71-14-W5. East Prairie Metis Settlement has 60 days from the issuance of this order to pay Bill.

Dated in the City of Edmonton in the Province
of Alberta on the 8th day of September 2016.



for Lorne Dustow
Panel Chair

¹⁷ (10,750 – 3,500 (roof repair)) x 25% = 5,437.50

