

Before:

Metis Settlements Appeal Tribunal

Land Panel

Between:

**Joey Cardinal**

Appellant

-and-

**Garry Gaudet**

Respondent

-and-

**Rochelle Gaudet**

Respondent

-and-

**Paddle Prairie Metis Settlement**

Respondent

-and-

**Metis Settlements General Council and Metis Settlements Land Registry**

Respondents

Concerning:

Land Dispute

Hearing Date:

August 30, 2016

Decision Date:

November 8, 2016

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**DECISION**

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## The Hearing – parties, place and date

### **MSAT Panel members:**

Phyllis Collins, Chairperson  
Ross Daniels, Panel Member  
Lorne Dustow, Panel Member

### **Parties Present at the Hearing:**

Joey Cardinal Sr., Appellant (lives in a house on the north west end of the quarter)  
Wilma Cardinal, (Joey Cardinal's wife and spokesperson)

Garry Gaudet, Respondent  
Marilyn Gaudet, (Garry's wife and spokesperson for Garry and Roehelle Gaudet)  
Joey Cardinal Jr., Respondent (Joey Sr. and Roehelle's son)  
Jaydon Cardinal, Respondent (Joey Sr. and Roehelle's son)

Lila Kilkenny, Respondent (lives in a house on the very north west part of the quarter)

Paddle Prairie Metis Settlement, Respondent  
Settlement Council  
Carmen Laboucane, Councillor  
Cory Ferguson, Councillor

### **MSAT Staff Present:**

BJ Simpson, Dispute Resolution Officer

### **Place and Date of the Hearing:**

Paddle Prairie Metis Settlement Council Chambers  
August 30, 2016

## 1.0 Context

[1] Here's the problem: Paddle Prairie Metis Settlement (PPMS) built three houses on Lot 1, Plan 900208, (the west side of the SW-14-103-22-5) in the 1990s without proper surveys or descriptive plans, which affected its ability to deal with requests for the Metis Title interest for lands surrounding the houses.

[2] Joey Cardinal Sr. lived in one of the houses on Lot 1 with his first wife, Roechelle Gaudet. They got divorced in 2006 and everyone left the Settlement for a period of time. Joey moved back to the Settlement and is once again living in the same house on Lot 1, with his new wife, Wilma Cardinal.<sup>1</sup> Joey Sr. wrote to the Appeal Tribunal after he learned that PPMS Council resolved to transfer the Metis Title interest for the lands under the house he is living in to Roechelle's father, Garry Gaudet, pending a survey being done. Joey Sr. wants the Metis Title interest transferred to him instead.

[3] Paddle Prairie currently holds the Metis Title interest for the entire quarter.<sup>2</sup> As the interest holder and as the body responsible for building the houses and collecting monies for those houses, it is now for Paddle Prairie to properly define the boundaries/lots around each housing unit (or a grouping thereof) through surveys or descriptive plans, and to then properly register those lots with the Metis Settlements Land Registry (MSLR). Should the PPMS Council decide to transfer the Metis Title interests underlying the newly registered lots, it is up to them to do so in accordance with the rules set out in the Metis Settlements General Council (MSGC) Land Policy and corresponding bylaw or policies, including the PPMS Residency Bylaw.

## 1.1 Evidence before the Panel

### Joey Cardinal Sr., Appellant

[4] Joey Sr.'s wife<sup>3</sup> helped with his submissions. According to the Cardinals:

- If the appeal period needs to be extended, it should be done because PPMS did not post its decision to transfer the Metis Title

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<sup>1</sup> Note: the description between "first wife" and "new wife" is not meant to be pejorative. It's just a statement of fact.

<sup>2</sup> See MSLR Land Search Reports at Tab 28 of Hearing Package, which shows that even the transfer of the 80.69 acres for the east side of SW-14-103-22-5 is "pending."

<sup>3</sup> MSAT's rules of procedure recognize that having immediate family help with submissions is part of Metis culture and is allowable in MSAT hearings. Later on, Roechelle's mom, Marilyn, spoke up on behalf of Roechelle and for Garry Gaudet to a certain extent.

interest until late November, 2015 and as soon as Joey Sr. found out, Joey Sr. amended his earlier request for review/appeal to now focus on Council's decision from October 13, 2015.

- Joey Sr. also said that PPMS Council did not notify him that they were making a decision about the house and land on October 13, 2015 and this is another reason for MSAT to review the matter.
- The PPMS Residency Bylaw (106/00) requires proof of residency (or a leave of absence) before a member can apply for a Metis Title interest. As far as Joey knows, Garry Gaudet is not a resident member because Garry has not lived in PPMS for over nine years. Neither has Garry been given a leave of absence. According to the Cardinals, PPMS is barred by the Residency Bylaw from transferring the Metis Title interest to Garry.
- The Cardinals said that due process was not afforded Joey Sr. when the PPMS Subdivision Approval Authority approved Garry's subdivision application to transfer approximately 1.5 acres located on the northwest portion of the SW-14-103-22-5 to Lila Kilkenny on April 30, 2001 ("on the condition that the area to be subdivided is surveyed by a licensed surveyor," at the applicant's cost).
- The Cardinals said that the fact that only Joey Sr. signed the [Housing] Agreement<sup>4</sup> on May 31, 1999, and was the only one named in the PPMS motion (#0039/99)<sup>5</sup> approving members for new houses, means that PPMS meant for Joey Sr. to get the house and Metis Title interest upon which the house sits.
- Joey Sr. said that since he moved back into the house in 2014, he has signed new payback agreements for utilities and for a portion of the construction cost of the house.

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<sup>4</sup> The title page of the Housing Agreement read that "This Agreement is between PPMS and Roehelle Gaudet and Joseph Cardinal."

<sup>5</sup> See Tab 7 of the Hearing Package. Resolution #0039/99, Les Nooskey/sec Raymond Arnault (5 in favour) moved to approve "the remaining five homes be awarded to Joey Cardinal..... (and four other members)."

- Joey Sr. said that he isn't looking to take the Metis Title interest in all the land on the west half of the SW-14-103-22-5 (i.e. 80 acres), but only looking for the Metis Title interest in enough land around the house to meet any sanitation and access requirements (between 3 and 10 acres).

**Garry Gaudet, Respondent**

[5] Marilyn Gaudet spoke for her husband, Garry, and their daughter, Roechelle (who was not present at the hearing). Marilyn also promoted her grandsons Joey Jr. and Jayden to say a few words. According to the Gaudets:

- Garry agreed to have another house built on the SW-14-103-22-5 because Roechelle (and Joey Sr.) and their children needed a house.
- The [Housing] Agreement signed by Joey Sr. on May 31, 1999 shows both "Roechelle Gaudet and Joseph Cardinal" as the members who were to receive the house.
- Roechelle—who is now living in Lethbridge and working several different jobs to make ends meet—also signed at least one payback agreement for the house and had \$50 deducted from her paycheck from PPMS on a by-weekly basis to pay for water and the house.
- Joey Jr. and Jayden said they want the house and [the interest] in the land to stay with their grandpa, Garry. They are concerned that they will lose the house and land if it goes to Joey Sr. because if he dies, Wilma will get everything under the Dower Act. Joey Jr. and Jayden recommended that the house and interest be held in trust for them.

**PPMS Council, Respondent**

[6] PPMS Council members confirmed that:

- PPMS did not post the Metis Title interest for the SW-14-103-22-5 (Lot 1, or otherwise) as being available, nor was notice given to

Joey Sr. that Council was going to deal with the house and underlying interest on October 13, 2015.

- The minutes from the October 13, 2015 meeting were adopted at Council's next meeting on October 26, 2015, but not posted in the Settlement's office for approximately another two weeks due to turn over in staff.
- Council did not consider the PPMS Residency Bylaw when it directed that the house and Metis Title interest be transferred to Garry, pending survey.
- Any approvals by Council (past and present) to transfer interests in land or to approve subdivision applications for the SW-14-103-22-5 have been made conditional to surveys being completed by the parties and no surveys have been completed to date.

**Lila Kilkenny, Respondent**

[7] Lila said that the 1.5 acres surrounding her house on the northwest portion of the SW-14-103-22-5 has been subdivided and is now registered in her name.

**1.2 Findings of Fact**

[8] According to the MSLR Land Search Report for the SW-14-103-22-5, PPMS holds the Metis Title interest for the entire quarter.<sup>6</sup> The transfer of the Metis Title interest to Norma Antoinette Houle for the *east* half of the quarter (71.93 acres) is marked as "pending".<sup>7</sup> The only other notation worth noting for the east side of the quarter is that a now defunct Allocation interest<sup>8</sup> is shown as having been recorded in Clarence Houle's name.

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<sup>6</sup> See MSLR Land Search Report at Tab 28 of the Hearing Package.

<sup>7</sup> The east side of the quarter is 71.93 acres because it excepts out Plan 900208 Lot 1 (80.31 acres) and Road Plan 1-3900015 (8.43) leaving a remainder of 71.93 acres.

<sup>8</sup> Every member who held an Allocation interest under the Metis Betterment Act was supposed to convert that interest into one recognized under the new MSGC Land Policy by June 1995. Those who did not convert their Allocations lost their interests by operation of the Conversion Regulation.

[9] Insofar as the west half of the quarter goes, (i.e. “Lot 1” which has 80.1 acres), PPMS is listed as the holder of the Metis Title interest. The only recording on file for Lot 1 is that Clifford McGillivray held a now defunct Allocation interest at one time.

[10] The decisions by PPMS Council and the PPMS Subdivision Approving Authority to transfer Metis Title interest or to carve out specific pieces of land in Lot 1 were made conditional on surveys being done by the parties and these surveys were never done. As a result, there is nothing on the MSLR Land Search Report for the SW-14-103-22-5 to show that Lot 1 has been subdivided or encumbered (i.e. made subject to other recorded or registered claims) in any way.

[11] PPMS did not post the Metis Title interest for the SW-14-103-22-5 as being available, nor did it give Joey Sr. notice that PPMS Council would be dealing with the matter on October 13, 2015.

[12] PPMS did not consider its Residency Bylaw 106/00 when it awarded the Metis Title interest in the SW-14-103-22-5 to Garry Gaudet, pending survey.

[13] The PPMS did not post the minutes from Council’s October 13, 2015 meeting until mid to late November, 2015. Joey Sr. wrote to the Appeal Tribunal on December 2, 2015 requesting that the Appeal Tribunal review PPMS Council’s decision to award the Metis Title interest in Lot 1 to Garry Gaudet.

### **1.3 How the law applies to this matter**

[14] The Appeal Tribunal has assumed jurisdiction over this matter under sections 8.1(1)(2) of the MSGC Land Policy. As set out in section 8.1, any person affected by Council’s decision concerning the transfer of an interest in settlement lands can appeal in writing to the Appeal Tribunal. Joey Sr. has standing to appeal because he is clearly affected by the would-be transfer of the Metis Title interest in Lot 1 to Garry. Furthermore, it is our opinion that the 30 day appeal deadline found in section 8.1(2) of the Land Policy must be read in conjunction with PPMS’s statutory duties to adopt and post Council decisions,<sup>9</sup> which means that the 30 day deadline does not start until Council decisions have been adopted and posted. Given that the October 13, 2015 minutes were not posted until mid-November 2015 at best (due to staff turnover), and that Joey

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<sup>9</sup> See section 44(1) regarding 15 day posting requirement and section 44(1)(e) concerning mandatory requirements for the adoption (and posting) of council minutes in particular.

Sr. filed his appeal in writing within 30 days of the minutes being posted, it is appropriate for the Tribunal to assume jurisdiction over this matter.

[15] Another reason for identifying the start of the 30 day appeal period as coinciding with the date Council minutes are posted is that to do otherwise would be to frustrate the rights of settlement members to make an appeal under the MSGC Land Policy and otherwise promote the idea that appeals (i.e. accountability) can be avoided simply by delaying the release/posting of council minutes/decisions. Either way, such a scenario does not promote good governance and it is the Appeal Tribunal's statutory mandate under section 187.1 of the MSA to strengthen Metis self-governance.

[16] Alternatively, had this Panel decided that the 30 day appeal deadline commenced on the day (October 13, 2015) PPMS decided to transfer the Metis Title interest (subject to a survey being done and paid for by Garry), we would have utilized our power under the MSGC Land Policy, section 8.1(3) footnote 37, to extend the appeal deadline to include the date when Joey Sr. filed his appeal in writing on December 2, 2015. We would have done this because PPMS did not notify Joey Sr. that it was deciding ownership over the parcel on October 13, 2015 and because Joey Sr. could not have known about PPMS' decision until the minutes were posted in mid to late November 2015. In other words, we would have extended the appeal deadline because in the circumstances it is what fairness requires and because it is within our power under section 190(o) of the MSA to do what fairness requires.

[17] In examining the decisions made to date in PPMS concerning Lot 1, the one thing they all have in common is that they are all "conditional." Specifically, before Lila's 1.5 acre subdivision could be completed, Lila or Garry needed to have a licensed surveyor survey the land (and presumably submit the survey to the PPMS Subdivision Authority for approval and registration at the MSLR). Of course, all this was premised on Garry actually holding a registered interest in the land at the time that he could transfer; which he did not. The Metis Title interest in the land has always been held by PPMS.

[18] The same goes for Council's decision to transfer the Metis Title interest in Lot 1 to Garry on October 13, 2015. It was made conditional on a survey being done (and paid for by Garry). It is also worth noting that Council's resolution reads that the "Metis Title interest for the SW-14-103-22-5 [be transferred] from PPMS to Garry Gaudet, pending survey," and it does not specify whether it is just Lot 1 (i.e. 80.31 acres) that is being transferred, or PPMS's interest in the entire quarter (including the 71.39 acres on the east half) that is being transferred.



[19] That the Appeal Tribunal exercises deference when dealing with Council decisions is true. However, given that the October 13, 2015 decision is conditioned on other things happening (i.e. a survey being done and paid for by Garry) and that the decision appears to give the *entire* quarter to Garry (which would cause a host of other problems), it is best to set aside what happened on October 13, 2015 and ask that Council start over, but with some guidance from the Tribunal.

[20] Starting first with the question of who holds the Metis Title to the SW-14-103-22-5, while the PPMS Housing Agreement signed by Joey Sr. and the PPMS Housing Policy<sup>10</sup> suggest that all recipients first hold the Metis Title interest or some other lessor form of recognized interest before the house is built, the Metis Title interest was not transferred before (or after) the house was built. Furthermore, since all future attempts to transfer the Metis Title interest to Garry (and Lila) were made conditional on surveys being done, and that this was not done, it is not surprising to find that the MSLR Land Search Report shows that PPMS is the registered holder of the Metis Title interest in the SW-14-103-22-5.

[21] In considering Joey Sr.'s suggestion that living in the house and paying for utilities and rent<sup>11</sup> gives rise to a presumption of transference of Metis Title interest, we cannot agree. Transferring interests in settlement lands is a proscribed process, requiring specific and deliberate steps that are sanctioned by the MSGC Land Policy.

[22] These steps are set out in Part 4 of the MSGC Land Policy. Starting with section 4.2 of the Land Policy:

**4.2 Making settlement held land available**

The settlement council can decide, in accordance with the Policy and settlement bylaws:

- (a) What parcels of settlement held land should be made available for use or development;
- (b) The purposes for which they should be made available; and
- (c) The type of interest that should be granted or transferred to enable the desired use or development.

[23] There are several aspects to section 4.2. The first is that it is up to a settlement council whether it makes its interest available. The second is that if its interest is made available, a

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<sup>10</sup> See the section 8(c) of the PPMS Policy No PP056102, section 8(c), *Eligibility*.

<sup>11</sup> Unless there is a rent to own agreement in place; which is not the case at hand.

settlement council should insist that the boundaries of each parcel of land be known before granting its interest in the land. It should know exactly *what parcel* of land is being made available. It is on this point that PPMS has erred. In our view, PPMS is attempting to transfer its interest without first describing or otherwise identifying the boundaries of the parcel it wants to transfer. Put another way, by making the transfer of the Metis Title interest conditional on surveys being done sometime in the future, PPMS is not meeting its duty to say just *what* parcels of land are being made available.

[24] This is not to say that PPMS is responsible for paying for surveys or even taking the lead in developing descriptive plans (which, when allowed under section 87 of the MSLR Regulations, are much less costly than surveys). Indeed, where feasible, it may be that the Settlement works in partnership with potential recipients to do the survey or descriptive plans in the lead-up to posting its interest. It may also be that the Settlement takes the lead and does the survey work or descriptive plan with the intention of recouping its expenses after it transfers its interest.

[25] In deciding what parcels to make available, PPMS must take into account provincial regulations and settlement bylaws. Such considerations can determine whether lands are made available, the size of the lands, and who is eligible to apply. For example, on those lands where houses have been built, PPMS should look to the *Alberta Private Sewage Systems Standard of Practice Handbook*,<sup>12</sup> (or to its own bylaws if any exist), which identifies key separation distances depending on the type of sewage system in use and which can then be used to identify the minimum/appropriate size of parcels that are later made available.

[26] Of course, it is also essential that PPMS follow the processes for posting available interests,<sup>13</sup> taking in applications,<sup>14</sup> and considering<sup>15</sup> each application in line with the overriding considerations set out in section 4.5 of the MSGC Land Policy. Other considerations to be taken into account include PPMS' own Residency Bylaw, which only allows resident members to apply for interests in settlement lands.

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<sup>12</sup> See [www.safteycodes.ab.ca/Public/Pages/Publications.aspx](http://www.safteycodes.ab.ca/Public/Pages/Publications.aspx).

<sup>13</sup> See section 4.3 of the MSGC Land Policy.

<sup>14</sup> See section 4.4 of the MSGC Land Policy.

<sup>15</sup> See section 4.5 of the MSGC Land Policy.

## 1.4 Decision

Given that PPMS built the houses on Lot 1 of the SW-14-103-22-5 without first clarifying the boundaries of the parcels and interest holders, it is for PPMS to make best efforts to now sort out the matter. Firstly by working with the MSLR to develop appropriate *descriptive plans*<sup>16</sup>—and taking into consideration any applicable sewage standards and other policies or bylaws—and registering those plans under its own name as the current holder of the Metis Title interest for the SW-14-103-22-5. Once the parcels of land are properly identified and registered, it will then be for PPMS to post the parcels, receive applications and review those applications in accordance with the MSGC Land Policy and any applicable local bylaws and policies.

We think that six months from the date of this decision is a reasonable amount of time to get it all done. If PPMS needs more time, it should notify the Appeal Tribunal and the parties that it needs more time before the six months is up. PPMS should also provide the reasons why it needs more time and how much time, in particular, is required to sort out these matters. The standard rights of appeal remain open to all those affected by any Council decisions concerning the transfer of interests on settlement lands; providing, of course, that the affected members meet the appeal requirements set out in section 8.1 of the MSGC Land Policy, or some other recognized appeal provision.

Dated in the City of Edmonton, in the Province  
of Alberta on this 8<sup>th</sup> day of November 2016.




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Phyllis Collins  
Panel Chair

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<sup>16</sup> It appears that descriptive plans can be utilized in this case to define the size of the parcels.