

Before:

Metis Settlements Appeal Tribunal

Land Panel

Between:

Dean Cunningham Sr.

Appellant

-and-

Gift Lake Metis Settlement

Respondent

-and-

Metis Settlements General Council

Respondent

-and-

Metis Settlements Land Registry

Respondent

Concerning:

Land Dispute/Compensation

Decision Date:

January 9, 2017

DECISION

MSAT Panel members:

Lorne Dustow, Chairperson

Ross Daniels, Panel Member

Joyce Parenteau, Panel Member

Parties participating in jurisdictional review:

Dean Cunningham, Appellant, represented by:

- Ms. Priscilla Kennedy, Legal Counsel, DLA Piper LLP

Gift Lake Metis Settlement, represented by:

- Mr. Thomas Owen, Legal Counsel, Owen Law

MSAT Staff:

BJ Simpson, Dispute Resolution Officer

Hearing:

By way of review of written submissions

1.0 Context

[1] The question before the Appeal Tribunal is whether it has jurisdiction over Dean Cunningham Sr.'s (Dean's) claim/appeal concerning the alleged expropriation by Gift Lake Metis Settlement of a *profit a prendre*¹ interest that he claims to have in haying lands in the Gift Lake Metis Settlement?

[2] By way of additional context, the Metis Settlements Land Registrar removed Dean from the Gift Lake Metis Settlement members list on October 15, 2015 after determining Dean had voluntarily become a registered Indian under the Indian Act on February 19, 2007. Dean is appealing that decision before the Court of Queen's Bench (see Action No.: 1503 07512²) and it is our understanding that the matter will be heard in December 2017. Dean also sought an immediate injunction from the Court of Queen's Bench in May 2016 to stop Gift Lake Metis Settlement from barring him from the Gift Lake haying lands. The request for injunctive relief was denied on May 31, 2016.

[3] In keeping with the Appeal Tribunal's power to make rules of procedure for the conduct of its business³ the parties were asked to submit their arguments in writing about this Tribunal's jurisdiction over allegations of expropriation.

[4] Having reviewed the arguments, this Panel is of the view (for the following reasons) that claims of expropriation must be tendered to the Court of Queen's Bench, not the Appeal Tribunal.

1.1 Evidence⁴ before the Panel

Dean Cunningham Sr., Appellant

[5] Dean⁵ clarified in writing on August 19, 2016 that he wants the Appeal Tribunal "to provide compensation for expropriation of his land rights and improvements on the haying lands which the Gift lake Metis Settlement has refused to compensate him for."

¹ *Profit a prendre* is defined via Google Search as Middle French for "right of taking," similar in the law of real property to an *easement*.

² Dean Cunningham and others are proceeding before the Court of Queen's Bench, see *Laderoute et al. v. Minister of Aboriginal Relations, Registrar of the Metis Settlements Land Registry, Attorney General of Alberta, et al.*

³ See s 195 *Metis Settlements Act* [RSA 2000, Chapter M-14]

⁴ The Panel has summarized the evidence that it thinks is relevant to the question of the Appeal Tribunal's jurisdiction over claims of expropriation.

⁵ Through his lawyer, Ms. Priscilla Kennedy.

[6] Dean argues that the Appeal Tribunal has authority over this matter because, in his view, he has a profit a prendre interest in the hay lands and the Gift Lake Metis Settlement cannot take away that alleged interest unless it expropriates the interest in accordance with section 108 of the *Metis Settlements Act* (MSA) and section 6 of the *Metis Settlements Land Protection Act*⁶ (MSLPA).

[7] Section 6 of the MSLPA reads:

6(1) If
(b) a person having a right to expropriate an estate or interest in land by virtue of an Act of the Legislature,
properly requires an interest less than the fee simple in patented land and specifies the part of the land required and the purpose for which it is required, the interest must be provided by the person from whom it is sought and compensation paid for it accordingly.

(2) If a disagreement arises as to
(c) the nature of the interest required, or
(d) the amount of compensation or to whom it is to be paid,
the disagreement, or any issue with respect to the matter, must be resolved in a manner determined by agreement between the Crown or the person requiring the interest and the General Council and any other person having an interest in the land affected by the proposed acquisition, but if no agreement can be reached, ***the matter must be determined by the Court of Queen's Bench*** [emphasis added by this Panel].

[8] Dean also argues that the Appeal Tribunal has jurisdiction through section 91(3) of the MSA, which reads that:

(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.

[9] According to Dean, when Gift Lake Metis Settlement rejected his claim for \$31,953.91 for improvements in the hay lands, they triggered a right of appeal under section 91(3).

⁶ *Metis Settlements Land Protection Act* [RSA 2000, Chapter M-16].

[10] Dean concludes his argument by suggesting that the Appeal Tribunal's jurisdiction is set through its overriding mandate in section 187.1, which instructs the Appeal Tribunal to preserve and enhance Metis culture and identity and to further the attainment of self-governance by Metis settlements under the laws of Alberta. He further argues that the Appeal Tribunal is compelled to hear matters ["must hear appeals"] as per section 189(1) of the MSA when a function is given to it under provincial legislation or under MSGC Policies or other subordinate laws, (such as settlement bylaws and other self-governance instruments).

Gift Lake Metis Settlement, Respondent

[11] Gift Lake Metis Settlement⁷ (GLMS) argued that Dean ceased to be a member of the Gift Lake Metis Settlement on February 19, 2007 when he voluntarily registered as an Indian under the *Indian Act*. And, when Dean ceased to be a member, he ceased to be entitled to the benefits of membership, including the use of the community hay lands located in Gift Lake Metis Settlement and reserved exclusively for the use of its members.

[12] GLMS argues that Dean does not have a right of profit a prendre in the hay lands, or an interest by way of adverse possession, and even if he did, GLMS did not expropriate that right. According to GLMS, there was no need to expropriate any alleged interest Dean claims to have because Dean lost all benefits of membership, including the use of the hay fields, when he voluntarily became a registered Indian in 2007. Any loss sustained by Dean was by operation of law, not by any act of expropriation by the GLMS.

[13] Insofar as Dean is claiming compensation for expropriation, GLMS points out that section 6(2)(d) reads that disagreements about any expropriation must be determined by the Court of Queen's Bench, not the Appeal Tribunal.

[14] Regarding Dean's claim for under section 91(3) of the MSA for improvements made to the land, GLMS argues that Dean does not qualify to use this section and that the Appeal Tribunal cannot assume jurisdiction under it, because Dean did not meet the prerequisite condition that he hold the land in question at the time he terminated his membership in 2007.

[15] Finally, GLMS pointed out that if Dean is successful in his application to restore his membership in the GLMS, he won't meet the stipulation of being a former member, and, once again, the Appeal Tribunal cannot be expected to adjudicate the matter.

⁷ Through its lawyer, Thomas Owen.

1.2 Findings of Fact

[16] This Panel is of the view that the following evidence on offer from the parties and as found in the information kit that was distributed to the parties for comment may be taken as fact on the balance of probabilities and are relevant to the question of jurisdiction:

- Dean became a registered Indian on February 19, 2007;
- The Registrar for the Metis Settlements Land Registry (MSLR) removed Dean from the Gift Lake membership list on October 15, 2015;
- Dean held registered Metis Title interests in the following parcels of land on October 15, 2015 (none of which overlap with the GLMS hay lands⁸):
 - NW-05-080-12-W5M (160 acres);
 - NW-33-079-12-W5M, 900103-14-05 (3.14 acres);
 - SW-08-080-12-W5M (160 acres); and
 - NW-33-079-11-W5M, 900005-14-05 (2.69 acres)
- No other interests in settlement lands have been registered or recorded under Dean's name at the MSLR.

1.3 How the law applies to this matter

[17] For the purposes of this exercise, *if* this Panel accepts that Dean has an unregistered profit a prendre interest in the GLMS hay lands *and* that Dean's interest was expropriated by GLMS, section 6(2)(d) of the MSLPA makes it clear that disagreements about any expropriation must be determined by the Court of Queen's Bench, not the Appeal Tribunal.

[18] Put simply, the Appeal Tribunal cannot assume jurisdiction over questions of expropriation. Furthermore, given the fact that Dean has commenced an action in the Court of Queen's Bench concerning this very thing, suggests that Dean knows that questions of expropriation are to be dealt with at the Court of Queen's Bench, not here at the Appeal Tribunal.

[19] Finally, if Dean is successful in convincing the Court of Queen's Bench that profit a prendre interests are in keeping with the purposes and design of the Metis Settlements General Council Land Policy,⁹ and that he has an enforceable profit a prendre interest, and that this

⁸ The GLMS hay lands are on the following quarters sections within the GLMS: NW-18-079-10-5; SW-19-079-10-5; NE-13-079-11-5 and SE-19-079-10-5.

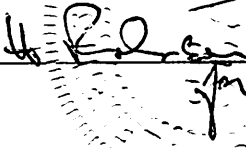
⁹ MSGC Land Policy GC-P0201. See section 1.2, Purpose of the Land Policy... to provide a basic system of interests

interest was expropriated by GLMS, the Appeal Tribunal can then deal with Dean's section 91(3) claim for improvements made to lands held by a former member. To be clear, this decision does not deny Dean's claim for compensation under section 91(3) of the MSA, it simply explains that the expropriation question and profit a prendre question must be firstly dealt with by the Court of Queen's Bench.

1.4 Decision

[20] Dean's appeal is dismissed.

Dated in the City of Edmonton, in the Province
of Alberta on this 9th day of January 2017.



Lorne Dustow
Panel Chair

in settlement land, to establish principles concerning transference, and to create a land management system that recognizes and balances the individual rights of the landholder and the collective rights of the settlement as a Metis community.

