

Before:

Metis Settlements Appeal Tribunal  
Land Panel

Between:

**Louis Haggerty**

Appellant

-and-

**East Prairie Metis Settlement**

Respondent

-and-

**Metis Settlements General Council**

Respondent

-and-

**Metis Settlements Land Registry**

Respondent

Concerning:

Trespass

Decision Date:

February 27, 2017

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**DECISION**

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**MSAT Panel members:**

Lorne Dustow, Chairperson

Ross Daniels, Panel Member

Joyce Parenteau, Panel Member

**Parties participating in jurisdictional review:**

Louis Haggerty, Appellant

East Prairie Metis Settlement given notice of review, but did not reply

**MSAT Staff:**

Karen Mustus, 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 Louis Haggerty's appeal concerning an alleged trespass and damages by a Settlement operator on Louis' land.

[2] In keeping with the Appeal Tribunal's power to make rules of procedure for the conduct of its business<sup>1</sup> the parties were asked to submit their arguments in writing about this Tribunal's jurisdiction concerning the alleged trespass and breach of the Metis Settlements General Council Timber Policy put forward by Louis.

[3] Having reviewed Louis' arguments (East Prairie Metis Settlement (EPMS) did not respond), this Panel cannot find that the Appeal Tribunal has authority over Louis' matter.

## 1.1 Evidence before the Panel

### **Louis Haggerty, Appellant**

[4] Louis filed his appeal with the Appeal Tribunal on February 25, 2016. In selecting the issue that best applies to him, Louis ticked off the "land" box and the "timber" box. He wrote:

I am asking for a hearing to hear what happened to me on a trespass issue on NW-8-71-15-W5.

There was about 6 acres of damage on my land. Others who were affected only a small amount got \$250 compensation some 3 feet wide by 40-50 feet long, about 1/16 of an acre.

I would like to be treated fairly using the smallest amount of land affected at \$250 x the amount I was affected by.

[5] On August 5, 2016, Louis delivered another letter to the Appeal Tribunal clarifying that he wants \$25,000.00 "as compensation" for the loss of timber, ground disturbance, wild plants and herbs." The Appeal Tribunal forwarded Louis' letter to EPMS and the Metis Settlements General Council and Metis Settlements Land Registry.

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<sup>1</sup> See s 195 *Metis Settlements Act* [RSA 2000, Chapter M-14]

**Darcy Dupas, Former Administrator, EPMS**

[6] On July 14, 2016, former EPMS Administrator, Darcy Dupas, wrote a statement<sup>2</sup> indicating that in the spring/summer of 2015 a road crew undertook road and ditch improvements along Cattle Ranch Road. Darcy wrote that:

- he instructed the crew supervisor to work with the EPMS Lands Clerk, Violet Haggerty, to notify any members of potential encroachment;
- the road improvement project proceeded unremarkably;
- Louis Haggerty approached him after the project was complete claiming trespass and damage to his land and timber;
- he (Darcy) approximated the damages based on salvage (i.e. firewood) values and attempted to requisition a cheque from the Settlement Council for \$800;
- Settlement Council rejected the requisition, preferring to offer all affected members the same amount of \$250 regardless of timber damage;
- Darcy agreed with Council's approach because, in his view:
  - Louis' land was not in active use;
  - no material harm was done to any structures or pre-existing landscaping;
  - the clearing work was requested by Louis years before and is actually an improvement to Louis' land; and Darcy recognized that his \$800 offer exceeded policy and standard operating procedures;
- Darcy concluded by suggesting that Settlement Council establish a policy concerning matters of trespass.

[7] On November 9, 2016, the Appeal Tribunal wrote to Louis Haggerty and East Prairie Metis Settlement (and the Metis Settlements General Council and Metis Settlements Land Registry) noting that jurisdiction is in issue and that the Panel had opted to utilize the paper review process, as set out in Rule 29 of the Appeal Tribunal's Rules of Procedure to determine its jurisdiction. The parties did not object (EPMS did not respond in any way) and after receiving an extension to the submission deadlines by this Panel, Louis sent his submissions to the Appeal Tribunal on December 13, 2016.

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<sup>2</sup> The Appeal Tribunal forwarded Darcy's statement to Louis Haggerty, EPMS, and the Metis Settlements General Council and Metis Settlements Land Registry.

**Submission on Jurisdiction by Louis Haggerty**

[8] Louis argues that the Appeal Tribunal has jurisdiction over this matter because it is the Appeal Tribunal's mandate under section 187.1 of the *Metis Settlements Act* to exercise its powers and carry out its duties with a view to preserving and enhancing Metis culture and identity and to further the attainment of self-governance by Metis settlements under the laws of Alberta. Louis also points out that under section 189(1) of the *Metis Settlements Act*, the Appeal Tribunal must hear appeals and references and perform any functions given to it under this act or any other enactment or by regulation, bylaw or General Council Policies. Louis copied a number of different sections of the General Council Land Policy for the Tribunal's consideration, including:

- Section 2.4: Nature of Metis Title, which includes the holder's exclusive right to use and occupy the land subject to natural rights of light, air, and support water [i.e. neighbors' rights], and to traditional community pathways and uses;
- Section 2.11: Subject to settlement by-laws and General Council Policies on resource development, a settlement council can grant rights of removal for non-renewable contents of the soil from any parcel of land in the settlement area, and grant a right of access to any land in the settlement area to effect the removal, etc.;
- Sections 3.1 and 3.2: The purpose of this Part is to describe limitations and conditions on the basic interests in Metis settlement land. Limits on interests are that the holder of a Metis title.... in a parcel has the right to make direct use of the timber and non-renewable resources found in the parcel to make improvements to the parcel (i.e. use trees for fence posts, logs for building a barn, or gravel for gravelling a driveway. They cannot sell the trees, timber or gravel to someone to use off the parcel.). Furthermore, the Metis title does not include any rights to timber or non-renewable resources other than those set out just above;
- Section 8.1: Whenever 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 within 30 days of council's decision.

[9] Louis also copied a number of sections of the *General Council Timber Policy*, including:

- Section 2.2(1): Subject to this Policy, the settlement council has sole authority and responsibility for managing the forest lands and timber resources of the settlement area and the benefits from their development including the authority to issue permits, designate timber lands, manage funds and do anything else required to manage the timber resource and regulate the harvesting and disposition of timber in the settlement area; and the responsibility for long term forest management planning to ensure sustainability, including the identification of timber land, the specification of harvesting and reforestation practices, and the setting of annual cutting limits.
- Section 2.2(2): In managing the forest lands and timber resources of the settlement area the settlement council must do its best to (a) benefit the community while adequately compensating landholders, (b) minimize the damage to wildlife resources and the environment, (c) provide a fair and orderly process for the issuing of timber permits, and (d) subject to settlement land use bylaws, retain sufficient forest lands in the settlement area to provide a sustainable source of timber for future generations.
- Section 2.2(3): General Council or any affected party, may, within one year of the event but not later, ask the Appeal Tribunal to review a decision or action that is contrary to subsection (1) or (2).
- Section 2.6(1): The settlement council cannot grant a timber permit allowing timber operations on a parcel of land without the consent of the landholder, unless a settlement bylaw allows a timber permit to be granted without the landholder's consent in such circumstances.
- Section 2.6(2): Any settlement bylaw allowing access to land without the landholder's consent must state the criteria and process for gaining access, and provide a reasonable means of appealing the landholder's compensation to the Metis Settlements Appeal Tribunal.
- Section 2.6(3): Requiring a landholder to consent to timber operations does not imply in any way that they have a right or interest in the timber and (4) The right to conduct timber operations under a timber permit does not imply in any way that the permit holder has an interest in the land on which the operations are carried out.
- Section 2.9: ...
- Section 3.4: Any person affected by an action contrary to this Policy may, within 90 days of the action and no later, refer the matter to the Metis

Settlements Appeal Tribunal and if the Tribunal determines that the action contravenes this Policy, it may direct remedial action as provided for in the Act and (2) the rights granted by this section do not detract from those provided for in section 2.2(3).

[10] Louis further submitted that “With all the relevant enactments, policies and regulations legislating the matter of lands, timber, access, entry, ancillary powers, relevant authorities, duties and requirements pertaining to this matter and issue, the negligence, breach of duty, infringement of landholder’s rights, contravention of powers by EPMS, each granting MSAT the authority via the *Metis Settlements Act*; *Metis Settlements General Council Land Policy*; *Metis Settlements General Council Timber Policy* (including timber Management Guidelines); with consideration and interpretation including various enactments such as the *Land Titles Act*; *Metis Settlements Land Registry Regulations*, *Petty Trespass Act*; *Interpretation Act* and *Limitations Act*.”

[11] Louis then provided a list of 14 facts he feels pertains to this matter:

1. EPMS did not consult with the landholder.
2. EPMS did not obtain landholder’s consent.
3. EPMS did not perform and/or operate the timber operation in accordance with the legislated enactments, policies and regulations.
4. EPMS did not have a bylaw in place pertaining to this timber operation.
5. EPMS did not issue a timber permit for this timber operation.
6. EPMS infringed and violated landholder’s rights legislated to the Metis title holder.
7. EPMS did not perform their actions and duties under proper legislated authority.
8. EPMS breached their legislated duty and ancillary powers.
9. EPMS acknowledges encroachment, entry, disturbance and timber operations in this matter [Motion 16.02.0181m].
10. EPMS offered a basic compensation amount (\$250) to all landholders within the project area, regardless of any encroachment, access, entry, disturbance, or timber operations on landholders’ land.
11. EPMS did not offer “fair compensation.” Offer neglects to consider and account for “fair compensation.”
12. EPMS does not have a Policy, bylaw, or standards of practice for compensation to fairly compensate landholders, occupiers, and affected

parties.

13. Fair compensation is not the same as equal compensation.

14. Mr. Haggerty's land received the most activity and encompassed a greater area.

## 1.2 Findings of Fact

[12] 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:

- Louis Haggerty is a member of East Prairie Metis Settlement;
- Louis Haggerty holds the Metis Title interest to the NW-8-71-15-W5, which is on Cattle Ranch Road;
- East Prairie Metis Settlement hired contractors who went onto the NW-8-71-15-W5, along with other parcels in the area, disturbing the land and trees; and
- East Prairie Metis Settlement offered \$250 to all landholders whose lands were disturbed by the work of its contractors along Cattle Ranch Road.

## 1.3 How the law applies to this matter

[12] Louis argues that the Appeal Tribunal has jurisdiction over this matter because:

- i. The Settlement (through its operators) trespassed on his land, causing damage, and the Appeal Tribunal has jurisdiction over matters of trespass and related damages under the *Metis Settlements Act* and/or *Metis Settlements General Council Land Policy*; and/or
- ii. The Settlement's actions damaged the timber on his land thereby triggering the appeal provisions in the *Metis Settlements General Council Timber Policy*.

[13] With respect to Louis' claim of trespass and the Appeal Tribunal's jurisdiction over questions of trespass, we note that "trespass" is included in only one section of the *Metis Settlement Act*. Section 129 of the Act reads as follow:



**Right to damages**

129 Notwithstanding the *Petty Trespass Act*, a person who, under a right of entry order, enters or uses the surface of land contrary to this Division [Division 7 – Access to Patented Land]

- (a) commits a trespass, and
- (b) is liable in damages or otherwise for the trespass to the occupants, or any of them.

[14] Reading section 129 in its entire context, and interpreting the words in their grammatical and ordinary sense within the scheme of the *Act*, we know immediately from reading the sections surrounding section 129 that this section is meant to apply to oil and gas operations. Specifically, we know that the sections within Division 7 apply to working or developing minerals under the Co-management Agreement, pipelines, transmission lines or in respect of mains, pipes, wires, conductors poles or other devices for conveying or transmitting electricity or sewage services under the *Water, Gas and Electric Companies Act* and to which “right of entry” orders apply.

[15] We also know that neither Louis nor Darcy suggested that the work done on Louis’ in the spring/summer of 2015 was related to oil and gas activities or an authorized project, nor was it suggested that the work was done by an operator in relation to an authorized project. Without these trigger points, it does not appear that section 129 of the Act can be used to assume jurisdiction over this matter.

[16] Nor can it be said that section 187.1—the Tribunal’s overriding consideration to exercise its powers to preserve Metis culture and to further the attainment of self-governance—confers power on the Tribunal to unilaterally expand its jurisdiction. As a quasi-judicial entity, the Appeal Tribunal can do those things that the legislation (provincial statutes, General Council Policies, Settlement Council Bylaws) says it can do—or that parties to a dispute agree in writing that it can do—but nothing more. To read section 187.1 any other way would turn the Appeal Tribunal from an agency that enjoys delegate authority into something akin to a superior court.

[17] It is also important to note that the apparent absence of any appeal mechanisms for trespass within the Metis Settlement legislative matrix does not preclude Louis from seeking redress through small claims court, which deals with civil claims (including claims for damages to property) up to \$50,000. In this regard, though, it behooves Louis mark any limitation periods that might apply to matters in small claims and to note that damages are generally tied to proven economic loss, or the price of replacing the damaged property. Furthermore, it is worth noting that under the *Petty Trespass Act*, it is apparently for the Crown to prosecute trespass and it is for

the Crown, not the property owner to levy fines (up to \$2000 for a first offence and \$5000 for subsequent offences).

[18] This Panel has also considered whether Louis might have an appeal under the *Metis Settlements General Council Land Policy*. While the purpose of the Land Policy is 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, we cannot find any section in the Land Policy that confers us authority over questions of trespass. The closest we come is that section 2.4 (1)(a) reads that subject to settlement bylaws, and natural rights of light, air, water and support (by a land holder's neighbours), and subject to traditional community pathways and uses, the holder of [a] Metis title [interest] in a parcel has exclusive right to use and occupy the land; which suggests that trespass as a concept is applicable on the Metis settlements. However, the concept is not married to any appeal provision that could take the matter to the Appeal Tribunal.

[19] Rather, to the extent that a right of appeal is given under section 8.1 of the Land Policy, it is restricted to matters where "this Policy requires the ... settlement council to make a decision related to the granting, transfer, or termination of interests in land in the settlement area and that any person affected by the decision, or lack of decision, can appeal in writing to the Appeal Tribunal. Given that we are dealing with an activity on settlement lands allegedly gone wrong, and not the granting, transfer, or termination of an interest in land, we cannot assume jurisdiction under section 8.1 of the Land Policy.

[20] Although the *other* appeal mechanism in Part 8 (section 8.2) offers an intriguing scenario—one where "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" [providing that the conditions in section 189 of the Metis Settlement Act are met]—the conditions set out in section 189 have not been met and the Appeal Tribunal cannot assume jurisdiction. Specifically, where the function in question has not been given to the Appeal Tribunal through the legislation—which we have already said is the case—then all that is left is the possibility under section 189(1)(f)<sup>3</sup> that the parties agreed in writing for the Appeal Tribunal to decide the matter; which East Prairie Metis Settlement has not done.

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<sup>3</sup> 189(1)(f) The Appeal Tribunal may decide differences or disputes between a settlement and one or more members... if all the parties involved in the difference or dispute agree in writing that the Tribunal should decide the matter.

[21] Given that the Appeal Tribunal does not have jurisdiction over the type<sup>4</sup> of trespass alleged by Louis, this leaves the question of whether Louis might still have a right of appeal under the *Metis Settlements General Council Timber Policy*. In our view, he does not.

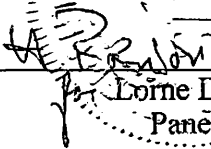
[22] We do not think the Timber Policy kicks in because, as indicated by Darcy, the purpose of the work done by the Settlement on Louis' land in the spring/summer of 2015 was more likely than not to improve the road and ditch along Cattle Ranch Road. From the evidence given the parties or gathered by our Dispute Resolution Officer, we understand that some trees were pushed down by the Settlement's operators and piled up on Louis' land. However, this activity does not fall under the purview of the Timber Policy because the purpose of the activity was to improve safety of those using Cattle Ranch Road and was not done for the purpose of stewarding the forest or for the *cutting and sale* of timber, which might have otherwise attract the management and appeal provisions set out in the Timber Policy.

[23] Put another way, we do not think that every time a tree falls on settlement lands, it is a timber operation requiring timber permits and the like. That said, there may well be a tipping point when the amount of destruction or damage to timber affects the good stewardship of the forest area and moves the activity away from one focused on safety to one focused on the forest itself. Certainly, had the cutting or destruction of timber on Louis' land been coupled with the sale of the same timber, then the nature of the activity would have been interpreted differently and in favour of calling it a timber operation. However, we do not have any evidence before us that the destruction of timber grossly exceeded what was necessary to improve the safety of Cattle Ranch Road, nor is there any evidence that the timber was sold. As such, we cannot utilize the appeal provisions found in the Timber Policy to assume jurisdiction over Louis' matter.

#### 1.4 Decision

[24] Louis' appeal is dismissed.

Dated in the City of Edmonton, in the Province  
of Alberta on this 27<sup>th</sup> day of February 2017.



Lorne Düstow  
Panel Chair

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<sup>4</sup> i.e. trespass that does not fall under section 129 of the *Metis Settlements Act*.

