MSAT Order: 305

Before:

Metis Settlements Appeal Tribunal

Land Panel

Between:

Dennis Reid and Tina Reid

Applicants

-and-

Jamie Bourque, Buffalo Lake Metis Settlement,
Metis Settlements General Council,
and
Metis Settlements Land Registry

Respondents

Concerning: Land Dispute / Jurisdiction

Decision Date: March 10, 2017

DECISION

MSAT Panel members:
Lorne Dustow, Panel Chair
Ross Daniels, Panel Member
David Drummond, Panel Member

Parties participating in jurisdictional review:
Dennis Reid, Applicant
No response from any of the Respondents

MSAT Staff:
Karen Mustus, Dispute Resolution Officer

Hearing:
By way of review of written submissions

1.1 Context

[1] The question before the Appeal Tribunal is whether Dennis Reid has a right to appeal the transfer/registration of the Metis Title interest in 900671-00-01, NE 10-064-17-4 (Lot 1) to Jamie Bourque.

[2] In keeping with the Appeal Tribunal's power to make rules of procedure for the conduct of its business[1] the parties were asked to submit their arguments in writing about whether Dennis Reid has a right to appeal.

[3] In this regard, given that Dennis missed the 30 day appeal deadline set out in section 8.1 of the Metis Settlements General Council Land Policy by many years, and given that we do not think there are special circumstances to warrant extending the appeal deadline by years, this Panel does not think that Dennis has a right of appeal.

1.2 Evidence before the Panel

Dennis Reid, Appellant

[4] Dennis filed his appeal in writing with the Appeal Tribunal on September 26, 2016.

[5] In his letter to the Appeal Tribunal, Dennis wrote that he met with Buffalo Lake Metis Settlement (BLMS) Council on September 13, 2016, but to no avail. Dennis wrote that Council told him to contact the Metis Settlements Appeal Tribunal if he wanted to pursue the matter any further. Dennis wrote that the Appeal Tribunal should transfer the Metis Title interest in Lot 1 to him because:

- His mother-in-law, Victoria Bourque, agreed to give him a portion of the NE 10-064-17-4, which is beside the quarter that he held/holds so he could build a house near the lake without worrying about encroaching on Victoria's land, and that he and Victoria went to the BLMS Office in 1982 and signed some papers to transfer some land [Dennis wrote that neither he nor Victoria knew how many acres were involved, but it was "up to the pasture fence"] but that the transfer was not done; furthermore, he did not get a copy of the transfer form because there were no photocopy machines in those days.

- Sometime in the mid-1990s, Dennis applied for Metis Title—under the new Metis Settlements Land Policy—and found out that the transfer was not done and, furthermore,

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

that Dean Bourque now held the Metis Title interest in the NE 10-064-17-4. Dennis wrote that Dean agreed to honor the agreement Dennis had with Dean's Grandmother (Victoria) and transfer some of the land up to the pasture fence from the NE 10-064-17-4. Dennis wrote that he and Dean "went to the office and he [Dean] transferred this land over to me again."

- However, a few years ago, Dennis found out that the land had still not been transferred to him and Jamie Bourque now held the Metis Title interest in the land, which had since been subdivided and registered (in Jamie's name) as 900671-00-01, NE 10-064-17-4 (Lot 1), comprising of 24.5 acres. [Jamie also holds the Metis Title interest on the remainder of the quarter, NE 10-064-17-4.] Dennis wrote that he talked to Jamie's mother, Freda Bourque, around that time and that he wanted to get Lot 1 (the 24.5 acres) into his name.

- Dennis wrote that he wants to transfer the land in question to his daughter, Twyla, but that he can't because the land [Lot 1] is not in his name.

- Dennis wrote that Freda indicated that Lot 1 could be sold to him for $3000, but that he isn't interested in buying something he feels he already owns.

- Dennis writes that there are five reasons why he should be given the Metis Title interest in Lot 1:

    1. Council and staff were not proactive in transferring the land, which lies between his front yard and the lake and failed to take notice of the transfer documents he signed in 1982 [and in the mid-1990s?];

    2. Jamie Bourque should not have been given the Metis Title interest to Lot 1 because he did not meet the requirements in the Land Policy to improve the land, nor did he meet the residency rules;

    3. The 1982 agreement was pre Accord and handshakes and verbal agreements were common back then;

    4. The new Accord legislation, including rules about land transfers and appeal, was not explained to Settlement members; and

    5. A majority of the Bourque family is aware of the original deal with Victoria and five of them (including Dennis' wife, Tina) have signed a letter to that effect.

[6] The Appeal Tribunal sent a letter—along with the draft hearing package—to the parties on January 17, 2017 asking them to comment on the issue identified in the hearing kit that Dennis did not file his appeal within the 30 day appeal period (he missed the last transfer involving Settlement Council, which was done in 2001, by 15 years) and whether the appeal period should be extended under section 202 of the *Metis Settlements Act*. Dennis was the only party who responded. On February 1, 2017, he wrote that section 202 should be used to extend the appeal period because:

- No letter was ever given to him by BLMS that the land [i.e. Lot 1] was or was not transferred to him;
- He was very young in 1982 and took it on faith that the transfer was done after he went to the office with Victoria;
- He and Dean did another transfer in the mid-1990s when they discovered that land had not yet been transferred;
- He tried to transfer the land to his daughter in 2012 believing it to be in his name;
- Had BLMS Office made an attempt to notify him that the land was not his, he would have reasons to deal with it immediately or reasons to appeal. The land was never posted and with the original 1982 agreement on file, the Land Clerks should not have transferred the Metis Title to [Dean or] Jamie. It has taken this long because Dennis left it in the hands of the Settlement Land Clerk.

Other evidence, draft hearing package

[7] The draft hearing package contains key legislation (the *Metis Settlements Act*, *Metis Settlements Land Registry Regulation*, *Metis Settlements General Council Land Policy*) and copies of all transfer, registration, and membership documents available through the Metis Settlements Land Registry. The documents show that the Metis Title interest in the NE 10-064-17-4 was actually transferred and held by four different members of the Bourque family (Victoria held it twice) and eventually subdivided by Jamie Bourque, with Lot 1 (the 24.59 acre parcel in dispute) being registered on April 15, 2015.

1.3 Findings of Fact

[8] This Panel is of the view that the following evidence on offer from the parties and as found in the hearing package 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:

- On April 24, 1995, BLMS transferred the Metis title interest in NE 10-064-17-4 to Victoria Bourque; it was registered on September 8, 1995. (HP Tab 5)

- On July 21, 1995, Victoria Bourque transferred the Metis Title in NE 10-064-17-4 to Dean Bourque; it was registered on September 8, 1995. (HP Tab 6)

- On May 16, 1996, Dean Bourque transferred the Metis Title interest in NE 10-064-17-4 to Victoria Bourque; it was registered on January 6, 2000. (HP Tab 7)

- On September 7, 1999, Victoria Bourque transferred the Metis Title interest in the NE 10-064-17-4 to Freda Bourque; it was registered on January 6, 2000. (HP Tab 8)

- On April 2, 2001, Freda Bourque transferred the Metis Title interest in the NE 10-064-17-4 to Jamie Bourque; the interest was registered on April 20, 2001. (HP Tab 9)

- On April 24, 2012, the Metis Settlements Land Registry advised Jamie Bourque that the Subdivision Plan 900597 (NE 10-064-17-4) was registered. The Metis Title interest for the NE 10 (Partial Quarter 37.80) and 900597-00-01 (11.94 acres) was registered to Jamie Bourque. (HP Tab 10)

- On October 11, 2012, the Metis Settlements Land Registry advised Jamie Bourque that his request to amalgamate two parcels within the NE 10-064-17-4 was complete resulting in the NE 10 (Partial Quarter being 49.73 acres). The change was registered on October 11, 2016. (HP Tab 11)

- On April 15, 2015, the Metis Settlements Land Registry advised Jamie Bourque that Subdivision Plan 900671 was registered. The Metis Title interest for the NE 10-064-17-4 (Partial Quarter 25.14) and 900671-00-01 (24.59 acres) was registered to Jamie Bourque. (HP Tab 12)

- There are no documents at the Metis Settlements Land Registry to show that Dennis Reid applied for the Metis Title interest (or any other interest) in the NE 10-064-17-4 at any time.

- Dennis Reid filed his appeal concerning the Lot 1 on the NE 10-064-17-4 on September 26, 2016.

1.4 How the law applies to this matter

[9] Dennis argues that the Metis Title interest in the NE 10-064-17-4 should not have been registered in Victoria's name on April 7, 1995 because he felt he had a claim to at least part of the quarter going back to 1982. In making his argument, Dennis gives evidence that he was aware since the mid-1990s that his initial attempt to transfer some of the NE 10-064-17-4 to him did not go through. The failure of transfer was once again affirmed when Dennis apparently tried to transfer that part of land (effectively Lot 1) between his house and the lake to his daughter in 2012.

[10] So, here's the problem: Section 8.1 of the *Metis Settlements General Council Land Policy*, which is copied below for ease of reference, tells us that any person who is affected by the granting, transfer or termination of interests in land in the Settlement area can appeal in writing <u>within 30 days of Council's decision</u> and that, with one exception (which we will explore later) there is <u>no right of appeal</u> if the proper documents are not filed with the Appeal Tribunal within the 30 days.

> **8.1 Right to appeal**
>
> (1) Wherever 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 a decision, can appeal in writing to the Appeal Tribunal.
>
> (2) The appeal must be filed with the Appeal Tribunal, and a Notice of Appeal filed with the Registrar within 30 days of the settlement council's decision, or, if the settlement council did not make a decision, within 30 days of the date by which it was required to have made the decision.
>
> (3) There is no right of appeal if the proper documents are not filed with the Appeal Tribunal and the Registrar within the specified time limit.[37]

> [37] Under section 202 of the Act,[2] the Appeal Tribunal may extend the time in special circumstances and this could allow it to make sure people with real problems are heard.

[11] The 30 day appeal deadline is a problem for Dennis because in relation to his initial claim that Victoria transferred some of the land to him in 1982, the 30 day appeal period came and went in the spring of 1995 when the unencumbered Metis Title interest for the entire NE 10-064-17-4 was registered in Victoria's name. If any other 30 day appeal windows opened up, they have also long since shut. Arguably, Dennis could have filed an appeal after trying—and failing—to have Dean (who held the Metis Title interest from September 1995 to May 1996) transfer the Metis Title interest to him. After this point, though, any claim that Dennis has to be a person affected by the transfer of Metis Title interest in the NE 10-064-17-4 is greatly diminished because it was Dennis' responsibility to take action back then when the original appeal windows were open.

[12] As indicated above, though, footnote 37 to section 8.1 tells us that the 30 day time limit for filing land disputes can be extended in *special circumstances* to make sure people with *real problems* are heard. So, are there special circumstances to extend the 30 day appeal period (by 21 years[3]) from 1995 when the Metis Title interest was registered in Victoria's name, and then in Dean's name?

[13] We think the answer is *no* because there is no document before us to suggest that Victoria and Dennis ever made a deal in 1982 to give him any part of the NE 10-064-17-4. Furthermore, even if there was such a document, it is on the person who is asserting an interest to perfect that interest by following the rules for transferring and registering the interest. That these rules are readily discoverable and applied by members every day is proven by the number of times this very interest has been transferred and registered and even subdivided by members of the community—and indeed from the very same extended family—that Dennis is from.

[14] This is to say that the Appeal Tribunal does not put much weight on the argument that Dennis did not know the rules about transferring interests in land or that they were not explained to him. It was for Dennis to take immediate responsibility and to take an active interest in the gap—from his perspective—between the interest he thought he had and what existed on the record at the Metis Settlements Land Registry. This responsibility to take immediate action—

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[2] Section 202 of the Metis Settlements Act reads: When a matter before the Appeal Tribunal is, by this Act or any other enactment or by any rule or decision of the Tribunal, required to be done within a specified time and if the circumstances of the case in its opinion so require, the Tribunal may, with or without notice, extend the time so specified or waive the requirement whither or not the time has expired.

[3] 21 years from the date Dennis filed his appeal in 2016.

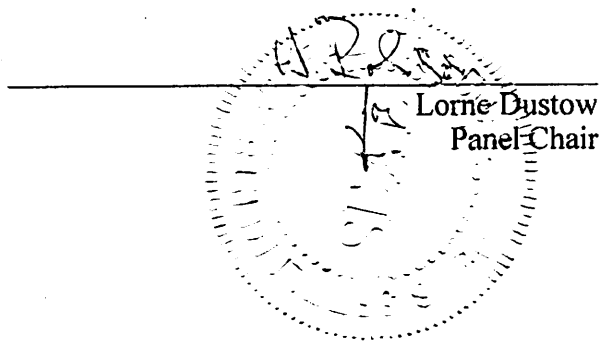
along with a strong nod the principle of "certainty" in land transactions—is why General Council, in concert with the Minister, decided on a 30 day limit appeal period and not something longer. It is also why appeal periods should only be extended in special circumstances and, even then, only extended sparingly by days or months, but hardly ever by years, let alone decades.

[15] Taken together, it was for Dennis to take immediate action in 1995 or 1996 when he first discovered the gap between what he thought he held and what the Registry reflected in terms of land holdings. Nor do we see the requisite special circumstances to extend the 30 day appeal period by any amount of time.

1.5 Decision

[16] Dennis' appeal is dismissed.

Dated in the City of Edmonton, in the Province of Alberta on this 14th day of March 2017.



Lorne Dustow
Panel Chair