

Before:

Metis Settlements Appeal Tribunal

Land Panel

Between:

**Gary Collins**

Applicant

-and-

**Thomas Collins, Dennis Collins, Elizabeth Metis Settlement, Metis Settlements  
General Council and Metis Settlements Land Registry**

Respondents

Concerning:

Land Dispute / Jurisdiction

Decision Date:

March 15, 2017

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**DECISION**

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**MSAT Panel members:**

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

**Parties participating in jurisdictional review:**

The parties were invited to review the draft hearing package compiled for this matter and to provide any additional commentary they saw fit. No additional submissions were received.

**MSAT Staff:**

Karen Mustus, Dispute Resolution Officer

**Hearing:**

By way of review of review of written submission on record

## 1.1 Context

[1] On October 20, 2015, Gary Collins applied for the NW 28-060-01-W4M, 900001-04-01, 0.57 acres (the land), which is located in the hamlet in Elizabeth Metis Settlement. However, the land had not been posted as available by the Elizabeth Metis Settlement Council and it refused to deal with Gary's application. In response, Gary filed an appeal in writing with this Tribunal on June 6, 2016.

[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 whether Gary has a right to appeal.

[3] Settlement Council can decide, in accordance with the Metis Settlements General Council Land Policy and settlement by-laws, what parcels of settlement land should be made available. Short of a requirement in the Land Policy or local bylaw (of which there are none), Settlement Councils cannot be forced to make lands available and Gary does not have a right of appeal in this matter because nothing in the Policy required Elizabeth Metis Settlement Council to grant, transfer or terminate the interest/land in question.

## 1.2 Evidence before the Panel

### Gary Collins, Appeal Form

[4] Gary wrote to the Appeal Tribunal on June 9, 2016. In his appeal form he suggested that the land in question be given to him because it belonged to his grandmother. Gary wrote that he discussed the matter with Elizabeth Metis Settlement Council and that they listened to what he had to say. Gary added that the Settlement posted the land in question as being available for about two weeks and that he and Thomas both applied for it.

### Draft Hearing Package

[5] The draft hearing package contains key legislation (the *Metis Settlements Act*, *Metis Settlements Land Registry Regulations*, *Metis Settlements General Council Land Policy*) and copies of all transfer, registration, and membership documents available for the land in question through the Metis Settlements Land Registry.

[6] The documents show that Gordon Collins registered a five year Provisional Metis Title Interest (PMT) interest in the land effective May 13, 2002 to May 12, 2007. Sadly, Gordon died in December 2002 and the PMT interest registered in his name was cancelled by the Registrar of the Metis Settlements Land Registry on October 28, 2010, leaving the Metis Title for the land unencumbered.

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

[7] The Elizabeth Metis Settlement holds the unencumbered Metis Title interest in the land and has not posted it as available. Regardless, several members of Elizabeth Metis Settlement have applied for the land, including:

- Gary August Collins, October 20, 2015;
- Thomas Charles Collins, January 13, 2016 (who filed an appeal on May 10, 2016, but later abandoned it); and
- Dennis Albert Collins on May 25, 2016.

### **1.3 Findings of Fact**

[8] The following facts are relevant:

- Gordon Collins registered a five year Provisional Metis Title Interest (PMT) interest in the land effective May 13, 2002 to May 12, 2007.
- Gordon died in December 2002 and the PMT interest registered in his name was cancelled by the Registrar of the Metis Settlements Land Registry on October 28, 2010.
- The Elizabeth Metis Settlement holds the Metis Title interest in the land and has not posted it as available since Gordon passed away. Elizabeth Metis Settlement Council has not granted, transferred or terminated any interests in the land in question since at least May 13, 2002 when the PMT interest was transferred to Gordon Collins, who died later that same year.
- Despite the land not being posted, several members of Elizabeth Metis Settlement have applied for the land, including:
  - Gary August Collins, October 20, 2015;
  - Thomas Charles Collins, January 13, 2016 (who filed an appeal on May 10, 2016, but later abandoned it); and
  - Dennis Albert Collins on May 25, 2016.

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

[9] Section 8.1 of the *Metis Settlements General Council Land Policy*<sup>2</sup>, which is copied below for ease of reference, tells us that any person who is affected by the granting, transfer or termination

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<sup>2</sup> See MSGC Land Policy GC-P9201.

of interests in land in the Settlement area can appeal in writing within 30 days of Council's decision.

**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.<sup>37</sup>

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<sup>37</sup> Under section 202 of the Act,<sup>3</sup> the Appeal Tribunal may extend the time in special circumstances and this could allow it to make sure people with real problems are heard.

[10] The problem for Gary is that Elizabeth Metis Settlement did not actually post the land or grant or transfer or terminate any interests relating to the land in question, so there is no decision to appeal, and, by extension, no right of appeal.

[11] Furthermore, as set out in section 4.2 (which is copied below for ease of reference) of the *Metis Settlements General Council Land Policy*, it is for settlement councils to decide, in accordance with the Land Policy and settlement by-laws, what parcels of settlement land should be made available for use or development. Put another way, short of having another enforceable right under the Land Policy or local by-law (of which we can find none), Elizabeth Metis Settlement Council cannot be forced to post land as available through the Appeal Tribunal's appeal process.

**4.2 Making settlement held land available**

The settlement council can decide, in accordance with this Policy and settlement by-laws:

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<sup>3</sup> 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 whether or not the time has expired.

- (a) what parcels of settlement held land should be made available for use or development.

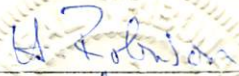
[12] Finally, as to why we think there was no posting, it is because Gary, Thomas and Dennis' applications were not submitted within a two or three week span—that would suggest that they were all responding to a posting—but over an seven or eight month period, suggesting that something else was going on. Also, discussions between our Dispute Resolution Officers and the Elizabeth Metis Settlement Land Clerk suggested that the Land Clerk could not find any postings in the file for the parcel in question... or at least that she could not find any posting later than the original one that Gordon applied for and received in 2002.

[13] What this suggests to us is that, if anything, the members of Elizabeth Metis Settlement are using the "Application for Available Land" form to prompt action from its Council, instead of using the form to apply for land that has actually has been posted. To avoid confusion in the future, we recommend under our powers to strengthen Metis self-governance, that Elizabeth Metis Settlement work with the Metis Settlements Land Registry to create a new form and process for the purposes of enabling members to make a "Request that Settlement Land be Posted."

## 1.5 Decision

[14] Gary's appeal is dismissed.

Dated in the City of Edmonton, in the Province  
of Alberta on this 15th day of March 2017.

  
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for Lorne Dustow  
Panel Chair

