

Before:

Metis Settlements Appeal Tribunal
Land Panel

Between:

Peter McGillivray,

Appellant,

-and-

**Paddle Prairie Metis Settlement,
Metis Settlements Land Registry
and
Metis Settlements General Council**

Respondents.

Concerning:

Application for Interest in Land

Decision Type:

Paper Review Process

Decision Date:

August 2, 2017

DECISION

1.0 Context

[1] Peter McGillivray wants the Appeal Tribunal to grant him the Metis Title interest to part of the NE-13-103-22-W5M. Peter said his dad, Clifford McGillivray, got his allocation interest in the land in a three-way deal in the 1970s involving Allan Martineau and Gary Gaudet and that his dad farmed the land for years.

[2] As permitted though the Appeal Tribunal's Rules of Procedure, this matter was dealt with through the Appeal Tribunal's "paper review" process because it wasn't clear if the Tribunal has jurisdiction over the matter.¹

[3] Indeed, having considered the evidence before us and the rules for assuming jurisdiction, our conclusion is that the Appeal Tribunal does not have jurisdiction over this matter. This is because the interest being applied for by Peter was not posted, nor has any decision been made by Council in recent years that could become the subject of review.

1.1 Evidence before the Panel/Findings of Fact

[4] The parties were informed in writing on June 1, 2017 that jurisdiction was in issue and they were invited to provide additional written submissions to the Appeal Tribunal about its jurisdiction by July 10, 2017. The parties did not provide any additional submissions, and this Panel is basing its review on the evidence set out in the draft hearing package that was sent to the parties on June 1, 2017.

[5] This Panel is satisfied on the balance of probabilities that the following evidence is factual and relevant to determining jurisdiction:

- i. The original land swap between Clifford McGillivray, Allan Martineau and Gary Gaudet is complicated by failures to convert old/pre-Accord allocation interests and incomplete sub-division efforts². Peter also filled in a Land Interest Transfer form and Request to Record or Register an Interest for Lot 6 (6.35 acres) and Lot 7 (57.14 acres) on February 1, 2016, but these forms are not signed by the Settlement, nor does it appear that the Lots were posted as available at any time by the Settlement.³
- ii. What is clear from the latest MSLR Land Search Report is that Paddle Prairie Metis Settlement (PPMS) is the registered holder of Metis Title interest in the entire NE-13-103-22-W5M.⁴

¹ See sections 29-30 of the Appeal Tribunal's Rules of Procedure effective October 4, 2016.

² See Tabs 9-13 of the information package that was sent to the parties on June 1, 2017 as part of the paper review process.

³ See Tab 6 of the information package that was sent to the parties on June 1, 2017

⁴ See Tab 8 of the information package that was sent to the parties on June 1, 2017

- iii. It is also clear from PPMS Land Clerk's memos and letters that Clifford was told on numerous occasions about the need to come into the office to sign off on the proper transfer documents and to convert his pre-Accord interest into a new form of interest recognized under the MSGC Land Policy, but that Clifford never did.⁵
- iv. Though no posting was issued by the PPMS, Peter applied for Lot 6 (top left corner of the quarter above road allowance, 6.35 acres according to the Aug 10, 1994 Descriptive Plan) and for Lot 7 (area between the Road Plan 696 and the stream running through the middle of the quarter, 67.14 acres according to the Aug 10, 1994 Descriptive Plan) on February 1, 2016.⁶
- v. Peter also believes that PPMS is prepared to transfer the Metis Title interest in Lots 6 and 7 to him, but Peter doesn't want to complete the transfer because he thinks his interest in Lot 7 (the bigger one between the road and the stream) should include the stream and some of the land on the other side. He said the land on the other side of the stream should be included because that is how he remembers it from his youth.⁷

1.3 How the law applies to this matter

[6] As set out in section 8.1 of the *Metis Settlements General Council Land Policy*⁸ (see below), if Council was required to make a decision relating to the granting, transfer or termination of interests in land, any person affected by the decision or lack of decision could file an appeal within 30 days⁹ of the decision, or within 30 days of the date by which Council was required to make the decision.

Part 8 – Appeals and References (*Metis Settlements Act*)

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, the Appeal Tribunal may extend the time in special circumstances and this could allow it to make sure people with real problems are heard.

⁵ See Tabs 11-13 of the information package that was sent to the parties on June 1, 2017

⁶ See Tab 6 of the information package that was sent to the parties on June 1, 2017

⁷ See Tab 1 of the information package that was sent to the parties on June 1, 2017

⁸ See MSGC Land Policy, GC-9201 (Tab 14) of the Hearing Package

⁹ Note: the 30 day deadline can be extended by the Appeal Tribunal in special circumstances as per footnote 37 of the MSGC Land Policy and application of section 202 of the *Metis Settlements Act*.

[7] As we know from the evidence, PPMS Council has not made any decisions concerning the land in question. So, *should PPMS Council have made a decision? Does filling in incomplete land interest transfer documents trigger a right of appeal? What is the proper process for granting interests in Settlement held land?*

[8] Peter filled in a Land Interest Transfer form and Request to Record or Register an Interest for Lot 6 (6.35 acres) and Lot 7 (57.14 acres) on February 1, 2016—to which PPMS holds the Metis Title interest—but these forms are not signed by the Settlement, nor does it appear that the Lots were posted as available at any time by the Settlement¹⁰. In this regard, it is also worth noting that Part 4 of the MSGC Land Policy says that Council can decide which settlement held land to post and to determine “the persons who are eligible to apply for the interest.” However, Part 4 (see below) does not say that Council *must* post lands it holds.

Part 4 – Granting Interests in Settlement Held Land

4.1 Purpose and scope

- (1) The purpose of this Part is to provide guidelines for fair and orderly procedures when granting new interests in settlement held land.

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.

4.3 Notice of available land

- (1) If the settlement council decides that an interest in settlement held land should be made available, it must provide at least 14 days public notice of the availability of the interest and the application requirements.
- (2) The notice must state, for each parcel in which an interest is to be made available:
 - (a) the legal description of the parcel;
 - (b) the interest being offered ...;
 - (c) ...
 - (d) ...
 - (e) the persons who are eligible to apply for the interest; and
 - (f) any special conditions that must be met as part of the application.

4.4 Applications

- (1) Any person who is eligible to apply for a posted interest in settlement held land can file an application in the required form at the settlement office.
- (2) The application must:
 - (a) be signed by the applicant seeking the interest;
 - (b) clearly identify the posted interest being sought;
 - (c) indicate that the applicant accepts the limitations or conditions set out in the posting;
 - (d) indicate that the applicant understands that although the settlement council may approve an application it is subject to appeal and is uncertain until the appeal process has concluded;
 - (e) ...;
 - (f) ... the legal description of the parcel;

¹⁰ See Tab 6 of the information package that was sent to the parties on June 1, 2017

4.5 *Considerations (by settlement council)*

...

4.6 *Applying for an allotment*

...

4.6 *Decisions*

- (1) The settlement council must provide notice of its decision on the granting of interests within 45 days of the posted deadline for applications.
- (2) The settlement council may accept an application or reject all applications for the posted interest.

[9] Put simply, PPMS holds the underlying Metis Title and can decide when to post it. The transfer forms that Peter filled in are to be used to facilitate transfers of interests between members or to respond to postings of interests by the Settlement. The forms cannot be used to compel the Settlement to post an interest. Posting interests is a governance decision and not one that should be lightly interfered with by the Appeal Tribunal, or anyone else.

[10] As a matter of *good governance*, though—and the key principle of *certainty* in particular—we recommend that PPMS Council make time in the very near future to assist Peter and all those who have latent claims to the NE-13-103-22-W5M to clarify the respective interests each holds.

[11] Finally, as set out in section 14(2)(c) of the *Land Interests Conversion Regulation*,¹¹ old allocation interests (the type of interest given to members by the Metis Betterment Branch before 1990), had to be converted to “new” interests under the MSGC Land Policy on or before June 30, 1995. Failure to convert by June 30, 1995 triggered the mandatory statutory extinguishment of those interests on that date. Peter’s father, Clifford, did not convert his old allocation interest and his allocation interest was extinguished by force of the Conversion Regulation. Put another way, after June 30, 1995 Clifford had no allocation interest to pass on to anybody.

[12] However, while Clifford’s old allocation interest was certainly extinguished, fairness requires that Peter’s continued occupancy of the land in question and PPMS’s recognition of Peter’s occupancy suggests be taken into account. PPMS can do this when goes through the exercise of clarifying the various interests and interest holders on the NE-13-103-22-W5M.

¹¹ See Tab 15 of the information package that was sent to the parties on June 1, 2017

1.4 Decision

[13] For the reasons set out above, Peter McGillivray does not currently have right of appeal in this matter. His matter is dismissed.

Dated in the City of Edmonton, in the Province
of Alberta on this 2nd day of August 2017.



Den Cunningham
Panel Chair



