

Before:

Metis Settlements Appeal Tribunal

Between:

**Charles Ronald Bellerose**

Appellant,

-and-

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

Respondents.

Concerning:

Posting of available interest in land, East Prairie

Decision Type:

Paper Review Process

Decision Date:

November 7, 2017

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**DECISION**

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**MSAT Panel members:**

Lorne Dustow, Chairperson  
Phyllis Collins, Panel Member  
Joyce Parenteau, Panel Member

**MSAT Staff:**

Harold Robinson, Tribunal Secretary  
Karen Mustus, Dispute Resolution Officer

**Hearing:**

Via Paper Review Process  
November 3, 2017

## 1.0 Context

[1] East Prairie Metis Settlement (EPMS) Council posted a Provisional Metis Title (PMT) interest as available for the NE-03-072-15-W5M on April 19, 2016. EPMS member, Charles Ronald Bellerose (Ron), applied for the posted PMT interest on May 5, 2016. EPMS informed Ron on July 20, 2016 that he was not awarded the PMT interest in land (in fact, no one was awarded the interest) and that he had 30 days to appeal EPMS Council's decision (i.e. until August 19, 2016). Ron filed his appeal with the Appeal Tribunal on July 25, 2016, five days after receiving EPMS' letter.

[2] The Appeal Tribunal opened an appeal file for Ron, and commenced the process of gathering evidence, but Ron withdrew his appeal on January 6, 2017. No reasons were given on his withdrawal form. The Appeal Tribunal closed Ron's file on this matter.

[3] Apparently, Ron was under the impression from settlement staff that if he withdrew his appeal, EPMS Council would re-post the PMT interest in the land and reconsider his application. However, the EPMS Council did not repost the PMT interest. Ron then filed another appeal on February 27, 2017 asking the Appeal Tribunal to reopen his original file in which he objected to EPMS Council's refusal of his May 5, 2016 application for the posted PMT interest in the NE-03-072-15-W5M.

[4] While Ron's first appeal was received within the 30 day appeal period allowed by the *Metis Settlements General Council Land Policy*,<sup>1</sup> his second appeal dated February 27, 2017 is obviously past the 30 day deadline. *Unless* the appeal deadline is extended—as is sometimes permitted through the Land Policy and application of section 202 of the *Metis Settlements Act*<sup>2</sup>—this matter cannot be said to be properly before the Appeal Tribunal and cannot be adjudicated.

[5] The question, then, is should the 30 day appeal deadline be extended from August 19, 2016 to February 27, 2017?

[6] In this regard, the Appeal Tribunal elected to determine its jurisdiction through its “paper review” process. Paper reviews are permitted on preliminary questions of jurisdiction (i.e. to determine if a matter is properly before the Appeal Tribunal) though sections 28-30 of the Appeal Tribunal's *Rules of Procedure*.<sup>3</sup> This process allows parties to state their case about jurisdiction, but saves parties the time and costs associated with in-person hearings.

## 1.1 Issue

[7] Should this Panel extend the 30 day appeal period from August 19, 2016 to February 27, 2017?

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<sup>1</sup> Metis Settlements General Council Land Policy, GC-P9201

<sup>2</sup> *Metis Settlements Act* [RSA 2000, Chapter M-14]

<sup>3</sup> Section 195 of the *Metis Settlements Act* allows the Appeal Tribunal to make rules for the conduct of its business, which it has done: See MSAT Rules of Procedure. Amended April 4, 2017.

<http://www.msat.gov.ab.ca/publications/>

## 1.2 Submissions

[8] In his February 27, 2017 appeal form, Ron wrote:

*I am asking that East Prairie Metis Council's decision be overturned... to disqualify my application for the NE-03-072-15-W5M. I had sent an application to MSAT and then cancelled it in hopes that Council would overturn their decision. I later found out that I had to have a written notice of my disqualification, not verbal, as stated by [Land and Membership Clerk] Violet Haggerty.*

[9] In response to the prompt in the Appeal Tribunal's appeal form about missing an appeal deadline, Ron wrote:

*Violet Haggerty stated I was informed verbally of my failure to qualify. I found out from speaking to BJ Simpson [Appeal Tribunal Dispute Resolution Officer] that it had to be in writing.*

[10] The Appeal Tribunal wrote to the parties on July 12, 2017 to make submissions about the Appeal Tribunal's jurisdiction over Ron's matter. EPMS Council did not respond, but Ron did. He sent in two letters on July 25, 2017, which were sent to the parties on August 4, 2017 for its review and comment, but none came. In his first letter, Ron wrote:

*I Ron Bellerose feel that we should have the appeal in person so the Tribunal can get a better insight of how I became in arrears. I can use witnesses to demonstrate how inefficient our finance department is. I can speak better to convey my reasons, and would be satisfied to have said my peace and done my due diligence under section 8.1(3).*

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

[11] In his second letter, also dated July 25, 2017, Ron wrote:

*On or about January 6, 2017, I met with Violet Haggerty (Land and Membership Clerk). We discussed my appeal for the land NE-03-072-15-W5M. Violet said I would be better off if I withdraw my appeal and got Council to repost to speed up the process I could reapply and clear any debts.*

*At the delegation meeting on November 1, 2016 Violet had informed me that if I was in arrears to the Settlement I could clear (pay) it up before Council deals with the matter, it was acceptable. This is an unwritten rule and the first I heard about this process. I asked where this was written. Violet said it was an unwritten rule.*

*I would like a copy of the November 1, 2016 delegation meeting.*

### 1.3 Evidence

[12] The hearing package prepared for this matter contains a number of documents that are reliable and relevant to this matter, including the following:

- i. Notice of Available Land (PMT interest) for the NE-03-072-15-5 posted on April 19, 2016:<sup>4</sup> Eligible applicants must be:
  1. Must be 18 years of age and a resident member...
  2. Indian status check has to be completed.
  3. Must be in good financial standing or Agreement in place 3 months prior to the Posting date w/payments up to date in the EPMS (Confirmation from the Finance Department has to be included stating your financial status within the EPMS).
  4. Must attach a letter with your application stating your intentions for the land.
  5. Family members of the previous title holder will be given 1<sup>st</sup> consideration

Applications must be submitted by May 5, 2016 at 4 PM.

- ii. Ron's application for the PMT interest in the NE-03-072-15-W5M, marked as received by the EPMS on May 5, 2016 at 3:48 PM.<sup>5</sup> Ron's application contains the following information:
  1. Why do you want the land and how do you intend to use it?  
*To build a house on, raise cows, pigs, horses and make hay. Most of the family would like me to have, so they can visit the old site from time to time*
  2. Will you need any help from the Settlement?  
*Maybe some, but very little. Gravel, excavate for house, water and sewer.*
  3. Do you owe money to the Settlement?  
*No*
- iii. EPMS report<sup>6</sup> from the Land Clerk and Membership Clerk, and from its Finance Department, dated May 16, 2016 reads that Ron owes \$240.00 [for UF<sup>7</sup>] to the Settlement and does not have an agreement to pay it back.
- iv. EPMS Council minutes for May 16, 2016 read "not to accept either (i.e. including Ron) applicant for posted available land for NE-03-072-15-W5M." Motion carried.<sup>8</sup>

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<sup>4</sup> At Tab 5 of the hearing package

<sup>5</sup> At Tab 6 of the hearing package

<sup>6</sup> At Tab 7 of the hearing package

<sup>7</sup> "UF" stands for "User Fee."

<sup>8</sup> At Tab 8 of the hearing package.

- v. EPMS letter to Ron dated July 20, 2016. It confirms that EPMS moved not to accept any applications for the posted PMT interest “as they did not fit the posting criteria.” The writer adds, “For your information, when the confirmation check was completed, it showed you owed monies to the EPMS of UF, \$240.00, with no agreement in place. Therefore, you did not fit the criteria under #3 of the eligibility in the posting of available land.”<sup>9</sup>

The writer also informed Ron that he has 30 days to appeal Council’s decision.

- vi. Ron filed an appeal with the Appeal Tribunal on July 25, 2016. Among other things, he *submitted*<sup>10</sup> that, “I should have been the successful applicant for the NE 03 Twp 72 Rge 15 W5 due to Finance’s mistake.... I checked with [EPMS Finance on June 6, 2016] and found out that they had been putting my [UF] payment on Randy Bellerose’ account.”<sup>11</sup>
- vii. A second letter was sent from EPMS to Ron, dated October 26, 2016.<sup>12</sup> It summarizes the concerns raised by Ron at a “Regular Delegation” meeting that he attended on October 4, 2016. In particular, that his “user fee payments were put on another account and that any other arrears occurred during the time when he was seeking a disability exemption and that the previous Settlement Administrator told him to not make payments until his standing was resolved.

The letter reads that Ron filed an appeal, but wants to work matters out locally.

The letter contains another passage that under section 4.7(2) of the *Metis Settlements Land Policy*, “The settlement council may accept an application or reject all applications for the posted interest.” And that “The [EPMS] Council rejected all the applications for the posted interest.”

- viii. Ron sent out two notes on January 6, 2017. The first was a request to EPMS to post the NE-03-072-15-W5M as available again,<sup>13</sup> and the second note<sup>14</sup> was sent to the Appeal Tribunal, withdrawing his appeal. It reads: “I, Ron Bellerose am withdrawing my appeal against EPMS on the posting of the NE 3 72 15 W5.” It is dated and signed by Ron.
- ix. The minutes from the EPMS Council meeting on January 16, 2017 include recommendations from the Land and Membership Clerk to keep the house and the

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<sup>9</sup> At Tab 9 of the hearing package.

<sup>10</sup> The Appeal Tribunal recognizes the difference between submissions and evidence. Though somewhat oversimplified, submissions are basically opinions or arguments, while evidence is best thought of as the paperwork relating to acquiring or rejecting a thing.

<sup>11</sup> At Tab 10 of the hearing package

<sup>12</sup> At Tab 11 of the hearing package.

<sup>13</sup> See Tab 12 of the hearing package.

<sup>14</sup> See Tab 13 of the hearing package.

land separate if it is posted, to sub-divide the land, and to keep open land for future business ventures. Motion 17.01.0051m reads that Council moves not to post the NE-03-072-15-W5M as available land for one year<sup>15</sup>.

- x. EPMS wrote to Ron on January 24, 2017<sup>16</sup> indicating that on January 16, 2017, Council moved not to post the NE-03-072-15-W5M as available for one year, with a note that under section 4.2 of the Metis Settlements General Council Land Policy, council can decide what parcels of land should be made available.
- xi. Ron filed another appeal with the Appeal Tribunal on February 27, 2017. Ron's submissions are set out above, in paragraphs [8] and [9].
- xii. The Metis Settlements Land Registry confirmed on July 11, 2017 that Ron is a member of the EPMS and that EPMS holds the Metis title for the NE-03-072-15-W5M.<sup>17</sup>

## 1.4 Analysis/Reasons

[13] The rules for granting, transferring and terminating interests in settlement lands are in the *Metis Settlements General Council Land Policy*.<sup>18</sup> So too are the rights of appeal, which are set out in part 8:

### *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... within 30 days of the settlement council's 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.\*

\*Footnote 37, comes at the end of section 8(3), and it reads that "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.

### *Time Extensions*

202 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.

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<sup>15</sup> See Tab 15 of the hearing package.

<sup>16</sup> See Tab 16 of the hearing package

<sup>17</sup> See Tab 20 of the hearing package.

<sup>18</sup> Policy GC-P9201, at Tab 4 of the hearing package.

[14] When dealing with matters under the Land Policy, the Appeal Tribunal has the discretion through footnote 37 to bring matters before it that would otherwise be barred under section 8(3) of the Land Policy because the appellant missed the 30 day deadline. In terms of knowing when to extend a deadline, there are two criteria, and both are listed in the footnote itself. The first criteria is that there are “special circumstances” in play, and the second criteria is to “make sure people with real problems are heard.”

[15] Again, what is in issue is that Ron withdrew his first appeal from July 25, 2016, which was filed on time, and then filed another appeal on February 27, 2017—or some six months after the August 19, 2016 appeal deadline and focused his second appeal on EPMS Council’s initial rejection of his application in the spring of 2016. Put simply, should the Appeal Tribunal extend the appeal deadline from August 19, 2016 to February 27, 2017? Are there special circumstances to do so and does Ron have a real problem that should be heard?

[16] In our view, there are neither special circumstances in the case at hand, nor a real problem that needs to be heard.

[17] Ron’s argument is that there are special circumstances because EPMS Council rejected his application in the spring of 2016 based on faulty information. Namely, that he owed \$240 in user fees to the Settlement when he didn’t. However, upon closer inspection, while it may be true that EPMS Finance wrongly attributed his user fee payments to another member, Ron clearly admits that he did not make his user fee payments for some time while seeking disability relief, which tells us that his balance sheet with the EPMS would still show him as owing money to the EPMS. To be clear, had EPMS Council based its decision on irrelevant or incorrect information, then a good argument for special circumstances would exist. However, we do not think that the report from the EPMS Finance department (dated May 9, 2016) was in error.

[18] In terms of the second criteria—that people with real problems are heard—we cannot say that Ron has a real problem. Ultimately, settlement councils enjoy a tremendous amount of discretion both in determining which interests in lands are posted<sup>19</sup> and in the selection or rejection of applicants once interests are posted. As rightly identified by EPMS in its letter to Ron dated October 26, 2016, EPMS Council’s discretion to accept or reject applications for posted interests in land is found in section 4.7(2) of the *Metis Settlements General Council Land Policy*.

***Decisions***

4.7(2) The settlement council may accept an application or reject all applications for the posted interest.

[19] To be clear, having the power to accept or reject applications for posted interests in land does not mean that settlement council can act in a high-handed or arbitrary fashion. As a matter of good governance, it is still expected that settlement councils will give reasons for accepting or rejecting applications that are relevant to the matter at hand. In this case, EPMS Council was of the view in the spring of 2016 that the applicants did not meet the application criteria (in Ron’s

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<sup>19</sup> Section 4.2 of the Land Policy reads that the Settlement Council can decide what parcels and types of interest should be made available.

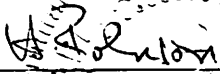


case, that he owed money to the EPMS), and, later, in January 2016 that more time was needed to clarify the scope of interest being posted for the NE-03-072-15-W5M and its purpose. These are not arbitrary considerations and, combined with EPMS Council's authority to make such decisions, it cannot be said that Ron has a real problem that needs to be heard.

### 1.5 Decision

[20] The Appeal Tribunal elects not to extend the appeal deadline in this matter. Ron's appeal is dismissed.

Dated in the City of Edmonton, in the Province  
of Alberta on this 7<sup>th</sup> day of November, 2017.

  
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Lorne Dustow  
Panel Chair

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