



Scenery at Elizabeth Metis Settlement

ANNUAL REPORT 2014

Report

211(1) On or before March 31 in each year, the Appeal Tribunal must give to the Minister and the General Council a report for the year ending on the preceding December 31, showing

- (a) the nature of its activities;
- (b) the general manner in which it dealt with matters coming before it; and
- (c) any other matter that the Minister directs.

(2) The Minister must table the Appeal Tribunal's report in the Legislative Assembly if it is then sitting or, if it is not sitting, within 15 days after the commencement of the next sitting.

[*Metis Settlements Act*, R.S.A. 2000]

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Part I – The nature of our activities in 2014

Our nature

The Appeal Tribunal is a quasi-judicial body with a legislated mandate to “exercise its powers and carry out its duties with a view to preserving and enhancing Metis culture and identity and furthering the attainment of self-governance by Metis Settlements under the laws of Alberta.”¹

No other tribunal has this same mandate; which calls on Tribunal decision-makers to firstly understand Metis culture and identity before deciding the questions of law before it. This is a challenging proposition, but one that was met in 2014 by listening hard and being respectful to all those before it, including elders, youth, Settlement members, Settlement Councils, plus representatives from the oil and gas and transportation sectors.

The nature of our mandate calls on the Appeal Tribunal to investigate and educate and to mediate and adjudicate matters before it. Led by its Chair, Cree-speaker, Don Cunningham, the Appeal Tribunal continued to engage in a mix of community outreach, conciliation, mediation and adjudication work in 2014.

Finally, as a publicly funded agency, the Appeal Tribunal is committed to the twin principles of transparency and accountability. The Appeal Tribunal was delighted to participate in Alberta’s Results Based Planning exercise and is committed to increasing efficiencies wherever practicable while retaining good and fair adjudication services for all parties who use its services.

Appeal Tribunal Board (2010-2014)



Don Cunningham, Chair



Allan Lamouche, Vice Chair



Wayne Cardinal, Vice Chair



David Drummond



Peter Bowal



Joyce Parenteau



Shannon Souray

¹ See section 187.1 of the *Metis Settlements Act*, RSA 2000

The nature of our work in 2014

Disputes & Decisions

In 2014, the Appeal Tribunal continued to receive and deal with appeals in its core areas of membership, land disputes and oil and gas access and compensation. Other matters, including descent of property, trespass and conflict of interest were also submitted to the Appeal Tribunal.

New Appeals Received				
	2011	2012	2013	2014
Membership	3	7	8	3
Land Disputes	18	17	11	18
Surface Access / Compensation	3	1	10	2
Descent of Property	3	1	2	
Trespass	--	1	--	1
Commercial	--	--	--	1
Conflict of Interest	--	--	--	1
New Appeals	27	27	31	26

Table 1.1

The Appeal Tribunal issued ten decisions in 2014. Highlights from this year's case law include:

- Clarification of Fishing Lake Metis Settlement Oil and Gas Distribution Bylaw – the Bylaw does not disrupt interests/rights to compensation established prior to 1990; [Orders 252, 255]
- Confirmation that where the intentions of the deceased interest holder can be confirmed, those intentions can be ratified by the Appeal Tribunal as per section 7.13(1)(a) of the MSGC Land Policy; [Order 253]
- Some interests in Settlement lands (such as Provisional Metis Title interests) are time limited. It is the responsibility of the holders of such interests to know those timelines and apply to convert or extend their interest before their interest expires. Conversely, when a Settlement member has filled in all the appropriate documents to create or extend an interest in land and those documents are not forwarded by the Settlement Office as relied on by the member, the Appeal Tribunal will do what fairness requires to protect the interest holder from losing his or her interest and any compensation attributable thereto; [Orders 256, 257, 258, 259, 260]
- Concerning membership, erroneous approvals of membership under the bylaw provisions cannot legally confer membership where the law prohibits such membership. Nor can the elapse of time, even four and one half years, confer or perfect membership where the law expressly prohibits it;² [Order 254] and
- Railway lands cutting across Paddle Prairie Metis Settlement were not legally or factually included in the transfer of Fee Simple to the Metis Settlements General Council by the Letters Patent. Contemporary land search reports for affected parcels show incorrect

² Note, leave to appeal to the Court of Appeal was granted in this matter (MSAT Order 254).

acreage and the Metis Settlements Registrar must revise the Registry's records accordingly. [Order 261]

In addition to the case law, the Appeal Tribunal's Land Access Panel amended six Right of Entry Orders in 2014. This reflects a sharp decline from the number of amendments requested in 2013 and 2012. This is not a negative indicator, though. It merely shows that operators held onto their assets throughout 2014.

MSAT Decisions				
	2011	2012	2013	2014
Membership	1	6	3	1
Land Disputes	5	5	3	4
Descent of Property	3	--	--	2
Surface Access / Compensation	--	2	2	2
MSLR Recording	--	--	--	1
Total Decisions	9	13	8	10
Land Access Panel - LAP Orders				
Amendments to Right of Entry and Compensation Orders	22	84	100	6
Existing Leases Land Access Panel – ELLAP Orders				
Right of Entry Orders	--	7	--	--
<i>Table 1.2</i>				

Community Conciliation & Mediation

The Appeal Tribunal continued to empower Settlement members and Councils to resolve disputes on their own. We did this by meeting with the members and Councils in their homes and offices and by clarifying the issues and law at hand. Our investigators encouraged and facilitated dialogue between the parties, resulting in twelve matters being conciliated in 2014 without the need for a hearing.

Matters Resolved Before Hearing Stage				
	2011	2012	2013	2014
Membership	1	1	2	3
Land Disputes	9	16	8	6
Access/Comp.	4	2	2	1
Descent of Property	1	--	--	1
Other	--	--	--	1
Totals	15	19	12	12
<i>Table 1.3</i>				

A long-standing descent of property issue was resolved by a number of surviving siblings utilizing our mediation services.

The Appeal Tribunal prioritizes community conciliation and mediations because this work strengthens community bonds and is entirely consistent with the Metis way of resolving matters at home. It is in the nature of Settlement members to take ownership of solutions and the Appeal Tribunal is pleased to breathe life into this aspect of Metis culture and identity. That these resolutions also tend to take less time, save money and reduce the likelihood of appeals to the Alberta Court of Appeal, are also all good things.

Outreach

The Appeal Tribunal partnered with the Metis Settlements Land Registry and set up an intense two day work camp right in Fishing Lake Metis Settlement. This provided Settlement members with the ability to confirm their land interests and to talk to Tribunal staff in the event that the interests didn't line up with their expectations. The response was more than positive, with many Settlement members expressing their thanks for helping them clarify their interests in Settlement lands and for clarifying any appeal processes that might apply.

The Appeal Tribunal was also delighted to partner with the University of Alberta Community Service Learning Program in which Native Studies students researched topics of interest and presented their findings to the Appeal Tribunal Board and staff members. This partnership between the Appeal Tribunal and the University of Alberta has been in place for many years, and it affords university students the opportunity to learn about the Appeal Tribunal and the Metis Settlements self-governance framework. What the Appeal Tribunal gets out of the partnership is an opportunity to consider presentations on a myriad of different research topics, including but not limited to, the economics of the Metis Settlements housing framework to how the Appeal Tribunal compares with other Aboriginal quasi-judicial entities in Canada, and beyond. In short, it allows us to see the Settlements through a different lens, with the only cost being the time it takes to recommend a research topic and to meet with the students doing the research.

Judicial Reviews

It is the nature of quasi-judicial tribunals to be open to review by higher courts. In the Appeal Tribunal's case, any party to an Appeal Tribunal decision can apply to the Alberta Court of Appeal for permission to appeal a Tribunal decision within 45 days of the decision being made. The appeal must concern a question of law or jurisdiction.

In 2014, two applications for permission to appeal were made. Permission to appeal was granted by the Court of Appeal in one matter (Order 254) and denied in the other (Order 257).³

The Appeal Tribunal does not take a position concerning permission to appeal applications. We simply advise the Court of Appeal on standards of review and the fact that the Appeal Tribunal operates within a legislated self-governance framework unique to the Metis Settlements. This

³ MSAT was advised in November 2014 that the unsuccessful party is seeking permission from the Supreme Court of Canada to review the Alberta Court of Appeal's refusal to grant permission. We expect that the SCC will issue its decision in 2015.

way, the Appeal Tribunal maintains its impartiality should the Court of Appeal direct that the matter be returned to it for further adjudication.

Whatever direction comes from the Alberta Court of Appeal, or higher, the Appeal Tribunal incorporates that direction as a new and useful tool by which to interpret the legislation at hand and thereby strengthen the Metis Settlements' self-governance framework.

Part II – How we dealt with matters in 2014

Priorities and Performance

As set out in its Business Plan for 2014 – 2016, the Appeal Tribunal is committed to three key desired outcomes:

- | | |
|------------------------|--|
| Desired Outcome One: | <i>The Appeal Tribunal resolves all disputes before it in a fair, timely and cost effective manner</i> |
| Desired Outcome Two: | <i>Settlement members and stakeholders are informed about Tribunal processes and decisions</i> |
| Desired Outcome Three: | <i>The Appeal Tribunal is a leader in transparency and accountability</i> |

Of these desired outcomes, *fairness* is the first priority and key measure.

To ensure fairness in all we do, the Appeal Tribunal reviewed and updated its Rules of Procedure in 2014 to ensure all parties can easily understand and access our dispute resolution systems.

The Appeal Tribunal's Code of Conduct was also updated, clarifying core values and guiding principles for identifying conflicts of interest and other breaches, and acting on those breaches.

Updating these frameworks took months of serious effort. Tribunal members and staff worked together to ensure the highest measures of accessibility, impartiality and transparency were incorporated into the Rules of Procedure and Code of Conduct. These key frameworks were approved by the Appeal Tribunal in July 2014 and put onto the Appeal Tribunal's website shortly thereafter.

The Appeal Tribunal did not receive any complaints that its processes were unfair, nor did any of the applications for permission to appeal to the Alberta Court of Appeal raise concerns about administrative fairness. In this regard, the applications for permission were based on the fact that the applicants did not agree with the decisions of the Appeal Tribunal, but no one raised any concerns with the process that led to those decisions.

Fairness requires that the Tribunal explain its decisions. In this regard, the Appeal Tribunal committed to providing written reasons with each decision, and it achieved this desired outcome. Where panelists reached the same conclusion, the decision reflects that consensus. Where panel

members could not reach consensus on all aspects of the appeal—as was the case in one⁴ matter—reasons of the majority were articulated, as was the opinion of the minority member. This approach shows that while consensus is always a desired outcome in decision-making, articulating reasons and enhancing the understanding of the parties is the ultimate desired outcome.

As part of its commitment to fairness, the Appeal Tribunal committed to providing notice to affected parties of their right to seek leave to appeal to the Alberta Court of Appeal with the issuance of every decision. The Appeal Tribunal met this objective.

The Appeal Tribunal also does everything it can to resolve disputes in as expeditious manner as possible. It set out a stretch target in 2014 to resolve 60% of the disputes brought before it within 6 months of receipt of the appeal. Not surprisingly, we discovered that community conciliation leads to a speedier resolution than the hearing process. When a matter goes to a hearing, only 20% of these are resolved within 6 months. When conciliation is used, 58% of the disputes brought before the Appeal Tribunal are resolved within 6 months.

One of the main reasons for the discrepancy is that hearings tend to follow failed attempts at community conciliation. This does not mean that community conciliation ought to be dropped from the lexicon. What it does mean, though, is that review processes—led by Tribunal Panels ultimately in charge of the dispute—can be strengthened so that matters might proceed to hearings more expeditiously. (This work is set out in the Business Plan for 2015-2017.)

The Appeal Tribunal also participated in the Government of Alberta's Results Based Budgeting process. This process allowed the Tribunal to consider new performance measures and best practices intended to improve efficiencies. As a result of this exercise, the Appeal Tribunal is committed to more fully utilizing certain technologies—such as conference calling—to facilitate panel deliberations and Board meetings.

The Appeal Tribunal continued to operate in a transparent and accountable manner in 2014. It carefully monitored its expenditures and managed its operations in compliance with provincial statutes and departmental practice directives. This includes the issuance of quarterly forecasts and expenditure reports, and oversight and support of its employees in line with the Public Service Act and other legislation.

The Appeal Tribunal reports its activities on a calendar year basis, from January 1 to December 31. However, its financial reporting period follows the provincial government fiscal year from April of the preceding year (2013) to March of the current reporting year (2014).

⁴ See Order 254

Finally, as set out below, the Appeal Tribunal continues to operate within the funding envelope provided by the Government of Alberta.

	2012/2013		2013/2014	
	Authorized Budget	Actual Expenditure	Authorized Budget	Actual Expenditure
Manpower ⁵	\$ 722,000	\$ 667,343	\$ 715,000	\$ 727,486.14
Supplies & Services ⁶	<u>\$ 475,000</u>	<u>\$ 476,665</u>	<u>\$ 482,000</u>	<u>\$ 456,295.80</u>
Miscellaneous				\$ 1,933.60
Total	<u>\$ 1,197,000</u>	<u>\$ 1,144,008</u>	<u>\$1,197,000</u>	<u>\$1,185,715.54</u>
Unexpended (Over-expended)		\$ 52,992		\$ 11,284.46

Table 1.4

⁵ Manpower includes salaried, wage employees, staff development and employee benefits.

⁶ Supplies and Services includes all contracts/per diems and business related expenses.

METIS SETTLEMENTS APPEAL TRIBUNAL

ORDERS⁷ ISSUED – January 2014 to December 2014

▪ **Order 252 Compensation Dispute**

Between: Arlene Calliou, John Calliou, and Jeremy Calliou, Appellants and Fishing Lake Metis Settlement, Crescent Point Energy Corp., Dennis A. Aulotte, Arlene Calliou (in trust), Barbara Lois Fayant, and Ronald Fayant, Respondents and Metis Settlements Land Registry, and Metis Settlements General Council, Other Parties

Order: Compensation should continue to be paid to the Calliou family (Arlene, John and Jeremy) according to Compensation Order 1418/88 and as further amended in Amending Order 0001/14.

Reasons: *Compensation should continue to be paid to the Calliou family in accordance with the rates set out on November 1, 1998. The reasons being that while the Fishing Lake Metis Settlement enjoys the right to create bylaws concerning the distribution of compensation, its latest bylaw clearly reads that it is not intended to disrupt payment frameworks arrived at before 1990 (i.e. in relation to existing mineral leases). Furthermore, the distribution scheme (in which the Settlement receives 100% of the compensation) only applies when there is no occupant, or when an occupant acquires his interest after 1990 and an authorized oil/gas project has been established. In the case at hand, the Calliou interests in the parcels stem from existing mineral lease agreements established prior to 1990, which are not intended to be disrupted by the Bylaw. Furthermore, any so-called breaks in their claim to the interests in these parcels are really more apparent than real, and certainly not the fault of the Calliou family.*

▪ **Order 253 Descent of Property**

Between: Candace Fayant, Appellant and Mary Gail Fayant, Respondent and Brian Fayant, Chrystal Fayant, Fishing Lake Metis Settlement, Metis Settlements General Council, and Metis Settlements Land Registry, Other Parties

Order: The Appeal Tribunal declares that Candace enjoys a contingent right to Metis Title in 10 acres of land on NW-32-057-02-W4 (Lot 2). It is now up to Candace to take all necessary and effective steps on a timely basis to subdivide and transfer Lot 2, in order to give proper legal effect to her grandmother's last expressed intentions and this Decision.

Reasons: *The grandmother intended to give the house upon 10 acres – represented by Lot 2 in Tab 11 – to Candace in 2005. The Appeal Tribunal heard no evidence of contrary intentions expressed by the grandmother after June 2005. The last wishes of the grandmother must be respected under the MSGC Land Policy paragraph 7.13 (1)(a) where, as here, there were no effective Estate Instructions filed with the Land Registry.*

⁷ Note: These summaries are for convenience only. If there is a discrepancy between the summary and the actual order, the actual order should be relied on to resolve the discrepancy.

- **Order 254 Membership Dispute**

Between: Morris Aulotte, Appellant and Fishing Lake Metis Settlement, and Linda Isbister, Respondents and Metis Settlements General Council, and Metis Settlements Land Registry, Other Parties

Order: Fishing Lake Metis Settlement Bylaw No.FLMS 2008-0186 is repealed and Linda Isbister's membership is terminated.

Reasons: *This particular case deals with the original jurisdiction back in 2008 of Council to approve Linda Isbister's bylaw membership. Linda was not legally eligible for membership under the MSA. She was registered as an Indian under the federal Indian Act at the time her bylaw membership was approved and she had obtained such registration after her 18th birthday. Council simply could not approve her membership. Erroneous approvals cannot legally confer membership where the law prohibits such membership. Nor can the elapse of time, even 4½ years, confer or perfect membership where the law expressly prohibits it.*

- **Order 255 Compensation Dispute**

Between: Glen Christensen, and Bertha Christensen, Appellants and Fishing Lake Metis Settlement, and Crescent Point Energy Corp., Respondents and Metis Settlements General Council and Metis Settlements Land Registry, Other Parties

Order: Compensation should continue to be paid to the Christensens in accordance with Compensation Orders E1919/85 (see amending Order 0018/11) and E1920/85 (see amending Order 0019/11).

Reasons: *While the FLMS enjoys the right to create bylaws concerning the distribution of compensation, its latest bylaw clearly reads that it is not intended to disrupt payment frameworks arrived at before 1990 (i.e. in relation to existing mineral leases). Furthermore, the distribution scheme (in which the Settlement receives 100% of the compensation) only applies when there is no occupant, or when an occupant acquires his interest after 1990 and an authorized oil/gas project has been established. In this case, the Christensen interests in the parcels stem from existing mineral lease agreements established prior to 1990, which are not intended to be disrupted by the Bylaw. Furthermore, any so-called breaks in their claim to the interests in these parcels are really more apparent than real, and certainly not the fault of the Christensen family.*

- **Order 256 Expiration of Provisional Metis Title**

Between: Metis Settlements Land Registry, Appellant and Raymond Thompson, Daniel Knelson Jr., and Kikino Metis Settlement, Respondents and Metis Settlements General Council, Other Party

Order: The Metis Settlements Registrar is directed to cancel the registration of the expired Provisional Metis Title interest (ID# 1-5003425) currently in the name Raymond Thompson in the land described as NE-01-062-15-W4M.

Reasons: *The Registrar provided proper and ample notice to Raymond Thompson through a letter dated October 1, 2005 regarding the expiration of his Provisional Metis Title. Mr. Thompson failed to respond to this notice.*

- **Order 257 Land Dispute**
Between: Walter Pruden, Appellant and Kikino Metis Settlement, Respondent and Fred Pruden, Robert Pruden, Metis Settlements Land Registry, and Metis Settlements General Council, Other Parties

Order: The appeal is dismissed.

Reasoning: *There is no right of appeal in this matter because Walter Pruden missed the appeal deadline by a number of years and because there were no special circumstances to justify extending the appeal deadline.*

- **Order 258 Land Dispute**
Between: Jada Starr Dumont, Appellant and Gordon Dumont, Respondent and Fishing Lake Metis Settlement Council, Other Party

Order: The appeal is dismissed.

Reasoning: *Jada Dumont cannot appeal this matter because the time for doing so ran out a very long time ago. Furthermore, there are no compelling or special circumstances to extend the appeal deadline by 20 years.*

- **Order 259 Land Dispute**
Between: Randy Parenteau, Appellant and Fishing Lake Metis Settlement, Respondent and Metis Settlements General Council and Metis Settlements Land Registry, Other Parties

Order: The appellant's request for Metis Title and compensation is denied.

Reasoning: *The fact that compensation payments were made in error does not justify the continuance of those payments. FLMS' failure to check the MSLR records before making payments does not mean it is obligated to continue making payments to the appellant. What it does mean is that FLMS must apply much more rigor in its oversight of compensation payments and, at a minimum, make its practice to always check the MSLR records before distributing any oil and gas money to members.*

- **Order 260 Land Dispute**
Between: Wayne Anderson Jr., Appellant and Fishing Lake Metis Settlement, Respondent and Metis Settlements General Council and Metis Settlements Land Registry, Other Parties

Order: The MSLR Registrar is directed to correct the record for this matter and to show that the PMT interest was renewed (and not cancelled) for a five year period commencing May 6, 2012.

Reasoning: *While the Appeal Tribunal is of the view that the onus is generally on the recipient of a new or renewed interest in land to exercise vigilance both in applying for and registering their interest in land, the Appellant did what he reasonably could do to renew and register the PMT interest in the land. In particular, the Appellant met with Council in December of 2011 and they agreed to renew his PMT interest at that time. The Appellant then saw to it that the*

requested paperwork was completed, and saw to it that the paperwork was corrected when deficiencies were pointed out by the MSLR. This paperwork was left with the FLMS land clerk with the reasonable expectation that it would be sent by the land clerk to the MSLR as had been done before. To the Appellant's surprise, it was not forwarded to the MSLR as expected. All this is to say that the Appeal Tribunal agrees that the resulting cancellation of the PMT interest was not the Appellant's fault, and that it is fair in these circumstances to undo that cancellation.

▪ **Order 261 Metis Settlements Land Registry Records**

Between: Registrar, Metis Settlements Land Registry, Appellant and Paddle Prairie Metis Settlement, and Canadian National Railway Company, and Metis Settlements General Council, Respondents and ATCO Electric Ltd., Cenovus Energy Inc., Long Run Exploration Ltd., Penn West Petroleum Ltd., Telus Communications Inc., Bradley Villeneuve, Craig Fischer, Dennis William Beaulieu, Don Everett Ducharme, Gary Cardinal, Jerome House, Octave Samuel Parenteau, Peter Stanley Ghostkeeper, Ronald Laverne Ducharme, Douglas K. Piper, Other Parties

Order: The Metis Settlements Land Registrar is directed, within 180 days of this Order, to revise the registrations of all Settlement lands affected by the registered CN railway overriding right of way. This revision must give complete effect and priority to the CN railway right of way and comprise an accurate description of Metis acreage held on each parcel.

Reasoning: *The railway lands were not legally or factually included in the transfer of fee simple interest to the General Council by the Letters Patent. When the Metis title register for patented land was created, it did not take into account the acreage taken up by the railway right of way. As a result, contemporary land search reports and Certificates of Metis title for the affected parcels record incorrect acreage. We conclude that this historical anomaly must now be corrected.*

METIS SETTLEMENTS APPEAL TRIBUNAL

Land Access Panels

LAP ORDERS ISSUED – January 2014 to December 2014

* "REO" – Right of Entry Order

LAP Order Number	Right of Entry Order	Compensation Order	Description	Settlement	Applicant
0001/14	0498/88	1418/88	Change of Occupant and Rate of Compensation	Fishing Lake	Fishing Lake
0002/14	E578/85	E1145/85	REO* Termination	Gift Lake	BP Canada
0003/14	E485/85	E1143/85	REO* Termination	Gift Lake	BP Canada
0004/14	E227/80	E1547/80	Rate of Compensation	Fishing Lake	Cenovus Energy Inc.
0005/14	0498/88	1418/88	Rate of Compensation	Fishing Lake	Crescent Point and Fishing Lake
0006/14	0499/88	1450/88	Rate of Compensation	Fishing Lake	Fishing Lake



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Ty Thompson- Kikino Elementary