

Order No. 139

File No. 02-0004-01

METIS SETTLEMENTS ACT

METIS SETTLEMENTS APPEAL TRIBUNAL

Between:

Donna Patenaude

Appellant

- and -

Buffalo Lake Metis Settlement

Respondent

- and -

Conoco Canada Limited

- and -

Gail A. Cardinal

Affected Parties

Concerning a land dispute on
NW-29-063-17-W4M

DECISION

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The Hearing

Appeal heard by the following members of the Metis Settlements Appeal Tribunal:

Phyllis Collins, Panel Chair
Floyd Flett, Panel Member
Wayne Cardinal, Panel Member

Parties present at the hearing:

Donna Patenaude, Appellant
Horace Patenaude, Donna Patenaude's spokesperson

Buffalo Lake Metis Settlement Council
Represented by: Glen Auger, Council Chair
Keith Heron, Councillor
Lorne Durocher, Councillor
Joseph Blyan, Councillor
Deana Auger, Assistant Finance Director
Leona Berard, Land and Membership Clerk/Council Secretary

MSAT staff:
Sara Daniels, Tribunal Secretary/Executive Director
Russ Teed, Research and Development Officer

Place and date of the hearing:

Community Centre Meeting Room, Buffalo Lake Metis Settlement
May 1, 2002

Objections to Panel:

The Panel Chair asked if there were any objections to the Panel; there were none.

The Panel Chair asked what the parties perceived the matter to be; it was the consensus that it was a land issue.

Background

Donna Patenaude has Metis title in land legally described as NW-29-063-17-W4M.

On November 2, 1999, Buffalo Lake Metis Settlement Council made motion # 167/11/99 to terminate Road Plan 1507 EU, which runs through the NW-29-063-17-W4M.

A letter to Horace Patenaude and Deana Auger, dated October 3, 2000, signed by Debbie Steele of Conoco Canada Limited (Conoco), indicates Conoco's willingness to enter into an Access License Agreement, effective November 15, 1999. The letter indicates the amount of back-dated compensation money Conoco was willing to pay.

On October 18, 2000, Buffalo Lake Metis Settlement, Donna Patenaude, and Conoco became parties to Access Agreement RU-BL-00-01. This agreement covers access across NW-29-063-17-W4M.

According to Buffalo Lake Metis Settlement Special Council Meeting minutes for October 30, 2000, Council agreed to pay the annual rent for 2 years to Donna and have the initial payment go to the Settlement.

According to a Buffalo Lake Metis Settlement ledger statement, the Settlement paid Donna Patenaude \$282.96 twice, once for annual rent for 1999 – 2000 and again for 2000 – 2001. She also received a member signing fee of \$200.00.

On October 22, 2001, Donna Patenaude appealed to the Tribunal. She stated that she was paid for annual rent but was denied the initial payment for a road used by Conoco. Mrs. Patenaude contends that the surface bylaw in Buffalo Lake Settlement says the Settlement must pay 80% to the affected member and 20% to the Settlement.

On February 21, 2002, a Case Management Panel of the Metis Settlements Appeal Tribunal met to determine whether MSAT had jurisdiction to hear this matter. The Panel decided that a Metis Settlements Appeal Tribunal Land Panel has jurisdiction to hear this matter in accordance with section 189(1)(f) of the *Metis Settlements Act* and Article 4.4 of the Access Licence Agreement RU-BL-00-01.

Jurisdiction

MSAT finds jurisdiction to hear this appeal in section 189(1)(f) of the *Metis Settlements Act*.

189(1) The Appeal Tribunal

...

- (f) may decide differences or disputes between a settlement and one or more settlement members or persons who are not members if all the parties involved in the difference or dispute agree in writing that the Tribunal should decide the matter; ...

Further, section 4.4 of Access Licence Agreement RU-BL-00-01 contains a dispute clause, which gives the Tribunal jurisdiction. It states:

Arbitration – The parties agree to make their best efforts to negotiate a solution to any dispute relating to this agreement. If proceedings before the Metis Appeals Tribunal are instituted as a result of such a dispute and the Settlement succeeds in obtaining a decision awarding more than the Operator has offered in writing prior to the decision, then the Operator will reimburse the Settlement for solicitor/client legal fees reasonably incurred in pursuing the issue.

Evidence

Donna Patenaude's Evidence

Horace Patenaude made the following points on behalf of Donna Patenaude:

- There is a bylaw in place.
- There is initial involved.
- The bylaw kicks in when the initial is involved.
- The road is right through our yard.
- Every day we get traffic from water trucks, operator's trucks and quads.
- It is a dangerous road.
- We have grandchildren we have to watch closely.
- We do not have a fence.
- I posted a 50 kilometre per hour speed limit. Sometimes the operator's vehicles don't go only 50 kilometres per hour.
- This dispute has been ongoing since 1995. I took it to the Tribunal. They said the road was Council's.
- Council didn't negotiate compensation for the use of the road.
- When Conoco came in, I figured it was a good time to get some compensation on the road.
- I asked them [Conoco] if they were going to use the road and told them that there was no agreement, no right of way.
- Conoco made an offer.
- I was on Council at the time.
- We live maybe a quarter mile from the road.

- I agreed to a right of way.
- This is a land issue.
- We just want fair compensation.

Buffalo Lake Metis Settlement Council's Evidence

Glen Auger

- The road has been there since the 1930's, a registered plan since before the Settlement started up.
- It goes all over, through different people's land to Smoky Lake.
- The Settlement members used the road a lot but since the 80's, early 90's, we haven't used it as much.
- When Council cancelled/abandoned the road title they gave it back to that quarter-section, to the members along the line.
- Conoco wanted to use that access.
- No construction has been done, no work, no upgrade.
- When they had the land the road was taken out of it.
- After Council abandoned the road, Horace brought Conoco's offer to Council.
- Conoco paid the Settlement the initial plus 2 years annual.
- To Council, initial means going through the bush, a new road.
- Only annuals are paid on existing roads, not initial.
- The road was the Settlement's, so they got the initial.
- The annual covers the next year.
- We agreed that Donna receives the annual.
- In agreements with oil companies, initial covers disturbance, first annual, loss of use; it's all in one.
- The initial is \$9000 something. The member gets 80% on new roads.
- Council is trying to be fair to everyone; whoever has something coming should get it.
- We have other roads like this; other people who have gotten quarters after the road was there; they don't get initial.
- We had a legal opinion; Horace was in conflict.
- Horace was Chairman at the time and took care of the oil and gas.
- Horace brought it to the Tribunal in 1997.
- MSAT said it was the Settlement's road all along.
- If a road goes across my land and I give it to a friend, I give the annual with it, not the initial.
- This is a land issue.
- Glen, Keith, Horace, LeeAnne initialed the agreement.
- Council wants what is fair.
- Council wants it to be legal.

Joseph Blyan

- There are similar cases, potential issues coming up we may have to deal with.
- Conoco does have a right of way. Horace agreed to it and was compensated.
- If there is compensation and Horace deserves it he should get it.

Keith Heron

- The decision I made was based on past practice.

Deana Auger

- Conoco paid the initial, annual for 2 years, an administration fee, and a signing fee.
- The annual was for 1999 and 2000.
- The initial was for 1998, according to my understanding of the surface rights bylaw.
- The road was abandoned in 1999.
- I am unsure when the abandonment of the road would go into effect.
- Conoco took over Renaissance.
- Horace wanted Renaissance to get that access.

Post-Hearing Evidence

While verifying the interests registered on NW-29-063-17-W4M, Tribunal staff found that the Metis Settlements Land Registry had road plan ID# 1-3890043 (1507 EU) registered as Buffalo Lake Metis Settlement's interest until April 26, 2002. On that date, upon receiving an April 18, 2002 request for termination of road title form MSLR08 from the Settlement, Land Registry adjusted the registry to indicate that the part of the road plan ID# 1-3890043 (1507 EU) that crosses NW-29-063-17-W4M, consisting of 5.57 acres, was terminated.

On May 8, 2002, at a post-hearing meeting, the Land Panel was informed of the termination of road request and subsequent adjustment to the registry. At the direction of the Panel, staff contacted all parties that were present at the May 1, 2002 hearing and gave them the same information the Panel received, and gave them an opportunity to respond. After all responses were received, those who responded were asked if they felt it was necessary to reconvene the hearing. All parties said it was not necessary to reconvene the hearing.

Findings of Fact

- On November 2, 1999, Buffalo Lake Metis Settlement Council made Motion # 167/11/99 to terminate Road Plan 1507 EU.
- On October 18, 2000, Buffalo Lake Metis Settlement, Donna Patenaude, and Conoco became parties to Access Agreement RU-BL-00-01. This agreement covers access across NW 29-063-17-W4M.
- Conoco paid the Settlement initial compensation, annual compensation for 2 years, an administration fee, and a signing fee.
- The annual compensation was for 1999 and 2000.
- The Settlement paid Donna the annual compensation for 2 years, totalling \$565.92, and a \$200.00 member's signing fee.
- The initial payment Conoco made to the Settlement was \$9240.00.
- On April 18, 2002 Glen Auger and Margaret Daniels signed form MSLR08 to terminate the part of the road plan ID # 1-3890043 (1507 EU) that crosses NW-29-063-17-W4M.
- On April 26, 2002, after receiving the road title termination request from Buffalo Lake Metis Settlement, the Metis Settlements Land Registry adjusted the registry to indicate that the part of the road plan ID # 1-3890043 (1507 EU) that crosses NW-29-063-17-W4M consisting of 5.57 acres was terminated.
- The road was not Donna Patenaude's in 1998.
- Section 1.3 of the Metis Settlements General Council Land Policy defines a road and registered as follows:
- ...
 - (g) **registered** means entered in a register of the Registry in order to complete the process of registration;
 - ...
 - (i) **road** means a road allowance, or a road shown on a plan filed with the registrar; ...
- Section 2.7 of the Metis Settlements General Council Land Policy states:
 - (1) The settlement holds a non-transferable **road title** interest in each road over which the settlement council has the right of direction, control and management.
 - (2) A settlement council can grant any interest out of its road title, except Metis title, that the General Council Policy allows to be granted for other settlement lands.
 - (3) A settlement council can create a road title in settlement held land by filing a plan with the Registrar and when it is created the Metis title in the land is terminated.
 - (4) The settlement council can terminate a road title by notice to the Registrar and the termination of the road title creates a Metis title in the land in the name of the settlement.

The Decision

Donna Patenaude is not entitled to the initial compensation payment that resulted from Access Agreement RU-BL-00-01.

Reasons

The Panel has made their decision based on the fact that at the time the agreement was made between Donna Patenaude, Buffalo Lake Metis Settlement and Conoco Canada Limited, Road Plan ID # 1-3890043 (1507 EU) was a registered road and so was not Donna's.

Further, because Buffalo Lake Metis Settlement held the interest in Road Plan ID # 1-3890043 (1507 EU), section 2.7(1) of the Metis Settlements General Council Land Policy applies.

Recommendations

The Land Panel would like to remind Buffalo Lake Metis Settlement Council that in LAP Order # 4, the Land Access Panel strongly recommended that Council examine the wording of Article 4(3) in Bylaw 002-92 and move to correct inconsistencies in the bylaw. To date, Bylaw 002-92 remains unchanged and its lack of clarity places it at the centre of another dispute. This Panel reiterates the recommendation for review made in LAP Order # 4.

Dated this 27th day of June, 2002

Phyllis Collins, Panel Chair