

Before:

Metis Settlements Appeal Tribunal

Between:

Marty Howse

Applicant

-and-

**Buffalo Lake Metis Settlement,
Metis Settlements General Council, and
Metis Settlements Land Registry**

Respondents

Concerning:

**Decision Regarding the Jurisdiction of the Metis Settlements Appeal Tribunal to
Consider an Appeal on Leave of Absence**

Decision Date:

June 9, 2016

DECISION

Panel members:

Don Cunningham, Panel Chair

Ross Daniels, Panel Member

Lorne Dustow, Panel Member

Parties:

Marty Howse, Applicant

Buffalo Lake Metis Settlement, Metis Settlements General Council, and Metis Settlements Land Registry, Respondents

Paper Review

The preliminary issue of this appeal was dealt with by the process of review of written submissions and documents on May 6, 2016.

1.0 Issue

[1] The question before the Panel is whether Marty Howse has a right of appeal in relation to the deferral of his Leave of Absence application.

1.1 Finding of Fact

[2] On September 1, 2015, Buffalo Lake Metis Settlement Council passed a motion (Motion #212/09/15): Harold Blyan moves to defer all Leave of Absences until the Policy update, seconded by Cyril Boucher, 4 in favour, carried.

[3] On October 11, 2015, Marty Howse attended a Council Meeting and was advised: Council will let him know once they've updated the policies, Leave of Absences will be looked at.

[4] On October 14, 2015, Marty Howse filed an appeal notice with Metis Settlements Appeal Tribunal concerning his Leave of Absence application:

On September 1, 2015 the Council of Buffalo Lake Metis Settlement refused to grant a leave of absence notwithstanding I have been granted one for over the last twenty (20) years as I am required to work off the Settlement.

I believe this is being done as I have leased my land to Eric Letourneau and his family, who are Metis originally from Quebec, and who the Council approved for Membership, but the Council is refusing to direct their employee to forward the required forms from the Membership Registry. By refusing to provide me with a Leave of Absence I would lose my Membership as a Settlement Member thus allowing the Council to take over my land and functionally becoming the "landlord" and would be in a position to evict them, thus removing a residence as is required to maintain membership.

[5] By an email dated March 18, 2016, Buffalo Lake Metis Settlement confirmed the Buffalo Lake Metis Settlement does not have a Leave of Absence policy.

[6] On March 22, 2016, the Metis Settlements Appeal Tribunal advised that Mr. Howse's appeal involved a preliminary issue to be determined by paper review, namely whether Mr. Howse has standing (right of appeal). The Applicant and the Respondents were given an opportunity to provide submissions on the preliminary issue. No submissions were received.

1.2 Decision

[7] The Appeal Tribunal does not have jurisdiction to hear the appeal. There is no appeal provision in the *Metis Settlements Act*, Metis Settlement General Council policies and Settlement bylaws to appeal deferrals of Leave of Absence applications.

1.3 Analysis / Reasons

[8] On October 11, 2015, Settlement Council advised Marty Howse they would not be making a decision on his Leave of Absence and “Council will let him know once they’ve updated the policies (sic), Leave of Absences will be looked at.”

[9] Section 85 of the *Metis Settlements Act* set out provisions for Leave of Absence in a settlement area:

Leave of absence

85(1) A settlement member has an authorized leave of absence if the member temporarily ceases to reside in the settlement area

(a) because of an appointment or election as an officer of the General Council, or to public office, requiring residence elsewhere,

(b) for educational reasons requiring residence elsewhere,

(c) as a result of imprisonment,

(d) for medical reasons, or

(e) as a result of military or police service requiring residence elsewhere,

but only if the member maintains an appropriate residence in the settlement area and writes the settlement council each year of his or her absence confirming an intention to return as soon as reasonably possible and make the settlement area the member’s home.

(2) A settlement council can give a settlement member an authorized leave of absence from the settlement area for any additional reason that appears reasonable to the council and impose terms and conditions on the leave.

(3) A settlement member on an authorized leave of absence is deemed to be a resident of the settlement area for all purposes, except as otherwise provided by settlement bylaw.

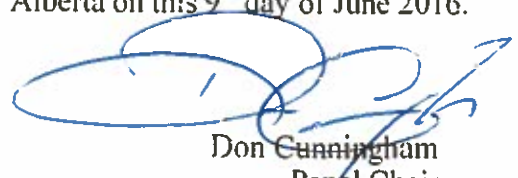
[10] The Applicant, in his appeal, expressed concern about the status of his membership because his application for Leave of Absence is not approved by Council. In response to that concern, the Panel considered section 87(2) of the *Metis Settlements Act* which states a settlement member may have his or her membership in a settlement terminated if the member ceases to reside on the settlement and has expressly or impliedly abandoned membership or has not resided in the settlement area for 12 consecutive months or more, unless there is sufficient reason for the member to be absent.

[11] In the case where membership is terminated under section 87(2), notice must be provided, at least 30 days’ written notice of the proposed bylaw and the date, time and place of which first reading is proposed, and the settlement member on request has the opportunity of explaining why the bylaw should not be given first reading.

[12] In the case of a section 87(2) termination of membership, the settlement member may appeal the decision to terminate the membership to the Appeal Tribunal by sending a written notice of appeal to the Tribunal within 30 days of reception of the bylaw or resolution.

[13] Although the Applicant has a valid concern about his membership status, the Panel cannot find any provision in the *Metis Settlements Act*, General Council Policies, or Settlement bylaws that gives jurisdiction to the Tribunal to hear this matter, at this stage of the matter.

Dated in the City of Edmonton, in the Province
of Alberta on this 9th day of June 2016.

A handwritten signature in blue ink, appearing to read 'Don Cunningham', is written over the printed name and title.

Don Cunningham
Panel Chair