

Before:

**Metis Settlements Appeal Tribunal**

Between:

**Cyril (Jack) Boucher,**

Appellant,

-and-

**Buffalo Lake Metis Settlement  
and  
Metis Settlements General Council**

Respondents.

Concerning:

**Metis Settlements General Council Financial Interest Policy**

Decision Date:

September 21, 2017

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**DECISION**

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**The Hearing – parties, place and date**

**MSAT Panel members:**

Lorne Dustow, Chair  
Phyllis Collins, Panel Member  
Cody Hodgson, Panel Member

**MSAT Staff:**

Harold Robinson, Tribunal Secretary  
Amanda Wyatt, Dispute Resolution Officer

**Participants:**

Cyril (Jack) Boucher, Appellant  
Horace Patenaude, Buffalo Lake Metis Settlement Council Chairman, Respondent  
Archie Handel, Buffalo Lake Metis Settlement Council member, Respondent  
Harold Blyan, Buffalo Lake Metis Settlement Council member, Respondent  
Lorne Ladouceur, Buffalo Lake Metis Settlement Council member, Respondent

**Hearing:**

Thursday, September 7, 2017 at 9:00 AM  
Canalta Hotel, Lac La Biche, Alberta

## 1.1 Context

[1] Cyril (Jack) Boucher wrote to the Appeal Tribunal on May 17, 2017, requesting clarification on whether he is in a conflict of interest. Specifically, Jack wants to know if accepting two honorarium checks (for \$150, each) from the Buffalo Lake Development Corporation (BLDC)—which he was appointed to by Buffalo Lake Metis Settlement (BLMS) Council—places him in a conflict of interest.

## 1.2 Evidence before the Panel

### Jack Boucher, Appellant

[2] Jack said that BLMS Council appointed him to the BLDC Board of Directors and that he accepted two honorarium payments of \$150 each from the BLDC in relation to work he did for the Corporation as its President.

[3] Jack said that some Council members and staff questioned the appropriateness of his accepting the two cheques and that he wants the question of conflict [financial interest] to be clarified. At Jack's request, the item was added to BLMS Council's agenda for its meeting on May 16, 2017 BLMS Council's agenda. (See BLMS Agenda for May 16, 2017 at Tab 2 of the Hearing Package.)

[4] The agenda item was discussed by BLMS Council on May 16, 2017, and Council minutes were prepared, adopted, and posted at the BLMS Administration Offices for the public to see. The Council minutes for May 16, 2017 read that:

*13) Perceived conflict of interest (Cyril [Jack's] request)  
Things were said regarding a situation with Cyril [Jack] being on another board [the BLDC] and wanting to be paid to attend 2 meetings that had taken place during a week day. Some Council feel that it's not right to take that payment. Cyril would like it to be in the minutes he feels he is not in conflict. Wants Council to deal with it either a letter stating he is not in conflict or he will take it to MSAT. [BLMS Council member], Harold [Blyan] stated he feels it's not right for him to get honorarium when sitting on a board. Lorne [Ladouceur] asked if the others were paid also, if they were then Cyril should [be paid] too. (See Tab 6 of the Hearing Package.)*

[5] Jack filed a letter<sup>1</sup> from the BLDC dated September 5, 2017 that it does not have a remuneration policy prohibiting council members from receiving honorarium payments.

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<sup>1</sup> See Exhibit One, entered in the hearing record on September 7, 2017, for information purposes.

**BLMS Council, Respondent**

[6] Council member, Harold Blyan, spoke for Council. He said that the Appeal Tribunal does not have jurisdiction over this matter under the *Metis Settlements General Council (MSGC) Financial Interest Policy*<sup>2</sup>, because the *Financial Interest Policy* requires that the matter be *before* Council and this matter was not *before* Council. Specifically, the two honorarium payments to Jack were made by the BLDC, not by BLMS Council, and BLMS Council is not in a party to those payments or in a position to stop them.

[7] Harold said that while the matter was on BLMS Council's agenda and that he offered an opinion to the question of conflict, it was only at Jack's continued insistence that the item was included on Council's agenda and that he offered his personal opinion... that it isn't right for Jack, or any Council member, to get honorarium payments for sitting on Settlement boards.

[8] Harold added that the purpose of the *Financial Interest Policy* is to stop Council members from making decisions that enrich themselves, and that since Council was not being called on to approve the payments there is nothing to trigger the Appeal Tribunal's jurisdiction over the matter.

**1.3 Findings of Fact**

[9] This Panel finds that the following uncontested evidence is relevant, and is more likely than not to be true:

- i. BLMS Council appointed Jack to the BLMS Development Corporation and Jack served as its President;
- ii. Jack attended at least two meetings of the BLMS Development Corporation and he received two \$150 honorarium payments from the BLDC;
- iii. The question of "Perceived conflict of interest (Cyril [Jack's] request)" was on the BLMS Council agenda for May 16, 2017; and
- iv. The Council minutes for May 16, 2017 were adopted and posted for public review. They read as follows:

*13) Perceived conflict of interest (Cyril [Jack's] request)*

*Things were said regarding a situation with Cyril [Jack] being on another board [the BLDC] and wanting to be paid to attend 2 meetings that had taken place during a week day. Some Council feel that it's not right to take that payment. Cyril would like it to be in the minutes he feels he is not in conflict. Wants Council to deal with it either a letter stating he is not in conflict or he will take it to MSAT. [BLMS Council member], Harold [Blyan] stated he feels it's not right for him to get honorarium when sitting on a board. Lorne [Ladouceur] asked*

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<sup>2</sup> See *MSGC Financial Interest Policy* [Policy GC-P9808]

*if the others were paid also, if they were then Cyril should [be paid] too..*

- v. Jack referred the question of financial interest to the Appeal Tribunal on May 17, 2017.

### 1.3 How the law applies to this matter

[10] The question of the Appeal Tribunal jurisdiction over this matter was raised at the hearing. Can the Appeal Tribunal judge whether Jack has a financial interest relating to the two payments he received from the BLDC? If it can, does Jack have a financial interest?

[11] As set out in section 189(1)(b) of the *Metis Settlements Act*<sup>3</sup>, “the Appeal Tribunal must hear appeals and references and perform any other function given to it or required to be performed by it under the regulations, bylaws or General Council Policies.” Meaning, if requirements for triggering an appeal under the *MSGC Financial Interest Policy* have been met, the Appeal Tribunal must hear the matter.<sup>4</sup>

[12] Like other tribunals, the Appeal Tribunal reads the words of legislation according to its purpose and context and the plain meaning of the words used to achieve the goals of the legislation. However, unlike other tribunals the Appeal Tribunal has a unique mandate to also interpret its home legislation<sup>5</sup> in a manner that, amongst other things, measurably advances the attainment of self-governance by Metis settlements under the laws of Alberta. In this regard, section 187.1 of the *Metis Settlements Act* reads that:

***Overriding consideration***

187.1 The Appeal Tribunal shall 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.

[13] This overriding consideration—*furthering the attainment of self-governance*—suggests that the Appeal Tribunal take an active role, as opposed to passive role, when considering questions of governance. Put another way, if the criteria for assuming jurisdiction is met, the Appeal Tribunal should and, really, must<sup>6</sup> exercise its authority to clarify on-going governance issues.

[14] Insofar as governance is defined by the mechanisms, processes and relations by which elected bodies, corporate bodies, and citizens interact, the question of conflict (financial interest) now before us is really about governance. Specifically, BLMS Council is obviously empowered

<sup>3</sup> *Metis Settlements Act* [RSA 2000, Chapter M-14].

<sup>4</sup> The Appeal Tribunal’s jurisdiction can also be triggered if all the parties to a matter agree in writing to have the Appeal Tribunal review the matter. This is sometimes done through contract and the inclusion of a dispute resolution clause naming the Appeal Tribunal (See section 189(1)(f) of the *Metis Settlements Act*.)

<sup>5</sup> The Appeal Tribunal’s “home legislation” includes certain provincial statutes, including the *Metis Settlements Act*, *MSGC policies*, including the *MSGC Financial Interest Policy*, settlement bylaws, and contracts made that give effect to the *Alberta Metis Settlements Accord* of 1989.

<sup>6</sup> As mandated under section 189(1)(b) of the *Metis Settlements Act*.

to appoint at least one Council member to the BLDC and did so. This power and subsequent action speaks to a direct relationship between the Corporation and Council. One of the foreseeable consequences of that relationship is that the Council member was offered an honorarium for participating in the Corporation's meetings and he took it. The question of conflict (financial interest) was added to Council's agenda by Jack and opinions were shared about the propriety of accepting the payments and those opinions—whether personal or not—formed part of the minutes/permanent governance record that was adopted and posted for public review. This result certainly amplified the internal discord within the BLMS Council and arguably diminished the public's confidence in the governance capacities of the BLMS Council.

[15] Looking forward, while this matter affords the Appeal Tribunal opportunities to speak to governance matters in general and to clarify the rules for financial interest in particular, these opportunities do convey jurisdiction on their own. The Appeal Tribunal must first be satisfied that Jack has a right of appeal. Specifically, section 189 of the *Metis Settlements Act* tells us that *one of three* triggers must be present to properly advance an appeal. The appeal must either be grounded in (1) provincial statute, *or* (2) MSGC Policy, settlement bylaws or Ministerial regulation *or* (3) be advanced through written agreement of the parties. Furthermore, appeal deadlines<sup>7</sup> must also be met to properly trigger the right of appeal.

[16] Jack's appeal relates to the second trigger: MSGC Policy, and the *MSGC Financial Interest Policy* in particular. Appeals on financial interest can be referred to the Appeal Tribunal through Section 3.1 of the *MSGC Financial Interest Policy*. Section 3.1 reads:

***3.1 Appeals on Financial Interest***

(1) If a question arises as to whether or not a councillor has a financial interest in a matter before council or in an agreement with a settlement, any affected person may, with the permission of the Metis Settlements Appeal Tribunal, refer the issue to the Tribunal for determination.

(2) A referral on a question of financial interest in a matter before council must be made within 60 days of the council meeting in which the matter is first raised, or in which a decision is made on the matter, whichever is later.

(3) A referral on a question of financial interest in an agreement with a settlement must be made within 180 days of the signing of the agreement or the subsequent council approval of the signing, if any, whichever is later.

[17] The purpose of the MSGC Financial Interest Policy is set out in section 1.2. It reads:

***1.2 Purpose***

The purpose of this Policy is to define when a settlement councillor has a financial interest in matter before council or in an agreement with a settlement.

[18] As argued by Jack, he meets the appeal/referral requirements set out in section 3.1(1) and (2). Jack pointed out that the question of whether he [Jack] (as a BLMS Councillor) has a financial interest concerning the honorarium payments from the BLDC was put before Council, as evidenced by Council's agenda (item #13) for May 16, 2017. At least one member of Council

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<sup>7</sup> The exception to this is for land disputes under the MSGC Land Policy, which expressly allows the 30 day appeal deadline to be extended by the Appeal Tribunal through its section 202 power under the *Metis Settlements Act*.

said it was not right for Jack to receive honorarium payments, and Council subsequently adopted the minutes, which then became part of the public record; affecting Jack's standing in the community. Furthermore, Jack referred the matter to the Appeal Tribunal within the 60 day appeal period.

[19] According to BLMS Council's spokesperson, Harold Blyan, while the question of financial interest was considered by Council on May 16, 2017, and comments were offered on the subject and put into the public record, the matter is not *before* Council because Council has no role in paying Jack. As further articulated by Harold, if the purpose of the *Financial Interest Policy* is to stop councillors from participating in decisions that enrich themselves or their family, there is no decision that Council can now make to enrich Jack. Accordingly, this shows that the matter is not before Council and that the key appeal/referral requirement in section 3.1(1) and (2) has not been met and that Jack does not have a right of appeal.

[20] Of the two views, this Panel thinks BLMS Council has it right. While permission was granted by the Appeal Tribunal to Jack to proceed with his appeal based the fact that Jack raised the question of financial interest before the Council and that he filed his appeal within the allotted time line—thus fulfilling the basic requirements in section 3.1(2)—we must now conclude that reviews of questions of financial interest be limited to those matters in which council makes, or could make, a decision having a financial effect on a councillor.

[21] This interpretation is reinforced when read in conjunction with and harmoniously with the wording of the *basic rule* at section 2.1 of the *MSGC Financial Interest Policy*, which reads:

**2.1 Basic rule**

(1) A councillor has a financial interest in a matter before council if he or she can reasonably be expected to know that **a decision on the matter could have a financial effect** on the councillor or a related person of the councillor. [emphasis added]

...

(3) Something has a financial effect on a person if it causes the person to gain or lose money.

[22] Accordingly, this Panel will not rule on whether Jack has a financial interest in the matter at hand because Council cannot now make any decision directly or indirectly affecting the payment to Jack. Nor will this Panel dwell on whether section 2.2(1)(b)(i) of the *MSGC Financial Interest Policy* provides an exception to the basic rule of financial interest that applies when council appoints a councillor be a director of a company incorporated for the purpose of carrying on business for the benefit of the settlement.

[23] While Jack's appeal is dismissed, this Panel will exercise that part of its mandate to further the attainment of self-governance by offering some advice that it hopes will be of value. The first bit of advice is that good governance depends on the development of clear, principled, rules and their consistent application. The second bit of advice is that Council apply its bylaw authority under section 51 of the *Metis Settlements Act* to clarify what remuneration—if any—councillors are entitled to when appointed to settlement companies by settlement council.




**1.4 Decision**

[24] Jack Boucher's appeal is dismissed.

Dated in the City of Edmonton, in the Province  
of Alberta on this 21<sup>st</sup> day of September 2017.

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Lorne Dustow  
Panel Chair

