

Before:

Metis Settlements Appeal Tribunal

Between:

Cyril (Jack) Boucher,

Appellant,

-and-

**BLMS Council member Archie Handel,
and
Buffalo Lake Metis Settlement,
and
Metis Settlements General Council,**

Respondents.

Concerning:

Appeal on financial interest concerning Archie Handel and Horace Patenaude

Decision Type:

Paper Review Process

Decision Date:

September 28, 2017

DECISION

MSAT Panel members:

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

MSAT Staff:

Harold Robinson, Tribunal Secretary
Amanda Wyatt, Dispute Resolution Officer

Hearing:

By Written Submissions and Paper Review
August 22, 2017

1.0 Context

[1] Buffalo Lake Metis Settlement (BLMS) Council member, Cyril (Jack) Boucher wrote to the Appeal Tribunal on June 19, 2017. Jack wants the Appeal Tribunal to determine if Archie Handel or Horace Patenaude have a financial interest in an agreement dated August 27, 2012 to remove gravel from Archie' property (legally described as the NW-28-63-17-W4).

[2] As set out in the MSGC *Financial Interest Policy*, questions of financial interest can only be referred to the Appeal Tribunal after the Appeal Tribunal has granted its permission for the question to be heard. In this regard, the Appeal Tribunal elected to deal with this preliminary matter—whether to grant permission—by way of its “paper review” process. This process is permitted through section 195 of the *Metis Settlements Act*¹, which allows the Appeal Tribunal to make rules for the conduct of its business, and thereunder, through sections 29 and 30 of the Appeal Tribunal's *Rules of Procedure*.²

1.1 Issue

[3] Should permission be granted to Jack to refer his question of financial interest concerning Archie Handel and Horace Patenaude and the BLMS regarding the 2012 agreement to remove gravel from Archie's property?

1.2 Submissions and evidence before this Panel

[4] In his appeal form, Jack wrote:

Archie Handel apparently signed a lease agreement with BLMS for a gravel pit to operate on his land. The agreement stated that \$10k would be set aside for reclamation. That is what was stated in the draft copy given to council... Archie Handel is now a councilor of BLMS. He is also a stakeholder, board member and officer of Buffalo Lake Sand and Gravel (BLSG) Board. I have asked repeatedly for a meeting to be called from the Board and President of BLSG, Dean McDonald, to no avail. The lease agreement ends in August 2017 and the officers have talked about reclamation in the amount of \$50k. That amount has not come up in the other Board meetings, it is decided by the four officers of BLSG.

I am asking if there is any conflict of interest by Archie Handel and Horace Patenaude in some of the financial decisions that were made for benefit of BLSG. Also the \$50k that I mentioned is made by the officers one of which is Archie Handel.

The question I have is there might not be enough time to deal with

¹ *Metis Settlements Act* [RSA 2000, Chapter M-14]

² MSAT Rules of Procedure. Amended April 4, 2017. <http://www.msat.gov.ab.ca/publications/>

this as the lease expires in August, 2017. If there is wrong doing and if we don't get back in Council what are repercussions?

[5] The Appeal Tribunal wrote to Jack, Archie Handel, Horace Patenaude and BLMS Council on _____, 2017, notifying them that the question of granting permission is in issue and requesting written submissions from each party. None of the parties provided any additional submissions about whether permission should be granted.

[6] At the BLMS Council meeting on February 17, 2017, Jack moved (Motion #34/02/17) that Archie produce a true copy (as affirmed by Commissioner of Oaths) of the gravel agreement. Council members, Lorne Ladouceur, seconded the agreement. Archie and Horace stepped out of the meeting and the motion is recorded as “defeated.” 2 in favour, 3 abstained. Within the same motion, Jack moved that Arche submit the reclamation procedure related to the gravel agreement. This part of the motion was also defeated, showing 2 in favour, 1 opposed and 2 abstained. (See hearing kit, Tab 6.)

[7] A copy of the Land Access Agreement dated August 27, 2017 (what we've been referring to as the gravel agreement) was also included in the hearing kit, at Tab 7. The Agreement is dated August 27, 2012 and is between Archie Handel (as the landholder of the NE-28-63-17-W4) and Buffalo Lake Metis Settlement. The relevant parts read as follow:

1. The term of the agreement shall commence on the date this agreement is signed and continue until all mineable gravel is removed from the property and the obligations of both parties have been met, but at most will be terminated after 5 years.
2. BLMS shall be the sole operator of the gravel pit throughout the term of this agreement and this agreement may not be assigned to another party.
- ...
9. The amount of \$10,000 will be placed into a separate account by BLMS to be held in trust as a reclamation fund. Upon termination of this agreement, if the land is not reclaimed in accordance with section 8 of this agreement, then all costs to reclaim the property shall be paid to the landholder from the reclamation fund up to a maximum amount of \$10,000.
- ...
11. The BLMS shall pay to the landholder upon execution of this agreement the amount of \$40,000 as full and total compensation for the right of entry, access and damages for the property.

[8] Archie Handel was not a member of the BLMS Council when the Land Access Agreement was executed, but was elected to the BLMS Council in October, 2013.

1.4 Analysis/Reasons

[9] As set out in section 189 of the *Metis Settlements Act*, the Appeal Tribunal is responsible for hearing appeals and references and performing any function given to it under the *Metis Settlements Act*, or other provincial statutes, Metis Settlements General Council (MSGC) Policies, Ministerial regulations, local settlement bylaws or when all the parties to a dispute agree in writing that the Appeal Tribunal decide the matter. Section 189(1)(b) of the *Metis Settlements Act* is particularly relevant. It reads:

Responsibilities

189(1) the Appeal Tribunal

(b) must hear appeals and references and perform any other function given to it under the regulations, bylaws or General Council Policies.

[10] The MSGC policy that applies is the MSGC Financial Interest Policy.³ The appeal mechanism in the *MSGC Financial Interest Policy* reads as follows:

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.

[11] The first issue is whether the Appeal Tribunal should grant permission for the matter to be heard. This bar is not necessarily a high one, but one that must be cleared in any event. The requirements are that the question being raised concerns financial interest of a council member; that the matter is before council; and, depending on which fact scenario is applicable, that the 60 or 180 day appeal deadlines have been met.

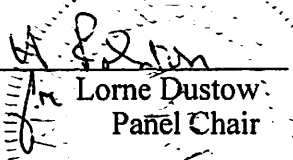
[12] In our view, while Archie is now a member of the BLMS council, and the decision to remediate or pay Archie \$10,000 in lieu of remediation will be for BLMS Council to make—which would place Archie in a financial interest—the matter has not yet come before Council, insofar as we can tell, rendering the current appeal premature.

³ MSGC Financial Interest Policy, Policy GC-9808.

3.0 Decision

[13] Jack Boucher is not granted permission to appeal the question of financial interest in this matter and his appeal is dismissed.

Dated in the City of Edmonton, in the Province of Alberta on this 28th day of September, 2017.



Lorne Dustow
Panel Chair

