

Before:

Metis Settlements Appeal Tribunal

Between:

**Cyril (Jack) Boucher,**

Appellant,

-and-

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

Respondents.

Concerning:

Request access to BLMS' lawyer and records held by BLMS' lawyer

Decision Type:

Paper Review Process

Decision Date:

September 28, 2017

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**DECISION**

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**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 in his capacity as a council member on June 19, 2017. Jack wrote that Settlement Council was meeting with their lawyer, Bill McElhanney, on June 15, 2017, about the Settlement's draft consultation policy, and that Jack wanted to speak to Bill about other matters, but was told by his fellow councilors that he needed a quorum of council to agree to add additional items to the agenda. Jack feels that his colleagues are preventing him from fulfilling his duties as a councilor and wants to know his legal rights to request information from BLMS's lawyer, including:

- What files are currently open;
- How much BLMS has paid Bill's firm since 2013;
- Files concerning conflicts of interest and whether any conflict files are specific to Jack;
- Files since Jack was elected in 2013; and
- A hard copy of BLMS policies and bylaws in the Firm's possession.

[2] Jack's appeal triggered a preliminary question about the Appeal Tribunal's jurisdiction over this matter. In the interests of efficiency, and of fairness and clarity for all the parties, Jack's appeal is being dealt with through the Appeal Tribunal's "paper review" process. This process is permitted through section 195 of the *Metis Settlements Act*, 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*.

## 1.1 Issue

[3] Can the Appeal Tribunal grant Jack's request to freely access the services and records of BLMS's lawyer?

## 1.2 Submissions

[4] In his appeal form, Jack wrote:

- *I want as an elected councilor to talk to our settlement lawyer on issues pertaining to BLMS. I feel a quorum of council is preventing me from doing due diligence as the elected official. As far as I know, BLMS does not have a policy on this issue so I am asking the Appeal Tribunal's legal opinion on this.*

[5] The Appeal Tribunal wrote to Jack and BLMS Council on \_\_\_\_\_, 2017, notifying them that jurisdiction is in issue and requesting written submissions from each party. Neither party provided any additional submissions concerning the Appeal Tribunal's jurisdiction over the matter.

## 1.4 Analysis/Reasons

[6] 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. Put another way, without an appeal provision—the requirements of which, including appeal deadlines which must be met—or, alternatively, that all the parties agree in writing that the Appeal Tribunal decide the matter, there can be no appeal.

[7] If there is a provision in any provincial statute, MSGC Policy, Ministerial regulation, or settlement bylaw that allows a member of a settlement council to appeal the non-production of monthly financial statements or staff job descriptions, we cannot find it. Nor did Jack point out any such section to this Panel; and neither have the parties agreed in writing that the Appeal Tribunal decide the matter. Without a clear appeal mechanism, or the consent of the parties for the Appeal Tribunal to decide the matter in the alternative, there can be no appeal.

[8] Before leaving this matter, though, the Appeal Tribunal will offer some suggestions under its overriding mandate found under section 187.1 of the *Metis Settlements Act*. Section 187.1 reads that “*The Appeal Tribunal shall exercise its powers and carry out 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.*”

[9] As a matter of governance and fiscal prudence, Jack’s colleagues are correct to suggest that discussions with the Settlement’s lawyer—who, like all lawyers, charges for his time—should be pre-planned and pre-approved through Council resolution. This accords the requirements under section 43(2) and (3) of the *Metis Settlements Act*, calling for council local decision-making to be made through resolution or bylaw.

[10] Whether pursuing good governance practices or fiscal prudence, though, BLMS would be well-served by passing a bylaw on the utilization of external legal counsel. Such a bylaw, by definition, would enjoy community support and speak to the purposes and internal approval mechanisms (i.e. checks and balances) necessary for engaging external legal counsel. Such a bylaw would also no doubt reduce any potential inconsistencies concerning the retention of external legal counsel, and likely lend real clarity and certainty to the retention of legal counsel.

[11] Finally, to the extent that Jack wants general information concerning BLMS’s usage of Bill’s law firm, he is likely better off asking the BLMS Administrator for that information.

### 3.0 Decision

[12] Jack Boucher's appeal is dismissed.

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



