

Before:

Metis Settlements Appeal Tribunal

Between:

Theresa Houle

Applicant,

-and-

**Paddle Prairie Metis Settlement, Metis Settlements General Council, and
Metis Settlements Land Registry**

Respondents.

Concerning:

Application for Costs

Decision Date:

November 16, 2017

DECISION

Decision Maker:

Lorne Dustow, Tribunal Chairperson

MSAT Staff:

Karen Mustus, Oil and Gas Officer
Harold Robinson, Tribunal Secretary

Participants:

Theresa Houle, Applicant

1.0 Context

[1] Theresa Houle (Theresa) applied for personal costs with respect to the Appeal Tribunal hearing held in Manning, Alberta, on June 19, 2017.

1.1 Issue

[2] Should costs be awarded?

1.2 Process

[3] Section 191 of the *Metis Settlements Act* (the Act) gives the Appeal Tribunal broad discretion to deal with costs incidental to proceedings before the Appeal Tribunal. In particular, section 191(2) of the Act allows the Appeal Tribunal to order by whom and to whom costs are to be paid, and by whom costs may be determined. Section 191 is set out below for ease of reference:

Costs

191(1) The costs of and incidental to proceedings before the Appeal Tribunal are in the discretion of the Tribunal.

(2) The Appeal Tribunal may order by whom and to whom any costs are to be paid, and by whom they are to be determined and allowed.

[4] Utilizing the broad discretion afforded via section 191(2), I elected to take this costs application on myself, and directed that the Appeal Tribunal invite the parties to make costs submissions in writing.

[5] The Appeal Tribunal sent a letter to the parties on October 3, 2017 inviting the parties to respond in writing to Theresa's costs application, which was attached to the letter. No additional submissions or objections were received from the parties.

1.3 Evidence

[6] The following evidence is taken from Theresa's application and from Appeal Tribunal Order 316, which is the Order that relates to the proceeding for which Theresa is requesting costs.

- i. Theresa Houle applied to the Appeal Tribunal to recover oil and gas compensation that had not been paid;
- ii. After consulting with the parties, including Paddle Prairie Metis Settlement (PPMS) Administration, the hearing for Theresa's matter (and other matters involving PPMS members) was set for June 19, 2017 at the PPMS Council Office;
- iii. Notices were sent to all the parties by registered mail on June 2, 2017 confirming the

place, date and time of the hearing;

- iv. Despite its earlier consent to have the hearing(s) in Council chambers on Monday, June 19, 2017, PPMS Council Secretary sent an email to MSAT Staff—but not to any of the parties— at 1:32pm the Thursday before the hearing (on June 15) that:

The hearings that you scheduled for June 19 at the Paddle Prairie Metis Settlement will not take place due to the moratorium set in place at the MSGC¹ level. Paddle Prairie does not agree to participate in any way.
Thank you

Sandra Ann

Paddle Prairie Metis Settlement
Council Secretary
780 981 2227
Email:executive@paddleprairie.com

- v. The email from PPMS Council was forwarded to the Panel responsible for the compensation hearing for its consideration. The Panel directed that the hearing(s) proceed on June 19, 2017, but be moved from Paddle Prairie Offices to the Nova Hotel in Manning, which is a little over an hour away by car from PPMS. All the parties (including Theresa) were notified of the change in location by telephone or email on June 15, 2017;
- vi. Theresa drove to Manning to attend the hearing on June 19, 2017.
- vii. PPMS Council did not attend the hearing in Manning. In this regard, the Panel responsible for the compensation hearing characterized PPMS Council's conduct as a failure in good governance. The Panel wrote:

[7] That PPMS Council chose not to attend the hearing(s) is its decision. However, by belatedly reversing its earlier agreement to have the hearing(s) in its offices, PPMS caused its own members to incur additional travel time, and expense. Given the Appeal Tribunal's statutory mandate to strengthen good governance on the Metis Settlements, we remind PPMS Council that good governance demands that Council respect the rights of Settlement members to be heard.²

¹ Metis Settlements General Council.

² See MSAT Order, paragraph [7].

- viii. Theresa applied to PPMS to offset her travel expenses to attend the hearing in Manning on June 19, 2017. Theresa used the PPMS Travel Form to claim the following from PPMS:

Kilometer claim to and from Manning (250 km x .52/km)	\$130.00
Lunch	\$20.00
Supper	\$30.00
Total	\$180.00³

- ix. Theresa's Travel claim is marked as "refused."

2.0 Analysis/Reasons

[7] The following principles are applicable when considering applications for costs:

- i. **Overriding consideration:** Section 187.1 of the *Metis Settlements Act* reads that the Appeal Tribunal shall exercise its discretion to award costs "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."
- ii. **Impact on access to justice:** What effects will an award of costs to the "successful party" have on future access to the Appeal Tribunal's services?
- iii. **Impact on efficiency:** Would costs deter unreasonable, vexatious or delay-causing conduct?

[8] In applying the first principle, Metis culture and identity calls on parties to respect one another. Ours is a culture built on openness, dialogue, and partnership. Not surprisingly, these cultural components are also the building blocks of good governance; including respect for the *Metis Settlements Act* and other Accord legislation guaranteeing certain rights of appeal.

[9] Indeed, having met the basic requirements under section 121 of the *Act*, (i.e. showing that an operator failed to pay money under a surface lease within 30 days of the date it was due), it was Theresa's right to expect that her matter be heard in a timely and efficient manner. Short of changing the *Act*, neither the Metis Settlements General Council (MSGC) nor PPMS has the authority to unilaterally declare an absolute moratorium on hearings that must be held under the *Act*. For, to do such a thing is to declare a moratorium on *checks and balances* that are essential to good governance.

[10] That such actions typically beget poor reviews—and are often characterized in terms such as "abuse of power" or similar language—is evidenced by the Panel's conclusion in the oil and gas

³ Theresa's Travel Form mistakenly summed up the amount as \$190.00; which is wrong. The total is \$180.00

compensation decision relating to this matter (Order 316). In Order 316, the Panel found that “PPMS caused its own member to incur additional travel time, and expense... [and the Panel had to “remind PPMS Council that good governance demands that Council respect the right of settlement members to be heard.”⁴ In my view, the intent of PPMS’ last minute declaration/email was high-handed and clearly meant to derail the hearing process to which its members were entitled, and it is not in keeping with tenants of Metis culture and identity, nor with the tenants of good governance. These tenants suggest that settlement councils honour existing commitments to hold hearings locally, and in the public buildings built for settlement members, and not make members travel away from the settlement to have their matter heard.

[11] With regard to the second principle—regarding impacts on access to justice—an award of costs in this particular matter would not dampen others from accessing the Appeal Tribunal’s services because the award, if given, would not be tied to the “success” of Theresa’s initial application for oil and gas compensation. Rather, an award, if given, would suggest the opposite: that access to justice—including to hearings—must not be unilaterally undermined by settlement councils.

[12] The third principle—impacts on efficiency—can be applied to dissuade conduct that is mischievous or vexatious in nature. In this regard, mischief was certainly in the air when PPMS sent an email to the Appeal Tribunal alone and not to any of the affected parties late Thursday afternoon unilaterally declaring that hearings scheduled for Monday would not be allowed in PPMS, causing the Appeal Tribunal to scramble for an alternative to ensure PPMS’ own members would be heard. In my view, which I think is reasonable, the intent of PPMS’ email of June 15, 2017 was to harass the Appeal Tribunal and to disrupt Theresa’s hearing and it was, by definition, vexatious.

[13] Taken together, it is appropriate to award costs to Theresa. However, the costs requested cannot be given in their entirety. First off, the amounts requested actually add up to \$180; not \$190. Also, Theresa’s hearing finished in the morning of June 19, 2017 and it would not have taken her until after supper to get back home. So, the claim for \$30 for supper is not allowed.

[14] Accordingly, based on PPMS’s own travel framework, Theresa’s costs are set at \$150.

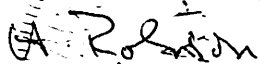
[15] Finally, I take no delight in making these findings, or even in awarding costs. This was hopefully a singular unfortunate lapse by PPMS; necessitating this singular response.

⁴ See MSAT Order 316, paragraph [7].

3.0 Decision

[16] PPMS will pay Theresa Houle costs of One Hundred Fifty (\$150) dollars. PPMS shall pay the costs to Theresa immediately upon receipt of this decision.

Dated in the City of Edmonton, in the Province of Alberta on this 16th day of November, 2017.



for Loïne Dustow
Tribunal Chair

