

Before:

Metis Settlements Appeal Tribunal

Membership Panel

Between:

**Harry Supernault**

Appellant

- and -

**Bruce Bourguignon,  
East Prairie Metis Settlement  
Metis Settlements General Council and  
Metis Settlements Land Registry**

Respondents

Concerning:

**Settlement Membership**

Decision Date:

**September 9, 2016**

---

**DECISION**

---

The Hearing – parties, place and date

**MSAT Panel members:**

Lorne Dustow, Panel Chair  
David Drummond, Panel Member  
Don Cunningham, Panel Member

**Parties present at the hearing:**

Harry Supernault, Appellant  
Kerri-Ann Haggerty, Representative for Bruce Bourguignon  
Jackie Bellerose, Interim Administrator, East Prairie Metis Settlement  
Karen L'Hirondelle, Executive Assistant, East Prairie Metis Settlement

**Observers:**

Violet Haggerty, Chad Haggerty, Tristyn Haggerty, Rose Prinz, Karen Cunningham, Jake Lalonde, Lashay Chalifoux, Marcel Desjarlais and Joan Haggerty

**MSAT staff present:**

BJ Simpson, Dispute Resolution Officer  
Harold Robinson, Tribunal Secretary

**Place and date of the Hearing:**

East Prairie Metis Settlement Communiplex, AB  
June 27, 2016

## 1.1 Context

[1] Settlement member, Harry Supernault, is asking for permission under section 83(3) of the *Metis Settlements Act*<sup>1</sup> (the Act) to appeal East Prairie Metis Settlement Council's decision to grant membership to Bruce Bourguignon.

[2] Permission was not granted because Mr. Supernault had sufficient notice and time to file his appeal within the 45 days after the application was approved by East Prairie Council and failed to do so.

## 1.2 Evidence before the Panel

[3] The evidence before the Panel includes submissions made at the hearing by the parties and information contained in the hearing kit.

### Harry Supernault's submissions

[4] Harry Supernault is a member of East Prairie Metis Settlement. It is common knowledge that Harry has sat on East Prairie Council in the past and also served as the President of the Metis Settlements General Council. Harry has also acted as the Administrator for East Prairie Metis Settlement in the past.

[5] Harry wrote to the Metis Settlements Appeal Tribunal on January 29, 2016 contesting Council's granting of membership in East Prairie Metis Settlement to Bruce Bourguignon. Harry wrote that he missed the appeal deadline by one day because of "posting or notification of minutes (Council)."

[6] At the hearing, Harry argued that the 45 day appeal deadline for appealing the approval of membership applications should not start until Council's decision was adopted and published as required under Part 2 of the Act. This process is commonly referred to as "posting" and Harry said Council's decision was not posted until January 11, 2016 and that he did not know about Council's approval of Bruce's membership until it was posted. Using this logic, Harry submitted that he was well within the 45 day appeal deadline when he filed his appeal on January 29, 2016 and that permission to proceed with his appeal should be granted to him by the Tribunal under section 83(3) of the Act.

---

<sup>1</sup> *Metis Settlements Act* [RSA 2000, Chap M-14].

**Bruce Bourguignon's submissions**

[7] Settlement member, Kerri-Ann Haggerty, represented Bruce Bourguignon. Kerri-Ann argued that the 45 day appeal deadline starts running from the date that East Prairie Council approved Bruce's membership on December 14, 2015. She pointed out that Harry's appeal was not made until January 29, 2016, or 46 days after Bruce's application was approved by Council and, as such, permission should not, and cannot, be granted to Harry to appeal Bruce's membership.

[8] Kerri-Ann added that the Appeal Tribunal cannot grant permission to Harry in these circumstances because with the Court of Appeal's direction in the *Isbister v Metis Settlements Appeal Tribunal*<sup>2</sup>, section 202 of the Act cannot be used to extend appeal deadlines on membership matters. Nor, in Kerri-Ann's opinion does the Alberta Interpretation Act<sup>3</sup> provide any extension of the appeal deadline because the 45<sup>th</sup> day from December 14, 2015 (i.e. Thursday, January 28, 2016) was not a holiday.

[9] Kerri-Ann also argued that the publication and notification requirements pertaining to Council decision-making in Part 2 of the Act do not apply because section 83(2)(3) makes no mention of the adoption or publication process. It only reads that appeals must be filed within 45 days after the membership application was approved [by Council].

**East Prairie Metis Settlement's submissions**

[10] Interim Administrator, Jackie Bellerose, and Executive Assistant, Karen L'Hirondelle, attended the hearing on behalf of the Settlement.

[11] Jackie confirmed that Council approved Bruce's membership on December 14, 2015 and that the minutes from that meeting were adopted and posted at the Settlement's Office on January 11, 2016.

**1.3 Findings of fact**

- East Prairie Settlement Council approved Bruce Bourguignon's membership application on December 14, 2015.
- East Prairie Settlement Council adopted the minutes from its December 14, 2015 meeting on January 11, 2016 and the minutes were posted at the Settlement Offices later that day.

---

<sup>2</sup> See *Isbister v Metis Settlements Appeal Tribunal*, 2015 ABCA 164

<sup>3</sup> Interpretation Act [RSA 2000, Chapter I-8].

- Harry Supernault filed his appeal in writing with the Metis Settlements Appeal Tribunal on January 29, 2016.

#### 1.4 How the law applies to this matter

[12] In all its work, the Appeal Tribunal is guided by the following 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.<sup>4</sup>

[13] What this means is that Tribunal's decisions should be made in a manner that is fair in all respects, and also in a manner that reflects Metis cultural imperatives while providing insights into good governance.

[14] In deciding whether to grant permission to Harry to make an appeal, we look to section 83(2) of the Act. It reads:

**83(2)** If a settlement council approves an application for membership in a settlement, any member of the settlement may appeal in writing to the Appeal Tribunal within 45 days after the application was approved.<sup>5</sup>

[15] In this regard, the threshold for granting permission to make an appeal under section 83(2) of the Act is relatively low. The Panel need only be satisfied that the basic conditions set out in section 83(2) have been met on their face. These conditions are as follows:

1. Has council approved an application for membership in the Settlement?
2. Is Harry a member of the Settlement?
3. Has the appeal been made in writing within 45 days after the application was approved?

[16] Applying the facts to the law/conditions set out above, the answer to the first conditions is: yes, Council approved Bruce's application for membership. The answer to the second question also, yes: Harry is a member of the East Prairie Metis Settlement. However, the answer to the third question is, no: Harry did not file his appeal in writing within 45 days after the application was approved.

[17] In determining this third criteria, the Panel believes that in these particular circumstances—*where the posting showed the date upon which Council made its decision and*

---

<sup>4</sup> See section 187.1 of the Metis Settlements Act [RSA 2000, Chap M-14].

<sup>5</sup> See section 83(2) of the Metis Settlements Act [RSA 2000, Chap M-14].

where the posting was made with reasonable time for members to file an appeal within 45 days from when the application was originally approved—it is appropriate to fix the approval date on the date Council made its decision, (December 14, 2015) and not the date Council adopted the minutes from its December meeting and published/posted them (on January 11, 2016). For clarity, the wording of the posting is set out below:

Motion 15.12.072c

Shelly Auger moves to approve the membership application from Bruce Bourguignon with a two year probationary period and that he is notified in writing that there is no housing available, therefore he is responsible to find his own living accommodations. Also, that he has to provide confirmation of residency within the Metis Settlements to the Administrator before his name will be added to the EPMS Membership list.

Seconded by Wade L'Hirondelle (for discussion)

Discussion:

- Peter – let him appeal
- Colette – why ask for ancestry when it's not verified?
- Shelly – with all the information provided, she can't say no.
- Peter requests a Recorded Vote

In Favour: Shelly, Wade and Gerald

Opposed: Peter and Colette – would like to see a membership bylaw in place for all types of applications.

MOTION CARRIED

December 14, 2015

[18] Put another way, Harry had 17 days to file his appeal from the date the minutes were posted (i.e. from January 11 to January 28, 2016) and elected not to file his appeal until the 18<sup>th</sup> day. In our view, Harry did not provide good reasons for the delay, and the consequences of this delay should rest with him and not on Bruce.

[19] Reflecting on the larger question of good governance and on section 44(1)(e) of the Act, which mandates Council to adopt its minutes and to publish/post those minutes, it is important to recognize good governance is a *process*. In particular, it is important to recognize why adoption of the minutes and publishing/posting them is critical: Namely, it's to provide transparency and a right of appeal. If minutes are not reviewed and adopted, or published in a timely manner, governance suffers.

[20] From this perspective then, it may sometimes be appropriate to fix the date when a matter is approved not from the date Council decided the matter, but from the date when the governance

process is fully executed (i.e. when the minutes have been adopted and published), because to do otherwise would be to eliminate transparency and rights of appeal. For further clarity, this is not the same as *extending* an appeal deadline for membership questions; which we now know is not within the Tribunal's authority. Rather, what is being determined is when to *start* the 45 day appeal deadline; which is a governance issue and clearly within the Tribunal's purview.

[21] By way of commentary, this approach is also consistent with doctrine of *discoverability*, which ties the starting point of an appeal deadline with the date the act or decision could first reasonably be discovered or known. In this regard, the general expectation is that an appeal period would normally start to run from the date a council fulfills their statutory duty and adopts and publishes their decisions and thereby makes them *discoverable* to Settlement members. To find otherwise, would be to invite councils to avoid appeals (in the case of membership appeals) by simply posting all decisions 46 days after making them; which would frustrate settlement members who want to appeal their approval. Furthermore, this approach is consistent with section 83(1)(a) of the Act, which ties a membership applicant's right of appeal to the date when notice of Council's decision is *received* by the person applying for membership.

[22] Taken together, though, it is most appropriate in the circumstances before us to fix the start date for the 45 day appeal period as December 14, 2015. Again, this is because of the way the Council minutes in this particular matter read, and because Harry still had a reasonable amount of days (17) from the date of discovery (January 11, 2016) to file his appeal and chose not to. Accordingly, permission is not granted to Harry to make an appeal in this matter.

[23] Finally, in reflecting on the question of good governance, we recommend that the Minister and Metis Settlements General Council clarify section 83, and other sections in the Act and Metis Settlements General Council Policies or local bylaws, to link the commencement of appeal periods to the date when council decisions are adopted and published.

## 1.5 Order

[24] Permission is not granted to Harry Supernault to make an appeal in this matter.

Dated in the City of Edmonton in the Province  
of Alberta on the 9<sup>th</sup> day of September 2016.

  
\_\_\_\_\_  
for Lorne Dustow  
Panel Chair

