



DECISION OF THE OTIPEMISIWAK MÉTIS GOVERNMENT JUDICIAL TRIBUNAL

RE: CHAIR OF CITIZENS' COUNCIL REQUEST FOR OPINION, 2024-03

This is the unanimous opinion of the Judicial Tribunal in reply to the request from the Office of the Chair of the Otipemisiwak Métis Government Citizens' Council dated November 6, 2024.

The request concerned the interpretation of the phrase “without reasonable excuse” under subsection 34(2)(a) of the *Self-Government Act* which provides for the removal of a Representative who misses three consecutive meetings of the Citizens' Council.

Summary

1. What could constitute a “reasonable excuse” is difficult to define in advance with any certainty. The list proposed in the request identifying such things as illness, medical appointments or family emergencies would likely be examples of reasonable, but a fulsome, complete, list of what could be reasonable in a circumstance is not possible in the abstract.

Administratively there may be a number of ways to track that representatives are attending meetings as required by their role. How the Citizens' Council might monitor their attendance and address a member failing to regularly attend is outside of what the Tribunal should provide an opinion on. A form with or without checkboxes or blanks to fill in is a choice that can be made but would not necessarily bind the Judicial Tribunal in making a determination in the future.

2. Persons taking on the role of an elected official have to swear an oath of office¹:
 - a. as individuals they swear to honour the spirit and the letter of the laws of the Métis Nation and;
 - b. as elected officials of the Otipemisiwak Métis Government, to conduct themselves in accordance with the Otipemisiwak Métis Government Constitution and Otipemisiwak Métis Government Law.

¹ https://albertametis.com/app/uploads/2024/09/OMG-Self-Government-Act_November_WEB_with-table.pdf



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These obligations are reflected as well in section 5(a) of the *Code of Ethics Act*.²

Pursuant to section 34 of the *Self Government Act*, if a representative fails to attend three consecutive meetings, without reasonable excuse, the Judicial Branch may order them removed from office.

Representatives should then, to the extent they can, structure the other obligations in their lives to honour the spirit and letter of section 34, and as representatives conduct themselves in a way that they won't miss three consecutive meetings.

Without prejudging any matter that may come before the Tribunal in the future, we are prepared to suggest that things like emergent, unforeseeable events would be reasonable. Health and family matters arise without warning.

Ordinary life events, other obligations that could have been scheduled for different days, or foreseeable situations might not. It snows in winter. Missing a third consecutive meeting because of an appointment to put on winter tires might not be a reasonable excuse.

Discussion

The Request contains a number of questions:

1. *Without limiting the scope and authority of the Judicial Branch to consider, adjudicate, and apply the conditions set out in subsection 34(2)a of the Self-Government Act;*
 - a. *Are there common over-arching examples or categories of reasons that could generally be defined as "reasonable excuse" in respect to an absence from a meeting of the Citizens' Council that could be included?*
 - b. *If a form were to be created by the Office of the Chair for Citizens' Representatives to provide notice and reasons for absence from a Council meeting, could it include "checkboxes" that could be marked by the Representative to indicate the reason for their absence? For example:*

i. Illness of Representative or Immediate Family Member

² https://albertametis.com/app/uploads/2023/10/OMG-Code-of-Ethics-Act_WEB.pdf



- ii. Bereavement*
- iii. Medical Appointment*
- iv. Jury Duty*
- v. Family Emergency*
- vi. Cultural or Religious Reason(s)*

c. If a categorized list as noted above were to be included in the development of such a form, could the form also include the option for a Representative to manually enter or “write in” a reason that is not captured by the predetermined categories?

- 2. In contemplation of both the language and the apparent intent of Section 20 of the Code of Ethics Act, and Chapter 16 of the Otipemisiwak Métis Government Constitution, which speak to the roles, responsibilities, and obligations of Citizens Council and its’ members, it is the considered opinion of both the President and Chair of the Otipemisiwak Métis Government that the obligation of Citizens’ Representatives to fulfill their duties at the Citizens’ Council table as elected legislators on behalf of the interests of their constituents must be considered a primary obligation of a Citizens’ Representative. Given the foregoing;*
- a. Is the interpretation and expectation by the President and Chair, that Citizens’ Representatives take a best efforts approach to arranging their scheduling and other duties in a manner that prioritizes their ability to attend and fulfill their duties in Citizens’ Council meetings reasonable?*
 - b. If there is a positive obligation on Citizens’ Council members to take a best efforts approach to prioritize attendance and participation in Citizens’ Council meetings, to consider, adjudicate, and apply the conditions set out in subsection 34(2)a of the Self-Government Act, or Section 20 of the Code of Ethics Act, are there common overarching examples or categories of reasons that could generally be defined as not meeting the threshold of being a “reasonable excuse” as set out in subsection 34(2)a of the Self-Government Act?*



Authority of the Judicial Tribunal to provide an interpretation of Otipemisiwak Government Laws

The Judicial Tribunal accepts the request and provides this opinion pursuant to section 63 of the *Judicial Branch Act*:

References

63 (1) The Citizens' Council, a District Council, or a Citizen may refer a question of law to the Judicial Tribunal regarding:

- (a) the interpretation and application of the *Constitution*;
- (b) the constitutionality, validity, interpretation, and application of an Otipemisiwak Métis Government Law or proposed Otipemisiwak Métis Government Law; or
- (c) the powers of the Otipemisiwak Métis Government or an Institution, whether or not the power in question has been exercised.

(2) Subject to subsection (3), the Judicial Tribunal must provide a written opinion on any question referred to the Judicial Tribunal in accordance with subsection (1).

(3) The Judicial Tribunal may refuse to provide an opinion on a question referred to the Judicial Tribunal under subsection (1) for any reason under section 41 of this Act.

The Tribunal is being asked the questions in relation to s. 34 (2) of the *Self-Government Act*:

34 Removal of Representative from office

...

(2) The Judicial Branch may order that a Representative be removed from office if:

- (a) the Representative, without reasonable excuse, is absent from three (3) consecutive meetings of the Citizens' Council;



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Decision-making

28 In its decision-making, the Judicial Tribunal must uphold the Constitution, Otipemisiwak Métis Government Law, and Métis customs, traditions, and values.

Otipemisiwak Métis Government Laws are newly created by the Otipemisiwak Métis Government. None of these laws have yet been “tested” through decisions of the Judicial Branch or courts of other jurisdictions.

The role of a government is for the elected officials to write and pass laws that benefit the members of the governed society.

The Citizens’ Council, in drafting the legislation, chose to use the words “without reasonable excuse” as an exception when the Judicial Branch is empowered to remove an elected official from office.

This proviso, without further qualification or explanation, must have been intentionally drafted, that is, not to provide examples or additional guidance but rather to leave it to the Citizens’ Council to create additional laws, regulations or policies to regulate missed meetings.

Therefore, which party should provide any desired detail?

The Tribunal looks to Chapter 16, section F of the *Otipemisiwak Métis Government Constitution*, as it sets out seven clauses under the heading “Operation of the Citizens’ Council”.

Specifically, clause 16.13 states:

“The Otipemisiwak Métis Government shall maintain a law governing the operations of the Citizens’ Council.”

Interpretation Tools

It is a long-standing principle of the colonial courts, and not abrogated by Métis customs or traditions, that the intent of legislation be interpreted by looking at the legislation as a whole, and also considering all of the evidence given to the court in any specific case.



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In applying this principle of interpretation, it becomes clear that the Otipemisiwak Métis Government, in drafting its constitution and laws, intended that the Citizens' Council itself draft appropriate laws and/or policies to provide additional guidance as to the types or categories of excuses that may be acceptable to miss a meeting.

Should an elected representative be pressured to reveal medical conditions to justify missing a meeting? Should an elected representative be pressured to reveal the identity of his or her children who needed a medical appointment to justify missing a meeting? Could there be a process whereby some level of detail is demanded but cannot be published but may be reviewed by a chosen official or elder who could decide the reasonableness of a given excuse?

There are many more questions that could be posed.

We recognize that this is not an easy task. There are many factors to consider, including conflicting interests, for example, the interests of the Métis membership who should rightfully expect their elected representatives to attend the meetings of the Otipemisiwak Métis Government.

The Tribunal recognizes the inadequacy of requiring checking off designated categories of excuses, without anything more to the process and procedure. This would be inviting abuse. There cannot be a singular answer to the reasonableness of a check mark.

A dishonest representative could intentionally schedule routine doctors' appointments for blood sugar level checks to fall on Citizens' Council meeting dates, when it could be just as convenient to choose other dates. On the other hand, appointments with specific doctors might by chance fall only on Citizens' Council meeting dates, and they may be important medical appointments.

Response

Recognizing the issues discussed above, we answer the questions as follows:

a. Are there common over-arching examples or categories of reasons that could generally be defined as "reasonable excuse" in respect to an absence from a meeting of the Citizens' Council that could be included?

No.



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b. If a form were to be created by the Office of the Chair for Citizens' Representatives to provide notice and reasons for absence from a Council meeting, could it include "checkboxes" that could be marked by the Representative to indicate the reason for their absence? For example:

- i. Illness of Representative or Immediate Family Member*
- ii. Bereavement*
- iii. Medical Appointment*
- iv. Jury Duty*
- v. Family Emergency*
- vi. Cultural or Religious Reason(s)*

While the Citizens' Council has power and authority to enact laws, regulations, or policies to decide these issues, and any process and procedure, the *Self-Government Act* has legislated for a role for both the Senior Executive Officer and for the Chair to decide policies, process, and procedure, so long as they are consistent with existing laws.

Section 54 of the *Self-Government Act* reads:

54. The Senior Executive Officer may institute and amend policies, procedure and standards regarding the management of the operations of the Otipemisiwak Metis Government provided that such policies, procedure and standards must be consistent with the Constitution, Otipemisiwak Métis Government Law, and any resolutions adopted by the Cabinet or the Citizens' Council.

Part IV of the *Self-Government Act* provides for the appointment of a chair and at paragraphs 58 and 59, sets out duties. Specifically, section 59(1) and (2) read:



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59(1) The Chair may make decisions on questions of order, practice, and procedure of the Citizens' Council and the Citizens' Gathering.

(2) If the applicable rules of procedure are silent on a matter, the Chair has the authority to decide the rules of procedure for that matter.

We find that section 59(1) provides sufficient authority to the Chair to make decisions in this regard when there are no other provisions addressing it, as it gives power not only over the Gathering, but also to the Citizens' Council itself.

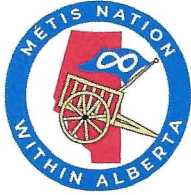
The intent of the *Self-Government Act*, through section 54, appears to provide the Senior Executive Officer more squarely with this type of task.

c. If a categorized list as noted above were to be included in the development of such a form, could the form also include the option for a Representative to manually enter or "write in" a reason that is not captured by the predetermined categories?

Yes, in any case where the issue has not been decided by a party with a higher authority.

2) In contemplation of both the language and the apparent intent of Section 20 of the Code of Ethics Act, and Chapter 16 of the Otipemisiwak Métis Government Constitution, which speak to the roles, responsibilities, and obligations of Citizens' Council and its' members, it is the considered opinion of both the President and Chair of the Otipemisiwak Métis Government that the obligation of Citizens' Representatives to fulfill their duties at the Citizens' Council table as elected legislators on behalf of the interests of their constituents must be considered a primary obligation of a Citizens' Representative. Given the foregoing;

a. Is the interpretation and expectation by the President and Chair, that Citizens' Representatives take a best efforts approach to arranging their



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scheduling and other duties in a manner that prioritizes their ability to attend and fulfill their duties in Citizens' Council meetings reasonable?

This is a reasonable expectation of the President and Chair, and Métis citizens and Citizens' Council representatives as well.

b. If there is a positive obligation on Citizens' Council members to take a best efforts approach to prioritize attendance and participation in Citizens' Council meetings, to consider, adjudicate, and apply the conditions set out in subsection 34(2)a of the Self-Government Act, or Section 20 of the Code of Ethics Act, are there common overarching examples or categories of reasons that could generally be defined as not meeting the threshold of being a "reasonable excuse" as set out in subsection 34(2)a of the Self-Government Act?

What is a reasonable excuse must take all factors into consideration, including the importance and priority that Citizens' Council meetings rightfully command.

Reasons that are trivial, not important, or that could be scheduled at a different time, generally would not be acceptable. For example, a Representative who procrastinates installing winter tires, but calls his or her tire shop a week before an expected snowfall and accepts the first appointment available at the tire shop which conflicts with a Citizens' Council meetings would not be reasonable. The representative has obligations to his constituents and needs to consider them, the Citizens' Council and exercise proper diligence in organizing their personal life and affairs to be able to accommodate meetings and honour their duties and commitments as a Citizens' representative.

Conclusion

The *Otipemisiwak Métis Government Constitution* contemplates that the Citizens' Council should address their minds to the need for laws, create laws when appropriate, regulations and/or policies to determine attendance questions, and to choose a process and procedure by which that might be determined.

Dated this 5th day of December 2024

Lionel Chartrand, Chairperson
On behalf of the unanimous panel