

HEARD IN FRONT OF THE MÉTIS NATION BRITISH COLUMBIA'S SENATE

Appeal Name: Gagnon vs. MNBC Central Registry,
3-07-18-46-2-00033

Date: 2009/04/23
Senate Clerk: Trumbley
Location: Kelowna

Between:

Joseph Henri Jean Gagnon

Applicant

And

**Métis Nation British Columbia (MNBC)
Central Registry**

Respondent

Reasons for Decision

Residing Senators:

Senator Alan Edkins
Senator Bill Thibeault

Senator Bob Adams
Senator Ron Snider



Introduction

[1] On February 23, 2009 the applicant, Mr. Henry Gagnon received a letter from the respondent, the MNBC Central Registry, indicating that his citizenship could not be validated or verified based on the qualifiers for MNBC Citizenship. Specifically, the respondent's letter highlighted:

"In regard to your application for a MNBC citizenship card, the MNBC's Office of the Provincial Registrar must inform you that based on the definition for the Métis, ratified in September 2002 by the Métis Nation General Assembly, MNBC cannot verify your genealogical connection to the traditional Métis homeland".

However, the applicant has requested the Senate to review the applicant's citizenship application package and all related materials and decide if the process and interpretations of the registrar was consistent with the intent of the "national definition" and the **MNBC Citizenship Act**.

Summary of the Case Law and MNBC Legislation

a) Canadian Law

[2] Subsections 35(1) and (2) of the **Constitution Act, 1982**, being Schedule B to the **Canada Act 1982** (U.K.), 1982, c. 11 state:

35(1) the existing aboriginal and treaty rights of the aboriginal peoples of Canada are hereby recognized and affirmed.

35(2) in this act, "aboriginal peoples of Canada" includes the Indian, Inuit and Métis peoples of Canada.

[3] The definitive Supreme Court of Canada case setting out the requirements for establishing a Métis constitutional right

is **R. v. Powley**, [2003] 2 S.C.R. 207, 230 D.L.R. (4th) 1, 177 C.C.C. (3d) 193, 2003 SCC 43. At paragraph 10, the Court defined the term "Métis" as it is used in s. 35, finding that while the term does not include all individuals with mixed Indian and European heritage, it does refer to:

...distinctive people who, in addition to their mixed ancestry, developed their own customs, way of life, and a recognizable group identity separate from their Indian or Inuit and European forebears.

b) MNBC Legislation, Policies and Procedures

[4] Section 62 of the **MNBC Constitution** states that a Métis means a person who self-identifies as Métis, is of historic Métis Nation Ancestry, is distinct from other Aboriginal Peoples and is accepted by the Métis Nation. The MNBC Constitution further states the following;

a) 62.1. *"Historic Métis Nation" means the Aboriginal people then known as Métis or Half-Breeds who resided in Historic Métis Nation Homeland.*

b) 62.2. *"Historic Métis Nation Homeland" means the area of land in west central North America used and occupied as the traditional territory of the Métis or Half-Breeds as they were then known.*

c) 62.3. *"Métis Nation" means the Aboriginal people descended from the Historic Métis Nation, which is now comprised of all Métis Nation citizens and is one of the "aboriginal peoples of Canada" within Section 35 of the **Constitution Act of 1982.***

d) 62.4. *"Distinct from other Aboriginal Peoples" means distinct for cultural and nationhood purposes.*

[5] Articles 2, 3 and 4 of the **MNBC Citizenship Act** further define the **MNBC Constitution** definition of Métis as stated above and more specifically the process in identifying

citizens.

[6] Articles 6, 7 and 8 of the **MNBC Citizenship Act** highlight the roles and responsibilities of the Central Registry, Registry Office and the Registrar. It further states in 8.0 that the registrar must adhere to all policies and procedures developed by the MNBC. This includes the MNBC Guidebook, Central Registry Policy and Procedures and the Senate Policy and Procedures version 3.0.

[7] Section 6.2 of the **Senate Policies and Procedures ver. 3.0** highlights the process utilized when conducting a citizenship and/or central registry appeal.

Conflict of Interest

[8] MNBC Thompson/Okanagan Region's Senator Margaret Penner filed a conflict of interest claim on the Gagnon vs. *MNBC Board of Directors* (Senate Action Number 3-07-18-46-2-00033). Upon review of Senator Margaret Penner's conflict of interest claim the Senate determined that there was not a direct conflict of interest as outline in Section 2.10 point 10 of the **Senate Policies and Procedures ver. 3.0**, however there is a "perceived" conflict based on an acquaintance connection with the Applicant, therefore Senator Margaret Penner's claim was granted and she was removed from the panel of residing Senators. Senator Margaret Penner was not privy to any portion of this decision or decision-making process.

Privacy Consent to Release

[9] On April 08, 2009, Mr. Gagnon supplied a signed and witnessed "*Consent to Release Confidential Information*" form. This form provided the Senate with the following consents:

- i. Utilization of the documentation supplied to the MNBC Central Registry for the purpose of the applied

for appeal.

- ii. To send the contents of Mr. Gagnon's Citizenship application file to a third-party for a second professional genealogical opinion.
- iii. To utilize all the information supplied or demanded, for the purpose of writing this MNBC Senate decision.

Second Genealogical Opinion

a) Société historique de Saint-Boniface

[10] Mrs. Janet La France from the genealogical department of the Société historique de Saint-Boniface supplied a second professional genealogical opinion by letter on April 23, 2009. Mrs. La France indicated the following;

"The information submitted by your client, Mr. Henry Gagnon, has been reviewed. We were able to track his lineage back to Quebec on the sides in question. Mr. Gagnon's ancestors do not connect into the Historic Metis Nation as they were then known or their homeland."

The Standard of Review

[11] The Senate's role is to ensure that all legislation, policies and procedures were adhered to and that the applicant has received a fair decision during the application review period. Since this appeal involves a question around the genealogical interpretation of the respondent, the Senate has ordered a second professional opinion to assist in their review. Furthermore, the Senate will adhere to the citizenship and/or central registry appeal process highlighted in Section 6.2 of the **Senate Policies and Procedures ver. 3.0**. The Senate further understands that the onus to prove citizenship is the responsibility of the applicant, Mr. Gagnon not the respondent, the MNBC Central Registry.

[12] The Senate has based this decision on the evidence supplied by the applicant and respondent and weighed this to the summary of case law at the time of the hearing.

Analysis

a) MNBC Policy and Procedure Adherence

[13] The applicant did request that a review of the policies and procedures be conducted. However, the Senate, upon review, found that the MNBC Central Registry did not violate or over-look any policies or procedures.

b) Genealogical Interpretation

[14] Both the MNBC Central Registry and the historique de Saint-Boniface indicated that they could not determine a link and/or ancestor that identified as Métis and resided within the Métis Nation Homeland.

[15] Based on the information supplied, testimony and the genealogical opinions (MNBC Central Registry and the historique de Saint-Boniface) the Senate could not identify a genealogical connection to the Métis Homeland or the presence of a Métis ancestor in Mr. Gagnon's genealogy.

c) MNBC Legislative Adherence

[16] Mr. Gagnon fails to comply with three parts of the National Definition as specified in the **MNBC Citizenship Act**. Those being;

- i) Mr. Gagnon failed to supply the appropriate documentation that proves his historic Métis Nation Ancestry.*
- ii) Mr. Gagnon failed to supply the appropriate documentation that proves any Métis ancestry that connects to the Historic Métis Nation Homeland.*
- iii) Mr. Gagnon failed to supply the evidence which*

would identify a historic Métis "distinctiveness" other than that of his French-Canadian ancestry.

Decision

[17] The MNBC Senate finds in favour of the Métis Nation British Columbia's Central Registry.

[18] It ought to be noted that should the parameters for MNBC citizenship change, or if the applicant discovers new information or documentation, that this decision does not limit or negate the applicant from reapplying for MNBC citizenship.