



“The judicial arm of the Métis Nation British Columbia”

Senate Action No. 3-05-04-34-3-00013

SENATE
Apihtow-kosison nekanapowin
MÉTIS NATION BRITISH COLUMBIA
Apihtow-kosison peyakosihtwawin

ADELINE SARVER

Applicant

and

MNBC CENTRAL REGISTRY

Respondent

DECISION

OF THE MÉTIS NATION BRITISH COLUMBIA SENATE

Dated 06/01/2008

UPON hearing the submissions and reading the material provided by or on behalf of the Applicant and the Respondent in this matter, the METIS NATION BRITISH COLUMBIA SENATE HAS DETERMINED THE FOLLOWING:

1. The MNBC Senate finds in favour of the Métis Nation British Columbia's Central Registry.
2. 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.

Signed on behalf of the Senate:

A handwritten signature in black ink, appearing to read "Dean Trumbley", is written over a horizontal line.

Dean Trumbley
Interim Senate Clerk

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

Appeal Name: Sarver vs. MNBC Central Registry,
3-05-04-34-3-00013

Date: 20080305
Senate Clerk: Trumbley
Location: Richmond

Between:

Adeline Sarver

Applicant

And

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

Respondent

Reasons for Decision

Residing Senators:

Senator Alan Edkins
Senator Margaret Penner
Senator Bill Thibeault

Senator Philip Gladue
Senator Bob Adams
Senator Ron Snider



Introduction

[1] On January 30, 2007 the applicant, Mrs. Adeline Sarver received a letter from the respondent, the MNBC Central Registry, indicating that her citizenship could not be validated or verified based on the qualifiers for MNBC Citizenship. Specifically, the respondent's letter highlighted:

"The Métis national definition requires MNBC citizenship applicants to validate and verify genealogical ties to the traditional Métis Homeland, and the founders of the first Métis Nation. The genealogy and supporting documentation you provided did not meet the above noted criteria and therefore the Office of the Provincial Registrar was not able to validate and verify your genealogy for MNBC citizenship".

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.

[7] Section 9.0 of the **Senate Policies and Procedures** highlights the process utilized when conducting a citizenship and/or central registry appeal. Section 9.4.1 and 9.4.2 further enforces the required adherence to the national definition.

Privacy Consent to Release

[8] On February 08, 2008, Mrs. Sarver 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 Mrs. Sarver'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

[9] Mr. Gilles Lesage, Directeur général of the Société historique de Saint-Boniface supplied a second professional genealogical opinion by mail on February 22, 2008. Mr. Lesage indicated:

"We were unable to establish lines further back than the client's great grand-mother "Marie Gingras" due to a lack of proper documentation. This hardly matters though, as the aforesaid identifies herself as a Siwash on the 1901 Canadian census".

The Standard of Review

[10] 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 9.0 of the **Senate Policies and Procedures**. The Senate further understands that the onus to prove citizenship is the responsibility of the applicant, Mrs. Sarver not the respondent, the MNBC Central Registry.

[11] 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] Furthermore, the Société historique de Saint-Boniface supplied a copy of the 1901 Census of Canada from Yale, B.C. The great grand-mother "Mary Keiffer (nee Gingras)" racially

identified as Siwash or First Nations. Even the ancestors prior to Mary Keiffer identified as Okanagan or First Nations. [16] There was no evidence supplied that would indicate Mrs. Sarver's genealogical ancestry held any connection to a Métis ancestor. However, it is clear that Mrs. Sarver's ancestral line has clearly identified from the mid-1800's to the early 1900's as being First Nations, specifically Siwash and Okanagan.

[17] 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 Mrs. Sarver's genealogy.

c) MNBC Legislative Adherence

[18] Mrs. Sarver fails to comply with three parts of the National Definition as specified in the ***MNBC Citizenship Act***. Those being;

- i) *Mrs. Sarver failed to supply the appropriate documentation that proves her historic Métis Nation Ancestry.*
- ii) *Mrs. Sarver failed to supply the appropriate documentation that proves a historic Métis ancestry that connects to the Historic Métis Nation Homeland.*
- iii) *Mrs. Sarver failed to supply the evidence which would identify a historic Métis "distinctiveness" other than that of her First Nations (Siwash and Okanagan) and German ancestry.*

Decision

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

[20] 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.