

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

Appeal Name: Swain vs. MNBC/MPCBC Board of Directors  
1-27-07-49-1-00120

Date: December 16, 2012

March 23, 2014

Senate Clerk: Thibeault

Location: Richmond

Between:

**Brent Swain**

Applicant

And

**Métis Nation British Columbia (MNBC)  
Board of Directors**

**And**

**Bruce Dumont**

Respondents

**Reasons for Decision**

Presiding Senators:

Senator Al Desmarais

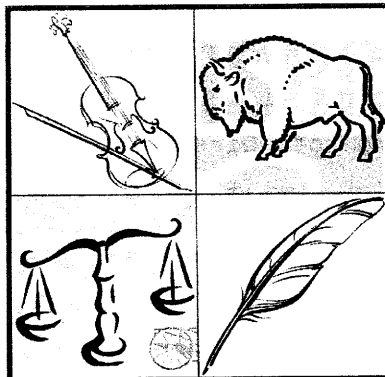
Senator Philip Gladue

Senator Margaret Penner

Senator Al Edkins

Senator Gerald Pope

Senator Betty Hoogendoorn



**MNBC Senate**

**NATURE OF APPEAL**

[1] The Métis Nation British Columbia (MPCBC/MNBC), through its President and Board of Directors ("Respondents"), entered into a form of Agreement with Enbridge Northern Gateway on or about November 2, 2011. The Applicant appeals the authority of President Bruce Dumont and the MNBC to enter into an agreement on behalf of the Métis citizens of British Columbia.

**CHRONOLGY OF RELEVANT DATES**

[2] The Métis Nation British Columbia (MPCBC/MNBC), through its President and Board of Directors ("Respondents"), entered into a form of Agreement with Enbridge Northern Gateway on or about November 2, 2011.

[3] On June 16, 2012 MNBC held a community information meeting at the Wachiay Friendship Centre in Courtenay, BC. During the information meeting, Mr. Brent Swain, the APPLICANT, raised his concerns in regard to the authority of the President to bind MNBC and the adequacy of consultation by MNBC and its President before the signing of the agreement. President, Bruce Dumont, and the Executive Director of MPCBC/MNBC, Dale Drown, were both present at this meeting.

[4] After the meeting, the Applicant, dissatisfied with the responses received, launched his appeal against the actions of the President and the Board of Directors, with respect to their exercising their authority and failing to adequately consult the Métis citizens.

[5] On July 02, 2012 the Applicant completed a DISPUTE NOTICE OF APPEAL raising these and other concerns and forwarded it to the Senate Clerk which was received by him on July 11, 2012.

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[6] On September 04, 2012, the Métis Nation British Columbia Senate agreed to hear the appeal of the Applicant.

[7] On the 11<sup>th</sup> day of December, 2012, a response to the Notice of Appeal was filed by Dale Drown, on behalf of both the President and the Board of Directors specifically raising the issue of the Senate's jurisdiction to resolve the issues raised in the Appeal.

[8] On December 16, 2012, the SENATE met and ruled on the jurisdiction arguments raised by the President and Board of Directors and found that it did have the jurisdiction to rule on the following issues:

- a) did and does the Board of Directors of the MNBC/MPCBC have the appropriate authority to sign the contractual agreement dated November 2, 2011, between themselves and Enbridge Northern Gateway?
- b) did the Board of Directors of the MNBC/MPCBC follow through on all of the required procedures and policies mandated by its own legislation and policy requirements before signing the Agreement?
- c) did and does the President of the MNBC/MPCBC have the appropriate authority to sign a contractual agreement dated November 2, 2011, between MNBC/MPCBC and Enbridge Northern Gateway?
- d) did the President of the MNBC/MPCBC follow through on all of the required procedures and policies mandated by its own legislation and policy requirements before signing the Agreement?

[9] The Senate then further ruled that the application as filed by Brent Swain lacked sufficient clarity and detail for them to rule on the points above enumerated and therefore ordered that:

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1) The Applicant, within Thirty (30) days of the ruling was to provide an amended dispute note detailing the specific sections of statute legislation and policy breached.

And that upon receipt of the amended note, it was to be forwarded to each of the Respondents who will be given Thirty (30) days to provide their explanation as to why the alleged breaches of duty either did not occur or where such, if they did, were not such a breach which should impact their authority to act as they did.

[10] No amended Appeal Notice was received prior to the 30 day deadline.

[11] On June 15, 2013, six months after its decision, the Senate Registry received an e-mail from the Applicant. In that e-mail, the Applicant states that his failure to respond was a result of the fact that he had not received notification of the Senate's decision until long after the expiration of the time given and further had not responded as he thought that the deadline had long passed.

[12] In consequence of the June 15, 2013, email, the Clerk of the Senate invited the Applicant, Brent Swain, to forward a letter providing an explanation for his failure to respond within the time frame allotted and further, at the same time, providing the particulars required in the original order of the Senate.

[13] On December 14, 2013, the Applicant responded to the Senate Clerk with an e-mail that stated as follows:

**Bill.**

After sending in my complaint, I received a letter stating that I had a deadline to respond by. I received the deadline about a month too late. Being out hunting, and living much closer to the Metis traditional lifestyle at the time, I had no chance of responding in time. My lifestyle is simply not "WHITE" enough to allow me the luxury of responding immediately. Such a penalty violates my mobility rights under section 7 of the Metis constitution, and section 6 of the Canadian Charter of Rights.

As I assumed I had lost the right to appeal , I went back out hunting , far away from easy internet access, my mail drop, and thus any way of finding out what my options were. I thought the issue had been quashed , by bureaucratic process.

Given that I was led to believe I had no further option of appeal, I hope you can reconsider the deadlines I was unable to meet.

Thank you  
Brent Swain

[14] The Senate met in Richmond on March 22 and 23, 2014, to deal with the issues of the Applicant's failure to meet the time requirements set out in its decision of December 16, 2012, and granted his application for relief against his late filing for the following reasons:

The Senate determined that that to determine aboriginal entitlement one looks to aboriginal practices rather than imposing a European template. The Metis were nomadic people and were often away and out of communication for extended periods of time. The Applicant still, to a certain degree, practices this lifestyle and has as a consequence resolved to rule on the merits of his restricted Appeal.

[15] The Appellant, in answer to the Senate's requirement that he provide specifics of the sections breached by the Respondents alleges that he relies upon a breach of Section 9 of the MNBC Constitution, which states as follows:

9. Every Métis citizen has the right to freedom of thought, expression, conscience and religion.

## **RULING**

[16] Métis Nation British Columbia, like many modern nations, is governed as a representative democracy. The Senate finds that part of the duty of a representative is not simply to communicate the wishes of the electorate but also to use their own judgement in the exercise of powers, even if such views are not reflective of all voters. As such, the elected representatives, inclusive of

the President and Board of Directors, do have the authority to sign agreements on behalf of the Nation.

[17] The Senate, after lengthy deliberation over the intentions of Section 9 of the Constitution above quoted finds as follows:

a) Freedom of thought, (sometimes also called the freedom of conscience or ideas), is the freedom of an individual to hold or consider a fact, view or point of thought, independent of other's viewpoints. The fact that the Applicant's thought process draws him to a different conclusion than that of the Respondent's in no way demonstrates that he has been deprived that fundamental freedom. A fact which was made even more clear, by his ability both through this Appeal and other means to express his contention without any repercussions or consequences;

b) Freedom of expression is by definition an extension of the right to freedom of thought. This fundamental right gives to every citizen of the Nation the ability to express themselves, therein words, deeds, or action without any threat or consequences occurring during the exercise of that right. Again there has been nothing demonstrated in connection with this Appeal which would suggest that any infringement from this right has occurred;

c) Freedom of conscience is the right to follow one's own beliefs in matters of religion or morality. The Applicant, in this instance, likewise demonstrated nothing which would indicate an infringement on his exercising this right;

d) Freedom of religion mandates that every citizen of the Nation is able to worship God as he sees and believes him to be irrespective of the opinions of other citizens or the Métis Nation itself.

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The Senate finds that there is nothing in this Appeal which in any way indicated that this freedom has been impinged.

[18] At its most basic, Article 9 seeks to prevent state indoctrination of individuals or intimidation by groups or individuals which intimidation is intended for the purpose of restricting any of the four rights referred to in Section 9 of the Constitution.

[19] The Senate finds that none of these rights were impacted by the Respondents in the signing of the agreement

The Senate, after extensive deliberation, have concluded that the application of the Applicant be dismissed without prejudice to his, or any other citizens right, to file an Appeal raising any other issue in connection with these facts except to the extent that they offend the provisions of Section 9 of the Metis Nation British Columbia (MPCBC/MNBC) Constitution.