

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

Appeal Name: Harms vs. MNBC Central Registry
3-04-12-51-2-00104

Date: December 14 2012
Senate Clerk: Thibeault
Location: Richmond

Between:

Paula Wendy Harms

Applicant

And

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

Respondent

Reasons for Decision

Residing Senators:

Senator Alan Edkins

Senator Ron Snider

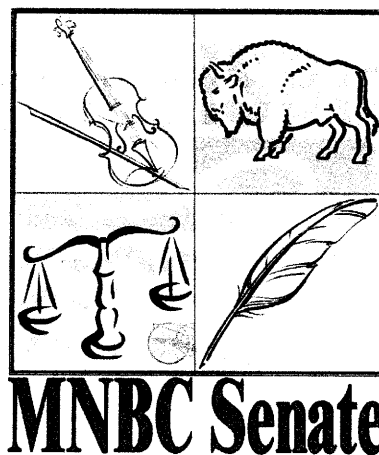
Senator Margaret Penner

Senator Gerald Pope

Senator Philip Gladue

Senator Betty Hoogendoorn

Senator Al Desmarais



Introduction

[1] On July 09, 2009 the applicant, Ms. Paula Wendy Harms 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:

"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. Métis communities evolved and flourished prior to the entrenchment of European control, when the influence of European settlers and political institutions became pre-eminent.

b) MNBC Legislation, Policies and Procedures

[4] Section 61 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) 61.1. "Historic Métis Nation" means the Aboriginal people then known as Métis or Half-Breeds who resided in Historic Métis Nation Homeland.

b) 61.2. "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) 61.3. "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) 61.4. "Distinct from other Aboriginal Peoples" means distinct for cultural and nationhood purposes.

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[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 3.2.

[7] Section 6.2 of the **Senate Policies and Procedures ver. 3.2** highlights the process utilized when conducting a citizenship and/or central registry appeal.

Second Genealogical Opinion

a) Société historique de Saint-Boniface

[8] Mrs. Janet La France from the genealogical department of the Société historique de Saint-Boniface supplied a second professional genealogical opinion by letter on December 5, 2012. Mrs. La France indicated the following;

*"The information submitted by your client, Ms. Paula Harms, (née Morton) has been carefully reviewed. We were able to trace back the lines in question into the Yale and Cariboo district of British Columbia. That being said, while we do not **often** see Métis self-identification occurring in families originating on the West Coast, this family clearly **does** ethnically identify themselves as Other Breeds (Placida Wright (née Valenzuela) and children) on the 1901 census...they are also described here in the colour column as being "red".*

While the delineation of the Historic Métis Homeland and whether or not this family falls into it is unclear; the fact that they identify themselves with both sides of their heritage and are not counted among the "Indians" of the region, suggest that they are indeed Métis. Of course, the final decision must be made by you. At this time, we are unable to prove that there is any cultural similarity or shared history between this family and the Historic Métis Nation."

The Standard of Review

[9] 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. 3.2**. The Senate further understands that the onus to prove citizenship is the responsibility of the applicant, Ms. Harms, not the respondent, the MNBC Central Registry.

[10] 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

[11] 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.

Genealogical Interpretation

[12] While both the Registry and the historique de Saint-Boniface indicated that on the 1901 Canada Census the family was identified "Other Breeds" it was also indicated that they could not verify a link and/or ancestor that identified as Métis and resided within the Métis Nation Homeland.

[13] Furthermore, while it is acknowledged that there is evidence to verify Ms. Harm's genealogy was connected to an aboriginal ancestor, there was concern over the lack of evidence to verify or validate a distinct ethnic connection to the Métis or to the Homeland.

[14] It was noted that the evidence must be sufficient to, on the balance of probabilities, show that the appellant had established that there is a real prospect to show their claim to be at least as probable as that of the Registry decision.

[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 specific genealogical connection to the Métis Homeland or the presence of a Métis ancestor in Ms. Harm's genealogy.

[16] Additionally, there was not evidence submitted to prove any cultural similarity or shared history between this family and the Historic Métis Nation. There were also concerns that the documents demonstrated other breed, when for other families on census documents, individuals in the same area were identified as Métis.

c) MNBC Legislative Adherence

[17] The Senate ascribes to the principle that the onus is on the appellant to present facts to support her claim, with the

standard required for the burden of proof based on the balance of probabilities, also known as the preponderance of the evidence. The standard is met if the proposition is deemed more likely to be true than not true, thus if there is a greater than fifty percent chance that the proposition is true, in other words, more probably than not.

[18] The question the Senate decided considered was whether or not, based on the material before it at this stage, the appellant had established that there is a real prospect to show their claim to be at least as probable as that of the Registry decision.

[19] While there was a form of basic consensus reached on this appeal, the Senate was only able to move to a split decision for this appeal. However, it was agreed that this was the only decision the Senate could arrive at based on the information available at the time of the hearing.

[20] Ms. Harms fails to comply with three parts of the National Definition as specified in the **MNBC Citizenship Act**. Those being;

- i) *Ms. Harms failed to supply the appropriate documentation that proves her historic Métis Nation Ancestry.*
- ii) *Ms. Harms failed to supply the appropriate documentation that proves any Métis ancestry that connects to the Historic Métis Nation Homeland.*
- iii) *Ms. Harms failed to supply the evidence which would identify a historic Métis "distinctiveness."*

Decision

[21] The MNBC Senate deliberated at length on the various factors and the information submitted before arriving at a

final conclusion on this appeal.

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

[22] 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.