



*“The judicial arm of the Métis Nation British Columbia”*

Senate Action No. 2-15-06-52-3-00016

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

NANCY JOAN COCHRANE

Applicant

and

MNBC CENTRAL REGISTRY

Respondent

**DECISION**

**OF THE MÉTIS NATION BRITISH COLUMBIA SENATE**

Dated 13/06/2008

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: Cochrane vs. MNBC Central Registry,  
2-15-06-52-3-00016

Date: 2008/06/13  
Senate Clerk: Trumbley  
Location: Kelowna

Between:

**Nancy Joan Cochrane**

Applicant

And

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

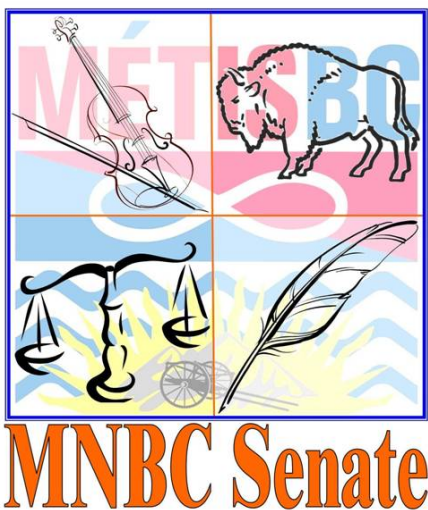
Respondent

**Reasons for Decision**

Residing Senators:

Senator Alan Edkins  
Senator Margaret Penner  
Senator Bill Thibeault  
Senator Gerald Pope

Senator Philip Gladue  
Senator Bob Adams  
Senator Ron Snider



## **Introduction**

[1] On March 03, 2008 the applicant, Mrs. Nancy Joan Cochrane 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.*

**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 2.0.

[7] Section 8.0 of the **Senate Policies and Procedures ver. 2.0** highlights the process utilized when conducting a citizenship and/or central registry appeal.

### **Privacy Consent to Release**

[8] On March 26, 2008, Mrs. Cochrane 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. Cochrane'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] Mrs. Janet La France from the genealogical department of the Société historique de Saint-Boniface supplied a second professional genealogical opinion by letter on May 23, 2008. Mrs. La France indicated the following;

*"We have been unsuccessful in finding any documentation to support your client's claim. In fact, not only does Albert Hutchinson not appear on the 1901 or 1911 census, neither do his biological parents! A quick search under his adoptive mother's name was to no avail as there are several Albert Snider's living in Ontario, none of which have definitively matching birthdays with the ancestor in question. He remains indiscernible as an aboriginal entity, and indeed he is identified as English on his own death certificate. Therefore, due to insufficient proof, Métis lineage cannot be established."*

### **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 8.0 of the **Senate Policies and Procedures ver. 2.0**. The Senate further understands that the onus to prove citizenship is the responsibility of the applicant, Mrs. Cochrane 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**

[12] 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**

[13] 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.

[14] A sworn statement was provided by a Mrs. Sylvia Rowsell (applicant's biological mother), dated September 01, 2005 indicating a First Nations ancestral connection in Ontario, however no primary or even secondary source document could validate this claim.

[15] There was no primary source documentation supplied that would indicate Mrs. Cochrane's genealogical ancestry held any connection to an aboriginal (First Nations, Métis or Inuit) origin.

[16] 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. Cochrane's genealogy.

**c) MNBC Legislative Adherence**

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

- i) *Mrs. Cochrane failed to supply the appropriate documentation that proves her historic Métis Nation Ancestry.*
- ii) *Mrs. Cochrane failed to supply the appropriate documentation that proves any aboriginal (First Nations, Métis or Inuit) ancestry that connects to the Historic Métis Nation*

*Homeland.*

*iii) Mrs. Cochrane failed to supply the evidence which would identify a historic Métis "distinctiveness" other than that of her Scottish and English ancestry.*

## **Decision**

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

[19] 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.