

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

Appeal Name: Fogarty vs. MNBC Central Registry
1-13-03-05-2-00148

Date: March 13, 2015
Senate Clerk: Thibeault
Location: Richmond

Between:

Falyn Filomena Fogarty

Applicant

And

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

Respondent

Reasons for Decision

Residing Senators:

Senator Gerald Pope

Senator Philip Gladue

Senator Margaret Penner

Senator Betty Hoogendoorn

Senator Al Desmarais



Introduction

[1] On December 20, 2013 Ms. Belinda Fogarty, mother of the applicant, Ms. Falyn Filomena Fogarty, received a letter from the respondent, the MNBC Central Registry, indicating that the citizenship for her daughter could not be validated or verified based on the qualifiers for MNBC Citizenship. Specifically, the respondent's letter highlighted the following:

"Thank you for submitting an application for Citizenship for your minor aged daughter, Falyn Filomena Fogarty, with the Métis Nation British Columbia (MNBC). Please be advised the Central Registry carefully reviewed the information submitted and has been unable to verify a genealogical connection to member of the Historic Métis Nation. Unless you can provide further primary source documentation to prove otherwise, her ancestry does not connect her into the Historic Métis Nation, as they were then known or to the traditional Métis Homeland. Therefore, the genealogical information you have provided with her application does not meet the required criteria for Métis citizenship within the province of British Columbia as defined by Section 61 of the MNBC Constitution".

[2] As a follow up from that decision of the registrar, the mother of the applicant has sent to the Senate a "Request for Citizenship and/or Central Registry Appeal Hearing" dated January 9, 2014. In that, the mother of the applicant requested that the Senate carry out a review of the applicant's citizenship application package and all related materials. From this, the Senate is to decide if the processes and interpretations of the office of the registrar were consistent with the intent of the "national definition" and the **MNBC Constitution** and the **MNBC Citizenship Act**.

Summary of the Case Law and MNBC Legislation

a) Canadian Law

[3] 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.

[4] 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 encompass or include all individuals with mixed Indian and European heritage, it does refer to:

...distinctive peoples 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.

Later in paragraph 10, the Court provided further wording in regard to clarification of the understanding of the term "Métis" specifying that:

"The Métis developed separate and distinct identities, not reducible to the mere fact of their mixed ancestry: "What distinguishes Métis people from everyone else is that they associate themselves with a culture that is

distinctly Métis.” (RCAP Report, vol.4 at p202).”

b) MNBC Legislation, Policies and Procedures

[5] 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.*

[6] 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.

[7] 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.

[8] 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.

Privacy Consent to Release

[9] On January 9, 2014 the mother of the applicant, Ms. Belinda Fogarty, supplied a signed and witnessed "Consent to Release Confidential Information" form, on behalf of the applicant. On January 27, 2014, Ms. Fogarty also provided a signed and witnessed "Parental Consent to Release Confidential Information" form for the applicant. These forms 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 Ms. Fogarty'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] A second genealogical opinion was obtained from the Saint Boniface historical society. The society does research to identify if the applicant has an ancestor that has been identified as Métis through official documentation such as census records, scrip, land grant documents or other official documents such as church records.

[11] Ms. Janet La France from the genealogical department of the Société historique de Saint-Boniface supplied a second professional genealogical opinion by letter on June 2, 2014. Mrs. La France indicated the following;

"The information submitted by your client, Ms. Falyn Filomena Fogarty, has been carefully reviewed. It appears that even though she descends from mixed European and Aboriginal ancestry, we have not been able to find any historic documentation to prove beyond a doubt that her ancestors identified themselves ethno-culturally as Métis/half-breeds.

Their origins being from somewhat outside of the Homeland; apparently unconnected to the fur-trade; and in a time period in which Treaty systems were already being put into place; in combination with existing documentation in the form of Status Cards and Death Registrations identifying ancestors as "Indian" and more specifically "Salish", lead me to believe that the ancestors in question never saw themselves as Métis/half-breeds and identified instead as First Nations.

*Therefore, it is my opinion that Ms. Fogarty's ancestors do **not** connect into the Historic Métis Nation as they were then known or their homeland."*

The Standard of Review

[12] 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. Fogarty, not the respondent, the MNBC Central Registry.

[13] 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

[14] 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

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

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

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

[18] Additionally, there was not any evidence submitted to

prove any cultural similarity or shared history between this family and the Historic Métis Nation. There were also indications that the documents demonstrated Indian or First Nation, specifically Salish, background.

c) MNBC Legislative Adherence

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

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

Decision

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

[21] 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.

P.S. In the opinion from the genealogical department of the Société historique de Saint-Boniface, it is stated, in part:

"...Their origins being from somewhat outside of the Homeland; apparently unconnected to the fur-trade; and in a time period in which Treaty systems were already being put into place; in combination with existing documentation in the form of Status Cards and Death Registrations identifying ancestors as "Indian" and more specifically "Salish", lead me to believe that the ancestors in question never saw themselves as Métis/half-breeds and identified instead as First Nations."

If there is interest in exploring this possible First Nations identification further, the applicant may contact an *Aboriginal Affairs and Northern Development Canada (AANDC)* office. AANDC is one of the federal government departments responsible for meeting the Government of Canada's obligations and commitments to First Nations, Inuit and Métis, and for fulfilling the federal government's constitutional responsibilities in the North.

AANDC has offices in Ottawa and regional offices in various locations including British Columbia. Information on how to contact the offices is available on the AANDC web-site at:

<http://www.aadnc-aandc.gc.ca/>.