

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

Appeal Name: Gagné vs. MNBC Central Registry  
4-07-09-95-2-00161

Date: March 14, 2015  
Senate Clerk: Thibeault  
Location: Richmond, BC

Between:

**Kaitlyn Jacqueline Gagné**

Applicant

And

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

Respondent

**Reasons for Decision**

Residing Senators:

Senator Gerald Pope

Senator Philip Gladue

Senator Al Desmarais

Senator Betty Hoogendoorn

Senator Margaret Penner



## **Introduction**

[1] On June 17, 2014 the applicant, Ms. Kaitlyn Jacqueline Gagné 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 following:

*"Thank you for submitting your application for Citizenship 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, your ancestry does not connect you into the Historic Métis Nation, as they were then known, or to the traditional Métis Homeland.*

*Therefore, the genealogical information you have provided with your 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 applicant has sent to the Senate a "Request for Citizenship and/or Central Registry Appeal Hearing" dated July 13, 2014. In that, the applicant has 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 of the Constitution, 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 to be utilized when conducting a citizenship and/or central registry appeal.

### **Privacy Consent to Release**

[9] On July 04, 2014 the applicant, Ms. Kaitlyn Jacqueline Gagné, 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 Ms. Gagné'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 March 05, 2015. Mrs. La France indicated the following;

*"The information submitted by your client, Ms. Kaitlyn Jacqueline Gagné, has been carefully reviewed. We were able to trace back the lines in question without encountering any evidence of Métis ancestry.*

*Our research conclusions are in accordance with the findings of the MNBC Central Registry in that no aboriginal ancestry could be confirmed within the genealogical line we were asked to examine. Therefore, Ms. Gagné'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. Gagné, 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 available case law at the time of the hearing, as well as applying cultural and traditional values to the administration of justice.

## **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 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.

[16] Furthermore, while the MNBC Central Registry indicated that they could not determine a link and/or ancestor that identified as Métis and resided within the Métis Nation Homeland, the historique de Saint-Boniface indicated that they could not find evidentiary material that would verify Ms. Gagné's genealogical ancestry was connected to any aboriginal (First Nations, Inuit or Metis) ancestor.

[17] Furthermore, it was noted that based on the documentation submitted, there was not any verifiable connection to the traditional Métis Homeland or to the traditions and culture of Métis communities.

[18] 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 Ms. Gagné's genealogy.

### **c) MNBC Legislative Adherence**

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

Those being;

- i) *Ms. Gagné failed to supply the appropriate documentation that proves her historic Métis Nation Ancestry.*
- ii) *Ms. Gagné failed to supply the appropriate documentation that proves any Métis ancestry that connects to the Historic Métis Nation Homeland.*
- iii) *Ms. Gagné 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.