

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

Appeal Name: Gordon vs. MNBC Central Registry  
4-11-10-83-2-00145

Date: March 22, 2014  
Senate Clerk: Thibeault  
Location: Richmond, BC

Between:

**Michelle Kathleen Gordon**

Applicant

And

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

Respondent

**Reasons for Decision**

Residing Senators:

Senator Gerald Pope

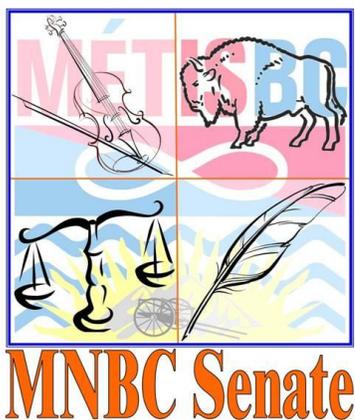
Senator Philip Gladue

Senator Al Desmarais

Senator Alan Edkins

Senator Margaret Penner

Senator Betty Hoogendoorn



## **Introduction**

[1] On October 2, 2013 the applicant, Ms. Michelle Kathleen Gordon 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 a 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] 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 office of the registrar was 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 October 08, 2013 the applicant, Ms. Michelle Gordon, 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. Gordon'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 13, 2013. Mrs. La France indicated the following;

*"The information submitted by your client, Ms. Michelle Kathleen Gordon has been carefully reviewed. We were*

*able to trace back the lines in question to the Yale and Cariboo district of British Columbia, Canada, without encountering any evidence of Métis ancestry. There is a possibility that there may be Treaty Ancestry on the Allen/Ignace line, but at present we are unable to prove such a claim for the client in question. In short, our research conclusions are in accordance with the findings of the MNBC Central Registry. Therefore, Ms. Gordon'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. Gordon, 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 there was evidentiary material supplied that would indicate Ms. Gordon's genealogical ancestry may have been connected to an aboriginal (First Nations, Inuit or Metis) ancestor, in this case possible Treaty Ancestry, this was not verifiable with the primary source documentation provided, nor was there any evidence to verify a distinct ethnic connection to the Métis.

[17] It was noted that while there was possible aboriginal background indicated by 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. Gordon's genealogy.

**c) MNBC Legislative Adherence**

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

i) *Ms. Gordon failed to supply the appropriate*

*documentation that proves her historic Métis Nation Ancestry.*

*ii) Ms. Gordon failed to supply the appropriate documentation that proves any Métis ancestry that connects to the Historic Métis Nation Homeland.*

*iii) Ms. Gordon 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.