

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

Appeal Name: Koster vs. MNBC Central Registry,
5-09-24-50-2-00029

Date: 2009/04/22
Senate Clerk: Trumbley
Location: Kelowna

Between:

John David Koster

Applicant

And

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

Respondent

Reasons for Decision

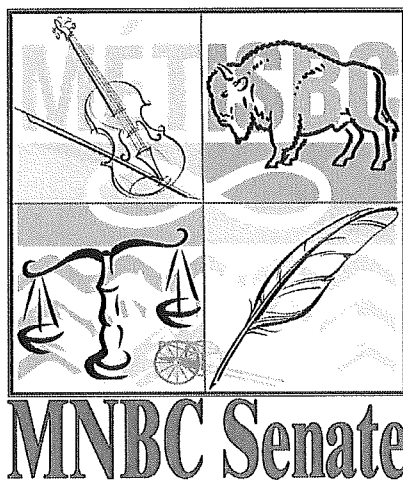
Residing Senators:

Senator Alan Edkins

Senator Ron Snider

Senator Margaret Penner

Senator Bill Thibeault



Introduction

[1] On April 08, 2009 the applicant, Mr. David Koster received a letter from the respondent, the MNBC Central Registry, indicating that his 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

Koster vs. MNBC Central Registry Page 3

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 3.0.

[7] Section 6.2 of the **Senate Policies and Procedures ver. 3.0** highlights the process utilized when conducting a citizenship and/or central registry appeal.

Privacy Consent to Release

[8] On April 14, 2009, Mr. Koster 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 Mr. Koster'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 March 27, 2009. Mrs. La France indicated the following;

"The information submitted by your client, Mr. John David

Koster vs. MNBC Central Registry Page 5

Koster, has been carefully reviewed. Documentation provided was thorough and complete. Unfortunately, though there is evidence of possible aboriginal ancestry on the side of Lucie Asteronae; nothing can be found to prove ethnic identification. Furthermore, census enumerations and other vital records pertaining to her son Henry and his descendants do not indicate any recognition of being culturally distinct or ethnically different than their European father. In fact, Henry Koster consistently identifies himself as being white and of German or Hollander ancestry (1891, 1901 and Death Certificate). Interestingly enough, Henry is absent on the 1881 Census, but both his father and a older sibling (Annie) of Henry's is there...she too identifies as Dutch; a BC archives record confirms that they share the same mother. Therefore, your client, does not connect into the Historic Métis Nation as they were then known or their homeland".

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 6.2 of the **Senate Policies and Procedures ver. 3.0**. The Senate further understands that the onus to prove citizenship is the responsibility of the applicant, Mr. Koster 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] Furthermore, there was evidence supplied that would indicate Mr. Koster's genealogical ancestry may have held aboriginal (First Nations) origin. However, due to an absence of evidence this could not be confirmed (refer to Line 10, last paragraph).

[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 genealogical connection to the Métis Homeland or the presence of a Métis ancestor in Mr. Koster's genealogy.

c) MNBC Legislative Adherence

[16] Mr. Koster fails to comply with three parts of the National Definition as specified in the **MNBC Citizenship Act**. Those being;

- i) *Mr. Koster failed to supply the appropriate documentation that proves his historic Métis Nation Ancestry.*
- ii) *Mr. Koster failed to supply the appropriate*

Koster vs. MNBC Central Registry Page 7

documentation that proves any Métis ancestry that connects to the Historic Métis Nation Homeland.

iii) Mr. Koster failed to supply the evidence which would identify a historic Métis "distinctiveness" other than that of his German, Hollander, English or Dutch ancestry.

Decision

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

[18] 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.