

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

Appeal Name: Kramer vs. MNBC Central Registry
7-20-06-91-2-00082

Date: December 17, 2011
Senate Clerk: Thibeault
Location: Kelowna

Between:

Kayla Lynn Kramer

Applicant

And

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

Respondent

Reasons for Decision

Residing Senators:

Senator Al Edkins

Senator Ron Snider

Senator Margaret Penner

Senator Betty Hoogendoorn

Senator Philip Gladue



Introduction

[1] On February 2, 2011 the applicant, Ms. Kayla Lynn Kramer 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. Métis communities evolved and flourished prior to the entrenchment of European control, when the influence of European settlers and political institutions became pre-eminent.

b) MNBC Legislation, Policies and Procedures

[4] 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.

[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 3.2.

[7] 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.

Conflict of Interest

[8] MNBC North Easter Region's Senator Gerald Pope filed a possible perception of conflict of interest claim in regard to the *Kramer vs. MNBC Central Registry* (Senate Action Number 7-20-06-91-2-00082) appeal in that the applicant was from his region and he knew individuals with the family name. Upon review of Senator Gerald Pope's possible perceived conflict of interest the Senate determined that while there was not a direct conflict of interest as outlined in Section 2.10 point 10 of the **Senate Policies and Procedures ver. 3.2**, there is a possible "perceived" conflict based on a possible acquaintance connection with the Applicant. Therefore Senator Gerald Pope's conflict of interest claim was granted and he was removed from the panel of residing Senators for this appeal only. Senator Gerald Pope was not privy to any portion of this decision or the decision-making process.

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 September 8, 2011. Mrs. La France indicated the following;

*"The information submitted by your client, Ms. Kayla Kramer has been reviewed. We were able to trace back the lines in question to the United States...while some family history and oral traditions seem to point to an aboriginal ancestor very early on, we could not confirm this beyond a doubt; while examining documents regarding the descendants however, we did not encounter any evidence of Métis ancestry. Therefore, Ms. Kramer's ancestors do **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. 3.2**. The Senate further understands that the onus to prove citizenship is the responsibility of the applicant, Ms. Kramer 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, while there was evidence supplied of a possible aboriginal ancestor early on, this could not be confirmed, and the evidence did not indicate Ms. Kramer's genealogical ancestry held any connection to Métis origins.

[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 in Ms. Kramer's genealogy.

c) MNBC Legislative Adherence

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

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

Homeland.

iii) Ms. Kramer failed to supply the evidence which would identify a historic Métis "distinctiveness".

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.