

**IN THE MÉTIS NATION BRITISH COLUMBIA'S SENATE**

Appeal Name: *Marks v. MNBC Registrar & Smith*  
3-00-00-00-2-00171

Date: October 4, 2021  
Senate Clerk Bill Bresser

Between:

**Shannon Marks**

Applicant

And:

**MNBC Registrar (Maryann Morrison)  
Lissa Smith**

Respondents

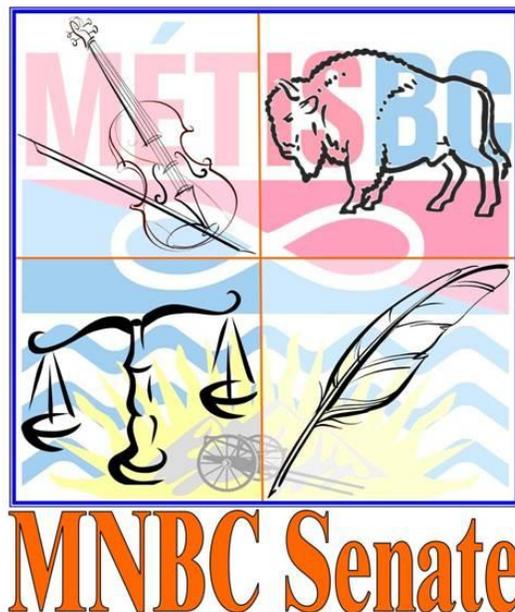
**Reasons for Decision**

Presiding Senators:

Senator Alan Edkins  
Senator Arnold Lucier  
Senator John Sayers  
Senator Philip Gladue

Place and Dates of Hearing:

Richmond BC  
September 7/8, 2021



## INTRODUCTION

This is an Appeal brought by Shannon Marks pursuant to Article 10 of the Metis Nation British Columbia (MNBC) *Citizenship Act* which reads as follows:

### **ARTICLE TEN - CHALLENGES TO PERSONS CURRENTLY REGISTERED**

**10.1** Challenges concerning the Metis ancestry of Citizens currently on MNBC citizenship/membership list(s) may be made by Metis Citizens, Metis Communities, or on behalf of the MNBC by written notice to the Registrar. The challenge must include the full name of the Citizen or other individual or person making the challenge and of the Citizen being challenged, the Metis Community at which that Citizen is registered and the grounds for the challenge including any documentation in evidence in support of the challenge. The Citizen subject to the challenge shall be notified by the Registrar in writing and shall have the right to refute the challenge by providing evidence of Metis ancestry to the satisfaction of the Registrar.

10.2 The Registrar shall render a written decision on the Challenge which shall be forwarded by registered mail to all parties to the Challenge.

10.3 Registrar shall inform the parties of their right to appeal the Registrar's decision within thirty (30) days to the Senate and shall provide instructions to the parties on the form and procedure to commence the appeal.

10.4 The parties shall be provided no less than two (2) weeks notice of the date on which the appeal will be heard. The parties and/or their representatives shall be entitled to attend and make representations to the Appeal Tribunal in such manner as may be determined by that Tribunal or the Senate on notice to the parties.

10.5 The MNBC, on the recommendation of the Registrar, may require the Citizen, individual or person instituting the challenge to pay the costs and other charges associated with a failed challenge in appropriate circumstances.

Pursuant to that Article the Applicant seeks an Order:

1. Reversing the Metis Nation of British Columbia's Registrar's decision granting citizenship to Lissa Smith.
2. That the Offices held by Lissa Smith, most notably as Vice President of the Metis Nation British Columbia Board, be declared vacant given that a critical component of holding that office is citizenship in the Metis Nation of British Columbia.
3. That all of the monies paid to Lissa Smith for her services rendered in these offices be repaid to the Nation.
4. That Lissa Smith be required to provide a public apology to the Metis Nation of British Columbia for her actions.

In response to the Applicant, Shannon Marks', requests the Registrar, and the citizen, Lissa Smith say, the Application brought is unfounded and is in its character, completely frivolous and vexatious. The Registrar and Lissa Smith further say that by reason of the complaint being

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frivolous and vexatious, that the Applicant, Shannon Marks, should be required, pursuant to Article 10.5 of the *Citizenship Act*, which reads as follows:

10.5 The MNBC, on the recommendation of the Registrar, may require the Citizen, individual or person instituting the challenge to pay the costs and other charges associated with a failed challenge in appropriate circumstances.

be responsible to reimburse the Registry and the Respondent, Lissa Smith, for the costs they have incurred in this Appeal.

### **REASONS**

There are only two substantive issues to be resolved in connection with this Appeal namely whether or not Lissa Smith is eligible for citizenship in the Metis Nation of British Columbia, and secondly, whether or not the Registry, in the performance of its duties, exercised the due diligence required of them, and if having done so, appropriately exercised any discretion available to them in their decision to grant Metis citizenship to Lissa Smith.

### **RE: CITIZENSHIP**

In determining whether or not Lissa Smith is eligible for citizenship in the British Columbia Metis Nation it will first be necessary to review the requirements mandated for citizenship. In that regard, we refer to Metis Nation of British Columbia *Constitution*, Article 61 which reads as follows:

61. Metis means a person who self-identifies as Metis, is of historic Metis Nation Ancestry, is distinct from other Aboriginal Peoples and is accepted by the Metis Nation.

As regards this definition, the only argument presented by the Applicant relating to Lissa Smith's want of qualifications flows from her contention that she is not of historic Metis Nation Ancestry so that her appeal will rise or fall solely on the Applicant's ability to persuade the Senate that Lissa Smith is not of Metis Nation Ancestry.

The Senate carefully reviewed the Application made by the Applicant, and the Response filed by both Respondents. Have listened, read and carefully weighed all of the evidence presented to it.

The Applicant's case against Lissa Smith and her citizenship application was almost entirely based on the information available in the Respondent, Lissa Smith's application for citizenship along with research regarding the same which the Applicant had for the most part done herself.

Based on that information and her research, the Applicant contends that there is not disclosed sufficient information to confirm historic Metis Nation Ancestry, but rather simply discloses a genealogical tree consisting of First Nation citizenship.

In addition to the above, the Applicant says that the Respondent, Lissa Smith's application, is lacking some of the details requested in it.

The Applicant seems to suppose that the application is the be all and end all in the Registry's process in determining eligibility for citizenship, when in fact, it is merely one of the vehicles used by the Registry to garner the information necessary to confirm, in its own opinion, eligibility for citizenship, as will be shown later in these Reasons.

The Respondent Registrar however, in reply to this issue, confirmed that the application for citizenship was simply one of the resources used by that office to conduct its own independent inquiry into an individual's qualification for citizenship.

The Respondent Registrar, both in oral presentation and in written reply, identified that they had referred Lissa Smith's genealogy to the following persons and institutions for confirmation of her genealogical requirements:

- a. Brodie Douglas, former Metis historian, MNBC
- b. Laurel Katemick, former Registrar, MNBC
- c. Terry Ranson, Citizen Assessment Officer, MNBC
- d. Maryann Morrison, current Registrar, MNBC
- e. Society historique de Saint-Boniface researcher and genealogist
- f. Know History researcher and genealogist

Of all of the people providing evidence at the Hearing, the Senate found the evidence and information supplied by Brodie Douglas to be by far the most thoroughly researched and carefully thought through. Mr. Douglas produced at the Hearing, genealogical charts, which he explained thusly:

**"I would be happy to take questions but before we do that I would like to bring up those three documents. I we could start with the 1870 census. You will note the head of the household is Ann Smith and that is Alexander Beddome Smith who is Lissa Smith's great grandfather. This is (Ann Smith) his mother so (Lissa Smith's) great great grandmother and then you can see her father listed here and also we can find Alexander's name. You will note Alexander Beddome Smith was identified in 1860 as an Anglais Metis or English speaking Metis. And also his mother who identifies an Anglais speaking Metis. So this document again shows a connection from Alexander Beddome Smith to bis Metis mother, Ann Smith, who was born Ann Oman. The father (of Alexander Beddome Smith), William Robert Smith, is listed there (on the 1870 Red River Census) recently passed away which is why Ann Smith is listed as a widow so she is the head of the household for this particular census.**

**If we could now go to the Ann Smith scrip document. Here we have Anne Hall who is the widow of William Smith and the wife of Andrew Hall; and her father, James Oman who was also seen on the 1870 census who is an Orkney man; Jane Brown who was her mother and a Metis. So Ann Smith Oman comes from a Metis. Her mother was Metis thereby her child being Metis.**

**And just in case there is any doubt we go to the third document. This is a Hudson's Bay biographical sheet. In the 1970's archivists in Manitoba went through the Hudson's Bay records and compiled biographical sheet of people who were mentioned also so we see every primary source they were mentioned in to prove where they were at, what position they were in and where they served. Here we can see that Ann Oman was the second wife of William Robert Smith, and here we can see Alexander Beddome born 1864 that ties these three documents together. And we have the primary source for his baptismal record so if there is any doubt it can be verified. Unfortunately I don't have any access to that primary document but the source listed does give the validation and the confidence of the researcher to say that this is the truth. That document is not making stuff up. At the top this is William Robert Smith his biographical sheet who shows he was born in London and died 1869 which is why he didn't appear on the 1870 census and mom (Ann Smith) is the head of the household and recently widowed. Those are the three documents that I brought that I believe support the file."**

Further, in response to a question put to him by the Applicant, as to how the chart should be interpreted as regards the Respondent, Lissa Smith, he responded as follows:

**"For a legal identity one can have one legal identity but that does not negate the fact that you would also be Metis. So he would not be eligible to apply for citizenship if he had Indian status, but he would still be genealogically Metis, and thereby children, grandchildren would also be able to follow through that Metis line because Lissa may not associate with her First Nations culture. She might have both in her genealogy but it would be her choice, her legal identity. And from an applications perspective we looked at the primary documents we didn't see the Indian status within the file. It was based on the genealogy. The genealogy is solid from Lissa connecting to her historically identified ancestor which would satisfy the requirements about the *Citizenship Act*."**

As a consequence of the above testimony, which we Senators fully accept, we say that so long as an individual can trace his or her ancestry back to the historic Metis Nation, it is utterly irrelevant that other members of their family in years past, have determined, for reasons unknown to anyone, not to avail themselves of their ability to claim Metis Citizenship.

The Senate further finds that the Registry did in fact perform all the duties required of them in processing Lissa Smith's application and that they did nothing but follow the genealogical evidence provided by the bodies and persons referred to previously all of whose evidence was consistent with Mr. Douglas's in making their decision.

Throughout the two days of Hearing, both the Applicant and the Respondent were given the opportunity to present evidence by written submissions, in person witnesses, and witnesses presented by visual internet connections. In all cases, the opposing parties were provided with every opportunity to ask questions regarding the content and veracity of the opposing sides presentations.

We, the Senate, collectively and unanimously, would like to say that regrettably, far too much of the Applicant's presentation was argument rather than evidentiary in nature.

Further, we the Senators, collectively and unanimously, were deeply concerned by the presentation of the Applicant's case and evidence. The Applicant's presentation was made with such vigor and rancor that it was difficult not to conclude that her motives were more directed at the Respondent, Lissa Smith's, political office rather than her qualifications to hold that office.

We, the Senators, again collectively and unanimously were further assisted to this conclusion by the nature of her Application wherein she not only sought to have Lissa Smith's citizenship revoked, but further sought the repayment of monies earned for a job already done, and most troubling, the demand for an apology.

Notwithstanding the above, we, the Senators have unanimously concluded that whether or not this Application was politically motivated, rather than simply used to raise the vital issue of the Respondent's eligibility for citizenship, the issue of how to determine eligibility for citizenship is vital to the Nation's existence and therefore the question put is worthy of the time and expense involved in answering it.

### **DECISION**

As a result of the above findings, the Senate dismisses the Application of the Applicant as regards Lissa Smith's citizenship. Further, given that Lissa Smith is qualified to hold the office of Vice President, and any other office in the Metis Nation, the Application for her removal from those offices as requested, by the Applicant, is dismissed.

Further, the Senate dismisses, without any hesitation, the Applicant's request that monies earned for a job performed, be repaid, for many reasons, not the least of which is the issue as to whether or not it has any jurisdiction to do so. This portion of the Application, along with her request that Respondent, Lissa Smith, provide an apology, go a long way in their considerations as to the potential motives at play by the Applicant.

Finally, the Respondent, Lissa Smith, and the Registrar seek an Order that the Applicant, pursuant to Article 10.5, pay all of the costs associated with this Appeal.

As regards to Article 10.5 of the MNBC *Citizenship Act* which reads as follows:

10.5 The MNBC, on the recommendation of the Registrar, may require the Citizen, individual or person instituting the challenge to pay the costs and other charges associated with a failed challenge in appropriate circumstances.

It is clear from this Article that any such decision regarding costs is exclusively the domain of the Registrar.

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Notwithstanding the fact however, that the Senate is without any binding authority in this matter, we are concerned that the Registrar, who is a party to this action, should be empowered to make a decision regarding the costs of the Appeal, for to do so, would make the Registry a judge in its own case.

The Senators, who are unanimous in this matter, feel that the Registrar, in these circumstances, is clearly in a position of conflict of interest.

This matter is further complicated by the fact that the Senators, in the administration of justice of the Metis Nation, are required to observe the principle of natural justice. See Article 9.1 of the Metis Nation *Senate Act*, which reads as follows:

9.1 In all matters concerning appeals, be bound by the rules of natural justice.

This being the case, it would seem irrational that the principles of natural justice should not be made an integral part of all of the Nation's administrative and judicial proceedings. We, the Senators hearing this case, consider that to make such a decision without reference to an outside source, would be a breach of the principles of natural justice.

The Senators fully recognize that they have no authority whatsoever in this matter, but still feel the need to comment on how this discretion should be exercised.

The issues raised in this Appeal clearly needed to be addressed and made clear to the citizens of the Nation, whether or not the motives in this instance were entirely pure. In consequence, it is our view that the costs, if any, awarded against the Applicant, should be restricted to those immediate expenses incurred by the Respondent, Lissa Smith, so that at least she might be made whole as regards to those losses.

In making these comments, we are mindful of the necessity to have the general principles raised in this Appeal cleared up, which alone justifies the considerable expense the Nation has been put to. This question would have to have been resolved and disseminated through such a decision at some point irrespective of this particular Application.

Having said the above, the Senators want it to be understood that the leniency recommended in this case should not be considered as a precedent in a case where similar conduct is displayed on the part of a party appearing before them.

Original Signed By  
Senator Alan Edkins

Original Signed By  
Senator Philip Gladue

Original Signed By  
Senator John Sayers

Original Signed By  
Senator Arnold Lucie

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