

IN THE MÉTIS NATION BRITISH COLUMBIA'S SENATE

Appeal Name: *Reay (Bouchier) v. MNBC Central Registry*
File: 1-16-06-87-2-00177

Date: July 22, 2022
Senate Clerk: Bill Bresser
Location: Williams Lake

Between:

Melissa Joan Susan Reay (Bouchier)

Applicant

And:

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

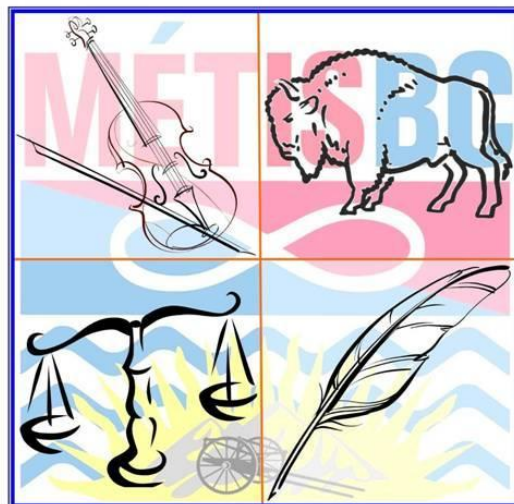
Respondent

Reasons for Decision

Presiding Senators:

Senator Alan Edkins
Senator Gerald Pope
Senator John Sayers

Senator Betty Hoogendoorn
Senator Phillip Gladue



MNBC Senate

Introduction

[1] On April 7, 2022 the Applicant, Melissa Reay (Bouchier), received a letter from the Respondent, the MNBC Registry, indicating that her citizenship could not be validated or verified based on the requirement to genealogically support ancestral connection to the historic Métis Nation Homeland, a mandatory component of the registration process.

Specifically, the Respondent's letter highlighted that:

- The ancestry traces from an area of the Province of Ontario that is not part the historic Métis Nation Homeland.
- This historic Métis Nation had recognized Aboriginal title, which the Government of Canada attempted to extinguish through the issuance of "scrip" and lands grants in the late 19th and early 20th centuries.

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 encompass all individuals with mixed Indian and European heritage; rather it refers 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 Administrative Standards and Practices

[4] Section 61 of the MNBC *Constitution Act* 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 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, Registry Policy and Procedures and the Senate Policy Manual and Administrative Standards and Practices.

[7] Section 982 of the Senate Policy Manual highlights the process utilized when conducting a citizenship and/or Registry appeal.

The Standard of Review

[8] The Senate's role is to ensure that all legislation, policies, and administrative standards and practices 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 ordered a second professional opinion to assist in their review. Furthermore, the Senate will adhere to the citizenship and/or Registry appeal process highlighted in Section 982 of the Senate Policy Manual. The Senate further understands that the onus to prove citizenship is the responsibility of the applicant, Melissa Reay (Bouchier), not the respondent, the MNBC Registry.

[9] The Senate has based this decision on the evidence supplied by the applicant and respondent and weights this to the summary of case law at the time of the hearing.

Second Genealogical Opinion

a) Société historique de Saint-Boniface

[10] Halley Ducharme from the genealogical department of the Société historique de Saint-Boniface supplied a second professional opinion by letter on June 20, 2022. Halley Ducharme indicated the following:

“The information submitted by your client, Melissa Reay (Bouchier), has been reviewed. The ancestor in question, Edith Labatt, undoubtedly has indigenous ancestry. What is interesting is that while Edith Labatt has mixed ancestry; she does not, nor do any of her indigenous ancestors appear to fall within the parameters of what is believed to be the Historic Métis Nation Homeland.

*It is possible that Edith Labatt saw herself as culturally distinct from both her father and mother. However, it is my professional opinion that Mrs. Melissa Reay (Bouchier) ancestors do **not** connect into the Historic Métis Nation as they were then known or their homeland.”*

Analysis

a) MNBC Policy and Procedure Adherence

[11] The applicant did request that a review of the policies and procedures be conducted. The Senate, on review, found the MNBC Registry did not violate or overlook any policies or procedures.

b) Genealogical Interpretation

[12] Both the MNBC Registry and the Société historique de Saint-Boniface indicated that they could not determine a link and/or ancestor that identifies as Métis and resided within the Historic Métis Nation Homeland.

[13] Further, no evidence was supplied by Melissa Reay (Bouchier) to verify a distinct ethnic connection to the Métis.

[14] Based on the information supplied, and the genealogical opinions (MNBC Registry and the Société historique de Saint-Boniface) the Senate was not able to identify a genealogical connection to the Historic Métis Nation Homeland or the presence of a Métis ancestor in Melissa Reay's (Bouchier's) genealogy.

c) MNBC Legislative Adherence

[15] Melissa Reay (Bouchier) failed to comply with three parts of the National Definition as specified in the MNBC *Citizenship Act*. Those being to supply:

- i) appropriate documentation that proves his historic Métis Ancestry;
- ii) appropriate documentation that proves any Métis ancestry that connects to the Historic Métis Nation Homeland; and
- iii) evidence which would identify a historic Métis "distinctiveness."

[16] In Melissa Reay's (Bouchier's) submission the applicant raised concern that the geographic area defined as the Historic Métis Nation Homeland was too narrow and needed to be broadened by the Senate. Such a decision does not to fall within the jurisdiction of the Senate. Rather, it can only be considered by the Governing Members of the Métis National Council.

Decision - Unanimous

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