

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

Appeal Name: Christian vs. MNBC Central Registry  
1-25-04-33-2-00083

Date: July 27, 2012  
Senate Clerk: Thibeault  
Location: Prince George

Between:

**John Daniel Christian**

Applicant

And

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

Respondent

**Reasons for Decision**

Residing Senators:

Senator Alan Edkins

Senator Ron Snider

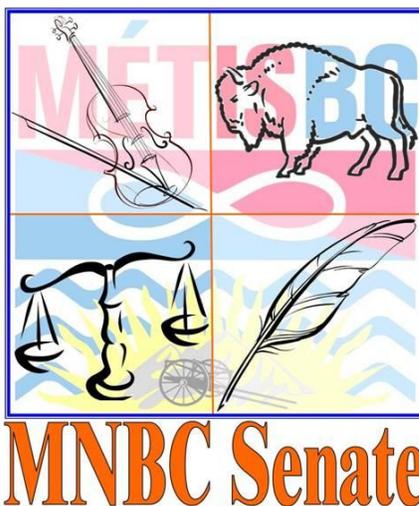
Senator Margaret Penner

Senator Gerald Pope

Senator Philip Gladue

Senator Betty Hoogendoorn

Senator Al Desmarais



## **Introduction**

[1] On February 1, 2011 the applicant, Mr. John Daniel Christian 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 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.

## **Second Genealogical Opinion**

### **a) Société historique de Saint-Boniface**

[8] Mrs. Janet La France from the genealogical department of the Société historique de Saint-Boniface supplied a second professional genealogical opinion by letter on July 12, 2012. Mrs. La France indicated the following;

*"The information submitted by your client, Mr. John Daniel Christian, has been carefully reviewed. We were able to trace back the lines in question into Victoria and Saanich areas of British Columbia. That being said, while we do not **often** see Métis self-identification occurring in families originating on the West Coast; this family clearly **does** ethnically identify themselves as English Breeds (Eliza Franck née Reid) and German Other Breeds (Isabelle Christian née Franck) on the 1901 Census...they are also described here in the colour column as being "red".*

*While the delineation of the Historic Métis Homeland and whether or not this family falls into it is unclear; the fact that they identify with both sides of their heritage and are not counted among the "Indians" of the region, suggest they are indeed Métis. Of course, the final decision must be made by you. At this time, we are unable to prove that there is any cultural similarity or shared history between this family and the Historic Métis Nation.*

*Alternatively, there is a substantial amount of records at LAC pertaining to the Cowichan Agency at Saanich that could be explored further to eliminate the possibility that this family was in fact Treaty...Most of these records however, do not appear to be digitized."*

### **The Standard of Review**

[9] 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, Mr. Christian, not the respondent, the MNBC Central Registry.

[10] 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, as well as applying cultural values to the administration of justice.

## **Analysis**

### **a) MNBC Policy and Procedure Adherence**

[11] 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) Balance of Probabilities**

[12] The Senate ascribes to the principle that the onus is on the plaintiff to present facts to support his claim, with the standard required for the burden of proof being based on the balance of probabilities, also known as preponderance of the evidence. The standard is met if the proposition is deemed more likely to be true than not true, thus if there is greater than fifty percent chance that the proposition is true, in other words, more probably than not.

[13] The balance of probability standard means that the Senate, as the judiciary of the Nation, must be satisfied that an event occurred such that the Senate considers that, on the evidence, the occurrence of an event was more likely than not. When assessing the probabilities, the Senate will have in mind as a factor that built into the preponderance of a probability standard is a degree of flexibility in respect of the seriousness of the allegation. Thus, the inherent probability or improbability of an event is itself a matter to be taken into account when weighing the probabilities and deciding whether, on balance, the event occurred.

[14] The question the Senate considered was whether or not, based on the material before it at this stage, the appellant had established that there is a real prospect to show their claim to be at least as probable as that of the Registry decision.

**c) Genealogical Interpretation**

[15] Both the MNBC Central Registry and the historique de Saint-Boniface indicated that the 1901 Canada Census identified the family as "Red" and "English Breed" and/or "Red" and "Other Breed". It was also indicated that the 1891 Canada Census did not collect identifying information such as colour or nationality, therefore it was not supportive in identifying Elizabeth Reid's aboriginal and/or Métis identity.

[16] The delineation of the Historic Métis Homeland has been, and at the current time still is, somewhat unclear. It is generally thought that the homeland includes regions scattered across Canada, as well as parts of the northern United States, that is the area of land in west central North America used and occupied as the traditional territory of the Métis.

[17] Based on the information supplied, testimony and the genealogical opinions (MNBC Central Registry and the historique de Saint-Boniface) the Senate is of the opinion that the applicant did, on the balance of probabilities, identify a genealogical connection to the Métis Homeland and the presence of a Métis ancestor in her genealogy.

[18] The following factors were taken into consideration by the Senate in its deliberations:

- i) On the 1901 Census, some of Mr. Christian's ancestors were clearly self-identified as "Red" and "English Breed" and/or "Red" and "Other Breed".*
- ii) The information supplied by the Société historique de Saint-Boniface stated that the family clearly did ethnically identify themselves as English Breeds (Eliza Franck née Reid) and German Other Breeds (Isabelle*

*Christian née Franck) on the 1901 Census.*

- iii) The delineation of the Historic Métis Homeland is somewhat unclear, thus creating to some extent, a degree of uncertainty as to whether this family falls into it.*
- iv) Information collected on rootsweb.com indicated that Elizabeth Reid's mother Jeanny is thought to be Indian. There was not a record of Elizabeth's birth except on her marriage and death certificates. Several pictures of her with her children show she has strong Indian features.*
- v) Elizabeth is listed in the Victoria Catholic Diocese records showing birth of several children to her and the records show her to be "semi-Indian" or "½ Indian".*
- vi) An ancestor, Elizabeth Reid, is of aboriginal ancestry and described as semi-Indian, although there is some degree of uncertainty as to whether she had ties to the Métis homeland.*
- vii) There are thus secondary source documents which buttress the available primary source documentation for Métis ancestry.*
- viii) The delineation of the Historic Métis Homeland and whether or not this family falls into it is unclear but the fact that they identify with both sides of their heritage and are not counted among the "Indians" of the region, suggest they are indeed Métis.*

**c) MNBC Legislative Adherence**

[19] Mr. Christian has supplied sufficient information that, based on the balance of probabilities, it is deemed his

request complies with the National Definition of Métis citizen and with the definition of Métis citizen as specified in the **MNBC Citizenship Act**.

- i) *Mr. Christian, the office of the Provincial Registrar and La Société historique de Saint-Boniface, supplied appropriate documentation that, on the balance of probabilities, appears to prove his historic Métis Nation Ancestry.*
- ii) *Mr. Christian supplied the appropriate documentation that indicates Métis ancestry that connects to the Historic Métis Nation Homeland.*
- iii) *Mr. Christian supplied evidence which would indicate the identification of a historic Métis "distinctiveness."*

### **Decision**

[20] The MNBC Senate finds in favour of the Appellant, Mr. John Daniel Christian.