

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

Appeal Name: Zawislak vs. MNBC Central Registry,
1-28-08-61-3-00019

Date: 20080802
Senate Clerk: Trumbley
Location: Nanaimo

Between:

Diane Lynn Zawislak

Applicant

And

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

Respondent

Reasons for Decision

Residing Senators:

Senator Alan Edkins

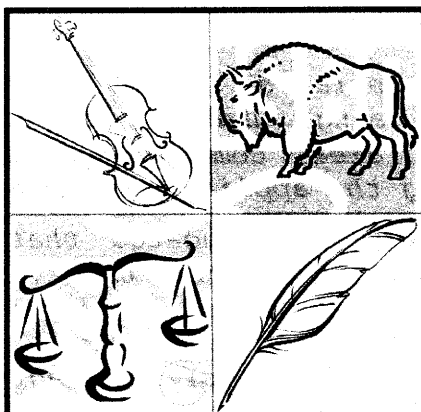
Senator Margaret Penner

Senator Bill Thibeault

Senator Philip Gladue

Senator Bob Adams

Senator Ron Snider



MNBC Senate

Introduction

[1] Mrs. Diane Lynn Zawislak ("APPLICANT") applied to the Métis Nation British Columbia Central Registry ("RESPONDENT") for her Métis Citizenship on October 26, 2006.

[2] On June 17, 2008 the RESPONDENT sent an update letter indicating that all parameters of Métis Citizenship have been approved with the exception of a return notice by her Métis Chartered Community of community acceptance. The RESPONDENT supplied all the contact information to the APPLICANT for the Mid Island Métis Nation. Furthermore, a letter was also sent to the Mid Island Métis Nation, notifying the Métis Chartered Community of the RESPONDENT's need for a decision on community acceptance.

[3] On July 09, 2008 the APPLICANT wrote a letter to the RESPONDENT, requesting them to release her card as the APPLICANT has attempted multiple times to acquire a decision on community acceptance to no avail.

[4] On July 15, 2008 the RESPONDENT supplied a response letter indicating the following:

"While the Registrar's office does understand your frustration in being unable to contact the chartered community in your area, community acceptance is a necessary step in completing the application process.

At this time, MNBC has mandated that community acceptance must be given by one of the thirty-seven (37) recognized Métis chartered communities to individuals seeking their provincial Métis citizenship card in British Columbia; therefore, the Registrar's office regrets that it is unable to comply with your request."

[5] On July 29, 2008 the APPLICANT applied for a Central Registry appeal against the position of the RESPONDENT on their interpretation of who can acknowledge the fact of community

acceptance. The APPLICANT has asked the Senate to review the RESPONDENT's interpretation of leaving the approval of community acceptance to one of the thirty-seven Métis Chartered Communities.

[6] On July 30, 2008, the Métis Nation British Columbia Senate agreed to hear the appeal of the APPLICANT against the decision of the RESPONDENT.

Summary of the MNBC Legislation, MNBC Policies and Procedures

[7] The Senate in making its decision has relied upon the following legislation.

a) MNBC Constitution

[8] The following is a list of sections that the Senate relied on in making their decision:

i) Communities

56. *Communities shall be the basic unit of the Métis Government. No community (city, town, municipality or unincorporated municipal unit) shall have more than one (1) Community, except with the written approval the MNBC.*

57. *A Community shall be made up of at least twenty-five (25) Members who are Métis Citizens eighteen (18) years of age or older.*

58. *All Communities shall be encouraged to enter into Community Governance Charters that define an affiliated relationship with the MNBC that set out requirements for financial and political accountability, mutual recognition and dispute resolution.*

59. *All Communities shall, as soon as possible, enact a Constitution that is consistent with this Constitution.*

b) MNBC Citizenship Act

[9] The following is a list of sections that the Senate relied on

in making their decision:

- i) Article Two Interpretations
 - 2.13 "Community" (collectively referred to as "Communities") means those organizations or societies as defined as a Métis Community or Métis Communities in the Constitution.
 - 2.16 "Métis Community" means a Community or Communities as defined in the Constitution.
 - 2.20 "Provincial Standardized Citizenship Card" means the identification card that shall be issued by the Registrar to all Métis Citizens who have had their Genealogy and supporting documentation validated and verified by the Office of the Registrar.
- ii) Article Three Community Acceptance
 - 3.0 The MNBC shall accept an application for citizenship as a Métis Citizen upon Applicant providing to the Registrar a written application together with sufficient Genealogical evidence which, if accepted by the Registrar, is proof that the Applicant is of Métis ancestry, is accepted by a Métis Community and that the Applicant complies with the following conditions:
 - 3.1 The Applicant normally resides within the Métis Community area or Métis community and the jurisdiction of the MNBC;
 - 3.2 The Applicant expressly held him/herself out to be Métis in the Métis Community and/or within the jurisdiction of the MNBC;
 - 3.3 The authorized Métis Community shall make its decision impartially, in good faith and shall, in all matters relating to a Citizen or the MNBC act as a fiduciary to the interests of the Citizen or the MNBC as the case may be and shall employ a transparent process that is consistent with the MNBC Constitution.

c) MNBC Métis Nation Governing Assembly Act

[10] The following is a list of sections that the Senate relied on in making their decision:

- i) Article Two Interpretations
 - 2.12 "Community" or "Communities" means an MNBC Métis Community or collectively the MNBC Métis Communities as set out in the Constitution.

The Standard of Review

[11] The Senate's role is to ensure that all MNBC legislation was

adhered to by the RESPONDENT when processing the APPLICANT's citizenship application and if not, rule accordingly.

[12] The Senate has based this decision on the information supplied by the APPLICANT and RESPONDENT.

[13] The Senate in rendering its decision not only applied and interpreted the relevant legislation but took into account all facts of the case while placing both in a historical and cultural context, at the same time being mindful of the traditional practices of the Métis people and the basic rights of a Métis citizen.

The Essential Facts as Determined by the Senate

[14] There is no clear definition of community as being only a Métis Chartered Community in relation to community acceptance in any of the MNBC legislation (Constitution and Acts).

[15] Historically, Métis communities were a network of families and relations, not constrained to a defined geographic area.

[16] MNBC Citizenship Cards are provincial in scope, thereby having provincial jurisdiction.

[17] Métis Community can be expressed as local, regional or provincial in scope.

[18] There is a deficiency of a consistent and transparent process for community acceptance at the Métis Chartered Community level.

[19] That the legislation clearly mandates, that in regards to the Nation's citizenship matters, the standard of care, in relation to

its citizens, requires the greatest diligence possible. In the Senate's opinion, pertaining to community acceptance of the APPLICANT, this has been inadequate.

[20] The Senate has a responsibility to uphold the rights of an individual Métis citizen, as per the authority designated in the Métis Nation British Columbia legislation.

[21] There is no wording in the Métis Nation British Columbia's legislation that restricts community acceptance to being only at the Métis Chartered Community level.

[22] That any applicant can apply for Métis citizenship either through an affiliated community or directly to the RESPONDENT. Therefore, the community acceptance process should be afforded the same standard.

[23] That both the APPLICANT and the RESPONDENT attempted multiple times to gain community acceptance, pertaining to the APPLICANT, from the Mid Island Métis Nation.

The Senate, on the Basis of the Legislation and Facts of this Case, Rule as Follows:

[24] The Senate rules that community acceptance can be provided at various levels, those being local, regional or provincial.

[25] The Senate rules that the RESPONDENT's current community acceptance process is inconsistent with historical, cultural and traditional practices of the Métis people.

Decision

[26] The Senate rules in favor of the APPLICANT.