

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

Appeal Name: Goertzen vs. MNBC Central Registry,
4-06-03-72-2-00063

Date: March 30, 2011
Senate Clerk: Thibeault
Location: Kelowna

Between:

Kimberley Goertzen

Applicant

And

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

Respondent

Reasons for Decision

Residing Senators:

Senator Ron Snider

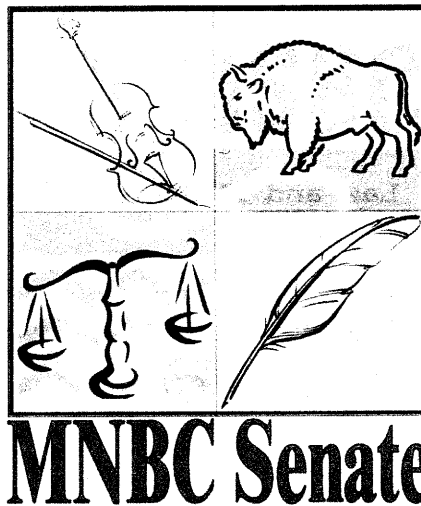
Senator Gerald Pope

Senator Margaret Penner

Senator Philip Gladue

Senator Betty Hoogendoorn

Senator Al Desmarais



Introduction

[1] On June 9, 2010 the applicant, Mr. Kimberley Clark (Kim) Goertzen 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 and your minor children, Abbey Goertzen, Jaaron Goertzen, and Kian Goertzen for a Métis Nation British Columbia (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 or your minor children's, 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 SCC 43, [2003] 2 S.C.R. 207. 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 peoples who, in addition to their mixed ancestry, developed their own customs, way of life, and 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 Policies 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 dated December 15, 2010. Mrs. La France indicated the following;

"The information submitted by your client, Mr. Kimberley Clark Goertzen, has been carefully reviewed. Unfortunately, though the client suggested the possibility of aboriginal ancestry on the Laventure/Paquette side; we are unable to find a document indicating any sort of aboriginal lineage whatsoever.

Presuming the ancestry is in fact there...the union in question, having occurred long before the birth of the Métis Nation and so far removed to the East of the country, seems to have resulted in the complete assimilation of the couple's offspring into European culture. That being said, we have not been able to discover a document to sustain the client's claim or to prove beyond a doubt that this family recognized themselves, or were recognized by others, as being Métis.

Records pertaining to the descendant's marriages and census enumerations suggest that at no point in time did these people see themselves as culturally distinct or ethnically different than their European fathers. Therefore, unfortunately these ancestors, though of possible mixed lineage, do not connect into the Historic Métis Nation as they were then known or their homeland...nor do they meet the criteria used to identify the Métis set forth by the Métis National Council."

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. Goertzen, 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.

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) Genealogical Interpretation

[12] 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.

[13] Furthermore, while there was possible aboriginal ancestry, it was opined that any such ancestry was too distant in time and location to be connected to the Métis Nation homeland, and that it appears to have resulted in the complete assimilation of the couple's offspring into European culture.

[14] Furthermore, there was not any verifiable evidence to indicate any sort of aboriginal lineage whatsoever.

[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 ancestor in Mr. Goertzen's genealogy.

c) MNBC Legislative Adherence

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

- i) Mr. Goertzen failed to supply the appropriate documentation that proves his historic Métis Nation Ancestry.
- ii) Mr. Goertzen failed to supply the appropriate documentation that proves any Métis ancestry that connects to the Historic Métis Nation Homeland.
- iii) Mr. Goertzen 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.