



SENATE
Apihtow-kosison nekanapowin
MÉTIS NATION BRITISH COLUMBIA
Apihtow-kosison peyakosihtwawin

JAYNNE JANSEN
Applicant

and

MÉTIS NATION BRITISH COLUMBIA CENTRAL REGISTRY
Respondent

DECISION
OF THE MÉTIS NATION BRITISH COLUMBIA SENATE

Dated the 04th day of August, 2007

UPON hearing the submissions and reading the material provided by or on behalf of the Applicant and the Respondent in this matter, the METIS NATION BRITISH COLUMBIA SENATE HAS DETERMINED THE FOLLOWING:

1. The MNBC Senate finds in favour of the Métis Nation British Columbia's Central Registry.
 - a. 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.
 - b. Please refer to the full decision which is attached or can be downloaded from the MNBC website at <http://www.mnbc.ca/senate> and click on the decision tab in the upper center portion of the webpage.

Signed on behalf of the Senate,

A handwritten signature in black ink, appearing to read 'Dean Trumbley', is written over a horizontal line.

Dean Trumbley
Interim Senate Clerk

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

Appeal Name: Jansen vs. MNBC Central Registry,
2-11-15-62-3-00003

Date: 20070804
Senate Clerk: Trumbley
Location: Kelowna

Between:

Jayne Jansen

Applicant

And

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

Respondent

Reasons for Decision

Residing Senators:

Senator Alan Edkins

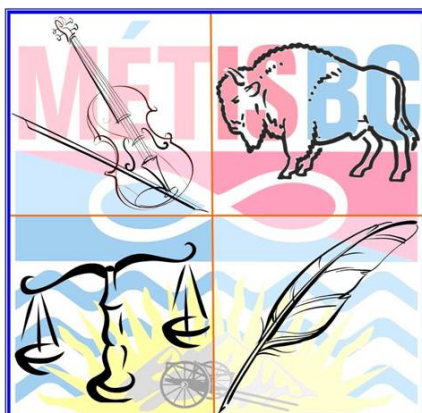
Senator Philip Gladue

Senator Margaret Penner

Senator Bob Adams

Senator Bill Thibeault

Senator Ron Snider



MNBC Senate

Introduction

[1] On April 17, 2007 the applicant, Mrs. Jayne Jansen received a letter from the respondent, the MNBC Central Registry, indicating that her citizenship could not be validated or verified based on the qualifiers for MNBC Citizenship. Specifically, the respondent's letter highlighted:

"the national definition for the Métis (ratified in the MNBC Constitution) does not include individuals whose ancestry originates from Quebec, at this time, based on the historical research to date".

However, the applicant disputes this decision based on the fact that her relatives in Ontario hold Métis Nation Ontario membership. Furthermore, her family has always identified as Métis.

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.

b) MNBC Legislation, Policies and Procedures

[4] Section 62 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) 62.1. "Historic Métis Nation" means the Aboriginal people then known as Métis or Half-Breeds who resided in Historic Métis Nation Homeland.

b) 62.2. "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) 62.3. "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) 62.4. "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.

[7] Section 9.0 of the **Senate Policies and Procedures** highlights the process utilized when conducting a citizenship and/or central registry appeal. Section 9.4.1 and 9.4.2

further enforces the required adherence to the national definition.

Parties Submissions

a) MNBC Central Registry

[8] Mrs. Jansen was notified on her unsuccessful application by the MNBC Central Registry, via a mailed letter, dated April 17, 2007.

[9] A letter dated July 10, 2007 submitted in the Citizenship Appeal file indicated:

"Upon analysis of the genealogy and supporting documents in this file the decision rendered is the applicant does not fit the criteria for MNBC Citizenship. This decision is determined by the following factors; the genealogy and supporting documentation provided does not validate and verify the applicant's genealogical ties to the traditional Métis homeland, and the founders of the first Métis Nation".

[10] Mrs. Katernick verbally testified in person on behalf of the MNBC Central Registry on August 04, 2007. Mrs. Katernick is the Provincial Registrar and also a genealogist. Mrs. Katernick indicated that Mrs. Jansen's ancestors were not historically connected to the Métis Homeland. Mrs. Katernick indicated that she followed the entire Dallaire bloodline and there was no connection to the Métis Homeland or the identification of one of the Dallaires as Métis. Mrs. Katernick further indicated that she analyzed both the paternal and maternal lines (Wisconsin and Quebec, respectively) and found no connection to the Métis Homeland or an individual that identified or would have qualified as a Métis. Mrs. Katernick indicated that Mrs. Jansen's ancestors had no connection to the Métis community or patronymic networks via any of the primary or secondary sources of documentation in her family genealogy.

b) Mrs. Jansen

[11] On May 15, 2007 Mrs. Jansen filed for an appeal of the MNBC Central Registry decision dealing with her citizenship application. Mrs. Jansen indicated that she wished the Senate to review her file as members of her family hold Métis Nation of Ontario membership cards and she disagrees with the decision made by the MNBC Central Registry.

[12] On August 04, 2007 Mrs. Jansen verbally testified by phone, to the Senate under oath that her aboriginal ancestry originated from the Chippewa (First Nations). Mrs. Jansen indicated that most of her family history is based on verbal accounts. Mrs. Jansen also indicated that her family has been involved with the Métis Nation in Ontario for quite a few years and quoted the attendance of an Annual General Meeting in 1998. Mrs. Jansen strongly voiced that she is a Métis person. Mrs. Jansen indicated that most of her family has their Métis Nation Ontario membership. Mrs. Jansen indicated that she practices her culture which includes, teaching history, make moccasins, birch kayaks/canoes, make/play drums and berry picking. Mrs. Jansen indicated that she has been involved with her community in B.C. including being a member on the board. Mrs. Jansen further indicated that her grandfather used to guide, hunt, fish and trap and that her uncle and family in Ontario still practice living off the land. Mrs. Jansen was unable to confirm if any of her family presently has a Métis Nation Ontario harvesting card. Mrs. Jansen could not indicate when she received her Métis Nation Ontario card but did say she supplied her genealogy or family tree in addition to research, however could not verify if primary source documentation was used in the determination of that membership. Mrs. Jansen indicated that she "*believes she did have*" her Métis Nation Ontario membership prior to 2003. Mrs. Jansen did indicate that she used her Métis Nation

Ontario membership card to verify her Métis ancestry with her community local here in British Columbia. Mrs. Jansen mentioned that her grandfather resided on a First Nation reserve but could not clarify if he was First Nations or Métis but did say he could speak Michif and Cree. Mrs. Jansen said *"that they consider her grandfather Métis more or less"*. Mrs. Jansen did not know if her grandfather held a First Nations status card but also indicated that they never asked. Mrs. Jansen indicated that one side of her family is Chippewa and the other side originated in Quebec and parts of Ontario.

c) Société historique de Saint-Boniface

[13] Mr. Gilles Lesage, Directeur général of the Société historique de Saint-Boniface supplied a second professional genealogical opinion by e-mail on August 01, 2007. Mr. Lesage indicated the following;

"In the case of Jayne Jansen, we have not been able to find a direct ancestor who was officially recognized as a Métis. The Dallaire, Dubuc, Vaillancourt and Turcotte families have far reaching Quebec family ties with no link to a Métis ancestor."

The Standard of Review

[14] 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 9.0 of the **Senate Policies and Procedures**. The Senate further understands that the onus to prove citizenship is the responsibility of the applicant, Mrs. Jansen not the respondent, the MNBC Central Registry.

[15] 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

[16] Although this case does not deal with a breach in policy or procedure, the Senate upon review, found that the MNBC Central Registry did not violate or over-look any policies or procedures.

b) Genealogical Interpretation

[17] 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.

[18] Furthermore, the aboriginal ancestry was identified as Chippewa from the Wisconsin area. Although the ancestry does identify an aboriginal and a French-Canadian background none of these ancestors were found to have identified as Métis or Half-Breed or had network (via family or community) connections within the Métis Homeland. **R. v. Powley**, [2003] the Court defined the term Métis as "*...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*".

[19] 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 Mrs. Jansen's genealogy.

c) MNBC Legislative Adherence

[20] Mrs. Jansen fails to comply with two parts of the

National Definition as specified in the *MNBC Citizenship Act*.

Those being;

- i) Mrs. Jansen failed to supply the appropriate documentation that proves her historic Métis Nation Ancestry.
- ii) Mrs. Jansen failed to supply the appropriate documentation that proves her ancestry is distinctly unique from First Nations.

Decision

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

[22] 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.