



“The judicial arm of the Métis Nation British Columbia”

Senate Action No. 1-09-15-52-3-00011

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

PIERRE DAVID BOUCHARD

Applicant

and

MNBC CENTRAL REGISTRY

Respondent

DECISION

OF THE MÉTIS NATION BRITISH COLUMBIA SENATE

Dated 14/06/2008

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.
2. 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.

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: Bouchard vs. MNBC Central Registry,
1-09-15-52-3-00011

Date: 2008/03/05 and 2008/06/14
Senate Clerk: Trumbley
Location: Richmond and Kelowna

Between:

Pierre David Bouchard

Applicant

And

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

Respondent

Reasons for Decision

Residing Senators (March 2008, Richmond Sitting):

Senator Alan Edkins

Senator Philip Gladue

Senator Margaret Penner

Senator Bob Adams

Senator Bill Thibeault

Senator Ron Snider

Residing Senators (June 2008, Kelowna Sitting):

Senator Alan Edkins

Senator Philip Gladue

Senator Margaret Penner

Senator Bob Adams

Senator Bill Thibeault

Senator Ron Snider

Senator Gerald Pope



Introduction

[1] On November 18, 2007 the applicant, Mr. Pierre David Bouchard 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.

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 8.0 of the **Senate Policies and Procedures ver. 2.0** highlights the process utilized when conducting a citizenship and/or central registry appeal.

Privacy Consent to Release

[8] On December 20, 2007, Mr. Bouchard supplied a signed and witnessed "*Consent to Release Confidential Information*" form. This form provided the Senate with the following consents:

- i. Utilization of the documentation supplied to the MNBC Central Registry for the purpose of the applied for appeal.
- ii. To send the contents of Mr. Bouchard's Citizenship application file to a third-party for a second professional genealogical opinion.
- iii. To utilize all the information supplied or demanded, for the purpose of writing this MNBC Senate decision.

Second Genealogical Opinion

a) Société historique de Saint-Boniface

[9] Mr. Gilles Lesage, Directeur général of the Société historique de Saint-Boniface supplied a second professional genealogical opinion on February 22, 2008. Mr. Lesage indicated;

"After painstakingly investigating David Bouchard's genealogy as per your request, we have come to the conclusion that proof of Métis heritage at this time is impossible to establish due to a series of missing and seemingly inaccessible documentation. The genealogical lines in question were thoroughly researched to no avail".

[10] Mr. Gilles Lesage further stated;

"The possibility of aboriginal heritage all stems from the client's great-grandmother, Odile Allard's line. On the marriage record for the aforesaid and her groom, "Joseph Theothime Mercier", Odile's parent's names are recorded as being "Joseph Allard" and "Jane Beaudoin" both born in Wisconsin".

"We were unable to locate a marriage record for this couple... So, in an effort to approximate Joseph and Jane Allard's ages, we searched the 1880 USA census. In fact Jane doesn't appear on any census except for those prior to her marriage to Joseph. This suggests that she married sometime after the 1870 USA census and died sometime before the 1880 USA census. Without a marriage record to refer back to, there is virtually no evidence of such a union".

"This aside, the Jane appearing on the 1870 census with her parents "Narcisse Beaudoin" and "Josette", is the only Jane of the right age (b. 1855), of the right origins (born in Wisconsin) and in the right area (Bay Settlement, County of Brown) to be Odile's mother. However, for "Joseph Allard", Jane's groom to be, there is no such obvious uniqueness. There are indeed two Joseph Allards living in Jane Beaudoin's immediate vicinity. Both of which are similar in age (1847-1855), are born in Wisconsin, (as stated by Odile on the 1880

USA census), and both come from Canadian (likely Quebecois) parents!".

Impossible in this case to determine which of these is the correct Joseph Allard or to pursue his line. Therefore the line is left blank. This is the line the client has hoped would lead back to Louise Sauvagesse (b. 1621)... A detailed copy of Joseph and Jane's union or of Odile's birth (with her parent's ages at her time of birth) would be necessary to secure it."

Senate Ordered Research

[11] On March 05, 2008, the Senate adjourned the *Bouchard vs. MNBC Central Registry* (Senate File Number 1-09-15-52-3-00011).

[12] The adjournment was to demand additional research, by both the MNBC Central Registry (the Respondent) and the Société historique de Saint-Boniface, on Mr. Bouchard's genealogy.

[13] The focus of the additional research is to be on the genealogical line that posed the only potential to "validate and verify" the applicant's Métis citizenship, since all other avenues had been exhausted to no avail.

a) Société historique de Saint-Boniface

[14] Mrs. Janet La France from the genealogical department supplied a professional genealogical opinion, based on the Senate's demand, on June 02, 2008. Mrs. La France indicated;

"The information submitted by your client. Mr. Pierre David Bouchard, has once again been reviewed in the event of newly submitted ¹information. We were, this time successfully able to track his lineage on the Allard-Lafond side straight back into Quebec and early New

¹ Primary source documentation acquired by the MNBC Central Registry upon demand by the Senate included the 1860 and 1870 US Census Wisconsin and the Wisconsin Birth Index 1820-1907.

France. Here we found a marriage between a Pierre Artault and a Louise Manitouakikoué. In this instance we can confirm that your client Mr. Bouchard does indeed have aboriginal ancestry. However, this union having occurred so long before the birth of the Métis Nation and so far removed to the East of the country would have resulted in complete assimilation of the couple's offspring into French culture. Records pertaining to the descendant's marriages and census enumerations attest to the fact that at no point in time did these people recognize themselves as culturally distinct or ethnically different than their European father. Therefore, your client, though of distant aboriginal ancestry, does not connect into the Historic Métis Nation as they were then known or their homeland."

b) Métis Nation British Columbia Central Registry

[15] Mrs. Laurel Katernick, Director of Registry supplied a research summary letter dated June 11, 2008, based on the Senate's demand for additional research. Mrs. Katernick indicated;

"the last page of the "Ancestors of Josephite "Josette" Charbonneau", contains an error in the genealogy in Generation No. 4. The document submitted by the applicant identifies Pierre Carbonneau dit Provencal parents as Jacques Carbonneau dit Provencal parents are Jean Baptiste Carbonneau dit Provencal and Isabelle Lefebvre and not Jacques Carbonneau and Genevieve Martin".

"The applicant's ancestors were French Canadian, Menominee and of mixed aboriginal ancestry, they were not however from the traditional Métis homeland or founders of the first Métis Nation".

"The additional research conducted on this application verifies the applicant's ancestor is the Joseph Allard born March 13, 1847 in Brown County, Wisconsin".

The Standard of Review

[16] 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 8.0 of the **Senate Policies and Procedures, version 2.0**. The Senate further understands that the onus to prove citizenship is the responsibility of the applicant, Mr. Bouchard not the respondent, the MNBC Central Registry.

[17] The Senate has based this decision on the evidence supplied by the applicant and respondent, in addition to the further requested research, and weighed this to the summary of case law at the time of the two hearings.

Analysis

a) MNBC Policy and Procedure Adherence

[18] 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

[19] 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 Historic Métis Nation Homeland.

[20] The Société historique de Saint-Boniface and the MNBC Central Registry supplied full primary source documentation, including original scanned census data, that supported the genealogical charts. The Quebec descendants claimed to be Métis by the applicant consistently identified as not being culturally distinct or ethnically different from their European fathers on marriage and census enumerations for over two-hundred years (1621 - 1840). This held true for the genealogical lines of Bouchard, Mercier, Allard, Beaudoin, Lafond, Grandmont, Desrosiers and Artout.

[21] Additionally, the documentation supplied by the applicant on the Charbonneau family line failed to establish a primary source connection with Menominee ancestry (Charlotte, 1810).

[22] Census documents acquired upon demand by the Senate clearly indicate that Joseph Allard and family descendants identified as being "W" for white in Wisconsin from 1870 to the early 1900s.

[23] There was evidence supplied that proved Mr. Bouchard's genealogy held a connection to an aboriginal ancestor back in the early 1600s (Louise Sauvagesse or Manitouakikoué) in the province of Quebec. This is the only confirmation of aboriginal ancestry located in Mr. Bouchard's family line that was supported by primary source documents.

[24] 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. Bouchard's genealogy.

c) MNBC Legislative Adherence

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

- i) *Mr. Bouchard failed to supply the appropriate documentation that proves his historic Métis Nation Ancestry.*
- ii) *Mr. Bouchard failed to supply the appropriate documentation that proves any Métis ancestry that connects to the Historic Métis Nation Homeland during the relevant time period.*
- iii) *Mr. Bouchard failed to supply the evidence which would identify a historic Métis "distinctiveness" other than that of his French Canadian and distant First Nations ancestry.*

Decision

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

[27] 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.