

Before:

Metis Settlements Appeal Tribunal
Membership Panel

Between:

Ben Hogenson, Appellant

-and-

Kikino Metis Settlement Council, Respondent

Concerning:

Membership Dispute

Hearing Date:

June 2, 2008

Decision Date:

June 27, 2008

DECISION

MSAT Panel members

Allan Lamouche, Panel Chair
Violet Haggerty, Panel Member
John Brosseau, Panel Member

Parties present at the hearing

Ben Hogenson, Appellant
Floyd Thompson, Chairman, Kikino Metis Settlement Council
Bill McEllhanney, Legal Counsel for Kikino Metis Settlement Council
Audrey Brooks, support person for Ben Hogenson

MSAT staff present at the hearing

Harry Cunningham, Dispute Resolution Officer
Harold Robinson-Tribunal Secretary/Director

Place and date of the Hearing

Metis Settlements Appeal Tribunal Office, Edmonton, Alberta
June 2, 2008

Issue/relief - what the Appellant wants

1. *Membership*: The Appellant, Ben Hogenson, wants to be granted membership in the Kikino Metis Settlement.

1. Membership in Kikino Metis Settlement

1.1 Applicable legislation – jurisdiction and decision-making criteria

The Membership Panel's authority to decide this matter comes from sections 83 and 84 of the *Metis Settlements Act* (the Act) [R.S.A. 2004]. These relevant parts of these sections read as follows:

Appeals

83(1) If a Settlement Council refuses or defers an application for membership, or an application is not considered or a decision is not made by the Settlement Council within the required time, the applicant may appeal in writing to the Appeal Tribunal

- (b) within 45 days after receiving notice of the refusal or deferral...

Appeal Tribunal hearing

84(1) On receipt of an appeal under section 83, the Appeal Tribunal must hold a hearing after giving everyone it considers affected by the appeal reasonable time of the date, time and place of the hearing.

- (2) The Appeal Tribunal must make its decision in accordance with Part 7.

The Appellant applied for membership in the Kikino Metis Settlement on April 12, 2007. Kikino Metis Settlement Council considered the Appellant's application and refused it. They sent a letter dated June 14, 2007 to the Appellant advising him of their refusal. The Appellant filed a written appeal within 45 days of receiving notice of the refusal with the Metis Settlements Appeal Tribunal on June 20, 2007.

The Appellant met the conditions for appeal. The Tribunal is therefore duty-bound to decide the membership question now before us.

1.2 Evidence before the Panel

The Appellant said he was denied membership by the Kikino Metis Settlement Council because he failed to prove to Kikino Council's satisfaction that he had *Canadian Aboriginal ancestry* as required under the Act.

Having named the key criteria in this membership dispute, the Appellant brought the Panel's attention to a series of documents. Some of these documents had been submitted to Kikino Council at the time he applied for membership, some had not.

One document that was submitted to Kikino Council was his birth certificate. It reads that the Appellant was born in Hartford Connecticut. It also reads that the Appellant and his parents are “white.” The Appellant explained that the United States of America has no classification for Metis, only treaty and non-status Indians and he backed this up with a letter from his mother to the Metis Settlements Branch. This letter was included in the hearing package at tab 3. He also told the Panel that his mother was just visiting his Aunt in America and she did not expect to give birth there. He added that they returned to Canada a week after he was born.

The Appellant then brought the Panel’s attention to another document that had not been submitted to Kikino Council at the time of his application for membership. The document, which was set out in tab 7 of the hearing package, was a genealogical record prepared by the Appellant’s mother. According to the Appellant, she constructed it from information taken from a family bible. He further stated that he didn’t submit it to Kikino Council when he first applied for membership because it was not ready then.

As set out in the purported genealogical record by way of a hand-written note, the Appellant’s great, great, great, grandparents were Indians from Upper Canada.

The Appellant also said he identifies with Metis history and culture. To this end, he brought the Panel’s attention to membership that had been granted to him by the Canadian Metis Council. He spoke about what being Metis means to him, including, amongst other things, learning from elders, practicing “traditional ways” of sweats and other ceremonies, and how his relations conducted Sundances in southern Alberta.

With respect to his connection to Kikino Metis Settlement, it was brought to the Panel’s attention that one of statutory declarations supporting his application for membership was from the wife of the present Chairman for Kikino Council. He also told the Panel that his mother and brother were members of Kikino Council. He did concede without prompting, though, that the circumstances of their membership were unique and that he was not relying on their membership in Kikino to make the case for his membership. He added that he lived in Kikino Settlement for a time as a child and only left because Social Services took him away.

The Appellant concluded by stating that he would secure land and preserve a peaceful community if granted membership in Kikino Metis Settlement.

For its part, the Respondent said that the Appellant failed to prove he has Canadian aboriginal ancestry, which is his burden to bear. The Respondent said that it relied on the documents submitted to it in April 2007 (which did not include the purported genealogical record) and that these documents—particularly the birth certificate—read that the Appellant and his parents are white.

The Respondent reminded the Panel of previous Appeal Tribunal decisions setting out the standards of proof in this regard—which generally require more than mere assertions of ancestry, but independent corroboration of ancestry.

The Respondent also argued that one of the statutory declarations supplied by the Appellant were not valid because the elder did not meet the requirement set out in Kikino's Membership Bylaw.

The Respondent concurred with the Appellant that the fact his mother and brother had been granted membership in Kikino Metis Settlement could not be relied on by the Appellant to prove his Metis identity.

Finally, the Respondent said that it met with the Appellant on June 5, 2007 to provide him with an opportunity to provide evidence in support of his application for membership.

1.3 Findings of Fact

- The Appellant applied for membership for the Kikino Metis Settlement on April 12, 2007.
- The Appellant met with Kikino Metis Settlement Council on June 5, 2007 to discuss his membership application.
- The purported genealogical record was not made available to Kikino Metis Settlement Council before it made its decision.
- Kikino Metis Settlement Council notified the Appellant in a letter dated June 14, 2007 that his application for membership was refused because he failed to prove his Canadian Aboriginal ancestry as required under the Act.
- On June 20, 2007 Ben Hogenson filed an appeal in writing with the Metis Settlements Appeal Tribunal.

1.4 Analysis / Reasons

The *Alberta-Metis Settlements Accord* of 1989 vested the Metis Settlements of Alberta with self-governance authority. A key aspect of this authority is the framework for defining Metis identity and conferring membership in the Metis Settlements.

This framework for membership is principally contained in Part 3 of the Act. The relevant sections of which read:

Proving Metis identity

76 Every application for membership in a Settlement must be sent to the Settlement office and must be accompanied by

- (a) a statutory declaration that
 - (i) the applicant has Canadian Aboriginal ancestry, describing the fact on which the declaration is based, and
 - (ii) the applicant identifies with Metis history and culture;
- (b) one or more of the following:
 - (i) genealogical records as evidence that the applicant has Aboriginal ancestry;
 - (ii) a statutory declaration of at least 2 Metis who are recognized as Metis elders that the applicant has Aboriginal ancestry, describing the facts on which the declaration is made;

- (iii) such other evidence satisfactory to the Settlement Council that the applicant has Aboriginal;

Membership decisions

78(1) An application for membership in a Settlement can be approved only if the Settlement Council is satisfied that the applicant

- (a) is a person of Canadian Aboriginal ancestry who identifies with Metis history and culture;
- (b) has or will have suitable living accommodations in the Settlement area; and
- (c) is committed to living in the Settlement area and preserving a peaceful community.

In the Panel's opinion, this matter turns on the question of whether the Appellant has discharged his burden of proving he is of Canadian Aboriginal ancestry. In this regard, the Panel is not satisfied that the evidence provided by the Appellant shows he is of Canadian Aboriginal ancestry.

As presented by the Appellant, the genealogical record—which is essentially a home-made document with hand-written notations—is not reliable. This is not to say that the document is untrue, but that in the Panel's opinion the lack of other independent supports, such as copies of church records, or other overlapping genealogies, makes it improper for the Panel to give it the weight necessary to reasonably find that Canadian Aboriginal ancestry has been established.

To the extent that the Elders' declarations might support the Appellant's claim of Canadian Aboriginal ancestry, the Panel cannot find anywhere within the declarations (neither of which is sworn) the facts upon which the declarations are made. Again, the lack of supporting facts makes it improper for the Panel to rely on the documents as presented.

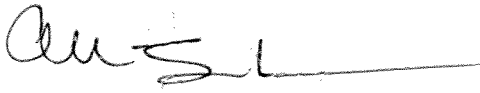
On a related point concerning the validity of the declarations, though, the Panel is not moved by the Respondent's submission that one of the Elders fails to meet the *age restriction* set out in Kikino's Membership Bylaw. In the Panel's view, being recognized as an Elder has much less to do with one's age, and much more to do with one's wisdom and knowledge of Metis history and culture, and general good standing and respect within one's community. Thus, while it is not the place of this Panel to suggest that Kikino's Membership Bylaw be replaced—not even in part—we do encourage the leadership and members of Kikino to continue exploring and naming the intrinsic qualities of "Eldership" that make our Elders vital to our families, communities and culture.

Given the Appellant's failure to prove Canadian Aboriginal ancestry—which is one of the mandatory criteria set out in section 78 of the Act—it is not necessary to continue this analysis any further.

1.5 Decision

The Appellant's appeal to be granted membership in Kikino Metis Settlement is denied.

Signed in Edmonton, Alberta, this 27th day of June, 2008.

A handwritten signature in black ink, appearing to read 'Allan Lamouche', with a long horizontal line extending to the right.

Allan Lamouche, Panel Chair