

Federal Court



Cour fédérale

Date: 20111020

Docket: T-1407-10

Citation: 2011 FC 1197

Ottawa, Ontario, October 20, 2011

PRESENT: The Honourable Mr. Justice Kelen

BETWEEN:

MUGFORD, KAITLIN

Applicant

and

**FIRST MINISTER,
NUNATSIAVUT GOVERNMENT**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application for judicial review of a decision of the Inuit Membership Appeal Board (the Board), dated July 19, 2010, denying the applicant's application for membership in the Nunatsiavut Government pursuant to Chapter 3 of the Labrador Inuit Land Claims Agreement, dated January 22, 2005 (the Agreement). The applicant seeks declaratory relief restoring the applicant's rights as a beneficiary of the Agreement.

FACTS

Background

[2] The applicant, Kaitlin Mugford, was born February 7, 1990. Her father applied on her behalf for membership in the Labrador Inuit Association shortly after her birth in 1990, but that application was denied.

[3] In 2006, the applicant applied for membership in the Nunatsiavut Government. That application presented the applicant's ancestry as follows:

Name	Relation to applicant	Place of birth	Place of residence	Percentage Inuit ancestry
Richard Mugford	Father	Goose Bay	Ottawa (until death)	56%
Jody Labelle	Mother	Ottawa	Ottawa	0%
Lawrence Mugford	Father's father	Cat Trap Brook	Goose Bay (until death)	43%
Hilda Mugford	Father's mother	Paradise River, Labrador	Goose Bay	68%

[4] In a letter dated January 12, 2007, the Registrar of Members of the Nunatsiavut Government, Don Dicker, informed the applicant that her membership application met the eligibility criteria in Part 3.3 of the Agreement, and therefore was approved.

[5] Mr. Dicker sent the applicant another letter, dated August 14, 2009, to advise her that section 3.11.4 of the Agreement states that, when a child member becomes an adult (i.e. on his or her 19th birthday), he or she must reapply for enrolment and must meet the eligibility criteria at that time. The letter requested that the applicant complete the enclosed application.

[6] The applicant submitted the application, dated November 15, 2009. On November 25, 2009, Mr. Dicker sent the applicant a letter advising her that her application was incomplete, and requesting that she send the omitted information. The letter stated that the Rigolet and Upper Lake Melville Membership Committee (the Committee) would make its decision regarding her application once this information was received.

[7] In a letter dated March 17, 2010, the applicant received notice that the Committee had made a preliminary decision that she did not meet the eligibility criteria, specifically because “the information that you have provided in 2.3 of your application show [sic] that you have no connections to the Labrador Inuit Land.” The letter informed the applicant that she had the opportunity to submit further information in support of her application, which the Committee would consider before making the preliminary decision final.

[8] On April 19, 2010, the applicant forwarded an email from Mr. Dicker to the Committee, which stated that the applicant’s eligibility had not changed since she was approved for membership in 2007, and which expressed puzzlement as to how the outcome could be different in this application.

[9] On April 22, 2010, the applicant made further submissions to the Committee through counsel, including:

- a. That she had more than the required 25% Inuit ancestry;
- b. That her application for membership was accepted in 2007;

- c. That she met the test for connection to the Labrador Inuit Land set out in Part 3.1.2 of the Agreement, because her father was born in the Labrador Inuit Settlement Area.

[10] In a letter dated May 10, 2010, the Committee rejected the applicant's application. The letter stated in part:

The Committee would like to point out to you what Chapter 3, Part 3.1, Article 3.1.1 reads; it means the members of the Aboriginal people who used to be known as Eskimos who traditionally used and occupied and currently use and occupy the Labrador Inuit Land Claims Area. It means in other words the individual [*sic*] who taken together are the Inuit of Labrador Inuit Land Claims Area. The Labrador Inuit Land Claims Area is defined by the [map] in schedule 1-A of the Land Claims Agreement. There are of course other Inuit throughout Canada's north. But the Labrador Inuit Land Claims Agreement does not refer to them. So Inuit does not mean Inuit of Baffin Island or Inuit of Northern Quebec or the Inuit of Southern Labrador. The above mentioned areas [*sic*] ancestry excluded the information that you have submitted on 2.3 of your application, your grandmother Hilda Heard Mugford was born in the above mentioned area leaving you 10.75% ancestry, with this information that you have provided on the above mentioned the Committee is rejecting your application under Chapter 3. Part 3.3. Article 3.3.3 reads you must have at least 25% ancestry.

[11] The letter advised the applicant of her right to appeal the Committee's decision to the Board. The applicant appealed the decision on May 28, 2010. In a letter confirming the filing of the notice of appeal, the applicant requested that the Board forward any rules of procedure it had established for appeals.

[12] The Board sent the applicant a letter dated July 19, 2010, in response to the applicant's question about procedure. It stated in part:

The Board does not have rules of procedures as such, we follow Chapter 3 of the Land Claims Agreement and the Beneficiaries Enrolment Act.

The Board also refers to an internal manual prepared for use by the Registrar's Office the Memberships Committee and the Appeal Board which provides general guidelines but which is not a set of procedural rules for Appeal Board hearings.

Where necessary in relation to an Appeal, the Board makes procedural decisions on a care [*sic*] by case basis.

Notably, this letter bears the same date as the letter containing the Board's decision on the applicant's appeal. The Board did not offer the applicant a hearing, or offer her the opportunity to present any additional evidence of her ancestry and connection to the Labrador Inuit Settlement Area before it reached its decision.

[13] The applicant submitted an affidavit to the Court, not before the Board in its decision, from the applicant's paternal grandmother, Ms. Hilda Mugford. This affidavit contains evidence that was not before the Board regarding the applicant's Inuit ancestry. The affidavit deposed that the applicant's paternal great-grandparents – Hilda Mugford's parents – were Inuit and lived in the Labrador Inuit Land Claims Area. The affidavit also deposed that the applicant's grandfather, Lawrence Mugford, was born in the Labrador Inuit Land Claims Area.

Decision under review

[14] In a letter dated July 19, 2010, the Board advised the applicant that her application for membership into the Nunatsiavut Government was denied. The letter stated that the Board had reviewed the family ancestral bloodline and the residency status of the applicant, based on the information she had submitted to the Registrar, the Committee and the Board.

[15] The letter stated that the eligibility criteria for membership in the Nunatsiavut Government are set out in Part 3.3 of the Agreement. It stated that the Board was also required to consider the definitions and interpretive provisions of the Agreement in order to apply those criteria.

[16] The letter reproduced the definition of “Inuit” and the interpretive provisions from Part 3.1 of the Agreement, as well as the eligibility criteria under Part 3.3 of the Agreement:

Part 3.1 Definitions and Interpretation

3.1.1 In this chapter:

"Inuit" means all those members of the aboriginal people of Labrador, sometimes known as Eskimos, that has traditionally used and occupied and currently uses and occupies the lands, waters and sea ice of the Labrador Inuit Land Claims Area, or any Region.

3.1.2 For purposes of this chapter, an individual who is not a Permanent Resident of the Labrador Inuit Settlement Area is connected to the Labrador Inuit Settlement Area if he or she:

- (a) was born in the Labrador Inuit Land Claims Area; or
- (b) is the child of an individual who was born in the Labrador Inuit Land Claims Area; or
- (c) is the grandchild of at least two individuals who:
 - (i) were born in the Labrador Inuit Land Claims Area; and
 - (ii) are Permanent Residents of the Labrador Inuit Land Claims Area or were Permanent Residents of the Labrador Inuit Land Claims Area when they died; and
- (d) has associations with the Labrador Inuit Land Claims Area or a Region and close kinship ties to Inuit or Kablunângajuit who are Permanent Residents of the Labrador Inuit Land Claims Area, and those associations and ties are recognized by Inuit or Kablunângajuit other than that individual's kin who are Permanent Residents of the Labrador Inuit Land Claims Area.

Part 3.3 Eligibility Criteria

3.3.1 An individual is eligible to be enrolled on the Register if that individual meets the Criteria.

3.3.2 An individual shall be enrolled on the Register if, on the Effective Date, that individual is alive and is:

- (a) a Canadian citizen or a permanent resident of Canada under federal Legislation;
- (b) an Inuk pursuant to Inuit customs and traditions and is of Inuit ancestry, or is a Kablunângajuk; and
- (c) either:
 - (i) a Permanent Resident of the Labrador Inuit Settlement Area; or
 - (ii) a Permanent Resident of a place outside the Labrador Inuit Settlement Area but is connected to the Labrador Inuit Settlement Area.

3.3.3 An individual who has at least one-quarter Inuit ancestry is eligible to be enrolled on the Register if that individual is a Canadian citizen or a permanent resident of Canada under federal Legislation despite anything in section 3.3.2 or 3.3.4 to the contrary.

[17] The letter then stated:

The Board has concluded that the Applicant has neither the Inuit ancestry nor the residency connected to the Labrador Inuit Land Claims Area to be eligible for enrolment as a beneficiary, therefore your application for membership into the Nunatsiavut Government is hereby denied.

RELEVANT PROVISIONS OF THE LABRADOR INUIT LAND CLAIMS AGREEMENT

[18] Part 3.11 of the Labrador Inuit Land Claims Agreement, dated January 22, 2005, sets out the procedures to apply for enrolment as a beneficiary:

Part 3.11 Enrolment Procedures

3.11.1 Anyone who wishes to enrol as a Beneficiary must apply to the appropriate Committee and provide all necessary information in support of his or her application.

...

3.11.4 Anyone who was enrolled on the Register as a minor must reapply for enrolment on the Register upon reaching the age of majority and must meet the Criteria for enrolment at that time.

[19] Part 3.1 defines “Inuit” for the purposes of the applications for enrolment, and also contains interpretive provisions regarding the test for connection to the Labrador Inuit Settlement Area:

Part 3.1 Definitions and Interpretation

3.1.1 In this chapter:

"Inuit" means all those members of the aboriginal people of Labrador, sometimes known as Eskimos, that has traditionally used and occupied and currently uses and occupies the lands, waters and sea ice of the Labrador Inuit Land Claims Area, or any Region.

3.1.2 For purposes of this chapter, an individual who is not a Permanent Resident of the Labrador Inuit Settlement Area is connected to the Labrador Inuit Settlement Area if he or she:

- (a) was born in the Labrador Inuit Land Claims Area; or
- (b) is the child of an individual who was born in the Labrador Inuit Land Claims Area; or
- (c) is the grandchild of at least two individuals who:
 - (i) were born in the Labrador Inuit Land Claims Area; and
 - (ii) are Permanent Residents of the Labrador Inuit Land Claims Area or were Permanent Residents of the Labrador Inuit Land Claims Area when they died; and
- (d) has associations with the Labrador Inuit Land Claims Area or a Region and close kinship ties to Inuit or Kablunângajuit who are Permanent Residents of the Labrador Inuit Land Claims Area, and those associations and ties are recognized by Inuit or Kablunângajuit other than that individual's kin who are Permanent Residents of the Labrador Inuit Land Claims Area.

[20] Part 3.3 of the Agreement sets out the eligibility criteria for enrolment as a beneficiary:

Part 3.3 Eligibility Criteria

3.3.1 An individual is eligible to be enrolled on the Register if that individual meets the Criteria.

- 3.3.2 An individual shall be enrolled on the Register if, on the Effective Date, that individual is alive and is:
- (a) a Canadian citizen or a permanent resident of Canada under federal Legislation;
 - (b) an Inuk pursuant to Inuit customs and traditions and is of Inuit ancestry, or is a Kablunângajuk; and
 - (c) either:
 - (i) a Permanent Resident of the Labrador Inuit Settlement Area; or
 - (ii) a Permanent Resident of a place outside the Labrador Inuit Settlement Area but is connected to the Labrador Inuit Settlement Area.

3.3.3 An individual who has at least one-quarter Inuit ancestry is eligible to be enrolled on the Register if that individual is a Canadian citizen or a permanent resident of Canada under federal Legislation despite anything in section 3.3.2 or 3.3.4 to the contrary.

[21] Part 3.10 of the Agreement grants jurisdiction to the Board to hear appeals of the Membership Committee decisions. It also states that those appeals will proceed as re-hearings:

Part 3.10 The Inuit Membership Appeal Board

3.10.1 On the date the Register is published under section 3.7.1, the Nunatsiavut Government shall establish the Inuit membership appeal board to hear and determine:

- (a) all appeals referred to in section 3.10.9;
- (b) all matters referred back to it by the Federal Court; and
- (c) applications referred to in section 3.11.12.

...

3.10.10 An appeal shall proceed as a re-hearing at which the Appellant may introduce additional evidence.

[22] Part 3.12 permits an application for judicial review to this Court by an individual affected by a decision of the Board:

Part 3.12 Judicial Review of Commission and Board Decisions

3.12.1 No order, decision or ruling of the Commission or the Board may be appealed. Every order, decision or ruling of the Commission or the Board is final and may not be reviewed in any court except as permitted by this part.

3.12.2 Notwithstanding sections 3.5.8 and 3.10.6, an application for judicial review of an order, decision or ruling of the Commission or the Board may be made to the Federal Court by the individual directly affected by the order, decision or ruling within 30 clear days from the date on which the order, decision or ruling was received by that individual, or within any additional time that a judge of the Federal Court may allow.

3.12.3 After hearing an application under section 3.12.2 the Federal Court may:

- (a) order the Commission or the Board to do anything it has unlawfully failed or refused to do or has unreasonably delayed in doing;
- (b) decide a decision, order, act or proceeding of the Commission or the Board to be invalid or unlawful;
- (c) quash, set aside or set aside and refer back for determination in accordance with any directions it considers to be appropriate a decision, order, act or proceeding of the Commission or the Board; or
- (d) prohibit or restrain a decision, order, act or proceeding of the Commission or the Board.

3.12.4 The Federal Court may grant a remedy referred to in section 3.12.3 if it is satisfied that the Commission or the Board:

- (a) acted without jurisdiction, acted beyond its jurisdiction or refused to exercise its jurisdiction;
- (b) failed to observe a principle of natural justice, procedural fairness or other procedure that it was required by Law to observe;
- (c) erred in Law in making a decision or an order, whether or not the error appears on the face of the record;
- (d) based its decision or order on an error of fact made in a perverse or capricious manner or without regard for the material before it;
- (e) acted, or failed to act, as a result of fraud or perjured evidence; or
- (f) acted in any other way contrary to Law.

ISSUES

[23] The applicant submits that the following issues are raised:

- a. Did the respondent err in law?
- b. Did the respondent breach the principles of procedural fairness?
- c. Did the respondent base its decision on an erroneous finding of fact?

- d. Did the respondent act in other ways contrary to law?
- e. What is the appropriate remedy?

[24] The respondent concedes that the applicant was not afforded the opportunity to fully present her case to the Board in her appeal. The respondent states that there is evidence before the Court that was not before the Board, and which may have affected its decision had the applicant been given the opportunity to present it. Therefore, the respondent submits that the application should be granted on this ground alone, and the matter referred back to the Board for reconsideration through a full hearing, to allow the applicant the opportunity to present all of her evidence.

STANDARD OF REVIEW

[25] The applicant submits that the standard of review in this case is correctness, because the Board did not properly exercise its jurisdiction—the applicant submits that the Supreme Court has stated that for true questions of jurisdiction, the standard of review is correctness: *New Brunswick (Board of Management) v Dunsmuir*, 2008 SCC 9. The respondent submits that the standard of review is reasonableness, and also cites *Dunsmuir*.

[26] The Court finds that the Board's decision is to be reviewed on a standard of reasonableness, as the Board was interpreting and applying the Agreement, and determining issues within its expertise. In reviewing the Commission's decision using a standard of reasonableness, the Court will consider "the existence of justification, transparency and intelligibility within the decision-making process" and "whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law": *Dunsmuir*, above, at paragraph 47.

[27] Questions of procedural fairness will be reviewed on a standard of correctness.

ANALYSIS

[28] The respondent concedes that the applicant did not receive a fair hearing before the Board. The hearing will allow the applicant to adduce evidence with respect to her Inuit ancestry, as defined in the Agreement, and her connection to the Labrador Inuit Settlement Area, also as defined in the Agreement.

[29] The Court recognizes that the Agreement is difficult and complex to understand. The Court has concluded that, if the applicant can meet either of the two eligibility criteria (and not necessarily both), she is eligible to be enrolled as a beneficiary under the Agreement. More evidence is required to demonstrate that the applicant has at least one-quarter Inuit ancestry under section 3.3.3 of the Agreement, remembering that “Inuit” is defined as those aboriginal people having “traditionally used and occupied” the Labrador Inuit Land Claims Area. It is not necessary to establish that her ancestors were born in that area, or died there—only that they “traditionally used and occupied” the area. If this criterion is met, the applicant does not need to show that her ancestors were “connected” to the Labrador Inuit Settlement Area, as defined in section 3.1.2.

[30] The applicant has demonstrated, through the affidavit of her grandmother, Hilda Mugford, that there is evidence about the applicant’s paternal grandfather and her paternal great-grandparents which may be able to establish that she has the requisite Inuit ancestry. The Court cannot issue a declaration as to the applicant’s ancestry without the evidence that the applicant would adduce before the Board. The Court notes that the Court is a specialized tribunal, able to assess whether her

ancestors “traditionally used and occupied” the Labrador Inuit Land Claims Area. Therefore, this matter must be referred back to the Board to afford the applicant the opportunity to adduce all her evidence. The Court notes that the applicant requested that the matter be referred back to the Committee; however, the Court is only authorized to refer the matter back to the Board.

[31] The Court further finds that, in addition to the breach of procedural fairness, the Board’s reasons for its decision were inadequate and not intelligible. Its reasons do not disclose the justification for its conclusion that the applicant did not have the required ancestry or connectedness to be found eligible as a beneficiary under the Agreement. Thus, the Board’s decision was not reasonable—however, the remedy is still to refer the matter back to the Board for reconsideration through a full hearing.

COSTS

[32] The applicant is entitled to party-and-party costs under Tariff B of the *Federal Courts Rules*. In this case, there is no reason to depart from the normal rule.

JUDGMENT

THIS COURT’S JUDGMENT is that the application for judicial review is granted. The Board’s decision is set aside and the matter is referred back to the Board for a full hearing of the appeal, in which the applicant will be permitted to present all of her evidence. Costs awarded to the applicant.

“Michael A. Kelen”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-1407-10

STYLE OF CAUSE: MUGFORD, KAITLIN v. FIRST MINISTER,
NUNATSIAVUT GOVERNMENT

PLACE OF HEARING: Ottawa, Ontario

DATE OF HEARING: October 3, 2011, by video-conference

**REASONS FOR JUDGMENT
AND JUDGMENT:** Kelen J.

DATED: October 20, 2011

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