Federal Court  Cour fédérale

Date: 20121211

Docket: T-568-12

Citation: 2012 FC 1464

Ottawa, Ontario, December 11, 2012

PRESENT: The Honourable Mr. Justice Zinn

BETWEEN:

BLAKE, KATHERINE

Applicant

and

FIRST MINISTER, NUNATSIAVUT GOVERNMENT

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] Katherine Blake seeks to set aside the decision of the Inuit Membership Appeal Board [the Appeal Board] dated February 12, 2012, that determined that she was not eligible to be enrolled as a Beneficiary of the Labrador Inuit Land Claims Agreement [the Agreement].

[2] The Agreement defines a Beneficiary as "an individual enrolled on the Register." The Criteria that makes one eligible to be enrolled on the Register are set out in Part 3.3 of the Agreement which is reproduced and attached as Annex A. Relevant to this judgment is that one

route to eligibility is demonstrating that one "has at least one-quarter Inuit ancestry […] [and] is a Canadian citizen or a permanent resident of Canada under federal Legislation [emphasis added]:" see section 3.3.3.

[3] Ms. Blake, having reached the age of majority, re-applied to be enrolled as a Beneficiary on May 26, 2011, pursuant to section 3.11.4 of the Agreement. By her calculations, as reflected in her application for membership, Ms. Blake reasoned she had 27.337% "Inuit ancestry."

[4] By letter dated June 21, 2011, the Rigolet and Upper Lake Melville Membership Committee [the Rigolet Committee] notified Ms. Blake that it had made a preliminary decision that she did not meet the Criteria for enrolment as a Beneficiary because she has less than the one-quarter Inuit ancestry required by section 3.3.3. In particular, the Rigolet Committee's preliminary conclusion was that Ms. Blake had 16.40% Inuit ancestry. The Rigolet Committee invited Ms. Blake to make representations or to request a hearing in person.

[5] Ms. Blake asked the Rigolet Committee to convoke an oral hearing, which it did on October 29, 2011. Ms. Blake was at university at that time, so her father, Henry Blake, attended the hearing on her behalf, as did her grandfather, Edward Blake, and her aunt, Patsy Murphy.

[6] On November 7, 2011, on the basis of her written application and the oral representations at the hearing, the Rigolet Committee decided that Ms. Blake did not have one quarter Inuit ancestry. Ms. Blake appealed that decision to the Appeal Board.

[7] On February 8, 2012, the Appeal Board convened to hear Ms. Blake's submissions. Ms. Blake did not appear in person, but the Board heard representations from Henry Blake, Patsy Murphy, and Judy Blake.

[8] The Appeal Board concluded that Ms. Blake did not meet the membership criteria of the Agreement. It conducted an analysis of Ms. Blake's "Inuit ancestral blood quantum" and determined that Ms. Blake had only 10.93% Inuit ancestry, which was short of the 25% minimum required by section 3.3.3 of the Agreement. The Appeal Board also considered a second possible route to membership under section 3.3.4; however, the Board concluded that Ms. Blake was not Inuk as required by paragraph 3.3.4(b), or, in any event, was not "connected" to the Labrador Inuit Settlement Area as required by subparagraph 3.3.4(c)(ii).

[9] Although Ms. Blake raises three issues with the decision, there is truly only one issue that the Court must examine: Is the Appeal Board's decision reasonable? The parties agree, as does the Court, that the standard of review is reasonableness: *Mugford v Nunatsiavut Government*, 2011 FC 1197 [*Mugford*]. "Reasonableness is concerned mostly with the existence of justification, transparency and intelligibility within the decision-making process … [and] it is also concerned with whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law." *Dunsmuir v New Brunswick*, 2008 SCC 9, at para 47.

[10] I find that the decision under review lacks intelligibility for the following reasons and it must be set aside.

[11] It is not disputed that Ms. Blake has Inuit ancestry only on her father's side. Her relevant ancestors as disclosed in the Appeal Board's decision and her application for membership are the following:

Sidney Blake (paternal great grandfather) - and - Alfreda Davis (paternal great grandmother)

Edward Blake (grandfather) - and - Kathleen Chaulk (grandmother)

Henry Blake (father).

[12] The Appeal Board determined that the Agreement's reference to an applicant's "Inuit ancestry" means that person's Inuit ancestral blood quantum, which is determined by adding the percentages of the Inuit ancestral blood quantum of each parent of the applicant and dividing the sum by two, and so on up the family tree. There is nothing unreasonable in that manner of proceeding and the Appeal Board is entitled to deference in its view of the meaning of "Inuit ancestry" and the manner of determining it.

[13] The submission made by Ms. Blake in her membership application as to her Inuit ancestral blood quantum is set out in schematic form in Annex B. It shows that she has 27.337% Inuit ancestry, more than enough to be registered as a Beneficiary.

[14] The Appeal Board accepted the Inuit ancestral blood quantum of Sidney Blake and Kathleen Chaulk as stated by Ms. Blake. However, it disputed her submissions on the Inuit ancestral blood quantum of Alfreda Davis, Edward Blake, and Henry Blake. Its finding is set out

in schematic form in Annex C and shows that Ms. Blake has 10.93% Inuit ancestry, which is not enough to be registered as a Beneficiary.

[15] The only reason provided by the Appeal Board for assigning Alfreda Davis, Ms. Blake's paternal great-grandmother, with 0% Inuit ancestral blood quantum is that:

> Alfreda Davis was from Goose Cove, Labrador, a place near Cartwright, Labrador that is outside the Labrador Inuit Settlement Area. Her blood quantum does not meet the criteria contained on page 30 of the Labrador Inuit Claims Agreement.

[16] The reference to the "criteria contained on page 30" of the Agreement, appears to be a reference to the definition of "Inuit" which is found on that page and which reads as follows:

> "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. "Inuit" does not include beneficiaries of:
>
> (a) the "James Bay and Northern Québec Agreement";
>
> (b) the "Inuvialuit Final Agreement"; or
>
> (c) the "Agreement between the Inuit of the Nunavut Settlement Area and Her Majesty the Queen in Right of Canada";

[17] The Appeal Board does not explain how it is that it finds that Alfreda Davis fails to meet the definition of "Inuit." The submission made by Ms. Blake in her membership application was that Alfreda Davis was born in Goose Cove in 1906 and was the child of Charles Davis (whose Inuit ancestral blood quantum was 75%) and Mary Ann Perry (whose Inuit ancestral blood

quantum was 100%). If true, then Alfreda Davis' Inuit ancestral blood quantum would appear to be 87.50%, as Ms. Blake claimed.

[18] The Court assumes (something that would not be done if the decision was intelligible) that the Appeal Board found that Alfreda Davis had 0% Inuit ancestral blood quantum because, and only because, she was born outside the Labrador Inuit Settlement Area as defined by the Agreement. This assumption is based in large part on the manner in which the Appeal Board treated the Inuit ancestral blood quantum of her son, Edward Blake. The Appeal Board states:

> This [ie Sidney Blake having 43.75% and Alfreda Davis having 0%] means your grandfather Edward Blake has 21.87% and he was born in Grand Lake, Labrador, an area outside the Labrador Inuit Settlement Area, therefore his blood quantum does not count for purpose of this agreement. [emphasis added]

[19] On the basis of the above, and most particularly the statements concerning Edward Blake, it appears that the Appeal Board has interpreted the Agreement such that an applicant only inherits the Inuit blood of an ancestor who was born in the Labrador Settlement Area, even if the parents of that ancestor were 100% Inuit. I say that this "appears" to be the case, because the Appeal Board's treatment of such ancestors is not consistent, and this lack of consistency is part of the reason its decision is unintelligible.

[20] This lack of consistency is evident in the treatment of Henry Blake. The Appeal Board states that Ms. Blakes' father, Henry Blake, has Inuit ancestral blood quantum of 21.87% (based on his mother's 43.75% and his father Edward's 0%) and then attributes Ms. Blake with one-half of his Inuit ancestral blood quantum. However, like his grandmother Alfreda Davis, Henry

Blake was not born in the Labrador Settlement Area, and therefore his Inuit ancestral blood quantum for the purposes of calculating that of Ms. Blakes' ought to have been 0% if the Appeal Board was consistent.

[21] Accordingly, if the Appeal Board determined that an ancestor's blood quantum only counted towards an applicant's Inuit ancestral blood quantum if that ancestor was born in the Labrador Settlement Area, then it failed to apply that interpretation consistently and its decision is therefore unreasonable.

[22] In any event, if it was determined that an ancestor's blood quantum only counted towards an applicant's Inuit ancestral blood quantum if that ancestor was born in the Labrador Settlement Area, that too is unreasonable. Absent clear and unambiguous language to the contrary, one does not loose one's ancestry simply because of where one is born. The ancestry of a child born of a French father and a Belgium mother is half-French and half-Belgium, regardless of where in the world the child is born. Where one is born impacts one's citizenship, not one's ancestry.

[23] As discussed, it appears that the Appeal Board discounted the blood quantum of most ancestors based its interpretation that birth in the Labrador Settlement Area was a requirement of being "Inuit" as defined by the Agreement. However, as was noted by Justice Kelen at para 29 of *Mugford*, the definition of "Inuit" in the Agreement makes no reference to having been born in the Labrador Settlement Area:

> "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. [emphasis added].

[24] There is another aspect of the Appeal Board's decision that may render its conclusion unreasonable. According to the decision, the applicant's father, Henry Blake has 21.87% Inuit ancestry; however, the record indicates that both Henry and his siblings are Beneficiaries under the Agreement. Because on the face of the record Henry does not appear to qualify under any other category of membership, this strongly suggests that he was previously determined to have at least 25% Inuit ancestry. If so, then the Appeal Board's analysis is unreasonable as it is contrary to, or at least does not address that evidence.

[25] At the hearing, the parties advised the Court that neither was seeking its costs and therefore none will be awarded.

JUDGMENT

THIS COURT'S JUDGMENT is that this application is allowed, the decision of the Inuit Membership Appeal Board dated February 12, 2012, that determined that Katherine Blake was not eligible to be enrolled as a Beneficiary of the Labrador Inuit Land Claims Agreement is set aside, her appeal of the decision of the Rigolet and Upper Lake Melville Membership Committee dated November 7, 2011, is remitted back to the Inuit Membership Appeal Board for decision in accordance with these reasons, and no costs are awarded,

"Russel W. Zinn"

Judge

ANNEX A

Labrador Inuit Land Claims Agreement

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.

3.3.4 Anyone who is born after the Effective Date who is a lineal descendant of someone who was enrolled or eligible to be enrolled on the Register under section 3.3.2 or 3.3.3 shall be enrolled on the Register if that individual 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 under clause (a) of the definition of "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.

3.3.5 Anyone who is not an Inuk or Kablunângajuk and who:

(a) was adopted as a minor prior to the Effective Date by an individual who is eligible to be enrolled on the Register under section 3.3.2 or 3.3.3, or who would have been eligible to be enrolled under one of those sections if that individual had been alive on the Effective Date; or

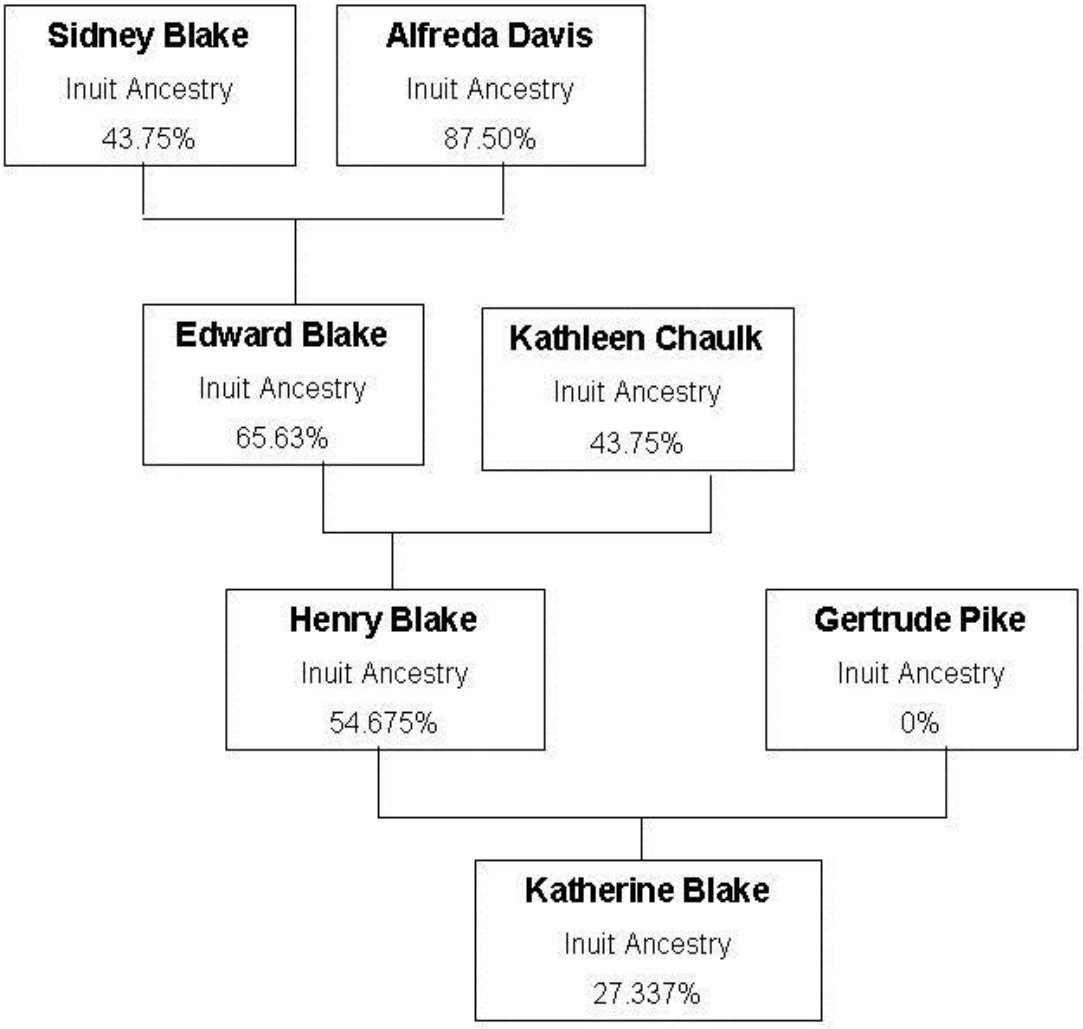
(b) is adopted as a minor by a Beneficiary after the Effective Date, is absolutely deemed to be a lineal descendant of his or her adoptive parents and to have the same ancestry that he or she would have had if he or she were a natural child of the adoptive parents.

3.3.6 No individual can be enrolled as a Beneficiary under the Agreement while that individual is enrolled under another Canadian aboriginal land claims agreement.

3.3.7 Anyone who is eligible to be enrolled under both the Agreement and another Canadian aboriginal land claims agreement may choose to be enrolled under the Agreement if that individual gives up his or her rights, benefits or privileges under the other agreement while enrolled under this Agreement.

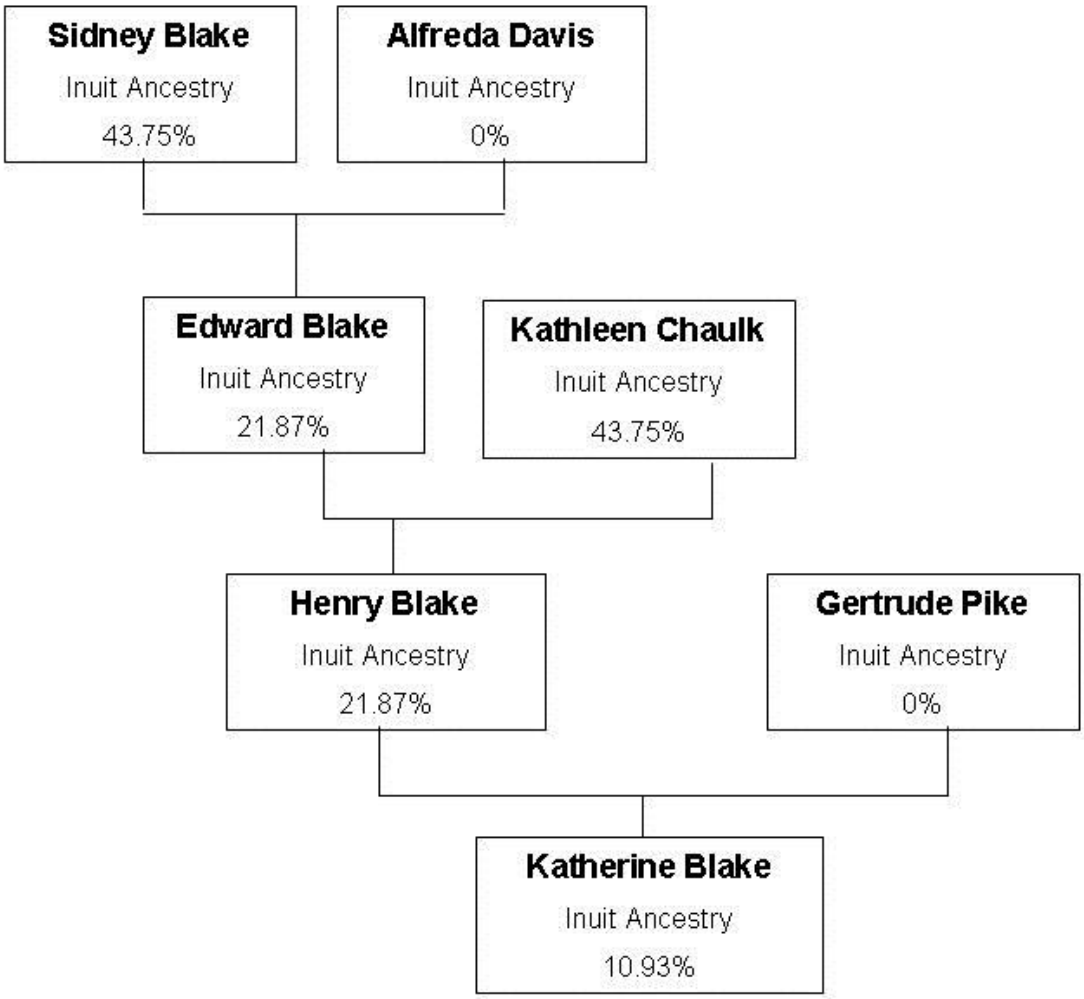
ANNEX B

Inuit Ancestral Blood Quantum per Katherine Blake



ANNEX C

Inuit Ancestral Blood Quantum per Appeal Board



FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-568-12
STYLE OF CAUSE:	BLAKE, KATHERINE v. FIRST MINISTER, NUNATSIAVUT GOVERNMENT
PLACE OF HEARING:	St. John's, Newfoundland and Labrador
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