Court File No. T-1804-10

FEDERAL COURT

BETWEEN:

ANGEL SUE LARKMAN

Applicant

-and-

ATTORNEY GENERAL OF CANADA

Respondent

SUPPORTING AFFIDAVITS AND DOCUMENTARY EXHIBITS
(VOLUME TWO)

VOLUME I OF II

August 26, 2011

FALCONER CHARNEY LLP
Barristers-at-Law
8 Prince Arthur Avenue
Toronto, Ontario
M5R 1A9

Julian N. Falconer
(L.S.U.C. #29465 R)

Sunil S. Mathai
(L.S.U.C. # 49616 O)

Tel: (416) 964-3408
Fax: (416) 929-8179

Solicitors for the Applicant

DEPARTMENT OF JUSTICE, ONTARIO REGIONAL OFFICE
130 King Street West
The Exchange Tower
Suite 3400, Box 36
Toronto, Ontario
M5X 1K6

Michael Beggs

Tel: (416) 952-4758
Fax: (416) 973-2319

INDEX

VOLUME II

01

T-1804-10

Court File No (10-I-31)

FEDERAL COURT

ANGEL SUE LARKMAN

Applicant

and

THE ATTORNEY GENERAL OF CANADA

Respondent

APPLICATION PURSUANT TO sections 18 and 18.1 of the *Federal Court Act*.

NOTICE OF APPLICATION

TO THE RESPONDENT:

A PROCEEDING HAS BEEN COMMENCED by the applicant. The relief claimed by the applicant appears on the following pages

THIS APPLICATION will be heard by the Court at a time and place to be fixed by the Judicial Administrator. Unless the Court orders otherwise, the place of hearing will be as requested by the applicant. The applicant requests that this application be heard at Toronto, Ontario

IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the application or to be served with any documents in the application, you or a solicitor acting for you must prepare a notice of appearance in Form 305 prescribed by the Federal Courts Rules and serve it on the applicant's solicitor, or where the applicant is self-represented, on the applicant, WITHIN 10 DAYS after being served with this notice of application

Copies of the Federal Courts Rules information concerning the local offices of the Court and other necessary information may be obtained on request to the Administrator of this Court at Ottawa (telephone 613-992-4238) or at any local office.

IF YOU FAIL TO OPPOSE THIS APPLICATION, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU.

November 1, 2010

Issued by: Christine McCullough
Registry Officer

Address of
Local office: Federal Court
180 Queen Street W
Toronto, Ontario
M5V 3L6

TO: ATTORNEY GENERAL OF CANADA
Michael Beggs
Ontario Regional Office
The Exchange Tower
130 King St West
Suite 3400, Box 36
Toronto, ON M5X 1K6

APPLICATION

This is an application for judicial review of the Order-in-Council, dated December 4, 1952, which enfranchised Laura Mary Flood (nee Batisse), [hereinafter "Laura Flood"] the maternal grandmother of the Applicant Angel Sue Larkman [hereinafter "The Applicant"]

The applicant makes application for:

i) An order that the Order-in-Council dated December 4, 1952 be set aside; and

ii) Such further and other relief as this Honourable Court deems just.

The grounds for the application are:

The Enfranchisement of Laura Flood

1. The Applicant's grandmother Laura Flood was born on March 1, 1926, on the Matachewan First Nation in Ontario. Laura Flood's birth parents were Harry and Anne Batisse, both of whom were considered to be "Indians" pursuant to the *Indian Act* in force at the time.

2. Prior to October 10, 1952, Laura Flood was considered an Indian pursuant to the *Indian Act*, and she was a member of the Matachewan First Nation, Band Number 72

3 In 1952, Laura Flood was unable to read or write Laura Flood was only capable of writing her first and last name.

4 On July 14, 1952, J. Marleau, Indian Agent for Sturgeon Falls, received a typed letter purporting to be from Laura Flood, requesting that she be forwarded the "necessary papers to release her from treaty" Laura Flood did not prepare the letter or request that a letter be prepared on her behalf asking that she be released from treaty

5 In response to the July 14, 1952 letter, J. Marleau requested that Laura Flood supply the Department of Citizenship and Immigration with several pieces of information,

including her length of residence away from the Reserve, a list of property on the Reserve, her present means of livelihood and annual income. The answers to these questions would determine whether or not Laura Flood could be enfranchised, as the legislation at the time only permitted enfranchisement for adults who were considered capable of supporting themselves financially.

6 The answers to the Indian Agent's questions were written on the letter by hand. At least one of the answers is erroneous. The document states that Laura Flood lived away from the Reserve for 13 years. However, Laura Flood did not leave the Reserve in 1939 at the age of 13, as is alleged on the document. Laura Flood left the Reserve when she was approximately 19 years old.

7. The Indian Agent subsequently wrote to the Department of Citizenship and Immigration requesting the necessary application forms for enfranchisement. The letter repeated the error concerning Laura Flood having lived away from the Reserve for 13 years.

8. On August 16, 1952, a second typed letter purporting to be prepared by Laura Flood was sent to the Indian Agent requesting that he inform her if he had received the requested information. Laura Flood did not prepare this letter, nor did she instruct anyone else to write the letter on her behalf.

9. On October 10, 1952, Laura Flood at the request of Chief Alfred Batisse and the Indian agent, signed an application for enfranchisement. She did not know what she was signing. Laura Flood was not informed that by signing the documentation that she was giving up her status as an Indian.

10. The Enfranchisement application itself contains several significant errors, including the omission of the names of Laura Flood's sons, both of whom were born before the Application was signed. Her first daughter, Laura Jean, was born four days after the application was purportedly signed.

11. On October 18, 1952, the Indian Agent sent a letter to Laura Flood acknowledging receipt of the Application and informing her that she would not receive any timber royalty if she continued with the enfranchisement application.

12. On October 31, 1952, a typed letter purporting to be from Laura Flood was sent to the Indian Agent requesting that her application be sent to the "Department" despite her loss of any timber royalty. Laura Flood did not prepare or request that this letter be prepared on her behalf. Laura Flood did not know what "timber royalty" was. The Indian Agent then forwarded the application for enfranchisement to the Department of Citizenship and Immigration.

13. By Order-in-Council P.C. 4588, dated December 4, 1952, Laura Flood was declared enfranchised. Although she acknowledges that her signature appears on the Enfranchisement Card, she did not know that she was signing a document that would strip her of her status as an Indian.

14. Laura Flood later discovered that she had signed an "Application for Enfranchisement". At the time of signing, Laura Flood did not know what "enfranchisement" was, or the consequences of enfranchisement. However, by Order-in-Council P.C. 4582, dated December 4, 1952, Laura Flood was declared enfranchised and therefore lost her recognition as an Indian under the *Indian Act*.

15. To the best of Laura Flood's knowledge and recollection, she did not receive any money from Chief Batisse or from the government for enfranchisement.

16. As a result of her enfranchisement, Laura Flood lost her interest in the reserve land, and she lost all legislative benefits that flow to Indians, such as the right to reside on reserve, and the right to vote in band elections.

17. Pursuant to the Bill C-31 amendments to the *Indian Act*, Laura Flood regained status as an Indian under subsection 6(1)(d) of the *Indian Act*.

18 On August 20, 1986, Laura Flood's daughter Dorothy Ann Flood (nee Batisse) [hereinafter "Dorothy Flood"] applied to be added to the Indian Register. She included her daughter Angel Sue Larkman (then Angel Sue Etches), the Applicant to this proceeding, as part of her application

19 By way of letter dated February 3, 1988, the Registrar advised Dorothy Flood that she was registered under section 6(2) of the *Indian Act*, but her daughter, the Applicant was not entitled to be registered.

20 On April 7, 1995, the Applicant submitted a second application for registration on her own behalf. By way of letter dated September 13, 1995, the Registrar advised that there was no basis to revisit the earlier decision of the February 3, 1988, letter to Dorothy Flood indicating that the Applicant was not entitled to registration.

21. By way of letter dated November 26, 1997, the Applicant and Laura Flood requested that the Registrar review the validity of Laura Flood's enfranchisement. The Registrar, by letter dated August 18, 1997, found the enfranchisement to be valid.

22. The Applicant and Laura Flood then protested the Registrar's decision by way of a Notice of Protest dated August 17, 1998 The Acting Registrar of the Department of Indian Affairs and Northern Development, in a letter dated July 21, 2000, upheld the decision of the Registrar.

Proceedings of the Courts

23 The Applicant and Laura Flood requested that a hearing be held pursuant to section 14.2(6) of the *Indian Act*, the Registrar declined to hold such a hearing.

24. In January 2001, Angel Sue Larkman, Dorothy Ann Flood and Laura Flood, initiated a statutory appeal pursuant to section 14 3(4) of the *Indian Act* of the July 21, 2000 decision, in the Ontario Superior Court of Justice

25. It was not until some nine years after the Notice of Protest was initiated that the Respondent, Her Majesty the Queen as represented by the Registrar of the Department of Indian Affairs and Northern Development and the Attorney General of Canada [Hereinafter the Respondents] raised an issue of jurisdiction.

Ontario Superior Court of Justice

26. On March 5, 2008, the Honourable Madam Justice Forestell of the Ontario Superior Court of Justice held that the 1952 Order in Council was *void ab initio* and ordered that Angel Sue Larkman, Dorothy Flood and Laura Flood, be registered pursuant to section 6(1)(a) of the *Indian Act*

Court of Appeal for Ontario

27. The Respondent, appealed the Order to the Court of Appeal for Ontario. The Appellate Court set aside the decision of Madam Justice Forestell on the basis of jurisdictional issues and stated that jurisdiction resides with the Federal Court.

Supreme Court of Canada

28 Angel Sue Larkman and Laura Flood then sought leave to appeal the decision to the Supreme Court of Canada On October 1, 2009, the Supreme Court of Canada dismissed the Application for leave to appeal without reasons

Order in Council is Invalid

29. That the Registrar, acting on behalf of the Minister of the Department of Indian Affairs and Northern Development, erred in finding that the statutory pre-conditions for the enfranchisement of Laura Flood had been met;

30 That the Registrar, acting on behalf of the Minister of the Department of Indian and Northern Development, erred in finding that the enfranchisement application of Laura Flood was voluntary, and that the Department of Citizenship and Immigration, as it then was, acted in good faith in processing her enfranchisement, when these findings are unsupported by the evidence; and

31. Such further and other grounds as counsel may advise and this Court may permit

This application will be supported by the following material:

i) The Affidavit of Angel Sue Larkman and the attachments thereto; and

ii) Such further material as counsel may advise and this Honourable Court may permit

The applicant requests that the Registrar of Indian and Northern Affairs Development send a certified copy of the following material that is not in the possession of the applicant but is in the possession of the Registrar of Indian and Northern Affairs Development:

1 All records and documents that the Registrar of Indian and Northern Affairs Development relied upon in support of the Application for Enfranchisement of Laura Flood submitted to the then Department of Citizenship and Immigration.

DATED this 1st day of November 2010

Mandy Wesley, L.S.U.C. #53539K

Amanda Driscoll, L.S.U.C. # 58739W

Aboriginal Legal Services of Toronto
415 Yonge St, Suite 803
Toronto, ON M5B 2E7

Ph: (416) 408-4041
Fax: (416) 408-4268

Counsel for the Applicant

ANGEL SUE LARKMAN and THE ATTORNEY GENERAL OF CANADA Court File No. 10-T-31

Applicant **Respondent**

FEDERAL COURT

NOTICE OF APPLICATION

Mandy Wesley
Amanda Driscoll
Aboriginal Legal Services of Toronto
803-415 Yonge Street
Toronto, ON
M5B 2E7

Ph: (416) 408-4041
Fax: (416) 408-4268

Counsel for the Applicant

63

Federal Court  Cour fédérale

Date: 20101018

Docket: 10-T-31

Toronto, Ontario, October 18, 2010

PRESENT: The Honourable Mr. Justice Hughes

BETWEEN:

ANGEL SUE LARKMAN

Applicant
(Moving Party)

and

HER MAJESTY THE QUEEN AS REPRESENTED BY THE REGISTRAR OF THE DEPARTMENT OF INDIAN AFFAIRS AND NORTHERN DEVELOPMENT AND THE ATTORNEY GENERAL OF CANADA

Respondent

ORDER

UPON MOTION in writing on behalf of the applicant dated September 10th, 2010, pursuant to Rule 369 of the *Federal Courts Rules* for an Order for extension of time to file a Notice of Application for Judicial Review of an Order in Council dated December 4, 1952;

AND UPON the Applicant's Motion Record, the Respondent's Motion Record and the Applicant's Reply;

THIS COURT ORDERS that:

1. The motion is granted;
2. The Applicant shall file her Notice of Application within fifteen (15) days from this Order;
3. The style of cause shall be amended so that the named Respondent is only the Attorney General of Canada;
4. No order as to costs.

"Roger T. Hughes"

Judge

Court File No.: T-1804-10 (10-T-31)

FEDERAL COURT

BETWEEN:

ANGEL SUE LARKMAN

Applicant

and

THE ATTORNEY GENERAL OF CANADA

Respondent

AFFIDAVIT OF ANGEL SUE LARKMAN

I, ANGEL SUE LARKMAN, of the City of Timmins in the Province of Ontario AFFIRM THAT:

1. I am the Applicant in the within Application and as such I have knowledge of the matters deposed herein. To the extent that this Affidavit contains information, which is not based on my direct knowledge, I have identified the source of the information, and I do verily believe the information to be true.

A. Background on Ancestry

2. I was born on January 5, 1972. My mother is Dorothy Ann Flood (née Batisse). My father was Gary Larkman. Attached to this my affidavit as **Exhibit "A"** is a true copy of my birth certificate.

3. My mother, Dorothy Flood was born on February 25, 1954. Attached to this my affidavit as **Exhibit "B"** is a true copy of Dorothy Flood's statement of birth.

4. Dorothy Flood's mother, my grandmother, was Laura Mary Flood (née Batisse) (hereinafter referred to as "Laura Batisse"). She was born on March 1, 1926 on the Matachewan First Nation in Ontario.

5. Laura Batisse's birth parents were Harry and Anne Batisse, both of whom were "Indians" as defined in the *Indian Act* in force at the time.

6. Prior to 1952, Laura Batisse was registered as an Indian pursuant to the *Indian Act*, and she was a member of the Matachewan First Nation.

7. Historically, the *Indian Act* and its predecessors set out a process by which Indians could be stripped (voluntarily or involuntarily) of their Indian status. This process was called "enfranchisement." By this application, I challenge the validity of my grandmother, Laura Batisse's enfranchisement of December 4, 1952.

B. The Enfranchisement of Laura Batisse

8. As set out below, as a consequence of my grandmother's enfranchisement, I am statutorily barred from being recognized as an Indian. In addition, and further set out below, my grandmother and I have taken steps to challenge her enfranchisement.

9. My grandmother, Laura Batisse, died on August 8, 2010. Before her death, my grandmother and I spoke many times about her enfranchisement. Laura Batisse signed several affidavits (executed as Laura Mary Flood) in other court proceedings (described below) in which she deposed her knowledge of the enfranchisement process, which I have attached as Exhibits to this affidavit. Attached to this my affidavit as **Exhibit "C"** is a true copy of the Affidavit of Laura Batisse dated February 26, 1996. Attached to this my affidavit as **Exhibit "D"** is a true copy of the Affidavit of Laura Batisse dated August 13, 1996. Attached to this my affidavit as **Exhibit "E"** is a true copy of the Affidavit of Laura Batisse dated April 22, 1998. I have reviewed each of these affidavits and do verily believe them to be true.

10. In addition, I have reviewed a documentary record provided by the Registrar of Indian and Northern Affairs Canada, which contains numerous documents relating to Laura Batisse's

enfranchisement. My knowledge of the enfranchisement is from these identified sources, and I do verily believe my description of events as set out below is accurate and true.

11. In 1952, Laura Batisse was unable to read or write English. She was only capable of writing her first and last name.

12. In a letter dated July 14, 1952, Laura Batisse purportedly wrote a letter in typed form to J.A Marlow, Indian Agent for Sturgeon Falls, requesting that he forward the "necessary papers to release her from treaty." The author of the letter misspelled the names of both J.A Marleau and Laura Batisse. Laura Batisse has provided an affidavit stating that she did not prepare the letter or request that a letter be prepared on her behalf asking that she be released from the treaty. Attached to this my affidavit as **Exhibit "F"** is a true copy of the letter. The letter is stamped as "received" on July 17, 1952.

13. In a letter dated July 18, 1952, J. Marleau requested that Laura Batisse supply the Department of Citizenship and Immigration with several pieces of information, including her length of residence away from the reserve, a list of property on the reserve, her present means of livelihood and annual income. The answers to these questions would determine whether or not Laura Batisse could be enfranchised, as the legislation at the time only permitted enfranchisement for adults who were considered capable of supporting themselves financially. A true copy of the letter is attached to this my affidavit as **Exhibit "G"**.

14. The answers to the Indian Agent's questions were typed onto the letter itself. The document states that Laura Batisse lived away from the reserve for 13 years. However, an affidavit included with these application materials states that she did not leave the reserve in 1939 at the age of 13, as is alleged in the document. Laura Batisse actually left the reserve six years later when she was approximately 19 years old.

15. In a letter dated July 29, 1952, J.A. Marleau wrote to the Indian Affairs Branch requesting enfranchisement application forms for Laura Batisse. The letter states, in part:

> We have received a letter from the above captioned requesting to be enfranchised.

15

> Miss Batisse has been living away from the Reserve for 13 years and has resided in Matachewan for 13 years. She has been steadily employed for the past four years as a house-keeper and camp cook with an approximate annual income of $600.00
>
> She holds no property on the Matachewan Reserve and is not indebted to band funds, appropriation or agency accounts. I believe Miss Batisse is capable of assuming responsibilities of citizenship.
>
> Therefore, if the Department approves, kindly forward necessary application forms for her enfranchisement.

Attached to this my affidavit as **Exhibit "H"** is a true copy of the letter dated July 29, 1952. The letter repeated the error concerning Laura Batisse having lived away from the reserve for 13 years.

16. On August 16, 1952, a second typed letter purporting to be prepared by Laura Batisse, was sent to the Indian Agent requesting that he inform her if he had received the requested information. The affidavit of Laura Batisse included in these materials indicates that she did not prepare this letter, nor did she instruct anyone else to write the letter on her behalf. A true copy of the letter is attached to this my affidavit as **Exhibit "I"**.

17. In a letter dated August 19, 1952, J.A. Marleau purports to reply to Laura Batisse indicating that her enfranchisement forms had been forwarded to the department on July 28, 1952, and that it may take several weeks before her enfranchisement would be passed by an Order in Council. A true copy of the letter is attached to this my affidavit as **Exhibit "J"**.

18. A memorandum prepared by F.O.E. Gilroy (Trusts & Annuities Division) dated August 29, 1952 queries what band or other funds Laura Batisse would be entitled to if she was enfranchised. The memorandum includes handwritten notations and calculations. A true copy of the letter is attached to this my affidavit as **Exhibit "K"**.

19. By letter dated September 30, 1952, the application forms were sent to J.A. Marleau. A true copy of the letter is attached to this my affidavit as **Exhibit "L"**.

20. By letter dated October 2, 1952, J.A. Marleau purports to have written to Laura Batisse enclosing the application forms. The letter is unsigned. A true copy of the letter is attached to this my affidavit as **Exhibit "M"**.

21. On October 10, 1952, Alfred Batisse, then-Chief of the Matachewan First Nation, along with the Indian Agent, J.A. Marleau, requested that Laura Batisse sign some papers. My grandmother trusted the Chief and always obeyed instructions from the Indian Agent. As such, she signed the papers. The documentation was neither read to her nor explained. She did not know what she was signing. It is now known that she signed an application for enfranchisement. At the time of signing, she did not know what "enfranchisement" was, or the consequences of "enfranchisement." A true copy of the enfranchisement application is attached to this my affidavit as **Exhibit "N"**.

22. As reflected in Laura Batisse's affidavits, neither the Chief nor the Indian Agent informed Laura Batisse that by signing the papers she was giving up her status as an Indian. Had she known the consequence of signing the papers, she would not have signed them. At no time did she intend to forfeit her recognition as an Indian (Exhibit C at para. 4; Exhibit E at para. 14). Laura Batisse was born an Indian and she always considered herself to be an Indian (Exhibit E at para 19).

23. The enfranchisement application itself contains several significant errors, including the omission of the names of Laura Batisse's sons, both of whom were born before the application was signed. Her first daughter, Laura Jean, was born four days after the application was purportedly signed.

24. On October 18, 1952, the Indian Agent allegedly sent a letter to Laura Batisse acknowledging receipt of the application and informing her that she would not receive any timber royalty if she continued with the enfranchisement application. A true copy of the letter is attached to this my affidavit as **Exhibit "O"**. The letter states, in part:

> I wish to acknowledge receipt of your application for enfranchisement duly signed.

> With reference to your notation, I wish to inform that although the timber rights have been sold on the Matachewan Reserve, collection on dues have not yet been paid.
>
> Therefore, if the Band has not been credited at the time of your enfranchisement, you will not receive any timber royalty as you will receive proportionately to what is in the band fund at the time of enfranchisement.
>
> If you wish to be enfranchised under these circumstances, kindly advise and we will forward the application to the Department.

25. The "notation" on the application form to which J.A. Marleau appears to refer to is a typed notation which reads: "Note: I believe there should be some interest due me from the Timber rights to the Matachewan Reserve which have been sold."

26. On October 31, 1952, a typed letter purporting to be from Laura Batisse was sent to the Indian Agent requesting that her application be sent to the "Department" despite her loss of any timber royalty. A true copy of the letter is attached to this my affidavit as **Exhibit "P"**. The letter states in part:

> In reply to your letter of October 18th relative to my application for enfranchisement.
>
> I have noted your reply to my notation regarding the timber rights that have been sold, however, I would like you to send my application form to the Department as soon as possible in order that I can be enfranchised.

27. Laura Batisse's affidavit included in these materials states that she did not prepare or request that this letter be prepared on her behalf. She did not know what "timber royalty" was (Exhibit E at para. 15).

28. By letter dated November 5, 1952, the application was forwarded to the Department of Citizenship and Immigration by J.A. Marleau. A true copy of the letter is attached to this my affidavit as **Exhibit "Q"**.

29. By Order-in-Council P.C. 4582, dated December 4, 1952, Laura Batisse was enfranchised and therefore lost her registration under the *Indian Act*. Attached to this my affidavit as **Exhibit "R"** is a true copy of the Order-in-Council. A true copy of a document entitled "Particulars re Enfranchisement" is attached to this my affidavit as **Exhibit "S"**.

30. By letter dated December 12, 1952, J.A. Marleau was informed by A.G. Leslie (Trusts & Annuities Division) that Laura Batisse had been enfranchised by Order-in-Council P.C. 4582. Attached to this my affidavit as **Exhibit "T"** is a true copy of the Order-in-Council.

31. On December 12, 1952, A.G. Leslie requisitioned a cheque in the amount of $82.23 in favour of Laura Batisse, but care of J.A. Marleau. Attached to this my affidavit as **Exhibit "U"** is a true copy of the cheque requisition.

32. By letter dated December 22, 1952, J.A. Marleau allegedly wrote to Laura Batisse to inform her of the enfranchisement order and provide her with the payment. The letter is unsigned. The letter states, in part:

> I wish to inform you that you were declared enfranchised by Order in Council PC 4582 dated December 4, 1952.
>
> We have to-day received a cheque in your favour in the amount of $82.83 which we are enclosing herewith. This represents your share of Matachewan band funds and annuity.
>
> Enclosed also please find your certificate of enfranchisement which we would ask you to sign in ink and insert the date. Kindly return this card in order that we may forward it to the Department for completion.
>
> Your name has been removed from the Matachewan paylist and family book. Therefore, you are no longer an Indian as defined by the Indian Act.

A true copy of the letter is attached to this my affidavit as **Exhibit "V".**

33. To the best of Laura Batisee's knowledge and recollection, she did not receive the $82.23 payment required by the Order-in-Council from Chief Batisse, the Agent or any other source. She does recall receiving $500 from the Chief in and around that time. However, she was under the impression that the money was given to her for the "stumpage" that was occurring on the land at the time (Exhibit C at para. 5).

34. As far as I am aware, there is no record of a cheque made out to Laura Batisse in the records provided by the Respondent. However, there is a record of a payment in this amount

made out to J.A. Marleau. A true copy of the pay statement is attached to this my affidavit as **Exhibit "W"**.

35. By letter dated January 23, 1953, J.A. Marleau forwarded a certificate of enfranchisement signed by Laura Batisse for completion by the Director of Indian Affairs. A true copy of the letter is attached to this my affidavit as **Exhibit "X"**.

36. By letter dated January 31, 1953, A.G. Leslie of the Trusts & Annuities Division forwarded Laura Batisse's enfranchisement card to J.A. Marleau. A true copy of the letter is attached to this my affidavit as **Exhibit "Y"**.

37. By letter dated February 2, 1953, from J.A. Marleau, Laura Batisse was provided with a certificate of enfranchisement. A true copy of the letter is attached to this my affidavit as **Exhibit "Z"**.

Consequences of Enfranchisement

38. As a result of her enfranchisement, Laura Batisse lost her interest in the reserve land, and she lost all legislative benefits that flow to Indians, such as the right to reside on reserve, tax exemptions and the right to vote in band elections.

39. She was not able to pass on her Indian status to her children born after the enfranchisement.

40. Laura Batisse was the mother of four children: Clarence Lorne (born March 22, 1946); Lorne David (born October 6, 1948); Laura Jean (born October 14, 1952) and Dorothy Ann (born February 25, 1954).

41. Pursuant to the Bill C-31 amendments to the *Indian Act*, Laura Batisse regained status as an Indian under subsection 6(1)(d) of the *Indian Act*:

> Persons entitled to be registered
> **6.** (1) Subject to section 7, a person is entitled to be registered if
> ...

(*d*) the name of that person was omitted or deleted from the Indian Register, or from a band list prior to September 4, 1951, under subparagraph 12(1)(*a*)(iii) pursuant to an order made under subsection 109(1), as each provision read immediately prior to April 17, 1985, or under any former provision of this Act relating to the same subject-matter as any of those provisions;

42. Attached to this my affidavit as **Exhibit "AA"** is a true copy of a letter dated March 25, 1987 from the Registrar to Laura Flood (nee Batisse) confirming her registration under s. 6(1)(d) of the *Indian Act*.

43. Due to the fact that they were born prior to the Order-in-Council, Laura's three eldest children are all registered as Indians pursuant to section 6(1)(a) of the *Indian Act*, 1985:

6. (1) Subject to section 7, a person is entitled to be registered if

(*a*) that person was registered or entitled to be registered immediately prior to April 17, 1985;

44. My mother, Dorothy Flood, was born after the enfranchisement. On August 20, 1986, my mother, Dorothy Flood, applied to be added to the Indian Register. She included my information as part of the application for Indian status, as I was a minor at this time. A true copy of the application is attached to this my affidavit as **Exhibit "BB"**.

45. In a letter dated February 3, 1988, the Registrar advised Dorothy Flood that she was registered under section 6(2) of the *Indian Act*. However, I was not entitled to be registered. A true copy of the letter is attached to this my affidavit as **Exhibit "CC"**.

46. Section 6(2) of the *Indian Act* reads as follows:

(2) Subject to section 7, a person is entitled to be registered if that person is a person one of whose parents is or, if no longer living, was at the time of death entitled to be registered under subsection (1).

47. Dorothy was registered pursuant to s. 6(2) (as opposed to s. 6(1)(a) like her siblings) because she was born after the enfranchisement. It is a consequence of her being registered pursuant to s. 6(2) of the *Indian Act* that I cannot be registered as an Indian.

My Efforts to Obtain Registration as an Indian

48. On April 7, 1995, I submitted, as an adult, an application for registration. A true copy of the application is attached to this my affidavit as **Exhibit "DD"**. The affidavits of Laura Batisse, attached as Exhibit C, D and E to this affidavit were prepared, severed and filed in support of my efforts to obtain registration as an "Indian".

49. In a letter dated September 13, 1995, the Registrar advised that there was no basis to revisit the earlier decision of February 3, 1988, indicating that I was not entitled to registration. A true copy of the letter is attached to this my affidavit as **Exhibit "EE"**.

50. By letters dated March 8, 1996 and April 29, 1996, legal counsel for myself, my grandmother and mother requested that the registration of Laura Flood (nee Batisse) and Dorothy Flood be changed and that I be registered pursuant to section 6(2) of the *Indian Act*. A true copy of the March 8, 1996 letter is attached to this my affidavit as **Exhibit "FF"**. A true copy of the April 29, 1996 letter attached to this my affidavit as **Exhibit "GG".**

51. On August 13, 1996, our legal counsel at the time wrote to the Registrar. It is apparent from the letter that the belief at that time was that my grandmother had been enfranchised as a result of her marriage to a non-Indian, and that this enfranchisement was in error because she was married after 1952 (the date of the enfranchisement). On June 20, 1964, Laura Batisse married Wycliffe Flood. Wycliffe Flood was a non-Aboriginal man.

52. A true copy of the August 13, 1996, letter is attached to this my affidavit as **Exhibit "HH"**. The letter states, in part:

> Ms. Flood (nee Batisse) was not married until June 20, 1964 as indicated in the attached Affidavit and Record of Marriage. This being the case, the Enfranchisement of 1952 is clearly invalid and her daughter, Dorothy Ann, born on February 25, 1954, is entitled to 6(1) status as a child born out of wedlock, and her granddaughter, Angel Etches, is entitled to status pursuant to section 6(2).
>
> We look forward to having this matter resolved in the very near future as our client, Dorothy Ann Flood, has three children which have been denied status because of the 1952 Enfranchisement.

53. Notably, in a document created by "Indian-Eskimo Affairs" and included in the Registrar's Record in related proceedings, the reason for the enfranchisement of L. Batisse is noted as "marriage to non-Indian." Attached to this my affidavit as **Exhibit "II"** is a true copy of that document.

54. By letter dated October 18, 1996, the Registrar clarified that the basis of the enfranchisement was not Laura Batisse's marriage. Rather, it was the application for enfranchisement:

> Our records indicated that Ms. Flood was enfranchised, by application, December 4, 1952, on Order in Council Number P.C. 4582. Our records also indicate that Laura Flood nee Batisse, married Wycliffe Davidson Flood, a non-Indian, on June 20, 1964. However, the fact that she married a non-Indian does not have an effect on the registration of her children because at the time of her marriage she was not registered as an Indian as a result of her enfranchisement. I cannot comment on the circumstances surrounding her enfranchisement.

A true copy of the letter is attached to this my affidavit as **Exhibit "JJ"**

55. By letter dated November 26, 1996, my mother, my grandmother and I requested that the Registrar review the validity of my grandmother's enfranchisement. A true copy of the letter is attached to this my affidavit as **Exhibit "KK"**.

56. The Registrar, by letter dated August 18, 1997, found the enfranchisement to be valid. A true copy of the letter is attached to this my affidavit as **Exhibit "LL"**.

57. We then protested the Registrar's decision by way of a Notice of Protest dated August 17, 1998. A true copy of the Notice of Protest is attached to this my affidavit as **Exhibit "MM"**.

58. The Acting Registrar of the Department of Indian Affairs and Northern Development, in a letter dated July 21, 2000, upheld the decision of the Registrar. A true copy of the letter is attached to this my affidavit as **Exhibit "NN"**.

59. On November 13, 2000, after receiving the decision of the Acting Registrar, we requested that an oral hearing be held pursuant to section 14.2(6) of the *Indian Act*. A true copy of the letter

is attached to this my affidavit as **Exhibit "OO"**. The Registrar declined to hold such a hearing. A true copy of the denial letter is attached to this my affidavit as **Exhibit "PP"**.

60. On January 19, 2001, a statutory appeal was commenced pursuant to section 14.3(4) of the *Indian Act* to the Ontario Superior Court of Justice. A true copy of the Notice of Appeal is attached to this my affidavit as **Exhibit "QQ"**.

61. On September 28, 2007, the Respondent served and filed its responding record and factum to our statutory appeal. In its factum, the Respondent raised for the first time the issue of the Superior Court of Justice's jurisdiction to hear the appeal. Jurisdiction was not raised in the prior nine years of proceedings in which my family and I sought to challenge the enfranchisement.

62. On March 5, 2008, the Honourable Madam Justice Forestell of the Ontario Superior Court of Justice held that the 1952 Order-in-Council was void and ordered that myself, Dorothy Flood and my grandmother, Laura Flood, be registered pursuant to section 6(1)(a) of the *Indian Act*. A true copy of the reason for decision are attached to this my affidavit as **Exhibit "RR"**.

63. Notably, having reviewed the evidence (which is also placed before this Honourable Court), Madam Justice Forestell concluded as follows:

> There is a full record before me on the appeal and based on that record, I am satisfied that the Appellants met the onus upon them to prove on the balance of probabilities that the enfranchisement of Laura Flood was not valid and that Laura Flood and her descendants are entitled to registration under s. 6(1)(a) of the *Indian Act*.

64. The Respondent appealed the Order to the Court of Appeal for Ontario. The Ontario Court of Appeal set aside the decision on the basis of jurisdictional issues and stated that jurisdiction resides with the Federal Court:

> 21. As a result, ss. 18 and 18.1 of the Federal Courts Act provides that the Federal Court has the exclusive jurisdiction to review the lawfulness of such orders and to order judicial review remedies in respect of these. Neither the Registrar nor a provincial superior court (or any other court enumerated in s. 96 of the Constitution Act, 1867) has the authority to set aside such orders and no application has been brought before the Federal Court seeking such relief.

...

47. In order to achieve the results sought, Laura Flood must first succeed in setting aside the Order-in-Council. She would then be in a position to seek registration pursuant to s. 6(1)(a) and her descendants could then also seek registration pursuant to that section.

A copy of this decision is attached to this my affidavit as **Exhibit "SS"**.

65. We then sought leave to appeal to the Supreme Court of Canada. On October 1, 2009, the Supreme Court of Canada dismissed the application for leave to appeal without reasons.

66. I make this affidavit in support of my application for judicial review and for no other or improper purpose.

SWORN BEFORE ME this 24 day of February, 2011, in the City of Timmins in the Province of Ontario)

A Commissioner etc.)

Angel Larkman

I, Elizabeth Damini, Deputy Clerk, Commissioner, etc., City of Timmins, District of Cochrane. Expires with Tenure.

This is Exhibit "A" referred to in the
Affidavit of Angel Sue Larkman sworn
Before me, on this 24 day of February, 2011.

A commissioner for taking affidavits

I, Elizabeth Damini, Deputy Clerk,
Commissioner, etc., City of
Timmins, District of Cochrane
Expires with Tenure.

Ontario CANADA

Form 27 A — *Formule 27 A*

Vital Statistics Act - *Loi sur l'état civil*

CEB074523

Name - *Nom*

LARKMAN, ANGEL SUE

Registration number - *Numéro d'enregistrement*

1977-05-501816

Date of birth - *Date de naissance*

JANUARY 05, 1972

Date of registration - *Date d'enregistrement*

AUGUST 24, 1977

Birthplace - *Lieu de naissance*

KIRKLAND LAKE

Sex - *Sexe*

FEMALE

Name of father - *Nom du père*

LARKMAN, GARY D

Maiden Name of mother - *Nom de jeune fille de la mère*

FLOOD, DOROTHY A

Birthplace of father - *Lieu de naissance du père*

ONTARIO

Birthplace of mother - *Lieu de naissance de la mère*

ONTARIO

Issued at - *Délivré à* Toronto, Ontario, Canada

Certificate No. - *N° du certificat*

90-104800-01

MAY 31, 1990

REGISTRAR GENERAL • REGISTRAIRE GÉNÉRAL • ONTARIO

Despina H. Georgas

(Deputy Registrar General)
(Registraire général adjoint)

(Registrar General)
(Registraire général)

Certified extract from birth registration
Extrait certifié du registre des naissances

21095 11/85

This is Exhibit "B" referred to in the
Affidavit of Angel Sue Larkman sworn
Before me, on this 24, day of February, 2011.

A commissioner for taking affidavits

I, Elizabeth Damini, Deputy Clerk,
Commissioner, etc., City of
Timmins, District of Cochrane.
Expires with Tenure.

ENS

23

OFFICE OF THE REGISTRAR GENERAL

CERTIFIED
A TRUE PHOTOSTATIC PRINT
OF A RECORD

ON FILE AT THE

OFFICE OF THE REGISTRAR GENERAL
TORONTO, ONTARIO
CANADA

Apr. 11, 1986

DATE ISSUED

Rosemarie E. Gage

ROSEMARIE E. GAGE
DEPUTY REGISTRAR GENERAL

PROVINCE OF ONTARIO
THE VITAL STATISTICS ACT

STATEMENT OF BIRTH

501367
(For use of Registrar General only)

CODE

1. PLACE OF BIRTH: City, town, village or township of KIRKLAND LAKE

Name and address of hospital or nursing home KIRKLAND LAKE HOSPITAL
(If birth occurred at home, give house number and street address)

County or territorial district of TEMISKAMING

2. PRINT NAME OF CHILD IN FULL FLOOD
(Surname or last name)

DOROTHY ANN
(Given or first names)

3. DATE OF BIRTH FEBRUARY 25, 1954 (month by name) (day) (year) 4. SEX FEMALE (State male or female)

5. PLEASE STATE IF MOTHER IS: Married, Widowed, Divorced or Single MARRIED
(The term "Common law" or "Separated" not to be used)

6. FATHER (Print full name)

FLOOD
(Surname or last name)

WYCLIFFE DAVIDSON
(Given or first names)

Age 46 (At time of this birth) Place of birth ONTARIO (Province, state or country)

Citizenship CANADIAN

7. MOTHER (Print full name)

LATISSE
(Maiden name — Name before marriage)

LAURA
(Given or first names)

Age 28 (At time of this birth) Place of birth ONTARIO (Province, state or country)

Citizenship CANADIAN

8. State if birth was single, twin, triplet or other SINGLE

9. Weight of child at birth NORMAL (lbs. and oz. or grams)

10. Length of pregnancy in completed weeks 40.

11. Total number of children born to this mother
(a) Number born alive including this birth 4
(b) Number living at date of this birth including this child 4
(c) Number born dead after 20 weeks' pregnancy —

12. Permanent residence of child's mother at time of this birth
(House No.) (Name of street or road)
MATACHEWAN (Name of city, municipality) ONTARIO (Province)

13. Name of medical practitioner or nurse in attendance at this birth DR. SOUTER (Surname or last name) A. W. (Given or first names or initials)

Post Office Address 42 SECOND ST, KIRKLAND LAKE.

I certify that the above stated particulars are true, to the best of my knowledge and belief, this

Date MARCH (month) 8 (day) /67 (year)

Signature [illegible] (Parent or Guardian)

Address MATACHEWAN, ONTARIO.

(For Division Registrar use only)
I am satisfied as to the correctness and sufficiency of this statement and register the birth by signing the statement, this

March (month) 22 (day) 1967 (year)

[signature]
(Signature of Division Registrar)
EXECUTIVE OFFICER

(Registration number) (Code number)

REGISTERED BY AUTHORITY (This space for office notation only)

V.S.A. R.S.O. [illegible] S. 18
L.F. NO.
VD. NO. 790406
DATE 22-3-67 ENTERED BY MJ

daughter

This is Exhibit "C" referred to in the
Affidavit of Angel Sue Larkman sworn
Before me, on this 24, day of February, 2011.

E Damini

A commissioner for taking affidavits

I, Elizabeth Damini, Deputy Clerk,
Commissioner, etc., City of
Timmins, District of Cochrane.
Expires with Tenure.

IN THE MATTER OF Angel Etches, Dorothy Ann Flood (nee Batisse), and Laura Flood (nee Batisse).

AND IN THE MATTER OF Application for Registration pursuant to the Indian Act.

A F F I D A V I T

I, Laura Mary Flood (nee Batisse), of the Town of Matachewan, in the District of Cochrane, MAKE OATH AND SAY AS FOLLOWS:

1. I was born on March 1, 1926 on the Matachewan Indian Reservation, in Ontario. My birth parents were Harry and Anne Batisse, both of whom were entitled to be registered as "Indians" pursuant to the Indian Act.

2. Prior to December 4, 1952 I was registered under the Indian Act. My registration number was 32. I was a member of the Matachewan First Nation, Band Number 72.

3. In December of 1952, the Chief of the Matchewan First Nation, Chief Alfred Batisse, requested that I sign some papers. At the time I was not able to read or write, so I had no idea what the documents were that the Chief asked me to sign. I trusted the Chief's direction and signed the documentation as requested.

4. I later discovered that I had in fact signed an Application for Enfranchisement. At the time of signing I did not know what Enfranchisement was, or what its consequences were. If I had know, I would never have signed the documentation. At no time did I intend to forfeit my registration under the Indian Act.

5. To the best of my knowledge and recollection I did not receive any money from the Chief, or from the government, for Enfranchisement. I do recall receiving $500.00 from the Chief, however, I was under the impression that the money was given to me as compensation for the "stumpage" that was occurring on the First Nation's land at the time.

6. I have since regained my status pursuant to Bill C-31. I verily believe that I should not have been registered as a "Bill C-31" registrant but rather as a "regular" registrant due to the invalidity of the Enfranchisement.

7. I also believe that my children should be granted "regular" registrant status. I am the birth mother to the following four children, all of whom were born out of wedlock.

Clarence Lorne, born on March 22, 1946;
Lorne David, born on October 6, 1948;
Laura Jean, born on October 14, 1952; and
Dorothy Ann, born on February 25, 1954

8. I make this affidavit for the purpose of having my Enfranchisement declared invalid, and for no other purpose.

SWORN BEFORE ME at the City of Toronto, in the Municipality of Metropolitan Toronto, this 26th day of February, 1996.

Laura Flood
Laura Mary Flood

A Commissioner etc.

This is Exhibit "D" referred to in the
Affidavit of Angel Sue Larkman sworn
Before me, on this 24, day of February, 2011.

E. Damini

A commissioner for taking affidavits

I, Elizabeth Damini, Deputy Clerk,
Commissioner, etc., City of
Timmins, District of Cochrane.
Expires with Tenure.

IN THE MATTER OF Angel Etches, Dorothy Ann Flood (nee Batisse), and Laura Flood (nee Batisse).

AND IN THE MATTER OF Application for Registration pursuant to the Indian Act.

AFFIDAVIT

I, Laura Mary Flood (nee Batisse), of the Town of Matachewan, in the District of Cochrane,

MAKE OATH AND SAY AS FOLLOWS:

1. I was born on March 1, 1926 on the Matachewan Indian Reservation, in Ontario. My birth parents were Harry and Anne Batisse, both of whom were entitled to be registered as "Indians" pursuant to the Indian Act.

2. Prior to December 4, 1952 I was registered under the Indian Act. My registration number was 32. I was a member of the Matachewan First Nation, Band Number 72.

3. I am the birth mother to the following four children, all of whom were born out of wedlock:

   Clarence Lorne, born on March 22, 1946;
   Lorne David, born on October 6, 1948;
   Laura Jean, born on October 14, 1952; and
   Dorothy Ann, born on February 25, 1954

4. On June 20, 1964 I married Wycliffe Flood, a non-native man. I have never-

been married to any other person prior to this 1964 marriage. At the time of my enfranchisement of December 4, 1952 I was not married to Wycliffe Flood, nor was I married to any other person, native or non-native.

5. I make this affidavit for the purpose of having my Enfranchisement of December 4, 1952 declared invalid, and for no other purpose.

SWORN BEFORE ME at the City of Toronto, in the Municipality of Metropolitan Toronto, this 13th day of August, 1996.

A Commissioner etc.

Laura Flood

Laura Mary Flood

This is Exhibit "E" referred to in the
Affidavit of Angel Sue Larkman sworn
Before me, on this 24, day of February, 2011.

A commissioner for taking affidavits

I, Elizabeth Damini, Deputy Clerk,
Commissioner, etc., City of
Timmins, District of Cochrane.
Expires with Tenure.

File E6000-219 (F0410)

IN THE MATTER OF Angel Etches, Dorothy Ann Flood (nee Batisse), and Laura Flood (nee Batisse).

AND IN THE MATTER OF Application for Registration pursuant to the *Indian Act*.

AFFIDAVIT OF LAURA MARY FLOOD (nee Batisse)

Kimberly R. Murray
Aboriginal Legal Services of Toronto
197 Spadina Avenue
Suite 600
Toronto, Ontario
M5T 2C8

Solicitor for the Applicants

File E6000-219 (F0410)

IN THE MATTER OF Angel Etches, Dorothy Ann Flood (nee Batisse), and Laura Flood (nee Batisse).

AND IN THE MATTER OF Application for Registration pursuant to the *Indian Act*.

INDEX

File E6000-219 (F0410)

IN THE MATTER OF Angel Etches, Dorothy Ann Flood (nee Batisse), and Laura Flood (nee Batisse).

AND IN THE MATTER OF Application for Registration pursuant to the *Indian Act*.

A F F I D A V I T

I, Laura Mary Flood (nee Batisse), of the Town of Matachewan, in the District of Cochrane,

MAKE OATH AND SAY AS FOLLOWS:

1. I was born on March 1, 1926 on the Matachewan Indian Reservation, in Ontario. My birth parents were Harry and Anne Batisse, both of whom were entitled to be registered as "Indians" pursuant to the *Indian Act*.

2. Prior to December 4, 1952 I was registered under the *Indian Act*. My registration number was 32. I was a member of the Matachewan First Nation, Band Number 72.

3. I recently had an opportunity to review the Department of Indian and Northern Affairs documentation regarding my "enfranchisement". I have a number of concerns, as set out in the following paragraphs, regarding the validity of the documentation.

4. My first concern relates to the letter dated July 28, 1952 from Indian Agent, J.A.

Marleau, to the Department of Citizenship and Immigration. Mr. Marleau writes that he received a letter from me requesting that I be enfranchised. This letter is not included in the enfranchisement file. At no time did I write such a letter, nor did I instruct anyone else to write this letter on my behalf. In 1952 I was illiterate, unable to read or write. The only thing I was capable of writing was my name. Now shown to me and marked as **Exhibit A** is a copy of the July 28, 1952 letter.

5. A second concern arising from the July 28, 1952 letter relates to Mr. Marleau's note that "Ms. Batisse has been living away from the Reserve for 13 years and has resided in Matachewan for 13 years." This information is false. I did not leave the Reservation in 1939 at the age of thirteen. As confirmed by the Matchewan Treaty Pay-Lists, I only moved off of the Reservation when I was approximately 19 years old.

6. A review of the 1925 Pay-List of Treaty 9 shows my father, ticket no. 32, as having three sons and no daughters residing with him. Now shown to me and marked as **Exhibit B** is a copy of the 1925 Pay-List.

7. A review of the 1926 Pay-List, the year I was born, shows my father as having three sons and one daughter residing with him. Now shown to me and marked as **Exhibit C** is a copy of the 1926 Pay-List.

8. A review of the 1930 Pay-List, the year my sister Elsie was born, shows my father as having two daughters residing with him. Now shown to me and marked as **Exhibit D** is a copy of the 1930 Pay-List.

9. A review of the 1933 Pay-List shows my father as reporting three daughters residing with him. This was the year that my sister Lorina was born. Now shown to me and marked as **Exhibit E** is a copy of the 1933 Pay-List.

10. A review of the 1935 Pay-List shows my father as reporting four daughters residing with him. The forth daughter listed is my youngest sister Louisa. Now shown to me and marked as **Exhibit F** is a copy of the 1935 Pay-List.

11. My father did not have any more daughters after 1935. Now shown to me and marked as **Exhibit G** is a copy of the Department of Indian and Northern Affairs Personal Data form with respect to my father.

12. A review of the 1939 Pay-List, the year that according to the Indian Agent, I left the Reservation, shows that my father reported four daughters as residing with him. Now shown to me and marked as **Exhibit H** is a copy of the 1939 Pay-List.

13. My father is recorded as having four daughters residing with him on subsequent Pay-Lists. Now shown to me and marked as **Exhibit I** is the Pay-List of 1945

indicating that I still resided with my father in the community.

14. A third concern which I have regarding my enfranchisement is with respect to the letter dated October 31, 1952, bearing my signature. I did not write this letter, nor did I instruct anyone else to write this letter on my behalf. I have no knowledge of the referred to letter dated October 18, 1952 from Indian Agent Marleau. This October 18, 1952 letter was not disclosed to me by the Department of Indian and Northern Affairs with the rest of the enfranchisement documentation. Now shown to me and marked as **Exhibit J** is a copy of the October 31, 1952 letter.

15. I presently have no understanding of, and certainly did not have any understanding in 1952, of the subject matter of the October 31, 1952 letter that bears my signature, namely, the issue of my timber rights.

16. I have reviewed my *Application for Enfranchisement*. The signature is my signature, however, as I have stated before, I did not know what I was signing. I could not read in 1952. I trusted my Chief and always obeyed instructions from the Indian Agent. I signed whatever documentation I was asked to sign. I was not informed that by signing the documentation I was giving up my status as an Indian. Now shown to me and marked as **Exhibit K** is a copy of the *Application for Enfranchisement*.

17. With respect to paragraph 3 of the *Application for Enfranchisement*, and the *Requisition For Cheque* dated December 12, 1952, I do not recall receiving a cheque for $82.23 from the Department of Citizenship and Immigration. Now shown to me and marked as **Exhibit L** is a copy of the cheque requisition.

18. A further concern arises with respect to paragraph 4 of the *Application for Enfranchisement*, and the Department of Citizenship and Immigration's *Particulars of Enfranchisement*, which both state that I had no minor, unmarried children. At the date of the application I had two sons; Clarence Lorne, born on March 22, 1946, and Lorne David, born October 6, 1948 . Now shown to me and marked as **Exhibit M** is a copy of the Department of Citizenship and Immigration's *Particulars of Enfranchisement*.

19. I have reviewed the correspondence between Indian Agent J. A. Marleau and the Department of Citizenship and Immigration regarding my *Enfranchisement Card*. The card bears my signature, however, as previously stated, I was not told that I was signing documentation which would strip me of my status as an Indian. I would never knowingly apply to give my rights as an Aboriginal person. I was born an "Indian" and I have always considered myself to be an "Indian". Now shown to me and marked as **Exhibits N, O, P and Q** are the letters dated December 12, 1952, January 23, 1953, and January 31, 1953, and my *Enfranchisment Card*, respectively.

20. I make this affidavit for the purpose of having my Enfranchisement declared invalid, and for no other purpose.

SWORN BEFORE ME at the City of
in the Province of Ontario, this 22 day of
APRIL 1998.

A Commissioner etc. POSTMASTER
NOTARIZING ON
PUBLIC

Laura Flood
Laura Mary Flood

8043-86 45

FIELD SERVICE 02378

PLEASE QUOTE FILE 43/37-3-3

CANADA

DEPARTMENT OF CITIZENSHIP AND IMMIGRATION

1952 JUL 29 AM 11:02 INDIAN AFFAIRS BRANCH

Sturgeon Falls, July 28, 1952.

12 - INDIAN AFFAIRS

Indian Affairs Branch, Department of Citizenship & Immigration, Ottawa.

Re: Enfranchisement of
Laura Batisse,
#67 Matachewan Band.

We have received a letter from the above captioned requesting to be enfranchised.

Miss Batisse has been living away from the Reserve for 13 years and has resided in Matachewan for 13 years. She has been steadily employed for the past four years as a housekeeper and camp cook with an approximate annual income of $600.00.

She holds no property on the Matachewan Reserve and is not indebted to band funds, appropriation or agency accounts. I believe Miss Batisse is capable of assuming responsibilities of citizenship.

Therefore, if the Department approves, kindly forward necessary application forms for her enfranchisement.

M. Kindy

c.c.: J. A. Marleau,
Superintendent,
Sturgeon Falls Indian Agency.

Bof. 111

This is exhibit A to the affidavit of LAURA MARY FLOOD dated the 28 day of APRIL 1998

46.1

PAY-LIST of TREATY NINE

for 1925

[illegible] BAND paid

Band No.	Name	Men	Women	Boys	Girls	Total	Amount Paid	No. on previous Pay-List
	[illegible] Widow		1			1	400	1
2	William	1		1	R	2	800	3
8	[illegible]	1	1	2	2	6	2400	6
5	[illegible] Widow		1	3	1	5	2000	6
9	Henry	1				1	400	1
10	[illegible]	1	1		2	4	1600	4
11	[illegible]		1	1		2	800	2
12	[illegible] Phillip			1		1	400	1
13	[illegible]			1	1	2	800	2
16	William [illegible]	1	1	1		3	1200	3
17	[illegible]	1				1	400	1
18	[illegible]	1				1	400	1
19	[illegible]	1	1		1	3	1200	3
20	[illegible]				1	1	400	1
22	Peter [illegible]	1	1	2	1	5	2000	6
23	[illegible]	1	1	2		4	1600	4
24	[illegible] Widow				2	2	800	2
26	[illegible]	1	1	1	3	6	2400	6
27	[illegible]		1			1	400	1
29	[illegible]		1			1	400	1
31	[illegible]	1	1	3		5	2000	4
32	[illegible]	1	1	2		4	1600	4
33	[illegible]		1			1	400	1
34	Forward	15	13	20	14	62	248.00	63

This is exhibit B to the affidavit of LOUISE MARY FLOOD dated the 28 day of APRIL 1998

This is Exhibit C to the affidavit of LAURA MAILL[illegible] dated the 23 day of April 1998

PAY-LIST OF Matachewan BAND

Treaty Nin[e]

PAID AT

2	[illegible] senior		1			1	4.00		1
3	[illegible] William	1		1		2	8.00		2
5	[illegible] Jr.	1	1	2	2	6	24.00		6
9	[illegible] senior		1	3	1	5	20.00		5
10	[illegible] Henry	1				1	4.00		1
11	[illegible]	1	1		2	4	16.00		4
12	Mr. [illegible]	1	1			2	8.00		2
13	[illegible] Philip			1		1	4.00		1
14	[illegible]			1	1	2	8.00		2
17	William [illegible]	1	1	1		3	12.00		3
18	John [illegible]	1				1	4.00		1
19	John [illegible]	1				1	4.00		1
20	William [illegible]	1	1		1	3	12.00		3
22	Mr. Thomas [illegible]		1		1	1	4.00		1
23	Peter [illegible]	1	1	2	1	5	20.00		5
24	James [illegible]	1	1	2		4	16.00		4
26	[illegible] senior				2	2	8.00		2
27	[illegible] Gustave	1	1	1	4	7	28.00		6
29	[illegible]		1			1	4.00		1
30	[illegible]		1			1	4.00		1
32	[illegible] Henry	1	1	3	1	6	24.00		5
33	[illegible]	1	1	2	1	5	20.00		4
34	[illegible]		1			1	4.00		1
	General [illegible]	13	15	21	12	65	260.00		62

80

Treaty Ni[illegible] for 19[illegible]

PAID AT [illegible]

No. on previous Paylist	Signatures of Recipients	Remarks
1	[illegible]	
2	[illegible]	
6	[illegible]	
5	Paid by [illegible]	
1	[illegible]	
4	Thomas [illegible]	
2	Paid by [illegible]	
1	[illegible]	
2	[illegible]	
3	[illegible]	
1	John [illegible]	
1	John [illegible]	
3	Paid by [illegible]	
1	William [illegible]	
5	Peter [illegible]	
4	James [illegible]	
2	[illegible]	[illegible]
6	[illegible]	
1	[illegible]	
2	[illegible]	[illegible]
5	[illegible]	[illegible]
4	[illegible]	
1	[illegible]	
12		

This is exhibit C to the affidavit of Laura Holl[illegible] dated this 28 day of April 1998

49

This is exhibit D to the affidavit of EVA MARY [illegible] dated the 28 day of April 1998

PAY-LIST OF [illegible] BAND

Treaty Nine fo[r] ... PAID AT [illegible]

Band No.	Names	Men	Women	Boys	Girls	Total	Amount Paid	Amount retained by Dept. for Absentees	No. on Previous Pay-list	Signatures of Witnesses
2	[illegible] widow				1	1	4.00		1	[illegible]
5	[illegible]	1		1		2	8.00		2	[illegible]
8	[illegible]	1	1	2	2	6	24.00		6	[illegible]
9	[illegible] widow		1	3	1	5	20.00		5	[illegible]
10	[illegible]	1				1	4.00		1	[illegible]
11	[illegible]	1	1		2	4	16.00		4	[illegible]
15	[illegible]	1	1		1	3	12.00		1	[illegible]
16	[illegible]			1		1	4.00		1	[illegible]
17	[illegible]	1	1	1		3	12.00		3	[illegible]
18	[illegible]	1				1	4.00		1	[illegible]
19	[illegible]	1				1	4.00		1	[illegible]
20	[illegible]	1	1		2	4	16.00		4	[illegible]
22	[illegible]		1			1	4.00		1	[illegible]
23	[illegible]	1	1	2	1	5	20.00		5	[illegible]
24	[illegible]	1	1	2		4	16.00		4	[illegible]
26	[illegible] widow				2	2	8.00		2	[illegible]
27	[illegible]	1	1	1	3	5	20.00		5	[illegible]
29	[illegible]		1			1	4.00		1	[illegible]
30	[illegible]		1			1	4.00		1	[illegible]
32	[illegible]	1	1	4	2	8	32.00		7	[illegible]
33	[illegible]	1	1	5	1	6	24.00		6	[illegible]
34	[illegible]		1			1	4.00		1	[illegible]
	Forward	14	14	21	19	69	[illegible]		65	

364

ST OF

.... BAND

Treaty ine for 1922

PAID AT Robinson

This is exhibit D to the affidavit of LAURA HINK Ford sworn before me this 28 day of April 1998

Married Wages to Band Council for time in office

This is exhibit E to the affidavit of Laura Mary Ford dated the 28 day of April 1968

PAY-LIST OF Potawatomi BAND

Treaty M

PAID AT

Roll No.	NAME.	NUMBER IN FAMILY				Amount Paid	Amount Retained to Pay for Absentee	No. on Previous Pay-List	
2	Barker Rebecca	1			1	400		1	
3	" Ellen	1	1		2	800		2	
5	" Fred A	1	1	2	1	5	2000	5	
9	Chauncey Ida	1		3	1	5	2000	5	
10	" Nancy	1			1	400		1	
11	Big Chief Joe	1	1		1	3	1200	3	
15	Caplequin Elizabeth	1	1	3	1	5	2000	4	
16	Medicine Eagle			1		1	400	1	
17	Williams Emmett	1	1			2	800	2	
18	Wabnum Wade	1				1	400	1	
19	Cotton Alexander	1				1	400	1	
20	Williams	1	1		3	4	1600	4	
22	Mrs Chauncey		1			1	400	1	
23	Peters Albert	1	1	2	1	5	2000	5	
24	Jones Paul	1	1	2		4	1600	4	
26	Peltier Eva				2	2	800	2	
27	Bourassa Isadore	1	1	1	5	8	3200	8	
29	Wabnum Mrs		1			1	400	1	
30	Hanson Mrs Peter		1			1	400	1	
32	Peters Mary	1	1	4	3	9	3600	5	
33	" Eugene	1	1	3	1	6	2400	6	
34	Capricon Mrs Alice	1			1	2	800	1	
	Amount	14	12	21	15	62	37600	65	

180

Treaty Nine or 1952

PAID AT... Mattawa

SIGNATURES OF RECIPIENTS	SYSTEMATIC NUMBERS				REMARKS
	1	2nd	1	2nd	

This is exhibit E to the affidavit of Laura Mary Flood dated the 28 day of April 1998

Mr Paul Baker
Mathias Baker
Rachel Baker
Paul Jr Baker
Henry Chapman
Stephen Pitt
Paul Jr Chapman
Frank Cannon
William Cannon
Wilson Mills
Lisa Mountain
Paul Jr Chapman
Joseph Chapman
Paul Jr Chapman
Frank Pierce
Mr Mrs Frank Baker
Andrew Chapman
Mr Robert Hayes
Paul Jr Chapman
Hector Baker
Edward Baker
Mr Elias Lyon

Jr. Paul Jr Chapman
Edward Baker Jr Mrs
Paul Jr Chapman

This is exhibit F to the Affidavit of Lawrence Hood sworn before me at Abbotsford this 28 day of April 1998

PAY-LIST OF Matsqui Indians PAID AT

Band No.	NAMES	Number in Family					Amount Paid	Amount to be Paid for Each Person	Remarks including Signature
		1	2	3	4	5			
2	Peters Richard senior	/			/		$10		/
3	" Charlie	/		/			$10		2
3	" Richard Jr	/	/		/		$30		3
9	Thomas Peter senior		/	2			$20		2
11	Pete Chief	/	/			/	$20		2
13	Charlie Peter Peter	/	/	2			$40		3
16	Richard Capi	/			/		$10		/
17	Matthew Abraham	/	/				$20		2
18	Peters Peter	/			/		$10		/
19	Peter Peterlick	/			/		$10		/
20	Charlie	/	/	/			$30		3
21	Pete Thompson		/		/		$10		/
23	Peter Charlie	/	/	2	/		$30		3
24	James Peter	/	/	/			$20		2
26	Peters Frank senior			/	/		$10		/
27	Harper Caroline	/	/	/			$30		3
29	Hope Peter		/		/		$10		/
30	Matthew Pete Peter		/		/		$10		/
32	Peters Henry	/	/				$20		2
33	" Arlene	/	/				$20		2
34	Pepinene Pete Peter	/			/		$10		/
		14	12	12	10	4	$320		45
		/	/	/	/	/			

97

Treaty Nine for 19 27

PAID AT Fort Hope

SIGNATURES OF RECEIVERS | REMARKS

This is exhibit F to the affidavit of Laura Mckay sworn dated the 28 day of April 1998

Robert Beardy
Matthew Beardy
Mitchell Beardy
Frederick Beardy
Edward Beardy
Paul Beardy
Henry Beardy
Mitchell Beardy
John Beardy
Edward Beardy
Peter Beardy
James Beardy
Edward Beardy
Frederick Beardy
Peter Beardy
Peter Beardy
Henry Beardy
Edward Beardy
Peter Beardy

55

1. LAST NAME: BATISSE
2. FIRST AND MIDDLE NAMES: HARRY
3. AGENCY: NIPISSING
4. P.O. ADDRESS:
5. RESERVE: MATACHEWA
6. BAND AND NO.:
7. DATE OF BIRTH: Jan. 1, 1895 **
8. RELIGION: R.C.
9. EDUCATION:
10. FATHER'S NAME:
11. MOTHER'S NAME:

PART 2 - MARRIAGE DATA

1. NAME OF SPOUSE	2. DATE OF BIRTH	3. BAND AND NO.	4. MARRIED ACCORDING TO CUSTOM OF BAND	5. DATE REGISTERED	6. RELIGION	7. CHANGES IN STATUS
~~ANNIE~~ One Lost	25/3/1894					Died
Mariage						

PART 3 - CHILDREN

1. NAMES	2. SEX	3. DATE OF BIRTH	4. DATE RECORDED	5. RELIGION	6. CHANGES IN STATUS OR MEMBERSHIP
~~HENRY~~	M	6/8/1920		R.C.	Tfd. to No. 57
~~GEORGE~~	M	13/5/1922		R.C.	Tfd. to No. 58
~~BARNEY~~	M	17/2/1938		R.C.	Tfd. to No. 84
~~WILLY~~	M	29/6/1910		R.C.	Died September 12/40
~~JOE~~	M	12/7/1924		R.C.	Died October 26, 1945
~~JAMES~~	M	6/2/1928		R.C.	Tfd. to No. 70 of age
~~LAURA~~	F	1/2/1926		R.C.	Tfd. to No. 67
~~LORENA~~	F	2/3/1933		R.C.	Tfd. to No. 76 Married Andrew McKenzie Non-I
~~MARY~~	F	1/6/1930		R.C.	Tfd. to No. 75 Married Clint Ploudre Non-Ind
					by P.C. 1954-1195 -Aug. 18/54 - File 43/27-3

PART 4 - GENERAL REMARKS: Harry Batisse fell from Government Dock at Matachewan and drowned ... August 26, 19

This is exhibit [illegible] to the affidavit of [illegible] sworn before me this 23rd day of [illegible] A.D. 19[illegible]

INDIAN

5	14. BAND AND NO.	15. OCCUPATION	32
		Deceased Farmer	

STATUS AND MEMBERSHIP	7. DATE	8. MEMO NO.	9. DATE
	16.1.72		
		57	
		58	
		64	
		70	
		67	
		76	
		75	

1.2.7

Com-Ind. Aug.12/50

1-Indian

37-3-4-32(12) Oct. 26/54

4-1962.

This is exhibit 6 to the affidavit of [illegible] dated the 28 day of April 19 98

38

Treaty No. 9

Matachewan Band Paid at Matachewan

2	Batisse, Michel		I			I	I	4 00	I
3	Batisse, William		I	I		2	2	8 00	2
5	Batisse, Michel Jr.	I	I	2		4	4	I6 00	5
9	Chaumie, John Widow		I			I	I	4 00	I
II	Fox, Mrs. Thomas		I			I	I	4 00	I
I5	Miller, Philip A.	I	I	2	4	8	8	32 00	8
I7	Cromathy, Wm.	I	I			2	2	8 00	2
I9	Wincikaby, John G.	I			I	2	2	8 00	2
20	Wincikaby, Wm.	I	I	I	3	6	6	24 00	6
23	Albany, Peter	I	I	2		4	4	I6 00	5
24	Pierce, James	I	I			2	2	8 00	2
26	Batisse, Noah				I	I	I	4 00	I
27	Langevin, Isadore	I	I		3	5	5	20 00	5
29	Dufee, Mrs. Peter Widow		I			I	I	4 00	I
30	Martin, Mrs. Peter Widow		I			I	I	4 00	I
32	Batisse, Harry	I	I	3	4	II	II	44 00	II
33	Batisse, Tonisse	I	I	3	I	6	6	24 00	6
34	Lafricain, Mrs. Steve		I			I	I	4 00	I
		10	16	16	17	57	57	228 00	61

This is exhibit H to the affidavit of Lawrence Nord dated the 28 day of April 19 98

RECEIVED: 1-27-98; 10:59; 17055652585 => XEROX 3006; #27
01/27/1998 12:05 17055652585 MATACH FIRST NATION

June 8th 1937

[illegible]					[illegible]	[illegible]
Mrs [illegible] x						
[illegible] x						
Michael [illegible] x	1				[illegible] Jan 6th 1937	
[illegible] - 2 9975						
Mrs [illegible] x						
[illegible] 2 9974						
[illegible]						
John [illegible]						
[illegible] - 2 9978						
Peter [illegible] x	1				[illegible] married [illegible] No 48	
[illegible] - 2 9981						
[illegible] x						
[illegible] x						
Mrs [illegible] x						
Mrs [illegible] x						
Harry [illegible] x						
[illegible] x						
[illegible] - 2 9976						

This is exhibit H to the affidavit of Laura Mary Hood dated the 28 day of April 1998

This is exhibit T to the affidavit of Louis Mary Flood dated the 22 day of April, 1918.

Treaty No. 9

Mistachowan Band Fund at Mistachowan Reserve

Number	Names	Arrears		Payments in Present					Amount this Payment	Amount this present Payment
3	Batisse, Mrs widow			1			1	1	4.00	1
5	Batisse, Michel		1	1		1	3	3	12.00	3
9	Chanonie, Julia widow									1
11	Fox, Mrs. Thomas			1			1	1	4.00	1
13	Miller, Philip A.		1	1	2	4	8	8	20.00	8
17	Cromathy, Mrs.		1	1			2	2	8.00	2
19	Winsikaby, John G.		1	1	1	3	6	6	24.00	5
20	Winsikaby, Mrs.		1	1	2	2	6	6	24.00	6
23	Albany, Peter widow			1			1	1	4.00	1
24	Pierce, James		1	1			2	2	8.00	2
27	Longevin, Isidore		1	1		1	3	3	12.00	4
29	Dufee, Mrs. Peter			1			1	1	4.00	1
30	Martin, Mrs. Annie			1			1	1	4.00	1
32	Batisse, Mary		1	1	4	4	10	10	40.00	10
33	Batisse, Terrance		1	1	1	1	4	4	16.00	4
34	Lafriomin, Mrs. Steve			1			1	1	4.00	1
36	Friday, Mrs. George			1	1	1	3	3	12.00	3
37	Friday, Mrs.		1	1		1	3	3	12.00	3
38	Friday, James		1				1	1	4.00	1
39	Friday, Joseph		1	1			2	2	8.00	2
41	McLeod, Mrs. Annie	1	4.00	1			1	1	4.00	1
42	Commanda, Simon widow			1			1	1	4.00	1
43	Chanonie, Jacob		1	1	3	2	7	7	28.00	7
44	Pierce, John		1	1	1	3	6	6	24.00	6

1. [illegible] 70/

57

Pay-lists

June 6th 1945.

2	Mrs. Wm. Batisse x Michel Batisse x			
		1	Died Dec. 2, 1944	
	Mrs. Thos. Fox x M.C. 714-6316.		Boy in Spanish School 2 in London Sanitorium -- Fund	12.00
	Wm. Cromarty x.			
3	John G. Cromarty x M.C. 714-6317. M.C. 714-6318.	1	Benjamin Edward born Sept. 3,1944	
	Taken by No. 5.		Thereon may. Aug. 3,1944, to Everett	
	Taken by No. 5.		L/T. Hanson, RCAF. No. 63	
	Mrs. Peter Pafoo x M.C. 714-6319.		Corrected	
	Taken by Son, George			
2	Tomisse Batisse x		This is exhibit I to the	
	Taken by No. 5.		affidavit of Laura Mary Pratt	
	Mrs. George Friday x		dated the 27 day of April 1998	
	Taken by No. 47			
	Taken by No. 47			
	Joseph Friday x			
3	Annie McLeod x.			
	Mrs. S. Commanda x			
	M.C. 714-6320			
	Taken by No. 5			

" " "

12 of

Mntachew
October

Mr. J.A. Marleau,
Superintendent,
Sturgeon Falls Indian Agency,
Sturgeon Falls, Ontario.

Dear Sir:

In reply to your letter of Octo
relative to my application for enfranchis

I have noted your reply to my n
regarding the timber rights that have bee
however, I would like you to send my appl
form to the Department as soon as possibl
that I can be enfranchised.

Yours very truly,

Laura B

(Laura Batisse)

This is exhibit J to the
affidavit of Laura Mary Ford
dated the 28 day of April 1978

APPLICATION FOR ENFRANCHISEMENT

pursuant to the provisions of the Indian Act being Chapter 29,
Statutes of Canada, 1951

I, LAURA BATISSE of the Township of Matachewan in the Province of Ontario hereby make application to the Superintendent General of Indian Affairs for enfranchisement pursuant to the provisions of the Indian Act, being Chapter 29 of the Statutes of Canada, 1951.

I hereby declare as follows:

1. I am a member of the Matachewan Band of Indians Nipissing Agency situated in the Province of Ontario My Band No. is 67 and I am of the full age of twenty-one years.

2. I am presently employed at Matachewan, as a housekeeper

and I am capable of assuming the duties and responsibilities of citizenship, and if enfranchised will be capable of supporting myself and dependents.

3. It is understood and agreed that upon enfranchisement as aforesaid, I, my wife and minor, unmarried children are each entitled to EIGHTY-TWO 23/100 Dollars ($82.23) as provided by section 15 (1) (a) and (b) of the said Act.

Note: I believe there should be some interest due me rrom the Timber rights to the Matachewan Reserve which have been sold.

4. My wife and minor, unmarried children consist of the following persons, namely:

WIFE

N/A
(Name in full)

SONS (Names in full)	Dates of birth
NONE	

This is exhibit K to the affidavit of Laura Batisse dated the 25th day of April 1968

(over)

I. A. 310 (Rev.)

DAUGHTERS (Names in full) Dates of birth

NONE

DATED at MATACHEWAN in PROVINCE OF ONTARIO

this TENTH day of OCTOBER 19 52

WITNESS:

Laura Batisse
Signature of Applicant

APPROVAL OF APPLICANTS' WIFE

I, N/A, do certify that I am the wife of ____, the above named applicant, and that I approve of this application for enfranchisement.

WITNESS:

N/A
Signature of Wife

CERTIFICATE OF SUPERINTENDENT

I certify that I know LAURA BATISSE, the above applicant, and that his statement of facts is true, to the best of my knowledge and belief, and that I consider him a fit and proper person to become enfranchised, and hereby recommend that the application be granted.

Indian Superintendent

This is exhibit K to the affidavit of LAURA MINA PAUL dated the 29th day of APRIL, 1978

FORM C.T. No. 17A—REV.
P. P. & S. Cat. No. 3118
50M—1-52

REQUISITION FOR CHEQUE

TO BE USED FOR ADVANCES OR AUTHORIZED PAYMENTS FOR WHICH THERE ARE NO ACCOUNTS

DEPT. No. ....

FILE No. 8043-06 (TP)

TREAS. No. ....

RTMENT of Citizenship and Immigration

INDIAN AFFAIRS DATE Ottawa, December 12, 1952.

TION IS HEREBY MADE FOR THE ISSUE OF THE FOLLOWING CHEQUE OR CHEQUES:—

>UE No.	IN FAVOUR OF	AMOUNT
	LAURA BATISSE c/o J. A. Marleau, Esq., Indian Superintendent, STURGEON FALLS, Ontario.	$32.25

AUDITED FOR PAYMENT DEC 17 1952

Y, WITH DETAILS IN EVERY CASE, WHETHER (a) STANDING ADVANCE, (b) ADVANCE FOR SPECIFIC JOURNEY—ESTIMATING NUMBER OF DAYS, (c) OTHER ACCOUNTABLE ADVANCE, OR (d) AUTHORIZED PAYMENT.

yment:

band funds and annuity payable to Miss Laura Batisse, No. 67 Matachewan Band, chisement authorized by Order in Council P.C. No. 4588 dated December 4, 1952.

Allotment, Sub-allotment or Enc. No.

Trust Account No. 136 Rev. - $ 2.25

Vote 540 - 22 - 811 Recovery 30.00

Dept., Com. or Dist.	Div. (2)00	Estab. (3)000	Vote (3)000	Prim. (2)00	Object (3)000	Amount	Dist. Sub. Al. (2)00	Dist. F.E. No. (4)0009

Dr:
t each item of the above amounts has been incurred under requisite
nd that the expenditure was necessary for the Public Service.
t the articles and services charged for have been received and
and that the prices charged are fair and just.

A. G. LESLIE
Deputy Head

of Branch

ORIGINAL SIGNED BY
E. J. MORGAN
TREASURY OFFICE APPROVAL

L

This is exhibit ____ to the affidavit of Laura Marie Blood dated the 24 day of April 1953

INDIAN AFFAIRS
BRANCH

CANADA

DEPARTMENT OF
CITIZENSHIP AND IMMIGRATION

REFER TO FILE NUMBER
8043-86

65

Particulars re Enfranchisement

Band No. ...67.....

Band ....Wetachewan..... Agency .....Nipissing.....

Name ..BATISSE.....LAURA.....
(Surname) (Given Names)

Wife ...////.....

Sons NONE

Daughters NONE

Date of memo. to Council .....November 27,.1952.....

File No. .....8001-8.....

Date of Enfranchisement Order ....December 4,.1952.....

P. C. No. .....4582.....

Sworn before me at
Laura Manitou
this 29 day of April 1918

A. O. E. Gilroy
Registrar.

INDIAN AFFAIRS
BRANCH

CANADA

DEPARTMENT OF
CITIZENSHIP AND IMMIGRATION

REFER TO FILE NUMBER
B043-86 (T2)

66

J. A. Marleau, Esq.,
Indian Superintendent,
STURGEON FALLS, Ontario.

OTTAWA, December 18, 1952

Kindly be advised that by Order in Council P.C. 4588
dated December 4, 19 52, the applicant and family hereunder
named has/have been declared enfranchised:

NAME: (Miss) LAURA BATISSE No. 57 Matachewan Band

WIFE: ———

together with the minor unmarried child or children:

NONE

Please remove the aforementioned from the Membership List and, if any, the Annuity or/and Interest Paylist of the Band.

An enfranchisement card is enclosed. This card should be dated, signed and returned to this office for the Director's signature, after which it will be returned for delivery through your office.

PARTICULARS (when applicable) RE: MONIES PAYABLE:

Under separate cover, in your care, a cheque in the amount of $88.23 is going forward to Laura Batisse. This represents shares of band funds and annuity payable to Miss Batisse. The cheque together with the enfranchisement card should be forwarded to Miss Batisse.

Additional Remarks and Instructions (when applicable):

This is exhibit N to the affidavit of Laura Mary Flood dated the 28 day of April 1992

A. G. Leslie,
Trusts & Annuities Division.

463.

FIELD SERVICE

8043-86

PLEASE QUOTE
FILE 43/57-3-3

67

CANADA

DEPARTMENT OF CITIZENSHIP AND IMMIGRATION
INDIAN AFFAIRS BRANCH

Sturgeon Falls, Ontario,
January 23, 1953.

2

REGISTERED JAN 24 1953 RECORDS INDIAN AFFAIRS

Indian Affairs Branch,
Dept. of Citizenship & Immigration,
Ottawa, Ontario.

We are attaching hereto certificate of enfranchisement duly signed by Laura Batisse for completion by the Director of Indian Affairs.

J. A. Marleau,
Superintendent,
Sturgeon Falls Indian Agency.

This is exhibit O to the affidavit of Laura Mary Ford dated the 22 day of April 19 82

INDIAN AFFAIRS
BRANCH

CANADA

DEPARTMENT OF
CITIZENSHIP AND IMMIGRATION

REFER TO FILE NUMBER
~~6043-86 (T2)~~

OTTAWA, January 31, 19 53

J. A. Marleau, Esq.,
Indian Superintendent,
STURGEON FALLS, Ontario.

The enclosed enfranchisement card, signed by the Director, should now be delivered to

Laura Batisse.

A. C. Leslie,
Trusts & Annuities Division.

460.

This is exhibit P to the affidavit of Laura Mary Flood dated the 28 day of April 19 83

DEPARTMENT OF CITIZENSHIP AND IMMIGRATION
INDIAN AFFAIRS BRANCH
CANADA

TO WHOM IT MAY CONCERN:

I, D. M. MacKay, Director, Indian Affairs Branch, Department of Citizenship and Immigration, hereby declare

THAT Laura Battiste
(See signature below)

formerly a member of the Kutaqamukuk Band of Indians, was duly enfranchised by Order in Council

P.C. No. 4532 and dated the 4th day

of December, 1952, and that from the date of the aforesaid Order in Council the provisions of the Indian Act and of any other Act or law making any distinction between the legal rights, privileges, disabilities and liabilities of Indians and those of Her Majesty's other subjects cease to apply to her as she now enjoys and exercises all the legal powers, rights and privileges of Her Majesty's other subjects and is no longer deemed to be an Indian within the meaning of any laws relating to Indians.

SIGNED D. M. MacKay
DIRECTOR OF INDIAN AFFAIRS

DATE Dec 29/52

SIGNATURE OF Laura Battiste
(Laura Battiste)

IA-1059

This is exhibit C to the affidavit of Gina Hall Floyd dated the 7th day of April 1998.

This is Exhibit "F" referred to in the
Affidavit of Angel Sue Larkman sworn
Before me, on this 24, day of February, 2011.

A commissioner for taking affidavits

I, Elizabeth Damini, Deputy Clerk, Commissioner, etc., City of Timmins, District of Cochrane. Expires with Tenure.

37-3-3

71

Matachewan Ontario,
July 14th, 1952.

Mr J. Marlow,
Indian Agent,
Sturgeoan Falls, Ont.

Dear Sir:

Kindly forward the necessary papers to, release me from the treaty

LB:rls

Yours respectfully,

Laura Batise

(Laura Batise)

This is Exhibit "G" referred to in the
Affidavit of Angel Sue Larkman sworn
Before me, on this 24 day of February, 2011.

A commissioner for taking affidavits

I, Elizabeth Damini, Deputy Clerk,
Commissioner, etc., City of
Timmins, District of Cochrane.
Expires with Tenure.

FIELD SERVICE

PLEASE QUOTE
FILE 43/37-3-3

CANADA

DEPARTMENT OF CITIZENSHIP AND IMMIGRATION
INDIAN AFFAIRS BRANCH

Sturgeon Falls, Ontario,
July 18, 1952.

STURGEON FALLS INDIAN AGENCY
JUL 28 1952

Miss Laura Batisse, #67
Matachewan, Ontario.

Dear Miss Batisse:

Replying to your letter of July 14th concerning your request to be enfranchised, I would ask that you supply us with the following information:-

1. Length of residence away from the reserve..13 years.....
2. How long you have been residing in Matachewan 13 years.....
3. Do you own property on an Indian Reserve. (Interest in Mat. Reserve
4. Present means of livelihood. Housekeeper and Camp Cook.....
5. How long present job has been held....4 years.....
6. Approximate annual income $600.....
7. If present employment has been of short duration, what other jobs have been held during the past two or three years .....Nope.....

Your prompt reply to the above questions would be very much appreciated.

Yours very truly,

J. A. Marleau,
Superintendent,
Sturgeon Falls Indian Agency.

M:M

This is Exhibit "H" referred to in the
Affidavit of Angel Sue Larkman sworn
Before me, on this 24 day of February, 2011.

A commissioner for taking affidavits

I, Elizabeth Damini, Deputy Clerk,
Commissioner, etc., City of
Timmins, District of Cochrane.
Expires with Tenure.

FIELD SERVICE

02378

8043-86 75
PLEASE QUOTE
File 43/37-3-3

CANADA

DEPARTMENT OF CITIZENSHIP AND IMMIGRATION
1952 JUL 29 AM 11:02 INDIAN AFFAIRS BRANCH

Sturgeon Falls, July 28, 1952.

12 -- INDIAN AFFAIRS

Indian Affairs Branch, Department of Citizenship & Immigration, Ottawa.

Re: Enfranchisement of
Laura Batisse,
#67 Matachewan Band.

We have received a letter from the above captioned requesting to be enfranchised.

Miss Batisse has been living away from the Reserve for 13 years and has resided in Matachewan for 13 years. She has been steadily employed for the past four years as a housekeeper and camp cook with an approximate annual income of $600.00.

She holds no property on the Matachewan Reserve and is not indebted to band funds, appropriation or agency accounts. I believe Miss Batisse is capable of assuming responsibilities of citizenship.

Therefore, if the Department approves, kindly forward necessary application forms for her enfranchisement.

adv: on file.

M. Kennedy
for: J. A. Marleau,
Superintendent,
Sturgeon Falls Indian Agency.

Bob. 111

This is Exhibit "I" referred to in the
Affidavit of Angel Sue Larkman sworn
Before me, on this 24, day of February, 2011.

A commissioner for taking affidavits

I, Elizabeth Damini, Deputy Clerk, Commissioner, etc., City of Timmins, District of Cochrane. Expires with Tenure.

37-3-3-1

77

Post Office Box 161,
Matachewan, Ontario,
August 16th, 1952.

Mr. J. Marleau,
Indian Agent,
Sturgeon Falls, Ontario.

STURGEON FALLS
AUG 19 1952
INDIAN AGENCY

Dear Sir:

Some time has elapsed since filling the form which you forwarded to me and which was returned and to date I have heard nothing further in this regard.

Would you let me know by return mail if you received the form and if not would you forward another to the above address in order that I may have this completed as soon as possible.

Yours truly,

LB:s

(Laura Batisse)

Laura Batisse

This is Exhibit "J" referred to in the
Affidavit of Angel Sue Larkman sworn
Before me, on this 24, day of February, 2011.

A commissioner for taking affidavits

I, Elizabeth Damini, Deputy Clerk,
Commissioner, etc., City of
Timmins, District of Cochrane.
Expires with Tenure.

43/37-3-3

Sturgeon Falls, Ontario,
August 19, 1952.

Miss Laura Batise,
Post Office Box 161,
Matachewan, Ontario.

Dear Miss Batisse:

Replying to your letter of August 16, I wish to inform that your enfranchisement forms were forwarded to the Department on July 28th.

It may take several weeks before your enfranchisement is passed by an Order in Council.

However, we will advise you when we receive further information.

Yours very truly,

J. A. Marleau,
Superintendent,
Sturgeon Falls Indian Agency.

M:M

This is Exhibit "K" referred to in the
Affidavit of Angel Sue Larkman sworn
Before me, on this 24, day of February, 2011.

A commissioner for taking affidavits

I, Elizabeth Damini, Deputy Clerk,
Commissioner, etc., City of
Timmins, District of Cochrane.
Expires with Tenure.

81

INDIAN AFFAIRS
BRANCH

CANADA

DEPARTMENT OF
CITIZENSHIP AND IMMIGRATION

REFER TO FILE NUMBER
8043-86 (T. 2)

Ottawa, August 29, 19 52

MEMORANDUM:

1. [illegible]
2. ~~Treasury~~
3. T. 2

What amount of band or other funds would

Laura Batisse

No. 67, Matachewan Band Band,

Nipissing Agency, be entitled

to receive if enfranchised?

-/c
136

The population of the Band is 111 and

they receive $4.00 ~~per~~ T.9 annuity.

F. O. E. Gilroy,
Trusts & Annuities Division.

Stencil 477.

at Sept 8/52
Cap. $ 0
Int. $ 2.23
Total $ 2.23

Annuity 80.00

CAPITAL 0

INTEREST
111 247.18
2.23

This is Exhibit "L" referred to in the
Affidavit of Angel Sue Larkman sworn
Before me, on this 24, day of February, 2011.

A commissioner for taking affidavits

I, Elizabeth Damini, Deputy Clerk,
Commissioner, etc., City of
Timmins, District of Cochrane.
Expires with Tenure.

INDIAN AFFAIRS
BRANCH

CANADA

DEPARTMENT OF
CITIZENSHIP AND IMMIGRATION

REFER TO FILE NUMBER
8043-86 (T2)

OTTAWA, September 30, 1952

J. A. Marleau, Esq.,
Indian Superintendent,
STURGEON FALLS, Ontario.

RE: Your letter July 28/52 - file 43/37-3-5

Enclosed is the application form, in duplicate, to be completed in connection with the application of Laura Batisse
No. 67 Matachewan Band, for enfranchisement.
The original (ribbon copy) only is to be returned to this office and the duplicate (carbon copy) retained in your office.

IMPORTANT: (If all or any of the particulars hereunder have not been furnished when forwarding the first request for enfranchisement.)
When returning the application, your covering letter of recommendation should contain particulars as to length of residence off the reserve; how long applicant has been resident in the place indicated in the application; whether property is held on an Indian reserve; present means of livelihood, how long present job has been held and, if possible, chances for continued employment; approximate annual income, character; if present employment has been of short duration, what other jobs have been held during the past two or three years; capability of assuming responsibilities of citizenship and ability to provide for his family; whether applicant is indebted to Band Funds, Appropriation or Agency Accounts.

THE FOLLOWING IS APPLICABLE ONLY IN ALBERTA, SASKATCHEWAN AND ONTARIO AND ONLY WHEN THE NAME OF THE APPLICANT IS INSERTED IN THE PARAGRAPH.

Kindly advise that it is the practice that the shares of the minor unmarried children, when totalling more than $500.00, are deposited with the Public Trustee for or the Official Guardian of Infants for for administration. Under these circumstances is it the wish of the applicant to proceed with enfranchisement?

A. G. Leslie,
Trusts & Annuities Division.

469.

This is Exhibit "M" referred to in the
Affidavit of Angel Sue Larkman sworn
Before me, on this 24, day of February, 2011.

A commissioner for taking affidavits

I, Elizabeth Damini, Deputy Clerk,
Commissioner, etc., City of
Timmins, District of Cochrane.
Expires with Tenure.

43/37-3-3

Sturgeon Falls, Ontario,
October 2, 1952.

Miss Laura Batisse,
Matachewan, Ontario.

Dear Miss Batisse:

I am enclosing herewith your application forms for enfranchisement which must be signed by you in ink where indicated. You must also have someone other than a relative sign as witness.

Would you a lso complete section 2 stating the name of your employer.

Upon completion, kindly return forms to this office at your earliest convenience.

Yours very truly,

J. A. Marleau,
Superintendent,
Sturgeon Falls Indian Agency.

M:M
Encl.

This is Exhibit "N" referred to in the
Affidavit of Angel Sue Larkman sworn
Before me, on this 24 , day of February, 2011.

E Damini

A commissioner for taking affidavits

I, Elizabeth Damini, Deputy Clerk,
Commissioner, etc., City of
Timmins, District of Cochrane.
Expires with Tenure.

APPLICATION FOR ENFRANCHISEMENT

pursuant to the provisions of the Indian Act being Chapter 29,
Statutes of Canada, 1951

I, LAURA DATISSE of the Township of Matachewan in the Province of Ontario hereby make application to the Superintendent General of Indian Affairs for enfranchisement pursuant to the provisions of the Indian Act, being Chapter 29 of the Statutes of Canada, 1951.

I hereby declare as follows:

1. I am a member of the Matachewan Band of Indians
Nipissing Agency
situated in the Province of Ontario. My Band No. is 67 and I am of the full age of twenty-one years.

2. I am presently employed at Matachewan, as a housekeeper

and I am capable of assuming the duties and responsibilities of citizenship, and if enfranchised will be capable of supporting myself and dependents.

3. It is understood and agreed that upon enfranchisement as aforesaid, I, my wife and minor, unmarried children are each entitled to EIGHTY-TWO 23/100 Dollars ($82.23) as provided by section 15 (1) (a) and (b) of the said Act.

Note: I believe there should be some interest due me from the Timber rights to the Matachewan Reserve which have been sold.

4. My wife and minor, unmarried children consist of the following persons, namely:

WIFE

N/A
(Name in full)

SONS	(Names in full)	Dates of birth
NONE		

DAUGHTERS (Names in full) Dates of birth

NONE

DATED at HATACHEWAN in PROVINCE OF ONTARIO

this TENTH day of OCTOBER 19 52

WITNESS:

Signature of Applicant

APPROVAL OF APPLICANTS' WIFE

I, N/A, do certify that I am the wife of ....., the above named applicant, and that I approve of this application for enfranchisement.

WITNESS:

N/A
Signature of Wife

CERTIFICATE OF SUPERINTENDENT

I certify that I know LAURA BATISSE, the above applicant, and that his statement of facts is true, to the best of my knowledge and belief, and that I consider him a fit and proper person to become enfranchised, and hereby recommend that the application be granted.

Indian Superintendent

This is Exhibit "O" referred to in the
Affidavit of Angel Sue Larkman sworn
Before me, on this 24, day of February, 2011.

E. Damini

A commissioner for taking affidavits

I, Elizabeth Damini, Deputy Clerk,
Commissioner, etc., City of
Timmins, District of Cochrane.
Expires with Tenure.

43/37-3-

Sturgeon Falls, Ontario,
October 18, 1952.

Miss Laura Batisse,
Matachewan, Ontario.

Dear Miss Batisse:

I wish to acknowledge receipt of your application for enfranchisement duly signed.

With reference to your notation, I wish to inform that although the timber rights have been sold on the Matachewan Reserve, collection on dues have not yet been paid.

Therefore, if the Band has not been credited at the time of your enfranchisement, you will not receive any timber royalty as you will receive proportionately to what is in band fund at the time of enfranchisement.

If you wish to be enfranchised under these circumstances, kindly advise and we will forward the application to the Department.

Yours very truly,

J. A. Marleau

J.A. Marleau,
Superintendent,
Sturgeon Falls Indian Agency.

M:M

This is Exhibit "P" referred to in the
Affidavit of Angel Sue Larkman sworn
Before me, on this 24, day of February, 2011.

E. Damini

A commissioner for taking affidavits

I, Elizabeth Damini, Deputy Clerk,
Commissioner, etc., City of
Timmins, District of Cochrane.
Expires with Tenure.

43/37-3-3 92

Matachewan, Ontario,
October 31st 1952.

Mr. J.A. Marleau,
Superintendent,
Sturgeon Falls Indian Agency,
Sturgeon Falls, Ontario.

Dear Sir:

In reply to your letter of October 18th relative to my application for enfranchisement.

I have noted your reply to my notation regarding the timber rights that have been sold, however, I would like you to send my application form to the Department as soon as possible in order that I can be enfranchised.

Yours very truly,

Laura Batisse

(Laura Batisse)

This is Exhibit "Q" referred to in the
Affidavit of Angel Sue Larkman sworn
Before me, on this 24, day of February, 2011.

A commissioner for taking affidavits

I, Elizabeth Damini, Deputy Clerk,
Commissioner, etc., City of
Timmins, District of Cochrane.
Expires with Tenure.

FIELD SERVICE

8043-36 PLEASE QUOTE
FILE 43/37-3-3

94

01538

CANADA

DEPARTMENT OF CITIZENSHIP AND IMMIGRATION
INDIAN AFFAIRS BRANCH

NOV 7 Sturgeon Falls, November 5, 1952.

T2

Indian Affairs Branch, Department of Citizenship & Immigration, Ottawa.

Re: Enfranchisement of
Laura Batisse,
#67 Matachewan Band.

Further to my letter of July 28, I am enclosing herewith application for enfranchisment duly signed by Laura Batisse which I trust you will find in order.

We are attaching copy of letter from Miss Batisse in reply to notation under question 3.

J.A. Marleau

J. A. Marleau,
Superintendent,
Sturgeon Falls Indian Agency.

RECOMMENDED

A/SUPERINTENDENT,
Reserves & Trusts

APPROVED

DIRECTOR

This is Exhibit "R" referred to in the
Affidavit of Angel Sue Larkman sworn
Before me, on this 24, day of February, 2011.

E. Damini

A commissioner for taking affidavits

I, Elizabeth Damini, Deputy Clerk, Commissioner, etc., City of Timmins, District of Cochrane. Expires with Tenure.

AT THE GOVERNMENT HOUSE AT OTTAWA

THURSDAY, the 4th day of DECEMBER, 1952.

PRESENT:

HIS EXCELLENCY

THE GOVERNOR GENERAL IN COUNCIL:

WHEREAS the Minister of Citizenship and Immigration reports that the Indians whose names are included in Schedule A hereto have applied for enfranchisement and that in his opinion the said applicants

(a) are of the full age of twenty-one years;

(b) are capable of assuming the duties and responsibilities of citizenship; and

(c) when enfranchised, will be capable of supporting themselves and their dependents;

AND WHEREAS the Minister reports further that the Indian women whose names are included in Schedule B hereto married persons who were not Indians on the respective dates specified therein;

THEREFORE His Excellency the Governor General in Council, on the recommendation of the Minister of Citizenship and Immigration, and by virtue of the powers conferred by The Indian Act, is pleased to declare the Indians named in Schedule A hereto, together with the wives and minor unmarried children named in the said Schedule, enfranchised, and they are hereby enfranchised, accordingly.

His Excellency in Council, under and by virtue of the power conferred by subsection two of section 108 of The Indian Act, is pleased to declare enfranchised, as of their respective dates of marriage, the Indian women together with their minor unmarried children named in Schedule B hereto, and they are hereby enfranchised, accordingly.

DEPUTY GOVERNOR GENERAL

DEC

SCHEDULE A

1. Claybourne Clarence Fisher, of the Chippewas of the Thames Band, in the Caradoc Agency, Province of Ontario, together with his wife Vera Fisher.

2. Simon Sinoway, of the Gull Bay Band, in the Port Arthur Agency, Province of Ontario, together with his wife Marie Sinoway and his minor unmarried children Francis Sinoway, Mary Sinoway, Hazel Delores Sinoway and Theresa Sinoway.

3. Francis Koganosh, of the Magnetawan Band, in the Parry Sound Agency, Province of Ontario.

4. Frederick Decaire, of the Gibson Band, in the Parry Sound Agency, Province of Ontario.

5. Russell Kewaquom, of the Chippewas of Saugeen Band, in the Saugeen Agency, Province of Ontario.

6. Laura Batisse, of the Matachewan Band, in the Nipissing Agency, Province of Ontario.

7. Annie Louttit, of the Albany Band, in the James Bay Agency, Province of Ontario.

8. Allan Tangie (Taggie), of the Michipicoten Band, in the Chapleau Agency, Province of Ontario, together with his wife Lena Tangie and his minor unmarried children Michael James Tangie, Arthur John Tangie, Rose Mary Tangie, Anna Elizabeth Tangie and Lucy Jane Tangie.

9. Ida Yellowfly, of the Blackfoot Band, in the Blackfoot Agency, Province of Alberta, together with her minor unmarried children Winston Yellowfly, Rita Joyce Yellowfly and Linda May Yellowfly.

10. Harry Kaysaywaysemat (Kay), of the Kahkewistahaw Band, in the Crooked Lake Agency, Province of Saskatchewan, together with his wife Mary Kaysaywaysemat and his minor unmarried child Linda Jean Kaysaywaysemat.

11. Joe Accose, of the Sakimay Band, in the Crooked Lake Agency, Province of Saskatchewan, together with his wife Olive Accose and his minor unmarried children Gerald Wayne Paul Accose, Joseph Norman Gabriel Accose and Agnes Gloria Accose.

12. John Pambrun, of the Muscowequan Band, in the Touchwood Agency, Province of Saskatchewan, together with his wife Mary Pambrun and his minor unmarried children Thomas Pambrun and Jean Baptiste Pambrun. Also the minor unmarried children of his wife, by a former marriage, Margaret Shingoose and Mary Florence Shingoose, of the Cote Band, in the Pelly Agency, Province of Saskatchewan.

13. John Robert Spence, of the Brokenhead Band, in the Clandeboye Agency, Province of Manitoba, together with his wife Linda Mae Spence and his minor unmarried children Constance Lucille Spence, Linda Mae Spence and Chyrane Spence.

14. Ellen Jane Prince, of the Fort Alexander Band, in the Clandeboye Agency, Province of Manitoba, together with her minor unmarried children Randel Ray Prince and Margaret Jane Prince.

15. Joe Henderson, of the Fort Alexander Band, in the Clandeboye Agency, Province of Manitoba, together with his wife Hanna Henderson and his minor unmarried children Randal Henderson, Robert Henderson, Harry Henderson, Violet Henderson and Lillian Henderson.

16. Morris Prince, of the Brokenhead Band, in the Clandeboye Agency, Province of Manitoba, together with his wife Janet Prince.

17. Ernest G. Bird, of the Little Black River Band, in the Clandeboye Agency, Province of Manitoba, together with his wife Beatrice Bird and his minor unmarried child Janice Mary Bird.

18. Michel Chalifoux, of the Driftpile Band, in the Lesser Slave Lake Agency, Province of Alberta.

19. Oliver George Spence, of the Peguis Band, in the Fisher River Agency, Province of Manitoba.

20. John Irvine, of the Peguis Band, in the Fisher River Agency, Province of Manitoba.

21. Modeste Mandeville, of the Chipewyan Band, in the Fort Resolution Agency, Northwest Territories, together with his wife Adeline Mandeville and his minor unmarried children Harvy Mandeville and Mary Christine Mandeville.

22. Charlie Pahpaysay, of the Grassy Narrows Band, in the Sioux Lookout Agency, Province of Ontario, together with his wife Emma Pahpaysay and his minor unmarried children Richard Pahpaysay, Mary Emily Pahpaysay and Isabel Pahpaysay.

23. Cyril Donald Baker, of the Squamish Band, in the Vancouver Agency, Province of British Columbia.

24. Sandy Timothy, of the Sliammon Band, in the Vancouver Agency, Province of British Columbia.

25. Mabel Morven, of the Gitlakdamix Band, in the Skeena River Agency, Province of British Columbia, together with her minor unmarried children Ronald Charles Morven and Eleanor Morven.

SCHEDULE B

1. Rita Tobbenonth (Turtle), of the Cockburn Island Band, in the Manitoulin Island Agency, Province of Ontario, on October 10, 1952, married William Turtle not of Indian status. Her minor unmarried child is Rose Marie Tobbenonth.

2. Caroline Henrietta Bird (Nelson), of the William Charles Band, in the Carlton Agency, Province of Saskatchewan, on October 6, 1952, married Patrick Nelson not of Indian status.

3. Margaret Isabel Smith (McKay), of the Peguis Band, in the Fisher River Agency, Province of Manitoba, on September 1, 1952, married Malcolm Lawrence McKay not of Indian status.

4. Lena Courchene (Houston), of the Fort Alexander Band, in the Clandeboye Agency, Province of Manitoba, on April 15, 1952, married Alexander Houston not of Indian status.

5. Adaline Margaret Manuel (Smith), of the Neskainlith Band, in the Kamloops Agency, Province of British Columbia, on March 15, 1952, married Edward Gilbert Smith not of Indian status. Her minor unmarried child is Arthur Irvine Manuel.

This is Exhibit "S" referred to in the
Affidavit of Angel Sue Larkman sworn
Before me, on this 24, day of February, 2011.

A commissioner for taking affidavits

I, Elizabeth Damini, Deputy Clerk,
Commissioner, etc., City of
Timmins, District of Cochrane.
Expires with Tenure.

INDIAN AFFAIRS BRANCH

CANADA

REFER TO FILE NUMBER 8043-86

DEPARTMENT OF CITIZENSHIP AND IMMIGRATION

Particulars re Enfranchisement

Band No. ...67.....

Band ....Matachewan..... Agency .....Nipissing.....

Name ..BATISSE.....LAURA.....
(Surname) (Given Names)

Wife ...////.....

Sons NONE

Daughters NONE

Date of memo. to Council .....November 27,.1952.....

File No. .....8001-2.....

Noted

Date of Enfranchisement Order ....December 4,.1952.....

P. C. No. .....4582.....

G. O. E. Gilday

Registrar.

This is Exhibit "T" referred to in the
Affidavit of Angel Sue Larkman sworn
Before me, on this 24, day of February, 2011.

A commissioner for taking affidavits

I, Elizabeth Damini, Deputy Clerk,
Commissioner, etc., City of
Timmins, District of Cochrane.
Expires with Tenure.

INDIAN AFFAIRS
BRANCH

CANADA

REFER TO FILE NUMBER
8043-86 (T2)

103

DEPARTMENT OF
CITIZENSHIP AND IMMIGRATION

OTTAWA, December 18, 1952

J. A. Marleau, Esq.,
Indian Superintendent,
STURGEON FALLS, Ontario.

Kindly be advised that by Order in Council P.C. 4582

dated December 4, 19 52 , the applicant and family hereunder named has/have been declared enfranchised:

NAME: (Miss) LAURA BATISSE No. 67 Matachewan Band

WIFE: ———

together with the minor unmarried child or children:

NONE

Please remove the aforementioned from the Membership List and, if any, the Annuity or/and Interest Paylist of the Band.

An enfranchisement card is enclosed. This card should be dated, signed and returned to this office for the Director's signature, after which it will be returned for delivery through your office.

PARTICULARS (when applicable) RE. MONIES PAYABLE:

Under separate cover, in your care, a cheque in the amount of $82.23 is going forward to Laura Batisse. This represents shares of band funds and annuity payable to Miss Batisse. The cheque together with the enfranchisement card should be forwarded to Miss Batisse.

Additional Remarks and Instructions (when applicable):

Interest
S.

This is Exhibit "U" referred to in the
Affidavit of Angel Sue Larkman sworn
Before me, on this 24, day of February, 2011.

A commissioner for taking affidavits

I, Elizabeth Damini, Deputy Clerk,
Commissioner, etc., City of
Timmins, District of Cochrane.
Expires with Tenure.

FORM C.T. No. 17A—REV.
P. P. & S. Cat. No. 3112
60M—1-52

105

REQUISITION FOR CHEQUE

TO BE USED FOR ADVANCES OR AUTHORIZED PAYMENTS FOR WHICH THERE ARE NO ACCOUNTS

DEPT. NO.

FILE NO. 8043-86 (T2)

TREAS. NO.

DEPARTMENT of Citizenship and Immigration

BRANCH INDIAN AFFAIRS DATE Ottawa, December 12, 1952.

APPLICATION IS HEREBY MADE FOR THE ISSUE OF THE FOLLOWING CHEQUE OR CHEQUES:—

CHEQUE NO.	IN FAVOUR OF	AMOUNT
	LAURA BATISSE c/o J. A. Marleau, Esq., Indian Superintendent, STURGEON FALLS, Ontario.	$32.23

AUDITED
DEC 17 1952

STATE BELOW, WITH DETAILS IN EVERY CASE, WHETHER (a) STANDING ADVANCE, (b) ADVANCE FOR SPECIFIC JOURNEY—ESTIMATING NUMBER OF DAYS, (c) OTHER ACCOUNTABLE ADVANCE, OR (d) AUTHORIZED PAYMENT.

Details of payment:

Shares of band funds and annuity payable to Miss Laura Batisse, No. 67 Matachewan Band, on enfranchisement authorized by Order in Council P.C. No. 4582 dated December 4, 1952.

Appropriation: Allotment, Sub-allotment or Enc. No.

Trust Account No. 136 Rev. - $ 2.23

Vote 540 - 22 - 811 ..... 80.00

F.E. No. (5)00000	Dept., Com. or Dist.	Div. (2)00	Estab. (3)000	Vote (3)000	Prim. (2)00	Object (3)000	Amount	Dist. Sub. Alt. (2)00	Dist. F.E. No. (4)0000

CERTIFIED:
(a) That each item of the above amounts has been incurred under requisite authority and that the expenditure was necessary for the Public Service.
(b) That the articles and services charged for have been received and performed and that the prices charged are fair and just.

A. G. LESLIE

Head of Branch — Deputy Head

ORIGINAL SIGNED BY
E. J. MORGAN

TREASURY OFFICE APPROVAL

This is Exhibit "V" referred to in the
Affidavit of Angel Sue Larkman sworn
Before me, on this 24, day of February, 2011.

A commissioner for taking affidavits

I, Elizabeth Damini, Deputy Clerk,
Commissioner, etc., City of
Timmins, District of Cochrane.
Expires with Tenure.

43/37-3
Pers

Sturgeon Falls, Ontario,
December 22, 1952.

Miss Laura Batisse,
Matachewan, Ontario.

Dear Miss Batisse:

I wish to inform that you were declared enfranchised by Order in Council PC 4582 dated December 4, 1952.

We have to-day received a cheque in your favour in the amount of $82.23 which we are enclosing herewith. This represents your share of Matachewan band funds and annuity.

Enclosed also please find your certificate of enfranchisement which we would ask you to sign in ink and insert the date. Kindly return this card in order that we may forward it to the Department for completion.

Your name has been removed from the Matachewan paylist and family book. Therefore, you are no longer an Indian as defined by the Indian Act.

Yours very truly,

J. A. Marleau,
Superintendent,
Sturgeon Falls Indian Agency.

M:K
Encl. 2

This is Exhibit "W" referred to in the
Affidavit of Angel Sue Larkman sworn
Before me, on this 24, day of February, 2011.

A commissioner for taking affidavits

I, Elizabeth Damini, Deputy Clerk,
Commissioner, etc., City of
Timmins, District of Cochrane.
Expires with Tenure.

THE ENCLOSED O...CIAL CHEQUE NO. B 22 - 20482 IS IN PAYMENT OF YOUR CLAIM AS DETAILED HEREUNDER

CITIZENSHIP & IMMIGRATION
INDIAN AFFAIRS BRANCH
RESOURCES & DEVELOPMENT
RESOURCE ...EVELOPMENT BR.
NAT. RESEARCH COUNCIL
R.C.M.P.

	INVOICE NO.	DATE OF INVOICE	PARTICULARS
☑	STMT	DEC 12	SHARES OF BAND FUNDS AND ANNUITY TO MISSLAURA BATISSE MATACHEWAN BD P C 4582 DEC 4/52
☐			B 82 23
☐			
☐			
☐			

STURGEON FALLS INDIAN AGENCY
DEC 22 1952

J A MARLEAU
INDIAN SUPT
STURGEON FALLS ONT

OFFICE OF THE COMPTROLLER OF THE TREASURY

CENTRAL PAY OFFICE - ACCOUNTS PAYABLE DIVISION

414 SUSSEX STREET — OTTAWA

C.T. 1734
NO ACKNOWLEDGMENT IS NECESSARY
△ IE

PLEASE QUOTE CHEQUE NUMBER WHEN REFERRING TO THIS REMITTANCE

This is Exhibit "X" referred to in the
Affidavit of Angel Sue Larkman sworn
Before me, on this 24, day of February, 2011.

A commissioner for taking affidavits

I, Elizabeth Damini, Deputy Clerk,
Commissioner, etc., City of
Timmins, District of Cochrane.
Expires with Tenure.

FIELD SERVICE

8043-86 111.

PLEASE QUOTE
FILE 43/37-3-3

CANADA

DEPARTMENT OF CITIZENSHIP AND IMMIGRATION
INDIAN AFFAIRS BRANCH

Sturgeon Falls, Ontario,
January 23, 1953.

T2

Indian Affairs Branch,
Dept. of Citizenship & Immigration,
Ottawa, Ontario.

We are attaching hereto certificate of enfranchisement duly signed by Laura Batisse for completion by the Director of Indian Affairs.

J. A. Marleau,
Superintendent,
Sturgeon Falls Indian Agency.

This is Exhibit "Y" referred to in the
Affidavit of Angel Sue Larkman sworn
Before me, on this 24, day of February, 2011.

A commissioner for taking affidavits

I, Elizabeth Damini, Deputy Clerk,
Commissioner, etc., City of
Timmins, District of Cochrane.
Expires with Tenure.

INDIAN AFFAIRS
BRANCH

CANADA

DEPARTMENT OF
CITIZENSHIP AND IMMIGRATION

REFER TO FILE NUMBER
~~8043-86 (T2)~~

OTTAWA, January 31, 19 53

J. A. Marleau, Esq.,
Indian Superintendent,
STURGEON FALLS, Ontario.

The enclosed enfranchisement card, signed by the Director, should now be delivered to

Laura Batisse.

A. G. Leslie,
Trusts & Annuities Division.

460.

This is Exhibit "Z" referred to in the
Affidavit of Angel Sue Larkman sworn
Before me, on this 24, day of February, 2011.

A commissioner for taking affidavits

I, Elizabeth Damini, Deputy Clerk, Commissioner, etc., City of Timmins, District of Cochrane. Expires with Tenure.

43/37-3-3

Sturgeon Falls, Ontario,
February 2, 1953.

Miss Laura Batisse,
Matachewan, Ontario.

Dear Miss Batisse:

Enclosed herewith please find your certificate of enfranchisement duly signed by the Director of Indian Affairs.

Please do not lose this card as it cannot be duplicated.

Yours very truly,

J. A. Marleau,
Superintendent,
Sturgeon Falls Indian Agency.

M:M
Encl.

This is Exhibit "AA" referred to in the
Affidavit of Angel Sue Larkman sworn
Before me, on this 24, day of February, 2011.

E Damini

A commissioner for taking affidavits

I, Elizabeth Damini, Deputy Clerk,
Commissioner, etc., City of
Timmins, District of Cochrane.
Expires with Tenure.

Indian and Northern Affairs Canada / Affaires indiennes et du Nord Canada

Your file / Votre référence

Our file / Notre référence
E6000-219 (CARRIERE)
F-410

MAR 2 5 1987

Mrs. Laura Mary Flood
General Delivery
MATACHEWAN, Ontario
P0K 1M0

Dear Mrs. Flood:

I refer to your Application for Registration dated September 12, 1985.

I am pleased to confirm that you are now registered as an Indian in the Indian Register maintained in this Department in accordance with paragraph 6(1)(d) of the Indian Act under the name of Laura Batisse. Your entitlement to membership in the Matachewan Band is subject to the provisions of paragraph 11(2)(a) of the Act. If you wish to be registered as "Flood", please forward a copy of your marriage certificate to:

District Manager
Sudbury District
Regency Gate Mall
1760 Regent Street South
SUDBURY, Ontario P3E 3Z8

Unless the band has assumed control of its membership by June 26, 1987, your name will be added to the Matachewan Band List on that date. Should the band assume control of its Band List prior to that date, you will have to apply to the band for membership.

Yours sincerely,

per G. Price

L.G. Smith
Registrar
Ottawa, Ontario
K1A 0H4

c.c. District Manager
Sudbury District
c.c. Regional Office
Medical Services Branch
Dept. of National Health & Welfare
3rd Floor, 1547 Merivale Road
NEPEAN, Ontario K1A 0L3
Phone (613) 952-0093

Canada

Indian and Northern Affairs Canada
Affaires indiennes et du Nord Canada

Your file Votre référence

Our file Notre référence
E6000-219 (CARRIERE)
F-410

MAR 25 1987

To: District Manager
Sudbury District

Date of Application: September 12, 1985
Received On: September 20, 1985

REGISTRATION PARTICULARS

Name of Applicant: Laura Mary Flood

Former Band and Number: Matachewan Band, No. 67
Name in Register: Laura Batisse

Date of Birth: February 1, 1926

Enfranchised by Application on: December 4, 1952

Applicant Entitled to Registration under Section 6(1)(d) of the Indian Act.

Conditional Entitlement to Membership in Matachewan Band subject to Section 11(2)(a) of the Indian Act.

Name Added to Register: Laura Batisse Minor Children: No

L. Price

L.G. Smith
Registrar
Ottawa, Ontario
K1A 0H4

c.c. Regional Director
Lands, Revenues & Trusts
Ontario Region

Canada

This is Exhibit "BB" referred to in the
Affidavit of Angel Sue Larkman sworn
Before me, on this 24, day of February, 2011.

A commissioner for taking affidavits

I, Elizabeth Damini, Deputy Clerk
Commissioner, etc., City of
Timmins, District of Cochrane.
Expires with Tenure.

Indian and Northern Affairs Canada / Affaires indiennes et du Nord Canada

APPLICATION FOR REGISTRATION UNDER THE INDIAN ACT
DEMANDE D'INSCRIPTION EN VERTU DE LA LOI SUR LES INDIENS

CHECK ONE / CLEZ DOCHERUS

L2391 (219)

1. ☐
I request that I and my minor children, if eligible, be registered in the Indian Register and, if applicable, that our names be entered in a Band List, as provided under the Indian Act as amended.

Je demande que moi-même et mes enfants mineurs, si éligibles, soient inscrits au Registre et, si approprié, que nos noms soient ajoutés sur une liste de bande, comme prévu dans la Loi sur les Indiens telle que modifiée.

Signature Dorothy A. Larkman Date Aug 20/86.

2. ☐
I make this application as guardian on behalf of the applicant who is under the age of 18 years or is mentally incompetent within the meaning of the Indian Act. I request that the applicant be registered in the Indian Register and, if applicable, that his/her name be entered in a Band List, as provided under the Indian Act as amended.

Je fais cette demande comme tuteur pour le requérant qui a moins de 18 ans ou est mentalement incapable tel que défini dans la Loi sur les Indiens. Je demande que le requérant soit inscrit au Registre et, si approprié, que son nom soit ajouté sur une liste de bande, comme prévu dans la Loi sur les Indiens telle que modifiée.

Signature _____ Date _____

IF MORE SPACE IS REQUIRED, ENTER ADDITIONAL INFORMATION ON A SEPARATE SHEET OF PAPER AND ATTACH IT TO THIS APPLICATION FORM.

UTILISER AU BESOIN UNE FEUILLE SÉPARÉE POUR AJOUTER DES RENSEIGNEMENTS ADDITIONNELS ET LA JOINDRE À CETTE DEMANDE.

Surname of Applicant – Nom de famille du requérant	Given Names – Prénoms
LARKMAN	DOROTHY AMY

Mailing Address – Adresse: 120 MOUNTAIN VIEW DR

Postal Code – Code postal: P1A-1Z7 Tel. No. – N° de tél.: 705-497-6154

PORT RAY ONTARIO

Date of Birth – Date de naissance (Y-A M DJ)	Former Band No. – Ancien N° de bande	Name of Former Band – Nom de l'ancienne bande
47 10 25		

Surname of Father – Nom de famille du père	Given Names – Prénoms
LOOLO	WYCLIFFE DAVID

Date of Birth – Date de naissance (Y-A M DJ)	Band No. – N° de bande	Name of Band – Nom de la bande
10 6 20		

Maiden Name of Mother – Nom de fille de la mère	Given Names – Prénoms
ATISE	LAURA MARY

Date of Birth – Date de naissance (Y-A M DJ)	Band No. – N° de bande	Name of Band – Nom de la bande
26 03 01	167	MATTAGAMI INDIAN RESERVE

Surname of Paternal Grandfather – Nom de famille du grand-père paternel	Given Names – Prénoms

Surname of Paternal Grandmother – Nom de famille de la grand-mère paternelle	Given Names – Prénoms

Surname of Maternal Grandfather – Nom de famille du grand-père maternel	Given Names – Prénoms
ATISE	HARRY

Surname of Maternal Grandmother – Nom de famille de la grand-mère maternelle	Given Names – Prénoms
CHEOO	ANNIE

Grounds for Registration – Raison pour l'inscription	Registration Surname – Nom de famille (inscription)
Enfranchisement	LARKMAN.

If you have children under the age of 18, please list their names and birthdates and attach a LONG FORM Birth Registration showing the names of the parents. Your children who have REACHED THE AGE OF 18 must complete A SEPARATE APPLICATION and also PROVIDE A COPY OF THEIR LONG FORM BIRTH REGISTRATION.

Si vous avez des enfants âgés de moins de 18 ans, veuillez indiquer leurs noms et date de naissance et attacher un CERTIFICAT D'ENREGISTREMENT DE NAISSANCE sur lequel apparaissent LES NOMS DES PARENTS. Vos enfants qui ont ATTEINT L'ÂGE DE 18 ANS doivent compléter UNE DEMANDE D'INSCRIPTION SÉPARÉE et aussi attacher un CERTIFICAT D'ENREGISTREMENT DE NAISSANCE SUR LEQUEL APPARAISSENT LES NOMS DES PARENTS.

All Children – Inscrivez tous les enfants Date of Birth – Date de naissance (Y-A M DJ)	Surname – Nom de famille	Given Names – Prénoms
10 10 05	LARKMAN	ANGELA SUE
15 01 10 02	LARKMAN	DANIEL JOHNATHAN
18 04 25	LARKMAN	STEVE AUSTIN

Name of Other Parent – Nom de famille de autre parent	Given Names – Prénoms	Date of Marriage – Date de mariage (Y-A M DJ)
ARKMAN	GARY	75 01 11

Date of Birth – Date de naissance (Y-A M DJ)	Registered Indian – Indien inscrit	Band No. – N° de bande	Name of Band – Nom de la bande
54 05 11	☐ Yes Oui ☑ No Non		

Canada

White Copy / Copie blanc ▶ MAIL TO: The Registrar

ENVOYER À: Le registraire

Yellow Copy / Copie jaune ▶ Band/District/Region Bande/District/Région

Indian and Northern Affairs Canada / Affaires indiennes et du Nord Canada

TRAITEMENT DE LA RÉINSCRIPTION
REINSTATEMENT PROCESSING

DONNÉES DE RÉFÉRENCE – APPLICATION REFERENCE

Langue / Language	N° de référence / Reference no.	Code de la bande / Band code	Date de la demande / Date of application
E A/Fr E/F	42391	219	86 10 16

Nom du requérant et adresse / Applicant name and address

[illegible] MAGNITAWINIGW DR
NORTH BAY, ON

Code postal / Postal code: P1B 2X7

No. de tél. / Tel. no.: 705 476-5141

Date de réception / Date application received ▶ 86 10 27

Accusé de réception / Acknowledged ▶ 86 10 30

DEMANDE-INSCRIPTION INDIVIDUELLE – APPLICATION-INDIVIDUAL REGISTRATION

Requérant – Applicant

Date de naissance / Date of birth	Sexe / Sex	Nom de famille, prénoms / Family name, given names	Code d'adm. Ent. code	Date d'inscription / Date of registration
54 02 25	F	[illegible]	75	88 02 03

Enfants mineurs – Minor children

Inscrire * si âgé de plus de 18 ans / Enter * if over 18 years old		Inscrire * si la preuve de naissance est incomplète / Enter * if proof of birth is incomplete	Inscrire * si la demande est rejetée / Enter * if application is rejected	
72 01 16	F	[illegible]	*	88 02 03
[redacted]		[redacted]		
[redacted]	M	[redacted]		

ÉTAT D'AVANCEMENT – PROGRESS STATUS

Données initiales entrées / Initial data entered ☑ | Agent / Officer [illegible] | Signature [illegible]

		Demandés le / Requested		Reçus le / Received
Certificat de naissance ou autres documents / Birth certificate or other document(s)	1		2	
Besoin de recherche / Research requirement	**3**	**Identifié le / Identified**	**4**	**Terminé le / Completed**
Demande / Application	5	Terminé le / Completed: 88 02 03		

161 88.01.11 1/Dept 13/

This is Exhibit "CC" referred to in the
Affidavit of Angel Sue Larkman sworn
Before me, on this 24, day of February, 2011.

A commissioner for taking affidavits

I, Elizabeth Damini, Deputy Clerk,
Commissioner, etc., City of
Timmins, District of Cochrane,
Expires with Tenure.

Indian and Northern Affairs Canada
Affaires indiennes et du Nord Canada

daughter

123

Your file Votre référence

Our file Notre référence

E6000-21 (Joseph)
L2391

FEB - 3 1988
FEV

To: District Manager
Sudbury District

Date of Application: August 20, 1986
Received on: August 27, 1986

REGISTRATION PARTICULARS

Name of Applicant: Dorothy Ann Larkman

Supporting Documentation: Statement of Birth
Name: Dorothy Ann Flood
Date of Birth: February 25, 1954
Child of: Wycliffe Davidson Flood and Laura Batisse

Applicant's Mother Laura Batisse born on February 1, 1926 was registered under No. 67 Matachewan Band until her enfranchisement on December 4, 1952. She is entitled to be registered under Section 6(1)(d) of the Indian Act..

Applicant Entitled to Registration as an Indian under Section 5(2) of the Indian Act.

Entitled to Membership in the Matachewan Band under Section 11(2)(b) of the Indian Act.

Name Added in Register: Dorothy Ann Flood Minor Children: No

G. Price

Per/

J.K. Allen
Acting Registrar
Ottawa, Ontario
K1A 0H4

c.c. Regional Director
Lands, Revenues & Trusts
Ontario Region

Canada

Indian and Northern Affairs Canada / Affaires indiennes et du Nord Canada

FEB - 3 1988

Your file / Votre référence

Our file / Notre référence

E6000-219(Joseph)
L2391

Received on: August 27, 1986

Mrs. Dorothy A. Larkman
320 Mountainview Drive
North Bay, Ontario
P1A 2X7

Dear Mrs. Larkman:

With reference to your Application for Registration under the Indian Act, dated August 20, 1986, I am pleased to confirm that you are now registered in the Indian Register maintained in this Department in accordance with paragraph 6(2) of the Indian Act under the name Dorothy Ann Flood.

You are also registered as a member of the Matachewan Band in accordance with paragraph 11(2)(b) of the Act.

To obtain your Certificate of Indian Status, please complete and forward the enclosed application along with a recent picture which measures approximately 1" by 1" to the address indicated below for the District Manager.

Any questions you may have concerning band membership and any benefits to which you may be entitled as a result of your registration as an Indian may also be referred to the same address.

Should you wish to be registered under your married name please provide a copy of your marriage certificate to the District Manager.

In reference to the registration of your children, there is no provision in the Indian Act for the registration of a person, one of whose parents is entitled to be registered under subsection 6(2) and whose other parent is not entitled to be registered as an Indian.

Yours sincerely,

G. Price

for J.K. Allen
Acting Registrar
Ottawa, Ontario
K1A 0H4

c.c. District Manager
Sudbury District
Regency Gate Mall
1760 Regent St. S.
Sudbury, Ontario
P3E 3Z8

c.c. Regional Office
Medical Services Branch
Dept. of National Health & Welfare
3rd Floor, 1547 Merivale Road
NEPEAN, Ontario K1A 0L3
Phone (613) 952-0093

Canada

This is Exhibit "DD" referred to in the
Affidavit of Angel Sue Larkman sworn
Before me, on this 24, day of February, 2011.

A commissioner for taking affidavits

I, Elizabeth Damini, Deputy Clerk,
Commissioner, etc., City of
Timmins, District of Cochrane.
Expires with Tenure.

Indian and Northern Affairs Canada / Affaires indiennes et du Nord Canada

APPLICATION FOR REGISTRATION UNDER s.6(2) (s.219)
DEMANDE D'INSCRIPTION EN VERTU DE LA LOI SUR LES INDIENS

124

A: CHECK ONE – VEUILLEZ COCHER

1. ☑ I request that I ~~and my minor children~~ be registered in the Indian Register and, if applicable, that our names be entered in a Band List, as provided under the Indian Act as amended.

Je demande que moi-même et mes enfants mineurs, si éligibles, soient inscrits au Registre et, s' approprié, que nos noms soient ajoutés sur une liste de bande, comme prévu dans la Loi sur les Indiens telle que modifiée

Signature: Angel GA Date: ~~March~~ April 7/95

2. ☐ I make this application as guardian on behalf of the applicant who is under the age of 18 years or is mentally incompetent within the meaning of the Indian Act. I request that the applicant be registered in the Indian Register and, if applicable, that his/her name be entered in a Band List, as provided under the Indian Act as amended.

Je fais cette demande comme tuteur pour le requérant qui a moins de 18 ans ou est mentalement incapable tel que défini dans la Loi sur les Indiens. Je demande que le requérant soit inscrit au Registre et, s'approprié, que son nom soit ajouté sur une liste de bande, comme prévu dans la Loi sur les Indiens telle que modifiée.

Signature: _____ Date: _____

IF MORE SPACE IS REQUIRED, ENTER ADDITIONAL INFORMATION ON A SEPARATE SHEET OF PAPER AND ATTACH IT TO THIS APPLICATION FORM.

UTILISER AU BESOIN UNE FEUILLE SÉPARÉE POUR AJOUTER DES RENSEIGNEMENTS ADDITIONNELS ET LA JOINDRE À CETTE DEMANDE.

Surname of Applicant – Nom de famille du requérant	Given Names – Prénoms
ETICHES	ANGEL SUE

Mailing Address – Adresse: 2137 PRINCESS STREET EAST

Postal Code – Code postal: P1B-1R1

Tel. No. – N° de tél.: 705-741-9141-18688

Date of Birth – Date de naissance	Former Band No. – Ancien N° de bande	Name of Former Band – Nom de l'ancienne bande
01 10 5	2135	MATACHEWAN

Surname of Father – Nom de famille du père	Given Names – Prénoms
LARKMAN	GARY DOUGLAS

Date of Birth – Date de naissance	Band No. – N° de bande	Name of Band – Nom de la bande
54 05 11	N/A	N/A

Maiden Name of Mother – Nom de fille de la mère	Given Names – Prénoms
FLOOD	DOROTHY ANN

Date of Birth – Date de naissance	Band No. – N° de bande	Name of Band – Nom de la bande
54 02 25	2135	MATACHEWAN

Surname of Paternal Grandfather – Nom de famille du grand-père paternel	Given Names – Prénoms
LARKMAN	HERBERT JOHN
Surname of Paternal Grandmother – Nom de famille de la grand-mère paternelle	Given Names – Prénoms
HODGINS	IDA ELLEN
Surname of Maternal Grandfather – Nom de famille du grand-père maternel	Given Names – Prénoms
FLOOD	WYCLIFFE DAVID
Surname of Maternal Grandmother – Nom de famille de la grand-mère maternelle	Given Names – Prénoms
SMITH	LAURA MARY

Grounds for Registration – Raison pour l'inscription: Mother lost status

Registration Surname – Nom de famille (inscription): LARKMAN

If you have children under the age of 18, please list their names and birthdates and attach a LONG FORM BIRTH REGISTRATION showing the names of the parents. Your children who have REACHED THE AGE OF 18 must complete A SEPARATE APPLICATION and also PROVIDE A COPY OF THEIR LONG FORM BIRTH REGISTRATION.

Si vous avez des enfants agés de moins de 18 ans, veuillez indiquer leurs noms et date de naissance et attacher un CERTIFICAT D'ENREGISTREMENT DE NAISSANCE sur lequel apparaissent LES NOMS DES PARENTS. Vos enfants qui ont ATTEINT L'ÂGE DE 18 ANS doivent compléter UNE DEMANDE D'INSCRIPTION SÉPARÉE et aussi attacher un CERTIFICAT D'ENREGISTREMENT DE NAISSANCE SUR LEQUEL APPARAISSENT LES NOMS DES PARENTS.

All Children – Inscrivez tous les enfants Date of Birth – Date de naissance	Surname – Nom de famille	Given Names – Prénoms
Y-A M D-J		
Y-A M D-J		
Y-A M D-J		
Y-A M D-J		

Surname of Other Parent – Nom de famille de autre parent	Given Names – Prénoms	Date of Marriage – Date de mariage Y-A M D-J

Date of Birth – Date de naissance Y-A M D-J	Registered Indian – Indien inscrit	Band No. – N° de bande	Name of Band – Nom de la bande
	☐ Yes Oui ☐ No Non		

Canada 18-E

White Copy – Copie blanc ▶ MAIL TO: The Registrar

ENVOYER À: Le registraire

Yellow Copy – Copie jaune ▶ Band/District/Region – Bande/District/Région

This is Exhibit "EE" referred to in the
Affidavit of Angel Sue Larkman sworn
Before me, on this 24, day of February, 2011.

A commissioner for taking affidavits

I, Elizabeth Damini, Deputy Clerk,
Commissioner, etc., City of
Timmins, District of Cochrane.
Expires with Tenure.

Your file Votre référence

Our file Notre référence

September 13,1995

Ms Angel Sue Etches
237 Princess Street East
NORTH BAY,Ontario
P1B 1R1

E6000-219
L2319

Dear Ms. Etches:

Thank you for your duplicate application for registration dated April 7, 1995. Your mother applied included you on her original application for registration in 1986.

On February 03, 1988 we wrote to your mother informing her that you were not entitled to be registered as an Indian on the Indian Register. The reason that you are not entitled to be registered is because at the time of your mother's birth your grandmother was not registered and she was not entitled to be registered. She had made application and had been enfranchised in 1952. With the amendments to the Indian Act in 1985 she was entitled to have her Indian status restored. All of her children are entitled to be registered under section 6(2) of the Act. There are no provisions in the Indian Act which allows for the registration of children of persons registered or entitled to be registered under section 6(2) of the Act when the other parent is a not an Indian as defined by the Indian Act. We have no information to indicate that either your father or your maternal grandfather are entitled to be registered as Indians. Therefore, I must concur with the decision of my predecessor.

I am sorry that my response cannot be more positive.

Yours sincerely,

Terri Harris
Registrar
OTTAWA,Ontario
K1A 0H4

This is Exhibit "FF" referred to in the
Affidavit of Angel Sue Larkman sworn
Before me, on this 24, day of February, 2011.

A commissioner for taking affidavits

I, Elizabeth Damini, Deputy Clerk,
Commissioner, etc., City of
Timmins, District of Cochrane.
Expires with Tenure.

197 Spadina Avenue
Toronto, Ontario
M5T 2C8

Aboriginal Legal Services
OF TORONTO

Telephone: (416) 408-39
If Busy: (416) 408-4C
Fax: (416) 408-42

8 March 1996

Terri Harris
Registrar
Department of Indian and Northern Affairs
Ottawa, Ontario
K1A 0H4

Dear Mr. Harris:

RE: File No. E6000-219 L2319

Please be advised that we act on behalf of Angel Sue Etches, her mother Dorothy Anne Batisse, and her grandmother, Laura Mary Flood. This letter concerns an application for registration submitted by Ms. Etches on April 7, 1995.

On December 4, 1952, Laura Mary Batisse (now Laura Mary Flood) was asked to sign an Application for Enfranchisement by the Chief of the Matachewan First Nation. At the time of signing the application, Ms. Batisse was completely unaware, and not informed by the Chief, of what she was signing. She had no knowledge as to the effect of the document. At the time, she was unable to read or write, and merely trusted the Chief's direction. Due to the enfranchisement, Laura Mary Batisse lost her status. She, along with three of her four children, was reinstated under s. 6(1)(d) of *Bill C-31*. Her fourth child, Dorothy Anne Batisse, having been born after the date of the invalid enfranchisement, was only granted status pursuant to section 6(2) of the Indian Act, thus meaning Angel Etches, was not entitled to be registered.

The circumstances surrounding the enfranchisement of Laura Flood suggest that the enfranchisement is invalid. As a result, Ms. Flood should not be considered a *Bill C-31* registrant since she was entitled to be registered under the *Indian Act, 1951*. Her child, Dorothy Anne was born out of wedlock and thus should have regular registrant status under s. 11(1)(e) of *Indian Act, 1951* and her grandchild, Angel Etches should be entitled to s. 6(2) status under the present legislation.

We request that the registrations of Laura Flood and Dorothy Anne Batisse be changed as stated above, and that Angel Etches be registered pursuant to section 6(2).

Enclosed, please find the Sworn Affidavit of Laura Flood.

Yours truly,
ABORIGINAL LEGAL SERVICES OF TORONTO (LEGAL CLINIC)

Kimberly R. Murray
Acting Clinic Director

/encl.

E:\INDIAN\L-ETCH01.KRM

This is Exhibit "GG" referred to in the
Affidavit of Angel Sue Larkman sworn
Before me, on this 24, day of February, 2011.

A commissioner for taking affidavits

I, Elizabeth Damini, Deputy Clerk,
Commissioner, etc., City of
Timmins, District of Cochrane.
Expires with Tenure.

197 Spadina Avenue
Toronto, Ontario
M5T 2C8

Aboriginal Legal Services
OF TORONTO

Telephone: (416) 408-3
If Busy: (416) 408-4
Fax: (416) 408-4

29 April 1996

Mr. Terri Harris
Registrar
Department of Indian And Northern Affairs
Ottawa, Ontario
K1A 0H4

FOLIO

Dear Mr. Harris:

RE: File No. E6000-219 L2319

By letter dated March 8, 1996, a copy of which is attached for your ease of reference, we requested that the status of Laura Flood and Dorothy Anne Batisse be changed and that Angel Etches be registered pursuant to section 6(2) of the Indian Act.

Please be advised that an error was inadvertently made in our March 8, 1996 correspondence. Kindly note that Dorothy Anne Batisse is registered as Dorothy Anne Flood.

Kindly confirm that our request is being considered.

Yours truly,
ABORIGINAL LEGAL SERVICES OF TORONTO (LEGAL CLINIC)

Kimberly R. Murray
Staff Lawyer

encls.

E:\INDIAN\L-ETCH03.KRM

This is Exhibit "HH" referred to in the
Affidavit of Angel Sue Larkman sworn
Before me, on this 24, day of February, 2011.

E. Damini

A commissioner for taking affidavits

I, Elizabeth Damini, Deputy Clerk,
Commissioner, etc., City of
Timmins, District of Cochrane.
Expires with Tenure.

197 Spadina Avenue
Toronto, Ontario
M5T 2C8

Aboriginal Legal Services
OF TORONTO

Telephone (416) 408-3967
If Busy: (416) 408-4041
Legal Services Fax: (416) 408-4273
Legal Clinic Fax: (416) 408-4268

13 August 1996

Mr. Michael O'Brien
Ontario Entitlement Unit
Department of Indian Affairs
Ottawa, Ontario, K1A 0H4

Via Facsimile & Mail: (819) 997-6296

Dear Mr. O'Brien:

RE: Laura Mary Flood
File No. F0410

Further to our conversation of August 6, 1996, enclosed please find an Affidavit of Laura Flood sworn August 13, 1996.

Ms. Flood (nee Batisse) was not married until June 20, 1964 as indicated in the attached Affidavit and Record of Marriage. This being the case, the Enfranchisement of 1952 is clearly invalid and her daughter, Dorothy Ann, born on February 25, 1954, is entitled to 6(1) status as a child born out of wedlock, and her granddaughter, Angel Etches, is entitled to status pursuant to section 6(2).

We look forward to having this matter resolved in the very near future as our client, Dorothy Ann Flood, has three children which have been denied status because of the 1952 Enfranchisement. We would appreciate any efforts made to categorize this matter as a priority within your department.

We thank you for your assistance with this matter.

Yours truly,
ABORIGINAL LEGAL SERVICES OF TORONTO (LEGAL CLINIC)

Kimberly R. Murray
Staff Lawyer
Encls.
E:\INDIAN\L-ETCH05.KRM

This is Exhibit "II" referred to in the
Affidavit of Angel Sue Larkman sworn
Before me, on this 24, day of February, 2011.

E. Damini

A commissioner for taking affidavits

I, Elizabeth Damini, Deputy Clerk,
Commissioner, etc., City of
Timmins, District of Cochrane.
Expires with Tenure.

Indian - Eskimo Affairs

PARC Box No 218908

Accession No: 572 BOX: E-68

Old File Number.	Vol.	Agency.	Subject or Description: Employment	Date From	to
				1952	1952
8043-74	1	Nipissing		1952	1952
75	1			1952	1952
76	1			1952	1952
77	1			1952	1952
78	1			1952	1952
79	1			1952	1952
80	1			1952	1952
81	1			1952	1952
82	1			1952	1952
83	1			1952	1952
84	1			1952	1952
85	1			1952	1953
86	1			1952	1952
87	1			1952	1952
88	1			1952	1952
89	1			1952	1952
90	1				
91	1				
92	1			1953	1953
93	1			1953	1953
94	1			1953	1953
95	1			1953	1953
96	1			1953	1953
97	1			1953	1953
98	1			1953	1953
99	1			1953	1953
100	1			1953	1953
101	1			1953	1953
103	1			1953	1953
104	1			1953	1953
105	1				

This is Exhibit "JJ" referred to in the
Affidavit of Angel Sue Larkman sworn
Before me, on this 24, day of February, 2011.

A commissioner for taking affidavits

I, Elizabeth Damini, Deputy Clerk, Commissioner, etc., City of Timmins, District of Cochrane. Expires with Tenure.

Indian and Northern Affairs Canada | Affaires indiennes et du Nord Canada

-139-

COPY

OCT 18 1996

Your file / Votre référence

Our file / Notre référence

E6000-219(O'Brien)
F0410

Kimberly R. Murray
197 Spadina Avenue
TORONTO, Ontario
M5T 2C8

Dear Ms. Murray:

RE: File No. E6000-219 L2319 - Laura Mary Flood

In reference to your letter of March 8, 1996 and subsequent correspondence dated April 29, 1996.

I must apologize for the delay in responding to your correspondence as I had to obtain documents from National Archives that relate to Ms. Flood's file.

Our records indicated that Ms. Flood was enfranchised, by application, December 4, 1952, on Order in Council Number P.C. 4582. Our records also indicate that Laura Flood nee Batisse, married Wycliffe Davidson Flood, a non-Indian, on June 20, 1964. However, the fact that she married a non-Indian does not have an effect on the registration of her children because at the time of her marriage she was not registered as an Indian as a result of her enfranchisement. I can not comment on the circumstances surrounding her enfranchisement.

.../2

Canada

COPY 140

Dorothy Ann Flood was only entitled to be registered as a status Indian as a result of the amendments to the Indian Act in 1985. The fact that she was born prior to her mother's marriage to a non-Indian has no bearing on the section under which she is registered because at the time of her birth her mother was not a registered Indian nor was she entitled to be registered under the *Indian Act* in place at that time.

Therefore, I regret to inform you that the decision that was rendered on March 25, 1987 will remain the same. Laura Mary Flood is registered as an Indian in accordance with section 6(1)(d) of the *Indian Act*. Her child is entitled to be registered in accordance with section 6(2), as she has one parent who is registered under section 6(1) of the *Indian Act*, and the other parent is not an Indian as defined by the *Act* or not identified.

I regret that my reply could not be more favourable.

Yours sincerely,

Terri Harrison
Registrar
OTTAWA, Ontario
K1A 0H4

c.c. Laura Mary Flood
General Delivery
Matachewan, Ontario
P0K 1M0

MAIL TO

This is Exhibit "KK" referred to in the
Affidavit of Angel Sue Larkman sworn
Before me, on this 24, day of February, 2011.

A commissioner for taking affidavits

I, Elizabeth Damini, Deputy Clerk,
Commissioner, etc., City of
Timmins, District of Cochrane.
Expires with Tenure.

197 Spadina Avenue
Toronto, Ontario
M5T 2C8

Aboriginal Legal Services
OF TORONTO

Telephone: (416) 408-3967
If Busy: (416) 408-4041
Fax: (416) 408-4268

26 November 1996

Mr. Michael O'Brien
Ontario Entitlement Unit
Indian and Northern Affairs
Ottawa, Ontario
K1A 0H4

VIA FACSIMILE & MAIL: (819) 997-6296

Dear Mr. O'Brien:

RE: E6000-219
F0410- Laura Mary Flood

We are in receipt of your correspondence dated October 18, 1996 and thank you for same.

Please note that we dispute your finding that Ms. Laura Flood, nee Batisse, was not a registered Indian at the time of Dorothy Anne Flood's birth. As indicated in our previous correspondence, and supported by two sworn Affidavits, the enfranchisement of December 4, 1952 is invalid as it was fraudulently obtained. If the enfranchisement is invalid, it follows that Laura Flood has always been registered as an Indian and her daughter Dorothy Flood, having been born out of wedlock, is entitled to be registered under section 6(1) of the current legislation.

You note in your correspondence that you "cannot comment on the circumstances surrounding (the) enfranchisement". Your refusal to address the validity of the enfranchisement is a breach of the Registrar's duty to provide a decision under section 14.2 of the *Indian Act*.

We ask that the Registrar provide a decision as to the validity of the enfranchisement and forward written reasons for its decision to our office. In addition, we ask that copies of all

documents relating to the enfranchisement be released to us. Enclosed please find a signed release of information form permitting our office to obtain Ms. Flood's personal information.

We thank you for your immediate attention to this matter.

Yours truly,
ABORIGINAL LEGAL SERVICES OF TORONTO (LEGAL CLINIC)

Kimberly R. Murray
Staff Lawyer

Encls.

E:\INDIAN\L-ETCH06.KRM

This is Exhibit "LL" referred to in the
Affidavit of Angel Sue Larkman sworn
Before me, on this 24, day of February, 2011.

A commissioner for taking affidavits

I, Elizabeth Damini, Deputy Clerk, Commissioner, etc., City of Timmins, District of Cochrane. Expires with Tenure.

Indian and Northern Affairs Canada / Affaires indiennes et du Nord Canada

August 18, 1997

Your file / Votre référence

Our file / Notre référence
E6050-219/1298
cc. E6000-219(F0410)

Aboriginal Legal Services of Toronto
197 Spadina Avenue
TORONTO ON M5T 2C8

Attn: Kimberly R. Murray

Re: Enfranchisement: Ms. Laura Mary Flood nee Batisse

Dear Ms. Murray:

I refer to your fax of June 26, 1997, referring to the enfranchisement of the above-mentioned individual.

I have reviewed the enfranchisement file of Laura Flood nee Batisse from our records and have reviewed them. I am satisfied that Ms. Flood apply for enfranchisement pursuant to the provisions of the Indian Act, S.C. 1951 c. 29 and was enfranchised on December 12, 1952. Please find enclosed a copy of her file for your information.

Please note that this matter is not under protest. Should you wish to pursue this matter further, you should forward any further correspondence to this office quoting the following file number:

E6000-219(F0410)

Sincerely,

M. M. MacDonald
Acting Registrar
OTTAWA ON K1A 0H4

This is Exhibit "MM" referred to in the
Affidavit of Angel Sue Larkman sworn
Before me, on this 24, day of February, 2011.

A commissioner for taking affidavits

I, Elizabeth Damini, Deputy Clerk,
Commissioner, etc., City of
Timmins, District of Cochrane.
Expires with Tenure.

File E6000-219 (F0410)

IN THE MATTER OF Angel Etches, now known as Angel Sue Larkman, Dorothy Ann Flood (nee Batisse), and Laura Flood (nee Batisse).

AND IN THE MATTER OF Application for Registration pursuant to the *Indian Act*.

NOTICE OF PROTEST

Kimberly R. Murray
Aboriginal Legal Services of Toronto
197 Spadina Avenue
Suite 600
Toronto, Ontario
M5T 2C8

tel: (416) 408-4041 ext. 25
fax: (416) 408-4268

Solicitor for the Applicants

File E6000-219 (F0410)

IN THE MATTER OF Angel Etches, now known as Angel Sue Larkman, Dorothy Ann Flood (nee Batisse), and Laura Flood (nee Batisse).

AND IN THE MATTER OF Application for Registration pursuant to the *Indian Act*.

INDEX

File E6000-219 (F0410)

IN THE MATTER OF Angel Etches, now known as Angel Sue Larkman, Dorothy Ann Flood (nee Batisse), and Laura Flood (nee Batisse).

AND IN THE MATTER OF Application for Registration pursuant to the *Indian Act*.

NOTICE OF PROTEST

THE APPLICANTS, pursuant to section 14.2(1) of the *Indian Act RSC 1985, c.I* protest the decisions of the Acting Registrar of the Department of Indian and Northern Affairs Canada dated August 18, 1997 and September 13, 1995.

THE APPLICANTS REQUEST the following:

1. That the Minister of Indian Affairs and Northern Development Canada, pursuant to section 4(a) of the *Department of Indian Affairs and Northern Development Act R.S.C. 1985, c.I-6* and section 3(1) of the *Indian Act R.S.C. 1985, c.I-5*, declare the 1952 Order in Council P.C. No. 4583 enfranchising Laura Mary Batisse void ab initio.

2. That the Registrar of the Department of Indian Affairs and Northern Development add the name Dorothy Ann Flood nee Batisse, born February 25, 1954, to the Indian Register pursuant to sections 5(3), and 6(1)(a) of the *Indian Act*.

3. That the Registrar of the Department of Indian Affairs and Northern Development add the name Angel Sue Larkman, born January 5, 1972, to the Indian Register pursuant to section 6(1)(a) of the *Indian Act* and to the Matachewan Band List pursuant to sections 8, 9(3) and 11(1)(a) of the *Indian Act*.

THE GROUNDS OF THE PROTEST are as follows:

1. That the Minister of the Department of Citizenship and Immigration, as it then was, had a fiduciary duty towards Indians. That duty was breached when it enfranchised Laura Mary Batisse in 1952.

2. That the Minister of the Department of Citizenship and Immigration, as it then

was, erred in law by enfranchising Laura Mary Batisse when the statutory preconditions for the enfranchisement were not met.

3. That the enfranchisement of Laura Mary Batisse was processed by the Department of Citizenship and Immigration, as it then was, in bad faith and pursuant to unconscionable behaviour.

4. That the enfranchisement application of Laura Mary Batisse was involuntary.

5. That the enfranchisement application of Laura Mary Batisse was obtained by way of fraudulent misrepresentations and duress.

THE FOLLOWING MATERIAL will be relied upon :

1. The Affidavit of Laura Mary Flood nee Batisse sworn April 28, 1998, and the Exhibits thereto;

2. The Affidavits of Laura Mary Flood nee Batisse sworn February 26, 1996 and August 13, 1996;

3. The Applicants' Memorandum of Points to be Argued;

4. Such further or other material as counsel may advise and may be permitted by the Registrar.

SIGNED AT TORONTO this 17th day of August, 1998

Kimberly R. Murray
Aboriginal Legal Services of Toronto
600-197 Spadina Avenue
Toronto, Ontario
M5T 2C8

Solicitor for the Applicants/Protestors

IN THE MATTER OF Angel Etches (nee Larkman), Dorothy Ann Flood (nee Batisse), and Laura Mary Flood (nee Batisse).

AND IN THE MATTER OF Application for Registration pursuant to the *Indian Act*.

APPLICANTS' MEMORANDUM OF POINTS TO BE ARGUED

PART 1 - STATEMENT OF FACTS

1. The applicant Laura Mary Flood nee Batisse, (hereinafter Laura Flood) was born on March 1, 1926 at Matachewan, Ontario. Laura Flood's parents were Harry and Anne Batisse, both of whom were Indians as defined by the *Indian Act*.

Affidavit of Laura Mary Flood, sworn April 28, 1998 at para 1

2. Laura Flood was registered as Laura Batisse under the *Indian Act, 1951*. She was a member of the Matachewan First Nation.

Affidavit of Laura Mary Flood sworn April 28, 1998 at para 2

3. Laura Flood had four children; Clarence Lorne, born on March 22, 1946, Lorne David, born on October 6, 1948, Laura Jean, born on October 14, 1952 and Dorothy Ann, born on February 25, 1954. All four children were born out of wedlock.

Affidavit of Laura Mary Flood sworn August 13, 1996 at para 3, TAB 4

4. Laura Flood was enfranchised by Order in Council P.C. No. 4582 dated December 4, 1952.

Exhibit Q to the Affidavit of Laura Mary Flood dated April 28, 1998

5. Three of Laura Flood's children are currently registered, or entitled to be registered, pursuant to section 6(1) of the *Indian Act*.

6. Laura Flood's youngest child, Dorothy Anne Flood (nee Batisse) applied for registration under the *Indian Act* in 1986 and was subsequently registered pursuant to section 6(2) of the *Indian Act*.

7. Angel Sue Larkman, a.k.a Angel Etches, Laura Flood's granddaughter and Dorothy Flood's daughter, applied for registration by application dated April 7, 1995 and was denied registration by letter dated September 13, 1995.

8. By letter dated November 26, 1997, the Applicants requested that the Registrar review the validity of Laura Flood's enfranchisement. The Registrar, by letter dated August 18, 1997, found the enfranchisement to be valid.

PART II - ISSUE

9. Did the Registrar err in finding that the December 4, 1952 enfranchisement of Laura Mary Flood (nee Batisse) was valid ?

PART III - ARGUMENT

Enfranchisement

10. The practice of enfranchisement was first introduced in the *Gradual Civilization Act, S.C.1857, c26.* The premise was that by removing all legal distinctions between Indians and non-Indians it would be possible to absorb Indian people fully into colonial society.

> *Looking Forward, Looking Backward, Report of the Royal Commission on Aboriginal People, 1996 Volume 1 at 271* ***TAB 5***

11. The Report of the Royal Commission on Aboriginal Peoples noted that;

> The concept of voluntary enfranchisement was given its first legislative expression in the *Gradual Civilization Act* of 1857 and remained virtually unchanged through successive versions of the *Indian Act* until relatively recently. It was not a realistic or popular policy among Indians, most of whom had no intention of renouncing their personal and group identity by assimilating into non-Aboriginal society.
>
> *Looking Forward, Looking Backward, Report of the Royal Commission on Aboriginal People, 1996 Volume 1 at 286-87* ***TAB 5***

12. The enfranchisement provisions in the *Indian Act S.C. 1951, c.29* read as follows:

> 15 (1) Subject to subsection two, an Indian who becomes enfranchised or who otherwise ceases to be a member of a band is entitled to receive from His Majesty

(a) one *per capita* share of the capital and revenue moneys held by His Majesty on behalf of the band, and (b) an amount equal to the amount that in the opinion of the Minister he would have received during the next succeeding twenty years under any treaty then in existence between the band and His Majesty if he had continued to be a member of the band.

108 (1) On the report of the Minister that an Indian has applied for enfranchisement and that in his opinion the Indian
(a) is of the full age of twenty-one years,
(b) is capable of assuming the duties and responsibilities of citizenship, and
(c) when enfranchised, will be capable of supporting himself and his dependents, the Governor in Council may by order declare that the Indian and his wife and minor unmarried children are enfranchised.
(2) On the report of the Minister that an Indian woman married a person who is not an Indian, the Governor in Council may by order declare that the woman is enfranchised.
(3) Where in the opinion of the Minister, the wife of an Indian is living apart from her husband, the names of his wife and his minor children who are living with the wife shall not be included in an order under subsection one that enfranchises the Indian unless the wife has applied for enfranchisement, but where the Governor in Council is satisfied that such wife is no longer living apart from her husband, the Governor in Council may by order declare that the wife and the minor children are enfranchised.
(4) A person is not enfranchised unless his name appears in an order of enfranchisement made by the Governor in Council.

13. The evidence indicates that Laura Flood did not, under her own free will, apply for enfranchisement. Laura Flood was involuntarily enfranchised. Pursuant to the 1951 *Indian Act* an Indian woman could only be enfranchised involuntarily if that Indian woman married a non-Indian. Laura Flood, in 1952, was not married to a non-Indian, and thus could not be involuntarily enfranchised.

Affidavit of Laura Mary Flood sworn August 13, 1996 at para 4 TAB 4

14. Section 108(1) of the *Indian Act, 1951* authorized the Minister to report to the Governor in Council only when an "Indian has applied for enfranchisement". The applicant for enfranchisement must be the Indian, not the Indian agent.

15. It is submitted that there is ample evidence before the Registrar which indicates that Laura Flood did not knowingly and/or voluntarily, apply for enfranchisement. She was illiterate and did not have the capacity to complete the Enfranchisement Application. There is no indication in the jurat of the application that the Indian Superintendent read the contents of the application in the presence of Laura Flood, that she appeared to understand it, or that she signed

the application in the Superintendent's presence.

Affidavit of Laura Mary Flood sworn April 28, 1998

Fiduciary Duty

16. A fiduciary obligation arises when "one person possesses unilateral power or discretion on a matter affecting a second "peculiarly vulnerable " person. The vulnerable party is in the power of the party possessing the power or discretion, who is in turn obligated to exercise that power or discretion solely for the benefit of the vulnerable party."

Blueberry River Indian Band v. Canada [1996] 2 C.N.L.R. 25 at 41 (S.C.C) ***TAB 7***

17. The Crown has a general fiduciary duty towards Aboriginal people to protect them in the enjoyment of their Aboriginal rights. This obligation owed by the Crown to Indians is unique, and deemed sui generis.

Guerin v. R. [1985] 1 C.N.L.R. 120 (S.C.C.) at 139 ***TAB 8***

18. The Minister responsible for Indian Affairs bears the Crown's fiduciary obligations towards Indians and is required to act with reasonable diligence.

Blueberry River Indian Band v. Canada [1996] 2 C.N.L.R. 25 at 36 (S.C.C) ***TAB 7***

19. The Minister of Citizenship and Immigration, and his agents, were responsible for carrying out Canada's fiduciary obligations towards Indians in 1952.

Indian Act S.C 1951 , c.29, s. 2(1)(d) ***TAB 6***

20. Since 1967 the Minister of Indian Affairs and Northern Development, and his/her agents, have had the special responsibility of carrying out Canada's fiduciary obligations towards Indians.

Department of Indian Affairs and Northern Development Act 1985 c.I c6 s. 4 ***TAB 9***
Native Law, Jack Woodrow, at page 112-113 ***TAB 10***

21. The duties of the fiduciary towards Indians include the following obligations:

a) not to exercise undue influence
b) not to act capriciously or totally unreasonably
c) not to allow any personal interest to conflict with a fiduciary obligation

The Law of First Nations, Robert Reiter, at page 231-232 ***TAB 11***

22. The Applicants submit that the Minister of Citizenship and Immigration breached his fiduciary duty by referring the enfranchisement application of Laura Batisse to the Governor in Council when he knew or ought to have known that the application was obtained pursuant to the exercise of undue influence. The existence of a fiduciary relationship gives rise to a presumption of undue influence. The onus is on the Minister to rebut the presumption by suitable and appropriate evidence such as that the other party obtained independent legal advise.

The Law of Contract, G.H.L. Fridman, at 301-303 ***TAB 12***

23. The Applicants further state that the Minister of Citizenship and Immigration breached his fiduciary duty by failing to adequately examine Laura Flood's enfranchisement application. If the Minister properly reviewed the application he would have determined that the information contained therein was false.

Affidavit of Laura Mary Flood sworn on April 28, 1998

24. It is further stated that the Minister, by referring the enfranchisement application to the Governor in Council was in direct conflict with his fiduciary obligations. The purpose of enfranchisement was to hasten the assimilation of Indians into colonial society. This purpose directly conflicts with the fiduciary's duty towards Aboriginal people to protect them in the enjoyment of their Aboriginal rights as enfranchisement eliminated all Aboriginal rights.

25. The Registrar of Indian Affairs and Northern Development continues to breach the fiduciary duty by failing to declare the enfranchisement invalid even after having been presented with evidence which clearly shows that Laura Flood did not have the legal capacity to make an informed decision with respect to her enfranchisement. Reasonable diligence requires that the Department of Indian Affairs and Northern Development take immediate steps to correct the erroneous enfranchisement when it came into possession of facts suggesting the error.

Affidavit of Laura Mary Flood sworn on April 28, 1998 paras 4, 15 & 16
Blueberry River Indian Band v. Canada [1996] 2 C.N.L.R. 25 at 63 (S.C.C) ***TAB 7***

PART IV - ORDER REQUESTED

1. That the Minister of Indian Affairs and Northern Development Canada, pursuant to section 4(a) of the *Department of Indian Affairs and Northern Development Act 1985, c.I-6* and section 3(1) of the *Indian Act RSC 1985, c.I-5,* declare the 1952 Order in Council P.C. No. 4583 enfranchising Laura Mary Batisse, void ab initio.

2. That the Registrar of the Department of Indian Affairs and Northern Development add the name Dorothy Ann Flood nee Batisse, born February 25, 1954, to the Indian Register pursuant to sections 5(3) and 6(1)(a) of the *Indian Act*.

3. That the Registrar of the Department of Indian Affairs and Northern Development add the name Angel Sue Larkman, born January 5, 1972, to the Indian Register pursuant to section 6(1)(a) of the *Indian Act* and to the Matachewan Band List pursuant to sections 8, 9(3) and 11(1)(a) of the *Indian Act*.

SIGNED AT TORONTO this 17th day of August, 1998

Kimberly R. Murray
Aboriginal Legal Services of Toronto
197 Spadina Avenue
Suite 600
Toronto, Ontario
M5T 2C8

tel: (416) 408-4041 ext 25
fax: (416) 408-4268

Solicitor for the Applicants/Protestors

IN THE MATTER OF Angel Etches, Dorothy Ann Flood (nee Batisse), and Laura Flood (nee Batisse).

AND IN THE MATTER OF Application for Registration pursuant to the Indian Act.

A F F I D A V I T

I, Laura Mary Flood (nee Batisse), of the Town of Matachewan, in the District of Cochrane, **MAKE OATH AND SAY AS FOLLOWS:**

1. I was born on March 1, 1926 on the Matachewan Indian Reservation, in Ontario. My birth parents were Harry and Anne Batisse, both of whom were entitled to be registered as "Indians" pursuant to the Indian Act.

2. Prior to December 4, 1952 I was registered under the Indian Act. My registration number was 32. I was a member of the Matachewan First Nation, Band Number 72.

3. In December of 1952, the Chief of the Matchewan First Nation, Chief Alfred Batisse, requested that I sign some papers. At the time I was not able to read or write, so I had no idea what the documents were that the Chief asked me to sign. I trusted the Chief's direction and signed the documentation as requested.

4. I later discovered that I had in fact signed an Application for Enfranchisement. At the time of signing I did not know what Enfranchisement was, or what its consequences were. If I had know, I would never have signed the documentation. At no time did I intend to forfeit my registration under the Indian Act.

5. To the best of my knowledge and recollection I did not receive any money from the Chief, or from the government, for Enfranchisement. I do recall receiving $500.00 from the Chief, however, I was under the impression that the money was given to me as compensation for the "stumpage" that was occurring on the First Nation's land at the time.

6. I have since regained my status pursuant to Bill C-31. I verily believe that I should not have been registered as a "Bill C-31" registrant but rather as a "regular" registrant due to the invalidity of the Enfranchisement.

7. I also believe that my children should be granted "regular" registrant status. I am the birth mother to the following four children, all of whom were born out of wedlock.

Clarence Lorne, born on March 22, 1946;
Lorne David, born on October 6, 1948;
Laura Jean, born on October 14, 1952; and
Dorothy Ann, born on February 25, 1954

8. I make this affidavit for the purpose of having my Enfranchisement declared invalid, and for no other purpose.

SWORN BEFORE ME at the City of Toronto, in the Municipality of Metropolitan Toronto, this 26th day of February, 1996.

Laura Flood
Laura Mary Flood

A Commissioner etc.

IN THE MATTER OF Angel Etches, Dorothy Ann Flood (nee Batisse), and Laura Flood (nee Batisse).

AND IN THE MATTER OF Application for Registration pursuant to the Indian Act.

A F F I D A V I T

I, Laura Mary Flood (nee Batisse), of the Town of Matachewan, in the District of Cochrane,

MAKE OATH AND SAY AS FOLLOWS:

1. I was born on March 1, 1926 on the Matachewan Indian Reservation, in Ontario. My birth parents were Harry and Anne Batisse, both of whom were entitled to be registered as "Indians" pursuant to the Indian Act.

2. Prior to December 4, 1952 I was registered under the Indian Act. My registration number was 32. I was a member of the Matachewan First Nation, Band Number 72.

3. I am the birth mother to the following four children, all of whom were born out of wedlock:

   Clarence Lorne, born on March 22, 1946;
   Lorne David, born on October 6, 1948;
   Laura Jean, born on October 14, 1952; and
   Dorothy Ann, born on February 25, 1954

4. On June 20, 1964 I married Wycliffe Flood, a non-native man. I have never

been married to any other person prior to this 1964 marriage. At the time of my enfranchisement of December 4, 1952 I was not married to Wycliffe Flood, nor was I married to any other person, native or non-native.

5. I make this affidavit for the purpose of having my Enfranchisement of December 4, 1952 declared invalid, and for no other purpose.

SWORN BEFORE ME at the City of Toronto, in the Municipality of Metropolitan Toronto, this 13th day of August, 1996.

A Commissioner etc.

Laura Flood

Laura Mary Flood

VOLUME

1

Looking Forward, Looking Back

Report
of the Royal Commission
on Aboriginal Peoples

Canadian Cataloguing in Publication Data

Canada. Royal Commission on Aboriginal Peoples.
Report of the Royal Commission on Aboriginal Peoples.

Issued also in French under the title:
Rapport de la Commission royale sur les peuples autochtones.

Contents:
v. 1. Looking forward, looking back –
v. 2. Restructuring the relationship –
v. 3. Gathering strength –
v. 4. Perspectives and realities –
v. 5. Renewal: a twenty-year commitment
ISBN 0-660-16413-2 (V. 1);
ISBN 0-660-16414-0 (V. 2);
ISBN 0-660-16415-9 (V. 3);
ISBN 0-660-16416-7 (V. 4);
ISBN 0-660-16417-5 (V. 5).
Cat. no. Z1-1991/1-1E (V. 1);
Cat. no. Z1-1991/1-2E (V. 2);
Cat. no. Z1-1991/1-3E (V. 3);
Cat. no. Z1-1991/1-4E (V. 4);
Cat. no. Z1-1991/1-5E (V. 5).

1. Native peoples – Canada.
2. Native peoples – Canada – Social conditions.
3. Native peoples – Canada – Economic conditions.
4. Native peoples – Canada – Politics and government.
I. Title.

E78.C2R46 1996 971'.00497 C96-980078-9

Available in Canada through
your local bookseller
or by mail from
Canada Communication Group – Publishing
Ottawa, Canada K1A 0S9

Cat. no. Z1-1991/1-1E
ISBN 0-660-16413-2

Cover: Joane Cardinal-Schubert, RCA, "Moonstruck I", acrylic on paper, 64.5 x 54 centimetres, framed.
Endpapers: Mireille Siouï, "Dans la maison d'Handiaouich, la petite tortue", intaglio, watercolour on paper, 50 x 32.5 centimetres.
Both, collection of the Indian Art Centre, Department of Indian Affairs and Northern Development. Photographer, Lawrence Cook.
Photograph facing page 1: Fred Cattroll.

Canada Communication Group Publishing
Groupe Communication Canada Édition

5. The *Gradual Civilization Act*: Assimilating Civilized Indians

Before the final report of the Pennefather Commission was published, the *Gradual Civilization Act* was passed in 1857.[38] It applied to both Canadas and was one of the most significant events in the evolution of Canadian Indian policy. Its premise was that by eventually removing all legal distinctions between Indians and non-Indians through the process of enfranchisement, it would be possible in time to absorb Indian people fully into colonial society.

Enfranchisement, which meant freedom from the protected status associated with being an Indian, was seen as a privilege. There was thus a penalty of six months' imprisonment for any Indian falsely representing himself as enfranchised. Only Indian men could seek enfranchisement. They had to be over 21, able to read and write either English or French, be reasonably well educated, free of debt, and of good moral character as determined by a commission of non-Indian examiners. For those unable to meet these criteria, a three-year qualifying period was allowed to permit them to acquire these attributes. As an encouragement to abandon Indian status, an enfranchised Indian would receive individual possession of up to 50 acres of land within the reserve and his per capita share in the principal of the treaty annuities and other band moneys.

An enfranchised man did not own the 50 acres of land allotted to him, however. He would hold the land as a life estate only and it would pass to his children in fee simple ownership upon his death. This meant that it was inalienable by him, but could be disposed of by his children once they had received it following his death. If he died without children, his wife would have a life estate in the land but upon her death it would revert to the Crown – not to the band. Thus, it would no longer be reserve land, thereby reducing the overall amount of protected land for the exclusive use and occupation of the reserve community. Where an enfranchised man died leaving children, his wife did not inherit the land. She would have a life estate like his and it would pass to the children of the marriage once she died.

Enfranchisement was to be fully voluntary for the man seeking it. However, an enfranchised man's wife and children would automatically be enfranchised with him regardless of their wishes, and would equally receive their shares of band annuities and moneys. They could not receive a share of reserve lands.

The provisions for voluntary enfranchisement remained virtually unchanged through successive acts and amendments, although some elements were modified over the years. Other developments in enfranchisement policy in subsequent legislation, such as making enfranchisement involuntary, will be described later in the discussion of the *Indian Act*.

The voluntary enfranchisement policy was a failure. Only one Indian, Elias Hill, was enfranchised between 1857 and the passage of the *Indian Act* in 1876.

council election and recommend to the governor in council that such a chief be prohibited from standing for election for six years. This provision was passed to counter the practice of many bands of holding sham elections and simply electing their traditional or hereditary leaders.

In 1914 the superintendent general received authority to make health regulations that would prevail over competing band council by-laws. This regulation-making power was enhanced to cover many more areas in 1936. Since these areas coincided with many of the band council law-making powers, this effectively allowed federal authorities to second-guess band councils.

In 1933 the authority of Indian agents was reinforced by an administrative directive requiring that all Indian complaints and inquiries be directed to the Indian affairs branch through the local agent. This produced the paradoxical situation of band complaints about their agents having to be directed to headquarters in Ottawa by the very agents complained about. Three years later other *Indian Act* amendments authorized Indian agents to cast the deciding vote in band council elections in the event of a tie and to preside at and direct band council meetings.

Although Indian agents began to be phased out in the 1960s, band councils still operate under the restrictive and limiting by-law making framework first developed in 1869. In the modern era, most band council by-laws are subject to either a ministerial power of disallowance or a requirement that the minister confirm them. In addition, the regulation-making authority of the governor in council may render band council by-laws irrelevant if they cover the same area as the regulation.

Moreover, subject to certain limits, recent judicial decisions have confirmed that general provincial laws may apply to Indians living on federally protected reserve lands.[74] In many situations both the provincial law and the band council by-law cover the same area. Traffic laws are a good example. So long as they do not actually conflict in a narrow constitutional sense, both sets of laws stand. This effectively undercuts band council authority and impedes the establishment of a band legal regime appropriate to the circumstances of the reserve concerned.

The limited and supervised law-making powers of bands under the *Indian Act* are a constant object of criticism by Indian people and appear to be more and more glaringly at odds with current trends toward enhanced autonomy for First Nations communities and general trends toward decentralization within the Canadian federation.

9.3 Enfranchisement

The concept of voluntary enfranchisement was given its first legislative expression in the *Gradual Civilization Act* of 1857 and remained virtually unchanged through successive versions of the *Indian Act* until relatively recently. It was not

166

a realistic or popular policy among Indians, most of whom had no intention of renouncing their personal and group identity by assimilating into non-Aboriginal society. Since only one Indian, Elias Hill, had been enfranchised voluntarily (see Chapter 6), federal officials decided to make it compulsory in some situations.

Thus, to the 'privilege' of voluntary enfranchisement, officials added compulsory enfranchisement in 1876 for those who obtained higher education. However, that first *Indian Act* also allowed unmarried Indian women to seek enfranchisement – ironically, one of the few examples of sexual equality in the early versions of the *Indian Act*. Given the stipulation that such a woman be unmarried, there was little possibility that her decision would affect others – unlike the case of men, whose enfranchisement would automatically enfranchise their wives and children.

In addition, the new *Indian Act* permitted entire bands to be enfranchised, a provision that the Wyandotte (Wendat) band of Anderdon, Ontario took advantage of in 1881, finally receiving letters patent enfranchising them in 1884. This move greatly encouraged subsequent generations of Indian affairs officials in their civilizing and assimilating endeavour.[75] Bands could still apply for voluntary enfranchisement until 1985. Only one other band was enfranchised voluntarily during the period when the *Indian Act* contained band enfranchisement provisions.[76]

With respect to compulsory individual enfranchisement, an 1880 amendment removed the involuntary element, thereby allowing university-educated Indians and those who had entered one of the professions to retain their Indian status if they wished. However, to prevent Indian communities from impeding worthy candidates from taking advantage of the provisions, in 1884 another amendment removed the right of the band to refuse to consent to enfranchisement or to refuse to allot the required land to the individual who had applied for enfranchisement during the probationary period. Further amendments in 1918 made it possible for Indians living off-reserve to enfranchise. This included widows and women over the age of 21. Passage of this amendment produced immediate results. The department of Indian affairs noted, for example, that in the period before 1918, only 102 persons had enfranchised, whereas between 1918 and 1920, a further 258 Indians abandoned their Indian status through enfranchisement.[77]

The most drastic change occurred in 1920, however, when the act was amended to allow compulsory enfranchisement once again. A board of examiners could be appointed by the superintendent general of Indian affairs to report on the "fitness of any Indian or Indians to be enfranchised" and, following the board's report, the superintendent general could recommend to the governor in council that "any Indian, male or female, over the age of twenty-one [who] is fit for enfranchisement" be enfranchised two years after the order.[78] This provision was repealed two years later, but reintroduced in slightly modified form in 1933

15 GEORGE VI.

CHAP. 29.

An Act respecting Indians.

[*Assented to 20th June, 1951.*]

HIS Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:

SHORT TITLE.

1. This Act may be cited as *The Indian Act.* Short title.

INTERPRETATION.

2. (1) In this Act, Definitions.

(*a*) "band" means a body of Indians "band."
- (i) for whose use and benefit in common, lands, the legal title to which is vested in His Majesty, have been set apart before or after the coming into force of this Act,
- (ii) for whose use and benefit in common, moneys are held by His Majesty, or
- (iii) declared by the Governor in Council to be a band for the purposes of this Act;

(*b*) "child" includes a legally adopted Indian child: "child."

(*c*) "council of the band" means "Council of the band."
- (i) in the case of a band to which section seventy-three applies, the council established pursuant to that section,
- (ii) in the case of a band to which section seventy-three does not apply, the council chosen according to the custom of the band, or, where there is no council, the chief of the band chosen according to the custom of the band;

(*d*) "Department" means the Department of Citizenship and Immigration; "Department."

(*e*) "elector" means a person who "elector."
- (i) is registered on a Band List,
- (ii) is of the full age of twenty-one years, and
- (iii) is not disqualified from voting at band elections;

(*f*) "estate" includes real and personal property and any interest in land; "estate."

Persons not entitled to be registered.

12. (1) The following persons are not entitled to be registered, namely,

(a) a person who

(i) has received or has been allotted half-breed lands or money scrip,

(ii) is a descendant of a person described in subparagraph (i),

(iii) is enfranchised, or

(iv) is a person born of a marriage entered into after the coming into force of this Act and has attained the age of twenty-one years, whose mother and whose father's mother are not persons described in paragraph *(a)*, *(b)*, *(d)*, or entitled to be registered by virtue of paragraph *(e)* of section eleven,

unless, being a woman, that person is the wife or widow of a person described in section eleven, and

(b) a woman who is married to a person who is not an Indian.

Certificate.

(2) The Minister may issue to any Indian to whom this Act ceases to apply, a certificate to that effect.

Admission to band of persons on General List.

13. (1) Subject to the approval of the Minister, a person whose name appears on a General List may be admitted into membership of a band with the consent of the band or the council of the band.

Transfer of band membership.

(2) Subject to the approval of the Minister, a member of a band may be admitted into membership of another band with the consent of the latter band or the council of that band.

Woman marrying outside band ceases to be member.

14. A woman who is a member of a band ceases to be a member of that band if she marries a person who is not a member of that band, but if she marries a member of another band, she thereupon becomes a member of the band of which her husband is a member.

Payments to persons ceasing to be members.

15. (1) Subject to subsection two, an Indian who becomes enfranchised or who otherwise ceases to be a member of a band is entitled to receive from His Majesty

(a) one *per capita* share of the capital and revenue moneys held by His Majesty on behalf of the band, and

(b) an amount equal to the amount that in the opinion of the Minister he would have received during the next succeeding twenty years under any treaty then in existence between the band and His Majesty if he had continued to be a member of the band.

Payments not to be made in certain cases.

(2) A person is not entitled to receive any amount under subsection one

(a) if his name was removed from the Indian register pursuant to a protest made under section nine, or

- 169 -

(b) if he is not entitled to be a member of a band by reason of the application of paragraph *(e)* of section eleven or subparagraph (iv) of paragraph *(a)* of section twelve.

Payments to minors

(3) Where by virtue of this section moneys are payable to a person who is under the age of twenty-one, the Minister may

(a) pay the moneys to the parent, guardian or other person having the custody of that person, or

(b) cause payment of the moneys to be withheld until that person reaches the age of twenty-one.

Compensation for permanent improvements.

(4) Where the name of a person is removed from the Indian Register and he is not entitled to any payment under subsection one, the Minister shall, if he considers it equitable to do so, authorize payment, out of moneys appropriated by Parliament, of such compensation as the Minister may determine for any permanent improvements made by that person on lands in a reserve.

Transfer of funds.

16. (1) Section fifteen does not apply to a person who ceases to be a member of one band by reason of his becoming a member of another band, but, subject to subsection three, there shall be transferred to the credit of the latter band the amount to which that person would, but for this section, have been entitled under section fifteen.

Transferred member's interest in lands and moneys.

(2) A person who ceases to be a member of one band by reason of his becoming a member of another band is not entitled to any interest in the lands or moneys held by His Majesty on behalf of the former band, but he is entitled to the same interest in common in lands and moneys held by His Majesty on behalf of the latter band as other members of that band.

Transfer of woman by marriage.

(3) Where a woman who is a member of one band becomes a member of another band by reason of marriage, and the *per capita* share of the capital and revenue moneys held by His Majesty on behalf of the first-mentioned band is greater than the *per capita* share of such moneys so held for the second-mentioned band, there shall be transferred to the credit of the second-mentioned band an amount equal to the *per capita* share held for that band, and the remainder of the money to which the woman would, but for this section, have been entitled under section fifteen shall be paid to her in such manner and at such times as the Minister may determine.

Minister may constitute new bands.

17. (1) The Minister may, whenever he considers it desirable,

(a) constitute new bands and establish Band Lists with respect thereto from existing Band Lists or General Lists, or both, and

(b) amalgamate bands that, by a vote of a majority of their electors, request to be amalgamated.

Short title.

Definitions. "band."

"child."

"Council of the band."

"Department."

"elector."

"estate."

place for which he is appointed or in which he has jurisdiction under provincial laws is situated.

Appointment of justices.

105. The Governor in Council may appoint persons to be, for the purposes of this Act, justices of the peace and those persons shall have and may exercise the powers and authority of two justices of the peace with regard to

(a) offences under this Act,

R.S., c. 36.

(b) offences under the *Criminal Code* with respect to inciting Indians on reserves to commit riotous acts, and robbing of Indian graves, and

(c) any offence against the provisions of the *Criminal Code* relating to cruelty to animals, common assault, breaking and entering and vagrancy, where the offence is committed by an Indian or relates to the person or property of an Indian.

Indian agent *ex officio* a J.P.

106. Where, immediately prior to the coming into force of this Act, an Indian agent was *ex officio* a justice of the peace under the *Indian Act*, chapter ninety-eight of the Revised Statutes of Canada, 1927, he shall be deemed, for the purposes of this Act. to have been appointed under section one hundred and five, and he may exercise the powers and authority conferred by that section until his appointment is revoked by the Minister.

Commissioners for taking oaths.

107. For the purposes of this Act or any matter relating to Indian affairs

(a) persons appointed by the Minister for the purpose,

(b) superintendents, and

(c) the Minister, Deputy Minister and the chief officer in charge of the branch of the Department relating to Indian affairs

are *ex officio* commissioners for the taking of oaths.

ENFRANCHISEMENT

Enfranchisement of Indian and wife and minor children.

108. (1) On the report of the Minister that an Indian has applied for enfranchisement and that in his opinion the Indian

(a) is of the full age of twenty-one years,

(b) is capable of assuming the duties and responsibilities of citizenship, and

(c) when enfranchised, will be capable of supporting himself and his dependants,

the Governor in Council may by order declare that the Indian and his wife and minor unmarried children are enfranchised.

Enfranchisement of married women.

(2) On the report of the Minister that an Indian woman married a person who is not an Indian, the Governor in Council may by order declare that the woman is enfranchised as of the date of her marriage.

Where wife living apart.

(3) Where, in the opinion of the Minister, the wife of an Indian is living apart from her husband, the names of his wife and his minor children who are living with the wife shall not be included in an order under subsection one that enfranchises the Indian unless the wife has applied for enfranchisement, but where the Governor in Council is satisfied that such wife is no longer living apart from her husband, the Governor in Council may by order declare that the wife and the minor children are enfranchised.

Order of enfranchisement.

(4) A person is not enfranchised unless his name appears in an order of enfranchisement made by the Governor in Council.

Enfranchised person ceases to be Indian.

109. A person with respect to whom an order for enfranchisement is made under section one hundred and eight shall, from the date thereof, be deemed not to be an Indian within the meaning of this Act or any other statute or law.

Sale of lands of enfranchised Indian.

110. (1) Upon the issue of an order of enfranchisement, any interest in land and improvements on an Indian reserve of which the enfranchised Indian was in lawful possession or over which he exercised rights of ownership, at the time of his enfranchisement, may be disposed of by him by gift or private sale to the band or another member of the band, but if not so disposed of within thirty days after the date of the order of enfranchisement such land and improvements shall be offered for sale by tender by the superintendent and sold to the highest bidder and the proceeds of such sale paid to him; and if no bid is received and the property remains unsold after six months from the date of such offering, the land, together with improvements, shall revert to the band free from any interest of the enfranchised person therein, subject to the payment, at the discretion of the Minister, to the enfranchised Indian, from the funds of the band, of such compensation for permanent improvements as the Minister may determine.

Grant to enfranchised Indian.

(2) When an order of enfranchisement issues or has issued, the Governor in Council may, with the consent of the council of the band, by order declare that any lands within a reserve of which the enfranchised Indian had formerly been in lawful possession shall cease to be Indian reserve lands.

172

JOSEPH APSASSIN, CHIEF OF THE BLUEBERRY RIVER INDIAN BAND, and JERRY ATTACHIE, CHIEF OF THE DOIG RIVER INDIAN BAND, on behalf of themselves and all other members of the DOIG RIVER INDIAN BAND, the BLUEBERRY RIVER INDIAN BAND and all present descendants of the BEAVER BAND OF INDIANS (Appellants) v. HER MAJESTY THE QUEEN IN RIGHT OF CANADA as represented by the DEPARTMENT OF INDIAN AFFAIRS AND NORTHERN DEVELOPMENT and the DIRECTOR OF THE *VETERANS LAND ACT* (Respondent) and THE MUSQUEAM NATION and ERMINESKIN TRIBAL COUNCIL, CHIEF ABEL BOSUM et al., CHIEF TERRY BUFFALO et al. and the SAMSON INDIAN BAND AND NATION, and the ASSEMBLY OF FIRST NATIONS (Interveners)

[Indexed as: **Blueberry River Indian Band v. Canada (Department of Indian Affairs and Northern Development)**]

Supreme Court of Canada La Forest, L'Heureux-Dubé, Sopinka, Gonthier, Cory, McLachlin and Major JJ., December 14, 1995

T.R. Berger, Q.C., L.J. Pinder, A. Pape and *G.A. Nelson*, for the appellants
Y. Whitehall, Q.C., J.R. Haig, Q.C., and *M.R. Taylor*, for the respondent
M.R.V. Storrow, Q.C., and *Maria Morellato*, for the interveners the Musqueam Nation and Ermineskin Tribal Council
J. O'Reilly, E. Molstad, Q.C., and *C. Chatelain*, for the interveners Chief Abel Bosum et al.
J. O'Reilly, E. Molstad, Q.C., and *L.D. Rae*, for the interveners Chief Terry Buffalo et al.
P.K. Doody and *J.E.S. Briggs*, for the intervener the Assembly of First Nations

The Beaver Indian Band signed treaty in 1916 and were granted reserve lands known as I.R. 172 which they used as their summer camping ground spending the rest of their time trapping and hunting further north. In 1940 the Band surrendered mineral rights to the Crown "in trust to lease" for the benefit of the Band. In 1945 the Band surrendered the reserve to the Crown pursuant to the *Indian Act*, R.S.C. 1927, c. 98 "in trust to sell or lease" upon such terms as are most conducive to the welfare of the Band and its people. The lands, including the mineral rights, were sold to the Director of *The Veterans' Lands Act* (DVLA) in 1948 for $70,000.00. The Director purchased the lands to sell to returning veterans under the *Veterans' Land Act*. Between 1948 and 1956, the Director sold the lands, including the mineral rights, to veterans. In 1950, the Department of Indian Affairs purchased new reserve lands for the Blueberry Band closer to their trapping grounds.

In 1940 the Crown sold permits to prospect on the reserve lands for $1,800.00 and distributed the monies to the Band members. In 1948, gas was discovered 40 miles

southeast of the former reserve and in 1949, oil companies expressed an interest in exploring the lands for oil and gas. At that time a question arose as to whether the Band or the veterans had title to the minerals in the lands and by August 9, 1949, it was concluded that the veterans held the mineral rights. In 1960, an official of the Department of Indian Affairs concluded that the failure to reserve mineral rights for the Band had been due to "inadvertence".

In 1976 oil and gas was discovered on the lands. In 1977 the Beaver Band divided into the Doig River and Blueberry River Bands. Also in 1977 an officer in the Department of Indian Affairs became concerned about how the Band had lost their mineral rights and notified the Bands of his concerns. On September 18, 1978, the Bands commenced these proceedings claiming damages for breach of fiduciary obligations from the Crown on a number of grounds including: breach of fiduciary obligation in allowing the Band to make an improvident surrender; breach for sale of the lands; breach for sale of the lands below value; breach in transferring mineral rights contrary to terms of 1940 surrender; breach in transferring mineral rights contrary to normal practice of reserving minerals for the benefit of the Band; and, breach for failing to revoke the sale of the surrendered lands pursuant to s.64 of the *Indian Act*. The Bands also argued that the surrender was invalid in that the Chiefs did not swear on oath certifying the surrender as required by s.51 of the *Indian Act*.

The Crown argued that it had not breached its fiduciary obligations to the Band; that the requirements of s.51 of the *Indian Act* were directory rather than mandatory and had been met; and, that the 1940 surrender was subsumed in the 1945 surrender. The Crown also argued that the claims were statute barred.

At trial ([1988] 1 C.N.L.R. 73) the Court dismissed the Bands claims except in relation to the sale of the lands to the DVLA which was held to have been undervalue. The majority of the Federal Court of Appeal, Isaac C.J. dissenting, dismissed the appeal and the Crown's cross-appeal ([1993] 2 C.N.L.R. 20).

Held: *Appeal allowed: The Crown breached its fiduciary duty to the Band in relation to the sale of mineral rights and in failing to revoke the sale pursuant to s.64 of the Indian Act when it became aware of the failure to reserve the mineral rights. Cross-appeal allowed: The Trial Judge erred in concluding that the Crown sold the lands below value. Case remitted to the Federal Court, Trial Division for assessment of damages.*

per Gonthier J. (La Forest, L'Heureux-Dubé and Sopinka JJ., concurring)

1. In matters relating to reserve lands, the *sui generis* nature of Aboriginal title requires courts to go beyond the usual restrictions imposed by the common law on the transfer of interests in land, in order to give effect to the true intention of the parties. The evidence suggests that the Band understood that they would be transferring all their rights in I.R. 172 to the Crown in trust in 1945, and that the Crown would either sell or lease those rights for the benefit of the Band. The sale or lease of I.R. 172 by the Crown would provide the funds necessary for the Band to purchase alternate reserve sites better suited to their traditional hunting and gathering activities. The Band neither expected nor intended to hold rights over I.R. 172 once the 1945 surrender was complete. Therefore the 1945 surrender included the tract of land forming I.R. 172, the minerals in that tract and the right to exploit those minerals.

2. In 1940, the Band transferred the mineral rights in I.R. 172 to the Crown in trust, requiring the Crown to lease those rights for the benefit of the Band. The 1945

agreement was also framed as a trust. The 1945 agreement subsumed the 1940 agreement and expanded upon it in two ways: (1) while the 1940 agreement covered only mineral rights, the 1945 agreement covered both mineral and surface rights; (2) while the 1940 constituted a trust "for lease", the 1945 surrender gave the Crown, as trustee, the discretion "to sell or lease". Under the terms of the trust and because of the Crown's fiduciary role in the dealings, the Department of Indian Affairs was required to exercise its enlarged powers in the best interests of the Band.

3. Following the 1945 surrender, the Crown was under a fiduciary duty to continue the leasing arrangement of the minerals which it breached when it abandoned its long-held policy of leasing minerals and sold the minerals to the DVLA in 1948. The failure to continue the leasing arrangement could be excused if the Department had received a clear mandate from the Band to sell the mineral rights, however, at no time prior to the 1945 agreement was the sale of mineral rights discussed. There was no clear authorization from the Band which justified the Department in departing from its long-standing policy of reserving mineral rights for the benefit of bands when surface rights were sold.

4. The breach of the fiduciary duty committed by the Department was not limited to the date when the mineral rights were sold in 1948. By August 1949 the Department was aware that the mineral rights in the reserve had potential value, and that they had been sold in 1948. The Department breached its fiduciary duty to deal with the reserve in the best interests of the band when it failed to exercise its power under s.64 of the 1927 *Indian Act* to reacquire the mineral rights for the purpose of effecting a leasing arrangement for the benefit of the band. The appellants were entitled to recover any losses stemming from transfers by DVLA after August 1949 as they fall within the 30-year limitation period imposed by the *Limitation Act* and are not barred by any other provision of the Act.

per McLachlin J. (Cory and Major JJ., concurring)

1. When the mineral rights were surrendered in 1940, they became "Indian lands" under s.2 of the 1927 *Indian Act* and ceased to be part of the reserve lands and, therefore, did not form part of the 1945 surrender. Mineral rights were neither discussed nor transferred through the 1945 surrender process.

2. The 1927 *Indian Act* did not permit re-surrender of surrendered lands and the Crown developed a practice of revoking a surrender and negotiating a new surrender where a Band wished to vary the terms of an existing surrender document. That practice was not followed in this case.

3. The Crown breached its duty to lease the mineral rights pursuant to the 1940 surrender when it sold the mineral rights to the DVLA with the surface rights in 1948.

per McLachlin J. (Cory, Major, La Forest, L'Heureux-Dubé, Sopinka and Gonthier JJ., concurring)

4. The surrender provisions of the *Indian Act* strike a balance between autonomy and protection in requiring both the Band and the Crown to consent to a surrender. The purpose of the Crown's consent is to prevent the Indians from being exploited, not to substitute the Crown's decision for that of the Band.

5. The evidence shows that the Band actively considered the surrender and does not suggest that the surrender was foolish, improvident or amounted to exploitation.

The Band did not abnegate or entrust its power of decision in relation to the surrender to the Crown. The evidence does not support the argument by the Band that the Crown owed a particular fiduciary duty to prevent the surrender of the reserve lands.

6. The "shall" in s.51 of the 1927 *Indian Act* requiring the Chiefs to certify the surrender on oath is directory and not mandatory. The Chiefs told the commissioner that they wished to surrender and the commissioner certified on oath. There is clear evidence of valid assent to the surrender. Failure to meet the technical requirements of s. 51 does not defeat the surrender.

7 While it was against the general policy of leasing surrendered lands rather than selling them, the evidence suggests that the decision to the sell the surrendered lands was defensible and reasonable at the time.

8. A fiduciary involved in self-dealing bears the onus of demonstrating that it did not benefit from its position as a fiduciary. The Crown adduced evidence showing that the price obtained was reasonable as it was within a range established by the appraisals. The onus then shifted to the Band to show that the sale price was unreasonable. The Band did not provide such evidence. The trial judge erred in finding that the Crown breached its fiduciary duty by selling the lands undervalue.

9. While it is clear that the Band was living in abject poverty following the surrender of the reserve lands, it is not clear that restoring the reserve to the Band would have been a solution. The Crown did not breach its fiduciary duty to the Band by not cancelling the surrender or refusing to sell the lands following the surrender.

10. The Department of Indian Affairs was under a duty to act in the best interests of the Band and by s.64 of the *Indian Act* the Superintendent-General was empowered to revoke an erroneous or mistaken sale or lease of reserve lands. The Crown breached its fiduciary obligation to recover the mineral rights on August 9, 1949 when it became aware of the value of the mineral rights and also became aware that they had been sold to the DVLA.

11. The claim for breach of fiduciary duty in relation to the transfer of the mineral rights to the DVLA in 1948 is barred by the 30-year limitation period of s.8 of the *Limitation Act*, R.S.B.C. 1979, c. 236.

12. Claims arising out of the failure to recover the mineral rights after August 9, 1949 are not barred by s.8 of the *Limitations Act* but are subject to the 6 year limitation period of s. 3(4) of the *Limitations Act*.

13. Section 6(3) of the *Limitations Act* delays the operation of s.3(4) to 1977 when the Bands first became aware of the relevant facts in relation to the mineral rights.

* * * * * *

LAFOREST, L'HEUREUX DUBÉ and SOPINKA JJ. concur with GONTHIER J.

GONTHIER J.:

I. Introduction

I have had the benefit of reading the reasons of my colleague, McLachlin J. While I agree with her analyses of the surrender of the surface rights in Indian Reserve 172 ("I.R. 172"), and the application of

authorization given encompassed leasing as well as selling. There was therefore no clear authorization from the Band which justified the DIA in departing from its long-standing policy of reserving mineral rights for the benefit of the Aboriginals when surface rights were sold. This underscores the critical distinction between the Band's intention to include the mineral rights in the 1945 surrender, and an intention of the Band that the mineral rights must be sold and not leased by the Crown. Given these circumstances, the DIA was under a fiduciary duty to continue the leasing arrangement which had been established in the 1940 surrender. It was a violation of the fiduciary duty to sell the mineral rights to the DVLA in 1948.

IV. Limitation of Actions

I agree with McLachlin J. that the breach of fiduciary duty committed by the DIA is not limited to the date when the mineral rights in I.R. 172 were sold to the DVLA. The DIA was under a duty to act in the best interests of the Beaver Band in all of its dealings with the mineral rights in I.R. 172, and as I noted above, this gave rise to a specific duty to lease those mineral rights for the benefit of the Band according to the terms of the 1945 agreement. So long as the DIA had the power, whether under the terms of the surrender instrument, or under the *Indian Act*, to reserve the mineral rights through a leasing arrangement, the DIA was under a fiduciary duty to exercise this power. Thus, like McLachlin J., I think that s.64 of the Act is very significant, since it gave the DIA the power to revoke an erroneous sale or lease of Indian lands. Because the mineral rights in I.R. 172 were sold inadvertently, s.64 provided the DIA with the power to reacquire the reserve lands, and thus afforded the DIA a "second chance" to effect a lease of the mineral rights.

In her reasons, McLachlin J. amply demonstrates that between July 15, 1949 and August 9, 1949, the DIA became aware of two facts: (1) the mineral rights in I.R. 172 were potentially of considerable value; and (2) the mineral rights had been sold to the DVLA in 1948. It should also be recalled that the DIA had a long-standing policy of reserving mineral rights for the benefit of Aboriginal peoples when selling Indian lands. Given these circumstances, it is rather astonishing that no action was taken by the DIA to determine how the mineral rights could have been sold to the DVLA. Little effort would have been required to detect the error which had occurred.

As a fiduciary, the DIA was required to act with reasonable diligence. In my view, a reasonable person in the DIA's position would have realized by August 9, 1949 that an error had occurred, and would

177

him) his power over a matter to another person. The person who has ceded power *trusts* the person to whom power is ceded to exercise the power with loyalty and care. This is the notion at the heart of the fiduciary obligation.

The evidence supports the view that the Band trusted the Crown to provide it with information as to its options and their foreseeable consequences, in relation to the surrender of the Fort St. John reserve and the acquisition of new reserves which would better suit its life of trapping and hunting. It does not support the contention that the Band abnegated or entrusted its power of decision over the surrender of the reserve to the Crown, as attested by the following findings of Addy J. (at pp. 66-67 F.C. [p. 129 C.N.L.R.]):

> 1. That the plaintiffs had known for some considerable time that an absolute surrender of I.R. 172 was being contemplated;
>
> 2. That they had discussed the matter previously on at least three formal meetings where representatives of the Department were present;
>
> 3. That, contrary to what has been claimed by the plaintiffs, it would be nothing short of ludicrous to conclude that the Indians would not also have discussed it between themselves on many occasions in an informal manner, in their various family and hunting groups;
>
> 4. That, at the surrender meeting itself, the matter was fully discussed both between the Indians and with the departmental representatives previous to the signing of the actual surrender;
>
> 5. That [Crown representatives had not] attempted to influence the plaintiffs either previously or during the surrender meeting but that, on the contrary, the matter appears to have been dealt with most conscientiously by the departmental representatives concerned;
>
> 6. That Mr. Grew [the local Indian agent] fully explained to the Indians the consequences of a surrender;
>
> 7. That, although they would not have understood and probably would have been incapable of understanding the precise nature of the legal interest they were surrendering, they did in fact understand that by the surrender they were giving up forever all rights to I.R. 172, in return for the money which would be deposited to their credit once the reserve was sold and with their being furnished with alternate sites near their trapping lines to be purchased from the proceeds;
>
> 8. That the said alternate sites had already been chosen by them, after mature consideration.

I conclude that the evidence does not support the existence of a fiduciary duty on the Crown prior to the surrender of the reserve by the Band.

(c) Whether the Surrender was Invalid for Failure to Comply with Section 51 of the Indian Act

Section 51(1) of the 1927 *Indian Act* indicates that no surrender

Supreme Court of Canada, Laskin C.J.C.*, Ritchie, Dickson, Beetz, Estey, McIntyre, Chouinard, Lamer and Wilson JJ., November 1, 1984

M.R.V. Storrow, J.I. Reynolds, L.F. Harvey, B.A. Crane, Q.C., W. Badcock and A.C. Pape (for National Indian Brotherhood), for the appellants
W.I.C. Binnie, Q.C., M.R. Taylor and M. Freeman, for the respondent

In 1957 an Indian band surrendered 162 acres of reserve land to the Crown for lease to a golf club on the understanding that the lease would contain the terms and conditions that were presented to and agreed upon by the band council. The surrender document which was subsequently executed gave the land to the Crown "in trust to lease the same" upon such terms as it deemed most conducive to the welfare of the band. In fact the terms of the lease obtained by the Crown were significantly different from what the band had agreed to and were less favourable. The band was unable to obtain a copy of the lease until March 1970. The band commenced an action for damages against the Crown in 1975.

At trial, [1982] 2 C.N.L.R. 83, Collier J. held the Crown to be in breach of its trust obligations in respect of the leasing of the surrendered reserve land and awarded the plaintiffs $10 million in damages. The Federal Court of Appeal, [1983] 1 C.N.L.R. 20, allowed the appeal, holding that no obligation enforceable in the courts had been created.

Held: **(Per Dickson J. (Beetz, Chouinard and Lamer JJ. concurring))**

1. Indian title to traditional tribal or reserve lands is an independent legal right not dependent upon the Royal Proclamation of 1763, s.18(1) of the Indian Act, R.S.C. 1952, c.149 (now R.S.C. 1970, c.I-6) or any other executive order or legislative provision.

2. Indian title is a unique interest in land characterized by its general inalienability and the Crown's obligation to deal with the land on behalf of the Indians when the land is surrendered.

3. The Indian Act confirms this historic responsibility undertaken by the Crown. By the discretion conferred upon the Crown by s.18(1) to decide for itself where the Indians' best interests lie, the obligation is transformed into a fiduciary duty which the court will supervise.

4. When an Indian band surrenders its interest to the Crown, a fiduciary obligation takes hold to regulate the manner in which the Crown exercises its discretion in dealing with the land on the Indians' behalf. The Crown's obligation is neither a trust nor agency relationship though it bears some resemblance.

* The Chief Justice did not take part in the judgment.

4. In the present case, the Crown was compelled in equity, upon the surrender, to hold the surrendered land in trust for the purpose of the lease which the band members had approved as being for their benefit. The Crown was no longer free to decide that a lease on some other terms would do, and thus, it was in breach of trust in entering a lease on terms other than those approved by the band.

5. The equitable fraud of the Crown in concealing the lease terms disentitled the Crown to relief for breach of trust under s.98 of the Trustee Act, R.S.B.C. 1960, c.390 (now R.S.B.C. 1979, c.414).

6. The trial judge made no error in principle in assessing damages as the difference between the value, as of the date of trial, of the band's lost opportunity to develop the land for residential purposes and the value of the golf club lease. In equity, it should be presumed that the band would have wished to develop its land in the most advantageous way during the period covered by the unauthorized lease.

7. Appeal allowed.

Per Estey J.

1. In order to deal with the personal interest of Indians in Indian lands, the Indian Act requires the band to surrender the interest to the Crown in order to effect the proposed alternate use of the land.

2. The Indian Act permits a type of surrender where the Indian interest is retained but exploitation of that interest is allowed in the manner and to the extent permitted by the statute. In such a case the Crown becomes the appointed agent of the Indians to develop and exploit the Indian interest under the direction and for the benefit of the Indians. The fact that the statute prescribes the agent and requires the principal to act through the agency of the Crown does not detract in law from the agent's legal capacity to act as agent nor diminish the rights of the principal to call upon the agent to account for the performance of the mandate.

3. In the present case, the band had determined to exercise its interest in the land by entering a lease with a golf club and had given detailed instructions regarding the lease terms to its agent, the government representatives. The government representatives did not carry out the instructions or keep the band informed as to the progress or outcome of negotiations. Thus the agent violated its duties to its principal.

4. The quantum of damages awarded by the trial judge was appropriate for a breach of agency.

5. Appeal allowed.

Appeal allowed.

that this is so cannot alter either the existence or the nature of the obligation which the Crown owes.

The Crown's fiduciary obligation to the Indians is therefore not a trust. To say as much is not to deny that the obligation is trust-like in character. As would be the case with a trust, the Crown must hold surrendered land for the use and benefit of the surrendering band. The obligation is thus subject to principles very similar to those which govern the law of trusts concerning, for example, the measure of damages for breach. The fiduciary relationship between the Crown and the Indians also bears a certain resemblance to agency, since the obligation can be characterized as a duty to act on behalf of the Indian bands who have surrendered lands, by negotiating for the sale or lease of the land to third parties. But just as the Crown is not a trustee for the Indians, neither is it their agent; not only does the Crown's authority to act on the band's behalf lack a basis in contract, but the band is not a party to the ultimate sale or lease, as it would be if it were the Crown's principal. I repeat, the fiduciary obligation which is owed to the Indians by the Crown is sui generis. Given the unique character both of the Indians' interest in land and of their historical relationship with the Crown, the fact that this is so should occasion no surprise.

The discretion which is the hallmark of any fiduciary relationship is capable of being considerably narrowed in a particular case. This is as true of the Crown's discretion vis-à-vis the Indians as it is of the discretion of trustees, agents, and other traditional categories of fiduciary. The Indian Act makes specific provision for such narrowing in ss.18(1) and 38(2). A fiduciary obligation will not, of course, be eliminated by the imposition of conditions that have the effect of restricting the fiduciary's discretion. A failure to adhere to the imposed conditions will simply itself be a prima facie breach of the obligation. In the present case both the surrender and the Order-in-Council accepting the surrender referred to the Crown leasing the land on the band's behalf. Prior to the surrender the band had also been given to understand that a lease was to be entered into with the Shaughnessy Heights Golf Club upon certain terms, but this understanding was not incorporated into the surrender document itself. The effect of these so-called oral terms will be considered in the next section.

(d) Breach of the Fiduciary Obligation

The trial judge found that the Crown's agents promised the band to lease the land in question on certain specified terms and then, after surrender, obtained a lease on different terms. The lease obtained was much less valuable. As already mentioned, the surrender document did not make reference to the "oral" terms. I would not wish to say that those terms had nonetheless somehow been incorporated as conditions into the surrender. They were not formally assented to by a majority of the electors of the band, nor were they accepted by the Governor in Council, as required by

DEPARTMENT OF INDIAN AFFAIRS AND NORTHERN DEVELOPMENT ACT

R.S.C. 1985, c. I-6, as am. S.C. 1991, c. 50, s. 30; 1993, c. 28, s. 78 (Schedule III, items 75-77) (not in force at date of publication)

SHORT TITLE

1. Short title. — This Act may be cited as the *Department of Indian Affairs and Northern Development Act*.

ESTABLISHMENT OF THE DEPARTMENT

2. (1) **Department established.** — There is hereby established a department of the Government of Canada called the Department of Indian Affairs and Northern Development over which the Minister of Indian Affairs and Northern Development appointed by commission under the Great Seal shall preside.

(2) **Minister.** — The Minister holds office during pleasure and has the management and direction of the Department.

3. Deputy head. — The Governor in Council may appoint an officer called the Deputy Minister of Indian Affairs and Northern Development to hold office during pleasure and to be the deputy head of the Department.

POWERS, DUTIES AND FUNCTIONS OF THE MINISTER

4. Powers, duties and functions of Minister. — The powers, duties and functions of the Minister extend to and include all matters over which Parliament has jurisdiction, not by law assigned to any other department, board or agency of the Government of Canada, relating to

(*a*) Indian affairs;

(*b*) the Yukon Territory and the Northwest Territories and their resources and affairs; and

(*b*) the Yukon Territory, and Northwest Territories and Nunavut and their resources and affairs; and [1993, c. 28, s. 78 (Schedule III, item 75). Not in force at date of publication.]

(*c*) Inuit affairs. 1993, c. 28, s. 78 (Schedule III, item 75).

5. Idem. — The Minister shall be responsible for

(*a*) coordinating the activities in the Yukon Territory and the Northwest Territories of the several departments, boards and agencies of the Government of Canada;

(*b*) undertaking, promoting and recommending policies and programs for the further economic and political development of the Yukon Territory and the Northwest Territories; and

(*a*) coordinating the activities in the Yukon Territory, the Northwest Territories and Nunavut of the several departments, boards and agencies of the Government of Canada;

(*b*) undertaking, promoting and recommending policies and programs for the further economic and political development of the Yukon Territory, the Northwest Territories and Nunavut; and [1993, c. 28, s. 78 (Schedule III, item 76). Not in force at date of publication.]

(*c*) fostering, through scientific investigation and technology, knowledge of the Canadian north and of the means of dealing with conditions related to its further development. 1993, c. 28, s. 78 (Schedule III, item 76).

6. Administration. — The Minister has the administration of all lands situated in the Yukon Territory and the Northwest Territories belonging to Her Majesty in right of Canada except those lands that were immediately before October 1, 1966 under the management, charge and direction of any minister, department, branch or agency of the Government of Canada other than the Minister of Northern Affairs and National Resources or the Department of Northern Affairs and National Resources. 1991, c. 50, s. 30; 1993, c. 28, s. 78 (Schedule III, item 77).

6. The Minister has the administration of all lands situated in the Yukon Territory, the Northwest Territories and Nunavut belonging to Her Majesty in right of Canada except those lands that were immediately before October 1, 1966 under the management, charge and direction of any minister, department, branch or agency of the Government of Canada other than the Minister of Northern Affairs and National Resources or the Department of Northern Affairs and National Resources. [1993, c. 28, s. 78 (Schedule III, item 77). Not in force at date of publication.]

ANNUAL REPORT

7. Annual report. — The Minister shall, on or before January 31 next following the end of each fiscal year or, if Parliament is not then sitting, on any of the first five days next thereafter that either House of Parliament is sitting, submit to Parliament a report showing the operations of the Department for that fiscal year.

183

NATIVE LAW

JACK WOODWARD
B.A. (Hons.), LL.B.
of the
British Columbia Bar

CARSWELL
Thomson Professional Publishing

Canadian Cataloguing in Publication Data

Woodward, Jack, 1951-
Native law

Bibliography: p.
Includes index.
ISBN 0-459-33271-6 (looseleaf). — ISBN 0-459-33211-2 (bound). — ISBN 0-459-33751-3 (pbk.)

1. Indians of North America — Canada — Legal status, laws, etc. I. Title.
KE7709.W65 1990 342.71'0872 C89-091175-4

CARSWELL
Thomson Professional Publishing

One Corporate Plaza, 2075 Kennedy Road, Scarborough, Ontario M1T 3V4
Customer Service:
Toronto 1-416-609-3800
Elsewhere in Canada/U.S. 1-800-387-5164
Fax 1-416-298-5094

There is no general legislative provision corresponding to s. 88 of the Indian Act concerning Inuit in the provinces. Inuit are subject to such provincial laws as apply of their own force and effect to anyone within the province.[152] However, they are not subject to incorporation by reference of provincial laws which affect Inuit rights.

(f) Conflicts between federal subordinate legislation

When by-laws under the Indian Act come into conflict with regulations of general application under other federal statutes, the more specific legislation, namely the by-law, prevails.[153] This situation has arisen in cases where conflict has arisen between band fishing by-laws passed pursuant to s. 81(1)(*o*)[154] of the Indian Act and regulations pursuant to the Fisheries Act. The by-law has been held to prevail.[155] To date, some of the other notable potential conflicts have not been litigated. They would include: a conflict under the Criminal Code; a health by-law under s. 81(1)(*a*)[156] and the Canada Health Act; etc.

It has been held that para. 81(1)(*m*) of the Indian Act does not confer on Band Councils authority to licence gambling casinos unless licensed by the province pursuant to the Criminal Code, and that if there were such a power, the provisions of the Criminal Code provisions would take precedence.[157]

3.3 The Minister and Department of Indian Affairs and Northern Development

The federal minister responsible for Indian affairs bears special responsibilities to carry out Canada's fiduciary obligations to native people. This special stature among ministers was expressed in the House of Commons in the following terms:

> The Minister of Indian Affairs and Northern Development is the only Minister of the federal Crown who holds a specific trust relationship with a specific group of Canadians . . .[158]

---

such as laws relating to hunting, fishing and trapping, apply by virtue of s. 88 of the *Indian Act*. In this regard, the Territory is no different from a province.

152 "*Ex proprio vigore*": see *Dick v. R.*, [1985] 2 S.C.R. 309 [B.C.], at heading IV: "The Second Issue".

153 *R. v. Jimmy* (by-law case), [1987] 5 W.W.R. 755 (B.C.C.A.).

154 Renumbered R.S.C. 1985, c. 32 (1st Supp.), s. 15(3).

155 Above, note 153; *R. v. Joseph*, [1986] 2 C.N.L.R. 108 (B.C. Co. Ct.).

156 Renumbered R.S.C. 1985, c. 32 (1st Supp.), s. 15(3).

157 *St Mary's Indian Band v. Canada (Minister of Indian Affairs & Northern Development)*, [1996] 2 C.N.L.R. 214 (Fed. T.D.).

158 Jim Fulton, M.P., 9th February 1988, House of Commons Debates (Hansard), p. 12787. In *Apsassin v. Canada (Department of Indian Affairs & Northern Development)*, [1993] C.N.L.R. 20 (Fed. C.A.), Marceau J.A. stated at p. 70 that, "[o]nly the Minister of Mines and Resources (now the Minister of Indian and Northern Affairs) is charged with the duty to see that the obligation of the Crown towards the Indians is fulfilled, and only he is entitled to hold surrendered land, or the proceeds from its disposition, for the use and benefit of the Indians."

This aspect of parliamentary tradition has not yet evolved to the point where the minister is as isolated from the collective responsibility of Cabinet as is, for example, the Attorney General of Canada. However, given the special and non-political obligations of the federal Crown towards native people in Canada, such independence from normal political accountability may well evolve. See generally *Blueberry River Indian Band v. Canada*[159].

(*Continued on page 113*)

159 [1996] 2 C.N.L.R. 25 (S.C.C.).

(a) Establishment of the Department of Indian Affairs and Northern Development

The Department is established by statute, the Department of Indian Affairs and Northern Development Act.[159] Pursuant to the Act, Indian and Inuit Affairs are the responsibility of the Department.

By s. 4 of the Act, discretionary powers are conferred on the Minister, including for example, the right to hold a referendum to determine if council should continue to be chosen by custom.[159.1]

Indian affairs have been administered under various departments of the federal government since Confederation. In 1868 Indian affairs were under the Secretary of State.[160] In 1873 responsibility passed to the Department of the Interior.[161] The Department of Indian Affairs was established in 1880.[162] In 1951 Indian affairs were brought under the Department of Citizenship and Immigration.[163] Since 1967 Indian affairs have been administered through the Department of Indian Affairs and Northern Development.[164]

Pursuant to the Federal Identity Program, federal officials refer to the Department as "Indian and Northern Affairs Canada". This name, abbreviated as INAC, has no legal status. Although it is almost always used on stationery of the Department, the correct name of the Department is the name found in the Act, usually abbreviated as DIAND.

(b) Indian Act designation of Department and Minister

The word "Department", when it occurs in the Indian Act, is defined to mean the Department of Indian Affairs and Northern Development:

> 2.(1) In this Act . . .
>
> "Department" means the Department of Indian Affairs and Northern Development.

For the purposes of the Indian Act, the responsible minister is defined as follows:

> 2.(1) In this Act . . .
>
> "Minister" means the Minister of Indian Affairs and Northern Development.

---

159 R.S.C. 1985, c. I-6.

159.1 *Six Nations Traditional Hereditary Chiefs v. Can. (Min. of Indian & Nor. Affairs)* (1991), 43 F.T.R. 132 (T.D.).

160 Secretary of State Act, S.C. 1868, c. 42.

161 Department of the Interior Act, S.C. 1873, c. 4, s. 3.

162 Indian Act, S.C. 1880, c. 28, s. 3.

163 Indian Act, S.C. 1951, c. 29, s. 2(1)(d).

164 Government Organization Act, S.C. 1966-67, Sched. B; S.C. 1968-69, c. 28.

THE LAW OF FIRST NATIONS

ROBERT A. REITER

B.A. (HONORS), M.A., LL.B., MEMBER OF THE ALBERTA BAR

1996

Juris Analytica Publishing Inc.

Canadian Cataloguing in Publication Data

Reiter, Robert Alan, 1956-
The Law of First Nations

Includes bibliographical reference
ISBN 0-9698958-1-X

1. Indians of North America -- Canada -- Legal status, laws, etc.
2. Canada. Indian Act. I. Title.

KE 7709.R44 1996 342.71'0872 C96-910103-1
KF 8205.R44 1996

fiduciary, and the degree of reliance and vulnerability exhibited by the beneficiary. Defining the nature of the fiduciary relationship depends upon the individual fact scenario involved. The duty of care may be plotted on a sliding scale, which increases proportionally with the amount of power and discretion wielded by the fiduciary:

> In order to find out what is involved in the fiduciary obligation in any particular case, the simple approach is to ask: what has the fiduciary undertaken to do? How has he undertaken to do it? Does the law expect anything else from him?
>
> This boils down to a simple statement: the scope of the undertaking defines the duty to be obeyed. The duty to be obeyed can vary in a number of ways: (1) the interests to be served; (2) the duties to be performed; (3) the standards to be attained; and (4) the restrictions to be obeyed. The principal's interests that must be served and protected, as we have already said, are as defined and understood by the parties. A fiduciary relationship does not necessarily connote a total all-embracing duty and loyalty to the principal for all purposes. The question is to ask what did the fiduciary undertake. The undertaking may be of a general character extending to all of the others' interests, as occurs in the case of a general agency or where a general power of attorney is held, or it may be specific and limited as in the case of an agent appointed to sell a specific property.[522]

C. Duties of the Fiduciary:

A fiduciary has typically been defined in terms of the obligations themselves, rather than by a set list of "standard" fiduciary relationships. The following have been recognized as typical fiduciary duties:

(i) not to delegate discretions,
(ii) not to act under another's dictation,
(iii) not to place "fetters" on discretions,
(iv) to consider whether a discretion should be exercised,
(v) not to act for the fiduciary's benefit or for the benefit of any third person,
(vi) to treat principals equally where they have similar rights,
(vii) to treat principals fairly where they have dissimilar rights,

---

522 Ibid. at 18-19.

(viii) not to act capriciously or totally unreasonably,
(ix) not to exercise undue influence,
(x) not to misuse property held in a fiduciary capacity,
(xi) not to misuse information derived in confidence,
(xii) not to purchase property if to do so would conflict with a fiduciary obligation,
(xiii) not to allow any personal interest to conflict with a fiduciary obligation,
(xiv) not to allow duty to another to conflict with a fiduciary obligation.[523]

This list is neither exhaustive nor all-inclusive as the "obligations of a particular fiduciary will depend upon the circumstances."[524] In Guerin, Dickson J. makes it clear that the obligation owed by the Crown to Indians is unique, deeming it *sui generis*.[525]

D. Distinguishing Between a Fiduciary and Trustee:

In Guerin, the federal Crown was found liable to the Musqueam Indian Band for mismanagement of surrendered lands. Three separate assenting judgments were offered, with none supported by a majority of the eight Supreme Court justices who took part. Estey J. founded the Crown liable in agency. Wilson J. (with Ritchie and McIntyre J. concurring) found the Crown liable on the basis of trust, while Dickson J. (with Beetz, Chouinard and Lamer JJ. concurring) based his finding of federal culpability upon the Crown's *sui generis* fiduciary responsibility with respect to Indian lands.

Commentators on Guerin have suggested that the discrepancies between the three decisions are not as significant as they would appear upon first reading. James I. Reynolds and Lew F. Harvey, who argued the case on behalf of the Musqueam Band at the Supreme Court, state:

> It is submitted that, from a practical point of view, little turned in this case on whether the Crown was a fiduciary, trustee or agent. Trustees and agents are particular classes of fiduciary.[526]

---

523 J.I. Reynolds and L.F. Harvey, Re: Guerin et al., [The Musqueam Case], Indians and the Law II, Continuing Legal Education Society of British Columbia, January 26, 1985, 1.1.01. at 1.1. 30.

524 Ibid.

525 Supra, note 516 at 138.

526 Supra, note 523 at 1.1.28.

THE LAW OF CONTRACT IN CANADA

by G.H.L. FRIDMAN, Q.C.,

M.A., B.C.L., LL.M.,

of the Ontario Bar, and
of the Middle Temple and the North Eastern Circuit,
Barrister-at-law,
Professor of Law, University of Western Ontario

Second Edition

CARSWELL
Toronto • Calgary • Vancouver

Canadian Cataloguing in Publication Date

Fridman, G.H.L. (Gerald Henry Louis), 1928-
The law of contract in Canada

Includes bibliographical references and index.
ISBN 0-459-38210-1 (bound). — ISBN 0-459-38220-9 (pbk.)

1. Contracts — Canada. I. Title.

KE850.F74 1986 346.71'02 C86-093651-1

By the same author

Law of Agency, 5th edition, 1983
The Modern Law of Employment, 1963
Sale of Goods, 1966
Modern Tort Cases, 1968
Bankruptcy Law and Practice, 1970 (with I. Hicks and E.C. Johnson)
Studies in Canadian Business Law, 1971 (Editor)
Sale of Goods in Canada, 2nd edition, 1979.
Introduction to the Law of Torts, 1978
Restitution, 1982 (with J.G. McLeod)

Decisions like these, and the many instances where Canadian courts have been faced with claims for the return of money paid under what was alleged to be duress, or compulsion, leave both the nature of economic duress and its application in uncertainty. Although the general idea is clear and accepted, namely, that the presence of duress renders the voluntary character of an agreement suspect, it is still not completely clear what kinds of pressure will amount to duress in commercial cases (at least where there is no obvious illegality or unlawfulness on the part of the party exercising the duress), nor whether the essence of duress as a defence to a contract, or as a basis for avoiding a contract, is lack of consent or the overbearing of the threatened party's will.

3. Undue influence[44]

Equity went further than the common law of duréss and developed the doctrine that contracts entered into as a result of moral coercion could also be avoided where it would be inequitable and unconscionable to hold the victim bound by his agreement. Thus, the doctrine of undue influence reaches beyond the boundaries of physical duress, or duress to goods and property, at common law. Equity was more concerned with the more subtle effects of non-physical pressure upon the mind and ultimate consent of the party being influenced. In some respects the equitable doctrine of undue influence is analagous not only to duress but to fraud. Any improper use by one contracting party of any form of oppression, coercion, compulsion or abuse of power or authority for the purpose of obtaining the consent of the other party may result in avoidance of the resulting contract on the ground of undue influence.[45] As the House of Lords explained in *National Westminister Bank v. Morgan*,[46] the principle justifying the court in setting aside a transaction for undue influence is the need to save persons from being victimized by others, not some vague "public policy". The wrongfulness of the transaction is shown by proving that an unfair advantage has been taken of another.[47]

A plea of undue influence attacks the sufficiency of consent, as Davey J.A. said in *Morrison v. Coast Finance Ltd.*[48] The onus of establishing such undue influence is on the party who is alleging the lack of consent on such basis. However, in some instances the mere fact that the parties stand in a certain relationship to one another raises a presumption of undue influence which at least discharges the preliminary burden of proof. This will be the case wherever the relationship between the parties is one of a confidential or fiduciary nature. Such relationships

---

44 Fridman & McLeod, *Restitution*, pp. 233-235; Goff & Jones, *Law of Restitution*, 2nd ed. 1978, pp. 192-198, dealing with the recovery of money paid under undue influence.

45 *Burris v. Rhind* (1899), 29 S.C.R. 498 (S.C.C.); *McKay v. Clow*, [1941] S.C.R. 643 (S.C.C.). But the plea is not available against a third party ignorant of the undue influence, see *Domenco v. Domenco* (1963), 41 D.L.R. (2d) 267 (Man. Q.B.).

46 [1985] 1 All E.R. 821 at 827-828 (H.L.) *per* Lord Scarman, citing *Allcard v. Skinner* (1887), 36 Ch. D. 145 at 183-183 *per* Lindley L.J.

47 [1985] 1 All E.R. 821 at 829 *per* Lord Scarman.

48 (1965), 55 D.L.R. (2d) 710 at 713 (B.C. C.A.).

include those of parent and child, principal and agent, and others to which reference has been made when discussing contracts *uberrimae fidei*.[49] In other instances, that is, where there is no such relationship, undue influence must be proved.[50]

Where the presumption applies, the transaction will be set aside unless the beneficiary under the contract establishes the independence of the other party or that he had independent legal advice, as long as this was based on knowledge of all the relevant circumstances and was honest and competent advice.[51] But lack of independent advice may not support a plea of undue influence, where the parties knew what they were doing.[52] In other situations, some facts may invite a conclusion of undue influence and require the beneficiary to show the fairness of the

---

49 Most cases concern some family relationship: see, *e.g.*, *Bank of Montreal v. Stuart*, [1911] A.C. 120 (P.C.); *McKay v. Clow*, [1941] S.C.R. 643 (S.C.C.) (applied in *Lato v. Lato* (1982), 19 Sask. R. 271 (Sask. Q.B.)); *Wheeler v. Wheeler* (1978), 20 N.B.R. (2d) 399 (N.B. Q.B.); affirmed (1978), 25 N.B.R. (2d) 374 (N.B. C.A.), where the presumption was rebutted; *Provender v. Lavoie* (1980), 5 Sask. R. 119 (Sask. Q.B.), where the presumption was not rebutted; *McArthur v. McArthur* (1983), 45 N.B.R. (2d) 10 (N.B. Q.B.), where no undue influence was established and the price at which the property was sold, though improvident, was not unfair or oppressive; compare *Laderoute v. Laderoute* (1978), 81 D.L.R. (2d) 433 (Ont. H.C.), mother transacting with son independent and in full possession of her facilities; transfer of land of equal value; *Randall v. Nicklin* (1984), 58 N.B.R. (2d) 414 (N.B. C.A.), presumption rebutted by proof of alcoholic's intention and receipt of independent advice. Contrast *Matheson v. Johnston's* (1984), 66 N.S.R. (2d) 19 (N.S. T.D.) (90-year-old man extremely reliant on nephew to whom he conveyed property).

But husband and wife are not within this category; undue influence must be proved, *per* Rushton J. in *Harding v. Harding* (1972), 28 D.L.R. (3d) 358 at 362 (B.C. S.C.). However, in *Lamers v. Lamers* (1978), 6 R.F.L. 283 (Ont. H.C.) it was held that while married people remained married to each other they owed each other a duty of utmost good faith, hence a family settlement made between a separated, but still married husband and wife could be set aside by the wife who proved that the husband had withheld material information as to the value of property owned by him; contrast *Miller v. Miller* (1978), 14 A.R. 429 (Alta. T.D.) where the *husband* was trying to avoid the agreement. Moreover in *E. & R. Distributors v. Atlas Drywall* (1980), 118 D.L.R. (3d) 339 (B.C. C.A.) it was said that there was a special rule applicable to a wife who becomes surety for her husband. See also *Brooks v. Alker* (1975), 60 D.L.R. (3d) 577 (Ont. H.C.).

Other instances of this presumption are: *Treadwell v. Martin* (1976), 67 D.L.R. (3d) 493 (N.B. C.A.) (principal and agent); *G. Mida Const. Ltd. v. Imp. Devs. (Int.) Ltd.*, [1978] 5 W.W.R. 577 (Man. C.A.) (contractor performing work for defendant by organizing and assembling construction projects), with which contrast *Green v. Charterhouse Group Can. Ltd.* (1976), 68 D.L.R. (3d) 592 (Ont. C.A.); *Allen v. Allen* (1976), 15 Nfld. & P.E.I.R. 362 (Nfld. Dist. Ct.); *Tannock v. Bromley* (1979), 10 B.C.L.R. 62 (B.C.S.C.) (practising hypnotherapist and patient); *Malicki v. Yankovich* (1981), 33 O.R. (2d) 537 (Ont. H.C.); additional reasons (1982), 42 O.R. (2d) 522 (Ont. H.C.); affirmed (1983), 41 O.R. (2d) 160 (Ont. C.A.) (solicitor and client); *Rochdale Credit Union Ltd. v. Barney* (1984), 48 O.R. (2d) 676 (Ont. C.A.); leave to appeal to S.C.C. refused (1985), 8 O.A.C. 320 (S.C.C.).

50 This and the previous three sentences were cited by Glube J. in *Thermo-Flo Corp. v. Kurylak* (1978), 84 D.L.R. (3d) 529 at 540 (N.S. T.D.). See also *Rimer v. Rimer* (1981), 119 D.L.R. (3d) 579 at 592-593 (Alta. Q.B.); *O'Sullivan v. Management Agency & Music Ltd.*, [1985] 3 All E.R. 351 (C.A.).

51 *Inche Noridh v. Shaik Allie Bin Omar*, [1929] A.C. 127 (P.C.); see *Treadwell v. Martin*, above, note 49; *Provender v. Lavoie*, above, note 49. Contrast *Clements v. Mair* (1980), 2 Sask. R. 1 (Sask. Q.B.).

52 *Murray v. Smith* (1980), 32 Nfld. & P.E.I.R. 191 (P.E.I. S.C.); affirmed (1981), 35 Nfld. & P.E.I.R. 382 (P.E.I. C.A.); *Malicki v. Yankovich*, above, note 49.

transaction, for example, where the other party lacked intelligence, was ignorant 196
of the language in which the transaction was conducted,[53] or was illiterate.[54] As with cases involving mistaken signature of documents,[55] the peculiar social history of western Canada in particular may have led to some developments in this area beyond the English authorities. But even with such extensions, the courts will not relieve a party from his contractual obligations merely because the party in question has been foolish. Some unconscionable conduct by the other party must be shown.[56]

4. Unconscionability[57]

(a) The traditional view

The equitable doctrine of undue influence has been stretched, or reinterpreted. Although the relationship between the parties is not one which can raise a presumption of improper conduct, calling into question the desirability of upholding and enforcing a contract, there may be present features which encourage and entitle a court applying equitable principles to intervene and grant rescission. Those features are the ingredients of what might be termed "equitable fraud". It is not fraud in the classical, common-law sense, involving misrepresentations of the truth. Nor is there any improper application of pressure amounting to duress or its equitable analogue of undue influence. Nonetheless, the conduct of one party in obtaining the assent of the other to a particular contract was of such a character that a court might well consider that to uphold the ensuing contract would be to perpetrate an injustice and produce an unfair result. A contract may be rescinded if the behaviour of one contracting party was unconscionable.

Wide though this jurisdiction may be, and broad though its application can sometimes appear, even a court applying equitable powers is not able, nor is it willing, to interfere with a concluded contract, otherwise not exceptionable,

---

53 Compare *Iwanchuk v. Iwanchuk* (1919), 48 D.L.R. 381 (Alta. C.A.).

54 *Gladu v. Edmonton Land Co.* (1914), 7 W.W.R. 279 (Alta. S.C.); contrast *Cripps v. Woessner*, [1917] 2 W.W.R. 1072 (Man. C.A.). Even where no independent legal advice was obtained, a wife was not acting under the undue influence when she mortgaged her own separate property without actually going security for her husband: *Wilgross Invts. Ltd. v. Goldshlager* (1974), 5 O.R. (2d) 687 (Ont. Div. Ct.); contrast *E.R. Distributors v. Atlas Drywall*, above, note 49.

55 Above, pp. 267-272.

56 That the contract was advantageous to the defendant may not suffice: *Sutherland v. Sutherland*, [1946] 4 D.L.R. 605 (B.C. S.C.); *Brock & Petty v. Gronbach*, [1953] 1 S.C.R. 207 (S.C.C.). Contrast *Hnatuk v. Chretian* (1960), 31 W.W.R. 130 (B.C. S.C.); *Mulholland v. Bartsch*, [1939] 1 D.L.R. 795 (Alta. S.C.).

57 Fridman & McLeod, *Restitution*, pp. 235-240; Goff & Jones, *Law of Restitution*, 2nd ed. 1978, pp. 199-202. Note the wider use of the idea as developed in Waddams "Unconscionability in Contracts" (1976), 39 M.L. Rev. 369. See also Tiplady, "The Judicial Control of Contractual Unfairness" (1983), 46 M.L. Rev. 601. For economic analysis see Trebilcock, "The Doctrine of Inequality of Bargaining Power" (1976), 26 U. Tor L.J. 359; *idem*, "An Economic Approach to the Doctrine of Unconscionability" in Reiter and Swan *Studies in Contract Law*, 1980, Study 11.

This is Exhibit "NN" referred to in the
Affidavit of Angel Sue Larkman sworn
Before me, on this 24, day of February, 2011.

A commissioner for taking affidavits

I, Elizabeth Damini, Deputy Clerk, Commissioner, etc., City of Timmins, District of Cochrane. Expires with Tenure.

JUL 2 1 2000

Your file Votre référence

Our file Notre référence
E6000-219 (McLaren)
F0410

Nicola P. Mulima / Kimberly R. Murray
Aboriginal Legal Services of Toronto
197 Spadina Avenue, Suite 600
TORONTO ON M5T 2C8

Dear Nicola Mulima:

I refer to your letter dated June 3, 1999 concerning the registration as an Indian of Laura Mary Flood née Batisse.

You provided a copy of her latest affidavit and attachments claiming that she was not validly enfranchised in 1952 and consequently her daughter, Dorothy Ann Flood, should be entitled to registration pursuant to subsection 6(1) of the *Indian Act*.

In general, it appears that the claim that Laura Flood's enfranchisement should be declared invalid rests on the assertion that she was not aware at the time that she was giving up her rights under the *Indian Act*. Some earlier submissions from your office suggested that the enfranchisement was invalid because Laura Flood did not marry a non-Indian until 1964, years after she enfranchised. However, she was not enfranchised because of marriage to a non-Indian but rather by her own application as an unmarried adult woman.

Laura Flood's affidavit outlines several concerns with the documentation on her enfranchisement file: she claims she never wrote to the Indian Superintendant requesting enfranchisement; she states that she did not leave the reserve until she was about nineteen, and not at the age of about thirteen years as indicated by the Indian Superintendant in his report; she states that she does not understand the letter bearing her signature and dealing with the question of timber rights; and she points out that she had two children at the date of the Application for Enfranchisement which states that she had none. She also asserts that she does not recall receiving the cheque for her share of band funds and annuity. Finally, although she admits to signing the various documents, she claims that she never understood what they meant, and in particular, that she did not know she was giving up her Indian status.

In regard to her first point, I have enclosed a copy of a letter bearing the signature of Laura Batisse, dated July 14, 1952, requesting the papers needed to "release

Canada

(her) from treaty". This letter appears to have been prepared by someone with the initials "R.L.S.". These are also the initials of the person who witnessed her Application for Enfranchisement: this may have been the same person. Perhaps if Laura Flood can recall who this person was, she may then be able to recall the circumstances under which her letter requesting enfranchisement was written. I have also enclosed a copy of her second letter on this matter, dated August 16, 1952.

In regard to the length of time she spent away from the reserve, you have provided copies of pay lists showing that she was listed with her parents from her birth up to 1939. This does not necessarily prove that she was not living elsewhere, since her father could have received her treaty payments on her behalf even if she was absent. Our records do not specifically confirm that the Batisse family lived on the reserve. In 1945, the family's payments were received by an adult son, which suggests that the rest of the family was absent for at least part of that year. In any event, the actual length of time she spent away from the reserve was not a vital factor in determining whether she could be enfranchised, so an inaccuracy in the Superintendant's report in this regard does not invalidate the enfranchisement. Finally, the Superintendant's information on this point may have come from Laura Flood herself, or from her relatives or acquaintances.

In regard to her children, since they were not registered Indians at the time she enfranchised, they could not be enfranchised, and were not entitled to shares of band funds. This probably explains why they were not named on the enfranchisement application - she could not apply for the enfranchisement of her children because they did not have Indian status, so it was not necessary to name them on her application.

She claims that she did not write the letter dated October 31, 1952 concerning the sale of timber rights, or instruct anyone to write it on her behalf, but she does not deny signing the letter. Our records do not contain the letter dated October 18, 1952 which is referred to in the October 31, 1952 correspondence. Presumably, this letter was sent to Laura Flood, and no record of its contents was retained by the Indian Superintendant. There is a reference to this matter on her Application for Enfranchisement. In her earlier affidavit dated February 26, 1996 she states that she recalls receiving $500.00 from the Chief which she believed was related to the "stumpage" occurring on the reserve lands at the time; yet in her latest affidavit she states that she does not now and did not then have any understanding of the timber rights referred to in the October 31, 1952 letter. It appears from her reference to stumpage that she did understand the matter under a different name.

Laura Flood states that she does not remember receiving the cheque for her share of band funds, but she obviously did receive her enfranchisement card, since you attached a copy of it to her affidavit. Based on the letter of instructions to the Indian Superintendant, J. A. Marleau, which is dated December 12, 1952 and which is attached to her affidavit, it appears that the cheque and the enfranchisement card were probably delivered to her at the same time. (The instructions say, "The cheque together with the enfranchisement card should be forwarded to Miss Batisse.")

In her affidavit dated February 26, 1996, she states that she signed an application for enfranchisement in December of 1952, at the request of the Chief of her band, Alfred Batisse. She states that she did not know then what she was signing but she later learned that it was an application for enfranchisement. According to our records, her application for enfranchisement was signed in October of 1952 and her first letter to the Indian Superintendant requesting enfranchisement was dated July 14, 1952. Neither of these documents bear the signature or initials of Alfred Batisse. In all of her affidavits she states that before she was enfranchised her Band Number was 72 but it was actually 67. It is hardly surprising if she cannot remember specific details of what she was told, or the exact contents of the various letters she was asked to sign after more than forty years, particularly since she could not read at the time; so it is also not surprising if she does not recall receiving her cheque for her share of band funds.

Laura Flood states in her affidavit that she did not understand the enfranchisement documents which she signed. You have not provided any evidence to show that she was not aware she had been enfranchised, other than her own unsupported assertions that she signed numerous papers without knowing what they were. Even if she was not familiar with the precise terminology contained in the *Indian Act*, that is, "enfranchisement", this does not mean that she did not understand the process under some other name. For example, in the enclosed letter, she requested the documents needed to "release her from the treaty": that or a similar term may have been how enfranchisement was usually described. She does not indicate how long it was before she learned that she had been enfranchised, but she did retain her enfranchisement card for more than forty years. She must have had some idea as to its meaning when she received it. She says that she was not told that by signing the enfranchisement documents she was giving up her Indian status, but she does not state whether she was given any explanation at all regarding the papers she signed in 1952 or if she had any idea of her own about what she was being asked to sign or why. Does she claim that none of the persons involved - the Chief of her band, the Indian Superintendant, J. A. Marleau, and the witness to her application, R. L. Scott - ever told her anything about the papers she was signing?

Since a letter requesting enfranchisement, bearing the signature of Laura Batisse, and her Application for Enfranchisement, duly signed and witnessed, were received by the Indian Superintendant, it appears that he acted in good faith in carrying out Laura Batisse's instructions and proceeding with her enfranchisement. Laura Flood does not deny signing the various letters and application forms and you have not provided any corroborative evidence to establish that she was unaware of the effect of the papers she signed. She claims that she was not told that she was giving up her Indian status under the *Indian Act*, but she does not indicate what she was told about the papers; and she has offered no explanation why the Chief of her band, or anyone else, would have tricked her into giving up her Indian status against her will.

Finally, on Laura Flood's Application for Registration under the *Indian Act* dated September 12, 1985, she gave as her grounds for registration the fact that she was enfranchised in 1952. She was reinstated to Indian status in 1987 as a person who enfranchised, and she did not dispute this finding by protesting her registration. I can only conclude from the information on file that Mrs. Flood signed the letters requesting that she be enfranchised, and that on the balance of probabilities the consequences of her actions were pointed out to her. I can therefore find no grounds to declare her enfranchisement invalid.

In light of the above, I must confirm my predecessor's decision of March 25, 1989, declaring Mrs. Flood entitled to registration under paragraph 6(1)(d) of the *Indian Act.*

I trust that I have been of assistance in this matter.

Yours sincerely,

M. M. MacDonald
Registrar
Ottawa, Ontario
K1A 0H4

This is Exhibit "OO" referred to in the
Affidavit of Angel Sue Larkman sworn
Before me, on this 24, day of February, 2011.

A commissioner for taking affidavits

I, Elizabeth Damini, Deputy Clerk,
Commissioner, etc., City of
Timmins, District of Cochrane.
Expires with Tenure.

415 Yonge Street
Suite 803
Toronto, Ontario
M5B 2E7

Aboriginal Legal Services
OF TORONTO

Telephone: (416) 408-3967
(416) 408-4041
Fax: (416) 408-4268

November 13, 2000

Registrar
Department of Indian
and Northern Affairs
Ottawa, Ontario
K1A 0H4

Dear Madam:

RE: File E6000-219/F0410

We are in receipt of your letter dated July 21, 2000 wherein our request to have Laura Flood's enfranchisement declared invalid was denied.

Upon review of the decision we note that a number of questions are asked and evidence is relied upon for which we have not been given an opportunity to respond to. As such we ask that this matter be forwarded to an oral hearing, in Toronto, as Ms. Flood would like to present oral evidence under oath. It would be a breach of natural justice and procedurally unfair to deny Ms. Flood an opportunity to respond to the questions raised by the adjudicator in the July 21, 2000 decision.

We also note that the decision fails to respond to our legal submissions, leading us to believe that the adjudicator fettered their discretion and failed to consider same.

Please advise immediately if further evidence will be accepted by way of a hearing.

Yours truly,
ABORIGINAL LEGAL SERVICES OF TORONTO-LEGAL CLINIC

Kimberly R. Murray
Director

This is Exhibit "PP" referred to in the
Affidavit of Angel Sue Larkman sworn
Before me, on this 24, day of February, 2011.

A commissioner for taking affidavits

I, Elizabeth Damini, Deputy Clerk,
Commissioner, etc., City of
Timmins, District of Cochrane.
Expires with Tenure.

Department of Justice Canada
Ontario Regional Office
The Exchange Tower
130 King St. West
Suite 3400, Box 36
Toronto, Ontario
M5X 1K6

Ministère de la Justice Canada
Bureau régional de l'Ontario
la tour Exchange
130 rue King ouest
Pièce 3400, CP 36
Toronto (Ontario)
M5X 1K6

Tel: 416-952-6192
Fax: 416-973-2319
Email: anusha.aruliah@justice.gc.ca

205

Our File: 4-468223
Notre dossier:

Your File:
Votre dossier:

July 08, 2004

BY FACSIMILE

Kimberly R. Murray
Aboriginal Legal Services of Toronto
415 Yonge Street, Suite 803
Toronto, Ontario
M5B 2E7

Dear Ms. Murray:

Re: Etches, Angel a.k.a Larkman, Angel Sue et. al v. The Attorney General of Canada et. al.
Court File No.: 01-CV-204158

Thank you for your letter of May 10, 2004. We had held off responding until we heard from the Registrar concerning your request that an oral hearing be convened. The Registrar's office has advised that she will not hold a hearing.

I would be pleased to discuss with you timelines for delivery of factums. I will be away from the office for the rest of the day today, but will be back in the office tomorrow, July 9, 2004.

Yours truly,

Anusha Aruliah
Counsel
Aboriginal Law Section

Canada

This is Exhibit "QQ" referred to in the
Affidavit of Angel Sue Larkman sworn
Before me, on this 24, day of February, 2011.

E. Damini

A commissioner for taking affidavits

I, Elizabeth Damini, Deputy Clerk,
Commissioner, etc., City of
Timmins, District of Cochrane.
Expires with Tenure.

Court File No.
01-CV-204158

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:

ANGEL ETCHES, now known as ANGEL SUE LARKMAN,
DOROTHY ANN FLOOD (NEE BATISSE),
AND LAURA MARY FLOOD (NEE BATISSE)

Applicants
(Appellants)

- and -

HER MAJESTY THE QUEEN AS REPRESENTED BY THE REGISTRAR OF THE DEPARTMENT OF INDIAN AFFAIRS AND NORTHERN DEVELOPMENT AND THE ATTORNEY GENERAL OF CANADA

Respondent
(Respondent in Appeal)

NOTICE OF APPEAL

THE APPELLANTS APPEAL to the Superior Court of Justice pursuant to sections 14.3(1)(b) and 14.3(5)(a.1) of the *Indian Act R.S.C. 1985*, c. I, from the decision of M.M. MacDonald, Acting Registrar of the Department of Indian Affairs and Northern Development, dated July 21, 2000, made at Ottawa.

THE APPELLANT ASKS that the decision be set aside and that judgment be granted as follows:

1. That the 1952 Order in Council P.C. No. 4583 enfranchising Laura Mary Batisse be declared void ab initio;

2. That Laura Mary Flood (née Batisee), born March 1, 1926, be added to the Indian Register pursuant to section 6(1)(a) of the *Indian Act R.S.C. 1985. C.I;*

3. That Dorothy Ann Flood (née Batisse), born February 25, 1954, be added to the Indian Register pursuant to section 6(1)(a) of the *Indian Act R.S.C. 1985, c. I;*

4. That Angel Sue Larkman, (now known as Angel Etches) born January 5, 1972, be added to the Indian Register pursuant to section 6(1)(a) of the *Indian Act R.S.C. 1985. C.I* and to the Matachewan Band List pursuant to sections 8, 9(3) and 11(1)(a) of the *Indian Act R.S.C. 1985. C.I;* and

5. Such further and other orders as counsel may advise and this court may permit.

THE GROUNDS FOR THE APPEAL are as follows:

1. That the Registrar, acting on behalf of the Minister of the Department of Indian Affairs and Northern Development, exceeded its jurisdiction by requiring that Laura Mary Flood (née Batisse) meet a burden of proof greater than that on a balance of probabilities to establish her claim;

2. That the Registrar, acting on behalf of the Minister of the Department of Indian Affairs and Northern Development, erred in ignoring the fiduciary duty owed to Laura Mary Flood (née Batisse);

3. That the Registrar, acting on behalf of the Minister of the Department of Indian Affairs and Northern Development, erred in finding that the statutory preconditions for the enfranchisement of Laura Mary Batisse had been met;

4. That the Registrar, acting on behalf of the Minister of the Department of Indian Affairs and Northern Development, erred in finding that the enfranchisement application of Laura Mary Batisse was voluntary, and that the Department of Citizenship and Immigration, as it then was, acted in good faith in processing her enfranchisement, when these findings are unsupported by the evidence; and

5. Such further and other grounds as counsel may advise and this Court may permit.

THE APPELLANT REQUESTS THAT THIS APPEAL BE HEARD at Toronto.

SIGNED AT TORONTO this 19th day of January 2001.

Kimberly R. Murray
Aboriginal Legal Services
of Toronto
415 Yonge Street, Suite 803
Toronto, Ontario
M5B 2E7
Tel: (416) 408-4041 ext. 225
Fax: (416) 408-4268

Solicitor for the Appellants

TO:

Registrar
Department of Indian Affairs and Northern Development
10 Wellington Street
Les Terrace de la Chaudiere
Ottawa, Ontario, K1A 0H4

AND TO:

The Attorney General of Canada
3400 Exchange Tower
First Canadian Place
Toronto, Ontario, M5X 1K6

211

Angel Etches et al
(Appellants)

and

HER MAJESTY THE QUEEN represented by the Registrar of the Department of Indian Affairs and Northern Development
(Respondent)

SUPERIOR COURT OF JUSTICE

Proceeding commenced at Toronto

NOTICE OF APPEAL

Kimberly R. Murray
Aboriginal Legal Services of Toronto
415 Yonge Street, Suite 803
Toronto, Ontario
M5B 2E7
Tel: (416) 408-4041 ext. 225
Fax: (416) 408-4268

Counsel for the Appellants

This is Exhibit "RR" referred to in the
Affidavit of Angel Sue Larkman sworn
Before me, on this 24, day of February, 2011.

A commissioner for taking affidavits

, Elizabeth Damini, Deputy Clerk,
Commissioner, etc., City of
Timmins, District of Cochrane.
Expires with Tenure.

COURT FILE NO.: 01-CV-204158
DATE: 20080305

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: **ANGEL ETCHES, now known as ANGEL SUE LARKMAN, DOROTHY ANN FLOOD (née BATISSE) and LAURA MARY FLOOD (née BATISSE)**

Appellants

- and -

HER MAJESTY THE QUEEN as represented by the REGISTRAR OF THE DEPARTMENT OF INDIAN AFFAIRS AND NORTHERN DEVELOPMENT and the ATTORNEY GENERAL OF CANADA

Respondent

BEFORE: **Justice M. Forestell**

COUNSEL: **Kimberly R. Murray and Jackie Esmonde**, for the Appellants

Anna Yarmon and Michael J. Beggs, for the Respondent

DATE HEARD: November 27, 2007

ENDORSEMENT

I. OVERVIEW

[1] Laura Flood was 'enfranchised' by Order-in-Council in 1952. Enfranchisement was the surrender of one's legal recognition as an Indian and one's membership in a band in exchange for Canadian citizenship and the right to hold land in fee simple. Enfranchisement surrendered the membership of the individual and of their descendants. The policy was an attempt to assimilate Aboriginal peoples and has been described as being among the most "oppressive amendments and practices"[1] in the history of the *Indian Act*.

[2] The *Indian Act* was amended in 1985 by Bill C-31 to permit those who lost registration through enfranchisement to register and regain registration. However, the provisions which permit registration to be restored after enfranchisement limit the recognition and membership of the individual's descendants.

---

[1] *Looking Forward, Looking Backward*, Report of the Royal Commission on Aboriginal Peoples, 1996 Volume 1, chapter 9, section 9 at page 271.

[3] Registration by virtue of 'entitlement' occurs under s. 6(1)(a) of the *Indian Act*. Registration after enfranchisement occurs under s. 6(1)(d) of the *Act*.

[4] Laura Flood applied to the Registrar to be re-registered under the *Indian Act* s. 6(1)(a) on the basis that her enfranchisement was not valid. She provided evidence that her enfranchisement application was signed by her at a time when she could not read or write and was unaware of what she was signing. She said that she signed the application because she was asked to do so by the Chief of the Matachewan First Nation and by the Indian Agent. She argued that she was therefore entitled to be registered under s. 6(1)(a) of the *Indian Act* and her descendants were also entitled to registration as if she had not been enfranchised.

[5] Ms. Flood's application was denied. The denial was the subject of a protest under the *Indian Act*. The Registrar, in a written decision, rejected the evidence provided by Ms. Flood and found that Ms. Flood was aware of the impact of the application. The Registrar therefore confirmed the decision that Ms. Flood was not entitled to registration pursuant s. 6(1)(a) but only pursuant to s. 6(1)(d) of the *Indian Act*. The result of the decision is that Ms. Flood's daughter, Dorothy Ann Flood, who was born during the time following her enfranchisement is entitled to registration under s. 6(2) and not s. 6(1)(a) of the *Indian Act* and Ms. Flood's granddaughter, Angel Etches Larkman, is not entitled to registration at all.

[6] The confirmation of the decision is the subject of the appeal before this Court, pursuant to s. 14.3(1) of the *Indian Act*. The decision is challenged by Laura Flood, Dorothy Flood and Angel Larkman, all of whom are affected by the decision. The Appellants argue that the Registrar erred in law, made findings of fact that were not based on the evidence and failed to consider the arguments of the appellants with respect to fiduciary duty and unconscionable bargain.

[7] The Respondent, Her Majesty the Queen, as represented by the Registrar of the Department of Indian Affairs and Northern Development and the Attorney General of Canada, has raised a jurisdictional argument and alternatively submits that the decision by the Registrar was correct.

II. ISSUES

[8] The issues in this case are:

1. Did the Registrar have jurisdiction to decide whether Laura Flood should be registered under s. 6(1)(a) or s. 6(1)(d) of the *Indian Act* or does this amount to a review of the decision of the Governor-in-Council, a matter which is within the exclusive jurisdiction of the Federal Court? and,

2. If the Registrar had jurisdiction to make the decision did she err by,

   (a) imposing a burden of proof greater than the balance of probabilities; or

   (b) making findings unsupported by the evidence; or,

(c) ignoring the fiduciary duty owed by the Minister of the Department of Indian affairs and Northern Development; or,

(d) failing to conclude that the enfranchisement was an unconscionable bargain?

[9] For the Reasons set out below, I have concluded that the Registrar had jurisdiction to decide the validity of the enfranchisement and that this Court therefore has jurisdiction to review that decision. I have concluded that the Registrar erred in law in imposing a burden of proof greater than the balance of probabilities and by making findings of fact that are unsupported by any evidence.

[10] As a result of my findings, it is not necessary to address the argument that the Registrar erred by failing to find an unconscionable bargain or by ignoring the fiduciary duty owed to the Appellant.

III. FACTS

Enfranchisement

History of Enfranchisement Legislation

[11] The government policy of enfranchisement began with the passage in 1857 of *An Act to Encourage the Gradual Civilization of Indian Tribes in the Province and to Amend the Laws Respecting Indians,* S. Prov. C. 1857, 20 Vict., c. 26 (hereinafter the "*Gradual Civilization Act*"). The preamble of the *Gradual Civilization Act* identifies the assimilation of the Indian people as the purpose of the enactment:

> WHEREAS it is desirable to encourage the progress of Civilization among the Indian Tribes in this Province, and the gradual removal of all legal distinctions between them and Her Majesty's other Canadian Subjects, and to facilitate the acquisition of property and of the rights accompanying it, by such Individual Members of the said Tribes as shall be found to desire such encouragement and to have deserved it.

[12] The enfranchisement policy was based on the premise that by removing all legal distinctions between Indians and non-Indians it would be possible to absorb Indian people fully into colonial society. Those subject to enfranchisement were no longer considered "Indians" and they lost their right to be members of and to reside in their Aboriginal communities.

[13] The federal government's enfranchisement policy was carried forward from the *Gradual Civilization Act* to the enactment of the first *Indian Act* and remained in place, in various forms, until the policy was abolished in 1985. The various incarnations of the *Indian Act* set out processes for both voluntary and involuntary enfranchisement of Aboriginal people.

[14] In this case, Laura Flood is alleged to have been enfranchised pursuant to the *Indian Act, 1951*. This *Act* provided for voluntary enfranchisement, whereby Indians could apply to become enfranchised. The Minister of Citizenship and Immigration ("Minister") had the sole discretion to request that the Governor-in-Council order the "enfranchising" of an Indian. The Minister could only request that the Governor-in-Council declare an Indian to be enfranchised if the Minister was of the opinion that the Indian requesting enfranchisement was twenty-one years or older; was capable of assuming the duties and responsibilities of citizenship, and was able to support herself and her dependants[2]: Registration as an Indian was lost upon an order of enfranchisement declared by the Governor-in-Council.[3]

[15] In 1985, the Federal government attempted to eliminate and redress some of the assimilation policies of the past. Bill C-31 amended the *Indian Act* and removed the voluntary and involuntary enfranchisement provisions. The amendments sought to remedy the problem of enfranchisement by re-registering Aboriginal people that had been enfranchised.

[16] Sections 6(1) and 6(2) of the 1985 *Indian Act* set out the various categories of Aboriginal people who are entitled to be registered as Indians:

> 6. (1) Subject to section 7, a person is entitled to be registered if,
>
> (a) that person was registered or entitled to be registered immediately prior to April 17, 1985;
>
> (b) that person is a member of a body of persons that has been declared by the Governor-in-Council on or after April 17, 1985 to be a band for the purposes of this *Act*;
>
> (c) the name of that person was omitted or deleted from the Indian Register, or from a band list prior to September 4, 1951, under subparagraph 12(1)(a)(iv), paragraph 12(1)(b) or subsection 12(2) or under subparagraph 12(1)(a)(iii) pursuant to an order made under subsection 109(2), as each provision read immediately prior to April 17, 1985, or under any former provision of this *Act* relating to the same subject-matter as any of those provisions;
>
> (d) the name of that person was omitted or deleted from the Indian Register, or from a band list prior to September 4, 1951, under subparagraph 12(1)(a)(iii) pursuant to an order made under subsection 109(1), as each provision read immediately prior to April 17, 1985, or under any former

[2] *Indian Act* S.C. 1951, c.29, section 108(1).
[3] *Indian Act* S.C. 1951, c.29, section 108(4).

provision of this *Act* relating to the same subject-matter as any of those provisions;

(e) the name of that person was omitted or deleted from the Indian Register, or from a band list prior to September 4, 1951,

(i) under section 13, as it read immediately prior to September 4, 1951, or under any former provision of this *Act* relating to the same subject-matter as that section, or

(ii) under section 111, as it read immediately prior to July 1, 1920, or under any former provision of this *Act* relating to the same subject-matter as that section; or

(f) that person is a person both of whose parents are or, if no longer living, were at the time of death entitled to be registered under this section.

(2) Subject to section 7, a person is entitled to be registered if that person is a person one of whose parents is or, if no longer living, was at the time of death entitled to be registered under subsection (1).

[17] Aboriginal people who had voluntarily enfranchised prior to the passing of Bill C-31 regained their registration pursuant to s. 6(1)(d) of the amended *Indian Act*.[4]

[18] Pursuant to Bill C-31, s. 6(1)(a) confirmed the registration of Indians and their descendants who, prior to 1985, fell within the definition of Indian pursuant to previous Indian Acts.

[19] If an Aboriginal woman was registered pursuant to s. 6(1)(a) (i.e. the Aboriginal woman was entitled to be registered prior to April 17, 1985), then any children born prior to April 17, 1985 that were illegitimate or fathered by an Indian, would also be registered pursuant to s. 6(1)(a) of the *Indian Act*.

[20] However, for children born to an Aboriginal woman who had been voluntarily enfranchised, Bill C-31 only permits their registration pursuant to s. 6(2). An Aboriginal child with one parent registered pursuant to s. 6(2) and whose other parent is not registered, is not entitled to be registered under the *Indian Act*. This is commonly referred to as the "second generation cut-off rule".

---

4 *Indian Act* R.S.C. 1985, c. I-5, section 6(1).

Enfranchisement of Laura Flood

[21] Laura Flood was born on March 1, 1926, in Matachewan, Ontario. Laura Flood's parents were Harry and Anne Batisse, both of whom were Indians as defined by the *Indian Act* in force at the time. Laura Flood is registered as "Laura Batisse" under the *Indian Act, 1951*. She is a member of the Matachewan First Nation. In 1952, Laura Flood was unable to read or write. The only words she was capable of writing were her first and last name.

[22] On July 14, 1952, J. Marleau, Indian Agent for Sturgeon Falls, received a typed letter purporting to be from Laura Batisse, requesting that she be forwarded the "necessary papers to release her from treaty". The author of the letter misspelled the names of both J. Marleau and Laura Batisse. Laura Flood has provided an affidavit stating that she did not prepare the letter or request that a letter be prepared on her behalf asking that she be released from treaty.

[23] In response to the July 14, 1952 letter, J. Marleau requested that Laura Flood supply the Department of Citizenship and Immigration with several pieces of information, including her length of residence away from the Reserve, a list of property on the Reserve, her present means of livelihood and annual income. The answers to these questions would determine whether or not Laura Flood could be enfranchised, as the legislation at the time only permitted enfranchisement for adults who were considered capable of supporting themselves financially.

[24] The answers to the Indian Agent's questions were written on the letter by hand. The document states that Laura Flood lived away from the Reserve for 13 years. However, Laura Flood's evidence is that she did not leave the Reserve in 1939 at the age of 13, as is alleged on the document. Laura Flood actually left the Reserve six years later when she was approximately 19 years old.

[25] The Indian Agent subsequently wrote to the Department of Citizenship and Immigration requesting the necessary application forms for enfranchisement. The letter repeated the error concerning Laura Flood having lived away from the Reserve for 13 years.

[26] On August 16, 1952, a second typed letter purporting to be prepared by Laura Batisse was sent to the Indian Agent requesting that he inform her if he had received the requested information. Laura Flood's affidavit states that she did not prepare this letter, nor did she instruct anyone else to write the letter on her behalf.

[27] On October 10, 1952, Laura Flood, at the request of Chief Alfred Batisse and the Indian agent, signed an application for enfranchisement. She did not know what she was signing. She deposes that "I trusted my Chief and always obeyed instructions from the Indian Agent. I signed whatever documentation I was asked to sign. I was not informed that by signing the documentation I was giving up my status as an Indian". She further deposes that, "If I had known, I would never have signed the documentation. At no time did I intend to forfeit my registration under the *Indian Act*."

[28] The Application itself contains several significant errors, including the omission of the names of Laura Flood's sons, both of whom were born before the Application was

signed. Her first daughter, Laura Jean, was born four days after the application was purportedly signed.

[29] On October 18, 1952, the Indian Agent sent a letter to Laura Batisse acknowledging receipt of the Application and informing her that she would not receive any timber royalty if she continued with the enfranchisement application.

[30] On October 31, 1952, a typed letter purporting to be from Laura Batisse was sent to the Indian Agent requesting that her application be sent to the "Department" despite her loss of any timber royalty. Laura Flood's affidavit states that she did not prepare or request that this letter be prepared on her behalf. She did not know what "timber royalty" was. The Indian Agent forwarded the application for enfranchisement to the Department of Citizenship and Immigration.

[31] By Order-in-Council P.C. 4588, dated December 4, 1952, Laura Batisse was declared enfranchised. Although she acknowledges that her signature appears on the Enfranchisement Card, she states that she did not know that she was signing a document that would strip her of her status as an Indian. She deposes: "I was born an 'Indian' and I have always considered myself to be an 'Indian.'"

History of Re-Registration

[32] On September 12, 1985, Laura Flood applied to be added to the Indian Register. As the ground for registration she listed her enfranchisement of December 4, 1952. In a letter, dated March 25, 1987, the Registrar informed Ms. Flood that she had been registered as an Indian in accordance with s. 6(1)(d) of the *Indian Act*.

[33] On August 20, 1986, Dorothy Flood, Laura Flood's daughter, applied to be entered on the Indian Register. Dorothy Flood applied on behalf of herself and her children including Angel Larkman. As the grounds for registration, Dorothy Flood listed "enfranchisement." In a letter dated February 3, 1988, the Registrar advised Dorothy Flood that she was registered under s. 6(2) of the *Act* but that her children were not entitled to registration.

[34] On April 7, 1995 Angel Larkman submitted a second application for registration. In a letter to Angel Larkman dated September 13, 1995 the Registrar advised that he found no reason to revisit the earlier decision. He stated that Angel Larkman and her siblings were not entitled to registration.

[35] On March 8, 1996, Aboriginal Legal Services wrote to the Registrar requesting that Laura and Dorothy Flood be registered pursuant to s. 6(1)(a) of the *Act* and that Angel Larkman be correspondingly registered pursuant to s. 6(2). The basis for this request for registration was the submission that Laura Flood's enfranchisement was invalid. The letter stated that Laura Flood had been asked to sign the enfranchisement application by the Chief of the Matachewan First Nation and that she was unaware of the nature and effect of the document at that time.

[36] On or about August 13, 1996 an affidavit sworn by Laura Flood was sent to the Registrar. The affidavit outlines the circumstances of Laura Flood's marriage to a non-Native man and does not address the enfranchisement application. The circumstances of the forwarding of the affidavit suggest that Ms. Flood at that time was under the impression that her registration under s. 6(1)(d) had been determined by her marriage.

[37] On October 18, 1996, the Registrar wrote to Aboriginal Legal Services to advise that she could not comment on the circumstances surrounding the enfranchisement of Laura Flood. The Registrar also noted that Laura Flood's marriage to a non-Native man had not led to her enfranchisement because at the time of her marriage she had already been enfranchised. The Registrar concluded that there was no reason the revisit the March 25, 1987 determination and that Laura Flood would continue to be registered under s. 6(1)(d) of the *Act*.

[38] On November 26, 1996 Aboriginal Legal Services again wrote to the Registrar asking the Registrar to provide a decision as to the validity of Laura Flood's enfranchisement. The Registrar agreed to undertake a final review of the records relating to the enfranchisement of Ms. Flood and would render a decision on the validity of the enfranchisement although the time for a protest under s. 14.2 of the *Act* had already passed.

[39] On August 18, 1997 the Acting Registrar advised by letter that she was satisfied that the enfranchisement was valid.

[40] A notice of protest was filed on behalf of Ms. Flood and Ms. Larkman on August 17, 1998. This notice of protest related to the August 18, 1997 decision that the enfranchisement of Ms. Flood was valid and to the September 13, 1995 decision to refuse Ms. Larkman's application for registration.

[41] The Acting Registrar wrote to Aboriginal Legal Services on April 21, 1999 advising that, in her view, the time period for filing a protest had expired in relation to the decisions with respect to the registration status of Laura Flood, Dorothy Flood and Angel Larkman. Nevertheless, the Registrar invited the Appellants to submit the April 28, 1998 affidavit of Laura Flood referred to in the notice of protest. This affidavit was sent to the Registrar.

[42] In a letter dated July 21, 2000, the Registrar confirmed the decision that the enfranchisement of Laura Flood was valid and that the registration status of the Appellants should remain unchanged. Having agreed to consider the protest in spite of the passage of time, the Registrar does not raise the time limit in this appeal.

IV. ANALYSIS

1. *Did the Registrar have jurisdiction to decide whether Laura Flood should be registered under s. 6(1)(a) or s. 6(1)(d) of the* Indian Act *or does this amount to a review of the decision of the Governor-in-Council, a matter which is within the exclusive jurisdiction of the Federal Court?*

Positions of the Parties

[43] The Respondent, Her Majesty the Queen, as represented by the Registrar of the Department of Indian Affairs and Northern Development and the Attorney General of Canada, raises the argument that there is no jurisdiction in this Court to determine the appeal because the Registrar had no jurisdiction to make the decision under appeal. In other words, the Registrar argues that she acted without jurisdiction in determining the validity of the enfranchisement. The Respondent takes this position on the basis that the enfranchisement of Ms. Flood was effected by way of Order-in-Council. The Governor-in-Council, in issuing the Order-in-Council, acted as a federal board, commission or other tribunal. Under s. 2 of the *Federal Courts Act*, R.S., 1985, c. F-7, s. 1; 2002, c. 8, s. 14 the Federal Court has the exclusive jurisdiction to review the lawfulness of decisions of a federal board, commission or other tribunal and had this exclusive jurisdiction at the time of the Registrar's decision. The Registrar, it is argued, had no jurisdiction to review the validity of the enfranchisement.

[44] As outlined above, the Appellants initially requested that the Registrar review the validity of the enfranchisement by letter dated November 26, 1997 and the Registrar found it to be valid in a letter dated August 18, 1998. The decision was protested by Notice of Protest Dated August 18, 1998. The Acting Registrar upheld the decision in a letter dated July 21, 2000. The Respondent raises the jurisdictional argument for the first time, in this appeal—nine years after the original decision.

[45] The Appellants take the position that the Registrar had jurisdiction to register Laura Flood under s. 6(1)(a) of the *Indian Act* rather than s. 6(1)(d) of the *Act*; that it is within the scope of authority given to the Registrar under the *Act* to determine the entitlement of an individual to registration and the type of registration.

Analysis

[46] In order to determine the jurisdictional issue, it is necessary to examine the role of the Registrar as it is defined in the words of the *Act* and in the historical development of the Indian register.

[47] The Respondents draw a distinction between the jurisdiction of the Registrar and the jurisdiction of the Governor-in-Council. This distinction, if valid, would call for a distinct review process for the decisions of the Governor-in-Council affecting registration and the decisions of the Registrar affecting registration. In my view, such separate routes of review would be contrary to the letter and spirit of the legislation and the intent of Parliament.

[48] The position of "Registrar" was created by the 1951 amendments to the *Indian Act*. The 1951 amendments created the Indian Register and the office of the Registrar. Prior to

the 1951 amendments, status as an "Indian" for the purposes of the *Act* was determined by membership in a band.[5] Any dispute over who was or was not a member of a band was determined by the Superintendant General[6]. Appeal of a determination of status was to the Governor-in-Council.[7]

[49] From the time of the creation of the office of Registrar in 1951 until the amendment of the *Act* in 1985, section 4 provided that the Governor-in-Council could, by proclamation, exempt any Indians or bands from the operation of the *Act* or any part of it, including the registration provisions and the appeal of registration protests[8]. Thus, until 1985, the Governor-in-Council retained jurisdiction to exempt from registration and to 'enfranchise.'

[50] The 1985 amendments removed from the Governor-in-Council the power to exempt Indians from ss. 5 to 14.3, the Registration sections. Sections 4(2) and 4(2.1) read as follows:

> 4 (2) The Governor-in-Council may by proclamation declare that this *Act* or any portion thereof, except sections 5 to 14.3 or sections 37 to 41, shall not apply to
>
> (a) any Indians or any group or band of Indians, or
>
> (b) any reserve or any surrendered lands or any part thereof,
>
> and may by proclamation revoke any such declaration.
> [emphasis added]
>
> 4 (2.1) For greater certainty, and without restricting the generality of subsection (2), the Governor-in-Council shall be deemed to have had the authority to make any declaration under subsection (2) that the Governor-in-Council has made in respect of section 11, 12, or 14, or any provision thereof as each section read immediately prior to April 17, 1985.

[51] Section 4(2) takes away from the Governor-in-Council the power to exempt Indians from the sections of the *Act* that determine status. This lends support to the conclusion that Parliament intended that the Registrar have exclusive jurisdiction over determinations of status.

[52] Section 4(2.1) deems certain prior exemption decisions valid. However, s. 4(2.1) does not validate decisions under the voluntary enfranchisement section but only decisions under ss. 11, 12 and 14. A review of Hansard discloses that s. 4(2.1) was drafted to preserve the remedial orders that had been made exempting bands from the mandatory involuntary enfranchisement provisions. In the interim period before the *Indian Act* could be amended,

---

5 *Indian Act* R.S.C. 1927, c. 98, section 2(d).
6 *Indian Act* R.S.C. 1927, c. 98, section 18.
7 *Indian Act* R.S.C. 1927, c. 98, section 18(2)
8 See for example: *Indian Act*, R.S.C. 1970, c.I-6, sections 4 & 9.

certain Orders-in-Council had been made in order to rectify the effect of the discriminatory provisions of the old *Act* in respect of particular bands or individuals. Section 4(2.1) was designed to preserve these interim orders[9].

[53] The 1985 amendments were designed to vest jurisdiction over registration in the Registrar, and not the Governor-in-Council. The validation of previous proclamations by the Governor-in-Council was circumscribed. Only the exemptions from discriminatory enfranchisement provisions were saved. The sections do not include the voluntary enfranchisement provisions under consideration in this case. Had Parliament intended to protect proclamations of voluntary enfranchisement, it was open to it to do so. I find that the wording of the legislation is consistent with the interpretation that full jurisdiction over the determination of registration is vested in the Registrar and not in the Governor-in-Council. Jurisdiction over registration remains with the Registrar even where there are prior proclamations by the Governor-in-Council, except in the very limited circumstances set out in s. 4(2.1). This interpretation is consistent with the evolution of the office of the Registrar as the arbiter of registration and the removal of the Governor-in-Council from the process. While the addition and deletion of names was, prior to 1951 the responsibility of the Governor-in-Council or the Minister, the subsequent amendments progressively removed the Minister and the Governor-in-Council from the process.

[54] The scope of the jurisdiction of the Registrar to determine entitlement to registration necessarily includes the power to look behind orders by other tribunals. This issue was addressed by the Quebec Court of Appeal in *Innu Takuaikan Uashat Mak Mani-Utenam c. Noel*.[10] The Quebec Court of Appeal held that the Registrar erred in refusing to look behind an adoption order made by the Court of Quebec in determining entitlement to registration. In that case, the registration of Mr. Noel was challenged by the band. Noel was the subject of an adoption order as an adult. His adoptive parent claimed that she had raised Mr. Noel since he was a small child. The First Nation disputed the adoption, claiming it had been granted on the basis of false statements. The Court of Appeal held that the Registrar erred in "hiding behind" the adoption judgment and not investigating and deciding the issue.

[55] There are distinctions between the *Noel* and the instant case, most notably the fact that the band had been held to have no standing to challenge the adoption order. However, the decision in *Noel* was that the Registrar was obliged to investigate, receive the evidence and evaluate it. The Court did not hold that this obligation was conditional on there being no other avenue of challenge.

[56] The effect of the decision in *Noel* was that the Registrar was required to review and determine the validity of the decision of the Court of Quebec in issuing the order. The jurisdiction to do so is conferred by ss. 14.1 and 14.2 of the *Indian Act*. In my view these sections similarly confer jurisdiction on the Registrar to review and determine the validity of

---

[9] Canada, Parliament, *Minutes of Proceedings and Evidence of the Standing Committee on Indian Affairs and Northern Development*, 33rd Parl., No. 22 (18 April 1985) at 32:6.

[10] [2004] 4 C.N.L.R. 66

an Order-in-Council where, as here, the validity of the Order–in-Council is challenged as having been obtained through fraud.

Conclusion

[57] The role of the Registrar has evolved over successive amendments of the *Indian Act* to encompass all registration decisions to the exclusion of the Governor-in-Council. Provisions in the *Act* ensure that the review process accords with principles of natural justice. It would be contrary to the history and purpose of the amendments to the *Indian Act* and to the principles enunciated by the Quebec Court of Appeal in *Noel,* for me to conclude that a separate and distinct review process is mandated where there is a challenge to the validity of an historical proclamation under the *Indian Act.* I therefore conclude that the Registrar had jurisdiction to make the decision under appeal. It is clear that, in the normal course, the decision of the Registrar to include in, or delete from the Register, the name of a person is challenged first by protest under s. 14.2. The Registrar is then required to investigate and a render a decision. The decision of the Registrar on the protest may then be challenged by way of appeal to this Court under s. 14.3(5)(a.1).

2. *Did the Registrar err in her decision?*

Standard of Review

[58] With respect to matters of law and the application of the law to the facts, the standard of review is one of correctness. The standard of review applicable to matters of fact on a s. 14.3 appeal is the "clearly wrong" standard. The Appellants argue that the Registrar made errors in her application of the burden of proof and that the Registrar made findings of fact that are clearly wrong as they are not founded in the evidence.

Errors relating to the Burden of Proof

[59] Sigurdson J. in *Wilson v. Canada*[11] held that the burden of proof in a protest before the Registrar is on the person protesting the decision to establish the grounds of protest and the standard is the civil standard of a balance of probabilities.

[60] The burden was therefore on the Appellant to satisfy the Registrar on the balance of probabilities that she was entitled to registration under s. 6(1)(a) of the *Act.*

[61] It is settled law that a party need not meet the burden on each individual piece of evidence. The burden of proof is properly applied to the ultimate issue. In *R. v. Morin*, the Supreme Court of Canada quoted with approval from *Thomas v. The Queen*, a decision of the New Zealand Court of Appeal.[12] The trial judge in that case charged the jury in the following language:

> Now whilst each piece of evidence must be carefully examined, because that is the accused's right and that is your duty, the case is not

---

11 *Wilson v. Canada (Indian Registry, Registrar)*, [1999] B.C.J. No. 2510 (B.C.S.C.) paras 22-26

12 [1972] N.Z.L.R. 34 (C.A.)

> decided by a series of separate and exclusive judgments on each item or by asking what does that by itself prove, or does it prove guilt? That is not the process at all. It is the cumulative effect....by the Court of Appeal.]

[62] The Court in *Morin* went on to observe that the "function of a standard of proof is not the weighing of individual items of evidence but the determination of ultimate issues."[13] It is an error to apply the burden of proof to each individual item of evidence rather than to the whole of the evidence as it imposes a more onerous burden on the party.

[63] The burden of proof is also improperly increased where the adjudicator requires corroboration unless the requirement for corroboration is justified in law. In *R. v. Seaboyer and Gayme*[14], the Supreme Court of Canada considered the history of the requirement for corroboration of the evidence of sexual assault victims and observed:

> The corroboration rules were also exceptions to traditional evidence principles. Generally, "the court may act upon the uncorroborated testimony of one witness, and such requirements as there are concerning a plurality of witnesses, or some other confirmation of individual testimony are exceptional" (*Cross*, *supra*, at p. 224). Certain classes of witnesses were thought to be unreliable such as children of tender years, accomplices and, interestingly, victims of sexual offences, almost always women.

[64] A requirement that a party's evidence not be accepted without corroboration effectively imposes a greater burden of proof on that party. There is no requirement for corroboration of the evidence of an applicant for registration under the *Indian Act*.

[65] The Registrar had a duty to consider the evidence presented by the Appellant and to apply the burden of proof to the totality of the evidence and determine whether the burden had been met. In my view, the Registrar erred in discharging this duty. She erred by imposing a burden greater than the balance of probabilities in that she failed to consider the evidence as a whole but imposed the burden of proof on each piece of evidence and she imposed a requirement for corroboration where none exists at law.

[66] The decision of the Registrar is contained in a letter dated July 21, 2000. The Registrar in her decision identified the circumstances delineated in Ms. Flood's affidavit as supporting her assertion that she did not know what she was signing. The Registrar characterized these circumstances as follows:

> Laura Flood's affidavit outlines several concerns with the documentation on her enfranchisement file: she claims she never wrote to the Indian Superintendant requesting enfranchisement; she states that she did not leave the reserve until she was about nineteen,

---

[13] [1988] S.C.J. No. 80

[14] [1991] S.C.J. No. 62 at para. 170

> and not at the age of about thirteen years as indicated by the Indian Superintendant in his report; she states that she does not understand the letter bearing her signature and dealing with the question of timber rights; and she points out that she had two children at the date of the Application for Enfranchisement which states that she had none. She also asserts that she does not recall receiving the cheque for her share of band funds and annuity. Finally, although she admits to signing the various documents, she claims that she never understood what they meant, and in particular, that she did not know she was giving up her Indian status.

[67] The Registrar then considers each of the enumerated concerns and rejects each one individually. The Registrar does not consider the circumstantial evidence as a whole in conjunction with the direct evidence of Ms. Flood. In approaching the evidence in this fashion, the Registrar erred in law.

[68] The written decision of the Registrar deals with the primary submission of the Appellant: that she did not know what she was signing when she signed the enfranchisement documents. The Registrar states: "**You have not provided any evidence to show that she was not aware she had been enfranchised, other than her own unsupported assertions that she signed numerous papers without knowing what they were**...Laura Flood does not deny signing the various letters and application forms and **you have not provided any corroborative evidence to establish that she was unaware of the effect of the papers she signed.**" [Emphasis added.]

[69] The report of the Indian Superintendant indicates that Laura Flood left the reserve at age thirteen. Ms. Flood swears in her affidavit that she did not leave until about age nineteen. Ms. Flood points to the error in the report as confirmation that she did not prepare the document as she would have known the date that she left reserve. Ms. Flood provided pay lists for the relevant time period to confirm that she was living with her parents on the reserve. The pay lists show that she was listed with her parents from her birth up until 1939. The Registrar considered this point in the following passage:

> In regard to the length of time she spent away from the reserve, you have provided copies of pay lists showing that she was listed with her parents from her birth up to 1939. This does not necessarily prove that she was not living elsewhere, since her father could have received her treaty payments on her behalf even if she was absent. Our records do not specifically confirm that the Batisse family lived on the reserve. In 1945, the family's payments were received by an adult son which suggests that the rest of the family was absent for at least part of that year. In any event, the actual length of time she spent away from the reserve was not a vital factor in determining whether she could be enfranchised, so an inaccuracy in the Superintendant's report in this regard does not invalidate the enfranchisement. Finally, the Superintendant's information on this point may have come from Laura Flood herself, or from her relatives or acquaintances.

[70] The Registrar erred in several respects in her analysis of this evidence. The most significant error is that she imposed a burden of proof on the Appellant beyond the civil standard. She says: "This does not necessarily prove that she was not living somewhere else" and, "Our records do not specifically confirm that the Batisse family lived on the reserve." Moreover, the passage is an example of the Registrar requiring the Appellant to provide corroborative evidence. There is no such requirement. Even if some confirmatory circumstantial evidence were required, it is an error to require the individual pieces of evidence to meet even the lower standard of the balance of probabilities before using the circumstantial evidence to assess the evidence as a whole.

Findings of Fact that were Speculative and not Founded on the Evidence

[71] In addition to the errors of law alleged, the Appellants argue that the Registrar erred in her findings of fact.

[72] Ms. Flood swore in her affidavit that she did not write to the Superintendent requesting enfranchisement. In response to this statement the Registrar encloses a copy of the letter bearing Ms. Flood's signature (then Laura Batisse) and states: "This letter appears to have been prepared by someone with the initials 'R.L.S.'. These are also the initials of the person who witnesses [sic] her application for Enfranchisement: this may have been the same person. Perhaps if Laura Flood can recall who this person was, she may then be able to recall the circumstances under which her letter requesting enfranchisement was written." The Registrar appears to ignore the accepted fact that Ms. Flood could not read or write at the time that the letters were signed. She speculates that Ms. Flood may have known the person who prepared the letter, but there is no evidentiary foundation for that inference. She appears to need further information from Ms. Flood but does not provide her with an opportunity to respond.

[73] The enfranchisement application stated that Ms. Flood had no children when in fact she had two children at the time. The Registrar deals with this as follows:

> In regard to her children, since they were not registered Indians at the time she enfranchised, they could not be enfranchised, and were not entitled to shares of band funds. This probably explains why they were not named on the enfranchisement application – she could not apply for the enfranchisement of her children because they did not have Indian status, so it was not necessary to name them on her application.

[74] The Registrar speculates that Ms. Flood wrote that she had no children when she really had two children because of the impact on enfranchisement. There is no evidence that Ms. Flood decided to leave her children off the application deliberately. The only evidence is to the contrary.

[75] Ms. Flood deposed that she did not write the letter dated October 31, 1952 concerning the sale of timber rights and did not have any understanding of the timber rights referred to in the letter. She also stated that she did not remember receiving a cheque for her share of band

funds. The Registrar checked the records available to the Ministry. No record of a cheque to Laura Batisse was located. However, the Registrar concludes that the cheque and enfranchisement card were "probably delivered to her at the same time." There is no evidence to support the assumption made by the Registrar.

Conclusions

[76] In deciding the protest in the instant case, the Registrar failed to consider the cumulative effect of the evidence but weighed each individual piece of evidence and subjected to a standard of scrutiny far more onerous than the civil standard of proof.

[77] There is no legal requirement for corroboration before an application for registration under the *Indian Act* is accepted and the Registrar erred in holding the Appellant to this standard. The Registrar further erred in considering the potentially confirmatory evidence in a piecemeal fashion rather than considering the cumulative effect of the evidence. In subjecting each piece of evidence to scrutiny the Registrar in two instances held the Appellant to a higher standard of proof than the civil standard.

[78] The Registrar also erred in her findings of fact in that she speculated and made findings based on a complete absence of evidence.

[79] In light of my findings with respect to the errors in the decision of the Registrar it is unnecessary to consider the arguments of the Appellants that the Registrar failed to consider the arguments of the Appellants that the enfranchisement was an unconscionable bargain and that the Minister and the Registrar breached a fiduciary duty to the Appellants.

V. REMEDY

[80] The Appellants seek an order allowing the appeal and:

1. Declaring the 1952 Order-in-Council *void ab initio*;

2. Ordering the Laura Mary Flood (nee Batisse), born March 1, 1926, be added to the Indian Register pursuant to s. 6(1)(a) of the *Indian Act*, R.S.C. 1985, c. I;

3. Ordering that Dorothy Ann Flood (nee Batisse), born February 25, 1954, be added to the Indian Register pursuant to s. 6(1)(a) of the *Act*; and,

4. Ordering that Angel Sue Larkman (now known as Angel Etches) born January 5, 1972, be added to the Indian register pursuant to s. 6(1)(a) of the *Act*.

[81] As set out above, in my view the Registrar had the jurisdiction to register the Appellants under s. 6(1)(a) without declaring the Order-in-Council void. The jurisdiction of the Registrar is not circumscribed by the prior decisions of the Governor-in-Council except in the limited circumstances set out in s. 4(2.1) of the *Act* which are inapplicable to the case at bar. Therefore, it is not necessary for the Order-in-Council to be declared void in order for the Appellants to be registered under s. 6(1)(a) of the *Act*.

[82] I have found that the Registrar had jurisdiction to decide whether Laura Flood was entitled to registration under s. 6(1)(a) on the basis that the enfranchisement was not valid. The Registrar exercised that jurisdiction and made a determination that the enfranchisement was valid. In so concluding the Registrar made several errors. The decision cannot stand. There is a full record before me on the appeal and based on that record, I am satisfied that the Appellants met the onus upon them to prove on the balance of probabilities that the enfranchisement of Laura Flood was not valid and that Laura Flood and her descendants are entitled to registration under s. 6(1)(a) of the *Indian Act*.

[83] I order that the Appellants each be registered pursuant to s. 6(1)(a) of the *Indian Act*.

Forestell J.

DATE: March 5, 2008

This is Exhibit "SS" referred to in the
Affidavit of Angel Sue Larkman sworn
Before me, on this 24, day of February, 2011.

E. Damini

A commissioner for taking affidavits

I, Elizabeth Damini, Deputy Clerk,
Commissioner, etc., City of
Timmins, District of Cochrane.
Expires with Tenure.

CITATION: Etches v. Canada (Indian and Northern Affairs), 2009 ONCA 182
DATE: 20090227
DOCKET: C48599

COURT OF APPEAL FOR ONTARIO

Lang, Rouleau and Watt JJ.A.

BETWEEN

Angel Etches (now known as Angel Sue Larkman), Dorothy Ann Flood (née Batisse), and Laura Mary Flood (née Batisse)

Appellants (Respondents)

and

Her Majesty the Queen as represented by the Registrar of the Department of Indian Affairs and Northern Development and the Attorney General of Canada

Respondent (Appellant)

Gary Penner and Anna Yarmon, for the appellant

Kimberly R. Murray, for the respondents

Heard: October 1, 2008

On appeal from the order of Justice Maureen D. Forestell of the Superior Court of Justice dated March 5, 2008, with reasons reported at (2008), 89 O.R. (3d) 599.

Rouleau J.A.:

I. OVERVIEW

[1] Prior to the 1985 amendments to the *Indian Act*, it was possible to surrender one's legal status as an Indian and one's membership in a Band in exchange for Canadian citizenship and the right to hold land in fee simple through "enfranchisement". Once a person had been enfranchised, their descendants also lost their right to Indian status. The purpose of enfranchisement was to facilitate the federal government's attempts to assimilate Aboriginal peoples into the mainstream population. The Royal Commission

on Aboriginal Peoples described enfranchisement as being amongst the most "oppressive amendments and practices" in the history of the *Indian Act*: see *Report of the Royal Commission on Aboriginal Peoples: Looking Forward, Looking Back*, vol. 1 (Ottawa: Canada Communication Group Publishing) at pp. 282 and 286. The federal government has attempted to redress the effects of enfranchisement; however, as explained below, in some instances, the remedy may be seen as incomplete.

[2] In 1952, Laura Flood was ostensibly voluntarily enfranchised by an Order-in-Council. Her position, however, is that the enfranchisement was obtained by fraud. In 1985, the *Indian Act* was amended to allow those who had previously lost their Indian status for a variety of reasons to re-register. Laura Flood applied to the Registrar of the Indian Register, and was registered pursuant to s. 6(1)(d) of the *Indian Act*, R.S.C. 1985, c. I-5, which allows for the registration of those who had been previously enfranchised voluntarily. Because she re-registered after having been enfranchised, her daughter, Dorothy Flood, was required to register pursuant to s. 6(2). Since the descendants of those registered under s. 6(2) are not entitled to registration, Dorothy Flood's daughter, Angel Larkman, was not entitled to be registered as an Indian. Laura Flood, Dorothy Flood, and Angel Larkman (collectively, the respondents) appealed to the Registrar seeking registration pursuant to s. 6(1)(a). The Registrar refused and the respondents appealed to the Superior Court seeking to have Laura Flood registered as if she had never been enfranchised. This would result in her registration being made pursuant to s. 6(1)(a), which would, in turn, if certain conditions were met, secure entitlement to registration for her descendants as well. The Superior Court judge allowed the appeal and the Crown appeals to this court.

[3] The central issue on this appeal is whether, in carrying out the duties prescribed by statute, the Registrar has the authority or the discretion to look behind an Order-in-Council enfranchising someone and to rule on its validity.

II. FACTS

1) Enfranchisement of Laura Flood

[4] Laura Flood (née Batisse) was born on March 1, 1926, in Matachewan, Ontario. She is a member of the Matachewan First Nation, and was registered there as "Laura Batisse" in accordance with the *Indian Act*, S.C. 1951, c. 29.

[5] A request for Laura Batisse's enfranchisement was granted by Order-in-Council P.C. 4582 dated December 4, 1952 pursuant to the *Indian Act*. At that time, a person who was enfranchised was entitled to one per capita share of the capital and revenue monies held on behalf of the Band, and an amount equal to the amount that the person would have received during the next twenty years under the applicable treaty. In Laura Flood's case, this amounted to $82.23. Laura Flood swore that she never received the $82.23 that was owed to her. As a result of enfranchisement, Laura Flood lost her interest in the

reserve land, and lost all legislative benefits that flow to Indians, such as the right to reside on the reserve, the right to a tax exemption, and the right to vote in Band elections.

2) 1985 Amendments to the *Indian Act*

[6] In 1985, the federal government introduced Bill C-31 in order to eliminate the assimilation policies embodied in the *Indian Act*; it did so by removing the voluntary and involuntary enfranchisement provisions. In addition, the amendments allowed for the re-registering of those who had been enfranchised. Sections 6(1) and 6(2) specify who is entitled to be registered as an Indian:

6. (1) Subject to section 7, a person is entitled to be registered if

(a) that person was registered or entitled to be registered immediately prior to April 17, 1985;

(b) that person is a member of a body of persons that has been declared by the Governor in Council on or after April 17, 1985 to be a band for the purposes of this Act;

(c) the name of that person was omitted or deleted from the Indian Register, or from a band list prior to September 4, 1951, under subparagraph 12(1)(a)(iv), paragraph 12(1)(b) or subsection 12(2) or under subparagraph 12(1)(a)(iii) pursuant to an order made under subsection 109(2), as each provision read immediately prior to April 17, 1985, or under any former provision of this Act relating to the same subject-matter as any of those provisions;

(d) the name of that person was omitted or deleted from the Indian Register, or from a band list prior to September 4, 1951, under subparagraph 12(1)(a)(iii) pursuant to an order made under subsection 109(1), as each

6. (1) Sous réserve de l'article 7, une personne a le droit d'être inscrite si elle remplit une des conditions suivantes :

a) elle était inscrite ou avait le droit de l'être le 16 avril 1985;

b) elle est membre d'un groupe de personnes déclaré par le gouverneur en conseil après le 16 avril 1985 être une bande pour l'application de la présente loi;

c) son nom a été omis ou retranché du registre des Indiens ou, avant le 4 septembre 1951, d'une liste de bande, en vertu du sous-alinéa 12(1)*a*)(iv), de l'alinéa 12(1)*b*) ou du paragraphe 12(2) ou en vertu du sous-alinéa 12(1)*a*)(iii) conformément à une ordonnance prise en vertu du paragraphe 109(2), dans leur version antérieure au 17 avril 1985, ou en vertu de toute disposition antérieure de la présente loi portant sur le même sujet que celui d'une de ces dispositions;

d) son nom a été omis ou retranché du registre des Indiens ou, avant le 4 septembre 1951, d'une liste de bande, en vertu du sous-alinéa 12(1)*a*)(iii) conformément à une ordonnance prise en vertu du paragraphe 109(1), dans leur version antérieure au 17 avril 1985, ou en vertu de toute disposition

provision read immediately prior to April 17, 1985, or under any former provision of this Act relating to the same subject-matter as any of those provisions;

(e) the name of that person was omitted or deleted from the Indian Register, or from a band list prior to September 4, 1951,

(i) under section 13, as it read immediately prior to September 4, 1951, or under any former provision of this Act relating to the same subject-matter as that section, or

(ii) under section 111, as it read immediately prior to July 1, 1920, or under any former provision of this Act relating to the same subject-matter as that section; or

(f) that person is a person both of whose parents are or, if no longer living, were at the time of death entitled to be registered under this section.

(2) Subject to section 7, a person is entitled to be registered if that person is a person one of whose parents is or, if no longer living, was at the time of death entitled to be registered under subsection (1).

antérieure de la présente loi portant sur le même sujet que celui d'une de ces dispositions;

e) son nom a été omis ou retranché du registre des Indiens ou, avant le 4 septembre 1951, d'une liste de bande :

(i) soit en vertu de l'article 13, dans sa version antérieure au 4 septembre 1951, ou en vertu de toute disposition antérieure de la présente loi portant sur le même sujet que celui de cet article,

(ii) soit en vertu de l'article 111, dans sa version antérieure au 1er juillet 1920, ou en vertu de toute disposition antérieure de la présente loi portant sur le même sujet que celui de cet article;

f) ses parents ont tous deux le droit d'être inscrits en vertu du présent article ou, s'ils sont décédés, avaient ce droit à la date de leur décès.

(2) Sous réserve de l'article 7, une personne a le droit d'être inscrite si l'un de ses parents a le droit d'être inscrit en vertu du paragraphe (1) ou, s'il est décédé, avait ce droit à la date de son décès.

[7] If a person had been voluntarily enfranchised, he or she would not have been "entitled to be registered" prior to the 1985 amendments to the *Indian Act*. That person would not, therefore, be registered pursuant to s. 6(1)(a). Instead, she would be registered pursuant to s. 6(1)(d). The difference is significant because the children of a woman registered pursuant to s. 6(1)(a), who are born prior to April 17, 1985, who are illegitimate or whose father was an Indian, would themselves be "entitled to be

registered" prior to the 1985 amendments to the Act. As a result, these children would also be entitled to registration pursuant to s. 6(1)(a). In contrast, the children of women who are registered pursuant to s. 6(1)(d), and who do not meet the criteria of any of the subsections under s. 6(1), can only be registered pursuant to s. 6(2). A person whose parent is registered pursuant to s. 6(2) is not entitled to be registered under the *Indian Act* (unless of course entitlement to registration flows to this person from the other parent). In this way, the statutory provisions aimed at redressing the previous enfranchisement regime appear to treat descendants of an enfranchised person differently than the descendants of a person who was never enfranchised.

3) Registration

[8] Laura Flood applied to be added to the Indian register on September 12, 1985, and was informed by the Registrar on March 25, 1987 that she had been registered in accordance with s. 6(1)(d). When Dorothy Flood, Laura Flood's daughter, applied to be added to the Indian register along with her children, she was advised by the Registrar that she was registered under s. 6(2), but that her children, including Angel Larkman, were not entitled to registration.

[9] Beginning on April 7, 1995, the respondents, and Aboriginal Legal Services of Toronto (ALST) on behalf of the respondents, wrote to the Registrar on multiple occasions requesting that Laura and Dorothy Flood be registered pursuant to s. 6(1)(a). They argued that Laura Flood's enfranchisement was invalid as it had been obtained by fraud. The Registrar responded that there was no reason to revisit the earlier decisions. On November 26, 1996, ALST again wrote to the Registrar asking the Registrar to investigate the validity of Laura Flood's enfranchisement. The Registrar agreed to do so and by means of a letter dated August 18, 1997 conveyed her conclusion that Laura Flood's enfranchisement was valid.

[10] On August 17, 1998, a notice of protest of the Registrar's decision was filed on behalf of Laura Flood and Angel Larkman. The various affidavits filed by Laura Flood explained, among other things, that:

(a) in 1952, the only words that she was able to read or write were her first and last name;

(b) she did not draft any letters in 1952 addressed to J. Marleau, Indian agent for Sturgeon Falls, purporting to request enfranchisement, nor did she request that they be drafted on her behalf;

(c) the 1952 correspondence and application contain numerous errors and anomalies such as the statement that Laura Flood lived away from the reserve for thirteen years rather than the correct figure of seven, and the omission of the names of her two sons; and

(d) it is unlikely that she would instruct the Indian agent to proceed with her application despite the fact that by doing so she would lose her timber royalties when she did not know what a timber royalty was.

[11] Although she acknowledges that the signature on the application for enfranchisement is hers, Laura Flood states that she did not know what she was signing. According to Laura Flood, Chief Alfred Batisse and the Indian agent requested that she sign the document in 1952. She trusted her Chief and always obeyed the instructions of the Indian agent. She did not know nor was she told that she would be giving up her Indian status by signing the document. She states that had she known, she would never have signed it.

[12] By letter dated July 21, 2000, the Registrar responded to the notice of protest confirming her earlier decision declaring that the enfranchisement was valid and declining to alter the registration status of the respondents.

4) The decision of the Superior Court

[13] On appeal, the Superior Court judge found that the Registrar had engaged in speculation and had made findings based on a complete absence of evidence. Further, the Registrar erred by imposing on Laura Flood the burden of proving each individual piece of evidence rather than addressing the burden of proof on the basis of the evidence as a whole, and by imposing a requirement for corroboration where none exists at law. The Superior Court judge then concluded that Laura Flood had demonstrated that the enfranchisement was invalid.

[14] The Superior Court judge also considered the issue of jurisdiction. The Crown's position was that in issuing the Order-in-Council enfranchising Laura Flood, the Governor-in-Council acted as a federal board, commission or other tribunal as defined in s. 2 of the *Federal Courts Act*, R.S.C. 1985, c. F-7. Pursuant to s. 18 of the *Federal Courts Act*, the Federal Court has the exclusive jurisdiction to review the validity of the Order-in-Council. As a result, neither the Registrar nor the Superior Court could look behind the Order-in-Council.

[15] The Superior Court judge disagreed with the Crown's position and found that the *Indian Act* conferred jurisdiction on the Registrar to determine whether an individual is entitled to registration as well as the provision under which the individual is entitled to be registered. She concluded that the Registrar's jurisdiction is not circumscribed by prior enfranchisement decisions of the Governor-in-Council except in limited circumstances not applicable in the present case. Accordingly, the Superior Court judge allowed the appeal and ordered that Laura Flood, Dorothy Flood and Angel Larkman each be registered pursuant to s. 6(1)(a) of the *Indian Act*.

III. ISSUES

[16] On appeal the Crown submits that the Superior Court judge erred as follows:

(a) in holding that the Registrar had the jurisdiction to register Laura Flood pursuant to s. 6(1)(a) despite the existence of a valid Order-in-Council declaring Laura Flood enfranchised;

(b) in holding that the Registrar failed to apply the appropriate burden of proof to the totality of the evidence and in finding that the Registrar was clearly wrong; and

(c) in concluding that the respondents are entitled to registration under s. 6(1)(a) as the Registrar failed to make the essential findings of fact necessary to support such a conclusion.

[17] For the reasons that follow, I have concluded that the Superior Court judge erred in finding that the Registrar could look behind a valid Order-in-Council. As a result, I would allow the appeal on the first ground and need not address the second and third.

IV. DISCUSSION

[18] The respondents maintain that the Superior Court judge was correct in concluding that each of the respondents should be registered pursuant to s. 6(1)(a). In support of that position, the respondents' principal submissions were as follows:

1. The Registrar has the discretion to look behind an Order-in-Council. Support for this proposition can be found in the Quebec Court of Appeal's decision in *Innu Takuaikan Uashat mak Mani-Utenam v. Noël*, [2004] 4 C.N.L.R. 66;

2. An "entitlement" to registration under s. 6(1)(a) can be found to exist despite the Order-in-Council if the respondents can show that the Order-in-Council was obtained by fraud. Sections 4(2) and 4(2.1) of the *Indian Act* lend support to this conclusion; and

3. As a result of the Federal Court's decision in *Callihoo v. Canada (Minister of Indian Affairs and Northern Development)*, [2005] 1 C.N.L.R. 1 (F.C.T.D.), all questions relating to registration under the *Indian Act* are to be heard in the provincial superior courts and not in Federal Court. It is the Superior Court therefore that has the jurisdiction to deem the Order-in-Council to be invalid.

[19] I will deal with each of these submissions in turn.

1) Does the Registrar have discretion to look behind an Order-in-Council?

a) The Order-in-Council

[20] The Order-in-Council enfranchising Laura Flood has never been revoked. An Order-in-Council is presumed to be valid until it is set aside or otherwise found to be invalid by a court of competent jurisdiction: see The Rt Hon The Lord Woolf, Jeffrey Jowell & Andrew Le Sueur, *De Smith's Judicial Review*, 6th ed. (London: Sweet & Maxwell, 2007) at para. 4-061. Until it is invalidated, the order remains legally effective: see *Gladstone Petroleum Ltd. v. Husky Oil (Alberta) Ltd)* (1982), 140 D.L.R. (3d) 701 (Sask. C.A.), at pp. 723-725, leave to appeal refused, [1982] 2 S.C.R. vii; *F. Hoffmann-La Roche & Co. A.G. v. Secretary of State for Trade and Industry*, [1975] A.C. 295 (H.L. Eng.), at pp. 319-320; and *Smith v. East Elloe Rural District Council*, [1956] A.C. 736 (H.L. Eng.), at pp. 769-770.

[21] Under s. 2(1) of the *Federal Courts Act*, R.S.C. 1985, c. F-7, the Governor-in-Council, in issuing orders pursuant to the *Indian Act*, is considered to be a "federal board, commission or other tribunal". As a result, ss. 18 and 18.1 of the *Federal Courts Act* provide that the Federal Court has the exclusive jurisdiction to review the lawfulness of such orders and to order judicial review remedies in respect of these. Neither the Registrar nor a provincial superior court (or any other court enumerated in s. 96 of the *Constitution Act, 1867*) has the authority to set aside such orders and no application has been brought before the Federal Court seeking such relief.

[22] The Registrar, therefore, is bound by a valid and subsisting Order-in-Council enfranchising Laura Flood.

b) The impact of the 1985 amendments to the *Indian Act*

[23] Section 6 of the *Indian Act*, as amended in 1985, creates a comprehensive set of categories of persons having the right to registration. Prior to the 1985 amendments, an enfranchised person did not have the right to be registered as an Indian. The 1985 amendments now allow a person who has been voluntarily or involuntarily enfranchised to regain their status as an Indian and to be registered. Registration of involuntarily enfranchised persons is pursuant to s. 6(1)(c) and registration of voluntarily enfranchised persons is pursuant to s. 6(1)(d). As explained earlier, registration pursuant to those subsections does not put the person into the same position as if the person had never been enfranchised. As these provisions are not being challenged in this proceeding, the Registrar and the court are to apply the legislative provisions, whether or not those provisions are viewed as fair.

[24] Section 6 tasks the Registrar with the responsibility to assess all applications or registrations and to process them in accordance with the provisions set out therein. The Registrar's authority is set out in s. 5(3). The Registrar is to "add to or delete from the Indian Register the name of any person who, *in accordance with this Act*, is entitled or not entitled, as the case may be, to have his name included in the Indian Register" (emphasis added).

[25] As set out in *Canada (Indian and Northern Affairs) v. Sinclair* (2001), 200 D.L.R. (4th) 347 (F.C.T.D.), at para. 76, the Registrar, in discharging the duties and functions under the Act,

> does not exercise any discretion in the sense of having been given a choice of options within a statutorily imposed set of boundaries (see, *Baker v. Canada (Minister of Citizenship and Immigration*, [1999] 2 S.C.R. 817 at 852, 174 D.L.R. (4th) 193 [para. 52]). Rather, the Registrar's principal task is to find the facts, based on the record, relevant to entitlement to registration and then apply those facts to the law. Counsel for the applicants aptly described the Registrar as an historian looking to see if there was evidence of entitlement to registration.[1]

[26] The Registrar is not any given any discretion and the exercise of power must be in accordance with the statutory regime created by Parliament: see *Dunsmuir v. New Brunswick*, [2008] 1 S.C.R. 190, at para. 29, and *Baptiste v. Canada (Registrar of Indian and Northern Affairs)*, [2001] 2 C.N.L.R. 19 (Sask. Q.B.), at para. 11.

c) Laura Flood's application for registration

[27] When Laura Flood presented her application for registration, the Registrar correctly determined that there was a valid existing Order-in-Council enfranchising Laura Flood. Applying the Act, the only basis upon which Laura Flood was "entitled" to be registered was, as provided in s. 6(1)(d), that her name had been "omitted or deleted from the Indian Register ... under subparagraph 12(1)(a)(iii) pursuant to an [enfranchisement] order made under subsection 109(1), as each provision read immediately prior to April 17, 1985". The Registrar could not ignore the existence of the Order-in-Council nor the fact that Laura Flood's name had been previously deleted from the Register pursuant to that Order-in-Council. Registration was not available under any other subsection of s. 6.

[28] Nothing in the Act vests the Registrar with authority to look behind an Order-in-Council. The Registrar cannot question or challenge the legality or the propriety of a subsisting Order-in-Council. The Registrar administers the Act and, in essence, the statute directs the Registrar to register someone in Laura Flood's circumstances pursuant to s. 6(1)(d).

d) The *Innu* decision

---

[1] Although on appeal this decision was set aside on jurisdictional grounds, no negative comments were made concerning the description of the Registrar's role: see *Canada (Registrar, Indian Register, Indian and Northern Affairs) v. Sinclair*, [2004] 2 C.N.L.R. 19 (F.C.A.).

[29] The respondents rely on *Innu Takuaikan Uashat mak Mani-Utenam v. Noël*, [2004] 4 C.N.L.R. 66 (Qc. C.A.), for the proposition that the Registrar was entitled to look behind an Order-in-Council when determining entitlement to registration under the Act. In *Innu*, the Quebec Court of Appeal held that the Registrar, when determining entitlement to registration, erred in refusing to look beyond an adoption order that had been made by the Court of Quebec. The Quebec Court of Appeal reasoned that the Registrar could not simply accept the adoption order as being determinative of the issue of whether the applicant met the definition of child in the *Indian Act*, but rather was obligated to investigate, receive evidence, evaluate it, and decide the issue.

[30] I do not view the *Innu* decision as being of assistance to the respondents. I say so for two reasons. First, in *Innu*, the Registrar was presented with an adoption order made when the applicant was thirty-seven years old. Under Quebec law, it was not always necessary for an adult adoptee seeking an adoption order to show that an *in loco parentis* situation had existed while the adoptee was a minor.[2] Although the court granting the adoption order in *Innu* accepted the applicant's evidence that an *in loco parentis* situation existed when the applicant was a minor, the Band challenging the applicant's eligibility to be registered on the Band list was not a party to the adoption proceedings. The Band relied on the Indian and Northern Affairs Canada (INAC) policy which stipulates that in order to acquire entitlement to Indian status through adoption, individuals who were adopted as adults must demonstrate that they were adopted in all practical senses of the term while still a minor. The applicant in *Innu* provided, in addition to his adoption order, sworn statements seeking to establish that he had been raised by a status Indian.

[31] The Band Council protested the addition of the applicant's name to its Band list. It claimed that the adoption order had been obtained on the basis of false statements and provided affidavit evidence stating that the applicant had not been brought up by a status Indian. The Registrar held that it was beyond her jurisdiction to resolve the matter; in order for the Band's protest to succeed, it must first have the adoption order declared null and void by a court. The Quebec Court of Appeal held that the Registrar erred in failing to exercise the jurisdiction conferred on her by ss. 14.2(5) and (6) of the *Indian Act*, which require the Registrar to "cause an investigation to be made", receive evidence, and "render a decision" when a protest is made. The Registrar could not rely solely on the adoption order. An adoption order obtained as an adult was not determinative because the applicant also had to show that the adoption occurred when the applicant was a minor, pursuant to the INAC policy.

[32] Second, Orders-in-Council are quite different from adoption orders made by a provincial court. Orders-in-Council were an integral part of the *Indian Act* and are the specific instruments that are determinative of the right of an applicant to be registered

[2] Article 545 of the *Civil Code of Quebec*, S.Q. 1991, c. 64, states: "No person of full age may be adopted except by the persons who stood *in loco parentis* towards him when he was a minor. The court, however, may dispense with this requirement in the interest of the person to be adopted."

pursuant to ss. 6(1)(c) and 6(1)(d). Where the Registrar is satisfied that an applicant was enfranchised by an Order-in-Council, the Act directs the Registrar to register the individual under s. 6(1)(c) where the enfranchisement was involuntary and under s. 6(1)(d) where it was voluntary. By conferring on the Registrar the power to conduct an investigation pursuant to ss. 14.2(5) and (6), Parliament did not, however, make the Registrar into a court of competent jurisdiction with the power to judicially review existing Orders-in-Council or the discretion to disregard Orders-in-Council that can be viewed as having been obtained by fraud.

2) Does an "entitlement" to registration under s. 6(1)(a) exist if the Order-in-Council is viewed as having been fraudulently obtained?

a) The proper reading of entitlement in s. 6(1)(a)

[33] The respondents also argue that it was open to the Registrar and therefore to the Superior Court on appeal to find that Laura Flood was "entitled" to be registered under s. 6(1)(a) if they concluded that Laura Flood had established that the Order-in-Council was obtained by fraud. In other words, the term "entitled" is sufficiently broad such that if the Registrar is satisfied that the Order-in-Council was obtained by fraud, the Registrar could conclude that an "entitlement" had been made out.

[34] In my view, the fact that Laura Flood may be able to prove that the Order-in-Council was obtained by fraud does not create an "entitlement" to registration under s. 6(1)(a). Reading the section as a whole and in context, it is clear to me that the entitlement contemplated in s. 6(1)(a) is a right (the French version of the statute uses the term "droit") based on the status of the applicant when the Registrar is called upon to make a determination. At that point, Laura Flood was a person whose name had been "omitted or deleted from the Indian Register ... under subparagraph 12(1)(a)(iii) pursuant to an order made under subsection 109(1), as each provision read immediately prior to April 17, 1985". As at April 16, 1985, s. 12(1)(a)(iii) of the Act provided that a person who is enfranchised is "not entitled to be registered". Until the Order-in-Council is set aside, therefore, Laura Flood is not a person "entitled to be registered immediately prior to April 17, 1985".

b) The impact of ss. 4(2) and 4(2.1) of the *Indian Act*

[35] The respondents further argue that ss. 4(2) and 4(2.1) of the Act show that Parliament intended that the Registrar was to have exclusive jurisdiction to determine Indian status and that a separate process to review decisions of the Governor-in-Council affecting registration would be contrary to the letter and spirit of the legislation and the intent of Parliament.

[36] Prior to the 1985 amendments to the *Indian Act*, the Governor-in-Council could exempt any Indians or Bands from any part of the *Indian Act*, including the registration

provisions. The 1985 amendments, however, removed from the Governor-in-Council the authority to exempt Indians from the registration sections of the *Indian Act* and this, in the respondents' view, lends support to the conclusion that it was intended that the Registrar have exclusive jurisdiction over the determination of status.

[37] In addition, s. 4(2.1) of the Act deems certain prior enfranchisement exemption decisions by the Governor-in-Council to be still valid. The purpose of this section was to preserve the interim orders exempting Bands from the mandatory involuntary enfranchisement provisions. These interim orders had been made in order to rectify the effect of the discriminatory provisions of the old *Indian Act* in the period before the Act could be amended. The respondents argue that because the 1985 amendments explicitly preserved the validity of some prior orders but were silent respecting voluntary Orders-in-Council, this suggests that Parliament intended that full jurisdiction over the determination of registration was now vested in the Registrar and not in the Governor-in-Council. Prior proclamations of the Governor-in-Council (except those specifically addressed in s. 4(2.1)) would, therefore, not be binding on the Registrar. Pursuant to the 1985 amendments, the Registrar had become the final arbiter of registration and the Governor-in-Council had been removed from the process. I disagree.

[38] In my view, these provisions are of no assistance in addressing whether the Registrar has the discretion to ignore or overturn Orders-in-Council. While it is true that s. 4(2.1) makes specific reference to the Governor-in-Council being deemed to have had the power to make orders exempting Bands from the mandatory involuntary enfranchisement provisions of the Act as it read prior to 1985, it does not follow, in my view, that all other orders of the Governor-in-Council made prior to 1985 are voided or are to be taken as having been made without authority. If that were so none of the enfranchisement orders made before 1985 would be subsisting and ss. 6(1)(c) and 6(1)(d) would serve no purpose.

[39] Further, I do not interpret these sections as transferring the jurisdiction of the Governor-in-Council regarding Orders-in-Council to the Registrar. The fact that the 1985 amendments removed the Governor-in-Council's power to enfranchise persons does not, by implication, mean that the power to reverse enfranchisement decisions has been conferred on the Registrar. The Act specifically provides how the Registrar is to deal with applications by enfranchised persons. There is no statutory provision that, explicitly or implicitly, gives the Registrar authority to set aside or ignore Orders-in-Council.

[40] It is not for this court to decide the manner in which the Order-in-Council may be set aside.

3) Does the challenge to the Order-in-Council have to be brought in Federal Court?

a) The *Callihoo* decision

[41] The respondents also argue that *Callihoo v. Canada (Minister of Indian Affairs and Northern Development)*, [2005] 1 C.N.L.R. 1 (F.C.T.D.), affirmed by 2008 FCA 368, stands for the proposition that, by providing that an appeal from a Registrar's order is to a provincial superior court, the Federal Court no longer has jurisdiction to deal with questions relating to Indian status. As a result, the jurisdiction of the Registrar and of the provincial superior court should be taken to extend to declaring invalid or at a minimum looking behind Orders-in-Council that impact on a person's Indian status. I disagree.

[42] *Callihoo* simply stands for the proposition that an appeal from a Registrar's decision is to the provincial superior court and that a Registrar's decision cannot be circumvented by going to the Federal Court. In *Callihoo*, the applicant sought a declaration in Federal Court that she was entitled to registration. In effect, what she was doing was trying to reverse the Registrar's previous refusal to register her. The court properly concluded that pursuant to the statute, any attempt to overturn the Registrar's decision has to be brought in the provincial superior court. The case before us is quite different. Here the respondents are trying to circumvent an existing Order-in-Council, not a decision of the Registrar. In my view, therefore, *Callihoo* has no application.

b) Does the Superior Court have the jurisdiction to deem the Order-in-Council invalid?

[43] I have concluded that the Registrar could not look behind or set aside the Order-in-Council nor, in exercising authority conferred by statute, could the Registrar register Laura Flood under a section of the Act as if the Order-in-Council did not exist or was not binding. As the Superior Court is sitting on appeal from the Registrar's decision, the Superior Court's authority is that of the Registrar. Because the Registrar is bound by the Order-in-Council, so is the Superior Court.

[44] The present case is different from the recent decision of this court in four matters heard together relating to the Superior Court's jurisdiction over civil claims arising from administrative decisions of federal boards, commissions or other tribunals: see *TeleZone Inc. v. (Canada) Attorney General*, 2008 ONCA 892. Those claims invoked, in part, the inherent jurisdiction of provincial superior courts to hear claims properly brought before it. Our court concluded that, by granting the Federal Court exclusive jurisdiction over judicial review of decisions by federal boards, commissions or other tribunals, Parliament had not clearly and explicitly removed the Superior Court's power to decide civil disputes arising from those administrative decisions.

[45] In the present case, the Superior Court draws its authority from the statute itself. The proceeding is a statutory appeal of the Registrar's decision. There is no distinct civil claim being advanced, no independent cause of action alleged, nor is the inherent jurisdiction of the court being brought into play as in the *TeleZone* case. As a result, the court's jurisdiction is, in effect, the same as the jurisdiction of the Registrar.

V. CONCLUSION

[46] In order to achieve the results sought, Laura Flood must first succeed in setting aside the Order-in-Council. She would then be in a position to seek registration pursuant to s. 6(1)(a) and her descendants could then also seek registration pursuant to that section.

[47] For these reasons, I would allow the appeal, set aside the judgment below and restore the decision of the Registrar. As neither party was seeking costs, I would make no order as to costs.

"Paul Rouleau J.A."
"I agree S.E. Lang J.A."
"I agree David Watt J.A."

RELEASED: February 27, 2009

ANGEL SUE LARKMAN

Applicant

-and-

ATTORNEY GENERAL OF CANADA

Respondent

File No: T-1804-10

FEDERAL COURT

AFFIDAVIT OF ANGEL SUE LARKMAN

FALCONER CHARNEY LLP
Barristers-at-Law
8 Prince Arthur Avenue
Toronto, Ontario
M5R 1A9

Julian N. Falconer (L.S.U.C.#29465 R)
Sunil S. Mathai (L.S.U.C. # 49616 O)
Tel: (416) 964-3408
Fax: (416) 929-8179

Lawyers for the Applicant

ANGEL SUE LARKMAN

Applicant

-and-

ATTORNEY GENERAL OF CANADA

Respondent

File No: T-1804-10

FEDERAL COURT

SUPPORTING AFFIDAVITS AND DOCUMENTARY EXHIBITS
(VOLUME TWO)

VOLUME I OF II

FALCONER CHARNEY LLP
Barristers-at-Law
8 Prince Arthur Avenue
Toronto, Ontario
M5R 1A9

Julian N. Falconer (L.S.U.C.#29465 R)
Sunil S. Mathai (L.S.U.C. # 49616 O)
Tel: (416) 964-3408
Fax: (416) 929-8179

Lawyers for the Applicant