

FEDERAL COURT

BETWEEN:

ANGEL SUE LARKMAN

Applicant

-and-

ATTORNEY GENERAL OF CANADA

Respondent

SUPPORTING AFFIDAVITS AND DOCUMENTARY EXHIBITS
(VOLUME TWO)

VOLUME II OF II

August 26, 2011

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Court File No.

FEDERAL COURT

BETWEEN:

ANGEL SUE LARKMAN

Applicant

- 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

AFFIDAVIT OF ANGEL SUE LARKMAN

I, Angel Sue Larkman [hereinafter Angel Larkman], of the City of Timmins, in the
Province of Ontario, MAKE OATH AND SAY AS FOLLOWS:

1. I am an Applicant in this Application, as such, I have direct knowledge of the matters hereinafter depose to and where I do not have direct knowledge, I am informed and verily believe said information to be true.
2. I was born on January 5, 1972, to Dorothy Ann Flood (nee Batisse) [hereinafter Dorothy Flood] and Gary Larkman.
3. My mother's mother, my grandmother, Laura Mary Flood (nee Batisse) [hereinafter Laura Flood], was born on March 1, 1926, on the Matachewan First Nation in Ontario.

Attached hereto and marked as Exhibit "A" is the Affidavit of Laura Flood dated February 26, 1996. (TAB A)

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

See also TAB A at para. 1.

5. Prior to December of 1952, Laura Flood was considered an Indian pursuant to the *Indian Act*, and she was a member of the Matachewan First Nation until December 1952.

See also TAB A at para. 2.

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

See also TAB A at para. 3.

7. On October 10, 1952, Alfred Batisse, Chief of the Matchewan First Nation along with the Indian Agent, requested that Laura Flood sign some papers. She trusted the Chief and always obeyed instructions from the Indian Agent, as such, she signed whatever documentation she was asked to sign but did not know what she was signing.

See also TAB A at para. 3.

8. Laura Flood was not informed by either Chief Batisse or the Indian Agent that by signing the papers she was giving up her status as an Indian. If she had known that, she would never have signed the documentation. At no time did she intend to forfeit her recognition as an Indian. Laura Flood was born an Indian and she always considered herself to be an Indian.

See also TAB A at para. 4.

9. Laura Flood later discovered that she had in fact signed an "Application for Enfranchisement". At the time of signing, she 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 (then Laura Batisse) was enfranchised and therefore lost her registration under the *Indian Act*.

See also TAB A at para. 4.
Attached hereto and marked as Exhibit "B" is the Order-in-Council P.C. 4582
dated December 4, 1952. (TAB B)

10. Laura Flood, to the best of her knowledge and recollection, did not receive any money from Chief Batisse or from the government for enfranchisement. She did recall receiving \$500.00 from the Chief; however, she was under the impression that the money was given to her for the "stumpage" that was occurring on the First Nation land at the time.

See also TAB A at para. 5.
See also TAB B.

11. As a result of her enfranchisement, she 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 exemption and the right to vote in band elections.

12. 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*.

See also TAB A at para. 6.

13. Laura Flood was the birth 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. All of her children were born out of wedlock.

Attached hereto and marked as Exhibit "C" is the affidavit of Laura Flood dated August 13, 1996. (TAB C)

14. Due to the fact that they were born prior to the Order-in-Council, Clarence Lorne, Lorne David and Laura Jean are all registered or entitled to be registered as Indians pursuant to section 6(1)(a) of the *Indian Act*, 1985.

15. On August 20, 1986, my mother Dorothy Flood (nee Batisse) applied to be added to the Indian Register. She included my information as part of the application for Indian Status.

Attached hereto and marked, as Exhibit "D" is the Application for Registration of Dorothy Flood dated August 20, 1986. (TAB D)

16. 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.

Attached hereto and marked, as Exhibit "E" is the letter from Registrar dated February 3, 1988. (TAB E)

17. Unlike my grandmother's other three children, Dorothy Flood was born after the enfranchisement; therefore she is registered pursuant to section 6(2) of the *Indian Act*.

18. As a result of my mother, Dorothy Flood being registered under section 6(2) of the *Indian Act*, I have been denied registration as an Indian.

19. On April 7, 1995, I submitted a second application for registration. 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.

Attached hereto and marked as Exhibit "F" is Application for Registration of Angel Larkman dated April 7, 1995. (TAB F)

Attached hereto and marked as Exhibit "G" is the letter from the Registrar dated September 13, 1995. (TAB G)

20. By letter dated November 26, 1996, my grandmother, Laura Flood and I requested that the Registrar review the validity of my grandmother's enfranchisement. The Registrar, by letter dated August 18, 1997, found the enfranchisement to be valid.

Attached hereto and marked as Exhibit "H" is the letter from Kimberly Murray dated November 26, 1996. (TAB H)

Attached hereto and marked, as Exhibit "I" Letter from Registrar dated August 18, 1997. (TAB I)

21. We 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.

Attached hereto and marked as Exhibit "J" is the Notice of Protest and supporting documentation dated August 17, 1998. (TAB J)

Attached hereto and marked as Exhibit "K" is the Decision of the Registrar dated July 21, 2000. (TAB K)

22. After receiving the decision of the Registrar, we requested that a hearing be held pursuant to section 14.2(6) of the *Indian Act*, the Registrar declined to hold such a hearing.

Attached hereto and marked as Exhibit "L" is the Letter from Kimberly Murray dated November 13, 2000. (TAB L)

Attached hereto and marked as Exhibit "M" is the Letter from Department of Justice dated July 8, 2004. (TAB M)

23. We initiated a statutory appeal pursuant to section 14.3(4) of the *Indian Act*, of the July 21, 2000 decision, at the Ontario Superior Court of Justice.

Attached hereto and marked as Exhibit "N" is the Notice of Appeal dated January 19, 2001. (TAB N)

24. In January 2001, we filed our Notice of Appeal with the Ontario Superior Court of Justice. 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 Respondent] would raise any issue of jurisdiction.

25. 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, my mother, Dorothy Flood and my grandmother, Laura Flood be registered pursuant to section 6(1)(a) of the *Indian Act*.

Attached hereto and marked, as Exhibit "O" is the Endorsement of Justice Forestell. (TAB O)

26. 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.

Attached hereto and marked as Exhibit "P" is the Order of the Court of Appeal for Ontario. (TAB P)

27. We 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.

Attached hereto and marked as Exhibit "Q" is the decision on Leave to Appeal of the Supreme Court of Canada. (TAB Q)

The delay in filing for a Judicial Review of the 1952 Order in Council with the Federal Court:

Inability to hire a lawyer

28. In 1952, Laura Flood, my grandmother was illiterate. She was only capable of signing her name. As such, she had no knowledge or understanding of the documents Chief Alfred Batisse and the Indian Agent placed before her for signature.

See also TAB 1 at para. 3.

29. Laura Flood only signed the documents because she was instructed to do so by her Chief and the Indian Agent. At no time did she knowingly forfeit her recognition under the *Indian Act*. By Order in Council P.C. 4582, dated December 4, 1952, she was enfranchised and therefore lost her status under the *Indian Act*, and all the rights and benefits that flow from such recognition.

See also TAB 1 at para 4.
See also TAB2.

30. Laura Flood could not read or write and she did not know how to hire a lawyer nor did she have the financial means to hire a lawyer.

31. After the 1985 Bill C-31 amendments to the *Indian Act*, Laura Flood regained Indian status under section 6(1)(d) of the *Act*. It was only after my registration was denied that we as a family sought legal advice.
32. In the mid-1990's I took an Aboriginal Justice program at Aboriginal Legal Services of Toronto [hereinafter ALST], through this program I became aware of the assistance provided by ALST.
33. The cost of litigation is far too expensive for me or for my family to afford. Therefore, we rely on the free legal assistance of Aboriginal Legal Services of Toronto.

Delay after the Supreme Court of Canada's denial of leave, October 2009

34. ALST has assisted us with our matter; however they have limited human and financial resources available. ALST has only 3 staff lawyers, one of whom acts as the Executive Director and they are dependent on limited government funds to operate. The amount of time available for any one staff lawyer to dedicate to this case has been a challenge and has been a contributing factor to the delay in filing the Application for Judicial Review with the Federal Court.
35. Our previous legal counsel, Kimberly R. Murray who had carriage of this matter for over 14 years has since taken a four year leave of absence to the Truth and Reconciliation Commission. As such, new legal counsel has been assigned to the matter. This too, has contributed to the delay in filing the Application for Judicial Review with the Federal Court.
36. Furthermore, another contributing factor to the delay has been the geographical distance between where ALST is located and where I and my family reside in northern Ontario. The nine hour driving distance makes it difficult for us to meet in person to provide direction to counsel on how to proceed with the matter.

37. My grandmother and I were to be the Applicants in this Application. As such, an affidavit was prepared in my grandmother's name for her signature so that we may proceed with the matter. However, before she could sign the affidavit my grandmother, Laura Flood died on August 8, 2010.

I make this affidavit in support of the Notice of Motion to extend time to file the Notice of Application for Judicial Review of the Order in Council and for a declaration that the Order in Council be set aside and for no other or improper purpose.

SWORN BEFORE ME at the City of
Timmins, in the Province of Ontario,
 this 25 day of August, 2010.



A Commissioner etc.

Ramona Sutherland LL.B



Angel Larkman

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.

This is exhibit A to the
affidavit of Angel Sue Larkman
dated the 25 day of August 2010


Commissioner, etc.

Ramona Sutherland / LLB

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

Kimberly
A Commissioner etc.

255

INDIAN AFFAIRS
BRANCHDEPARTMENT OF
CITIZENSHIP AND IMMIGRATIONREFUGEE TO FILE NUMBER
8043-86 (T2)

OTTAWA, December 18, 1952

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

Kindly be advised that by Order in Council P.C. 4558

dated December 4, 1952, 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 enfranchise-
ment card should be forwarded to Miss Batisse.Additional Remarks and Instructions (when applicable):

*Patented
S.*

403.

Rh
A. C. Leslie,
Trusts & Annuities Division.

This is exhibit B to the
affidavit of Angel Sue Larkman
dated the 25 day of August 2010

W
Commissioner, etc.

Hamona Sutherland LIB

p/10

(P.C.) 4582

357
8601-272

Dept. of Citizenship & Immigration OTTAWA 1952 MINISTER'S OFFICE

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.

Certified to be a true copy

Ann Shee
 A. M. Hill
 Sec'y. Clerk of the Privy Council

This is exhibit C to theaffidavit of Angeline Lockmandated the 25 day of August 20 10M. L. Lamont Sutherland
Commissioner, etc. LLS

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.

Kimberly
A Commissioner etc.

Laura Flood
Laura Mary Flood

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

☐ 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 _____

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

SEPARATE SHEET OF PAPER AND ATTACHED TO THIS APPLICATION									
Name of Applicant - Nom de famille du requérant					Given Names - Prénoms				
AIRIKIMIAW					DIOROTHYI IANNA				
Living Address - Adresse									
1201 Imlokwutai Inuvialuw Dir									
Postal Code - Code postal					Tel. No. - N° de tél.				
10RTW RAYI OWTARIO					P11A-12X7705-476-5411				
Date of Birth - Date de naissance		Former Band No. - Ancien N° de bande		Name of Former Band - Nom de l'ancienne bande					
11.02.25									
Surname of Father - Nom de famille du père					Given Names - Prénoms				
L101010					WYICILIAFPI DAVIDSD W				
Date of Birth - Date de naissance		Band No. - N° de bande		Name of Band - Nom de la bande					
11.06.20									
Given Name of Mother - Nom de fille de la mère					Given Names - Prénoms				
IAITISIE					LIAIRAI MARIYI				
Date of Birth - Date de naissance		Band No. - N° de bande		Name of Band - Nom de la bande					
11.09.01				67MA TAIKHEWAW INOILAW KESIEIRVIE					
Name 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				
Name of Maternal Grandfather - Nom de famille du grand-père maternel					Given Names - Prénoms				
AITISIE					HAIIRYI				
Name of Maternal Grandmother - Nom de famille de la grand-mère maternelle					Given Names - Prénoms				
CLELOO					ANNIE				

Registration Surname - Nom de famille (inscription)

of conciseness

Si vous avez des enfants âgés de moins de 18 ans, veuillez indiquer leurs noms et dates 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 APPARAÎSSENT 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	2	10	1951	LAIRIKMIANI	ALIN GLEK ISULE
Y-A	M	D-J	7	10	1951	LAIRIKMIANI	DIANIEK KLOWATYAN
Y-A	M	D-J	8	10	1951	LAIRIKMIANI	STEFIE ALUSTIEK
Name of Other Parent - Nom de famille de autre parent		Given Names - Prénoms		Date of Marriage - Date de mariage		Y-A M D-J	
LAIRIKMIANI		GLAIRY		7		15	
Date of Birth - Date de naissance		Registered Indian - Indien inscrit		Band No. - N° de bande		Name of Band - Nom de la bande	
Y-A	M	D-J	5	4	1951	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	

Band/District/Region
Band/District/Region

CONTENTS

This is exhibit D to the affidavit of Angel Sue Barker dated the 25 day of August 2010

Remont Switzerland LLC

Exhibit "E" 11

Indian and Northern
Affairs CanadaAffaires indiennes
et du Nord Canada

FEB - 3 1988

Your file Your reference

Our file Note reference

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,

J. Price

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 3J8

This is exhibit E to theaffidavit of Angel Sue Larkmandated the 25 day of August 2010*[Signature]*
Commissioner, etc.*Ramona Sutherland US*

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

Exhibit "G"



Indian and Northern
Affairs Canada

Affaires indiennes
et du Nord Canada

grandchild

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
Terri Harris
Registrar
OTTAWA, Ontario
K1A 0H4

This is exhibit G to the
affidavit of Angel Sue Larkman
dated the 25 day of August 2010

[Signature]
Commissioner, etc.

Ramona Sutherland

Canada

197 Spadina Avenue
Toronto, Ontario
M5T 2C8



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

This is exhibit H to the
affidavit of Angel Sue Larkman
dated the 25 day of August 2010



Commissioner, etc.

Ramona Sutherland / U/B

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

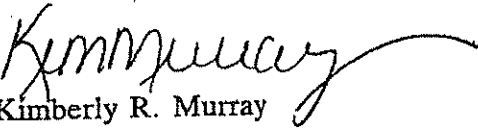
- 2 -

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.

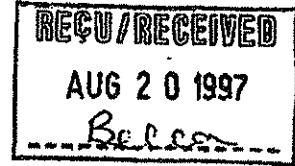
Exhibit "I"

267



Indian and Northern
Affairs Canada

Affaires indiennes
et du Nord Canada



August 18, 1997

Your file Votre référence

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

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

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 I to the
affidavit of Angel Sue Larkman
dated the 25 day of August 20 10

Commissioner, etc.

Ramona Sutherland LBS

Canada

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

This is exhibit J to the
affidavit of Angel Sue Larkman
dated the 25 day of August 2010


Commissioner, etc.

Ramona Sutherland LLB

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*.

I N D E X

TAB 1	Notice of Protest
TAB 2	Applicants' Memorandum of Points to be Argued
TAB 3	Affidavit of Laura Mary Flood sworn February 26, 1996
TAB 4	Affidavit of Laura Mary Flood sworn August 13, 1996
TAB 5	<i>Looking Forward, Looking Backward</i> , Report of the Royal Commission on Aboriginal People, 1996 Volume 1, pp. 271, 286-287
TAB 6	<i>Indian Act S.C. 1951, c. 29, ss. 2(1)(d), 15(1), & 108</i>
TAB 7	<i>Blueberry River Indian Band v. Canada</i> [1996] 2 C.N.L.R. 25 (S.C.C.) pp. 36, 41
TAB 8	<i>Guerin v. R.</i> [1985] 1 C.N.L.R. 120 (S.C.C.) p. 139
TAB 9	<i>Department of Indian Affairs and Northern Development Act S.C. 1985</i> <i>c.1, c 6 s. 4</i>
TAB 10	<i>Native Law</i> , Jack Woodrow, pp.112-113
TAB 11	<i>The Law of First Nations</i> , Robert Reiter, pp 231-232
TAB 12	<i>The Law of Contract</i> , G.H.L. Fridman, pp 301-303

Court File No. T-1804-10

FEDERAL COURT

B E T W E E N:

ANGEL SUE LARKMAN

Applicant

- and -

THE ATTORNEY GENERAL OF CANADA

Respondent

This is the Cross-examination of ANGEL SUE LARKMAN, the
Applicant, herein, on her Affidavit sworn February 11,
2011, held at Network Reporting & Mediation, One First
Canadian Place, 100 King Street West, Suite 3600,
Toronto, Ontario, M5X 1E3 on Friday, June 10, 2011.

APPEARANCES:

Sunil S. Mathai

For the Applicant

Michael Beggs

For the Respondent

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1 ANGEL SUE LARKMAN, SWORN

2 CROSS-EXAMINATION BY MR. BEGGS:

3 1 Q. Could you please state your full name for the
4 record?

5 A. I'm Angel Sue Larkman-Sutherland.

6 2 Q. And you swore an Affidavit on April 24, 2011
7 in these proceedings. Is that right?

8 A. Yes.

9 3 Q. And you're the Applicant in these
10 proceedings?

11 A. Yes.

12 4 Q. Just to clarify, or just to get it on the
13 record, you were also at one time known as Angel Sue
14 Etches?

15 MR. MATHAI: E-T-C-H-E-S?

16 BY MR. BEGGS:

17 5 Q. And the proceedings in that name related to
18 you, as well?

19 A. Yes.

20 6 Q. And have you ever been cross-examined
21 before?

22 A. No.

23 7 Q. Just as a preliminary, I guess I would say,
24 and probably your counsel has gone through a lot of this
25 with you already. Obviously, everything that you're

1 saying is being taken down. So you'll have to give
2 verbal answers to questions. Nodding or shrugging, or
3 any other gesture won't be recorded. And odds are that
4 one of counsel or the Reporter will draw your attention
5 to it if that's the type of answer you've given. But we
6 don't mean to be rude when we do that, just to keep the
7 record all clarified. That usually happens to everybody,
8 but usually they forget. It happens to me all the time
9 as the lawyer?

10 A. Okay.

11 8 Q. And if you want a break, at any time, just
12 let me know. If you don't understand my question, I
13 suppose there is a good chance of that, it might not make
14 sense, feel free to ask me to rephrase the question?

15 A. Okay.

16 9 Q. Okay. I guess to start off I'd like to ask
17 you some family tree questions, so we can get it all
18 sorted out. Your father was Gary Larkman, is that
19 right?

20 A. Right.

21 10 Q. And his parents were Herbert and Ida
22 Larkman?

23 A. Yes.

24 11 Q. And there is no Aboriginal heritage on that
25 side of the family?

1 A. No.

2 12 Q. And your mother is Dorothy Flood?

3 A. Yes.

4 13 Q. And her parents were Laura Mary Batisse and
5 Wycliffe Davidson Flood? Is that David with a "D" in the
6 middle there, or is his name Davidson?

7 A. Davidson.

8 14 Q. I guess I see you have a copy of the
9 Affidavit of Gary Penner in front of you?

10 A. Yes.

11 15 Q. Have you looked at that, by any chance?

12 A. Yes.

13 16 Q. Could you look at Exhibit W, and that is the
14 Marriage Certificate of your maternal grandparents. Is
15 that right?

16 A. Yes.

17 17 Q. And I guess for Wycliffe Davidson Flood it
18 says his parents are William Flood and Mary Davidson on
19 the left side, is it?

20 A. Yes.

21 18 Q. And there is no Aboriginal heritage on
22 Wycliffe-Flood's side that you're aware of?

23 A. Not that I'm aware of.

24 19 Q. And you already said your maternal
25 grandmother was Laura Batisse. Her parents, and I think

1 they're on the right side of that Marriage Certificate,
2 were Harry Batisse and Annie McLeod. Is that right?

3 A. Yes.

4 20 Q. And both Harry Batisse and Annie McLeod were
5 registered as Indians?

6 A. Yes.

7 21 Q. And Laura Batisse was registered as an
8 Indian, I guess that's what we're all here about, but at
9 least until 1952. Is that right?

10 A. Yes.

11 22 Q. Now, do you have any siblings?

12 A. Yes, I have two siblings.

13 23 Q. Are they brothers or sisters?

14 A. Two brothers.

15 24 Q. What are their names?

16 A. Daniel and Steve.

17 25 Q. And you are the oldest, I guess?

18 A. Yes.

19 26 Q. I'm sorry if these questions seem personal.
20 Do they have the same parents as you, both parents?

21 A. Yes. We tease them that sometimes they,
22 don't but they do.

23 27 Q. And so they're in the same position as far
24 as, maybe you can't answer this but I'll ask it anyway,
25 entitlement to registration that you would be in. Is

1 that right?

2 MR. MATHAI: It's legal question, I'll answer it
3 and I'll just say: Yes, they are.

4 BY MR. BEGGS:

5 28 Q. Now, your mother had three siblings. Is that
6 correct?

7 A. My mother had three siblings.

8 29 Q. Or has three siblings?

9 A. Yes.

10 30 Q. And is that Lorne, Clarence and Laura was the
11 third one?

12 A. Yes.

13 31 Q. And all four of those children have the same
14 parents, both parents are the same?

15 A. We're not a hundred per cent sure about my
16 uncle Clarence.

17 32 Q. Oh, okay?

18 A. But we go under the assumption that his dad
19 is Wycliffe, as well. But there's been discussion that
20 he was not.

21 33 Q. Now, your maternal grandmother, Laura
22 Batisse-Flood, she passed away last year. Is that
23 right?

24 A. Yes.

25 34 Q. I have a document here, I appreciate you may

1 not have seen it before but let me know, it's an obituary 277
2 for Laura Flood. Would you take a look at that? Would
3 you have seen that from the Kirkland Lake Northern
4 News?

5 A. I hadn't seen it before.

6 35 Q. It lists a number of children. Are those her
7 natural children? Well, besides the people we've already
8 mentioned, are they her natural children?

9 A. No. They're her stepchildren, as well as one
10 adopted child. Terry Belanger, he was adopted as an
11 adult when my uncle passed away.

12 36 Q. Now, your birth date is January 5, 1972. Is
13 that right?

14 A. Yes.

15 37 Q. You were born in Kirkland Lake?

16 A. Yes.

17 38 Q. Is that where your family was living, at that
18 time?

19 A. No, we lived in Matachewan.

20 39 Q. When you say "Matachewan," is it the Town of
21 Matachewan?

22 A. Yes.

23 40 Q. Now, the Town of Matachewan is separate from
24 the Matachewan Reserve?

25 A. Yes.

1 41 Q. You've been to the Matachewan Reserve?

2 A. Yes.

3 42 Q. How far apart are they?

4 A. They're about 12 miles apart.

5 43 Q. And you may not be able to answer this, but
6 are you aware of whether the town is roughly in the same
7 location it was in 1952?

8 A. In 1952.

9 MR. MATHAI: I'm going to refuse, only because
10 she wasn't born in 1952 so she wouldn't know necessarily
11 where it was in 1952.

12 --- REFUSAL

13 BY MR. BEGGS:

14 44 Q. Okay. I just wonder if, perhaps, it was a
15 church that was built in such and such a date. But if
16 you don't know, that's fine?

17 A. No.

18 45 Q. So how old were you when you first left
19 Matachewan on a permanent basis?

20 A. That's a little bit difficult to answer.

21 46 Q. Perhaps I should rephrase it, then. Did you
22 spend your childhood in Matachewan?

23 A. Until probably about the age of six. And
24 then it was sort of home base that we returned to all the
25 time. My father was a pipeliner so we would live for a

1 few years in Alberta and Saskatchewan, and then we came
2 back to Ontario. And then we'd spend a few years in
3 Matachewan and move on.

4 47 Q. And currently you live in the City of
5 Timmins. Is that right?

6 A. Yes.

7 48 Q. And you're an office manager at a law firm,
8 is that right?

9 A. Yes.

10 49 Q. What do you do as an office manager?

11 A. I do a lot of things. It's a new office, so
12 I've been doing client management. I've hired some staff
13 now to help take care of things. I take care of funding
14 coming in. I take care of billing going out. Just about
15 everything other than practice law.

16 50 Q. And how long have you worked there?

17 A. We opened the office March, 2010. So just
18 over a year.

19 51 Q. What did you do before that?

20 A. For two years before that I'd been a foster
21 parent. I was full-time foster parent. And before that
22 I was a legal assistant for two or three years for a
23 in-house counsel at Constance Lake First Nation.

24 52 Q. You swore another Affidavit in this
25 Application previously, didn't you?

1 A. Previous to the one?

2 53 Q. Previous to the one on this Motion for
3 extension of time?

4 A. I don't recall.

5 MR. MATHAI: I believe that is the case. I don't
6 have that with me here.

7 MR. BEGGS: I'll just show you it's labelled
8 "Motion Record." And I'll give it to you. Tab 2 is
9 where there is an Affidavit.

10 MR. MATHAI: Counsel, is it your intention to ask
11 her questions with respect to this Affidavit?

12 MR. BEGGS: A few questions, yes.

13 MR. MATHAI: My only concern is this is on an
14 examination for the Affidavit that was filed in support
15 of the Judicial Review Application, and is not related to
16 the Court of Appeal matter, Federal Court of Appeal
17 matter which this Affidavit was sworn on.

18 MR. BEGGS: Actually, no, this Affidavit was
19 sworn on the original motion for extension of time, it is
20 what initiated this proceeding. It was originally part
21 of this proceeding.

22 MR. MATHAI: That's right. But it's not part of
23 the supporting documentary exhibits to which this
24 examination now relates.

25 MR. BEGGS: But it pertains to this examination.

1 MR. MATHAI: It's not one of the documents that
2 is being relied upon at the judicial review.

3 MR. BEGGS: Well, that's fine. I would still
4 like to ask her questions about which she previously
5 sworn in relation to these proceedings.

6 MR. MATHAI: What I propose to do is hear the
7 question, and try to determine whether or not I think it
8 is appropriate; and whether in fact that it's not in an
9 Affidavit that's being relied upon in the judicial review
10 process. And then we can take it from there. If I
11 object we'll go forward, as is, or if I allow the
12 question. But what I think may be appropriate, at this
13 time, is having Ms. Larkman review the Affidavit. So
14 maybe if we go off the record for a couple of minutes,
15 and then Angel will be given the opportunity to review
16 the Affidavit and review the exhibits attached. Does
17 that make sense?

18 MR. BEGGS: Yes.

19 --- OFF THE RECORD

20 BY MR. BEGGS:

21 54 Q. Back on the record: So you've had a chance
22 to review that Affidavit?

23 A. Yes.

24 55 Q. And do you recall swearing that Affidavit?

25 A. Honestly, no. It is my signature, though.

1 56 Q. And the date on the Affidavit is August 25,
2 2010?

3 A. Yes.

4 57 Q. Essentially, a few points I want to draw your
5 attention there so I won't ask you about the whole
6 Affidavit. At paragraph 37 of the Affidavit, it's near
7 the end, I believe, you stated that: My grandmother and
8 I were to be the applicants in this application?

9 A. Yes.

10 58 Q. Do you still agree with that?

11 MR. MATHAI: Counsel, what's the relevance of
12 that?

13 MR. BEGGS: It goes to her standing to bring this
14 Application for Judicial Review.

15 MR. MATHAI: Okay. I'll allow it. Go ahead.

16 THE DEPONENT: Sorry, what was the question
17 again?

18 BY MR. BEGGS:

19 59 Q. Do you still agree with the statement that
20 you and your grandmother were to be the applicants in
21 this Application for Judicial Review?

22 A. Yes.

23 60 Q. And since your grandmother passed away you
24 brought this Application in your own name?

25 A. Yes.

1 61 Q. Now, I think in that Affidavit, I haven't got
2 the paragraph right in front of me but it states you took
3 an Aboriginal Justice Program at Aboriginal Legal
4 Services in the mid-1990s?

5 A. I took the Courtwork Program.

6 62 Q. Was that a volunteer position or a paid
7 position?

8 A. You mean the training?

9 63 Q. Was it just training?

10 A. It was training.

11 MR. MATHAI: And that's paragraph 32 of the
12 Affidavit that I believe you're referring to.

13 BY MR. BEGGS:

14 64 Q. Okay. And do you know what year you started
15 that?

16 A. 1995.

17 65 Q. Now, Aboriginal Legal Services is located in
18 Toronto. Is that right?

19 A. Yes.

20 66 Q. And did you move to Toronto to start that
21 programme?

22 A. Yes.

23 67 Q. Could you, briefly, tell me what the
24 Courtwork Program is?

25 A. They trained us to be able to go in, because

1 Aboriginal Legal Services has court workers that work at
2 the different courts in the City of Toronto, and they
3 were training us to fill in those positions as more of
4 them became available. It's to help the Aboriginal
5 clientele with possibly finding a lawyer, or getting into
6 diversion programs. That sort of thing.

7 68 Q. And how long was the training?

8 A. It was a year long.

9 69 Q. And after that year did you continue working
10 with Aboriginal Legal Services?

11 A. No.

12 70 Q. I believe it was 1996 that Aboriginal Legal
13 Services first wrote a letter on your behalf to the
14 Registrar. Is that right?

15 A. I'm not sure.

16 MR. MATHAI: Maybe you could help with directing
17 her to a letter.

18 BY MR. BEGGS:

19 71 Q. In your Affidavit at tab FF, that's a letter
20 from Aboriginal Legal Services. Correct?

21 A. Yes.

22 72 Q. And it starts: "Please be advised we act on
23 behalf of Angel Sue Etches."?

24 A. Yes.

25 73 Q. And that was written the 8th of March,

1 1996?

2 A. Yes.

3 74 Q. Now, sorry, this is going to sound stupid,
4 I'm stating the obvious, you have already said you were
5 born in 1972. Correct?

6 A. Yes.

7 75 Q. And you were not alive in 1952, therefore?

8 A. Yes.

9 76 Q. So you have no direct personal knowledge of
10 what occurred in 1952 in relation to your grandmother's
11 enfranchisement, is that correct? You didn't see or
12 observe any yourself?

13 A. Correct.

14 77 Q. Now, your Affidavit, tab 1 of your materials,
15 paragraph 9 it refers to three Affidavits that were sworn
16 by your grandmother?

17 A. Yes.

18 78 Q. And in the final sentence you say: ".....I
19 have reviewed each of these Affidavits and do verily
20 believe them to be true." Is that right?

21 A. Yes.

22 79 Q. And then in the following paragraph you say
23 you have reviewed a documentary record provided by the
24 Registrar of Indian and Northern Affairs Canada?

25 A. Yes.

1 80 Q. Is that the documents that you've attached as
2 exhibits to your Affidavit? Well, among other others
3 there is other documents in here?

4 A. Okay. You're talking about the letters?

5 81 Q. Tab F to say tab, I'm just looking at your
6 index?

7 A. Okay.

8 82 Q. Z?

9 A. Yes.

10 MR. MATHAI: I think there is one exception to
11 that. In Exhibit E of her Affidavit, which is the
12 Affidavit of Laura Flood, dated April, 2008, there is an
13 Exhibit Q that would have been included but was not
14 included in the Registrar's file.

15 BY MR. BEGGS:

16 83 Q. Okay. Are there any other documents that you
17 rely on for knowledge of the enfranchisement, what
18 happened in 1952?

19 A. Document? No.

20 84 Q. So at the end of paragraph 10, on the next
21 page, the last sentence there, the top of the page, last
22 sentence in the paragraph, it says: ".....My knowledge
23 of enfranchisement is from these identified sources."
24 Are those sources the documentary record in your
25 grandmother's Affidavits?

1 A. My grandmother's Affidavits as well as the
2 documents, yes.

3 85 Q. So I take you to the Affidavits, then. Sorry
4 to be jumping back and forth, I tried to work it out in
5 my head how to do less flipping but it doesn't seem to be
6 successful. So at tab C, Exhibit C of your Affidavit is
7 the Affidavit of Laura flood, dated February 26, 1996.
8 Is that correct?

9 A. Yes.

10 86 Q. Now, were you present when this Affidavit was
11 sworn?

12 A. Yes.

13 87 Q. Now, she states at the beginning of the
14 Affidavit that she was of the Town of Matachewan. Is
15 that where she was living in 1996?

16 A. Yes.

17 88 Q. And she was living in the town, not on the
18 Reserve?

19 A. Yes.

20 89 Q. And the Affidavit was sworn in Toronto.
21 Correct?

22 A. Yes.

23 90 Q. So she came down to Toronto to swear?

24 A. Yes.

25 91 Q. And you were present, I guess, that's your

1 grandmother's signature on this Affidavit?

2 A. Yes.

3 92 Q. Now, did your grandmother read the Affidavit
4 before she swore it?

5 A. No. Well, Kim Murray read it to her.

6 93 Q. So it was read out loud to her?

7 A. Yes.

8 94 Q. I'm just going to jump around on subject
9 matter, just so we won't have to flip around pages I'll
10 just stick with this Affidavit for a minute. So
11 paragraph 2 says she was registered under the Indian Act
12 prior to December 4, 1952. It says: "My registration
13 number was 32?"

14 A. Yes.

15 95 Q. I'm going to end up flipping anyway.

16 MR. MATHAI: Counsel, I don't know if this will
17 help. But if you ask whether or not it's accurate she
18 may be able to give you an answer on that.

19 BY MR. BEGGS:

20 96 Q. Well, I guess it will help a bit. Do you
21 know whether that was her number?

22 A. That was her family's number, not her
23 individual number.

24 97 Q. Do you know what her number was?

25 A. 67 or 76, one or the other.

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1 MR. MATHAI: It's 67.

2 THE DEPONENT: 67. Okay.

3 BY MR. BEGGS:

4 98 Q. If I could ask you to look at the Affidavit
5 of Gary Penner, for a moment, the very last exhibit,
6 Exhibit AA, it's entitled: "APPLICATION FOR REGISTRATION
7 UNDER THE INDIAN ACT." That was the Application for
8 registration by Laura Flood in 1985. Is that right?

9 A. Yes.

10 99 Q. Now, you would have been quite young in
11 1985?

12 A. Yes.

13 100 Q. You weren't aware of this happening, at the
14 time, or were you?

15 A. Of the Application at the time? No.

16 101 Q. I'll just point out in the middle of next to
17 where it says "Matachewan Indian Reserve" in printing it
18 says "67" under "Former Band Member?"

19 A. Yes.

20 102 Q. Do you have any explanation as to why she
21 would say "67" in 1985?

22 A. She didn't fill this form in. She signed
23 this form, she didn't fill it in.

24 103 Q. She didn't fill the Application form in?

25 A. That is my grandmother's signature. She did

1 not print in any of that information. That is my uncle
2 Clarence's writing.

3 104 Q. Oh, is it? Okay. This may be just part of
4 the same question you've already answered. But since I
5 asked you if you knew anything generally about it, but
6 more specifically you don't know if, for example, this
7 was read to her or not?

8 A. No, I don't know if this was read to her.

9 105 Q. Okay. Back to your grandmother's Affidavit,
10 the first one, at Exhibit C. Could I ask you to read to
11 yourself paragraph 3 and 4. The reason I asked you to
12 read them together is I think they work together, but you
13 can correct me if I'm wrong. So it says that in December
14 of 1952 Chief Alfred Batisse requested she sign some
15 papers, and that she, and the last sentence: ".....I
16 trusted the Chief's direction and signed the
17 documentation as requested." And then the next paragraph
18 says: "I later discovered I had in fact signed an
19 Application for Enfranchisement. ..." Is that right?

20 A. That is what it says, yes.

21 106 Q. And your grandmother seems to be under the
22 impression, well maybe she's right, I don't know, the
23 Application for Enfranchisement was signed in December,
24 1952?

25 A. What is your question?

1 107 Q. If you don't know, that's fine. But do you
2 know if your grandmother was under the impression that
3 the Application for Enfranchisement was signed in
4 December, 1952?

5 A. She did not know that it was an Application
6 for Enfranchisement in 1952 when she signed it, no.

7 108 Q. What I'm wondering is, and I'm not trying to
8 trick you, is this: The Application for Enfranchisement,
9 and we can go there, is dated October 10, 1952 and
10 that's, I think, what you say in your Affidavit. You say
11 at paragraph 21 of your Affidavit?

12 A. Of my Affidavit?

13 109 Q. Of your Affidavit, it says: "On October 10,
14 1952, Alfred Batisse, then-Chief of Matachewan First
15 Nation, along with the Indian Agent, J.A. Marleau,
16 requested that Laura Batisse sign some papers. ..." You
17 attach that as Exhibit N?

18 MR. MATHAI: Sorry, counsel, what are you
19 reading?

20 BY MR. BEGGS:

21 110 Q. Paragraph 21 of your Affidavit. You're
22 wondering what my question was, and I'm trying to
23 remember it. I'm trying not to mislead you so I'm trying
24 to make sure I get this right. What I'm trying to figure
25 out is your Affidavit refers to October 10, 1952 the

1 Enfranchisement, the Application for Enfranchisement
2 being signed on?

3 A. Right.

4 111 Q. And that's what the date is on that document,
5 the 10th of October, 1952. But your grandmother's
6 Affidavit, referring to the Application for
7 Enfranchisement says that -- well, again, I'll try to be
8 fair, it says in December, 1952 she was asked to sign
9 papers, and then it says later found out that was an
10 Application for Enfranchisement?

11 A. Yes.

12 112 Q. When you say it was signed October 10, 1952
13 are you disagreeing with your grandmother that it was
14 signed in December, 1952?

15 A. No. I'm trying to figure out where the
16 October date came from.

17 113 Q. The October date comes from the document,
18 itself, I think. But I don't want to say?

19 A. Okay. Sorry, which tab is that?

20 114 Q. The document is at tab N. And, again, I
21 don't want to mislead you. But I also don't want to
22 confuse you by throwing two documents at once at you.
23 There is something that is signed in December, 1952?

24 MR. MATHAI: I think it's important to remember
25 that at the time of signing this first document, the

1 first Affidavit, that when Laura Batisse signed in
2 February, 1996 she did not have the full Registrar file.
3 So the only document she would have, at that time, is her
4 own enfranchisement card.

5 BY MR. BEGGS:

6 115 Q. Does that sound right to you?

7 A. Yes.

8 116 Q. Okay. Now, paragraph 5 of your grandmother's
9 Affidavit, the first Affidavit, tab C, Exhibit C, it
10 says:

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

19 I read that correctly, didn't I?

20 A. Yes.

21 117 Q. Do you know, and you may not, but do you know
22 what your grandmother meant by the word "stumpage?"

23 A. No, I never clarified with her her term
24 "stumpage."

25 118 Q. If I could take you to paragraph 33 of your

1 Affidavit. In the second sentence there it says:
2 ".....She does recall receiving \$500 from the Chief in
3 and around that time..." Now, paragraph 5 of your
4 grandmother's Affidavit doesn't say, "in and around that
5 time."?

6 A. Right.

7 119 Q. Was that an inference you drew from the fact
8 that the stumpage was happening, at that time?

9 A. Oh, the "in and around that time" is a
10 problem.

11 120 Q. I don't know that it's unreasonable?

12 A. Yes.

13 121 Q. Or did your grandmother indicate that somehow
14 before, apart from that?

15 A. I know we had conversations that she said she
16 remembered getting some money. It might have been in and
17 around that time. I'm not sure how to answer that
18 question.

19 122 Q. She didn't communicate a specific time,
20 then?

21 A. No.

22 123 Q. Let's take you to the next Affidavit of your
23 grandmother, Exhibit D. And that was sworn on August 13,
24 1996?

25 A. Yes.

1 124 Q. Were you present at that time for that
2 swearing?

3 A. Yes.

4 125 Q. And I'm guessing a lot of it is the same as
5 the previous one, but correct me. It was sworn in
6 Toronto, again?

7 A. Yes.

8 126 Q. And she came down from Matachewan to swear it
9 again?

10 A. Yes.

11 127 Q. And that's your grandmother's signature?

12 A. Yes.

13 128 Q. And was the Affidavit read out loud to her
14 again?

15 A. Yes.

16 129 Q. And the next Affidavit, the last Affidavit of
17 your grandmother is Exhibit E. Maybe I should clarify.
18 This was the last Affidavit that your grandmother swore
19 in these proceedings, is that right, or in related
20 proceedings?

21 A. Yes.

22 130 Q. I know in the Affidavit I took you to before
23 in the extension of time that a draft had been done, but
24 that was never finalized. Right?

25 A. Right.

1 131 Q. Okay. So Exhibit E stated, I'm looking at
2 page 28 in the top right corner. You're ahead of me.
3 It's dated 22nd of April, 1998?

4 A. Yes.

5 132 Q. This one doesn't mention where it was
6 signed?

7 A. Matachewan.

8 133 Q. It was sworn in Matachewan?

9 A. Yes.

10 134 Q. Were you there for that?

11 A. No.

12 135 Q. So you didn't see her sign it, but you
13 recognize her signature?

14 A. Yes.

15 136 Q. And you don't know, yourself, whether it was
16 read to her?

17 A. Yes. My mom and I read it to my grandmother
18 and went over the document with her. And then my mother
19 took her to the Post Master to have it commissioned.

20 137 Q. Okay. Good. I don't know how you're doing,
21 or if you want to check on anybody?

22 A. No.

23 138 Q. Okay. Well, I guess while I'm here, the very
24 last page your counsel drew our attention to this earlier
25 in the Affidavit, page 53. This document doesn't have a

1 real title on it, but it's been referred to in these
2 materials as either the Certificate of Enfranchisement or
3 Enfranchisement Card. Is that right?

4 A. Yes.

5 139 Q. Have you seen the original of this?

6 A. I have the original, not here in Toronto but
7 I have the original in my possession.

8 140 Q. Is it a card or is it a piece of paper?

9 A. It's a card about this big.

10 141 Q. I guess maybe you could describe that for the
11 record?

12 A. Describe that for the record? And I'm not
13 good with inches or anything like that. So.

14 142 Q. It doesn't really matter how big it is?

15 A. It's about the size of the palm of my hand,
16 kind of thing.

17 143 Q. Do you recall when the first time you saw
18 this document was?

19 A. I can't remember the exact date, but it would
20 have been in 1996.

21 144 Q. Okay. When the proceedings started before
22 the Registrar. Now, was this something that was in your
23 family's possession or was it something provided by the
24 Registrar to you?

25 A. No, it was in my grandmother's possession.

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1 145 Q. Okay. Now, the document has a signature,
2 "Laura Batisse." And I think in her Affidavit at
3 paragraph 19, page 27, that's where the exhibit is
4 referred to, it says in the third line: ".....The card
5 bears my signature, ..." And, obviously, I know that
6 it's in dispute that she knew what was going on, or knew
7 what she was signing I guess. But, of course, it's
8 Batisse not Flood. But do you recognize that
9 signature?

10 A. Yes.

11 146 Q. Now, there is a date written above that
12 signature, do you recognize that as your grandmother's
13 handwriting?

14 A. No, that's not my grandmother's
15 handwriting.

16 147 Q. Okay. I'm going to be coming back to this
17 Affidavit, so you might just want to hold on to it. But
18 if you look at your Affidavit at paragraph 14, this is in
19 relation to when she moved away from the Reserve, the
20 final sentence says: ".....Laura Batisse actually left
21 the reserve six years later..." I guess if I read the
22 other part it would refer to 1939 when she was
23 approximately 19 years old. That's what you say in your
24 Affidavit?

25 A. Yes.

1 148 Q. And that's based on your grandmother's 1998
2 Affidavit, is that right?

3 A. That's based on, like as a family we had a
4 discussion when she came out long before any status
5 information came up.

6 149 Q. Oh, yeah?

7 A. Yes.

8 150 Q. And when your grandmother spoke of that was
9 it in terms of her age, or was it in terms of the year
10 that she referred to it?

11 A. Her age.

12 151 Q. And when she referred to leaving at 19 years
13 old, was it in terms of leaving the Reserve or leaving
14 her family's home?

15 A. No, she didn't leave her family's home. The
16 whole family left the Reserve because the agent had told
17 them that the younger children needed to attend school,
18 or they would move them and put them in residential
19 school. So my great-grandfather Harry brought the whole
20 family, including my grandmother, down into town so that
21 the younger children could attend school.

22 152 Q. And there was a school in the Town of
23 Matachewan?

24 A. Yes.

25 153 Q. I just have to remember where all the

1 documents are, it may take a few moments. I'm sorry if I
2 didn't absorb everything, but you said that the children
3 would have to go to school?

4 A. The younger children would have to go to
5 school.

6 154 Q. And on looking in your grandmother's
7 Affidavit, Exhibit G, at page 39, and that's tab E, page
8 39 of the record, it's a registered, it doesn't have a
9 title on it, but I think you'll agree it's a registered
10 Indian record of Harry Batisse and his family?

11 A. Yes.

12 155 Q. So there is a couple of children, it's not in
13 order the birth date for some reason?

14 A. No.

15 156 Q. Was it Harry's children they were talking
16 about?

17 A. Yes.

18 157 Q. Harry and Annie's children?

19 A. Yes.

20 158 Q. So it may be would have been Barney?

21 A. Louisa went to school. You can't see Louisa
22 on the list because you've kind of got the page pulled
23 over, but Louisa is there. Elsie went to school for a
24 year or two. Lorina went to school in the Town of
25 Matachewan. And Barney went to school. And the rest of

1 them were all too old to attend school.

2 159 Q. Right. Did anybody in this family end up
3 going to residential school?

4 A. No.

5 160 Q. And Laura never went to school at all?

6 A. She never went to school at all.

7 161 Q. Do you know what school they were supposed to
8 have gone to?

9 A. It would have been Matachewan Public School.
10 He just told them that he was going to take them away and
11 put them in residential school. They didn't go down to
12 town.

13 162 Q. Okay. This may have no relevance so feel
14 free to object, I'm just thinking in terms of residential
15 schools. I notice on the page we're looking at the
16 religions of the family are listed as RC, which I would
17 assume is Roman Catholic?

18 A. Yes.

19 163 Q. And I noticed when we looked at the Marriage
20 Certificate of Laura Batisse to Wycliffe Flood it
21 mentioned that she was from the United Church?

22 A. Yes.

23 164 Q. And the reason I think of this is residential
24 schools tended to be religious based. Is that your
25 recollection the family was Catholic at one point, and

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1 became Protestant?

2 A. In my life time we always attended the United
3 Church.

4 165 Q. Given that more thought I'm not sure that was
5 even relevant at all. Okay. Well, just to clarify that.
6 I didn't see the answer to that but I'll tie it up. In
7 the 1998 Affidavit at Exhibit E, paragraph 5, it again
8 refers to the subject matter of when she left the
9 Reserve, and the final sentence says: ".....As confirmed
10 by the Matachewan Treaty Pay-Lists, I only moved off the
11 Reservation when I was approximately 19 years old." So
12 from what you told me that was her independent
13 recollection that she knew she was 19 years old?

14 A. Yes.

15 166 Q. She wasn't relying on pay lists to prove
16 that?

17 A. No.

18 167 Q. She was just saying the pay lists can confirm
19 that?

20 A. Yes.

21 168 Q. Okay. In your Affidavit at paragraph 21 and
22 22, I think I may have already read that to you or read
23 that out loud on the record, but in 21 it refers to:

24 ".....Alfred Batisse, then-Chief of the
25 Matachewan First Nation, along with the Indian

1 Agent, J.A. Marleau, requested Laura Batisse
2 signed some papers. My grandmother trusted the
3 Chief and always obeyed instructions from the
4 Indian Agent. ..."

5 And the next paragraph it says:

6 "As reflected in Laura Batisse's affidavits,
7 neither the Chief nor the Indian Agent informed
8 Laura Batisse that by signing her papers she was
9 giving up her status as an Indian. ..."

10 Is that right?

11 A. Yes.

12 169 Q. Now, we have the three Affidavits, not
13 dealing with them in chronological order but content.
14 What is dated by the second Affidavit, the one at Exhibit
15 D, doesn't refer at all to the circumstances of the
16 enfranchisement in 1952, does it? Well, I guess it says:
17 At the time of the enfranchisement I was not married.
18 But?

19 A. 1952 she was not married. Yes, it does say
20 that.

21 170 Q. That is the only reference to the 1952
22 enfranchisement?

23 A. Yes.

24 171 Q. And in the first Affidavit at tab C, sorry,
25 did you want some time?

1 MR. MATHAI: No.

2 BY MR. BEGGS:

3 172 Q. There's a, tab C, in paragraph 3 there is a
4 reference to Chief Alfred Batisse requesting Laura Flood
5 to sign some papers, and that she had no idea what the
6 documents were that the Chief asked her to sign, and that
7 she trusted the Chief's direction. But in this Affidavit
8 there is no record reference to the Indian Agent whether
9 generically or by the name "Marleau" is there?

10 A. No.

11 173 Q. Sorry, do you agree with that?

12 A. That there is no reference to the "Marleau"
13 in this one? Right.

14 174 Q. So the third Affidavit, April 19, 1998
15 Affidavit at Exhibit E, paragraph four there is a
16 reference to the Indian agent J.A. Marleau. But that
17 paragraph doesn't say that Marleau asked your grandmother
18 to do anything, does it?

19 A. Your question is what?

20 175 Q. That paragraph four of that Affidavit doesn't
21 refer to Marleau asking your grandmother to do
22 anything?

23 A. No, it doesn't.

24 176 Q. And then Marleau is mentioned again in
25 paragraph 5?

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1 A. Yes.

2 177 Q. But, again, there is no mention of Marleau
3 asking your mother to do anything?

4 A. Right.

5 178 Q. I believe the next mention of the Indian
6 Agent is at paragraph 14. Again, there is no reference
7 to him, to Marleau, asking your grandmother to do
8 anything in this paragraph?

9 A. Right. No, is there is not.

10 179 Q. And then in paragraph 16, the third line it
11 says: ".....I trusted my Chief and always obeyed
12 instructions from the Indian Agent. ..." Correct?

13 A. Yes.

14 180 Q. That is everything that it says about the
15 Indian Agent in that paragraph. Right?

16 A. Yes.

17 181 Q. And then I believe paragraph 19 is the final
18 mention of Marleau or the Indian Agent. And, again, this
19 paragraph doesn't suggest that Marleau asked her to do
20 something, does it?

21 A. No, it does not.

22 182 Q. I don't know if you want to take any time to
23 review these, but in none of these three Affidavits does
24 it say that Marleau, or referring to it generically as
25 the Indian Agent or superintendent, nowhere does it say

1 that Marleau asked your grandmother to sign anything or
2 do anything. It doesn't say that?

3 A. The first Affidavit, again, sorry, which one
4 was it behind?

5 183 Q. Well, the first one I took you to was just
6 the one about family, the one about marriage?

7 A. I need just a moment.

8 184 Q. Sure.

9 MR. MATHAI: The question he's asking relates to
10 paragraph 21 of your Affidavit. You say that the Chief
11 along with Marleau requested that Laura sign some
12 papers.

13 THE DEPONENT: Right.

14 MR. MATHAI: He's saying that the Laura
15 Affidavits do not suggest that Marleau was there for the
16 signature, or asking for the signature on October 10th
17 which you confirmed.

18 THE DEPONENT: Correct.

19 MR. MATHAI: Okay.

20 MR. BEGGS: Okay.

21 MR. MATHAI: Is there something that you want to
22 ask as a follow-up?

23 BY MR. BEGGS:

24 185 Q. Just a moment. Would it be fair to say,
25 again just going to take a couple of steps back, there is

1 no doubt you could expand or correct on this, but
2 generally speaking the suggestion is, in this case, that
3 your grandmother was asked to sign something that she
4 didn't know what it was and as a result signed -- became
5 enfranchised?

6 A. Yes.

7 186 Q. Generally speaking, yes. I guess would you
8 agree that those three Affidavits don't suggest that the
9 Indian Agent was involved in that deception, if I may
10 call it that?

11 A. Those Affidavits only reference to
12 correspondence, not to when the agent actually visited.
13 So there is no reference to when the agent visited and
14 had conversation with her. That's something that we had
15 in conversation with my grandmother about what happened
16 to her around that time. Because those are specifically
17 that talking about correspondence that went back and
18 forth. And nowhere in the correspondence does it appear
19 that he has anything to do with it.

20 187 Q. But she didn't say in her Affidavits that he
21 had anything to do with it whether in correspondence or
22 in person?

23 A. Correct..

24 188 Q. In Exhibit FF to your Affidavit, this is a
25 letter I took you to at the beginning of this for March,

1 1996, this is a letter from Kimberly Murray who was your
2 counsel, at the time?

3 A. Yes.

4 189 Q. And it says in the second paragraph:
5 "On December 4, 1952, Laura Mary Batisse (now
6 Laura Mary Flood) was asked to sign an
7 Application for Enfranchisement by the Chief of
8 the Matachewan First Nation. At the time of
9 signing the application, Ms. Batisse was
10 completely unaware, and not informed by the
11 Chief, of what she was signing. She had no
12 knowledge as to the effect of the document. At
13 the time, she was unable to read or write, and
14 merely trusted the Chief's direction. ..."

15 Now you've already talked about the date. I'm not
16 worried about that, at this point. But this letter only
17 refers to the Chief. Correct?

18 A. Yes.

19 190 Q. It doesn't refer to the Indian Agent being
20 involved?

21 A. Correct.

22 191 Q. And if I can take you to tab M, as in
23 Michael?

24 A. Just M?

25 192 Q. I guess that is MM, it's the Notice of

1 Protest?

2 A. Yes.

3 193 Q. I'm just going to take a moment to glance
4 through this. Maybe you need to do, as well. This
5 document doesn't actually refer to the circumstances of
6 the signing with the Chief at all. There is a discussion
7 of Minister, this is at page 105, and I guess we're going
8 from the Notice of Protest to the Memorandum, saying that
9 the Minister ".....ought to have known that the
10 application was obtained pursuant to the exercise of
11 undue influence. ..." That's at paragraph 22. And at
12 paragraph 23 it refers to the Minister failing ".....to
13 adequately examine ... the Enfranchisement Application."
14 But I guess I would put it to you, and it may require to
15 you look at it, that there is nothing in here that
16 suggest the Indian Agent was involved in a deception
17 against Laura Flood?

18 MR. MATHAI: I'm going to refuse the question.
19 It doesn't actually speak to the circumstances at all in
20 this document; it just speaks to the fact the information
21 in the Application was incorrect. The Minister should
22 have looked at it closer at the Application.

23 --- REFUSAL

24 BY MR. BEGGS:

25 194 Q. Okay. On the same objection, but we'll see.

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1 At tab QQ is a Notice of Appeal. And that's in relation
2 to the statutory appeal from the Registrar's decision to
3 the Superior Court. And, again, I would ask if there is
4 any suggestion in this Notice of Appeal that the Indian
5 Agent was involved in deception against Laura flood?

6 MR. MATHAI: Again, I'm going to refuse on the
7 same basis that the circumstances of the filling out of
8 the Application are not explicitly referenced in this
9 document.

10 --- REFUSAL

11 BY MR. BEGGS:

12 195 Q. You were at the hearing of the Superior Court
13 of Justice, is that right?

14 A. Yes.

15 196 Q. And that was on November 27, 2007, I think I
16 saw the date of the decision. If you want to look at
17 that?

18 A. I don't recall the exact date now.

19 197 Q. I'm looking at tab R of the decision, it
20 says: "DATE HEARD: November 27, 2007."

21 A. Yes.

22 198 Q. Now, would you agree that the first time it
23 was suggested in these proceedings that Marleau was
24 involved in a deception was during that hearing?

25 MR. MATHAI: I'm going to object to that. It

1 presumes she remembers, first of all, what was said in
2 that hearing in enough detail to remember that. She
3 wasn't the one making the arguments, I don't think it is
4 good evidence frankly. So I'm going to object to that.

5 --- REFUSAL

6 BY MR. BEGGS:

7 199 Q. Are you aware of an earlier time at which it
8 was suggested to the Registrar that the Indian Agent was
9 involved in a deception?

10 MR. MATHAI: I'm going to object to that, too.
11 Because Ms. Larkman wouldn't have been privy to the
12 conversations that happened between counsel and the
13 Registrar during, you know, the many years that the
14 Registrar process continued so she would have no
15 knowledge of whether or not discussions were made at that
16 time. So I'm going to object to that, as well.

17 --- REFUSAL

18 BY MR. BEGGS:

19 200 Q. Are you doing okay? Do you want a break?

20 A. No, I'm okay.

21 201 Q. I'm going to turn to some documents for the
22 1950s that you've attached as exhibits to your Affidavit.
23 Now, I'm trying to decide how to do this with a minimum
24 of flipping. All right. Well, I'm going to be taking
25 you, in a moment, to the Application for Enfranchisement

1 at Exhibit N of your Affidavit. But first I'm going to
2 take you to your grandmother's 1998 Affidavit, Exhibit E,
3 paragraph 16, and in that paragraph she's talking about
4 the Application for Enfranchisement. I think I've
5 already gone over this, she says: ".....The signature,
6 is my signature, ..." And then she says she does not
7 know what she was signing. That document is at page 46
8 and 47 of her Affidavit. And I'm going to suggest it's
9 the same document that is at tab N of your Affidavit?

10 A. Yes.

11 202 Q. Now, do you agree that's her signature on
12 there?

13 A. Yes.

14 203 Q. And I'm going to take you to a letter, dated
15 October 31, 1952, which is Exhibit P of your Affidavit.
16 Again, I'm going to look at your grandmother's Affidavit
17 again?

18 A. P?

19 204 Q. Yes, I'm going to compare two documents which
20 I believe are the same, Exhibit P of your Affidavit and
21 in your grandmother's 1998 Affidavit, the one at tab E,
22 which is Exhibit J at page 45. Am I right?

23 A. Yes.

24 205 Q. I'm looking at page 45 and 65 of the Motion
25 Record. Those are the same document?

1 A. Yes.

2 206 Q. Except for one is not so visible. Now, in
3 your grandmother's Affidavit, paragraph 14, this is at
4 page 26?

5 A. Sorry. Your question is?

6 207 Q. Well, at page 26 of her Affidavit, I'm just
7 referring to the page numbers on the top right there,
8 paragraph 14, that's the paragraph that attaches the
9 exhibit and the letter dated October 31st, and she refers
10 to as ".....bearing my signature..." Although, in
11 fairness, she says she ".....did not write this letter,
12 nor did I instruct anyone to write the letter on my
13 behalf."?

14 A. Right.

15 208 Q. Do you agree that's her signature on that
16 letter?

17 A. I will say "yes" because she said that's her
18 signature. It doesn't appear the same to me as the other
19 signatures. But I will say "yes" because she said that's
20 her signature.

21 209 Q. And that's why I wanted to take you to that
22 first, I didn't want to put you in a position where
23 you're arguing with your grandmother. But feel free, if
24 you wish. And Exhibit F of your Affidavit is a letter,
25 dated July 14, 1952?

1 A. Yes.

2 210 Q. The letter date is July 14th, the stamp says
3 July 17th it's received. I'm assuming that's what it
4 means?

5 A. Right.

6 211 Q. Now, your grandmother's 1998 Affidavit at
7 page 23 and 24, it doesn't refer to this letter. The way
8 I read paragraph 4 suggests that she did not have that
9 letter before her, at the time?

10 A. This Affidavit is from when?

11 212 Q. 1998?

12 A. So you're asking if the letter from?

13 213 Q. Are you aware whether she had the July 14th
14 letter? I would read that paragraph and suggest that she
15 didn't?

16 A. So in 1998 that letter was being shown to
17 her?

18 214 Q. No, what I'm saying is in 1998 she's
19 referring to a July 28th letter?

20 A. Okay.

21 215 Q. And says that that letter, I'm just reading
22 from it:

23 ".....Mr. Marleau writes that he received a
24 letter from me requesting that I be enfranchised.
25 This letter is not included in the

315

1 enfranchisement file. "At no time did I write
2 such a letter, nor did I instruct anyone else to
3 write this letter on my behalf. ..."

4 A. Okay.

5 216 Q. I guess my question is: Do you know if she
6 had this letter in front of her? Because that would mean
7 two different things as to what that paragraph means,
8 either she doesn't believe this letter or she wasn't
9 aware this letter existed?

10 A. I don't know the answer to that question.

11 217 Q. Anyway she doesn't comment on her signature.
12 But do you believe that to be her signature?

13 A. Yes.

14 218 Q. Now, you said you were a legal assistant
15 working as an office manager?

16 A. Yes.

17 219 Q. You have written a fair amount of
18 correspondence, I guess?

19 A. Yes.

20 220 Q. On behalf of other people?

21 A. Yes.

22 221 Q. Are you aware of identification initials, the
23 practice of them?

24 A. Yes.

25 222 Q. I know you're not in a position to say what

1 actually happened as to this, but ordinarily what would
2 the initials show?

3 A. I don't know what they stand for.

4 MR. BEGGS: Oh, you don't know. Okay. That's
5 fine.

6 MR. MATHAI: Counsel, I know obviously what the
7 practice is of them. But do you know what "RLS" is or
8 whom "RLS" is?

9 MR. BEGGS: I have a guess.

10 MR. MATHAI: Then who is that?

11 MR. BEGGS: The Application for Enfranchisement
12 at tab N has a signature by the name Ron L. Scott.

13 MR. MATHAI: And do you know who Ron L. Scott is?

14 MR. BEGGS: No, I don't know who Ron L. Scott.

15 MR. MATHAI: Because when I look through the
16 Treaty List there is no Ron L. Scott who is a member of
17 the band. And my query is whether or not Ron L. Scott,
18 we don't know what the "L" stands for, but Ron L. Scott
19 whether or not he is someone working with the Indian
20 Agent.

21 MR. BEGGS: Well, that is an interesting question
22 but I actually had a number of questions about Mr. Scott
23 for Ms. Larkman, which she may not be able to answer.
24 But I would like to put them to her.

25 MR. MATHAI: Well, we don't know who it is. But

1 you can ask the questions.

2 BY MR. BEGGS:

3 223 Q. Since we're on the topic do you know anyone
4 by the name of Ron L. Scott?

5 A. No, I don't know anyone by the name of Ron L.
6 Scott. And I want to add something to that, that he in
7 my mind I'm thinking ahead of this conversation with my
8 mother that the Scotts owned the bar in Matachewan. But
9 I may be incorrect, I would need to clarify that. But
10 there were a couple during a period of time that owned
11 the bar, and I'm thinking it was the Scotts.

12 224 Q. Well, I'm not sure this advances us anywhere
13 but I'll take you to something I noticed which is
14 actually your grandparent's Marriage Certificate which
15 was in the Affidavit of Gary Penner at tab W. Now, this
16 Marriage Certificate was from 1964, right?

17 A. Correct.

18 225 Q. And there's two witnesses signing it. Now,
19 I'm not purporting them to be Ron L. Scott, but my
20 reading of that is on the left Walter Scott and on the
21 right G.L. Scott. Would you agree with that?

22 A. I would agree with the G.L. Scott.

23 226 Q. Would you think they're the last name Scott,
24 not the first name?

25 A. That's possible, too.

1 227 Q. And the address line underneath says
2 Matachewan, I believe?

3 A. Yes.

4 228 Q. Both. But that doesn't jog your memory of
5 the Scotts?

6 A. No.

7 229 Q. Okay?

8 A. No.

9 230 Q. Now, I guess you suggested and I appreciate
10 this was secondhand, it was not recollection, but you
11 suggested that they may have owned the bar. Are you
12 saying they once did or they currently do?

13 A. No. No one currently owns the bar. But they
14 may have once owned the bar. It's been through many,
15 many, many people since then.

16 MR. MATHAI: Counsel, have you made inquiries as
17 to whether Ron L. Scott is someone who worked for Indian
18 and Eskimo Affairs, at the time?

19 MR. BEGGS: No, it never occurred to me that
20 Scott may be an employee of the department.

21 MR. MATHAI: Is that something that could be
22 inquired into?

23 MR. BEGGS: Well, I know he's not, for example,
24 an Indian Agent because he's not on the listing of Indian
25 Agents. For example, he's not a successor to

1 Mr. Marleau.

2 MR. MATHAI: Who was the successor? Oh, J.A.
3 Levesque. No. Sorry. I apologize. That is not the
4 person's name.

5 MR. BEGGS: No, you are right. No. Wait.
6 Levesque was before him. I'm looking at tab D of Gary
7 Penner's Affidavit, it had a document listing Indian
8 agents in the Nipissing agency. Actually, it's the first
9 page, the second page. The first page is an alphabetical
10 listing, the second page lists the agents for the
11 Nipissing agency. The third is Albert Marleau. And then
12 succeeding him is a person named Gauthier and a person
13 named Moore. It would be very difficult to find records
14 at this point of somebody who was in a subordinate
15 position, I think.

16 MR. MATHAI: Or whether he was just an employee
17 at Indian and Eskimo Affairs. That may not be so
18 difficult to find in the Nipissing area.

19 MR. BEGGS: I think it would be very difficult to
20 find, actually.

21 MR. MATHAI: Okay. Maybe you could make
22 inquiries.

23 MR. BEGGS: Well, I'm not going to give an
24 undertaking.

25 MR. MATHAI: Obviously, I can't ask of you for

1 undertakings while you are cross-examining my client.
2 You know, that being said you have raised some doubt with
3 respect to the issue of who this Scott individual is.
4 You know, I think it would be incumbent upon the Attorney
5 General to take steps to ascertain whether or not he was
6 an employee of Indian and Eskimo Affairs. We've provided
7 our best evidence, which is the evidence that my client
8 has said with respect to a Scott family that was living
9 in the area. Whether or not that would be the
10 individual, I don't know. But I would think that it
11 might be something that the Attorney General may want to
12 clarify.

13 MR. BEGGS: Well, I disagree that it's incumbent
14 on the Attorney General to do so. But we'll discuss it
15 off the record, at some point.

16 MR. MATHAI: That's fine. Do you want to go off
17 the record now?

18 MR. BEGGS: Sure.

19 --- OFF THE RECORD

20 BY MR. BEGGS:

21 231 Q. Now, in your Affidavit at paragraph 33, again
22 I think I read part of this to you already, this time
23 it's the first sentence I'm interested in, it says:

24 "To the best of Laura Batisee's knowledge and
25 recollection, she did not receive the \$82.23

1 payment required by the Order-in-Council from
2 Chief Batisse, the Agent or any other source.
3 ..."

4 In your grandmother's first Affidavit at paragraph 5 the
5 language is very similar to what you just said there: "
6 "To the best of my knowledge and recollection I did not
7 receive..." That's right?

8 A. Right.

9 232 Q. And she's not saying definitively that she
10 did not receive such a payment, but that it was to the
11 best of her knowledge and recollection. Is that right?

12 A. She's not saying definitively. Right.
13 Correct.

14 233 Q. And, again, in the 1998 Affidavit, paragraph
15 17, which is at page 27, on the second line it says:
16 ".....I do not recall receiving a cheque for \$82.23."
17 Again, she's not saying absolutely she did not receive
18 that cheque but that she did not recall it. Correct?

19 A. Correct.

20 234 Q. Now, in your Affidavit at paragraph 34 you
21 says:

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

1 made out to J.A. Marleau."

2 And you've attached a document at Exhibit W. Correct?

3 A. Yes.

4 235 Q. Now, when you say the ".....payment in this
5 amount made out to J.A. Marleau" are you saying the
6 cheque was made out to the name of J.A. Marleau?

7 A. You're asking me if the cheque was made out
8 to?

9 236 Q. I'm asking you if that's what you're
10 saying?

11 A. All I'm saying is J.A. Marleau received,
12 according to this document, shares of band funds to
13 Ms. Laura Batisse. So from that document that's all I
14 can see, that's as far as I see that it went.

15 237 Q. Okay. Feel free to disagree?

16 A. Okay.

17 238 Q. This document at the top left says: "THE
18 ENCLOSED OFFICIAL CHEQUE NO. B 22 -" and then in
19 typewritten numbers "20482 IS A PAYMENT OF YOUR CLAIM AS
20 DETAILED HEREUNDER." That suggest there was a cheque
21 enclosed with this, whatever this document was. Is that
22 right?

23 A. Yes.

24 239 Q. And now I had looked at that rectangular box
25 with rounded corners as an address box. Is that what you

1 had understood it to be?

2 A. If I understood at the time I don't know,
3 because I can't remember when I first looked at that
4 document, that's a while back now. If you are pointing
5 that out to me now, yes, I can say it looks like an
6 address box.

7 240 Q. It looks like the cheque did, as you say,
8 reached J.A. Marleau?

9 A. Yes.

10 241 Q. But this document, itself, doesn't say in
11 what name the cheque is written in?

12 A. Right.

13 THE DEPONENT: Is it okay if we take a break?

14 --- Whereupon proceedings recessed at 12:52 p.m.

15 --- Whereupon proceedings resumed at 1:03 p.m.

16 BY MR. BEGGS:

17 242 Q. So if I could take you to paragraph 51 of
18 your Affidavit, and it refers to "Exhibit "HH"" which is
19 a letter dated August 13, 1996. It says:

20 " On August 13, 1996, our legal counsel at the
21 time wrote to the Registrar. It is apparent from
22 the letter that the belief at that time was that
23 my grandmother had been enfranchised as a result
24 of her marriage to a non-Indian, and that this
25 enfranchisement was in error because she was

1 married after 1952."

2 Now if you want to take time to look at the letter,
3 that's fine. But my question is: You say ".....the
4 belief at that time..." whose "belief" are you talking
5 about

6 A. That would be our whole family. Let me
7 explain just a little bit. Our whole family believed
8 because, and I know the correct terminology is non-Native
9 or non-Aboriginal but back then even now my grandmother
10 would have referred to as the "white man" she was living
11 with. And that was always the belief that she was living
12 with a "white man" that she didn't have status, or that
13 was what the enfranchisement was about her living with a
14 white man. And that was right up to the end we all
15 believed that until we got the documents in 1996 when we
16 received the documents, that's when we started to see
17 that there was something else happening other than the
18 white man situation who she was living with.

19 243 Q. Okay. Just to tell you where I'm going. You
20 said "1996," I'm going to ask about whether you know when
21 it was you received the documents from, I'm not sure what
22 you said, from the department?

23 A. Yes.

24 244 Q. I don't know what the answer to that question
25 is. The best I can come up with is looking at Exhibit KK

1 to your Affidavit, which is dated November 26, 1996?

2 A. Right.

3 245 Q. And at the end of that page going on to the
4 next page it says:

5 ".....In addition, we ask that copies of all
6 documents relating to the enfranchisement be
7 released to us."

8 Can you say whether, or maybe you can't, but it was after
9 this letter that you received the documents

10 A. Yes.

11 246 Q. Okay. But you don't know any more
12 specifically when you received them?

13 A. I don't know exactly when they arrived at
14 Ms. Murray's office. I just know when she compiled them
15 then we would come together and discuss what she
16 received.

17 MR. MATHAI: Counsel, maybe to assist. If you
18 flip to tab L there is a letter from M.M. MacDonald,
19 Acting Registrar to Kimberly Murray at Aboriginal Legal
20 Services of Toronto enclosing a copy of her file, "her"
21 being Laura Flood. So it would appear that the materials
22 only arrive at Aboriginal Legal Services of Toronto
23 August 18, 1997.

24 BY MR. BEGGS:

25 247 Q. I don't find that myself. That's great. If

1 I take you to Exhibit FF, which we've looked at before,
2 that's the letter we talked about that was the first
3 letter from Aboriginal Legal Services on your behalf?

4 A. Yes.

5 248 Q. And in the second paragraph, which I think I
6 read out before so I'll just summarize. The gist of it
7 seems to be that Laura Batisse was signing something that
8 she was unaware of, she was not informed of what it was;
9 that she said no knowledge as to the effect of it, and
10 that she was unable to read or write. She trusted her
11 Chief's direction. This pertains to the signing of the
12 Application for Enfranchisement. And this precedes the
13 time when the full file was given to your family. Isn't
14 that right?

15 A. Correct. It could be just that Kim took that
16 information from the enfranchisement document. That date
17 is on the enfranchisement document.

18 249 Q. I'm just trying to think this through
19 chronologically. Exhibit C is the Affidavit from your
20 grandmother, dated February 26, 1996. I assume that's
21 the letter. The letter we were just looking at says:
22 Please find enclosed the sworn Affidavit of Laura
23 Flood?

24 A. What are you saying?

25 250 Q. Exhibit C is the Affidavit, but the letter we

1 were looking at is FF?

2 A. Okay.

3 251 Q. And FF says: Enclosed please find --

4 MR. MATHAI: This Affidavit?

5 BY MR. BEGGS:

6 252 Q. The sworn Affidavit of Laura Flood. And I
7 assume that could only have been the first Affidavit
8 based on the dates?

9 MR. MATHAI: That is a fair assumption.

10 BY MR. BEGGS:

11 253 Q. So this first Affidavit makes the allegation
12 in paragraph 3 and 4 that she was the same allegation
13 that was in the letter, that she was asked to sign
14 something she didn't know what it was that turned out to
15 be the Application for Enfranchisement. Does this not
16 show that your grandmother knew in 1996 that she had been
17 enfranchised, because she had filled out this form?

18 A. No, all that means is that her understanding
19 of that form was she just agreed that she was living with
20 a "white man."

21 254 Q. So she thought this form, the enfranchisement
22 still had something to do --

23 A. Living with a white man. And the
24 enfranchisement document doesn't say any reasons what the
25 enfranchised card is for, it just says "enfranchised."

1 255 Q. Okay. Now, sorry, this is going to seem like
2 a personal question, it is, but she was married in 1964.
3 Correct?

4 A. Correct.

5 256 Q. And she married Wycliffe Flood. And Wycliffe
6 Flood we discussed was a -- oh, I see. Okay, well, I
7 think you said that Wycliffe Flood was at least the
8 father of Lorne Flood?

9 A. Yes. No one has ever talked about Lorne
10 being anyone else's child other than Wycliffe's.

11 257 Q. And Lorne was born in 1948?

12 A. Yes.

13 258 Q. Now, you've said that your grandmother spoke
14 of it in terms of living with the "white man?"

15 A. Yes.

16 259 Q. Was she living with him prior to the marriage
17 in 1964?

18 A. Yes.

19 260 Q. Was she living with him, say, at the time in
20 1952?

21 A. Yes.

22 261 Q. So from your discussions with her she thought
23 it was because she was living with your grandfather?

24 A. Yes.

25 262 Q. That she was enfranchised in 1952?

1 A. Yes.

2 263 Q. Now, we're going to really jump around a lot
3 but that's just because we're near the end. Paragraph 21
4 of your Affidavit?

5 A. Yes.

6 264 Q. This is the paragraph referring to October
7 10, 1952 and signing the papers. What I want to ask you
8 about is the third and fourth line, it says: "As such,
9 she signed the papers. The documentation was neither
10 read to her nor explained. She did not know what she was
11 signing." That event, anyway, is referred to twice in
12 your grandmother's Affidavits. The first Affidavit from
13 February, 1996?

14 A. The event of signing the papers.

15 265 Q. Signing the Application for Enfranchisement.
16 And I think that is paragraph 3 and 4 of the first
17 Affidavit. And also in the third Affidavit, the 1998
18 Affidavit, paragraph 16, my question is this: You said
19 the documentation was neither read to her nor
20 explained?

21 A. Correct.

22 266 Q. Now, I see in those paragraphs that she says
23 she didn't know what she was signing?

24 A. Right.

25 267 Q. But I don't see her say that they were not

1 read or explained to her?

2 MR. MATHAI: Well, counsel, in fairness, it says:
3 "I did not know what I was signing." I think that can be
4 inferred it was not read or explained to her.

5 BY MR. BEGGS:

6 268 Q. That's what I want to clarify. Is that a
7 inference that it was not read or explained to her?

8 A. No. We would have had a conversation when we
9 were doing this, we said: Did anybody tell you what you
10 were signing? She said: No, I didn't know what I was
11 signing. So that's all that would have been said.
12 Because English is not a first language, it's all about
13 the way we ask her and how she answers to things.

14 269 Q. Okay. So it's based on your discussions with
15 her?

16 A. Yes.

17 MR. BEGGS: I'm sorry to suggest a break just so
18 soon after the last one, but if I have a few moments I
19 could probably wrap this up. Five or ten minutes.

20 --- Whereupon proceedings recessed at 1:21 p.m.

21 --- Whereupon proceedings resumed at 1:32 p.m.

22 BY MR. BEGGS:

23 270 Q. So, again, leaping around a fair bit but it
24 shouldn't take too much longer. Now, are you aware of
25 any of your uncles or aunts or great uncles or aunts who

1 have been Chiefs or counsellors of the Matachewan Band?

2 A. Yes.

3 271 Q. Who can you think of?

4 A. Well, I know uncle Barney because I've known
5 him since he was Chief. And since we started doing this
6 I've learned that uncle George was. And I'm not sure
7 uncle Mike might have at some point been a counsellor or
8 a Chief.

9 272 Q. And am I correct that your grandmother's two
10 surviving siblings are Barney and Elsie?

11 A. Yes.

12 273 Q. And that is the Barney that you said was
13 Chief, at some point?

14 A. Yes.

15 274 Q. Do you know when he was Chief?

16 A. In the 1980s he was Chief, for part of the
17 '80s. I'm trying to think if it went into the 90s, as
18 well. He was Chief for about eight years running.

19 275 Q. And you said through these proceedings you've
20 become aware that George was a Chief?

21 A. Yes.

22 276 Q. I think you said this, correct me if I'm
23 wrong, you did say you looked at the Affidavit of Gary
24 Penner?

25 A. Yes.

1 277 Q. And there's several documents there, I can
2 take you to them if you'd wish. But generally speaking
3 there are some documents included in there that suggested
4 the Chief in 1952 was George Batisse, Laura Batisse's
5 brother. Right?

6 A. Yes.

7 278 Q. In your Affidavit you said the Chief in 1952
8 was Alfred Batisse?

9 A. Yes.

10 279 Q. Do you now believe that the Chief in 1952
11 was, in fact, George?

12 A. George, yes. Alfred, no.

13 280 Q. Okay. So you think it was George and not
14 Alfred?

15 A. Yes.

16 281 Q. So you think it was a mistake?

17 A. Yes.

18 282 Q. Now, this might seem like nothing to you in
19 light of yesterday's discussion, simply because you
20 probably have a better idea of this whole geography
21 better than anyone else does. How far is Sturgeon Falls
22 from Matachewan?

23 A. Yeah, I had said this before that driving
24 like a hundred and something kilometres an hour it might
25 take us more than two and a half hours to get there. I

1 don't know what that translates into distance.

2 283 Q. That's the way I would think of things too.
3 Now, in your Affidavit at paragraph 60 and 61 you state
4 in 60 that ".....a statutory appeal was commenced on ..."
5 January 19, 2001. Is that right?

6 A. That's what I read, yes.

7 284 Q. And that was in relation to the appeal of the
8 proceedings before the Registrar. Right?

9 A. Right.

10 285 Q. Now, I'm not sure if this question is
11 straining privilege. Were you kept abreast of the
12 proceedings in the statutory appeal?

13 MR. MATHAI: Hold on. First, I want to know the
14 relevance.

15 MR. BEGGS: Well, she put it in her Affidavit,
16 paragraphs 60 and 61.

17 MR. MATHAI: Fair enough. But I still want to
18 know the relevance, from your perspective, other than
19 just saying it's in your Affidavit, what is the
20 relevance?

21 MR. BEGGS: I say it's sufficient that you put it
22 in there that I can ask a question about it. I would
23 also say it's relevant because a lot of the evidence, in
24 this case, is based on the evidence in the Affidavits of
25 Laura Flood. And those Affidavits are inherently

1 hearsay, because she's unable to testify. And so we're
2 going to, at some point, address the question whether
3 they are necessary, the test of admissibility of hearsay
4 evidence. So the question of delay is going to become an
5 issue.

6 MR. MATHAI: Well, they're hearsay insofar as any
7 Affidavit is hearsay.

8 MR. BEGGS: Not in the sense of Ms. Larkman's
9 Affidavit is not hearsay.

10 MR. MATHAI: By definition anything that is not
11 viva voce evidence in court is hearsay. Whether it
12 becomes acceptable to use it for the truth of its
13 contents is a different question. And in J.R.
14 proceedings, obviously, it gets used for the truth of
15 it's content subject to cross-examination. We're talking
16 about whether it can be relied upon as any Affidavit gets
17 relied upon. I guess you'll argue that it shouldn't be
18 because she's passed away, I'll say it's necessary
19 because she has passed away.

20 The issue of delay and my recollection of the
21 contest in terms of allowing hearsay statements is not
22 addressed in that, not Khan and K.G.B., it's not
23 addressed in that. So I'm a little bit confused as to
24 why the delay issue becomes important. Maybe you can
25 assist with that? I know of no case law that says delay

1 is consideration in determining hearsay. It's necessity
2 and reliability are the two.

3 BY MR. BEGGS:

4 286 Q. It's part of necessary whether it would be
5 necessary to allow this evidence in this manner. If it's
6 the applicant's own delay that it became necessary that
7 would be a relevant consideration. But going back to the
8 first point why are these paragraphs here if they're not
9 relevant?

10 MR. MATHAI: I hear that. I get that. I'm going
11 to refuse it on two grounds. The first is the question
12 that you've asked is straying into privileged material in
13 terms it's going to ask what the contents of the
14 discussion with counsel were. So I'm going to refuse it
15 on that basis.

16 And the second refusal I'm going to base it on is
17 the fact that other than what you've explained that it's
18 in the Affidavit, I don't believe those two questions of
19 necessity and reliability as it pertains to whether or
20 not the Affidavit should be allowed in as an exception to
21 the hearsay rule.

22 --- REFUSAL

23 BY MR. BEGGS:

24 287 Q. Okay. Well, I'll continue on. When did you
25 file your Motion Record, or your record on this statutory

1 appeal?

2 A. When did I file my record on the statutory
3 appeal?

4 288 Q. Yes?

5 MR. MATHAI: Maybe the threshold question should
6 be: Do you know when? She may not know when.

7 BY MR. BEGGS:

8 289 Q. Well, I already asked whether she was aware
9 of what was going on. She refused.

10 MR. MATHAI: If you want to ask: Do you know,
11 then sure.

12 BY MR. BEGGS:

13 290 Q. Do you know when your record was filed?

14 A. Offhand, no. I would have to go through all
15 the papers again.

16 MR. MATHAI: Counsel, she may not know the
17 answer. I'm sure you will be able to by going through
18 court filings, it is what it is that's the date.

19 MR. BEGGS: But I would like to get it on the
20 record.

21 MR. MATHAI: You won't have a dispute from me if
22 you get something from the court that says that it was
23 filed on that date. I'm not going to play cheeky bugger
24 with it and say: Well, that's not part of the evidence.

25 BY MR. BEGGS:

1 291 Q. It would be simpler for her or for you to
2 just look at the materials. Because these are
3 proceedings from the Superior Court of Justice, it would
4 take some difficulty to get them introduced into the
5 Federal Court. It could be a hassle. I would like to
6 show you these two documents, dated July 3, 2007 from the
7 statutory appeal?

8 MR. MATHAI: First of all, this is a Factum and
9 the Appeal Book and Compendium. I'm not trying to be
10 cheeky about it, it looks like it would have been served
11 and filed July, 2007.

12 MR. BEGGS: There is a stamp on the back from us,
13 that is our stamp.

14 MR. MATHAI: How about we'll do this. I'll give
15 you an undertaking to ascertain the date and then advise.
16 That should be good enough for your concerns. And I'm
17 not trying to be cheeky about it. My concern is that I
18 want to be accurate about the date. As you can already
19 see your date stamp it is July 4th, the front date has
20 July 3rd. I just want to make sure when all the
21 materials were filed. There may have been an exhibit
22 book, which you know are separate from the appeal book.
23 So I also want to know when that was filed too.

24 MR. BEGGS: Okay. This question your counsel may
25 want to answer or refuse, as the case may be. It's the

1 same paragraph, paragraph 61 that I'm thinking about.

2 The second line of 61, second sentence it says:

3 ".....In its factum, the Respondent raised for
4 the first time the issue of the Superior Court of
5 Justice's jurisdiction to hear the appeal. ..."

6 Now, I'm just trying to correct the record. And maybe
7 you want to take this under-advisement and think about it
8 and come back later. Because what I would suggest is
9 that our argument was not that the Superior Court did not
10 have the jurisdiction to hear an appeal, but generally
11 not to provide -- it didn't have the jurisdiction to
12 provide the remedy. That distinction may not be
13 important, but I'm just trying to correct the record.

14 MR. MATHAI: My understanding of your concern is
15 it's solely with the issue of whether it was
16 "jurisdiction to hear the appeal." As opposed to the
17 Superior Court of Justice's jurisdiction to grant the
18 remedy sought in the appeal.

19 MR. BEGGS: Right.

20 MR. MATHAI: But you do not take issue with the
21 heart of the paragraph, which is that this argument,
22 however characterized, was first introduced or made an
23 issue in the factum that you filed in response to my
24 client's former counsel's factum.

25 MR. BEGGS: Actually, I don't concede that at

1 all.

2 MR. MATHAI: Okay.

3 MR. BEGGS: But I'm not asking about that.

4 MR. MATHAI: Okay. So you only want
5 clarification with respect to the jurisdiction to hear
6 the appeal. So what I will do, because I haven't
7 reviewed that Factum in quite some time, is I will give
8 you an undertaking to review the Factum and determine
9 whether it's necessary to revise paragraph 61.

10 MR. BEGGS: Okay. Great.

11 --- UNDERTAKING

12 MR. BEGGS: That actually completes my questions.
13 I don't know if you were intending to re-examine?

14 RE-EXAMINATION BY MR. MATHAI:

15 292 Q. There are some areas of re-examination that I
16 would, briefly, like to go into. But it will not take
17 very long at all.

18 Ms. Larkman, you'll recall you were asked some
19 questions by my friend with respect to who the Chief was
20 in 1952. Do you recall those questions?

21 A. Yes.

22 293 Q. Do you recall that you conceded that you were
23 in error in your Affidavit by saying it was Alfred
24 Batisse?

25 A. Yes.

1 294 Q. And you conceded, fairly to my friend, that
2 the Chief at the time was, in fact, George Batisse.
3 Correct?

4 A. Correct.

5 295 Q. Do you know if Alfred Batisse was ever a
6 Chief?

7 A. Yes. He was a Chief in, I can't tell you the
8 exact year, it was in the 1960s?

9 296 Q. And how do you know?

10 A. I know that because my aunt Elsie was my
11 grandmother's sister who told me. To give a bit of an
12 explanation. She was talking about Alfred being Chief
13 when we asked for correction on why grandma would think
14 it was Alfred who initially had her sign the documents,
15 and Elsie said: It's because Alfred made us not allowed
16 on the Reserve anymore. He's the one who actually told
17 all of us who didn't have our status anymore that that's
18 the reason why. So that is the reason why grandma
19 believed it was him who had enfranchised her.

20 297 Q. And you don't know the exact date that he
21 would have been Chief?

22 A. No, we have a list of the Chiefs and I would
23 have stop go back and call someone from the Reserve to
24 find out the answer.

25 298 Q. Now, you just said in your answer "we have a

1 list." When you say "we" who are we talking about, your
2 family?

3 A. Sorry. Although I don't have status I
4 participate as part of the community. The community
5 recognizes me as a non-official member. So when I say
6 "me" I mean "me" as a Matachewan First Nation person.

7 299 Q. So you are using the royal "we", so-to-speak,
8 as opposed to the family?

9 A. Yes.

10 300 Q. Now, you'll recall my friend asking you some
11 questions with respect to when your grandmother, Laura
12 Flood, would have left the Reserve. Do you recall those
13 questions?

14 A. Yes.

15 301 Q. And you will recall that you stated, both in
16 your Affidavit and it's also reflected in your
17 grandmother's Affidavit, that she indicates that she left
18 the Reserve in or around the time she was 19 years old?

19 A. Yes.

20 302 Q. Do you know your grandmother's date of
21 birth?

22 A. Yes, for us it's February 1, 1926. For
23 documentation purposes it's March 1, 1926.

24 303 Q. Okay. I hear the distinction you're making,
25 and I take it you'll correct me. What you are saying for

1 the documentation is that there is some documentation
2 that says March 1, 1926?

3 A. Yes.

4 304 Q. But internally in your family you believe
5 it's February 1st?

6 A. Yes.

7 305 Q. But in any event it's 1926?

8 A. Yes.

9 306 Q. Now, at what age would she have turned 21?

10 A. At what age?

11 307 Q. Actually, let me change that. She says that
12 she would have left when she was 19. Correct?

13 A. Yes.

14 308 Q. What year would have it have been when she
15 was 19?

16 A. It would have been 1945.

17 309 Q. Is that your understanding of the year that
18 they would have left, then?

19 A. Yes.

20 310 Q. And you, in answer to my friend's questions,
21 had indicated that the whole family left. Is that
22 correct?

23 A. Yes.

24 311 Q. I'm going to show you some documents that are
25 in the Affidavit of Mr. Penner. You had indicated you

1 had reviewed this Affidavit, is that correct?

2 A. Yes.

3 312 Q. I think the quickest way to do this is by
4 asking you to look at paragraph 16 of the Affidavit?

5 A. Okay.

6 313 Q. We'll just wait a second. Can you review the
7 bullet points in this Affidavit, and tell me what they
8 describe?

9 A. Yeah. They're describing who picked up
10 Treaty pay for the Batisse family from '38 to, at the top
11 it says '54. Yeah, '54.

12 314 Q. Now, can you assist by telling me from the
13 years 1938 to 1944 who was picking up the annuities on
14 behalf of the Batisse family?

15 A. My great grandfather Harry Batisse picked it
16 up in '38, '39, '40, '41, '42, '43 and '44.

17 315 Q. And then in 1945 who is picking it up?

18 A. My uncle George.

19 316 Q. 1946 who is picking it up?

20 A. George.

21 MR. BEGGS: I don't want to prolong this by
22 objecting too much. How does this flow out of the
23 questions that I asked about leaving at the age of 19?

24 MR. MATHAI: I'm going to get to that at the end.
25 I just need to establish the record, but it will come out

1 in the end.

2 MR. BEGGS: It's not going to be a long time.

3 BY MR. MATHAI:

4 317 Q. No. '47?

5 A. My uncle George picked it up.

6 318 Q. To circumvent this, I've reviewed it to and
7 I've asked you to take the time to look at it. It
8 appears from '45 to the end that it's a mixture of either
9 Harry, I believe, Larry or George that's picking it up?

10 A. Correct.

11 319 Q. Do you have an explanation for why this
12 change occurs after '44?

13 A. Because up until 1945 they'd been living on
14 the Reserve, and it was easy enough for my great
15 grandfather Harry to go over and pick up the payment. In
16 1945 when they moved downtown it was about who was
17 available, and my uncle George was the eldest so he would
18 be sent up to pick up the Treaty pay.

19 320 Q. To the best of your knowledge, would your
20 grandmother, Laura, have left the Reserve without your
21 family?

22 A. No. She couldn't speak English. She
23 wouldn't have known how to live out in the non-Ojibway
24 world without somebody else there for guidance.

25 321 Q. Did your grandmother ever tell you: Before I

1 was 19 I moved out on my own into the town?

2 A. Not into the town. They moved around
3 frequently to different trapping spots. To her when you
4 say: Did you go off the Reserve? To her it would to go
5 to Temagami to trap. But they never went into a
6 non-Native community to do anything.

7 322 Q. Her first time moving out of the Reserve,
8 meaning changes homes, would have been in 1945?

9 A. Yes.

10 323 Q. Ms. Flood, I'm going to ask you to turn to
11 paragraph 23 of your Affidavit. Now, paragraph 21 you'll
12 recall that my friend asked you some questions about this
13 paragraph?

14 A. Yes.

15 324 Q. In particular, you'll recall that he asked
16 you about the Indian Agent, J.A. Marleau's presence in
17 asking Ms. Batisse to sign. Correct?

18 A. Correct.

19 325 Q. I'm going to ask you to turn to the April,
20 1998 Affidavit, which is at tab E. And if you could turn
21 to paragraph 16. You see this paragraph, you've read it
22 over now a number of times?

23 A. Yes.

24 326 Q. It says:

25 "I have reviewed my Application for

1 Enfranchisement. The signature is my signature,
2 however, as I stated before, I did not know what
3 I was signing. I could not read in 1952. I
4 trusted my Chief and always obeyed instructions
5 from the Indian Agent. I signed whatever
6 documentation I was asked to signed. I was not
7 informed that by signing the documentation I was
8 giving up my status as an Indian. Now shown to
9 me marked as Exhibit K is a copy of the
10 Application for Enfranchisement."

11 This paragraph references the Indian agent, correct

12 A. Yes.

13 327 Q. And it references it within the context of
14 the Application for Enfranchisement. Am I right in
15 that?

16 A. Yes. The paragraph talks about the
17 Application, yes.

18 328 Q. And it refers to a document that's at exhibit
19 K of that Affidavit. Exhibit K is what?

20 A. The Application for Enfranchisement.

21 329 Q. So we're turning back, then, to paragraph 21
22 of your Affidavit. You'll see that it says: "On October
23 10, 1952, ..." And that's in reference to when the
24 Superintendent or Indian Agent, rather, J.A. Marleau and
25 the Chief asked your grandmother to sign the papers,

1 attached to that is Exhibit N. Correct?

2 A. Yes.

3 330 Q. And Exhibit N is what document?

4 A. That's the Application for Enfranchisement.

5 331 Q. Okay. What you have here in paragraph 21, is
6 it fair to say that comes from paragraph 16 of the April,
7 '98 Affidavit?

8 A. Yes.

9 332 Q. Did your grandmother ever tell you that she
10 had conversations with an Indian agent?

11 A. Yes.

12 333 Q. In relation to this event?

13 A. I remember her talking about when the Agent
14 comes to visit you you were just supposed to listen, and
15 you were supposed to do as you were directed. That's the
16 details I can remember about any conversation with the
17 Indian Agent.

18 334 Q. So nothing, in particular?

19 A. No.

20 335 Q. But based on her advice, it sounds like,
21 about listening to what the agent says, what did you take
22 from that?

23 A. Did I take from what she believed?

24 336 Q. Yes?

25 A. She wasn't supposed to dispute anything.

1 When they came to the house to see her, or wherever they
2 were to see her she was not to dispute anything that
3 Indian Affairs had.

4 337 Q. So is it fair to say that based on her advice
5 that you would listen to the agent and do what the agent
6 says, that she had had interactions with the agent?

7 A. Yes.

8 338 Q. Now, earlier you'll recall my friend asked
9 you a number of questions relating to when you or your
10 counsel would have received documents from the Registrar
11 enclosing the file. Do you recall those questions?

12 A. Yes.

13 339 Q. And you'll recall that with my assistance, in
14 fairness, we saw a document from I believe it's August,
15 1997 where the material was provided to your counsel at
16 the time. Yes, it was August, 1997 to Kimberly Murray.
17 Do you recall that?

18 A. Yes.

19 340 Q. Now, your grandmother had signed or executed
20 three Affidavits. Correct?

21 A. Yes.

22 341 Q. And the first two Affidavits, and this is
23 going to be stating the obvious, the first one being
24 February, 1996, the second one being August, 1996. Those
25 were all signed prior to obtaining the file?

1 A. Yes.

2 342 Q. What documents did your grandmother have, to
3 your knowledge, relating to the enfranchisement at the
4 time of signing those first two Affidavits?

5 A. Only the card and then the rejection letter,
6 not rejection letter but the letter for -- well, I guess
7 it wasn't in her possession, it was in my possession the
8 letter from INAC stating I wasn't allowed to be
9 registered as a status.

10 343 Q. Let's break that down a bit. You talked
11 about she would have had the enfranchisement card. For
12 the sake of the record I'm going to show you a document
13 that's at Exhibit Q which is page 53 of the record. Is
14 this what you are referring to?

15 A. Yes.

16 344 Q. Her being in possession of?

17 A. Yes.

18 345 Q. You know she had this in her possession?

19 A. Yes.

20 346 Q. How do you know that?

21 A. She gave it to me.

22 347 Q. And then you refer to another document that
23 she may not have had in her possession, but you would
24 have had at that time. And you refer to that as a,
25 "rejection letter?"

1 A. Yes.

2 348 Q. Now, I understand that at some point your mom
3 had requested that her status be recognized and that your
4 status be recognized, as well?

5 A. Yes, when I was a teenager she applied.

6 349 Q. And just for the sake of the record I'm going
7 to show you that, if I can find it. That would be
8 Exhibit BB of your Affidavit?

9 A. Yes, that's my mom's Application for Status.
10 Yes.

11 350 Q. What is the date of that?

12 A. August 20, 1986.

13 351 Q. And what was the results of Dorothy Larkman
14 applying for status? Actually, sorry, before I ask that
15 question. Who was she applying for status for?

16 A. For herself. And then she added myself and
17 my two brothers to the application.

18 352 Q. And what was the result of her application?

19 A. She obtained status, but my brothers and I
20 did not.

21 353 Q. I'm going to show you a letter, it's at tab
22 CC of your Affidavit. Is this the letter you're
23 referring to?

24 A. Yes.

25 354 Q. This is the letter that denied status for you

1 and your siblings?

2 A. Yes.

3 355 Q. Does this letter indicate that your
4 grandmother applied for enfranchisement? And take your
5 time and read the document?

6 A. It doesn't say my grandmother applied for
7 enfranchisement.

8 356 Q. Okay. And what's the date of this letter?

9 A. February 3, 1988.

10 357 Q. Lastly, as you know the reason we're here is
11 that your grandmother by Order of Council in 1952 was
12 enfranchised. You understand that, correct?

13 A. Yes.

14 358 Q. What has been the effect of that
15 enfranchisement on you, your mother and your siblings?

16 MR. BEGGS: I don't think that flows from
17 anything I have asked.

18 MR. MATHAI: It does, and I'll tell you where.
19 It comes from your standing issue. You've indicated that
20 standing may be an issue. And this question is meant to
21 elicit evidence with respect to what her and her family's
22 interest is in this application, which will go towards
23 standing.

24 MR. BEGGS: Well, me asking questions about
25 standing doesn't.

1 MR. MATHAI: Sure it does. It opens the door to
2 the relevance of standing.

3 MR. BEGGS: Relevance of standing is always an
4 issue. Right. You could have put that material in your
5 Affidavits to start with.

6 MR. MATHAI: It is in the Affidavits.

7 MR. BEGGS: Then you don't need to go over it
8 again.

9 MR. MATHAI: If that is the test then much of
10 what we do in examination and cross-examination is not
11 proper. But that's not, frankly. So I think it is a
12 fair question. She's entitled to explain how this has
13 affected her. Normally, I wouldn't have asked the
14 question but you opened the door by making standing an
15 issue, which I until this point, until today, I had never
16 known was actually going to be an issue made by the
17 Attorney General. I hadn't seen it in any previous
18 materials filed with the court, nor in the Affidavit that
19 was prepared. So until your question was asked I didn't
20 know it was going to be an issue, now that it is I think
21 we have to establish her interest in standing.

22 MR. BEGGS: Well, it's always an issue in the
23 sense the court will want to know that the persons who
24 qualify under the Federal Court Act to give the court
25 jurisdiction to deal with the matter. I haven't said I'm

1 challenging her standing. I said I was simply asking her
2 questions to establish her standing.

3 MR. MATHAI: That's fair, and now I'm doing the
4 same.

5 MR. BEGGS: But you could have done that to start
6 with. I'm going to object, it is not a proper follow-up
7 re-examination question.

8 BY MR. MATHAI:

9 359 Q. I'm going to ask it, and she'll answer and I
10 guess it will be up to the court to determine how to use
11 it. It's somewhat of a unique situation. I've never
12 actually seen an attempted refusal on a re-exam. But
13 because it's my witness I'm going to ask her to answer
14 it. And then it can be an issue that you raise with the
15 court saying that they should consider it, although it's
16 some in the Affidavit and you've opened the door. But if
17 you tell me now that you will not raise the issue of
18 standing, and you will concede that she has standing then
19 I won't ask the question. I'll be happy to move on.

20 MR. BEGGS: No, I won't concede that at this
21 point.

22 BY MR. MATHAI:

23 360 Q. So I'd ask you to explain to me how the Order
24 in Council, which is now the subject of the Judicial
25 Review Application that brings us here today, how that

1 has affected you, your mother and your siblings?

2 A. It sort of has two effects. One, in that we
3 are not able to participate in our community in the same
4 way we would if we had status. My brother is an active
5 hunter and trapper and his peers who are Aboriginal by
6 status can do and participate in the community in a way
7 that he can't. So it infringes on his ability to
8 actively participate in the community.

9 The other part that it does is that it takes
10 advantage of the fact that my grandmother could not read
11 or write, and that English was not her first language for
12 her to be able to understand what was happening at the
13 time. And so it is sort of an ongoing family thing where
14 someone some place along the line took advantage of the
15 fact that my grandmother couldn't do what she was able to
16 do, what English-speaking people could do as far as
17 reading and confirming documents that she was signing.
18 So it sort of brings us to -- yes, I don't know how to
19 summarize how that second point works out. It affects us
20 in that we have to live with the fact that someone took
21 advantage of her not being able to speak. And we have to
22 live with the repercussions of someone taking advantage
23 of the fact that she couldn't speak, read or write
24 English appropriately.

25 361 Q. In terms of legal rights, are you able to

1 vote in Band elections?

2 A. No.

3 362 Q. Why are you not allowed to vote?

4 A. Because we don't have status. The community
5 recognizes us in that we are allowed to participate in
6 ceremonial activities. But as far as elections or
7 anything that pertains to decision making with the
8 community, we're not allowed to participate in that.

9 363 Q. Do you feel that you are a member of the
10 community?

11 A. Yes, actively.

12 364 Q. What about the right to reside on the
13 Reserve?

14 A. No, we don't have the right to reside. My
15 grandmother has built a log cabin for us to be able to
16 use. But we are only allowed to even use it provided
17 that a status member is with us. So I can't even
18 actively go to my grandmother's log cabin on the Reserve.

19 MR. BEGGS: I'm not sure if you are finished or
20 not. But obviously I had the same objection to all those
21 questions. And I also would qualify that if it was
22 relevant, and I didn't want to interrupt Ms. Larkman out
23 of respect for her, I hope I didn't cut you off?

24 THE DEPONENT: No, that's fine.

25 MR. BEGGS: Strictly speaking, although I

1 realize, you know, there is a question of her and her
2 family and how something that affects her family might
3 affect her. But strictly speaking it's her standing. So
4 something that affects someone else not her only is not,
5 strictly-speaking, standing an issue.

6 BY MR. MATHAI:

7 365 Q. That will be a legal argument that we will
8 want to get to argue. I do also note that most of what
9 Ms. Larkman's evidence is right now is found in
10 paragraphs 38 to 47 of her Affidavit, which the Attorney
11 General has not sought to strike on the basis of
12 irrelevance or some form of prejudice.

13 Are there any other legal consequences that
14 attach to you not being a status Indian?

15 A. Legal consequences?

16 366 Q. That's right, any rights that you would
17 lose?

18 A. Well, yeah. I, in essence, paid to put
19 myself through school whereas if I was a Band member I
20 would have been able to access the dollars for
21 education.

22 367 Q. Before you go further. Just for the record,
23 because it won't be clear to people what are "dollars for
24 education?"

25 A. Indian Affairs gives each community a certain

1 amount of money to pay for their Band members to attend
2 post-secondary education. And I can't access that,
3 because I'm not a registered member.

4 368 Q. Did you attend post-secondary school?

5 A. Yes.

6 369 Q. Where was that?

7 A. At Trent University.

8 370 Q. What did you study?

9 A. I have a BA in Aboriginal Studies.

10 371 Q. What about with respect to tax benefits?

11 A. Yes. I don't receive any tax benefits. And
12 I also don't receive any medical benefits.

13 372 Q. And if you were a status Indian what would
14 those tax benefits or medical benefits be?

15 A. Because there are numerous occasions when I
16 worked on First Nation, but because I don't have my
17 status I paid the taxes off of my employment. And in
18 purchasing anything that I brought with me when I was
19 living in the community with my spouse who is status, I
20 couldn't not pay the taxes even though he was returning
21 with me to First Nation. So, yeah, in everyday life
22 those are the things that affect me, yes.

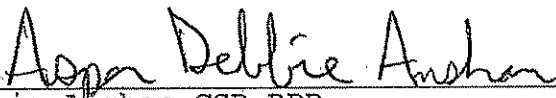
23 MR. MATHAI: Thank you. Those are all the
24 questions I have in re-examination. Is there anything
25 that follows from that?

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MR. BEGGS: No, that's all right.

--- Whereupon proceedings adjourned at 2:14 p.m.

I hereby certify the foregoing to be
a true and accurate transcript of my
computerized shorthand notes, to the
best of my skill and ability.


Debbie Anshan CSR RPR
Real Time (Caption) Shorthand Reporter

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Court File No. T-1804-10

FEDERAL COURT

B E T W E E N:

ANGEL SUE LARKMAN

APPLICANT

- AND -

THE ATTORNEY GENERAL OF CANADA

RESPONDENT

This is the Cross-examination of GARY PENNER on his
Affidavit sworn April 13, 2011, a representative on
behalf of the Respondent, herein, held at Network
Reporting & Mediation, One First Canadian Place, 100 King
Street West, Suite 3600, Toronto, Ontario, M5X 1E3, on
Thursday, June 9, 2011.

APPEARANCES:

Sunil S. Mathai

For the Applicant

Michael Beggs

For the Respondent

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14, 30, 46

THERE WERE NO EXHIBITS NOTED

1 GARY PENNER, AFFIRMED

2 CROSS-EXAMINATION BY MR. MATHAI:

3 1 Q. Good morning, Mr. Penner. You've been
4 affirmed, is that correct?

5 A. Yes.

6 2 Q. And you have sworn an Affidavit in this
7 matter. The date of the execution of that affidavit is
8 April 13, 2011. Is that correct?

9 A. Yes.

10 3 Q. And in paragraph 1 of that Affidavit you
11 indicate that you're General Counsel with Aboriginal Law
12 Section of the Ontario Regional Office of the Department
13 of Justice. Is that correct?

14 A. Yes.

15 4 Q. The Ontario Regional Office of the Department
16 of Justice is representing the Attorney General of
17 Canada, in this matter, is that correct?

18 A. That's correct.

19 5 Q. How long have you been counsel with the
20 Aboriginal Law section?

21 A. General counsel, two or three years.

22 6 Q. Prior to that what was your role in that?

23 A. Senior counsel.

24 7 Q. And how long were you senior counsel for?

25 A. Six or seven years.

1 8 Q. Prior to that?

2 A. Counsel.

3 9 Q. Again, with the same group?

4 A. Yes.

5 10 Q. Did you article there?

6 A. I did.

7 11 Q. A long time in that one place. Now, in
8 relation to your experience on this file, can you please
9 tell me when you first became involved in the Angel Sue
10 Larkman file?

11 A. I became involved, initially, although
12 marginally, when it became a statutory appeal of the
13 Registrar's decision. So from that moment our group had
14 carriage of it. My role was marginal at the first stage
15 which was the statutory appeal, itself, in more of a
16 consulting role.

17 12 Q. When the matter was before the Registrar in
18 the protest, did you or any of your colleagues have any
19 involvement in it?

20 A. I certainly didn't. I'm not aware whether
21 any of my colleagues had any involvement. I would be
22 surprised if we did, but I can't be certain.

23 13 Q. Can I get an undertaking, counsel, to
24 determine whether anybody at the Ontario Regional Office
25 at the Department of Justice Aboriginal Law Section is

1 involved in this matter, at that time, when it was under
2 the protest?

3 MR. BEGGS: No, I don't think so. The
4 proceedings with the Registrar are not material to the
5 judicial review of the Order in Council 1952. So I don't
6 see how it would be relevant.

7 BY MR. MATHAI: Well, part of my concern, in this
8 matter, is many of the allegations you're raising with
9 respect to the credibility of the earlier Affidavits
10 sworn by Ms. Flood are based on the fact that no
11 cross-examination was done. And an opportunity was
12 provided to the Registrar in a related proceeding before
13 the Court of Appeal. You've indicated that this
14 department was not related in any way to the Registrar's
15 decision. So I want to know whether that is, in fact,
16 correct; whether or not anybody from your department was
17 working with the Registrar and assisted in coming to that
18 decision of not to examine Ms. Flood when the opportunity
19 was made available.

20 MR. BEGGS: Well, I still don't think that
21 whether or not there was involvement with the Department
22 of Justice with the Registrar would go to the issue of
23 whether cross-examination would be available or not.

24 MR. MATHAI: Let me help you. If you were
25 counsel for the Registrar and then made the decision not

1 to examine her, for whatever reason, jurisdictionally or
2 for tactical reasons then that is something I want to
3 know. It's as simple as that. I don't think you can
4 say: Well, you know, we weren't involved with the
5 Registrar and then not tell me whether in fact you were.
6 I don't have to take the blind statement or the assertion
7 that you weren't. I can do it by way of undertaking and
8 then determine whether that's accurate.

9 MR. BEGGS: Well, I don't think we've made that
10 assertion that we weren't involved with the Registrar. I
11 believe the assertion is actually that the Registrar is
12 someone separate from the Attorney General of Canada.
13 But, in any event, our position is a legal position that
14 there was no cross-examination available at that stage.

15 MR. MATHAI: At the protest stage?

16 MR. BEGGS: Not whether there was a decision to
17 cross-examine or not, but it was simply not possible
18 legally to do so.

19 MR. MATHAI: Now, my understanding was that was
20 your argument rightly or wrongly with respect to the
21 statutory appeal. I didn't also understand it to be part
22 of your position with respect to the Registrar. Am I now
23 to understand it's not that you're separate from the
24 Registrar, it's that the Registrar did not have this
25 authority to do cross-examination. It's somewhat of a

1 shifting target, so I'm just trying to understand exactly
2 now what the argument is with respect to the Registrar's
3 ability to cross-examine; and why there wasn't an
4 opportunity given to Ms. Flood to be examined?

5 MR. BEGGS: Well, as I understand it the
6 Registrar has a pretty wide latitude under the Act to
7 follow the procedure that they see fit. It is not open
8 to the Attorney General to cross-examine in a proceeding
9 before the Registrar. I'm not sure if the question would
10 pertain to the Attorney General gave advice to the
11 Registrar to whether to cross-examine. Even is that
12 advice were given that would be privileged advice.

13 MR. MATHAI: Just so we're clear, I'm not looking
14 for the advice because you are correct that would be
15 privileged and I would not be entitled to it. I'm simply
16 asking whether or not the Attorney General of Canada, the
17 Crown, is acting for the Registrar, a Crown agency, with
18 respect to the protest. That's it. I get that you're
19 also saying that there's a distinction. You know, my
20 position down the road would be the Crown speaks as one.
21 But, in any event, all I want to know is whether or not
22 your department, Aboriginal Law Section of the Ontario
23 Regional Office, Department of Justice, was counsel for
24 the Registrar at the relevant time. Do you want to take
25 it under-advisement and get back to me?

1 MR. BEGGS: Yes, I'm thinking that might be what
2 I'll do. I'm still working out the relevancy in my head,
3 but I'll take it under-advisement.

4 --- UNDER-ADVISEMENT

5 MR. MATHAI: That's fine. So we'll list that as
6 a taken under-advisement. And you will let me know
7 whether or not you refuse down the road. To be clear
8 about what I'm looking for. I'm looking for an
9 undertaking, which you are taking under-advisement, to
10 determine whether or not any counsel with the Aboriginal
11 Law Section of the Ontario Regional Office of the
12 Department of Justice was acting or providing advice to
13 the Registrar, or any of his or her delegates with
14 respect to Ms. Flood's and Ms. Larkman's protest.

15 MR. BEGGS: Okay.

16 BY MR. MATHAI:

17 14 Q. Thank you. Mr. Penner, I'd ask that you turn
18 to paragraph 4 of your Affidavit?

19 A. Yes.

20 15 Q. In that paragraph you'd agree with me that
21 you list a number of items, correspondence mostly and
22 application forms that you believe would have been
23 relevant to the Privy Council at the time they made the
24 decision to enfranchise Ms. Flood. Is that correct?

25 A. I guess I would have said it would have been

1 or could have been.

2 16 Q. That's right. And, in fact, to use your
3 language, you say: It may be assumed that the following
4 documents were relevant for consideration by the
5 decision-maker. Is that correct?

6 A. That's correct, because we can't know for
7 sure.

8 17 Q. And that's fair. And I should have asked you
9 this: Before you drafted this Affidavit, of course?

10 A. With the assistance of counsel; we did it
11 together.

12 18 Q. And you reviewed this in preparation for
13 today?

14 A. Yes, I did.

15 19 Q. And you reviewed everything and you confirm
16 again that it's accurate?

17 A. That's correct.

18 20 Q. And you have no corrections or changes to
19 make to this Affidavit?

20 A. No. The only thing that we came up with
21 subsequent to this Affidavit is that we had one more
22 document that we would have put in, and I think we
23 brought a copy of that document.

24 21 Q. That's excellent. Because that's where I was
25 going with my question with regard to paragraph 4. Are

1 there any further documents between July, 1952 and
2 December, 1952?

3 A. Well, the document that I'm referring, in
4 fact, wouldn't have been a document before the Privy
5 Council. But we think it's an extraneous document that's
6 relevant to the issues raised.

7 MR. MATHAI: Could we go off the record for a
8 second.

9 --- OFF THE RECORD

10 BY MR. MATHAI:

11 22 Q. Okay, we can go back on the record. After we
12 went off the record counsel provided me with a copy of a
13 document relating to Joseph Albert Marleau that provides
14 a retirement date of August 1, 1953 on account of age. I
15 don't intend to make it an exhibit on this examination.

16 Referring back, then, to paragraph 4, Mr. Penner.
17 Can you review the documents listed in this paragraph,
18 and tell me if there are any further documents between
19 July and December of 1952 that you believe may be
20 relevant to the decision of the Privy Council?

21 A. I've done that and there are no other
22 documents that we are aware of.

23 23 Q. Mr. Penner, do you have a copy of Section 108
24 of the Indian Act as it was in 1951?

25 A. Not with me.

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1 24 Q. Counsel, do you have one?

2 MR. BEGGS: No. Sorry. Not that section.

3 BY MR. MATHAI:

4 25 Q. Counsel, I'm going to show you a copy of
5 Section 108 from the Indian Act, the citation being SC
6 1951 C29. And you're going to excuse the fact that I
7 marked it up, I'm just going to cross out the note I had
8 there. Can you just take a quick read of that provision
9 as well as Section 109, too, actually?

10 A. Okay.

11 26 Q. Did you get an opportunity to read section
12 109, as well?

13 A. Yes.

14 27 Q. You'd agree with me, Mr. Penner, that these
15 are the sections that detail enfranchisement and an Order
16 made pursuant to the enfranchisement to enfranchise a
17 First Nation person as it was in 1951. Correct?

18 A. These provisions speak to that, yes.

19 28 Q. And you'd agree with me that these provisions
20 are the relevant provisions for the purposes of what
21 happened to Ms. Flood in December of 1952. Correct?

22 A. There may be other provisions, but these ones
23 certainly look relevant to the enfranchisement of
24 Ms. Flood.

25 29 Q. And you would agree with me that Section 109,

1 if I can take a look over your shoulder, that the Order
2 that can be made enfranchising an individual can only be
3 done when a First Nation person has applied for
4 enfranchisement. Correct?

5 A. We're just talking about 109 now or both
6 together?

7 30 Q. And how it reads with 108?

8 A. As I understand it either an Indian applies
9 to be enfranchised, or they could become enfranchised
10 even if they haven't applied depending on circumstance.

11 31 Q. Let's talk about they could be enfranchised
12 depending on the circumstances, even if they haven't
13 applied. I expect what you're referring to is 108(2)
14 that allows for the enfranchisement, or allowed for the
15 enfranchisement of a First Nation Woman when she married
16 a non-First Nation person. Is that correct?

17 A. That's correct.

18 32 Q. And are there any other scenarios that you
19 know of where a person can be enfranchised without
20 application?

21 A. Well, I've never given this too much thought
22 because it's not the case that we had to deal with
23 because Ms. Flood wasn't married at the time. But it
24 looks to me that 108(3) suggests that if a wife is living
25 with a husband and the husband applies for

1 enfranchisement it seems that she becomes enfranchised,
2 as well.

3 33 Q. That's right. And that is also found in
4 108(1) where a First Nation man applies and his wife of
5 unmarried minor children. And, in fact, though, in sub 3
6 when it does refer to the fact when a woman is living
7 away from her husband who has applied for
8 enfranchisement, that woman will only be enfranchised if
9 she does, in fact, apply. Correct?

10 A. That's right.

11 34 Q. So they have to apply, right?

12 A. Well, they have to depending on the
13 circumstances. There are some circumstances where they
14 don't. If she was living with her husband she wouldn't
15 have to apply.

16 35 Q. That's right. And in the case of Ms. Flood
17 we're talking about her having to apply. Correct?

18 A. She would have had to apply, correct.

19 36 Q. Because in 1952 she was not married?

20 A. That's correct.

21 37 Q. And if she didn't apply there would be
22 nothing that involuntarily enfranchised her, correct?

23 A. Not that I'm aware of.

24 38 Q. Could the Privy Council make an Order
25 enfranchising her if she had not applied?

1 A. Not that I'm aware of.

2 39 Q. And, in fact, if they had done that they'd be
3 acting in excess of their jurisdiction, Correct?

4 MR. BEGGS: That is sort of a legal question you
5 are asking, so I will object to that.

6 --- REFUSAL

7 BY MR. MATHAI:

8 40 Q. Refused. Fair enough.

9 Now, Mr. Penner, I want to ask you a few
10 questions with respect to the Attorney General's
11 knowledge of Ms. Flood's literacy in 1952. As you know
12 Ms. Flood states in Affidavits that she was illiterate,
13 at that time. You understand that, correct?

14 A. Yes.

15 41 Q. And does the Attorney General have any direct
16 evidence contradicting that statement?

17 A. Not that I'm aware of.

18 42 Q. Does the Attorney General take the position
19 that Ms. Flood was literate in 1952?

20 A. I don't think there is any basis on which to
21 take that position or any other position. She says she
22 wasn't. We know that.

23 43 Q. What is the Attorney General's position with
24 respect to that assertion?

25 MR. BEGGS: Mr. Penner is not here as a

1 representative of the Attorney General in the sense of
2 providing legal positions. So I don't think that is a
3 relevant question to ask him what the Attorney General's
4 position is on her literacy.

5 MR. MATHAI: It's not a legal question I'm
6 asking; I'm not asking for a legal position. I'm asking
7 with respect to what is a fact in an Affidavit, that is
8 stated under oath, that she was illiterate in 1952 at the
9 time of signing the relevant documents. Whether or not
10 the Attorney General does not agree with that, and says
11 she was literate. I'm entitled to know that. If you say
12 that she wasn't illiterate, then I want to know what
13 evidence you intend to rely on. If as you say she was
14 literate, then we can just move on and then ask other
15 questions relating to what the Attorney General's
16 evidence will be with respect to Ms. Flood's knowledge of
17 what she was signing at the time. But, you know, this is
18 an issue with respect to a fact that is really at the
19 heart of this Judicial Review Application.

20 MR. BEGGS: Right. Well, I mean the question
21 that was posed to Mr. Penner as to whether the Attorney
22 General has any evidence is a fair question. And the
23 answer is that we don't have any evidence as to her
24 literacy or one way or the other, I'm not sure what the
25 wording was. But that's the general intent.

1 THE DEPONENT: I think I said we have her
2 evidence. But that is all the evidence I'm aware of.

3 BY MR. MATHAI:

4 44 Q. That is fair. But I'm also entitled to know
5 positions, and that's well established in case law with
6 respect to the relevancy of questions on
7 cross-examination. I'm entitled to know the position of
8 the opposing party with respect to what is the most
9 material, probably, issue that will be heard on this
10 Judicial Review Application.

11 MR. BEGGS: Right. And I'm just saying
12 Mr. Penner isn't here as a witness who is able to give
13 the official position in this litigation on various
14 issues. But, for example, you know, we'd still be doing
15 the evidence of Ms. Larkman tomorrow and there may be
16 evidence coming out of that that will change Canada's
17 position on that subject.

18 MR. MATHAI: That's fair. And I can ask the
19 question as of now, then, and ask you for an undertaking
20 to update that subject to what you hear from Ms. Larkman
21 tomorrow. But I'm still entitled to the position. I'm
22 reading paragraph 1:

23 "I am employed as General Counsel with Aboriginal
24 Law Section of the Ontario Regional Office of the
25 Department of Justice, which is representing the

1 defendant, the Attorney General of Canada ..."
2 Now, Mr. Penner is swearing an Affidavit on behalf of the
3 Attorney General of Canada on this matter. You are
4 counsel for the Attorney General of Canada. And if you'd
5 like, the question doesn't have to be directed towards
6 Mr. Penner, I can ask you, as counsel, to provide the
7 answer. Either way, I would like an answer on what is a
8 relevant question.

9 MR. BEGGS: I want to be fair about this.
10 Perhaps you could let me know the question again.

11 BY MR. MATHAI:

12 45 Q. What is the Attorney General's position with
13 respect to Ms. Flood's statement that she was illiterate
14 at the time of executing these documents from July, 1952
15 to December, 1952?

16 MR. BEGGS: Well, I guess our position is that we
17 have no information as to whether she was literate or not
18 in 1952. We are aware, of course, of her Affidavit which
19 stated that she was not literate in 1952. But at this
20 point, I guess, we are not challenging her literacy or
21 illiteracy as the case may be. We'll undertake to advise
22 you if that changes.

23 --- UNDERTAKING

24 BY MR. MATHAI:

25 46 Q. Now, I'm just using a quote that I just wrote

1 down here: At this point we are not challenging her
2 illiteracy. Do I take it to mean that you accept that
3 she was not illiterate? I'm just trying to make this as
4 simple as possible. Take out all the lawyering and get
5 to the simple answers.

6 We can go off the record, if you like?

7 MR. BEGGS: Well, we don't admit that she was
8 illiterate, I guess is the basic point. We have
9 questions about the overall reliability of her Affidavit.
10 Our position in a larger sense is that it might not
11 matter whether she was, in fact, illiterate in 1952 or
12 not. And I think that's the best expression I can give
13 right now of our position on her literacy. So I guess if
14 you have follow-up questions, I'll give the undertaking
15 to advise you of changes.

16 BY MR. MATHAI:

17 47 Q. But you still would maintain you are not
18 challenging her literacy, given your earlier answer: We
19 are not challenging her?

20 MR. BEGGS: We're not challenging it; but we're
21 not admitting it, either. But I don't mean to be evasive
22 about it.

23 BY MR. MATHAI:

24 48 Q. It's the nature of these things, I
25 understand.

1 Mr. Penner, with respect to your Affidavit. You
2 will agree with me that you noted some issues that you
3 say affected the reliability of the three Affidavits
4 filed by Ms. Flood. Correct?

5 A. That's correct.

6 49 Q. And one of them relates to the Chief, is that
7 correct?

8 A. That's correct.

9 50 Q. And who the relevant Chief was?

10 A. Yes.

11 51 Q. The second relates to Ms. Flood's claim that
12 she did not leave the reserve at 13 years of age.
13 Correct?

14 A. Yes.

15 52 Q. Do you also question the date in which she
16 applied for enfranchisement, and her knowledge of that
17 date?

18 A. Maybe you could refer me to a paragraph
19 number?

20 53 Q. Sure. And that would be the end of your
21 Affidavit under the title: "(g) Further Credibility
22 Issues."?

23 A. And your question about this is?

24 54 Q. It's not a question about it. It's just this
25 is one of your other issues with respect to credibility,

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1 her knowledge of the date of her application?

2 A. When she became aware of it?

3 55 Q. That's right?

4 A. Okay. That is what I didn't understand what
5 date you were referring to. Yes.

6 56 Q. Is that fair to say that those are the three
7 main critiques with respect to her Affidavits?

8 A. Well, I don't know that I would characterize
9 them as the "three main," but they are three of them.
10 There were more than three, I believe.

11 57 Q. And what other ones are there?

12 A. There was the evidence of payment of band
13 funds to Laura Batisse.

14 58 Q. And if we hold right there for a second. The
15 payment of the funds. Is there any direct evidence that
16 suggests that she was provided the funds?

17 A. There is, I guess, we would call it
18 inferential evidence that she was provided some funds.
19 There was some question in her Affidavit about whether a
20 cheque was intended for her or, in fact, was intended for
21 the Indian Nation.

22 59 Q. Now, you speak of "inferential evidence" that
23 she would have received this cheque. Is that correct?

24 A. Uh'hmm.

25 60 Q. And I'm guessing when you say "inferential"

1 one of the things that you're speaking of is a letter
2 from Mr. Marleau to Ms. Laura, at the time, Batisse,
3 dated December 22, 1952. Is that correct?

4 A. Maybe you could just refer me to it?

5 MR. BEGGS: Paragraph 37.

6 BY MR. MATHAI:

7 61 Q. Paragraph 37, I thank my friend for that?

8 A. Yes, December 22, 1952 a letter from the
9 Indian Nation to Laura Batisse stating that enclosed is
10 "..... "cheque in your favour in the amount of \$82.23,"
11"

12 62 Q. And do you have a copy of my client's
13 "SUPPORTING AFFIDAVIT AND DOCUMENTARY EXHIBITS?"

14 A. I do.

15 63 Q. If you can turn to tab V. This is the letter
16 you're referring to from December 22, 1952, is that
17 correct?

18 A. That's right.

19 64 Q. And do you have an executed copy of this
20 document?

21 A. This is the only copy that I believe we have
22 in our possession.

23 65 Q. And it is unexecuted, correct?

24 A. There is no signature, that's correct.

25 66 Q. So it is unexecuted?

1 A. I don't know if that's the right term for it.
2 It's not signed.

3 67 Q. Okay. Can you find me any other letter from
4 Mr. Marleau to either Ms. Batisse, or to anybody else in
5 this file where he has not affixed his signature?

6 A. I'd have to flip through it to answer that.

7 MR. MATHAI: And, that's fine, we can go off the
8 record and you can take a look.

9 --- OFF THE RECORD

10 BY MR. MATHAI:

11 68 Q. So while off the record counsel and
12 Mr. Penner reviewed the documents and found one other
13 document that does not have a signature, and that is tab
14 M of the "SUPPORTING AFFIDAVITS AND DOCUMENTARY
15 EXHIBITS," it's a letter that purports to be from
16 Mr. Marleau to Ms. Laura Batisse dated October 2, 1952.
17 Mr. Penner, do you have a version of this letter where
18 there is a signature on it?

19 A. Not that I'm aware of, no.

20 69 Q. So tab M and tab V would represent the only
21 two letters where there is no signature for Mr. Marleau.
22 Is that correct?

23 A. Yes, that's right. Except for the one that
24 was signed on his behalf by his assistant.

25 MR. BEGGS: We assume his assistant.

1 BY MR. MATHAI:

2 70 Q. And the document you're referring to is found
3 at tab H of the SUPPORTING AFFIDAVIT OF DOCUMENTARY
4 EXHIBITS, correct?

5 A. Yes.

6 71 Q. Now, if you could turn back to tab V for a
7 second. And there you'll see it's dated December 22,
8 1952. Correct?

9 A. Yes.

10 72 Q. And it purportedly is sent from Mr. Marleau
11 to Ms. Laura Batisse. Correct?

12 A. Yes.

13 73 Q. And Mr. Marleau, you'll see the signature
14 there it says: "Superintendent, Sturgeon Falls Indian
15 Agency."?

16 A. Yes.

17 74 Q. And at the top you'll also see that it says,
18 "Sturgeon Falls Ontario?

19 A. Yes.

20 75 Q. So it's being sent from Sturgeon Falls, is
21 that what we can surmise from reviewing this?

22 A. Yes.

23 76 Q. And do you have any information, at this
24 time, as to whether Mr. Marleau was located out of the
25 Sturgeon Falls area?

1 A. Yes.

2 MR. BEGGS: That's our understanding is that he
3 was located in Sturgeon Falls.

4 BY MR. MATHAI:

5 77 Q. In fact, the document you provided, it says
6 Province of Ontario Agency, Sturgeon Falls. And you'll
7 see there that it indicates Ms. Laura Batisse,
8 B-A-T-I-S-S-E, is in Matachewan, Ontario. And it was
9 sent to Matachewan, Ontario. Correct?

10 A. That's correct.

11 78 Q. Is it your understanding when it was sent to
12 Matachewan, Ontario it's to the town and not to the
13 Reserve?

14 A. I have no way to know that.

15 79 Q. And are you familiar with this area?

16 A. Not personally.

17 80 Q. Have you been up to the area?

18 A. Not to my knowledge.

19 81 Q. And do you know, then, maybe you do or don't,
20 do you know if Sturgeon Falls is close to Matachewan?

21 A. Do you?

22 MR. BEGGS: I know it's not particularly close,
23 and there might be some evidence in her Affidavit. If I
24 could just take a moment?

25 MR. MATHAI: Yes.

1 MR. BEGGS: With respect to the question about
2 whether Matachewan is close to Sturgeon Falls. Myself,
3 as counsel, have information based on a map which is not
4 in evidence. But Exhibit T out of Mr. Penner's
5 Affidavit, even with one of the pay lists in 1952,
6 actually, has some extra documents in there dealing with
7 travelling. I'm not sure what conclusions can
8 necessarily be drawn, but there it is. I'll just say
9 what it says on page 2 there is some travelling expenses
10 noted by Mr. Marleau for 1952 saying he left Sturgeon
11 Falls from Matachewan on the 13th, came back on the 15th
12 and claimed car mileage of 509 miles. I'm not sure how
13 much use this evidence is. But I think that suggests
14 it's quite a distance from Sturgeon Falls to Matachewan.

15 MR. MATHAI: That would be two ways.

16 MR. BEGGS: That would be two ways. So, roughly,
17 half, 250 miles one way. Of course, we don't know what
18 route he took. That's the only evidence I know of.

19 BY MR. MATHAI:

20 82 Q. Sure. Actually, that's helpful. Thank you.
21 The only reason I ask, Mr. Penner is this letter that is
22 dated December 22nd encloses two items. Correct?

23 A. Yes.

24 83 Q. And the first item appears to be a cheque in
25 the amount of \$82.23?

1 A. Yes.

2 84 Q. And the second item is a Certificate of
3 Enfranchisement?

4 A. Yes.

5 85 Q. And if I understand the Attorney General's
6 position you would argue, or you argued that the fact
7 that Ms. Flood signed the enfranchisement card and
8 returned it would suggest that she did receive this
9 letter?

10 A. I think that makes sense.

11 86 Q. And, in fact, that's, I believe, what you
12 argue in the Affidavit. Correct?

13 A. Well, I don't know if I'm arguing in an
14 Affidavit, but I think I said that.

15 87 Q. Fair enough. That's what you stated in your
16 Affidavit. Now, if we can turn to that actual
17 application?

18 MR. BEGGS: This is the Certificate that she
19 signed, is that what you're looking for?

20 MR. MATHAI: That's right.

21 MR. BEGGS: It's this Affidavit under Exhibit E.
22 In the Affidavit of Angel Larkman at Exhibit E is the
23 Affidavit of Laura Mary Flood from 1998. Exhibit Q to
24 that Affidavit is, I think, what counsel is referring to.

25 BY MR. MATHAI:

1 88 Q. That is the document that I'm referring to.
2 And, Mr. Penner, just to make sure we're all on the same
3 page. If you go to your Affidavit at paragraph 37 of
4 your Affidavit around one, two, three, four lines down it
5 says:

6 "...Marleau requests that the latter document
7 be dated signed, dated, and returned. It appears
8 that the letter received as Laura Batisse
9 admitted to signing the certificate, which bears
10 her signature as well as that of the Minister..."

11 It refers to:

12 "(Exhibit "Q" to the Affidavit of Laura Mary
13 Flood, dated April 28, 1998, ..."

14 A. Yes.

15 89 Q. You see that there, correct?

16 A. Yes.

17 90 Q. Now, you would agree that the document that
18 we're looking at at Exhibit "Q", in my client's
19 Affidavit, is the document you're referring to in
20 paragraph 37, the document that was signed and
21 returned?

22 A. That's correct.

23 91 Q. And the date of this is December 22nd.
24 Correct?

25 A. I see that date on here, yes.

1 92 Q. So on the theory that the Attorney General, I
2 call it a "theory" only because there is no actual hard
3 facts one way or the other, somehow that letter made its
4 way down from Sturgeon Falls to Matachewan and was signed
5 on the very same day. Correct?

6 A. It may be that that's so. The dates are the
7 same. The date of the letter enclosing the Certificate
8 is dated December 22nd, and the date that appears on the
9 Certificate above Laura Batisse's signature is also
10 December the 22nd, 1952.

11 93 Q. And, counsel, I'm going to ask for an
12 undertaking to determine whether or not Mr. Marleau made
13 any mileage claims for December 22, 1952?

14 A. Sorry, for December 22nd?

15 94 Q. 1952?

16 MR. BEGGS: I will give the undertaking to look.
17 But I have no idea how easy it will be to find it if it
18 still exists. We'll take a look and make reasonable
19 effort to find that.

20 MR. MATHAI: And if it is available to produce
21 same?

22 MR. BEGGS: Okay.

23 MR. MATHAI: Is that an undertaking?

24 MR. BEGGS: If it is available we will make
25 reasonable efforts to locate it, and we will produce it.

1 --- UNDERTAKING

2 BY MR. MATHAI:

3 95 Q. Mr. Penner, do you have any explanation for
4 how this letter would have been drafted on the 22nd, made
5 its way down to Matachewan which is some 250 miles away,
6 signed and executed on the same day?

7 A. I have no explanation for that.

8 96 Q. And I ask this question not to be smart, or
9 anything like that, but at the time in 1952 would you
10 agree with me the facsimile was not available?

11 A. I think that's fair.

12 97 Q. And, clearly, not email, of course?

13 A. Yes.

14 98 Q. Looking at that do you find it strange that
15 it made its way down and signed all within one day?

16 A. I don't know that I find it strange. But I
17 can't provide an explanation as to how that came to be.

18 99 Q. You know, by way of an example you'll recall
19 that you had shown me another document, rightfully, that
20 was from Mr. Marleau that was not signed by Mr. Marleau.
21 If you could flip to that it's tab M?

22 A. Yes.

23 100 Q. And there you see the letter that purports to
24 be from Mr. Marleau to Ms. Batisse is dated October 2,
25 1952. Correct?

1 A. Yes.

2 101 Q. And, again, in this letter it says will you
3 complete the forms for enfranchisement, sign it and send
4 it back. Correct?

5 A. Yes.

6 102 Q. If you flip to the next document it appears
7 Ms. Batisse did sign a document, an "APPLICATION FOR
8 ENFRANCHISEMENT?"

9 A. Yes.

10 103 Q. And the date of that signature is the 10th of
11 October?

12 A. Yes.

13 104 Q. Some eight days after it was sent?

14 A. Yes.

15 105 Q. And that would make sense taking into account
16 the distance that has to be travelled for the letter to
17 make it there; Canada Post is slow in 2011, so I can only
18 imagine what it would have been like in 1952. Correct?

19 MR. BEGGS: I don't think I'm going to let
20 Mr. Penner answer a question of what Canada Post was like
21 in 1952.

22 --- REFUSAL

23 BY MR. MATHAI:

24 106 Q. But you would agree that the time lag makes
25 sense, given the distance that this letter and enclosures

1 had to travel back in 1952?

2 A. It makes sense.

3 107 Q. Now, Mr. Penner, you've read the Affidavits
4 of Ms. Flood. Correct?

5 A. I have.

6 108 Q. And you have read Ms. Larkman's Affidavit, as
7 well?

8 A. Yes.

9 109 Q. And you understand that in one of Ms. Flood's
10 Affidavits she indicates that she didn't move off the
11 Reserve until she was 19 years old, in/or around that
12 time?

13 A. Yes.

14 110 Q. And you also understand in her application "
15 that it indicates that she was off the Reserve for 13
16 years. Right?

17 A. I'm aware that she says that.

18 111 Q. And you agree with me, though, that the
19 application says 13 years off the Reserve. Correct?

20 A. Maybe you can confirm that to me?

21 112 Q. Sure. I ask you to turn to tab H of the
22 "SUPPORTING AFFIDAVIT OF DOCUMENTARY EXHIBITS?"

23 A. Yes.

24 113 Q. You'll see there in the second paragraph:

25 "Miss Batisse has been living away from the

1 Reserve for 13 years and has resided in
2 Matachewan for 13 years. . . ."

3 A. Yes.

4 114 Q. "She has been steadily employed for the past
5 four years as a house-keeper and camp cook
6 with an approximate annual income of
7 \$600.00."

8 Correct?

9 A. Yes.

10 115 Q. So it appears that Mr. Marleau is indicating
11 to the Indian Affairs Branch -- actually, I'm not sure
12 who he's writing to, it appears he's writing to the
13 Indian Affairs Branch, Department of Citizenship &
14 Immigration in Ottawa?

15 A. Yes.

16 116 Q. Indicating that she had been living off the
17 Reserve for 13 years?

18 A. Yes.

19 117 Q. As of what appears to be July 29, 1952?

20 A. July 28, 1952. Well, there is two dates
21 there.

22 118 Q. Sure. That's fine. As of July 28, 1952?

23 A. Yes.

24 119 Q. You would agree with me that Ms. Larkman was
25 born in 1926. Correct?

1 A. Yes.

2 120 Q. March 1, 1926, I believe?

3 A. There seems to be some discrepancy whether it
4 was February 1st or March 1st. But 1926 I think is
5 correct.

6 121 Q. And you would agree with me, then, that doing
7 the math if she had lived off the Reserve for 13 years?

8 A. Yes.

9 122 Q. Then she would have been 13 at the time she
10 left the Reserve. Correct?

11 A. That's right.

12 123 Q. There seems to be a discrepancy of about six
13 years?

14 A. When you say "discrepancy," I'm not sure what
15 you're referring to. The discrepancy? The discrepancy
16 between what and what?

17 124 Q. Sorry. Between her claim and the claim made
18 by Mr. Marleau in this document?

19 A. Yes. Just to be clear, her claim that she
20 was 19 when she left?

21 125 Q. That's right?

22 A. As opposed to doing the math here that
23 suggest she was 13 when she left. Yes, I appreciate
24 there is a discrepancy.

25 126 Q. And if you flip to tab G?

1 A. Yes.

2 127 Q. You'll see there is another document here,
3 and it appears to be a letter to Ms. Laura Batisse,
4 signed by Mr. Marleau where he's asking a number of
5 questions. Correct?

6 A. Yes.

7 128 Q. And it appears to be filled out?

8 A. Yes.

9 129 Q. "Length of residence away from the Reserve 13
10 years." Correct?

11 A. Yes.

12 130 Q. "How long you have been residing in
13 Matachewan (another) 13 years."?

14 A. Yes.

15 131 Q. Now, with respect to item number 2, "how long
16 you have been residing in Matachewan." Do you interpret
17 that as meaning the town or the Reserve?

18 A. It's hard to tell because there is nothing
19 here that clearly makes the distinction Matachewan, the
20 town or Matachewan, the reserve. In terms of the math
21 it's possible to surmise that she had been living in the
22 town of Matachewan, according to this, for 13 years and
23 had been prior to that residing in Matachewan Reserve for
24 13 years. That is one way to read it. But I can't say
25 with any certainty that is what was intended. It could

1 be that the 13 years referred to in 2 is the exact same
2 13 years referred to in 1, for example.

3 132 Q. Although, in fairness, the first question
4 makes it distinct, it says "reserve" as opposed to using
5 the word "Matachewan?"

6 A. That's right.

7 133 Q. And given that distinction would it be fair
8 to say that it looks like they're suggesting 13 years on
9 Reserve, 13 years in the town?

10 A. I have no reason to dispute that
11 interpretation or to prefer that interpretation or not.
12 That makes sense to me as a reasonable interpretation of
13 this document.

14 134 Q. And if you'd turn now to tab F. This appears
15 to be the first document where there is a letter
16 purported to be from Ms. Batisse to Mr. Marleau, even
17 though "Marleau" is spelled incorrectly, asking for the
18 papers necessary to release me from the treaty. Is that
19 correct?

20 A. Yes.

21 135 Q. Is it fair to say this is what initiates the
22 process?

23 A. It appears to be, and I think it probably is.
24 Whether there's any other correspondence that preceded
25 this that I'm not familiar with, it's possible. But this

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1 looks like it initiated the process.

2 MR. BEGGS: We're not aware of anything that came
3 before that.

4 BY MR. MATHAI:

5 136 Q. Okay. And you'll agree with me there is
6 nothing in here that says 13 years off the Reserve, 13
7 years in the town?

8 A. No, I agree.

9 137 Q. Going back to the second document, and by
10 second document I mean tab G, you'd agree with me there
11 is no signature here from Ms. Batisse. Correct?

12 A. I don't see one. That's correct.

13 138 Q. In fact, there is nothing in here that
14 indicates that she's actually the one who typed out the
15 information?

16 A. That's correct.

17 139 Q. It looks like it is typed out, but there is
18 no signature from Ms. Batisse or any other individual
19 other than Mr. Marleau who sent the letter. Correct?

20 A. That's correct.

21 140 Q. Now, I want to ask you a few questions, and
22 it doesn't come from your Affidavit but with respect to
23 the move of members of the band, off of Reserve, to
24 Matachewan. It is my understanding that at some point, I
25 guess what it would be called at the time was Indian and

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1 Eskimo Affairs would have purchased a number of houses
2 for Reserve members in the town in order to move them off
3 the Reserve into the town. Are you aware of that?

4 A. I'm not.

5 141 Q. Now, the reason I ask is because that may be
6 helpful to understand the date that, in fact, Ms. Flood
7 left the Reserve if that is accurate. So I'm going to
8 ask, counsel, for an undertaking to determine whether or
9 not INAC, or at the time Indian and Eskimo Affairs, had
10 purchased houses for members of the First Nation Reserve,
11 Matachewan. Just for that undertaking, what year that
12 would have been?

13 MR. BEGGS: So I can clarify, I guess, or narrow
14 the search, if you will?

15 MR. MATHAI: Sure.

16 MR. BEGGS: Maybe we should go off the record for
17 a second.

18 --- OFF THE RECORD

19 MR. BEGGS: Go back on the record. Okay. So I
20 think the undertaking asked is to determine whether INAC,
21 or whatever it was at the time, purchased houses for
22 members of the band in the Town of Matachewan between the
23 years 19, say, 38 to 1947 and if so what year or years
24 those purchases took place, occurred?

25 MR. MATHAI: That's right.

1 MR. BEGGS: I guess I'll take it under-advisement
2 only for the purpose of -- I'm willing to make inquiry,
3 but my taking it under-advisement because I don't know if
4 it's a massive task to do. It doesn't sound like it
5 would be, I assume it wouldn't be that large a task. It
6 might be something that takes a long time. I don't know
7 how long it would take to find that information if it
8 exist.

9 MR. MATHAI: You can see it's relevant. It's
10 just a question of how long it's going to take.

11 MR. BEGGS: Well, I'm assuming it's not a big
12 task in the sense that the band wasn't that big, and I'm
13 assuming the town wasn't that big. So it's not like
14 we're talking thousand of purchases.

15 MR. MATHAI: At that time we were talking at most
16 67. At the time Laura under the treaty list becomes her
17 own number she's 67.

18 MR. BEGGS: That's true. But I'd like to take it
19 under-advisement just to determine the magnitude of this
20 task. But I'm willing to make the undertaking to request
21 the information if it exists.

22 --- UNDER-ADVISEMENT/UNDERTAKING

23 BY MR. MATHAI:

24 142 Q. Thank you. Mr. Penner, do you know of any
25 other documents that would have been held either by the

1 band or INAC that would reflect who was living on the
2 Reserve, and at what time?

3 A. I don't.

4 143 Q. Mr. Penner, at this time, let's say from 1930
5 to 1950, to use a rough estimate, am I right in assuming
6 that INAC, or whatever it was called at that time, would
7 have been in control of band lists?

8 A. Band lists. You mean lists of the members of
9 the band? That's what you mean by band list?

10 144 Q. Yes?

11 A. I believe that's so, yes, certainly of this
12 band and other treaty nine bands.

13 145 Q. And do you know whether these band lists at
14 the time would have included a designation as to whether
15 or not the person lived on Reserve or off Reserve?

16 A. I haven't seen lists that reflect that.

17 146 Q. So is that "I don't know," or is that: No,
18 generally they don't?

19 A. Well, I can't say I don't know, I haven't
20 seen them. So I assume that they don't reflect that.
21 The ones I've seen, the lists that are in these materials
22 do not reflect that.

23 MR. BEGGS: Sorry. Just so, perhaps, you both
24 understand what each other is talking about.

25 THE DEPONENT: Because you don't?

1 MR. BEGGS: I just want to clarify that I do.
2 Are we talking about a list that is different from the
3 pay lists that we have attached?

4 THE DEPONENT: That's what I mean. The list that
5 are in these materials do not reflect that, that's clear.
6 Those are the lists that I'm familiar with.

7 BY MR. MATHAI:

8 147 Q. Well, the pay lists don't explicitly refer to
9 who is on Reserve or off Reserve, that I agree with.
10 Explicitly it doesn't say. The pay lists are not the
11 band lists, you would agree with that?

12 A. I don't know that.

13 148 Q. So I'm going to ask for an undertaking,
14 counsel, to first determine whether or not there is a
15 separate band list apart from the pay lists that have
16 already been included?

17 MR. BEGGS: Yes.

18 --- UNDERTAKING

19 BY MR. MATHAI:

20 149 Q. If there is I'd ask that you determine
21 whether or not those band lists indicate whether or not a
22 person was living on Reserve or off Reserve, and if it
23 does then I'd ask that you produce the same. Maybe to
24 help you I can tell you why I think it's relevant?

25 MR. BEGGS: I think I know, but it would be good

1 to get it on the record, sure.

2 MR. MATHAI: Sure. The reason I think it's
3 relevant is as we can find the document that's found at
4 tab G of the "SUPPORTING AFFIDAVITS AND DOCUMENTARY
5 EXHIBITS," you have a letter dated July 8, 1952 that
6 states that Ms. Batisse, Laura Flood would have lived off
7 the Reserve for 13 years, on the Reserve for 13 years.
8 Now, at the time this letter was written she would have
9 been 26. It's a nice even split, 13/13. So it's all
10 very convenient. Obviously, my client disagrees with
11 that. She stated in her Affidavit that she would have
12 left when she was 19 years old, which would have put more
13 time on the Reserve and less time in the town. There is
14 no definitive answer in the documents that advises us
15 when she did leave the Reserve. And I believe that these
16 band lists may provide some assistance in that regard.
17 And that's why I've asked the questions in the way I have
18 to first make sure the band lists are different from the
19 pay lists, which I think they are. And, second, to see
20 whether or not they actually indicate who is on the
21 Reserve and who is off the Reserve. Because if it does
22 indicate that then, clearly, it would be of some
23 assistance to another material issue on this Judicial
24 Review Application, that being whether or not the
25 information in this document is accurate.

1 MR. BEGGS: Okay. Again, we're talking between
2 1930 and 1950. So I'll give the undertakings. In fact,
3 I don't have a problem if we find them, if they exist.
4 If there are separate band lists that exist I don't have
5 a problem giving them to you either way. But, you know,
6 just for privacy purposes you're aware there is some
7 personal information of people there.

8 MR. MATHAI: Any privacy concerns I concede can
9 be redacted from the document and then can be provided to
10 me in the similar way you put forward information of
11 other members in First Nation in these documents already.

12 MR. BEGGS: So we'll make that undertaking for
13 the years 1930 to 1950. Is that all right?

14 MR. MATHAI: Yes, that is fine. Yes, that is
15 fine.

16 --- UNDERTAKING

17 MR. MATHAI: You could even, and it's up to you,
18 but you could even limit it, if you like, even more
19 because the allegation based on this document is that she
20 left when she was 13.

21 MR. BEGGS: Right.

22 MR. MATHAI: So you could limit it to that based
23 on that, if you'd like. But I'm happy with 30 to 50.

24 MR. BEGGS: Okay.

25 BY MR. MATHAI:

1 150 Q. Now, Mr. Penner, I think we already went over
2 this but there is nothing on this document that indicates
3 that she actually filled this document out. Correct?

4 A. That's correct.

5 151 Q. Or that she approved of the information that
6 was on here?

7 A. That's correct.

8 152 Q. And you'd agree with me that this is the
9 information by which Mr. Marleau, indeed the Privy
10 Council when giving an Order, would rely upon in
11 determining whether or not someone could qualify as being
12 enfranchised. Correct?

13 A. It would be one of the documents, yes.

14 153 Q. And, in fact, in terms of providing
15 information it would be this document and then
16 potentially the application. Correct?

17 A. Those would be important documents, yes.

18 154 Q. Let's take a look at the application. You'll
19 recall that it was at tab N, as in Nancy. Now, you'll
20 see in this document we have her name filled out:

21 "1. I am a member of the Matachewan Band of
22 Indians situated in the Province of Ontario. My
23 Band No. is 67 and I am of the full age of
24 twenty-one years.

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

1 housekeeper."

2 A. Yes.

3 155 Q. And then there is a blank line:

4 "And I am capable of assuming the duties and
5 responsibilities of citizenship, and if
6 enfranchised will be capable of supporting myself
7 and dependents."

8 A. Yes.

9 156 Q. And, at this time, Ms. Flood would have had
10 two dependents. Correct?

11 A. That's my understanding.

12 157 Q. And when I say "this time" for the purposes
13 of the record I'm talking about October 10, 1952?

14 A. Yes?

15 158 Q. And, in fact, subsequent to this document she
16 would have a third child?

17 A. Yes.

18 159 Q. And that third child was born prior to the
19 Order, correct?

20 A. I believe that's right, yes.

21 160 Q. And you'd agree with me, Mr. Penner, that
22 simply signing that I can assume the duties of
23 citizenship and support my dependents without anything
24 more would not be sufficient to satisfy the
25 enfranchisement provisions of s. 108. Correct?

1 A. I believe that more information would be
2 required.

3 161 Q. That's right. Because there's still a
4 statutory obligation to ensure that the person can, in
5 fact, assume the duties and responsibilities of
6 citizenship and can support themselves?

7 A. Correct. I think that's so, yes.

8 162 Q. Because s. 108 and s. 109 of the Indian Act
9 it's not meant to be a rubber stamp, someone just submits
10 a name and automatically you're enfranchised. Correct?

11 A. That's my understanding.

12 163 Q. So it really wouldn't be this document,
13 meaning document N, that suggest that she satisfies the
14 conditions of 108. Correct?

15 MR. BEGGS: I don't know if you can comment on
16 what the Indian Nation would have relied on, or had in
17 mind apart from the correspondence.

18 MR. MATHAI:

19 164 Q. And I get that. Maybe I'll ask it this way:
20 This document doesn't indicate how much money she makes.
21 Correct?

22 A. That's correct.

23 165 Q. It doesn't indicate how long she's been off
24 the Reserve?

25 A. That's correct.

1 166 Q. It doesn't indicate how long she was living
2 on the Reserve?

3 A. That's also correct.

4 167 Q. Is there anything in this document that could
5 be fairly relied upon in order to suggest that s. 108 is
6 complied with?

7 A. Maybe you could repeat that question?

8 168 Q. Sure. Is there anything in this application,
9 just looking at this application, not any other
10 documents, at this point, is there anything in this
11 application that would satisfy the pre-conditions of
12 enfranchisement set out in 108?

13 MR. BEGGS: I think that's asking him a legal
14 question whether this information is sufficient to
15 satisfy s. 108.

16 BY MR. MATHAI:

17 169 Q. So is that a refusal?

18 MR. BEGGS: Yes.

19 --- REFUSAL

20 MR. BEGGS: Could we go off the record, for a
21 minute?

22 MR. MATHAI: Sure.

23 --- OFF THE RECORD

24 BY MR. MATHAI:

25 170 Q. We can go back on the record. Mr. Penner, if

1 we can turn to tab H?

2 A. H, yes.

3 171 Q. And this is the letter we looked at earlier,
4 dated July 28, 1952 from Mr. Marleau to the Indian
5 Affairs Branch. Correct?

6 A. Yes.

7 172 Q. And here you'll see, again, he indicates that
8 she's been living away from the Reserve for 13 years.
9 Correct?

10 A. Yes.

11 173 Q. And has resided in Matachewan for 13 years?

12 A. Yes.

13 174 Q. And also has the income?

14 A. Yes.

15 175 Q. And you'd agree with me that none of that
16 information can be found in the application that was
17 actually filled out. Correct?

18 A. The application located at tab N.

19 176 Q. N. Other than the fact that application says
20 she was a housekeeper. But it does not refer to the
21 annual income of how long she's been living off the
22 reserve. Correct?

23 A. That's correct.

24 177 Q. So is it fair to say that that information
25 only comes from this July 18th letter?

1 MR. BEGGS: I don't think Mr. Penner can answer
2 whether Mr. Marleau had any other information.

3 BY MR. MATHAI:

4 178 Q. Based on what you've reviewed is there any
5 other document that would contain this information that
6 is reflected in the July 28, 1952 letter?

7 A. Well, there's the document dated July the
8 18th that contains some of that information.

9 179 Q. And that's the only document, correct?

10 A. Well, we're now looking at two documents.

11 180 Q. Sorry. That's correct the only document that
12 contains the information that is reflected in the July
13 28th letter?

14 A. The July 18th document.

15 181 Q. That's right?

16 A. That I'm aware of, yes.

17 182 Q. Again, this is the July 18th letter that is
18 not executed by my client?

19 A. Correct.

20 183 Q. And then this letter goes out on July 28th,
21 correct, the letter found at tab H?

22 A. Yes.

23 184 Q. And it has what appears to be a received
24 stamp of July 29th?

25 A. Yes.

1 185 Q. And then Ms. Flood, or at the time Laura
2 Batisse, her letter that asks essentially for a status
3 update follows. Correct? It's August 16, 1952, correct,
4 which is tab I?

5 A. What was your question about this letter?

6 186 Q. Just simply that you would agree with me it
7 comes after Mr. Marleau has already sent on the
8 information contained in the earlier letter, the July
9 18th letter?

10 A. Yes.

11 187 Q. In this letter you'll see has Ms. Batisse's
12 signature there, correct?

13 A. Yes.

14 188 Q. And it also has brackets, "(Laura Batisse)"?

15 A. Yes.

16 189 Q. And the signature is underneath it,
17 correct?

18 A. Yes.

19 190 Q. I'd ask you to turn to your Affidavit. In
20 particular, if you could turn to paragraph 15. In the
21 second half of that paragraph, which is at page 8?

22 A. Yes.

23 191 Q. Four sentences down it says:

24 ".....I have been further advised by Pat Bertrand
25 and truly believe that being paid on the reserve

1 does not necessarily mean one is residing on the
2 reserve and that annuities for minor children are
3 paid to the head of the family, regardless of
4 whether those minor children are living with that
5 person."

6 That's what you were advised by Mr. Bertrand?

7 A. Yes, by Pat Bertrand.

8 192 Q. Now, you spoke directly to Mr. Bertrand,
9 then, and he told you that?

10 A. No, I did not speak directly to, I think it
11 was Ms. Bertrand. I'm not sure.

12 193 Q. Would Pat be a woman?

13 A. I don't know. No, it wasn't direct.

14 194 Q. Okay. And so who, then, directly spoke to
15 Pat Bertrand?

16 A. Information that I received with respect to
17 information contained in this Affidavit, if it wasn't
18 based on my own information, knowledge and belief was
19 received either by email correspondence or by telephone;
20 with respect to Pat Bertrand that would be, it wasn't
21 directly from Ms. Bertrand.

22 195 Q. Okay. So when you say, "it wasn't directly
23 from Ms. Bertrand," who was it directly from then?

24 A. I would have to go back and look at the email
25 correspondence to determine how that was communicated to

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1 me..

2 196 Q. Now, we may be just splitting hairs, is what
3 you're saying that you received an email from Pat
4 Bertrand? Or that you received an email from someone
5 other than Pat Bertrand?

6 A. Well, for example, and this is not uncommon,
7 we would have a contact at Indian Affairs who with
8 respect to certain types of questions might refer us to
9 somebody else in a particular area with more
10 understanding of that particular area. They might get
11 back to us directly by way of email, or they might get
12 back to us indirectly by an attached email through the
13 person that we were initially in contact with. Somebody
14 may phone us back and say: I've been told this by so and
15 so. There's any number of different ways that
16 information gets transmitted.

17 197 Q. So it may, in fact, have been third-hand
18 information?

19 A. It's possible. I can't say, in this
20 particular case.

21 198 Q. Now, based on your understanding of these
22 treaty lists, am I right in that what was expressed to
23 you was that whoever the head of the household was
24 received the annuities until the person went from being a
25 minor to an adult?

1 A. That's my understanding.

2 199 Q. And at that time what would have been the age
3 that you turn into an adult?

4 A. I understand that to be 21.

5 200 Q. Is it your understanding that if you left the
6 Reserve you were still entitled to the annuity?

7 A. As long as you are still a member of the band
8 I think that's right, yes.

9 201 Q. Do you know whether or not the annuity was
10 paid out on the Reserve or was it paid out in town?

11 A. My understanding it was paid out on the
12 Reserve.

13 202 Q. And where does that understanding come from?
14 Is that also from Mr. Bertrand/Ms. Bertrand, or whomever
15 else would have informed you?

16 A. It's also just general knowledge I have that
17 the payment of annuities was an annual event that
18 involved some ceremony historically, and that people were
19 expected to attend in order to receive their payment.

20 203 Q. I'd ask you to turn to the 1947 pay list?

21 A. The tab?

22 204 Q. It's at tab O of your Affidavit?

23 A. Yes.

24 205 Q. Tab O of the Affidavit, for the record, is
25 the treaty pay list from 1947. Is that correct?

1 A. Yes.

2 206 Q. And the date that it was given out it looks
3 like June 19, 1947?

4 A. Yes.

5 207 Q. And at the top you'll see: "Band Paid at
6 Matachewan." Correct?

7 A. Yes.

8 208 Q. Now, if we scroll down a bit and the best way
9 I guess to do this is looking at the page numbers in the
10 top right corner?

11 A. Yes.

12 209 Q. You'll see page 8?

13 A. Yes.

14 210 Q. There is the name, "Harry Batisse?"

15 A. Yes.

16 211 Q. And it says: "Taken by Son George."?

17 A. Yes.

18 212 Q. Now, at that time George would not have been
19 the head of the Batisse household, would he?

20 A. I think not.

21 213 Q. But irrespective of that George, for some
22 reason, is taking Harry's annuities, which at the time
23 appears to be \$28. Correct?

24 A. Yes.

25 214 Q. Now if we flip to page 14?

1 A. Yes.

2 215 Q. It appears that George Batisse's date of
3 birth is indicated as May 13, 1921. Is that correct?

4 A. Sorry. Where are you looking at? Oh, over
5 here.

6 216 Q. I apologize, it's 58?

7 A. Right, that's page 13. Okay, you're just
8 using the numbers on the right. That's fine. Okay. So,
9 yes, number 58, date of birth, 13th of May, 1921.

10 217 Q. And have you no reason to doubt that date of
11 birth is accurate, correct?

12 A. For?

13 218 Q. For Mr. Batisse?

14 A. For George Batisse that's referred to as band
15 member number 58, yes.

16 219 Q. And if we do some math on his date of birth,
17 being 1921, we just add 21 to that we would think by 1942
18 he would be 21 years of age and receiving his own
19 annuity, correct, based on the theory of annuities that
20 have been explained to you by Mr. Bertrand?

21 A. That as of 1942 he would have been 21, yes.

22 220 Q. So if we go to 1942 in the pay lists, and
23 that can be found at tab J?

24 A. Yes.

25 221 Q. And you'll see at tab J you'll agree with me

1 this is the 1942 pay list?

2 A. Yes.

3 222 Q. Unfortunately, there is no page numbers here.
4 But the very first page you'll see Harry Batisse and
5 number 32?

6 A. Yes.

7 223 Q. There it indicates six boys, four girls, one
8 man, one woman for a total of 12?

9 A. Yes.

10 224 Q. For a total of 12 under his family is 48?

11 A. Yes.

12 225 Q. Am I right there is no separate entry for
13 George Batisse?

14 A. That appears to be so, yes.

15 226 Q. And by June 11, 1942 he would have been 21
16 years of age?

17 A. That seems to be so, yes.

18 227 Q. Now, if we flip, then, to 1943, which is the
19 next tab, tab K?

20 A. Yes.

21 228 Q. Again, you see at line 32 Harry Batisse?

22 A. Yes.

23 229 Q. And, again, it's the same thing, six boys,
24 four girls?

25 A. Yes.

1 230 Q. \$48 received, number of people 12?

2 A. Yes.

3 231 Q. And signature of receipt there is a line that
4 says, "Harry Batisse" with an 'X'?

5 A. Right.

6 232 Q. Again, there is no line item for George?

7 A. That's correct.

8 233 Q. Now at this time George would be 22?

9 A. Yes.

10 234 Q. I think the first time we see George get his
11 own line item is 1944. Is that correct?

12 A. That appears to be so, yes.

13 235 Q. And for the record the 1944 pay list is found
14 at tab L. And there under Harry Batisse, line 32, is
15 actually a notation under the "REMARKS" section that
16 says, "Michael tfd to No. 57, George tfd to number 58."

17 A. Yes.

18 236 Q. Is that right?

19 A. That's right.

20 237 Q. And then the first line item appears, then,
21 at 57 and 58 we see Michael Jr. and George?

22 A. Yes.

23 238 Q. By this point George now is 23?

24 A. Yes.

25 239 Q. Do you know of any reason why it would have

1 taken 23 years for George to be receiving his own annuity
2 as opposed to 21?

3 A. I don't know.

4 240 Q. It seems to run in contrast to what you were
5 told by Ms. Bertrand or through some other source,
6 correct?

7 A. Maybe we can just go back to that paragraph
8 so I could answer that question accurately.

9 241 Q. My recollection is it's paragraph 15 that
10 goes on to page 8?

11 A. Yes. This paragraph does not explain the
12 discrepancy as to why it took until the age of 23 for
13 George to be receiving his own annuities directly.

14 242 Q. Okay. Now, again, if we jump back -- and the
15 reason we're jumping back, if you go to tab O, it
16 appears, you know, by 1947 they're now including people's
17 date of birth, correct, on the pay list?

18 A. Yes.

19 243 Q. And even Michael Jr., they don't have a full
20 date of birth, they only give him a year 1921?

21 A. That's correct.

22 244 Q. It would appear that even he would have
23 received his first annuity after his 21 birthday?

24 A. Yes.

25 245 Q. Although I concede it appears that both of

1 them were born in 1921 based on this which does, in fact,
2 seem strange?

3 A. Unless they were twins.

4 246 Q. Unless they were twins. I don't have that
5 information?

6 A. No.

7 247 Q. And I trust that you don't, either?

8 A. No.

9 248 Q. Well, let's do it this way instead. I'm
10 going to pick someone who is unrelated to the Batisse
11 family. I looked at a gentleman by the name of Louis
12 Friday, and if you're still on tab O?

13 A. Yes.

14 249 Q. You'll see Mr. Friday at page 14, again
15 doesn't have a full year birth, but has 1913?

16 A. Yes.

17 250 Q. Now, obviously, doing the simple math at 19
18 13?

19 A. Yes.

20 251 Q. So simple that I have to use a calculator
21 plus 21, you'd think that by 1934 he'd be receiving his
22 own annuities?

23 A. Well, that depends. We don't have enough
24 information with respect to Louis Friday to know why he
25 didn't start receiving annuities on this pay list until

1 this year.

2 252 Q. Well, no. Sorry. And I should have been
3 clear. The only reason I turned to tab O was to get his
4 year of birth. He actually does receive annuities
5 through his family in earlier versions of the pay list?

6 A. I don't know that, because I haven't looked
7 at those.

8 253 Q. And we'll do that. But if I could ask you
9 first to turn to tab L?

10 A. Yes.

11 254 Q. If you look at line number 36?

12 A. Yes.

13 255 Q. There is a Mrs. George Friday. If you go all
14 the way to remarks?

15 A. Maybe I'm at the wrong tab. What tab?

16 256 Q. Tab L which is 1944?

17 A. All right. And then the line entry?

18 257 Q. Is 36?

19 A. Okay. I see it. Yes.

20 258 Q. You see Mrs. George Friday?

21 A. Mrs. George Friday, yes.

22 259 Q. And there you see: "Louis tfd to No. 59."

23 So it would appear that is when Louis then gets his own
24 line item, 59?

25 A. Right.

1 260 Q. Now, at that point he would have been --
2 doing, again, the simple calculator math, 31 years old.
3 Some ten years after he should have been receiving his
4 own annuity?

5 A. That's right.

6 261 Q. If we flip back to tab K, so one tab later?

7 A. Yes.

8 262 Q. You'll see that there is no line item for
9 Louis Friday?

10 A. That's correct.

11 263 Q. So it's another example that doesn't appear
12 to conform to the advice that you received from
13 Mr. Bertrand. Correct?

14 A. It doesn't. It's not explained by that
15 information, that's correct.

16 264 Q. Is it fair to say that there may be other
17 explanations, then, for why people are receiving their
18 annuities other than turning to the age of 21?

19 A. I think that's fair.

20 265 Q. Now, with respect to Laura Batisse, it would
21 appear that she first gets her own line item -- sorry,
22 can we go off the record.

23 --- OFF THE RECORD

24 BY MR. MATHAI:

25 266 Q. Sorry, go back on the record. It would

1 appear that Ms. Laura Flood first received her own line
2 item in 1947, correct?

3 A. Yes.

4 267 Q. And that's reflected in tab O, which is the
5 1947 pay list. Correct?

6 A. Uh'hmm.

7 268 Q. And doing the simple math this is when she
8 would have turned 21?

9 A. The math there conforms to 21, yes.

10 269 Q. And we've now discovered, though, that there
11 are other reasons why she may have received that annuity,
12 correct, other than her turning 21 years of age?

13 A. I wouldn't say that. There are reasons why
14 other people don't receive them until some other age.
15 But that doesn't explain her situation where the notation
16 says "of age." So it would appear in her case because
17 she became of age.

18 270 Q. And what would you say the "tfd" stands
19 for?

20 A. I understand that to mean transferred.

21 271 Q. And that would, again, come from
22 Ms. Bertrand?

23 A. No, that was actually my own interpretation.
24 I don't recall that Ms. Bertrand said that. It just
25 appear to be that is the way these pay lists were.

420

1 272 Q. And I think that's a fair assumption, that's
2 the way I read it too. But I'd like the undertaking to
3 determine what the "tfd" initials stand for?

4 MR. BEGGS: Okay.

5 --- UNDERTAKING

6 BY MR. MATHAI:

7 273 Q. Now, consistent with what you were saying
8 before it appears that these pay dates happen either in
9 June or July on a one-day occasion?

10 A. Yes.

11 274 Q. And that was consistent with what you were
12 saying before that there is actually a ceremony on the
13 Reserve and people come and they obtain the money.
14 Correct?

15 A. Yes, that's my understanding.

16 275 Q. Now, in the treaty pay lists that you have
17 provided, which I think date back from 1938 forward to
18 1947, and counsel will tell me if I'm wrong on that, I'm
19 sure?

20 MR. BEGGS: It starts in 1938 and goes to 1954, I
21 think.

22 BY MR. MATHAI.

23 276 Q. Thank you. If you look from 38 to 44,
24 Mr. Penner, you'll see that Harry Batisse picked up his
25 annuities, is that correct?

1 A. Do you want me to look at each one of them?

2 277 Q. If you could, I don't want you to take my
3 word for it?

4 A. Okay. 1938 Harry Batisse picks up his own
5 annuities or on behalf of his family, is that the
6 question?

7 MR. BEGGS: I don't know if this is saving time.
8 Paragraph 16 of this Affidavit describes, each point says
9 whether Harry picked it up himself.

10 BY MR. MATHAI:

11 278 Q. You're right. And that would be the quicker
12 way as long as the witness is willing to agree that
13 what's in 16 accurately reflect what it says.

14 A. Yes, I would have checked it then. In 1938
15 Harry received his annuity himself. Same is true for
16 1939, 1940, 1941, 1942, 1943, 1944. And 1945 the annuity
17 was received by his son, George. Do you want me to carry
18 on?

19 279 Q. No, let's stop there for a second. Now,
20 based on the information that you were told by Pat
21 Bertrand or some other person, the monies would have
22 received by the heads of family for all minor children.
23 Correct?

24 A. For themselves, spouse and minor children.
25 Yes.

1 280 Q. And the heads would have received it?

2 A. Well, typically, yes. But, apparently, it
3 wasn't an absolute requirement because at some point the
4 son, there are examples of the son or somebody else
5 receiving them on behalf of the family.

6 281 Q. And at this point, 1945, Ms. Batisse would
7 have been 19?

8 A. I think that's right.

9 282 Q. And it's at this time, and you'll correct me
10 if I'm wrong, that she alleges that she moved off the
11 Reserve. Correct?

12 A. Yes. I think that's right. 19, yes.

13 283 Q. And could one explanation for why George is
14 picking up the money is because Laura and her family have
15 moved off the Reserve in 1945?

16 A. Laura and her entire family?

17 284 Q. Yes?

18 A. I don't know.

19 285 Q. Then, again, in 1946 Larry's annuity is
20 received by George. Correct?

21 A. Yes.

22 286 Q. Again, in 1947 George receives it?

23 A. Yes.

24 287 Q. Although it actually says that Laura received
25 her own?

1 A. Yes.

2 288 Q. Again, in 1948?

3 A. Yes.

4 289 Q. George receives it?

5 A. Yes.

6 290 Q. In 1949 Larry receives it instead of Harry?

7 A. Yes.

8 291 Q. And it continues on that way that Harry is
9 not receiving his own until 19, at least until 1953?

10 A. Well, 1951 it says Laura Batisse appears at
11 band 67 to note that her annuity was received by George.

12 MR. BEGGS: We weren't necessarily talking about
13 Harry the whole time. 1949 we didn't say what happened
14 to Harry. So you might want to look into that from then
15 on.

16 MR. MATHAI:

17 292 Q. Any explanation for why from at least 1945
18 until 1949 Harry as the head of household is not picking
19 up the annuity?

20 A. I have no knowledge about that.

21 293 Q. But, again, this is another area that seems
22 to be different than the area that you received from
23 Mr. Bertrand?

24 A. Well, let's go back to that paragraph again
25 and you can ask me that question. Okay. At paragraph 15

1 what I was advised is that the annuities were paid to the
2 head of each family for all of the family members. And
3 the pay list suggest that while the physical handing over
4 of the payment wasn't necessarily to the head of the
5 family, in other words somebody could stand in for the
6 head of the family and receive the annuity on behalf of
7 the head of the family and the rest of them. So I don't
8 see any contradiction there, it's just the pay list
9 suggest that it's possible for somebody other than the
10 head to actually receive the payment.

11 294 Q. Your point being that while they're minor
12 they count towards the annuity owed to the head, but can
13 be collected by anybody?

14 A. I don't know that they could be collected by
15 anybody. But it's pretty clear from the pay list that
16 they weren't always picked up by the head of the
17 family.

18 295 Q. And it could be one of the reasons why it
19 wasn't picked up by the head of the family is because the
20 head of the family wasn't there for the ceremony?

21 A. That's quite possible.

22 296 Q. So someone else would pick it up?

23 A. I think that's logical.

24 MR. MATHAI: This may be a good time to take a
25 break.

1 --- WHEREUPON PROCEEDINGS RECESSED AT 11:52 A.M.

2 --- WHEREUPON PROCEEDINGS RESUMED AT 12:10 P.M.

3 BY MR. MATHAI:

4 297 Q. Thank you, Mr. Penner. Before we went back
5 while we were off the record I had asked you to review
6 the three Affidavits prepared by Ms. Flood and determine
7 whether or not, or how many references to the Chief being
8 Alfred Batisse were reflected. Have you had an
9 opportunity to do that?

10 A. Yes.

11 298 Q. And what is the answer to that?

12 A. The answer is that there's one reference to
13 the Chief of Matachewan First Nation being Alfred
14 Batisse.

15 299 Q. And that would be in the first Affidavit,
16 correct?

17 A. Yes, the Affidavit at tab C of the
18 applicant's materials. And that was the Affidavit of
19 Laura Flood sworn on the 26th of February, 1996. The
20 reference is at paragraph 3.

21 300 Q. Could I ask you to turn to paragraph 21 of
22 your Affidavit?

23 A. Yes.

24 301 Q. Now, in paragraph 21 you refer to information
25 you received from Magali Bouffard?

1 A. Yes.

2 302 Q. And that indicates that the three children,
3 Clarence Lorne Flood, Lorne Davidson Flood and Laura Jean
4 Flood are recorded as being the children of Wycliffe
5 Davidson Flood. Is that correct?

6 A. Yes.

7 303 Q. And did you receive that information directly
8 from Magali Bouffard?

9 A. Yes.

10 304 Q. So this is different from the information you
11 received from Pat?

12 A. I'm not certain of the information received
13 from Pat Bertrand was received directly. But I am
14 certain that the information from Magali Bouffard was
15 received.

16 305 Q. This paragraph says that these three children
17 are recorded. Do you know what record she's referring
18 to?

19 A. No. I can't say what the record is that
20 she's referring to, no.

21 306 Q. Can I get an undertaking, counsel, to contact
22 Ms. Bouffard and determine what record she is referring
23 to, and to produce the same?

24 MR. BEGGS: Okay.

25 --- UNDERTAKING

1 BY MR. MATHAI:

2 307 Q. Thank you. Paragraph 22, but on page 12, you
3 indicate that:

4 ".....Prior to this marriage, as children of an
5 unmarried female registered Indian, they would
6 have been entitled to registration under the
7 Indian Act. I am also informed by Ms. Bouffard,
8 and I do believe, that two of these children were
9 registered as Indians under the Indian Act in
10 1989 and the third child was registered in 1990."

11 Now, you refer to two of these children. Which two are
12 they?

13 A. I'm not sure if I knew that, at the time.
14 But I don't recall.

15 308 Q. Counsel, I'm going to ask for an undertaking
16 to find out which two children are being referred to in
17 paragraph 22 as being registered in 1989 and 1990?

18 MR. BEGGS: Sure.

19 --- UNDERTAKING

20 BY MR. MATHAI:

21 309 Q. You'd agree with me that, in fact, Ms. Flood
22 had three children prior to being enfranchised on
23 December 4, 1952. Correct?

24 A. Three children prior to being enfranchised,
25 yes.

1 310 Q. And you would agree with me, then, those
2 three children would all have been entitled to
3 registration under the Indian Act based on the same logic
4 that you stated in paragraph 12?

5 A. Paragraph 12?

6 311 Q. Paragraph 22, my apologies?

7 A. Yes.

8 312 Q. Could it be a typographical error that's in
9 paragraph 22, and it should say that three of these
10 children were registered as Indians? Or you just don't
11 know?

12 A. Sorry, you lost me there?

13 313 Q. Could it be a typographical error where you
14 say: ".....I am also informed by Ms. Bouffard, and I do
15 believe, that two of these children were registered as
16 Indians...."?

17 A. It says two were registered as Indians in
18 1989, and the third was registered in 1990.

19 314 Q. I see. It's my misreading of it, and I
20 apologize for that. You're right. So all three children
21 were registered at some point?

22 A. That's my understanding, yes.

23 315 Q. Okay. Could I get an undertaking, counsel,
24 to obtain the document confirming the registration; and
25 under what section under the Indian Act they were

1 registered?

2 MR. BEGGS: I'll give the undertaking. But I
3 want to show you something. At tab C of Mr. Penner's
4 Affidavit, this is a record for George Batisse. So is
5 this the type of document you're looking for, a
6 registration type?

7 MR. MATHAI: Yes, because this document will
8 indicate the type of category that this individual is
9 under.

10 MR. BEGGS: Okay. And that's for the three
11 children?

12 MR. MATHAI: That's right. So that is an
13 undertaking you are willing to provide?

14 MR. BEGGS: Yes, we'll provide that.

15 --- UNDERTAKING

16 BY MR. MATHAI:

17 316 Q. Looking back at s. 108. Again, I'm putting
18 it in front of you s. 108 of the Indian Act. Typically
19 upon enfranchisement of an unmarried Indian woman her
20 unmarried minor children should have been enfranchised,
21 as well, correct?

22 A. What section are you referring me to?

23 317 Q. Section 108(1), all the way down?

24 A. Yes. So the question being that if an
25 unmarried woman is enfranchised that her minor unmarried

1 children would also be enfranchised, that's the way the
2 section reads. Yes.

3 318 Q. So, in this case, wouldn't it have been the
4 case that Ms. Flood's three children that were born at
5 the time of her enfranchisement should have been
6 enfranchised, as well?

7 A. I think that's the way this reads. I can't
8 be certain of that, because I've not tried to trace
9 through how this provision has been applied. But that's
10 the way it appears to read.

11 319 Q. And you'd agree with me that the three
12 children that she did have that were all minor unmarried
13 at the time of her enfranchisement were not enfranchised.
14 Correct?

15 A. Am I supposed to know the answer to that?

16 MR. BEGGS: Well, I'm sure you don't know the
17 answer to that. I'm just trying to think if we know the
18 answer. Perhaps that might be something we'd have to
19 check, I guess. I assume not.

20 BY MR. MATHAI:

21 320 Q. So the answer is you don't know if they were
22 enfranchised, am I correct?

23 A. That's correct.

24 321 Q. So I'm going to ask for an undertaking,
25 counsel, to be advised whether Lorne Davidson Flood,

1 Clarence Lorne Flood and Laura Jean Flood were
2 enfranchised?

3 A. At this time, I take it, you mean?

4 322 Q. At any time?

5 MR. BEGGS: The logic I had understood was that
6 since the first time they were registered was in 1989 and
7 1990 they were never registered and, therefore, never
8 would have been enfranchised. But I'll check that may be
9 I misunderstood something. So I'll give that
10 undertaking, and take a look.

11 --- UNDERTAKING

12 BY MR. MATHAI:

13 323 Q. Thank you. I'm going to ask you to turn to
14 tab R of the "SUPPORTING DOCUMENTS AND DOCUMENTARY
15 EXHIBITS?"

16 MR. BEGGS: Is that in the Affidavit of Angel
17 Larkman?

18 BY MR. MATHAI:

19 324 Q. This is the Order in Council that
20 enfranchises Laura Batisse. Correct?

21 A. Yes.

22 325 Q. And then if you turn to page 2 of this
23 document you'll see at line 6, it says: "Laura Batisse
24 of the Matachewan Band, in the Nipissing Agency, Province
25 of Ontario." Correct?

1 A. Yes.

2 326 Q. There is no reference to her unmarried minor
3 children. Correct?

4 A. Correct.

5 327 Q. And you do see other entries there of
6 individuals whose unmarried minor children are, in fact,
7 enfranchised?

8 A. I can see that, yes.

9 328 Q. And that's consistent with an interpretation
10 in s. 108 where it's mandatory that the unmarried minor
11 children are also enfranchised. Correct?

12 A. It's consistent with that interpretation,
13 yes.

14 329 Q. And part of the explanation for why the
15 children were not enfranchised on this document is that
16 there is no children listed on the application form.
17 Correct?

18 A. That makes sense.

19 330 Q. And is the Attorney General aware for any
20 explanation why those children were not listed on the
21 documents?

22 A. No.

23 331 Q. I'm going to ask to you turn to tab II of
24 this "SUPPORTING AFFIDAVIT OF DOCUMENTARY EXHIBITS," the
25 double I?

1 A. Uh'hmm.

2 332 Q. This appears to be a document from Indian -
3 Eskimo Affairs. Is that correct?

4 A. Yes.

5 333 Q. And can you tell me what this document is?

6 A. It is a list of people according to the
7 subject or description line who have been subject to
8 enfranchisement. And it provides a date from and a date
9 to. And there is a column for agency. But the only
10 entry that we can read actually seems to provide an
11 explanation for the enfranchisement.

12 334 Q. And the explanation is?

13 A. In the case of L. Batisse, which is the one
14 entry that we can read, it says: Marriage to
15 non-Indian.

16 335 Q. This would be in error, correct?

17 A. We probably would think that's in error,
18 because her marriage to a non-Indian post-dated her
19 enfranchisement in 1952 and so it would have made no
20 difference.

21 336 Q. Do we know the date that this was prepared?

22 A. I don't see a date on the document itself,
23 no.

24 337 Q. Now, this document, obviously, wasn't
25 prepared by my client?

1 A. I think that's fair.

2 338 Q. And my understanding is this document was
3 something that was in the Registrar's file, is that
4 correct?

5 A. I think that's right. Do we know?

6 MR. BEGGS: I don't know, actually.

7 THE DEPONENT: We don't know.

8 BY MR. MATHAI:

9 339 Q. Can I get an undertaking, counsel, to
10 determine the origin of this document?

11 MR. BEGGS: I'm sure we'll make a reasonable
12 effort. I have to qualify that because I don't know
13 where it came from. But we'll do our best to find out.

14 --- UNDERTAKING

15 BY MR. MATHAI:

16 340 Q. And the date that it was created?

17 MR. BEGGS: Okay. It's possible, and this is
18 just speculation, that this is a type of document that
19 was filled in over time. But I'll try my best to find a
20 date.

21 --- UNDERTAKING

22 BY MR. MATHAI:

23 341 Q. Now, it says "Date From and then "Date To."
24 Do you interpret "Date From" to be the date of the
25 enfranchisement?

1 A. Well, the "Date From" is consistent with the
2 date of enfranchisement. But that begs the question what
3 in 1953 it's in reference to.

4 342 Q. So, again, do you interpret "Date From" to be
5 the date that she was enfranchised?

6 A. I think that's fair.

7 343 Q. And it would appear that whoever filled this
8 out believed that the date of enfranchisement she was
9 enfranchised for the reason of being married to a
10 non-Indian. Is that correct?

11 A. That's what is written in there, yes.

12 344 Q. And that would be pursuant to s. 108(2) of
13 the Indian Act, correct?

14 A. Yes.

15 345 Q. Does the Attorney General have any
16 explanation for the notation on this?

17 MR. BEGGS: The marriage?

18 BY MR. MATHAI:

19 346 Q. The notation indicating she was married to a
20 non-Indian?

21 A. I don't have any explanation.

22 347 Q. And, of course, can I get an undertaking that
23 if an explanation is obtained that it will be provided to
24 us?

25 MR. BEGGS: Okay.

1 --- UNDERTAKING

2 BY MR. MATHAI:

3 348 Q. Mr. Penner, are you aware of any other claims
4 from members of the Matachewan First Nation who claims to
5 have been enfranchised pursuant to 108(1) without their
6 knowledge?

7 A. I'm not.

8 349 Q. So this would represent the first time that
9 you've been aware of a case that involves someone
10 claiming that they didn't know what they were signing?

11 A. With respect to enfranchisement that would be
12 fair.

13 350 Q. Counsel, can I get an undertaking to
14 determine whether or not there are any other cases that
15 either the Attorney General or the Registrar may know of
16 where a First Nation woman from the Matachewan First
17 Nation claimed that they had not applied for
18 enfranchisement?

19 MR. BEGGS: From the Matachewan First Nation?

20 BY MR. MATHAI:

21 351 Q. Only from the Matachewan First Nation. And I
22 can be a little more specific, actually. Let's do from
23 the years 1945 until 1955?

24 MR. BEGGS: The Attorney General would only be
25 aware usually if it came forward in litigation; and the

1 Registrar would only be aware if somebody made that
2 complaint to them. So I can undertake to ask the
3 Registrar and check, you know, with the Attorney General,
4 you know, the department, whether such a complaint or
5 claim has been made. But, obviously, if it was anything
6 more informal we wouldn't know.

7 MR. MATHAI: That is fair.

8 MR. BEGGS: So I'll make that inquiry.

9 --- UNDERTAKING

10 BY MR. MATHAI:

11 352 Q. If we go to tab V again. This is the
12 unsigned letter of December 22nd?

13 A. Yes.

14 353 Q. Do you have the original unsigned version of
15 this letter, or is the AG only in possession of a copy?

16 A. The only copy we have is this copy.

17 MR. BEGGS: We only have a copy. It's a document
18 from which our copy was made. I believe would have come
19 from a file in National Archives.

20 BY MR. MATHAI:

21 354 Q. So the original is at the National
22 Archives?

23 MR. BEGGS: I believe so.

24 BY MR. MATHAI:

25 355 Q. I'm not going to ask you to get the original

1 from the Archives, but can I get an undertaking to
2 determine whether the National Archives has the original?

3 MR. BEGGS: Okay.

4 --- UNDERTAKING

5 BY MR. MATHAI:

6 356 Q. If I could ask you to turn to tab W?

7 A. Yes.

8 357 Q. Now, this is the cheque requisition from J.A.
9 Marleau?

10 A. Yes.

11 358 Q. And what's the date stamp on that?

12 A. December 22, 1952.

13 359 Q. So on December 22, 1952 it appears that J.A.
14 Marleau requested the cheque be made for \$82.23?

15 A. I don't read it that way. There is an
16 earlier date, which is the date of invoice of December
17 the 12th.

18 360 Q. Okay?

19 A. And given that the date stamp of December
20 22nd is the stamp of the Sturgeon Falls Indian Agency, it
21 looks to me more like that's the date it was received by
22 him or by his office.

23 361 Q. Okay. So he received the cheque on December
24 22nd?

25 A. It appears that way to me.

1 362 Q. Sent it out on the 22nd?

2 A. That's reference to the letter dated the 22nd
3 somewhere else, I believe, yes.

4 363 Q. Yes. And got those documents signed on the
5 22, as well?

6 A. Received on the 22nd. I don't know where the
7 other document is.

8 364 Q. And signed on the 22nd, as well. Correct?

9 A. Well, if we go through those I could say
10 "correct." I would have to look at them again, just to
11 be pretty sure of that.

12 365 Q. That's fair. It's at tab E, page 53 of my
13 record, enfranchisement card?

14 A. Okay. And signed by Laura Batisse below the
15 date of December the 22nd, 1952.

16 366 Q. So the cheque is received on December 22,
17 1952?

18 A. In the office.

19 367 Q. In the office. And then it's sent out by
20 letter the same day?

21 A. Yes. That's at tab V, there is a letter of
22 Marleau saying received the cheque today, and it's being
23 sent out the same day December 22, 1952 to Ms. Batisse.

24 368 Q. Along with the enfranchisement card?

25 A. That's correct.

1 369 Q. And it's signed on the 22nd, the
2 enfranchisement card?

3 A. I can't say with certainty what date it was
4 signed. But the signature appears under the date of
5 December 22, 1952, yes..

6 370 Q. You have no reason to believe it wasn't
7 signed on that date?

8 A. There is no other date on there.

9 371 Q. That's right. December 22nd was a busy
10 day?

11 A. It seems like it. Pony express.

12 372 Q. Maybe not a pony, maybe a stallion based on
13 the mileage?

14 A. Two hundred fifty miles.

15 373 Q. Now, you had rightly pointed out that in this
16 document at tab W, the date of the invoice was December
17 12th?

18 A. Yes.

19 374 Q. Correct. And if you turn to tab T, "T" as in
20 Tom, you'll see there that this appears to be the date
21 that it was requested. Correct?

22 A. I'm not sure that this is a request for the
23 cheque. It does say that under separate cover a cheque
24 is going forward to Laura Batisse instructing Marleau to
25 forward the cheque and the card to Ms. Batisse.

1 375 Q. So this document, then, is not the invoice or
2 the request, that's what you're saying?

3 A. It doesn't appear to be. For example, if you
4 turn to tab U there's a cheque requisition form also
5 dated December 12th. And that looks more like an invoice
6 to me, although technically it's actually a requisition
7 for a cheque. But December 12th is the operative date
8 with respect to both of those documents.

9 376 Q. Turning back to tab T?

10 A. Yes.

11 377 Q. I'll just read it out here. "Kindly be
12 advised that by Order in Council P.C. 4582 dated December
13 4, 1952, the applicant and family hereunder named has/
14 have been declared enfranchised: NAME: (Miss) LAURA
15 BATISSE No. 67 Matachewan Band WIFE: (blank) together
16 with the minor unmarried child or children: NONE."?

17 A. That's correct.

18 378 Q. Despite the fact that she did have minor or
19 unmarried children?

20 A. Yes.

21 379 Q. And despite the fact that the Act requires as
22 mandatory that these minor unmarried children be
23 enfranchised?

24 A. That appears to be so.

25 MR. MATHAI: Could we go off the record.

1 --- OFF THE RECORD

2 BY MR. MATHAI:

3 380 Q. I have one last question: Can I get an
4 undertaking with respect to the cheque that was
5 eventually, apparently, received at Sturgeon Falls to
6 determine whether or not that cheque was cashed, and
7 whether there are documents reflecting that fact?

8 MR. BEGGS: I'll give an undertaking to make a
9 reasonable effort to find that out. Frankly, I'm not
10 optimistic, and say that we had it.

11 --- UNDERTAKING

12 BY MR. MATHAI:

13 381 Q. Or if there is any documents reflecting the
14 fact that it was not cashed?

15 MR. BEGGS: Okay. I'll make that inquiry.

16 --- UNDERTAKING

17 MR. MATHAI: And one more brief indulgence, and
18 then I think I'm finished.

19 Subject to the answers to undertakings, and I
20 think there was really a couple of, I don't think there
21 was any real refusals but two under-advisements, at
22 least, those are my questions.

23 MR. BEGGS: I just have one point to clarify on
24 re-examination.

25 MR. MATHAI: Sure.

1 RE-EXAMINATION BY MR. BEGGS:

2 382 Q. My friend asked in your Affidavit,
3 Mr. Penner, at tab O. My friend took you to George
4 Batisse's birth date on the last page of tab O at line
5 58. This is the line my friend took you to saying that
6 he, indicating that Mr. George Batisse had been born in
7 1921?

8 A. Yes.

9 383 Q. Just for clarifying the record. If I could
10 take you to tab C of your Affidavit. You'll see on the
11 first page that looks like a computer printout the
12 registered Indian record of George Batisse, and it has a
13 birth date there?

14 A. Yes.

15 384 Q. Can you tell me the year?

16 A. 13th of May 1922.

17 385 Q. And there is a couple of pages following.
18 There is, again, called Registered Indian Record for
19 George Batisse. And there is a date of birth under item
20 7?

21 A. May 13, 1922.

22 386 Q. And then just taking you ahead to tab P which
23 is, again, a pay list. The last page line 58?

24 A. Yes.

25 387 Q. It has George Batisse's birth date, again?

1 A. It has 13th of May, 1921.

2 388 Q. Tab P?

3 A. Oh, sorry. There the date for George Batisse
4 is 13th of May 1922.

5 389 Q. I just wanted to clarify that distinction.
6 Although I do note that -- perhaps, I should do it with
7 the witness. The line above 57, Michel Batisse?

8 A. Yes.

9 390 Q. Gives the year he was born as?

10 A. 1920.

11 MR. BEGGS: There seems to be some distinction
12 between P and O as to actual birth dates.

13 EXAMINATION BY MR. MATHAI, CONTINUED:

14 391 Q. I just have one question following up on
15 that, or two questions following up on that.

16 Using 1922 as the date he would have been 21 at
17 the year 1943. Is that correct?

18 A. Twenty-one and 22 makes 43, yes.

19 392 Q. And he only, George, that is, received his
20 annuity as being separate from Harry in 1944. Correct?

21 A. I think that's correct, yes.

22 393 Q. At the age of 22?

23 A. Yes.

24 394 Q. And the other individual that we looked at,
25 Louis Friday, he would have received it well after 21

1 still?

2 A. Yes.

3 MR. MATHAI: That is it.

4 --- WHEREUPON PROCEEDINGS ADJOURNED AT 12:53 p.m.

5 *****

6 I hereby certify the foregoing to be
7 a true and accurate transcript of my
8 computerized shorthand notes, to the
9 best of my skill and ability.

10 Aspe: Debra Aub
11 D. Anshan, CSR RPR
12 Real Time (Caption) Shorthand Reporter

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Applicant

-and- ATTORNEY GENERAL OF CANADA

Respondent

File No: T-1804-10

FEDERAL COURT

SUPPORTING AFFIDAVITS AND DOCUMENTARY
EXHIBITS
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VOLUME II OF II

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