

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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UNDERTAKINGS ARE NOTED ON THE FOLLOWING PAGES:
70

REFUSALS ARE NOTED ON THE FOLLOWING PAGES:
9, 40, 41, 42, 66

THERE WERE NO UNDER-ADVISEMENTS OR EXHIBITS NOTED

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
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.

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.

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

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?

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.

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

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
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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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