

Court File No. T-1804-10

FEDERAL COURT

B E T W E E N:

ANGEL SUE LARKMAN

APPLICANT

- AND -

THE ATTORNEY GENERAL OF CANADA

RESPONDENT

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

APPEARANCES:

Sunil S. Mathai

For the Applicant

Michael Beggs

For the Respondent

INDEX OF PROCEEDINGS

PAGE

GARY PENNER, AFFIRMED	3
CROSS-EXAMINATION BY MR. MATHAI	3
RE-EXAMINATION BY MR. BEGGS	85
EXAMINATION BY MR. MATHAI, CONTINUED	86

UNDERTAKINGS ARE NOTED ON THE FOLLOWING PAGES:

17, 28, 38, 40, 42, 62, 69, 71, 73, 76, 78, 79, 80, 84

UNDER-ADVISEMENTS ARE NOTED ON THE FOLLOWING PAGES

8, 38

REFUSALS ARE NOTED ON THE FOLLOWING PAGES

14, 30, 46

THERE WERE NO EXHIBITS NOTED

1 GARY PENNER, AFFIRMED

2 CROSS-EXAMINATION BY MR. MATHAI:

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

5 A. Yes.

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

9 A. Yes.

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

14 A. Yes.

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

18 A. That's correct.

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

21 A. General counsel, two or three years.

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

23 A. Senior counsel.

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

25 A. Six or seven years.

1 8 Q. Prior to that?

2 A. Counsel.

3 9 Q. Again, with the same group?

4 A. Yes.

5 10 Q. Did you article there?

6 A. I did.

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

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

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

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

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

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

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

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

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

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

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

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

15 MR. MATHAI: At the protest stage?

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

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

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

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

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

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

4 --- UNDER-ADVISEMENT

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

15 MR. BEGGS: Okay.

16 BY MR. MATHAI:

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

19 A. Yes.

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

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

1 or could have been.

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

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

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

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

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

14 A. Yes, I did.

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

17 A. That's correct.

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

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

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

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

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

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

9 --- OFF THE RECORD

10 BY MR. MATHAI:

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

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

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

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

25 A. Not with me.

1 24 Q. Counsel, do you have one?

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

3 BY MR. MATHAI:

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

10 A. Okay.

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

13 A. Yes.

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

18 A. These provisions speak to that, yes.

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

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

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

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

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

7 30 Q. And how it reads with 108?

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

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

17 A. That's correct.

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

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

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

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

10 A. That's right.

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

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

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

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

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

20 A. That's correct.

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

23 A. Not that I'm aware of.

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

1 A. Not that I'm aware of.

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

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

6 --- REFUSAL

7 BY MR. MATHAI:

8 40 Q. Refused. Fair enough.

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

14 A. Yes.

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

17 A. Not that I'm aware of.

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

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

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

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

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

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

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

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

3 BY MR. MATHAI:

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

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

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

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

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

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

11 BY MR. MATHAI:

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

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

23 --- UNDERTAKING

24 BY MR. MATHAI:

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

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

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

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

16 BY MR. MATHAI:

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

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

23 BY MR. MATHAI:

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

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

5 A. That's correct.

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

8 A. That's correct.

9 50 Q. And who the relevant Chief was?

10 A. Yes.

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

14 A. Yes.

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

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

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

23 A. And your question about this is?

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

1 her knowledge of the date of her application?

2 A. When she became aware of it?

3 55 Q. That's right?

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

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

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

11 57 Q. And what other ones are there?

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

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

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

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

24 A. Uh'hmm.

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

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

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

5 MR. BEGGS: Paragraph 37.

6 BY MR. MATHAI:

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

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

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

14 A. I do.

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

18 A. That's right.

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

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

23 65 Q. And it is unexecuted, correct?

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

25 66 Q. So it is unexecuted?

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

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

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

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

9 --- OFF THE RECORD

10 BY MR. MATHAI:

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

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

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

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

25 MR. BEGGS: We assume his assistant.

1 BY MR. MATHAI:

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

5 A. Yes.

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

9 A. Yes.

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

12 A. Yes.

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

16 A. Yes.

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

19 A. Yes.

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

22 A. Yes.

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

1 A. Yes.

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

4 BY MR. MATHAI:

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

10 A. That's correct.

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

14 A. I have no way to know that.

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

16 A. Not personally.

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

18 A. Not to my knowledge.

19 81 Q. And do you know, then, maybe you do or don't,
20 do you know if Sturgeon Falls is close to Matachewan?

21 A. Do you?

22 MR. BEGGS: I know it's not particularly close,
23 and there might be some evidence in her Affidavit. If I
24 could just take a moment?

25 MR. MATHAI: Yes.

1 MR. BEGGS: With respect to the question about
2 whether Matachewan is close to Sturgeon Falls. Myself,
3 as counsel, have information based on a map which is not
4 in evidence. But Exhibit T out of Mr. Penner's
5 Affidavit, even with one of the pay lists in 1952,
6 actually, has some extra documents in there dealing with
7 travelling. I'm not sure what conclusions can
8 necessarily be drawn, but there it is. I'll just say
9 what it says on page 2 there is some travelling expenses
10 noted by Mr. Marleau for 1952 saying he left Sturgeon
11 Falls from Matachewan on the 13th, came back on the 15th
12 and claimed car mileage of 509 miles. I'm not sure how
13 much use this evidence is. But I think that suggests
14 it's quite a distance from Sturgeon Falls to Matachewan.

15 MR. MATHAI: That would be two ways.

16 MR. BEGGS: That would be two ways. So, roughly,
17 half, 250 miles one way. Of course, we don't know what
18 route he took. That's the only evidence I know of.

19 BY MR. MATHAI:

20 82 Q. Sure. Actually, that's helpful. Thank you.
21 The only reason I ask, Mr. Penner is this letter that is
22 dated December 22nd encloses two items. Correct?

23 A. Yes.

24 83 Q. And the first item appears to be a cheque in
25 the amount of \$82.23?

1 A. Yes.

2 84 Q. And the second item is a Certificate of
3 Enfranchisement?

4 A. Yes.

5 85 Q. And if I understand the Attorney General's
6 position you would argue, or you argued that the fact
7 that Ms. Flood signed the enfranchisement card and
8 returned it would suggest that she did receive this
9 letter?

10 A. I think that makes sense.

11 86 Q. And, in fact, that's, I believe, what you
12 argue in the Affidavit. Correct?

13 A. Well, I don't know if I'm arguing in an
14 Affidavit, but I think I said that.

15 87 Q. Fair enough. That's what you stated in your
16 Affidavit. Now, if we can turn to that actual
17 application?

18 MR. BEGGS: This is the Certificate that she
19 signed, is that what you're looking for?

20 MR. MATHAI: That's right.

21 MR. BEGGS: It's this Affidavit under Exhibit E.
22 In the Affidavit of Angel Larkman at Exhibit E is the
23 Affidavit of Laura Mary Flood from 1998. Exhibit Q to
24 that Affidavit is, I think, what counsel is referring to.

25 BY MR. MATHAI:

1 88 Q. That is the document that I'm referring to.
2 And, Mr. Penner, just to make sure we're all on the same
3 page. If you go to your Affidavit at paragraph 37 of
4 your Affidavit around one, two, three, four lines down it
5 says:

6 ".....Marleau requests that the latter document
7 be dated signed, dated, and returned. It appears
8 that the letter received as Laura Batisse
9 admitted to signing the certificate, which bears
10 her signature as well as that of the Minister..."

11 It refers to:

12 "(Exhibit "Q" to the Affidavit of Laura Mary
13 Flood, dated April 28, 1998,"

14 A. Yes..

15 89 Q. You see that there, correct?

16 A. Yes..

17 90 Q. Now, you would agree that the document that
18 we're looking at at Exhibit "Q", in my client's
19 Affidavit, is the document you're referring to in
20 paragraph 37, the document that was signed and
21 returned?

22 A. That's correct..

23 91 Q. And the date of this is December 22nd.
24 Correct?

25 A. I see that date on here, yes..

1 92 Q. So on the theory that the Attorney General, I
2 call it a "theory" only because there is no actual hard
3 facts one way or the other, somehow that letter made its
4 way down from Sturgeon Falls to Matachewan and was signed
5 on the very same day. Correct?

6 A. It may be that that's so. The dates are the
7 same. The date of the letter enclosing the Certificate
8 is dated December 22nd, and the date that appears on the
9 Certificate above Laura Batisse's signature is also
10 December the 22nd, 1952.

11 93 Q. And, counsel, I'm going to ask for an
12 undertaking to determine whether or not Mr. Marleau made
13 any mileage claims for December 22, 1952?

14 A. Sorry, for December 22nd?

15 94 Q. 1952?

16 MR. BEGGS: I will give the undertaking to look.
17 But I have no idea how easy it will be to find it if it
18 still exists. We'll take a look and make reasonable
19 effort to find that.

20 MR. MATHAI: And if it is available to produce
21 same?

22 MR. BEGGS: Okay.

23 MR. MATHAI: Is that an undertaking?

24 MR. BEGGS: If it is available we will make
25 reasonable efforts to locate it, and we will produce it.

1 --- UNDERTAKING

2 BY MR. MATHAI:

3 95 Q. Mr. Penner, do you have any explanation for
4 how this letter would have been drafted on the 22nd, made
5 its way down to Matachewan which is some 250 miles away,
6 signed and executed on the same day?

7 A. I have no explanation for that.

8 96 Q. And I ask this question not to be smart, or
9 anything like that, but at the time in 1952 would you
10 agree with me the facsimile was not available?

11 A. I think that's fair.

12 97 Q. And, clearly, not email, of course?

13 A. Yes.

14 98 Q. Looking at that do you find it strange that
15 it made its way down and signed all within one day?

16 A. I don't know that I find it strange. But I
17 can't provide an explanation as to how that came to be.

18 99 Q. You know, by way of an example you'll recall
19 that you had shown me another document, rightfully, that
20 was from Mr. Marleau that was not signed by Mr. Marleau.
21 If you could flip to that it's tab M?

22 A. Yes.

23 100 Q. And there you see the letter that purports to
24 be from Mr. Marleau to Ms. Batisse is dated October 2,
25 1952. Correct?

1 A. Yes.

2 101 Q. And, again, in this letter it says will you
3 complete the forms for enfranchisement, sign it and send
4 it back. Correct?

5 A. Yes.

6 102 Q. If you flip to the next document it appears
7 Ms. Batisse did sign a document, an "APPLICATION FOR
8 ENFRANCHISEMENT?"

9 A. Yes.

10 103 Q. And the date of that signature is the 10th of
11 October?

12 A. Yes.

13 104 Q. Some eight days after it was sent?

14 A. Yes.

15 105 Q. And that would make sense taking into account
16 the distance that has to be travelled for the letter to
17 make it there; Canada Post is slow in 2011, so I can only
18 imagine what it would have been like in 1952. Correct?

19 MR. BEGGS: I don't think I'm going to let
20 Mr. Penner answer a question of what Canada Post was like
21 in 1952.

22 --- REFUSAL

23 BY MR. MATHAI:

24 106 Q. But you would agree that the time lag makes
25 sense, given the distance that this letter and enclosures

1 had to travel back in 1952?

2 A. It makes sense.

3 107 Q. Now, Mr. Penner, you've read the Affidavits
4 of Ms. Flood. Correct?

5 A. I have.

6 108 Q. And you have read Ms. Larkman's Affidavit, as
7 well?

8 A. Yes.

9 109 Q. And you understand that in one of Ms. Flood's
10 Affidavits she indicates that she didn't move off the
11 Reserve until she was 19 years old, in/or around that
12 time?

13 A. Yes.

14 110 Q. And you also understand in her application
15 that it indicates that she was off the Reserve for 13
16 years. Right?

17 A. I'm aware that she says that.

18 111 Q. And you agree with me, though, that the
19 application says 13 years off the Reserve. Correct?

20 A. Maybe you can confirm that to me?

21 112 Q. Sure. I ask you to turn to tab H of the
22 "SUPPORTING AFFIDAVIT OF DOCUMENTARY EXHIBITS?"

23 A. Yes.

24 113 Q. You'll see there in the second paragraph:

25 "Miss Batisse has been living away from the

1 Reserve for 13 years and has resided in
2 Matachewan for 13 years. . . ."

3 A. Yes.

4 114 Q. "She has been steadily employed for the past
5 four years as a house-keeper and camp cook
6 with an approximate annual income of
7 \$600.00."

8 Correct?

9 A. Yes.

10 115 Q. So it appears that Mr. Marleau is indicating
11 to the Indian Affairs Branch -- actually, I'm not sure
12 who he's writing to, it appears he's writing to the
13 Indian Affairs Branch, Department of Citizenship &
14 Immigration in Ottawa?

15 A. Yes.

16 116 Q. Indicating that she had been living off the
17 Reserve for 13 years?

18 A. Yes.

19 117 Q. As of what appears to be July 29, 1952?

20 A. July 28, 1952. Well, there is two dates
21 there.

22 118 Q. Sure. That's fine. As of July 28, 1952?

23 A. Yes.

24 119 Q. You would agree with me that Ms. Larkman was
25 born in 1926. Correct?

1 A. Yes.

2 120 Q. March 1, 1926, I believe?

3 A. There seems to be some discrepancy whether it
4 was February 1st or March 1st. But 1926 I think is
5 correct.

6 121 Q. And you would agree with me, then, that doing
7 the math if she had lived off the Reserve for 13 years?

8 A. Yes.

9 122 Q. Then she would have been 13 at the time she
10 left the Reserve. Correct?

11 A. That's right.

12 123 Q. There seems to be a discrepancy of about six
13 years?

14 A. When you say "discrepancy," I'm not sure what
15 you're referring to. The discrepancy? The discrepancy
16 between what and what?

17 124 Q. Sorry. Between her claim and the claim made
18 by Mr. Marleau in this document?

19 A. Yes. Just to be clear, her claim that she
20 was 19 when she left?

21 125 Q. That's right?

22 A. As opposed to doing the math here that
23 suggest she was 13 when she left. Yes, I appreciate
24 there is a discrepancy.

25 126 Q. And if you flip to tab G?

1 A. Yes.

2 127 Q. You'll see there is another document here,
3 and it appears to be a letter to Ms. Laura Batisse,
4 signed by Mr. Marleau where he's asking a number of
5 questions. Correct?

6 A. Yes.

7 128 Q. And it appears to be filled out?

8 A. Yes.

9 129 Q. "Length of residence away from the Reserve 13
10 years." Correct?

11 A. Yes.

12 130 Q. "How long you have been residing in
13 Matachewan (another) 13 years."?

14 A. Yes.

15 131 Q. Now, with respect to item number 2, "how long
16 you have been residing in Matachewan." Do you interpret
17 that as meaning the town or the Reserve?

18 A. It's hard to tell because there is nothing
19 here that clearly makes the distinction Matachewan, the
20 town or Matachewan, the reserve. In terms of the math
21 it's possible to surmise that she had been living in the
22 town of Matachewan, according to this, for 13 years and
23 had been prior to that residing in Matachewan Reserve for
24 13 years. That is one way to read it. But I can't say
25 with any certainty that is what was intended. It could

1 be that the 13 years referred to in 2 is the exact same
2 13 years referred to in 1, for example.

3 132 Q. Although, in fairness, the first question
4 makes it distinct, it says "reserve" as opposed to using
5 the word "Matachewan?"

6 A. That's right.

7 133 Q. And given that distinction would it be fair
8 to say that it looks like they're suggesting 13 years on
9 Reserve, 13 years in the town?

10 A. I have no reason to dispute that
11 interpretation or to prefer that interpretation or not.
12 That makes sense to me as a reasonable interpretation of
13 this document.

14 134 Q. And if you'd turn now to tab F. This appears
15 to be the first document where there is a letter
16 purported to be from Ms. Batisse to Mr. Marleau, even
17 though "Marleau" is spelled incorrectly, asking for the
18 papers necessary to release me from the treaty. Is that
19 correct?

20 A. Yes.

21 135 Q. Is it fair to say this is what initiates the
22 process?

23 A. It appears to be, and I think it probably is.
24 Whether there's any other correspondence that preceded
25 this that I'm not familiar with, it's possible. But this

1 looks like it initiated the process.

2 MR. BEGGS: We're not aware of anything that came
3 before that.

4 BY MR. MATHAI:

5 136 Q. Okay. And you'll agree with me there is
6 nothing in here that says 13 years off the Reserve, 13
7 years in the town?

8 A. No, I agree.

9 137 Q. Going back to the second document, and by
10 second document I mean tab G, you'd agree with me there
11 is no signature here from Ms. Batisse. Correct?

12 A. I don't see one. That's correct.

13 138 Q. In fact, there is nothing in here that
14 indicates that she's actually the one who typed out the
15 information?

16 A. That's correct.

17 139 Q. It looks like it is typed out, but there is
18 no signature from Ms. Batisse or any other individual
19 other than Mr. Marleau who sent the letter. Correct?

20 A. That's correct.

21 140 Q. Now, I want to ask you a few questions, and
22 it doesn't come from your Affidavit but with respect to
23 the move of members of the band, off of Reserve, to
24 Matachewan. It is my understanding that at some point, I
25 guess what it would be called at the time was Indian and

1 Eskimo Affairs would have purchased a number of houses
2 for Reserve members in the town in order to move them off
3 the Reserve into the town. Are you aware of that?

4 A. I'm not.

5 141 Q. Now, the reason I ask is because that may be
6 helpful to understand the date that, in fact, Ms. Flood
7 left the Reserve if that is accurate. So I'm going to
8 ask, counsel, for an undertaking to determine whether or
9 not INAC, or at the time Indian and Eskimo Affairs, had
10 purchased houses for members of the First Nation Reserve,
11 Matachewan. Just for that undertaking, what year that
12 would have been?

13 MR. BEGGS: So I can clarify, I guess, or narrow
14 the search, if you will?

15 MR. MATHAI: Sure.

16 MR. BEGGS: Maybe we should go off the record for
17 a second.

18 --- OFF THE RECORD

19 MR. BEGGS: Go back on the record. Okay. So I
20 think the undertaking asked is to determine whether INAC,
21 or whatever it was at the time, purchased houses for
22 members of the band in the Town of Matachewan between the
23 years 19, say, 38 to 1947 and if so what year or years
24 those purchases took place, occurred?

25 MR. MATHAI: That's right.

1 MR. BEGGS: I guess I'll take it under-advisement
2 only for the purpose of -- I'm willing to make inquiry,
3 but my taking it under-advisement because I don't know if
4 it's a massive task to do. It doesn't sound like it
5 would be, I assume it wouldn't be that large a task. It
6 might be something that takes a long time. I don't know
7 how long it would take to find that information if it
8 exist.

9 MR. MATHAI: You can see it's relevant. It's
10 just a question of how long it's going to take.

11 MR. BEGGS: Well, I'm assuming it's not a big
12 task in the sense that the band wasn't that big, and I'm
13 assuming the town wasn't that big. So it's not like
14 we're talking thousand of purchases.

15 MR. MATHAI: At that time we were talking at most
16 67. At the time Laura under the treaty list becomes her
17 own number she's 67.

18 MR. BEGGS: That's true. But I'd like to take it
19 under-advisement just to determine the magnitude of this
20 task. But I'm willing to make the undertaking to request
21 the information if it exists.

22 --- UNDER-ADVISEMENT/UNDERTAKING

23 BY MR. MATHAI:

24 142 Q. Thank you. Mr. Penner, do you know of any
25 other documents that would have been held either by the

1 band or INAC that would reflect who was living on the
2 Reserve, and at what time?

3 A. I don't.

4 143 Q. Mr. Penner, at this time, let's say from 1930
5 to 1950, to use a rough estimate, am I right in assuming
6 that INAC, or whatever it was called at that time, would
7 have been in control of band lists?

8 A. Band lists. You mean lists of the members of
9 the band? That's what you mean by band list?

10 144 Q. Yes?

11 A. I believe that's so, yes, certainly of this
12 band and other treaty nine bands.

13 145 Q. And do you know whether these band lists at
14 the time would have included a designation as to whether
15 or not the person lived on Reserve or off Reserve?

16 A. I haven't seen lists that reflect that.

17 146 Q. So is that "I don't know," or is that: No,
18 generally they don't?

19 A. Well, I can't say I don't know, I haven't
20 seen them. So I assume that they don't reflect that.
21 The ones I've seen, the lists that are in these materials
22 do not reflect that.

23 MR. BEGGS: Sorry. Just so, perhaps, you both
24 understand what each other is talking about.

25 THE DEPONENT: Because you don't?

1 MR. BEGGS: I just want to clarify that I do.
2 Are we talking about a list that is different from the
3 pay lists that we have attached?

4 THE DEPONENT: That's what I mean. The list that
5 are in these materials do not reflect that, that's clear.
6 Those are the lists that I'm familiar with.

7 BY MR. MATHAI:

8 147 Q. Well, the pay lists don't explicitly refer to
9 who is on Reserve or off Reserve, that I agree with.
10 Explicitly it doesn't say. The pay lists are not the
11 band lists, you would agree with that?

12 A. I don't know that.

13 148 Q. So I'm going to ask for an undertaking,
14 counsel, to first determine whether or not there is a
15 separate band list apart from the pay lists that have
16 already been included?

17 MR. BEGGS: Yes.

18 --- UNDERTAKING

19 BY MR. MATHAI:

20 149 Q. If there is I'd ask that you determine
21 whether or not those band lists indicate whether or not a
22 person was living on Reserve or off Reserve, and if it
23 does then I'd ask that you produce the same. Maybe to
24 help you I can tell you why I think it's relevant?

25 MR. BEGGS: I think I know, but it would be good

1 to get it on the record, sure.

2 MR. MATHAI: Sure. The reason I think it's
3 relevant is as we can find the document that's found at
4 tab G of the "SUPPORTING AFFIDAVITS AND DOCUMENTARY
5 EXHIBITS," you have a letter dated July 8, 1952 that
6 states that Ms. Batisse, Laura Flood would have lived off
7 the Reserve for 13 years, on the Reserve for 13 years.
8 Now, at the time this letter was written she would have
9 been 26. It's a nice even split, 13/13. So it's all
10 very convenient. Obviously, my client disagrees with
11 that. She stated in her Affidavit that she would have
12 left when she was 19 years old, which would have put more
13 time on the Reserve and less time in the town. There is
14 no definitive answer in the documents that advises us
15 when she did leave the Reserve. And I believe that these
16 band lists may provide some assistance in that regard.
17 And that's why I've asked the questions in the way I have
18 to first make sure the band lists are different from the
19 pay lists, which I think they are. And, second, to see
20 whether or not they actually indicate who is on the
21 Reserve and who is off the Reserve. Because if it does
22 indicate that then, clearly, it would be of some
23 assistance to another material issue on this Judicial
24 Review Application, that being whether or not the
25 information in this document is accurate.

1 MR. BEGGS: Okay. Again, we're talking between
2 1930 and 1950. So I'll give the undertakings. In fact,
3 I don't have a problem if we find them, if they exist.
4 If there are separate band lists that exist I don't have
5 a problem giving them to you either way. But, you know,
6 just for privacy purposes you're aware there is some
7 personal information of people there.

8 MR. MATHAI: Any privacy concerns I concede can
9 be redacted from the document and then can be provided to
10 me in the similar way you put forward information of
11 other members in First Nation in these documents already.

12 MR. BEGGS: So we'll make that undertaking for
13 the years 1930 to 1950. Is that all right?

14 MR. MATHAI: Yes, that is fine. Yes, that is
15 fine.

16 --- UNDERTAKING

17 MR. MATHAI: You could even, and it's up to you,
18 but you could even limit it, if you like, even more
19 because the allegation based on this document is that she
20 left when she was 13.

21 MR. BEGGS: Right.

22 MR. MATHAI: So you could limit it to that based
23 on that, if you'd like. But I'm happy with 30 to 50.

24 MR. BEGGS: Okay.

25 BY MR. MATHAI:

1 150 Q. Now, Mr. Penner, I think we already went over
2 this but there is nothing on this document that indicates
3 that she actually filled this document out. Correct?

4 A. That's correct.

5 151 Q. Or that she approved of the information that
6 was on here?

7 A. That's correct.

8 152 Q. And you'd agree with me that this is the
9 information by which Mr. Marleau, indeed the Privy
10 Council when giving an Order, would rely upon in
11 determining whether or not someone could qualify as being
12 enfranchised. Correct?

13 A. It would be one of the documents, yes.

14 153 Q. And, in fact, in terms of providing
15 information it would be this document and then
16 potentially the application. Correct?

17 A. Those would be important documents, yes.

18 154 Q. Let's take a look at the application. You'll
19 recall that it was at tab N, as in Nancy. Now, you'll
20 see in this document we have her name filled out:

21 "1. I am a member of the Matachewan Band of
22 Indians situated in the Province of Ontario. My
23 Band No. is 67 and I am of the full age of
24 twenty-one years.

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

1 housekeeper."

2 A. Yes.

3 155 Q. And then there is a blank line:

4 "And I am capable of assuming the duties and
5 responsibilities of citizenship, and if
6 enfranchised will be capable of supporting myself
7 and dependents."

8 A. Yes.

9 156 Q. And, at this time, Ms. Flood would have had
10 two dependents. Correct?

11 A. That's my understanding.

12 157 Q. And when I say "this time" for the purposes
13 of the record I'm talking about October 10, 1952?

14 A. Yes?

15 158 Q. And, in fact, subsequent to this document she
16 would have a third child?

17 A. Yes.

18 159 Q. And that third child was born prior to the
19 Order, correct?

20 A. I believe that's right, yes.

21 160 Q. And you'd agree with me, Mr. Penner, that
22 simply signing that I can assume the duties of
23 citizenship and support my dependents without anything
24 more would not be sufficient to satisfy the
25 enfranchisement provisions of s. 108. Correct?

1 A. I believe that more information would be
2 required.

3 161 Q. That's right. Because there's still a
4 statutory obligation to ensure that the person can, in
5 fact, assume the duties and responsibilities of
6 citizenship and can support themselves?

7 A. Correct. I think that's so, yes.

8 162 Q. Because s. 108 and s. 109 of the Indian Act
9 it's not meant to be a rubber stamp, someone just submits
10 a name and automatically you're enfranchised. Correct?

11 A. That's my understanding.

12 163 Q. So it really wouldn't be this document,
13 meaning document N, that suggest that she satisfies the
14 conditions of 108. Correct?

15 MR. BEGGS: I don't know if you can comment on
16 what the Indian Nation would have relied on, or had in
17 mind apart from the correspondence.

18 MR. MATHAI:

19 164 Q. And I get that. Maybe I'll ask it this way:
20 This document doesn't indicate how much money she makes.
21 Correct?

22 A. That's correct.

23 165 Q. It doesn't indicate how long she's been off
24 the Reserve?

25 A. That's correct.

1 166 Q. It doesn't indicate how long she was living
2 on the Reserve?

3 A. That's also correct.

4 167 Q. Is there anything in this document that could
5 be fairly relied upon in order to suggest that s. 108 is
6 complied with?

7 A. Maybe you could repeat that question?

8 168 Q. Sure. Is there anything in this application,
9 just looking at this application, not any other
10 documents, at this point, is there anything in this
11 application that would satisfy the pre-conditions of
12 enfranchisement set out in 108?

13 MR. BEGGS: I think that's asking him a legal
14 question whether this information is sufficient to
15 satisfy s. 108.

16 BY MR. MATHAI:

17 169 Q. So is that a refusal?

18 MR. BEGGS: Yes.

19 --- REFUSAL

20 MR. BEGGS: Could we go off the record, for a
21 minute?

22 MR. MATHAI: Sure.

23 --- OFF THE RECORD

24 BY MR. MATHAI:

25 170 Q. We can go back on the record. Mr. Penner, if

1 we can turn to tab H?

2 A. H, yes.

3 171 Q. And this is the letter we looked at earlier,
4 dated July 28, 1952 from Mr. Marleau to the Indian
5 Affairs Branch. Correct?

6 A. Yes.

7 172 Q. And here you'll see, again, he indicates that
8 she's been living away from the Reserve for 13 years.
9 Correct?

10 A. Yes.

11 173 Q. And has resided in Matachewan for 13 years?

12 A. Yes.

13 174 Q. And also has the income?

14 A. Yes.

15 175 Q. And you'd agree with me that none of that
16 information can be found in the application that was
17 actually filled out. Correct?

18 A. The application located at tab N.

19 176 Q. N. Other than the fact that application says
20 she was a housekeeper. But it does not refer to the
21 annual income of how long she's been living off the
22 reserve. Correct?

23 A. That's correct.

24 177 Q. So is it fair to say that that information
25 only comes from this July 18th letter?

1 MR. BEGGS: I don't think Mr. Penner can answer
2 whether Mr. Marleau had any other information.

3 BY MR. MATHAI:

4 178 Q. Based on what you've reviewed is there any
5 other document that would contain this information that
6 is reflected in the July 28, 1952 letter?

7 A. Well, there's the document dated July the
8 18th that contains some of that information.

9 179 Q. And that's the only document, correct?

10 A. Well, we're now looking at two documents.

11 180 Q. Sorry. That's correct the only document that
12 contains the information that is reflected in the July
13 28th letter?

14 A. The July 18th document.

15 181 Q. That's right?

16 A. That I'm aware of, yes.

17 182 Q. Again, this is the July 18th letter that is
18 not executed by my client?

19 A. Correct.

20 183 Q. And then this letter goes out on July 28th,
21 correct, the letter found at tab H?

22 A. Yes.

23 184 Q. And it has what appears to be a received
24 stamp of July 29th?

25 A. Yes.

1 185 Q. And then Ms. Flood, or at the time Laura
2 Batisse, her letter that asks essentially for a status
3 update follows. Correct? It's August 16, 1952, correct,
4 which is tab I?

5 A. What was your question about this letter?

6 186 Q. Just simply that you would agree with me it
7 comes after Mr. Marleau has already sent on the
8 information contained in the earlier letter, the July
9 18th letter?

10 A. Yes.

11 187 Q. In this letter you'll see has Ms. Batisse's
12 signature there, correct?

13 A. Yes.

14 188 Q. And it also has brackets, "(Laura Batisse)"?

15 A. Yes.

16 189 Q. And the signature is underneath it,
17 correct?

18 A. Yes.

19 190 Q. I'd ask you to turn to your Affidavit. In
20 particular, if you could turn to paragraph 15. In the
21 second half of that paragraph, which is at page 8?

22 A. Yes.

23 191 Q. Four sentences down it says:

24 ".....I have been further advised by Pat Bertrand
25 and truly believe that being paid on the reserve

1 does not necessarily mean one is residing on the
2 reserve and that annuities for minor children are
3 paid to the head of the family, regardless of
4 whether those minor children are living with that
5 person."

6 That's what you were advised by Mr. Bertrand?

7 A. Yes, by Pat Bertrand.

8 192 Q. Now, you spoke directly to Mr. Bertrand,
9 then, and he told you that?

10 A. No, I did not speak directly to, I think it
11 was Ms. Bertrand. I'm not sure.

12 193 Q. Would Pat be a woman?

13 A. I don't know. No, it wasn't direct.

14 194 Q. Okay. And so who, then, directly spoke to
15 Pat Bertrand?

16 A. Information that I received with respect to
17 information contained in this Affidavit, if it wasn't
18 based on my own information, knowledge and belief was
19 received either by email correspondence or by telephone;
20 with respect to Pat Bertrand that would be, it wasn't
21 directly from Ms. Bertrand.

22 195 Q. Okay. So when you say, "it wasn't directly
23 from Ms. Bertrand," who was it directly from then?

24 A. I would have to go back and look at the email
25 correspondence to determine how that was communicated to

1 me.

2 196 Q. Now, we may be just splitting hairs, is what
3 you're saying that you received an email from Pat
4 Bertrand? Or that you received an email from someone
5 other than Pat Bertrand?

6 A. Well, for example, and this is not uncommon,
7 we would have a contact at Indian Affairs who with
8 respect to certain types of questions might refer us to
9 somebody else in a particular area with more
10 understanding of that particular area. They might get
11 back to us directly by way of email, or they might get
12 back to us indirectly by an attached email through the
13 person that we were initially in contact with. Somebody
14 may phone us back and say: I've been told this by so and
15 so. There's any number of different ways that
16 information gets transmitted.

17 197 Q. So it may, in fact, have been third-hand
18 information?

19 A. It's possible. I can't say, in this
20 particular case.

21 198 Q. Now, based on your understanding of these
22 treaty lists, am I right in that what was expressed to
23 you was that whoever the head of the household was
24 received the annuities until the person went from being a
25 minor to an adult?

1 A. That's my understanding.

2 199 Q. And at that time what would have been the age
3 that you turn into an adult?

4 A. I understand that to be 21.

5 200 Q. Is it your understanding that if you left the
6 Reserve you were still entitled to the annuity?

7 A. As long as you are still a member of the band
8 I think that's right, yes.

9 201 Q. Do you know whether or not the annuity was
10 paid out on the Reserve or was it paid out in town?

11 A. My understanding it was paid out on the
12 Reserve.

13 202 Q. And where does that understanding come from?
14 Is that also from Mr. Bertrand/Ms. Bertrand, or whomever
15 else would have informed you?

16 A. It's also just general knowledge I have that
17 the payment of annuities was an annual event that
18 involved some ceremony historically, and that people were
19 expected to attend in order to receive their payment.

20 203 Q. I'd ask you to turn to the 1947 pay list?

21 A. The tab?

22 204 Q. It's at tab O of your Affidavit?

23 A. Yes.

24 205 Q. Tab O of the Affidavit, for the record, is
25 the treaty pay list from 1947. Is that correct?

1 A. Yes.

2 206 Q. And the date that it was given out it looks
3 like June 19, 1947?

4 A. Yes.

5 207 Q. And at the top you'll see: "Band Paid at
6 Matachewan." Correct?

7 A. Yes.

8 208 Q. Now, if we scroll down a bit and the best way
9 I guess to do this is looking at the page numbers in the
10 top right corner?

11 A. Yes.

12 209 Q. You'll see page 8?

13 A. Yes.

14 210 Q. There is the name, "Harry Batisse?"

15 A. Yes.

16 211 Q. And it says: "Taken by Son George."?

17 A. Yes.

18 212 Q. Now, at that time George would not have been
19 the head of the Batisse household, would he?

20 A. I think not.

21 213 Q. But irrespective of that George, for some
22 reason, is taking Harry's annuities, which at the time
23 appears to be \$28. Correct?

24 A. Yes.

25 214 Q. Now if we flip to page 14?

1 A. Yes.

2 215 Q. It appears that George Batisse's date of
3 birth is indicated as May 13, 1921. Is that correct?

4 A. Sorry. Where are you looking at? Oh, over
5 here.

6 216 Q. I apologize, it's 58?

7 A. Right, that's page 13. Okay, you're just
8 using the numbers on the right. That's fine. Okay. So,
9 yes, number 58, date of birth, 13th of May, 1921.

10 217 Q. And have you no reason to doubt that date of
11 birth is accurate, correct?

12 A. For?

13 218 Q. For Mr. Batisse?

14 A. For George Batisse that's referred to as band
15 member number 58, yes.

16 219 Q. And if we do some math on his date of birth,
17 being 1921, we just add 21 to that we would think by 1942
18 he would be 21 years of age and receiving his own
19 annuity, correct, based on the theory of annuities that
20 have been explained to you by Mr. Bertrand?

21 A. That as of 1942 he would have been 21, yes.

22 220 Q. So if we go to 1942 in the pay lists, and
23 that can be found at tab J?

24 A. Yes.

25 221 Q. And you'll see at tab J you'll agree with me

1 this is the 1942 pay list?

2 A. Yes.

3 222 Q. Unfortunately, there is no page numbers here.
4 But the very first page you'll see Harry Batisse and
5 number 32?

6 A. Yes.

7 223 Q. There it indicates six boys, four girls, one
8 man, one woman for a total of 12?

9 A. Yes.

10 224 Q. For a total of 12 under his family is 48?

11 A. Yes.

12 225 Q. Am I right there is no separate entry for
13 George Batisse?

14 A. That appears to be so, yes.

15 226 Q. And by June 11, 1942 he would have been 21
16 years of age?

17 A. That seems to be so, yes.

18 227 Q. Now, if we flip, then, to 1943, which is the
19 next tab, tab K?

20 A. Yes.

21 228 Q. Again, you see at line 32 Harry Batisse?

22 A. Yes.

23 229 Q. And, again, it's the same thing, six boys,
24 four girls?

25 A. Yes.

1 230 Q. \$48 received, number of people 12?

2 A. Yes.

3 231 Q. And signature of receipt there is a line that
4 says, "Harry Batisse" with an 'X'?

5 A. Right.

6 232 Q. Again, there is no line item for George?

7 A. That's correct.

8 233 Q. Now at this time George would be 22?

9 A. Yes.

10 234 Q. I think the first time we see George get his
11 own line item is 1944. Is that correct?

12 A. That appears to be so, yes.

13 235 Q. And for the record the 1944 pay list is found
14 at tab L. And there under Harry Batisse, line 32, is
15 actually a notation under the "REMARKS" section that
16 says, "Michael tfd to No. 57, George tfd to number 58."

17 A. Yes.

18 236 Q. Is that right?

19 A. That's right.

20 237 Q. And then the first line item appears, then,
21 at 57 and 58 we see Michael Jr. and George?

22 A. Yes.

23 238 Q. By this point George now is 23?

24 A. Yes.

25 239 Q. Do you know of any reason why it would have

1 taken 23 years for George to be receiving his own annuity
2 as opposed to 21?

3 A. I don't know.

4 240 Q. It seems to run in contrast to what you were
5 told by Ms. Bertrand or through some other source,
6 correct?

7 A. Maybe we can just go back to that paragraph
8 so I could answer that question accurately.

9 241 Q. My recollection is it's paragraph 15 that
10 goes on to page 8?

11 A. Yes. This paragraph does not explain the
12 discrepancy as to why it took until the age of 23 for
13 George to be receiving his own annuities directly.

14 242 Q. Okay. Now, again, if we jump back -- and the
15 reason we're jumping back, if you go to tab O, it
16 appears, you know, by 1947 they're now including people's
17 date of birth, correct, on the pay list?

18 A. Yes.

19 243 Q. And even Michael Jr., they don't have a full
20 date of birth, they only give him a year 1921?

21 A. That's correct.

22 244 Q. It would appear that even he would have
23 received his first annuity after his 21 birthday?

24 A. Yes.

25 245 Q. Although I concede it appears that both of

1 them were born in 1921 based on this which does, in fact,
2 seem strange?

3 A. Unless they were twins.

4 246 Q. Unless they were twins. I don't have that
5 information?

6 A. No.

7 247 Q. And I trust that you don't, either?

8 A. No.

9 248 Q. Well, let's do it this way instead. I'm
10 going to pick someone who is unrelated to the Batisse
11 family. I looked at a gentleman by the name of Louis
12 Friday, and if you're still on tab O?

13 A. Yes.

14 249 Q. You'll see Mr. Friday at page 14, again
15 doesn't have a full year birth, but has 1913?

16 A. Yes.

17 250 Q. Now, obviously, doing the simple math at 19
18 13?

19 A. Yes.

20 251 Q. So simple that I have to use a calculator
21 plus 21, you'd think that by 1934 he'd be receiving his
22 own annuities?

23 A. Well, that depends. We don't have enough
24 information with respect to Louis Friday to know why he
25 didn't start receiving annuities on this pay list until

1 this year.

2 252 Q. Well, no. Sorry. And I should have been
3 clear. The only reason I turned to tab O was to get his
4 year of birth. He actually does receive annuities
5 through his family in earlier versions of the pay list?

6 A. I don't know that, because I haven't looked
7 at those.

8 253 Q. And we'll do that. But if I could ask you
9 first to turn to tab L?

10 A. Yes.

11 254 Q. If you look at line number 36?

12 A. Yes.

13 255 Q. There is a Mrs. George Friday. If you go all
14 the way to remarks?

15 A. Maybe I'm at the wrong tab. What tab?

16 256 Q. Tab L which is 1944?

17 A. All right. And then the line entry?

18 257 Q. Is 36?

19 A. Okay. I see it. Yes.

20 258 Q. You see Mrs. George Friday?

21 A. Mrs. George Friday, yes.

22 259 Q. And there you see: "Louis tfd to No. 59."

23 So it would appear that is when Louis then gets his own
24 line item, 59?

25 A. Right.

1 260 Q. Now, at that point he would have been --
2 doing, again, the simple calculator math, 31 years old.
3 Some ten years after he should have been receiving his
4 own annuity?

5 A. That's right.

6 261 Q. If we flip back to tab K, so one tab later?

7 A. Yes.

8 262 Q. You'll see that there is no line item for
9 Louis Friday?

10 A. That's correct.

11 263 Q. So it's another example that doesn't appear
12 to conform to the advice that you received from
13 Mr. Bertrand. Correct?

14 A. It doesn't. It's not explained by that
15 information, that's correct.

16 264 Q. Is it fair to say that there may be other
17 explanations, then, for why people are receiving their
18 annuities other than turning to the age of 21?

19 A. I think that's fair.

20 265 Q. Now, with respect to Laura Batisse, it would
21 appear that she first gets her own line item -- sorry,
22 can we go off the record.

23 --- OFF THE RECORD

24 BY MR. MATHAI:

25 266 Q. Sorry, go back on the record. It would

1 appear that Ms. Laura Flood first received her own line
2 item in 1947, correct?

3 A. Yes.

4 267 Q. And that's reflected in tab O, which is the
5 1947 pay list. Correct?

6 A. Uh'hmm.

7 268 Q. And doing the simple math this is when she
8 would have turned 21?

9 A. The math there conforms to 21, yes.

10 269 Q. And we've now discovered, though, that there
11 are other reasons why she may have received that annuity,
12 correct, other than her turning 21 years of age?

13 A. I wouldn't say that. There are reasons why
14 other people don't receive them until some other age.
15 But that doesn't explain her situation where the notation
16 says "of age." So it would appear in her case because
17 she became of age.

18 270 Q. And what would you say the "tfd" stands
19 for?

20 A. I understand that to mean transferred.

21 271 Q. And that would, again, come from
22 Ms. Bertrand?

23 A. No, that was actually my own interpretation.
24 I don't recall that Ms. Bertrand said that. It just
25 appear to be that is the way these pay lists were.

1 272 Q. And I think that's a fair assumption, that's
2 the way I read it too. But I'd like the undertaking to
3 determine what the "tfd" initials stand for?

4 MR. BEGGS: Okay.

5 --- UNDERTAKING

6 BY MR. MATHAI:

7 273 Q. Now, consistent with what you were saying
8 before it appears that these pay dates happen either in
9 June or July on a one-day occasion?

10 A. Yes.

11 274 Q. And that was consistent with what you were
12 saying before that there is actually a ceremony on the
13 Reserve and people come and they obtain the money.
14 Correct?

15 A. Yes, that's my understanding.

16 275 Q. Now, in the treaty pay lists that you have
17 provided, which I think date back from 1938 forward to
18 1947, and counsel will tell me if I'm wrong on that, I'm
19 sure?

20 MR. BEGGS: It starts in 1938 and goes to 1954, I
21 think.

22 BY MR. MATHAI.

23 276 Q. Thank you. If you look from 38 to 44,
24 Mr. Penner, you'll see that Harry Batisse picked up his
25 annuities, is that correct?

1 A. Do you want me to look at each one of them?

2 277 Q. If you could, I don't want you to take my
3 word for it?

4 A. Okay. 1938 Harry Batisse picks up his own
5 annuities or on behalf of his family, is that the
6 question?

7 MR. BEGGS: I don't know if this is saving time.
8 Paragraph 16 of this Affidavit describes, each point says
9 whether Harry picked it up himself.

10 BY MR. MATHAI:

11 278 Q. You're right. And that would be the quicker
12 way as long as the witness is willing to agree that
13 what's in 16 accurately reflect what it says.

14 A. Yes, I would have checked it then. In 1938
15 Harry received his annuity himself. Same is true for
16 1939, 1940, 1941, 1942, 1943, 1944. And 1945 the annuity
17 was received by his son, George. Do you want me to carry
18 on?

19 279 Q. No, let's stop there for a second. Now,
20 based on the information that you were told by Pat
21 Bertrand or some other person, the monies would have
22 received by the heads of family for all minor children.
23 Correct?

24 A. For themselves, spouse and minor children.
25 Yes.

1 280 Q. And the heads would have received it?

2 A. Well, typically, yes. But, apparently, it
3 wasn't an absolute requirement because at some point the
4 son, there are examples of the son or somebody else
5 receiving them on behalf of the family.

6 281 Q. And at this point, 1945, Ms. Batisse would
7 have been 19?

8 A. I think that's right.

9 282 Q. And it's at this time, and you'll correct me
10 if I'm wrong, that she alleges that she moved off the
11 Reserve. Correct?

12 A. Yes. I think that's right. 19, yes.

13 283 Q. And could one explanation for why George is
14 picking up the money is because Laura and her family have
15 moved off the Reserve in 1945?

16 A. Laura and her entire family?

17 284 Q. Yes?

18 A. I don't know.

19 285 Q. Then, again, in 1946 Larry's annuity is
20 received by George. Correct?

21 A. Yes.

22 286 Q. Again, in 1947 George receives it?

23 A. Yes.

24 287 Q. Although it actually says that Laura received
25 her own?

1 A. Yes.

2 288 Q. Again, in 1948?

3 A. Yes.

4 289 Q. George receives it?

5 A. Yes.

6 290 Q. In 1949 Larry receives it instead of Harry?

7 A. Yes.

8 291 Q. And it continues on that way that Harry is
9 not receiving his own until 19, at least until 1953?

10 A. Well, 1951 it says Laura Batisse appears at
11 band 67 to note that her annuity was received by George.

12 MR. BEGGS: We weren't necessarily talking about
13 Harry the whole time. 1949 we didn't say what happened
14 to Harry. So you might want to look into that from then
15 on.

16 MR. MATHAI:

17 292 Q. Any explanation for why from at least 1945
18 until 1949 Harry as the head of household is not picking
19 up the annuity?

20 A. I have no knowledge about that.

21 293 Q. But, again, this is another area that seems
22 to be different than the area that you received from
23 Mr. Bertrand?

24 A. Well, let's go back to that paragraph again
25 and you can ask me that question. Okay. At paragraph 15

1 what I was advised is that the annuities were paid to the
2 head of each family for all of the family members. And
3 the pay list suggest that while the physical handing over
4 of the payment wasn't necessarily to the head of the
5 family, in other words somebody could stand in for the
6 head of the family and receive the annuity on behalf of
7 the head of the family and the rest of them. So I don't
8 see any contradiction there, it's just the pay list
9 suggest that it's possible for somebody other than the
10 head to actually receive the payment.

11 294 Q. Your point being that while they're minor
12 they count towards the annuity owed to the head, but can
13 be collected by anybody?

14 A. I don't know that they could be collected by
15 anybody. But it's pretty clear from the pay list that
16 they weren't always picked up by the head of the
17 family.

18 295 Q. And it could be one of the reasons why it
19 wasn't picked up by the head of the family is because the
20 head of the family wasn't there for the ceremony?

21 A. That's quite possible.

22 296 Q. So someone else would pick it up?

23 A. I think that's logical.

24 MR. MATHAI: This may be a good time to take a
25 break.

1 --- WHEREUPON PROCEEDINGS RECESSED AT 11:52 A.M.

2 --- WHEREUPON PROCEEDINGS RESUMED AT 12:10 P.M.

3 BY MR. MATHAI:

4 297 Q. Thank you, Mr. Penner. Before we went back
5 while we were off the record I had asked you to review
6 the three Affidavits prepared by Ms. Flood and determine
7 whether or not, or how many references to the Chief being
8 Alfred Batisse were reflected. Have you had an
9 opportunity to do that?

10 A. Yes.

11 298 Q. And what is the answer to that?

12 A. The answer is that there's one reference to
13 the Chief of Matachewan First Nation being Alfred
14 Batisse.

15 299 Q. And that would be in the first Affidavit,
16 correct?

17 A. Yes, the Affidavit at tab C of the
18 applicant's materials. And that was the Affidavit of
19 Laura Flood sworn on the 26th of February, 1996. The
20 reference is at paragraph 3.

21 300 Q. Could I ask you to turn to paragraph 21 of
22 your Affidavit?

23 A. Yes.

24 301 Q. Now, in paragraph 21 you refer to information
25 you received from Magali Bouffard?

1 A. Yes.

2 302 Q. And that indicates that the three children,
3 Clarence Lorne Flood, Lorne Davidson Flood and Laura Jean
4 Flood are recorded as being the children of Wycliffe
5 Davidson Flood. Is that correct?

6 A. Yes.

7 303 Q. And did you receive that information directly
8 from Magali Bouffard?

9 A. Yes.

10 304 Q. So this is different from the information you
11 received from Pat?

12 A. I'm not certain of the information received
13 from Pat Bertrand was received directly. But I am
14 certain that the information from Magali Bouffard was
15 received.

16 305 Q. This paragraph says that these three children
17 are recorded. Do you know what record she's referring
18 to?

19 A. No. I can't say what the record is that
20 she's referring to, no.

21 306 Q. Can I get an undertaking, counsel, to contact
22 Ms. Bouffard and determine what record she is referring
23 to, and to produce the same?

24 MR. BEGGS: Okay.

25 --- UNDERTAKING

1 BY MR. MATHAI:

2 307 Q. Thank you. Paragraph 22, but on page 12, you
3 indicate that:

4 ".....Prior to this marriage, as children of an
5 unmarried female registered Indian, they would
6 have been entitled to registration under the
7 Indian Act. I am also informed by Ms. Bouffard,
8 and I do believe, that two of these children were
9 registered as Indians under the Indian Act in
10 1989 and the third child was registered in 1990."

11 Now, you refer to two of these children. Which two are
12 they?

13 A. I'm not sure if I knew that, at the time.
14 But I don't recall.

15 308 Q. Counsel, I'm going to ask for an undertaking
16 to find out which two children are being referred to in
17 paragraph 22 as being registered in 1989 and 1990?

18 MR. BEGGS: Sure.

19 --- UNDERTAKING

20 BY MR. MATHAI:

21 309 Q. You'd agree with me that, in fact, Ms. Flood
22 had three children prior to being enfranchised on
23 December 4, 1952. Correct?

24 A. Three children prior to being enfranchised,
25 yes.

1 310 Q. And you would agree with me, then, those
2 three children would all have been entitled to
3 registration under the Indian Act based on the same logic
4 that you stated in paragraph 12?

5 A. Paragraph 12?

6 311 Q. Paragraph 22, my apologies?

7 A. Yes.

8 312 Q. Could it be a typographical error that's in
9 paragraph 22, and it should say that three of these
10 children were registered as Indians? Or you just don't
11 know?

12 A. Sorry, you lost me there?

13 313 Q. Could it be a typographical error where you
14 say: "...I am also informed by Ms. Bouffard, and I do
15 believe, that two of these children were registered as
16 Indians..."?

17 A. It says two were registered as Indians in
18 1989, and the third was registered in 1990.

19 314 Q. I see. It's my misreading of it, and I
20 apologize for that. You're right. So all three children
21 were registered at some point?

22 A. That's my understanding, yes.

23 315 Q. Okay. Could I get an undertaking, counsel,
24 to obtain the document confirming the registration; and
25 under what section under the Indian Act they were

1 registered?

2 MR. BEGGS: I'll give the undertaking. But I
3 want to show you something. At tab C of Mr. Penner's
4 Affidavit, this is a record for George Batisse. So is
5 this the type of document you're looking for, a
6 registration type?

7 MR. MATHAI: Yes, because this document will
8 indicate the type of category that this individual is
9 under.

10 MR. BEGGS: Okay. And that's for the three
11 children?

12 MR. MATHAI: That's right. So that is an
13 undertaking you are willing to provide?

14 MR. BEGGS: Yes, we'll provide that.

15 --- UNDERTAKING

16 BY MR. MATHAI:

17 316 Q. Looking back at s. 108. Again, I'm putting
18 it in front of you s. 108 of the Indian Act. Typically
19 upon enfranchisement of an unmarried Indian woman her
20 unmarried minor children should have been enfranchised,
21 as well, correct?

22 A. What section are you referring me to?

23 317 Q. Section 108(1), all the way down?

24 A. Yes. So the question being that if an
25 unmarried woman is enfranchised that her minor unmarried

1 children would also be enfranchised, that's the way the
2 section reads. Yes.

3 318 Q. So, in this case, wouldn't it have been the
4 case that Ms. Flood's three children that were born at
5 the time of her enfranchisement should have been
6 enfranchised, as well?

7 A. I think that's the way this reads. I can't
8 be certain of that, because I've not tried to trace
9 through how this provision has been applied. But that's
10 the way it appears to read.

11 319 Q. And you'd agree with me that the three
12 children that she did have that were all minor unmarried
13 at the time of her enfranchisement were not enfranchised.
14 Correct?

15 A. Am I supposed to know the answer to that?

16 MR. BEGGS: Well, I'm sure you don't know the
17 answer to that. I'm just trying to think if we know the
18 answer. Perhaps that might be something we'd have to
19 check, I guess. I assume not.

20 BY MR. MATHAI:

21 320 Q. So the answer is you don't know if they were
22 enfranchised, am I correct?

23 A. That's correct.

24 321 Q. So I'm going to ask for an undertaking,
25 counsel, to be advised whether Lorne Davidson Flood,

1 Clarence Lorne Flood and Laura Jean Flood were
2 enfranchised?

3 A. At this time, I take it, you mean?

4 322 Q. At any time?

5 MR. BEGGS: The logic I had understood was that
6 since the first time they were registered was in 1989 and
7 1990 they were never registered and, therefore, never
8 would have been enfranchised. But I'll check that may be
9 I misunderstood something. So I'll give that
10 undertaking, and take a look.

11 --- UNDERTAKING

12 BY MR. MATHAI:

13 323 Q. Thank you. I'm going to ask you to turn to
14 tab R of the "SUPPORTING DOCUMENTS AND DOCUMENTARY
15 EXHIBITS?"

16 MR. BEGGS: Is that in the Affidavit of Angel
17 Larkman?

18 BY MR. MATHAI:

19 324 Q. This is the Order in Council that
20 enfranchises Laura Batisse. Correct?

21 A. Yes.

22 325 Q. And then if you turn to page 2 of this
23 document you'll see at line 6, it says: "Laura Batisse
24 of the Matachewan Band, in the Nipissing Agency, Province
25 of Ontario." Correct?

1 A. Yes.

2 326 Q. There is no reference to her unmarried minor
3 children. Correct?

4 A. Correct.

5 327 Q. And you do see other entries there of
6 individuals whose unmarried minor children are, in fact,
7 enfranchised?

8 A. I can see that, yes.

9 328 Q. And that's consistent with an interpretation
10 in s. 108 where it's mandatory that the unmarried minor
11 children are also enfranchised. Correct?

12 A. It's consistent with that interpretation,
13 yes.

14 329 Q. And part of the explanation for why the
15 children were not enfranchised on this document is that
16 there is no children listed on the application form.
17 Correct?

18 A. That makes sense.

19 330 Q. And is the Attorney General aware for any
20 explanation why those children were not listed on the
21 documents?

22 A. No.

23 331 Q. I'm going to ask to you turn to tab II of
24 this "SUPPORTING AFFIDAVIT OF DOCUMENTARY EXHIBITS," the
25 double I?

1 A. Uh'hmm.

2 332 Q. This appears to be a document from Indian -
3 Eskimo Affairs. Is that correct?

4 A. Yes.

5 333 Q. And can you tell me what this document is?

6 A. It is a list of people according to the
7 subject or description line who have been subject to
8 enfranchisement. And it provides a date from and a date
9 to. And there is a column for agency. But the only
10 entry that we can read actually seems to provide an
11 explanation for the enfranchisement.

12 334 Q. And the explanation is?

13 A. In the case of L. Batisse, which is the one
14 entry that we can read, it says: Marriage to
15 non-Indian.

16 335 Q. This would be in error, correct?

17 A. We probably would think that's in error,
18 because her marriage to a non-Indian post-dated her
19 enfranchisement in 1952 and so it would have made no
20 difference.

21 336 Q. Do we know the date that this was prepared?

22 A. I don't see a date on the document itself,
23 no.

24 337 Q. Now, this document, obviously, wasn't
25 prepared by my client?

1 A. I think that's fair.

2 338 Q. And my understanding is this document was
3 something that was in the Registrar's file, is that
4 correct?

5 A. I think that's right. Do we know?

6 MR. BEGGS: I don't know, actually.

7 THE DEPONENT: We don't know.

8 BY MR. MATHAI:

9 339 Q. Can I get an undertaking, counsel, to
10 determine the origin of this document?

11 MR. BEGGS: I'm sure we'll make a reasonable
12 effort. I have to qualify that because I don't know
13 where it came from. But we'll do our best to find out.

14 --- UNDERTAKING

15 BY MR. MATHAI:

16 340 Q. And the date that it was created?

17 MR. BEGGS: Okay. It's possible, and this is
18 just speculation, that this is a type of document that
19 was filled in over time. But I'll try my best to find a
20 date.

21 --- UNDERTAKING

22 BY MR. MATHAI:

23 341 Q. Now, it says "Date From and then "Date To."
24 Do you interpret "Date From" to be the date of the
25 enfranchisement?

1 A. Well, the "Date From" is consistent with the
2 date of enfranchisement. But that begs the question what
3 in 1953 it's in reference to.

4 342 Q. So, again, do you interpret "Date From" to be
5 the date that she was enfranchised?

6 A. I think that's fair.

7 343 Q. And it would appear that whoever filled this
8 out believed that the date of enfranchisement she was
9 enfranchised for the reason of being married to a
10 non-Indian. Is that correct?

11 A. That's what is written in there, yes.

12 344 Q. And that would be pursuant to s. 108(2) of
13 the Indian Act, correct?

14 A. Yes.

15 345 Q. Does the Attorney General have any
16 explanation for the notation on this?

17 MR. BEGGS: The marriage?

18 BY MR. MATHAI:

19 346 Q. The notation indicating she was married to a
20 non-Indian?

21 A. I don't have any explanation.

22 347 Q. And, of course, can I get an undertaking that
23 if an explanation is obtained that it will be provided to
24 us?

25 MR. BEGGS: Okay.

1 --- UNDERTAKING

2 BY MR. MATHAI:

3 348 Q. Mr. Penner, are you aware of any other claims
4 from members of the Matachewan First Nation who claims to
5 have been enfranchised pursuant to 108(1) without their
6 knowledge?

7 A. I'm not.

8 349 Q. So this would represent the first time that
9 you've been aware of a case that involves someone
10 claiming that they didn't know what they were signing?

11 A. With respect to enfranchisement that would be
12 fair.

13 350 Q. Counsel, can I get an undertaking to
14 determine whether or not there are any other cases that
15 either the Attorney General or the Registrar may know of
16 where a First Nation woman from the Matachewan First
17 Nation claimed that they had not applied for
18 enfranchisement?

19 MR. BEGGS: From the Matachewan First Nation?

20 BY MR. MATHAI:

21 351 Q. Only from the Matachewan First Nation. And I
22 can be a little more specific, actually. Let's do from
23 the years 1945 until 1955?

24 MR. BEGGS: The Attorney General would only be
25 aware usually if it came forward in litigation; and the

1 Registrar would only be aware if somebody made that
2 complaint to them. So I can undertake to ask the
3 Registrar and check, you know, with the Attorney General,
4 you know, the department, whether such a complaint or
5 claim has been made. But, obviously, if it was anything
6 more informal we wouldn't know.

7 MR. MATHAI: That is fair.

8 MR. BEGGS: So I'll make that inquiry.

9 --- UNDERTAKING

10 BY MR. MATHAI:

11 352 Q. If we go to tab V again. This is the
12 unsigned letter of December 22nd?

13 A. Yes.

14 353 Q. Do you have the original unsigned version of
15 this letter, or is the AG only in possession of a copy?

16 A. The only copy we have is this copy.

17 MR. BEGGS: We only have a copy. It's a document
18 from which our copy was made. I believe would have come
19 from a file in National Archives.

20 BY MR. MATHAI:

21 354 Q. So the original is at the National
22 Archives?

23 MR. BEGGS: I believe so.

24 BY MR. MATHAI:

25 355 Q. I'm not going to ask you to get the original

1 from the Archives, but can I get an undertaking to
2 determine whether the National Archives has the original?

3 MR. BEGGS: Okay.

4 --- UNDERTAKING

5 BY MR. MATHAI:

6 356 Q. If I could ask you to turn to tab W?

7 A. Yes.

8 357 Q. Now, this is the cheque requisition from J.A.
9 Marleau?

10 A. Yes.

11 358 Q. And what's the date stamp on that?

12 A. December 22, 1952.

13 359 Q. So on December 22, 1952 it appears that J.A.
14 Marleau requested the cheque be made for \$82.23?

15 A. I don't read it that way. There is an
16 earlier date, which is the date of invoice of December
17 the 12th.

18 360 Q. Okay?

19 A. And given that the date stamp of December
20 22nd is the stamp of the Sturgeon Falls Indian Agency, it
21 looks to me more like that's the date it was received by
22 him or by his office.

23 361 Q. Okay. So he received the cheque on December
24 22nd?

25 A. It appears that way to me.

1 362 Q. Sent it out on the 22nd?

2 A. That's reference to the letter dated the 22nd
3 somewhere else, I believe, yes.

4 363 Q. Yes. And got those documents signed on the
5 22, as well?

6 A. Received on the 22nd. I don't know where the
7 other document is.

8 364 Q. And signed on the 22nd, as well. Correct?

9 A. Well, if we go through those I could say
10 "correct." I would have to look at them again, just to
11 be pretty sure of that.

12 365 Q. That's fair. It's at tab E, page 53 of my
13 record, enfranchisement card?

14 A. Okay. And signed by Laura Batisse below the
15 date of December the 22nd, 1952.

16 366 Q. So the cheque is received on December 22,
17 1952?

18 A. In the office.

19 367 Q. In the office. And then it's sent out by
20 letter the same day?

21 A. Yes. That's at tab V, there is a letter of
22 Marleau saying received the cheque today, and it's being
23 sent out the same day December 22, 1952 to Ms. Batisse.

24 368 Q. Along with the enfranchisement card?

25 A. That's correct.

1 369 Q. And it's signed on the 22nd, the
2 enfranchisement card?

3 A. I can't say with certainty what date it was
4 signed. But the signature appears under the date of
5 December 22, 1952, yes..

6 370 Q. You have no reason to believe it wasn't
7 signed on that date?

8 A. There is no other date on there.

9 371 Q. That's right. December 22nd was a busy
10 day?

11 A. It seems like it. Pony express.

12 372 Q. Maybe not a pony, maybe a stallion based on
13 the mileage?

14 A. Two hundred fifty miles.

15 373 Q. Now, you had rightly pointed out that in this
16 document at tab W, the date of the invoice was December
17 12th?

18 A. Yes.

19 374 Q. Correct. And if you turn to tab T, "T" as in
20 Tom, you'll see there that this appears to be the date
21 that it was requested. Correct?

22 A. I'm not sure that this is a request for the
23 cheque. It does say that under separate cover a cheque
24 is going forward to Laura Batisse instructing Marleau to
25 forward the cheque and the card to Ms. Batisse.

1 375 Q. So this document, then, is not the invoice or
2 the request, that's what you're saying?

3 A. It doesn't appear to be. For example, if you
4 turn to tab U there's a cheque requisition form also
5 dated December 12th. And that looks more like an invoice
6 to me, although technically it's actually a requisition
7 for a cheque. But December 12th is the operative date
8 with respect to both of those documents.

9 376 Q. Turning back to tab T?

10 A. Yes.

11 377 Q. I'll just read it out here. "Kindly be
12 advised that by Order in Council P.C. 4582 dated December
13 4, 1952, the applicant and family hereunder named has/
14 have been declared enfranchised: NAME: (Miss) LAURA
15 BATISSE No. 67 Matachewan Band WIFE: (blank) together
16 with the minor unmarried child or children: NONE."?

17 A. That's correct.

18 378 Q. Despite the fact that she did have minor or
19 unmarried children?

20 A. Yes.

21 379 Q. And despite the fact that the Act requires as
22 mandatory that these minor unmarried children be
23 enfranchised?

24 A. That appears to be so.

25 MR. MATHAI: Could we go off the record.

1 --- OFF THE RECORD

2 BY MR. MATHAI:

3 380 Q. I have one last question: Can I get an
4 undertaking with respect to the cheque that was
5 eventually, apparently, received at Sturgeon Falls to
6 determine whether or not that cheque was cashed, and
7 whether there are documents reflecting that fact?

8 MR. BEGGS: I'll give an undertaking to make a
9 reasonable effort to find that out. Frankly, I'm not
10 optimistic, and say that we had it.

11 --- UNDERTAKING

12 BY MR. MATHAI:

13 381 Q. Or if there is any documents reflecting the
14 fact that it was not cashed?

15 MR. BEGGS: Okay. I'll make that inquiry.

16 --- UNDERTAKING

17 MR. MATHAI: And one more brief indulgence, and
18 then I think I'm finished.

19 Subject to the answers to undertakings, and I
20 think there was really a couple of, I don't think there
21 was any real refusals but two under-advisements, at
22 least, those are my questions.

23 MR. BEGGS: I just have one point to clarify on
24 re-examination.

25 MR. MATHAI: Sure.

1 RE-EXAMINATION BY MR. BEGGS:

2 382 Q. My friend asked in your Affidavit,
3 Mr. Penner, at tab O. My friend took you to George
4 Batisse's birth date on the last page of tab O at line
5 58. This is the line my friend took you to saying that
6 he, indicating that Mr. George Batisse had been born in
7 1921?

8 A. Yes.

9 383 Q. Just for clarifying the record. If I could
10 take you to tab C of your Affidavit. You'll see on the
11 first page that looks like a computer printout the
12 registered Indian record of George Batisse, and it has a
13 birth date there?

14 A. Yes.

15 384 Q. Can you tell me the year?

16 A. 13th of May 1922.

17 385 Q. And there is a couple of pages following.
18 There is, again, called Registered Indian Record for
19 George Batisse. And there is a date of birth under item
20 7?

21 A. May 13, 1922.

22 386 Q. And then just taking you ahead to tab P which
23 is, again, a pay list. The last page line 58?

24 A. Yes.

25 387 Q. It has George Batisse's birth date, again?

1 A. It has 13th of May, 1921.

2 388 Q. Tab P?

3 A. Oh, sorry. There the date for George Batisse
4 is 13th of May 1922.

5 389 Q. I just wanted to clarify that distinction.
6 Although I do note that -- perhaps, I should do it with
7 the witness. The line above 57, Michel Batisse?

8 A. Yes.

9 390 Q. Gives the year he was born as?

10 A. 1920.

11 MR. BEGGS: There seems to be some distinction
12 between P and O as to actual birth dates.

13 EXAMINATION BY MR. MATHAI, CONTINUED:

14 391 Q. I just have one question following up on
15 that, or two questions following up on that.

16 Using 1922 as the date he would have been 21 at
17 the year 1943. Is that correct?

18 A. Twenty-one and 22 makes 43, yes.

19 392 Q. And he only, George, that is, received his
20 annuity as being separate from Harry in 1944. Correct?

21 A. I think that's correct, yes.

22 393 Q. At the age of 22?

23 A. Yes.

24 394 Q. And the other individual that we looked at,
25 Louis Friday, he would have received it well after 21

1 still?

2 A. Yes.

3 MR. MATHAI: That is it.

4 --- WHEREUPON PROCEEDINGS ADJOURNED AT 12:53 p.m.

5 *****

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

10 Aspe: Debbi Aub
11 D. Anshan, CSR RPR
12 Real Time (Caption) Shorthand Reporter

13 Reproductions of this transcript are in direct
14 violation of O.R. 587/91 Administration of Justice Act
15 January 1, 1990 and are not certified without the
16 original signature of the Court Reporter
17
18
19
20
21
22
23
24
25