

No. 23646
NELSON REGISTRY

**IN THE PROVINCIAL COURT OF BRITISH COLUMBIA
(BEFORE THE HONOURABLE JUDGE MROZINSKI)**

**OCTOBER 5, 2016
NELSON, BC**

IN THE MATTER OF

REGINA

v.

RICHARD LEE DESAUTEL

**PROCEEDINGS AT TRIAL
(DAY 8)**

APPEARING FOR THE CROWN:

**G. THOMPSON
A. PEACOCK
M. WORTH**

APPEARING FOR THE ACCUSED:

**M. UNDERHILL
E. PENN**

Darlena Watt (for the accused)
Cross-exam by Mr. Thompson
Michael Marchand (for the accused)
In chief by Mr. Underhill

1 Q No, no, but I'm just asking you, you do it in
2 Washington as well; right? There's hunting in
3 Washington?

4 A Both places, yes.

5 Q Right. And so people are hunting now in
6 Washington, and you have a --

7 A Yes.

8 Q -- basis for doing it. So people get deer in
9 Washington; is that right?

10 A M'mm-hmm. Yes.

11 Q And they get other game in Washington as well?

12 A Yes.

13 MR. THOMPSON: Those are my questions. Thank you.

14 THE WITNESS: Thank you.

15 THE COURT: Anything arising, Mr. Underhill?

16 MR. UNDERHILL: Nothing arising, Your Honour.

17 THE COURT: Ms. Watt, I'd like to thank you very much
18 for coming and testifying. Appreciate that. And
19 I'll excuse you from the witness stand. Thank
20 you.

21 THE WITNESS: Thank you.

22

23 **(WITNESS EXCUSED)**

24

25 THE COURT: All right. Have you got another witness,
26 Mr. Underhill?

27 MR. UNDERHILL: Yes, I do.

28 THE COURT: Okay.

29 MR. UNDERHILL: Yes. I now call Dr. Michael Marchand
30 to the stand, please.

31

32

**MICHAEL MARCHAND, a
witness called for the
accused, sworn.**

33

34

35

36 THE CLERK: Please state your full name and spell your
37 last name for the record.

38 THE WITNESS: Michael Edward Marchand. And it's my
39 English name.

40

41 **EXAMINATION IN CHIEF BY MR. UNDERHILL:**

42

43 Q Dr. Marchand, I wonder if you could first
44 introduce yourself traditionally to the court.

45 A Okay. My English name is Michael Edward Marchand.
46 My Indian name is Qualth-a-men, Q-u-a-l-t-h-
47 a-m-e-n. That's how I spell it. It's probably

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1 not the real linguistical way to spell it, but it
2 means --

3 THE COURT: Some Xs in there.

4 THE WITNESS: Yeah. It means wolverine. That's the
5 Indian name. And when my aunt named me. My
6 parents were Edward Marchand. He was Lakes. My
7 mother was Thelma Cleveland-Marchand. She was
8 mostly Entiat and Wenatchi. And my paternal --
9 well, I'll start with -- my maternal grandparents
10 were John B. Cleveland. He was Wenatchi and
11 former chairman of our tribe. Then his wife was
12 Gladys Timator-Cleveland. And she was the
13 descendant of the Entiat chief, Shilkasaskin
14 [phonetic], which means Standing Cloud. That's my
15 mother's side. And then I had a couple of uncles
16 and a few aunts on that side too, but I won't go
17 into them.

18 But on my father's side, my father was Arrow
19 Lakes. He was raised in Kettle Falls. And his
20 parents were William Marchand. He was commonly
21 called Willy, I think. And then his wife was Mary
22 Aurapahkin-Marchand. She was the descendant of
23 Chief Aurapahkin. So that is my family. And I
24 had lots of uncles. Lots of aunts. Lots of
25 cousins.

26 MR. UNDERHILL:

27 Q Maybe tell the court a little bit more about what
28 you know about Chief Aurapahkin.

29 A I was raised a lot with my grandparents. So I
30 lived -- I went to public schools, like, nine
31 months of the year, but the summers I stay with my
32 grandparents mostly, and mostly with my
33 grandparents who lived near Kettle Falls. There's
34 a -- just north of Kettle Falls there's allotments
35 called Aurapahkin Allotments, and that's where my
36 grandparents lived. And so I stayed there most
37 summers. And then just in daily life she
38 mentioned Aurapahkin once in a while. Like, if I
39 did something she thought was good, then she might
40 say, that's like your grandpa -- Chief Aurapahkin
41 used to do that. Could be almost anything. If I
42 did something bad, she never did say that. And so
43 that's kind of how I heard about him.

44 And then as we were raised -- it seems kind
45 of odd now, but when I was a real young child I
46 didn't really understand time or calendars or
47 years or anything like that, but we would play

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- 1 with -- we were encouraged to play with hunting
2 things a lot or war things a lot, things like
3 knives or bows or even guns. And we were kind of
4 encouraged just to utilize those things, and we
5 were encouraged to hunt or help hunt. And in the
6 course of doing that they would teach us how to be
7 safe with things. And, for example, with a gun or
8 something, we were taught probably from the time
9 you were a baby that this is a lethal weapon.
10 It's meant to kill. You don't ever point this as
11 nothing, especially people, unless you plan to
12 kill something, you know. So actually seeing baby
13 pictures of myself with, like, high-powered rifles
14 in the same picture, that sort of thing. We were
15 just raised with those things. And he was just
16 kind of a presence there. And I don't know how --
17 I guess just he was just kind of spiritual
18 presence in my whole childhood, I guess.
- 19 Q I want to come back to that a little bit later,
20 Dr. Marchand. Let me first go through some
21 background for the benefit of the court. You are
22 also a member of the Lakes Tribe of the
23 Confederated Tribes of the Colville Reservation;
24 correct?
- 25 A Yes.
- 26 Q Could you just tell the court where you live.
- 27 A Presently I live in a place called Disautel,
28 Washington. It's not actually -- it's more like a
29 spot on a map. It's up in the mountains. It's
30 near the town of Omak, Washington. So my legal
31 post office residence is Omak, but I actually live
32 in Disautel. It's about 17 miles from Omak.
- 33 Q And how long have you lived there?
- 34 A I think about 25 years. And then before that I
35 lived in Omak.
- 36 Q And you are currently the chairman of the Colville
37 Confederated Tribes; correct?
- 38 A Yes, I'm the chairman for the Colville
39 Confederated Tribes.
- 40 Q I wonder if you could start just by taking the
41 court briefly through your history of being on the
42 council and how long you've done that for.
- 43 A In terms of actually being on the council, I
44 started about 20 years ago. And I've been -- but
45 those haven't been consecutive years. I was -- I
46 lost elections a couple of times, so I actually
47 was out for a couple of years. I forget what

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1 years, but basically I started 20 years ago. I've
2 been chairman once before about 10 years ago, but
3 prior to that I worked for the council. I was,
4 like, council staff person. And then as a child
5 my mother was a councilwoman and my grandfather
6 was the chairman, and they used to take me to
7 meetings, so I feel like I have kind of been
8 training to be a councilman all my life, so ...

9 Q Maybe you could tell the court a little bit about
10 your other employment that you've had outside of
11 the political world. You did mention being a
12 staff person. So if you could just maybe work
13 through some of your other employment history for
14 the court.

15 A Well, my parents and grandparents were kind of
16 like workaholics, so they expected us kids all to
17 work all the time. So I started working kind of
18 at the bottom of my tribe, where you could call it
19 that or fieldwork, working in the forest, thinning
20 trees, working with chainsaws, farm work, fencing
21 work. All kinds of manual labour. Anything you
22 could think of like that that young people could
23 do. No education. I did all things. And then
24 over time I kind of worked my way up through the
25 system. Well, chairman is top of the system.
26 It's like a country. It's the size of the state
27 of Connecticut. We have 1,300 employees in our
28 government. We have about another 1,000 employees
29 in our business operations. It's a pretty
30 substantial operation. And I'm basically at the
31 top of that system now. And I probably worked in
32 most of the jobs in between, but I also worked in
33 other places.

34 Out of college I worked for Seattle City
35 Light, Office of the Mayor. I was the policy
36 analyst for the mayor of Seattle. For a time I
37 was a technical assistant director in Eastern
38 Washington University. We provided training and
39 assistance to Northwest Indian tribes for about
40 five years. But mostly I worked for the tribe.

41 Q Can you, then, take the court through your
42 post-secondary education.

43 A I'm kind of proud of my high school too, but I --

44 Q We can talk about that too. That's all right.

45 A I went to prep school at Phillips Exeter Academy
46 in New Hampshire. And that's pretty much always
47 ranked in the top five schools in the world. And

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1 so I went there. I didn't graduate from there,
2 but I went there for two years. Then in college I
3 tried some places, but I ended up liking Eastern
4 Washington University in Cheney, Washington near
5 Spokane. I got a bachelor of arts degree in
6 economics and a second major in urban and regional
7 planning. And then I worked a while. Then I went
8 back and I got a masters in urban regional
9 planning from the same place, Eastern Washington
10 University. And then I worked quite a while.
11 Then fairly recently, about five or six years ago,
12 I lost my election, and then I went -- then I had
13 an opportunity to get into a doctorate program at
14 the University of Washington, so I went there for
15 three years and got a doctorate in forestry. And
16 so I'm kind of a recent graduate from there.

17 Q And could you tell the court about your
18 dissertation topic.

19 A I wrote a dissertation about the impacts of the
20 Grand Coolee Dam on Colville people. Most of it
21 about Colvilles, but all river Indian people. And
22 that was eventually published in a book. I can't
23 remember the whole title of it, but it starts *The*
24 *River of Life*, and then I'm the principal author,
25 Marchand. You can Google that. It will get you
26 to the book. But it was a lot of work. And it
27 won some awards in China. And they want me to
28 write another book, so ...

29 Q So I would like to, then, now circle back to where
30 you began, which is you mentioned that you had
31 spent summers with your grandparents. And your
32 grandmother was Mary Marchand; is that right?

33 A Yes.

34 Q And the court has obviously heard about her before
35 today. I'd like you to tell the court a little
36 bit about her and how she lived her life.

37 A She was probably the closest grandparent that I
38 had because I spent a lot of time with her and she
39 spent a lot of time teaching me or trying to teach
40 me. And there was a -- I used to feel fortunate
41 because she was kind of a throwback to the ancient
42 times. She liked traditional things. She was
43 actually not a poor person. Her husband was kind
44 of an entrepreneur. He was always doing business
45 and contracts and wheeling and dealing stuff. And
46 so she wasn't short of money, but she actually had
47 a house in Orient, Washington. She had a house in

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1 what is called Marcus Flats or what is called
2 Kelly Hill, Washington, which is near Kettle
3 Falls. She had a house in Omak, Washington. And
4 at one time she had a house by the mouth of the
5 Okanogan River called -- near a town called
6 Brewster, Washington or Monse. So she actually
7 had four houses at one time. Maybe five. There
8 were too close together. But even though she had
9 all these houses, she didn't like houses. And she
10 lived in tents. Her preference was living in a
11 tent.

12 And so most of the summers that I stayed with
13 her we were living in the mountains. I had no
14 idea where we were often. But she just thought
15 houses were crazy. And she liked being outdoors.
16 She liked to have a campfire. She liked to have
17 the stars. And we spent -- makes me cry but it
18 was good times. And she just said, like, this is
19 the best it can be. We are in the outdoors.
20 We've got the sky and fires and have time to tell
21 stories and actually see people. There were no
22 cellphones or computers in those days. It was
23 actually people to people. And so she would be
24 camped out at various places in the mountains
25 picking berries or else on rivers fishing for
26 salmon or else on lakes fishing for trout. And it
27 was very seasonal. And I didn't know it at the
28 time, but I guess that's how our people always
29 lived, but I just know that's how I lived. And so
30 we would be in one area where there were
31 huckleberries. They might be ripe in July. And
32 then we would pack up and go somewhere elsewhere.
33 Huckleberries are ripe in August. Then we go
34 someplace else where they are ripe in September.
35 We kept moving around like that.

36 And then she'd pick -- earlier in the year
37 she'd pick roots. And then we spent a lot of time
38 at the mouth of the Okanogan River. I camped out
39 there, and I mainly fished for salmon in those
40 days up. Until the mid 1960s, and then -- and
41 that was the ancient camping site, the mouth of
42 the Okanogan.

43 And I was told a lot of stories about that
44 area. That was just the ancient, ancient site.
45 People fished there and people had longhouses
46 there. People had horse races there. And we've
47 always been there, up until the mid 60s. They

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1 built Wells Dam, and that was all flooded. And
2 then my grandma got depressed. And she went back
3 to Kelly Hill. And actually a lot of Arrow Lakes
4 people did the same. They fished at Kelly Hill,
5 Kettle Falls, until 1942. And Grand Coolee Dam
6 came in, flooded the Columbia River, flooded
7 Kettle Falls. And so up until 1942 we've been
8 fishermen for probably at least 10,000 years or
9 had been traders and wealthy people. In 1942 it
10 just stopped.

11 And so a lot of Arrow Lakes people went down
12 to the next fishing spot. The next fishing spot
13 was Okanogan River. And so a lot of Arrow Lakes
14 people moved to Inchelium. They moved to
15 Nespelem. But a lot of them moved to Omak because
16 it was closer to the Okanogan River. And they
17 kept fishing. So fishing just remained important,
18 and it still is. I could go down there today and
19 probably a lot of the fishermen are actually Arrow
20 Lakes fishermen today. And most of my relatives.

21 Q Now, you were the eldest son in your immediate
22 family; is that right?

23 A Yes.

24 Q Could you talk a little bit about how your
25 grandmother Mary Marchand raised you in comparison
26 to your other brothers?

27 A I think I was raised differently, but then it's
28 not unusual. I think in our culture they look at
29 each child's potential and what they want to do
30 and -- like, I had a brother who was a good
31 athlete, and they kind of pushed him into being
32 that. And then I had other brothers that did
33 other things. And I don't know exactly why, but
34 they seemed to think I wanted to be a tribal
35 leader, and they kind of pushed me into being
36 that, helped me be that. And so, like -- and so I
37 wasn't treated like my brothers, but then -- I had
38 four brothers, but then each one of them wasn't
39 treated like the other four brothers either. They
40 were just totally total focused on each individual
41 Indian child. And I don't know about all
42 families. I just know about my family, but it was
43 all positive reinforcement. No one ever was
44 negative to me in my whole life. And I know
45 that's not always the case, but for me it was. So
46 whenever we did something good, we were praised
47 for it, and we were treated like spoiled kings or

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1 something. And that is how I was raised.

2 And so in my case, the resources to train me
3 to be a leader were there. My grandparents were
4 kind of community leaders. They weren't really
5 into politics so much, but people looked up to
6 them. My mother's side were more the elected
7 leaders at that time. They were councilmen --
8 elected councilmen, chairmen. They understood
9 federal policy, state policy, Indian law, all that
10 sort of history. They understood that, and I was
11 encouraged to learn that. And they actually
12 brought me to meetings, and I was just taught to
13 be quiet and don't make noise and listen, you know.

14 And in those days we didn't have big fancy
15 buildings or anything, so tribal councils used to
16 meet in the farmhouses. So my grandpa was
17 chairman and lived in a farmhouse down by the
18 mouth of the Okanogan River. This is my mother's
19 dad. And the tribal council used to come to his
20 house to meet, and they would meet usually all
21 night. And they just had a big pot of coffee and
22 they just sit there at the kitchen table. And I
23 remember it was smoky. They all smoked cigars and
24 pipes and cigarettes. And they drank a lot of
25 coffee. And they would argue all night about
26 should the tribe do this; should the tribe do
27 that; what are the threats to the tribe. Right.
28 They would talk about congressmen. They would
29 talk about presidents. And sometimes congressmen
30 would come to their house.

31 So there was a -- my grandpa was a well-known
32 person in national Indian politics, and he had
33 respect from congressmen and senators and state
34 legislature. And they would actually come out to
35 his farmhouse. And so I had met -- I didn't know
36 these people, but I had met people like Senator
37 Everett Dirksen or some of these famous senators.
38 I actually met them when I was a child.

39 Q Did your grandmother talk to you about the Arrow
40 Lakes area? Your recollections of conversations.

41 A Yeah, I think it's kind of a lifetime experience
42 learning about that. And it starts when you are
43 almost a baby, I think. And I guess we are just
44 taught that we are Arrow Lakes people, that we
45 are -- that we've always been a strong tribe, a
46 powerful tribal. Maybe not in ways that western
47 society sees it, but in our ways of valuing

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1 things. We are important people. And I got
2 examples, I guess. But, like, one place that
3 starts is the creation stories. Like the Bible
4 has Genesis, we have our stories. Once -- and
5 often a lot of these stories are coyote stories.
6 There was a coyote story about how coyote creates
7 the world. And actually there are a lot of
8 stories about coyotes.

9 This one story starts at the Pacific Ocean,
10 and he travels up the Columbia River. And he
11 meets different tribes, and he kind of creates the
12 world as he goes up the river. And it's a long
13 story, but I won't go through the whole story.
14 But since my mom was Entiat, he got to the
15 Entiat -- where the town of Entiat is now there's
16 the Entiat River there, and a coyote is a kind of
17 a figure that makes things happen. He's kind of
18 neither good nor bad but maybe more bad. I'm not
19 sure, but he makes things happen. And he was
20 going up the river, and he would meet with
21 different villages, and he was looking for a wife.
22 And he knew there was some beautiful Entiat --
23 potential brides in the Entiat Tribe, and he
24 talked to the Entiat, and he said that he wanted
25 to get a wife. What would they do with -- could
26 they help him. And they said no, they are not
27 going to help him, and none of their girls wanted
28 to marry the coyote. And that made him angry.
29 And he said, you guys are, like, stingy. You guys
30 aren't sharing. You guys aren't helping me. And
31 so his punishment to the Entiat people was he gave
32 them the smallest river, so Entiat River is the
33 smallest river. There's still fish in it, but
34 it's a real small river. And that's what they got
35 because they were not generous and they were being
36 stingy that day. I think usually they are not
37 that stingy, but that day they were stingy. So
38 they got the Entiat River, which I don't know if
39 it's a smallest river, but to my knowledge it's
40 the smallest river. It's a pretty short river.

41 So he kept going up the river, and, like,
42 every village was kind of a different story. And
43 I don't know how many there is, but when he got up
44 to Kettle Falls -- Kettle Falls with the big giant
45 falls, the big thundering falls, and there was one
46 of the biggest fisheries in the world and the
47 wealthy resource, and there were lots of people

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1 there -- that lived there, and he asked them the
2 same thing. He said, do you guys have a wife for
3 me. And they said yeah. And they gave him a
4 great wife. She was a beautiful wife. And he was
5 grateful to the Arrow Lakes people. And he
6 said -- for a reward, he said, we are giving you
7 guys the best lands in the world. So all the
8 Arrow Lakes lands come from creation, beginning of
9 the world.

10 So it starts like that. And you are just a
11 toddler. You hear stories like that. And I don't
12 remember, I heard that story the same time -- it's
13 kind of like the Mother Goose story. You kind of
14 hear it all over, all your life, and when you are,
15 like, three years old, maybe it means one thing.
16 When you are ten years old, it kind of maybe means
17 something else. There's different layers of
18 interpretation to it, but basically that's where
19 it starts. Our people were -- it was important to
20 live right. It was important to be generous. It
21 was important to respect mother earth. It was
22 important to respect visitors.

23 And maybe one other difference in the way our
24 people were and the western people were is that we
25 believe everything is kind of alive, everything
26 has a spirit. And so I think Christians talk
27 about souls. We have that same belief. We call
28 it spirit or something else maybe, but we go
29 beyond that. We would say this table has a
30 spirit. This column has a spirit. Rock has a
31 spirit. The stars have spirits. The earth has a
32 spirit. The earth is mother earth. Even the air
33 has a spirit. When the wind comes by, that has a
34 spirit. So everything is alive. And then one of
35 the core beliefs is that we have to respect those
36 spirits, and if we do that and if we conduct their
37 ceremonies right -- like Doll just talked about
38 ceremonies. If you do these ceremonies right or
39 if you do -- like the earlier guy talked about,
40 you do the salmon ceremonies right, you respect
41 these parts of nature, the nature will respect
42 you. And so if you do everything right, live
43 right, the salmon will come back, the deer will
44 come back, the weather will come back.

45 And our people went through some disastrous
46 years. In 1942 I mentioned the Coolee Dam was
47 built. Yeah, it was built. Fish stopped. I

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1 talked to a lot of my elders, and I said well,
2 what happened? They tell me we screwed up. We
3 started valuing money. We started valuing greed.
4 We started doing bad things. We weren't doing
5 ceremonies, so those things were taken from us.

6 And so now we have kind of a movement going
7 on now where we are trying to get back on track,
8 get back to the doing ceremonies, get back to
9 doing salmon ... The difficulty with the salmon
10 ceremonies is there hasn't been fish since 1942,
11 but we are doing it. And I think good things are
12 starting to happen. I see it on the news. Even
13 though I have a lot of years in, like, western
14 science, I still have respect for how I was
15 raised. So that's one story, was this coyote
16 story. And then as I got older, my grandmother
17 would just tell me things like --

18 MR. THOMPSON: Your Honour, I hesitated to interrupt
19 the witness, but in regard to the fact that we are
20 now hearing some oral history, it appears, I'm
21 wonder if this has not been appropriately set up
22 for the receipt of oral history, so I'm just
23 suggesting --

24 THE COURT: Okay. So you are wondering. I -- are you
25 objecting and are you saying --

26 MR. THOMPSON: I am objecting, Your Honour.

27 THE COURT: Okay. So -- and the basis of your
28 objection is ...

29 MR. THOMPSON: Is that we are listening to oral history
30 without it being properly set up in accordance
31 with the test, as I understand the test.

32 THE COURT: Mr. Underhill?

33 MR. UNDERHILL: Well, I don't really understand this to
34 be oral history evidence. He is simply relating
35 what his grandmother told him about the Arrow
36 Lakes area and its people. So the extent that,
37 you know, if it is oral history, and I'm not --

38 THE COURT: Well, some of it clearly is.

39 MR. UNDERHILL: Fair enough. My submission is simply
40 it is grounded, and it has a source, and that is
41 his grandmother. And I think he has been very
42 clear that everything he has said he has learned
43 from his grandmother. So that -- to the extent --
44 and again, where it becomes oral history. I'm not
45 sure. And I take your point, Your Honour, there's
46 no question some of it is. It's grounded in his
47 grandmother and for that reason should be

1 admissible. As I said, I have really -- just to
2 go back to what I had asked him to begin with, he
3 is simply telling stories of what his grandmother
4 has told him about the Arrow Lakes area. And that
5 is really the point of the question.

6 MR. THOMPSON: Well, Your Honour, my friend is
7 suggesting it's not oral history. He is
8 suggesting this is just something that's been told
9 to the witness. Then I would suggest that there's
10 a question as to whether this is strictly hearsay
11 or not in that regard. So it would appear to me
12 that there is some necessity to set this up
13 appropriately as the receipt of oral history.

14 THE COURT: Well, I have heard -- I mean, I do know the
15 source certainly from this witness of what I'm
16 hearing. I wonder how much of it is necessary at
17 this point, I suppose is my question. I mean, you
18 are welcome to go through the process. I'm sure
19 you can, but I think if you confine yourself to
20 what it was that you started out to get from this
21 witness, I think we would get there without the
22 detour. So you are welcome to establish some
23 basis for the oral -- the introduction of the oral
24 history, or we can take a sharp turn to the left
25 and actually hear some evidence that doesn't
26 require that. All right.

27 MR. UNDERHILL: Right.

28 THE COURT: I think what we might do now is just take
29 the afternoon break.

30 So, yeah, Mr. -- Dr. Marchand, we are going
31 to take 15 minutes and come back and see where we
32 are at.

33 THE WITNESS: Okay.

34 MR. UNDERHILL: Thank you, Your Honour.

35 THE CLERK: Order in court.

36
37 **(WITNESS STOOD DOWN)**

38
39 **(PROCEEDINGS ADJOURNED AT 2:54 P.M. FOR AFTERNOON RECESS)**
40 **(PROCEEDINGS RECONVENED AT 3:14 P.M.)**

41
42 THE CLERK: Order in court. All rise. Provincial
43 court is reconvened.

44
45 **MICHAEL MARCHAND, a**
46 **witness for the accused,**
47 **recalled, reminded.**

81
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1
2 MR. UNDERHILL: Your Honour. We have regrouped
3 somewhat, and we will take -- though it's a sharp
4 left, it's certainly a different direction. And
5 it soon will be a sharp left, I should say.
6

7 **EXAMINATION IN CHIEF BY MR. UNDERHILL (continuing):**
8

9 Q Just one more question about growing up,
10 Dr. Marchand, and in particular, without getting
11 into what he or she may have told you, can you
12 just tell the court a little bit about other
13 individuals who talked to you about the Arrow
14 Lakes and the Sinixt people growing up.
15 A It was mostly just in contact with direct family,
16 like parents, siblings and uncles, and so I really
17 wasn't in contact with any other people, and so
18 everything was from them. And I think my
19 grandmother -- I asked her, actually, what is the
20 Arrow Lake? She said it went from Kettle Falls
21 and upper Columbia. She said the present towns of
22 Nelson, Castlegar, Trail and Revelstoke used to be
23 Arrow Lakes lands. And today they are not. But
24 she said that's their lands. Upper Columbia. And
25 in her mind, I think, the dominant summer area was
26 Kettle Falls because of the great fisheries there.
27 And it really orientated towards fisheries, but
28 the other lands were important for roots and
29 berries and hunting and these other activities,
30 and so you couldn't just live off of fish alone.
31 I guess that's about it for Arrow Lakes territory.

32 Q Could you tell the court, and you've mentioned
33 some of this earlier, how and when you learned to
34 hunt. Starting with maybe how old you were.

35 A I think they begin from the time you are born,
36 basically. They model -- you model your behaviour
37 after what you see. And my uncles liked to hunt,
38 and my mother liked to hunt. Not so much my
39 grandmother, but my grandfather liked to hunt.
40 And then they take you with them hunting. And I
41 had my dad. And my uncles are big strong guys.
42 Joe Marchand and Ed Marchand. At least when they
43 were younger, they were strong guys. And they
44 would wake me up middle of the night. I always
45 thought it was, like, middle of the night. And it
46 seemed like it was always cold. And they would
47 say, we are going hunting. And then we would go

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1 up to some mountain somewhere. And when I was
2 real small they just put me on their shoulders,
3 and they would carry me. And so -- and I think
4 one of the things they expect of you when you are
5 small is -- usually when you are small you can see
6 good. And when you get older you don't see so
7 good. And so that's one of the roles as kids.
8 You are supposed to have good eyes. And so you
9 kind of spot stuff. And plus you are up higher
10 too. And you start that way. And they would take
11 you out fall -- mostly fall, winter, but we did
12 hunt year round sometimes. But when they look for
13 a lot of game, it's usually in the fall, in the
14 winter. And they liked to hunt in the winter.
15 And I just remember when the snow is deep, it
16 would be three big guys breaking trail through the
17 snow, and they would take turns breaking trail
18 through the snow. And I was a little bratty boy,
19 and I would say, when is my turn? And they would
20 just laugh, and they would say, okay; it's your
21 turn. And they would let me break trail. And I
22 would slow up the whole train, you know, but they
23 would tolerate you. And you were just treated
24 special. And they were happy you are there. And
25 they were happy for the chance to train you to
26 hunt. And so you watch that. And they'll hunt,
27 and they'll shoot deer. And you watch them take
28 care of the deer meat and watch them butcher the
29 meat, and then you watch -- and then you eat it.
30 And so growing up, all we ever ate was deer
31 meat. Things like birds, grouse -- my dad liked
32 grouse. And we ate a lot of fish. And so usually
33 it was grouse, deer meat, fish. It would be
34 salmon or trout sometimes steelhead. And then
35 natural foods like berries or roots. And then
36 they also had big gardens. In those days everyone
37 had big gardens. They would grow stuff like corn
38 and potatoes and peas and things like that in a
39 regular garden. Except their gardens are big.
40 And the women spent a lot -- mostly -- well, us
41 men too. Men and women spent a lot of time taking
42 care of gardens. And there were no stores close
43 by. And nobody had a lot of cash money. And so
44 they were pretty self-sufficient. They just have
45 bullets for hunting. They grew their own gardens
46 and grew their own food and were pretty
47 self-sufficient. And they lived in extended

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1 families usually, and so usually I was always
2 around uncle and aunts or cousins usually all the
3 time.

4 But as you get older, stronger and bigger,
5 you get more responsibility. And then they teach
6 you how to hunt in groups. And so a lot of that
7 teaching is learning more about, I guess, nature
8 and more about animals and you learn about
9 everything. Like, how does a bird live. How does
10 a blue Heron live. Or how does a duck live. Or
11 how does a raccoon live. And then how do deer
12 live. And you learn about all these things. And
13 it's all helps you be a better hunter. And it's a
14 lot of education. And then you need to know the
15 land, the lay of the land.

16 So I was mostly raised in the Kettle Falls
17 area and in the Colville Reservation. I think
18 probably -- in the Colville Reservation -- I have
19 probably been on every square foot of land on the
20 Colville Reservation at one time or another. In
21 the north half, maybe not so much, but I hunted a
22 lot -- quite a bit around the Kelly Hill area,
23 what is kind of the area north of Kettle Falls.
24 And it's important to know the terrain because if
25 you know the terrain, you know where the animals
26 are going to be. And if you know what the animals
27 eat, you know where they are going to be. And
28 they have to have water and food, and they have to
29 have places to hide. And so my uncles had hunted
30 in these areas all their life. They knew where
31 the animals were.

32 And they knew how to hunt them. And so, like
33 I say, given drainage, there would be a basin.
34 They would -- they would kind of know where the
35 deer were at certain times of the year. They
36 would post themselves up on the ridgetops and top
37 of canyons or draws and they would send kids to
38 the bottom because kids make the most noise. No
39 matter how we walk, we make noise. We don't know
40 how to walk right. And they would send us into
41 the bottom, and we would scare game up to the top
42 of these ridgetops. And then shooters would be up
43 there waiting for them to come. And sure enough,
44 we'd start walking through the bottom and deer
45 would run up these trails. And they usually
46 know -- they would know where most of the deer
47 would go. And usually their best shooters would

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1 be waiting there. And then we'd shoot. They
2 might shoot 5 deer or 10 deer all at once.

3 And then they elect to hunt in the wintertime
4 because it's lot easier to drag deer down in the
5 snow than when there's not snow. And so these are
6 just things they did every year. And they knew
7 where to hunt at certain times of the year --
8 certain weather conditions. They knew places to
9 be, and they just had a lot of knowledge of the
10 deer and of the environment. And that's just
11 something they learned over their lifetime. And
12 that was taught to us. And so that's group
13 hunting. And then you are kind of taught as a boy
14 to hunt by yourself. And, like, when I was
15 young -- I think I was in third grade, my dad went
16 up to a place called Wannacut Basin, near Omak,
17 and he seen a deer, and he shot it. And then he
18 went over to gut it. And I was tagging along with
19 him. I was -- whatever a third grader is -- nine
20 years old or something. And I had a little short
21 22 rifle. It was real common. They'd have boys
22 who would shoot 22s. And actually, adults used
23 22s a lot too. And then I seen two deer. And he
24 shot one. And then so I started trying to catch
25 the other deer. And I went over a little hill,
26 and I caught up to the other little deer. And
27 then he was just a sprite deer. And I was able to
28 sneak up to him pretty close. And that's another
29 thing they would teach you, is with a 22, it's a
30 real short range rifle, so the closer you can get,
31 the easier it is to shoot. And then -- and so I
32 got up pretty close to him, and I shot him right
33 between the eyes. And he dropped dead. And my
34 dad was real happy. And I was real cool about it
35 because I was thinking I could shoot all these
36 grouse. I'd sooner shoot deer. That's bigger,
37 but that's probably kind of lucky.

38 And so I didn't have to gut that deer. My
39 dad gutted it. I was thinking he is going to make
40 me gut the deer, but he didn't. And then -- but
41 then we took the deer down to my mother's house,
42 and then we skinned it and butchered it. And then
43 I was watching him, and he didn't know I was
44 watching him, and he took the heart and he put a
45 piece of wire through it, like, kind of like
46 bailing wire or something, and then he just hung
47 it up in the backyard. And he had a bunch of

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1 trees kind of like a vineyard back there, and he
2 just hung it up out there in the air. And I was
3 kind of peeking around the house watching. And
4 then I didn't know what he was doing. Then -- and
5 I just thought that was kind of interesting to me
6 because I was wondering, what is my dad doing.
7 And he would never say anything. And then you
8 would roll the clock up many years and I was
9 reading the story about Lakes people. I forget
10 who wrote it, but it might have been Verne Ray's
11 account. I'm not sure. But he described how
12 Arrow Lakes people would hang the hearts up, just
13 like my dad did, and -- but my dad never did tell
14 me that.

15 And then I read that as well. My dad is
16 Arrow Lakes, and that is what he did. He hung the
17 heart up. And they hang it up. I guess the birds
18 eat it. But I just thought it was odd because
19 I -- then I asked my dad about that. I said, did
20 you -- I says, is that why you hung that heart up
21 because that what Arrow Lakes people do? And he
22 denied it. He said, I didn't do that. And I
23 thought, that's strange. Then I thought about
24 that for a long time. But I think -- that's just
25 my interpretation. I think he had just repressed
26 a lot of his culture and maybe -- I'm not for
27 sure, but I think so. But he just was in kind of
28 denial that he did that. He repressed a lot of
29 his beliefs. And he didn't teach me to speak the
30 language. He didn't teach me a lot of the
31 customs, although he knew them. He knew our
32 language. He just -- I think he just thought that
33 was, like, extra information that was kind of,
34 like, baggage that I didn't need in my life, I
35 think. That's just my interpretation. Maybe I'm
36 wrong. I don't know. I thought that was odd.
37 But otherwise he is a pretty open guy. And I
38 wonder, like, this is, like, 40 years later. He
39 still won't admit it. And I know I saw him do
40 that.

41 But I don't know. That was kind of common.
42 In school they would tell us, cut your hair.
43 Don't speak Indian. You had to conform with
44 things. And I guess it's kind of the way he was
45 thinking, I guess.

46 Q Do you remember what happened with the meat from
47 that first deer that you shot?

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1 A Well, it wasn't a big deer, but they gave it away
2 to the neighbourhood. I don't know exactly who
3 they gave it to, but I imagine it's our friends.
4 And so we had -- at that time East Omak was mostly
5 Native Americans, mostly Colvilles, and probably
6 mostly Arrow Lakes people actually. And within
7 one block area all my relatives -- if you go a few
8 more blocks, it's other people but still mostly
9 Arrow Lakes people like Charlie Quintasket. So he
10 gave it away. And that's pretty common amongst
11 most things. First deer, first elk, first salmon,
12 first basket even.

13 Q Does hunting remain part of your life today?

14 A It's still important to me, but I'm a very busy
15 person. So I have to squeeze that time to hunt
16 now. And so if it was up to me, I would be
17 hunting every day, but I have to work six, seven
18 days a week now. So if I get voted out, I don't
19 cry too much.

20 Q I wonder if you could describe for the court the
21 importance of this area to you personally, that is
22 the Arrow Lakes area.

23 A I think a lot of it just goes back to I felt it
24 was important to my ancestors that I knew, and it
25 was an important dream to them and a place, and I
26 know our ancestors are buried here. That's
27 important to Indians. Or at least our Indians.
28 Ancestors are very important. And so even though
29 I'm in a big business-type world, we make
30 decisions -- we actually have all our chiefs in
31 the council chamber from 12 tribes, and every time
32 we vote on something, I think, how would these
33 guys think about this. There's a Lakes chief.
34 There's an Eniat chief. There's a Nez Perce
35 chief. They are all called chiefs, and they are
36 all looking at us, and I'm thinking like, how
37 would they view this. And so we bounce -- that is
38 how I think anyway. And so your ancestors are
39 real important. And we come at it -- we are not
40 all traditional either, though. I think it's kind
41 of like a bell curve. We have some modern Indians
42 and some super traditional Indians. And some
43 kinds in the middle.

44 I'm probably like more in the middle
45 probably, but to me, the past is good. Traditions
46 are good. The history is good. Our people were
47 good. And we try -- even though we can't go back

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1 in history and exactly duplicate those things
2 today, we can try to go back to the best parts of
3 our traditions and bring those into the future.
4 So Arrow Lakes lands is one of those things. And
5 so I just think that as part of our creation
6 stories and -- maybe it's kind of silly, but when
7 I was a young boy I seen the movie Exodus, and I
8 seen that movie, and it's about the Jews going
9 back to Israel, and I was thinking, that's just
10 like us. It was like we are deported to a place,
11 often at gunpoint, instead of in our homeland, and
12 someday we are going to get back here. I don't
13 know when, but that's our goal.

14 Q Lastly, I wonder if you could tell the court about
15 two individuals who aren't with us today, Jim Boyd
16 and Virgil Seymour, and talk a little bit about
17 the role they played in Lakes society before they
18 passed on.

19 A Well, they were my good friends as an adult, I
20 guess. I didn't know them as children. But as
21 adults I worked with them. We were on tribal
22 council together. And when you are on a tribal
23 council, it's kind of like your own family because
24 you see each other a lot. You see each other
25 every day. I don't even see my own family every
26 day now, but I see the council about every day.
27 So I see -- Larry is on our council. These guys
28 are on council. I spent years with Doll Watt.
29 She's on council. And I'd see these guys at least
30 five days a week. Usually -- sometimes seven days
31 a week. Sometimes late at night. And so they
32 become kind of your family. And then you spend a
33 lot of hours talking to them. And I spent a lot
34 of hours talking to Jim and talking to Virgil.
35 And a lot of that time was talking about Arrow
36 Lakes because I know a little bit about Arrow
37 Lakes, and then they would know a little bit about
38 Arrow Lakes, and each one of them would kind of
39 have a little bit different angle. And we would
40 learn from each other about what is here and why
41 do we want to get back here and what is important.
42 And they shaped -- I think we kind of shaped each
43 other's thinking a lot on that.

44 And so we are trying to figure out well, how
45 do we make this happen. And so they were just
46 important. And then I was -- eventually they got
47 off council. Well, I am getting my history mixed

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1 up. But at one time I was chairman, about ten
2 years ago. Then we were thinking we need someone
3 to be kind of like a liaison or ambassador to
4 British Columbia, and we hired Jim Boyd to do
5 that. And he was my friend. I knew him before.
6 We had been on boards before. We were on the
7 business board before. And I knew about him. He
8 was an artist. He was a singer. And he knew
9 about our culture. And he knew about Arrow Lakes.
10 And he had family in Arrow Lakes. And we did
11 that. We hired him to be a liaison. Virgil was
12 kind of similar. Eventually these roles reversed.
13 Eventually Jim Boyd is the chairman, and I'm a
14 councilman, and we hired Virgil, and so -- but we
15 all supported each other. And a few years ago
16 people asked me to be chairman. I said no, Jim is
17 chairman; I like Jim being chairman; let him be
18 chairman. And I'm glad I did because that was his
19 last year of his life. So they were just friends.
20 And we just tried learning more about Arrow Lakes
21 and trying to advance our Arrow Lakes. And they
22 did a lot. And probably part of the reason we are
23 here is because they were in that discussion.
24 MR. UNDERHILL: Thank you. Those are my questions,
25 Dr. Marchand. And now I think Mr. Thompson may
26 have a few for you as well. Thank you.

27
28 **CROSS-EXAMINATION BY MR. THOMPSON:**
29

30 Q Mr. Marchand, thank you for being here today.
31 Just to confirm some of the matters that you've
32 already been through with Mr. Underhill just so I
33 have this clear in my mind, you are a citizen of
34 the United States; correct?
35 A Yes.
36 Q And you are a resident of the United States?
37 A Yes.
38 Q And you've lived in the United States all of your
39 life; is that right?
40 A Yes.
41 Q And I believe it's well established now that you
42 are the chairman of the Business Council of the
43 Confederated Tribes of the Colville; correct?
44 A Yes.
45 Q And just so I have this right, you had said that
46 you have been on the business council either as
47 chairman or as a councillor since -- did I have

- 1 this right -- 20 years; is that correct?
- 2 A Yes.
- 3 Q So around 20 years. And --
- 4 A Minus maybe three years or something.
- 5 Q Right. I understand. You are estimating a little
- 6 bit. And when were you first chairman? Do you
- 7 recall?
- 8 A It was about 10 years ago.
- 9 Q So about 2006, in there?
- 10 A Somewhere back there.
- 11 Q And how long did that appointment last?
- 12 A One year.
- 13 Q And then from there on you were back on the
- 14 council, and you were on council up until this
- 15 most recent appointment; is that right?
- 16 A I was chairman. Then there was the timber
- 17 recession, and we laid off hundreds of people.
- 18 And I was voted out. And so I was out for maybe a
- 19 year. Then I got re-elected again.
- 20 Q Okay. Now, the -- is it considered that the
- 21 business council is the recognized Indian
- 22 government for the 12 tribes within the Colville?
- 23 A Yes, it is.
- 24 Q And so the -- each of the tribes, then, as I
- 25 understand it, is subject to the directions of the
- 26 business council; is that right?
- 27 A If it pertains to activities on the reservation or
- 28 resources of the tribe -- there's nothing to stop
- 29 them from going somewhere else and doing whatever
- 30 they want, but if it pertains to our budget, it's
- 31 our resources, that's all under the control of the
- 32 tribal council.
- 33 Q Right. And perhaps I could just -- I'd like to
- 34 show you -- I've reproduced some documents here,
- 35 and these are documents that are readily available
- 36 online, and they are in fact constituting
- 37 documents of the Confederated Tribes. And will
- 38 you just turn to tab A, please. And this is
- 39 labelled "The Constitution of the Confederated
- 40 Tribes of the Colville." Does this look familiar
- 41 to you?
- 42 A Yes.
- 43 Q And this -- as I understand it, it -- it's
- 44 available publicly, as I say, on the internet.
- 45 And is this the most recent version of the
- 46 constitution?
- 47 A It appears to be.

- 1 Q So on that same -- just to clarify what we have in
2 this document. If you go to tab B, it's the
3 "Colville Tribal Law and Order Code." It's the
4 index. And it just has "the current edition."
5 And this is a summarized table of contents. Does
6 that appear to be current as well?
7 A I think it's current.
8 Q And then the tab 4 if you turn over, there is
9 actually chapter 4 -- or title 4, I should say,
10 the "Natural Resources and Environment" chapter.
11 Does that also appear to be current to you?
12 A Yes, it appears to be correct.
13 Q Then just to tab 8. This is title 8, which is the
14 "Enrollment, Referendums and Elections" title
15 chapter. And chapter 8.1, "Membership." Again,
16 if you could confirm for me that this appears to
17 be the most recent version.
18 A I think it probably is, but we did change the code
19 to allow for adoption of Okanagan and Arrow Lakes
20 people, who are our members in Canada. I don't
21 notice that in here, but maybe it's in there.
22 Q No, it's actually not. And that would be one of
23 my questions for you.
24 A Okay. Yeah.
25 Q So --
26 A So I guess it's not totally current, I guess.
27 Q So that particular amendment, to allow for that
28 adoption, when did that occur?
29 A I'm not sure, but the attorney who worked for us
30 at the time was a guy named Mike Taylor. He
31 argued for that amendment, but that's probably
32 been -- just guessing, probably, like, 15 years
33 ago.
34 Q 15?
35 A I'm not sure.
36 Q This is the one that is currently on your website
37 as -- indicated as being current. It doesn't
38 include that. And you are sure it's that long
39 ago?
40 A Yeah. That's kind of my problem.
41 Q It could be. So for that --
42 A Thanks.
43 Q No, you are welcome for that. So, in any event,
44 having said that, then, the -- is it
45 requirement -- I notice in here, and I'll do this
46 generally, there's a -- and we can go to it
47 specifically if we need to. There is a

- 1 requirement for a blood quantum to be a member of
2 the Colville Tribes; is that correct?
- 3 A Yes.
- 4 Q And it says that there has to be one quarter more
5 of Indian blood -- in fact I'll just take you to
6 it. If you go to the constitution article 7
7 "Membership." It's in the first tab.
- 8 A Okay. Article 7.
- 9 Q And do you see here under article 7 "Membership"
10 is "all persons of Indian blood." It's sub (a).
11 Section 1(a). In the second line. It's:
12
13 ... subject to the approval of the secretary
14 of the Interior ...
15
- 16 So when you are talking about the amendment to
17 allow the adoption of members of the Arrow Lakes
18 outside of the United States, was that approved by
19 the secretary of the Interior?
- 20 A That's what it says. And as far as I know it's
21 still in place. In some situations through
22 internal memorandums within the Bureau of Indian
23 Affairs, they'll delegate that down to the local
24 agency superintendent, but I'd have to check on
25 this. I assume that's what happened.
- 26 Q Right. I understand what you are saying. So
27 where it says, then, that -- and I'm looking at
28 (c) now. If you are talking about children,
29 that -- possessing one fourth more Indian blood,
30 born after January 1st, 1937, if they maintain a
31 residence elsewhere than the Continental United
32 States, there has to be a willingness on the part
33 of the parent to maintain tribal relations,
34 participate in tribal affairs. With the adoption
35 of people from Canada into the Colville Tribes.
36 Are they required to participate in tribal
37 affairs, the Colville?
- 38 A No. And I don't know if we are still using that
39 provision.
- 40 Q So going down further -- so you don't know the
41 answer to that, in other words; is that right? If
42 they are required to participate in tribal
43 affairs?
- 44 A I guess it depends on the definition of "tribal
45 affairs." I do know of a couple of cases where we
46 did adopt members of Okanagan First Nations
47 people. They did become Colvilles, and I believe

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- 1 both of them became employees of the Colville
2 Tribe. I don't know that they would make the test
3 doing that.
- 4 Q So if --
5 A And they lived there.
- 6 Q Sorry, they live there? They live in --
7 A Yes.
- 8 Q They live on the reservation?
9 A Yes.
- 10 Q Is that right?
11 A Yes.
- 12 Q Okay. So -- and this is one of my questions when
13 you come down to 7(c) here it says:
14
15 That any member who takes up permanent
16 residence or is enrolled with the tribe, band
17 or community of foreign Indians shall lose
18 his membership in the Colville Tribes.
19
- 20 Now, with the adoption, as you put it, of people
21 from outside of the United States, is it a
22 requirement that the people that you are referring
23 to, who may be adopted, that they have to actually
24 disenroll or unenroll from a band in Canada, for
25 instance?
- 26 A We generally -- no, we don't allow you to be dual
27 enrolled. Although I know -- I have cases where I
28 suspect they are dual enrolled, but we can't prove
29 it.
- 30 Q You can't prove it?
31 A No.
- 32 Q But -- so if someone is adopted, a Canadian is
33 adopted into the Colville Tribes, do you require
34 them to cease their membership with the band that
35 they come from?
- 36 A Yes, we would have to have a document from the
37 First Nations that they are leaving that they are
38 leaving.
- 39 Q Right. So they would have to say that they were
40 leaving. If they come from an Okanagan band, for
41 instance, in Canada, they have to have
42 documentation saying they are leaving that band;
43 is that right?
44 A Yes.
- 45 Q Do they, then, have to reside in the Continental
46 United States?
47 A I'm not aware of that being an active requirement.

1 Usually the two issues are did they disenroll, can
2 they prove that they are one fourth Okanagan
3 blood. And sometimes they have difficulty doing
4 that because -- I don't know all the specifics,
5 but apparently different First Nations do it
6 differently, I guess.

7 Q Right. And -- but in dealing with the members of
8 the Okanagan, can I take you, then, to title 8 or
9 tab 8. I just want to go to page 2 at the bottom,
10 which is "Membership." And you'll see that this
11 section starting there, 8-1-80, is on
12 "Membership." And again, we go over to -- sorry.
13 I need my glasses. Going to "Membership" down
14 (b), you'll see that the membership is composed of
15 persons on the roll of the tribes. And I am going
16 to paraphrase a little bit. And -- and then you
17 go to (b):

18
19 Blood degree, parental enrolment, residence
20 in Continental United States, written
21 application ...
22

23 So on this version residence in the Continental
24 United States is required. And are you suggesting
25 that for a Canadian coming from the Okanagan as
26 the example, one, they have to unenroll from any
27 band they belong to in Canada; is that correct?

28 A Looks like that's what it says.

29 Q And then -- yeah. And the second part is they
30 have to reside in the continental United States.
31 Does that continue to be true?

32 A It appears that's what it says. I would say yes.

33 THE COURT: Is there something different for a
34 membership generally because as I'm -- I think I'm
35 on the same page, 8-1-80, "Membership." I think
36 you said membership of the tribes, but this is
37 membership of the tribe for all tribal programs.
38 Is there something for -- that deals with
39 membership generally? This seems to relate to
40 tribal programs. Is there something else?

41 MR. THOMPSON: I'm looking at -- actually, Your Honour,
42 your point is well taken, but also if you go over
43 to 8-1-81, it says in 8-1-81, no -- well, this
44 goes to Mr. Marchand's earlier point, I think,
45 which is:

46
47 No person who is an enrolled member of any

1 other Indian tribe or band, foreign or
2 domestic, recognized by a Aboriginal
3 government may be enrolled or adopted into
4 the tribe.
5

6 And we've had that dealt with.
7 THE COURT: And I think it's "national government."
8 Not "Aboriginal government."
9 MR. THOMPSON: Right. Oh, I am sorry.

10 ... recognized by a national government ...
11
12

13 Correct. And then reading that together --
14 THE COURT: Well, does that change the -- it just looks
15 like the section overall is membership for all
16 tribal programs, and it seems to relate still to
17 the tribal programs. I'm just wondering.

18 MR. THOMPSON: No, I see your point, Your Honour. And
19 I may -- because there is a -- yes, if we go back
20 to the -- there's -- going back to tab 1, if we
21 may. And which is "Membership of the Confederated
22 Tribes." It's amendment V. This is on page Roman
23 numeral (x).

24 THE COURT: Sorry, tab 1.

25 MR. THOMPSON: In tab 1.

26 THE COURT: Tab A?

27 MR. THOMPSON: Yes, tab A. Under amendment V,
28 membership of tribe.

29 THE COURT: So you are in Roman numeral (x).

30 MR. THOMPSON: So if you go to -- this is membership --
31 this is from an amendment obviously and that
32 amendment is from 1949/1950 and section 1 says:
33

34 The membership of the Confederated Tribes of
35 the Colville Reservation shall consist of the
36 following ...
37

38 So then if you follow down to section 2, the
39 question, the business council has the power to
40 prescribe rules and regulations, including the
41 adoption of members -- which includes the adoption
42 of members and loss of membership provided ...
43 And here we have three points. And the third
44 point, (c), and this is my question for
45 Dr. Marchand:
46

47 That any member who takes up permanent

1 residence or is enrolled with a tribe, band
2 or community of foreign Indians shall lose
3 his membership in the Colville Tribes.
4
5 And I think that's been covered.
6 Q So are you saying they do have to disenroll?
7 MR. THOMPSON: And the tribal program issue for all
8 tribal programs is what I wanted to take up, Your
9 Honour, with respect to exhibit 30. And this
10 relates to Cody DeSautel's evidence. And perhaps
11 that could be provided to the witness. And if you
12 turn to tab 12.
13 Q At tab 12 is -- and do you recognize this,
14 Dr. Marchand? This was -- Cody DeSautel provided
15 this to the court as a regulation regarding
16 hunting in the Arrow Lakes area.
17 A Yes, I think I recognize it.
18 Q Now, is it feasible to say that the issue of
19 hunting and the direction of Fish and Wildlife and
20 the permit that accompany this is part of a
21 program that is developed by the Colville for
22 hunting generally?
23 A Yes, I think so.
24 Q So this particular regulation would be subject to
25 the requirement we've been discussing about
26 residence in the Continental United States?
27 A I'd make a distinction between getting enrolled.
28 And then once you are enrolled, you are enrolled
29 and you can go live anywhere you want after that.
30 In fact even if you were by some error enrolled,
31 we have laws saying we can't disenroll you. And
32 so once you are a member, you are a member.
33 Unless you enroll in another tribe. And even then
34 we would like to have documentation showing that.
35 And that has never happened, to my knowledge,
36 really.
37 Q No, I understand your point. And I think that all
38 I'm getting at is that this is part of a program
39 of permitting that is run by the Colville and
40 these permits that are subject to this regulation
41 are issued pursuant to that program; right?
42 A Yes.
43 Q So let me just ask you a bit about this
44 regulation. It's promulgated in 2010. And you
45 see that before you. It states under the
46 "Background" that:
47

1 The Colville Business Council on behalf of
2 our constituent, Arrow Lakes Tribe, and
3 through the Colville Tribal Code, established
4 the Arrow Lakes Aboriginal Society.
5

6 So let me just stop you there. The Arrow Lakes
7 Aboriginal Society was a BC society, was it not?

8 A Yes.

9 Q And you were a member of council at the time that
10 it was established, the Arrow Lakes Aboriginal
11 Society?

12 A I was a member when we discussed creating it. I
13 can't recall if I was on it during the exact time
14 it happened. I may have been. I am aware of it.

15 Q You may have been, but you are not absolutely
16 sure?

17 A Yeah.

18 Q But you -- since have you had dealings with the
19 society that is the Arrow Lakes Aboriginal
20 Society?

21 A Yes.

22 Q And when you were dealing with them -- I'm going
23 to take you back particularly a few years to when
24 it was first established. Were you dealing with
25 it at that time? It was first established in --
26 what? About 2007, 2008; is that right?

27 A Possibly.

28 Q And at that time had you retained or did the
29 council retain Stuart Rush, a lawyer out of
30 Vancouver, to set up the Arrow Lakes Aboriginal
31 Society?

32 A Yes. Although I think he was under retainer
33 before that, but yes.

34 Q I'm sorry, I missed the last part.

35 A I think he had been employed before this issue.

36 Q Oh, I see. Thank you. Okay. And at this time
37 does the Colville Business Council still have
38 dealings directly with the Arrow Lakes Aboriginal
39 Society?

40 A Yes.

41 Q And my understanding is that it is actually the
42 Arrow Lakes Aboriginal Society that has retained
43 the experts who testified in this case or at
44 least --

45 MR. UNDERHILL: I object to that question.

46 THE COURT: Well, I wonder about that objection. The
47 expert reports have been in, and so privilege over

Michael Marchand (for the accused)
Cross-exam by Mr. Thompson

1 the expert reports has been waived. I don't know
2 how privilege was waived over the establishment of
3 the Arrow Lakes Aboriginal Society other than the
4 fact that the Crown put this document in or the
5 Confederated Tribe put something in that
6 references this. So I wondered about the
7 question about the hiring of Stuart Rush. I don't
8 think that was appropriate, but privilege has been
9 waived on the experts.

10 MR. UNDERHILL: But it's more the relevance that I was
11 objecting to. I don't understand how it's
12 relevant at all to anything to do with this case.

13 THE COURT: Maybe Mr. Thompson can help us because you
14 could let us know where you are going with that
15 one, Mr. Thompson.

16 MR. THOMPSON: I am sorry, I missed that last -- what
17 you said, Your Honour.

18 THE COURT: Well, you can just assist us in describing
19 how it's relevant.

20 MR. THOMPSON: Well, my point is, Your Honour, that
21 we've seen from the invoice letters that were
22 submitted by Mr. Hart that they were submitted to
23 the Arrow Lakes Aboriginal Society. The Arrow
24 Lakes Aboriginal Society is -- my understanding,
25 is a vehicle for achieving and accomplishing
26 presence in Canada by advancing the business
27 council's interest in Canada. And in that regard
28 it's -- it's directly involved here. As you can
29 see, it's through the Arrow Lakes Aboriginal
30 Society. It's "pursuing," as it says here,
31 "reserved rights to hunt, fish and gather in the
32 Arrow Lakes territory." So my point is that this
33 is simply a vehicle that's been established with a
34 Canadian presence in order to pursue this agenda
35 in British Columbia.

36 THE COURT: You mean pursue a claim for Aboriginal
37 rights?

38 MR. THOMPSON: Pursue a claim for Aboriginal rights.

39 THE COURT: I don't see how it's relevant.

40 MR. THOMPSON: Well, simply, Your Honour, to --

41 THE COURT: I just don't see how it's relevant. I have
42 that information. I know that. I'm not sure -- I
43 don't understand. I know that this has been
44 raised a few times, but they are pursuing an
45 Aboriginal rights claim, and they are clear about
46 it. I don't think there's anything nefarious in
47 that.

1 MR. THOMPSON: So we can move on, Your Honour. You
2 have the point.

3 THE COURT: All right.

4 MR. THOMPSON:

5 Q And with respect to the hunt that was conducted by
6 Mr. DeSautel, he has given evidence here that he
7 was directed by council to come to Canada to hunt
8 pursuant to this regulation; is that correct?

9 A Yes, although I guess from our point of view it
10 was voluntary on his part. We assured him that we
11 would be supportive of him if he got arrested.

12 Q And his evidence was that he was directed to
13 provide ceremonial meat, is my note on that, by
14 obtaining it in the Arrow Lakes area. And does
15 that jibe with your recollection of what direction
16 was given to him?

17 A I don't recall exactly that, but it sounds pretty
18 probable that we did do that.

19 Q That you did do that.

20 A I just remember discussing the hunt. I don't
21 remember the ceremonial part.

22 Q And in fact there's been some evidence as well
23 from Cody DeSautel that there were meetings that
24 were held with members of the -- British
25 Columbia's resources people to determine -- to
26 advise them that a hunt would be taking place.
27 And I don't know if you were in the courtroom when
28 that evidence was given, but my question is with
29 respect to that when you were on council and at
30 that time. Do you recall giving direction to
31 people in your wildlife group to make those
32 applications -- or rather advances to British
33 Columbia?

34 A I think we did. I guess, I think, as much as
35 possible we tried to set it up as we would set up
36 hunting within our normal jurisdictions, and so
37 there's kind of a biological opinion, and then
38 work within whatever system is there. So I'm sure
39 we were -- I would just imagine that based on
40 previous things, they probably consulted with
41 Canadian authorities.

42 Q And your recollection is that you probably did
43 that -- you probably gave that direction.

44 A I think it's kind of consistent with what we've
45 done in other things.

46 MR. THOMPSON: Before I leave this, could we just have
47 the documents marked as the next exhibit, please.

1 THE CLERK: Exhibit 62, Your Honour.
2

3 **EXHIBIT 62: Colville government documents**
4 **(tabs A-B, 4 and 8)**
5

6 MR. THOMPSON:

7 Q Now, in your evidence this afternoon,
8 Dr. Marchand, you had talked about the fact that
9 in the council chamber there were 12 chiefs.
10 12 chiefs attended council; is that right?

11 A I was referring to photographs.

12 Q To photographs. Thank you. I was unclear about
13 that. So that -- I missed out that part. Thank
14 you very much.

15 A Yeah, politics. Right.

16 Q And then the fact is that there are no chiefs of
17 the individual tribes per se. All of the
18 administrative -- put it this way, all of the
19 chiefly duties have been granted to the business
20 council; is that right?

21 A Yes. In general, in 1938, the tribe made a
22 decision to go with an elected council. There's
23 one exception. When Aurapahkin died -- Chief
24 Aurapahkin died in 1910, they held an election,
25 and they elected chief James Bernard to be a
26 chief. So he was the first elected person in the
27 Colville Tribes that I know of. And then in
28 recent years the Wenatchi Band decided to elect a
29 salmon chief, and that was done, I'm guessing,
30 five years ago. So that's, like, the first chief
31 since 1938, but he has limited responsibilities to
32 salmon chief duties within that band. His name is
33 Chas Williams.

34 Q Right. And there's -- as far as the salmon chief
35 is concerned, there's another -- there's other
36 salmon chiefs. Like, the Sanpoil have a salmon
37 chief; is that right?

38 A Historically they did, but -- for example, my
39 ancestors are mostly chiefs, but since 1938 they
40 are no longer chiefs. At least not as far as the
41 government is concerned.

42 Q And as I understand it with the salmon chief, it's
43 largely a ceremonial position; is that right?

44 A Historically it was partly ceremony and partly
45 regulatory. They actually controlled when people
46 could fish or not fish, and so it was more than
47 just ceremonial.

1 Q And the salmon chief distributed the fish, did he
2 not?

3 A Depending on the tribe, yes, he could be doing
4 that, but mostly he regulated who could fish or
5 not fish, how much you could fish and how you
6 could fish. For example, at Kettle Falls it was
7 our custom to let other tribes fish there, but the
8 understanding was they came into our lands, they
9 did things by our laws, by our salmon chief, but
10 they could fish there but with that understanding.

11 Q And you had testified as well that -- with regard
12 to hunting, you've given quite a bit of
13 information about that. And as I understand it,
14 there's still hunting available in Kelly Hill
15 area, for instance.

16 A Yes, except there's a lot more fee simple lands
17 and agricultural developments. There's a lot more
18 posted lands now.

19 Q And there's hunting available in other areas in
20 the Washington part of the Colville -- well, in
21 the Colville Reservation area? Let's put it that
22 way.

23 A Yes. The original Colville Reservation was about
24 3 million acres, and then gold was discovered in
25 what is called now the north half, and the
26 government forced the tribe to sell that back to
27 the federal government, and so we call it the
28 north half. We can still hunt and fish there, but
29 it's mostly national forest land and some small
30 towns and cities. Then within the reservation
31 proper, that's all under our jurisdiction, and we
32 can regulate hunting and fishing within the
33 reservation.

34 Q Right. And so under the -- in the reservation you
35 are entitled to regulate it, I understand that,
36 according to your constitutional documents. And
37 just to take you back to that for a moment, we did
38 have some evidence on this, but I wanted to take
39 you to tab 4, which is the "Fish, Wildlife and
40 Recreation" title. And if you have that, you'll
41 see that on page 1 -- sorry. It's tab 4. Oh, I
42 beg your pardon, this is at the -- you may not
43 have it. Madam Clerk has it for you. So tab 4,
44 you'll see that under the "Policy" there's a
45 reference in the third line to:

46
47

... the usual and accustomed fishing grounds

1 and stations, hunting areas or Aboriginal
2 lands of the tribes.

3
4 And Cody DeSautel gave some evidence about this,
5 and I'm just curious to run this at you. And if
6 you go over to page 10, I was interested in the
7 definition of "usual and accustomed." And page 10
8 there is a definition there under Roman
9 numeral XXXX, it looks like, or say four Xs
10 anyway. And "usual accustomed grounds and
11 stations," would that cover, that definition, the
12 Arrow Lakes area in terms of how this title would
13 be administered?

14 A I think it would apply from our laws.

15 Q Exactly. So --

16 A There could be a conflict of laws, though.

17 Q Should you obtain a right in the Arrow Lakes to
18 use that area then you would consider it, and you
19 would regulate it under this regulation -- or
20 rather under this title, as a usual and accustomed
21 hunting area; is that right?

22 A I would say we do that in Washington State now in
23 the off-reservation areas, and I'm not totally --
24 I'm not a lawyer, but I'm not an expert in
25 Canadian law either, but assuming that it's
26 somewhat similar to Washington's laws then we
27 would start with that presumption that we could do
28 this. We may have to modify that. I don't know.

29 Q As a means to address it within your regulation?

30 A Yeah. At least from within ourself, yeah.

31 Q And then under -- with that, you would presume or
32 it would be your understanding as -- at this time
33 as the chairman of the business council then that
34 this entire chapter, "Fish, Wildlife and
35 Recreation," insofar as it's applicable would
36 apply to that area; is that right?

37 MR. UNDERHILL: I'm not sure the witness can
38 answer that question, Your Honour.

39 THE COURT: I don't know how he answered the last few.

40 MR. UNDERHILL: Yeah, exactly. I was a little late.

41 THE COURT: But he did a good job. But, yeah, he
42 really can't answer that. They are legal
43 questions.

44 MR. THOMPSON: I have your point, Your Honour.

45 Q So put that aside for a moment.

46 And just going back to something you had said
47 in your evidence, Dr. Marchand, you had talked

- 1 about the appointment of Jim Boyd as a liaison to
2 British Columbia. And do you recall giving that
3 evidence?
- 4 A Yes.
- 5 Q And just can I ask you from your perspective as --
6 just back up for a second. You were -- prior to
7 Jim Boyd's unfortunate passing, that you were the
8 vice-chair, is that right, of the Colville
9 Business Council?
- 10 A Yes.
- 11 Q So at that time -- was this contemplation of
12 making this appointment at that time in your
13 tenure?
- 14 A I can't remember the timing of it.
- 15 Q And I think really where I want to go with this or
16 wanted to ask you is did you consider that from
17 the standpoint of your position in the tribes and
18 the business council as this being a
19 government-to-government relationship between the
20 Colville Tribes and British Columbia?
- 21 MR. UNDERHILL: I'm going to object to that question as
22 well on the same grounds.
- 23 THE COURT: That being a legal question?
- 24 MR. UNDERHILL: Yeah. What does
25 "government-to-government" mean?
- 26 THE COURT: Well, I don't have a difficulty
27 understanding that. I guess if the witness needs
28 clarification. It seems more of a political
29 question.
- 30 MR. UNDERHILL: I could stand on relevance, I suppose
31 as well.
- 32 THE COURT: Well, you are welcome to make that
33 objection as well. Is that -- are you making that
34 objection?
- 35 MR. UNDERHILL: Yes, I will make that objection as well
36 as I think about things.
- 37 MR. THOMPSON: Your Honour, my point is whether -- is
38 that it is a political question in the sense that
39 my understanding is that the Colville Business
40 Council and the Colville Tribes consider
41 themselves to be an Indian government, so -- and
42 that's been established by the witness. British
43 Columbia is a government. As you are well
44 aware -- you are probably aware, I should say, in
45 this province we regularly -- or the province
46 regularly deals with First Nations who engage with
47 the province on the basis they consider it a

1 government-to-government relationship. And that
2 emanates from the First Nations. So my
3 question to Dr. Marchand is simply to determine if
4 they are attempting to -- or this would be
5 considered in the same footing. And I'm not
6 asking him to answer that part of it. That's the
7 relevance of it in terms of does it compare to
8 what we, British Columbia, might expect from the
9 First Nation in this province.

10 THE COURT: Well, see, first of all, I don't see it as
11 being relevant, but secondly, I think the way you
12 phrased it makes it impossible for him to answer
13 because I don't know how he could compare. So I
14 think that I will sustain the objection on the
15 grounds of relevance. Okay.

16 MR. THOMPSON: Fine, Your Honour. Thank you. And I
17 think we have nothing else for you, Dr. Marchand.
18 Thank you very much.

19 THE WITNESS: You are welcome.

20 THE COURT: Anything arising?

21 MR. UNDERHILL: Nothing arising.

22 THE COURT: Dr. Marchand, thank you very much for
23 coming -- or for getting up and testifying today.
24 Thank you. You are excused.

25

26 **(WITNESS EXCUSED)**

27

28 THE COURT: I take it that we are not going to start
29 with another witness, then?

30 MR. UNDERHILL: We could. Ms. Boyd is here.

31 THE COURT: Is she here?

32 MR. UNDERHILL: I wouldn't finish direct, I wouldn't
33 think, but, you know, she has come up and sat
34 here, so if we --

35 THE COURT: We do have 15 minutes. If you can -- sure.
36 All right.

37 MR. UNDERHILL: Maybe just check.

38 Your Honour, I'd like to now call Shelly Boyd
39 to the stand, please, who will affirm to give her
40 evidence today.

41

42

43

44

45

46

47

**SHELLY BOYD, a witness
called for the accused,
affirmed.**

THE CLERK: Please state your full name and spell your
last name for the record.