

Court File No. CV-24-00000091-00CP

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:

WABASEEMOONG INDEPENDENT NATIONS, on behalf of all TREATY 3

FIRST NATIONS

and

CHIEF WAYLON SCOTT, on his own behalf and on behalf of all members of the

WABASEEMOONG INDEPENDENT NATIONS and all members of Treaty 3

First Nations

Plaintiffs

- and -

HIS MAJESTY THE KING IN RIGHT OF CANADA

as represented by the ATTORNEY GENERAL OF CANADA

Defendant

(Proceeding under the *Class Proceedings Act*, 1992, S.O. 1992, c. 6)

**SUPPLEMENTAL MOTION RECORD OF
WABASEEMOONG INDEPENDENT NATIONS**

Motion for Certification

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TABLE OF CONTENTS

ITEM	PAGE
Transcript of the Cross-Examination on Affidavit of Stefan Matiation dated January 14, 2026	4

Court File No. CV-24-00000091-00CP

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:

WABASEEMOONG INDEPENDENT NATIONS, on behalf of all
TREATY 3 FIRST NATIONS and CHIEF WAYLON SCOTT, on
his own behalf and on behalf of all members of the
WABASEEMOONG INDEPENDENT FIRST NATIONS and all
members of TREATY 3 FIRST NATIONS
Plaintiffs

- and -

HIS MAJESTY THE KING IN RIGHT OF CANADA as
represented by the ATTORNEY GENERAL OF CANADA
Defendant

CROSS-EXAMINATION OF STEFAN MATIATION
on his affidavit affirmed on October 23, 2025,
held via Arbitration Place Virtual
on Wednesday, January 14, 2026, at 10:00 a.m.

APPEARANCES:

Anjalika Rogers on behalf of the Plaintiffs
Kelley V. Humber

Heather Thompson on behalf of the Defendant
Genevieve Tremblay-Tardif

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900-333 Bay Street Toronto, ON M5H 2R2

INDEX

	PAGE
AFFIRMED: STEFAN MATIATION	3
CROSS-EXAMINATION BY A. ROGERS	3

LIST OF REFUSALS

Refusals (REF) found at pages:
7, 16, 28, 29, 31, 34, 42, 44

1 Arbitration Place Virtual

2 --- Upon commencing on Wednesday, January 14, 2026,

3 at 10:00 a.m.

4 AFFIRMED: STEFAN MATIATION

5 CROSS-EXAMINATION BY A. ROGERS:

6 1 Q. Good morning, Mr.

7 Matiation.

8 A. Good morning.

9 2 Q. My name is Anjalika

10 Rogers, I'm counsel for Wabaseemong Independent
11 Nations in matter number CV-24-00091, a proposed
12 class proceeding in the Ontario Superior Court of
13 Justice. I'll be cross-examining you today. If
14 any of my questions are unclear or if you can't
15 hear me, please do stop me and ask me to repeat
16 myself or for clarification, and I'll do my best
17 to oblige. You swore an affidavit on October 23rd
18 2025 in this matter.

19 Do you have a copy of that
20 document in front of you?

21 A. Yes, I do.

22 3 Q. I will also be referring
23 to the affidavit of Heaven Deschamps sworn
24 December 1st 2025 that's contained in the Reply
25 Record of the plaintiff.

1 Do you have a copy of that in
2 front of you?

3 A. Yes, I do.

4 4 Q. Thank you.

5 So turning to paragraph 1 of
6 your affidavit, you state that you are the
7 Director General of the Specific Claims Branch of
8 Crown-Indigenous Relations and Northern Affairs
9 Canada, which I'll refer to as "CIRNAC" for ease
10 of reference, I suppose.

11 What does that mean?

12 For example, what is your role
13 at CIRNAC?

14 A. I'm the executive
15 responsible for the Specific Claims Branch, so
16 responsible for all of the activities and work
17 with the branch. I report to an Assistant Deputy
18 Minister in Crown Indigenous Relations, who is the
19 Assistant Deputy Minister responsible for what's
20 called the Resolution and Partnership Sector, and
21 she reports to our Deputy Minister.

22 5 Q. And what is the name of
23 your Deputy Minister that you report to?

24 A. Valerie Gideon.

25 6 Q. And is she the DM or the

1 ADM?

2 A. She is the Deputy
3 Minister. The Assistant Deputy Minister is
4 Darlene Bess.

5 7 Q. Sorry, could you repeat
6 that name?

7 A. Darlene.

8 8 Q. Darlene, okay.

9 As the executive responsible
10 for the Specific Claims Branch, can you just give
11 us a brief description of your responsibilities?

12 A. Essentially I'm
13 responsible for the -- for the programs --
14 Specific Claims Program. I have a team that
15 carries out the assessment of claims, and a team
16 of negotiators, a litigation management unit that
17 supports us in the litigation process, and a small
18 policy team. And essentially we're responsible
19 for carrying out the Specific Claims Program and
20 Process, which is referred to in my affidavit.

21 9 Q. And, Mr. Matiation, what
22 is your educational background?

23 A. I have a BA in political
24 studies, and a law degree from the University of
25 Toronto, and a masters of law from Columbia

1 University.

2 10 Q. Turning now to
3 paragraph 2 of your affidavit, there you state
4 that the processing of specific claims is done
5 according to the Specific Claims Policy and
6 Process Guide, which is a publicly available
7 document. You also indicate that it sets out the
8 process of claims submission and filing, among
9 other things.

10 Why have you included the
11 Specific Claims Policy and Process Guide in your
12 affidavit?

13 A. Just for informational
14 purposes and a reference point.

15 11 Q. I guess specifically why
16 is that information something that you think is
17 important to put forward in the context of this
18 motion?

19 A. I don't know.

20 12 Q. I'm actually going to
21 flip ahead first before I get into the Specific
22 Claims Policy and Process Guide, and I'm going to
23 go to paragraph 8 of your affidavit. And at
24 paragraph 8 you state that you make the affidavit
25 "in response to the Motion for Certification in

1 the within class proceedings".

2 So what specifically in the

3 Motion for Certification is your affidavit

4 responding to?

5 REF H. THOMPSON: I'm going to,

6 counsel, object to that question. Mr. Matiation

7 is not counsel of record on this file. While he

8 may have legal training, that doesn't mean that

9 he's involved in the litigation strategy and

10 development of arguments, so I don't think that's

11 a fair question to pose to a fact witness.

12 A. ROGERS: I disagree,

13 counsel. It's his evidence that he's making the

14 affidavit in response. He's made that statement.

15 I -- I feel that I can cross-examine him on that

16 statement. I mean, surely he wouldn't have put

17 the statement in the affidavit if he didn't know

18 what it meant.

19 H. THOMPSON: Well, I don't

20 disagree that it's his evidence, but I don't think

21 it's fair to say that affiants necessarily are

22 developing the strategy in which their evidence is

23 going to be used with respect to legal argument

24 and --

25 A. ROGERS: I'm not asking him

1 -- I'm not asking him for a legal argument; I'm
2 asking him what his affidavit is responding to. I
3 mean, he said he makes it in response to the
4 Motion for Certification. You know, the Motion
5 for Certification is a fairly broad term. I'm
6 asking for perhaps him to narrow, if he can,
7 specifically what he is responding to.

8 H. THOMPSON: Are you asking
9 him to identify, like, which element of the test?

10 A. ROGERS: Not necessarily.
11 I mean, is he responding to something that's in
12 one of the other affidavits? Is he responding
13 to -- you know, at this point no legal arguments
14 have been filed, so the legal issues aren't really
15 at issue yet, but I suppose what has been filed is
16 a Notice of Motion, affidavits from, you know,
17 experts, as well as fact witnesses in the
18 plaintiff's record. I'm trying to get a sense of
19 what his affidavit is in response to with respect
20 to that Motion Record. And this is so that I can
21 make sure my questions are in line with what he's
22 putting forward and its purposes.

23 H. THOMPSON: So and I
24 understand your question and I think, from my
25 perspective, counsel has also answered on that

1 that we're not required at this stage to indicate
2 the purpose to which we're going to be putting our
3 evidence. We filed responding evidence, as we
4 have a right to do, and the purpose for which the
5 specific evidence is going to be used doesn't need
6 to be disclosed by -- by counsel. And I don't
7 know that it's really fair to the witness, who is
8 a fact witness and not legal counsel with
9 carriage, to indicate the purpose for which his
10 evidence is intended to be used. But I mean, I
11 can allow you to pose the question but I just want
12 to make sure that's clear on the record that we
13 have a concern with the purpose for which the
14 question is being posed and the limitations with
15 which he could answer.

16 A. ROGERS: Certainly, and,
17 again, he's --

18 H. THOMPSON: I'll let the
19 witness answer.

20 BY A. ROGERS:

21 13 Q. So perhaps I'll phrase it
22 this way: Mr. Matiation, are you aware of what,
23 if anything, in the Motion for Certification your
24 affidavit is responding to?

25 A. No, I'm not.

1 14 Q. And you also state in
2 paragraph 8 that you "know of no fact, material to
3 the motion, that has not been disclosed" in the
4 affidavit.

5 What do you mean by "material
6 to the motion"?

7 A. I'm not aware of anything
8 relevant. I don't know anything relevant that I
9 would add to the affidavit that would be relevant
10 to the motion because I'm not familiar with the
11 details of the motion.

12 15 Q. Sorry, I think I -- I
13 didn't catch all of that.

14 You're not aware of anything
15 relevant that was excluded? I know you didn't use
16 that word but just so I understand.

17 A. I'm not aware of anything
18 that I would include in the affidavit that would
19 be relevant beyond what's in there now.

20 16 Q. So you use the word
21 "relevant".

22 So is it fair to say that in
23 your -- your position is that what is in the
24 affidavit is relevant to the motion?

25 A. I'm not familiar with the

1 motion itself so I can't say.

2 17 Q. Did you prepare your
3 affidavit?

4 A. I -- it was prepared for
5 me but I have discussed it with counsel.

6 18 Q. So would it be fair to
7 say it wasn't your decision as to what to include
8 and not to include?

9 A. I signed the affidavit as
10 it's written.

11 19 Q. Pardon me, sir, you
12 didn't answer my question.

13 Would you say it's fair that
14 it wasn't your decision as to what to include or
15 not include?

16 A. It was my decision to
17 sign it based on the material that you have in
18 front of you. So it was my decision to sign it.

19 20 Q. But with respect to its
20 contents, was it your decision as to what would be
21 included or not included?

22 A. It was not my decision to
23 write it the way it was. I mean, I signed it with
24 the information that -- that it presents.

25 21 Q. I'm going to take you

1 back to paragraph 2, and I -- I previously asked
2 you why you've included the Specific Claims Policy
3 and Process Guide in your affidavit. You
4 responded for informational purposes and a
5 reference point.

6 However, would it be accurate
7 to say you don't know why that information is in
8 there?

9 A. I don't -- yeah, I guess
10 it is fair to say that I don't know why it is in
11 terms of the proceedings -- why it is included in
12 terms of the proceedings themselves.

13 22 Q. And with respect to
14 Exhibit A, which is the Specific Claims Policy and
15 Process Guide, the same question I would have for
16 you: Do you know why that particular document
17 forms part of your evidence?

18 A. I know that it provides
19 facts about the process -- like, the specific
20 claims process, but I don't know how it relates to
21 the Certification Motion.

22 23 Q. I'm going to have you
23 flip to Exhibit A now, please.

24 A. Yes, I have it open.

25 24 Q. And the pages aren't

1 numbered but I -- I will be referring to page
2 numbers. And I numbered mine myself, so hopefully
3 it shouldn't be too difficult for you to locate
4 the particular part of the guide that I'm going to
5 be referring you to. So I would like to start
6 with The Policy -- so the heading is "The Policy".
7 I have it as the fourth page of the guide.

8 A. Yes, I have that in front
9 of me.

10 25 Q. So under that heading,
11 the second paragraph, and then I'm going to draw
12 your attention to the last sentence:

13 "The Specific Claims
14 Policy establishes the
15 principles and process
16 for resolving specific
17 claims through notion
18 negotiation."

19 Have I read that right?

20 A. Yes, you have.

21 26 Q. Would you agree that the
22 purpose of the policy is to establish how a
23 specific claim may be resolved via negotiation as
24 opposed to litigation?

25 A. Yes, that's a purpose of

CROSS-EXAMINATION OF STEFAN MATIATION

January 14, 2026

1 the policy, yeah.

2 27 Q. And I'm going to take you
3 to what's now -- what I have as the ninth page of
4 that document, and it's -- the part I would like
5 to speak about with you today is under the heading
6 "The Process".

7 Do you have that in front of
8 you?

9 A. Yes, I do.

10 28 Q. Do you agree that this
11 part of the document sets out the steps for the
12 processing of a specific claim under the policy?

13 A. Yes, it does.

14 29 Q. So the first step
15 indicated there -- and I'm going to paraphrase --
16 a claim is submitted by a First Nation, and then
17 the Minister of Indian Affairs and Northern
18 Development notifies a First Nation in writing
19 when their claim submission has been received.

20 Is that an accurate summary of
21 the first step?

22 A. Yes.

23 30 Q. And would you agree with
24 me that this notification is done by way of
25 letter?

1 A. From the Minister, you
2 mean or from -- yes, it is done by way of -- yes.

3 31 Q. And those letters are
4 from yourself, correct? To the First Nation,
5 typically?

6 A. They are typically from
7 the Director General of Specific Claims, yes.

8 32 Q. So that would be you?

9 A. That would be me now,
10 yes.

11 33 Q. And you'd agree with me
12 that the letter will typically acknowledge a
13 receipt of the claims submission, confirm the date
14 on which it was received, and advise that the
15 claim will undergo an early review to determine if
16 it meets Minimum Standards?

17 Does that sound familiar?

18 A. That's correct.

19 34 Q. And would you agree with
20 me that the letter also advises that the early
21 review process will be completed within six months
22 of the date the claims submission was received,
23 and once that review has been completed, the
24 Nation will be informed whether the claim
25 submission has been filed with the Minister?

1 Does that sound right in terms
2 of what those letters say?

3 A. I don't have a copy of
4 the letter in front of me but, yes, that sounds
5 generally correct.

6 35 Q. And I'm happy to refer
7 you to one such letter if you'd like me to. I can
8 take you there. So if we turn to the Deschamps
9 affidavit in the Reply Record, so Exhibit B to
10 that -- Exhibit B to Ms. Deschamps's affidavit is
11 the affidavit of Chief -- former Chief Todd
12 Peigan.

13 REF H. THOMPSON: Ms. Rogers,
14 we're going to have to object to any questions on
15 Exhibit B on various grounds, one being that
16 there's a Confidentiality Order that pertains to
17 the Pasqua matter. And I have a copy here with me
18 and I reviewed it beforehand, and the material
19 that is -- forms part of the Pasqua First Nations
20 is a claims Tribunal matter and is not to be
21 publicly disclosed.

22 Furthermore, I'm concerned
23 that it relates to settlement privilege and that
24 it breaches section 31 of the Specific Claims
25 Tribunal Act, which sets out that, subject to

1 subsection 341, evidence given by any person in
2 the course of a Tribunal hearing, including
3 anything said, any position taken, or any
4 admission made is not admissible in any other
5 proceeding.

6 So it is our position that
7 Exhibit B is not admissible evidence in this
8 matter and it would not be appropriate to put that
9 to Mr. Matiation, particularly given the
10 Confidentiality Order that's in place.

11 So I have no problem with you
12 asking questions about the letter, the concept of
13 this letter, but taking him to a specific letter
14 that's not admissible, we'd ask that you not do
15 that. However, should he be in a position to
16 answer any general questions about the nature of
17 these letters, we will not oppose those questions.

18 A. ROGERS: My purpose in
19 taking him there is just to -- out of fairness to
20 him. You know, I'm asking him to describe
21 something that he does not have in front of him.
22 My understanding is these letters are basically
23 form letters and they come from him specifically,
24 so with respect to the confidentiality concerns
25 that attached to that material, in my position --

1 in my submission, it isn't -- it's not treading on
2 those concerns. It's really a form letter that
3 addresses, you know, the process, generally
4 speaking, under the policy. And the policy is in
5 his evidence, it's part of his affidavit, so I'm
6 just trying to dig into the policy. And the
7 letter is an example of something that he would
8 send under that policy.

9 H. THOMPSON: So perhaps what
10 we could, then, do -- because, again, there won't
11 be any letter -- you know, if we are successful in
12 terms of this not being admissible, there will be
13 no letter on the regard. Perhaps questions could
14 just be posed generally. We will acknowledge that
15 he has in front of him -- and, again, it's not in
16 this record in this transcript, that would be a
17 breach of confidentiality. We'll allow questions
18 but interject as -- as necessary.

19 A. ROGERS: Certainly.

20 BY A. ROGERS:

21 36 Q. And perhaps I can put it
22 this way, then: Having looked at this letter
23 without it having to form an exhibit or anything
24 in the proceeding or in the cross-examination, Mr.
25 Matiation, are you satisfied that it -- it advises

1 that an early review process will be completed
2 within six months of the date the claim submission
3 has been received, and once that review has been
4 completed, the Nation will be informed whether the
5 claim submission has been filed?

6 Is that an accurate summary of
7 what those letters tend to say generally?

8 A. Yeah, that's an accurate
9 summary of what those letters tend to say
10 generally, looking at the example at Annex C of my
11 own affidavit.

12 37 Q. So moving on to step
13 two -- and I'm returning to the Policy here,
14 Exhibit A to your affidavit under The Process on
15 page 9:

16 "Within six months of
17 receipt by the Minister,
18 all claim submissions
19 will be assessed against
20 the Minimum Standard."

21 Is that correct in terms of
22 what happens next?

23 A. That's correct.

24 38 Q. And those claims that
25 meet the Minimum Standard will be filed with the

1 Minister, is that also correct?

2 A. That's correct, yes.

3 39 Q. And the First Nation will
4 be notified in writing, is that correct?

5 A. Yes, it is.

6 40 Q. And this notification is
7 also done by way of letter, is that correct?

8 A. That's correct, yes.

9 41 Q. And that letter also
10 comes from -- from yourself to the First Nation,
11 correct?

12 A. Yes, it comes from the
13 Director General of Specific Claims, which is the
14 role I occupy now, yes.

15 42 Q. Generally, these letters
16 confirm that the early review of the submission
17 has been completed and that the claim, where it
18 has met Minimum Standards, it has been filed with
19 the Minister and it provides the date of filing.

20 Does that accord with your
21 recollection of what these letters generally say?

22 A. Yes, that's correct.

23 43 Q. Would you agree with me
24 that the letters can also include specific content
25 that relates to the claim in issue?

1 A. Certainly the letters can
2 vary, you know, if appropriate.

3 44 Q. So I'm going to ask you
4 specifically about letters that pertain to treaty
5 annuities indexing claims.

6 And have those letters
7 included statements to the effect that the treaty
8 annuities indexing claims are part of a larger
9 issue involving the adjustment of periodic
10 economic treaty benefits to reflect inflation,
11 that the specific claims process is limited to
12 addressing historical grievances and could not
13 resolve issues which are less than 15 years old
14 and forward-looking, and, given the unique nature
15 of treaty annuities indexing claims, an engagement
16 process with CIRNAC is proposed to discuss the
17 claim and the path towards resolution?

18 Are you aware of whether that
19 statement appears in treaty annuities indexing
20 claims letters that you send when the claim is
21 filed?

22 A. It would appear in some
23 at a certain point in time.

24 A. ROGERS: Sorry, just give
25 me one minute.

CROSS-EXAMINATION OF STEFAN MATIATION

January 14, 2026

1 BY A. ROGERS:

2 45 Q. So moving on to step
3 three, once the claim is filed, the Minister has
4 three years to assess the claim in accordance with
5 the assessment criteria and the six grounds for
6 establishing a specific claim set out in the
7 Policy section of the Process Guide, is that
8 correct?

9 A. That's correct, yes.

10 46 Q. So during this three-year
11 period -- and, again, I'm going to be speaking
12 specifically about treaty annuities indexing
13 claims -- would you agree that a parallel
14 negotiation process within CIRNAC has also taken
15 place in the past?

16 A. I'm not sure what you
17 mean exactly by "parallel process".

18 47 Q. So, for example, has it
19 ever occurred that the claim has been filed with
20 the Minister -- and we did just talk about the
21 kinds of statements that you said appeared in some
22 of the letters at a certain point in time -- and
23 the statement that I had summarized indicated that
24 the unique nature of treaty annuities indexing
25 claims gave rise to you proposing an engagement

1 process with CIRNAC to discuss the scope of the
2 claim and a path towards resolution.

3 So following on that, has
4 there been instances where those -- a parallel --
5 and I'm using the word "parallel" -- but a process
6 within CIRNAC has unfolded, to your knowledge, at
7 the same time that the claim is within the
8 three-year assessment period?

9 A. This isn't something that
10 I have reviewed as part of preparing for this
11 cross because it's not a matter that's set out in
12 my affidavit.

13 48 Q. So do you have any
14 recollection or no recollection of there ever
15 being a parallel process, to the best of your
16 knowledge, involving a treaty annuities indexing
17 claim?

18 A. The use -- what I'm
19 stumbling over is your use of the words "parallel
20 process". There has been a process of engagement
21 on treaty annuity indexation claims that were also
22 filed with the Minister but I wouldn't
23 characterize -- I'm not, I guess, in agreement
24 that I would characterize it as a "parallel
25 process".

CROSS-EXAMINATION OF STEFAN MATIATION

January 14, 2026

1 49 Q. So this process of
2 engagement, that's being led by Treaty and
3 Aboriginal Governance?

4 A. There was a process of
5 engagement. I can't speak to what that part of
6 the department is doing now.

7 50 Q. Sorry, I think you -- the
8 sound jogged a bit.

9 There was a process of
10 engagement but you can't speak to what the
11 department is doing now, is that what you stated?

12 A. Well, you're asking me if
13 there's a parallel process of engagement on treaty
14 annuity indexation claims, and I would say, no,
15 there isn't.

16 51 Q. Has there been one in the
17 past?

18 A. In the past? Yes, there
19 was in the past.

20 52 Q. And as part of that
21 process in the past, would you agree that a
22 framework to resolve all of the claims on a
23 treaty-wide basis was developed?

24 H. THOMPSON: Can I just
25 interject? Is this -- it feels like maybe we're

1 getting into some areas of privilege. Are we
2 talking about a negotiation process?

3 A. ROGERS: Well, Canada has
4 taken the position that it wasn't a negotiation
5 and that it was an engagement process, so I'm not
6 sure privilege would necessarily apply there, but
7 I'm asking generally. And I can zoom out even
8 more, if that would be helpful, to something that
9 isn't privileged and that's in the public realm,
10 and then use that to ask my specific question.

11 H. THOMPSON: And that's --
12 that's fine. I mean, I don't know that we've
13 taken a position. I understand that the witness
14 has given some evidence. I just want to be
15 cautious that we're not treading into territory
16 that could be the subject of negotiations or past
17 negotiations and privilege.

18 A. ROGERS: Certainly, so
19 perhaps I'll start with this question, then, which
20 I don't believe is privileged.

21 BY A. ROGERS:

22 53 Q. It's: Would you agree
23 that an expedited resolution framework was used to
24 resolve agricultural benefits claims across
25 Treaties 4, 5, 6 and 8?

1 A. Yes, I would agree that
2 there was -- is such a process for agricultural
3 benefits claims.

4 54 Q. And are you aware of
5 whether a similar process was contemplated for
6 treaty annuities indexing claims?

7 A. Not -- not -- no, I'm not
8 aware that there was a similar process.

9 55 Q. Why wouldn't the Specific
10 Claims Branch want to use a similar process?

11 A. The Specific Claims
12 Branch hasn't been -- hasn't been or wasn't
13 leading engagements with First Nations on treaty
14 annuity indexations, so I don't have direct
15 knowledge of what was being contemplated for --
16 you know, for those types of claims.

17 56 Q. Turning back to the
18 Policy or the Guide that's Exhibit A to your
19 affidavit, and step four -- so that's on page 10
20 of the Guide -- Negotiation and Settlement.

21 This step only occurs where
22 the Minister has notified the First Nation that
23 its claim has been accepted for negotiation, is
24 that correct?

25 A. Yes.

CROSS-EXAMINATION OF STEFAN MATIATION

January 14, 2026

1 BY A. ROGERS:

2 61 Q. So with respect to this
3 particular letter that we're discussing, a
4 negotiation and settlement letter, are you aware
5 of whether any such letter has been sent out to a
6 Treaty 3 First Nation with an annuities indexing
7 claim?

8 And I can be more
9 specific because --

10 A. No.

11 62 Q. No? Are you aware of
12 whether the Minister intends to negotiate Treaty 3
13 annuities indexing claims through an expedited
14 framework that was used in the settlement of
15 agricultural benefits claims?

16 REF H. THOMPSON: I'm going to ask
17 the witness not to answer because he can't speak
18 to what the Minister is intending to do.
19 Certainly I can ask that you rephrase and speak to
20 his own knowledge.

21 BY A. ROGERS:

22 63 Q. Do you -- I suppose do
23 you have any knowledge of a mandate to resolve
24 Treaty 3 annuities indexing claims using an
25 expedited resolution framework like was used for

CROSS-EXAMINATION OF STEFAN MATIATION

January 14, 2026

1 the agricultural benefits claims?

2 A. No, there is no such
3 mandate that I'm aware of.

4 64 Q. And would that mandate
5 come from the Minister?

6 REF H. THOMPSON: I'm a little bit
7 hesitant to proceed along this line of
8 questioning. This is getting into areas that
9 could relate to -- I mean, if it's Ministerial
10 decisions, Cabinet confidence, mandates to
11 negotiate, that's engaging in settlement
12 privilege, solicitor-client privilege. So you do
13 have the witness's answer on his own direct
14 knowledge, and I would ask that we leave it there.

15 A. ROGERS: I'm not asking
16 about a specific mandate, just generally in terms
17 of how it works. Do mandates come from the
18 Minister? Is that acceptable, counsel?

19 H. THOMPSON: Yes, I'm fine if
20 we're talking generally about the process.

21 A. ROGERS: Yes, thank you.

22 BY A. ROGERS:

23 65 Q. Mr. Matiation, would --
24 generally speaking, does that sort of mandate come
25 from the Minister or does it come from Cabinet?

1 Are you able to speak to that?

2 A. It can vary depending on
3 the matter and the, you know, anticipated scale of
4 the mandate.

5 66 Q. And when you say it
6 varies, do you mean it can vary as to who it could
7 come from, whether it comes from Cabinet versus
8 the Minister?

9 A. I mean, generally
10 speaking, it's -- generally speaking, mandates --
11 the Minister has authority to issue mandates up to
12 150 million, generally speaking. And Cabinet is
13 required for mandates over 150 million. But there
14 can be variation in the sense that on a case by
15 case basis a determination might need to be made
16 about what process needs to be used to obtain a
17 mandate on a particular matter.

18 67 Q. And I asked you about
19 whether you had knowledge of a mandate for the
20 resolution of treaty annuities indexing claims
21 using an expedited framework.

22 Are you aware -- do you have
23 knowledge of the existence of a mandate to resolve
24 agricultural benefits claims in Treaty 3 using an
25 expedited resolution framework?

1 A. There is no mandate in
2 the way that you've described it, you know, in
3 terms of an expedited resolution process for
4 Treaty 3.

5 68 Q. Is there another mandate
6 to resolve Treaty 3 ag benefits claims?

7 REF H. THOMPSON: And I want to
8 interject again here. I'm, again, concerned that
9 we're treading into areas that would be related to
10 settlement privilege, solicitor-client privilege.
11 If you're speaking to specific mandates to
12 negotiate that's -- if it's -- unless there's
13 something you can point to in his affidavit, my
14 concern is, frankly, that he's being asked to
15 disclose privileged information.

16 A. ROGERS: And I don't want
17 to speak to anything in specific with respect to
18 any particular First Nation, but at paragraph 7 we
19 have a list of Nations -- pardon me, a list of
20 claims that have been filed. And my understanding
21 is the potential relevance of those claims could
22 be that they are another means by which these
23 issues can be resolved versus the class
24 proceeding. And, again, I can only guess because
25 of Canada's position that the purpose of the

CROSS-EXAMINATION OF STEFAN MATIATION

January 14, 2026

1 affidavit evidence is not going to be disclosed at
2 this time. So I'm just trying to understand, you
3 know, the reality of that, and not specifically
4 with respect to the Nations listed but whether,
5 you know, there's going to be some sort of
6 process, or whether he's aware there could be a
7 process.

8 H. THOMPSON: And that's fair.
9 I mean, perhaps I would just -- I mean, at the
10 very least caution the witness to be cautious of
11 privilege. And I'll leave it within his expertise
12 to know what is -- what information can be
13 disclosed. But that's my concern, that if we're
14 speaking about negotiated processes, the mandates,
15 that that may be privileged.

16 A. ROGERS: So I'll ask --
17 sorry, I don't know if I need to ask the question
18 again, but I think it was a follow up. Mr.
19 Matiation said there's no mandate to resolve
20 agricultural benefits claims through an expedited
21 resolution framework. And I said, is there a
22 mandate to resolve them otherwise. And I'll allow
23 him to answer to the best of his ability --

24 THE WITNESS: The claims that
25 we have from Treaty 3 are listed within the

CROSS-EXAMINATION OF STEFAN MATIATION

January 14, 2026

1 affidavit. And two of them are in assessment,
2 three of them were pending filing, so we're not at
3 the stage of having even negotiations with these
4 First Nations for Treaty 3.

5 BY A. ROGERS:

6 69 Q. Thank you.

7 And so I'm going to ask you to
8 go back to -- because I was just referring to
9 paragraph 7 of your affidavit but I'm going to
10 refer back to Exhibit A, so the Specific Claims
11 Policy and Process Guide. And what I have there
12 as page 12, which is the Conclusion, and there's a
13 sentence -- it's the second sentence in the
14 conclusion, and it's:

15 "Negotiated settlements
16 are about justice,
17 respect and
18 reconciliation."

19 Did I read that right?

20 A. Yes, you did.

21 70 Q. Would you agree that
22 reconciliation is best advanced through a
23 negotiated settlement through the specific claims
24 process?

25 A. Well, I believe that

CROSS-EXAMINATION OF STEFAN MATIATION

January 14, 2026

1 reconciliation can be advanced through the
2 specific claims process, yes.

3 71 Q. But is it better done
4 there than through litigation in the courts, in
5 your opinion?

6 REF H. THOMPSON: The witness is
7 not being advanced to give an opinion. You're
8 asking just for his opinion as --

9 A. ROGERS: Well, he's the
10 Director of the Specific Claims Branch and, you
11 know, he's -- he's already given evidence that
12 this policy is about negotiating claims. So I'm
13 just trying to assess his views on whether this is
14 a better way of advancing reconciliation, given
15 the statement in the Policy, versus other ways of
16 resolving these claims, one being litigation
17 through the courts. Does he have a view on that?

18 REF H. THOMPSON: And,
19 respectfully, I don't think his personal opinion
20 is really of relevance here.

21 A. ROGERS: Well, maybe I'll
22 ask it a different way.

23 BY A. ROGERS:

24 72 Q. Would you agree that the
25 Specific Claims Branch was created for the

CROSS-EXAMINATION OF STEFAN MATIATION

January 14, 2026

1 purposes of advancing reconciliation through
2 negotiation?

3 A. The branch was created --
4 it has been in place for a very long time. I'm
5 not even sure when it was created so I don't know
6 why it was created at that time, beyond being
7 created to administer a process.

8 73 Q. I'm going to ask you to
9 go to paragraph 4 of your affidavit, please.

10 Paragraph 4 refers to the
11 Specific Claims Reporting Centre and to reports of
12 the specific claims that have been filed with the
13 Minister, is that correct?

14 A. Yes.

15 74 Q. And in line with my
16 earlier questions on the specific contents of your
17 affidavit, would you agree that you don't know why
18 this particular information was included in your
19 affidavit?

20 A. Only that I know that
21 it's factual, but I don't know how it relates to
22 the motion.

23 75 Q. And then moving on to
24 paragraph 5 where you state that:

25 "The Reporting Centre

1 provides up-to-date
2 information about the
3 status of individual
4 First Nation specific
5 claims, along with a
6 brief description of the
7 claim and key dates,
8 which includes the date
9 the claim was filed"

10 You would agree that you're
11 not -- that you don't know why or how that
12 information relates to the motion?

13 A. I agree.

14 76 Q. Does the Reporting Centre
15 include information on whether claims have been
16 resolved?

17 A. Yes, it does.

18 77 Q. And would you agree that
19 usually is indicated by the word "settled"?

20 A. Yes.

21 78 Q. What does it mean when a
22 file is marked as "closed" on the Reporting
23 Centre?

24 A. I mean, it just -- it
25 means there's no action being taken on a file by

CROSS-EXAMINATION OF STEFAN MATIATION

January 14, 2026

1 the department.

2 79 Q. Is a file marked

3 "closed" -- I'll rephrase.

4 Is one of the reasons a file

5 might be marked "closed" because the claim has

6 been resolved outside of the specific claims

7 process, to the best of your knowledge?

8 A. I would have to look at a

9 specific example, I guess, to determine, you know,

10 why a particular matter is being identified as

11 closed. But I guess I would just generally say if

12 it's marked as closed, it means that, you know,

13 certain acts of Specific Claims Branch is not

14 actively addressing the matter through the

15 specific claims process.

16 80 Q. Are you aware of whether

17 annuities indexing claims for Treaty 8 were

18 resolved through the Specific Claims Branch?

19 H. THOMPSON: Sorry, what is

20 the relevance of that here?

21 A. ROGERS: So I have -- you

22 know, I can -- we can do this -- we have a

23 printout of all of the specific claims in Alberta,

24 Saskatchewan and British Columbia, and I'm happy

25 to share that and we can go through it. But it

CROSS-EXAMINATION OF STEFAN MATIATION

January 14, 2026

1 came to our attention that there were a number of
2 Treaty 8 First Nations with annuities indexing
3 claims that all had their files closed on the same
4 day. And I'm just trying to understand what the
5 Reporting Centre is communicating or what can be
6 gleaned from that information. And given that Mr.
7 Matiation has referred to the Reporting Centre and
8 status reports and the information contained
9 therein, I wanted to ask him whether he has any
10 knowledge of sort of the context where a treaty
11 annuities indexation claim is being marked as
12 closed for any treaty area.

13 H. THOMPSON: I'm just -- you
14 know, as far as asking specifically, though, about
15 Treaty 8, I mean, I take no issue with your
16 questions more generally, but if you're asking him
17 specifically about Treaty 8, I'm just wondering
18 what the relevance is to the Certification Motion
19 here.

20 A. ROGERS: Well, the
21 relevance, in our view, is the suitability of the
22 specific claims process for resolving these claims
23 as opposed to a class proceeding. And that's what
24 we can only guess is the relevance of -- of this
25 whole exercise and in terms of his affidavit. So,

CROSS-EXAMINATION OF STEFAN MATIATION

January 14, 2026

1 you know, again, we're shooting in the dark here a
2 little bit but I can ask it generally --

3 H. THOMPSON: Yeah, and,
4 again, this would only -- maybe I just wonder if
5 the witness could step out. I just don't want to
6 taint his evidence in any way.

7 A. ROGERS: We can even --
8 should we stand down? Do you want to --

9 H. THOMPSON: Why don't we go
10 off the record for a moment?

11 A. ROGERS: Yeah.
12 --- Off the record discussion.

13 BY A. ROGERS:

14 81 Q. Mr. Matiation, are you
15 aware of whether treaty annuities indexing claims
16 have been resolved on a treaty-wide basis
17 anywhere?

18 A. Not on a treaty-wide
19 basis, no, but some First Nations have resolved
20 treaty annuity indexation claims.

21 82 Q. Through the Specific
22 Claims Branch?

23 A. Not to my knowledge.
24 The -- some First Nations in Treaty 8 have had
25 treaty annuity indexation settlements.

1 83 Q. I'm going to take you to
2 paragraph 6 of your affidavit, and we're almost
3 done here, I don't have that many more questions.

4 So at paragraph 6 you refer to
5 the Status Report for the Reporting Centre, and
6 you attach as Exhibit B the report for Ontario and
7 Manitoba Nations with specific claims relating to
8 annuities and agricultural benefits.

9 And just to follow on with my
10 earlier questions, is it accurate to say you don't
11 know why that specific information has been
12 produced in this motion?

13 A. That's correct.

14 84 Q. So turning to Exhibit B,
15 so this is a printout from the Specific Claims
16 Branch status -- pardon me, it's a printout from
17 the Specific Claims Branch Reporting Centre. It's
18 a Status Report, and the second row shows a claim
19 that's been filed by Wabaseemong Independent
20 Nations, the representative plaintiff in this
21 action.

22 It's a Treaty 3 annuities
23 indexing claim, is that correct?

24 A. That's correct.

25 85 Q. And it shows that the

CROSS-EXAMINATION OF STEFAN MATIATION

January 14, 2026

1 date the claim was filed was on the 16th of
2 June of 2025?

3 A. Correct.

4 86 Q. And that research started
5 on the 17th of June 2025?

6 A. That's correct.

7 87 Q. Would you agree with me
8 that Wabaseemoong would have been sent a letter
9 from yourself confirming that the claim was filed?

10 A. I would agree, yes, that
11 they should have been.

12 88 Q. And are you aware of
13 whether -- and we spoke earlier in the
14 cross-examination about a statement made in
15 previous treaty annuities indexing claims letters
16 about referring those claims out to an engagement
17 process with CIRNAC to discuss a path forward,
18 given the unique nature of those claims.

19 Are you aware of whether
20 Wabaseemoong's letter would have contained that
21 information?

22 A. I hadn't -- I haven't
23 reviewed it lately so I can't say it for sure, but
24 I don't believe that it includes that kind of a
25 statement, no.

CROSS-EXAMINATION OF STEFAN MATIATION

January 14, 2026

1 89 Q. Are you aware of whether
2 this claim has been referred to CIRNAC to
3 negotiate?

4 A. It's in assessment with
5 Specific Claims Branch.

6 90 Q. Do you have knowledge of
7 whether it's the Minister's intention to negotiate
8 the claim?

9 REF H. THOMPSON: I don't think
10 that the witness can answer that question. He
11 can't speak to the Minister's intentions.

12 BY A. ROGERS:

13 91 Q. Perhaps I'll put it to
14 you this way: Have you received a mandate to
15 negotiate this claim as the branch?

16 H. THOMPSON: Again, I think
17 if we're talking about mandates negotiated, to the
18 extent that there's nothing that has been
19 communicated that potentially is subject to
20 privilege.

21 A. ROGERS: So are you --
22 counsel, are you instructing your client not to
23 answer the question, so I'm clear?

24 REF H. THOMPSON: Yes.

25 BY A. ROGERS:

CROSS-EXAMINATION OF STEFAN MATIATION

January 14, 2026

1 92 Q. Paragraph 7 of your
2 affidavit sets out the claims that have been
3 filed, and we've already spoken about those a
4 little bit today, the claims that have been filed
5 with respect to Treaty 3.

6 And, again, would it be
7 accurate to state you don't know the reason
8 which -- or I guess how this information with
9 respect to the list of claims that are pending
10 filing and have been filed relates to the
11 Certification Motion?

12 A. Correct.

13 93 Q. You'd also agree with
14 me -- and I believe you already stated this but I
15 just want to be clear -- that none of these claims
16 have even reached the negotiation stage yet?

17 A. That's correct.

18 94 Q. And would it be fair to
19 say whether these claims end up being negotiated
20 would be a matter of discretion on the Minister's
21 part?

22 A. A matter of the
23 Minister's decision, yes. So, yes, a matter of
24 discretion.

25 A. ROGERS: Sorry, I just have

CROSS-EXAMINATION OF STEFAN MATIATION

January 14, 2026

1 a couple of more questions. I just want to look
2 and see what's already been covered.

3 BY A. ROGERS:

4 95 Q. Would you agree that the
5 adoption of an expedited framework for resolution
6 for annuities indexing claims would respect the
7 Nation-to-Nation relationship between the Nations
8 and the Crown?

9 REF H. THOMPSON: Are you asking
10 for his personal opinion or -- and, again, he's
11 not here as an opinion witness.

12 A. ROGERS: I suppose I'm
13 asking for whether the Branch has a view on the
14 best way to effect reconciliation that he's aware
15 of in terms of these claims.

16 THE WITNESS: I mean, I can't
17 speak for a view of the Branch but I would say
18 there's likely many different ways that matters
19 can be addressed from a Nation-to-Nation
20 perspective.

21 BY A. ROGERS:

22 96 Q. Thank you, Mr. Matiation,
23 I don't have any other questions.

24 H. THOMPSON: I wonder if we
25 could just maybe take ten minutes -- well, maybe

CROSS-EXAMINATION OF STEFAN MATIATION

January 14, 2026

1 five minutes is all that's needed. I just want to
2 confer with my colleague about any possible
3 re-examination.

4 Maybe what we'll do is we'll
5 have you step to the other room. We'll turn off
6 our audio and camera and come back in five
7 minutes.

8 A. ROGERS: Perfect, okay.

9 H. THOMPSON: Okay.

10 --- Recess taken at 11:03 a.m.

11 --- On resuming at 11:09 a.m.

12 H. THOMPSON: We just want to
13 confirm that we don't have any re-examination
14 questions.

15 A. ROGERS: Thank you.

16 --- Whereupon proceedings adjourned at 11:10 a.m.

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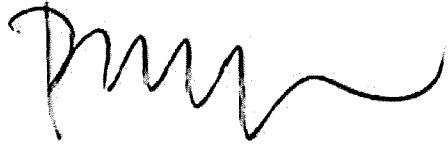
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I HEREBY CERTIFY THAT I have, to the best of my skill and ability, accurately recorded by shorthand, and transcribed therefrom, the foregoing proceeding using realtime computer-assisted software.



Rubina Jan

Certified Court Reporter

**WABASEEMOONG
INDEPENDENT NATIONS**

ATTORNEY GENERAL OF CANADA

Plaintiff

Defendant

ONTARIO
SUPERIOR COURT OF JUSTICE
Proceeding Commenced at Kenora, Ontario

**SUPPLEMENTAL MOTION RECORD OF
WABASEEMOONG INDEPENDENT NATIONS**
(Motion for Certification)

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