

In the Matter Of:
The Chippewas of Saugeen First Nation et al vs
Attorney General of Canada et al.

DAY 93 VOL 93
March 10, 2020



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ONTARIO

SUPERIOR COURT OF JUSTICE

B E T W E E N:

THE CHIPPEWAS OF SAUGEEN FIRST NATION, and THE
CHIPPEWAS OF NAWASH FIRST NATION
Plaintiffs

- and -

THE ATTORNEY GENERAL OF CANADA,
HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO, THE
CORPORATION OF THE COUNTY OF GREY, THE
CORPORATION OF THE COUNTY OF BRUCE, THE
CORPORATION OF THE MUNICIPALITY OF NORTHERN
BRUCE PENINSULA, THE CORPORATION OF THE TOWN OF
SOUTH BRUCE PENINSULA, THE CORPORATION OF THE
TOWN OF SAUGEEN SHORES, and THE CORPORATION OF
THE TOWNSHIP OF GEORGIAN BLUFFS
Defendants

Court File No. 03-CV-261134CM1

A N D B E T W E E N:

CHIPPEWAS OF NAWASH UNCEDED FIRST NATION and
SAUGEEN FIRST NATION
Plaintiffs

- and -

THE ATTORNEY GENERAL OF CANADA and HER MAJESTY
THE QUEEN IN RIGHT OF ONTARIO
Defendants

--- This is VOLUME 93 / DAY 93 of the trial
proceedings in the above-noted matter, being
held at the Superior Court of Justice, 330
University Avenue, Courtroom 5-1 Toronto,
Ontario, on the 10th day of March, 2020.

B E F O R E:

The Honourable Justice Wendy M. Matheson

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A P P E A R A N C E S :

Cathy Guirguis, Esq. for the Plaintiffs,
& Krista Nerland, Esq., The Chippewas of
Saugeen First
Nation and the
Chippewas of Nawash
First Nation.

Michael McCulloch, Esq., for the Defendant,
& Barry Ennis, Esq., Attorney General
& Alexandra, Colizza, Esq., of Canada.

David Feliciant, Esq., for the Defendant,
& Peter Lemmond, Esq., Her Majesty the
& Richard Ogden, Esq., Queen in Right of
& Julia McRandall, Esq., Ontario.
& Jennifer Lapan, Esq.

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I N D E X

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WITNESS: GWEN REIMER

Cross-examination by Ms. Guirguis (con't)..11936

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1 --- Upon commencing at 10:04 a.m.

2 THE COURT: Morning, Ms. Guirguis.

3 MS. GUIRGUIS: Morning, Your Honour.

4 please.

5 THE COURT: Please go ahead.

6 MS. GUIRGUIS: Thank you.

7 GWEN REIMER: PREVIOUSLY AFFIRMED.

8 CROSS-EXAMINATION BY MS. GUIRGUIS:

9 (Continued)

10 Q. Good morning, Dr. Reimer.

11 A. Good morning.

12 Q. So we left off yesterday I had
13 brought up a 1994 article by Shanahan, which was
14 Exhibit 4631, and I would like to bring that up.
15 And you referenced this article in your report,
16 volume 3, correct?

17 A. Yes, I do.

18 Q. So I'll take you to page 25 of
19 the article, which is what you reference, PDF
20 image 9. And I believe that you relied on the
21 second sentence in this marked paragraph:

22 "The proposal he made in 1836 was
23 that as a quid pro quo [...]"

24 And then it goes on until, "[...]
25 Reside there."

1 A. Yes, and just to clarify it's
2 page 21.

3 Q. That's right, page 21, page 9 of
4 the PDF?

5 A. Yes.

6 Q. So you'd agree with me that in
7 this reference Shanahan is only discussing the
8 Manitoulin surrender, is that correct?

9 A. That's correct.

10 Q. And there's no suggestion here
11 that this kind of quid pro quo applied to Treaty
12 45 1/2 in the Peninsula?

13 A. Not by Shanahan, no.

14 Q. So I want to scroll to page 25 of
15 the article, which is PDF page 13. And you're
16 likely familiar with the article, but I would
17 like you to review the marked area. If you want
18 to refresh your memory it starts with:

19 "However large scale migration of
20 Indians [...]"

21 And it ends on page 27 of the article
22 where Shanahan writes, "[...] new round of
23 negotiations."

24 A. (Witness reading the document.)

25 Q. I think that's sufficient.

1 Actually to the bottom of that first paragraph
2 on this page is probably helpful.

3 A. Okay.

4 (Witness reading the document.)

5 Okay, finished to the next green box.

6 Q. Thank you. So Shanahan accepts
7 that the bargain in Treaty 45 was that the
8 Ottawas and Chippewas of Manitoulin allowed
9 other Indians to settle on their territory in
10 exchange for the Crown's promise to grant and
11 protect Manitoulin Island?

12 A. Yes, that's my understanding.

13 Q. Okay. But Shanahan, the author,
14 is sharply critical of the idea that the failure
15 of other First Nations to come to Manitoulin
16 meant that the Crown was somewhat absolved of
17 this promise to grant and protect the island?

18 A. Yes, he was critical of that.

19 Q. So if you could just take a look
20 at this next marked green area on 27 up until
21 page 28, which is the next page. And then I'll
22 ask you a couple more questions.

23 A. (Witness reading the document.)

24 Q. So Shanahan here is describing
25 the negotiation of the 1862 treaty to make a

1 surrender of Manitoulin?

2 A. Correct.

3 Q. And Shanahan explains the Crown
4 used the argument that the failure of other
5 First Nations to come to Manitoulin essentially
6 allowed them to take a surrender of Manitoulin
7 Island?

8 A. I'm just trying to follow your
9 question.

10 Q. Sure.

11 A. If you -- can you break it down?

12 Q. Yes. So Shanahan -- so we've
13 talked about Treaty 45?

14 A. Correct.

15 Q. Shanahan accepts the idea that
16 there was a bargain with the Ottawas and
17 Chippewas of Manitoulin that if they allowed
18 other Indians to settle on the island the
19 Crown's promise was to protect that island for
20 them?

21 A. Yes, correct.

22 Q. So what he's explaining here, is
23 that the Crown used the argument that because
24 the -- because there was a failure of other
25 First Nations to come to Manitoulin that the

1 Crown could go back on its promise?

2 A. Yes, correct. That's what
3 Shanahan is saying, yes.

4 Q. That's what Shanahan is saying.
5 And now with respect to the peninsula you've
6 confirmed that neither Anderson in August 1854,
7 nor Oliphant in October 1854, ever raised as a
8 reason why the Saugeen Ojibwe should surrender
9 the peninsula it was because First Nations
10 failed to come there?

11 A. That's correct.

12 Q. So yesterday we were talking
13 about questionnaires, the questionnaires that
14 had been sent out by Anderson and received
15 between August 3rd and the end of October 18 --
16 sorry. So started to receive them between
17 August 3rd, 1854 to the end of October?

18 A. Yes, that's correct.

19 Q. So I want to take a look at one
20 of the questionnaires, the answers to the
21 questionnaires again. We looked at one
22 yesterday. This one is Exhibit 2106. And I
23 believe it's the bottom half of this page it
24 says, "Answer from the Rama Indians". We do
25 have a transcript at Exhibit 4782.

1 So when we looked at this yesterday it
2 was the third question that was in respect to --
3 it was the third question on the questionnaire
4 that was in respect to whether they wanted to
5 come to Owen Sound, correct?

6 A. Correct, yes.

7 Q. So here we have, at the paragraph
8 that's marked in the middle of the page of the
9 transcript as "Third", then ending with "[...]
10 break its faith with us again." If you can take
11 a look at that?

12 A. (Witness reading the document.)
13 I've read it.

14 Q. So this is the answer from the
15 Rama band as to whether they would be willing to
16 repair to the Saugeen Peninsula, correct?

17 A. Yes, correct.

18 Q. And here we see the band refusing
19 to repair to the Saugeen Peninsula, and one of
20 the reasons they give is because they do not
21 believe that the government will not break its
22 faith again?

23 A. Correct.

24 Q. And you'd agree we with me that
25 that's referring to their concern that the

1 government is going to take a further surrender
2 of the lands?

3 MR. FELICIAN: Your Honour, I rise
4 because this is the Rama band, this is not the
5 SON band. And there's, firstly, a relevance
6 issue. I don't know how that could be relevant
7 to what happened with SON in 1854, but there's
8 also a concern with respect to the scope of this
9 witness' evidence here, which is focused on the
10 Saugeen and Nawash not on Rama.

11 THE COURT: Ms. Guirguis?

12 MS. GUIRGUIS: Well, Your Honour, this
13 expert witness is qualified as an ethnohistorian
14 that talks about treaty making from the
15 perspective, I understand, of the Anishinaabe.

16 Yes, we're looking at the Saugeen
17 Nawash Nation in this litigation. However,
18 she's referred to the questionnaires and opined
19 on the questionnaires.

20 THE COURT: Did she opine on the
21 questionnaires as regards other First Nations,
22 or just the ones we're concerned about in this
23 trial?

24 MS. GUIRGUIS: Well, she's referred to
25 the questionnaires in the context of her opinion

1 about the Crown's motivations to take the
2 peninsula.

3 THE COURT: That wasn't my question.

4 MS. GUIRGUIS: Well, that's, I think,
5 how I would describe her opinion.

6 THE COURT: So you're not saying that
7 there's any express discussion about Rama?

8 MS. GUIRGUIS: That's right.

9 THE COURT: All right. What about the
10 other basis for the objection?

11 MS. GUIRGUIS: I'd have to look at it.

12 THE COURT: She's not here as an
13 expert with respect to Rama, I believe was the
14 other basis.

15 MS. GUIRGUIS: Right. What I'd
16 submit, Your Honour, is that I don't think my
17 question is asking for her expertise with
18 respect to Rama, it's just a reading of the
19 document and what that says.

20 THE COURT: But if it isn't informed
21 by expertise what use is it to me? I mean, I
22 can read the document.

23 MS. GUIRGUIS: She is here to provide
24 expert opinion about the historical record and
25 the context within which treaties were being

1 negotiated at that time.

2 THE COURT: Well, I have some doubt
3 that this is going to be of any use to me, but
4 I'll permit you to ask the question.

5 Dr. Reimer, the question was, would
6 you agree with me that this excerpt that you've
7 been taken to, is referring to Rama's concern
8 that the government is going to take a further
9 surrender of the lands? That was the question.

10 THE WITNESS: Surrender of which
11 lands?

12 BY MS. GUIRGUIS:

13 Q. Of the lands that they were
14 asking them to move to?

15 A. No, I do not agree.

16 First of all, I think I need to
17 clarify that my reference to these
18 questionnaires and the other First Nations who
19 reply to the questionnaire is merely an
20 accounting of what their answers were, yes or
21 no, we're willing to remove or we're not willing
22 to remove.

23 Q. Okay. So yesterday in our
24 discussion when we were talking about Anderson's
25 statement to the Saugeen Ojibwe on August 2nd,

1 1854, and he said to them, I'm paraphrasing but
2 hopefully I do it in a precise enough way.

3 On August 2nd, 1854, Anderson said to
4 the Saugeen Ojibwe, the government will not
5 trouble to help you; and he also indicated to
6 them that they could do as they -- the
7 government could do as they pleased. Does that
8 sound right?

9 A. Generally, yes.

10 Q. And I asked you some questions
11 about that. And in one of your responses you
12 noted that there's nothing -- that you didn't
13 think that the Saugeen Ojibwe believed him. Is
14 that a fair summary?

15 A. I think it's a bit of an
16 overstatement. I'm saying there's -- it's
17 possible that they did not believe him.

18 Q. It's possible that they did not
19 believe him?

20 A. Correct.

21 Q. And in our discussion you
22 referred to the fact that the Saugeen Ojibwe,
23 having an understanding and relationship, I
24 believe you said, with other First Nations, to
25 know that lands couldn't be taken without

1 surrender?

2 A. Correct.

3 Q. Would you agree with me that
4 based on this comment, and I'm not asking you to
5 answer from the perspective of Rama, but that
6 "the government will not break its faith with us
7 again", can we assume that there was, amongst
8 Anishinaabe at the time, concerns that the
9 government wouldn't follow through on what it
10 was supposed to do?

11 THE COURT: Mr. Feliciant.

12 MR. FELICIAN: In fairness, Your
13 Honour, I think that's far too broad a question
14 for what this -- the work that this witness
15 undertook in her report.

16 That's an enormous question that would
17 require a separate research task. That the
18 foundation hasn't been laid that this witness --
19 hasn't engaged in that, so I object. I think
20 it's too broad and the witness hasn't done the
21 work to answer it.

22 THE COURT: Ms. Guirguis, it's
23 certainly very broad, especially given the
24 evidence I've heard about the extensive nature
25 of the Indigenous populations that considered

1 themselves Anishinaabe covering wide geographic
2 and political, and other areas well beyond the
3 peninsula.

4 So I will permit you to attempt to lay
5 that foundation for a question but given the
6 evidence I've heard about the breadth of that
7 term I have difficulty even really
8 understanding, if you're not going for the broad
9 meaning, what you'd be trying to get at. At
10 this point we're not even in Canada West, or
11 whichever name you choose to use in that
12 fashion.

13 MS. GUIRGUIS: I would like another
14 moment, Your Honour. I'll look at my question
15 and see if I can --

16 THE COURT: Please go ahead.

17 BY MS. GUIRGUIS:

18 Q. Rama would have been one of the
19 Nations that attended council, general councils
20 with the Saugeen Ojibwe?

21 A. Yes, that's documented.

22 Q. And they would have spoken about
23 issues and common concerns?

24 A. Yes.

25 Q. So the excerpt that we have in

1 front of us from Exhibit 2106 of Rama's, stating
2 that it's concerned the government will not
3 break its faith with us again, putting that to
4 one side; is it fair to assume that the Saugeen
5 Ojibwe may have discussed those common concerns
6 at a general council with other Nations like
7 Rama?

8 MR. FELICIAN: Sorry, Your Honour,
9 the best evidence are the minutes of the general
10 councils. If counsel has an example that can be
11 derived from any of those minutes I think put it
12 to the witness.

13 But I don't think we can just ask --
14 ask this witness to assume if something might
15 have happened when we have the best evidence.

16 THE COURT: Well, this witness has
17 provided a report on general councils, and her
18 report does talk about certain specific general
19 councils and the minutes. And so I am going to
20 permit the question and the witness will
21 indicate if she has any difficulty with it.

22 Dr. Reimer, the question was, is it
23 fair to assume that the Saugeen Ojibwe's may
24 have discussed those common concerns at a
25 general council with other Nations like Rama?

1 THE WITNESS: The "common concerns"
2 specifically being? Can you elaborate?

3 BY MS. GUIRGUIS:

4 Q. That the promises -- that the
5 promises that the government is making -- that
6 they are concerned that the government may break
7 its faith with us again, to use those words.

8 A. There's a number of documented
9 examples of general Indian councils where --
10 that were attended by both Rama and Saugeen
11 Ojibwe Nation where they discussed common
12 concerns about centralization, and where they in
13 fact agreed on petitions and memorials that if
14 centralization were to move forward that the
15 Saugeen would be a place they would be willing
16 to go.

17 The only general council I can think
18 of right now that discussed issues of government
19 and land surrenders is the one that occurred in
20 1860 when the Prince of Wales was visiting; and
21 several Chiefs refused to sign any kind of
22 petition or resolution that stated that the
23 government stole their lands without the First
24 Nations' permission.

25 Q. So I guess with respect to my

1 question as to whether it's reasonable to
2 conclude that the Saugeen Ojibwe would have
3 shared the concern that the government will
4 break its faith with us again, is your answer
5 yes or no?

6 A. You know, it's really difficult
7 to agree to and/or apply an assumption from a
8 Rama reply to what the Saugeen Ojibwe Nation
9 would have thought and whether they would have
10 agreed with this.

11 They weren't there. They didn't hear
12 this response. We don't know that they read
13 this response. So I'm very hesitant to provide
14 an opinion either way on the matter.

15 Q. Okay. So when we started off the
16 discussion about Crown motivations I had listed
17 three that you have provided in your report.
18 The pressure for settlement lands, the failure
19 of the centralization scheme, which we've just
20 gone through, and then the other one was the
21 plan to fund the Indian Agency?

22 THE COURT: Counsel, I'm having a
23 little trouble hearing you.

24 BY MS. GUIRGUIS:

25 Q. So I want to move to that last --

1 the last reason that you give, the motivation
2 about the plan to restructure and fund the
3 Indian Agency?

4 A. Okay.

5 THE COURT: Again, can you just repeat
6 that? I didn't hear it the second time either.

7 BY MS. GUIRGUIS:

8 Q. Plan to restructure and fund the
9 Indian Agency.

10 THE COURT: Indian Agency.

11 MS. GUIRGUIS: Yes.

12 THE COURT: Thank you very much.

13 BY MS. GUIRGUIS:

14 Q. Okay. So on February 12 you
15 talked with Mr. Feliciant about the Crown's
16 financial motivations for entering into Treaty
17 72, and in particular you were explaining your
18 statement at page 142, of your volume 3 be
19 report, under section 6.1.2. Your volume 3
20 report being Exhibit 4703, where you wrote:

21 "The Crown was strongly motivated
22 to resolve the financial difficulties
23 of the Indian Department."

24 A. Yes.

25 Q. So I'd would like to bring up the

1 final transcript from February 12th, 2020. It's
2 volume 83, and your answers at pages 10679 to
3 10681. And the time stamp is 16:09:56. Right
4 there at line 2 is where the question is, so
5 it's 16:09:50. And then you give your answer
6 until 16:33:45. If you just want to take a look
7 to refresh your memory?

8 A. (Witness reading the document.

9 Q. I want to talk about Oliphant's
10 plan that you noted was discussed in his
11 November 3rd, 1854, report?

12 A. Yes.

13 Q. So I'd like to bring up Exhibit
14 2175, where we find a copy of Oliphant's report
15 to Lord Elgin dated November 3, 1854. And he
16 starts at page 7 talking about this plan.

17 So at page 7 he talks about reducing
18 expenditures in Lower Canada, making cuts in
19 departments, eliminating interpreters and
20 salaries. Does that sound right?

21 A. Yes.

22 Q. And I just want to turn -- he
23 also talks about expenses and income for Upper
24 Canada, so he talks about it both in Lower
25 Canada and Upper Canada?

1 A. Yes, that's correct.

2 Q. And how expenses and income for
3 Upper Canada will be dealt with separately from
4 Lower Canada?

5 A. Yes.

6 Q. So he talks about Upper Canada in
7 pages 8 and 9 in some detail. And if we go to
8 the page 8, which is PDF 7, he lists the
9 expenditures in two charts. If we can go to the
10 one at the bottom of the page, Oliphant is
11 listing here expenditures for Upper Canada
12 consisting of contingencies, salaries, pensions
13 and pensions to wounded Indians. And he
14 calculates the amount as being 2,570 -- rather
15 to that pound sterling?

16 A. Yes.

17 Q. And, in addition, on the next
18 page we have another chart there and he's
19 reflecting there the expenditure for the
20 accountant, Mr. Chesley, Mr. Turner and also
21 Mr. Anderson. And he's calculated that to
22 amount about 900 pounds sterling, correct?

23 A. That's correct.

24 Q. So the total for those two charts
25 that we've looked at, those expenditures for

1 Upper Canada, is 2,570 pound sterling plus 900
2 pound sterling, so that comes out to 3,470 pound
3 sterling?

4 A. Yes.

5 Q. And also on page 9, immediately
6 after he explains these expenditures he has
7 another chart there. And a paragraph above, and
8 he's listing out line items for Saugeen and Owen
9 Sound, six Nations and nine remaining tribes?

10 A. Correct.

11 Q. So these are the amounts that he
12 is suggesting can be used to meet these charges?

13 A. The 3740, yes.

14 Q. Okay. 3470?

15 A. 3470.

16 Q. So about 1,100 from each Nation
17 that's identified? Or Saugeen and Owen Sound,
18 and Six Nations and the nine remaining tribes
19 contribute the remaining 1,100?

20 A. Correct.

21 Q. So if we go to the top of page 9
22 of the report? We can zoom in a bit, and I
23 would like to highlight the portion he
24 discusses, the Saugeen and Owen Sound Indians
25 here. And if we review from about half way

1 through this paragraph, fifth line down from
2 "but to" and then ending at "over their
3 interests".

4 A. (Witness reading the document.)
5 Okay.

6 Q. So his plan, as you described on
7 February 12 I think in your exam in-chief, it
8 relies on future dollars to be gained from the
9 sale of the peninsula?

10 A. Yes.

11 Q. So putting aside whether his
12 estimate is realistic or optimistic, I want to
13 turn to his estimate for the Saugeen Ojibwe's
14 income from the sale of the lands on the
15 peninsula, which is also this paragraph on page
16 9 of Exhibit 2175. He's estimating that the
17 peninsula lands would be sold for one dollar per
18 acre, right?

19 A. At a minimum he says, yes.

20 Q. So he's estimating for 450,000
21 acres, which is the whole peninsula?

22 A. Correct.

23 Q. That they might make \$450,000?

24 MR. FELICIAN: Your Honour, sorry, I
25 think we have to be careful with language.

1 We've had three different currencies referenced.
2 We've had pound sterling, and I didn't object
3 before but I think I should mention it, it's not
4 always, actually according to the document
5 itself, pound sterling it's actually currency,
6 which is Halifax currency, but I can't give
7 evidence.

8 THE COURT: Well, we had that evidence
9 earlier in the trial.

10 MR. FELICIAN: It's currency, but it
11 definitely is not dollars. So I think we need
12 to keep the record straight and use the
13 appropriate terminology. Is it currency we're
14 talking about, which is not the same as
15 sterling, or is it sterling, or is it dollars?

16 THE COURT: Well, Ms. Guirguis, I know
17 that you want this to be useful and it's not --
18 it may not be easy but you really do have to be
19 specific, because we have had evidence in this
20 trial that reflect the fact that all of those
21 things have sometimes different meanings, so you
22 need to address that.

23 MS. GUIRGUIS: What I'm trying to do,
24 Your Honour, is use the words that Oliphant uses
25 based on the document, but I understand.

1 THE COURT: But you have to address
2 the objection. I mean, we've had a -- I'm going
3 to call loosely a financial expert in this
4 trial, that is probably not what the tender said
5 but we have had that expertise in this trial.
6 And we've had evidence about currency in this
7 trial. I can't recall all of it but I recall
8 Halifax pounds.

9 But if you want it to be meaningful to
10 me it isn't good enough just to say, I'm using
11 the terms that Oliphant used, unless you have
12 already laid some foundation elsewhere in the
13 trial that establishes what he meant. I don't
14 remember that but if you've done it I'll take
15 your word for it.

16 And you also need the answers to be
17 useful so the witness needs to know what you're
18 talking about.

19 MS. GUIRGUIS: I understand that, Your
20 Honour. So I misspoke when I said "pound
21 sterling".

22 THE COURT: I suspect you did.

23 MS. GUIRGUIS: Yes.

24 THE COURT: But that is not the only
25 challenge.

1 MS. GUIRGUIS: The other challenge is
2 the language of "one dollar per acre".

3 THE COURT: Well, no, there's "pounds"
4 as well. It needs to be specific because, as
5 you just said, it's not necessarily pound
6 sterling. So dollars is another aspect of it.

7 Take a crack, counsel, if you wish,
8 and I'll permit you to do it.

9 BY MS. GUIRGUIS:

10 Q. So I just want to take a moment
11 and find a reference in this document.

12 THE COURT: Is there one? It is a
13 lengthy document.

14 BY MS. GUIRGUIS:

15 Q. So in this paragraph, and about
16 half-way down, so the section that -- right
17 after the section that I had asked you to
18 review -- or in the section that I asked you to
19 review, Dr. Reimer, it says:

20 "But to this again to be added
21 the sum which will be approved to the
22 Saugeen and Owen Sound Indians from
23 the sale of recently surrendered
24 territory, which may be roughly
25 estimated at 1,000 [...]"

1 There's an "L" there, and that's
2 referring to the currency of the day?

3 A. That's what I'd assumed, yes.
4 Pounds currency, that's the way I took it.

5 Q. And then he follows and says:

6 "[...] this is rating the land at
7 \$1 an acre."

8 So if we assume that Oliphant is
9 referring to the sale of the peninsula, which is
10 450,000 acres?

11 A. Roughly, yes.

12 Q. We can assume that 450,000 acres
13 is, according to Oliphant's words, worth 100,000
14 pounds currency?

15 A. Well, that would be a
16 straightforward way of calculating it. 450,000
17 acres total doesn't necessarily convert to
18 450,000 acres sold because this will have not
19 included reserve lands, other kinds of Crown
20 lands, et cetera.

21 But, you know, at the simplest level
22 one could perhaps use that as an estimate, if --
23 it's hard to know whether that's what -- he
24 doesn't say 450,000 acres here.

25 So was that the total estimate that he

1 was thinking of right now? He doesn't say. He
2 does say roughly estimated at a hundred thousand
3 pounds.

4 Q. Okay. So, yeah, if we were to
5 take a simple assumption, is that the sale of
6 the peninsula, which is -- we know to be about
7 450,000 acres, will make them -- will make the
8 Saugeen Ojibwe 100,000 pounds currency?

9 A. That's what -- that's what I've
10 understood him to be saying here, yes.

11 Q. Okay. So roughly that implies --
12 when he says "one dollar per acre" he means
13 dollars?

14 A. I would assume so. It's -- why
15 he went back-and-forth between pounds and
16 dollars is a bit of a mystery, but, yes.

17 Q. Even if we assume, let's say,
18 yeah, if he's referring to dollars or acres,
19 it's 4.5 to each pound currency?

20 THE COURT: Counsel, I'm lost. You're
21 asking the witness to make assumptions, you're
22 entitled to do that. But, you know, when I said
23 this the other day, we're very late in this
24 trial and I do not recall evidence to satisfy
25 your obligation to prove your assumptions. If

1 you do recall then I will trust you on that
2 front, but we're pretty deep in the weeds here
3 on the assumptions on very specific matters.

4 I do recall some financial evidence.
5 I do not recall that it gets into this
6 situation.

7 And I'll be blunt with you, I don't
8 even know from the evidence, and please tell me
9 if you know, how the dollar was handled back
10 then. We have an understanding of what that
11 means today, so you have to really think about
12 whether you a basis upon which to proceed in the
13 fashion you're proceeding.

14 MS. GUIRGUIS: Your Honour, I believe
15 that I do from previous evidence that's been
16 provided, but what I will do is I think move
17 over this part and come back to it after lunch
18 if necessary.

19 THE COURT: If you wish to.

20 MS. GUIRGUIS: It's worth double
21 checking.

22 BY MS. GUIRGUIS:

23 Q. So I'm going to leave this
24 section for now but I may revisit with you,
25 Dr. Reimer.

1 I want to ask about your testimony
2 in-chief and your opinion in your volume 3
3 report, Exhibit 4703, about the Royal
4 Proclamation.

5 So I'd like to go to page 14 of your
6 volume 3 report, Exhibit 4703, which is where we
7 have your table 2.1, which you titled
8 "Principles of Treaty-Making in Upper Canada".
9 So if we scroll to the statement below the table
10 at the bottom of the page, and going to the next
11 page, this is the paragraph that starts with,
12 "These instruction and standards [...]", and it
13 continues with -- the sentence ends with, "[...]
14 Indigenous inhabitants." And then you have
15 excerpted a section of the Bagot Commission
16 about the Royal Proclamation?

17 A. Yes.

18 Q. So in this section you are
19 referring to the Royal Proclamation as setting
20 out instruction and standards that were in place
21 to guide the actions of the Indian Department up
22 to and well beyond the Saugeen surrenders of
23 1836 to 1854, yes?

24 A. Yes.

25 Q. And I understand from your

1 examination in-chief by Mr. Feliciant that you
2 were saying the term "instructions" comes from
3 the historical record?

4 A. Yes.

5 Q. This was an official term for
6 directions given to colonial governors about the
7 policies they were to follow, correct?

8 A. An official term? Is that what I
9 stated?

10 Q. I can't recall, I'm just asking
11 that question.

12 A. I'm not sure what the implication
13 is of "official" with respect to this. It's the
14 word that's used repeatedly and commonly in
15 dispatches sent to new governors, et cetera.

16 Q. Okay. So the Royal Proclamation,
17 and subsequent official documents, regarding the
18 conduct of Indian Affairs respecting land
19 surrenders would use the term "instructions"?

20 A. On some occasions, yes, it was a
21 common term that was used.

22 Q. And that includes the Dorchester
23 Instructions of 1794?

24 A. Yes, he explicitly titles it
25 "Additional Instructions".

1 Q. So I'd like to turn up Exhibit
2 4727. This is an article that you wrote
3 entitled "British-Canada's Land Purchases, 1783
4 to 1788" that my colleague Mr. Townshend brought
5 you to last week.

6 A. Yes.

7 Q. And that was published in Spring
8 2019?

9 A. Correct.

10 Q. And I want you to bring you to
11 page 9, which is PDF page 4. We've highlighted
12 a paragraph here on the left-hand side of the
13 page. The marked excerpt starts with, "However,
14 in the period [...]", and ends with, "[...]
15 executed in the 1780s."

16 A. (Witness reading the document.)
17 I've finished reading it.

18 Q. Is it fair to say that your view,
19 as expressed here, is that the Dorchester
20 instructions of 1794 were issued in order to
21 ensure treaty-making processes complied with the
22 Royal Proclamation?

23 A. I'm sorry, could you repeat that?
24 I just lost my train of thought that's all.

25 Q. Is it fair to say that your view,

1 as expressed here in this article that you've
2 written, is that the Dorchester instructions of
3 1794 were issued to ensure treaty-making
4 processes complied with the Royal Proclamation?

5 A. Complied with and added to, added
6 more detail to.

7 Q. And is that still your view and
8 your opinion?

9 A. Yes.

10 Q. And when you say "complied with
11 and added to" do you mean also that it was meant
12 to rectify any omissions in following the
13 instructions and standards set south in the
14 Royal Proclamation?

15 A. Yes, and that statement has to be
16 taken in the context of what was going on in the
17 1780s when so many of the records were lost,
18 or never -- were never kept. And there was some
19 serious issues in relation to the Crown's
20 confidence of their agreements with First
21 Nations prior to this time.

22 Q. So the fact that these
23 instructions, Dorchester's instructions were put
24 in place to improve compliance with the Royal
25 Proclamation this, would you agree, demonstrates

1 that the Crown believed compliance with the
2 Royal Proclamation was important?

3 A. Yes.

4 Q. And it implies that there was an
5 expectation that the instructions and standards
6 found in the Royal Proclamation would be
7 followed?

8 A. An expectation, yes.

9 Q. And so it's appropriate to refer
10 to documents like Dorchester's 1794 instructions
11 as instructions even if they were not followed
12 perfectly?

13 A. Even if they were not followed
14 perfectly. And there's a reason why in my
15 report I've tried my best to refer to them as
16 principles or guidelines, because over time, of
17 course, I don't address that so much in this
18 particular article, but in this -- in my report
19 I do.

20 That over time treaty-making models,
21 the culture of the Indian Department, et cetera,
22 changed. And, you know, essentially the
23 guidelines remained but the details of the
24 following of those guidelines may have been
25 altered in terms of the specificity of certain

1 things that have been decreed, been instructed
2 in 1763 and 1794.

3 Q. You were brought to Exhibit 1264
4 in your examination in-chief, we'll just bring
5 that up so that you -- in case you didn't
6 memorize the exhibit.

7 So this is Exhibit 1264, it's a
8 dispatch from Lord Glenelg. This was brought to
9 you in your examination in-chief. And my friend
10 described this as being a dispatch from Lord
11 Glenelg to the Earl of Gosford. He took you to
12 the last page, which is page 9 of the document,
13 PDF page 5.

14 If we look to the right-hand side it
15 actually is referred to a dispatch from Lord
16 Glenelg to the Earl of Durham.

17 THE COURT: Counsel, can I ask you to
18 pause?

19 MS. GUIRGUIS: Yes.

20 THE COURT: I noted that the first
21 page was from 1837?

22 MS. GUIRGUIS: Yes.

23 THE COURT: And this is 1838. Is it
24 the same document?

25 MS. GUIRGUIS: No, it's not. It's in

1 the same exhibit and what I believe, Your
2 Honour, is that I think they're different
3 dispatches in there.

4 THE COURT: Well, that's fine, but
5 just so I understand, can you go to the
6 beginning of the document you're referring to?
7 Which I take it is not the document on page 1?
8 First page of the document? What page are we
9 on?

10 MS. GUIRGUIS: This is the first page.

11 THE COURT: But that was the one I saw
12 1837 though, but you said this is separate.
13 Where does it start?

14 MS. GUIRGUIS: I think it starts here.

15 THE COURT: So you're referring to
16 number 4 then?

17 MS. GUIRGUIS: That's correct.

18 THE COURT: I'll make that correction,
19 thank you.

20 MS. GUIRGUIS: Thank you.

21 BY MS. GUIRGUIS:

22 Q. So that's the dispatch that my
23 friend took you to?

24 A. Yes.

25 Q. And you noted in your examination

1 in-chief that this was a new document, that you
2 had not reviewed the document or opined on it
3 prior -- in preparing your original report,
4 correct?

5 A. That's correct.

6 Q. It was brought to your attention
7 later?

8 A. Yes.

9 Q. And this document you've not --
10 you haven't reviewed it or taken note of it in
11 any of your previous research prior to this
12 litigation?

13 A. No.

14 Q. And you've done previous research
15 prior to this litigation about treaty making?

16 A. Yes.

17 Q. So whereas I assume in that
18 previous research you would have referred to and
19 relied on the Royal Proclamation and the
20 Dorchester instructions?

21 A. Yes.

22 Q. Well, let's look at Exhibit 1264.
23 So Mr. Feliciant asked you about the three
24 recommendations at page 9 of the document, which
25 is where we are, at the end of the dispatch.

1 And in particular he brought to your attention
2 the third recommendation, which we've
3 highlighted in the green box. It starts with a
4 number "3" and it ends with "sanctioned".

5 A. Okay.

6 Q. So the rules and instructions
7 that it's referring to are those that we find in
8 the Royal Proclamation and such things as
9 Dorchester instructions?

10 A. That's the way I've interpreted
11 it, yes.

12 Q. So this one does say that if it's
13 to the clear advantage of the Indians to depart
14 from the rules and instructions then the
15 departure should be sanctioned?

16 A. Yes.

17 Q. Would you agree that from a
18 reading of this document that it implies that
19 the Crown would be acting in the best interest
20 of the Indians at heart?

21 A. Can you repeat that, please?

22 Q. Would you agree from a reading of
23 this document that this implies that the Crown
24 would be acting with the best interest of the
25 Indians at heart?

1 A. Yes, but I think these
2 statements, the entirety of number 3, as well as
3 the other two observations he made, Glenelg
4 made, need to be taken in the context of the
5 conversation, which was lengthy, prior to these
6 three observations.

7 And that observation -- that context
8 is dealing with the changes in the Indian
9 Department and the Crown-First Nation relations
10 in the context of civil administration as
11 opposed to military administration.

12 Q. But it does say that a sanction
13 of a departure from the rules is only when it's
14 for the clear advantage of the Indians?

15 A. If in any case, yes.

16 Q. It doesn't say that departure
17 from the rules would be sanctioned to allow the
18 Crown to take lands from the Indian to advance
19 its own objectives?

20 A. Not without their consent.

21 Q. And if we put back in our minds
22 the instructions and standards of the Royal
23 Proclamation, and other documents that you
24 summarize in your table, would you agree with me
25 that there's some departures from those rule

1 that could not be sanctioned?

2 A. Can you be more specific?

3 Q. Well, this permission to depart
4 from the strictness of the rules it wouldn't
5 justify departing from the instruction to obtain
6 voluntary consent of the Indians?

7 A. Correct.

8 Q. So it's not permission to
9 forcibly take lands from the Indians?

10 A. No.

11 Q. And I'd suggest to you that it's
12 not permission to lie to the Indians in order to
13 affect a surrender of the lands?

14 A. Can you repeat the question,
15 please?

16 Q. I would suggest to you that it's
17 not permission to lie to the Indians in order to
18 affect a surrender of the lands?

19 A. I've seen no documentation or
20 instructions, principles or standards of treaty
21 making that speak to the matter of lying, but
22 voluntary consent and -- I understand also to
23 include informed consent, and that would require
24 a level of honesty by both parties.

25 Q. And this is actually confirmed

1 also, what you've just said -- the excerpted
2 portion of the 1839 Bagot Commission that's a
3 year after this dispatch, correct?

4 A. Yes.

5 Q. So that's back at page 14 and 15
6 of your volume 3 report, PDF 24 and 25. We'll
7 go to the bottom.

8 So in this excerpt it says:

9 "In 1763 the government, adhering
10 to the Royal Proclamation of that
11 year, have not considered themselves
12 entitled to dispossess the Indians of
13 their lands without entering into an
14 agreement with them and rendering them
15 some compensation."

16 A. Correct.

17 Q. So dispossessing Indians of their
18 lands without entering into an agreement with
19 them, without rendering some compensation, is
20 still, despite 1264, that's not allowed?

21 A. Despite which?

22 Q. Exhibit 1264, what we were just
23 looking at. Allowing some departure from the
24 standards and rules?

25 A. All right. Now, if you can

1 repeat your question please?

2 Q. Sure. So:

3 "[...] dispossess[ing] Indians of
4 their land without entering into an
5 agreement with them and rendering them
6 some compensation."

7 Is still, despite the dispatch that we
8 just looked at about sanctioning some departure,
9 that's still not allowed?

10 A. Correct.

11 Q. And if we could just flip back to
12 Exhibit 1264 one more time, this dispatch.
13 You'd agree with me that even though this third
14 recommendation says there might be some
15 departure, this passage still emphasizes that:

16 "[...] it is necessary to observe
17 the rules regarding the disposal of
18 lands with the utmost of strictness."

19 A. Yes.

20 Q. So it further confirms that these
21 rules and instructions, coming from the Royal
22 Proclamation, repeated by other historical
23 documents, were supposed to be followed?

24 A. Yes.

25 So I want to ask you a question about

1 the answer that you gave to Mr. Beggs from
2 Canada during Canada's cross-examination.

3 A. Yes.

4 Q. And I'd like to bring up the
5 final transcript from February 13th, 2020,
6 that's volume 84. And if we turn to page 10754?
7 Looking at the time stamp 12:03:51, and it
8 starts with, "Now given that they are
9 paraphrased", and going on to 12:05:23 on the
10 next page.?

11 A. (Witness reading the document.)
12 Okay.

13 Q. So you -- in your answer here you
14 said:

15 "I don't know that they will have
16 gone out to a Treaty Councils with a
17 list of things that they needed to
18 do."

19 And then you go on to say that there
20 was a general awareness.

21 So I want to go to Exhibit 1134. It's
22 the second letter at this page in the original.
23 We have a transcript at Exhibit 4815.

24 THE COURT: What are we looking at?
25 You called it a letter but it didn't look like a

1 letter.

2 BY MS. GUIRGUIS:

3 Q. I think it's a letter from
4 Colonel James Givens to Lieutenant Colonel
5 Napier?

6 THE COURT: Can you go back?

7 MS. GUIRGUIS: Yes.

8 THE COURT: I'm just pausing because
9 it's not a separate piece of paper.

10 MS. GUIRGUIS: No.

11 THE COURT: So calling it a "letter"
12 seems odd, but perhaps that's not a material
13 part of your question.

14 THE WITNESS: I could explain.

15 THE COURT: Thank you, Dr. Reimer.

16 THE WITNESS: If it would assist.

17 This is an example of a letter book
18 where in this case Givens will have copied and
19 kept track of his responses to letters. The
20 individual letter will have been sent out to the
21 recipient and this will have been Givens' record
22 of what was in that letter.

23 So all you see is this was his
24 response in his letter book.

25 THE COURT: Just for my clarity, this

1 is something I've been wondering about, and if
2 you don't know that's fine, but was the practice
3 to verbatim copy or not?

4 THE WITNESS: My understanding is
5 that, to the best of the letter book keeper's
6 knowledge they were copying verbatim.

7 THE COURT: Okay. So Ms. Guirguis
8 probably already knew that --

9 MS. GUIRGUIS: Yes.

10 THE COURT: -- but I did not. Please
11 go ahead.

12 MS. GUIRGUIS: Thank you, Your Honour.

13 BY MS. GUIRGUIS:

14 Q. So this is dated August 20th,
15 1836 from James Givens to Colonel Napier. We
16 can go back to the transcript.

17 And colonel James Givens at this time
18 he was the Chief Superintendent of the Indian
19 Department, correct?

20 A. You're challenging my memory. He
21 was certainly an official in the Indian Affairs
22 Department at the time.

23 Q. Okay. So if you could just look
24 at this short letter?

25 A. Okay.

1 Q. And Lieutenant Colonel Napier
2 he's listed there when it says "SEC for IND
3 affairs", is that secretary for Indian Affairs?

4 A. Yes.

5 Q. And the letter first "H.E. the
6 L.G." is that His Excellency the Lieutenant
7 Governor?

8 A. Yes.

9 Q. So at this time it's Sir Francis
10 Bond Head?

11 A. Yes.

12 Q. So this letter suggests or says
13 that Bond Head has requested a copy of the Royal
14 Proclamation of August of 1836?

15 A. Yes.

16 Q. So, therefore, Bond Head believed
17 that the document was important to his work as
18 lieutenant governor of Upper Canada?

19 A. It's a plausible interpretation
20 of this question, yes.

21 Q. So I would now like to look at
22 Exhibit 1141. I do not have a transcript
23 unfortunately for this one. I don't know if
24 you're able to make out the writing. This is
25 dated September 6, 1836, is that correct?

1 A. 6th September 1836, yes.

2 Q. So --

3 A. Can I just see who the writer and
4 recipient are, please?

5 Q. Yes.

6 A. All right, thank you.

7 Q. Does that tell us that just
8 for -- that tells us that this is from Napier to
9 Givens?

10 A. It doesn't say "Givens" but it's
11 Napier transmitting a copy of the Proclamation
12 1763.

13 Q. So this first page is a
14 description of what the letter is about, is that
15 right?

16 A. Yes, this is usually referred to
17 as the "cover page".

18 Q. Okay. So if we scroll down are
19 you able to make out the letter?

20 A. Yes, yes I am.

21 Q. If you can have a look at it?

22 A. (Witness reading the document.)
23 Is there a second page?

24 Q. Yes.

25 A. (Witness reading the document.)

1 Okay.

2 Q. So the content of this letter
3 you'd agree with me that this indicates that
4 Napier continues to refer to an actual copy of
5 the Royal Proclamation in his dealings with the
6 Indians of Lower Canada?

7 A. Yes. Sorry, Lower Canada?

8 Q. He's writing from Quebec, right?

9 A. Could we go back to the first
10 page, please?

11 Q. Yes, we can.

12 A. No, down, down, down. There,
13 stop. It's not necessarily Lower Canada. The
14 seat of government changed and at this point
15 Indian Affairs headquarters was in Quebec. But
16 I take this to mean both Upper and Lower, or it
17 could mean that. It's not necessarily specific
18 to Lower Canada.

19 Q. All right, thank you. And would
20 you agree with me that this seems to indicate
21 that he relies on the Royal Proclamation in his
22 work frequently enough that although he's
23 willing to send it to Bond Head he wants to get
24 it back as quickly as possible?

25 A. Yes.

1 Q. So would you agree that it
2 suggests that it is likely that Crown officials
3 going out to a Treaty Council for the surrender
4 of lands sometimes did have a list of things
5 that they needed to do? Based on the Royal
6 Proclamation?

7 A. I don't think I would make that
8 leap from this letter to an individual treaty
9 Commissioner having a list with him.

10 Q. But they'd have a general
11 understanding of the instructions that were set
12 out in the Royal Proclamation?

13 A. Yes, that I agree with.

14 Q. That's fine. I would like to
15 turn back to Treaty 72 and talk about the
16 Saugeen Ojibwe participation leading up to or at
17 the Treaty Council for Treaty 72?

18 A. Okay.

19 Q. So if we go back to Exhibit 2175,
20 and Oliphant's report from November 3rd, 1854,
21 this is at page 4 of the document, which is page
22 3 of the PDF. We've marked a section in the
23 middle that we can zoom in on. Starting with,
24 "On the afternoon [...]", and ending with,
25 "[...] strong expressions of dissent."

1 A. (Witness reading the document.)

2 Okay.

3 Q. So Oliphant is describing Chief
4 Madwayosh here, correct?

5 A. Yes.

6 Q. And he says that Madwayosh is the
7 head Chief?

8 A. Yes.

9 Q. And he describes him as entirely
10 influencing the opinion of the band?

11 A. Yes.

12 Q. Now, if we move further down the
13 page from:

14 "I was met by most decided
15 opposition on the part of Alexander
16 Madwayosh [...]"

17 And ending with that sentence that
18 ends, "[...] in the proceedings."

19 A. (Witness reading the document.)

20 Okay.

21 Q. So Oliphant reports only
22 Madwayosh's participation in the proceedings in
23 his report, right? You can take a moment to
24 look at it if you want, but my question is that
25 he only reports Madwayosh speaking in the

1 proceedings?

2 A. He only names --

3 Q. Yes.

4 A. -- Madwayosh? That may be
5 correct. I hadn't read it for that particular
6 fact but from what you've showed me here only
7 Madwayosh is actually named.

8 Q. Given Madwayosh's position as
9 head chief and how Oliphant describes him in
10 being named as speaking at the proceeding, would
11 it be fair to assume that Chief Madwayosh was
12 the primary voice for the Saugeen Ojibwe during
13 the discussion?

14 A. That's a plausible assumption,
15 yes.

16 Q. Would you agree with me that in
17 Anishinaabe governance the Chief is speaking for
18 his people?

19 A. Yes.

20 Q. And he receives his mandate from
21 the decision or the consensus of his community?

22 A. Yes.

23 Q. So is it fair to say that Chief
24 Madwayosh was expressing the consensus of his
25 community at this proceeding in 1854?

1 A. Yes.

2 Q. And what he was expressing at the
3 open of Treaty Council was a "no" to a
4 surrender?

5 A. Yes. Well, it says "strong" --
6 can we go up to that portion? I'd just like to
7 actually read the words.

8 Q. Sure.

9 A. (Witness reading the document.)
10 Again it's sort of obscured but:

11 "Strong expressions of dissent to
12 the proposal which Oliphant was about
13 to make."

14 Q. So:

15 "Strong expressions of dissent to
16 the [proposal] of surrender that
17 Oliphant was about to make."

18 A. Well, he doesn't say "proposal of
19 surrender" but he says "the proposals" was about
20 to make.

21 So I take this to mean Oliphant wanted
22 to prepare Madwayosh with the full scope of
23 proposals for surrender and other conditions of
24 that surrender so that -- to get a sense of how
25 Madwayosh might respond.

1 Q. What we know from what Oliphant
2 reports is that Madwayosh is dissenting with
3 respect to those proposals?

4 A. At this point in time, yes.

5 Q. At the beginning of the Treaty
6 Council. And we can assume, you said it's -- we
7 can assume that Chief Madwayosh was speaking for
8 his community at this point?

9 A. He will -- his responsibility was
10 to speak for the majority consensus of his
11 community.

12 Q. So it suggests at this point, at
13 the open of Treaty Council, when he's speaking
14 to Oliphant, to the extent that there's any
15 consensus within the Saugeen Ojibwe about the
16 surrender of the peninsula, that it was against
17 the surrender, yes?

18 A. Yes.

19 Q. Well, let me take you to your
20 report on treaty deliberations. You've
21 expressed the view at pages 3 to 4 of your
22 treaty deliberation report, which is Exhibit
23 4707, pages 3 and 4. At the bottom of page 3 on
24 to 4, it's 4(a), you express the view here that:

25 "The Saugeen Ojibway had been

1 considering and debating a surrender
2 of this land on the Saugeen peninsula
3 for several months prior to Treaty
4 72."

5 Yes?

6 A. Yes.

7 Q. So according to the evidence that
8 we have you'd agree that we have a head Chief
9 arriving at Treaty Council, is one of the only
10 people recorded as speaking at the council,
11 besides Oliphant, expressing that they did not
12 want to surrender the peninsula?

13 A. The Saugeen -- Madwayosh may well
14 have been speaking on behalf of his band at
15 Saugeen.

16 Q. And speaking on their behalf
17 saying they did not want to surrender?

18 A. Correct. They did not want to --
19 they dissented from the proposals that Oliphant
20 had explained prior to the council.

21 Q. And the last time the Crown
22 sought a surrender via Anderson in August 1854
23 the answer was no to a surrender of the whole
24 peninsula?

25 A. Correct.

1 Q. And after Anderson's statements
2 to them about the government not troubling to
3 help them the Saugeen Ojibwe made a
4 counterproposal but only for a portion of
5 peninsula, yes?

6 A. Correct.

7 Q. And we've discussed already that
8 previous to August 1854 the various times that
9 the Crown had attempted to get a surrender of a
10 portion of the peninsula there was no surrender
11 of these portions either?

12 So prior to August 1854 Anderson is
13 seeking a surrender of the whole peninsula.
14 We've discussed a number of times where the
15 Crown sought surrenders of portion of the
16 peninsula and the answer was always no from the
17 Saugeen Ojibwe?

18 A. Yes.

19 Q. So based on this evidence would
20 you agree that this is not a case where the
21 Saugeen Ojibwe had already reached a consensus
22 to surrender the peninsula prior to the Treaty
23 Council in October 1854.

24 A. Not a consensus of both the
25 Saugeen and Nawash bands, no.

1 Q. And if consensus wasn't reached
2 to surrender the peninsula prior to the Treaty
3 Council in October 1854 being convened between
4 the bands, would you agree with me that all they
5 had was one hour of private deliberation to
6 reach that consensus?

7 A. No, I do not agree. I don't
8 agree with the wording of your question.

9 Q. Well, they didn't have the
10 opportunity to talk about it before the Treaty
11 Council started?

12 A. That's correct.

13 Q. They had, according to Oliphant's
14 report, one hour of private deliberation?

15 A. They took one hour of private
16 deliberation.

17 Q. So they had one hour of private
18 deliberation?

19 A. They took one hour -- I'm not
20 going to say they had it because that implies a
21 limitation on the time they were given. And I
22 don't believe there's any evidence to suggest
23 that they couldn't have taken two hours, that
24 they couldn't have asked to wait and postpone
25 the council until the next morning.

1 We do know that one hour -- the only
2 report we have is that it was one hour. Exactly
3 why and who determined the one hour, that's not
4 documented.

5 Q. Right. So my question at this
6 point isn't about the why. So let me clarify
7 that. I will get to that probably at a later
8 point.

9 A. All right.

10 Q. But my question right now is, how
11 much time did they actually have of private
12 deliberation? So you'd agree with me that the
13 actual amount of time of private deliberation
14 was one hour?

15 A. Correct.

16 MR. FELICIAN: Your Honour, embedded
17 within that question, and although it ended
18 differently, at the beginning it was how much
19 time they have? And Dr. Reimer has said
20 repeatedly now, it's not a question of how much
21 time they had it's how much they took.

22 So I don't think the question in its
23 entirety is fair given that the response was to
24 the entirety of the question.

25 THE COURT: Put another way,

1 Ms. Guirguis, to the extent that the witness has
2 answered your question, now you can ask her
3 another question. I don't have a problem with
4 that. But that one was odd because you started
5 with the proposition that's been rejected and
6 then you turned it around.

7 I don't know if you were trying to do
8 that intentionally or not, but it made it
9 difficult to understand whether you were moving
10 forward or not.

11 You don't have to move forward, but
12 putting the two things in the same question made
13 it at least potentially unfair.

14 MS. GUIRGUIS: My intention was to
15 simply ask the witness how much time did they
16 have --

17 THE COURT: She's answered that
18 question, counsel. I don't know why you've
19 asked another complicated-structured question
20 about it.

21 MS. GUIRGUIS: Your Honour, I'm about
22 to move on to another subject. This might be a
23 good time right now to take the morning break.

24 THE COURT: All right.

25 -- RECESSED AT 11:28 A.M. --

1 -- RESUMED AT 11:52 A.M. --

2 THE COURT: Please go ahead.

3 MS. GUIRGUIS: Thank you, Your Honour.

4 BY MS. GUIRGUIS:

5 Q. Dr. Reimer, I want to continue on
6 talking about the Treaty Council in October
7 1854. During your examination in-chief you were
8 asked about whether there was any indication in
9 the historical record of Oliphant sending
10 notice, advance notice to the Chiefs of his
11 journey and of the Treaty Council?

12 A. Yes.

13 Q. And you confirmed that there's
14 nothing in the historical record about such
15 advance notice?

16 A. No documents, no.

17 Q. But you said that it was typical
18 practice that such advance notice would have
19 been sent; and you speculated that that's why we
20 see Rankin and McNabb in attendance?

21 A. Yes.

22 Q. But again to confirm, there's no
23 documentation that Oliphant sent advance notice
24 to Rankin or McNabb?

25 A. No documentation, no.

1 Q. So we've talked about McNabb and
2 you said -- you referred to him at several
3 footnotes in your report and in your volume 3
4 report as a Crown lands' agent, and you also
5 spoke to my colleague last week about his
6 efforts at Chantry Island?

7 A. Correct.

8 Q. When you referred to McNabb as a
9 Crown lands agent in your report you talked
10 about how he was in conflict as a Crown lands'
11 agent, and you make statements that he used his
12 position to try and get leases, sales of lands,
13 surrenders, et cetera?

14 MR. FELICIAN: Sorry, if we could go,
15 Your Honour -- I'm pausing because I'm not sure
16 that Dr. Reimer rendered an opinion that he was
17 in conflict.

18 There is a footnote where there is a
19 reference to him -- to conflict of interest, but
20 I just -- I think the witness should be taken to
21 the footnote if we're going to suggest that.

22 MS. GUIRGUIS: We can go to the
23 footnotes in Exhibit 4703, which is volume 3
24 report.

25 THE COURT: You said 4703 but the

1 footnotes don't go that high.

2 MS. GUIRGUIS: The Exhibit number is
3 4703, volume 3 report. The first footnote is at
4 footnote 519, page number 132.

5 BY MS. GUIRGUIS:

6 Q. So in this footnote you say:

7 "As indicated above, McNabb was
8 in conflict of interest as he was also
9 the process of applying to lease Sable
10 Falls as timber cutting venture."

11 A. Yes.

12 Q. There's another footnote at --
13 you have another footnote, footnote 585, which
14 is at page 149 of your report. So at 585 you
15 say:

16 "As noted in the previous
17 chapter, there was an inherent
18 conflict of interest in McNabb's
19 dealings with the Saugeen Nawash First
20 Nations. In this instance he used his
21 position to negotiate a lease for
22 Chantry Island."

23 A. Correct.

24 Q. And you also make note that in
25 1852 he had proposed a surrender while in the

1 process of applying to lease Sable Falls?

2 A. Right, and that was a reference
3 to footnote 519.

4 Q. And then footnote 670, sorry,
5 that's the wrong one. Footnote 671 you note
6 that:

7 "However, McNabb had conflicting
8 interests at personal, political and
9 professional levels."

10 A. Yes.

11 Q. "And in years previous to the
12 surrender he exploited his position as
13 Crown land and Indian agent for the
14 Saugeen band [...]."

15 A. Correct.

16 Q. So I take it to be your opinion
17 that given what we've just looked at that you
18 would view McNabb as someone who is interested
19 in getting a lease, or sale, or surrender of
20 parts of the Saugeen reserve?

21 A. Yes. And just to clarify,
22 however, any kind of surrender will have been
23 first authorized -- any attempt at a surrender
24 will have first been authorized by the Crown.

25 Q. So given that he has that

1 interest that's demonstrated in the historical
2 record, it's not surprising that he would be at
3 Saugeen on a regular basis, is it?

4 A. Not necessarily.

5 Q. Okay. So his presence in the
6 area and his interest in seeing parts of the
7 reserve surrendered, you'd agree that those are
8 both plausible reasons why McNabb may have been
9 present without having received advance notice
10 from Oliphant?

11 A. How would he know to go there
12 that day? I think that's my point. He lived in
13 Southampton, not far from the Saugeen village.

14 But if you're suggesting that it was
15 coincidence I don't -- I don't read Oliphant's
16 report in that way.

17 He describes McNabb as someone there
18 as a witness. So I don't think it's -- McNabb's
19 position and place of residence is necessarily
20 evidence for or against whether or not notice
21 was given, but certainly Oliphant -- I don't
22 think it was coincidence that McNabb was there
23 on that day.

24 Q. Well, certainly it's plausible
25 that if Oliphant sent messengers to notify the

1 Chiefs when he arrived at Saugeen he could have
2 also sent one to McNabb?

3 A. He could have, yes.

4 Q. Who was located nearby?

5 A. Yes.

6 Q. And Rankin was located in Owen
7 Sound, correct?

8 A. That's correct.

9 Q. We also, in some of the documents
10 in the historical record, see Rankin's presence
11 at various councils and meeting with respect to
12 the Saugeen Ojibwe?

13 A. Yes.

14 Q. So given that he was local to the
15 area it's plausible that he was informed of the
16 Treaty Council in Saugeen only upon Oliphant's
17 arrival too?

18 A. It's not impossible.

19 Q. Or, for example, Oliphant sending
20 if for the Owen Sound band that that's when
21 Rankin might have been notified.

22 A. It's possible.

23 Q. And in any case there's no
24 documents in the historical record to suggest
25 Oliphant did send advance notice about his

1 arrival at Saugeen to the First Nations or to
2 Rankin or McNabb?

3 A. I've already answered that
4 question. No, there's no documentation.

5 Q. Thank you. So I'd like to bring
6 up Exhibit 3927, this is an agreed statement of
7 facts regarding events in 1854 concerning the
8 negotiation of Treaty 72 between the parties?

9 A. Okay.

10 Q. I just want to use this to help
11 with the next question I have for you, which is,
12 if we go to page 2 we've highlighted numbers 11
13 and 12 here. So starting:

14 "On September 24th, 1854 [...]"
15 And ending at, "[...] Saugeen."

16 A. (Witness reading the document.)
17 Okay.

18 Q. So if we assume that this is
19 correct, I'd like you to assume that it's
20 correct, that Oliphant passed through Owen Sound
21 on his way to the treaty negotiation in October
22 1854, Owen Sound was the location of the Nawash
23 Reserve at this time, right?

24 A. Yes.

25 Q. So he passed close by Nawash

1 Reserve on his way to Saugeen?

2 A. Yes.

3 Q. And Oliphant doesn't mention in
4 his report any attempt to contact, or any actual
5 contact with the Nawash Chiefs who advised him
6 of the Treaty Council?

7 A. No, not in his report, no.

8 Q. And if we go to his report, so
9 back to Exhibit 2175, at page 4, which is page 3
10 of the PDF. Oliphant says that when he arrives
11 at Saugeen, which was on October 12, 1854,
12 correct?

13 A. Yes, that's my understanding.

14 Q. Oliphant says when he arrives at
15 Saugeen:

16 "I dispatched messengers for the
17 Chiefs for Saugeen, Nawash and
18 Colpoy's."

19 A. Yes.

20 Q. So this confirms that Oliphant
21 did in fact pass by Nawash on his way without
22 advising them that he was convening a Treaty
23 Council in Saugeen?

24 A. It doesn't say anything about
25 passing by Owen Sound but you're connecting the

1 dots, okay.

2 Q. And when he arrived in Saugeen
3 the Chiefs weren't there?

4 A. Correct.

5 Q. And you've said that
6 ordinarily -- well, actually, ordinarily when
7 they had notice of a Treaty Council would you
8 agree that Anishinaabe Chiefs would arrange to
9 be there?

10 A. Yes, generally yes. I hesitate
11 in my answer because there are other instances
12 where letters had been sent but not received, or
13 where the Commissioners or treaty parties
14 arrived and First Nations were away at fishing
15 grounds, for example, and so messengers were
16 sent off to say, Well, we're here now, and then
17 they came.

18 So it's not an unusual -- necessarily
19 unusual occurrence for Europeans to arrive,
20 messengers to be sent and the First Nations to
21 proceed back to the community to hold the
22 council.

23 Q. But taking this with the fact
24 that you've said there's no documents in the
25 record to indicate that Oliphant did send a

1 letter to the Chiefs; taken together with this
2 fact that he had to dispatch messengers, this is
3 a strong piece of evidence that they did not
4 have notice of Oliphant visit?

5 A. No, I don't agree. I don't agree
6 for the reason that I just explained in my
7 previous answer. It was not uncommon for
8 European to not know the exact date of an
9 arrival.

10 There are documented instances in the
11 record where Anderson, for example sent a letter
12 saying he would be in the area and wanted to
13 hold a council, the letter was not received.
14 Messengers were sent off and First Nations
15 representatives came back to the council.

16 I just find it highly unlikely that
17 Oliphant and Ross would have made this trip,
18 which was not an easy trip, without any kind of
19 advance notice.

20 And I note also that once messengers
21 were dispatched the Chiefs and First Nation
22 members left their fishing grounds and came to
23 Saugeen to attend the council.

24 They could have just as likely said,
25 Well, we didn't know there was any kind of

1 council called. We didn't know that Oliphant or
2 anyone else was going to be in the community.
3 We're fishing now and we don't have time to meet
4 with them. That's not what happened. Shortly
5 after the Chiefs arrived.

6 Q. So in your answer you've referred
7 to documented instances in the record where
8 Anderson, for example, sent a letter. There's
9 no letter here though that Oliphant sent. We
10 don't have a letter?

11 A. We don't have a letter and we
12 don't have Oliphant referring to a letter. So
13 the example I was referring to with Anderson I
14 think was 1853. I don't recall at the moment
15 and I can't recall the footnote, but Anderson
16 says, I sent a letter and apparently it was not
17 received. So he dispatched messengers and the
18 First Nations arrived a day or two later and a
19 council was held.

20 Q. Okay. So moving further down
21 page 4 of the document at Exhibit 2175. So on
22 the first highlighted green box in the middle,
23 five lines down, beginning:

24 "On the afternoon of the day
25 following my arrival [...]"

1 So the Chiefs -- when he dispatched
2 messengers the chiefs of the Saugeen band arrive
3 the following day at Saugeen?

4 A. Yes.

5 Q. So if you can look at this
6 until -- starting:

7 "On the afternoon of the day
8 following my arrival [...]"

9 Up until, "[...] interpreter".

10 A. (Witness reading the document.)

11 Okay.

12 Q. So on October 13 the Saugeen
13 Chiefs arrive?

14 A. Yes.

15 Q. And Oliphant says he immediately
16 sits down with Madwayosh?

17 A. Correct.

18 Q. And he says, because he knows
19 he -- who he knows to oppose the surrender?

20 A. Correct.

21 Q. And who he knows to have a lot of
22 influence?

23 A. Yes.

24 Q. So he sits down with him to try
25 and convince him?

1 A. To prepare him for the proposals
2 Oliphant was about to make.

3 Q. And then he says he:

4 "[...] left me with a strong of
5 expression of dissent [...]"

6 A. Yes.

7 Q. So we know from this that at the
8 end of the conversation Oliphant did not
9 convince Madwayosh of the proposals he's about
10 to deliver?

11 A. Yes, correct.

12 Q. Then the Nawash Chiefs arrive,
13 and Oliphant in his own words say that he is:

14 "[...] anxious not to allow them
15 an opportunity of consulting either
16 among themselves or with the
17 Europeans."

18 A. Correct.

19 Q. So he starts the Treaty Council
20 right away?

21 A. At 7:00 p.m., yes.

22 Q. Without allowing the Nawash
23 Chiefs to speak to Madwayosh or the other
24 Saugeen Chiefs?

25 A. Yes.

1 Q. So you'd agree with me from
2 Oliphant's report he's saying he wanted to avoid
3 the Chiefs talking among themselves before he
4 started the Treaty Council?

5 A. Correct.

6 Q. And a good way of ensuring that
7 they didn't have time to consult is to start the
8 Treaty Council as soon as they all arrived?

9 A. Correct.

10 Q. And also by make making sure that
11 the Nawash didn't arrive early?

12 A. There's no evidence of that.

13 Q. Well, there's no evidence that he
14 invited them when he stopped in Owen Sound,
15 correct?

16 A. But we don't know why or why not.

17 Q. Okay. Now, you've expressed the
18 opinion that Oliphant too took steps to manage
19 the proceedings to produce the outcome he
20 wanted, right?

21 A. Prior to the council, yes.

22 Q. So you'd agree with me that he
23 was trying to avoid the Chiefs speaking to one
24 another in advance of the Treaty Council because
25 ultimately he didn't want to get a "no" to his

1 proposal?

2 A. He wanted the opportunity -- I
3 read this as he was anxious to have an
4 opportunity to present his proposal to the
5 entire council before these other consultations
6 could take place.

7 The consultations -- I take this as
8 his approach to the consultation on his actual
9 proposal as to any kind of anticipated proposals
10 or united front against his proposals.

11 Q. And the outcome he wanted was to
12 have his proposal accepted?

13 A. Yes.

14 Q. So if we continue with this
15 report, page 4, starting with, "I was met by
16 [...]", and ending at, "[...] private debate".
17 So, "I was met by [...]", talks about opening
18 the proceedings. "I was met by [...]" -- sorry,
19 it's near the end of this paragraph that's
20 marked in green. It's about the seventh line
21 from the bottom of that paragraph:

22 "I was met by most decided
23 opposition [...]"

24 And the:

25 "[...] In order to allow time for

1 a private debate."

2 A. (Witness reading the document.)

3 Okay.

4 Q. So here Oliphant reports that:

5 "As soon as the discussion was
6 fairly diverted from the question of
7 the propriety of the surrender to a
8 consideration of the limits of the
9 reserve [...]"

10 Oliphant says that he retires for one
11 hour to allow for private debate?

12 A. Correct.

13 Q. So from that sentence he didn't
14 want them to be focused on the propriety of the
15 surrender?

16 MR. FELICIAN: I don't know, Your
17 Honour, if that's a fair reading of what's in
18 the document.

19 THE COURT: I'm going to let the
20 witness indicate that one way or the other.

21 THE WITNESS: I agree that as a
22 negotiator he diverted the discussion from a
23 main topic to another topic, the consideration
24 of the limits of the reserves.

25 Can you repeat your question please?

1 BY MS. GUIRGUIS:

2 Q. He didn't want them to be focused
3 on the propriety of the surrender?

4 A. I can't say that that is not what
5 he wanted. I mean, the entire negotiation was
6 about a surrender, as well as about limits of
7 reserves and other considerations.

8 So I've taken this as one of his -- as
9 a negotiator's tactic to divert from the main
10 topic of contention with one of the main Chiefs
11 to other considerations; and then retiring for
12 an hour in order to allow time for private
13 debate.

14 I would not interpret this as a
15 diversion away from any kind of private
16 deliberation on the propriety of the surrender.

17 That was one of the main points of the
18 negotiation. I'm not sure if I'm understanding
19 your question or if I've answered it.

20 Q. That's fine. He says:

21 "As soon as a discussion was
22 fairly diverted [...]"

23 He retires one hour for private
24 debate. There's no discussion in this report
25 about why he returns after an hour?

1 A. No.

2 Q. So we don't know whether he is
3 summoned or whether he returns of his own
4 volition, correct?

5 A. Not from this report, no.

6 Q. However, based on what we've
7 talked about on his design of the council
8 proceedings prior to the council starting, up to
9 this point, and his design to limit the
10 discussion between the Chiefs about the
11 proposal, would you agree with me that it's
12 reasonable to conclude that Oliphant also did
13 not want to leave them for too long in private
14 debate?

15 A. No evidence of that.

16 Q. So you wouldn't consider his
17 steps taken to start the Treaty Council right
18 away to avoid the Chiefs speaking to one another
19 as evidence that he didn't want them to spend
20 too long talking about this?

21 A. I think it's a very one-sided
22 view. I think that it does not take into
23 account the role of the numbers of Chiefs and
24 First Nations members at this council; that
25 there is no evidence that they could not have

1 taken longer; there is no evidence that they
2 asked for longer.

3 Whether Oliphant wanted a short
4 deliberation time or not, at this point once he
5 leaves he had -- no longer has control over the
6 length of private debate.

7 He has now left the council. And to
8 suggest that he purposefully desired and was
9 able to manage a short period of time such as
10 one hour is to deny any kind of role by the
11 First Nations Chiefs, councilors and other First
12 Nation members at the council.

13 There was nothing stopping the First
14 Nations from, as I've said earlier, to take more
15 than an hour; to postpone until the following
16 day; to refuse to meet at 7:00 o'clock as he so
17 desired; to request -- you know, we know you
18 want to call the council today but we want some
19 time for consultation with each other, we would
20 like to start to convene the council on the
21 morning of the 14th. There's no evidence of
22 these kind of requests.

23 So we know what Oliphant thought, we
24 know what Oliphant did, but what we don't have a
25 record of the other side of the story.

1 Q. We also, you've agreed, don't
2 have a record or discussion in his report about
3 why he returns after an hour?

4 A. Exactly.

5 Q. So when you say, Dr. Reimer,
6 whether Oliphant wanted a short deliberation
7 time or not, that he no longer has control over
8 the length of private debate, we actually don't
9 know, correct?

10 There's no evidence or there's no
11 mention in this report that conclusively tells
12 us that he didn't return of his own volition?

13 A. There isn't, no. But, again, I
14 would just reiterate that there's also no
15 evidence that he returned without being invited
16 back that, We're now ready to continue to
17 negotiations.

18 Q. Okay. Of so let's look back at
19 his report, page 3 again, it's on the same
20 excerpt that begins with:

21 "I opened the proceedings by
22 stating to them the reasons [...]."

23 And ending a:

24 "[...] of which they were now
25 deprived."

1 A. (Witness reading the document.)

2 Okay.

3 Q. So one of the arguments that
4 Oliphant makes here for his proposal, which
5 we've discussed already, is that he says it
6 would be extremely difficult if not impossible
7 to prevent encroachments?

8 A. Correct.

9 Q. And we've already talked about
10 enforcement measures that may have been
11 available before the surrender to Crown
12 officials to prevent encroachments?

13 A. Yes.

14 Q. And you'd agree with me that one
15 has to at least try to do something and fail if
16 you're going to be able to say with any kind of
17 authority that it was extremely difficult if not
18 impossible?

19 A. Are you suggesting that no
20 efforts were made? I know I'm not supposed to
21 be asking you the questions, but I think there's
22 also documentation of efforts by government and
23 agents to prevent or to deal with unauthorized
24 intrusions.

25 Q. Well, you've confirmed that based

1 on your review of the historical record you've
2 not located records about the arrest or eviction
3 of squatters from the Reserve under the 1839 Act
4 or the 1850 Act in the years leading up to the
5 surrender of the peninsula in October of 1854?

6 A. Nonprosecutions -- yes, you're
7 correct.

8 Q. And you've not located records
9 about the arrest or eviction of squatters from
10 the Reserve in the months or weeks leading up to
11 the surrender of the peninsula in October of
12 1854?

13 A. Not in that time period, no.

14 Q. And we don't have any evidence
15 that Oliphant sought any kind of report or made
16 any inquiry into whether squatters were being
17 evicted or arrested, do we?

18 A. I've not asked myself that
19 question and I don't recall seeing that kind of
20 documentation, no.

21 Q. We don't have any evidence that
22 Oliphant sought any kind of information into
23 whether there were efforts by local law
24 enforcement or Crown official being made to
25 remove or arrest squatter or trespassers from

1 the Reserve?

2 A. Not that I'm aware of.

3 Q. And we don't have any evidence of
4 Oliphant himself directing local law
5 enforcement, such as the sheriff, to take action
6 against trespasser and squatters before he
7 obtained the surrender?

8 A. I think I've already answered
9 that question and not that I'm aware of, no.

10 Q. So we don't have that evidence.
11 Isn't it fair to conclude that what Oliphant
12 said at the Treaty Council in October 1854 he
13 couldn't have known whether that was true?

14 A. Oh, I disagree. I mean, he had
15 only been Superintendent General for a short
16 period of time, but he will have been acquainted
17 with the obligations of the job he was given.
18 He will have needed to be acquainted with some
19 of the main issues and problems and state of
20 affairs of Indian lands, problems and issues of
21 encroachment.

22 There had been correspondence about
23 the difficulty of Crown land agents monitoring
24 and enforcing the 1850 Act.

25 So to say that he arrived with

1 absolutely no information whatsoever about
2 Indian lands, and issues, and problems related
3 to encroachments on Indian lands; (a), we have
4 no evidence that he was not acquainted with
5 these issues, but I see this as in fact indirect
6 evidence that he had looked into the issue and
7 had some understanding of the difficulties the
8 department was facing with respect to these
9 problems.

10 Q. So he's appointed at the end of
11 June 1854?

12 A. In June, yes.

13 Q. So a few months later he's at
14 this Treaty Council in October 1854?

15 A. Correct.

16 Q. We don't -- what you've confirmed
17 is that there's no documentation that he asked
18 for reports about what's been done or that he
19 had that information?

20 A. No documentation, but that's not
21 uncommon. I mean, generally the -- this will
22 have been an internal matter and Oliphant will
23 have had available to him, you know, a myriad of
24 information in order to acquaint himself with
25 the issues he was appointed to administer and be

1 responsible for as the Superintendent General.

2 There doesn't need to be, in my
3 opinion, a paper trail of that kind of thing.
4 Any new Minister acquaints themselves with the
5 matters at hand and the responsibilities and
6 obligations of their position; and there's no
7 reason to suppose that Oliphant did not to the
8 same.

9 Q. We certainly don't have a
10 documentary record of him having personal
11 experience of trying to protect the peninsula
12 from encroachment and finding out that's
13 impossible?

14 A. Not personal, no, but that's also
15 not necessarily unusual. He will have acquired
16 information from the other superintendents
17 within his department who did have experience on
18 the ground, and who will have been able to
19 inform him on these matters, including Anderson,
20 with whom he corresponded, as well as McNabb and
21 Rankin with whom he met at the time.

22 Q. We don't have Oliphant directing
23 the sheriff, like I said, to remove trespasser
24 and squatters before the surrender of the
25 peninsula, nor do we have Anderson doing that.

1 We don't have documentation of that?

2 A. No, and I've already answered
3 those questions.

4 Q. Let's talk about Peter Jacobs,
5 who was in attendance at the 1854 Treaty
6 Councils for Treaty 72, and he served as an
7 interpreter, correct?

8 A. Correct.

9 Q. I'd like to bring up Exhibit
10 4125. So this is from the publication
11 "Mississauga Portraits" by Donald B. Smith. And
12 this is the chapter on Peter Jacobs, which is
13 chapter 4; it begins on pages 107 and 108.

14 So Peter Jacobs is a Methodist
15 teacher, missionary?

16 A. Yes.

17 Q. So if I can turn to page 119 of
18 this chapter, PDF page 28? We've marked this
19 passage, two paragraphs here that starts with,
20 "After his return [...]", and ends with, "[...]
21 appetite for wine."

22 A. Do we know where he was returning
23 to after his return to --

24 Q. Would you like know scroll up?

25 A. Just scroll up a bit please.

1 Q. Sure.

2 A. (Witness reading the document.)

3 Okay, he had been in the US That's
4 fine.

5 (Witness reading the document.)

6 Okay.

7 Q. So based on this, and perhaps
8 your other knowledge you may have about Peter
9 Jacobs, would you agree with me that he would
10 have been likely to have been influential
11 amongst the Methodist converts of the Saugeen
12 Ojibwe in the early to mid-1850s?

13 A. I think the Methodist
14 missionaries were influential, yes.

15 Q. So in the same document if we
16 look at page 122, so that's the last paragraph
17 on the page and it says:

18 "Shortly after the Treaty Peter
19 Jacobs decided to pursue another
20 career option. He and Betsey needed
21 cash for their children's education."

22 A. Okay.

23 Q. Can you identify which treaty
24 they're talking about here?

25 A. Well, I just see the date of 13,

1 October 1854, three lines above it so it's
2 likely that, Treaty 72.

3 Q. And so they're talking about
4 Treaty 72, 1854, and that's the one he was
5 retained by the Crown to assist in the
6 surrender?

7 A. Correct. As interpreter, yes.

8 Q. So I'd like to go to Exhibit
9 2966. So this is "Episodes in a Life of
10 Adventure, Moss from a Rolling Stone", so this
11 is Oliphant's memoir?

12 A. Yes.

13 Q. And you refer to this in your
14 report?

15 A. Yes.

16 Q. So if we turn to page 71 Oliphant
17 refers to his interpreter. And we've marked a
18 portion of the second-to-last paragraph. So
19 starting at, "I, again [...]", and ending at,
20 "[...] too stupid to understand."

21 A. Okay.

22 Q. So Oliphant is referring to
23 Jacobs, his interpreter here?

24 A. Correct.

25 Q. And he refers to him "pecuniarily

1 interested" in the matter?

2 A. Yes.

3 Q. And he says that Jacob remains
4 during the private deliberations of the Saugeen
5 Ojibwe Chiefs?

6 A. Yes.

7 Q. So Oliphant also notes in this
8 passage that he's taking advice from Jacobs
9 about how to conduct the negotiations?

10 A. Yes.

11 Q. Now, we've heard evidence in this
12 trial about some concerns with respect to the
13 memoir about not taking it necessarily at face
14 value.

15 A. Correct. It is embellished, yes.

16 Q. So you do share those concerns?

17 A. I do, yes.

18 Q. Would you agree though if there
19 is some corroborating piece of evidence to
20 what's in this memoir that it might be reliable?

21 A. It might be, it should be
22 considered at least.

23 Q. So I would like to bring up
24 Exhibit 2469. So this is a receipt for payment
25 to Peter Jacobs dated March -- well, let's

1 scroll down to the second page. So here it says
2 it's dated March 28, 1857, correct?

3 A. Correct.

4 Q. And it's for 50 pounds Halifax
5 currency, or currency? Fifty pounds currency?

6 A. I've just said pounds, yes. Oh,
7 50 pounds currency it says.

8 Q. Okay. And it says that this is
9 for:

10 "Services rendered Mr. Oliphant
11 in obtaining the surrender of the
12 Saugeen Peninsula."

13 A. Correct.

14 Q. It says that on the first page,
15 here. On the second page in front of us it
16 says:

17 "In procuring a surrender for the
18 Saugeen Peninsula."

19 A. Yes. Can I see the cover page
20 again, please?

21 Q. Yes.

22 A. Yes, okay.

23 Q. And we don't have any indication
24 that this payment is for any other work, other
25 than what is described here?

1 A. No, no other indication.

2 Q. And the receipt doesn't
3 specifically mention "interpretation"?

4 A. No.

5 Q. I'd like to look at one more
6 document, this is SC2026. The date is on the
7 top left.

8 A. I think it says 1857.

9 Q. And next to that it says "Saugeen
10 and Owen Sound --"

11 A. Indians.

12 Q. And then on the right side it
13 says?

14 A. "Land fund".

15 Q. Your Honour, I'd like to add this
16 as the next exhibit.

17 THE COURT: Can you describe it
18 please?

19 MS. GUIRGUIS: Ledger titled "Saugeen
20 and Owen Sound Indians Land Fund".

21 THE WITNESS: Dated 1857.

22 THE COURT: It doesn't say whose
23 ledger it is I guess?

24 MS. GUIRGUIS: No. Not which
25 accountant I don't have that information.

1 THE COURT: Well, you're making a
2 large assumption right there, counsel. Is there
3 any evidence that it is an accountant to begin
4 with?

5 MS. GUIRGUIS: Okay, I'm advised that
6 it's T.G. Anderson.

7 THE COURT: Well, your technical
8 support gentleman, who I'm sure is very helpful
9 to you, is not a witness in this trial.

10 MS. GUIRGUIS: I think we can --

11 THE COURT: So we've got two answers,
12 one it's an accountant, which I don't know where
13 that is coming from, and the second is T.G.
14 Anderson, where is that coming from? I don't
15 think he was an accountant? Was he.

16 MS. GUIRGUIS: Not that I'm aware of,
17 Your Honour.

18 THE COURT: All right. So what's your
19 position?

20 MS. GUIRGUIS: I think I can get a
21 more comprehensive copy of this and put it to
22 the witness at that point.

23 THE COURT: All right.

24 THE WITNESS: Can we go down and see
25 the archival reference? All right. That

1 doesn't really tell us anything.

2 BY THE WITNESS:

3 Q. So we'll come back to that if I'm
4 able to.

5 THE COURT: Well, if Ontario is
6 prepared to accept one of your two explanations,
7 which seem inconsistent with one another, I
8 guess I'd have to ask Canada as well, then you
9 don't need to come back. But as of now I don't
10 understand where this is coming from.

11 MR. FELICIAN: Well, that would be
12 helpful information. And the other issue on its
13 face is that if the document is in fact dated
14 1857 I'm curious as to why there are entries
15 post-dating that 1864, 1918. So I'm
16 concerned --

17 THE COURT: Yes, there are a lot of
18 curiosities about this document. So I guess we
19 don't have an agreement, counsel, so you'll have
20 to circumstance back.

21 MS. GUIRGUIS: That's not a problem,
22 Your Honour.

23 BY THE WITNESS:

24 Q. So leaving this aside, if we can
25 flip back to our discussion about Peter Jacob

1 and the receipt for payment for 50 pounds
2 currency? I'm going to take you to another
3 document, which is Exhibit 4352.

4 This is an excerpt of answers from
5 Canada to discovery questions regarding salary
6 of interpreters. If we turn to PDF page 6? So
7 here we've highlighted a chart regarding annual
8 salaries, if you want to take a look, of
9 interpreters.

10 A. (Witness reading the document.)

11 Okay.

12 Q. So this tells us that the high
13 end of an annual salary for an interpreter was
14 about 50 pounds currency?

15 A. According to this person's
16 analysis, yes, or this table, yes.

17 Q. So Mr. Jacobs being paid 50
18 pounds for his services rendered to Mr. Oliphant
19 in obtaining a surrender of the Saugeen
20 Peninsula in 1854, that's a high payment?

21 A. It does appear substantial, yes.

22 Q. At least for the services of just
23 an interpreter?

24 A. It does appear substantial for
25 just that one service, yes.

1 Q. So based on what we reviewed,
2 Oliphant's description in his memoir of Peter
3 Jacob's role and pecuniary interest, and that
4 Jacobs remained to participate in the private
5 debate, the amount that he was paid for that
6 work, would you agree that this suggests that he
7 was doing something much more valuable to the
8 government than just interpreting?

9 A. No, and I take that from -- the
10 first clue is the timing of Jacob's payment, was
11 a full two and a half years later. So that
12 raises a lot of questions in my mind.

13 Why did Peter Jacobs go back for
14 payment supposedly for this service? Or why did
15 he receive that payment a full two and a half
16 years later? Why was he paid that particular
17 amount? Why was it recorded for -- solely for
18 that particular purpose considering the amount?
19 I think it raises more questions than it
20 answers.

21 Q. Okay. Let me leave that there
22 then. Thank you.

23 Based on your review of the historical
24 record would you conclude that it was known to
25 Crown officials, and the public, that the

1 southern portion of the peninsula was better for
2 farming than the north portion.

3 MR. FELICIAN: Your Honour, I object
4 to the portion of the question that refers to
5 the public. I think it's one thing for this
6 witness to give evidence about Crown officials,
7 because that's her expertise, but adding in the
8 public is -- we haven't established that she
9 searched for that information and is aware of
10 it.

11 THE COURT: Well, my problem with the
12 question, counsel, is a different one which is
13 that, I don't know what you mean by "the
14 public", and it could mean many, many, many
15 different things. So if you wish the answer to
16 be useful it isn't especially at the moment.

17 MS. GUIRGUIS: Okay.

18 THE COURT: But there's no objection
19 to the part of the question which relates to the
20 Crown, and so you may attempt to continue to
21 relate to the other thing with more questions if
22 you wish.

23 BY MS. GUIRGUIS:

24 Q. Well, let me pull up Exhibit
25 2424. So this is a transcript in front of the

1 original document, an article from the Daily
2 Globe Toronto, dated September 11, 1856. We can
3 see that at the bottom of the document?

4 A. I see that, yes.

5 Q. It's reporting on the big --
6 well, it says, "The great sale of lands on the
7 Indian peninsula [...]", from the first line?

8 A. Yes.

9 Q. If we go to page 3 of 6 of the
10 transcript there's a paragraph here that's
11 marked from, "The consequence of this fine
12 growth [...]", ending with, "[...] on the east
13 coast."

14 A. (Witness reading the document.)
15 Okay.

16 Q. So would you agree with me that
17 this indicates that it was well-known?

18 A. No, not in 1854.

19 Q. This is as of 1856?

20 A. Yes, after which the peninsula
21 had been surveyed and Rankin and Dennis, and
22 their teams, reported on the quality of soil and
23 timber, et cetera.

24 So this is -- this is information that
25 was compiled during the survey period not prior

1 to the surrender.

2 Q. So if we go to Exhibit 4376, we
3 can zoom out so you can take a look. It's an
4 article from the Sarnia Observer, dated
5 September 1st, 1854, and then if we go into the
6 middle of the article it's talking about
7 Oliphant's journey to obtain the peninsula?

8 A. I'm sorry, I'm unclear on the
9 date of this. Can I see the whole page, please?

10 Q. Yes.

11 A. So we don't have the date of
12 publication?

13 Q. It's not written on the article
14 itself. I think we've dealt with this when it
15 was brought up before, that it's in the REDI
16 database information.

17 THE COURT: That isn't evidence,
18 counsel. The problem is that it's not your
19 problem it's the document that -- it's chopped
20 off at the top.

21 MS. GUIRGUIS: Right.

22 THE COURT: It is an incomplete copy.
23 Again, if there's an agreement with other
24 counsel as to the date I'll accept that, but we
25 can't tell from the document. It is a one-page,

1 truncated copy. It doesn't say where it was
2 published.

3 BY MS. GUIRGUIS:

4 Q. One thing I can suggest, if we
5 zoom in on the centre article, "Lands Purchased
6 from Indians", if you want to review that,
7 Dr. Reimer, and if that gives you some comfort
8 of the time period?

9 A. It does not. You know, I would
10 not use this document unless I went back and
11 tried to determine what its source was, what the
12 date of its source was. I just noticed at the
13 bottom it says "September 25th" but no year is
14 provided.

15 So, you know, I would -- I would want
16 to know much more about the provenance of this
17 newspaper article before, you know, beginning to
18 analyze it within its timeline and context.

19 So if you're able to provide that I'm
20 happy to speak to it, but short of that it's
21 simply a badly-printed photocopy of something.

22 THE COURT: Counsel, it's coming up to
23 1 o'clock, if you wish we could break early and
24 you could see if over the lunch break you could
25 sort this out?

1 MS. GUIRGUIS: Okay.

2 THE COURT: It's up to you.

3 MS. GUIRGUIS: Sure, Your Honour, that
4 would be great.

5 THE COURT: So we'll resume at 2:05.

6 -- RECESSED AT 12:50 P.M. --

7 -- RESUMED AT 2:06 P.M. --

8 THE COURT: Please go ahead.

9 BY MS. GUIRGUIS:

10 Q. Thank you, Your Honour. Good
11 afternoon, Dr. Reimer.

12 A. Good afternoon.

13 Q. So picking up where we left off I
14 want to turn to Exhibit 2104. So this is a
15 letter I believe that you're familiar with from
16 Rankin to Anderson dated August 2, 1854?

17 A. Right. Yes.

18 Q. So that's two months before
19 Treaty 72?

20 A. Yes.

21 Q. I'd like to look at two
22 paragraphs of this transcript.

23 A. Sorry, I was trying to find where
24 in my report I discuss this. Never mind, it's
25 all right.

1 (Witness reading the document.)

2 Both green outlined areas or just the
3 top?

4 Q. Just the top one for now.

5 A. Just to clarify, this is Rankin
6 to Anderson?

7 Q. That's correct.

8 A. Okay, fine.

9 Q. So going to my earlier question
10 about Crown officials being aware of whether the
11 northern part of the peninsula was suitable for
12 farming, you'd agree that Rankin and Anderson
13 were both aware prior to the completion of
14 Treaty 72 of that information?

15 A. Yes. This is Rankin's estimation
16 of the northern and southern parts of the
17 peninsula, and it says that:

18 "[...] the northern part contains
19 but little that can be cultivated."

20 Q. And this is before Rankin sent
21 any kind of surveying of the lands on the
22 peninsula? That doesn't take place until 1856?

23 A. That's right. The technical
24 surveys did not take place until -- starting in
25 1855, completed in 1856.

1 Q. So this is just based on his own
2 general knowledge --

3 A. Yes.

4 Q. -- and belief? "Believed to be
5 very rocky"?

6 A. Yes. Rankin had been living in
7 Owen Sound and surveying in the area for a
8 number of years. So this was his general
9 assessment of the north versus the southern
10 parts of the peninsula.

11 Q. Okay. So if you go to the second
12 highlighted portion of this exhibit that's in
13 front of us, of this letter, it starts at, "Of
14 the 190,000 acres [...]", and it ends, "[...] in
15 a wedge like shape." If you can take a look at
16 that section right now?

17 A. Yes. I believe the word after
18 "Fishing Islands" should be "leaving" not
19 "leasing".

20 Q. Thank you. So this is describing
21 in part the counteroffer that the Saugeen Ojibwe
22 made on August 2, 1854?

23 A. Yes. This is Rankin's
24 interpretation of that counteroffer, estimating
25 the acreages and the general location of their

1 counteroffer, yes.

2 Q. And you'd agree with me that
3 Rankin and Anderson, based on what's said
4 earlier in this letter, would know that this
5 tract in the south of the peninsula would be
6 good farming land?

7 A. The entire southern tract?

8 Q. Well, this tract that's described
9 here would be included in what's known to them
10 to be better farming land?

11 A. Are you talking about the 190,000
12 acres; the 130,000 acres; or the 60,000 acres?

13 Q. The 60,000 acres.

14 A. Okay. So now your question is?

15 Q. Anderson and Rankin would have
16 known that this centre of the -- this centre
17 portion, this 60,000 acres, would be where the
18 good farming land was on the peninsula?

19 A. It will have -- yes.

20 Q. So the better the farming land
21 the more desirable to settlers? The Crown
22 officials would have known that?

23 A. Yes.

24 Q. But the Crown didn't accept this
25 partial surrender?

1 A. No.

2 Q. And they didn't come back with a
3 counteroffer saying that was less than the rest
4 of the peninsula? They didn't come back with a
5 counteroffer saying 60,000 acres plus a few
6 valuable other sites or towns, or anything?

7 A. No, there's no indication to
8 indicate that they did.

9 Q. So I'd like to turn to your
10 volume 4 report, which is Exhibit 4704. At page
11 25 of volume 4 this is where you note that the
12 survey of all the surrendered lands on the
13 peninsula was completed by July 16, 1856?

14 A. Yes.

15 Q. And after that on July 18, 1856,
16 Pennefather, who is the Superintendent General
17 of Indian Affairs, correct?

18 A. Correct.

19 Q. He drafted a notice for
20 publication in the newspapers announcing the
21 sale?

22 A. Correct.

23 Q. And the first sale of the Saugeen
24 Peninsula was to be held at Owen Sound on
25 September 2nd, 1856?

1 A. Yes.

2 Q. So it wasn't until July 1856 that
3 the surrendered lands on the peninsula were
4 ready to be sold, correct?

5 A. And by "ready" meaning that the
6 surveys had been checked and finalized and the
7 maps ready to be produced for the sale, yes.

8 Q. And you mention in your report
9 the first land sale that was held in September
10 of 1856 was for lands in the townships of Keppel
11 and Amabel, is that correct?

12 A. I believe that's so, yes.

13 Q. So Keppel Township -- there's a
14 map, Exhibit Q, which I believe is behind you.

15 THE COURT: Can you describe this?
16 I'm looking at what looks like a current
17 commercial map. Is that what it is?

18 BY MS. GUIRGUIS:

19 Q. That's correct. I would describe
20 it as -- Exhibit Q has been provided by the
21 Municipal defendants in this case and it's a
22 commercial map of the Grey Bruce area in
23 Ontario; so it shows the peninsula and lands to
24 the south as well.

25 So by reference to that, Dr. Reimer,

1 Keppel Township is -- it's in Grey County, if
2 you take a look, north of Highway 21. And the
3 area that we're talking about falls -- if you
4 look at the top of Exhibit Q there's letters.
5 Would you like me to move it a bit closer to
6 you?

7 A. Either that or I have to stand up
8 and go to the map.

9 THE COURT: I'm just struggling over
10 the fact that this is a map that was probably
11 printed last year.

12 MS. GUIRGUIS: Yes.

13 THE COURT: But we're talking about
14 the 19th century at the moment. And this is not
15 in evidence, this map. So just be clear what
16 time period you're asking about please.

17 MS. GUIRGUIS: Right.

18 BY MS. GUIRGUIS:

19 Q. Let me ask, Dr. Reimer, do you
20 have a sense of where Keppel and Amabel were
21 located in 1854?

22 A. Yes. 1854?

23 Q. Yes.

24 A. 1856.

25 Q. 1856. So you have a sense of

1 where Keppel and Amabel were located in 1856?

2 A. Yes.

3 Q. Then we need not refer to this
4 map. Would you agree with me that they were the
5 southern-most townships in the newly-surrenders
6 Saugeen tract?

7 A. Yes.

8 Q. And the lands sale for lands in
9 Keppel and Amabel that went on for five days,
10 correct?

11 A. Five or six days, yes.

12 Q. But not all the lands in Keppel
13 and Amabel were sold at this sale, is that
14 right?

15 A. Not all but, if I recall
16 correctly, a majority of the lands were sold.

17 Q. So you've noted in your report
18 that the northern part of each Keppel and Amabel
19 those were the lands that did not sell?

20 A. Can you --

21 Q. Pages 36 to 37 of your report.

22 A. Thank you.

23 (Witness reading the document.)

24 Yes, Bartlett reported that:

25 "A few thousand acres in the

1 northerly part of both townships
2 [referring to Amabel and Keppel] have
3 been withdrawn, the upset price not
4 being offered."

5 Q. So that letter that you refer to,
6 which for the record is at Exhibit 2423, from
7 Bartlett to Pennefather. When it says:

8 "[...] the upset price not being
9 offered."

10 That means that no bids were made on
11 those lands?

12 A. They didn't get a bid that met
13 the minimum price or the upset price, that's my
14 understanding.

15 Q. So those lands in the north, the
16 northern part of the southern-most townships of
17 the peninsula --

18 A. Yes.

19 Q. -- they didn't sell completely?

20 A. Not at that first auction, no.

21 Q. So would you agree that this
22 tells us that by 1856 the demand for land wasn't
23 so overwhelming?

24 A. It depends on the upset prices
25 that had been set and whether bidders were

1 willing to pay that price for the lands in the
2 north. Why exactly the upset prices were not
3 offered Bartlett does not explain in this
4 letter.

5 Q. If we can go to Bartlett's
6 letter, because I have a question about some of
7 the phrasing he uses; it's Exhibit 2423.

8 So this is dated September 6, 1856,
9 Bartlett to Pennefather. And the first page of
10 the transcript, this highlighted area, he says:

11 "Nearly all the lots have sold
12 above the upset and the more valuable
13 of them at large prices."

14 And then he says, the portion that you
15 quoted:

16 "A few thousand acres in the
17 northerly part of both townships have
18 been withdrawn, the upset price not
19 being offered."

20 A. Correct.

21 Q. Doesn't it seem to indicate that
22 it was because they weren't seen as valuable?

23 A. It may indicate that. It may
24 also indicate that the most southerly lots were
25 sold most quickly because they were nearest to

1 the already-settled parts of Grey and Bruce.

2 And that by the end of the five days
3 bidding had essentially stopped and so they were
4 withdrawn because no one was either bidding on
5 them, or the upset price itself, the minimum
6 bid, was not being offered.

7 This particular paragraph does not
8 speak to the quality of the lots that were
9 withdrawn.

10 Q. I would like to turn to page 61
11 of your volume 4, Exhibit 4704, that's PDF page
12 68.

13 So here this is your table 3.1, and
14 you provided a table of unsold lands on the
15 peninsula from 1870 to 1934?

16 A. Yes.

17 Q. So the first column, or the first
18 row, sorry, the first row refers to the year,
19 1870?

20 A. Yes.

21 Q. And in the next column, "number
22 of acres remaining unsold", you have that at
23 216,074 acres?

24 A. Correct.

25 Q. So the percentage of lands

1 surrendered in 1854 that remained unsold in 1870
2 you're saying is at 48 percent?

3 A. Yes.

4 Q. So the demand for lands on the
5 peninsula was so low that only about half the
6 lands was sold within 16 years of the surrender?

7 A. On the entirety of the peninsula,
8 all seven townships? Yes.

9 Q. So I want to talk to you now
10 briefly about the debate around actual
11 settlement conditions --

12 A. Okay.

13 Q. -- on the surrendered lands.
14 Which you discuss at pages 32 to 46 of your
15 volume 4 report.

16 And if I can sum up the essential
17 issue that you note, is that the Saugeen Ojibwe
18 wanted conditions of actual settlement on their
19 surrendered lands?

20 A. Yes, I agree.

21 Q. And they at times expressed that
22 they understood this to have been a condition of
23 the Treaty?

24 A. Yes.

25 Q. And at page 37 you agree with

1 Dr. Driben, who is one of the plaintiffs'
2 experts, that one of the reasons that the
3 Saugeen Ojibwe wanted actual settlement was
4 because they wanted to deter squatting and
5 speculating on the surrendered lands?

6 A. Correct.

7 Q. But ultimately the Crown did not
8 actually agree that settlement was a condition
9 of the Treaty?

10 A. Correct.

11 Q. You also noted in volume 4 of
12 your report that:

13 "There was concerns from various
14 people and groups that without
15 settlement conditions the surrendered
16 lands would be bought by wealthy
17 speculators and individual farmers and
18 would-be settlers wouldn't be able to
19 access any lands."

20 A. Are you talking about municipal?

21 Q. Yes.

22 A. Yes.

23 Q. So you mentioned that Charles
24 Rankin has this concern?

25 A. Yes.

1 Q. The municipal council of Grey had
2 this concern?

3 A. Yes.

4 Q. And you note the municipal
5 council of the united counties of Huron and
6 Bruce also had this concern?

7 A. I believe so, yes.

8 Q. But there's no actual settlement
9 conditions that were imposed on the southern
10 townships?

11 A. Not in the beginning, no.

12 Q. So based on your review did you
13 find that speculators did buy up most of those
14 lands?

15 A. I didn't do that detailed an
16 analysis of who the purchasers were.

17 Q. Okay. Can go to Exhibit 2488?
18 So this is a letter from W.R. Bartlett to
19 Pennefather, it's dated September 30th, 1857.

20 A. Okay.

21 Q. I have a transcript of this at
22 Exhibit 4800 that we can refer to. Dr. Reimer
23 if you can have a look at this transcript of the
24 letter and let me know when you want to scroll?

25 A. (Witness reading the document.)

1 Q. So he's writing about the most
2 recent land sale as of the time of this letter,
3 of Saugeen lands held at Owen Sound in September
4 1857?

5 A. Yes.

6 Q. And near the beginning, the first
7 page, he writes:

8 "It was observed there were fewer
9 speculators at this than at the former
10 sale."

11 A. Yes.

12 Q. So he's referring to the 1856
13 land sale when he says the --

14 A. I am presuming that that's
15 correct, yes.

16 Q. You'd agree that this suggests
17 that there were speculators who bought up lands
18 in the former sale, which was the 1856 sale?

19 A. Yes.

20 Q. And the effect of speculation --
21 well, the concerns about speculation on lands,
22 the concerns expressed was that it would reduce
23 the amount of land that was available to actual
24 settlers?

25 A. That was one concern, yes.

1 Q. So you'd agree with me that if
2 the Crown's goal was in fact ensuring there was
3 land available to address the overwhelming
4 demand of settlers to open up lands for
5 settlement, it would be counterproductive to
6 allow speculators to buy up the Saugeen lands?

7 A. That's an interesting question,
8 and one that I think would require more analysis
9 in terms of numbers of settlers buying lots,
10 number of speculators buying lots. So I'm a
11 little hesitant to answer that question.

12 If you're asking generally does there
13 appear on its face to be a contradiction?
14 Speculation does not equal settlement, certainly
15 not immediate settlement.

16 The demands for lands I -- my
17 understanding is that it was both for settlers
18 and individuals speculating for lands that they
19 could develop mills on, et cetera.

20 So, again, you know, it's a very
21 general question that I have not looked into in
22 any depth; and so on that basis I'm hesitant to
23 say anything concrete or conclusive about it.

24 Q. Oliphant in his report stated
25 that he didn't intend to impose settlement

1 conditions, correct?

2 A. I think he states that later on,
3 he does state that in his report. He talks
4 about that, yes.

5 Q. So would you agree with me that
6 this would be an odd choice, that he stated his
7 intention not to impose settlement conditions,
8 if Oliphant's real concern in taking Treaty 72
9 was to address the overwhelming settler demand
10 that he describes in his report?

11 A. Again, I understand the
12 contradiction that you're referring to that if
13 the land was sold only to speculators that
14 certainly would not be consistent with the
15 documents about the need to open up settlement
16 lands.

17 My understanding of the settlement
18 condition issue was that it would -- it would
19 open up the lands to both settlers and
20 speculators; which means to develop, to take
21 timber, to do whatever it was they intended with
22 the speculation -- with their speculation lands.
23 I think there was a demand for both.

24 At the time of Oliphant writing his
25 report, if I recall correctly, his interest is

1 also in affecting, you know, let's -- the lands
2 are open now for sale; let's sell them at the
3 best rates and at the best pace possible, in his
4 opinion, and the Crown Lands' Department agreed
5 that this would -- that this would be best
6 achieved by not imposing settlement conditions.

7 Q. So let me turn to some questions
8 about your maps' report, which is Exhibit 4710.

9 THE COURT: Do you mean 4707?

10 MS. GUIRGUIS: 4710.

11 THE COURT: I have it, thank you.

12 BY MS. GUIRGUIS:

13 Q. Okay. So, Dr. Reimer, this
14 report is dated January 2020?

15 A. Yes.

16 Q. And I understand you were asked
17 to provide the opinion that is set out in the
18 map report by Ontario counsel on December 6th,
19 2019? That you received instructions over the
20 phone for this question on December 6th, 2019?

21 A. I'm sorry, I don't understand
22 your question. I don't recall getting a report
23 from them.

24 Q. Not getting a report. You were
25 asked to provide an expert opinion and they

1 asked you to do this by way of phone call on
2 December 6, 2019, is what I understand?

3 A. All right. This information will
4 have been from someone other than me so I'll
5 have to --

6 Q. So you don't recall the phone
7 call on December 6th, 2019 --

8 A. I remember a phone call, I don't
9 remember the date of the phone call.

10 Q. Okay. Do you recall what Ontario
11 legal counsel's instructions were to you with
12 respect to the preparation of this opinion?

13 A. To examine documents on which
14 they based the production of some illustration
15 maps.

16 Q. And they provided you with those
17 documents?

18 A. Yes, they provided me with
19 citations to those documents.

20 Q. Did you do any research beyond
21 the documents that they provided you?

22 A. Yes. As I explained in the
23 introduction I added several documents that, in
24 my view, were necessary to understand what my
25 interpretation was of what these maps were

1 attempting to illustrate.

2 Q. And did you have any contact with
3 Mr. Greg Sikma, the person who created the maps?

4 A. No, I did not.

5 Q. I want to start by looking at
6 maps K-2 and L-1, which are lettered exhibits.

7 THE COURT: I think they're also in
8 this report, is that correct?

9 MS. GUIRGUIS: That's correct.

10 BY MS. GUIRGUIS:

11 Q. K-2 is on page 3 of your report
12 as well, and L-1 is on page 9 of your report.
13 So both of these maps, K-2 and L-1, purport to
14 show what land the Saugeen Ojibwe intended to
15 set aside for other groups in 1851, yes?

16 A. Yes.

17 Q. And at page 4 you state that:

18 "K-1(sic) represents an
19 illustration of the tracts intended to
20 be set aside by the Saugeen Ojibwe for
21 the Caughnawaga Mohawks, Credit River
22 and John Jones Colpoy's Bay Band in
23 and around 1851."

24 A. Yes.

25 Q. And map L-1 at page 10 you state

1 essentially the same thing?

2 A. Yes.

3 Q. So both K-2 and L-1 depict areas
4 "A" and "B", described respectively as Colpoy's
5 Bay and Owen Sound Reserve?

6 A. Correct.

7 Q. So let's start with area "B",
8 which is labelled as "Owen Sound Reserve"?

9 A. Okay.

10 Q. You stated that the basis for
11 this illustration of this parcel is Exhibit
12 2175, Oliphant's instructions for the boundaries
13 of the Owen Sound Reserve?

14 A. Yes, okay. On page 6 of my --

15 Q. Yes.

16 A. Okay.

17 Q. And Exhibit 2463 the 1857 treaty
18 text describing the Owen Sound Reserve that was
19 being surrendered?

20 A. Correct.

21 Q. So at page 7 of your report you
22 make the assumption that:

23 "These sizes and locations were
24 the same or very similar to those
25 understood by the Nawash band in

1 1851."

2 A. Is this on page 8 of my report?

3 Q. I had it as page 7., page 8?

4 A. I see that, yes.

5 Q. And you also assume that:

6 "The ultimate Owen Sound Reserve
7 was the same or similar to the size of
8 the tract retained by the Nawash Band
9 when the 1851 agreement was made with
10 the Caughnawaga Mohawks."

11 A. I am making that assumption, yes.

12 Q. So I have a few questions about
13 this.

14 So, first, the word "Reserve" on this
15 map -- well, on both K-2 and L-1, used to
16 describe the Owen Sound Reserve, you'd agree
17 with me that as of 1851 there's only one Reserve
18 on the peninsula?

19 A. Yes.

20 Q. And that's the entire peninsula?

21 A. Yes.

22 Q. So in 1851 there's no such thing
23 as the Owen Sound Reserve?

24 A. No, the word "tract" would be
25 more accurate.

1 Q. So "tract" or sometimes we see
2 the words "village site"?

3 A. No, I think "village site" is
4 more localized, it included the village site,
5 yes.

6 Q. And based just generally in your
7 field of historical -- in your experience in the
8 field of historical Indigenous claims, would you
9 agree with me that boundary disputes regarding
10 Reserves is common?

11 THE COURT: You used the past and the
12 present tense, which did you intend? Are you
13 talking about 2020 or some other time?

14 MS. GUIRGUIS: I think it can apply to
15 both so let me ask you a different way.

16 BY MS. GUIRGUIS:

17 Q. In your volume 4 report, and in
18 your examination in-chief, you note that there
19 were a few boundary disputes by both Saugeen and
20 Nawash bands regarding the Reserves, correct?

21 A. After the surrender, yes.

22 Q. So a few -- there was a few
23 examples of when Crown officials would go out to
24 survey the Reserves after the surrender and it
25 didn't line up with the First Nations'

1 understanding of what ought to be included?

2 A. Yeah, that's correct.

3 Q. And that it excluded some of
4 their cultivated lands, grave yards, areas that
5 may have been included in what were their
6 village sites?

7 MR. FELICIAN: I rise because we're
8 now getting into a question that seems to call
9 for specific evidence about hypothetical
10 disputes. So I don't know how this witness can
11 answer what the basis was for -- the "it
12 excluded", so not sure what "it" is. Some of
13 their cultivated lands. Well, whose cultivated
14 lands?

15 Are we simply talking about the
16 Saugeen Nawash? Or are we now talking about
17 other First Nations? Because if it's other
18 First Nations that's not something Dr. Reimer
19 would have researched for this trial.

20 THE COURT: Well, I imagine this may
21 well be one of those instances when the question
22 perhaps wasn't exactly what you intended. If
23 you want to respond to the objection you can do
24 that or you may want to state a new question
25 that will address the objection. You can do

1 that.

2 MS. GUIRGUIS: I can restate the
3 question. I was building on one question to the
4 next.

5 THE COURT: Well, you can build away,
6 but there is a problem with what does "it" refer
7 to?

8 MS. GUIRGUIS: Sure.

9 THE COURT: Since the prior answer was
10 not in the singular.

11 BY MS. GUIRGUIS:

12 Q. So, Dr. Reimer, you agree that in
13 volume 4 of your report you've noted a few
14 examples with respect to the boundary disputes
15 by both Saugeen and Nawash bands regarding the
16 Reserves after the surrender?

17 A. Yes.

18 Q. Those were a few examples of when
19 Crown officials went to go out and do the
20 surveys of the Reserves after the surrender and
21 it didn't line up with the Saugeen Ojibwe First
22 Nation's understanding of what ought to be
23 included?

24 A. Correct.

25 Q. And in those examples you gave,

1 with respect to the Saugeen Ojibwe Nations and
2 those disputes, my understanding is that it was
3 because it excluded some of their cultivated
4 lands and grave yards?

5 A. Yes.

6 Q. And those are areas that may have
7 been included in the Saugeen Ojibwe's village
8 sites that they wanted included in the Reserves?

9 A. I did not find an example of the
10 actual village site being excluded.

11 Q. So I think this is a matter of
12 terminology.

13 A. Okay.

14 Q. That's I think when you were
15 clarifying that you refer to it as a "tract"
16 versus "village site" you have two different
17 meanings for that?

18 A. Yes. "Village site" I understand
19 and would define as a smaller, localized area
20 where there were permanent or semi-permanent
21 residences and other structures.

22 The tract would include areas of land
23 that will have been considered band territory,
24 for example; hunting, fishing, cultivating,
25 those sorts of things. So "tract" is larger

1 than a "village".

2 Q. And it's your view that the
3 Reserves that the Saugeen Ojibwe would agree to
4 would include more than their village site?

5 A. Yes.

6 Q. So then looking back at this map
7 that we have in front of us, L-1, and I think
8 this applies to K-2 as well, in 1851 there would
9 be no basis really to separate the Owen Sound
10 tract from the rest of the Saugeen Peninsula,
11 would there be?

12 A. I'm sorry. Repeat that please?

13 Q. Sure. So looking back at this
14 map that we have in front of us, L1, and it
15 would apply to K-2 as well, in 1851 there would
16 be no basis to separate the Owen Sound tract
17 from the rest of the Saugeen Peninsula, which
18 was the Reserve, would there be?

19 A. I tend to agree with you. I
20 would just want to go back to the wording of the
21 1851 agreement.

22 Q. Uhm-hmm.

23 A. So I'm just reviewing my notes
24 here.

25 Q. Sure. That's fine. I'm -- and

1 that's where I'm coming to next, some questions
2 about the 1851 agreement.

3 A. Yes, I see what you're saying.

4 Q. So let me ask you about the 1851
5 agreement regarding the Caughnawaga that you
6 reference?

7 A. Correct.

8 Q. So, for the record, the 1851
9 agreement is found at Exhibits 1873, and at
10 Exhibits 1872 there's a copy of that as well,
11 which included a transcript. So this 1851
12 agreement, you've reviewed it?

13 A. Yes.

14 Q. And it makes no mention of an
15 Owen Sound Reserve, correct?

16 A. You're correct.

17 Q. And there's no evidence that's
18 referenced in your report that confirms that
19 area "B", as depicted on L-1 and K-2, was the
20 extent of the land the Owen Sound Indians used
21 and occupied in 1851?

22 A. No, that's based on later
23 documentation.

24 Q. Okay. And there's nothing in the
25 1851 agreement indicating that the Saugeen

1 Ojibwe ever intended to retain only area "B"
2 when this agreement was made with the
3 Caughnawaga Mohawks in 1851?

4 A. I agree with you, yes.

5 Q. And there's nothing in the 1851
6 agreement indicating that the Saugeen Ojibwe
7 ever intended to give up the rest of the
8 peninsula when this agreement was made with the
9 Caughnawaga Mohawks?

10 A. I agree with you, yes.

11 Q. So let's turn to area "A", which
12 is in pink on Exhibit K-2 and L-1. And that's
13 labeled the "Colpoy's Bay Reserve" on both K-2
14 and L-1?

15 A. Yes.

16 Q. And, again, in 1851 there's no
17 such thing as the Colpoy's Bay Reserve, correct?

18 A. It's referred to as a "tract".

19 Q. The only Reserve that does exist
20 is the entire peninsula?

21 A. Correct.

22 Q. And the primary basis for the
23 illustration of area "A" on maps K-2 and L-1 is
24 the eventual Reserve created for Colpoy's Bay
25 after Treaty 72, correct?

1 MR. FELICIANANT: Your Honour, sorry, my
2 objection here is that -- the question refers to
3 the primary basis for the illustration. And the
4 evidence we're aware of so far is this witness
5 didn't actually illustrate the map.

6 So I don't think it's fair to be
7 asking this witness what the primary basis for
8 the illustration was when she didn't do it.

9 THE COURT: Ms. Guirguis?

10 MS. GUIRGUIS: Perhaps, Your Honour,
11 if I phrase it as -- perhaps I can rephrase it
12 to satisfy my friend.

13 BY MS. GUIRGUIS:

14 Q. So, Dr. Reimer, to back up.

15 A. Okay.

16 Q. To make sure that my meaning is
17 clear. You provide an opinion that area "A" is
18 an illustration of certain exhibits, certain
19 documents?

20 A. Yes.

21 Q. So the primary basis for your
22 opinion that area "A" is an illustration -- one
23 moment.

24 So the primary basis for your opinion
25 that area "A" is an illustration that is fair of

1 the Colpoy's Bay, what's referred to here as the
2 "Reserve", about what you say may be referred to
3 as the "tract".

4 MR. OGDEN: Your Honour, I stand up
5 because I led Dr. Reimer in this -- in the -- in
6 relation to this expert report. And I object
7 because Dr. Reimer does not state in this report
8 that she had provided any opinion on what area
9 "A" illustrates.

10 THE COURT: Well, I appreciate your, I
11 expect, trying to meet my expectations,
12 Mr. Ogden. But even though you have permission
13 to have two counsel in-chief I'm henceforth
14 going to limit you to one on objections.

15 MR. OGDEN: Thank you, Your Honour.

16 THE COURT: So you and Mr. Feliciant
17 can flip a coin.

18 Ms. Guirguis, the trouble I'm having
19 is we've had a lot of evidence from the map
20 maker in a level of detail that I found
21 surprising, but that's fine. And certainly if
22 there's something important you're trying to get
23 at I'd like you to do that.

24 But you do have to recognize the
25 different roles played by the map maker we've

1 had already and by this expert.

2 Please go ahead and if you need to try
3 again to make sure that your question is fair
4 with respect to those matters.

5 MS. GUIRGUIS: Okay. Sorry, Your
6 Honour, I'm just going to take a moment to think
7 about how to state this.

8 BY MS. GUIRGUIS:

9 Q. So, Dr. Reimer, if we turn to
10 page 10, which is about Exhibit L-1, you stated
11 in the paragraph that starts with:

12 "Dr. Reimer's understanding and
13 expert opinion. It is my
14 understanding that the documents
15 listed in table 2 support an
16 illustration of the tracts intended to
17 be set aside in 1851."

18 And then you end that paragraph by
19 saying:

20 "In my opinion inferences may be
21 drawn from these documents about
22 approximate size, location,
23 orientation of the Caughnawaga and
24 Credit tracts as intended in 1851, and
25 as they would appear in relation to

1 the Owen Sound and Colpoy's Bay
2 Reserves, as shown on maps in the
3 post-survey period."

4 So, to confirm, the area that's listed
5 as "A", your understanding is that that is a
6 representation of Colpoy's Bay Reserve created
7 after Treaty 72?

8 A. Correct.

9 Q. And that Reserve, Colpoy's Bay
10 Reserve, is described in Exhibit 2175, which
11 you've referred to in your report at page 13, as
12 a block of land containing 6,000 acre and
13 including their village and bounded on the north
14 by Colpoy's Bay, is that correct?

15 A. I think it's on page 12 but yes.

16 Q. Yes. But other than Exhibit
17 2175, or any other exhibit you've cited in your
18 mapping report, it says that the Colpoy's Bay
19 tract was 6,000 acres in size in 1851, correct?
20 Other than 2175, which you've cited, you've not
21 referred to any other document that says
22 Colpoy's Bay tract was 6,000 acres in size in
23 1851?

24 A. You're correct.

25 Q. Let's turn to the Caughnawaga

1 tract that's depicted on K-2 and L-1 as area
2 "C".

3 So with respect to L-1, since that's
4 in front of us right now, you say at page 12 of
5 your report that:

6 "It may be assumed that provision
7 was made to assign up to 100 acres --"

8 I'm sorry, I have the wrong one. It's
9 page 11. Page 11 is when you talk about the
10 Caughnawaga tract. And at 3(c) you talk about
11 the assumption that 100 acres will be provided
12 for each family, that that's inferred from the
13 1851 agreement?

14 A. No. It's assumed -- it's an
15 assumption based on the prior two documents
16 cited. The 1851 agreement I don't believe
17 refers to numbers of acres per family.

18 MS. GUIRGUIS: Okay. Can I have a
19 moment, Your Honour?

20

21 BY MS. GUIRGUIS:

22 Q. All right. My apologies, I see
23 where the confusion came from. I was referring
24 to K-2 instead of L-1, which is what's in front
25 of me.

1 So let's refer to map K-2, page 6 of
2 your report is where you talk about the
3 supporting documents for map Exhibit K-2.

4 So here you talked about 5(b) on this
5 chart:

6 "It may be inferred that
7 provision was made to assign up to 100
8 acres for each Caughnawaga Mohawk
9 family."

10 A. Yes, that's inferred from the
11 Governor General's approval.

12 Q. So that's Exhibit 1923. And if I
13 can bring up 1923? So this is document that
14 you're referring to?

15 A. Yes.

16 Q. So at the third entry here on the
17 first page it says that:

18 "The Mohawk Indians shall not be
19 entitled as a right to more than 100
20 acres of each family unless with
21 special permission of the Governor
22 General."

23 A. Yes.

24 Q. So you'd agree with me that this
25 document is setting a cap or a maximum of 100

1 acres per family?

2 A. Yes, unless with special
3 permission they might get more.

4 Q. But this document it's not saying
5 that the 1851 agreement is setting aside a
6 particular size of tract, correct?

7 A. Correct.

8 Q. And based on your review of the
9 1851 agreement there's nothing that specifies
10 that the Chippewas at Nawash and Colpoy's Bay
11 intended the tract where they would allow the
12 Caughnawaga to settle to reflect this 100 acres
13 per family?

14 A. No.

15 Q. So the date of the 1851 agreement
16 between the Chippewas at Nawash and Colpoy's Bay
17 and the Caughnawaga, that's August 20th, 1851,
18 correct?

19 A. Correct.

20 Q. So I want to bring up Exhibit
21 1935. This is a letter from Anderson, I have
22 the transcript at Exhibit 4817. So this is a
23 letter from Anderson to Bruce dated June 28,
24 1852. Can you take a moment to review,
25 Dr. Reimer, and then I'll ask you some

1 questions?

2 A. (Witness reading the document.)

3 I've read it.

4 Q. So this suggests that the Saugeen
5 band didn't sign off on the 1851 agreement with
6 the Caughnawaga?

7 A. Yes, that's what it states.

8 Q. So you'd agree with me that it
9 can't really be said that the 1851 agreement
10 reflected the intentions of the entire Saugeen
11 Ojibwe in 1851?

12 A. Not according to this document,
13 no.

14 Q. And I'd also like to bring up
15 Exhibit 1933, this is dated at Owen Sound, June
16 26, 1852, I again have a transcript at Exhibit
17 4759.

18 Look at the first section under "One
19 of Three" starting with, "I then asked the
20 Saugeens [...]"And these minutes -- these are
21 taken by Anderson, is that correct? When we see
22 on -- underneath "Two of Three" it says, "Query
23 by T.G. Anderson". This is referring to the
24 fact that he attended to the meeting or no?

25 THE COURT: What is this? You haven't

1 said. Can we see the top of the document? It
2 doesn't say what it is.

3 MS. GUIRGUIS: From the chiefs and
4 principal men --

5 THE COURT: But I guess what I'm
6 saying is who wrote this document? It doesn't
7 say on the top. Does it say on the bottom.

8 MS. GUIRGUIS: Perhaps if we flip back
9 to the original.

10 THE COURT: It may be that the witness
11 knows.

12 THE WITNESS: I need to see the
13 original.

14 THE COURT: Sometimes seeing the
15 original just doesn't seem to be helpful.

16 THE WITNESS: Could we go to the end
17 then please? Well, there it says that Anderson
18 signed this. If there was a cover page to this
19 document it may explain is it minutes? Is it --
20 you know, what is it? That's not on this copy
21 of the original. But, yes it -- Anderson has
22 signed this document so it appears that he's the
23 author of these questions and answers.

24 BY MS. GUIRGUIS:

25 Q. Okay. And at the top of -- if we

1 scroll back to the top of the original, the
2 first sentence, if you can take a look at that,
3 Dr. Reimer. Does that give us any indication
4 what this is?

5 A. It's a general council of Owen
6 Sound and Saugeen.

7 Q. Shall we go back to the
8 transcript?

9 A. Sure.

10 Q. So under the first section under
11 "One of Three", if you could look at the
12 sentence starting wit:

13 "I then asked the Saugeens [...]"
14 Over to the second section marked "Two
15 of Three" and ending with the sentence:

16 "[...] but we will not consent
17 that the Mohawks shall have any
18 control over our property."

19 A. (Witness reading the document.)
20 I'm sorry, how far did you want me to
21 read?

22 Q. There's a sentence that ends
23 with, "[...] any control over our property."

24 A. Okay, I'm done then.

25 Q. Okay. Again this is referring to

1 1851 agreement with the Caughnawaga?

2 A. Yes.

3 Q. And you'd agree with me that this
4 tells us that the 1851 agreement didn't reflect
5 a consensus amongst all of the Saugeen Ojibwe to
6 give up any of the lands?

7 A. Correct.

8 Q. And the Saugeen confirm here that
9 they do not wish to give up control over any
10 parcels of the Reserve, even if they allow the
11 Caughnawaga to join them there?

12 A. They do not want to confer
13 authority or control over the lands, but it
14 appears they're willing to allow them to use and
15 reside upon the lands.

16 Q. So I would like to go to SC-2015.
17 So here we have a transcript of a document
18 followed by the original. If we go to the
19 original, which starts at PDF page 3, to see the
20 date it's dated September 3, 1856?

21 A. Could I read the rest of the
22 cover page, please?

23 Q. Yes.

24 A. Okay, thank you.

25 Q. So this cover page is describing

1 that this is from the Saugeen and Owen Sound
2 Chiefs?

3 A. Yes.

4 Q. Your Honour, may I add this as
5 the next exhibit?

6 THE COURT: Mr. Registrar.

7 THE REGISTRAR: Exhibit number 4844.

8 EXHIBIT NO. 4844: Transcript of a
9 document from the Saugeen and Owen
10 Sound Chiefs dated September 3, 1856;
11 document number SC-2015.

12 BY MS. GUIRGUIS:

13 Q. And if we can go back up to the
14 transcript? So the first line this is addressed
15 to His Excellency Sir Edmund Walker, that's the
16 Governor General at the time?

17 A. Yes.

18 Q. So I've marked this -- one of the
19 paragraphs that starts with, "That in the fall
20 of the year 1852 [...]", and ends with, "[...] obtain the money."

22 A. (Witness reading the document.)

23 Okay.

24 Q. So the Saugeen Ojibwe chiefs are
25 writing to the Governor General with respect to

1 the Caughnawaga Indians settling upon certain of
2 their lands, is that correct?

3 A. Yes.

4 Q. They're noting that they gave
5 consent to 36 families to settle on the said
6 lands?

7 A. Well, that consent was given and
8 then 36 families did settle.

9 Q. And then they follow it up with
10 the sentence that they allow them to reside on
11 the said lands but they're objecting to the
12 Caughnawaga Indians being at liberty to dispose
13 of the same and obtain money from the lands?

14 A. That was the agreement.

15 Q. So this confirms the sentiment
16 that we've seen in the previous documents as
17 well that even if the Saugeen Ojibwe were open
18 to inviting Caughnawaga families to join them,
19 the Saugeen Ojibwe confirmed they are not
20 willing to give up any land to their control,
21 correct?

22 A. Correct.

23 Q. So the Saugeen Ojibwe's
24 understood the land is still belonging to them
25 and they retain the sole right to surrender it

1 and obtain any money from its sale?

2 A. From the sale, yes.

3 Q. So let's go to Exhibit 2048.

4 So this is a transcript followed by the original
5 document, it's titled "Petition to His
6 Excellency William Rowan, by the Ojibwe Tribe of
7 Indians."

8 And I think if we go down to page 3 of
9 the transcript that's where the date of this
10 document is, just for your reference.

11 So at the bottom there it says --
12 where it starts, "[...] Tribe of Indians [...]",
13 and ends with, "[...] January."

14 A. Yes.

15 Q. So the date is?

16 A. January 3, 1854.

17 Q. So if we go back up to page 1,
18 and if you can review the document let us know
19 when you'd like to scroll?

20 A. (Witness reading the document.)

21 Q. So this is a petition from the
22 Chiefs of Saugeen, Nawash and Colpoy's, is that
23 right?

24 A. Can I go down? I would like to
25 see -- in council -- yes.

1 Q. And given the signature of all
2 the Chiefs here, or their marks, you would agree
3 that this is likely a reflection of the
4 consensus of all of the Saugeen Ojibwe?

5 A. Yes.

6 Q. And it's likely a better
7 reflection of their consensus and intention,
8 that of the Saugeen Ojibwe, versus the 1851
9 agreement?

10 A. Certainly more recent, yes.

11 Q. So this suggests that there was
12 an arrangement for 36 families to come from
13 Caughnawaga?

14 A. Can we scroll up a little bit?
15 But, yes, it said 36 families I think. To come?
16 My impression is they were there already.

17 Q. But there's no suggestion of a
18 tract being set aside for Caughnawaga, right?

19 A. In this -- no.

20 Q. Rather it said 36 families have
21 settled in the north of the village of Nawash on
22 Owen Sound and built houses?

23 A. Built houses? Can you go up a
24 bit please?

25 "They have settled upon and

1 improved the land for farming
2 purposes."

3 Q. Okay, that's more accurate. So
4 improved the said land for farming purposes?

5 A. Yes.

6 Q. And here we see reference to 100
7 acres per family?

8 A. Yes.

9 Q. So based on this, if one was
10 going to map out the area actually settled by
11 the Caughnawaga families on the peninsula, using
12 the 100 acres per family, you'd agree with me
13 that it's more accurate to estimate the area as
14 being 3600 acres?

15 A. According to this documentation,
16 yes.

17 Q. Rather than what we see in K-2,
18 which depicts the Caughnawaga tribe as 26,000
19 acres?

20 A. Well, first I want to clarify
21 that the acreage given on the map are not my
22 acreages and I don't address the size of the
23 actual tract as shown on the illustration maps.

24 Q. Okay.

25 A. And just want to go back to the

1 1851 -- the wording of the 1851 agreement.

2 I would say that the -- there is a
3 difference between the tract being described in
4 the 1851 agreement, difference in size of the --
5 what is described in the 1851 agreement and the
6 size as described in this 1854 petition.

7 Q. Okay. So if we were to rely on
8 this petition instead though, and one was going
9 to map out the area settled by the Caughnawaga
10 families, it would be fair to use this figure of
11 36 families, times 100 acres, so 3600 acres?

12 A. Yes, except that does not account
13 for the title of the map which was trying to
14 determine the 1851 boundaries, and that was the
15 understanding that was given to me.

16 Q. Okay, that's fair. But you agree
17 that the 1851 agreement, based on what we
18 reviewed, didn't reflect the Saugeen band's
19 intentions?

20 A. That's correct.

21 Q. So if one wanted to draw a map
22 that reflected the intentions, or the consensus
23 of all the Saugeen Ojibwe you couldn't rely on
24 the 1851 agreement?

25 A. My understanding was that the

1 objective of this map was what was said in the
2 1851 agreement, full stop.

3 Q. Okay.

4 A. So what else might have been
5 intended by others drawing maps, or one wanting
6 to draw a map I can't speak to that.

7 Q. So page 13 of your report, your
8 maps report, you have a footnote that mentions
9 that only 17 families were residing north of
10 Owen Sound?

11 A. As of 1856.

12 Q. Right. And your footnote says
13 that this explains the relatively small tract of
14 land labelled "Reserve of the Caughnawaga
15 Indians" shown on survey maps dated 1856 to
16 1857?

17 A. That's correct.

18 Q. So I want to bring up SC-1950.
19 If we scroll to the bottom of this and zoom in.
20 So this tells us that it's surveyed by C. Rankin
21 1836, correct?

22 A. 1856.

23 Q. 1856, yes.

24 A. Yes.

25 Q. So is this an example of what you

1 were referring to?

2 A. I believe so, yes.

3 MS. GUIRGUIS: Your Honour, can I add
4 this as the next exhibit with the description, a
5 survey of Keppel by Charles Rankin dated August
6 5, 1856?

7 THE COURT: Mr. Registrar.

8 THE REGISTRAR: Exhibit number 4845.

9 EXHIBIT NO. 4845: Survey of Keppel by
10 Charles Rankin dated August 5, 1856.

11 BY MS. GUIRGUIS:

12 Q. And if we scroll up on this map,
13 and over to the right-hand side. We may have to
14 zoom in on that a bit. Scroll down.

15 It says "Caughnawaga Indians" there.
16 So this is what you're referring to -- or this
17 is an example of what you're referring to?

18 A. Yes.

19 Q. Depicting a smaller area where
20 the Caughnawaga families settled on the
21 peninsula?

22 A. Correct.

23 MS. GUIRGUIS: Your Honour, it is a
24 bit earlier than our regular afternoon break but
25 we did start a bit earlier, would you like to

1 break now?

2 THE COURT: If that works for your
3 cross-examination.

4 MS. GUIRGUIS: It does, Your Honour.

5 THE COURT: 20 minutes.

6 -- RECESSED AT 3:24 P.M. --

7 -- RESUMED AT 3:45 P.M. --

8 THE COURT: Please go ahead.

9 MS. GUIRGUIS: Thank you, Your Honour.

10 BY MS. GUIRGUIS:

11 Q. So, Dr. Reimer, staying on your
12 maps report, I want to talk about the Credit
13 Mississaugas. And, again, both maps K-2 and L-1
14 refer to the Credit Mississaugas on the legends.
15 So it's marked as area "D", and it's just
16 described as "Credit Mississaugas". On Exhibit
17 K2 it's described as an acreage of 6,000; and
18 it's the same on Exhibit L-1.

19 A. Yes, I see that.

20 Q. So you've assumed at page 5 of
21 your report with respect to K-2, and I believe
22 you repeat the same thing with respect to L-1 as
23 well at page 11, actually not page 11 -- yes,
24 page 11. That you assume that there were about
25 61 families in 1849, relying on Exhibit 1659.

1 So it may be inferred that it was intended to
2 set aside a tract of at least 6100 acres on the
3 peninsula?

4 A. Yes.

5 Q. So your basis for this that you
6 referred to is Exhibit 1659 for this inference,
7 which are minutes of a council held at Credit in
8 March and April of 1847, correct?

9 A. Correct.

10 Q. So this is Exhibit 1659 on the
11 screen, and we've highlighted a portion here in
12 the transcript dated March 28, 1847. So at page
13 1 of your report, sorry, page 4 of your report
14 you note that at PDF page 1 of the minutes you
15 say:

16 "The 1847 minutes report on the
17 number of Credit Mississauga families
18 who wanted to move to Owen Sound. A
19 total of 63 families was counted at
20 least 60 of whom were in favour of
21 relocating."

22 So I want to look at this exhibit,
23 which you've reviewed. And if you can take a
24 look at it just to refresh your memory. Do you
25 want us to zoom in a bit? It's a bit difficult

1 to read.

2 A. That's all right. I can read it.

3 Q. Okay.

4 A. (Witness reading the document.)

5 Okay.

6 Q. So your reading of it that at
7 least 60 families from Credit were in favour of
8 relocating, you would agree that what this does
9 tell us is the bottom line says, "One removed to
10 Owen Sound." Right?

11 A. Yes.

12 Q. And above that it says, "Two
13 remain at credit."

14 A. Okay.

15 Q. And above that it says, "51
16 families were for the west, nine --" does that
17 say, "[...] nine were absent."?

18 A. I think that's what it says, yes.

19 Q. So it doesn't say that at least
20 60 families from the Credit were in favour of
21 relocating, does it?

22 A. I see that now. I would recount
23 that as 51, families plus the ones who had
24 already apparently removed to Owen sound.

25 Q. So you read 51 families as being

1 for the west as them wanting to move to Owen
2 Sound?

3 A. It says just above that line:
4 "They were for the west or Owen
5 Sound."

6 Q. Or Owen Sound, right. And right
7 under it it says, "51 families were for the
8 west."

9 A. Yes.

10 Q. And you're assuming the nine
11 families that were absent also wanted to go to
12 Owen Sound?

13 A. I see that now and I could have
14 been more precise. I had originally counted
15 them in, yes.

16 Q. So I just want to bring up
17 another document and ask you whether this
18 affects your view of the reading of this letter.
19 So it's SC-1951. We have a transcript, followed
20 by the original, and maybe we'll go down to the
21 original?

22 THE COURT: Maybe not.

23 MS. GUIRGUIS: Maybe not.

24 THE COURT: Well, Dr. Reimer can try
25 if she wants to. That one is especially bad.

1 THE WITNESS: I think if we can go
2 back up to the....

3 BY MS. GUIRGUIS:

4 Q. So this is a letter dated March
5 20th, 1847.

6 THE COURT: I'm just struggling
7 because the original is really illegible. And
8 I'm wondering -- I take it -- is this are a
9 consent exhibit or is this a new document?

10 MS. GUIRGUIS: This is one I provided
11 to my friends I believe prior -- a week and a
12 half ago, a week ago. I'm not sure --

13 THE COURT: That wasn't my question.

14 MS. GUIRGUIS: Yes.

15 THE COURT: I take it it has not been
16 marked as an exhibit?

17 MS. GUIRGUIS: It has not.

18 THE COURT: I'll wait and see what
19 Ontario says when we get to that point.

20 BY MS. GUIRGUIS:

21 Q. So it's a letter dated March
22 30th, 1847. And, unfortunately, going back to
23 the original I wonder if we can make out who
24 it's from and who it's to?

25 A. I can try. It's from Anderson,

1 Anderson has written this to Vardon.

2 Q. And I just want to go back down
3 to the original we were looking at to make sure
4 that the date is correct, because we have it on
5 the transcript as March 20th?

6 A. I can take a look at that.

7 (Witness reading the document.)

8 THE COURT: A much better copy has
9 magically appeared. Your tech guy is
10 congratulating himself.

11 Is this a different SC number that you
12 should read into the record than the one we were
13 looking at?

14 MS. GUIRGUIS: It seems that it's the
15 same one SC-1951.

16 THE COURT: It's a mystery.

17 MS. GUIRGUIS: Yes.

18 THE COURT: Does this also have the
19 transcription? It does. All right.

20 Mr. Registrar, when you get to this can you
21 double check after the SC number to make sure
22 it's the right one?

23 BY MS. GUIRGUIS:

24 Q. So if we could just scroll down
25 to the original I just want to check with

1 Dr. Reimer if you can read the date here?

2 THE COURT: It's much better.

3 THE WITNESS: It could be 20th but, I
4 actually read it as 30th March and then slash
5 47, so 1847. I don't think it makes a
6 difference whether it as the 20th or 30th but
7 it's around the end of March.

8 BY MS. GUIRGUIS:

9 Q. Thank you, Dr. Reimer. So this
10 is a letter dated March 30th, 1847, from
11 Anderson to Vardon.

12 MS. GUIRGUIS: Your Honour, may I add
13 this as the next exhibit.

14 THE COURT: You can add the legible
15 one.

16 MS. GUIRGUIS: Yes.

17 THE COURT: What is the next exhibit,
18 Mr. Registrar?

19 THE REGISTRAR: Exhibit number 4846.

20 EXHIBIT NO. 4846: Transcript of a
21 letter, with original attached, dated
22 March 30th, 1847, from Anderson to
23 Vardon; document number SC-1951.

24 BY MS. GUIRGUIS:

25 Q. Okay, if we can go back up to the

1 transcript and, Dr. Reimer, we'll ask you to
2 take a look, unless you prefer to look at the
3 original?

4 A. No, that's fine.

5 (Witness reading the document.)

6 Q. So we see here at the middle of
7 the page, in the middle of the transcript it
8 talks about -- well, the letter itself that
9 Anderson is writing to Vardon is with respect to
10 the Credit Mississaugas, correct?

11 A. Yes.

12 Q. And we see at the middle of the
13 page that the numbers that are listed here,
14 total number of families 63, concluded to go
15 west 51, absent from village 9, and remain at
16 Credit 3. That's very similar to the last
17 document we were looking at?

18 A. Yes.

19 Q. If we look at the last paragraph
20 of this transcript it says:

21 "The two Chiefs and all the
22 principal men concluded to go west.
23 They appear undecided whether to go to
24 Muncey town or to Brantford."

25 So based on this letter it seems to

1 suggest that "go west" may not refer to Owen
2 Sound?

3 A. I agree with you, yes.

4 Q. So it might be a reference to
5 Muncey Town or Brantford?

6 A. Yes.

7 Q. So based on this document it
8 would seem that we know that only one Credit
9 family is going to Owen Sound for sure?

10 A. From the previous document
11 that's -- yes.

12 Q. From the previous one, yes.

13 A. Right.

14 Q. From the previous one, Exhibit
15 1659 shows that one Credit family is going to
16 Owen Sound?

17 A. Yes.

18 Q. So if we continue on with the
19 assumption that there's a hundred acres per
20 family figure, which you assume for the purposes
21 of your report, would it not be more accurate
22 then to illustrate an area on the maps that's a
23 hundred acres and not 6,000 acres?

24 MR. FELICIAN: Your Honour, I object
25 because I don't think this witness can talk

1 about what would be more accurate to illustrate
2 on a map she didn't illustrate.

3 THE COURT: Is there a particular
4 opinion in the maps report that you're getting
5 at, counsel?

6 BY MS. GUIRGUIS:

7 Q. So at the -- page 4 at the bottom
8 of the paragraph where, Dr. Reimer, you say:

9 "In my opinion the approximate
10 size and location of the tracts
11 intended for Caughnawaga Mohawk and
12 Credit Mississauga families may be
13 inferred from the documentation
14 available in this pre-survey period."

15 Now that we've referred to this, would
16 you agree with me that you might change your
17 opinion that the approximate size and location
18 of the tracts for the Credit Mississauga might
19 be more accurately described as a hundred acres?

20 A. My opinion now is that Exhibit
21 1659 is in fact not relevant to the illustration
22 of the tract, because I now understand that this
23 is referring to 63 families in consideration of
24 a move to -- not to Owen Sound but rather west
25 to the Six Nations or Muncey Town.

1 So, you know, upon reflection I would
2 eliminate that exhibit from this list of
3 documents.

4 The curious thing is that the 1851
5 agreement, and I don't discuss this in the map
6 report, the curious thing is that the 1851
7 agreement still refers to a tract for the Credit
8 Mississauga families when in fact as of 1847,
9 mid-1847 they had already reached a decision in
10 the majority not to move there.

11 So there is a level of supposition in
12 terms of the documentation trying to illustrate
13 what tracts might have been referred to in this
14 1851 agreement.

15 So in 1851 to describe a tract as
16 bounding -- to describe the Caughnawaga Mohawk
17 tract as being bounded by a tract for the Credit
18 River Mississaugas as only 100 acres to me
19 there's -- it's a bit of an illogical kind of
20 tract, it's simply one farm lot really.

21 And so, again, I go back to my
22 previous answer that this -- my understanding
23 was this was an attempt to try to illustrate
24 tracts as described in the 1851 agreement.

25 Q. Understood. I would like to

1 bring up SC-1954. So let's turn to the
2 original. So this is titled "Indian Department
3 numerical return of the Chippewa Indians at Owen
4 Sound for the year 1848".

5 A. Yes.

6 Q. And if we turn to the second page
7 of the original we see it's dated April 1st,
8 1849, correct?

9 A. Correct.

10 Q. It seems to be signed off by John
11 Wabadick and Peter Kegedonce?

12 A. Yes, and two others.

13 Q. And Wabadick and Kegedonce are
14 Owen Sound Chiefs?

15 A. Correct.

16 Q. And it's signed off by David
17 Sawyer?

18 A. It looks like it, yes.

19 Q. And the last name --

20 A. Looks like Jacob Jackson.

21 Q. So this numerical return this is
22 a population count?

23 A. Yes.

24 Q. Your Honour, can I add this as
25 the next exhibit?

1 THE COURT: Mr. Registrar.

2 THE REGISTRAR: Exhibit number 4847.

3 EXHIBIT NO. 4847: Document titled
4 "Indian Department numerical return of
5 the Chippewa Indians at Owen Sound for
6 the year 1848", dated April 1st, 1849;
7 document number SC-1954.

8 BY MS. GUIRGUIS:

9 Q. Sorry, if we go down to the next
10 page, this is a note here at the bottom and it's
11 signed by David Sawyer, correct?

12 A. Yes.

13 Q. So this is what's transcribed in
14 the partial transcript on the first page, which
15 we can refer to. Unless you prefer to work from
16 the original?

17 A. Can I just take a minute to look
18 at the original and then we can go to the
19 transcript.

20 Q. Absolutely.

21 A. (Witness reading the document.)

22 All right. We can go to the
23 transcript.

24 Q. Can you just take a moment to
25 review that?

1 A. (Witness reading the document.)

2 Okay.

3 Q. So this suggests that at least
4 six families who were once Credit, who were not
5 included in the returns from previous years,
6 they are now considered part of the Owen Sound
7 band, correct?

8 A. Yes.

9 Q. So that's about 30 people in
10 total?

11 A. Yes.

12 Q. So these families and their homes
13 that would now be considered part of the Owen
14 Sound village site?

15 A. Well, can we go back to the cover
16 page.

17 Q. Yes.

18 A. I don't know if it says "village
19 site" or "band", "at Owen Sound". I'm sorry,
20 did you have a question?

21 Q. Yes.

22 A. I'm saying "at Owen Sound"
23 doesn't necessarily refer specifically to a
24 local village.

25 Q. Okay. But we can assume from

1 what's written that they are living at Owen
2 Sound?

3 A. Right. Yes.

4 Q. So would you agree, based on
5 this, that it would be fair to eliminate a
6 reference to the Credit tract all together?

7 A. Except that the 1851 agreement
8 still refers to the tract for the Credit
9 Mississaugas.

10 Q. So based on this, and the last
11 document we've looked at, we don't really have a
12 sense now of the size of the tract that's
13 intended for the Credit Mississaugas?

14 A. I would agree, to the extent that
15 in 1846 the intention was that they were still
16 moving to Owen Sound and they wanted lots of at
17 least 100 acres each.

18 However, the fact that Exhibit 1659,
19 dated March 28, 1847, is now an indication of
20 who would be -- how many families would be
21 moving west, which was not Owen Sound, it is
22 certainly now more difficult to determine what
23 an inferred size would be.

24 Q. So I'd like to bring up SC-1988.
25 This is a map that we've provided to illustrate

1 what we've discussed.

2 MS. GUIRGUIS: Your Honour, I'm
3 wondering if I can add this map as the next
4 lettered exhibit?

5 THE COURT: Mr. Registrar?

6 THE REGISTRAR: Lettered Exhibit A-4.
7 Of.

8 EXHIBIT NO. A-4: Document SC-1988,
9 map.

10 BY MS. GUIRGUIS:

11 Q. If we can zoom in on it a bit so
12 you can take a look, Dr. Reimer. We can look at
13 the legend in particular.

14 So area "A" on this map, lettered
15 Exhibit A-4, is meant to designate the site of
16 the Colpoy's Bay village. Do you see that?

17 A. Yes, I see that.

18 Q. And area "B" is intended to
19 illustrate the site of the Nawash village?

20 A. Okay.

21 Q. See that near Owen Sound? And
22 then area "C" is marked in a yellow dotted line,
23 and on the legend it is described as the site of
24 the Caughnawaga village, and it's estimated at
25 approximately 3600 acres.

1 A. Okay.

2 Q. And that's based on our
3 discussion of accepting the hundred acre
4 inference per family, excepting that the --
5 under the understanding that 36 families
6 settled?

7 A. Okay.

8 Q. And there's no area "D", and
9 that's based on our discussion, to illustrate a
10 tract for the Credit Indians, that's based on
11 our discussions it's not clear what that size
12 would be?

13 A. Okay.

14 Q. And area "E" designates the site
15 of the Saugeen village where the Saugeen Band
16 would have had homes?

17 A. Yes.

18 Q. Area "F" illustrates the
19 Half-Mile Strip surrender which took place in
20 1851?

21 A. Correct.

22 Q. And then area "G" is referred to
23 as the Saugeen Ojibwe Nation Reserve, the
24 Saugeen Reserve?

25 A. Okay.

1 Q. And that's the green -- the green
2 area. And you've agreed that is the only
3 Reserve that did exist in 1851 on the peninsula?

4 A. Correct.

5 Q. So would you agree, Dr. Reimer,
6 that this map is a fair and accurate
7 representation of the historical records we've
8 reviewed?

9 THE COURT: Mr. Feliciant.

10 MR. FELICIAN: Your Honour,
11 Dr. Reimer did not prepare this map; we haven't
12 heard from the person who prepared this map;
13 nobody's taken us to any of the underlying
14 documents that support this map.

15 There have to be assumptions made with
16 respect to the accuracy of the map and that
17 evidence hadn't been called.

18 There is an issue also with respect to
19 the qualifications of this witness to discuss
20 whether this is a fair and accurate map.

21 So I have a whole huge series of
22 objections basically stemming from the fact this
23 witness didn't prepare the map and there's no
24 evidence to support it.

25 THE COURT: Ms. Guirguis.

1 MS. GUIRGUIS: Well, Your Honour, I'm
2 not seeking to add this as an exhibit for the
3 record. I'm -- I've added it as a lettered
4 exhibit.

5 THE COURT: This isn't an objection to
6 tendering this exhibit, it's an objection to
7 asking the witness if this is an accurate and
8 fair representation of the historical records.

9 You've got a record already of
10 numerous details. I pause, without commenting
11 on all the objections, over the concept that
12 this witness is qualified to give that opinion
13 in the first place.

14 I'm not saying she's not qualified to
15 talk about maps, we've been talking about maps
16 for quite a long time, but this seems to go
17 straight to the illustration in the map as
18 opposed to discussing facts around where things
19 were and how they might have been.

20 MS. GUIRGUIS: So, Your Honour, I
21 would submit that we've gone through a fair bit
22 of documents --

23 THE COURT: No, no, can you address my
24 point about the qualification to comment on the
25 fairness of an illustration of the evidence?

1 This is -- you've got the evidence
2 already, for whatever you want to make of it,
3 but the question relates to the fairness of the
4 illustration of the evidence.

5 MS. GUIRGUIS: Well, Your Honour, I
6 think that that -- Dr. Reimer has given that
7 opinion in her maps report already with respect
8 to other illustrations.

9 THE COURT: Well, she's given various
10 opinions in her maps report which are combined,
11 as I understand it, with the evidence of the
12 person who prepared the illustration as to make,
13 what I was told, back then would be a request
14 later on to make it an exhibit.

15 You haven't put forward the person who
16 prepared this map. Having objected to the other
17 maps that seems somewhat contradictory, but what
18 else do you have to say about that? I'm not
19 talking about the evidence that you've already
20 obtained, counsel, that's all on the record
21 already, you can use that. I'm just talking
22 about the illustration.

23 She's answered various questions about
24 where things are on the map that she's able to
25 answer those questions, that's great.

1 MS. GUIRGUIS: Well perhaps, Your,
2 Honour, I could rephrase the question and then I
3 could see if that's still objectionable.

4 THE COURT: Sure.

5 MS. GUIRGUIS: Okay.

6 BY MS. GUIRGUIS:

7 Q. So, Dr. Reimer, this illustration
8 that's in front of you, and we've gone through
9 the legend, would you agree with me that the
10 locations that are identified in the legend and
11 the sizes that are identified in the legend,
12 reflect the discussion of the historical
13 documents I've just taken you to?

14 A. The locations. The size? I
15 really prefer not to express an opinion about
16 the size as illustrated on this map.

17 Q. Okay. Let's turn back to your
18 mapping report, map L-2. So this map is
19 described as being an illustration of the
20 approximate area described in Exhibit 2095,
21 which is Keating's proposal to the Chiefs and
22 principal men July 5th, 1854?

23 A. Yes.

24 Q. And we've talked about Keating's
25 proposal and the Saugeen Ojibwe's response to

1 that proposal?

2 A. Yes.

3 Q. And Keating was wanting to build
4 a mill site?

5 A. Yes.

6 Q. Correct?

7 A. Correct.

8 Q. And so he sought a surrender of a
9 tract, or he wanted them to sell a tract on the
10 Sauble River?

11 A. Correct.

12 Q. And the Saugeen Ojibwe said no to
13 Keating's proposal?

14 A. Yes.

15 Q. And that's at Exhibit 2097, for
16 the record.

17 So you'd agree with me that this map,
18 the illustration that's depicted here doesn't
19 reflect the parcel of land that the Saugeen
20 Ojibwe intended to surrender in July 1854?

21 A. As the map title states it's an
22 illustration of the approximate area described
23 by Keating's proposal.

24 Q. So it's not reflecting what the
25 Saugeen Ojibwe intend to surrender in July --

1 A. It's not intended to illustrate
2 that.

3 Q. Now, looking at this
4 illustration, this map, here is map L-2, Keating
5 was trying to get the Saugeen Ojibwe to
6 surrender a tract that include the Saugeen
7 village site, correct?

8 A. The Saugeen village tract?

9 Q. Yes.

10 A. No, this is at Sauble.

11 Q. Okay. Thank you.

12 Let's move to map N-1. So this is at
13 page 21 of your maps report.

14 A. Yes.

15 Q. And you referred in this section
16 of your report to two different exhibits,
17 Exhibit -- or mainly to two different exhibits.
18 Exhibit 2105, which was Anderson's questions and
19 answers by the Saugeen Ojibwe as written by
20 David Sawyer?

21 A. Correct.

22 Q. And Exhibit 2104, which is a
23 letter from Rankin to Anderson also dated August
24 2nd, 1854?

25 A. Yes.

1 Q. So I want to take a look at these
2 two Exhibits and I want to start with Exhibit
3 2105.

4 And we have a transcript of this,
5 which we looked at earlier, which is Exhibit
6 4796. So if we can go to page 6 of the
7 transcript? There's no page 6 so it's noted 1
8 of 6 at the top -- or page 6 of 7, I'm sorry.

9 So the way that it reads is on the
10 left side we have "Fifth" and that's the
11 question from Anderson; and on the right side it
12 says, "Answer to Five query", and that's the
13 answer from the Saugeen Ojibwe written down by
14 David Sawyer, right?

15 A. Yes, that's correct.

16 Q. So when it says "6 of 7" that's
17 referring to the original document.

18 A. Yes, the original document is not
19 paginated in order. You have to go
20 back-and-forth.

21 Q. Okay. So that's why 6 of 7 is on
22 top, 5, of 7?

23 A. Yes, exactly.

24 Q. So if you can review the
25 highlighted area from, "We see the quantity of

1 land [...]", to, "[...] we wish to keep them."

2 A. (Witness reading the document.)

3 Okay.

4 Q. So from this excerpt they -- it
5 identifies general areas of three Reserves?

6 A. Correct.

7 Q. But it doesn't say anything about
8 the size of the Reserves?

9 A. No.

10 Q. And at the time it says that it
11 was accompanied by a map that presumably would
12 have shown the precise boundaries the Saugeen
13 Ojibwe would have had in mind, correct?

14 A. Yes. And my reading of this is
15 that Anderson brought a map along with him and
16 he had marked the areas he was proposing. And
17 then the First Nations drew their own pencil
18 lines along that map of the areas they were
19 willing to cede.

20 Q. But we don't have a copy of that
21 map?

22 A. No, and many experts have
23 searched for it and so far we've not been able
24 to find a copy.

25 Q. So what we know from this written

1 document is there are three Reserves. The
2 Reserves embrace the Fishing Islands?

3 A. Yes.

4 Q. The Reserves embrace Cape Croker?

5 A. Correct.

6 Q. And we know that one Reserve
7 embraces a tract from Owen Sound to the head of
8 Colpoy's Bay?

9 A. Correct.

10 Q. So looking back at N-1, this
11 illustration seems to assume that the Reserve
12 that embraces the Fishing Islands is distinct
13 from the Reserve that embraces Cape Croker,
14 right?

15 A. You're referring to area "A" and
16 area "D"?

17 Q. Yes.

18 A. Okay, yes.

19 Q. But that's not necessarily clear
20 from what's written on Exhibit 2105, is it? The
21 one we just looked at?

22 A. It's not clear, you're correct.

23 Q. And there's Fishing Islands on
24 both the Lake Huron side of the peninsula and
25 the Georgian Bay side?

1 A. Yes, but I would strongly suspect
2 that the phrase "Fishing Islands" almost always
3 referred to the Fishing Islands on the west
4 side, on the Lake Huron side.

5 Q. But that's not specified in
6 Exhibit 2105?

7 A. Not on this particular exhibit,
8 no.

9 Q. So it could be that one Reserve
10 embraces both Cape Croker and the shore opposite
11 the Fishing Islands on the Lake Huron side?

12 A. As one Reserve?

13 Q. Yes.

14 A. Well, the problem is that they
15 refer specifically to three Reserves.

16 Q. So we have the Reserve that's
17 illustrated at "A", and then we have the Reserve
18 illustrated at area "C", and it's possible that
19 the third Reserve could have been a straight
20 line across from Colpoy's Bay over to Lake
21 Huron? That would have embraced both Cape
22 Croker and the Fishing Islands, correct?

23 A. Colpoy's Bay is south though.
24 I'm not -- you would need to draw a pencil line.

25 I can't visualize it because from

1 Colpoy's Bay to the fishing islands is just
2 another short distance north from the green area
3 shown on this map. I don't see how it includes
4 all of Cape Croker.

5 Q. Well, it would be everything
6 north of that line to the tip of the peninsula.

7 A. Okay.

8 MR. FELICIANANT: I'm objecting because
9 there's no evidence that would support a
10 suggestion that it goes to the tip of the
11 peninsula.

12 The question is no longer based on the
13 content of the document but rather counsel's
14 speculation about different possible scenarios,
15 which I don't know how they can be proven.

16 THE COURT: Ms. Guirguis.

17 MS. GUIRGUIS: I'm putting a
18 hypothetical to the witness --

19 THE COURT: It's not going very well.

20 MS. GUIRGUIS: Well, Your Honour --

21 THE COURT: It does seem like you're
22 out on a branch somewhere as far as the evidence
23 in this trial is concerned. But you know what,
24 if you want to put it to the witness I'll let
25 you do it.

1 If you're going to stand up at the end
2 of the trial and say, based on this evidence
3 that the document referred to the entirety of
4 the peninsula, and that the Fishing Islands, for
5 the first time in this trial, ever, should be
6 taken to infer something all together different
7 from what your clients' use of that term, I
8 think that's the objection.

9 MS. GUIRGUIS: Your Honour, with
10 respect, I'm just looking at what it says in
11 Exhibit 2105.

12 THE COURT: I understand that. That's
13 why I said you can go ahead if you want to. But
14 I just -- you know.

15 BY MS. GUIRGUIS:

16 Q. So if we go to Exhibit 2104, this
17 is the letter from Rankin to Anderson, also
18 dated August 2nd, 1854.

19 A. Yes.

20 Q. That you've referred to.

21 And in this letter Rankin talks about
22 two of the parcels that the Saugeen Ojibwe want
23 to retain, and both are in the south of the
24 peninsula, correct?

25 A. Correct.

1 Q. And these are the two parcels on
2 either side of what he calls the "inland wedge"?

3 A. Correct.

4 Q. So if we look at N-1, again, the
5 inland wedge is marked as area "B", and area "C"
6 is one parcel what he describes as the mill site
7 on the Au Sable River, the coast opposite to the
8 Fishing Islands?

9 A. No, that would be "A".

10 Q. I'm sorry, I misspoke. My note
11 actually says area "A". What he describes as
12 the mill site on the Au Sable River, the coast
13 opposite to the Fishing Islands?

14 A. Correct.

15 Q. And area "C" a parcel that runs
16 from Colpoy's Bay to Owen Sound?

17 A. Correct.

18 Q. Now, there's nothing in Rankin's
19 letter that indicates that the Saugeen Ojibwe
20 were willing to give up any other tract other
21 than the inland wedge, correct?

22 A. That's correct.

23 Q. So at page 24 of your map's
24 report -- Your Honour, maybe it's good time to
25 stop here and I will get the correct page number

1 of where I'm going.

2 THE COURT: That's fine, counsel. Can
3 you give me a sense of where you are in your
4 schedule for tomorrow?

5 MS. GUIRGUIS: Your Honour, I might be
6 completed my cross-examination by morning break
7 tomorrow.

8 THE COURT: So Ontario needs to know
9 that so they're ready to do their
10 re-examination. Thank you.

11 We'll resume tomorrow morning at 10:00
12 o'clock.

13 -- Whereupon the examination was
14 adjourned at 4:29 p.m.

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REPORTER'S CERTIFICATE

I, HELEN MARTINEAU, CSR, Certified
Shorthand Reporter, certify;

That the foregoing proceedings were
taken before me at the time and place therein
set forth;

That the testimony of the witness and
all objections made at the time of the
examination were recorded stenographically by me
[Note: Not all quotes have been verified
against source document, but transcribed as
read into the record];

That the foregoing is a true and
accurate transcript of my shorthand notes so
taken. Dated this 24th day of March, 2020.



PER: HELEN MARTINEAU
CERTIFIED SHORTHAND REPORTER

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