

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

DAY 7/ VOL 7
May 15, 2019



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Court File No. 94-CQ-50872CM

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 7/DAY 7 of the trial
proceedings in the above-noted matter, being
held at the James Mason Memorial Culture and
Recreation Centre, 47 French Bay Road,
Southampton, Ontario, on the 15th day of May
2019.

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 :
H.W. Roger Townshend, Esq., for the Plaintiffs,
& Benjamin Brookwell, Esq., The Chippewas of
& Cathy Guirguis, Esq., Saugeen First
Nation, and the
Chippewas of Nawash
First Nation.

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

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

REPORTED BY: Helen Martineau, CSR.

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1 -- Upon commencing at 9:34 a.m.

09:35:10 2 THE COURT: Morning, counsel. Go
09:35:11 3 ahead with your next witness.

09:35:13 4 MS. GUIRGUIS: I'd like to call
09:35:14 5 Mr. James Ritchie.

09:35:16 6 THE REGISTRAR: Good morning, sir.

09:35:37 7 THE WITNESS: Good morning. How are
09:35:38 8 you?

09:35:39 9 THE REGISTRAR: I'm good, thank you.
09:35:41 10 Would you like to make an oath on the holy book
09:35:44 11 or make a solemn affirmation to tell the truth?

09:35:48 12 THE WITNESS: Affirm.

09:35:49 13 THE REGISTRAR: Affirm. Can you state
09:35:50 14 and spell your first and last name for the
09:35:52 15 record?

09:35:53 16 THE WITNESS: James Robert Ritchie.
09:35:56 17 Is that what you said?

09:35:58 18 THE REGISTRAR: Can you spell it,
09:35:58 19 please? Can you spell it for the record?

09:36:04 20 THE COURT: Sir, can you spell your
09:36:05 21 name, please.

09:36:06 22 THE WITNESS: Spell it?

09:36:06 23 THE REGISTRAR: Yes.

09:36:08 24 THE WITNESS: Okay. J-a-m-e-s
09:36:09 25 R-o-b-e-r-t R-i-t-c-h-i-e.

09:36:18 1 JAMES ROBERT RITCHIE: AFFIRMED.

09:36:20 2 EXAMINATION IN-CHIEF BY MS. GUIRGUIS:

09:36:36 3 Q. Good morning, Mr. Ritchie. Thank
09:36:36 4 you for joining us this morning.

09:36:39 5 A. Good morning.

09:36:39 6 Q. If at any time you can't hear me
09:36:41 7 because of the sound in here please let me know
09:36:43 8 and we'll repeat the questions for you.

09:36:46 9 I want to start off by asking you some
09:36:48 10 questions to introduce you to the court. Which
09:36:51 11 First Nation are you a member of? Which First
09:36:56 12 Nation are you a member of?

09:36:58 13 A. Saugeen First Nation number 29
09:36:59 14 and 28.

09:37:03 15 Q. And when were you born?

09:37:06 16 A. 1951, August the 9th.

09:37:09 17 Q. And how long have you lived in
09:37:11 18 Saugeen?

09:37:12 19 A. Forever.

09:37:17 20 Q. Any time spent away from the
09:37:18 21 reserve? Any time that you lived away from the
09:37:21 22 reserve?

09:37:22 23 A. I spent three years in the United
09:37:24 24 States.

09:37:26 25 Q. And when was that?

09:37:30 1 A. 1972 to '75.

09:37:34 2 Q. And where do you live today?

09:37:38 3 A. When did I live there or where?

09:37:42 4 Q. Where do you live today?

09:37:43 5 A. On Saugeen First Nation.

09:37:51 6 Q. I understand you met with

09:37:52 7 Professor Jarvis Brownlie on June 2nd, 2016.

09:37:56 8 Professor Brownlie interviewed you about some of

09:38:00 9 the barriers that your community faced in

09:38:04 10 bringing claims to the territory. Do you recall

09:38:07 11 that interview?

09:38:09 12 A. You know, I can hardly hear you

09:38:11 13 with the speakers. They're a little bit --

09:38:14 14 either too loud or something is wrong with it.

09:38:17 15 I can't hear you very well.

09:38:18 16 MS. GUIRGUIS: Is it that I'm speaking

09:38:19 17 too loud?

09:38:20 18 THE COURT: Sir, two things, we have

09:38:21 19 to just get ourselves organized. First of all,

09:38:23 20 could you move the microphone closer to you?

09:38:26 21 Okay, that's good. And you're having trouble

09:38:30 22 hearing counsel?

09:38:31 23 THE WITNESS: Yeah, the hearing is the

09:38:32 24 problem.

09:38:32 25 THE COURT: It may be because it's

09:38:34 1 such a big room. Is there any reason why
09:38:40 2 counsel couldn't come over to where Mr. Brown --
09:38:44 3 Mr. Brookwell is sitting instead of -- and then
09:38:48 4 you could use your natural voice more?

09:38:51 5 MS. GUIRGUIS: Absolutely.

09:38:57 6 THE COURT: Madam Reporter, is that
09:38:57 7 going to work out?

09:38:57 8 Just wait for a minute, sir, and we'll
09:38:59 9 try and improve the sound. Move the podium over
09:39:00 10 and perhaps count on your natural voice more
09:39:00 11 than the microphone, yes. Not too close,
09:39:11 12 Mr. Brookwell.

09:39:12 13 Now, counsel I am going to ask that
09:39:18 14 you move so that you're facing the witness more.
09:39:26 15 And you might try leaving that microphone
09:39:30 16 directly beside the podium rather than on the
09:39:33 17 podium because I think it's creating a little
09:39:35 18 echo.

09:39:36 19 MS. GUIRGUIS: Okay.

09:39:36 20 THE COURT: And you could project your
09:39:38 21 natural voice more. Sir, please continue to
09:39:49 22 indicate if you can't hear properly, okay?
09:39:49 23 We're going to try again.

09:39:49 24 THE WITNESS: Okay, thank you.

09:39:52 25 MS. GUIRGUIS: Thank you.

09:39:52 1 THE COURT: Please go ahead.

09:39:52 2 BY MS. GUIRGUIS:

09:39:54 3 Q. Okay. So I'll start from asking

09:39:55 4 you about that you met with Professor Jarvis

09:39:58 5 Brownlie?

09:40:02 6 THE COURT: Okay, now I'm going to

09:40:03 7 interrupt you. Is -- just we're okay. Is the

09:40:09 8 live transcript working on this side of the

09:40:11 9 room? Now that will provide a sound supplement

09:40:16 10 to counsel. If any counsel has trouble between

09:40:20 11 the live transcript and the sound stand up,

09:40:23 12 otherwise we'll proceed. I think it will work

09:40:26 13 but you need to tell me if you're not satisfied.

09:40:29 14 All right, please go ahead, counsel.

09:40:32 15 MS. GUIRGUIS: Absolutely, Your

09:40:32 16 Honour.

09:40:33 17 BY MS. GUIRGUIS:

09:40:33 18 Q. You can hear me better this way?

09:40:36 19 Great.

09:40:37 20 So the interview that you did with

09:40:39 21 Professor Jarvis Brownlie on June 2nd, 2016, do

09:40:42 22 you recall that interview?

09:40:45 23 A. Yes, I do, yeah.

09:40:51 24 Q. I'm going to show you a

09:40:52 25 transcript from your talk with Professor

09:40:53 1 Brownlie. This is Exhibit Number 3918. It's
09:40:58 2 going to come up on your screen, or it should if
09:41:01 3 the screens are --

09:41:06 4 THE COURT: I'm sure that
09:41:07 5 Mr. Brookwell is on it. It's not yet up on the
09:41:10 6 screen.

09:41:10 7 Now, while we're waiting, sir, can you
09:41:13 8 move that microphone to be between you and
09:41:16 9 counsel? That's perfect. Thank you, sir.
09:41:19 10 Maybe not pointed down. All right.

09:41:22 11 And you'll see, sir, there's a screen
09:41:24 12 on the other side that hopefully the document is
09:41:28 13 going to come up on that screen.

09:41:30 14 THE WITNESS: This one?

09:41:32 15 THE COURT: Yes, it's not there yet
09:41:32 16 though.

09:41:40 17 MR. BROOKWELL: I don't think we have
09:41:41 18 control yet.

09:41:42 19 THE COURT: Technical problems?

09:41:43 20 THE REGISTRAR: Counsel, probably your
09:41:43 21 laptop is not connected properly.

09:41:45 22 THE COURT: Counsel, is there another
09:41:57 23 section of your examination that you could
09:41:58 24 proceed while Mr. Brookwell is trying to work on
09:42:02 25 the technology?

09:42:07 1 I'm sure you have some other topics
09:42:09 2 that you were planning on covering.

09:42:12 3 MS. GUIRGUIS: Absolutely. What I
09:42:12 4 wanted to do was authenticate the interview and
09:42:14 5 then ask questions about the interview. I'm
09:42:14 6 happy to --

09:42:14 7 THE COURT: I'm not suggesting that
09:42:16 8 you overlook that, I'm just saying start on a
09:42:19 9 different topic while we work on the technology.

09:42:21 10 MS. GUIRGUIS: Right. If that's fine
09:42:22 11 with the court that I can just asking questions
09:42:23 12 about things he discussed in the interview?

09:42:26 13 THE COURT: Just to pick -- I'm sure
09:42:28 14 you have other topics that you're planning on
09:42:31 15 talking about.

09:42:32 16 BY MS. GUIRGUIS:

09:42:32 17 Q. So we'd like to talk a bit about
09:42:34 18 your knowledge of the history of Saugeen.

09:42:37 19 A. Okay.

09:42:38 20 Q. Can you please tell us a bit
09:42:39 21 about how you came to know the history of
09:42:41 22 Saugeen?

09:42:43 23 A. I am getting a little bit of the
09:42:45 24 history of Saugeen First Nation from my
09:42:47 25 grandfather, who was Oliver Nashkawa.

09:42:53 1 He was born in 1906, he was on the
09:42:56 2 council in the Saugeen First Nation in the
09:42:57 3 '50s and early '60s, so he told me a lot of
09:43:02 4 history about what was going on back in that
09:43:03 5 day.

09:43:04 6 But he didn't have all the history
09:43:05 7 either because there was a lot of suppression in
09:43:07 8 those days about our access to any information
09:43:13 9 on our rights and stuff and who we were. So
09:43:16 10 there was a lot of suppression back in that day.
09:43:19 11 So he didn't have all the -- there was Indian
09:43:21 12 Agents here at that time and so it was not a lot
09:43:25 13 of freedom as we could -- if you want to say it
09:43:28 14 that way.

09:43:29 15 Q. How did you learn from your
09:43:30 16 grandfather Oliver Nashkawa?

09:43:34 17 A. How did I learn? I worked with
09:43:36 18 him when I was a little kid. He was a furniture
09:43:39 19 maker, a basket maker, a carver, like all kinds
09:43:43 20 of different things. And I worked with him as a
09:43:45 21 little -- when I was what? Six, seven, eight,
09:43:48 22 nine years old.

09:43:50 23 And then working with him I learned
09:43:51 24 all the stuff that he knew. And you kind of
09:43:54 25 graduated as you got more knowledge on things

09:43:56 1 you were doing.

09:43:58 2 After that knowledge then you
09:44:00 3 progressed to more detail of what you were
09:44:03 4 doing. And you begin with just the rough stuff.
09:44:07 5 So, yeah, he taught me a lot. I learned the
09:44:09 6 language from him, working with him every day
09:44:11 7 too.

09:44:12 8 Q. Did you say you learned the
09:44:13 9 language from him?

09:44:14 10 A. Yes, I did, yeah.

09:44:16 11 Q. And that's Anishinaabemowin?

09:44:17 12 A. Yes, Anishinaabemowin. You're
09:44:19 13 right.

09:44:22 14 Q. So you spent a lot of time with
09:44:23 15 him learning about furniture making, basket
09:44:27 16 making, things like that?

09:44:28 17 A. Yes.

09:44:28 18 Q. What else did you do with him?

09:44:31 19 A. We fished for fish, like -- and
09:44:35 20 he was a net maker. He could make nets for
09:44:38 21 fishing. He was an all-around Anishinaabe. He
09:44:42 22 knew everything about Indian life. He was a net
09:44:46 23 maker so we would fish.

09:44:48 24 Sometimes we went up to the Sauble
09:44:50 25 River up at the falls and fished there; and

09:44:52 1 sometimes the Ministry would come along, MNR,
09:44:54 2 like to bother us, but they didn't really get
09:44:58 3 anywhere with him because he was just -- he
09:45:00 4 stood his ground on pretty much everything
09:45:03 5 Indian. So the Ministry would probably not ask
09:45:06 6 him too much questions, and they never really
09:45:08 7 did. They just asked him how his fishing was
09:45:12 8 and he would say, it's good. It's always good,
09:45:14 9 he said. So that's about that.

09:45:16 10 Q. So you said the MNR, that's the
09:45:18 11 Ministry of Natural Resources?

09:45:20 12 A. That's who I'm referring to,
09:45:22 13 yeah. When I say Ministry of Natural Resources,
09:45:25 14 MNR.

09:45:26 15 Q. So they would come up to you and
09:45:28 16 your grandfather while you were fishing on
09:45:31 17 Sauble River?

09:45:32 18 A. Yes, they would.

09:45:32 19 Q. And try to stop you?

09:45:33 20 A. Well, I didn't think -- they
09:45:36 21 might have wanted us to stop but he wouldn't
09:45:39 22 stop. He didn't listen to them very much. He
09:45:41 23 owned the territory, that's what he told me.
09:45:43 24 It's our land. We don't have to listen to those
09:45:45 25 people, he said. Old school.

09:45:49 1 Q. You mentioned that he served on
09:45:52 2 council in the 1950s?

09:45:54 3 A. Yeah, in the late '50s and
09:45:57 4 early '60s I think he was on council, yeah.

09:46:00 5 Q. Did he ever tell you about or
09:46:02 6 talk about what was going on in terms of
09:46:03 7 politics in the council?

09:46:06 8 A. Well, if he did I can barely
09:46:09 9 remember a lot of that stuff. That's going way
09:46:11 10 back and I'm getting pretty old. Anyway, he
09:46:14 11 would talk about council.

09:46:16 12 There was another man, that would be
09:46:18 13 my mother's husband, Livingston Ritchie, and
09:46:21 14 they would talk. And they was always talking in
09:46:23 15 the Indian language, Ojibwe language, so I would
09:46:26 16 sit around and listen to what they were talking
09:46:28 17 about.

09:46:29 18 Most of the times it was about stuff
09:46:31 19 going on in Ottawa. People there, I guess, were
09:46:35 20 going to go to Ottawa and Cape Croker with some
09:46:38 21 issue that was a big one that they had to go
09:46:40 22 down there for. So that's what they would be
09:46:43 23 talking about.

09:46:44 24 But as for council business and
09:46:46 25 everyday business I couldn't remember every

09:46:48 1 detail about everything about that, no. But he
09:46:50 2 did talk about council but usually it was about
09:46:54 3 land rights and stuff like that, what we owned.

09:46:59 4 Him and Livingston would talk and I
09:47:03 5 would listen in on what they were -- because I
09:47:04 6 was right there working with them. So I heard a
09:47:06 7 lot of stuff in different forms or other and
09:47:11 8 about hunting and fishing and stuff like that
09:47:13 9 too. Like, we could hunt anywhere he said.

09:47:16 10 I remember one time when I was 11, my
09:47:18 11 brother was 12, my grandfather had an old Army
09:47:22 12 rifle, one of them old .303 he had in the war.
09:47:25 13 He had bullets and he would say, we can hunt
09:47:29 14 anywhere. So my brother and I, Chester, he's
09:47:32 15 dead now, but he was the hunter, he was a year
09:47:34 16 older than I was so he had the gun.

09:47:37 17 So we went across the road on the 1836
09:47:40 18 side of the road, I'm talking 1836 Treaty side
09:47:44 19 of 21 Highway. So we went by in the bush and we
09:47:48 20 shot a deer back there. And he must have shot
09:47:51 21 it about five times probably before it fell
09:47:53 22 down. Anyway, we got the deer and came back
09:47:56 23 home. So we told Oliver what we did and he
09:48:00 24 said, that's real good. He said, I'll come and
09:48:02 25 help you bring it home. We couldn't bring it

09:48:05 1 home because it was too heavy for us. He came
09:48:08 2 and he helped us bring it home. Him and my
09:48:11 3 other brother, he's dead too, and we brought the
09:48:13 4 venison home. And we did got hunting where he
09:48:17 5 said we could go. So we did that, and nobody
09:48:19 6 bothered us at that time.

09:48:21 7 Q. So when you said the other side,
09:48:23 8 the 1836 side, if you look to your left there's
09:48:28 9 a map right here, which is Exhibit P. Can you
09:48:33 10 point out what's the 1836 side that you're
09:48:37 11 talking about?

09:48:38 12 A. Right here.

09:48:45 13 Q. So you pointed to the light green
09:48:47 14 area?

09:48:47 15 A. On the green side of that map
09:48:49 16 that's 1836.

09:48:50 17 Q. And you would hunt --

09:48:51 18 THE COURT: I think the gentleman was
09:48:52 19 pointing, just to be clear, at the light green
09:48:56 20 portion south of the main peninsula, is that
09:48:57 21 where he was pointing?

09:49:01 22 BY MS. GUIRGUIS:

09:49:02 23 Q. That's correct. At the light
09:49:03 24 green 1836 portion.

09:49:05 25 A. That's what I refer to as the

09:49:07 1 1836 Treaty. You call it 45 and a half I guess.

09:49:11 2 Q. Yes.

09:49:12 3 A. We'll refer to it then as 45 and

09:49:14 4 a half.

09:49:14 5 Q. And you would hunt there in that

09:49:16 6 area?

09:49:16 7 A. Yeah, we didn't go all over that

09:49:18 8 area. We were only 11 and 12 years old. We

09:49:22 9 couldn't cover the whole territory. We got lost

09:49:25 10 somewhere.

09:49:26 11 Anyway, that's where we hunted on that

09:49:28 12 side. And we hunted on this side too, on our --

09:49:31 13 what's that treaty called? The 54 Treaty, I'll

09:49:34 14 call that one. We could hunt anywhere we

09:49:37 15 wanted, according to him anyway, so we did that.

09:49:40 16 Q. I want to shift and just ask you

09:49:42 17 about your personal experience as a councilor in

09:49:44 18 Saugeen.

09:49:46 19 When were you on Saugeen's elected

09:49:48 20 Band Council?

09:49:49 21 A. 1991.

09:49:50 22 Q. Until when?

09:49:52 23 A. Off and on until about 2014 I

09:49:54 24 think, roughly speaking.

09:50:01 25 Q. And how were you involved in the

09:50:03 1 assertion of Saugeen's rights while you were on
09:50:05 2 council?

09:50:05 3 A. Well, I sat on the fisheries
09:50:08 4 committee as a chair, and I sat on land claims
09:50:10 5 as a Chair with Robert and myself, and sat on
09:50:15 6 the housing committee; and that's where we sat.
09:50:19 7 That was our portfolios on council, plus other
09:50:22 8 band business that was going on not just them
09:50:24 9 three; that was our specifics but we had other
09:50:27 10 stuff we did do internal.

09:50:31 11 Q. So before I turn to asking you a
09:50:32 12 few more questions about your experience as a
09:50:35 13 councilor, and also your experiences as a child
09:50:38 14 growing up in Saugeen, I see that we have the
09:50:41 15 screen up now.

09:50:42 16 THE COURT: Yeah.

09:50:43 17 BY MS. GUIRGUIS:

09:50:43 18 Q. So if I can go back to talking to
09:50:45 19 you about the interview that you did with
09:50:48 20 Professor Jarvis Brownlie?

09:50:50 21 A. Yeah.

09:50:51 22 Q. That was on June 2nd, 2016?

09:50:55 23 A. Right.

09:50:56 24 Q. And you discussed some barriers
09:50:57 25 that the community faced in bringing claims to

09:50:59 1 the territory and exercising rights in the
09:51:02 2 territory over the years? Do you recall that
09:51:06 3 interview?

09:51:08 4 A. Yeah. I remember talking to the
09:51:09 5 guy but exact date, I'm just seeing it now,
09:51:13 6 within that time, yeah.

09:51:15 7 Q. Have you reviewed this transcript
09:51:17 8 recently?

09:51:17 9 A. Yes, I have.

09:51:20 10 Q. Is it a true reflection of what
09:51:21 11 you said in your interview?

09:51:25 12 A. Yeah, I would say it is a true
09:51:27 13 reflection of what I said.

09:51:29 14 Q. And is what you said in this
09:51:30 15 transcript true and accurate to the best of your
09:51:33 16 knowledge?

09:51:33 17 A. To the best of my knowledge.
09:51:35 18 What I remember, yeah. It's true.

09:51:42 19 Q. Okay. So going to a few of the
09:51:44 20 topics that you actually spoke about in this
09:51:46 21 interview, I want to go into that a bit more.

09:51:51 22 Starting with what you learned and
09:51:52 23 experienced when you were a child, learning with
09:51:55 24 your -- from your grandfather and growing up in
09:51:58 25 Saugeen, in your interview with Professor

09:52:01 1 Brownlie you talked about the Indian Agent and
09:52:05 2 what you remember and know about that from when
09:52:09 3 you were growing up.

09:52:10 4 What role did the Indian Agent play in
09:52:14 5 Saugeen when you were growing up?

09:52:18 6 A. Well, let me see. I have to go
09:52:20 7 back to my school days probably, most of it was
09:52:24 8 encountering with the Indian Agent. I don't
09:52:26 9 think it was a very good experience for me. It
09:52:29 10 was kind of more of a -- I don't know how to say
09:52:36 11 this. I would say it was more like an
09:52:38 12 oppressor, that's how I viewed the man. Like,
09:52:41 13 he was just not my -- like your kind of a
09:52:43 14 friendly person that you would talk to when I
09:52:46 15 was a kid. So that's how I would view the
09:52:49 16 Indian Agent as a child growing up.

09:52:55 17 Q. You mentioned that in the
09:52:56 18 interview you were scared of the Indian Agent
09:53:00 19 because there was a perception that the Indian
09:53:02 20 Agent could send people away. To where?

09:53:09 21 A. Ask me that again.

09:53:09 22 Q. You mentioned in your interview
09:53:10 23 that there was a fear of the Indian Agent
09:53:14 24 sending kids away.

09:53:16 25 A. Yeah, I had a fear of the Indian

09:53:17 1 Agent because at home the old people like my
09:53:20 2 grandfather, grandmother, my mother would always
09:53:22 3 tell us not to talk too much to that guy, the
09:53:26 4 Indian Agent. They said, those guys can take
09:53:28 5 you away, they would say to us. You know, like,
09:53:30 6 they would send you away. So that was where I
09:53:33 7 got my fear from that person, and I always had a
09:53:35 8 fear of those people like that way from when I
09:53:39 9 was growing up.

09:53:41 10 Q. And where would they send you to?

09:53:44 11 A. They didn't send me no place, but
09:53:45 12 if they did it would be probably a terrible
09:53:48 13 place. That was my view, like I didn't want to
09:53:52 14 go there, whenever that was. But I know that
09:53:55 15 there was people went to Muncey, Mimico, there
09:53:58 16 was another school there were they sent people
09:54:01 17 and there was -- I guess the real ones went to a
09:54:03 18 residential school, like the Catholic people.

09:54:06 19 So that was -- probably the fear that
09:54:09 20 I had is what they did with those kids, because
09:54:11 21 my aunt went to Muncey I think, and another
09:54:14 22 friend I knew -- and after they came back I knew
09:54:17 23 who they were. Charlie Thompson is another one
09:54:20 24 that went to Mimico, I think where he went. But
09:54:21 25 those were schools that were mentioned when I

09:54:23 1 was growing up.

09:54:25 2 Q. So you mentioned a couple of
09:54:27 3 schools, you said Muncey?

09:54:31 4 A. Mimico and Muncey had a school
09:54:34 5 for -- my aunt went to that one, yeah.

09:54:36 6 Q. Were those residential schools?

09:54:37 7 A. I don't know what those were but
09:54:40 8 they were schools that weren't here.

09:54:42 9 Q. That were around here?

09:54:42 10 A. No. Muncey is way down by
09:54:45 11 London. I think that's where it is.

09:54:46 12 Q. What role did the Indian Agent
09:54:48 13 play in sending kids from Saugeen to residential
09:54:53 14 school?

09:54:53 15 A. You know what, I don't know if it
09:54:54 16 was him that sent the ones to residential
09:54:56 17 schools, per se, but however they got there I
09:55:01 18 don't know. That would be up to a different
09:55:04 19 branch of people I think maybe. I don't know.
09:55:05 20 Maybe the Indian Agent had a lot to do with that
09:55:07 21 too, I don't know.

09:55:08 22 But I know the system that was on that
09:55:11 23 side of the road was probably the Catholic
09:55:14 24 Church people, that's mostly what the
09:55:16 25 residential schools -- my father-in-law on my

09:55:21 1 wife's side went to residential school.

09:55:26 2 So it was not a good place. If you
09:55:31 3 ended up there you were lucky to get out of
09:55:33 4 there really I guess. So it wasn't a good view
09:55:37 5 in my mind at the time. That's not a good place
09:55:39 6 to be going, to get sent away by these people
09:55:43 7 because you never know what's going to happen.

09:55:46 8 Q. What kind of powers did the
09:55:47 9 Indian Agent have over the band council?

09:55:55 10 A. I'm pretty sure that they had a
09:55:56 11 lot of control over how the information that
09:55:59 12 council produced anyway, because the council I
09:55:59 13 don't think they ever got all the paperwork from
09:56:03 14 the Indian Agent that was presiding over the
09:56:06 15 council. Because I think they were in every
09:56:08 16 council meeting at the time, that was before I
09:56:09 17 got elected to council, when there was Indian
09:56:10 18 Agents.

09:56:13 19 Q. And how do you know this?

09:56:15 20 A. How do I know this? My
09:56:19 21 grandfather never brought a paper home from
09:56:21 22 council. Never a paper, always in his head.
09:56:27 23 That's how I know he never brought no paper
09:56:29 24 home.

09:56:30 25 Q. So in your interview with

09:56:31 1 Professor Brownlie you mentioned something about
09:56:33 2 the Indian Agent having all the history. Is
09:56:36 3 that what you meant by that?

09:56:39 4 A. Yeah, the history. See, over
09:56:42 5 here in Saugeen there was the Indian Agency
09:56:45 6 right up the road here.

09:56:47 7 There was an Indian Agency office plus
09:56:49 8 there was a house for the Indian Agent to live
09:56:51 9 in; and I guess that's all the information went
09:56:54 10 there. We had our own council hall and that
09:56:59 11 where the Band office sits now, the old one is
09:57:02 12 the old building that stands up higher. That
09:57:04 13 was back in the day, back in the day.

09:57:08 14 Q. When you say "back in the day"
09:57:13 15 you mean when you were --

09:57:15 16 A. I'm talking around the '50s and
09:57:17 17 '60s and --- yeah.

09:57:21 18 Q. You talked to Professor Brownlie
09:57:23 19 about a memory you have of your mom having a
09:57:25 20 ticket to leave the reserve?

09:57:26 21 A. She had a ticket -- see, my
09:57:28 22 mother and us two boys -- like, she was always
09:57:31 23 travelling. She went out to Alberta and then
09:57:33 24 we'd come back. Because we used to be able to
09:57:36 25 ride the train for free at a certain age. You

09:57:38 1 could go for free so you only had to pay one
09:57:40 2 fare. So we used to go that way on the train
09:57:43 3 because we could get on there for free.

09:57:45 4 So anyway, she had this ticket, I
09:57:47 5 remember that ticket. She would have to show
09:57:51 6 that ticket to somebody and we're going to go
09:57:54 7 somewhere. And I don't think it was red, I
09:57:56 8 think this one was yellow. It was a yellow
09:57:59 9 paper. I probably still have it at home
09:58:02 10 somewhere. If I looked I could probably find
09:58:04 11 it.

09:58:06 12 Q. And you're saying that she had
09:58:07 13 this ticket she had to show to someone to leave
09:58:09 14 the reserve?

09:58:11 15 A. Yeah. When she was off the
09:58:12 16 reserve and somebody stopped and asked her where
09:58:15 17 she's from she'd have to show them that paper,
09:58:17 18 like a policeman or something, because we went
09:58:20 19 to Owen Sound quite a bit.

09:58:24 20 Q. When did the Indian Agent leave
09:58:26 21 Saugeen?

09:58:27 22 A. When did they leave? I'm pretty
09:58:29 23 sure it was in the '60s. Probably around --
09:58:31 24 I'll say between '65 or maybe '68. '65 to '68,
09:58:38 25 around that time. That's what I think. Because

09:58:41 1 I left here in '72 and there was no Indian Agent
09:58:44 2 here then.

09:58:45 3 We had -- well, I guess I could say we
09:58:47 4 still had an agent but not that kind of an
09:58:49 5 agent. We had a lady named Ray Jones. She
09:58:52 6 still works here as -- she helps our old people
09:58:55 7 do paperwork and stuff like income taxes and
09:58:57 8 land stuff, and so she's still here.

09:59:00 9 But she worked in that agency under
09:59:02 10 the Indian Agents back in the day, so she's
09:59:05 11 still around here.

09:59:09 12 Q. But the Indian Agent that you
09:59:11 13 describe as having an office on the Band and a
09:59:13 14 home left in about the mid-'60s?

09:59:17 15 A. I'm thinking about that because
09:59:18 16 there were none here when I left to go to the
09:59:20 17 States because I didn't need a ticket to go
09:59:23 18 there.

09:59:24 19 Q. In your interview with Professor
09:59:25 20 Brownlie you mentioned the story about the
09:59:29 21 Indian Agent burning books?

09:59:34 22 A. Burning books, burning the
09:59:35 23 history, that's what he was doing really. All
09:59:38 24 the notes and documents we had. And the man
09:59:39 25 that told me that story about that was hired to

09:59:42 1 burn the books. The story that I heard from was
09:59:46 2 Marshall Nadjiwon, and he was the guy that was
09:59:49 3 burning the books, hired by the Indian Agent.
09:59:51 4 But I think he managed to save some of the books
09:59:54 5 from the fire when the agent wasn't looking.
09:59:58 6 But I think it all got burned up.

10:00:01 7 Q. So Marshall Nadjiwon is a member
10:00:04 8 of Nawash?

10:00:05 9 A. He's from Nawash Band, yeah.

10:00:07 10 Q. So do you know whether Marshall
10:00:09 11 was telling you the story of this happening at
10:00:12 12 Saugeen or at Cape Croker?

10:00:15 13 A. You know, I couldn't be 100
10:00:16 14 percent sure but I think he meant over here at
10:00:19 15 the agency in Saugeen when he was talking to me
10:00:21 16 about it. And I think they burned books up at
10:00:24 17 Cape too back in the day.

10:00:29 18 Q. But your knowledge about this is
10:00:30 19 just based on what Marshall --

10:00:32 20 A. It's secondhand. When I'm saying
10:00:34 21 it it's secondhand. It's not firsthand
10:00:37 22 knowledge, but I don't know why a man would lie
10:00:39 23 to me. What would be the purpose of lying to
10:00:41 24 me?

10:00:50 25 Q. So when the Indian Agent left in

1 the mid-'60s how did this affect the
2 community's ability to assert its rights?

3 A. Well, in the late '60s I would
4 say there was kind of like a -- I'm not going to
5 say liberty in general, but that kind of a
6 feeling you would have when you know you don't
7 have to worry too much probably about Indian
8 Agent. That would be my feeling. I can't speak
9 for everybody. My feelings would be freedom at
10 last. I don't know.

11 Q. When did the community begin to
12 be able to find legal counsel that could bring
13 its claims forward?

14 A. After the Indian Agent left. I
15 would say there was a resolution passed from
16 Saugeen and Cape Council in 1976. I think it
17 was a resolution kind of stating a land claim
18 for unsold, unsurrendered lands. I don't know
19 the exact wording of it but I have seen it.

20 I would say after the Indian Agent
21 left there was more freedom of the Indian people
22 I think. But back in the day when the Indian
23 Agent -- if I can add more to that?

24 Back in the day the Indian Agent used
25 to give us paint, I think -- I don't know, we

10:02:13 1 had three or four different colours of houses we
10:02:16 2 could paint your house. White, black or red,
10:02:17 3 those were the three colours they gave us for
10:02:18 4 paint back in the day.

10:02:20 5 And then I don't know where they got
10:02:22 6 the money, but sometimes they would bring food,
10:02:25 7 not food-food but it was like Spam in a can,
10:02:30 8 that stuff. You know, like that kind of food?
10:02:32 9 They would drop a case off at every house. I
10:02:34 10 don't know if anybody remembers them days but I
10:02:37 11 do.

10:02:40 12 So I don't know if that was control or
10:02:42 13 not. Maybe that was rations, I don't know what
10:02:47 14 you call that, anyway.

10:02:48 15 Q. When you were growing up what was
10:02:50 16 the relationship like between the First Nations
10:02:53 17 and the communities around it, the neighbours?

10:03:02 18 A. Not much different than it is
10:03:04 19 today I don't think.

10:03:06 20 There was always that -- oh, there's
10:03:07 21 an Indian in town, something like that. I don't
10:03:09 22 know what you call it, but something different.

10:03:13 23 There was a lot of people didn't even
10:03:16 24 look at you walking down the street. You say hi
10:03:19 25 to them and they look away like you're not

10:03:21 1 supposed to be there or something like that. I
10:03:22 2 don't know. I encountered that all the time,
10:03:24 3 even today. I don't worry about it. It's their
10:03:30 4 problem, not mine.

10:03:33 5 Q. So would you say it's -- you felt
10:03:36 6 that there was discrimination at that time?

10:03:39 7 A. What?

10:03:39 8 Q. People treated you differently?

10:03:41 9 A. I don't know if they treated us
10:03:43 10 differently but we were different anyways. I
10:03:46 11 mean, we were not White people, that's for sure.
10:03:49 12 We were Indian people so I guess they knew there
10:03:53 13 was a difference.

10:04:04 14 Q. Did that impact at all whether
10:04:06 15 you were comfortable leaving the reserve?

10:04:08 16 A. Not really, no. It didn't bother
10:04:11 17 me too much.

10:04:12 18 Q. What about for other people?

10:04:13 19 A. I'm not too sure. I can't speak
10:04:15 20 for them. They weren't with us, we'd go
10:04:17 21 ourselves. Whenever they went they went
10:04:19 22 themselves. I don't know what their take was on
10:04:21 23 -- or what their perception was on non-Natives
10:04:25 24 or the environment they were in, I don't know.

10:04:29 25 Q. So let me shift to talking a bit

10:04:31 1 about the fishing and asserting fishing rights
10:04:39 2 in the territory. What can you tell us about
10:04:41 3 how Saugeen has asserted its rights to fish in
10:04:44 4 the territory?

10:04:45 5 A. How we asserted our rights?
10:04:48 6 After '91 is when we started the first protest.
10:04:52 7 We had a protest, Nawash in Saugeen, up in
10:04:56 8 Howdenvale, that's up on the Peninsula. I don't
10:04:58 9 know if I could point it out but it's up past
10:05:00 10 Chief's Point.

10:05:01 11 Q. There's another map on your
10:05:03 12 right, which is Exhibit Q.

10:05:05 13 A. Yeah, that will help me a little.
10:05:14 14 Around here. That would be A2.

10:05:17 15 THE COURT: A2? On the coastline.

10:05:19 16 THE WITNESS: In that vicinity.

10:05:21 17 THE COURT: Thank you, sir. And that
10:05:26 18 was Exhibit Q. I think you mentioned that,
10:05:29 19 counsel?

10:05:32 20 MS. GUIRGUIS: Yes.

10:05:32 21 BY MS. GUIRGUIS:

10:05:32 22 Q. So you had a protest up at --

10:05:35 23 A. Yeah, and what the protest was
10:05:36 24 about at that time -- because the Ministry would
10:05:43 25 bother us if we would go down to the river to

10:05:43 1 fish here with spears. Like, we fish with
10:05:43 2 spears. We have that right to fish, harvest, ay
10:05:47 3 way we want. Like, which is more -- I think
10:05:50 4 spearing a fishing is actually better than
10:05:52 5 playing with it myself.

10:05:55 6 Anyway, what we did is we had a
10:05:58 7 protest because we were fishing for commercial
10:06:00 8 fish. And we wanted to have commercial rights,
10:06:02 9 which were never recognized by the Government of
10:06:05 10 Canada. We had that right ourselves. We knew
10:06:07 11 we had that right.

10:06:08 12 So in 1991 we organized a protest to
10:06:11 13 go to Howdenvale. I went to Howdenvale from
10:06:14 14 Saugeen, me and my wife and a couple of other
10:06:17 15 guys, they're both dead now. But we went up and
10:06:19 16 the Chief of Cape Croker was up at Howdenvale,
10:06:23 17 Ralph Akiwenzie. And there was a whole bunch of
10:06:25 18 them up there. I had no boat, I had no net. We
10:06:28 19 never fished here before with gill nets, we
10:06:30 20 weren't allowed.

10:06:31 21 Anyway, we went up there and they had
10:06:33 22 nets because they had a license of some sort to
10:06:35 23 fish in Georgian Bay, so they brought all that
10:06:37 24 over.

10:06:37 25 And what our protest was about, we

1 notified the Ministry we're going to go
2 fishing -- I think it was October 8th, 1991.
3 We're going to go fishing and we want you to
4 come and arrest us. We're going fishing.
5 Nobody showed up. What a disappointment. The
6 day you want to see a Ministry of Natural
7 Resources person they don't show up.

8 So they didn't show up. So we had to
9 keep coming back and they still never came.

10 But after that we went to court. And
11 we went to court and we finally won in our court
12 that we had the right of commercial fish.

13 Q. So let me just back up on that a
14 bit. You said that the protest was in 1991?

15 A. Yeah.

16 Q. You notified the Ministry?

17 A. That we're going fishing.

18 Q. That you were going fishing --

19 A. Come and arrest us.

20 Q. -- hoping that they were going to
21 come and arrest you?

22 A. We were hoping for that so we'd
23 have our day in court faster, quicker, we were
24 hoping.

25 Q. And the court date that you're

10:07:37 1 talking about, the court decision you're talking
10:07:38 2 about came out in 1993?
10:07:40 3 A. 1993, yeah.
10:07:41 4 Q. That's the Jones and Nadjiwon
10:07:43 5 decision?
10:07:43 6 A. The Jones, Nadjiwon, yeah.
10:07:45 7 Q. From when they were charged in
10:07:47 8 1989, correct?
10:07:48 9 A. Yeah, that was overfishing their
10:07:50 10 license, so they said.
10:07:56 11 Q. So have you ever been charged for
10:07:59 12 fishing in the territory?
10:08:00 13 A. Yes, I have.
10:08:01 14 Q. And around when was that?
10:08:03 15 A. Probably about '94, or '93, '95,
10:08:08 16 somewhere around there. I had two charges.
10:08:10 17 Q. What were you charged with?
10:08:12 18 A. Not reporting my fish catch to
10:08:14 19 the Ministry, and I think another one was when I
10:08:19 20 sold fish I didn't report that to the Ministry
10:08:21 21 because I'm selling it on the reserve, they got
10:08:23 22 no business here really. That was my view, they
10:08:26 23 didn't have any business here.
10:08:28 24 Q. And what happened with those
10:08:29 25 charges?

10:08:30 1 A. I went to court and -- at that
10:08:34 2 time there was a little bit of whatever is going
10:08:37 3 on, but I didn't have a lawyer at that time. So
10:08:39 4 I went to court.

10:08:42 5 And so it was the Ministry that
10:08:46 6 charged me, MNR, Natural Resources. And the
10:08:50 7 judge and Crown, I guess it's the Crown that
10:08:53 8 works with the judge, and myself went into a
10:08:55 9 room. And the Ministry had a lawyer and he went
10:08:59 10 in that same room with us. And the judge was
10:09:03 11 talking about the charges and I says, I told the
10:09:06 12 judge, I said, I have to plead guilty, I said,
10:09:09 13 because I can't afford a lawyer.

10:09:11 14 And the judge said, I don't want to
10:09:13 15 hear that. End of the meeting. And so we went
10:09:17 16 back out to the courtroom. So I just pled
10:09:19 17 guilty, I had no choice. Forced to plead
10:09:23 18 guilty. So that's what I did.

10:09:25 19 And then I got a fine. One was -- I
10:09:29 20 think one was for \$500 and one was for just a
10:09:32 21 real small amount of money; but on the first
10:09:34 22 fine I asked for time to pay it and on the
10:09:37 23 second one I asked for the same thing, time to
10:09:39 24 pay, which they gave me.

10:09:41 25 So I wasn't -- in my own mind I knew I

1 wasn't guilty of any of this stuff but I had to
2 plead guilty because I was in the court. I had
3 no choice at that time. I wasn't happy about
4 it.

5 Q. I want to go back to the 1980s
6 for a second and take you to some documents
7 about fishing. I'd like to take you to three
8 different documents now which have been
9 circulated to counsel and are in the database.
10 It's going to show up on the screen, I believe.
11 The first one is number SC0103.

12 Are you familiar with this document,
13 Mr. Ritchie?

14 A. I've seen it.

15 Q. Can you describe what it is?

16 A. It's a BCR requesting for a
17 fishing license, or to fish with gill nets for
18 fish in the lake, Lake Huron.

19 Q. So "BCR" is Band Council
20 Resolution?

21 A. That is a Band Council
22 Resolution, yes, it is.

23 Q. And it's dated January 5th, 1981,
24 correct?

25 A. It is, yes, '81.

10:11:08 1 Q. And you're familiar with the
10:11:10 2 subject matter of this document?

10:11:12 3 A. Yes, I know what it is but I'm
10:11:14 4 kind of -- I think there was no response to this
10:11:18 5 from the government, I don't think. But there
10:11:21 6 might have been.

10:11:24 7 MS. GUIRGUIS: Your Honour, I would
10:11:25 8 like to add this as an exhibit.

10:11:27 9 THE COURT: Any objection? No.
10:11:29 10 Mr. Registrar?

10:11:33 11 THE REGISTRAR: Exhibit number 3569.
10:11:35 12 EXHIBIT NO. 3969: BCR (Band Council
10:11:36 13 Resolution) dated January 5, 1981.
10:11:36 14 Document SC0103

10:11:38 15 BY MS. GUIRGUIS:

10:11:38 16 Q. Mr. Ritchie, to your knowledge
10:11:40 17 after this BCR was passed on January 5th, 1981
10:11:44 18 was Saugeen able to secure a license from the
10:11:47 19 Minister?

10:11:47 20 A. No, we weren't.

10:11:52 21 Q. If I can turn to the next
10:11:53 22 document, which is SC0102?

10:12:01 23 This is a letter from James Mason, who
10:12:03 24 you mentioned earlier?

10:12:05 25 A. Yeah.

10:12:06 1 Q. Who was he? Mr. Ritchie, who was
10:12:17 2 James Mason?
10:12:19 3 A. James Mason was the Chief. Yes,
10:12:21 4 he was. He was requesting a license at that
10:12:22 5 time too so we could fish in the lake.
10:12:26 6 Q. That's a letter for -- requesting
10:12:27 7 a license. And what's the date of the letter?
10:12:31 8 A. The date of that letter is March
10:12:33 9 1st, 1984, it looks like to me.
10:12:36 10 Q. And are you familiar with the
10:12:37 11 issue that he was raising in this document?
10:12:40 12 A. I know of the issue. Yes, I do,
10:12:42 13 yeah.
10:12:45 14 Q. Your Honour, I would like to add
10:12:47 15 this as the next exhibit.
10:12:49 16 THE COURT: Any objection? No.
10:12:52 17 THE REGISTRAR: Exhibit Number 3570.
10:12:55 18 EXHIBIT NO. 3970: Letter requesting
10:12:57 19 license, dated March 1, 1984.
10:12:57 20 Document SC0102.
10:12:59 21 BY MS. GUIRGUIS:
10:12:59 22 Q. Do you know whether or what
10:13:01 23 response Saugeen received to this from the
10:13:03 24 Ministry?
10:13:04 25 A. I don't think -- if there was a

10:13:06 1 response. We didn't get no license to fish,
10:13:08 2 that's for sure.

10:13:12 3 Q. And then the third document that
10:13:13 4 I'd like to turn to, SC0104. It's also a BCR
10:13:21 5 from Saugeen about nine months later, dated
10:13:26 6 December 3rd, 1984. Are you familiar with this
10:13:29 7 document? This one might be a bit harder to
10:13:33 8 read.

10:13:33 9 A. It's a little fuzzy, this one.
10:13:37 10 But yeah, I know what it is.

10:13:38 11 Q. What is this document about?

10:13:46 12 A. The same thing, requesting a
10:13:48 13 license to fish. This time it went to Oceans
10:13:55 14 and Fisheries, I think, this one. But it's the
10:13:57 15 same thing, asking for a fishing license.

10:14:01 16 Q. Your Honour, I would like to add
10:14:02 17 this has next exhibit.

10:14:05 18 THE COURT: Any objection? No.

10:14:08 19 THE REGISTRAR: Exhibit Number 3971.

10:14:10 20 EXHIBIT NO. 3971: BCR (Band Council
10:14:10 21 Resolution) dated December 3, 1984.

10:14:10 22 Document SC0104

10:14:16 23 BY MS. GUIRGUIS:

10:14:17 24 Q. Mr. Ritchie, I would like to look
10:14:18 25 at the third paragraph down.

10:14:21 1 A. You have to raise that up then.

10:14:29 2 Q. It's the part of the BCR that
10:14:31 3 says:

10:14:32 4 "Whereas we are denied --"

10:14:35 5 A. "[...]access to the fisheries,
10:14:36 6 the resources adjacent to our lands.
10:14:38 7 And the right to fish for food is an
10:14:41 8 inherent right which we practice and
10:14:46 9 we cannot sell our surplus legally."

10:14:54 10 Q. Can you explain what the council
10:14:56 11 meant when they said they were denied access to
10:14:58 12 the fishing resource?

10:14:59 13 A. Exactly what it says, we were not
10:15:00 14 allowed to fish because -- you know, it's
10:15:05 15 actually -- it's a double-edged sword, those
10:15:08 16 requests.

10:15:09 17 There's good in it that we were
10:15:11 18 persistent in pursuing our rights to the
10:15:13 19 fishery, but it as a good thing they didn't --
10:15:16 20 that they didn't approve it because that forced
10:15:19 21 us to court.

10:15:20 22 Well, we won the court case in 1993
10:15:24 23 and ended up with a hundred times more than
10:15:26 24 what's on that paper because we owned the
10:15:28 25 territory. We won on that principle.

1 We had always had that right but
2 always oppressed so you couldn't exercise your
3 rights. That was the problem.

4 So I'm kind of glad, like, it was good
5 that we pursued the right and it's good that we
6 were denied the right, in a sense of speaking,
7 after the court, which ruled in our favour
8 because they knew we were right all along.

9 We always had those rights, and we
10 still have those rights, hunting and fishing in
11 our territory. That's my view. The government
12 has a different view.

13 Q. So when you say "our
14 territory" --

15 A. All the green that you see and
16 the yellow that you see.

17 Q. On Exhibit P?

18 A. On this map.

19 Q. So after the fishing decision in
20 1993, you continued to serve on council?

21 A. Say that again.

22 Q. You were still on Band Council
23 after 1993?

24 A. 1993? Yes, I was.

25 Q. That's after the fishing trial?

10:16:31 1 A. After the fishing trial, yeah.

10:16:33 2 Q. And when did the council start to
10:16:34 3 advance these claims respecting the territory in
10:16:38 4 court?

10:16:41 5 A. I think the land claims came
10:16:42 6 after the fishing trial, really. I think that's
10:16:45 7 the process. I can't hardly remember all that
10:16:47 8 in detail, but I know, like, we did file land
10:16:50 9 claims after the fishing trial.

10:16:53 10 It's only because it was after the
10:16:54 11 fishing trial that we got it filed. It was
10:16:57 12 always in pursuit, ever since day one. Since
10:17:00 13 1836 there have been Indians going back to
10:17:03 14 Ottawa to try and find out what's going on here.
10:17:06 15 Like, you're not living up to the promises in
10:17:08 16 your Treaty. You never have. Still even today
10:17:11 17 they haven't. Because the promises are written
10:17:13 18 right on black and white paper, you can't
10:17:16 19 mistake it. They never lived up to it. We're
10:17:20 20 still here though. Forever.

10:17:27 21 Q. Just have a last few questions
10:17:28 22 about hunting, which you've already mentioned.
10:17:34 23 Do you hunt in the territory?

10:17:39 24 A. Well, I don't hunt as much
10:17:41 25 anymore because it's getting a little too hard

10:17:43 1 to get through the bushes now. You know, like,
10:17:45 2 you get old things just work as good.

10:17:50 3 Q. But when you did hunt did you
10:17:52 4 hunt all over the territory?

10:17:53 5 A. Most of it, yeah.

10:17:55 6 Q. And what do you hunt?

10:17:57 7 A. Deer, mostly deer.

10:17:59 8 Q. When did you start hunting?

10:18:01 9 A. When I was 11.

10:18:04 10 Q. And have you ever been charged
10:18:06 11 for hunting?

10:18:07 12 A. No. Although -- no, I never was.

10:18:24 13 Q. Okay. Thank you, Mr. Ritchie.
10:18:26 14 Those are all my questions for now.

10:18:29 15 THE COURT: Thank you, counsel. Which
10:18:30 16 counsel for Canada will be asking this gentleman
10:18:32 17 questions?

10:18:35 18 MR. BEGGS: Michael Beggs.

10:20:14 19 THE COURT: Please go ahead. When you
10:20:15 20 begin, Mr. Beggs, just make sure that this
10:20:18 21 gentleman can hear you properly.

10:20:25 22 Is the microphone not on? Tap it,
10:20:38 23 sir. No? Sir, why don't you come around and
10:20:39 24 use the same podium. Thank you.

10:20:40 25 CROSS-EXAMINATION BY MR. BEGGS:

10:20:58 1 Q. Hello, Mr. Ritchie. Can you hear
10:21:01 2 me okay?
10:21:01 3 A. I can hear you a little bit, yes,
10:21:03 4 go ahead.
10:21:04 5 Q. Should I speak louder?
10:21:06 6 A. We're good right there. Right
10:21:07 7 there was good.
10:21:08 8 Q. Now, Mr. Ritchie, you told us
10:21:15 9 this morning about your grandfather Oliver
10:21:18 10 Nashkawa, is that right?
10:21:20 11 A. That's right.
10:21:21 12 Q. And he was the grandfather that
10:21:25 13 shared knowledge with you as you were growing
10:21:29 14 up?
10:21:29 15 A. He is, yes.
10:21:30 16 Q. Is he the same one who sat on
10:21:32 17 council in the '50s and '60s that you
10:21:36 18 mentioned?
10:21:37 19 A. He's the same one, yeah.
10:21:39 20 Q. And do you know who -- or would
10:21:43 21 you be able to tell us who his parents were?
10:21:46 22 A. Angus Nashkawa would be his
10:21:52 23 father but I don't know who his mother was
10:21:55 24 because she wasn't here. Angus was though.
10:22:03 25 Q. Do you know if your family is

1 part of a Clan?

2 A. I don't think our family were in
3 a Clan system ourselves, personally. I don't
4 remember them mentioning Clan anyway.

5 Q. Okay. When you yourself were
6 growing up how far did you go in school?

7 A. Well, let me tell you that story,
8 that's another good story. I went to school up
9 to grade 8 on the reserve; and then when I hit
10 grade 9 they send me to Walkerton, that's about
11 an hour from here if you drive -- you probably
12 know where that is -- to school.

13 And there's a school in Owen Sound, a
14 high school, and there's one in a Port Elgin, a
15 high school. But they sent me, just me, to
16 Walkerton, and another guy from Cape Croker, his
17 name was Joe Solomon. We ended up going to
18 Walkerton school.

19 So I went to grade 9. I quit. I
20 said, I ain't doing this. Why do I have to do
21 this? So I just quit.

22 Q. Do you know of anyone before you
23 from Saugeen that went to high school?

24 A. A lot of them went to high school
25 but they didn't go to Walkerton.

10:23:23 1 Q. Now, while you were on council
10:23:26 2 did you deal with something called the Duluth
10:23:29 3 Declaration?

10:23:30 4 A. Yes, sir, I did.

10:23:32 5 Q. Can you tell us what that was?

10:23:34 6 A. It was a declaration of
10:23:34 7 sovereignty declared in Duluth, Minnesota, in
10:23:40 8 1997 or '96, somewhere around there, that we had
10:23:45 9 sovereignty over the water in our territory.
10:23:46 10 That was the Duluth Declaration.

10:23:49 11 Q. And was it about the same -- if
10:23:49 12 you look at this map, Exhibit P, is it about the
10:23:53 13 same area that was in -- it's in the red square
10:23:57 14 that was claimed?

10:24:02 15 A. The red square?

10:24:03 16 Q. There's a sort of a red square
10:24:05 17 between the dark blue and light blue on this
10:24:08 18 map. Is that what was claimed in the Duluth
10:24:11 19 Declaration?

10:24:11 20 A. I would say it was all that you
10:24:12 21 see on that map. Ojibwe territory, that's --

10:24:15 22 Q. Even past the red lines?

10:24:17 23 A. Yeah. But that was our claim to
10:24:22 24 the water, to the international boundary.
10:24:23 25 Because on the other side of the lake there's

1 Indians over there too and they're Ojibwes too,
2 most of them are but there's Potawatomi there
3 too. There's Potawatomi here too.

4 But, anyway, that was our claim to
5 fame is that declaration of sovereignty. Half
6 and half, we go half way everywhere on that side
7 because they have to have their rights
8 recognized by us as well because they recognize
9 our rights.

10 Q. And the Duluth Declaration, was
11 that something done in conjunction with the
12 Nawash First Nation?

13 A. Actually, that was a Saugeen
14 initiative, that one, although the invite was
15 there.

16 Q. I'm sorry?

17 A. Although the invite was there.

18 Q. Yes. And did -- was any special
19 permission sought from women of Saugeen for the
20 Duluth Declaration as keepers of the water?

21 A. I didn't really look on the
22 resolution. There's women's names signed on to
23 that resolution that okayed the declaration at
24 that time. So the women would have the voice of
25 the women, I would assume that at that time.

10:25:40 1 Q. Through council members --

10:25:40 2 A. Because any objection we would
10:25:41 3 have heard about it before we went. There was
10:25:43 4 no objection.

10:25:44 5 Q. Okay. Now, you mentioned spear
10:26:00 6 fishing on lakes and rivers. I take it on Lake
10:26:03 7 Huron a different type of fishing is used, is
10:26:05 8 that right?

10:26:09 9 A. Can I have that question again?

10:26:10 10 Q. How do you fish on Lake Huron?

10:26:13 11 A. After '93? '91, '93?

10:26:16 12 Q. Well, I'm asking you about the
10:26:18 13 manner. Like, not spear fishing I guess? Do
10:26:21 14 you use nets? Or how do you fish in Lake Huron?

10:26:25 15 A. When we went commercial fishing
10:26:26 16 we had nets, gill nets, we had tugs, we had --
10:26:32 17 we even had some non-Natives on the boat showing
10:26:34 18 us how to fish because we didn't do it before.
10:26:36 19 So they helped us out quite a bit when they lost
10:26:39 20 their fishing.

10:26:40 21 Q. And after 1991 did you yourself
10:26:42 22 have boats on Lake Huron?

10:26:45 23 A. In Saugeen we got boats after
10:26:47 24 that, yes, we did.

10:26:48 25 Q. And did you go out fishing on

10:26:49 1 those boats?

10:26:51 2 A. We did, yes. I did too, yeah.

10:26:53 3 Q. And how far did you go out on

10:26:54 4 those boats?

10:26:56 5 A. You could almost see Michigan

10:26:57 6 from where I was.

10:26:59 7 Q. Oh yeah?

10:26:59 8 A. If I was a little taller I would

10:27:01 9 have seen Michigan.

10:27:08 10 Q. And in the winter did you do any

10:27:10 11 ice fishing on Lake Huron?

10:27:12 12 A. Ice fishing?

10:27:13 13 Q. Yes, cutting holes in the ice,

10:27:15 14 sir?

10:27:16 15 A. No, I never ice fished on a lake

10:27:17 16 like that. Not me, no. But there might have

10:27:23 17 been people before me that did, but I sure

10:27:26 18 didn't. Ice fished on Chesley Lake, a smaller

10:27:32 19 lake.

10:27:32 20 Q. Is that different from doing it

10:27:34 21 on Lake Huron?

10:27:36 22 A. It would have been, yes, way

10:27:37 23 different, yes.

10:27:37 24 Q. Is it more dangerous or --

10:27:40 25 A. More safer for sure.

10:27:43 1 Q. More safer.

10:27:44 2 A. Yeah.

10:27:56 3 Q. Now, my friend Ms. Guirguis

10:27:59 4 showed you the statement that you gave -- or the

10:28:02 5 interview you did with Professor Brownlie. Did

10:28:06 6 you know that Professor Brownlie wrote a report

10:28:09 7 for the court?

10:28:10 8 A. It's right there, yeah.

10:28:12 9 Q. Have you read the report by

10:28:13 10 Professor Brownlie?

10:28:14 11 A. I've read my statement that I

10:28:16 12 made to him. I've read that, yeah.

10:28:19 13 Q. But you haven't seen the report

10:28:21 14 that they wrote for the court?

10:28:23 15 A. No, I didn't. I didn't see the

10:28:25 16 report.

10:28:31 17 Q. She makes mention of you, and I'd

10:28:33 18 like to call up the report. It's currently

10:28:36 19 SC0067. Yes, that's the one. And I'd like to

10:28:49 20 take -- go to page 60 of the report. This is

10:29:20 21 the one and it's actually a footnote that I

10:29:22 22 would like to take you to, 153.

10:29:33 23 If my friend doesn't mind me reading

10:29:36 24 over her shoulder.

10:29:37 25 So in footnote 153 it mentions:

10:29:43 1
10:29:45 2
10:29:48 3
10:29:52 4
10:29:55 5
10:30:05 6
10:30:07 7
10:30:08 8
10:30:11 9
10:30:12 10
10:30:14 11
10:30:18 12
10:30:20 13
10:30:23 14
10:30:25 15
10:30:28 16
10:30:28 17
10:30:29 18
10:30:31 19
10:30:35 20
10:30:37 21
10:30:37 22
10:30:40 23
10:30:42 24
10:30:43 25

"Jim Ritchie, interviewed by
Jarvis Brownlie."
Which you've already talked about.
Actually, maybe I'd better go up to the text
where 153 starts.
Okay. It said -- in the middle at the
very top it says:
"Mr. Ritchie also made the
connection between the departure of
Indian Agents and the direct assertion
by the Saugeen Ojibwe over authority
over their territory because if you'll
notice after they left then they made
the Band Council Resolution, joint
resolution in '76 to assert over their
territory."
And I think that's the resolution you
were telling us about this morning, is that
right? You mentioned this morning?
A. Yeah, I did mention that this
morning. That's --
Q. And if we can go to footnote now,
153, the second sentence says:
"Mr. Ritchie is probably
referring to a joint council

10:30:45 1 resolution in 1976 that asserted
10:30:48 2 ownership of the beds of lakes and
10:30:49 3 streams."

10:30:52 4 And I just wanted to clarify, she says
10:30:54 5 "probably", but that's what you were in fact
10:30:57 6 referring to?

10:30:58 7 A. That's what I was referring to,
10:30:59 8 yes.

10:30:59 9 Q. And if I can, just to be clear,
10:31:02 10 call up Exhibit 3810?

10:31:05 11 MS. GUIRGUIS: Can we make this an
10:31:08 12 exhibit?

10:31:09 13 BY MR. BEGGS:

10:31:09 14 Q. Oh, yes, sure. We made the last
10:31:11 15 time an expert report was referred to as a
10:31:14 16 lettered exhibit.

10:31:16 17 THE COURT: Is it the same report,
10:31:17 18 sir?

10:31:18 19 MR. BEGGS: No, it was -- we made a
10:31:19 20 report of Professor Hinderaker an exhibit I
10:31:23 21 believe -- a lettered exhibit, and I guess
10:31:24 22 that's the manner to deal with it?

10:31:27 23 THE COURT: Well, we'll have to do
10:31:28 24 some of the mechanics later I think, Mr.
10:31:30 25 Registrar, but can we assign a letter to it now

10:31:32 1 and then --

10:31:32 2 THE REGISTRAR: Yes, we can, Your

10:31:34 3 Honour.

10:31:34 4 THE COURT: -- we'll load it later?

10:31:37 5 THE REGISTRAR: I already loaded it.

10:31:38 6 THE COURT: You did? And what letter,

10:31:38 7 sir?

10:31:38 8 THE REGISTRAR: It's lettered Exhibit

10:31:40 9 Y.

10:31:41 10 THE COURT: Okay, letter Y. Can you

10:31:42 11 just fully describe the report, sir, with the

10:31:45 12 date of the report included in your description,

10:31:47 13 please.

10:31:48 14 BY MR. BEGGS:

10:31:48 15 Q. Sure.

10:31:53 16 Can you flip to first page?

10:31:55 17 THE COURT: Well, we don't need to.

10:31:56 18 You just need to say it out loud, unless you

10:31:58 19 don't know, sir.

10:31:59 20 MR. BEGGS: I don't remember the full

10:32:00 21 name of it. It's called "The long road to

10:32:02 22 claims."

10:32:02 23 THE COURT: Is the date --

10:32:02 24 MR. BEGGS: And it's -- "The long Road

10:32:02 25 to Land Claims, The Historical Development of

1 the Saugeen Ojibwe's Capacity to Challenge
2 Governments on Treaty and Land Issues." And
3 it's originally dated November 2017 but revised
4 June 2018.

5 THE COURT: Thank you.

6 EXHIBIT NO. Y: Document SC0067.

7 Report titled "The long Road to Land
8 Claims, The Historical Development of
9 the Saugeen Ojibwe's Capacity to
10 Challenge Governments on Treaty and
11 Land Issues", dated November 2017,
12 revised June 2018, authored by
13 Dr. Brownlie.

14 MR. BEGGS: Thank you, Your Honour.

15 BY MR. BEGGS:

16 Q. If I could go to Exhibit 3810?

17 THE COURT: Can you repeat that,
18 please?

19 BY MR. BEGGS:

20 Q. Exhibit 3810. This might be a
21 bit difficult to see but would this be the
22 resolution that you're talking about?

23 A. That would be probably the
24 resolution. I would think so, yes, 1976.

25 Q. Okay. Thank you.

1 Now, in your interview with Professor
2 Brownlie you make reference to the Saugeen
3 fighting the Mohawks?

4 A. Fighting with the Mohawk?

5 Q. Yes.

6 A. That's right.

7 Q. And when would that be?

8 A. Oh, that's way back in the day.
9 That's before my time.

10 I would say that would be around the
11 16th century or 1650, 1676, somewhere around
12 there. Because the Mohawks were trying to push
13 their way over to Minnesota, Michigan. So the
14 Potawatomi, the Odawas and all them got
15 together, and the Ojibwes from that time, pushed
16 the Mohawk right back to Manhattan main Street.
17 Well not Manhattan but in New York is what I'm
18 saying, at that time.

19 Q. And perhaps I could call up the
20 interview again, it's Exhibit 3918. And on page
21 25, it's almost near the end -- you just went
22 past it. Can you go back up again? A few more
23 lines, okay.

24 You're basically talking at this point
25 about how big the community is growing and has

1 been. And the line "JR", which I imagine is
2 James Ritchie, you, says:

3 "No, we had" --

4 The question was:

5 "Do you feel the community here
6 grew slowly because of lack of
7 economic opportunity?"

8 And your answer was:

9 "No, we had wars back in the day
10 too."

11 And then I guess there's some question
12 about what was said but it says "ours wars",
13 Professor Brownlie says:

14 "You mean way back before
15 treaties?"

16 And then you say again:

17 "Yeah, we had wars. We had
18 different other things happen."

19 Is that the war with the Mohawks or
20 was it -- were there other wars that you were
21 speaking of?

22 A. Well, I imagine -- well, mostly
23 the Mohawks would be the ones that were pushing
24 their way around that world at that time.

25 But I think there was a battle right

1 down the hill here, I don't think I know there
2 was, at the edge of the Saugeen River on our
3 side here the Mohawks come to fight there too.

4 If you went there today if you could
5 dig deep enough you could find arrowheads still
6 there.

7 Q. Oh, really?

8 A. Yeah, they're still there. But
9 the bones I think we piled them up at Skull
10 Mound so you might have a hard time finding
11 bones.

12 Q. And my last question -- actually,
13 I have two more questions. If I could take you
14 to page 27 of your interview, it's near the very
15 end. If you could scroll down a bit?

16 So in the paragraph at the bottom
17 there, you've been asked -- the question was:

18 "I was thinking about changes
19 even in the law in Canada with court
20 judgments and so on that are -- have
21 you seen some change over your --"

22 And your answer is:

23 "Yeah, yeah, they changed the
24 laws. They changed the laws, they
25 changed the laws, they changed the

10:37:37 1 laws. Forever changing the laws to
10:37:39 2 suit the day. But you can never
10:37:41 3 change justice. Whatever was justice
10:37:43 4 in 1836 that must be the justice
10:37:46 5 that's applied to a court case when we
10:37:49 6 go to court. It has to be the law of
10:37:51 7 that day, what was intended in that
10:37:53 8 day. And you gotta take into account,
10:37:56 9 what did the Indian know about the
10:37:58 10 English language back in 1836 in
10:38:01 11 Saugeen? What did they know?"

10:38:02 12 And then you start talking about
10:38:06 13 English today. Do you recall that statement?

10:38:14 14 A. Yes, I remember that.

10:38:18 15 Q. Could you tell us what you meant
10:38:19 16 by taking into account what was justice in 1836?

10:38:24 17 A. What I was kind of referring to
10:38:25 18 in that statement about changing the laws and
10:38:27 19 stuff was 1836 there was no Indian Act; 1924,
10:38:31 20 there was no Lands Act for Ontario either. So
10:38:34 21 they've changed all of the meanings of all of
10:38:37 22 the things all the way through the process.

10:38:40 23 So those things were not there in 1836
10:38:43 24 because that was pre-Confederation, right? So
10:38:45 25 all those things were added on. It's like they

10:38:48 1 had -- if you had a pile of papers, here's your
10:38:51 2 Treaty sitting there. There's nothing on it,
10:38:54 3 it's just a treaty; and then you keep piling
10:38:57 4 papers on top of it; at the end of the day you
10:39:00 5 can't find the treaty anymore; you buried it so
10:39:03 6 far under the pile you don't acknowledge what's
10:39:06 7 written there no more.

10:39:06 8 You know, you gotta look at -- you
10:39:07 9 have to go back to that day, to the words that
10:39:09 10 are written on them papers to understand and
10:39:13 11 understand the law of that day too.

10:39:14 12 And a promise in that day, like, if
10:39:17 13 you said "forever" to me that's not like it's
10:39:20 14 going end tomorrow. That's not like 18 years
10:39:23 15 after 1836 to '54, that isn't forever.

10:39:27 16 I think when I married my wife I
10:39:29 17 promised I'd stay with her forever. I've been
10:39:32 18 with her for over 38 years. So that's a promise
10:39:35 19 forever, not 18 years. So those are things that
10:39:38 20 I'm looking at.

10:39:39 21 If you use words like that you must
10:39:41 22 fulfill those words that you use. I would say
10:39:44 23 that's the Crown in right of Canada. That's my
10:39:47 24 view on the whole thing.

10:39:48 25 So everything has been piled on top of

1 our Treaty so you can't hardly see them anymore.
2 And you don't really acknowledge it because
3 those people that buried them don't remember
4 what's written in there. They try not to
5 remember it anyways but it's still there, you
6 can't take it away.

7 That's where I'm coming from.

8 Q. Thank you.

9 And the last question I promised
10 was -- if I could -- there's a document in the
11 database, it's not yet an exhibit. It's SC0121,
12 it's a Federal Court action.

13 So this is a Federal Court action from
14 1991, and I believe you were on council at that
15 point, in 1991?

16 A. I was on council at that time.

17 Q. So you're the James Ritchie --

18 A. I'm the James Ritchie listed
19 there.

20 Q. And this is a -- do you recall
21 this action dealing with -- it deals with Hill
22 Street and Treaty 72? Does that sound familiar?

23 A. Yeah. I would -- I was at that
24 meeting when they made that resolution but
25 that's a refresher. I have to go back and

1 rethink this one. It's a new document now to
2 me. That's '91, '81, 2001, it's almost 30 years
3 old that paper.

4 Q. Yes.

5 A. So I'd have to refresh my memory
6 on what was -- what actually transpired to bring
7 that forward.

8 Q. Do you know whether that action
9 has been stayed or what happened to it?

10 A. This document?

11 Q. This one, yeah. That case.

12 A. Well, after '91 I know the Indian
13 Agent didn't take it so it must be here
14 someplace.

15 Q. Okay.

16 MS. GUIRGUIS: Your Honour, could
17 counsel explain what "stayed" means?

18 THE COURT: I can't hear you.

19 MS. GUIRGUIS: Just asking if we could
20 clarify what "stayed" means since that's legal
21 language and we're not sure --

22 THE COURT: For the witness? Just
23 give me a moment.

24 I think what the gentleman said was
25 that the action must be here someplace, which

10:42:27 1 sort of suggested to me that he might know what
10:42:30 2 that means. But certainly, Mr. Beggs, can you
10:42:33 3 explain what you mean by "stay"?

10:42:36 4 BY MR. BEGGS:

10:42:36 5 Q. Yes, what I meant was this action
10:42:39 6 was filed with the Federal Court but it --
10:42:44 7 you're not aware that it's gone to trial? Or do
10:42:50 8 you know whether it's gone to trial?

10:42:54 9 A. No. I mean, what's the rest of
10:42:54 10 that document? That's just a part of it.
10:42:59 11 Where's the rest of it? That's just the top
10:43:01 12 half of it. You're not displaying very much
10:43:04 13 there.

10:43:08 14 Q. But do you recall --

10:43:18 15 THE COURT: Sir, it's your
10:43:19 16 cross-examination, but if you -- it seems to me
10:43:25 17 there's more straightforward ways of finding out
10:43:27 18 what this gentleman knows about this.

10:43:31 19 MR. BEGGS: Yes, I don't need an
10:43:32 20 answer to that question. However, I think it
10:43:34 21 would be helpful to ask that it be made an
10:43:38 22 exhibit.

10:43:39 23 THE COURT: Any objection? No?
10:43:40 24 Mr. Registrar?

10:43:42 25 THE REGISTRAR: Exhibit Number 3972.

10:43:45 1 EXHIBIT NO. 3972: Document SC0121.
10:43:47 2 Federal Court action file dated 1991
10:43:47 3 dealing with Hill Street and Treaty
10:43:47 4 72.
10:43:55 5 BY MR. BEGGS:
10:43:55 6 Q. Thank you very much, Mr. Ritchie,
10:43:58 7 for your time. Those are my questions.
10:44:00 8 A. Thanks for asking me the
10:44:01 9 questions.
10:44:02 10 THE COURT: Sir, there may be a few
10:44:04 11 more questions. Which counsel is asking this
10:44:08 12 gentleman questions for Ontario? Could you use
10:44:10 13 the podium by the witness, please?
10:44:10 14 CROSS-EXAMINATION BY MS. McRANDALL:
10:45:05 15 Q. Good morning, Mr. Ritchie. Can
10:45:07 16 you hear me?
10:45:08 17 A. Kind of, yeah.
10:45:09 18 Q. I'm Julia McRandall. And I'm one
10:45:14 19 of the counsel for Ontario, and I'll just be
10:45:15 20 asking you a few questions. Let me know at any
10:45:16 21 point if you can't hear me and I'd be happy to
10:45:18 22 repeat the question.
10:45:20 23 A. Okay, I'll do that.
10:45:26 24 Q. I think earlier you had mentioned
10:45:27 25 a brother that you had, and was his name Chester

10:45:31 1
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10:45:58 15
10:46:01 16
10:46:07 17
10:46:11 18
10:46:20 19
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10:46:47 23
10:46:47 24
10:46:51 25

Ritchie?

A. I had a brother named Chester, I did so, yes.

Q. And was he on council for Saugeen at one time?

A. He was on council about 12 years before I got on council.

Q. About 12 -- so do you know the approximate years that he was on council? Was it --

A. I can't hear you now.

Q. Do you know the approximate years that he was on council?

A. Well, let me see. I got an idea when he was still there then, so if you go back ten years before that I'd say probably '85, '86, or '76, somewhere around there. He was there for like 12 years so...

Q. To clarify, Mr. Ritchie, so Chester Ritchie was likely on council in the late 1970s, the 1980s, about that time period?

A. Yes. I would say, yeah.

Q. And you said, I believe, that you were on council beginning in 1991 and then on-and-off until 2014?

10:46:53 1 A. That's what I said, yes, I did.

10:46:54 2 Q. And when you were on council in
10:46:57 3 1991, were there any discussions at that time
10:46:59 4 with respect to bringing any claims against the
10:47:02 5 government with respect to land?

10:47:07 6 A. I imagine there was always
10:47:09 7 discussions about land claims against the
10:47:10 8 government, didn't have to be in '91. It
10:47:14 9 started in 1836 I think.

10:47:16 10 There's always claims being made,
10:47:17 11 assertions of Aboriginal rights, I would say
10:47:20 12 that, but actual factual, paper claim there had
10:47:25 13 to be something after -- like, there was always
10:47:29 14 paper flying back to Ottawa I would say, somehow
10:47:33 15 or other.

10:47:33 16 But after '93 was actual -- there was
10:47:38 17 the filing of the big claim, what we're talking
10:47:40 18 about today.

10:47:54 19 Q. And you said it probably started
10:47:56 20 in 1836. Why do you say that?

10:48:00 21 A. Because they've never honoured a
10:48:02 22 treaty since then, so I figure there's always
10:48:05 23 been a discrepancy, always a complaint somewhere
10:48:07 24 about what's not being done properly. That's
10:48:10 25 what I'm referring to. We can go back to 1836.

10:48:16 1 You can't quote me on that's when it
10:48:19 2 started but that's what I'm saying, it hasn't
10:48:22 3 been honoured since it was signed, so let's put
10:48:24 4 it that way.

10:48:25 5 Q. And I think you mentioned also
10:48:28 6 earlier -- you referred to school days, and I
10:48:30 7 think you mentioned Calgary, and I was just
10:48:32 8 wondering what you meant by that?

10:48:35 9 A. What did I say?

10:48:36 10 Q. I think earlier Ms. Guirguis when
10:48:38 11 she was asking you questions you said something
10:48:40 12 to the effect of back in my school days, and I
10:48:43 13 think you mentioned Calgary and that perhaps
10:48:45 14 your mother used to go to Alberta. So I'm just
10:48:48 15 wondering if you spent time in Alberta when you
10:48:52 16 were a child.

10:48:53 17 A. We'd go there for the summers,
10:48:54 18 yeah, sometimes.

10:48:55 19 Q. Pardon me?

10:48:56 20 A. We'd go there for the summer,
10:48:57 21 vacation, time away from home.

10:49:12 22 Q. I would like to ask you some
10:49:13 23 questions about your interview with Professor
10:49:15 24 Brownlie and perhaps we can bring that up. It's
10:49:20 25 Exhibit 3918.

10:49:25 1 A. You have to speak a little
10:49:26 2 louder, lady, I can hardly hear you.

10:49:29 3 Q. I'm sorry. I'm going to ask you
10:49:30 4 a few questions about your interview with
10:49:32 5 Professor Brownlie, and we're going to bring it
10:49:34 6 up, and it's Exhibit 3918.

10:49:39 7 THE COURT: Counsel, you're going to
10:49:39 8 just have to make your top priority being heard.
10:49:41 9 I know you have a book in front of you, and so
10:49:43 10 on, but before you speak you have to remind
10:49:51 11 yourself that your top priority is being heard,
10:49:53 12 okay?

10:49:58 13 MS. MCRANDALL: Thank you, Your
10:49:58 14 Honour.

10:49:58 15 THE COURT: Even that was not loud
10:49:58 16 enough.

10:49:58 17 MS. MCRANDALL: I will speak up.
10:49:59 18 Thank you, Your Honour.

10:50:02 19 BY MS. MCRANDALL:

10:50:02 20 Q. How were you selected as an
10:50:04 21 interviewee for Professor Brownlie?

10:50:09 22 A. Run that by me again?

10:50:11 23 Q. How were you selected to be
10:50:12 24 interviewed by Professor Brownlie?

10:50:15 25 A. How was I?

10:50:17 1 Q. Did you volunteer? Did somebody
10:50:18 2 approach you?
10:50:21 3 A. For what?
10:50:21 4 Q. To be interviewed by Professor
10:50:23 5 Brownlie in 2016.
10:50:34 6 A. I don't understand the question
10:50:35 7 because I can't hear half of the question.
10:50:40 8 Q. I'm sorry. Would it be better if
10:50:41 9 I speak like this?
10:50:43 10 THE COURT: Counsel, you are simply
10:50:43 11 not speaking loudly enough. You may be worried
10:50:47 12 about shouting. Don't worry, okay? You need to
10:50:50 13 speak up substantially from what you're saying.
10:50:52 14 MS. MCRANDALL: Pardon me, Your
10:50:52 15 Honour.
10:50:52 16 THE COURT: Raise your voice loudly.
10:50:57 17 Follow my lead.
10:50:59 18 BY MS. MCRANDALL:
10:51:00 19 Q. Mr. Ritchie, can you tell me how
10:51:02 20 you were selected for the interview with
10:51:04 21 Professor Brownlie in 2016?
10:51:06 22 A. How was I selected for the
10:51:08 23 interview. Okay, now I got it.
10:51:08 24 Well, I think I was on the fishing
10:51:15 25 committee, I was on land claims, I was on

10:51:17 1 council. I was one of the guys that was
10:51:21 2 probably available to talk to him I would say.

10:51:24 3 And there was no draw, there was no
10:51:26 4 649 or nothing like that. It was just if you
10:51:29 5 were there then they selected you because you
10:51:31 6 were a councilor or whatever, you knew
10:51:33 7 something.

10:51:39 8 Q. So did somebody ask you or did
10:51:41 9 you volunteer?

10:51:42 10 A. He asked me if I would volunteer.

10:52:01 11 Q. I would like to take you to page
10:52:02 12 2 of the Brownlie interview. If you could just
10:52:04 13 pull it up to the second-last paragraph?

10:52:13 14 THE COURT: Just while you're waiting,
10:52:14 15 move the microphone to the other side of the
10:52:17 16 podium, please, where you are yourself speaking
10:52:20 17 instead of where you're not speaking.

10:52:37 18 BY MS. MCRANDALL:

10:52:37 19 Q. So Professor Brownlie asked at
10:52:39 20 that point, the second sentence:

10:52:41 21 "So the general area of inquiry
10:52:43 22 is the historical ability of the
10:52:45 23 Saugeen Ojibwe Nation, so Saugeen and
10:52:47 24 Cape Croker or the Nawash, to assert
10:52:50 25 their Aboriginal and treaty rights,

10:52:52 1 and I understand that you've been
10:52:54 2 involved in that process."

10:52:55 3 So the process that Professor Brownlie
10:53:06 4 is referring to, what -- did that involve
10:53:10 5 conducting research?

10:53:23 6 A. I might answer that question
10:53:24 7 actually going back past 1836, 1763. The Royal
10:53:28 8 Proclamation at Niagara was kind of more or less
10:53:34 9 like a peace treaty. I would think of it that
10:53:38 10 way in my mind.

10:53:39 11 Coming this way 1836 was a transaction
10:53:43 12 for land. And there was a deal made, there was
10:53:46 13 a real, honest-to-goodness deal of this for
10:53:48 14 that. That's what I look at 1836.

10:53:55 15 But that went, this never came, that's
10:53:57 16 what I'm saying. So what I meant in my
10:53:59 17 interview, that's what I'm stating. There's
10:54:02 18 always been a land claim since '36.

10:54:06 19 Does that answer your question or am I
10:54:07 20 going down the wrong trail here?

10:54:10 21 Q. Thank you.

10:54:11 22 I think my question was, when
10:54:15 23 Professor Brownlie was saying you've been
10:54:18 24 involved in that process, the process of
10:54:20 25 asserting Aboriginal and treaty rights, was part

1 of that that you conducted some research, was
2 part of the process?

3 A. I would imagine, yeah.

4 Q. Pardon me?

5 A. I would imagine that would be the
6 case, yeah. I'm not 100 percent sure now.

7 Q. So you did conduct some research
8 then?

9 A. Yeah. Like I really can't hear
10 your question --

11 THE COURT: Counsel, we're going to
12 start again.

13 First of all, move the microphone to
14 the right-hand side of the podium, which is
15 where you lean when you ask your questions.

16 Second of all, please do lean forward
17 when you ask your questions. I think the
18 witness will understand your questions just
19 fine. It's just that he can't hear them. And
20 speak up.

21 MS. MCRANDALL: I'm sorry, Your
22 Honour. I just wasn't sure --

23 THE COURT: It's a big room. You
24 don't need to apologize. Just focus on raising
25 your voice, leaning into the microphone and I

1 think we'll be fine. All right?

2 BY MS. MCRANDALL:

3 Q. Mr. Ritchie, just in case you
4 didn't hear me earlier, I just was asking if you
5 had conducted research for part of the process
6 of asserting rights with respect to land?

7 A. When did we start asserting our
8 rights?

9 Q. No, I'm sorry. Did you conduct
10 any research as part of the process of asserting
11 rights with respect to land?

12 A. Was I comfortable with the
13 process? Something like that you're asking me,
14 yeah? I guess there was a process in that there
15 was rules were set how we're going to do land
16 claims. We have pre-Confederation land claims
17 here, that's where we're at. And we got all the
18 Land Act stuff after that and that override over
19 top of the treaty.

20 So if you're asking me if I was happy
21 with the process?

22 Q. No, I'm sorry. Are you having
23 more difficulty hearing me when I'm speaking
24 into --

25 THE COURT: Counsel, counsel, counsel,

10:56:36 1 that was fine to hear. It was the question that
10:56:40 2 the witness was having difficulty with.

10:56:44 3 MS. MCRANDALL: Oh.

10:56:44 4 THE COURT: So keep up with the audio.
10:56:48 5 I actually -- you asked that question a few
10:56:49 6 minutes ago and got an answer. You can go back
10:56:52 7 to it if you want.

10:56:53 8 MS. MCRANDALL: I'll move on.

10:57:00 9 THE WITNESS: You have to write it
10:57:00 10 down.

10:57:02 11 BY MS. MCRANDALL:

10:57:02 12 Q. Did you receive the questions for
10:57:05 13 your interview with Professor Brownlie in
10:57:07 14 advance?

10:57:09 15 A. In advance of today? Yes, I
10:57:11 16 have.

10:57:11 17 Q. In advance of meeting with
10:57:13 18 Professor Brownlie in 2016?

10:57:15 19 A. No, I didn't. I had the
10:57:17 20 questions when he got there. I think that's the
10:57:19 21 process. He had the question and, I'm going to
10:57:22 22 ask you a few questions. Like that.

10:57:23 23 And then I had a copy of the question
10:57:26 24 he would ask me and I'd answer the question.
10:57:26 25 That's how the process worked, from what I can

10:57:30 1 recall of it.

10:57:31 2 Q. Thank you.

10:57:34 3 Before the interview with Professor
10:57:36 4 Brownlie did you do anything to prepare, such as
10:57:41 5 reading documents?

10:57:44 6 A. Never prepared for it at all, no,
10:57:46 7 because I'm always prepared. I don't have to
10:57:51 8 prepare.

10:58:03 9 Q. In your interview with Professor
10:58:05 10 Brownlie at page 9 you made reference to
10:58:10 11 documentation that the Saugeen Ojibwe have of
10:58:13 12 your history records kept by the Jesuits, Hudson
10:58:20 13 Bay Company. Have you reviewed any of those
10:58:22 14 records? It is on page 9 if you wanted to see
10:58:30 15 the reference.

10:58:55 16 A. I have to say the information I
10:58:56 17 was referring to there would be like a --
10:59:00 18 through the years there's been different things
10:59:02 19 happen on the land, like the territory, there's
10:59:04 20 been different people come through here.

10:59:06 21 I want to go back a little bit farther
10:59:08 22 than 1836. I should have answered this question
10:59:12 23 when the other lawyer asked the question about
10:59:14 24 how -- like, how long have we been here? It was
10:59:17 25 from time immemorial, but I want to go back to

10:59:20 1 there.

10:59:21 2 See, in the day prior to 1836 there
10:59:25 3 was a lot of migration going on. There was a
10:59:27 4 lot of people marching from Oklahoma that way
10:59:32 5 going out to -- or not Oklahoma, but Georgia,
10:59:36 6 Alabama, Tennessee, Kentucky. They were
10:59:38 7 marching Indians out to the west.

10:59:40 8 And in 1894 there was a march of the
10:59:45 9 Potawatami out to Kansas, am I right or wrong?
10:59:45 10 1894 they marched the Potawatami, so a lot of
10:59:49 11 people had flight issues at that time.

10:59:51 12 So in Saugeen we have Potawatami
10:59:54 13 people here, we have Odawa people here, we got
10:59:56 14 Ojibwe-s here. But if you live here long enough
10:59:58 15 in Saugeen you're going to end up living here as
11:00:01 16 an Ojibwe Indian. That's what I'm saying.

11:00:02 17 But information from these people like
11:00:04 18 that. Like the Jesuits were trappers, and
11:00:07 19 whatever they did here they did at that time. I
11:00:09 20 don't know. But I'm pretty sure there's history
11:00:13 21 with them too. Like, they got documentation of
11:00:14 22 their travels.

11:00:15 23 There's a church here, I think they
11:00:18 24 did a dig there, they found French money at this
11:00:22 25 old church and it was built in 1891, I think,

11:00:24 1 that church.

11:00:26 2 And then you go down the hill at
11:00:29 3 Donaldson dig there, that dig is 2600 years old
11:00:32 4 and there's artifacts there, Aboriginal
11:00:34 5 artifacts there. We've been here for a long,
11:00:37 6 long time. We didn't just fly in here on a 747.

11:00:51 7 Q. If I could bring up page 2 of the
11:00:55 8 interview with Professor Brownlie, the last
11:00:57 9 paragraph? And it seems the answer was:

11:01:11 10 "I want to go way back to the
11:01:13 11 beginning of asserting our rights to
11:01:16 12 our terr --"

11:01:16 13 And then the word is cut off:

11:01:16 14 "-- oh, it'd be probably 1836
11:01:22 15 when the first land was taken over
11:01:24 16 there. And it was always a kind of a
11:01:27 17 protest over that land and the
11:01:29 18 boundary issue. And because -- I
11:01:33 19 remember my grandfather, he used to be
11:01:35 20 a councilor here back in the day; his
11:01:41 21 name was [unclear] (sic) he was on the
11:01:45 22 council here. But they would talk
11:01:47 23 about politics when I was a little
11:01:50 24 kid[...]"

11:01:55 25 Was this the grandfather that you

11:01:59 1 mentioned before? Oliver Nashkawa who --

11:02:04 2 A. Oliver Nashkawa, that's right,
11:02:04 3 yes.

11:02:13 4 Q. So I think you had said earlier
11:02:13 5 that they usually talked about land rights,
11:02:16 6 hunting and fishing? Is that the politics that
11:02:18 7 you mentioned hearing when you were a child?

11:02:22 8 A. No, that wasn't the politics.
11:02:23 9 The politics was the land and the way
11:02:26 10 that operation wasn't going, it wasn't going
11:02:28 11 properly. Like, there was no -- there was no
11:02:33 12 promise made. There was no -- there was nothing
11:02:35 13 for the promise. It was only the Indian Act,
11:02:39 14 the Indian Agent, but no promise from the
11:02:41 15 Treaty. There was no Treaty settlement, that's
11:02:44 16 what the politics was about.

11:02:46 17 And about the Indians having to go to
11:02:47 18 Ottawa or Toronto, somewhere to make a claim
11:02:51 19 against the government for not doing due process
11:02:55 20 or due diligence on the issue that they signed
11:02:58 21 on to. Like, that's what it was about. Kind of
11:03:01 22 like that way.

11:03:02 23 Hunting and fishing were just a given.
11:03:05 24 You don't have to talk about that. There
11:03:07 25 wouldn't be a big spiel, it's something you

11:03:09 1 already know. It's a natural -- something you
11:03:11 2 have in you. So the politics wouldn't be
11:03:17 3 hunting and fishing at that time.

11:03:28 4 Q. And I'd also like to take you to
11:03:31 5 page 16 of the transcript of the interview with
11:03:32 6 Professor Brownlie. And near the bottom of the
11:03:49 7 page -- sorry, near the middle of the page
11:03:55 8 Professor Brownlie asked you if you knew when
11:03:59 9 the Saugeen Ojibwe began to hire lawyers to
11:04:01 10 help? And your answer began:

11:04:07 11 "Probably '76. I would say --
11:04:10 12 because they made the claim. Now they
11:04:13 13 gotta have -- find someone to go fight
11:04:15 14 the claim or go and research the claim
11:04:18 15 for them, what we're asserting."

11:04:22 16 A. I'm pretty sure that would be in
11:04:24 17 the beginning of the land claim situation. We
11:04:28 18 had to do research. We had to get people to do
11:04:30 19 research for us, right? So Vern Roote I think
11:04:33 20 at the time was our first researcher doing some
11:04:35 21 of the boundary stuff around the res and stuff
11:04:39 22 and trying to find documentation.

11:04:40 23 But it was bigger than us, it was a
11:04:43 24 bigger problem, it was humungous. So we had
11:04:47 25 other people come in the game, and that was --

1 Darlene Johnson was one from Cape Croker; and
2 there was Catherine was in early -- I don't know
3 her last name now but those were our main
4 researchers at the time that the claim was made.
5 Is that what you're asking me?

6 Q. Thank you.

7 That was around 1976 that that
8 started?

9 A. No, this is going back -- after
10 '93 now. We're going after '93.

11 So in '76, is that what you're talking
12 about now? There was no real research because
13 the Indian Agent -- remember I said burned the
14 books? So there's no books, there's no history
15 now. The books are all burned up when the
16 agents left in the '60s. There was no history
17 for us to look at. All the documents were gone,
18 so to speak.

19 So now we had to get researchers to go
20 and find documentation for us, like in archives
21 in Ottawa, wherever that's at. You know, to get
22 the real history of this place. So that's what
23 really happened, documents were missing.

24 Lands were sold and we got no records
25 of them selling that land and who sold it. So

11:05:54 1 who do you think sold the land? Who was in
11:05:56 2 power at the time? So you have to assume it had
11:05:59 3 to be those people.

11:06:02 4 Like, I'm saying that without
11:06:04 5 documentation. So it had to happen somehow.
11:06:08 6 How did you sell land? How did we not know
11:06:11 7 about it here? All on our territory land being
11:06:14 8 sold, islands being sold. An island in town
11:06:16 9 sold, we didn't know nothing about that back in
11:06:20 10 the day.

11:06:21 11 So how did all those things happen?
11:06:23 12 Where is that all information? It should be in
11:06:25 13 the agency office. It should be somewhere in
11:06:28 14 the government. Indian Affairs should have had
11:06:29 15 it. We didn't have it.

11:06:34 16 Q. And that research that you
11:06:36 17 mentioned, such as going to the archives --

11:06:38 18 A. Yes.

11:06:38 19 Q. -- that you were saying started,
11:06:39 20 was it around 1976? Was that what you were
11:06:43 21 saying to Professor Brownlie?

11:06:44 22 A. That's what I'm talking about in
11:06:45 23 my document here is we have to go find all this
11:06:48 24 stuff now because it ain't there no more.

11:06:55 25 Q. Thank you. And it was also

11:06:57 1 around 1976 that the Saugeen Ojibwe hired
11:07:00 2 lawyers to pursue or to look into claims against
11:07:03 3 the government?

11:07:11 4 A. I got half of that.

11:07:12 5 Q. I'm sorry. It was also around
11:07:13 6 1976 that the Saugeen Ojibwe began to hire
11:07:16 7 lawyers to look into possibly bringing claims
11:07:20 8 against the government?

11:07:21 9 A. I think it's 1976 actually set
11:07:24 10 the groundwork for the process to go forward.
11:07:28 11 That's how I'm looking at it.

11:07:30 12 Like, if you're going to go somewhere
11:07:32 13 to go fight somebody you need some information;
11:07:34 14 so you have to get information to go make your
11:07:37 15 claim; you have to understand what you're doing;
11:07:38 16 you need people that know the law that exists
11:07:41 17 today. So you had to put a process in place how
11:07:43 18 you're going to go fight this, I'll call it a
11:07:46 19 "war" but it's not a war, but war of words,
11:07:48 20 really.

11:07:51 21 But you have to get all your ducks in
11:07:53 22 order in order to go there. So from '76 to '86,
11:07:57 23 to whenever, we had to get our ducks in order,
11:07:59 24 line them up.

11:08:01 25 We had different people representing

1 us back in the day. I think one name I heard
2 just -- I know the guy myself, he worked for
3 us -- Paul Williams, the first lawyer on the
4 land claim. But his research you could -- it
5 wasn't very much there, it was not enough to
6 make a step forward. We couldn't make a move on
7 his information, although he wanted us to make
8 the move. But there wasn't enough there to make
9 100 percent solid case against Canada or Ontario
10 at that time, mostly Canada, really.

11 Q. Do you know when Paul Williams
12 was hired, approximately?

13 A. I know when he was fired because
14 I was there when we fired him. Yeah.

15 Actually he was hired before I got on
16 council. He was already there. He was probably
17 there 12 years when my brother was on there.

18 Q. Would that have been then around
19 the 1980s?

20 A. Like, he was here for quite a
21 while. I mean, Paul Williams was around for a
22 long time.

23 There was another guy too, I can't
24 remember his name, but another lawyer but I
25 don't think he worked on land claims. I don't

11:09:14 1 remember his name but there was another one
11:09:16 2 there.

11:09:17 3 Q. Thank you.

11:09:49 4 So you mentioned hearing that an
11:09:52 5 Indian Agent had burned history papers here at
11:09:55 6 Saugeen. When was that approximately?

11:10:01 7 A. I think I said that that was
11:10:04 8 actually done when they started getting rid of
11:10:05 9 the Indian Agent system. That's in the '60s
11:10:09 10 somewhere, whenever they left.

11:10:12 11 And I thought I said that Marshall
11:10:13 12 Nadjiwon burned the books. The Indian Agent got
11:10:23 13 other people to do his dirty work for him to
11:10:27 14 burn the books, the way I look at the big
11:10:29 15 picture.

11:10:29 16 Q. And do you know the name of that
11:10:31 17 Indian Agent?

11:10:34 18 A. The only name I can remember --
11:10:35 19 there was a bunch of Indian Agents around at the
11:10:38 20 time. The one that I remember the most, the
11:10:40 21 most terrifying to me was a guy named Bouchard.
11:10:45 22 He was like the Grim Reaper to me right now if I
11:10:47 23 look at it. That's -- what I saw when I looked
11:10:50 24 at that man was a horrible person.

11:11:06 25 Q. Was that the Indian Agent who was

11:11:08 1 involved in this burning papers or you're just
11:11:11 2 saying he's the one whose name you remember?

11:11:14 3 A. I had to view the big picture.
11:11:16 4 On the big picture scheme of things would be all
11:11:19 5 of them involved. He's only one guy doing the
11:11:23 6 ordering but they're all involved in the agenda
11:11:26 7 that they had when they're leaving.

11:11:27 8 Somebody had to prepare an agenda for
11:11:29 9 them how to exit the reserve, or the agency.
11:11:35 10 They had to have a plan.

11:11:36 11 So the plan was, I guess, in my mind,
11:11:39 12 after hearing the stories about the books being
11:11:42 13 burned, that was their plan, burn everything up
11:11:45 14 so they leave no trail of history for us to know
11:11:48 15 what they did.

11:11:54 16 Q. I think you said that Marshall
11:11:56 17 Nadjiwon told you this. Did anyone else repeat
11:12:03 18 the story to you?

11:12:04 19 A. No, Marshall only told me about
11:12:05 20 himself.

11:12:08 21 Q. And did he tell you about any
11:12:10 22 other community members who were hired by or
11:12:13 23 involved in it?

11:12:15 24 A. No, he just mentioned himself. I
11:12:21 25 don't think there's nothing else in my paper

11:12:23 1 that says that there was more than one, nowhere.

11:12:27 2 Q. Thank you.

11:12:31 3 And you mentioned that there were
11:12:32 4 history papers that were burned. So the papers
11:12:36 5 were they -- did they belong to the community?
11:12:39 6 Or did -- were they Indian Agent papers?

11:12:45 7 A. Actually what they were were
11:12:45 8 council minute books is what they were burning
11:12:48 9 up, is the minute books of council, probably
11:12:50 10 other documents too; but at that time that I was
11:12:53 11 talking to Marshall he said it was the council
11:12:56 12 minute books.

11:12:57 13 And I think at the time that he
11:12:59 14 salvaged, somehow, three of those books, or
11:13:01 15 maybe something like that, that didn't get
11:13:02 16 burned up. He didn't burn some of them. When
11:13:04 17 the agent wasn't looking he didn't burn some of
11:13:07 18 them, you know what I mean? Trying to save some
11:13:09 19 of the history of what was going on there.

11:13:18 20 Q. To your knowledge did anybody
11:13:19 21 write to Indian Affairs or to the government to
11:13:23 22 complain about this behaviour or ask about it?

11:13:33 23 A. Well, I'm pretty sure somebody
11:13:34 24 must have said something to somebody around here
11:13:36 25 but the agent was gone. I mean -- I mean, who

1 do you talk to then?

2 So, yeah, no, I don't know. I can't
3 answer that question because I don't know.

4 Q. And you mentioned earlier that
5 you don't go ice fishing on Lake Huron, is that
6 correct?

7 A. I said that, yeah.

8 Q. And did your grandfather go ice
9 fishing on Lake Huron?

10 A. We went to the rivers. We had no
11 boat. We weren't allowed to have boats, like
12 canoes. No, we didn't go on the lake me and my
13 grandfather. We just fished in the rivers,
14 mostly at Sauble River because there was an
15 abundance of fish up there. And this river
16 moved too fast out here, Saugeen River, so we'd
17 go to Sauble River.

18 Q. So when you mentioned earlier
19 going out into Lake Huron with gill nets that
20 was after 1993?

21 A. 1991. We had to protest with
22 something that was contraband to us, and gill
23 nets at that time were not allowed to be owned
24 by Indian people, I guess, on this reserve
25 anyway. So to go protest we had to have that

11:15:24 1 stuff. So that was supplied to us on Saugeen
11:15:26 2 side from Cape Croker people because they
11:15:29 3 already had a fishing operation over there; we
11:15:32 4 didn't have one here. According to all of the
11:15:34 5 requests that were made were denied for Saugeen
11:15:36 6 to get a license.

11:15:38 7 So when we went to the protest our
11:15:41 8 equipment came from Cape Croker to get out to
11:15:43 9 even -- even the boats, we got on boats with
11:15:47 10 them to go and do the protest in '91.

11:15:56 11 Q. And I'd like to take you to a
11:15:57 12 Band Council Resolution that was put before you
11:16:00 13 earlier, it's Exhibit 3569. I'm sorry, that
11:16:35 14 appears to be the incorrect number.

11:16:36 15 THE REGISTRAR: The correct number is
11:16:38 16 3969, counsel.

11:16:40 17 BY MS. MCRANDALL:

11:16:40 18 Q. Thank you, Mr. Registrar. I
11:16:42 19 would like to bring up 3969.

11:16:44 20 Why was the license that is being
11:17:09 21 sought here -- that was being sought here to
11:17:14 22 cover out to five miles?

11:17:26 23 A. The question again?

11:17:27 24 Q. Why was -- the license that was
11:17:29 25 sought, why was it out a distance of five miles?

11:17:33 1 A. Why was it only five miles?

11:17:37 2 Probably because we probably only had a small
11:17:40 3 boat maybe and couldn't get out to 20 miles or
11:17:42 4 30 miles where we had to go. I think it had to
11:17:45 5 do with the equipment, five miles.

11:17:50 6 In 1847 there's a proclamation that
11:17:53 7 they gave us seven miles and all the islands
11:17:55 8 that's out there, so that way we had land claim
11:18:00 9 someplace too.

11:18:02 10 Q. Thank you.

11:18:10 11 I would like to show you another
11:18:12 12 document now, the document ID, is SC0057.

11:18:23 13 Your Honour, this document is listed
11:18:24 14 in the agreed statement of facts regarding oral
11:18:28 15 history interviews, which is Exhibit 3931; it
11:18:30 16 was described as an interview summary of an
11:18:32 17 interview with Chester Ritchie dated August 6th,
11:18:36 18 1991, eight pages in length.

11:18:39 19 And if you turn to page 6, if I bring
11:18:43 20 up page 6 of this interview near the top it
11:18:52 21 reads:

11:18:53 22 "Jim Ritchie some other family
11:18:56 23 join us."

11:19:08 24 Your Honour, the documents listed in
11:19:09 25 that agreed statement of fact were -- it was

11:19:13 1 agreed that they were what they purport to be,
11:19:16 2 and the interviews on which they are based took
11:19:18 3 place as indicated. May I have that entered as
11:19:21 4 an exhibit?

11:19:22 5 THE COURT: Any objection? No?
11:19:25 6 Mr. Registrar?

11:19:27 7 THE REGISTRAR: Exhibit Number 3973.
11:19:32 8 EXHIBIT NO. 3973: Document SC0057.
11:19:34 9 Interview summary of an interview with
11:19:34 10 Chester Ritchie dated August 6th,
11:19:34 11 1991, eight pages in length.

11:19:37 12 BY MS. MCRANDALL:

11:19:37 13 Q. Thank you.

11:19:44 14 Now, Mr. Ritchie, do you recall this
11:19:47 15 interview with -- in 1991 with your brother
11:19:49 16 Chester Ritchie and Mr. Patrick Nadjiwon?

11:19:56 17 A. I haven't seen it for a while,
11:19:57 18 let's put it that way, so it's kind of gone from
11:20:00 19 my memory a bit. But if I was to read it again
11:20:04 20 it would refresh my memory, but I haven't seen
11:20:05 21 this for a while. But I know the story about
11:20:08 22 the people coming out here to buy fish off the
11:20:11 23 Indians, yeah, with horse and buggy, but that
11:20:15 24 did happen. Yeah.

11:20:16 25 Q. Did you want to read it to

11:20:18 1 refresh your memory before I ask questions about
11:20:20 2 the document?
11:20:21 3 A. I may as well, sure. If you have
11:20:22 4 it here I would like to read it.
11:20:28 5 Q. Your Honour, perhaps we can take
11:20:29 6 a break at this point?
11:20:32 7 THE COURT: How long is the document?
11:20:36 8 MS. MCRANDALL: It is eight pages.
11:20:39 9 THE COURT: And it's an interview with
11:20:40 10 someone else. Are you intending to ask this
11:20:42 11 gentleman about what someone else said? Or do
11:20:44 12 you want to refer to a portion of it that refers
11:20:47 13 to this gentleman in person?
11:20:50 14 MS. MCRANDALL: Mostly his own answers
11:20:51 15 but I might ask him one question about an answer
11:20:53 16 that his brother --
11:20:55 17 THE COURT: Okay, we'll take the break
11:20:57 18 a bit early so that you can assist the witness,
11:20:59 19 perhaps with his own counsel as well, to be able
11:21:01 20 to look over the whole document. So we'll take
11:21:05 21 a 20-minute break at this time.
11:21:06 22 MS. MCRANDALL: Thank you, Your
11:21:06 23 Honour.
11:21:06 24 --- RECESSED AT 11:21 A.M. --
11:21:06 25 -- RESUMED AT 11:48 A.M. --

11:48:10 1 THE COURT: Please go ahead, counsel.

11:48:12 2 MS. MCRANDALL: Thank you, Your

11:48:13 3 Honour.

11:48:16 4 BY MS. MCRANDALL:

11:48:16 5 Q. Mr. Ritchie, I would like to take

11:48:18 6 you to page 3 --

11:48:19 7 A. Page 3.

11:48:20 8 Q. -- of the interview summary of an

11:48:28 9 interview with Chester Ritchie and Patrick

11:48:32 10 Nadjiwon from 1991.

11:48:40 11 So the third answer, or "A" from the

11:48:44 12 bottom of the page, it starts "James Earl [...]"

11:48:50 13 And then a bit further on it says:

11:48:52 14 "I used to do a bit of research

11:48:54 15 on land claims."

11:49:01 16 Do you remember your brother Chester

11:49:03 17 Ritchie conducting research into issues relevant

11:49:06 18 to these claims at one time?

11:49:10 19 A. Actually, no, I really don't. I

11:49:12 20 wasn't at that interview with Chester and this

11:49:14 21 Patrick guy. I just walked in on this meeting

11:49:18 22 later on, like, I wasn't at the beginning of

11:49:21 23 their conversation. So I really don't know what

11:49:24 24 they were discussing. Like, I see it written

11:49:27 25 here. And what Chester was on his mind I really

11:49:32 1 can't tell you.

11:49:33 2 Q. All right.

11:49:34 3 A. And how he portrayed his story to
11:49:36 4 whoever he's talking like...

11:49:38 5 Q. All right.

11:49:39 6 A. But I can speak for myself. I
11:49:41 7 got no problem there.

11:49:42 8 Q. Separate from the interview then,
11:49:44 9 do you remember if Chester did any research in
11:49:48 10 land claims?

11:49:49 11 A. Did he do any work in land
11:49:51 12 claims? Yeah, they all did, all the councilors.

11:49:54 13 Q. Pardon me?

11:49:55 14 A. They all worked on land claims,
11:49:57 15 the whole council, Chief and council back in
11:49:59 16 that day. I didn't get on council until 1991
11:50:07 17 and that was on a by-election, so that would be
11:50:09 18 after this date. So, yeah, but it was still
11:50:13 19 '91.

11:50:14 20 Q. And on page 6, if we can turn up
11:50:17 21 page 6?

11:50:18 22 A. Page 6.

11:50:22 23 Q. Now that's after you joined the
11:50:23 24 interview?

11:50:24 25 A. Uhm-hmm.

11:50:25 1 Q. And the answers after the letter
11:50:26 2 "J" were they your answers?
11:50:36 3 A. That's me. That's the "J", yeah.
11:50:48 4 Q. If I could take you to the bottom
11:50:49 5 of page 6? Do you see the third "J" from the
11:50:55 6 bottom?
11:50:58 7 A. Okay. On page 6, right?
11:50:58 8 Q. This is -- yes. So it reads:
11:51:09 9 "Have you read the Schmalz book?
11:51:12 10 Have you read the land surrenders?
11:51:14 11 There is a lot of history there. To
11:51:16 12 me that is pure history, it is not
11:51:18 13 dreamed up."
11:51:19 14 And then it looks like the
11:51:20 15 interviewer, it reads:
11:51:22 16 "He made the problem because he
11:51:25 17 buys the migration theory that the
11:51:27 18 Anishinaabe just moved into the void
11:51:29 19 left here after the Iroquois people
11:51:31 20 left. Around 1701 was the date that
11:51:34 21 Schmalz uses, which can make a problem
11:51:37 22 in court when you say that we got here
11:51:39 23 in 1701, maybe we were not here
11:51:42 24 forever, but[...]"
11:51:45 25 And then your answer, it reads:

11:51:47 1 "It doesn't matter who got here
11:51:49 2 first, we were here when they came."
11:51:58 3 So I just have a few questions about
11:51:59 4 that. When you said the "Schmalz book" was this
11:52:05 5 referring to a book by Peter Schmalz that you
11:52:09 6 read?

11:52:10 7 A. When you're referring to the
11:52:10 8 Schmalz book -- Schmalz wrote two books. One
11:52:14 9 was kind of a good book, the second one was kind
11:52:15 10 of a flop that didn't go too far. So you can
11:52:19 11 only be a hero once and then after that you're
11:52:21 12 just something else.

11:52:24 13 Q. So you read the first book
11:52:25 14 sometime before this interview in 1991?

11:52:29 15 A. I would say I read parts of it,
11:52:30 16 not all of it. It wasn't my interest. I wasn't
11:52:35 17 interested in what Peter had to say, really.

11:52:44 18 Q. And did that book discuss Treaty
11:52:45 19 72 of 1854?

11:52:48 20 A. I don't know where Peter Schmalz
11:52:50 21 really was coming from. He was a high school
11:52:54 22 teacher, I understand, from Walkerton, I think,
11:52:55 23 somewhere down that way. So he'd be a real
11:52:57 24 expert to tell about Indian people, I'm pretty
11:53:00 25 sure of that, because he had a lot of contact

1 with me when I went to Walkerton school for
2 three months, about the only Indian that he ever
3 seen at that time, I would think.

4 So how he wrote the book on our
5 history is beyond me, other than he read it from
6 somebody else's reports. You know what I'm
7 saying? So that's why I never took no interest
8 in his book. Because he wasn't from here, you
9 know? Telling the Indian stories an Indian
10 would tell the story from here, not from all
11 over the place. You know what I'm saying?

12 So I never took a real deep interest
13 in what he wrote at all, but he did write some
14 history stuff there that was involved in our
15 lands here. So he must have read something. He
16 must have been a history teacher at school or
17 something, how he got the information. I'm not
18 sure, I'm just saying.

19 Q. Do you remember if the book that
20 you read discussed the Treaty of 1854?

21 A. The book he wrote? I think he
22 piecemealed a lot of information together to
23 write the book, because how else would he do it?
24 Other than digging through other things like --
25 maybe information we didn't have was -- which

11:54:06 1 might have been something mentioned in there
11:54:08 2 about something. I don't know. That's a
11:54:09 3 long -- I can't recall all that stuff.

11:54:12 4 Q. All right. Thank you. Thank
11:54:25 5 you, Mr. Ritchie. Those are my questions.

11:54:31 6 THE COURT: Any re-examination,
11:54:33 7 counsel?

11:54:34 8 MS. GUIRGUIS: Yes, Your Honour. If I
11:54:34 9 could just have one moment?

11:54:37 10 RE-EXAMINATION BY MS. GUIRGUIS:

11:55:37 11 Q. Apologies, Your Honour.

11:55:38 12 Mr. Ritchie, I just have one question
11:55:40 13 for you. Counsel for Canada, I believe, asked
11:55:44 14 you about Paul Williams working for the Band,
11:55:48 15 and you said that you knew he was fired because
11:55:51 16 you were there when you fired him. Do you know
11:55:54 17 what year that was?

11:55:58 18 A. Run that question by me again.

11:56:00 19 THE COURT: I don't think it's a
11:56:00 20 microphone problem. If you'd just repeat the
11:56:00 21 question again?

11:56:00 22 BY MS. GUIRGUIS:

11:56:09 23 Q. Okay, sure.

11:56:09 24 You were asked about Paul Williams,
11:56:12 25 the lawyer that worked for Saugeen?

11:56:14 1 A. Okay, Paul Williams, yeah, I got
11:56:16 2 it.
11:56:16 3 Q. And you had said that you were
11:56:17 4 around when he was fired?
11:56:19 5 A. Right.
11:56:19 6 Q. Do you remember what year that
11:56:20 7 was?
11:56:21 8 A. Exact year? No, it was in the
11:56:24 9 '90s.
11:56:25 10 Q. After you were on council?
11:56:27 11 A. Let me see. It had to be '94
11:56:34 12 upwards of -- I'll say up as far as '98. In
11:56:39 13 between all that.
11:56:40 14 Q. Okay, thank you.
11:56:40 15 A. I think for sure that would be
11:56:42 16 the time.
11:56:43 17 Q. Thank you, Mr. Ritchie.
11:56:45 18 THE COURT: Thank you for your
11:56:46 19 assistance, sir. You can leave the witness box.
11:56:50 20 THE WITNESS: Thank you. Thank you
11:56:51 21 for your time.
11:56:52 22 THE COURT: Now, is it Mr. Townshend
11:56:55 23 or Ms. Guirguis? Who is calling Mr. Jones?
11:56:57 24 You're finished, sir. Thank you.
11:57:04 25 MS. GUIRGUIS: We'll be calling

11:57:05 1 Mr. Howard Jones.

11:57:07 2 THE COURT: I thought it was Mr. Dale

11:57:09 3 Jones.

11:57:09 4 MS. GUIRGUIS: Mr. Dale Jones, because

11:57:10 5 of the scheduling, he'll be called tomorrow.

11:57:12 6 THE COURT: We're going to have to

11:57:13 7 talk about that. You have Mr. Howard Jones here

11:57:15 8 now

11:57:16 9 MS. GUIRGUIS: Mr. Howard Jones is

11:57:18 10 here now.

11:57:19 11 THE COURT: All right. Please go

11:57:20 12 ahead.

11:57:22 13 MS. GUIRGUIS: Your Honour, I just

11:57:23 14 have to get my documents in order. If I could

11:57:25 15 just have one moment?

11:57:43 16 THE REGISTRAR: Good morning, sir.

11:57:45 17 THE WITNESS: Morning.

11:57:46 18 THE REGISTRAR: Would you like to make

11:57:47 19 an oath on the holy book or make a solemn

11:57:49 20 affirmation to tell the truth?

11:57:52 21 THE WITNESS: The Bible is fine.

11:57:53 22 THE REGISTRAR: Can you state and

11:57:53 23 spell your first and last name for the record?

11:58:05 24 THE WITNESS: My first name is Howard,

11:58:06 25 my last name is Jones. It's H-o-w-a-r-d

11:58:10 1 J-o-n-e-s.

11:58:12 2 HOWARD JONES: SWORN.

11:58:17 3 EXAMINATION IN-CHIEF BY MS. GUIRGUIS:

11:58:41 4 Q. Good afternoon, Mr. Jones.

11:58:43 5 A. Good afternoon.

11:58:45 6 Q. I want to start off by asking a

11:58:46 7 few introductory questions, starting with which

11:58:51 8 First Nation are you a member of?

11:58:54 9 A. I am a member of the Chippewas of

11:58:58 10 Nawash at Cape Croker.

11:59:02 11 Q. When were you born?

11:59:03 12 A. I was born on the 4th day of the

11:59:06 13 4th month of '47.

11:59:10 14 Q. So April 4th, 1947?

11:59:13 15 A. That is correct.

11:59:18 16 Q. And where were you born?

11:59:20 17 A. I was born on Lot 19, Concession

11:59:22 18 5 East at Cape Croker Indian Reserve, which was

11:59:26 19 our family home.

11:59:30 20 Q. What periods of your life have

11:59:31 21 you lived in Cape Croker?

11:59:35 22 A. I have lived predominantly at

11:59:37 23 Cape Croker. At times I have left the reserve

11:59:41 24 for my pursuing work, but for no extended time

11:59:52 25 period.

11:59:56 1 Q. And what did you do for work?

11:59:58 2 A. I am a retired 45-year member of
12:00:03 3 the Iron Workers Union in Hamilton.

12:00:11 4 Q. So today you still live in Cape
12:00:12 5 Croker?

12:00:13 6 A. I still live at Cape Croker.

12:00:17 7 Q. I'd like to discuss your role as
12:00:18 8 a leader in Nawash. When were you elected to
12:00:22 9 council?

12:00:24 10 A. I believe I was elected to
12:00:26 11 council the first time in the '80s. I don't
12:00:29 12 know exactly the date that -- it wasn't 1980, it
12:00:35 13 could have been '81 or '82.

12:00:41 14 Q. And you also served as Chief?

12:00:44 15 A. Yes, that's true.

12:00:50 16 Q. When were you elected as Chief?

12:00:52 17 A. I ran in a by-election. The
12:00:54 18 council at the time our previous Chief, who was
12:00:58 19 Peter J. Akiwenzie, had resigned to take work
12:01:00 20 with the Province -- sorry, not with the
12:01:04 21 Province but with the Union of Ontario Indians.

12:01:07 22 And the council wanted me to step in
12:01:10 23 as the interim Chief, and I refused on the
12:01:14 24 grounds that I felt that it was important to be
12:01:17 25 elected by the people. We had a by-election and

1 I was put in, I believe, in 1986. It could be
2 '87. I'm very poor on dates. You'll have to
3 excuse that.

4 Q. When we spoke earlier I think you
5 had said 1988 that you were elected Chief.

6 A. That could be true. You can --
7 I'm sure that information is fully available
8 should anyone want to look it up.

9 Q. And how long did you remain Chief
10 of Nawash?

11 A. I believe I was the Chief for a
12 short term of 14 months.

13 Q. Thank you.

14 I'd like to turn to the interview that
15 you did with Professor Jarvis Brownlie on June
16 7th, 2016. Professor Brownlie asked you some
17 questions about barriers that the Saugeen Ojibwe
18 faced in bringing its claims and also about how
19 they asserted their rights over the years. Do
20 you recall that interview?

21 A. I do recall that interview. It
22 was at my kitchen table in my own home.

23 Q. I'm going to show you a
24 transcript from your talk with Professor
25 Brownlie, it's going to show up on the screen.

1 This is Exhibit Number 3922.

2 While we're waiting for it to be
3 pulled up, Mr. Jones?

4 A. Yes.

5 Q. You've reviewed the transcript
6 recently of that interview?

7 A. I have reviewed it, looked it
8 over and, yes, I have seen it.

9 Q. This is a transcript of the
10 interview?

11 A. Yes, this is the transcript.

12 Q. So when you reviewed the
13 transcript would you be able to say that it's a
14 true reflection of what you said in your
15 interview?

16 A. Yes, I don't believe that there's
17 any astronomical changes to any of the answers
18 that I've given to the questions.

19 Q. So it is a true and accurate
20 transcript, to the best of your knowledge?

21 A. To the best of my knowledge, yes.

22 Q. So today I'd like to talk to you
23 about some of the things that Professor Brownlie
24 asked about. First, please tell us how you came
25 to know about the Saugeen Ojibwe's history that

12:04:48 1 you talked about in your interview with
12:04:50 2 Professor Brownlie.

12:04:57 3 A. To what extent are you asking the
12:04:59 4 question? Are you asking the question to the
12:05:01 5 extent of how far back you want to know? Or are
12:05:04 6 we talking about research? Or are we talking
12:05:09 7 about the time that I spent as the Chief in
12:05:13 8 council? Or are we talking about the time when
12:05:16 9 I was just a member of the Band?

12:05:19 10 Q. I think almost all of those. I'm
12:05:22 11 wondering if you can describe what personal
12:05:24 12 experiences and knowledge you have that helped
12:05:28 13 you answer the questions that Professor Brownlie
12:05:31 14 put to you.

12:05:39 15 A. Professor Brownlie covered most
12:05:40 16 of what he would like to know about my
12:05:42 17 understanding of why we expected certain favours
12:05:50 18 or certain things from the government. And I
12:05:55 19 said that it was all contained within the
12:05:57 20 Treaties.

12:05:59 21 And you have to understand that the
12:06:01 22 written paper, the parchment paper that Treaty
12:06:04 23 72 is written on is not the complete treaty. We
12:06:09 24 have to consider, through my oral teachings and
12:06:13 25 through what has come from my grandfather and

12:06:21 1 the people around me, any of the written
12:06:24 2 documents that were taken either by the
12:06:26 3 missionaries or by minutes of the meeting, need
12:06:29 4 to be also included in the treaties. It is not
12:06:34 5 only the words that are written on the parchment
12:06:41 6 that are involved here.

12:06:42 7 Because promises were made to us
12:06:43 8 orally that need to be considered in the reading
12:06:51 9 of the treaties. And why people today do not
12:06:53 10 understand what Treaty 72 is is because they
12:06:56 11 only read the words that are on the parchment.

12:07:05 12 Q. You mentioned that you have
12:07:06 13 experience as a Chief and councilor, I asked you
12:07:08 14 questions about that. You're also descended
12:07:11 15 from a line of Chiefs, correct?

12:07:13 16 A. I am a descendant of one of the
12:07:17 17 signators to Treaty 72. Kegedonce was my great,
12:07:27 18 great grandfather; his name was changed to Peter
12:07:31 19 Kegedonce Jones at the baptism into Christianity
12:07:39 20 at the mouth of the Saugeen River.

12:07:48 21 He had a son whose named was Charles
12:07:49 22 Kegedonce Jones, who is also a Chief, who had a
12:07:54 23 son whose name was John Jones, called "Jack" by
12:07:59 24 the common person. He was also a Chief. He had
12:08:09 25 a son also, among other people his name was

12:08:13 1 Vernon Jones, who was also a Chief. Vernon
12:08:19 2 Jones was my father. And I am a Chief, showing
12:08:26 3 a direct lineage to a person that signed the
12:08:31 4 Treaty 72.

12:08:36 5 Because in the Treaty there is a
12:08:37 6 timeline that says that this treaty is enacted
12:08:43 7 as long as there can be shown that there are
12:08:46 8 people of the descendants of the people that are
12:08:49 9 signatory to the treaty. This is a timeline
12:08:55 10 that I believe will never run out.

12:09:03 11 Q. Tell me a bit about your mother
12:09:04 12 and her service on the council at Nawash.

12:09:13 13 A. My mother was not of the Native
12:09:24 14 descent. She was very well educated and came to
12:09:28 15 live with her husband on the reserve. I don't
12:09:30 16 know the dates of it but she was elected to
12:09:34 17 council in the '50s. And I believe it was 1954,
12:09:40 18 although I'm not absolutely sure of that.

12:09:45 19 She served as a councilor both in the
12:09:46 20 '50s and in the '60s. And I believe, but again
12:10:00 21 I'm not totally sure, but she was the first
12:10:03 22 woman ever elected to council on the Cape Croker
12:10:06 23 Reserve.

12:10:07 24 Q. I'd like to ask you some
12:10:10 25 questions about when you were a child growing up

1 in Cape and your perceptions and experiences
2 there when the Indian Agent was still on the
3 reserve.

4 What was the perception of the Indian
5 Agent at Cape Croker?

6 A. Well, because I heard the former
7 testimony of Mr. Ritchie, I had a vision then of
8 a person that he spoke about, who was the Indian
9 Agent, and his name was Ford Bouchard; who was a
10 person from the town of Wiarton; who was put in
11 place as the Indian Agent and he was first the
12 Indian Agent at Cape Croker; and he was a large
13 man, very tall, I'm sure over 6 foot 6 and very
14 wide and he intimidated very much just by his
15 stature, but his stature was one thing and his
16 wrath was another.

17 He had full authority to do as he
18 pleased with the population of our reserve, or
19 at least this was his statement.

20 In several instances that I can
21 recall, and I can only recall at this time
22 personal experiences, I can remember going to
23 visit a friend and asking his parents where this
24 friend was. And he said, well, he's hiding
25 today because today's the day that the Indian

1 Agent comes to take all the children away to
2 residential schools. And the parents had sent
3 him away to hide in the bush so that
4 Mr. Bouchard couldn't get to him.

5 On another instance I remember as a
6 very small child, and I don't believe that I was
7 any more than 6 or 7-years-old, Ford Bouchard
8 walked into our home without being announced; by
9 that I mean he did not knock on the door, he did
10 not do anything. He pushed on the door and
11 opened it and walked in and sat down at the
12 kitchen table and said, I want to know some
13 information.

14 And my mother was there and totally
15 appalled and asked, what right do you have to
16 come into our home and demand this kind of talk?
17 This is our home. You have no right. And
18 Mr. Bouchard said, I have the right of
19 everything over Indian people.

20 And without getting into the details
21 of what Ford Bouchard was there for, I can do
22 that, but I would prefer that I don't have to.
23 He did state what the business was that he had,
24 and to this day I don't feel that it was valid.
25 He was trying to get information from my mother

1 of who his daughters -- her daughters had
2 accompanied, or who their boyfriends were, or
3 what their interaction with people were. And my
4 mother didn't feel that that was any of his
5 business.

6 Q. Thank you.

7 What about the role that the Indian
8 Agent, this Indian Agent or others played in
9 managing the Band Council in the 1960s --
10 1950s, 1960s?

11 A. There, again, I have lots of
12 evidence because I do study these things and
13 have read some things. But what I will relate
14 to you here is as close as I can possibly get to
15 factual things that I have learned and found out
16 directly myself.

17 My mother was quite concerned as a
18 councilor about events that happened at council
19 tables and this and that, referring to the
20 actions of the Indian Agent.

21 Often things that would happen at the
22 council table never got responded to from the
23 government. And there was always a feeling that
24 did this agent send our reports out to the
25 powers to be? Or was he vetoing what we were

1 asking for?

2 And there, again, different Indian
3 Agents took different attitudes towards the
4 documentation that they were providing to their
5 superiors.

6 So I do not believe, although there
7 are lots of documents out there, that all of the
8 evidence went directly to their superiors.

9 Also what's happened is Indian -- and
10 the agents didn't necessarily report correctly.
11 What they did was in a lot of instances they
12 fabricated stories to degrade the perception of
13 how people looked at individuals. If the agent
14 was having problems with someone in the
15 community they always made sure that they made
16 them look bad in the light of other people.

17 And it was basically a suppression of
18 anyone with any knowledge or anyone with any
19 attitude that didn't fit in to their way of
20 life -- or their mandate, excuse me.

21 Q. Do you have any memory of what
22 you've just described, of someone trying to
23 stand up to the Indian Agent and how that would
24 have turned out?

25 A. There are lots of instances that

12:16:48 1 you can relate to how the Indian agent treated
12:16:52 2 other people. But personally I have nothing
12:16:57 3 that I can come up with at this time that -- of
12:17:01 4 how the Indian Agent directly affected any
12:17:07 5 situation that I was in.

12:17:15 6 You have to understand that recalling
12:17:17 7 so much information all at once is quite hard.

12:17:22 8 Q. So other than the incident that
12:17:24 9 you did describe with him coming into your
12:17:26 10 mother's house, the incident that you did
12:17:31 11 describe of the Indian Agent coming into your
12:17:33 12 mother's house?

12:17:34 13 A. Yes, I remember that vividly. I
12:17:41 14 was there as a small child. I don't know
12:17:44 15 exactly when but I believe that -- I believe
12:17:47 16 that it was about '56, 1956.

12:17:57 17 Q. Thank you.

12:17:58 18 A. And other than that the only
12:17:59 19 other direct reference was that it was always a
12:18:04 20 troubling time when the Indian Agent came to
12:18:07 21 take the children away to residential schools.

12:18:10 22 In lots of instances parents were not
12:18:13 23 even notified ahead of time that their child was
12:18:16 24 going. The Indian Agent came, took your child
12:18:21 25 by the hand and said, this child is going to

12:18:24 1 school for this session. Parents had no way of
12:18:30 2 refuting what was going on.

12:18:40 3 It's much like the situation that is
12:18:42 4 happening with our near neighbour in the United
12:18:44 5 States today, only that's over a border dispute.

12:18:55 6 Q. I'd like to turn to some
12:18:56 7 questions now about hunting in the territory.

12:19:02 8 How common was it for people to be hunting
12:19:04 9 around the territory when you were growing up?

12:19:07 10 A. Hunting was very important to us,
12:19:08 11 very important all through my childhood and my
12:19:14 12 life. We hunted as a sustenance. We hunted
12:19:23 13 because we had to. Our problem when I was young
12:19:31 14 was not worrying about what you were going to
12:19:33 15 eat next week, our problems were what you were
12:19:36 16 going to eat for the next meal or for the next
12:19:38 17 day.

12:19:40 18 And these things prompted us into
12:19:44 19 hunting as much as we can. So we did that to
12:19:51 20 provide food for our table. It was very
12:19:54 21 important and it was carried on quite regularly.
12:19:57 22 I mean, it -- we hunted both on our own reserve,
12:20:04 23 which is the Chippewas of Nawash, and we have
12:20:08 24 what's called a hunting reserve.

12:20:12 25 But the problem with having the

12:20:14 1 hunting reserve, when I was growing up, was if
12:20:19 2 you were unfortunate and a CO from the lands and
12:20:21 3 forests, or whatever, caught up with you they
12:20:29 4 were always stopping us and charging us. And
12:20:31 5 they say, well, you know, we're Indians, we can
12:20:34 6 hunt as much as we can.

12:20:35 7 But they used all the little loopholes
12:20:38 8 and they'd say, but you're transporting it from
12:20:41 9 here to there. If you're going to kill it there
12:20:43 10 you have to eat it there. That's what they told
12:20:45 11 us. And how can you feed your family when
12:20:47 12 that's true?

12:20:50 13 MNR always comes up with the evidence
12:20:52 14 that they say it's important because you have to
12:20:55 15 observe safety, you know?

12:21:02 16 Well, we were always taught -- we were
12:21:03 17 taught to hunt when we were children. We were
12:21:06 18 taught that you don't point a gun at anything
12:21:08 19 that you don't intend to kill. That works
12:21:11 20 everywhere. It works all the way around. It
12:21:14 21 worked during the first World War. It worked
12:21:18 22 during the second World War.

12:21:21 23 When Indian people volunteered a
12:21:23 24 hundred to fight for a country that was fighting
12:21:30 25 against them and suppressing them.

12:21:36 1 Slavery in the United States was
12:21:37 2 outlawed before it was against the Indians in
12:21:41 3 Canada. And I don't have a date on that but I
12:21:44 4 know it happened.

12:21:50 5 There are so many things, so many
12:21:53 6 injustices that probably even this case will not
12:21:55 7 clear up, but it's a good starting point.

12:22:06 8 Q. I'm going to circle back to you
12:22:06 9 mentioned COs, conservation officers, from the
12:22:09 10 MNR charging people with hunting in the
12:22:12 11 territory. Was it a regular thing for people to
12:22:15 12 be charged with hunting in the territory when
12:22:17 13 you were growing up?

12:22:28 14 A. I never, in my younger times and
12:22:31 15 up until I was the Chief, ever seen a CO or
12:22:33 16 lands and forest on the reserve; but if you were
12:22:38 17 ever off of the reserve or going in between
12:22:40 18 reserves you were always checked for what your
12:22:46 19 intentions are or -- and if you had any game.

12:22:50 20 And there was no leniency. It was
12:22:56 21 always by what they felt was the book, by their
12:22:59 22 laws. They had no tolerance up until recently,
12:23:05 23 until it has been determined that the law has to
12:23:07 24 be -- or supposed to be, and yous (sic) people
12:23:14 25 know more about the law than I do. It's

12:23:16 1 supposed to be applied liberally to the Indian
12:23:18 2 people because they don't have the same
12:23:22 3 understanding of your justice system as what
12:23:29 4 yous (sic) do.

12:23:30 5 And it must be recognized it is your
12:23:33 6 system and not ours that we're being judged by.

12:23:40 7 Q. In your interview with Professor
12:23:43 8 Brownlie you described a story where your father
12:23:47 9 was charged with a hunting offence in the
12:23:49 10 1960s. Can you tell us that story?

12:23:52 11 A. Yes. I was with several adults,
12:23:56 12 I was the youngest person in the vehicle. I
12:23:59 13 believe I must have been 8 or 9-years-old. I
12:24:03 14 don't recall the year. I do know that I was
12:24:14 15 young. There was three other people in the
12:24:16 16 vehicle that I know of. There was Norman Peter
12:24:18 17 Jones, there was a fellow named Charlie
12:24:21 18 Akiwenzie, we called him Charlie Shoot, and
12:24:26 19 there was Eugene Keshige. They were all members
12:24:30 20 of the Cape Croker reserve.

12:24:31 21 And we were on our way to Tobermory to
12:24:35 22 hunt deer. And we were on the side of the road,
12:24:42 23 the men were relieving themselves and we were
12:24:44 24 stopped by a CO. And he began to question them
12:24:51 25 and he could not get any answers out of them,

12:24:53 1 the grown men. So he turned to me and asked me
12:24:58 2 what we were doing. And being of young, a young
12:25:02 3 person, I had no understanding of where he was
12:25:06 4 coming from and the entrapment that he was
12:25:08 5 trying to occur. And I said, well, we're
12:25:10 6 hunting.

12:25:12 7 But I didn't have the perception of
12:25:13 8 knowing that we weren't hunting then, we were on
12:25:16 9 our way to go hunting. But I said "hunting" and
12:25:20 10 our guns were seized. Everything in the vehicle
12:25:23 11 was seized. And there was court cases after
12:25:28 12 that but I didn't have to attend.

12:25:32 13 So that -- those people were charged.

12:25:38 14 Q. You said you are on your way to
12:25:41 15 Tobermory, that's on the way to the hunting
12:25:43 16 reserve near there?

12:25:44 17 A. That's on our way to the hunting
12:25:47 18 reserve, 60A and 60B. I believe 60A belongs --
12:25:52 19 is registered with Saugeen Indian Reserve, which
12:25:54 20 is the front half of the reserve, and the back
12:25:58 21 half of the reserve is registered under the
12:26:02 22 Chippewas of Nawash.

12:26:06 23 Q. You also mention, in your
12:26:07 24 interview with Professor Brownlie, an incident
12:26:10 25 with a conservation officer at Craigleith and

1 Francis Nadjiwon. Can you tell us about that?

2 A. It was after our -- the Jones
3 Nadjiwon case. And I was with Francis Nadjiwon
4 and one of our fishermen that we had brought in
5 to help us to learn the new trade of commercial
6 fishing on a tug.

7 And the CO came up to us and tried to
8 give Francis Nadjiwon -- or I believe it was
9 serving a paper to Francis Nadjiwon and he would
10 not accept it. He kept his hands behind his
11 back and kept them -- so that the CO could not
12 give him the subpoena, or I suppose that's what
13 it was.

14 The one CO was standing talking to
15 Francis or -- and harassing him, I felt it was
16 harassment. And the second CO was possibly 20
17 feet away with his holster unbuttoned and his
18 hand on his side arm. And I was in between them
19 and I feared at that time for an incidence that
20 it was going to happen that one of us was going
21 to be violently hurt.

22 Fortunately nothing more became of it.
23 The paper fell on the road and stayed on the
24 road. It was never viewed or taken up by
25 Francis. The COs, after that, I can't in my

12:28:11 1 life identify who they were. To me it was such
12:28:15 2 a traumatic thing to think that we were that
12:28:19 3 close and everybody else preaches safety, none
12:28:22 4 of us had guns.

12:28:24 5 It was a man with his hand on a side
12:28:28 6 arm. I still when I revert to it have trauma
12:28:36 7 over thinking about this.

12:28:43 8 Q. Thank you for sharing that.

12:28:46 9 I want to go to another part of
12:28:47 10 talking about experiences that you had with
12:28:51 11 asserting rights throughout the territory, in
12:28:57 12 particular talking about fishing. What was
12:29:00 13 fishing like around Cape Croker in the 1950s?

12:29:08 14 A. Fishing was -- we need to go back
12:29:14 15 a little bit, I guess, because fishing in -- our
12:29:23 16 history of our court case tells us that fishing
12:29:26 17 started to decline, and this is from evidence
12:29:29 18 from the Jones Nadjiwon case. It started to
12:29:34 19 decline in '47, '48, and as late as into '56
12:29:41 20 where it started to pick up again because there
12:29:44 21 was more fish in the lake.

12:29:45 22 Some of the causes for that have been
12:29:54 23 claimed that it was the introduction or the
12:29:56 24 opening of the St. Lawrence Seaway, which let
12:29:58 25 lamprey eel into the Great Lakes and destroyed

12:30:02 1 the stock of lake trout, which was the general
12:30:12 2 fishery in the '40s. It had turned over from
12:30:16 3 a sturgeon fishery to a trout fishery.

12:30:23 4 And in '56 and into the early '60s
12:30:26 5 and '70s fishing in the Great Lakes started to
12:30:29 6 come back better and better because there was
12:30:31 7 some controls being put into place dealing with
12:30:38 8 the lamprey eel.

12:30:42 9 And the fish that were being left in
12:30:44 10 lake were no longer just fish with smooth skin,
12:30:47 11 they were fish that were left with scales so
12:30:51 12 that the lamprey eel couldn't attack them as
12:30:55 13 well.

12:30:56 14 Q. So just for clarity for those
12:30:58 15 that don't know, what is lamprey eel?

12:31:02 16 A. A lamprey eel is a parasite kind
12:31:05 17 of a thing. It's of the eel family, I don't
12:31:07 18 know the scientific name for that, but it's
12:31:13 19 something that attaches to the fish and sucks
12:31:18 20 their blood and makes them weak to where they
12:31:22 21 become -- they die from -- if they have too much
12:31:28 22 interaction with these parasites.

12:31:37 23 Q. After the recovery of the fishery
12:31:39 24 then in the '60s, '70s and '80s how common was
12:31:45 25 it for Saugeen Ojibwe members to be fishing?

12:31:48 1 A. There was always a tidbit of
12:31:50 2 fishing happening among our people. Even
12:31:54 3 from -- even through from the -- from '47
12:32:01 4 through to the '60s people would always go out
12:32:07 5 maybe once or twice a year and set up a net, or
12:32:10 6 whatever, to check to see if there was any fish,
12:32:17 7 or if they were lucky they would catch a fish
12:32:20 8 for their dinner table.

12:32:22 9 There wasn't as much commercial
12:32:23 10 activity that happened between the low periods.
12:32:26 11 And there was no real pursuit of any commercial
12:32:29 12 activity in that era.

12:32:32 13 As the fisheries started to come back
12:32:37 14 and the testing by our people of the lake, that
12:32:42 15 the lake started to become healthy again and
12:32:46 16 there was more stocks of fish there, our people
12:32:48 17 started to catch fish and sell them, both
12:32:54 18 through selling through commercial buyers and
12:33:00 19 through peddling fish.

12:33:03 20 My mother and I -- quite often a
12:33:08 21 fishermen would hire my mother with her vehicle
12:33:10 22 and we would go around and peddle fish
12:33:14 23 door-to-door to make some sort of cash for
12:33:18 24 people who were cash starved.

12:33:29 25 I might add, if yous are looking for

12:33:33 1 the fact that our people all through this
12:33:37 2 time -- one of the activities that I had trouble
12:33:41 3 understanding is we fished through the ice. Any
12:33:44 4 time that the lake fish -- the lake froze we
12:33:47 5 would cut holes in the ice and set nets directly
12:33:51 6 under the ice.

12:33:53 7 And it's a process that we used in the
12:33:55 8 wintertime. And usually you set your nets when
12:33:59 9 the lake froze. Sometimes you would have a foot
12:34:02 10 of ice, sometimes more. And you would generally
12:34:08 11 set your net and lift it every day for food
12:34:11 12 fish, that usually went on.

12:34:17 13 And today it still goes on. If people
12:34:19 14 want to set a net in the wintertime under the
12:34:23 15 ice they still do that. It's a method that's
12:34:26 16 not practiced very often here in Ontario but
12:34:30 17 it's quite a healthy thing that happens on Lake
12:34:35 18 Winnipeg. Through my research in looking at
12:34:39 19 what goes on with -- there's quite an active
12:34:43 20 winter fishery in Lake Winnipeg through the ice.

12:34:51 21 Q. So when the fisheries -- when the
12:34:52 22 fish came back, when the stocks came back during
12:34:55 23 that period, how common was it for Saugeen
12:35:00 24 Ojibwe members to be charged with fishing
12:35:02 25 offences?

12:35:12 1 A. In the beginning there was no
12:35:13 2 effort paid to us by the MNR officers regarding
12:35:19 3 our fishing activities, but as the stocks in the
12:35:21 4 lakes started to come up and they started to
12:35:24 5 notice that there was more and more fish coming
12:35:26 6 into the markets, and this and that, through
12:35:29 7 from the Indian fishery and that they had no
12:35:32 8 control on it they started to find ways to
12:35:40 9 control what we were doing.

12:35:54 10 And their activity related to making
12:35:54 11 new rules and regulations on how much fish you
12:35:57 12 could take and how much yardage of net you could
12:36:01 13 use. They were putting measures in place and at
12:36:10 14 the time of my trial I believe that the judge
12:36:12 15 said that they were using 50-year-old science to
12:36:17 16 try to prove some of their activities on how
12:36:23 17 they were setting the quotas.

12:36:33 18 Outside of that it has become my
12:36:35 19 observation that the way, in relation to myself,
12:36:37 20 that the MNR has made decisions. And the way
12:36:40 21 that they make decisions is, they make a
12:36:43 22 political decision on how -- what they want to
12:36:46 23 happen and then they talk to their scientists
12:36:50 24 and they said, now, go out and find us evidence
12:36:53 25 that we can do what we want to do. They don't

12:36:56 1 act on pure evidence putting the science first
12:37:00 2 and the political decision afterwards.

12:37:11 3 This has been my own personal
12:37:13 4 experience through dealing with them. This is
12:37:14 5 the only way that I can see that they do it.

12:37:16 6 In today's world, since we have taken
12:37:19 7 it over, there is better science out there,
12:37:21 8 there is better understanding of what's going on
12:37:23 9 in the lake. Because we have an agreement that
12:37:27 10 we find the science, we provide science and we
12:37:31 11 share what we have with them.

12:37:33 12 There was no effort on their part at
12:37:35 13 any time to share exactly with us what they were
12:37:39 14 getting, but now that we have an agreement we
12:37:43 15 share with them. So now Canada and Ontario is
12:37:48 16 better off in the Great Lakes because we do
12:37:50 17 share. But it's -- that's through our action,
12:37:53 18 not theirs.

12:37:56 19 Q. So I want to come back in a bit
12:37:58 20 to the trial and also the charges that you faced
12:38:02 21 in 1989 and the outcome of that. But before I
12:38:05 22 do that I want to ask you, when you were in
12:38:12 23 council in the '80s did you often see or hear of
12:38:16 24 people getting charged with fishing offences?

12:38:21 25 THE COURT: I'm just going to

12:38:22 1 interrupt you, counsel, because I do want an
12:38:25 2 answer to the question.

12:38:26 3 So, sir, I just want you to listen
12:38:28 4 carefully to it. It's a very specific question
12:38:31 5 and it's the second time counsel has asked. I
12:38:36 6 want your answer about whether or not you heard
12:38:39 7 of people being charged, very specifically,
12:38:43 8 okay? I just wanted to make that emphasis so I
12:38:47 9 can get your answer. Just the question of
12:38:51 10 people being charged. Thank you.

12:38:58 11 THE WITNESS: Could you ask the
12:38:59 12 question again, please?

12:39:00 13 BY MS. GUIRGUIS:

12:39:00 14 Q. Sure. When you were in council
12:39:02 15 in the 1980s did you hear about people being
12:39:05 16 charged with fishing offences?

12:39:08 17 A. Yes, I did. And several times
12:39:14 18 our people were charged with fishing over the
12:39:19 19 quota. Several times there was talk in the
12:39:24 20 community about going to court and our people
12:39:32 21 being put through the courts, and quite often it
12:39:37 22 was a case that we were pled guilty.

12:39:41 23 If we had lawyers they usually tried
12:39:44 24 to plead us guilty because they said that there
12:39:48 25 was probably no way that we could beat the

12:39:51 1 charges, either that or they tried to make
12:39:56 2 arrangements for lesser sentences.

12:40:02 3 In one instance that I can recall, and
12:40:04 4 I don't know what the dates are on it, but our
12:40:08 5 people were charged and went to court. And I
12:40:12 6 believe that there was seven or eight of our
12:40:15 7 fishermen and some of them were elderly, and our
12:40:21 8 Elders, and they were made to stand in front of
12:40:23 9 the court for over 45 minutes being taunted by
12:40:33 10 or -- I shouldn't say taunted, I guess that's
12:40:36 11 the wrong word to use when you're talking about
12:40:38 12 a judge. They were being vigorously reprimanded
12:40:45 13 by the judge for doing what they were doing.

12:40:54 14 Our people were Elders and they were
12:40:56 15 not even allowed to sit while a strip was being
12:41:01 16 torn off of them. And this became very
12:41:03 17 aggrevable (sic) in our community because it
12:41:07 18 showed a total disrespect from the court for our
12:41:12 19 elderly people.

12:41:13 20 You can do lots of things and get away
12:41:15 21 with it with young people but don't touch our
12:41:17 22 Elders. Our Elders have to have more respect
12:41:24 23 than that, wherever it comes from. I hope that
12:41:29 24 answer your question.

12:41:34 25 THE COURT: Sir, the wonderful thing

12:41:35 1 about your capable counsel is that she will
12:41:38 2 always ask you another question if you haven't
12:41:41 3 covered everything. So I want you just to
12:41:44 4 listen to her specific questions, and I know
12:41:45 5 you're doing the best you can and that's
12:41:48 6 terrific. Please go ahead.

12:42:01 7 MS. GUIRGUIS: Thank you.

12:42:01 8 BY MS. GUIRGUIS:

12:42:02 9 Q. So the fishing charges, am I
12:42:02 10 correct in saying that the charges that people
12:42:04 11 were being charged with, the fishing charges,
12:42:06 12 the fishing offences, were about fishing above
12:42:09 13 quotas? I think I heard you say that?

12:42:12 14 A. Yes.

12:42:13 15 Q. Okay.

12:42:14 16 A. They were generally fishing above
12:42:16 17 the quota.

12:42:17 18 Q. Thank you. On this issue of the
12:42:19 19 quota, and also getting back to what you were
12:42:22 20 talking about earlier with the fishing trial and
12:42:24 21 your own charges that you faced, this is the R.
12:42:27 22 v. Jones Nadjiwon case, I want to take you to
12:42:33 23 some documents now leading up to that.

12:42:34 24 So what I'd like to do is look at a
12:42:41 25 few letters that are in the ready database. The

1 first document is a letter from Mr. Blake Smith,
2 fish and wildlife officer to Chief Akiwenzie.

3 The document number is SC0076.

4 So, Mr. Jones, this is while you were
5 on council. Are you familiar with this
6 document?

7 A. Yes, it looks to me like it's a
8 standard commercial fishing license.

9 Q. So it's a letter about a standard
10 commercial fishing license?

11 A. Yes, it's about a commercial
12 fishing license.

13 Q. And what does it say?

14 THE COURT: Sorry, you want the
15 gentleman to read it out loud?

16 BY MS. GUIRGUIS:

17 Q. No, I don't want him to read it
18 out loud.

19 Do you know what it's about?

20 A. It's about interaction between
21 our former Chief Peter J. Akiwenzie and the MNR
22 relating to asking for an increase in the quota.
23 It's the general drift of the situation and
24 the -- at this time there's no means to increase
25 the quota by the MNR.

12:44:40 1 MS. GUIRGUIS: Your Honour, I'd like
12:44:41 2 to add this as an exhibit.
12:44:43 3 THE COURT: Any objection? No.
12:44:45 4 THE REGISTRAR: Exhibit 3974.
12:44:48 5 EXHIBIT NO. 3974: Document SC0076.
12:44:50 6 Standard commercial fishing license.
12:44:51 7 BY MS. GUIRGUIS:
12:44:51 8 Q. I would like to take you a second
12:44:53 9 letter, which is in the database document number
12:44:58 10 SC0077. This is a letter from Chief Akiwenzie
12:45:07 11 responding to Blake Smith. Are you familiar
12:45:09 12 with this letter?
12:45:28 13 A. Yes, I am familiar with this
12:45:29 14 letter.
12:45:31 15 Q. What's the general subject matter
12:45:33 16 that's in this letter?
12:45:38 17 A. It's generally a fact that we are
12:45:42 18 having trouble complying with the license, I
12:45:47 19 believe. And along the lines that we would like
12:45:56 20 to work with the government but the conditions
12:45:59 21 are not such that we can.
12:46:03 22 Q. Your Honour, I'd like to add this
12:46:05 23 letter as an exhibit?
12:46:07 24 THE COURT: Any objection? No. All
12:46:08 25 right.

12:46:10 1 THE REGISTRAR: Exhibit number 3975.
12:46:12 2 EXHIBIT NO. 3975: Document SC0077.
12:46:13 3 Letter from Chief Akiwenzie responding
12:46:13 4 to Blake Smith.
12:46:32 5 BY MS. GUIRGUIS:
12:46:32 6 Q. Mr. Jones, can you look at the
12:46:35 7 second paragraph, the first bullet point, and
12:46:38 8 just read out that sentence?
12:46:40 9 THE COURT: Which bullet point --
12:46:44 10 BY MS. GUIRGUIS:
12:46:45 11 Q. The first one.
12:46:46 12 A. "The following letter
12:46:46 13 is in regards to the Chippewas of
12:46:48 14 Nawash fishing license, and the
12:46:52 15 understanding and discussion between
12:46:53 16 yourself and Chief Akiwenzie and Paul
12:46:57 17 Williams."
12:46:58 18 Q. Sorry, and then below that the
12:47:00 19 first bullet point in the list?
12:47:08 20 A. "The Band accepts license under
12:47:11 21 protest.
12:47:12 22 Q. So this is referring to a
12:47:13 23 commercial fishing license. Do you know why
12:47:18 24 they would have accepted the license under
12:47:21 25 protest?

12:47:22 1 A. Yes. This situation occurred
12:47:27 2 during Peter's time as the Chief and during my
12:47:33 3 time as the Chief.

12:47:35 4 The reason being is that it was
12:47:41 5 important to us to work within the law as long
12:47:45 6 as we could. And at some point in time if we
12:47:52 7 went over the quota, or whatever, we had to
12:47:56 8 figure out what we were going to do at that
12:47:59 9 situation. That was standard procedure.

12:48:03 10 Like, we had always pursued with MNR
12:48:10 11 that our licenses should be increasing because
12:48:16 12 our own evidence, although it wasn't at that
12:48:18 13 time scientific, we were feeling that there was
12:48:27 14 more fish in the lake than was being warranted
12:48:30 15 and we weren't getting any increases in our
12:48:32 16 quota.

12:48:33 17 However, we knew through our
12:48:35 18 interactions with the people in the white
12:48:40 19 fisheries and the white commercial fisheries
12:48:42 20 that their quotas had been increasing in both
12:48:45 21 Georgian Bay and Lake Huron. And when I talk
12:48:48 22 about Georgian Bay I also always consider that
12:48:52 23 as Lake Huron.

12:48:59 24 So their quotas were increasing and
12:49:04 25 ours weren't. And this was our way of saying,

12:49:07 1 we want to work with you and we want to increase
12:49:08 2 our quotas but we can't work within this system.

12:49:12 3 Q. So I'd like to refer you to one
12:49:14 4 more document, which is a copy of the commercial
12:49:16 5 fishing license, number OS1472. It's in the
12:49:22 6 database under the number SC0078.

12:49:31 7 So this is a copy of the commercial
12:49:32 8 fishing license that you've referred to, it's in
12:49:35 9 the letters. You're familiar with this
12:49:37 10 document?

12:49:38 11 A. It looks like a document that I
12:49:40 12 would be familiar with. I am not specifically
12:49:47 13 familiar with this one. "Grey Lady" at the top
12:49:55 14 of the document is actually the name of one of
12:49:57 15 the boats that one of the fishermen was using,
12:50:00 16 if anybody's wondering about that. And then it
12:50:03 17 says "small boat".

12:50:05 18 So I'm not -- because it doesn't look
12:50:08 19 like I was a participant of this specific
12:50:13 20 license, but it's a general thing. And the
12:50:16 21 signatures on the bottom are people who were
12:50:22 22 designated under this license to fish. And you
12:50:26 23 could add them as the need required.

12:50:29 24 Q. So these names that are listed
12:50:31 25 here, Marshall Nadjiwon, Ronald Akiwenzie, and

12:50:35 1 so on, those are designated fishers that can
12:50:37 2 fish under the license?

12:50:39 3 A. They are designated fishers that
12:50:42 4 were allowed to fish under the license.

12:50:44 5 You have to understand that the Chief
12:50:46 6 was the holder of the license, and the people
12:50:51 7 under him were -- that are listed here were
12:50:56 8 designated. So that the MNR had somebody that
12:51:02 9 they could put on the charges, or whatever, if
12:51:06 10 there was any to file. This is what was
12:51:12 11 explained to me by Mr. Smith.

12:51:19 12 Q. If we scroll down on this
12:51:20 13 document on the page? You mentioned that the
12:51:21 14 Chiefs are listed on the license. You have
12:51:28 15 three signatures there, one is Blake Smith and
12:51:31 16 there's another two, Peter Akiwenzie and Ralph
12:51:35 17 Akiwenzie.

12:51:37 18 A. I believe that that is Peter
12:51:38 19 Akiwenzie's signature under Ralph Akiwenzie's
12:51:41 20 signature. Ralph at the time was not a Chief,
12:51:45 21 he was a councilor at this time.

12:51:49 22 And quite often in the absence of our
12:51:52 23 Chief our head councilor steps in and is
12:51:56 24 authorized by the council to sign on behalf of
12:51:59 25 the Chief. And that's why Ralph Akiwenzie's

1 name appears on this license.

2 MS. GUIRGUIS: Thank you. Your
3 Honour, I'd like to add this as an Exhibit.

4 THE COURT: I didn't objection? No.

5 THE REGISTRAR: Exhibit number 3976.

6 EXHIBIT NO. 3976: Document SC0078.

7 Copy of commercial fishing license
8 number OS1472.

9 BY MS. GUIRGUIS:

10 Q. And I would like to take you to
11 the second page of this document. Just to
12 clarify a point that you've been saying, "the
13 quotas", that the charge is for fishing outside
14 of the quotas. Can you describe to me what --
15 how is it that these quotas controlled the
16 Saugeen Ojibwe's fishing?

17 A. Well, like, if I'm understanding
18 the question correctly, we were to provide to
19 the Ministry each month tally sheets of what
20 fish were caught by all of our fishermen. That
21 was how they would know how much fish we had
22 caught. It's -- is that what you're asking for?

23 Q. Yes, that's what I'm asking.

24 So when we see at number (4) on this
25 page about:

12:53:34 1 "The reporting of the assigned
12:53:37 2 quantity of the species of fish named
12:53:40 3 in the appendix C [...]"
12:53:42 4 Which is later in the document.
12:53:42 5 "[...] fishing for this species of
12:53:45 6 fish shall cease."
12:53:46 7 That's what you mean?
12:53:48 8 A. Yes.
12:53:49 9 Q. And also if we look up at number
12:53:50 10 (2), on the same page, that the license is valid
12:53:52 11 for gill and trap nets only. What does that
12:53:56 12 refer to?
12:53:57 13 A. It's two different methods of
12:53:59 14 fishing. Gill net is a net that you set and it
12:54:03 15 catches the fish in a very small twine, what we
12:54:07 16 call twine; it's like fishing line. And the
12:54:10 17 fish are caught by the gills and that's what a
12:54:13 18 gill net is.
12:54:14 19 A trap net is a net that generally
12:54:18 20 catches fish alive. And you pick the pocket up
12:54:22 21 and you take the fish out while they're still
12:54:25 22 alive; and you can release any other fish that
12:54:29 23 are still alive and not commercially valuable.
12:54:39 24 Q. So would it be fair to say,
12:54:41 25 without getting into too much more detail of

12:54:43 1 this commercial fishing license, that what it
12:54:46 2 does is set terms for what type of fish, the
12:54:49 3 amount of fish and how they're caught?

12:54:52 4 A. That's the -- that my belief is
12:54:55 5 the general attitude of what a fishing license
12:54:59 6 is.

12:55:03 7 Q. Okay. Thank you.

12:55:05 8 So you had mentioned already that
12:55:07 9 council had concerns with the quotas that were
12:55:11 10 expressed in the letters. Did you receive any
12:55:19 11 response, between the time that those letters
12:55:20 12 were sent and prior to your charges in 1989,
12:55:22 13 about agreeing to increase the quota?

12:55:32 14 A. I believe that there may have
12:55:36 15 been a token increase on one of our licenses,
12:55:39 16 but it was to the extent that it was still
12:55:45 17 insignificant. It was no -- it was no doubling
12:55:49 18 or tripling, or anything like that, of our
12:55:54 19 license, which was basically a very small
12:55:57 20 amount. I received -- I believe there should be
12:56:04 21 another letter somewhere stating that there's no
12:56:07 22 further quota to be allocated to this license.
12:56:13 23 I believe that that letter came from either
12:56:18 24 Ralph Tippet or Blake Smith, I'm not sure.

12:56:23 25 Q. So speaking of that letter, I'll

12:56:26 1 take you to another couple of documents now?

12:56:28 2 THE COURT: Counsel, just before you
12:56:30 3 begin, and you're welcome to begin, can we do
12:56:33 4 those couple of documents in the next five
12:56:36 5 minutes do you think? I don't want to stop
12:56:39 6 early but I just want to flag for you that you
12:56:42 7 should have a plan. I'm sure you do.

12:56:44 8 MS. GUIRGUIS: I probably need about
12:56:46 9 another 15 minutes, Your Honour. So if you
12:56:48 10 wanted to take --

12:56:49 11 THE COURT: For the two letters or for
12:56:51 12 this gentleman?

12:56:54 13 MS. GUIRGUIS: For the two letters and
12:56:55 14 then for this gentleman's examination to be
12:56:55 15 completed.

12:56:57 16 THE COURT: You need about 15 more
12:56:58 17 minutes to complete the examination.

12:57:03 18 MS. GUIRGUIS: Yes.

12:57:03 19 THE COURT: Well, let's just do the
12:57:04 20 first of your letters then and take a break.

12:57:07 21 MS. GUIRGUIS: Okay.

12:57:07 22 THE COURT: Because I don't think we
12:57:07 23 should go all the way in -- that far because of
12:57:07 24 starting early this morning.

12:57:09 25 So do one and then let's take the

12:57:11 1 break and we can finish this gentleman's chief
12:57:13 2 after the break.
12:57:15 3 MS. GUIRGUIS: Thank you, Your Honour.
12:57:19 4 BY MS. GUIRGUIS:
12:57:19 5 Q. So the first of the documents --
12:57:21 6 THE COURT: Sorry, I'm just
12:57:22 7 remembering something you said yesterday about
12:57:25 8 this gentleman having a time constraint today.
12:57:29 9 MS. GUIRGUIS: That was Mr. Ritchie.
12:57:31 10 THE COURT: All right. So we can take
12:57:32 11 the lunch break then.
12:57:33 12 MS. GUIRGUIS: Yes, we can.
12:57:36 13 THE COURT: All right. Please go
12:57:40 14 ahead.
12:57:40 15 BY MS. GUIRGUIS:
12:57:41 16 Q. So the first of the documents is
12:57:43 17 SC0079, it is a Band Council resolution dated
12:57:52 18 January 31st, 1989. Do you recognize this
12:57:56 19 document?
12:58:00 20 A. I do recognize this document.
12:58:03 21 Q. Your Honour, I'd like to add this
12:58:05 22 as the next exhibit?
12:58:08 23 THE COURT: Any objection.
12:58:11 24 THE REGISTRAR: Exhibit number 3977.
12:58:14 25 EXHIBIT NO. 3977: Documents SC0079,

12:58:15 1 Band Council Resolution dated January
12:58:15 2 31st, 1989.
12:58:17 3 BY MS. GUIRGUIS:
12:58:17 4 Q. Mr. Jones, can you tell the court
12:58:20 5 why council passed this resolution?
12:58:22 6 A. It's standard procedure for the
12:58:24 7 council to direct Chiefs when they want them
12:58:26 8 specifically to do something.
12:58:31 9 Often times when in politics people
12:58:35 10 might get around to doing something when they
12:58:37 11 feel that they would get around to doing it.
12:58:41 12 And when you receive a resolution like this it
12:58:44 13 is a direct order from the council that you do
12:58:47 14 something.
12:58:48 15 And so my own feelings or theories on
12:58:54 16 whether or not I should sign the license are not
12:58:56 17 mine in this situation. I am being directed by
12:58:59 18 the council to do so.
12:59:03 19 I probably would have signed the
12:59:05 20 license without this direction but they were
12:59:07 21 making sure that it was signed.
12:59:09 22 Q. And the words in the Band Council
12:59:11 23 Resolution say that they were directing you to
12:59:13 24 sign it in protest?
12:59:15 25 A. Correct.

12:59:19 1 Q. So the next document that I want
12:59:20 2 to pull up is the letter that you mentioned, the
12:59:23 3 number is SC0080. It is a letter dated February
12:59:40 4 1st, 1989 and it's from you to Minister Ralph
12:59:50 5 Tippet. Are you familiar with this document?

12:59:57 6 A. I am familiar with this document.

12:59:59 7 Q. Your Honour, I'd like that add
01:00:00 8 this as an Exhibit.

01:00:01 9 THE COURT: Any objection? No.

01:00:04 10 THE REGISTRAR: Exhibit 3978.

01:00:06 11 EXHIBIT NO. 3978: Document SC0080.

01:00:07 12 Letter from Howard Jones to Minister
01:00:07 13 Ralph Tippet, dated February 1st,
01:00:07 14 1989,

01:00:17 15 BY MS. GUIRGUIS:

01:00:17 16 Q. And what's the general nature of
01:00:19 17 what you were saying in this letter to Minister
01:00:23 18 Tippet?

01:00:23 19 A. The general nature in the
01:00:24 20 individual words is, we don't believe their
01:00:26 21 science, and we don't believe the fact that they
01:00:28 22 have grounds not to increase our quota. We
01:00:31 23 believe that their science is flawed.

01:00:43 24 Q. But you were agreeing to sign the
01:00:45 25 commercial license as is?

01:00:47 1 A. We were agreeing to sign the
01:00:48 2 license as is because we couldn't get any
01:00:51 3 satisfaction to increase it; but we knew that in
01:00:54 4 order to start it was important to be legal in
01:00:56 5 their terms as long as possible.

01:01:00 6 We weren't at the stage yet to where
01:01:02 7 we needed to do any physical protests. We were
01:01:06 8 still at the stage to where we were doing
01:01:10 9 minuscule objections to the law.

01:01:18 10 Q. Did the Ministry respond to the
01:01:20 11 concerns that you and the council expressed in
01:01:23 12 the letter and the BCR?

01:01:27 13 A. I am not sure whether they
01:01:30 14 responded directly to that, but my understanding
01:01:35 15 would be because they did not increase the quota
01:01:42 16 that there was no response to it.

01:01:47 17 MS. GUIRGUIS: Your Honour, I think
01:01:47 18 now would be a good time for a break, if that's
01:01:50 19 okay with you?

01:01:51 20 THE COURT: Thank you, we'll take the
01:01:52 21 break now until 2:15.

01:01:53 22 -- RECESSED AT 1:01 P.M. --

01:01:53 23 -- RESUMED AT 2:17 P.M. --

02:17:28 24 THE COURT: Go ahead, counsel.

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BY MS. GUIRGUIS:

Q. So, Mr. Jones, we left at the break talking about the commercial fishing licenses and the quotas that were imposed by the Ministry, and also that you had been directed by your council and that you did in fact sign the commercial fishing license under protest.

So what I'd like to talk about is what followed next in 1989, leading up to what's often referred to and known as the Jones and Nadjiwon case. Can you tell me about that case?

THE COURT: Counsel, can you ask a more specific question. I think you know that we're not here to retry that case, as I understand it. Is that correct, counsel?

MS. GUIRGUIS: That's correct.

THE COURT: The witness has a lot of history. Maybe you can ask him a more specific question?

BY MS. GUIRGUIS:

Q. So, Mr. Jones, you're the Jones that's referred to in that case?

A. That's correct.

Q. And you were charged in 1989?

A. That's correct.

02:18:26 1 Q. What were you charged for?

02:18:29 2 A. I was charged for fishing over
02:18:33 3 quota, and also charged for failing to report
02:18:41 4 properly, which was a charge that brought into
02:18:50 5 question my integrity.

02:18:55 6 Q. You mentioned before the break
02:18:56 7 when we were talking earlier that there were
02:18:58 8 other fishing charges that Saugeen Ojibwe Nation
02:19:01 9 members faced. Was in the first one that was
02:19:04 10 defended as an Aboriginal rights case?

02:19:09 11 A. I don't know that that was even
02:19:14 12 an Aboriginal rights case. It was a charge
02:19:17 13 under the laws of the Province under the Game
02:19:22 14 and Fish Act. I don't know that it was directly
02:19:27 15 a charge under Aboriginal rights.

02:19:35 16 Q. The defence that you brought was
02:19:37 17 based on an Aboriginal right to fish
02:19:40 18 commercially, is that right?

02:19:42 19 A. That's right.

02:19:43 20 Q. So what was different about this
02:19:44 21 case that made the Saugeen Ojibwe decide to
02:19:48 22 bring it as an Aboriginal rights case, to defend
02:19:52 23 it, sorry, is more accurate, as an Aboriginal
02:19:54 24 rights case?

02:19:55 25 A. This -- the past events leading

02:20:03 1 up to the court case affected our decision on
02:20:07 2 what we were going do with the court case.
02:20:10 3 Because we didn't feel that it was right for us
02:20:15 4 to continue going to court and being guilty of
02:20:19 5 something. We felt we had to get this done and
02:20:22 6 over with and that it was our right to fight
02:20:31 7 this.

02:20:32 8 You gotta understand that we were in a
02:20:34 9 certain time relating to the Canadian
02:20:38 10 constitution, in 1985 the patriation to where
02:20:45 11 our rights are protected under section 35.

02:20:52 12 Also something significant had
02:20:54 13 happened in the courts in British Columbia, and
02:20:55 14 that was the Sparrow case, that prompted us that
02:21:01 15 we had a fight to prove that we had an existing
02:21:05 16 right and through that would be exempt from the
02:21:09 17 provincial guidelines.

02:21:19 18 Q. And how did winning the Jones and
02:21:21 19 Nadjiwon case change things for the Saugeen
02:21:25 20 Ojibwe and how you exercised your rights?

02:21:30 21 A. Many, many issues. Moral issues.
02:21:33 22 When I say "moral issues", again, one day after
02:21:38 23 the case I walked out on the dock and seen a
02:21:43 24 beehive of people happy at what they were doing,
02:21:47 25 working, making a legal living and something

02:21:52 1 that they knew how to do, something that was a
02:21:54 2 custom to them, under very few restrictions and
02:22:05 3 that was -- were being imposed on us. That is
02:22:13 4 one of the moral situations that occurred.

02:22:16 5 The other things that occurred were,
02:22:17 6 we now became co-managers of the resource, which
02:22:29 7 should have been done a long time ago and
02:22:31 8 probably would have added better to the
02:22:34 9 management of the lakes. But it's better done
02:22:39 10 now than later.

02:22:42 11 So those are just a few things, and I
02:22:43 12 don't want to get too lengthy.

02:22:52 13 Q. Mr. Jones, thank you very much.
02:22:53 14 Those are my questions for you.

02:22:58 15 THE COURT: Is counsel from Canada
02:23:00 16 going to ask this gentleman questions?

02:23:06 17 MR. ENNIS: Yes, Your Honour.

02:23:07 18 THE COURT: You're able to use the
02:23:08 19 podium, sir, over by the witness. That seems to
02:23:09 20 be working well.

02:23:10 21 MR. ENNIS: I will.

02:23:11 22 THE COURT: And you can introduce
02:23:12 23 yourself to this gentleman when you get there.

02:23:16 24 MR. ENNIS: I will.

02:23:23 25 CROSS-EXAMINATION BY MR. ENNIS:

02:23:42 1 Q. Good afternoon, Chief Jones?

02:23:46 2 A. Good afternoon, sir.

02:23:48 3 Q. My name is Barry Ennis and I'm
02:23:50 4 one of the legal counsel for Canada. And I'd
02:23:53 5 first like to ask you, is it okay if I addressed
02:23:56 6 you as "Chief Jones"?

02:24:00 7 A. I'm quite happy to be addressed
02:24:03 8 as Chief Jones. I'm honoured by the fact that
02:24:07 9 you're calling me a Chief. I am a past Chief.
02:24:10 10 I do not wish to take any responsibilities or
02:24:14 11 any glory away from the present Chief. If you
02:24:20 12 so wish you can call me Chief for these
02:24:23 13 proceedings.

02:24:24 14 Q. Thank you.

02:24:29 15 Now, you were a Chief at the time that
02:24:31 16 the charges were laid against you and
02:24:33 17 Mr. Nadjiwon in July of 1989. And, for
02:24:36 18 clarification, can you tell us who exactly laid
02:24:39 19 the charges against the two of you?

02:24:42 20 A. I don't remember the exact person
02:24:45 21 named that was on the document, but the person
02:24:49 22 that would have been in charge of that in Owen
02:24:52 23 Sound was either Ralph Tippet or Blake Smith.
02:24:56 24 They were the people that I normally dealt with.
02:24:59 25 And I believe that Blake Smith was the

1 license issuer for the department of --
2 department of Lands and Forests.

3 Q. Sorry, was that the Ministry --

4 A. The Ministry, I'm sorry.

5 Q. Thank you.

6 And, of course, the matter proceeded
7 to Provincial Court and you were acquitted by
8 Judge Fairgrieve, is that correct?

9 A. That's correct.

10 Q. And you've already answered this
11 so I'm a little hesitant to ask this broad,
12 open-ended question, but what was the
13 significance of the Jones and Nadjiwon decision
14 for the Nawash First Nation?

15 A. The significance was that we were
16 now able to pursue a livelihood that would allow
17 us to earn a living at something that we were
18 used to doing and achieving all of our life.

19 In the words of another person that I
20 knew, it was an occupation that came natural to
21 us. And I guess that's about all that I find.

22 Q. Thank you.

23 What is the importance, beyond what
24 you've just said, if there is, to the Saugeen
25 Ojibwe Nation of fishing?

02:26:34 1 A. Fishing has been a livelihood
02:26:36 2 right from time of immemorial.

02:26:40 3 For this court case we're talking
02:26:42 4 about the time of the Treaty, since even further
02:26:46 5 back than Treaty 72 to the Treaty of 1854.

02:26:57 6 We were a subsistence person,
02:26:59 7 hunter-gatherer people, we traded for a lot of
02:27:10 8 sustenance from other people that grew
02:27:13 9 vegetables, that grew other foods. It's -- it
02:27:17 10 was our way of life. It was what we knew.

02:27:25 11 Q. And are there particular
02:27:26 12 important fishing sites for the Saugeen Ojibwe
02:27:28 13 Nation in your traditional territories?

02:27:37 14 A. In modern times or old times?

02:27:41 15 Q. Let's start with old times?

02:27:45 16 A. Well, to my knowledge, from my
02:27:47 17 studies and from my understanding of talking
02:27:50 18 with several of my older people, all down
02:27:54 19 through my life people went places. Wherever
02:27:59 20 they were that's where they fished, that's where
02:28:02 21 they hunted. They went to where the animals
02:28:10 22 were.

02:28:11 23 For instance, what would happen in the
02:28:12 24 winter time when we lived in Owen Sound, because
02:28:15 25 there was deer yards in Markdale, Ontario, our

02:28:19 1 people moved there for the winter time and
02:28:21 2 that's where they were able to gather venison or
02:28:28 3 deer readily, because that's where they were in
02:28:31 4 the winter time. Our people moved with the
02:28:35 5 game. They went where they had to go.

02:28:39 6 In modern times we fish where the fish
02:28:43 7 are, we hunt where the game is. Of course
02:28:48 8 everybody has a better means of transportation,
02:28:51 9 better means of finding fish, so we don't fish
02:28:57 10 in as many spots and we don't hunt in as many
02:29:00 11 spots.

02:29:01 12 Q. Thank you.

02:29:02 13 And what kind of fish do the Saugeen
02:29:06 14 Ojibwe Nation fish for in modern times?

02:29:14 15 A. Well, I have to revert back a
02:29:16 16 little bit to history.

02:29:19 17 My court case, first of all, was --
02:29:22 18 they stated that our fishery was, at first, a
02:29:25 19 sturgeon fishery; then it became a lake trout
02:29:29 20 fishery; and then after the '40s when the
02:29:34 21 lamprey eel invaded the Great Lakes we became
02:29:39 22 more a white fish fishery; and at present the
02:29:43 23 target fish is the white fish fishery.

02:29:48 24 We are having a bit of trouble with
02:29:49 25 the lakes right now because of the introduction

02:29:51 1 of invasive species in our lake. But I hope
02:30:01 2 that answers your question.

02:30:02 3 Q. Yes, it does, thank you.

02:30:04 4 I'd like to take you to a transcript
02:30:06 5 of an interview that you had with Ed Koenig, I'm
02:30:07 6 not sure how to pronounce his name but it's
02:30:07 7 spelled K-O-E-N-I-G, and it took place in
02:30:17 8 December of 1995. And the interview -- the
02:30:23 9 transcript indicates that the interview took
02:30:25 10 place in your own mechanical shop on the Nawash
02:30:29 11 Reserve. Do you recall the interview?

02:30:35 12 A. I don't but I would like you to
02:30:36 13 refresh my memory, because I don't recall the
02:30:39 14 name but if I hear the substance I'm sure I will
02:30:42 15 remember.

02:30:43 16 Q. Well, you can see on the monitor
02:30:45 17 that's the beginning of the interview. It's
02:30:48 18 a -- it's document SC0105.

02:31:05 19 A. I believe this is my interview.

02:31:07 20 Q. Okay. Thank you.

02:31:08 21 I would like to make this document the
02:31:11 22 next exhibit, Mr. Registrar.

02:31:15 23 THE COURT: Any objection? No.

02:31:18 24 THE REGISTRAR: Exhibit number 3979.

10:11:42 25 EXHIBIT NO. 3979: Document SC0105.

10:11:42 1 Interview of Chief Howard Jones by
10:11:42 2 Ed Koenig in December of 1995.
02:31:22 3 BY MR. ENNIS:
02:31:22 4 Q. Thank you, now if we could go to
02:31:24 5 the second page of the interview, towards the
02:31:27 6 bottom third of the page where Mr. Koenig asks:
02:31:37 7 "You were saying that there is
02:31:38 8 not a lot of money in fishing but at
02:31:40 9 least there is a living to be made."
02:31:43 10 And then you say, you answer:
02:31:47 11 "Some of the people think that
02:31:48 12 fishing is a get rich quick scheme,
02:31:51 13 but I don't think it is any different
02:31:52 14 than any other job. It is not a
02:31:54 15 lottery win or anything. Every fish
02:31:56 16 you catch costs something in overhead.
02:31:59 17 Some people this year replaced their
02:32:02 18 gear 6 times. They don't have the
02:32:04 19 experience that non-native commercial
02:32:06 20 fishermen do, and they are playing
02:32:08 21 catch up now. I mentioned at noon
02:32:10 22 that they are trying to get up to the
02:32:12 23 place that they would have been now if
02:32:14 24 their rights to fish were recognized
02:32:16 25 all along."

02:32:17 1 And then the question is:

02:32:19 2 "You think it is a little riskier
02:32:22 3 for them?"

02:32:22 4 And your answer is:

02:32:24 5 "They have to learn as they go -
02:32:25 6 learn how to work in the unnatural
02:32:29 7 environment out on the water."

02:32:30 8 And I wanted to ask you, Chief, what
02:32:32 9 could you mean by "[...]learn how to work in the
02:32:35 10 unnatural environment out on the water"?

02:32:41 11 A. All right. The fishery has
02:32:42 12 changed. The fishery has changed. And the
02:32:47 13 fishery, in regards to the native people, was
02:32:50 14 suppressed so badly that native -- the native
02:32:55 15 fishery was not allowed to grow at the same rate
02:32:57 16 as the big commercial fishery with tugs and
02:33:00 17 everything else.

02:33:05 18 Most of our native fishery had no idea
02:33:08 19 how to situation (sic) and how to operate a tug
02:33:10 20 with big -- different gear. There was --
02:33:15 21 instead of being a pulled-by-hand situation all
02:33:19 22 the commercial fishermen out there had been
02:33:21 23 allowed to grow and improve their gear
02:33:26 24 year-after-year, whereas our people weren't
02:33:30 25 given enough quota or enough to sink money into

02:33:35 1 growing their businesses so it was a catch-up
02:33:38 2 situation. We had to get up to speed.

02:33:42 3 And that's what's meant by this
02:33:44 4 comment.

02:33:46 5 Q. So was there a part of the water
02:33:48 6 that was more unnatural for your people when
02:33:51 7 they started to fish after the Jones and
02:33:55 8 Nadjiwon decision?

02:34:02 9 A. Well, first of all, like history
02:34:04 10 tells us, the native people had a great
02:34:08 11 understanding of what the waters were, where
02:34:10 12 they were. Although they didn't fish deep they
02:34:13 13 roamed the waters.

02:34:16 14 The problem was that they had no idea
02:34:24 15 of what it took to run a big tug or run a boat
02:34:28 16 like that; so they needed some assistance from
02:34:30 17 people who were willing to help to teach them,
02:34:34 18 school them, or apprentice them, if you want, in
02:34:40 19 how to run a modern fishery.

02:34:48 20 This would have happened had the laws
02:34:53 21 and the rules not been planted against us,
02:34:56 22 naturally, without all of a sudden have to get
02:34:59 23 up to speed, it would have happened through
02:35:07 24 nutrition (sic), but it wasn't allowed to work
02:35:10 25 that way.

02:35:12 1 Q. Thank you.

02:35:12 2 But were these modern methods that , I
02:35:15 3 guess, the nonindigenous commercial fishermen
02:35:18 4 were getting used to over the previous decades,
02:35:21 5 were they different from -- they must have
02:35:23 6 differed, of course, from the traditional ways
02:35:26 7 of fishing by your people in earlier times?

02:35:30 8 A. Different in the aspect only of
02:35:32 9 the size. You have to understand that the
02:35:36 10 native people still fished with gill nets, they
02:35:40 11 still fished hook-and-line in the early '40s
02:35:47 12 and that; but they didn't increase and come up
02:35:56 13 to the same scale as the non-native fishery.
02:35:59 14 They still used the same gear and same equipment
02:36:02 15 but on a different scale.

02:36:03 16 Q. And in terms of where the fishing
02:36:06 17 occurs, do the tug boats, for example, the
02:36:09 18 modern tug boats do they go out further into
02:36:12 19 Lake Huron from the shoreline than traditionally
02:36:16 20 the fishing boats would have gone?

02:36:23 21 A. I believe that they do. Of
02:36:28 22 course now that we are allowed to gear up and
02:36:31 23 get bigger we need to be stewards of the lake
02:36:35 24 and make sure that the lake has -- is kept
02:36:40 25 healthy. And the way to keep -- one of the ways

02:36:45 1 to keep the lake healthy is not to fish in just
02:36:49 2 one spot but to fish the whole thing and to keep
02:36:51 3 the stocks equal.

02:36:56 4 Q. Thank you.

02:36:56 5 But I guess just to maybe clarify just
02:37:01 6 a little bit further. Would the tugs -- would
02:37:07 7 tug -- the fishing by the tugs, would it --
02:37:10 8 would the fishing occur in the deeper water than
02:37:12 9 in the earlier boats?

02:37:21 10 A. I don't know if -- how much
02:37:24 11 deep-water fishing was done in the early days.
02:37:29 12 Definitely you can fish a lot deeper with a tug
02:37:35 13 because you don't have to pull by hand.

02:37:39 14 On the other hand, you can fish a lot
02:37:42 15 shallower with the smaller boats than you can
02:37:46 16 with the big ones. And access -- so you get
02:37:53 17 good access on one end and better access on
02:37:56 18 another end depending on the operation.

02:38:00 19 Q. So maybe the combination of the
02:38:01 20 two is the best?

02:38:03 21 A. That's correct.

02:38:05 22 Q. Thank you.

02:38:06 23 I'd like to take you now a transcript
02:38:09 24 of an interview that you did with Patrick
02:38:13 25 Nadjiwon in June of 1991 that's about Cape

1 Croker fishing. Do you recall the interview?

2 It's -- by the way, it's document SC0107.

3 A. Yes, I remember the substance at
4 least. I don't recall the exact place that we
5 did this interview, but I remember being
6 interviewed by Patrick.

7 Q. Thank you. I'd like to make this
8 is the next exhibit, Mr. Registrar.

9 THE COURT: Any objection? No?

10 THE REGISTRAR: Exhibit number 3980.

11 EXHIBIT NO. 3980: Document SC0107.

12 Transcript of an interview by Patrick
13 Nadjiwon of Chief Howard Jones in June
14 of 1991 regarding Cape Croker fishing.

15 BY MR. ENNIS:

16 Q. Thank you.

17 Now if I could take you to bottom of
18 the first page? Just a little bit higher than
19 that? Yes. That's right.

20 It's the last full paragraph of the --
21 of your answer where you say:

22 "There was very little summer
23 fishing. Most of the fishing was done
24 in the spring and the fall. The
25 reason for this, well now I know, it

02:39:37 1 is because in the summer time the fish
02:39:39 2 were in deep water, they relied in
02:39:43 3 shallow water fisheries because the
02:39:46 4 did not have the ability to go deep."
02:39:50 5 And just -- I may have asked this
02:39:52 6 question before, but does this mean that
02:39:55 7 traditionally the Saugeen Ojibwe Nation members
02:39:58 8 would fish closer to the shorelines of the lake,
02:40:00 9 or off nearby islands, rather than in the middle
02:40:06 10 of Lake Huron or the middle of Georgian Bay?

02:40:16 11 A. I believe that there was more
02:40:17 12 fishing done in the shallower water because of
02:40:21 13 the type of boats that we had.

02:40:22 14 But there was also a certain amount of
02:40:24 15 deeper-water fishing. And it all depends on
02:40:28 16 what you want to consider as deep. I guess, you
02:40:31 17 know, when you're pulling a net anything over 20
02:40:35 18 feet is deep when you're pulling it by hand.

02:40:41 19 Definitely there was more access if
02:40:43 20 you had a tug than if you were in a canoe, if
02:40:47 21 that's where you're coming from.

02:40:49 22 Q. But in a canoe would it be more
02:40:53 23 likely that the fishing would be done closer to
02:40:55 24 the shorelines of either the mainland or of the
02:40:59 25 islands?

02:41:05 1 A. I believe so.

02:41:05 2 Q. Thank you.

02:41:06 3 Thank you very much, Chief Jones,

02:41:08 4 those are all my questions. I'm sure that

02:41:12 5 counsel for Ontario still has some questions for

02:41:14 6 you, but thank you for your answers and

02:41:16 7 miigwetch.

02:41:17 8 A. Thank you.

02:41:19 9 THE COURT: Thank you. Counsel for

02:41:20 10 Ontario.

02:41:22 11 CROSS-EXAMINATION BY MR. FELICIANIANT:

02:41:49 12 Q. Good afternoon, Mr. Jones.

02:41:50 13 A. Good afternoon, sir.

02:41:51 14 Q. We've met before but formally,

02:41:52 15 for the record, my name is David Feliciant and

02:41:55 16 I'm counsel for Ontario in this matter and I

02:41:57 17 have a few questions for you this afternoon.

02:42:01 18 A. That's fine.

02:42:02 19 Q. Now, you were asked some

02:42:03 20 questions this morning about your interview with

02:42:07 21 Professor Brownlie. And I just wanted to ask

02:42:11 22 you if you know how it was that you were one of

02:42:15 23 the people that were selected to be interviewed

02:42:18 24 by Professor Brownlie?

02:42:23 25 A. I guess there's probably a lot of

02:42:27 1 reasons. One of the reasons is I was a former
02:42:30 2 Chief. I was the person that was -- that was
02:42:33 3 named in the Jones and Nadjiwon case. It wasn't
02:42:43 4 for my rowdiness or anything like that, I don't
02:42:46 5 believe.

02:42:47 6 Q. And do you generally know, and
02:42:51 7 you may not have had anything to do with the
02:42:53 8 process, but do you happen to know what the
02:42:55 9 process was at the First Nation around how
02:42:58 10 people would be selected for Professor Brownlie
02:43:01 11 to interview?

02:43:09 12 A. No, but Mr. Brownlie should have
02:43:11 13 interviewed everyone in our community because,
02:43:13 14 you know, maybe there was some knowledge that he
02:43:15 15 missed. I mean, we don't all possess the same
02:43:21 16 understanding of the same word, so maybe
02:43:23 17 Mr. Brownlie missed some of what he should
02:43:26 18 have -- he should have covered.

02:43:30 19 I felt privileged that at least he was
02:43:34 20 getting my opinion. I had no idea of any of the
02:43:37 21 other people that he had interviewed. He didn't
02:43:40 22 share that with me and I didn't ask.

02:43:43 23 Q. Okay. Thank you.

02:43:45 24 Did you get any questions in advance
02:43:48 25 of the interview?

02:43:53 1 A. I have a pretty good memory and I
02:43:54 2 do not remember any.

02:43:58 3 Q. If I could pull up document
02:44:00 4 number SC0142?

02:44:00 5 Now, I'm showing you a document, it's
02:44:19 6 a short document that has some questions on it,
02:44:21 7 and it was provided to us by plaintiffs'
02:44:26 8 counsel. And these are the questions that
02:44:27 9 Professor Brownlie utilized in the interviews.
02:44:30 10 If you could just take a look at those to
02:44:31 11 refresh your memory to see whether in fact you
02:44:36 12 may have seen those questions before?

02:44:48 13 A. I don't know that I've seen this
02:44:50 14 document. I do remember that these are along
02:44:51 15 the lines of the questions that Mr. Brownlie
02:44:55 16 asked me. I don't remember viewing the document
02:44:58 17 specifically.

02:45:05 18 MR. FELICIAN: Your Honour, I'd like
02:45:06 19 to make the document an exhibit at this point,
02:45:08 20 for convenience sake. I will be referring to it
02:45:14 21 later. I could make it for identification but I
02:45:14 22 think plaintiffs' counsel won't object because
02:45:14 23 they provided the document.

02:45:14 24 THE COURT: Let's find out. Does
02:45:15 25 anyone object? No. That will be the next

02:45:19 1 exhibit, Mr. Registrar.

02:45:21 2 THE REGISTRAR: Exhibit number 3981.

02:45:23 3 EXHIBIT NO. 3981: Document SC0142.

02:45:26 4 Questions utilized by Professor

02:45:26 5 Brownlie in the interviews.

02:45:27 6 BY MR. FELICIANANT:

02:45:27 7 Q. Can you pull up Exhibit 3922

02:45:31 8 please?

02:45:35 9 THE COURT: Can you repeat the number?

02:45:38 10 MR. FELICIANANT: 3922.

02:45:40 11 BY MR. FELICIANANT:

02:45:40 12 Q. Now, I'm showing you a transcript

02:45:42 13 of your interview with Professor Brownlie, and

02:45:47 14 you've already been asked some questions about

02:45:50 15 it today.

02:45:53 16 You'll notice at the top of the

02:45:54 17 interview under your name, of course, it starts

02:45:58 18 with the line, "Yes, go ahead." Do you see

02:46:02 19 that?

02:46:05 20 A. Yes, I do.

02:46:07 21 Q. Could you tell me what you

02:46:08 22 discussed with Professor Brownlie prior to the

02:46:15 23 commencement of the interview?

02:46:17 24 A. We had just discussed that he was

02:46:18 25 going to do an interview with me and was this an

02:46:24 1 appropriate time to start the interview? We
02:46:27 2 didn't discuss any answers or any real
02:46:32 3 questions. He just asked me if this was an
02:46:35 4 appropriate time to start the interview.

02:46:37 5 Q. And did he explain to you the
02:46:39 6 purpose of the interview?

02:46:45 7 A. No, he didn't. To the extent
02:46:49 8 that it was going to be used in this court case.

02:46:53 9 You gotta understand that I am one of
02:46:57 10 people that, for some reason, is magnetic and
02:47:04 11 seems to get interviewed by everybody that comes
02:47:07 12 along that wants to do a thesis or wants to do
02:47:10 13 something. So I have no understanding of why
02:47:16 14 the man was interviewing me.

02:47:17 15 And he was asking all these questions.
02:47:20 16 He wasn't being belligerent. He wasn't trying
02:47:24 17 to prove anything. He was just asking me
02:47:28 18 questions. I thought it was -- might have been
02:47:30 19 for a historical accounting, or something like
02:47:33 20 that, that was my only idealism (sic).

02:47:37 21 Q. Now, if you go down a just a
02:47:39 22 little bit there's a line there that says that
02:47:45 23 you had understood it's about Treaty 72. Do you
02:47:51 24 see that? I think it's at the bottom of the
02:47:53 25 page you're now looking at. It says --

02:48:00 1 A. "My understanding is that there
02:48:05 2 had been controversy." Is that the line?
02:48:07 3 Q. I think it's:
02:48:07 4 "But I understand here we're
02:48:09 5 talking mostly about Treaty 72, is
02:48:12 6 that correct?"
02:48:12 7 And so it made me wonder at what point
02:48:18 8 did Professor Brownlie talk to you about Treaty
02:48:21 9 72, because I didn't see it in the preceding
02:48:24 10 portion of the transcript?
02:48:31 11 A. Could you repeat your direct
02:48:32 12 question please?
02:48:32 13 Q. I was -- at what point did
02:48:36 14 Professor Brownlie tell you that the interview
02:48:39 15 was going to be mostly about Treaty 72? Because
02:48:43 16 I didn't see that in the preceding part of the
02:48:47 17 transcript?
02:49:02 18 A. I don't separate -- when I talk
02:49:03 19 about treaties I don't separate 72 from 54 very
02:49:09 20 often. So this was probably an initiative of my
02:49:15 21 own because I have a different understanding
02:49:19 22 in -- even if you want to go back I also tie
02:49:24 23 Treaty 45 to Treaty 45 and a half, as 45 and a
02:49:31 24 half is tied to 45; and Treaty 72 is also
02:49:37 25 mentioned in Treaty 45.

02:49:39 1 And, as I said this morning, there's
02:49:44 2 much more to the Treaties than just the text of
02:49:48 3 the parchment.

02:49:49 4 And so I tend to tie everything
02:49:53 5 together and don't feel that you can only
02:49:56 6 exercise a portion of any of those treaties.

02:50:03 7 Q. I think the purpose of my
02:50:04 8 question is more towards the process used by
02:50:08 9 Professor Brownlie. And the question I can ask
02:50:11 10 is, is it possible, in your recollection, that
02:50:15 11 there may have been a portion of the interview
02:50:18 12 which Professor Brownlie didn't record?

02:50:26 13 A. Not to my knowledge.

02:50:27 14 I have seen other interviews that I
02:50:29 15 have done and any -- I have usually re-read many
02:50:36 16 of my interviews that have been hard copied, and
02:50:39 17 normally if there's a stoppage the person puts a
02:50:43 18 stoppage block in and says "at this point we
02:50:47 19 stopped".

02:50:48 20 In one of my interviews there's a
02:50:50 21 blockage or a stoppage that said, "Mr. Jones
02:50:54 22 stopped to answer his phone". But that's
02:50:56 23 recorded generally in any of the interviews
02:51:01 24 that -- I'm very particular about how I answer
02:51:06 25 the specific questions like that.

02:51:10 1 So I don't believe -- if you're trying
02:51:12 2 to say that he was asking me to say specific
02:51:15 3 things I would not allow that to happen. That
02:51:23 4 is not in my nature that people can put words in
02:51:27 5 my mouth, I have enough of my own.

02:51:32 6 Q. I think you've answered the
02:51:33 7 question at this point, but it was not about you
02:51:38 8 it was about whether there was a discussion
02:51:40 9 prior to the interview that may not have been
02:51:43 10 recorded. Not your answers, this wasn't about
02:51:46 11 your answers, it was about whether there was a
02:51:49 12 discussion prior to the interview that was not
02:51:52 13 recorded? And to your recollection you don't
02:51:55 14 remember that?

02:51:57 15 A. If there was any talk before the
02:51:59 16 interview it would have been purely socializing.
02:52:03 17 I probably, if he was in my home,
02:52:04 18 would have offered him sustenance, something to
02:52:08 19 drink, something to eat and got comfortable.

02:52:11 20 If you're doing an interview it's very
02:52:13 21 nice if two people can talk on a
02:52:16 22 person-to-person basis as opposed to one person
02:52:21 23 being dominant over the other.

02:52:23 24 So I don't believe that any of my
02:52:28 25 recollection that Professor Brownlie had led me

02:52:39 1 to any of his conclusions. They were all my
02:52:41 2 own.

02:52:42 3 Q. Okay, thank you very much.

02:52:43 4 I have some questions now about
02:52:44 5 traditional knowledge, and specifically I was
02:52:47 6 going to ask you about what traditional
02:52:52 7 knowledge you have with respect to the Treaties.

02:52:58 8 If we could pull up document SC0137?
02:53:15 9 This is another of the many interviews you've
02:53:18 10 mentioned you've provided. This one is with
02:53:21 11 Victor Litwin. Are you familiar with Victor
02:53:27 12 Litwin as one of the experts in the Jones and
02:53:31 13 Nadjiwon trial?

02:53:38 14 A. I am familiar with the name. I
02:53:40 15 am trying to figure out what discipline he had a
02:53:44 16 doctorate in. I believe Victor Litwin had a --
02:53:49 17 was he the Hudson's Bay specialist?

02:53:54 18 Q. He was qualified as a historical
02:53:57 19 geographer at your trial. He may have other
02:54:00 20 expertise but that was his qualification at the
02:54:02 21 trial. He was a historian.

02:54:04 22 A. I remember the name "Victor
02:54:04 23 Litwin".

02:54:11 24 MS. GUIRGUIS: Sorry, your Honour, the
02:54:12 25 names of the interviewers are Ed Koenig and

02:54:17 1 Janet Armstrong.

02:54:19 2 MR. FELICIAN: That would be the
02:54:19 3 wrong -- I'm sorry. If I may have a moment?

02:55:55 4 BY MR. FELICIAN:

02:55:55 5 Q. Perhaps I can ask you some
02:55:57 6 general questions about your knowledge of the
02:55:58 7 Treaties.

02:56:00 8 My understanding, from your evidence,
02:56:02 9 is that you've done a great deal of personal
02:56:07 10 research into both the Treaties and the history
02:56:13 11 of your communities, is that right?

02:56:17 12 A. That is right. In all aspects I
02:56:22 13 have done research, and I have also read the
02:56:31 14 thesis of several people, who have law degrees,
02:56:36 15 referring to the Treaty 72 treaty.

02:56:45 16 Q. Now, if you could turn your mind
02:56:48 17 specifically to not what you've read but rather
02:56:56 18 stories that either your father, or your mother,
02:57:00 19 or your grandfather would have told you? So if
02:57:06 20 you can try and put to one side what you've read
02:57:08 21 for a moment, I was just going to ask you a
02:57:11 22 couple of questions about what you'd have heard
02:57:14 23 about the treaties directly from either your
02:57:18 24 parents or your grandparents.

02:57:23 25 So did you hear any detailed stories

02:57:27 1 or accounts of who might have been at the Treaty
02:57:32 2 Councils?

02:57:43 3 A. Historically I can't make a
02:57:47 4 differentiation between what I have learned
02:57:51 5 through normal process of education and personal
02:57:57 6 stories.

02:57:57 7 But I do know that I was -- I was told
02:58:07 8 that we had rights that were not being exercised
02:58:14 9 because we were being suppressed and held under
02:58:17 10 different laws. And people wouldn't listen to
02:58:20 11 what the people on our side had to say about
02:58:30 12 what our rights were.

02:58:36 13 I don't know how far you want me to
02:58:38 14 get into it? Because I had a very young
02:58:41 15 experience with learning about -- that the
02:58:44 16 Indian Act governed us. It was not really
02:58:49 17 changes or anything, but there was a lot more
02:58:54 18 fullness happened after the changes to the
02:58:56 19 Indian Act in 1951 it brought about a little bit
02:59:03 20 of freedom.

02:59:03 21 And in my own experience I have seen
02:59:10 22 things consistently changing since the changes
02:59:17 23 that have happened within the Indian Act,
02:59:20 24 whereas the governing of Indian people.

02:59:23 25 Is this what you're -- I think I -- I

02:59:27 1 think I have more to offer but I get off track
02:59:30 2 when I think of everything.

02:59:36 3 My grandfather died and the only
02:59:43 4 recollection I have of him was on his death bed.
02:59:48 5 I was there the night that he died. And the
02:59:56 6 people in the community were talking and saying
03:00:01 7 that he was the last living member of people
03:00:04 8 that really would have known what the spoken
03:00:08 9 word was at the Treaties.

03:00:12 10 Because previous to that the house
03:00:15 11 that he had -- that he owned contained all the
03:00:19 12 papers that we had on our side and they burned
03:00:24 13 in that house.

03:00:27 14 And so there was only an oral
03:00:29 15 understanding of what the Treaties held in them.
03:00:36 16 Because a lot of those things weren't shared
03:00:38 17 with us all through history. They're -- the
03:00:42 18 Crown had its copy, or had copies, they knew
03:00:46 19 exactly what was in it, but there was never a
03:00:50 20 distribution of the -- of the wording after the
03:00:57 21 second day of negotiation.

03:01:01 22 Q. I found the document I was
03:01:02 23 looking for, and if we could just scroll up a
03:01:07 24 bit? This is an interview of Howard Jones by
03:01:11 25 Victor Litman. On the screen it says that it's

03:01:18 1 document SC0137. Is that not correct?

03:01:40 2 MS. LE PAN: At the bottom of the

03:01:42 3 document it indicates that the interview is by

03:01:45 4 Victor Litman.

03:01:47 5 MR. FELICIAN: And the document

03:01:48 6 number is SC0137?

03:01:52 7 MS. LE PAN: Exactly.

03:02:00 8 BY MR. FELICIAN:

03:02:00 9 Q. And if we could just go to the

03:02:01 10 top of the page? I see Victor Litman. It was a

03:02:05 11 Victor Litman project. It's -- interviewers of

03:02:10 12 Ed Koenig and Janet Armstrong. If we could go

03:02:14 13 to page 7 of that document? And if you can

03:02:26 14 scroll down a little bit?

03:02:43 15 That's fine. That's still not the one

03:02:45 16 I was looking for.

03:02:51 17 So is it fair to say, back to my

03:02:54 18 original question, that very little of what you

03:03:01 19 now know about the treaties, in terms of

03:03:04 20 details, came directly from either your

03:03:10 21 grandparents or your great grandparents, but

03:03:15 22 most of it is what you yourself have researched?

03:03:19 23 Is that a fair statement?

03:03:31 24 A. The studies of the treaties is a

03:03:32 25 fair statement, but the understanding of what I

03:03:35 1 was reading I believe I drew my own conclusions.

03:03:42 2 I drew my conclusions from as much
03:03:45 3 knowledge as I could possibly find out there
03:03:48 4 through people who are scholars, through just
03:03:51 5 reading what I seen. And I started -- you start
03:03:56 6 to wonder.

03:03:57 7 I had a very recent problem with
03:04:03 8 Treaty 72. I always knew my grandfather was a
03:04:06 9 signator, my great, great grandfather was a
03:04:10 10 signator. But then I got looking at it and it
03:04:18 11 said "Peter Jones". And I said, grandpa didn't
03:04:21 12 sign his name like that. I said, what's the
03:04:24 13 difference?

03:04:24 14 So I went back and I researched and I
03:04:26 15 found Peter Jones. And I found the Peter Jones
03:04:29 16 that was on the Internet was being
03:04:31 17 misrepresented as the person that had been
03:04:34 18 sign -- had signed Treaty 72. He was being
03:04:38 19 represented by the Peter Jones from the Six
03:04:44 20 Nations area.

03:04:45 21 And his totem is the eagle. And on
03:04:52 22 the Treaty the totem that appears beside or
03:04:59 23 between Peter Jones is the otter clan, and that
03:05:04 24 is our clan. So that would -- that happened
03:05:14 25 since this court case came into being. That is

03:05:15 1 something that I have overlooked so I did

03:05:15 2 research into it. That's how find out things.

03:05:23 3 Q. Thank you very much.

03:05:24 4 I just have some questions generally
03:05:26 5 about fishing. Well, it's now a more specific
03:05:28 6 question about ice fishing.

03:05:30 7 You talked about ice fishing. Where
03:05:38 8 does that usually occur? Is it on internal
03:05:41 9 lakes? Is it on the river? Is it along the
03:05:43 10 shore? If you could help me out where you would
03:05:47 11 choose an ice fishing spot?

03:05:50 12 A. Well, again, you rely on
03:05:52 13 traditional knowledge. And our people, over the
03:05:55 14 years, have set nets in a lot of bad places so
03:05:58 15 they know not to set there again.

03:06:01 16 When they find a place that works well
03:06:02 17 in the winter time they take and they set a net
03:06:06 18 under the water. And usually it's left there
03:06:08 19 for the majority of the winter. They pull it up
03:06:11 20 every day or every second day, take the fish out
03:06:14 21 and use them or whatever, and that's normally
03:06:18 22 what happened.

03:06:20 23 There's several spots where people
03:06:23 24 would fish. And, you know, they -- it's very
03:06:26 25 sporadic because you don't set a whole bunch of

03:06:29 1 nets in the same area when you're ice fishing.

03:06:33 2 It's usually -- there's usually only a few nets
03:06:36 3 out.

03:06:37 4 It hasn't been done here in our area,
03:06:39 5 commercially and that's why I referred to Lake
03:06:43 6 Winnipeg when I was talking about that.

03:06:46 7 Q. How far from the shore would you
03:06:49 8 dig -- I don't know if "dig" is the right word,
03:06:53 9 break an ice hole, make an ice hole?

03:06:56 10 A. How far --

03:06:57 11 Q. Off the shore?

03:06:58 12 A. In ice fishing?

03:07:00 13 Q. Yes.

03:07:00 14 A. Well, that all depended. Usually
03:07:02 15 it's not really deep. It's -- the normal places
03:07:08 16 that I have seen fished are between 15 and 30
03:07:14 17 feet. Okay.

03:07:23 18 Q. Now, do you yourself conduct any
03:07:25 19 ceremonies?

03:07:41 20 A. I respect the traditional ways.
03:07:44 21 I myself am not active as a Midewiwin person, or
03:07:49 22 anything like that. Although there are people
03:07:52 23 within my family who are Midewiwin and they have
03:07:56 24 moved up into different ranks of the Midewiwin.

03:08:03 25 I do observe and understand a lot of

03:08:06 1 the traditional ways. I understand most --
03:08:09 2 sometimes my views are different than other
03:08:11 3 people's views.

03:08:14 4 For instance, when you kill an animal
03:08:18 5 a lot of people just use tobacco, and tobacco
03:08:23 6 has always been something that was used. But I
03:08:27 7 was also taught that when you're out in the
03:08:30 8 woods or in the bush and you're honouring the
03:08:32 9 spirit of the animal that you kill that water is
03:08:36 10 also important. You can give water as thanks as
03:08:42 11 opposed to just tobacco, because water was
03:08:45 12 sacred. So you give the animal a drink and you
03:08:47 13 thank his spirit for giving himself up for your
03:08:51 14 sustenance.

03:08:53 15 I was raised as a Christian person,
03:08:57 16 but I have very much respect for the old ways of
03:09:02 17 the people. And it's probably, again, through
03:09:05 18 the education of the Europeans that I have the
03:09:12 19 belief that I have.

03:09:16 20 They are both strong in both ways and
03:09:18 21 I don't think that we can differentiate very
03:09:21 22 much between the two because both of them preach
03:09:26 23 respect.

03:09:27 24 I believe that the native religion
03:09:29 25 preaches a lot more respect for Mother Earth

03:09:33 1 than what the European religious efforts teach,
03:09:42 2 because they teach more of a respect for an
03:09:49 3 inanimate god.

03:09:51 4 And that is, in a nutshell, there is a
03:09:55 5 lot more complexity to it than that, but that is
03:09:59 6 a very short version of what I believe.

03:10:06 7 Q. Did you ever hear any stories or
03:10:10 8 accounts from your parents, or your
03:10:15 9 grandparents, about how your earlier relatives,
03:10:22 10 or your great grandparents, would have travelled
03:10:27 11 through your traditional territory? And to help
03:10:32 12 situate you with an example, so, for example, if
03:10:36 13 you -- your ancestors were to travel from Nawash
03:10:41 14 to Saugeen how would they have done that? Do
03:10:48 15 you know?

03:10:51 16 A. I know some stories. I know
03:10:58 17 several stories, stories of the Iroquois wars
03:11:04 18 between our people and how our people escaped
03:11:08 19 that first from the Iroquois people. They
03:11:15 20 talked about in their legends of escaping
03:11:19 21 through a tunnel from one side of the lake to
03:11:21 22 the other from Georgian Bay to Lake Huron.

03:11:24 23 But in my own thinking and trying to
03:11:27 24 figure this out, because I know the peninsula so
03:11:30 25 well, I believe that it was -- that there's a

03:11:35 1 water -- portage route that is very short
03:11:39 2 between the two and only local people would have
03:11:43 3 known that; and that is the portage from Wiarton
03:11:46 4 to Sauble Beach, and it's down through the
03:11:50 5 Rankin River system.

03:11:52 6 Q. Is that something you could show
03:11:53 7 us on the map that's marked Exhibit Q?

03:12:02 8 A. I will try.

03:12:04 9 THE COURT: Sir, please take the
03:12:05 10 microphone with you. You can take it off the
03:12:08 11 stand. Very good. So you can say out loud what
03:12:11 12 you're looking at.

03:12:43 13 THE WITNESS: It's between D and 2 and
03:12:45 14 a half. That's -- that portage across there is
03:12:51 15 called the "Rankin System".

03:12:56 16 BY MR. FELICIANANT:

03:12:56 17 Q. And while you're there I'll ask
03:12:57 18 you, if your community wanted to travel into
03:13:04 19 Treaty 45 and a half to go hunting, how would
03:13:09 20 you ordinarily, your ancestors, today I suspect
03:13:14 21 you would drive, but ordinarily your ancestors
03:13:16 22 do you know how they would have travelled into
03:13:18 23 that area?

03:13:19 24 A. Well, generally, before Cape
03:13:23 25 Croker and Saugeen were split into two reserves

03:13:29 1 I was led to believe, by my father, that we
03:13:35 2 lived together in Owen Sound in the late fall
03:13:42 3 and early spring. And in the spring people
03:13:47 4 would migrate to Cape Croker to do their
03:13:51 5 farming, and to Southhampton, and then to
03:13:58 6 Southhampton in the summer to do farming.

03:14:03 7 Travelling to Treaty 45 was done
03:14:06 8 because, in our case, what I know of it, was to
03:14:12 9 access the deer yards in and around the Markdale
03:14:21 10 area.

03:14:23 11 Q. Thank you.

03:14:33 12 Those are my questions. Thank you
03:14:34 13 very much, Mr. Jones.

03:14:36 14 THE COURT: Thank you. Any
03:14:37 15 re-examination.

03:14:43 16 MS. GUIRGUIS: Just a moment, Your
03:14:43 17 Honour. No re-examination.

03:14:46 18 THE COURT: Thank you, sir, thank you
03:14:46 19 for your assistance. We're going to take the
03:14:50 20 afternoon break at this time and I'm going to
03:14:52 21 have a short scheduling meeting with counsel
03:14:56 22 over the afternoon break.

03:14:57 23 -- RECESSED AT 3:14 P.M. --

03:14:57 24 -- RESUMED AT 3:29 P.M. --

03:29:30 25 THE COURT: So after discussing

03:29:32 1 scheduling with counsel, our next witness is
03:29:35 2 going to start early tomorrow morning, the same
03:29:37 3 as we started early today. So we're going to
03:29:40 4 adjourn now until 9:30 tomorrow morning. Thank
03:29:43 5 you.

6 --- Whereupon the proceedings were
7 adjourned for the day at 3:29 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 at which time the witness was put
under oath;

That the testimony of the witness and
all objections made at the time of the
examination were recorded stenographically by me
and were thereafter transcribed;

That the foregoing is a true and
accurate transcript of my shorthand notes so
taken. Dated this 24th day of May 2019.

A handwritten signature in blue ink, appearing to read "Helen Martineau", is written over a horizontal line.

PER: HELEN MARTINEAU

CERTIFIED SHORTHAND REPORTER

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