

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

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DAY 70 VOL 70  
December 16, 2019

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77 King Street West, Suite 2020  
Toronto, ON M5K 1A2  
1.888.525.6666 | 416.413.7755

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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

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--- This is the VOLUME 70/DAY 70 of the transcript  
of the trial proceedings in the above-noted matter,  
being held at the Superior Court of Justice,  
330 University Avenue, Courtroom 5-1, Toronto,  
Ontario, on the 16th day of December, 2019.

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B E F O R E:

The Honourable Justice Wendy M. Matheson

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

2

3 Renée Pelletier, Esq., for the Plaintiffs,  
4 & Benjamin Brookwell, Esq., The Chippewas of  
5 & Jaclyn McNamara, Esq., Saugeen First Nation,  
6 and the Chippewas of  
7 Nawash First Nation.

8

9

10 Michael Beggs, Esq., for the Defendant,  
11 & Michael McCulloch., Esq., The Attorney General &  
12 & Barry Ennis, Esq., of Canada.  
13 & Alexandra Colizza, Esq.,

14

15 David Feliciant, Esq., for the Defendant,  
16 & Peter Lemmond, Esq., Her Majesty the  
17 & Richard Ogden, Esq., Queen in Right of  
18 & Julia McRandall, Esq., Ontario.  
19 & Jennifer Le Pan, Esq.,

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22 REPORTED BY: Judith M. Caputo, RPR, CSR, CRR

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MARGARET E. MORDEN; Affirmed.

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NO.	DESCRIPTION	PAGE NO.
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09:48:13 1 -- Upon commencing at 10:13 a.m.

09:53:32 2

10:13:21 3 THE COURT: Good morning, Counsel.

10:13:25 4 MS. PELLETIER: Good morning, Your  
10:13:25 5 Honour. Before we begin today I just wanted to  
10:13:27 6 introduce the Court to Ms. Jaclyn McNamara, who is  
10:13:30 7 the newest member of the Plaintiff's team.

10:13:33 8 THE COURT: Good morning, Ms. McNamara.  
10:13:41 9 I hear we have technology problems.

10:13:46 10 MS. COLIZZA: Yes, I apologize. We had  
10:13:50 11 some difficulty with the Internet. I apologize.

10:13:53 12 THE COURT: Are you ready to go?

10:13:54 13 MS. COLIZZA: Yes, we are.

10:13:55 14 THE COURT: Please go ahead.

10:13:56 15 MS. COLIZZA: I would like to call  
10:14:02 16 Ms. Morden as our next witness.

10:14:13 17 THE REGISTRAR: Good morning.

10:14:14 18 Would you like to make an oath on the  
10:14:16 19 Holy Book or make a solemn affirmation to tell the  
10:14:19 20 truth?

10:14:19 21 THE WITNESS: A solemn affirmation.

10:14:22 22 THE REGISTRAR: Can you state and spell  
10:14:23 23 your first and last name for the record.

10:14:25 24 THE WITNESS: Yes. My name is Margaret  
10:14:27 25 Morden, M-A-R-G-A-R-E-T, last name M-O-R-D-E-N.

10:14:33 1 THE REGISTRAR: Thank you.

10:14:49 2 MARGARET MORDEN: AFFIRMED.

10:14:49 3 THE COURT: Ms. Morden, this is a big  
10:14:51 4 room and everybody, including the people in the  
10:14:53 5 back row, need to hear you. The microphone will  
10:14:56 6 help, but it will not do the job by itself. Please  
10:14:59 7 keep your voice up.

10:15:01 8 Please go ahead.

10:15:02 9 MS. COLIZZA: Thank you.

10:15:02 10 EXAMINATION IN-CHIEF BY MS. COLIZZA:

10:15:03 11 Q. Good morning, Ms. Morden.

10:15:05 12 A. Good morning.

10:15:05 13 MS. COLIZZA: I would like to pull up  
10:15:07 14 SC1491, which is Ms. Morden's curriculum update.

10:15:15 15 THE COURT: Is it updated or is it the  
10:15:16 16 same as the original that I was provided with?

10:15:16 17 MS. COLIZZA: It was updated, Your  
10:15:17 18 Honour, on December 10th.

10:15:17 19 THE COURT: All right.

10:15:22 20 MS. COLIZZA: I would ask that this  
10:15:23 21 please be marked as our next numbered exhibit.

10:15:32 22 THE COURT: Please go ahead.  
10:15:34 23 Mr. Registrar.

10:15:35 24 THE REGISTRAR: Exhibit No. 4451.

10:15:43 25 EXHIBIT NO. 4451: Updated CV of

1 Margaret Morden.

2 BY MS. COLIZZA:

3 Q. And a version of Ms. Morden's  
4 expert report had been previously marked as  
5 lettered Exhibit R2, during Dr. Williamson's  
6 testimony. However, that version of the report has  
7 a map that's not the most recent. The map had been  
8 updated in July of this year. But an up-to-date  
9 report is in the database as document SC1093 --

10 THE COURT: All right.

11 MS. COLIZZA: -- which is on the screen  
12 now. I'd ask this report be made the next numbered  
13 exhibit.

14 THE REGISTRAR: Exhibit number 4452.

15 EXHIBIT NO. 4452: Up-to-date Expert  
16 Report of Margaret Morden.

17 BY MS. COLIZZA:

18 Q. If I can turn back to the CV,  
19 which is Exhibit 4451. And I'd like to begin by  
20 asking you a few questions, Ms. Morden, about your  
21 education, if you can scroll to that section.

22 So you did your bachelor's at the  
23 University of Toronto before going to Texas A&M  
24 University. Why did you choose to move to Texas  
25 for your first masters degree?



10:16:55 1 A. I was interested in doing a degree  
10:16:57 2 in nautical or underwater archaeology, and at that  
10:17:00 3 point there were only two places that did old world  
10:17:03 4 underwater archaeology, Haifa University and Texas  
10:16:50 5 A&M University, and I decided to go to that  
10:17:09 6 program.

10:17:11 7 Q. And your thesis was entitled, "The  
10:17:14 8 Glass Lamps from the Serce Liman Shipwreck"?

10:17:19 9 A. That is correct.

10:17:20 10 Q. Can you tell us briefly what this  
10:17:20 11 thesis was about?

10:17:20 12 A. The Serce Liman shipwreck in 11th  
10:17:25 13 century of the common era, shipwreck off the south  
10:17:29 14 coast of Turkey, was an itinerant -- had been  
10:17:31 15 identified as an itinerant glass blower.

10:17:35 16 And it contained a cargo of broken  
10:17:39 17 glass, as well as glass cullet. And I worked as a  
10:17:46 18 registrar working on the identification, the  
10:17:51 19 separation of the glass and the registration of  
10:17:55 20 objects from that cargo.

10:17:58 21 And as part of that work, I identified  
10:18:00 22 all these glass lamp fragments that then became the  
10:18:04 23 subject of my MA thesis.

10:18:08 24 Q. And then in 1984, you did your  
10:18:10 25 second masters at the University of Michigan. Did

10:18:14 1 you write a thesis for this degree?

10:18:16 2 A. No, it was coursework and exams  
10:18:18 3 only.

10:18:19 4 Q. And below that, also the  
10:18:22 5 University of Michigan, it says "PhD ABD"; what  
10:18:26 6 does "ABD" stand for?

10:18:28 7 A. "All but dissertation". I  
10:18:30 8 completed all of the coursework and exams for the  
10:18:33 9 PhD but did not complete the dissertation.

10:18:37 10 Q. I'd like to now ask you about your  
10:18:39 11 work experience. So next to -- "Archeological  
10:18:45 12 Experience in Ontario". In 1982 you worked as a  
10:18:49 13 project coordinator for the Ministry of Culture and  
10:18:53 14 Recreation Ottawa field office for the Annie  
10:18:56 15 Falconer shipwreck survey in Lake Ontario.

10:18:56 16 What were your responsibilities as a  
10:19:01 17 project coordinator?

10:19:02 18 A. I was hired by the Ottawa field  
10:19:04 19 office in order to help coordinate the volunteer  
10:19:09 20 group SOS Kingston, an amateur -- they were not  
10:19:15 21 archaeologists, but they were undertaking the  
10:19:18 22 survey of a historic shipwreck, the Annie Falconer.  
10:19:23 23 So when there was not an officer from the Ottawa  
10:19:27 24 field office, I was in charge of the archaeology.

10:19:31 25 Q. And the next two archeological

10:19:33 1 experience in classical lands, you say that you  
10:19:36 2 have 45 seasons of work on excavations and surveys  
10:19:39 3 in Cyprus, Egypt, Greece, Israel, Italy and Turkey.  
10:19:46 4 First, what is a "season of work"?

10:19:47 5 A. It can be anything from a week to  
10:19:51 6 three months. My work in this part of the world is  
10:19:54 7 usually dependent on air fares and coordinating  
10:20:01 8 with projects that are -- most of the projects I  
10:20:04 9 was involved with were actually North American  
10:20:08 10 universities or museums that were undertaking  
10:20:11 11 research in those parts of the world.

10:20:13 12 Q. Okay. And for how many years have  
10:20:15 13 you been working as an archeologist?

10:20:17 14 A. The first field school I was ever  
10:20:20 15 on was in 1974, and really, I've been working in  
10:20:24 16 archaeology continuously since 1977.

10:20:27 17 Q. And, briefly, what is the  
10:20:31 18 difference between an excavation and a survey?

10:20:33 19 A. The main difference between survey  
10:20:38 20 and excavation is that survey is usually  
10:20:42 21 nonintrusive. Excavation involves the disturbance  
10:20:48 22 of the -- by examining, by digging and examining  
10:20:53 23 the soil layers of a site, one is actually  
10:20:56 24 destroying the site.

10:20:57 25 Survey and other types of remote

10:20:59 1 sensing, which can be involved in the survey, is a  
10:21:03 2 way of investigating a site without actually  
10:21:07 3 destroying it.

10:21:08 4 Q. And generally speaking, did the  
10:21:12 5 sites you work on fall into a particular time  
10:21:15 6 period?

10:21:15 7 A. I've worked on a number of  
10:21:17 8 different projects of different time periods. Most  
10:21:19 9 of my recent fieldwork, from the '90s through the  
10:21:27 10 2000s involved Hellenistic sites in Cyprus and  
10:21:34 11 Israel.

10:21:34 12 But I've worked on projects that have  
10:21:37 13 involved the epi paleolithic material on Cyprus,  
10:21:44 14 through the Neolithic Bronze Ages up to the  
10:21:47 15 historic present.

10:21:48 16 Q. Would you say that the sites that  
10:21:49 17 you worked on are of a particular type?

10:21:52 18 A. There's been a wide range of types  
10:21:55 19 of sites that I've worked on during my career.  
10:21:58 20 Everything from small farmsteads, Roman farmsteads  
10:22:02 21 in Cyprus, to administrative palaces in the site  
10:22:09 22 that I was working on in Israel. A number of  
10:22:11 23 religious sites -- my worked at Idalion in the '90s  
10:22:15 24 was -- in Cyprus was a sanctuary site. So I've  
10:22:21 25 worked on a number of different types of sites that

1 have functioned very differently.

2 Q. I'd like to go to the top of the  
3 resumé to ask you some questions about the section  
4 entitled "Employment".

5 From 2013 to present, you've worked as  
6 a lecturer at the University of Toronto School of  
7 Continuing Studies. How did you come to be a  
8 lecturer?

9 A. I had been working as a lecturer  
10 for the Royal Ontario Museum, and when they stopped  
11 their programming, I was recommended to apply to  
12 the School of Continuing Studies, and was given the  
13 name of the dean of humanities.

14 And at that point they didn't have an  
15 application process, but I wrote a letter, a cover  
16 letter, and submitted my CV and a couple of  
17 suggestions of courses that I would be interested  
18 in teaching.

19 Q. One of the courses you list here  
20 is entitled "Handling the Past: Analysis of  
21 Archeological Materials From Ontario". Could you  
22 tell us a bit about this course?

23 A. Yes. That is a course that was  
24 offered once. Unfortunately, I didn't get enough  
25 students to take the course to make it run again.

1 This was a course that was in  
2 cooperation with the anthropology department at the  
3 University of Toronto, using their collections  
4 under the auspices of the director at that time,  
5 director of the archaeology centre, Michael Chazan.

6 And that we used and were able to  
7 access artefacts from sites excavated by the  
8 University of Toronto and that ranged in date from  
9 the Archaic period through the Woodland period into  
10 the historic archaeology.

11 We also used some of the collections  
12 from field schools that were actually taking place  
13 under the auspices of the anthropology department  
14 actually on the U of T campus, which was mainly  
15 historical material.

16 Q. Were the students for this course  
17 studying to work in a particular region?

18 A. No. There was a wide range of  
19 students who were interested in different,  
20 different -- there was one young man who was  
21 interested in Middle Eastern studies; there were  
22 other people who were more interested in Ontario  
23 archaeology.

24 Q. And you mentioned that you were  
25 teaching this course with First Nations artefacts?

1 Do you consider yourself an expert in archaeology  
2 as it relates specifically to Indigenous peoples?

3 A. No, I do not.

4 Q. So from 2006 to present, you're  
5 Registrar of Finds and Artefact Database from the  
6 University of Michigan/Minnesota excavations at Tel  
7 Kedesh in Israel?

8 A. Yes.

9 Q. Can you explain what it means to  
10 be a "registrar of finds"?

11 A. All the material that comes in,  
12 all the artefacts that come in from the field,  
13 everything including from soil samples, bone and  
14 pottery, all classes of artefacts that come in from  
15 the field cross the registrar's desk.

16 So they're given numbers. The  
17 registrar makes sure things are handled in the  
18 right way, either by the conservators, makes sure  
19 that once things are in out of the field, the  
20 registrar knows where they are at all times,  
21 whether they are in the hands of photographer, in  
22 the hands of conservators, or objects are in the  
23 hands of the pottery registrar.

24 So the general registrar of finds  
25 handles everything that comes in.

1 Q. For six years, from 1992 to 1998,  
2 you were a lecturer at Brock University classics  
3 department for 16 different courses in archaeology,  
4 history and art history.

5 Could you please tell us, broadly  
6 speaking, some of the highlights of your time  
7 teaching these courses?

8 A. I would say the greatest highlight  
9 for me was the field course that I was able to  
10 teach in Cyprus. It was an archeological practicum  
11 which taught students the fundamentals of  
12 archaeology, field methods, field recording of all  
13 times and theoretical underpinnings for that.

14 Q. So teaching this practicum, did  
15 you train your students in archeological  
16 methodology?

17 A. Yes, yes.

18 Q. And were the students for this  
19 course studying to work in a particular region?

20 A. No, some of them did go on to work  
21 in Cyprus on various projects, different periods.  
22 But there were a number of students who came back  
23 and worked in, on projects in North America.

24 Q. And how does the methodology, the  
25 archeological skills and techniques you taught in



10:27:06 1 this course and the other course we discussed  
10:27:08 2 compare to methodology you use in your own work in  
10:27:11 3 classical lands?

10:27:12 4 A. It's very similar. You use the  
10:27:15 5 same principles of digging, recording. It's the  
10:27:21 6 same.

10:27:23 7 It's really just the data set that will  
10:27:26 8 be different from one place to another. So  
10:27:28 9 classical material, the pottery will be different,  
10:27:32 10 some of the artefact classes will be very  
10:27:34 11 different. But the way you handle them will be  
10:27:37 12 informed by the same methodology.

10:27:39 13 Q. If you go to the second page, I  
10:27:41 14 need to ask you some questions about the  
10:27:42 15 publications section.

10:27:43 16 So under "Articles" in 1995, you have  
10:27:48 17 "The Function of Imports in Early Iron Age Tomb  
10:27:55 18 Assemblages." Can you please explain what the  
10:27:57 19 "assemblage" means?

10:27:58 20 A. "Assemblage" is collection of  
10:28:00 21 artefacts. And it will be defined by how it is  
10:28:04 22 found.

10:28:04 23 So, for instance, you can have a whole  
10:28:06 24 site, all the artefacts from a site will be called  
10:28:09 25 a site assemblage. In the case of this particular

10:28:13 1 article, it was two assemblages, so it was a  
10:28:15 2 collection of artefacts that were found in  
10:28:17 3 individual tombs that were compared to each other.

10:28:21 4 Q. Under "Chapters" in 1993, in  
10:28:25 5 Chapter 11, "The Small Finds". What is a "small  
10:28:28 6 find"?

10:28:29 7 A. Small finds -- when one is  
10:28:31 8 publishing a site, usually you have specialists who  
10:28:35 9 will be responsible for classes of objects.

10:28:38 10 So often in a publication, you will  
10:28:41 11 have someone who is handling the animal bone,  
10:28:43 12 somebody who is handling the paleobotanical  
10:28:46 13 remains, somebody who is handling the pottery or  
10:28:49 14 the lithics.

10:28:51 15 Invariably there are classes of objects  
10:28:54 16 that are small and discrete that are not handled by  
10:28:58 17 specific specialists, and so they will be collected  
10:29:01 18 together and handled.

10:29:04 19 This sort of disparate group of things  
10:29:07 20 that fall through the cracks will be handled  
10:29:10 21 together as small finds, and usually it will be the  
10:29:12 22 registrar who will be handling that publication.

10:29:15 23 Q. And this 2009 chapter, Part 9:  
10:29:20 24 "Lamps in the Serce Liman: Glass in the 11-Century  
10:29:26 25 Shipwreck"? Is this related to your thesis that we

10:29:29 1 discussed?

10:29:29 2 A. Yes, it is. Of course this is a  
10:29:31 3 lot -- it is after the fact. I finished my  
10:29:34 4 MA thesis in 1982, and the glass cataloging  
10:29:39 5 continued from that point on.

10:29:40 6 But the catalogue, the typology that I  
10:29:46 7 had created for my thesis stood the test of time.  
10:29:51 8 And all of the additional fragments, of lamp  
10:29:54 9 fragments, that were found in the subsequent  
10:29:57 10 sorting were able to be slotted into that typology  
10:30:01 11 and so that it was still the basis of the chapter,  
10:30:05 12 was my MA thesis.

10:30:08 13 Q. And under "Papers", the top paper  
10:30:12 14 there, 2004: "The Sacred Landscape of Ancient  
10:30:17 15 Idalion Cyprus", presented at the SAA in Montreal.  
10:30:21 16 First, what are sacred landscapes?

10:30:24 17 A. That's a very large topic and  
10:30:26 18 there's a body of theory associated with the study  
10:30:30 19 of sacred landscape and interpretation of how  
10:30:36 20 people interact with landscape.

10:30:40 21 It is an aspect of cognitive  
10:30:43 22 archaeology. You have to try to get inside the  
10:30:46 23 head of how people are interacting with their  
10:30:49 24 landscape, and how they are using the sacred to  
10:30:52 25 define their relationship to that.

1 This particular paper was based on  
2 fieldwork that I did as a codirector of the Idalion  
3 survey project, which was inspired by the fact that  
4 we were -- I was the field director for a sanctuary  
5 site, the Sanctuary of Apollo of East Temenos, at  
6 Idalion.

7 And the location of this site that had  
8 been excavated in the 1860s had been lost. And a  
9 report on the sacred landscape had misrepresented  
10 where it was located, and so I initiated the survey  
11 project in order to be able to elucidate the  
12 location of various sites across the landscape.

13 Q. You said you were working as a  
14 field director. What are the responsibilities of a  
15 field director?

16 A. A field director is not the  
17 director of the overall project. In this case,  
18 there were two -- sometimes as many as three  
19 different fields open at a depth the site of  
20 Idalion.

21 I was in charge of the excavation of  
22 the East Terrace of the Eastern Acropolis. And I  
23 had a number of people working under me. And I was  
24 in charge of the day-to-day work on the site, and  
25 making sure that a certain standard of methodology

1 was practiced and a certain standard of recording  
2 was practiced as well.

3 Q. And this paper was presented at  
4 the SAA; what is the SAA?

5 A. The Society for American  
6 Anthropologists.

7 Q. You have a number of papers listed  
8 here that were presented at the Archeological  
9 Institute of Americas Annual Meetings.

10 First, what is the Archeological  
11 Institute of America?

12 A. It is a professional group,  
13 actually, it's a -- it has a dual purpose. It was  
14 founded in 1878 as a professional group for  
15 academics interested in classical archaeology, the  
16 archaeology of Greece and Rome.

17 It has since expanded that professional  
18 focus to archeologists who practice in the  
19 Mediterranean area. But at the same time, in 1878,  
20 the AIA also initiated its second sort of role as a  
21 grassroots organization, an outreach to sort of  
22 promote the discipline of archaeology to the  
23 general public.

24 And to that end, they started local  
25 societies. And we have one here in Toronto, and

1 I've been associated with these outreach branches  
2 of the AIA in Ann Arbor, Michigan, and the Niagara  
3 Peninsula Chapter, which is located at Brock  
4 University in the Niagara Peninsula, and also here  
5 in Toronto.

6 Q. Have you held any titles with the  
7 AIA?

8 A. Yes, I've been a program  
9 coordinator involved in organizing the lecture  
10 schedules, and various programming for both  
11 starting in at University of Michigan in Ann Arbor,  
12 and also in the Niagara Peninsula Society and also  
13 in Toronto.

14 But I've held other roles as membership  
15 secretary for the local societies, vice-president,  
16 and at one point I was also a trustee for the board  
17 of the actual home organization, which is set up in  
18 Boston.

19 So there would be three sets of  
20 meetings a year that I would go to and represent  
21 the organization as a whole.

22 Q. So we discussed your experience  
23 teaching archeological methodology in Ontario and  
24 your fieldwork abroad.

25 Is there any difference between the two

10:35:14 1 that would affect your ability to comment on sites  
10:35:18 2 in Southern Ontario?

10:35:21 3 A. The main difference -- classical  
10:35:24 4 archaeology, for a long time, was pigeonholed as  
10:35:27 5 being backward in terms of its use of theory. But  
10:35:31 6 that is no longer the case.

10:35:33 7 I think that that was a result of how  
10:35:36 8 rich the data set for classical archaeology is, and  
10:35:41 9 how long it took for classical archeologists to  
10:35:45 10 come to terms and sort of wrestle it to the ground  
10:35:47 11 and understand it.

10:35:49 12 But now I think classical  
10:35:52 13 archeologists, Mediterranean archeologists, are as  
10:35:56 14 ambitious with theory and up-to-date with theory as  
10:36:00 15 any other group of archeologists practicing  
10:36:04 16 archaeology around the world.

10:36:06 17 And so the same kinds of theoretical  
10:36:09 18 concerns are the subject of both classical and  
10:36:16 19 other sites.

10:36:19 20 MS. COLIZZA: I'd like to bring up  
10:36:22 21 SC1493, which is our proposed tender for  
10:36:27 22 Ms. Morden's qualification.

10:36:29 23 If you can go to the second page. So  
10:36:34 24 it reads:

10:36:35 25 "Archaeologist with familiarity

1 with the practice of archaeology in  
2 Ontario and of archeological  
3 methodology in general."

4 And I understand the Plaintiffs are  
5 challenging this proposed tender?

6 THE COURT: All right. Ms. Pelletier,  
7 are you cross-examining?

8 MS. PELLETIER: Yes, Your Honour.

9 THE COURT: Please go ahead.

10 VOIR DIRE EXAMINATION BY MS. PELLETIER:

11 Q. Good morning, Ms. Morden.

12 A. Good morning.

13 Q. My name is Renee Pelletier. I am  
14 counsel for the Plaintiffs and I'll be asking you  
15 some questions today.

16 A. Sure.

17 Q. I'll begin by bringing back up  
18 your resumé, which is Exhibit 4451.

19 My apologies, I believe we have to  
20 switch out the port.

21 Now, Ms. Morden, I see that you have  
22 experience in classical archaeology. I believe you  
23 just confirmed that "classical archaeology" or  
24 "classic lands" means mostly the archaeology for  
25 Mediterranean countries; is that correct?



10:38:29 1 A. That is correct.

10:38:29 2 Q. You've also said in the  
10:38:30 3 declaration section of your report that your  
10:38:33 4 research interests are focused on the material  
10:38:35 5 culture of the eastern Mediterranean?

10:38:37 6 A. Yes.

10:38:37 7 Q. And is it fair to say this is  
10:38:39 8 where most of your experience lies?

10:38:41 9 A. Most of it, yes.

10:38:42 10 Q. And most of your work and  
10:38:45 11 education in archaeology has been equally in  
10:38:48 12 eastern Mediterranean countries?

10:38:50 13 A. Yes.

10:38:51 14 Q. I note you've just gone through  
10:38:54 15 your education with my colleague or my -- Ms.  
10:39:01 16 Colizza, and you noted your masters degrees are  
10:39:04 17 both from American universities?

10:39:05 18 A. Yes.

10:39:05 19 Q. These are in nautical archaeology,  
10:39:07 20 and classical art and archaeology?

10:39:09 21 A. That is correct.

10:39:10 22 Q. And you would agree that your  
10:39:11 23 masters degrees did not focus on archaeology in  
10:39:16 24 Ontario?

10:39:16 25 A. That is correct.

1 Q. You would agree also your masters  
2 degrees are in no way related to archaeology of  
3 Indigenous communities?

4 A. That is correct.

5 Q. Equally, your PhD work was also in  
6 the States, University of Michigan I understand?

7 A. Yes.

8 Q. You noted that you did not  
9 complete your PhD dissertation, but you would agree  
10 that your PhD did not focus on archaeology in  
11 Ontario?

12 A. That is correct.

13 Q. And your PhD also in no way  
14 related to archaeology in Indigenous communities?

15 A. That is correct.

16 Q. I'd like to move to your  
17 publications on your resumé. Looking at your  
18 publications, you would also agree you've never  
19 published an article relating to archaeology of  
20 Indigenous communities?

21 A. That is correct.

22 Q. Or on Indigenous communities more  
23 generally?

24 A. That is correct.

25 Q. You'd also agree you have never

1 published anything related to archaeology in  
2 Ontario?

3 A. That is correct.

4 Q. And the only listing under  
5 "Publication" or under the publication section of  
6 your resumé that seems to relate to Ontario is  
7 actually a presentation from 1983? And perhaps you  
8 can scroll down, please. And the very last one on  
9 this page, the "Falconer Project"?

10 A. Yes.

11 Q. And that was a presentation that  
12 was co-authored with Peter Engelbert?

13 A. That is correct.

14 Q. And this was related to work as  
15 project coordinator for the Ministry of Culture and  
16 Recreation Ottawa Field Office on the Annie  
17 Falconer Shipwreck Survey in Lake Ontario off  
18 Prince Edward County?

19 A. That is correct.

20 Q. This was before you completed your  
21 second masters, correct?

22 A. Yes, well, I'd completed -- yes,  
23 it's before I completed my second. It was in  
24 between my two masters.

25 Q. How often were you on site for

10:41:00 1 that project?

10:41:01 2 A. I was on site 5 to 6 days a week  
10:41:07 3 for the months of July and August of 1982.

10:41:15 4 Q. Okay. And you were not the lead  
10:41:18 5 archaeologist on this site, correct?

10:41:20 6 A. No, that was the officers -- Peter  
10:41:22 7 Engelbert was the lead officer for the Ottawa, from  
10:41:26 8 the Ottawa field office.

10:41:28 9 Q. And other than this presentation  
10:41:31 10 with Peter Engelbert on the Falconer project, you  
10:41:35 11 had never presented work relating to Ontario,  
10:41:37 12 correct?

10:41:37 13 A. That is correct.

10:41:38 14 Q. Or even to Canada?

10:41:39 15 A. That is correct.

10:41:40 16 Q. Now, moving on to your Ontario  
10:41:43 17 work experience. Aside from the work on the  
10:41:46 18 Falconer project, I see that -- firstly, let's see,  
10:41:53 19 yes, sorry. Aside from the work on the Falconer  
10:41:55 20 project, you've listed volunteer work for the  
10:41:58 21 Jordan pottery site?

10:41:59 22 A. That is correct.

10:42:00 23 Q. In Jordan Station in 1977?

10:42:02 24 A. That is correct.

10:42:03 25 Q. This site was dated between 1815

1 and 1845?

2 A. That is correct.

3 Q. So this work did not relate to the  
4 archaeology of Indigenous communities?

5 A. No, it did not.

6 Q. This was also before you completed  
7 actually any of your masters work, correct?

8 A. That is correct.

9 Q. You were not in a supervisory role  
10 for this work?

11 A. I was not.

12 Q. This work took how long?

13 A. I was involved for two different  
14 weekends, short time.

15 Q. So you volunteered at one site,  
16 the Jordan site, for two different weekends and  
17 then I believe you said for the Falconer site it  
18 was 5 to 6 days for about two months?

19 A. Yes.

20 Q. So then, outside of this, there's  
21 been no work relating to archaeology elsewhere in  
22 Canada; is that right?

23 A. That is correct.

24 Q. And you've confirmed that neither  
25 of these projects related to archaeology in

1 Indigenous communities?

2 A. I have.

3 Q. In terms of your employment,  
4 you've listed that you're a lecturer at the  
5 University of Toronto School of Continuing Studies.  
6 And you would agree with me that there's no  
7 specific criteria for becoming a lecturer at the  
8 U of T School for Continuing Studies?

9 A. It is at the discretion of the  
10 dean of whatever faculty you are applying to work.

11 Q. And you'd also agree that there  
12 are no admission criteria for taking continuing  
13 studies courses. So, basically, anyone 18 years or  
14 older can take the course that you teach?

15 A. Exactly.

16 Q. And the continuing studies courses  
17 do not count towards a degree?

18 A. No, they do not.

19 Q. And it's fair to say these are  
20 introductory courses?

21 A. Mostly, yes.

22 Q. You would agree that you're not  
23 currently teaching any courses relating to the  
24 archaeology of Indigenous communities?

25 A. Not at the moment, no.

1 Q. Nor have you ever taught any  
2 courses relating to the archaeology of Indigenous  
3 communities?

4 A. Just as the elements of handling  
5 the past, the course handling the past, we were  
6 dealing with some First Nations materials. But  
7 dated to the Archaic and the Woodland periods.

8 Q. And that you said, I believe, you  
9 taught the course once; is that right?

10 A. That's right.

11 Q. That would have been in 2015?

12 A. Yes.

13 Q. And so this class, I take it, was,  
14 would you agree is about 20 hours long or less of  
15 total class time?

16 A. 20 hours, yes. Not all of it  
17 would have been involved with First Nations  
18 materials.

19 Q. Okay.

20 A. Because we were going through up  
21 to the historical present, or 100 years ago.

22 Q. Roughly how many of the 20 hours  
23 of course time would you have say was focused on  
24 First Nations materials?

25 A. I would say probably 16.

10:44:43 1 Q. 16 hours of the 20 hours?

10:44:45 2 A. Yes.

10:44:45 3 Q. And this class you did not teach  
10:44:48 4 by yourself; is that correct?

10:44:51 5 A. That is true.

10:44:52 6 Q. You co-taught with Dr. Sarah  
10:44:55 7 Stewart?

10:44:55 8 A. That is correct.

10:44:56 9 Q. Who I understand is a member of  
10:44:57 10 the department of anthropology at U of T?

10:45:00 11 A. She is.

10:45:01 12 Q. Moving on to your experience with  
10:45:02 13 the Archeological Institute of America. You are  
10:45:08 14 currently serving, if I understand correctly, as  
10:45:11 15 the Chief of the Archeological Institute of America  
10:45:13 16 or AIA Toronto Society Annual Meeting Committee?

10:45:18 17 A. Oh, that is -- that's over.

10:45:21 18 Q. Okay.

10:45:22 19 A. We had our general meeting here in  
10:45:25 20 Toronto, and that was, I was on the committee that  
10:45:28 21 was helping organize that.

10:45:29 22 Q. Understood. When you served on  
10:45:31 23 the committee, I understand that your primary  
10:45:34 24 responsibilities were largely administrative; is  
10:45:36 25 that correct?



10:45:36 1 A. That's correct.

10:45:37 2 Q. Okay. In terms of your research  
10:45:42 3 interests, you've listed sacred landscapes as one  
10:45:45 4 of your research interests?

10:45:46 5 A. Yes, it is.

10:45:47 6 Q. You've never conducted research on  
10:45:51 7 sacred landscapes in the context of Indigenous  
10:45:54 8 communities; is that right?

10:45:54 9 A. No, I have not.

10:45:55 10 Q. Or sacred landscapes in Ontario?

10:45:58 11 A. No, exactly.

10:45:59 12 Q. You also listed "sacred versus  
10:46:02 13 profane in archeological context" as one of  
10:46:06 14 research interests?

10:46:06 15 A. Yes.

10:46:07 16 Q. And again, you've never conducted  
10:46:08 17 research on this topic in the context of Indigenous  
10:46:11 18 communities?

10:46:11 19 A. No, I have not.

10:46:12 20 Q. Or at all in Ontario?

10:46:14 21 A. No, that is correct.

10:46:15 22 MS. PELLETIER: Those are my questions,  
10:46:16 23 Your Honour. We do have a proposed revised tender,  
10:46:20 24 if you'd like me to pull that up now.

10:46:20 25 THE COURT: Let's finish the

10:46:21 1 examination first and I'll ask you about that in a  
10:46:23 2 minute.

10:46:24 3 MS. PELLETIER: Sure.

10:46:24 4 THE COURT: Is it Colizza or Colizza?  
10:46:28 5 Stand up, Counsel. Ms. Pelletier can  
10:46:32 6 sit down.

10:46:33 7 Do you have any re-examination?

10:46:34 8 MS. COLIZZA: No, I do not.

10:46:35 9 THE COURT: Ma'am, I have a couple of  
10:46:38 10 questions, and after my questions both counsel may  
10:46:41 11 have a couple of questions as well.

10:46:42 12 Your report focused on what has been  
10:46:47 13 known in this trial as a "bead analysis" that forms  
10:46:50 14 part of the expert evidence of Dr. Williamson.

10:46:54 15 And, as you note in your report,  
10:46:56 16 certain scientific tests were employed in the bead  
10:47:00 17 analysis and your report addresses that analysis in  
10:47:05 18 a number of respects.

10:47:07 19 One of the scientific tests is called  
10:47:13 20 "NAA", which means "Neutron Activation Analysis".

10:47:16 21 THE WITNESS: Yes.

10:47:18 22 THE COURT: I take it, ma'am, you're  
10:47:20 23 familiar with that testing?

10:47:21 24 THE WITNESS: Yes. I haven't done it  
10:47:22 25 myself, but I am familiar with it.

10:47:24 1 THE COURT: Is that familiarity arising  
10:47:26 2 from your archeological education and experience?

10:47:29 3 THE WITNESS: Yes, it is.

10:47:29 4 THE COURT: Is the use of that testing  
10:47:35 5 in any way limited to the source of the material,  
10:47:40 6 the geographic source of the material that the test  
10:47:43 7 is being used on?

10:47:44 8 THE WITNESS: This kind of test can be  
10:47:46 9 used on archeological materials from any place in  
10:47:48 10 the world.

10:47:49 11 THE COURT: All right. Now the second  
10:47:50 12 test that is the subject of that analysis is called  
10:47:54 13 the "XRF", which means "X-ray fluorescence". I  
10:48:02 14 have the same question.

10:48:04 15 First of all, are you familiar with  
10:48:06 16 that test?

10:48:07 17 THE WITNESS: I am, Your Honour.

10:48:07 18 THE COURT: And is its use in any way  
10:48:11 19 restricted to the source of the material that's  
10:48:13 20 being tested?

10:48:13 21 THE WITNESS: No, Your Honour.

10:48:14 22 THE COURT: All right. And my last  
10:48:16 23 question has to do with the part of your report  
10:48:19 24 that describes archeological methodology and  
10:48:22 25 practices with respect to the manner in which sites

10:48:26 1 are addressed, either by survey or other more  
10:48:35 2 intrusive activity and the manner in which  
10:48:37 3 archaeology looks upon the locations in the sites  
10:48:40 4 where materials are taken from.

10:48:42 5 THE WITNESS: Yes.

10:48:43 6 THE COURT: And I have the same  
10:48:44 7 question.

10:48:47 8 Are those methodologies and practices  
10:48:48 9 in any way different depending on the geographic  
10:48:52 10 source of the materials that are being the subject  
10:48:56 11 of analysis?

10:48:56 12 THE WITNESS: No, Your Honour.

10:48:57 13 THE COURT: All right.

10:48:58 14 Now, Ms. Colizza, do you have any  
10:49:01 15 questions arising from my questions?

10:49:04 16 MS. COLIZZA: No, Your Honour.

10:49:05 17 THE COURT: All right. Ms. Pelletier?

10:49:07 18 MS. PELLETIER: I do.

10:49:07 19 THE COURT: Please go ahead.

10:49:09 20 MS. PELLETIER: Thank you.

10:49:12 21 VOIR DIRE RE-EXAMINATION BY MS. PELLETIER:

10:49:13 22 Q. I want to make sure I don't  
10:49:14 23 misquote Her Honour.

10:49:16 24 Ms. Morden, you were just asked by  
10:49:19 25 Justice Matheson with respect to the scientific

1 testing of INAA whether you were, you had  
2 familiarity and whether that was based on your  
3 archeological, education and experience, and you  
4 said, that "yes", it was.

5 I'd ask the same question with respect  
6 to the database, the database that flows from the  
7 glass bead testing, the INAA and the X-ray  
8 analysis; do you have experience using the  
9 database?

10 A. Not that particular database, but  
11 I have experience using databases that deal with  
12 the same kinds of testing for pottery.

13 MS. PELLETIER: Thank you. Those are  
14 my only questions, Your Honour.

15 THE COURT: Now Ms. Pelletier, what is  
16 your -- first of all, can someone please put the  
17 tender back up on the screen?

18 Is somebody doing that? I see shaking  
19 heads. What is the SC number of the tender?

20 THE REGISTRAR: 1493, Your Honour.

21 THE COURT: All right. While we're  
22 getting that on the screen, Mr. Registrar, can that  
23 be the next lettered exhibit?

24 THE REGISTRAR: Lettered Exhibit E-3.

25 THE COURT: All right. Ms. Pelletier,

1 what is your proposed amendment and why?

2 MS. PELLETIER: I can pull it up  
3 actually, Your Honour. Our proposed tender is  
4 Document 1492.

5 THE COURT: Does there need to be a  
6 second document?

7 MS. PELLETIER: Doesn't need to be.  
8 It's basically --

9 THE COURT: Please don't talk at the  
10 same time.

11 Can you start by telling me what the  
12 change is, because I won't be able to -- unless you  
13 black-lined it, I won't be able to see it in the  
14 other document.

15 MS. PELLETIER: Sure. It is taking out  
16 the reference to archaeology in Ontario.

17 So the change would be "archaeologist  
18 with familiarity with archaeology methodology in  
19 general".

20 THE COURT: How does "in general" not  
21 include Ontario, Counsel?

22 MS. PELLETIER: We would propose that  
23 this limit -- I appreciate that by reading it, it  
24 sounds as though we are attempting to broaden her  
25 qualifications.

1 THE COURT: Well, no, I don't have a  
2 problem with that from what I've heard. I don't  
3 have a problem with it in general, but I'm  
4 struggling, if you can stand up at the end of this  
5 trial and say "in general" doesn't include Ontario,  
6 I would have a problem with that.

7 MS. PELLETIER: We would say in terms  
8 of the methodology in general, she can speak to.  
9 It's specifically the practice of archaeology in  
10 Ontario.

11 THE COURT: The evidence I've heard,  
12 and frankly, it's exactly what I expected, is the  
13 archaeologists in Buffalo use the same scientific  
14 tests for those purposes and same methodologies as  
15 the ones in Niagara Falls.

16 So if that's the evidence, and it is,  
17 then a properly qualified archaeologist is equally  
18 qualified in Buffalo and Niagara Falls. So how do  
19 you say that this individual is not qualified to  
20 speak about these tests and practices and  
21 methodology as regards Ontario samples?

22 MS. PELLETIER: I don't say that, Your  
23 Honour.

24 THE COURT: So I'm struggling then with  
25 the distinction you're trying to draw.

1 MS. PELLETIER: So, with respect, I can  
2 pull up -- we have a copy of Ms. Morden's report  
3 with sections that we would propose to strike out.  
4 I believe -- our position is her evidence in her  
5 report with respect to the bead testing is fine.

6 She goes beyond that in a number of  
7 sections in her report where she talks about  
8 Indigenous communities in general.

9 She speaks about how Indigenous  
10 communities likely interacted with the land, what  
11 objects --

12 THE COURT: She has significant  
13 portions of her report that repeat and agree with  
14 your expert witness. I assume you're not going to  
15 be trying to strike them out?

16 MS. PELLETIER: No.

17 THE COURT: But that is the lion's  
18 share, if not all, of what she says about  
19 Indigenous peoples.

20 She's recounting evidence that was  
21 given by Dr. Williamson, and not entirely, but in  
22 large part, agrees with it.

23 MS. PELLETIER: Those aren't the  
24 sections, Your Honour.

25 THE COURT: You're going to leave those



1 ones in and strike something else out?

2 MS. PELLETIER: The part where she's  
3 just summarizing what's in Dr. Williamson's report  
4 are not opinion, as far as we're concerned, and  
5 those can stay in.

6 It's the portions where she opines on  
7 what objects would not have been ceremonial for  
8 Indigenous people, the ceremonies that they  
9 would've performed, how they would have behaved  
10 more generally.

11 Basically her comments that are focused  
12 on Indigenous people, not with respect to the  
13 testing of beads, is what we take issue with. And  
14 by Ms. Morden's own admission, she does not have  
15 the requisite expertise.

16 THE COURT: You better take me through  
17 them.

18 MS. PELLETIER: Sure. So I will pull  
19 up document SC1495. And this is what we would  
20 propose to be Ms. Morden's report, the exclusions  
21 if Your Honour will grant us the revised tender.

22 So the first one begins --

23 THE COURT: I want you to know we're  
24 doing two different but related things here.

25 They're quite separate subjects,

1 Counsel, the proposed tender and the report. Now  
2 they're not unrelated, but they're not identical,  
3 either.

4 So I heard you on the tender, show me  
5 what in the report that you're concerned about.

6 MS. PELLETIER: I appreciate that. I  
7 believe that taking a look at the passages which we  
8 take issue with in the report does demonstrate the  
9 need for a revised tender.

10 So beginning at page 8.

11 THE COURT: Just note parenthetically  
12 your obligation was to give me notice of any such  
13 issue. This is now the second expert witness like  
14 this where I've been given no notice. This witness  
15 is down as no challenge on consent, as was the  
16 witness last week.

17 All right. So let's not have that  
18 happen again. I guess it's academic now for  
19 Canada, but I don't want to see that when Ontario  
20 comes around.

21 MS. PELLETIER: Understood, Your  
22 Honour. So the paragraph beginning with  
23 "unfortunately".

24 "Unfortunately the  
25 characteristic nature of the

10:56:00 1 archeological record of most  
10:56:01 2 Aboriginal sites makes the  
10:56:02 3 understanding of these concepts  
10:56:04 4 crucial. Sites reflect the  
10:56:05 5 respectful nature of the people who  
10:56:07 6 created and used them, a people who  
10:56:09 7 lived lightly on the land, moved  
10:56:11 8 frequently taking even their  
10:56:12 9 palisades stakes with them, leaving  
10:56:15 10 little behind for archaeologists to  
10:56:17 11 find."

10:56:18 12 THE COURT: All right. And evidence to  
10:56:21 13 that effect was given by Dr. Williamson, your own  
10:56:26 14 witness, but you have difficulty with it coming  
10:56:28 15 from this individual?

10:56:28 16 MS. PELLETIER: She doesn't have the --

10:56:30 17 THE COURT: That wasn't my question.

10:56:31 18 This report is clearly stated at its  
10:56:35 19 outset as being a response to one aspect of  
10:56:39 20 Dr. Williamson's testimony. And I hope we're not  
10:56:43 21 going to get down into individual word choices, but  
10:56:46 22 in large part whatever is said here about the  
10:56:49 23 Indigenous communities is from Dr. Williamson's  
10:56:52 24 evidence, where this witness is talking about the  
10:56:57 25 focus of her report and putting it in context.

1 If you have some offence to that  
2 sentence that you think it is not only outside this  
3 person's expertise but false, rather than my  
4 reaction when I read it, which was that it was an  
5 effort to say something that was roughly the same  
6 as what Dr. Williamson had said, then I'll make a  
7 note of it, if you think that is false. I had  
8 highlighted that sentence myself but for a  
9 different reason.

10 MS. PELLETIER: To the extent, Your  
11 Honour, that the suggestion is supposed to be that  
12 we take from this passage that there's very little  
13 left with Indigenous archeological sites such that  
14 we aren't able to learn from them because there are  
15 few artefacts to find, et cetera, I do take issue  
16 with that, and I don't believe that that's  
17 consistent with Dr. Williamson's testimony.

18 THE COURT: What is the next section?

19 MS. PELLETIER: The next one, page 14,  
20 the very bottom.

21 THE COURT: All right.

22 MS. PELLETIER:

23 "One must remember that a  
24 single bead would never have been  
25 viewed as a complete object as the

10:58:01 1 standard practice would be to use  
10:58:03 2 many beads to decorate clothing and  
10:58:05 3 objects like boxes, belts and bags  
10:58:07 4 with patterns of beads. Most likely  
10:58:09 5 the single bead is an accidental  
10:58:11 6 inclusion in the burial, broken off  
10:58:14 7 of clothing while the dog was  
10:58:18 8 buried."  
10:58:19 9 THE COURT: What is the next one?  
10:58:21 10 MS. PELLETIER: Page 18.  
10:58:32 11 THE COURT: Yes.  
10:58:35 12 MS. PELLETIER: The paragraph that  
10:58:36 13 begins with "the recognition", the last sentence:  
10:58:39 14 "The Anishinaabe are not unique in this  
10:58:42 15 regard [...]"  
10:58:52 16 THE COURT: Where is that? Oh, I see.  
10:58:59 17 Again, this witness doesn't need to be  
10:59:02 18 an expert in Indigenous peoples to make that  
10:59:05 19 statement.  
10:59:07 20 MS. PELLETIER: I don't take particular  
10:59:08 21 offence to that statement, Your Honour.  
10:59:10 22 THE COURT: All right.  
10:59:12 23 MS. PELLETIER: I'm just trying to be  
10:59:13 24 consistent.  
10:59:14 25 THE COURT: Then I have the next one

1 written down already. What is your last one? I  
2 think there's one more?

3 MS. PELLETIER: The large section in  
4 "Conclusion" at page 20.

5 THE COURT: Where? Again, this is, as  
6 it said it would be, a response to Dr. Williamson's  
7 own evidence about the Anishinaabe where he was  
8 tendered by you as an expert in that area.

9 MS. PELLETIER: But, Your Honour,  
10 comments like:

11 "The thesis that Anishinaabe  
12 culture is timeless and eternal can  
13 be seen to be disproved by the fact  
14 that one" -- I believe it's meant to  
15 be -- "one of the cultural criteria  
16 that Williamson uses, animal bundles  
17 related to ceremonial feasting and  
18 celebrations, is relatively new  
19 against the long history of  
20 Anishinaabe people."

21 She's just not qualified to say that.  
22 Again, that is inconsistent with what Dr.  
23 Williamson has said. And:

24 "The Anishinaabe people  
25 continued and continue to develop

1 and evolve in reaction and relation  
2 to their changing world."

3 Again, that last sentence, I don't take  
4 particular offence to it, but in an attempt to be  
5 consistent, our submission is that she's not  
6 qualified to make those statements.

7 THE COURT: Well, I also have to be  
8 concerned about consistency. And as you know, some  
9 of your own expert witnesses were the subject of  
10 similar submissions -- I can't remember if  
11 Dr. Williamson was one at the moment --  
12 wherein substantial part, the report was squarely  
13 within the witness's expertise, which is certainly  
14 the case here. But counsel on the opposite side  
15 was saying there was a bit here and a bit there.

16 As you know, for -- is it Dr. Herring?  
17 I've forgotten -- for your witnesses, I took into  
18 account that -- those submissions, but we did not  
19 get into a piecemeal chop of the report.

20 What is your submission as to why your  
21 witnesses should be treated any differently because  
22 this is now the second time?

23 MS. PELLETIER: I think in all other  
24 examples to date, Your Honour, where there has been  
25 a challenge to the tender with respect to someone's

1 profession, so I believe the issue for Dr.  
2 Williamson was that he wanted to opine on the  
3 documentary record and the concern was that he was  
4 not a historian. We were able to establish that  
5 he, in his work, used the documentary record quite  
6 extensively.

7 THE COURT: It wasn't he that I was  
8 thinking of.

9 It was this exact situation where the  
10 main focus of the report is squarely within the  
11 expert's properly proposed expertise, but there was  
12 a little bit here and a little bit there, that I  
13 can't remember if it was Canada or Ontario, who  
14 said was outside of that experiential or  
15 educational expertise.

16 And you all said it should not result  
17 in striking out the report, and you seem to have  
18 taken a different attitude last week and this week.  
19 Because this is exactly what you're doing.

20 MS. PELLETIER: Well, Your Honour, my  
21 submission is that it's not exactly what I'm doing.

22 I think in all of the other instances,  
23 the expert in question had familiarity, at a  
24 minimum, with the material. At least all of my  
25 witnesses, Your Honour, I can't speak to those



11:02:41 1 for whom I --

11:02:42 2 THE COURT: Well, I will correct you,  
11:02:43 3 Counsel, that's not the case.

11:02:44 4 So assuming I'm right about that, why  
11:02:46 5 do you say that this witness should be dealt with  
11:02:49 6 in that way?

11:02:50 7 MS. PELLETIER: I think that she has  
11:02:53 8 admittedly not worked at all in Indigenous sites.  
11:02:56 9 Having her opinion about Indigenous communities,  
11:02:58 10 Indigenous sites, how Indigenous people would have  
11:03:01 11 behaved is not helpful to this Court.

11:03:02 12 I think it confuses the issues, and I  
11:03:05 13 think she's not properly qualified. I think it  
11:03:07 14 goes beyond you giving her little weight in those  
11:03:10 15 areas. The proper thing to do in this case in my  
11:03:13 16 submission would be to actually strike out those  
11:03:14 17 sections of her report.

11:03:16 18 THE COURT: All I can tell you,  
11:03:18 19 Counsel, plaintiffs' counsel are changing their  
11:03:20 20 approach. You're entitled to change your approach,  
11:03:23 21 you should say so. But this is not different for  
11:03:28 22 at least one witness I can think of -- not  
11:03:30 23 Dr. Williamson -- at all.

11:03:34 24 Now you're entitled to say, that's  
11:03:36 25 interesting, Your Honour, but I think we should do

11:03:38 1 it anyway, which is what I think you're saying.

11:03:41 2 The fact that we can't rustle up the  
11:03:44 3 old ones doesn't really change anything from my  
11:03:47 4 standpoint, because I still want to do the  
11:03:50 5 appropriate thing in this regard.

11:03:52 6 Now, moving back to Canada. Canada,  
11:03:55 7 what do you have to say about all of this?

11:03:58 8 MS. COLIZZA: Thank you, Your Honour.

11:04:09 9 Well, a number of points were already  
11:04:14 10 referred to by Your Honour.

11:04:15 11 THE COURT: Doesn't mean I have the  
11:04:16 12 view. It just means I want my questions answered,  
11:04:19 13 so better express yourself.

11:04:22 14 MS. COLIZZA: Well, Ms. Morden is not  
11:04:23 15 an anthropologist or an ethnologist. Clearly, she  
11:04:28 16 does not profess to have expertise on matters  
11:04:30 17 related to Indigenous culture.

11:04:31 18 And while archaeology can draw upon  
11:04:33 19 these other disciplines, Ms. Morden is being  
11:04:35 20 tendered as an expert in this case for her  
11:04:37 21 specialized knowledge and experience as it relates  
11:04:40 22 to methodological principles and archeological  
11:04:43 23 techniques which are applicable to the practice of  
11:04:45 24 archaeology generally.

11:04:47 25 She then applies this expertise to an

11:04:48 1 area with which she has familiarity, mainly the  
11:04:52 2 practice of archaeology in Ontario.

11:04:54 3 Further, Ms. Morden has familiarity  
11:04:56 4 with archeological sites, artefacts and reports  
11:04:59 5 from a broad range of cultures, locations and time  
11:05:01 6 periods.

11:05:02 7 I submit this experience makes her well  
11:05:05 8 placed to know which of the skills and techniques  
11:05:07 9 she uses can apply cross-culturally, including in  
11:05:11 10 Ontario.

11:05:11 11 And most of the specific sections of  
11:05:15 12 Ms. Morden's reports to which the Plaintiffs are  
11:05:17 13 objecting are actually in the observations and the  
11:05:20 14 evidence as has been presented in Dr. Williamson's  
11:05:24 15 reports, which are the subject to which Ms. Morden  
11:05:26 16 was asked to respond.

11:05:27 17 The observations made in Ms. Morden's  
11:05:31 18 report, and that we intend to highlight in her  
11:05:33 19 testimony, are made on the basis of her specialized  
11:05:35 20 knowledge of archeological practice and methodology  
11:05:40 21 as applied to the data and arguments presented in  
11:05:42 22 Dr. Williamson's reports.

11:05:43 23 We believe that any concerns the  
11:05:45 24 Plaintiffs may have about Ms. Morden's lack of  
11:05:47 25 expertise as it relates to Indigenous cultures, in

1 particular, and how that might bear upon her  
2 observations and conclusions would be more properly  
3 raised in cross.

4 And I did go through some of the  
5 objected-to passages in Ms. Morden's report and  
6 found some corresponding pages in Dr. Williamson's  
7 reports. It would be a bit of a lengthy exercise  
8 to go through them all, but I'd be happy to if Your  
9 Honour would like.

10 THE COURT: Any reply?

11 MS. PELLETIER: Your Honour, just to  
12 say that I don't take issue with Ms. Morden being  
13 able to give an opinion on archeological  
14 methodology in general, and I appreciate that that  
15 can cross over to sites of different natures.

16 The passages, and I hope that you will  
17 agree, that we have focused on, are very narrow and  
18 limited, and they really focus on those matters  
19 that we feel go outside of the realm of archaeology  
20 and deal with the subject matter that Ms. Morden in  
21 her own admission has no expertise, not even  
22 expertise, no experience in. Not even familiarity.

23 And so I think that we're not -- we're  
24 not taking issue with her lack of expertise or  
25 experience in Ontario. The methodology in general

1 we're fine with. It's statements relating to  
2 Indigenous people and their way of life.

3 THE COURT: Can you put up your form of  
4 the tender, please.

5 MS. PELLETIER: SC number 4192.

6 THE COURT: And then switch back to the  
7 other one.

8 You may have a seat.

9 All right, Madam Reporter, my ruling is  
10 as follows:

11 Ms. Morden is tendered as:

12 "Archaeologist with familiarity with the practice  
13 of archaeology in Ontario and of archeological  
14 methodology in general."

15 There is no dispute that this witness  
16 is an expert archaeologist, including relevant  
17 testing practices and methodologies that are used  
18 throughout the profession, regardless of the source  
19 of the materials being tested.

20 As I hear Plaintiffs' counsel's  
21 submissions, it becomes apparent that the real  
22 issue is some passages in this witness's expert  
23 report that speak about Indigenous culture, also  
24 described as Indigenous people and their way of  
25 life.

11:12:03 1 As stated in the outset of this report,  
11:12:06 2 this witness has been asked to opine on a report of  
11:12:13 3 Dr. Williamson. Dr. Williamson, who I have  
11:12:18 4 accepted as an expert archaeologist, testified as  
11:12:22 5 part of the Plaintiffs' case. He put forward a  
11:12:26 6 number of reports, one of which is what I will  
11:12:32 7 describe as a bead analysis.

11:12:37 8 In that report, Dr. Williamson  
11:12:41 9 discusses the results of certain scientific testing  
11:12:48 10 on a collection of beads that were found at a  
11:12:52 11 particular number of sites in Ontario with the  
11:13:00 12 primary focus on one site, the technical name of  
11:13:07 13 which I will leave aside for the moment, but it is  
11:13:14 14 located proximate to the Saugeen River.

11:13:19 15 As stated in great detail in that  
11:13:22 16 report, a group of beads located at various places  
11:13:25 17 were analyzed using certain scientific tests that  
11:13:31 18 are highly sophisticated, and the results of those  
11:13:34 19 tests were considered by Dr. Williamson in  
11:13:38 20 conjunction with other evidence and other  
11:13:41 21 archeological data, giving rise to certain  
11:13:46 22 opinions.

11:13:47 23 I have no doubt that this witnesses is  
11:13:50 24 qualified to respond to that bead analysis with her  
11:13:58 25 archeological credentials. The fact is that those

11:14:01 1 tests are not geographically restricted and the  
11:14:04 2 fact that archeological practice and methodology is  
11:14:08 3 also not geographically restricted. And when I say  
11:14:13 4 it that way, I mean that those test, practices and  
11:14:16 5 methodologies are used regardless of whether those  
11:14:20 6 beads were located geographically in the province  
11:14:23 7 of Ontario.

11:14:24 8 So in substantial part, there is no  
11:14:31 9 issue from my standpoint about whether this witness  
11:14:34 10 is qualified to testify about the matters covered  
11:14:37 11 in her report.

11:14:39 12 As for the form of the tender, she's  
11:14:42 13 certainly qualified beyond the province of Ontario.  
11:14:48 14 And so the proposal from the Plaintiffs to remove  
11:14:55 15 the word "Ontario" and substitute the word  
11:15:00 16 "generally", which would include the province of  
11:15:03 17 Ontario, is not a problem from my standpoint.

11:15:06 18 It does not address the issue with the  
11:15:08 19 report, which I will get back to in a minute.

11:15:11 20 So from the standpoint of accepting the  
11:15:12 21 tender, I am simply going to accept the following  
11:15:14 22 tender: "Archaeologist with familiarity in the  
11:15:17 23 practice of archaeology and of archeological  
11:15:24 24 methodology in general".

11:15:27 25 I then move to what seems to be the

1 real issue here, which is that certain parts of  
2 this report are, in the submission of Plaintiffs'  
3 counsel, evidence about Indigenous peoples' culture  
4 and practices arising from their culture that is  
5 not sourced from Dr. Williamson's evidence. That  
6 is disputed.

7 Canada's counsel says that if I wish to  
8 hear more from her, she would go at some length to  
9 establish that these references can be found in his  
10 lengthy evidence. Certainly, some of them are  
11 within my recollection of his evidence, though I  
12 stand to be corrected if Plaintiffs' counsel wish  
13 to do so at the appropriate juncture.

14 The reason this issue comes up is that  
15 the agreement in this trial, and between counsel  
16 from the outset, is that expert reports will be  
17 made evidence.

18 And as a result, the expert is not  
19 obliged to re, say all of the words in her report,  
20 because the report itself becomes part of her  
21 examination-in-chief. We follow that practice  
22 based on the parties' consent from the outset of  
23 this trial.

24 It is for this reason I assume that  
25 Plaintiffs' counsel are raising now these



1 objections because this report will form part of  
2 this witness's evidence in-chief.

3 I must say that some of the passages  
4 complained about seem so similar, if not identical,  
5 to what Dr. Williamson said, that I am struggling  
6 to understand why they're being raised. However,  
7 there are two portions of the report which don't  
8 immediately come to my recollection from his  
9 evidence.

10 One is on page 18, the last sentence of  
11 the third paragraph up from the bottom, which  
12 begins with the words "In the context [...]" and  
13 then on page 20, the second last paragraph.

14 Having considered all of the  
15 submissions, it's my conclusion that having noted  
16 those two excerpts, and indeed all the other  
17 excerpts that Plaintiffs' counsel have drawn to my  
18 attention, that I will permit the entire report to  
19 be marked on the reservation that this witness has  
20 candidly admitted that she is not an expert on  
21 Indigenous culture, then or now.

22 And if it turns out that those  
23 statements do not have a proper evidentiary  
24 foundation from Dr. Williamson, I will disregard  
25 them.

11:18:28 1 That concludes my reasons for decision,  
11:18:32 2 Madam Reporter.  
11:18:35 3 Counsel, please go ahead.  
11:18:39 4 THE REGISTRAR: Court's indulgence,  
11:18:42 5 which one are we marking as a lettered exhibit,  
11:18:46 6 E-3?  
11:18:46 7 THE COURT: Thank you for reminding me.  
11:18:46 8 EXHIBIT E-3: Tender Proposed for  
11:18:46 9 Ms. Morden, SC4192.  
11:18:48 10 THE COURT: I think for the record we  
11:18:49 11 should also give a letter to the proposed tender  
11:18:51 12 for Ms. Pelletier.  
11:18:53 13 If you can bring that back up on the  
11:18:55 14 screen or Ms. Pelletier just give Mr. Registrar the  
11:18:59 15 SC number for the second version.  
11:19:03 16 MS. PELLETIER: It's SC1492, Your  
11:19:06 17 Honour.  
11:19:06 18 THE COURT: All right. So that will be  
11:19:07 19 the next lettered exhibit.  
11:19:09 20 THE REGISTRAR: Lettered Exhibit F-3.  
11:19:12 21 THE COURT: F-3, all right.  
11:19:15 22 EXHIBIT F-3: Revised Tender Proposed  
11:19:17 23 by the Plaintiffs.  
11:19:14 24 THE COURT: So F-3 is the revised  
11:19:16 25 tender proposed by the Plaintiffs.

1                   You don't have to bring it up on the  
2 screen. Ms. Colizza, please go ahead.

3                   MS. COLIZZA: Thank you, Your Honour.

4                   EXAMINATION IN-CHIEF BY MS. COLIZZA (CONT'D):

5                   Q. I'd like to pull up Ms. Morden's  
6 expert report, which is Exhibit 4452. And if you  
7 turn to page 8, please.

8                   I'm going to ask a couple of questions  
9 about the fourth paragraph down that's highlighted  
10 there that begins "In part 1 [...]".

11                  So in this paragraph you say that your  
12 report will define important archeological terms,  
13 especially those related to the stratigraphy of  
14 sites, which may affect the reliability of dating  
15 the deposits at the site.

16                  To begin, can you please provide us  
17 with a brief overview of what stratigraphy is and  
18 how it might be used today on a site?

19                  THE COURT: If you can just pause for a  
20 moment, please.

21                  Stratigraphy, please go ahead.

22                  THE WITNESS: Stratigraphy is the study  
23 of soil deposits as excavated at a site.

24                  The idea that deposits are found  
25 stacked in the best case scenario, where you have

11:20:43 1 older deposits at the bottom, and more recent  
11:20:46 2 deposits at the top, sort of closer to topsoil, and  
11:20:50 3 that from an analysis of these soil deposits, one  
11:20:54 4 can establish a relative chronology of the  
11:20:58 5 artefacts associated with the different soil  
11:21:02 6 deposits.

11:21:04 7 So therefore, all the objects found  
11:21:06 8 within the bottom layer, for instance, will be  
11:21:09 9 earlier, as a group, as an assemblage, than  
11:21:13 10 artefacts found in soil deposits at the top.

11:21:16 11 And so you have all these deposits with  
11:21:19 12 the artefacts and it creates a relative chronology.

11:21:19 13 BY MS. COLIZZA:

11:21:24 14 Q. So could stratigraphy be thought  
11:21:26 15 of as synonymous as distance to the surface?

11:21:30 16 A. No. Sometimes excavators who do  
11:21:34 17 not have the advantage of stratified deposits at  
11:21:40 18 their site will talk about trying to understand  
11:21:43 19 relationship of objects found at their site, will  
11:21:49 20 measure from topsoil, where they find materials.

11:21:54 21 But this is not the equivalent of  
11:21:57 22 stratigraphy, where I'm talking about the stacking  
11:22:00 23 of soil deposits.

11:22:03 24 A good example where this can be a  
11:22:06 25 problem is from the Frank Bay site on Lake

1 Nipissing, where deposits were, the stratigraphic  
2 relationship was based on distance from the surface  
3 and which put a collection of beads in adjacent to  
4 some dog burials.

5 Later testing of carbon 14 date  
6 samples, the bedding material -- carbon 14 samples  
7 were taken from the bedding material under some of  
8 the dog burials and it was found that that was not  
9 the case at all.

10 So although they were the same distance  
11 from the surface they actually dated to a different  
12 time period.

13 Q. I'll ask you some questions about  
14 carbon 14 a little later on. But for reference,  
15 the Frank Bay site, the report by Brizinski and  
16 Savage was added to the database by the Plaintiffs  
17 as S-0293, if we want to mark that now since it's  
18 been referred to.

19 Can we bring that up, please.

20 THE COURT: You either want to or you  
21 don't want to.

22 MS. COLIZZA: I will since it's been  
23 mentioned. So this is, "Dog Sacrifices Among the  
24 Algonquin Indians, an Example from the Frank's Bay  
25 Site From Brizinski and Savage in Ontario

1 Archaeology".

2 If we can mark this as the next  
3 numbered exhibit, Your Honour.

4 THE REGISTRAR: Exhibit number 4453.

5 EXHIBIT NO. 4453: Report entitled,

6 "Dog Sacrifices Among the Algonquin

7 Indians, an Example from the Frank's

8 Bay Site from Brizinski and Savage in

9 Ontario Archaeology".

10 BY MS. COLIZZA:

11 Q. You mentioned later on in your  
12 report that stratigraphy is not always vertical;  
13 could you expand on what you mean by that?

14 A. Sometimes sites will expand over  
15 time, so a site that may have started with 1 or 2  
16 houses, buildings will expand and include more than  
17 one, you know, 4, 5, or 6.

18 So what you'll have is the nucleus of a  
19 village will be where those original buildings were  
20 situated, and that you'll have other buildings at  
21 the same level but they will not -- they won't be  
22 at the same level, but they will not necessarily be  
23 chronologically the same.

24 So you have sometimes expansion, a  
25 horizontal expansion which reflects a chronological

11:24:40 1 process.

11:24:40 2 Q. You also refer in -- we can go  
11:24:44 3 back to the report. Let's just make sure it's on  
11:24:47 4 the screen.

11:24:47 5 You also refer in this paragraph to the  
11:24:51 6 difference between sealed and unsealed deposits.  
11:24:54 7 What is a sealed deposit?

11:24:55 8 A. A sealed deposit is really the  
11:24:58 9 gold standard for stratigraphy. That's what  
11:25:02 10 everyone hopes to find on their projects. It means  
11:25:05 11 the material is securely, that that deposit is a  
11:25:10 12 securely identified assemblage without intrusions,  
11:25:14 13 later intrusions.

11:25:15 14 The degrees of sealing, if you find a  
11:25:22 15 deposit underneath a concrete floor that's intact,  
11:25:25 16 that's a beautifully sealed deposit. On a Roman  
11:25:29 17 site it would be under a mosaic floor. The  
11:25:32 18 deposits underneath would be securely dated.

11:25:35 19 But you can have deposits that are not  
11:25:38 20 sealed, but are still within a stratigraphic  
11:25:41 21 context. But one has to then be very careful about  
11:25:47 22 how one is analyzing those deposits.

11:25:49 23 Q. In your experience, how common is  
11:25:52 24 it to have a sealed deposit?

11:25:53 25 A. Truly sealed deposits are rare on

1 almost all sites. On sites that I've worked at in  
2 classical lands, they get a special designation.  
3 And for any given trench, you will really -- you're  
4 lucky if you get 1 or 2 of those deposits. You're  
5 lucky. So they're not common.

6 Q. And this paragraph also refers to  
7 "processes of post depositional interference". Can  
8 you briefly explain what you mean by that?

9 A. Well, post depositional processes  
10 can be both cultural, can be the result of human  
11 activity but also can be the result of natural  
12 processes, like erosion.

13 And so sometimes the stratigraphic  
14 profile at a site can be disturbed by, for  
15 instance, if someone goes and digs a latrine pit in  
16 a site, that is cultural activity. Digging down  
17 through previous deposits, you end up, material  
18 that is dug out becomes a secondary fill.

19 A material that is been mixed, perhaps  
20 1, 2 or 3 different levels that the pit has been  
21 dug down through become a deposit on topsoil.

22 Q. And is secondary fill the same as  
23 a redeposited fill?

24 A. Yes. Secondary fill suggests that  
25 it is the result of the initial disturbance of



11:27:33 1 primary deposits, on -- sorry, can you -- the two  
11:27:43 2 terms that you --

11:27:44 3 Q. Redeposited fill and secondary  
11:27:46 4 fill.

11:27:46 5 A. So redeposited fill could be  
11:27:49 6 something that has been interacted with more than  
11:27:52 7 once. There's no limit.

11:27:55 8 Q. And how does an unsealed deposit  
11:27:57 9 or a redeposited fill affect your ability to use  
11:28:02 10 stratigraphy to form a relative chronology or  
11:28:05 11 sequence?

11:28:05 12 A. It makes it difficult, makes it  
11:28:07 13 very difficult. Essentially if one does not have  
11:28:11 14 stratigraphically distinct deposits, one then needs  
11:28:15 15 to treat the assemblage from the entire site as a  
11:28:20 16 unit.

11:28:21 17 And then look at individual artefact  
11:28:26 18 classes and look at their dating.

11:28:28 19 Q. And how do you date artefact  
11:28:30 20 classes?

11:28:30 21 A. Through seriation, through an  
11:28:35 22 analysis of form and decoration of a particular  
11:28:41 23 object class.

11:28:41 24 So for instance, for pottery, if you're  
11:28:43 25 looking at the shapes and how they evolve through

11:28:46 1 time and the decorative patterns and how they  
11:28:51 2 evolve through time, you can then place examples  
11:28:54 3 within a linked series and they can have -- you can  
11:28:59 4 then establish a relative chronology of that object  
11:29:03 5 class.

11:29:04 6 Q. And what can a change in the style  
11:29:06 7 or form of a class of artefact tell us, if  
11:29:09 8 anything, about the relative chronology of a site?

11:29:12 9 A. Well, it can -- if you have a  
11:29:15 10 well-documented artefact class, pottery is well  
11:29:23 11 studied around the world, and it's something that  
11:29:26 12 you find in so many sites.

11:29:27 13 If you have pottery that comprises part  
11:29:33 14 of the full seriation for a particular type of  
11:29:36 15 pottery, then you know that there is a sort of  
11:29:39 16 clustering of artefacts within a certain part of  
11:29:46 17 the seriation, one can assume one is dealing with a  
11:29:48 18 subset of the entire pottery and perhaps that will  
11:29:51 19 have chronological meaning for that object class.

11:29:57 20 Q. Okay. And in addition to  
11:29:59 21 measuring artefacts' change over time, are there  
11:30:02 22 any other factors that can be reflected in changing  
11:30:05 23 seriation?

11:30:09 24 A. Well, you can have differences in  
11:30:11 25 objects on the site that will perhaps reflect

1 something to do with the people who use them or  
2 made them. Sometimes you will have differences in  
3 pottery that reflect differences in local  
4 variations. So you can have regional changes, so  
5 that pottery that is actually contemporary can be  
6 quite different from one region to another.

7 So not all changes in artefacts are a  
8 result of chronological markers.

9 Q. And what can differences in style  
10 or form of classes of artefact tell us about  
11 differences in identity of the historical group  
12 making or using those artefacts, if anything?

13 A. Well, it can give an indication of  
14 trade, interaction between social groups, sometimes  
15 something as simple as some pottery style studies.

16 For instance, a neolithic site, frankly  
17 a paleolithic through neolithic site in Greece  
18 called the Franchthi Cave, the ceramicists  
19 analyzing the pottery from this site were able to  
20 identify the possibility of pottery markers that  
21 might suggest intermarriage between different  
22 groups from different parts of that part of Greece.

23 So sometimes you can -- pottery changes  
24 will actually give you sort of all sorts of  
25 information, social information.

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11:32:58 25

Q. Thank you.

MS. COLIZZA: Your Honour, it's just past 1130 am. Is this a good time for a break?

THE COURT: Given the way we started today, I was going to go for a few more minutes unless you're starting a brand new topic right now.

MS. COLIZZA: I have two more questions on this topic.

THE COURT: Perhaps you can start that now.

BY MS. COLIZZA:

Q. Looking at dating sites themselves how does the way a group uses a site or a territory affect the utility of the relative dating techniques that we discussed?

A. Well, if a group is, for instance, part of the world that I have most familiarity with, the eastern Mediterranean, you have Romans come to a site and they're very heavy on the land. They dig their foundations of their large structures down to bedrock, and so they disturb everything but they leave quite an explicit example of their building practice.

Other groups, not so much. If you have -- I've looked at Serbian material for the

11:33:02 1 neolithic in Cyprus, and really, all you have from  
11:33:06 2 groups that are really using, using seasonal camps,  
11:33:13 3 usually just have stone tools as the only evidence  
11:33:18 4 for the use of a particular people at a particular  
11:33:23 5 time period.

11:33:24 6 So how people use, how lightly they  
11:33:28 7 live on the land, how heavily they live on a land  
11:33:32 8 will make a huge difference in what kind of  
11:33:34 9 archeological record will be left to -- for  
11:33:43 10 archeologists to discover.

11:33:44 11 Q. How does the natural environment  
11:33:46 12 in a region like the Bruce Peninsula affect the  
11:33:47 13 utility of these relative dating techniques?

11:33:52 14 A. Sometimes when you have an area  
11:33:54 15 that will be subject to erosional problems, wind,  
11:34:00 16 water erosion, you'll end up with sites being  
11:34:06 17 moved, the soil matrix being eroded away, leaving  
11:34:11 18 the artefacts on a rocky surface, perhaps.

11:34:13 19 So sometimes, the actual environment  
11:34:17 20 will have a huge effect on the ability to use  
11:34:22 21 archeological methods like stratigraphy because it  
11:34:26 22 will actually strip the stratigraphy away, leaving  
11:34:29 23 the artefacts.

11:34:31 24 MS. COLIZZA: Your Honour, I'm about to  
11:34:33 25 start a new section. Would you like me to

1 continue?

2 THE COURT: No, we'll take the morning  
3 break for 20 minutes at this time.

4 -- RECESS TAKEN AT 11:35 --

5 -- UPON RESUMING AT 11:58 --

6 THE COURT: Please go ahead.

7 MS. COLIZZA: Thank you, Your Honour.

8 BY MS. COLIZZA:

9 Q. Ms. Morden, we have discussed  
10 methods of relative dating. And now I'd like to  
11 move on to methods of absolute dating.

12 What are the most common ways of fixing  
13 a site's date and time to get an age in calendar  
14 years?

15 A. If one has artefacts that can be  
16 dated precisely -- coinage at sites around the  
17 world can give a very precise date if one has  
18 evidence for the minting dates.

19 So artefacts, some artefact classes can  
20 be very helpful for dating. Also, some parts of  
21 the world you have inscriptions which will give a  
22 date. So, Egyptian chronology is completely  
23 founded on King lists, and objects are identified  
24 that way.

25 Literary testimonium that will describe

1 particular sites, events at those sites can be very  
2 helpful. And otherwise, you know, scientific  
3 dating techniques can be helpful as well.

4 Q. Okay. So I'd like to now pull up  
5 page 12 of Ms. Morden's report, which is  
6 Exhibit 4452. And I'd like you -- I'm going to ask  
7 you a couple of questions about the second  
8 paragraph from the bottom which begins  
9 "archeologists are eager [...]".

10 So in this paragraph you state that C14  
11 dating only works for organic material. And C14  
12 dating is another term for radiocarbon dating,  
13 correct?

14 A. That's correct. It only works for  
15 organic material because it's based on the premise  
16 that living organisms accumulate C14 in their  
17 systems during their life. And as soon as the  
18 organism dies, animals, trees, plants, then that  
19 C14 radio -- it's a radioactive isotope -- starts  
20 to decay.

21 And we know the half life of it. And  
22 so when a carbon 14 sample is tested, it is  
23 essentially testing for what stage in the  
24 deterioration of that C14 isotope is, how much is  
25 left.

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Q. And what are some examples of organic and inorganic material that you would commonly find at a site?

A. Well, a lot of sites, some of the best organic material that you're going to find is carbonized plant material, carbonized tree, so firewood, fire pits are a great source of charred organic material.

A lot of sites around the world have a problem with the preservation of organic materials because of fluctuating water tables. So in places where you have either submerged sites, where materials remain waterlogged, or particularly dry sites, where they remain dry, you can have the preservation of organic materials.

But in places like Cyprus, where I work, and places like Ontario, where you have fluctuating water tables, you will have a problem with the preservation of organic materials.

Q. And we've already discussed sealed and unsealed deposits when we were discussing relative dating. Can you please expand on the challenges you refer to in this paragraph about radiocarbon dating an unsealed deposit?

A. Well, there's a possibility of



12:02:19 1 contamination of that sample. From a sealed  
12:02:22 2 deposit, one has a better chance of having  
12:02:27 3 uncontaminated carbon 14 samples.

12:02:30 4 Q. How does a sample become  
12:02:32 5 contaminated?

12:02:33 6 A. It can become contaminated just  
12:02:35 7 through handling. The oils in your hands can  
12:02:38 8 transfer your C14 signature to the sample. And  
12:02:43 9 also, contamination from other fires.

12:02:46 10 At sites I've worked on there's a  
12:02:52 11 prohibition against having campfires close to your  
12:02:56 12 excavation trenches, especially at times when one  
12:02:58 13 is hoping to get carbon 14 samples, because it can  
12:03:02 14 be contaminated by ash.

12:03:04 15 Q. And you also state that the margin  
12:03:06 16 of error range is getting smaller. How precise is  
12:03:10 17 radiocarbon dating generally?

12:03:12 18 A. It depends on the size of the  
12:03:14 19 sample and the age of the sample. Carbon 14  
12:03:20 20 analysis is most reliable for materials dating  
12:03:25 21 400 years from the present to, you know,  
12:03:29 22 50,000 years, 40,000 years.

12:03:31 23 So it is -- but what is happening as  
12:03:38 24 scientific processes, methods used for C14 analysis  
12:03:44 25 have improved through time, you need a smaller

12:03:48 1 sample size. And the actual -- when you get a C14  
12:03:53 2 date, it is a plus or minus date. So what is often  
12:03:57 3 the case that that range of the date plus or minus  
12:04:02 4 will actually be closer. You'll have plus or minus  
12:04:06 5 20, plus or minus 30, as opposed to plus or minus  
12:04:10 6 100.

12:04:10 7 Q. And briefly, how does a  
12:04:12 8 radiocarbon determination relate to the date of the  
12:04:16 9 assemblage of the site in which it is found?

12:04:18 10 A. Well, if you are dealing with  
12:04:22 11 samples from a stratigraphic profile, where you  
12:04:27 12 have samples from a specific soil deposit within a  
12:04:32 13 stratigraphic profile, you can then date the  
12:04:38 14 assemblage of artefacts that's found in the same  
12:04:41 15 soil deposit by that carbon 14 date, that sample.

12:04:46 16 Reliability goes up if you have more  
12:04:50 17 than one sample. That will -- if you have more  
12:04:55 18 than one sample from a deposit, you then can sort  
12:05:00 19 of look at how the dates cluster.

12:05:02 20 And that is then a check on the  
12:05:04 21 reliability of your sample and a check on the fact  
12:05:08 22 that if you have a real -- if you have five  
12:05:11 23 samples, and four cluster very tightly and one is a  
12:05:16 24 complete outlier, chances are that that outlier  
12:05:20 25 could be a contaminated sample.

1 And so having more samples than you  
2 have a control on the legitimacy of the C14 dates.

3 Q. Now I'd like to ask you some  
4 questions about chemical dating, which you refer to  
5 in this paragraph and discuss in greater detail on  
6 pages 10 and 11 of your report.

7 But on this page, you mention the  
8 growing use of XRF and INAA of inorganic artefacts.  
9 What information do we get from these tests?

10 A. These tests give you a chemical  
11 profile for the object tested. It started largely  
12 with analysis of inorganic material, where one is  
13 interested in the find spots, where the source  
14 material, the source of the clay for pottery, the  
15 source of the stone is located.

16 So you get a chemical profile that can  
17 identify source material.

18 Q. How does the information gathered  
19 from XRF and INAA compared to that which you get  
20 from radiocarbon dating?

21 A. They're both scientific tests,  
22 very technical scientific tests. Carbon 14 gives  
23 you an absolute date, an actual date. The other  
24 two tests, INAA and XRF, give you a chemical  
25 profile, not a date.

12:06:51 1 Q. So what if anything does this  
12:06:53 2 chemical composition or profile tell us about the  
12:06:56 3 date of the manufacture of the object?

12:07:01 4 A. Well, if the manufacturing history  
12:07:03 5 of a particular object class is understood, and  
12:07:09 6 that that manufacturing history changes through  
12:07:12 7 time, then perhaps one can associate samples with  
12:07:18 8 different, the evolution of that manufacturing  
12:07:21 9 process.

12:07:22 10 Q. And you state in the last sentence  
12:07:25 11 of this paragraph that:

12:07:26 12 "Dr. Williamson tries to  
12:07:28 13 minimize discrepancies by  
12:07:30 14 specifically choosing comparator  
12:07:32 15 sites and beads."

12:07:33 16 What do you think is the impact, if  
12:07:34 17 any, of choosing particular sites and beads in  
12:07:38 18 order to interpret findings?

12:07:42 19 A. Well, one of the great advantages  
12:07:44 20 of this, here you have a particular site that he  
12:07:50 21 analyzed in his bead report, the River Mouth Speaks  
12:07:55 22 site, that was the artefact assemblage was not  
12:08:00 23 precisely dated. And yet it had the potential, as  
12:08:04 24 identified by the primary excavator of the site,  
12:08:08 25 Fitzgerald, to perhaps be more finely dateable by

12:08:15 1 an analysis of the beads.

12:08:18 2 So that particular site was chosen  
12:08:20 3 because of its importance in the process of dating  
12:08:26 4 sites within the SONTL area. This was one site  
12:08:34 5 that seemed to have that potential for bridging the  
12:08:36 6 gap.

12:08:37 7 The comparanda, what we're dealing with  
12:08:42 8 is a database of materials that have been chosen  
12:08:45 9 because people had access to samples, and were able  
12:08:51 10 to pay for the results, for the testing.

12:08:55 11 So in a way, what you're dealing with  
12:08:58 12 is a comparanda set that is not the entire  
12:09:04 13 assemblage of beads that have been excavated but  
12:09:08 14 just the ones that have been tested.

12:09:10 15 Q. If we can go to page 15 of the  
12:09:13 16 report.

12:09:19 17 So you mention, in the third paragraph  
12:09:22 18 down, a manufacture date and a deposition date for  
12:09:26 19 an individual object?

12:09:27 20 Can you please summarize briefly what  
12:09:30 21 the difference is, and why that matters when trying  
12:09:32 22 to date an assemblage for a site?

12:09:35 23 A. Well, objects are made, and if  
12:09:38 24 something is made locally and used locally and  
12:09:41 25 deposited locally, perhaps the difference between a

12:09:47 1 manufacturing date and a deposition date is not as  
12:09:50 2 critical.

12:09:51 3 But for an object class that are  
12:09:54 4 imports or trade items to the site in question,  
12:10:01 5 what you're dealing with is a lag between the  
12:10:06 6 potential of the manufacturing of the object, the  
12:10:11 7 use of its life history essentially, from where  
12:10:15 8 it's manufactured, transport, and ending up at the  
12:10:21 9 site.

12:10:22 10 And it can be used, some objects are  
12:10:25 11 used and curated. All you have to do is look at  
12:10:28 12 your own -- our own apartments, and you look at all  
12:10:33 13 the different kinds of objects -- I'm still using  
12:10:38 14 my great-grandmother's pottery.

12:10:39 15 It gets broken; I don't have the  
12:10:41 16 complete set anymore. But I'm still using on a  
12:10:44 17 daily basis something that was used in the 19th  
12:10:47 18 century. It was created, manufactured in the 19th  
12:10:51 19 century and is still being used today.

12:10:54 20 That is an extreme case of curation,  
12:10:59 21 but different object classes will have different  
12:11:05 22 profiles in how long they are used, how long they  
12:11:08 23 stay in use and when do they get broken?

12:11:13 24 Things that are readily broken, pottery  
12:11:15 25 is often readily broken, and so we'll actually have

12:11:19 1 a changeover. You'll have an accumulation of  
12:11:22 2 broken material in an archeological site that  
12:11:26 3 reflects, you know, the use of that particular  
12:11:28 4 object, the type of object class.

12:11:31 5 Other types of objects will have a much  
12:11:34 6 longer lifespan in use in human -- used by people.

12:11:40 7 Q. And would the issue of time lag be  
12:11:45 8 the same when you're dealing with a site with no  
12:11:51 9 stratigraphy or where you're relying on individual  
12:11:52 10 objects to arrive at a date?

12:11:53 11 A. Well, in all cases when you have  
12:11:53 12 stratigraphy, it's a control on how your objects  
12:11:57 13 are being used through time.

12:11:58 14 Any deposit will have -- often will  
12:12:01 15 have residual material from deposits below it.  
12:12:04 16 It's the same principle that underlies survey  
12:12:10 17 theory, that when you walk across the surface, you  
12:12:14 18 will find a representative sample of all the  
12:12:17 19 artefacts and time periods of the site below the  
12:12:20 20 surface, that things are kicked up, things are  
12:12:25 21 redeposited, ploughing, all sorts of activities,  
12:12:29 22 both cultural and natural, will bring this -- will  
12:12:35 23 contribute to this process, percolation of objects  
12:12:39 24 up to the surface.

12:12:40 25 So that even in a stratigraphic, highly

1 stratified site, where deposits are laid on top of  
2 each other and are unique and distinct, you will  
3 have residual pottery or artefacts representing the  
4 deposits underneath.

5 But the stratigraphy gives you the  
6 clustering of the assemblage. You look at the  
7 latest dateable for each deposit will give you the  
8 date of that deposit, not the percentage. You  
9 don't look at percentages, but you look at the  
10 latest dateable within a deposit.

11 If you don't have stratigraphy, then  
12 one is reliant on the seriation of artefact  
13 classes, looking at the site assemblage as a whole.

14 And, therefore, then what you are  
15 looking at is how pottery, for instance, stone  
16 tools, change through time.

17 And then you'll be looking at where  
18 they cluster. Where you have most of your pottery  
19 that clusters into three different time periods,  
20 that you have a component of your pottery that is  
21 associated with the Archaic, early Woodland, late  
22 Woodland, then you are dealing with perhaps three  
23 phases of occupation, just based on the seriation  
24 of the pottery.

25 How other artefacts fit into that is



12:14:09 1 difficult. Something like pottery, which is used  
12:14:13 2 at the site and broken, and -- broken pottery  
12:14:18 3 doesn't have a use once its broken, so it's  
12:14:27 4 jettisoned, ends up in the garbage piles of the  
12:14:31 5 site.

12:14:31 6 But artefacts that can have an  
12:14:35 7 intrinsic value -- so metal, for instance, is  
12:14:38 8 something that is curated and reused and melted  
12:14:41 9 down and reused. You'll often find fewer metal  
12:14:48 10 objects because they actually have a value. Even  
12:14:49 11 broken metal objects can be melted down and have a  
12:14:52 12 reuse.

12:14:53 13 So it really depends on the artefact  
12:14:56 14 class, how reliable it will be in terms of creating  
12:15:01 15 these clusters of objects, clusters that can denote  
12:15:10 16 use of a site through time when one is dealing with  
12:15:13 17 a site assemblage with no stratigraphy.

12:15:16 18 Q. I'd like to pull up part of the  
12:15:20 19 transcript from Dr. Williamson's examination  
12:15:20 20 in-chief from day 44 of the trial, which was  
12:15:27 21 September 17, 2019. If we can turn to page 5362.

12:15:31 22 THE COURT: Do you have the final  
12:15:32 23 transcript, Counsel?

12:15:34 24 MS. COLIZZA: Yes, Your Honour.

12:15:36 25 THE COURT: Thank you.

12:15:37 1 BY MS. COLIZZA:

12:15:37 2 Q. If we can go to line 14. So my  
12:15:40 3 friend and Dr. Williamson were discussing a part of  
12:15:43 4 your report. The question was:

12:15:45 5 "Now, if I can turn to page 15  
12:15:47 6 of the report. And Ms. Morden makes  
12:15:50 7 the point that glass beads may have  
12:15:52 8 been deposited long after they were  
12:15:55 9 manufactured."

12:15:57 10 And then Dr. Williamson reads a section  
12:15:59 11 of your report and he comments on it, but I'd like  
12:16:02 12 to look at a particular section of his response  
12:16:06 13 which begins on page 5364 at line 4.

12:16:08 14 So Dr. Williamson is responding and  
12:16:10 15 says:

12:16:11 16 "Finally, in comparing  
12:16:12 17 assemblages against assemblages, it  
12:16:14 18 may very well be that other beads  
12:16:16 19 were curated for a while longer.  
12:16:18 20 But if I have a series of beads here  
12:16:19 21 and they come out of this  
12:16:21 22 archeological site and they date to  
12:16:23 23 a certain period, as they do in  
12:16:25 24 these other dated sites, it really  
12:16:26 25 is immaterial whether some beads

12:16:28 1 were curated."

12:16:30 2 And my friend asks:

12:16:30 3 "And to what extent does the  
12:16:32 4 archeological record in Southern  
12:16:34 5 Ontario show glass beads being  
12:16:35 6 deposited a long time after they  
12:16:38 7 were manufactured?"

12:16:38 8 And the answer is:

12:16:39 9 "I'm not familiar with that  
12:16:41 10 being a problem in dating these  
12:16:42 11 sites. The trends that we've talked  
12:16:44 12 about here and the assemblages that  
12:16:45 13 are represented in this report are  
12:16:47 14 compared against dated assemblages.  
12:16:49 15 And so whether a bead of that type  
12:16:52 16 may have survived later in some  
12:16:54 17 other site may be the case, but  
12:16:55 18 we're comparing assemblages on equal  
12:16:55 19 footing."

12:16:56 20 So the question is:

12:16:57 21 "So in other words if a glass  
12:16:59 22 bead were deposited a long time  
12:17:01 23 after it was manufactured, how would  
12:17:02 24 that affect your results?

12:17:06 25 "Answer: It wouldn't."

1                   Would you like to respond to this  
2                   comment by Dr. Williamson?

3                   A.     Yes, I would.    There are two  
4                   issues I'd like to respond to.   One is the idea of  
5                   comparing assemblages.   And the second point is  
6                   about the life history of beads, and the idea of  
7                   the time lag and possible -- the time lag between  
8                   manufacturing and deposition.

9                   In relationship to the first issue of  
10                  assemblages, one of the issues that arises, we have  
11                  in his report a discussion of assemblages of the  
12                  River Mouth Speaks site and he in his testimony  
13                  asserted that there are no really stratified  
14                  deposits; we're dealing with undifferentiated fill.

15                  So it is an issue where we really don't  
16                  know when objects would have been deposited.   We  
17                  don't have a sequence of deposits.

18                  And if you're comparing to sites within  
19                  the bead database, the bead database looks for a  
20                  scientific -- there's a large section of the bead  
21                  database that is scientific.

22                  It is the result of the testing which  
23                  gives the chemical profile.   But the other part of  
24                  the bead database, which is the information from  
25                  the archeological record, is part of the

12:18:48 1 interpretation of that site.

12:18:51 2 Now the bead database, in some of the  
12:18:55 3 comparanda sites that Dr. Williamson uses for his  
12:19:00 4 analysis, he gives often references to who dated  
12:19:08 5 the material, or who excavated the material.  
12:19:11 6 Sometimes they are unspecified, the source of the  
12:19:16 7 information.

12:19:18 8 But also, sometimes there's a cultural  
12:19:21 9 affiliation given, for instance, a number of the  
12:19:24 10 sites, comparanda sites, are Seneca sites. But  
12:19:29 11 there's no other description of the sites within  
12:19:31 12 his reports.

12:19:32 13 So it's hard to assess that the  
12:19:36 14 assemblages are equivalent, that are similar, if we  
12:19:40 15 don't know what the stratigraphic nature of the  
12:19:44 16 sites are, what is the function of the sites, how  
12:19:48 17 they were used, what is -- and what is the full  
12:19:54 18 profile of the site assemblage.

12:19:57 19 And so it is hard to know whether we're  
12:20:00 20 actually making equivalent assemblage comparisons  
12:20:04 21 there. For the second point, which is the time  
12:20:08 22 lag, I think it's a well-known fact that a number  
12:20:15 23 of archeologists who write handbooks on methodology  
12:20:20 24 and talk about this as an issue, that it has to be  
12:20:23 25 taken into consideration.

1 And certain -- it is quite clear that  
2 objects can sometimes be deposited very quickly  
3 after they've been manufactured. But unless we  
4 have some kind of control for that, either other  
5 forms of dating, association with an assemblage, a  
6 stratigraphic assemblage, I think one has to be  
7 cautious in how one disregards the issue of time  
8 lag of artefact use.

9 Q. Can we pull up page 29 of Ms.  
10 Morden's report. So this is a map entitled  
11 "Density of Known Archeological Sites Located in  
12 SON's Area of Interest".

13 Can you explain this map and why you  
14 included it in your report?

15 THE COURT: Just before you do that,  
16 Counsel.

17 MS. COLIZZA: Yes.

18 THE COURT: You have three maps at this  
19 tab. Are all three different from the prior copy,  
20 or is this just the one that is different?

21 MS. COLIZZA: Just this one, Your  
22 Honour.

23 THE COURT: All right, thank you.

24 BY MS. COLIZZA:

25 Q. Would you like the question again?

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A. Sure, yes.

Q. Would you please explain this map and why you included it in your report?

A. I was -- when I first read Dr. Williamson's 2013 report, I was intrigued by -- because of my unfamiliarity with material from this area, I was intrigued to understand whether his report was complete, whether it listed all the sites from the area, from the SONTL area, or whether it was a subset.

And so I contacted the Ministry, and so this is a map that was generated by my association with Robert von Bitter, who is an officer for the Ministry archaeology unit. And we had to negotiate the use of this map, but it reflects all the sites that had been found and are in the Ministry archeological database.

And one of the things that's interesting about there is, there are over 900 and some odd sites. A lot of them are single objects, so it would make a lot of sense not to necessarily clutter up a report with all of these.

But also, it reflects the full area in Dr. Williamson's report. He really only deals with the Bruce and Grey Counties. He doesn't deal with

12:23:17 1 the rest of the SONTL claimed land.

12:23:22 2 So I was interested to see how many  
12:23:24 3 other sites there were associated with these other  
12:23:27 4 areas. As you can see, there are patterns of use  
12:23:31 5 through -- overall. And so with over 900 sites,  
12:23:39 6 Dr. Williamson talks about 130-odd sites, and a  
12:23:46 7 small subset of those are ones that he actually  
12:23:49 8 goes into detail or analysis.

12:23:51 9 And a lot of that is, it's a factor of  
12:23:54 10 what has been excavated, how much information is  
12:23:56 11 available for different sites. And so -- but I  
12:24:00 12 generated this map just to give a sense of what the  
12:24:03 13 overall picture is of the area so I wouldn't be  
12:24:06 14 surprised if there were supplementary materials.

12:24:10 15 THE COURT: Can you scroll to the top  
12:24:12 16 of the page? Thank you.

12:24:24 17 BY MS. COLIZZA:

12:24:26 18 Q. I'd now like to step back and ask  
12:24:28 19 some broader questions about archeological  
12:24:31 20 methodology and theory.

12:24:32 21 So, as an archeologist, how do you use  
12:24:35 22 the documentary or historic record?

12:24:38 23 A. Well, it is -- when one has a  
12:24:42 24 documentary or historic record it is invaluable for  
12:24:46 25 aid in interpreting archeological materials. As a



12:24:50 1 classical archaeologist, I am privileged to have a  
12:24:53 2 very deep historical record within which the  
12:24:59 3 archeological material can rest.

12:25:04 4 Of course, and within the practice of  
12:25:07 5 archaeology in Ontario, it is of course stage one  
12:25:11 6 investigation, and involves the analysis of  
12:25:14 7 historical documentation and secondary materials  
12:25:19 8 before one ever puts a spade in the ground one has  
12:25:22 9 to engage in this.

12:25:23 10 So this is, as defined by archaeology  
12:25:26 11 as practiced in Ontario, it's an integral part of  
12:25:29 12 the archeological practice.

12:25:35 13 But of course, use of historical  
12:25:38 14 materials demands all of the theoretical  
12:25:44 15 underpinnings of that discipline.

12:25:47 16 The use of historical and literary  
12:25:50 17 testimonia have their own constraints in how one  
12:25:55 18 deals with those materials and methodologies and  
12:25:58 19 theory associated with it.

12:26:00 20 So, taking that into consideration, one  
12:26:02 21 has to -- and often what you'll find is that  
12:26:05 22 literary testimonia may give some indication of  
12:26:09 23 what's happening, but often archeological material  
12:26:12 24 gives a very different picture.

12:26:14 25 There are aspects of human activity

12:26:16 1 that are just never going to appear in a literary  
12:26:19 2 or historical document.

12:26:22 3 Lifeways of individuals, the common  
12:26:25 4 people, you know, the 99 percent. You know,  
12:26:29 5 history deals with important events and people, and  
12:26:34 6 archaeology often is the only window into how the  
12:26:38 7 other 99 percent lives.

12:26:41 8 Q. And does your methodology for  
12:26:44 9 analyzing archeological data change if you're  
12:26:47 10 dealing with a culture or a time period with no  
12:26:50 11 written record, or an incomplete historical record?

12:26:52 12 A. Well, of course, you just don't  
12:26:54 13 have the advantage of the other control on your  
12:26:58 14 archeological analysis. But it doesn't really  
12:27:03 15 change how you should -- the methods and theories  
12:27:08 16 that you use to interpret the archeological  
12:27:10 17 evidence shouldn't change.

12:27:16 18 These other aspects, ethnoarchaeology,  
12:27:22 19 literary and historical sources, they augment the  
12:27:24 20 picture from the archeological record. It doesn't  
12:27:27 21 necessarily change -- it doesn't change the  
12:27:29 22 archeological record. It perhaps enlivens it, or  
12:27:34 23 creates another dimension to the analysis.

12:27:38 24 Q. And what can those differing  
12:27:41 25 theoretical approaches tell us about an

12:27:44 1 archeologist's role in interpreting the  
12:27:47 2 archeological record?

12:27:48 3 A. It's fundamental. One of the  
12:27:50 4 things that needs to be understood about  
12:27:52 5 archaeology is that it's not a scientific  
12:27:55 6 discipline.

12:27:57 7 Well, archaeology evolved out of the  
12:28:02 8 academic discipline, scientific discipline of  
12:28:06 9 geology, and a lot of the method and theories and  
12:28:09 10 original practices were derived from geology.

12:28:13 11 How one organizes material into  
12:28:16 12 periods, the love of the geologist for tripartite  
12:28:20 13 organization, you find that happening. Early  
12:28:23 14 Middle Late Woodland is a nomenclature that  
12:28:30 15 ultimately comes from our geologic antecedents for  
12:28:36 16 archaeology.

12:28:37 17 But the reality is, although  
12:28:39 18 archaeology uses scientific methods on a regular  
12:28:43 19 basis, it is not a science. It is an experiment  
12:28:48 20 that can only be carried out at any one site,  
12:28:52 21 because when you excavate a site it is destroyed.

12:28:56 22 And, therefore, it is the individual  
12:28:57 23 archeologist observing, recording and interpreting  
12:29:05 24 the archeological facts, the data that is found, is  
12:29:10 25 crucial in the understanding of what the social

1 science of archaeology is all about. There's so  
2 much interpretation.

3 And, of course, an archaeologist  
4 approaching the site will have their own biases.  
5 Their biases of education, background, and, of  
6 course, these are principles that archeological  
7 theory tries to identify and lessen the impact of.

8 But even the kinds of questions that  
9 one asks of the archeological data will determine  
10 actually what you find and how you record it.

11 I think one of the best testaments to  
12 an archeologist is if the data that an archeologist  
13 has excavated and published can be used to back up  
14 a theory different than the excavator had for that  
15 original material himself.

16 It means that they presented the data  
17 of the archeological site in its full complexity  
18 that allows for alternative interpretations.

19 BY MS. COLIZZA:

20 Q. And how do archeologists account  
21 for ideology when developing a hypothesis to  
22 explain that data that they collect?

23 A. There are some archeologists who  
24 would say that you have to be very careful when you  
25 get into ideology, and there were, you know,

12:30:41 1 schools of thought that said you can really only  
12:30:44 2 talk about functional aspects.

12:30:46 3 But that has changed. And the current  
12:30:50 4 -- there are current approaches for all sorts of  
12:30:53 5 different types of ideologies, ways to use  
12:30:56 6 archeological material to explore different ways of  
12:31:00 7 thinking, that where you use artefacts to try and  
12:31:05 8 express the cognitive reality of the people under  
12:31:09 9 study.

12:31:10 10 Q. If we can go to page 14 of your  
12:31:14 11 report. And near the bottom, so you have the  
12:31:24 12 paragraph, and I'd like to ask you about the last  
12:31:30 13 couple of sentences there, which begins: "One must  
12:31:33 14 remember that a single bead would never -- "

12:31:36 15 Can you explain on what basis you were  
12:31:38 16 making this point?

12:31:39 17 A. Well, re-reading this sentence at  
12:31:43 18 this point and keeping in mind the objections that  
12:31:48 19 Dr. Williamson and your colleague raised when he  
12:31:56 20 was giving his testimony, I think I overstated  
12:31:59 21 this.

12:32:01 22 That a single would never -- I would  
12:32:04 23 like to -- a single bead "usually", rather than  
12:32:10 24 "would never", viewed as a complete object. And  
12:32:13 25 the example that he gave of an earring where a

1 single bead could be used to ornament an earring,  
2 you're still dealing with an object that is a  
3 multiple material object.

4 An earring would be the bead also with  
5 the material either -- and usually an organic  
6 material, rawhide or thistle fibre, used to attach  
7 the bead to the ear.

8 So the idea that the bead itself would  
9 operate, would be a very unusual thing. Usually  
10 they're in conjunction with other materials, either  
11 other beads on something else, or a single bead as  
12 part of something else.

13 Q. I'd like to pull up document  
14 S0622, which is an article cited in your report.  
15 If we pull up the second page of the PDF, which is  
16 the page 121 of the document.

17 This article is entitled, "Hurons in  
18 Algonquian Land" by William A. Fox and Charles  
19 Garrad, from a 2004 edition of Ontario Archaeology.

20 First, who are William Fox and Charles  
21 Garrad?

22 A. They are both very well known  
23 archeologists who have worked in Ontario. William  
24 Fox has also worked elsewhere in Canada. I  
25 actually worked with him in Cyprus on a survey

12:33:50 1 project. So he's worked more than one place.

12:33:52 2 Charles Garrad, he was also an  
12:34:01 3 archeological officer for Southwestern Ontario.  
12:34:02 4 He's now currently -- Bill Fox is now currently  
12:34:07 5 teaching at Trent University.

12:34:10 6 Charles Garrad is a well-known Ontario  
12:34:14 7 archeologist, well associated with all sorts of  
12:34:18 8 local associations, the Ontario Archeological  
12:34:20 9 Society, who is a specialist in the Petun, and has  
12:34:24 10 published many articles based on his field research  
12:34:29 11 and also more sort of substantive works on the  
12:34:39 12 Petun and other groups.

12:34:42 13 MS. COLIZZA: Your Honour, I'd ask that  
12:34:43 14 this article be added as the next numbered exhibit.

12:34:47 15 THE COURT: Mr. Registrar.

12:34:48 16 THE REGISTRAR: Exhibit No. 4454.

12:34:51 17 EXHIBIT NO. 4454: Article entitled,  
12:33:25 18 "Hurons in Algonquian Land" by William  
12:33:29 19 A. Fox and Charles Garrad, from a 2004  
12:34:53 20 edition of Ontario Archaeology.

12:34:53 21 BY MS. COLIZZA:

12:34:54 22 Q. Would you please turn to page 129  
12:34:57 23 of the document. Sorry, it's page 10 of the PDF.  
12:35:01 24 And I'm going to read out part of the paragraph  
12:35:04 25 under "Conclusions" if you can scroll down, please,

12:35:08 1 before asking you a few questions about it. So it  
12:35:11 2 says:

12:35:11 3 "Early 17th century records  
12:35:14 4 identify two cultural groups  
12:35:15 5 resident in the Southern Georgian  
12:35:19 6 Bay littoral region. They were  
12:35:20 7 characterized by differing languages  
12:35:22 8 and subsistence strategies. A  
12:35:22 9 variety of material culture  
12:35:25 10 attributes also differentiate these  
12:35:27 11 peoples, to greater or lesser  
12:35:29 12 extents, including personal attire,  
12:35:30 13 decoration and hairstyles -- Polly  
12:35:30 14 Wiessner's 'emblemic style' markers  
12:35:30 15 of ethnicity, lithic technology and  
12:35:36 16 house forms. The former are  
12:35:38 17 particularly ephemeral within the  
12:35:39 18 archeological record. Clearly, the  
12:35:41 19 only way future researchers could  
12:35:44 20 begin to identify the ethnic  
12:35:46 21 identity of villages or road  
12:35:47 22 segments" -- on to next page  
12:35:51 23 -- "or precincts in Huronia, will be  
12:35:53 24 through careful review of the entire  
12:35:54 25 constellation of material culture



1 attributes contained within the  
2 archeological record while looking  
3 for differences in degree rather  
4 than of kind. As noted by Sian  
5 Jones, 'If archaeologists persist in  
6 assuming that there is only one  
7 ethnic meaning or association to be  
8 "extracted" from a particular  
9 monument or a particular style of  
10 material culture, then they will  
11 never be able to understand the  
12 multiple strands of practice  
13 involved in the reproduction and  
14 maintenance of ethnicity in the  
15 past."

16 Could you please explain what "material  
17 culture" means when discussing the archaeological  
18 record?

19 A. Well, material culture is what  
20 survives in the archeological record. You're  
21 usually dealing with a subset of the material  
22 culture of a living culture.

23 So not everything survives; organic  
24 material is often gone. As a case like this, you  
25 don't have hairstyles or clothing or body marking.

12:36:45 1 And so those things will not survive in the  
12:36:48 2 archeological record, the material extant  
12:36:52 3 archeological material culture.

12:36:56 4 Q. And how does material culture  
12:36:59 5 relate to cultural identity or ethnicity?

12:37:02 6 A. Well, it is something that is  
12:37:03 7 considered difficult because you're dealing with a  
12:37:05 8 subset of the living culture. So there are things  
12:37:08 9 that are completely missing.

12:37:09 10 And it will depend on the importance of  
12:37:12 11 the class of object that survives in the  
12:37:17 12 archeological -- the importance that it had in  
12:37:21 13 marking the distinctions for the group in question.

12:37:25 14 So if you have a lot of energy invested  
12:37:30 15 in cultural markers on pottery, and that's a large  
12:37:34 16 class of what you find on archeological sites, if  
12:37:36 17 that's the main marker then, yes, you'll have a lot  
12:37:40 18 of information about -- potential information about  
12:37:43 19 cultural and ethnic markers.

12:37:45 20 But if the main way that peoples  
12:37:51 21 transmit the idea of themselves is not in a class  
12:37:55 22 of materials that survive in the archeological  
12:37:58 23 record, it will be a little more difficult, for  
12:38:00 24 sure.

12:38:01 25 Q. And in your opinion, based on your

1 work, what factors may need to be considered when  
2 looking to this material culture to distinguish  
3 between groups?

4 A. Well, one of the things --

5 THE COURT: Hold on for a second, Ms.  
6 Pelletier.

7 MS. PELLETIER: Your Honour, I have to  
8 object. This is far outside of the witness's  
9 report.

10 THE COURT: So it's a non-disclosure  
11 concern?

12 MS. PELLETIER: Yes.

13 THE COURT: All right. We've had some  
14 non-disclosure concerns before, including on the  
15 Plaintiffs' side and I dealt with them. I'm not  
16 saying this will work for you today, Ms. Pelletier,  
17 you'll tell me. But I dealt with them in a couple  
18 of different ways.

19 With this particular question, and for  
20 any others that might come up, I don't know if  
21 there will be -- one thing that comes to mind is  
22 that I told, I think it was Mr. Feliciant, but I  
23 could be wrong -- that he could ask for more time  
24 before commencing his cross-examination.

25 So I certainly would give you that

12:39:11 1 opportunity. You won't know what you need yet,  
12:39:16 2 depending on whether it's just the one answer or  
12:39:19 3 more. Knowing the question, does that suggest to  
12:39:24 4 you this could be an area where deferring to the  
12:39:28 5 commencement of your cross-examination or the  
12:39:31 6 completion of it to, say, tomorrow or whatever  
12:39:32 7 would be helpful.

12:39:33 8 MS. PELLETIER: I'm not sure.

12:39:34 9 THE COURT: Not sure.

12:39:35 10 MS. PELLETIER: I would require more  
12:39:36 11 time, Your Honour.

12:39:37 12 THE COURT: Fair enough.

12:39:38 13 MS. PELLETIER: I think my concern here  
12:39:42 14 is this is not only outside of her report and there  
12:39:44 15 is a disclosure issue, but also outside of her  
12:39:46 16 expertise. If what is being asked is whether or  
12:39:49 17 not there may have been more than one ethnic group  
12:39:52 18 on the SONTL, that is not something that --

12:39:55 19 THE COURT: That was not the question.  
12:39:56 20 I'm sure you're thinking ahead.

12:39:58 21 MS. PELLETIER: I may be thinking  
12:40:00 22 ahead.

12:40:00 23 THE COURT: Let's not do that.

12:40:01 24 MS. PELLETIER: I've let two questions  
12:40:04 25 go that I thought were straying outside the report

12:40:05 1 --

12:40:06 2 THE COURT: This question must be  
12:40:07 3 specific. "What factors need to be considered when  
12:40:09 4 looking at this material culture to distinguish  
12:40:12 5 between groups"? It is a general question. It has  
12:40:14 6 not to do with either a type of group or a  
12:40:16 7 geographical location.

12:40:18 8 MS. PELLETIER: I'll sit down for now,  
12:40:20 9 Your Honour.

12:40:20 10 THE COURT: What I'll do for now is  
12:40:22 11 permit the witness to answer because I think it  
12:40:25 12 does fall within her expertise. We'll take it a  
12:40:27 13 question at a time.

12:40:28 14 I'm not expecting a question about SON  
12:40:32 15 groups. There may be other questions that put you  
12:40:34 16 in a situation that you may ask for some other  
12:40:37 17 relief before you commence your cross-examination.

12:40:43 18 MS. PELLETIER: Thank you, Your Honour.

12:40:43 19 THE COURT: I'm going to ask counsel,  
12:40:46 20 I'll re-read it for your benefit since I have it on  
12:40:50 21 my screen here.

12:40:51 22 THE COURT: "What factors need to be  
12:40:53 23 considered when looking at this material culture to  
12:40:56 24 distinguish between groups", is the question?

12:40:59 25 THE WITNESS: Well, the factors

12:41:02 1 involved are trying to isolate if you have a group  
12:41:13 2 that's isolated the material culture will reflect  
12:41:16 3 that culture.

12:41:17 4 But if you have a group that is in an  
12:41:23 5 area where there's a great deal of interaction in  
12:41:27 6 terms of trade, in terms of social activities,  
12:41:34 7 where there is interaction between different  
12:41:39 8 cultural groups, then the archeological record will  
12:41:42 9 become more complex.

12:41:43 10 It is not impossible to understand,  
12:41:46 11 pull out the strings of different cultural groups.  
12:41:52 12 But it is just, there's caution needs to be exerted  
12:41:55 13 when interpreting, trying to identify ethnic  
12:41:59 14 identity in a culturally rich, culturally diverse  
12:42:04 15 area.

12:42:04 16 BY MS. COLIZZA:

12:42:04 17 Q. Thank you. And again, generally  
12:42:07 18 speaking and based on your work, what do we know  
12:42:10 19 about the effects of colonial influence if any, on  
12:42:13 20 the change in material culture over time?

12:42:15 21 A. Well, I think even when you have  
12:42:21 22 -- for instance, if you look at, for instance, an  
12:42:25 23 imperial, a colonial impact -- I deal with Roman  
12:42:33 24 Britain for instance -- so we're dealing with the  
12:42:34 25 Romans coming into Britain, interacting. -- excuse

12:42:49 1 me .

12:42:49 2 Q. Take your time?

12:42:51 3 A. Interacting with the Indigenous  
12:42:53 4 people, and it has a huge impact on the material  
12:42:57 5 culture of that group and how they lived.

12:43:01 6 And I think that this is usually the  
12:43:03 7 case when you have sort of an influx of new people,  
12:43:08 8 new ideas, and it will often completely change some  
12:43:14 9 aspects of their lifeways.

12:43:19 10 Other aspects will continue. In the  
12:43:21 11 case of Roman Britain, the Celtic tradition  
12:43:25 12 reasserted itself as soon as the Romans left, so  
12:43:29 13 you have this continuity of culture even under the  
12:43:35 14 dominating imperial culture of the Romans.

12:43:39 15 Q. So I'd now like to turn to page 19  
12:43:42 16 of your report. And I am going to ask you a couple  
12:43:47 17 of questions regarding your answer to Question 2.6  
12:43:50 18 in which you were asked: "Do the three reports  
12:43:53 19 give archeological proof of the continuous  
12:43:56 20 occupation of the lands"?

12:43:58 21 So, first, is there an archeological  
12:44:01 22 definition of "occupation"?

12:44:02 23 A. Not of -- occupation is talking  
12:44:06 24 about the use of a particular area. And that can  
12:44:10 25 be fairly, very slight, very short, ephemeral, you

12:44:17 1 might say, or it can be quite substantive.

12:44:20 2 So the term "occupation" has a huge  
12:44:25 3 variety of definitions depending on the culture and  
12:44:29 4 the way a particular site is used.

12:44:32 5 Q. And when you're looking at a site  
12:44:34 6 with compromised stratigraphy, what can the  
12:44:38 7 archeological data tell us about whether or not  
12:44:41 8 occupation was continuous or intermittent?

12:44:43 9 A. It would be difficult. Again,  
12:44:47 10 intermittent occupation of a site will leave less  
12:44:51 11 material and, therefore, it will be a little more  
12:44:54 12 difficult to ascertain, you know, for how long or  
12:44:58 13 how deeply one was using a site. One would like at  
12:45:04 14 the entire site assemblage and look at how the  
12:45:08 15 material patterns out into different time periods.

12:45:10 16 Q. So in this question you were asked  
12:45:13 17 to comment on whether the three reports of Dr.  
12:45:16 18 Williamson gave archeological proof of the  
12:45:18 19 continuous occupation of the land. You said that,  
12:45:20 20 quote:

12:45:21 21 "At this time, there's no  
12:45:23 22 archeological proof that is  
12:45:24 23 definitive that supports the notion  
12:45:26 24 of the continuous occupation of the  
12:45:27 25 SONTL."



1 And you refer both to the 100-year gap  
2 post dispersal, and the great gaps in the  
3 archaeological record for much of the history of  
4 the area.

5 So I would like to ask you about how  
6 your approach and ultimate conclusion differs from  
7 that of Dr. Williamson. First, are you familiar  
8 with Dr. Williamson's peer-reviewed work outside of  
9 his three reports that were prepared for the  
10 litigation?

11 A. I think everyone is very familiar  
12 with his work. He is a giant in his field. I  
13 would like to take this opportunity to say how much  
14 I respect him in all aspects of archaeology.

15 He is someone who is passionate about  
16 archaeology in all of its forms. He is someone who  
17 works hard within the discipline to promote the  
18 professionalism and the standards of the field,  
19 site preservation. And his peer-reviewed  
20 publications, he publishes his sites in their  
21 entirety.

22 He not only does the minimum of site  
23 reporting that is required by permits, but he, for  
24 all the major sites that he has excavated, there  
25 are wonderful final reports, a whole raft of

12:46:49 1 articles about specific aspects of these sites.

12:46:52 2 He's interested in not just the  
12:46:54 3 archeological record, but how -- its greater  
12:46:57 4 meaning and impact. And also, he is -- has done a  
12:47:03 5 great deal of service on all sorts of boards and  
12:47:08 6 groups.

12:47:09 7 So he is someone I truly respect and  
12:47:12 8 know his work quite well. And one of the things  
12:47:16 9 that's fascinating about his work is that he  
12:47:19 10 usually is -- he will tailor his writing to the  
12:47:25 11 audience. So he can write just as persuasively for  
12:47:29 12 a general public as for a highly academic audience.

12:47:33 13 The one thing I was a little surprised  
12:47:37 14 at in the -- when I first read the 2013 report, was  
12:47:42 15 that it seemed, although it was for a specific  
12:47:47 16 purpose, not for scholars of his stature, but as a  
12:47:56 17 report for nonspecialists to understand the  
12:48:01 18 complexity of this area of the archeological  
12:48:04 19 historical material, but it seemed to be sort of  
12:48:11 20 difficult to sort of get one's teeth into and  
12:48:13 21 understand the report.

12:48:18 22 And I felt there was sort of an  
12:48:21 23 unevenness in a way certain sites were handled,  
12:48:25 24 that he -- it was sort of an incomplete record. He  
12:48:29 25 talks about sites and then sometimes he'll talk

12:48:31 1 about a number of sites then only discuss -- he  
12:48:34 2 names a subset of that and then describes in detail  
12:48:39 3 -- so there's an unevenness as to how the material  
12:48:42 4 was presented.

12:48:43 5 So I think for non-professional, and  
12:48:45 6 someone like me, who was not fully cognizant of the  
12:48:51 7 archeological record in Ontario, it was a little  
12:48:54 8 difficult to get -- to get a grip on what the  
12:48:58 9 report really was -- the unevenness of some of the  
12:49:05 10 accounts.

12:49:06 11 And so I was a little surprised, that's  
12:49:09 12 all. But one of the things about the report is  
12:49:18 13 that there's really -- especially the second, the  
12:49:22 14 supplementary report, really shows a change in  
12:49:29 15 focus, which, to the sort of sacred landscape, and  
12:49:35 16 since I'm not a specialist I really can't comment  
12:49:37 17 on that. But that really becomes the focus of the  
12:49:41 18 second supplementary article.

12:49:42 19 But the idea of closing the gap, I do  
12:49:49 20 not disagree with his -- the possibility of his  
12:49:54 21 conclusion that we're closing that gap from the  
12:50:01 22 material, the bead evidence closes the gap of the  
12:50:06 23 River Mouth Speaks site.

12:50:09 24 And it's an important issue because if  
12:50:12 25 you can close that gap to a 20-or 30-year period,

12:50:15 1 you're dealing with living memory. You're dealing  
12:50:20 2 with neighbors on Manitoulin, in Michigan that may  
12:50:26 3 have interacted with the original inhabitants of  
12:50:31 4 the SONTL within their living memory. So that  
12:50:35 5 you're dealing with not folk memory, not secondhand  
12:50:44 6 accounts, but you're dealing with direct experience  
12:50:46 7 of sites and how they were used in this area before  
12:50:49 8 dispersal.

12:50:50 9 So it's a crucial, crucial distinction  
12:50:54 10 and the more one can narrow that down, the more  
12:50:59 11 persuasive is the idea of continuity of culture.  
12:51:05 12 But there are issues with the dating of the beads  
12:51:14 13 that one has to sort of look at.

12:51:18 14 Is the dating of the beads in the  
12:51:22 15 database secure? What is the rationale for the  
12:51:27 16 dating of those beads? Is it based on the beads?  
12:51:32 17 Is it based on stratigraphic materials? Is it  
12:51:36 18 based on historical documentation? That is an  
12:51:42 19 issue.

12:51:42 20 And one of the things that's  
12:51:44 21 fascinating, when you compare the Ministry  
12:51:51 22 database, the time periods that archeologists  
12:51:56 23 usually assign to archeological materials as part  
12:52:00 24 of their permit responsibilities is by time period.

12:52:06 25 So the Ministry is not expecting

12:52:12 1 practitioners to give specific absolute dates, but  
12:52:21 2 ask for a time -- so for instance, does a site have  
12:52:28 3 an occupational phase that dates to the late  
12:52:31 4 Woodland, Early Woodland Archaic period? Those are  
12:52:35 5 the kinds of dating criteria that are established,  
12:52:39 6 that are expected by the Ministry and that are a  
12:52:41 7 part of their database.

12:52:43 8 So, one of the things that I think -- I  
12:52:47 9 think that the bead analysis is going to be crucial  
12:52:50 10 and is going to continue to be crucial to this  
12:52:56 11 area, in that I think it is at a phase where it  
12:53:00 12 needs to be refined.

12:53:01 13 I think that there has to be a  
12:53:07 14 acknowledgement that the date of manufacture does  
12:53:10 15 not necessarily mean the date of deposition. And  
12:53:13 16 we need to be clear about those distinctions.

12:53:16 17 And it needs to be explicit in how the  
12:53:19 18 dates are handled. You know, what is the source  
12:53:24 19 for the dates, for the comparanda? And they are so  
12:53:30 20 specific, you know, I would just love to know more  
12:53:34 21 about that.

12:53:35 22 And I think that in time, I think this  
12:53:39 23 will be incredibly useful. I don't think it's  
12:53:41 24 quite there yet.

12:53:43 25 MS. COLIZZA: Your Honour, if I can

1 have a moment to confer with my colleague.

2 Those are all our questions, Your  
3 Honour.

4 THE COURT: Thank you.

5 Now, on the schedule, Ms. Pelletier,  
6 nothing unusual about this; we've been running  
7 early on our schedule. But you were scheduled to  
8 start tomorrow morning, and I will entertain from  
9 you a request to do so if you wish, bearing  
10 everything in mind.

11 MS. PELLETIER: I'm ready to go,  
12 Your Honour.

13 THE COURT: Okay, so we'll start at  
14 2:15 then.

15 Ms. Morden, I'm not sure you've  
16 testified before, but there is a very strict rule  
17 that applies starting now, right through to when  
18 you are finished.

19 And it's a simple rule. It simply is  
20 that you must not do or say or discuss with anyone,  
21 anything at all that has anything at all to do with  
22 this.

23 So you'll find other productive  
24 activities. I have permitted counsel to lunch with  
25 their experts notwithstanding this rule because

12:54:54 1 counsel are professionals, and I'm sure they will  
12:54:57 2 abide by the rule and you need to as well, all  
12:55:00 3 right?

12:55:00 4 THE WITNESS: Yes.

12:55:00 5 THE COURT: Do you understand that.

12:55:01 6 THE WITNESS: I do understand that.

12:55:03 7 THE COURT: All right. We'll resume at  
12:55:05 8 2:15 then.

12:55:06 9 -- RECESS TAKEN AT 12:58 P.M. --

02:17:54 10 -- UPON RESUMING AT 2:17 P.M. --

02:17:54 11 THE COURT: Please go ahead.

02:18:06 12 MS. PELLETIER: Thank you, Your Honour.

02:18:07 13 CROSS-EXAMINATION BY MS. PELLETIER:

02:18:08 14 Q. Good afternoon, Ms. Morden.

02:18:09 15 A. Good afternoon.

02:18:10 16 Q. I'd like to begin by pulling up  
02:18:12 17 your report, which is at Exhibit 4452. I'm going  
02:18:18 18 to take you to page 8. I have two, what I believe  
02:18:21 19 to be related passages in your report that I want  
02:18:24 20 to ask you some questions about.

02:18:25 21 A. Sure.

02:18:26 22 Q. So the first is at page 8. We  
02:18:32 23 have the paragraph that begins with  
02:18:37 24 "Unfortunately". So I'll just read it out, given  
02:18:39 25 that it's short.

02:18:39 1 "Unfortunately, the  
02:18:40 2 characteristic nature of the  
02:18:41 3 archeological record of most  
02:18:43 4 Aboriginal sites makes the  
02:18:44 5 understanding of these concepts  
02:18:47 6 crucial. Sites reflect the  
02:18:48 7 respectful nature of the people who  
02:18:50 8 created and used them, a people who  
02:18:52 9 lived lightly on the land, moved  
02:18:55 10 frequently, taking even their  
02:18:56 11 palisades stakes with them, leaving  
02:18:59 12 little behind for archaeologists to  
02:19:01 13 find."

02:19:02 14 And then this is part of the passage  
02:19:03 15 that I'm particularly interested in:

02:19:06 16 "Few sites are fully excavated.  
02:19:07 17 Most sites are identified only by  
02:19:09 18 the recovery of artefacts from  
02:19:12 19 surface survey, sometimes by only  
02:19:17 20 stray finds. And many have suffered  
02:19:17 21 disturbance through subsequent  
02:19:20 22 building and occupation."

02:19:20 23 So I'll get back to that in a second,  
02:19:20 24 but I want to take you, just before I ask my  
02:19:23 25 questions, to what I believe to be a related



02:19:24 1 passage, which is at page 11. And under 1.1.1.5:  
02:19:42 2 "Are These Tests Common?" You say, the second  
02:19:50 3 sentence:

02:19:51 4 "The limits for archaeology are  
02:19:53 5 the costs, as archaeology is  
02:19:55 6 considered part of the arts and not  
02:19:56 7 as well funded as industry or  
02:19:59 8 science. Because of prohibitive  
02:20:01 9 costs, it is now standard to use  
02:20:03 10 only the UV and XRF tests without  
02:20:08 11 going on to the more expensive INAA  
02:20:12 12 test."

02:20:13 13 Now the reason I view these two  
02:20:14 14 passages as related is I feel that they could  
02:20:17 15 suggest that the data that is produced through  
02:20:19 16 archeological work is somehow incomplete or  
02:20:22 17 insufficient. I trust that's not what you're  
02:20:25 18 saying, but I wanted to confirm.

02:20:26 19 A. No, it's definitely not the  
02:20:28 20 impression I wanted to leave. It's just that these  
02:20:32 21 tests were developed, originally for industry.  
02:20:34 22 And, of course, industry has deeper pockets than  
02:20:40 23 the humanities will ever have.

02:20:44 24 So things that are quite standard for  
02:20:48 25 industry, where they would just as a matter of

02:20:51 1 course go straight on to the more expensive tests,  
02:20:54 2 the INAA, it's not necessarily always necessary for  
02:20:58 3 the requirements of understanding signatures for  
02:21:05 4 archaeology.

02:21:08 5 Q. Now I assume the basis for the  
02:21:10 6 first remark about "few sites being fully  
02:21:12 7 excavated" would be because of what's found in  
02:21:16 8 legislation such as the Ontario Carriage Act, or  
02:21:18 9 the Ministry Standards and Guidelines For  
02:21:19 10 Consulting Archeologists?

02:21:21 11 A. Yes.

02:21:21 12 Q. And I note a preference for the  
02:21:22 13 avoidance of impact and the protection of  
02:21:25 14 archeological sites?

02:21:26 15 A. Precisely.

02:21:27 16 Q. But you're not suggesting that  
02:21:28 17 sites are not being fully excavated anymore?

02:21:31 18 A. No, that's not the case. But of  
02:21:34 19 course, one of the -- what has happened through  
02:21:36 20 time is the understanding that since archaeology is  
02:21:39 21 destructive, and that the sites -- sometimes sites  
02:21:42 22 will be partially excavated, leaving a section of a  
02:21:45 23 site -- and this is a practice worldwide -- that  
02:21:47 24 the full-scale excavation of sites, if it's not  
02:21:51 25 necessary to extract information ahead of the

02:21:55 1 bulldozer, development, if possible, sites are left  
02:22:03 2 intact.

02:22:04 3 And so remote sensing, surface survey,  
02:22:11 4 ground testing, remote sensing, will be preferable  
02:22:15 5 to actual excavation, which of course entails the  
02:22:19 6 destruction of the site.

02:22:20 7 Q. You'd agree that typically  
02:22:22 8 archeological assessments are conducted as a result  
02:22:24 9 of some form of development application?

02:22:26 10 A. Often, often.

02:22:27 11 Q. And often where an archeological  
02:22:30 12 assessment --

02:22:31 13 THE COURT: Ms. Pelletier, you're  
02:22:33 14 speaking very fast.

02:22:35 15 MS. PELLETIER: I will slow it down,  
02:22:36 16 Your Honour.

02:22:36 17 THE COURT: Thank you. I lost you at  
02:22:40 18 "usually done". I can read the screen, but it's  
02:22:44 19 not preferable. I think you said it was usually  
02:22:48 20 done in advance of development and the witness  
02:22:50 21 agreed, but I would ask you to slow down.

02:22:52 22 BY MS. PELLETIER:

02:22:53 23 Q. Sure, I can repeat that, Your  
02:22:54 24 Honour.

02:22:54 25 So my first question was, to which

02:22:56 1 you've agreed, Ms. Morden, that typically you'd  
02:22:58 2 agree that archeological assessments are conducted  
02:23:01 3 as a result of some form of development  
02:23:04 4 application?

02:23:04 5 A. Yes.

02:23:04 6 Q. And that where an archeological  
02:23:07 7 assessment uncovers a site, quite often in order  
02:23:10 8 for that development to proceed, sites must be at  
02:23:14 9 least partially excavated?

02:23:15 10 A. That is true, sometimes, though,  
02:23:18 11 another possibility where you have re-siting or  
02:23:23 12 reformulation of the site where you can end up  
02:23:27 13 leaving the site intact and you build around it.

02:23:30 14 There are various scenarios that would  
02:23:33 15 allow for preservation of the site, that excavation  
02:23:36 16 isn't the only recourse in the face of development.

02:23:40 17 Q. But often those other alternatives  
02:23:42 18 are not possible and excavation needs to happen?

02:23:45 19 A. Yes, yes.

02:23:46 20 Q. And that the Ministry, you'd agree  
02:23:49 21 that the ministry standard --

02:23:50 22 THE COURT: Take a deep breath,  
02:23:52 23 Ms. Pelletier. Take three deep breaths, because I  
02:23:55 24 haven't noticed any change. I know it's hard, but  
02:23:58 25 slow down.

02:23:59 1 MS. PELLETIER: Okay.

02:24:00 2 BY MS. PELLETIER:

02:24:00 3 Q. The Ministry Standard and  
02:24:02 4 Guidelines contemplate that where development is  
02:24:05 5 going to occur and avoidance and protection are not  
02:24:09 6 a viable option, that excavation must be completed?

02:24:14 7 A. Yes.

02:24:16 8 Q. That where excavation must  
02:24:18 9 happen -- this is again taken from the Ministry  
02:24:20 10 Standard and Guidelines -- you would agree that the  
02:24:22 11 focus must be on recovering as much data as  
02:24:25 12 possible, rather than simply a sampling of the  
02:24:29 13 site?

02:24:29 14 A. Yes. In the face of total  
02:24:32 15 destruction of the site's redevelopment, yes.

02:24:35 16 Q. And you would agree that, as was  
02:24:38 17 the case in the River Mouth Speaks site, even a  
02:24:41 18 partial excavation can yield a significant amount  
02:24:44 19 of data?

02:24:44 20 A. I totally agree.

02:24:46 21 Q. Now moving on to your comment  
02:24:48 22 about the cost constraints and thank you for  
02:24:50 23 clarifying those, but are you aware that the  
02:24:57 24 archaeology industry in Ontario has close to a  
02:25:00 25 \$30 million annual budget?

02:25:03 1 A. No, I wasn't.

02:25:05 2 Q. Do you have any reason to dispute  
02:25:06 3 that or does that surprise you in any way?

02:25:09 4 A. No, because that comes from  
02:25:12 5 development, and there's -- development has big  
02:25:16 6 deep pockets, so that makes sense, that makes  
02:25:19 7 sense.

02:25:19 8 Q. Okay. So and I think we're on the  
02:25:22 9 same page wanting to confirm that we agree that  
02:25:25 10 archeological research is still being adequately  
02:25:27 11 funded, and that research is continuing and able to  
02:25:30 12 provide robust and fulsome data?

02:25:33 13 A. Yes, yes.

02:25:34 14 Q. Excellent.

02:25:37 15 Now, moving on to the bead dating  
02:25:44 16 report, and the results more specifically. I note  
02:25:48 17 that you've said in your report that both the X-ray  
02:25:51 18 fluorescence, or XRF, and the Instrumental Neutron  
02:25:56 19 Activation Analysis, or INAA, that both of these to  
02:26:00 20 test artefacts such as beads is both widespread  
02:26:04 21 accepted, and is something that is common?

02:26:06 22 A. Yes.

02:26:07 23 Q. So I think that's great. I'd like  
02:26:09 24 to ask you a few questions though about what you  
02:26:12 25 said in your report about the use of the database.

02:26:14 1 A. Yes.

02:26:14 2 Q. So for that I will --

02:26:18 3 THE COURT: Counsel.

02:26:18 4 MS. PELLETIER: Am I still?

02:26:19 5 THE COURT: No discernible difference.

02:26:21 6 MS. PELLETIER: I will really try to

02:26:23 7 slow it down, Your Honour.

02:26:24 8 THE COURT: I am very, very aware of

02:26:26 9 how hard it is. The best thing I can say to you,

02:26:29 10 you have to be totally artificial about it because

02:26:32 11 everything else will go in the other direction.

02:26:34 12 MS. PELLETIER: I apologize, Your

02:26:36 13 Honour.

02:26:36 14 THE COURT: You don't have to

02:26:37 15 apologize. We'll get it straightened out.

02:26:39 16 MS. PELLETIER: I am aware that I speak

02:26:41 17 quickly --

02:26:41 18 THE COURT: Yes, well.

02:26:42 19 MS. PELLETIER: -- I will make an extra

02:26:43 20 effort today.

02:26:47 21 BY MS. PELLETIER:

02:26:48 22 Q. So page 12 of your report. I'd

02:26:56 23 like to ask you about this paragraph in green. So

02:27:02 24 I believe you went through this passage in your

02:27:04 25 examination in-chief. So I'll just read it out,

1 given that it's relatively short:

2 "Archeologists are --

3 THE COURT: It isn't short, it's long.

4 If you wish to read it out you may do so.

5 MS. PELLETIER: I will read out the  
6 section that I care the most about, which begins  
7 with the third line to the bottom: "Williamson  
8 tries to minimize". So you say:

9 "Williamson tries to minimize  
10 the discrepancies by specifically  
11 choosing sites to compare the beads  
12 to from the database (see Table 2 on  
13 page 2-3), and does not compare the  
14 beads to all the 4,000 beads in the  
15 database."

16 So I want to ask you some questions  
17 about that specific passage. I'd like to take a  
18 look at Table 2 that you referenced in your report,  
19 so I'd like to now bring up Exhibit 4240, which is  
20 Dr. Williamson's glass bead analysis report. And  
21 I'd like to go to page 2. Do you see a passage in  
22 green?

23 THE COURT: I'm not seeing any green;  
24 oh, on the right?

25 MS. PELLETIER: Yes.



02:29:04 1 THE COURT: Okay. Above Table 2.

02:29:09 2 BY MS. PELLETIER:

02:29:09 3 Q. Ms. Morden, would you like to take  
02:29:12 4 a moment to read that paragraph again and I'll ask  
02:29:15 5 you some questions about it.

02:29:17 6 A. (Witness reviews document).

02:29:18 7 Yes.

02:29:27 8 Q. So here what I suggest to you, Ms.  
02:29:30 9 Morden, is we have Dr. Williamson discussing the  
02:29:34 10 findings of Dr. Fitzgerald?

02:29:37 11 A. I agree.

02:29:38 12 Q. Dr. Fitzgerald was of course one  
02:29:41 13 of the people on the team, the archaeologists  
02:29:44 14 working on the River Mouth Speaks site, and he was  
02:29:46 15 one of the authors, correct, of the excavation or  
02:29:49 16 the archeological report?

02:29:52 17 A. He was.

02:29:52 18 Q. So here you note Dr. Williamson is  
02:29:56 19 talking about Dr. Fitzgerald's findings, and says:

02:30:01 20 "His comparison of the RMS site  
02:30:05 21 Glass Bead assemblage with a  
02:30:08 22 selection of securely dated  
02:30:10 23 Indigenous and European  
02:30:11 24 archeological sites across North  
02:30:14 25 America and the Great Lakes --"

02:30:16 1 And then he refers to Table 2  
02:30:19 2 reproduced below.

02:30:19 3  
02:30:24 4 And then just a bit further down, then  
02:30:27 5 he begins to identify the sites which Fitzgerald  
02:30:32 6 believed that the glass assemblage found at River  
02:30:36 7 Mouth Speaks shared the greatest -- shared the  
02:30:38 8 greatest affinity with.

02:30:42 9 A. Yes.

02:30:42 10 Q. So Dr. Williamson here is actually  
02:30:45 11 only reproducing the results of the sites that  
02:30:48 12 Dr. Fitzgerald had identified as being similar?

02:30:51 13 A. (Witness nods.)

02:30:52 14 Q. And you would agree with me it is  
02:30:54 15 Dr. Fitzgerald that was the one to recommend the  
02:30:58 16 actual INAA and XRF testing?

02:31:05 17 A. Yes.

02:31:06 18 Q. So it is not -- Table 2 does not  
02:31:07 19 represent the sites that Dr. Williamson chose to  
02:31:11 20 select from the database to test against the  
02:31:14 21 assemblage found at the River Mouth Speaks site?

02:31:17 22 A. You're right. I misread that.

02:31:19 23 Q. So you would agree then, that  
02:31:24 24 Dr. Williamson in fact, in not limiting himself to  
02:31:28 25 these sites, does in fact compare the beads to --

02:31:32 1 the beads of the River Mouth Speaks site to all of  
02:31:35 2 the 4,000 beads in the database?

02:31:37 3 A. Yes.

02:31:38 4 Q. Excellent.

02:31:57 5 Now, I'd like to go back to your  
02:31:59 6 report, Exhibit 4452. And this, Ms. Morden, I'll  
02:32:08 7 give you a moment to re-read this passage. It is  
02:32:11 8 where you are talking about the limits of being  
02:32:15 9 able to re-examine sites.

02:32:16 10 A. Yes.

02:32:18 11 THE COURT: Can you put on the record  
02:32:19 12 what passage you're talking about, Counsel?

02:32:22 13 MS. PELLETIER: Yes. It is the passage  
02:32:24 14 highlighted or blocked off in green that begins,  
02:32:28 15 "Sites are reexamined [...]" It's on page 13 of  
02:32:32 16 Ms. Morden's report.

02:32:49 17 THE WITNESS: (Witness reviews  
02:32:49 18 document).

02:32:50 19 Yes, okay.

02:32:51 20 BY MS. PELLETIER:

02:32:52 21 Q. I just want to make sure I  
02:32:54 22 understand this passage correctly. The first thing  
02:32:56 23 I would note is, as we've discussed, it is not the  
02:32:57 24 case that sites are no longer being excavated?

02:33:00 25 A. That is correct.

02:33:00 1 Q. This passage suggests that when a  
02:33:02 2 site has been excavated that it cannot be  
02:33:06 3 reevaluated because new assemblages can't be  
02:33:10 4 obtained?

02:33:11 5 A. If the site has been completely  
02:33:12 6 excavated.

02:33:13 7 Q. Okay. Then you go on to say that  
02:33:15 8 "artefact assemblages are often reevaluated in  
02:33:20 9 relation to new archeological discoveries".

02:33:23 10 So to clarify when you say this, do you  
02:33:26 11 mean that already excavated sites can undergo  
02:33:30 12 additional testing as new advances in archaeology  
02:33:33 13 are made? For example, mud residue analysis?

02:33:38 14 A. Yes, and, for instance, if beads  
02:33:40 15 are found at a site, historically, they can be  
02:33:43 16 tested in the ways that the beads in the report  
02:33:47 17 from the River Mouth Speaks, those beads were  
02:33:51 18 tested.

02:33:51 19 Also, for instance, like at the Frank  
02:33:55 20 Bay site in Lake Nipissing, where the site was  
02:34:00 21 excavated, samples were taken but perhaps not  
02:34:04 22 submitted immediately for carbon 14 dating. And so  
02:34:07 23 you can sometimes have samples that hang around for  
02:34:10 24 a while until they have money to test or there's a  
02:34:14 25 need.

02:34:14 1 And so then you can get that, the  
02:34:19 2 actual archeological record already excavated can  
02:34:23 3 suggest new interpretations of an already excavated  
02:34:27 4 site.

02:34:27 5 Q. Thank you, that's helpful. So in  
02:34:30 6 other words, new assemblages are not necessarily  
02:34:33 7 needed when there are new discoveries in  
02:34:37 8 archaeology, since we can test assemblages that  
02:34:41 9 have been previously been excavated. Is that what  
02:34:43 10 you're saying?

02:34:43 11 A. Yes, it's not only scientific  
02:34:45 12 techniques but sometimes new theoretical models can  
02:34:48 13 be applied to an old data set to essentially create  
02:34:54 14 new inferences.

02:34:55 15 So that kind of change in the  
02:34:57 16 archeological, in academia, archeological academia  
02:35:02 17 is happening all the time.

02:35:04 18 Q. Now, this section on your report  
02:35:07 19 is under the heading: "Do Evolving Refinements in  
02:35:11 20 Archeological Methods Undermine the Database?"

02:35:18 21 So in terms of how new discoveries in  
02:35:21 22 archaeology might affect the dating of sites in the  
02:35:25 23 database, and I believe one of the things you said  
02:35:28 24 just as we were ending this morning is, you wish  
02:35:31 25 that you knew more about how some of the sites in

02:35:34 1 the database had arrived at their dates?

02:35:35 2 A. Yes.

02:35:36 3 Q. Are you aware that many of the  
02:35:39 4 sites in the database are -- already have certain  
02:35:44 5 dates because they are based using documentary  
02:35:46 6 record?

02:35:49 7 A. No, I did not know that and that  
02:35:51 8 is a very important factor to take into  
02:35:55 9 consideration.

02:35:57 10 Q. So, for example, just so that I  
02:36:00 11 can see if you agree with me on how the documentary  
02:36:03 12 record can assist in giving a secure certain date  
02:36:07 13 to a site, if we know from the documentary record  
02:36:10 14 that there was a village site established, say, in  
02:36:13 15 1700, and then we know again from the documentary  
02:36:16 16 record that the village site gets abandoned in  
02:36:21 17 1725, when that site is discovered centuries later,  
02:36:24 18 that village site will be dated from 1700 to 1725,  
02:36:30 19 correct?

02:36:30 20 A. But also at the same time, you  
02:36:35 21 need to be able to -- you would need to have a  
02:36:37 22 historian evaluate the historical record so that,  
02:36:41 23 you know, the veracity of the historical record  
02:36:44 24 needs to be judged by historians.

02:36:47 25 Q. Sure. And I believe you said in

02:36:49 1 your testimony this morning that archeologists are  
02:36:52 2 very much engaged with the historical record and  
02:36:55 3 it's an important part of doing your work, correct?

02:36:58 4 A. Yes, yes.

02:36:58 5 Q. Now, are you aware that Bead Hill,  
02:37:04 6 as an example of a site in the database, and one  
02:37:07 7 that is used as a comparison site to the beads  
02:37:11 8 found at River Mouth Speaks, was dated securely  
02:37:14 9 using the document record?

02:37:16 10 A. No, I wasn't.

02:37:17 11 Q. And are you aware that Rochester  
02:37:22 12 Junction, also a site appearing in the database  
02:37:24 13 that comes up for River Mouth Speaks as a  
02:37:28 14 comparable site, was dated Petun using the  
02:37:31 15 documentary record?

02:37:32 16 A. No, I was not aware.

02:37:33 17 Q. And the Fort Saint Joseph site as  
02:37:38 18 well?

02:37:38 19 A. Makes sense, yes.

02:37:39 20 Q. And the Fort Malden site?

02:37:41 21 A. Yes, so the forts are logical to  
02:37:43 22 have a historical record associated with them, yes.

02:37:48 23 Q. And the Boughton Hill, I may be  
02:37:50 24 mispronouncing that. B-O-U-G-H-T-O-N.

02:37:54 25 A. No, I did not know that one had.

02:37:57 1 Q. Those I would suggest to you,  
02:38:00 2 Ms. Morden, are only a few examples of many of the  
02:38:03 3 sites in the database that are dated in fact by use  
02:38:06 4 of the documentary record?

02:38:08 5 A. Yes, but are the beads necessarily  
02:38:11 6 associated with those particular occupations?

02:38:15 7 Q. The beads were found at the sites,  
02:38:17 8 and the sites are securely dated?

02:38:19 9 A. Well, with only one phase of  
02:38:21 10 occupation?

02:38:22 11 Q. Would you like to go through the  
02:38:24 12 ones that I've listed and I can give you the dates  
02:38:26 13 for them? Yes, they are not multi-component sites  
02:38:30 14 for the most part.

02:38:30 15 A. That was my question.

02:38:32 16 Q. Okay. So we discussed your  
02:38:43 17 comment about the database and how you  
02:38:47 18 misunderstood that Dr. Williamson had in fact  
02:38:52 19 tested the beads found at River Mouth Speaks  
02:38:55 20 against all of the 4,000 beads in the database.

02:38:58 21 I'd like to talk now about what I  
02:39:01 22 believe might perhaps be another misunderstanding  
02:39:03 23 on your part with respect to how the database is  
02:39:06 24 used?

02:39:06 25 So one of the points you make in your



02:39:08 1 report, and that you discuss this morning, is your  
02:39:11 2 view that the nature of beads are such that their  
02:39:15 3 date of deposit into a site might be much longer  
02:39:19 4 than their date of manufacture. So I want to  
02:39:21 5 explore this question of data manufacture versus  
02:39:25 6 date of deposit with you.

02:39:26 7 So the INAA process tells us the  
02:39:32 8 chemical composition of the beads?

02:39:34 9 A. Yes.

02:39:35 10 Q. And the database identifies sites  
02:39:39 11 where similar beads were found?

02:39:41 12 A. Yes.

02:39:41 13 Q. And some of those sites in the  
02:39:43 14 database, as we've just discussed, are securely  
02:39:46 15 dated?

02:39:46 16 A. Yes.

02:39:47 17 Q. So that is that they are dates  
02:39:49 18 that have been derived at through historical  
02:39:51 19 record, perhaps some by carbon dating.

02:39:54 20 And so when you look at the database,  
02:39:56 21 you try to find other sites where beads of the same  
02:40:00 22 chemical composition as the ones found at your site  
02:40:04 23 may also have been found?

02:40:05 24 A. Yes.

02:40:06 25 Q. But what you were looking at is

02:40:09 1 the date those beads have been deposited, not the  
02:40:13 2 date that they were made? That's how the database  
02:40:16 3 works, correct?

02:40:17 4 A. Yes, if that is in case the case  
02:40:22 5 for all of the examples within the 4,000 record of  
02:40:28 6 the database.

02:40:29 7 Q. I'd submit to you it is.

02:40:32 8 So maybe --

02:40:34 9 THE COURT: I chuckled. You don't get  
02:40:36 10 to submit anything to this witness.

02:40:37 11 MS. PELLETIER: Suggest to you that it  
02:40:38 12 is.

02:40:38 13 THE COURT: You can't give evidence,  
02:40:40 14 and you can't make submissions where you're  
02:40:42 15 standing, Counsel.

02:40:43 16 MS. PELLETIER: I would suggest I  
02:40:44 17 misspoke.

02:40:45 18 THE COURT: You only get to ask  
02:40:46 19 questions.

02:40:47 20 MS. PELLETIER: I used the wrong word.  
02:40:49 21 I apologize, Your Honour.

02:40:51 22 THE COURT: All right.

02:40:51 23 BY MS. PELLETIER:

02:40:52 24 Q. It may be that your beads were  
02:40:54 25 made in 1610, but if they're showing up in sites

02:40:57 1 between 1650 and 1675, then you can assume that  
02:41:02 2 means that your site, that has those same 1610  
02:41:07 3 beads, probably date to between 1650 and 1675  
02:41:12 4 because that's when those beads are showing up at  
02:41:15 5 other sites? That's how we use the database?

02:41:17 6 A. That makes, that -- in principle,  
02:41:20 7 that is correct. But that is not the only way that  
02:41:23 8 one can interpret it. Those beads could -- I mean,  
02:41:26 9 I submit that those beads could be in use for a  
02:41:29 10 longer period of time.

02:41:30 11 I think that the nature of the trading  
02:41:34 12 beads suggests that there are a lot of beads being  
02:41:38 13 traded, and we only have a very small subset. Even  
02:41:42 14 with 4,000 beads, we have a small subset of the  
02:41:46 15 total number of beads that were traded.

02:41:48 16 So perhaps we're not dealing with the  
02:41:50 17 entire, you know, possibilities. We're only  
02:41:56 18 dealing with a subset of the beads.

02:41:57 19 Q. We're dealing with a subset of  
02:42:00 20 4,000 beads?

02:42:00 21 A. Yes.

02:42:01 22 Q. Are you suggesting that that's a  
02:42:03 23 small amount?

02:42:04 24 A. No, that's, I mean, that's a good  
02:42:06 25 statistical sample. But not all of them date to

02:42:12 1 that time period, to those time periods. You have  
02:42:15 2 a range of possible chemical compositions that  
02:42:19 3 range in date from 1601 to 1610 up through the 19th  
02:42:25 4 century.

02:42:25 5 Q. But the way the database is used  
02:42:28 6 is, the dates that are attributed to the sites are  
02:42:32 7 not based on the manufacturer, the date of  
02:42:37 8 manufacture of the beads that have been found at  
02:42:38 9 those sites?

02:42:39 10 A. Yes, I get that.

02:42:42 11 Q. So the idea that --

02:42:44 12 A. But are all of the sites highly  
02:42:47 13 stratified?

02:42:47 14 THE COURT: This is the second time the  
02:42:49 15 witness has asked a question of counsel, and the  
02:42:51 16 reason for that concerns me, not that you asked,  
02:42:55 17 ma'am.

02:42:56 18 Counsel, you can't give evidence. You  
02:42:59 19 can give factual propositions, but you cannot prove  
02:43:02 20 through this witness because she said she doesn't  
02:43:07 21 know.

02:43:08 22 A conversation about facts is not  
02:43:09 23 helpful to me. You can ask this witness to make  
02:43:12 24 assumptions about facts and then you'll have your  
02:43:17 25 job to prove them elsewhere.

02:43:20 1 But twice now when the witness asked  
02:43:23 2 questions, I worry that the witness thinks that you  
02:43:26 3 are somehow going to be the witness for the facts  
02:43:29 4 and counsel don't do that. So I think your  
02:43:34 5 question, even though it's cross-examination, you  
02:43:36 6 may need to make it more clear that you aren't  
02:43:42 7 giving evidence, Counsel.

02:43:45 8 BY MS. PELLETIER:

02:43:46 9 Q. Perhaps the easier way to move  
02:43:47 10 forward on this topic would be to bring up Dr.  
02:43:50 11 Williamson's testimony, so a portion of his  
02:43:53 12 transcript, to see what he has had to say about  
02:43:57 13 this, and then I will ask you to comment, Ms.  
02:44:00 14 Morden.

02:44:00 15 So if I can have the transcript for  
02:44:03 16 September 16th, which I believe is day 43. And  
02:44:21 17 page 5266.

02:44:35 18 So Ms. Morden, this -- I believe you  
02:44:39 19 were actually in court when Dr. Williamson was  
02:44:41 20 testifying. This is the point in his testimony  
02:44:43 21 where he gives the example of the parking lots?

02:44:45 22 A. Yes.

02:44:45 23 Q. So I'll give you a moment to  
02:44:47 24 review that, if you can just maybe say "Scroll  
02:44:50 25 Down" when you need us to scroll down the page?

02:44:52 1 THE COURT: I can't see the beginning  
02:44:54 2 of whatever I have on my screen. I assume the  
02:44:57 3 witness has the same screen?

02:45:00 4 BY MS. PELLETIER:

02:45:00 5 Q. "The other way we use is  
02:45:04 6 seriation" is where I wanted to begin, but if you  
7 would like me to scroll up so you can see the  
8 question, that would be fine as well. Would you  
9 like me to scroll up?

10 A. Then go to the previous page  
11 please.

12 Q. So why don't we begin with:

02:45:16 13 "Thank you, Dr. Williamson.

02:45:18 14 And how do archaeologists date a  
02:45:21 15 site?"

02:45:23 16 A. (Witness reviews document).

02:45:41 17 Okay.

02:46:17 18 Q. So what I would suggest to you  
02:46:18 19 here, Ms. Morden is, it may be that there is some  
02:46:22 20 time between the date of manufacture and date of  
02:46:24 21 deposit. Maybe that we have beads that are made in  
02:46:27 22 Europe, don't find -- in 1600. And they don't find  
02:46:32 23 their way to Ontario until the mid-1600s.

02:46:36 24 What I am suggesting, though, is that  
02:46:38 25 the database takes that into account. Because what

02:46:42 1 it's looking at is the date that those -- the date  
02:46:46 2 that the beads are found, so the date of deposit,  
02:46:49 3 not the date of manufacture?

02:46:51 4 A. I agree when you talk about the  
02:46:56 5 examples that have other ways of dating that can  
02:47:00 6 firm it up, the historical record. But what about  
02:47:03 7 some of the sites that don't have that?

02:47:05 8 And I am sure there are beads in the  
02:47:07 9 bead database that don't have historical  
02:47:10 10 attributions. And if they don't have stratigraphy  
02:47:18 11 then you're dealing with site assemblages and  
02:47:21 12 seriation as you're dealing with here.

02:47:24 13 But you can have seriation of pottery,  
02:47:26 14 lithics, various classes of objects. How can you  
02:47:31 15 necessarily assign all -- if you don't have a  
02:47:36 16 stratigraphic deposit in which you have the beads  
02:47:40 17 involved, how can you be sure that they are  
02:47:44 18 associated with one of these parking lots?

02:47:47 19 Q. Ms. Morden, in your report you  
02:47:50 20 said that "comparison to the database is valid"?

02:47:55 21 A. Yes, I'm talking about the  
02:47:56 22 chemical analysis.

02:47:58 23 Q. That's not the database.

02:48:00 24 A. That's part of the database.

02:48:02 25 Q. Chemical analysis precedes the

02:48:05 1 database?

02:48:05 2 A. Right. But the actual chemical  
02:48:09 3 analysis is part of the database. That's the  
02:48:14 4 scientific part of the database.

02:48:15 5 Q. The database lists a number of  
02:48:18 6 sites and it assigns dates to those sites. The  
02:48:20 7 dates that it assigns to those sites are based on  
02:48:24 8 the deposit of the beads. I've given you some  
02:48:27 9 examples where we know, we can know precisely when  
02:48:30 10 those beads were deposited because the sites are  
02:48:33 11 dated based on the documentary record.

02:48:35 12 If I understand you correctly, you're  
02:48:36 13 saying that's fine for those but we don't know  
02:48:39 14 about the others?

02:48:40 15 THE COURT: Well, I'm just going to --  
02:48:41 16 looking over at Canada's counsel sitting firmly in  
02:48:44 17 their chair -- but I heard and I think it's  
02:48:47 18 important to fairly state the evidence in your  
02:48:49 19 question.

02:48:49 20 When you asked about each of those  
02:48:51 21 sites, she said she didn't know. She said she'd  
02:48:55 22 take it from you. As you went along, she, I think  
02:48:59 23 assumed she should take it from you.

02:49:01 24 I want to make sure I know what this  
02:49:03 25 witness is being asked to assume, Counsel. And



02:49:06 1 that's fine, you can ask this witness to assume any  
02:49:09 2 fact you want.

02:49:11 3 But, as you did with this passage, if  
02:49:15 4 you want her to take a fact as proved in this  
02:49:18 5 trial, it can't come from you unless you ask her to  
02:49:21 6 assume it. And in which case that's fine.

02:49:24 7 MS. PELLETIER: Sorry, I did not mean  
02:49:26 8 to suggest that Ms. Morden had agreed with me that  
02:49:29 9 those sites which I gave as examples --

02:49:31 10 THE COURT: She's neither agreed nor  
02:49:33 11 disagreed. I think she said she didn't know, as  
02:49:36 12 you went along, she said, as most witnesses would,  
02:49:39 13 she'll take it from you. That may well be  
02:49:42 14 completely accurate, I don't know.

02:49:44 15 But I think in your cross-examination  
02:49:46 16 questions you should be careful not to suggest that  
02:49:48 17 the evidence is coming from her, when it was coming  
02:49:51 18 from you, all right?

02:49:52 19 MS. PELLETIER: What I intended to ask,  
02:49:55 20 I apologize if I misspoke.

02:49:57 21 BY MS. PELLETIER:

02:49:57 22 Q. I believe, Ms. Morden, you said  
02:49:59 23 that if a site was dated based on the documentary  
02:50:02 24 record, then yes, that would be a securely dated  
02:50:05 25 date; we can trust that date?

02:50:07 1 A. I think they all have to be  
02:50:11 2 reviewed. And if it's been accepted by  
02:50:15 3 archeologists, then work -- working in the field,  
02:50:18 4 then, yes, they should probably be accepted.

02:50:21 5 Q. And do you have any reason to  
02:50:23 6 believe that the dates that are assigned to the  
02:50:25 7 sites in the database have not been submitted by  
02:50:29 8 archeologists and not reviewed by archaeologists?  
02:50:34 9 Who else would be --

02:50:35 10 A. Are all those dates securely dated  
02:50:40 11 stratified deposits, from stratified deposits?

02:50:43 12 Q. Have you checked?

02:50:44 13 A. No.

02:50:46 14 Have you?

02:50:48 15 THE COURT: This is what I'm trying to  
02:50:51 16 get past here. I understand why you're asking  
02:50:53 17 those questions, Ms. Morden, because you're hearing  
02:50:55 18 a lot of facts from counsel. So you can say you  
02:50:58 19 would need to know this, or you would need to know  
02:51:01 20 that.

02:51:02 21 THE WITNESS: Yes.

02:51:03 22 THE COURT: I'm trying to caution  
02:51:06 23 Counsel not to leave the impression that she  
02:51:07 24 personally is testifying from the counsel chair.  
02:51:10 25 She can't do that. She can't put propositions to

02:51:13 1 you and ask you to assume that they're true. If  
02:51:16 2 she does that you're obliged to make the  
02:51:19 3 assumption, all right?

02:51:20 4 THE WITNESS: Yes.

02:51:21 5 THE COURT: So we want to make sure  
02:51:23 6 there's a fair account of where this is all coming  
02:51:25 7 from.

02:51:26 8 I think Ms. Pelletier has the idea, so  
02:51:29 9 I'm going to let her proceed.

02:51:36 10 BY MS. PELLETIER:

02:51:37 11 Q. I think I'm happy to move on from  
02:51:39 12 this topic in one moment. It's just to point out  
02:51:42 13 on this last point, Ms. Morden, you've noted in  
02:51:45 14 your report, I'm just going to read the sentence --  
02:51:47 15 I won't bother bringing it up -- but that:

02:51:52 16 "The authors Williamson et al.  
02:51:55 17 are relying on the information  
02:51:56 18 provided them by the excavators and  
02:51:58 19 the museum. If the excavators are  
02:52:00 20 not being honest, then they have  
02:52:02 21 perjured themselves in their reports  
02:52:05 22 to the MTCS. This is highly  
02:52:07 23 unlikely."

02:52:08 24 I think you've acknowledged we can rely  
02:52:11 25 on archeological reports submitted by

1 archaeologists because in the prior paragraph, that  
2 section of your report, you talk about how you were  
3 effectively self-policing?

4 A. Yes. One of the points I would  
5 say since you've raised the idea of the Ministry,  
6 the Archeological Ontario Ministry of Tourism  
7 Culture and Sport, the Archaeology Unit, that  
8 database, what is required of archaeologists and  
9 what are the kinds of dates submitted by the  
10 archaeologists when making their reports, are  
11 usually these range dates of periods, Late  
12 Woodland, Middle Woodland, Early Woodland, as  
13 opposed to specific dates. And there are very few  
14 specific dates in the database as submitted to the  
15 government.

16 Q. Sure. I think you'd agree that  
17 the bead dating database is a very separate  
18 database. And the point of it is to refine those  
19 dates, Woodland site, Early Woodland, Late  
20 Woodland, it's the point of the bead database is to  
21 get even more precise than what is found, in, as  
22 you've noted, the reports filed with the Ministry  
23 of Culture, Tourism and Sport?

24 A. Yes.

25 Q. I'd like to go back to your

02:53:37 1 report, Exhibit 4452, page 16. And just under  
02:53:55 2 number 1.2.2.4: "How refined are the stratigraphic  
02:54:01 3 dates of these sites?" You begin by saying:

02:54:05 4 "Many of the comparanda sites  
02:54:10 5 are identified by surface  
02:54:13 6 collections of artefacts after they  
02:54:15 7 are dragged to the surface by  
02:54:17 8 ploughing and other intrusive  
02:54:19 9 activities."

02:54:22 10 I'm a bit puzzled, because I believe  
02:54:26 11 you just acknowledged you're not really familiar  
02:54:28 12 with the other sites in the database?

02:54:30 13 A. Yes.

02:54:31 14 Q. So I'm wondering how you can make  
02:54:34 15 this statement?

02:54:35 16 A. On the basis of the database that  
02:54:40 17 I looked at for that map that I produced -- that  
02:54:44 18 was produced for me by Robert Von Bitter and the  
02:54:48 19 database that was associated with that map, where  
02:54:51 20 so many of the sites are stray finds, are surface  
02:54:55 21 collection.

02:54:55 22 Q. Ms. Morden, those sites aren't the  
02:54:58 23 same sites that are in the bead database. It is a  
02:55:01 24 different database?

02:55:03 25 A. Okay, yes.

02:55:04 1 Q. So I'd suggest to you that a  
02:55:07 2 number of the sites that are found in the bead  
02:55:09 3 database are in fact have gone through very  
02:55:12 4 extensive excavations in some cases?

02:55:15 5 A. Some of them, yes.

02:55:16 6 Q. I'd like to move on to page 14.

02:55:52 7 This is the last paragraph. And this  
02:55:55 8 is your comment about the one single bead?

02:55:59 9 A. Yes.

02:56:00 10 Q. And I believe in your examination  
02:56:03 11 in-chief, you retracted from this a bit and said --  
02:56:08 12 I don't want to put words in your mouth -- I you  
02:56:11 13 said perhaps you -- could you remind me what you  
02:56:14 14 said, misspoke or overstated?

02:56:17 15 A. No, let me see now. Where I said  
02:56:21 16 "would never".

02:56:22 17 Q. Yes?

02:56:23 18 A. I over spoke.

02:56:24 19 Q. And I believe you qualified that  
02:56:26 20 in your testimony this morning to say "would  
02:56:30 21 usually"?

02:56:30 22 A. Yes.

02:56:31 23 Q. Okay. So, Ms. Morden, you've  
02:56:37 24 acknowledged that you don't have experience working  
02:56:39 25 on Indigenous sites?

02:56:40 1 A. Yes.

02:56:41 2 Q. And you also don't have experience  
02:56:43 3 working with Indigenous people or their history or  
02:56:46 4 their world views?

02:56:47 5 A. No, I do not have experience  
02:56:50 6 working with those.

02:56:51 7 Q. And so you are not -- I'm assuming  
02:56:56 8 you are not aware that there are other cases where  
02:56:58 9 dogs have been found buried with a single bead?

02:57:02 10 A. In the research era?

02:57:10 11 Q. Are you aware of other sites where  
02:57:12 12 dogs have been buried with a single bead?

02:57:15 13 A. I know dogs have been buried with  
02:57:18 14 quartz crystals.

02:57:19 15 Q. That is one site, and there is  
02:57:23 16 another site where a single bead was found?

02:57:25 17 A. Which site is that?

02:57:26 18 Q. Perhaps we can pull up, just so  
02:57:29 19 you don't have to take my word for it. I will pull  
02:57:33 20 up SC1496. And this is an expert from day 44,  
02:57:54 21 Dr. Williamson's testimony September 17th.

02:57:58 22 Your Honour, I'm putting this up as an  
02:58:01 23 expert because I ask that this be marked as an  
02:58:04 24 exhibit?

02:58:04 25 THE COURT: Why?

02:58:05 1 MS. PELLETIER: Well, I didn't want to  
02:58:06 2 read the lengthy passage into the record.

02:58:08 3 THE COURT: You don't have to read it.  
02:58:10 4 You can use the transcript as you wish. Why would  
02:58:13 5 it also need to be marked as an exhibit.

02:58:15 6 MS. PELLETIER: I thought for your  
02:58:16 7 assistance, Your Honour, unless I'm going to read  
02:58:18 8 it by pointing to a page number and paragraph, and  
02:58:21 9 you having to fumble to find where it's referenced.  
02:58:26 10 I believe that others have done this. If you would  
02:58:29 11 rather I not, then I would proceed as you wish,  
02:58:36 12 Your Honour.

02:58:36 13 THE COURT: If you wish to you may. To  
02:58:38 14 all of you assembled here, I am not enthusiastic  
02:58:42 15 about the idea that our trial transcript will also  
02:58:46 16 start forming part of our trial exhibits.

02:58:50 17 So if it facilitates your  
02:58:52 18 cross-examination and you've already planned to do  
02:58:54 19 it, by all means. But no one should make a  
02:58:57 20 practice of this.

02:58:57 21 MS. PELLETIER: Okay, thank you.  
02:59:03 22 Am I take that to mean you rather me  
02:59:05 23 not have it entered as an exhibit?

02:59:07 24 THE COURT: I'll mark it as a lettered  
02:59:09 25 exhibit just this one time. But I don't want our



02:59:11 1 trial record, which I think we're up to 4,400 and I  
02:59:14 2 don't know what, start getting littered with  
02:59:17 3 excerpts from the trial transcript, which is also  
02:59:19 4 available on the exact same database.

02:59:24 5 MS. PELLETIER: Thank you, Your Honour.

02:59:25 6 THE COURT: Mr. Registrar, what is the  
02:59:27 7 next lettered exhibit?

02:59:29 8 THE REGISTRAR: Next lettered Exhibit G-3.

02:59:29 9 EXHIBIT G-3: Excerpt from Trial  
02:59:29 10 Transcript Day 44, September 17, 2019,  
02:59:50 11 pages 5360 to 5362, SC1496.

02:59:33 12 THE COURT: Can you fully credential  
02:59:36 13 this document?

02:59:36 14 MS. PELLETIER: Excerpt of day 44  
02:59:39 15 September 17th.

02:59:39 16 THE COURT: What pages?

02:59:41 17 MS. PELLETIER: Beginning at page 5360  
02:59:44 18 and if I can have the end page, please. 5362.  
02:59:52 19 Dr. Williamson's testimony.

02:59:53 20 THE COURT: What is it you want the  
02:59:55 21 witness to do? Read these three pages?

02:59:57 22 MS. PELLETIER: Yes.

02:59:57 23 BY MS. PELLETIER:

02:59:57 24 Q. I will give you a moment,  
02:59:59 25 Ms. Morden.

03:00:13 1 THE WITNESS: (Witness reviews  
03:00:13 2 document).

03:00:13 3 Yes, so this is --

03:00:15 4 THE COURT: Sorry, over here, have you  
03:00:19 5 read all three pages?

03:00:20 6 THE WITNESS: No, I haven't.

03:00:21 7 THE COURT: So just ask for the screen  
03:00:23 8 to be moved forward.

03:00:24 9 THE WITNESS: Okay, thank you. Next  
03:00:25 10 screen, please.

03:00:27 11 (Witness reviews document).

03:01:05 12 Next section, please.

03:01:07 13 (Witness reviews document).

03:01:16 14 THE COURT: You're going too quickly,  
03:01:19 15 are you at the top of the page?

03:01:20 16 THE WITNESS: Yes.

03:01:40 17 BY MS. PELLETIER:

03:01:40 18 Q. So you'll see here it says  
03:01:44 19 "providence base"?

03:01:46 20 A. Providence Bay.

03:01:48 21 Q. Were you aware of a single bead  
03:01:50 22 being found in the dog burial at the Providence Bay  
03:01:53 23 site?

03:01:53 24 A. No, I was not aware of that.

03:02:00 25 Q. Now I'd like to move on to the

03:02:02 1 topic of stratigraphy. Go back to your report,  
03:02:06 2 Exhibit 4452.

03:02:11 3 THE COURT: What page?

03:02:13 4 MS. PELLETIER: Page 15.

03:02:14 5 BY MS. PELLETIER:

03:02:32 6 Q. Your comment here, Ms. Morden:

03:02:33 7 "An assemblage is dated by  
03:02:35 8 looking at the dates and range dates  
03:02:36 9 of all the objects with the same  
03:02:39 10 soil matrix and the latest dateable  
03:02:41 11 material dates the entire assemblage  
03:02:43 12 as a deposit. Individual objects  
03:02:45 13 will still have their manufacture  
03:02:47 14 date, but their deposition date may  
03:02:49 15 be much later."

03:02:51 16 Now I understand that stratigraphy is a  
03:02:55 17 common way of dating sites in Europe and the  
03:02:58 18 Mediterranean; is that correct?

03:02:59 19 A. Yes.

03:02:59 20 Q. And that is both in Europe and  
03:03:01 21 Mediterranean, soil conditions allow for this type  
03:03:04 22 of layering?

03:03:05 23 A. Yes.

03:03:06 24 Q. And are you aware that --

03:03:08 25 THE COURT: Slow down, Counsel.

03:03:09 1 BY MS. PELLETIER:

03:03:10 2 Q. -- this is not a typical method of  
03:03:12 3 dating sites in Ontario?

03:03:14 4 A. I think it's not a typical,  
03:03:19 5 because there are many sites that do not have  
03:03:21 6 stratigraphy.

03:03:21 7 Q. That's right. And often even if  
03:03:24 8 there were, you can have disturbances due to  
03:03:27 9 development?

03:03:27 10 A. Right.

03:03:28 11 Q. That's where we get into the  
03:03:29 12 redeposit fills that you spoke about this morning?

03:03:32 13 A. Yes, yes.

03:03:32 14 Q. And in fact, on most of the Bruce  
03:03:35 15 Peninsula, it's virtually impossible to have  
03:03:37 16 stratigraphy given the shallow soil depth; would  
03:03:40 17 you agree with that?

03:03:40 18 A. Yes.

03:03:41 19 Q. Thank you.

03:03:45 20 And River Mouth Speaks would have been  
03:03:48 21 one exception, one of the rare sites on the Bruce  
03:03:53 22 where stratigraphy may have been possible because  
03:03:55 23 of it was near a river mouth, but you are aware  
03:04:00 24 that the conclusion of the team is that most of the  
03:04:03 25 stratigraphy had been disturbed?

03:04:05 1 A. Yes.

03:04:05 2 Q. I believe you acknowledge that in  
03:04:08 3 your report as well, and you note that much of the  
03:04:11 4 site is comprised of redeposit fills?

03:04:14 5 A. Yes.

03:04:15 6 Q. Great.

03:04:15 7 A. It was something that Dr.  
03:04:17 8 Williamson acknowledged in his testimony as well.

03:04:19 9 Q. Yes, that's right.

03:04:21 10 So in the case of dating River Mouth  
03:04:24 11 Speaks what is being relied on in determining the  
03:04:27 12 dates, or the time periods associated with the  
03:04:32 13 dates, are the various dates assigned to the  
03:04:35 14 various assemblages, or some assemblages found at  
03:04:39 15 the site?

03:04:40 16 A. Right.

03:04:40 17 Q. And that is why the lack of  
03:04:43 18 stratigraphy at the site is irrelevant in this  
03:04:45 19 case?

03:04:45 20 A. But it does beg the issue that now  
03:04:48 21 that all the beads that have been tested are now  
03:04:51 22 part of the bead database, and you're dealing with  
03:04:55 23 a site that does not have stratigraphy, does not  
03:04:57 24 have a historical record documenting the date. So  
03:05:03 25 it would be interesting to note what would be the

03:05:05 1 dates for the beads in the database now for River  
03:05:11 2 Mouth Speaks.

03:05:11 3 Q. I believe you've lost me. I'll  
03:05:14 4 ask you to --

03:05:15 5 A. This is exactly the kind of  
03:05:17 6 example that I'm talking about, potentially sites  
03:05:19 7 within the database that do not have any  
03:05:55 8 corroborative dating material to pinpoint a  
03:05:27 9 particular date and do not have stratigraphy.

03:05:29 10 So now these beads that have been  
03:05:31 11 tested are now part of the database. How will the  
03:05:35 12 date be ascertained for those beads when future  
03:05:40 13 beads are tested?

03:05:41 14 Q. Are you suggesting that the River  
03:05:44 15 Mouth Speaks site has been added to the database?  
03:05:46 16 Do you know that?

03:05:47 17 A. It makes sense that it should be.

03:05:50 18 Q. Do you know that it has?

03:05:51 19 A. No, I don't.

03:05:52 20 Q. No, okay. So having established  
03:06:00 21 that stratigraphy is not relied on here, you would  
03:06:06 22 also agree that what we're dealing with at the  
03:06:09 23 River Mouth Speaks is not one assemblage of beads?  
03:06:12 24 We're dealing with some assemblages?

03:06:16 25 A. Yes. The entire artefact

03:06:19 1 assemblage or site assemblage can be broken down  
03:06:21 2 into discrete units, because the clustering of  
03:06:26 3 types of -- within the seriation of the pottery,  
03:06:30 4 the stone, tools, you have different periods that  
03:06:32 5 were identified. And now perhaps the beads will  
03:06:38 6 have -- can be broken down into different  
03:06:40 7 assemblage types, based on their scientific profile  
03:06:46 8 or chemical profile.

03:06:49 9 Q. So when you say:

03:06:50 10 "An assemblage is dated by  
03:06:52 11 looking at the dates and range dates  
03:06:53 12 of all the objects within the same  
03:06:55 13 soil matrix, and the latest dateable  
03:06:58 14 material dates the entire assemblage  
03:07:00 15 as a deposit [...]"

03:07:02 16 You're not suggesting that of the beads  
03:07:04 17 as a whole found at the River Mouth Speaks?

03:07:06 18 A. No, because we have no  
03:07:09 19 stratigraphic deposits. So we're not dealing with  
03:07:13 20 the latest dateable scenario. We're looking at all  
03:07:17 21 of the objects that essentially have to essentially  
03:07:21 22 be judged on their own merits.

03:07:22 23 Q. I guess what I'm getting at is  
03:07:24 24 you're not suggesting they were all deposited at  
03:07:27 25 the same time?

03:07:28 1 A. Oh, no, no. I would suggest quite  
03:07:30 2 the opposite.

03:07:31 3 Q. You would acknowledge this is a  
03:07:32 4 site that has been used over a significant amount  
03:07:35 5 of time. This is what you would call a  
03:07:37 6 multi-component site, right?

03:07:38 7 A. Yes.

03:07:39 8 Q. Thank you. So then I want to take  
03:07:43 9 you to page 16 of your report. So at 1.2.2.5,  
03:07:58 10 where you say: "The existing stratigraphy does not  
03:08:06 11 support continuous occupation?"

03:08:07 12 Would you agree this statement is  
03:08:09 13 slightly misleading -- not slightly, it is  
03:08:12 14 misleading, because stratigraphy is not what is  
03:08:15 15 relied on here?

03:08:15 16 A. So there is no stratigraphy to  
03:08:17 17 support continuous occupation; there is no  
03:08:21 18 stratigraphy.

03:08:21 19 Q. Okay.

03:08:25 20 A. One of the --

03:08:27 21 Q. Sure.

03:08:28 22 A. One of the sort of classic ways  
03:08:30 23 that you use stratigraphy, especially when you're  
03:08:32 24 trying to talk about occupation and length of  
03:08:35 25 duration, is accumulation of deposits.



03:08:38 1 And for a lot of sites, then you key in  
03:08:43 2 the artefact distribution and seriation, and you  
03:08:47 3 can see how, you know, certain types of pottery  
03:08:51 4 extends through different deposits.

03:08:53 5 But here, we don't have stratigraphy,  
03:08:58 6 so all you have are artefact classes that perhaps  
03:09:01 7 may cluster at different times.

03:09:04 8 Q. So to clarify, what you're saying  
03:09:06 9 here is the stratigraphy does not support  
03:09:08 10 continuous occupation, but you're not saying that  
03:09:11 11 there may be other methods, such as bead dating  
03:09:15 12 that could support continuous occupations, the  
03:09:17 13 stratigraphy that doesn't because it's absent?

03:09:19 14 A. That's right.

03:09:21 15 Q. Gotch ya'.

03:09:23 16 This is perhaps a small point but I  
03:09:25 17 also just wanted to clarify, I believe this morning  
03:09:27 18 in your chief you spoke a little bit about  
03:09:31 19 continuous occupation versus intermittent  
03:09:35 20 occupation?

03:09:36 21 A. Right.

03:09:36 22 Q. And you would agree with me that  
03:09:39 23 you could have continuous intermittent occupation?

03:09:42 24 A. Yes.

03:09:42 25 Q. Sites of this nature, that have

03:09:44 1 been used for centuries, very rarely do we see  
03:09:49 2 continuous as in every day. It's typically more  
03:09:51 3 continuous yet intermittent, correct?

03:09:54 4 A. A site that's seasonally used.

03:09:56 5 Q. Perfect, thank you.

03:09:58 6 I'd like to move to page 17 of your  
03:10:07 7 report. So I'd like to unpack this statement a  
03:10:29 8 little bit.

03:10:35 9 The first part of this paragraph, you  
03:10:38 10 state: "Reoccupation of the site within a  
03:10:40 11 generation cannot be proven because the context for  
03:10:44 12 the beads are not sealed."

03:10:46 13 So we just discussed how the database  
03:10:49 14 works. And you'd agree with me that you're going  
03:10:52 15 to use the database to date these sites, that in  
03:10:55 16 order to compare an assemblage against another,  
03:10:57 17 there doesn't need to be a sealed context?

03:11:02 18 A. This gets to one of the questions  
03:11:04 19 of like assemblages. Now if we're comparing a site  
03:11:10 20 that has no stratigraphy, has no historical  
03:11:13 21 testimonia to cement a date of or either one  
03:11:20 22 occupation or a series of occupations, any sort of  
03:11:23 23 literary or historical testimony to sort of  
03:11:27 24 essentially refine some dates, then essentially  
03:11:30 25 you're comparing this assemblage to a very

03:11:33 1 different assemblage where you do have all of these  
03:11:37 2 other testimonia.

03:11:39 3 And so I don't think you can be  
03:11:42 4 definitive about the actual deposition date when  
03:11:47 5 you don't have stratigraphy and don't have other  
03:11:50 6 forms of trying to refine the period of use.

03:11:56 7 Q. But again, Ms. Morden, the way the  
03:11:59 8 database works is you are comparing assemblage to  
03:12:02 9 assemblage. You're comparing beads that have a  
03:12:05 10 particular composition and you're looking at a  
03:12:07 11 database and finding where are those beads have the  
03:12:10 12 exact same chemical composition, where else are  
03:12:12 13 they found? You're comparing apples to apples?

03:12:15 14 A. I would argue no. Sites have  
03:12:17 15 different kinds of functions, sites have different  
03:12:21 16 histories, sites have different geographic  
03:12:23 17 locations.

03:12:24 18 And I think we'll have to agree to  
03:12:28 19 disagree. Because I do think there are other  
03:12:31 20 variables that are important too, when comparing  
03:12:33 21 sites.

03:12:33 22 Q. Well, perhaps we can -- I will be  
03:12:36 23 taking you to the results of the bead database  
03:12:39 24 testing later and perhaps you can explain to me how  
03:12:42 25 it is that you don't see similar beads being

03:12:47 1 compared to similar beads. Because I'm afraid I'm  
03:12:50 2 not following you on this. But we'll come back to  
03:12:53 3 that in a second?

03:12:54 4 A. I'm not arguing similar beads --  
03:12:57 5 they have the same chemical composition. I'm  
03:13:00 6 talking about the accidents of deposition, that you  
03:13:03 7 can have the same object that perhaps, you know,  
03:13:07 8 beads from the same batch that were manufactured at  
03:13:10 9 the same time, can be transported to the New World  
03:13:14 10 At the same time.

03:13:15 11 But then once they get to the New  
03:13:17 12 World, they can have a very different history, life  
03:13:20 13 history, before they're deposited in different  
03:13:23 14 sites.

03:13:23 15 Q. Sure. But it --

03:13:25 16 A. So I think that that does have an  
03:13:28 17 impact on how precise that one can talk about  
03:13:31 18 deposition date especially talking about a site  
03:13:34 19 like, when comparing the database to a site like  
03:13:40 20 River Mouth Speaks, where you don't have  
03:13:41 21 stratigraphy and you don't have other forms of  
03:13:43 22 dating.

03:13:43 23 Q. What I'm trying to get you, to see  
03:13:46 24 if you'll agree with me, Ms. Morden, the way the  
03:13:48 25 database works is you have beads, you figure out

03:13:52 1 their chemical composition?

03:13:54 2 A. Yes.

03:13:54 3 Q. And then you look at the database  
03:13:55 4 to find out if there are other sites that have  
03:13:58 5 those same beads. You don't look at whether they  
03:14:03 6 come from sealed deposits or not. Would you agree  
03:14:05 7 with me on that? It's not what you look at when  
03:14:06 8 you're looking at the database?

03:14:09 9 A. Well, you were talking about sites  
03:14:11 10 where you have definitive dating. That  
03:14:18 11 differentiates the sites right there.

03:14:19 12 Q. When you're looking to find --

03:14:21 13 A. I understand, I would disagree  
03:14:24 14 that not always are you going to be able to date  
03:14:28 15 them, but there are other variables that will need  
03:14:31 16 to be taken into consideration.

03:14:32 17 Q. So, what you're saying is --

03:14:35 18 A. It's a possibility but it's not  
03:14:37 19 definitive.

03:14:38 20 Q. If there was a bead, as there was  
03:14:41 21 at River Mouth Speaks, that came from a sealed  
03:14:44 22 deposit; do you think that you would --

03:14:46 23 A. There wasn't a --

03:14:48 24 Q. There was one bead found in a  
03:14:51 25 sealed deposit. You've acknowledged that in your

03:14:53 1 report?

03:14:53 2 A. The dog burial.

03:14:55 3 Q. Yes, that was the one sealed  
03:14:57 4 deposit?

03:14:57 5 A. It wasn't sealed; was it? I don't  
03:15:01 6 think so.

03:15:01 7 Q. It was.

03:15:15 8 A. It was found associated --

03:15:17 9 THE COURT: You have to wait until  
03:15:20 10 counsel asks you a question. She's looking  
03:15:24 11 something up at the moment.

03:15:29 12 MS. PELLETIER: I apologize, just give  
03:15:31 13 me a moment.

03:15:32 14 BY MS. PELLETIER:

03:15:52 15 Q. So if you can go to page 16 of  
03:15:55 16 Ms. Morden's report. At the top of the page,  
03:16:08 17 Section 1.2.2.2. "What is the stratigraphy of the  
03:16:09 18 site? Are there sealed deposits"?

03:16:12 19 You say:

03:16:12 20 "Much of the site is comprised  
03:16:14 21 of deposits which are described as  
03:16:16 22 'redeposited fills'. There are some  
03:16:19 23 sections of the site where there are  
03:16:21 24 undisturbed deposits and features  
03:16:24 25 like animal burials and harvesting

03:16:26 1 territories. Only one glass bead  
03:16:26 2 was found in such a deposit, an  
03:16:28 3 antimony white glass bead."

03:16:29 4 A. But that's not a sealed deposit.

03:16:30 5 Q. If there was one sealed deposit.  
03:16:33 6 I'll ask you to assume. Would that change the way  
03:16:36 7 in which you would use the database?

03:16:38 8 A. No, because it's essentially one  
03:16:43 9 deposit floating without any stratigraphic  
03:16:46 10 controls.

03:16:46 11 Q. If there was more than one bead  
03:16:51 12 and there were stratigraphic controls, if you had  
03:16:54 13 an assemblage -- if there was stratigraphy that  
03:16:56 14 could be relied on at River Mouth Speaks, and you  
03:16:59 15 took all the beads out of one layer, and you used  
03:17:02 16 them in the database, would you treat them any  
03:17:04 17 differently because they came from what you are  
03:17:07 18 calling a sealed deposit?

03:17:08 19 A. It would have more -- it would be  
03:17:14 20 -- one would be able to be a little more  
03:17:17 21 definitive.

03:17:17 22 Q. How would you use them differently  
03:17:19 23 in the database when you pluck in their chemical  
03:17:24 24 composition and press search and you're looking for  
03:17:26 25 all the other sites, is there a field that you hit

03:17:29 1 that says "Sealed Deposits"? How would this be  
03:17:32 2 different?

03:17:32 3 A. No, one has to -- because when  
03:17:34 4 it's dealing with, for instance, when one is  
03:17:37 5 testing against the database, one is dealing with a  
03:17:39 6 material that you are comparing to the database.  
03:17:42 7 So you understand the stratigraphy, you understand  
03:17:45 8 the deposits as found at that particular site. So  
03:17:48 9 that's what you're taking into consideration as  
03:17:51 10 well.

03:17:51 11 You know, how one is going to be  
03:17:53 12 treating -- you know, how definitive can you be? I  
03:17:58 13 think that, yes, the more controls on the  
03:18:02 14 archeological record, the more definitive one can  
03:18:06 15 be. It's a matter of gradation, reliability.

03:18:12 16 Q. Perhaps your position Ms. Morden  
03:18:15 17 that if you had stratigraphy you wouldn't need to  
03:18:17 18 use the database?

03:18:18 19 A. Yes, of course, for sure.

03:18:19 20 Q. What I'm suggesting to you is,  
03:18:21 21 that's not the situation we have. And so you use  
03:18:23 22 the database, and when you use the database it  
03:18:25 23 doesn't matter whether there's been stratigraphy or  
03:18:28 24 sealed deposits, you treat all the beads the same.  
03:18:31 25 It's about their chemical compositions and where



03:18:33 1 else those beads with similar compositions have  
03:18:36 2 been found?

03:18:37 3 A. Yes, but it doesn't necessarily  
03:18:38 4 mean -- I mean, there's a range of dates for some  
03:18:41 5 of these sites. So it's not as if there's only one  
03:18:44 6 date for, you know, some of the comparanda sites.  
03:18:50 7 So we're not dealing with absolutes here.

03:18:52 8 What I'm saying is, yes, there's  
03:18:54 9 degrees of reliability and the more data you have,  
03:18:57 10 the more reliable the inferences can be.

03:19:00 11 Q. Sure. But again, you've  
03:19:01 12 acknowledged that stratigraphy is not something  
03:19:04 13 that is typically relied on in Ontario because we  
03:19:06 14 don't have the same soil composition as in the  
03:19:10 15 Mediterranean or in Europe. So that's a luxury we  
03:19:15 16 simply don't have here?

03:19:15 17 A. Okay.

03:19:16 18 MS. PELLETIER: Your Honour, I'm about  
03:19:17 19 to move on to -- actually same topic but different  
03:19:20 20 sub topic; would you like to take a break?

03:19:24 21 THE COURT: Is that the same as asking  
03:19:26 22 for the afternoon break?

03:19:27 23 MS. PELLETIER: I believe we break at  
03:19:29 24 3:15?

03:19:30 25 THE COURT: We haven't been especially

03:19:33 1 normalized in this area. Are you asking for the --

03:19:37 2 MS. PELLETIER: No, I'm fine to keep  
03:19:39 3 going.

03:19:39 4 THE COURT: Let's go to 3:30 then.

03:19:42 5 MS. PELLETIER: Okay.

03:19:43 6 BY MS. PELLETIER:

03:19:45 7 Q. Perhaps we can go back to page 17.  
03:19:48 8 We got slightly sidetracked. So this is the  
03:19:51 9 paragraph, Ms. Morden, that we've highlighted in  
03:19:54 10 the green box. One of the things that you've noted  
03:20:02 11 is the 100-year gap might be narrowed to less than  
03:20:08 12 a generation if the dates of the beads could be  
03:20:13 13 refined?

03:20:13 14 A. Yeah.

03:20:14 15 Q. And I believe this morning in your  
03:20:21 16 examination in-chief you acknowledged the  
03:20:25 17 significance of that, and I believe you said that  
03:20:29 18 this could mean -- and tell me if I'm misquoting  
03:20:32 19 you, but I'll paraphrase -- that if you could  
03:20:35 20 narrow that gap you might be looking at one  
03:20:37 21 generation and you might be looking at, if you said  
03:20:40 22 --

03:20:42 23 A. Living memory.

03:20:43 24 Q. -- living memory. Neighbors on  
03:20:46 25 Manitoulin coming, neighbors from Michigan coming?

03:20:49 1 You'd agree it could also be the same people?

03:20:53 2 MS. PELLETIER: Say "yes" or "no" for  
03:20:55 3 the record.

03:20:56 4 THE WITNESS: Sorry, yes.

03:20:58 5 MS. PELLETIER: Thank you.

03:20:59 6 BY MS. PELLETIER:

03:20:59 7 Q. So, I'd like to understand a  
03:21:01 8 little bit more about where you get this 100-year  
03:21:05 9 gap from. I'm assuming the beginning of the  
03:21:09 10 supposed gap is the date of dispersal?

03:21:12 11 A. Yes.

03:21:12 12 Q. 1649, 1650?

03:21:16 13 A. (Witness nods.)

03:21:17 14 Q. Yes?

03:21:18 15 A. That is correct.

03:21:18 16 Q. Are you getting the end date which  
03:21:21 17 if it's a hundred-year gap it would be around 1750  
03:21:24 18 are you getting this from the conclusions of Dr.  
03:21:27 19 Fitzgerald from his River Mouth Speaks report?

03:21:31 20 A. That was one place.

03:21:33 21 Q. Okay. Was there another place?

03:21:36 22 A. No, I think that's probably --

03:21:38 23 Q. Okay. So you'd agree with me,  
03:21:41 24 though, that Dr. Fitzgerald and just kind of  
03:21:44 25 eyeballing the beads, assigned them to, he said, I

03:21:47 1 think that I am -- these beads resemble beads from  
03:21:50 2 other sites, that's where that Table 2 that we  
03:21:53 3 looked at earlier came from.

03:21:55 4 And then he says that these dates, or  
03:21:57 5 these sites that he thinks that the beads at River  
03:22:00 6 Mouth Speaks are similar to, were from sites that  
03:22:03 7 date to the middle decades of the 18th centuries,  
03:22:06 8 which is where you're getting your 1750 date from,  
03:22:10 9 yes?

03:22:10 10 A. Yes.

03:22:13 11 MR. FELICIAN: Your Honour, I'm  
03:22:14 12 concerned of the multi-faceted nature of some of  
03:22:16 13 the questions. So when the witness is asked at the  
03:22:18 14 end, "Do you agree?" I'm left, and I'm sure the  
03:22:21 15 witness is, too, what it is she's being asked to  
03:22:24 16 agree to.

03:22:25 17 And there's a point at which -- I  
03:22:27 18 appreciate it's cross-examination, but there's a  
03:22:29 19 point at which the question has to be narrow enough  
03:22:33 20 for the answer to have some meaning.

03:22:35 21 MS. PELLETIER: I'll be happy to break  
03:22:37 22 it down, Your Honour.

03:22:38 23 THE COURT: Well, Mr. Feliciant,  
03:22:43 24 without necessarily disagreeing with you, Ms.  
03:22:47 25 Pelletier's questions are a lot shorter than some

03:22:50 1 others I've heard in this trial.

03:22:52 2 This is an expert witness and I expect  
03:22:54 3 an expert witness to speak up if she cannot follow  
03:22:58 4 and answer the question.

03:22:59 5 Having said that, it would obviously be  
03:23:03 6 helpful if they weren't compounded and if that's  
03:23:05 7 not something you're doing to get where you're  
03:23:08 8 going, and you've offered to keep that in mind,  
03:23:11 9 that would be helpful.

03:23:12 10 Now that we have stopped for a couple  
03:23:14 11 of minutes, we might as well stay stopped and have  
03:23:17 12 the afternoon break and the same restrictions,  
03:23:20 13 madam, apply at that time. All right? 20 minutes.

03:23:24 14 -- RECESS TAKEN AT 3:23 --

03:44:56 15 -- UPON RESUMING AT 3:46 --

03:44:56 16 THE COURT: Please go ahead.

03:44:58 17 MS. PELLETIER: Thank you, Your Honour.

03:44:59 18 BY MS. PELLETIER:

03:45:01 19 Q. Ms. Morden, before the break we  
03:45:02 20 were talking about the passage we have up on the  
03:45:05 21 screen from your report. And specifically, the  
03:45:08 22 reference to the 100-year gap.

03:45:11 23 And just to recap, I believe we  
03:45:14 24 confirmed that the beginning of the gap, was 1649  
03:45:18 25 to 1650, which is the beginning of the dispersal?

03:45:22 1 A. Yes.

03:45:23 2 Q. And that you the reason you  
03:45:25 3 thought there was a 100-year gap is that Dr.  
03:45:32 4 William Fitzgerald in the River Mouth Speaks  
03:45:33 5 archaeology report draws the conclusion that most  
03:45:38 6 of the beads were deposited in the middle decades  
03:45:41 7 of the 18th century?

03:45:42 8 A. Yes.

03:45:42 9 Q. You would also agree with me,  
03:45:47 10 however, Dr. Fitzgerald pointed out further  
03:45:51 11 analysis of the beads' chemical composition could  
03:45:54 12 provide more precise dates?

03:45:56 13 A. Yes.

03:45:56 14 Q. And that's in fact the analysis  
03:45:58 15 that was completed and that resulted in the Glass  
03:46:03 16 Bead report?

03:46:03 17 A. Yes.

03:46:04 18 Q. Great. So I'd like to look at the  
03:46:06 19 results of that Glass Bead analysis. I want to  
03:46:11 20 bring you to a document that we entered as an  
03:46:13 21 exhibit during Dr. Williamson's testimony, Exhibit  
03:46:18 22 4250, which is a document created by Dr. Williamson  
03:46:20 23 wherein he summarizes the results of the bead  
03:46:24 24 analysis.

03:46:24 25 So I'll give you a moment to review

03:46:28 1 that, Ms. Morden, and you can let us know when  
03:46:31 2 you'd like us to scroll down?

03:46:33 3 A. (Witness reviews document).

03:46:35 4 Yes, (Witness reviews document).

03:47:07 5 Yes.

03:47:28 6 Q. Would you agree with me, Ms.  
03:47:30 7 Morden, that many of the beads found at River Mouth  
03:47:33 8 Speaks are consistent with sites dated -- with date  
03:47:36 9 ranges that fall within 1650 and 1750?

03:47:41 10 A. Yes.

03:47:43 11 Q. And in fact, we see here that many  
03:47:45 12 of the beads collected at River Mouth Speaks date  
03:47:51 13 tightly with sites from the later half of the 17th  
03:47:54 14 century?

03:47:54 15 A. Yes.

03:47:54 16 Q. And this would suggest, would it  
03:47:57 17 not, that the use of River Mouth Speaks was resumed  
03:48:00 18 within one generation from the dispersal?

03:48:02 19 A. It could be suggestive of that,  
03:48:05 20 yes.

03:48:05 21 Q. I'd like to move to page 19 -- go  
03:48:10 22 back to your report.

03:48:12 23 Page 19. The first passage that is in  
03:48:34 24 the green box, you've stated here that there is no  
03:48:38 25 scholarly debate that there is a long evolving

1 culture occupying the land during this period?

2 A. That's correct.

3 Q. And by "this period", I'm assuming  
4 you are referring to the pre-Contact period?

5 A. Yes, Paleo through Late Woodland  
6 pre-contact.

7 Q. Thank you.

8 And you are aware of the extensive  
9 volume of artefacts that have been retrieved from  
10 the site?

11 A. Yes.

12 Q. For example, you don't dispute  
13 that over 11,000 artefacts were found at the  
14 partial excavation of River Mouth Speaks?

15 A. Yes.

16 Q. Now there's evidence of  
17 occupation, I believe you said Paleo --

18 A. Oh, that was -- the Paleo, the  
19 date range that I gave for Paleo was for the SONTL.

20 Q. Sorry. To clarify, I want to  
21 speak about River Mouth Speaks specifically?

22 A. Yes.

23 Q. So would you agree with me that  
24 there is evidence of occupation as early as Late  
25 Archaic?



03:49:42 1 A. Yes.

03:49:43 2 Q. So that would be beginning roughly  
03:49:48 3 in 2500 BC?

03:49:51 4 A. Yes.

03:49:52 5 Q. And there's substantial evidence  
03:49:55 6 of occupation in the Middle Woodland and Late  
03:49:58 7 Woodland periods?

03:49:59 8 A. Yes.

03:49:59 9 Q. So that's 300 BC to about 1700 AD?

03:50:04 10 A. Yes.

03:50:04 11 Q. And you don't dispute that there  
03:50:06 12 is also evidence of occupation dating from the late  
03:50:11 13 17th through mid-19th century?

03:50:13 14 A. When exactly -- there's a high  
03:50:20 15 probability that there is pre-1700 occupation, but  
03:50:25 16 it's not definitive. But there is later  
03:50:28 17 occupation, for sure.

03:50:29 18 Q. The bead dating results that we  
03:50:32 19 looked at would suggest that there is pre-1700  
03:50:35 20 occupation?

03:50:36 21 A. It's a suggestion, yes.

03:50:37 22 Q. I would like to move to page 18 of  
03:50:49 23 your report. Here you made a comment about animal  
03:51:06 24 burials. You've stated that in the context of the  
03:51:08 25 long history of the Aboriginal peoples of the

03:51:26 1 SONTL, this is late practice and it is interesting  
03:51:15 2 that such a crucial cultural marker developed so  
03:51:18 3 late.

03:51:19 4 So I'd like to pull up Dr. Williamson's  
03:51:22 5 transcript where he discusses this?

03:51:30 6 A. Yes.

03:51:31 7 Q. And it's from day 43, which is  
03:51:34 8 September 16, 2019. Beginning at page 5290.  
03:51:52 9 Perhaps we can scroll up to see the question on the  
03:51:56 10 previous page, please. Scroll up a bit more as  
03:52:00 11 well so we can see the context.

03:52:12 12 So you see, Ms. Morden, we're  
03:52:16 13 discussing dog burial at the Frank's Bay site?

03:52:20 14 A. Yes.

03:52:21 15 Q. And the question is: "And how far  
03:52:23 16 back is there evidence of this practice?" You've  
03:52:27 17 said that it is a late practice. And then Dr.  
03:52:29 18 Williamson goes on. Scroll to the next page,  
03:52:31 19 please. I'll give you a moment to review that.

03:52:53 20 A. (Witness reviews document).

03:52:55 21 Yes.

03:52:58 22 Q. Before I scroll down, I wonder if  
03:53:00 23 you'd agree with me that, I believe there's --  
03:53:04 24 suggest there is an error in the transcript, which  
03:53:06 25 happens at times. When in the second paragraph Dr.

03:53:08 1 Williamson says, in the SONTL there's a dog at the  
03:53:11 2 -- at the Donaldson site, so you can date it back  
03:53:15 3 to at least 8500; you'd agree that doesn't make  
03:53:18 4 sense?

03:53:19 5 A. No, it doesn't.

03:53:19 6 Q. And what he actually said was  
03:53:26 7 "AD 500"?

03:53:26 8 THE COURT: Now, are you testifying  
03:53:27 9 about that?

03:53:27 10 MS. PELLETIER: I'm asking --

03:53:28 11 THE COURT: This witness cannot testify  
03:53:30 12 about what Dr. Williamson said in this trial. You  
03:53:34 13 can ask her to make an assumption about it.

03:53:36 14 MS. PELLETIER: Okay. I'd like to ask  
03:53:40 15 if the passage makes more sense read as "AD 500".

03:53:44 16 THE COURT: Sure.

03:53:44 17 THE WITNESS: It does.

03:53:45 18 BY MS. PELLETIER:

03:53:45 19 Q. And are you aware of dog burials  
03:53:48 20 found at the Donaldson site that date to AD 500?

03:53:53 21 A. Yes, also at the Frank's Bay site.

03:53:56 22 Q. Donaldson site being a site that  
03:53:58 23 is on the SONTL?

03:53:59 24 A. Yes.

03:54:00 25 Q. Thank you.

03:54:02 1 A. But if you're looking at the full  
03:54:04 2 history of the SONTL, you're going from the Paleo  
03:54:08 3 period. You're dealing with a period of  
03:54:10 4 12,000 years. So you're dealing with the last  
03:54:14 5 thousand years of a very long history that you're  
03:54:18 6 dealing with dog burials. The point that I was  
03:54:21 7 making is that it's not -- there's no evidence for  
03:54:25 8 dog burials right from the very beginning.

03:54:27 9 Q. Would you agree with Dr.  
03:54:29 10 Williamson's statement that bone will only survive  
03:54:32 11 after about 4,000 to 5,000 years?

03:54:34 12 A. That's still 3,000 to 4,000 years  
03:54:36 13 that we don't really have secure evidence for dog  
03:54:40 14 burials. When you might expect the bone to  
03:54:45 15 survive.

03:54:46 16 Q. The passage we looked at from your  
03:54:48 17 report, and perhaps I'll bring it back up, which is  
03:54:52 18 at page 18. Where you say:

03:54:55 19 "Animal burials have been  
03:54:57 20 attested at Anishinaabe sites from  
03:54:59 21 the 13th and 14th century."

03:55:01 22 A. Yes.

03:55:02 23 Q. And, "This practice continued  
03:55:04 24 through the Contact period and up to the 20th  
03:55:07 25 century"?

03:55:07 1 A. Yes.

03:55:08 2 Q. And you make the comment that it  
03:55:09 3 is a late practice. Would you agree that 500 AD is  
03:55:14 4 before the 13th century?

03:55:16 5 A. Yes, I would.

03:55:17 6 Q. I'd like to move now to page 7 of  
03:55:29 7 your report.

03:55:31 8 This last paragraph, the fourth line  
03:56:01 9 up, you begin "Williamson abandons", you say:

03:56:07 10 "Williamson abandons full  
03:56:09 11 reliance on the attempt to prove the  
03:56:11 12 continuous occupation of the land  
03:56:12 13 from pre-contact, through contact  
03:56:14 14 and the dispersal in 1650. Instead  
03:56:17 15 he posits the theory of continuity  
03:56:19 16 through the use of 'sacred sites and  
03:56:22 17 landscapes', arguing that using the  
03:56:25 18 same geographic space in the same  
03:56:27 19 way demonstrates continuity of  
03:56:29 20 culture, if not the exact same  
03:56:31 21 people."

03:56:33 22 I'd like to ask you some questions  
03:56:35 23 about that. So I would agree with you that  
03:56:38 24 Williamson, Dr. Williamson does present a theory of  
03:56:41 25 continuity of culture.

03:56:43 1                   However, I'd like to point out passages  
03:56:45 2                   from his report that I believe do not accord with  
03:56:48 3                   him abandoning the argument of continuous  
03:56:51 4                   occupation as you've suggested. So I'd like to  
03:56:54 5                   pull up Dr. Williamson's supplementary report,  
03:56:58 6                   which is Exhibit 4241, at page 1.

03:57:15 7                   I'll give you a moment to read the  
03:57:31 8                   paragraph in the green box.

03:57:40 9                   THE WITNESS: (Witness reviews  
03:57:40 10                  document).

03:57:58 11                  Yes, thank you.

03:57:59 12                  BY MS. PELLETIER:

03:57:59 13                  Q. So specifically, Dr. Williamson  
03:58:02 14                  here states that:

03:58:03 15                               "A few of these sites also show  
03:58:05 16                               extensive reoccupation over  
03:58:07 17                               centuries, even millennia, which  
03:58:09 18                               evidence continuity in the people  
03:58:12 19                               occupying the territory."

03:58:13 20                  You would agree that Dr. Williamson's  
03:58:15 21                  analysis here is about actual continuous occupation  
03:58:18 22                  of the SONTL?

03:58:21 23                  A. Prior to the dispersal.

03:58:32 24                  Q. Okay. I'd like to point to a  
03:58:54 25                  passage in Dr. Williamson's report where -- sorry,

1 let me rephrase that or ask a different question.

2 Are you suggesting that Dr. Williamson  
3 is not saying that there's continuous occupation  
4 post-dispersal as well; is that not the conclusion  
5 of the bead report?

6 A. That's how he interprets the bead  
7 report.

8 Q. And would you agree with me that  
9 Dr. Williamson in fact argues for the in-situ  
10 development of the Anishinaabe on the SONTL?

11 A. Yes. But prior to dispersal.

12 Q. And that the bead report, in fact,  
13 Dr. Williamson's conclusion is that that is  
14 evidence of actual continuous occupation, and not  
15 just cultural continuity, so to speak?

16 A. But there is a -- he's still  
17 posited a gap.

18 Q. Ms. Morden, I suggest to you that  
19 the point of the bead report is to narrow that gap?

20 A. "Narrow" the gap is the keyword, I  
21 think. "Narrow". Not dispensing with the gap  
22 altogether.

23 Q. Narrowing the gap to one  
24 generation?

25 A. Yeah.

04:00:18 1 Q. Which would suggest that it is the  
04:00:20 2 same people that are occupying the SONTL?

04:00:23 3 A. Not necessarily. They could be,  
04:00:27 4 they could be related to the same group, but  
04:00:29 5 there's no direct evidence for the exact same  
04:00:33 6 people.

04:00:34 7 But that's really not my expertise, as  
04:00:41 8 to which people came back.

04:00:43 9 Q. Perhaps we can turn to page 6 of  
04:00:45 10 Dr. Williamson's supplementary report. Again here,  
04:00:57 11 Dr. Williamson says:

04:00:58 12 "The following sections examine  
04:01:00 13 the archeological record for the  
04:01:02 14 in-situ development of the Odawa in  
04:01:06 15 the SONTL and use of some sites over  
04:01:08 16 centuries, if not Millenia,  
04:01:11 17 including ceremonial use in the 19th  
04:01:14 18 century."

04:01:15 19 So here Dr. Williamson is talking about  
04:01:17 20 the continuous use of the Odawa, the actual  
04:01:21 21 occupation of the Odawa.

04:01:26 22 A. Well, the in-situ development of  
04:01:28 23 the Odawa, and the use through long period of time  
04:01:37 24 as witnessed by the development of artefact classes  
04:01:40 25 that seem to suggest in-situ development. But



04:01:46 1 again -- and he demonstrates ceremonial use in the  
04:01:51 2 19th century, for sure. But again there is a  
04:01:57 3 crucial, perhaps, gap.

04:02:02 4 BY MS. PELLETIER:

04:02:02 5 Q. I understand that you believe  
04:02:03 6 there may be a crucial gap, but what I'm asking is,  
04:02:06 7 would you not agree that -- I'm trying to point out  
04:02:10 8 passages in Dr. Williamson's report?

04:02:11 9 A. I would agree that he thinks there  
04:02:13 10 is for sure.

04:02:14 11 Q. That he thinks there is actual  
04:02:16 12 occupation?

04:02:16 13 A. I think he thinks there is  
04:02:18 14 cultural continuity.

04:02:20 15 Q. So I'm trying to see if you will  
04:02:22 16 agree with me that he has not in fact abandoned his  
04:02:25 17 argument of actual occupation, particularly in  
04:02:29 18 light of the results of the bead report. He's not  
04:02:32 19 abandoned that in favour of the argument of  
04:02:35 20 cultural continuity? He's arguing both?

04:02:37 21 A. I will withdraw the use of the  
04:02:40 22 term "abandon".

04:02:41 23 Q. Thank you.

04:02:50 24 MS. PELLETIER: Those are my questions,  
04:02:52 25 Your Honour. Thank you, Ms. Morden.

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THE COURT: Re-examination?

MS. COLIZZA: No, Your Honour.

THE COURT: Ms. Morden, thank you very much for coming to assist us in this matter. You can step down.

(Margaret Morden was excused from the proceedings).

THE COURT: Counsel, it seems like my silver lining on my ruling of Dr. von Gernet is that you all have an extended holiday break. It wasn't what I had in mind, but it is for an important reason that implies and means that he cannot be called early.

Before we break, I did want to get an update from counsel on a couple of scheduling matters.

The Friday has now come and gone, and I want to hear that everyone is working productively toward the deadline this Friday upcoming for all of the materials for the January 8th motion. If there had been a significant hiccup, I expect you all would have figured that out. Is that correct, starting with Plaintiffs' counsel?

MS. PELLETIER: Yes, on time, Your Honour.

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THE COURT: Mr. Beggs.

MR. BEGGS: Yes, Your Honour.

THE COURT: Mr. Feliciant.

MR. FELICIAN: Yes, on time, Your Honour.

THE COURT: You remember in addition to e-mail you're going to file paper copies at 361. All right.

I've said it twice already, but I'm going to say it one more time. That I hope we don't need to, but when I read those materials, they will include not only your various positions on that issue, but how you envisage Phase 1B would go, and when and for how long, all those questions I asked you before this trial commenced.

Obviously, they may be largely estimates, all right? But when I asked you those questions before the trial commenced no one had answers to any of them for a good reason because that was a fairly recent development in the pretrial steps.

But I am expecting everyone to say what they say it would look like and when and for how long, all right?

Everyone seems to be looking completely

04:05:14 1 calm about that and they realize that because it's  
04:05:16 2 the third time I've raised it; is that about right?  
04:05:19 3 Yes, okay.

04:05:20 4 There was one small loose end that it  
04:05:33 5 isn't time sensitive -- well, there's two, really.  
04:05:36 6 First of all, there's Canada's read-ins.  
04:05:38 7 Apparently, there were going to be some. Mr.  
04:05:40 8 Beggs, how is that coming along?

04:05:42 9 MR. BEGGS: Yes, we will be sending the  
04:05:45 10 list of read-ins to counsel this week prior to the  
04:05:49 11 Friday.

04:05:50 12 THE COURT: All right. I think I  
04:05:52 13 probably previously said I don't ordinarily have  
04:05:55 14 them read, so when they're ready they should be  
04:06:00 15 prepared in a document form that's been previewed  
04:06:04 16 by all counsel to make sure there's no objections.  
04:06:07 17 Can that be ready for the 8th of January, Mr. Beggs?

04:06:10 18 I guess that depends on Plaintiffs'  
04:06:13 19 counsel. Why don't we say the 10th.

04:06:15 20 MS. PELLETIER: That's fine, Your Honour.

04:06:17 21 THE COURT: That means you have to get  
04:06:18 22 back to Mr. Beggs and so forth.

04:06:22 23 Is there anything else anyone wishes to  
04:06:27 24 raise before we break? Everyone looks placid. As  
04:06:34 25 of now, I don't see any need for the trial

1 conference this Friday upcoming. Rest assured, if  
2 something comes up over the course of the week, I  
3 will require it, all right. We can do it by  
4 telephone. But if you are able to continue working  
5 productively toward that deadline there won't be a  
6 need for it.

7 I wish all of you the best for the  
8 holiday season, whatever that is for you and your  
9 family. We will resume in court on January the 8th.

10  
11 -- Court adjourned at 4:08 p.m.  
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REPORTER'S CERTIFICATE

I, JUDITH M. CAPUTO, RPR, CSR, CRR,  
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  
by the court registrar;

That the testimony of the witness and  
all objections made at the time of the examination  
were recorded stenographically by me (Note: Not all  
quotes have been verified against source document,  
but transcribed as read into the record);

That the foregoing is a Certified  
Transcript of my shorthand notes so taken.

Dated this 30th day of December, 2019.



NEESONS, A VERITEXT COMPANY

PER: JUDITH M. CAPUTO, RPR, CSR, CRR

<hr/> <b>\$</b> <hr/>	<b>13th</b> 9184:21 9185:4	9069:10 9181:22 9184:18	<b>2000s</b> 9024:10	<b>40,000</b> 9085:22
<b>\$30</b> 9129:25	<b>14</b> 9056:19 9073:5,6,14 9083:22 9085:3, 13,19 9086:15 9087:22 9094:2 9105:10 9136:22 9154:6	<b>1815</b> 9040:25	<b>2004</b> 9031:14 9106:19 9107:19	<b>400</b> 9085:21
<hr/> <b>1</b> <hr/>	<b>1492</b> 9050:4	<b>1845</b> 9041:1	<b>2006</b> 9027:4	<b>4192</b> 9065:5
<b>1</b> 9071:10 9074:15 9076:4, 20 9186:6	<b>1493</b> 9049:20	<b>1860s</b> 9032:8	<b>2009</b> 9030:23	<b>4240</b> 9132:19
<b>1.1.1.5</b> 9125:1	<b>14th</b> 9184:21	<b>1878</b> 9033:14, 19	<b>2013</b> 9025:5 9099:5 9118:14	<b>4241</b> 9186:6
<b>1.2.2.2</b> 9170:17	<b>15</b> 9089:15 9094:5 9159:4	<b>18th</b> 9176:7 9178:7	<b>2015</b> 9043:11	<b>4250</b> 9178:22
<b>1.2.2.4</b> 9153:2	<b>16</b> 9028:3 9043:25 9044:1 9153:1 9164:9 9170:15 9182:8	<b>19</b> 9115:15 9179:21,23	<b>2019</b> 9093:21 9157:10 9182:8	<b>43</b> 9145:16 9182:7
<b>1.2.2.5</b> 9164:9	<b>1600</b> 9146:22	<b>1974</b> 9023:15	<b>20th</b> 9184:24	<b>44</b> 9093:20 9155:20 9157:10,14
<b>10</b> 9087:6 9107:23	<b>1601</b> 9144:3	<b>1977</b> 9023:16 9040:23	<b>2500</b> 9181:3	<b>4451</b> 9019:24, 25 9020:19 9036:18
<b>100</b> 9043:21 9086:6	<b>1610</b> 9142:25 9143:2 9144:3	<b>1982</b> 9022:12 9031:4 9040:3	<b>29</b> 9098:9	<b>4452</b> 9020:14, 15 9071:6 9083:6 9123:17 9135:6 9153:1 9159:2
<b>100-year</b> 9117:1 9174:11 9175:8 9177:22 9178:3	<b>1649</b> 9175:12 9177:24	<b>1983</b> 9039:7	<b>2:15</b> 9122:14 9123:8	<b>4453</b> 9074:4,5
<b>10:13</b> 9018:1	<b>1650</b> 9143:1,3 9175:12 9177:25 9179:9 9185:14	<b>1984</b> 9021:24	<b>2:17</b> 9123:10	<b>4454</b> 9107:16, 17
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<b>11,000</b> 9180:13	<b>17</b> 9093:21 9157:10 9166:6 9174:7	<b>1995</b> 9029:16	<b>3,000</b> 9184:12	<hr/> <b>5</b> <hr/>
<b>11-century</b> 9030:24	<b>1700</b> 9138:15, 18 9181:9	<b>1998</b> 9028:1	<b>30</b> 9086:5	<b>5</b> 9040:2 9041:18 9074:17
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<b>11:35</b> 9082:4	<b>1750</b> 9175:17 9176:8 9179:9	<b>1B</b> 9191:13	<b>300</b> 9181:9	<b>50,000</b> 9085:22
<b>11:58</b> 9082:5	<b>17th</b> 9108:3 9155:21 9157:15 9179:13 9181:13	<hr/> <b>2</b> <hr/>	<b>361</b> 9191:7	<b>500</b> 9183:7,15, 20 9185:3
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