

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

DAY 83 VOL 83
February 12, 2020



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1 Court File No. 94-CQ-50872CM
2 ONTARIO
3 SUPERIOR COURT OF JUSTICE

4 B E T W E E N:

5 THE CHIPPEWAS OF SAUGEEN FIRST NATION, and THE
6 CHIPPEWAS OF NAWASH FIRST NATION
7 Plaintiffs

8 - and -

9 THE ATTORNEY GENERAL OF CANADA,
10 HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO,
11 THE CORPORATION OF THE COUNTY OF GREY, THE
12 CORPORATION OF THE COUNTY OF BRUCE, THE CORPORATION
13 OF THE MUNICIPALITY OF NORTHERN BRUCE PENINSULA,
14 THE CORPORATION OF THE TOWN OF SOUTH BRUCE PENINSULA,
15 THE CORPORATION OF THE TOWN OF SAUGEEN SHORES, and
16 THE CORPORATION OF THE TOWNSHIP OF GEORGIAN BLUFFS
17 Defendants

18 Court File No. 03-CV-261134CM1

19 A N D B E T W E E N:

20 CHIPPEWAS OF NAWASH UNCEDED FIRST NATION and
21 SAUGEEN FIRST NATION

22 Plaintiffs

23 - and -

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

Defendants

26 -----
27 --- This is VOLUME 83/DAY 83 of the TRANSCRIPT of
28 the trial proceedings in the above-noted
29 matter, being held at the Superior Court of
30 Justice, Courtroom 5-1, 330 University Avenue,
31 Toronto, Ontario, on the 12th day of February, 2020.

32 B E F O R E: The Honourable Justice Wendy M.
33 Matheson

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

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& Benjamin Brookwell, Esq., Saugeen First Nation,
& Cathy Guirguis, Esq., and the Chippewas of
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& Michael McCulloch The Attorney General &
& Alexandra Colizza, Esq., of Canada.

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

REPORTED BY: Deana Santedicola, RPR, CSR, CRR

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[REPORTER'S NOTE: Exhibits 4569
through 4701 marked, excluding Exhibit
No. 4574, 4575 and 4576.]

1 -- Upon commencing at 10:08 a.m.

2

3 THE COURT: Please go ahead.

4 MR. FELICIAN: Good morning, Your
5 Honour. Before I call Dr. Reimer, it just came to
6 our attention, just as you were walking in, that
7 the list of documents that are being made exhibits,
8 they jump from 4573 to 4577. So somehow there will
9 be some document numbers that will have no exhibit
10 numbers attached to them, so I'm not sure if that
11 is a serious enough problem to work out before we
12 begin.

13 THE COURT: Mr. Registrar, can I see
14 the list.

15 THE REGISTRAR: Yes, I made a mistake,
16 Your Honour.

17 THE COURT: Oh, there are some missing
18 numbers there?

19 THE REGISTRAR: Yes.

20 THE COURT: How many?

21 THE REGISTRAR: There are four.

22 THE COURT: Four. Okay. Well, I
23 understand there is a very lengthy list of
24 documents that are going on consent to be exhibits,
25 11 pages long. I asked Mr. Registrar to annotate

10:09:12 1 that list with the exhibit numbers so that we would
10:09:14 2 not have to sit for 15 minutes while he read them
10:09:17 3 aloud.

10:09:18 4 Thank you for drawing it to our
10:09:20 5 attention that there were four exhibit numbers
10:09:23 6 unpopulated. We can populate them this morning
10:09:26 7 because, of course, we'll be soon marking
10:09:30 8 Dr. Reimer's many reports, so Mr. Registrar will
10:09:36 9 use up those numbers in the ordinary way.

10:09:40 10 MR. FELICIAN: Thank you.

10:09:41 11 THE COURT: What I would like to do is
10:09:42 12 deal with that list right now, if we can.

10:09:45 13 MR. FELICIAN: Yes. Usually we make
10:09:46 14 that a lettered exhibit.

10:09:48 15 THE COURT: Yes. I'm going to ask
10:09:49 16 Mr. Registrar to put on the record the exhibit
10:09:53 17 number range that does apply, and while he is doing
10:09:56 18 that, he'll mention the exceptions in the range,
10:10:00 19 and then we'll mark the list as a lettered exhibit
10:10:03 20 so that it is part of the record of the trial.

10:10:05 21 Whenever you are ready, Mr. Registrar.

10:10:08 22 THE REGISTRAR: The exhibit list is
10:10:09 23 going to be lettered Exhibit T-3.

10:10:13 24 THE COURT: T as in Tom?

10:10:16 25 THE REGISTRAR: T as in Tom.

1 EXHIBIT NO. T-3: Document entitled
2 "Gwen Reimer - Documents to be entered
3 as exhibits on consent".

4 THE REGISTRAR: And the range of the
5 exhibits goes for Exhibit No. 4569 to Exhibit No.
6 4701, except Exhibit No. 4575, 4576, 4577.

7 MR. FELICIAN: No, sorry, it would be
8 4574, 4575 and 4576.

9 THE REGISTRAR: 4576.

10 MR. FELICIAN: That's right.

11 THE REGISTRAR: And the next number is
12 4577.

13 MR. FELICIAN: Which is populated?

14 THE REGISTRAR: Is populated.

15 [REPORTER'S NOTE: Exhibits 4569
16 through 4701 marked, excluding Exhibit
17 No. 4574, 4575 and 4576.]

18 THE COURT: Okay. Just a moment.

19 And Mr. Registrar has provided a number
20 of copies of the annotated list so that counsel can
21 proceed today. Is everybody content with what they
22 have? Yes?

23 All right.

24 All right. Please go ahead.

25 MR. FELICIAN: Ontario would like to

1 Dr. Gwen Reimer to the stand, please.

2 DR. GWEN DIANNE REIMER; AFFIRMED.

3 THE COURT: Now, Dr. Reimer, this is a
4 very big room, and you will see people sitting all
5 the way at the back. And so the microphone in
6 front of you will help somewhat, but I need you to
7 put on your teaching voice because everyone right
8 back to the back row needs to be able to hear you.
9 All right?

10 THE WITNESS: I will do so.

11 THE COURT: Okay. Please go ahead.

12 EXAMINATION IN-CHIEF BY MR. FELICIAN
13 (ON QUALIFICATIONS):

14 Q. Thank you. Good morning,

15 Dr. Reimer.

16 A. Good morning.

17 Q. If we could pull up Dr. Reimer's
18 CV, please. It is SC1720. On the screen in front
19 of you is what appears to be your curriculum vitae.
20 Who prepared that document?

21 A. I did.

22 Q. And that is your CV?

23 A. Yes, it is.

24 Q. Could we make this the next
25 exhibit, please, Your Honour.

10:13:32 1
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10:14:56 25

THE COURT: Mr. Registrar.

THE REGISTRAR: Exhibit No. 4575.

EXHIBIT NO. 4575: Curriculum Vitae of
Dr. Gwen Reimer.

BY MR. FELICIANANT:

Q. Thank you. And at the top, we can
see that you obtained both a master of arts and a
doctor of philosophy in anthropology. Can you
describe generally what the field of anthropology
is?

A. Anthropology generally is the
study of cultures and culture groups, both past and
present. Anthropology is generally considered to
have four main sub-fields.

The study of culture of the past is
archaeology, and archaeology studies sites from
which artifacts are recovered and interpretations
made based on those artifacts.

Another sub-field is social-cultural
anthropology. The main product is ethnology or
ethnography, and it is the study of present
cultures, and that is the sub-field that I
specialized in at the masters and Ph.D. level.

A third sub-field is linguistics, which
is the study of language and how culture is

10:15:01 1 reflected in languages.

10:15:05 2 A fourth sub-field is what is known
10:15:11 3 either as forensic anthropology or physical
10:15:15 4 anthropology, sometimes also biological
10:15:18 5 anthropology, and this most commonly would be known
10:15:22 6 as where theories of human evolution, for example,
10:15:27 7 have developed.

10:15:29 8 Q. Now, you described yourself as
10:15:32 9 focussing on the field of cultural anthropology.
10:15:36 10 What is that?

10:15:36 11 A. Cultural anthropology deals with
10:15:41 12 the cultural and social life ways of particular
10:15:46 13 culture groups. So, for example, my field research
10:15:50 14 was among an Inuit community in what is now
10:15:56 15 Nunavut. There are several sub-fields of
10:16:01 16 social-cultural anthropology, one of which is
10:16:05 17 ethnohistory, which is the study of the
10:16:08 18 intersection of historical documentation and
10:16:13 19 cultural or ethnological studies.

10:16:15 20 Q. And what was the focus of your
10:16:19 21 doctoral work?

10:16:20 22 A. For my doctoral work, I spent a
10:16:23 23 year in the community of Pangnirtung, which is on
10:16:30 24 Baffin Island, and I studied community-based
10:16:32 25 tourism development there. My main interest was in

1 applied anthropology, and so I worked with the
2 hamlet council, the community, and with the
3 government of what was then Northwest Territories
4 to produce an evaluation of a pilot project that
5 had started ten years earlier, and the arrangement
6 was that I was then allowed to use the information
7 I collected through interviews, participant
8 observation, et cetera, as the basis of my doctoral
9 dissertation.

10 Q. And you used the phrase "applied
11 anthropology"?

12 A. Yes.

13 Q. What is applied anthropology?

14 A. Applied anthropology refers to
15 studying topics and issues that are of direct
16 application or relevance to issues being faced by
17 culture groups, by communities. The opposite would
18 be an academic career. I was very much more
19 interested in an applied career.

20 Q. And you also mentioned in your
21 last answer about engaging in participant
22 observation. Have you ever engaged in participant
23 observation in an Anishnawbek community?

24 A. Not to the same extent that I did
25 in Pangnirtung. I have, however, had opportunities

1 to spend some time in Anishnawbek communities

2 conducting interviews. For example, in the late

3 '90s, I did some work with the Mississaugas of New

4 Credit.

5 Q. And how significant is participant
6 observation in a cultural anthropologist's ability
7 to do the work you are doing in a case like this?

8 A. I think it is important to
9 understand what participant observation is, and it
10 is important to be able to locate ethnographies
11 that are based on participant observation of other
12 communities that you have not had an opportunity to
13 observe yourself.

14 So the importance is not that you have
15 actually done participant observation in the
16 community you are studying at the time in an
17 ethnohistory project, for example. The important
18 thing is to understand what it is and to locate
19 ethnographies that have written about that group or
20 groups close to them.

21 Q. So I understand also, if we look
22 to both the professional affiliations, you indicate
23 you are an adjunct research professor, sociology
24 and anthropology, and if we can go to the last page
25 of the CV, please. I believe it is page 9.

10:19:33 1 THE COURT: Does it matter that I have
10:19:34 2 ten pages, Counsel?

10:19:39 3 MR. FELICIAN: I have to check my --

10:19:41 4 THE COURT: Oh, yes, I think the
10:19:42 5 screen --

10:19:44 6 MR. FELICIAN: So it isn't the last
10:19:47 7 page. It is page 9.

10:19:48 8 THE COURT: All right.

10:19:51 9 BY MR. FELICIAN:

10:19:51 10 Q. I am looking at a double-sided
10:19:53 11 sheet, sorry. It is page 9. You will see under
10:19:55 12 "Teaching" a number of items from 1987 to 2000.
10:20:04 13 Can you describe your teaching experience and how
10:20:07 14 it relates to your work in ethnohistory and
10:20:11 15 cultural anthropology.

10:20:13 16 A. I'm sorry, are you referring only
10:20:14 17 to the first bullet, 1999 to 2000, or to --

10:20:21 18 Q. No, just to give a summary of your
10:20:24 19 teaching experience generally and how it relates to
10:20:27 20 your work as a cultural anthropologist and
10:20:30 21 ethnohistorian.

10:20:31 22 A. Okay. From 1993 right through to
10:20:35 23 1999, I was one of the main co-instructors for the
10:20:42 24 Required Methodology Course if one was working
10:20:46 25 toward a degree in anthropology at Carleton

1 University. This was a required course, and so I
2 had the opportunity to not only teach myself but to
3 teach others the intricacies of doing qualitative
4 research, of doing participant observation,
5 interviewing, that sort of thing, and not only how
6 to conduct the research, but then how to analyze
7 and interpret the data as well.

8 Q. Okay. Thank you.

9 A. Could I add something?

10 Q. Yes.

11 A. I was just going to say, in the
12 final year of teaching, I was asked to develop a
13 course, a seminar course for fourth-year students
14 and graduate students at Carleton focussed
15 specifically on ethnohistory, and so I did that.
16 We went to the Archives, et cetera, and that was
17 based mainly on the experience I had acquired so
18 far in doing ethnohistory.

19 Q. Thank you. So could you give us
20 more of a detailed explanation of what ethnohistory
21 is?

22 A. Ethnohistory is a sub-field that
23 developed around the 1950s very much around the
24 issues of land claims and Indigenous rights claims,
25 both in the U.S. and in Canada, where

1 anthropologists were being asked to not only
2 testify to or research cultures as they were at the
3 time but to go back to the past to try and
4 determine traditional territories and those sorts
5 of things.

6 So ethnohistory developed as a
7 sub-discipline where an anthropologist would use
8 their skills as a social-cultural researcher and
9 combine those with historiographic skills, such as
10 going into the archives and looking at documents,
11 and then synthesizing those findings and looking at
12 historical documents from the cultural perspective
13 of the group that was the subject of the research.

14 So essentially it is trying to learn
15 about a cultural group who did not -- who does not
16 have a written history, per se, but there are
17 documents written by others, by outsiders, by
18 traders, by missionaries, by government officials,
19 about those groups and then using those documents
20 to discern what might have been going on in the
21 past and how the interpretations in those documents
22 might also be coloured by the cultural biases of
23 the person writing it, so the trader or the
24 missionary, et cetera.

25 Q. And what experience do you have

1 doing ethnohistorical work?

2 A. Since around 1995 or so, I think I
3 have been asked to conduct ethnohistorical research
4 in about 30 or more projects.

5 Q. And have you ever been qualified
6 as an expert witness before in Court?

7 A. Yes, twice.

8 Q. And do you recall what you were
9 qualified as?

10 A. In the first case, I was qualified
11 as an anthropologist and an ethnohistorian, and in
12 the second case, I think was the same thing, an
13 anthropologist and an ethnohistorian.

14 Q. And have you written any
15 ethnohistorical articles that have been
16 peer-reviewed?

17 A. Yes, I have, three. The first two
18 were on Metis ethnogenesis in Ontario and in
19 Quebec. The first one titled "Doing the
20 Ethnohistory of Metis in Ontario" was published in
21 the journal called Ethnohistory. It is the
22 landmark journal of the discipline as it started to
23 develop, as I said, in and around the 1950s. So
24 that was important to me to have a peer-reviewed
25 article published in that journal.

1 More recently, just in 2019, I had an
2 article published about the early Upper Canada
3 treaties in the journal Ontario History.

4 Q. And if we go to page 7 of your CV,
5 you will see articles from 2019 and 2004. Are
6 those the two you are speaking of?

7 A. Yes.

8 Q. Have you gained any experience
9 through either learning or working in the field of
10 archaeology?

11 A. I have studied archaeology from
12 the undergraduate level at University of Winnipeg,
13 right through to the Ph.D. level at McMaster.

14 Q. And what did that training enable
15 you to do?

16 A. It enabled me to search for and
17 locate, review archaeological monographs, reports,
18 publications to discern majority opinions and
19 conclusions about certain matters, to synthesize
20 those and apply those then to the subject matter I
21 was currently concerned with in a report.

22 Q. And have you ever taken any
23 courses in law?

24 A. No.

25 Q. In the course of your work as an

1 anthropologist, do you come across law in the past?

2 A. Can you clarify what you mean by
3 coming across law?

4 Q. Do you at any time encounter
5 statutes or letters that speak of either statutes
6 or case law or law in general at a historic point
7 in time?

8 A. Yes, I do.

9 Q. And how do you deal with that?

10 A. I deal with it descriptively. So
11 for example, if the Indian Department in the 1800s
12 at some point is -- I come across correspondence
13 where they are asking the legal branch of the
14 department for an opinion on some matter, I will
15 read that legal opinion in order to understand the
16 department's perspective on a particular right or
17 whatever it is that the opinion is about.

18 Q. Now, if we can go to page 6 of
19 your CV, you will see at the top, between 1993 and
20 1995, you had some work with respect to the Royal
21 Commission on Aboriginal Peoples. What was
22 involved in that work, and how were you selected,
23 what did you do?

24 A. The initial contract I got with
25 the Royal Commission on Aboriginal Peoples was

1 directly the result of the Ph.D. work I had done in
2 Panguitung. I was asked -- because I had been
3 there recently, had lived there for a year, I was
4 asked to return and to work with a local Inuk
5 researcher in expanding -- my Ph.D. research was
6 focussed on tourism development. I was asked to
7 expand that to the local economy generally.

8 Q. And what experience have you had
9 researching traditional use and occupation?

10 A. I would say quite a number of the
11 projects I have worked on have dealt with that
12 question on traditional use and occupation,
13 attempting to discern traditional territories,
14 boundaries of traditional territories, et cetera,
15 extent of use, type of use, how that corresponds to
16 the economy or life ways of a particular culture
17 whose traditional territory that was.

18 So it is a common subject area or area
19 or aspect of many of the ethnohistorical reports
20 that I have written.

21 Q. And what experience do you have
22 researching and commenting upon treaty-making in
23 Ontario?

24 A. I have a fair bit of experience in
25 this. Again, I would say most of the ethnohistory

10:30:05 1 projects I have worked on have either been focussed
10:30:09 2 directly on a particular treaty in Ontario or are
10:30:14 3 tangentially related to a treaty or treaty area
10:30:18 4 within Ontario.

10:30:18 5 Q. And if you were to give two
10:30:20 6 examples of that experience more recently, what
10:30:25 7 would they be?

10:30:26 8 A. Certainly the work I did for the
10:30:30 9 Alderville matter was heavily focussed on treaties
10:30:34 10 and treaty-making from the 1780s onward.

10:30:39 11 Q. Okay. And that would be on page 2
10:30:45 12 of your CV, just to identify it at the top,
10:30:50 13 Alderville et al. v. R. [Federal Court]?

10:30:58 14 A. Yes.

10:30:58 15 Q. And how would you describe your
10:31:00 16 experience researching Crown and Indigenous
10:31:03 17 relations?

10:31:04 18 A. If you are -- whenever I study a
10:31:07 19 treaty, I am studying Crown/Indigenous relations,
10:31:12 20 and so an understanding of, for example, British
10:31:17 21 Crown and Indigenous relations in Upper Canada,
10:31:22 22 Canada West and then Ontario is pertinent and is
10:31:28 23 the overarching context of studying any particular
10:31:33 24 treaty.

10:31:33 25 Q. And what is your experience

1 researching First Nation perspectives and Crown
2 perspectives?

3 A. Again, it is part and parcel of
4 studying treaty-making, Crown/Indigenous relations.
5 I would say that in most, if not all, projects that
6 deal with treaties I seek to -- I'm either asked to
7 or I seek to provide the best information possible
8 on what the Indigenous perspective was at the time,
9 and what the Crown perspective was.

10 Q. Could we pull up SC1721, please.
11 Your Honour, this is the proposed tender. I
12 understand from my friends that there is no
13 objection to this. You will note it reads:

14 "Dr. Gwen Reimer is an
15 anthropologist and qualified to give
16 opinion evidence in relation to
17 cultural anthropology and
18 ethnohistory, and in general, on the
19 pre-history, proto-history, and
20 history of the Saugeen and Chippewas
21 of Nawash First Nations and their
22 ancestors, including their
23 traditional social and economic
24 practices, and the history of Crown
25 and Indigenous relations including

1 the history of treaty-making in
2 Ontario. In particular, she is
3 qualified to give opinion evidence
4 on the history of the surrenders and
5 treaties between the Crown and the
6 ancestors of the Saugeen and
7 Chippewas of Nawash First Nations,
8 the historical background leading up
9 to the making of Treaties 45 1/2,
10 67, and 72 and the making, signing
11 and implementation of those
12 Treaties."

13 THE COURT: And there is no objection?

14 Mr. Feliciant, I am just pausing over
15 the words "in particular", because as I have
16 reviewed the reports, they are not limited to that
17 second description. The first description is very
18 broad, and it would at least notionally cover the
19 reports I have seen, but the second description is
20 much more limited to maybe one or two of the
21 reports I have seen and not the rest of them.

22 Are those words intended to be
23 limiting?

24 MR. FELICIAN: No. So we could easily
25 take them out and say "she is also qualified" and

10:33:56 1 that would solve the problem, I believe.

10:33:58 2 THE COURT: Does anyone have an
10:34:00 3 objection to removing the words "in particular"
10:34:02 4 from the tender?

10:34:07 5 No?

10:34:07 6 MR. TOWNSHEND: No, Your Honour.

10:34:08 7 THE COURT: All right. So I'll accept
10:34:09 8 this witness as qualified as described in
10:34:15 9 Exhibit -- what is the next lettered exhibit, sir?

10:34:18 10 THE REGISTRAR: Court's indulgence,
10:34:20 11 Your Honour. The list that I received from
10:34:22 12 Mr. Feliciant, document number S0344, "Canadian
10:34:27 13 institutions", was already marked as an exhibit by
10:34:34 14 Ms. Guirguis on October 31st.

10:34:36 15 THE COURT: We are just going to get
10:34:37 16 back to that in a minute, Mr. Registrar. In the
10:34:40 17 meantime, can I have the next lettered exhibit for
10:34:42 18 this document in front of me.

10:34:43 19 THE REGISTRAR: The next lettered
10:34:45 20 exhibit is going to be V3 as in Victor.

10:34:51 21 THE COURT: Victor-3.

10:34:54 22 THE REGISTRAR: Victor-3.

10:34:56 23 EXHIBIT NO. V-3: Proposed tender for
10:34:56 24 the expert qualification of Dr. Gwen
10:34:58 25 Reimer.

1 THE COURT: So the proposed tender is
2 marked as V-3. The accepted tender is that same
3 text with the omission of the first three words of
4 the last sentence, "In particular, she", and
5 substituting, "She is also", and that addresses my
6 issue.

7 MR. FELICIAN: Thank you, Your Honour.

8 THE COURT: And Mr. Feliciant is
9 frowning.

10 MR. FELICIAN: No, I am not. I am
11 just writing it down.

12 THE COURT: All right. So that is V-3.
13 Now, Mr. Registrar, I take it that
14 there is also a duplicate exhibit that you wanted
15 to draw to everyone's attention?

16 THE REGISTRAR: Yes, Your Honour.
17 Document number S0344.

18 THE COURT: On the list?

19 THE REGISTRAR: On the list.

20 THE COURT: Has already been assigned
21 what number?

22 THE REGISTRAR: It has already been
23 assigned as number - just one second, Your
24 Honour - 4374 on October 31st.

25 THE COURT: All right. So Mr.

1 Registrar, I am going to direct you to handwrite
2 that change on Exhibit T-3. In other words, to
3 remove the assignment of that exhibit number and
4 put the old one in, and you can use that available
5 exhibit for something else.

6 THE REGISTRAR: Sure.

7 THE COURT: And if any counsel wants a
8 copy of that amended exhibit, they could ask for
9 one. For now, they can just make their own
10 annotations.

11 Thank you, Mr. Registrar. Please go
12 ahead, Mr. Feliciant.

13 MR. FELICIAN: So at this time, Your
14 Honour, we would be asking to make exhibits of
15 Dr. Reimer's reports.

16 So the first report would be Volume 1,
17 and this is at document SC1722. So this would be
18 Volume 1, "Aboriginal Use and Occupation of the
19 Bruce Peninsula and Environs, Circa 500 BC-1860
20 AD".

21 THE COURT: All right. Whenever you
22 are ready, Mr. Registrar.

23 MR. FELICIAN: So the next exhibit.

24 THE REGISTRAR: The next exhibit number
25 is 4576.

10:37:05 1 THE COURT: 4576.

10:37:07 2 EXHIBIT NO. 4576: Volume 1 of Dr.

10:36:43 3 Reimer's expert report entitled Volume

10:36:45 4 1, "Aboriginal Use and Occupation of

10:36:47 5 the Bruce Peninsula and Environs, Circa

10:36:51 6 500 BC-1860 AD".

10:37:09 7 MR. FELICIAN: I should note, Your

10:37:10 8 Honour, that a previous version of this was marked

10:37:12 9 as a lettered exhibit, namely Exhibit S-1, so this

10:37:17 10 is an updated version of that.

10:37:19 11 THE COURT: All right. Thank you for

10:37:20 12 putting that on the record.

10:37:21 13 MR. FELICIAN: Volume 2 -- so the next

10:37:23 14 exhibit, SC1723, Volume 2, "Aboriginal Use and

10:37:29 15 Occupation of the Lake Claim Area, Circa 900-1900".

10:37:40 16 THE COURT: That is Volume 2, Mr.

10:37:42 17 Registrar.

10:37:42 18 THE REGISTRAR: Exhibit No. 4577.

10:37:44 19 THE COURT: Thank you.

10:37:46 20 MR. TOWNSHEND: Your Honour, that is

10:37:48 21 already populated on this list.

10:37:49 22 THE COURT: Oh, I see. Okay. Yes.

10:37:52 23 MR. TOWNSHEND: 4574 is not yet

10:37:55 24 populated.

10:37:55 25 THE COURT: That's right, Mr.

1 Registrar.

2 Perhaps, Mr. Registrar, if you wish,
3 you could go to the end and then come back later
4 and sort those middle numbers out.

5 THE REGISTRAR: Sure. Exhibit No.
6 4702.

7 THE COURT: 4702, thank you.

8 EXHIBIT NO. 4702: Volume 2 of Dr.
9 Reimer's expert report entitled
10 "Aboriginal Use and Occupation of the
11 Lake Claim Area, Circa 900-1900".

12 MR. FELICIAN: The next exhibit would
13 be SC1724, Volume 3, "Saugeen-Nawash land cessions
14 No. 45 1/2 (1836), No. 67 (1851), and No. 72
15 (1854)", and that would be the next exhibit.

16 THE REGISTRAR: Exhibit No. 4703.

17 EXHIBIT NO. 4703: Volume 3 of Dr.
18 Reimer's expert report entitled Volume
19 3, "Saugeen-Nawash Land Cessions No. 45
20 1/2 (1836), No. 67 (1851), and No. 72
21 (1854)".

22 MR. FELICIAN: In this case as well,
23 there was a previous version marked as a lettered
24 exhibit, namely G-1, but this is the updated
25 version of that.

1 The next exhibit would be Volume 4.

2 This is SC1725, Volume 4, "Implementation Issues
3 Related to Surrender No. 72, 1854-1970s".

4 THE COURT: Yes, Mr. Townshend?

5 MR. TOWNSHEND: Your Honour, I have one
6 qualification I wanted to put on. I am not
7 objecting to it being made an exhibit.

8 In Volume 4, Dr. Reimer was asked to
9 and gave opinions on whether or not Treaty 72 was
10 properly fulfilled. That, I submit, is a legal
11 question, and it is a legal question, in my
12 submission, not relevant to this litigation, or at
13 least not relevant to this phase of this
14 litigation. It is, as we have discussed
15 previously, the kind of question squarely at issue
16 in the five pieces of stayed litigation that were
17 mentioned in the Agreed Statement of Facts, which
18 is at Exhibit 4263.

19 However, most of Volume 4 would be
20 responsive to the question, for example, what
21 measures were taken to implement Treaty 72, and
22 what responses were there to that, and that is a
23 question that I accept would be potentially
24 relevant to the intentions of the parties to Treaty
25 72 and to limitations and laches.

10:40:28 1 So rather than asking for some sorts of
10:40:32 2 excision of parts of it, I just wanted to make that
10:40:34 3 qualification on the record.

10:40:35 4 THE COURT: Can you give me an example,
10:40:36 5 sir, of an opinion that would fall within your
10:40:39 6 objection?

10:40:52 7 For example, if you had an example in
10:40:54 8 section 7, which is a summary, that might be
10:40:57 9 helpful to me. But if you don't have one in that
10:41:01 10 section, you can give me one somewhere else.

10:41:23 11 MR. TOWNSHEND: Yes. This is in
10:41:24 12 section 7, page 125, and the paragraph after the
10:41:33 13 heading titled "7.1 "Survey Obligations" says:

10:41:38 14 "It is my expert opinion that
10:41:40 15 the historical evidence generally
10:41:41 16 indicates that the Crown fulfilled
10:41:43 17 its immediate post-surrender
10:41:45 18 obligations with respect to
10:41:48 19 surveying the lands surrendered in
10:41:49 20 1854."

10:41:50 21 That is the type of --

10:41:51 22 THE COURT: Yes, that is a good
10:41:52 23 example. Thank you.

10:41:53 24 So I will permit this to be marked
10:41:55 25 subject to Plaintiffs' counsel's objection to what

1 he has indicated is a portion of a long report, and
2 that is now on the record, so that is helpful.

3 Mr. Registrar?

4 THE REGISTRAR: Exhibit No. 4704.

5 EXHIBIT NO. 4704: Volume 4 of Dr.

6 Reimer's expert report entitled

7 "Implementation Issues Related to

8 Surrender No. 72, 1854-1970s".

9 MR. FELICIAN: The next exhibit, Your
10 Honour, would be SC1865, and that is entitled
11 "Gwen Reimer - Errata - February 11, 2020", and you
12 will note, Your Honour, that the first portion of
13 that is entitled "Errata relating to general Indian
14 Councils as noted in page 17 of the supplementary
15 report on general Indian Councils". We simply
16 reproduced it here so you have it in one convenient
17 place, but you will find that section also in the
18 general Indian council report which will later be
19 made an exhibit.

20 THE COURT: I am just pausing because I
21 have a document differently titled "Errata and
22 Revisions November 2019". How does that relate to
23 this document?

24 MR. FELICIAN: That document -- those
25 errata and revisions were incorporated into the

10:43:16 1 documents that we have made exhibits, Volumes 1
10:43:20 2 through 4, because those volumes were updated in
10:43:25 3 November 2019, so they are already reflected in the
10:43:27 4 updated main reports.

10:43:30 5 So we don't have to re-file that as a
10:43:33 6 new exhibit because the changes have been made,
10:43:35 7 basically.

10:43:36 8 THE COURT: Somehow I didn't get this
10:43:37 9 one, which is fine. Perhaps off-line you could
10:43:40 10 send me a -- I would like to have one printed copy
10:43:43 11 of the expert material, so --

10:43:47 12 MR. FELICIAN: We do have a printed
10:43:48 13 copy now.

10:43:49 14 THE COURT: Well, there is no special
10:43:50 15 urgency. You can give it an exhibit number, and at
10:43:53 16 some point you can provide it to me.

10:43:55 17 Mr. Registrar, what is the next exhibit
10:43:57 18 number?

10:43:58 19 THE REGISTRAR: Exhibit No. 4705.

10:44:04 20 THE COURT: 4705?

10:44:06 21 THE REGISTRAR: 4705, Your Honour.

10:44:09 22 EXHIBIT NO. 4705: Document entitled
10:42:30 23 "Gwen Reimer - Errata - February 11,
10:42:35 24 2020".

10:44:13 25 MR. FELICIAN: Ms. Lapan is handing

1 the Registrar a copy.

2 THE COURT: Thank you.

3 MR. FELICIAN: The next exhibit will
4 be SC1866 -- sorry, SC1859. The next Exhibit is
5 SC1859 entitled "Changes to Dr. Gwen Reimer Opinion
6 Volume 3", if we could have that as the next
7 exhibit, please.

8 THE COURT: Is that satisfactory,
9 Mr. Townshend?

10 MR. TOWNSHEND: Yes, it is, Your
11 Honour.

12 THE COURT: Mr. Registrar.

13 THE REGISTRAR: Exhibit No. 4706.

14 THE COURT: 4706.

15 EXHIBIT NO. 4706: Document entitled
16 "Changes to Dr. Gwen Reimer Opinion
17 Volume 3".

18 MR. FELICIAN: The next exhibit is
19 SC1727, "Documentation Relevant to the Extent of
20 Time Taken By Anishinaabeg First Nations At Treaty
21 Councils to Deliberate Terms of Surrender" dated
22 September 6th, 2019, which colloquially we tend to
23 refer to as the deliberation time report, if that
24 could be the next exhibit, please.

25 THE COURT: Mr. Registrar.

1 THE REGISTRAR: Exhibit No. 4707.

2 EXHIBIT NO. 4707: Report entitled

3 "Documentation Relevant to the Extent

4 of Time Taken By Anishnabeg First

5 Nations At Treaty Councils to

6 Deliberate Terms of Surrender".

7 MR. FELICIAN: The next exhibit is

8 SC1728. This is entitled "Documentation Relevant

9 to the Extent of Squatting on the Saugeen Peninsula

10 Reserve Pre- and Post-Surrender No. 72 (13 October

11 1854)" which colloquially we refer to at times as

12 the squatting report, and that would be the next

13 exhibit.

14 THE COURT: Mr. Registrar.

15 THE REGISTRAR: Exhibit No. 4708.

16 EXHIBIT NO. 4708: Report entitled

17 "Documentation Relevant to the Extent

18 of Squatting on the Saugeen Peninsula

19 Reserve Pre- and Post-Surrender No. 72

20 (13 October 1854)".

21 MR. FELICIAN: The next exhibit is

22 document number SC1729. This is entitled

23 "Documentation Relevant to the Context and Nature

24 of General Indian Councils in Upper Canada/Canada

25 West", dated January 10, 2020, which we at times

1 refer to as the General Councils report, and that
2 would be the next exhibit, please.

3 THE COURT: Mr. Registrar.

4 THE REGISTRAR: Exhibit No. 4709.

5 EXHIBIT NO. 4709: Report entitled
6 "Documentation Relevant to the Context
7 and Nature of General Indian Councils
8 in Upper Canada/Canada West".

9 MR. FELICIAN: The next exhibit would
10 be SC1730. This was previously marked as a
11 lettered Exhibit P-3. This is the "Analysis of
12 Documentation Relevant to Ontario's Illustration
13 Maps Marked As Exhibits K2, L1, L2, M2, N1, N2, O1"
14 dated January 20, 2020, amended January 26, 2020,
15 and we refer to that at times as the maps report,
16 if we could make that the next exhibit, please.

17 THE COURT: All right. Mr. Registrar.

18 THE REGISTRAR: Exhibit No. 4710.

19 EXHIBIT NO. 4710: Report entitled
20 "Analysis of Documentation Relevant to
21 Ontario's Illustration Maps Marked As
22 Exhibits K2, L1, L2, M2, N1, N2, O1".

23 MR. FELICIAN: Now, Your Honour, with
24 your permission, I would now call upon Mr. Ogden to
25 conduct the direct examination of Dr. Reimer with

1 respect to Volumes 1 and 2 of her report, followed
2 by myself examining her on Volume 3, and Ms. Lapan
3 on Volume 4.

4 THE COURT: All right. Please go
5 ahead.

6 MR. FELICIAN: Thank you, Your Honour.

7 THE COURT: Can I put all the other
8 volumes to one side, Mr. Ogden, or do you want me
9 to have something else out?

10 MR. OGDEN: Just Volumes 1 and 2, Your
11 Honour. Thank you. Good morning.

12 EXAMINATION IN-CHIEF BY MR. OGDEN:

13 Q. Dr. Reimer, you have reviewed, I
14 understand, the trial testimony of Dr. Williamson;
15 is that correct?

16 A. That's correct.

17 Q. And you have reviewed the document
18 we are showing you now, which is Exhibit 4256?

19 A. Yes.

20 Q. And this contains a copy of Table
21 2.1 from your Volume 1 report, which at the time
22 your Volume 1 report was marked as lettered exhibit
23 S-1, and subsequently it is now marked as Exhibit
24 4576. This table was taken from page 44 of Volume
25 1 of your report and is entitled "Comparison and

1 Contrast of Iroquoian and Algonquian Cultures".

2 And if you look on the first page, there are
3 numbers circled in the boxes on the table, and then
4 the second page, comments made by Dr. Williamson.

5 Do you have responses to those comments
6 that Dr. Williamson made?

7 A. Yes, I do.

8 Q. I am now showing document SC1864
9 entitled "Dr. Reimer Response to Dr. Williamson
10 Comments (Exhibit 4256) on Table 2.1 of Volume 1 of
11 Dr. Reimer's Report". Have you reviewed this
12 document?

13 A. Yes, I have.

14 Q. And does it contain your responses
15 to Dr. Williamson's comments in Exhibit 4256?

16 THE COURT: You can answer the
17 question, and then I'll hear from Mr. Townshend.

18 THE WITNESS: Yes, it does.

19 THE COURT: All right. Mr. Townshend.

20 MR. TOWNSHEND: Your Honour, I just
21 wanted to note on the record that this is some
22 additional opinion that we received yesterday, but
23 I am not objecting to it.

24 THE COURT: Thank you, sir.

25 Mr. Registrar?

1 THE REGISTRAR: Yes, Your Honour.

2 THE COURT: The next numbered exhibit.

3 THE REGISTRAR: Exhibit No. 4711.

4 EXHIBIT NO. 4711: Document entitled
5 "Dr. Reimer Response to Dr. Williamson
6 Comments (Exhibit 4256) on Table 2.1 of
7 Volume 1 of Dr. Reimer's Report".

8 THE COURT: I can't tell, sir, if this
9 is a single page, or what are we looking at here?

10 MR. OGDEN: It is a two-page document,
11 Your Honour. And I have -- you will see on the
12 left numbered comments which corresponds to the
13 comments of Dr. Williamson in Exhibit 4256, and
14 Dr. Reimer's response on the right. And I have
15 paper copies if Your Honour would like, not to be
16 marked, but if it is convenient to you, of 4256 and
17 this document here, 4711.

18 THE COURT: Well, I would receive one
19 because I have it on my desk in my office a paper
20 copy that Plaintiffs' counsel provided me with the
21 annotated chart and Dr. Williamson's comments, so I
22 would receive a paper copy of this one because they
23 would go together.

24 MR. OGDEN: Yes, Your Honour. Thank
25 you. I will note that, Your Honour, on Exhibit

1 4711, it refers to the documents which have this
2 morning been made exhibits, so I'll give you the
3 exhibit numbers for them. That is on the
4 right-hand side, and the first box says "page 10
5 Heidenreich", and that is now Exhibit 4604, and
6 then the third box down on the right side, the same
7 document, Exhibit 4604.

8 On the second page, there are two
9 documents, one already an exhibit, and the second
10 one, Kinietz, is Exhibit 4610.

11 THE COURT: Yes. Thank you.

12 BY MR. OGDEN:

13 Q. And, Dr. Reimer, this document
14 contains your responses?

15 A. Yes, it does.

16 Q. Thank you. Dr. Reimer, what
17 political relationship did Ojibwe communities have
18 with each other at the time of first contact with
19 Europeans?

20 A. Did you specify Ojibwe
21 communities?

22 Q. Yes.

23 A. What relationship they had to each
24 other?

25 Q. Yes.

10:54:06 1 A. Well, each Band, if I can use that
10:54:13 2 term, were autonomous groups, but there were some
10:54:18 3 relationships between those groups. I am not quite
10:54:23 4 sure if I understand the scope of your question.

10:54:25 5 Q. To the extent they had any
10:54:30 6 alliance, how permanent were such alliances?

10:54:36 7 A. There was an alliance that in my
10:54:39 8 report I refer to as the Three Fires Council.
10:54:44 9 Those alliances -- that alliance was impermanent.
10:54:50 10 It was specific to certain issues, conflicts,
10:54:55 11 hostilities, interests that particular groups might
10:54:59 12 have, and the Three Fires included the Pottawatomi,
10:55:05 13 Odaawaa, and Ojibwe, mostly in the Michigan
10:55:10 14 Peninsula area, who would support each other in an
10:55:18 15 alliance should one need the other in a context of
10:55:24 16 territorial conflicts, fur trade hostilities, that
10:55:27 17 sort of thing.

10:55:27 18 But it was impermanent in the sense
10:55:32 19 that it was event- or issue-specific and did not
10:55:39 20 affect the political autonomy of each Ojibwe,
10:55:47 21 Pottawatomi, or Odaawaa community.

10:55:50 22 Q. And you used the word "council".
10:55:57 23 You said "Three Fires Council" rather than
10:56:00 24 confederacy. Why is that?

10:56:02 25 A. "Council" is the term most

10:56:04 1 commonly used in the secondary literature. It does
10:56:09 2 not -- it implies an alliance that is not
10:56:15 3 necessarily a governing body over the individual
10:56:19 4 communities or Bands that were participating in the
10:56:23 5 alliance.

10:56:23 6 Q. And at the time of contact with
10:56:33 7 Europeans, what role, if any, did the Three Fires
10:56:36 8 Council have in Bands or Indigenous communities
10:56:42 9 about the use of natural resources within their own
10:56:45 10 individual territories?

10:56:47 11 A. I would say none. Use of
10:56:51 12 territory, sharing of territory, was a Band
10:56:59 13 responsibility and, as I said, they were autonomous
10:57:04 14 in terms of the use of what was considered their
10:57:09 15 traditional territory.

10:57:10 16 Q. And you stated that the Three
10:57:18 17 Fires Council operated primarily in the Michigan
10:57:23 18 Peninsula. Do you mean the Upper and Lower
10:57:25 19 Peninsulas?

10:57:25 20 A. Yes.

10:57:26 21 Q. And was the Three Fires Council
10:57:30 22 restricted to this area?

10:57:31 23 A. It was centred in that area.
10:57:36 24 There may have been Ojibwe, Odaawaa, Pottawatomi
10:57:42 25 groups near the area who may have participated

10:57:46 1 within the alliance, but the core of the alliance
10:57:50 2 was from Michilimackinac and down into the Michigan
10:57:57 3 Peninsula.

10:57:57 4 Q. So did the practical or import or
10:58:01 5 role of the council change as you moved -- if one
10:58:04 6 moved further away from the peninsula?

10:58:07 7 A. The authors who have -- or
10:58:14 8 scholars who have studied the Three Fires, such as
10:58:21 9 Clifton and Fixico, my understanding is that the
10:58:25 10 further you got away from that core area, the less
10:58:30 11 participation or influence the Three Fires Alliance
10:58:32 12 had.

10:58:33 13 Q. So if you can look behind you,
10:58:36 14 there is a large map called Exhibit P, and in light
10:58:40 15 blue on this map, there is a representation of the
10:58:42 16 Plaintiffs', the SON, the Aboriginal title claim
10:58:47 17 area. What have you concluded about the existence
10:58:50 18 of the Three Fires Council in relation to this SON
10:58:55 19 Aboriginal title claim area around 1763? Is there
10:59:00 20 any evidence on that question, firstly?

10:59:01 21 A. I did not find any evidence, and
10:59:04 22 the published sources, such as Clifton and Fixico,
10:59:11 23 who I mainly relied on for information about the
10:59:13 24 Three Fires, do not refer to this area.

10:59:16 25 Q. And your opinion is that --

1 THE COURT: I am just going to
2 interrupt. Dr. Reimer, I always need a little
3 clarity on this particular exhibit. You will see
4 it has got many colours on it, and I want to make
5 sure your answer covers the entirety of the light
6 green, light blue, yellow, and red part of the map.
7 Did it include all of that?

8 THE WITNESS: It included all of that.

9 THE COURT: All right. Please go
10 ahead.

11 BY MR. OGDEN:

12 Q. Thank you, Your Honour. Your
13 opinion is that in the early 17th century, the
14 Indigenous peoples who were present on or around
15 the Saugeen or Bruce Peninsula were likely Odaawaa;
16 is that correct?

17 A. Yes.

18 Q. And then in the middle of the 17th
19 century occurred the conquest of the Huron by the
20 Iroquois?

21 A. Uhm-hmm.

22 Q. And during that conquest, what
23 happened to the Odaawaa who were on or around the
24 Bruce/Saugeen Peninsula and SON Aboriginal title
25 claim area?

11:00:27 1 A. There -- I document this quite
11:00:30 2 extensively in Volume 1. There was a large
11:00:36 3 dispersal, large in terms of numbers of people at
11:00:39 4 the time and geographic area, so groups living --
11:00:44 5 Iroquoian groups living in -- south of Georgian
11:00:49 6 Bay; Odaawaa, who are likely the groups who may
11:00:55 7 have used the Bruce Peninsula and south of the
11:00:58 8 Bruce Peninsula and travelling up to Manitoulin
11:01:02 9 Island. Essentially there was an emptying out or a
11:01:07 10 near emptying out of those original groups when the
11:01:10 11 Iroquois invaded in circa 1649.

11:01:16 12 Q. In Volume 1 of your report,
11:01:20 13 Exhibit 4576, at pages 112 to 115, you describe the
11:01:28 14 journey taken in 1669 to 1670 by two French men,
11:01:36 15 Dollier and Galinée. What is significant about
11:01:38 16 this journey for the SON Aboriginal title claim
11:01:41 17 area?

11:01:41 18 A. It is one of the earliest
11:01:46 19 accounts, firsthand accounts, of Europeans
11:01:51 20 travelling by canoe along the entire Lake Huron
11:01:56 21 coastline of -- so it would be the eastern
11:02:01 22 shoreline of Lake Huron, but the western shore of
11:02:05 23 the land, of Southwestern Ontario and the Bruce
11:02:09 24 Peninsula. And these two missionaries, French
11:02:15 25 missionaries, travelled by canoe along the entire

1 coastline up to Manitoulin Island and then north to
2 what is now Sault Ste. Marie.

3 Q. And did they record that journey?

4 A. They recorded the journey. There
5 is a journal. There is a published translation.
6 The journal was written in French originally.
7 There is a published translation of the journal in
8 English, and so yes, I went through that journal.
9 The accounts that are written of this segment of
10 their journey does not mention any kind of
11 habitation along that coastline.

12 So I thought this was a significant
13 sort of negative indicator of what might have been
14 going on along those lands at the time, and I say
15 negative indicator because I would expect that if
16 Dollier and Galinée had encountered Indigenous
17 groups along the coastline, they would likely have
18 mentioned it in their journal. But that is the
19 best that I can say or identify from the journal
20 entries. They said nothing.

21 Q. What was the next major event in
22 the 17th century in Southern Ontario?

23 A. The next major event after the
24 Beaver Wars, after 1650?

25 Q. Yes, and after Dollier and

1 Galinée.

2 A. It was very soon after the journey
3 in 1669-1670 by Dollier and Galinée that there are
4 different kinds of evidence that an alliance of
5 Algonquian and Iroquoian groups who had been driven
6 out of Southern Ontario joined in an offensive
7 alliance to drive the Iroquois back to the south of
8 Lake Ontario.

9 And it is mainly the oral histories
10 that tell of this allied offensive and together
11 provide a narrative of what will have happened
12 within those decades in terms of Algonquians moving
13 into Southwestern Ontario.

14 Q. And what is your opinion about
15 the -- well, who were the Algonquian people
16 specifically who were in Southern Ontario after the
17 conquest of the Iroquois?

18 A. Ojibwe.

19 Q. And is it your opinion that the
20 next Indigenous people present in the SON
21 Aboriginal title claim area and on the Bruce
22 Peninsula and to the south after the conquest of
23 the Iroquois were Ojibwe?

24 A. Yes.

25 Q. You have mentioned oral history.

11:05:20 1 What other types of evidence are there to indicate
11:05:24 2 when the Ojibwe established themselves on the Bruce
11:05:29 3 Peninsula and lands -- other lands adjacent to the
11:05:32 4 SON Aboriginal title claim area?

11:05:34 5 A. In the period what --

11:05:36 6 Q. Well, after the Iroquois conquest
11:05:39 7 and until and including the 19th century, what
11:05:44 8 other types of evidence? You mentioned oral
11:05:46 9 history.

11:05:46 10 A. There is very little documented
11:05:49 11 historical evidence about what was happening in the
11:05:54 12 SON traditional territory at the time. There is
11:05:58 13 some anecdotal evidence that I have gleaned from
11:06:03 14 local histories about Bruce County, for example,
11:06:07 15 about French trading posts, et cetera, comments --
11:06:13 16 scattered comments by other explorers that it was
11:06:19 17 mainly Ojibwe who lived in the area north of the
11:06:24 18 Thames. The oral histories support that and are
11:06:30 19 generally consistent with that, but it is the oral
11:06:34 20 historical accounts that provide the best evidence
11:06:36 21 of what was likely happening around 1680, 1690s.

11:06:43 22 Q. Could we go to page 122 of Exhibit
11:06:47 23 4576, please. This is Volume 1 of your reports,
11:06:54 24 and you have a quotation there from George Copway
11:07:00 25 describing how he assessed the validity of oral

1 history. It says that he followed two rules:

2 "The first is to inquire
3 particularly into the leading points
4 of every tradition narrated.

5 The second is to notice whether
6 the traditions are approved by the
7 oldest chiefs and wise men. Such
8 are most likely to be true [...]"

9 Were you satisfied that the narratives
10 about the conquest of the Iroquois, the oral
11 histories about the conquests of the Iroquois which
12 you reviewed met this standard?

13 A. Yes.

14 Q. And what did the oral histories
15 say happened after the conquest about the presence
16 of Ojibwe in the SON Aboriginal title claim area
17 and adjacent lands?

18 A. Stories in the oral histories
19 about battles that took place at or near the
20 Saugeen River, elements of the oral histories that
21 speak to the presence of Skull Mounds in those
22 areas around Saugeen River, oral histories that
23 comment on -- for example, there is a Wyandot oral
24 history that tells of an arrangement or an
25 acknowledgment that north of the Thames was where

11:08:36 1 the Ojibwe -- that would be their territory. Have
11:08:42 2 I answered your question?

11:08:43 3 Q. Yes. And what archaeological
11:08:52 4 evidence did you find regarding the presence of
11:08:55 5 Ojibwe after the conquest of the Iroquois in
11:08:59 6 Southern Ontario, specifically near or in the
11:09:05 7 Aboriginal title claim area? You mentioned Skull
11:09:11 8 Mounds, that one?

11:09:12 9 A. Yes.

11:09:12 10 Q. And any others?

11:09:14 11 A. I would need time to refresh my
11:09:18 12 memory on that.

11:09:18 13 Q. What can we take from the
11:09:36 14 historical documentary evidence about the presence
11:09:39 15 of Ojibwe in the SON Aboriginal title claim area
11:09:44 16 and adjacent lands in the 17th and 18th century?

11:09:50 17 A. The documented evidence is fairly
11:09:57 18 scanty up until the late 1700s, early 1800s. There
11:10:06 19 were expeditions and explorations by British naval
11:10:13 20 surveyors, for example, Gother Mann, who explored
11:10:21 21 the area around the Bruce Peninsula, made markings
11:10:25 22 on the peninsula about Indian villages, winter
11:10:31 23 encampments, traders, et cetera.

11:10:34 24 So these provide a glimpse into the
11:10:38 25 fact that there was some habitation there, use of

11:10:43 1 the area, but the evidence is fairly piecemeal
11:10:48 2 really up until the early 1800s, 1820s in
11:10:52 3 particular.

11:10:52 4 Q. And what do you mean by "scanty"?
11:10:56 5 Can anything be taken from the facts or the
11:10:58 6 historical evidence as scanty?

11:11:01 7 A. Very little was known about the
11:11:03 8 area. ** outside are the main -- were the main
11:11:10 9 French forts or British holdings. The officials,
11:11:13 10 the British officials, had very little information
11:11:16 11 and knowledge about the area beyond those main
11:11:21 12 centres, and the Saugeen traditional territory and
11:11:26 13 peninsula were part of that unknown area, as far as
11:11:31 14 the British are concerned.

11:11:32 15 Q. You mentioned the Gother Mann map.
11:11:37 16 That is, for the record, Exhibit 708. Was there an
11:11:49 17 earlier historical record of Ojibwe, not
11:11:55 18 necessarily in this direct area but close to the
11:11:59 19 Aboriginal title claim area earlier than 1788,
11:12:07 20 Ojibwe or Mississauga?

11:12:08 21 A. If you could point me to a page in
11:12:19 22 my report.

11:12:20 23 Q. Well, certainly.

11:12:21 24 A. I am sorry that I am having
11:12:23 25 difficulty with my recall here.

11:12:24 1 Q. Well, no, it is my fault here.

11:12:28 2 I'm talking about, at page 145 of your report, you
11:12:34 3 mention an anonymous report about Mississaugas at
11:12:41 4 Matchedash Bay.

11:12:43 5 A. Correct.

11:12:43 6 Q. Is that the -- were there any
11:12:47 7 earlier historical reports of Anishinaabeg people
11:12:54 8 around or near the Bruce Peninsula?

11:12:58 9 A. Well, in the French period, again,
11:13:00 10 there are what I would call anecdotal evidence in
11:13:07 11 some of the local histories that speak of French
11:13:13 12 traders in the area during the French regime, the
11:13:19 13 1718 report about Mississaugas at Matchedash Bay,
11:13:30 14 which is a fair distance from the Saugeen
11:13:32 15 Peninsula, although it is just up the coast along
11:13:35 16 the Georgian Bay there.

11:13:37 17 I took these and documented these as a
11:13:41 18 clue about the general cultural population of that
11:13:45 19 area, and so anything nearby that might have been
11:13:51 20 identified with a particular cultural group is, in
11:13:54 21 my opinion, significant because it is giving us at
11:13:58 22 least a glimpse as to who might be occupying those
11:14:02 23 areas in the early 1700s because we have so little
11:14:07 24 evidence about -- that is situated exactly at the
11:14:12 25 base of the Saugeen Peninsula or in Saugeen

11:14:16 1 traditional territory.

11:14:16 2 Q. So you mentioned -- well, I
11:14:19 3 mentioned this report of 1718. For the record,
11:14:25 4 that can be found in different versions in Exhibits
11:14:28 5 355, 356, and 357, but the better of those is
11:14:37 6 Exhibit 355 on the PDF page 7 of that document,
11:14:44 7 which is page 889 of the original. But I won't go
11:14:50 8 to this, just for the record.

11:14:53 9 In 1822, there was a map prepared by
11:15:00 10 Captain Bayfield. What is relevant about the
11:15:04 11 Bayfield map? This is Exhibit 912, and you refer
11:15:12 12 to it in your report.

11:15:15 13 A. Can you give me a page number?

11:15:40 14 I am familiar with the Bayfield map.
11:15:48 15 Just before I comment on it, I want to make sure it
11:15:50 16 is the one I'm thinking of.

11:15:56 17 Q. Sorry, if we go to Volume 2, page
11:16:00 18 41, that is Exhibit 4702.

11:16:14 19 THE COURT: What page?

11:16:15 20 BY MR. OGDEN:

11:16:16 21 Q. 41.

11:16:33 22 A. Yes. Can you repeat the question,
11:16:35 23 please?

11:16:35 24 Q. What is relevant about this map?
11:16:37 25 What do we learn from this map?

11:16:38 1 A. Bayfield made many notations on
11:16:46 2 his map, both what he observed on the water, but
11:16:50 3 also what he observed along the coastlines. He did
11:16:55 4 a very meticulous survey of all of Lake Huron, and
11:17:02 5 what is significant to this is the maps that he
11:17:05 6 produced about the Bruce -- what is now called the
11:17:07 7 Bruce Peninsula.

11:17:09 8 At the base of Owen Sound, he has
11:17:11 9 written "winter encampments", and at Saugeen River,
11:17:18 10 he has made a notation "Indian traders".

11:17:24 11 He also notes and identifies Chief's
11:17:30 12 Point and the Fishing Islands on the west coast of
11:17:33 13 the peninsula.

11:17:38 14 So the significance is that by 1822 we
11:17:42 15 are getting a stronger sense of where either
11:17:46 16 permanent or semi-permanent encampments and
11:17:52 17 settlement sites have developed on the peninsula,
11:17:57 18 at the base of the peninsula.

11:17:58 19 Q. Could I ask you to turn forward to
11:18:04 20 page 17 of Volume 2, Exhibit 4702. In the main
11:18:16 21 paragraph there, at the bottom of this paragraph,
11:18:21 22 the sentence reads:

11:18:23 23 "It should be noted that there
11:18:25 24 is no historical evidence of a
11:18:28 25 European presence in the lake claim

11:18:30 1 area during the French regime that
11:18:33 2 ruled Canada's colonies until 1760."
11:18:37 3 And I want to put that alongside --
11:18:41 4 THE COURT: I am not seeing that. Oh,
11:18:43 5 I see. It is in the middle.
11:18:46 6 MR. OGDEN: Yes. It's the last
11:18:48 7 sentence of the main paragraph.
11:18:49 8 THE COURT: All right.
11:18:50 9 BY MR. OGDEN:
11:18:50 10 Q. I want to put that against a
11:18:52 11 conclusion in your Volume 1 report at page 273. In
11:19:13 12 the paragraph 10.4.1, the first paragraph, you,
11:19:16 13 again, refer here to the Mississauga settlement at
11:19:20 14 Matchedash Bay in 1718 as the earliest and nearest
11:19:24 15 record of Ojibwes settled in the region. And then
11:19:27 16 you continue:
11:19:28 17 "There also exists anecdotal
11:19:31 18 evidence of ruins of French trade
11:19:33 19 posts at Cape Croker and at the
11:19:34 20 mouth of the Saugeen River. At
11:19:37 21 best, these data allow
11:19:39 22 unsubstantiated speculation about
11:19:42 23 Aboriginal occupation and trade in
11:19:43 24 the Bruce region during the first
11:19:45 25 half of the 18th century."

11:19:47 1 So I want just to ask you about what
11:19:48 2 you mean by, in Volume 2, no historical evidence,
11:19:53 3 and then also putting that with your opinion that
11:19:59 4 there is anecdotal evidence that allows, at best,
11:20:03 5 unsubstantiated speculation.

11:20:06 6 A. About Aboriginal occupation.

11:20:20 7 Q. And what do you mean by
11:20:22 8 "unsubstantiated speculation"?

11:20:24 9 A. There is no way to confirm or
11:20:30 10 really to confirm through primary historical
11:20:37 11 documented sources the stories about the French
11:20:43 12 presence at Vail Point, for example. I am finding
11:20:48 13 those only in local histories. These are stories
11:20:53 14 that are told by people who have lived in the area.
11:20:55 15 I am not saying that they are not true or that they
11:20:57 16 are not significant. It is just that I found
11:20:59 17 nothing further in the documented record,
11:21:04 18 historical record, to confirm or not confirm them.

11:21:18 19 Q. On the assumption that there were
11:21:23 20 Ojibwe present in the SON Aboriginal title claim
11:21:26 21 area in 1763, how could we describe their
11:21:30 22 relationship to the Aboriginal title claim area,
11:21:34 23 the light blue offshore area, light blue in Exhibit
11:21:44 24 P.

11:21:46 25 A. Right. I am just thinking through

1 your question. Go ahead.

2 Q. How could we describe their
3 relationship to that area?

4 A. It will have been primarily for
5 fishery resources, marine resources. Being along
6 the coastline was very important in terms of
7 subsistence that relied upon fish. I think there
8 is a fair bit of evidence to indicate that that was
9 the case.

10 Q. Did they have what could be called
11 a spiritual relationship with the claim area?

12 A. That was a difficult or a
13 challenging subject area to analyze simply because
14 there was nothing specific to Saugeen Ojibwe and
15 the relationship to spiritual connection to water,
16 but there is a fair bit of general evidence,
17 ethnographic and ethnohistorical evidence, about
18 water deities, Ojibwe water deities, spiritual
19 connection to water, certainly strong cultural and
20 economic connection to water, and that is not
21 necessarily place-specific. And I think it can be
22 correlated to likely what the Saugeen Ojibway
23 Nation will have shared those kinds of beliefs in
24 and have had a spiritual connection to water
25 deities.

11:23:24 1 The issue is that I found no actual
11:23:29 2 historical record in which they expressed -- there
11:23:34 3 is an expression of their connection to the water
11:23:37 4 in spiritual terms, in their communications with
11:23:40 5 the British, for example.

11:23:41 6 Q. But when you say "they", are you
11:23:43 7 talking about the Ojibwe in general or the SON?

11:23:46 8 A. The Saugeen Ojibway.

11:23:47 9 Q. And did you find anything in your
11:23:52 10 research to indicate whether an Ojibwe relationship
11:23:55 11 to land or to water, spiritual -- let me start
11:23:59 12 again. Sorry.

11:23:59 13 Did you find anything in your research
11:24:01 14 to indicate whether an Ojibwe spiritual
11:24:07 15 relationship with water was limited to water within
11:24:15 16 a particular Band's territory?

11:24:17 17 A. Can you repeat that, please?

11:24:21 18 Q. Certainly. In your research, did
11:24:24 19 you find anything to indicate whether an Ojibwe
11:24:28 20 spiritual relationship with water was limited to
11:24:31 21 water within a particular Band's territory?

11:24:38 22 A. No, not necessarily. As I said
11:24:39 23 earlier, I think from what I have read, it was more
11:24:42 24 general. So if you are out on the water -- and
11:24:44 25 Lake Huron is notorious for wild storms coming up

11:24:49 1 quite quickly, so there was -- there were general
11:24:52 2 beliefs in water monsters, water deities, that will
11:25:04 3 have been shared by other Ojibwe groups.

11:25:06 4 Q. Are you aware of the Ojibwe, from
11:25:10 5 your research, having a spiritual relationship with
11:25:13 6 the lands under water?

11:25:15 7 A. I have not come across it, no.

11:25:20 8 Q. You have said that the primary
11:25:33 9 relationship of the SON in the 19th century and
11:25:39 10 after the assertion of Crown sovereignty with the
11:25:43 11 Aboriginal title claim area was the fisheries.
11:25:47 12 What led you to this conclusion?

11:25:49 13 A. The majority of documentation that
11:25:55 14 relates to water and Saugeen Ojibway Nation was in
11:26:01 15 relation to fisheries.

11:26:03 16 Q. What evidence in the historical
11:26:10 17 record is there of assertions of rights by the SON
11:26:14 18 to the lakebed?

11:26:16 19 A. I have not found any.

11:26:22 20 MR. OGDEN: Your Honour, the next
11:26:27 21 question I am going to ask relates to testimony
11:26:30 22 given by a Plaintiff witness, and it is lengthy,
11:26:34 23 and I would ask that we take a break at this point,
11:26:37 24 please.

11:26:37 25 THE COURT: All right. 20 minutes.

11:26:38 1 MR. OGDEN: Thank you.

11:27:06 2 -- RECESSED AT 11:27 A.M.

11:55:57 3 -- RESUMED AT 11:55 A.M.

11:55:57 4 BY MR. OGDEN:

11:55:58 5 Q. Dr. Reimer, I am going to read you

11:55:59 6 part of the testimony in this trial of Dr. Paul

11:56:02 7 Driben, who gave evidence as an expert, and then

11:56:05 8 ask you whether you agree with it.

11:56:09 9 Your Honour, this is a lengthy excerpt,

11:56:13 10 but I would like to read it so that it is adjacent

11:56:16 11 to the answer, although we ** wish to see it on the

11:56:19 12 screen in front of us. It is from October 22nd,

11:56:24 13 2019, day 51, volume 54, pages 6840 to 6842. It is

11:56:34 14 from the evidence in-chief of Dr. Driben. And it

11:56:42 15 appears that there are a couple of typos, which I

11:56:44 16 will correct as I go for flow, unless there is an

11:56:51 17 objection, when we get to them.

11:56:53 18 So at line 17 on page 6840:

11:57:01 19 "Question: At page 90 in your

11:57:04 20 report, you use a term 'proprietary

11:57:08 21 right'. I'm asking you about that

11:57:10 22 in the ethnological sense, not the

11:57:12 23 legal sense. Can you tell us how

11:57:14 24 the Anishinaabe understood this and

11:57:17 25 what kind of resources are subject

11:57:18 1 to proprietary rights?

11:57:21 2 Answer: Proprietary rights are
11:57:23 3 the rights to use and enjoy
11:57:24 4 particular resources. Now, among
11:57:25 5 the Anishinaabe, those resources are
11:57:27 6 resources that have a value, in
11:57:29 7 particular, value as trade goods,
11:57:31 8 but not exclusively as trade goods.
11:57:33 9 So if something becomes -- so if
11:57:35 10 something has a value as a trade
11:57:37 11 good, let's say a fur, then that's
11:57:39 12 regarded as a property. If it's
11:57:41 13 something that's sugar, that's
11:57:44 14 regarded as -- made from maple
11:57:46 15 trees, that's regarded as property.
11:57:48 16 If it is a fish, it's regarded as
11:57:51 17 property, when these are traded.
11:57:53 18 These are all -- so whatever,
11:57:54 19 whatever can be used as trade, a
11:57:56 20 trade good, that's how you
11:57:57 21 categorize a resource over which
11:57:59 22 they would exercise proprietary
11:58:01 23 rights.

11:58:02 24 Question: How, if at all, does
11:58:04 25 water and water transportation

1 routes fit into that?

2 Answer: As I said before, they
3 consider the water in their -- they
4 consider water as part of their
5 territory. The mapping that I've
6 done, when I'm doing land use
7 mapping, I'm mapping to the water,
8 because they direct me to say, 'This
9 is the area which I use.' So they
10 regard the water as their territory
11 and they regard the resources within
12 that, as resources over which they
13 have proprietary rights. I should
14 say, with the exception of
15 individuals who come for food, who
16 come for just subsistence because
17 they need the food. If you need the
18 food, you have to allow people to
19 take the food if they need that for
20 their sustenance, their basic
21 sustenance. Otherwise, no, it has
22 value, no, then it is a resource
23 over which you'll have a proprietary
24 right.

25 I would also say some things do

1 not have the value [...] at the
2 beginning. Furs are a good example
3 of that; minerals are another
4 example of that. You have something
5 that has a value, but that value
6 comes in later. As soon as the
7 value comes in, they regard the
8 resource something over which they
9 have proprietary rights."

10 Dr. Reimer, do you agree with

11 Dr. Driben's testimony?

12 THE COURT: Don't answer yet, please.

13 Yes, Mr. Townshend?

14 MR. TOWNSHEND: Yes, this appears to be
15 asking for an opinion that we haven't been given
16 notice of, certainly at this explicit -- explicitly
17 in reference to Dr. Driben's testimony. If my
18 friend can point to where this is touched on in her
19 report, then I'll defer to that, but I can't
20 immediately see where.

21 MR. OGDEN: Your Honour, there is a
22 reference to some of the opinion of Dr. Driben
23 contained in this quote in Volume 2 of Dr. Reimer's
24 report, Exhibit 4702, at page 131, paragraphs -- or
25 paragraph 7.71, where she agrees generally with

1 Dr. Driben as to the nature of proprietary rights
2 in the use of rivers, lakes, wetlands and other
3 aqueous terrain, and to the resources within.

4 But the question raised by the
5 objection is as to whether there is prejudice. I
6 am not saying that before this point the Plaintiffs
7 have had notice of what the answer of Dr. Reimer
8 may be, but the question would be whether there is
9 prejudice, and that may depend on her answer and
10 that there may not be any prejudice at all.

11 But I struggle to see how there may be
12 prejudice in an answer given in this trial to the
13 question of whether or not the witness agrees with
14 testimony given in this trial by an expert called
15 by the Plaintiff some months ago and an answer
16 given almost three weeks before cross-examination
17 of this witness will commence.

18 THE COURT: All right. Mr. Townshend?

19 MR. TOWNSHEND: If the answer is
20 consistent with what is in the paragraph that my
21 friend pointed to, then I don't object.

22 THE COURT: Otherwise?

23 MR. TOWNSHEND: Well, it is hard to
24 know what until we have heard the answer.

25 THE COURT: Well, I am going to permit

12:02:18 1 the question. This general subject matter is
12:02:22 2 certainly covered in the report, and it is, as
12:02:27 3 counsel points out, a number of weeks before
12:02:30 4 cross-examination is going to be reached, and
12:02:36 5 counsel is free to raise it again, if they wish.

12:02:40 6 Do you need a refresher on the
12:02:43 7 question, Dr. Reimer, or do you recall the
12:02:44 8 question?

12:02:45 9 THE WITNESS: I recall the question.

12:02:46 10 THE COURT: Please go ahead.

12:02:47 11 THE WITNESS: I do generally agree.

12:02:52 12 BY MR. OGDEN:

12:03:05 13 Q. Dr. Reimer, did the Ojibwe in the
12:03:08 14 mid-18th century remove or keep out everyone who
12:03:12 15 came into their territory, whatever the intention
12:03:15 16 of such people coming into their territory?

12:03:17 17 A. There is very little documentation
12:03:21 18 upon which I can give a specific answer.

12:03:25 19 THE COURT: Can you keep your voice up
12:03:27 20 a bit, please.

12:03:28 21 THE WITNESS: Oh, sorry. There is very
12:03:29 22 little historical documentation by which I can give
12:03:32 23 a specific answer to that. If you could give me
12:03:35 24 some examples, I might be able to speak to that.

12:03:39 25 BY MR. OGDEN:

12:03:40 1 Q. Would you have examples of when
12:03:43 2 the Ojibwe would not have sought to remove someone
12:03:46 3 who came into their territory?

12:03:49 4 A. Consistent with the quote that you
12:03:53 5 just read from Dr. Driben, and from my review of
12:03:56 6 his work, and the opinions I express in relation to
12:04:02 7 his conclusions, one example would be individuals
12:04:07 8 or families passing through Saugeen Ojibway
12:04:11 9 territory and hunting for food, camping as
12:04:17 10 necessary overnight, fishing for food.

12:04:21 11 So on an intermittent or temporary
12:04:25 12 basis, I think the cultural norm of you need to
12:04:30 13 eat, and we -- you know, our territory is to be
12:04:37 14 shared for that would apply.

12:04:39 15 Q. And did Ojibwe communities -- did
12:04:44 16 your research lead you to a conclusion as to
12:04:47 17 whether Ojibwe communities generally kept an eye
12:04:50 18 out for people coming into their territory?

12:04:54 19 A. I have not come across anything
12:04:57 20 that would describe or suggest that there was a
12:05:02 21 monitoring, for example, of waterways or coastal
12:05:07 22 areas or lands, people passing by, passing through.
12:05:17 23 You know, my inclination would be to say that
12:05:22 24 likely this kind of monitoring did not necessarily
12:05:27 25 occur, certainly not at a time of perhaps, you

1 know, relative peace, et cetera.

2 So people passing through, I think that
3 that would not be a problem.

4 Q. And in your report, you said that
5 some Anishinaabeg asserted rights to control
6 particular waterways. Could you give an example of
7 a particular waterway over which the control was
8 asserted.

9 A. Yes. There is a fair bit of
10 historical documentation and analysis that has been
11 done about Odaawaa control of the French River
12 route and the Ottawa River trade route. It was a
13 main artery of trade from the Great Lakes through
14 to Montreal, and there is evidence of monitoring
15 there, tolls being taken, of a middleman role that
16 the Odaawaa played.

17 Q. Was that within their traditional
18 territory?

19 A. No.

20 Q. Did you find any evidence about
21 whether the SON asserted rights to control water
22 trade routes within the Aboriginal title claim area
23 prior to 1763?

24 A. I have not found any such
25 evidence, documentary evidence.

1 Q. Did you find any for the period
2 after 1763, including the 19th century?

3 A. No.

4 Q. Did you find any evidence about
5 how the SON responded to European navigation
6 through the Aboriginal title claim area after 1763
7 within the 18th century?

8 A. Within the 18th century? The 1788
9 exploration by Gother Mann, there is no evidence of
10 that journey being interrupted or obstructed.

11 Q. And then in the 19th century?

12 A. In the early 19th century, Captain
13 Owen was instructed to navigate the area of
14 Georgian Bay and around the peninsula, and he was
15 not obstructed in those explorations, and his
16 journals state that he noticed quite a few British
17 schooners going through the area. So that suggests
18 to me that there was at that point some frequency
19 of water travel by British schooners.

20 As well, there is one incident where
21 Captain Owen encountered a group of Indians on an
22 island near Colpoy's Bay, so these were likely
23 members of the Saugeen Ojibway Nation, and no
24 indication that he was stopped or obstructed from
25 travelling further. And, in fact, I document in my

1 report that the Indigenous people were helpful in
2 providing information about the Boat Lake portage.

3 Q. And other than Captain Owen's
4 journey then, was there any other documentary
5 evidence of complaints by the SON about navigation
6 in the Aboriginal title claim area in the early
7 19th century?

8 A. Not that I had found.

9 Q. I would like to turn back to
10 Volume 2 of your report, Exhibit 4702, and page 35,
11 please, the paragraph at the top of that page 35.
12 And here, at the bottom of this paragraph, you
13 refer to the Penetanguishene purchase, and you talk
14 about how extinguishment of title to harbours and
15 waterways as agreed to in the Penetanguishene
16 purchase in May 1795, and you also cover that
17 purchase at pages 29 to 31.

18 What do you mean by "harbours and
19 waterways"? And if you would like, we can look at
20 the document. Before you answer my question,
21 please, if we could pull up Exhibit 765, and I will
22 ask my question again.

23 Your Honour, this is Exhibit 765, and
24 it is the extract from Indian Treaties and
25 Surrenders, Volume 1, and it contains pages 15 to

12:10:51 1 17 of that volume, and it also contains three
12:10:53 2 sketch maps.

12:10:57 3 So, Dr. Reimer, what did you mean by
12:11:02 4 "harbours and waterways" concerning the
12:11:04 5 Penetanguishene purchase?

12:11:05 6 A. First of all, I should make clear
12:11:08 7 that the phrase "harbours and waterways" is -- are
12:11:15 8 words that I took from the text of the Surrender.

12:11:21 9 Q. Is this the Surrender, the first
12:11:24 10 text here on page 2, PDF page 3?

12:11:29 11 A. Surrender No. 5, yes.

12:11:32 12 Q. And the date there is 22nd of May,
12:11:42 13 and what year do you understand that to be?

12:11:44 14 A. 1798.

12:11:46 15 Q. And it refers to a plan of the
12:11:58 16 lands and harbour purchased and a schedule of the
12:12:02 17 goods given in purchase of the same, but the plan
12:12:05 18 of the lands and harbour purchased, do you
12:12:08 19 understand the plan to be contained in this
12:12:10 20 exhibit?

12:12:11 21 A. Yes.

12:12:11 22 Q. So this is PDF page 7, and it is
12:12:27 23 not a numbered page. Do you understand this to be
12:12:30 24 the plan referred to?

12:12:31 25 A. Yes.

1 Q. You will see PDF page 6 has
2 another sketch. Is this related to the
3 Penetanguishene purchase?

4 A. Not this one, no.

5 Q. PDF page 5, what is this sketch?
6 Is it related to the Penetanguishene purchase?

7 A. Yes, it is, the provisional
8 purchase -- provisional agreement, I should say.

9 Q. When was that provisional
10 agreement reached?

11 A. 1795.

12 Q. And you will see that on PDF page
13 3 there is a text beginning:

14 "We the undersigned Chiefs of
15 the Chippeway Nation, do in behalf
16 of ourselves and our Nation,
17 relinquish and cede to the King of
18 Great Britain the lands described in
19 the plan subjoined, bounded by a
20 line to be drawn from the head
21 [...]"

22 And it continues. What is this text
23 here?

24 A. This is the text of the
25 provisional agreement.

12:13:56 1 Q. And it refers to a "plan
12:13:58 2 subjoined"?

12:13:58 3 A. Yes.

12:13:59 4 Q. What is that plan?

12:14:00 5 A. That was the second sketch map
12:14:02 6 that we looked at, I believe. I could add that in
12:14:11 7 the Volume 1 of Treaties and Surrenders, the maps
12:14:16 8 are always in fold-outs together within the volume,
12:14:22 9 and so you'll get two, three, four maps or sketch
12:14:25 10 maps together. They are not necessarily attached
12:14:29 11 immediately to the text of the surrender. So that
12:14:31 12 is why we are seeing things that appear to be a
12:14:34 13 little bit out of order.

12:14:35 14 Q. So this is the third sketch we
12:14:39 15 saw. I believe there was a sketch that you said
12:14:42 16 was unrelated.

12:14:43 17 A. Oh, correct. Yes.

12:14:46 18 Q. This third sketch here, PDF page
12:14:48 19 5, is that the plan referred to in the 1795 text?

12:14:55 20 A. Yes. My understanding that this
12:14:57 21 is the sketch referred to in the provisional
12:15:00 22 agreement.

12:15:01 23 Q. Just to summarize then, what is
12:15:08 24 your view about -- or what do you mean by "harbours
12:15:14 25 and waterways" in this purchase?

12:15:16 1 A. In this purchase, I understand
12:15:19 2 "harbour" to mean the safe coastline area at the
12:15:25 3 bottom of -- you see the line. I am pointing at my
12:15:30 4 screen here, but --

12:15:31 5 Q. What are you pointing at?

12:15:32 6 A. Okay. You see the word
12:15:34 7 "Penetanguishene".

12:15:35 8 Q. In the bottom left corner?

12:15:36 9 A. No. There, yes, right there. So
12:15:41 10 it is sort of in an arch at the top of the harbour.

12:15:44 11 Q. Okay. The bottom left of the page
12:15:48 12 there?

12:15:49 13 A. Through the -- yes.

12:15:50 14 Q. The word "Penetanguishene?"

12:15:54 15 A. The word "Penetanguishene", and
12:15:56 16 then below that, within the water, it says
12:15:59 17 "harbour".

12:15:59 18 Q. And then what do you understand --
12:16:01 19 what area of land do you understand "harbour" to
12:16:05 20 mean?

12:16:05 21 A. The coastline area surrounding the
12:16:08 22 word "harbour" where ships could safely anchor or
12:16:17 23 be docked. This is a very layperson's
12:16:24 24 understanding of "harbour" that I am giving.

12:16:26 25 Q. And what, with reference to this

12:16:37 1 map, do you understand the area surrendered to be?

12:16:40 2 A. I understand the area surrendered
12:16:43 3 to be north of the straight line at the south -- at
12:16:49 4 the bottom left of the screen. So it goes from
12:17:01 5 Opetguoyawsing -- pardon my pronunciation -- and
12:17:02 6 has the words "northwest" written below it. So
12:17:06 7 that straight line, and the lands north of that to
12:17:08 8 the coastline.

12:17:09 9 And you can see that on this sketch
12:17:12 10 there is a darker pencil or pen marking the outline
12:17:18 11 of those lands that are described in the surrender.

12:17:29 12 THE COURT: Just for the record, can
12:17:30 13 you expand this a bit, please, this map? Yes, and
12:17:37 14 show me the bottom of the -- the bottom left
12:17:42 15 corner. All right.

12:17:44 16 Now, what now appears on the screen is
12:17:49 17 not the entirety of the map but the entirety of, I
12:17:53 18 believe, what the witness just referred to as an
12:17:58 19 area marked with a darker line, and I just want to
12:18:01 20 ask clarification. I am trying to think of a way
12:18:06 21 of describing that shape. It has a straight
12:18:08 22 diagonal line toward the bottom and then three
12:18:13 23 out-jets along the other side. Is that what you
12:18:15 24 are referring to?

12:18:16 25 THE WITNESS: Yes, that is correct.

12:18:18 1 THE COURT: All right. Thank you for
12:18:20 2 clarifying that.

12:18:21 3 BY MR. OGDEN:

12:18:26 4 Q. And with reference to that line
12:18:27 5 and the darker pencil or pen marking on the outline
12:18:35 6 of the coast, could you tell us again, please, what
12:18:38 7 area you understand to have been surrendered in
12:18:44 8 this agreement?

12:18:45 9 A. The lands within the dark outline.

12:18:51 10 Q. And --

12:18:57 11 A. Sorry, and according to the text
12:18:58 12 of the Treaty, the waterways within that area as
12:19:02 13 well.

12:19:03 14 Q. So when you say "waterways within
12:19:05 15 that area", what do you mean?

12:19:07 16 A. I interpret that to mean rivers,
12:19:14 17 any inland lakes.

12:19:23 18 MR. McCULLOCH: Your Honour, objection.
12:19:25 19 We are now entering into expert opinion about the
12:19:29 20 interpretation of 18th century conveyancing
12:19:33 21 language, which is an aspect of legal history which
12:19:37 22 lies outside of the tender of qualification.

12:19:41 23 THE COURT: Well, since the witness has
12:19:43 24 answered the question, I will deal with this by
12:19:46 25 simply saying that your objection is on the record.

12:19:49 1 Please go ahead.

12:19:50 2 BY MR. OGDEN:

12:19:52 3 Q. Thank you.

12:19:52 4 Also on page 35 of Volume 2 of your
12:19:55 5 report, in this same paragraph at the top of the
12:20:00 6 page, you refer to a "'right-of-way' agreement as
12:20:08 7 Simcoe negotiated". Is there another description
12:20:12 8 of that agreement you are referring to?

12:20:21 9 THE COURT: Just before you answer the
12:20:24 10 question, so it is the same page?

12:20:24 11 MR. OGDEN: Page 35, yes.

12:20:25 12 THE COURT: Oh, I see.

12:20:27 13 BY MR. OGDEN:

12:20:28 14 Q. The Simcoe negotiated agreement.
12:20:32 15 Earlier, at pages 27 to 29, you cover the Simcoe
12:20:38 16 agreement of 1792, and another agreement starting
12:20:44 17 at page 27, August 1785, where you refer to an
12:20:53 18 agreement negotiated by John Collins, and then you
12:21:00 19 describe an agreement made by Simcoe in 1792.

12:21:09 20 So when on page 35 you talk about a
12:21:16 21 right-of-way agreement as Simcoe negotiated, were
12:21:20 22 there other negotiations associated with that
12:21:23 23 Simcoe agreement?

12:21:24 24 A. Yes, the 1785 memorandum by John
12:21:32 25 Collins and William Crawford, which I discuss in

1 Volume 2, pages 27 to 28.

2 Q. You call this agreement
3 essentially "a 'right-of-way' agreement"; what do
4 you mean by that?

5 A. I mean that this was an agreement
6 in which the Anishinaabe in the -- in this
7 particular case, in the Lake La Clie or Lake Simcoe
8 ** Matchedash area where the conference was held
9 with Collins and Crawford, there was an agreement
10 to allow transportation, navigation, and the use of
11 some lands for storage facilities that the British
12 required in order to complete what they referred to
13 as a communication route to Lake Huron.

14 Q. And do you understand the
15 agreement to have been specifically about
16 navigation as opposed to other things?

17 A. As opposed to settlement? The
18 objective was to gain free access along the route
19 between Lake Ontario, up the Toronto Carrying Place
20 to Lake Simcoe, and then into Lake Huron. So if
21 that is navigation, then yes.

22 Q. And how did the agreements come
23 about?

24 A. How did the agreements come about?

25 Q. What was Mr. Collins doing in the

12:23:24 1 area?

12:23:25 2 A. Collins had been instructed to
12:23:31 3 explore the area to find a suitable and navigable
12:23:38 4 route completely within British territory that
12:23:41 5 would not be interfered with by the Americans.
12:23:45 6 This was a priority for the British at the time.
12:23:49 7 This was soon after the American War of
12:23:54 8 Independence, and fur traders and the military were
12:23:57 9 very interested in finding and developing what they
12:24:02 10 called a communication route but basically a way of
12:24:05 11 navigating between Lakes Ontario and Huron safely,
12:24:11 12 away from the Americans, and -- sorry, I lost my
12:24:19 13 train of thought. What was the rest of your
12:24:20 14 question?

12:24:21 15 Q. That is fine. I am going to ask
12:24:24 16 for Exhibit 701 to be brought up, please. This is
12:24:29 17 an extract from the Archives of Ontario. If we
12:24:38 18 could go to PDF pages 4 to 5, please. At the
12:24:46 19 bottom half of this page 4 PDF, do you recognize
12:24:54 20 this?

12:24:55 21 A. Yes, I believe this is the letter
12:24:57 22 of instructions to John Collins to explore the
12:25:05 23 route from the Bay of Quinte and Lake Huron to Lake
12:25:14 24 La Clie, which is Lake Simcoe now. He was
12:25:18 25 instructed to note water depths, inhabitants, the

12:25:25 1 lands, whether, in fact, the Indigenous inhabitants
12:25:29 2 might be disposed to dispose of lands, what lands
12:25:34 3 might be necessary to purchase at a later time in
12:25:38 4 order to put into effect the communication route
12:25:43 5 that they were hoping -- the British were hoping to
12:25:46 6 establish.

12:25:56 7 Q. And what happened to the Collins
12:25:58 8 agreement? Well, we saw that the Collins agreement
12:26:01 9 was incorporated in some fashion in the
12:26:04 10 between-the-lakes purchase or the agreement
12:26:09 11 adjacent to the between-the-lakes purchase in 1792
12:26:14 12 made with Governor Simcoe. What can you say about
12:26:18 13 why the Collins agreement was incorporated in that
12:26:24 14 Simcoe agreement?

12:26:26 15 A. The fact that the Collins -- what
12:26:30 16 is usually referred to as the Collins memorandum,
12:26:33 17 is copied almost verbatim as a clause appended to
12:26:39 18 the 1792 between-the-lakes purchase, has always
12:26:46 19 been very interesting to historical researchers
12:26:50 20 studying treaties at the time because there is such
12:26:55 21 scattered and often missing archival information
12:26:59 22 about those early treaties.

12:27:02 23 The fact that we have an extant copy of
12:27:07 24 the Collins agreement and that we also have an
12:27:10 25 extant copy of Simcoe almost copying verbatim that

12:27:16 1 agreement in 1792 provides some correlation and
12:27:24 2 confirmation that, in fact, what happened in 1785
12:27:30 3 was not a land purchase and provides greater
12:27:37 4 significance to Simcoe and his ** superior's
12:27:40 5 concern for free access to navigable waters along
12:27:46 6 the Toronto Carrying Place and north to Lake Huron.

12:27:48 7 The between-the-lakes purchase was with
12:27:51 8 the Mississaugas of New Credit. Originally, upon
12:27:58 9 reading Collins' memorandum, I had assumed that the
12:28:04 10 agreement was solely with the Chippewas of Lakes
12:28:08 11 Huron and Simcoe because the agreement states that
12:28:11 12 it was made at Lake La Clie or Lake Simcoe.

12:28:17 13 The fact that it was appended to the
12:28:20 14 1792 Treaty with the Mississaugas of New Credit
12:28:24 15 suggests that there were other Anishinaabe groups
12:28:28 16 who were party to that original agreement in 1795.
12:28:32 17 Simcoe refers to it "as you agreed in a conference
12:28:37 18 with Collins and Crawford".

12:28:41 19 So exactly why Simcoe felt it important
12:28:47 20 or necessary to append that clause to the 1792
12:28:51 21 agreement, I have not come to any firm conclusion
12:28:57 22 about that, but it, on its face, appears as a
12:29:00 23 reminder that in other areas that the New Credit
12:29:05 24 Mississauga may have traditional rights to, that
12:29:10 25 they -- reminding them that they had promised to

1 allow free access to those navigable routes.

2 Q. Thank you, Your Honour. Those are
3 my questions on Volumes 1 and 2.

4 Thank you, Dr. Reimer.

5 A. Thank you.

6 EXAMINATION IN-CHIEF BY MR. FELICIANANT:

7 Q. Dr. Reimer, good afternoon.

8 A. Good afternoon.

9 Q. Can we start by -- I want to ask
10 you a couple of questions about the 1764 Congress
11 of Niagara. So if we could just quickly pull up
12 page 36 of your Volume 3 report, and this is
13 Exhibit 4703.

14 And I am just looking at page 36, the
15 second paragraph and the second sentence where it
16 reads:

17 "Bond Head's explanation for
18 seeking an agreement was framed in
19 historical reference to other
20 surrenders since the peace and
21 friendship treaties at Niagara in
22 1764."

23 And we don't have to pull this up, but
24 at Exhibit 4707, PDF page 5, this is your
25 deliberation time report, there is a chart in which

12:30:52 1 you reference the Congress of Niagara as being one
12:30:55 2 of the peace and friendship treaties.

12:30:57 3 So the question I have for you is did
12:31:00 4 you turn your mind specifically when preparing this
12:31:06 5 report to the Congress at Niagara and whether it or
12:31:11 6 any part of it was a treaty?

12:31:13 7 A. Not to that specific question of
12:31:16 8 whether it was a treaty. I would ask, I suppose
12:31:22 9 before giving a more fulsome answer, as to how
12:31:26 10 "treaty" is being defined.

12:31:30 11 Q. As a formal agreement between the
12:31:35 12 First Nations and the Crown.

12:31:38 13 A. Right.

12:31:39 14 Q. That carried with it certain
12:31:41 15 obligations.

12:31:42 16 A. Right, right.

12:31:44 17 MR. McCULLOCH: Your Honour, objection.
12:31:46 18 That is a legal question.

12:31:50 19 MR. FELICIAN: I would disagree that
12:31:51 20 it is a legal question. I would --

12:31:53 21 THE COURT: Well, before you disagree,
12:32:00 22 I mean, it is always a bit tricky, but when this
12:32:07 23 witness answers the question of whether she turned
12:32:10 24 her mind to whether what transpired at Niagara was
12:32:12 25 a treaty, and she needs to know what Mr. Feliciant

1 means by that, her answer and the value of it will
2 be limited to whatever presupposition she is given.

3 But I don't think there is anything
4 wrong with telling an expert how you are using a
5 word for the purpose of their answer. I think that
6 is all that is going on here. You may have to ask
7 your question again.

8 BY MR. FELICIAN:

9 Q. So did you turn your mind
10 specifically to the Congress of Niagara and whether
11 it or any part of it was a treaty?

12 A. No.

13 Q. Did you read or have you read
14 Professor Beaulieu's report?

15 A. No.

16 Q. Have you read Professor Beaulieu's
17 transcript of evidence that he gave in this
18 proceeding?

19 A. No.

20 Q. Relative to the balance of your
21 report, how important is it to your report whether
22 or not the Congress of Niagara is characterized as
23 a treaty or something else?

24 A. Nothing turns on that question in
25 terms of the rest of my opinions and conclusions.

1 Q. Can we -- do you have any
2 particular opinion then? I guess you don't, but
3 any particular opinion on Professor Beaulieu's
4 views on the Congress of Niagara?

5 A. I don't know what they are, so no.

6 Q. Thank you. Can we pull up page 2,
7 please, of the same report. Under heading 1.2, you
8 set out what you consider to be your research
9 issue, which you say is:

10 "[...] whether or not the land
11 cessions by the Saugeen-Nawash First
12 Nations to the Crown between 1836
13 and 1854 were conducted honorably."

14 Can you tell us what you understood
15 that instruction to be, particularly with respect
16 to honorably.

17 A. First of all, I should make it
18 clear that this is my paraphrase of what I
19 understood a main task of mine to be. I used the
20 word "conducted honorably" in view of prior
21 research that I have done on guidelines,
22 instructions, principles of treaty-making, that
23 have been issued to Crown officials since 1763.

24 So I am using it in more of a social
25 scientific sense in terms of honourable, proper,

12:35:17 1 appropriate behaviour or conduct.

12:35:20 2 Q. Can you comment on the amount of
12:35:23 3 secondary material available to you around
12:35:28 4 researching this issue of, as you have described,
12:35:32 5 honourable conduct?

12:35:33 6 A. The subject area specific to what
12:35:40 7 has often been referred to as "honour of the Crown"
12:35:44 8 is very much in its infancy from a historical or
12:35:49 9 even social scientific perspective.

12:35:52 10 For those of us doing historical
12:35:55 11 research and trying to grasp what might be the
12:36:02 12 scope of what we would look at in order to
12:36:08 13 recognize or, in social scientific parlance,
12:36:13 14 operationalize how honour of the Crown was shaped,
12:36:20 15 its past, its thread over time, is something that
12:36:29 16 is still very, very new.

12:36:30 17 When I started doing research on the
12:36:32 18 issue, which was in the context of my work for
12:36:36 19 Alderville, I was specifically asked to look into
12:36:40 20 it. I did a fairly comprehensive search for
12:36:43 21 secondary materials that might provide some clues
12:36:47 22 that I could follow, and there was virtually
12:36:50 23 nothing.

12:36:50 24 So I still see this as an area of
12:36:53 25 historical research, and anthropological research

12:36:58 1 in the sense too, and I can get to that later, but
12:37:01 2 historical research that is very new and that those
12:37:04 3 of us who are being asked these kinds of questions
12:37:09 4 are still taking one step at a time and, I think,
12:37:12 5 learning from each other how do we get a handle on
12:37:17 6 this, how do we recognize conduct that is
12:37:22 7 honourable or dishonourable when we are reading
12:37:25 8 through historical documentation, what guidelines
12:37:27 9 can we use.

12:37:29 10 So that it is still very much a new
12:37:34 11 area of research in my experience.

12:37:35 12 Q. And when you say you use it in the
12:37:38 13 social science context, what does that mean?

12:37:42 14 A. I mean that, in the social
12:37:44 15 sciences, we look for indicators, so what do people
12:37:52 16 do; how do they behave; what actions do they take;
12:37:56 17 what words do they say that will indicate a
12:37:59 18 particular phenomenon or aspect of, you know, what
12:38:05 19 are norms, what are considered not norm or
12:38:14 20 behaviour outside the norm, what is not socially
12:38:17 21 acceptable, these sorts of things, and social
12:38:21 22 scientists, you know, our job is to take a concept
12:38:25 23 and then -- again, I use the word "operationalize",
12:38:29 24 to suggest that we have to find actual little
12:38:32 25 pieces of identifiable behaviour or words that will

12:38:39 1 indicate whether or not a type of behaviour or
12:38:43 2 action or words are consistent with or not
12:38:46 3 consistent with norms within a social context.

12:38:52 4 Q. If we move down the page a little
12:38:55 5 bit, you will see three issues there, Issue 1,
12:38:59 6 Issue 2, Issue 3, and if you go over to page 3, so
12:39:04 7 the next page basically, you will see Issue 4 and
12:39:08 8 Issue 5. So you have five issues.

12:39:10 9 Could you tell us how Issues 1 through
12:39:16 10 5 relate to your research question. So what are
12:39:20 11 you doing here is what I am asking.

12:39:23 12 A. Would you like me to go through
12:39:24 13 each of the five or explain them more generally?

12:39:27 14 Q. Explain them more generally.

12:39:29 15 A. Each of these five are the kinds
12:39:31 16 of issues that I determined would be useful in
12:39:36 17 terms of bodies of documentation that would be
12:39:40 18 relevant to finding these indicators, as I
12:39:44 19 suggested earlier. So what kinds of information
12:39:48 20 might I look at and where might I find evidence of
12:39:53 21 understandings of honourable behaviour, both from a
12:40:01 22 First Nation perspective and from a Crown official
12:40:04 23 perspective.

12:40:04 24 So these were the five general types of
12:40:08 25 issues that methodologically were relevant to the

12:40:16 1 overall question I was trying to answer.

12:40:18 2 Q. And how would you describe the
12:40:21 3 amount of data available to you to address those
12:40:24 4 issues?

12:40:25 5 A. It is robust. There is a lot of
12:40:32 6 documentary evidence. The historical record is
12:40:37 7 fairly rich with respect to the subject matter that
12:40:40 8 I covered in my report from 1763 onward.

12:40:47 9 Q. Now, I would like to ask you some
12:40:49 10 questions about the second chapter in your report
12:40:55 11 on the Royal Proclamation and instructions. So how
12:41:01 12 would you -- why are you referring to the Royal
12:41:10 13 Proclamation and subsequent document as
12:41:12 14 instructions?

12:41:12 15 A. The term "instructions" comes out
12:41:16 16 of the historical documentary record itself. Many
12:41:20 17 of the documents I looked at -- for example, when a
12:41:25 18 new Lieutenant Governor would come to Upper Canada
12:41:29 19 or a new Governor General would be coming to
12:41:32 20 Canada, they were issued what were called
12:41:36 21 instructions. Similar kinds of "instructions" --
12:41:38 22 and I could put that into quotation marks -- were
12:41:41 23 also addressed to the Crown officials in charge of
12:41:45 24 the Indian Department, not only from 1763 onward,
12:41:52 25 but before that, 1755, when Sir William Johnson

1 became the Superintendent for the northern area.

2 So my use of the word "instructions"
3 comes from the -- directly from the historical
4 record. These were the protocols and policies and
5 guidelines that the Crown was issuing to their
6 officials in Canada in terms of this is what we
7 expect you to follow when dealing with Indigenous
8 groups, when disposing of -- treating for the
9 disposal of lands, et cetera.

10 Q. Can we go to page 14 of your
11 report. On this page you have something called
12 "Table 2.1, Principles of Treaty-Making in Upper
13 Canada". How did you --

14 THE COURT: Sorry, what page are you
15 on, Counsel?

16 MR. FELICIAN: Sorry, this is page 14.

17 THE COURT: Of Volume 2?

18 MR. FELICIAN: Of Volume 3.

19 THE COURT: Volume 3.

20 MR. FELICIAN: Page 14.

21 BY MR. FELICIAN:

22 Q. So if we can go up again, please,
23 scroll up. So let's start with asking you, what is
24 the purpose of this chart?

25 A. This chart is my way of organizing

12:43:26 1 the information that comes from a variety of
12:43:34 2 different historical records. The fact that I put
12:43:39 3 it into table format was simply my way of
12:43:42 4 organizing the information.

12:43:47 5 The information is a summary -- or the
12:43:50 6 13 principles are a summary of instructions from
12:43:56 7 the Royal Proclamation through to Dorchester's 1794
12:44:03 8 instructions. Some of those documents are lengthy.
12:44:07 9 They will have 60, 70 separate instructions, only a
12:44:13 10 few of which might relate to treaty-making in
12:44:16 11 Canada.

12:44:18 12 And in the preceding pages, I go
12:44:21 13 through the foundational documents, the Royal
12:44:27 14 Proclamation, the 1764 plan, draft plan, and
12:44:31 15 Dorchester's 1794 instructions, and Table 2.1
12:44:37 16 simply synthesizes and summarizes the 13 main
12:44:41 17 principles that I gleaned from those documents.

12:44:44 18 Q. And so how do you intend the
12:44:46 19 reader to use this chart?

12:44:47 20 A. As simply a comparative or
12:44:53 21 heuristic device by which we can then examine more
12:44:58 22 closely information ** and records we have about a
12:45:01 23 particular treaty and then, okay, how do or do not
12:45:10 24 what happened in this particular treaty reflect
12:45:14 25 what we know of the culture and protocol of

12:45:18 1 treaty-making that was established from the
12:45:21 2 beginning of British sovereignty in Canada.

12:45:24 3 Q. And now I am going to ask you the
12:45:26 4 other side of that question. How should it not be
12:45:29 5 used?

12:45:29 6 A. It should not be used as a test of
12:45:34 7 validity. I don't think it should be -- I did not
12:45:38 8 intend for it to be used as a checklist. I
12:45:43 9 understand that it can be misconstrued that way and
12:45:48 10 that may be the result of my decision to put it
12:45:52 11 into a table format and then using it to assess
12:45:58 12 treaty-making for each of the next three treaties
12:46:02 13 that I deal with in this report.

12:46:04 14 Q. And you mentioned that you didn't
12:46:05 15 think it should be referred to as a checklist. Why
12:46:11 16 should it not be used as a checklist?

12:46:13 17 A. I think I do use the word
12:46:16 18 "checklist" at least once in this report, and it is
12:46:21 19 perhaps not the best choice of words because it
12:46:26 20 connotes or evokes an idea of, you know, having a
12:46:33 21 board with a list and checking things off, did it,
12:46:37 22 did it, did it, did it, and it is not -- it is
12:46:41 23 likely not the best way for it to have been
12:46:46 24 presented.

12:46:49 25 And I say this because I think it is,

12:46:53 1 again, important to make clear that this is all a
12:46:57 2 work in progress in terms of determining how
12:47:00 3 historical researchers deal with this question of
12:47:04 4 treaty-making and honour of the Crown in
12:47:07 5 treaty-making.

12:47:09 6 So, you know, that is the best
12:47:12 7 explanation that I can give at this point. It
12:47:16 8 really is a tool of comparison, of reminding us
12:47:20 9 that there is a culture of treaty-making in the
12:47:24 10 Indian Department. When a particular Commissioner
12:47:28 11 was appointed to go and make a treaty in 1851 or
12:47:37 12 1850 or 1854, this was not, in my opinion, done in
12:47:40 13 a vacuum. There was a stage that had been set,
12:47:47 14 these are how things are done, and these are
12:47:49 15 guidelines that can be followed and that are useful
12:47:53 16 to us as a Crown in terms of having a record of
12:47:59 17 these treaties, of what happened at the
12:48:02 18 treaty-making, during the treaty-making process, et
12:48:04 19 cetera.

12:48:04 20 Q. And just for the record, you have
12:48:09 21 said you did refer to it as a checklist at one
12:48:11 22 point in your report. Can we just pull up page 73
12:48:15 23 so that we can see where that was. Is that the
12:48:21 24 reference you are speaking of where you indicate
12:48:23 25 that Table 3.1 below provides a treaty-making

12:48:27 1 checklist?

12:48:28 2 A. Yes.

12:48:28 3 Q. Now, when you say they can be
12:48:35 4 followed, why do you use the word "can"?

12:48:38 5 A. Because I am not -- and I am still
12:48:42 6 developing my thinking on this matter. I -- they
12:48:48 7 were instructions. A person can be instructed to
12:48:50 8 do something. A person can choose not to follow
12:48:53 9 those instructions, and it may be subject to
12:48:57 10 reprimand or not if the instructions are not
12:49:00 11 followed.

12:49:01 12 I think that some flexibility needs --
12:49:06 13 there is still work to be done to incorporate some
12:49:08 14 flexibility in what I have done here with these
12:49:11 15 tables and with the 13 principles, and that is why
12:49:16 16 I want to emphasize that this for me, as a
12:49:21 17 historical researcher, is still an area of study
12:49:24 18 that is a work in progress, and I don't think
12:49:29 19 anything is set in stone.

12:49:31 20 At the same time, I think it is very
12:49:33 21 important to acknowledge and remember that these
12:49:38 22 treaties and the way in which treaty Commissioners
12:49:44 23 conducted themselves were subject to a history of
12:49:46 24 the way treaty-making had been done, and there are
12:49:50 25 foundational documents from 1763 onward that inform

12:49:56 1 those protocols and traditions of treaty-making.

12:49:58 2 Q. Can we pull up Exhibit 615,
12:50:03 3 please. I understand this is the -- well, I'll
12:50:14 4 wait for it. Exhibit 615, and I believe we go to
12:50:57 5 page 10.

12:51:02 6 THE COURT: Can you expand it, please?
12:51:04 7 It is very small.

12:51:15 8 BY MR. FELICIAN:

12:51:16 9 Q. I understand -- and perhaps if we
12:51:17 10 go back to not the first page, but the first page
12:51:20 11 of the written text, if we can expand that a little
12:51:27 12 bit, please. This is what I understand to be the
12:51:36 13 Plan for the Future Management of Indian Affairs
12:51:41 14 from 1764; is that what that document is?

12:51:44 15 A. Correct.

12:51:44 16 Q. Now --

12:51:47 17 THE COURT: Just before you go on, can
12:51:49 18 you make it a little bigger, please?

12:52:02 19 That is a slight overcorrection.

12:52:03 20 All right. Stop there.

12:52:07 21 BY MR. FELICIAN:

12:52:07 22 Q. Now, perhaps we can start by
12:52:09 23 telling us what that document is.

12:52:14 24 A. The Lords of Trade in 1764, so
12:52:19 25 after the Royal Proclamation of 1763, the Lords of

1 Trade drafted a plan for how Indian Affairs should
2 be managed within the British territories in
3 Canada. And this was the plan that they came up
4 with, and I think there is something like, I don't
5 know, 60-some instructions or components to the
6 plan, many of which deal with how trade would be
7 regulated, how -- most of it is about trade, but it
8 does include some clauses that are relevant to land
9 surrenders or the disposal of lands by Indigenous
10 people.

11 Q. Now, was there anything in that
12 about reserves, by any chance?

13 A. Yes.

14 Q. Now, can you comment on whether
15 this document had any relevance in 1854 at the time
16 of Treaty 72?

17 A. The Plan for Future Management of
18 Indian Affairs was a draft plan. It was never
19 formally adopted. Sir William Johnson had
20 responses to the plan, concerns about the plan.
21 However, as written, the plan -- I'm just giving a
22 little bit of background context, if you don't
23 mind.

24 The plan itself became -- or remained a
25 very alive document over the next few decades. It

12:54:08 1 was appended to the instructions to Governor
12:54:13 2 Haldimand. It was appended to the instructions of
12:54:18 3 Sir Guy Carleton, who was later Lord Dorchester, as
12:54:23 4 a guide on how to conduct trade, and it always
12:54:25 5 included these clauses -- I think it is 41, 42, and
12:54:30 6 43 -- that deal with the disposal of lands and
12:54:34 7 reserves.

12:54:34 8 The reason -- one of the reasons I
12:54:39 9 think this is a significant document to tracing the
12:54:45 10 principles of treaty-making for decades after, for
12:54:51 11 example, in 1854, is the Plan for Future Management
12:54:54 12 of Indian Affairs is the one plan that addressed
12:55:00 13 reserves for the Indigenous people and the
12:55:03 14 concurrence of Indigenous people to the boundaries
12:55:05 15 of those reserves.

12:55:07 16 Dorchester's plan in 1794 and the Royal
12:55:13 17 Proclamation do not mention reserves. We know that
12:55:16 18 not only in Surrender 72 in 1854 were reserves a
12:55:22 19 matter of misunderstanding or a need to come to an
12:55:28 20 agreement on an understanding of what the reserve
12:55:31 21 boundaries were, and dealing also with the way in
12:55:37 22 which the boundaries of those reserves were
12:55:39 23 surveyed.

12:55:39 24 So in that respect, I see a thread from
12:55:45 25 what we see in the plan to what we see later on in

12:55:51 1 future treaties.

12:55:52 2 Q. Can we pull up Exhibit 1264,
12:55:59 3 please. And on the screen we have a copy of a
12:56:05 4 dispatch from Lord Glenelg to the Earl of Gosford
12:56:11 5 dated August 31st, 1837. Does this document relate
12:56:16 6 to the understanding of Crown officials when making
12:56:19 7 treaties, and if so, how?

12:56:22 8 A. First of all, this document came
12:56:23 9 to my attention only recently. It is not a
12:56:26 10 document I was familiar with before this. The very
12:56:33 11 last observation at the end of this dispatch
12:56:37 12 relates to the disposal of lands.

12:56:44 13 Q. Can we go to that, towards the end
12:56:47 14 of the dispatch, please.

12:56:52 15 A. It is this one here, the 1838 one.

12:56:54 16 Q. And how does that relate to --

12:57:00 17 A. No, we need to go down to the
12:57:02 18 bottom.

12:57:03 19 Q. Sorry.

12:57:14 20 A. Right.

12:57:14 21 Q. So it says:

12:57:15 22 "I conclude with Three general
12:57:17 23 Observations:"

12:57:18 24 So how does this relate to that issue?

12:57:20 25 A. Just to provide a little bit of

12:57:23 1 context, he is concluding three general
12:57:26 2 observations in relation to all of the dispatch
12:57:31 3 that he has written in the pages before this.

12:57:34 4 In 1838, the Indian Department was
12:57:39 5 embarking very much on attempting to implement a
12:57:43 6 new policy of civilization in the Canadas, and
12:57:49 7 Glenelg was quite committed to the policy of
12:57:53 8 civilization and much of the letter preceding these
12:57:57 9 three general observations relate to his views and
12:58:00 10 advice that he has received about how to effect
12:58:04 11 civilization of Indian Nations in the Canadas.

12:58:08 12 So at the end of it, he concludes with
12:58:11 13 three general observations. The first two do not
12:58:17 14 concern disposal of lands, but the third one, if we
12:58:20 15 go down, very briefly states:

12:58:27 16 "3. I would in the same Spirit
12:58:30 17 [...]" -- and I am quoting now.

12:58:32 18 "I would in the same Spirit deal
12:58:34 19 with the Question of Lands for the
12:58:36 20 Indians. However rigidly the Rules
12:58:38 21 respecting the Disposal of Lands may
12:58:40 22 be observed in general, and it is
12:58:41 23 necessary to observe them with the
12:58:43 24 utmost Strictness, yet if in any
12:58:46 25 Case it be for the clear Advantage

1 of the Indians to depart from those
2 Rules the Departure ought without
3 Hesitation to be sanctioned."

4 Q. So then how do you incorporate
5 that into your discussion of the documents you have
6 listed in your chart?

7 A. First of all, I think that there
8 is -- this is an interesting document in terms of
9 furthering historical research into the development
10 of treaty-making in the Canadas. This is a direct
11 statement that is being made in the context of
12 civilization as opposed to the military alliance
13 that had come before and the trade alliance that
14 most of the prior instructions were dealing with.

15 And I think it is very significant to
16 note that Glenelg is talking about rules respecting
17 the disposal of lands and that they should be
18 observed with the utmost strictness, but that there
19 needs to be some flexibility now that we are in a
20 period of civilization that these be sanctioned as
21 well.

22 So this is back to where I was speaking
23 to the challenge of researching this question of
24 honour of the Crown decades after the Royal
25 Proclamation, this notion that what is yet to be

1 done, and what I -- would be the next step after
2 what I have done so far is how do we incorporate
3 that kind of policy change and flexibility that
4 would be needed in this context.

5 Q. Having read this -- and this will
6 be my last question before our break. Having read
7 now this dispatch from Lord Glenelg, does it change
8 your conclusions in any way?

9 A. No, it does not.

10 MR. FELICIAN: Your Honour, I note
11 that it is 1 o'clock, our usual lunch break.

12 THE COURT: All right. 2:15.

13 -- ADJOURNED AT 1:01 P.M.

14 -- RESUMED AT 2:17 P.M.

15 THE COURT: Please go ahead.

16 BY MR. FELICIAN:

17 Q. Thank you.

18 Where we left off at Exhibit 1264, just
19 for the record, I neglected to say it ended up we
20 were on pages 8 and 9 of the document itself.

21 So if we go to -- now if we could bring
22 up Volume 3, the report, and go to page 158.
23 First, look at the first paragraph, you will see
24 highlighted in blue:

25 "[...] I am in full agreement

14:17:51 1 with Plaintiff Experts Dr. Driben
14:17:54 2 and Dr. Brownlie that Anderson's
14:17:57 3 actions were both coercive and
14:18:00 4 dishonourable."

14:18:01 5 So to put it in context, Anderson's
14:18:03 6 actions you are referring to, we are talking
14:18:08 7 about -- what period of time here are we talking
14:18:10 8 about?

14:18:10 9 A. August 1854.

14:18:11 10 Q. So at this point, all I am going
14:18:19 11 to ask you about is the word "dishonourable", and
14:18:21 12 could you explain --

14:18:23 13 THE COURT: Could you just pause for a
14:18:25 14 minute. I thought you said page --

14:18:27 15 MR. FELICIAN: 158.

14:18:28 16 THE COURT: I'm in the wrong place
14:18:30 17 here. All right. Please go ahead.

14:18:38 18 BY MR. FELICIAN:

14:18:39 19 Q. And I guess, before I actually ask
14:18:41 20 you the question, I can take you to the second
14:18:43 21 place where this appears, is at page 202, if we can
14:18:47 22 go to page 202, please. And if we look at 7.8.7,
14:18:59 23 this is just in your summary of conclusions, you
14:19:02 24 repeated it where you used the word
14:19:06 25 "dishonourable."

14:19:06 1 And the question I have for you is can
14:19:08 2 you explain what you mean by "dishonourable
14:19:13 3 conduct"?

14:19:14 4 A. In this instance -- and I want to
14:19:18 5 make it clear that I am talking about Anderson's
14:19:20 6 personal conduct, not -- and I used the word
14:19:25 7 "dishonourable" because, in my opinion, his -- the
14:19:29 8 threats and intimidating and coercive language that
14:19:34 9 he used was inappropriate as a representative of
14:19:38 10 the Crown. It is not reflective of informed and
14:19:44 11 voluntary consent, as suggested and indicated in
14:19:49 12 the Royal Proclamation and further instructions.

14:19:53 13 So when I say:

14:19:57 14 "Anderson resorted to
14:19:59 15 intimidation and threats that did
14:20:00 16 not reflect Departmental policy and
14:20:03 17 practice and [...]"

14:20:07 18 In my opinion, it contravenes
14:20:09 19 treaty-making principles flowing from the 1763
14:20:11 20 Royal Proclamation.

14:20:18 21 Q. And did the Crown ultimately
14:20:20 22 follow Anderson's advice?

14:20:21 23 A. No, it did not.

14:20:22 24 Q. Did it sanction in any way his
14:20:25 25 conduct?

14:20:25 1 A. There is no documentation to
14:20:29 2 indicate whether they did or not, but it is
14:20:34 3 possibly telling that he was not present at the
14:20:39 4 negotiations two months later in October.

14:20:41 5 Q. And when you used the word
14:20:44 6 "dishonourable", do you mean that in any legal
14:20:48 7 sense of the word, such as in respect to honour of
14:20:51 8 the Crown?

14:20:52 9 A. No.

14:20:52 10 Q. Now, I would like to talk to you a
14:20:58 11 bit about your report where it speaks about
14:21:02 12 centralization and civilization, which occurs at
14:21:06 13 pages 27 and 28 of your report. Can you explain
14:21:14 14 what these terms mean and how they relate to each
14:21:17 15 other.

14:21:18 16 So perhaps just pull up page 27. Yes.
14:21:31 17 Sorry, so if you could explain what is meant by the
14:21:34 18 terms "centralization" and "civilization" and how
14:21:38 19 they relate to each other.

14:21:39 20 A. Centralization was an idea and a
14:21:43 21 policy to bring together the Indigenous what were
14:21:52 22 called wandering Indians or wandering tribes across
14:21:59 23 what was then Upper Canada, to centralize them in
14:22:04 24 local areas where they could be civilized.

14:22:10 25 "Civilization" refers essentially to

14:22:15 1 assimilative kinds of policies, providing schools,
14:22:19 2 education, training for trades, farming,
14:22:27 3 Christianization. The missions were part of the
14:22:30 4 plan.

14:22:32 5 So the two are connected in that in
14:22:34 6 order to civilize, in the Crown's view, they needed
14:22:38 7 to centralize the First Nations peoples as well.

14:22:42 8 Q. If we could call up Exhibit 1092,
14:22:47 9 please, and if we can go to PDF page 19, which at
14:22:57 10 the top of the document appears to be marked 59904,
14:23:03 11 if we could blow that up a little bit.

14:23:06 12 Now, this is a bit of a long passage,
14:23:08 13 and we don't have a transcript for it, but if you
14:23:11 14 could perhaps read that to us to help us with the
14:23:15 15 interpretation and translation of it, that would be
14:23:18 16 helpful --

14:23:19 17 THE COURT: Well, before we do that, we
14:23:20 18 need to know what it is.

14:23:21 19 BY MR. FELICIANANT:

14:23:22 20 Q. Oh, sorry. Yes, you are quite
14:23:24 21 right. I understand -- if you could explain to us
14:23:26 22 what this letter is. If we can go back to the top
14:23:31 23 of the letter, I understand this is a letter from
14:23:34 24 Anderson to the Governor General; is that correct?

14:23:36 25 A. Yes.

14:23:40 1

Q. Okay.

14:23:40 2

A. Dated 24 September, 1835.

14:23:44 3

Q. And can you just remind us then

14:23:46 4

when the Treaty 45 1/2 was?

14:23:49 5

A. 1836, so just about a year later.

14:23:52 6

Q. Okay. So now, if we can go back

14:23:55 7

to that portion, if you could just read the

14:23:59 8

highlighted portion and then, after reading it,

14:24:03 9

tell us what this portion tells you and assists us

14:24:11 10

with understanding.

14:24:12 11

A. So Anderson is providing his

14:24:16 12

opinion and advice to the Governor General based on

14:24:20 13

his knowledge and experience of working with First

14:24:26 14

Nations, particularly at Coldwater and the Narrows.

14:24:32 15

To put this into context, things were not going

14:24:35 16

very well at Coldwater and, in fact, about a year

14:24:39 17

later, Coldwater was -- the so-called experiment

14:24:44 18

was ended.

14:24:44 19

So Anderson is stating here -- I am

14:24:51 20

just having trouble with the second word, "If

14:24:54 21

[...]"

14:24:55 22

Q. "Concentrated" perhaps?

14:24:57 23

A. "If concentrated and civilized,

14:25:00 24

the Indian Nations would be useful

14:25:03 25

and loyal subjects [...]"

14:25:05 1 Pardon me, let me go back:

14:25:06 2 "If concentrated and civilized,
14:25:08 3 the Indian Nations would be useful
14:25:11 4 and loyal subjects during peace and
14:25:14 5 in the event of war might become an
14:25:16 6 important support to the government.
14:25:18 7 Our Indian allies [...]"

14:25:24 8 Q. "Emigrating", perhaps?

14:25:26 9 A. "[...] emigrating from the
14:25:29 10 United States and seeking our
14:25:31 11 protection as well as the British
14:25:32 12 Indians whose means of subsistence
14:25:35 13 are exhausted [...]"

14:25:37 14 Can you scroll down, please?

14:25:38 15 "[...] have claims on our
14:25:41 16 humanity which would be most easily
14:25:42 17 satisfied by forming one extensive
14:25:46 18 establishment in the purpose of
14:25:48 19 leading them to exercise the arts of
14:25:51 20 civilized life."

14:25:52 21 [As read.]

14:25:52 22 So there you have one extensive
14:25:54 23 establishment, that is centralization, for the
14:25:56 24 purpose of leading them to exercise the arts of
14:25:58 25 civilization. So there is a direct connection in

1 Anderson's letter.

2 I'll continue on:

3 "The Manitoulin, an island on
4 the north side of Lake Huron in
5 extent about one hundred miles by
6 thirty, appears to be the most
7 suitable for the purpose. Its
8 immediate vicinity to the present
9 lands [...]" - and here it is
10 vicinity to Coldwater and the
11 Narrows - "of the Indians will
12 induce them to make the change
13 without difficulty. The land is
14 good - it is well watered by rivers
15 and interior lakes, and its numerous
16 bays abound in fish. All these are
17 important considerations, for the
18 Indians cannot be expected all at
19 once to change his habit of life.
20 This must with every nation be a
21 lingering operation. We can easily
22 conceive how long a time it would
23 take a white man to change his mode
24 of life to that of the Indian, to
25 acquire the arts of canoe and wigwam

14:27:09 1 building, to fish and hunt."

14:27:14 2 [As read.]

14:27:16 3 Q. So what does this tell us,
14:27:19 4 firstly, about the timing of any decision to
14:27:26 5 centralize Indians on Manitoulin Island?

14:27:28 6 A. That this was an idea being
14:27:31 7 promoted at least a year earlier by Anderson, who
14:27:38 8 was most familiar with the First Nations living in
14:27:41 9 this part of Upper Canada.

14:27:43 10 Q. And what would Anderson's
14:27:45 11 relationship to Bond Head, what would that have
14:27:49 12 been?

14:27:49 13 A. When Bond Head came over as
14:27:51 14 Lieutenant Governor, Anderson will have informed
14:27:56 15 him, have advised him. Anderson accompanied Bond
14:28:03 16 Head or, perhaps the other way around, Bond Head
14:28:07 17 accompanied Anderson, to Manitoulin Island during
14:28:10 18 the annual distribution of presents -- distribution
14:28:16 19 of annual presents in August 1836 on Manitoulin
14:28:19 20 Island.

14:28:20 21 Q. And how would you then describe,
14:28:31 22 firstly, Bond Head's plan in 1836 when he proposed
14:28:37 23 to the Indians to centralize on Manitoulin? How
14:28:42 24 would you characterize or describe that plan?

14:28:45 25 A. Well, Bond Head himself describes

14:28:49 1 it as having travelled around to some extent with
14:28:55 2 Anderson and visiting locations where First Nations
14:29:00 3 were living, was convinced that centralizing First
14:29:07 4 Nation peoples and groups, creating settlements and
14:29:10 5 communities that were near white settlement, was to
14:29:14 6 their disadvantage.

14:29:16 7 His view was that the bad influences of
14:29:21 8 white settlement were more of a disadvantage than
14:29:27 9 could be achieved by the advantages of being that
14:29:31 10 close.

14:29:31 11 So by the time he arrived in Manitoulin
14:29:34 12 Island with Anderson, Bond Head was quite convinced
14:29:38 13 of the centralization or segregation aspect of the
14:29:45 14 government's new Indian Affairs policies.

14:29:49 15 He was not convinced of the
14:29:52 16 civilization aspect of it, though. In his view,
14:29:56 17 the better way to go -- and this was his own
14:30:00 18 personal view, that the better way to go was to
14:30:03 19 centralize and segregate and allow the First
14:30:07 20 Nations to continue in their traditional way of
14:30:09 21 life on the island and that attempts to civilize,
14:30:14 22 in fact, were doomed to fail.

14:30:15 23 Q. So if we could bring up Exhibit
14:30:25 24 1138, please, and this is a copy of the dispatch
14:30:29 25 from Sir F.B. Head to Lord Glenelg dated August

14:30:37 1 20th, 1836, and if we could go to the second page,
14:30:43 2 12 lines up from the bottom approximately, you will
14:30:45 3 see the highlighted portion in blue. It is a short
14:30:52 4 passage. Could you just read that for us and then
14:30:54 5 tell us what that tells us about Bond Head's ideas
14:30:58 6 of civilization?

14:30:59 7 A. So I should read the portion after
14:31:04 8 the semicolon?

14:31:06 9 Q. Yes.

14:31:07 10 A. "Yet it was evident to me that
14:31:11 11 we should reap a very great benefit
14:31:13 12 if we could persuade those Indians
14:31:15 13 who are now impeding the progress of
14:31:17 14 civilization in Upper Canada to
14:31:20 15 resort to a place possessing the
14:31:21 16 double advantage of being admirably
14:31:24 17 adapted to them (inasmuch as it
14:31:29 18 affords fishing, hunting, bird
14:31:31 19 shooting, and fruit), and yet in no
14:31:38 20 way adapted to the white
14:31:40 21 population."

14:31:40 22 [As read.]

14:31:44 23 Q. So what does that tell us then
14:31:46 24 about Bond Head's ideas?

14:31:49 25 A. That he had been convinced that

14:31:53 1 allowing a place where First Nations could be
14:31:56 2 centralized and continue their traditional way of
14:31:59 3 life was, in his view, the better approach.

14:32:03 4 Q. Now, can we pull up Exhibit 1123,
14:32:12 5 please. Now, this is a letter dated July 5th,
14:32:21 6 1836, and if we go to the end of the letter, we'll
14:32:23 7 see who it is from, the very end, from Joshua
14:32:31 8 Wawanash and three other Chiefs. So can you
14:32:39 9 describe basically what this letter is and where it
14:32:42 10 was printed?

14:32:43 11 A. The letter is a published copy of
14:32:46 12 a letter in the Christian Guardian.

14:32:48 13 Q. And who was the letter to?

14:32:53 14 A. The letter is from the Chiefs at
14:32:57 15 St. Clair to their Anishinaabe brethren elsewhere
14:33:00 16 in Upper Canada.

14:33:01 17 Q. If we can go to page 2 and look at
14:33:06 18 the second full paragraph, which is marked in blue,
14:33:13 19 and if you need a moment to read it -- you don't
14:33:15 20 have to read it out loud, and perhaps tell us what
14:33:20 21 this highlighted portion from "Could we all settle
14:33:24 22 together [...]" to "[...] bless her benefactors"
14:33:30 23 tells us.

14:33:32 24 A. [Witness reviews document.]

14:33:34 25 This portion of the letter is exhorting

1 other First Nations, Anishinaabe, to come together,
2 to settle together, to be separate from the white
3 population, to have their own schools, et cetera,
4 to also asking for assistance from missionaries and
5 government agents to assist them to continue their
6 existence in a place separate or in a place --
7 yeah, a place separate from the whites.

8 Q. And if we could go to page 3,
9 please, the first full paragraph, approximately six
10 lines down, you will see a highlighted portion
11 starting "Our brethren at Sawgeeng pity us [...]",
12 and if you could read that and perhaps tell us what
13 this tells us about the timing of the community's
14 considerations around centralization from the
15 community's perspective.

16 A. I'm sorry, can you just remind me
17 of the date of this letter? It was 1835?

18 Q. It was July the 5th, 1836.

19 A. Oh, July 1836.

20 Q. July the 5th, 1836.

21 A. Okay. Thank you.

22 The Chiefs are suggesting that a piece
23 of land that they could achieve this separation and
24 a place of their own was on Saugeen territory and
25 that their brothers at Saugeen were willing to have

14:35:27 1 them come and settle with them on their lands.

14:35:29 2 Q. And in relation to when Bond Head
14:35:31 3 came to make the treaty and deliver the presents in
14:35:35 4 1836, when was that?

14:35:36 5 A. August 1836.

14:35:42 6 Could I just say something more about
14:35:44 7 this passage?

14:35:46 8 Q. Yes.

14:35:47 9 A. Because the last portion of the
14:35:48 10 passage is significant as well, because in July
14:35:50 11 1836, Chief Wawanosh and his fellow Chiefs are
14:35:56 12 saying:

14:35:56 13 "[...] if we do not accept this
14:35:58 14 offer, they must sell their lands to
14:36:00 15 Government, and if once sold we can
14:36:03 16 never purchase them back again; and
14:36:03 17 when we have to remove, or our
14:36:06 18 children, we or they must go we know
14:36:09 19 not where."

14:36:10 20 And for me that portion is significant
14:36:13 21 not only because of a recognition of land sales,
14:36:18 22 and once they are sold, they can never purchase
14:36:19 23 them back again, but they are talking -- as far as
14:36:22 24 I can tell, they are talking about the lands south
14:36:26 25 of the peninsula that were still Saugeen territory.

14:36:31 1 The St. Clair First Nation will have
14:36:34 2 been aware that immediately above them and below
14:36:42 3 Saugeen territory were the Canada Company lands and
14:36:46 4 that those were filling in, and the next set of
14:36:49 5 lands to perhaps be asked for would be those ones
14:36:54 6 bordering on the Canada Company lands, and that was
14:36:58 7 Saugeen territory.

14:36:59 8 So I find this letter interesting in
14:37:04 9 terms of its timing and the acknowledgment by the
14:37:08 10 St. Clair Chiefs that if we don't act fast, we may
14:37:11 11 lose our chance.

14:37:13 12 Q. And if we go to page 2, the third
14:37:17 13 full paragraph, starting "But you will be ready to
14:37:25 14 say, 'O the graves of our fathers!' [...]", and
14:37:32 15 then down to -- if you can scroll down a bit,
14:37:34 16 "[...] if safely funded, to provide something for
14:37:38 17 our children for ever", can you just take a look at
14:37:41 18 that paragraph and tell us what that tells us about
14:37:44 19 the community's perspectives on giving up their
14:37:48 20 lands and moving to Saugeen or somewhere else.

14:37:51 21 A. [Witness reviews document.]

14:38:05 22 First of all, it demonstrates the
14:38:13 23 adoption of Christianity by these Chiefs and other
14:38:18 24 Anishinaabe in the area. It acknowledges a change
14:38:25 25 in their way of life and in their future, and it

14:38:32 1 demonstrates a concern shifting from homelands
14:38:37 2 where their fathers' graves are to focussing on a
14:38:43 3 better future for their children and looking for
14:38:48 4 solutions to -- in light of a very changing world
14:38:54 5 around them.

14:38:55 6 Q. If we could pull up Exhibit 1065,
14:39:00 7 please. Now, you were talking about -- this is a
14:39:09 8 map of land unsurrendered prior to Treaty 45 1/2
14:39:15 9 dated November 29th, 1834. Now, if you could
14:39:21 10 scroll just -- yeah, that is good. You will see
14:39:27 11 this depicting three areas there. At the very
14:39:31 12 bottom, it references the Canada Company's Huron
14:39:34 13 tract.

14:39:34 14 A. Right.

14:39:35 15 Q. Then there is a wedge-shaped area
14:39:36 16 in the middle and an area above that that would
14:39:40 17 have encompassed basically Treaty 45 1/2 and Treaty
14:39:44 18 72. How does this -- does this assist us in
14:39:48 19 understanding what was being referenced in the last
14:39:50 20 letter we read?

14:39:51 21 A. I interpret the letter about if we
14:40:01 22 don't move to Saugeen, the lands will surely be
14:40:04 23 sold, and I see this as not coincidental that there
14:40:08 24 is a line above which lands are already taken up
14:40:11 25 and above that is the Saugeen tract. And I think

14:40:16 1 when you look at this map and you read the letter
14:40:19 2 published in the Christian Guardian, you can get a
14:40:23 3 sense of sort of the geographic urgency of what the
14:40:29 4 St. Clair Chiefs were saying, that, you know,
14:40:34 5 settlement and survey is closing in on them and a
14:40:38 6 sense of urgency to move to settle in a central
14:40:44 7 place and the invitation from the Saugeen to do so
14:40:47 8 there.

14:40:47 9 Q. So if you were to describe the
14:40:49 10 Saugeen tract by looking at this map, what area on
14:40:52 11 that map would you say it is?

14:40:55 12 A. The area east of the Lake Huron
14:41:01 13 coastline, north of the uppermost straight
14:41:10 14 diagonal, almost horizontal dark line -- sorry, it
14:41:15 15 is hard to describe without pointing my finger --
14:41:18 16 and then the area west of the townships that are
14:41:24 17 named.

14:41:25 18 Q. Thank you.

14:41:26 19 A. I don't know if that clearly --

14:41:29 20 Q. Now, I am going to move to another
14:41:32 21 portion of your report now. You discuss in your
14:41:35 22 report some of the communities' petitions to settle
14:41:40 23 land, so if we could bring up Exhibit 1040, please.
14:41:52 24 And this is a petition to Sir John Colborne dated
14:41:58 25 July 8th, 1833. Are you able to tell us which

1 communities are sending this petition?

2 A. The Saugeen Ojibway Nation.

3 Q. And if we could go to the last
4 page, please, and the blue portion that you just
5 passed. Sorry, the second-last page.

6 Now, can you take a look, if you would,
7 at those -- if you need to refresh your memory,
8 those five "Fathers", as I called them that,
9 "Father [...]", there were five of them. Could you
10 take a look at those and tell us what this tells us
11 about the Saugeen's priorities.

12 A. Can we scroll up a little bit,
13 please?

14 Q. And again, this is in 1833.

15 A. [Witness reviews document.]

16 The first "Father" expresses a concern
17 to educate their children.

18 If you could scroll down just a little
19 bit.

20 [Witness reviews document.]

21 They are concerned about -- there are
22 financial concerns about being able to acquire
23 equipment and materials to pursue other kinds of
24 economic activity, sawmills, farming.

25 The next?

14:43:48 1 [Witness reviews document.]

14:43:48 2 And what they are suggesting is that in
14:43:54 3 order to acquire the finances necessary to buy the
14:43:57 4 equipment and materials, they are willing to part
14:44:01 5 with some of the land which joins the Huron Tract.

14:44:14 6 Q. Can we bring up Exhibit 1058,
14:44:17 7 please. This appears to be another petition dated
14:44:26 8 September 1834, and which community or communities
14:44:35 9 are sending this petition?

14:44:36 10 A. It is difficult to read, but it
14:44:39 11 says at the top "Sahkeeng", September 4, 1834. It
14:44:47 12 is spelled S-a-h-k-e-e-n-g.

14:44:56 13 Q. And in this particular petition,
14:44:58 14 what are the Chiefs asking for?

14:44:59 15 A. I would need to see a bit more of
14:45:01 16 it.

14:45:09 17 [Witness reviews document.]

14:45:10 18 All right. So at this portion, can you
14:45:12 19 scroll up just a little bit? Yes, thank you. :

14:45:16 20 "Father, listen to what we have
14:45:17 21 to say [...]"

14:45:21 22 [As read.]

14:45:21 23 Oh, I'm sorry.

14:45:21 24 Q. No, go ahead if that helps you.

14:45:24 25 A. No, that is all right. I was just

14:45:26 1 going -- I want "Father we ask if you [...]" The
14:45:28 2 next Father.

14:45:29 3 "Father, we ask if you do not
14:45:32 4 want to buy a little of our land.
14:45:35 5 It is because we stand in need of
14:45:37 6 many things in order to become like
14:45:39 7 the white people that we wish to
14:45:41 8 sell some of our land, we wish you
14:45:44 9 to tell us if you wish to buy it of
14:45:48 10 us, send us word [...]"

14:45:53 11 [As read.]

14:45:53 12 Q. And so what does that tell us
14:45:59 13 about the perspective -- what does this and the
14:46:01 14 other exhibit tell us about the perspective of the
14:46:03 15 communities when Bond Head comes in 1836?

14:46:08 16 A. That they had already been openly
14:46:11 17 considering selling some lands in order to afford
14:46:18 18 what they needed to educate their children, to
14:46:22 19 diversify their economy, to adapt to the changes
14:46:26 20 around them, such as farming, et cetera.

14:46:35 21 Q. Can we, please, bring up Exhibit
14:46:38 22 1103. Now, this is a transcript of a portion of
14:46:50 23 the 1836 General Council and starting at January
14:46:57 24 26th, 1836. So could you describe, firstly, in
14:47:04 25 general terms what was the General Council in

14:47:08 1 January of 1836.

14:47:09 2 A. It was a Council, a General Indian
14:47:16 3 Council of Anishinaabe's people, groups, in Upper
14:47:21 4 Canada in the Ontario region near what is now
14:47:24 5 Ontario, the region near Credit, Lake Simcoe,
14:47:29 6 Saugeen, Rice Lake, et cetera.

14:47:33 7 The Council had been called at the
14:47:35 8 request of the Narrows and Coldwater Chiefs, and
14:47:40 9 they had particular matters of general concern to
14:47:44 10 the other First Nations that they wished to discuss
14:47:46 11 in General Council.

14:47:47 12 Q. Now, this portion of the
14:47:50 13 transcript we have in this particular exhibit is
14:47:54 14 from January 26th, 1836, but how long was the
14:47:59 15 General Council meeting itself?

14:48:00 16 A. It was several days. Off the top
14:48:04 17 of my head, I don't remember how many days. I
14:48:07 18 think I have that documented in my general Indian
14:48:11 19 Council supplementary report.

14:48:13 20 Q. Okay. We'll bring that up in just
14:48:15 21 a minute. So basically, you are saying that this
14:48:19 22 was more than just one day?

14:48:19 23 A. Yes, this was more than just one
14:48:21 24 day.

14:48:21 25 Q. If we can go to page 2, please,

14:48:28 1 starting at -- it says "6th". If we can go down,
14:48:33 2 please, scroll down to the highlighted portion, and
14:48:37 3 if you could just -- if you can scroll up just a
14:48:40 4 bit so you get the next page, and then if you could
14:48:43 5 just read that, please, and tell us and explain to
14:48:47 6 us what the Chiefs have decided here.

14:48:49 7 A. I am just wondering if we could go
14:48:51 8 up a little bit to "1st". I just want to see what
14:48:55 9 they are listing here.

14:49:01 10 [Witness reviews document.]

14:49:03 11 Q. Up a bit more maybe.

14:49:05 12 A. Yeah, a little bit more.

14:49:06 13 [Witness reviews document.]

14:49:07 14 No, go back down. I'm sorry. And
14:49:16 15 down.

14:49:19 16 All right. This is a reply to items of
14:49:24 17 discussion. So we can go back down. And I think
14:49:34 18 up above they are saying they do not want to --
14:49:41 19 they don't want to live at Manitoulin, but I am not
14:49:44 20 sure. I'm sorry. I'm going to have to see a
14:49:49 21 little bit more of this. I don't want to
14:49:52 22 misrepresent.

14:49:55 23 Q. Would it be helpful to look at
14:49:57 24 your General Council report where you discuss it?
14:50:00 25 That is Exhibit 4709.

14:50:04 1 A. Yes. If you go to page 9 of this
14:50:17 2 report, and section 4.1 is about the 1836 General
14:50:29 3 Indian Council held from the 24th to the 28th of
14:50:34 4 January, 1836.

14:50:42 5 Q. And if you can just take a look at
14:50:44 6 that and explain to us, without necessarily reading
14:50:50 7 it to us, but just an overview of what it is at
14:50:53 8 that General Council the Chiefs decided?

14:50:56 9 A. Yes, the points 4.1.1 to 4.1.4 are
14:51:06 10 not really relevant to the portion that you just
14:51:08 11 showed me on the exhibit, but if you go to 4.1.5 on
14:51:12 12 the next page, that summarizes:

14:51:18 13 "[...] during the sessions on
14:51:20 14 January 26-28, the Chiefs from 'the
14:51:24 15 east and south' proposed that
14:51:25 16 'should the government at anytime
14:51:28 17 recommend the Indians to form one
14:51:30 18 general settlement, this council
14:51:31 19 have unanimously come to the
14:51:32 20 conclusion that the only tract of
14:51:34 21 land that they would be willing to
14:51:35 22 remove to, is the Indian Territory
14:51:37 23 at Sahgeeng."

14:51:41 24 And that is quoted from the exhibit
14:51:45 25 that you had on the screen earlier.

14:51:46 1 Q. And what does this again tell us
14:51:53 2 in terms of timing in relation to the Treaty
14:51:57 3 Council in 1836 with Bond Head, the community's
14:52:04 4 perspective on having other communities come and
14:52:09 5 live with them?

14:52:09 6 A. First of all, it demonstrates an
14:52:18 7 awareness of the government centralization plans.
14:52:21 8 That this Council was held at the Narrows, I think,
14:52:26 9 is probably not coincidental. By this point in
14:52:29 10 time, they will have been aware that Coldwater was
14:52:34 11 going to be closed down, and they will likely also
14:52:36 12 have been aware that Manitoulin was the place that
14:52:40 13 the government was talking about centralizing.

14:52:43 14 And what they are saying here is that
14:52:47 15 their choice would be to go to Saugeen and an
14:52:52 16 awareness also that the Saugeen Ojibway Nation was
14:52:56 17 willing to have them there.

14:52:58 18 Q. So before we leave your General
14:53:02 19 Council report, which is Exhibit 4709, if we can go
14:53:08 20 now to a more general level, can you explain to us
14:53:11 21 what were General Councils.

14:53:13 22 A. General Indian Councils were
14:53:17 23 Councils that were held once, maybe twice a year,
14:53:21 24 maybe not even every year, of the Chiefs and
14:53:26 25 Principal Men or delegates from the various First

1 Nations in what we now refer to as Southern
2 Ontario.

3 Sometimes they were Anishinaabe or
4 Ojibwe communities only. Other times, Iroquois
5 from Six Nations would attend as well. The purpose
6 of the General Indian Councils were to discuss
7 among themselves matters of general concern to all
8 the First Nations in Upper Canada at the time,
9 relations with the government, Indian Affairs
10 policies, and their response and options in view of
11 those changes.

12 Q. In what capacity did the Chiefs
13 attend these General Councils?

14 A. As representatives of their
15 communities.

16 Q. And what can you tell us about the
17 preparation that would have been required by the
18 Chiefs when they attended these Councils?

19 A. Before they left home, you mean?

20 Q. Yes.

21 A. They will have acquired
22 information. And there is no direct documentation
23 on this, so I have to answer the question based on
24 what I have read about General Indian Councils and
25 the General Indian Council minutes themselves, that

14:54:57 1 the Chiefs and the delegates were expected to
14:55:00 2 represent the consensus of their communities. They
14:55:05 3 were -- at this same 1836 Council that we are
14:55:07 4 discussing here, there was a day spent talking
14:55:12 5 about the conduct of Chiefs, that they were to work
14:55:18 6 toward the good of their entire communities.

14:55:22 7 So those sorts of resolutions and
14:55:26 8 recommendations at these Councils sort of provide
14:55:32 9 us with a glimpse of who the individual Chiefs and
14:55:37 10 delegates were representing, and that was their
14:55:39 11 communities.

14:55:39 12 Q. Now, I would like to move on to
14:55:45 13 Chapter 3 of Volume 3, which is your discussion of
14:55:49 14 Treaty 45 1/2.

14:55:51 15 So perhaps at a high level, can you
14:55:55 16 provide us with an overview of the negotiations
14:55:59 17 with the Saugeen and Nawash communities at the
14:56:03 18 Treaty Council.

14:56:04 19 A. There is actually not very much
14:56:10 20 information about the Treaty Council itself. I
14:56:14 21 think it is important to recall that the Assembly
14:56:19 22 of First Nations on Manitoulin at the time, its
14:56:23 23 purpose was not to negotiate any kind of land
14:56:25 24 surrender. Its purpose was to distribute annual
14:56:28 25 presents.

14:56:29 1 So the Saugeen and Nawash families and
14:56:35 2 Chiefs who attended will not have arrived there
14:56:39 3 intending to discuss a land surrender. They will
14:56:42 4 have gone there intending to collect their
14:56:45 5 presents, to meet up with fellow Anishinaabe, and
14:56:52 6 that sort of thing.

14:56:53 7 Bond Head announced that he would like
14:56:56 8 to have -- he wanted to call a Treaty Council to
14:57:00 9 discuss the disposal of lands and had interviews
14:57:05 10 with Chiefs to that effect and then suggested that
14:57:13 11 they go back to their camps, speak with their
14:57:15 12 missionaries, speak with their -- other members of
14:57:19 13 their communities who were there and to come back
14:57:21 14 the next day for a Treaty Council.

14:57:23 15 Q. And what was the Saugeen Chiefs'
14:57:35 16 response to Bond Head's suggestion of moving to
14:57:38 17 Manitoulin Island?

14:57:39 18 A. They rejected that option. They
14:57:43 19 had no desire to move to Manitoulin Island, and
14:57:48 20 rather, stated that they wanted to keep the Saugeen
14:57:52 21 territory as their place of refuge. And Bond Head
14:57:59 22 agreed to that, and that is why we have Treaty 45
14:58:03 23 as the Manitoulin agreement and 45 1/2 as the
14:58:08 24 separate agreement with the Saugeen.

14:58:11 25 Q. And what was the government's

14:58:20 1 response to Bond Head's thinking on the
14:58:28 2 effectiveness of the civilization policy or lack of
14:58:32 3 effectiveness?

14:58:33 4 A. I think their words were that it
14:58:36 5 was ill-advised. No one agreed at the higher
14:58:41 6 levels in England, agreed with Bond Head's
14:58:47 7 approach. They ended up accepting the surrender
14:58:54 8 agreement for Treaty 45 1/2, even though it had been
14:59:01 9 provisional at the time, but they did not approve
14:59:07 10 of -- so they accepted his centralization aspect of
14:59:11 11 his plan, but not the non-civilization portion of
14:59:16 12 his plan.

14:59:16 13 Q. Can you explain the boundary
14:59:25 14 dispute in 1843 and what it was?

14:59:30 15 A. The boundary dispute of the -- the
14:59:36 16 boundary of the Saugeen Reserve?

14:59:39 17 Q. Yes.

14:59:40 18 A. As --

14:59:41 19 Q. The south boundary of the Saugeen
14:59:46 20 Reserve, that south boundary.

14:59:48 21 A. Right. So I am just going to add
14:59:50 22 a little bit of context here again.

14:59:51 23 When Bond Head made the agreement with
14:59:53 24 the Saugeen in 1836, no specific documentation is
14:59:59 25 available about them having agreed to particular

1 metes and bounds of boundaries of where the Saugeen
2 territory would end. Essentially the peninsula was
3 understood to be the Saugeen Reserve, but there was
4 no record of any actual boundary being set.

5 In the 1840s, when surveyors came in to
6 set that boundary, the Saugeen Ojibway Nation
7 disputed that. It was a straight line that cut off
8 the Indian path between Nawash and Saugeen
9 Villages, and the Saugeen and Nawash Chiefs
10 disputed this and said no, our understanding was
11 that the path would still be within our territory.

12 So that was the boundary dispute that
13 was settled in 1843 to the satisfaction of the
14 understanding of the First Nations.

15 Q. And can you explain how the
16 annuity provision or the annuity was awarded to the
17 Saugeen?

18 A. Again, the agreement that Bond
19 Head made with the Saugeen First Nation -- I mean,
20 if you read the treaty text, it is very brief.
21 There were no compensation terms included in that
22 text, and there was considerable protest and
23 objection not only to what Bond Head had done in
24 1836 and his views on civilization, but the fact
25 that the Saugeen Ojibway Nation had surrendered

15:01:46 1 this huge tract of land, and there were no terms of
15:01:50 2 compensation provided for them at the time.

15:01:52 3 So the missionaries, First Nations,
15:01:58 4 even the Indian Department, advocated on behalf of
15:02:03 5 the fact that these sorts of terms needed to be
15:02:06 6 included, and in 1840, the standard annuity of 2
15:02:13 7 pounds 10 per capita was awarded to the -- was
15:02:17 8 included as a term to the 1836 surrender.

15:02:20 9 Q. So can we go to page 72 of your
15:02:28 10 report, please, and if we could go to the paragraph
15:02:41 11 under 3.6, and it is highlighted there.

15:02:44 12 THE COURT: Just before you do that.

15:02:46 13 MR. FELICIAN: Yes.

15:02:46 14 THE COURT: All right. You are in
15:03:01 15 which volume? Are you back in Volume 3?

15:03:04 16 MR. FELICIAN: Back in Volume 3.

15:03:05 17 THE COURT: Okay. Just give me a
15:03:06 18 minute. As you might guess, I have many volumes.

15:03:17 19 Page?

15:03:18 20 MR. FELICIAN: 72.

15:03:23 21 THE COURT: Thank you.

15:03:23 22 BY MR. FELICIAN:

15:03:24 23 Q. So the highlighted section on the
15:03:26 24 screen directly under 3.6, you write that:

15:03:36 25 "[...] Bond Head conducted the

15:03:39 1 treaty council for a land cession
15:03:40 2 from the Saugeen Ojibway in August
15:03:43 3 1836 indicates that he fell short of
15:03:45 4 following British treaty-making
15:03:46 5 principles that existed at the
15:03:47 6 time."

15:03:48 7 So can you help us understand
15:03:54 8 specifically what principles you were referring to?

15:03:59 9 A. He had not been instructed or
15:04:04 10 authorized to negotiate a land surrender from the
15:04:08 11 Indigenous people. He acted unilaterally in that
15:04:13 12 respect. He did not -- the Treaty Council that he
15:04:22 13 held on Manitoulin Island was an Assembly of First
15:04:27 14 Nations that had not been called for that purpose,
15:04:31 15 which was part of the instructions so that First
15:04:35 16 Nations leaders would have a chance to contemplate
15:04:40 17 and be prepared to discuss a land surrender and
15:04:43 18 also to make sure that they had sufficient
15:04:47 19 representation and consensus from their communities
15:04:51 20 before entering into some sort of land negotiation.
15:04:54 21 So that fell short.

15:04:56 22 As well, at the time, there were no
15:05:04 23 terms of compensation that were discussed and the
15:05:08 24 boundaries.

15:05:09 25 I qualify all of this by stating that

15:05:14 1 it is my opinion that Bond Head, when he negotiated
15:05:19 2 these Treaty 45 and Treaty 45 1/2, intended these as
15:05:25 3 provisional agreements, and he -- I think he refers
15:05:30 4 to them in his dispatch as provisional and that
15:05:35 5 they were in a sense incomplete and needed to be
15:05:39 6 confirmed and completed.

15:05:41 7 So although he fell short and acted
15:05:48 8 very unilaterally and, in fact, contrary to the
15:05:53 9 policy of civilization at the time, he intended
15:05:59 10 these to be provisional and to be completed later
15:06:02 11 on, and that didn't happen, except for the granting
15:06:08 12 of compensation as standard at the time, and the
15:06:12 13 proper survey of the boundary, which happened later
15:06:14 14 as well.

15:06:14 15 Q. Now, if you go to the next page of
15:06:24 16 your report and just go down, we have your chart,
15:06:29 17 and with respect to this particular treaty, how
15:06:35 18 should the reader use your chart, or at least can
15:06:42 19 you -- how should the reader be looking at this
15:06:44 20 chart?

15:06:44 21 A. Well, this chart and all of the
15:06:48 22 other charts need to be looked at in the context of
15:06:55 23 the discussion that I have just provided. This is
15:06:58 24 a summary. So if we look at the 13 principles,
15:07:04 25 number 1:

1 "Land cessions require

2 voluntary consent by First Nations."

3 Ultimately, that happened, but I put in
4 brackets "reluctantly".

5 You have to go back to my discussion to
6 understand why -- where that reluctance came from.

7 So you have to read it with some
8 qualification. The basic guidelines, either they
9 are not documented, or they were partly fulfilled
10 or partly followed. In some, there is implied.

11 So, for example, number 9. And in some cases, this
12 is an example of where you have to look at not only
13 what happened on the day of the Treaty Council, but
14 how problems with what happened on that day were
15 later corrected in terms of particularly
16 compensation and reserve boundaries.

17 Q. I am going to move on now to
18 Chapter 4, which is discussing the period between
19 1841 and 1851. What was the most significant
20 development in Upper Canada during this time
21 relevant to the Bruce Peninsula?

22 A. There was a period of intense
23 immigration into the Canadas and the governments of
24 Canada promoting immigration into Canada West.

25 Q. And how did the government at the

1 time or Crown officials at the time see this
2 increase in immigration? How did they characterize
3 it?

4 A. As a problem to be solved, as an
5 issue that needed to be addressed in terms of where
6 do we settle people, where do we acquire more
7 settlement lands, that sort of thing.

8 Q. And so how did the government, the
9 Crown, respond to this increase in immigration?
10 What did they actually do?

11 A. They searched for and acquired
12 settlement lands that had not yet been surrendered
13 by First Nations particularly. They also looked at
14 clergy reserves that had been set aside, basically
15 just looking for tracts that could be acquired for
16 settlement, either through surrenders from First
17 Nations or where other tracts might be available.

18 Q. And what was the economic
19 situation of the First Nations during this period
20 of time in general terms?

21 A. In general terms. I'll answer the
22 question the way I think I understand it. For a
23 large part, the Saugeen Ojibway First Nations were
24 still following a traditional way of life, seasonal
25 winter camps, hunting, fishing, a subsistence way

1 of life. They were looking to engage as well in
2 farming, to find ways to provide education, to
3 diversify their economy, to adapt to what was
4 happening around them in Canada West.

5 Q. You discussed the protection of
6 Indian lands starting at page 93 of your report.
7 Perhaps what we can do is bring up Exhibit 4708.
8 This is what I have termed the squatting report.
9 Could you tell us what your main research question
10 was when doing this report?

11 A. The main research question was to
12 find any documentation that would quantify or
13 identify actual squatting on the Saugeen Peninsula
14 Reserve.

15 Q. And can you summarize your
16 findings in that regard?

17 A. That, in fact, there is very --
18 that the documentation indicates there was sporadic
19 but relatively few actual squatters on the reserve.
20 In fact, the instances of squatting for the most
21 part that are positively documented are in the
22 period after the 1854 surrender.

23 Q. Could we go to page 98, please, of
24 your Volume 3, go back to Volume 3, Exhibit 4703.
25 And then at the last paragraph, the first sentence

1 on that page, it's not got the blue box around it,
2 it says:

3 "Enforcement also suffered from
4 the absence of a police force in
5 Bruce and Grey counties."

6 And then you refer to an 1851 to 1852
7 census.

8 A. Yes.

9 Q. What information were you
10 attempting to glean from the census?

11 A. My discussion of the 1851-1852
12 census is focussing in on Bruce and Grey Counties
13 in relation to the paragraph that precedes it where
14 problems of squatting and trespass on Indian lands
15 was a general problem in Canada West.

16 So my interest was -- and that
17 correspondence and that body of documentation
18 suggests that it was a problem difficult for the
19 Indian Department who had appointed their
20 Superintendents as Commissioners to enforce the
21 Indian Protection Act.

22 I wanted to take a look at what the
23 census of Bruce and Grey Counties might also inform
24 us in terms of what was happening on the ground in
25 what was called the Queen's Bush at the time.

1 So that census indicated that there
2 were four judges, two sheriffs, two clerks of the
3 peace, and four Crown land agents in those united
4 counties, which to me is a picture of counties that
5 are not yet very well developed in terms of a
6 population, jailhouses, and enforcement of laws.

7 Q. Now, beyond looking at the census,
8 do you have any expertise in law enforcement?

9 A. No, I don't.

10 Q. If we can go to page 101 of your
11 report, and go up, please, to the heading. At
12 4.2.2, you begin a section "Securing the Saugeen
13 Peninsula as an 'Indian Reserve'", and you have got
14 that in quotes. Why is that "Indian Reserve" in
15 quotes?

16 A. I -- it is taken from the
17 quotation about four lines up from the first -- at
18 the end of the first paragraph, and that sentence
19 beginning with:

20 "At the General Council at
21 River Credit in 1840 the
22 Saugeen-Nawash Chiefs together with
23 fellow Ojibway leaders petitioned
24 that the 'Government to extend the
25 Indian Reserve at the Saugeen River

15:16:06 1 [...]'"

15:16:09 2 So I extracted that Indian Reserve
15:16:11 3 quote into the subtitle.

15:16:20 4 Q. Now, ultimately, when Treaty 72
15:16:22 5 was entered into and the provision was made for the
15:16:26 6 sale of lands, which communities on the Saugeen
15:16:36 7 Peninsula were beneficiaries of that provision?

15:16:39 8 A. The Saugeen, the Nawash, and
15:16:46 9 Colpoy's Bay.

15:16:47 10 Q. Are you aware of any parties or
15:16:57 11 any communities on the peninsula that when lands
15:17:04 12 were sold they didn't benefit?

15:17:06 13 A. No.

15:17:09 14 Q. Can we pull up Exhibit 1272,
15:17:17 15 please. Now, this is, I understand, a letter from
15:17:28 16 Peter Jones to Lord Glenelg, if we go to the bottom
15:17:35 17 of that so we can see who it is from. So that is
15:17:44 18 Peter Jones to The Right Honourable Lord Glenelg.

15:17:49 19 And now if we could go back to the top,
15:18:01 20 and if we look at the highlighted portion on to the
15:18:03 21 next page, the first question I'll ask you is could
15:18:07 22 you remind us who Peter Jones is.

15:18:08 23 A. Peter Jones was a minister and
15:18:12 24 missionary and also a Chief of the Credit River
15:18:17 25 Mississaugas.

15:18:18 1 Q. And if you can just look at the
15:18:22 2 highlighted portion and tell us what Peter Jones is
15:18:29 3 saying here and what he is suggesting?

15:18:31 4 A. He is suggesting that the Governor
15:18:41 5 General seriously consider reserving a sufficient
15:18:44 6 tract of land at Saugeen as a future home of all
15:18:48 7 the Canadian Indians and any others who may come
15:18:52 8 from the United States to settle in Canada.

15:18:55 9 Q. And are you able to tell us
15:18:58 10 whether the Saugeen would have been aware of this
15:19:02 11 in 1838?

15:19:04 12 A. Yes, they would have been aware.

15:19:06 13 Q. If we can now go back to your
15:19:17 14 General Indian Council report for a moment at
15:19:24 15 Exhibit 4709, and if we can go to page 9 of that
15:19:33 16 report, and you go down, please, and on to the next
15:19:43 17 page -- sorry, page 10 then. Keep going. No, it
15:19:51 18 is page 11. At 4.3, you talk about a General
15:19:58 19 Council in 1840, and this is the -- we have already
15:20:03 20 looked at a portion of this, I believe. No, we
15:20:06 21 haven't. Sorry.

15:20:06 22 A. No.

15:20:07 23 Q. 1840, January 16th to 24th. So
15:20:14 24 can you tell us here who attended -- sort of a
15:20:19 25 summary of this Council, who attended and what was

15:20:22 1 discussed and decided relative to moving to
15:20:26 2 Saugeen.

15:20:26 3 A. This was a General Council of a
15:20:30 4 number of Anishinaabe groups in what is now
15:20:36 5 Ontario, including the Saugeen and including the
15:20:41 6 River Credit. The Council was held at River
15:20:45 7 Credit.

15:20:45 8 Q. And so if you could give us a
15:20:52 9 sense then of, in relation to moving to Saugeen,
15:21:00 10 what the Chiefs decided?

15:21:02 11 A. There were several petitions that
15:21:05 12 came out of this General Council, which I could add
15:21:09 13 was one of the purposes of General Indian Councils,
15:21:15 14 was to present a united voice when making general
15:21:19 15 kinds of requests to the government or to The
15:21:23 16 Queen, and so you will have General Council minutes
15:21:26 17 that often include petitions that are then signed
15:21:30 18 by the representatives and delegates attending the
15:21:33 19 Council.

15:21:33 20 In section 4.3.3, on the following
15:21:38 21 page, page 12 of the supplemental report:

15:21:44 22 "[...] on January 24, the
15:21:46 23 General Council petitioned that
15:21:48 24 'our Great Mother the Queen may be
15:21:51 25 graciously pleased to reserve a

15:21:52 1 sufficient tract of land in the
15:21:54 2 vicinity of the Saugeen River, as
15:21:55 3 the future home of all of your Red
15:21:59 4 Children'."

15:22:01 5 Q. And could you perhaps tell us what
15:22:02 6 was decided in relation to manual labour schools.

15:22:06 7 A. At this Council?

15:22:25 8 Q. Yes. Can we pull up -- perhaps it
15:22:28 9 will assist if I pull up Exhibit 328 -- 13, sorry,
15:22:33 10 Exhibit 1328. And if we can go to page 2 of the
15:22:46 11 typed transcript.

15:22:52 12 THE COURT: What are we looking at
15:22:53 13 here?

15:22:55 14 BY MR. FELICIAN:

15:22:56 15 Q. Sorry, this is the -- if we can go
15:22:57 16 to the top, this is the typed portion of the 1840
15:23:04 17 General Council dated January 24th, 1840. This is
15:23:09 18 a typed version of the handwritten document of that
15:23:15 19 date.

15:23:22 20 Could you stop, please.

15:23:25 21 Go up. No, go up some more.

15:23:28 22 Oh, perhaps just up a bit more. So the
15:23:38 23 second "Father", what is the perspective of the
15:23:49 24 communities with respect to -- and actually, the
15:23:54 25 question would be does this apply to the discussion

1 of manual labour schools, or is that something else
2 in the second "Father", where it says:

3 "Being convinced of the
4 necessity of making greater
5 exertions [...]"

6 A. Well, I am not -- I think this is
7 a general request that is not specific only to
8 manual labour schools. This is a general request
9 to assist in agricultural development, et cetera.

10 If I could just interject a little bit,
11 I know that this 1840 Council, they outlined the
12 main issues that they planned to discuss, and one
13 was manual labour schools. I am not sure it is
14 addressed. This is a petition to the
15 Superintendent General of Indian Affairs that came
16 out of that Council.

17 There may be a petition request in
18 relation to manual labour schools, but I would need
19 to go down to find that. So if you could scroll
20 down. Keep going.

21 [Witness reviews document.]

22 Keep going.

23 No, this particular petition does not
24 have a request in specific relation to manual
25 labour schools. You would need to go to the actual

1 minutes of the Council, not just this petition that
2 came out of that Council.

3 MR. FELICIAN: Well, Your Honour, it
4 might be more efficient if I tee that up, if we
5 take the afternoon break five minutes early and
6 come back perhaps five minutes early.

7 THE COURT: All right. 20 minutes.

8 -- RECESSED AT 3:27 P.M.

9 -- RESUMED AT 3:50 P.M.

10 THE COURT: Please go ahead.

11 BY MR. FELICIAN:

12 Q. Yes. Could we call up Exhibit
13 1322, please. Sorry, my screen is off, Your
14 Honour.

15 So if we could go to the top of the
16 document, just so you can explain to us what we are
17 looking at, Dr. Reimer.

18 A. This is a transcript of the
19 minutes of the General Indian Council at River
20 Credit that commenced on January 16, 1840.

21 Q. And were Saugeen or Nawash
22 present?

23 A. Yes.

24 Q. Can you go down, please. Can you
25 go to the second -- PDF page 2, please. And you

15:50:04 1 will see item 4. Now, these items, what is it that
15:50:08 2 is being enumerated here, and what is this item 4
15:50:13 3 signifying?

15:50:13 4 A. These are the items that the
15:50:17 5 General Council is intending to discuss over the
15:50:22 6 period of the Council, so we might refer to it as
15:50:27 7 an agenda, and the fourth item is:

15:50:32 8 "The importance of forming a
15:50:34 9 Central manual labor School."

15:50:38 10 Q. Okay. If we can go to PDF 18,
15:50:41 11 which is -- could you just go to the bottom so I
15:50:47 12 can see which page of the actual document it is. A
15:50:50 13 little further down. So this is page 18 of 19. So
15:50:59 14 you can just look at that and tell us what they
15:51:06 15 have decided with respect to manual labour schools.

15:51:11 16 A. First of all, am I correct in that
15:51:17 17 "Father" is referring to the Superintendent General
15:51:19 18 of Indian Affairs? Could I just see who the
15:51:25 19 petition -- this is a petition that the Council
15:51:27 20 will have agreed to send, yes, to Samuel Jarvis,
15:51:33 21 the Chief Superintendent of Indian Affairs. That
15:51:37 22 is fine then.

15:51:38 23 And they are expressing their desire
15:51:43 24 for manual labour schools to be established for the
15:51:47 25 religious education of their children and for

1 industrious and domestic habits training or trades
2 training and requesting assistance from the
3 government to form these kinds of schools.

4 Q. And at the bottom, it suggests
5 what they are prepared to do for that purpose.
6 What does it -- what do they tell us they are
7 prepared to do?

8 A. They are willing to appropriate
9 part of their land payments toward the
10 establishment of these schools.

11 Q. So why was there a desire on the
12 part of First Nations to have manual labour
13 schools?

14 A. At this point in time, 1840, many
15 of the First Nation leaders were aware of and
16 concerned about the fact that they could no longer
17 follow their traditional way of life, seasonal
18 hunting and fishing way of life. They desired a
19 future for their children in which their children
20 would be able to participate in the economy in
21 Canada West and to benefit from the education that
22 the settlers were benefitting from as well.

23 They saw this as an important part of
24 providing for the future of their children.

25 Q. And can you tell us what became of

15:53:21 1 this initiative to have manual labour schools in
15:53:25 2 the Saugeen Peninsula. What happened to that?

15:53:27 3 A. Initially, the Indian Department
15:53:32 4 had planned to establish one at Saugeen, at Muncey,
15:53:39 5 and at Alnwick or at Alderville.

15:53:42 6 However, in 1857 -- pardon me, that is
15:53:45 7 wrong. In 1847, when the New Credit -- when the
15:53:51 8 Credit River Band decided not to move to Saugeen,
15:53:55 9 it was apparently decided also that then a manual
15:54:01 10 labour school would not be developed or established
15:54:04 11 at Saugeen.

15:54:05 12 Peter Jones was a main proponent of the
15:54:09 13 manual labour school program, and originally, the
15:54:15 14 idea had been that when Credit moved to Saugeen
15:54:18 15 territory, that he would take charge of that and be
15:54:23 16 one of the teachers at the manual labour school.
15:54:27 17 So when the Credit decided not to go there, that
15:54:31 18 was put into jeopardy, and ultimately, the school
15:54:33 19 was not established there.

15:54:35 20 Q. Okay. Now, before we leave this
15:54:39 21 period of time, which was 1841 to 1851, can we just
15:54:47 22 pull up Exhibit 1427, please. And this appears to
15:55:02 23 be a letter dated June 10th, 1843. And can we go
15:55:06 24 down to the bottom, please, to see who it is from.
15:55:12 25 Could you explain to us then -- it says "Your **

1 Obediant Servant, Wahbahdick Chief". Who is this
2 letter to? Is it to the Chief Secretary Government
3 House?

4 A. Yes.

5 Q. Who was that? Not necessarily who
6 it is, but the position. What is that position in
7 Kingston? Oh, Kingston, Ontario?

8 A. Yes.

9 Q. If you could go up, who was
10 Wahbahdick?

11 A. Wahbahdick was a Chief at Owen
12 Sound.

13 Q. If we could go to the first page,
14 please, the last full sentence there:

15 "There is a great many white
16 men who come here and want us to
17 give them land and we do not wish to
18 hear them as we do not want any
19 white men on our land."

20 So what does that tell us about, in
21 1843, what is happening at Saugeen and what their
22 response is?

23 A. I interpret this as experience
24 with a demand for land by Euro-Canadians, that they
25 have -- Euro-Canadians have been either asking for

1 or speaking with Owen Sound Chief Wahbahdick about
2 acquiring land, and Wahbahdick is stating that at
3 this point in time they do not want Euro-Canadians
4 on their land.

5 Q. All right. Now, if we can move on
6 to Chapter 5 of your report where you discuss the
7 surrender of the Half Mile Strip between 1851 and
8 1853, perhaps you can tell us -- just generally
9 summarize the steps that led to the surrender of
10 the Half Mile Strip.

11 A. From the early 1840s, the Saugeen
12 and Nawash communities were desirous of having a
13 proper road built between the two communities.
14 There was also interest from the settlers south of
15 Saugeen territory to have a proper road, a good
16 post road, for example.

17 And the government also had generally
18 supported the notion of having a road built along
19 that, between those two points as well.

20 In 18 -- do you want me to just
21 continue?

22 Q. Yes.

23 A. Okay. There had been a fair bit
24 of discussion about how the road would be built,
25 who would be paying for the road, what line the

1 road would follow. The Saugeen Ojibway Nation were
2 desirous of having it follow the boundary of the
3 peninsula reserve.

4 In 1851, T.G. Anderson met with the
5 joint Saugeen and Nawash Council to propose that
6 they surrender a concession width of land along the
7 southern boundary of the Saugeen Reserve and that
8 then the road could be constructed within that
9 concession.

10 My understanding is that the reason the
11 Crown was desirous of having a full concession is
12 that they could build a road with settlement lots
13 on either side of the road, the idea being that as
14 the lots were sold and settlers took up the lands,
15 part of their obligation, settlement obligation,
16 would be to help construct the road and maintain
17 the road.

18 When Anderson made the proposal,
19 although the Saugeen Ojibway Nation were still
20 desirous of having a road, they had not
21 anticipated, nor did they desire, to actually
22 surrender some of their land in order for that road
23 to be established.

24 They initially rejected Anderson's
25 proposal. They deliberated for -- they deliberated

1 on the matter and came back with what I term a
2 counter-proposal to surrender less than half a
3 concession of land. So in other words, settlement
4 lots could be established on one side of the road
5 on their territory; the rest would have to be taken
6 up from lands south of the peninsula.

7 I would just like to explain that there
8 is no direct documentation explaining this what I
9 call a counter-proposal. It is the conclusion I
10 have come to because you have Anderson's proposal
11 for a full concession. The First Nations come
12 back, and they agree to this Half Mile Strip; hence
13 the name of the treaty. We call it the Half Mile
14 Strip Surrender. And somewhere then it can be
15 presumed that a compromise was made for a smaller
16 or narrower tract of land.

17 Anderson's report on the matter, in his
18 report he says, I presume that this small strip of
19 land will not be satisfactory to the Crown, so that
20 also reinforces the idea that they were still
21 hoping for a much larger width of land than what
22 was offered.

23 In the end, the surrender was agreed to
24 for the Half Mile Strip.

25 Q. And does this tell us anything

1 about the Saugeen and Nawash communities and their
2 negotiations?

3 A. It demonstrates their capacity to
4 deliberate, to come to a majority consensus, to
5 come back with an alternate proposal, and to
6 negotiate for what they believed was in the best
7 interests of their communities and to essentially
8 say we'll agree to this much, but not to as much as
9 you are asking for.

10 So I think it demonstrates a certain
11 strength of negotiation capacity on their part.

12 Q. Were there any requests to
13 purchase lands during this period of time on the
14 reserve by Euro-Canadians?

15 A. To the Crown, you mean?

16 Q. Yeah, that Indian Affairs had to
17 respond.

18 A. There were a number of documents,
19 a number of requests by individuals writing to the
20 Indian Department asking if they can purchase
21 specific tracts of land or plots of land, and
22 consistently the Indian Department replied that
23 these were still Indian lands, and they were not
24 for sale.

25 Q. And during this period of time, so

1 we are talking about 1851 to 1853, what happened
2 during this time with regard to SON's invitation to
3 other communities?

4 A. New Credit -- or Credit, I'm
5 sorry. The Credit River Band had at this point in
6 time decided to move to a tract offered on the Six
7 Nations Reserve, and so that decision had been
8 made.

9 There were a number of families from
10 the Caughnawaga Mohawks who had expressed an
11 interest, and an agreement was made to set aside a
12 relatively large tract for the Caughnawaga
13 families.

14 Originally, it was anticipated that
15 upwards of 300 families would move. Ultimately,
16 only about 16 or 17 families moved. There was
17 still anticipation of other Anishinaabe -- for
18 example, from Rice Lake, possibly from Lakes Huron
19 and Simcoe -- to move to the peninsula, but no --
20 the documentation does not indicate that any
21 definite plans had been made by these other
22 Anishinaabe groups.

23 But the Saugeen Ojibway Nation was
24 still holding out -- was still encouraged by the
25 general response and was holding out hope that they

1 would be able to invite and accept other
2 Anishinaabe First Nations to Saugeen territory.

3 Q. I would like to move now to
4 Chapter 6 where you discuss the surrender of the
5 peninsula in Treaty 72. So perhaps if we could
6 start, why was it that the Crown -- what was the
7 Crown's motivation in wanting to enter into a
8 treaty for the peninsula?

9 A. The top reason was to acquire
10 settlement lands.

11 Q. What was the primary motivation
12 for SON to enter into the treaty to surrender the
13 lands?

14 A. By the fall of 1854, you have to
15 sort of surmise from the context of the
16 documentation that the Saugeen Ojibway Nation had
17 come to the realization that other First Nations
18 would not be moving to the peninsula. The manual
19 labour school did not seem to be an idea that was
20 going to be successful on the peninsula.

21 So there was a reluctant, I think,
22 acceptance that the creating of a large central
23 Indian Reserve on the Saugeen Peninsula was not
24 going to unfold.

25 Q. And were the municipalities at

16:06:33 1 this point playing any role?

16:06:35 2 A. Yes, there were certainly events
16:06:41 3 in the municipalities surrounding or to the south
16:06:47 4 of the Saugeen Peninsula that will have influenced
16:06:50 5 the Crown's decision to pursue a surrender. They
16:06:55 6 had been receiving petitions and letters from the
16:06:59 7 Reeves of Bruce County, Grey County, suggesting
16:07:05 8 that we need to open up these lands for more
16:07:09 9 settlement and urging the government to take steps
16:07:12 10 to acquire a surrender of those lands.

16:07:17 11 Q. Now, why was it -- at both
16:07:25 12 Anderson's discussions with the communities in
16:07:27 13 August of 1854 and then, again, Oliphant's
16:07:30 14 discussions in October, why were they talking about
16:07:35 15 white encroachment with the communities?

16:07:37 16 A. I think there was a heightened
16:07:41 17 threat of white encroachment for a couple of
16:07:47 18 reasons, one of which is the letters and petitions
16:07:54 19 being received from the municipalities saying there
16:07:58 20 is a great demand for land, there is no land left
16:08:01 21 in our municipalities that we can sell, so there
16:08:08 22 was that pressure.

16:08:09 23 There was also the -- I'm not sure if
16:08:13 24 I'm answering your question. Can you repeat your
16:08:16 25 question?

1 Q. I was asking why was it that this
2 was a topic of conversation, the white encroachment
3 on to the -- potential white encroachment.

4 A. Right. Yes, I think people were
5 alert to the fact that there was a potential for
6 encroachment, perhaps squatting as well, because of
7 the heightened demand for settlement lands and the
8 lack of those lands and the knowledge that there
9 were these unsurrendered, unsettled, what
10 Euro-Canadians would have considered vacant lands.
11 You know, there they are. This land is just
12 sitting there. Why don't I just move on and move.

13 So I think that there was a heightened
14 sense of fear that encroachment and/or squatting
15 might happen.

16 I would add that the land sale that
17 took place in Southampton in August -- September
18 1854 will have served to have heightened that kind
19 of awareness. At that point, all of the remaining
20 Crown lands, the school lands and other Crown lands
21 that would be available for settlement had been
22 sold, and there was a huge rush in Southampton to
23 acquire those lands.

24 So these events will have heightened
25 the fear or the threat of squatting and

16:09:48 1 encroachment on Saugeen lands.

16:09:50 2 Q. Can we, please, go to page -- pull
16:09:56 3 up your Volume 3 report again, please, and go to
16:10:02 4 page 142. If we can go to the first sentence under
16:10:10 5 6.1.2, you write that:

16:10:16 6 "The Crown was strongly
16:10:17 7 motivated to resolve the financial
16:10:18 8 difficulties of the Indian
16:10:20 9 Department."

16:10:21 10 Now, what do you mean by that
16:10:27 11 statement?

16:10:28 12 A. At this point in time, the British
16:10:32 13 Crown was moving to either reduce or eliminate the
16:10:42 14 Imperial grant for the Indian Department in Canada.
16:10:49 15 It was also at around this time one of the ways
16:10:54 16 that they were going to resolve the lack of funds
16:10:56 17 coming from London, was to eliminate the annual
16:11:01 18 distribution -- the distribution of annual
16:11:05 19 presents, which was a majority portion of those
16:11:11 20 funds that were being transferred over to Canada.

16:11:15 21 And so it had already been announced
16:11:16 22 that the presents would be reduced and then
16:11:20 23 eliminated. But they were looking to other ways to
16:11:26 24 make the Indian Department self-supporting in
16:11:29 25 Canada.

1 Q. So what role, if any, did this
2 play in Oliphant's negotiations?

3 A. Oliphant, when he came, when he
4 was sent over to surrender -- to negotiate a
5 surrender, he had been tasked with -- one of his
6 jobs was to try to find and make recommendations
7 about making the Indian Department more efficient
8 and self-supporting.

9 His idea, which you find out in his
10 report after the surrender is made, that he viewed
11 the land sales that would proceed from this
12 surrender, these large -- this large tract of land,
13 he devised a formula whereby those land sales could
14 help to be used to fund the Indian Department.

15 Q. And what was the Crown's response
16 to Oliphant's plan?

17 A. If I could just explain Oliphant's
18 plan very briefly, I think it is important to make
19 clear that his plan did not include the land sales
20 of the Saugeen Peninsula to be the only source of
21 funding for the Indian Department. It was a small
22 part of that. There were other sources of revenue
23 that Oliphant was considering in his plan or his
24 formula as well.

25 Very quickly after Oliphant submitted

1 his report, an analysis was done of his ideas, and
2 it was quickly dismissed as unfeasible because the
3 plan -- that part of the plan relied on, as Duncan
4 Campbell Scott said later on, on unrealized assets.

5 So in other words, you had to sell the
6 lands before the plan would work, and so it was a
7 plan based on future income, not actual income. So
8 it was not a plan that was implemented.

9 Q. And did SON have any financial
10 motivations?

11 A. As we have seen in some of the
12 documents that we have pulled up in the last few
13 hours, there were several instances where Saugeen
14 Ojibway Nation offered to sell lands in order to
15 acquire income, to buy equipment and materials, to
16 farm, to build sawmills, that sort of thing.

17 I also found documentation that
18 suggested that they had debts that needed to be
19 repaid.

20 So there was a financial motivation as
21 well as the realization that the Saugeen Peninsula
22 would not become a central reserve.

23 Q. In footnote 585 on page 149 -- can
24 we go there, please. This is footnote 585, if you
25 blow it up just a little bit. You will see you

1 write that:

2 "As noted in the previous
3 chapter, there was an inherent
4 conflict of interest in McNabb's
5 dealings with the Saugeen-Nawash
6 First Nations."

7 Could you explain, was he involved in
8 either August 1854 when Anderson attended the
9 communities or October 1854 when Oliphant attended?

10 A. Off the top of my head, I don't
11 recall if he was there in August 1854 when Anderson
12 attempted to negotiate a surrender. McNabb was
13 certainly present as a witness to the Oliphant --
14 ** the Treaty surrender 72 in October 1854. He has
15 signed as a witness.

16 Q. Is there any evidence that can
17 shed light on his involvement, if any, at that
18 time?

19 A. I have found no direct
20 documentation that describes what, if any, role
21 McNabb played in those negotiations in October
22 1854.

23 Q. Did you find any documentation
24 that could assist us in knowing how Mr. McNabb or
25 Mr. Rankin knew to be present in October 1854?

1 A. I think that is a very interesting
2 question because somehow they did know, and they
3 were there as witnesses. Rankin, I suspect, will
4 have been there in part to help with some of the
5 survey aspects or advising Oliphant in terms of the
6 geographic lay of the land. They talk about maps
7 being laid out on a table. It is possible that
8 Rankin helped to supply some of those maps. He
9 lived in Owen Sound. McNabb lived in Southampton.

10 We don't know how McNabb or Rankin knew
11 to be at Saugeen for October the 13th or around
12 that date. The normal procedure would be for
13 Oliphant or someone at headquarters, Indian Affairs
14 headquarters, to notify the interested parties,
15 including McNabb, including Rankin, and for them to
16 inform the First Nations leaders that Oliphant was
17 coming. But we have no direct documentation to --
18 no letters to Rankin, no letters to McNabb, no
19 letters to the First Nations indicating that
20 Oliphant planned to be there -- where he would be
21 or when he would be there at any particular time.

22 But for me, the plausible explanation
23 is that some kind of notification had been given
24 and either it didn't survive in the archival
25 record. I say that also because, according to

16:18:30 1 Oliphant's report and memoirs, it was a relatively
16:18:35 2 arduous trip, one that took time, and it would be
16:18:39 3 surprising to me that, considering the importance
16:18:42 4 of his task and the trip itself, that he would not
16:18:47 5 have arrived unannounced hoping somebody would be
16:18:51 6 there.

16:18:53 7 Q. So going back in time a bit to
16:19:00 8 July of 1854, in your report you speak about
16:19:08 9 Keating attempting to negotiate a surrender of some
16:19:14 10 land. What was the purpose behind that? This is
16:19:22 11 at page 153 of your report.

16:19:25 12 A. Keating was associated with other
16:19:35 13 private entrepreneurs who were interested in
16:19:39 14 establishing a mill at Sauble River and hoped to
16:19:46 15 acquire a tract of about 50 square miles at Sauble
16:19:53 16 River in order to establish the mill, and I am not
16:20:00 17 sure if they wanted to create a settlement there,
16:20:02 18 but they wanted a 50-mile-square parcel at River
16:20:08 19 Sauble and north of River Sauble.

16:20:09 20 It was -- the impetus was private
16:20:14 21 interests, but of course the lands were Indian
16:20:16 22 lands and a surrender had to be effected first.

16:20:19 23 Keating had been part of the Indian
16:20:22 24 Department. My understanding is that at this point
16:20:24 25 he was not officially an employee of the

1 Department, but he was on occasions authorized to
2 act on behalf of the Department to undertake some
3 business for them.

4 Keating -- again, we don't have any
5 direct documentation of instructions to Keating,
6 but the correspondence indicates that he had
7 apparently been authorized to meet with the Saugeen
8 Ojibway Nation Council and to make a proposal for
9 them to surrender this 50-mile -- square mile tract
10 of land.

11 Q. And how did SON respond to the
12 proposal?

13 A. They rejected the proposal.

14 Q. Now, speaking, again, of
15 Anderson's August attempt to secure a surrender,
16 August 1854, where were those negotiations? Where
17 did they take place?

18 A. At Owen Sound.

19 Q. And what was SON's response to
20 Anderson's proposal to surrender land in August of
21 1854?

22 A. They considered it. They
23 deliberated for a day and a night. They came back
24 and said that they were not willing to surrender
25 the entirety of lands as proposed by Anderson, but

1 proposed to surrender portions of lands which they
2 drew in pencil on a map.

3 Q. Did Anderson's conduct, which you
4 have described and you spoke about earlier as
5 dishonourable, is there any evidence to suggest
6 that it had any impact on Oliphant's October 1854
7 negotiation?

8 A. Not that I know of, not in terms
9 of documentation that I have found. After Anderson
10 leaves Owen Sound in August, you don't really hear
11 anything more about that particular proposal and
12 that the next main event is Oliphant arriving in
13 October.

14 Q. Is there any evidence that
15 Anderson was present or not present at the Treaty
16 Council in October?

17 A. There is no evidence that he was
18 present.

19 Q. Do you have any information as to
20 how long SON deliberated on Anderson's proposal?

21 A. I believe Anderson's report states
22 that they took nearly all day and all night to
23 deliberate on his proposal. And that is in
24 Anderson's -- he states this in his speech on
25 August 2, 1854.

16:23:43 1 Q. Which is, I understand, Exhibit
16:23:46 2 2102. Were the same parties involved in August as
16:23:53 3 in October?

16:23:55 4 A. The same First Nation parties?

16:23:56 5 Q. The same -- sorry. Were the same
16:23:59 6 First Nation parties involved in August as in
16:24:02 7 October?

16:24:03 8 A. Yes, the leaders of Saugeen and
16:24:06 9 Nawash were present at both.

16:24:22 10 MR. FELICIAN: Your Honour, we are
16:24:23 11 very close to 4:30, and I am actually pretty close
16:24:28 12 to being done, so I won't need much time in the
16:24:32 13 morning.

16:24:33 14 THE COURT: Well, we have someone else
16:24:35 15 after you, do we not?

16:24:37 16 MR. FELICIAN: Yes.

16:24:37 17 THE COURT: So we might as well adjourn
16:24:39 18 until tomorrow morning.

16:24:40 19 MR. FELICIAN: Thank you.

16:24:40 20 THE COURT: And as far as the rest of
16:24:41 21 the chief, if you could just -- is it you,
16:24:47 22 Mr. McCulloch, who is doing Canada's
16:24:48 23 cross-examination?

16:24:49 24 MR. McCULLOCH: That has yet to be
16:24:50 25 determined. It will be certainly either Mr. Beggs

1 or myself.

2 THE COURT: Well, please let Mr. Beggs
3 know that he should be present in court tomorrow
4 morning on the off chance this goes more quickly
5 than expected.

6 MR. McCULLOCH: We have already advised
7 him.

8 THE COURT: If you land on him doing
9 it.

10 MR. McCULLOCH: We have already advised
11 him that we expect the cross-examination to be
12 tomorrow, even before lunch.

13 THE COURT: Very good.

14
15 -- Adjourned at 4:25 p.m.
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1 REPORTER'S CERTIFICATE


2
3
4 I, DEANA SANTEDICOLA, RPR, CRR,
5 CSR, Certified Shorthand Reporter, certify:

6 That the foregoing proceedings were
7 taken before me at the time and place therein set
8 forth, at which time the witness was put under oath
9 by me;

10 That the testimony of the witness
11 and all objections made at the time of the
12 examination were recorded stenographically by me
13 and were thereafter transcribed;

14 That the foregoing is a true and
15 correct transcript of my shorthand notes so taken.
16

17
18 Dated this 20th day of February, 2020.
19

20
21
22 

23 NEESONS, A VERITEXT COMPANY

24 PER: DEANA SANTEDICOLA, RPR, CRR, CSR
25

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