

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

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DAY 76 VOL 76  
January 17, 2020

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ONTARIO

SUPERIOR COURT OF JUSTICE

B E T W E E N:

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

- and -

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

Court File No. 03-CV-261134CM1

A N D B E T W E E N:

CHIPPEWAS OF NAWASH UNCEDED FIRST NATION and  
SAUGEEN FIRST NATION  
Plaintiffs

- and -

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

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--- This is VOLUME 76 / DAY 76 of the trial  
proceedings in the above-noted matter, being  
held at the Superior Court of Justice, 330  
University Avenue, Courtroom 5-1 Toronto,  
Ontario, on the 17th day of January 2020.

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B E F O R E:

The Honourable Justice Wendy M. Matheson

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A P P E A R A N C E S :  
Roger Townshend, Esq., for the Plaintiffs,  
& Chris Evans, Esq., the Chippewas of  
& Jaclyn McNamara, Esq., Nation, and the  
Chippewas of Nawash  
First Nation.

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

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

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1 --- Upon commencing at 10:03 a.m.

2 THE COURT: Morning, Mr. Beggs.

10:03:38

3 MR. BEGGS: Morning.

10:03:40

4 Thank you, Your Honour. As the court

10:03:43

5 knows Canada's last witness will be called in

10:03:47

6 February, Professor Bowman, and apart from that

10:03:53

7 there are only a few remaining evidentiary

10:03:59

8 exhibits for us to call.

10:04:02

9 First of all our --

10:04:04

10 THE COURT: Just before you do that I

10:04:05

11 just want to put on the record two things; that

10:04:07

12 Professor Bowman is being called out of order

10:04:11

13 for health reasons and, secondly, that it's on

10:04:14

14 consent.

10:04:15

15 MR. BEGGS: Yes. Thank you, Your

10:04:16

16 Honour.

10:04:16

17 We have three international treaties

10:04:19

18 which are being admitted on consent. The first

10:04:22

19 is the Boundary Waters Treaty of 1909, it's

10:04:25

20 SC1299. And I'd like to -- I would ask that

10:04:37

21 this be made the next exhibit, Your Honour.

10:04:41

22 THE COURT: Mr. Registrar

10:04:42

23 THE REGISTRAR: Exhibit number 4506.

10:04:44

24 EXHIBIT NO. 4506: Copy of the

10:04:47

25 Boundary Waters Treaty of 1909;

10:04:47 1 document number SC1299.

10:04:51 2 MR. BEGGS: The second treaty is the  
10:04:52 3 Great Lakes Water Quality Agreement, the version  
10:04:56 4 we have is 2012, and it's SC1302.

10:05:02 5 THE COURT: Is that a treaty?

10:05:03 6 MR. BEGGS: It is an actual treaty  
10:05:04 7 between Canada and the United States. I'd like  
10:05:08 8 to ask this to be made an exhibit as well.

10:05:11 9 THE COURT: Mr. Registrar.

10:05:13 10 THE REGISTRAR: Exhibit 4507.

10:05:15 11 EXHIBIT NO. 4507: Copy of the Great  
10:05:17 12 Lakes Water Quality Agreement, 2012  
10:05:17 13 version; document number SC1302.

10:05:18 14 MR. BEGGS: And the last is the Great  
10:05:19 15 Lakes Fisheries Commission, which is originally  
10:05:23 16 dated 1954, it is -- this exhibit is actually a  
10:05:27 17 schedule to the actual Great Lakes Fisheries  
10:05:30 18 Convention Act statute, the Treaty begins on  
10:05:35 19 page 3 of this document. It's the -- and as I  
10:05:39 20 said the, Great Lakes Fisheries Convention Act,  
10:05:42 21 it is SC1305. If this could be made an exhibit  
10:05:48 22 as well?

10:05:50 23 THE COURT: Mr. Registrar.

10:05:51 24 THE REGISTRAR: Exhibit number 4508.

10:05:53 25 EXHIBIT NO. 4508: Great Lakes



10:05:53 1 Fisheries Commission, originally dated  
10:05:53 2 1954, a schedule to the actual Great  
10:05:53 3 Lakes Fisheries Convention Act  
10:05:53 4 statute; document number SC1305.

10:05:54 5 MR. BEGGS: The next two items are  
10:06:31 6 answers -- plaintiffs answers to written  
10:06:34 7 interrogatories and rather, as has been  
10:06:37 8 arranged, they won't be read in but instead will  
10:06:40 9 be marked as exhibits.

10:06:42 10 Canada, when doing the  
10:06:45 11 interrogatories, separated the Treaty in the  
10:06:47 12 title action so there's two separate documents.

10:06:50 13 The first is SC1614.

10:07:01 14 THE COURT: Is this an excerpt from  
10:07:02 15 the plaintiffs' answers?

10:07:04 16 MR. BEGGS: It is. It is an excerpt  
10:07:05 17 from the plaintiffs' answers to the written  
10:07:08 18 interrogatory questions of Canada for the Treaty  
10:07:10 19 action.

10:07:21 20 And we'd like that to be an exhibit as  
10:07:23 21 well, Your Honour.

10:07:24 22 THE COURT: Mr. Townshend, have you  
10:07:26 23 had a chance to review that.

10:07:29 24 MR. TOWNSHEND: Yes.

10:07:30 25 THE COURT: And you're not objecting

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10:08:22 25

to it.

MR. TOWNSHEND: No.

THE COURT: All right. Mr. Registrar.

THE REGISTRAR: Exhibit 4509.

EXHIBIT NO. 4509: Excerpt from the

plaintiffs' answers to the written

interrogatory questions of Canada for

the Treaty action; document SC1614.

MR. BEGGS: And the next is SC1615

and, again, it's an excerpt of the plaintiffs'

answers to interrogatory questions of Canada for

the title action. We'd like this to be made the

next exhibit, please.

THE COURT: I take it there's no

objection to that either Mr. Townshend.

MR. TOWNSHEND: No objection.

THE COURT: All right.

THE REGISTRAR: Exhibit number 4510.

EXHIBIT NO. 4510: Excerpt of the

plaintiffs' answers to interrogatory

questions of Canada for the title

action; document number SC1615.

MR. BEGGS: The last item is a

historical document, it's SC1669. And I believe

any difficulties have been addressed, but I'll

10:08:25 1 let me friend raise that if he wishes. The  
10:08:28 2 document is an excerpt from the Ojibwe and  
10:08:30 3 English vocabulary written by M.B. Madwayosh, an  
10:08:35 4 interpreter for J. Craig, Esquire, Southhampton,  
10:08:36 5 December 29th, 1859, and it was extracted from  
10:08:43 6 the archival record held by Bruce County Museum  
10:08:45 7 and Cultural Centre, and it's pages 1 to 27. I  
10:08:50 8 would ask that this be made the last exhibit for  
10:08:53 9 Canada.

10:08:54 10 THE COURT: Any objection.

10:08:55 11 MR. TOWNSHEND: No objection.

10:08:56 12 THE COURT: Thank you, sir.

10:08:58 13 THE REGISTRAR: Exhibit 34511.

10:09:00 14 EXHIBIT NO. 4511: Excerpt from the  
10:09:01 15 Ojibwe and English vocabulary written  
10:09:01 16 by M.B. Madwayosh, an interpreter for  
10:09:01 17 J. Craig, Esquire, Southhampton,  
10:09:01 18 December 29th, 1859; document number  
10:09:01 19 SC1669.

10:09:08 20 MR. BEGGS: Thank you, Your Honour.

10:09:09 21 THE COURT: Don't sit down until you  
10:09:09 22 tell me whether you're closing your case, sir,  
10:09:09 23 subject to the evidence of Professor Bowman.

10:09:09 24 MR. BEGGS: Yes, subject to the  
10:09:09 25 evidence of Professor Bowman Canada is closing

10:09:14 1 its case. Thank you.

10:09:16 2 THE COURT: Thank you.

10:09:17 3 And who is opening for Ontario?

10:09:29 4 Mr. Feliciant.

10:09:31 5 MR. FELICIAN: Good morning, Your  
10:09:31 6 Honour, if we could start by bringing up  
10:09:34 7 document SC1664?

10:09:48 8 Your Honour, what I'm bringing up now  
10:09:49 9 is an outline of the evidence of Ontario's  
10:09:54 10 expert witnesses. It's a helpful, I believe,  
10:09:59 11 chart similar to charts provided by the  
10:10:02 12 plaintiffs and Canada. And if we could perhaps  
10:10:06 13 mark this as the next lettered exhibit as  
10:10:09 14 forming part of our opening?

10:10:11 15 THE COURT: Yes. Just give me a  
10:10:12 16 moment.

10:10:16 17 Yes, I recall a helpful summary, by  
10:10:18 18 the plaintiffs at least. I believe Canada  
10:10:24 19 provided one but it was their experts only.

10:10:27 20 Is this in the category of the  
10:10:28 21 plaintiffs' summary Canada's summary.

10:10:32 22 MR. FELICIAN: This is in the line of  
10:10:33 23 the plaintiffs' summary of expert and fact  
10:10:36 24 witnesses.

10:10:38 25 THE COURT: Just give me a moment

10:10:40 1 here.

10:10:53 2 Mr. Registrar, this chart entitled  
10:10:57 3 "Outline of Evidence of Ontario's Expert and  
10:11:00 4 Fact Witnesses" will be the next lettered  
10:11:03 5 exhibit.

10:11:04 6 THE REGISTRAR: Lettered Exhibit K-3.  
10:11:07 7 EXHIBIT NO. K-3: Chart entitled  
10:11:10 8 "Outline of Evidence of Ontario's  
10:11:10 9 Expert and Fact Witnesses".

10:11:13 10 MR. FELICIAN: Your Honour, Ontario  
10:11:13 11 is pleased to open its case in this matter. I  
10:11:19 12 don't propose to revisit the submissions made in  
10:11:22 13 the initial opening statement but those have not  
10:11:26 14 changed.

10:11:28 15 Just as a brief reminder, it is  
10:11:32 16 Ontario's position that in the Treaty action  
10:11:35 17 there is no breach of fiduciary duty and no  
10:11:37 18 breach of the honour of the Crown.

10:11:41 19 And in the Aboriginal title action to  
10:11:42 20 the lake beds of Lake Huron and Georgian Bay it  
10:11:46 21 is our position it is not relief that's  
10:11:51 22 cognizable in law in Canada; and if it is the  
10:11:56 23 plaintiffs have not provided evidence sufficient  
10:11:58 24 to make out exclusive use and occupation of the  
10:12:02 25 area claimed.

1 Ontario will be calling, in its case,  
2 eight witnesses comprised of three experts and  
3 five lay witnesses.

4 The three experts that will speak to  
5 these issues are Mr. Jean-Phillippe Chartrand,  
6 Professor Donald Graves and Dr. Gwen Reimer.

7 Jean-Phillippe Chartrand is an  
8 anthropologist and an ethnohistorian. He's  
9 prepared an expert report for this proceeding  
10 titled "Historical Research on Provisions of  
11 American Treaties, Including Surrenders of Lake  
12 Beds in the Great Lakes".

13 His report and testimony address  
14 provisions in five American treaties that the  
15 plaintiffs assert are examples of surrenders of  
16 lake beds in the Great Lakes, which contrast to  
17 the terms of Treaty 72, which contain no such  
18 surrender.

19 He will analyze these treaties in the  
20 context of British and American relations both  
21 with each other and with Indigenous peoples in  
22 the Great Lakes region from the mid-18th to the  
23 mid-19th century, including the different treaty  
24 policies and protocols in Upper Canada and the  
25 U.S. His evidence primarily pertains to the

1 title action.

2 Professor Donald Graves is a historian  
3 with a particular focus in military history. He  
4 has prepared an expert report titled "Comments  
5 and Observations on the Expert Reports of  
6 Professor Eric Hinderaker and Dr. Sidney Harring  
7 and the Historical basis for the Plaintiffs'  
8 Statement of Claim".

9 In his report and testimony he will  
10 review the military history of the Great Lakes  
11 area from 1756 to 1867.

12 His evidence pertains to the title  
13 action, namely the issue of exclusive use. It  
14 also pertains to the Treaty action and the issue  
15 of whether the Crown breached any duties it may  
16 have owed in relation to the protection of the  
17 peninsula from encroachment.

18 Finally for the expert witnesses,  
19 Dr. Reimer is an anthropologist with expertise  
20 in cultural anthropology and ethnohistory.  
21 Dr. Reimer provided an expert report comprised  
22 of four volumes.

23 The primary research question  
24 addressed in the first volume was whether there  
25 is sufficient evidence to determine if

1 Aboriginal occupation of the Saugeen Peninsula  
2 was continuous from the prehistoric to the  
3 historic periods?

4 The second volume analyzed the use and  
5 occupation of waters and lands in the lake claim  
6 area.

7 The third volume focused on land  
8 cession agreements between the SON and Crown  
9 with specific reference to Treaty 45 1/2, Treaty  
10 67 and Treaty 72.

11 Lastly, the fourth volume of  
12 Dr. Reimer's report presented evidence regarding  
13 the implementation of Treaty 72.

14 She will also be addressing the expert  
15 evidence of Professor's Hinderaker, Brownlie,  
16 Williamson, Harring and Driben.

17 Additionally Ontario will be calling  
18 five fact witnesses. Ron Gould, Jennifer Keys,  
19 Mark Mushett, Caroline O'Neil and Greg Sikma.

20 Starting with Mr. Gould, Ron Gould  
21 work for the Ministry of Environment,  
22 Conservation and Parks as a protected area  
23 specialist. He will provide evidence focused on  
24 the ministry's work along the shorelines and  
25 with respect to the waters around the Provincial



1 parks that border on Lake Huron and Georgian  
2 Bay.

3 He will discuss access and use by  
4 members of the public of those areas and the  
5 Ministry's efforts to preserve sensitive areas  
6 of species at risk.

7 Jennifer Keys works for the Ontario  
8 Ministry of Natural Resources and Forestry and  
9 is a manager of the water resources section,  
10 possibly now a director. I believe she's now a  
11 director of the -- in that organization so she's  
12 got a promotion.

13 She will speak to her ministry's role  
14 in federal and binational collaboration in Great  
15 Lakes management, and in respect of various  
16 agreements between the Province and the federal  
17 government, the United States and individual  
18 State governments.

19 This evidence will include material  
20 related to the Ministry's obligation that flow  
21 from these agreements as well as the work being  
22 carried on in respect of ecosystem management  
23 and water management issues.

24 Mark Mushett is employed by the  
25 Ministry of Natural Resource and he will speak

1 to the commercial fishing agreement with SON and  
2 Upper Great Lakes fisheries' management.

3 Caroline O'Neil is a manager with the  
4 Ministry of Environment, Conservation and Parks  
5 and, in a manner similar to Jennifer Keys, will  
6 speak to the various international, binational  
7 and other subnational agreements relating to the  
8 management of the Great Lakes as it applies to  
9 that particular ministry.

10 Finally, Greg Sikma is a cartographic  
11 expert with MNRF and he will speak to his role  
12 in making certain maps used in the  
13 cross-examination of Professor Brownlie, and  
14 also being addressed by Dr. Reimer.

15 Many lawyers and judges often talk  
16 about large trials and how much evidence and how  
17 many documents there are, but there's some  
18 conventional wisdom that says no matter how big  
19 the trial is it only comes down to a few key  
20 documents and facts; of course in a trial like  
21 this is on a larger scale but it, nevertheless,  
22 hold true.

23 So in this opening it is my intention  
24 to distill, from the quite voluminous that  
25 evidence you will hear, those core facts that

1 create the core narrative that, in Ontario's  
2 view, should be driving the decision.

3 THE COURT: Just before you move on to  
4 that, I don't have any notes suggesting there  
5 will be any voir dieres in relation to your three  
6 experts. Is that still the case or is that --

7 MR. FELICIANANT: Yes. My understanding  
8 from counsel is that there will be no objection  
9 to our proposed tenders.

10 THE COURT: All right.

11 MR. FELICIANANT: So I'll start with the  
12 Aboriginal title to the lake beds claim. And  
13 hopefully we can now distill some of the facts  
14 that drive this core narrative.

15 Dr. Reimer will testify about the  
16 prehistoric, protohistoric and historic  
17 occupation of the Bruce Peninsula. We will hear  
18 that the Ojibwe likely did not arrive on the  
19 Bruce Peninsula until approximately the 1690s  
20 after the Iroquois were driven out of southern  
21 Ontario.

22 Dr. Reimer will also testify that in  
23 the 1760s, British officials had little  
24 information about Indigenous groups who lived  
25 beyond the major forts.

1 By the 1820s there was some  
2 awareness that villages were occupied by Ojibwe  
3 at Saugeen and Nawash. Potawatami families  
4 relocated to the Saugeen and Nawash communities  
5 in the 1830s, having left the United States  
6 for various reasons, including the American  
7 removal policy and western expansion.

8 Dr. Reimer will also testify that  
9 Ojibwe communities were politically autonomous  
10 and responsible for making their own decisions  
11 relating to the use of their territory and other  
12 day-to-day matters.

13 Participation and alliances was  
14 impermanent and depended upon whether  
15 participation in a particular endeavour was  
16 sufficiently important to their interest, in  
17 this regard she agrees with Professor Driben.

18 The location of the Ojibwe contact and  
19 then, again, at the assertion of sovereignty is  
20 important when analyzing the community's  
21 historic use and occupation of Lake Huron and  
22 George Bay, in addition to its ability to  
23 control access points and waters.

24 Donald Graves will testify that by  
25 1763, and into the early 19th century, British

1 naval power dominated the Lower and Upper Great  
2 Lakes, except for short periods during the War  
3 of 1812 during which British control was  
4 contested by the United States.

5 More particularly, the British  
6 controlled Lake Huron during the War of 1812,  
7 except in 1814 when American warships dominated  
8 Lake Huron until two American ships on Lake  
9 Huron for captured by British boarding parties  
10 in September 1814.

11 Indigenous attacks on British sailing  
12 vessels in 1763 generally were unsuccessful and  
13 costly to the attackers.

14 During the War of 1812 it was through  
15 their alliance with the British that the  
16 Indigenous Nations of Upper Great Lakes were  
17 able to continue to utilize these waters for  
18 their own purposes.

19 Consistent with other evidence we've  
20 heard, Dr. Reimer will testify that the primary  
21 use of Lake Huron and what made it truly  
22 important to the Saugeen and Nawash communities  
23 was its fisheries.

24 Mark Mushett will provide evidence of  
25 the commercial fishing agreement with SON that

1 protects their right to commercially fish in  
2 Lake Huron and Georgian Bay.

3 Jennifer Keys from MNR, the Ministry  
4 of Natural Resources and Forestry will testify  
5 about the international, national, and  
6 subnational agreements and collaboration in  
7 relation to MNR's role in management of the  
8 Great Lakes that could be impacted by a finding  
9 of Aboriginal title.

10 Caroline O'Neil from MECP, Ministry of  
11 the Environment, Conservation and Parks, will  
12 testify about the international, national and  
13 subnational agreements and collaboration in  
14 relation to MECP's role in the management of the  
15 Great Lakes that could be impacted by a finding  
16 of Aboriginal title.

17 Ron Gould from MECP will speak  
18 specifically to ecological issues managed by  
19 MECP in relation to the Provincial Parks that  
20 border the claim area of Lake Huron and Georgian  
21 Bay, that could be impacted by a finding of  
22 Aboriginal title.

23 These ecological issues would include  
24 species at risk protection and water testing.  
25 He will also speak to recreational uses of the

1 park along the shore and in the adjacent waters.

2 Finally, Mr. Chartrand will testify  
3 about the American treaty-making experience and  
4 why some treaties in the U.S. and Indigenous  
5 parties contained a surrender of portions of the  
6 beds of the Great Lakes. The concerns of the  
7 United States government and the American  
8 treaty-making experience, you will hear, are  
9 historically different to that of the British.

10 Now turning our attention to the  
11 Treaty claim that involved declarations of  
12 fiduciary duty and breach of the honour of the  
13 Crown, Dr. Reimer will testify that in the 1800s  
14 there was a dramatic increase in the population  
15 in Upper Canada; she will testify as to the  
16 pressure this put on the Crown to open up lands  
17 for settlement.

18 She will testify that the Crown  
19 entered into a number of what are known as  
20 Preconfederation Treaties along the shore of  
21 Lake Ontario and inland, and that officials  
22 generally followed treaty-making guidelines set  
23 out in the Royal Proclamation of 1763 and  
24 Dorchester Instructions of 1794. Dr. Reimer  
25 will discuss treaties 45 and 45 1/2.

10:24:51 1 She will testify that Lieutenant  
10:24:52 2 Governor Bond Head in 1836 convened a general  
10:24:56 3 council and proposed two treaties, first to the  
10:24:59 4 Ottawa and Ojibwe of Manitoulin Island and,  
10:25:03 5 second, to the Ojibwe of Saugeen and Nawash.

10:25:07 6 Although he had no formal instructions  
10:25:09 7 from London he nevertheless used the opportunity  
10:25:11 8 of the distribution of the annual presents at  
10:25:14 9 Manitoulin to convene a Treaty Council.

10:25:17 10 His vision was to have all Indians  
10:25:19 11 centralized on territories away from white  
10:25:22 12 settlement so that they could continue in their  
10:25:24 13 customary way of life, protected from the  
10:25:26 14 negative influences of white settlers. Although  
10:25:29 15 the Crown rejected this as a policy it  
10:25:33 16 nevertheless ratified the Treaty.

10:25:41 17 Dr. Reimer will describe that at the  
10:25:43 18 same time the Chiefs of Saugeen and Nawash were  
10:25:45 19 asked if they would surrender their lands and  
10:25:48 20 remove to Manitoulin Island. The Saugeen and  
10:25:52 21 Nawash rejected this proposal and stated that  
10:25:54 22 they would surrender 1.5 million acres south of  
10:25:58 23 the Bruce Peninsula on the condition that the  
10:26:00 24 peninsula be reserved as Indian territory.

10:26:04 25 One interpretation of this promise was



10:26:06 1 that the Crown would protect cultivated land for  
10:26:08 2 the use of the communities forever.

10:26:12 3 You will hear evidence from Dr. Reimer  
10:26:14 4 that between 1836 and 1854 SON advocated for the  
10:26:19 5 creation of a manual labour school and  
10:26:21 6 encouraged other communities to join them on  
10:26:24 7 this reserve.

10:26:25 8 You will also hear that when it became  
10:26:27 9 clear that this was not -- would not materialize  
10:26:30 10 and the other communities were not going to join  
10:26:33 11 that they agreed to surrender their lands on the  
10:26:36 12 Bruce Peninsula in Treaty 72.

10:26:40 13 In addition to the realization that no  
10:26:42 14 manual labour school was going to be built, you  
10:26:44 15 will hear that the First Nations in the summer  
10:26:46 16 of 1854 became concerned about squatting on the  
10:26:51 17 peninsula.

10:26:52 18 Similar to the evidence of Professor  
10:26:55 19 Driben, Dr. Reimer will testify that there is no  
10:26:59 20 comprehensive quantitative account available  
10:27:02 21 that would tell us how many squatters may have  
10:27:05 22 taken up land and resided on it, although there  
10:27:09 23 is evidence of settlers extracting resources  
10:27:12 24 such as timber.

10:27:14 25 Dr. Reimer will testify that she found

1 very few examples of actual squatting between  
2 1840 and the signing of Treaty 72.

3 It was not until the summer of 1854  
4 that concerns about the risk of actual squatting  
5 began to escalate. In particular the big land  
6 sale at Southampton in September of 1854, of  
7 lands that had been surrendered already in 1836  
8 caused concern that there would be increased  
9 pressure for lands on the peninsula.

10 This evidence is relevant when  
11 considering whether the Crown in fact breached  
12 its promise to protect the peninsula, and also  
13 to the issue of whether it was reasonable to  
14 criticize the Crown for not engaging police or  
15 the military for the purpose of protecting the  
16 peninsula.

17 This raises Donald Graves' evidence.  
18 Mr. Graves will testify that even if there were  
19 evidence of actual squatting the Crown would  
20 have been reluctant to utilize the military  
21 against civilians; he will also testify that the  
22 Crown simply did not have the military resources  
23 that would have been required to patrol such a  
24 long boundary.

25 Dr. Reimer will also testify about

1 Indian Superintendent Anderson's attempt to  
2 secure a surrender of the Bruce Peninsula in  
3 August 1854. She will testify that  
4 Mr. Anderson's behaviour when he suggested that  
5 the Crown might simply take the land was not  
6 appropriate.

7 However, she will also testify that  
8 the communities had the strength to resist the  
9 proposal and, in fact, made a counterproposal.  
10 In the end no treaty was agreed to in August  
11 1854.

12 Dr. Reimer will testify that when  
13 Superintendent General Oliphant attended at  
14 Saugeen in October 1854 he tried to keep the  
15 Nawash and Saugeen Chiefs from convening  
16 together prior to hearing his proposal in  
17 council.

18 However, she will also testify that  
19 they were present together during the council  
20 and met together following the council in  
21 private.

22 Dr. Reimer will testify about the  
23 focus of concerns expressed by the Saugeen  
24 community at the Treaty Council and in the  
25 subsequent years following the making of the

1 Treaty.

2 SON was primarily concerned with  
3 maximizing the revenue from the sale of land.  
4 They proposed, the SON proposed, that a  
5 condition of settlement be imposed on land  
6 sales, and at one point suggested lowering the  
7 price of land.

8 Dr. Reimer will testify that SON had  
9 their own objectives for agreeing to enter into  
10 a treaty.

11 Dr. Reimer will finally testify that  
12 there are no documented complaints by SON that  
13 the Treaty proceedings were rushed, that  
14 proceedings were not conducted according to  
15 custom, or that the treaty did not reflect SON's  
16 intention to sell the lands.

17 To this day SON maintains that the  
18 treaty is legally valid.

19 Ontario reiterates that there was no  
20 failure to implement Treaty 45 1/2 and protect  
21 the peninsula; that the threat of squatting did  
22 not rise to a level of real concern until  
23 shortly before the Treaty was entered into in  
24 1854; that the communities were not under duress  
25 when they signed Treaty 72; that whatever

10:31:00 1 concerns one may have about Crown conduct those  
10:31:03 2 concerns do not rise to the level of a breach of  
10:31:06 3 the honour of the Crown or breach of fiduciary  
10:31:07 4 duty; and they did not cause SON to enter into  
10:31:13 5 the Treaty.

10:31:16 6 SON, exercising its own agency, had  
10:31:19 7 its own reasons and own objectives for entering  
10:31:21 8 into Treaty 72.

10:31:26 9 Your Honour, that concludes Ontario's  
10:31:28 10 opening statement.

10:31:31 11 Our first witness, as we have  
10:31:33 12 discussed, will be available Monday morning and  
10:31:34 13 that will where Professor Chartrand.

10:31:37 14 THE COURT: Thank you, sir.

10:31:39 15 MR. FELICIAN: Thank you, Your  
10:31:40 16 Honour.

10:31:44 17 THE COURT: It's probably too soon for  
10:31:50 18 me to ask if any progress has been made on the  
10:31:53 19 schedule that we talked about yesterday. But I  
10:31:55 20 would ask counsel if perhaps by email, by end of  
10:31:59 21 the day Monday, indicate when next week you  
10:32:03 22 would be available to have a discussion about  
10:32:05 23 the schedule. It doesn't have any impact on  
10:32:09 24 Monday but I would like not to get too far away  
10:32:13 25 from that. Is there anything that anyone wishes

10:32:16

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to address before we adjourn to Monday?

--- Whereupon the proceedings were  
adjourned at 10:32 a.m.

REPORTER'S CERTIFICATE

I, HELEN MARTINEAU, CSR, Certified  
Shorthand Reporter, certify;

That the foregoing proceedings were  
taken before me at the time and place therein  
set forth;

That the testimony of the witness and  
all objections made at the time of the  
examination were recorded stenographically by me  
[Note: Not all quotes have been verified  
against source document, but transcribed as  
read into the record];

That the foregoing is a true and  
accurate transcript of my shorthand notes so  
taken. Dated this 22nd day of January 2020.



PER: HELEN MARTINEAU  
CERTIFIED SHORTHAND REPORTER

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