

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

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DAY 79 VOL 79  
January 22, 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 the VOLUME 79/DAY 79 of the transcript  
28 of the trial proceedings in the above-noted matter,  
29 being held at the Superior Court of Justice,  
30 330 University Avenue, Courtroom 5-1, Toronto,  
31 Ontario, on the 22nd day of January, 2020.

32 B E F O R E:

33 The Honourable Justice Wendy M. Matheson

1           A P P E A R A N C E S :

2

3           Cathy Guirguis, Esq.,                                 for the Plaintiffs,  
4           & Benjamin Brookwell, Esq.,                     The Chippewas of  
5   Saugeen First Nation,  
6   and the Chippewas of  
7   Nawash First Nation.

8

9

10          Barry Ennis, Esq.,                                 for the Defendant,  
11          & Alexandra Colizza, Esq.                        The Attorney General  
12   Of Canada.

13

14          David Feliciant, Esq.,                            for the Defendant,  
15          & Jennifer Lepad, Esq.,                            Her Majesty the  
16   Queen in Right of  
17   Ontario.

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

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09:41:19 1 -- Upon commencing at 10:05 a.m.

10:06:11 2

10:06:12 3 THE COURT: Good morning, Ms. LEPAN.

10:06:14 4 MS. LEPAN: Good morning, Your Honour.

10:06:15 5 THE COURT: What is the sort of  
10:06:16 6 high-level plan for witnesses this week?

10:06:19 7 MS. LEPAN: So following Jennifer, we  
10:06:20 8 should be -- Jennifer Keyes is our next witness and  
10:06:25 9 following Jennifer Keyes, Carolyn O'Neill is the  
10:06:28 10 last witness for this week and she should be ready  
10:06:31 11 to start after the lunch break.

10:06:32 12 THE COURT: So you don't have anything  
10:06:34 13 to call tomorrow?

10:06:35 14 MS. LEPAN: No, so following that  
10:06:37 15 there's no further witnesses this week.

10:06:40 16 THE COURT: Is it anticipated, I guess  
10:06:42 17 a question for Plaintiffs' counsel as well, that  
10:06:44 18 those two witnesses can be completed today?

10:06:47 19 MS. GUIRGUIS: Yes, Your Honour.

10:06:49 20 THE COURT: All right. There's one  
10:06:51 21 scheduling matter that I'll mention in that regard  
10:06:54 22 which is that there's some sort of planned activity  
10:06:58 23 at the U.S. Embassy at 1:00 p.m., so we'll break  
10:07:04 24 for lunch at 12:30 p.m. I'm not sure if that will  
10:07:08 25 have any impact on the plan for today.



1 But the request is not to, you know, be  
2 in the area directly around the embassy so that  
3 will give everyone time to get where they're going  
4 before one, if you're going somewhere at lunchtime.

5 The other scheduling issue that I  
6 sorted out after court yesterday was that I do have  
7 a meeting at Osgoode tomorrow after court, so we  
8 need a new time for the case conference.

9 MS. LEPAN: Yes, Your Honour. Perhaps  
10 the parties could discuss and advise you of a time  
11 that would work for them on Friday, if that would  
12 be...

13 THE COURT: Well, I'd rather do it on  
14 Thursday, because you know, if there are still  
15 issues with the schedule, it's better to know  
16 sooner rather than later. And I have to find out  
17 from the Plaintiffs, I guess, whether there was  
18 another report delivered or -- yes, there was?

19 MS. GUIRGUIS: Yes, that is correct,  
20 Your Honour.

21 THE COURT: So we have some new  
22 information that we have to factor in. So I'd like  
23 to do it tomorrow as planned, but not at 4:30 p.m.

24 Perhaps what one of your colleagues  
25 could do as you call the next witness is ask

10:08:32 1 counsel at large if we could do it at 10 o'clock.

10:08:39 2 Most people would be available, I  
10:08:41 3 assume, since you were planning to be here.

10:08:46 4 MS. LEPAN: Yes, Your Honour, we can do  
10:08:47 5 that.

10:08:48 6 THE COURT: If there's no objection we  
10:08:50 7 can do it on the phone which would be convenient, I  
10:08:53 8 suspect, for some people. But if someone could  
10:08:55 9 look into that because 4:30 p.m. tomorrow is not  
10:08:58 10 going to work, all right?

10:09:02 11 So those are the two scheduling matters  
10:09:04 12 that I wanted to raise. Is there anything else  
10:09:07 13 along that vein either from you or from Plaintiffs'  
10:09:12 14 counsel or Canada?

10:09:14 15 No, no, no, all right.

10:09:24 16 Just give me a minute.

10:10:02 17 I see Mr. Feliciant back there, not  
10:10:04 18 actually hiding but hard to see.

10:10:08 19 Mr. Feliciant, I take it from  
10:10:14 20 Ms. Lepan's remarks that we can't have Greg Sikma  
10:10:20 21 this week; is that the case?

10:10:25 22 We've got Jennifer Keyes and Carolyn  
10:10:28 23 O'Neill today; is that correct?

10:10:29 24 MS. LEPAN: Yes, that's correct.

10:10:33 25 MR. FELICIAN: We'd have to check with

1 Mr. Sikma, but the Plaintiffs, I understand, wanted  
2 an opportunity to review the report. Because the  
3 report we served this week is tied into his  
4 evidence, so I don't know that it would be possible  
5 to move him up.

6 THE COURT: I see. Well that second  
7 problem is -- rings a bell. It may have been  
8 raised by you, Counsel --

9 MS. GUIRGUIS: Yes, Your Honour.

10 THE COURT: -- at the case conference;  
11 is that right?

12 MS. GUIRGUIS: Yes.

13 THE COURT: Is that still the case that  
14 you prefer not to see him on Friday?

15 MS. GUIRGUIS: That is correct,  
16 Your Honour.

17 THE COURT: And you prefer to see him  
18 on Monday?

19 MS. GUIRGUIS: That is correct.

20 THE COURT: Because of that second  
21 issue, I guess we'll have to manage without him.

22 I know that the other issues -- I guess  
23 it wouldn't have been next week, it would have been  
24 a week from Monday -- but still the other issues  
25 starting a week from Monday are the subject of the

1 case conference that I'd like to have tomorrow  
2 sometime.

3 Okay, Counsel, please go ahead.

4 MS. LEPAN: Thank you, Your Honour.

5 Ontario would like to call Ms. Jennifer  
6 Keyes.

7 THE REGISTRAR: Good morning.

8 THE WITNESS: Good morning.

9 THE REGISTRAR: Would you like to make  
10 an oath on the Holy Book or make a solemn  
11 affirmation to tell the truth.

12 THE WITNESS: On the Holy Book.

13 THE REGISTRAR: The Bible?

14 THE WITNESS: Yes.

15 THE REGISTRAR: Can you state and spell  
16 your first and last name for the record.

17 THE WITNESS: My name is Jennifer  
18 Keyes.

19 THE REGISTRAR: Can you spell it for  
20 us.

21 THE WITNESS: J-E-N-N-I-F-E-R, last  
22 name, K-E-Y-E-S.

23 THE REGISTRAR: Thank you.

24 JENNIFER KEYES: SWORN.

25 THE COURT: Ms. Keyes, it's a very big

1 room and everyone in it needs to hear you. That  
2 microphone will help a little bit, but you really  
3 need to keep your voice up, all right?

4 THE WITNESS: Okay.

5 THE COURT: Please go ahead.

6 MS. LEPAN: Your Honour, before we  
7 begin, we've provided a list to the registrar of  
8 certain documents that we're going to be asking to  
9 be made exhibits.

10 My friends have advised that they are  
11 consenting to these documents being marked as  
12 exhibits, so I would ask that we do that now.

13 THE COURT: All right. First of all,  
14 Mr. Registrar, can you mark the document which is  
15 entitled "Jennifer Keyes - Documents to Be Entered  
16 As Exhibits on Consent" as the next lettered  
17 exhibit.

18 THE REGISTRAR: Next lettered Exhibit  
19 N-3 as in "Nancy".

20 THE COURT: N-3?

21 THE REGISTRAR: Yes, Your Honour.

22 EXHIBIT NO. N-3: Jennifer Keyes -  
23 Documents to be Entered as Exhibits on  
24 Consent.

25 THE COURT: If you can take us through

1 the document numbers.

2 THE REGISTRAR: Document No. SC1015,  
3 No. 4531.

4 EXHIBIT NO. 4531: Canada Ontario  
5 Agreement on Great Lakes Water Quality  
6 and Ecosystem Health, 2014.

7 THE REGISTRAR: Document No. SC1020,  
8 Exhibit No. 4532.

9 EXHIBIT NO. 4532: Great Lakes Basin  
10 Compact (With State and Federal  
11 Legislative History).

12 THE REGISTRAR: Document No. SC1021,  
13 Exhibit No. 4533.

14 EXHIBIT NO. 4533: Great Lakes  
15 Commission Declaration of Partnership.

16 THE REGISTRAR: Document No. SC1025,  
17 Exhibit No. 4534.

18 EXHIBIT NO. 4534: Great Lakes  
19 St. Lawrence River Basin Sustainable  
20 Water Resources Agreement.

21 THE REGISTRAR: Document No. SC1026,  
22 Exhibit No. 4555.

23 Document No. SC1223, Exhibit  
24 No. 4546 --

25 THE COURT: Sorry, which one are you on

10:13:57 1 now? SC...

10:14:00 2 THE REGISTRAR: Court's indulgence.

10:14:17 3 Document No. SC1026, Exhibit No. 4535.

10:14:17 4 EXHIBIT NO. 4535: Lake Huron Action

10:14:17 5 and Management Plan, 2017-2021.

10:14:23 6 THE REGISTRAR: Document No. SC1223,

10:14:27 7 Exhibit No. 4536.

10:14:27 8 EXHIBIT NO. 4536: Ontario's Great

10:14:27 9 Lakes Strategy.

10:14:29 10 THE REGISTRAR: Document No. SC1224,

10:14:33 11 Exhibit No. 4537.

10:14:33 12 EXHIBIT NO. 4537: Information Note -

10:14:33 13 Great Lakes-St. Lawrence Legislative

10:14:33 14 Caucus (GLLC).

10:14:35 15 THE REGISTRAR: Document No. SC1225,

10:14:40 16 Exhibit No. 4538.

10:14:40 17 EXHIBIT NO. 4538: Great Lakes St. Lawrence

10:14:40 18 Governors and Premiers - United for Growth.

10:14:41 19 THE REGISTRAR: Document No. SC1227,

10:14:46 20 Exhibit No. 4539.

10:14:46 21 EXHIBIT NO. 4539: Resolution Creating

10:14:46 22 the Conference of Great Lakes and

10:14:46 23 St. Lawrence Governors and Premiers.

10:14:48 24 THE REGISTRAR: Document No. SC1228,

10:14:53 25 Exhibit No. 4540.

10:14:53 1 EXHIBIT NO. 4540: Great Lakes  
10:14:53 2 St. Lawrence Legislative Caucus Rules.  
10:14:56 3 THE REGISTRAR: Document No. SC1687,  
10:15:01 4 Exhibit No. 4541.  
10:15:01 5 EXHIBIT NO. 4541: Great Lakes  
10:15:01 6 Protection Act, 2015.  
10:15:03 7 THE REGISTRAR: Document No. SC1692,  
10:15:09 8 Exhibit No. 4542.  
10:15:09 9 EXHIBIT NO. 4542: Convention on Great  
10:15:09 10 Lakes Fisheries between The United  
10:15:09 11 States of America and Canada.  
10:15:20 12 THE COURT: Proceed.  
10:15:20 13 MS. LEPAN: Thank you.  
10:15:21 14 EXAMINATION IN-CHIEF BY MS. LEPAN:  
10:15:21 15 Q. Good morning, Ms. Keyes.  
10:15:22 16 A. Good morning.  
10:15:23 17 Q. I'm going to begin by asking you a  
10:15:26 18 few questions to introduce you to the court. I  
10:15:28 19 understand you work for the Ministry of Natural  
10:15:31 20 Resources and Forestry?  
10:15:31 21 A. Yes, I do.  
10:15:32 22 Q. For the purposes of this  
10:15:33 23 examination, I may refer to the Ministry of Natural  
10:15:36 24 Resources and Forestry as "MNRF".  
10:15:39 25 What is your current job title?



10:15:41 1 A. I'm currently the director of  
10:15:43 2 Natural Resources Policy Conservation Branch.

10:15:46 3 Q. When did you begin that role?

10:15:47 4 A. I started that role December 6th  
10:15:49 5 of 2019.

10:15:52 6 Q. And what does the Natural  
10:15:56 7 Resources Conservation Policy Branch do?

10:15:56 8 A. It provides strategic leadership  
10:15:59 9 to the Ministry on various resource management  
10:16:03 10 activities, such as aggregates, petroleum, water  
10:16:06 11 resources, natural heritage and Great Lakes  
10:16:09 12 management.

10:16:10 13 Q. And what are your responsibilities  
10:16:12 14 as the director of the Conservation Policy Branch?

10:16:15 15 A. I provide the strategic direction  
10:16:18 16 to staff to review legislation, regulations that  
10:16:22 17 help manage those resources and oversee, as well as  
10:16:28 18 negotiate, when agreements are up for renewal  
10:16:31 19 around the Great Lakes.

10:16:32 20 Q. And what agreements would those  
10:16:34 21 be?

10:16:34 22 A. So there's several agreements that  
10:16:36 23 we work in that govern how we operate around the  
10:16:39 24 Great Lakes.

10:16:39 25 So there's the Boundary Waters Treaty,

10:16:42 1 there's the Great Lakes Water Quality Agreement,  
10:16:45 2 the Canada-Ontario agreement respecting the Great  
10:16:50 3 Lakes ecosystem health.

10:16:51 4 There's also the Great Lakes  
10:16:53 5 sustainable water resources agreement.

10:16:56 6 Q. And prior to your work as the  
10:16:58 7 director of the Conservation Policy Branch; where  
10:17:01 8 did you work?

10:17:01 9 A. I was the manager of the water  
10:17:06 10 resources section within that branch.

10:17:07 11 Q. What does the water resources  
10:17:08 12 section do?

10:17:08 13 A. Similar to the branch, we provide  
10:17:12 14 strategic leadership for water resources in the  
10:17:15 15 Province of Ontario respecting the Ministry's  
10:17:18 16 natural resources and forestry's mandate. So that  
10:17:20 17 would include working within the agreements that I  
10:17:22 18 mentioned.

10:17:23 19 Q. What responsibilities did you have  
10:17:26 20 as the manager of the water resources section?

10:17:29 21 A. Again, I oversaw the staff that  
10:17:31 22 were providing policy support and advice to the  
10:17:35 23 government in advancing our interests in Great  
10:17:38 24 Lakes matters, including facilitating and working  
10:17:41 25 within the agreements that I mentioned earlier.

1 Q. So those agreements that you've  
2 mentioned, they relate to the management of the  
3 Great Lakes. Can you describe at a high level how  
4 management of the Great Lakes is carried out?

5 A. The Great Lakes are considered  
6 boundary waters shared between Canada and the U.S.  
7 So all of the agreements that I'll outline today  
8 really are designed for the orderly management of  
9 resource management activities and associated  
10 activities with those shared waters.

11 So it is about a collaborative approach  
12 to managing transboundary waters with Canada and  
13 the U.S., and domestically with Ontario, Québec,  
14 and the eight U.S. Great Lakes states.

15 Q. I want to shift now and ask you  
16 about several of the bi-national agreements and  
17 treaties regarding the Great Lakes.

18 So I'd like to start with pulling up  
19 Exhibit 4506, which is the Boundary Waters Treaty.

20 Can you describe what this document is?

21 A. The Boundary Waters Treaty is the  
22 foundational treaty that was signed between Canada  
23 and the United States in 1909, and it outlines the  
24 principles of which the two jurisdictions will  
25 collaborate and cooperate on issues associated with

10:19:04 1 shared waters, and that being the Great Lakes  
10:19:07 2 Basin.

10:19:07 3 And the agreement is a principle-based  
10:19:09 4 agreement that outlines that no one jurisdiction  
10:19:12 5 will do undue harm to the other's use of the waters  
10:19:17 6 and the resources that accompany those waters.

10:19:18 7 It also establishes the International  
10:19:24 8 Joint Commission, which is the overseeing body that  
10:19:27 9 was established as a result of this treaty to hear  
10:19:31 10 disputes amongst the parties, as well as to approve  
10:19:33 11 any type of project that will affect the quality or  
10:19:37 12 quantity of the Great Lakes boundary waters.

10:19:43 13 The boundary waters treaty is not  
10:19:45 14 exclusive to the Great Lakes. It's for all  
10:19:47 15 boundary waters between Canada and U.S. across the  
10:19:50 16 country. But I just work within the Great Lakes  
10:19:52 17 Basin context.

10:19:53 18 Q. You mention that it's a  
10:19:58 19 principle-based agreement; what did you mean by  
10:20:00 20 that?

10:20:00 21 A. It sets out the foundations. It's  
10:20:04 22 set up in such a way -- if I could ask if you can  
10:20:08 23 scroll, could I see part of --

10:20:10 24 Q. Of course, we can scroll down.

10:20:25 25 A. So the agreement is set out with

10:20:27 1 some preliminary articles, as well as detailed  
10:20:30 2 articles that prioritize the interests of the  
10:20:33 3 parties, so making sure that navigation is not  
10:20:36 4 affected by any one jurisdiction's activities as  
10:20:40 5 well as the water quality or quantity.

10:20:42 6 So if anything that affects the flows  
10:20:44 7 and levels, if one jurisdiction does undue harm to  
10:20:48 8 the other, the IJC is there to hear the disputes  
10:20:52 9 between the two countries.

10:20:53 10 Q. And can you describe briefly what  
10:20:57 11 types of issues the treaty aims to address?

10:21:00 12 A. So treaty primarily aims to  
10:21:02 13 address water quality. So that's the quality of  
10:21:05 14 the water; as well as water quantity. So that's  
10:21:09 15 the flows and levels associated with movement from  
10:21:13 16 basin to basin as well as out of the Saint Lawrence  
10:21:16 17 River and again, any economic impacts that  
10:21:20 18 adjustments to those waters would have on either  
10:21:22 19 country.

10:21:23 20 Q. And when did the treaty first come  
10:21:25 21 into effect?

10:21:25 22 A. It came into effect in 1909.

10:21:29 23 Q. So you've gone over this a bit,  
10:21:31 24 but I'll get you to break it down. Can you  
10:21:33 25 describe at a high level how the Boundary Waters

1 Treaty works?

2 A. So the Boundary Waters Treaty is  
3 governed by Canada and the United States, and it's  
4 Global Affairs and State Department in the U.S.  
5 that administer the treaty.

6 The two governments will have  
7 established the International Joint Commission.  
8 The International Joint Commission is made up of  
9 three appointees, three from Canada and three from  
10 the United States.

11 And the governments of Canada and the  
12 U.S. may direct the IJC to undertake studies,  
13 scientific research, to inform the two governments  
14 of the health of the Great Lakes. And the IJC also  
15 would approve any large scale infrastructure  
16 projects that would limit the flow of water through  
17 the Great Lakes.

18 So there's two primary dams within the  
19 Great Lakes Basin that impact flows and levels.  
20 And that's the Moses-Saunders Dam in Cornwall,  
21 which the IJC oversee the flow of water through.  
22 And they have a Board of Control associated with  
23 the management of that facility which manages Lake  
24 Ontario levels.

25 And they also have infrastructure that

10:22:43 1 they approved in the St. Mary's River between Lake  
10:22:48 2 Superior, Lake Huron, Lake Michigan. And again  
10:22:51 3 they would have a Board of Control and a regulation  
10:22:55 4 plan on how they operate that dam. As well as one  
10:22:57 5 in Niagara Falls, which is the Niagara River  
10:23:02 6 Control Works, which manages flows over Niagara  
10:23:05 7 Falls. And again they would have a Board of  
10:23:06 8 Control that oversees the operation of those dams.

10:23:09 9 Q. We'll turn back to Boards of  
10:23:12 10 Control a bit later.

10:23:12 11 You mentioned the two signatories to  
10:23:17 12 the Boundary Waters Treaty are Canada and the U.S.,  
10:23:18 13 but not Ontario. What involvement, if any, does  
10:23:21 14 MNRF have with respect to the Boundary Waters  
10:23:23 15 Treaty?

10:23:23 16 A. The MNRF would be providing advice  
10:23:27 17 to the IJC when asked by the IJC. When the IJC is  
10:23:35 18 asked by the two federal governments to review the  
10:23:39 19 health of the Great Lakes, or flows and levels  
10:23:41 20 associated with those facilities that I mentioned,  
10:23:44 21 they will ask for stakeholders' perspective.

10:23:46 22 So they do consider Ontario as a  
10:23:48 23 stakeholder as part of deliberations, so MNRF would  
10:23:54 24 be providing input into the IJC or directly to the  
10:23:58 25 federal government within Canada, about our

10:23:59 1 interests, whether they be economic, environmental,  
10:24:03 2 ecological, navigation.

10:24:05 3 And MNRF would be facilitating the  
10:24:09 4 input from Ontario, Ontarian citizens, industries,  
10:24:13 5 stakeholders, municipalities and First Nations,  
10:24:15 6 into those deliberations of the IJC.

10:24:18 7 Q. And how does MNRF determine what  
10:24:21 8 Ontario's interests are?

10:24:23 9 A. MNRF would be consulting with  
10:24:30 10 Ontarians about different perspectives. So if the  
10:24:33 11 IJC was studying, for example, Amending Plan 2014  
10:24:39 12 which is the regulation plan that manages the  
10:24:41 13 outflow of the Moses-Saunders facilities, Ontario  
10:24:45 14 would be bringing forward our riparian interests,  
10:24:48 15 so that's the landowner property rights' interests,  
10:24:50 16 making sure that properties aren't flooded  
10:24:54 17 disappropriately or negatively impacted the  
10:24:58 18 economy.

10:24:58 19 We would do that in such a way that we  
10:25:00 20 would engage Ontarians through websites,  
10:25:03 21 communications, letters out to interested parties,  
10:25:07 22 letters out to First Nation communities within the  
10:25:10 23 basin and outside the basin, as well as Métis  
10:25:13 24 communities to garner their interest in  
10:25:17 25 participating in the IJC deliberations.



10:25:20 1 Q. When MNRF engages with First  
10:25:22 2 Nations, what First Nations or Indigenous  
10:25:25 3 communities do they engage with?

10:25:27 4 A. So, for issues associated with  
10:25:30 5 anything to do with Great Lakes, we write letters  
10:25:33 6 to all 133 recognized First Nation communities in  
10:25:38 7 Ontario. So we don't decipher whether or not  
10:25:41 8 they're in the basin or not. As well as any  
10:25:44 9 recognized Métis communities.

10:25:46 10 We also notify the provincial treaty  
10:25:50 11 territorial organizations and made them aware of  
10:25:54 12 the opportunity to comment either directly through  
10:25:56 13 the IJC or bring their concerns forward to Ontario  
10:26:00 14 that we would then bring forth to the IJC.

10:26:04 15 Q. You mention MNRF also works with  
10:26:06 16 the IJC; what work do they do with the IJC?

10:26:10 17 A. So the IJC from time to time will  
10:26:15 18 initiate studies to better understand how those  
10:26:18 19 regulation plans are working. Are we seeing  
10:26:21 20 effects that we thought we would see based on the  
10:26:24 21 approving of those plans?

10:26:25 22 So they will ask MNRF to participate as  
10:26:28 23 subject matter experts in their deliberations. So  
10:26:31 24 we may put forward some science ecological  
10:26:35 25 information, to mapping information, as well as

1 hydrological information to help inform their  
2 deliberations.

3 Q. And what is the Great Lakes-St.  
4 Lawrence Adaptive Management Committee?

5 A. So the Great Lakes-St. Lawrence  
6 Adaptive Management Committee is a creation of the  
7 IJC. It was created to help inform the IJC of any  
8 adjustments that need to be made to those  
9 regulation plans.

10 MNRF is a member of that committee, so  
11 we provide expert knowledge and support, again in  
12 the areas of mapping ecological information as well  
13 as hydrologic information.

14 Q. You mentioned water control boards  
15 earlier; what are those?

16 A. So water control boards are  
17 established by the IJC. They are Canadian citizens  
18 appointed to sit on a control board based on the  
19 individual's expertise. They don't represent the  
20 organization that they work for. And they're there  
21 to monitor the regulation plan that the  
22 IJC established.

23 So, for example, the Moses-Saunders  
24 facility has a regulation plan that the IJC tells  
25 the operators how to manage their dams. So the

1 Citizen's Board is there to ensure that the dam is  
2 following the regulation plan that the IJC put  
3 forward, as well as report any deviations to the  
4 IJC.

5 Q. Is there a water control board  
6 that relates to Lake Huron?

7 A. Yes, there is a water control  
8 board that is, again, the IJC's regulation plan  
9 which is at, along the St. Mary's River between  
10 Lake Superior, Lake Huron and Lake Michigan. And  
11 it manages flows out from Lake Superior into Lake  
12 Huron, Lake Michigan.

13 Q. What role, if any does MNRF have  
14 with respect to implementation of the Boundary  
15 Waters Treaty?

16 A. Again, MNRF would support the  
17 IJC in the two levels of government when asked for  
18 input as to flows and levels. If they were doing a  
19 particular research study that they needed the  
20 provincial perspective on, they would approach our  
21 ministry as well as other ministries within the  
22 provincial government for data, information,  
23 technical expertise and advice.

24 Q. Okay. So let's turn now, I'd like  
25 to pull up Exhibit 4507. This is the Great Lakes

1 Water Quality Agreement.

2 Can you describe what the Great Lakes  
3 Water Quality Agreement is at a high level?

4 A. The Great Lakes Water Quality  
5 Agreement is designed to further advance the  
6 principles of the Boundary Waters Treaty.

7 So it's an agreement between Canada and  
8 the U.S., and it's administered by the  
9 Environmental Protection Agency in the U.S. and  
10 Environment Canada Climate Change in Canada.

11 It's a principle-based agreement that  
12 sets out how the two parties will collaborate to  
13 advance water quality within the Great Lakes Basin.

14 And it has a series of principles at  
15 the front of how the two parties will work  
16 together, the governance of the two parties, as  
17 well as, it has a series of subject matter annexes  
18 which outline what actions the parties will take to  
19 enhance the water quality of the Great Lakes.

20 Q. What role if any does MNRF play  
21 with respect to this agreements?

22 A. So MNRF supports the federal  
23 government in implementing this agreement. And we  
24 have a sub agreement that's called the  
25 Canada-Ontario Agreement which is signed by the

1 federal government and the Ontario government to  
2 further the actions within the Water Quality  
3 Agreement. So that's our domestic Canada-only  
4 actions within Water Quality Agreement.

5 So Ministry of Natural Resources and  
6 Forestry would be working with our federal  
7 government to implement a lot of the actions  
8 contained within this agreement. So things like  
9 agreeing to certain -- introducing or enhancing  
10 certain fish species within the Great Lakes.

11 Making sure that we're doing collective  
12 assessments on the health of species within the  
13 Great Lakes. We would be working with the federal  
14 Government to restore fish habitat.

15 We may be doing some science project to  
16 better understand how invasive species are  
17 impacting water quality. We'd be working with  
18 partners to restore wetlands to advance the water  
19 quality of the Great Lakes.

20 Q. And what is the Great Lakes  
21 Executive Committee?

22 A. The Great Lakes Executive  
23 Committee is the governance in which the Water  
24 Quality Agreement is administered.

25 So the federal government's agencies,

1 within the two federal governments within Canada  
2 and the U.S., sit on that committee. And by  
3 invitation, they also invite Ontario and other  
4 jurisdictions, such as the U.S. states that are in  
5 the Great Lakes Basin, eight of them, as well as  
6 come back to be part of that governance committee  
7 to help track, monitor, make sure that each party  
8 is fulfilling its obligations under the agreement.

9 Q. And does MNRF have any role with  
10 any of the annexes?

11 A. Yes. MNRF would be -- the annexes  
12 are co-led by the two federal governments, both one  
13 in Canada and one in the U.S.

14 However, provincially MNRF would be  
15 supporting our federal colleagues in implementing  
16 commitments within the annex. And the two annexes  
17 that MNRF has the support lead to help our Federal  
18 colleagues implement the agreement are in species  
19 habitat as well as invasive species.

20 Q. How is progress tracked under this  
21 agreement?

22 A. The commitments within the  
23 agreement, it outlines that the parties have to  
24 report on their progress in the agreement.

25 And then because the foundation of this

10:32:41 1 agreement is advancing the Boundary Waters Treaty,  
10:32:45 2 the IJC also does an independent review of the  
10:32:48 3 party's progress on implementing the agreement.

10:32:52 4 Q. I'd like to turn now to  
10:32:55 5 Exhibit 4542.

10:32:58 6 This is titled "Convention on Great  
10:33:08 7 Lakes Fisheries Between the United States of  
10:33:10 8 America and Canada".

10:33:12 9 Can you describe what this document is?

10:33:14 10 A. So again, this is to recognize the  
10:33:17 11 shared waters within Canada and the U.S. So this  
10:33:21 12 convention was signed between Canada and the U.S.  
10:33:24 13 to address fisheries management.

10:33:28 14 As we know, fish don't recognize  
10:33:30 15 national borders, so the agreement is designed to  
10:33:34 16 have orderly management of our fish species within  
10:33:38 17 the Great Lakes.

10:33:38 18 It also primarily focuses on sea  
10:33:43 19 lamprey control, to make sure that both  
10:33:46 20 jurisdictions are adequately eradicating and  
10:33:49 21 managing sea lamprey, which is a threat to our  
10:33:52 22 native fish species within the Great Lakes.

10:33:55 23 Q. What role, if any, does MNRF have  
10:33:57 24 with respect to this convention on Great Lakes  
10:34:01 25 fisheries?

10:34:01 1 A. MNRF provides a support role to  
10:34:08 2 Canadian government. So the convention is really  
10:34:12 3 designed to advance collective science between the  
10:34:14 4 two jurisdictions.

10:34:15 5 So MNRF being the lead fisheries  
10:34:17 6 ministry for the province would be assisting the  
10:34:22 7 federal government in our science and understanding  
10:34:23 8 of fish health, species decline or increase, as  
10:34:30 9 well as working with the United States to set our  
10:34:32 10 quota limit, so how much fish each jurisdiction can  
10:34:37 11 take.

10:34:38 12 As well as working domestically within  
10:34:40 13 Ontario to prevent the spread of sea lamprey, so  
10:34:45 14 making sure that when we do decide to decommission  
10:34:48 15 or build a dam, that we have sea lamprey management  
10:34:52 16 within our decision making.

10:34:56 17 Q. What is the Fisheries Commission?

10:34:58 18 A. Great Lakes Fisheries Commission  
10:35:00 19 is the overseeing body of the convention, and  
10:35:05 20 there's commissioners appointed from each  
10:35:08 21 jurisdiction within Canada and the U.S. And our  
10:35:10 22 Assistant Deputy Minister, Tracy Mill, is a  
10:35:14 23 commissioner.

10:35:15 24 Q. And Article 4 of this document  
10:35:18 25 mentions that the convention should coordinate



10:35:23 1 research.

10:35:24 2 Does MNRF play any role with respect to  
10:35:26 3 research under this agreement?

10:35:27 4 A. Yes. We, through our commission  
10:35:30 5 membership, we support the federal government and  
10:35:34 6 collective science.

10:35:35 7 So whether it be fisheries assessment,  
10:35:39 8 invasive species understanding. We do a lot of  
10:35:41 9 research to advance our awareness of fish species,  
10:35:45 10 such as Asian carp, and do a lot of EDNA research,  
10:35:49 11 which is a technique that looks at samples of water  
10:35:53 12 to determine what fish is in there.

10:35:55 13 So we do support -- our science is  
10:35:57 14 directed at supporting and implementing the  
10:35:59 15 convention.

10:36:00 16 Q. Okay. So I want to shift now and  
10:36:03 17 talk about sub national agreements that you work  
10:36:06 18 with. So I'd like to pull up Exhibit 4531.

10:36:19 19 This document is titled "Canada-Ontario  
10:36:24 20 Agreement on Great Lakes Water Quality and  
10:36:27 21 Ecosystem Health"; do you recognize this document?

10:36:29 22 A. Yes, I do.

10:36:30 23 Q. Can you describe what it is?

10:36:31 24 A. This is our domestic agreement  
10:36:34 25 between Ontario and Canada that helps fulfill

10:36:38 1 Canada's obligations under the Water Quality  
10:36:42 2 Agreement as well as under the Fisheries  
10:36:42 3 Convention.

10:36:44 4 So it is a commitment between Canada  
10:36:46 5 and the U.S. that we would further advance the  
10:36:50 6 commitments in the Water Quality Agreement. It's  
10:36:53 7 just a finer scale of what Ontario would bring to  
10:36:56 8 the table, as well as what Canada would bring to  
10:36:59 9 the table.

10:36:59 10 Again, it's a principle-based  
10:37:01 11 agreement. It has a preamble as well as, I think,  
10:37:05 12 14 annexes, which are thematic annexes, which  
10:37:09 13 commit the parties to undertake certain actions  
10:37:12 14 within the time frame of the agreement.

10:37:13 15 Q. And who are the signatories to  
10:37:15 16 this agreement?

10:37:16 17 A. There's several federal  
10:37:18 18 departments within Canada that sign the agreement.  
10:37:21 19 And then three provincial ministries, including  
10:37:23 20 Ministry of Natural Resources and Forestry; the  
10:37:27 21 Ministry of Environment at the time, it's now  
10:37:28 22 called Ministry of Environment, Conservation and  
10:37:31 23 Parks. And the Ministry of Agriculture and Rural  
10:37:34 24 Affairs.

10:37:34 25 Q. Can you describe at a high level

10:37:38 1 how this agreement works?

10:37:39 2 A. So the agreement is, again, our  
10:37:41 3 domestic implementation of the Water Quality  
10:37:44 4 Agreement. There's a governance structure; there's  
10:37:47 5 a chair -- co-chairs for each of the annex. So  
10:37:52 6 there's a provincial lead as well as a federal lead  
10:37:55 7 on each of the 14 annexes.

10:37:56 8 The Ministry of Natural Resources  
10:37:59 9 co-chairs the invasive species annex as well as the  
10:38:03 10 habitat and species annex. And it's the obligation  
10:38:07 11 of those chairs to ensure that the commitments that  
10:38:09 12 are outlined in the agreement are implemented to  
10:38:12 13 the jurisdictions' best of their ability based on  
10:38:15 14 their budgets.

10:38:17 15 Q. Does MNRF have any other role with  
10:38:19 16 respect to this agreement?

10:38:20 17 A. MNRF has a role in other annexes,  
10:38:22 18 such as the lake wide management annex, some of the  
10:38:27 19 science as well as supporting our colleagues in the  
10:38:30 20 Ministry of Environment and Climate Change or  
10:38:34 21 Ministry of Environment, Conservation and Parks in  
10:38:35 22 implementing the First Nation and Métis annex.

10:38:38 23 Q. So you mentioned that it's the  
10:38:42 24 obligations of the parties to ensure that  
10:38:44 25 commitments made under the annex are implemented?

10:38:46 1  
10:38:50 2  
10:38:53 3  
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10:39:00 6  
10:39:02 7  
10:39:06 8  
10:39:09 9  
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10:39:21 12  
10:39:26 13  
10:39:31 14  
10:39:39 15  
10:39:44 16  
10:39:54 17  
10:39:55 18  
10:39:58 19  
10:40:00 20  
10:40:03 21  
10:40:07 22  
10:40:10 23  
10:40:14 24  
10:40:14 25

Can you describe any action that MNRF has undertaken in order to implement any commitments under the annexes?

A. So there are detailed commitments within this agreement.

And The Ministry of Natural Resources allocates approximately \$4.9 million a year to fulfill our obligations in the agreement.

So that would include research projects, science projects, fisheries projects, some habitat restoration, as well as some land use planning, shoreline restoration, dealing with some invasive species like phragmites, understanding how we're going to reduce phragmites on the shoreline.

Q. I'd like to pull up Exhibit 4534. This is titled: "Great Lakes-St. Lawrence River Basin Sustainable Water Resource Agreement"; can you explain what this document is?

A. This is an agreement between eight U.S. Great Lakes states, Québec and Ontario. And the agreement is signed by the governors and premiers to acknowledge the importance of ensuring that the waters of the Great Lakes stay within the basin.

So to further our commitment to the

10:40:18 1 Boundary Waters Treaty, each of these governors  
10:40:23 2 felt they wanted to go further that what's in the  
10:40:26 3 Boundary Waters Treaty and domestically  
10:40:28 4 collectively agreed on a process that we would  
10:40:31 5 agree to ban diversions out of the Great Lakes. So  
10:40:34 6 large scale diversions, whether it be pipelines or  
10:40:37 7 tankers that would threaten to remove water out of  
10:40:41 8 the Great Lakes.

10:40:41 9 Each of the jurisdictions implemented  
10:40:43 10 legislation and regulation within their own area of  
10:40:46 11 jurisdiction to ban diversions and limit large  
10:40:50 12 scale diversions.

10:40:51 13 Q. So I want to turn to Article 102  
10:40:54 14 of this agreement. So Article 102 states:

10:41:09 15 "Each party to this agreement  
10:41:11 16 shall seek to adopt and implement  
10:41:13 17 measures that may be required to  
10:41:14 18 give effect to the commitments  
10:41:16 19 embodied within this agreement."

10:41:18 20 What is the purpose of this article?

10:41:19 21 A. So this article is to have the  
10:41:24 22 exact same laws and rules within each of the ten  
10:41:26 23 jurisdictions that are signatories to this  
10:41:28 24 agreement, so that any large scale water-taking is  
10:41:35 25 banned within the Great Lakes context.

10:41:37 1 So each of the parties to the agreement  
10:41:39 2 are to pass laws that are consistent with what's  
10:41:42 3 outlined in the agreement, so that a foreign  
10:41:45 4 company cannot enter into any of our jurisdictions  
10:41:49 5 and divert water out of the Great Lakes. So it's a  
10:41:53 6 consistent commitment to pass rules, legislation  
10:41:56 7 and regulation to implement the agreement.

10:42:00 8 Q. Why was this agreement necessary?

10:42:02 9 A. The governors and premiers at the  
10:42:07 10 time this agreement was signed, I think in 2005,  
10:42:10 11 acknowledged water is a scarce resource across the  
10:42:14 12 world. And we wanted to ensure that the region  
10:42:17 13 continued its economic prosperity that the water  
10:42:21 14 Great Lakes provides to the region. So it was to  
10:42:23 15 protect large scale diversions.

10:42:26 16 At the time there were foreign  
10:42:27 17 companies that were interested in shipping Great  
10:42:30 18 Lakes water overseas by large tanker ships. So it  
10:42:33 19 was to prevent water from leaving the basin.

10:42:37 20 Q. And can you describe at a high  
10:42:40 21 level when this agreement would be triggered?

10:42:42 22 A. So this agreement is triggered --  
10:42:45 23 since all the states and provinces have introduced  
10:42:49 24 consistent legislation and regulations, the  
10:42:52 25 agreement does allow for some takings.

10:42:54 1 So there are exceptions to the  
10:42:56 2 agreement and the exceptions are outlined within  
10:42:58 3 the agreement.

10:42:59 4 So a large scale public water supply  
10:43:04 5 request where a straddling county or community is  
10:43:07 6 on the border of the Great Lakes Basin, the Great  
10:43:12 7 Lakes Basin is mapped and it's available online so  
10:43:14 8 people can see where that border is.

10:43:16 9 So if a community is just on the other  
10:43:18 10 side the border, we didn't want to do undue harm to  
10:43:22 11 that community just because they happen to straddle  
10:43:25 12 the Great Lakes Basin divide.

10:43:26 13 So if a community needed this water for  
10:43:30 14 drinking water and exhausted all other sources of  
10:43:32 15 water whether it be surface water or groundwater,  
10:43:36 16 they would trigger this agreement.

10:43:39 17 Q. And what happens when the  
10:43:41 18 agreement is triggered?

10:43:42 19 A. When the agreement is triggered,  
10:43:42 20 each of the jurisdictions have the opportunity to  
10:43:44 21 review the application for consistency with the  
10:43:49 22 agreement.

10:43:50 23 So making sure that any return flow is  
10:43:53 24 of certain quality, that we're not introducing an  
10:43:57 25 invasive species. We're ensuring that we have

1 consistent calculations of consumptive use, so  
2 making sure people aren't taking more water than  
3 they need.

4 As well as a strong commitment to water  
5 conservation and returning the water back to the  
6 basin after it's been used.

7 Q. What is MNRF's role with respect  
8 to this agreement?

9 A. So MNRF is the designee. So that  
10 means the premier has designated our ministry to  
11 lead the implementation of this agreement. So we  
12 oversee the agreement; we work with the other  
13 jurisdictions to implement some of the joint  
14 commitments within the agreement.

15 So the agreement also commits the  
16 parties to collective science to understand how  
17 climate change is impacting the lakes.

18 We also provide our total consumptive  
19 withdraws from the basin so that we can look at the  
20 cumulative impact of all the basins' withdraws. So  
21 MNRF is the organization that the premier has  
22 delegated the responsibility to administer the  
23 agreement.

24 Q. What's the total consumptive  
25 withdraws?



10:45:05 1 A. I don't have that answer.

10:45:08 2 Q. What is the Great Lakes-St.

10:45:11 3 Lawrence Water Resources Regional Body?

10:45:14 4 A. The regional body outlined in the  
10:45:16 5 agreement is the governance entity that ensures  
10:45:20 6 that all the parties are fulfilling their  
10:45:23 7 obligations under the agreement. So it is made up  
10:45:26 8 of premiers and governors.

10:45:28 9 They can delegate that responsibility  
10:45:30 10 within their organizations, and our Premier has  
10:45:33 11 delegated it to the Ministry of Natural Resources  
10:45:35 12 and Forestry.

10:45:36 13 So they meet twice a year and they  
10:45:38 14 facilitate dialogue between the parties as well as  
10:45:41 15 the public as we deliberate on any large water  
10:45:44 16 taking, or report on our progress and implementing  
10:45:48 17 the agreement.

10:45:49 18 Q. You mentioned earlier that each  
10:45:53 19 signatory to the agreement implements it in their  
10:45:56 20 own jurisdiction.

10:45:57 21 Has Ontario enacted any legislation or  
10:46:02 22 regulations to implement the agreement?

10:46:04 23 A. Yes, we have. Ontario made  
10:46:06 24 amendments to the Ontario Water Resources Act, as  
10:46:10 25 well as the Clean Water Act, and the permit to take

10:46:13 1 water regulation to be consistent with agreements.

10:46:16 2 So again, that's banning diversions  
10:46:20 3 from the Great Lakes. So you can't have a permit  
10:46:22 4 to take water, remove large amounts of water from  
10:46:24 5 the Great Lakes.

10:46:25 6 So those are our statutes that we  
10:46:27 7 amended to fulfill our obligations.

10:46:30 8 Q. Are there any other ministries  
10:46:32 9 that are involved with the operation of this  
10:46:33 10 agreement?

10:46:34 11 A. Yes, the Ministry of Environment,  
10:46:39 12 Conservation and Parks implements those regulations  
10:46:41 13 that I just outlined, the Clean Water Act, Ontario  
10:46:46 14 Water Resources Act, as well as the Permit to Take  
10:46:48 15 Water Regulations. So they're actually the  
10:46:50 16 administrator of the statutes.

10:46:52 17 Q. I want to turn to Article 504 of  
10:46:56 18 this agreement, which is page 22 of the document.

10:47:00 19 What does this article do?

10:47:02 20 A. So this article is to acknowledge  
10:47:05 21 First Nation and tribes consultation when a  
10:47:10 22 diversion is being requested from any of the  
10:47:13 23 jurisdictions.

10:47:15 24 And it really highlights the fact that  
10:47:17 25 it puts the onus on the jurisdiction of which the

1 application is contained in to ensure that we're  
2 meeting our obligations under the duty to consult  
3 under Section 35 for Ontario.

4 It also provides acknowledgement that  
5 First Nations and federally recognized tribes in  
6 the U.S. have the opportunity to participate in the  
7 process.

8 So it outlines what steps the regional  
9 body, which is the governance that I talked about  
10 earlier, what steps we will take to inform First  
11 Nations and federally recognized tribes in the U.S.  
12 of our deliberations, and allow them an opportunity  
13 to participate as they see fit.

14 Q. What type of steps are those?

15 A. Before any deliberation of the  
16 regional body, which is the meeting we would have,  
17 we would alert -- we, meaning the regional body, so  
18 the staff that are the secretary to the regional  
19 body, would alert the 133 First Nations within  
20 Ontario of the upcoming meeting, as well as provide  
21 an opportunity to have a First Nations and tribes  
22 only meeting outside the regional process.

23 And we would also notify them of a  
24 water taking that's outside of Ontario's  
25 jurisdiction where there is no legal duty to

10:48:34 1 consult, but we want to make sure they are aware of  
10:48:36 2 it and have the opportunity to participate.

10:48:38 3 Q. And what First Nations does MNRF  
10:48:41 4 engage in under this agreement?

10:48:43 5 A. We engage all 133 First Nations  
10:48:48 6 within Ontario, as well as Métis communities that  
10:48:52 7 are recognized.

10:48:52 8 Q. Let's turn to Article 401 of the  
10:48:58 9 agreement, which is on page 20.

10:49:00 10 In this article it mentions a  
10:49:05 11 secretariat will be created under the agreement.

10:49:09 12 Who is the secretariat?

10:49:11 13 A. So the secretariat is a  
10:49:14 14 collaborative group of people that we fund the  
10:49:19 15 salaries, as well as support costs, to ensure that  
10:49:24 16 all the administration associated with the  
10:49:27 17 agreement is done, and it's housed in the Great  
10:49:31 18 Lakes and Premier's and Governor's Office.

10:49:32 19 So each party would be paying an annual  
10:49:35 20 due that would cover the cost associated with the  
10:49:38 21 secretariat, and then the secretariat is  
10:49:40 22 responsible for all the administration associated  
10:49:43 23 with the agreement.

10:49:45 24 Q. What is the Great Lakes-  
10:49:48 25 St. Lawrence Governor's and Premier's office?

10:49:51 1 A. It's a collaborative office of the  
10:49:53 2 eight U.S. Great Lakes states, two provinces. So  
10:49:56 3 each of the parties agree to fund certain staff  
10:50:00 4 there, I think there's like four staff that  
10:50:03 5 administer this agreement.

10:50:04 6 So it's to recognize that we're  
10:50:06 7 collaborating collectively and we established that  
10:50:11 8 group, that party to oversee the implementation of  
10:50:13 9 the agreement as a secretariat.

10:50:15 10 Q. And what does the Great Lakes-St.  
10:50:21 11 Lawrence Governors and Premiers do?

10:50:22 12 A. So they implement -- they help us  
10:50:25 13 implement the agreement by providing all the  
10:50:28 14 administrative support that's outlined in  
10:50:30 15 Article 401.

10:50:31 16 They also meet the premiers -- they  
10:50:34 17 facilitate meetings between their premiers and  
10:50:37 18 governors to advance collective priorities on the  
10:50:39 19 Great Lakes.

10:50:40 20 MNRF uses this forum to advance some of  
10:50:42 21 our work on species, invasive species, so we have,  
10:50:48 22 between the premiers and governors, we have the  
10:50:52 23 least-wanted list. So that's the species we don't  
10:50:55 24 want collectively in the Great Lakes.

10:50:56 25 So it is a commitment for all of us to

10:50:59 1 implement actions to prevent those species either  
10:51:01 2 from arriving, or eradicate them from the Great  
10:51:06 3 Lakes.

10:51:06 4 Q. Are there any other ministries  
10:51:07 5 that are involved with the Great Lakes-St. Lawrence  
10:51:11 6 Governors and Premiers?

10:51:11 7 A. Yes. So depending on the theme of  
10:51:14 8 the meeting, they tend to meet once or twice a  
10:51:16 9 year, and they can talk about any topic associated  
10:51:18 10 with Great Lakes.

10:51:19 11 So anything from the economics of the  
10:51:20 12 Great Lakes to the ecological health of the Great  
10:51:23 13 Lakes. So any Ontario ministry could be supporting  
10:51:27 14 the premier in their attendance at the Great Lakes  
10:51:32 15 Governors and Premiers meetings.

10:51:33 16 Q. So is it fair to say the topic of  
10:51:37 17 some of these meetings is outside the scope of the  
10:51:42 18 Great Lakes-St. Lawrence River Basin Sustainable  
10:51:46 19 Water Resources Agreement?

10:51:47 20 A. Yes, it is.

10:51:48 21 Q. I'd like to pull up Exhibit 4533.  
10:52:08 22 This document is titled "Declaration of  
10:52:12 23 Partnership". Could we zoom out so we can see it  
10:52:18 24 in full?

10:52:20 25 Do you recognize this document?

10:52:22 1  
10:52:22 2  
10:52:23 3  
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10:52:37 7  
10:52:41 8  
10:52:43 9  
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10:52:48 11  
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10:53:05 17  
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10:53:16 21  
10:53:23 22  
10:53:25 23  
10:53:25 24  
25

A. Yes, I do.

Q. And what is it?

A. So this is a declaration of partnership that is inviting Ontario to participate in the Great Lakes Commission. The Great Lakes Commission is a commission created out of a U.S. compact that is designed to bring the eight U.S. governors together to advance their collective interests in the Great Lakes.

And because it's a U.S. compact, Ontario has no jurisdiction in the Great Lakes Commission, so this is an acknowledgement of Ontario's interest as well as Québec's interest in the Great Lakes, and an invitation for us to participate in the Great Lakes Commission deliberations by invitation as non-voting members but observers, and giving us an associate commissioner status on their deliberations.

THE COURT: Counsel, I'm struggling to find a date on this document.

MS. LEPAN: The document isn't dated.

THE COURT: Are you planning to ask the witness about that?

MS. LEPAN: Yes.

1 BY MS. LEPAN:

2 Q. Are you aware when this

3 Declaration of Partnership was entered into?

4 A. No, I'm not.

5 Q. And who are the members of the

6 Great Lakes Commission?

7 A. The Great Lakes Commission are

8 made up of the governors in the U.S., and then the

9 observer status or associate commissioners are the

10 premiers in Ontario and Québec.

11 But in most cases administratively

12 they've delegated those responsibilities or duties

13 to assistant deputy ministers. So my Assistant

14 Deputy Minister, Craig Brown, would be the

15 associate commissioner of the Great Lakes

16 Commission.

17 Q. Would you please describe -- does

18 MNRF play any other role with respect to the Great

19 Lakes Commission?

20 A. Yes, we would be supporting the

21 Great Lakes Commission in some other deliberations

22 if they want to put forward a position to any

23 levels of government. So sometimes the Great Lakes

24 Commission get together and advance collective

25 interests, either around the economy of the Great



1 Lakes, any kind of habitat issues.

2 So MNRF would be supporting the Great  
3 Lakes Commission if they advance an issue that  
4 aligns with Ontario's interests.

5 Q. Are any other ministries involved  
6 with the Great Lakes Commission?

7 A. Yes, there are. So our Cabinet  
8 Office, Intergovernmental, is the primary associate  
9 commissioner.

10 We also have our Ministry of the  
11 Environment and Climate Change and Parks Assistant  
12 Deputy Minister as a commissioner. And our  
13 Ministry of Transportation, as well as the Ontario  
14 Ministry of Agriculture and Rural Affairs.

15 Q. I want to turn now and talk about  
16 provincial legislation that relates to the  
17 management of Great Lakes.

18 What provincial legislation and  
19 regulations does MNRF work with in their management  
20 of the Great Lakes?

21 A. We have a series of regulations  
22 and legislation that sets a framework of how either  
23 individuals or private sector companies seek  
24 approval to carry, undertake works associated with  
25 the beds of the Great Lakes. So I'll list a few of

10:55:50 1 them.

10:55:51 2 We have the Public Lands Act, which is  
10:55:52 3 really the main statute that talks about -- the  
10:55:57 4 beds of the Great Lakes are administered through  
10:56:00 5 that statute, as well as any Crown land that's  
10:56:03 6 managed by the Ministry of Natural Resources and  
10:56:05 7 Forestry.

10:56:06 8 So if you wanted to do any work on the  
10:56:08 9 beds of the Great Lakes or on Crown land, you'd  
10:56:12 10 have to seek a Public Lands Act approval.

10:56:14 11 We also administer the Lakes and River  
10:56:18 12 Improvement Act, which is -- and associated  
10:56:19 13 regulations. And that's if you want to build a  
10:56:22 14 dam, a dike, or a channel, any type of water within  
10:56:27 15 Ontario; so you'd need approval from the ministry.

10:56:31 16 As well as, we have the Conservation  
10:56:34 17 Authorities Act, which creates the 36 conservation  
10:56:36 18 authorities that are in Ontario. And they  
10:56:40 19 administer regulation that outlines what property  
10:56:43 20 owners can do on their shoreline as it relates to  
10:56:47 21 erosion or unstable slopes.

10:56:50 22 We also have the Fish and Wildlife  
10:56:53 23 Conservation Act that describes how we manage our  
10:56:55 24 fishery, as well as what licence you need to fish  
10:57:00 25 within the Great Lakes and any inland waters or

1 connecting channels.

2 We also have our invasive species  
3 legislation, which outlines some of the  
4 prohibitions of importing certain species into  
5 Ontario and what actions we can take if we do  
6 discover an invasive specie that we want to  
7 eradicate within the province.

8 Q. What is the relationship between  
9 these provincial statutes and the various  
10 agreements and treaties that you mentioned this  
11 morning?

12 A. So Ontario uses a lot of our  
13 statutes to achieve the objectives of the  
14 agreement. So we tend to ensure that our decisions  
15 have due consideration for the agreements that we  
16 have signed on to. So if we are trying to advance  
17 something in the agreement, then we will ensure  
18 that our legislation and regulatory framework is  
19 consistent with the agreements.

20 Q. And having discussed all these  
21 bi-national and sub-national agreements and  
22 treaties, can you explain what their significance  
23 is to the management of the Great Lakes?

24 A. The waters in the Great Lakes are  
25 shared between multiple jurisdictions. So all of

10:58:16 1 the -- from the foundations of the Boundary Waters  
10:58:19 2 Treaty right up to the provincial legislation,  
10:58:22 3 they're really designed to have the orderly  
10:58:24 4 coordination of water resource management and all  
10:58:27 5 the associated economic benefits that those waters  
10:58:32 6 provide to citizens that reside within the  
10:58:34 7 jurisdictions of the Boundary Waters Treaty. So it  
10:58:37 8 really is the orderly coordination of the  
10:58:40 9 jurisdictions that share the boundary waters.

10:58:45 10 MS. LEPAN: Thank you. A moment's  
10:58:47 11 indulgence.

10:58:58 12 Thank you, those are all my questions.

10:59:00 13 THE COURT: Okay. Mr. Brookwell or  
10:59:05 14 Ms. Guirguis, who's cross-examining the witness?

10:59:08 15 MS. GUIRGUIS: I'll be cross-examining  
10:59:09 16 the witness, Your Honour. I'm wondering if we  
10:59:11 17 might be able to take the morning break early.

10:59:14 18 THE COURT: Yes, we can, as we're also  
10:59:16 19 taking the lunch break earlier.

10:59:18 20 Ma'am, I don't know if you've testified  
10:59:20 21 before, but it's sufficient to say as of now you're  
10:59:26 22 under cross-examination, which means you should not  
10:59:29 23 discuss these matters with anybody at all or do  
10:59:32 24 anything with respect to them until your testimony  
10:59:36 25 is complete.

10:59:38 1 So find something else to talk about on  
10:59:40 2 the coffee break.

10:59:41 3 THE WITNESS: Okay, thank you.

10:59:42 4 -- RECESS TAKEN AT 11:00 --

11:16:01 5 -- UPON RESUMING AT 11:22 --

11:22:59 6 THE COURT: Please go ahead.

11:23:05 7 MS. GUIRGUIS: Thank you, Your Honour.

11:23:06 8 CROSS-EXAMINATION BY MS. GUIRGUIS:

11:23:07 9 Q. Ms. Keyes, good morning. My name  
11:23:10 10 is Cathy Guirguis. I'm one of the lawyers for the  
11:23:14 11 Plaintiffs. And I'll be asking you a few questions  
11:23:16 12 this morning.

11:23:17 13 So you began today speaking to my  
11:23:19 14 friend about the Boundary Waters Treaty, which is  
11:23:23 15 Exhibit 4506. I just want to bring that up and  
11:23:27 16 confirm with you my understanding of what the  
11:23:29 17 primary commitments Canada has made in the treaty,  
11:23:32 18 what those are, which you touched on this morning.

11:23:34 19 So Article 1 on pages 2 to 3 of this  
11:23:38 20 document which is pages 4 and 5 of the PDF; it's  
11:23:45 21 highlighted here.

11:24:02 22 A. (Witness reviews document).

11:24:16 23 Q. So here that's just telling us  
11:24:18 24 that one of the main commitments that Canada has  
11:24:21 25 made in the treaty is to maintain navigation for

1 the purposes of commerce; is that correct?

2 A. That's correct.

3 Q. If we move to Article 3, which is  
4 on page 3, PDF page 5, this deals with something I  
5 think that you spoke about this morning: To make  
6 sure water diversions or obstructions, for example,  
7 dams and canals do not adversely affect citizens in  
8 the U.S. and Canada; is that correct?

9 A. That's correct.

10 Q. If we move to Article 4, which is  
11 on the next page, page 4. This article talks about  
12 the obligations to prevent pollution in boundary  
13 waters, correct?

14 A. That is correct.

15 Q. Based on your experience, are you  
16 aware of any outstanding complaints by the U.S. or  
17 by any other party against Canada for not meeting  
18 these obligations?

19 A. Not for navigation or pollution,  
20 or obstruction, no.

21 Q. Thank you. So it's fair to assume  
22 with respect to those three obligations, at least  
23 based on your own knowledge and experience, that  
24 Canada has a record of meeting those commitments?

25 A. Yes.

1 Q. You also spoke about this morning  
2 about the dispute resolution role that the IJC  
3 plays, and I just want to turn to Article 12, which  
4 is at page 8 of the document, page 10 of the PDF.

5 So here it says:

6 "The commission shall have  
7 power to administer oaths to  
8 witnesses, to take evidence on oath  
9 whenever deemed necessary in any  
10 proceeding or inquiry, or matter  
11 within its jurisdiction under this  
12 treaty. And all parties interested  
13 therein shall be given convenient  
14 opportunity to be heard."

15 So this tells us that parties other  
16 than the U.S. and Canada can go to the IJC if they  
17 have an issue about matters covered by the treaty;  
18 is that correct?

19 A. That is correct.

20 Q. So any party could be a property  
21 owner?

22 A. That's correct.

23 Q. Or a First Nation?

24 A. Correct.

25 Q. So this is an example where

11:26:48 1 third-party participation in the IJC is  
11:26:52 2 contemplated?

11:26:53 3 A. Yes.

11:26:54 4 Q. Okay. So I want to delve a little  
11:27:00 5 deeper into the IJC to take you to some places on  
11:27:03 6 the IJC website.

11:27:05 7 I want to bring up document SC1670. So  
11:27:22 8 this is a selection of press releases or  
11:27:27 9 description or descriptions of IJC's operations  
11:27:31 10 from the IJC website.

11:27:33 11 I believe we downloaded it and  
11:27:35 12 preserved it in this PDF document on January 17,  
11:27:40 13 2020.

11:27:41 14 MS. GUIRGUIS: Your Honour, I'd like to  
11:27:42 15 mark this as the next exhibit.

11:27:44 16 THE COURT: Mr. Registrar?

11:27:45 17 THE REGISTRAR: Exhibit No. 4543.

11:27:48 18 THE COURT: Thank you.

11:27:51 19 EXHIBIT NO. 4543: Selection of Press  
11:27:29 20 Releases Describing IJC Operations From  
11:27:31 21 the IJC Website.

11:27:51 22 BY MS. GUIRGUIS:

11:27:52 23 Q. So I'd like to take you to a few  
11:27:54 24 spots in this document and I'll ask you a few  
11:27:56 25 questions about them.



11:27:58 1 If we can go to page 29, if we scroll  
11:28:10 2 down, there's a section about IJC engagement with  
11:28:15 3 Indigenous peoples. We've highlighted an excerpt  
11:28:18 4 at the bottom in the green box. If we can zoom in.  
11:28:25 5 Thank you.

11:28:25 6 So the excerpt says:

11:28:28 7 "For the first nine years of  
11:28:29 8 the treaty, the Federal governments  
11:28:31 9 advised the IJC that they would  
11:28:32 10 engage with First Nations and tribal  
11:28:34 11 governments directly. However,  
11:28:35 12 since the early 21st century,  
11:28:38 13 governments have specifically noted  
11:28:39 14 the need for the commission to work  
11:28:40 15 with Indigenous peoples when  
11:28:42 16 assigning tasks to the commission."

11:28:45 17 So I take it to your knowledge that  
11:28:47 18 Canada and Ontario support direct Indigenous  
11:28:50 19 participation at the IJC?

11:28:52 20 THE WITNESS: Ontario does, yes.

11:28:53 21 BY MS. GUIRGUIS:

11:28:54 22 Q. Okay. That's correct for Ontario.  
11:29:00 23 I'd like to take you to page 30 of this  
11:29:03 24 same document. So here we have an IJC newsletter  
11:29:09 25 entitled, "Historic Workshop Marks First Ever

1 Gathering of Indigenous Board Members/Partners".

2 It's dated August 19, 2019.

3 There's a couple of sections again that  
4 are highlighted in green boxes that I'll let you  
5 take a moment to read.

6 So, again, to your knowledge, and based  
7 on your experience, does Ontario support "the  
8 improvement of inclusion and engagement of First  
9 Nations and first peoples in transboundary work"?

10 A. Yes, we do.

11 Q. I'm going to take you to the  
12 International Watersheds Initiative which is also  
13 described in this document, which is page 23.

14 So the International Watersheds  
15 Initiative and the program, this is about  
16 delivering the IJC's mandate, correct?

17 A. It's also -- yes, correct, through  
18 the Boards of Control.

19 Q. Right. And we have highlighted,  
20 again, a couple of paragraphs about what the  
21 IWI does. And if we scroll down, there's another  
22 one. Under the heading of "balanced and inclusive  
23 board representation"; if you can take a look at  
24 that?

25 A. (Witness reviews document).

11:30:49 1 Q. So here it's talking about why  
11:30:54 2 watershed boards are most effective when they  
11:30:56 3 include various representatives, including members  
11:30:59 4 of First Nations, Métis communities and other  
11:31:00 5 Indigenous groups; is that correct?

11:31:03 6 A. Sorry, what was the question?

11:31:04 7 Q. That this is basically telling us  
11:31:06 8 that watershed boards are most effective when it  
11:31:09 9 includes Indigenous participants?

11:31:11 10 A. That's what the document says,  
11:31:13 11 yes.

11:31:13 12 Q. To your knowledge, does Ontario  
11:31:15 13 support that? That perspective on Indigenous  
11:31:18 14 participation?

11:31:19 15 A. Yes, we support Indigenous  
11:31:21 16 participation on watershed initiatives.

11:31:23 17 Q. Okay. And, to your knowledge, has  
11:31:27 18 these efforts and the result of increased  
11:31:33 19 engagement for Indigenous people at the IJC and in  
11:31:38 20 its boards, has this stopped Ontario or Canada from  
11:31:42 21 maintaining navigation and boundary waters for the  
11:31:44 22 purposes of commerce?

11:31:46 23 A. I can't comment on the  
11:31:49 24 participation of First Nation Métis on the boards  
11:31:51 25 as it relates to navigation or commerce.

11:31:54 1 Q. But can you comment on the fact  
11:31:57 2 that they are undertaking -- this is telling us  
11:32:00 3 that the IJC, through its boards and through  
11:32:03 4 different initiatives, is undertaking increased  
11:32:06 5 direct participation by the Indigenous parties;  
11:32:09 6 you'd agree with that?

11:32:10 7 A. That's how I'd read that, yes.

11:32:13 8 Q. You have no knowledge of  
11:32:14 9 complaints regarding Canada's fulfillment of its  
11:32:18 10 obligations under the Boundary Waters Treaty?

11:32:21 11 A. That's correct.

11:32:22 12 Q. Okay. And there's no knowledge of  
11:32:25 13 complaints with respect to Canada's fulfillment of  
11:32:29 14 those obligations on the basis of Indigenous  
11:32:32 15 participation?

11:32:32 16 A. That's correct.

11:32:35 17 Q. So let's talk a bit more about the  
11:32:38 18 boards. You touched on this earlier this morning  
11:32:40 19 as well.

11:32:41 20 You mentioned that the IJC has various  
11:32:47 21 boards to help carry out its mandate. I want to  
11:32:50 22 take you to page 10 of this same document. Let's  
11:33:00 23 go to first page 9. So this is The International  
11:33:11 24 Rainy-Lake of the Woods Watershed Board.

11:33:12 25 And then I'd like to scroll down to

1 page 10. And this shows us the structure and the  
2 membership of this board. If you want to take a  
3 look at that?

4 A. (Witness reviews document).

5 Q. Are you familiar with this board?

6 A. I'm familiar with the board as far  
7 as the website outlines the board.

8 Q. Okay. So there's 23 members on  
9 this board. And there's two co-chairs, one from  
10 the Canada and one from U.S., and otherwise, it  
11 looks to me that there's equal membership between  
12 Canada and the U.S. And that's because the boards  
13 have equal representation from both countries, both  
14 treaty signatories; is that typical?

15 A. That's typical of a Board of  
16 Control.

17 Q. Okay. And this is a board that  
18 MNRF is involved with. And there are Indigenous  
19 members of this board that we can see highlighted  
20 in green. And each one of these Indigenous members  
21 of the board, they are representing their  
22 respective Indigenous nation or group?

23 A. When you're appointed to an IJC  
24 Board of Control, you're appointed as a Canadian  
25 citizen. So you don't represent -- you may have

11:34:38 1 knowledge of your organization, but you don't  
11:34:42 2 represent your organization.

11:34:46 3 So you are there as a Canadian citizen.  
11:34:49 4 You separate your duties from -- for example, Greg  
11:34:53 5 Chapman, who is a district manager in Fort Frances,  
11:34:58 6 in his participation on the board he's there as  
11:35:02 7 Greg Chapman, Canadian citizen.

11:35:04 8 Q. The First Nation members that are  
11:35:05 9 listed here, with respect to this board, The  
11:35:09 10 International Rainy-Lake of the Woods Board;  
11:35:10 11 they're all from the Rainy-Lake of the Woods area;  
11:35:14 12 is that correct?

11:35:14 13 A. I can't speak to that.

11:35:15 14 Q. In general, is that how it's  
11:35:17 15 drawn?

11:35:17 16 A. Not necessarily, no.

11:35:19 17 Q. So the Canadian section of the  
11:35:24 18 board, the Canadian members, though, they represent  
11:35:27 19 Canada's interests there?

11:35:28 20 A. That's correct.

11:35:28 21 Q. And the U.S. members represent the  
11:35:31 22 U.S. interests there?

11:35:32 23 A. That is correct.

11:35:33 24 Q. So to the extent that somebody  
11:35:36 25 represents a different nation, you would agree with

1 me they at least bring their own perspective and  
2 concerns to that board?

3 A. Yes. So each individual would be  
4 responsible for overseeing what the IJC has ordered  
5 the board to undertake. So it depends on the terms  
6 of reference for the board.

7 Q. And each board, though, they do  
8 work with Indigenous groups to resolve their  
9 interests in that area?

10 A. I can't speak for the particular  
11 board.

12 Q. Let's go to an example of what  
13 this board has done. At page 35 of this document,  
14 there's a newsletter entitled "Climate Change and  
15 Dams Present Challenges For Wild Rice At Rainy  
16 Lake".

17 This is dated August 21, 2018. If you  
18 scroll down, we've highlighted another couple of  
19 portions starting with the one right above the map.  
20 I'll just give you a few moments to read through?

21 A. (Witness reviews document). Okay.

22 Q. If we can scroll down?

23 A. (Witness reviews document).

24 Q. Thank you. So here we see that  
25 the IJC's Rainy-Lake of the Woods Watershed Board

11:37:35 1 is working with regional First Nations, including,  
11:37:37 2 for instance, the Seine River First Nation, to  
11:37:42 3 address their concerns about wild rice; is that  
11:37:47 4 right?

11:37:47 5 A. That's how I read it, yes.

11:37:49 6 Q. So from this document we see the  
11:37:51 7 IJC is interested in improving the conditions of  
11:37:53 8 wild rice, and it is funding studies about wild  
11:37:57 9 rice. So it is incorporating First Nations'  
11:38:00 10 concerns about wild rice into the decision making  
11:38:03 11 about the management of water levels in this  
11:38:06 12 system, yes?

11:38:06 13 A. So the way boards operate is, the  
11:38:09 14 IJC issues an order, a regulation plan on how they  
11:38:13 15 operate the dams associated with the watershed that  
11:38:16 16 the boards govern. Any changes to the regulation  
11:38:19 17 plan will come from the IJC, endorsed by the two  
11:38:24 18 federal governments.

11:38:25 19 So the boards actually don't have the  
11:38:27 20 authority to alter the regulation plan. So the IJC  
11:38:31 21 would have to -- after this study, would have to  
11:38:33 22 reissue an order to the board.

11:38:37 23 Q. So the board undertakes the study;  
11:38:41 24 is that correct?

11:38:41 25 A. The board doesn't undertake the



1 study. It typically is the IJC.

2 Q. The IJC undertakes a study?

3 A. That is correct.

4 Q. And takes into consideration the  
5 concerns of interested stakeholders, including  
6 First Nations?

7 A. That is correct.

8 Q. And this example we have them  
9 taking into consideration funding studies about  
10 wild rice and response to Indigenous concerns; is  
11 that correct?

12 A. That's how I read the document,  
13 yes.

14 Q. And then that's taken into  
15 consideration when they're making decisions about  
16 how to regulate the Rainy Lake water system?

17 A. That's when the IJC is considering  
18 altering the regulation plan for that particular  
19 board. The board cannot alter the regulation plan  
20 that is ordered to them by the IJC. IJC also has  
21 Canada and U.S. support for an alteration to a  
22 regulation plan.

23 So the way I read this document is that  
24 the IJC is collecting information about wild rice  
25 to inform whether or not they want to amend their

11:39:45 1 regulation plan.

11:39:48 2 Q. And presumably they would take  
11:39:50 3 that information that they've collected and then  
11:39:53 4 implement that, or take that into consideration  
11:39:55 5 when they make a decision about the plan?

11:39:57 6 A. Yes, that's how studies tend to  
11:40:01 7 work. The IJC would have terms of reference for  
11:40:03 8 their study. They would engage interested parties  
11:40:07 9 in getting their interests. And then the IJC would  
11:40:11 10 advise the two federal governments on how they  
11:40:14 11 would like to move forward.

11:40:16 12 The two federal governments would  
11:40:17 13 approve the new regulation plan for the Board of  
11:40:20 14 Control. Then the Board of Control would implement  
11:40:22 15 and oversee the plan.

11:40:24 16 Q. Okay. Thank you for that  
11:40:25 17 clarification.

11:40:26 18 So it is, though, a collaborative  
11:40:29 19 approach or a collaborative way of doing things  
11:40:31 20 that the IJC undertakes?

11:40:33 21 A. Yes, it is.

11:40:33 22 Q. Okay. And to your knowledge, has  
11:40:36 23 that collaboration between the IJC and, for example  
11:40:39 24 in this case, First Nations in the Rainy Lake water  
11:40:44 25 system, stopped Ontario or Canada from maintaining

11:40:47 1 navigation and boundary waters for the purpose of  
11:40:50 2 commerce?

11:40:50 3 A. Not to my knowledge, no.

11:40:51 4 Q. Nor has it prevented them from  
11:40:53 5 preventing pollution in boundary waters?

11:40:56 6 A. Not to my knowledge.

11:40:57 7 Q. Or making sure water diversions or  
11:40:59 8 obstructions do not adversely affect citizens in  
11:41:03 9 the U.S. and Canada?

11:41:04 10 A. Not to my knowledge.

11:41:05 11 Q. Thank you. So I want to go back  
11:41:10 12 to the Boundary Waters Treaty, for example, which  
11:41:13 13 is Exhibit 4506.

11:41:16 14 And I want to turn to page 9 of the  
11:41:20 15 document, which is page 11 of the PDF. So this  
11:41:31 16 section here states:

11:41:35 17 "Nothing in this treaty shall  
11:41:37 18 be construed as affecting or  
11:41:39 19 changing any existing territorial or  
11:41:41 20 riparian rights in the water or  
11:41:44 21 rights of the owners of lands under,  
11:41:46 22 on either side of the International  
11:41:48 23 Boundary at the rapids of the St.  
11:41:51 24 Mary's River at Sault Ste. Marie and  
11:41:52 25 the use of water flowing over such

11:41:55 1  
11:41:56 2  
11:42:03 3  
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11:42:46 16  
11:42:48 17  
11:42:49 18  
11:42:50 19  
11:42:51 20  
11:42:52 21  
11:42:54 22  
11:42:55 23  
11:42:56 24  
25

lands [...]."

If we scroll down a bit further.

Sorry, on page 10. The section that's highlighted here repeats the same thing. That nothing is going to be construed as affecting or changing existing rights, including rights to the owners of lands underwater on either side of the International Boundary, referencing the rapids of St. Mary's River at Sault Ste. Marie again.

To your knowledge, has private ownership to lands underwater such as those referenced in the treaty in Sault Ste. Marie, that has not stopped Ontario and Canada from maintaining navigation and boundary waters for the purpose of commerce; is that right?

THE COURT: I didn't get that question. Can you repeat it?

BY MS. GUIRGUIS:

Q. Sure. So, to your knowledge, the private --

THE COURT: Sorry, can I ask you to slow down.

MS. GUIRGUIS: Yes, of course.

THE COURT: And repeat your question.

11:42:57 1 BY MS. GUIRGUIS:

11:42:58 2 Q. So, to your knowledge, private  
11:42:59 3 ownership to lands underwater, such as those that  
11:43:02 4 are referenced in the treaty in Sault Ste. Marie,  
11:43:06 5 that's not stopped Ontario or Canada from  
11:43:08 6 maintaining navigation in boundary waters for the  
11:43:13 7 purposes of commerce; is that right?

11:43:14 8 A. That's correct. So the dam that  
11:43:18 9 is constructed along the St. Mary's River and Sault  
11:43:24 10 Ste. Marie is an approved project by the IJC, and  
11:43:27 11 therefore it has a board and a regulation  
11:43:29 12 associated with it, and it allows for navigation  
11:43:33 13 for the purpose of commerce.

11:43:35 14 Q. And it's not prevented them from  
11:43:37 15 ensuring that the boundary waters are not polluted?

11:43:40 16 THE COURT: Sorry.

11:43:42 17 MS. GUIRGUIS: Sorry.

11:43:43 18 THE COURT: The witness is having no  
11:43:45 19 trouble at all, which is helpful. But you talk  
11:43:48 20 very quickly, and I don't know who the "them" is in  
11:43:52 21 that question. There's more than one option.

11:43:57 22 You said it is not -- "it has not  
11:43:59 23 prevented them". So that I can understand the  
11:44:03 24 answer, you better tell me who "them" is.

11:44:08 25 BY MS. GUIRGUIS:

11:44:08 1 Q. It has not prevented Canada or  
11:44:10 2 Ontario from assisting Canada in meeting its  
11:44:12 3 obligation to prevent pollution in boundary waters;  
11:44:19 4 is that correct?

11:44:19 5 A. I can't speak to pollution. I was  
11:44:22 6 speaking to navigation for the purpose of commerce.

11:44:27 7 Q. You're not aware of any current  
11:44:29 8 complaint that exists against Canada with respect  
11:44:33 9 to pollution in boundary waters that's based on  
11:44:37 10 private ownership on lands underwater?

11:44:41 11 A. Pollution, no.

11:44:55 12 Q. In fact, this existing project at  
11:44:57 13 St. Mary's River, it's contemplated that Canada and  
11:45:00 14 the U.S. would be able to fulfill the treaty  
11:45:03 15 obligations in coexistence with the private  
11:45:06 16 ownership of lands underwater; is that correct? Is  
11:45:12 17 that a fair summary of what you were saying?

11:45:14 18 A. So there's a dam at St. Mary's  
11:45:16 19 River which the IJC authorized. And it's a private  
11:45:21 20 company that runs that dam, but it has to manage  
11:45:26 21 the dam consistent with the IJC's instructions  
11:45:30 22 through a regulation order.

11:45:32 23 Q. So it's possible that there's  
11:45:36 24 private interests and ownership of lands and water  
11:45:39 25 that can be maintained and run in a way that's

11:45:42 1 consistent?

11:45:42 2 A. That is correct.

11:45:43 3 Q. I want to bring you to another  
11:45:47 4 example of private ownership of lands underwater;  
11:45:51 5 are you familiar with the "Ports Asset Transfer  
11:45:55 6 Program"?

11:45:56 7 A. I am aware of it, yes.

11:45:59 8 Q. So it's a Transport Canada  
11:46:04 9 program, and I'd like to bring up a document  
11:46:08 10 SC1671. So this is a short description of the  
11:46:18 11 Ports Asset Transfer Program, which sets out that  
11:46:24 12 Transport Canada-administered port facilities can  
11:46:30 13 be transferred to third parties. The date at the  
11:46:33 14 bottom is January 22, 2019, of this document?

11:46:42 15 MS. GUIRGUIS: Your Honour, I'd like to  
11:46:43 16 add this as the next exhibit.

11:46:46 17 THE COURT: Mr. Registrar?

11:46:46 18 THE REGISTRAR: Exhibit No. 4544.

11:46:48 19 THE COURT: Is this an Internet  
11:46:50 20 printout, Counsel?

11:46:51 21 MS. GUIRGUIS: Yes, Your Honour.

11:46:52 22 EXHIBIT NO. 4544: Ports Asset Transfer  
11:46:21 23 Program Description, dated January 22,  
11:46:53 24 2019.

11:46:53 25 THE COURT: Please go ahead.

11:46:56 1 BY MS. GUIRGUIS:

11:46:56 2 Q. So here in the highlighted  
11:46:59 3 portion, the list of parties that might be  
11:47:04 4 transferred a port, that includes Indigenous groups  
11:47:09 5 and the general public; is that correct?

11:47:14 6 A. That's how I read the document,  
11:47:16 7 yes.

11:47:17 8 Q. I want to bring up another  
11:47:20 9 document regarding the Port Divestiture Program.  
11:47:24 10 It's SC1672. This document is dated August 22,  
11:47:35 11 2006.

11:47:39 12 MS. GUIRGUIS: Your Honour, I'd like to  
11:47:40 13 make this the next exhibit.

11:47:42 14 THE COURT: I'm looking at a page that  
11:47:44 15 says on the top: "We have archived this page and  
11:47:47 16 will not be updating it". I don't know where that  
11:47:51 17 comes from. And I assume from you that there's a  
11:47:54 18 date, but I can't see it.

11:47:56 19 MS. GUIRGUIS: Right. So it is from  
11:47:57 20 the website, and the last time it was updated it's  
11:48:00 21 dated August 22, 2006. And it just gives us a bit  
11:48:05 22 more information about the program.

11:48:09 23 THE COURT: Well, I don't see an  
11:48:11 24 objection. So I'll permit it to be marked. I'm  
11:48:14 25 certain that Ontario will have checked.



11:48:17 1 MS. LEPAN: Your Honour, we don't have  
11:48:19 2 an objection to this.

11:48:20 3 THE COURT: Mr. Registrar?

11:48:21 4 THE REGISTRAR: Exhibit No. 4545.

11:48:24 5 THE COURT: Thank you.

11:48:24 6 EXHIBIT NO. 4545: Port Divestiture Program  
11:48:26 7 Information page, dated August 22, 2006.

11:48:26 8 BY MS. GUIRGUIS:

11:48:27 9 Q. So if we turn to page 2, we've  
11:48:35 10 highlighted a portion there that says that 466  
11:48:39 11 ports have been transferred as of the date of the  
11:48:42 12 press release, and that date is August 22nd, 2006?

11:48:47 13 THE COURT: Well, it's your  
11:48:49 14 cross-examination. It doesn't say that. So I  
11:48:51 15 would ask you to be fair to the witness. She can  
11:48:54 16 read it herself.

11:48:57 17 MS. GUIRGUIS: Okay.

11:48:58 18 BY MS. GUIRGUIS:

11:48:58 19 Q. So, yes, what it says is that the  
11:49:01 20 Transport Canada has transferred, deproclaimed or  
11:49:08 21 terminated its interest at 466 of its sites by this  
11:49:13 22 point.

11:49:14 23 And if I can take you to page 3. This  
11:49:30 24 further elaborates on the transfer of ownership and  
11:49:32 25 operation of regional local ports and harbour beds

1 to provincial or local interests.

2 The second excerpt tells us that the  
3 new owners have the same rights and obligations of  
4 any property owner and are subject to applicable  
5 legislation.

6 Finally, I just want to take you to the  
7 last page, which is page 5. It states that:

8 "[...] the government of Canada  
9 retains jurisdiction over lawful  
10 navigation on the water."

11 So my question is, based on this and  
12 based on the reading of this, the private ownership  
13 of ports including lands underwater in those  
14 harbors, to your knowledge, that's not created an  
15 issue or stopped Ontario or Canada from meeting its  
16 obligation under the Boundary Waters Treaty act?

17 A. That's correct.

18 Q. Okay. Thank you.

19 So this morning you were talking about  
20 the Great Lakes-St. Lawrence Water Resources  
21 Regional Body and that agreement.

22 And you talked about -- there was a  
23 provision that we went to, Article 504, that  
24 provides for a consultation with and opportunities  
25 for participation of First Nation groups.

1 The participation and consultation with  
2 First Nations as part of this agreement, that's not  
3 prevented, in your experience, the fulfillment of  
4 any objectives and provisions of the agreement?

5 A. Sorry, can you repeat the  
6 question?

7 Q. So the agreement provides that  
8 First Nations and tribes on both sides of the  
9 border will be consulted; that was Article 504 that  
10 you were talking about earlier?

11 A. So the agreement acknowledges that  
12 each of the jurisdictions where a proponent-led  
13 process would be initiated has the duty to consult  
14 within their own jurisdictional boundaries.

15 And then the other clauses in that  
16 article just outline participation opportunities  
17 for First Nations and U.S. tribes.

18 Q. And to your knowledge, their  
19 participation and consultation with those groups,  
20 that's not prevented the fulfillment of the  
21 objectives and provisions of that agreement?

22 A. That is correct.

23 Q. And you talked about that this  
24 agreement has U.S. parties involved, different U.S.  
25 states? It has Ontario and Québec involved?

11:52:55 1 A. Correct.

11:52:56 2 Q. Each of those parties have some

11:52:59 3 jurisdiction?

11:53:02 4 THE COURT: Is that a legal question?

11:53:04 5 Ontario is sitting firmly in their chair but --

11:53:07 6 MS. LEPAN: Yes, we would object to

11:53:09 7 that question and ask that it be rephrased.

11:53:12 8 MS. GUIRGUIS: Sure.

11:53:12 9 THE COURT: I'm sure you can ask the

11:53:14 10 question another way.

11:53:25 11 BY MS. GUIRGUIS:

11:53:26 12 Q. Each of those parties are

11:53:29 13 governments and that's why they have a seat at the

11:53:31 14 table?

11:53:31 15 A. That's correct.

11:53:32 16 Q. You talked about legislation that

11:53:34 17 they put into place to enforce parts of this

11:53:37 18 agreement?

11:53:37 19 A. Yes, that's correct.

11:53:39 20 Q. To achieve objectives under the

11:53:41 21 agreement?

11:53:42 22 A. Yes.

11:53:43 23 Q. And presumably, all these parties

11:53:46 24 then, when they are working to meet the objectives

11:53:51 25 of the agreement, they have to -- you talked about

11:53:55 1 that they would come together and meet and  
11:53:58 2 negotiate and figure out a way to make it work; is  
11:54:02 3 that right?

11:54:02 4 A. So the agreement doesn't take  
11:54:04 5 effect until all parties that are signatories to  
11:54:08 6 the agreement have fully implemented the  
11:54:11 7 legislation and regulatory rules that support the  
11:54:16 8 agreement.

11:54:16 9 Q. So if some other party was  
11:54:19 10 identified that needed a seat at the table, nothing  
11:54:21 11 in your knowledge or experience would lead you to  
11:54:24 12 think that involving such a party would impair  
11:54:26 13 these objectives?

11:54:27 14 A. The only parties to the agreement  
11:54:30 15 are those that signed onto the agreement.

11:54:32 16 Q. If there was another one that  
11:54:36 17 needed to sign --

11:54:38 18 A. I can't comment on that.

11:54:42 19 Q. Okay.

11:55:15 20 MS. GUIRGUIS: Give me one moment, Your  
11:55:18 21 Honour.

11:55:18 22 Thank you, Your Honour.

11:55:27 23 BY MS. GUIRGUIS:

11:55:28 24 Q. I also wanted to speak to you  
11:55:30 25 about -- you talked about the Great Lakes Fisheries

1 Commission this morning. Are you familiar with a  
2 rehabilitation project that took place involving  
3 the Great Lakes Fisheries Commission at Denny's  
4 Dam?

5 A. No, I am not.

6 Q. Okay.

7 MS. GUIRGUIS: Your Honour, can I move  
8 that map over here?

9 THE COURT: I'm sure one of your team  
10 can help you.

11 The answer is, yes, you can if you wish  
12 to. You better tell Mr. Brookwell the one you're  
13 thinking of.

14 Okay, Exhibit P.

15 MS. GUIRGUIS: Yes, thank you.

16 THE COURT: Mr. Brookwell, you're also  
17 going to have to move the stand as well to make  
18 that situation work.

19 MS. GUIRGUIS: Thank you.

20 BY MS. GUIRGUIS:

21 Q. So this is a map of the Saugeen  
22 Ojibway Nation's -- this is Exhibit P I'm  
23 referring to, and it's the Saugeen Ojibway Nation's  
24 traditional territory that we've been using as an  
25 illustrative aid in this trial. Are you familiar

1 with the Saugeen Ojibway Nation?

2 A. Yes, I am.

3 Q. And do you recognize this? Have  
4 you seen this map before?

5 A. No, I haven't.

6 Q. So we've been using this as an  
7 illustrative aid, and Denny's Dam --

8 THE COURT: Excuse me. I recognize  
9 Ontario is unconcerned about any of this, which I  
10 don't understand. But I think it's important that  
11 the witness be told that this is the claim area.

12 MS. GUIRGUIS: Yes.

13 THE COURT: And I don't suggest you  
14 omitted that intentionally. But, you know, that is  
15 what it is.

16 Please go ahead.

17 MS. GUIRGUIS: That is correct.

18 BY MS. GUIRGUIS:

19 Q. Yes. That's correct. And my  
20 apologies. That was not intentional, we tend to go  
21 back and forth --

22 THE COURT: No, I'm sure it wasn't.  
23 It's not your job or mine, frankly, to deal with  
24 it. Please go ahead.

25

11:57:59 1 BY MS. GUIRGUIS:

11:57:59 2 Q. So this is the claim area that is  
11:58:01 3 the subject of this litigation as well. So Denny's  
11:58:04 4 Dam, I'd like to bring up a map which is at SC1712.

11:58:13 5 THE COURT: Yes, Counsel?

11:58:14 6 MS. LEPAN: Your Honour, we would  
11:58:15 7 object to this question. The witness has already  
11:58:18 8 identified that she's not familiar with the Denny's  
11:58:20 9 Dam project.

11:58:21 10 THE COURT: I haven't heard the  
11:58:22 11 question yet, but I hear the objection and the  
11:58:25 12 witness certainly did say that she doesn't know  
11:58:26 13 about Denny's Dam. I will permit counsel to ask  
11:58:30 14 her a question, in case there's a question that's  
11:58:32 15 still proper. Please go ahead.

11:58:35 16 Please wait to answer to see if their  
11:58:39 17 objection is maintained, all right?

11:58:41 18 THE WITNESS: Okay.

11:58:42 19 THE COURT: Please go ahead.

11:58:43 20 BY MS. GUIRGUIS:

11:58:44 21 Q. So, I'm bringing up this map as  
11:58:46 22 another illustrative aid, just to show where  
11:58:49 23 Denny's Dam conservation area is located.

11:58:53 24 And you'll see in this document,  
11:58:57 25 SC1712, it's here. It's in the Saugeen Ojibway



1 Nation's claim area.

2 I think if we scroll down we have a  
3 closer view of it on the map.

4 MS. GUIRGUIS: Your Honour, I'm  
5 wondering if I can mark this as a lettered exhibit?

6 THE COURT: Is this the same as the  
7 previous screen? It says 2 of 3. Are these three  
8 maps?

9 MS. GUIRGUIS: Yes, there's three maps.  
10 I thought it was two.

11 THE COURT: That's all right. Can we  
12 see all three of them before we ask the question?  
13 All right. So you have three maps at different  
14 levels of detail described as showing Denny's Dam.  
15 Is there any objection to these three maps being  
16 marked?

17 MS. LEPAN: Not as a lettered exhibit,  
18 Your Honour.

19 THE COURT: All right, Mr. Registrar?

20 THE REGISTRAR: Lettered Exhibit O-3.

21 THE COURT: O, as in "open"?

22 THE REGISTRAR: Yes, Your Honour, "O"  
23 as in "open".

24 EXHIBIT NO. O-3: Maps of Denny's Dam  
25 (three).

12:00:18 1 THE COURT: Please go ahead.

12:00:19 2 MS. GUIRGUIS: Thank you, Your Honour.

12:00:22 3 If I can ask Your Honour's indulgence  
12:00:25 4 for one moment.

12:00:45 5 BY MS. GUIRGUIS:

12:00:46 6 Q. So you mentioned that the Great  
12:00:51 7 Lakes Fisheries Commission is involved in the  
12:00:52 8 rehabilitation revitalization of dam projects for  
12:00:56 9 the purposes of minimizing sea lamprey. You talked  
12:01:01 10 about that this morning?

12:01:03 11 A. Yes, I did.

12:01:04 12 Q. And the Ministry of Natural  
12:01:07 13 Resources and Forestry, they'd be involved on the  
12:01:09 14 Canadian side of that?

12:01:10 15 A. The Ministry of Natural Resources  
12:01:13 16 and Forestry, under the Lakes and Rivers  
12:01:15 17 Improvement Act, authorize any alterations, new or  
12:01:20 18 decommissioning of dams in the province.

12:01:21 19 Q. So, I appreciate that you don't  
12:01:25 20 know specifics about this particular project, but a  
12:01:29 21 dam such as Denny's Dam in Ontario, if it was  
12:01:34 22 subject to rehabilitation, then that's the kind of  
12:01:37 23 approval that you're talking about that MNRF would  
12:01:40 24 be involved in?

12:01:41 25 A. It would be a proponent-led

12:01:43 1 process. So whoever owned the dam would have to  
12:01:46 2 seek MNRF approvals to alter -- consistent with the  
12:01:51 3 legislation with the Lakes and Rivers Improvement  
12:01:54 4 Act. So you'd have to be consistent with the rules  
12:01:56 5 in the legislation. And MNRF would be the  
12:01:59 6 organization that would authorize the approval.

12:02:01 7 Q. And in authorizing the approval,  
12:02:08 8 you talked about the requirement for the duty to  
12:02:10 9 consult this morning and to engage with First  
12:02:13 10 Nations and to inform them.

12:02:16 11 You talked also about collecting First  
12:02:19 12 Nation views, and then presenting them going  
12:02:21 13 forward; is that correct?

12:02:22 14 A. Can you --

12:02:26 15 Q. In terms of the international  
12:02:28 16 body, such as the Great Lakes Fisheries Commission,  
12:02:30 17 you said that you would be sending out, let's say,  
12:02:33 18 notices to all 133 First Nations and those  
12:02:36 19 recognized Métis groups. You would collect those  
12:02:40 20 views and concerns, and then bring them forward?

12:02:41 21 A. I didn't make reference to that  
12:02:43 22 under the Great Lakes Fisheries Commission; that  
12:02:48 23 was the IJC.

12:02:48 24 Q. That was the IJC?

12:02:49 25 A. Correct.

12:02:50 1 Q. I'm confusing the two bodies, my  
12:02:53 2 apologies.

12:03:23 3 MS. GUIRGUIS: Those are my questions.  
12:03:25 4 Thank you, Your Honour.

12:03:25 5 THE COURT: Thank you. Any  
12:03:26 6 re-examination, Counsel?

12:03:27 7 MS. LEPAN: No.

12:03:30 8 THE COURT: Thank you very much, ma'am.  
12:03:32 9 You can step down. And that restriction I  
12:03:35 10 mentioned to you earlier has now come to an end.

12:03:38 11 Thank you for coming to Toronto.

12:03:40 12 Ms. Lepan, is your next witness your  
12:03:42 13 witness as well?

12:03:42 14 MS. LEPAN: No. David Feliciant will  
12:03:47 15 be calling the next witness.

12:03:48 16 THE COURT: I don't see him or her in  
12:03:50 17 the room.

12:03:51 18 MR. FELICIAN: Actually, all week has  
12:03:54 19 moved much faster than anticipated --

12:03:58 20 THE COURT: Can you come to the podium  
12:04:00 21 for the benefit of Madam Court Reporter, please.

12:04:02 22 MR. FELICIAN: So we've been moving  
12:04:04 23 her up progressively, as I've heard details of the  
12:04:08 24 week. She was originally scheduled for Friday, I  
12:04:11 25 moved her up to Thursday, I told her 2:15 today.

12:04:14 1 So at this point she's expected today at 2:15.

12:04:17 2 THE COURT: Maybe you can quietly have  
12:04:19 3 a word with whichever, Mr. Brookwell or  
12:04:23 4 Ms. Guirguis, is cross-examining, off the record,  
12:04:24 5 and then come back and tell me if we start at 2:15  
12:04:28 6 if that will provide sufficient time to complete  
12:04:30 7 her today.

12:04:35 8 MR. FELICIAN: I can do that.

12:04:36 9 THE COURT: I don't know which of these  
12:04:37 10 two counsel, but one of them will want to talk to  
12:04:40 11 you.

12:04:42 12 -- OFF THE RECORD DISCUSSION --

12:04:47 13 MR. FELICIAN: Yes, we do believe we  
12:04:50 14 will be done today.

12:04:51 15 THE COURT: All right. Well, that's a  
12:04:53 16 reasonable basis upon which to adjourn until that  
12:04:56 17 time. And is there -- I suspect the answer is no,  
12:05:01 18 just so you don't worry -- has any progress been  
12:05:04 19 made on the case conference rescheduling tomorrow?

12:05:10 20 MR. FELICIAN: I understand the  
12:05:11 21 Plaintiffs have no problem with it. I'd have to  
12:05:13 22 check --

12:05:13 23 THE COURT: Perhaps after lunch,  
12:05:15 24 Mr. Feliciant or Ms. Lapan or whomever, could give  
12:05:19 25 me an update with respect to that issue, all right,

1 for tomorrow's schedule. So we have that  
2 information before we run through to the end of the  
3 day, all right?

4 MR. FELICIAN: We'll do that, thank  
5 you.

6 -- RECESS TAKEN AT 12:05 --

7 -- UPON RESUMING AT 2:19 --

8 THE COURT: Yes, sir.

9 MR. FELICIAN: We're ready to call our  
10 next witness, Carolyn O'Neill, please.

11 THE REGISTRAR: Good afternoon.

12 Would you like to make an oath on the  
13 Holy Book or make a solemn affirmation to tell the  
14 truth?

15 THE WITNESS: I'll make a solemn  
16 affirmation.

17 THE REGISTRAR: Can you state and spell  
18 your first and last name for the record.

19 THE WITNESS: Yes, Carolyn O'Neill.  
20 C-A-R-O-L-Y-N O'-N-E-I-L-L.

21 CAROLYN O'NEILL: AFFIRMED.

22 THE COURT: Ms. O'Neill, I need you to  
23 keep your voice up so everyone can hear you right  
24 to the back of the room.  
25

EXAMINATION IN-CHIEF BY MR. FELICIANIANT:

Q. Good afternoon. What is your current title in your current job?

A. I am the manager of the Great Lakes Office within the Great Lakes and Inland Waters Branch at the Ministry of the Environment, Conservation and Parks -- Ontario Ministry of Environment, Conservation and Parks.

Q. What is your educational background?

A. I've a bachelor in science in zoology, as well as several majors. One in philosophy, and one in the history and philosophy of science.

Q. Could you outline for us your previous positions that would relate to management of the Great Lakes?

A. Sure. After I finished my degree, I was fortunate to begin a career in communications with Environment Canada at the time in Toronto. That office is very focused on the Great Lakes, and Great Lakes agreements.

So my communications work was very focused on that, as well as the emerging issue of climate change at the time.

02:22:07 1 After several years, due to personal  
02:22:09 2 circumstances, I moved out to the West Coast and  
02:22:12 3 began working again with Environment Canada on the  
02:22:14 4 Fraser River, which, as many of you know, is a  
02:22:16 5 critical river running through Vancouver, critical  
02:22:20 6 to people and to fish.

02:22:22 7 I worked my way through a management  
02:22:24 8 position there of an integrated policy planning and  
02:22:27 9 human resource team, to be asked to take over the  
02:22:31 10 coordination of a fledgling Fraser River Action  
02:22:35 11 Plan Coordination Office.

02:22:36 12 So this was a new quote-unquote  
02:22:39 13 "ecosystem initiative" that was part of Prime  
02:22:45 14 Minister Mulroney's Green Plan in 1990. It was a  
02:22:47 15 very, as I say, "young program".

02:22:49 16 And so we developed it. We worked a  
02:22:52 17 lot with the science, and the reporting, and the  
02:22:54 18 coordination. And I would note, actually, we took  
02:22:58 19 a number of lessons from the more mature Great  
02:23:01 20 Lakes program at that time.

02:23:03 21 Again, personal circumstances, I moved  
02:23:05 22 back to Ontario. I took up work again directly on  
02:23:08 23 the Great Lakes program, again, with Environment  
02:23:08 24 Canada.

02:23:13 25 And there I worked on both the



02:23:15 1 Canada-Ontario Agreement on Great Lakes. I worked  
02:23:18 2 in management capacities there, managing the  
02:23:21 3 committees that oversee that agreement. I worked  
02:23:24 4 on the implementation of programs under the  
02:23:27 5 agreement. And I also worked on communications  
02:23:31 6 around scientific findings and successes under that  
02:23:36 7 agreement.

02:23:38 8 Just before leaving, I also was  
02:23:40 9 involved from the federal side in the early days of  
02:23:44 10 the review of the Canada-U.S. Great Lakes Water  
02:23:52 11 Quality Agreement.

02:23:52 12 Q. I understand you now work at the  
02:23:55 13 Great Lakes office. Why does that office exist?

02:24:00 14 A. The office was formed for two  
02:24:03 15 reasons. One was in 2006, when I was asked to move  
02:24:08 16 over and take that over, there was a need to  
02:24:10 17 renegotiate the Canada-Ontario agreement, as well  
02:24:14 18 as ensure that Ontario had a good position with  
02:24:18 19 respect to its input to Canada on how it was going  
02:24:21 20 to work with the U.S. to negotiate the Canada,  
02:24:23 21 U.S.A. agreement.

02:24:25 22 The other, maybe more diffuse reason  
02:24:29 23 the office was created is a bit of a feeling that  
02:24:33 24 the Great Lakes are hidden in plain sight, that  
02:24:36 25 there is a depreciation of their importance across

02:24:38 1 our society.

02:24:40 2 99 percent of us live, work, play and  
02:24:44 3 learn in the Great Lakes Basin. That number of  
02:24:46 4 people also get their drinking water either  
02:24:49 5 directly from the Great Lakes or from the  
02:24:50 6 watersheds and groundwater in the basin.

02:24:53 7 95 percent of our agricultural lands  
02:24:56 8 are in the area drained. We have the fourth  
02:24:59 9 largest food processing -- actually the largest  
02:25:02 10 food processing sector in Canada right here in the  
02:25:05 11 basin because of access to water.

02:25:07 12 83 percent of our power in Ontario is  
02:25:10 13 generated with a toe in the water, either for hydro  
02:25:13 14 for cooling -- pardon me, for cooling or for hydro.

02:25:19 15 50 percent of Canada's manufacturing  
02:25:20 16 still takes place in the Great Lakes Basin.

02:25:23 17 And when we calculate the addition of  
02:25:25 18 the GDPs of the Great Lakes states, the eight  
02:25:29 19 states, along with Ontario and Québec, the Great  
02:25:32 20 Lakes region is actually the third largest economy  
02:25:35 21 in the world.

02:25:36 22 So there was a desire to create a hub  
02:25:39 23 and a greater appreciation of the importance of the  
02:25:41 24 Great Lakes in Ontario, as well as meet our more  
02:25:44 25 policy-minded objectives.

02:25:46 1 Q. And so what are your current  
02:25:50 2 responsibilities in the office?

02:25:51 3 A. Right now we oversee the  
02:25:55 4 negotiation of the 9th Canada-Ontario Agreement.  
02:25:59 5 The first one was signed in 1971, in advance of the  
02:26:02 6 first Canada-U.S. Great Lakes Water Quality  
02:26:06 7 Agreement. We are actively negotiating the ninth.

02:26:09 8 Prior to that, our office, my office  
02:26:13 9 negotiated an agreement in 2007, as well as 2014.  
02:26:17 10 I would also just mention again, that we played a  
02:26:20 11 very large role in developing Ontario's position as  
02:26:24 12 we sat with Canada at the table -- not at the  
02:26:30 13 negotiating table, but Canada was very magnanimous  
02:26:35 14 and gave Ontario an opportunity for pre-meetings  
02:26:38 15 before they met with the U.S.

02:26:40 16 So we developed a position, we  
02:26:42 17 communicated that to Canada at the Ministry level  
02:26:45 18 as well as senior bureaucratic level. And worked  
02:26:49 19 with them to do that.

02:26:52 20 There was a 5 or 6-year review process  
02:26:55 21 in advance of the actual amendment to the  
02:26:59 22 agreement, so that was quite a long period of time.  
02:27:03 23 It was a big outcome for us, I think.

02:27:06 24 We, in our office, are the folks who  
02:27:11 25 worked to bring together something new called

02:27:14 1 "Ontario's Great Lakes strategy", which involves  
02:27:18 2 the work of 14 ministries across the OPS.

02:27:20 3 And this is where Ontario articulates  
02:27:22 4 within its own jurisdiction its cooperative goals  
02:27:26 5 for the Great Lakes. So it's a complement to our  
02:27:30 6 Canada-Ontario agreements.

02:27:32 7 We assisted with the development of  
02:27:34 8 something called "the Great Lakes Protection Act",  
02:27:36 9 a couple of elements of which I would speak to  
02:27:39 10 maybe a little bit later.

02:27:41 11 And we on an ongoing basis support a  
02:27:45 12 lot of committee work. First of all, we are the  
02:27:50 13 folks who prepare our senior executives to take  
02:27:54 14 part in the Great Lakes Executive Committee, which  
02:27:57 15 advises and assists Canada and the U.S. with the  
02:28:00 16 implementation of the Canada-U.S. Great Lakes Water  
02:28:00 17 Quality Agreement.

02:28:05 18 I support my senior executives as  
02:28:07 19 members of the Water Quality Board underneath the  
02:28:12 20 Water Quality Agreement, if I can call it that.  
02:28:15 21 That is an advisory board to the International  
02:28:18 22 Joint Commission.

02:28:19 23 We support our senior executives going  
02:28:21 24 to meetings of the Great Lakes Commission, which is  
02:28:23 25 a sub national commission that involves the eight

1 Great Lakes states, Québec and Ontario.

2 We prepare our political masters, when  
3 asked, for their participation in the meetings of  
4 Great Lakes governors and premiers, as well as the  
5 Great Lakes St. Lawrence River Caucus.

6 We support our Minister in his  
7 chairmanship of the Great Lakes Guardians' Council,  
8 which is a group of all sectors of Ontario's  
9 society, stakeholders, First Nations, Métis,  
10 municipal governments, conservation authorities,  
11 environmental groups, a very large diversity of  
12 people interested in the Great Lakes.

13 As well, we do a lot of science policy  
14 dialogue. We stay very in touch with our science  
15 colleagues, and have had several formal dialogues  
16 where we bring people together. It's incredibly  
17 important as policy people to be close to what is  
18 actually taking place in the ecosystem.

19 We develop budget proposals; we do a  
20 great deal of engagement. Everything from  
21 students' summits and conferences for students on  
22 the Great Lakes, to, over the years, some very  
23 extensive engagement with First Nations and Métis.

24 And most recently, our office has been  
25 asked, and I manage the team now that is

02:29:50 1 responsible for the Ministry's Conservation  
02:29:55 2 Authority mandate. Conservation Authorities, there  
02:29:59 3 are 36 across Ontario. They are critical  
02:30:02 4 implementation bodies for us in terms of doing our  
02:30:05 5 Great Lakes work.

02:30:06 6 So we do the day-to-day, as well as we  
02:30:08 7 are actively working on legislation and policy to  
02:30:11 8 modernize the legislation.

02:30:13 9 Q. Okay. If we can pull up  
02:30:20 10 Exhibit 4507. This is the Great Lakes Water  
02:30:25 11 Quality Agreement I understand you've referred to.  
02:30:26 12 So I will be asking you some questions about that.

02:30:29 13 What is the purpose of this agreement  
02:30:34 14 from MECP's perspective?

02:30:37 15 A. We are supportive of the purpose  
02:30:40 16 articulated -- if we can scroll down to see it --  
02:30:42 17 of the agreement which is to restore and maintain  
02:30:45 18 the chemical --

02:30:46 19 Q. I believe it's page 5?

02:30:48 20 A. The chemical, biological and  
02:30:51 21 physical integrity of the Great Lakes Basin --  
02:30:54 22 pardon me, of the waters of the Great Lakes.

02:30:56 23 And the subs to that purpose involve  
02:31:01 24 collaboration and coordination, which we have  
02:31:03 25 strongly supported.

02:31:04 1 Q. Sorry, if we can just go up.

02:31:10 2 Page 3 of the agreement. Go ahead.

02:31:14 3 A. Okay. Sorry, we're very  
02:31:21 4 supportive of the purpose as it's stated as well as  
02:31:23 5 the sub purposes to that, which are to make sure  
02:31:26 6 that we are collaborating, along with doing the  
02:31:29 7 work we need to do to protect, that we are doing  
02:31:31 8 the science that we need to do to understand it,  
02:31:33 9 and we are reaching out and engaging the people we  
02:31:35 10 need to, which are part of the purposes, which is a  
02:31:38 11 little bit further down, but I think I've captured  
02:31:41 12 it in...

02:31:42 13 Q. Okay. If we can just now scroll  
02:31:44 14 up for a moment.

02:31:47 15 Up one more page. Now, in the middle  
02:32:03 16 it says:

02:32:05 17 "Reaffirming their commitment  
02:32:06 18 to achieve the goals and objectives  
02:32:09 19 of the 1978 agreement, as amended on  
02:32:11 20 16th October, 1983, and 18th  
02:32:14 21 November, 1987, as well as those of  
02:32:16 22 its 1972 predecessor agreement."

02:32:20 23 Could you perhaps tell us at what point  
02:32:22 24 you became involved? Which version of the  
02:32:25 25 agreement you manage, or have managed?

02:32:28 1 A. So my involvement in the Great  
02:32:33 2 Lakes Water Quality Agreement picks up with the  
02:32:36 3 November 1987 agreement. When I began my career it  
02:32:40 4 had been freshly minted, freshly signed. And so it  
02:32:46 5 stood as the agreement for a very long time, as it  
02:32:49 6 was not amended again until 2012.

02:32:51 7 So a great deal of my career has been  
02:32:54 8 spent working under that particular agreement.

02:32:56 9 Q. What was the focus of that  
02:32:57 10 agreement?

02:32:58 11 A. Can I back up a little bit and  
02:33:00 12 just give you a sense of the build towards that  
02:33:02 13 agreement? Because I think this page is important  
02:33:04 14 in that it recognizes that all the agreements are  
02:33:08 15 building on one another.

02:33:09 16 And so the first agreement in 1972,  
02:33:14 17 this was a period of time when we had excessive  
02:33:21 18 algal growth in Lake Erie. Some of you may recall  
02:33:24 19 that Dr. Seuss declared Lake Erie dead. And we had  
02:33:29 20 to address it. There was a policy need to  
02:33:31 21 understand what was driving it. We didn't know  
02:33:34 22 what was driving it.

02:33:35 23 And so in order for this agreement to  
02:33:39 24 be implemented, there was some very important  
02:33:42 25 science undertaken to determine what drives algal



02:33:47 1 growth in freshwater ecosystems. We now know it's  
02:33:52 2 phosphorus, based on experiments done at this time  
02:33:52 3 to serve the purposes of that agreement.

02:33:55 4 I will just, as a counterpoint, note  
02:33:57 5 that it's nitrogen in an ocean environment that  
02:33:59 6 causes algal growth, which is my understanding. So  
02:34:02 7 this agreement focused on getting that  
02:34:04 8 understanding. Once we had it we knew we could do  
02:34:07 9 -- as I say we, it is the royal "we". I was not  
02:34:10 10 involved; I was pretty young at this point.

02:34:12 11 Once the implementers had the science,  
02:34:17 12 they knew they could begin to put limits on the  
02:34:21 13 amounts of phosphorus in products or coming out of  
02:34:24 14 sewage treatment plants, which they did. But they  
02:34:27 15 also needed to understand how they were going to --  
02:34:31 16 how they were going to reduce the amount of  
02:34:33 17 phosphorus coming off diffuse sources such as farm  
02:34:37 18 fields.

02:34:37 19 So under this agreement there was a  
02:34:40 20 reference to the International Joint Commission to  
02:34:45 21 bring Canada and U.S. science people together to  
02:34:49 22 take a look at what, what could be done to reduce  
02:34:53 23 this runoff, and it resulted in a touchstone  
02:34:56 24 report, the PLUARG report. And I think that was  
02:35:00 25 the Pollution from Land Use Research Group that

1 pulled this together.

2 Again, this resulted in new farming  
3 practices, best management practices, that reduce  
4 loadings of phosphorus to all the Great Lakes with  
5 particular benefits for Lake Erie.

6 So this is an issue that came up in  
7 that agreement, and it runs through all the  
8 agreements to date.

9 In 1978, Canada and the United States  
10 actually negotiated a new agreement, the 1978  
11 agreement. At this time, again, contributions from  
12 both sides of the border and from work done by the  
13 International Joint Commission and many others, we  
14 were starting to get a better picture of the fact  
15 that persistent toxic substances in the Great Lakes  
16 were causes things like egg shell thinning, cross  
17 bills in cormorants, reproductive failure in  
18 herring gulls. And within, again, this agreement  
19 drove trying to get an understanding of what was  
20 causing these defects.

21 And so the understanding that these  
22 biomagnify up a food chain. You can have a very  
23 low concentration in water, but then the little  
24 creature eats it, and the bigger one, the bigger  
25 one. By the time you get to the bald eagle,

02:36:22 1 they're getting a very high concentration of a very  
02:36:24 2 persistent substance.

02:36:24 3 And I think many of us know, it got bad  
02:36:27 4 enough our bald eagle population plummeted, among  
02:36:31 5 other ecological impacts.

02:36:33 6 So that was sort of the growth. We  
02:36:36 7 carried on the nutrients work from the '72  
02:36:39 8 agreement but we added in this important facet of  
02:36:42 9 looking at persistent toxic substances in the 1978  
02:36:46 10 agreement.

02:36:47 11 Q. And then you said it was amended  
02:36:51 12 when you picked it up, when it was amended in 1987.  
02:36:55 13 So what was the focus in 1987?

02:36:57 14 A. So in 1987 in addition to carrying  
02:36:58 15 forward both these critical elements, there was the  
02:37:02 16 addition of some, at the time, very pioneering  
02:37:06 17 community involvement mechanisms.

02:37:08 18 And the one I'll speak to first is  
02:37:10 19 something called "The Remedial Action Plan  
02:37:14 20 Program".

02:37:14 21 And so this was a program that came  
02:37:18 22 into place, the International Joint Commission had  
02:37:21 23 identified a number of areas around the Great Lakes  
02:37:25 24 where conditions were deemed to be very degraded  
02:37:28 25 due to local anthropogenic problems, so they were

02:37:34 1 worse than other parts of the lake.

02:37:35 2 So they were at the time, 17 in Canada,  
02:37:38 3 5 of which were actually shared with the U.S. But  
02:37:41 4 what was innovative here is that the two  
02:37:46 5 governments, Canada made and the U.S. made and  
02:37:48 6 commitments to work with states and provinces and  
02:37:50 7 others in the communities, the local communities to  
02:37:53 8 define the problem, define what success would look  
02:37:57 9 like, and get in place the work needed to remediate  
02:38:02 10 these areas.

02:38:03 11 So that, along with something called,  
02:38:04 12 the Lakewide Management Program, which looked at  
02:38:08 13 the lake wide scale and said where you have lake  
02:38:12 14 wide problems that require ecological approaches,  
02:38:14 15 we need to do this at the lake wide scale.

02:38:17 16 So those were two of the major  
02:38:19 17 innovations in the 1987 amendments.

02:38:22 18 Q. Finally, you said you worked on  
02:38:24 19 the 2012?

02:38:25 20 A. Right.

02:38:25 21 Q. What's the focus there?

02:38:27 22 A. So 2012, after a long period of  
02:38:30 23 time, and I should say our own Canada-Ontario  
02:38:33 24 agreements had been evolving and contemporizing, so  
02:38:36 25 we were continuing to work under agreements that

02:38:39 1 were timely. But the senior agreement, the Great  
02:38:43 2 Lakes Water Quality Agreement, was out of date.

02:38:46 3 In 1987, invasive species were not  
02:38:50 4 hugely on the radar; climate change was not  
02:38:53 5 mentioned. So there was a lot of catching up to  
02:38:56 6 do, and indeed the 2012 agreement added a whole  
02:39:00 7 raft of new issues. So in addition to the nutrient  
02:39:03 8 issue that I mentioned, the harmful pollution  
02:39:06 9 issue, and this need to work at both local and lake  
02:39:09 10 scale, we also have a new focus on climate change,  
02:39:12 11 on invasive species, on habitats and species, on  
02:39:17 12 groundwater.

02:39:18 13 We have a recognition that the  
02:39:20 14 agreement shouldn't just be about cleaning up the  
02:39:22 15 past, but should be looking forward to a  
02:39:24 16 sustainable future. We have acknowledgement of the  
02:39:28 17 need to think of the inherent value of the Great  
02:39:33 18 Lakes, of the multi-generational nature of their  
02:39:36 19 importance.

02:39:37 20 We have instead of Canada just, and the  
02:39:39 21 U.S., committing to deal with the provinces and the  
02:39:42 22 states, we have a much more inclusive governance  
02:39:45 23 framework that includes First Nations and Métis,  
02:39:48 24 municipalities, watershed organizations, so there  
02:39:53 25 was quite a lot of addition to the 2012 amendment.

02:39:59 1 Q. And now that you've touched on  
02:40:03 2 engagement with the First Nations and Métis, how is  
02:40:06 3 that provided for?

02:40:08 4 A. Under the --

02:40:09 5 Q. Is that something MECP, your  
02:40:11 6 ministry, does?

02:40:11 7 A. Yeah. I mean, I'm familiar with  
02:40:14 8 some of the work Canada does. They certainly do  
02:40:17 9 invite First Nation and Métis participation at many  
02:40:20 10 of the forum they lead.

02:40:24 11 In terms of Ontario, we tend to work  
02:40:27 12 more under the umbrella of the Canada-Ontario  
02:40:30 13 Agreement. We don't work as much at the  
02:40:33 14 bi-national level when it comes to engaging First  
02:40:35 15 Nations and Métis under the agreement, under the  
02:40:38 16 strategy under our Great Lakes Protection Act.

02:40:41 17 As well it isn't as connected to the  
02:40:43 18 bi-national, unless we are working in a -- for  
02:40:47 19 example, at the level of a bi-national lake wide  
02:40:50 20 plan.

02:40:51 21 Q. Now, in order to fulfill your  
02:40:55 22 commitments under the agreement, what is it that  
02:41:00 23 you require in terms of being able to do the  
02:41:05 24 science and do the work. Your ministry, what does  
02:41:09 25 it require?

02:41:10 1 A. On the science side in particular?

02:41:15 2 Q. Yes.

02:41:15 3 A. Well, we certainly require a very  
02:41:18 4 collaborative cooperative environment. Because we  
02:41:23 5 are but one jurisdiction, even although we are the  
02:41:26 6 whole of the north shore of the Great Lakes.  
02:41:32 7 Pollution and fish don't know political boundaries,  
02:41:35 8 so it's critically important that the framework set  
02:41:37 9 out in the Great Lakes Water Quality Agreement  
02:41:40 10 provides that tent for us in Canada and in the U.S.  
02:41:47 11 to be working together on things.

02:41:49 12 And under the Canada-U.S. Water Quality  
02:41:52 13 Agreement, there is a five-year rotating cycle of  
02:41:57 14 intensive years on each Great Lake where the  
02:42:00 15 scientists, you know, send their boats and their  
02:42:05 16 best scientists to a given lake on a given year.  
02:42:08 17 We can't be everywhere all the time; so in a  
02:42:11 18 coordinated fashion it rotates around. So  
02:42:14 19 certainly that.

02:42:15 20 If we take a look at the work our  
02:42:17 21 ministry does in the Great Lakes proper, our work  
02:42:21 22 involves access to the open lake. It involves  
02:42:24 23 access to the near shore areas, and to the  
02:42:27 24 tributaries of the Great Lakes.

02:42:29 25 We need access to sediments, to water,

02:42:32 1 to benthic, creatures who live in the mud, and  
02:42:37 2 fish, to be able to sense on both the issues I  
02:42:42 3 started off with, what is the nutrient level, what  
02:42:46 4 is the toxic level in these creatures.

02:42:49 5 We need access several times during the  
02:42:53 6 year to be able to deploy instruments and go back  
02:42:56 7 and check them. And then take them out during  
02:43:01 8 inclement weather.

02:43:02 9 So yeah.

02:43:10 10 Q. So you've mentioned the Great  
02:43:16 11 Lakes Water Quality Board; what is MECP's role with  
02:43:22 12 respect to the Great Lakes Water Quality Board?

02:43:24 13 A. Okay. So should I maybe just  
02:43:27 14 mention how it fits in a little bit?

02:43:29 15 Q. Sure.

02:43:33 16 A. So I think you've heard a little  
02:43:35 17 bit about the International Joint Commission.  
02:43:37 18 Under the Water Quality Agreement, the  
02:43:40 19 International Joint Commission has special  
02:43:41 20 responsibilities that relate to the Great Lakes.

02:43:43 21 They are asked to maintain an office in  
02:43:45 22 Windsor, as well as Washington, to focus on Great  
02:43:49 23 Lakes issues. And one of the things that Windsor  
02:43:52 24 office does is support two very important  
02:43:55 25 longstanding advisory boards.



02:43:58 1 One is the Water Quality Board, which I  
02:44:02 2 will focus on. Our ministry is a member to that  
02:44:04 3 board. I'll mention the other one, the Science  
02:44:07 4 Advisory Board. It is deemed to be the science  
02:44:09 5 advisor to the Water Quality Board as well as to  
02:44:12 6 the International Joint Commission itself.

02:44:14 7 So the inception of the Water Quality  
02:44:18 8 Board was in the original 1972 agreement; it is  
02:44:21 9 that longstanding. I believe we are at almost  
02:44:24 10 meeting 200 of that board. My office supports our  
02:44:29 11 member on that.

02:44:32 12 It's usually at the ADM, Assistant  
02:44:37 13 Deputy Minister, or at the director level. Right  
02:44:38 14 now my director sits on that committee. So we  
02:44:41 15 prepare her for upcoming agenda items to  
02:44:45 16 contribute.

02:44:45 17 We have in the past gotten a little bit  
02:44:48 18 more involved, for example, in helping to organize  
02:44:50 19 one of the face-to-face meetings that the Water  
02:44:57 20 Quality Board held here in Canada.

02:44:58 21 So our office played a direct role  
02:45:01 22 working with a number of the Indigenous members of  
02:45:04 23 the Water Quality Board to set up a meeting in  
02:45:08 24 Thunder Bay that was designed to help bring a  
02:45:11 25 stronger more active First Nation and Métis voice

1 to the Water Quality Board.

2 But the issues are quite various.

3 There are face-to-face as well as teleconferences  
4 every few months.

5 I've already touched on the Water  
6 Quality Board a little bit. It does have quite a  
7 history of achievements over the years, including  
8 as I mentioned, work on these harmful pollutants,  
9 work on the nutrient issue, and as well, as I  
10 mentioned, the Water Quality Board is actually who  
11 determined which would be the, these areas  
12 requiring a remedial action plan.

13 Q. And what is the lake wide action  
14 management plan and does it apply in any way to  
15 Lake Huron?

16 A. Okay. So lake wide management  
17 plans, as I mentioned, they were introduced into  
18 the 1987 agreement, they have evolved since that  
19 time.

20 They are designed, as I said, to look  
21 at issues that need to be treated in an ecosystem  
22 or an integrated way at a lake basin. And that of  
23 course means many, many partners and led by Canada  
24 and the United States.

25 So when this concept was first

02:46:29 1 introduced, I believe it was in Lake Ontario where  
02:46:33 2 the first lake wide action and management plan came  
02:46:36 3 into being, and then to Lake Erie and then to Lake  
02:46:40 4 Superior.

02:46:41 5 My understanding is that there was a  
02:46:43 6 decision to not immediately move towards a LAMP,  
02:46:48 7 I'll call it, for Lake Huron, because of the nature  
02:46:51 8 of the issues there. But what did happen was the  
02:46:54 9 development of a very robust partnership called a  
02:46:59 10 "bi-national partnership" for Lake Huron.

02:47:02 11 It started again with the federal  
02:47:03 12 governments. We added in Ontario and Michigan --  
02:47:06 13 "we", the royal "we"; they were added in. And then  
02:47:10 14 they went out and gathered quite a strong network  
02:47:12 15 of people. As I said, it became known as this  
02:47:16 16 "bi-national partnership". And some very good work  
02:47:21 17 started to come from that.

02:47:23 18 One of the examples of importance to  
02:47:25 19 our ministry is something called "Healthy Lake  
02:47:28 20 Huron, Clean Water, Clean Beaches", which is  
02:47:31 21 something we have been financially supporting and  
02:47:34 22 with in-kind support.

02:47:36 23 It's an example under that LAMP  
02:47:38 24 umbrella of where you have the senior levels of  
02:47:41 25 government providing the science, some of the

02:47:46 1 coordination, some of the funding. But it also  
02:47:49 2 combines local landowners with strong interests and  
02:47:54 3 a number of the people who care about the lake.

02:47:57 4 For example, on Lake Huron there is the  
02:48:00 5 coastal centre -- the centre for coastal health.

02:48:04 6 So this initiative did a smart thing, recognizing  
02:48:09 7 that the geography of the Great Lakes and Lake  
02:48:13 8 Huron is so huge, they picked five sentinel  
02:48:16 9 watersheds where they felt they could focus their  
02:48:20 10 efforts and see results. So these ranged from  
02:48:23 11 Sarnia up to Tobermory. There's quite a range  
02:48:26 12 between them. They chose areas where we thought we  
02:48:29 13 could make change.

02:48:32 14 And in those areas, they are looking at  
02:48:34 15 trying to determine what the best management  
02:48:37 16 practices would be, trying to monitor -- it's a  
02:48:40 17 very agricultural area in large part, so a number  
02:48:43 18 of projects to monitor these nutrients and other  
02:48:49 19 pollutants, like bacteria coming off farmers'  
02:48:53 20 fields, or into the tributaries.

02:48:56 21 So it's a good example of a cooperation  
02:48:59 22 at all levels under the chapeau of this bi-national  
02:49:01 23 partnership.

02:49:02 24 Now, I should say when the 2012  
02:49:04 25 amendments were made to the Canada-U.S. Great Lakes

02:49:08 1 Water Quality Agreement, they took this concept of  
02:49:11 2 Lake Huron of the bi-national partnership and made  
02:49:13 3 that part of the management of all the LAMPs.

02:49:16 4 So that was one of the outgrowths of  
02:49:19 5 there being a slightly different model than Lake  
02:49:22 6 Huron, which is now, as I say, has a LAMP and is  
02:49:25 7 the same as the other lakes.

02:49:30 8 Under the LAMP, there is a great deal  
02:49:32 9 of bi-national science going on. I think right  
02:49:36 10 now, my understanding is that the oligotrophic or  
02:49:41 11 ultra-oligotrophic, i.e., the very low levels of  
02:49:44 12 nutrients available to creatures and to fish in  
02:49:48 13 Lake Huron, are of concern.

02:49:52 14 And there is bi-national science, a  
02:49:54 15 number of different conferences and papers being  
02:49:56 16 produced bi-nationally that should help elucidate  
02:50:00 17 what is going on.

02:50:01 18 So I'd say that's an example of action  
02:50:04 19 and an example of science under the LAMP.

02:50:07 20 Q. If we can bring up Exhibit 4531,  
02:50:11 21 please. That's the Canada-Ontario agreement on  
02:50:14 22 Great Lakes Water Quality and Ecosystem Health.

02:50:20 23 Now, you had said earlier your ministry  
02:50:24 24 has done work with this particular agreement, and  
02:50:29 25 mentioned First Nations engagement under this

02:50:34 1 agreement.

02:50:34 2 So perhaps we can start with what is  
02:50:36 3 your ministry's role in managing this agreement or  
02:50:39 4 working with this agreement?

02:50:41 5 A. Okay. I will just say -- full  
02:50:48 6 disclosure. This 2014 agreement expired in  
02:50:52 7 December. And as I mentioned, we are actively  
02:50:56 8 negotiating the new Canada-Ontario agreement. We  
02:50:59 9 have posted a draft, very much based on this.  
02:51:03 10 Until that is signed, this is continuing to be our  
02:51:06 11 guiding document.

02:51:11 12 So our role in this agreement was to --  
02:51:17 13 first and foremost our office negotiated it,  
02:51:19 14 supported the negotiation of this with our  
02:51:22 15 colleagues at Canada.

02:51:23 16 It was quite a long process, actually  
02:51:27 17 because of Ontario's desire to make sure we did  
02:51:33 18 have and Canada's desire to make sure we did have a  
02:51:36 19 strong First Nation and Métis angle in this  
02:51:40 20 agreement. And the negotiation resulted in the  
02:51:43 21 addition of two annexes.

02:51:47 22 This agreement is structured very much  
02:51:49 23 like the Water Quality Agreement where you have a  
02:51:51 24 framework and then you have issue or  
02:51:55 25 geography-based annexes.

02:51:58 1 So we worked with Canada to negotiate  
02:52:02 2 two new annexes. One was First Nations, it's the  
02:52:05 3 13th annex and "Engaging First Nations" is the  
02:52:08 4 title.

02:52:09 5 There's another on Métis.

02:52:12 6 What is in that Annex includes an  
02:52:16 7 obligation for our co-executive committee  
02:52:20 8 co-chairs, the most senior people who oversee this  
02:52:23 9 agreement, the COA, to meet with First Nations  
02:52:26 10 leadership every year.

02:52:27 11 It includes commitments to support  
02:52:29 12 pilot projects, to examine how we could better  
02:52:34 13 bring traditional ecological knowledge to the fore.  
02:52:38 14 It included a commitment to host traditional  
02:52:42 15 ecological knowledge symposia, among other things.

02:52:45 16 So we were advised at the time that  
02:52:48 17 this is -- was the first federal-provincial  
02:52:51 18 agreement to include such an annex. So that was --  
02:52:55 19 that's sort of the story around the negotiation of  
02:52:58 20 the agreement.

02:52:59 21 In terms of its implementation, our  
02:53:03 22 office supports the executive committee. So we are  
02:53:07 23 constantly working with our other ministry  
02:53:10 24 colleagues who lead, for example, on the harmful  
02:53:13 25 pollutants, or on the nutrients, or on the WRAPS

02:53:17 1 and on the LAMPs. We coordinate them together and  
02:53:21 2 we also work with the other signatories to this  
02:53:24 3 agreement.

02:53:25 4 So it's actually signed by our  
02:53:27 5 Minister, Minister of the Environment, Conservation  
02:53:28 6 and Parks, as well as the Ministry of Natural  
02:53:32 7 Resources and Forestry; and the Ministry of  
02:53:35 8 Agriculture, Food and Rural Affairs; as well as,  
02:53:38 9 depending on how departments are shaped up at a  
02:53:42 10 given time, six or seven federal signatories.

02:53:46 11 So we do the work to coordinate  
02:53:49 12 implementation of the agreement at the very senior  
02:53:51 13 executive level. Our office is also the lead for  
02:53:56 14 the implementation of these two annexes that I  
02:54:00 15 spoke to; the First Nation and Métis annexes.

02:54:04 16 And maybe I could just say, in terms of  
02:54:06 17 what we achieved under this agreement, we did  
02:54:09 18 support three traditional ecological knowledge  
02:54:13 19 symposia. One was in the Grand River in 2014. A  
02:54:21 20 second was in 2014 in Sault Ste. Marie. And in  
02:54:25 21 2017 we also did a tech symposium in North Bay.

02:54:32 22 We were also fortunate to be able to  
02:54:34 23 provide capacity support to communities to  
02:54:38 24 undertake traditional ecological knowledge projects  
02:54:41 25 in their own communities. I'm going to try to



02:54:45 1 remember them: In Sagkeeng, Magnetawan, Walpole  
02:54:52 2 Island, Mohawks, Akwesasne and Chippewas of the  
02:55:01 3 Thames.

02:55:04 4 So we were able to do some good  
02:55:06 5 implementation there, I think.

02:55:08 6 Q. Can we pull up Exhibit 4534, which  
02:55:11 7 is the Great Lakes-Saint Lawrence River Sustainable  
02:55:16 8 Water Resources Agreement.

02:55:17 9 Is this an agreement that your ministry  
02:55:21 10 participate in?

02:55:22 11 A. We do participate in this. This  
02:55:25 12 is very much led by my colleague, Jennifer Keyes,  
02:55:31 13 who is at the Ministry of Natural Resources and  
02:55:34 14 Forestry. They are the lead on water quantity and  
02:55:36 15 on this agreement.

02:55:38 16 Their ministry has the representative  
02:55:40 17 on the management, the sub national management --  
02:55:45 18 it's called the "regional body" that runs this.

02:55:47 19 But our ministry does play a supporting  
02:55:50 20 role in providing the Ministry of Natural Resources  
02:55:53 21 with an understanding of water takings through our  
02:55:58 22 Permit to Take Water Program, as well as support in  
02:56:01 23 terms of water conservation programs. And  
02:56:04 24 understanding the cumulative effects of water  
02:56:07 25 taking.

02:56:08 1 Q. Okay. Can we bring up  
02:56:11 2 Exhibit 4536, please. This is the Great Lakes  
02:56:21 3 strategy.

02:56:41 4 So you'll see there the "Ontario's  
02:56:44 5 Great Lakes Strategy"; is this a document or an  
02:56:47 6 agreement that your ministry participates in?

02:56:49 7 A. Yeah. So our office, my office,  
02:56:53 8 developed this strategy. We did this based on a  
02:56:59 9 significant round of engagement with stakeholders  
02:57:03 10 and First Nations and Métis. And this articulates,  
02:57:09 11 as I mentioned earlier, the work that -- over a  
02:57:13 12 dozen OPS, Ontario Public Service ministries do on  
02:57:17 13 the Great Lakes.

02:57:19 14 So it has a broader geographic scope  
02:57:22 15 than the Canada-Ontario agreement or the  
02:57:26 16 Canada-U.S. agreement, which tend to focus on the  
02:57:29 17 bi-national waters for obvious reasons.

02:57:32 18 Our strategy looks at the whole basin,  
02:57:35 19 and it is also inclusive of the entire drainage of  
02:57:39 20 the Saint Lawrence River.

02:57:40 21 Probably what was most significant  
02:57:42 22 about this, and I mentioned earlier this sense that  
02:57:46 23 the Great Lakes at times can be hidden in plain  
02:57:51 24 sight. They're there, but some people don't  
02:57:53 25 realize how much they depend on them.

02:57:55 1 So part of the evolution of this  
02:57:57 2 document was working with all of these other  
02:57:59 3 ministries, including the economic and the social  
02:58:02 4 ministries, to help them see, and they did, that we  
02:58:07 5 all have a role in Great Lakes protection and we  
02:58:09 6 all have many benefits we derive from the Great  
02:58:13 7 Lakes.

02:58:14 8 So you'll see that the goals of the  
02:58:16 9 strategy cover some of the same terrain as the  
02:58:19 10 Canada-Ontario agreement and the Canada- U.S  
02:58:22 11 agreement: The nutrients, the harmful pollutants,  
02:58:25 12 the invasive species, the habitats, the need to  
02:58:29 13 have a shared scientific understanding and look at  
02:58:31 14 climate change.

02:58:32 15 But there is also a focus on  
02:58:35 16 sustainable economic development as well. So it is  
02:58:41 17 not duplicative of the agreements. It is a little  
02:58:44 18 bit more expansive, and in the Ontario context,  
02:58:48 19 it's the first time that Ontario has articulated  
02:58:51 20 its goals for the Great Lakes outside of the  
02:58:54 21 context of the agreements. And we're currently  
02:58:58 22 working on a review of it and a potential renewal  
02:59:05 23 revision.

02:59:05 24 Q. Now, if we could pull up Exhibit  
02:59:14 25 4541, please. This is the Great Lakes Protection

02:59:19 1 Act. I'm not going to ask you to give us any  
02:59:22 2 interpretation of it, but I understand you said  
02:59:25 3 earlier in your evidence your office participated  
02:59:26 4 or you participated in developing portions of the  
02:59:29 5 act?

02:59:30 6 Could you perhaps tell us what the  
02:59:32 7 objective was behind the legislation?

02:59:37 8 A. Maybe the quickest way to  
02:59:39 9 demonstrate that, if you could scroll down to the  
02:59:43 10 "Purposes" of the act. There are two kind of --  
02:59:48 11 those two, that's just fine right there. You see  
02:59:52 12 the purposes of the act are:

02:59:53 13 "No. 1, to protect and restore  
02:59:55 14 the ecological health of the Great  
02:59:58 15 Lakes-St. Lawrence River Basin.

03:00:00 16 And.

03:00:00 17 "No. 2, to create opportunities  
03:00:02 18 for individuals and communities to  
03:00:04 19 become involved in the protection  
03:00:05 20 and restoration of the ecological  
03:00:07 21 health of the Great Lakes-St.  
03:00:07 22 Lawrence River Basin."

03:00:11 23 So that was significant as we were  
03:00:13 24 developing the legislation, that this be something  
03:00:15 25 that, again, brings people to the Great Lakes and

1 helps them to be involved in Great Lakes  
2 protection.

3 Q. Is there a role for First Nations?

4 A. Very much so. It's way down in  
5 the legislation, but Section 28, if we could --

6 Q. Perhaps we can scroll to  
7 Section 28.

8 A. This, as I said -- this was -- I  
9 didn't say.

10 This Great Lakes Protection Act was  
11 being developed at the same time as we were working  
12 on the strategy and doing engagement with  
13 stakeholders and with First Nations and Métis on  
14 our thinking around Great Lakes.

15 And we were very conscious and we had a  
16 lot of input on the legislation and how the First  
17 Nation and Métis voice should be articulated. So  
18 you'll see there under 28 sub (2) that there's an  
19 obligation that if we're offered traditional  
20 knowledge we will consider it in a number of  
21 contexts.

22 The first one being the review and  
23 amendment of the strategy, which I just mentioned  
24 we are beginning to work upon.

25 The legislation sets out provisions for

03:01:29 1 the development of targets with action plans for  
03:01:32 2 the Great Lakes. And, again, First Nations and  
03:01:34 3 Métis input on that is required.

03:01:37 4 We also have -- it's a little bit  
03:01:42 5 cryptic but there's another section of the act that  
03:01:45 6 deals with something called an initiative or a  
03:01:50 7 geographically focused initiative, to use the full  
03:01:54 8 bureaucratic terminology.

03:01:56 9 It is the development of a plan with an  
03:01:58 10 intensive look at a certain part of the geography  
03:02:01 11 of the Great Lakes. It was modeled on the Lake  
03:02:05 12 Simcoe protection plan. Again, obligated to, if we  
03:02:09 13 are offered traditional knowledge there.

03:02:11 14 Q. Okay. I was going to ask you,  
03:02:14 15 what is the Great Lakes Guardians' Council?

03:02:16 16 A. Yes. So, sorry to make you go  
03:02:18 17 back and forth. But if we can go back to, I think  
03:02:22 18 it's Part 1 of the legislation. We have something  
03:02:25 19 called the Great Lakes Guardians' Council.

03:02:31 20 This is a very simple requirement that  
03:02:32 21 our Minister once a year -- it's Part 2, thank you,  
03:02:36 22 sorry about that.

03:02:37 23 Our Minister convene, and there's a  
03:02:41 24 list of people who he needs to convene to bring  
03:02:44 25 together to talk about issues of importance of the

03:02:48 1 Great Lakes, including Great Lakes agreements, but  
03:02:52 2 also projects and priorities and collaboration.

03:02:55 3 Since the act was passed, there have  
03:02:58 4 been five meetings of the Great Lakes Guardians'  
03:03:01 5 Council. And all but the first one have been  
03:03:04 6 co-chaired with an Indigenous co-chair who has been  
03:03:07 7 the Grand Council Chief of the Anishinaabek Nation.

03:03:15 8 Under the Great Lakes Guardians'  
03:03:19 9 Council we've had good meetings, but for me the  
03:03:22 10 most tangible outcome has been the development of  
03:03:23 11 something called the "Great Lakes Guide".

03:03:25 12 So at a very early council meeting,  
03:03:27 13 this idea came forward that we needed a place for  
03:03:30 14 people to go, a digital platform where people could  
03:03:34 15 go and they could see all different types of  
03:03:36 16 information and ways of knowing and stories, not  
03:03:40 17 just western science, but also traditional  
03:03:43 18 knowledge as well.

03:03:45 19 And this was to be a platform that  
03:03:47 20 would get people to not become tethered to the  
03:03:53 21 digital platform, but would actually get them  
03:03:56 22 interested in getting out to see and visit the  
03:03:59 23 Great Lakes.

03:04:00 24 So one of the most tangible outcomes of  
03:04:02 25 these meetings to date has been the fact that the

03:04:07 1 Grand Council Chief at the time really championed  
03:04:10 2 this issue.

03:04:11 3 He led, with our support, a design  
03:04:14 4 charet, what could it look like? We certainly  
03:04:17 5 don't want it to duplicate the myriad of other  
03:04:20 6 digital platforms on Great Lakes that are out  
03:04:24 7 there.

03:04:24 8 He did that. And also hosted one of  
03:04:27 9 the traditional ecological workshops that I  
03:04:29 10 mentioned. And with all of this input, we were  
03:04:31 11 able to go through a competitive process to get an  
03:04:35 12 outside party to build said digital platform, and  
03:04:39 13 it is now there. And the Grand Council Chief has  
03:04:43 14 stayed and remains involved in the project.

03:04:46 15 So it was a very meaningful, to me  
03:04:49 16 anyway, part of the council work.

03:04:52 17 Q. Thank you. Can we bring up  
03:04:55 18 Exhibit 4533, please. And this is the Great Lakes  
03:05:01 19 Commission document. We looked at this earlier,  
03:05:06 20 and this document is undated. Can you assist us  
03:05:10 21 with when the commission was formed?

03:05:17 22 A. To answer the question, my  
03:05:18 23 understanding is that it was formed in 1955 under  
03:05:23 24 compact, and at that time only included the Great  
03:05:28 25 Lakes states. But in 1999 associate members were



1 brought in from Québec and Ontario.

2 So the current configuration would be  
3 1999.

4 Q. Thank you. I understand in  
5 Exhibit 4539, there's a resolution creating the  
6 Conference of Great Lakes and St. Lawrence  
7 Governors and Premiers. Is this something your  
8 ministry or your office plays a role in?

9 A. This would be at the request of  
10 our political office. We do certainly play a role  
11 in providing briefing notes, depending on the  
12 agenda items. Sometimes the agenda items are more  
13 focused on the mandate of our Ministry of Natural  
14 Resources.

15 For example, this group has been very  
16 interested in invasive species, for example. But  
17 sometimes it's more focused on matters that MECP --  
18 Ministry of Environment, Conservation and Parks  
19 leads on. So it changes from meeting to meeting.

20 I will say the last meeting which was  
21 in, I want to say in Milwaukee in June, our  
22 Minister attended on behalf of the Premier.

23 So we were more involved in preparing  
24 briefing notes and preparing him to attend that  
25 meeting, in particular.

03:06:53 1 But it is up to our political masters  
03:06:55 2 to determine, you know, how much support they want  
03:06:58 3 from government people.

03:07:00 4 Q. And what is the Great Lakes and  
03:07:04 5 St. Lawrence Cities initiative?

03:07:08 6 A. So I believe it was in 2008, the  
03:07:11 7 Mayors of Chicago and Toronto, Daley and Miller at  
03:07:16 8 the time, got together and decided we need an  
03:07:20 9 organization that represented municipal voices  
03:07:22 10 around the lakes.

03:07:24 11 Many of our big municipalities are  
03:07:26 12 right on the lakes. They're the ones facing the  
03:07:30 13 issues in terms of the benefits of waterfronts, and  
03:07:33 14 the disbenefits, when it comes to things like  
03:07:36 15 flooding.

03:07:37 16 But they really felt that there needed  
03:07:38 17 to be an amplification of the municipal voice. So  
03:07:43 18 they created this entity. I believe they have  
03:07:46 19 about 140 or so -- the numbers vary -- mayors  
03:07:51 20 signed on.

03:07:54 21 They select certain priorities; they  
03:07:56 22 have an annual meeting; they have regular news  
03:07:58 23 releases they put out. They have resolutions.  
03:08:03 24 There are a number of mayors from the Lake Huron  
03:08:07 25 watershed. They are disproportionately

03:08:10 1 represented, I would say.

03:08:11 2 And the cities initiative has been  
03:08:16 3 valuable, for example, to us in designing Ontario's  
03:08:20 4 Great Lakes strategy, to reminding us of the  
03:08:22 5 importance of that place where people meet the  
03:08:25 6 lakes at the water's edge. So that's my  
03:08:31 7 understanding of them.

03:08:31 8 Q. You've spoken about collaboration  
03:08:34 9 with other governments and states; is there any  
03:08:37 10 collaboration with the private sector?

03:08:39 11 A. I will go back a little bit in  
03:08:44 12 history and say for many years there was something  
03:08:47 13 called the Council of Great Lakes Industries. It  
03:08:49 14 was in place between 19 -- I want to say 83 -- I'm  
03:08:58 15 not going to give the dates.

03:09:00 16 But it was in place for several  
03:09:02 17 decades, and it was the voice of the private  
03:09:05 18 sector. Particularly, industry that depended on  
03:09:07 19 the Great Lakes at all these Great Lakes tables.

03:09:11 20 They no longer exist. I think in 2011  
03:09:16 21 they closed their doors. But in maybe a more  
03:09:20 22 contemporary frame we have the emergence of a new  
03:09:24 23 group called the "Council of the Great Lakes  
03:09:25 24 Region", which is very much a private sector  
03:09:28 25 gathering.

03:09:29 1 Some of their priorities include better  
03:09:31 2 integration of the Canada-U.S. Great Lakes economy.  
03:09:35 3 Focus on big data. They again, have an annual  
03:09:38 4 economic forum, I think it's Chicago in May this  
03:09:42 5 year. They were formed in 2013, I believe.

03:09:45 6 So we do have -- for example, to pass  
03:09:50 7 the last meeting of the Great Lakes Guardians'  
03:09:53 8 Council, the Minister sought to invite the  
03:09:57 9 executive director of that group to his council  
03:10:00 10 meeting. So we do have an active voice there.

03:10:01 11 Q. Has there been any collaboration  
03:10:02 12 with environmental nongovernmental organizations?

03:10:04 13 A. Well, again, a little bit of  
03:10:06 14 history. For many decades there was a group called  
03:10:10 15 "Great Lakes United" which was the bi-national  
03:10:12 16 voice for environmental groups.

03:10:15 17 When we were developing the Great Lakes  
03:10:18 18 Strategy and Great Lakes Protection Act, something  
03:10:21 19 called the "Great Lakes Protection Act Alliance"  
03:10:24 20 formed, which was led by the Environmental Law  
03:10:29 21 Association and Environmental Defence. And had a  
03:10:32 22 number of the other ENGOs in Ontario participating,  
03:10:37 23 and providing us with advice on what they'd like to  
03:10:40 24 see in the strategy and in the Act.

03:10:42 25 To my knowledge, they are continuing to

03:10:44 1 meet and deliberate on policy. So, yeah, there are  
03:10:48 2 a number of examples of ENGO collaboration.

03:10:52 3 Q. And my last question. Has there  
03:10:55 4 been any collaboration with the scientific  
03:10:57 5 community?

03:10:58 6 A. Right. So I've already alluded to  
03:11:00 7 quite a bit. I wouldn't want to miss speaking  
03:11:02 8 about something called the International  
03:11:04 9 Association of Great Lakes Researchers, commonly  
03:11:06 10 known as IAGLR, formed in the mid-'50s. They  
03:11:10 11 started producing a regular journal in 1975, which  
03:11:13 12 is a go-to journal for Great Lakes science, mainly  
03:11:18 13 western natural science, but it has diversified a  
03:11:21 14 little bit more.

03:11:22 15 They have an annual conference which is  
03:11:23 16 very important, bringing science and policy people  
03:11:26 17 together. And, as I say, yes, that journal is  
03:11:31 18 quite a vital thread running through the Great  
03:11:35 19 Lakes science community.

03:11:36 20 I mentioned also already the  
03:11:38 21 collaboration on this rotating, the cooperative  
03:11:41 22 science and monitoring initiative under the  
03:11:44 23 Canada-U.S. Great Lakes Water Quality Agreement,  
03:11:46 24 which creates this natural opportunity for  
03:11:48 25 intensive collaboration on a given lake in a given

03:11:52 1 year.

03:11:52 2 There has been, in my view, a  
03:11:56 3 blossoming of collaboration in the social sciences.  
03:12:00 4 An example would be the Great Lakes Futures Project  
03:12:02 5 in 2015, which was a collaboration of principal  
03:12:06 6 investigators from Canadian and U.S. universities,  
03:12:09 7 who came together and working with many graduate  
03:12:13 8 students, did four different projections of the  
03:12:16 9 development scenario in the Great Lakes, some good,  
03:12:18 10 some not good.

03:12:19 11 And that is actually published in a  
03:12:21 12 whole IAGLR journal to itself. There has been  
03:12:26 13 cooperation on the economic side as well. A number  
03:12:31 14 of studies have been done including one done by our  
03:12:34 15 ministry, in cooperation with Ministry of Natural  
03:12:37 16 Resources and Agriculture and the Great Lakes  
03:12:41 17 Cities initiative, as well as the Toronto Region  
03:12:45 18 Conservation Authority. Through a number of case  
03:12:47 19 studies we assessed the return on investment in  
03:12:50 20 Great Lakes restoration.

03:12:52 21 Most recently, there's an initiative  
03:12:55 22 called Great Lakes Revival. Which again I think is  
03:12:58 23 a good example of bi-national work. We have a  
03:13:03 24 couple of Canadian researchers and a couple of U.S.  
03:13:06 25 researchers. They've done 8 to 10 case studies

03:13:10 1 examining the results of the work in these areas of  
03:13:13 2 concern that I mentioned.

03:13:14 3 So they've actually gone in there and  
03:13:16 4 said, now that you've done this restoration, what  
03:13:19 5 kind of economic payback has there been in these  
03:13:22 6 communities? And they've quantified and given a  
03:13:24 7 quantifiable, plus a qualitative assessment of  
03:13:29 8 that. And certainly one of the lessons they  
03:13:31 9 learned is the importance of cooperation and  
03:13:34 10 collaboration in these areas.

03:13:37 11 MR. FELICIAN: Your Honour, those are  
03:13:38 12 my questions.

03:13:40 13 THE COURT: Thank you, Mr. Feliciant.  
03:13:42 14 Is it Mr. Brookwell?

03:13:44 15 MR. BROOKWELL: Yes, Your Honour.

03:13:46 16 THE COURT: Please go ahead.

03:13:48 17 CROSS-EXAMINATION BY MR. BROOKWELL:

03:13:54 18 Q. Good afternoon, Ms. O'Neill.

03:13:56 19 A. Good afternoon.

03:13:57 20 Q. My name is Benjamin Brookwell.

03:14:01 21 I'm a lawyer for the Plaintiffs in this case. I  
03:14:05 22 have a few questions for you today.

03:14:07 23 A. Okay.

03:14:07 24 Q. If you'll bear with us for a  
03:14:11 25 moment, we're setting up our technology on our

03:14:15 1 side.

03:14:36 2 Ms. O'Neill, are you familiar with the  
03:14:39 3 Saugeen Ojibway Nation?

03:14:40 4 A. Somewhat, not hugely.

03:14:44 5 Q. By "somewhat", is that in the  
03:14:48 6 context of your work, or just generally speaking?

03:14:50 7 A. In the context of my work, I have  
03:14:52 8 encountered their work on fisheries at, for  
03:14:56 9 example, one of the traditional ecological  
03:14:59 10 knowledge workshops that we put together.

03:15:01 11 So I have been -- what's the word? I  
03:15:10 12 have been learning from the work that they've been  
03:15:12 13 doing and what they've been doing.

03:15:16 14 I don't work very often at the lake  
03:15:18 15 scale. I tend to work at the basin-wide scale. So  
03:15:22 16 I don't lead the work on Lake Huron; so I haven't  
03:15:25 17 had an opportunity to work with them in that  
03:15:28 18 ecosystem context.

03:15:31 19 Q. This may be self-evident, but are  
03:15:36 20 you familiar with the Saugeen Ojibway Nation claim  
03:15:38 21 territory?

03:15:39 22 A. I am.

03:15:41 23 Q. You are?

03:15:42 24 A. Well, yes, I am. I don't want to  
03:15:44 25 be perceived as an expert but I am cognizant of the



03:15:48 1 geography that it covers.

03:15:49 2 Q. Behind you just over your shoulder  
03:15:54 3 there's a large image marked "P". That's Exhibit P  
03:15:59 4 in this trial. And it is a graphical  
03:16:05 5 representation prepared by the Plaintiffs showing  
03:16:07 6 the Saugeen Ojibway claim territory.

03:16:12 7 Does this align with your understanding  
03:16:14 8 and knowledge, or is this the first time you've  
03:16:17 9 seen it?

03:16:18 10 A. I've seen this before.

03:16:19 11 Q. Okay. So, you spoke to my friend  
03:16:23 12 earlier this afternoon about getting access for  
03:16:31 13 scientific testing. I understand that's access to  
03:16:34 14 waters in the Great Lakes?

03:16:35 15 A. Well, as I mentioned, certainly to  
03:16:38 16 the open water. But also that near-shore coastal  
03:16:44 17 interface as well. And to some degree, we need to  
03:16:49 18 understand how chemicals and nutrients are behaving  
03:16:53 19 in the watersheds, the tributaries to the lakes.

03:16:58 20 So it's -- I would capture it in those  
03:17:01 21 three ways, yes.

03:17:03 22 Q. And this is on the Canadian side  
03:17:05 23 and the U.S. side of the Great Lakes?

03:17:09 24 A. I can't speak for the U.S., and  
03:17:11 25 how they would characterize their requirement for

03:17:15 1 access. But what I would describe to you is my  
03:17:17 2 understanding of what our scientists at MECP would  
03:17:21 3 require.

03:17:21 4 Q. Are you aware of any instance  
03:17:23 5 where MECP has been unable to access the waters set  
03:17:30 6 out on Exhibit P behind you?

03:17:34 7 A. I'm not.

03:17:36 8 Q. Earlier this afternoon, you were  
03:17:40 9 talking about the Great Lakes Water Quality Board.  
03:17:45 10 And I believe you said that it is the principal  
03:17:50 11 advisor to the International Joint Commission; is  
03:17:53 12 that a scientific advisor?

03:17:56 13 A. I'll back up. The way the  
03:18:00 14 agreement, the Great Lakes Water Quality Agreement,  
03:18:03 15 is set out, it has two boards. One is the Water  
03:18:07 16 Quality Board and one is the Science Advisory  
03:18:11 17 Board. The Science Advisory Board is the principal  
03:18:14 18 science advisor to both the Water Quality Board and  
03:18:17 19 sometimes directly to the Commissioners.

03:18:21 20 So not to say that the Water Quality  
03:18:24 21 Board doesn't delve into scientific matters. My  
03:18:27 22 experience is that it does. But it is not  
03:18:31 23 comprised of scientists.

03:18:33 24 Q. And is Ontario -- sorry, the  
03:18:40 25 Ministry of the Environment, Conservation and Parks

03:18:44 1 participate then as having a representative on the  
03:18:48 2 Water Quality Board; is that right?

03:18:49 3 A. That's right. And that is the  
03:18:51 4 board that I'm closer to, but we also, within our  
03:18:54 5 ministry, have a representative on the science  
03:18:57 6 advisory board.

03:18:58 7 Q. And in terms of your role, you  
03:19:01 8 support Ontario senior executives in participation  
03:19:05 9 for the Water Quality Board?

03:19:07 10 A. That's right.

03:19:07 11 Q. So I take it you're familiar with  
03:19:10 12 the Water Quality Board and its operations?

03:19:13 13 A. I am familiar with it. Depending  
03:19:15 14 on the individual meeting, more familiar. I have  
03:19:20 15 observed several meetings but I want to -- what's  
03:19:24 16 the word -- I want to temper things by saying I  
03:19:27 17 don't attend the meetings so I don't have direct  
03:19:30 18 familiarity. But I understand the business that's  
03:19:33 19 going on while I develop support for our members.

03:19:37 20 THE COURT: Ma'am, I think the use of  
03:19:39 21 the map is over. So if you could turn around and  
03:19:42 22 point yourself toward that microphone.

03:19:45 23 THE WITNESS: Yes, sorry.

03:19:46 24 THE COURT: Thank you.

25

03:19:47 1 BY MR. BROOKWELL:

03:19:48 2 Q. And are you aware that it has an  
03:19:51 3 "Indigenous Peoples Engagement Principles and  
03:19:53 4 Practices" document?

03:19:54 5 A. I am aware of that. I believe  
03:19:57 6 it's available on the website of the International  
03:20:01 7 Joint Commission. I have some familiarity with how  
03:20:04 8 it came to be.

03:20:08 9 MR. BROOKWELL: Could we have document  
03:20:10 10 SC1693 on the screen, please.

03:20:17 11 BY MR. BROOKWELL:

03:20:17 12 Q. Is this the copy of the document  
03:20:19 13 that you were just describing?

03:20:20 14 A. It's stretched but it looks like  
03:20:22 15 it.

03:20:23 16 Q. Okay.

03:20:25 17 MR. BROOKWELL: Your Honour, can we  
03:20:26 18 have this as the next exhibit?

03:20:28 19 THE COURT: Yes. Can you describe it  
03:20:31 20 for the record.

03:20:32 21 MR. BROOKWELL: Yes. It's the  
03:20:35 22 Indigenous Peoples Engagement Principles and  
03:20:38 23 Practices of the Great Lakes Water Quality Board  
03:20:41 24 dated April 2017.

03:20:44 25 THE COURT: Thank you. Mr. Registrar.

03:20:45 1 THE REGISTRAR: Exhibit No. 4546.

03:20:48 2 EXHIBIT NO. 4546: Indigenous Peoples

03:20:36 3 Engagement Principles and Practices of

03:20:39 4 the Great Lakes Water Quality Board

03:20:41 5 dated April 2017.

03:20:56 6 BY MR. BROOKWELL:

03:20:57 7 Q. If we could scroll down. There's

03:21:07 8 a highlighted box there, if you can take a moment

03:21:09 9 to read it. And let me know when you're ready.

03:21:19 10 A. (Witness reviews document).

03:21:20 11 Yes.

03:21:21 12 Q. Can we scroll down a little

03:21:23 13 further. And there's three highlighted boxes

03:21:27 14 there. If you care to read those as well. And if

03:21:31 15 you would like to read more, please let me know and

03:21:33 16 I will ask you a question.

03:21:34 17 A. (Witness reviews document).

03:21:35 18 Okay.

03:21:53 19 Q. So, to your knowledge, have any of

03:21:55 20 the principles articulated in those highlighted

03:21:57 21 sections prevented Ontario from assisting Canada in

03:22:02 22 its implementation of the Great Lakes Water Quality

03:22:07 23 Agreement?

03:22:07 24 A. No.

03:22:08 25 Q. To your knowledge, has Indigenous

03:22:20 1 engagement with the Water Quality Board prevented  
03:22:24 2 Ontario from assisting Canada with its  
03:22:27 3 implementation of the Great Lakes Water Quality  
03:22:30 4 Agreement?

03:22:30 5 A. No.

03:22:35 6 Q. And I take it you have no  
03:22:37 7 knowledge of complaints regarding Canada or  
03:22:39 8 Ontario's fulfillment obligations under the Great  
03:22:45 9 Lakes Water Quality Agreement on the basis of  
03:22:48 10 including Indigenous participation?

03:22:50 11 A. No.

03:22:57 12 Q. Could we turn to Exhibit 4535,  
03:23:00 13 please. This is "Lake Huron, Lakewide Action and  
03:23:14 14 Management Plan". And I'd like to take you to a  
03:23:19 15 page, Roman Numeral two, which is page 2 of the  
03:23:26 16 PDF.

03:23:27 17 If we can zoom in on the highlighted  
03:23:30 18 box. And if you just take a moment to review that.

03:23:48 19 A. (Witness reviews document).

03:23:52 20 Okay.

03:23:53 21 Q. So you'll agree with me that, at  
03:23:57 22 least for the U.S. side, the partnership agencies  
03:24:04 23 include tribes and tribal organizations?

03:24:06 24 A. Yes.

03:24:07 25 Q. To your knowledge, it was the Lake

03:24:20 1 Huron partnership, if I understand, prepared the  
03:24:26 2 LAMP? Maybe I'll back this up.

03:24:26 3 The Lake Huron partnership prepared the  
03:24:29 4 LAMP; is that right?

03:24:30 5 A. Yes, led by Canada and the United  
03:24:33 6 States.

03:24:33 7 Q. And to your knowledge, were they  
03:24:42 8 impaired in preparing that document by the  
03:24:44 9 participation of tribe and tribal organizations?

03:24:46 10 A. Not that I'm aware of.

03:24:49 11 Q. So today you've talked about some  
03:24:52 12 international agreements, some sub national  
03:24:55 13 agreements, which have to do with Ontario, and  
03:24:59 14 programs that Ontario is part of.

03:25:03 15 And these have all been geared toward  
03:25:06 16 protection and conservation and restoration of the  
03:25:08 17 waters in the Great Lakes. Is that a fair summary  
03:25:11 18 of what you've been talking about today?

03:25:13 19 A. Can you repeat that?

03:25:19 20 Q. So you talked about international  
03:25:22 21 agreements, sub national agreements and Ontario  
03:25:24 22 programs. And these are all geared toward the  
03:25:28 23 protection and conservation and restoration of  
03:25:31 24 waters in the Great Lakes; is that a fair summary?

03:25:34 25 A. That, but in a number of cases

03:25:37 1 also I would add the dimension of sustainable  
03:25:41 2 economic development.

03:25:42 3 Q. Okay.

03:25:43 4 A. Yeah.

03:25:43 5 Q. So, with that in mind, that you  
03:25:50 6 talked about that today, including sustainable  
03:25:53 7 economic development, based on your knowledge and  
03:25:55 8 experience, you'll agree with me that Ontario  
03:26:01 9 strives to cooperate and consult with First Nations  
03:26:05 10 in that effort?

03:26:07 11 A. Yes.

03:26:07 12 Q. And to your knowledge, you're not  
03:26:11 13 aware of any instances where cooperation,  
03:26:14 14 consultation has prevented Ontario from assisting  
03:26:17 15 Canada in implementing the agreements we've talked  
03:26:21 16 about today?

03:26:21 17 A. I'm not aware of any.

03:26:23 18 Q. And to your knowledge, you're not  
03:26:24 19 aware of any instances where such cooperation and  
03:26:27 20 consultation has prevented Ontario from  
03:26:29 21 implementing the sub national agreements and  
03:26:33 22 programs we talked about today?

03:26:34 23 A. No, not prevented.

03:26:37 24 Q. You have no knowledge of  
03:26:39 25 complaints regarding Canada or Ontario's



03:26:41 1 fulfillment of the obligations in those agreements  
03:26:45 2 that we've talked about today, based on Indigenous  
03:26:49 3 participation?

03:26:49 4 A. No.

03:26:56 5 MR. BROOKWELL: Thank you, Ms. O'Neill.  
03:26:57 6 Those are my questions.

03:26:58 7 THE COURT: Mr. Feliciant?

03:27:00 8 MR. FELICIAN: No questions, Your  
03:27:02 9 Honour.

03:27:02 10 THE COURT: Thank you. Thank you very  
03:27:03 11 much. You can step out of the witness box.

03:27:07 12 Mr. Feliciant, Ms. Lapan, whoever wants  
03:27:10 13 to answer some scheduling questions.

03:27:24 14 (Ms. O'Neill was excused from the  
03:27:28 15 proceedings).

03:27:28 16 THE COURT: So where are we then, sir?

03:27:33 17 MR. FELICIAN: That's our last witness  
03:27:34 18 for the week.

03:27:37 19 We sent an e-mail to all parties  
03:27:39 20 concerned with respect to the trial management  
03:27:41 21 conference tomorrow at 10:00, and provided the  
03:27:46 22 call-in numbers.

03:27:46 23 Nobody appears to have a problem with  
03:27:49 24 that time. We let them know that if they did have  
03:27:52 25 a problem, they should let us know by 2:15 and we

1 didn't hear, so I think we're good for tomorrow.

2 Next week I understand we're not  
3 sitting, and then our next witness as I understand  
4 is Mr. Sikma.

5 THE COURT: All right. If not, you  
6 have until tomorrow at 10:00 to, all of you, be  
7 ready to talk about ensuring that the trial  
8 schedule commencing on that day is full in  
9 February. That was the main topic of that case  
10 conference.

11 So if you haven't got it done yet, you  
12 have a few extra hours to get it done, all right?

13 MR. FELICIAN: Okay.

14 THE COURT: Anything else anyone needs  
15 to raise at this time? Mr. Feliciant?

16 MR. FELICIAN: No, not from our end.

17 THE COURT: Looking at Ms. Guirguis.

18 MS. GUIRGUIS: Nothing from us, Your  
19 Honour.

20 MR. ENNIS: No, Your Honour.

21 THE COURT: All right. We'll adjourn  
22 then. What is the date a week Monday? February  
23 the 3rd, Mr. Registrar?

24 THE REGISTRAR: It's February 27th --  
25 January 27th.

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MR. FELICIAN: I think it's

February 3rd.

THE COURT: I'm looking at a calendar

on the monitor.

MR. FELICIAN: It's February 3rd.

THE COURT: It is February 3rd, I was

right after all.

All right. Thank you, Ontario, for

organizing the case conference for tomorrow.

MR. FELICIAN: Thank you.

THE COURT: All right.

-- Court adjourned at 3:30 p.m.

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REPORTER'S CERTIFICATE

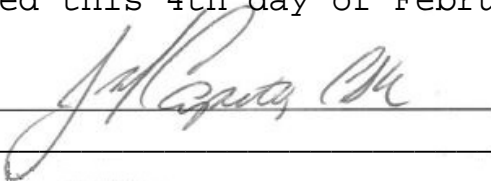
I, JUDITH M. CAPUTO, RPR, CSR, CRR,  
Certified Shorthand Reporter, certify;

That the foregoing proceedings were  
taken before me at the time and place therein set  
forth at which time the witness was put under oath  
by the court registrar;

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

That the foregoing is a Certified  
Transcript of my shorthand notes so taken.

Dated this 4th day of February, 2020.



\_\_\_\_\_

NEESONS, A Veritext Company

PER: JUDITH M. CAPUTO, RPR, CSR, CRR

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<b>11</b> 10116:15	<b>1999</b> 10169:25 10170:3	<b>21</b> 10112:17	<b>4531</b> 10063:3,4 10082:18 10158:20	<b>50</b> 10139:15
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