

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

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VOL 25 DAY 25  
July 10, 2019

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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

Plaintiffs

7 - and -

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

Defendants

17 Court File No. 03-CV-261134CM1

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

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

Plaintiffs

21 - and -

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

Defendants

24 -----  
25 --- This is VOLUME 25 / DAY 25 of the  
transcript of the trial proceedings in the  
above-noted matter, being held at the Superior  
Court of Justice, 330 University Avenue,  
Courtroom 5-2, Toronto, Ontario, on the 10th day  
of July 2019.

26 B E F O R E:

The Honourable Justice Wendy M. Matheson

1       A P P E A R A N C E S :

2       H.W. Roger Townshend, Esq.,       for the Plaintiffs,  
3       & Benjamin Brookwell, Esq.,       The Chippewas of  
4   Saugeen First  
5   Nation, and the  
6   Chippewas of Nawash  
7   First Nation.

8  
9       Michael Beggs, Esq.,               for the Defendant,  
10       & Michael McCulloch, Esq.,       Attorney General  
11       & Barry Ennis, Esq.,               of Canada.

12  
13  
14       David Feliciant, Esq.,           for the Defendant,  
15       & Jennifer Le Pan, Esq.,       Her Majesty the  
16       & Richard Ogden, Esq.,       Queen in Right of  
17       & Julia McRandall, Esq.,       Ontario.

18  
19       Also appearing:

20       Amanda Benson  
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I N D E X

PAGE

WITNESS: MARY ANN CORBIERE

Cross-Examination by Ms. Le Pan.....2496

Re-Examination by Mr. Townshend.....2539

Discussion on scheduling.....2546

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
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19  
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21  
22  
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INDEX OF EXHIBITS

NO. /	DESCRIPTION	PAGE
4101	Full text of "In Other Words: A Coursebook on Translation" by Mona Baker. Document number SC0727.	2498
4102	Chapter from "Translation and Language: Linguistic Theories Explained" by Peter Fawcett. Document number S0566.	2525
G(1)	Volume 3 of Gwen Reimer's expert report. Document number SC0752.	2536

1 --- Upon commencing at 10:02 a.m.

2 THE COURT: Just before we begin, I  
3 did receive in my office yesterday a stack of  
4 material from the plaintiffs and from Canada.  
5 Am I right that I should not expect anything  
6 from Ontario, Ms. Le Pan?

7 MS. LE PAN: Yes, you will not be  
8 receiving anything --

9 THE COURT: Is Ontario taking a  
10 position?

11 MS. LE PAN: I believe Ontario will be  
12 supporting Canada's motion.

13 THE COURT: But not delivering  
14 supplementary materials?

15 MS. LE PAN: Yes.

16 THE COURT: All right.

17 MARY ANN CORBIERE:

18 PREVIOUSLY AFFIRMED.

19 CROSS-EXAMINATION BY MS. LE PAN:

20 (continued)

21 Q. Good morning, Professor Corbiere.  
22 You stated yesterday that the meaning of some  
23 words varies based on the context in which they  
24 are used, is that right?

25 A. Yes.

1 Q. And would you agree with me that  
2 a person's knowledge and previous experiences  
3 can also affect the words that they use or how  
4 they understand a word?

5 A. May I hear the question again,  
6 please?

7 Q. Of course. Do you agree that a  
8 person's knowledge and previous experiences can  
9 affect what words they use and how they  
10 understand words?

11 A. Yes, it would. Yes, they would.

12 Q. And would you agree that a  
13 person's expectations can also affect how they  
14 convey a message or how they understand a word  
15 or a text?

16 A. That part, it seems to me --  
17 yeah, I don't know that expectations of the  
18 person would affect the word they use. That  
19 possibility has never occurred to me.

20 Q. Okay. I'm going to take you to a  
21 document, and perhaps that will impact your  
22 thinking. So if we could pull up document  
23 SC0727? This is the full text of the document  
24 titled "In Other Words: A Coursebook on  
25 Translation" by Mona Baker. And you reference

1 one chapter of this book at various points in  
2 your report. Do you recognize this document?

3 A. The title is recognizable, the  
4 design is different.

5 Q. And you would recognize Mona  
6 Baker as an authoritative source?

7 A. I take her to be one of the  
8 presumably several authoritative sources.

9 Q. Your Honour, I would ask that  
10 this be marked as the next exhibit.

11 THE COURT: Any objection?  
12 Mr. Registrar.

13 THE REGISTRAR: Exhibit number 4101.

14 EXHIBIT NO. 4101: Full text of "In  
15 Other Words: A Coursebook on  
16 Translation" by Mona Baker. Document  
17 number SC0727.

18 BY MS. LE PAN:

19 Q. So I want to turn to page 219 of  
20 this document. And I'm going to read from the  
21 beginning of the last paragraph. So if we could  
22 scroll down a little bit. There we go:

23 "[...] the coherence of a text is  
24 a result of the --"

25 I have the wrong reference, excuse me.



1 If we could turn to page 222? Starting where  
2 it's highlighted, I'll read:

3 "Like any writer, a translator  
4 has to take account of the range of  
5 knowledge available to his/her target  
6 readers and of the expectations they  
7 are likely to have about such things  
8 as the organization of the world, the  
9 organization of language in general,  
10 the organization and conventions of  
11 particular texts types, the structure  
12 of social relations, and the  
13 appropriateness or inappropriateness  
14 of certain kinds of linguistic and  
15 nonlinguistic behaviour, among other  
16 things. These are all factors which  
17 affect the coherence of a text in  
18 varying degrees because, as human  
19 beings, we can only make sense of new  
20 information in terms of our own  
21 knowledge, beliefs and previous  
22 experiences of both linguistic and  
23 nonlinguistic elements (sic)."

24 Would you agree with that?

25 A. Yes, the -- when it says -- when

10:07:21 1 it's talking about the expectations, it seems to  
10:07:24 2 refer to the expectations of the people who  
10:07:29 3 would be hearing a translation. So in that  
10:07:39 4 regard, a professional translator would  
10:07:43 5 certainly take into consideration those factors  
10:07:53 6 identified in that sentence.

10:07:55 7 Q. Thank you. And would you agree  
10:07:59 8 with me that the type of document or setting in  
10:08:04 9 which a word is used can impact how it's  
10:08:08 10 translated or understood?

10:08:14 11 A. May I hear that question again,  
10:08:15 12 please?

10:08:16 13 Q. Of course. Would you agree with  
10:08:18 14 me that the type of document or setting in which  
10:08:24 15 a word is used can impact how it is translated  
10:08:30 16 or understood?

10:08:44 17 A. May I hear that one more time,  
10:08:45 18 please?

10:08:46 19 Q. Of course. Would you agree with  
10:08:48 20 me that the type of document or the setting in  
10:08:55 21 which a word is used can impact how that word is  
10:09:03 22 translated or understood? If it would be  
10:09:08 23 helpful, I can provide an example.

10:09:11 24 A. Perhaps that would help.

10:09:12 25 Q. Okay. So, for example, a word or

1 a phrase in a poem that might be translated or  
2 understood differently than if that word or  
3 phrase was used in a scientific article.

4 A. That would be possible and,  
5 again, would depend on the word involved because  
6 in poetry, poetry serves quite a different  
7 purpose as opposed to the purposes that a  
8 scientific article or a legal document would  
9 serve.

10 Q. So perhaps it's better to say  
11 that based on the purpose of a document, that  
12 can affect how a word in that document is  
13 understood or translated?

14 A. Okay, are we talking about the  
15 original word in the source text or the word or  
16 phrase that is the translation of a particular  
17 word or phrase in the source document?

18 Q. Both.

19 A. Okay. So looking at the source  
20 document, the translator would be -- a  
21 professional translator today would want to  
22 ensure that he or she understands the meaning  
23 the word has as used in that source document he  
24 or she is looking at.

25 After he or she translates it in a

10:11:18 1 manner that he or she feels is most appropriate,  
10:11:26 2 most logical or most -- or matches the effect --  
10:11:31 3 so in the case of poetry, for example, and I  
10:11:37 4 wish some points came to mind quickly or some  
10:11:41 5 lines of a poem.

10:11:46 6 Okay. Whatever very eloquent,  
10:11:49 7 beautiful line in an English poem, there would  
10:11:56 8 be a translator who would endeavour to translate  
10:12:02 9 that and to retain the impact that the English  
10:12:06 10 wording has on the English reader of the English  
10:12:09 11 poem.

10:12:09 12 The translator would want -- would try  
10:12:12 13 to ensure that the translation has the same, I  
10:12:16 14 guess you might say, emotional resonance, or  
10:12:26 15 depending on the -- what the poem is exactly, if  
10:12:28 16 it's trying to create some beautiful imagery or  
10:12:32 17 whatever kind of imagery, that the wording in  
10:12:34 18 the translation creates the same kind of impact.

10:12:45 19 Now, what happens -- how successful  
10:12:47 20 that is would also depend on the kind of  
10:12:53 21 practice, cultural practices in which the  
10:12:55 22 speakers of the target of the language into  
10:12:59 23 which this poem is being translated with regard  
10:13:04 24 to the kinds of cultural activities in which  
10:13:07 25 they engage.

10:13:09 1 So if poetry, as understood in the  
10:13:15 2 English language, as it's performed in the  
10:13:19 3 English language, if that is not a common  
10:13:24 4 cultural practice in the target language, the  
10:13:29 5 language into which a poem is being translated,  
10:13:32 6 it would be hard to say how the hearers or  
10:13:37 7 readers of the poem, of the translated poem, how  
10:13:43 8 that would come across to them if the practice  
10:13:50 9 of writing poetry, of reading poetry in their  
10:13:54 10 language, in the target language is something  
10:13:56 11 quite foreign in which there really is not a  
10:14:01 12 body of literature called "poetry" that would  
10:14:06 13 match poetry as conceptualized in the English  
10:14:11 14 language.

10:14:12 15 Q. Thank you.

10:14:14 16 So I would like to pull up a document,  
10:14:16 17 SC0750. This is the full text of a book titled  
10:14:27 18 "Introducing Translation Studies, Theories and  
10:14:31 19 Applications" by Jeremy Munday. And I want to  
10:14:36 20 turn to page 142 of that book and read you a  
10:14:38 21 portion of it, and then I'll ask you a question.

10:14:41 22 So if we look under heading 6.1,  
10:14:43 23 Munday describes the Hallidayan model of  
10:14:54 24 language and discourse, which is based on a  
10:14:56 25 systematic functional linguistics.

1 And if we turn to the next page, we  
2 see a diagram that illustrates the factors which  
3 the Hallidayan model say influence what words an  
4 individual chooses or what -- sorry, what  
5 factors impact the words an individual chooses  
6 or how words are understood. And at the top of  
7 the diagram it states, "sociocultural  
8 environment", do you see that?

9 A. Yes, I do.

10 Q. And I want to read now from the  
11 top of the second paragraph on that page.

12 Munday writes:

13 "The direction of influence is  
14 top down. Thus, the sociocultural  
15 environment in which the text operates  
16 is the highest level. This will  
17 include the conventions operating at  
18 the time and place of text production,  
19 as well as social and cultural  
20 factors. It will reflect any  
21 political, historical or legal  
22 conditions."

23 Do you agree that the sociocultural  
24 environment, including things like social,  
25 cultural, political and historical factors can

10:16:18 1 impact what word an individual chooses to use to  
10:16:21 2 convey a message?

10:16:27 3 A. A professional translator of  
10:16:29 4 today who has received professional training of  
10:16:34 5 the type available presumably would be -- would  
10:16:43 6 take those various things into consideration.

10:16:49 7 Q. Okay. I think maybe I wasn't  
10:16:51 8 clear with my question. I'm saying that when  
10:16:54 9 somebody chooses their words to convey a  
10:16:59 10 message, do you agree that the sociocultural  
10:17:02 11 factors, things like the historical context,  
10:17:07 12 political factors, those would impact what word  
10:17:11 13 they choose to use?

10:17:16 14 A. Yeah, I'll finish my thought.  
10:17:19 15 When I say take into consideration -- yes, and  
10:17:23 16 in the end the translator would then determine  
10:17:30 17 what word or phrases he or she should use.

10:17:36 18 Q. Okay. And so are you saying that  
10:17:38 19 translators without the professional training  
10:17:42 20 that's available today would not take into  
10:17:45 21 consideration things like the sociocultural  
10:17:48 22 environment?

10:17:50 23 A. I believe that given the lack of  
10:17:52 24 professional training, they would probably not  
10:17:57 25 be aware that the -- some or many of these

1 various factors could be influencing or should  
2 be taken into consideration how they translate a  
3 word or a phrase.

4 Q. Would you agree with me that the  
5 relationship between parties can impact how a  
6 message is communicated or understood as between  
7 those two parties?

8 A. Can you give me an example of the  
9 two parties that might be involved?

10 Q. So, for example, let's take an  
11 easy example, a mother and a child.

12 A. Okay. With that example, may I  
13 hear the question again?

14 Q. Yeah. Would you agree with me  
15 that the relationship between parties can impact  
16 how a message is communicated or understood as  
17 between those parties?

18 A. One more time, please?

19 Q. Would you agree with me that the  
20 relationship between parties can impact how a  
21 message is communicated or understood as between  
22 those parties?

23 A. Well, certainly when we think of  
24 a specific example as a mother and child --  
25 okay, can I hear this one more time?



10:19:43 1 Q. Of course. Would you agree with  
10:19:44 2 me that the relationship between parties can  
10:19:49 3 impact how a message is communicated or  
10:19:56 4 understood as between those parties?

10:20:00 5 A. Okay, so the example you've  
10:20:00 6 given, I take it, the full scenario would be a  
10:20:10 7 mother translating something for her child?

10:20:12 8 THE COURT: Am I missing something,  
10:20:14 9 counsel? I don't want to interfere with your  
10:20:18 10 cross-examination, but the witness was not asked  
10:20:20 11 about translation.

10:20:22 12 MS. LE PAN: Yes, thank you.

10:20:24 13 THE COURT: And I think if you want to  
10:20:25 14 ask about translation, you should say so. If  
10:20:30 15 you don't, then it would be helpful to the  
10:20:32 16 witness to be clear with her that she is not  
10:20:35 17 being asked about translation. So if you could  
10:20:37 18 just make that clear and then re-ask your  
10:20:39 19 question whether you are or are not asking about  
10:20:41 20 translation?

10:20:42 21 MS. LE PAN: Thank you.

10:20:43 22 BY MS. LE PAN:

10:20:44 23 Q. So I am not asking about  
10:20:45 24 translation. I'm just asking about when  
10:20:48 25 messages are conveyed between two people.

10:20:51 1 So let's take the translator out of  
10:20:52 2 the situation for a second. And if we imagine a  
10:20:57 3 mother communicating with a daughter or a  
10:21:01 4 businessperson communicating with somebody else  
10:21:05 5 that they often do business with, I'm asking  
10:21:08 6 about whether or not the relationships between  
10:21:13 7 those two parties, so, for example, the previous  
10:21:17 8 interactions that they've had, things like that,  
10:21:21 9 if that can impact how those two parties  
10:21:25 10 communicate messages between each other.

10:21:32 11 A. I don't know that the  
10:21:34 12 relationship would be having any significant  
10:21:41 13 degree of impact.

10:21:50 14 Q. Would you agree that previous  
10:21:52 15 interactions between two parties could lead to  
10:21:57 16 them having certain expectations of the other  
10:22:01 17 party? Again, I'm not talking about  
10:22:04 18 translation.

10:22:19 19 A. I just find some of the terms in  
10:22:20 20 there just too general to be able to answer  
10:22:23 21 that, such as "expectations".

10:22:40 22 Q. Are you familiar with the term  
10:22:42 23 "implicature"?

10:22:47 24 A. I've heard it. I would want to  
10:22:50 25 double-check definitions of its meaning to be

10:22:53 1 sure that what I think it means, from my seeing  
10:22:59 2 it in context -- in a few contexts that I have a  
10:23:04 3 proper understanding of it.

10:23:05 4 Q. Okay. Let's pull up Exhibit  
10:23:09 5 4101, which is the Baker text again. And if we  
10:23:24 6 turn to page 223, I am going to read from about  
10:23:26 7 the third paragraph down.

10:23:32 8 And starting there where it's  
10:23:33 9 highlighted, it says:

10:23:35 10 "One of the most important  
10:23:36 11 notions which has emerged in text  
10:23:38 12 studies in recent years is that of  
10:23:40 13 implicature, the question of how it is  
10:23:43 14 that we come to understand more than  
10:23:45 15 is actually said. Grice (1975) uses  
10:23:50 16 the term 'implicature' to refer to  
10:23:52 17 what the speaker means or implies  
10:23:54 18 rather than what s/he literally says."

10:24:02 19 Does that accord with your  
10:24:03 20 understanding of the term "implicature"?

10:24:05 21 A. That's what I assumed it means.

10:24:08 22 Q. And are you familiar with the  
10:24:10 23 term "explanatory coherence"?

10:24:20 24 A. I don't recall having -- coming  
10:24:22 25 across that particular phrase.

10:24:33 1 Q. So if we go up just a little bit  
10:24:35 2 in the second paragraph there, here Baker is  
10:24:39 3 speaking about explanatory coherence. You're  
10:24:43 4 saying you're not familiar with that term?

10:24:45 5 A. I'm saying that I don't recall  
10:24:47 6 having come across it.

10:25:01 7 Q. Okay. So you stated earlier that  
10:25:02 8 things like the social, historical, the  
10:25:04 9 political context, the sociocultural environment  
10:25:07 10 that we spoke about earlier, those can impact  
10:25:14 11 how a word is conveyed or understood as between  
10:25:19 12 two parties?

10:25:25 13 A. Yes, I believe that to be the  
10:25:26 14 case.

10:25:26 15 Q. So you would agree that these are  
10:25:27 16 all important considerations when determining  
10:25:29 17 how to translate a document or text?

10:25:34 18 A. A professional translator today,  
10:25:37 19 ^yes, would need to be mindful of those various  
10:25:43 20 things.

10:25:46 21 Q. I think we're done with this  
10:25:47 22 document so you can just put it down.

10:25:52 23 And the failure of a translator to  
10:25:55 24 consider these things, the sociocultural  
10:25:58 25 environment or the parties' knowledge, those

1 could affect the accuracy of the translation, is  
2 that right?

3 A. Again, depending on the words or  
4 phrases involved.

5 Q. For the purposes of your report  
6 did you review any of the historical expert  
7 reports that were prepared for this proceeding?

8 A. When you say "historical", what  
9 do you mean?

10 Q. I'll make the question more easy  
11 to understand. Did you review any of the  
12 reports that were prepared for this proceeding?

13 THE COURT: You mean the expert  
14 reports?

15 BY MS. LE PAN:

16 Q. The expert reports, excuse me,  
17 yes.

18 THE COURT: Other than her own?

19 BY MS. LE PAN:

20 Q. Other than your own. Thank you.

21 A. The one -- I'm not sure if  
22 it's -- I guess it's classed as an "expert  
23 report", that I saw pertained to the person who  
24 was discussing -- it was a very long report, and  
25 I really can't remember what it was about or its

10:27:28 1 details, and I didn't read all of it, but it was  
10:27:37 2 in relation -- I did it in relation to the  
10:27:42 3 second report -- the additional questions.

10:27:47 4 Q. Was it the report of P.G. McHugh?

10:27:51 5 A. I don't recall the name. The  
10:27:54 6 report -- yeah, seemed to do with the question  
10:28:03 7 of the -- of "forever", to the best of my  
10:28:07 8 recollection. And I can't remember names of  
10:28:12 9 authors.

10:28:12 10 Q. Thank you. But you didn't review  
10:28:14 11 any other expert reports in this proceeding,  
10:28:16 12 again, outside of your own and the one you've  
10:28:19 13 just mentioned?

10:28:30 14 A. To my recollection, no.

10:28:31 15 Q. And did you review any  
10:28:32 16 documentation regarding the day of the  
10:28:33 17 negotiations of Treaty 45, 45 1/2 or 72 which  
10:28:39 18 provided information about who was at the  
10:28:41 19 negotiations, who spoke Anishinaabemowin or  
10:28:45 20 English, how many translators were present or  
10:28:49 21 the process of the negotiations?

10:28:55 22 A. I have a recollection of seeing  
10:28:57 23 something with that information, that kind of  
10:29:04 24 information. I can't remember exactly the kind  
10:29:06 25 of information that was contained in what I

1 read, but I don't have a very clear recollection  
2 of exactly, in detail what I read.

3 Q. And what you read, it's not  
4 listed on page 30 of your report where you  
5 outline the research you conducted or the  
6 documents that you referenced?

7 A. May I check?

8 Q. I can pull up -- yes, page 30 of  
9 your report, of course. So if you could go to  
10 --

11 THE COURT: The witness has her report  
12 right in front of her, counsel. You can pull it  
13 up if you want, but she just wants to look for  
14 it, and she's doing that right now.

15 MS. LE PAN: Thank you.

16 THE WITNESS: None of the references  
17 I've listed sound like they would have been that  
18 material.

19 BY MS. LE PAN:

20 Q. So previously when you said that  
21 section was complete, there may have been one  
22 thing that was missing from there?

23 A. I always find it -- I guess I was  
24 unsure what to include as references. I took --  
25 I assumed that the practice was references that

1 I cited within the report itself. And to my  
2 recollection, I don't know -- I would have to go  
3 through the report if anywhere in my report I  
4 cited that other document.

5 Q. And you don't have any memory  
6 about what document it was?

7 A. Unfortunately, no.

8 Q. Do you have any memory of the  
9 content of that document? What it discussed?

10 A. I have a -- I have some  
11 recollection of a very small part of it.

12 Q. And do you have any recollection  
13 if you reviewed that document specifically for  
14 the purposes of preparing your report?

15 A. I think, as with any research,  
16 you scan materials to see if they contain  
17 anything that would be germane to your analysis.  
18 So if I didn't cite it -- so when I read it, it  
19 would have been to see, is there anything in  
20 here that is germane to my analysis?

21 And if I didn't include it -- if I  
22 didn't cite it, then I guess I figured that this  
23 is not so germane.

24 Q. Did you review any journal  
25 entries or reports prepared by missionaries with



10:32:50 1 respect to the process surrounding the signing  
10:32:52 2 of Treaty 45 and 45 1/2?

10:32:54 3 A. I don't recall seeing anything  
10:32:58 4 written by missionaries on that point.

10:33:07 5 Q. Did you do any research to look  
10:33:08 6 for any documentation from missionaries on that  
10:33:11 7 point?

10:33:21 8 A. Not on that specific point.

10:33:24 9 Q. And are you aware of who David  
10:33:26 10 Sawyer and Charles Keeshick are?

10:33:37 11 A. My awareness of them comes from  
10:33:39 12 yesterday from seeing -- ^having it pointed out.

10:33:42 13 Q. And did you review any  
10:33:45 14 communications between Crown officials and the  
10:33:49 15 Saugeen Ojibwe Nation from before or after the  
10:33:53 16 treaties were signed on the subject of the  
10:33:55 17 treaties?

10:34:00 18 A. That specific one I don't recall.

10:34:05 19 Q. You don't recall whether or not  
10:34:06 20 you reviewed communications?

10:34:08 21 A. Right.

10:34:08 22 Q. Do you recall whether or not you  
10:34:10 23 did any specific research to look for documents  
10:34:12 24 that detailed communications between Crown  
10:34:16 25 officials and the SON?

10:34:27 1 A. Again, I don't recall. I think I  
10:34:29 2 can say I don't think I did.

10:34:37 3 Q. Did you review Treaty 67 of 1851  
10:34:41 4 for the purposes of preparing your report?

10:34:49 5 A. That's a different treaty from  
10:34:51 6 what this report is about, right?

10:34:54 7 Q. Yes, it is.

10:34:55 8 A. Yeah, offhand, I don't know what  
10:34:58 9 Treaty 67 is, and to my recollection I don't  
10:35:00 10 recall reading such a treaty.

10:35:06 11 Q. Are you aware that Treaty 67 is  
10:35:08 12 referenced in Treaty 72?

10:35:13 13 A. I would have to read the thing  
10:35:14 14 again. I don't recall.

10:35:17 15 Q. Off the top of your head?

10:35:19 16 A. Yes, specific minute details of  
10:35:21 17 the many documents I've read.

10:35:33 18 Q. And so it's safe to say you  
10:35:34 19 didn't research the implementation of Treaty 67  
10:35:36 20 and the impact that treaty might have had on the  
10:35:40 21 SON's harvesting rights?

10:35:50 22 A. That seems to have been probably  
10:35:51 23 the case.

10:35:59 24 Q. And did you conduct any research  
10:36:01 25 regarding the extent of SON's knowledge and

1 familiarity with land sale surrenders when they  
2 signed the treaties, including land sale  
3 surrenders entered into by neighbouring First  
4 Nations?

5 A. Would it be useful for me to know  
6 what "SON's" refers to? I don't recognize that  
7 word.

8 Q. That's my mistake. When I say  
9 SON I mean the Saugeen Ojibwe Nation.

10 A. Oh, okay. Now may I hear the  
11 question again?

12 Q. Of course. Did you consider the  
13 extent of SON's knowledge and familiarity with  
14 land sale surrenders when they signed the  
15 treaties, including land sale surrenders entered  
16 into by neighbouring First Nations?

17 A. One more time, please?

18 Q. Did you consider or research the  
19 extent of SON's knowledge and familiarity with  
20 land sale surrenders when they entered into the  
21 treaties, including land sale surrenders entered  
22 into by neighbouring First Nations?

23 A. To my recollection, I did not.

24 Q. Did you conduct any research into  
25 Indian centralization policies around the time

10:37:31 1 that Treaty 45, 45 1/2 or Treaty 72 were signed?

10:37:43 2 A. What kind of things would be  
10:37:46 3 referred to under Indian centralization  
10:37:50 4 policies?

10:37:52 5 Q. So by that I mean did you review  
10:37:54 6 or research policies with respect to bringing  
10:37:59 7 First Nations from the surrounding Upper Great  
10:38:02 8 Lakes area to one central location?

10:38:13 9 A. The knowledge I have of those  
10:38:15 10 policies comes from knowledge I have acquired in  
10:38:20 11 the course of my tenure in the department of  
10:38:24 12 Indigenous studies. So I did not research it  
10:38:32 13 specifically with the idea of specifically  
10:38:37 14 considering it in relation to the report.

10:38:45 15 Q. And did you consider that  
10:38:46 16 knowledge when you prepared the report?

10:38:52 17 A. Okay, the knowledge concerning  
10:38:53 18 the centralization policies?

10:38:55 19 Q. Yes.

10:39:01 20 A. If I may, I'll tell you the  
10:39:03 21 general understanding I have of those policies  
10:39:07 22 and then answer the question.

10:39:10 23 My general understanding was just  
10:39:12 24 that -- well, one part of it was at one point  
10:39:17 25 people -- the colonial government, I guess, was

10:39:22 1 wanting all Indians to be moved to Manitoulin  
10:39:27 2 Island, for Manitoulin Island to be the reserve.  
10:39:36 3 So that's the -- I guess that's the piece of  
10:39:38 4 information that most readily comes to mind  
10:39:41 5 about such policies.

10:39:44 6 Sorry, in explaining that I have lost  
10:39:48 7 track of the question. May I hear the question  
10:39:50 8 again?

10:39:52 9 Q. Of course. Did you take into  
10:39:55 10 consideration that understanding when you  
10:39:59 11 prepared your report? Did that impact your  
10:40:02 12 report? ^Is a more precise way of saying that.

10:40:10 13 A. As I think about the kinds of  
10:40:12 14 information that I would have thought were  
10:40:15 15 germane to the analysis I needed to do to answer  
10:40:19 16 the questions that were presented to me, that I  
10:40:23 17 was asked to address in the report, it would  
10:40:28 18 seem that -- it seems I would have thought that  
10:40:35 19 that particular information would not have been  
10:40:40 20 directly germane to the report.

10:40:47 21 Q. And did you research if any  
10:40:49 22 missionaries were present at the negotiations  
10:40:51 23 and signing of Treaty 45, 45 1/2 and 72 and if  
10:40:55 24 they spoke English?

10:41:03 25 A. My knowledge about the presence

1 of missionaries came from information that  
2 was -- that was -- that I came across or was  
3 provided to me. So in the sense of me  
4 specifically, purposely going and researching  
5 were there any missionaries there, that I did  
6 not do.

7 Q. So I'm going to shift gears now a  
8 bit. I'd like you to assume for a moment that  
9 there were hours of negotiations which took  
10 place in which the Saugeen Ojibwe Nation and the  
11 Crown officials communicated back-and-forth to  
12 negotiate the terms of the treaties prior to  
13 each treaty being signed.

14 Would you agree that this would have  
15 impacted the Saugeen Ojibwe Nation's  
16 understanding of the treaties?

17 A. May I hear that one more time,  
18 please?

19 Q. I'd like you to assume for a  
20 moment that there were hours of discussions  
21 which took place in which the Saugeen Ojibwe  
22 Nation and Crown officials communicated  
23 back-and-forth to negotiate the terms of the  
24 treaty.

25 THE COURT: That was the assumption,

10:42:42 1 counsel. I haven't heard the question. The  
10:42:44 2 witness is waiting for you.

10:42:46 3 BY MS. LE PAN:

10:42:46 4 Q. Would you agree that this  
10:42:47 5 would -- would have impacted the Saugeen Ojibwe  
10:42:49 6 Nation's understanding of the treaties?

10:42:57 7 A. That would be hard for me to say  
10:42:59 8 without knowing exactly what was discussed. And  
10:43:06 9 if there were any impact, the impact likely  
10:43:14 10 would have been on their decision in the end.

10:43:25 11 Whether it impacted their  
10:43:26 12 understanding, yeah, it depends on what was  
10:43:29 13 discussed, if the discussions included questions  
10:43:32 14 such as, what do they mean by this? And then if  
10:43:38 15 the meaning of something was clarified, then  
10:43:45 16 that would have impacted understanding of  
10:43:49 17 particular parts of the treaty, presumably.

10:43:55 18 Q. Thank you. And now I'd like you  
10:43:58 19 to assume that there were multiple translators  
10:44:01 20 present at the signing of Treaty 45, 45 1/2 and  
10:44:06 21 72, with the Crown having a translator and the  
10:44:11 22 Saugeen Ojibwe Nation having at least one and  
10:44:14 23 possibly two translators of their own.

10:44:21 24 Would you agree that in these  
10:44:23 25 circumstances that I've described the presence

1 of more translators fluent in English and  
2 Anishinaabemowin would increase the likelihood  
3 of an accurate translation of the treaties?

4 A. That would depend, in my view, on  
5 the knowledge base of those -- of all those  
6 translators.

7 Q. What do you mean by "knowledge  
8 base"?

9 A. What knowledge they have  
10 concerning the words they're encountering in the  
11 document and the implications of certain words.

12 Q. I'd now like you to assume that  
13 the Saugeen Ojibwe Nation had spoken with other  
14 Anishinaabe peoples from the area regarding  
15 treaties which were being made in the  
16 surrounding area, and those other people had  
17 explained those treaties to the Saugeen Ojibwe  
18 Nation in Anishinaabemowin.

19 And I'd also like you to assume that  
20 they explained to the Saugeen Ojibwe Nation the  
21 impact of the treaties on the relevant lands,  
22 including the arrival of nonIndigenous settlers  
23 who occupied increasingly large portions of the  
24 lands and cleared farms, established towns.

25 Would you agree that this would have



1 informed the Saugeen Ojibwe Nation's  
2 understanding of the terms of the treaty,  
3 treaties?

4 A. One more time, please?

5 Q. I'd like you to assume that the  
6 Saugeen Ojibwe Nation had spoken with other  
7 Anishinaabemowin peoples from the area regarding  
8 treaties being made in that area, and those  
9 Anishinaabemowin people had explained the  
10 treaties to the Saugeen Ojibwe Nation in  
11 Anishinaabemowin.

12 And I'd like you to assume that they  
13 also explained to the Saugeen Ojibwe Nation the  
14 impact of the treaties on the relevant lands,  
15 including the arrival of nonIndigenous settlers  
16 who occupied increasingly large portions of the  
17 lands and cleared farms, established towns. So  
18 those are the assumptions.

19 And my question is, would you agree  
20 that this would have informed the Saugeen Ojibwe  
21 Nation's understanding of the terms of the  
22 treaties?

23 A. Okay. So to further, I guess,  
24 describe -- is this a hypothetical scenario? If  
25 this is a hypothetical scenario, and I guess

10:47:56 1 what would happen in the interval between the  
10:48:01 2 other groups having signed the treaty that they  
10:48:04 3 would be talking about with the Saugeen Ojibwe  
10:48:08 4 Nation. Are we talking an interval of five  
10:48:13 5 years? Ten years? Fifteen years?

10:48:18 6 Q. At an interval of a year or less.

10:48:20 7 A. Oh, okay. It seems that it might  
10:48:35 8 have affected their understanding to the extent  
10:48:39 9 of perhaps being more mindful of particular  
10:48:50 10 things in the treaty to be cautious about.

10:49:03 11 Q. Professor Corbiere, I'm now going  
10:49:04 12 to ask my clerk to pull up a document, which  
10:49:13 13 I'll put up here before you on the screen. The  
10:49:13 14 doc I.D. is S0566.

10:49:18 15 This is a chapter from a book by Peter  
10:49:19 16 Fawcett titled "Translation and Language:  
10:49:24 17 Linguistic Theories Explained", which was  
10:49:28 18 published in 1997, and you reference this book  
10:49:31 19 in your report, right?

10:49:33 20 A. I do reference Fawcett as the  
10:49:37 21 source. I don't recall the specific year of his  
10:49:40 22 publications that I reference.

10:49:42 23 Q. And you would recognize Fawcett  
10:49:43 24 as an authoritative source on the subject of  
10:49:49 25 translation issues?

1 A. Yes, I consider him to be, as I  
2 said earlier, along with Baker and Munday, one  
3 of presumably quite a few authoritative sources.

4 Q. Your Honour, I would ask that  
5 this be marked as the next exhibit.

6 THE COURT: Mr. Registrar.

7 THE REGISTRAR: Exhibit Number 4102.

8 EXHIBIT NO. 4102: Chapter from  
9 "Translation and Language: Linguistic  
10 Theories Explained" by Peter Fawcett.  
11 Document number S0566.

12 BY MS. LE PAN:

13 Q. I want to pull up page 25 of that  
14 document, which is page 16 of the PDF. I'm  
15 going to be reading from the bottom-right  
16 corner.

17 At the bottom there we see Fawcett  
18 writes:

19 "The variation between languages  
20 and the different components and  
21 relations of word meanings has two  
22 consequences for translation.  
23 Firstly, the meaning that is  
24 transferred will be decided by  
25 situation and context, not by the

1 dictionary. And secondly, the  
2 transfer will nearly always involve  
3 some form of loss or change. These  
4 are both now a commonplace of  
5 linguistic theories of translation.  
6 As Catford says: 'The source language  
7 and the target language items rarely  
8 have the same 'meaning' in the  
9 linguistic sense, but they can  
10 function in the same situation.'

11 And it goes on from there. Do you  
12 agree with this statement?

13 A. It seems to say or make much the  
14 same point that Nichols made in his article. I  
15 have to consider a part of it a bit more, the  
16 part that says:

17 "[...] the source language and  
18 target language items rarely have the  
19 same 'meaning' in the linguistic  
20 sense, but they can function in the  
21 same situation."

22 I'm not entirely clear what he means  
23 when he says "meaning in the linguistic sense",  
24 so that's why it's hard for me to answer that  
25 question.

10:52:21 1 Q. Would you agree that the issue of  
10:52:22 2 there not being an equivalent word or concept  
10:52:27 3 between the source language and the target  
10:52:29 4 language exists not just when translating  
10:52:32 5 between Anishinaabek to English, but with most  
10:52:34 6 or all languages?

10:52:40 7 A. One more time, please?

10:52:41 8 Q. Do you agree that the issue of  
10:52:43 9 there not being an equivalent word or concept  
10:52:47 10 between the source language and the target  
10:52:49 11 language, that issue exists not just when  
10:52:54 12 translating between Anishinaabek to English, but  
10:52:57 13 with most or all languages?

10:53:04 14 A. Certainly the literature that I  
10:53:06 15 have used, Baker comes most readily to mind,  
10:53:20 16 make that point.

10:53:24 17 Q. And would you agree that there  
10:53:25 18 are various methods by which translators adapt  
10:53:28 19 to this problem? So, for example, rank  
10:53:32 20 shifting?

10:53:39 21 A. A translator with proper training  
10:53:41 22 has an opportunity to learn various alternative  
10:53:50 23 strategies for handling those kinds of  
10:53:53 24 challenges.

10:53:56 25 Q. And by "proper training" you

1 don't necessarily mean formal training in  
2 translation, correct?

3 A. Well, in this day and age proper  
4 training would be considered what's available in  
5 a degree program in translation and  
6 interpretation.

7 Q. But you've never taken a degree  
8 program in interpretation or translation and  
9 you're still able to provide an accurate  
10 translation, correct?

11 A. I'm able to provide an accurate  
12 translation of certain things. Certain other  
13 things, I believe my translations would be  
14 accurate; certainly that is my -- what I see as  
15 my professional obligation to ensure that they  
16 are accurate.

17 Q. So by using certain methods  
18 translators -- it's possible for a translator to  
19 translate concepts or messages between a source  
20 language and a target language even though  
21 there's not an equivalent?

22 A. Again, that would depend on the  
23 word involved and the degree of equivalence,  
24 whether -- I mean, when you say "equivalence",  
25 we make a distinction between whether there is

10:55:57 1 an exact equivalent or a rough equivalent.

10:56:01 2 Q. I mean rough equivalent. So  
10:56:03 3 perhaps the grammar or the structure might not  
10:56:07 4 be the same, but the concept or message can be  
10:56:11 5 conveyed.

10:56:18 6 A. If a translator understands the  
10:56:24 7 source language term, then it seems that he or  
10:56:27 8 she would be able to translate by explaining, in  
10:56:39 9 a sense, defining in the target language that  
10:56:42 10 word he or she is translating.

10:56:51 11 Q. Thank you. So I want to now turn  
10:56:52 12 up your report, which is Exhibit 4094, and I  
10:57:06 13 want to turn to page 17 of that report. And if  
10:57:23 14 we scroll down to the bottom of that page,  
10:57:27 15 starting with the word "however", you state:

10:57:31 16 "However, given the lack of  
10:57:32 17 records that would have indicated how  
10:57:34 18 common any of these phrases was in  
10:57:37 19 diplomatic discourse with  
10:57:39 20 Anishinaabemowin speech community, we  
10:57:40 21 cannot conclude that these matched  
10:57:43 22 entirely the meaning the English  
10:57:45 23 phrase had in the British legal  
10:57:48 24 system."

10:57:49 25 And I think the phrase you're

1 referring to there is the phrase "full and  
2 complete surrender", correct?

3 A. Yes, that is the phrase I'm  
4 referring to.

5 Q. And did you conduct any research  
6 into the public archives to look for records of  
7 documents detailing Anishinaabemowin in  
8 diplomatic discourse?

9 A. No, I did not.

10 Q. And turning to page 19 of your  
11 report, which is page 21 in the PDF, you outline  
12 the way in which someone could unambiguously  
13 convey a prohibition on hunting, fishing,  
14 trapping and gathering on the surrendered land  
15 in the Anishinaabemowin language, right?

16 A. Yes.

17 Q. And I think yesterday you  
18 mentioned that this is not the only way that  
19 that prohibition can be expressed; there could  
20 be other variations as well, is that right?

21 A. Correct.

22 Q. And Ontario's expert historian  
23 Gwen Reimer produced a report for the purposes  
24 of this action, and in it she gives an opinion  
25 that prior to the signing of Treaty 72 there



10:59:08 1 were approximately six hours of negotiations to  
10:59:11 2 negotiate the terms of the treaties, and of  
10:59:15 3 those six, four were spent explaining the  
10:59:18 4 Crown's proposal.

10:59:19 5 And you can't say one way or another  
10:59:22 6 whether or not the translation you've provided,  
10:59:26 7 which communicates an absolute prohibition on  
10:59:29 8 hunting, fishing, trapping and gathering was  
10:59:32 9 communicated to the Saugeen Ojibwe Nation at any  
10:59:34 10 such discussions?

10:59:38 11 A. One more time, please?

10:59:43 12 Q. So you outline in your report  
10:59:46 13 ways that a prohibition on hunting, fishing and  
10:59:48 14 gathering could be conveyed. And Ontario has an  
10:59:51 15 expert who says that there were hours of  
10:59:53 16 negotiations which took place prior to Treaty 72  
10:59:56 17 being signed.

10:59:56 18 And my question to you is, you can't  
10:59:58 19 say one way or another whether or not that  
11:00:02 20 translation, which would indicate a prohibition  
11:00:09 21 on hunting, fishing, or gathering, you can't say  
11:00:13 22 whether or not that was given during those  
11:00:15 23 discussions?

11:00:16 24 A. I don't have any information that  
11:00:20 25 would have been a word-for-word transcription or

1 an audio recording of what was actually said.

2 Q. Thank you. You mentioned in your  
3 report that languages automatically develop  
4 concise forms for referring to complex concepts  
5 if the concepts become important enough to be  
6 talked about often, right?

7 A. Yes.

8 Q. And so if Indigenous peoples in  
9 the 19th century were aware of nonIndigenous  
10 settlers regularly coming onto Indigenous lands  
11 against their wishes and establishing  
12 settlements on those lands or taking lumber off  
13 of those lands or farming those lands, it's  
14 possible they could have developed words to  
15 discuss those occurrences, correct?

16 A. There is perhaps some  
17 possibility. It's hard to say how possible.

18 Q. I only have a few more questions  
19 for you. I want to turn to page 29 of your  
20 report.

21 And here you conclude that as a result  
22 of Treaty 45 1/2 the kind of actions that the  
23 Anishinaabe might have expected the Crown to  
24 take in relation to protecting the Peninsula,  
25 and you write:

11:02:13 1 "[...] would be ones that seem  
11:02:15 2 most logical in the particular  
11:02:16 3 situation and were customarily taken."

11:02:19 4 Do you see that?

11:02:40 5 A. Yes, I do. And I'm just reading  
11:02:42 6 it again. Sorry, what was the question then?

11:02:58 7 Q. Going on to ask the question now.

11:03:01 8 A. Oh, okay.

11:03:02 9 Q. Essentially, what you're saying  
11:03:03 10 is that the actions which the Saugeen Ojibwe  
11:03:06 11 Nation would have expected of the Crown would  
11:03:08 12 have been contextual, is that right?

11:03:20 13 A. That would have seemed most  
11:03:22 14 logical.

11:03:23 15 Q. And you can't provide an opinion  
11:03:26 16 on what would have been expected of the Crown  
11:03:29 17 because you don't have sufficient knowledge of  
11:03:31 18 the relevant context, is that right?

11:03:49 19 A. May I hear that again, please?

11:03:51 20 Q. I said, you can't provide an  
11:03:52 21 opinion on what would have been expected of the  
11:03:55 22 Crown because you don't have the sufficient  
11:04:00 23 knowledge about the relevant context, is that  
11:04:04 24 right?

11:04:23 25 A. I don't know how to answer that

11:04:26 1 exactly.

11:04:35 2 Q. I can move on. Or would you like  
11:04:37 3 some time to think?

11:04:54 4 A. Can I hear the question one more  
11:04:56 5 time, please? Sorry.

11:04:57 6 Q. Of course. You can't give an  
11:05:01 7 opinion on what would have been expected of the  
11:05:03 8 Crown because you don't have the sufficient  
11:05:07 9 knowledge about the context?

11:05:16 10 A. The reason that -- another reason  
11:05:19 11 or perhaps the main reason I would not be able  
11:05:21 12 to give a definite opinion is also I have no way  
11:05:28 13 of knowing what the ^Chiefs exactly would have  
11:05:36 14 been thinking. There is no information  
11:05:38 15 available on that.

11:05:40 16 Q. Thank you. So I'm going to move  
11:05:45 17 on. This is the last set of questions I have,  
11:05:48 18 so I should be done in about five minutes or  
11:05:51 19 less.

11:05:52 20 I want to turn to page 29 of your  
11:05:55 21 report, or perhaps it's 30. There at the top.

11:06:12 22 And at the top of the page you list  
11:06:14 23 the factual assumptions on which the opinions in  
11:06:16 24 your report are based. And I'm looking at the  
11:06:20 25 first factual assumption under (i) which states

11:06:24 1 that the copy of the transcriptions of Treaty 72  
11:06:28 2 and Treaty 45 and Treaty 45 1/2 that you were  
11:06:30 3 provided were true copies of the original  
11:06:35 4 treaties and that the wording shown in those  
11:06:37 5 copies is what the translator would have been  
11:06:39 6 asked to interpret. Do you see that?

11:06:43 7 A. Yes, I do.

11:06:44 8 Q. I'd like to pull up SC0752, which  
11:06:48 9 is a copy of the third volume of Ontario's  
11:06:50 10 expert report by Gwen Reimer. And this will be  
11:06:59 11 entered into evidence at a later time, but I  
11:06:59 12 would ask that this be marked for identification  
11:07:02 13 purposes at this point.

11:07:05 14 THE COURT: Why? You all seem to have  
11:07:07 15 a different idea than I about the purpose of  
11:07:12 16 marking something for identification. Is there  
11:07:13 17 some dispute about the identity of this  
11:07:15 18 document?

11:07:16 19 MS. LE PAN: From my knowledge there's  
11:07:17 20 no dispute about it. So I'm content to not mark  
11:07:20 21 it --

11:07:21 22 THE COURT: Well, you're going a  
11:07:22 23 little too fast, all right?

11:07:42 24 There is no dispute in this trial that  
11:07:43 25 that witness will testify and that her report

11:07:46 1 will become evidence, just the same way as we've  
11:07:50 2 done for this witness. Does anyone suggest that  
11:07:54 3 we can't mark it as an exhibit today? I guess  
11:07:57 4 the only reason I can think of is if for some  
11:08:02 5 reason she doesn't herself appear, which would  
11:08:04 6 be a problem.

11:08:05 7 MS. LE PAN: My only concern with that  
11:08:06 8 is that there are four volumes of Gwen's report,  
11:08:10 9 and so to the extent that we will be marking  
11:08:12 10 this one today, the record might be a bit  
11:08:15 11 unclear if we mark the other three later.

11:08:18 12 THE COURT: I think the record would  
11:08:20 13 be perfectly clear, counsel. My point, I think,  
11:08:22 14 is appropriate reason, which is to say, and I  
11:08:26 15 certainly hope this does not occur, but if for  
11:08:29 16 some reason she is unable to testify, I think  
11:08:31 17 the plaintiffs' counsel would at that point  
11:08:34 18 object to her evidence going in, or at least  
11:08:37 19 there would be some submissions.

11:08:39 20 So to avoid all of that we can mark it  
11:08:42 21 as a lettered exhibit at this time.

11:08:44 22 Mr. Registrar.

11:08:46 23 THE REGISTRAR: Lettered Exhibit G(1).

10:11:10 24 EXHIBIT NO. G(1): Volume 3 of Gwen  
10:11:10 25 Reimer's expert report. Document

10:11:10 1 number SC0752.

11:08:50 2 THE COURT: And that's for volume 3 of  
11:08:51 3 the expert report of Professor Reimer. Please  
11:08:55 4 go ahead, counsel.

11:08:57 5 BY MS. LE PAN:

11:08:57 6 Q. Thank you. I would like to turn  
11:08:58 7 to page 42 of that report. And Professor  
11:09:05 8 Corbiere, beginning at the top of the page  
11:09:11 9 Dr. Reimer has written out the full text of  
11:09:15 10 Treaty 45 1/2, which she obtained from looking  
11:09:19 11 at the original treaty document.

11:09:20 12 Did you look at the original treaty  
11:09:21 13 document in the course of preparing your  
11:09:23 14 reports?

11:09:24 15 A. When you say "original treaty  
11:09:28 16 document", do you mean the actual document that  
11:09:30 17 was signed?

11:09:31 18 Q. Yes, I do.

11:09:32 19 A. No, what I saw was a photocopy, I  
11:09:38 20 presume.

11:09:39 21 Q. And if we look midway down the  
11:09:41 22 page where the treaty is transcribed there is a  
11:09:44 23 line which is crossed out, do you see that?

11:09:46 24 A. I see that, yes.

11:09:50 25 Q. And that line that is crossed out

11:09:52 1 reads:

11:09:54 2 "So long as the country you at  
11:09:56 3 present occupy shall remain  
11:09:58 4 uncultivated, you will have full  
11:10:01 5 liberty to consider it as your hunting  
11:10:02 6 ground."

11:10:05 7 A. Yes, I see that.

11:10:07 8 Q. Now, if we turn back to your  
11:10:09 9 first report on page 55 of the PDF, which is  
11:10:17 10 appendix B to your report, you include here a  
11:10:24 11 copy of the Treaty 45 1/2 which you worked with,  
11:10:26 12 correct?

11:10:30 13 A. Sorry. I have the wrong binder.  
11:10:45 14 Just looking at it carefully just to be sure  
11:10:48 15 what I see on the screen matches what I have in  
11:10:51 16 my report.

11:10:51 17 Q. Of course.

11:11:21 18 A. Okay, what's on screen matches  
11:11:23 19 what I have in my report.

11:11:27 20 Q. And the version of the document  
11:11:28 21 that you worked with does not contain the line  
11:11:30 22 which was crossed out which we saw in  
11:11:32 23 Dr. Reimer's report, is that right?

11:11:36 24 A. Apparently.

11:11:37 25 Q. So you did not consider this line



1 in assessing how the treaty provisions might  
2 have been translated and explained, correct?

3 A. Since I did not see it, I did not  
4 consider it.

5 Q. Thank you, Professor Corbiere. I  
6 have no further questions.

7 THE COURT: Re-examination,  
8 Mr. Townshend?

9 RE-EXAMINATION BY MR. TOWNSHEND:

10 Q. Can I have the original of Treaty  
11 45 1/2 up on the screen? Exhibit 1132. That is  
12 not easy to read. Maybe we should have Reimer's  
13 transcript up again of it. Thank you.

14 The clause that is struck out -- the  
15 clause that is struck out, to what land would  
16 you take that to refer?

17 THE COURT: There's no objection. Go  
18 ahead.

19 THE WITNESS: Just from the reading of  
20 that sentence, it seems to me it refers to the  
21 land you are occupying at present.

22 BY MR. TOWNSHEND:

23 Q. And if you go to the paragraph  
24 above that, and it says:

25 "[...] you should surrender to

11:15:16 1 your Great Father the Sauking  
11:15:16 2 Territory you at present occupy, and  
11:15:16 3 you should repair either to this  
11:15:16 4 island or that part of your territory  
11:15:25 5 which lies on the north of Owen Sound  
11:15:25 6 [...]."

11:15:38 7 Do you take the opening of that, the  
11:15:43 8 land which is surrendered, to refer to the same  
11:15:46 9 land as the struck-out clause?

11:15:49 10 THE COURT: Don't answer, please, as  
11:15:50 11 we have counsel standing. Mr. Beggs?

11:15:55 12 MR. BEGGS: Your Honour, I'm assuming  
11:15:58 13 that the witness would be answering in her  
11:16:02 14 expertise as a linguist and not as a historian  
11:16:04 15 or legal analyst.

11:16:06 16 THE COURT: She can't answer in any  
11:16:07 17 other capacity, Mr. Beggs, so there is no need  
11:16:10 18 to stand up. Just looking at the question  
11:16:12 19 again, do you take the opening of the prior  
11:16:12 20 paragraph --

11:16:20 21 I am a little confused by the  
11:16:22 22 question, Mr. Townshend, as a question for this  
11:16:26 23 witness, what she takes from the prior  
11:16:28 24 paragraph. Do you want to take another crack at  
11:16:30 25 it and see if we get an objection? Bearing in

1 mind the scope of this witness' testimony.

2 BY MR. TOWNSHEND:

3 Q. I'm trying to figure out how to  
4 do this without excessively leading.

5 THE COURT: Well, you can't lead, but  
6 you also have to stick to the four corners of  
7 not just the witness' expertise, but also reply,  
8 sir.

9 BY MR. TOWNSHEND:

10 Q. Yes.

11 You were focusing on the clause --

12 THE COURT: Now you are just leading.  
13 Since you raised it, sir, I --

14 BY MR. TOWNSHEND:

15 Q. Would the presence or absence of  
16 that struck-out clause affect your view of how  
17 to translate the clause "forever to protect for  
18 you from the encroachments of the Whites"?

19 A. On that specific clause, "forever  
20 to protect for you from the encroachments"?

21 Q. Yes.

22 A. You're asking whether -- okay, I  
23 just need further clarification.

24 Could you please repeat the question?

25 Q. Would your opinion about the

1 translation of the clause "forever to protect  
2 for you from the encroachments of the White", be  
3 affected by the presence or absence of the  
4 struck-out clause?

5 A. In my opinion it would not have  
6 affected the translation of that specific  
7 clause, that specific part you read, "forever to  
8 protect for you from the encroachments of the  
9 Whites".

10 Q. Thank you. Those are my  
11 questions.

12 THE COURT: Can whoever has control of  
13 the screen please bring up the curriculum vitae,  
14 which was marked as Exhibit 4092?

15 Professor, this curriculum vitae shows  
16 your professorial history at the University of  
17 Sudbury, yet twice yesterday you said you were  
18 at Laurentian. Why is that?

19 THE WITNESS: Because of the way that  
20 particular university -- it's a federation. So  
21 Laurentian University is the degree-granting  
22 institution. University is one of three  
23 federated universities that, in the case of --  
24 I'm not familiar with the other two, Huntington  
25 and Thorneloe. But the University of Sudbury

11:20:14 1 put its degree-granting powers into abeyance  
11:20:18 2 when Laurentian University was established.

11:20:23 3 THE COURT: So just -- I understand  
11:20:25 4 you got a degree from Laurentian, but you are a  
11:20:28 5 tenured professor at the University of Sudbury?

11:20:32 6 THE WITNESS: Yes.

11:20:33 7 THE COURT: All right.

11:20:34 8 THE WITNESS: The federated  
11:20:35 9 universities each have their own precedent.

11:20:39 10 THE COURT: Professor, you don't need  
11:20:40 11 to go on and explain. It's perfectly  
11:20:41 12 straightforward. Thank you for clarifying that.  
11:20:51 13 Give me a moment.

11:21:12 14 Now, Mr. Townshend, are the two  
11:21:14 15 dictionaries that this witness referred to  
11:21:17 16 amongst the agreed upon trial exhibits already?

11:21:22 17 MR. TOWNSHEND: Yes, the most  
11:21:22 18 convenient place for them is in the appendices  
11:21:28 19 of Professor Corbiere's report. They are --

11:21:31 20 THE COURT: The entirety of the  
11:21:32 21 dictionaries?

11:21:33 22 MR. TOWNSHEND: No, no, just excerpts  
11:21:35 23 of them.

11:21:36 24 THE COURT: My question was, are the  
11:21:38 25 two dictionaries that this witness referred to

11:21:41 1 already part of the exhibits in this trial? Yes  
11:21:43 2 or no?

11:21:44 3 MR. TOWNSHEND: The entire one?

11:21:46 4 THE COURT: Well, that is what is  
11:21:47 5 meant by a dictionary, is a -- presumably a book  
11:21:50 6 of some kind.

11:21:52 7 MR. TOWNSHEND: No, they're not.

11:21:53 8 THE COURT: No, they're not. You're  
11:21:54 9 saying that excerpts from them are?

11:21:56 10 MR. TOWNSHEND: Yes.

11:21:57 11 THE COURT: But are they freestanding,  
11:21:59 12 or are they only in regard to selected portions  
11:22:01 13 referred to in this expert's testimony?

11:22:07 14 MR. TOWNSHEND: I'm not sure I  
11:22:08 15 understood, I'm sorry.

11:22:10 16 THE COURT: You said that a convenient  
11:22:12 17 place to locate excerpts is in this witness'  
11:22:16 18 report. Is that also the only place to locate  
11:22:18 19 excerpts?

11:22:19 20 MR. TOWNSHEND: No, no, they are in  
11:22:20 21 the document database. We have not made them --  
11:22:24 22 most of them are treated as secondary sources,  
11:22:27 23 so they have not been made exhibits. And that's  
11:22:31 24 why I was doing --

11:22:36 25 THE COURT: You are making a meal out

1 of this, sir. Perfectly straightforward  
2 questions. Thank you for answering them.

3 But Professor, because I asked you a  
4 couple of questions, counsel may have an  
5 additional question or two for you. I would be  
6 surprised, but you never know.

7 Mr. Townshend, do you have an  
8 additional question for this witness?

9 MR. TOWNSHEND: No, I do not.

10 THE COURT: Mr. Beggs?

11 MR. BEGGS: No, Your Honour.

12 THE COURT: Ms. Le Pan?

13 MS. LE PAN: No.

14 THE COURT: Thank you very much,  
15 Professor, for coming. You may step down at  
16 this point.

17 THE WITNESS: Thank you very much.

18 THE COURT: Now, Mr. Townshend, I want  
19 to talk about the -- really, it might be  
20 Mr. Beggs that I want to ask the questions of.  
21 Why don't you have a seat. I want to talk about  
22 the schedule for Friday.

23 MR. BEGGS: Yes, Your Honour.

24 THE COURT: So we have two things  
25 we're doing on Friday. One is a motion of yours

11:23:34 1 or Canada's, that is, with respect to the more  
11:23:43 2 extensive report that is the subject of an  
11:23:45 3 objection -- give me a moment -- of Professor  
11:23:56 4 von Gernet. And the second has to do with a --  
11:24:01 5 the more general objection to that expert not  
11:24:05 6 having to do with his -- is it a him?

11:24:07 7 MR. BEGGS: Yes, Your Honour.

11:24:09 8 THE COURT: His two reports, but  
11:24:11 9 having to do with his ability to testify as an  
11:24:13 10 expert. So those are the two things we have to  
11:24:15 11 take care of.

11:24:16 12 Have counsel discussed a schedule for  
11:24:20 13 the day?

11:24:24 14 MR. BEGGS: No, I don't -- we haven't  
11:24:25 15 discussed it between ourselves, no, Your Honour.

11:24:28 16 THE COURT: We're going to do it right  
11:24:29 17 now then. How much time, sir, do you expect to  
11:24:32 18 need to -- are you doing it, or is one of your  
11:24:35 19 colleagues?

11:24:35 20 MR. BEGGS: I'll be doing it, Your  
11:24:36 21 Honour.

11:24:37 22 THE COURT: You'll be doing it? To  
11:24:37 23 make your submissions in relation to the motion?  
11:24:40 24 Bearing in mind that I will in the meantime read  
11:24:44 25 all the material of both sides.



11:24:47 1 MR. BEGGS: Yes, Your Honour. I  
11:24:48 2 believe that my -- with respect to the motion,  
11:24:54 3 it would be at most 30 minutes.

11:24:59 4 THE COURT: All right. Mr. Townshend,  
11:25:00 5 who on your team is taking care of this?

11:25:04 6 MR. TOWNSHEND: The motion will be by  
11:25:04 7 Ms. Pelletier. She is in a different hearing  
11:25:08 8 today.

11:25:10 9 THE COURT: All right. Can I safely  
11:25:11 10 assume that she won't be any longer than 30  
11:25:13 11 minutes, bearing in mind that I will have read  
11:25:17 12 everything?

11:25:25 13 MR. TOWNSHEND: I'll ask  
11:25:25 14 Mr. Brookwell. He is assisting Ms. Pelletier.

11:25:28 15 THE COURT: Very happy to hear from  
11:25:29 16 any of your counsel team. Please go ahead.

11:25:31 17 MR. BROOKWELL: If it would be  
11:25:44 18 possible, Your Honour, if we could take a brief  
11:25:45 19 moment to adjourn and I could try and reach  
11:25:46 20 Ms. Pelletier?

11:25:48 21 THE COURT: If she's in another  
11:25:50 22 hearing that's not going to work. How about  
11:25:52 23 this instead. Why don't I say 45 minutes and  
11:25:54 24 then if there is a serious problem, which I  
11:25:57 25 doubt, you can raise it with everyone on e-mail.

1 And then there will be a brief reply.

2 Now, because that motion only relates  
3 to a question of which or whether a second  
4 report is going to be included in this  
5 gentleman's testimony, regardless of its  
6 outcome, we must go ahead and deal with the voir  
7 dire.

8 So it is my plan, subject to hearing  
9 from any counsel if they think there is any  
10 problem with my plan, to take the motion under  
11 reserve and press ahead with the voir dire on  
12 Friday. Does any counsel take any objection to  
13 that process? No. Okay.

14 And you all know the process, so,  
15 again, I want to get some time estimates.

16 Mr. Beggs will qualify and tender  
17 Mr. -- is it a professor?

18 MR. BEGGS: Professor von Gernet.

19 THE COURT: Professor von Gernet,  
20 spending approximately how long, sir, to do  
21 that?

22 MR. BEGGS: 45 minutes I would say.

23 THE COURT: And then to be  
24 cross-examined, is the same counsel doing the  
25 cross-examination or someone else?

11:27:21 1 MR. TOWNSHEND: Ms. Guirgus is doing  
11:27:25 2 it, but Mr. Brookwell knows more about this.

11:27:38 3 MR. BROOKWELL: 30 minutes for  
11:27:39 4 cross-examination will be fine, Your Honour.

11:27:41 5 THE COURT: And then we'll have  
11:27:41 6 submissions. On that can I -- it's a very  
11:27:42 7 narrow, focused issue, as I understand it. It  
11:27:45 8 seemed to be that --

11:27:46 9 How long -- well, it would be your  
11:27:48 10 objection, Mr. Brookwell, so don't sit down.

11:27:53 11 MR. BROOKWELL: For our submissions  
11:27:54 12 less than ten minutes.

11:27:56 13 THE COURT: And, Mr. Beggs, around the  
11:27:57 14 same?

11:27:57 15 MR. BEGGS: Yes, Your Honour.

11:27:58 16 THE COURT: Okay. Thank you for that.

11:28:06 17 The other subject I want to raise  
11:28:08 18 before we rise is this issue of these recently  
11:28:11 19 discussed historical records. Mr. Townshend was  
11:28:18 20 not in court when the issue came up; he is now.  
11:28:21 21 And I want to raise something and I invite all  
11:28:26 22 counsel to say that they want to consider it  
11:28:29 23 before they get into a discussion.

11:28:33 24 But it is the case that more than one  
11:28:36 25 of the plaintiffs' witnesses has now referenced

11:28:40 1 events, historically in the mid-20th century,  
11:28:45 2 and I will oversimplify by saying, where steps  
11:28:53 3 were taken that may have resulted in either the  
11:28:59 4 attempt to or successful destruction of certain  
11:29:02 5 records, historical records, but in every  
11:29:06 6 account that I have heard that that attempt was  
11:29:10 7 either entirely or partly unsuccessful and the  
11:29:14 8 plaintiffs or one of them was able to obtain and  
11:29:22 9 retain some of those very records. And I think  
11:29:24 10 one witness referred to four volumes, and  
11:29:26 11 another witness referred to the fact that the  
11:29:29 12 entire barrel was rescued without any permanent  
11:29:38 13 destruction at all.

11:29:41 14 And earlier this week we had some  
11:29:43 15 evidence that at least to some extent some of  
11:29:47 16 these records may be in existence and in the  
11:29:51 17 possession of plaintiffs' counsel.

11:29:59 18 And what I would like to hear about,  
11:30:00 19 and it does not have to be right now, is it  
11:30:02 20 intended that anyone advance some or all of  
11:30:10 21 those records in this trial?

11:30:11 22 And I raise it because there was some  
11:30:13 23 objection made earlier this week about only  
11:30:16 24 learning last week that these documents were  
11:30:19 25 available and them not appearing on the

11:30:22 1 plaintiffs' affidavits of documents, where one  
11:30:26 2 would have theoretically expected on the  
11:30:28 3 objector, and I can't remember if it was Canada  
11:30:31 4 or Ontario on the objector's submissions.

11:30:34 5 So I don't want this to be coming up  
11:30:38 6 ad hoc. As I said the other day, there are a  
11:30:41 7 number of rules that apply to this situation.

11:30:43 8 And I do want counsel to let me know,  
11:30:46 9 again, doesn't have to be today, whether or not  
11:30:49 10 there is any intention to put forward those  
11:30:53 11 documents in this trial, and if so on what  
11:30:56 12 basis, and if so if there's any dispute so we  
11:30:58 13 can deal with it in an orderly way.

11:31:03 14 Yes, Mr. Townshend?

11:31:06 15 MR. TOWNSHEND: I can tell you the  
11:31:06 16 plaintiffs' position, our view is that the  
11:31:12 17 contents of the documents are not relevant at  
11:31:16 18 least to this phase of the litigation. That's  
11:31:20 19 why they were not --

11:31:21 20 THE COURT: You mean your position is  
11:31:21 21 that they're not relevant?

11:31:24 22 MR. TOWNSHEND: Yes.

11:31:24 23 THE COURT: And that's why they  
11:31:27 24 weren't produced?

11:31:28 25 MR. TOWNSHEND: That's why they

1 weren't produced, yes.

2 THE COURT: Notwithstanding that a  
3 number of witnesses have referred to them and  
4 their contents, according to my notes?

5 MR. TOWNSHEND: By "content" I meant  
6 what they said, not what they were. This came  
7 up in 2002.

8 THE COURT: That was stated, and I  
9 understand that defendants' counsel, I think in  
10 an effort to be fair, said it's not recalled.

11 MR. TOWNSHEND: Yes, and I have  
12 retrieved an e-mail from 2002 that clarified  
13 some of that.

14 THE COURT: All right. Well, I'm sure  
15 you'll share that with opposite counsel.

16 MR. TOWNSHEND: Yes, which I can  
17 share.

18 So at that point I said, well, I don't  
19 think what they say is relevant, but I do  
20 recognize that what they are is relevant. And  
21 on that basis I invited counsel for Canada,  
22 Ontario, Ontario asked to look at it and I  
23 provided them to Ontario. And Mr. Lemmond did  
24 look at them, and I have an e-mail exchange  
25 about that.

11:32:38 1 THE COURT: And you're going to share  
11:32:40 2 all that e-mail with defendants' counsel?

11:32:42 3 MR. TOWNSHEND: Yes.

11:32:43 4 THE COURT: So your position is that  
11:32:44 5 they were not disclosed, and by "disclose" I  
11:32:47 6 mean properly listed in an Affidavit of  
11:32:48 7 Documents? Because it's the plaintiffs'  
11:32:50 8 position that they're not relevant to this  
11:32:52 9 trial.

11:32:53 10 MR. TOWNSHEND: Yes.

11:32:54 11 THE COURT: All right. Why is it then  
11:32:55 12 that your own counsel sought to introduce some  
11:32:58 13 pages from the records the other day, sir?

11:33:08 14 MR. TOWNSHEND: We were working on an  
11:33:09 15 agreed statement of fact, and Canada and Ontario  
11:33:12 16 and plaintiffs all agreed and the municipalities  
11:33:16 17 are still thinking about it.

11:33:18 18 THE COURT: I heard that.

11:33:19 19 MR. TOWNSHEND: So it was in the  
11:33:20 20 absence of that agreed statement of fact which  
11:33:22 21 just dealt with the existence and location of  
11:33:24 22 the documents, which is the only thing we were  
11:33:26 23 interested in putting forward. But in the  
11:33:34 24 absence of that we couldn't put that in, so then  
11:33:37 25 counsel tried to put some of those documents in.

1 And I believe there was an objection, and then  
2 it was withdrawn is what I think --

3 THE COURT: Well, I think that counsel  
4 came to an agreement, which is always a good  
5 thing, sir. But I'm going to ask you to reflect  
6 on that, perhaps consult the transcript from the  
7 prior witness.

8 It does seem a little inconsistent to  
9 me to say that the existence of the books is the  
10 only thing that matters but then to seek to  
11 introduce copies of four pages to show, what? I  
12 don't know. But they certainly -- I'm not  
13 asking you to sort it all out right now, sir,  
14 okay?

15 So does either Canada or Ontario have  
16 something to say, or are you going to take me up  
17 on my invitation to leave this for discussion  
18 first?

19 MR. BEGGS: For Canada we'll consider  
20 it and get back to you soon.

21 THE COURT: What about Ontario?

22 MR. OGDEN: Likewise, Your Honour.

23 THE COURT: Okay. So what I'm going  
24 to ask you to do because this is the sort of  
25 thing that really -- we've got a long trial, and



11:34:46 1 if there's going to be some issue I would rather  
11:34:49 2 move it forward so that the impact, if any, of  
11:34:52 3 the issue is mitigated. All right?

11:34:56 4 So I'm going to be coming back to this  
11:34:58 5 before we rise at the end of July with the  
11:35:03 6 expectation of a very complete discussion with  
11:35:05 7 counsel about these records.

11:35:09 8 And if anyone needs to go and look at  
11:35:10 9 them in the meantime, do it right away; you've  
11:35:13 10 got tomorrow off. Because I think there's time  
11:35:17 11 next week, if I recall the schedule, maybe on  
11:35:19 12 Friday. And unless there's an objection, which  
11:35:27 13 I will hear, I think what I'd like to do is give  
11:35:30 14 you until Friday of next week to make inquiries,  
11:35:38 15 exchange information, discuss with counsel and  
11:35:41 16 so on.

11:35:43 17 And if you can come to some agreement,  
11:35:46 18 you can obviously communicate that to me at any  
11:35:50 19 time. It may not entirely address the issue,  
11:35:53 20 but even a partial agreement is always a good  
11:35:56 21 thing. So I just want to make sure we don't  
11:36:00 22 lose track of this.

11:36:01 23 Anyone want to make a submission?  
11:36:03 24 Mr. Townshend, would you like to make a  
11:36:05 25 submission about that?

11:36:10 1 MR. TOWNSHEND: No, thank you.

11:36:11 2 THE COURT: All right. So if everyone  
11:36:12 3 could get on to that, and we'll see where you  
11:36:15 4 are a week from Friday.

11:36:17 5 Sorry, Mr. Beggs, please go ahead.

11:36:22 6 MR. BEGGS: Your Honour, one minor  
11:36:23 7 thing is we do have the book of authorities for  
11:36:28 8 the bias that you wished.

11:36:31 9 THE COURT: Is that different from  
11:36:32 10 what I have in my office?

11:36:34 11 MR. BEGGS: I think the book of  
11:36:35 12 authorities we've given you so far is the one  
11:36:38 13 for our motion. You asked us to also exchange  
11:36:39 14 authorities on --

11:36:41 15 THE COURT: Did you bring it to court?

11:36:43 16 MR. BEGGS: I have brought it to court  
11:36:45 17 in case you wanted it, but we can file it if you  
11:36:45 18 --

11:36:46 19 THE COURT: No, if you brought it to  
11:36:46 20 court, just hand it to Mr. Registrar, please. I  
11:36:49 21 take it the other parties, especially the  
11:36:50 22 plaintiffs, have received it?

11:36:54 23 MR. BROOKWELL: Yes, that's right,  
11:36:55 24 Your Honour.

11:37:04 25 THE COURT: Thank you, Mr. Brookwell.

1 Is there any other similar matter that anyone  
2 wishes to raise? Yes, Mr. Brookwell?

3 MR. BROOKWELL: Just an update about  
4 the estimated time. I was able to hear from  
5 Ms. Pelletier for the motion and Ms. Pelletier  
6 estimates 15 minutes. And for the  
7 cross-examination Ms. Guirgus estimates 45  
8 minutes, so doing a small switch but saving 15  
9 minutes overall.

10 THE COURT: Appreciate the update.  
11 Anything else? Anybody? No. All  
12 right.

13 -- Whereupon the proceedings were  
14 adjourned at 11:38 a.m.

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REPORTER'S CERTIFICATE

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

That the foregoing proceedings were  
taken before me at the time and place therein  
set forth at which time the witness was put  
under oath by me;

That the testimony of the witness and  
all objections made at the time of the  
examination were recorded stenographically by me  
and were thereafter transcribed;

That the foregoing is a true and  
accurate transcript of my shorthand notes so  
taken. Dated this 21st day of July 2019.



PER: HELEN MARTINEAU  
CERTIFIED SHORTHAND REPORTER

<hr/> <p>(</p> <hr/> <p><b>(1975)</b> 2509:15</p> <p><b>(i)</b> 2534:25</p> <hr/> <p><b>1</b></p> <hr/> <p><b>1/2</b> 2512:17 2515:2 2518:1 2519:23 2521:20 2532:22 2535:2 2537:10 2538:11 2539:11</p> <p><b>10:02</b> 2496:1</p> <p><b>1132</b> 2539:11</p> <p><b>11:38</b> 2557:14</p> <p><b>142</b> 2503:20</p> <p><b>15</b> 2557:6,8</p> <p><b>16</b> 2525:14</p> <p><b>17</b> 2529:13</p> <p><b>1851</b> 2516:3</p> <p><b>19</b> 2530:10</p> <p><b>1997</b> 2524:18</p> <p><b>19th</b> 2532:9</p> <hr/> <p><b>2</b></p> <hr/> <p><b>2002</b> 2552:7,12</p> <p><b>21</b> 2530:11</p> <p><b>219</b> 2498:19</p> <p><b>222</b> 2499:1</p> <p><b>223</b> 2509:6</p> <p><b>25</b> 2525:13</p> <p><b>29</b> 2532:19 2534:20</p> <hr/> <p><b>3</b></p> <hr/> <p><b>3</b> 2536:24 2537:2</p>	<p><b>30</b> 2513:4,8 2534:21 2547:3, 10 2549:3</p> <hr/> <p><b>4</b></p> <hr/> <p><b>4092</b> 2542:14</p> <p><b>4094</b> 2529:12</p> <p><b>4101</b> 2498:13, 14 2509:5</p> <p><b>4102</b> 2525:7,8</p> <p><b>42</b> 2537:7</p> <p><b>45</b> 2512:17 2515:2 2518:1 2519:23 2521:20 2532:22 2535:2 2537:10 2538:11 2539:11 2547:23 2548:22 2557:7</p> <hr/> <p><b>5</b></p> <hr/> <p><b>55</b> 2538:9</p> <hr/> <p><b>6</b></p> <hr/> <p><b>6.1</b> 2503:22</p> <p><b>67</b> 2516:3,9,11, 19</p> <hr/> <p><b>7</b></p> <hr/> <p><b>72</b> 2512:17 2516:12 2518:1 2519:23 2521:21 2530:25 2531:16 2535:1</p> <hr/> <p><b>A</b></p> <hr/> <p><b>a.m.</b> 2496:1 2557:14</p> <p><b>abeyance</b></p>	<p>2543:1</p> <p><b>ability</b> 2546:9</p> <p><b>absence</b> 2541:15 2542:3 2553:20,24</p> <p><b>absolute</b> 2531:7</p> <p><b>accord</b> 2509:19</p> <p><b>account</b> 2499:4 2550:6</p> <p><b>accuracy</b> 2511:1</p> <p><b>accurate</b> 2522:3 2528:9, 11,14,16</p> <p><b>acquired</b> 2518:10</p> <p><b>action</b> 2530:24</p> <p><b>actions</b> 2532:22 2533:10</p> <p><b>activities</b> 2502:24</p> <p><b>actual</b> 2537:16</p> <p><b>ad</b> 2551:6</p> <p><b>adapt</b> 2527:18</p> <p><b>additional</b> 2512:3 2545:5,8</p> <p><b>address</b> 2519:17 2555:19</p> <p><b>adjourn</b> 2547:19</p> <p><b>adjourned</b> 2557:14</p> <p><b>advance</b> 2550:20</p> <p><b>affect</b> 2497:3, 9,13,18 2499:17 2501:12 2511:1 2541:16</p> <p><b>affected</b> 2524:8 2542:3,6</p>	<p><b>Affidavit</b> 2553:6</p> <p><b>affidavits</b> 2551:1</p> <p><b>AFFIRMED</b> 2496:18</p> <p><b>age</b> 2528:3</p> <p><b>agree</b> 2497:1, 7,12 2499:24 2500:7,13,19 2504:23 2505:10 2506:4, 14,19 2507:1 2508:14 2510:15 2520:14 2521:4, 24 2522:25 2523:19 2526:12 2527:1, 8,17</p> <p><b>agreed</b> 2543:16 2553:15,16,20</p> <p><b>agreement</b> 2554:4 2555:17, 20</p> <p><b>ahead</b> 2537:4 2539:18 2547:16 2548:6, 11 2556:5</p> <p><b>alternative</b> 2527:22</p> <p><b>analysis</b> 2514:17,20 2519:15</p> <p><b>analyst</b> 2540:15</p> <p><b>Anishinaabe</b> 2522:14 2532:23</p> <p><b>Anishinaabek</b> 2527:5,12</p> <p><b>Anishinaabe mowin</b> 2512:19 2522:2, 18 2523:7,9,11 2529:20 2530:7, 15</p>	<p><b>ANN</b> 2496:17</p> <p><b>answering</b> 2540:13 2545:2</p> <p><b>Apparently</b> 2538:24</p> <p><b>appearing</b> 2550:25</p> <p><b>appendices</b> 2543:18</p> <p><b>appendix</b> 2538:10</p> <p><b>Applications</b> 2503:19</p> <p><b>apply</b> 2551:7</p> <p><b>appropriateness</b> 2499:13</p> <p><b>approximatel y</b> 2531:1 2548:20</p> <p><b>archives</b> 2530:6</p> <p><b>area</b> 2518:8 2522:14,16 2523:7,8</p> <p><b>arrival</b> 2522:22 2523:15</p> <p><b>article</b> 2501:3, 8 2526:14</p> <p><b>assessing</b> 2539:1</p> <p><b>assisting</b> 2547:14</p> <p><b>assume</b> 2520:8,19 2521:19 2522:12,19 2523:5,12 2547:10</p> <p><b>assumed</b> 2509:21 2513:25</p> <p><b>assuming</b> 2540:12</p> <p><b>assumption</b> 2520:25 2534:25</p>
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<b>assumptions</b> 2523:18 2534:23	<b>beautiful</b> 2502:7,16	2557:2,3	<b>Charles</b> 2515:10	<b>commencing</b> 2496:1
<b>attempt</b> 2550:4,6	<b>Beggs</b> 2540:11,12,17 2545:10,11,20, 23 2546:7,14,20 2547:1 2548:16, 18,22 2549:13, 15 2554:19 2556:5,6,11,16	<b>brought</b> 2556:16,19	<b>check</b> 2513:7	<b>common</b> 2503:3 2529:18
<b>audio</b> 2532:1		<b>business</b> 2508:5	<b>Chiefs</b> 2534:13	<b>commonplac e</b> 2526:4
<b>authoritative</b> 2498:6,8 2524:24 2525:3		<b>businesspers on</b> 2508:4	<b>child</b> 2506:11, 24 2507:7	<b>communicate</b> 2508:10 2555:18
<b>authorities</b> 2556:7,12,14	<b>begin</b> 2496:2	<hr/> <b>C</b> <hr/>	<b>choose</b> 2505:13	<b>communicate</b> <b>d</b> 2506:6,16,21 2507:3 2520:11, 22 2531:9
<b>authors</b> 2512:9	<b>beginning</b> 2498:21 2537:8	<b>called</b> 2503:12	<b>chooses</b> 2504:4,5 2505:1,9	<b>communicate</b> <b>s</b> 2521:25
<b>automatically</b> 2532:3	<b>behaviour</b> 2499:15	<b>Canada</b> 2496:4 2551:3 2552:21 2553:15 2554:15,19	<b>circumstance</b> <b>s</b> 2521:25	<b>communicate</b> <b>s</b> 2531:7
<b>avoid</b> 2536:20	<b>beings</b> 2499:19	<b>Canada's</b> 2496:12 2546:1	<b>cite</b> 2514:18,22	<b>communicati ng</b> 2508:3,4
<b>aware</b> 2505:25 2515:9 2516:11 2532:9	<b>beliefs</b> 2499:21	<b>capacity</b> 2540:17	<b>cited</b> 2514:1,4	<b>communicati ons</b> 2515:14, 20,24
<b>awareness</b> 2515:11	<b>bias</b> 2556:8	<b>care</b> 2546:11 2547:5	<b>clarification</b> 2541:23	<b>community</b> 2529:20
<hr/> <b>B</b> <hr/>	<b>binder</b> 2538:13	<b>carefully</b> 2538:14	<b>clarified</b> 2521:15 2552:12	<b>complete</b> 2513:21 2530:2 2555:6
<b>back</b> 2538:8 2554:20 2555:4	<b>bit</b> 2498:22 2510:1 2520:8 2526:15 2536:10	<b>case</b> 2502:3 2510:14 2516:23 2542:23 2549:24 2556:17	<b>clarifying</b> 2543:12	<b>complex</b> 2532:4
<b>back-and- forth</b> 2520:11, 23	<b>body</b> 2503:12	<b>Catford</b> 2526:6	<b>classed</b> 2511:22	<b>components</b> 2525:20
<b>Baker</b> 2497:25 2498:6,16 2509:5 2510:2 2525:2 2527:15	<b>book</b> 2498:1 2503:17,20 2524:15,18 2544:5 2556:7, 11	<b>cautious</b> 2524:10	<b>clause</b> 2539:14,15 2540:9 2541:11, 16,17,19 2542:1,4,7	<b>concept</b> 2527:2,9 2529:4
<b>barrel</b> 2550:12	<b>books</b> 2554:9	<b>central</b> 2518:8	<b>clear</b> 2505:8 2507:16,18 2513:1 2526:22 2536:13	<b>concepts</b> 2528:19 2532:4, 5
<b>base</b> 2522:5,8	<b>bottom</b> 2525:17 2529:14	<b>centralization</b> 2517:25 2518:3, 18	<b>cleared</b> 2522:24 2523:17	<b>conceptualiz ed</b> 2503:13
<b>based</b> 2496:23 2501:11 2503:24 2534:24	<b>bottom-right</b> 2525:15	<b>century</b> 2532:9 2550:1	<b>clerk</b> 2524:12	<b>concern</b> 2536:7
<b>basis</b> 2551:12 2552:21	<b>bring</b> 2542:13 2556:15	<b>challenges</b> 2527:24	<b>coherence</b> 2498:23 2499:17 2509:23 2510:3	<b>concise</b> 2532:4
<b>bearing</b> 2540:25 2546:24 2547:11	<b>bringing</b> 2518:6	<b>change</b> 2526:3	<b>colleagues</b> 2546:19	<b>conclude</b> 2529:21 2532:21
	<b>British</b> 2529:23	<b>chapter</b> 2498:1 2524:15 2525:8	<b>colonial</b> 2518:25	<b>conditions</b> 2504:22
	<b>Brookwell</b> 2547:14,17 2549:2,3,10,11 2556:23,25			

<b>conduct</b> 2516:24 2517:24 2530:5	<b>convey</b> 2497:14 2505:2, 9 2530:13	2513:11 2520:25 2525:6 2535:14,22 2536:12 2537:2 2539:7,17 2540:10,16 2541:5,12 2542:12 2543:3, 7,10,20,24 2544:4,8,11,16, 25 2545:10,12, 14,18,24 2546:8,16,22 2547:4,9,15,21 2548:19,23 2549:5,13,16,20 2551:20,23 2552:2,8,14 2553:1,4,11,18 2554:3,21,23 2556:2,9,15,16, 19,20,25 2557:10	25 <b>curriculum</b> 2542:13,15 <b>customarily</b> 2533:3	2522:4 2528:22 <b>depending</b> 2502:15 2511:3 <b>depends</b> 2521:12 <b>describe</b> 2523:24 <b>describes</b> 2503:23 <b>design</b> 2498:4 <b>destruction</b> 2550:4,13 <b>detail</b> 2513:2 <b>detailed</b> 2515:24 <b>detailing</b> 2530:7 <b>details</b> 2512:1 2516:16 <b>determine</b> 2505:16 <b>determining</b> 2510:16 <b>develop</b> 2532:3 <b>developed</b> 2532:14 <b>diagram</b> 2504:2,7 <b>dictionaries</b> 2543:15,21,25 <b>dictionary</b> 2526:1 2544:5 <b>differently</b> 2501:2 <b>diplomatic</b> 2529:19 2530:8 <b>dire</b> 2548:7,11 <b>direction</b> 2504:13 <b>directly</b> 2519:20 <b>disclose</b> 2553:5
<b>conducted</b> 2513:5	<b>conveyed</b> 2507:25 2510:11 2529:5 2531:14		<hr/> <b>D</b> <hr/>	
<b>confused</b> 2540:21	<b>copies</b> 2535:3, 5 2554:11		<b>database</b> 2544:21	
<b>consequence</b> <b>s</b> 2525:22	<b>copy</b> 2535:1,9 2538:11		<b>daughter</b> 2508:3	
<b>consideratio</b> <b>n</b> 2500:5 2505:6,15,21 2506:2 2519:10	<b>Corbiere</b> 2496:17,21 2524:11 2537:8 2539:5		<b>David</b> 2515:9	
<b>consideratio</b> <b>ns</b> 2510:16	<b>Corbiere's</b> 2543:19		<b>day</b> 2512:16 2528:3 2546:13 2551:6 2553:13	
<b>considered</b> 2528:4	<b>corner</b> 2525:16		<b>deal</b> 2548:6 2551:13	
<b>consult</b> 2554:6	<b>corners</b> 2541:6	<b>crack</b> 2540:24	<b>dealt</b> 2553:21	
<b>contained</b> 2512:25	<b>correct</b> 2528:2,10 2530:2,21 2532:15 2538:12 2539:2	<b>create</b> 2502:16	<b>decided</b> 2525:24	
<b>content</b> 2514:9 2535:20 2552:5	<b>counsel</b> 2507:9 2513:12 2521:1 2536:13, 17 2537:4 2540:11 2545:4 2546:12 2547:16 2548:9, 12,24 2549:22 2550:17 2551:8 2552:9,15,21 2553:2,12,25 2554:3 2555:7, 15	<b>creates</b> 2502:18	<b>decision</b> 2521:10	
<b>contents</b> 2551:17 2552:4	<b>country</b> 2538:2	<b>cross-</b> <b>examination</b> 2496:19 2507:10 2548:25 2549:4 2557:7	<b>defendants'</b> 2552:9 2553:2	
<b>context</b> 2496:23 2505:11 2509:2 2510:9 2525:25 2533:18,23 2534:9	<b>couple</b> 2545:4	<b>cross-</b> <b>examined</b> 2548:24	<b>defining</b> 2529:9	
<b>contexts</b> 2509:2	<b>Coursebook</b> 2497:24 2498:15	<b>crossed</b> 2537:23,25 2538:22	<b>definite</b> 2534:12	
<b>contextual</b> 2533:12	<b>court</b> 2496:2,9, 13,16 2498:11 2507:8,13 2511:13,18	<b>Crown</b> 2515:14,24 2520:11,22 2521:21 2532:23 2533:11,16,22 2534:8	<b>definitions</b> 2508:25	
<b>continued</b> 2496:20		<b>Crown's</b> 2531:4	<b>degree</b> 2508:13 2528:5, 7,23 2543:4	
<b>control</b> 2542:12		<b>cultural</b> 2502:21,24 2503:4 2504:19,	<b>degree-</b> <b>granting</b> 2542:21 2543:1	
<b>convenient</b> 2543:18 2544:16			<b>degrees</b> 2499:18	
<b>conventions</b> 2499:10 2504:17			<b>delivering</b> 2496:13	
			<b>department</b> 2518:11	
			<b>depend</b> 2501:5 2502:20	

<b>disclosed</b> 2553:5	2550:24 2551:1, 11,17 2553:7, 22,25	<b>ensure</b> 2501:22 2502:13 2528:15	2555:15 2556:13	<b>explained</b> 2522:17,20 2523:9,13 2524:17 2525:10 2539:2
<b>discourse</b> 2503:24 2529:19 2530:8	<b>double-check</b> 2508:25	<b>entered</b> 2517:3,15,20,21 2535:11	<b>excuse</b> 2498:25 2511:16	<b>explaining</b> 2519:6 2529:8 2531:3
<b>discuss</b> 2532:15 2555:15	<b>doubt</b> 2547:25	<b>entire</b> 2544:3 2550:12	<b>exhibit</b> 2498:10,13,14 2509:4 2525:5, 7,8 2529:12 2536:3,21,23,24 2539:11 2542:14	<b>explanatory</b> 2509:23 2510:3
<b>discussed</b> 2514:9 2521:8, 13 2546:12,15 2549:19	<hr/> <b>E</b> <hr/>	<b>entirety</b> 2543:20	<b>exhibits</b> 2543:16 2544:1, 23	<b>expressed</b> 2530:19
<b>discussing</b> 2511:24	<b>e-mail</b> 2547:25 2552:12,24 2553:2	<b>entries</b> 2514:25	<b>existence</b> 2550:16 2553:21 2554:9	<b>extensive</b> 2546:2
<b>discussion</b> 2549:23 2554:17 2555:6	<b>earlier</b> 2510:7, 10 2525:2 2550:14,23	<b>environment</b> 2504:8,15,24 2505:22 2510:9, 25	<b>exists</b> 2527:4, 11	<b>extent</b> 2516:25 2517:13,19 2524:8 2536:9 2550:15
<b>discussions</b> 2520:20 2521:13 2531:10,23	<b>easy</b> 2506:11 2511:10 2539:12	<b>equivalence</b> 2528:23,24	<b>expect</b> 2496:5 2546:17	<hr/> <b>F</b> <hr/>
<b>dispute</b> 2535:17,20,24 2551:12	<b>effect</b> 2502:2	<b>equivalent</b> 2527:2,9 2528:21 2529:1, 2	<b>expectation</b> 2555:6	<b>fact</b> 2550:11 2553:15,20
<b>distinction</b> 2528:25	<b>effort</b> 2552:10	<b>Essentially</b> 2533:9	<b>expectations</b> 2497:13,17 2499:6 2500:1,2 2508:16,21	<b>factors</b> 2499:16 2500:5 2504:2,5,20,25 2505:11,12 2506:1
<b>doc</b> 2524:14	<b>elements</b> 2499:23	<b>established</b> 2522:24 2523:17 2543:2	<b>expected</b> 2532:23 2533:11,16,21 2534:7 2551:2	<b>factual</b> 2534:23,25
<b>document</b> 2497:21,22,23 2498:2,16,20 2500:8,14,20 2501:8,11,12, 17,20,23 2503:16 2510:17,22 2514:4,6,9,13 2522:11 2524:12 2525:11,14 2535:18 2536:25 2537:11,13,16 2538:20 2544:21	<b>eloquent</b> 2502:6	<b>establishing</b> 2532:11	<b>experiences</b> 2497:2,8 2499:22	<b>failure</b> 2510:23
<b>documentati on</b> 2512:16 2515:6	<b>emerged</b> 2509:11	<b>estimated</b> 2557:4	<b>expert</b> 2511:6, 13,16,22 2512:11 2530:22 2531:15 2535:10 2536:25 2537:3 2546:5,10	<b>fair</b> 2552:10
<b>documents</b> 2513:6 2515:23 2516:17 2530:7	<b>emotional</b> 2502:14	<b>estimates</b> 2548:15 2557:6, 7	<b>expert's</b> 2544:13	<b>familiar</b> 2508:22 2509:22 2510:4 2542:24
	<b>encountering</b> 2522:10	<b>events</b> 2550:1	<b>expertise</b> 2540:14 2541:7	<b>familiarity</b> 2517:1,13,19
	<b>encroachmen ts</b> 2541:18,20 2542:2,8	<b>evidence</b> 2535:11 2536:1, 18 2550:15	<b>explain</b> 2543:11	<b>farming</b> 2532:13
	<b>end</b> 2505:16 2521:10 2555:5	<b>exact</b> 2529:1		<b>farms</b> 2522:24 2523:17
	<b>endeavour</b> 2502:8	<b>excerpts</b> 2543:22 2544:9, 17,19		<b>fast</b> 2535:23
	<b>engage</b> 2502:25	<b>excessively</b> 2541:4		<b>Father</b> 2540:1
	<b>English</b> 2502:7,9,10 2503:2,3,13 2512:20 2519:24 2522:1 2527:5,12 2529:22	<b>exchange</b> 2552:24		<b>Fawcett</b> 2524:16,20,23 2525:10,17



<b>federated</b> 2542:23 2543:8	2498:14 2503:17 2507:6 2530:1 2537:9 2538:4	2514:22 2518:25 2519:3 2523:23,25 2536:3	<b>helpful</b> 2500:23 2507:15	<b>idea</b> 2518:13 2535:15
<b>federation</b> 2542:20	<b>function</b> 2526:10,20	<b>Guirgus</b> 2549:1 2557:7	<b>highest</b> 2504:16	<b>identification</b> 2535:12,16
<b>feels</b> 2502:1	<b>functional</b> 2503:25	<b>Gwen</b> 2530:23 2535:10 2536:24	<b>highlighted</b> 2499:2 2509:9	<b>identified</b> 2500:6
<b>Fifteen</b> 2524:5	<hr/> <b>G</b> <hr/>	<b>Gwen's</b> 2536:8	<b>his/her</b> 2499:5	<b>identity</b> 2535:17
<b>figure</b> 2541:3	<b>G(1)</b> 2536:23, 24	<hr/> <b>H</b> <hr/>	<b>historian</b> 2530:22 2540:14	<b>illustrates</b> 2504:2
<b>figured</b> 2514:22	<b>gathering</b> 2530:14 2531:8, 14,21	<b>Hallidayan</b> 2503:23 2504:3	<b>historical</b> 2504:21,25 2505:11 2510:8 2511:6,8 2549:19 2550:5	<b>imagery</b> 2502:16,17
<b>file</b> 2556:17	<b>gears</b> 2520:7	<b>hand</b> 2556:20	<b>historically</b> 2550:1	<b>imagine</b> 2508:2
<b>find</b> 2508:19 2513:23	<b>general</b> 2499:9 2508:20 2518:21,23 2546:5	<b>handling</b> 2527:23	<b>history</b> 2542:16	<b>impact</b> 2497:21 2500:9, 15,21 2502:9,18 2504:5 2505:1, 12 2506:5,15,20 2507:3 2508:9, 13 2510:10 2516:20 2519:11 2521:9 2522:21 2523:14 2555:2
<b>fine</b> 2549:4	<b>gentleman's</b> 2548:5	<b>happen</b> 2524:1	<b>hoc</b> 2551:6	<b>impacted</b> 2520:15 2521:5, 11,16
<b>finish</b> 2505:14	<b>germane</b> 2514:17,20,23 2519:15,20	<b>happy</b> 2547:15	<b>Honour</b> 2498:9 2525:4 2540:12 2545:11,23 2546:7,15,21 2547:1,18 2549:4,15 2554:22 2556:6, 24	<b>implementati on</b> 2516:19
<b>Firstly</b> 2525:23	<b>Gernet</b> 2546:4 2548:18,19	<b>hard</b> 2503:6 2521:7 2526:24 2532:17	<b>harvesting</b> 2516:21	<b>implications</b> 2522:11
<b>fishing</b> 2530:13 2531:8, 13,21	<b>give</b> 2506:8 2534:6,12 2543:13 2546:3 2555:13	<b>hard</b> 2503:6 2521:7 2526:24 2532:17	<b>head</b> 2516:15	<b>implicature</b> 2508:23 2509:13,16,20
<b>fluent</b> 2522:1	<b>government</b> 2518:25	<b>harvesting</b> 2516:21	<b>heading</b> 2503:22	<b>implies</b> 2509:17
<b>focused</b> 2549:7	<b>grammar</b> 2529:3	<b>head</b> 2516:15	<b>hear</b> 2497:5 2500:11,17 2506:13,25 2517:10 2519:7 2520:17 2533:19 2534:4 2547:15 2550:18 2555:13 2557:4	<b>important</b> 2509:10 2510:16 2532:5
<b>focusing</b> 2541:11	<b>great</b> 2518:7 2540:1	<b>heard</b> 2508:24 2521:1 2550:6 2553:18	<b>hearing</b> 2500:3 2547:7, 22 2548:8	<b>inappropriate ness</b> 2499:13
<b>foreign</b> 2503:11	<b>Grice</b> 2509:15	<b>hearers</b> 2503:6	<b>hearing</b> 2500:3 2547:7, 22 2548:8	<b>include</b> 2504:17 2513:24 2514:21 2538:10
<b>forever</b> 2512:7 2541:17,19 2542:1,7	<b>ground</b> 2538:6	<b>hearing</b> 2500:3 2547:7, 22 2548:8	<hr/> <b>I</b> <hr/>	
<b>form</b> 2526:3	<b>groups</b> 2524:2		<b>I.D.</b> 2524:14	
<b>formal</b> 2528:1	<b>guess</b> 2502:14 2511:22 2513:23			
<b>forms</b> 2532:4				
<b>forward</b> 2551:10 2553:23 2555:2				
<b>freestanding</b> 2544:11				
<b>Friday</b> 2545:22,25 2548:12 2555:12,14 2556:4				
<b>front</b> 2513:12				
<b>full</b> 2497:23				

<b>included</b> 2521:13 2548:4	<b>interfere</b> 2507:9	<b>kind</b> 2502:17, 18,20 2512:23, 24 2518:2 2532:22 2544:6	2543:2,4	<b>literally</b> 2509:18
<b>including</b> 2504:24 2517:2, 15,21 2522:22 2523:15	<b>interpret</b> 2535:6	<b>kinds</b> 2499:14 2502:24 2519:13 2527:23	<b>Le</b> 2496:6,7,11, 15,19 2498:18 2507:12,21,22 2511:15,19 2513:15,19 2521:3 2525:12 2535:19 2536:7 2537:5 2545:12, 13	<b>literature</b> 2503:12 2527:14
<b>inconsistent</b> 2554:8	<b>interpretation</b> 2528:6,8	<b>knowing</b> 2521:8 2534:13	<b>lead</b> 2508:15 2541:5	<b>litigation</b> 2551:18
<b>increase</b> 2522:2	<b>interval</b> 2524:1,4,6	<b>knowledge</b> 2497:2,8 2499:5,21 2510:25 2516:25 2517:13,19 2518:9,10,16,17 2519:25 2522:5, 7,9 2533:17,23 2534:9 2535:19	<b>leading</b> 2541:4,12	<b>locate</b> 2544:17,18
<b>increasingly</b> 2522:23 2523:16	<b>introduce</b> 2553:12 2554:11	<b>L</b>	<b>learn</b> 2527:22	<b>location</b> 2518:8 2553:21
<b>Indian</b> 2517:25 2518:3	<b>Introducing</b> 2503:18	<b>lack</b> 2505:23 2529:16	<b>learning</b> 2550:24	<b>logical</b> 2502:2 2533:2,14
<b>Indians</b> 2519:1	<b>invitation</b> 2554:17	<b>Lakes</b> 2518:8	<b>leave</b> 2554:17	<b>long</b> 2511:24 2538:2 2548:20 2549:9 2554:25
<b>Indigenous</b> 2518:12 2532:8, 10	<b>invite</b> 2549:21	<b>land</b> 2517:1,2, 14,15,20,21 2530:14 2539:15,21 2540:8,9	<b>legal</b> 2501:8 2504:21 2529:23 2540:15	<b>longer</b> 2547:10
<b>individual</b> 2504:4,5 2505:1	<b>involve</b> 2526:2	<b>lands</b> 2522:21, 24 2523:14,17 2532:10,12,13	<b>Lemmond</b> 2552:23	<b>lose</b> 2555:22
<b>influence</b> 2504:3,13	<b>involved</b> 2501:5 2506:9 2511:4 2528:23	<b>language</b> 2499:9 2502:22 2503:2,3,4,5,10, 14,24 2524:16 2525:9 2526:6, 7,17,18 2527:3, 4,10,11 2528:20 2529:7,9 2530:15	<b>lettered</b> 2536:21,23	<b>loss</b> 2526:3
<b>influencing</b> 2506:1	<b>island</b> 2519:2 2540:4	<b>languages</b> 2525:19 2527:6, 13 2532:3	<b>level</b> 2504:16	<b>lost</b> 2519:6
<b>information</b> 2499:20 2512:18,23,24, 25 2519:4,14,19 2520:1 2531:24 2534:14 2555:15	<b>issue</b> 2527:1,8, 11 2549:7,18,20 2555:1,3,19	<b>large</b> 2522:23 2523:16	<b>liberty</b> 2538:5	<b>lumber</b> 2532:12
<b>informed</b> 2523:1,20	<b>issues</b> 2524:25	<b>Laurentian</b> 2542:18,21	<b>lies</b> 2540:5	<b>M</b>
<b>inquiries</b> 2555:14	<b>items</b> 2526:7, 18		<b>likelihood</b> 2522:2	<b>made</b> 2522:15 2523:8 2526:14 2544:21,23 2550:23
<b>institution</b> 2542:22	<b>J</b>		<b>Likewise</b> 2554:22	<b>main</b> 2534:11
<b>intended</b> 2550:20	<b>Jeremy</b> 2503:19		<b>lines</b> 2502:5	<b>make</b> 2499:19 2507:18 2511:10 2526:13 2527:16 2528:25 2546:23 2555:14,21,23, 24
<b>intention</b> 2551:10	<b>journal</b> 2514:24		<b>linguist</b> 2540:14	<b>making</b> 2544:25
<b>interactions</b> 2508:8,15	<b>July</b> 2555:5		<b>linguistic</b> 2499:14,22 2524:17 2525:9 2526:5,9,19,23	<b>Manitoulin</b> 2519:1,2
<b>interested</b> 2553:23	<b>K</b>		<b>linguistics</b> 2503:25	<b>manner</b> 2502:1

<b>mark</b> 2535:20 2536:3,11,20	2530:18 2532:2	<b>Mona</b> 2497:25 2498:5,16	<b>negotiate</b> 2520:12,23 2531:2	<b>obtained</b> 2537:10
<b>marked</b> 2498:10 2525:5 2535:12 2542:14	<b>message</b> 2497:14 2505:2, 10 2506:6,16,21 2507:3 2529:4	<b>morning</b> 2496:21	<b>negotiations</b> 2512:17,19,21 2519:22 2520:9 2531:1,16	<b>occupied</b> 2522:23 2523:16
<b>marking</b> 2535:16 2536:9	<b>messages</b> 2507:25 2508:10 2528:19	<b>mother</b> 2506:11,24 2507:7 2508:3	<b>neighbouring</b> 2517:3,16,22	<b>occupy</b> 2538:3 2540:2
<b>MARY</b> 2496:17	<b>methods</b> 2527:18 2528:17	<b>motion</b> 2496:12 2545:25 2546:23 2547:2, 6 2548:2,10 2556:13 2557:5	<b>Nichols</b> 2526:14	<b>occupying</b> 2539:21
<b>match</b> 2503:13	<b>mid-20th</b> 2550:1	<b>move</b> 2534:2, 16 2555:2	<b>nonindigeno us</b> 2522:22 2523:15 2532:9	<b>occur</b> 2536:15
<b>matched</b> 2529:21	<b>midway</b> 2537:21	<b>moved</b> 2519:1	<b>nonlinguistic</b> 2499:15,23	<b>occurred</b> 2497:19
<b>matches</b> 2502:2 2538:15, 18	<b>mind</b> 2502:4 2519:4 2527:15 2541:1 2546:24 2547:11	<b>multiple</b> 2521:19	<b>north</b> 2540:5	<b>occurrences</b> 2532:15
<b>material</b> 2496:4 2513:18 2546:25	<b>mindful</b> 2510:19 2524:9	<b>Munday</b> 2503:19,23 2504:12 2525:2	<b>notes</b> 2552:4	<b>offhand</b> 2516:8
<b>materials</b> 2496:14 2514:16	<b>minor</b> 2556:6	<b>municipalitie s</b> 2553:16	<b>notions</b> 2509:11	<b>office</b> 2496:3 2556:10
<b>matter</b> 2557:1	<b>minute</b> 2516:16		<b>Notwithstand ing</b> 2552:2	<b>officials</b> 2515:14,25 2520:11,22
<b>matters</b> 2554:10	<b>minutes</b> 2534:18 2547:3, 11,23 2548:22 2549:3,12 2557:6,8,9	<hr/> <b>N</b> <hr/>	<b>number</b> 2498:13,17 2525:7,11 2537:1 2551:7 2552:3	<b>OGDEN</b> 2554:22
<b>Mchugh</b> 2512:4	<b>missing</b> 2507:8 2513:22		<hr/> <b>O</b> <hr/>	<b>Ojibwe</b> 2515:15 2517:9 2520:10,15,21 2521:5,22 2522:13,17,20 2523:1,6,10,13, 20 2524:3 2531:9 2533:10
<b>meal</b> 2544:25	<b>missionaries</b> 2514:25 2515:4, 6 2519:22 2520:1,5	<b>names</b> 2512:8	<b>object</b> 2536:18	<b>Ontario</b> 2496:6,9,11 2531:14 2551:4 2552:22,23 2553:15 2554:15,21
<b>meaning</b> 2496:22 2501:22 2508:25 2521:15 2525:23 2526:8, 19,23 2529:22	<b>mistake</b> 2517:8	<b>Nation</b> 2515:15 2517:9 2520:10,22 2521:22 2522:13,18,20 2523:6,10,13 2524:4 2531:9 2533:11	<b>objection</b> 2498:11 2539:17 2540:25 2546:3, 5 2548:12 2549:10 2550:23 2554:1 2555:12	<b>Ontario's</b> 2530:22 2535:9
<b>meanings</b> 2525:21	<b>mitigated</b> 2555:3	<b>Nation's</b> 2520:15 2521:6 2523:1,21	<b>objector</b> 2551:3	<b>opening</b> 2540:7,19
<b>means</b> 2509:1, 17,21 2526:22	<b>model</b> 2503:23 2504:3	<b>Nations</b> 2517:4,16,22 2518:7	<b>objector's</b> 2551:4	<b>operates</b> 2504:15
<b>meant</b> 2544:5 2552:5	<b>moment</b> 2520:8,20 2543:13 2546:3 2547:19	<b>necessarily</b> 2528:1	<b>obligation</b> 2528:15	<b>operating</b> 2504:17
<b>meantime</b> 2546:24 2555:9		<b>needed</b> 2519:15	<b>obtain</b> 2550:8	<b>opinion</b> 2530:24
<b>memory</b> 2514:5,8				
<b>mentioned</b> 2512:13				

2533:15,21 2534:7,12 2541:25 2542:5 <b>opinions</b> 2534:23 <b>opportunity</b> 2527:22 <b>opposed</b> 2501:7 <b>opposite</b> 2552:15 <b>orderly</b> 2551:13 <b>organization</b> 2499:8,9,10 <b>original</b> 2501:15 2535:3 2537:11,12,15 2539:10 <b>outcome</b> 2548:6 <b>outline</b> 2513:5 2530:11 2531:12 <b>oversimplify</b> 2550:2 <b>Owen</b> 2540:5	<b>part</b> 2497:16 2514:11 2518:24 2526:15,16 2540:4 2542:7 2544:1 <b>partial</b> 2555:20 <b>parties</b> 2506:5, 7,9,15,17,20,22 2507:2,4 2508:7,9,15 2510:12 2556:21 <b>parties'</b> 2510:25 <b>partly</b> 2550:7 <b>parts</b> 2521:17 <b>party</b> 2508:17 <b>PDF</b> 2525:14 2530:11 2538:9 <b>Pelletier</b> 2547:7,14,20 2557:5 <b>Peninsula</b> 2532:24 <b>people</b> 2500:2 2507:25 2518:25 2522:16 2523:9 <b>peoples</b> 2522:14 2523:7 2532:8 <b>perfectly</b> 2536:13 2543:11 2545:1 <b>performed</b> 2503:2 <b>permanent</b> 2550:12 <b>person</b> 2497:18 2511:23 <b>person's</b> 2497:2,8,13 <b>pertained</b> 2511:23	<b>Peter</b> 2524:15 2525:10 <b>phase</b> 2551:18 <b>photocopy</b> 2537:19 <b>phrase</b> 2501:1, 3,16,17 2506:3 2509:25 2529:23,25 2530:1,3 <b>phrases</b> 2505:17 2511:4 2529:18 <b>piece</b> 2519:3 <b>place</b> 2504:18 2520:10,21 2531:16 2543:18 2544:17,18 <b>plaintiffs</b> 2496:4 2550:8 2553:16 2556:22 <b>plaintiffs'</b> 2536:17 2549:25 2550:17 2551:1, 16 2553:7 <b>plan</b> 2548:8,10 <b>poem</b> 2501:1 2502:5,7,11,15, 23 2503:5,7 <b>poetry</b> 2501:6 2502:3 2503:1, 9,12,13 <b>point</b> 2515:4,7, 8 2518:24 2526:14 2527:16 2535:13 2536:13,17 2545:16 2552:18 <b>pointed</b> 2515:12 <b>points</b> 2498:1 2502:4	<b>policies</b> 2517:25 2518:4, 6,10,18,21 2519:5 <b>political</b> 2504:21,25 2505:12 2510:9 <b>portion</b> 2503:21 <b>portions</b> 2522:23 2523:16 2544:12 <b>position</b> 2496:10 2551:16,20 2553:4,8 <b>possession</b> 2550:17 <b>possibility</b> 2497:19 2532:17 <b>possibly</b> 2521:23 <b>powers</b> 2543:1 <b>practice</b> 2502:21 2503:4, 8 2513:25 <b>practices</b> 2502:21 <b>precedent</b> 2543:9 <b>precise</b> 2519:12 <b>prepared</b> 2511:7,12 2514:25 2518:16 2519:11 <b>preparing</b> 2514:14 2516:4 2537:13 <b>presence</b> 2519:25 2521:25 2541:15 2542:3 <b>present</b> 2512:20	2519:22 2521:20 2538:3 2539:21 2540:2 <b>presented</b> 2519:16 <b>press</b> 2548:11 <b>presume</b> 2537:20 <b>previous</b> 2497:2,8 2499:21 2508:7, 14 <b>previously</b> 2496:18 2513:20 <b>prior</b> 2520:12 2530:25 2531:16 2540:19,23 2554:7 <b>problem</b> 2527:19 2536:6 2547:24 2548:10 <b>proceeding</b> 2511:7,12 2512:11 <b>proceedings</b> 2557:13 <b>process</b> 2512:21 2515:1 2548:13,14 <b>produced</b> 2530:23 2551:24 2552:1 <b>production</b> 2504:18 <b>professional</b> 2500:4 2501:21 2505:3,4,19,24 2510:18 2528:15 <b>professor</b> 2496:21 2524:11 2537:3, 7 2539:5 2542:15 2543:5, 10,19 2545:3,15 2546:3 2548:17,
--	---	---	--	--

18,19	2530:23	<b>re-ask</b> 2507:18	2498:2,5 2517:6	<b>regularly</b>
<b>professorial</b>	2535:13	<b>Re-</b>	2524:23	2532:10
2542:16	<b>put</b> 2510:22	<b>examination</b>	2552:20	<b>Reimer</b>
<b>program</b>	2524:13 2543:1	2539:7,9	<b>recollection</b>	2530:23
2528:5,8	2551:10	<b>reach</b> 2547:19	2512:8,14,22	2535:10 2537:3,9
<b>prohibition</b>	2553:24,25	<b>read</b> 2498:20	2513:1 2514:2,11,12 2516:9	<b>Reimer's</b>
2530:13,19	<b>putting</b>	2499:2 2503:20	2517:23	2536:25
2531:7,13,20	2553:23	2504:10 2509:6	<b>record</b>	2538:23
<b>proper</b> 2509:3		2512:1 2513:1,2,3 2514:18	2536:10,12	2539:12
2527:21,25	<b>Q</b>	2516:13,17	<b>recording</b>	<b>relates</b> 2548:2
2528:3		2539:12 2542:7	2532:1	<b>relation</b>
<b>properly</b>	<b>qualify</b>	2546:24	<b>records</b>	2512:2 2518:14
2553:6	2548:16	2547:11	2529:17 2530:6	2532:24
<b>proposal</b>	<b>question</b>	<b>reader</b> 2502:10	2549:19 2550:5,9,16,21 2553:13	2546:23
2531:4	2497:5 2500:11	<b>readers</b>	2555:7	<b>relations</b>
<b>protect</b>	2503:21 2505:8	2499:6 2503:7	<b>refer</b> 2500:2	2499:12
2541:17,20	2506:13	<b>readily</b> 2519:4	2509:16	2525:21
2542:1,8	2507:19	2527:15	2539:16 2540:8	<b>relationship</b>
<b>protecting</b>	2509:13	<b>reading</b>	<b>reference</b>	2506:5,15,20
2532:24	2511:10 2512:6	2503:9 2516:10	2497:25	2507:2 2508:12
<b>provide</b>	2517:11	2525:15 2533:5	2498:25	<b>relationships</b>
2500:23 2528:9,11 2533:15,20	2518:22 2519:7	2539:19	2524:18,20,22	2508:6
<b>provided</b>	2521:1 2523:19	<b>reads</b> 2538:1	<b>referenced</b>	<b>relevant</b>
2512:18 2520:3	2526:25	<b>reason</b>	2513:6 2516:12	2522:21
2531:6 2535:3	2531:18 2533:6,7 2534:4	2534:10,11	2549:25	2523:14
2552:23	2540:18,22	2536:4,5,14,16	<b>references</b>	2533:18,23
<b>provisions</b>	2541:24	<b>recall</b> 2509:24	2513:16,24,25	2551:17,21
2539:1	2543:24 2545:5,8 2548:3	2510:5 2512:5	<b>referred</b>	2552:19,20
<b>public</b> 2530:6	<b>questions</b>	2515:3,18,19,22	2518:3 2543:15,25 2544:13	2553:8
<b>publications</b>	2512:3 2519:16	2516:1,10,14	2550:10,11	<b>remain</b> 2538:3
2524:22	2521:13	2524:21	2552:3	<b>remember</b>
<b>published</b>	2532:18	2555:11	<b>referring</b>	2511:25 2512:8,24 2551:3
2524:18	2534:17 2539:6	<b>recalled</b>	2530:1,4 2532:4	<b>repair</b> 2540:3
<b>pull</b> 2497:22	2542:11 2545:2,4,20	2552:10	<b>refers</b> 2517:6	<b>repeat</b> 2541:24
2503:16 2509:4	<b>quickly</b> 2502:4	<b>receive</b> 2496:3	2539:20	<b>reply</b> 2541:7
2513:8,12	<b>R</b>	2505:4 2556:22	<b>reflect</b> 2504:20	2548:1
2524:12		<b>receiving</b>	2554:5	<b>report</b> 2498:2
2525:13 2535:8	<b>raise</b> 2547:25	2496:8	<b>regard</b> 2500:4	2511:5,23,24
<b>purpose</b>	2549:17,21	<b>recent</b> 2509:12	2502:23	2512:3,4,6
2501:7,11	2550:22 2557:2	2549:18	2544:12	2513:4,9,11
2535:15	<b>raised</b> 2541:13	<b>recently</b>	<b>Registrar</b>	2514:1,3,14
<b>purposely</b>	<b>range</b> 2499:4	2549:18	2498:12,13	2516:4,6
2520:4	<b>rank</b> 2527:19	<b>recognizable</b>	2525:6,7	2518:14,16
<b>purposes</b>	<b>rarely</b> 2526:7,18	2498:3	2536:22,23	2519:11,12,17,20 2524:19
2501:7 2511:5		<b>recognize</b>	2556:20	2529:12,13
2514:14 2516:4				2530:11,23

2531:12 2532:3, 20 2534:21,24 2535:10,25 2536:8,25 2537:3,7 2538:9,10,16, 19,23 2543:19 2544:18 2546:2 2548:4	<b>rights</b> 2516:21 <b>rise</b> 2549:18 2555:5 <b>rough</b> 2529:1,2 <b>rules</b> 2551:7	<b>scope</b> 2541:1 <b>screen</b> 2524:13 2538:15,18 2539:11 2542:13 <b>scroll</b> 2498:22 2529:14 <b>seat</b> 2545:21 <b>secondary</b> 2544:22 <b>section</b> 2513:21 <b>seek</b> 2554:10 <b>selected</b> 2544:12 <b>sense</b> 2499:19 2520:3 2526:9, 20,23 2529:9 <b>sentence</b> 2500:6 2539:20 <b>serve</b> 2501:9 <b>serves</b> 2501:6 <b>set</b> 2534:17 <b>setting</b> 2500:8, 14,20 <b>settlements</b> 2532:12 <b>settlers</b> 2522:22 2523:15 2532:10 <b>share</b> 2552:15, 17 2553:1 <b>shift</b> 2520:7 <b>shifting</b> 2527:20 <b>show</b> 2554:11 <b>shown</b> 2535:4 <b>shows</b> 2542:15 <b>sic</b> 2499:23 <b>sides</b> 2546:25	<b>signed</b> 2515:16 2517:2, 14 2518:1 2520:13 2524:2 2531:17 2537:17 <b>significant</b> 2508:12 <b>signing</b> 2515:1 2519:23 2521:20 2530:25 <b>similar</b> 2557:1 <b>sir</b> 2541:8,13 2545:1 2546:17 2548:20 2553:13 2554:5, 13 <b>sit</b> 2549:10 <b>situation</b> 2508:2 2525:25 2526:21 2533:3 2551:7 <b>situation.'</b> 2526:10 <b>small</b> 2514:11 2557:8 <b>social</b> 2499:12 2504:19,24 2510:8 <b>sociocultural</b> 2504:7,14,23 2505:10,21 2510:9,24 <b>SON</b> 2515:25 2517:9 <b>SON's</b> 2516:21,25 2517:6,13,19 <b>sort</b> 2554:13,24 <b>sought</b> 2553:12 <b>sound</b> 2513:17 2540:5 <b>source</b> 2498:6 2501:15,17,19, 23 2524:21,24 2526:6,17	2527:3,10 2528:19 2529:7 <b>sources</b> 2498:8 2525:3 2544:22 <b>speaker</b> 2509:17 <b>speakers</b> 2502:22 <b>speaking</b> 2510:3 <b>specific</b> 2506:24 2515:8, 18,23 2516:16 2524:21 2541:19 2542:6, 7 <b>specifically</b> 2514:13 2518:13 2520:4 <b>speech</b> 2529:20 <b>spending</b> 2548:20 <b>spent</b> 2531:3 <b>spoke</b> 2510:10 2512:19 2519:24 <b>spoken</b> 2522:13 2523:6 <b>stack</b> 2496:3 <b>stand</b> 2540:18 <b>standing</b> 2540:11 <b>starting</b> 2499:1 2509:8 2529:15 <b>state</b> 2529:15 <b>stated</b> 2496:22 2510:7 2552:8 <b>statement</b> 2526:12 2553:15,20 <b>states</b> 2504:7 2534:25
<b>reports</b> 2511:7,12,14,16 2512:11 2514:25 2537:14 2546:8 <b>rescued</b> 2550:12 <b>research</b> 2513:5 2514:15 2515:5,23 2516:19,24 2517:18,24 2518:6,12 2519:21 2530:5 <b>researching</b> 2520:4 <b>reserve</b> 2519:2 2548:11 <b>resonance</b> 2502:14 <b>respect</b> 2515:1 2518:6 2546:1 2547:2 <b>result</b> 2498:24 2532:21 <b>resulted</b> 2550:3 <b>retain</b> 2502:9 2550:9 <b>retrieved</b> 2552:12 <b>review</b> 2511:6, 11 2512:10,15 2514:24 2515:13 2516:3 2518:5 <b>reviewed</b> 2514:13 2515:20	<b>S</b> <b>s/he</b> 2509:18 <b>S0566</b> 2524:14 2525:11 <b>safe</b> 2516:18 <b>safely</b> 2547:9 <b>sale</b> 2517:1,2, 14,15,20,21 <b>Saugeen</b> 2515:15 2517:9 2520:10,15,21 2521:5,22 2522:13,17,20 2523:1,6,10,13, 20 2524:3 2531:9 2533:10 <b>Sauking</b> 2540:1 <b>saving</b> 2557:8 <b>Sawyer</b> 2515:10 <b>SC0727</b> 2497:23 2498:17 <b>SC0750</b> 2503:17 <b>SC0752</b> 2535:8 2537:1 <b>scan</b> 2514:16 <b>scenario</b> 2507:6 2523:24, 25 <b>schedule</b> 2545:22 2546:12 2555:11 <b>scientific</b> 2501:3,8			

<b>step</b> 2545:15	<b>surrender</b> 2530:2 2539:25	2531:2	2517:17,25	<b>transcription</b> 2531:25
<b>steps</b> 2550:2	<b>surrendered</b> 2530:14 2540:8	<b>territory</b> 2540:2,4	2520:17 2523:4	<b>transcription</b>
<b>stick</b> 2541:6	<b>surrenders</b> 2517:1,3,14,15, 20,21	<b>testify</b> 2535:25 2536:16 2546:9	2527:7 2531:11	<b>s</b> 2535:1
<b>straightforward</b> 2543:12 2545:1	<b>surrounding</b> 2515:1 2518:7 2522:16	<b>testimony</b> 2541:1 2544:13 2548:5	2534:3,5	<b>transfer</b> 2526:2
<b>strategies</b> 2527:23	<b>switch</b> 2557:8	<b>text</b> 2497:15,23 2498:14,23 2499:17 2501:15 2503:17 2504:15,18 2509:5,11 2510:17 2537:9	2535:11	<b>transferred</b> 2525:24
<b>struck</b> 2539:14,15	<b>system</b> 2529:24	<b>texts</b> 2499:11	2536:21	<b>translate</b> 2502:8 2506:2 2510:17 2528:19 2529:8 2541:17
<b>struck-out</b> 2540:9 2541:16 2542:4	<b>systematic</b> 2503:25	<b>theoretically</b> 2551:2	2546:17	<b>translated</b> 2500:10,15,22 2501:1,13 2502:23 2503:5, 7 2539:2
<b>structure</b> 2499:11 2529:3	<hr/> <b>T</b> <hr/>	<b>theories</b> 2503:18 2524:17 2525:10 2526:5	2548:15	<b>translates</b> 2501:25
<b>studies</b> 2503:18 2509:12 2518:12	<b>takes</b> 2540:23	<b>things</b> 2513:22 2516:13 2553:22 2554:5, 10,25 2555:21 2556:7	2555:10,19 2557:4	<b>translating</b> 2507:7 2527:4, 12 2529:10
<b>subject</b> 2515:16 2524:24 2546:2 2548:8 2549:17	<b>taking</b> 2496:9 2532:12 2547:5	<b>thinking</b> 2497:22 2534:14 2553:17	<b>title</b> 2498:3	<b>translation</b> 2497:25 2498:16 2500:3 2501:16 2502:13,18 2503:18 2507:11,14,17, 20,24 2508:18 2511:1 2522:3 2524:16,25 2525:9,22 2526:5 2528:2, 5,8,10,12 2531:6,20 2542:1,6
<b>submission</b> 2555:23,25	<b>talk</b> 2545:19,21	<b>Thorneloe</b> 2542:25	<b>titled</b> 2497:24 2503:17 2524:16	<b>translations</b> 2528:13
<b>submissions</b> 2536:19 2546:23 2549:6, 11 2551:4	<b>talked</b> 2532:6	<b>thought</b> 2505:14 2519:14,18	<b>today</b> 2501:21 2505:4,20 2510:18 2536:3, 10 2547:8 2551:9	<b>translator</b> 2499:3 2500:4 2501:20,21 2502:8,12 2505:3,16 2508:1 2510:18, 23 2521:21 2527:21 2528:18 2529:6 2535:5
<b>successful</b> 2502:19 2550:4	<b>talking</b> 2500:1 2501:14 2508:17 2524:3, 4	<b>time</b> 2500:17 2504:18 2506:18,25	<b>tomorrow</b> 2555:10	
<b>Sudbury</b> 2542:17,25 2543:5	<b>target</b> 2499:5 2502:22 2503:4, 10 2526:7,18 2527:3,10 2528:20 2529:9		<b>top</b> 2504:6,11, 14 2516:15 2534:21,22 2537:8	
<b>sufficient</b> 2533:17,22 2534:8	<b>team</b> 2547:5,16		<b>towns</b> 2522:24 2523:17	
<b>suggest</b> 2536:2	<b>ten</b> 2524:5 2549:12		<b>Townshend</b> 2539:8,9,22 2540:22 2541:2, 9,14 2543:14, 17,22 2544:3,7, 10,14,20 2545:7,9,18 2547:4,6,13 2549:1,19 2551:14,15,22, 25 2552:5,11,16 2553:3,10,14,19 2555:24 2556:1	
<b>supplementary</b> 2496:14	<b>tender</b> 2548:16		<b>track</b> 2519:7 2555:22	
<b>supporting</b> 2496:12	<b>tenure</b> 2518:11		<b>training</b> 2505:4,19,24 2527:21,25 2528:1,4	
<b>surprised</b> 2545:6	<b>tenured</b> 2543:5		<b>transcribed</b> 2537:22	
	<b>term</b> 2508:22 2509:16,20,23 2510:4 2529:7		<b>transcript</b> 2539:13 2554:6	
	<b>terms</b> 2499:20 2508:19 2520:12,23 2523:2,21			

<p><b>translators</b>                  2505:19                  2512:20                  2521:19,23                  2522:1,6                  2527:18                  2528:18</p> <p><b>trapping</b>                  2530:14 2531:8</p> <p><b>treated</b>                  2544:22</p> <p><b>treaties</b>                  2515:16,17                  2517:2,15,21                  2520:12,16                  2521:6 2522:3,                  15,17,21                  2523:3,8,10,14,                  22 2531:2                  2535:4</p> <p><b>treaty</b> 2512:17                  2515:2 2516:3,                  5,9,10,11,12,19,                  20 2518:1                  2519:23                  2520:13,24                  2521:17,20                  2523:2 2524:2,                  10 2530:25                  2531:16                  2532:22 2535:1,                  2 2537:10,11,                  12,15,22                  2538:11 2539:1,                  10</p> <p><b>trial</b> 2535:24                  2543:16 2544:1                  2550:21                  2551:11 2553:9                  2554:25</p> <p><b>true</b> 2535:3</p> <p><b>turn</b> 2498:19                  2499:1 2503:20                  2504:1 2509:6                  2529:11,13                  2532:19                  2534:20 2537:6                  2538:8</p> <p><b>turning</b>                  2530:10</p> <p><b>type</b> 2500:8,14,</p>	<p>20 2505:5</p> <p><b>types</b> 2499:11</p> <hr/> <p style="text-align: center;"><b>U</b></p> <hr/> <p><b>unable</b>                  2536:16</p> <p><b>unambiguou                  sly</b> 2530:12</p> <p><b>unclear</b>                  2536:11</p> <p><b>uncultivated</b>                  2538:4</p> <p><b>understand</b>                  2497:4,10,14                  2509:14                  2511:11 2543:3                  2549:7 2552:9</p> <p><b>understandin                  g</b> 2509:3,20                  2518:21,23                  2519:10                  2520:16 2521:6,                  12,16 2523:2,21                  2524:8</p> <p><b>understands</b>                  2501:22 2529:6</p> <p><b>understood</b>                  2500:10,16,22                  2501:2,13                  2503:1 2504:6                  2506:6,16,21                  2507:4 2510:11                  2544:15</p> <p><b>universities</b>                  2542:23 2543:9</p> <p><b>university</b>                  2542:16,20,21,                  22,25 2543:2,5</p> <p><b>unsuccessful</b>                  2550:7</p> <p><b>unsure</b>                  2513:24</p> <p><b>update</b> 2557:3,                  10</p> <p><b>Upper</b> 2518:7</p>	<hr/> <p style="text-align: center;"><b>V</b></p> <hr/> <p><b>variation</b>                  2525:19</p> <p><b>variations</b>                  2530:20</p> <p><b>varies</b> 2496:23</p> <p><b>varying</b>                  2499:18</p> <p><b>version</b>                  2538:20</p> <p><b>view</b> 2522:4                  2541:16                  2551:16</p> <p><b>vitae</b> 2542:13,                  15</p> <p><b>voir</b> 2548:6,11</p> <p><b>volume</b> 2535:9                  2536:24 2537:2</p> <p><b>volumes</b>                  2536:8 2550:10</p> <p><b>von</b> 2546:4                  2548:18,19</p> <hr/> <p style="text-align: center;"><b>W</b></p> <hr/> <p><b>waiting</b> 2521:2</p> <p><b>wanted</b>                  2556:17</p> <p><b>wanting</b>                  2519:1</p> <p><b>ways</b> 2531:13</p> <p><b>week</b> 2550:14,                  23,24 2555:11,                  14 2556:4</p> <p><b>White</b> 2542:2</p> <p><b>Whites</b>                  2541:18 2542:9</p> <p><b>wished</b> 2556:8</p> <p><b>wishes</b>                  2532:11 2557:2</p> <p><b>withdrawn</b>                  2554:2</p>	<p><b>witness'</b>                  2541:1,7                  2544:17</p> <p><b>witnesses</b>                  2549:25 2552:3</p> <p><b>word</b> 2497:4,                  14,18 2500:9,                  15,21,25                  2501:2,5,12,15,                  17,23 2505:1,                  12,17 2506:3                  2510:11 2517:7                  2525:21 2527:2,                  9 2528:23                  2529:10,15</p> <p><b>word-for-                  word</b> 2531:25</p> <p><b>wording</b>                  2502:10,17                  2535:4</p> <p><b>words</b> 2496:23                  2497:3,9,10,24                  2498:15 2504:3,                  5,6 2505:9                  2511:3 2522:10,                  11 2532:14</p> <p><b>work</b> 2547:22</p> <p><b>worked</b>                  2538:11,21</p> <p><b>working</b>                  2553:14</p> <p><b>world</b> 2499:8</p> <p><b>write</b> 2532:25</p> <p><b>writer</b> 2499:3</p> <p><b>writes</b> 2504:12                  2525:18</p> <p><b>writing</b> 2503:9</p> <p><b>written</b> 2515:4                  2537:9</p> <p><b>wrong</b> 2498:25                  2538:13</p> <hr/> <p style="text-align: center;"><b>Y</b></p> <hr/> <p><b>year</b> 2524:6,21</p> <p><b>years</b> 2509:12</p>	<p>2524:5</p> <p><b>yesterday</b>                  2496:3,22                  2515:12                  2530:17                  2542:17</p>
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