

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

VOL 32 DAY 32
July 24, 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
7 Plaintiffs

8 - and -

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

18 Court File No. 03-CV-261134CM1

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

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

22 Plaintiffs

23 - and -

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

Defendants

26 -----
27 --- This is VOLUME 32/DAY 32 of the trial
28 proceedings in the above-noted matter, being held
29 at the Superior Court of Justice, Courtroom 5-1,
30 330 University Avenue, Toronto, Ontario, on the
31 24th day of July, 2019.

32 -----
33 B E F O R E: The Honourable Justice Wendy M.
34 Matheson
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A P P E A R A N C E S:

Krista Nerland, Esq., for the Plaintiffs,
& Cathy Guirguis, Esq., The Chippewas of
Saugeen First Nation,
and the Chippewas of
Nawash First Nation.

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

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

REPORTED BY: Deana Santedicola, RPR, CSR, CRR

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I N D E X

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documents..... 3342-3355

WITNESS: PROFESSOR JARVIS BROWNLIE
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NO.	DESCRIPTION	PAGE/LINE NO.
4152:	Chapter 3 of book authored by A. Portelli.	3355:17
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4154:	Article "Notes on Canada and the Northwest States of America."	3369:18
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09:52:38 1 -- Upon commencing at 10:05 a.m.

09:28:28 2
10:06:18 3 THE COURT: Mr. Beggs.

10:06:21 4 MR. BEGGS: Thank you, Your Honour. I
10:06:23 5 believe Ms. Guirguis has something she would like
10:06:25 6 to raise before I begin my cross-examination.

10:06:26 7 THE COURT: All right, please go ahead,
10:06:28 8 Ms. Guirguis.

10:06:29 9 MS. GUIRGUIS: Good morning, Your
10:06:30 10 Honour.

10:06:30 11 THE COURT: Good morning.

10:06:31 12 MS. GUIRGUIS: Your Honour, we have an
10:06:32 13 objection to raise that we have discussed with our
10:06:33 14 friends that we think is better dealt with at the
10:06:35 15 start of cross-examination.

10:06:36 16 It is about late disclosure of
10:06:38 17 documents that our friends, Canada and Ontario, may
10:06:42 18 put to Professor Brownlie on cross-examination.

10:06:44 19 So Canada sent us an email Tuesday
10:06:47 20 afternoon at around 2 o'clock identifying four
10:06:49 21 documents that it intends to put to Dr. Brownlie
10:06:52 22 and a further email at 9 o'clock p.m. identifying
10:06:56 23 another 15 documents.

10:06:58 24 Of these, we think from our review that
10:07:03 25 seven have not been previously disclosed to the

1 Plaintiffs.

2 Ontario sent an email Tuesday morning
3 at 11 o'clock identifying 27 documents that it may
4 be putting to Dr. Brownlie. Of these, 25 we
5 believe have not been previously disclosed.

6 So in total, as far as we can tell, we
7 have 32 new documents which have not been disclosed
8 pursuant to the rules which may be put by my
9 friends to Professor Brownlie.

10 Late disclosure, of course, has already
11 been raised as an issue, and we acknowledge that
12 disclosure is going to happen throughout the trial
13 and that leave can be granted under the rules.

14 But we submit that, given the lateness
15 of this disclosure, there is prejudice to the
16 Plaintiffs for two reasons.

17 To the extent that these documents are
18 relevant to matters and issues that were in
19 Professor Brownlie's report, they should have been
20 disclosed early enough that Professor Brownlie
21 could have had the opportunity to consider them
22 prior to his examination in-chief.

23 I can't say whether this is the case
24 for all of them without a little more time to
25 review the substance of the documents.

10:08:05 1 There's some fishery documents, a
10:08:08 2 Fisheries Commission report, which I have discussed
10:08:10 3 with my friends from Ontario and they say that they
10:08:13 4 can -- it is about 400 pages and they say you don't
10:08:15 5 need to look at all of it, but I think that that
10:08:17 6 might have been something that could have been
10:08:18 7 provided to us before.

10:08:20 8 The second reason is that we have
10:08:24 9 closed -- that we submit that there is prejudice is
10:08:27 10 that we have closed the examination in-chief, and
10:08:28 11 so the opportunity is now lost to prepare our
10:08:31 12 witness for cross-examination based on these
10:08:33 13 documents.

10:08:34 14 We are expected to have all the
10:08:41 15 relevant documents before us when we prepare our
10:08:43 16 witness for cross-examination, and now that we did
10:08:46 17 not receive that until well past that point, it is
10:08:49 18 not permissible for us to speak to our witness
10:08:51 19 about it.

10:08:52 20 THE COURT: Well, without my permission
10:08:53 21 it is not permissible.

10:08:57 22 MS. GUIRGUIS: That's right.

10:08:58 23 So, you know, we have had a look at the
10:08:59 24 case law about the prejudice by late disclosure,
10:09:02 25 since this topic has come up before, and, you know,

1 raising documents not disclosed in accordance with
2 the rules only in cross-examination, and it has
3 been found -- we have a Court of Appeal case,
4 Iannarella v. Corbett, that says that there is
5 prejudice where you have lost the opportunity to
6 prepare for examination in-chief.

7 When we are not surprised by the
8 evidence, you know, it indicates there is no
9 prejudice, but as I have mentioned, we haven't had
10 the chance to review them substantively.

11 It could fall into the category that we
12 are not surprised, but we need a short time to
13 review it. For Ontario, we do have time. They are
14 not going up until August. For Canada, since they
15 are set to start --

16 THE COURT: How many of the 32
17 documents are Canada?

18 MS. GUIRGUIS: Seven.

19 THE COURT: Seven.

20 MS. GUIRGUIS: So seven documents, and
21 so since they are set to start today, what we think
22 is reasonable is to ask for a short adjournment
23 this morning, maybe an hour or an hour and a half.
24 There's seven documents and I think that there is
25 only one that is likely, but I think that that is

10:10:20 1 one that I am not too concerned about.

10:10:21 2 So that is what we think would be
10:10:31 3 reasonable to ask for, is a short adjournment so
10:10:33 4 that we can review the seven documents, but we
10:10:36 5 still have the issue that our examination in-chief
10:10:39 6 is complete and, as you point out, not permissible
10:10:41 7 to speak to our witness without your permission.

10:10:44 8 THE COURT: All right. Mr. Beggs, what
10:10:50 9 do you have to say about this?

10:10:51 10 MR. BEGGS: Well, first of all, I do
10:10:59 11 apologize for the late disclosure which,
10:11:01 12 unfortunately, does happen from time to time.

10:11:03 13 I have no objection if my friend feels
10:11:08 14 that a short adjournment would give her the
10:11:13 15 opportunity to review the documents and hopefully
10:11:17 16 resolve any difficulties that might come, and --

10:11:24 17 THE COURT: What is your current
10:11:25 18 estimate of the length of your cross-examination?

10:11:27 19 MR. BEGGS: My current estimate is two
10:11:33 20 and a quarter days, possibly less.

10:11:51 21 THE COURT: I take it you are not
10:11:53 22 objecting to the request for a short delay this
10:11:55 23 morning?

10:11:55 24 MR. BEGGS: No, Your Honour.

10:11:57 25 THE COURT: Does Ontario have anything

1 to say about any of this?

2 MR. FELICIAN: No objection to any
3 short delay, Your Honour.

4 THE COURT: And what is the reason for
5 the late disclosure, Mr. Beggs?

6 MR. BEGGS: Frankly, just the relevance
7 of some materials only became apparent on short --
8 on review before Professor Brownlie's examination.
9 Some of it was simply a matter of getting it
10 uploaded and sent in. I believe one of the
11 documents is Professor Brownlie's thesis, which I
12 didn't believe would be an issue.

13 THE COURT: Yes, it would be hard to
14 imagine that he needs any assistance understanding
15 the existence of that document.

16 MR. BEGGS: I know another document is
17 a short obituary, and another document is an entry
18 from the Oxford Dictionary of National Biography,
19 which we only received yesterday -- well, actually
20 maybe it was late one day. I saw it yesterday
21 morning.

22 I don't recall what the other four
23 documents would be.

24 THE COURT: But they were recently
25 obtained? They are not documents, for example,

1 over which you would claim litigation privilege but
2 you are now waiving it?

3 MR. BEGGS: No, no, nothing to do with
4 privilege.

5 THE COURT: All right.

6 MR. BEGGS: I think --

7 THE COURT: You can have an offline
8 quiet conversation, if you wish, with Counsel, but
9 you have to stand away from the podium to do that
10 and quietly do that.

11 MR. BEGGS: I believe several documents
12 pertain to an issue in 1895. All of those
13 documents I can forgo examination on. It is not
14 that -- it is not essential here.

15 THE COURT: So out of the seven, one of
16 them is the thesis, which I put to one side.

17 How many remain after you forgo those
18 documents, sir?

19 MR. BEGGS: I believe four documents,
20 including the thesis?

21 MS. GUIRGUIS: I think it is three not
22 including the thesis.

23 THE COURT: So we have to obviously --
24 at least I think it is obvious. I'll give
25 Plaintiffs' counsel time to look at these

10:15:05 1 documents. That is all they are asking for. With
10:15:11 2 the assistance of the recent discussion offline
10:15:13 3 with counsel, Ms. Guirguis, how much time do you
10:15:18 4 ask for? I don't think you should be asking for
10:15:25 5 any time in relation to this gentleman's thesis,
10:15:28 6 just to be perfectly clear.

10:15:31 7 MS. GUIRGUIS: Yes, Your Honour, the
10:15:32 8 thesis is what I was referring to as the one we are
10:15:34 9 not concerned about, so I think with the three
10:15:36 10 documents we would need at most an hour.

10:15:38 11 THE COURT: All right. And are you
10:15:39 12 asking for permission to talk to your witness, or
10:15:42 13 not? Because it does not automatically follow that
10:15:47 14 late disclosure would mean that you should get to
10:15:50 15 sit with your witness.

10:15:52 16 MS. GUIRGUIS: Yes, that's right. I
10:15:53 17 mean, I have been thinking about this and I'm not
10:15:57 18 sure -- yeah, that is the problem, is that without
10:16:03 19 reviewing the documents first, I'm not sure that it
10:16:05 20 would be appropriate to ask to sit with the
10:16:08 21 witness.

10:16:09 22 THE COURT: Okay.

10:16:10 23 MS. GUIRGUIS: And that goes for
10:16:11 24 Ontario's documents as well, we haven't reviewed
10:16:13 25 them in detail.

1 THE COURT: No, but as you have pointed
2 out correctly, there is no urgency to that
3 situation.

4 MS. GUIRGUIS: Exactly, yes.

5 THE COURT: All right. Well, we'll --
6 unless these are lengthy documents --

7 MS. GUIRGUIS: I don't think that they
8 are.

9 THE COURT: It just strikes me as
10 improbable that it would take an hour to look at
11 three not lengthy documents.

12 MS. GUIRGUIS: I think we can look at
13 the page count, but yeah, I think probably less
14 than an hour.

15 THE COURT: Well, could you give me the
16 page count?

17 MS. NERLAND: I can, I just wrote it
18 down.

19 THE COURT: For the three remaining
20 documents.

21 MS. GUIRGUIS: Oh, 20 pages?

22 MS. NERLAND: There are just over 20,
23 maybe 24.

24 MS. GUIRGUIS: Just 24 pages.

25 THE COURT: If it is that many pages,

1 I'll give you until 11 o'clock to look at them.

2 It's almost an hour. And obviously if at 11

3 o'clock you feel that you need more time, just tell

4 Mr. Registrar how much more time you need and we'll

5 take it from there. So we'll stand down until 11

6 o'clock.

7 -- RECESSED AT 10:17 A.M.

8 -- RESUMED AT 11:02 A.M.

9 THE COURT: Where do we stand, Ms.

10 Guirguis?

11 MS. GUIRGUIS: Your Honour, we have had

12 a brief review of the documents. One of the

13 documents there were missing pages, and one of the

14 pages we think has the relevant information that we

15 are supposed to be paying attention to.

16 So I believe my friends are working on

17 getting a copy that has those pages. As of now,

18 from what we have reviewed, we don't think that we

19 need to speak to the witness, but I don't know what

20 is on that page, so I still don't have an answer or

21 a fulsome request in terms of whether we need to

22 speak to him.

23 THE COURT: You mean comprehensive,

24 right?

25 MS. GUIRGUIS: Comprehensive.

11:04:29 1 THE COURT: I was once told look up the
11:04:30 2 meaning of "fulsome," which I also used in the
11:04:34 3 manner you do.

11:04:35 4 So are you asking for anything? Are
11:04:36 5 you prepared to allow the cross-examination to
11:04:39 6 commence? What is your position?

11:04:45 7 MS. GUIRGUIS: If it is possible, what
11:04:47 8 I have asked my friend is if he can leave this
11:04:49 9 particular document until later, but the issue
11:04:51 10 being is that he will have started his cross, and
11:04:53 11 then if we review the document over the lunch
11:04:56 12 break, it just becomes more difficult then for us
11:04:58 13 to then ask for your permission to speak to him at
11:05:03 14 that point.

11:05:03 15 THE COURT: So what are you asking for
11:05:04 16 right now?

11:05:06 17 MS. GUIRGUIS: I think that we have to
11:05:08 18 see that page.

11:05:09 19 THE COURT: I mean, the reality is that
11:05:11 20 Mr. Beggs' estimate is able to be completed if we
11:05:16 21 start later.

11:05:18 22 MS. GUIRGUIS: Okay.

11:05:19 23 THE COURT: And my experience, and I
11:05:23 24 could be wrong because it could change, but my
11:05:26 25 experience in this trial suggests that if Mr. Beggs

11:05:29 1 says he could be less time, that that is actually
11:05:32 2 quite a realistic possibility. He said two and a
11:05:36 3 quarter days. If it was two and a quarter days, we
11:05:40 4 could commence at 2:15 and he could still conclude
11:05:45 5 his cross-examination this week.

11:05:48 6 Mr. Beggs, how long is it going to take
11:05:51 7 to rustle up the missing pages?

11:05:57 8 MR. BEGGS: If I could have a moment?

11:05:58 9 THE COURT: Yes. I mean, we could
11:06:03 10 start back even, like, at 2 o'clock. I'm not
11:06:06 11 suggesting 15 minutes is going to make a huge
11:06:08 12 difference, but --

11:06:10 13 MR. BEGGS: Perhaps 2 o'clock would be
11:06:11 14 good, Your Honour.

11:06:12 15 THE COURT: And is that going to give
11:06:14 16 you time?

11:06:16 17 MR. BEGGS: It will certainly be done
11:06:18 18 by then.

11:06:18 19 THE COURT: Is this something that can
11:06:19 20 be done here?

11:06:21 21 MR. BEGGS: Yes.

11:06:22 22 THE COURT: So would counsel, at least
11:06:24 23 those who are interested in this issue -- I'm happy
11:06:26 24 to do that so we can put the issue to one side and
11:06:29 25 resume at 2 o'clock, but I don't want people to

11:06:33 1 disperse for coffee if I adjourn now until 2
11:06:35 2 o'clock. I would like this to be taken care of
11:06:38 3 first and then you can disperse for coffee. Is
11:06:40 4 that satisfactory?

11:06:41 5 MR. BEGGS: Yes, Your Honour.

11:06:42 6 THE COURT: So why don't we resume at 2
11:06:44 7 o'clock, and by that time everyone will have had
11:06:46 8 the time they need to consider their position. All
11:06:49 9 right?

11:06:49 10 -- RECESSED AT 11:07 A.M.

14:01:04 11 -- RESUMED AT 2:00 P.M.

14:01:04 12 THE COURT: Yes, Counsel.

14:01:06 13 MS. GUIRGUIS: Your Honour, we have now
14:01:07 14 had the opportunity to review the documents in a
14:01:10 15 more comprehensive manner, and we are not asking
14:01:12 16 for permission to speak to Professor Brownlie
14:01:14 17 before Canada's cross-examination.

14:01:16 18 I do have one housekeeping matter that
14:01:19 19 I forgot to bring up earlier today, and that is
14:01:23 20 about the two articles that we added as lettered
14:01:27 21 exhibits yesterday from Portelli. Mr. Feliciant
14:01:32 22 has advised that they have no objection to making
14:01:34 23 those exhibits, so I am hoping that we can do that
14:01:37 24 now.

14:01:39 25 THE COURT: If I'm recalling correctly,

14:01:41 1 they were also late-produced.

14:01:43 2 MS. GUIRGUIS: That's correct.

14:01:44 3 THE COURT: And Mr. Feliciant wanted
14:01:45 4 time to read them over.

14:01:47 5 MS. GUIRGUIS: That's right.

14:01:47 6 THE COURT: I see, and he is
14:01:49 7 unconcerned, having had that time?

14:01:51 8 So I think it was F-1 and 2, Mr.
14:01:55 9 Registrar.

14:01:55 10 THE REGISTRAR: H-1 and H-2.

14:01:59 11 THE COURT: H-1 and H-2. Give me a
14:02:02 12 moment here. I am just trying to find that.

14:02:19 13 So H-1 is Chapter 3, and H-2 is Chapter
14:02:25 14 1. So beginning with Chapter 3, Mr. Registrar?

14:02:27 15 THE REGISTRAR: Chapter 3 is going to
14:02:30 16 be Exhibit 4152.

14:02:30 17 EXHIBIT NO. 4152: Chapter 3 of book
14:02:42 18 authored by A. Portelli.

14:02:42 19 THE COURT: And Chapter 1?

14:02:44 20 THE REGISTRAR: Chapter 1 is Exhibit
14:02:48 21 4153.

14:02:48 22 EXHIBIT NO. 4153: Chapter 1 of book
14:02:51 23 authored by A. Portelli.

14:02:51 24 THE COURT: Thank you, Counsel.

14:02:52 25 Anything further?

14:02:53 1 MS. GUIRGUIS: No. Thank you, Your
14:02:54 2 Honour, for the time this morning.
14:02:56 3 THE COURT: Mr. Beggs?
14:03:00 4 MR. BEGGS: Thank you, Your Honour.
14:03:01 5 PROFESSOR JARVIS BROWNLIE; Under Prior
14:03:03 6 Affirmation.
14:03:03 7 CROSS-EXAMINATION BY MR. BEGGS:
14:03:09 8 Q. Good afternoon, Professor
14:03:10 9 Brownlie.
14:03:11 10 A. Good afternoon.
14:03:11 11 Q. My name is Michael Beggs. I'm the
14:03:14 12 lawyer with the Attorney General of Canada, and I
14:03:17 13 just wanted to start with some things I think you
14:03:27 14 might be able to help us with.
14:03:28 15 I wanted to look at a map, Exhibit P,
14:03:33 16 and it is the large map behind you, but we'll get
14:03:36 17 it up on the screen as well so you don't have to
14:03:38 18 lose your microphone.
14:03:40 19 I should say, Your Honour, that Ms.
14:03:48 20 Lorin Kirk is assisting me from my office this
14:03:51 21 morning.
14:03:51 22 THE COURT: I am delighted to hear
14:03:53 23 that, sir. Some of your other colleagues, although
14:03:55 24 well-intentioned perhaps, aren't as good at it.
14:03:59 25 BY MR. BEGGS:

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Q. Yes, Your Honour.

So looking at this map, you can see that several areas have been highlighted pertaining to different treaties, so there is a light green area marked Treaty 45 1/2; the yellow area is marked Treaty 72; a white line is marked Treaty 67; and an orange area is marked Treaty 82; and there is also a green area marked Treaty 93.

And it is actually about those numbers that I wanted to ask you about. We have been referring to these numbers of treaties throughout the case so far, and I just wanted to clarify for the purposes of the record, you mentioned, I think on Monday, about a book called Treaties and Surrenders of Canada?

A. Yes.

Q. And the numbers, Treaty 45 1/2, 72, et cetera, all come from that collection; is that right?

A. That sounds right.

Q. And the collection was -- well, the collection goes to 1890 and I believe it was published in 1891; is that correct?

A. That sounds right.

Q. So it is your understanding that

14:05:23 1 prior to 1891 these Treaties wouldn't have been
14:05:27 2 known by those names? Like, for example, somebody
14:05:31 3 in the 1860s wouldn't have referred to Treaty 72;
14:05:35 4 they would have referred to it by --

14:05:37 5 A. Oh, yes, I mean, they were named
14:05:39 6 that, I believe, when they were made, like Treaty
14:05:45 7 45 1/2 has that written on it, I think, but yeah, at
14:05:48 8 the time people were vaguer about when they
14:05:50 9 referred to treaties.

14:05:51 10 Q. So your understanding is they had
14:05:52 11 that number all along?

14:05:53 12 A. I believe -- certainly I believe
14:05:56 13 45 1/2 did.

14:05:57 14 Q. Okay.

14:05:59 15 A. I can look that up.

14:06:08 16 THE COURT: Sir, part of the problem is
14:06:09 17 that you are leaning on your hand, which may be
14:06:12 18 comfortable, but impedes hearing you.

14:06:16 19 BY MR. BEGGS:

14:06:16 20 Q. Okay. In any event, Treaty 45 1/2
14:06:20 21 is a bit of a strange number. It is -- in your
14:06:26 22 understanding, that doesn't suggest that the treaty
14:06:29 23 is any less important than another treaty, like
14:06:32 24 Treaty 45?

14:06:35 25 A. It is an oddity. I'm not aware of

1 any other treaty that has a half attached to it.

2 Q. Is it your understanding that the
3 half just demonstrates that it is related to Treaty
4 45?

5 A. I don't really have an opinion on
6 that. I couldn't -- I haven't looked into it, so I
7 couldn't really say if there was any significance
8 to that. I mean, obviously they were -- they were
9 linked at the time, the Treaty 45 1/2 specifically
10 refers to Treaty 45 in its preamble.

11 Q. All right, but it doesn't, for
12 example, mean that the Treaty was written on a
13 half-piece of paper?

14 A. Oh, I think it was, wasn't it? I
15 think it was, yeah.

16 Q. Well, that wouldn't be why it was
17 called Treaty 45 1/2, would it, because it was
18 written on a half-piece of paper?

19 A. No, I really haven't looked into
20 this.

21 Q. Okay. But you did mention that
22 you were familiar with the numbered treaties; is
23 that right?

24 A. Meaning of the 1870s, you mean?

25 Q. Yes.

14:07:42 1 A. Yes.

14:07:42 2 Q. And that numbering system isn't
14:07:45 3 connected to the numbering system of 45 1/2 or 72?

14:07:49 4 A. No, I don't think so.

14:07:50 5 Q. Okay, it is a sort of -- well, 72
14:07:53 6 obviously is 1854, and the numbered treaties come
14:07:58 7 later?

14:07:59 8 A. Right. Yeah, they started again
14:08:00 9 at 1 for the numbered treaties.

14:08:02 10 Q. And the numbered treaties, you
14:08:12 11 referred to them when referring to the length of
14:08:15 12 time in which deliberations might take place?

14:08:18 13 A. Yes.

14:08:18 14 Q. Were the numbered treaties with
14:08:21 15 Ojibwe groups?

14:08:22 16 A. Some of them were, yes.

14:08:23 17 Q. Okay, and some weren't, I take it?

14:08:27 18 A. Correct, yeah.

14:08:28 19 Q. Do you know which ones were?

14:08:31 20 A. Treaty 1, Treaty 2, Treaty 5, all
14:08:34 21 of those for sure had -- Treaty 5? No, Treaty 5
14:08:39 22 might not have. Treaties 1 and 2 for sure, and
14:08:42 23 Treaty 3.

14:08:42 24 Q. And are you familiar with Treaty 9
14:08:45 25 in Northern Ontario?

14:08:47 1 A. Yes.

14:08:47 2 Q. And that had some Ojibwe Bands
14:08:56 3 involved, I believe?

14:08:59 4 A. I am not sure. I would have to
14:09:01 5 look that up.

14:09:02 6 Q. Okay.

14:09:05 7 A. It is pretty far north, so it
14:09:07 8 could have been all Cree.

14:09:08 9 Q. Okay. So I want to actually ask
14:09:14 10 you about some of the main historical sources we
14:09:17 11 are using in this trial, but before I get into
14:09:21 12 depth on that, you have said you are very familiar
14:09:26 13 with the departmental correspondence, the
14:09:30 14 historical documents?

14:09:32 15 A. Yes.

14:09:32 16 Q. And I have noted that many of
14:09:33 17 these documents have what appears to be some sort
14:09:36 18 of cover page with a description written on it.
14:09:38 19 Can you tell us what that is?

14:09:41 20 A. My understanding is that those
14:09:45 21 little descriptions that appear sort of on the
14:09:48 22 front of them were written by someone internal to
14:09:51 23 the department and it was a way of, you know,
14:09:53 24 briefly, quickly summarizing the contents of the
14:09:56 25 document for a quick reference.

14:09:58 1 Q. So if it was a letter from someone
14:10:01 2 outside the department, someone from within the
14:10:05 3 department might write a cover page?

14:10:06 4 A. Yes.

14:10:07 5 Q. A note, if you will?

14:10:08 6 A. Yes, I believe that is how it was
14:10:09 7 done.

14:10:09 8 Q. And some of the documents we have
14:10:11 9 looked at have had dates on the cover page which
14:10:16 10 you noted earlier in your testimony where there was
14:10:20 11 a number -- there was two numbers essentially, a
14:10:23 12 date with a slash in between them?

14:10:25 13 A. Yes.

14:10:25 14 Q. Can you explain what that means?

14:10:27 15 A. I was guessing and I didn't have a
14:10:31 16 chance to look more closely at that. I noted that
14:10:34 17 too at the time in Court.

14:10:35 18 My guess is that the first date would
14:10:38 19 be the date at which the -- the date of the letter
14:10:44 20 itself, the date when the author wrote it, and the
14:10:46 21 second one, I'm guessing, would be the date that it
14:10:49 22 arrived in the department.

14:10:51 23 Q. Okay.

14:10:52 24 A. Because later they used a date
14:10:54 25 stamp for that. They always note what date the

14:10:56 1 letter arrived.

14:10:56 2 Q. Okay, thank you. So turning to
14:11:00 3 the main historical documents, first of all, we
14:11:08 4 have the Treaty itself which I believe is Exhibit
14:11:14 5 2146, and you have reviewed this Treaty, I take it?

14:11:25 6 A. Yes.

14:11:26 7 Q. And if I could scroll down to the
14:11:31 8 bottom actually of the signature page. So we know
14:11:39 9 who Mr. Oliphant is. We know who Mr. Jacobs is.
14:11:47 10 There are three other individuals listed as
14:11:49 11 witnesses. And then there is a number of
14:11:58 12 Indigenous people who have signed it or written a
14:12:01 13 totem. I think you have already referred to John
14:12:05 14 H. Beaty?

14:12:06 15 A. Yes.

14:12:06 16 Q. And you said he was -- did you say
14:12:09 17 he was an interpreter for Colpoy's Bay or just a
14:12:14 18 member of --

14:12:14 19 A. He was a member of Colpoy's Bay.

14:12:17 20 Q. Are you aware of whether he was an
14:12:19 21 interpreter or not?

14:12:19 22 A. I haven't seen him referred to as
14:12:21 23 an interpreter.

14:12:22 24 Q. Okay. And so John Kaduhgekwun and
14:12:37 25 Alex Madwayosh, those are the Chiefs from Saugeen;

14:12:43 1 is that correct?

14:12:44 2 A. I believe so.

14:12:45 3 Q. And John Thomas Wahbahdick and
14:12:53 4 Peter Jones, sometimes referred to as Kegedonce,
14:12:57 5 those are the Chiefs from Nawash; is that correct?

14:12:59 6 A. Yes.

14:12:59 7 Q. And to your understanding, are the
14:13:05 8 others head men or clan leaders?

14:13:11 9 A. I think the others are -- have
14:13:21 10 different roles, varying roles.

14:13:23 11 Q. Okay, that is fair enough. David
14:13:27 12 Sawyer, for example, I guess you are familiar with
14:13:29 13 him?

14:13:30 14 A. Yes.

14:13:30 15 Q. So he is -- well, I'll get to him
14:13:36 16 later, but we'll move on from the Treaty, I guess.
14:13:39 17 But the Treaty was also accompanied by
14:13:43 18 a map that was used; is that correct?

14:13:45 19 A. Yes, I believe so, yes.

14:13:47 20 Q. So if I could call up Exhibit
14:14:04 21 2175. So this is page 14 of Exhibit 2175. The
14:14:16 22 document is the overall report of -- the whole
14:14:22 23 document is the report of Laurence Oliphant, but
14:14:25 24 this is the map that was included in that report.

14:14:30 25 Have you seen this map before?

14:14:31 1 A. I think so.

14:14:32 2 Q. And it marks the reserves in red
14:14:42 3 that were set aside -- well, I should say there
14:14:50 4 were modifications to the reserves after the
14:14:52 5 initial negotiation; is that correct?

14:14:54 6 A. Yes.

14:14:54 7 Q. But this would have been the
14:14:56 8 reserves as indicated during the October 1854
14:15:00 9 negotiation?

14:15:01 10 A. Presumably, yes.

14:15:02 11 Q. Could we blow up the bottom of it
14:15:04 12 so I could see the writing on the little bit of
14:15:19 13 line at the bottom. Maybe the resolution won't be
14:15:32 14 so good. Could we scroll over a bit.

14:15:45 15 So there is writing in between two
14:15:48 16 lines at the bottom which says:

14:15:51 17 "Part of the strip surrendered
14:15:53 18 by the Indians in 1851 between the
14:15:56 19 yellow marks."

14:15:58 20 And I guess there is yellow on each
14:16:00 21 side of those, of that section. Is that your
14:16:05 22 understanding that that was the surrender, what was
14:16:09 23 known as the surrender of the half-mile strip?

14:16:12 24 A. Yes.

14:16:13 25 Q. And presumably that was because it

1 was a half-mile wide?

2 A. Yes.

3 Q. And that was Treaty 67, I guess,
4 in the collection that we saw earlier or the map?

5 A. It sounds right.

6 Q. Okay, and so the surrender Treaty
7 67, if you will, 1851, that was the first surrender
8 of territory on the Saugeen Peninsula following
9 Treaty 45 1/2; is that correct?

10 A. I believe so.

11 Q. All right. And so again,
12 continuing with the historical documents, we have
13 already mentioned that Laurence Oliphant, he was
14 the Crown negotiator for the Treaty?

15 A. Yes.

16 Q. And he gave several accounts of
17 the Treaty over time, and I think you referred to
18 some in your report and in your testimony earlier?

19 A. Yes.

20 Q. So his first report, which I
21 believe is Exhibit 2160, you referred to that --
22 well, it would be the same as this one too,
23 actually, 2175, but we have marked up 2160. It is
24 a -- the report, you referred to it many times in
25 your first report?

14:17:43 1 A. Yes.

14:17:44 2 Q. And I won't get into it right at
14:17:48 3 this moment, but you had some reservations about
14:17:51 4 how honest Oliphant might be in his reporting
14:17:53 5 letter?

14:17:54 6 A. Yes. I might prefer the word
14:18:02 7 "forthcoming" to "honest."

14:18:04 8 Q. Forthcoming, okay. I am going to
14:18:14 9 move ahead. So he also wrote about the
14:18:20 10 negotiations in a book the following year, in 1855;
14:18:25 11 is that correct?

14:18:25 12 A. The following year? Are you
14:18:33 13 referring to -- what book is that?

14:18:34 14 Q. Are you familiar with the book
14:18:37 15 "Minnesota and the Far West"?

14:18:38 16 A. Oh, yeah, yes, I did look at that.

14:18:40 17 Q. I believe that is Exhibit 2179.
14:18:51 18 And actually, I'll be coming back to that again
14:18:58 19 later, so I don't need to call that up.

14:19:00 20 Are you familiar with a series of
14:19:13 21 articles that Oliphant published earlier in the
14:19:16 22 year anonymously called "Notes on Canada and the
14:19:19 23 Northwest States of America"?

14:19:22 24 A. Honestly, I can't remember whether
14:19:24 25 I have seen those or not.

14:19:25 1 Q. Okay. That was one of the
14:19:27 2 documents that we were discussing this morning.

14:19:31 3 A. Okay. Oh, I see.

14:19:33 4 Q. That was the one that was missing
14:19:34 5 the pages that we had to resolve.

14:19:35 6 A. Okay.

14:19:36 7 Q. Just so I am -- I am not
14:19:51 8 suggesting that you missed anything there. There
14:19:55 9 is no reference to the negotiations in that
14:19:57 10 article. I just wanted to -- the one flows to the
14:20:02 11 next.

14:20:02 12 So in 1886, Oliphant wrote another
14:20:07 13 series of articles for Blackwood's Magazine called
14:20:11 14 "Moss From a Rolling Stone"; are you familiar with
14:20:13 15 that?

14:20:13 16 A. Yes. Well, I'm familiar with the
14:20:15 17 book version.

14:20:15 18 Q. Right, and so the following year
14:20:17 19 in 1887 it became a book?

14:20:20 20 A. Yes, yes.

14:20:21 21 Q. And so, actually, if I could just
14:20:38 22 for the record pull up some of the documents. So
14:20:41 23 the article "Notes on Canada and the Northwest
14:20:45 24 States of America" is SC0849.

14:20:59 25 And this particular article is from May

1 1855. And I would ask that it be made the next
2 exhibit, Your Honour, the article there was some
3 discussion about this morning.

4 MS. GUIRGUIS: Your Honour, my friend
5 has referred to it as that it is written
6 anonymously by Oliphant, but I am not sure that we
7 have any evidence that confirms that it is Oliphant
8 that actually wrote these articles.

9 THE COURT: Well, not so far.

10 MS. GUIRGUIS: Yes.

11 THE COURT: Because this gentleman did
12 not identify it as such. It can nonetheless be
13 marked, unless you object. Do you object?

14 MS. GUIRGUIS: No, I don't object.

15 THE COURT: All right. So, Mr.
16 Registrar?

17 THE REGISTRAR: Exhibit No. 4154.

18 EXHIBIT NO. 4154: Article "Notes on
19 Canada and the Northwest States of
20 America."

21 THE COURT: Just give me a moment. My
22 computer is having a moment. We are just going to
23 take a short technology break, Mr. Beggs.

24 It won't take very long.

25 Please go ahead.

14:22:59 1 BY MR. BEGGS:

14:23:00 2 Q. Thank you, Your Honour.

14:23:00 3 Actually, while we are on the topic of
14:23:02 4 authorship, I believe on Monday you referred to the
14:23:06 5 memoir "Episodes in a Life of Adventure" as being
14:23:13 6 purportedly written by Mr. Oliphant. Do you have
14:23:16 7 some doubt that it was written by Mr. Oliphant?

14:23:19 8 A. Well, the thing with published
14:23:21 9 books at any time, but particularly in the 19th
14:23:28 10 century, is that without researching it, you don't
14:23:30 11 know for sure if there was a ghost writer and/or
14:23:35 12 intervention by the editor. That is why I added
14:23:37 13 that word.

14:23:38 14 Q. Okay, thank you. So going back
14:23:40 15 again for the record, I would like to call up
14:23:45 16 SC0860, and this is again an article from
14:23:50 17 Blackwood's Magazine, this time titled "Moss From a
14:23:54 18 Rolling Stone" by Laurence Oliphant. It is an
14:24:05 19 August 1866 edition. And I would like to ask that
14:24:10 20 this be made an exhibit as well, Your Honour.

14:24:13 21 THE COURT: Mr. Registrar?

14:24:16 22 THE REGISTRAR: Exhibit No. 4155.

14:23:47 23 EXHIBIT NO. 4155: Article from
14:23:50 24 Blackwood's Magazine titled "Moss From
14:23:54 25 a Rolling Stone" written by Laurence

14:24:20 1 Oliphant.

14:24:20 2 BY MR. BEGGS:

14:24:27 3 Q. And you referred to this -- well,
14:24:29 4 not to this one, but to the book several times in
14:24:31 5 your report as well, I believe?

14:24:34 6 A. Yes.

14:24:34 7 Q. And you mentioned in your report
14:24:35 8 and in your testimony that you said that memoirs of
14:24:40 9 this type were - and I am not quoting you, so
14:24:43 10 please correct me - but primarily to sell books and
14:24:46 11 entertain readers?

14:24:47 12 A. Yes.

14:24:47 13 Q. I would like to refer to another
14:24:53 14 book that was referred to in your second report a
14:24:57 15 few times, and that was Exhibit 2658, and this is a
14:25:18 16 book entitled "The Indian Chief: An Account of the
14:25:27 17 Labours, Losses, Sufferings, and Oppression of
14:25:34 18 Ke-Zig-Ko-E-Ne-Ne (David Sawyer), A Chief of the
14:25:45 19 Objibway Indians in Canada West," by Enemikeese.
14:25:49 20 So you are familiar with this book as well?

14:25:51 21 A. Yes.

14:25:52 22 Q. And can you tell us who Enemikeese
14:26:00 23 was?

14:26:00 24 A. Conrad Van Dusen, a Methodist
14:26:00 25 missionary.

14:26:00 1 Q. And this book was published in
14:26:02 2 1867, I believe?

14:26:03 3 A. Yes.

14:26:03 4 Q. So you said Methodist. He was a
14:26:13 5 Wesleyan Methodist; is that correct?

14:26:15 6 A. That sounds right. Yes, I think
14:26:16 7 so.

14:26:16 8 Q. And as the title states, it's a
14:26:20 9 book about David Sawyer, and is that the same David
14:26:22 10 Sawyer who signed the Treaty?

14:26:23 11 A. Yes.

14:26:24 12 Q. Now, in your report, I won't take
14:26:29 13 you to it -- well, you may have it in front of you.
14:26:31 14 Do you have your second report in front of you?

14:26:33 15 A. Yes.

14:26:33 16 Q. It is page 77 of the second
14:26:37 17 report, footnote 198. It is a very minor thing,
14:26:44 18 but I think it describes the book or refers to the
14:26:49 19 book?

14:26:51 20 A. Yes.

14:26:51 21 Q. Could you tell me what it says
14:26:53 22 there?

14:26:53 23 A. It is footnote 198, is that --

14:26:55 24 Q. 198, yes.

14:26:57 25 A. Read the footnote out loud?

14:26:59 1

Q. Yes, please.

14:26:59 2

A. Yes, so I cited the book and then

14:27:01 3

I said:

14:27:03 4

"It should be noted that this

14:27:04 5

book by Conrad Van Dusen contains

14:27:08 6

some documents that have not been

14:27:09 7

located in other sources. Van Dusen

14:27:12 8

was clearly a highly partisan

14:27:14 9

figure, but the documents in his

14:27:16 10

book are plausible: their style and

14:27:17 11

arguments are very much in keeping

14:27:19 12

with those of other similar

14:27:20 13

petitions and council proceedings

14:27:22 14

found in DIA records."

14:27:27 15

Q. And as you say, he does quote from

14:27:31 16

a number -- or he quotes in their entirety a number

14:27:34 17

of documents, I believe?

14:27:35 18

A. Yes.

14:27:36 19

Q. And as a generalization there,

14:27:44 20

there doesn't seem to be any problems with those

14:27:46 21

documents on their face?

14:27:48 22

A. Correct.

14:27:49 23

Q. So what did you mean when you

14:27:53 24

referred to him as "highly partisan"?

14:27:57 25

A. He had involved himself directly

14:28:05 1 in the political matters of the Nawash Band and had
14:28:13 2 engaged in a good deal of conflict with some
14:28:17 3 members of the Band and clearly pushed for certain
14:28:21 4 things that he wanted to see happen.

14:28:23 5 Q. And without taking you to a direct
14:28:50 6 or particular point in the book, but in general, he
14:28:53 7 had a fairly negative view of certain individuals?

14:28:56 8 A. Yes.

14:28:56 9 Q. He had a fairly negative view of
14:29:01 10 Captain Anderson, for example?

14:29:03 11 A. Probably. It has been a long time
14:29:05 12 since I looked at this book, to be honest.

14:29:07 13 Q. Okay, do you recall him having a
14:29:09 14 fairly negative view of Peter Jones Kegeponce?

14:29:12 15 A. Highly plausible.

14:29:15 16 Q. Okay.

14:29:16 17 A. I can't remember what he says in
14:29:17 18 the book, but I know that he engaged in many
14:29:22 19 battles with people within the Nawash community,
14:29:27 20 and yeah, so he -- at times he fought with
14:29:33 21 Wahbahdick and at other times he fought with other
14:29:35 22 people.

14:29:36 23 Q. Now, is it your recollection that
14:29:42 24 he came to the communities in 1852?

14:29:44 25 A. Van Dusen?

14:29:46 1 Q. Yes.

14:29:48 2 A. That sounds about right.

14:29:49 3 Q. And he was a colleague of David

14:29:53 4 Sawyer's as Methodists?

14:29:57 5 A. Yes.

14:29:57 6 Q. I believe --

14:29:59 7 A. I guess. I mean, David Sawyer

14:30:01 8 wasn't a missionary, I don't think.

14:30:03 9 Q. Okay.

14:30:10 10 A. But they worked together.

14:30:11 11 Q. Okay. And David Sawyer was also

14:30:16 12 an interpreter; is that correct?

14:30:18 13 A. Yes.

14:30:18 14 Q. And the role of interpreter often

14:30:20 15 was a writer for the Band as well?

14:30:23 16 A. Yeah, I think he was originally

14:30:25 17 appointed as secretary and interpreter for the

14:30:27 18 Band.

14:30:28 19 Q. Okay, so he would have written a

14:30:29 20 lot of correspondence that you would have seen?

14:30:32 21 A. Yes.

14:30:38 22 Q. Now, he does not appear to have

14:30:48 23 been present for the surrender in October of 1854;

14:30:52 24 is that correct?

14:30:56 25 THE COURT: Just for my benefit, what

14:30:58 1 "he" are you referring to?

14:31:00 2 BY MR. BEGGS:

14:31:00 3 Q. Sorry, "he" being Reverend Van
14:31:05 4 Dusen?

14:31:05 5 A. Oh, that is why I was frowning.
14:31:07 6 David Sawyer was, but --

14:31:08 7 Q. Yes, David Sawyer, of course, he
14:31:09 8 signed, yes.

14:31:10 9 A. Yes, I was doubting myself there.
14:31:11 10 Yeah, David Sawyer signed, but Van Dusen, I don't
14:31:19 11 think there is a record of him being present.

14:31:19 12 Q. I believe in Oliphant's report he
14:31:20 13 says that the only non-whites or non- -- sorry, not
14:31:26 14 non-whites.

14:31:27 15 A. Yes.

14:31:28 16 Q. Non-Natives besides himself were
14:31:36 17 James Ross and Alexander McNabb and Charles Rankin;
14:31:40 18 does that sound familiar?

14:31:42 19 A. Yes, and those three did sign the
14:31:44 20 Treaty.

14:31:46 21 Q. If I could go to page -- in the
14:32:06 22 book we have in front of us, page 51 of the book,
14:32:10 23 which I believe is 68 of the PDF. So again, this
14:32:22 24 is Reverend Van Dusen writing. He starts:

14:32:25 25 "The Indians in Owen Sound

14:32:28 1 country had previously surrendered
14:32:29 2 to the Government a strip of land
14:32:31 3 half a mile wide, extending from
14:32:33 4 Owen Sound eighteen or twenty miles
14:32:35 5 westward to the Saugeen River, for
14:32:37 6 which they got no returns. It was
14:32:39 7 surveyed, and sold principally to
14:32:41 8 land speculators, and of the sales
14:32:43 9 of that land the Indians have got no
14:32:45 10 account."

14:32:48 11 Now, he is talking there about the
14:32:50 12 half-mile strip surrender, isn't he?

14:32:53 13 A. Yes.

14:32:53 14 Q. And:

14:32:56 15 "But, notwithstanding the
14:32:58 16 dissatisfaction they felt about this
14:32:59 17 land surrender, still many of the
14:33:05 18 most ignorant and indolent part of
14:33:08 19 the tribe were elated with the
14:33:09 20 prospects held out to them by the
14:33:11 21 agents sent by the Indian
14:33:13 22 Department, to negotiate with them
14:33:14 23 for the surrender of nearly the
14:33:16 24 whole of their peninsula. They were
14:33:18 25 told that from the sale of the land

14:33:20 1 they would soon have a large income,
14:33:22 2 that they would be able to ride in
14:33:24 3 carriages, roll in wealth, and fare
14:33:28 4 sumptuously every day."
14:33:30 5 Are you familiar with that quotation?
14:33:33 6 A. Yes.
14:33:33 7 Q. Now, setting aside the derogatory
14:33:41 8 tones of it, he seems to be indicating that many of
14:33:50 9 the Band members were in favour of surrender; is
14:33:55 10 that correct?
14:33:55 11 A. I don't put much stock in Van
14:34:05 12 Dusen's account.
14:34:06 13 Q. Okay, fair enough.
14:34:07 14 A. That is why I said he is a highly
14:34:10 15 partisan figure. I probably wouldn't rely on him
14:34:15 16 for a piece of information unless it was attested
14:34:20 17 somewhere else or at least, as in the case of these
14:34:22 18 petitions, you know, consistent with everything
14:34:25 19 else at the time. You can see the hyperbole in his
14:34:27 20 language here, and he is --
14:34:30 21 Q. Right, okay.
14:34:30 22 A. It is a polemic. The whole book
14:34:33 23 is a polemic.
14:34:34 24 Q. Okay. And just for completion,
14:34:40 25 you probably have the same -- you may have the same

14:34:42 1 remark, but if I can go to page 56 of this book,
14:34:47 2 which is page 73 of the PDF. So in the third
14:35:02 3 paragraph it starts:

14:35:07 4 "Chief Sawyer," which I'll set
14:35:10 5 aside for the moment, "Chief Sawyer,
14:35:12 6 as a member of the tribe, had no
14:35:14 7 objections to surrender all the land
14:35:16 8 unoccupied, which they did not
14:35:18 9 require for farming purposes; for
14:35:21 10 the benefit of the country he wished
14:35:22 11 all the vacant land in the country
14:35:24 12 occupied by white men or Indians."

14:35:27 13 Now, setting aside for a moment the
14:35:29 14 question of whether he is a member of the tribe or
14:35:31 15 whether he is a Chief --

14:35:33 16 A. Yes.

14:35:33 17 Q. -- do you feel that Van Dusen
14:35:38 18 would have had knowledge of whether David Sawyer
14:35:42 19 had objections?

14:35:43 20 A. Again, I think the book is a
14:35:48 21 polemic, and in this instance I don't feel certain
14:35:52 22 that he wasn't putting his own opinion in David
14:35:56 23 Sawyer's mouth.

14:35:57 24 Q. Okay.

14:35:59 25 A. Figuratively speaking.

14:36:04 1 Q. Okay, and do you have any
14:36:06 2 knowledge of whether David Sawyer was a member of
14:36:09 3 the tribe?

14:36:10 4 A. It is complicated.

14:36:14 5 Q. Okay.

14:36:15 6 A. He was originally from the
14:36:18 7 Mississauga of the Credit, and he had been, I
14:36:22 8 think, invited but to Nawash, but certainly had
14:36:25 9 been, you know, hired there as a secretary and
14:36:29 10 interpreter because they needed someone who spoke
14:36:31 11 and wrote English. So he came in that capacity.
14:36:38 12 But he quickly became politically involved and made
14:36:44 13 alliances with some people against others and so
14:36:49 14 then there was a lot of contention.

14:36:50 15 He did at one point get appointed as
14:36:52 16 Chief of the Band by the Department of Indian
14:36:57 17 Affairs, but I am not sure whether he actually was
14:37:00 18 a Band member until that point. I hadn't looked
14:37:04 19 into that.

14:37:04 20 Q. Okay. All right, I would like to
14:37:27 21 move on to another topic, which is a general
14:37:30 22 narrative of what happened in October of 1854, and
14:37:40 23 it will be fairly general and then I'll come back
14:37:43 24 later to specific points we may identify as
14:37:48 25 controversial issues.

14:37:49 1 If I could go to document 2160 or
14:38:01 2 Exhibit 2160. So on page 2 of the PDF and it has a
14:38:45 3 number 3 at the top of the page, I'm going to start
14:38:50 4 with Mr. Oliphant's trip to Saugeen. So in the
14:39:03 5 third paragraph of what is titled "Enclosure No.
14:39:07 6 1," and I guess I should say this document is
14:39:11 7 Oliphant's report to Lord Elgin; is that correct?

14:39:13 8 A. Yes.

14:39:13 9 Q. On November 3rd, 1854?

14:39:17 10 A. Yes.

14:39:17 11 Q. So he starts off describing his
14:39:19 12 trip:

14:39:20 13 "On my way to Saugeen, and in
14:39:21 14 passing through the counties of Grey
14:39:23 15 and Bruce, adjoining this reserve,"
14:39:27 16 the counties, "I received numerous
14:39:29 17 evidences testifying to the
14:39:30 18 expediency of the mission upon which
14:39:33 19 your Lordship had been pleased to
14:39:35 20 send me, and leading me to the hope,
14:39:37 21 that the most beneficial results
14:39:38 22 might be anticipated to all classes
14:39:40 23 of the community, by the successful
14:39:41 24 issue of the undertaking."

14:39:44 25 That is all the surrender he is about

14:39:47 1 to embark on, I take it?

14:39:48 2 A. Yes, yes.

14:39:49 3 Q. "The tide of emigration which
14:39:51 4 has, of late years been flowing into
14:39:53 5 Canada, has driven before it a crowd
14:39:55 6 of those more adventurous spirits,
14:39:57 7 whose office it is to prepare the
14:39:59 8 way for the industrious emigrant.
14:40:03 9 These were the more eager in their
14:40:04 10 search for wild lands, as the
14:40:07 11 prospect of obtaining them became
14:40:08 12 almost confined in this direction to
14:40:10 13 the counties bordering on the
14:40:12 14 Saugeen Peninsula, then an Indian
14:40:14 15 reserve, and which must now be the
14:40:15 16 limit of their explorations. These
14:40:17 17 men were to be seen collected at the
14:40:18 18 door of every backwood tavern, or
14:40:21 19 returning in gangs to the more
14:40:23 20 populous parts of the country where
14:40:26 21 they have no settled occupation,
14:40:28 22 disappointed in their search for
14:40:30 23 land, inveighing against the alleged
14:40:33 24 dishonesty of Crown land agents,
14:40:35 25 organizing bands for the forceable

14:40:37 1 ejection of more fortunate
14:40:39 2 squatters, a proceeding which
14:40:40 3 generally resulted in bloodshed; and
14:40:42 4 in one instance which came to my
14:40:44 5 notice in murder.
14:40:45 6 They threatened, in my presence, to
14:40:47 7 settle upon the Indian reserve in
14:40:49 8 defiance of the Government. The
14:40:51 9 general principle that Indian
14:40:52 10 concessions are beneficial alike to
14:40:54 11 the Indian and the white, was here
14:40:56 12 merged in a more important
14:40:59 13 consideration. So keen was the
14:41:01 14 struggle for land, that a surrender
14:41:04 15 of the territory for the purpose of
14:41:06 16 sale, appeared the only method by
14:41:08 17 which the property of these tribes
14:41:09 18 could be conserved to them. It
14:41:12 19 therefore became an obligation upon
14:41:14 20 the Indian Department to spare no
14:41:15 21 pains in endeavouring to wring from
14:41:19 22 those whom it protects, some assent,
14:41:22 23 however reluctant, to the adoption
14:41:24 24 of the only means by which this
14:41:26 25 object could be achieved."

14:41:28 1 Now, I think you referred earlier to
14:41:31 2 this phrase again there, the wringing of this
14:41:34 3 assent?

14:41:35 4 A. Yes.

14:41:35 5 Q. And I think you said it was a very
14:41:41 6 appropriate description?

14:41:42 7 A. Yes.

14:41:42 8 Q. But do you understand that section
14:41:45 9 of the report to be Oliphant's observations of --
14:41:53 10 the personal observations of what he is seeing on
14:41:55 11 this trip there?

14:41:56 12 A. Yes, it certainly appears to be.

14:41:59 13 Q. I would like to go to the book
14:42:05 14 "Minnesota and the Far West," which is Exhibit
14:42:18 15 2179, and I am looking at page 74 of the book,
14:42:21 16 which is page 35 of the PDF. And, again, at this
14:42:33 17 point in the book he is describing his trip to
14:42:39 18 Saugeen, and he says:

14:42:41 19 "There is scarcely an acre of
14:42:42 20 government land left throughout the
14:42:46 21 Counties of Grey and Bruce, in which
14:42:47 22 the Towns of Sydenham and Saugeen
14:42:49 23 are situated; and we found the bars
14:42:50 24 at the road-side taverns filled with
14:42:53 25 squatters or speculators, inveighing

14:42:54 1 loudly against the alleged
14:42:56 2 dishonesty of the government
14:42:57 3 land-agents, organized into gangs,
14:42:59 4 bound upon the charitable mission of
14:43:01 5 forcibly ejecting the peaceable
14:43:03 6 unprotected settlers, and
14:43:06 7 appropriating their premises. All
14:43:08 8 sorts of 'chiselling' goes forward
14:43:11 9 upon these occasions; and there is
14:43:13 10 plenty of scope for it, according to
14:43:14 11 the present system pursued by the
14:43:16 12 government. The most satisfactory
14:43:17 13 way to all parties is to allow them
14:43:19 14 to buy their land by option, and not
14:43:21 15 to acquire it by establishing
14:43:22 16 pre-emptive claims to it by previous
14:43:24 17 squatting."

14:43:25 18 So I take it you would agree that this
14:43:28 19 is a fairly consistent description between the two
14:43:32 20 reports of squatting that is observed?

14:43:34 21 A. Yes, they are quite similar.

14:43:36 22 Q. So he then arrives at Saugeen. So
14:43:45 23 if I could go back to Exhibit 2160, which is
14:43:49 24 Oliphant's report, and it is on page 4 of that
14:43:54 25 document, and there is a section beginning

1 "Immediately on my arrival [...]"

2 There it is at the top, sorry. Now, I
3 think you have already addressed in your report and
4 in your evidence that there is some difference
5 between his memoir and his report as to when he
6 arrives -- well, whether there are people waiting
7 for him when he arrives, for example?

8 A. Yes.

9 Q. And I think you found the report
10 to be more credible on this point?

11 A. Yes.

12 Q. So the first thing he says is:

13 "Immediately on my arrival at
14 Saugeen, I despatched messengers for
15 the chiefs of the Saugeen band, who
16 were absent at their fishing
17 grounds, as well as for those of the
18 Owen Sound and Colpoy's Bay bands."

19 And you have already commented on how
20 he could have done it earlier when he passed Owen
21 Sound, I believe?

22 A. Yes.

23 Q. And the fact that the Chiefs were
24 absent from Saugeen indicates it wasn't expected
25 either, I think?

14:45:20 1 A. Yes.

14:45:21 2 Q. So while he is waiting, he says:

14:45:23 3 "And in the meantime, I
14:45:24 4 endeavoured to obtain as much
14:45:26 5 information as possible upon the
14:45:27 6 best means of securing the
14:45:28 7 surrender, and the most satisfactory
14:45:31 8 allotment of the lands."

14:45:32 9 Now, you mentioned that Mr. Oliphant
14:45:35 10 may have gained a lot of his information from
14:45:42 11 Captain Anderson previously?

14:45:43 12 A. Yes.

14:45:44 13 Q. Is it possible that he gathered a
14:45:46 14 lot of his information, for example, about Chief
14:45:51 15 Madwayosh and his opposition during his wait?

14:45:55 16 A. We don't know. Anderson in his
14:45:58 17 report from the August Council specifically
14:46:01 18 mentioned Madwayosh as being the main opponent, but
14:46:06 19 he just says he endeavoured to obtain information.
14:46:08 20 He doesn't say from whom. So we don't know for
14:46:11 21 sure what he found out or from whom on this
14:46:14 22 occasion.

14:46:14 23 Q. Okay. So he says:

14:46:19 24 "On the afternoon of the day
14:46:20 25 following my arrival the chiefs of

14:46:22 1 the Saugeen band arrived. As I
14:46:24 2 looked for the strongest opposition
14:46:26 3 from the head chief of this band
14:46:28 4 [...]"

14:46:28 5 Who we have already identified as
14:46:31 6 Alexander Madwayosh, but at least --

14:46:32 7 A. Yes.

14:46:32 8 Q. But he is referring to Alexander
14:46:35 9 Madwayosh?

14:46:35 10 A. Yes.

14:46:37 11 Q. "[...] who entirely influences
14:46:39 12 its opinion. I immediately sent for
14:46:44 13 him privately, and, in a long
14:46:45 14 interview, prepared him for the
14:46:46 15 proposals I was about to make. He
14:46:47 16 left me with strong expression of
14:46:49 17 dissent."

14:46:50 18 Now, I don't believe we have any
14:46:53 19 information that Mr. Oliphant could speak
14:47:04 20 Anishinaabemowin. Do you know whether Chief
14:47:08 21 Madwayosh could speak English?

14:47:09 22 A. I don't believe so.

14:47:10 23 Q. So presumably somebody was helping
14:47:11 24 them in that discussion?

14:47:12 25 A. It would appear so. I'm pretty

14:47:14 1 sure Oliphant didn't speak Ojibwe,
14:47:18 2 Anishinaabemowin.

14:47:18 3 Q. He had only been in the country
14:47:20 4 since June; is that correct?

14:47:21 5 A. Yes.

14:47:22 6 Q. So:

14:47:25 7 "Shortly after the chiefs of
14:47:26 8 the other bands arrived, and,
14:47:28 9 anxious not to allow them an
14:47:29 10 opportunity of consulting either
14:47:31 11 among themselves or with Europeans
14:47:33 12 [...]"

14:47:33 13 And then you commented on that
14:47:36 14 strategy?

14:47:37 15 A. Yes.

14:47:37 16 Q. "[...] I called a grand council
14:47:41 17 at 7 p.m. in the church at the
14:47:44 18 Indian village, which was attended
14:47:46 19 by the chiefs of the different bands
14:47:48 20 and warriors of the Saugeen band."

14:47:52 21 Now, you mentioned earlier in your
14:47:54 22 testimony that during their deliberations it was
14:47:57 23 only the Chiefs deliberating. Wouldn't this
14:48:02 24 suggest that at least several, at least some
14:48:06 25 warriors of the Saugeen Band were also part of

14:48:09 1 these discussions?

14:48:09 2 A. Yes, it would.

14:48:10 3 Q. And then this is what we referred
14:48:16 4 to earlier "The only Europeans [...]," and that is
14:48:19 5 what he used, the Europeans present were Ross,
14:48:23 6 McNabb and Rankin, and it mentions Mr. Jacobs,
14:48:32 7 Indian missionary, acting as interpreter.

14:48:34 8 So I would actually like to move back
14:48:37 9 to "Minnesota and the Far West," which is Exhibit
14:48:43 10 2179, and I would like to go to page 75, which is
14:48:51 11 the next page in the PDF.

14:48:55 12 So this is the entirety of the
14:49:00 13 description of the negotiations that appears in
14:49:03 14 "Minnesota and the Far West"; does that sound
14:49:07 15 right?

14:49:07 16 A. It does. I remember finding there
14:49:09 17 wasn't that much in it relating to the Treaty.

14:49:11 18 Q. Right, so it says:

14:49:12 19 "When the chiefs and young men
14:49:13 20 of the different tribes had
14:49:14 21 assembled at the village, a grand
14:49:17 22 council was held in the church, to
14:49:20 23 consider the proposals of the
14:49:22 24 Government, which involved an
14:49:23 25 immense consumption of tobacco,

14:49:25 1 smoked in solid pipes of red clay,
14:49:27 2 with long ornamented stems. The
14:49:33 3 palaver," I'm not sure I pronounced
14:49:34 4 that right, "the palaver was
14:49:36 5 protracted until the small hours of
14:49:37 6 the morning and resulted in an
14:49:40 7 interesting exhibition of artistic
14:49:42 8 skill on the part of the chiefs,
14:49:45 9 each one of whom affixed to the
14:49:47 10 treaty his totem, or the
14:49:49 11 representation of the animal which
14:49:51 12 distinguished his family or clan."
14:49:54 13 And then he makes more remarks about
14:49:55 14 the totem.

14:49:57 15 Perhaps I should have raised this
14:49:59 16 earlier, but this is also a book for publication,
14:50:04 17 for sale; is that right?

14:50:08 18 A. Yes, I think it was in a book.

14:50:10 19 Q. Yeah, and he was trying to
14:50:13 20 entertain its readers, I take it?

14:50:15 21 A. Yes.

14:50:16 22 Q. But he does make a mention of
14:50:20 23 pipes and tobacco there, and I know you had
14:50:26 24 concerns about the credibility of the description
14:50:31 25 in "Episodes in a Life of Adventure," which

14:50:36 1 appeared in 1886 and '87?

14:50:40 2 A. Yes.

14:50:41 3 Q. But this book is from 1855. Does
14:50:43 4 that suggest that there is or more likely there was
14:50:47 5 in fact some pipes and tobacco involved in the
14:50:51 6 negotiation?

14:50:51 7 A. I wouldn't say that that makes it
14:50:56 8 necessarily more likely. There is much less of a
14:51:01 9 time lapse, of course. He is talking about events
14:51:04 10 in the previous year, so his memory wouldn't have
14:51:07 11 faded as much.

14:51:08 12 But he still has the same motivation as
14:51:11 13 in the later book to entertain his readers and
14:51:14 14 provide them with the kinds of images they expect
14:51:20 15 when you are talking about Indians, as they were
14:51:22 16 then called.

14:51:24 17 So that is why I don't entirely trust
14:51:26 18 him in these matters. And of course, this also
14:51:31 19 doesn't appear to describe a pipe ceremony either,
14:51:34 20 you know, which wouldn't be an immense consumption
14:51:37 21 of alcohol -- sorry, not alcohol, of tobacco,
14:51:41 22 because it would be passed around.

14:51:42 23 Q. Okay. So if I could go back to
14:51:49 24 Mr. Oliphant's report, which is Exhibit 2160, and
14:51:57 25 so where we left off was:

1 "I opened the proceedings by
2 stating to them the reasons which
3 had induced Your Excellency to
4 recommend the surrender of so large
5 a portion of their territory. The
6 evidence of their own senses was
7 sufficient to bear me out in the
8 truth of my assertions in reference
9 to the avidity with which the
10 neighbouring lands were taken up by
11 whites. They were compelled to
12 admit that squatters were, even
13 then, locating themselves without
14 permission either from themselves or
15 the department upon the reserve. I
16 represented the extreme difficulty,
17 if not impossibility, of preventing
18 such unauthorized intrusion. On the
19 other hand, I explained the
20 advantages which would accrue to
21 them from so large an augmentation
22 of funds [...]"

23 And I guess I might pause there to say
24 he seems to be suggesting they will get a large
25 augmentation of funds from this deal?

14:52:53 1 A. Yes.

14:52:53 2 Q. "[...] as must result from the
14:52:56 3 sale of their lands, by which they
14:52:58 4 would be enabled to erect schools,
14:53:01 5 extend their farms, and purchase
14:53:03 6 many comforts of which they were now
14:53:05 7 deprived. As a further inducement
14:53:09 8 to accede to Your Lordship's
14:53:11 9 recommendation, and also because I
14:53:13 10 considered, upon many grounds, that
14:53:14 11 it would be a most desirable mode of
14:53:17 12 sale, I promised that the lands,
14:53:18 13 when surveyed, should be sold by
14:53:20 14 auction; that arrangements should be
14:53:22 15 made by which separate titles to
14:53:23 16 farm lots could be granted by the
14:53:25 17 departments to the Indians within
14:53:26 18 their own reserves and having no
14:53:28 19 reference to white men; that the
14:53:29 20 annuities arising from the sale
14:53:31 21 should be paid in money, and not in
14:53:32 22 goods; finally promised that those
14:53:36 23 chiefs who were prepared to meet the
14:53:39 24 government in this measure, so
14:53:40 25 productive of benefit to their

14:53:42 1 bands, should be rewarded by Your
14:53:45 2 Excellency with medals."

14:53:47 3 [As read.]

14:53:47 4 I might pause there. Do you have any
14:53:50 5 knowledge of whether medals would have been an
14:53:51 6 appealing concept to the Anishinaabe?

14:53:55 7 A. There was quite a history of the
14:53:57 8 British providing medals as a gift or sometimes as
14:54:03 9 a special honour upon Chiefs, so I don't think they
14:54:08 10 would be averse to receiving medals.

14:54:10 11 Q. Okay. So it then goes on:

14:54:16 12 "I was met by most decided
14:54:18 13 opposition on the part of Alexander
14:54:20 14 Madwayosh, principal Chief of the
14:54:23 15 Saugeen Band, who I have before
14:54:29 16 mentioned and with whom I maintained
14:54:31 17 an animated discussion. None of the
14:54:33 18 other Chiefs taking any part in the
14:54:35 19 proceedings."

14:54:36 20 [As read.]

14:54:36 21 And I guess, again, the "Episodes" book
14:54:40 22 has a more general discussion, like, more wider
14:54:46 23 participation by the group in the discussions, I
14:54:48 24 believe?

14:54:49 25 A. In "Episodes" it mentions someone

14:54:52 1 who clearly appears to be Madwayosh speaking first
14:54:56 2 against the Treaty, and then he introduces another
14:54:58 3 figure who doesn't appear here, another unnamed
14:55:01 4 person who spoke against what Madwayosh had said
14:55:05 5 and then insulted him.

14:55:06 6 Q. Okay.

14:55:12 7 "It was clear, however, that
14:55:13 8 public opinion more especially with
14:55:16 9 the Chiefs of the Owen Sound Band
14:55:18 10 was turning against him. And I
14:55:21 11 therefore passed on to explain to
14:55:23 12 them the limits of the reserves
14:55:25 13 proposed by the government."

14:55:26 14 [As read.]

14:55:26 15 And you had mentioned in your testimony
14:55:28 16 that this was a negotiation tactic?

14:55:30 17 A. Yes.

14:55:31 18 Q. I guess I should pause. Are you
14:55:39 19 basing that on the history of Treaty negotiations
14:55:47 20 or are you basing that on more general sense of
14:55:51 21 negotiations in general?

14:55:52 22 A. I would say a general sense of
14:55:54 23 negotiations, and then the internal evidence of
14:55:57 24 this document, the next sentence.

14:55:59 25 Q. Okay:

14:56:01 1 "As soon as the discussion was
14:56:03 2 fairly diverted from the question of
14:56:04 3 the propriety of the surrender to a
14:56:06 4 consideration of the limits of the
14:56:07 5 reserves, I retired for an hour, in
14:56:10 6 order to allow time for a private
14:56:11 7 debate."

14:56:19 8 [As read.]

14:56:19 9 Now, I'm going to skip down a couple --
14:56:26 10 a little bit. I'm not sure if it is on the next
14:56:32 11 page or the bottom of this paragraph. Okay, there
14:56:37 12 at the top:

14:56:39 13 "An additional advantage was
14:56:40 14 derived from the presence of many of
14:56:41 15 the young men and warriors of the
14:56:43 16 Saugeen band, who did not attend at
14:56:45 17 Owen Sound, but whose opinions could
14:56:47 18 now be easily ascertained and
14:56:48 19 allowed to have their due effect."

14:56:50 20 [As read.]

14:56:50 21 So I think that goes to whether it was
14:56:53 22 just the Chiefs or a wider group present, I guess,
14:56:57 23 in the discussions?

14:56:58 24 A. Right. Obviously some men of the
14:57:02 25 Saugeen community were there as well who weren't

1 Chiefs.

2 Q. Now, there's a couple of points
3 before moving on. So you have mentioned in your
4 testimony earlier that in the "Episodes" book it is
5 -- well, maybe I should just go to it. I believe
6 it is Exhibit 2966. So I believe it is on page 71
7 of the book or page 9 of the PDF.

8 All right, so there's actually two
9 points here. I can read this okay. Can you read
10 this okay?

11 A. Yes.

12 Q. Maybe we'll just --

13 A. Can you just click in the middle
14 of the white space? Won't that blue disappear?
15 Just in the middle of the space. Not in the
16 margins. Anyway, we can read it.

17 Q. Okay, so I guess -- so in the
18 yellow or orange box it says:

19 "Again, by the advice of my
20 interpreter, I retired," and then it
21 puts in quotes, "'to let them fight
22 it out', which he afterwards assured
23 me that they did literally with
24 their fists."

25 So in this 1887 version, he is

14:59:26 1 mentioning what appears to be the fight which he
14:59:28 2 hadn't mentioned in the report.

14:59:32 3 A. Right.

14:59:33 4 Q. Would you regard that account of
14:59:38 5 the fight as purely fictional or entertainment?

14:59:42 6 A. Yes, yes, this appears to me
14:59:44 7 completely fictionalized.

14:59:46 8 Q. And I guess just for remarking, I
14:59:51 9 guess this would be allegedly a fight in a church
14:59:55 10 in front of the missionary, among and presumably
14:59:59 11 fights were not common ways of Ojibwe
15:00:03 12 decision-making?

15:00:03 13 A. No. That is putting it mildly.

15:00:09 14 Q. So at the bottom of the box:

15:00:12 15 "It was past midnight when the
15:00:14 16 catechist," whom we have identified
15:00:17 17 as Jacobs, "summoned me from the
15:00:20 18 little outhouse in which I had been
15:00:22 19 waiting with the welcome
15:00:24 20 intelligence that all the
15:00:25 21 difficulties had been overcome, and
15:00:27 22 that the Chiefs expressed themselves
15:00:29 23 ready to consent to the proposed
15:00:31 24 arrangement."

15:00:32 25 Now, earlier in your evidence you

15:00:35 1 mentioned that although the report doesn't say who
15:00:41 2 determined the length of the delay, the hour, and
15:00:47 3 although "Episodes" suggests it was Jacobs or the
15:00:53 4 Indigenous members themselves who brought back
15:00:57 5 Oliphant, you offered the suggestion that it was
15:01:04 6 Oliphant who made sure it was a short time period;
15:01:09 7 is that correct?

15:01:09 8 A. Yes, it is speculative. It is not
15:01:14 9 -- there is no conclusive statement as to why it
15:01:16 10 was that length of time.

15:01:17 11 Q. Okay.

15:01:19 12 A. And here he implies that he waited
15:01:20 13 until the catechist, Jacobs, called him back, which
15:01:24 14 could be what happened.

15:01:25 15 Q. Nothing may turn on this, but
15:01:37 16 would you agree with my impression on reading this
15:01:39 17 book or this chapter that he may not have a clear
15:01:43 18 recollection of who Peter Jacobs was?

15:01:45 19 A. That is possible. He doesn't name
15:01:49 20 him.

15:01:49 21 Q. So if I could go back to the
15:01:56 22 report to Lord Elgin, so again:

15:02:06 23 "Upon returning to council I
15:02:08 24 found that the chief, Alexander
15:02:10 25 Madwayosh, had been completely

15:02:12 1 out-voted."

15:02:14 2 If I might pause there, would you say

15:02:22 3 "out-voted" is the proper term to be using when
15:02:27 4 discussing Anishinaabe decision-making?

15:02:33 5 A. Not usually, no. I mentioned
15:02:35 6 earlier that the goal usually was to achieve
15:02:39 7 consensus.

15:02:40 8 Q. And Chief Madwayosh did ultimately
15:02:44 9 sign, I guess?

15:02:45 10 A. Yes.

15:02:45 11 Q. So:

15:02:47 12 "Some of the other chiefs now
15:02:50 13 came forward to stipulate for
15:02:52 14 increased limits to their reserves
15:02:54 15 and fresh privileges, in
15:02:55 16 consideration of their readiness to
15:02:57 17 adopt the views of Government.
15:02:59 18 These were discussed seriatim; each
15:03:02 19 party finding occasional concessions
15:03:04 20 necessary until we decided upon the
15:03:05 21 terms of the surrender, as embodied
15:03:06 22 in the document herewith annexed,
15:03:09 23 which I drew out in the presence of
15:03:10 24 the chiefs, and which was afterwards
15:03:13 25 read and explained to them."

1 And just so I don't have to come back

2 to this document, it finishes off:

3 "By 1 o'clock a.m. the signing,
4 sealing and affixing of totems was
5 concluded, and the council broke
6 up."

7 So if I could go to the Treaty itself,
8 which I believe is Exhibit 2146. Actually, can you
9 go back to the second page. So just above the
10 signatures, I find this an interesting way of
11 structuring the Treaty, so it seems to end at:

12 "Done in Council, at Saugeen,
13 this thirteenth day of October,
14 1854."

15 And then underneath that is written:

16 "It is understood that no
17 islands are included in this
18 surrender."

19 A. Yes.

20 Q. Do you have any insight as to why
21 that sentence appears to be out of place?

22 A. This is where you always want to
23 look at the handwritten original, but it certainly
24 does appear to be an afterthought. My first guess
25 would be he mentions that it was written down and

15:04:49 1 then read aloud to them. It certainly would be
15:04:52 2 plausible that he read it aloud and they said, wait
15:04:56 3 a minute, you haven't mentioned the islands and
15:04:58 4 that this was added. But we would want to look at
15:05:02 5 the handwritten version.

15:05:03 6 Q. Well, we could do that, actually.
15:05:05 7 Do we have that one ready? Exhibit 2147. So
15:05:21 8 presumably it is at the bottom or above the
15:05:22 9 signatures.

15:05:34 10 Okay, so there, so on the right side.
15:05:43 11 We have a little bit cut off. Can we move it at
15:05:46 12 all. Okay.

15:06:00 13 A. I'm sorry, would you mind
15:06:02 14 scrolling to the next page for just a moment. I'm
15:06:04 15 just trying to figure out if it is different PDFs
15:06:09 16 of the same page or if they are two different
15:06:12 17 pages.

15:06:14 18 I think they are two different pages,
15:06:17 19 but it says "signed" at the bottom of the previous
15:06:20 20 one as well.

15:07:20 21 THE COURT: Mr. Beggs.

15:07:23 22 MR. BEGGS: Yes, Your Honour.

15:07:24 23 THE COURT: I'm going to take a short
15:07:26 24 break. Why don't I take it now while you sort out
15:07:29 25 these technology -- I see all this activity on my

1 screen, which is productive, I'm sure. Maybe we'll
2 just take 15 minutes.

3 -- RECESSED AT 3:07 P.M.

4 -- RESUMED AT 3:30 P.M.

5 THE COURT: Are you all set with the
6 images?

7 MR. BEGGS: I believe so, Your Honour.

8 THE COURT: All right, please go ahead.

9 BY MR. BEGGS:

10 Q. So we have on the screen before us
11 the handwritten version of the Treaty, and on the
12 bottom right we have those words:

13 "Done in Council at Saugeen
14 this thirteenth day of October,
15 1854.

16 It is understood that no islands
17 are included in this surrender."

18 And then the word "signed," but I take
19 it that is just the mannerism of putting the first
20 word from the next page on the bottom?

21 A. Yes.

22 Q. So I don't know if that helps
23 provide any insight as to how that last phrase got
24 entered into the --

25 A. Yeah, yes, I think the handwritten

15:31:29 1 version itself, it does look added at the end.

15:31:33 2 Q. Okay, so in any event, it appears
15:31:36 3 that that was an important provision to the
15:31:40 4 Indigenous parties to make sure it was in the
15:31:42 5 Treaty?

15:31:42 6 A. Yes.

15:31:43 7 Q. So I would like to go back to the
15:31:47 8 typed version of the Treaty for convenience -- no,
15:31:54 9 wait -- yes, the typed version of the Treaty, which
15:31:59 10 is Exhibit 2146, and in the top, the first page, so
15:32:28 11 I would like to go down, I am just guessing, it is
15:32:36 12 about eight or ten lines, but it starts on the
15:32:39 13 right side:

15:32:42 14 "We have therefore set our
15:32:43 15 marks to this document, after having
15:32:48 16 heard the same read to us, and do
15:32:50 17 hereby surrender the whole of the
15:32:52 18 above-named tract [...]"

15:32:54 19 And then it deals with the
15:32:56 20 descriptions.

15:32:56 21 Now, that phrase seems to coincide with
15:33:04 22 Mr. Oliphant's report which stated that the Treaty
15:33:07 23 was read to them again before being signed; is that
15:33:12 24 correct?

15:33:13 25 A. Yes, "having heard the same read

1 to us."

2 Q. Now, if I could go back to
3 "Minnesota and the Far West" again, which is
4 Exhibit 2179, this time on page 77 of the book,
5 which is page 38 of the PDF, so this describes
6 Oliphant's and his companion's trip back from
7 Saugeen to Sydenham?

8 THE COURT: Sorry, what page did you
9 say, sir?

10 MR. BEGGS: The page of the book is
11 page 77.

12 THE COURT: I see it now.

13 BY MR. BEGGS:

14 Q. And so apparently they got lost on
15 their way back from the Saugeen heading towards
16 Sydenham?

17 A. Yes.

18 Q. And he says:

19 "We had been for some hours
20 wandering disconsolately through the
21 wood, and I was beginning to wish
22 myself back again upon the Indian
23 trail, when we unexpectedly came
24 upon two rough-looking characters,
25 with hatchets in their hands,

15:34:31 1 prowling about through the wood, and
15:34:33 2 blazing the trees as they went
15:34:36 3 along. We found, upon speaking to
15:34:37 4 them, that all the government land
15:34:40 5 having been taken up, they were
15:34:42 6 coming to squat surreptitiously upon
15:34:44 7 Indian territory, trusting to the
15:34:45 8 remote situation in which they
15:34:47 9 intended to commence operations to
15:34:48 10 save them from discovery, and
15:34:50 11 determined to defend their own
15:34:51 12 against all comers, should it be
15:34:53 13 necessary. We told them that, by
15:34:56 14 waiting for a few months, they would
15:35:00 15 have an opportunity of purchasing
15:35:02 16 the land instead of appropriating it
15:35:06 17 illegally, and thus avoid the
15:35:10 18 liabilities to which, by their
15:35:11 19 present conduct, they were exposing
15:35:13 20 themselves."

15:35:14 21 [As read.]

15:35:14 22 Now, I appreciate that perhaps had some
15:35:25 23 entertainment value as a story, but do you feel
15:35:28 24 that is consistent with the previous descriptions
15:35:30 25 he has given of the squatters he has been

15:35:32 1 encountering?

15:35:33 2 A. Yes, it is certainly consistent
15:35:36 3 with his comments in the report about running into
15:35:39 4 squatters, yes.

15:35:40 5 Q. So I think that covers generally
15:35:53 6 the available information certainly from Oliphant's
15:36:07 7 point of view of the accounts of the Treaty, or do
15:36:10 8 you have any suggestions that I am missing --

15:36:11 9 A. I'm sorry, can you repeat the
15:36:13 10 statement? I was a little distracted by the text.

15:36:17 11 Q. Yes, sorry. So I believe that
15:36:24 12 covers the descriptions of the Treaty from
15:36:27 13 Oliphant's point of view; is that correct?

15:36:29 14 A. Yes, I think so.

15:36:31 15 Q. Now, you stated when you were
15:36:34 16 discussing the sources you looked at that you had
15:36:39 17 looked for and there were no available contemporary
15:36:45 18 Indigenous accounts of the treaty-making process?

15:36:49 19 A. Yes.

15:36:49 20 Q. Now, I would like to go to a
15:36:54 21 document which isn't contemporary, but is some
15:36:58 22 years later. It is Exhibit 2956. This will be a
15:37:22 23 document dated March 10th, 1886, which is written
15:37:36 24 to the Superintendent General of Indian Affairs
15:37:39 25 from the Chiefs and Councillors of the Chippewa

1 Tribes of Indians of Nawash and Saugeen. I believe
2 that is what it says at the top there?

3 A. Yes.

4 Q. So as I say, this is from 1886,
5 and this is a letter or petition, and the first
6 paragraph, what I just read, says:

7 "We the Chiefs and Councillors
8 [...]," et cetera, "have been sent
9 by our people to bring before you
10 our complaint in relation to the
11 land and timber on the Saugeen
12 Peninsula."

13 And then it goes on:

14 "Many winters ago our
15 forefathers surrendered to their
16 Great Father King George the Third a
17 large portion of their territory
18 which had been their hunting grounds
19 from the beginning of time to make
20 homes for white men and only
21 reserved for themselves a tract of
22 land called the Saugeen Peninsula."

23 [As read.]

24 So they refer to a surrender during the
25 time of King George III. Would that be the Treaty

1 45 1/2 surrender?

2 A. It seems to be, yes.

3 Q. And then it goes on:

4 "Many years afterwards, when
5 the hunting was destroyed and the
6 Indians had turned their attention
7 to farming the land in order to
8 provide food for themselves and
9 children, they found that the tract
10 of land which they had reserved for
11 their own use was more land than
12 with their slender means they were
13 able to cultivate and they were
14 induced to make a second surrender
15 of a large portion of the said tract
16 of land on which many large trees
17 were growing, to her gracious
18 Majesty The Queen, under a solemn
19 assurance that the timber and land
20 then surrendered should be sold and
21 the purchase money should be set
22 apart for the benefit of their
23 people and the interest thereon
24 should be paid to their people and
25 their descendants. It is a long

15:40:25 1 time ago that our people made this
15:40:32 2 surrender.

15:40:33 3 We have learned from time to time
15:40:35 4 that sales of land and timber are
15:40:38 5 made, but that the white men who
15:40:41 6 purchased the land and have grown
15:40:44 7 rich and have plenty of cattle do
15:40:46 8 not all of them pay for the lands
15:40:50 9 nor the interest on the purchase
15:40:54 10 money."

15:40:56 11 [As read.]

15:40:57 12 And then it goes on to say:

15:41:01 13 "The old men who made the
15:41:03 14 surrender have died without deriving
15:41:06 15 any benefit from the surrender, and
15:41:08 16 those who were young when the
15:41:09 17 surrender was made have grown old
15:41:11 18 and are passing away without
15:41:13 19 receiving their fair share of the
15:41:16 20 interest on the sales of land which
15:41:23 21 they are entitled."

15:41:27 22 [As read.]

15:41:27 23 And so this is a letter of complaint to
15:41:34 24 the Superintendent General from the Bands?

15:41:37 25 A. Yes.

15:41:37 1 Q. And it appears to be a complaint
15:41:42 2 about money not being properly paid to them either
15:41:49 3 in interest or perhaps even in payments on the
15:41:53 4 property themselves, but in the description of --
15:41:59 5 well, first of all, I suppose the second surrender
15:42:03 6 that they refer to, would you understand that to
15:42:10 7 be, in this context, Treaty 72?

15:42:12 8 A. Yes, it seems to be.

15:42:13 9 Q. And I know your report has
15:42:22 10 emphasized the pressure that the Saugeen and Nawash
15:42:27 11 were under with respect to the negotiations, but
15:42:32 12 does this letter suggest to you that the Treaty 72
15:42:42 13 surrender was perhaps more voluntary on their part?

15:42:48 14 A. How would it suggest that?

15:42:51 15 Q. That:

15:39:34 16 "[...] they found that the
15:39:35 17 tract of land which they had
15:39:38 18 reserved for their own use was more
15:39:42 19 land than with their slender means
15:39:52 20 they were able to cultivate [...]"

15:43:02 21 A. Well, I wouldn't understand a
15:43:10 22 short phrase like that from their descendants 30
15:43:14 23 years later to be more credible than their own
15:43:17 24 comments at the time.

15:43:19 25 Q. Okay. Now, from your answer to

15:43:31 1 that question, I'm going to go the wrong direction,
15:43:35 2 which is farther in the future. If I could take
15:43:37 3 you to Exhibit 3957, which is an article published
15:43:52 4 in The Canadian Echo in Wiarton in 1931. And this
15:44:03 5 will require some enlargement.

15:44:06 6 Okay, so this is an article written by
15:44:18 7 Lawrence A. Keeshig entitled "Historical Sketches
15:44:21 8 of the Cape Croker Indians," and I am not sure
15:44:27 9 where on the page it appears, but it is dated
15:44:30 10 January 15th, 1931.

15:44:36 11 A. Yes, that sounds right.

15:44:37 12 Q. Have you seen these articles
15:44:38 13 before?

15:44:39 14 A. Yes.

15:44:39 15 Q. Okay. So Mr. Keeshig has been
15:44:45 16 describing his grandfather, Peter Jones Kegedonce,
15:44:50 17 who was Chief and who we have already mentioned,
15:44:54 18 and so if we could scroll down a bit on this
15:44:57 19 document, so right at the bottom there on the left
15:45:07 20 it starts:

15:45:07 21 "It is with pardonable pride
15:45:11 22 that I think of my grandfather,
15:45:13 23 Chief Peter Jones, who must have
15:45:15 24 possessed more than ordinary
15:45:17 25 foresight and understanding for one

1 of his race [...]"

2 And I think we'll need to go to the
3 next page.

4 A. Yes, it goes down. It is a longer
5 column. It is the next PDF page.

6 Q. So I guess:

7 "[...] race, schooling and
8 time. It was his idea to have a
9 council to assist him in deciding
10 the important issues affecting his
11 people [...]"

12 Am I in the right spot?

13 A. No, I think you are not. I think
14 I might --

15 Q. Sorry, I'm going to jump farther
16 down. Well, it gives some reasons for what he is
17 about to say.

18 A. Actually, I think it is just after
19 "The growth of Owen Sound [...]"

20 Q. "The growth of Owen Sound which
21 had been surveyed as a town that was
22 rapidly filling [in] [...]"

23 A. "Filling up."

24 Q. "[...] filling up," thank you,
25 "with white settlers, led the Chief

15:46:37 1 and council to foresee the time
15:46:42 2 coming when the Indians
15:46:43 3 would be crowded out or pushed aside
15:46:45 4 by the incoming white settlers.
15:46:47 5 They were still too primitive to
15:46:50 6 mingle with and hold their own
15:46:51 7 against the white man, that Peter
15:46:53 8 Jones remembering Cape Croker, where
15:46:56 9 his boyhood days were spent, thought
15:47:00 10 that if his people could be moved to
15:47:02 11 this more isolated spot and given a
15:47:04 12 chance to develop, they would in a
15:47:09 13 generation or two be better fitted
15:47:13 14 to adapt themselves to the changed
15:47:16 15 conditions which civilization was
15:47:16 16 bringing. To this end, he and his
15:47:18 17 council began to make negotiations
15:47:20 18 with the government, and as a result
15:47:21 19 the Bruce Peninsula, with the
15:47:23 20 exception of the islands, was
15:47:26 21 surrendered on condition that Cape
15:47:28 22 Croker, consisting of all the land
15:47:31 23 east of a line drawn from the foot
15:47:39 24 of Hope Bay to the mouths of
15:47:42 25 Colpoy's Creek, was to remain as an

1 Indian reserve. A sum of money was
2 to be paid down at the time, and as
3 fast as the land was taken up by the
4 white settlers, a further payment of
5 so much per acre was to enrich the
6 Indian funds."

7 [As read.]

8 And then it goes on to describe more
9 details.

10 So I think there's some obvious errors
11 in that statement?

12 A. Yes.

13 Q. The description, perhaps, of what
14 has been reserved, but --

15 A. And also that a sum of money was
16 paid down at the time.

17 Q. Yes. Do you place any credibility
18 in Mr. Keeshig's account that it was Peter Jones
19 and his Council that initiated things?

20 A. That just doesn't accord with the
21 documentary record. I mean, the evidence from the
22 time is consistent. Oliphant says that he
23 initiated it. We know that only two months earlier
24 Anderson had asked them to surrender a larger area,
25 and they had refused.

1 So this just -- I haven't seen anything
2 from the time period of the Treaty that is at all
3 consistent with what he says here.

4 Q. Okay.

5 A. So I think this is an error of
6 oral history, perhaps people re-imagining things a
7 little bit with time that maybe they had a little
8 more agency.

9 Q. Okay. On a different point, but
10 still about Peter Jones Kegedonce -- actually,
11 while I'm doing this, maybe -- I'm not sure if you
12 are the right person to ask, but how would it be
13 proper to refer to him? Would it be Peter Jones or
14 Kegedonce or Peter Jones Kegedonce or Peter
15 Kegedonce Jones? I have seen it many ways.

16 A. Yeah, I always used Peter
17 Kegedonce Jones, but I'm not sure that there is a
18 wrong way.

19 Q. Okay. So if I could go to the
20 article that precedes this one actually, Exhibit
21 3956, and now this article is --

22 THE COURT: What Exhibit number did you
23 just give?

24 MR. BEGGS: It should be 3956.

25 THE COURT: It is just not showing that

1 way on the screen.

2 MR. BEGGS: It is the right one.

3 THE COURT: All right.

4 BY MR. BEGGS:

5 Q. So this is the first of the
6 articles. At this time it appears Mr. Keeshig was
7 writing anonymously as by one of them "LAK"?

8 A. Yes, maybe to see what would
9 happen.

10 Q. Now, he said that his father, or
11 sorry, his grandfather was Peter Jones, and looking
12 at the second column on the right he says:

13 "My grandfather, then a young
14 man, was sent to a Methodist mission
15 school near Beaverton on the shore
16 of Lake Simcoe, and it was there he
17 was converted and baptized under the
18 name of Peter Jones."

19 [As read.]

20 If you could scroll down farther. Yes,
21 and so at the paragraph beginning "At this time
22 [...]":

23 "At this time, an Indian Chief
24 was absolute ruler of his people.
25 He had a secretary, a second chief,

1 or vice, and a [...]," and I can't
2 make that out.

3 A. Messenger.

4 Q. "[...] messenger," thank you,
5 "but no council as at the present
6 time. My grandfather was considered
7 a well educated man, being able to
8 read and write, count money and
9 understand English. He married and
10 settled down at the time of becoming
11 Chief."

12 [As read.]

13 Now, as I'm sure you have noticed from
14 Reverend Van Dusen's book "Indian Chief," he
15 describes Peter Jones in quite negative terms and I
16 believe describes him as illiterate or ignorant.
17 Do you place any value on Mr. Keeshig's description
18 or knowledge of his grandfather's education?

19 A. You know, I'm sorry, I have read a
20 little bit about Peter Kegedonce Jones, but I don't
21 really know this detail.

22 I don't think he had a lot of
23 education, because that is why they brought David
24 Sawyer up there and then Charles Keeshig. So he
25 can't have had a lot of education.

15:52:50 1 Q. Okay.

15:52:53 2 A. So no, I don't want to discount

15:52:57 3 everything Lawrence Keeshig wrote, but he has got a

15:53:04 4 few things wrong.

15:53:05 5 Q. Okay, and am I correct that

15:53:13 6 Charles Keeshig was Peter Jones' brother-in-law?

15:53:17 7 A. That sounds right. I can't

15:53:21 8 remember.

15:53:21 9 Q. Charles Keeshig was educated;

15:53:24 10 that's correct?

15:53:24 11 A. Yes.

15:53:25 12 Q. He went to Upper Canada College?

15:53:28 13 A. That's right.

15:53:29 14 Q. And was one of the interpreters

15:53:30 15 and writers for a time?

15:53:31 16 A. Yes.

15:53:32 17 Q. And he was also a signatory of the

15:53:35 18 Treaty?

15:53:36 19 A. Yes.

15:53:36 20 Q. And there are still Keeshigs, like

15:53:47 21 Mr. Lawrence Keeshig, in the community today?

15:53:49 22 A. I believe so.

15:53:56 23 Q. Okay. Just a moment.

15:54:07 24 There appears to be some confusion I

15:54:29 25 need to correct. The document that we are looking

1 at right now, and it was maybe my fault, is Exhibit
2 3956, and the one we looked at previously was
3 Exhibit 3957.

4 Okay, I'm told that I'm incorrect. It
5 is the wrong way around.

6 THE COURT: Sorry, is that different
7 from what you said originally, because I have you
8 dealing with them in reverse order in my notes. Is
9 that incorrect?

10 MR. BEGGS: Apparently I did get it
11 wrong. It is the other way to which I said.

12 THE COURT: I smile as I say I'm
13 confident that you did get it wrong, because your
14 colleague, who I think probably knows exactly what
15 is going on, has given you a note.

16 MR. BEGGS: Yes, I'll try --

17 THE COURT: What I would like you to do
18 for the record is just describe the article in The
19 Canadian Echo in 1931, which exhibit was that?

20 MR. BEGGS: So the one currently before
21 us is the article --

22 THE COURT: No, no, no, this is not the
23 one currently before us, but if you want to do that
24 one first, that is fine.

25 So this article is which exhibit, the

15:55:42 1 one that we are looking at?

15:55:43 2 MR. BEGGS: 3956.

15:55:44 3 THE COURT: Okay, that is what I had
15:55:45 4 noted, and the prior article, which was in The
15:55:49 5 Canadian Echo, in 1931, which was later than this
15:55:53 6 article, what Exhibit number is it?

15:55:56 7 MR. BEGGS: 3957.

15:55:58 8 MR. FELICIAN: I think it is the other
15:55:59 9 way around, Your Honour.

15:56:00 10 THE COURT: I suspect it is the other
15:56:01 11 way around.

15:56:02 12 So the bottom line is that if I'm going
15:56:04 13 to accept your colleague's wisdom here, you just
15:56:09 14 got them backwards and I will switch them, and that
15:56:12 15 is fine.

15:56:13 16 MR. BEGGS: Yes, I'll make sure that is
15:56:14 17 correct and --

15:56:15 18 THE COURT: I'm sure it is correct. I
15:56:18 19 just think it isn't -- all right, please go ahead.

15:56:25 20 BY MR. BEGGS:

15:56:25 21 Q. Thank you, Your Honour.

15:56:26 22 All right. You mentioned that you
15:56:42 23 would place more weight on the comments by the
15:56:44 24 Indigenous people at the time?

15:56:46 25 A. Yes.

15:56:46 1 Q. And I believe in your second
15:56:50 2 report, if I could generalize, if you will, most of
15:56:57 3 the individuals you interviewed for oral history
15:57:03 4 evidence indicated, when asked how or when did the
15:57:11 5 communities first start asserting their rights or
15:57:19 6 taking steps to protect their rights, they said
15:57:21 7 essentially they always did from 1836 on, at least;
15:57:27 8 that seemed to be a common --

15:57:28 9 A. That was the common answer, yes,
15:57:30 10 somewhere -- sort of from time immemorial or going
15:57:35 11 way back, yes.

15:57:36 12 Q. Presumably, as soon as people
15:57:37 13 started to --

15:57:38 14 A. Question them.

15:57:39 15 Q. Yes. So I would actually like to
15:57:42 16 turn to some of the complaints that followed Treaty
15:57:48 17 72, and if I could turn to Exhibit 2197. So this
15:58:04 18 is a petition and there is a transcript at the
15:58:12 19 front of it. It is dated February 27th, 1855. I
15:58:20 20 don't see the date right now. And it appears to
15:58:33 21 come mostly from the -- okay, well, it says they
15:58:37 22 composed the Ojibwe Tribe in Owen Sound and Saugeen
15:58:41 23 Country.

15:58:42 24 So after the introductory paragraph, it
15:58:46 25 says:

15:58:46 1 "We fully believe it will not
15:58:48 2 only promote the general interest of
15:58:49 3 this part of the Country, but
15:58:51 4 greatly increase The value, and Sale
15:58:55 5 of the land we have recently
15:58:57 6 surrendered, by requiring actual
15:58:59 7 settlement upon all farm lots that
15:59:01 8 may be disposed of for our benefit."
15:59:04 9 I'm not sure if that is exactly what it
15:59:10 10 says.

15:59:11 11 "By this means, the settlement,
15:59:14 12 in these counties, will be rapidly
15:59:16 13 extended, and private speculators
15:59:19 14 will be prevented from purchasing
15:59:20 15 large blocks of the land, which may
15:59:22 16 remain for years uncultivated, and
15:59:24 17 unoccupied, and thus prevent the
15:59:26 18 rising value of the remaining part
15:59:28 19 of the Territory, and also be a
15:59:30 20 great hindrance to the speedy
15:59:31 21 extension of the Settlement."

15:59:36 22 And then it goes on to say that they
15:59:39 23 want an actual settlement and they also want to
15:59:41 24 have a voice in who is being appointed as the agent
15:59:44 25 to sell the lands.

15:59:46 1 And is this the first -- are you
15:59:49 2 familiar with this document, first of all?

15:59:51 3 A. Yes.

15:59:51 4 Q. Is this the first complaint, if
15:59:55 5 you will, about Treaty -- well, I'm not sure it is
16:00:01 6 yet a complaint. It is a request, I suppose, but
16:00:05 7 perhaps a complaint voiced about Treaty 72 by the
16:00:08 8 Bands?

16:00:09 9 A. I think so. Yeah, I'm not sure
16:00:12 10 this letter actually states that -- I'm not sure it
16:00:16 11 is a complaint in the sense that they believed
16:00:18 12 those actual settlement conditions aren't being
16:00:21 13 imposed, I think again at the beginning, but yeah,
16:00:23 14 I believe this is the first communication about it.

16:00:25 15 Q. That hasn't been established yet.

16:00:29 16 A. Because it was only October -- the
16:00:31 17 surrender was October 1854, and this is four months
16:00:34 18 later, yeah.

16:00:36 19 Q. All right. So in your report you
16:00:42 20 discuss the question of the requirement for actual
16:00:46 21 settlement, and it appears the reason they give for
16:00:52 22 wanting actual settlement is the value of the land,
16:00:59 23 that it would be better for the value of the land.

16:01:02 24 But it also appears that they were
16:01:09 25 eager for the land to be cultivated and occupied in

16:01:12 1 this letter; is that fair?

16:01:22 2 THE COURT: Sorry, you have to --

16:01:24 3 THE WITNESS: Speak so you can hear me?

16:01:26 4 THE COURT: Sir, all right, a long day,
16:01:33 5 if you wish to read on the record, that is fine,
16:01:35 6 but you need to read out loud and clearly.

16:01:39 7 If you are trying to read out loud
16:01:46 8 sotto voce, if you know what I mean by that, it
16:01:49 9 creates a difficulty for the court reporter who
16:01:52 10 doesn't know whether or not that is an
16:01:53 11 on-the-record comment by you. So you are going to
16:01:55 12 have to choose either loud enough for us all to
16:01:58 13 hear or not.

16:02:00 14 THE WITNESS: Got it.

16:02:01 15 THE COURT: All right.

16:02:03 16 THE WITNESS: So they first say they
16:02:07 17 believe it will promote the general interest of the
16:02:09 18 country and increase the value and sale of the
16:02:11 19 land. And in the next paragraph they are
16:02:15 20 elaborating:

15:59:11 21 "By this means, the settlement,
15:59:14 22 in these counties, will be rapidly
15:59:16 23 extended, and private speculators
15:59:19 24 will be prevented from purchasing
15:59:20 25 large blocks of the land, which may

15:59:22 1 remain for years uncultivated, and
15:59:24 2 unoccupied [...]"

16:02:29 3 And that would prevent the rise in
16:02:31 4 value.

16:02:31 5 So in both cases, the emphasis seems to
16:02:33 6 be primarily on the value of the land rising, but
16:02:36 7 they do say at the end of the second paragraph that
16:02:40 8 it would be a "[...] great hindrance to the speedy
16:02:43 9 extension of the Settlement."

16:02:45 10 BY MR. BEGGS:

16:02:45 11 Q. So what I am wondering, and I
16:02:50 12 believe you do address it a bit in your report, is
16:02:52 13 why the Bands would want an extension of settlement
16:02:59 14 when that would mean less land available for their
16:03:03 15 traditional hunting and fishing exercises? Do you
16:03:08 16 have a view on that?

16:03:09 17 A. Yeah, I can only speculate, of
16:03:12 18 course. I was struck by this myself when I first
16:03:15 19 started seeing these records because it is a bit of
16:03:20 20 a zero sum game as far as hunting versus settlement
16:03:23 21 goes, right. The more settlement, agricultural
16:03:27 22 settlement occurs on these lands, the less game
16:03:31 23 will be available.

16:03:35 24 It seems that in this instance, they
16:03:39 25 have decided to place more emphasis on getting more

1 money in return for the lands, which may reflect
2 the fact that they decided the hunting was less
3 valuable than the potential financial outcome of
4 selling the land.

5 One does guess that the missionary
6 might have had a hand in this. It is kind of a
7 language of settlement.

8 Q. I do see the witness is said to be
9 Conrad Van Dusen at the bottom?

10 A. Yes.

11 Q. Okay. So if I could go to the
12 next exhibit, which is 2205, and again, this is a
13 document which has a transcript in front of it. It
14 is a letter from Peter Jones Kegedonce dated the
15 7th of March 1855, and so this appears to have some
16 relation to the previous message or perhaps other
17 messages.

18 If we could scroll down a bit, so it
19 starts off saying:

20 "[...] there is something going
21 on now amongst our People which we
22 do not understand."

23 And it refers to a petition from the
24 Saugeen to the Nawash a few days ago:

25 "[...] and read to us by

1 Mr. Van Dusen, a Methodist
2 missionary, and it asks two things,
3 one, that our lands may not be sold
4 to speculators, and the other that
5 our Great Father will allow us to
6 have a voice in appointing an agent
7 to sell our lands, without saying
8 who that agent should be."

9 And then it says:

10 "We wish that our lands should
11 not be sold to speculators but to
12 settlers."

13 [As read.]

14 But then it goes on to complain that
15 this decision wasn't made by the three Bands
16 together.

17 So it appears that this letter -- well,
18 first of all, have you seen this letter before?

19 A. This one now, that we are looking
20 at now?

21 Q. Yes.

22 A. Yes, I think so.

23 Q. And so it appears that this letter
24 from Peter Jones Kegedonce at least agrees on that
25 point about actual settlement with the previous

1 one?

2 A. Yes.

3 Q. Although it has some concerns
4 about Mr. Van Dusen and other issues?

5 A. Yes, they object -- you know, they
6 are objecting to the petition being sent when the
7 three Bands hadn't worked together on that
8 petition.

9 Q. Right. If I could turn to
10 document SC0856. Now, this is a document found in
11 Mr. Van Dusen's "Indian Chief" book, it is one of
12 the documents he quotes from, and it appears to be
13 minutes of a General Council meeting at Saugeen on
14 May 5th, 1855. Have you seen this document before,
15 I mean, this copy of the document, if you will?

16 A. Yes, I believe so.

17 Q. So this minutes of a General
18 Council -- actually, before I move on, perhaps I'll
19 ask that it be marked as an exhibit. I guess I
20 would describe it as minutes of General Council
21 dated May 5th, 1855 quoted in "The Indian Chief" by
22 Conrad Van Dusen.

23 THE COURT: Mr. Registrar?

24 THE REGISTRAR: Exhibit number 4156.

25 EXHIBIT NO. 4156: Minutes of General

1 Council dated May 5th, 1855 quoted in
2 "The Indian Chief" by Conrad Van Dusen.

3 BY MR. BEGGS:

4 Q. So the first item, and this is by
5 now May of 1855:

6 "Resolved, that we feel
7 dissatisfied with the survey that
8 Mr. C. Rankin is making near the
9 village of Saugeen, having commenced
10 about 400 yards too far southward
11 and then not running the line
12 through an opening called Copway's
13 Road, as expressed and understood by
14 Mr. Oliphant and ourselves at the
15 time our Treaty was made. And that
16 Mr. Rankin be requested to
17 discontinue the survey till we
18 confer with the Government on this
19 subject."

20 And it then goes on to say:

21 "And also, we wish still to
22 urge upon the consideration of our
23 great father the necessity of
24 requiring actual settlement on the
25 land, when sold, as formerly

1 requested by our council."

2 [As read.]

3 And then number 2, it says that they
4 are going to send a deputation to Quebec, and I
5 take it that is Quebec City where the government is
6 located?

7 A. Yes.

8 Q. To lay their concerns before the
9 Governor-in-Council, and then they ask for expenses
10 to be paid for that deputation.

11 So again, they have mentioned that
12 actual settlement is something they see as
13 necessary, but now they have added a concern about
14 the survey, either the survey being wrong or
15 perhaps the description as being wrong in the
16 Treaty?

17 A. Yes.

18 Q. Now, as I understand it, that
19 group did go to Quebec City to try to meet with the
20 Governor General?

21 A. Yes.

22 Q. And the Governor General refused
23 to meet with them, I believe, on the basis that
24 they hadn't gone through Captain Anderson to go
25 visit him?

16:10:50 1 A. Yes.

16:10:50 2 Q. And before I go further, perhaps
16:11:05 3 I'll -- they brought a petition with them when they
16:11:08 4 went; is that correct? It is Exhibit --

16:11:12 5 A. I -- sorry, I believe so.

16:11:15 6 Q. Document SC0858. I believe again
16:11:20 7 this is a document that was quoted in "The Indian
16:11:30 8 Chief"?

16:11:30 9 A. Right.

16:11:31 10 Q. I suppose since Mr. Van Dusen was
16:11:44 11 involved in these things, perhaps these documents
16:11:46 12 might be thought to be -- or he would have
16:11:49 13 knowledge of these documents, I suppose?

16:11:51 14 A. Right, he might have them in his
16:11:54 15 possession at this point.

16:11:55 16 Q. Yes. So that doesn't look like it
16:11:59 17 is from the -- it is the petition, but I don't know
16:12:04 18 that it is actually part of the larger document.

16:12:10 19 Okay, so it is a petition, and I
16:12:12 20 believe if we go down, it is dated May 16th, 1855,
16:12:21 21 yes. Oh, it says at the bottom "Source: The Indian
16:12:25 22 Chief," okay.

16:12:29 23 So there are several relevant points
16:12:33 24 that I would like to point out in this, so I would
16:12:36 25 like to go up again to the first item, so they

1 start off saying that they:

2 "[...] would like to speak a
3 few words on the following subjects,
4 in which we feel greatly interested.

5 1st. When we surrendered our
6 land, and made the treaty with
7 Mr. Oliphant in October last,
8 Mr. Oliphant, with ourselves, walked
9 upon a road open from our village
10 (Saugeeng) about one mile in a
11 straight line to the shore of Lake
12 Huron. This road, we supposed, ran
13 northward; and was to be the
14 boundary between the land we
15 surrendered, and that which we
16 reserved adjoining Saugeeng village.
17 But when the surveyors commenced
18 their work, it was found that a line
19 running due north from the village,
20 does not reach the shore of Lake
21 Huron till it extends about five
22 miles and a half from the boundary
23 agreed on by Mr. Oliphant and
24 ourselves. By this survey we are
25 shut out from the water of the lake,

1 greatly to our inconvenience and
2 damage."

3 [As read.]

4 So again, this is -- the first item is
5 their concern about the survey and perhaps the
6 description of their territory that was given?

7 A. Yes.

8 Q. And they emphasize how important
9 it is because they would be shut off from the
10 water; that's correct?

11 A. Yes.

12 Q. And so the second item starts:

13 "2nd. In a former Treaty made
14 with Captain Anderson last summer
15 [...]"

16 And before I go on, would that be the
17 surrender that was discussed with Captain Anderson
18 in August of 1854, but not accepted by Captain
19 Anderson?

20 A. Yes, that is what it appears to
21 be.

22 Q. Okay:

23 "[...] it was fully expressed
24 and understood that when our land
25 would be sold, actual settlement

16:14:39 1 should be required, and we thought
16:14:40 2 the same condition was implied in
16:14:41 3 the Treaty made with Mr. Oliphant.
16:14:44 4 We earnestly hope this will not only
16:14:48 5 be favorably considered by our great
16:14:50 6 father, but also that we may be
16:14:52 7 allowed to have something to say in
16:14:54 8 the appointment of an agent to
16:14:56 9 dispose of the land, as it is to be
16:14:57 10 sold for our benefit under the
16:14:59 11 direction of the Government."

16:15:01 12 [As read.]

16:15:02 13 So again, they are emphasizing that
16:15:04 14 actual settlement is very important to them?

16:15:06 15 A. Yes.

16:15:06 16 Q. And would you agree that they seem
16:15:15 17 to be implying that Mr. Oliphant didn't make an
16:15:19 18 explicit promise about that, but they assumed based
16:15:23 19 on the previous discussions with Captain Anderson
16:15:26 20 that actual settlement was a term of their Treaty?

16:15:29 21 A. That is what it appears to say,
16:15:30 22 yes, that it was fully -- that it was overtly
16:15:34 23 stated when they talked to Captain Anderson in
16:15:36 24 August, and they say they thought it was implied in
16:15:41 25 the Treaty made with Mr. Oliphant.

1 Q. Okay, and the third item says:

2 "3rd. Having no more hunting
3 ground, from choice, as well as from
4 necessity, we wish to turn our
5 attention, more than ever before, to
6 the cultivation of our land; and
7 therefore hope our great father will
8 encourage us in this, by giving to
9 each in our tribe a title deed for
10 one hundred acres of land, as prayed
11 for in our memorial of last April."

12 [As read.]

13 So they appear to be acknowledging that
14 the available hunting land is diminished; is that
15 correct?

16 A. It appears to me there is more
17 than one possible reading of that phrase "having no
18 more hunting ground."

19 It could mean, and actually I think in
20 this connection it does, or in this context it does
21 mean that, you know, they have surrendered the
22 hunting ground, so it is formally not theirs
23 anymore, and then they say:

24 "[...] from choice, as well as
25 from necessity, we wish to turn our

1 attention [...] to the cultivation

2 [...]"

3 Given that this is their argument for
4 getting title deeds, my interpretation is that they
5 were advised probably by Van Dusen that bargaining
6 that they were going to cultivate the land would
7 make their request for a title deed more
8 compelling.

9 Q. Okay. So the next items I don't
10 believe are so relevant for us. The fourth deals
11 with manual schools, and the fifth is a request
12 that the deputation's expenses be paid. The
13 sixth, well, that is actually quite vague:

14 "We also wish to make some
15 statements to our great father,
16 setting forth our wishes to secure
17 his sanction to the acts of our
18 General Councils from time to time,
19 when considered by the Governor in
20 Council, calculated to secure the
21 harmony, and promote the interest,
22 of our tribe."

23 [As read.]

24 Do you have any knowledge of what that
25 might be referring to?

16:18:05 1 A. This looks to me like an allusion
16:18:11 2 to the conflicts within the Band, which by this
16:18:14 3 point was divided into factions, so you'll notice
16:18:17 4 that only certain people have signed this petition
16:18:20 5 at the bottom and Peter Kegedonce Jones is missing,
16:18:24 6 Charles Keeshig is missing. You know, it is
16:18:26 7 only -- it is one faction that is advancing this
16:18:30 8 petition.

16:18:31 9 So this looks to me like a way of
16:18:35 10 trying to ensure that they can make -- what is the
16:18:40 11 term they use? I'm sorry, can you scroll up,
16:18:42 12 please, just so I can see number 6.

16:18:47 13 "To make some statements [...]
16:18:51 14 setting forth our wishes to secure
16:18:53 15 his sanction to the acts of our
16:18:55 16 General Councils from time to time
16:18:58 17 [...]"

16:18:58 18 [As read.]

16:18:58 19 It is vague, but it appears that they
16:19:01 20 want to secure some kind of promise that their
16:19:08 21 General Councils be heeded, something like that.
16:19:14 22 The comment "calculated to secure the harmony of
16:19:16 23 our tribe" appears a little ironic, given that it
16:19:21 24 was quite disharmonious at the time.

16:19:23 25 Q. Okay, the seventh one appears to

1 be relevant, but is perhaps equally mysterious, and
2 it says:

3 "7th. We also wish to make
4 some inquiry as to the purport and
5 meaning contained in a certain
6 paragraph in the Treaty drawn up by
7 Mr. Oliphant."

8 [As read.]

9 Now, I'll be going through more
10 documents later, but at this stage -- well, I guess
11 it can't hurt. Do you have any knowledge from your
12 historical research as to what that might be
13 referring to at this point?

14 A. I'm really not sure. It is
15 unclear.

16 Q. Could we infer from this statement
17 that the Bands have a copy of the Treaty and have
18 read it, or at least some of them have read it?

19 A. Possibly. It would be consistent
20 with that.

21 Q. The last item just simply explains
22 why they didn't see Captain Anderson before coming
23 to visit Quebec; that is correct?

24 A. Yes. That is the reason they
25 give, anyway.

1 Q. And actually, as a matter of fact,
2 Captain Anderson was on his way to visit them at
3 the same time they were here; is that correct?

4 A. I believe he was.

5 MR. BEGGS: Okay. Could I make this
6 document an exhibit. It is a petition dated May
7 16th, 1855, quoted in "The Indian Chief" by Conrad
8 Van Dusen.

9 THE COURT: Mr. Registrar?

10 THE REGISTRAR: Exhibit No. 4157.

11 EXHIBIT NO. 4157: Petition dated May
12 16, 1855, quoted in "The Indian Chief"
13 by Conrad Van Dusen.

14 BY MR. BEGGS:

15 Q. So the deputation had gone to
16 Quebec. They were not allowed to see the Governor
17 General Lord --

18 A. Bury.

19 Q. They did see Lord Bury?

20 A. Oh, right, right.

21 Q. So they did see Lord Bury
22 informally, I believe, as Mr. Van Dusen describes
23 it?

24 A. Right.

25 Q. And then they went, they tried to

1 present a petition to parliament on May 17th; is
2 that right?

3 A. Yes, it does.

4 Q. And if I could call up Exhibit
5 2658. So again, this is the petition from May 17,
6 1855, but it is quoted in "The Indian Chief." If I
7 could -- oh, this is the whole "Indian Chief,"
8 isn't it? Sorry, could I go to page 107 of the
9 PDF; it is page 87 of the book.

10 So this is a petition that they gave to
11 parliament by the same group that had gone, the
12 deputation. If I could scroll down to the next
13 page, so it starts with the language, I guess:

14 "That when the Superintendent
15 General of Indian Affairs visited
16 Saugeeng in October, 1854, to
17 consummate a Treaty with the Ojibwe
18 Tribe of Indians, for the surrender
19 of their peninsula, lying between
20 Lake Huron and the Georgian Bay,
21 commonly known as the 'Indian
22 Reserve', he made verbal promises
23 which have not been fulfilled. And
24 several conditions and
25 considerations were expressed, and

1 understood by the Council at that
2 time, which do not appear in the
3 written Treaty."

4 And I think I'll keep going before I
5 ask you a question:

6 "Also, under the direction of
7 the Indian Department, the land is
8 now being surveyed not according to
9 the agreement fully expressed, and
10 well understood, between the parties
11 at the time the Treaty was made."

12 [As read.]

13 And then it talks about how it resulted
14 in a deputation going, and the Governor General
15 refusing to hear from them.

16 And then on the next page -- well, at
17 the bottom of the page actually they ask that the
18 Indian Department in Canada "may be placed under
19 the direction and control of our provincial
20 government." So they have escalated things a bit,
21 I guess?

22 A. Yes, that is a request you don't
23 see often.

24 Q. So the reason I read the whole
25 rather than stopping after the first part, so we

1 know that one of their complaints in this petition
2 is the survey problems?

3 A. Yes.

4 Q. But they also refer at the
5 beginning to verbal promises which have not been
6 fulfilled and several conditions and considerations
7 expressed which do not appear in the written
8 Treaty.

9 Based on your historical -- or are you
10 able to tell what they would be referring to in
11 this context?

12 A. Well, it would appear to refer to
13 the requirement of actual settlement.

14 Q. Okay.

15 A. Though they mention several, so
16 that does appear to suggest there were others and I
17 am not sure what they would be.

18 Q. Okay.

19 THE COURT: Yes, you glanced at the
20 clock at a good moment. You can continue if you
21 have something you can do in the next couple of
22 minutes, but otherwise, we can break.

23 MR. BEGGS: I think it will take more
24 than a few minutes, Your Honour, so I would request
25 a recess at this time.

1 THE COURT: We are adjourned until

2 tomorrow morning.

3 Professor, you'll recall what I said

4 yesterday about being under cross-examination, all

5 right?

6 THE WITNESS: Yes.

7 THE COURT: Yes.

8
9 -- Adjourned at 4:27 p.m.

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REPORTER'S CERTIFICATE

I, DEANA SANTEDICOLA, RPR, CRR,
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
correct transcript of my shorthand notes so taken.

Dated this 3rd day of August, 2019



NEESON COURT REPORTING INC.

PER: DEANA SANTEDICOLA, RPR, CRR, CSR
CERTIFIED REAL-TIME REPORTER

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