

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

VOL 33 DAY 33
July 25, 2019



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1 Court File No. 94-CQ-50872CM

2 ONTARIO

3 SUPERIOR COURT OF JUSTICE

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5 B E T W E E N:

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

8 Plaintiffs

9 - and -

10 THE ATTORNEY GENERAL OF CANADA,

11 HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO,

12 THE CORPORATION OF THE COUNTY OF GREY,

13 THE CORPORATION OF THE COUNTY OF BRUCE,

14 THE CORPORATION OF THE MUNICIPALITY OF NORTHERN

15 BRUCE PENINSULA, THE CORPORATION OF THE TOWN OF

16 SOUTH BRUCE PENINSULA, THE CORPORATION OF THE TOWN

17 OF SAUGEEN SHORES, and THE CORPORATION OF THE

18 TOWNSHIP OF GEORGIAN BLUFFS

19 Defendants

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21 --- This is the Volume 33/Day 33 of the transcript of
22 the trial proceedings in the above-noted matter, being
23 held at the Superior Court of Justice, 330 University
24 Avenue, Courtroom 5-1, Toronto, Ontario, on the
25 25th day of July, 2019.

Page 3448

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2 B E F O R E:

3 The Honourable Justice Wendy M. Matheson

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

7

8 Krista Nerland, Esq., for the Plaintiffs,

9 & Cathy Guirguis, Esq., The Chippewas of

10 Saugeen First Nation,

11 and the Chippewas of

12 Nawash First Nation.

13

14 Michael Beggs, Esq., for the Defendant,

15 & Michael McCulloch, Esq., The Attorney General

16 & Barry Ennis, Esq., of Canada.

17

18 David Feliciant, Esq., for the Defendant,

19 & Julia McRandall, Esq., Her Majesty the

20 & Jennifer Lepan, Esq., Queen in Right of

21 & Richard Ogden, Esq., Ontario.

22

23

24

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

Page 3449

1 I N D E X

2 PAGE

3 Administrative/Housekeeping..... 3451 - 3453

4 3546 - 3547

5

6

7 Submissions

8 by Mr. Feliciant 3596

9

10 Ruling by the Court/Cautiounary Instruction

11 to the witness 3599

12

13

14

15

16 WITNESS:

17

18 JARVIS BROWNLIE; Previously affirmed

19 Cross-Examination by Mr. Beggs (cont'd)..... 3453

20

21

22

23

24

25

Page 3450

1 INDEX OF EXHIBITS

2

3 NO. DESCRIPTION PAGE NO.

4 4158: Diary of SY Chesley dated 1857 3505

5 4159: Obituary for Peter Jacobs from the 3510

6 Orillia Daily Times, dated September 4, 1890

7 4160: Request to Pay the Bearer dated 3513

8 March 3, 1854.

9 4161: Request to Pay the Bearer dated 3514

10 March 4, 1854.

11 4162: Request to Pay the Bearer dated 3515

12 March 8, 1854.

13 4163: Excerpt from the Oxford Dictionary of 3540

14 National Biography for Henry Labouchere, Baron

15 Taunton.

16 4164: Thesis entitled, Fatherly Eye to 3619

17 Indian Agents on Georgian Bay, 1918 to 1939

18 by Professor Brownlie.

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Page 3451

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

2

3 THE COURT: Before you resume,

4 Mr. Beggs. Have the arrangements been made that

5 were discussed on Friday to have Dr. Von Gernet

6 back in August?

7 MR. BEGGS: Not yet, your Honour, but I

8 expect to be able to arrange that.

9 THE COURT: All right. With respect to

10 Canada's motion heard last Friday, as counsel will

11 recall, the original plan had been to hear both the

12 motion and voir dire on the same day. And for

13 reasons I don't have to go over with, that just

14 didn't happen.

15 But having considered the submissions

16 made on the motion, and including some submissions

17 made for the Plaintiffs which overlapped with what

18 they told me to anticipate would be issues they

19 would raise on the voir dire, I've come to the

20 conclusion that that original plan was a sensible

21 approach.

22 And for that reason, I'm going to hold

23 the motion decision over until we have the voir

24 dire in August. And I think, Ms. Guirguis, it was

25 Ms. Pelletier who argued that motion, but you can

<p style="text-align: right;">Page 3452</p> <p>1 convey this back to her.</p> <p>2 She will recall that I had asked her in</p> <p>3 the hearing to give some -- she had indicated in</p> <p>4 her submissions that she had some specific concerns</p> <p>5 about the updates to the report. And I asked her</p> <p>6 to provide some examples in support of some of her</p> <p>7 submissions, and at least one of her examples was</p> <p>8 from the updates. And unless there is some</p> <p>9 objection, and you can tell me tomorrow, it would</p> <p>10 be helpful to me if in the interval, between now</p> <p>11 and some time in August, there could be a</p> <p>12 communication from Plaintiffs counsel and Canada</p> <p>13 indicating specifically, not with submissions, but</p> <p>14 just locations of any portions of the updated</p> <p>15 report that are problematic from the standpoint of</p> <p>16 the First Nations.</p> <p>17 And I'm really just talking about page</p> <p>18 numbers, you know, or paragraphs. I'm not talking</p> <p>19 about anything elaborate. But I didn't want --</p> <p>20 Ms. Pelletier was being helpful to me by giving me</p> <p>21 some examples, but it was obviously off the cuff.</p> <p>22 And in one instance, at least Mr. Beggs observed</p> <p>23 that he hadn't been aware that there was that</p> <p>24 particular issue.</p> <p>25 So I think the other benefit of this</p>	<p style="text-align: right;">Page 3454</p> <p>1 from the Legislative Assembly on that petition?</p> <p>2 A. I'm sorry, I can't remember.</p> <p>3 Q. No problem.</p> <p>4 In any event, the deputation returned</p> <p>5 home and then they --</p> <p>6 Are you aware of any -- would you agree</p> <p>7 that there was some, perhaps not confrontation, but</p> <p>8 a dispute between the Indigenous members and the</p> <p>9 surveyors who were going through the territory?</p> <p>10 A. Yes.</p> <p>11 Q. And they, the Indigenous members,</p> <p>12 sought to stop the process of the surveying?</p> <p>13 A. Yes, of the Saugeen Reserve.</p> <p>14 Q. And then I'd like to go to</p> <p>15 Exhibit 2254, which is June 26th of 1855. And this</p> <p>16 is a petition to the Governor General, and I</p> <p>17 believe it says:</p> <p>18 "Of the Chiefs, Warriors and</p> <p>19 Principal Men of the Ojibwe Tribe at</p> <p>20 Saugeen and Nawash in Council</p> <p>21 Assembled June 26, 1855."</p> <p>22 THE WITNESS: Yes.</p> <p>23 BY MR. BEGGS:</p> <p>24 Q. Have you seen this petition before?</p> <p>25 A. Yes, I have.</p>
<p style="text-align: right;">Page 3453</p> <p>1 approach would be a little bit more time to deal</p> <p>2 with that.</p> <p>3 So I'm going to ask, Mr. Beggs, for you</p> <p>4 to communicate to all concerned about that</p> <p>5 scheduling.</p> <p>6 MR. BEGGS: Yes, Your Honour.</p> <p>7 THE COURT: And as far as this</p> <p>8 additional information, the day before, whatever</p> <p>9 that day is, it would obviously be better if it was</p> <p>10 sooner. But I'm not going to require it to be</p> <p>11 sooner. And, of course, you don't know the day, so</p> <p>12 I'm not going to ask you to comment on it, all</p> <p>13 right?</p> <p>14 Okay. Please go ahead, sir.</p> <p>15 MR. BEGGS: Thank you, Your Honour.</p> <p>16 JARVIS BROWNLIE: Previously affirmed.</p> <p>17 CROSS-EXAMINATION BY MR. BEGGS (CONT'D):</p> <p>18 Q. Good Morning, Professor Brownlie.</p> <p>19 A. Good morning.</p> <p>20 Q. I think before we left yesterday,</p> <p>21 we had just gone through the petition that was</p> <p>22 submitted to the Legislative Assembly in May of</p> <p>23 1855?</p> <p>24 A. Yes.</p> <p>25 Q. And are you aware of any response</p>	<p style="text-align: right;">Page 3455</p> <p>1 Q. And in the petition, they start</p> <p>2 off in the first paragraph by expressing their</p> <p>3 sorrow at the way they were treated in Québec City.</p> <p>4 And then in the paragraph after that,</p> <p>5 they are claiming the right to appoint their own</p> <p>6 chiefs and officers; is that correct?</p> <p>7 A. Yes.</p> <p>8 Q. And then, I guess the point is,</p> <p>9 after having not been able to speak to the Governor</p> <p>10 General, they decided to put their complaints in</p> <p>11 writing again?</p> <p>12 A. Yes.</p> <p>13 Q. And so the paragraph after the</p> <p>14 officers which starts, "we complain against the</p> <p>15 person acting as a clerk at Nawash..."</p> <p>16 Now that would be Charles Keeshig; is</p> <p>17 that correct?</p> <p>18 A. I think so, at this point, yes.</p> <p>19 Q. And it says -- it actually says:</p> <p>20 "We complain against the person</p> <p>21 acting as to clerk at Nawash and</p> <p>22 those who cooperate with him. We</p> <p>23 are prepared to submit our</p> <p>24 complaints to any person (except</p> <p>25 Captain Anderson) your Excellency</p>

<p style="text-align: right;">Page 3456</p> <p>1 may be pleased to appoint [...]"</p> <p>2 And then they say that:</p> <p>3 "[...] documents presented by</p> <p>4 Captain Anderson will be laid before</p> <p>5 the tribe [...]"</p> <p>6 The next paragraph is perhaps more</p> <p>7 interesting, though, beginning: "We complain</p> <p>8 that", so it's the bottom of the page.</p> <p>9 THE COURT: The first full paragraph</p> <p>10 starts: "We complain that"; is that what you're</p> <p>11 referring to?</p> <p>12 MR. BEGGS: Yes.</p> <p>13 THE COURT: Oh, there's another one.</p> <p>14 MR. BEGGS: Yes, most of the paragraphs</p> <p>15 start with "We complain". So it's the one above</p> <p>16 that.</p> <p>17 BY MR. BEGGS:</p> <p>18 Q. So it says:</p> <p>19 "We complain that the wording</p> <p>20 of the late treaty" --</p> <p>21 That's the most interesting, or one of</p> <p>22 the most interesting for us.</p> <p>23 "We complain that the wording</p> <p>24 of the late treaty is not in</p> <p>25 accordance with the map laid before</p>	<p style="text-align: right;">Page 3458</p> <p>1 "[...] and understood to be the</p> <p>2 rule of the Government on the</p> <p>3 disposal of all lands are to be set</p> <p>4 aside on the disposal of the tract</p> <p>5 surrendered by us, thereby</p> <p>6 inflicting" --</p> <p>7 Sorry, my pacing is probably throwing</p> <p>8 this off.</p> <p>9 THE WITNESS: No, it's okay, I'm</p> <p>10 following along.</p> <p>11 BY MR. BEGGS:</p> <p>12 Q. So they're complaining that the</p> <p>13 regulations are being set aside on the tract they</p> <p>14 surrendered.</p> <p>15 "[...] and thereby inflicting a</p> <p>16 serious injury on this portion of</p> <p>17 the province and depreciating the</p> <p>18 value of our lands. We ask that</p> <p>19 actual settlement be strictly</p> <p>20 carried out."</p> <p>21 And then there's another complaint</p> <p>22 which appears to be new, or new to us in the</p> <p>23 documents.</p> <p>24 A. Right, the first time it appeared.</p> <p>25 Q. Yes.</p>
<p style="text-align: right;">Page 3457</p> <p>1 the Council of the night the Treaty</p> <p>2 was discussed, which we are prepared</p> <p>3 to show."</p> <p>4 Now I take it this would refer to what</p> <p>5 we've already seen as to the complaints about the</p> <p>6 boundaries and the way it's being surveyed?</p> <p>7 THE WITNESS: Yes.</p> <p>8 BY MR. BEGGS:</p> <p>9 Q. And in the next paragraph, again,</p> <p>10 it's also along the lines we've seen, it says:</p> <p>11 "We complain that the</p> <p>12 regulations for the sale of the</p> <p>13 public lands requiring an actual</p> <p>14 settlement and improvements, as</p> <p>15 expressed in our former treaty" --</p> <p>16 Now, would you agree that is likely</p> <p>17 referring to the arrangements made with Captain</p> <p>18 Anderson in August, the "former treaty"?</p> <p>19 A. Yeah, it does look that way, even</p> <p>20 though it didn't become a treaty, but I think</p> <p>21 that's what they mean.</p> <p>22 Q. Yes.</p> <p>23 "-- which were in force when</p> <p>24 the Treaty was signed."</p> <p>25 Up a bit, please.</p>	<p style="text-align: right;">Page 3459</p> <p>1 "We complain that the promise</p> <p>2 made by Oliphant to the Chiefs of</p> <p>3 the Saugeen Band have not been</p> <p>4 carried out. Mr. Oliphant promised</p> <p>5 that our annuity should be regularly</p> <p>6 paid through the bank, instead of</p> <p>7 which the last was sent by Captain</p> <p>8 Anderson to Mr. Rankin, a surveyor,</p> <p>9 an unauthorized person, who contrary</p> <p>10 to the express wishes of the chiefs</p> <p>11 paid out the money without deducting</p> <p>12 the amount due by the tribe for</p> <p>13 provisions and tools purchased for</p> <p>14 the purpose of opening a road to the</p> <p>15 village and building a bridge across</p> <p>16 a deep ravine.</p> <p>17 "Mr. Oliphant was shown the</p> <p>18 work and expressed dissatisfaction</p> <p>19 in the manner in which the work was</p> <p>20 done, and recommended that the new</p> <p>21 lines of roads be opened and paid</p> <p>22 out of the annuity. The Saugeen</p> <p>23 Chiefs are anxious to have the debt</p> <p>24 contracted by the tribe immediately</p> <p>25 paid, and we ask that Mr. Oliphant's</p>

<p style="text-align: right;">Page 3460</p> <p>1 promise be carried out." 2 So as we said, this is the first time 3 we've seen this in writing of this, although it had 4 been mentioned to some vague complaints that 5 weren't defined in some of the earlier documents, 6 that they had something that they wanted to take up 7 or... 8 THE WITNESS: Right, other issues, yes. 9 BY MR. BEGGS: 10 Q. Yes. 11 And I would also note that they say -- 12 they add a bit to the description of what happened 13 when Mr. Oliphant visited. Apparently, they took 14 him on a bit of the tour of the area to show him 15 some works that were done; do you agree with that? 16 A. Yes. Yes. 17 Q. And then they make the last 18 complaint, which is essentially about the behaviour 19 of Captain Anderson. 20 A. Yes. 21 Q. And this behaviour pertains to a 22 visit made by Captain Anderson in May while the 23 deputation was away and -- 24 A. Right. In Quebec, yes. 25 Q. Exactly.</p>	<p style="text-align: right;">Page 3462</p> <p>1 So if I can go over to the first page. 2 This has been written to Lord Bury, who is the 3 Superintendent General. And Lord Bury says: 4 "At the request of the Indians, 5 I forward to your Lordship for the 6 consideration of his Excellence 7 Governor General the enclosed 8 petition of the Chiefs and Indians 9 composing the Ojibwe tribe in the 10 Owen Sound country." 11 Now they say "Owen Sound country", but 12 I take it they mean Saugeen as well? It seems the 13 petition refers to the Saugeen? 14 A. Yeah, presumably, yeah. It's a 15 bit odd but they were -- they had different ways of 16 referring to things back then, they weren't always 17 consistent. 18 Q. I suppose when -- I think we may 19 have established this previously, but when we're 20 talking about Owen Sound at this time period, we're 21 really talking about the geographic body, not the 22 city? 23 A. Right. 24 Q. "For reasons set forth in the 25 petition, the Indians are unwilling</p>
<p style="text-align: right;">Page 3461</p> <p>1 Okay. So that appears to be the end of 2 the letter, so that's a series of complaints. Most 3 relevant for us would be the complaint about the 4 wording with, apparently, it being the map and the 5 boundaries. 6 A. Yes. 7 Q. The actual settlement issue and 8 the manner in which the annuity is being paid? 9 A. Yes. 10 Q. So if I can turn to Exhibit 225. 11 That last document was from June 26th, and this 12 document is from June 30th. And this is, as you 13 can see from the cover, a letter from Reverend Van 14 Dusen dated June 30, 1855. 15 I believe this is essentially mailing 16 on -- they're sending on the petition that we just 17 referred to, but also voicing other complaints? 18 A. Right, yes. 19 Q. Now, this being Reverend 20 Van Dusen's -- again, you'd be taking into account 21 the -- not sure what the word would be, but his 22 biases and motives in evaluating this, I take it? 23 A. Oh, yes. 24 Q. Sorry, I may have called this 25 Exhibit 225; it's actually 2255, exhibit.</p>	<p style="text-align: right;">Page 3463</p> <p>1 to transact their business through 2 Captain Anderson." 3 Well, he says: 4 "False representations having 5 been made to the Indian Department, 6 both by communications from private 7 individuals and through the press 8 [...]" 9 He then decides to set out some facts 10 or what he asserts are facts. 11 A. Yes. 12 Q. Then the next few paragraphs 13 really deal with the population and who's who on 14 the Peninsula. And who perhaps should be properly 15 entitled to a share in the annuities. 16 And there's a paragraph -- if you can 17 go to the next page. All right, so the third 18 paragraph, the second full paragraph starts with: 19 "This Kegeponce who was once a 20 Chief in the Nawash Band, has been 21 dismissed from office by an act of 22 their General Council, and still he 23 is sustained by Captain Anderson as 24 a Chief. The tribe, I think it's a 25 hardship that anyone connected with</p>

<p style="text-align: right;">Page 3464</p> <p>1 the Indian Department should assume 2 to palm upon them a Chief whom they 3 repudiate." 4 I take it that would be what was 5 referred to in previous documents as their right to 6 appoint their own officers that they were referring 7 to? 8 A. Yes. 9 Q. And so the next paragraph still 10 goes on about, I believe, the fact that the 11 arguments between groups in the tribe -- and the 12 Band, I mean. 13 If you can scroll down to "I am 14 satisfied" so that paragraph below. 15 There, so at the bottom of the page: 16 "I am satisfied that these 17 Indians have no wish" -- 18 Can we go to the next page? 19 "-- to oppose the Government, 20 or cause trouble in the country, 21 unless driven to it by oppression, 22 but they feel that they have cause 23 to complain on account of the manner 24 in which they have been treated. A 25 Council was called by Mr. Oliphant,</p>	<p style="text-align: right;">Page 3466</p> <p>1 perhaps never will be), a member of 2 this tribe. He has no share in 3 their annuities or their lands, and 4 notwithstanding he has neither lot 5 or part in these matters, if by 6 Mr. Oliphant he is named in the 7 Treaty as the representative of that 8 Band." 9 And so that was John Beaty as you've 10 talked about before? 11 A. Yes. 12 Q. And so the next paragraph begins: 13 "In a word, the verbal promises 14 made to them when the Treaty was 15 consummated last October have not 16 been carried out. Actual settlement 17 on the land was a condition 18 expressed in the former treaty made 19 last July, and the Indians expected 20 it was implied in the one 21 consummated in October." 22 And that's consistent with what we've 23 seen, that they felt that it was explicit in the 24 discussions with Captain Anderson. 25 THE WITNESS: Yes.</p>
<p style="text-align: right;">Page 3465</p> <p>1 last October, at Saugeen, without 2 giving notice to the Nawash Band" -- 3 and we talked about that. 4 A. Yes. 5 Q. But then it says: 6 "-- until after all the details 7 of the Treaty were discussed" -- 8 Now that's different from what we had 9 seen previously. The other report suggested that 10 while they had no advanced warning, they -- well, 11 okay, maybe I'll step back. 12 So there was a discussion with 13 Alexander Madwayosh before the Nawash arrived? 14 THE WITNESS: Right, yes. 15 BY MR. BEGGS: 16 Q. Apart from that, there doesn't 17 appear to have been discussions, at least from 18 looking at the account we have? 19 A. Yes, correct. 20 Q. Okay. 21 "-- and no notice, whatever, of 22 the Council was given to the Band at 23 Colpoys Bay. One Indian from that 24 Band happened to be present, but it 25 also happened that he was not (and</p>	<p style="text-align: right;">Page 3467</p> <p>1 BY MR. BEGGS: 2 Q. And, therefore, implied in the 3 discussions with Mr. Oliphant? 4 A. Yes. 5 Q. And then the next paragraph says: 6 "As their land was not 7 surrendered for certain annuity, as 8 was the case in former treaties made 9 with the Government, but to be sold 10 for their benefit with the verbal 11 promise that they might retain the 12 right to direct in disposing of it 13 to the best advantage. They, 14 therefore, asked that actual 15 settlement be required." 16 At the bottom, sorry. 17 "Indeed they claim it - they 18 expect it, and the country also 19 expect it." 20 So this is the letter that accompanied 21 the petition from the Council, and it emphasizes as 22 well, the actual settlement that's complained about 23 in the petition. 24 THE WITNESS: Yes. 25</p>

<p style="text-align: right;">Page 3468</p> <p>1 BY MR. BEGGS: 2 Q. But it adds a few new complaints 3 about - well, besides the other complaints about 4 Captain Anderson, but also complaints about 5 Mr. Beaty's involvement? 6 A. Yes. 7 Q. And the notice that was given to 8 the Nawash Band? 9 A. Yes. And Colpoy's Bay, yes. 10 Q. Yes, yes. 11 So following this letter at the end of 12 June, Lord Bury and a number of other officials, 13 came to the Peninsula; is that correct? 14 A. Yes. 15 Q. And that was in July. I'm not 16 sure if I have the date, but in July of 1855? 17 A. That sounds right. 18 Q. And they wanted to meet in Nawash, 19 but the Saugeen weren't willing to come because of 20 the way they had been treated in Québec City; is 21 that correct? 22 A. That sounds right, yes. 23 Q. And so instead, they met halfway 24 between Saugeen and Owen Sound on the banks of this 25 Sauble River, where Allenford would be today?</p>	<p style="text-align: right;">Page 3470</p> <p>1 from Alexander McNabb to Captain Anderson, I 2 believe, and it's dated 24th of October 1855. And 3 so it starts: 4 "The Chiefs of the Saugeen Band 5 have asked me to lay before you what 6 they consider a grievance. It 7 appears that in running out, under 8 the recent treaty" -- 9 I take it that's Treaty 72? 10 A. Yes. 11 "-- the continuation of the 12 line surrendered in 1851" -- 13 Which would be the "Half Mile Strip" 14 line? 15 A. Yes, that's right. 16 Q. "-- it is now discovered by 17 them" -- and I take it this is 18 Mr. McNabb's editorial comment 19 "-- (which they might have known 20 before signing the Treaty) that it 21 takes in a portion of their 22 cornfields, which they are desirous 23 of retaining - as the line is 24 surveyed in strict accordance, not 25 only with the Treaty, but as</p>
<p style="text-align: right;">Page 3469</p> <p>1 A. I don't know. 2 Q. You don't know Allenford? 3 A. In that piece, I don't know. 4 Q. But somewhere around... 5 A. Yeah, somewhere in between, yes. 6 Q. So they had a meeting there. And 7 are you aware of any complaints they may have 8 expressed at that time to Lord Bury? 9 A. Yes. I believe they expressed 10 more complaints, or the same ones, yes. 11 Q. Same ones, yeah. 12 And I think Lord Bury promised to fix 13 the boundary issue? 14 A. The main one, yes, about having 15 access to the shoreline. 16 Q. And he gave medals, I guess, to 17 some people? 18 A. Oh, I forgot that bit, yeah. 19 Q. But he refused or maintained that 20 they would not require actual settlement on the 21 land? 22 A. Yes. 23 Q. If I can go to Exhibit 2305. 24 So this is a document that hopefully 25 has a transcript in front of it. It's a letter</p>	<p style="text-align: right;">Page 3471</p> <p>1 understood in Council when the land 2 was surrendered - I cannot recommend 3 any departure from that part of the 4 Treaty, but as part of the land is 5 cultivated, I would beg to leave to 6 suggest that the portion of their 7 cornfield be measured and the whole 8 of lots 56 and 57 be sold by private 9 sale, subject to a lease of one 10 shilling per anum of so many acres 11 comprised within the cornfield to 12 the Chiefs and for a [certain] 13 number of years, with the 14 understanding that the lease shall 15 terminate upon the Indians removing 16 from Saugeeng Village and the land 17 revert to the purchaser." 18 And they enclose a sketch. So it 19 appears there's several things going on here. We 20 have Mr. McNabb passing on a grievance that has 21 been noted, again, about the boundary, I take it. 22 A. Yes, a different issue this time. 23 Q. Right. And then we have -- I 24 don't believe it's explicitly stated, but I think 25 it's implied that McNabb plans to buy the property</p>

<p style="text-align: right;">Page 3472</p> <p>1 or wants to buy the property, then lease it back to 2 the Saugeen; is that what you took from it, or am I 3 incorrect? He just says, "private purchasers". 4 A. Yeah, I didn't assume that that 5 would be him necessarily on reading that -- 6 Q. Okay. 7 A. -- and it could be. 8 Q. Okay. 9 A. Actually, I sort of assumed he 10 thought it would be purchased by one of the 11 Saugeen -- 12 Q. Okay. 13 A. -- people. Which I think might be 14 what happened, but I'm not sure. 15 Q. And I do find interesting the last 16 part, at the top of this page here, that speaks of: 17 "The lease shall terminate on the Indians removing 18 from Saugeen Village and the land revert to the 19 purchaser." 20 Now, the Saugeen are still on that same 21 property today; is that correct? 22 A. Yes. 23 Q. But you take it from this that for 24 some reason Mr. McNabb had the belief that they 25 might be leaving at some point in the future?</p>	<p style="text-align: right;">Page 3474</p> <p>1 for our Indians of this place" -- 2 Maybe I'll go -- can you scroll down to 3 the original so I can see what's being said here? 4 Okay, so: 5 "We the Chiefs of Saugeeng Band 6 of Indians, send a few words through 7 you to His Excellency, that as we 8 fear of our lands will not be enough 9 for our Indians of this place" -- 10 then it looks like "we" was put in? 11 A. Yeah. It looks like "we" to me. 12 Q. -- "we wish it to have our 13 lands be according to the 14 understanding in the time of 15 surrendering our lands to the Crown. 16 That this reserve of Saugeeng was to 17 be laid in six miles from our 18 village toward Owen Sound and we 19 find it is not. We particularly" -- 20 it says "-- we particularly the 21 flats to be reserved for our benefit 22 of the whole tribe. We hope that 23 few words will reach to your 24 consideration and in the ears of our 25 Great Father, the Governor General".</p>
<p style="text-align: right;">Page 3473</p> <p>1 A. Yes. 2 Q. If I can go on to Exhibit 2352, 3 and this takes us into the next year of March of 4 1856. 5 Again, it has a transcript which is 6 helpful. And so this is from -- I'm not sure what 7 the stub at the top refers to. But this refers to 8 a letter of Saugeen Chiefs dated March 17, 1856, 9 and is directed to Richard Pennefather. 10 Now, did he replace Lord Bury as the 11 Superintendent General? 12 A. Yes. 13 Q. Okay. So it's signed by Alexander 14 Madwayosh and John Kaduhgeqwon. And I note that 15 Moses Madwayosh was the interpreter. 16 A. Yes. 17 Q. I take it that's his son, Moses 18 Madwayosh is Alexander's son? 19 A. I think so. 20 Q. Okay. So if we go up again. It's 21 a short letter, it says: 22 "We the Chiefs of Saugeeng Band 23 of Indians send few words through 24 you to His Excellency, that as we 25 fear of our lands will not be enough</p>	<p style="text-align: right;">Page 3475</p> <p>1 So I take it, am I correct, that this 2 letter refers to another boundary, this complaint 3 about the Saugeen Reserves? 4 A. Yes. 5 Q. Okay. One last one for this 6 section. If I can go to 2431, which is a 7 declaration from October of 1856. Could we go 8 down, please? 9 Is the Declaration here? This looks 10 like a cover letter to the Declaration. 11 A. Yes, this is obviously the cover 12 letter sent with it. 13 Q. Perhaps I'll just move on from 14 that. 15 So we've seen a number of petitions of 16 complaint that are not -- for concern, if you will. 17 I suppose we've seen a number of ways in which the 18 Indigenous members have expressed their concerns. 19 A. Yes. 20 Q. Many of them have been petitions 21 directly to the Government, either the Governor 22 General or through the Superintendent? 23 A. Yes. 24 Q. And we've seen the Indigenous 25 members seek the help of allies, like Conrad Van</p>

Page 3476	Page 3478
<p>1 Dusen or Alexander McNabb to express their concerns 2 as well? 3 A. Yes. 4 Q. And we've seen some direct action 5 in the sense of stopping the survey from proceeding 6 at one point? 7 A. Yes. 8 Q. I think my friend asked you 9 earlier on in your testimony -- sorry, stepping 10 back for a moment. 11 We've seen the complaints voiced in 12 these materials as being pertaining to the 13 boundaries being incorrectly set out as it was 14 understood; as well as the actual settlement, which 15 was an issue, which was an important issue for 16 them? 17 A. Yes. 18 Q. As well as some other issues 19 raised, such as the way the annuities were being 20 paid and -- well, the way the annuities were being 21 paid was one complaint? 22 A. Yes. 23 Q. And there were, in Conrad Van 24 Dusen's words, but not the Band's words, complaints 25 about the manner in which the negotiations took</p>	<p>1 have known. 2 THE COURT: Ms. Guirguis. 3 MS. GUIRGUIS: Sorry, your Honour. 4 I appreciate Mr. Beggs said that he was 5 paraphrasing. My question that I put, if I can 6 provide that, was about the expert -- 7 Dr. Brownlie's opinion about the validity. Why 8 didn't they bring the validity of the Treaty 9 forward. 10 MR. BEGGS: Thank you, that's helpful. 11 BY MR. BEGGS: 12 Q. So I guess that was the question 13 you answered, the question of validity. 14 A. (Witness nods). 15 Q. I suppose my question would be the 16 one that you're answering now, which is, why didn't 17 they complain about the pressures they were put 18 under? And I'm not sure if you were mid-sentence 19 or if you were done? 20 A. I think I was mid-sentence. 21 Q. Okay. 22 THE COURT: Well, you weren't 23 mid-sentence, but I think Mr. Beggs is inviting you 24 to supplement your answer. 25 You said something along the lines</p>
Page 3477	Page 3479
<p>1 place in the sense of the late notification and the 2 role of Mr. Beaty? 3 A. Yes. 4 Q. Now, I believe in response to a 5 question from my friend earlier on, you were asked 6 why there was not complaints about the 7 Treaty-making -- I'm paraphrasing, so I might not 8 be saying it accurately. But essentially, why the 9 complaints about these issues and not about the 10 overall problem of being pressured into 11 surrendering all of their lands, pretty much. 12 And you answered that it wasn't a 13 feasible that -- I think you said there was no way 14 that the lands would ever be returned to them, or 15 the Treaty set aside? 16 A. Yes. 17 Q. Having reviewed all these 18 petitions, you're still of that opinion that it was 19 not possible for the Bands to have expressed at 20 some point in here that they thought the whole 21 thing was unfair in the way it was carried out? 22 A. They could have expressed that. I 23 mean, I think some of Van Dusen's comments do go to 24 that, that he did think it was unfair the way it 25 was carried out. It's clear to me that they would</p>	<p>1 that: "They could have expressed that. I mean, I 2 think some of Van Dusen's comments did go to that, 3 that he did think it was unfair the way it was 4 carried out, it was clear to me that they would 5 have known." 6 THE WITNESS: Yeah. 7 THE COURT: I think you're being 8 invited to say if that's complete or not. 9 THE WITNESS: Yes, I wasn't finished. 10 So this is where -- this is exactly the 11 kind of question where you need to have an 12 understanding of the context of the time. I show 13 in my second report, that the Government was never 14 willing to entertain any questions about the 15 validity of Treaties until the 1970s. 16 And that attitude was well entrenched 17 by this time. There was no question of annulling a 18 treaty, that never happened. And I think the 19 Saugeen understood the context very well, that they 20 had been pressured for years, they had finally 21 given a "yes". And they knew a "yes" in that 22 context could not be undone, that would never -- I 23 mean, that wouldn't have been entertained for one 24 moment. 25</p>

<p style="text-align: right;">Page 3480</p> <p>1 BY MR. BEGGS: 2 Q. Okay. And on a smaller scale, 3 they appeared to have been willing to complain 4 about Captain Anderson and his conduct about 5 various matters? 6 A. Well, some of them did. 7 Q. Yes, some of them did? 8 A. One faction did. 9 Q. Yes. But are you aware of any 10 complaint about how Captain Anderson conducted his 11 August 1854 meeting with them? 12 A. I haven't seen any written records 13 about that. 14 Q. Okay. And certainly there was no 15 complaint at least between August and the date of 16 the Treaty setting to October 13th? 17 A. Not that I've seen, no. 18 Q. Okay. 19 A. It wasn't a good idea to pick a 20 fight with your superintendent, if you could help 21 it. He had quite a bit of power, and he was 22 supposed to be the person who maintained their 23 relationship with the Government, which was 24 supposed to be a relationship of protection and 25 benevolence. And he was the man who tended that</p>	<p style="text-align: right;">Page 3482</p> <p>1 A. I believe he was, yes. 2 Q. In fact, he had two wives who were 3 both Indigenous people; is that correct? Not at 4 the same time, but -- 5 A. That was possible. 6 Q. Yes. But a first and second wife; 7 were you aware of that? 8 A. I wasn't, actually. 9 Q. Okay. I think we have an idea of 10 who Captain Anderson was. 11 So as we've seen in many of those 12 petitions, and as you've discussed earlier in your 13 evidence and report, actual settlement was a 14 significant concern for the First Nations? 15 A. Yes. 16 Q. And you discuss in your report, 17 the -- we've already talked about why the First 18 Nation may have wanted it, and that's in your 19 report. But you also discussed in your report why 20 Oliphant, and later Lord Bury did not -- refused to 21 impose actual settlement? 22 A. Yes. 23 Q. And I think, if I can call up your 24 report, it's on page -- the exhibit is 4118, the 25 page, I think, is 31.</p>
<p style="text-align: right;">Page 3481</p> <p>1 relationship and brought their messages to 2 government. So it was never a good idea to fight 3 with your superintendent if you could help it. 4 Q. Now, just for context. Perhaps we 5 can go into a bit of who Captain Anderson was. I 6 believe his full name was Thomas Gummingsall 7 Anderson? 8 A. Yes. 9 Q. And he had been in service to the 10 Indian Department for quite some time? 11 A. Yes, a long time. 12 Q. He was near retirement at the time 13 of the Treaty? 14 A. Yeah, he was quite old. I think 15 he was about 75 at the time Treaty 72 was made. 16 Q. And he in fact had been present as 17 one of the witnesses to Treaty 45 1/2; is that 18 correct? 19 A. Yes. 20 Q. And even prior to being a employee 21 of the Indian Department, he had worked at what was 22 called an "Indian trader"? 23 A. Yes. 24 Q. And he was known to be fluent, I 25 take it, in Anishinaabemowin?</p>	<p style="text-align: right;">Page 3483</p> <p>1 A. First report, right? 2 Q. First report, yes. 3 A. Yes. 4 Q. So that's where the Saugeen Ojibwe 5 section is discussed. On page 31 is where 6 Oliphant's reasons are discussed. 7 So in your report you review a quote 8 from Oliphant's November 3rd report? 9 A. Yes. 10 Q. And you discuss the meaning of a 11 phrase, "private interests" in that quote. 12 A. Yes. 13 Q. And you say that -- I think you 14 say in your report, again paraphrasing -- that 15 private interests he's referring to are absentee 16 speculators? 17 A. Well, of course it's a bit vague. 18 Speculators, for sure. Not necessarily absentee. 19 Well, depending what that means, I suppose. 20 Q. Right. 21 A. Yes, speculators who weren't going 22 to settle and clear the land. 23 Q. Okay. Some sort of richer class 24 or group? 25 A. Yes.</p>

Page 3484	Page 3486
<p>1 Q. I'd actually like to take you to 2 the report and go over the quotation in a little 3 more context and ask you to reconsider the meaning 4 of what "private interests" would mean. 5 If I can go to Exhibit 2160. That's 6 Oliphant's report. And I think it's about page 5. 7 So, yes, near the bottom of the page. 8 So in the paragraph beginning: "Having 9 thus given a detailed account..." 10 I'd like to go down approximately eight 11 lines to the line beginning: "...their evaluation. 12 The advantages of confining the sale..." 13 And I think -- yes, that's where you 14 begin your quote in your report as well. 15 A. Right. 16 Q. So it says: 17 "The advantages of confining 18 the sale to actual settlers were 19 much pressed upon my consideration 20 at Saugeen and Owen Sound" -- 21 Now Saugeen presumably -- well, do you 22 assume "Saugeen" refers to the Indian village or to 23 some other location? 24 THE WITNESS: Yeah, I think it would be 25 the Ojibwe Village, yes.</p>	<p>1 involved, unless it be clearly 2 demonstrable that a different system 3 would be deeply injurious to the 4 prosperity of the country, they have 5 a higher claim upon the 6 consideration of those to whose 7 trust they are confided, than the 8 convenience of a comparatively small 9 portion of the community." 10 This is beyond what you had quoted, 11 going a little farther: 12 "Under these circumstances, it 13 would seem a wiser course that no 14 conditions of actual settlement 15 should be attached to the sale of 16 these lands, but in order to allow 17 persons of limited means to buy, 18 that the purchase-money should be 19 paid by five annual installments 20 upon the system now adopted in the 21 Crown Land Department. In all cases 22 one-third of the purchase-money to 23 be paid at the time of sale; it 24 being always distinctly understood 25 that the same indulgence which is</p>
Page 3485	Page 3487
<p>1 BY MR. BEGGS: 2 Q. And Owen Sound, though he hadn't 3 visited Nawash on this trip, would Owen Sound be -- 4 A. He passed through it, I think. He 5 passed through Owen Sound. 6 Q. Yes, okay. 7 "-- a large proportion of the 8 community of the settlements being 9 composed of a class which is 10 possessed a more enterprise and 11 experience than capital." 12 Now, there he's talking potentially 13 about non-Indigenous settlers, I take it? 14 A. Yes. 15 Q. "Regarding, however, the 16 results which characterize the 17 system now adopted by the Crown land 18 Department, and the great difficulty 19 which must always attend the 20 enforcement of conditions, 21 compliance with which is supposed to 22 imply actual settlement, it does not 23 seem advisable that the same system 24 should be pursued here. Where 25 private interests are so largely</p>	<p>1 granted to settlers who hold under 2 the Crown, cannot be accorded to 3 those who are remiss in paying up 4 their installments to the Indians. 5 It must ever be the duty of the 6 department to enforce the most rigid 7 compliance with stipulations 8 attached to all transactions 9 affecting the property of those whom 10 it protects." 11 So I would ask you to reconsider 12 whether in this context "private interests" 13 actually refers to the Saugeen and Nawash Bands, 14 and not the speculators. Seeing as the sentence 15 says, "they have a higher claim upon the 16 consideration of those to whose trust they are 17 confided." 18 And I am suggesting that speculators 19 wouldn't have -- wouldn't be confided to the trust 20 of the Crown, but the Bands would be. 21 THE WITNESS: It is a really convoluted 22 sentence. 23 BY MR. BEGGS: 24 Q. Yes? 25 A. And he's really quite unclear.</p>

<p style="text-align: right;">Page 3488</p> <p>1 You know, it really is left to interpretation what 2 he means by "private interests". 3 I take your point about this phrase 4 "those to whose trust they are confided". 5 I think what influenced my 6 interpretation of this unclear sentence was this 7 phrase, "the convenience of a comparatively small 8 portion of the community..." which appears to me to 9 refer to the people who pressed upon him the 10 advantages of confining the sale to actual 11 settlers. 12 I say that because in this time period 13 they -- Indigenous people were seen as a completely 14 separate group. You know, and so when he says "the 15 community", unless he's specifically referring to 16 an Indigenous community, I think he'd be referring 17 to the general public. Which in their minds, 18 didn't -- they were like, people and Indians 19 almost; or white people and Indians. That's why I 20 interpret it in that way. But it isn't entirely 21 clear. 22 Q. Okay. And while I'm -- I take it 23 from the context of this letter, or the manner in 24 which this letter is expressed, perhaps not well, 25 that there are regulations which were followed by</p>	<p style="text-align: right;">Page 3490</p> <p>1 situation where a company or some sort of group 2 would seek a licence for a lease to cut timber on 3 lands without having purchased the lands, they 4 would just get a lease or some licence to do that? 5 A. Yes. 6 Q. And I take it, in the latter case, 7 the company cutting timber, it would be expected 8 that the Indigenous people would receive the 9 profits from that lease, if we're talking about 10 Indian lands or surrendered lands, that the profits 11 of that leasing would go to the Bands? 12 A. I've looked into this for the 20th 13 Century, I haven't looked into it in detail for 14 this time. But I believe the way it worked was, 15 the Government got some of the revenue, I think 16 there's like stumpage fees. I think there's more 17 than one type of fee involved. And some of it went 18 into Band funds, and I think some of it went to 19 government. 20 Q. Okay. Now, in this section you 21 refer to the local history document that we saw 22 earlier, or that you went to with my friend by 23 Norman Robertson, The History of the County of 24 Bruce; that's correct? 25 A. Yes, yes.</p>
<p style="text-align: right;">Page 3489</p> <p>1 the Crown, Crown land department? 2 A. Yes. 3 Q. And Oliphant is suggesting, and 4 I'm not seeking an answer as to whether it's right 5 or wrong, but he seems to be suggesting that the 6 Indian Department is not bound by those same 7 regulations of the Crown land department. 8 A. Yes, it does imply that. 9 Q. If I can go back to your report 10 for a moment, Exhibit 4118. And it's on page 29 of 11 the document, a section that begins on page 29 and 12 goes on to page 30, it's the bottom of page 29. 13 You have a section about: "Would the 14 Crown have been expected to profit from the sale of 15 timber rights as well as from taking portions of 16 land sales revenue"? 17 Now, is it correct that at this time, 18 when a purchaser had made deposits, but not yet 19 received the patent and essentially fulfilled 20 whatever payments they needed to pay, but they 21 started for settlement, I take it, that when they 22 cut down trees they could not sell that timber 23 without getting a licence from the Crown? 24 A. That's right, yes. 25 Q. And there was also a different</p>	<p style="text-align: right;">Page 3491</p> <p>1 Q. But there's no other citations in 2 this section. Did you have any other sources for 3 your research on this issue of timber rights. 4 A. I'm afraid I did this work about 5 six years ago, so I can't say for sure. Obviously 6 it's a very short section, and I also noted that 7 there aren't a lot of footnotes. 8 So I think -- I mean, Norman Robertson 9 talks specifically about this issue, and the issue 10 of -- I think he also talks about them not always 11 paying in full. 12 There are documents that show 13 discussion about timber and payments for timber. I 14 think David Wood may have addressed this, but I 15 can't recall. His book is called "Making Ontario", 16 I think. 17 Q. I think when we looked at a 18 petition from 1886, which was Exhibit 2956, we 19 don't need to call it up, but that was the one 20 which talked about their -- well, I've drawn it to 21 your attention for the discussion of how the 22 surrender had taken place. 23 A. Right, right. 24 Q. But the complaint that seems to be 25 voiced in that letter appear to have dealt largely</p>

Page 3492	Page 3494
<p>1 with sales of land and timber, they appear to have 2 felt that they weren't getting their purchase money 3 at least in 1886 -- 4 A. Yes. 5 Q. -- for the timber. 6 Do you know how much a timber licence 7 would cost, or how much money the Government would 8 make on that timber licence? 9 A. No, I don't. 10 Q. Do you have any idea how much -- I 11 mean, the question was: Would the Crown have 12 expected a profit, but do you have any idea how 13 much the Crown did profit in, say, the five years 14 following -- well, five years isn't good, because 15 the sales didn't start right away? 16 A. Yeah. 17 Q. Ten years, perhaps, following the 18 Treaty? I mean, obviously not exact, but an idea 19 of how much money? 20 A. I haven't really seen any 21 documents giving those kinds of figures. The sale 22 of timber rights would have included both the sale 23 of permits to settlers who hadn't got patents yet, 24 and selling it to timber companies. 25 You know, one of the problems the</p>	<p>1 A. Yes. 2 Q. So Peter Jacobs was, as we've 3 already covered, is a Methodist Missionary? 4 A. Yes. 5 Q. He only arrived relatively 6 recently to the Saugeen station? 7 A. Yes. 8 Q. Or mission, I guess you call it. 9 And it was his church -- well, not his 10 personal church, but the church in which he 11 preached, that the negotiations took place? 12 A. I believe so. 13 Q. And he had actually written a book 14 about his earlier work just before having -- the 15 book that was published in 1853, I believe; is that 16 correct? 17 A. Peter Jacobs had? 18 Q. Yes. 19 A. What is the book? 20 Q. I lost the title at the moment. 21 All right. You mentioned, I think in 22 your testimony, you inferred that he was being paid 23 -- well, you've told us how he was paid, he was 24 paid 50 pounds -- 25 A. Yes.</p>
Page 3493	Page 3495
<p>1 Government always faced in this time period was 2 difficult communications and, you know, small 3 numbers of staff to enforce these things. So I 4 don't know how many settlers went ahead and got 5 their timber permit, and how many quietly sold 6 timber without getting their permit. And I haven't 7 seen documentation of that. 8 Q. Okay. If I can turn to the 9 question of the role of Peter Jacobs -- 10 A. I'm sorry, am I allowed to add a 11 coda? 12 Q. To the last question? 13 A. Yes. 14 Q. Sure. 15 A. I actually just remembered that I 16 have seen a letter from one of the Government 17 officials actually telling a settler that they had 18 to pay. That somehow they knew they had been 19 cutting timber, and the letter did say they had to 20 pay for a timber license, or a permit I guess it 21 was called. 22 Q. Okay, thank you. 23 So if I can turn to the role of Peter 24 Jacobs, I believe it's on page 33 of your report 25 where it starts.</p>	<p>1 Q. -- and the document said for 2 services in securing the surrender, I believe? 3 A. Yes. 4 Q. And I think you inferred that he 5 was being paid to use his influence as a missionary 6 in the discussions? 7 A. Yes. 8 Q. Did you take it that he -- that he 9 was being paid -- he was also acting as the 10 translator or the interpreter for the Treaty? 11 A. Yes. 12 Q. Did you understand him or believe 13 that this payment was to affect his role as a 14 translator at all; to perhaps unfairly translate? 15 A. Well, we have no direct evidence 16 of what he actually did to perform those services, 17 except Oliphant's book, Episodes in a Life of 18 Adventure, which is certainly a very colourful 19 account. 20 Q. Right. And I think in that book 21 he appears to give advice to Oliphant as to how to 22 proceed. And he participates in the 23 discussions that go on without Oliphant? 24 A. Yes, and the fistfight. 25 Q. Yes, and the fistfight. So just</p>

<p style="text-align: right;">Page 3496</p> <p>1 going back to the question of the translation, 2 though. 3 We've talked about how David Sawyer was 4 a capable translator, I believe. And Charles 5 Keeshig was a capable -- or was fluent in both 6 languages? 7 A. Yes. 8 Q. You didn't have any knowledge of 9 John Beaty, I think that is what you said earlier 10 about his -- 11 A. That's right, I don't. 12 Q. And you had some doubts about 13 Peter Jones Kecedonce? 14 A. Right. 15 Q. So there was some people at least 16 who were also capable of checking Peter Jacobs' 17 translations? 18 A. Yes. 19 Q. Now, would it be fair to say that 20 the Methodists favoured Indigenous peoples settling 21 in particular locations and pursuing agriculture? 22 A. Yes. 23 Q. And that they tended to discourage 24 hunting and fishing as a manner of life? 25 A. Yes.</p>	<p style="text-align: right;">Page 3498</p> <p>1 Q. Sure. 2 A. Oliphant said he was pecuniarily 3 interested in the result, which clearly is a 4 statement that the money was offered as an 5 inducement, and that he was only going to get it if 6 the surrender went through. Because otherwise, he 7 wouldn't have been pecuniarily interested, he would 8 have been paid either way. 9 THE COURT: I just lost track of it, so 10 I'm going to interrupt you, sir. 11 That statement was from his book? 12 THE WITNESS: Yes, from the memoire. 13 THE COURT: And you're accepting that 14 statement? 15 THE WITNESS: Well -- 16 THE COURT: I'm just a little confused 17 at this point. We're going back and forth between 18 the two Oliphant documents. 19 Anyway, you can ignore my question 20 because I'll ask it later if no one else does. And 21 I don't want to interrupt Mr. Beggs, but you are 22 talking about the book -- 23 THE WITNESS: Yes. 24 THE COURT: -- which you talked about 25 yesterday.</p>
<p style="text-align: right;">Page 3497</p> <p>1 Q. Would you regard as possible that 2 Peter Jacobs had favourable views of the surrender 3 on his own, without having to be paid for it? 4 A. He might have. But he was paid. 5 Q. Right. Now, clearly, he wasn't 6 paid until well after the Treaty? 7 A. Yes. 8 Q. And we have no knowledge of when 9 the money was offered to him. I mean, we know it 10 was offered during Oliphant's visit at some point? 11 A. The only evidence about when it 12 was offered is the comment in Oliphant's memoire 13 that he believed himself to be pecuniarily 14 interested, I think was the term. 15 Q. So it appears if that were true, 16 that was before the negotiations that he was 17 offered this? 18 A. Yes. 19 Q. Okay. But we don't know whether 20 the money was conditional on the Treaty being 21 successful? 22 A. We don't know. 23 Q. If I can go to the receipt, I 24 think, on which demonstrates -- 25 A. I'm sorry, can I add a coda again?</p>	<p style="text-align: right;">Page 3499</p> <p>1 THE WITNESS: Yes. 2 BY MR. BEGGS: 3 Q. Now you'll recall yesterday I 4 suggested that perhaps Oliphant didn't really 5 remember who Peter Jacobs was when he was writing 6 the 1887 book? 7 A. It's possible. 8 Q. Okay. And a person reading his 9 book without any knowledge of the other documents 10 in history, but just reading the book as it was 11 meant to be read, as entertainment; coming across 12 the phrase "pecuniarily interested", and the fact 13 that it was a native catechist, as he was 14 described; wouldn't the assumption be that he was 15 pecuniarily interested because he was one of the 16 Band members that was going to profit? 17 A. Well, I don't know what the 18 readers would think at the time, but he wasn't one 19 of the Band members. 20 Q. No? 21 A. So he wasn't going to profit. 22 Q. He definitely was not one of the 23 Band members -- 24 A. Right. 25 Q. -- and he wasn't there very long,</p>

<p style="text-align: right;">Page 3500</p> <p>1 he left shortly thereafter. 2 A. Yeah, it didn't work out very 3 well. 4 Q. Yeah, I guess. 5 But what I'm suggesting is that 6 Oliphant may have actually been referring, in 7 trying to suggest, not that Jacobs was being paid 8 under the table, if you will, but that he was 9 pecuniarily interested because he was a member of 10 the Band, even though that was false? 11 A. If we only had the book to go on, 12 and that comment, that he was pecuniarily 13 interested, I would be very skeptical about it. 14 But we have this receipt showing that he was paid 15 50 pounds, and it says it was for services rendered 16 obtaining the surrender. 17 So, in that instance, the comment from 18 memoire matches that piece of evidence. 19 Q. But it matches it -- I'm not 20 trying to make this an argument -- but it matches 21 it because we know of this payment; but the reader 22 would not know of this payment. 23 So if you wanted to say that he had 24 paid the interpreter, why didn't he just say it? 25 It might have been more entertaining to suggest</p>	<p style="text-align: right;">Page 3502</p> <p>1 interested" places all the emphasis on Jacobs. And 2 then he goes on to say he thinks Jacobs is acting 3 immorally. 4 Whereas, if he said we were bribing 5 him, the emphasis would be more on the actions of 6 the Government, which then wouldn't look too 7 palatable. So maybe that's why he did it that way. 8 Q. Okay. So if I can call up the 9 receipt that is Exhibit 2469. So that's the cover 10 page, somebody has written "Receipt" -- well, that 11 may be perhaps relevant to read. So somebody in 12 the Indian Department wrote: 13 "Peter Jacobs receipt for 14 50 pounds for services rendered 15 Mr. Oliphant in obtaining a 16 surrender of the Saugeen Peninsula." 17 So if we can go down to the document. 18 So this is -- appears to be a torn piece of paper, 19 it's written to the Indian Department Toronto, 20 28th, March, 1857. It says "50 pounds" at the top 21 left corner. It says: 22 "Received from SY Chesley 23 accountant, Indian Department." 24 Is that correct? You know who 25 Mr. Chesley is?</p>
<p style="text-align: right;">Page 3501</p> <p>1 that he had bribed the translator or commissioner; 2 why would he use a phrase that didn't mean anything 3 to the reader "pecuniarily interested"? 4 A. Well, I think it means something. 5 It states that he had a financial interest in the 6 outcome. That he stood to benefit, financially, 7 from a surrender. 8 So that makes him a bit more colourful 9 and explains why he would've waded the fistfight. 10 Q. Correct, fair enough. 11 A. It seems to me, I mean, he's 12 trying to -- he makes -- he devotes quite a bit of 13 attention, actually, to Peter Jacobs in the 14 memoire. Which is in great contrast to the report, 15 where there's only one sentence saying he was the 16 translator or interpreter. 17 And he's clearly trying to make a 18 colourful figure out of him. He then says he left 19 it to his conscience, as a preacher, whatever, to 20 reconcile his actions with his conscience. Which 21 clearly is a statement that Oliphant considers he 22 was acting incorrectly or immorally, and that fits 23 with the "pecuniarily interested" part. 24 But I don't know, we're speculating 25 here, but the way that he put it, "pecuniarily</p>	<p style="text-align: right;">Page 3503</p> <p>1 THE WITNESS: Yes. 2 BY MR. BEGGS: 3 Q. Okay. So the Indian Department: 4 "The Governor General's warrant 5 number 1869 for the sum of 50 pounds 6 currency", I think it says. 7 A. Yes. 8 Q. Stopping for a moment. 9 The Governor General's warrant would be 10 the manner in which the paperwork was processed on 11 a payment? 12 A. Yes, some form of cheque or 13 whatever. 14 Q. Did you try and locate the 15 Governor General's warrant that's referred to here? 16 A. No, I didn't. 17 Q. I'm not suggesting anything about 18 that, because it's not in our document collection, 19 no one has been able to find it. But I was just 20 curious if you knew where it was. 21 A. Well, if it's the equivalent of a 22 cheque, it would have gone to Peter Jacobs and he 23 probably took it to bank, right? So if it still 24 existed, it would be in the bank records which 25 probably don't still exist.</p>

<p style="text-align: right;">Page 3504</p> <p>1 Q. Would a warrant not be, 2 essentially, an authorization by the Governor 3 General? 4 A. I don't know exactly what type 5 of -- it's something they used to transfer money, 6 but I couldn't say more about it. 7 Q. Okay. In any event, we don't have 8 it, the warrant? 9 A. Right. 10 Q. "In payment for my services 11 rendered Mr. Oliphant, Life 12 Superintendent General, in procuring 13 a surrender of the Saugeen 14 Peninsula". 15 So we have the statement that's for his 16 services rendered to Mr. Oliphant, and it's for 17 procuring a surrender. We don't have any more idea 18 than that as to what specifically he was asked to 19 do -- 20 A. No. 21 Q. -- or what in fact he did do? 22 A. We don't. Although, the memoire, 23 problematic as it is, does have some of the bones 24 of the story that we know from the report. And 25 basically what he says is that he was coached in</p>	<p style="text-align: right;">Page 3506</p> <p>1 "Wednesday, 28th of January, 2 1857. A very beautiful day. 3 Mr. Ross and Peter Jacobs call at 4 the office about Mr. Oliphant's 5 promise to the latter." 6 And that's all we have about that. I'm 7 just being thorough. 8 So certainly -- so Mr. Jacobs appears 9 to have obtained the assistance of Mr. Ross who is 10 also present during the negotiations? 11 A. Right. 12 Q. And it clearly indicates that 13 Mr. Oliphant had made a promise and that Mr. Ross 14 was present day witness to the fact that the 15 promise had been made? 16 A. Right. He was also an MP, so he 17 did those kinds of things, people could come to him 18 for his help and he would help them get things 19 done, presumably. 20 Q. Okay. Before I leave this 21 document, and this is a little out of context. I 22 note that the phrase following, "the promise to the 23 latter", being Peter Jacobs, it goes on to say: 24 "I write to Van Dusen about a 25 further surrender by the Nawash</p>
<p style="text-align: right;">Page 3505</p> <p>1 terms of, you know, especially seems to be about 2 when to do things, and when discussion was at the 3 right point to leave. And then he says it was 4 Jacobs who told him when to come back. 5 So it's a -- not an ideal source, but 6 it is -- that part is plausible. 7 Q. Okay. If I can call up a document 8 which is not yet an exhibit, but it's SC0850. It's 9 a large document, so it might take a moment. 10 What this document is, is the diary of 11 Mr. Chesley for 1857. So if we could go to page 4 12 of the document, which has -- well, does it have a 13 number indicating it on the document? There's no 14 page numbers, okay. 15 So we're at the top of the document, 16 "Wednesday, 28th January, 1857". 17 And actually before I forget, perhaps I 18 can ask that the diary of SY Chesley 1857 be made 19 next exhibit, Your Honour? 20 THE COURT: Mr. Registrar. 21 THE REGISTRAR: Exhibit 4158. 22 EXHIBIT NO. 4158: Diary of SY Chesley 23 dated 1857. 24 BY MR. BEGGS: 25 Q. So it begins:</p>	<p style="text-align: right;">Page 3507</p> <p>1 Indians [...]" 2 And then he talks about a letter from 3 Sarah Ann, so presumably that's the end of that. 4 If I can go down to the bottom of the 5 page, just so I don't have to go back to this 6 document. I can't make out the word, but 7 presumably it's "Wednesday", because the entry 8 above is "Tuesday" in the last paragraph. 9 So Wednesday the 4th: 10 "Have a long and unsatisfactory 11 interview with Van Dusen who 12 evidently wants a douceur for 13 negotiating a surrender." 14 Then it appears to talk about rain. So 15 what would a "douceur" mean in the context of this? 16 A. Never seen that word, appears to 17 be a French word. 18 Q. Would it essentially mean a 19 "sweetener" or a "commission" for having negotiated 20 the surrender? 21 A. That's certainly -- 22 THE COURT: I'm going to ask you to 23 stop. 24 MR. BEGGS: Fair enough. 25 THE COURT: Ms. Guirguis.</p>

<p style="text-align: right;">Page 3508</p> <p>1 MS. GUIRGUIS: Your Honour, the witness 2 has already answered that he's ever seen this. 3 THE COURT: It's not just that he's 4 answered it, but I have no evidence that he speaks 5 French. And Mr. Beggs can't do that for him. He's 6 never seen the word before. So far I haven't heard 7 anything that would suggest that this is useful. 8 MR. BEGGS: Certainly, Your Honour. 9 THE COURT: Thank you, Ms. Guirguis. 10 BY MR. BEGGS: 11 Q. So he had an unsatisfactory 12 interview anyway with Van Dusen? 13 A. Yes. 14 THE COURT: Just as you're pausing, 15 sir, sometime shortly we can take the morning 16 break. Either now or when you're finished what 17 you're up to with this document. 18 MR. BEGGS: Now would be the most 19 convenient time, Your Honour. 20 THE COURT: All those things you can't 21 do, sir, apply during coffee breaks and all other 22 times. 23 Last time we had an expert here, we had 24 basketball to keep him busy. I'm sure you'll think 25 of something else.</p>	<p style="text-align: right;">Page 3510</p> <p>1 September 4th, 1890. This is one of our new 2 documents, but I'd ask that it be made an exhibit? 3 THE COURT: No objections. 4 Mr. Registrar. 5 THE REGISTRAR: Exhibit No. 4159. 6 EXHIBIT NO. 4159: Obituary for 7 Peter Jacobs from the Orillia Daily 8 Times, dated September 4, 1890. 9 BY MR. BEGGS: 10 Q. So this, I take it, you wouldn't 11 have seen this before? 12 A. I don't think so. 13 Q. Okay. So this is from the Orillia 14 Daily Times, as I've said. And Peter Jacobs, after 15 leaving Saugeen, went to Rama, I believe? 16 A. Sounds right. Sorry, I don't 17 remember all the details. 18 Q. Sure. And would you say Rama is 19 close to Orillia; are you familiar with that? 20 A. Yes. 21 Q. Okay. So just as an obituary 22 generally, would you have some reservations as a 23 historian in relying on obituaries? 24 A. I'd just want to know who wrote 25 them and what they knew about Jacobs and that sort</p>
<p style="text-align: right;">Page 3509</p> <p>1 -- RECESS TAKEN AT 11:28 -- 2 -- UPON RESUMING AT 12:00 -- 3 THE COURT: Go ahead, Mr. Beggs. 4 MR. BEGGS: Thank you, Your Honour. 5 BY MR. BEGGS: 6 Q. We were discussing Peter Jacobs, I 7 believe before the break. And in your report, you 8 rely on the buyout fee of Peter Jacobs by Donald 9 Smith, Donald B. Smith? 10 A. Yes. 11 Q. And that was made an exhibit 12 earlier, 4125. And in particular, you mention the 13 difficulties that Jacobs faced at the time of the 14 Treaty in 1854, including the death of two of his 15 daughters and the financial troubles he was having? 16 A. Yes. 17 Q. And in Smith's book, he also 18 mentions that Jacobs was shortly thereafter 19 dismissed from the Methodists for touring the U.S. 20 trying to raise money and for drinking too much 21 wine? 22 A. Oh, right. 23 Q. If I could call up the document 24 SC0854. So this is a transcript of an obituary for 25 Peter Jacobs from the Orillia Daily Times,</p>	<p style="text-align: right;">Page 3511</p> <p>1 of thing. 2 Q. Right. So I can't help you with 3 who wrote it, but if we can scroll down a bit in 4 his obituary. I guess it's about halfway through, 5 it starts: 6 "He was a natural order and 7 wherever he spoke, it was to large 8 crowds" -- 9 And that's really the middle of the 10 page. 11 A. Yes, I see that. 12 Q. Are you able to see that? 13 A. I see it, yes. 14 Q. "-- his magnetic qualities in 15 this respect he determined to 16 utilize, when 28 years ago" -- 17 someone has handwritten 'whilst' 18 into this "-- he was the stationed 19 Minister at Rama, a gale destroyed 20 some of the dwellings on the 21 reservation and rendered useless the 22 old wooden church. By lecturing in 23 the States, he secured the 24 subscriptions which built the 25 present substantial stone structure,</p>

<p style="text-align: right;">Page 3512</p> <p>1 but it was also on this trip that he 2 fell from grace, unable to master 3 the greatest of Indian weaknesses, 4 the love of strong drink." 5 Now setting aside the obvious racism 6 that might be in there -- 7 A. Yes. 8 Q. -- would you consider it possible 9 that -- as a historian, would you be open to the 10 possibility that Jacobs was not fundraising in the 11 U.S. for his own profit, but for funds for his 12 church? 13 A. Yes, it's certainly plausible. 14 Q. And if I can turn to document 15 SC0851. So this is a document dated March 3rd, I 16 believe it says, 1854 from Saugeen. And it's 17 written by Alexander Madwayosh -- on behalf of 18 Alexander Madwayosh and John -- how do you 19 pronounce that second name? 20 A. Kaduhgeqwon. 21 Q. -- Kaduhgeqwon, the Chiefs of 22 Saugeen. 23 MR. BEGGS: I'd ask that this be made 24 the next exhibit. 25 THE COURT: Mr. Registrar.</p>	<p style="text-align: right;">Page 3514</p> <p>1 As I said, this is dated March 3, 1854. 2 A. Yes. 3 Q. So would you agree that it appears 4 Mr. Jacobs lent, or spent his own money in the 5 amount of 80 pounds, essentially loaning it to the 6 Saugeen? 7 A. Looks like it. 8 Q. If I can go to the next document, 9 SC0852. This is another Request to Pay the Bearer, 10 this one dated March 4th, 1854 from -- 11 A. The other one is also -- sorry, do 12 you remember what the date of the previous one was? 13 Q. I believe it was March 3rd. 14 A. Okay, thank you. 15 MR. BEGGS: And I'd like to ask this be 16 made an exhibit as well. 17 THE COURT: Mr. Registrar. 18 THE REGISTRAR: Exhibit No. 4161. 19 EXHIBIT NO. 4161: Request to Pay the 20 Bearer dated March 4, 1854. 21 BY MR. BEGGS: 22 Q. So this is the following day and 23 it's to Mr. McNabb, it says: 24 "Sir, please pay the bearer 25 Mr. P. Jacobs, the sum of 37 pounds,</p>
<p style="text-align: right;">Page 3513</p> <p>1 THE REGISTRAR: Exhibit No. 4160. 2 EXHIBIT NO. 4160: Request to pay the 3 Bearer dated March 3, 1854. 4 THE COURT: That's fine, sir. I'm just 5 trying to tell what type of document it is. Is it 6 a letter, is it something else? 7 MR. BEGGS: Sorry. I had been going to 8 call it a receipt, but I don't think it's a 9 receipt. It's a Request to Pay the Bearer. 10 THE COURT: All right. Well that's 11 good enough for the description. Just go ahead. 12 BY MR. BEGGS: 13 Q. So it's addressed to the house -- 14 or to Mr. McNabb anyway. 15 "Sir, please pay the bearer 16 Mr. P. Jacobs the sum of 80 pounds, 17 10 shillings currency, it being the 18 amount for provisions bought by him 19 for the Saugeen Indians and charge 20 the same into our account" -- I 21 guess it's "by this" -- 22 A. "By thus", I think. 23 Q. Yes. "Thus doing", you're right. 24 "-- by thus doing you will 25 oblige."</p>	<p style="text-align: right;">Page 3515</p> <p>1 17 shillings and four and a half 2 pence" -- 3 I can't make out the next word, 4 something "mugging" -- 5 A. "Currency", I think. 6 Q. "Currency", oh, you're quite 7 right. 8 "-- currency being the amount 9 that he has paid toward the bridge, 10 and charge the same into our publik 11 -- with a 'K' -- accounts, and by so 12 doing you will so oblige." 13 And it's marked by Alexander Madwayosh 14 and John Kaduhgeqwon. 15 And again, this appears that he has 16 lent, Mr. Jacobs has lent money to the Saugeen, 17 this time for a bridge. 18 A. Yes, looks like it. 19 Q. If I can call up SC0853. 20 And this is another Request to Pay the 21 Bearer dated March 8, 1854, and I'd like to make 22 this an exhibit as well. 23 THE COURT: Mr. Registrar? 24 THE REGISTRAR: Exhibit No. 4162. 25 EXHIBIT NO. 4162: Request to Pay the</p>

<p style="text-align: right;">Page 3516</p> <p>1 Bearer dated March 8, 1854. 2 BY MR. BEGGS: 3 Q. And this is again to Alexander 4 McNabb. 5 "Sir, please pay the bearer, 6 Mr. Peter Jacobs, the sum of 7 105 pounds, 10 shillings currency, 8 for the sum he has paid to the money 9 claims as you find in the cash lists 10 and charge the same into our account 11 and by so doing you will oblige." 12 Again, marked Alexander Madwayosh and 13 John Kaduhgeqwon; do you see that? 14 A. Yes. 15 Q. Do you have any idea what the cash 16 limits would be? 17 A. "For the sum he has paid to the 18 money claims as you find in the cash list". I 19 don't know. 20 Q. Again, it seems he has lent 21 105 pounds on this occasion as well; is that 22 correct? 23 A. So it seems. It is very 24 surprising he would have these amounts of money. 25 Q. Well, I guess that was my next</p>	<p style="text-align: right;">Page 3518</p> <p>1 Indigenous Methodist missionary, they were 2 typically paid less, and even the non-Indigenous 3 ones weren't paid very well. So I find this all a 4 bit mysterious. 5 Q. When you say he was charged with -- 6 A. I can't remember the words. 7 Q. He was actually -- are you 8 referring to the fact that he was dismissed -- 9 A. Yes. 10 Q. -- for fund-raising without 11 permission? 12 A. Well, that's what it was, 13 fund-raising without permission. 14 Q. All right. I think I'll leave 15 Peter Jacobs at that, then. 16 If I could turn to a different topic. 17 You talked earlier this week at various times about 18 other First Nations moving to the Peninsula in the 19 19th Century. 20 A. Yes. 21 Q. And I believe you referred to the 22 Potawatomi having moved there? 23 A. Yes. 24 Q. And was that in 1820s, 1830s 25 largely they came?</p>
<p style="text-align: right;">Page 3517</p> <p>1 question. 2 Based on these receipts, would you 3 consider the possibility that Mr. Jacobs was not in 4 financial distress in 1854, but had money available 5 that he could be lending to the Band at least for 6 short periods of time? 7 A. As I say, I find this strange. 8 These are large amounts of money. And I can't 9 explain how he would have them, so I'm a little 10 bit -- because I don't feel I have a full sense of 11 what these documents are, I'm a little leery about -- 12 because, frankly, I did notice that the witness for 13 the other two was Peter Jacobs, and the witness for 14 this one is Charles Jacobs, which I think is his 15 son; and the handwriting looks the same. The 16 handwriting of witness Charles Jacobs looks the 17 same as the writing of the receipt. 18 So given that we also mentioned he's 19 been charged with issues around money -- I'm just 20 not quite sure what to make of this. But I would 21 add that we have the biography by Donald B. Smith, 22 he's a very thorough researcher, and I would put a 23 lot of reliance on his analysis of Jacobs's 24 financial situation at the time. 25 And he was a Methodist missionary, an</p>	<p style="text-align: right;">Page 3519</p> <p>1 A. 1830s, I believe. 2 Q. Do you have any idea how many came 3 onto the Peninsula? 4 A. I don't. I didn't research into 5 the numbers. 6 Q. And they essentially joined the 7 First Nations. They joined the Saugeen, Nawash and 8 became part of the community? 9 A. Yes. Some were granted 10 membership, I'm not sure if all of them were. 11 Q. Okay. The Colpoy's Bay Indians, 12 do you know where they originally came from? 13 A. Yes. They had previously been at 14 the Cold Water Narrows Reserve, where there was a 15 farming experiment. 16 Q. And that farming experiment, I 17 guess, was run by Captain Anderson -- 18 A. Yes. 19 Q. -- and Adam Elliot, one of the 20 witnesses at Treaty 45 ½? 21 A. Yes. 22 Q. And so they moved from Cold Water, 23 or some of them moved from Cold Water to Colpoy's 24 Bay, I guess, or Sturgeon's Bay; is that right? 25 A. I only know it as Colpoy's Bay,</p>

Page 3520

1 yeah.
2 Q. And that was in the early 1840s,
3 was it?
4 A. I would have thought late 1830s,
5 Cold Water Narrows was closed down in 1837. And I
6 know it was after that that they moved there, I
7 don't know exactly when.
8 Q. And we've heard how there was no
9 official representative from Colpoy's Bay at the
10 Treaty?
11 A. Right.
12 Q. There was John Beaty --
13 A. Yes.
14 Q. -- who we've discussed.
15 A. Yes.
16 Q. But a reserve was set aside for
17 the Colpoy's Bay Band in the Treaty, correct?
18 A. Yes.
19 Q. Do you know what ultimately
20 happened to that reserve?
21 A. It was surrendered later.
22 Q. And I guess, it's even on the map
23 behind you, but that seems to be 1861, according to
24 that map, does that sound right? So the dark green
25 at the top?

Page 3521

1 A. Yes, that does sound right.
2 Q. Okay. And there was also -- we
3 mentioned, I think, how David Sawyer came from the
4 Credit?
5 A. Yes.
6 Q. And they were Missisauagas from
7 there; is that correct?
8 A. Yeah. That's one term used for
9 them, yes.
10 Q. But they were essentially --
11 A. They're Ojibwe.
12 Q. -- Ojibwe, yes, or Anishinaabe.
13 Anyway, but Ojibwe.
14 And there was also a group of Ojibwe
15 from the Credit who were considering moving up to
16 the Peninsula; is that right?
17 A. Yes.
18 Q. And did any of them ultimately
19 move there?
20 A. I think a couple did, but most did
21 not.
22 Q. David Sawyer apparently lived
23 there for some time, right?
24 A. At Nawash, yes.
25 Q. Right. And Katherine Sutton and

Page 3522

1 her husband, I believe, were the other?
2 A. Right.
3 Q. But most decided not to go to the
4 Peninsula, I take it?
5 A. Right.
6 Q. And I believe you discussed a
7 document with my friend earlier this week, dealing
8 with the Mohawks. And I think I heard you
9 pronounce it, Gonawagay (ph) is that...
10 A. Yes. Caughnawaga, yes.
11 Q. And it's spelled
12 C-A-U-G-H-N-A-W-A-G-A?
13 A. That was the spelling at the time,
14 yes.
15 Q. Right, okay.
16 And some of the Mohawks from there
17 moved to the Peninsula as well; is that correct?
18 A. Yes.
19 Q. I think the document you went over
20 with my friend indicated that a large group was
21 being refused to be allowed to move to Peninsula by
22 the Government; is that correct?
23 A. Of the Mohawks, you mean?
24 Q. Yes.
25 A. Yes, there's some statement about

Page 3523

1 further moves being prohibited or something.
2 Q. Okay. And so what ultimately
3 happened to the group that moved to the Peninsula?
4 A. I think most of them left later.
5 Q. Okay.
6 A. They ended up surrendering the
7 land, I think. But anyway, that most of them ended
8 up leaving.
9 Q. Was it a very large group that
10 went from Caughnawaga?
11 A. I don't actually know the numbers,
12 I'm sorry.
13 Q. So you mention, I believe, that
14 one of the arguments that the Saugeen and Nawash
15 would use to counter suggestions of surrender,
16 would be that they wanted to keep the land not only
17 for themselves, but also because they expected
18 others to come and join them?
19 A. Yes.
20 Q. And is it fair to say it wasn't
21 just a tactic, but they actually genuinely did
22 welcome others to come and join them?
23 A. Yes, they did as we've noted, yes.
24 Q. And many of them were related
25 groups among the Anishinaabe, I take it?

<p style="text-align: right;">Page 3524</p> <p>1 A. Yes.</p> <p>2 Q. Would you agree that having more</p> <p>3 Indigenous people in the area would help to resist</p> <p>4 influx of squatters?</p> <p>5 A. Well, I can certainly see how the</p> <p>6 Saugeen Ojibwe would think it might. It's sort of</p> <p>7 a pragmatic matter, that if you have more people</p> <p>8 moving around the territory, especially if they're</p> <p>9 out hunting, they would cover more territory and be</p> <p>10 more likely to find squatters.</p> <p>11 Q. Right. But also, I take it, a lot</p> <p>12 of the documents written by Europeans mention how</p> <p>13 the land is being -- how the Europeans believe the</p> <p>14 land on Peninsula is not being used, that it's</p> <p>15 especially empty or a wasteland?</p> <p>16 A. Yes, that's Colonial rhetoric for</p> <p>17 you.</p> <p>18 Q. And they didn't, perhaps,</p> <p>19 appreciate that the land was being used in a</p> <p>20 different manner to what they understood?</p> <p>21 A. No. The British, the British</p> <p>22 assertion or ideology at the time was that</p> <p>23 agricultural uses of land were superior to and more</p> <p>24 efficient than hunting uses.</p> <p>25 Q. And if perhaps there were more</p>	<p style="text-align: right;">Page 3526</p> <p>1 Q. Right. I'd like to turn to a</p> <p>2 document we've mentioned, the 1847 Declaration.</p> <p>3 I think that's Exhibit 1674. I think</p> <p>4 in your report, I may be mistaken, so please</p> <p>5 correct me. But in your report you indicated that</p> <p>6 it was in response to a petitioner request from the</p> <p>7 Saugeen that this declaration was issued?</p> <p>8 A. Yes.</p> <p>9 Q. Now, halfway down the page,</p> <p>10 there's underlined "Lake Huron". So it gives the</p> <p>11 boundaries that had been set aside or confirmed --</p> <p>12 it's not confirming it, this was already in place.</p> <p>13 It was sort of announcing to the public to remind</p> <p>14 them that this existed?</p> <p>15 A. Yes.</p> <p>16 Q. So it gives some boundaries and</p> <p>17 it says:</p> <p>18 "Surrounded" -- or "bounded" --</p> <p>19 this is just about the Lake Huron --</p> <p>20 "on the east, north and west by Lake</p> <p>21 Huron."</p> <p>22 But then it says:</p> <p>23 "Including any islands in Lake</p> <p>24 Huron within seven miles of that</p> <p>25 part of the mainland comprised</p>
<p style="text-align: right;">Page 3525</p> <p>1 agriculture, that that itself would discourage</p> <p>2 squatters if the land was visibly taken up?</p> <p>3 A. It might. There was a lot of</p> <p>4 squatting, I believe this has been covered by</p> <p>5 another expert who studied this, but there was a</p> <p>6 lot of squatting in Upper Canada in general.</p> <p>7 Q. Right, okay. Were there any other</p> <p>8 groups than the ones I mentioned that you're aware</p> <p>9 of that did move to Peninsula?</p> <p>10 A. We've mentioned the Potawatomi?</p> <p>11 Q. Yes. And I'm not talking about</p> <p>12 individuals, but --</p> <p>13 A. Yes, I think we've covered them</p> <p>14 all.</p> <p>15 Q. Okay. And from your review of the</p> <p>16 documents, after the New Credit group decided not</p> <p>17 to come, did it appear there was a reasonable</p> <p>18 prospect of more people coming, or had the idea of</p> <p>19 immigration stopped at that point?</p> <p>20 A. I think the Saugeen Ojibwe were</p> <p>21 feeling discouraged and obviously they hadn't had</p> <p>22 nearly as many people move there as they would have</p> <p>23 liked, or not as many as they would have liked.</p> <p>24 They were particularly hoping for the people from</p> <p>25 the Credit to come.</p>	<p style="text-align: right;">Page 3527</p> <p>1 within the heretofore described</p> <p>2 tract of land."</p> <p>3 So I think you did mention earlier that</p> <p>4 islands were noted to be protected in this</p> <p>5 declaration?</p> <p>6 A. Yes.</p> <p>7 Q. Now, at one point in your</p> <p>8 testimony earlier, I believe you said the waters</p> <p>9 were protected. There was no explicit reference to</p> <p>10 the waters being protected; is there?</p> <p>11 A. Well here it says "islands".</p> <p>12 Q. And if I can scroll down to the</p> <p>13 bottom half, there's a word "pleasure", which is</p> <p>14 underlined, I think on the left. It says just</p> <p>15 above that:</p> <p>16 "Make it known that it is our</p> <p>17 Royal will and pleasure, that the</p> <p>18 said Ojibwe Indians and their</p> <p>19 posterity forever shall possess and</p> <p>20 enjoy, and at all times hereafter</p> <p>21 continue to possess and enjoy the</p> <p>22 said above described tract of land</p> <p>23 or the proceeds of the sale thereof</p> <p>24 if sold as hereinafter provided for</p> <p>25 and the" -- it looks like "ranks,</p>

Page 3528	Page 3530
<p>1 issues and" -- 2 A. "Rents". 3 Q. "Rents", thank you. 4 "-- rents, issues and profits 5 of the said tract of land or of the 6 proceeds of sale thereof. If sold 7 as aforesaid without any hindrance 8 whatever on our part or on the part 9 of our heirs and successors, or of" -- 10 A. "Our or their". 11 Q. "-- our or their servants or officers." 12 So it is acknowledged in the 1847 13 declaration that the First Nations could sell the 14 property at some point if they wished to? 15 A. Yes. 16 Q. And that's consistent with the 17 policies of the Royal Proclamation, too, would be 18 that they could surrender territory if they wished 19 to? 20 A. Yes. 21 Q. And yeah, I guess I'll leave that 22 point. 23 I want to take you to some of the 24 approaches for surrender prior to the Treaty, and 25 you've discussed several of them already and I'll</p>	<p>1 Nation, but it's a letter -- 2 THE COURT: So far this is nothing, so 3 let's wait for a minute. 4 MR. BEGGS: Okay. 5 BY MR. BEGGS: 6 Q. So this is Exhibit 1906. It's a 7 letter from Charles Rankin dated 24th of 8 February 1852. And it's written -- can we go to 9 the bottom? 10 It appears to be written to the 11 Commissioner of Lands and then transferred to the 12 Indian Department for consideration, I take it? 13 A. Yes, it appears so. 14 Q. So if I could go to the top. So 15 this is Rankin writing to the Crown, generally: 16 "I beg leave to enclose to you 17 a sketch showing the position, shape 18 and quantity of the remaining Indian 19 lands south by Lake Huron - and 20 which I do for the purpose of 21 suggesting for consideration of the 22 Government, the propriety of 23 treating with the Indians for the 24 surrender of the southern section 25 thereof on that portion [...]"</p>
Page 3529	Page 3531
<p>1 try not to overlap with those, but I may ask you to 2 reconsider a couple of comments along the way. 3 THE COURT: Which treaty? I think I 4 know your Treaty but -- 5 MR. BEGGS: Treaty 72 of 1854. 6 BY MR. BEGGS: 7 Q. I'll actually go back and start 8 with 1852. 9 And we've already seen that in 1851 10 there was the surrender of the Half Mile Strip. 11 And is it correct that in the years between 1851 12 and 1854, sort of the administrative details of 13 selling those lands unfolded? The surveying and 14 the actual sales? 15 A. Yes. 16 Q. So the First Nations witnessed 17 some problems, including the lack of actual 18 settlement on the Half Mile Strip? 19 A. Right. 20 Q. And so that was one of the reasons 21 they wanted to ensure that it occurred in Treaty 22 72; is that right? 23 A. I think so, yes. 24 Q. So if I could go to Exhibit 1906. 25 So this is not an approach to the First</p>	<p>1 And it gives a description for quite a 2 while actually. 3 A. Yes. 4 Q. And so, "They have, as you" -- so 5 this is like the fourth line down on this page, 6 which is the second page of the transcript: 7 "They have, as you will observe 8 on the sketch, three villages within 9 this space. Yet, they cultivate but 10 a very trifling quantity of land, 11 and for every practical purpose of 12 good to them a reserve of two or 13 three miles square at each would 14 save to them all of the benefits 15 which they have now. The whole 16 being in their hands, and that is 17 they would thus retain more than 18 they, their children, or any of 19 their descendants are likely to 20 bring into cultivation. They would 21 have the same privileges, which they 22 now have of fishing on" -- if we can 23 scroll down a bit "-- on the coasts. 24 And as to hunting is nearly done, or 25 it is done or nearly so on this</p>

<p style="text-align: right;">Page 3532</p> <p>1 Peninsula. While by the sale of the 2 land, that is on the principle in 3 which they surrendered the strip 4 last summer, vis. they to receive 5 the full price when sold to white 6 settlers, they would come to receive 7 a large yearly income" -- there's a 8 word that we'd have to look at the 9 original to see "-- and if no 10 disadvantage to the Indians, but 11 probably the reverse under judicious 12 management, it would obviously be 13 for the benefit of the whites that 14 thus an opportunity should be 15 afforded of extending settlements in 16 that direction and particularly it 17 is desirable that the coast opposite 18 the Fishing Islands should come into 19 possession of the Government because 20 a town should go up there being a 21 natural harbour." 22 And then the last paragraph it says: 23 "The space I have referred to 24 as being desirable to be purchased 25 and settled, if it can be done with</p>	<p style="text-align: right;">Page 3534</p> <p>1 Q. So then I want to turn to 2 Exhibit 1968. 3 Could you scroll down a bit, please? 4 THE COURT: I missed the date. 5 MR. BEGGS: Sorry. It's June 28, 1852. 6 THE COURT: All right. 7 MR. BEGGS: Sorry, wait. This is not 8 that document. 9 THE COURT: It certainly is not. 10 MR. BEGGS: I think I have the wrong 11 exhibit number. That's okay, actually. 12 BY MR. BEGGS: 13 Q. If I can go to Exhibit 1939, could 14 we scroll down and see if this is the right 15 document? Not quite. I think I'll shift to a new 16 topic for a moment while I perhaps deal with that 17 stuff after lunch. 18 If I could turn to Exhibit 2966 which 19 is actually The Episodes book, the memoire from 20 1887. 21 And I wanted to talk for a moment about 22 some of the issues you've raised with respect to -- 23 you gave me a word yesterday, and I can't recall 24 what it was, but with possible bias on the part of 25 Mr. Oliphant in the way he wrote his report.</p>
<p style="text-align: right;">Page 3533</p> <p>1 the goodwill of the Indians embraces 2 about 180,000 acres and after 3 reserving 20,000 for them at their 4 stations would make three good 5 townships." 6 So Rankin is the land surveyor and he 7 was one of the witnesses to Treaty 72; is that 8 right? 9 A. Yes. 10 Q. And so here we have him suggesting 11 to the Government an idea of his for surrender on 12 the Peninsula? 13 A. Yes. 14 Q. And it appears to be quite a small 15 surrender compared to the -- we don't have the map, 16 or I'm not aware that we have a map. But compared 17 to the ultimate surrender in Treaty 72, it's much 18 smaller, it's 180,000 acres? 19 A. Right. 20 Q. Whereas Treaty 72 was 450,000 acres, 21 I believe? 22 A. Yes. 23 Q. But he does put forward the idea 24 to the Crown about this? 25 A. Yes.</p>	<p style="text-align: right;">Page 3535</p> <p>1 A. Right. His report, you mean the 2 earlier one right after the -- 3 Q. The one in November 1854? 4 A. Right. "Self-justification." 5 Q. Yes. 6 Now, if I can go to page 12 of the 7 document, I think it might be above that. Can you 8 go back a page? 9 Maybe I'll look in your report. It was 10 in reference to the offer made to Mr. Oliphant as a 11 reward for his services. 12 A. Oh, the Lieutenant Governorship in 13 the West Indies or something? 14 Q. Yes, yes. 15 A. Right. 16 Q. I remember quoting that, I'm not 17 sure either where it is. 18 In any event, it was a quote from 19 Episodes where he says that he, in recognition for 20 his having saved the department 13,000 pounds, 21 Lord Taunton offered him a Lieutenant Governorship 22 in the West Indies? 23 A. Yes. 24 Q. And that he declined it, because 25 he was more interested in diplomatic work than</p>

<p style="text-align: right;">Page 3536</p> <p>1 going to the Crimea? 2 A. Right, yes. 3 MS. GUIRGUIS: It's page 72. 4 MR. BEGGS: Oh, page 72. 5 BY MR. BEGGS: 6 Q. Yes, thank you. 7 It's at the bottom of page 72: 8 "By means of the revenue 9 derived from this cession of Indian 10 territory, I was enabled to 11 reorganize the whole financial 12 system of the Indian Department, and 13 to effect a clear savings to the 14 Imperial Exchequer of 13,000 pounds 15 a year, an economy with which Lord 16 Taunton, then Colonial Minister, 17 expressed himself so well satisfied, 18 that he was kind enough to offer me 19 a small Lieutenant-Governorship in 20 the West Indies, which I should have 21 gratefully accepted had it not been 22 for my preference for diplomatic 23 work, and desire to go to the seat 24 of war in the Crimea." 25 So that's the part you quoted, I</p>	<p style="text-align: right;">Page 3538</p> <p>1 the promise which Lord Clarendon had 2 previously made to find me 3 employment in the east, where the 4 stirring nature of the events which 5 were transpiring, offered the 6 strongest attraction, induced me to 7 decline this offer and to return to 8 England with Lord Elgin, and Lord 9 Bury became my successor in Canada." 10 And it actually that says: 11 "When I left home, I had not 12 expected to be absent above eight 13 weeks [but] the same number of 14 months would now nearly have elapsed 15 before our return to British soil". 16 So there's a couple of things from that 17 entry that appears he says, that he was offered a 18 chance to stay as Secretary, and presumably 19 Superintendent General by Sir Edmund Head who 20 replaced Lord Elgin? 21 A. Yes. 22 Q. And it also says at the bottom 23 that he apparently did not anticipate staying very 24 long when he first became a secretary to Lord 25 Elgin.</p>
<p style="text-align: right;">Page 3537</p> <p>1 believe, in your report? 2 A. Yes, that sounds right. 3 Q. So I think we've mentioned that 4 Oliphant was not long in his position. He started 5 in June of 1854; is that correct? 6 A. Yes, that sounds right. 7 Q. And he left in December or January -- 8 December of 1854 or perhaps January of 1855? 9 A. I was just trying to remember. It 10 was very short, that sounds about right. 11 Q. And he was leaving with Lord 12 Elgin, Lord Elgin was being replaced as Governor 13 General? 14 A. Right. And he had arrived -- he 15 had come to Canada with Lord Elgin. 16 Q. Right. 17 So on this last page, on the right 18 side, it mentions: 19 "[...] Sir Edmund Head, Lord 20 Elgin's successor had arrived, and 21 we merely remained a few weeks to 22 facilitate the transfer to the 23 Government. Sir Edmund was so kind 24 as to urge me to remain with him in 25 the office I was now filling; but</p>	<p style="text-align: right;">Page 3539</p> <p>1 A. Right. They were coming to 2 negotiate, I guess the reciprocity treaty, so it 3 was considered, you know, a -- a diplomatic/trade 4 mission. 5 Q. Okay. And when he says -- he's 6 talking about a promise in the east from Lord 7 Clarendon, he appears to be talking about going to 8 Crimea? 9 A. Yes, sounds like it. 10 Q. And if you see the next chapter is 11 entitled, "Crimea and Circassian Experience" that 12 follows. 13 A. Yes. 14 Q. So he did go to Crimea shortly 15 after leaving Canada? 16 A. Yes. 17 Q. Now, you have, of course, 18 expressed some concerns about the reliability of 19 The Episodes book, and I'm going to show you a 20 document and see if I can worsen those concerns -- 21 A. All right. 22 Q. -- for the moment. 23 I'm going to call up a document SC0848. 24 This is an entry of Oxford Dictionary of National 25 Biography. And the excerpt which starts on page 3,</p>

<p style="text-align: right;">Page 3540</p> <p>1 I believe, is for Henry Labouchere, Baron Taunton, 2 I ask this be made as the next exhibit. 3 THE REGISTRAR: Exhibit 4163. 4 EXHIBIT NO. 4163: Excerpt from the 5 Oxford Dictionary of National Biography 6 for Henry Labouchere, Baron Taunton. 7 BY MR. BEGGS: 8 Q. Now Barron Taunton would be the 9 title of a nobleman; is that correct? 10 A. Yes, I believe so. 11 Q. Or Lord Taunton, perhaps, as it 12 was referred to in Oliphant's book, he refers to 13 Lord Taunton? 14 A. Lord Taunton, yes. 15 Q. But he would have had a different 16 name prior to being elevated, if you will. 17 A. Right. 18 Q. And in this case it appears that 19 Baron Taunton, who died in 1869, was originally 20 known as Henry Labouchere; is that correct? 21 A. Yes. 22 Q. So if I could scroll down to the 23 next page. On the right side, just diagonal from 24 the picture on the page. 25 THE COURT: Yes, excuse me. I was</p>	<p style="text-align: right;">Page 3542</p> <p>1 two words are a title. Because it would seem to be 2 the sort of thing that historians might know, and 3 if he didn't know, he would just say so. 4 Your second objection is about whether 5 the predecessor name was Henry Labouchere; is that 6 your second -- 7 MS. GUIRGUIS: That is correct. 8 THE COURT: What is the basis for that 9 objection? 10 MS. GUIRGUIS: I'm not sure what he's 11 asking him to base that knowledge on. Is it simply 12 the reading of this document? 13 THE COURT: You're asking -- I guess, 14 Counsel, it seems to me not so far away that it 15 would justify what is conventionally seen to be a 16 wide-ranging right of cross-examination. 17 This witness has obviously shown 18 himself to be perfectly capable of saying when he 19 does or doesn't know things. So I'm going to 20 permit that question. 21 MS. GUIRGUIS: Okay. Thank you, Your 22 Honour. 23 THE COURT: Mr. Beggs, please go ahead. 24 BY MR. BEGGS: 25 Q. Thank you, Your Honour.</p>
<p style="text-align: right;">Page 3541</p> <p>1 focused on my notes. Ms. Guirguis, if that 2 happened again you can just speak up. 3 MS. GUIRGUIS: Thank you, Your Honour. 4 Just on the previous questions my 5 friend was asking about Lord Taunton and the title 6 that this person has in this biography, I would 7 just note that I think this is a bit outside of the 8 scope of the expertise of this witness. 9 I'm just wondering if you're asking to 10 answer based on this document? 11 THE COURT: No, you don't ask Mr. Beggs 12 questions. 13 MS. GUIRGUIS: Your Honour. 14 THE COURT: Give me a moment. 15 Counsel, it's your objection this 16 gentleman is not qualified to say whether the words 17 "Baron Taunton" are a title; is that your question? 18 MS. GUIRGUIS: Yes. Whether the title 19 is "Baron" or "Lord", or whether his previous name 20 was "Henry". 21 THE COURT: Those are two different 22 things. 23 MS. GUIRGUIS: I'm raising the two. 24 THE COURT: I mean, as qualified, I 25 don't have a problem with him being asked if those</p>	<p style="text-align: right;">Page 3543</p> <p>1 Professor Brownlie, I'd like to take 2 you to the paragraph diagonal down from the picture 3 which starts "though not". It says: 4 "Though not an original member 5 of Palmerston's first ministry, 6 Labouchere was appointed Secretary 7 of State for the colonies 8 (21st November 1855) in place of Sir 9 William Molesworth after the refusal 10 of the post by Lord Derby and Sidney 11 Herbert and continued to hold this 12 office until Palmerston's 13 resignation in February 1858." 14 If I can skip a few lines, perhaps 15 about eight lines, there's a line that begins 16 "New Zealand" on the sentence that follows: 17 "On Palmerston's return to 18 power, Labouchere was created Baron 19 Taunton of Taunton in the County of 20 Somerset by letters patent dated 21 18th of August 1859." 22 BY MR. BEGGS: 23 Q. Now, would you accept the Oxford 24 Dictionary of National Biography as relatively 25 reliable?</p>

Page 3544

1 A. I was thinking about that, I can't
2 say I'm that familiar with it.
3 Q. Okay.
4 A. But I don't feel inclined to
5 contradict it. And I don't know anything about
6 Baron Taunton.
7 Q. Right so we'll -- keeping that in
8 mind, this appears to indicate, would you agree
9 that it appears to indicate that Mr. Labouchere was
10 made the first Baron Taunton in 1859?
11 A. Yes, it appears so.
12 Q. And so --
13 A. "Created Baron Taunton", yes.
14 Q. Yes. So would you also agree
15 there's nothing particularly strange about Oliphant
16 referring to Lord Taunton being -- by that name
17 rather than the name he would have actually held at
18 the time that Oliphant would have met him?
19 A. No, I don't find that strange.
20 Q. But this also appears to indicate
21 that Baron Taunton -- or sorry, Mr. Labouchere, was
22 a Colonial Minister or Secretary of State for the
23 colonies for 21st of November 1855 to
24 February 1858; would you agree with that?
25 A. Yes, that's what it says here.

Page 3545

1 Q. And so would you agree that it's --
2 that if in fact Lord Taunton offered him a
3 position, they could not have offered him that
4 position prior to November of 1855?
5 A. Correct.
6 Q. And although Mr. Oliphant gives
7 the excuse that he wanted to go to the Crimea and
8 that's why he refused the post, he in fact went to
9 the Crimea before November of 1855?
10 A. I think so. I'm not sure of that
11 date, but that would fit, because he seems to have
12 left Canada in December 1854.
13 Q. Right.
14 A. I'm not sure about his
15 circumstances, if he was a sort of, you know, the
16 kind of young man of a wealthy family who could
17 take downtime, so to speak.
18 Q. Right.
19 A. You know, hang out with his family
20 for a while before he went off on his next
21 adventure. But, obviously, there is a time lag
22 here --
23 Q. Right.
24 A. -- between his departure from
25 Canada and Labouchere's appointment, as going as

Page 3546

1 secretary.
2 Q. And when Mr. Oliphant says he
3 saved the Government 13,000 pounds, he did set
4 forth proposals as to how money should be spent on
5 the Indian Department before he left; is that
6 correct?
7 A. Yes, he did.
8 Q. And part of that suggestion was to
9 take money from the sale of the Saugeen lands and
10 use it to help fund the Indian Department?
11 A. Correct.
12 Q. And that proposal was ultimately
13 not accepted?
14 A. Correct, correct.
15 MR. BEGGS: Your Honour, I wonder if we
16 might break now. I'd like to get the documents
17 that I want to follow with, ready for after the
18 lunch.
19 THE COURT: That's no problem.
20 MR. BEGGS: Thank you, Your Honour.
21 THE COURT: Before we actually rise,
22 I'm going to divert into another administrative
23 matter.
24 Ontario kindly agreed to take a, I'm
25 going to call it a "to-do list", from our recent

Page 3547

1 case conference. And from past experience, I'm
2 confident that it's been sent out to all concerned
3 to be finalized, but I have not received it. So
4 it's stuck somewhere.
5 So whoever is in charge of that
6 document, might over lunch, indicate to whatever
7 group is involved in that process, that Justice
8 Matheson would like, if possible, to see that
9 document finalized before the end of this week.
10 I can't remember if I said that at the
11 time. I do remember, however, that I said at the
12 time, that I wanted by the end of this week, a
13 updated trial schedule that reflected our various
14 discussions; and that also has not arrived.
15 So I make the same suggestion that
16 whoever it is in the pipeline, that over lunch
17 someone might send out an e-mail to push that
18 project along. All right, 2:15.
19 -- LUNCH RECESS TAKEN AT 12:57 --
20 -- UPON RESUMING AT 2:18 --
21 THE COURT: Mr. Beggs, please go ahead.
22 MR. BEGGS: Thank you, Your Honour.
23 BY MR. BEGGS:
24 Q. Professor Brownlie, before the
25 break, we were talking about the concerns about the

Page 3548

1 reliability of Mr. Oliphant's November 1854 report.
2 A. Yes.
3 Q. And one last point before we move on.
4 You mentioned, I believe in your
5 report, that in his report -- probably too many
6 pronouns in there.
7 In your report, you mentioned that in
8 Oliphant's report, Oliphant thanks James Ross for
9 his assistance, but otherwise does not explain how
10 Mr. Ross assisted him; is that right?
11 A. Yes.
12 Q. We've seen that James Ross is a
13 witness to the document and was involved in other
14 aspects following the Treaty, including assisting
15 Mr. Jacobs. Other witnesses were Mr. Rankin and
16 Mr. McNabb?
17 A. Yes.
18 Q. Given that there were these three
19 witnesses as well as all the Indigenous witnesses
20 and Peter Jacobs, the missionary, does that provide
21 any more comfort to you as to the reliability of
22 the report that if Mr. Oliphant misrepresented what
23 happened, that there would be people available to
24 contradict him?
25 A. Well, they signed the Treaty, they

Page 3549

1 didn't sign his report.
2 Q. No, but the report did become a
3 public document.
4 A. Did it? At what point?
5 Q. When it was published in the
6 return of 1856.
7 A. So two years later, they would
8 have had a chance to look at it if they wanted to?
9 Q. Perhaps.
10 A. I don't honestly find it that
11 comforting.
12 Q. Okay, that's fine.
13 A. You know, he had collaborated with
14 some of these people, like he and Alexander McNabb
15 and Charles Rankin had all been discussing among
16 themselves, ways of getting different parcels of
17 land on the Peninsula. So they were already
18 cooperating with each other, you know, they had
19 this common goal already.
20 You know, I'm not necessarily -- I'm
21 not saying the whole report is fabricated or
22 anything like that. My main point is that a report
23 like that, is designed to convince the superior of
24 its author, that he has acted appropriately and
25 above all, effectively.

Page 3550

1 So, for instance, one of the things I
2 noted were his two different accounts give a
3 different portrayal of who was involved in
4 obtaining the surrender. And he really, in his
5 report, really emphasizes his own role, whereas the
6 memoire paints a different picture.
7 But it's true, he does say he was much
8 indebted to Ross for "the assistance he was at all
9 times ready to afford"; very vague, who knows what
10 that means.
11 Q. Okay. So jumping back to where we
12 were before I wasn't able to find the document, I
13 think I found it now.
14 So we were talking about the events of
15 1852. And we had looked at a letter from
16 Mr. Rankin recommending a said surrender of some
17 smaller part of the Peninsula.
18 A. Yes.
19 Q. And earlier with my friend, you
20 had looked at a document from August of 1852, in
21 which Anderson had met with the Bands and asked
22 about a surrender and was replied to you by John
23 Johnston; do you recall that?
24 A. Yes.
25 Q. And that, for reference in the

Page 3551

1 record, is Exhibit 1943 but I won't go to that.
2 But in that document, it states that
3 Captain Anderson told the Bands, "last spring, I
4 suggested to you, the benefit you would derive and
5 [...] before going on".
6 I believe you said to my friend that
7 you weren't -- you didn't know off the top of your
8 head what "last spring" was referring to; is that
9 correct?
10 A. Yeah, again, it's not entirely
11 specific.
12 Q. No. And so I'd like to show you a
13 document that I would ask if you would consider
14 this possibly the reference to "last spring". It's
15 Document 1930.
16 MR. BEGGS: Can my colleague approach
17 the computer to turn it on?
18 Thank you.
19 BY MR. BEGGS:
20 Q. So this is one of the documents
21 that has a transcript at the top, it's
22 Exhibit 1930. It is, essentially, a journal by
23 Captain Anderson that he then forwards to Colonel
24 Bruce.
25 If we can scroll down to the date of

<p style="text-align: right;">Page 3552</p> <p>1 the 27th, which would be June 27th. So at the 2 bottom -- sorry, if we can go up to the transcript. 3 At the bottom there it says: 4 "27th: At Owens, sent a 5 messenger for the Saugeen Band, they 6 arrived on the 28th and being a 7 settlement Council, I took occasion 8 to represent to them the evil and 9 folly of their keeping so much wild 10 lands which only served as a harbour 11 for mosquitos and snakes, without 12 yielding to the owners one penny of 13 profit. Whereas, if they were to 14 hand it over to the Government to be 15 sold for their benefit, they would 16 in a short time have a large amount 17 of interest coming in that would" -- 18 I guess somebody wrote in the word 19 "-- 'be' very acceptable and enable 20 them to supply the want of presents. 21 They could, if they saw fit, 22 reserve, say, six miles square at 23 each of their three villages. These 24 Saugeen, Owen Sound and Colpoy's 25 Bay" -- the "but" is crossed out</p>	<p style="text-align: right;">Page 3554</p> <p>1 A. Yes. 2 Q. That's probably all that would be 3 usefully gain. 4 But I'm wondering June 27th and 28th, 5 might be somewhat late in the year, but is it 6 possible that this is the reference to "last 7 spring"? 8 A. It's possible. It does seem a 9 little late to call it spring. Yeah, it is 10 June 27th. Who knows? Maybe. I wouldn't have 11 thought you called that spring, but maybe this is 12 it. 13 Q. In any event, he did raise the 14 subject of surrender with them at that point? 15 A. Yes. 16 Q. So as I said, you went over with 17 my friend, the meeting in August of 1852. And I'd 18 like to go to Exhibit 1953, which is a letter from 19 Mr. McNabb to Mr. Anderson dated the 15th of 20 October 1852, if you can scroll down. 21 So this is not a communication with the 22 Bands, but between Mr. McNabb and Mr. Anderson: 23 "Dear sir, I have delayed 24 acknowledging your note of 1st, 25 September relative to the Indian</p>
<p style="text-align: right;">Page 3553</p> <p>1 "-- also the tract to be granted to 2 the Mohawks. They appear to think 3 favourably of this, and will resume 4 the subject at the time of issuing 5 presents. As far as I'm informed on 6 the subject, I do not see any 7 objections to the Mohawks retaining 8 the part south of Colpoy's Bay 9 originally given to them by the Owen 10 Sound Band. Particularly in the 11 event of their selling the reserves 12 in which case a line may be so drawn 13 from Owen Sound to Colpoy's Bay as 14 to include all the reserves for the 15 Indians at two points, these Saugeen 16 and Owen Sound [...]" 17 If we can scroll down a bit. Will you 18 go down to the next page, too? So there's talk 19 about Mohawks and the area they're settling in, but 20 then there's the paragraph: 21 "Squatters have commenced to 22 settle on the strip of land ceded by 23 them, the Indians, last year [...]" 24 So I guess that would be the Half Mile 25 Strip again?</p>	<p style="text-align: right;">Page 3555</p> <p>1 tract, in the hope that I might 2 persuade though --" persuade "them" 3 maybe? 4 A. "Them", yeah. 5 Q. "-- them to surrender, but I 6 regret to say without success. They 7 appear determined to hold 8 possession. Poor creatures, they 9 have strange views with regards to 10 the lands. It is very doubtful 11 whether even the next generation 12 will derive a greater benefit than 13 the present, still they hold on. I 14 pointed out all the advantages they 15 would derive from surrendering now, 16 but it was no use. Still, I would 17 not recommend any harsh measures 18 being adopted." 19 So that's, as I say, a communication 20 from Mr. McNabb to Captain Anderson. And it would 21 appear that Mr. McNabb had been communicating with 22 the Bands on the subject of surrendering. 23 THE WITNESS: Yes. 24 BY MR. BEGGS: 25 Q. And that they voiced their,</p>

<p style="text-align: right;">Page 3556</p> <p>1 apparently, strong opposition to surrendering? 2 A. Yes. 3 Q. So I'd like to move to 1853. Now 4 I believe my friend took you to a letter from 5 Colonel Bruce to Captain Anderson in June of 1853, 6 that was Exhibit 1944. And I won't take you there 7 again. 8 And I believe you also went over a 9 document pertaining to Anderson meeting with the 10 Owen Sound and Saugeen Bands in August of 1853? 11 A. Yes. 12 Q. And that was in-person and in 13 Council; is that correct? 14 A. Yes. 15 Q. And that was Exhibit 2004. Well, 16 I guess I don't need to call that up. 17 And then you went through, or I believe 18 you discussed some correspondence in October of 19 1853, which pertained to the leasing of a mill at 20 Sauble? 21 A. Yes, a mill site, yes. 22 Q. Okay. And are you aware that 23 Anderson met in person with anyone at that time, or 24 is it just correspondence? 25 A. I'm not sure. I mean, it was</p>	<p style="text-align: right;">Page 3558</p> <p>1 A. Yes. 2 Q. And I believe you also went over 3 with my friend a letter from Mr. McNabb to Anderson 4 on November 26, 1853 which -- I'm not positive 5 about that, so maybe I'll just call it up, 6 Exhibit 2036. 7 So this is a letter from Mr. McNabb to 8 Captain Anderson dated 26 November 1853. The first 9 part deals with some payments that we can skip 10 over. We can go down -- 11 So he talked about dealings with the 12 Band. But on the second line that we're looking 13 at, at the end it says: 14 "In the event of the Saugeen 15 Bands agreeing to surrender a 16 certain portion of the tract, say 40 17 or 50 thousand acres commencing at 18 the mouth of the Saugeen River [...]" 19 And it gives a description of that 20 property, which we can go down to: 21 "[...] be sufficient for your 22 acceptance without the sanction of 23 the other Bands. If so, I think the 24 difficulty can be gone over with the 25 Nawash Band or the other Bands may</p>
<p style="text-align: right;">Page 3557</p> <p>1 clearly -- yeah, it might have been just 2 correspondence. It was clearly communicated to 3 them, because they reply. 4 Q. If I can go to Exhibit 2026. 5 A. Oh, right. 6 Q. So this is a letter from Anderson 7 to the Chiefs dated 22nd of October, 1853. It 8 starts off: 9 "My object in sending for you 10 the other day was to explain to you 11 the views of your Great Father at 12 Quebec on the subject of your 13 leasing the Riviere au Sable Mill 14 Site, but as you did not choose to 15 come and listen to his words I now 16 communicate to you by letter the 17 substance of what I had to explain 18 in person, which is as follows 19 [...]" 20 And then he goes on to talk about 21 whether the mill site would be advantageous or not. 22 A. Yes. 23 Q. So I believe there was some 24 response back and forth on the subject of the mill 25 in October, November; is that right?</p>	<p style="text-align: right;">Page 3559</p> <p>1 further special benefits render that 2 part adjoining the Township of 3 Derby." 4 So it's a small amount compared to what 5 we've been talking about. But Mr. McNabb appears 6 to be suggesting some kind of surrender that 7 perhaps the Saugeen could do by themselves without 8 involving the other Bands. 9 THE WITNESS: Yes. 10 BY MR. BEGGS: 11 Q. If I can go to Exhibit 2037. So 12 it's a letter from Anderson replying to Mr. McNabb 13 on the 7th of December 1853 and the second 14 paragraph starts: 15 "With regard to the Indians 16 ceding a part of the Saugeen River 17 reserve to the Crown to be sold for 18 their benefit, I am glad to learn 19 from Owen Sound that the Nawash Band 20 are becoming more favourable to the 21 project, and I have no doubt but 22 that both Bands will ere long see 23 their interest in carrying to such a 24 conclusion. 25 "I am of opinion that if they</p>

<p style="text-align: right;">Page 3560</p> <p>1 would agree to reserve at Saugeeng, 2 say from the northwest corner of the 3 strip (already ceded)" -- so I guess 4 that's the Half Mile Strip -- "to 5 the line dividing Arran and Derby, 6 thence northerly three or four miles 7 thence westerly until the line would 8 strike the lake, thence along the 9 lakeshore southerly to the mouth of 10 the Saugeen River, which would be 11 more than they would ever cultivate" -- 12 if we can go down a bit more -- 13 "then the Nawash people to reserve 14 all east of a line drawn from the 15 northeast corner of the strip to the 16 head of Colpoy's Bay, which would 17 embrace the Colpoy's Bay, the 18 Caughnawaga and the Nawash 19 settlements and have plenty of space 20 for emigrants [...]" 21 Then he talks about reserving space for 22 Manual School. 23 "If they would be satisfied 24 with such reserves [and] cede the 25 remainder to the Crown for sale,</p>	<p style="text-align: right;">Page 3562</p> <p>1 "I have the honour to report to 2 you that having written to the 3 Saugeen Indians inquiring whether 4 they would surrender a portion of 5 their reserve, including the Riviere 6 aux Sable mill site as directed by 7 your letter of 6 October last, I am" -- 8 A. "Informed". 9 Q. "Informed", yes. I get thrown off 10 when a word is broken into two lines. 11 "-- informed by a letter of the 12 Chiefs dated 9 alt, that they think 13 it is not practical at the present 14 time to cede it to this government. 15 While on the other hand, Mr. Alex 16 McNabb is of opinion that they will 17 ere long exceed to the proposal." 18 Then he talks about the Rama Indians. 19 So it appears that he's having two 20 different discussions to me; is that correct? 21 He's having one discussion about a mill 22 site with the Saugeen and a somewhat different 23 discussion with Mr. McNabb. Does that seem right, 24 or seem correct? 25 THE WITNESS: Yes. There was a</p>
<p style="text-align: right;">Page 3561</p> <p>1 they would soon be in receipt of a 2 large income arising out of the 3 interest whereas in its present 4 state, it is of no use to them. 5 "Or if they will not do this 6 and would sell another strip 7 averaging two or three miles deep 8 from the lake so as to embrace the 9 Riviere aux Sable and Fishing 10 Islands so that this harbour would 11 be available for railroad purposes 12 etcetera, it would all be well." 13 Now after reading that, I believe you 14 did go over that with my friend earlier this week. 15 A. Yes. 16 Q. But it is, again, a sort of 17 different size of proposed surrender, not 18 communicated to the Bands so far as we know, but at 19 least being discussed behind the scenes; if you 20 will. 21 A. Right. 22 Q. And so then on December 9th, if I 23 can go to Exhibit 2038. I don't believe this was 24 covered. This is Captain Anderson writing to 25 Colonel Bruce to explain what he's learned:</p>	<p style="text-align: right;">Page 3563</p> <p>1 previous letter about the mill site. 2 BY MR. BEGGS: 3 Q. There could be. 4 A. The letter in -- the letter in 5 which he says, you know, I called you to a meeting 6 and you chose not to come; isn't that one where he 7 talked about the mill site? 8 Q. Yes, that's right. 9 A. So that's Anderson writing to the 10 Saugeen. He's corresponding with a number of 11 people about this endeavour to get a surrender. 12 Q. Okay. And I wanted to go through 13 that part with you to discuss what happened the 14 next year. And you went over with my friend 15 earlier this week, a letter from Charles Keeshig to 16 Captain Anderson, which was dated March 10, 1854. 17 That was Exhibit 2062, if we could call that up. 18 And I believe, correct me if I'm wrong, 19 but I believe that you indicated that Mr. Keeshig 20 was, to your mind, talking about the mill, proposed 21 mill surrender as opposed to anything larger. 22 A. Yes. 23 Q. So I'd like to look at this 24 letter. So this is a letter, as I said, March 10, 25 1854 from Charles Keeshig to Captain Anderson:</p>

<p style="text-align: right;">Page 3564</p> <p>1 "I have been explaining to the 2 Indians of this place and of 3 Saugeen, the plan you proposed to us 4 in our Council last time you were 5 here to cede to some of our lands 6 and" -- it's been crossed out -- 7 "and giving them my reasons why I 8 wish them" -- I can't make out 9 what's inserted there. 10 A. "Also". I think it's "also". 11 Q. "-- also to that advise them to 12 sell out --" 13 A. "Soon". 14 Q. Sorry? 15 A. "Soon". 16 Q. "Soon," yes, thank you. 17 "The Chief Kegeponce is also 18 wishing the Indians to sell out" -- 19 A. "Now". 20 Q. Yes. 21 "-- now they, Saugeen and Owen 22 Sound Indians, make up their mind to 23 cede some of their lands. Can the 24 Indians sell the lands to any White 25 Man they wish?"</p>	<p style="text-align: right;">Page 3566</p> <p>1 it's at the bottom of the left side of this 2 document. It's Charles Keeshig and Captain 3 Anderson: 4 "I have just received your 5 letter of the 10th inst" -- 6 I suppose maybe just to clarify. 7 "Inst" means "this month"; is that correct? 8 A. Yes. Short for "instant", I 9 think. But, yes, "this month". 10 Q. And "alt" is "last month"? 11 A. "Alt" would be "last month", yeah. 12 Q. "-- and I'm glad to find that 13 the Indians propose to do what must 14 be of great benefit to themselves. 15 That is, to give up this land to the 16 Government to sell for them and then 17 this" -- 18 A. "Thus". 19 Q. Sorry? 20 A. "Thus". 21 Q. "Thus". Perhaps maybe, are you up 22 to finishing this? 23 A. Yes, I do this for a living so I'm 24 quite used to deciphering difficult handwriting. 25 If you'd like me to, I'd be happy to.</p>
<p style="text-align: right;">Page 3565</p> <p>1 And then I can't make out something 2 about a gentleman, that I can't figure out. 3 A. No, I think it's something, "come 4 a gentleman to them they can" or that... 5 Q. Okay. 6 A. It doesn't seem to be quite 7 correct English. 8 Q. The gist of it is -- well, the 9 important point I wanted to raise was, he's talking 10 about proposal that was given to them in Council 11 last time Anderson was here. 12 Now as we saw, the discussions about 13 mill site were done by correspondence? 14 A. Uhm-hmm. 15 Q. So would this be referring to the 16 August visit by Captain Anderson? 17 A. So can I see the date again? Is 18 this December? 19 Q. I think it's March, March 1854. 20 A. Oh, March something. (Witness 21 reviews document). 22 Yes, could be. 23 Q. I'd like to look at Captain 24 Anderson's response, that's Exhibit 2066. 25 So it's dated March 18th. So I think</p>	<p style="text-align: right;">Page 3567</p> <p>1 Q. Yes. If you could start with 2 "thus" and continue on the paragraph. 3 A. "And thus reap an immediate 4 benefit from it instead of leaving 5 it as now is and derive no advantage 6 from it." 7 Shall I go on? 8 Q. Sure, just the next sentence. 9 A. "But you may tell them that 10 they can neither sell or lease any 11 part of it without the" -- it's 12 something like approval of the 13 Government "-- without the sanction 14 of the Government." 15 Q. Okay. And then the next paragraph 16 starts, "if they are desirous to" -- 17 A. Yes. 18 Q. -- something -- "in the 19 arrangement". 20 A. Looks like, "put the arrangement". 21 Q. -- "put the arrangement." 22 If we can go to the right side of the 23 page. 24 "They had better look at 25 Mr. Rankin's maps and mark off what</p>

Page 3568	Page 3570
<p>1 they want to reserve and inform me 2 of it by letter, saying they are 3 willing to cede the remainder and I 4 will forward this communication to 5 Québec." 6 So I would suggest at least Anderson 7 took Mr. Keeshig's letter to be dealing with more 8 than just the mill site; would that be fair? 9 A. Possibly. I'm sorry, it's a 10 little bit -- I'm sort of concentrating on 11 deciphering the words, so the meaning isn't quite 12 as clear to me. 13 Q. Sure. 14 A. If I can look at it again, it 15 would be helpful. 16 Q. Okay. 17 A. (Witness reviews document). 18 "I'm glad to learn that the Indians 19 are -- the Indians are thinking about ceding" -- 20 something -- "you may tell them that they can 21 neither sell or lease without the Government's 22 sanction. If they desire to" -- I think it's -- 23 "put the arrangement they had better talk -- look 24 at Mr. Rankin's map" -- or maps -- "and mark off 25 what they want to reserve and inform me of it by</p>	<p>1 more longer. The plan you proposed 2 to us in our Council has been 3 considered by me during this winter 4 and I understand it now perfectly. 5 But if you see anything that I 6 should get benefit of (of my salary 7 will be increased)" -- 8 A. "If". 9 Q. "If my salary", that would make 10 more sense. 11 A. Yes. 12 Q. -- "I will make the Indians to 13 sell some of their lands to the 14 Government. I had some 15 opportunities of introducing your 16 proposition to the Saugeen and Owen 17 Sound Indians to sell out, and am in 18 opinion that they will sell some of 19 their lands soon." 20 Then he talks about the death of his 21 brother. So again, he refers to the Council and 22 the proposition from the Council, so that probably 23 would refer to the August meeting with Captain 24 Anderson? 25 A. That seems plausible.</p>
Page 3569	Page 3571
<p>1 letter saying they are willing to cede the" -- it 2 does say "remainder", doesn't it? 3 -- "cede the remainder and I will 4 forward their communication to Québec." 5 He's definitely trying to make it the 6 whole Peninsula here. I'm not sure that's what 7 Keeshig was saying but... 8 Q. Sure. If we can go to, I think 9 Mr. Keeshig had referred to Mr. Kegeдонce being 10 desirous as well. 11 And so if we can go to a letter 12 Exhibit 2065, letter from March 14, 1854. And this 13 is from -- I'm not sure if it's PJ or PI Kegeдонce 14 to Captain Anderson, and it says: 15 "I take this opportunity of 16 writing to you a few lines and 17 informing you that I have been 18 trying with my best to get my young 19 men to follow agricultural pursuit 20 since I have been appointed as a 21 Chief, but without success" -- and 22 then I think "but" is crossed out -- 23 "and I will by" -- 24 A. "Try". 25 Q. -- "I will try this a little</p>	<p>1 Q. And somewhat strangely, there's a 2 connection between Mr. Kegeдонce's salary and 3 selling the land. Do you have any thoughts as to 4 what that's supposed to mean? 5 A. Well, he does seem to be 6 suggesting that -- what does he say here? 7 "If you see anything that I 8 should get benefit of, if my salary 9 will be increased, I will make the 10 Indians to sell some of their lands 11 to the Government." 12 He does seem to be saying that if 13 Anderson will increase his salary, he'll work to 14 try to make this surrender happen, or to have them 15 sell some of their lands. 16 Q. Anyway, it does say "some of the 17 lands"; so it doesn't appear to be all of the 18 lands? 19 A. Right. 20 Q. So if I can turn to Exhibit 2072, 21 which is a reply from Captain Anderson to Chief 22 Kegeдонce, the 21st of March 1854. And thankfully 23 there's a transcript for this one. 24 It says: 25 "In reply to your letter of the</p>

<p style="text-align: right;">Page 3572</p> <p>1 14 inst, I am glad to learn you are 2 making your best endeavors to induce 3 your young men to turn their 4 attention to farming, as it is the 5 only means by which they can provide 6 for their families. 7 "As to an increase to your 8 salary, that must in great measure 9 depend upon the view of the tribe. 10 If they choose to vote you a larger 11 salary and the Great Father finds 12 that you are" -- sorry. 13 It says "desiring" I'm not sure that's -- 14 A. Yeah, I'm pretty sure it would be 15 "deserving", actually. 16 Q. -- "of it, maybe you will get it." 17 The next paragraph says: 18 "I am glad to find that your 19 people are beginning to see the 20 wisdom of turning their land to a 21 profit by giving it up to the 22 Government to sell for their benefit 23 instead of it remaining as it is and 24 not yielding you one penny of 25 profit."</p>	<p style="text-align: right;">Page 3574</p> <p>1 Cape Croker, right, not in 1854. So it's just 2 another way of -- it's a mixed up account. 3 Q. Okay. And I believe the surrender 4 of 1857, Chief Kegedonce was a fairly -- was in 5 favour of that surrender? 6 A. I didn't really -- I didn't 7 research that treaty, I really only read secondary 8 sources about it. 9 Q. Okay. Thank you. 10 So in June of 1854, my friend already 11 took you to a letter which was Exhibit 2091, which 12 we don't need to take up, but it essentially was in 13 relation to some correspondence with Adam Wilson a 14 solicitor about -- Mr. Wilson was asking about the 15 surrender and Captain Anderson was passing on that 16 note to Colonel Bruce, I believe -- no, not to 17 Colonel Bruce, to Oliphant. 18 A. He was asking for land that wasn't 19 available yet; was that the one? 20 The letter writer was asking about 21 buying land that was on the Peninsula; is that the 22 right one? 23 Q. Maybe. Can we go to Exhibit 2090? 24 So this is a letter from Mr. Wilson to Captain 25 Anderson.</p>
<p style="text-align: right;">Page 3573</p> <p>1 So it appears that Captain Anderson 2 perhaps chose not to take the hint about the salary 3 in this letter and chose to say -- separate the two 4 issues of the salary and the surrender? 5 A. Yes. 6 Q. But he does essentially thank 7 Chief Kegedonce for letting him know about their 8 willingness to surrender some land? 9 A. Yes. No, the request for a larger 10 salary, of course, casts some doubt on the rest of 11 it. He's just saying, well, if you'll increase my 12 salary, I'll try to make them surrender more land. 13 Q. Right. Now, you've already given 14 us your view of Lawrence Keeshig's account of how 15 his grandfather, Chief Kegedonce, initiated the 16 surrender. 17 Do you find that the letter from Chief 18 Kegedonce adds any more credibility to that story? 19 A. No. I was thinking about that, 20 the Lawrence Keeshig account yesterday after court. 21 And the other thing about that, of course, is that 22 he's conflating the two Treaties together. 23 His account conflates Treaty 72, with 24 the surrender of 1857, when they surrendered Owen 25 Sound, right? Because that's when they moved to</p>	<p style="text-align: right;">Page 3575</p> <p>1 Now Mr. Wilson -- are you familiar with 2 who Mr. Wilson was in this context? 3 A. No, actually. 4 Q. I'll skip the first part. 5 A. Right, that's about something 6 else. 7 Q. Right, it's about some other 8 matter. And then it says on page 2 of the document: 9 "While writing on these 10 matters, I take the opportunity of 11 writing also upon the subject of the 12 Indian lands north of the Saugeen 13 River which we were speaking of last 14 fall" -- so that would be the fall 15 of 1853 -- "you thought then nothing 16 could be done about them until they 17 were ceded by the Indians and that 18 you might perhaps be able to go up 19 this summer and treat with them on 20 the subject. 21 "Could you go up, do you think, 22 and if so, when" -- 23 A. "When". He's sort of ending the 24 phrase, "and if so, when?" 25 Q. I should be looking at the</p>

<p style="text-align: right;">Page 3576</p> <p>1 original for that -- perhaps we should. 2 Can we scroll down to the original, 3 let's see if it's -- oh, dear. I don't think I'll 4 be able to make that out. So if we can go back up 5 again. So where was I? 6 "So when for I should make it 7 my" -- something illegible -- "to 8 get upon with you and I dare say it 9 is most likely the matter could be 10 affected with the assistance of the 11 parties who have heretofore been 12 setting out Indians against the 13 cession and whose" -- possibly names -- 14 "I think I have. If any such 15 arrangement could be speedily made, 16 I would make provisions for taking 17 the whole tract upon terms which 18 should be advantageous for both 19 sides, but I imagine nothing can be 20 done without your intervention as 21 one of the Commissioners. Would you 22 be good enough to write me on the 23 subject, as well as upon the other 24 affairs at the beginning of my 25 letter?"</p>	<p style="text-align: right;">Page 3578</p> <p>1 A. I doubt it's the whole Peninsula, 2 but they obviously discuss some specific tract and 3 he doesn't really outline -- could we see the 4 previous page, please? 5 "Indian lands north of the Saugeen 6 River" -- that's not very specific. 7 "Could you go up, do you think? And if 8 so, when? For I shall make it my task" -- or 9 something -- something -- "with you. And I dare 10 say this matter could be affected with the 11 assistance of the parties who have heretofore have 12 been --" basically, advising them against the 13 cession. 14 So he thinks he's got some people on 15 board who were previously opposed to the Treaty, 16 but he doesn't say who. It's all a little vague. 17 Q. In any event, this appears to be, 18 again, an internal discussion between -- or at 19 least it doesn't involve the Indigenous First 20 Nations as a discussion between Mr. Wilson who 21 wishes to purchase land and Captain Anderson? 22 A. Yeah, it's just a continuation of 23 the planning and seeking means to make this happen. 24 Q. Right. Are you aware of an 25 attempt by William Keating to buy land on the</p>
<p style="text-align: right;">Page 3577</p> <p>1 So first of all, Captain Anderson was a 2 Commissioner for Indians Lands; is that correct? 3 THE WITNESS: Anderson? 4 BY MR. BEGGS: 5 Q. Yes, Captain Anderson. In addition -- 6 A. Commissioner for Indians Lands? I 7 am not aware of him having that title. 8 Q. Okay. 9 A. I was looking this up yesterday. 10 I think his title at this point was -- something, 11 maybe Chief Superintendent of Indian Affairs; and 12 then Visiting Superintendent of Indian Affairs or 13 something. I don't think he had, maybe I'm wrong, 14 I don't think he had a title of Commissioner of 15 Lands. 16 Q. Okay. In any event, it appears 17 Mr. Wilson wants to buy as much land as he can get? 18 A. When he says here as one of the 19 Commissioners, I was assuming he meant as a Treaty 20 Commissioner; but it is unclear. 21 Q. Okay. So anyway, it appears that 22 Mr. Wilson wanted to buy as much land as possible? 23 A. The whole tract. I was trying to 24 figure out what the "whole tract" meant. 25 Q. Yes.</p>	<p style="text-align: right;">Page 3579</p> <p>1 Peninsula this summer? 2 A. Yes. 3 Q. And am I correct to say that he 4 went to the Peninsula hoping to encounter Captain 5 Anderson, but went ahead with a meeting for 6 surrender without Captain Anderson? 7 A. Yes, that sounds right. 8 Q. And that he was unsuccessful in 9 getting what he wanted from the Bands? 10 A. Right. 11 Q. If I can go to another letter, 12 Exhibit 2113. And this is a letter from Mr. McNabb 13 to Captain Anderson, dated August 14, 1854. It 14 says: 15 "Enclosed is the Memorial for 16 the Saugeen Township Council. I can 17 scarcely remark that such a large 18 tract of wasteland in a county is a 19 serious drawback to improvement. 20 And as the Indian lands form an 21 important portion of Bruce" -- 22 presumably that's the County of Bruce? 23 A. Presumably. 24 Q. -- "adding to its" -- sorry, I 25 can't make out the next word.</p>

<p style="text-align: right;">Page 3580</p> <p>1 A. I'm having trouble with it as well. 2 Q. "Something confounds" -- I 3 don't know -- "without any 4 corresponding return it is time a 5 change be made. Now that the 6 Government lands in this 7 neighbourhood are disposed of" -- 8 I assume that would be the lands from 9 the Half Mile Strip being disposed of. 10 A. Presumably. And previous, I 11 guess, all previously surrendered lands. 12 Q. Right. 13 "-- I shall not be surprised to 14 see or hear of squatters taking 15 forcible possession of the 16 Peninsula." 17 A. Yes. 18 Q. And as I say, that's Mr. McNabb to 19 Captain Anderson. 20 So it encloses a Memorial, but it also 21 gives a warning that squatters might start using 22 force with the Peninsula. 23 A. Yes. 24 Q. So if we can go to Exhibit 2110, 25 that's the Memorial that was enclosed with it.</p>	<p style="text-align: right;">Page 3582</p> <p>1 resources. Your Memorialists would 2 beg" -- 3 A. "Suggest"? 4 Q. Oh, "suggest", thank you. 5 "-- suggest that the proposed 6 surrender include the whole Indian 7 tract lying within the County of 8 Bruce as shown on the accompanying 9 sketch. And the Saugeen Band of 10 Indians removed to the tract of land 11 north of the Townships of Derby and 12 Sydenham in the County of Grey, at 13 present held by the Nawash Indians" -- 14 and I'm not sure -- 15 A. "Thereby". I think it's 16 "thereby". 17 Q. -- "thereby form one Band. 18 Your Memorialists beg to also leave 19 to recommend that a general council 20 for the purpose of taking the above 21 into consideration be called to meet 22 at the Saugeen Village at an early 23 day when your Memorialists have 24 reason to believe the whole tract 25 will be immediately surrendered.</p>
<p style="text-align: right;">Page 3581</p> <p>1 A. The Saugeen Town Council, I think 2 you said. 3 Q. Yes, the Town Council, I believe. 4 So the Memorial begins: 5 "That your memorialists having 6 learned that Your Excellency is 7 endeavoring to obtain from the 8 Chippeway tribe of Indians a 9 surrender of a portion of the land 10 forming the Peninsula lying north of 11 the townships of Saugeen and Aaran 12 beg leave most respectfully to make 13 that" -- 14 A. "To state". 15 Q. "To state", thank you. 16 "-- to state that the school 17 and Crown lands in the County of 18 Bruce being now nearly all settled 19 by an enterprising and highly 20 respectable class of settlers, the 21 non-improvement of so large a block 22 as the Indian lands within this 23 thriving county is a serious 24 drawback to the progress of 25 improvement and development of its</p>	<p style="text-align: right;">Page 3583</p> <p>1 And your Memorialists as in duty 2 bound will forever pray." 3 Can you scroll down a bit? So it's 4 actually signed by Mr. McNabb as reeve of the 5 Council. 6 So you may not be able to answer this, 7 but if -- from the documents, are you able to say 8 how likely it is that the Council would know that 9 the Band would be willing to surrender? 10 A. I was asking myself the same 11 question. I don't think the document by itself can 12 answer that question. 13 Q. Okay. So in any event, there's 14 pressure coming from the Municipal Council of 15 Saugeen for a surrender? 16 A. Yes, yes. And, I mean, McNabb is 17 the reeve. So he's been heavily involved for a 18 while writing this. This is definitely one of his 19 projects. 20 Q. Okay. If I can go to 21 Exhibit 2127. This is Captain Anderson forwarding 22 on the message from Mr. McNabb to Oliphant, I 23 guess. 24 "I have the honour to enclose 25 the copy of a letter from Alexander</p>

<p style="text-align: right;">Page 3584</p> <p>1 McNabb, Esquire of Southampton 2 forwarding a petition from the 3 Reeves and Council of the Townships 4 of Saugeen County of Bruce praying 5 His Excellency the Governor General 6 to the effect that Saugeen Reserve 7 will be brought into the market and 8 that Saugeen Band of Indians be 9 removed to Owen Sound. 10 "It appears to me that this 11 last idea would not only be pressing 12 the Indians too hard at present, but 13 as it would require an increase -- 14 increased quantity of land, too much 15 of the saleable coast would be taken 16 up by the Indians to the exclusion 17 of a more" -- if I can go down 18 -- "thrifty class of settler." 19 "This Memorial appears to be 20 the beginning of an importunity 21 which may soon" -- 22 A. "Erelong", the old fashioned... 23 Q. -- "erelong increase as" -- 24 A. -- "so increase as to render it 25 expedient" --</p>	<p style="text-align: right;">Page 3586</p> <p>1 the Saugeen, I think that's the first time that 2 suggestion has emerged. 3 Q. Right. Last letter I want to look 4 at in the section was letter -- I believe it was 5 referred to earlier, but it was a letter from the 6 congregationalist Minister from Colpoy's Bay. 7 If I can call up, it's Exhibit 2144. 8 Now this one has a transcript, although, can we 9 scroll down to the handwritten section, at the very 10 bottom, perhaps. I'm sorry, the bottom of the 11 whole document. 12 Now, the transcript, and in your 13 testimony earlier, you said this gentleman's name 14 was Ludwick Knils, K-N-I-L-S. And this suggests 15 that it's Kribs, K-R-I-B-S? 16 A. Oh, yeah, that sounds right. 17 Q. I believe that's how Mr. Anderson 18 refers to him in his report, to Mr. Oliphant. 19 A. Yes. 20 Q. If we can go back up to the 21 transcript for a moment. Now as you said earlier, 22 Mr. Kribs was involved, or present for the meeting 23 with Captain Anderson in August; is that correct? 24 A. He seems to have been, yes. 25 Q. I believe Captain Anderson thanked</p>
<p style="text-align: right;">Page 3585</p> <p>1 Q. Oh. 2 "-- for the Government to 3 withdraw the restrictions now" -- 4 A. "Exercised". 5 Q. -- "exercised on over this land." 6 So Captain Anderson is not in favour 7 entirely of Mr. McNabb's proposal, but does 8 indicate that there is pressure coming from a 9 number of people, I guess? 10 A. Yes. 11 Q. So I missed chronologically. So 12 these letters between the Council, McNabb and 13 Anderson, all happened in August. But I missed 14 chronologically that of course Captain Anderson had 15 his meeting with the Bands at Nawash in early 16 August; is that correct? 17 A. Yes. 18 Q. And that was where he made his 19 speech and suggested, or said he would recommend 20 withdrawing government protection essentially? 21 A. Yes. He would recommend that the 22 Government take the land and sell it. 23 Q. Right. 24 A. Does seem to be a shift here. Now 25 they're going so far as to say complete removal of</p>	<p style="text-align: right;">Page 3587</p> <p>1 him for assistance at the time. 2 A. Oh, okay. 3 Q. You don't recall? 4 A. I don't, I'm sorry. I just 5 remember him -- I've read this letter quite a bit. 6 Q. Sure, if I can start. So it's 7 October 11, 1854. So it's actually written just 8 two days before the actual treaty is being 9 negotiated. So, it states: 10 "It is commonly reported here 11 that the Government have broken off 12 negotiations with the Indians in 13 reference to the sale of their lands 14 lying between Lake Huron and the 15 Georgian Bay with no prospect of a 16 renewal. In consequence of such a 17 rumor, I feel so deeply in reference 18 to it that I cannot well refrain 19 from taking the liberty of troubling 20 you with this communication I have 21 been labouring" -- I think that's 22 different thought -- "I have been 23 labouring for the last three and a 24 half years as a missionary among the 25 Indians of Colpoy's Bay and others</p>

<p style="text-align: right;">Page 3588</p> <p>1 on this Peninsula. As soon as I 2 heard from Mr. Rankin that the 3 Government were willing to sell the 4 land for the benefit of the Indians, 5 I began to let my influence as far 6 as I felt it to be wise or prudent 7 to prevail upon them to have the 8 whole brought into market. I did 9 this for two reasons.</p> <p>10 First, because I saw fully the 11 deplorable conditions the Indians 12 are in and the benefit they would 13 derive from such sale. With 14 thorough acquaintance with Indian 15 habits [...]"</p> <p>16 Well anyway, it gets into very 17 derogatory terms for a while.</p> <p>18 A. Yes.</p> <p>19 Q. So what is marked as the beginning 20 of page 3:</p> <p>21 "Their lands as they are, are 22 of no earthly benefit to them as all 23 of them together do not probably 24 cultivate above 100 acres of ground, 25 and there is no gain to benefit them</p>	<p style="text-align: right;">Page 3590</p> <p>1 of their reserving what they saw to 2 be the most valuable of their land. 3 From conversations I have had with 4 them, I find them quite willing to 5 cede the remainder as soon as they 6 find themselves receiving anything 7 from the sale of that portion which 8 they consented to give up. Or if a 9 few hundred pounds could at once be 10 put into their hands, I have no 11 doubt they would at once give up the 12 whole. They distinctly told me that 13 when they were in Council with 14 Captain Anderson, but I did not 15 suppose that Captain Anderson either 16 could or would, if he could give 17 them anything in hand and so I did 18 not encourage them to make any such 19 proposition.</p> <p>20 "Seeing their lands nearly all 21 gone from them, their presents 22 withdrawn and their annuities so 23 small, they have become very 24 suspicious. I did all I could to 25 inspire them with confidence in the</p>
<p style="text-align: right;">Page 3589</p> <p>1 in that way. They're obliged 2 chiefly to live upon fish and in 3 wintertime can scarcely get these 4 without great exposure."</p> <p>5 And then it complains of -- well, talks 6 about something else. Go down to the paragraph, 7 "now the sale":</p> <p>8 "Now the sale of this Peninsula 9 if properly managed would" -- and it 10 appears "give" was inserted -- "them 11 an amount which would be of benefit 12 to them, and upon which they could 13 lean with something like dependance. 14 It should be borne in mind [...]"</p> <p>15 Well, another derogatory phrase.</p> <p>16 "[...] it should be borne in 17 mind, too, that Indians are like so 18 many children who having an object 19 in possession are unwilling to part 20 with it until they see something 21 placed before them sufficient to 22 induce them to do so. They are 23 evidently fearful that if they give 24 up the land that they will see 25 nothing in return. Hence, the cause</p>	<p style="text-align: right;">Page 3591</p> <p>1 Government that justice would be 2 done them. But like children, they 3 want tangible proof. They evidently 4 had this idea throughout. We will 5 keep these most valuable portions of 6 the land until we see whether or no 7 the Government will give us as they 8 promise. If they do, we will give 9 up the remainder. If they do not, 10 we will at any rate still have the 11 best land. I see no reason why the 12 Government should not accept what 13 they have consented to yield and 14 secure the remainder as fast as 15 possible. The Indians are evidently 16 feeling more suspicious already on 17 account of reported refusal to 18 receive what they have offered.</p> <p>19 "I know it may be reasonably 20 said why should the Government beg 21 of people when that people are 22 unwilling to be benefited in the way 23 proposed? I would just say in 24 reply, that if they were capable of 25 calculation and consequence could</p>

<p style="text-align: right;">Page 3592</p> <p>1 see what will be beneficial for 2 them, it would be quite another 3 thing. But as they are incapable of 4 this, I think we ought to meet that 5 difficulty in the best manner 6 possible, and yet seek to do them 7 good." 8 If we can scroll down a bit, to the 9 next page, perhaps. I think the remainder of the 10 letter mainly deals with the merits of different 11 parts of land for settlement. 12 THE WITNESS: I think so, too. 13 BY MR. BEGGS: 14 Q. Okay. Scroll down to the next 15 section. Maybe I'll just start the fifth line: 16 "[...] and there is great 17 danger if that portion now offered 18 is not accepted of there being a 19 long time not out of market as Chief 20 Alexander says in a letter received 21 here yesterday, that if the 22 Government does not now receive what 23 they have offered, he will never 24 consent again to give up a foot. 25 Others may see in that a dogged</p>	<p style="text-align: right;">Page 3594</p> <p>1 way as to soften what's actually a critique of the 2 Government. 3 Right? So he's saying, you made a 4 mistake by not accepting the land they offered; you 5 should have taken that and then kept working on 6 getting the rest. 7 He's saying, if you would just actually 8 pay them something upfront for the land, then that 9 would be an inducement, you know, but instead -- 10 it's sort of a negative comment about Anderson. He 11 says, you know, "if Anderson would just give them a 12 hundred dollars..." 13 And he said, I did not believe he 14 could -- or he would if he could". It's kind of 15 negative. 16 So I feel that some of the negative 17 comments about the Indigenous people are a way of 18 sort of distracting from the critique of 19 Government. And then the rest of it is just 20 classic, oh, they'll never be industrious, they'll 21 never cultivate land, those things. You know, 22 partly, that's just regular Colonial discourse, and 23 partly it's the missionary focus on agriculture and 24 partly it's another justification for taking the 25 land.</p>
<p style="text-align: right;">Page 3593</p> <p>1 stubbornness to stand in the way of 2 their own benefit, but I see in it 3 what I have before hinted, is that 4 it was through fear thus their lands 5 should be taken from them without 6 adequate remuneration. I sincerely 7 hope, therefore, and I know there 8 are very many who would join in that 9 hope, that if the Government had 10 concluded to break off negotiations 11 about these lands, or that they will 12 not accept any without the whole, 13 they will, upon our consideration, 14 be induced to take another course." 15 So as a historian, would you have some 16 concerns about the evident biases in this letter as 17 to its reliability? 18 THE WITNESS: I thought a lot about 19 this letter because it's very interesting, and the 20 derogatory comments are just part of the regular 21 speech at the time among settlers, that is the way 22 they talked about Indigenous people. 23 At the same time, after I read this a 24 few times, I realized that some of the negative 25 comments about Indigenous people are used in such a</p>	<p style="text-align: right;">Page 3595</p> <p>1 BY MR. BEGGS: 2 Q. Right, okay. 3 A. He says, "like children they want 4 tangible proof". 5 Well, I don't think it's only children 6 who want tangible proof, right? If you want to buy 7 my land, I probably would want you to pay me 8 upfront. 9 Q. Okay. 10 MR. FELICIAN: Your Honour, I see that 11 we're coming up to the break, and I notice 12 Mr. Beggs is taking what looks like a natural 13 break. 14 There is a submission I'd like to make 15 based on something I heard and wondered if I can do 16 that in the absence of the witness before we take 17 the break? 18 MR. BEGGS: That would be fine with me, 19 Your Honour. 20 THE COURT: All right. 21 Sir, you can step outside and assume 22 that as soon as everyone else comes out, we'll be 23 having our afternoon break. 24 THE WITNESS: Thank you. 25 THE COURT: Thank you.</p>

<p style="text-align: right;">Page 3596</p> <p>1 (The witness is excused from the 2 proceedings). 3 MR. FELICIAN: Your Honour, it's 4 something the witness -- 5 THE COURT: If you want to exclude the 6 witness, we have to wait until the door closes. 7 MR. FELICIAN: Oh, sorry. 8 THE COURT: Yes, sir. 9 MR. FELICIAN: Your Honour, I heard at 10 one point in the transcript, and I appreciate this 11 isn't the final transcript, but I'm quite confident 12 in one part I heard. 13 At 14:59:49, there is an answer that 14 says: "Commissioner for Crown Lands, I am not 15 aware of him that have gone title -- that will get 16 fixed I'm sure -- but what I heard was, "I was 17 looking this up yesterday". 18 And I was concerned -- 19 THE COURT: Are you saying that appears 20 on the rough transcript, those words? 21 MR. FELICIAN: I heard them, and then 22 I double checked the rough transcript. So I'm 23 concerned in light of your direction not to be 24 researching things, that some research may have 25 happened.</p>	<p style="text-align: right;">Page 3598</p> <p>1 not supposed to engage in research, is one word for 2 it. But just, you know, pursuing what he would 3 expect ordinarily do, is checking things out that 4 cross his mind. 5 MR. FELICIAN: Thank you very much. 6 THE COURT: Thank you for drawing that 7 to my attention. 8 MR. FELICIAN: Thank you. 9 THE COURT: We'll have the afternoon 10 break. Just before we do that, I'm not trying to 11 rush you, Mr. Beggs, I always like to know where 12 we're going. 13 Do you have a rough estimate of how 14 much longer you plan to be? 15 MR. BEGGS: I would be until the end of 16 the day. I expect I would be finished before the 17 first break tomorrow. 18 THE COURT: That's good to know what 19 the rough estimate is. 20 Just before we all have our break. 21 Ms. Guirguis, are you content or do you have any 22 problem with this issue that's been raised just 23 being dealt with in the manner I've suggested? 24 MS. GUIRGUIS: I have no issue, Your 25 Honour.</p>
<p style="text-align: right;">Page 3597</p> <p>1 THE COURT: Certainly, I heard him say 2 a number of times that he was thinking about things 3 that have come up, which is perfectly fine. 4 MR. FELICIAN: Yes, that's right. And 5 it's the looking up. And I don't know if the court 6 reporter can go check that timestamp. 7 MS. GUIRGUIS: What's the timestamp? 8 MR. FELICIAN: I'm looking at the iPad 9 here. It's 14:59:49, and it goes down to 14:59:52 10 is where the start of the phrase: "I was looking 11 this up yesterday" came out. 12 THE COURT: Madam reporter, is it a 13 straightforward matter to zero in on that time? 14 THE REPORTER: Yes, it is. 15 THE COURT: All right. Well, let's do 16 it then. 17 -- REPORTER'S NOTE: The portion of the 18 transcript in question was read back as follows: 19 "Commission for Indian Lands? I am not 20 aware of him having that title. I was looking this 21 up yesterday [...]" 22 THE COURT: So I must say, I heard that 23 other phrase a number of other times, but this one 24 didn't leap up off the page. 25 I will remind the witness that he is</p>	<p style="text-align: right;">Page 3599</p> <p>1 THE COURT: Thank you very much. 2 MS. GUIRGUIS: Thank you. 3 THE COURT: We'll take the afternoon 4 break. 5 -- RECESS TAKEN AT 3:29 -- 6 -- UPON RESUMING AT 3:51 -- 7 THE COURT: Sir, it was pointed out to 8 me before the break that on one occasion in your 9 cross-examinations you said that you had been 10 looking something up yesterday. 11 THE WITNESS: Oh. 12 THE COURT: Just let me finish, sir. 13 Madam reporter checked, and that is 14 what you said. And I don't know if you misspoke, 15 or if you were looking something up yesterday, but 16 on Tuesday at the end of the day, I cautioned you. 17 And among other things, I specifically said that 18 you cannot engage in inquiries, or research or 19 looking into things while you're under 20 cross-examination. 21 THE WITNESS: Right. 22 THE COURT: First of all, going 23 forward, I'd ask that you not do that. 24 THE WITNESS: Yes. 25 THE COURT: Okay?</p>

<p style="text-align: right;">Page 3600</p> <p>1 THE WITNESS: Yes, Your Honour. 2 THE COURT: Now it's going to be 3 challenging, sir, because you're going to be under 4 cross-examination for the intervening two weeks 5 while this trial is suspended and resuming in 6 August. And I'm sure there will be a number of 7 things that might pique your curiosity, but it's 8 very important that you not do that. 9 Now, other than that one occasion, were 10 there other areas where you were looking into 11 things, sir? 12 THE WITNESS: No, Your Honour. It's 13 just certain things we looked at yesterday, I 14 played over in my mind. 15 THE COURT: Right. Well, playing them 16 over in your mind is perfectly fine, all right? 17 And I did note that you said a number of times that 18 you had been thinking about things that had come up 19 in your testimony, and that's perfectly fine. You 20 need to stop short of starting to look things up. 21 THE WITNESS: Yes. 22 THE COURT: All right? And if by 23 chance it comes up in the rest of your questioning, 24 and you recall that you did look something up, I 25 would ask that you say so, so that it's clear.</p>	<p style="text-align: right;">Page 3602</p> <p>1 A. Yes. 2 Q. And you also went through some 3 accounts by several missionaries, one being Adam 4 Elliot, who I believe was Anglican; is that 5 correct? 6 A. Yes. 7 Q. And two by James Evans, who was 8 Methodist? 9 A. Yes. 10 Q. And with respect to Mr. Evans' 11 account, something that piqued my interest was that 12 he referred to the fact that the Indigenous people 13 would come to the missionaries and say what had 14 transpired. The missionaries would give advice and 15 then the Indigenous people would go back to 16 Mr. Bond Head. 17 A. Yes. 18 Q. Do I take it from that that the 19 missionaries weren't actually present during the 20 negotiations of the Treaty? 21 A. Yeah. It appears that at least 22 some of the conversations between Bond Head and the 23 Saugeen Ojibwe occurred without the missionaries 24 present. 25 Q. Now certainly I believe the</p>
<p style="text-align: right;">Page 3601</p> <p>1 But going forward, just don't do it, 2 all right? 3 THE WITNESS: Yes. Thank you, Your 4 Honour. 5 THE COURT: All right. Please go 6 ahead, Mr. Beggs. 7 BY MR. BEGGS: 8 Q. Thank you, Your Honour. 9 I'd like to move topics now to Treaty 10 45 ½ which you provided evidence on earlier this 11 week. 12 A. Yes. 13 Q. And with my friend, you went 14 through a number of accounts of how Treaty 45 ½ was 15 unfolded, if you will. 16 A. Yes. 17 Q. And so there was Mr. Bond Head's 18 own account that he wrote to Lord Glenelg, I 19 believe? 20 A. Yes. 21 Q. And you referred us to -- was it 22 Chief Metigwob; is that the name? 23 A. Yes. 24 Q. And he gave his account of what he 25 witnessed and experienced?</p>	<p style="text-align: right;">Page 3603</p> <p>1 missionaries signed what became the treaty, so 2 presumably they were there for that speech? 3 A. Yes. 4 Q. Okay. Now you gave some evidence 5 that there was no, no monetary compensation listed 6 in that treaty document? 7 A. Yes. 8 Q. And about how some payments had 9 been made, and I believe you said there eventually 10 was some arrangements to be made for payment of the 11 annuity? 12 A. Yes. 13 Q. That was after some requests by 14 the Indigenous people and possibly some 15 missionaries as well? 16 A. Possibly. 17 Q. Okay. And I believe there was 18 also a boundary problem with the Treaty, that the 19 Treaty as it reads in the text refers to lands 20 north of Owen Sound, I believe, but that would 21 exclude Saugeen; is that correct? 22 A. Yes. 23 Q. And that was corrected later on to 24 make sure that Saugeen could keep their territory? 25 A. Their settlement, yes.</p>

<p style="text-align: right;">Page 3604</p> <p>1 Q. Okay. Now in the United States 2 there was a policy of removal. I think you 3 referred to it -- 4 A. Yes. 5 Q. -- and it was, I think described 6 as a compulsory removal policy? 7 A. Yes. 8 Q. Would the removal policy that was 9 evident in Mr. Bond Head's proposals for Manitoulin 10 Island be in the same category or would they 11 perhaps be more voluntary removal? 12 A. It appears that he was aiming at 13 voluntary removal at least in the short term. 14 Q. And overall, the British -- or 15 perhaps I should put it this way. 16 Mr. Bond Head's policies were sent to 17 London for review by Lord Glenelg? 18 A. Yes. 19 Q. And ultimately Lord Glenelg 20 deferred to the man on the ground, I guess, as 21 might be said; is that correct? 22 A. Meaning? 23 Q. He ultimately left -- accepted 24 what Bond Head had done at least with respect to 25 the Treaty?</p>	<p style="text-align: right;">Page 3606</p> <p>1 of the first paragraph it says: 2 "I propose now to convey to you 3 my sentiments on the more important 4 question of the general treatment of 5 those tribes [...]" 6 I think that's the tribes being the 7 previous sentence, the Indians of Upper Canada. 8 THE WITNESS: Yes. 9 BY MR. BEGGS: 10 Q. And so essentially this is Lord 11 Glenelg giving the Lieutenant Governor his 12 instructions, because Lord Glenelg is his superior. 13 A. Yes, that's right. 14 Q. So if I can scroll down. 15 Actually, I think it's two pages more. Sorry, next 16 page, please. 17 So I note, prior to that, it's page 4 18 I'm on, it set out some general principles, he 19 says: 20 "By which I think the executive 21 government should be guided by its 22 treatment of Indian tribes". 23 And it says: 24 "I do not attempt to give any 25 detailed instructions on the subject</p>
<p style="text-align: right;">Page 3605</p> <p>1 A. He accepted the Treaties, yes. 2 Q. But he did have concerns about 3 what Mr. Bond Head was proposing and about the 4 nature of how Indigenous people were being treated 5 by Mr. Bond Head; is that correct? 6 A. Yes. He particularly objected to 7 the notion that they didn't need to be 8 Christianized. 9 Q. Right. Lord Glenelg, perhaps I'll 10 just go to Exhibit 1262, if I could. I'm looking 11 at what's labelled number 25 on this document. It 12 is a dispatch from Lord Glenelg to Sir G. Arthur 13 dated 22nd of August 1838. 14 Now I believe at this time Mr. Bond 15 Head had left Canada to -- 16 A. Yes. 17 Q. And Sir Arthur was his immediate 18 replacement, or was there somebody in between? 19 A. I think there was someone in between. 20 Q. In any event, Sir Arthur came by 21 1838, the Governor General there? 22 A. Sorry, the Lieutenant Governor. 23 Q. Yes, Lieutenant Governor, thank 24 you. 25 So I see at the beginning, at the end</p>	<p style="text-align: right;">Page 3607</p> <p>1 since I am aware that for the 2 preparation of such instructions, an 3 acquaintance with the many local 4 circumstances and with the moral and 5 physical peculiarities Indian rights 6 would be indispensable. But I 7 commit to your hands the task of 8 carrying out our healthy intentions 9 of Her Majesty's government in this 10 matter, convinced that you share our 11 anxiety to protect and cherish this 12 helpless race and raise them in the 13 scale of humanity and to extend and 14 consolidate the advantages which 15 they possess as the dependants of 16 the British Crown." 17 So again, perhaps that's consistent 18 with what you've described about Lord Glenelg's 19 religious concerns about how Indigenous people 20 should be treated? 21 A. Yes. 22 Q. But he does seem to be saying 23 there that aside from his general principles, he's 24 leaving it to the Lieutenant Governor who should be 25 aware of local circumstances?</p>

Page 3608	Page 3610
<p>1 A. Yes. In this paragraph, yes. 2 Q. Right, okay. 3 Can we go up another page again? 4 Sorry, one more page. Now in the second paragraph 5 -- perhaps start at the top. 6 In the first paragraph he's talking 7 about Mr. Bond Head effecting the general removal 8 of tribes to Manitoulin Island and the section of 9 the territories, presumably it's the Saugeen 10 surrender of 1836? 11 A. Right. 12 Q. Then he talks about some of 13 Mr. Bond Head's reasoning, but he also talks about 14 other arrangements at New Fairfield and the 15 Moravian Mission; are you aware of what those are? 16 A. Yes. 17 Q. Could you tell us what the New 18 Fairfield is? 19 A. It was a mission run by the 20 Moravian Missionaries in Southern Ontario, with 21 Delawares, I think. I think it was peoples who 22 had -- peoples who had come up at some point from 23 the U.S. And my memory is a little vague on what 24 that was, but it was a Moravian Mission. 25 Q. I guess I'd like your help</p>	<p>1 the restoration of the land actually 2 ceded, but merely request that a 3 more secure title should be granted 4 for the remaining portion, and that 5 it should hereafter be inalienable 6 except with the consent of the 7 Moravian Missionaries. This 8 application appears to be liberal 9 and just and preferred in a spirit 10 of great moderation." 11 So does this Moravian Mission have 12 anything to do with Manitoulin Island, or the 13 southern Peninsula, or is this a different topic 14 entirely? 15 A. I think it's a different topic. I 16 don't think they have any direct connection to the 17 Saugeen people in Manitoulin Island. 18 Q. Okay. The next paragraph, though, 19 begins: 20 "I most own, however, that I am 21 not quite satisfied of the propriety 22 of withholding from the mission even 23 that portion of land which has been 24 thus surrendered; provided we are 25 yet at liberty in reference to the</p>
Page 3609	Page 3611
<p>1 clarifying this. 2 So in the second paragraph, the fifth 3 line down it starts: "This dispatch" on the 4 left -- but the sentence: 5 "It is alleged, for example, 6 that a portion of the Indians who 7 were induced to remove to the 8 Manitoulin Islands were at the time 9 of their removal located on land 10 which they had themselves brought 11 into cultivation. It is also stated 12 in Mr. Latrobe's letter, that the 13 Indians settled in New Fairfield 14 were persuaded to give up a part of 15 their land without any reference to 16 the missionaries who up to that time 17 had acted as their trustees. In 18 this latter case --" so I guess New 19 Fairfield. 20 A. Yes. 21 Q. -- "you will observe that the 22 members of the Moravian Mission, 23 although complaining, and not 24 without some appearance of justice 25 of this proceeding, do not ask that</p>	<p>1 manner in which that portion has 2 been disposed of, to restore it to 3 the Indians." 4 So we'll take it that this isn't 5 referring to the Saugeen surrender, but is 6 referring to the New Fairfield surrender for the 7 Moravian Mission. 8 A. Yes. 9 Q. I guess what I'm asking is that 10 you had indicated that there was no realistic 11 chance of a land surrender, at least one like the 12 Treaty 72 surrender being reversed. 13 But in this case, it appears that Lord 14 Glenelg was willing to entertain reversing a land 15 surrender. I'm not sure how large this one would 16 have been, though. 17 A. Neither am I. Do you want me to 18 answer? 19 Q. Well, first of all, do you know? 20 I guess you don't know how large it is? 21 A. I don't. Here is what I can say. 22 I suspect this is one of the four 23 surrenders that Sir Francis Bond Head took that 24 summer. 25 Q. Okay.</p>

<p style="text-align: right;">Page 3612</p> <p>1 A. He took the Manitoulin surrender, 2 the Saugeen tract, and two more in the south. And 3 one I think was the -- the Wendat settlement. 4 Sorry, I'm blanking on the -- maybe Amherstburg and 5 there was another; and those two were much smaller. 6 Those were, as you can see this, "[...] Indian 7 settled in New Fairfield were persuaded to give up 8 a part of their land without any reference to the 9 missionaries [...]" 10 Yeah, I -- this may well have been one 11 of the surrenders Bond Head took and it would have 12 been a small area. 13 Q. Okay. 14 A. I think. 15 Q. Now I certainly don't want to be 16 unfair. So if you can't answer, please say so. 17 Because you indicate you don't have much 18 information, and I certainly don't have information 19 about it. 20 But would you agree that at least in 21 the case of the Moravians, Lord Glenelg was willing 22 to entertain reversing a surrender? 23 A. It does appear so. This was 24 20 years earlier, though -- 25 Q. Yes.</p>	<p style="text-align: right;">Page 3614</p> <p>1 So I just think that in terms of 2 culture, there's a different attitude in the 3 mid-1850s. And the Government was entirely 4 aligned with the settlers, that this was just 5 something that needed to happen. 6 Q. Okay, thank you. 7 I'd like to turn to some questions 8 about your second report. Most particularly, I'd 9 like to talk about the role of the Indian Agent 10 that you've discussed. 11 And I think you said that from the oral 12 histories you gathered, that the Indian Agent was 13 regarded as particularly authoritarian, especially 14 in Nawash; is that right? 15 A. Yes. 16 Q. And you used a couple of 17 descriptions, I think, that were words that you had 18 said were used. One was "dictatorial", you also 19 mentioned -- am I correct somebody called him a 20 "communist"; is that right? 21 A. One of the people I interviewed 22 said -- well, not quite. He said something like, 23 "I'm not going to say it was communism..." 24 Not quite that, but it was something 25 like that. It was maybe Vernon Roote or Jim</p>
<p style="text-align: right;">Page 3613</p> <p>1 A. -- or 15, or whatever, that the 2 conditions in the colony had changed quite a bit as 3 of 1854, I would say. 4 This period, this is the late 1830s, 5 they're still working on the civilization policy, 6 they haven't moved to the assimilation policy. 7 They're still more conciliatory with Indigenous 8 people. So I don't really believe it's a very 9 analogous situation to the situation in 1854 with 10 the surrender of the whole Saugeen Peninsula, which 11 the settlers had been clambering for a long time. 12 So even if the Government had been 13 willing to entertain, you know, undoing the Treaty, 14 which I don't believe would ever have been the 15 case, that the settlers would have had a pretty big 16 reaction to that. 17 Q. Okay. 18 A. Can I add a little bit? 19 Q. Sure. 20 A. Well, just that the 1850s -- by 21 the 1850s, you had a very large population of 22 settlers in Upper Canada who are very confident. 23 You know, there's a much larger population of 24 settlers at that point, and they're just finishing 25 up getting all the land up to the tip of Tobermory.</p>	<p style="text-align: right;">Page 3615</p> <p>1 Ritchie. So implying that it was a -- what do 2 people mean by communism? In this context I think 3 he basically meant authoritarian. 4 Q. Yes, he wasn't talking about sort 5 of property values. He was talking about a -- 6 A. Yeah, a dictatorial system. 7 Q. Okay. I think you mentioned on 8 occasions agents would fail to send on 9 correspondence. 10 Are you aware of specific incidences of 11 that in Saugeen or Nawash? 12 A. Not off the top of my head. I 13 mean, what I have is oral history that says things 14 like, "they would say you can say that in Council" 15 or, "you can pass that resolution, but I'm not 16 going to send it on". 17 Q. Okay. 18 A. Of course that's the kind of thing 19 that you wouldn't be able to find through written 20 records. I mean, if they didn't send it on, we 21 don't know about it. 22 Q. Okay. I'd like to take you to 23 Exhibit 4137 -- 24 A. I'm sorry. Can I just add a 25 little bit to the last -- I'm just thinking of a</p>

<p style="text-align: right;">Page 3616</p> <p>1 specific example that I have. 2 Q. Okay. 3 A. I have a letter from one of my 4 agents, not at Saugeen, but he said something like, 5 "they passed a number of other resolutions, but 6 they were so ridiculous, I have not sent them on." 7 That is from another reserve. 8 THE COURT: I'm having trouble hearing 9 you, sir. 10 THE WITNESS: Oh, sorry. 11 THE COURT: As I mentioned to you 12 earlier when you lean on your hand, that is not 13 helpful. 14 Did you just say that was not a Saugeen 15 or a Nawash example? 16 THE WITNESS: Yes, that is correct that 17 was a different agent. 18 THE COURT: Please go ahead. 19 BY MR. BEGGS: 20 Q. Is that Mr. Daly that you talked 21 about before? 22 A. Yes, Mr. Daly. 23 Q. So if I can go to Exhibit 4137. 24 It's a chapter from the Royal Commission Report on 25 Aboriginal Peoples. Going to Section 9.11.</p>	<p style="text-align: right;">Page 3618</p> <p>1 instruments instead of machinery [to 2 harvest their crops]. By the same 3 token, however, some Indian Agents 4 were petty despots who seemed to 5 enjoy wielding enormous power over 6 the remnants of once powerful 7 Aboriginal Nations [...]" 8 And it goes on from there. 9 I take it Mr. Daly who you've just 10 referred to, would fall into the second category of 11 Indian Agent? 12 A. In fairness to Mr. Daly, I did try 13 to be fair to him. And I did feel that he believed 14 he was helping. And he did actually argue for 15 certain kinds of Indigenous rights. So there was a 16 pattern among Indian Agents of trying to protect 17 Indigenous peoples livelihoods. 18 So the examples they give here are the 19 Indian Agents opposing the peasant farming policy 20 which was imposed on the prairies in the 1870s and 21 '80s, I think, in which they were not allowed to 22 use machinery. In this case, that was just Indian 23 Agents trying to make the Department's own policy 24 make sense, because the policy was to turn them 25 into farmers.</p>
<p style="text-align: right;">Page 3617</p> <p>1 I take it from what was earlier said, 2 that there's different versions of this, so the 3 page numbers may not be consistent always. 4 A. (Witness nods.) 5 Q. So this is a section on Indian 6 Agents. If I can scroll down to the next page, 7 starting with paragraph "in many cases". I've 8 taken you to the right chapter, 9? 9 A. Yes. 10 Q. "In many cases, Indian Agents 11 were persons of intelligence and 12 integrity. For example, the 13 anti-potlatch provisions in the 14 Indian Act after 1884 were often 15 thwarted by the agents themselves as 16 many regarded the prohibition as 17 misguided and harmful. In the same 18 way, the Indian Agents along with 19 the farm instructors were from the 20 beginning the most vociferous in 21 calling for an end to certain 22 aspects of Hayter Reed's absurd 23 agriculture policy of transforming 24 Indians into simple peasant farmers 25 by forcing them to use hand</p>	<p style="text-align: right;">Page 3619</p> <p>1 So Indian Agents did sometimes try to 2 speak out against policies they felt were harmful 3 to the livelihoods of Indigenous people. Daly did 4 that, but he also exercised a lot of power over 5 them. 6 Q. Okay. So would you, based on your 7 expertise in the Indian Agent field, would you 8 regard those two paragraphs as a fair description? 9 A. Yes. 10 Q. I'd like to go to your thesis for 11 a moment. It's document number SC0847 and it's 12 Fatherly Eye to Indian Agents on Georgian Bay, 1918 13 to 1939 by Professor Brownlie. I'd like to ask 14 that this be made the next exhibit. 15 THE COURT: Mr. Registrar. 16 THE REGISTRAR: The Exhibit No. 4164. 17 EXHIBIT NO. 4164: Thesis entitled, 18 Fatherly Eye to Indian Agents on 19 Georgian Bay, 1918 to 1939 by Professor 20 Brownlie. 21 BY MR. BEGGS: 22 Q. I apologize, I've read your 23 thesis, I haven't read your book, so I don't know 24 if they're identical or not. 25 A. You read my thesis and not my</p>

<p style="text-align: right;">Page 3620</p> <p>1 book? Grave mistake, sir. 2 Q. If I can go to page 45. 3 A. The book is better. 4 Q. Okay. Sorry, 45 of the PDF. So 5 it's page 34 of the thesis. 6 Now your thesis was mainly about 7 Mr. Daly and another Indian Agent? 8 A. Yes. 9 Q. But you did do some comparisons. 10 And in this passage, you're speaking of agents who 11 were employed after having returned from overseas 12 service. And on the fifth line down: 13 "This may well be true" -- I 14 guess the soldiers were politically 15 appointed, poorly educated -- 16 "although did not necessarily mean 17 that they neglected their duty. 18 Captain Ross Garland, for example, 19 agent of the Cape Croker Reserve 20 from 1919 to 1922, was a returned 21 soldier whose Military service was 22 doubtless as a factor in his 23 appointment. He was a very active 24 agent who clearly worked very hard 25 to help his clients become</p>	<p style="text-align: right;">Page 3622</p> <p>1 send back some money for vouchers I 2 sent in some time ago. They are 3 bothering the life out of me asking 4 when their money will come. I have 5 now advanced about 5 or 6 hundred 6 dollars of my own money. They're 7 all demanding interest. I need my 8 money. Why are bills not being 9 paid?" 10 So it appears in the thesis that you 11 had a reasonably favour view of Captain Garland as 12 an Indian Agent? 13 THE WITNESS: I did, yes. 14 BY MR. BEGGS: 15 Q. Has that changed at all? 16 A. No. I mean, I haven't done any 17 further research on him. 18 Q. And so would it be fair to say 19 that, general level, some agents were better than 20 others in asserting their constituency, if you 21 will? 22 A. I'm trying to formulate a helpful 23 response to that. That was really what I was 24 trying to get at in my thesis is to show the extent 25 to which the agents' own personalities and</p>
<p style="text-align: right;">Page 3621</p> <p>1 successful farmers. His letters do, 2 however, indicate a rather moderate 3 degree of education: They are 4 written in relatively 5 unsophisticated language with little 6 attention to technicalities of 7 sentence structure [...]" 8 And if I can go to page 64 of the PDF, 9 page 53 of the document. A little farther down. I 10 think it might be a footnote, footnote 50. So 11 that's from a sentence which says: 12 "Some agents felt compelled to 13 pay tradesmen and shopkeepers with 14 their own money after months of 15 waiting for a cheque from Ottawa. 16 Their debts from this source could 17 run into hundreds of dollars." 18 Footnote 50 says: 19 "For example, Captain Ross 20 Garland of Cape Croker Agency had 21 advanced substantial sums of his own 22 money while helping returned 23 soldiers to establish farms." 24 And there's a quote: 25 "Sir, I wish he would try and</p>	<p style="text-align: right;">Page 3623</p> <p>1 attitudes shaped, really, the results of the system 2 for the Indigenous people they worked with. And, 3 yes, some were more sympathetic. 4 And this, in this case, for instance, 5 you know, he was a return soldier himself, this is 6 about helping other return soldiers. There was a 7 lot of solidarity between return soldiers, 8 especially in these early years after the war. 9 And yet he actually -- I think he was 10 the only one I found who did that, who would 11 advance his own money to Indigenous people when 12 they were waiting for money from the Department. 13 Q. Now I think you mentioned earlier 14 on in your testimony that there had been two 15 separate agencies, one in Saugeen and one at 16 Nawash? 17 A. Yes. 18 Q. And that in 1958, they merged and 19 operated out of the office located at Saugeen? 20 A. Yes. 21 Q. And if I could turn -- I think you 22 may have explained it in your testimony, but I want 23 to be sure. If I can turn to page 33 of your 24 report. And while we're waiting, I know -- sorry, 25 this report is Exhibit 4119, it's the second</p>

Page 3624


1 report, page 33.
2 You may have explained this already,
3 but a lot of the oral history interviews refer to
4 the Indian Agent being kicked off the reserve?
5 A. Yes.
6 Q. And was your explanation that, you
7 know, it didn't necessarily mean the kicking off at
8 the office, but more kicking off the agent from --
9 preventing the agent from being a continual
10 presence on the reserve, or for being able to
11 attend at will, if you will?
12 A. Something like that. There's an
13 account from Wilmer Nadjiwan, at least one account
14 from him -- there might be more than one just from
15 him -- where he talks about when he was Chief, he
16 says he was trying to work with the Indian Agent,
17 but that the Indian Agent wanted to be the boss and
18 wouldn't share power with him; and that he then
19 told him to get off the reserve.
20 And I can't remember exactly what other
21 accounts I've seen. A number of people refer to
22 this, and there are never a lot of details. But it
23 always sounds to me as if it's a situation where
24 the agent is coming to the reserve for some
25 purpose, and something comes to a head. Probably

Page 3625

1 he says something that the Chief finds
2 objectionable or unacceptable, and then he sort of
3 says, "get off our land"; something like that. And
4 that's how Wilmer Nadjiwan describes it, along
5 those lines.
6 It's not clear to me if there was still
7 an office open on Nawash Cape Croker Reserve at
8 that time or not. I know the building is still
9 there, but I believe the main office was at
10 Saugeen.
11 Q. Okay.
12 THE COURT: Sir, unless you want to
13 finish up some point, of which you're welcome to
14 do, we can resume tomorrow morning.
15 MR. BEGGS: That would be fine, Your
16 Honour. Thank you.
17
18 -- Court adjourned at 4:30 p.m.
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Page 3626

REPORTER'S CERTIFICATE

1
2
3 I, JUDITH M. CAPUTO, RPR, CSR, CRR,
4 Certified Shorthand Reporter, certify;
5 That the foregoing proceedings were
6 taken before me at the time and place therein set
7 forth at which time the witness was put under oath
8 by the court registrar;
9 That the testimony of the witness and
10 all objections made at the time of the examination
11 were recorded stenographically by me (Note: Not
12 all quotes have been verified against source
13 document, but transcribed as read into the record);
14 That the foregoing is a Certified
15 Transcript of my shorthand notes so taken.
16
17 Dated this 14th day of August, 2019.
18
19 
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21 PER: JUDITH M. CAPUTO, RPR, CSR, CRR
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10 3513:17 3516:7 3563:16,24 100 3588:24 105 3516:7,21 10:02 3451:1 10th 3566:5 11 3587:7 11:28 3509:1 12 3535:6 1262 3605:10 12:00 3509:2 12:57 3547:19 13,000 3535:20 3536:14 3546:3 13th 3480:16 14 3569:12 3572:1 3579:13 14:59:49 3596:13 3597:9 14:59:52 3597:9 15 3613:1 15th 3554:19 1674 3526:3 17 3473:8 3515:1 180,000 3533:2,18 1820s 3518:24 1830s 3518:24 3519:1 3520:4 3613:4 1836 3608:10 1837 3520:5 1838 3605:13,21 1840s 3520:2 1847 3526:2 3528:12 1850s 3613:20,21 1851 3470:12									

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3574:15,25 3577:1, 3,5 3578:21 3579:5, 6,13 3580:19 3583:21 3585:6,13, 14 3586:17,23,25 3590:14,15 3594:10, 11	3471:19 3488:8 3495:21 3497:15 3502:18 3506:8 3507:14,16 3514:3 3515:15 3530:10,13 3533:14 3538:17 3539:7 3540:18 3544:8,9,11,20 3559:5 3562:19 3573:1 3577:16,21 3578:17 3584:10,19 3589:10 3596:19 3602:21 3604:12 3610:8 3611:13 3622:10	arrange 3451:8 arrangement 3567:19,20,21 3568:23 3576:15 arrangements 3451:4 3457:17 3603:10 3608:14 arrived 3465:13 3494:5 3537:14,20 3547:14 3552:6 Arthur 3605:12,17, 20 aspects 3548:14 3617:22 Assembled 3454:21 Assembly 3453:22 3454:1 asserting 3622:20 assertion 3524:22 asserts 3463:10 assimilation 3613:6 assistance 3506:9 3548:9 3550:8 3576:10 3578:11 3587:1 assisted 3548:10 assisting 3548:14 assume 3464:1 3472:4 3484:22 3580:8 3595:21 assumed 3472:9 assuming 3577:19 assumption 3499:14 attached 3486:15 3487:8 attempt 3578:25 3606:24 attend 3485:19 3624:11 attention 3491:21 3501:13 3572:4	3598:7 3621:6 attitude 3479:16 3614:2 attitudes 3623:1 attraction 3538:6 au 3557:13 August 3451:6,24 3452:11 3457:18 3480:11,15 3543:21 3550:20 3554:17 3556:10 3565:16 3570:23 3579:13 3585:13,16 3586:23 3600:6 3605:13 author 3549:24 authoritarian 3614:13 3615:3 authorization 3504:2 aux 3561:9 3562:6 averaging 3561:7 aware 3452:23 3453:25 3454:6 3469:7 3480:9 3482:7 3525:8 3533:16 3556:22 3577:7 3578:24 3596:15 3597:20 3607:1,25 3608:15 3615:10	23 3500:10 3517:5 3520:17 3552:5 3553:10 3558:12,25 3559:19 3582:9,17 3583:9 3584:8 Band's 3476:24 Bands 3477:19 3487:13,20 3490:11 3550:21 3551:3 3554:22 3555:22 3556:10 3558:15,23, 25 3559:8,22 3561:18 3579:9 3585:15 bank 3459:6 3503:23,24 banks 3468:24 Baron 3540:1,6,19 3541:17,19 3543:18 3544:6,10,13,21 Barron 3540:8 base 3542:11 based 3517:2 3541:10 3595:15 3619:6 basically 3504:25 3578:12 3615:3 basis 3542:8 basketball 3508:24 Bay 3465:23 3468:9 3519:11,24,25 3520:9,17 3552:25 3553:8,13 3560:16, 17 3586:6 3587:15, 25 3619:12,19 bearer 3513:3,9,15 3514:9,20,24 3515:21 3516:1,5 Beaty 3466:9 3477:2 3496:9 3520:12 Beaty's 3468:5 beautiful 3506:2 beg 3471:5 3530:16 3581:12 3582:2,18 3591:20
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began 3588:5	3551:4 3552:15	3534:19 3539:19	Brownlie 3453:16, 18 3543:1 3547:24 3619:13,20	3538:9 3539:15
Beggs 3451:4,7 3452:22 3453:3,6, 15,17 3454:23 3456:12,14,17 3457:8 3458:11 3460:9 3465:15 3467:1 3468:1 3478:4,10,11,23 3480:1 3485:1 3487:23 3498:21 3499:2 3503:2 3505:24 3507:24 3508:5,8,10,18 3509:3,4,5 3510:9 3512:23 3513:7,12 3514:15,21 3516:2 3529:5,6 3530:4,5 3534:5,7,10,12 3536:4,5 3540:7 3541:11 3542:23,24 3543:22 3546:15,20 3547:21,22,23 3551:16,19 3555:24 3559:10 3563:2 3577:4 3592:13 3595:1,12,18 3598:11,15 3601:6,7 3606:9 3616:19 3619:21 3622:14 3625:15	3555:12 3559:18 3566:14 3567:4 3570:6 3571:8 3572:22 3588:4,12, 22,25 3589:11 3593:2	3540:12 3619:23 3620:1,3	Brownlie's 3478:7	3545:12,25 3605:15 3606:7 3613:22
begin 3484:14	benefited 3591:22	borne 3589:14,16	Bruce 3490:24 3551:24 3556:5 3561:25 3574:16,17 3579:21,22 3581:18 3582:8 3584:4	Canada's 3451:10
beginning 3456:7 3484:8,11 3572:19 3576:24 3584:20 3588:19 3605:25 3617:20	benefits 3531:14 3559:1	boss 3624:17	building 3459:15 3625:8	capable 3496:4,5, 16 3542:18 3591:24
begins 3466:12 3489:11 3505:25 3543:15 3581:4 3610:19	benevolence 3480:25	bothering 3622:3	built 3511:24	Cape 3574:1 3620:19 3621:20 3625:7
behalf 3512:17	bias 3534:24	bottom 3456:8 3464:15 3467:16 3484:7 3489:12 3507:4 3527:13 3530:9 3536:7 3538:22 3552:2,3 3566:1 3586:10	Bury 3462:2,3 3468:12 3469:8,12 3473:10 3482:20 3538:9	capital 3485:11
behaviour 3460:18,21	biases 3461:22 3593:16	bought 3513:18	business 3463:1	Captain 3455:25 3456:4 3457:17 3459:7 3460:19,22 3463:2,23 3466:24 3468:4 3470:1 3480:4,10 3481:5 3482:10 3519:17 3551:3,23 3555:20 3556:5 3558:8 3561:24 3563:16,25 3565:16,23 3566:2 3569:14 3570:23 3571:21 3573:1 3574:15,24 3577:1,5 3578:21 3579:4,6,13 3580:19 3583:21 3585:6,14 3586:23, 25 3590:14,15 3620:18 3621:19 3622:11
belief 3472:24	big 3613:15	bound 3489:6 3583:2	buy 3471:25 3472:1 3486:17 3577:17,22 3578:25 3595:6	carried 3458:20 3459:4 3460:1 3466:16 3477:21,25 3479:4
believed 3497:13 3618:13	bills 3622:8	boundaries 3457:6 3461:5 3476:13 3526:11,16	buying 3574:21	carrying 3559:23 3607:8
beneficial 3592:1	biography 3517:21 3539:25 3540:5 3541:6 3543:24	boundary 3469:13 3471:21 3475:2 3603:18	buyout 3509:8	case 3467:8 3490:6 3540:18 3547:1 3553:12 3609:18 3611:13 3612:21 3613:15 3618:22 3623:4
benefit 3452:25 3467:10 3474:21 3501:6 3532:13	bit 3453:1 3457:25 3460:12,14 3462:15 3469:18 3480:21 3481:5 3483:17 3501:8,12 3511:3 3517:10 3518:4 3531:23 3534:3 3541:7 3553:17 3560:12 3568:10 3583:3 3587:5 3592:8 3613:2,18 3615:25	bounded 3526:18	call 3482:23 3491:19 3494:8 3502:8 3505:7 3506:3 3509:23 3513:8 3515:19 3539:23 3546:25 3554:9 3556:16 3558:5 3563:17 3586:7	cases 3486:21 3617:7,10
	blanking 3612:4	break 3508:16 3509:7 3546:16 3547:25 3593:10 3595:11,13,17,23 3598:10,17,20 3599:4,8	called 3461:24 3464:25 3481:22 3491:15 3493:21 3554:11 3563:5 3582:21 3614:19	cash 3516:9,15,18
	block 3581:21	breaks 3508:21	Canada 3452:12 3525:6 3537:15	casts 3573:10
	board 3578:15	bribed 3501:1		catechist 3499:13
	body 3462:21	bribing 3502:4	C	category 3604:10 3618:10
	Bond 3601:17 3602:16,22 3604:9, 16,24 3605:3,5,14 3608:7,13 3611:23 3612:11	bridge 3459:15 3515:9,17	C-A-U-G-H-N-A- W-A-G-A 3522:12	
	bones 3504:23	bring 3478:8 3531:20	calculation 3591:25	
	book 3491:15 3494:13,15,19 3495:17,20 3498:11, 22 3499:6,9,10 3500:11 3509:17	British 3524:21 3538:15 3604:14 3607:16	call 3482:23 3491:19 3494:8 3502:8 3505:7 3506:3 3509:23 3513:8 3515:19 3539:23 3546:25 3554:9 3556:16 3558:5 3563:17 3586:7	
		broken 3562:10 3587:11	calling 3617:21	
		brother 3570:21		
		brought 3481:1 3584:7 3588:8 3609:10		

Caughnawaga 3522:10 3523:10 3560:18	cherish 3607:11	clambering 3613:11	colourful 3495:18 3501:8,18	communism 3614:23 3615:2
cautioned 3599:16	Chesley 3502:22, 25 3505:11,18,22	Clarendon 3538:1 3539:7	Colpoy's 3465:23 3468:9 3519:11,23, 25 3520:9,17 3552:24 3553:8,13 3560:16,17 3586:6 3587:25	communist 3614:20
cede 3560:24 3562:14 3564:5,23 3568:3 3569:1,3 3590:5	Chief 3463:20,24 3464:2 3564:17 3569:21 3571:21 3573:7,15,17 3574:4 3577:11 3592:19 3601:22 3624:15 3625:1	clarify 3566:6	comfort 3548:21	community 3485:8 3486:9 3488:8,15,16 3519:8
ceded 3553:22 3560:3 3575:17 3610:2	chiefly 3589:2	class 3483:23 3485:9 3581:20 3584:18	comforting 3549:11	companies 3492:24
ceding 3559:16 3568:19	chiefs 3454:18 3455:6 3459:2,10,23 3462:8 3470:4 3471:12 3473:8,22 3474:5 3512:21 3557:7 3562:12	classic 3594:20	commenced 3553:21	company 3490:1,7
Century 3490:13 3518:19	children 3531:18 3589:18 3591:2 3595:3,5	clear 3477:25 3479:4 3483:22 3488:21 3536:13 3568:12 3600:25 3625:6	commencing 3451:1 3558:17	comparatively 3486:8 3488:7
cession 3536:9 3576:13 3578:13	Chippeway 3581:8	clerk 3455:15,21	comment 3453:12 3470:18 3497:12 3500:12,17 3594:10	compared 3533:15,16 3559:4
challenging 3600:3	choose 3557:14 3572:10	clients 3620:25	comments 3477:23 3479:2 3529:2 3593:20,25 3594:17	comparisons 3620:9
chance 3538:18 3549:8 3600:23 3611:11	chose 3563:6 3573:2,3	close 3510:19	commission 3507:19 3597:19 3616:24	compelled 3621:12
change 3580:5	Christianized 3605:8	closed 3520:5	commissioner 3501:1 3530:11 3577:2,6,14,20 3596:14	compensation 3603:5
changed 3613:2 3622:15	chronologically 3585:11,14	closes 3596:6	commit 3607:7	complain 3455:14, 20 3456:7,10,15,19, 23 3457:11 3459:1 3464:23 3478:17 3480:3
chapter 3539:10 3616:24 3617:8	church 3494:9,10 3511:22 3512:12	coached 3504:25	Commissioners 3576:21 3577:19	complained 3467:22
characterize 3485:16	Circassian 3539:11	coast 3532:17 3584:15	common 3549:19	complaining 3458:12 3609:23
charge 3513:19 3515:10 3516:10 3547:5	circumstances 3486:12 3545:15 3607:4,25	coasts 3531:23	commonly 3587:10	complains 3589:5
charged 3517:19 3518:5	citations 3491:1	coda 3493:11 3497:25	communicate 3453:4 3557:16	complaint 3458:21 3460:18 3461:3 3475:2,16 3476:21 3480:10,15 3491:24
Charles 3455:16 3496:4 3517:14,16 3530:7 3549:15 3563:15,25 3566:2	city 3455:3 3462:22 3468:20	coffee 3508:21	communicated 3557:2 3561:18	complaints 3455:10,24 3457:5 3460:4 3461:2,17 3468:2,3,4 3469:7, 10 3476:11,24 3477:6,9
check 3597:6	civilization 3613:5	Cold 3519:14,22,23 3520:5	communicating 3555:21	complete 3479:8 3585:25
checked 3596:22 3599:13	claim 3467:17 3486:5 3487:15	collaborated 3549:13	communication 3452:12 3554:21 3555:19 3568:4 3569:4 3587:20	completely 3488:13
checking 3496:16 3598:3	claiming 3455:5	colleague 3551:16	communications 3463:6 3493:2	compliance 3485:21 3487:7
cheque 3503:12,22 3621:15	claims 3516:9,18	collection 3503:18		
		Colonel 3551:23 3556:5 3561:25 3574:16,17		
		Colonial 3524:16 3536:16 3544:22 3594:22		
		colonies 3543:7 3544:23		
		colony 3613:2		

composed 3485:9	confirmed 3526:11	consummated 3466:15,21	cornfield 3471:7, 11	12 3584:4
composing 3462:9	confirming 3526:12	CONT'D 3453:17	cornfields 3470:22	couple 3521:20 3529:2 3538:16 3614:16
comprised 3471:11 3526:25	conflates 3573:23	content 3598:21	correct 3455:6,17 3465:19 3468:13,21 3472:21 3475:1 3481:18 3482:3 3489:17 3490:24 3494:16 3501:10 3502:24 3516:22 3520:17 3521:7 3522:17,22 3526:5 3529:11 3537:5 3540:9,20 3542:7 3545:5 3546:6,11,14 3551:9 3556:13 3562:20,24 3563:18 3565:7 3566:7 3577:2 3579:3 3585:16 3586:23 3602:5 3603:21 3604:21 3605:5 3614:19 3616:16	court 3451:3,9 3453:7 3456:9,13 3478:2,22 3479:7 3498:9,13,16,24 3505:20 3507:22,25 3508:3,9,14,20 3509:3 3510:3 3512:25 3513:4,10 3514:17 3515:23 3529:3 3530:2 3534:4,6,9 3540:25 3541:11,14,21,24 3542:8,13,23 3546:19,21 3547:21 3573:20 3595:20,25 3596:5,8,19 3597:1, 5,12,15,22 3598:6,9, 18 3599:1,3,7,12,22, 25 3600:2,15,22 3601:5 3616:8,11,18 3619:15 3625:12,18
compulsory 3604:6	conflating 3573:22	context 3479:12, 19,22 3481:4 3484:3 3487:12 3488:23 3506:21 3507:15 3575:2 3615:2	corrected 3603:23	cover 3461:13 3475:10,11 3502:9 3524:9
computer 3551:17	confounds 3580:2	continual 3624:9	correspondence 3556:18,24 3557:2 3565:13 3574:13 3615:9	covered 3494:3 3525:4,13 3561:24
concentrating 3568:10	confrontation 3454:7	continuation 3470:11 3578:22	cost 3492:7	created 3543:18 3544:13
concern 3475:16 3482:14	confused 3498:16	continue 3527:21 3567:2	council 3454:20 3457:1 3463:22 3464:25 3465:22 3467:21 3471:1 3552:7 3556:13 3564:4 3565:10 3570:2,21,22 3579:16 3581:1,3 3582:19 3583:5,8,14 3584:3 3585:12 3590:13 3615:14	creatures 3555:8
concerned 3453:4 3547:2 3596:18,23	connected 3463:25	continued 3543:11	cost 3492:7	credibility 3573:18
concerns 3452:4 3475:18 3476:1 3539:18,20 3547:25 3593:16 3605:2 3607:19	connection 3571:2 3610:16	contracted 3459:24	county 3462:10, 11 3464:20 3467:18 3486:4	Credit 3521:4,15 3525:16,25
conciliatory 3613:7	Conrad 3475:25 3476:23	contracted 3459:24	country 3462:10, 11 3464:20 3467:18 3486:4	Crimea 3536:1,24 3539:8,11,14 3545:7,9
concluded 3593:10	conscience 3501:19,20	contradict 3544:5 3548:24	counsel 3451:10 3452:12 3541:15 3542:14	critique 3594:1,18
conclusion 3451:20 3559:24	consent 3592:24 3610:6	contrary 3459:9	counter 3523:15	Croker 3574:1 3620:19 3621:20 3625:7
condition 3466:17	consent 3592:24 3610:6	contrast 3501:14	country 3462:10, 11 3464:20 3467:18 3486:4	crops 3618:2
conditional 3497:20	consented 3590:8 3591:13	convenience 3486:8 3488:7	county 3490:23 3543:19 3579:18,22 3581:17,23 3582:7,	cross 3598:4
conditions 3485:20 3486:14 3588:11 3613:2	consequence 3587:16 3591:25	convenient 3508:19	county 3490:23 3543:19 3579:18,22 3581:17,23 3582:7,	cross- examination 3453:17 3542:16
conduct 3480:4	consideration 3462:6 3474:24 3484:19 3486:6 3487:16 3530:12,21 3582:21 3593:13	conventionally 3542:15		
conducted 3480:10	considered 3451:15 3539:3 3570:3	conversations 3590:3 3602:22		
conference 3547:1	considers 3501:21	convey 3452:1 3606:2		
confided 3486:7 3487:17,19 3488:4	consistent 3462:17 3466:22 3528:16 3607:17 3617:3	convince 3549:23		
confidence 3590:25	consolidate 3607:14	convinced 3607:10		
confident 3547:2 3596:11 3613:22	constituency 3622:20	convoluted 3487:21		
confining 3484:12,17 3488:10		cooperate 3455:22		
		cooperating 3549:18		
		copy 3583:25		
		corner 3502:21 3560:2,15		

3599:20 3600:4 cross-examinations 3599:9 crossed 3552:25 3564:6 3569:22 crowds 3511:8 Crown 3474:15 3485:17 3486:21 3487:2,20 3489:1,7, 14,23 3492:11,13 3530:15 3533:24 3559:17 3560:25 3581:17 3596:14 3607:16 cuff 3452:21 cultivate 3531:9 3560:11 3588:24 3594:21 cultivated 3471:5 cultivation 3531:20 3609:11 culture 3614:2 curiosity 3600:7 curious 3503:20 currency 3503:6 3513:17 3515:5,6,8 3516:7 cut 3489:22 3490:2 cutting 3490:7 3493:19	3551:25 3565:17 dated 3461:14 3470:2 3473:8 3505:23 3510:8 3512:15 3513:3 3514:1,10,20 3515:21 3516:1 3530:7 3543:20 3554:19 3557:7 3558:8 3562:12 3563:16 3565:25 3579:13 3605:13 daughters 3509:15 David 3491:14 3496:3 3521:3,22 day 3451:12 3453:8, 9,11 3506:2,14 3514:22 3557:10 3582:23 3598:16 3599:16 days 3587:8 deal 3453:1 3463:13 3534:16 dealing 3522:7 3568:7 dealings 3558:11 deals 3558:9 3592:10 dealt 3491:25 3598:23 dear 3554:23 3576:3 death 3509:14 3570:20 debt 3459:23 debts 3621:16 December 3537:7, 8 3545:12 3559:13 3561:22 3565:18 decided 3455:10 3522:3 3525:16 decides 3463:9 deciphering 3566:24 3568:11	decision 3451:23 declaration 3475:7,9,10 3526:2, 7 3527:5 3528:13 decline 3538:7 declined 3535:24 deducting 3459:11 deep 3459:16 3561:7 deeply 3486:3 3587:17 deferred 3604:20 defined 3460:5 degree 3621:3 Delawares 3608:21 delayed 3554:23 demanding 3622:7 demonstrable 3486:2 demonstrates 3497:24 department 3463:5 3464:1 3481:10,21 3485:18 3486:21 3487:6 3489:1,6,7 3502:12, 19,23 3503:3 3530:12 3535:20 3536:12 3546:5,10 3623:12 Department's 3618:23 departure 3471:3 3545:24 depend 3572:9 dependance 3589:13 dependants 3607:15 depending 3483:19	deplorable 3588:11 deposits 3489:18 depreciating 3458:17 deputation 3454:4 3460:23 Derby 3543:10 3559:3 3560:5 3582:11 derive 3551:4 3555:12,15 3567:5 3588:13 derived 3536:9 derogatory 3588:17 3589:15 3593:20 descendants 3531:19 describes 3625:4 description 3460:12 3513:11 3531:1 3558:19 3619:8 descriptions 3614:17 deserving 3572:15 designed 3549:23 desirable 3532:17, 24 desire 3536:23 3568:22 desiring 3572:13 desirous 3470:22 3567:16 3569:10 despots 3618:4 destroyed 3511:19 detail 3490:13 detailed 3484:9 3606:25 details 3465:6 3510:17 3529:12	3624:22 determined 3511:15 3555:7 development 3581:25 devotes 3501:12 diagonal 3540:23 3543:2 diary 3505:10,18,22 dictatorial 3614:18 3615:6 Dictionary 3539:24 3540:5 3543:24 died 3540:19 difficult 3493:2 3566:24 difficulties 3509:13 difficulty 3485:18 3558:24 3592:5 diplomatic 3535:25 3536:22 diplomatic/trade 3539:3 dire 3451:12,19,24 direct 3467:12 3476:4 3495:15 3610:16 directed 3473:9 3562:6 direction 3532:16 3596:23 directly 3475:21 disadvantage 3532:10 discourage 3496:23 3525:1 discouraged 3525:21 discourse 3594:22 discovered 3470:16
--	--	--	--	---

D

Daily 3509:25 3510:7,14
Daly 3616:20,22 3618:9,12 3619:3 3620:7
danger 3592:17
dare 3576:8 3578:9
dark 3520:24
date 3468:16 3480:15 3514:12 3534:4 3545:11

<p>discuss 3482:16 3483:10 3563:13 3578:2</p> <p>discussed 3451:5 3457:2 3465:7 3482:12,19 3483:5,6 3520:14 3522:6 3528:25 3556:18 3561:19 3614:10</p> <p>discussing 3509:6 3549:15</p> <p>discussion 3465:12 3491:13,21 3505:2 3562:21,23 3578:18,20</p> <p>discussions 3465:17 3466:24 3467:3 3495:6,23 3547:14 3562:20 3565:12</p> <p>dismissed 3463:21 3509:19 3518:8</p> <p>dispatch 3605:12 3609:3</p> <p>disposal 3458:3,4</p> <p>disposed 3580:7,9 3611:2</p> <p>disposing 3467:12</p> <p>dispute 3454:8</p> <p>dissatisfaction 3459:18</p> <p>distinctly 3486:24 3590:12</p> <p>distracting 3594:18</p> <p>distress 3517:4</p> <p>divert 3546:22</p> <p>dividing 3560:5</p> <p>document 3461:11,12 3469:24 3489:11 3490:21 3495:1 3502:17 3503:18 3505:7,9, 10,12,13,15 3506:21 3507:6 3508:17</p>	<p>3509:23 3512:14,15 3513:5 3514:8 3522:7,19 3526:2 3534:8,15 3535:7 3539:20,23 3541:10 3542:12 3547:6,9 3548:13 3549:3 3550:12,20 3551:2, 13,15 3556:9 3565:21 3566:2 3568:17 3575:8 3583:11 3586:11 3603:6 3605:11 3619:11 3621:9</p> <p>documentation 3493:7</p> <p>documents 3456:3 3458:23 3460:5 3464:5 3491:12 3492:21 3498:18 3499:9 3510:2 3517:11 3524:12 3525:16 3546:16 3551:20 3583:7</p> <p>dogged 3592:25</p> <p>dollars 3594:12 3621:17 3622:6</p> <p>Donald 3509:8,9 3517:21</p> <p>door 3596:6</p> <p>double 3596:22</p> <p>doubt 3559:21 3573:10 3578:1 3590:11</p> <p>doubtful 3555:10</p> <p>doubtless 3620:22</p> <p>doubts 3496:12</p> <p>douceur 3507:12, 15</p> <p>downtime 3545:17</p> <p>drawback 3579:19 3581:24</p> <p>drawing 3598:6</p> <p>drawn 3491:20 3553:12 3560:14</p>	<p>drink 3512:4</p> <p>drinking 3509:20</p> <p>driven 3464:21</p> <p>due 3459:12</p> <p>Dusen 3461:14 3476:1 3506:24 3507:11 3508:12</p> <p>Dusen's 3461:20 3476:24 3477:23 3479:2</p> <p>duty 3487:5 3583:1 3620:17</p> <p>dwellings 3511:20</p> <hr/> <p style="text-align: center;">E</p> <hr/> <p>e-mail 3547:17</p> <p>earlier 3460:5 3476:9 3477:5 3482:12 3490:22 3494:14 3496:9 3509:12 3518:17 3522:7 3527:3,8 3535:2 3550:19 3561:14 3563:15 3586:5,13,21 3601:10 3612:24 3616:12 3617:1 3623:13</p> <p>early 3520:2 3582:22 3585:15 3623:8</p> <p>ears 3474:24</p> <p>earthly 3588:22</p> <p>east 3526:20 3538:3 3539:6 3560:14</p> <p>economy 3536:15</p> <p>editorial 3470:18</p> <p>Edmund 3537:19, 23 3538:19</p> <p>educated 3620:15</p> <p>education 3621:3</p> <p>effect 3536:13 3584:6</p>	<p>effecting 3608:7</p> <p>effectively 3549:25</p> <p>efficient 3524:24</p> <p>elaborate 3452:19</p> <p>elapsed 3538:14</p> <p>elevated 3540:16</p> <p>Elgin 3537:12,15 3538:8,20,25</p> <p>Elgin's 3537:20</p> <p>Elliot 3519:19 3602:4</p> <p>embrace 3560:17 3561:8</p> <p>embraces 3533:1</p> <p>emerged 3586:2</p> <p>emigrants 3560:20</p> <p>emphasis 3502:1, 5</p> <p>emphasizes 3467:21 3550:5</p> <p>employed 3620:11</p> <p>employee 3481:20</p> <p>employment 3538:3</p> <p>empty 3524:15</p> <p>enable 3552:19</p> <p>enabled 3536:10</p> <p>enclose 3471:18 3530:16 3583:24</p> <p>enclosed 3462:7 3579:15 3580:25</p> <p>encloses 3580:20</p> <p>encounter 3579:4</p> <p>encourage 3590:18</p> <p>end 3461:1 3468:11 3507:3 3547:9,12 3558:13 3598:15 3599:16 3605:25 3617:21</p>	<p>endeavoring 3581:7</p> <p>endeavors 3572:2</p> <p>endeavour 3563:11</p> <p>ended 3523:6,7</p> <p>ending 3575:23</p> <p>enforce 3487:6 3493:3</p> <p>enforcement 3485:20</p> <p>engage 3598:1 3599:18</p> <p>England 3538:8</p> <p>English 3565:7</p> <p>enjoy 3527:20,21 3618:5</p> <p>enormous 3618:5</p> <p>ensure 3529:21</p> <p>enterprise 3485:10</p> <p>enterprising 3581:19</p> <p>entertain 3479:14 3611:14 3612:22 3613:13</p> <p>entertained 3479:23</p> <p>entertaining 3500:25</p> <p>entertainment 3499:11</p> <p>entitled 3463:15 3539:11 3619:17</p> <p>entrenched 3479:16</p> <p>entry 3507:7 3538:17 3539:24</p> <p>Episodes 3495:17 3534:19 3535:19 3539:19</p> <p>equivalent 3503:21</p>
---	--	--	---	--

<p>erelong 3559:22 3562:17 3584:22,23</p> <p>Esquire 3584:1</p> <p>essentially 3460:18 3461:15 3477:8 3489:19 3504:2 3507:18 3514:5 3519:6 3521:10 3551:22 3573:6 3574:12 3585:20 3606:10</p> <p>establish 3621:23</p> <p>established 3462:19</p> <p>estimate 3598:13, 19</p> <p>etcetera 3561:12</p> <p>Europeans 3524:12,13</p> <p>evaluating 3461:22</p> <p>evaluation 3484:11</p> <p>Evans 3602:7</p> <p>Evans' 3602:10</p> <p>event 3454:4 3504:7 3535:18 3553:11 3554:13 3558:14 3577:16 3578:17 3583:13 3605:20</p> <p>events 3538:4 3550:14</p> <p>eventually 3603:9</p> <p>evidence 3482:13 3495:15 3497:11 3500:18 3508:4 3601:10 3603:4</p> <p>evident 3593:16 3604:9</p> <p>evidently 3507:12 3589:23 3591:3,15</p> <p>evil 3552:8</p> <p>exact 3492:18</p> <p>examples 3452:6, 7,21 3618:18</p>	<p>exceed 3562:17</p> <p>Excellence 3462:6</p> <p>Excellency 3455:25 3473:24 3474:7 3581:6 3584:5</p> <p>excerpt 3539:25 3540:4</p> <p>Exchequer 3536:14</p> <p>exclude 3596:5 3603:21</p> <p>exclusion 3584:16</p> <p>excuse 3540:25 3545:7</p> <p>excused 3596:1</p> <p>executive 3606:20</p> <p>exercised 3585:4, 5 3619:4</p> <p>exhibit 3454:15 3461:10,25 3469:23 3473:2 3482:24 3484:5 3489:10 3491:18 3502:9 3505:8,19,21,22 3509:11 3510:2,5,6 3512:24 3513:1,2 3514:16,18,19 3515:22,24,25 3526:3 3529:24 3530:6 3534:2,11, 13,18 3540:2,3,4 3551:1,22 3554:18 3556:6,15 3557:4 3558:6 3559:11 3561:23 3563:17 3565:24 3569:12 3571:20 3574:11,23 3579:12 3580:24 3583:21 3586:7 3605:10 3615:23 3616:23 3619:14,16, 17 3623:25</p> <p>exist 3503:25</p> <p>existed 3503:24 3526:14</p> <p>expect 3451:8 3467:18,19 3598:3, 16</p>	<p>expected 3466:19 3489:14 3490:7 3492:12 3523:17 3538:12</p> <p>expedient 3584:25</p> <p>experience 3485:11 3539:11 3547:1</p> <p>experienced 3601:25</p> <p>experiment 3519:15,16</p> <p>expert 3478:6 3508:23 3525:5</p> <p>expertise 3541:8 3619:7</p> <p>explain 3517:9 3548:9 3557:10,17 3561:25</p> <p>explained 3623:22 3624:2</p> <p>explaining 3564:1</p> <p>explains 3501:9</p> <p>explanation 3624:6</p> <p>explicit 3466:23 3527:9</p> <p>explicitly 3471:24</p> <p>exposure 3589:4</p> <p>express 3459:10 3476:1</p> <p>expressed 3457:15 3459:18 3466:18 3469:8,9 3475:18 3477:19,22 3479:1 3488:24 3536:17 3539:18</p> <p>expressing 3455:2</p> <p>extend 3607:13</p> <p>extending 3532:15</p> <p>extent 3622:24</p> <p>Eye 3619:12,18</p>	<p style="text-align: center;">F</p> <p>fabricated 3549:21</p> <p>faced 3493:1 3509:13</p> <p>facilitate 3537:22</p> <p>fact 3464:10 3481:16 3482:2 3499:12 3504:21 3506:14 3518:8 3545:2,8 3602:12</p> <p>faction 3480:8</p> <p>factor 3620:22</p> <p>facts 3463:9,10</p> <p>fail 3615:8</p> <p>fair 3496:19 3501:10 3507:24 3523:20 3568:8 3618:13 3619:8 3622:18</p> <p>Fairfield 3608:14, 18 3609:13,19 3611:6 3612:7</p> <p>fairly 3574:4</p> <p>fairness 3618:12</p> <p>fall 3575:14 3618:10</p> <p>false 3463:4 3500:10</p> <p>familiar 3510:19 3544:2 3575:1</p> <p>families 3572:6</p> <p>family 3545:16,19</p> <p>farm 3617:19</p> <p>farmers 3617:24 3618:25 3621:1</p> <p>farming 3519:15, 16 3572:4 3618:19</p> <p>farms 3621:23</p> <p>farther 3486:11 3621:9</p> <p>fashioned 3584:22</p>	<p>fast 3591:14</p> <p>Father 3474:25 3557:11 3572:11</p> <p>Fatherly 3619:12, 18</p> <p>favour 3574:5 3585:6 3622:11</p> <p>favourable 3497:2 3559:20</p> <p>favourably 3553:3</p> <p>favoured 3496:20</p> <p>fear 3473:25 3474:8 3593:4</p> <p>fearful 3589:23</p> <p>feasible 3477:13</p> <p>February 3530:8 3543:13 3544:24</p> <p>fee 3490:17 3509:8</p> <p>feel 3464:22 3517:10 3544:4 3587:17 3594:16 3618:13</p> <p>feeling 3525:21 3591:16</p> <p>fees 3490:16</p> <p>FELICIAN 3595:10 3596:3,7,9, 21 3597:4,8 3598:5, 8</p> <p>fell 3512:2</p> <p>felt 3466:23 3492:2 3588:6 3619:2 3621:12</p> <p>field 3619:7</p> <p>fight 3480:20 3481:2</p> <p>figure 3501:18 3565:2 3577:24</p> <p>figures 3492:21</p> <p>filling 3537:25</p> <p>final 3596:11</p> <p>finalized 3547:3,9</p>
---	---	---	--	--

finally 3479:20	footnote 3621:10, 18	fully 3588:10	Gernet 3451:5	3594:2,19 3606:21 3607:9 3613:12 3614:3
financial 3501:5 3509:15 3517:4,24 3536:11	footnotes 3491:7	fund 3546:10	gist 3565:8	Government's 3568:21
financially 3501:6	force 3457:23 3580:22	fund-raising 3518:10,13	give 3452:3 3495:21 3541:14 3550:2 3566:15 3589:10,23 3590:8, 11,16 3591:7,8 3592:24 3594:11 3602:14 3606:24 3609:14 3612:7 3618:18	Governor 3454:16 3455:9 3462:7 3474:25 3475:21 3503:4,9,15 3504:2 3537:12 3584:5 3605:21,22,23 3606:11 3607:24
find 3472:15 3474:19 3503:19 3516:9,18 3517:7 3518:3 3524:10 3538:2 3544:19 3549:10 3550:12 3566:12 3572:18 3573:17 3590:4,6 3615:19	forcible 3580:15	fundraising 3512:10	giving 3452:20 3465:2 3492:21 3564:7 3572:21 3606:11	Governorship 3535:12,21
finds 3572:11 3625:1	forcing 3617:25	funds 3490:18 3512:11	glad 3559:18 3566:12 3568:18 3572:1,18	grace 3512:2
fine 3513:4 3549:12 3595:18 3597:3 3600:16,19 3625:15	forever 3527:19 3583:2	future 3472:25	Glenelg 3601:18 3604:17,19 3605:9, 12 3606:11,12 3611:14 3612:21	grandfather 3573:15
finish 3599:12 3625:13	forget 3505:17	G	Glenelg's 3607:18	granted 3487:1 3519:9 3553:1 3610:3
finished 3479:9 3508:16 3598:16	forgot 3469:18	gain 3554:3 3588:25	goal 3549:19	gratefully 3536:21
finishing 3566:22 3613:24	form 3503:12 3579:20 3582:17	gale 3511:19	Gonawagay 3522:9	Grave 3620:1
fish 3589:2	forming 3581:10	Garland 3620:18 3621:20 3622:11	good 3453:18,19 3480:19 3481:2 3492:14 3513:11 3531:12 3533:4 3576:22 3592:7 3598:18	great 3474:25 3485:18 3501:14 3557:11 3566:14 3572:8,11 3589:4 3592:16 3610:10
finish 3599:12 3625:13	formulate 3622:22	gathered 3614:12	goodwill 3533:1	greater 3555:12
finished 3479:9 3508:16 3598:16	forward 3462:5 3478:9 3533:23 3568:4 3569:4 3599:23 3601:1	gave 3469:16 3534:23 3601:24 3603:4	government 3458:2 3464:19 3467:9 3475:21 3479:13 3480:23 3481:2 3490:15,19 3492:7 3493:1,16 3502:6 3522:22 3530:22 3532:19 3533:11 3537:23 3546:3 3552:14 3562:14 3566:16 3567:13,14 3570:14 3571:11 3572:22 3580:6 3585:2,20,22 3587:11 3588:3 3591:1,7,12,20 3592:22 3593:9	greatest 3512:3
finishing 3566:22 3613:24	forwarding 3583:21 3584:2	general 3454:16 3455:10 3462:3,7 3463:22 3473:11 3474:25 3475:22 3488:17 3504:3,12 3525:6 3537:13 3538:19 3582:19 3584:5 3605:21 3606:4,18 3607:23 3608:7 3622:19	ground 3588:24 3604:20	green 3520:24
fish 3589:2	forwards 3551:23	General's 3503:4, 9,15	group 3483:24 3488:14 3490:1 3521:14 3522:20 3523:3,9 3525:16 3547:7	Grey 3582:12
fishing 3496:24 3531:22 3532:18 3561:9	found 3550:13 3623:10	generally 3510:22 3530:15	groups 3464:11 3523:25 3525:8	grievance 3470:6 3471:20
fistfight 3495:24, 25 3501:9	fourth 3531:5	generation 3555:11	guess 3455:8 3469:16 3478:12 3493:20 3494:8 3500:4 3511:4 3513:21 3516:25	ground 3588:24 3604:20
fit 3545:11 3552:21	Francis 3611:23	gentleman 3541:16 3565:2,4		
fits 3501:22	frankly 3517:12	gentleman's 3586:13		
fix 3469:12	French 3507:17 3508:5	genuinely 3523:21		
fixed 3596:16	Friday 3451:5,10	geographic 3462:21		
flats 3474:21	friend 3476:8 3477:5 3490:22 3522:7,20 3541:5 3550:19 3551:6 3554:17 3556:4 3558:3 3561:14 3563:14 3574:10 3601:13	Georgian 3587:15 3619:12,19		
fluent 3481:24 3496:5	front 3469:25			
focus 3594:23	fulfilled 3489:19			
focused 3541:1	full 3456:9 3463:18 3481:6 3491:11 3517:10 3532:5			
follow 3546:17 3569:19				
folly 3552:9				
foot 3592:24				

<p>3519:17,24 3520:22 3528:21 3539:2 3542:13 3552:18 3553:24 3556:16 3560:3 3580:11 3583:23 3585:9 3604:20 3608:25 3609:18 3611:9,20 3620:14</p> <p>guided 3606:21</p> <p>Guirguis 3451:24 3478:2,3 3507:25 3508:1,9 3536:3 3541:1,3,13,18,23 3542:7,10,21 3597:7 3598:21,24 3599:2</p> <p>Gummersall 3481:6</p> <hr/> <p style="text-align: center;">H</p> <hr/> <p>habits 3588:15</p> <p>half 3470:13 3515:1 3527:13 3529:10,18 3553:24 3560:4 3580:9 3587:24</p> <p>halfway 3468:23 3511:4 3526:9</p> <p>hand 3552:14 3562:15 3590:17 3616:12 3617:25</p> <p>hands 3531:16 3590:10 3607:7</p> <p>handwriting 3517:15,16 3566:24</p> <p>handwritten 3511:17 3586:9</p> <p>hang 3545:19</p> <p>happen 3451:14 3571:14 3578:23 3614:5</p> <p>happened 3460:12 3465:24,25 3472:14 3479:18 3520:20 3523:3 3541:2 3548:23 3563:13 3585:13 3596:25</p>	<p>happy 3566:25</p> <p>harbour 3532:21 3552:10 3561:10</p> <p>hard 3584:12 3620:24</p> <p>hardship 3463:25</p> <p>harmful 3617:17 3619:2</p> <p>harsh 3555:17</p> <p>harvest 3618:2</p> <p>Hayter 3617:22</p> <p>he'll 3571:13</p> <p>head 3537:19 3538:19 3551:8 3560:16 3602:16,22 3604:24 3605:3,5,15 3608:7 3611:23 3612:11 3615:12 3624:25</p> <p>Head's 3601:17 3604:9,16 3608:13</p> <p>healthy 3607:8</p> <p>hear 3451:11 3580:14</p> <p>heard 3451:10 3508:6 3520:8 3522:8 3588:2 3595:15 3596:9,12, 16,21 3597:1,22</p> <p>hearing 3452:3 3616:8</p> <p>heavily 3583:17</p> <p>heirs 3528:9</p> <p>held 3544:17 3582:13</p> <p>helpful 3452:10,20 3473:6 3478:10 3568:15 3616:13 3622:22</p> <p>helping 3618:14 3621:22 3623:6</p> <p>helpless 3607:12</p> <p>Henry 3540:1,6,20 3541:20 3542:5</p>	<p>Herbert 3543:11</p> <p>hereinafter 3527:24</p> <p>heretofore 3527:1 3576:11 3578:11</p> <p>higher 3486:5 3487:15</p> <p>highly 3581:19</p> <p>hindrance 3528:7</p> <p>hint 3573:2</p> <p>hinted 3593:3</p> <p>historian 3510:23 3512:9 3593:15</p> <p>historians 3542:2</p> <p>histories 3614:12</p> <p>history 3490:21,23 3499:10 3615:13 3624:3</p> <p>hold 3451:22 3487:1 3543:11 3555:7,13</p> <p>home 3454:5 3538:11</p> <p>honestly 3549:10</p> <p>honour 3451:7 3453:6,15 3478:3 3505:19 3508:1,8,19 3509:4 3541:3,13 3542:22,25 3546:15, 20 3547:22 3562:1 3583:24 3595:10,19 3596:3,9 3598:25 3600:1,12 3601:4,8 3625:16</p> <p>hope 3474:22 3555:1 3593:7,9</p> <p>hoping 3525:24 3579:4</p> <p>house 3513:13</p> <p>humanity 3607:13</p> <p>hundred 3590:9 3594:12 3622:5</p> <p>hundreds 3621:17</p> <p>hunting 3496:24</p>	<p>3524:9,24 3531:24</p> <p>Huron 3526:10,19, 21,24 3530:19 3587:14</p> <p>husband 3522:1</p> <hr/> <p style="text-align: center;">I</p> <hr/> <p>idea 3480:19 3481:2 3482:9 3492:10,12,18 3504:17 3516:15 3519:2 3525:18 3533:11,23 3584:11 3591:4</p> <p>ideal 3505:5</p> <p>identical 3619:24</p> <p>ideology 3524:22</p> <p>ignore 3498:19</p> <p>illegible 3576:7</p> <p>imagine 3576:19</p> <p>immediately 3459:24 3582:25</p> <p>immigration 3525:19</p> <p>immorally 3501:22 3502:3</p> <p>Imperial 3536:14</p> <p>implied 3466:20 3467:2 3471:25</p> <p>imply 3485:22 3489:8</p> <p>implying 3615:1</p> <p>important 3476:15 3565:9 3579:21 3600:8 3606:3</p> <p>importunity 3584:20</p> <p>impose 3482:21</p> <p>imposed 3618:20</p> <p>improvement 3579:19 3581:25</p> <p>improvements 3457:14</p>	<p>in-person 3556:12</p> <p>inalienable 3610:5</p> <p>incapable 3592:3</p> <p>incidences 3615:10</p> <p>inclined 3544:4</p> <p>include 3553:14 3582:6</p> <p>included 3492:22</p> <p>including 3451:16 3509:14 3526:23 3529:17 3548:14 3562:5</p> <p>income 3532:7 3561:2</p> <p>incorrect 3472:3</p> <p>incorrectly 3476:13 3501:22</p> <p>increase 3571:13 3572:7 3573:11 3584:13,23,24</p> <p>increased 3570:7 3571:9 3584:14</p> <p>indebted 3550:8</p> <p>Indian 3463:5 3464:1 3465:23 3481:10,21,22 3484:22 3489:6 3490:10 3502:12,19, 23 3503:3 3512:3 3530:12,18 3536:9, 12 3546:5,10 3554:25 3575:12 3577:11,12 3578:5 3579:20 3581:22 3582:6 3588:14 3597:19 3606:22 3607:5 3612:6 3614:9,12 3617:5, 10,14,18 3618:3,11, 16,19,22 3619:1,7, 12,18 3620:7 3622:12 3624:4,16, 17</p> <p>Indians 3462:4,8, 25 3464:17 3466:19 3471:15 3472:17 3473:23 3474:1,6,9</p>
--	---	---	--	---

3487:4 3488:18,19 3507:1 3513:19 3519:11 3527:18 3530:23 3532:10 3533:1 3553:15,23 3559:15 3562:3,18 3564:2,18,22,24 3566:13 3568:18,19 3570:12,17 3571:10 3575:17 3576:12 3577:2,6 3581:8 3582:10,13 3584:8, 12,16 3587:12,25 3588:4,11 3589:17 3591:15 3606:7 3609:6,13 3611:3 3617:24	influence 3495:5 3588:5 influenced 3488:5 influx 3524:4 inform 3568:1,25 information 3453:8 3612:18 informed 3553:5 3562:8,9,11 informing 3569:17 initiated 3573:15 injurious 3486:3 injury 3458:16 inquiries 3599:18 inquiring 3562:3 inserted 3564:9 3589:10 inspire 3590:25 inst 3566:5,7 3572:1 installments 3486:19 3487:4 instance 3452:22 3500:17 3550:1 3623:4 instant 3566:8 instructions 3606:12,25 3607:2 instructors 3617:19 instruments 3618:1 integrity 3617:12 intelligence 3617:11 intentions 3607:8 interest 3501:5 3552:17 3559:23 3561:3 3602:11 3622:7 interested 3497:14 3498:3,7 3499:12,15 3500:9,	13 3501:3,23 3502:1 3535:25 interesting 3456:7,21,22 3472:15 3593:19 interests 3483:11, 15 3484:4 3485:25 3487:12 3488:2 internal 3578:18 interpret 3488:20 interpretation 3488:1,6 interpreter 3473:15 3495:10 3500:24 3501:16 interrupt 3498:10, 21 interval 3452:10 intervening 3600:4 intervention 3576:20 interview 3507:11 3508:12 interviewed 3614:21 interviews 3624:3 introducing 3570:15 invited 3479:8 inviting 3478:23 involve 3578:19 involved 3486:1 3490:17 3547:7 3548:13 3550:3 3583:17 3586:22 involvement 3468:5 involving 3559:8 ipad 3597:8 Island 3604:10 3608:8 3610:12,17 islands 3526:23 3527:4,11 3532:18	3561:10 3609:8 issue 3452:24 3461:7 3469:13 3471:22 3476:15 3491:3,9 3598:22,24 issued 3526:7 issues 3451:18 3460:8 3476:18 3477:9 3517:19 3528:1,4 3534:22 3573:4 issuing 3553:4	<hr/> J <hr/> Jacobs 3493:9,24 3494:2,17 3497:2 3499:5 3500:7 3501:13 3502:1,2,13 3503:22 3505:4 3506:3,8,23 3509:6, 8,13,18,25 3510:7, 14,25 3512:10 3513:16 3514:4,25 3515:16 3516:6 3517:3,13,14,16 3518:15 3548:15,20 Jacobs' 3496:16 Jacobs's 3517:23 James 3548:8,12 3602:7 January 3505:16 3506:1 3537:7,8 JARVIS 3453:16 Jim 3614:25 John 3466:9 3473:14 3496:9 3512:18 3515:14 3516:13 3520:12 3550:22 Johnston 3550:23 join 3523:18,22 3593:8 joined 3519:6,7 Jones 3496:13 journal 3551:22	judicious 3532:11 July 3466:19 3468:15,16 jumping 3550:11 June 3454:15,21 3461:11,12,14 3468:12 3534:5 3537:5 3552:1 3554:4,10 3556:5 3574:10 justice 3547:7 3591:1 3609:24 justification 3594:24 justify 3542:15
indicating 3452:13 3505:13 Indies 3535:13,22 3536:20 Indigenous 3454:8,11 3475:18, 24 3482:3 3488:13, 16 3490:8 3496:20 3518:1 3524:3 3548:19 3578:19 3593:22,25 3594:17 3602:12,15 3603:14 3605:4 3607:19 3613:7 3618:15,17 3619:3 3623:2,11 indispensable 3607:6 individuals 3463:7 3525:12 induce 3572:2 3589:22 induced 3538:6 3593:14 3609:7 inducement 3498:5 3594:9 indulgence 3486:25 industrious 3594:20 inferred 3494:22 3495:4 inflicting 3458:6, 15				<hr/> K <hr/> K-N-I-L-S 3586:14 K-R-I-B-S 3586:15 Kaduhgeqwon 3473:14 3512:20,21 3515:14 3516:13 Katherine 3521:25 Keating 3578:25 keeping 3544:7 3552:9 Keeshig 3455:16 3496:5 3563:15,19, 25 3566:2 3569:7,9 3573:20 Keeshig's 3568:7 3573:14 Kegedonce 3463:19 3496:13 3564:17 3569:9,13 3571:22 3573:7,15, 18 3574:4 Kegedonce's 3571:2 kicked 3624:4 kicking 3624:7,8 kind 3479:11 3536:18 3537:23 3545:16 3559:6 3594:14 3615:18	

<p>kindly 3546:24</p> <p>kinds 3492:21 3506:17 3618:15</p> <p>knew 3479:21 3493:18 3503:20 3510:25</p> <p>Knils 3586:14</p> <p>knowledge 3496:8 3497:8 3499:9 3542:11</p> <p>Kribs 3586:15,22</p> <hr/> <p style="text-align: center;">L</p> <hr/> <p>labelled 3605:11</p> <p>Labouchere 3540:1,6,20 3542:5 3543:6,18 3544:9,21</p> <p>Labouchere's 3545:25</p> <p>labouring 3587:21,23</p> <p>lack 3529:17</p> <p>lag 3545:21</p> <p>laid 3456:4,25 3474:17</p> <p>lake 3526:10,19,20, 23 3530:19 3560:8 3561:8 3587:14</p> <p>lakeshore 3560:9</p> <p>land 3466:17 3467:6 3469:21 3471:1,4,16 3472:18 3483:22 3485:17 3486:21 3489:1,7,16 3492:1 3523:7,16 3524:13,14,19,23 3525:2 3527:2,22 3528:5 3531:10 3532:2 3533:6 3549:17 3553:22 3566:15 3571:3 3572:20 3573:8,12 3574:18,21 3577:17, 22 3578:21,25 3581:9 3582:10 3584:14 3585:5,22 3588:4 3589:24</p>	<p>3590:2 3591:6,11 3592:11 3594:4,8, 21,25 3595:7 3609:9,15 3610:1,23 3611:11,14 3612:8 3613:25 3625:3</p> <p>lands 3457:13 3458:3,18 3466:3 3473:25 3474:8,13, 15 3477:11,14 3486:16 3490:3,10 3529:13 3530:11,19 3546:9 3552:10 3555:10 3564:5,23, 24 3570:13,19 3571:10,15,17,18 3575:12 3577:2,6,15 3578:5 3579:20 3580:6,8,11 3581:17,22 3587:13 3588:21 3590:20 3593:4,11 3596:14 3597:19 3603:19</p> <p>language 3621:5</p> <p>languages 3496:6</p> <p>large 3485:7 3505:9 3511:7 3517:8 3522:20 3523:9 3532:7 3552:16 3561:2 3579:17 3581:21 3611:15,20 3613:21</p> <p>largely 3485:25 3491:25 3518:25</p> <p>larger 3563:21 3572:10 3573:9 3613:23</p> <p>late 3456:20,24 3477:1 3520:4 3554:5,9 3613:4</p> <p>Latrobe's 3609:12</p> <p>Lawrence 3573:14,20</p> <p>lay 3470:5</p> <p>lean 3589:13 3616:12</p> <p>leap 3597:24</p> <p>learn 3559:18 3568:18 3572:1</p>	<p>learned 3561:25 3581:6</p> <p>lease 3471:9,14 3472:1,17 3490:2,4, 9 3567:10 3568:21</p> <p>leasing 3490:11 3556:19 3557:13</p> <p>leave 3471:5 3505:3 3506:20 3518:14 3528:21 3530:16 3581:12 3582:18</p> <p>leaving 3472:25 3510:15 3523:8 3537:11 3539:15 3567:4 3607:24</p> <p>lecturing 3511:22</p> <p>leery 3517:11</p> <p>left 3453:20 3488:1 3500:1 3501:18 3502:21 3523:4 3527:14 3537:7 3538:11 3545:12 3546:5 3566:1 3604:23 3605:15 3609:4</p> <p>Legislative 3453:22 3454:1</p> <p>lending 3517:5</p> <p>lent 3514:4 3515:16 3516:20</p> <p>letter 3461:2,13 3467:20 3468:11 3469:25 3473:8,21 3475:2,10,12 3488:23,24 3491:25 3493:16,19 3507:2 3513:6 3530:1,7 3550:15 3554:18 3556:4 3557:6,16 3558:3,7 3559:12 3562:7,11 3563:1,4, 15,24 3566:5 3568:2,7 3569:1,11, 12 3571:25 3573:3, 17 3574:11,20,24 3576:25 3579:11,12 3583:25 3586:3,4,5 3587:5 3592:10,20 3593:16,19 3609:12</p>	<p>3616:3</p> <p>letters 3543:20 3585:12 3621:1</p> <p>letting 3573:7</p> <p>level 3622:19</p> <p>liberal 3610:8</p> <p>liberty 3587:19 3610:25</p> <p>licence 3489:23 3490:2,4 3492:6,8</p> <p>license 3493:20</p> <p>Lieutenant 3535:12,21 3605:22, 23 3606:11 3607:24</p> <p>Lieutenant-governorship 3536:19</p> <p>life 3495:17 3496:24 3504:11 3622:3</p> <p>light 3596:23</p> <p>limited 3486:17</p> <p>limits 3516:16</p> <p>lines 3457:10 3459:21 3478:25 3484:11 3543:14,15 3562:10 3569:16 3625:5</p> <p>list 3516:18 3546:25</p> <p>listed 3603:5</p> <p>listen 3557:15</p> <p>lists 3516:9</p> <p>live 3589:2</p> <p>lived 3521:22</p> <p>livelihoods 3618:17 3619:3</p> <p>living 3566:23</p> <p>loaning 3514:5</p> <p>local 3490:21 3607:3,25</p> <p>locate 3503:14</p> <p>located 3609:9 3623:19</p>	<p>location 3484:23</p> <p>locations 3452:14 3496:21</p> <p>London 3604:17</p> <p>long 3481:11 3499:25 3507:10 3537:4 3538:24 3592:19 3613:11</p> <p>longer 3570:1 3598:14</p> <p>looked 3490:12,13 3491:17 3550:15,20 3600:13</p> <p>Lord 3462:2,3 3468:12 3469:8,12 3473:10 3482:20 3535:21 3536:15 3537:11,12,15,19 3538:1,8,20,24 3539:6 3540:11,13, 14 3541:5,19 3543:10 3544:16 3545:2 3601:18 3604:17,19 3605:9, 12 3606:10,12 3607:18 3611:13 3612:21</p> <p>Lordship 3462:5</p> <p>lost 3494:20 3498:9</p> <p>lot 3466:4 3491:7 3517:23 3524:11 3525:3,6 3593:18 3619:4 3623:7 3624:3,22</p> <p>lots 3471:8</p> <p>love 3512:4</p> <p>Ludwick 3586:14</p> <p>lunch 3534:17 3546:18 3547:6,16, 19</p> <p>lying 3581:10 3582:7 3587:14</p> <hr/> <p style="text-align: center;">M</p> <hr/> <p>machinery 3618:1,22</p>
---	--	---	---	--

Madam 3597:12 3599:13	Manitoulin 3604:9 3608:8 3609:8 3610:12,17 3612:1	3583:4,16,22 3584:1 3585:12	mention 3509:12 3523:13 3524:12 3527:3	3589:14,17 3598:4 3600:14,16
made 3451:4,16,17 3457:17 3459:2 3460:22 3463:5 3466:14,18 3467:8 3481:15 3489:18 3505:18 3506:13,15 3509:11 3510:2 3512:23 3514:16 3535:10 3538:2 3540:2 3544:10 3576:15 3580:5 3585:18 3594:3 3603:9,10 3619:14	manner 3459:19 3461:8 3464:23 3476:25 3488:23 3496:24 3503:10 3524:20 3592:5 3598:23 3611:1	Mcnabb's 3470:18 3585:7	mentioned 3460:4 3494:21 3517:18 3521:3 3525:8,10 3526:2 3537:3 3548:4,7 3614:19 3615:7 3616:11 3623:13	minds 3488:17
Madwayosh 3465:13 3473:14,15, 18 3512:17,18 3515:13 3516:12	Manual 3560:22	meaning 3483:10 3484:3 3568:11 3604:22	mentions 3509:18 3537:18	Minister 3511:19 3536:16 3544:22 3586:6
magnetic 3511:14	map 3456:25 3461:4 3520:22,24 3533:15,16 3568:24	means 3483:19 3486:17 3488:2 3501:4 3536:8 3550:10 3566:7 3572:5 3578:23	merged 3623:18	ministry 3543:5
mailing 3461:15	maps 3567:25 3568:24	meant 3499:11 3577:19,24 3615:3	merits 3592:10	minute 3530:3
main 3469:14 3549:22 3625:9	March 3473:3,8 3502:20 3512:15 3513:3 3514:1,10, 13,20 3515:21 3516:1 3563:16,24 3565:19,20,25 3569:12 3571:22	measure 3572:8	message 3583:22	misguided 3617:17
mainland 3526:25	mark 3567:25 3568:24	measured 3471:7	messages 3481:1	misrepresented 3548:22
maintained 3469:19 3480:22	marked 3515:13 3516:12 3588:19	measures 3555:17	messenger 3552:5	missed 3534:4 3585:11,13
Majesty's 3607:9	market 3584:7 3588:8 3592:19	medals 3469:16	met 3468:23 3544:18 3550:21 3556:23	mission 3494:8 3539:4 3608:15,19, 24 3609:22 3610:11, 22 3611:7
make 3460:17 3492:8 3500:20 3501:17 3507:6 3515:3,21 3517:20 3527:16 3533:4 3547:15 3564:8,22 3565:1 3569:5 3570:9,12 3571:9,14 3573:12 3576:4,6,16 3578:8,23 3579:25 3581:12 3590:18 3595:14 3603:24 3618:23,24	mark 3567:25 3568:24	meet 3468:18 3582:21 3592:4	Methodist 3494:3 3517:25 3518:1 3602:8	missionaries 3602:3,13,14,19,23 3603:1,15 3608:20 3609:16 3610:7 3612:9
makes 3501:8,12	marked 3515:13 3516:12 3588:19	meeting 3469:6 3480:11 3554:17 3556:9 3563:5 3570:23 3579:5 3585:15 3586:22	Methodists 3496:20 3509:19	missionary 3494:3 3495:5 3517:25 3518:1 3548:20 3587:24 3594:23
making 3491:15 3572:2	market 3584:7 3588:8 3592:19	member 3466:1 3500:9 3543:4	Metigwob 3601:22	Missisaugas 3521:6
man 3480:25 3545:16 3564:25 3604:20	master 3512:2	members 3454:8, 11 3475:18,25 3499:16,19,23 3609:22	mid-1850s 3614:3	misspoke 3599:14
managed 3589:9	matches 3500:18, 19,20	membership 3519:10	mid-sentence 3478:18,20,23	mistake 3594:4 3620:1
management 3532:12	materials 3476:12	memoire 3497:12 3498:12 3500:18 3501:14 3504:22 3534:19 3550:6	middle 3511:9	mistaken 3526:4
	Matheson 3547:8	Memorial 3579:15 3580:20,25 3581:4 3584:19	Mile 3470:13 3529:10,18 3553:24 3560:4 3580:9	mixed 3574:2
	matter 3524:7 3546:23 3575:8 3576:9 3578:10 3597:13 3607:10	member 3466:1 3500:9 3543:4	miles 3474:17 3526:24 3531:13 3552:22 3560:6 3561:7	moderate 3621:2
	matters 3466:5 3480:5 3575:10	members 3454:8, 11 3475:18,25 3499:16,19,23 3609:22	Military 3620:21	moderation 3610:10
	Mcnabb 3470:1 3471:20,25 3472:24 3476:1 3513:14 3514:23 3516:4 3548:16 3549:14 3554:19,22 3555:20, 21 3558:3,7 3559:5, 12 3562:16,23 3579:12 3580:18	members 3454:8, 11 3475:18,25 3499:16,19,23 3609:22	mill 3556:19,21 3557:13,21,24 3562:6,21 3563:1,7, 20,21 3565:13 3568:8	Mohawks 3522:8, 16,23 3553:2,7,19
		member 3466:1 3500:9 3543:4	mind 3544:8 3563:20 3564:22	Molesworth 3543:9
		memorialists 3581:5 3582:1,18,23 3583:1		moment 3476:10 3479:24 3489:10 3494:20 3503:8 3505:9 3534:16,21

3539:22 3541:14 3586:21 3619:11	Municipal 3583:14	negotiate 3539:2	notwithstanding 3466:4	obvious 3512:5
monetary 3603:5	mysterious 3518:4	negotiated 3507:19 3587:9	November 3483:8 3535:3 3543:8 3544:23 3545:4,9 3548:1 3557:25 3558:4,8	occasion 3516:21 3552:7 3599:8 3600:9
money 3459:11 3492:2,7,19 3497:9, 20 3498:4 3504:5 3509:20 3514:4 3515:16 3516:8,18, 24 3517:4,8,19 3546:4,9 3621:14,22 3622:1,4,6,8 3623:11,12	N	negotiating 3507:13	number 3468:12 3471:13 3475:15,17 3503:5 3505:13 3534:11 3538:13 3563:10 3585:9 3597:2,23 3600:6,17 3601:14 3605:11 3616:5 3619:11 3624:21	occasions 3615:8
month 3566:7,9,10, 11	Nadjiwan 3624:13 3625:4	negotiations 3476:25 3494:11 3497:16 3506:10 3587:12 3593:10 3602:20	numbers 3452:18 3493:3 3505:14 3519:5 3523:11 3617:3	occurred 3529:21 3602:23
months 3538:14 3621:14	named 3466:6	neighbourhood 3580:7	O	October 3465:1 3466:15,21 3470:2 3475:7 3480:16 3554:20 3556:18 3557:7,25 3562:7 3587:7
moral 3607:4	names 3576:13	night 3457:1	obituaries 3510:23	odd 3462:15
Moravian 3608:15, 20,24 3609:22 3610:7,11 3611:7	Narrows 3519:14 3520:5	nobleman 3540:9	obituary 3509:24 3510:6,21 3511:4	offer 3535:10 3536:18 3538:7
Moravians 3612:21	Nation 3482:18 3530:1	nods 3478:14 3617:4	object 3557:9 3589:18	offered 3497:9,10, 12,17 3498:4 3535:21 3538:5,17 3545:2,3 3591:18 3592:17,23 3594:4
morning 3453:18, 19 3508:15 3625:14	National 3539:24 3540:5 3543:24	non- improvement 3581:21	objected 3605:6	office 3463:21 3506:4 3537:25 3543:12 3623:19 3624:8 3625:7,9
Moses 3473:15,17	Nations 3452:16 3482:14 3518:18 3519:7 3528:13 3529:16 3578:20 3618:7	non-indigenous 3485:13 3518:2	objection 3452:9 3541:15 3542:4,9	officers 3455:6,14 3464:6 3528:11
mosquitos 3552:11	native 3499:13	Norman 3490:23 3491:8	objected 3557:9 3589:18	official 3520:9
motion 3451:10,12, 16,23,25	natural 3511:6 3532:21 3595:12	north 3526:20 3575:12 3578:5 3581:10 3582:11 3603:20	objected 3605:6	officials 3468:12 3493:17
motives 3461:22	nature 3538:4 3605:4	northeast 3560:15	objectionable 3625:2	Ojibwe 3454:19 3462:9 3483:4 3484:25 3521:11,12, 13,14 3524:6 3525:20 3527:18 3602:23
mouth 3558:18 3560:9	Nawash 3454:20 3455:15,21 3463:20 3465:2,13 3468:8,18 3485:3 3487:13 3506:25 3519:7 3521:24 3523:14 3558:25 3559:19 3560:13,18 3582:13 3585:15 3614:14 3615:11 3616:15 3623:16 3625:7	northerly 3560:6	objections 3510:3 3553:7	Oliphant 3459:2,4, 17 3460:13 3464:25 3466:6 3467:3 3482:20 3489:3 3495:21,23 3498:2, 18 3499:4 3500:6 3501:21 3502:15 3504:11,16 3506:13 3534:25 3535:10 3537:4 3544:15,18 3545:6 3546:2 3548:8,22 3574:17 3583:22 3586:18
move 3475:13 3521:19 3522:21 3525:9,22 3548:3 3556:3 3601:9	necessarily 3472:5 3483:18 3549:20 3620:16 3624:7	northwest 3560:2	oblige 3513:25 3515:12 3516:11	
moved 3518:22 3519:22,23 3520:6 3522:17 3523:3 3573:25 3613:6	needed 3489:20 3614:5	note 3460:11 3473:14 3506:22 3541:7 3554:24 3574:16 3597:17 3600:17 3606:17	obliged 3589:1	
moves 3523:1	negative 3593:24 3594:10,15,16	noted 3471:21 3491:6 3523:23 3527:4 3550:2	observe 3531:7 3609:21	
moving 3518:18 3521:15 3524:8	neglected 3620:17	notes 3541:1	observed 3452:22	
MP 3506:16		notice 3465:2,21 3468:7 3517:12 3595:11	obtain 3581:7	
mugging 3515:4		notification 3477:1	obtained 3506:9	
		notion 3605:7	obtaining 3500:16 3502:15 3550:4	

<p>Oliphant's 3459:25 3483:6,8 3484:6 3495:17 3497:10,12 3506:4 3540:12 3548:1,8</p> <p>one-third 3486:22</p> <p>Ontario 3491:15 3546:24 3608:20</p> <p>open 3512:9 3625:7</p> <p>opened 3459:21</p> <p>opening 3459:14</p> <p>operated 3623:19</p> <p>opinion 3477:18 3478:7 3559:25 3562:16 3570:18</p> <p>opportunities 3570:15</p> <p>opportunity 3532:14 3569:15 3575:10</p> <p>oppose 3464:19</p> <p>opposed 3563:21 3578:15</p> <p>opposing 3618:19</p> <p>opposite 3532:17</p> <p>opposition 3556:1</p> <p>oppression 3464:21</p> <p>oral 3614:11 3615:13 3624:3</p> <p>order 3486:16 3511:6</p> <p>ordinarily 3598:3</p> <p>original 3451:11, 20 3474:3 3532:9 3543:4 3576:1,2</p> <p>originally 3519:12 3540:19 3553:9</p> <p>Orillia 3509:25 3510:7,13,19</p> <p>Ottawa 3621:15</p> <p>outcome 3501:6</p> <p>outline 3578:3</p>	<p>overlap 3529:1</p> <p>overlapped 3451:17</p> <p>overseas 3620:11</p> <p>Owen 3462:10,11, 20 3468:24 3474:18 3484:20 3485:2,3,5 3552:24 3553:9,13, 16 3556:10 3559:19 3564:21 3570:16 3573:24 3584:9 3603:20</p> <p>Owens 3552:4</p> <p>owners 3552:12</p> <p>Oxford 3539:24 3540:5 3543:23</p> <hr/> <p style="text-align: center;">P</p> <hr/> <p>p.m. 3625:18</p> <p>pacing 3458:7</p> <p>pages 3606:15</p> <p>paid 3459:6,11,21, 25 3461:8 3476:20, 21 3486:19,23 3494:22,23,24 3495:5,9 3497:3,4,6 3498:8 3500:7,14,24 3515:9 3516:8,17 3518:2,3 3622:9</p> <p>paints 3550:6</p> <p>palatable 3502:7</p> <p>palm 3464:2</p> <p>Palmerston's 3543:5,12,17</p> <p>paper 3502:18</p> <p>paperwork 3503:10</p> <p>paragraph 3455:2, 4,13 3456:6,9 3457:9 3463:16,18 3464:9,14 3466:12 3467:5 3484:8 3507:8 3532:22 3543:2 3553:20 3559:14 3567:2,15 3572:17 3589:6</p> <p>3606:1 3608:1,4,6 3609:2 3610:18 3617:7</p> <p>paragraphs 3452:18 3456:14 3463:12 3619:8</p> <p>paraphrasing 3477:7 3478:5 3483:14</p> <p>parcels 3549:16</p> <p>part 3466:5 3471:3, 4 3472:16 3501:23 3505:6 3519:8 3526:25 3528:8 3534:24 3536:25 3546:8 3550:17 3553:8 3558:9 3559:2,16 3563:13 3567:11 3575:4 3589:19 3593:20 3596:12 3609:14 3612:8</p> <p>participates 3495:22</p> <p>parties 3576:11 3578:11</p> <p>partly 3594:22,23, 24</p> <p>parts 3592:11</p> <p>pass 3615:15</p> <p>passage 3620:10</p> <p>passed 3485:4,5 3616:5</p> <p>passing 3471:20 3574:15</p> <p>past 3547:1</p> <p>patent 3489:19 3543:20</p> <p>patents 3492:23</p> <p>pattern 3618:16</p> <p>pausing 3508:14</p> <p>pay 3489:20 3493:18,20 3513:2, 9,15 3514:9,19,24 3515:20,25 3516:5 3594:8 3595:7 3621:13</p>	<p>paying 3487:3 3491:11</p> <p>payment 3495:13 3500:21,22 3503:11 3504:10 3603:10</p> <p>payments 3489:20 3491:13 3558:9 3603:8</p> <p>PDF 3620:4 3621:8</p> <p>peasant 3617:24 3618:19</p> <p>peculiarities 3607:5</p> <p>pecuniarily 3497:13 3498:2,7 3499:12,15 3500:9, 12 3501:3,23,25</p> <p>Pelletier 3451:25 3452:20</p> <p>pence 3515:2</p> <p>Peninsula 3463:14 3468:13 3502:16 3504:14 3518:18 3519:3 3521:16 3522:4,17, 21 3523:3 3524:14 3525:9 3532:1 3533:12 3549:17 3550:17 3569:6 3574:21 3578:1 3579:1,4 3580:16,22 3581:10 3588:1 3589:8 3610:13 3613:10</p> <p>Pennefather 3473:9</p> <p>penny 3552:12 3572:24</p> <p>people 3469:17 3472:13 3482:3 3488:9,13,18,19 3490:8 3496:15 3506:17 3524:3,7 3525:18,22,24 3548:23 3549:14 3560:13 3563:11 3572:19 3578:14 3585:9 3591:21 3593:22,25 3594:17 3602:12,15 3603:14</p> <p>3605:4 3607:19 3610:17 3613:8 3614:21 3615:2 3619:3 3623:2,11 3624:21</p> <p>peoples 3496:20 3608:21,22 3616:25 3618:17</p> <p>perfectly 3542:18 3570:4 3597:3 3600:16,19</p> <p>perform 3495:16</p> <p>period 3462:20 3488:12 3493:1 3613:4</p> <p>periods 3517:6</p> <p>permission 3518:11,13</p> <p>permit 3493:5,6,20 3542:20</p> <p>permits 3492:23</p> <p>person 3455:15,20, 24 3459:9 3480:22 3499:8 3541:6 3556:23 3557:18</p> <p>personal 3494:10</p> <p>personalities 3622:25</p> <p>persons 3486:17 3617:11</p> <p>persuade 3555:2</p> <p>persuaded 3609:14 3612:7</p> <p>pertained 3556:19</p> <p>pertaining 3476:12 3556:9</p> <p>pertains 3460:21</p> <p>Peter 3493:9,23 3494:2,17 3496:13, 16 3497:2 3499:5 3501:13 3502:13 3503:22 3506:3,23 3509:6,8,25 3510:7, 14 3516:6 3517:13 3518:15 3548:20</p>
---	---	--

<p>petition 3453:21 3454:1,16,24 3455:1 3461:16 3462:8,13, 25 3467:21,23 3491:18 3584:2</p> <p>petitioner 3526:6</p> <p>petitions 3475:15, 20 3477:18 3482:12</p> <p>petty 3618:4</p> <p>ph 3522:9</p> <p>phrase 3483:11 3488:3,7 3499:12 3501:2 3506:22 3575:24 3589:15 3597:10,23</p> <p>physical 3607:5</p> <p>PI 3569:13</p> <p>pick 3480:19</p> <p>picture 3540:24 3543:2 3550:6</p> <p>piece 3469:3 3500:18 3502:18</p> <p>pipeline 3547:16</p> <p>pique 3600:7</p> <p>piqued 3602:11</p> <p>PJ 3569:13</p> <p>place 3474:1,9 3477:1 3491:22 3494:11 3526:12 3543:8 3564:2</p> <p>places 3502:1</p> <p>Plaintiffs 3451:17 3452:12</p> <p>plan 3451:11,20 3564:3 3570:1 3598:14</p> <p>planning 3578:23</p> <p>plans 3471:25</p> <p>plausible 3505:6 3512:13 3570:25</p> <p>played 3600:14</p> <p>playing 3600:15</p> <p>pleased 3456:1</p>	<p>pleasure 3527:13, 17</p> <p>plenty 3560:19</p> <p>point 3455:8,18 3472:25 3476:6 3477:20 3488:3 3497:10 3498:17 3505:3 3525:19 3527:7 3528:14,22 3548:3 3549:4,22 3554:14 3565:9 3577:10 3596:10 3608:22 3613:24 3625:13</p> <p>pointed 3555:14 3599:7</p> <p>points 3553:15</p> <p>policies 3528:17 3604:16 3619:2</p> <p>policy 3604:2,6,8 3613:5,6 3617:23 3618:19,23,24</p> <p>politically 3620:14</p> <p>Poor 3555:8</p> <p>poorly 3620:15</p> <p>population 3463:13 3613:21,23</p> <p>portion 3458:16 3470:21 3471:6 3486:9 3488:8 3530:25 3558:16 3562:4 3579:21 3581:9 3590:7 3592:17 3597:17 3609:6 3610:4,23 3611:1</p> <p>portions 3452:14 3489:15 3591:5</p> <p>portrayal 3550:3</p> <p>position 3530:17 3537:4 3545:3,4</p> <p>positive 3558:4</p> <p>possess 3527:19, 21 3607:15</p> <p>possessed 3485:10</p>	<p>possession 3532:19 3555:8 3580:15 3589:19</p> <p>possibility 3512:10 3517:3</p> <p>possibly 3551:14 3568:9 3576:13 3603:14,16</p> <p>post 3543:10 3545:8</p> <p>posterity 3527:19</p> <p>Potawatomi 3518:22 3525:10</p> <p>potentially 3485:12</p> <p>pounds 3494:24 3500:15 3502:14,20 3503:5 3513:16 3514:5,25 3516:7,21 3535:20 3536:14 3546:3 3590:9</p> <p>power 3480:21 3543:18 3618:5 3619:4 3624:18</p> <p>powerful 3618:6</p> <p>practical 3531:11 3562:13</p> <p>pragmatic 3524:7</p> <p>prairies 3618:20</p> <p>pray 3583:2</p> <p>praying 3584:4</p> <p>preached 3494:11</p> <p>preacher 3501:19</p> <p>predecessor 3542:5</p> <p>preference 3536:22</p> <p>preferred 3610:9</p> <p>preparation 3607:2</p> <p>prepared 3455:23 3457:2</p> <p>presence 3624:10</p>	<p>present 3465:24 3481:16 3506:10,14 3511:25 3555:13 3561:3 3562:13 3582:13 3584:12 3586:22 3602:19,24</p> <p>presented 3456:3</p> <p>presents 3552:20 3553:5 3590:21</p> <p>press 3463:7</p> <p>pressed 3484:19 3488:9</p> <p>pressing 3584:11</p> <p>pressure 3583:14 3585:8</p> <p>pressured 3477:10 3479:20</p> <p>pressures 3478:17</p> <p>pretty 3477:11 3572:14 3613:15</p> <p>prevail 3588:7</p> <p>preventing 3624:9</p> <p>previous 3464:5 3514:12 3541:4,19 3563:1 3578:4 3580:10 3606:7</p> <p>previously 3453:16 3462:19 3465:9 3519:13 3538:2 3578:15 3580:11</p> <p>price 3532:5</p> <p>Principal 3454:19</p> <p>principle 3532:2</p> <p>principles 3606:18 3607:23</p> <p>prior 3481:20 3528:24 3540:16 3545:4 3606:17</p> <p>private 3463:6 3471:8 3472:3 3483:11,15 3484:4 3485:25 3487:12 3488:2</p>	<p>privileges 3531:21</p> <p>problem 3454:3 3477:10 3541:25 3546:19 3598:22 3603:18</p> <p>problematic 3452:15 3504:23</p> <p>problems 3492:25 3529:17</p> <p>proceed 3495:22</p> <p>proceeding 3476:5 3609:25</p> <p>proceedings 3596:2</p> <p>proceeds 3527:23 3528:6</p> <p>process 3454:12 3547:7</p> <p>processed 3503:10</p> <p>Proclamation 3528:17</p> <p>procuring 3504:12,17</p> <p>Professor 3453:18 3543:1 3547:24 3619:13,19</p> <p>profit 3489:14 3492:12,13 3499:16, 21 3512:11 3552:13 3572:21,25</p> <p>profits 3490:9,10 3528:4</p> <p>progress 3581:24</p> <p>prohibited 3523:1</p> <p>prohibition 3617:16</p> <p>project 3547:18 3559:21</p> <p>projects 3583:19</p> <p>promise 3459:1 3460:1 3467:11 3506:5,13,15,22 3538:1 3539:6 3591:8</p>
---	--	---	--	---

<p>promised 3459:4 3469:12</p> <p>promises 3466:13</p> <p>pronounce 3512:19 3522:9</p> <p>pronouns 3548:6</p> <p>proof 3591:3 3595:4,6</p> <p>properly 3463:14 3589:9</p> <p>property 3471:25 3472:1,21 3487:9 3528:14 3558:20 3615:5</p> <p>proportion 3485:7</p> <p>proposal 3546:12 3562:17 3565:10 3585:7</p> <p>proposals 3546:4 3604:9</p> <p>propose 3566:13 3606:2</p> <p>proposed 3561:17 3563:20 3564:3 3570:1 3582:5 3591:23</p> <p>proposing 3605:3</p> <p>proposition 3570:16,22 3590:19</p> <p>propriety 3530:22 3610:21</p> <p>prospect 3525:18 3587:15</p> <p>prosperity 3486:4</p> <p>protect 3607:11 3618:16</p> <p>protected 3527:4, 9,10</p> <p>protection 3480:24 3585:20</p> <p>protects 3487:10</p> <p>provide 3452:6 3478:6 3548:20 3572:5</p>	<p>provided 3527:24 3601:10 3610:24</p> <p>province 3458:17</p> <p>provisions 3459:13 3513:18 3576:16 3617:13</p> <p>prudent 3588:6</p> <p>public 3457:13 3488:17 3526:13 3549:3</p> <p>publik 3515:10</p> <p>published 3494:15 3549:5</p> <p>purchase 3492:2 3578:21</p> <p>purchase-money 3486:18,22</p> <p>purchased 3459:13 3472:10 3490:3 3532:24</p> <p>purchaser 3471:17 3472:19 3489:18</p> <p>purchasers 3472:3</p> <p>purpose 3459:14 3530:20 3531:11 3582:20 3624:25</p> <p>purposes 3561:11</p> <p>pursued 3485:24</p> <p>pursuing 3496:21 3598:2</p> <p>pursuit 3569:19</p> <p>push 3547:17</p> <p>put 3455:10 3474:10 3478:5,17 3501:25 3517:22 3533:23 3567:20,21 3568:23 3590:10 3604:15</p> <hr/> <p style="text-align: center;">Q</p> <hr/> <p>qualified 3541:16, 24</p>	<p>qualities 3511:14</p> <p>quantity 3530:18 3531:10 3584:14</p> <p>Quebec 3460:24 3557:12</p> <p>question 3477:5 3478:5,12,13,15 3479:11,17 3492:11 3493:9,12 3496:1 3498:19 3517:1 3541:17 3542:20 3583:11,12 3597:18 3606:4</p> <p>questioning 3600:23</p> <p>questions 3479:14 3541:4,12 3614:7</p> <p>quietly 3493:5</p> <p>quotation 3484:2</p> <p>quote 3483:7,11 3484:14 3535:18 3621:24</p> <p>quoted 3486:10 3536:25</p> <p>quoting 3535:16</p> <p>Québec 3455:3 3468:20 3568:5 3569:4</p> <hr/> <p style="text-align: center;">R</p> <hr/> <p>race 3607:12</p> <p>racism 3512:5</p> <p>railroad 3561:11</p> <p>rain 3507:14</p> <p>raise 3451:19 3509:20 3554:13 3565:9 3607:12</p> <p>raised 3476:19 3534:22 3598:22</p> <p>raising 3541:23</p> <p>Rama 3510:15,18 3511:19 3562:18</p>	<p>Rankin 3459:8 3530:7,15 3533:6 3548:15 3549:15 3550:16 3588:2</p> <p>Rankin's 3567:25 3568:24</p> <p>ranks 3527:25</p> <p>rate 3591:10</p> <p>ravine 3459:16</p> <p>reach 3474:23</p> <p>reaction 3613:16</p> <p>read 3499:11 3502:11 3574:7 3587:5 3593:23 3597:18 3619:22,23, 25</p> <p>reader 3500:21 3501:3</p> <p>readers 3499:18</p> <p>reading 3472:5 3499:8,10 3542:12 3561:13</p> <p>reads 3603:19</p> <p>ready 3546:17 3550:9</p> <p>realistic 3611:10</p> <p>realized 3593:24</p> <p>reap 3567:3</p> <p>reason 3451:22 3472:24 3582:24 3591:11</p> <p>reasonable 3525:17</p> <p>reasoning 3608:13</p> <p>reasons 3451:13 3462:24 3483:6 3529:20 3564:7 3588:9</p> <p>recall 3451:11 3452:2 3491:15 3499:3 3534:23 3550:23 3587:3 3600:24</p>	<p>receipt 3497:23 3500:14 3502:9,10, 13 3513:8,9 3517:17 3561:1</p> <p>receipts 3517:2</p> <p>receive 3490:8 3532:4,6 3591:18 3592:22</p> <p>received 3489:19 3502:22 3547:3 3566:4 3592:20</p> <p>receiving 3590:6</p> <p>recent 3470:8 3546:25</p> <p>recently 3494:6</p> <p>RECESS 3509:1 3547:19 3599:5</p> <p>reciprocity 3539:2</p> <p>recognition 3535:19</p> <p>recommend 3471:2 3555:17 3582:19 3585:19,21</p> <p>recommended 3459:20</p> <p>recommending 3550:16</p> <p>reconcile 3501:20</p> <p>reconsider 3484:3 3487:11 3529:2</p> <p>record 3551:1</p> <p>records 3480:12 3503:24 3615:20</p> <p>Reed's 3617:22</p> <p>reeve 3583:4,17</p> <p>Reeves 3584:3</p> <p>refer 3457:4 3488:9 3490:21 3570:23 3624:3,21</p> <p>reference 3527:9 3535:10 3550:25 3551:14 3554:6 3587:13,17 3609:15 3610:25 3612:8</p>
--	---	---	---	--

referred 3461:17 3464:5 3503:15 3518:21 3532:23 3540:12 3569:9 3586:5 3601:21 3602:12 3604:3 3618:10	relative 3554:25	rendered 3500:15 3502:14 3504:11,16 3511:21	requests 3603:13	response 3453:25 3477:4 3526:6 3557:24 3565:24 3622:23
referring 3456:11 3457:17 3462:16 3464:6 3483:15 3488:15,16 3500:6 3518:8 3544:16 3551:8 3565:15 3611:5,6	relevant 3461:3 3502:11	renewal 3587:16	require 3453:10 3469:20 3584:13	rest 3573:10 3594:6,19 3600:23
refers 3462:13 3473:7 3475:2 3484:22 3487:13 3540:12 3570:21 3586:18 3603:19	reliability 3539:18 3548:1,21 3593:17	rents 3528:2,3,4	required 3467:15	restoration 3610:1
reflected 3547:13	reliable 3543:25	reorganize 3536:11	requiring 3457:13	restore 3611:2
refrain 3587:18	reliance 3517:23	replace 3473:10	research 3491:3 3519:4 3574:7 3596:24 3598:1 3599:18 3622:17	restrictions 3585:3
refusal 3543:9 3591:17	religious 3607:19	replaced 3537:12 3538:20	researcher 3517:22	result 3498:3
refused 3469:19 3482:20 3522:21 3545:8	rely 3509:8	replacement 3605:18	researching 3596:24	results 3485:16 3623:1
regard 3497:1 3559:15 3619:8	relying 3510:23	replied 3550:22	reservation 3511:21	resume 3451:3 3553:3 3625:14
regarded 3614:13 3617:16	remain 3537:24	replying 3559:12	reservations 3510:22	resuming 3509:2 3547:20 3599:6 3600:5
Registrar 3505:20, 21 3510:4,5 3512:25 3513:1 3514:17,18 3515:23,24 3540:3 3619:15,16	remainder 3560:25 3568:3 3569:2,3 3590:5 3591:9,14 3592:9	report 3452:5,15 3465:9 3479:13 3482:13,16,19,24 3483:1,2,7,8,14 3484:2,6,14 3489:9 3493:24 3501:14 3504:24 3509:7 3526:4,5 3534:25 3535:1,9 3537:1 3548:1,5,7,8,22 3549:1,2,21,22 3550:5 3562:1 3586:18 3614:8 3616:24 3623:24,25 3624:1	reserve 3454:13 3474:16 3519:14 3520:16,20 3531:12 3552:22 3559:17 3560:1,13 3562:5 3568:1,25 3584:6 3616:7 3620:19 3624:4,10,19,24 3625:7	retain 3467:11 3531:17
regret 3555:6	remark 3579:17	reported 3587:10 3591:17	reserved 3474:21	retaining 3470:23 3553:7
regular 3593:20 3594:22	remember 3454:2 3499:5 3510:17 3514:12 3518:6 3535:16 3537:9 3547:10,11 3587:5 3624:20	reporter 3597:6, 12,14 3599:13	reserves 3475:3 3553:11,14 3560:24	retirement 3481:12
regularly 3459:5	remembered 3493:15	REPORTER'S 3597:17	reserving 3533:3 3560:21 3590:1	return 3538:7,15 3543:17 3549:6 3580:4 3589:25 3623:5,6,7
regulations 3457:12 3458:13 3488:25 3489:7	remind 3526:13 3597:25	represent 3552:8	resignation 3543:13	returned 3454:4 3477:14 3620:11,20 3621:22
related 3523:24	remiss 3487:3	representations 3463:4	resist 3524:3	revenue 3489:16 3490:15 3536:8
relation 3574:13	remnants 3618:6	representative 3466:7 3520:9	resolution 3615:15	Reverend 3461:13,19
relationship 3480:23,24 3481:1	removal 3585:25 3604:2,6,8,11,13 3608:7 3609:9	repudiate 3464:3	resolutions 3616:5	reverse 3532:11
	remove 3609:7	request 3462:4 3513:2,9 3514:9,19 3515:20,25 3526:6 3573:9 3610:2	resources 3582:1	reversed 3611:12
	removed 3582:10 3584:9		respect 3451:9 3511:15 3534:22 3602:10 3604:24	reversing 3611:14 3612:22
	removing 3471:15 3472:17		respectable 3581:20	revert 3471:17 3472:18
	remuneration 3593:6		respectfully 3581:12	review 3483:7 3525:15 3604:17
	render 3559:1 3584:24			

<p>reviewed 3477:17</p> <p>reviews 3565:21 3568:17</p> <p>reward 3535:11</p> <p>rhetoric 3524:16</p> <p>Richard 3473:9</p> <p>richer 3483:23</p> <p>ridiculous 3616:6</p> <p>rights 3489:15 3491:3 3492:22 3607:5 3618:15</p> <p>rigid 3487:6</p> <p>rise 3546:21</p> <p>Ritchie 3615:1</p> <p>River 3468:25 3558:18 3559:16 3560:10 3575:13 3578:6</p> <p>Riviere 3557:13 3561:9 3562:5</p> <p>road 3459:14</p> <p>roads 3459:21</p> <p>Robertson 3490:23 3491:8</p> <p>role 3477:2 3493:9, 23 3495:13 3550:5 3614:9</p> <p>Roote 3614:25</p> <p>Ross 3506:3,9,13 3548:8,10,12 3550:8 3620:18 3621:19</p> <p>rough 3596:20,22 3598:13,19</p> <p>Royal 3527:17 3528:17 3616:24</p> <p>rule 3458:2</p> <p>rumor 3587:17</p> <p>run 3519:17 3608:19 3621:17</p> <p>running 3470:7</p> <p>rush 3598:11</p>	<p style="text-align: center;">S</p> <p>Sable 3557:13 3561:9 3562:6</p> <p>salary 3570:6,9 3571:2,8,13 3572:8, 11 3573:2,4,10,12</p> <p>sale 3457:12 3471:9 3484:12,18 3486:15, 23 3488:10 3489:14 3492:21,22 3527:23 3528:6 3532:1 3546:9 3560:25 3587:13 3588:13 3589:7,8 3590:7</p> <p>saleable 3584:15</p> <p>sales 3489:16 3492:1,15 3529:14</p> <p>sanction 3558:22 3567:13 3568:22</p> <p>Sarah 3507:3</p> <p>satisfied 3464:14, 16 3536:17 3560:23 3610:21</p> <p>Sauble 3468:25 3556:20</p> <p>Saugeen 3454:13, 20 3459:3,22 3462:12,13 3465:1 3468:19,24 3470:4 3472:2,11,18,20 3473:8 3475:3 3479:19 3483:4 3484:20,21,22 3487:13 3494:6 3502:16 3504:13 3510:15 3512:16,22 3513:19 3514:6 3515:16 3519:7 3523:14 3524:6 3525:20 3526:7 3546:9 3552:5,24 3553:15 3556:10 3558:14,18 3559:7, 16 3560:10 3562:3, 22 3563:10 3564:3, 21 3570:16 3575:12 3578:5 3579:16 3581:1,11 3582:9,22 3583:15 3584:4,6,8</p>	<p>3586:1 3602:23 3603:21,24 3608:9 3610:17 3611:5 3612:2 3613:10 3615:11 3616:4,14 3623:15,19 3625:10</p> <p>Saugeeng 3471:16 3473:22 3474:5,16 3560:1</p> <p>save 3531:14</p> <p>saved 3535:20 3546:3</p> <p>savings 3536:13</p> <p>Sawyer 3496:3 3521:3,22</p> <p>SC0847 3619:11</p> <p>SC0848 3539:23</p> <p>SC0850 3505:8</p> <p>SC0851 3512:15</p> <p>SC0852 3514:9</p> <p>SC0853 3515:19</p> <p>SC0854 3509:24</p> <p>scale 3480:2 3607:13</p> <p>scarcely 3579:17 3589:3</p> <p>scenes 3561:19</p> <p>schedule 3547:13</p> <p>scheduling 3453:5</p> <p>school 3560:22 3581:16</p> <p>scope 3541:8</p> <p>scroll 3464:13 3474:2 3511:3 3527:12 3531:23 3534:3,14 3540:22 3551:25 3553:17 3554:20 3576:2 3583:3 3586:9 3592:8,14 3606:14 3617:6</p> <p>seat 3536:23</p> <p>secondary 3574:7</p>	<p>secretary 3538:18, 24 3543:6 3544:22 3546:1</p> <p>section 3475:6 3483:5 3489:11,13 3490:20 3491:2,6 3530:24 3586:4,9 3592:15 3608:8 3616:25 3617:5</p> <p>secure 3591:14 3610:3</p> <p>secured 3511:23</p> <p>securing 3495:2</p> <p>seek 3475:25 3490:2 3592:6</p> <p>seeking 3489:4 3578:23</p> <p>Self-justification 3535:4</p> <p>sell 3489:22 3528:13 3561:6 3564:12,18,24 3566:16 3567:10 3568:21 3570:13,17, 18 3571:10,15 3572:22 3585:22 3588:3</p> <p>selling 3492:24 3529:13 3553:11 3571:3</p> <p>send 3473:23 3474:6 3547:17 3615:8,16,20 3622:1</p> <p>sending 3461:16 3557:9</p> <p>sense 3476:5 3477:1 3517:10 3570:10 3618:24</p> <p>sentence 3487:14, 22 3488:6 3501:15 3543:16 3567:8 3606:7 3609:4 3621:7,11</p> <p>sentiments 3606:3</p> <p>separate 3488:14 3573:3 3623:15</p>	<p>September 3510:1,8 3554:25</p> <p>series 3461:2</p> <p>servants 3528:11</p> <p>served 3552:10</p> <p>service 3481:9 3620:12,21</p> <p>services 3495:2,16 3500:15 3502:14 3504:10,16 3535:11</p> <p>set 3458:3,13 3462:24 3463:9 3476:13 3477:15 3520:16 3526:11 3546:3 3606:18</p> <p>setting 3480:16 3512:5 3576:12</p> <p>settle 3483:22 3553:22</p> <p>settled 3532:25 3581:18 3609:13 3612:7</p> <p>settlement 3457:14 3458:19 3461:7 3466:16 3467:15,22 3469:20 3476:14 3482:13,21 3485:22 3486:14 3489:21 3529:18 3552:7 3592:11 3603:25 3612:3</p> <p>settlements 3485:8 3532:15 3560:19</p> <p>settler 3493:17 3584:18</p> <p>settlers 3484:18 3485:13 3487:1 3488:11 3492:23 3493:4 3532:6 3581:20 3593:21 3613:11,15,22,24 3614:4</p> <p>settling 3496:20 3553:19</p> <p>shape 3530:17</p> <p>shaped 3623:1</p>
---	--	---	--	---

<p>share 3463:15 3466:2 3607:10 3624:18</p> <p>shift 3534:15 3585:24</p> <p>shilling 3471:10</p> <p>shillings 3513:17 3515:1 3516:7</p> <p>shopkeepers 3621:13</p> <p>shoreline 3469:15</p> <p>short 3473:21 3491:6 3517:6 3537:10 3552:16 3566:8 3600:20 3604:13</p> <p>shortly 3500:1 3508:15 3509:18 3539:14</p> <p>show 3457:3 3460:14 3479:12 3491:12 3539:19 3551:12 3622:24</p> <p>showing 3500:14 3530:17</p> <p>shown 3459:17 3542:17 3582:8</p> <p>shy 3591:20</p> <p>side 3537:18 3540:23 3566:1 3567:22</p> <p>sides 3576:19</p> <p>Sidney 3543:10</p> <p>sign 3549:1</p> <p>signed 3457:24 3473:13 3548:25 3583:4 3603:1</p> <p>significant 3482:14</p> <p>signing 3470:20</p> <p>simple 3617:24</p> <p>simply 3542:11</p> <p>sincerely 3593:6</p> <p>sir 3453:14 3498:10</p>	<p>3508:15,21 3513:4, 15 3514:24 3516:5 3537:19,23 3538:19 3543:8 3554:23 3595:21 3596:8 3599:7,12 3600:3,11 3605:12,17,20 3611:23 3616:9 3620:1 3621:25 3625:12</p> <p>site 3556:21 3557:14,21 3562:6, 22 3563:1,7 3565:13 3568:8</p> <p>situation 3490:1 3517:24 3613:9 3624:23</p> <p>size 3561:17</p> <p>skeptical 3500:13</p> <p>sketch 3471:18 3530:17 3531:8 3582:9</p> <p>skip 3543:14 3558:9 3575:4</p> <p>small 3486:8 3488:7 3493:2 3533:14 3536:19 3559:4 3590:23 3612:12</p> <p>smaller 3480:2 3533:18 3550:17 3612:5</p> <p>Smith 3509:9 3517:21</p> <p>Smith's 3509:17</p> <p>snakes 3552:11</p> <p>soften 3594:1</p> <p>soil 3538:15</p> <p>sold 3467:9 3471:8 3493:5 3527:24 3528:6 3532:5 3552:15 3559:17</p> <p>soldier 3620:21 3623:5</p> <p>soldiers 3620:14 3621:23 3623:6,7</p>	<p>solicitor 3574:14</p> <p>solidarity 3623:7</p> <p>Somerset 3543:20</p> <p>son 3473:17,18 3517:15</p> <p>sooner 3453:10,11</p> <p>sorrow 3455:3</p> <p>sort 3472:9 3483:23 3490:1 3510:25 3524:6 3526:13 3529:12 3542:2 3545:15 3561:16 3568:10 3575:23 3594:10,18 3615:4 3625:2</p> <p>sought 3454:12</p> <p>sound 3462:10,11, 20 3468:24 3474:18 3484:20 3485:2,3,5 3520:24 3521:1 3552:24 3553:10,13, 16 3556:10 3559:19 3564:22 3570:17 3573:25 3584:9 3603:20</p> <p>sounds 3468:17,22 3510:16 3537:2,6,10 3539:9 3579:7 3586:16 3624:23</p> <p>source 3505:5 3621:16</p> <p>sources 3491:2 3574:8</p> <p>south 3530:19 3553:8 3612:2</p> <p>Southampton 3584:1</p> <p>southerly 3560:9</p> <p>southern 3530:24 3608:20 3610:13</p> <p>space 3531:9 3532:23 3560:19,21</p> <p>speak 3455:9 3541:2 3545:17 3619:2</p> <p>speaking 3575:13 3620:10</p>	<p>speaks 3472:16 3508:4</p> <p>special 3559:1</p> <p>specific 3452:4 3551:11 3578:2,6 3615:10 3616:1</p> <p>specifically 3452:13 3488:15 3491:9 3504:18 3599:17</p> <p>speculating 3501:24</p> <p>speculators 3483:16,18,21 3487:14,18</p> <p>speech 3585:19 3593:21 3603:2</p> <p>speedily 3576:15</p> <p>spelled 3522:11</p> <p>spelling 3522:13</p> <p>spent 3514:4 3546:4</p> <p>spirit 3610:9</p> <p>spoke 3511:7</p> <p>spring 3551:3,8,14 3554:7,9,11</p> <p>square 3531:13 3552:22</p> <p>squatters 3524:4, 10 3525:2 3553:21 3580:14,21</p> <p>squatting 3525:4, 6</p> <p>staff 3493:3</p> <p>stand 3593:1</p> <p>standpoint 3452:15</p> <p>start 3455:1 3456:15 3492:15 3529:7 3567:1 3580:21 3587:6 3592:15 3597:10 3608:5</p> <p>started 3489:21 3537:4</p>	<p>starting 3600:20 3617:7</p> <p>starts 3455:14 3456:10 3463:18 3470:3 3493:25 3511:5 3539:25 3543:3 3557:8 3559:14 3567:16 3609:3</p> <p>state 3543:7 3544:22 3561:4 3581:14,15,16</p> <p>stated 3471:24 3609:11</p> <p>statement 3498:4, 11,14 3501:21 3504:15 3522:25</p> <p>states 3501:5 3511:23 3551:2 3587:9 3604:1</p> <p>station 3494:6</p> <p>stationed 3511:18</p> <p>stations 3533:4</p> <p>stay 3538:18</p> <p>staying 3538:23</p> <p>step 3465:11 3595:21</p> <p>stepping 3476:9</p> <p>stipulations 3487:7</p> <p>stirring 3538:4</p> <p>stone 3511:25</p> <p>stood 3501:6</p> <p>stop 3454:12 3507:23 3600:20</p> <p>stopped 3525:19</p> <p>stopping 3476:5 3503:8</p> <p>story 3504:24 3573:18</p> <p>straightforward 3597:13</p> <p>strange 3517:7 3544:15,19 3555:9</p>
---	--	--	--	--

strangely 3571:1	successful 3497:21 3621:1	supposed 3480:22,24 3485:21 3571:4 3598:1	suspended 3600:5	talks 3491:9,10 3507:2 3560:21 3562:18 3570:20 3589:5 3608:12,13 3624:15
strict 3470:24	successor 3537:20 3538:9	surprised 3580:13	suspicious 3590:24 3591:16	tangible 3591:3 3595:4,6
strictly 3458:19	successors 3528:9	surprising 3516:24	sustained 3463:23	task 3578:8 3607:7
strike 3560:8	sufficient 3558:21 3589:21	surrender 3491:22 3495:2 3497:2 3498:6 3500:16 3501:7 3502:16 3504:13,17 3506:25 3507:13,20 3523:15 3528:18,24 3529:10 3530:24 3533:11,15, 17 3550:4,16,22 3554:14 3555:5 3558:15 3559:6 3561:17 3562:4 3563:11,21 3571:14 3573:4,8,12,16,24 3574:3,5,15 3579:6 3581:9 3582:6 3583:9,15 3608:10 3611:5,6,11,12,15 3612:1,22 3613:10	Sutton 3521:25	Taunton 3535:21 3536:16 3540:1,6,8, 11,13,14,19 3541:5, 17 3543:19 3544:6, 10,13,16,21 3545:2
strip 3470:13 3529:10,18 3532:3 3553:22,25 3560:3, 4,15 3561:6 3580:9	suggest 3471:6 3500:7,25 3508:7 3568:6 3582:3,4,5	surrendered 3458:5,14 3467:7 3470:12 3471:2 3490:10 3520:21 3532:3 3573:24 3580:11 3582:25 3610:24	sweetener 3507:19	technicalities 3621:6
strong 3512:4 3556:1	suggested 3465:9 3499:4 3551:4 3585:19 3598:23	surrendering 3474:15 3477:11 3523:6 3555:15,22 3556:1	SY 3502:22 3505:18,22	telling 3493:17
strongest 3538:6	suggesting 3487:18 3489:3,5 3500:5 3503:17 3530:21 3533:10 3559:6 3571:6	surrenders 3611:23 3612:11	Sydenham 3582:12	Ten 3492:17
structure 3511:25 3621:7	suggestion 3546:8 3547:15 3586:2	Surrounded 3526:18	sympathetic 3623:3	tended 3480:25 3496:23
stub 3473:7	suggestions 3523:15	survey 3476:5	system 3485:17,23 3486:2,20 3536:12 3615:6 3623:1	term 3497:14 3521:8 3604:13
stubbornness 3593:1	suggests 3586:14	surveyed 3457:6 3470:24	table 3500:8	terminate 3471:15 3472:17
stuck 3547:4	sum 3503:5 3513:16 3514:25 3516:6,8,17	surveying 3454:12 3529:13	tactic 3523:21	terms 3505:1 3576:17 3588:17 3614:1
studied 3525:5	summer 3532:4 3575:19 3579:1 3611:24	surveyor 3459:8 3533:6	takes 3470:21 3473:3	tended 3480:25 3496:23
stuff 3534:17	sums 3621:21	surveyors 3454:9	taking 3461:20 3489:15 3576:16 3580:14 3582:20 3587:19 3594:24 3595:12	term 3497:14 3521:8 3604:13
stumpage 3490:16	superintendent 3462:3 3473:11 3475:22 3480:20 3481:3 3504:12 3538:19 3577:11,12	suspect 3611:22	talk 3507:14 3534:21 3553:18 3557:20 3568:23 3614:9	terminating 3471:15 3472:17
Sturgeon's 3519:24	superior 3524:23 3549:23 3606:12		talked 3465:3 3466:10 3482:17 3491:20 3496:3 3498:24 3518:17 3558:11 3563:7 3593:22 3616:20	territories 3608:9
subject 3471:9 3553:4,6 3554:14 3555:22 3557:12,24 3575:11,20 3576:23 3606:25	supplement 3478:24		talking 3452:17,18 3462:20,21 3485:12 3490:9 3498:22 3525:11 3539:6,7 3547:25 3550:14 3559:5 3563:20 3565:9 3608:6 3615:4,5	territory 3454:9 3524:8,9 3528:18 3536:10 3603:24
submission 3595:14	supply 3552:20		talks 3491:9,10 3507:2 3560:21 3562:18 3570:20 3589:5 3608:12,13 3624:15	testimony 3476:9 3494:22 3527:8 3586:13 3600:19 3623:14,22
Sturgeon's 3519:24	support 3452:6		tangible 3591:3 3595:4,6	text 3603:19
subject 3471:9 3553:4,6 3554:14 3555:22 3557:12,24 3575:11,20 3576:23 3606:25	suppose 3462:18 3475:17 3478:15 3483:19 3566:6 3590:15		task 3578:8 3607:7	thanked 3586:25
submission 3595:14			Taunton 3535:21 3536:16 3540:1,6,8, 11,13,14,19 3541:5, 17 3543:19 3544:6, 10,13,16,21 3545:2	thankfully 3571:22
submissions 3451:15,16 3452:4, 7,13			technicalities 3621:6	thesis 3619:10,17, 23,25 3620:5,6 3622:10,24
submit 3455:23			telling 3493:17	thing 3477:21 3511:1 3542:2 3573:21 3592:3
submitted 3453:22			Ten 3492:17	
subscriptions 3511:24			tended 3480:25 3496:23	
substance 3557:17			term 3497:14 3521:8 3604:13	
substantial 3511:25 3621:21			terminating 3471:15 3472:17	
success 3555:6 3569:21			terms 3505:1 3576:17 3588:17 3614:1	
			territories 3608:9	
			territory 3454:9 3524:8,9 3528:18 3536:10 3603:24	
			testimony 3476:9 3494:22 3527:8 3586:13 3600:19 3623:14,22	
			text 3603:19	
			thanked 3586:25	
			thankfully 3571:22	
			thereof 3527:23 3528:6 3530:25	
			thesis 3619:10,17, 23,25 3620:5,6 3622:10,24	
			thing 3477:21 3511:1 3542:2 3573:21 3592:3	

3615:18	3562:14 3564:4	town 3532:20	treat 3575:19	true 3497:15 3550:7
things 3462:16	3565:11 3580:4	3581:1,3	treated 3455:3	3620:13
3471:19 3493:3	3586:1 3587:1	Township 3559:2	3464:24 3468:20	trust 3486:7
3505:2 3506:17,18	3592:19 3593:21,23	3579:16	3605:4 3607:20	3487:16,19 3488:4
3508:20 3538:16	3597:13 3605:14	townships 3533:5	treaties 3467:8	trustees 3609:17
3541:22 3542:19	3609:8,16 3613:11	3581:11 3582:11	3479:15 3573:22	Tuesday 3507:8
3550:1 3594:21	3622:2 3625:8	3584:3	3605:1	3599:16
3596:24 3597:2	times 3508:22	track 3498:9	treating 3530:23	turn 3461:10
3598:3 3599:17,19	3509:25 3510:8,14	tract 3458:4,13	treatment 3606:4,	3493:8,23 3512:14
3600:7,11,13,18,20	3518:17 3527:20	3527:2,22 3528:5	22	3518:16 3526:1
3615:13	3550:9 3593:24	3553:1 3555:1	treaty 3456:20,24	3534:1,18 3551:17
thinking 3544:1	3597:2,23 3600:17	3558:16 3576:17	3457:1,15,18,20,24	3571:20 3572:3
3568:19 3573:19	timestamp	3577:23,24 3578:2	3465:7 3466:7,14,18	3614:7 3618:24
3597:2 3600:18	3597:6,7	3579:18 3582:7,10,	3470:8,9,20,25	3623:21,23
3615:25	tip 3613:25	24 3612:2	3471:4 3477:15	turning 3572:20
thinks 3502:2	title 3494:20 3540:9	trader 3481:22	3478:8 3479:18	type 3490:17
3578:14	3541:5,17,18 3542:1	tradesmen	3480:16 3481:13,15,	3504:4 3513:5
Thomas 3481:6	3577:7,10,14	3621:13	17 3492:18 3495:10	typically 3518:2
thought 3472:10	3596:15 3597:20	transact 3463:1	3497:6,20 3509:14	
3477:20 3520:4	3610:3	transactions	3519:20 3520:10,17	
3554:11 3575:15	to-do 3546:25	3487:8	3528:24 3529:3,4,5,	
3587:22 3593:18	Tobermory	transcript 3469:25	21 3533:7,17,20	
thoughts 3571:3	3613:25	3473:5 3509:24	3539:2 3548:14,25	
thousand 3558:17	today 3468:25	3531:6 3551:21	3573:23 3574:7	U.S. 3509:19
thrifty 3584:18	3472:21	3552:2 3571:23	3577:19 3578:15	3512:11 3608:23
thriving 3581:23	token 3618:3	3586:8,12,21	3587:8 3601:9,14	Uhm-hmm
throwing 3458:7	told 3451:18	3596:10,11,20,22	3602:20 3603:1,6,	3565:14
thrown 3562:9	3494:23 3505:4	3597:18	18,19 3604:25	ultimate 3533:17
thwarted 3617:15	3551:3 3590:12	transfer 3504:5	3611:12 3613:13	ultimately 3520:19
timber 3489:15,22	3624:19	3537:22	Treaty-making	3521:18 3523:2
3490:2,7 3491:3,13	tomorrow 3452:9	transferred	3477:7	3546:12 3604:19,23
3492:1,5,6,8,22,24	3598:17 3625:14	3530:11	trees 3489:22	unable 3512:2
3493:5,6,19,20	tools 3459:13	transforming	trial 3547:13 3600:5	unacceptable
time 3452:11	top 3472:16 3473:7	3617:23	tribe 3454:19	3625:2
3453:1 3458:24	3502:20 3505:15	translate 3495:14	3456:5 3459:12,24	unauthorized
3460:2 3462:20	3520:25 3530:14	translation 3496:1	3462:9 3463:24	3459:9
3469:8 3471:22	3551:7,21 3608:5	translations	3464:11 3466:2	unclear 3487:25
3474:14 3479:12,17	3615:12	3496:17	3474:22 3572:9	3488:6 3577:20
3481:10,11,12,15	topic 3518:16	translator	3581:8	underlined
3482:4 3486:23	3534:16 3610:13,15	3495:10,14 3496:4	tribes 3606:5,6,22	3526:10 3527:14
3488:12 3489:17	topics 3601:9	3501:1,16	3608:8	understand
3490:14 3493:1	torn 3502:18	transpired	trifling 3531:10	3495:12 3570:4
3499:18 3508:19,23	Toronto 3502:19	3602:14	trip 3485:3 3512:1	understanding
3509:13 3515:17	tour 3460:14	transpiring	trouble 3464:20	3471:14 3474:14
3517:6,24 3521:23	touring 3509:19	3538:5	3580:1 3616:8	3479:12
3522:13 3524:22			troubles 3509:15	understood
3544:18 3545:21			troubling 3587:19	3458:1 3471:1
3547:11,12 3552:16				3476:14 3479:19
3553:4 3556:23				

<p>3486:24 3524:20 undoing 3613:13 undone 3479:22 unfair 3477:21,24 3479:3 3612:16 unfairly 3495:14 unfolded 3529:13 3601:15 United 3604:1 unsatisfactory 3507:10 3508:11 unsophisticated 3621:5 unsuccessful 3579:8 unwilling 3462:25 3589:19 3591:22 updated 3452:14 3547:13 updates 3452:5,8 upfront 3594:8 3595:8 Upper 3525:6 3606:7 3613:22 urge 3537:24 usefully 3554:3 useless 3511:21 utilize 3511:16</p> <hr/> <p style="text-align: center;">V</p> <hr/> <p>vague 3460:4 3483:17 3550:9 3578:16 3608:23 validity 3478:7,8, 13 3479:15 valuable 3590:2 3591:5 values 3615:5 Van 3461:13,20 3475:25 3476:23 3477:23 3479:2 3506:24 3507:11 3508:12</p>	<p>verbal 3466:13 3467:10 Vernon 3614:25 versions 3617:2 view 3572:9 3573:14 3622:11 views 3497:2 3555:9 3557:11 village 3459:15 3471:16 3472:18 3474:18 3484:22,25 3582:22 villages 3531:8 3552:23 vis 3532:4 visibly 3525:2 visit 3460:22 3497:10 3565:16 visited 3460:13 3485:3 Visiting 3577:12 vociferous 3617:20 voiced 3476:11 3491:25 3555:25 voicing 3461:17 voir 3451:12,19,23 voluntary 3604:11,13 Von 3451:5 vote 3572:10 vouchers 3622:1</p> <hr/> <p style="text-align: center;">W</p> <hr/> <p>waded 3501:9 wait 3530:3 3534:7 3596:6 waiting 3621:15 3623:12,24 wanted 3460:6 3468:18 3482:18 3500:23 3523:16 3529:21 3534:21</p>	<p>3545:7 3547:12 3549:8 3563:12 3565:9 3577:22 3579:9 3624:17 war 3536:24 3623:8 warning 3465:10 3580:21 warrant 3503:4,9, 15 3504:1,8 Warriors 3454:18 wasteland 3524:15 3579:18 Water 3519:14,22, 23 3520:5 waters 3527:8,10 ways 3462:15 3475:17 3549:16 weaknesses 3512:3 wealthy 3545:16 Wednesday 3505:16 3506:1 3507:7,9 week 3518:17 3522:7 3547:9,12 3561:14 3563:15 3601:11 weeks 3537:21 3538:13 3600:4 Wendat 3612:3 west 3526:20 3535:13,22 3536:20 westerly 3560:7 whilst 3511:17 white 3488:19 3532:5 3564:24 whites 3532:13 wide-ranging 3542:16 wielding 3618:5 wife 3482:6 wild 3552:9 William 3543:9</p>	<p>3578:25 willingness 3573:8 Wilmer 3624:13 3625:4 Wilson 3574:13,14, 24 3575:1,2 3577:17,22 3578:20 wine 3509:21 winter 3570:3 wintertime 3589:3 wisdom 3572:20 wise 3588:6 wiser 3486:13 wished 3528:14,18 wishes 3459:10 3578:21 wishing 3564:18 withdraw 3585:3 withdrawing 3585:20 withdrawn 3590:22 withholding 3610:22 witnessed 3529:16 3601:25 witnesses 3481:17 3519:20 3533:7 3548:15,19 wives 3482:2 wondered 3595:15 wondering 3541:9 3554:4 Wood 3491:14 wooden 3511:22 word 3461:21 3466:13 3507:6,16, 17 3508:6 3515:3 3527:13 3532:8 3534:23 3552:18 3562:10 3579:25</p>	<p>3598:1 wording 3456:19, 23 3461:4 words 3473:23 3474:6,23 3476:24 3518:6 3541:16 3542:1 3557:15 3568:11 3596:20 3614:17 work 3459:18,19 3491:4 3494:14 3500:2 3535:25 3536:23 3571:13 3624:16 worked 3481:21 3490:14 3620:24 3623:2 working 3594:5 3613:5 works 3460:15 worsen 3539:20 would've 3501:9 write 3506:24 3576:22 writer 3574:20 writing 3455:11 3460:3 3499:5 3517:17 3530:15 3561:24 3563:9 3569:16 3575:9,11 3583:18 written 3462:2 3480:12 3494:13 3502:10,19 3512:17 3524:12 3530:8,10 3562:2 3587:7 3615:19 3621:4 wrong 3489:5 3534:10 3563:18 3577:13 wrote 3502:12 3510:24 3511:3 3534:25 3552:18 3601:18</p>
---	--	--	--	--

Y

year 3473:3
3536:15 3553:23
3554:5 3563:14

yearly 3532:7

years 3471:13
3479:20 3491:5
3492:13,14,17
3511:16 3529:11
3549:7 3587:24
3612:24 3623:8

yesterday 3453:20
3498:25 3499:3
3534:23 3573:20
3577:9 3592:21
3596:17 3597:11,21
3599:10,15 3600:13

yield 3591:13

yielding 3552:12
3572:24

young 3545:16
3569:18 3572:3

Z

Zealand 3543:16