

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

VOLUME 34 DAY 34
July 26, 2019



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1 Court File No. 94-CQ-50872CM

2 ONTARIO

3 SUPERIOR COURT OF JUSTICE

4
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

20 -----

21 --- This is the Volume 34/Day 34 of the transcript
22 of the trial proceedings in the above-noted
23 matter, being held at the Superior Court of Justice,
24 330 University Avenue, Courtroom 5-1, Toronto,
25 Ontario, on the 26th day of July, 2019.

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B E F O R E:

The Honourable Justice Wendy M. Matheson

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WITNESS:

JARVIS BROWNLIE; Previously affirmed

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

THE COURT: Please go ahead.

MR. BEGGS: Thank you, Your Honour.

JARVIS BROWNLIE; Previously affirmed.

CROSS-EXAMINATION BY MR. BEGGS (CONT'D):

Q. Good morning, Professor Brownlie.

A. Good morning.

Q. If I can take you to your second report, which is Exhibit 4119, and I'd like to go to page 33 of that report. In the middle of the page, it says:

"Also at Cape Croker, Wilmer Nadjiwon ran for Chief in 1964 and was elected. Part of his agenda was to work to regain control of Saugeen Ojibway lands and he was part of the Council that passed resolutions to reassert control over unsold lands on the Saugeen Peninsula."

If I can scroll down to the bottom, the bottom of that paragraph, it says:

"Around the year 1967, the Chippewas of Nawash expelled the Indian agent from their community,

10:04:41 1 another sign of their growing

10:04:43 2 determination to take back control

10:04:44 3 of their own affairs."

10:04:47 4 Now we talked about that yesterday, the

10:04:49 5 references to expelling the agent. The footnote to

10:04:58 6 that statement is to Wilmer Nadjiwon's interview

10:04:58 7 from 1998. Was it during his time as Chief that

10:05:04 8 the stories say that the agent was expelled?

10:05:12 9 A. I'm not sure if they all specify
10:05:14 10 that.

10:05:16 11 Q. Okay.

10:05:16 12 A. So I just went with his account.

10:05:18 13 Q. Sure. Okay. Were you aware
10:05:26 14 whether Wilmer Nadjiwon was alive when you were
10:05:30 15 doing the interviews in 2016?

10:05:32 16 A. I believe he was.

10:05:33 17 Q. Did you consider using him as one
10:05:37 18 of the subjects of interviews?

10:05:39 19 A. I didn't. He was quite old and I
10:05:44 20 don't think he was very well.

10:05:47 21 Q. Okay.

10:05:48 22 A. We also have about five interviews
10:05:50 23 with him and a book.

10:05:52 24 Q. Is that the book "Nor Wolf Nor
10:06:02 25 Dog", or something?

10:06:03 1

A. Yes.

10:06:03 2

Q. If I can go to the interview

10:06:05 3

you've cited at the bottom, it's Exhibit 3897.

10:06:13 4

While I'm waiting, when you were doing

10:06:27 5

your research for the second paper, did you review

10:06:30 6

Band records from the '60s and '70s?

10:06:32 7

A. Yes, I did.

10:06:33 8

Q. You saw a fair amount of that

10:06:37 9

correspondence?

10:06:37 10

A. Yes.

10:06:37 11

Q. If I can go to page -- the top of

10:06:51 12

page 5 -- so I believe it's -- the top text is

10:06:58 13

Wilmer Nadjiwon speaking. And so it's the last

10:07:07 14

sentence, last two sentences. It says:

10:07:11 15

"Before I left, they said we

10:07:12 16

were going to ask you to run for

10:07:14 17

Chief, we are going to campaign for

10:07:16 18

you. So they did, and the next

10:07:18 19

14 years I was Chief."

10:07:21 20

And the interviewer asks: "Starting in

10:07:24 21

1950?"

10:07:25 22

And Wilmer says: "No, '64." [As read]

10:07:30 23

So that would appear to cover the time

10:07:32 24

period in which talk of expelling the Indian agent

10:07:40 25

took place?

1 A. Yes.

2 Q. From your review of the

3 correspondence and documents from the Band in the
4 '60s and '70s, would you have any reason to believe
5 Wilmer Nadjiwon was missing from the reserve for
6 years at a time, or absent for years at a time?

7 A. I didn't run across that in the
8 records, but I wasn't particularly tracing him.

9 Q. Right. Okay. I wanted to go back
10 to something, another topic -- I'll probably be
11 jumping around a fair bit this morning. And the
12 topic being, you were discussing the civilization
13 policy and the assimilationist policy?

14 A. Yes.

15 Q. So the civilization policy came
16 first; is that right?

17 A. Yes.

18 Q. And what was the policy previous?
19 You said there's a first one?

20 A. Military alliance.

21 Q. Military alliance, okay.

22 So on Monday you were discussing the
23 shift from military alliance to civilization. And
24 you mentioned that in Upper Canada in the 1820s
25 government jobs were relatively scarce and very

1 valuable commodities.

2 Do you know how many people were
3 employed by the Indian Department around the 1820s?

4 A. I couldn't say exactly.

5 Q. Would it be less than a dozen
6 or...

7 A. It might be. It might be around a
8 dozen.

9 Q. Now, if I understood you correctly
10 then, you seemed to be suggesting that the reason
11 the civilization policy was proposed was that the
12 departmental employees wanted to keep their job
13 security, and they wanted to find a new purpose for
14 the department to do that.

15 Were you suggesting that was the main
16 reason, or just one of several reasons for the
17 civilization policy?

18 A. Oh, one of several, yes.

19 Q. All right. And another would
20 presumably be the religious views from officials
21 such as Lord Glenelg?

22 A. Yes. And also the general desire
23 to ensure that colonization didn't wipe out
24 Indigenous nations.

25 Q. Okay. With respect to your oral

1 history interviews, the first subject you
2 interviewed was Jim Ritchie; is that correct?

3 A. It sounds right.

4 Q. His exhibit was -- sorry, his
5 interview is Exhibit 3918, if I can call that one
6 up. Now while you had each interview subject, if I
7 can call them that, sign a consent form to allow
8 their -- or to just do the whole exercise, I take
9 it?

10 A. Yes.

11 Q. And if I can scroll down a bit, so
12 Mr. Ritchie signed that one, if I can just go down
13 farther, to the next page. Okay. And so at the
14 top, there seems to be talk of a second consent
15 form.

16 Could you tell me what that was?

17 A. Where do you get that it was a
18 second one? There was only one consent form.

19 Q. Okay. If we go back up for a
20 moment?

21 A. It's probably just a different
22 question on the form.

23 Q. So, sorry, scroll up a little bit
24 more.

25 So Mr. Ritchie says:

1 "I'm kind of all right with
2 this, yeah. If you give me a pen
3 I'll sign this for you, I'll put my
4 name here."

5 And you say:

6 "Wonderful. And the date, June 2nd."
7 I'm not sure what happens there, and you say:

8 "And that's for using the
9 interview in connection with
10 litigation and OKT and you keeping
11 it. There you go."

12 And next there's a phone call.

13 Then on the next page it starts:

14 "So this is to let -- allow me
15 to use the interview, also, if I
16 want to write history articles about
17 this. Now it's up to you, you don't
18 have to say 'yes' to this. I want
19 you to feel free to." And then it
20 says:

21 "(Mr. Ritchie reading): Wish
22 to make use of this interview to
23 write conference papers and
24 articles, or possibly a book, about
25 some of..." and it trails off. [As read]

10:13:26 1 And then you say:

10:13:27 2 "So one of the things I'm
10:13:28 3 thinking about writing about is just
10:13:30 4 this whole process of First Nations
10:13:32 5 in the last sort of 50 years or so
10:13:36 6 asserting their rights and how
10:13:38 7 they've done that. And how, you
10:13:41 8 know, what the results have been.
10:13:42 9 It seems to me that a lot has
10:13:44 10 happened and not a lot has been
10:13:45 11 written about it actually."

10:13:47 12 There's one more page. And that's just
10:13:50 13 asking:

10:13:50 14 "If you're okay with the
10:13:51 15 interview being kept long-term so
10:13:54 16 that other researchers can see it.
10:13:57 17 And if you're okay with that we can
10:13:57 18 get into more details about how
10:13:57 19 you'd want that to look." [As Read]

10:13:59 20 And then he agrees to sign it.
10:13:59 21 Do you know what that's referring to?

10:14:01 22 A. Yes, those are questions on the
10:14:02 23 consent form.

10:14:03 24 Q. This is still the same original
10:14:04 25 consent form?

10:14:05 1 A. Yes.

10:14:05 2 Q. So that original consent form asks
10:14:08 3 if you can use it for history research?

10:14:10 4 A. Yes.

10:14:10 5 Q. Okay. If I can go to page 4 of
10:14:33 6 the transcript. If I can scroll down. He seems to
10:14:42 7 be talking about the burning of papers, which I
10:14:48 8 think you referred to earlier in your testimony?

10:14:53 9 A. Yes.

10:14:53 10 Q. And about how different people
10:14:55 11 gave some accounts of that?

10:14:56 12 A. Yes.

10:14:57 13 Q. And so Mr. Ritchie is asking a
10:15:09 14 number of questions: What was the reason for that?
10:15:11 15 Why did they do that? Why didn't he burn it
10:15:14 16 himself?

10:15:16 17 And you ask the question:

10:15:18 18 "Really interesting. Do you
10:15:20 19 know who was involved in that."

10:15:23 20 He responds:

10:15:24 21 "Yeah, one of them was Marshall
10:15:26 22 Nadjiwon. He's up at Cape Croker"

10:15:26 23 --

10:15:30 24 And I don't know if he gives another
10:15:33 25 name there, but he says:

10:15:36 1 "-- and is in there somewhere, too," he

10:15:36 2 says:

10:15:38 3 "Check him out, see what he
10:15:40 4 says about burning the papers." [As read]
10:15:42 5 Did you consider asking Marshall
10:15:44 6 Nadjiwon or using him as a subject?

10:15:44 7 A. No.

10:15:48 8 Q. Was there any reason you didn't
10:15:50 9 follow the suggestion?

10:15:52 10 A. The burning of the papers wasn't
10:15:54 11 really one of my focuses.

10:15:56 12 Q. Okay. I guess there's a similar
10:15:58 13 question on page 5, if I can go down. So at the
10:16:15 14 very bottom, he starts talking about a story about
10:16:18 15 a hanging and he says:

10:16:20 16 "Just ask him about the hanging
10:16:21 17 in Owen Sound."

10:16:24 18 And you ask: "The hanging?"

10:16:27 19 He says: "Yes, the hanging.

10:16:29 20 Just ask him about it when you talk
10:16:30 21 to him."

10:16:33 22 Do you know who he -- if we scroll down
10:16:34 23 maybe it says who he was talking about.

10:16:37 24 "Oh, who should I ask?"

10:16:39 25 "I think you've got an interview

1 with Lorne Mandawaub some day."

2 So did you consider asking Lorne

3 Mandawaub any questions?

4 A. No. Because, again, these weren't
5 matters that I was interested in pursuing.

6 Q. Okay. You refer a number of times
7 to as a source, a collection which I think we've
8 already gone to earlier this week, called "We Have
9 Spoken" series of interviews?

10 A. Yes.

11 Q. That's Exhibit 3880, if I can call
12 that up.

13 Sorry, I have to go back to your
14 report, 4119 is the report. So if I can go to
15 page 95.

16 Just before the quotation there, you
17 describe a memory of Charles Akiwenzie and you
18 provide a quote there; do you recall that?

19 A. You mean the quote, do I recall
20 the quote?

21 Q. Do you recall using Charles
22 Akiwenzie's quote here?

23 A. Yes.

24 Q. And you have the quote, and it is
25 an accurate quote, but it says:

10:19:06 1 "That island sure makes me
10:19:08 2 lonesome every time I look over
10:19:10 3 there. We got a lot of meat off of
10:19:12 4 there, and we shared it with the
10:19:13 5 people. A lot of deer donated and
10:19:16 6 fish. Now I can't do those things
10:19:17 7 and it makes me mad."

10:19:22 8 Can we go to Exhibit 3880, the "We Have
10:19:26 9 Spoken", and go to page 95, I think, is Charles
10:19:44 10 Akiwenzie's? No, it's not -- is it 109?

10:19:46 11 If we can zoom in on the top part, it
10:20:03 12 starts off:

10:20:03 13 "I can't hunt like I used to or
10:20:03 14 play sports anymore. I have a bad
10:20:03 15 hip and it's holding me back." [As Read]

10:20:07 16 So I just wanted to ask you, while your
10:20:10 17 quote is accurate, if you look at the whole quote,
10:20:16 18 it seems the reason he can't do the things he's
10:20:19 19 describing in your quote is because of his own
10:20:22 20 injury; is that your understanding?

10:20:25 21 A. Yes.

10:20:25 22 Q. Okay. It's not, for example,
10:20:27 23 because somebody is stopping him from hunting?

10:20:30 24 A. Oh, no. I didn't intend to imply
10:20:33 25 that.

10:20:33 1 Q. No problem, I just wanted to
10:20:35 2 clarify.

10:20:36 3 If I can go to page 109 of your report.

10:21:05 4 And so in the first paragraph there, the bottom
10:21:10 5 half of the first paragraph, it starts: "Walter
10:21:14 6 Johnston of Cape Croker noted how the Three Fires
10:21:17 7 Confederacy was weakened by the Colonial system":

10:21:22 8 "I remember vaguely people
10:21:23 9 talking of Three Fires at one time,
10:21:25 10 but it became loose, with so many
10:21:27 11 things happening to destroy and
10:21:29 12 control the people, distance
10:21:30 13 eventually becoming a factor. But
10:21:32 14 the Ojibway, Potawatomi and Odawa
10:21:35 15 basically believed in the same
10:21:37 16 thing, from what I understand." [As Read]
10:21:39 17 That is a quote again from the "We Have
10:21:41 18 Spoken" book? Perhaps we can scroll down.

10:21:43 19 A. I have to see the footnote.

10:21:44 20 Q. The 297 footnote?

10:21:47 21 A. There we go, yes.

10:21:57 22 Q. If we can go back up to that book,
10:22:04 23 it's on page 7. Can we scroll down to the bottom
10:22:10 24 of the first column? Now it starts off:

10:22:30 25 "Things back then were not like

10:22:31 1 today. It was a better disciplined
10:22:34 2 society then, harder, but the
10:22:35 3 children were grown with values of
10:22:38 4 life and work. The change came when
10:22:39 5 we were exposed to the white man
10:22:41 6 culture too fast, and gradually some
10:22:43 7 very important things were lost."

10:22:43 8 [As read]

10:22:48 9 And then if we go back up to the top.
10:22:51 10 I believe that's the quote, people talking about
10:22:55 11 Three Fires Confederacy and being destroyed.

10:23:01 12 Now your report said that it was
10:23:07 13 weakened by a Colonial system. Is the statement
10:23:12 14 that exposure to the white man culture -- is this
10:23:15 15 the Colonial system that you're referring to?

10:23:24 16 A. Well, partly, but what I was
10:23:26 17 really trying to get at was his point about these
10:23:29 18 middle clauses: "With so many things happening to
10:23:34 19 destroy and control the people, distance eventually
10:23:35 20 became a factor", which I take to be a reference to
10:23:39 21 when I talk about being placed on reserves,
10:23:41 22 separated from each other, contained.

10:23:54 23 Q. Okay. Yesterday -- sorry, not
10:23:56 24 yesterday, earlier in the week, you were talking
10:24:00 25 about the Indian Claims Commission; is that what it

1 was called?

2 A. The Indian Commission of Ontario.

3 Q. Indian Commission of Ontario and
4 some claims that the Saugeen and Nawash had filed?

5 A. Yes.

6 Q. Were those claims in relation to
7 Treaty 45½?

8 A. I think so but I didn't really
9 look into that, exactly what those claims were at
10 that time. I think they were but...

11 Q. So you don't know if they were in
12 relation to Treaty 72, for example?

13 A. I think not, but I'm not sure.

14 Q. Okay. Now when you were talking
15 about the loggers hiring lawyers, or lawyers taking
16 money anyway, you stated:

17 "I am not aware of any instance
18 in which the Indian Department
19 granted the SON permission to hire
20 lawyers or pay anyone to prosecute
21 land claims." [As Read]

22 Do you recall that?

23 A. Yes.

24 Q. Now are you aware of any instance
25 in which permission was requested to do so by the

1 SON or their lawyers?

2 A. No, I don't know if they did or
3 not.

4 Q. Okay.

5 A. Actually I'm pretty -- I don't
6 think they did. The oral history seems to suggest
7 that they, you know, first hired a lawyer in the
8 '70s, maybe. But I'm not sure.

9 Q. And was that -- well, I'll leave
10 that, I guess.

11 If I could go to Exhibit 2094. And
12 this is a very difficult document to read, I'm
13 afraid --

14 A. Thank you for the warning.

15 Q. -- so I might get you to...

16 So this is a letter from Laurence
17 Oliphant dated 28th of June 1854. Actually, no,
18 this isn't the difficult one. Sorry, my mistake,
19 that one is still to come.

20 It's a letter, I believe, to Anderson,
21 if we can scroll down for a moment. Yes, it's to
22 Anderson from Oliphant June 28th. This was just
23 filling in a bit of a blank, I guess.

24 If I can go up to the last sentence of
25 the text. So it starts -- it doesn't start there,

10:26:39 1 but it's talking about one issue and then he says:

10:26:43 2 "[...] and that His Excellency
10:26:45 3 thinks it highly desirable that the
10:26:47 4 reserve at Saugeen should be
10:26:48 5 surrendered by the Indians for
10:26:52 6 sale."

10:26:53 7 So I think that's -- would you agree
10:26:55 8 that's a pretty clear indication that Oliphant is
10:27:00 9 passing on some instructions from Elgin?

10:27:04 10 A. Yes.

10:27:08 11 Q. Now I wanted to go to another
10:27:09 12 document that I didn't put in, or didn't discuss
10:27:14 13 with you in the -- when going over the various
10:27:23 14 exchanges, I didn't bring it up in order. It's
10:27:27 15 Exhibit 2100.

10:27:30 16 Now this is a peculiar document in
10:27:33 17 form, format. It is a series of questions posed by
10:27:40 18 Oliphant for Anderson to pass on to the Bands, to
10:27:44 19 the various Bands. Do you recall that document?

10:27:46 20 A. Yes.

10:27:46 21 Q. So the reason I say it's somewhat
10:27:50 22 strange is that the way it's written. So there's a
10:27:55 23 series of questions that appear on the first page
10:27:58 24 going down, first, second, and so on. And on the
10:28:05 25 right side -- you've read this document, you said

10:28:11 1 you're familiar with it?

10:28:12 2 A. I believe so.

10:28:13 3 Q. On the right side there are some
10:28:14 4 answers, but the ones we're looking at right now
10:28:16 5 are not the answers from Saugeen and Owen Sound.
10:28:18 6 They're answers from another group.

10:28:20 7 A. Right.

10:28:21 8 Q. But if we can go down to page,
10:28:33 9 page 4, which has the number 104 written at the top
10:28:37 10 of it in this document, so there we have answers
10:28:41 11 from the Saugeen and Owen Sound Indians. But they
10:28:45 12 don't have the questions with them at this point.

10:28:48 13 So I'm going to -- I'm going to leave
10:28:52 14 this here and read from the questions from the
10:28:55 15 earlier things.

10:28:57 16 So the first question is: "Would you
10:29:07 17 prefer receiving the amount of your annuities in
10:29:09 18 money rather than in goods or presents?"

10:29:14 19 The answer says: "We prefer being paid
10:29:17 20 in money."

10:29:18 21 A. Yes.

10:29:18 22 Q. That's fine.

10:29:20 23 And the second question deals with
10:29:26 24 title -- so I'm going to skip it.

10:29:29 25 But the third question says:

1 "Do you wish, or are you

2 opposed to the concentration of the
3 Chippewa tribes at Owen Sound?

4 "If you are opposed to such an
5 arrangement, state what your
6 objections to it are." [As Read]

7 And the answer from the Saugeen and
8 Owen Sound Indians, it says:

9 "We have been long trying to
10 get the other tribes from Beausoleil
11 Island, Rama and Snake Island to
12 come and settle here, and we hope
13 our Great Father will be able to
14 collect the wandering tribes to this
15 place." [As Read]

16 A. Yes.

17 Q. Can I scroll down to the next page
18 actually for a moment? So it's hard to see, but on
19 the right side there, it says "Owen Sound". I
20 think it says "2nd August, 1854"; would you agree
21 with that?

22 A. That's what it looks to me, yes.

23 Q. So in August 1854 the Saugeen and
24 Owen Sound Bands are still saying they'd like
25 certain groups to be coming and settling there?

10:30:55 1 A. Yes.

10:30:56 2 Q. If we can go back up, so the
10:31:00 3 fourth question deals with schools, so I'll skip
10:31:03 4 that.

10:31:03 5 But the fifth question, again, this is
10:31:15 6 somewhat of a peculiar document. So the fifth
10:31:18 7 question is a particular question for the Saugeen
10:31:23 8 Ojibway in Owen Sound. The other Bands were asked
10:31:25 9 a different fifth question, but that doesn't
10:31:28 10 concern us.

10:31:28 11 So the fifth question for the Saugeen
10:31:30 12 in Owen Sound is:

10:31:33 13 "Are you, the Saugeen and Owen
10:31:36 14 Sound Indians, prepared to cede to
10:31:37 15 the Government to be sold for your
10:31:40 16 benefit the tract of land called the
10:31:41 17 Saugeen Reserve, reserving for the
10:31:43 18 use of Indian tribes, the portions
10:31:46 19 or blocks of land as marked in the
10:31:48 20 accompanying map; or are you still
10:31:50 21 opposed to the great benefit the
10:31:53 22 Government wish to confer upon them?
10:31:57 23 Let them state their objections in
10:31:59 24 writing." [As Read]

10:32:00 25 Now, August 2nd is the same time as

1 Anderson is actually visiting them; is that
2 correct?

3 A. Yes.

4 Q. We've already seen, I believe, his
5 speeches to them as to what they should do?

6 A. Yes.

7 Q. So I think this -- you've read
8 this? You are familiar with this, you said, I
9 believe?

10 A. I believe so.

11 Q. Would you agree this is going to
12 be their response, not only to the question but
13 also to Anderson? We can go over it first.

14 A. I'd rather look at it first, yes.

15 Q. It says:

16 "After one day and night of
17 deliberation, the Saugeen and Owen
18 Sound Indians arrived at the
19 following unsatisfactory
20 conclusion." [As read]

21 I take it this is being written by
22 Anderson?

23 A. It looks that way.

24 Q. "Nawash speakers said we have
25 appointed David Sawyer to deliver

our sentiments on this occasion."

David Sawyer commenced by saying:

"I've listened to the Chiefs and warriors last night and understand what they've said'--" [as read]

Is it "we want"?

A. I think it's "we", yes.

Q. "-- we want to do our Great Father's wishes as near as we can because I see myself we're not able to manage our own affairs and we now place ourselves in the hand of our Great Father.

"We see the quantity of land to be reserved for our use as marked on the map is not large enough. Therefore, we beg our Great Father to increase the quantity to the pencil lines we have drawn on the map embracing the Fishing Islands and Cape Croker, with the tract from the Owen Sound to the head of Colpoy's Bay. These are the three reserves, marked in pencil, we want to keep for ourselves and children

10:34:05 1 on the mainland. The islands we say
10:34:07 2 nothing about as they belong to us
10:34:09 3 and we wish to keep them. The
10:34:12 4 remainder of our reserve we are
10:34:16 5 willing to cede to the government to
10:34:20 6 be disposed of to the best
10:34:23 7 advantage, the principal to be
10:34:24 8 funded and interest payable annually
10:34:26 9 to us and our posterity forever.
10:34:30 10 Where there is a prospect of a town
10:34:32 11 being built on the part now ceded,
10:34:35 12 we wish our Great Father to have it
10:34:38 13 laid out into town lots and sold to
10:34:40 14 the best advantage for our benefit.
10:34:43 15 The white people are wise
10:34:47 16 speculators --" maybe?
10:34:50 17 A. Yes.
10:34:51 18 Q. "-- we know the lands laid out
10:34:53 19 into villages are mill sites. The
10:34:57 20 whites speculate upon a spirit.
10:35:01 21 Speculation is getting up amongst
10:35:03 22 us. A spirit on speculation is
10:35:06 23 getting" -- sorry -- "getting up
10:35:09 24 amongst us." [As Read]
10:35:10 25 A. Yes.

10:35:16 1 Q. "We wish the land now ceded to
10:35:20 2 be immediately laid out into lots
10:35:21 3 and that there be no time lost in
10:35:23 4 making sale of them to actual
10:35:26 5 settlers so that the interest will
10:35:29 6 shortly be coming in and not be
10:35:31 7 waiting so long as for the little
10:35:34 8 strip we lately sold.

10:35:36 9 "We want a written paper from
10:35:37 10 the government saying the principal
10:35:40 11 coming in for this reserve will be
10:35:42 12 funded for ourselves and the future
10:35:44 13 generation and that we and they
10:35:46 14 shall receive the interest of it
10:35:48 15 every year." [As Read]

10:35:55 16 And then it's actually recorded that
10:35:56 17 there were signatures from David Sawyer on behalf
10:35:59 18 of the Saugeen Band and Peter Jones Kegeponce on
10:36:10 19 behalf of the Owen Sound Band.

10:36:12 20 So it appears, would you agree, that
10:36:15 21 this indicates that the two Bands gave a fair
10:36:20 22 amount of thought to Anderson's proposal and had
10:36:23 23 detailed conditions in mind?

10:36:30 24 A. Yes.

10:36:31 25 Q. And this would be the response

10:36:46 1 that Anderson then rejects in his speech on
10:36:53 2 August 2nd; is that correct?

10:36:54 3 A. Yes, apparently.

10:36:57 4 Q. Now, this is a minor point about
10:37:10 5 something that came up yesterday. If I can call up
10:37:12 6 exhibit -- oh, it's not an exhibit yet. It's
10:37:15 7 document SC0868.

10:37:22 8 This is the difficult document I was
10:37:24 9 mentioning. In we can zoom in on the bottom. Now,
10:37:42 10 it's a letter to Anderson, and if we go down to the
10:37:49 11 next page, actually we can see it's from -- that's
10:37:52 12 the top, Laurence Oliphant, September -- can you
10:37:57 13 make out the date there? That's right. It
10:38:02 14 September 15th, 1854?

10:38:05 15 A. Yes.

10:38:05 16 Q. Have you seen this letter before,
10:38:07 17 do you think?

10:38:08 18 A. I'm not sure honestly.

10:38:10 19 Q. Okay. So, as I say, this is a
10:38:13 20 letter from Oliphant to Anderson. And yesterday
10:38:17 21 you said you were not aware of whether Captain
10:38:22 22 Anderson had a title as a commissioner with respect
10:38:27 23 to Indian lands?

10:38:28 24 A. Yes.

10:38:28 25 Q. So this is a letter from Oliphant

1 to Anderson and he's talking about Beausoleil and
2 Christian Island. On the second last line of this
3 document, it says:

4 "You were requested to exercise
5 the powers granted to you as a
6 commissioner to protect the Indian
7 lands within your superintendence
8 from trespass and intrusion, and by
9 seizing any timber that may have
10 been so cut and by prosecuting the
11 trespassers for their intrusion."

12 [As Read]

13 So would you agree that in
14 September 1854 Captain Anderson was a commissioner
15 for protection of Indian lands?

16 A. Yes, it looks like it.

17 Q. Okay. If I can go to
18 Exhibit 2556. So this is a document -- it doesn't
19 have a date. It says:

20 "To his Grace the Duke of
21 Newcastle, we beg to present the
22 complaints that were not included in
23 our petition dated 17th of April,
24 1860." [As Read]

25 So would you agree that this --

10:40:13 1 although it doesn't have a date, it's sometime
10:40:15 2 after that date of 17th April, 1860?

10:40:19 3 A. Yes, that makes sense.

10:40:20 4 Q. Are you aware of petitions being
10:40:23 5 given in 1860?

10:40:25 6 A. I couldn't say. I mean, there
10:40:30 7 were a number of petitions.

10:40:32 8 Q. Were you aware of petitions
10:40:34 9 dealing with Katherine Sutton and David Sawyer and
10:40:37 10 the lands they owned?

10:40:39 11 A. Yes.

10:40:40 12 Q. And the complaints of David Sawyer
10:40:48 13 and Katherine Sutton, and I believe some others,
10:40:56 14 pertained to lands that they lost or were taken
10:40:56 15 away from them as a result of the 1857 surrender;
10:41:00 16 is that right?

10:41:01 17 A. I believe so.

10:41:04 18 Q. So the first statement there says:

10:41:06 19 "We your petitioners beg to
10:41:08 20 mention the treaty of 9th February,
10:41:11 21 1857, being unlawful for the want of
10:41:14 22 this --"

10:41:17 23 A. His Excellency.

10:41:19 24 Q. Oh.

10:41:19 25 "-- His Excellency's signature.

1 Therefore, according to the wording
2 of the treaty it is null and void."

3 Now, we've talked about how you felt it
4 was not possible for Treaty 72 to be set aside
5 after the fact. Would you agree that at least here
6 somebody is making an effort to set aside the 1857
7 treaty?

8 A. They're trying to. It didn't get
9 set aside.

10 Q. No, of course.

11 Can you scroll down and see if it
12 indicates to see who might have signed this? Okay,
13 it's signed on behalf of the Cape Croker Band,
14 Peter Jones Kegedonce and George A. Tabegwon, and
15 there's some dodems.

16 Do you find it peculiar that Peter
17 Jones Kegedonce would write a petition in support
18 of David Sawyer?

19 A. I haven't done my own research on
20 those relationships, so I don't want to comment.

21 Q. After the sales from the land of
22 Treaty 72 began, are you aware of occasions in
23 which the Bands urged or complained that the lands
24 were not being sold quickly enough?

25 A. I believe so, yes.

1 Q. And are you aware of occasions in
2 which they requested the Government to purchase all
3 the lands outright?

4 A. I don't recall that.

5 Q. If I can go to Exhibit 2692. So
6 this fortunately is a document that has a
7 transcript. It's dated 8th of May, 1871, I assume.

8 It is to Joseph Howe. Do you know who
9 Joseph Howe is?

10 A. He was a federal politician, I
11 believe.

12 Q. If you can scroll down and see
13 what other -- W.R. Bartlett. Do you know who
14 Bartlett was? Was he the Indian agent?

15 A. I think so. I'd have to look it
16 up, but I think so.

17 Q. If we can go back up again. So
18 this letter appears to be merely a cover letter for
19 another document. But it says:

20 "I have the honour to enclose
21 herewith a letter addressed to me by
22 the Saugeen Indian chiefs requesting
23 me to transmit a set of resolutions
24 addressed to you also enclosed,
25 which is signed by the Saugeen and

10:44:51 1 Cape Croker chiefs and their
10:44:52 2 principal men, in which they ask the
10:44:55 3 Indian Department to purchase and
10:44:55 4 pay them for the remainder of the
10:44:57 5 lands unsold in the Saugeen
10:44:59 6 Peninsula and then give them as free
10:45:02 7 grants to settlers." [As Read]
10:45:07 8 And then it goes on to talk about
10:45:09 9 roads. So would you agree that this appears to
10:45:17 10 indicate that they were wanting to get all of their
10:45:20 11 money in a lump sum at this point?
10:45:22 12 A. It looks that way, yes.
10:45:41 13 Q. So in your report you concluded,
10:45:44 14 and you've stated in your evidence this week, that
10:45:49 15 although the Saugeen and Nawash had participated in
10:45:51 16 discussions of surrender of some or all of the
10:45:56 17 Peninsula prior to Treaty 72, I think -- and,
10:45:58 18 again, I'm paraphrasing here -- the Oliphant
10:46:01 19 proposal is so different from previous proposals
10:46:04 20 that the Bands effectively didn't have adequate
10:46:06 21 time to consider Oliphant's? Would you --
10:46:11 22 A. Is that in my first report?
10:46:13 23 Q. Yes, I'm going back to your first
10:46:19 24 report.
10:46:19 25 A. Would you mind if I just looked?

10:46:23 1 Q. Sure, I think it's the last
10:46:25 2 section?

10:46:25 3 A. (Witness reviews document).

10:46:34 4 Q. I guess I'm looking at the very
10:46:36 5 last page on page 43. It says:

10:46:39 6 "Thus when Lord Oliphant
10:46:41 7 arrived for his unannounced treaty
10:46:44 8 Council on October 13, 1854, the
10:46:47 9 Saugeen Ojibway were unprepared and
10:46:48 10 found themselves required to respond
10:46:49 11 to a new proposal that appears to
10:46:52 12 have been considerably more
10:46:54 13 extensive than previous requests for
10:46:56 14 surrenders." [As Read]

10:46:58 15 A. Yes.

10:46:58 16 Q. So that's essentially what you're
10:47:00 17 saying?

10:47:00 18 A. Yes.

10:47:01 19 Q. Now I went over a number of
10:47:10 20 things, and my friend went over them with you. So
10:47:13 21 we had a meeting in June of 1852 with Anderson, and
10:47:16 22 we had a meeting with Anderson in August of 1852?

10:47:20 23 A. Yes.

10:47:21 24 Q. And then another Council meeting
10:47:24 25 with Anderson in August of 1853?

10:47:27 1 A. Yes.

10:47:27 2 Q. And we also have a letter in which
10:47:33 3 Anderson responded to Charles Keeshig and he asked
10:47:37 4 Keeshig -- this is March of 1854?

10:47:40 5 A. Yes.

10:47:40 6 Q. He asked Keeshig to discuss
10:47:42 7 surrender with others and mark out on a map what
10:47:44 8 they wanted to reserve; is that right?

10:47:46 9 A. Yes.

10:47:46 10 Q. And then in addition to that we
10:47:50 11 went over occasions on which Alexander McNabb
10:47:54 12 appears to have communicated with the Bands
10:47:55 13 directly?

10:47:56 14 A. Yes.

10:47:56 15 Q. And Mr. Keating, as well, seems to
10:48:00 16 have made some proposals to them directly?

10:48:02 17 A. Yes.

10:48:02 18 Q. And when we went over the report
10:48:10 19 from Oliphant of November 1854, you stated that the
10:48:19 20 minutes of the reserves were being discussed during
10:48:21 21 the meeting; is that correct?

10:48:23 22 A. Yes.

10:48:23 23 Q. So given all that, would you still
10:48:30 24 maintain that the Bands had inadequate time to
10:48:33 25 consider Oliphant's proposal?

10:48:35 1 A. Yes, because all of the previous
10:48:38 2 occasions that you mentioned were either just
10:48:42 3 general and vague, like those first requests from
10:48:45 4 Anderson.

10:48:46 5 He just said, would you surrender some
10:48:48 6 of your lands? Then he said: Have you thought
10:48:50 7 about it, are you thinking about it; will you
10:48:53 8 surrender some lands? And it wasn't specific.

10:48:56 9 Then the private persons had specific
10:48:58 10 areas, and most of them I think were quite limited
10:49:01 11 in size.

10:49:03 12 Then in the August Council, it appears
10:49:07 13 that we don't have a map from that Council, which
10:49:10 14 would be very helpful.

10:49:10 15 But we have Charles Rankin's letter, in
10:49:14 16 which it appears that they were talking about
10:49:16 17 trying to get that 190,000 acres, the more
10:49:21 18 southerly part of the Peninsula that they
10:49:23 19 considered the most desirable land. And then
10:49:27 20 Oliphant comes and asks for all of it.

10:49:35 21 Q. Okay. So, jumping topics again,
10:49:42 22 on Tuesday, I believe, you were asked about an
10:49:46 23 individual named Alexander MacGregor?

10:49:50 24 A. Yes, from the 1830s, I believe.

10:49:53 25 Q. Yes, and you were taken to a

1 letter from 1835, which was a complaint about
2 MacGregor encroaching on the Indian fisheries.

3 Do you remember that, or do you want to
4 see it again?

5 A. I remember it, unless you need a
6 lot of detail. I remember it, yes.

7 Q. You were asked the question: Did
8 your research and review of the historical record
9 reveal what if anything the Government did in
10 response to this request?

11 And your answer was:

12 "I don't think I've seen any
13 evidence that MacGregor was driven
14 off. In general, the Government was
15 in favour of the establishment of
16 commercial fisheries, which were a
17 source of revenue for government."

18 [As Read]

19 Do you recall saying that?

20 A. Yes.

21 Q. In your research, did you come
22 across any reference to a Chief William MacGregor
23 of the Nawash Band?

24 A. I'm not sure. I don't remember
25 that.

1 Q. Okay. I'd like to take you to
2 Exhibit 1147. It's the Bagot Commission report.
3 You're familiar with the Bagot Commission report?

4 A. Yes.

5 Q. So it's a large document, it's
6 1447. Now, we're actually going to look --
7 unfortunately, although it's quite a large
8 document, it doesn't have page numbers on it.

9 And we're looking at the appendix.
10 There's an appendix to the volume, but we're
11 looking to the appendix to the report.

12 I want to jump to page 154 of the PDF.
13 If I can scroll down, sorry, if we can go back up a
14 bit. There it is, a little farther.

15 Now, I'll show you, this to you in a
16 moment, but I'll ask you to take my word for it
17 that this is evidence provided by Anderson at this
18 time?

19 A. Okay.

20 Q. It says -- he appears to be
21 responding to questions, and the third item is what
22 I'm drawing your attention to. It's on the right
23 column:

24 "The course to be adopted with
25 respect to squatters upon Indian

10:52:29 1 lands, whether altogether without
10:52:32 2 authority or under color of
10:52:34 3 recognized titles obtained from
10:52:36 4 individuals amongst the Indians, and
10:52:38 5 how far the act recently passed will
10:52:38 6 be likely to afford sufficient
10:52:38 7 protection to the rights of the
10:52:38 8 Indians." [As Read]

10:52:42 9 So that's apparently the question.

10:52:45 10 So this is approximately 1840. What
10:52:49 11 would be the -- do you know what "the act recently
10:52:51 12 passed" would be?

10:52:53 13 A. I can't remember the name, but
10:52:55 14 there is an act, something about the protection of
10:52:57 15 Indian lands or something like that. I'm sorry,
10:53:01 16 the Bagot Commission, 1840? Is it not 1844?

10:53:05 17 Q. It is 1844. I think this evidence
10:53:08 18 came from 1840, but we'll scroll to that in a
10:53:13 19 moment.

10:53:13 20 A. Thank you.

10:53:13 21 Q. The answer is:

10:53:14 22 "I cannot say what course
10:53:16 23 should be adopted, but there is a
10:53:18 24 case and perhaps many others which I
10:53:21 25 am not acquainted with, in which the

1 act recently passed does not produce
2 the desired effect. I am told and I
3 believe it to be a fact, a man by
4 the name of MacGregor occupies
5 fishing stations, cultivates a farm,
6 cuts timber, sells whiskey and
7 purchases the Indian presents" --
8 etcetera, etcetera -- "on the
9 Saugeen Reserve and on an island 20
10 or 30 miles from this. But neither
11 Indian or white man is found to
12 enter formal complaint and he
13 remains undisturbed much to the
14 prejudice of the Indians." [As Read]
15 If I can scroll up a bit and see if we
16 can find the date and name, I think it's on the
17 other page.

18 So this one says "Answers of
19 Mr. Superintendent Anderson to the questions of the
20 Commissioners of 1840". But oddly enough his
21 answer is dated 20th of December, 1839.

22 A. It is odd.

23 Q. If I can go down to page 161 of
24 this document as well, 161 of the PDF. If we can
25 scroll down a bit.

10:54:57 1 And, again, so I think he gave similar
10:55:01 2 answers to a number of different questions.

10:55:03 3 Because on the right side, the questions appear to
10:55:13 4 be dealing with the defrauding of Indians of their
10:55:16 5 recently acquired presents, and the third question
10:55:18 6 is "What practical expedient would you recommend
10:55:22 7 generally to correct this evil?"

10:55:27 8 If we go down a bit to his answer, the
10:55:30 9 fifth line from the bottom, it says:

10:55:32 10 "And at Manitowaning this was
10:55:35 11 followed up, and I am informed that
10:55:37 12 a Mr. MacGregor living on the
10:55:39 13 Saugeen Reserve filled his shop 2 or
10:55:41 14 3 years since with government
10:55:43 15 blankets and other presents issued
10:55:45 16 to the Potawatomi and Saugeen
10:55:46 17 Indians." [As Read]

10:55:48 18 If we can go to the next page:
10:55:52 19 "And during the whole time the
10:55:53 20 Indians were in camp here, a
10:55:55 21 schooner belonging to this person
10:55:57 22 lay at anchor within a few yards of
10:55:59 23 the present store until the issue
10:56:01 24 was over, when she sailed and placed
10:56:03 25 herself in a convenient moorage to

1 meet the Indians on the return home,
2 dispatching a canoe or boat to
3 another convenient point, under the
4 charge of a half breed of bad
5 character, who after robbing the
6 Indian to a considerable amount, was
7 assailed by a sober Indian." [As
8 Read]

9 It goes on about that story for a bit.

10 Then, if I can take you to page 164, I
11 believe he has some final remarks of Mr. MacGregor.

12 So the bottom of the first column, it says:

13 "Have you heard of any facts
14 from which you can judge of the
15 efficiency of the late acts of
16 Parliament for the protection of
17 Indian lands and squatters?

18 "I am told that there is on the
19 Saugeen Reserve a Mr. MacGregor who
20 cultivates a farm, cuts timber, has
21 a large fishing establishment and
22 purchases the Indian presents for
23 whiskey, and that the early part of
24 last summer he took up a fishing
25 station on an island about 30 miles

10:57:19 1 to the southeast of this where he
10:57:21 2 has a party of men at present.

10:57:23 3 Although I sent him a copy of the
10:57:26 4 Act relating to squatters, etcetera,
10:57:29 5 passed last session, he totally
10:57:37 6 disregards it and continues his
10:57:37 7 unlawful traffic." [As Read]

10:57:38 8 So would you agree that Anderson seems
10:57:42 9 to have been aware of the problems with Mr.
10:57:47 10 MacGregor?

10:57:47 11 A. Yes.

10:57:47 12 Q. And that he wanted to take action
10:57:52 13 but felt that the legislation wasn't sufficient to
10:57:55 14 suit his purpose?

10:57:57 15 A. Yes. Well, he says he sent a copy
10:58:00 16 of the Act to MacGregor and MacGregor disregarded
10:58:05 17 it.

10:58:05 18 Q. He also said earlier that he
10:58:08 19 couldn't find either Indian or white man to file a
10:58:11 20 complaint, essentially?

10:58:13 21 A. Yes.

10:58:13 22 Q. If we can call up Exhibit 1135?
10:58:45 23 So we're going to look at the first page first. So
10:58:46 24 this is the letter from Sir Francis Bond Head, 20th
10:58:54 25 of August, 1836. This is his reporting letter

10:58:55 1 about Treaty 45½; is that correct?

10:58:57 2 A. Yes.

10:59:03 3 Q. Now, on Monday, you were talking
10:59:05 4 about, I think, annuities and the need to, or the
10:59:14 5 need to make payments. And you said:

10:59:22 6 "And this is consistent with
10:59:24 7 Bond Head's later statement that the
10:59:26 8 Treaties were dealing with them in
10:59:27 9 equity. A phrase that meant the
10:59:29 10 terms were general and not all
10:59:31 11 specifically finalized." [As Read]
10:59:35 12 So I'm going to go to page 2 of this,
10:59:41 13 and it starts "Your Lordship will".

10:59:45 14 I'm going to ask if this is the phrase
10:59:47 15 you meant:

10:59:50 16 "Your Lordship will at once
10:59:52 17 perceive that the document is not in
10:59:54 18 legal form, but our dealings with
10:59:56 19 the Indians have been only in
10:59:58 20 equity; and I was therefore anxious
11:00:00 21 to show that the transaction had
11:00:02 22 been equitably explained to them."

11:00:02 23 [As Read]

11:00:04 24 Is that the part that you were
11:00:06 25 referring to?

11:00:06 1 A. Yes.

11:00:06 2 Q. I'm almost finished, so I'm really
11:00:21 3 jumping around.

11:00:22 4 On Monday with respect to the 1847
11:00:25 5 declaration, you mentioned that, I think you
11:00:28 6 indicated that the document was unique; you hadn't
11:00:31 7 seen anything like it before?

11:00:32 8 A. Yes.

11:00:33 9 Q. Would you agree that after the
11:00:38 10 legislation was passed in 1850 there wouldn't be a
11:00:42 11 need for such a document, the legislation
11:00:45 12 protecting Indian lands? All that would be
11:00:50 13 necessary would be to proclaim certain lands under
11:00:53 14 the act?

11:00:53 15 A. Theoretically, you know, these
11:00:58 16 documents had political function, too. So one
11:01:03 17 could still publish such a declaration. But, yeah,
11:01:07 18 they did give themselves another tool with the Act
11:01:09 19 of 1850.

11:01:10 20 Q. I wanted to call up your thesis,
11:01:29 21 which we made an exhibit yesterday. I'll try and
11:01:35 22 find the number, 4164. So Exhibit 4164.

11:01:48 23 I actually wanted to go to something in
11:01:52 24 here, "Acknowledgements", which is in the document
11:01:59 25 page V and VI, probably page 7 of the PDF. Yes,

11:02:09 1 that's the one.

11:02:10 2 So, at the bottom, this is your
11:02:15 3 acknowledgement section. You mention two
11:02:20 4 individuals who shared with you the tense summer of
11:02:26 5 1990 when Canada's armed forces confronted their
11:02:30 6 people at Kanesatake and Kahnawake. It says:

11:02:36 7 "That experience, which
11:02:37 8 occurred just before I entered the
11:02:40 9 doctoral program, reaffirmed my
11:02:42 10 commitment to documenting the
11:02:43 11 history of Canadian colonization and
11:02:45 12 to working to restore First Nations
11:02:47 13 to their rightful place in this
11:02:49 14 country [...]" [As Read]

11:02:57 15 Now is that still your view of the role
11:03:01 16 of the historian, or a proper role for a historian
11:03:05 17 in society?

11:03:05 18 A. As a historian, my commitment is
11:03:11 19 to document the history of Canadian colonization
11:03:16 20 and Crown Indigenous relations. And as a public
11:03:21 21 historian and as an academic, I do try to
11:03:26 22 contribute to positive developments in the country.

11:03:31 23 Q. Thanks.

11:03:32 24 My last question is actually a peculiar
11:03:39 25 one. My friend rightly pointed out that it hadn't

11:03:53 1 been demonstrated that the article "Notes From
11:03:56 2 Canada", which were anonymous, was written by
11:04:00 3 Mr. Oliphant. And I want to show you a passage
11:04:04 4 from both documents. It's going to be the passage
11:04:11 5 that I quoted, or discussed with you.

11:04:17 6 So on the left we have Minnesota in the
11:04:20 7 far west, which is Exhibit 2179. And on the right
11:04:25 8 we have Exhibit 4154, which is the article from
11:04:31 9 Blackwoods called "Notes on Canada".

11:04:39 10 And so, on "Notes on Canada", if we can
11:04:42 11 go to page 577, the right column, I'm not going to
11:04:52 12 ask you to attribute authorship. I'm just going to
11:04:55 13 ask you if the sections we discussed are the same
11:04:57 14 or similar. And so, yes, the right column, if we
11:05:01 15 can get there.

11:05:03 16 And it starts "There is scarcely". So
11:05:10 17 on the left side we have "Minnesota In the Far
11:05:16 18 West", which is page 74 of the book?

11:05:25 19 A. Am I correct in thinking they're
11:05:27 20 both dated the same year?

11:05:28 21 Q. Yes, they are dated the same year.
11:05:30 22 The article is dated May 1855 and the book, I'm not
11:05:35 23 sure, it is dated 1855, I'm not sure what month.

11:05:42 24 The top of page 74 it starts: "There
11:05:45 25 is scarcely an acre of government land left..."

1 Could you take a look at both
2 paragraphs? On the right it's not very broken down
3 into the same paragraph structure but -- and see if
4 the paragraphs starting with "There is scarcely an
5 acre of government land [...]" is similar to both
6 sources?

7 A. Yes. Would it be possible to zoom
8 in a bit on the right document, please. Maybe up
9 to 100 percent?

10 Thank you. (Witness reviews document).

11 Yes, it appears to me that the
12 paragraph on the left document is reproduced pretty
13 much word for word on the right document up to a
14 certain point, and then -- then shifts.

15 Q. And I think the only difference
16 appears to be that "chiseling" is in quotations in
17 the left document, "Minnesota in the Far West", and
18 is not in quotations on the right document; is that
19 correct?

20 A. Yes, that difference is there, for
21 sure.

22 Q. Okay. Well thank you for your
23 assistance.

24 MR. BEGGS: Those are my questions,
25 Your Honour.

11:07:33 1 THE COURT: Thank you, Mr. Beggs.

11:07:35 2 Now, sir, you are now going to resume
11:07:47 3 your regular life until you return to complete your
11:07:51 4 cross-examination on -- what is it? August the
11:07:55 5 12th? The 12th. And I don't wish to belabor the
11:08:00 6 point, but you must not engage in this matter in
11:08:07 7 any way, as I have previously said in more detail.
11:08:10 8 And I'm sure you'll do your best to not do so.

11:08:14 9 Yes, Ms. Guirguis.

11:08:16 10 MS. GUIRGUIS: Your Honour, point of
11:08:18 11 clarification. I've asked of my friends whether
11:08:21 12 they understand this to mean Professor Brownlie is
11:08:23 13 able to review his expert report prior to coming
11:08:26 14 back? Is that --

11:08:28 15 THE COURT: What did your friends --

11:08:30 16 MS. GUIRGUIS: They agreed that they
11:08:31 17 understood he could review the expert report to
11:08:34 18 refresh his memory and those materials, but no
11:08:37 19 other outside research, as you've directed.

11:08:41 20 THE COURT: Certainly if the defendants
11:08:42 21 are consenting to this gentleman re-reading his two
11:08:46 22 reports in preparation for August 13th, that's fine
11:08:50 23 with me.

11:08:51 24 MS. GUIRGUIS: Okay.

11:08:52 25 THE COURT: I'm not sure that everyone

11:08:53 1 would be so accommodating, but I'm fine with that.

11:08:56 2 MS. GUIRGUIS: Thank you, Your Honour.

11:08:57 3 THE COURT: And, you know, that's just
11:09:00 4 the reports themselves.

11:09:05 5 So thank you, sir, you can step back
11:09:08 6 into the courtroom, as you wish.

11:09:11 7 Now, Mr. Beggs.

11:09:14 8 MR. BEGGS: Yes, Your Honour.

11:09:15 9 THE COURT: My trial schedule
11:09:17 10 suggestions, how is that coming along? For some
11:09:21 11 reason, I think you're the one that might have the
11:09:24 12 document although Ms. Guirguis is next if you
11:09:27 13 don't.

11:09:27 14 MR. BEGGS: No, I do have the document.

11:09:29 15 I've discussed, we made changes to the
11:09:33 16 estimates, and which would impact the calendar.

11:09:39 17 But speaking to my friends again today,
11:09:42 18 we all thought that further reductions could be
11:09:45 19 made, so we were going to, I think, try and -- try
11:09:51 20 to discuss it internally to each party this
11:09:55 21 afternoon and hopefully I would be able to send you
11:09:58 22 a new schedule and calendar by the end of the day.

11:10:01 23 THE COURT: All right. That's very
11:10:03 24 helpful.

11:10:05 25 Next subject for you.

11:10:08 1 MR. BEGGS: Yes, Your Honour.

11:10:09 2 THE COURT: Any precision on the
11:10:11 3 question of when we're doing our voir dire?

11:10:14 4 MR. BEGGS: Not yet, Your Honour.

11:10:16 5 Dr. von Gernet appears to be travelling
11:10:26 6 in the wilderness at the moment.

11:10:28 7 THE COURT: I hope he's not in northern
11:10:32 8 Manitoba, or is it Saskatchewan? I forgot from the
11:10:39 9 news this morning.

11:10:40 10 MR. BEGGS: No, I don't believe so.

11:10:40 11 THE COURT: He's travelling. When do
11:10:42 12 you expect him to be back?

11:10:43 13 MR. BEGGS: That's what we're trying to
11:10:45 14 determine.

11:10:45 15 We know he'll be back for certain by
11:10:50 16 September, but we want to see if we can get him
11:10:53 17 back during the time period we have discussed.

11:10:56 18 So we're trying to reach him to see if
11:10:59 19 we can persuade him to return.

11:11:01 20 THE COURT: Well it would seem to me,
11:11:03 21 that, for example -- I will ask Mr. Feliciant for
11:11:09 22 an estimate in a moment -- based on prior estimates
11:11:10 23 for this gentleman that we're hearing from this
11:11:14 24 week, that the latter part of the week of
11:11:17 25 August 13th might be an excellent choice.

1 So I guess, obviously, if you can't
2 reach him, you can't reach him. But you'll pursue
3 that and e-mail when you discover the answer.

4 MR. BEGGS: Yes, Your Honour.

5 THE COURT: Now, my excellent assistant
6 has found a -- for her sake, much better job, much
7 closer to where she lives.

8 So coming on around two weeks from now,
9 we'll have to sort something out about who will be
10 taking that over. But at least in the next two
11 weeks it should be fine to continue to keep me
12 up-to-date through her about these matters, all
13 right?

14 MR. BEGGS: Thank you, Your Honour.

15 THE COURT: Now, let's move on to Mr.
16 Feliciant.

17 MR. FELICIAN: Yes, Your Honour.

18 THE COURT: Mr. Feliciant, without
19 holding you to it, as I've said to other counsel,
20 if you can give me a rough estimate -- I know you
21 have investigations you have to make into certain
22 things that came up this week unexpectedly, but
23 allowing for those sorts of things, roughly how
24 long do you think you'll be with Professor
25 Donnelly?

11:12:39 1 MR. FELICIAN: I've discussed this
11:12:40 2 with Mr. Ogden and we've divided the work according
11:12:44 3 to reports, so I'll be on "The Long Road to Land
11:12:48 4 Claims" report no more than a day and a half,
11:12:51 5 likely a day.

11:12:52 6 THE COURT: Sorry, you're splitting the
11:12:54 7 cross? Oh, you've asked me for permission?

11:12:58 8 MR. FELICIAN: I was getting to that,
11:13:00 9 but you'd asked me about timing before you asked me
11:13:04 10 to ask for permission. So it raised it all at
11:13:06 11 once.

11:13:06 12 THE COURT: Given the in-chief was
11:13:08 13 split, I have no problem with it.

11:13:09 14 MR. FELICIAN: Thank you.

11:13:09 15 THE COURT: I'm not concerned about how
11:13:11 16 much time you will specifically take. If there are
11:13:13 17 two of you, the question is what is the overall
11:13:16 18 estimate of how long Ontario thinks they are going
11:13:19 19 to be?

11:13:20 20 MR. FELICIAN: I think four days at
11:13:21 21 the outside.

11:13:22 22 THE COURT: Well, that's all you have,
11:13:24 23 so it can't be any longer than that.

11:13:26 24 MR. FELICIAN: It won't be any longer,
11:13:28 25 but I'm hoping it will be cut down.

11:13:30 1 THE COURT: So at most four days,
11:13:34 2 hopefully it will be cut down. That does seem like
11:13:37 3 if we're having the voir dire that week, better off
11:13:41 4 to do it on Friday, Mr. Beggs. There may be brief
11:13:48 5 re-examination, but that shouldn't interfere with
11:13:50 6 voir dire, all right?

11:13:51 7 MR. BEGGS: Yes, Your Honour. I think,
11:13:54 8 maybe my friends can correct me.

11:13:55 9 But I think there's also a voir dire or
11:13:58 10 motion on Professor Beaulieu to be heard around the
11:14:02 11 same time. I'm not sure...

11:14:05 12 THE COURT: That's where we get to the
11:14:06 13 list of things to do that hasn't arrived at my
11:14:10 14 office yet. The meeting we had last week.

11:14:18 15 MR. BEGGS: I believe it was sent
11:14:20 16 yesterday sometime.

11:14:21 17 THE COURT: It was sent yesterday.

11:14:22 18 MR. FELICIAN: Yes, Your Honour. The
11:14:23 19 to-do list has been sent to your assistant.

11:14:27 20 THE COURT: Well, I'm sure I'll get it,
11:14:30 21 but I have not yet received it.

11:14:32 22 MR. FELICIAN: Your Honour, I
11:14:34 23 understand it was sent this morning so it may not
11:14:36 24 be, have made its way to you yet.

11:14:41 25 THE COURT: You don't to worry about

11:14:43 1 it, but whoever has it in their mind because I
11:14:45 2 think there may have been even one more thing.

11:14:47 3 So the voir dire on Professor Beaulieu
11:14:50 4 is going to be in that period. Was there also one
11:14:54 5 more thing that was going to be in that two-week
11:14:57 6 period? Does anyone recall?

11:15:00 7 MR. MC CULLOCH: Your Honour, thanks to
11:15:01 8 the good graces of Mr. Feliciant.

11:15:03 9 THE COURT: Yes.

11:15:04 10 MR. MC CULLOCH: There will no longer
11:15:05 11 be any need for a motion to seal the map from the
11:15:09 12 Morden report.

11:15:11 13 THE COURT: I still have to deal with
11:15:13 14 the motion?

11:15:14 15 MR. MC CULLOCH: It is not necessary to
11:15:16 16 seal it. We have a decision --

11:15:19 17 THE COURT: I see.

11:15:19 18 MR. MC CULLOCH: -- from the relevant
11:15:21 19 ministry saying they're prepared to have it part of
11:15:24 20 the public record.

11:15:24 21 THE COURT: There's no request being
11:15:26 22 made.

11:15:26 23 MR. MC CULLOCH: No request, and we
11:15:28 24 will include the letter along with the report.

11:15:30 25 THE COURT: That is helpful; was that

1 something we were going to deal with in August?

2 MR. MC CULLOCH: I was supposed to have
3 pleaded the materials in the middle of August.

4 THE COURT: So, thank you, sir.

5 MR. FELICIAN: Your Honour, the other
6 thing we were asked to do that week was to put our
7 position on the record with respect to the
8 documents held by OKT we've been talking about.

9 THE COURT: That's a very brief matter
10 and since it's counsel-only we can squeeze that in.

11 So witnesses, and I'm glad you raised
12 Professor Beaulieu; he's your witness, Mr. Beggs?

13 MR. BEGGS: Yes, Your Honour.

14 THE COURT: Have you ascertained his
15 availability.

16 MR. BEGGS: I think the motion is about
17 relevance so I don't think his attendance is
18 necessary for...

19 THE COURT: Well, that makes that
20 straightforward as well.

21 I'm sure my assistant will send me
22 along the list, and thank you for that.

23 I think what we'll do is rather than
24 fixing a time for either of those two counsel-only
25 items that I added to the list, we'll leave them

1 flexible so that there's -- maximize the chance of
2 getting the voir dire done in that period.

3 Because I think that Professor Benn,
4 I'm over to Plaintiffs' counsel now. I think he's
5 scheduled for the full next week.

6 MS. GUIRGUIS: That is correct, Your
7 Honour.

8 THE COURT: Is that still your
9 expectation of how that's going to work out?

10 MS. GUIRGUIS: I think, Your Honour,
11 our expectation for the amount of time we're going
12 to take -- it's Ms. Pelletier's witness -- but I
13 think we have one day for in-chief? I'd have to
14 have it in front of me, I'm sorry.

15 THE COURT: I have it, if you don't.

16 MS. GUIRGUIS: Yes.

17 THE COURT: Benn; right now you have
18 one day, Canada has one day and Ontario has three.

19 MS. GUIRGUIS: That is correct.

20 THE COURT: Is that still everyone's
21 estimate of how long that gentleman will take?

22 MR. MC CULLOCH: Your Honour, Canada
23 expects to only take half a day.

24 THE COURT: And who's doing this
25 gentleman for Ontario?

11:17:46 1 MR. FELICIAN: It will be Mr. Lemmond
11:17:47 2 from our office and I understand from him he will
11:17:50 3 not be less than the three days.

11:17:52 4 THE COURT: You mean he won't be more
11:17:54 5 either, I'm sure you've told him.

11:17:56 6 MR. FELICIAN: I'm hoping he won't be
11:17:58 7 more. I'm doing my best to ensure he knows the
11:18:04 8 time constraints.

11:18:05 9 THE COURT: It seems, Mr. Beggs, that
11:18:06 10 when you do reach Professor von Gernet, the first
11:18:12 11 Friday is the best choice. The second Friday is a
11:18:16 12 little less certain but is another option.

11:18:20 13 But what we don't want to do is
11:18:22 14 interfere with the completion of this gentleman's
11:18:24 15 evidence. We want to do that first, and we also
11:18:27 16 want to make sure we get Professor Benn in and out.

11:18:34 17 It sounds like he may take most of the
11:18:37 18 second week. We better start him on the Monday.
11:18:40 19 If you can do the best you can.

11:18:41 20 The other thing we can consider doing,
11:18:43 21 and I'm open to this is finding an isolated day
11:18:47 22 that we otherwise were not planning to sit before
11:18:51 23 resuming at whatever date that was in September, in
11:18:57 24 order to get that done.

11:18:59 25 So if you could maximize your exploring

11:19:03 1 of his availability and get it into an e-mail, we
11:19:08 2 can move forward with that, all right?

11:19:10 3 MR. BEGGS: Yes, thank you.

11:19:32 4 The other thing I have down, Ms. Guirguis,
11:19:34 5 is Mr. Townshend indicated that he was in the
11:19:39 6 process of trying to come to some sort of agreement
11:19:43 7 about what to do about late-produced documents.
11:19:48 8 Can you give me an update on that, please.

11:19:50 9 MS. GUIRGUIS: That's correct, Your
11:19:52 10 Honour. We're still waiting. He's recirculated a
11:19:55 11 revised version this week but we're still waiting
11:19:58 12 to hear comments from our friends.

11:20:14 13 THE COURT: You see, for Professor
11:20:17 14 Beaulieu, Mr. Beggs, I have a note -- and this may
11:20:19 15 be in your documents and I'm not suggesting it
11:20:22 16 isn't -- that there would be written submissions.

11:20:25 17 MR. BEGGS: Oh, yes.

11:20:27 18 THE COURT: Before August 13th.

11:20:29 19 MR. BEGGS: Yes, Your Honour.

11:20:30 20 THE COURT: Where counsel would
11:20:32 21 articulate their dispute over, I think it's
11:20:34 22 relevance, yes?

11:20:35 23 MR. BEGGS: Yes, we've arranged --

11:20:38 24 THE COURT: I think Plaintiffs' counsel
11:20:39 25 disputes the relevance of some or all of his

11:20:42 1 testimony and I don't need those before
11:20:48 2 August 13th, but I would -- I think I indicated
11:20:51 3 that I would like to have them in by then, which
11:20:54 4 means you all have to be finished.

11:20:57 5 MR. BEGGS: Yes.

11:20:58 6 THE COURT: Did you agree on -- you
11:21:00 7 did, Ms. Guirguis is nodding her head -- on a
11:21:03 8 timetable.

11:21:04 9 MR. BEGGS: Yes, we did. The
11:21:06 10 Plaintiffs have already given us their materials
11:21:08 11 and I believe under our arrangement we are giving
11:21:11 12 ours on Monday.

11:21:12 13 THE COURT: All right. Just because I
11:21:13 14 am in a transition with my assistant, I want you to
11:21:18 15 continue to e-mail everything to her, but for any
11:21:21 16 submissions, also have a printed copy delivered to
11:21:26 17 Judge's Administration at 361 because that will
11:21:29 18 independently get to me if there's some -- there
11:21:32 19 might be some intermittent gaps in the e-mail
11:21:40 20 process, all right?

11:21:41 21 All right. Well, that's helpful.
11:21:43 22 Anything else that -- without the benefit of that
11:21:45 23 list, anything else that should be dealt with today
11:21:51 24 or could be dealt with today?

11:21:53 25 MR. BEGGS: Not from Canada, Your

1 Honour .

2 THE COURT: Thank you, Mr. Beggs. You
3 can have a seat, Mr. Feliciant.

4 MR. FELICIAN: Not from Ontario.

5 THE COURT: Back to you, sir. I'm
6 happy to hear there's no longer a need to seek a
7 sealing order; does that mean that material is now
8 going to be part of the consent material?

9 MR. MC CULLOCH: I beg your pardon.

10 Is that going to be part of the
11 material that's being put into the record?

12 THE COURT: I understood it was a
13 single page appended to an expert report.

14 MR. MC CULLOCH: Yes.

15 THE COURT: That will now just fall
16 into the ordinary process when that individual
17 testifies. Is that the idea?

18 MR. MC CULLOCH: Yes, Your Honour.

19 THE COURT: Anything else? No.

20 Some of you are taking a little holiday
21 in the interval. So we'll adjourn to August 13th.

22 THE REGISTRAR: Order. The Court is
23 adjourned the trial is set to recommence on
24 August 12th.

25 -- Court adjourned at 11:26 a.m.

REPORTER'S CERTIFICATE

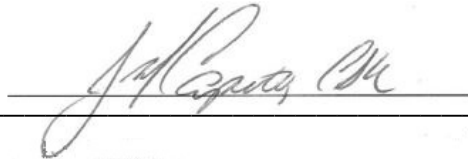
I, JUDITH M. CAPUTO, RPR, CSR, CRR,
Certified Shorthand Reporter, certify;

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

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

That the foregoing is a Certified
Transcript of my shorthand notes so taken.

Dated this 14th day of August, 2019.



NEESON COURT REPORTING INC.

PER: JUDITH M. CAPUTO, RPR, CSR, CRR

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