

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

DAY 19 / VOL 19
June 10, 2019



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Court File No. 94-CQ-50872CM

ONTARIO

SUPERIOR COURT OF JUSTICE

B E T W E E N:

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

Plaintiffs

- and -

THE ATTORNEY GENERAL OF CANADA,
HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO, THE
CORPORATION OF THE COUNTY OF GREY, THE
CORPORATION OF THE COUNTY OF BRUCE, THE
CORPORATION OF THE MUNICIPALITY OF NORTHERN
BRUCE PENINSULA, THE CORPORATION OF THE TOWN OF
SOUTH BRUCE PENINSULA, THE CORPORATION OF THE
TOWN OF SAUGEEN SHORES, and THE CORPORATION OF
THE TOWNSHIP OF GEORGIAN BLUFFS

Defendants

Court File No. 03-CV-261134CM1

A N D B E T W E E N:

CHIPPEWAS OF NAWASH UNCEDED FIRST NATION and
SAUGEEN FIRST NATION

Plaintiffs

- and -

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

Defendants

--- This is VOLUME 19/DAY 19 of the transcript
of the trial proceedings in the above-noted
matter, being held at the Superior Court of
Justice, 330 University Avenue, Courtroom 5-1,
Toronto, Ontario, on the 10th day of June 2019.

B E F O R E:

The Honourable Justice Wendy M. Matheson

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

2 Renee Pelletier, Esq., for the Plaintiffs,
3 & Chris Evans, Esq., The Chippewas of
4 Saugeen First
5 Nation, and the
6 Chippewas of Nawash
7 First Nation.

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

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

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22 REPORTED BY: Helen Martineau, CSR.

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I N D E X

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09:26:18

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

10:00:55

2 THE COURT: Please go ahead.

10:00:58

3 Ms. Pelletier.

10:01:01

4 MS. PELLETTIER: Thank you, Your

10:01:01

5 Honour, before we call the next witness I have

10:01:04

6 three quick preliminary matters.

10:01:07

7 THE COURT: All right.

10:01:07

8 MS. PELLETTIER: First, I'm joined by

10:01:09

9 my colleague Chris Evans. I will be conducting

10:01:12

10 the examination in-chief of Dr. Hinderaker, but

10:01:14

11 with the Court's permission I'll leave any

10:01:17

12 re-examination, to the extent there is any, to

10:01:19

13 Mr. Evans.

10:01:20

14 THE COURT: That's fine.

10:01:21

15 MS. PELLETTIER: Thank you.

10:01:22

16 Secondly a quick pleadings matter.

10:01:24

17 Paragraph 22 of the Amended amended Statement of

10:01:26

18 Claim, states that:

10:01:28

19 "The terms of the Royal

10:01:29

20 Proclamation were explained to

10:01:31

21 representatives of SON and to other

10:01:34

22 Aboriginal Nations at the Treaty of

10:01:36

23 Niagara in 1764 and at other times and

10:01:39

24 places."

10:01:39

25 So for the record, Your Honour, we are

10:01:41 1 no longer pursuing the argument that the Royal
10:01:44 2 Proclamation was read out at the Congress of
10:01:48 3 Niagara, but, to be clear, we do intend to
10:01:52 4 argue, as set out in our pleadings statement,
10:01:52 5 the spirit and intent of the Royal Proclamation
10:01:55 6 was reflected in the Treaty of Niagara.

10:01:57 7 THE COURT: So you're withdrawing the
10:01:58 8 suggestion that it was read out loud?

10:02:01 9 MS. PELLETIER: That's correct.

10:02:02 10 THE COURT: All right. Just give me a
10:02:03 11 moment. Is that the version of the Amended
10:02:11 12 Statement of Claim that appears in the
10:02:13 13 supplementary trial record, counsel?

10:02:18 14 MS. PELLETIER: Yes.

10:02:55 15 THE COURT: You said there were three
10:02:57 16 matters.

10:02:58 17 MS. PELLETIER: Yes, the final note,
10:02:59 18 Your Honour, is we've prepared a roadmap of our
10:03:01 19 examination of Dr. Hinderaker. And, with your
10:03:05 20 permission, I propose to hand up a copy in the
10:03:07 21 hopes you will find it helpful and, of course,
10:03:07 22 with the understanding that it is not intended
10:03:09 23 to be used as evidence. I've provided a copy to
10:03:13 24 my friends.

10:03:14 25 THE COURT: Any objection? No.

10:03:16 1 That's fine. If you have two copies please give
10:03:18 2 them to Mr. Registrar.

10:03:37 3 Now before you begin I repeat, as I
10:03:40 4 have said with other expert witnesses, that
10:03:42 5 there is an agreement, based upon the reports,
10:03:46 6 and perhaps minor exceptions that we'll get to
10:03:49 7 in this trial, but the reports are being marked
10:03:52 8 as evidence; and because of that, examining
10:03:58 9 counsel is conducting what I call a "highlights
10:04:01 10 examination" rather than a comprehensive
10:04:04 11 examination.

10:04:04 12 I know with Professor Hinderaker that
10:04:07 13 there are in fact three reports. And I assume,
10:04:11 14 although I will check now, that all three of
10:04:13 15 them will now be marked as evidence. Is that
10:04:15 16 correct? Okay. All right.

10:04:18 17 Why don't we do that first, counsel,
10:04:20 18 before we begin?

10:04:22 19 MS. PELLETIER: Sure. Great.

10:04:23 20 THE COURT: Mr. Registrar.

10:04:26 21 THE REGISTRAR: Yes, Your Honour.

10:04:33 22 THE COURT: I think it's probably best
10:04:34 23 to give each of them their own exhibit number.
10:04:37 24 So I'll ask counsel to identify each report one
10:04:40 25 at a time by some unique description, and then

10:04:45 1 we'll go through them and give each of them
10:04:48 2 their own number.

10:04:49 3 Please go ahead, counsel.

10:04:51 4 MS. PELLETIER: Sure. So
10:04:51 5 Dr. Hinderaker's main report is document SC0043.
10:04:57 6 And I would propose that that be marked as an
10:04:59 7 exhibit with the title "Hinderaker Main Report."

10:05:06 8 THE REGISTRAR: Exhibit number 4017.

10:05:09 9 EXHIBIT NO. 4017: Hinderaker main
10:05:11 10 report.

10:05:14 11 MS. PELLETIER: Your Honour, we also
10:05:15 12 have errata for the main report. Would it be
10:05:18 13 appropriate to file that as an exhibit now?

10:05:22 14 THE COURT: Yes, let's do that next.
10:05:24 15 I take it that's also on consent? Yes. If you
10:05:27 16 could hand up two copies of the errata, I see
10:05:31 17 it's described as an addendum to the index
10:05:33 18 citations of Exhibit 417.

10:05:38 19 MS. PELLETIER: We also have that
10:05:39 20 filed in the written database, Your Honour,
10:05:41 21 SC0229.

10:05:45 22 THE COURT: I don't have -- all right.
10:05:47 23 I can use the electronic version for that. That
10:05:52 24 would be the next exhibit.

10:05:56 25 THE REGISTRAR: Exhibit No. 4018.

10:05:57 1 EXHIBIT NO. 4018: Addendum to the
10:06:00 2 index citations of Exhibit 417.
10:06:00 3 Document SC0229.
10:06:01 4 THE COURT: Okay.
10:06:12 5 MS. PELLETTIER: And the next report,
10:06:14 6 supplementary report 1, is SC0625. And I would
10:06:20 7 propose that that be marked as an exhibit with
10:06:23 8 the title "Hinderaker Supplementary Report 1".
10:06:35 9 THE COURT: So the supplementary
10:06:37 10 report number 1 will be the next exhibit,
10:06:40 11 Mr. Registrar.
10:06:42 12 THE REGISTRAR: Can you repeat the
10:06:42 13 document number?
10:06:44 14 MS. PELLETTIER: SC0625.
10:06:51 15 THE REGISTRAR: Exhibit No. 4019.
10:06:53 16 EXHIBIT NO. 4019: Hinderaker
10:06:55 17 Supplementary Report 1. Document
10:06:55 18 SC0625.
10:06:56 19 MS. PELLETTIER: Then finally we have
10:06:58 20 document number SC0626, which is
10:07:03 21 Dr. Hinderaker's supplementary report number 2,
10:07:06 22 and I would propose that that be marked as the
10:07:08 23 next exhibit with the title "Hinderaker
10:07:12 24 Supplementary Report 2."
10:07:13 25 THE COURT: Mr. Registrar?

10:07:17 1 THE REGISTRAR: Exhibit 4020.
10:07:24 2 EXHIBIT NO. 4020: Hinderaker
10:07:24 3 Supplementary Report 2, SC026.
10:07:26 4 THE COURT: And we're going to also
10:07:27 5 mark, Mr. Registrar, the one page outline that
10:07:31 6 was just handed to me called "Road map of
10:07:37 7 examination in-chief of Dr. Hinderaker" as a
10:07:39 8 lettered exhibit, and it may be that counsel has
10:07:43 9 to provide you with the image, but for now can I
10:07:44 10 just get the letter?

10:07:48 11 THE REGISTRAR: Exhibit D(1) as in
10:07:51 12 David.

10:07:52 13 EXHIBIT NO. D(1): Road map of
10:07:56 14 examination in-chief of
10:07:56 15 Dr. Hinderaker.

10:08:17 16 THE COURT: Please go ahead.

10:08:19 17 MS. PELLETIER: I would like to call
10:08:19 18 the next witness for the plaintiffs,
10:08:22 19 Dr. Hinderaker.

10:08:34 20 THE REGISTRAR: Good morning, sir.

10:08:36 21 THE WITNESS: Morning.

10:08:37 22 THE REGISTRAR: Would you like to make
10:08:38 23 an oath on the holy book or make a solemn
10:08:40 24 affirmation to tell the truth?

10:08:43 25 THE WITNESS: I will swear on the Holy

10:08:45 1 book.

10:08:50 2 THE REGISTRAR: Can you state and
10:08:50 3 spell your first and last name for the record.

10:08:52 4 THE WITNESS: My name is Eric
10:08:53 5 Hinderaker E R-I-C, H-I-N-D-E-R-A-K-E-R.

10:09:04 6 ERIC HINDERAKER: SWORN.

10:09:09 7 EXAMINATION IN-CHIEF BY MS. PELLETIER:

10:09:24 8 Q. Good morning, Dr. Hinderaker.

10:09:27 9 A. Good morning.

10:09:28 10 Q. Your Honour, I'm going to bring
10:09:29 11 up document SC0628. Apologies, we appear to be
10:09:44 12 having issues with the main screen.

10:09:46 13 THE COURT: Has this been marked yet,
10:09:49 14 counsel?

10:09:50 15 MS. PELLETIER: Entered as an exhibit?
10:09:52 16 No.

10:09:52 17 THE COURT: That's all right. Just
10:09:54 18 checking.

10:09:59 19 BY MS. PELLETIER:

10:10:00 20 Q. And Dr. Hinderaker you can
10:10:00 21 confirm that this is your curriculum vitae?

10:10:03 22 A. Yes, it is.

10:10:03 23 Q. Your Honour, could we have this
10:10:05 24 marked as the next exhibit?

10:10:07 25 THE COURT: Yes.

1 THE REGISTRAR: Exhibit No. 4021.

2 EXHIBIT NO. 4021: Curriculum vitae of
3 Dr. Eric Hinderaker.

4 MS. PELLETIER: Your Honour, it's our
5 understanding that the defendants consent to
6 Dr. Hinderaker's proposed qualifications so I
7 will only go through his key qualifications
8 today.

9 BY MS. PELLETIER:

10 Q. So, Dr. Hinderaker, in 1991 you
11 obtained a Ph.D. in history from the University
12 of Harvard?

13 A. That's correct.

14 Q. And you have been a professor at
15 the University of Utah, Department of History,
16 since 1991?

17 A. Yes.

18 Q. And last year the professor named
19 you a distinguished professor, is that correct?

20 A. The university named me
21 distinguished professor, correct.

22 THE COURT: Sir, you have to speak up.
23 And if you pull your chair closer to the
24 microphone that will help too.

25 THE WITNESS: Is this better?

10:10:38 1 THE COURT: Only a little bit better.
10:10:38 2 Pretend you have a classroom of 205.

10:10:38 3 THE WITNESS: All right. I can do
10:10:38 4 that.

10:10:47 5 BY MS. PELLETIER:

10:10:55 6 Q. So, for the record, I will read
10:10:57 7 the definition of the term "distinguished
10:11:00 8 professor" from pages 6-7 of the University of
10:11:02 9 Utah policy 6-300, provision 18.

10:11:06 10 It reads:

10:11:07 11 "The rank of Distinguished
10:11:09 12 Professor is reserved for selected
10:11:11 13 individuals whose achievements
10:11:13 14 exemplify the highest goals of
10:11:15 15 scholarship, as demonstrated by
10:11:16 16 recognition accorded to them from
10:11:16 17 their peers with national and
10:11:19 18 international stature, and whose
10:11:21 19 record includes evidence of a high
10:11:23 20 dedication to teaching as demonstrated
10:11:25 21 by recognition accorded to them by
10:11:27 22 students and or colleagues. Except in
10:11:30 23 unusual situations, only one
10:11:32 24 distinguished professor in the
10:11:34 25 university may be appointed in a

1 single academic year."

2 And on your page of the
3 University of Utah website you give
4 the following research statement:

5 "I am a scholar of early
6 Anglo-America with particular interest
7 in comparative colonization,
8 European-Indian relations and the
9 nature of early modern empires."

10 Yes?

11 A. Yes.

12 Q. And your Ph.D. dissertation was
13 titled "The Creation of the American Frontier,
14 Europeans and Indians in the Ohio River Valley
15 1673 to 1800"?

16 A. That's correct.

17 Q. And how does it relate to the
18 subject matter of your reports in this case?

19 A. The research that I did for that
20 project and subsequently for the book that
21 derived from it, "Elusive Empires," involved me
22 in materials generated especially about the
23 British and French empires throughout the course
24 of the 18th century, as they related to
25 relations with First Nations peoples of the

10:12:34 1 west, broadly speaking, the Ohio valley, the
10:12:39 2 Great Lakes.

10:12:40 3 Q. And why were you interested in
10:12:41 4 the Ohio River Valley specifically?

10:12:44 5 A. It was a zone of competition
10:12:46 6 between the two empires in the course of the
10:12:48 7 18th century, and also was the first focus of
10:12:54 8 U.S. expansion after the American Revolution.
10:12:57 9 So it was a useful place to compare their
10:13:02 10 various efforts to get a handle on that
10:13:04 11 territory.

10:13:05 12 Q. And to what extent does your
10:13:06 13 knowledge about the Ohio River First Nations
10:13:09 14 apply to the Great Lakes First Nations, writ
10:13:10 15 large?

10:13:13 16 A. It applies very closely. There
10:13:17 17 were close relationships among Ohio River Valley
10:13:22 18 Nations and the Nations of the Great Lakes; and
10:13:25 19 there was a fair amount of traffic, human
10:13:29 20 traffic back and forth between those regions;
10:13:31 21 and in terms of policy they were also, in many
10:13:35 22 ways, a unified zone of both French and British
10:13:39 23 activity in the 18th century.

10:13:41 24 Q. Excellent.

10:13:42 25 I'm just going to the book section of

1 your CV at -- starting at the bottom of page 1.

2 So in 1997 you noted -- you made your
3 dissertation into a book titled "Elusive
4 Empires: Constructing Colonialism in the Ohio
5 Valley, 1673-1800", and then in 2003 you
6 co-authored a book titled, "At the Edge of
7 Empire: The Backcountry in British North
8 America", and you are currently working on a
9 book entitled "The Americas in the Early Modern
10 Era: Origins to Independence and Revolution".

11 A. Yes.

12 Q. And how do these books relate to
13 the subject matter of your reports?

14 A. Both "At the Edge of Empire" and
15 "The Americas in the Early Modern Era" survey
16 broadly the efforts of European empires, and
17 especially of Great Britain, to develop policies
18 relating to First Nations peoples and also deal
19 with the responses that First Nations peoples
20 made to those efforts.

21 Q. Excellent.

22 I'm going to page 3 of your CV. You
23 see here a list of a total of 19 articles,
24 essays, and review essays all identify you in
25 particular. In 2012 an article titled,

10:15:15 1 "Anglo-Amerindian Relations in the Americas," in
10:15:22 2 2007 an article titled, "Declaring Independence:
10:15:24 3 The Ohio Indians in the Seven Years' War", in
10:15:29 4 2001 a chapter in the book "The Sixty Years' War
10:15:31 5 of the Great Lakes" titled "Liberty and Power in
10:15:35 6 the Old Northwest, 1763-1800", in 2000 a book
10:15:40 7 chapter titled "The Amerindian Population in
10:15:45 8 1763", in 1996 19 entries in "The Colonial Wars
10:15:49 9 of North America, 1512-1763: An Encyclopedia".

10:15:54 10 Are these publications related to the subject
10:15:58 11 matters of your report, Dr. Hinderaker?

10:16:00 12 A. They are. They all relate to
10:16:02 13 relations between Europeans and Native Americans
10:16:05 14 in the era of the Seven Years' War and the --
10:16:10 15 more generally, and they all reflect my
10:16:16 16 engagement with primary and secondary source
10:16:19 17 materials in that area.

10:16:20 18 Q. Thank you.

10:16:22 19 MS. PELLETIER: Your Honour, I'm
10:16:22 20 bringing up document SC0627, which is
10:16:26 21 Dr. Hinderaker's proposed expert qualification.

10:16:38 22 So, your Honour, I would ask that
10:16:39 23 Dr. Hinderaker be tendered as follows:
10:16:41 24 Historian with expertise in the relations
10:16:44 25 between the British and First Nations in the

1 18th century, and capable of giving opinion
2 evidence on: number 1, British practice with
3 respect to issues associated with the
4 territorial expansion of the American colonies;
5 number 2, the events leading up to the Seven
6 Years' War in North America and the war itself;
7 number 3, the Detroit treaty; number 4,
8 Pontiac's War; 5, the Royal Proclamation; and
9 sixth, the Niagara Congress.

10 THE COURT: My only question, counsel,
11 and it may be that we can ask this witness
12 another question or two, is I haven't heard
13 anything from him about, which I would conclude
14 he has expertise about, the Royal Proclamation
15 of 1763, if that is intended to refer to the
16 making of it which took place in Great Britain,
17 as we now know. Perhaps you can ask him some
18 questions. I know there's no objection.

19 MS. PELLETIER: Sure.

20 BY MS. PELLETIER:

21 Q. Dr. Hinderaker, would you like to
22 say a little bit about your experience and
23 expertise with respect to the Royal Proclamation
24 itself?

25 A. Yeah, I'd be happy to. I think

10:17:47 1 that actually much of my work in "Elusive
10:17:50 2 Empires" and in other research projects dealt
10:17:55 3 with the kind of interplay between policymaking
10:18:00 4 in Great Britain and on-the-ground conditions in
10:18:05 5 North America. And so, in fact, I have looked
10:18:11 6 extensively into the background of the Royal
10:18:13 7 Proclamation and drafting of the Royal
10:18:16 8 Proclamation and so on, as well as attending to
10:18:20 9 the ways in which it was received and
10:18:22 10 interpreted in North America.

10:18:37 11 THE COURT: All right, that's
10:18:38 12 satisfactory, counsel. I accept the tender,
10:18:40 13 which will be marked as the next lettered
10:18:42 14 exhibit. Mr. Registrar.

10:18:45 15 THE WITNESS: Letter exhibited D(2).

10:05:09 16 EXHIBIT NO. D(2): Tender of expertise
10:05:11 17 of Dr. Hinderaker.

10:18:57 18 BY MS. PELLETIER:

10:18:58 19 Q. Dr. Hinderaker, before we begin I
10:18:59 20 want to make sure you have copies of your
10:19:02 21 reports with you?

10:19:03 22 A. Yes, I do.

10:19:04 23 Q. Excellent. So we will be talking
10:19:06 24 about events in different places in and around
10:19:08 25 the Great Lakes. To start I'm going to ask you

1 to set the scene of where the key players were
2 located around 1763.

3 So behind you -- and I'll ask to have
4 document SC0621 pulled up. And behind you,
5 Dr. Hinderaker, you have a blown-up version of
6 that document.

7 Do you recognize it, firstly?

8 A. Yes, I do.

9 Q. And what does it show?

10 A. It is a map of -- a satellite
11 image of the northeastern quadrant of North
12 America that centers on the Great Lakes.

13 Q. Great.

14 MS. PELLETIER: Your Honour, I'd ask
15 that this be entered as the next lettered
16 exhibit please.

17 THE COURT: Mr. Registrar. There's no
18 objection?

19 THE WITNESS: Lettered Exhibit E(1).

20 EXHIBIT NO. E(1): Satellite image of
21 the northeastern quadrant of North
22 America that centers on the Great
23 Lakes.

24 BY MS. PELLETIER:

25 Q. Dr. Hinderaker, I'm going to ask

10:20:04 1 you to mark a number of areas on the map, and
10:20:06 2 for the record these are rough and ready
10:20:08 3 approximations drawn by hand. So if we could
10:20:13 4 begin by asking you to please circle the areas
10:20:14 5 occupied by the Anishinaabek around 1763 and
10:20:19 6 then mark them with an "A".

10:20:21 7 A. (Witness marking the map.)

10:20:43 8 Q. And would that have included
10:20:44 9 SON's territory?

10:20:45 10 A. Yes.

10:20:49 11 Q. And in your main report you refer
10:20:50 12 to the Iroquois, who are also known as the
10:20:53 13 Haudenosaunee or Six Nations. If you could
10:20:56 14 please circle the areas they occupied around
10:21:01 15 1763 and mark them with an "I".

10:21:04 16 A. (Witness marking the map.)

10:21:08 17 Q. You also refer to the Ohio River
10:21:10 18 Valley Indians, who include the Delawares and
10:21:13 19 the Shawnees. Please circle the areas they
10:21:17 20 occupied around 1763 and mark them with an "O".

10:21:20 21 A. (Witness marking the map.)

10:21:23 22 Q. And in your main report you refer
10:21:24 23 to events involving the Great Lakes First
10:21:28 24 Nations collectively. Broadly speaking, what
10:21:30 25 First Nations are you referring to?

10:21:35 1 A. In talking about the Great Lakes '
10:21:38 2 First Nations I'm talking about, you know,
10:21:40 3 pretty wide array of communities dominated by
10:21:47 4 Anishinaabek peoples, but including other
10:21:49 5 peoples as well, including Hurons and Wyandots
10:21:53 6 at Detroit and Miami, Piankashaw, Ouiatanon
10:21:59 7 Indians. Illinois Indians come into the --
10:22:02 8 although they're geographically separate from
10:22:05 9 the Great Lakes, come into play in relations
10:22:08 10 with Great Lakes Indians. But, in general, I'm
10:22:11 11 talking predominantly about Anishinaabek
10:22:14 12 peoples.

10:22:15 13 Q. Thank you. I'm just going to get
10:22:16 14 you to mark the map again. In your main report
10:22:18 15 you state that:

10:22:19 16 "In 1763 the British were just
10:22:22 17 starting to settle west of the
10:22:22 18 Appalachian Mountains."

10:22:26 19 I'd ask you to please draw a line
10:22:28 20 along the fault line of the Appalachians and
10:22:32 21 shade in the area where the British had settled
10:22:35 22 and please mark them with a "B".

10:22:52 23 A. (Witness marking the map.)

10:22:52 24 Q. In your main report you say that:

10:22:54 25 "France's presence in the Great

10:22:55 1 Lakes consisted of a network of
10:22:57 2 posts."
10:22:57 3 We'll look at a map of the posts
10:22:59 4 later, but for now could you please circle the
10:23:01 5 areas where the French had settled in meaningful
10:23:03 6 numbers by 1763 and mark them with an "F"?
10:23:07 7 A. (Witness marking the map.)
10:23:35 8 Q. To what extent was there French
10:23:37 9 settlement around the posts?
10:23:40 10 A. Settlement was minimal at most of
10:23:42 11 the interior posts. Detroit had the largest
10:23:45 12 settler population of these posts, about 2,000
10:23:49 13 people in 1763.
10:23:53 14 MS. PELLETIER: Your Honour, I would
10:23:53 15 ask that the map be marked as the next numbered
10:23:56 16 exhibit with the title "Map of North America
10:23:59 17 annotated by Dr. Hinderaker" please.
10:24:02 18 THE COURT: Well, it is not a map of
10:24:03 19 North America, counsel. I think you misspoke.
10:24:07 20 MS. PELLETIER: Yes.
10:24:08 21 THE COURT: We can mark it as a new
10:24:10 22 exhibit if you wish. You can redescribe it for
10:24:13 23 the record.
10:24:15 24 MS. PELLETIER: Map of the northern
10:24:18 25 quadrant.

1 THE WITNESS: Northeastern.

2 MS. PELLETIER: Northeastern quadrant
3 of North America, annotated by Dr. Hinderaker.

4 THE COURT: Well, I'm just pausing
5 because I think we marked the map unannotated as
6 a map of the Great Lakes, which is what it is
7 roughly. And it seems to me confusing to
8 describe the two exhibits markedly differently.
9 Is there any reason why we just can't call it
10 map of the Great Lakes annotated by Professor
11 Hinderaker?

12 MS. PELLETIER: That works for me,
13 Your Honour.

14 THE COURT: What exhibit will that be,
15 Mr. Registrar?

16 THE REGISTRAR: Exhibit number 4022.

17 EXHIBIT NO. 4022: Map of the Great
18 Lakes annotated by Professor
19 Hinderaker.

20 BY MS. PELLETIER:

21 Q. Now let's start with point 1 on
22 the road map, and that is, in 1763 Britain posed
23 no threat to SON's occupation of its territory.

24 Point 1(a) is that when Britain signed
25 the Treaty of Paris it had no physical presence

10:25:24 1 in SON's territory. So I first want to ask you
10:25:27 2 a little bit about the events leading up to the
10:25:29 3 Treaty of Paris.

10:25:31 4 Can you start by giving us a very
10:25:33 5 broad overview of what the Seven Years' War was
10:25:36 6 and what it was about, please?

10:25:38 7 A. The Seven Years' War was fought
10:25:40 8 among various European combatants, including
10:25:44 9 France and Great Britain.

10:25:46 10 The fighting started at the head
10:25:47 11 waters of the Ohio River in 1754; war was
10:25:52 12 declared in 1756; it became a global war.

10:25:56 13 The outcome of the war was settled in
10:25:58 14 the Treaty of Paris of 1763.

10:26:00 15 Q. And to what extent was Britain
10:26:02 16 present in SON's territory before the Seven
10:26:04 17 Years' War?

10:26:06 18 A. Not at all.

10:26:07 19 Q. And why was that?

10:26:11 20 A. Because it lay far from the
10:26:13 21 frontiers of any British colonies and far from
10:26:17 22 any area that the British were directly
10:26:19 23 concerned in.

10:26:20 24 Q. Thank you. I have some questions
10:26:22 25 about where the war was fought in relation to

1 SON's territory. I would like to bring up
2 document SC0553. And this is a map from page 19
3 of the book, "Beyond Pontiac's Shadow", by Keith
4 Widder. And, Dr. Hinderaker, what does it show?

5 A. It shows various sites in
6 northeastern North America at the time of the --
7 at the time of Pontiac's War, including interior
8 posts and also colonial settlements.

9 Q. And does it show the location of
10 the posts reasonably accurately in your view?

11 A. Yes.

12 Q. The map identifies several First
13 Nation villages on the northwest coast of Lake
14 Huron and south of Lake Erie. Do you have an
15 opinion about whether those locations are
16 accurate?

17 A. I don't and they certainly are
18 not a comprehensive representation of First
19 Nations' occupation of that territory.

20 Q. Thank you.

21 MS. PELLETIER: Your Honour, I ask
22 that this be marked as the next exhibit with the
23 title "Map of the Great Lakes post circa 1763".
24 And, for the record, we are relying on the map
25 to show the locations of the posts but not the

10:27:44 1 location of indigenous settlements.

10:28:20 2 THE COURT: Any objection? No?

10:28:25 3 EXHIBIT NO. 4023: Map of the Great
10:28:27 4 Lakes post circa 1763.

10:28:36 5 BY MS. PELLETIER:

10:28:36 6 Q. Dr. Hinderaker, on the map of the
10:28:37 7 Great Lakes you indicated that French settlement
10:28:40 8 was largely around the St. Lawrence Seaway. Why
10:28:42 9 was France interested in having posts so far
10:28:46 10 into the interior?

10:28:48 11 A. During the colonial period,
10:28:49 12 France used those posts as trading centres.
10:28:53 13 They were also interested in controlling
10:28:56 14 strategic points of entry that the British might
10:28:59 15 use to enter this territory. And they
10:29:02 16 sustained -- they sustained alliances with First
10:29:05 17 Nations' peoples which allowed them to claim
10:29:10 18 dominion over a large swath of the interior of
10:29:13 19 the continent.

10:29:15 20 Q. How would posts -- how would the
10:29:17 21 posts prevent British expansion into the Great
10:29:19 22 Lakes?

10:29:21 23 A. Well, the idea was that by
10:29:23 24 placing them at strategic points and supplying
10:29:31 25 allied First Nations with arms to assist in

10:29:35 1 defending those strategic points that the
10:29:36 2 British could be kept out of the Great Lakes
10:29:42 3 region.

10:29:44 4 Q. And to what extent did France
10:29:46 5 need the support of the Great Lakes First
10:29:47 6 Nations to establish the posts?

10:29:52 7 A. The support of First Nations was
10:29:54 8 essential to the establishment of the posts and
10:29:56 9 was really kind of essential to the purpose of
10:29:59 10 the posts. They were there often as missionary
10:30:05 11 outposts as well as trading centres. And in
10:30:09 12 both cases, you know, this is -- these are
10:30:12 13 activities that were a co-operative enterprise.

10:30:15 14 Q. And what set off the Seven Years'
10:30:18 15 War?

10:30:20 16 A. Competition for control of the
10:30:23 17 head waters of the Ohio between New France and
10:30:26 18 the British colonies.

10:30:28 19 Q. And when did fighting start?

10:30:30 20 A. In the summer of 1754, the battle
10:30:33 21 of Fort Necessity is traditionally identified as
10:30:38 22 the precipitating battle. War had not been
10:30:41 23 declared yet but it was the precipitating battle
10:30:44 24 that led to further conflict in North America
10:30:46 25 and ultimately elsewhere.

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Q. And when was war officially declared?

A. 1756.

Q. And how far into the Great Lakes were the battles fought?

A. The battles were fought primarily on Lake Ontario at Oswego, the French attack at Oswego, at Fort Frontenac and at Fort Niagara.

Q. And was Fort Niagara captured?

A. Yes.

Q. In what year?

A. In 1759.

Q. And after the capture of Fort Niagara, what happened to France's posts in the interior of the Great Lakes?

A. They were cut off from their supply lines.

Q. And after the capture of Fort Niagara where did the British army go?

A. East to -- towards Montreal.

Q. And when did fighting end in North America?

A. It ended with the capture and capitulation in Montreal in 1760.

Q. And after that what territory did

1 France control in North America?

2 A. By the terms of the capitulation
3 it ceded control of its territories to the
4 British.

5 Q. And what forces, if any, did
6 Britain send into east Lake Huron and Georgian
7 Bay?

8 A. None.

9 Q. Why not?

10 A. It was not an area that they were
11 directly competing for control in.

12 Q. Thank you. I would like to move
13 to point 1(B) on the roadmap that in 1763
14 Britain had promised not to interfere with the
15 Great Lakes First Nations occupation of their
16 territories.

17 In your main report you say that
18 Britain started making these promises in the
19 Seven Years' War to win over France's allies.
20 But first I have some questions about events
21 earlier in the 18th century that led Britain to
22 adopt that strategy.

23 So to begin, can you please describe
24 the difference between the British North
25 American colonies and the Imperial government?

10:32:46 1 A. Yeah, in relation to -- as it
10:32:47 2 concerns relations with First Nations people,
10:32:52 3 and actually more generally, the Crown -- the
10:32:55 4 Imperial government was not very directly
10:32:58 5 involved in on-the-ground governance in North
10:33:01 6 America in the first half of the 18th century.
10:33:06 7 And so relations with First Nations peoples were
10:33:08 8 conducted by individual colonies in the first
10:33:11 9 place.

10:33:13 10 Gradually, beginning in the 1740s
10:33:18 11 especially, administrators began to argue that
10:33:22 12 the Crown needed to take more direct control and
10:33:24 13 that the independence of the colonies was
10:33:26 14 leading to incoherent policies.

10:33:30 15 In the Seven Years' War itself the
10:33:31 16 appointment of Superintendents for Indian
10:33:34 17 Affairs for the northern and southern colonies
10:33:37 18 marked the moment when the Crown officially took
10:33:42 19 over control of relations with First Nations
10:33:46 20 peoples from the -- from the individual
10:33:48 21 colonies.

10:33:49 22 Q. And what was the Board of Trade?

10:33:52 23 A. The Board of Trade was the
10:33:53 24 Superintending (sic) advisory body in London
10:33:57 25 that advised the Crown and Parliament on matters

1 of overseas trade generally and the colonies
2 fell under that umbrella.

3 Q. Thank you. At pages 3 and 6 of
4 your main report you describe the first half of
5 the 18th century as:

6 "A period in which the British
7 colonies attempted to manage the
8 conflicts with First Nations that
9 arose from their westward expansion."
10 What were those conflicts?

11 A. There were conflicts in -- on the
12 western boundaries along the western edges of
13 numerous British colonies during the course of
14 the 18th century. And diplomatic practices,
15 particularly, pioneered with the Haudenosaunee
16 peoples, the Iroquois confederacy and, you know,
17 under the diplomatic practices that were called
18 a "covenant chain relationship", those practices
19 became pretty firmly established and became the
20 relations with -- the Haudenosaunee became a
21 model for relations with other neighbouring
22 native nations in the first half of the 18th
23 century.

24 Q. Thank you. And at page 3 of your
25 report, you say that --

1 THE COURT: Counsel, can you just slow
2 down a bit. I'm not sure how Madam Reporter is
3 doing, but one cannot accomplish time limits
4 through talking faster. All right. So just
5 give me a moment and then you can slow yourself
6 down a bit.

7 Please go ahead.

8 BY MS. PELLETIER:

9 Q. At page 3 of your main report you
10 say that in the 17th century the British
11 colonies' practice was generally to fight wars
12 of conquest with neighbouring First Nations.
13 How successful was that strategy?

14 A. Well, broadly successful in the
15 long run in the sense that the English colonies
16 did generally capture the territory that they
17 were after in the long run; but it was seen as
18 kind of disastrous, especially in the short to
19 medium term, particularly King Philip's War in
20 which New England colonies lost a lot of
21 territory initially to First Nations combatants.

22 Q. And why was it so costly?

23 A. Settlements were destroyed and
24 abandoned, many people were killed. It was a
25 catastrophic -- that war in particular was

1 catastrophic for the colonies involved.

2 Q. At pages 6 to 7 of your main
3 report you say:

4 "During the course of the 18th
5 century Britain learned to deal with
6 the native allies throughout its
7 borderlands as independent polities.
8 The archives of every colony include
9 extensive documentation of these
10 relationships."

11 Why did the colonies change strategy?

12 A. Well, beginning in the late 17th
13 century from the time of the founding of
14 Pennsylvania, for example, William Penn made it
15 a conscious principle in the development of his
16 new colony that he would, as he said:

17 "[...]deal fairly and openly with
18 neighbouring peoples and seek to
19 negotiate purchases."

20 And that principle became more
21 widespread and more consistent in the 18th
22 century.

23 The other factor in the 18th century
24 is that as Britain and its European rivals
25 entered into a century of prolonged warfare --

1 the 18th century is a period of repeated
2 European wars -- it also became increasingly
3 useful to Great Britain to have diplomatic
4 relationships with Native American allies who
5 were willing to assist in defending its
6 interests in North America.

7 Q. You mentioned the covenant chain
8 earlier, could you say a little bit more about
9 that?

10 A. Yeah. The covenant chain is a
11 diplomatic system, a set of diplomatic practices
12 that developed in the first place between the
13 Haudenosaunee peoples, the Iroquois Confederacy,
14 and the colony of New York beginning in the
15 1670s and 1680s. And it was really built
16 around -- it involved adapting condolence
17 ceremonies that the Nations, the Iroquois
18 Confederacy, had developed among themselves, and
19 interpolating them into a set of diplomatic
20 practices that allowed, first, New York and
21 ultimately other colonies in British North
22 America to maintain a pretty good basis for
23 mutual understanding and mutual action.

24 Q. What commitments did the colonies
25 make with respect to land purchases from First

1 Nations as part of their new strategy of
2 diplomacy?

3 A. Typically land purchases,
4 colonies sought to negotiate land purchases in a
5 clear and open manner. It wasn't always the
6 case and there were -- there were instances in
7 the first half of the 18th century where private
8 purchasers made purchases that colonial
9 officials regarded as illegitimate, but in
10 general the colonies attempted to maintain a
11 practice of open purchases through diplomatic
12 negotiations.

13 Q. When conflicts did arise between
14 the colonies and First Nations in the early 18th
15 century over land purchases what role, if any,
16 did the Imperial government play during this
17 period?

18 A. The Imperial government did not
19 play a direct role most of the time. There are
20 some exceptions. I mean, one exception that I
21 talk about in the report involves the Mohican
22 Indians who appealed to the Crown in their
23 relations in a conflict over land with the
24 colony of Connecticut. And that is a case that
25 got Crown lawyers and officials, advisors

10:40:55 1 thinking about the question of Indigenous land
10:40:58 2 rights.

10:41:01 3 But in general the Imperial government
10:41:05 4 did not have a systematic means for intervening
10:41:09 5 in these purchases.

10:41:11 6 Q. Thank you.

10:41:11 7 I have some questions about Britain's
10:41:14 8 change of strategy towards Indian relations in
10:41:16 9 the Seven Years' War. At the beginning of the
10:41:20 10 war, what First Nations fought on Britain's
10:41:22 11 side?

10:41:25 12 A. I mean, essentially none. There
10:41:27 13 were some stalwart Mohawks and Mingos that
10:41:38 14 participated, but for the most part Britain lost
10:41:41 15 allies that it had previously had, especially in
10:41:44 16 the Ohio Valley the Delawares and the Shawnees
10:41:49 17 and the bulk of the Ohio Indians that resided
10:41:52 18 with them in the upper Ohio.

10:41:53 19 Q. What First Nations fought on
10:41:55 20 France's side?

10:41:57 21 A. France had extensive -- an
10:42:02 22 extensive array of First Nation's allies in the
10:42:05 23 early years of the war. The most famous example
10:42:08 24 is the campaign against Fort William Henry when
10:42:12 25 a force of something like 2,000 First Nations

10:42:15 1 warriors was raised, some of them coming from
10:42:18 2 communities around Montreal, I think about half
10:42:20 3 of them coming from communities around Montreal
10:42:23 4 and the other half coming from the Great Lakes
10:42:25 5 region.

10:42:25 6 Q. How likely is it that the SON
10:42:27 7 would have fought on France's side?

10:42:31 8 A. It's fairly likely. That Fort
10:42:37 9 William Henry campaign drew on, you know,
10:42:41 10 warriors from throughout the Great Lakes. And
10:42:43 11 so it's often remarked upon how broad the
10:42:49 12 coalition was of warriors who participated in
10:42:52 13 that campaign --

10:42:53 14 Q. Thank you. Why fight on either
10:42:54 15 side?

10:42:58 16 A. Well, these nations had a long
10:43:02 17 historic allegiance with France that influenced
10:43:06 18 their loyalties. They also had interests at
10:43:08 19 stake in defending the ongoing viability of the
10:43:13 20 posts that they relied upon for trade.

10:43:19 21 And there's also a promise of -- of
10:43:23 22 booty in the campaign and a promise that they
10:43:26 23 could take away, you know, whatever goods were
10:43:30 24 abandoned in the process.

10:43:34 25 Q. How did France make so many

10:43:36 1 alliances with so many First Nations?

10:43:41 2 A. Well, this was a -- it was a, you
10:43:43 3 know, a long-developing process in the course of
10:43:45 4 the 17th and 18th centuries. In the 17th
10:43:50 5 century, as I said, France supplied First
10:43:53 6 Nations peoples in the Great Lakes with trade
10:43:57 7 goods; they also participated in wars between
10:44:01 8 First Nations peoples and the Haudenosaunee and
10:44:04 9 defended their interests in that way.

10:44:08 10 They had not put any particular
10:44:11 11 pressure on Native American territories. There
10:44:14 12 was not -- New France did not have the same kind
10:44:19 13 of demographic growth that was typical of the
10:44:24 14 British colonies, especially in the 18th
10:44:27 15 century. So the presence of French posts was
10:44:31 16 not perceived as a threat to First Nations'
10:44:36 17 interests.

10:44:37 18 Q. At pages 7 and 8 of your main
10:44:40 19 report you say that:

10:44:42 20 "Britain's defeat at the battle
10:44:44 21 of Monongahela prompted it to seek the
10:44:48 22 allegiance or neutrality of First
10:44:50 23 Nations."

10:44:52 24 Why did this defeat prompt Britain's
10:44:54 25 change in strategy?

10:44:56 1 A. This was a defeat that was
10:44:58 2 devastating for British interests. It was a --
10:45:03 3 there was a large military campaign led by
10:45:06 4 General Edward Braddock. Braddock, the Braddock
10:45:11 5 Campaign famously did not include any native
10:45:16 6 warriors to speak of. Braddock is well known
10:45:20 7 for having alienated the First Nations that had
10:45:26 8 traditional alliance relationships with
10:45:29 9 Pennsylvania.

10:45:32 10 And so the defeat really dramatized
10:45:36 11 the problem that that defection of First Nations
10:45:40 12 allies had created.

10:45:43 13 And so after 1755, both the Imperial
10:45:48 14 government and the government of the colony of
10:45:51 15 Pennsylvania made concerted efforts to win back
10:45:55 16 the alliance, the allegiance of -- especially
10:46:00 17 Delaware and Shawnee Indians who had formerly
10:46:04 18 resided in the colony of Pennsylvania and
10:46:10 19 recently were moved to the upper Ohio country.

10:46:12 20 Q. Pages 8 and 9 of your main report
10:46:12 21 you say that:

10:46:14 22 "The Imperial government took
10:46:15 23 over Indian relations in 1755 by
10:46:18 24 appointing superintendents of Indian
10:46:20 25 Affairs."

1 Why did it do so?

2 A. 1756 is the date here.

3 It did so because it felt that the --
4 that the colonies were failing to sustain
5 alliances that the Imperial government believed
6 were critical to British interests and British
7 fortunes in the contest for North America.

8 Q. And who were those
9 Superintendents?

10 A. The Superintendent for northern
11 Indians was William Johnson. He was a trader in
12 the Mohawk Valley who had close relations with
13 the Mohawk Nation, and through them with the
14 Iroquois confederacy; probably the single most
15 experienced and knowledgeable person in Indian
16 relations that the Crown was aware of in North
17 America. And the Superintendent for the
18 southern colonies was Edmond Atkin, who was a
19 Charleston trader.

20 Q. We will encounter Johnson several
21 times. Can you say a little bit about the role
22 he played in developing British Indian policy
23 from 1756 to 1764?

24 A. Yeah. He was really at the
25 center of Indian relations for Great Britain in

10:47:43 1 that period and was consulted on every
10:47:48 2 initiative that Great Britain took; and was
10:47:52 3 probably the single most influential voice, the
10:47:55 4 single most influential advisor in shaping
10:47:58 5 relations with First Nations peoples in that
10:48:01 6 period.

10:48:01 7 Q. Thank you. At page 9 of your
10:48:05 8 main report you say that:

10:48:06 9 "By appointing the Superintendent
10:48:07 10 of Indian affairs for the first time
10:48:10 11 the Crown placed Indian relations in
10:48:12 12 the hands of officials whose authority
10:48:15 13 superseded that of Britain's
10:48:17 14 individual colonies."

10:48:19 15 Why did the Superintendent -- who did
10:48:21 16 the Superintendents answer to?

10:48:24 17 A. The Superintendents answered to
10:48:26 18 the Crown and the Board of Trade, the
10:48:31 19 Secretaries of State, and they also, in the
10:48:34 20 colonies, answered to the commander-in-chief of
10:48:37 21 British forces in North America.

10:48:39 22 Q. So I'm going to bring up Exhibit
10:48:42 23 463. Now, this is a letter from Secretary Fox
10:48:55 24 to Sir William Johnson dated March 13, 1756.
10:48:59 25 And what is this letter about?

10:49:04 1 A. This is the letter that
10:49:07 2 commissions Johnson as a colonel, and that also
10:49:14 3 names him agent and sole Superintendent of the
10:49:16 4 affairs of the Six Nations and other northern
10:49:19 5 Indians.

10:49:21 6 Q. And who was --

10:49:23 7 THE COURT: Counsel, you're doing it
10:49:24 8 again.

10:49:25 9 Okay. So I have on my screen, a,
10:49:27 10 highlighted document that looks like it's
10:49:30 11 printed out from a textbook of an unidentified
10:49:33 12 nature. So we need to go backwards and explain,
10:49:37 13 or have your witness explain that is, what I am
10:49:41 14 looking at here?

10:49:43 15 THE WITNESS: Yeah. This is a
10:49:46 16 document that comes from a large compilation of
10:49:50 17 documents that was published by the State of New
10:49:52 18 York in the 19th century, and that is the
10:49:57 19 standard reference work for the printed versions
10:50:03 20 of the primary sources that it contains.

10:50:07 21 THE COURT: So going back to the page,
10:50:08 22 perhaps you can explain what's showing on the
10:50:10 23 screen?

10:50:11 24 THE WITNESS: Yes. This is the --

10:50:13 25 THE COURT: Oh, I see. Now I see the

1 top which is helpful.

2 THE WITNESS: This is the text of a
3 letter from Secretary Fox to Sir William
4 Johnson, secretary of the Board of Trade.

5 THE COURT: And it's dated --

6 THE WITNESS: 13 March, 1756.

7 THE COURT: And it seems to come to an
8 abrupt end, or it goes on -- oh I see, there it
9 is.

10 What's the significance, counsel, of
11 the fact that there's highlighting on this
12 document?

13 MS. PELLETIER: I was going to ask
14 further questions about this letter, Your
15 Honour.

16 THE COURT: Including why there's
17 highlighting on the document?

18 MS. PELLETIER: That was for the
19 Court's -- to attempt to be of assistance. I'm
20 highlighting some of the portions that I will
21 read.

22 THE COURT: So the yellow highlighting
23 is put on by counsel?

24 MS. PELLETIER: Yes, that's correct.

25 THE COURT: It's not in the witness'

1 original documents?

2 MS. PELLETIER: No, that's correct,
3 that is added by me.

4 THE COURT: And which portion did you
5 just recently look at then?

6 MS. PELLETIER: I haven't looked at
7 anything yet. I was just going to ask him who
8 is Secretary Fox.

9 THE COURT: Go ahead.

10 BY MS. PELLETIER:

11 Q. Dr. Hinderaker, who was Secretary
12 Fox?

13 A. Secretary Fox was Secretary of
14 State, member of the Board of Trade.

15 Q. And what were his
16 responsibilities with respect to North America?

17 A. Well, in this case his
18 responsibility was communicating with --
19 communicating the Crown's intentions with
20 William Johnson.

21 Q. And in the first paragraph of
22 this letter Fox says:

23 "It is His Majesty's intention to
24 give you a commission of Colonel,
25 Agent and sole Superintendent of the

10:51:54 1 affairs of the Six Nations and other
10:51:57 2 Northern Indians."

10:51:59 3 What was the significance of Johnson's
10:52:01 4 instructions coming from the King himself?

10:52:05 5 A. The significance is that it is a
10:52:07 6 reflection of -- that is a reflection of the way
10:52:14 7 in which relations with First Nations had risen
10:52:17 8 to the highest level concern with -- relations
10:52:20 9 with First Nations peoples had risen to the
10:52:23 10 highest levels in British government. And the
10:52:27 11 interest that the Crown had in appointing Indian
10:52:30 12 superintendents was directly related to the
10:52:36 13 Crown's desire to have more direct control over
10:52:41 14 those relationships.

10:52:42 15 Q. And why did the King give Johnson
10:52:45 16 a military rank?

10:52:48 17 A. This was a time of war and, as I
10:52:52 18 said, the Commissioners for Indian Affairs
10:52:57 19 reported to the commander-in-chief for British
10:53:01 20 forces; and their principal charge in time of
10:53:05 21 war was really to co-ordinate their efforts with
10:53:08 22 Britain's military undertaking in North America.

10:53:13 23 Q. Now, in the second paragraph of
10:53:14 24 this letter Fox says:

10:53:17 25 "It is the King's pleasure that

10:53:18 1 you should assemble the Indians as
10:53:20 2 soon as possible, when you will
10:53:22 3 acquaint them with His Majesty's
10:53:25 4 steady resolution to support and
10:53:27 5 protect them as his allies; and invite
10:53:31 6 them to join and act with his troops
10:53:33 7 against the French. You will
10:53:34 8 communicate to the Indians all the
10:53:36 9 orders the King has given for
10:53:38 10 prohibiting settlements upon their
10:53:40 11 lands; for redressing their just
10:53:43 12 complaints with regard to the patented
10:53:46 13 lands, and for preventing the like
10:53:48 14 abuses for the future."

10:53:51 15 What did Johnson do to carry out these
10:53:53 16 orders?

10:53:55 17 A. He did what the orders specified.
10:54:04 18 He assembled Indians to communicate, both to
10:54:07 19 seek to strengthen an alliance with First
10:54:09 20 Nations peoples, and also to communicate the
10:54:13 21 King's interest in their lands, in redressing
10:54:21 22 their complaints, as the document says.

10:54:24 23 This really maps out a new kind of, I
10:54:28 24 guess you could say, quid pro quo that the Crown
10:54:34 25 was agreeing to in its relation with First

1 Nations peoples in exchange for their support in
2 military undertakings in the second half,
3 basically, of the Seven Years' War.

4 He was ensuring that their complaints
5 about encroachments on land would be addressed.

6 Q. Thank you. And at page 9 of your
7 main report you say that:

8 "The turning point in Britain's
9 relations with First Nations was when
10 it secured the neutrality of the Ohio
11 River Nations."

12 How was Britain fairing in the war at
13 that time?

14 A. Not well. The early years of the
15 war were bad for Great Britain both in North
16 America and actually elsewhere on the globe as
17 well.

18 But in North America the contest of
19 the head waters of the Ohio was regarded as
20 particularly significant. And so Johnson and
21 the colony of Pennsylvania invested considerable
22 efforts in winning back those Ohio Indians to a
23 British alliance who had abandoned it at the
24 beginning of the war.

25 Q. And in your report you describe

1 the Ohio River Nations as "strategically
2 crucial." How did making peace with them help
3 Britain?

4 A. Well, it determined control of
5 the head waters of the Ohio. The French had
6 built Fort Duquesne at the head waters of the
7 Ohio and relied upon the Ohio Indians for
8 support of that fort site.

9 And when the Delawares and Shawnees
10 abandoned the French alliance the French
11 abandoned Fort Duquesne, it was not even fought
12 over. As British forces under General Forbes
13 were advancing the French abandoned the site
14 without seeking to defend it.

15 Q. And what did Britain offer them
16 to make peace?

17 A. The Shawnees and Delawares, they
18 offered redress of their grievances and
19 especially protection of their territorial
20 interests.

21 Q. And how did Britain's First
22 Nations' strategy affect the balance of power as
23 the war progressed?

24 A. Well, the shift in strategy and
25 the shift in fortunes that it helped to promote,

10:57:15 1 which was also accompanied, I would say, by kind
10:57:20 2 of like an opposite shift on the part of New
10:57:23 3 France, whose native allies were increasingly
10:57:26 4 unhappy with French military policy in the later
10:57:31 5 stages of the war, had a significant impact on
10:57:36 6 the outcome.

10:57:38 7 Historian Fred Anderson argues that it
10:57:40 8 had a determinative impact, in fact, in really
10:57:46 9 deciding the fortunes of French and British
10:57:48 10 forces in North America.

10:57:51 11 Q. And I have a few questions about
10:57:52 12 the Articles of Capitulation of Montreal so I'd
10:57:55 13 like to bring up Exhibit 479.

10:58:05 14 Can you tell us, Dr. Hinderaker, what
10:58:07 15 we're looking at here?

10:58:09 16 A. Yeah. These are state papers
10:58:15 17 from the Dominion of Canada. And the document,
10:58:20 18 I believe -- these are documents from the
10:58:23 19 Canadian archives, and I believe the document
10:58:25 20 that we're about to see is the Articles of
10:58:27 21 Capitulation, is that correct?

10:58:31 22 Q. That's correct.

10:58:36 23 And with France's surrender fighting
10:58:39 24 ended in North America, is that correct?

10:58:41 25 A. Yes.

1 Q. What was the relationship between
2 the Articles of Capitulation and the Treaty of
3 Paris?

4 A. Well, the Treaty of Paris was a
5 comprehensive treaty that settled the outcome of
6 the Seven Years' War more generally.

7 The Articles of Capitulation relate
8 only to the affairs in North America. The
9 Articles of Capitulation were formulated and
10 signed in 1760 after Montreal fell. The Treaty
11 of Paris came three years later in 1763.

12 Q. Thank you.

13 MS. PELLETIER: And, Your Honour, the
14 highlighting, again, comes from me and it is
15 just to highlight in an attempt to be helpful so
16 that you can follow along. I'll read the
17 preamble.

18 THE COURT: You can wait a minute
19 before you do that.

20 MS. PELLETIER: Sure.

21 THE COURT: The witness said this was
22 1760 but I don't see a date on this document.
23 Is it 1760?

24 THE WITNESS: It may be dated at the
25 end of the document.

1 MS. PELLETIER: Yes, that was my last
2 question about this document, was to take him to
3 the very end. It's highlighted, Your Honour.

4 THE COURT: I see. September 8th,
5 1760.

6 MS. PELLETIER: Yes.

7 THE COURT: Please go ahead.

8 MS. PELLETIER: Thank you.

9 BY MS. PELLETIER:

10 Q. The preamble states that:

11 "Britain's representative is
12 Major General Amherst, Commander in
13 Chief of his Britannic Majesty's
14 troops and forces in North America."

15 We'll mention him a number of times.

16 Can you tell us a little bit about him, please?

17 A. Yes. Jeffrey Amherst was, as you
18 said, the commander-in-chief of British forces
19 in North America. I guess as he relates to the
20 events that we are going to discuss today,
21 Amherst is noteworthy particularly for his
22 relatively hostile attitude toward First Nations
23 peoples.

24 And in the period after the war ended
25 one of the things that he sought to do was to

11:01:20 1 limit trade goods and diplomatic gift giving
11:01:26 2 in -- at the western posts and in Indian country
11:01:30 3 more generally.

11:01:32 4 Q. And what was the position of
11:01:33 5 commander-in-chief of Britain's North American
11:01:37 6 forces?

11:01:38 7 A. He was the supreme military
11:01:40 8 commander of the British armed forces in North
11:01:43 9 America.

11:01:45 10 Q. Thank you. I'll take you to
11:01:47 11 article 40. It reads:

11:01:57 12 "The savages or Indian allies of
11:01:59 13 his most Christian Majesty shall be
11:02:02 14 maintained in the lands they inhabit
11:02:04 15 if they choose to remain there. They
11:02:06 16 shall not be molested on any pretense
11:02:08 17 whatsoever for having carried arms and
11:02:11 18 served His Most Christian Majesty."

11:02:13 19 Who is His Most Christian Majesty?

11:02:17 20 A. The King of France.

11:02:18 21 Q. And the article carries on to
11:02:21 22 discuss religious practices, then at the end
11:02:24 23 there is a dash, which has been highlighted with
11:02:27 24 a sentence highlighted in quotes which says:

11:02:31 25 "-- Granted except that the last

11:02:32
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11:02:35
11:02:47
11:03:02
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11:03:32
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article which has already been
refused."
Who is speaking in that sentence?
A. Let's see. Amherst is speaking.
Q. And what is Amherst agreeing to
in that sentence?
A. He's agreeing to maintaining the
Indian allies of the King of France in the lands
they inhabit.
Q. And then finally, as we've noted
already, the very last page, and I wanted to
point out that the articles were signed on
September 8, 1760.
Now I have some questions about how
Britain made peace with the Great Lakes First
Nations at the Congress of Detroit. So,
firstly, what was the Treaty of Detroit?
A. The Treaty of Detroit was a
meeting between -- it was organized by William
Johnson and it was a meeting between Johnson and
the -- it was an attempt to call together those
First Nations peoples who had been previously
allied with France.
Q. And when was the Treaty of
Detroit made?

11:04:09 1 A. In 1761.

11:04:11 2 Q. How likely is it that SON would

11:04:13 3 have been represented at the Treaty Congress?

11:04:19 4 A. I mean, I think it's fairly

11:04:20 5 likely. I would say it's likely but it's hard

11:04:25 6 to assign a strong statement of probability.

11:04:30 7 Q. And which party proposed the

11:04:32 8 Treaty?

11:04:34 9 A. The British.

11:04:35 10 Q. And which -- what individual

11:04:37 11 proposed it?

11:04:38 12 A. Sir William Johnson.

11:04:39 13 Q. And when was the Treaty Congress

11:04:41 14 held?

11:04:43 15 A. It was held in the fall of 1761.

11:04:48 16 Q. And who was Britain's negotiator?

11:04:51 17 A. Sir William Johnson.

11:04:52 18 Q. I'd like to bring up Exhibit 491.

11:04:58 19 If you can tell us a bit about what we

11:05:00 20 are looking at, Dr. Hinderaker, please?

11:05:02 21 A. Yes. This is a volume of "The

11:05:03 22 Papers of Sir William Johnson". Again, this is

11:05:07 23 kind of the standard reference work for

11:05:11 24 accessing the primary source materials that were

11:05:14 25 in his possession at the time of the -- at the

11:05:18 1 time that he was serving as Superintendent of
11:05:20 2 Indian Affairs.

11:05:22 3 Q. Thank you. I'll take you to PDF
11:05:24 4 image 52 of this document.

11:05:30 5 THE COURT: Are you talking about book
11:05:31 6 page number what?

11:05:33 7 MS. PELLETIER: 478.

11:05:35 8 THE COURT: All right.

11:05:35 9 BY MS. PELLETIER:

11:05:42 10 Q. These are the minutes of the
11:05:43 11 Detroit conference for September 9, 1761. Do
11:05:47 12 you agree with that, Dr. Hinderaker?

11:05:49 13 A. Yes.

11:05:52 14 Q. And the paragraph beginning with
11:05:53 15 "Brethren", I've highlighted a passage. Johnson
11:05:56 16 says the following:

11:05:59 17 "I can with confidence assure you
11:06:01 18 that it is not at present, neither
11:06:03 19 hath it been His Majesty's intention
11:06:06 20 to deprive any Nation of Indians of
11:06:09 21 their just property by taking
11:06:10 22 possession of any lands to which they
11:06:12 23 have a lawful claim."

11:06:14 24 What is the significance of referring
11:06:15 25 to the First Nations as "brethren"?

1 A. In Johnson's mind, in Johnson's
2 experience, based on his long interaction with
3 the Haudenosaunee, the term "brethren" was a
4 term that implied a kind of equality; it implied
5 that the First Nations he was addressing were
6 allies and not subjects, not directly under the
7 governance of the Crown.

8 Q. And what is the significance of
9 saying that it is the King's intention, as
10 opposed to General Amherst, the governors of the
11 colonies or someone else's?

12 A. Well, this is a way for Johnson
13 to highlight the source of his authority, which
14 is, you know, the ultimate source of authority
15 in Great Britain in these matters, and to assure
16 the assembled First Nations representatives that
17 he had the strongest backing in articulating
18 this promise to them.

19 Q. And what commitment, if any, is
20 Johnson making on behalf of Britain?

21 A. His commitment here is that we
22 will not deprive any nation of their just
23 property by taking possession of any lands to
24 which they have a lawful claim.

25 Q. Now, moving to PDF image 56,

11:08:08 1 which is page 482 of the document, still in the
11:08:10 2 minutes, I've highlighted the portion which
11:08:13 3 reads:

11:08:13 4 "The conference broke up for this
11:08:15 5 day and the Indians retiring to
11:08:17 6 consider on and prepare an answer."

11:08:21 7 Now at 483, top of the next page, the
11:08:23 8 minutes for September 10 say:

11:08:27 9 "P.M. the Indians all assembled
11:08:30 10 to deliver in their answer. Present
11:08:32 11 as yesterday. Anaïasa, Chief of the
11:08:37 12 Hurons, addressed Sir William as
11:08:39 13 follows."

11:08:43 14 The Chief of the Hurons, was he
11:08:44 15 speaking on behalf of all of the Indians or just
11:08:48 16 on behalf of the Hurons?

11:08:49 17 A. He seems to have been speaking on
11:08:51 18 behalf of all of the Indians. The minutes
11:08:54 19 indicate that the Indians retired together to
11:08:57 20 consider Johnson's -- to consider Johnson's
11:09:01 21 speech. And the way that the minutes say that
11:09:05 22 the Indians all assembled to deliver in their
11:09:09 23 answer implies that he was speaking -- in these
11:09:12 24 cases sometimes spokespeople will speak only for
11:09:14 25 their own community, but this is a case where

11:09:17 1 the minutes clearly indicate that this was a
11:09:24 2 response that articulated the reaction of all of
11:09:30 3 the assembled Indians.

11:09:32 4 Q. Thank you. Moving now on to PDF
11:09:35 5 image 59, which is page 485 of the minutes, we
11:09:40 6 have, again, the Chief of the Hurons. The
11:09:43 7 highlighted -- what I've highlighted reads:

11:09:46 8 "Brother, it gives us great
11:09:48 9 satisfaction to hear that the King has
11:09:49 10 no intentions to deprive us of our
11:09:51 11 lands (of which we were once very
11:09:55 12 apprehensive) and as to the troops who
11:09:57 13 are now going to the distant posts, we
11:09:59 14 are well pleased therewith and hope
11:10:02 15 they will look upon and treat us as
11:10:04 16 brethren in which light they shall
11:10:06 17 always be esteemed by us as we are
11:10:08 18 determined to live on the best terms
11:10:09 19 with them."

11:10:11 20 He then gives Johnson a belt.

11:10:13 21 You had said earlier that Johnson was
11:10:15 22 offered not to deprive the Indians of their just
11:10:21 23 property. What, if anything, is the Chief of
11:10:23 24 the Hurons saying in response to this offer?

11:10:25 25 A. The Chief of the Hurons is saying

11:10:27 1 that he is very happy to hear about the Royal
11:10:29 2 protection that's being extended to Native
11:10:31 3 American land claims; and that under the terms
11:10:36 4 Johnson has outlined that the people he is
11:10:46 5 speaking for are happy to have the British take
11:10:49 6 up the occupation of the distant posts, the
11:10:51 7 formerly French posts in the Great Lakes.

11:10:56 8 And he further says that he hopes that
11:10:58 9 the British will always treat them as brethren,
11:11:02 10 meaning always treat them respectfully as
11:11:05 11 allies.

11:11:06 12 Q. And what is the significance of
11:11:07 13 his giving Johnson a belt?

11:11:09 14 A. The use of wampum belts in
11:11:12 15 covenant chain diplomacy, and diplomacy more
11:11:19 16 generally among First Nations in the northeast,
11:11:20 17 was a way of solemnizing diplomatic agreements,
11:11:23 18 a way of confirming and remembering the
11:11:25 19 commitments that were being made.

11:11:27 20 Q. Thank you.

11:11:30 21 I have a few brief questions now about
11:11:32 22 the relationship between the Treaty of Detroit
11:11:35 23 and the Treaty of Paris.

11:11:39 24 Who are the parties to the Treaty of
11:11:41 25 Paris?

11:11:42 1 A. Britain, France, and Spain.

11:11:46 2 Q. And what First Nations were
11:11:47 3 parties to the Treaty?

11:11:49 4 A. None.

11:11:49 5 Q. And you said that Britain had
11:11:51 6 already made peace with the Great Lakes First
11:11:54 7 Nations through the Treaty of Detroit, is that
11:11:56 8 correct?

11:11:56 9 A. Yes.

11:11:57 10 Q. And what does the Treaty of Paris
11:11:58 11 say about First Nations' land rights?

11:12:01 12 A. It does not -- the Treaty of
11:12:02 13 Paris does not address First Nations' land
11:12:05 14 rights.

11:12:06 15 Q. And what affect did the Treaty of
11:12:07 16 Paris have on the Treaty of Detroit.

11:12:13 17 THE COURT: Counsel, just take a
11:12:14 18 breath between each of your questions. Since I
11:12:16 19 need to understand the answer I need you to go
11:12:19 20 back two questions at this point.

11:12:21 21 MS. PELLETIER: My apologies.

11:12:23 22 THE COURT: I lost you at who were the
11:12:24 23 parties to the Treaty of Paris, Britain, France
11:12:34 24 and Spain. Are First Nations parties? No.
11:12:35 25 Does it address land right? And then I couldn't

1 keep up.

2 BY MS. PELLETIER:

3 Q. I'll go to the question just
4 before that, which was just to confirm that you
5 had earlier said that Britain had already made
6 peace with the Great Lakes First Nations through
7 the Treaty of Detroit?

8 A. Yes.

9 Q. And what does the Treaty of Paris
10 say about First Nations' land rights?

11 A. Nothing. It does not address the
12 issue of First Nations land rights.

13 Q. What effect did the Treaty of
14 Paris have on the Treaty of Detroit?

15 THE COURT: Can you repeat that?

16 BY MS. PELLETIER:

17 Q. What affect did the Treaty of
18 Paris have on the Treaty of Detroit?

19 THE COURT: Before you answer that
20 question, sir, can you remind me of the dates of
21 those two treaties?

22 THE WITNESS: Yes. Detroit is
23 September 1761. So, you know, shortly following
24 the capitulation at Montreal.

25 THE COURT: That's what I thought.

1 THE WITNESS: And the Treaty of Paris
2 that ended the Seven Years' War in its totality
3 that does not come until 1763.

4 THE COURT: So the Treaty of Detroit
5 having already been entered into, counsel, your
6 question confuses me.

7 MS. PELLETIER: I'll rephrase the
8 question, Your Honour.

9 BY MS. PELLETIER:

10 Q. Did the Treaty of Paris modify
11 the Treaty of Detroit?

12 A. No, it did not.

13 MR. OGDEN: Your Honour.

14 THE COURT: Yes.

15 MR. OGDEN: To the extent the
16 Treaty --

17 THE COURT: Yes, counsel, that's a
18 leading question if that's why you're standing.

19 MR. OGDEN: Well, actually my concern
20 is that the question is asking for a conclusion
21 perhaps as to law, or as to law to the extent
22 that the Treaty of Detroit is put forward as a
23 treaty with First Nations.

24 THE COURT: Well, rest assured that
25 this gentleman is not qualified to give opinions

1 of law so I appreciate your interjection. It
2 was a leading question, but I think counsel was
3 trying to use a different verb since I was
4 confused by the earlier question.

5 MR. OGDEN: Thank you, Your Honour.

6 THE COURT: I will take it all into
7 when considering this gentleman's answer.

8 MR. OGDEN: Thank you, Your Honour.

9 THE COURT: I thought to myself, it's
10 limited to really if I comprehensively read the
11 Treaty of Paris I'd find no words in it that
12 reported to affect an amendment to the
13 previously-entered into Treaty of Detroit. I
14 think that's where you were going, counsel.

15 MS. PELLETIER: That's correct, Your
16 Honour.

17 THE COURT: And go no further than
18 that.

19 MR. OGDEN: Thank you.

20 THE COURT: All right. Thank you.
21 Please go ahead.

22 BY MS. PELLETIER:

23 Q. So I'd like to move now to point
24 2 on the roadmap.

25 THE COURT: Just before you do that

1 I'm going to just sort this out, this point that
2 you've just discussed.

3 Two years earlier, sir, the Treaty of
4 Detroit roughly?

5 THE WITNESS: Yeah, a year and a half.

6 THE COURT: Please go ahead, Counsel.

7 MS. PELLETIER: Thank you.

8 BY MS. PELLETIER:

9 Q. So I would like to move to point
10 2 on the roadmap, that in Pontiac's War the
11 Great Lakes First Nations asserted control over
12 the waterways in their territory.

13 Dr. Hinderaker, in your main report
14 and first supplementary report you discuss the
15 likelihood that SON participated in Pontiac's
16 War or at least supported it. In brief, how
17 likely do you think it was?

18 A. I think it's reasonably likely
19 that they participated.

20 Q. And your rationale for this
21 position is detailed in those reports so I don't
22 propose to take you through them today.

23 Moving on to point 2(a) on the
24 roadmap, that is that controlling the Great
25 Lakes waterways was a strategic necessity both

1 for Britain and the Great Lakes First Nations.

2 Let's start with the strategic significance of
3 the waterways to Britain.

4 At page 45 of your main report you
5 say:

6 "[...]in a place and time when
7 long-distance overland transport was a
8 practical impossibility the Great
9 Lakes were the strategic heart of the
10 continent."

11 What do you mean by that?

12 A. Well, I mean because water
13 transport was really the most essential means of
14 transportation; that the Great Lakes really
15 provided the most extensive access to various
16 territories, contiguous territories of any body
17 of water, any collection of bodies of water in
18 North America.

19 Q. Why was Britain interested in
20 occupying the posts?

21 A. Well, by the terms of the Treaty
22 of Paris France had ceded all of its territory
23 east of the Mississippi River to Great Britain.

24 And so in order to accede to the
25 terms, in order to take up the territory that

11:18:59 1 was being granted to Great Britain the British
11:19:03 2 needed to occupy those posts because that was
11:19:05 3 what the French empire consisted of in the
11:19:09 4 interior country.

11:19:10 5 So it was interested in picking up on
11:19:14 6 the trading relationships and the alliance
11:19:17 7 relationships that the French had developed.

11:19:23 8 Q. What was the strategic
11:19:24 9 significance of the choice of location for the
11:19:28 10 posts?

11:19:31 11 A. The posts are -- there are a
11:19:35 12 number of posts that we're talking about, a
11:19:37 13 couple of dozen; but when you focus on the posts
11:19:41 14 in the Great Lakes the most important ones were
11:19:43 15 located at choke points in the transportation
11:19:48 16 system of the Great Lakes.

11:19:52 17 So those were strategically
11:19:55 18 significant to the extent that they granted --
11:19:59 19 that they provided a certain amount of control
11:20:03 20 over traffic on the Great Lakes.

11:20:08 21 They also were ideally placed for
11:20:10 22 trading relations since all roads, in effect, or
11:20:15 23 all water routes led to these posts.

11:20:18 24 Q. Thank you.

11:20:23 25 Now let's discuss the strategic

11:20:25 1 significance of the waterways to the Great Lakes
11:20:35 2 First Nations. Why was it important for the
11:20:37 3 Great Lakes First Nations to control the
11:20:38 4 waterways?

11:20:39 5 A. Well, the Great Lakes First
11:20:40 6 Nations, you know, their territory was really
11:20:46 7 built around the waterways of the Great Lakes.
11:20:50 8 The Great Lakes were critically important to
11:20:53 9 them as transportation routes, also for resource
11:20:57 10 gathering.

11:21:14 11 Q. At page 17 of your report you say
11:21:16 12 that:

11:21:16 13 "For the first time the Great
11:21:18 14 Lakes First Nations contemplated that
11:21:20 15 Britain might attempt to displace them
11:21:22 16 from their territories."

11:21:25 17 What led them to realize that this was
11:21:26 18 a possibility?

11:21:31 19 A. Yeah. Despite the promises that
11:21:33 20 Johnson made at Detroit in 1761 there was
11:21:37 21 growing concern by early 1763 that the British
11:21:45 22 might not be good for their word. And they had
11:21:50 23 several reasons for thinking this.

11:21:51 24 One reason is that Great Lakes people
11:21:56 25 had -- were having more contact with groups

1 like -- especially the Delawares and Shawnees
2 who had themselves been displaced by earlier
3 British settlement.

4 They were also observing, in 1763,
5 this pattern repeating itself in the upper Ohio,
6 both around Fort Pitt and to a lesser extent at
7 Sandusky.

8 And so there was some growing concern
9 about British respect for Native American land
10 claims. There was also concern about the tenor
11 with which military officials were taking up
12 their places in some of the western posts.

13 Q. At page 21 of your report you say
14 that one of the causes of Pontiac's War was:

15 "[...]the concern that colonists
16 regarded the newly acquired posts in
17 the west as beachheads that might
18 support and defend new settlements on
19 First Nations lands".

20 How did the posts facilitate
21 settlement?

22 A. Well, a post like Fort Pitt is an
23 especially good example of the way that a
24 symbiotic relationship could develop between the
25 fort itself and a settlement population

1 surrounding it.

2 Because once that fort was established
3 settlers immediately gathered outside its walls
4 to -- hoping to supply the fort with food in
5 exchange for money.

6 And that pattern was one that First
7 Nations peoples observed and mistrusted, based
8 on what they had seen happen in colonies like
9 Pennsylvania and New Jersey in earlier years.

10 Q. At page 29 of your report you say
11 that:

12 "Some people, including Pontiac
13 himself, wanted to prompt France to
14 re-enter the war."

15 Why did they want that?

16 A. There was a growing sense among
17 First Nations of the Great Lakes and the Ohio
18 Valley that the exchange of the French as
19 partners for the British as partners was a bad
20 deal for them.

21 Particularly there was concern about
22 land pressures, which we've just discussed.

23 There were also really stringent new
24 trade regulations that Amherst had promulgated,
25 which put tremendous economic pressure on First

1 Nations peoples who were still trying to recover
2 from the years of warfare which, you know, were
3 years of privation anyway.

4 And so Amherst was trying to impose
5 regulations that required Native American
6 hunters to come to British posts in order to
7 trade rather than allowing traders to travel to
8 their communities, as had previously been the
9 practice.

10 He was also dramatically limiting the
11 amount of lead and gun powder that could be
12 traded to First Nations peoples.

13 So the sense -- after -- you know,
14 once the Seven Years' War was over was a very
15 strong sense in this region, in this interior
16 region, that Britain was fundamentally changing
17 the terms of engagement, the terms of alliance
18 that had previously governed both French and
19 British practices in this area.

20 Q. At page 17 of your report you say
21 that:

22 "At the beginning of Pontiac's
23 War the goal was 'to prepare the
24 ground for the possibility of a French
25 reoccupation of those Forts'."

1 As the likelihood of that possibility
2 decreased over the course of the war how did the
3 First Nations' goals change?

4 A. It's a good question, and really
5 this is something that we can only be -- we can
6 only infer. But it appears that during the
7 course of the war that at the outset the
8 intentions of warriors, attackers in Pontiac's
9 War was to expel the British from the posts that
10 they attacked.

11 By the end of the summer, and in the
12 fall of 1763, when it became increasingly clear
13 that there was going to be no French return to
14 the region, it seems that the First Nations
15 combatants in Pontiac's War recalibrated their
16 strategy to take account of the necessity of
17 allowing Britain to maintain its presence at the
18 posts.

19 So, by the end of Pontiac's War it's
20 my view that the First Nations were more
21 interested in ensuring that the British occupied
22 those posts on their terms, that they at least
23 impose some control over the way in which
24 British traders and soldiers entered into,
25 returned into their territories.

1 Q. Thank you. Your Honour, would
2 you like to take the morning break?

3 THE COURT: Yes. We can do that.
4 Twenty minutes.

5 -- RECESSED AT 11:29 A.M. --

6 -- RESUMED AT 11:54 AM --

7 THE COURT: Please go ahead, counsel.

8 MS. PELLETIER: Thank you. Your
9 Honour.

10 BY MS. PELLETIER:

11 Q. Before the break we were
12 discussing Pontiac's goals for the war, for
13 Pontiac's War. And now I'd like to talk a bit
14 about Pontiac's -- the First Nations rationale
15 for the war.

16 And at page 17 of your report you say:

17 "For the vast majority of
18 participants, however, the goal was
19 not to reject all contact with
20 Europeans but to shape the terms upon
21 which it continued. They wanted to
22 maintain trade ties that would
23 continue to bring European merchandise
24 into the region, but to do so on terms
25 that ensured their control of the

11:54:01 1 territory they occupied. To that end,
11:54:04 2 Pontiac's War sought to demonstrate
11:54:07 3 the essential vulnerability of
11:54:09 4 Britain's western posts and to impress
11:54:12 5 upon the empire's military and
11:54:15 6 administrative leaders the essential
11:54:17 7 fact that they occupied those posts
11:54:20 8 only with the permission of the First
11:54:22 9 Nations that controlled the
11:54:24 10 surrounding territory."

11:54:27 11 What did the First Nations want from
11:54:29 12 Britain to achieve this goal?

11:54:34 13 A. The First Nations wanted to
11:54:37 14 ensure their territorial integrity and they
11:54:41 15 wanted to -- they wanted Great Britain to reopen
11:54:47 16 trading ties that would provide them with the
11:54:51 17 trade goods, the merchandise that they had come
11:54:54 18 to expect.

11:55:06 19 Q. At pages 17 and 22 of your main
11:55:08 20 report you say that some of the participants in
11:55:10 21 the War were inspired by the prophet Neolin,
11:55:10 22 correct?

11:55:15 23 A. Yes.

11:55:15 24 Q. At page 23 you quote Pontiac's
11:55:18 25 rendition of the Neolin's prophecies. And those

1 prophecies call on the First Nations to drive
2 the British off their lands. What is the source
3 of these quotes?

4 A. These quotes come from a
5 firsthand account of the siege of Detroit. This
6 is where Pontiac himself was operating. It is a
7 journal that has long been regarded as an
8 authentic, firsthand account. It's authorship
9 is uncertain but it's been attributed to a
10 Frenchman at Detroit named Robert Navarre.

11 Q. And I'd like to pull up that
12 document, which is at Exhibit 524, and start by
13 bringing up the title page.

14 A. There are a couple of
15 authoritative published versions of this
16 journal. This particular edition is, you can
17 see, printed in 1958. It's a volume that
18 includes a couple of texts, one of which is this
19 Robert Navarre journal.

20 Q. Thank you. So I'd like to take
21 you to the passage -- a passage at page 14. And
22 this is Pontiac --

23 THE COURT: You have page 13, counsel.
24 I thought you said 14?

25 MS. PELLETIER: I did, sorry. It

11:57:06 1 appears I have neglected to highlight the
11:57:09 2 passage but I'll be reading from the beginning
11:57:11 3 of the last paragraph.

11:57:13 4 BY MS. PELLETIER:

11:57:14 5 Q. Which here you would agree,
11:57:15 6 Dr. Hinderaker, this is Pontiac who is speaking,
11:57:18 7 relaying a message from the Master of Life who
11:57:23 8 gave Neolin the prophecies, correct?

11:57:28 9 A. Yes. So, I mean, just to
11:57:28 10 clarify, so this is Robert Navarre's
11:57:31 11 supposedly -- probably Robert Navarre's text,
11:57:35 12 his journal. So he is reporting what he
11:57:39 13 understood Pontiac to say to the assembled
11:57:41 14 warriors before the attack on the fort. And in
11:57:45 15 doing that he is quoting, you know, his
11:57:48 16 understanding of Neolin's prophecy.

11:57:53 17 Q. Thank you. So the text reads:

11:57:55 18 "This land where ye dwell I have
11:57:59 19 made for you and not for others.
11:58:01 20 Whence comes it that ye permit the
11:58:03 21 whites upon your lands? Can ye not
11:58:06 22 live without them? I know that those
11:58:09 23 whom ye call the children of your
11:58:11 24 Great Father supply your needs. But
11:58:14 25 if ye were not evil, as ye are, ye

11:58:19 1 could surely do without them. Ye
11:58:21 2 could live as ye did live before
11:58:23 3 knowing them. Before those whom ye
11:58:26 4 call your brother had come upon your
11:58:28 5 lands. Did ye not live by the bow and
11:58:30 6 arrow? Ye have no need of gun or
11:58:34 7 powder, or anything else, and
11:58:36 8 nevertheless ye caught animals to live
11:58:38 9 upon and to dress yourselves with
11:58:40 10 their skins. But when I saw that ye
11:58:44 11 were given up to evil I led the wild
11:58:51 12 animals to the depths of the forest so
11:58:52 13 that ye had to depend upon your
11:58:54 14 brothers to feed and shelter you. Ye
11:58:57 15 have only to become good again and do
11:58:59 16 what I wish and I will send back the
11:59:02 17 animals for your food."

11:59:06 18 Dr. Hinderaker, how prominent was the
11:59:08 19 theme of giving up European goods, particularly
11:59:12 20 firearms, in Neolin's teachings?

11:59:17 21 A. In Neolin's teachings this is a
11:59:24 22 theme that comes up. Although Neolin is a
11:59:28 23 little hard to read and, of course, we don't
11:59:31 24 have any firsthand accounts of what Neolin was
11:59:33 25 saying. We have several secondhand versions of

11:59:36 1 this prophecy. But he did make reference to the
11:59:45 2 idea that First Nations once lived with bows --
11:59:51 3 made do with bows and arrows and wore skins.
11:59:56 4 And there is some implication that they should
11:59:58 5 be going back to that way of living, but then
12:00:01 6 there are other aspects of his teachings that do
12:00:04 7 not necessarily imply complete separation.

12:00:10 8 For example, if you just go on a
12:00:11 9 little bit from what you were just reading this
12:00:15 10 version of Neolin's prophecy says:

12:00:18 11 "I do not forbid you to permit
12:00:20 12 among you the children of your father.
12:00:22 13 I love them, they know and pray to
12:00:23 14 me."

12:00:24 15 So that seems to be a kind of
12:00:27 16 intention if not a contradiction with the
12:00:30 17 injunction to separate themselves.

12:00:34 18 It's also -- I mean people have
12:00:35 19 commented, scholars have commented frequently on
12:00:38 20 the fact that Neolin himself, his spiritual
12:00:43 21 ideas are clearly strongly influenced by
12:00:46 22 Christian traditions as well as indigenous ones.
12:00:51 23 So he's a complicated figure.

12:00:57 24 But this idea about bows and arrows
12:01:00 25 and skins comes up in the versions of the

12:01:03 1 prophecy that we have.

12:01:07 2 Q. Thank you.

12:01:12 3 To what extent did Neolin's teachings
12:01:16 4 lead to a spiritual movement?

12:01:18 5 A. That's a good question. It seems
12:01:20 6 to be the case, at least Europeans in the Great
12:01:24 7 Lakes and the Ohio country reported that
12:01:27 8 people -- that First Nations peoples were
12:01:30 9 broadly aware of Neolin, his message travelled.

12:01:36 10 But there are no examples of -- that I
12:01:40 11 know of, of communities that actively
12:01:46 12 implemented the kind of prescription here for
12:01:50 13 rejecting European influences, rejecting
12:01:57 14 clothing and weapons and living as their
12:01:59 15 forefathers once did.

12:02:01 16 Q. So just to be clear on that
12:02:03 17 point, how many First Nations were giving up
12:02:05 18 firearms, which Neolin's teaching appears to
12:02:08 19 call for?

12:02:09 20 A. None that I know of.

12:02:14 21 Q. How much weight do you give
12:02:16 22 Neolin's prophecies as a cause of Pontiac's War?

12:02:23 23 A. Well, it's a good question. It
12:02:25 24 does come up. You know I think, for example,
12:02:26 25 Robert Navarre uses it to introduce his account

12:02:31 1 of Pontiac's War. And it has rhetorical and
12:02:36 2 dramatic utility. And it may be that Ponti --
12:02:38 3 sorry, that Neolin's message was -- had some
12:02:47 4 kind of galvanizing effect on communities that
12:02:51 5 were really struggling with the situation they
12:02:54 6 found themselves in.

12:02:56 7 But I think that in terms of thinking
12:03:02 8 about the larger goals, the larger purpose of
12:03:05 9 the war, I don't think Neolin's prophecy gets us
12:03:11 10 very far. Because I think that it's quite clear
12:03:13 11 that Pontiac and the other First Nations peoples
12:03:20 12 that rose up against the British power in 1763
12:03:25 13 were -- were not seeking separation from
12:03:30 14 European influence. They had been living with
12:03:32 15 European influences a long time. There was
12:03:37 16 interest in restoring the French to the region.
12:03:39 17 In the end, there was an interest in dictating
12:03:44 18 terms to the British for the reoccupation of the
12:03:46 19 posts.

12:03:46 20 So in that sense I don't think that
12:03:49 21 Neolin's prophecy goes very far toward
12:03:52 22 explaining the motives or the goals of the -- of
12:04:00 23 Pontiac's War.

12:04:01 24 Q. Thank you. I'd like to now bring
12:04:03 25 up document SC0623. It's the expert report for

12:04:16 1 Canada by Dr. Beaulieu. It's entitled "French,
12:04:20 2 British and Aboriginal Peoples in the Great
12:04:22 3 Lakes Area 1600-1774". Your Honour, if this
12:04:25 4 could be marked as the next lettered exhibit for
12:04:31 5 identification.

12:04:44 6 THE COURT: It can be marked as the
12:04:44 7 next lettered exhibit. It's not being marked
12:04:46 8 for identification because I think we all
12:04:47 9 consent to what it is, but this gentleman hasn't
12:04:50 10 testified yet so for that reason it can be
12:04:54 11 marked as a lettered exhibit at this time.

12:04:57 12 So Professor Beaulieu's report will be
12:05:00 13 the next letter exhibit.

12:05:05 14 EXHIBIT NO. E(2): Expert report of
12:05:06 15 Dr. Beaulieu entitled "French, British
12:05:06 16 and Aboriginal Peoples in the Great
12:05:06 17 Lakes Area 1600-1774".

12:05:34 18 BY MS. PELLETIER:

12:05:35 19 Q. So I'll take you to -- it's PDF
12:05:38 20 image 83, but page 82 of Mr. -- or
12:05:43 21 Dr. Beaulieu's report. I've highlighted a
12:05:46 22 passage. I'll read it out. It reads:

12:05:49 23 "The hostility toward the British
12:05:52 24 also fed into a messianic movement
12:05:57 25 that advocated a return to traditional

12:06:01 1 Aboriginal practices and the breaking
12:06:03 2 off of relations with the Europeans.
12:06:05 3 This movement, which first emerged in
12:06:07 4 the Ohio Valley, played a decisive
12:06:12 5 role in the outbreak of the conflict.
12:06:15 6 It acted as the ideological ferment
12:06:16 7 for the Aboriginal coalition that took
12:06:20 8 up arms against the English."

12:06:23 9 Dr. Hinderaker, do you agree with
12:06:24 10 Dr. Beaulieu's claim that this spiritual
12:06:27 11 movement, to the extent there was one, played a
12:06:30 12 decisive role in the outbreak of Pontiac's War?

12:06:33 13 A. I do not. I think that this
12:06:39 14 passage overstates the significance of Neolin's
12:06:44 15 influence. I think the phrase "messianic
12:06:48 16 movement" is problematic. As I said a minute
12:06:52 17 ago, I don't think there's evidence of a
12:06:56 18 Neolin-inspired movement among the First Nations
12:07:00 19 of the Great Lakes. And particularly the
12:07:03 20 emphasis in this passage on return to
12:07:06 21 traditional Aboriginal practices and breaking
12:07:09 22 off of relations with the Europeans.

12:07:12 23 There's no evidence that that was a
12:07:14 24 meaningful, long-term goal of Pontiac or the
12:07:18 25 various other First Nation warriors that made

1 war on the British in 1763.

2 And the idea of an ideological
3 ferment. As I said, I do think it's possible
4 that Neolin's prophecy provided some kind of
5 galvanizing energy for the warriors, but the
6 phrase "ideological ferment" implies something
7 more than galvanizing energy. I think it
8 implies that there was some kind of underlying
9 conceptual logic to his message that structured
10 the ideas, the goals of the warriors in 1763. I
11 do not think that was the case.

12 I think that, as I said, these were
13 communities that were long accustomed to
14 relations with European powers and had wanted to
15 sustain those relations on terms that they could
16 control or at least influence.

17 Q. Thank you.

18 I'd like to move now to point 2(b) of
19 the roadmap. In Pontiac's War the Great Lakes
20 First Nations military strategy was to take
21 control of waterways.

22 And your main report describes a
23 number of events in the war that demonstrates
24 this was their strategy. For example, at pages
25 49 to 53 you give a brief narrative of Pontiac's

12:08:55 1 efforts to destroy the British ships protecting
12:09:00 2 Fort Detroit. I would like to look further in
12:09:03 3 depth into one of these events, which is the
12:09:06 4 attack on the surveyors.

12:09:12 5 Pages 24 and 49 of your main report
12:09:14 6 you say that Pontiac's War started on May 6th,
12:09:19 7 1763, when a party of Ojibwe warriors attacked a
12:09:23 8 party of British surveyors sent to map the
12:09:26 9 channel from Detroit to Lake Huron.

12:09:28 10 Why were the British surveying the
12:09:31 11 channel?

12:09:33 12 A. They were surveying the channel
12:09:35 13 because they were trying to figure out whether
12:09:38 14 it was possible for a large vessel to sail from
12:09:45 15 Lake Erie into Lake Huron and if so to map the
12:09:49 16 channel that would allow that to happen.

12:09:59 17 Q. I would like to bring up Exhibit
12:10:01 18 514. Dr. Hinderaker, can you tell us a bit
12:10:18 19 about this document please?

12:10:20 20 A. Yes. This is the same -- you can
12:10:27 21 see that it's the same volume that we were
12:10:30 22 looking at for the Navarre journal. The other
12:10:35 23 document that it contains is the narrative of
12:10:38 24 John Rutherford, who is with the party that you
12:10:41 25 were just describing and who was captured in the

12:10:43 1 attack that you just identified.

12:10:45 2 Q. So what is this document about?

12:10:48 3 A. It is -- it tells the story of
12:10:53 4 Rutherford's experience in the attack on the
12:10:55 5 surveyors and in his captivity following that
12:10:59 6 attack.

12:11:01 7 Q. Great. So I would like to take
12:11:03 8 you to PDF image 67, which are pages 222 and 224
12:11:09 9 of this document, and I've highlighted some
12:11:12 10 passages. So I'll take you to the entry for May
12:11:19 11 6th, the day of the attack.

12:11:28 12 Rutherford is describing an exchange
12:11:30 13 the survey party had with two French Canadians
12:11:33 14 on their way to the area they intended to
12:11:38 15 survey. The passage begins:

12:11:42 16 "May 6th, in the morning we
12:11:44 17 arrived at La Pinnarre, where there
12:11:49 18 were some Canadians building a saw
12:11:49 19 mill for whom we brought, at the
12:11:49 20 desire of a French gentleman at
12:11:49 21 Detroit, a few barrels of flour.

12:11:51 22 They returned us thanks and told
12:11:52 23 us with all the rhetoric they were
12:11:54 24 masters of that all the Nations of
12:11:56 25 Indians around were in league to take

12:11:58 1 up the hatchet against the English;
12:12:03 2 that they knew of our coming that way
12:12:05 3 and were waiting six miles up the
12:12:05 4 river to seize and destroy us. And if
12:12:07 5 we proceeded any farther we would
12:12:07 6 certainly be cut to pieces. They
12:12:07 7 begged us with tears in their eyes for
12:12:07 8 God's sake to return and by means of
12:12:07 9 the wind and strong current of the
12:12:19 10 river we might gain the Fort before
12:12:22 11 they could perceive we had discovered
12:12:25 12 their intentions. This was friendly
12:12:30 13 advice given by people who showed even
12:12:30 14 by their countenances that they have
12:12:32 15 our safety very much at heart, and had
12:12:36 16 we followed their counsel many would
12:12:38 17 have saved their lives on this
12:12:40 18 occasion and others would have avoided
12:12:42 19 a long and dangerous captivity."
12:12:53 20 Dr. Hinderaker, in your view was the
12:12:54 21 attack on the survey party planned in advance?
12:12:56 22 A. Yes.
12:12:57 23 Q. And why would the First Nations
12:12:59 24 have been concerned about Britain surveying the
12:13:03 25 channel?

12:13:06 1 A. Well, I think that this is really
12:13:09 2 clear evidence of the desire on the part of the
12:13:13 3 Ojibwe warriors that participated in this attack
12:13:16 4 to control access to Lake Huron.

12:13:24 5 Q. I would like to bring up document
12:13:26 6 SC0422. This is a report by Mr. Graves prepared
12:13:39 7 in this proceeding for Ontario.

12:13:42 8 Your Honour, could we have it marked
12:13:43 9 as the next lettered exhibit?

12:13:47 10 THE COURT: Yes.

12:13:51 11 THE WITNESS: Lettered Exhibit F(1).

12:13:53 12 EXHIBIT NO. F(1): Report authored
12:13:56 13 Mr. Graves.

12:14:01 14 BY MS. PELLETIER:

12:14:01 15 Q. So I'll take you to page 6 of
12:14:03 16 Mr. Graves' report. I've highlighted a passage.
12:14:11 17 It reads:

12:14:12 18 "Professor Hinderaker feels that
12:14:13 19 the warriors were compelled by
12:14:15 20 'strategic necessity of acting'
12:14:18 21 against the survey party because the
12:14:20 22 St. Clair River forms the passageway
12:14:23 23 between Lake Eries and Huron. While
12:14:26 24 this may be a possibility there is a
12:14:27 25 greater possibility that the British

1 party was attacked simply because it
2 was necessarily on the water since
3 there were no roads in the region at
4 the time."

5 Dr. Hinderaker, could you please tell
6 the court whether you agree with this passage
7 and why?

8 A. I strongly disagree with this
9 passage. Mr. Graves does not explain his
10 rationale for saying that there is a greater
11 possibility that the party was attacked, you
12 know. I mean, by saying simply because it was
13 necessarily on the water the implication is that
14 the location of the attack was random.

15 I think that it's quite clear that the
16 accounts that we have suggest, as you brought
17 out in questioning, that it was a premeditated
18 attack. They were located in a particular place
19 on the river anticipating the arrival of a
20 surveying party.

21 I can't imagine why Mr. Graves,
22 frankly, thinks it's more likely that it was a
23 random event than a strategically intentional
24 one.

25 Q. Thank you.

1 So I'd like to move on to point 2(c)
2 of the roadmap and talk about the extent to
3 which the Great Lakes First Nations achieved
4 their goals for the war.

5 I'll bring up now document SC0446.
6 This is a map from page 49 of Helen Hornbeck
7 Tanner's "Atlas of Great Lakes Indian History".
8 Perhaps you can begin, Dr. Hinderaker, by
9 telling us a bit about this publication?

10 A. The publication is a -- was a
11 scholarly undertaking to provide an atlas, that
12 is to say a kind of comprehensive history and
13 analysis of Great Lakes Indigenous peoples from
14 the prehistorical period through -- into the
15 19th century.

16 Q. And what does this map show?

17 A. This map shows the British Forts
18 affected by Pontiac's War in 1763.

19 Q. Note there's a legend in the
20 bottom left-hand corner of the map. Can you
21 explain that legend to us?

22 A. Yes, the Forts that have a hollow
23 middle, the Forts that have a dot in the -- a
24 white dot in the middle of them are the Forts
25 that were destroyed or abandoned by the British

1 as a result of First Nations' attacks.

2 The Forts that have a solid middle are
3 the Forts that were attacked or besieged but
4 were held by the British.

5 And then the dates show -- the numbers
6 underneath the Fort names show dates either of
7 the attack, the successful attack or, in the
8 case of Detroit, Pitt and Ligonier, the period
9 during which the Forts were under attack, under
10 siege.

11 Q. And is this map accurate?

12 A. Yes.

13 Q. Your Honour, I'd ask that this be
14 marked as the next exhibit?

15 THE COURT: Before we do that I'm
16 having trouble seeing it. The witness has
17 indicated that there are two different kinds of
18 square boxes which generally seem to be --
19 there's one that's filled and there's one that's
20 not filled. Are those the only two indicators,
21 sir?

22 THE WITNESS: Yes.

23 THE COURT: So it's just not a very
24 good copy, counsel. I suppose you can probably
25 get a better one?

12:18:56 1 MS. PELLETTIER: Is that better having
12:18:57 2 zoomed in, Your Honour?

12:19:00 3 THE COURT: That is probably good
12:19:01 4 enough. I can now more clearly see the
12:19:04 5 difference between the two square boxes.

12:19:16 6 MR. MCCULLOUGH: Your Honour, Canada
12:19:17 7 has in fact a higher quality copy of the first
12:19:18 8 part of the Tanner atlas. Perhaps after we
12:19:21 9 finish this portion of the examination we can
12:19:24 10 convey that to our friends.

12:19:26 11 THE COURT: Thank you for doing that.
12:19:27 12 So what we'll do is we'll mark a substitute
12:19:30 13 image as the next exhibit. Mr. Registrar, what
12:19:34 14 exhibit are we on?

12:19:37 15 THE REGISTRAR: Exhibit 4024.

12:19:40 16 EXHIBIT NO. 4024: Copy of page 49 of
12:19:44 17 Helen Hornbeck Tanner's "Atlas of
12:19:44 18 Great Lakes Indian History".

12:19:45 19 THE COURT: So 4024 is page 49 of this
12:19:46 20 atlas, I think you call it "Atlas of Indian
12:19:47 21 History"?

12:19:47 22 MS. PELLETTIER: "Atlas of Great Lakes
12:19:48 23 Indian History".

12:19:53 24 THE COURT: And we'll work with this
12:19:55 25 image for now, as enlarged, and we'll get a

12:19:57 1 better one for later.

12:19:58 2 MS. PELLETIER: Thank you, Your
12:19:59 3 Honour.

12:19:59 4 THE COURT: Please go ahead.

12:20:01 5 BY MS. PELLETIER:

12:20:02 6 Q. Dr. Hinderaker, which of the
12:20:03 7 forts would you consider as being in the
12:20:04 8 territory of the Great Lakes First Nations?

12:20:09 9 A. I would say all of them --
12:20:13 10 Bedford and Ligonier were certainly outside of
12:20:16 11 that territory. Pitt was outside of the Great
12:20:19 12 Lakes, but it did have -- the First Nations
12:20:22 13 peoples at Fort Pitt had substantial contact
12:20:26 14 with Great Lakes warriors. But Ligonier and
12:20:33 15 Bedford I guess probably fit, but Fort Pitt --
12:20:36 16 yeah. I would say the rest of them are best
12:20:46 17 regarded as forts in the Great Lakes region.

12:20:49 18 Q. You mentioned that Pontiac's War
12:20:52 19 started on May 6th, 1763. Can you describe how
12:20:56 20 successful the First Nations had been in taking
12:20:58 21 control of the posts on the Great Lakes by the
12:21:01 22 end of June?

12:21:06 23 A. Yeah, as you can see from this
12:21:08 24 map, and if you look at the dates as well as the
12:21:14 25 forts that fell, there were a series of

12:21:18 1 successful attacks. Nine forts were abandoned
12:21:23 2 by the British as a result of the attacks in May
12:21:25 3 and June.

12:21:28 4 And at Detroit and at Fort Pitt
12:21:31 5 prolonged sieges had been initiated and were
12:21:36 6 underway and were having a substantial impact on
12:21:42 7 their inhabitants.

12:21:43 8 Q. And how close did Pontiac come to
12:21:46 9 capturing Fort Detroit?

12:21:50 10 A. Well, at the outset the
12:22:01 11 commanding officer at Detroit, Gladwin, was
12:22:04 12 tipped off that there was an attack impending
12:22:07 13 and so he successfully prevented that from
12:22:10 14 happening.

12:22:10 15 I mean, over the long run the siege
12:22:13 16 had a pretty significant impact on the Fort of
12:22:16 17 Detroit. Gladwin himself said that at the time
12:22:20 18 that Pontiac sued for peace he was pretty much
12:22:24 19 out of provisions and was worried that he was
12:22:27 20 not going to be able to hold out much longer.

12:22:29 21 Q. So let's take you to that
12:22:31 22 document, actually, that source which is
12:22:34 23 document SC0210.

12:22:39 24 Now, this is a letter -- first,
12:22:42 25 actually can we go -- perhaps you can begin by

12:22:46 1 telling us a bit about this publication?

12:22:52 2 A. I'm sorry, I'm not sure what
12:22:54 3 volume this is from. This, I believe, is a
12:22:57 4 compilation of Canadian documents. You can see
12:23:07 5 that the -- that what appears here is a text,
12:23:11 6 the text of a letter from Gladwin, commanding
12:23:15 7 officer at Detroit, to Sir Jeffrey Amherst,
12:23:18 8 commander-in-chief, his Superior officer. And
12:23:21 9 that is the original is found in the British
12:23:24 10 museum manuscript collection. And that a
12:23:29 11 printed version appeared in the Michigan
12:23:32 12 Historical Collections volume 27. And I take it
12:23:38 13 that is that second version that is reproduced
12:23:49 14 here.

12:23:49 15 Q. And you're familiar with this
12:23:50 16 letter?

12:23:51 17 A. Yes.

12:23:51 18 Q. And it is, I see, dated November
12:23:52 19 1st, 1763?

12:23:58 20 A. Uhm-hmm.

12:23:58 21 Q. You've noted that it's a letter
12:23:59 22 from Major Henry Gladwin to Sir Jeffrey Amherst.
12:24:06 23 You've said a little bit about this but could
12:24:06 24 you tell us a bit more about who was Major Henry
12:24:07 25 Gladwin?

12:24:09 1 A. Yeah. He was the commanding
12:24:10 2 officer at Detroit during the summer of 1763
12:24:15 3 during the time of the siege.

12:24:20 4 Q. And Amherst was still the
12:24:23 5 commander-in-chief of Britain's North American
12:24:25 6 forces?

12:24:26 7 A. Yes.

12:24:27 8 Q. Your Honour, I would ask that
12:24:28 9 this be marked as the next exhibit.

12:24:31 10 THE COURT: Seeing no objection that
12:24:32 11 will be the next exhibit.

12:24:35 12 THE WITNESS: Exhibit No. 4025.

12:24:37 13 EXHIBIT NO. 4025: Text of a letter
12:24:40 14 from Gladwin, commanding officer at
12:24:40 15 Detroit, to Sir Jeffrey Amherst,
12:24:40 16 commander in-chief.

12:24:49 17 BY MS. PELLETIER:

12:24:49 18 Q. And I've highlighted a passage
12:24:51 19 here. The first paragraph reads:

12:24:53 20 "On the 12th October, the enemy
12:24:56 21 sued for peace in a very submissive
12:24:59 22 manner. At that time I was so
12:25:01 23 circumstanced for want of flour that I
12:25:04 24 must either abandon my post or hear
12:25:07 25 them: Of the two I chose the latter,

1 thinking it of the utmost consequence

2 to keep possession of the country."

3 At this point how long had Detroit
4 been under attack?

5 A. Since May.

6 Q. And what does Gladwin mean by
7 "abandoning his post"?

8 A. He seems to be contemplating the
9 possibility that he was going to have to
10 surrender the Fort to its besiegers.

11 Q. How likely is it that Gladwin is
12 telling the truth about being close to
13 surrendering?

14 A. I assume that he's telling the
15 truth. I don't know why he would have a motive
16 not to tell the truth in this instance.

17 THE COURT: It's not a question,
18 counsel. No one is standing up. The likelihood
19 of someone -- well, I guess the answer will
20 stand for whatever it stands for.

21 BY MS. PELLETIER:

22 Q. When did -- sorry, who was the
23 "enemy" that Gladwin is referring to?

24 A. The -- Pontiac and his allied
25 warriors.

1 Q. And when did Pontiac lift the
2 siege?

3 A. The 30th of October.

4 Q. And why did he do that?

5 A. Well, I mean partly because he
6 was -- you know, because Gladwin accepted his
7 suit of peace.

8 I mean, for Pontiac in October some of
9 the warriors who had assembled with him were
10 returning home for winter hunts. It was kind of
11 characteristic of First Nations warfare and
12 early modern warfare in general, the winter was
13 not a campaign season so the practical term of
14 the siege was reaching its end. And this was an
15 opportunity for Pontiac to approach Gladwin to
16 begin negotiating terms.

17 Q. And after the winter what was the
18 First Nations' capacity to continue fighting?

19 A. Do you mean to resume a siege in
20 the spring of 1764?

21 Q. That's correct.

22 A. It's a good question. I mean,
23 they -- they were short on supplies in October.
24 They were short on gunpowder and lead;
25 presumably they might have been able to restock

12:27:51 1 their supplies of gunpowder and lead. They had
12:27:54 2 support from French traders in the Illinois
12:27:56 3 country and so it's possible that they could
12:28:04 4 have returned and resumed the siege at that
12:28:06 5 point.

12:28:07 6 Q. Why didn't they?

12:28:07 7 A. Well, I think events were moving
12:28:10 8 in a different direction; and by the spring and
12:28:15 9 summer of 1764 the possibility that, as I said
12:28:26 10 earlier, that they could somewhat control the
12:28:27 11 terms of the British reoccupation of the post
12:28:27 12 was a more realistic possibility than it had
12:28:30 13 been in the previous spring.

12:28:32 14 Q. Thank you. I'd like to take you
12:28:40 15 again to Mr. Graves' report, entered as a
12:28:54 16 lettered exhibit, F(1).

12:29:02 17 Page 6 of Mr. Graves' report I've
12:29:03 18 highlighted a passage that reads:

12:29:06 19 "Professor Hinderaker devotes
12:29:09 20 four pages (49-51) to a discussion of
12:29:15 21 Aboriginal attacks on British warships
12:29:18 22 or waterborne forces, but it appears
12:29:21 23 that after some initial successes the
12:29:22 24 Aboriginals more often than not failed
12:29:25 25 in such attacks and suffered heavy

casualties."

To what extent, Dr. Hinderaker, do you agree with this statement and why?

A. I think -- I don't really agree with it. I would say that the fortunes of both the First Nation warriors and the British ebbed and flowed during the course of the siege.

I mean, more often than not -- it's certainly true that most of their strategies to attack British -- the British ships, the larger vessels, did not succeed. But the implication that there is some kind of downward trajectory in First Nations' military fortunes during the course of the siege I disagree with.

I think that actually the story of the siege is the story of repeated and often costly attacks that both sides really suffered in the period of warfare. And there was no sense, in my mind, that the effort was failing later in the summer.

Q. Thank you.

At page 28 and 29 of your main report you say that:

"While the military outcome of the war was inconclusive most First

1 Nations were satisfied with that
2 outcome."

3 Why was that?

4 A. Because it -- you know, the
5 summer of 1763 really altered the trajectory of
6 British -- of Britain's occupation of the west.
7 I mean, the Royal Proclamation of that fall, the
8 promise of a resumption of diplomatic relations,
9 the Treaty of Niagara, the Niagara Conference,
10 which eventually is called for 1764, these are
11 all signs that this period when the British
12 sought to really kind of dictate the terms of
13 their occupation of the western posts was coming
14 to an end; and that British administrators had a
15 new-found -- I don't know if you want to say
16 respect for First Nations' autonomy but I think
17 that's a fair formulation.

18 Certainly in London advisors of the
19 Crown, the Board of Trade were appalled at the
20 cost of the attacks on the forts, and the
21 vulnerability of the forts, and really felt like
22 a different approach was necessary.

23 Q. So let's move to point 2(d) of
24 the roadmap, that Pontiac's War prompted Britain
25 to reaffirm that it would not interfere with the

1 Great Lakes First Nations occupation of their
2 territories.

3 At page 30 of your main report you
4 say:

5 "The Royal Proclamation of 1736
6 and the Treaty of Niagara of 1764
7 demonstrated a new commitment on the
8 part of the British to respecting
9 First Nation land rights and land
10 claims in the west."

11 So let's start with the Royal
12 Proclamation. The Royal Proclamation was made
13 October 7, 1763?

14 A. Yes.

15 Q. And that was during Pontiac's
16 War?

17 A. Yes.

18 Q. How was Britain fairing in the
19 war at that time?

20 A. Not well. As I suggested, nine
21 posts had been abandoned and Detroit was still
22 under a prolonged siege.

23 The sense in London was, as I just
24 said, that it was a really costly and
25 devastating series of events.

12:34:08 1 Q. I'd like to pull up Exhibit 531.

12:34:30 2 Can you tell us a bit about this document,
12:34:33 3 Dr. Hinderaker?

12:34:34 4 A. The collection, as you can see,
12:34:36 5 is a collection of materials from the Canadian
12:34:38 6 archives. It's a publication called "Documents
12:34:41 7 related to the Constitutional History of Canada
12:34:45 8 1759-1791" printed by the Order of Parliament.

12:34:58 9 Q. I'd like to take you to PDF page
12:35:00 10 2, which is page 150 of this document.

12:35:06 11 And here we have a letter from the
12:35:08 12 Lords of Trade to Egremont. Can you tell us who
12:35:15 13 Egremont is?

12:35:17 14 A. Egremont was a Secretary of State
12:35:19 15 for the Crown in London.

12:35:23 16 Q. And who are the Lords of Trade
12:35:24 17 again?

12:35:24 18 A. They were the advisory body who
12:35:25 19 advised the Board of Trade and who recommended
12:35:29 20 policies for overseas trade and colonial
12:35:32 21 policies to the Crown.

12:35:35 22 Q. And this letter from the Lords of
12:35:36 23 Trade to Egremont attaches what is called a
12:35:41 24 "Representation to the King". What is the
12:35:44 25 Representation to the King about?

12:35:46 1 A. The Representation to the King
12:35:48 2 here has to do with organizing the territory
12:35:52 3 that has been -- that was ceded to Great Britain
12:36:03 4 by France in the Treaty of Paris. The terms of
12:36:05 5 that treaty gave Great Britain a claim in
12:36:09 6 European law to a vast new territory in the
12:36:14 7 interior of North America that had previously
12:36:17 8 been controlled by France, previously belonged
12:36:20 9 to France and also Spain. But we're talking
12:36:22 10 about the part that belonged to France.

12:36:25 11 And so this representation is an
12:36:33 12 attempt to lay out the principles for that, that
12:36:38 13 process of organizing those new lands.

12:36:41 14 Q. Thank you.

12:36:43 15 So I'd like to go to PDF image 4,
12:36:46 16 which is page 152 of this document. And the
12:36:50 17 very last paragraph I've highlighted some text.
12:36:56 18 So I'll read that out:

12:36:58 19 "In the meantime we humbly
12:37:00 20 propose that a proclamation be
12:37:02 21 immediately issued by Your Majesty as
12:37:04 22 well on account of the late complaints
12:37:07 23 of the Indians and the actual
12:37:09 24 disturbances in consequence as of Your
12:37:11 25 Majesty's fixed determination to

12:37:14 1 permit no grant of lands nor any
12:37:16 2 settlements to be made within certain
12:37:18 3 fixed bounds, under pretense of
12:37:21 4 purchase or any other pretext
12:37:23 5 whatever, leaving all that territory
12:37:25 6 within it free for the hunting grounds
12:37:27 7 of those Indian Nations, subjects of
12:37:29 8 Your Majesty."

12:37:32 9 Now, at page 31 of your main report
12:37:34 10 you say that:

12:37:37 11 "[...]the war was clearly
12:37:37 12 influenced by the Proclamation."

12:37:41 13 How did it do so -- or sorry:

12:37:43 14 "[...]the war clearly influenced
12:37:44 15 the Proclamation."

12:37:46 16 How did it do so?

12:37:47 17 A. Right. Well this passage I think
12:37:49 18 pretty clearly articulates the way that it did
12:37:54 19 so. You can see that the King has instructed
12:37:57 20 the Board of Trade to ensure in its policy that
12:38:07 21 no grants of lands will be made in the new
12:38:10 22 territories except by the Crown.

12:38:12 23 Right, so the King began this process
12:38:17 24 by stipulating that he wanted control of these
12:38:20 25 territories, wanted control of land distribution

1 in these territories.

2 In this passage what the Lords of
3 Trade are saying is that they think it's
4 incumbent upon the Crown to immediately issue a
5 proclamation, as well on account of the late
6 complaints of the Indians and the actual
7 disturbances and consequence as that prior -- as
8 much for that reason as because of the prior
9 royal intentions.

10 So they're basically telling the King
11 that he needs to not only inform his subjects in
12 North America that they can't take up any lands
13 they want, they have to wait for Royal
14 approbation, but also they're saying that it's
15 equally important to promulgate this message to
16 reassure First Nations peoples. That's the
17 import of the phrase:

18 "[...] as well on accounts of the
19 late complaints of the Indians and the
20 actual disturbances in consequence."

21 That's a reference to Pontiac's War.
22 And they're saying that the King needs to
23 address First Nation peoples directly in this
24 proclamation, as is clearly evidenced by the
25 disturbances in the west.

1 So if you read the text of the Royal
2 Proclamation, there are really kind of two
3 things going on. One is a set of stipulations
4 that organizes the newly-acquired territory and
5 creates new colonies.

6 The other is a set of guarantees to
7 First Nations peoples.

8 Q. I'm showing you document SC0619,
9 which is a map from page 30 of Fred Anderson's
10 "Crucible of War". Can you tell us who Fred
11 Anderson is, first of all?

12 A. Yes. Fred Anderson is a
13 historian at the University of Colorado, a
14 scholar of 18th century North American history
15 in general, and particularly military history.
16 And "Crucible of War" is considered the recent,
17 definitive account of the Seven Years' War in
18 North America.

19 Q. And do you recognize this map?

20 A. I do.

21 Q. What does it show?

22 A. As the legend says it shows
23 "Indian groups, regions, and topography of the
24 North American interior". And for our purposes
25 it's particularly useful because it shows the

12:41:08 1 so-called proclamation line, the line that was
12:41:13 2 stipulated in the Royal Proclamation of 1763.

12:41:17 3 Q. What is the royal -- or what is
12:41:17 4 the proclamation line?

12:41:22 5 A. The Proclamation specifies that
12:41:25 6 the boundaries of the colonies will be
12:41:29 7 restricted to the eastern side of the fall line
12:41:33 8 of the Allegheny mountains.

12:41:36 9 And that all territory west of the
12:41:38 10 fall line of the Allegheny mountains will be
12:41:42 11 reserved to First Nations peoples.

12:41:46 12 Q. Does this map accurately show the
12:41:48 13 location of the Proclamation line and the
12:41:50 14 boundaries of the colonies?

12:41:51 15 A. Yes.

12:41:54 16 Q. It also appears to show areas
12:41:56 17 where various First Nations were located. Do
12:41:58 18 you have a view on how accurate those
12:42:01 19 descriptions are?

12:42:02 20 A. No.

12:42:04 21 Q. It also identifies a shaded area
12:42:06 22 as the "notional limits of the pays d'en haut".
12:42:11 23 What is the pays d'en haut, first or all?

12:42:13 24 A. The translation for that term is
12:42:15 25 "upper country". It's what the French called

12:42:18 1 their kind of interior territory in the Great
12:42:23 2 Lakes region, broadly.

12:42:26 3 Q. And do you have a view on how
12:42:28 4 accurately the map describes this notional
12:42:31 5 limit?

12:42:33 6 A. I mean, there were no precise
12:42:36 7 boundaries for the pays d'en haut, but
12:42:39 8 personally I think this pulls the boundaries a
12:42:43 9 little too far south, but that is perhaps
12:42:46 10 debatable. I do not think of the Ohio Valley
12:42:49 11 and the Illinois country as being part of the
12:42:52 12 pays d'en haut.

12:42:54 13 Q. Your Honour, I ask that this be
12:42:57 14 marked as the next exhibit with the title "Map
12:43:00 15 of the Royal Proclamation line and the North
12:43:03 16 American Colonies'. And for the record, we are
12:43:05 17 relying on it to show the location of the
12:43:07 18 proclamation line and not the other features
12:43:10 19 that I've mentioned.

12:43:19 20 THE COURT: This is enlarged. If it
12:43:20 21 was not enlarged would there be a key at the
12:43:23 22 bottom of it.

12:43:24 23 THE WITNESS: There is a key.

12:43:33 24 THE COURT: So we have two kinds of
12:43:35 25 lines. We have something called the

12:43:36 1 "Proclamation line" showed by a dotted line, and
12:43:40 2 then we have a second line showed by a dash line
12:43:44 3 called the "Proclamation boundaries". You're
12:43:48 4 relying on it solely for what is described here
12:43:50 5 as the dotted line, is that correct, counsel?

12:43:54 6 MS. PELLETIER: The Proclamation line,
12:43:55 7 that's correct, Your Honour.

12:43:57 8 THE COURT: And for nothing else?

12:43:58 9 MS. PELLETIER: That's correct.

12:44:01 10 THE COURT: Which is the line that
12:44:01 11 goes up along what we now call the Appalachian.

12:44:07 12 MS. PELLETIER: That's correct.

12:44:09 13 THE COURT: Any objection to that
12:44:11 14 exhibit? No? Okay.

12:44:13 15 THE WITNESS: Exhibit number 4026.

12:44:15 16 EXHIBIT NO. 4026: Document entitled"
12:44:16 17 map of the Royal Proclamation line and
12:44:16 18 the North American Colonies'.

12:44:20 19 MS. PELLETIER: Thank you.

12:44:21 20 BY MS. PELLETIER:

12:44:29 21 Q. On the map the Proclamation line
12:44:30 22 appears to follow the fall line of the Allegheny
12:44:34 23 mountains. Why did the Royal Proclamation
12:44:37 24 choose this as the boundary?

12:44:44 25 A. It's the most substantial

12:44:45 1 geographical, geological barrier that divides
12:44:51 2 eastern North America. All of the rivers on the
12:44:54 3 east side of the fall line fall into the
12:44:58 4 Atlantic, all the rivers on the west side fall
12:45:01 5 into the Mississippi or the Gulf. And -- so,
12:45:04 6 you know, there's a kind of geographical logic
12:45:08 7 to it.

12:45:08 8 It was the understanding of the Board
12:45:14 9 of Trade that by specifying this line
12:45:18 10 essentially that no colonies had yet breached
12:45:21 11 this line. So it seemed like a clear and
12:45:23 12 unproblematic way for them to designate a long
12:45:28 13 boundary that would affect all of the British
12:45:31 14 colonies in the eastern seaboard.

12:45:37 15 Q. And this map shows SON's
12:45:38 16 territory to be in the Indian lands, is that
12:45:40 17 correct?

12:45:41 18 A. That's correct.

12:45:44 19 Q. This map shows the original
12:45:45 20 proclamation line but, as you mentioned at pages
12:45:48 21 41 and 42 of your main report, it was modified
12:45:52 22 by three subsequent treaties.

12:45:54 23 THE COURT: Just before you go on to
12:45:55 24 that.

12:45:56 25 MS. PELLETIER: Yes.

12:45:56 1 THE COURT: I'm going to ask this
12:45:57 2 gentleman a question.

12:45:59 3 Sir, you see that the dotted line,
12:46:03 4 which is called the "Proclamation line", goes
12:46:05 5 off the page at the top, right-hand border of
12:46:11 6 the page.

12:46:13 7 THE WITNESS: Yes.

12:46:14 8 THE COURT: Are you able to assist the
12:46:15 9 court as to where that ends? Not on this page
12:46:20 10 but as a matter of awareness.

12:46:23 11 THE WITNESS: I think it just follows
12:46:26 12 a line to the --

12:46:28 13 THE COURT: To the coast.

12:46:29 14 THE WITNESS: -- coast. Let's see.

12:46:35 15 THE COURT: Let me ask the question
12:46:36 16 this way, is the entirety of that line what we
12:46:40 17 now regard as the United States.

12:46:41 18 THE WITNESS: The upper limit of the
12:46:43 19 line is kind of meaningless. And the Board of
12:46:48 20 trade, I should hasten to say, did not draw a
12:46:52 21 map.

12:46:55 22 THE COURT: No, no, but my question
12:46:56 23 is --

12:46:57 24 THE WITNESS: So if you look at where
12:46:58 25 the line is it actually makes no sense to put it

12:47:00 1 -- to position it the way -- this way because
12:47:04 2 the -- obviously the St. Lawrence River is
12:47:07 3 outside of the bounds the way that it's been
12:47:11 4 drawn.

12:47:12 5 And in practice the idea of the
12:47:21 6 Proclamation line, if you will, did not extend
12:47:24 7 that far north.

12:47:27 8 THE COURT: So your evidence is clear
12:47:29 9 on the record, how far north did it extend?

12:47:34 10 THE WITNESS: Through --

12:47:36 11 THE COURT: Into Maine?

12:47:38 12 THE WITNESS: Into Maine, yes.

12:47:46 13 THE COURT: So this graph preparer
12:47:49 14 has -- his or her line extends out to the east
12:47:53 15 coast of the United States but you're not
12:47:56 16 signing up for that last chunk.

12:48:00 17 THE WITNESS: I guess I would say that
12:48:02 18 I'm agnostic on the question of whether the last
12:48:08 19 portion of the line that we see here accurately
12:48:12 20 reflects the intention of the Royal
12:48:14 21 Proclamation.

12:48:15 22 THE COURT: But even if it went up to
12:48:16 23 the St. Lawrence River the entirety of the line
12:48:19 24 would still be in what we now regard as the
12:48:22 25 United States, correct?

12:48:30 1 THE WITNESS: Yes.

12:48:30 2 I mean, another function of the
12:48:31 3 Proclamation was to create new colonies. You
12:48:34 4 can see that that dashed line defines the
12:48:37 5 boundaries of Quebec, for example.

12:48:43 6 So there are aspects of the Royal
12:48:45 7 Proclamation that relate to this territory but
12:48:48 8 the proclamation line does not -- the line that
12:48:54 9 divides colonial settlements from First Nations'
12:48:57 10 territory does not extend that far northeast.

12:49:05 11 THE COURT: Thank you for clarifying
12:49:06 12 that.

12:49:06 13 You were going to move on, counsel.

12:49:08 14 MS. PELLETIER: Thank you.

12:49:08 15 THE COURT: About the Treaties that
12:49:09 16 changed, if you will, or affected these
12:49:12 17 boundaries.

12:49:13 18 BY MS. PELLETIER:

12:49:14 19 Q. I'll read the question.

12:49:14 20 This map shows the original
12:49:15 21 proclamation line but, as you mentioned at pages
12:49:18 22 4 and 42 of your main report, it was modified by
12:49:22 23 three subsequent treaties. Did any of these
12:49:25 24 modifications extend to SON's territory?

12:49:28 25 A. No, they did not.

12:49:30 1 Q. I'd like to move now to the
12:49:44 2 Treaty of Niagara. Is it your view,
12:49:57 3 Dr. Hinderaker, that Britain made a treaty at
12:50:02 4 Fort Niagara with what Johnson calls the western
12:50:06 5 Nations?

12:50:06 6 A. Yes.

12:50:07 7 Q. And, for the record, you
12:50:08 8 explained the basis of that view in your second
12:50:10 9 supplementary report and so I won't take you
12:50:13 10 through that today.

12:50:14 11 In your first report, however, you
12:50:16 12 don't appear to have turned your mind to the
12:50:19 13 question of whether there was a treaty. Why is
12:50:20 14 that?

12:50:24 15 A. It did not occur to me in
12:50:27 16 preparing my first report that there would be
12:50:28 17 any question about whether or not this should be
12:50:31 18 regarded as a treaty.

12:50:38 19 Q. To what extent do reputable
12:50:40 20 scholars in this area agree or disagree that
12:50:42 21 there was a Treaty of Niagara?

12:50:45 22 A. To my knowledge there is a --
12:50:49 23 essentially a scholarly consensus on the subject
12:50:53 24 that there was a treaty at Niagara.

12:50:56 25 Q. What scholars agree with

1 Dr. Beaulieu's argument that there was no
2 treaty?

3 A. I don't know of any.

4 Q. Could you describe the difference
5 between a Congress and a treaty?

6 A. Well, a Congress refers to the
7 coming together of British and First Nations'
8 representatives, it refers to a meeting.

9 A Treaty refers to a set of solemn
10 agreements that derive from that meeting.

11 Q. Is there a difference in the
12 terms "congress" and "conference"?

13 A. Not in my mind, no. The two
14 terms are both used actually in the minutes of
15 the Niagara Conference or Congress.

16 Q. When Johnson uses the term
17 "western Nations" what First Nations is he
18 referring to?

19 A. He's referring to the Great Lakes
20 Nations broadly, including, you know, really
21 kind of dominated by the Anishinaabe Nations but
22 including the other western Nations that we
23 talked about at the beginning this morning.

24 You know, so it includes
25 non-Anishinaabe people especially like at Green

1 Bay and on the western shore of Lake Michigan,
2 Wyandots and Hurons at Detroit, Miami, Ouiatanon
3 Indians. So it includes a larger array of
4 nations but with Anishinaabe peoples at kind of
5 at its core.

6 Q. Thank you.

7 Your first supplementary report, you
8 discuss the likelihood that SON would have been
9 represented at the Congress. In brief how
10 likely do you think it was?

11 A. I think it's quite likely.

12 Q. And your reasons for this opinion
13 are included in that report so I won't take you
14 through those today.

15 Whose idea was the Treaty of Niagara?

16 A. William Johnson's.

17 Q. And what did Britain hope to
18 achieve by making the Treaty?

19 A. Britain hoped to bring the
20 hostilities in the Great Lakes region to an end,
21 Great Lakes-Ohio Valley region to an end, and to
22 resume trading relationships with First Nations
23 peoples on terms comparable to the ones the
24 French enjoyed.

25 It was also Johnson's hope that he

12:53:49 1 could single out and punish those First Nations
12:53:51 2 that had taken up arms against the British posts
12:53:58 3 in Pontiac's War.

12:54:05 4 Q. There isn't a written document
12:54:07 5 setting out the terms of the Treaty with the
12:54:09 6 parties' signatures at the bottom?

12:54:12 7 A. That is correct.

12:54:13 8 Q. And how common is that practice
12:54:15 9 of 18th century treaties?

12:54:17 10 A. It's fairly common that we have
12:54:19 11 treaties where the only surviving record is the
12:54:24 12 minutes of the conference, which the minutes
12:54:27 13 record the solemn agreements that were made,
12:54:30 14 describe the proceedings. That's fairly common.
12:54:35 15 I think I list six examples in one of my
12:54:41 16 supplemental reports.

12:54:44 17 Q. Was there a written document
12:54:46 18 setting out the terms of the Treaty at Detroit?

12:54:49 19 A. No.

12:54:57 20 Q. How does the Treaty of Niagara
12:54:59 21 relate to the policy regarding Indian lands set
12:55:00 22 out in the Royal Proclamation?

12:55:04 23 A. It's consistent with the policy
12:55:06 24 set out in the Royal Proclamation. The Royal
12:55:08 25 Proclamation stipulates that First Nations

12:55:12 1 peoples will be respected in their capacity to
12:55:18 2 retain control of the lands that belong to them;
12:55:23 3 and it also enacts the policies respecting trade
12:55:34 4 with First Nations peoples that is articulated
12:55:38 5 in the Royal Proclamation.

12:55:41 6 Q. Do you have a view as to whether
12:55:43 7 the Royal Proclamation was read out loud at the
12:55:46 8 Treaty of -- at the Treaty congress?

12:55:49 9 A. I do not.

12:56:04 10 Q. I'm bringing up Exhibit 572.
12:56:06 11 Could you tell us what we're looking at,
12:56:10 12 Dr. Hinderaker?

12:56:10 13 A. We are looking at a document that
12:56:12 14 comes from volume 6 of "The Papers of Sir
12:56:14 15 William Johnson". This is a project that was
12:56:18 16 undertaken by the Division of Archives and
12:56:22 17 History of the State of New York; it's the
12:56:26 18 definitive collection, published collection of
12:56:30 19 Johnson's papers.

12:56:31 20 Q. Thank you. I'm going to take you
12:56:39 21 to a letter from William Johnson to Thomas Gage.
12:56:43 22 It's dated February 27, 1764. Who was Thomas
12:56:47 23 Gage?

12:56:48 24 A. Thomas Gage was -- had succeeded
12:56:56 25 Jeffrey Amherst as the commander-in-chief of

1 British forces in North America, so he was now
2 the supreme military commander in North America
3 and, therefore, also Johnson's Superior officer
4 as -- in Johnson's capacity as Superintendent
5 for Indian Affairs.

6 Q. And what was this letter about?

7 A. So can you -- can we -- this is
8 the letter that you're intending, the February
9 19th letter?

10 Q. Yes, sorry, I've misspoken. I
11 believe I said the date was February 27th. It's
12 February 19th, 1764.

13 A. Right, I see. So this is a
14 letter from William Johnson to Thomas Gage in
15 which he is describing his intentions for the
16 Niagara congress.

17 Q. Thank you. Go to page -- PDF
18 image 5, page 331 of this letter. Second
19 paragraph there I've highlighted some text.
20 Johnson lists the commitments he wants to get
21 from First Nations and he includes the
22 following:

23 "The occupancy of all the French
24 posts, et cetera, to be left to our
25 discretion and a free passage by land

1 or water to them, as also the
2 navigation of the upper lakes, et
3 cetera."

4 Now, Dr. Hinderaker, you said before
5 that Britain needed free passage through the
6 Great Lakes waterways to access the posts. Is
7 that what Johnson intended to ask for?

8 A. Yes. That's what he is -- what
9 he's stipulating here is that he intends to push
10 for reoccupying the -- whatever French posts the
11 British want to; and that as a necessary
12 corollary of that reoccupation that he also
13 intends to push for free passage on the part of
14 the British to get back and forth among those
15 posts.

16 Q. When Johnson refers to
17 "navigation of the upper lakes, et cetera", what
18 lakes is he referring to?

19 A. He is referring here to -- at
20 least he is referring to Huron, Michigan and
21 Superior. Possibly he is also referring to Erie
22 since Erie is above Niagara Falls, but
23 essentially what he's anticipating, what he
24 seems to be referring to here is passage
25 essentially beyond Detroit into the waters

01:00:09 1 beyond.

01:00:10 2 Q. And did Johnson make these
01:00:12 3 requests at the Treaty conference?

01:00:15 4 A. Johnson by implication, yes. In
01:00:25 5 talking about resuming trade at the posts the
01:00:33 6 implication quite clearly was that this would
01:00:36 7 require free passage through the upper lakes.

01:00:43 8 Q. Thank you, Dr. Hinderaker. Those
01:00:44 9 are my question, Your Honour.

01:00:46 10 THE COURT: Thank you, counsel. We
01:00:47 11 have an ongoing ambivalence in this trial about
01:00:50 12 whether university professors are referred to as
01:00:52 13 professors or doctors, and since you're number
01:00:55 14 three I'm going to stick with professor because
01:00:57 15 that's where I started.

01:00:59 16 Sir, even though your
01:01:01 17 cross-examination has not commenced yet I will
01:01:04 18 ask you to follow these rules, which means that
01:01:07 19 henceforth you should not be discussing your
01:01:09 20 testimony or this matter with anyone except in
01:01:14 21 your questioning in the courtroom.

01:01:17 22 And I don't think that means you can't
01:01:19 23 have lunch with plaintiff's counsel but you must
01:01:22 24 talk not about this litigation but about
01:01:25 25 something else, and that will continue to be the

01:01:26 1 case until you're concluded. All right?

01:01:29 2 THE WITNESS: Yes.

01:01:30 3 THE COURT: So on that basis we'll

01:01:31 4 take -- since it's a bit later than usual we'll

01:01:40 5 break until 2:20.

01:02:30 6 -- RECESSED AT 1:04 P.M. --

02:15:56 7 -- RESUMED AT 2:24 PM --

02:23:05 8 THE COURT: Go ahead.

9 CROSS-EXAMINATION BY MR. McCULLOCH:

02:23:07 10 Q. Professor Hinderaker, I'm Michael

02:23:09 11 McCulloch. I'm going to be asking you some

02:23:12 12 questions on behalf of the Attorney General of

02:23:14 13 Canada.

02:23:21 14 And, like my friend, I too have a

02:23:23 15 roadmap although I didn't have the sense to

02:23:25 16 print it out and distribute it in advance.

02:23:27 17 Because I'm going to be asking you questions in

02:23:32 18 four general areas. There may be some overlap

02:23:35 19 but I'm hoping this will provide a useful way of

02:23:39 20 moving forward.

02:23:44 21 The first is about your understanding

02:23:46 22 of the discipline of history and your historical

02:23:50 23 methodology.

02:23:51 24 Now, this is not a challenge to your

02:23:53 25 qualifications, you've been qualified. But we

02:23:57 1 have linguists, we have archeologists, we have
02:24:00 2 geographers, we have ethnohistorians, economic
02:24:04 3 historians. In short, I think it is very
02:24:07 4 useful, and I'm doing this consistently, to get
02:24:10 5 a clear sense of how people see their discipline
02:24:12 6 operating and how they operate within it so Her
02:24:18 7 Honour can compare apples with apples.

02:24:22 8 The second area, which is about the
02:24:24 9 most shapeless, I simply labelled "background".
02:24:28 10 That's to say the fundamental dynamics of the
02:24:33 11 world that produced the Seven Years' War. Who
02:24:41 12 was doing what and where?

02:24:43 13 No surprise that the third area is
02:24:46 14 treaties at Niagara, question mark. And, of
02:24:49 15 course, when we're talking about treaties we're
02:24:52 16 talking about treaties as understood at the
02:24:54 17 time.

02:24:55 18 And, finally, balance of power. Did
02:25:01 19 the events of 1763 to 1766 show that the
02:25:09 20 Anishinaabe had the ability to keep the British
02:25:11 21 out of the Great Lakes?

02:25:20 22 If that makes sense I'd like to
02:25:21 23 proceed to the questions about your sense of
02:25:25 24 history as a discipline. Needless to say, you
02:25:29 25 are a historian?

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A. Yes.

Q. And if I can say this, a historian with a very distinguished CV. I have heard very good things about "The Two Hendricks" rule, for example.

A. Thank you.

Q. And I'm not presenting this as an argument but presenting you with what I was told history was back many, many years ago; and you can tell me if that's your approach to history. Would you agree that history is an attempt to understand the past?

A. Yes.

Q. Would you agree that in the pursuit of this understanding historians rely on a historical record consisting of documents?

A. Yes, I mean if that's not intended to be an exhaustive list.

Q. Oh no, no. Materials from other disciplines? I'm thinking particularly of archeology?

A. Yes.

Q. And oral traditions?

A. Yes.

Q. Is there anything that you would

02:26:34 1 like to add to that list?

02:26:39 2 A. To make it an exhaustive list?

02:26:42 3 Q. Well, to make it one that you
02:26:44 4 feel is comfortably representative of the
02:26:46 5 materials that historians should properly look
02:26:49 6 at.

02:26:50 7 A. Well, I think that a
02:26:55 8 comprehensive assessment of the primary source
02:26:58 9 record; I also think attention to secondary
02:27:01 10 sources is an important dimension of the
02:27:04 11 practice of history.

02:27:09 12 I'm still not sure I'm arriving at an
02:27:12 13 exhaustive list, I'd prefer not to curtail any
02:27:14 14 list unless absolutely required to.

02:27:19 15 Q. You may not be aware, but perhaps
02:27:21 16 you are, that the law hates closed lists. But I
02:27:26 17 thank you for adding the importance of sound
02:27:29 18 secondary scholarship to that list, because that
02:27:39 19 will be significant later on.

02:27:40 20 And I'm going to come up with a very
02:27:42 21 amateurish articulation of what's the measure of
02:27:47 22 good professional history.

02:27:50 23 And do not hesitate to laugh out loud,
02:27:55 24 but would you say that the understanding of what
02:27:59 25 actually happened in the past that is the most

02:28:03 1 supported by the historical record, and
02:28:06 2 reasonable inferences drawn from it, is the
02:28:09 3 strongest interpretation of past events?

02:28:16 4 A. I think so.

02:28:18 5 Q. Well at least we're on the same
02:28:20 6 page.

02:28:23 7 Now, I'm now going to move into your
02:28:25 8 particular part of the historical discipline.

02:28:31 9 You would agree that historians have a
02:28:34 10 tendency to specialize in a particular area and
02:28:37 11 know the historical record of that -- those
02:28:40 12 areas very intimately, right?

02:28:47 13 A. Yes. I mean, I'm not sure I
02:28:50 14 would actually completely agree with that but,
02:28:53 15 yes, I agree that that is one thing that
02:28:55 16 historians do.

02:28:56 17 Q. But historians, and this is why I
02:28:58 18 thank you for the addition to the list, can have
02:29:02 19 a broader area of expertise based on their
02:29:05 20 familiarity with the scholarship that they
02:29:09 21 accept as sound from other scholars?

02:29:12 22 A. Yes.

02:29:14 23 Q. Now, if I could go down to some
02:29:16 24 of your courses that you've taught? Just while
02:29:36 25 we're going through your publications, I note

02:29:37 1 that they have to do with the Ohio Valley and
02:29:41 2 the Boston massacre. Do you have a favourite
02:29:44 3 publication? Or is that like having a favourite
02:29:48 4 child?

02:29:49 5 A. It's a bit like having a
02:29:50 6 favourite child. "The Two Hendricks" is the
02:29:54 7 book I enjoyed writing the most.

02:30:12 8 Q. Now, we talked about your special
02:30:14 9 area of primary focus of your research has been
02:30:19 10 the Ottawa Valley, generally and also
02:30:24 11 specifically Boston. But when you're teaching
02:30:28 12 these broader courses you often draw upon your
02:30:34 13 familiarity with the secondary scholarship?

02:30:38 14 A. Correct.

02:30:39 15 Q. I mean, American civilization,
02:30:41 16 that's something that you would have to be
02:30:44 17 familiar with the general scholarship and to a
02:30:46 18 certain extent rely on it, right?

02:30:48 19 A. Correct.

02:30:51 20 Q. And I'm just looking down,
02:30:54 21 "Americas after Columbus", does that involve New
02:31:00 22 France?

02:31:00 23 A. Yes.

02:31:03 24 Q. Is New France one of the areas
02:31:05 25 where you're dependent on the secondary

02:31:07 1 literature or have you engaged in an intimate
02:31:12 2 exploration of the primary documents?

02:31:14 3 A. I have engaged in extensive
02:31:17 4 exploration of primary documents with respect to
02:31:19 5 the history of New France.

02:31:20 6 Q. And the next question is going to
02:31:22 7 sound a little bit weird but there's a reason
02:31:24 8 for it. You have -- you're entirely comfortable
02:31:27 9 with 17th and 18th century French documents?

02:31:35 10 A. That's a strange phrase.

02:31:37 11 Q. That's to say that you have no
02:31:40 12 doubt about your ability to read them and
02:31:42 13 understand them?

02:31:44 14 A. I would say that given time and
02:31:48 15 effort, yes, I could -- I'm confident in my
02:31:52 16 ability to interpret documents from the 17th and
02:31:54 17 18th centuries from New France.

02:31:57 18 Q. There's a reason for that
02:31:58 19 question, and it's not meant to in any way to
02:32:00 20 impugn your ability to do scholarship.

02:32:04 21 A. Okay.

02:32:13 22 Q. You've mentioned the importance
02:32:14 23 of secondary scholarship as background; are you
02:32:16 24 familiar with the Smithsonian's "Handbook of
02:32:21 25 North American Indians"?

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1 A. Yes.

2 Q. Is it a credible secondary
3 source?

4 A. I would say it's credible. I
5 would say it's -- published in the --

6 Q. Well, some of it in the '70s.

7 A. -- '70s into the '80s, yeah.

8 Q. So it's credible? Not
9 dispositive but credible?

10 A. Yes, it is an encyclopedia-style
11 publication with all the limitations that that
12 implies, but it is credible.

13 Q. And, again, just using the
14 standard of credible, you've mentioned Helen
15 Tanner's Atlas?

16 A. Uhm-hmm.

17 Q. Would you consider that also to
18 be a credible piece of scholarship?

19 A. I would say the same thing. It
20 is an encyclopedia-style piece of work with all
21 the limitations that implies, and it is also
22 now -- was it 1985, was it? Something like
23 that. So it's, you know, more than 30 years
24 old. And that does -- that is significant. A
25 lot can change in people's understandings of the

02:33:24 1 field in that period of time.

02:33:27 2 Q. And I note also that you rely on
02:33:29 3 W.J. Eccles, "The Canadian frontier"?

02:33:34 4 A. I footnoted him one time in the
02:33:37 5 report for some fairly straightforward, factual
02:33:43 6 point I think. I don't recall what the footnote
02:33:46 7 was.

02:33:51 8 Q. We'll revisit it. Do you know
02:33:52 9 when the first edition was written?

02:33:54 10 A. A while ago, '40s maybe, '50s.

02:33:59 11 Q. Actually I think '69.

02:34:01 12 A. Was it '69? Okay.

02:34:01 13 Q. It was a textbook when I was a
02:34:03 14 graduate, puts it in context.

02:34:06 15 Anyway, there are scholars -- and you
02:34:09 16 would agree that scholars can disagree without
02:34:18 17 one or the other being totally wrong? That the
02:34:21 18 there are legitimate conflicting interpretations
02:34:23 19 of events?

02:34:26 20 A. Yeah.

02:34:26 21 Q. For example, and, again, one of
02:34:27 22 the authors that you've relied upon is Professor
02:34:31 23 Dowd. I believe you quoted his "War under
02:34:35 24 Heaven" a number of times?

02:34:37 25 A. Uhm-hmm.

02:34:38 1 Q. Do you consider him a credible
02:34:39 2 scholar?

02:34:41 3 A. I do consider him credible. I
02:34:42 4 don't consider him 100 percent correct, but I
02:34:46 5 consider him credible.

02:34:47 6 Q. And as I said, I like the idea
02:34:49 7 that there can be different credible
02:34:51 8 interpretations. That's one of the things that
02:34:54 9 I wanted you to put into your understanding of
02:34:58 10 the record, that we're not operating in a
02:35:02 11 Manichaeian discipline where you're either right
02:35:09 12 or wrong.

02:35:10 13 And, finally, and again, I think this
02:35:12 14 is fairly obvious but I'll ask it anyway. If a
02:35:15 15 scholar, upon reviewing the historical record,
02:35:19 16 comes to a conclusion that's different from
02:35:21 17 earlier conclusions the historian has to change
02:35:26 18 her mind?

02:35:30 19 A. I don't understand the question.

02:35:32 20 Q. Let me try to be a little bit
02:35:33 21 more articulate. A good historian can be
02:35:38 22 persuaded that she is wrong on the basis of the
02:35:41 23 historical record?

02:35:43 24 A. Yes.

02:35:48 25 Q. Well, I think now we will move on

02:35:52 1 to the second area and I hope this will make it
02:35:56 2 clear why I asked some of those preliminary
02:35:59 3 questions, and that's the background issue. Who
02:36:06 4 was where heading up to 1760?

02:36:10 5 And we have uploaded a new version of
02:36:16 6 Tanner. It's SCC number is -- might you have
02:36:25 7 it? You did receive it?

02:36:30 8 MS. PELLETIER: We did.

02:37:20 9 BY MR. MCCULLOCH:

02:37:21 10 Q. I'll have to send you the SCC
02:37:22 11 number. I think it's 0662, but I will have to
02:37:26 12 double check.

02:37:37 13 And if you could take us to page 26
02:37:41 14 and 27? It's a terrifying commentary on the
02:38:32 15 Attorney General of Canada's shop that I'm one
02:38:35 16 of the more technically literate members of our
02:38:38 17 litigation team.

02:39:07 18 This is the distribution of late
02:39:12 19 historic -- late prehistoric cultures, that is
02:39:16 20 1200 to 1600?

02:39:21 21 A. 1400.

02:39:22 22 Q. 1400 to 1600. And you will
02:39:24 23 notice from the table to the -- on the bottom
02:39:27 24 left that the darker green represents Iroquoian.
02:39:40 25 And you'll notice that that covers, that darker

02:39:43 1 green, the Iroquoian, covers not only the Bruce
02:39:46 2 Peninsula but also the area to the south of it.
02:39:50 3 The lighter green to the north and northwest,
02:39:53 4 and also to the east, that's Anishinaabe,
02:40:00 5 correct? According to Tanner? I'm simply
02:40:03 6 saying --

02:40:05 7 THE COURT: I think your comment about
02:40:06 8 being more adept than others is very apt at the
02:40:09 9 moment since our screen keeps moving around, so
02:40:12 10 maybe you can wait until the screen demonstrates
02:40:14 11 the picture that we had before and it doesn't at
02:40:31 12 the moment.

02:40:48 13 BY MR. MCCULLOCH:

02:40:48 14 Q. I'm not asking you to adopt this
02:40:51 15 but simply this is the view of one scholar in
02:40:54 16 the area?

02:40:55 17 THE COURT: Well, you're going to need
02:40:57 18 to assist me before you can ask a question about
02:40:59 19 this. So you said -- you made reference to the
02:41:02 20 darker green?

02:41:03 21 MR. McCULLOCH: Yes.

02:41:04 22 THE COURT: And I take it you're
02:41:05 23 referring to the section shown on the right-hand
02:41:07 24 side of the map?

02:41:09 25 MR. McCULLOCH: Yeah.

02:41:09 1 THE COURT: And then you went on to
02:41:11 2 speak about another section. And how did you
02:41:14 3 describe that section?

02:41:15 4 MR. McCULLOCH: It's lighter green,
02:41:17 5 although it looks more yellow-green.

02:41:21 6 THE COURT: That's my difficulty. I
02:41:23 7 don't see lighter green but I do see yellow. Is
02:41:26 8 that what you're referring to?

02:41:28 9 MR. McCULLOCH: Yes, that's the
02:41:29 10 Anishinaabe section.

02:41:31 11 THE COURT: So perhaps you can ask
02:41:32 12 your question again.

02:41:34 13 BY MR. MCCULLOCH:

02:41:34 14 Q. You agree that this map shows
02:41:37 15 that Ms. Tanner considers that in the late
02:41:40 16 prehistoric period Iroquoian cultures dominated
02:41:45 17 the area in dark green?

02:41:56 18 A. I mean that's what the map shows.

02:41:58 19 Q. And that area includes the Bruce
02:41:59 20 Peninsula and the area to the south of it?

02:42:02 21 A. Yes.

02:42:04 22 Q. Now, in your examination in-chief
02:42:09 23 you used some terminology that I'd like to get
02:42:12 24 clear for the record. You referred to the
02:42:18 25 "Saugeen Ojibwe Nation", or SON. What is your

02:42:23 1 definition of SON?

02:42:27 2 A. For the record I did not refer to
02:42:29 3 SON but I was asked about SON, and I was asked
02:42:33 4 about the territory of SON and also the
02:42:36 5 participation of SON in Pontiac's War and the
02:42:44 6 Treaties of Detroit and Niagara.

02:42:47 7 Q. So you do not yourself have a
02:42:49 8 definition of "SON" when you answered those
02:42:52 9 questions?

02:42:53 10 A. I do. I intended to refer to
02:42:59 11 those Anishinaabe peoples that occupied the
02:43:02 12 territory in the vicinity of the Saugeen River
02:43:06 13 and the Bruce Peninsula.

02:43:09 14 Q. And so when you refer to the SON
02:43:11 15 territory, you meant that area?

02:43:13 16 A. Yes.

02:43:16 17 Q. However, do you have any direct
02:43:21 18 evidence that in the period of the 18th century,
02:43:27 19 the period we're looking at now, there was, in
02:43:30 20 fact, a significant Anishinaabe presence in that
02:43:34 21 area?

02:43:35 22 A. Well, I will say that in the
02:43:38 23 period that I'm here to talk about this map does
02:43:42 24 not accurately represent the territory of the
02:43:48 25 Iroquois and the Iroquois-related peoples.

02:43:52 1 And, as far as I know, the -- my
02:43:57 2 understanding is that the territory between the
02:44:00 3 north shores of Lake Erie and Lake Ontario, and
02:44:03 4 the southern and eastern shores of Lake Huron
02:44:07 5 were occupied by Anishinaabe peoples. That's my
02:44:13 6 understanding.

02:44:14 7 Q. Perhaps if we could go to another
02:44:16 8 map. Again, I'm not asking you to agree with it
02:44:18 9 but just to get the sense of the range of
02:44:21 10 opinions out there. If I could go to the Dowd
02:44:25 11 map on page 24 of "War Under Heaven".

02:44:31 12 Now, in this map the heavy print shows
02:45:22 13 circa 1600 and the lighter print shows circa
02:45:28 14 1760, is that correct?

02:45:30 15 A. Yes.

02:45:31 16 Q. And this map has the Odawa, that
02:45:36 17 is what "OT" stands for, who are Anishinaabe,
02:45:41 18 present in 1600. Is that correct?

02:45:44 19 A. Yes.

02:45:48 20 Q. However, it does not show them as
02:45:49 21 present in 1760?

02:45:55 22 A. That's true. I would not
02:45:57 23 describe this as a comprehensively accurate map
02:46:03 24 of the territory that it embraces, but I note
02:46:06 25 the point that you're making.

02:46:07 1 Q. Yes. And, in fact, it's
02:46:09 2 precisely because the moment we're dealing with
02:46:11 3 is a very uncertain area that I want to get that
02:46:15 4 sense of the range of ideas available.

02:46:28 5 I believe that we were accepting the
02:46:30 6 Tanner maps as substitutes for the exhibits
02:46:33 7 created earlier? Or have they been made
02:46:36 8 exhibits?

02:46:41 9 MS. PELLETIER: That's right.

02:46:45 10 MR. McCULLOCH: Has it been made an
02:46:46 11 exhibit?

02:46:47 12 I've been reminded by my colleagues
02:46:55 13 that I have been remiss. If we could go back
02:46:57 14 and make that Tanner map from page 26 and 27 of
02:47:03 15 the Atlas an exhibit?

02:47:10 16 THE COURT: Sorry, you said -- maybe
02:47:12 17 you said more current?

02:47:14 18 MR. McCULLOCH: We paid extra to have
02:47:16 19 better resolution.

02:47:17 20 THE COURT: Oh, I see. It's not a
02:47:19 21 different publication date?

02:47:21 22 MR. McCULLOCH: No, it's exactly the
02:47:23 23 same but we couldn't make out the maps very well
02:47:26 24 so we decided to get a higher fidelity one.

02:47:29 25 THE COURT: Okay, give me a moment.

02:47:36 1 And the image that the plaintiffs used is not an
02:47:43 2 exhibit, is that what you're saying?

02:47:47 3 MS. PELLETIER: I believe this is a
02:47:48 4 different map, Your Honour.

02:47:51 5 MR. McCULLOCH: Oh, it's from the same
02:47:52 6 source.

02:47:53 7 THE COURT: And there's no objection
02:47:54 8 so pages -- the map on pages 26 and 27 of the
02:47:58 9 "Atlas of the Great Lakes", and again I realize
02:48:01 10 it is not -- Mr. Registrar, what exhibit number
02:48:03 11 are we up to?

02:48:07 12 THE REGISTRAR: Your Honour, we can't
02:48:11 13 make pages an exhibit. The entire document has
02:48:13 14 to be made as an exhibit.

02:48:16 15 THE COURT: We can if we separately
02:48:18 16 ask counsel to file it.

02:48:19 17 THE REGISTRAR: Yes, we can.

02:48:19 18 THE COURT: Counsel, it's either the
02:48:22 19 whole thing or you have to file separately. You
02:48:25 20 don't have to do it right now. Do you want just
02:48:28 21 the map?

02:48:29 22 MR. McCULLOCH: Actually I want the
02:48:30 23 whole thing because the attached text explains
02:48:33 24 how the maps were produced.

02:48:36 25 THE REGISTRAR: Exhibit No. 4027.

02:48:39 1 EXHIBIT NO. 4027: Map on pages 26 and
02:48:40 2 27 of the "Atlas of the Great Lakes",
02:48:40 3 authored by Helen Hornbeck Tanner.

02:48:42 4 MR. McCULLOCH: And I believe Dowd's
02:48:43 5 "War Under Heaven" has already been made an
02:48:46 6 exhibit? No. Does it have an SC number?
02:48:49 7 SC0496. We'd like to make actually the whole
02:48:54 8 book an exhibit.

02:49:08 9 THE COURT: I presume that is 4028?

02:49:11 10 THE REGISTRAR: Exhibit number 4028,
02:49:11 11 Your Honour.

02:49:12 12 EXHIBIT NO. 4028: Book entitled "War
02:49:13 13 Under Heaven", authored by Greg Dowd.
02:49:13 14 Document SC0496.

02:49:18 15 BY MR. MCCULLOCH:

02:49:18 16 Q. Now the Tanner map that my
02:49:20 17 friends showed is on pages 40 to 41, so I'll
02:49:24 18 talk with them whether they prefer to have them
02:49:27 19 broken out or whether they prefer to have that
02:49:29 20 chunk of the Tanner atlas a single exhibit.

02:49:37 21 And I hope we've caught up, or at
02:49:40 22 least I've caught up.

02:50:16 23 Now, Professor Hinderaker, I hope you
02:50:18 24 recognize this and admit to its authorship or
02:50:24 25 glory in its authorship?

02:50:25 1 A. Yes, I recognize this as my own
02:50:27 2 work.

02:50:29 3 Q. Now, if my colleague can go to
02:50:33 4 the bottom of the first column?

02:50:40 5 THE COURT: Sir, the witness has
02:50:42 6 recognized it but I would prefer you state on
02:50:44 7 the record what it is.

02:50:46 8 BY MR. MCCULLOCH:

02:50:46 9 Q. If we could go back up to the
02:50:46 10 top? It's an extract from I believe it's the
02:50:50 11 "Handbook of the American Revolution"?

02:50:56 12 A. Yes, that's right, the Blackwell
02:50:59 13 Handbook.

02:50:59 14 Q. "The Blackwell Handbook of the
02:51:02 15 American Revolution". And it's a chapter
02:51:05 16 entitled "The Amerindian population in 1763."
02:51:09 17 It's SC0663. I would like to make it an
02:51:23 18 exhibit.

02:51:25 19 THE COURT: No objection? Go ahead
02:51:28 20 Mr. Registrar.

02:51:30 21 THE REGISTRAR: Exhibit 4029.

02:51:35 22 EXHIBIT NO. 4029: Chapter entitled
02:51:38 23 "The Amerindian population in 1763"
02:51:38 24 from the book "The Blackwell Handbook
02:51:38 25 of the American Revolution". Document

02:51:38 1
02:51:39 2
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02:51:44 5
02:51:47 6
02:51:51 7
02:51:55 8
02:51:57 9
02:52:00 10
02:52:04 11
02:52:06 12
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02:52:43 25

SC0663.

BY MR. MCCULLOCH:

Q. I hope you don't mind if I read the paragraph and then -- the paragraph at the top out and ask you if they are indeed your words? Just for the record:

"By 1763, the Amerindian societies of North America had been adjusting to the wrenching effects of the European colonization for more than a century and a half. Dozens of distinct peoples often sharing some broad cultural patterns but speaking many languages and pursuing a variety of social, economic and political strategies, faced unprecedented challenges to their survival. Europeans diseases devastated Amerindian communities, destroying some all together and reducing the population of others by as much as 90 percent."

That's your opinion?

A. Yes.

Q. And the exact percentage is a

02:52:45 1 matter of debate, but you would agree that the
02:52:48 2 devastating impact of European diseases is
02:52:51 3 commonly acknowledged?

02:52:53 4 A. Yes. Although also highly
02:52:55 5 variable dependent on place, time and
02:52:58 6 circumstance.

02:52:58 7 Q. Yes. And let's go to the
02:53:06 8 paragraph:

02:53:11 9 "Perhaps 150,000 Amerindian
02:53:14 10 peoples still inhabited the eastern
02:53:17 11 woodlands in 1763."

02:53:18 12 And the eastern woodlands would be
02:53:22 13 roughly that northeastern quadrant?

02:53:25 14 A. It would include the southeast as
02:53:27 15 well.

02:53:28 16 Q. Okay.

02:53:28 17 "They faced an uncertain future.
02:53:34 18 For two generations Amerindians and
02:53:39 19 Europeans had cultivated political,
02:53:39 20 economic, social and cultural ties
02:53:39 21 that knitted together backcountry
02:53:44 22 communities and improved
02:53:46 23 inter-cultural relations."

02:53:48 24 If we can scroll on a little bit.

02:54:04 25 "The fur trade in the north and

02:54:06 1 the trade in the south brought
02:54:08 2 prosperity and dependency to
02:54:12 3 Amerindian communities and gradually
02:54:14 4 transformed the material conditions of
02:54:15 5 their residence lives. Amerindian
02:54:19 6 hunted with guns and wore European
02:54:21 7 clothing. In many Amerindian towns,
02:54:23 8 traditional wigwams and longhouses
02:54:25 9 stood alongside single family cabins
02:54:29 10 in the European style. Cash economies
02:54:32 11 often prevailed in trading communities
02:54:35 12 and American women began to raise
02:54:36 13 chicken, pigs and cattle."

02:54:41 14 In short you have an increasing
02:54:42 15 pattern of dependence upon European technology?

02:54:47 16 A. Well, and I would say an
02:54:49 17 increasing adaptation to European technology and
02:54:52 18 to European -- yeah.

02:54:55 19 Q. Such that without guns and gun
02:54:57 20 powder even subsistence hunting had become
02:55:01 21 increasingly difficult?

02:55:05 22 A. Yes, I think that's fair to say.

02:55:12 23 Q. So what we're looking at, as we
02:55:14 24 move into the middle of the 18th century, is not
02:55:16 25 just a culture, but multiple cultures undergoing

02:55:19 1 profound changes; one of which -- and these are
02:55:23 2 both likely things I want to be very clear on so
02:55:27 3 excuse me if I sound repetitive, one of which is
02:55:31 4 dependence on materials that could be only
02:55:36 5 imported from Europe?

02:55:39 6 A. Yeah. You know, I realize I use
02:55:42 7 the word "dependency" in this essay. I would
02:55:46 8 probably not use that particular word because I
02:55:48 9 do think that the scholarship on this point has
02:55:52 10 shifted. And I would actually phrase it
02:55:56 11 differently because I think "dependency" is a
02:55:59 12 kind of --

02:56:02 13 Q. Loaded?

02:56:03 14 A. Overstated term in this case.
02:56:06 15 But certainly a clear cultural preference was
02:56:09 16 expressed.

02:56:14 17 And the other thing I would quickly
02:56:16 18 point out, if I could just interject on this
02:56:18 19 point, because this is a handbook on the
02:56:20 20 American revolution I'm generalizing broadly,
02:56:23 21 but I'm really emphasizing what was going on
02:56:27 22 most profoundly in Native American communities
02:56:32 23 closest -- in closest proximity to areas of
02:56:36 24 colonization.

02:56:40 25 Q. And in the second section, in

02:56:42 1 resistance, you give an account of Pontiac's
02:56:45 2 War?

02:56:46 3 A. Yes.

02:56:46 4 Q. You don't mention the congress at
02:56:51 5 Niagara, do you?

02:56:52 6 A. I don't recall if I do or not. I
02:56:54 7 have not read this in a while.

02:56:56 8 Q. Do you want to take a second?

02:56:58 9 A. To read it?

02:56:59 10 Q. Yeah.

02:57:00 11 A. No, I'll take your word for it.

02:57:01 12 Q. Well, that's very kind of you.

02:57:13 13 But we don't have much doubt about the
02:57:15 14 impact of diseases on population?

02:57:17 15 A. Well, do you really want to get
02:57:20 16 into this? Because I actually would say that
02:57:22 17 the discussion has moved quite a bit on this
02:57:26 18 subject, and this another thing that I would
02:57:29 19 also cast somewhat differently. I think that
02:57:32 20 the scholarly consensus has shifted somewhat on
02:57:36 21 the mechanistic way in which scholars were
02:57:45 22 talking about the role of disease in
02:57:47 23 depopulation for a couple of decades.

02:57:54 24 And I would actually now offer a
02:57:55 25 somewhat more nuanced view that would emphasize

02:58:00 1 that those communities that suffered the
02:58:02 2 greatest population losses were typically
02:58:06 3 communities that were subjected to the worst
02:58:07 4 privations, not just associated with
02:58:13 5 colonization but especially associated with
02:58:14 6 colonization, dislocation, violence.

02:58:17 7 And that there are communities that
02:58:18 8 were much more effective than others at
02:58:23 9 sheltering themselves from the worst effects of
02:58:26 10 both colonization and the impact of Eurasian
02:58:34 11 diseases.

02:58:35 12 Q. But you would accept that those
02:58:36 13 communities that were in the intersection of
02:58:38 14 war, trade and missionary activity might have
02:58:41 15 some more exposure than more isolated groups?

02:58:46 16 A. Yes.

02:58:47 17 Q. Moving on, I'd like now to go to
02:58:54 18 your report, if I may?

02:58:55 19 A. Sure.

02:58:55 20 Q. I believe it's Exhibit 4017. And
02:59:04 21 if I go to pages 46 to 47. We're now going to
02:59:27 22 talk about forts. I suspect this is not going
02:59:30 23 to be the last time we talk about forts.

02:59:33 24 But in your report you set out, I
02:59:37 25 believe, two different views of the forts. And

02:59:47 1 right at the very bottom, if you could scroll
02:59:49 2 down a little bit?

02:59:53 3 "Historians have often seen this
02:59:55 4 network of forts and posts as the
02:59:58 5 basis for an enormously expansive
03:00:01 6 territorial empire in the interior of
03:00:04 7 North America. That is, at best, a
03:00:08 8 half-truth."

03:00:09 9 Now, just stop there for a second.
03:00:20 10 You don't have a footnote in there. You say
03:00:23 11 "historians" but you don't tell us which ones?

03:00:26 12 A. That's true.

03:00:27 13 Q. And then you go on to present an
03:00:29 14 alternate view:

03:00:30 15 "For the First Nation populations
03:00:32 16 inhabiting the Great Lakes, the posts
03:00:34 17 represented a twofold privilege that
03:00:36 18 had been conferred upon the French:
03:00:37 19 The privilege of occupying their
03:00:40 20 western posts, and the privilege of
03:00:43 21 travelling through the circuits that
03:00:45 22 connected them."

03:00:46 23 Again, we don't have the footnote from
03:00:48 24 where you get this insight into the indigenous
03:00:53 25 perspective?

03:00:54 1 A. That's true.

03:01:01 2 Q. Well, I believe there is one
03:01:03 3 place where you quote something from the
03:01:05 4 indigenous perspective, and since it gets quoted
03:01:08 5 elsewhere I'd like to now go to Alexander Henry.

03:01:17 6 Now, you've quoted him, but I would
03:01:23 7 like to take us to the source that you cited so
03:01:26 8 we can read the speech. And I can look for
03:01:32 9 assistance from my friends, Chief Minavavana.

03:01:45 10 A. Close enough.

03:01:46 11 Q. Close enough. It's pages --
03:01:52 12 it's -- it should be 44 and then 46, 47. Now,
03:02:07 13 while we're going there I don't think there is
03:02:09 14 any dispute that Alexander Henry was a fur
03:02:11 15 trader?

03:02:13 16 A. I don't think there is either.

03:02:15 17 Q. He was not an officer of the
03:02:17 18 British army? He was not a Crown agent? He
03:02:21 19 was, in fact, moving in ahead of the British
03:02:25 20 garrison. So he arrives -- here we are.

03:02:47 21 "At length the pipes", that would
03:02:54 22 be peace pipes, "being finished, as
03:02:55 23 well as the long pause by which they
03:02:57 24 were succeeded, Minavavana taking a
03:02:59 25 few sprigs of wampum in his hand"

03:03:04 1 Pause here. Exchanges of wampum were
03:03:04 2 a traditional part of what I understand is
03:03:04 3 called "forest diplomacy"?

03:03:07 4 A. Yeah, that's not a phrase I'm
03:03:08 5 familiar with but it is a traditional part of
03:03:11 6 diplomatic exchanges.

03:03:13 7 Q. And, indeed, it happened not
03:03:14 8 necessarily at formal meetings, because we know
03:03:17 9 that Alexander Henry is not a Crown agent, but
03:03:19 10 in fact at almost all ritual exchanges?

03:03:24 11 A. Um, yeah. I mean, ritual
03:03:27 12 exchanges. I don't think Alexander Henry had
03:03:30 13 any wampum strings or belts with him on this
03:03:35 14 occasion, did he? I don't recall that there's
03:03:38 15 any exchange in that regard.

03:03:39 16 Q. But there's a presentation of
03:03:40 17 wampum?

03:03:41 18 A. By Minavavana, yes. Actually
03:03:45 19 it's not clear if he presents it. He takes it
03:03:51 20 in his hand.

03:03:53 21 Q. I think that's about as far as we
03:03:54 22 -- wampum are important. I think we can all
03:03:58 23 agree on that?

03:04:00 24 A. Wampum are important.

03:04:01 25 Q. And that's not the last time.

03:04:03 1 That we'll be discussing -- not you
03:04:03 2 and I but the Court will be considering the
03:04:05 3 issue of wampum.

03:04:07 4 And this is the speech, and I won't go
03:04:09 5 through it in its entirety, but I want to stop
03:04:12 6 at points and ask for your opinion, if I may?

03:04:15 7 A. Sure.

03:04:16 8 Q. It starts off:

03:04:18 9 "Englishman, it is to you that I
03:04:21 10 speak and I demand your attention!
03:04:24 11 Englishman, you know that the French
03:04:27 12 King is our father. He promised to be
03:04:30 13 such; and we, in return, promised to
03:04:34 14 be his children."

03:04:35 15 Now, earlier you were talking about
03:04:38 16 the significance of the British acceptance of
03:04:42 17 the term "brothers"?

03:04:44 18 A. Yes.

03:04:45 19 Q. Here very clearly the way that
03:04:48 20 the Anishinaabe, or at least this particular
03:04:52 21 Anishinaabe chief is articulating the
03:04:54 22 relationship with the French Crown is as a
03:04:58 23 father?

03:04:58 24 A. That's right. The two traditions
03:05:01 25 are quite distinct from each other. The French

03:05:03 1 tradition with the Anishinaabe and other
03:05:06 2 Algonquin-speaking peoples of the Great Lakes
03:05:10 3 and the Mississippi valley was to present as
03:05:14 4 onontio, the great father. And so the
03:05:17 5 father-children metaphor was very common in
03:05:20 6 French diplomacy with its native allies.

03:05:24 7 But in British diplomacy with the
03:05:27 8 Iroquois there was a very different
03:05:28 9 understanding in which, as Johnson says, you
03:05:32 10 know, in his -- in some of his correspondence in
03:05:35 11 his period it would be regarded as insulting or
03:05:40 12 threatening to be referred to as children rather
03:05:43 13 than brethren.

03:05:44 14 Q. Now I'm asking questions
03:05:48 15 primarily about the French Anishinaabe as to the
03:05:52 16 background, as I said.

03:05:53 17 A. Yes.

03:05:53 18 Q. Okay. This is such a great
03:05:55 19 speech:

03:05:57 20 "Englishman! It is you who have
03:06:00 21 made war with this our father. You
03:06:01 22 are his enemy. And how then could you
03:06:05 23 have the boldness to venture among us,
03:06:08 24 his children? You know that his
03:06:09 25 enemies are ours.

03:06:12 1 Englishman! We are informed
03:06:14 2 that our father, the king of France,
03:06:17 3 is old and infirm, and that being
03:06:22 4 fatigued with making war upon your
03:06:25 5 nation, he is fallen asleep. During
03:06:28 6 his sleep, you have taken advantage of
03:06:30 7 him, and possessed yourselves of
03:06:32 8 Canada. But his nap is almost at an
03:06:35 9 end. I think I hear him already
03:06:39 10 stirring and inquiring for his
03:06:41 11 children, the Indians. And when he
03:06:44 12 does awake, what must become of you?
03:06:47 13 He will destroy you utterly!"

03:06:50 14 I think we have here a very clear
03:06:52 15 message being conveyed to Alexander that this
03:06:56 16 isn't over. That, in fact, there is the hope,
03:07:01 17 maybe even at least the pretense of an
03:07:05 18 expectation that the French are coming back.

03:07:08 19 And, indeed, this does not immediately
03:07:11 20 happen, though I believe it is not
03:07:14 21 controversial, but the French commander of
03:07:18 22 Michilimackinac when he left had said the
03:07:21 23 equivalent of, "I shall return."

03:07:24 24 That nod is a yes?

03:07:25 25 A. Yes. And counselor Pelletier and

03:07:28 1 I discussed this issue of the possibility of the
03:07:30 2 French return this morning.

03:07:32 3 Q. I'm just putting the context of
03:07:34 4 this particular speech.

03:07:36 5 A. Right.

03:07:36 6 Q. Because this speech gets quoted,
03:07:38 7 and I think it helps us to put a less
03:07:41 8 transactional gloss on the Anishinaabe-French
03:07:47 9 relationship. That whole privilege business,
03:07:47 10 and so I think this puts it in a slightly
03:07:58 11 different, familial tone, if you will.

03:08:02 12 "Englishman! Although you have
03:08:02 13 conquered the French[...]" and it's very clear
03:08:02 14 from the preceding that when he says "conquered"
03:08:05 15 he doesn't mean conquered finally and forever.
03:08:08 16 He just finished saying the French King is
03:08:11 17 coming back, right?

03:08:12 18 So when he's saying, "You have
03:08:14 19 conquered the French", he's not saying conquered
03:08:17 20 in the sense of it's over, right?

03:08:26 21 A. That's possibly true. Yes, I
03:08:27 22 think that's a reasonable reading.

03:08:29 23 Q. And here is the passage that
03:08:31 24 everybody is familiar with:

03:08:32 25 "[...]you have not yet conquered

03:08:35 1 us. We are not your slaves. These
03:08:38 2 lakes, these woods and mountains were
03:08:40 3 left to us by our ancestors. They are
03:08:42 4 our inheritance, and we will part with
03:08:45 5 them to none. Your nation supposes
03:08:48 6 that we, like the white people, cannot
03:08:50 7 live without bread, and pork, and
03:08:52 8 beef. But you ought to know that He -
03:08:55 9 the Great Spirit and Master of Life -
03:08:57 10 has provided food for us in these
03:09:00 11 spacious lakes and on these woody
03:09:03 12 mountains."

03:09:05 13 Now, would you agree that that's a
03:09:07 14 declaration that -- whether sincere or not --
03:09:11 15 that Chief Minavavana did not see the Europeans
03:09:21 16 as necessary?

03:09:30 17 A. Well, I think he's saying beef
03:09:32 18 and pork aren't necessary. Yeah, I mean, I
03:09:34 19 definitely think he's making a declaration of --
03:09:38 20 against the premise that he, his people are
03:09:45 21 helplessly dependent on European goods.

03:09:50 22 Q. And it could be understood then,
03:09:53 23 and again I emphasize we're talking about
03:09:56 24 different valid interpretations. Could someone
03:09:59 25 see this as an echo of the idea that there was a

03:10:07 1 spiritual movement to restore indigenous
03:10:10 2 independence?

03:10:14 3 A. Well, I would say for there to be
03:10:15 4 a spiritual movement there has to be more than a
03:10:19 5 speech.

03:10:19 6 Q. Well, that actually brings me
03:10:21 7 to -- if I could have the Dowd article? And if
03:10:36 8 you could take me to page 6? No, that's right,
03:10:40 9 right there.

03:10:41 10 This is SC0495(002) by Professor Dowd,
03:10:57 11 Gregory Evans Dowd in "A Spirited Resistance".
03:11:14 12 This is what Professor Dowd, whom you have
03:11:17 13 identified as a credible scholar, wrote about
03:11:20 14 the northeastern origins 1737-1775 of this
03:11:27 15 revival:

03:11:29 16 "A nativistic movement that would
03:11:34 17 last a generation to become the
03:11:35 18 religious underpinning of militant
03:11:36 19 pan-Indianists first developed most
03:11:41 20 clearly in the polyglot communities on
03:11:44 21 the upper Susquehanna. Refugees from
03:11:49 22 earlier dispossessions in New Jersey
03:11:51 23 and eastern Pennsylvania, these people
03:11:53 24 began to fall back before the
03:11:54 25 Anglo-American advance of the 1750s

03:11:57 1 and '60s. The movement accompanying
03:12:00 2 refugees as they fled northwest and
03:12:03 3 then west from the Susquehanna to the
03:12:07 4 headwaters of the Allegheny, from
03:12:10 5 whence it descended upon the Ohio
03:12:13 6 country. Here it found inviting souls
03:12:15 7 amongst the already established
03:12:17 8 refugees who inhabited the polyglot
03:12:25 9 villages that had developed around St.
03:12:25 10 Lawrence. Laid low during the Seven
03:12:25 11 Years' War, the Indians provided the
03:12:26 12 movement with deep basins of support.
03:12:26 13 The Ohio River issued from mountain
03:12:29 14 springs, snows and rains. The current
03:12:31 15 of nativism issued from the reckonings
03:12:35 16 of several thousand souls, and from
03:12:37 17 the many prophets who gave those souls
03:12:41 18 voice."

03:12:42 19 So you would put that in terms of your
03:12:47 20 comment about Professor Beaulieu's statement?

03:12:51 21 So you see that there's a range -- you would
03:12:54 22 agree that this illustrates that there's a range
03:12:56 23 of views about how millinery or messianic
03:12:58 24 spiritual revival was?

03:13:07 25 A. No, I don't think that this

03:13:09 1 contradicts what I said earlier. It is true
03:13:12 2 that this book, Dowd's book, is an account of
03:13:14 3 the contest between what he terms "nativists"
03:13:18 4 and "accommodationists" in Native American
03:13:20 5 polities, and that it spans a period from about
03:13:25 6 17 -- the title probably has a date range but
03:13:28 7 this is 1737, the book goes to 1815 I believe.

03:13:32 8 So he's interested in explaining a
03:13:33 9 long-term pattern, a long-term process by which
03:13:38 10 some Native American leaders sought to create a
03:13:44 11 Pan-Indian resistance movement to Anglo-American
03:13:50 12 expansion across a period of, you know, three
03:13:55 13 quarters of a century of time with many
03:13:57 14 different -- he talks about many different
03:14:01 15 events.

03:14:01 16 He does talk about Neolin in this
03:14:04 17 book. But I do not think that he demonstrates
03:14:06 18 that -- that he demonstrates Beaulieu's
03:14:12 19 contention that Pontiac's War is best understood
03:14:17 20 as a messianic movement that embraced the
03:14:20 21 rejection of all European influences.

03:14:23 22 Q. I dare say we'll have Professor
03:14:26 23 Beaulieu commenting himself so I won't spend
03:14:29 24 more time on that.

03:14:31 25 I would like to get away from forts

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1 for a change.
2 Can we make this the next exhibit?
3 THE COURT: Is it the book or the
4 article, sir, that you want to be made an
5 exhibit?
6 MR. McCULLOCH: It's the extract.
7 THE COURT: Is it "A Spirited
8 Resistance" or is it an extract?
9 MR. McCULLOCH: It's an extract from
10 that book I believe.
11 THE COURT: Is the book named -- is
12 that a chapter of a book?
13 MR. McCULLOCH: Yes.
14 THE COURT: Called "A Spirited
15 Resistance".
16 MR. McCULLOCH: "A Spirited
17 Resistance" is the book.
18 THE COURT: So you're asking then that
19 a chapter of the book be marked as the next
20 exhibit?
21 MR. McCULLOCH: Yes, please.
22 THE COURT: And there's no objection
23 so yes.
24 THE REGISTRAR: Exhibit number 4030.
25 EXHIBIT NO. 4030: Excerpt from "A

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Spirited Resistance."

BY MR. MCCULLOCH:

Q. So I said I thought I would get away from forts and take you back to your own report. Page 48.

Now, in the middle of this, the sentence starting "in 1763...", well I'll read the sentence:

"In 1763, Anishinaabekg peoples controlled all the access points to Lake Huron and Georgian Bay: The St. Claire River north of Detroit[...]."
That's through Fort Detroit?

A. Right.

Q. "[...]the Straits of Michilimackinac. "

We've talked about Michilimackinac.

"[...]St. Mary's River at Sault Ste. Marie, which connected Lake Huron with Lakes Erie, Michigan, and Superior, respectively; and the rivers that connected the lake to its surrounding landscape on the east and south, including the French, the Magnetawan, the Muskoka, the Severn,

1 the Nottawasaga, and the Saugeen."

2 In short the forts aren't the only way
3 into the Lake Huron. Indeed, I believe -- well
4 allow me -- you would agree that they are not
5 the only way into Lake Huron?

6 A. Yes.

7 Q. And, in fact, Alexander Henry,
8 whom you mentioned in one of your supplementary
9 reports, goes down and hits Lake Simcoe and then
10 on to Lake Ontario?

11 A. Right.

12 Q. So, in short, there are an awful
13 lot of, shall we say, gateways that aren't
14 protected by any particular establishment? And
15 this brings me to --

16 A. They are not protected by any
17 French forts you mean?

18 Q. Uhm hmm.

19 A. Yes, I think that's fair to say.

20 Q. It brings me to the question of
21 what does control mean?

22 A. Well, it's a good question. I
23 think that what it means in this case, broadly,
24 is that this was landscape that was inhabited by
25 Anishinaabe peoples and that they were capable

03:17:43 1 of defending if necessary.

03:17:46 2 Q. Do you have any evidence during
03:17:47 3 the French regime of French fur-trading groups
03:17:52 4 being blocked on those routes?

03:17:58 5 A. No, I don't think there was any
03:18:01 6 desire to block French fur trading.

03:18:03 7 Q. If we don't like the word
03:18:05 8 "dependence", mutual reliance?

03:18:09 9 A. Yeah, mutual activity,
03:18:11 10 cooperative activity, trade, a
03:18:17 11 mutually-desirable arrangement.

03:18:22 12 Q. Now, oh dear. Just trying -- I
03:18:25 13 think I'll work in one more question and then
03:18:27 14 perhaps if it's not too early we can take a
03:18:31 15 break before I move on to the next section.

03:18:33 16 I believe we have a quotation from
03:18:48 17 Eccles at page 5.

03:19:03 18 We have the actual Eccles, page 5?

03:19:12 19 THE COURT: Page 5 of what?

03:19:12 20 MR. McCULLOCH: Of Eccles, "The
03:19:12 21 Canadian Frontier."

03:19:49 22 THE COURT: Perhaps we'll take a break
03:19:50 23 now and you can queue up your technology.

03:19:52 24 On the break I asked Canada and
03:19:55 25 Ontario to confer on times because I made the

03:19:58 1 overture that if necessary we can start at 9:30
03:20:09 2 tomorrow. Speak to each other and you can tell
03:20:12 3 me after the break whether you regard it as
03:20:14 4 necessary.

03:20:14 5 -- RECESSED AT 3:22 P.M. --

03:20:14 6 -- RESUMED AT 3:37 PM --

03:36:22 7 THE COURT: Did you have a discussion
03:36:23 8 over the break, counsel?

03:36:25 9 MR. McCULLOCH: We don't see the need
03:36:27 10 to start at 9:30.

03:36:29 11 THE COURT: All right. Start at 10:00
03:36:30 12 o'clock then. Please go ahead.

03:36:31 13 BY MR. MCCULLOCH:

03:36:31 14 Q. And if I could have the extract
03:36:33 15 from Eccles, please, page 5? Keep on going
03:37:06 16 down. I believe this passage you quoted. I'd
03:37:12 17 like to just go through it a little bit more at
03:37:15 18 length.

03:37:17 19 So it starts:

03:37:18 20 "Although the French had the
03:37:20 21 physical means to penetrate into the
03:37:22 22 interior, they could only do so with
03:37:24 23 the agreement of the Indian Nations.
03:37:26 24 As long as the Indians received
03:37:28 25 benefits and saw no threat to their

03:37:30 1 own interests, they allowed the French
03:37:32 2 to establish trading posts and even a
03:37:34 3 few settlements on their lands.

03:37:37 4 But to the end of the French
03:37:39 5 regime these posts and settlements
03:37:42 6 were tiny islands with a handful of
03:37:45 7 men amid a much larger population of
03:37:47 8 Indians who regarded the lands as
03:37:50 9 theirs."

03:37:52 10 So rather stark, very frontier image
03:37:57 11 of the fort experience.

03:38:02 12 I believe I noticed a paper on Turner
03:38:04 13 in your publications. You're, of course, aware
03:38:09 14 that Eccles attempted to bring Turner to Canada?

03:38:12 15 A. Yes.

03:38:13 16 Q. And you're aware that he was not
03:38:15 17 entirely triumphant?

03:38:20 18 A. I don't know about his triumphs
03:38:24 19 or lack thereof but, yes, it was part of a
03:38:26 20 series of books on American frontiers. And so
03:38:30 21 it was, I think, partly a project imposed upon
03:38:34 22 him or a project that he responded to a call
03:38:37 23 for.

03:38:38 24 Q. Well, we've got that image. I
03:38:42 25 think you would agree that in all the issues

03:38:45 1 that we've been discussing we keep ending back
03:38:49 2 at Detroit. And indeed I believe you commented
03:38:57 3 that there were 2,000 French settlers at
03:39:01 4 Detroit.

03:39:07 5 If I could actually have the Dowd
03:39:09 6 extract, pages 60, 61? And I'm going to go from
03:39:23 7 the bottom paragraph. And, oh, I better --
03:39:27 8 before I move on we better make Eccles an
03:39:30 9 exhibit. The S number for Eccles was 0497. And
03:39:44 10 I expect we might as well make it an exhibit.

03:39:49 11 THE COURT: There is no objection so
03:39:50 12 please go ahead.

03:39:53 13 THE REGISTRAR: Exhibit number 4031.

03:39:55 14 EXHIBIT NO. 4031: Extract from page 5
03:39:56 15 of the book, "The Canadian Frontier",
03:39:56 16 authored by William Eccles. Document
03:39:56 17 SC0497.

03:39:58 18 BY MR. MCCULLOCH:

03:39:59 19 Q. And we are now having another
03:40:01 20 extract from Dowd's "War Under Heaven". It's
03:40:02 21 S04897.

03:40:06 22 THE COURT: Is that different from
03:40:07 23 what we've marked as 4030?

03:40:10 24 MR. McCULLOCH: I don't believe it is,
03:40:11 25 sorry.

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THE COURT: Okay. Let's not mark it
again then.

BY MR. MCCULLOCH:

Q. "Since it's founding in 1701
Detroit had been the centre of
French-Anishinaabe alliance. Some 80
to 100 houses lay along the streets
within its palisades. Dispersed for
more than five miles along each bank
of the Detroit river was more
white-washed homes. 'The country',
wrote Croghan in 1765, 'is thick
settled with the French'. There were
several hundred families who raised
crops and provided dairy products to
the garrison and its frequent
interests. Others traded with the
Indians, soldiered in the garrison or
laboured as voyageurs in the extensive
French transportation system so
recently destroyed by the Seven Years'
War.

Among the Wyandot, Odawas,
Potawotami and Ojibwe there were at
least 550 local men of fighting age

03:41:14 1 suggesting a total Indian population
03:41:16 2 of well over 2,000. The last several
03:41:17 3 years of the Seven Years' War put an
03:41:17 4 immense strain on this polyglot
03:41:17 5 community."

03:41:30 6 So here we have, contrary to the
03:41:31 7 generalization in Eccles, not a handful of
03:41:32 8 isolated Frenchmen surrounded by a vastly
03:41:36 9 greater number of indigenous people; you've got
03:41:41 10 a community with roughly balanced population, a
03:41:45 11 French garrison, and French control of the
03:41:48 12 trade. Is that right?

03:41:54 13 A. I don't see these two passages as
03:41:56 14 in conflict with each other.

03:41:59 15 Q. Roughly equal numbers versus
03:42:03 16 small handful vastly outnumbered?

03:42:05 17 A. I think that Eccles is
03:42:06 18 generalizing broadly about a pattern of
03:42:09 19 development that unfolded in a vast territory
03:42:11 20 over a long period of time.

03:42:13 21 You are -- what Dowd is doing here is
03:42:15 22 focusing on the one post with the largest French
03:42:18 23 population at the most mature point of its
03:42:24 24 development.

03:42:24 25 And the -- I think the contrast with

03:42:27 1 what was going on in the British colonies is
03:42:29 2 really important and instructive; because in
03:42:35 3 those places the pressures of population
03:42:38 4 consistently displaced native peoples. So that
03:42:41 5 the growth of the colonial enterprise
03:42:43 6 dramatically disadvantaged First Nations over
03:42:46 7 time, and they were very aware of that and they
03:42:48 8 were, you know, resistant to it.

03:42:51 9 That pattern never -- that pattern
03:42:54 10 never occurred around any of the French posts in
03:42:57 11 the Great Lakes. At Detroit, Detroit was a
03:43:01 12 place where -- it was a place where the French
03:43:08 13 were interested in attracting and concentrating
03:43:11 14 native allies because they thought it was an
03:43:14 15 important strategic point.

03:43:15 16 And so they created a fort, they
03:43:17 17 invited First Nations peoples to settle
03:43:21 18 alongside of it. Gradually a French population
03:43:23 19 grew up alongside of it and there was never any
03:43:26 20 conflict between those two populations. The
03:43:31 21 First Nations who didn't like it there left but
03:43:34 22 many remained.

03:43:36 23 And so I think the way that Dowd
03:43:38 24 describes it, as a polyglot community, is an
03:43:44 25 appropriate description, which is entirely in

03:43:46 1 keeping with the characterization that Eccles
03:43:48 2 provides of France's presence in the interior of
03:43:52 3 North America.

03:43:53 4 Q. So you would agree that Detroit
03:43:54 5 was a special place at the time?

03:43:58 6 A. Special? Yes, sure, why not.
03:44:02 7 All places are special in my mind but I'm sure
03:44:05 8 Detroit was special too.

03:44:06 9 Q. It is a warmer illustration of
03:44:08 10 the codependence of the communities?

03:44:12 11 A. The interpenetration of the
03:44:13 12 communities, uhm-hmm.

03:44:16 13 Q. You mentioned something just a
03:44:17 14 few moments ago that I'd like to explore. You
03:44:21 15 said that the French invited indigenous friends,
03:44:27 16 allies to come to Detroit?

03:44:32 17 A. That's right.

03:44:34 18 Q. They came from what? The north
03:44:36 19 shore of Georgian Bay?

03:44:38 20 A. They came from primarily the area
03:44:42 21 around Michilimackinac. Also they came to the
03:44:52 22 southwest of Detroit.

03:44:54 23 Early on the hope was to get a very
03:44:56 24 large agglomeration of native peoples to settle
03:45:01 25 there. It didn't work very well and most of

03:45:03 1 them left after a decade or so. But Miami
03:45:08 2 Indians, Ojibweans, the other groups that ended
03:45:20 3 up eventually with their own smaller posts in
03:45:22 4 the region were initially invited to settle
03:45:24 5 there.

03:45:29 6 Q. So a community by invitation.
03:45:32 7 The idea that it was such a clear product of
03:45:42 8 the -- I was just reminded. You nodded?

03:45:46 9 A. To community by invitation.

03:45:47 10 Q. Yes.

03:45:48 11 A. Yes. It was a -- Detroit was a
03:45:51 12 French project.

03:45:51 13 Q. It was a French project.

03:45:53 14 A. That was a partially-successful
03:45:55 15 French project.

03:45:56 16 Q. And you've actually just spared
03:45:58 17 me having to put up yet another document,
03:46:02 18 because that was going to be my next point. So
03:46:04 19 we're actually moving along quickly.

03:46:09 20 That's the last image I wanted to put
03:46:12 21 to you, the image of Detroit just on the eve of
03:46:16 22 the conquest.

03:46:20 23 I think it's now time to move to
03:46:22 24 another topic. If we're finishing at 4:00 I
03:46:25 25 think I have time to get into it.

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THE COURT: 4:00 did you say?

MR. McCULLOCH: We're finishing at 4:30?

THE COURT: Well, since you bring up the subject, without in any way holding you to it, roughly how much longer do you expect to be? I'm not suggesting that you should finish today. I'm just curious to know where are we today in our schedule, sir?

MR. McCULLOCH: I hope to be able to finish, or at least get into the core of the next area, the Treaties at Niagara, question mark section.

THE COURT: But for purposes of Ontario's plan, you know, when should Ontario be expecting they are going to be -- I assume sometime tomorrow, but you tell me.

MR. McCULLOCH: I do not expect to be more than an hour or an hour and a half tomorrow.

THE COURT: So in those circumstances, and bearing in mind the set of drums outside the window that some woman is diligently playing, let's stick with 4:00. Although that is unusual we'll do that today.

03:47:34 1 MR. McCULLOCH: Or I can go to 4:30.

03:47:37 2 THE COURT: Let's move forward on that

03:47:38 3 basis.

03:47:39 4 BY MR. MCCULLOCH:

03:47:40 5 Q. All right. Treaties at Niagara.

03:47:42 6 And I would like to take you to the letter dated

03:47:48 7 August the 30th, Sir William Johnson to the

03:47:54 8 Board of Trade.

03:48:02 9 THE COURT: Is this an exhibit?

03:48:05 10 MR. McCULLOCH: I believe it's Exhibit

03:48:08 11 643.

03:48:09 12 THE COURT: Thank you.

03:48:10 13 BY MR. MCCULLOCH:

03:48:10 14 Q. And I'd just like to get a couple

03:48:11 15 of terms clarified. I don't think we need to

03:48:15 16 clarify who Sir William Johnson is. I think his

03:48:19 17 identity has been sufficiently established.

03:48:27 18 The Board of Trade, and it may be just

03:48:29 19 a question of terminology, you referred to it as

03:48:31 20 an advisory body to the Secretary of State or --

03:48:39 21 A. To the Crown.

03:48:40 22 Q. -- to the Crown. And again I'm

03:48:45 23 trying to put things, without being extremely

03:48:48 24 anachronistic, into modern terms.

03:48:51 25 We have been thinking more in terms of

03:48:53 1 the department, which, of course, advises the
03:48:56 2 Secretary of State, who advises the Crown. So
03:49:01 3 it's the departmental entity.

03:49:03 4 Or is that -- are we talking about a
03:49:08 5 difference between the American and the Canada
03:49:10 6 system?

03:49:11 7 A. I'm not sure what you mean by
03:49:13 8 "departmental entity". I think you might be
03:49:16 9 describing a more formal, a more formalized
03:49:19 10 bureaucratic arrangement than the one that
03:49:24 11 existed in the mid-18th century, but I'm not
03:49:26 12 sure.

03:49:26 13 Q. Would you agree then that through
03:49:27 14 the Lords of Trade is how Sir William makes his
03:49:31 15 reports?

03:49:31 16 A. Yes.

03:49:34 17 Q. Well, if we could go to the first
03:49:45 18 indented paragraph, the one that starts:

03:49:48 19 "The Treaties of Peace with the
03:49:54 20 Huron of Detroit[...]"

03:49:55 21 That's the Wyandot usually referred
03:50:03 22 to, or Wyandot?

03:50:04 23 A. Uhm-hmm.

03:50:06 24 3 Q. "[...]the Huron of Detroit and
03:50:08 25 the enemy Senecas, I have the honour

03:50:10 1 to enclose you herewith. As for the
03:50:12 2 other Nations, they declared that they
03:50:15 3 only came to renew their engagements,
03:50:18 4 not having approved of the war, or
03:50:20 5 engaged in it, except some individuals
03:50:27 6 who had left them for that purpose,
03:50:29 7 and the Indians being likewise
03:50:31 8 furnished with several certificates
03:50:33 9 from Major Gladwin[...]"
03:50:36 10 Major Gladwin you informed us was?
03:50:39 11 A. The post commander at Detroit.
03:50:42 12 4 Q. "[...] and other officers
03:50:44 13 importing [...]", that means implying
03:50:47 14 or saying, rather. "[...] that they
03:50:49 15 had behaved very well and protected
03:50:51 16 the Garrisons of La Baye and
03:50:55 17 Michilimacinac I thought it best to
03:51:00 18 promise them, that they should be
03:51:04 19 admitted into the covenant chain of
03:51:06 20 friendship on their agreeing to the
03:51:08 21 re-establishment of Michilimacinac
03:51:13 22 (which Colonel Bradstreet was ordered
03:51:18 23 to effect) and promising to get all
03:51:21 24 prisoners out of the enemies' hands,
03:51:25 25 as also to procure some restitution

1 for traders for all their losses, all
2 of which they engaged to perform."

3 I believe somewhere Dowd makes a
4 comment for Johnson's penchant for grand
5 eloquence, but I'll save that for another
6 occasion.

7 That's a long, complicated paragraph,
8 but the crux of it is that there are two
9 treaties and something else, a renewal.

10 A. Yes. Well, when you finish your
11 question I'll ...

12 Q. Johnson report says, Here Are two
13 treaties. And I didn't have to do a treaty with
14 the others; I did a renewal of our relationship.
15 That's what that says, isn't it?

16 A. He does distinguish between the
17 treaty texts, which he is sending, and the
18 renewal of engagements. But I would argue
19 strongly that the renewal of engagements that he
20 is describing constitutes a treaty agreement as
21 well.

22 Q. I believe you remember we're
23 asking ourselves about what was considered a
24 treaty at the time?

25 A. These covenant chain meetings

03:52:41 1 were commonly referred to as treaties in the
03:52:43 2 18th century.

03:52:45 3 Q. But not this one. It's a renewal
03:52:50 4 of the covenant chain?

03:52:52 5 A. A renewal of the covenant chain
03:52:54 6 is a treaty, particularly in the case where it
03:52:56 7 has been broken by war, as was the case here.

03:53:00 8 Johnson, you know from -- at least the
03:53:02 9 argument that I make in my report, which I know
03:53:04 10 you're familiar with, is that Johnson was very
03:53:07 11 interested to single out guilty parties at
03:53:10 12 Niagara and was unable to do. So, therefore,
03:53:12 13 had to treat with everybody there as if they had
03:53:15 14 not engaged in any attacks, even though he
03:53:20 15 strongly suspected that that was not the case.

03:53:23 16 Q. Everybody except, of course, the
03:53:24 17 Huron and the Seneca?

03:53:26 18 A. Correct. I'm referring now to
03:53:28 19 the Anishinaabe representatives that were
03:53:32 20 present. And so -- but, I mean, again, if you
03:53:38 21 have read my report you know that I think it's
03:53:45 22 strongly probable that some people who were
03:53:47 23 present at Niagara in 1764 had in fact engaged
03:53:51 24 in hostilities, or communities they were
03:53:54 25 speaking for had engaged in hostilities.

03:53:58 1 There were also communities
03:53:59 2 represented there who had never been part of a
03:54:02 3 previous covenant chain agreement, which I think
03:54:04 4 again strongly argues that despite Johnson's
03:54:07 5 language in this letter there was something more
03:54:10 6 going on than a mere renewal or confirmation.

03:54:18 7 And I feel that, like every scholar
03:54:19 8 who has written about Niagara, I would also
03:54:21 9 stress that Johnson himself put particular
03:54:24 10 emphasis on wampum belts, and particularly the
03:54:29 11 large covenant chain belt that he passed to the
03:54:34 12 First Nations assembled at Niagara as a
03:54:37 13 solemnification of a kind that had never before
03:54:40 14 occurred in that region.

03:54:41 15 So to me that rises to the level of a
03:54:45 16 treaty negotiation, a treaty meeting, solemn
03:54:48 17 promises on both sides.

03:54:52 18 Q. But Johnson informed his
03:54:55 19 superiors, the people to whom he communicated
03:54:58 20 with the King, that it was not a treaty.

03:55:01 21 A. He did not say it's not a treaty.
03:55:03 22 He said the Treaties of Peace, so he's talking
03:55:07 23 about particular documents that laid out
03:55:09 24 articles of agreement based on the understanding
03:55:16 25 that these had been hostiles in a war. The

03:55:18 1 Treaties of Peace, these two texts, these two
03:55:21 2 documents I'm sending you with this letter. As
03:55:25 3 for the other Nations renewing their
03:55:28 4 engagements, they claim they didn't approve of
03:55:31 5 the war, engage in it, and so on. Then he says:

03:55:34 6 "I thought it best to promise
03:55:38 7 them that they should be admitted into
03:55:38 8 the covenant chain of friendship."

03:55:41 9 I consider that a treaty act.

03:55:43 10 Q. You do. We'll leave that to
03:55:44 11 further discussion later.

03:55:45 12 A. I try to --

03:55:53 13 THE COURT: Sir, this process does not
03:55:53 14 work when people talk at the same time.

03:55:53 15 Ask your question please.

03:55:55 16 BY MR. MCCULLOCH:

03:55:55 17 Q. Actually what I would like to do
03:55:57 18 is move on to another document. And I believe
03:56:00 19 it's an extract from your report in which --
03:56:06 20 just go to page 13 and 14.

03:56:12 21 I'd like to step back a little bit
03:56:13 22 from Niagara.

03:56:23 23 And this is your description of the
03:56:26 24 exchange -- we've already gone through it, I'm
03:56:30 25 just refreshing the recollection -- of what

03:56:33 1 Johnson said at Detroit in 1761. And I'm going
03:56:35 2 to the quotation. He wanted an:

03:56:45 3 "[...]extensive plentiful
03:56:45 4 commerce on the most equitable terms
03:56:47 5 between the subjects and all Indians
03:56:51 6 who are willing to entitle themselves
03:56:53 7 thereto and to partake of his Royal
03:56:57 8 clemency by entering into an offensive
03:56:58 9 and defensive alliance with the
03:57:00 10 British Crown."

03:57:01 11 And, again, we're talking about trade,
03:57:05 12 alliance, and just property or property lawfully
03:57:21 13 held or lawfully claimed. Just as a note --
03:57:22 14 sorry, could you say yes?

03:57:26 15 A. Yes.

03:57:29 16 Q. You will agree that the only
03:57:31 17 reference here is to land?

03:57:37 18 A. There's a reference to extensive
03:57:40 19 plentiful commerce, offensive and defensive
03:57:44 20 alliance, and just property, by taking
03:57:51 21 possession of any lands to which they have a
03:57:54 22 lawful claim.

03:57:55 23 Q. So there's no reference to water
03:57:57 24 here or navigable waters?

03:58:02 25 A. No. I mean unless "just

03:58:03 1 property" extends to the waters. I don't have
03:58:08 2 an opinion on that particular question.

03:58:10 3 Q. And when Johnson talks about
03:58:12 4 "lawful claim" would he be envisioning that in
03:58:16 5 accordance with English law as it was understood
03:58:20 6 in 1761?

03:58:33 7 A. That's a good question. I mean,
03:58:34 8 I don't know what other meaning the adjective
03:58:36 9 "lawful" could have. I think -- I would be
03:58:41 10 inclined to say that I think what he has in mind
03:58:44 11 is something more like a just claim than a
03:58:47 12 lawful claim, but as written, yes, it would
03:58:59 13 imply.

03:59:00 14 Q. Well, that is a question for
03:59:01 15 legal historians, would you agree?

03:59:03 16 A. Perhaps.

03:59:04 17 Q. We have at least two of those
03:59:05 18 coming up.

03:59:07 19 And these ideas that the Crown
03:59:09 20 respects law or lawful claims to land, is
03:59:15 21 interested in alliance, interested in commerce,
03:59:19 22 is -- I think you have already indicated that
03:59:20 23 you don't think Johnson was inventing these out
03:59:24 24 of the blue. So what you have here is a
03:59:29 25 well-established English policy?

03:59:31 1 A. A well-established English
03:59:34 2 intention, stated policy. Yes, definitely.

03:59:36 3 Q. And, in fact, you've already -- I
03:59:37 4 don't have the transcript so I can't take you to
03:59:40 5 your quotations, but you will correct me if I
03:59:45 6 misstate your meaning. That the various
03:59:48 7 colonies had attempted, not always successfully
03:59:52 8 but as a matter of policy, to restrict private
03:59:57 9 so-called purchases from Indians?

04:00:01 10 A. Yes, they had tried to do that.

04:00:03 11 Q. And that the major change, and
04:00:05 12 again I'm trying to summarize what you've
04:00:08 13 already told us, came in 1756 when the Imperial
04:00:12 14 government decided that it was going to take
04:00:15 15 over that policy?

04:00:17 16 A. Yes.

04:00:19 17 Q. So we have a well-established
04:00:21 18 policy respecting lawful claims, looking for
04:00:25 19 alliance. And that goes back, at least in terms
04:00:33 20 of dealing with the western Nations, the
04:00:35 21 Anishinaabe and others, at least as far back as
04:00:39 22 1761, right?

04:00:41 23 A. Yes.

04:00:42 24 Q. Where at this point, after the
04:00:42 25 surrender of Montreal, it was kind of clear who

04:00:55 1 was going to win the war?

04:00:57 2 A. Yes.

04:00:58 3 Q. And I think that is as good a
04:00:58 4 point to break as any.

04:01:03 5 THE COURT: Well, I wish all of you a
04:01:04 6 pleasant evening and a late one if you are going
04:01:08 7 to partake of Canada's recently anointed
04:01:12 8 national sport.

04:01:12 9 So I will see everybody at 10 o'clock
04:01:12 10 tomorrow morning.

04:01:12 11 Sir, I have already mentioned to you
04:01:24 12 about the restrictions about what you can do in
04:01:26 13 your spare time.

04:01:27 14 I'm going to say one more thing,
04:01:27 15 please avoid the intellectual curiosity that may
04:01:33 16 have come up today in doing your own independent
04:01:36 17 research on-line or otherwise about some of
04:01:38 18 these interesting questions. All right. Just
04:01:41 19 put this to one side. I'm sure you have other
04:01:44 20 things to work on.

04:01:46 21 THE WITNESS: I plan to watch the game
04:01:46 22 too.

04:01:46 23 THE COURT: Excellent.

24 --- Whereupon the proceedings were
25 adjourned 4:03 p.m.

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REPORTER'S CERTIFICATE

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

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

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

That the foregoing is a true and
accurate transcript of my shorthand notes so
taken. Dated this 20th day of June 2019.



PER: HELEN MARTINEAU
CERTIFIED SHORTHAND REPORTER

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