

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

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DAY 18 / VOL 18  
June 04, 2019

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Toronto, ON M5K 1A2  
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1 Court File No. 94-CQ-50872CM

2 ONTARIO

3 SUPERIOR COURT OF JUSTICE

4 B E T W E E N:

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

6 Plaintiffs

6 - and -

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

11 Defendants  
12

13 Court File No. 03-CV-261134CM1

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

15 CHIPPEWAS OF NAWASH UNCEDED FIRST NATION and  
15 SAUGEEN FIRST NATION

16 Plaintiffs

16 - and -

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

18 Defendants  
19

20 -----  
21 --- This is VOLUME 18/DAY 18 of the trial  
21 proceedings in the above-noted matter, being  
22 held at the Superior Court of Justice, 330  
22 University Avenue, Courtroom 5-1, Toronto,  
23 Ontario, on the 4th day of June 2019.  
23 -----

24 B E F O R E:

25 The Honourable Justice Wendy M. Matheson

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

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

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

12  
13 Richard Ogden, Esq., for the Defendant,  
14 & Julia McRandall, Esq., Her Majesty the  
15 & Richard Ogden, Esq., Queen in Right of  
16 Ontario.

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22 REPORTED BY: Helen Martineau, CSR.

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I N D E X

PAGE

WITNESS: FRANKLIN SHAWBEDEES  
(Via videotaped examination).....1531

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1 --- Upon commencing at 10:04 a.m.  
2 THE COURT: Good morning.  
3 MR. TOWNSHEND: Morning.  
4 THE COURT: We have Mr. Shawbedees'  
5 evidence this morning.  
6 MR. TOWNSHEND: Yes, the Rule 36  
7 evidence is in-chief of the evidence, it is at  
8 Exhibit 3947; and the cross-examination is at  
9 3948.  
10 The examination in-chief is just under  
11 an hour and there are two cross-examinations,  
12 and each is slightly over an hour. The total is  
13 3 hours and 10 minutes.  
14 THE COURT: So since we'll need to go  
15 into the afternoon I suggest that we -- we'll  
16 see where the logical break points are for this  
17 morning.  
18 MR. TOWNSHEND: Yes.  
19 THE COURT: Is Mr. Brookwell in charge  
20 of the video?  
21 MR. BROOKWELL: I am, Your Honour.  
22 THE COURT: Okay. We can do the  
23 in-chief and the first cross. We may want to do  
24 a brief break in between them and then part of  
25 the second cross before lunch.

10:04:56 1 MR. TOWNSHEND: Okay.

10:04:57 2 -- REPORTER'S NOTE: (Videotaped  
10:04:57 3 Examination of Franklin Shawbedees is  
10:04:57 4 played for the Court).  
10:04:57 5 (Videotaped Examination was paused).

10:59:08 6 THE COURT: Please go ahead.

10:59:11 7 MR. TOWNSHEND: Okay.

10:59:11 8 -- REPORTER'S NOTE: (Videotaped  
10:59:11 9 Examination of Franklin Shawbedees is  
10:59:11 10 played for the Court).  
10:59:11 11 (Videotaped Examination was paused).

11:27:39 12 MR. TOWNSHEND: The topic of the  
11:27:40 13 question shifts so it's a good time for a break.

11:27:43 14 THE COURT: All right. We'll take a  
11:27:44 15 break now.

11:50:24 16 -- RECESSED AT 11:27 A.M. --  
11:50:24 17 -- RESUMED AT 11:52 A.M. --

11:52:06 18 THE COURT: Thank you, this is the  
11:52:07 19 continuation of the cross-examination on behalf  
11:52:09 20 of Ontario, which is being conducted, I think,  
11:52:15 21 by Mr. Lemmond.

11:52:20 22 MR. TOWNSHEND: That's right.

11:52:21 23 THE COURT: And part of the way  
11:52:22 24 through for this Rule 36 witness.

11:52:25 25 MR. TOWNSHEND: Yes.

11:52:26 1 THE COURT: Please go ahead.

11:52:27 2 -- REPORTER'S NOTE: (Videotaped  
11:52:27 3 Examination of Franklin Shawbedees is  
11:52:27 4 played for the Court).  
11:52:27 5 (Videotaped Examination was paused).

12:28:07 6 MR. TOWNSHEND: We're having some  
12:28:08 7 technical difficulties.

12:28:10 8 THE COURT: That's okay. Take a  
12:28:11 9 minute. I'm sure you can work it out. Is this  
12:28:14 10 segment all one long video? Both  
12:28:16 11 cross-examinations? Or is it possible that  
12:28:19 12 they're -- I think it's one long video.

12:28:24 13 MR. TOWNSHEND: It is one long video  
12:28:25 14 but it seemed to end prematurely.

12:28:28 15 THE COURT: Let's see if we can  
12:28:29 16 restart it. It would be premature there is at  
12:28:34 17 least another hour.

12:29:57 18 MR. TOWNSHEND: We're having  
12:29:58 19 difficulty here and we may need some time. We  
12:30:01 20 have another copy of this that we may need to  
12:30:04 21 swap in and swap out. Would the court care to  
12:30:07 22 take an early lunch break and give us time do  
12:30:09 23 that?

12:30:10 24 THE COURT: Certainly. So you have  
12:30:12 25 another file is what you're saying?

12:30:15 1 MR. TOWNSHEND: We have another --

12:30:17 2 THE COURT: Copy of the file

12:30:19 3 MR. TOWNSHEND: Copy of the file that

12:30:20 4 we're hoping doesn't have this problem.

12:30:23 5 THE COURT: And do special

12:30:24 6 arrangements need to be made to have it played

12:30:27 7 on our system or is it just a matter --

12:30:31 8 MR. TOWNSHEND: No, it's plugging in a

12:30:32 9 different USB. We have it here but it's taking

12:30:39 10 a little bit of tweaking.

12:30:46 11 THE COURT: Just going to give

12:30:47 12 Mr. Brookwell one more minute.

12:30:49 13 THE COURT: Thank you. That's helpful

12:30:49 14 to get it started again.

12:30:49 15 -- REPORTER'S NOTE: (Videotaped

12:30:49 16 Examination of Franklin Shawbedees is

12:30:49 17 played for the Court).

12:30:49 18 (Videotaped Examination was paused).

12:56:39 19 THE COURT: Mr. Brookwell, this goes

12:56:41 20 on for quite some time. If you don't have an

12:56:44 21 objection I suggest that rather than -- we won't

12:56:47 22 be able to complete the topic.

12:56:49 23 MR. TOWNSHEND: Yes.

12:56:50 24 THE COURT: We can pause now and come

12:56:51 25 back at 2:15 and there's quite a bit left so we



12:56:57 1 could complete it at that time.

12:57:00 2 MR. TOWNSHEND: That's fine.

12:57:01 3 THE COURT: Everyone is nodding their  
12:57:02 4 head? All because. We'll pause now.

01:27:06 5 -- RECESSED AT 12:57 P.M. --

01:27:06 6 -- RESUMED AT 2:17 P.M. --

02:17:08 7 THE COURT: Please go ahead.  
02:17:11 8 (Video being played.)

02:17:58 9 THE COURT: Mr. Townshend, is the  
03:03:43 10 diary that this gentleman referred to part of  
03:03:47 11 the consent exhibits in the trial?

03:03:49 12 MR. TOWNSHEND: No, it is not. The  
03:03:52 13 diary, as far as I can determine, was a diary of  
03:03:58 14 a surrender at Manitoulin with which these First  
03:04:02 15 Nations were not involved so it's not part of  
03:04:05 16 this case.

03:04:07 17 THE COURT: So the plaintiffs aren't  
03:04:08 18 relying on it for this case?

03:04:10 19 MR. TOWNSHEND: That's correct.

03:04:11 20 THE COURT: And I understand that this  
03:04:12 21 was all 17 years ago.

03:04:14 22 MR. TOWNSHEND: Yes.

03:04:36 23 THE COURT: And I understand, if I'm  
03:04:37 24 correct, sir, that is the conclusion of the Rule  
03:04:41 25 36 evidence?

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MR. TOWNSHEND: That is.

THE COURT: So that's a helpful step. Now, as I understand it, sir, your next witness is an expert from Utah?

MR. TOWNSHEND: That's right.

THE COURT: Who is unavailable until Monday, is that correct?

MR. TOWNSHEND: Correct.

THE COURT: And we have completed the Rule 36 evidence hence we cannot move forward in the meantime.

I am going to have a scheduling meeting with counsel this week. Other than that is there anything that you propose to do?

MR. TOWNSHEND: No, I do not.

THE COURT: Is there anything else that anyone wants to raise at this time? You all are planning to talk over the schedule and will there be an updated schedule to talk about.

MR. TOWNSHEND: We are going to have a teleconference tomorrow morning and we'll probably resolve among the schedule to discuss on Thursday.

Will that be in the room here?

THE COURT: Yes, we could do it by

03:05:48 1 telephone. Do you have a preference? Does any  
03:05:53 2 counsel have a preference.

03:05:54 3 MR. TOWNSHEND: I would prefer  
03:05:55 4 in-person.

03:05:56 5 THE COURT: You would prefer in-person  
03:05:59 6 that had been my intention. All right. So  
03:06:02 7 that's what we'll do then. I'll send you an  
03:06:04 8 e-mail about the arrangements. Or my assistant  
03:06:08 9 will. All right. The trial is then adjourned  
03:06:11 10 until Monday and is it Professor Hinderaker from  
03:06:35 11 Utah.

12 --- Whereupon the proceedings were  
13 adjourned at 3:06 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;

That the submissions of counsel and  
Her Honour 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 13th day of June 2019.



PER: HELEN MARTINEAU

CERTIFIED SHORTHAND REPORTER

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