

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

DAY 94 VOL 94
March 11, 2020



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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 94 / DAY 94 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 11th day of March, 2020.

B E F O R E:

The Honourable Justice Wendy M. Matheson

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A P P E A R A N C E S:
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& Cathy Guirguis, Esq., The Chippewas of
& Benjamin Brookwell, Esq., Saugeen First
& Krista Nerland, Esq., Nation and the
Chippewas of Nawash
First Nation.

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

David Feliciant, Esq., for the Defendant,
& Peter Lemmond, Esq., Her Majesty the
& Richard Ogden, Esq., Queen in Right of
& Jennifer Le Pan, Esq. Ontario.

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

10:02:48 2 THE COURT: Good morning.

10:02:51 3 MS. GUIRGUIS: Morning, Your Honour.

10:02:52 4 THE COURT: Please go ahead.

10:02:53 5 GWEN REIMER: PREVIOUSLY AFFIRMED.

10:02:53 6 CROSS-EXAMINATION BY MS. GUIRGUIS:

10:02:53 7 (Continued)

10:02:54 8 Q. Morning, Dr. Reimer.

10:02:55 9 A. Morning.

10:02:56 10 Q. We left off yesterday talking

10:02:57 11 about your maps report, which is Exhibit 4710,

10:02:59 12 and I just had a few more questions that I

10:03:02 13 wanted to ask you about this report before

10:03:04 14 moving to our next topic.

10:03:08 15 So we were talking about map N-1,

10:03:18 16 which is on page 21 of your report.

10:03:23 17 THE COURT: Remind me of the exhibit
10:03:25 18 number, counsel?

10:03:27 19 MS. GUIRGUIS: For the report the
10:03:28 20 Exhibit is 4710.

10:03:30 21 THE COURT: Thank you, I have it.

10:03:34 22 BY MS. GUIRGUIS:

10:03:35 23 Q. So at page 21, Dr. Reimer, we
10:03:36 24 have the illustration that is at Exhibit N-1?

10:03:39 25 A. Correct.

10:03:41 1 Q. And at page 23 of your report
10:03:49 2 you've expressed the view that the three
10:03:52 3 Reserves in the Saugeen Ojibwe Nation's
10:03:55 4 counterproposal, which we find at Exhibit 2105,
10:03:58 5 that's the response from the Saugeen Ojibwe
10:04:00 6 Nation to Anderson's questions, as written by
10:04:03 7 David Sawyer. You've expressed the view at page
10:04:07 8 23 of your report that the three Reserves in
10:04:10 9 that proposal were to be reserved for each of
10:04:14 10 the three bands?

10:04:19 11 A. For each of the three bands?

10:04:22 12 Q. Uhm-hmm.

10:04:30 13 A. "They drew lines to mark three
10:04:32 14 tracts that they wished to reserve."

10:04:36 15 Q. Right.

10:04:37 16 A. That's point 1(d), is that what
10:04:39 17 you're looking at?

10:04:42 18 Q. Yes. But there's no document
10:04:56 19 that says that the Reserves would have been for
10:04:58 20 each one of the bands correct?

10:05:00 21 A. Not that I know of, no.

10:05:01 22 Q. Okay. So from what we know, and
10:05:07 23 what we talked about yesterday about Exhibit
10:05:09 24 2105, we know that the Saugeen Ojibwe were only
10:05:13 25 intending to surrender the 60,000 acre inland

1 wedge, as we've described?

2 A. That wedge, yes.

3 Q. So would you agree that it's more
4 plausible that they intended to keep their
5 villages, or "tracts", as you've described it,
6 and share the rest of the remaining reserve
7 jointly, as they had up to that point?

8 A. That's very possible, yes.

9 Q. That next map that you refer to
10 at page 24 of your report is a map that's been
11 marked as Exhibit N-2; it's entitled
12 "Illustration of Approximate Areas Described in
13 Exhibit 2120".

14 And this map purports, as I understand
15 it, to reflect the surrender that was proposed
16 by Anderson to the Saugeen Ojibwe on August 2nd,
17 1854?

18 A. Yes, that's my understanding as
19 well.

20 Q. And you accept at page 26 of your
21 report, at paragraph 4(d), that neither the
22 shapes nor the location of the Reserves, or the
23 tracts that are identified on map Exhibit N-2
24 for the Saugeen, Owen Sound or Colpoy's Bay are
25 identified in Exhibit 2120.

10:06:42 1 A. Yes, this is page 27. Is that
10:06:44 2 what you said?
10:06:45 3 Q. I have it as page 26 in your
10:06:48 4 report.
10:06:54 5 THE COURT: I'm having trouble finding
10:06:55 6 it, counsel.
10:06:58 7 MS. GUIRGUIS: It's on page 27, there
10:07:00 8 was an amendment to the report.
10:07:08 9 THE COURT: That's fine.
10:07:09 10 BY MS. GUIRGUIS:
10:07:10 11 Q. So page 27 at paragraph 4(d)?
10:07:13 12 A. Correct.
10:07:13 13 Q. So you accept that neither the
10:07:16 14 shapes or the locations of those Reserves and
10:07:19 15 tracts are identified in Exhibit 2120?
10:07:22 16 A. They're not described there, no.
10:07:24 17 Q. So what you say is that it can be
10:07:28 18 inferred or assumed that the Owen Sound,
10:07:31 19 Colpoy's Bay and Saugeen reserves are in the
10:07:33 20 same location as those Reserves that were
10:07:34 21 negotiated in Treaty 72 in October 1854?
10:07:38 22 A. That is one of the assumptions
10:07:39 23 that can be made from this, yes.
10:07:42 24 Q. I just want to confirm there's no
10:07:44 25 documentary evidence to support that?

10:07:46 1 A. Well, in 4(d), as far as the
10:07:51 2 manual labour school is, a tract was located
10:07:56 3 near present-day Allenford, that is an
10:08:00 4 assumption based on Exhibit 2037 above.

10:08:03 5 Q. Right.

10:08:05 6 A. But otherwise, no, these are
10:08:07 7 assumptions.

10:08:10 8 Q. Thank you.

10:08:19 9 So I want to go back to a document
10:08:22 10 that I had brought up when we were talking about
10:08:25 11 Peter Jacobs. So leaving the map reports now.

10:08:29 12 A. Okay.

10:08:30 13 Q. And I'm going to try again to
10:08:32 14 bring up this document, and we've provided a
10:08:35 15 more comprehensive excerpt so we'll see if we
10:08:39 16 can deal with the issues that were identified.

10:08:44 17 A. Okay.

10:09:00 18 Q. This is SC2041. So I'm hoping to
10:09:02 19 ask you some questions on this document,
10:09:02 20 Dr. Reimer, and we'll see if we can resolve the
10:09:02 21 interpretation if we can.

10:09:03 22 So on the first page we have the
10:09:05 23 title, "Indian Affairs Province of Canada,
10:09:09 24 Warrant Books 1852-1857"?

10:09:13 25 A. Yes.

10:09:13 1 Q. And below that that citation that
10:09:14 2 is the archive citation?
10:09:17 3 A. Yes.
10:09:17 4 Q. So are you -- and "warrant
10:09:22 5 books", I'm not sure if you're familiar with
10:09:24 6 this one or if you're familiar with documents
10:09:25 7 like this?
10:09:26 8 A. Similar to this, not this
10:09:28 9 particular one, no.
10:09:29 10 Q. So if we scroll to the first page
10:09:31 11 the document itself is 145 pages, but I just
10:09:34 12 want to go to the first page. And we have on
10:09:40 13 the left-hand side of the page what looks to be
10:09:43 14 an index, the first part listed as "Annuity
10:09:48 15 Counts" and the second as "Land Fund"?
10:09:50 16 A. Okay.
10:09:50 17 Q. Would that indicate what we find
10:09:52 18 as entries on this book?
10:09:55 19 A. Types of accounts, does that
10:09:59 20 answer your question?
10:10:00 21 Q. Yes, the types of accounts. And
10:10:02 22 in your experience with similar documents are
10:10:06 23 you familiar with the typical authorship?
10:10:08 24 Whether this tends to be one author or several?
10:10:12 25 A. I can't say. I don't know.

10:10:19 1 Q. And this is titled "Warrant
10:10:21 2 Books", I just want to go to the right-hand side
10:10:23 3 of the page and look at the top column that
10:10:25 4 describes the different columns -- or the top,
10:10:28 5 sorry, row that describes the contents of the
10:10:30 6 columns. And if you look at the left-hand side
10:10:34 7 does that say "Number of Warrants"?

10:10:39 8 A. It's the number of the warrant,
10:10:40 9 so each warrant is numbered.

10:10:43 10 Q. And the warrant -- do you
10:10:45 11 understand that to mean that it's a direction?

10:10:48 12 A. It's a release of funds to pay
10:10:51 13 something.

10:10:53 14 Q. And next to "Number, of Warrant,"
10:10:55 15 can you make out what that says?

10:11:05 16 A. "On what or whose account" and
10:11:07 17 then the amount.

10:11:07 18 Q. Okay.

10:11:09 19 Your Honour, I wonder if I may add
10:11:11 20 this as the next exhibit?

10:11:13 21 THE COURT: Mr. Registrar.

10:11:17 22 EXHIBIT NO. 4848: Document title,
10:11:17 23 "Indian Affairs Province of Canada,
10:11:17 24 Warrant Books 1852-1857"; document
10:11:17 25 number SC2041.

10:11:27 1 BY MS. GUIRGUIS:

10:11:28 2 Q. I would like to turn to page 148
10:11:30 3 of this document, which is PDF image 136. If we
10:11:34 4 could zoom out first so that Dr. Reimer can see
10:11:40 5 the page?

10:11:40 6 So at the top of the page on the
10:11:42 7 left-hand corner we have 1857. Is that
10:11:45 8 referring -- would you understand that to refer
10:11:47 9 to the year?

10:11:48 10 A. Yes.

10:11:49 11 Q. And next to that it says "Saugeen
10:11:51 12 and Owen Sound Indians"?

10:11:55 13 A. Yes.

10:11:55 14 Q. And to the right of the page that
10:11:57 15 comment is saying "Land Fund"?

10:12:00 16 A. Correct.

10:12:00 17 Q. So would you agree with me that
10:12:01 18 this is listing warrants, you said expenditures
10:12:07 19 out of their land funds?

10:12:08 20 A. Correct.

10:12:08 21 Q. As opposed to their annuities'
10:12:11 22 account?

10:12:11 23 A. Yes.

10:12:16 24 Q. So we go to the middle of the
10:12:18 25 page, six entries down, at the left-hand side it

1 says 1869, so that refers to the warrant number?

2 A. Correct.

3 Q. And then next to that is the
4 date, March 28th?

5 A. Correct.

6 Q. And as we follow it across
7 there's the number "50" right in the middle. Is
8 that referring to the amount?

9 A. I believe so, yes. Could we just
10 go to the top and see the column headings?

11 Q. Yes.

12 A. Oh, it doesn't say, but it's the
13 amount, that's what I take it to be.

14 Q. Okay. And then as we follow that
15 row along to the column we see the description
16 of who is being paid and for what. Is that
17 correct?

18 A. Yes. Again, is there any kind of
19 column heading? I don't think there was on
20 this, but it's the remarks or description of
21 what the warrant is for.

22 Q. Okay. So here we have reference
23 to "Peter Jacobs", and if you could just read
24 the -- what's at the right-hand column of the
25 description?

10:13:31 1 A. Out loud or to myself?

10:13:32 2 Q. If you could read it out loud
10:13:32 3 that would be helpful.

10:13:33 4 A. "For services rendered
10:13:33 5 L. Oliphant Esq., late Superintendent
10:13:36 6 General in obtaining a surrender of
10:13:40 7 the Saugeen Peninsula in 1854".

10:13:43 8 Q. Okay. So this matches up with
10:13:50 9 the receipt we saw earlier for Peter Jacobs?

10:13:54 10 A. Yes.

10:13:55 11 Q. And it provides more or less the
10:13:57 12 same description for services rendered to
10:14:00 13 Mr. Oliphant in obtaining a surrender of the
10:14:05 14 Saugeen Peninsula?

10:14:05 15 A. Correct.

10:14:06 16 Q. And it doesn't mention
10:14:07 17 interpretation services?

10:14:08 18 A. Not in this -- not here, no.

10:14:17 19 Q. And I'm wondering if we can look
10:14:19 20 briefly at the entry right underneath? Just the
10:14:23 21 "Comment" side, which seems to refer to a cheque
10:14:26 22 in favour of Alexander McNabb? If you can take
10:14:29 23 a look at that? "Cheque in favour of Alexander
10:14:33 24 McNabb [...]", and ending with, "[...] land sale
10:14:39 25 in 1856."

10:14:42 1 A. Did you want me to read it out
10:14:44 2 loud?

10:14:47 3 Q. No, you can just review it to
10:14:49 4 yourself?

10:14:50 5 A. (Witness reading the document.)
10:14:51 6 Okay.

10:14:58 7 Q. So this -- would you agree that
10:14:59 8 this is a description of payment for -- to
10:15:02 9 Alexander McNabb for something related to land
10:15:05 10 sales from the peninsula?

10:15:07 11 A. It just says, "Indian land sale
10:15:10 12 in 1856" it may be the peninsula, but it was
10:15:16 13 W.R. Bartlett who administered that sale. So
10:15:20 14 exactly what this is referring to is not
10:15:23 15 completely clear.

10:15:24 16 Q. Okay.

10:15:39 17 A. Could I just make a comment about
10:15:41 18 this?

10:15:41 19 Q. Yes.

10:15:42 20 A. What's not stated in this land
10:15:45 21 sale warrant book is from whom or when the
10:15:53 22 requisition was received by the department.

10:15:57 23 So it's my understanding that
10:16:00 24 requisitions were received, they were then
10:16:02 25 approved or not approved and then a warrant --

1 if approved a warrant was issued.

2 So it still leaves the question -- for
3 me it leaves the question open, who submitted
4 the requisition, for example, the Peter Jacobs
5 warrant? So that's just the other comment I
6 wanted to make.

7 Q. Okay. Well, what we can take
8 from this is that aside from who issued it and
9 who approved it, Peter Jacobs wasn't paid until
10 1857 and the monies came out of this land fund?

11 A. Yes.

12 Q. So shifting gears, I'd like to
13 talk to you about something that you spoke a few
14 weeks ago with my friend, Ms. Lapan, about the
15 historical record of Saugeen Ojibwe's -- of the
16 Saugeen Ojibwe's complaints after Treaty 72.

17 A. Okay.

18 Q. So before I get into that
19 specific -- in your experience, in your work
20 experience and your research you've looked at a
21 number of Crown-Indigenous treaties in Ontario?

22 A. Yes.

23 Q. Have you ever come across a case
24 where the Crown reversed a land surrender
25 treaty?

10:17:31 1 A. Reversed it? So sanctioned it
10:17:35 2 first and then reversed it?

10:17:37 3 Q. Right.

10:17:37 4 A. No.

10:17:43 5 Q. I want to turn now to your
10:17:44 6 opinion that you discuss in -- so this is volume
10:17:48 7 4, just so you're -- for your reference. So
10:17:54 8 volume 4 is Exhibit 4704, about the efforts that
10:18:02 9 Saugeen Ojibwe made to get the government to
10:18:04 10 sell their lands faster in the post-treaty
10:18:07 11 period?

10:18:07 12 A. Okay.

10:18:09 13 Q. So we've already discussed the
10:18:11 14 slow pace of sales of the lands surrendered in
10:18:16 15 Treaty 72?

10:18:17 16 A. Okay.

10:18:17 17 Q. You would agree with me that one
10:18:19 18 of the main arguments that Oliphant reports
10:18:21 19 making at the Treaty Council is that there was
10:18:24 20 extreme demand for the Saugeen Ojibwe Nation's
10:18:29 21 land by white settlers right?

10:18:32 22 A. He did speak to issue of demand
10:18:34 23 for settlement lands, yes.

10:18:37 24 Q. So it's reasonable to conclude
10:18:39 25 that the Saugeen Ojibwe would have left those

1 Treaty Councils, or that Treaty Council
2 expecting their lands were in high demand?

3 A. Yes.

4 Q. But according to your report, and
5 what we've discussed, it took almost 50 years to
6 sell all of the surrendered lands?

7 A. Yes, 50 years sounds about right,
8 yes.

9 Q. So would you agree that the slow
10 pace of sales may have been surprising to the
11 Saugeen Ojibwe given what the Crown had told
12 them at the Treaty Council?

13 A. Surprising? I think that they
14 were disappointed and there was -- there were
15 certainly signs of impatience.

16 I haven't come across documentation
17 that suggests that they were surprised, but I
18 suppose that could be inferred in the
19 documentation that speaks to their repeated
20 petitions and speeches about trying to speed up
21 the pace of sales.

22 Q. On page 60 of your volume 4
23 report you write that in 1871 the Saugeen and
24 Cape Croker bands were showing signs of
25 impatience with the slow pace of land sales?

10:20:02 1 A. Yes.

10:20:04 2 Q. This was the earliest expression
10:20:06 3 of concern about this issue that you found?

10:20:09 4 A. Oh, I would have to go back into
10:20:11 5 this chapter to...

10:20:14 6 Q. Okay.

10:20:20 7 A. And I would need a minute to do
10:20:22 8 that.

10:20:23 9 Q. That's fine.

10:20:24 10 A. (Witness reading the document.)
10:20:24 11 My answer is going to be that 1871 may
10:21:14 12 have been first the -- the first, or one of the
10:21:16 13 earliest explicit demonstrations of impatience
10:21:21 14 on their behalf; and that prior to this there
10:21:25 15 was the petitions, et cetera, were more
10:21:31 16 concerned with issues of settlement conditions,
10:21:36 17 reserve boundaries, that sort of thing.

10:21:39 18 So 1871 is -- was the one that I
10:21:43 19 documented as one of the earliest examples of
10:21:48 20 signs of impatience on -- about the slow pace of
10:21:51 21 sales.

10:21:51 22 Q. Okay. And you cite other
10:21:55 23 resolutions and petitions throughout the 1870s
10:21:59 24 of Saugeen Ojibwe complaining of the fact that
10:22:01 25 their lands -- that had been sold were badly in

1 arrears?

2 A. Yes, that was a problem as well.

3 Q. And they were also complaining
4 about revaluation of the lands that were already
5 sold?

6 A. Yes, and lack of consultation in
7 that regard.

8 Q. So is it fair to say that the
9 issue that they're complaining about is that
10 they were not realizing the expected benefits
11 from the surrender that they had made in 1854?

12 A. Yes, and I make that point in my
13 report as well.

14 Q. So I want to go to Exhibit 2494.
15 So here we have the title page "Report of the
16 Special Commissioners Appointed the 8th of
17 September 1856 to Investigate Indian Affairs in
18 Canada".

19 A. Yes.

20 Q. This is more commonly referred as
21 the "Pennefather Report"?

22 A. Yes.

23 Q. Released in 1858, correct?

24 A. Correct. Yes.

25 Q. So if we go to PDF image 73, I

1 don't think that this document is numbered
2 itself.

3 We've highlighted a paragraph here,
4 the top half of the last paragraph on the page.
5 Starts with, "In spite of [...]", and then,
6 "[...] the same may be said of them still."

7 We'll just zoom in on that if you can
8 review that, Dr. Reimer?

9 A. (Witness reading the document.)

10 Okay.

11 Q. I should have gone to a previous
12 page so you have some context for who is being
13 discussed here.

14 A. Okay.

15 Q. If we could just scroll up.
16 Where it says, "The Chippewas of Potawatomi of
17 Saugeen [...]", (sic), so it's discussing the
18 Saugeen Band, correct?

19 A. Yes.

20 Q. And if we can go to PDF image 76?
21 If we scroll up to the previous page, just to
22 give you some context about what's being
23 discussed.

24 A. Is this still under the same --

25 Q. I think it's still under the same

1 heading, correct.

2 A. It looks like this is Cape Croker
3 though or Owen Sound. I'm not sure. Can we go
4 up a little bit further? Yes, Nawash.

5 Q. So this is referring to Nawash?

6 A. Yes.

7 Q. So if we go to this excerpt, the
8 second paragraph on this page that starts with,
9 "The description given [...]", and ends with,
10 "[...] intemperance."

11 A. (Witness reading the document.)

12 Okay.

13 Q. So the excerpts that I brought
14 you to suggest that in 1858 poverty was a
15 considerable issue amongst the Chippewas of
16 Nawash and Saugeen?

17 A. I wouldn't say 1858 I would say
18 1856.

19 Q. Right.

20 A. Because the investigation was
21 done in 1856 but the publication date was 1858.

22 Q. Okay. And if we can turn now to
23 SC1974? This is an excerpt from "Sessional
24 Papers, volume 7, from the fourth session of the
25 third Parliament Dominion of Canada", it's dated

1 1877, the session is.

2 So if we could just look at the
3 bottom? You can scroll down to the bottom.
4 It's signed by -- well, not signed but it's
5 noted by Mr. Plummer?

6 A. Yes.

7 Q. And Plummer is the Superintendent
8 General of Indian Affairs at this time?

9 A. No, the visiting Superintendent
10 Commissioner of the Central Agency.

11 Q. Thank you. Your Honour, can I
12 add this as the next exhibit?

13 THE COURT: Mr. Registrar.

14 THE REGISTRAR: Exhibit 4849

15 EXHIBIT NO. 4849: Excerpt from

16 "Sessional Papers, volume 7, from the
17 fourth session of the third Parliament
18 Dominion of Canada" dated 1877;
19 Document number SC1974.

20 BY MS. GUIRGUIS:

21 Q. So here under the heading in the
22 centre of the page the "Chippewas of Nawash" I
23 want to draw your attention to, "The situation
24 of their reserve [...]", and ending at, "[...]
25 hunger and privation."

10:27:27 1 A. (Witness reading the document.)

10:27:27 2 Okay.

10:27:28 3 Q. So this is Mr. Plummer's report
10:27:33 4 with respect to the Chippewas of Nawash, and
10:27:36 5 other First Nations, the excerpt you looked at
10:27:39 6 is with respect to Nawash?

10:27:40 7 A. Yes, at Cape Croker.

10:27:43 8 Q. So you would agree with me that
10:27:44 9 based on this it seems that in 1876 poverty is
10:27:48 10 still being reported as an issue for the
10:27:50 11 Chippewas of Nawash?

10:27:53 12 A. For that year, yes.

10:27:57 13 Q. So I would suggest to you, based
10:27:58 14 on this, that the Saugeen Ojibwe in the 1870s
10:28:01 15 seeking some benefit from the sale of their
10:28:03 16 lands that they surrendered was a rational
10:28:06 17 response?

10:28:10 18 A. I sorry, can you repeat that?

10:28:12 19 Q. Yes. I'd suggest to you that for
10:28:15 20 the Saugeen Ojibwe to be seeking some benefit
10:28:17 21 for the sale of their lands that they
10:28:19 22 surrendered in 1854 that was a rational response
10:28:24 23 at this time?

10:28:26 24 A. Yes.

10:28:26 25 Q. And that was because they were

1 experiencing poverty?

2 A. Well, the --

3 MR. FELICIAN: Your Honour, I object
4 because I don't know if it's up to this witness
5 to say whether the response was rational or not.

6 This witness can tell us what they
7 did, what circumstances they were facing, but I
8 don't know if it's for an ethnohistorian to
9 conclude a particular response was rationale?

10 THE COURT: Well, the witness has
11 answered that question so I'm going to move
12 forward.

13 Do you say your objection extends to
14 the question that was unanswered? And that is,
15 because they are experiencing poverty.

16 MR. FELICIAN: It's tied to the first
17 question, which I didn't object to in time, but
18 it follows directly from that, and it's the same
19 theme about whether or not it's a rational
20 response or not.

21 THE COURT: I'll take that into
22 consideration but I'll permit the question. I
23 think it was in the past tense and I just cited
24 it in the present so maybe you better repeat the
25 question.

10:29:46 1 MS. GUIRGUIS: Sure. Thank you, Your
10:29:47 2 Honour.

10:29:47 3 BY MS. GUIRGUIS:

10:29:51 4 Q. So would you agree that it was a
10:29:55 5 rational response because they were experiencing
10:29:57 6 poverty at the time?

10:30:02 7 A. My response to that question
10:30:03 8 would be that the -- as I explained in volume 3,
10:30:09 9 one of the motivations that is documented for
10:30:13 10 the First Nations to have agreed to the
10:30:19 11 surrender of the peninsula in 1854 was in order
10:30:23 12 to provide greater economic security, financial
10:30:27 13 security for their communities and their future
10:30:31 14 generations.

10:30:34 15 At the time we don't have any
10:30:38 16 documentation from around 1854 speaking to
10:30:41 17 motivation that poverty was at the root of that.
10:30:48 18 So, you know, that doesn't take away from the
10:30:53 19 examples that you've shown me now.

10:30:56 20 Certainly there are many examples and
10:30:59 21 lots of documentation about both the Saugeen and
10:31:04 22 Nawash Bands looking to diversify their economy,
10:31:09 23 integrate their economy, still maintaining a
10:31:13 24 traditional harvesting economy to at least
10:31:16 25 supplement other kinds of ventures such as

1 farming, saw mills, that sort of thing.

2 So we're taking -- we're comparing
3 somewhat apples and oranges in terms of Indian
4 agents talking about Indians living in poverty,
5 et cetera. And what we have documentation for
6 in terms of aspirations at the time of --
7 preceding and at the time of the surrender
8 itself.

9 Did they expect economic returns?
10 Absolutely they did. What was the underlying --
11 was the foundation for that aspiration poverty?
12 That's not directly documented.

13 Q. And just to be clear, as I wasn't
14 asking about poverty at the time of surrender
15 but I was asking about it afterwards in the
16 1870s.

17 A. They were certainly looking for
18 returns from the land sales to bolster their
19 accounts and their -- perhaps "standard of
20 living" isn't the right word, it's a more modern
21 term.

22 But the difficulty thing about looking
23 at this excerpt that's on the screen right now
24 is that the conversation and the report by
25 Plummer is not connected to their land fund,

10:33:03 1 their annuities, anything like that.

10:33:05 2 So that's why I say, you know, his
10:33:08 3 observations are not being made in the context
10:33:13 4 of the amount of funds they had in their
10:33:18 5 accounts.

10:33:20 6 So how do we balance this? And how I
10:33:25 7 would balance is it by looking at more than one
10:33:29 8 single example; and also looking at how -- if
10:33:33 9 there's any evidence of how Saugeen and Nawash
10:33:37 10 First Nations are viewing themselves and their
10:33:39 11 economy as opposed to how Plummer is viewing
10:33:43 12 them.

10:33:43 13 I mean, there's many examples of
10:33:45 14 non-Indigenous and Indian Affairs officials
10:33:49 15 having one view of Indian's starving, for
10:33:52 16 example, and what the Indigenous people
10:33:54 17 themselves believed, or experienced, or felt
10:34:03 18 about their economic welfare.

10:34:05 19 So I think those kinds of issues need
10:34:07 20 to be taken into account in order to properly
10:34:10 21 interpret one single paragraph of Plummer's
10:34:14 22 observations in 1877.

10:34:16 23 Q. So let me ask you this, taking
10:34:18 24 into account your review of the records in
10:34:22 25 preparation for this litigation and with respect

10:34:24 1 to the Saugeen Ojibwe around this time, and
10:34:27 2 their complaints in the 1870s, would you agree
10:34:30 3 with me that this response of seeking some
10:34:32 4 benefits from the lands that they surrendered in
10:34:36 5 1854 in Treaty 72, that doesn't necessarily mean
10:34:41 6 that they were satisfied with the process by
10:34:43 7 which Treaty 72 was concluded?

10:34:47 8 A. What do you mean by "concluded"?

10:34:54 9 Q. I mean by which the lands were
10:34:56 10 surrendered under Treaty 72. It doesn't
10:34:59 11 necessarily mean that they were fine with how
10:35:01 12 things had gone. And I think that's -- well --

10:35:06 13 A. In the 23 years from 1854 to
10:35:09 14 1877?

10:35:11 15 Q. To the 1870s, when you note the
10:35:13 16 first complaint, which is 1871, right.

10:35:16 17 A. So if I understand your question,
10:35:18 18 you're asking me -- I come across the first
10:35:23 19 explicit reference to impatience with the pace
10:35:26 20 of land sales in the 1870s, and are you asking
10:35:29 21 me then that this may have been true for the
10:35:33 22 previous 20 years after the surrender as well?
10:35:36 23 That they were not satisfied with the pace of
10:35:38 24 land sales in that -- I want to make sure I'm
10:35:42 25 answering the question you're asking.

10:35:43 1 Q. What I'm suggesting to you is
10:35:44 2 that the response of seeking benefits -- of
10:35:48 3 seeking to get benefits from the lands that are
10:35:50 4 surrendered, it doesn't mean that they were
10:35:53 5 satisfied or -- that they were satisfied with
10:35:58 6 the surrender of lands in Treaty 72?

10:36:08 7 MR. FELICIAN: Your Honour, is there
10:36:09 8 evidence that they weren't satisfied with the
10:36:13 9 surrender of lands?

10:36:15 10 THE COURT: Well, I think I know what
10:36:16 11 counsel is trying to get at, I don't know that
10:36:18 12 the witness does and it's not -- and you're
10:36:21 13 objecting to the actual words that counsel used
10:36:27 14 as opposed to what I imagine she's trying to get
10:36:31 15 at.

10:36:35 16 Counsel, can you either restate or
10:36:38 17 rephrase, whichever you prefer, the question and
10:36:41 18 then I'm going to ask Mr. Feliciant if he still
10:36:44 19 objects to it.

10:36:45 20 MS. GUIRGUIS: Thank you, Your Honour.

10:37:25 21 BY MS. GUIRGUIS:

10:37:25 22 Q. So let me go through this piece
10:37:28 23 by piece and maybe that will make my meaning
10:37:30 24 more clear.

10:37:31 25 You've noted that beginning in the

1 1870s the Saugeen Ojibwe had complaints with
2 respect to the slow pace of land sales?

3 A. Correct.

4 Q. You've agreed that this was a
5 response that they -- that this response
6 reflected that they did want to seek some --
7 they wanted to seek benefits from the lands that
8 they had surrendered?

9 A. Yes.

10 Q. So the response -- the fact that
11 they were seeking benefits -- they wanted to
12 seek benefits from the lands that they had
13 surrendered in 1854, you would agree with me
14 that that doesn't mean that they were satisfied,
15 meaning, okay with, the process by which treaty
16 72 was negotiated?

17 THE COURT: Mr. Feliciant, do you
18 still have an objection?

19 MR. FELICIAN: My concern, Your
20 Honour, is that we don't have evidence of
21 whether they were satisfied or not in 1854. And
22 I don't think we can be asking the witness to
23 assume one way or the other because we don't
24 have evidence of it.

25 So I just object to the question.

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THE COURT: Ms. Guirguis?

MS. GUIRGUIS: Your Honour, my question is not intended, and I don't think that I said "were they satisfied in 1854", I'm saying that the complaints that are made in the 1870s, seeking a faster pace of land sales, I'm asking whether that's necessarily contrary to the fact that they may have also had issues with how Treaty 72 was concluded?

THE COURT: And that's the objection.

Mr. Feliciant has made his objection and that is your response to it. I don't think he's misunderstood the question. He's objecting to the question.

MS. GUIRGUIS: Well, there is evidence of their complaints that they made in the 1870s, and so on and so forth, we've reviewed those. So I'm asking her to draw an inference from those complaints.

THE COURT: That's interesting but what's your response to the objection?

MS. GUIRGUIS: The objection is about that there's no evidence in 1854 with respect to their complaints. My response to that is my question is not about evidence in 1854, it's

10:40:15 1 about the evidence later on that we're
10:40:17 2 discussing in the 1870s.

10:40:21 3 THE COURT: Well, I think the two of
10:40:22 4 you may be at cross purposes.

10:41:03 5 Dr. Reimer, let me read to you the
10:41:06 6 last version of this question.

10:41:12 7 "The fact that they were seeking
10:41:13 8 benefits -- they wanted to seek
10:41:16 9 benefits from the lands that they had
10:41:18 10 surrendered in 1854, you would agree
10:41:21 11 with me that that doesn't mean that
10:41:25 12 they were satisfied, meaning okay with
10:41:29 13 the process, by which Treaty 72 was
10:41:32 14 concluded?"

10:41:35 15 Now, doctor, if you feel that you
10:41:38 16 understand that question -- it's long and has a
10:41:43 17 negative in it, but if you feel you understand
10:41:45 18 that question I will permit you to answer that
10:41:48 19 question.

10:41:50 20 THE WITNESS: I would need to rephrase
10:41:52 21 it in order to demonstrate whether or not I
10:41:55 22 understand it.

10:41:56 23 THE COURT: Well, rephrase it before
10:41:57 24 answering what you believe the question to be,
10:42:03 25 because the last time you rephrased it, and this

1 is not a criticism but a reflection of the
2 confusion, I think it wasn't what Ms. Guirguis
3 was trying to get at.

4 So why don't you try to explain what
5 you think that means and then we'll go from
6 there.

7 THE WITNESS: I'm understanding your
8 question to be, do the complaints about the slow
9 pace of sales in the 1870s indicate that in
10 1854 they were dissatisfied with how the Treaty
11 was negotiated?

12 THE COURT: Is that what you intended
13 to ask, Ms. Guirguis? I think it's perhaps
14 slightly different.

15 MS. GUIRGUIS: It's slightly
16 different.

17 THE COURT: But it's a lot simpler.

18 MS. GUIRGUIS: Yes, it is.

19 THE COURT: And maybe you could start
20 from that proposition and amend it to be what
21 you asked rather than from your question?

22 BY MS. GUIRGUIS:

23 Q. Okay. So I would modify that
24 question simply because -- and I think this is
25 what you said, is that the complaints about the

1 slow pace of sales in the 1870s, and also I
2 would add their other complaints with respect to
3 the valuation of lands, does that indicate that
4 in 1854, and the years following that, they were
5 satisfied with how the Treaty was negotiated?

6 THE COURT: That just runs squarely
7 into the original objection, which I haven't had
8 your submissions on yet.

9 You had originally said, that is not
10 where I'm headed so you rephrased. In other
11 words, you said you weren't trying to establish
12 what --

13 MS. GUIRGUIS: Right.

14 THE COURT: -- people were or were not
15 satisfied with.

16 MS. GUIRGUIS: Right.

17 THE COURT: But I'm happy to give you
18 another try, counsel.

19 BY MS. GUIRGUIS:

20 Q. I think, Dr. Reimer, what I'd
21 like to ask you is that, based on your review of
22 the complaints in the 1870s with respect to
23 land sales, and with respect to the sale of the
24 lands that were surrendered in the peninsula, we
25 can't -- you'd agree with me that we can't draw

10:45:07 1 the conclusion that the Saugeen Ojibwe were
10:45:18 2 satisfied with the surrender of lands, but I'm
10:45:26 3 asking about that just in respect to the --
10:45:28 4 after when we started receiving complaints?

10:45:31 5 MR. FELICIAN: I still object.

10:45:32 6 THE COURT: I know, Ms. Guirguis,
10:45:33 7 you're trying really hard and I'm resisting the
10:45:36 8 temptation to help because I don't think I'm
10:45:38 9 supposed to. Is this the end of your
10:45:41 10 cross-examination?

10:45:48 11 MS. GUIRGUIS: No, I have some more.
10:45:50 12 I can come back to it.

10:45:50 13 THE COURT: Well, I know you're
10:45:50 14 working with your team. And maybe while you're
10:45:51 15 working on other things your team will be able
10:45:53 16 to help you more than they have been. I know
10:45:56 17 they're trying to help you now but I think we're
10:46:01 18 in a loop at the moment.

10:46:03 19 There may well be a proper question.
10:46:10 20 Maybe the counsel helping you can work on that
10:46:11 21 while you work on other matters.

10:46:15 22 MS. GUIRGUIS: That's fine, Your
10:46:16 23 Honour, we can take a break from this.

10:46:19 24 BY MS. GUIRGUIS:

10:46:19 25 Q. Okay. So let me move on,

1 Dr. Reimer, to talk about your discussion with
2 my friend Ms. Lapan about the role of the Indian
3 Agent and bringing forth complaints from First
4 Nations?

5 A. Okay.

6 Q. So you confirm the main ways that
7 the Saugeen Ojibwe could complain about issues
8 that arose between 1850 and 1900, roughly, were
9 through petitions?

10 A. Correct.

11 Q. Band council resolutions?

12 A. Correct.

13 Q. And through deputations to the
14 seat of government?

15 A. Yes.

16 Q. So although petitions and
17 especially Band council resolutions those were
18 the main ways for First Nations to bring forward
19 complaints in the 1860s and '70s?

20 A. Yes.

21 Q. And you confirmed that each one
22 of these options required permission from the
23 Indian Agent?

24 A. Yes, although I would add that
25 missionaries such as Conrad Van Dusen were also

1 very active on sending off petitions on behalf
2 of the First Nations as well. I don't recall if
3 I mentioned that in my direct testimony or not.

4 Q. So if we go to your direct
5 testimony, February 13th, 2020, which is volume
6 84, if we go to page 10718, and if you look at
7 the question Ms. Lapan asked you, which is at
8 line 12, 10:43:02, the time stamp ending at line
9 21, 10:43:29?

10 A. Okay.

11 Q. So you said here that you didn't
12 find any documentation about the fact that
13 communications from First Nations were not
14 getting through?

15 A. Correct.

16 Q. So I have a few questions about
17 this. I just want to start by going to Exhibit
18 2254. We have a transcript at Exhibit 4801. So
19 this is "Petitions of the Chiefs, Warriors and
20 Principal Men of the Ojibwe Tribes at Saugeen
21 and Nawash in Council Assembled June 24, 1855"?

22 A. Yes.

23 Q. And this is addressed to "Sir
24 Edmund Head", who is Governor General at the
25 time?

10:49:20 1 A. Correct.

10:49:21 2 Q. So if you could just review this
10:49:22 3 document?

10:49:23 4 A. (Witness reading the document.)

10:49:46 5 THE COURT: Mr. Beggs.

10:49:48 6 MR. BEGGS: Your Honour, first of all
10:49:49 7 can you hear me from back hear.

10:49:55 8 THE COURT: Please go ahead.

10:49:57 9 MR. BEGGS: This is somewhat unusual,
10:49:58 10 but my friend mentioned that it was from the
10:50:01 11 Chief, warriors and principal men of the Ojibwe
10:50:04 12 tribe at Saugeen and Nawash in council, which is
10:50:07 13 what it's entitled, however, the text of the
10:50:12 14 petition makes it evident that it's -- whether
10:50:24 15 it represents all the Chiefs or not is actually
10:50:26 16 a matter of contention.

10:50:28 17 So it might be better qualified as
10:50:32 18 purporting to be from the chiefs and whatnot.

10:50:39 19 THE COURT: Well, I think we can
10:50:39 20 manage with, "it is stated at the top of the
10:50:42 21 document as follows", and the rest of it will
10:50:44 22 come out. And I do thank you for trying to
10:50:45 23 ensure that there's not a misleading description
10:50:49 24 of an exhibit.

10:50:52 25 MR. BEGGS: Thank you, Your Honour.

10:50:53 1 THE COURT: Ms. Guirguis, please go
10:50:53 2 ahead.
10:50:54 3 BY MS. GUIRGUIS:
10:50:55 4 Q. Thank you, Your Honour.
10:51:01 5 A. (Witness reading the document.)
10:51:02 6 I've read the highlighted portion.
10:51:04 7 Q. Thank you. So this tells us that
10:51:09 8 the governor general refused to hear the
10:51:12 9 deputation from the Chiefs?
10:51:13 10 A. Correct.
10:51:15 11 Q. And instead they sent this
10:51:17 12 petition that includes complaints about
10:51:20 13 Anderson?
10:51:21 14 A. Correct.
10:51:22 15 Q. And Anderson, as their agent, he
10:51:24 16 would have been the one that would have had to
10:51:26 17 approve the deputation to go to the governor
10:51:29 18 general, correct?
10:51:30 19 A. Correct.
10:51:36 20 Q. And in this petition it says that
10:51:38 21 they are:
10:51:38 22 "[...] prepared to submit
10:51:38 23 complaints to any person, except
10:51:42 24 Captain Anderson, your excellency may
10:51:44 25 be pleased to appoint."

10:51:47 1 A. Yes, and this is one of the
10:51:48 2 documents that I had cited with respect to the
10:51:52 3 deterioration of the relationship between
10:51:54 4 Anderson and the Saugeen Ojibwe Nation.

10:51:56 5 Q. So lacked some confidence that
10:52:03 6 they had in their Indian Agent, Superintendent
10:52:03 7 Anderson, as a fair intermediary of the Band's
10:52:06 8 concerns?

10:52:07 9 A. Yes. They were complaining about
10:52:08 10 him, yes.

10:52:14 11 Q. Would you agree with me that it's
10:52:15 12 reasonable to conclude, or to suspect that an
10:52:17 13 Indian Agent who refused to pass on a petition
10:52:20 14 or a BCR would not necessarily make note of this
10:52:24 15 in a letter or some kind of record to his
10:52:27 16 superiors?

10:52:27 17 A. I suppose so, yes.

10:52:30 18 Q. For example, we wouldn't expect
10:52:32 19 an Indian Agent to have kept a journal of all
10:52:34 20 the times he refused permission to Indians to
10:52:38 21 bring forth a complaint or a resolution?

10:52:41 22 A. We wouldn't expect that, is that
10:52:42 23 your question?

10:52:43 24 Q. That's right.

10:52:45 25 A. Generally, yes, I would agree

10:52:46 1 with that.

10:52:48 2 Q. And your review of the historical
10:52:49 3 record, that's primarily drawn from government
10:52:52 4 archives, correct?

10:52:53 5 A. Yes.

10:52:59 6 Q. So would you agree that if a
10:53:01 7 complaint in the form of a resolution or a
10:53:03 8 petition was disallowed by the Indian Agent
10:53:07 9 there would probably be no resolution or
10:53:09 10 petition in the archives?

10:53:11 11 A. Yes, that would be the case.

10:53:12 12 Q. Okay. Because it never made it
10:53:16 13 to the department?

10:53:17 14 A. Correct.

10:53:19 15 Q. We would only see it if the
10:53:20 16 Indian Agent allowed it to be sent or if the
10:53:23 17 Indians had found a way around the Indian Agent?

10:53:27 18 THE COURT: Mr. Feliciant.

10:53:27 19 MR. FELICIAN: I may be late in
10:53:29 20 standing, but do we actually have evidence that
10:53:32 21 there are several petitions floating out there
10:53:35 22 that never made it into the archives? Because I
10:53:38 23 haven't seen it. And it's one thing to have
10:53:42 24 asked the question initially, well, can you say,
10:53:45 25 well, wouldn't you do it then speculate. Okay,

10:53:51 1 if you refused it once it may not be in a
10:53:54 2 record. Okay, that's one thing.

10:53:55 3 But now it's gone on further, and
10:53:57 4 there's the underlying suggestion that there are
10:53:59 5 all these documents that never made it into the
10:54:01 6 archive, and that's not what the evidence is.

10:54:04 7 THE COURT: Well, looking at the
10:54:05 8 specific question that you rose on it really is
10:54:10 9 focused on what would be in the archives. And
10:54:14 10 this expert has indicated that that was her
10:54:17 11 primary source for documentation.

10:54:19 12 So I am going to permit the question.
10:54:22 13 Dr. Reimer, the question was, we would only see
10:54:24 14 it if -- "it" meaning in the archives, is that
10:54:27 15 correct, Ms. Guirguis.

10:54:29 16 MS. GUIRGUIS: That's correct, Your
10:54:29 17 Honour.

10:54:30 18 THE COURT: We would have only see it
10:54:32 19 in the archives if the Indian Agent allowed it
10:54:34 20 to be sent, or if the Indians found a way around
10:54:38 21 the Indian Agent. That was the question.

10:54:46 22 THE WITNESS: We would only see it in
10:54:47 23 the Indian Affairs archives if that was the
10:54:50 24 case? Yes.

25

10:54:55 1 BY MS. GUIRGUIS:

10:54:56 2 Q. So have you reviewed any of the
10:54:58 3 oral histories or the testimony in this case
10:54:59 4 from members of the Saugeen Ojibwe Nation?

10:55:02 5 A. No.

10:55:04 6 Q. So when you say there's no
10:55:08 7 documentary evidence, or there's no evidence of
10:55:11 8 Indian Agent interference with the Saugeen
10:55:13 9 Ojibwe complaints you're not referring to
10:55:16 10 recorded oral history evidence or the testimony
10:55:18 11 of Saugeen Ojibwe members in this case?

10:55:21 12 A. That's correct.

10:55:50 13 Q. So I want to ask you some
10:55:51 14 questions about the changes in your opinion
10:55:53 15 about Oliphant's conduct.

10:55:56 16 A. Okay.

10:55:57 17 Q. So your original opinion on this
10:55:58 18 was found in your volume 3 report, Exhibit 4703.
10:56:11 19 So the initial date of this report was in 2015
10:56:16 20 and then it was revised in 2019, but there were
10:56:20 21 no substantial changes to your opinion on this
10:56:23 22 issue with respect to Oliphant's conduct as of
10:56:26 23 November 2019?

10:56:28 24 A. Correct.

10:56:29 25 Q. We received the revised opinion,

10:56:31 1 which is at Exhibit 4706, prior -- a week prior
10:56:36 2 to your examination in-chief, so I think that
10:56:41 3 was in January of 2020, correct?

10:56:44 4 A. Correct.

10:56:55 5 Q. So I'd like to turn now to your
10:56:58 6 revised opinion at Exhibit 4706, so the top of
10:57:03 7 page 3. So you write here:

10:57:11 8 "However, in opining on these
10:57:12 9 events later in my report [...]."

10:57:18 10 And then we go to the end where you
10:57:20 11 say:

10:57:22 12 "[...] to exert a measure of
10:57:25 13 control in the hours before presenting
10:57:27 14 his formal proposal at the Treaty
10:57:27 15 Council."

10:57:28 16 So in this excerpt you say that your
10:57:30 17 general opinion was and is that Oliphant was a
10:57:34 18 skill and experienced negotiator?

10:57:36 19 A. Yes.

10:57:40 20 Q. So I want to open Exhibit 4189,
10:57:42 21 which is the Oxford biography of Mr. Oliphant.
10:57:54 22 So the first paragraph that's highlighted here,
10:57:56 23 beginning with "Oliphant, Laurence", it tells us
10:57:59 24 that he was born in 1829?

10:58:01 25 A. Yes.

10:58:02 1 Q. So he was 25 when he negotiated
10:58:04 2 Treaty 72?

10:58:06 3 A. Yes, around that.

10:58:13 4 Q. If we look at the bottom
10:58:15 5 paragraph on this page under the heading "Law,
10:58:17 6 Diplomacy and Journalism", if you want to review
10:58:21 7 from, "Oliphant was called [...]", to the end
10:58:31 8 of, "[...] never completed."

10:58:43 9 A. (Witness reading the document.)
10:58:43 10 Okay.

10:58:44 11 Q. So this tells us that during the
10:58:49 12 time that's mentioned here, prior to being
10:58:52 13 appointed in Canada, or in Upper Canada at the
10:58:57 14 time, it tells us he went hunting in Nepal and
10:59:00 15 wrote a book about going to Kathmandu, called to
10:59:03 16 the bar and began but did not finish studies in
10:59:07 17 law in Scotland, correct?

10:59:09 18 A. Correct.

10:59:09 19 Q. So until about 1853 he was
10:59:12 20 traveling and studying law and writing adventure
10:59:17 21 stories it says, correct?

10:59:24 22 A. 1852?

10:59:26 23 Q. 1853. Until 1853. Doesn't it
10:59:27 24 say that?

10:59:28 25 A. No.

10:59:29 1 Q. 1852.

10:59:32 2 A. Yes.

10:59:32 3 Q. I'm sorry, the excerpt if you
10:59:34 4 look on to the next page I'm confusing the two
10:59:37 5 dates.

10:59:51 6 A. You're asking me to read the
10:59:53 7 highlighted portion?

10:59:54 8 Q. No, it's okay, just the front.
10:59:56 9 So in those years there's no note that
10:59:58 10 he was engaged in any negotiations, right?

11:00:01 11 A. Not at that time, no.

11:00:03 12 Q. So now if we go to the second
11:00:06 13 page, page 2, you can look at the marked excerpt
11:00:08 14 that's, "While keenly interested [...]", and
11:00:14 15 then ends with, "[...] Elgin to Quebec."

11:00:25 16 A. (Witness reading the document.)
11:00:25 17 Okay.

11:00:32 18 Q. So this tells us that his first
11:00:34 19 government post was accompanying Lord Elgin to
11:00:40 20 Washington to act as a secretary?

11:00:42 21 A. Correct.

11:00:42 22 Q. And that was while Lord Elgin was
11:00:45 23 negotiating the reciprocity treaty between
11:00:48 24 Canada and the United States?

11:00:50 25 A. Yes.

11:00:51 1 Q. And from this excerpt it sounds a
11:00:51 2 bit like he may have gotten this appointment
11:00:55 3 because his mother was a friend of Lord Elgin's
11:00:58 4 family, or it mentions that?

11:01:00 5 A. It mentions that connection, yes.

11:01:01 6 Q. So I'd like to open SC1945. This
11:01:08 7 is chapter 3 from Oliphant's memoir, which you
11:01:13 8 are familiar with I believe?

11:01:16 9 A. Yes.

11:01:16 10 Q. "Moss On A Rolling Stone", the
11:01:19 11 chapter is titled "My First Experiences in
11:01:23 12 Diplomacy", if we can scroll down to that?

11:01:27 13 And, Your Honour, I'd like to add this
11:01:28 14 chapter three of Oliphant's memoir as the next
11:01:31 15 Exhibit.

11:01:32 16 THE COURT: It's not already in? So
11:01:35 17 much of this is but I'll take your word for it
11:01:40 18 Mr. Registrar.

11:01:42 19 THE REGISTRAR: Exhibit 4850.

11:01:43 20 EXHIBIT NO. 4850: Chapter 3, "My
11:01:43 21 First Experiences in Diplomacy", from
11:01:43 22 Oliphant's memoir, "Moss from a
11:01:43 23 Rolling Stone"; document number
11:01:43 24 SC1945.

25

1 BY MS. GUIRGUIS:

2 Q. So I would like to turn to page
3 45, which is PDF 11. So the excerpt here begins
4 with, "We happened to arrive in Washington
5 [...]", and ends with, "[...] a bloody civil
6 war." If you can take a look at that,
7 Dr. Reimer?

8 A. (Witness reading the document.)

9 Okay.

10 Q. So he writes here that he arrived
11 in Washington on the same day the Nebraska Bill
12 was carried in Congress, right?

13 A. Correct.

14 Q. So if we can go to SC1946? This
15 is the United States Senate summary of the
16 Kansas-Nebraska Act. So dated at the top, May
17 30th, 1854.

18 Your Honour, can I add this as the
19 next Exhibit?

20 MR. FELICIAN: Your Honour, I think
21 there's -- even from the title of the document
22 and the nature of it there's a threshold
23 relevance question. I don't know how this
24 document could be relevant. It's a United
25 States Senate Kansas-Nebraska Act. There's no

11:03:38 1 evidence that this witness is familiar with it
11:03:40 2 or knows of it, and I don't know how it could be
11:03:49 3 relevant to this proceeding.

11:03:51 4 THE COURT: Leaving aside the question
11:03:52 5 of relevance, counsel, and especially because it
11:03:58 6 isn't in the format that one might normally
11:04:03 7 expect, at least as a Canadian jurist of a
11:04:06 8 statute, I'm not saying it's not a statute, but
11:04:08 9 you have not laid a foundation for having this
11:04:11 10 document be an exhibit, unless there's consent
11:04:14 11 and there is no consent.

11:04:16 12 MS. GUIRGUIS: Okay. Well, Your
11:04:25 13 Honour to respond to relevance I'm only relying
11:04:28 14 on it --

11:04:29 15 THE COURT: I'm putting aside
11:04:31 16 relevance, I'm just talking about rules of
11:04:36 17 evidence here, counsel. Not to suggest that
11:04:44 18 that doesn't include relevance but you know what
11:04:46 19 I mean.

11:04:55 20 MS. GUIRGUIS: That's fine. I'll
11:04:55 21 leave it there, Your Honour.

11:05:02 22 THE COURT: I mean, we have had an
11:05:04 23 expert in US law but that was a long time ago
11:05:06 24 and if this isn't in he's long gone.

11:05:13 25 MS. GUIRGUIS: Yes. And it's not my

1 concern to have the actual law in evidence, it
2 was just about the date so that's fine, I can
3 leave that there.

4 BY MS. GUIRGUIS:

5 Q. So we'll take this away and I'll
6 just ask you, Dr. Reimer, so Oliphant mentions
7 that he arrives, in his memoir, in Washington.
8 Are you aware of when he arrived?

9 A. I thought it was in May 1854.

10 Q. So if he arrived in May 1854 or
11 thereabouts, he was acting as a secretary to
12 Lord Elgin in the negotiation of the Reciprocity
13 Treaty then from around the time of his arrival
14 to June of 1854, is that correct?

15 A. I believe so. If we go further
16 up in this chapter does it give us a better
17 timeline? In my report I just indicate that
18 Elgin -- Oliphant accompanied Elgin in
19 negotiating the American Reciprocity Treaty in
20 May 1854.

21 Q. Okay.

22 A. And that's on page 161 of my
23 volume 3.

24 Q. And then he was appointed
25 Superintendent General of Indian Affairs on June

1 19th, 1854?

2 A. It was in June.

3 Q. Right. By that point not aware
4 of any evidence that he had any experience with
5 Indigenous people?

6 A. There's no evidence of that, no.

7 Q. No evidence that he had
8 experience in negotiating treaties with
9 Indigenous people?

10 A. No evidence of that, no.

11 Q. He had only, by this point, a
12 short time as an assistant to someone else who
13 was negotiating a treaty between what is now
14 Canada and the US?

15 THE COURT: Mr. Feliciant.

16 MR. FELICIANANT: I rise because there
17 is a term that was used and it was "secretary",
18 and that is different than an "assistant". And
19 it may have to be a subject of re-examination,
20 but I'll --

21 THE COURT: You mean in historical
22 terms when you say it's different?

23 MR. FELICIANANT: Yes.

24 THE COURT: Ms. Guirguis, your
25 response to that?

11:08:05 1 MS. GUIRGUIS: I can revise my
11:08:06 2 question to refer to him as "secretary".

11:08:08 3 THE COURT: Please go ahead.

11:08:10 4 BY MS. GUIRGUIS:

11:08:11 5 Q. So he had only by this point a
11:08:13 6 short time as a secretary to someone else who
11:08:15 7 was negotiating a treaty between what is now
11:08:17 8 Canada and the US?

11:08:18 9 A. Yes, but my understanding is that
11:08:21 10 he worked very closely with Elgin throughout
11:08:23 11 this time.

11:08:26 12 Q. Okay. I want to look back at
11:08:43 13 your Exhibit 4706 and your change at page 3 of
11:08:45 14 your report, or your short addendum to the
11:08:52 15 report.

11:08:56 16 So if we look lower on the page under
11:08:59 17 your heading "Expert report volume 3, page 185
11:09:02 18 bottom paragraph". Half way through the
11:09:17 19 paragraph you cross out:

11:09:19 20 "[...] as conduct unbecoming a
11:09:20 21 representative of the Crown instructed
11:09:22 22 to openly negotiate a surrender of
11:09:24 23 lands by First Nations and at the same
11:09:28 24 time however from [...]"

11:09:30 25 And then you've replaced it with

1 language about:

2 "[...] a tactic calculated to
3 acquire a measure of control over the
4 negotiation process."

5 And here you say:

6 "It is critical to note that
7 these actions by Oliphant were prior
8 to the public council not during the
9 Treaty Council."

10 And then you spoke about this in your
11 testimony to my friend on February 13th, 2020.
12 And we can bring that up to take a look to
13 refresh your memory as to how you explained the
14 change.

15 So if we go to the final transcript
16 dated February 13th, 2020, page 10707, that is
17 volume 84. So here from about line 3 to line 24
18 on this page.

19 A. (Witness reading the document.)

20 Okay.

21 Q. So I want to ask you about this,
22 you say that the error that you're trying to
23 correct here is what you describe as collapsing
24 what happened prior to the Treaty Council on
25 October 13, 1854, and what happened during the

1 council itself?

2 A. Yes.

3 Q. And your critique after reviewing
4 the testimony of Dr's. Driben and Dr. Brownlie
5 was that they had treated Oliphant's bad
6 behaviour prior to the council as colouring or
7 impacting what happened during the council, is
8 that fair?

9 A. That was my reading of it, yes.

10 MR. FELICIAN: Your Honour, I'm not
11 sure it was characterized as bad behaviour in
12 this report.

13 THE COURT: Well, the witness has
14 answered the question. Please moved forward.

15 MS. GUIRGUIS: Thank you, Your Honour.

16 BY MS. GUIRGUIS:

17 Q. So your original opinion was
18 Oliphant's conduct prior to the council could be
19 characterized as "conduct unbecoming a
20 representative of the Crown"?

21 A. That was my original wording,
22 yes.

23 Q. And in making this
24 characterization in your original wording you
25 refer to two measures Oliphant took, his

11:12:21 1 attempts to convince Madwayosh privately prior
11:12:26 2 to the treaty?

11:12:35 3 A. Can you tell me where you're
11:12:36 4 taking that from?

11:12:38 5 Q. I believe this is around page
11:12:40 6 185.

11:13:12 7 A. Yes, I see that.

11:13:15 8 Q. And the second measure you refer
11:13:18 9 to is his efforts to not allow the Bands time to
11:13:23 10 consult among themselves after the Owen Sound
11:13:25 11 and Colpoy's Bay Bands arrive?

11:13:28 12 A. Yes, but I would further clarify
11:13:30 13 that my original comments about "conduct
11:13:36 14 unbecoming" refer to his not allowing the
11:13:40 15 Chiefs of the other bands an opportunity of
11:13:43 16 consulting either among themselves or with
11:13:46 17 Europeans.

11:13:47 18 Q. Okay.

11:13:53 19 A. Because then I say, "Oliphant
11:13:54 20 justified this tactic".

11:13:57 21 Q. All right. And Oliphant in his
11:13:58 22 report admits he prevented the bands from
11:14:02 23 consulting among themselves, correct?

11:14:03 24 A. Well, that was the effort he made
11:14:05 25 and he was successful in that effort, yes.

1 Q. And he says in his report that he
2 does this in order to prevent them from deciding
3 against his proposals before the council begins?

4 A. To oppose -- hang on a sec.
5 (Witness reading the document.)

6 I state that:

7 "Oliphant justified this tactic
8 on the grounds that 'jealousy' existed
9 between the Bands and that in the
10 recent past joint councils were
11 characterized by, 'Indians whose only
12 desire was to oppose the wishes of
13 their rivals'."

14 Q. Okay. So it is the same Chiefs
15 and principal men that Oliphant prevents from
16 speaking with one another who attended the
17 Treaty council later that night?

18 A. Yes.

19 Q. And in particular his efforts
20 were about keeping the Chiefs and principal men
21 from Owen Sound separate from Madwayosh and the
22 Chiefs from Saugeen?

23 A. That's one implication, yes.

24 Q. And Madwayosh was known to oppose
25 the Treaty?

11:15:30 1 A. Yes.

11:15:30 2 Q. And as a result of Oliphant's
11:15:33 3 efforts they did not have in fact the chance to
11:15:35 4 speak to one another in the afternoon before the
11:15:36 5 Treaty Council begins?

11:15:39 6 A. "They did not have the chance"
11:15:41 7 implies that they were prevented from deciding
11:15:44 8 to do so. They could have decided to postpone
11:15:48 9 the calling of the council.

11:15:55 10 Q. But Oliphants efforts were to
11:15:57 11 call the council right away in order to avoid
11:16:00 12 that?

11:16:01 13 A. Yes.

11:16:04 14 Q. So you would agree with me that
11:16:05 15 his conduct was to get the Saugeen Ojibwe to
11:16:08 16 agree to the surrender at Treaty Council?

11:16:10 17 A. He was interested in a successful
11:16:12 18 outcome of the surrender, yes.

11:16:19 19 Q. So in your revised opinion you've
11:16:21 20 come back, you've retreated from believing that
11:16:23 21 this conduct was unbecoming of the Crown, but
11:16:28 22 you still say that Oliphant was using tactics
11:16:32 23 calculated to obtain a measure of control over
11:16:35 24 the negotiations?

11:16:36 25 A. Yes.

11:16:37 1 Q. The conduct prior to Treaty
11:16:37 2 Council, you would agree with me that it
11:16:40 3 impacted the choices that the Saugeen Ojibwe
11:16:42 4 made during the Treaty Council, didn't it?

11:16:44 5 A. We don't know.

11:16:45 6 Q. But it was designed to do so?

11:16:48 7 A. It was designed to prevent a
11:16:51 8 united front prior to Oliphant presenting his
11:16:54 9 proposals in public council.

11:16:58 10 Q. So you'd agree with me that what
11:17:00 11 happens before the Treaty Council and what's
11:17:02 12 said before hand that's not forgotten once the
11:17:05 13 Treaty Council begins?

11:17:07 14 A. It may not be.

11:17:14 15 Q. So you don't have to agree with
11:17:17 16 me that this was the case, but if I ask you to
11:17:20 17 assume that Oliphant's conduct was intimidating
11:17:22 18 the Chiefs prior to the Treaty Council wouldn't
11:17:25 19 that affect the Treaty Council itself?

11:17:29 20 A. No evidence yes or no. You're
11:17:33 21 asking me to base this on an assumption.

11:17:35 22 Q. Yes.

11:17:36 23 A. Again, you know, my hesitancy
11:17:39 24 comes from the implication that this is a
11:17:43 25 one-sided story; and it is not my opinion that

11:17:46 1 this is a one-sided story.

11:17:49 2 We have Oliphant's report; we know
11:17:51 3 what he clearly says; what he clearly attempted
11:17:55 4 to do; why. He gives his reasons for doing
11:17:58 5 that.

11:17:59 6 What we don't know is the other side
11:18:02 7 of the story. Madwayosh and the other Chiefs
11:18:08 8 and First Nations members who were present there
11:18:10 9 that day. Why -- for example, is there any
11:18:16 10 evidence -- it would be nice to have evidence of
11:18:18 11 Madwayosh saying, no I refuse to -- I've already
11:18:22 12 expressed my dissent. I refuse to meet with you
11:18:26 13 in council tonight. First I want to be able to
11:18:28 14 speak with the other chiefs of the other First
11:18:30 15 Nations.

11:18:31 16 So, again, I just cannot see this as
11:18:38 17 only Oliphant having the only effect and
11:18:44 18 influence over the process.

11:18:47 19 We only have what he has told us and
11:18:50 20 he, in his report, admits to what his tactics
11:18:54 21 and his approach were; and we don't know the
11:19:01 22 other side of the story.

11:19:03 23 All we can gather from Oliphant's
11:19:06 24 report is that he wanted the council called
11:19:10 25 right away, the council was called right away.

11:19:19 1 But he couldn't be in the church by
11:19:21 2 himself holding the council by himself. He
11:19:23 3 needed the participation and the consent of the
11:19:29 4 First Nations' chiefs and members to participate
11:19:35 5 in that council.

11:19:36 6 Q. Right. So I understand that
11:19:39 7 point.

11:19:41 8 A. Okay.

11:19:45 9 Q. And your view of it perhaps
11:19:48 10 seeming like this is a one-sided point of view.
11:19:49 11 But what I'm trying to get clarification on is
11:19:54 12 that Oliphant's behaviour beforehand towards the
11:20:00 13 Chiefs, his words -- and we don't have to agree
11:20:05 14 on whether it was the case that he lied or
11:20:09 15 threatened, I'm not asking you to assume that.
11:20:12 16 If he did that's not simply forgotten once the
11:20:15 17 Treaty Council starts, is it?

11:20:18 18 So the idea of separating,
11:20:20 19 disaggregating the pre-Treaty Council behaviour
11:20:23 20 and the Treaty Council behaviour itself. You'd
11:20:26 21 agree with me that whatever the behaviour was
11:20:29 22 beforehand and the words spoken beforehand are
11:20:32 23 not forgotten by the Chiefs and principal men
11:20:36 24 once the Treaty Council starts?

11:20:38 25 MR. FELICANT: Your Honour, I'm

11:20:39 1 sorry, I object because the -- there's no
11:20:42 2 evidence of the underlying assumption. The
11:20:47 3 underlying assumption is there were lies and
11:20:50 4 threats. We don't have a record of a meeting
11:20:52 5 with Chief Madwayosh so we don't know what was
11:20:56 6 said.

11:21:02 7 THE COURT: Your response to that?

11:21:04 8 MS. GUIRGUIS: Your Honour, we have
11:21:05 9 Oliphant's report and we have testimony from
11:21:07 10 other expert witnesses, I think it's a matter of
11:21:11 11 argument as to what rises to the level or not.

11:21:14 12 Right now for the purpose of my I'm
11:21:17 13 just asking the witness to accept the
11:21:18 14 assumption.

11:21:23 15 MR. FELICIAN: In reply I just simply
11:21:25 16 say, Oliphant's report doesn't say anything
11:21:27 17 about lies or threats during the private meeting
11:21:30 18 with Madwayosh.

11:21:34 19 THE COURT: Well, I think Ms. Guirguis
11:21:37 20 was trying to set that issue to one side,
11:21:46 21 although having mentioned it it was somewhat
11:21:47 22 inconsistent with her later statement that she
11:21:50 23 wanted to set that issue to one side.

11:21:56 24 Skipping over a very long preamble,
11:21:58 25 Ms. Guirguis asked this question:

11:22:01 1 "Would you agree that whatever
11:22:02 2 the behaviour was beforehand, and the
11:22:07 3 words spoken beforehand, are not
11:22:11 4 forgotten by the Chiefs and principal
11:22:13 5 men once the council starts."

11:22:19 6 Dr. Reimer, I permit you to answer
11:22:20 7 that question.

11:22:23 8 THE WITNESS: Um, I would generally
11:22:25 9 agree with that, but the only intimation of what
11:22:30 10 was said to any one Chief was what Oliphant
11:22:37 11 reports about preparing Madwayosh for the
11:22:39 12 proposal he was going to make during the public
11:22:42 13 council.

11:22:44 14 So we have one Chief with whom
11:22:49 15 Oliphant -- we have the record of one Chief with
11:22:54 16 whom Oliphant spoke before the council, and we
11:22:56 17 have the explicit statement that Madwayosh left
11:23:01 18 with strong expressions of dissent.

11:23:04 19 Will that have been remembered at the
11:23:05 20 Treaty Council? In fact Oliphant's account of
11:23:08 21 the Treaty Council itself indicates that it was
11:23:11 22 not forgotten.

11:23:21 23 BY MS. GUIRGUIS:

11:23:22 24 Q. Thank you. Now let's turn to
11:23:23 25 changes you made about your conclusions about

1 Oliphant's conduct more generally.

2 We've already looked at this as the
3 change -- your original opinion puts it that
4 Oliphant's actions were:

5 "[...] conduct unbecoming of a
6 representative of the Crown instructed
7 to openly negotiate a surrender of
8 lands by First Nations."

9 And you change your opinion to say
10 instead that:

11 "Oliphant's pre-council attempts
12 to influence the proceeding as a
13 tactic calculated to acquire a measure
14 of control over the negotiation
15 process."

16 So this change, to me, as I understand
17 it, is that it's now your opinion that what
18 Oliphant did prior to the counsel was acceptable
19 behaviour for a representative of the Crown, is
20 that correct?

21 A. I'm saying that from what we know
22 of the guidelines issuing forth from the
23 Proclamation of 1763, the instructions in 1794,
24 and understandings of treaty making after that
25 time, the guidelines refer to an open council,

1 open Treaty Council and not so much to what
2 happened before the Treaty Council.

3 And that's the distinction that I'm
4 making here, without judging the goodness or the
5 wrongness or the -- I can't remember the word
6 that you used right now.

7 What Oliphant did prior to the Treaty
8 Council, in my opinion, is actually not that
9 terribly unusual. What's unusual is the way he
10 reported on it. It's not unusual for
11 Commissioners to have had private meetings with
12 Chiefs prior to the formal Treaty Council.

13 So I -- you know, I stand by my
14 opinion that we need to look at those two
15 separately, those two events as two separate
16 events.

17 Q. Okay. So putting that aside
18 about the two separate events which we've just
19 discussed.

20 A. Okay.

21 Q. The words that you deleted is:

22 "[...] conduct unbecoming of a
23 representative of the Crown."

24 And you've replaced that with:

25 "[...] as a tactic calculated to

11:26:10 1 acquire a measure of control."

11:26:13 2 And it seems to me that this change
11:26:15 3 also is now a change in your opinion that your
11:26:21 4 opinion, and that's what I'm asking for you to
11:26:24 5 confirm if I'm correct or not.

11:26:26 6 A. Okay.

11:26:26 7 Q. Your opinion now is that what
11:26:30 8 Oliphant did and how he conducted himself was
11:26:34 9 acceptable behaviour for a representative of the
11:26:36 10 Crown, is that correct?

11:26:40 11 A. Yes, that's correct. Had he
11:26:43 12 reported that during the open council -- I just
11:26:48 13 need to explain here a little bit. Because the
11:26:51 14 way I had originally written that, and I'm just
11:26:55 15 going to take a look at it.

11:26:57 16 Can you bring the exhibit up where
11:26:59 17 I've crossed things out?

11:27:01 18 Q. Yes. So that's Exhibit 4706.

11:27:14 19 A. So my original words:

11:27:16 20 "[...] conduct unbecoming of a
11:27:17 21 representative of the Crown instructed
11:27:19 22 to openly negotiate a surrender."

11:27:23 23 When I reconsidered that wording I
11:27:27 24 thought Oliphant -- it would be conduct
11:27:29 25 unbecoming if this had happened during the

11:27:31 1 actual negotiation of the surrender at council,
11:27:33 2 in the Treaty council.

11:27:37 3 He did not -- he will have been
11:27:41 4 instructed, and he will have understood that the
11:27:45 5 surrender needed to be openly negotiated in a
11:27:48 6 public council, and that's what happened.

11:27:54 7 So my wording here is, in essence,
11:27:58 8 flipping what happened prior to the council. So
11:28:05 9 by his conduct prior to council did not prevent
11:28:08 10 open negotiation of the surrender at the Treaty
11:28:09 11 Council.

11:28:10 12 So my opinion about conduct
11:28:13 13 unbecoming does not apply, in my opinion, to
11:28:18 14 what happened before the council.

11:28:24 15 Q. Okay. I think I have it.

11:28:31 16 Your Honour, it's about 11:30 the time
11:28:33 17 of our morning break. I'm wondering if you
11:28:35 18 would like to take the morning break now.

11:28:37 19 THE COURT: How are we doing on time,
11:28:39 20 counsel.

11:28:41 21 MS. GUIRGUIS: I probably have about
11:28:43 22 15 to 20 minutes left.

11:28:45 23 THE COURT: And you need to -- well
11:28:46 24 you don't need to but you will have the
11:28:49 25 opportunity on the morning break to consider

11:28:51 1 that other issue that arose this morning. It's
11:28:53 2 up to you obviously.
11:28:54 3 MS. GUIRGUIS: Thank you, Your Honour.
11:28:55 4 THE COURT: Twenty minutes.
11:28:56 5 -- RECESSED AT 11:29 A.M. --
11:28:56 6 -- RESUMED AT 11:51 A.M. --
11:51:11 7 THE COURT: Go ahead.
11:51:19 8 MS. GUIRGUIS: Thank you, Your Honour.
11:51:20 9 BY MS. GUIRGUIS:
11:51:20 10 Q. So, Dr. Reimer, I want to go back
11:51:22 11 and try that question again.
11:51:24 12 A. Okay.
11:51:28 13 Q. So do you draw the inference,
11:51:29 14 from these complaints that we have reviewed
11:51:33 15 regarding the pace of sales, revaluations and
11:51:37 16 arrears in the 1870s, that the Saugeen Ojibwe
11:51:41 17 had no other concerns related to Treaty 72?
11:51:57 18 A. It's a very broad question
11:52:00 19 because I do document other concerns such as
11:52:05 20 initial concerns about boundary -- Reserve
11:52:09 21 boundaries and settlement conditions. I'm not
11:52:14 22 sure if that's answering the question.
11:52:22 23 Q. Well, okay. Let me --
11:52:24 24 A. So you're talking specifically
11:52:26 25 the concerns that were being expressed in the

11:52:28 1 1870s. Are you asking if at that time there
11:52:32 2 were other concerns in the 1870s?

11:52:40 3 Q. I'm asking based on your review
11:52:42 4 of those concerns, in the 1870s, you draw the
11:52:45 5 inference that the SON, or the Saugeen Ojibwe,
11:52:47 6 had no other concerns related to Treaty 72?

11:52:55 7 A. I draw the inference that this
11:52:57 8 was -- these were their main concerns in the
11:53:00 9 1870s. I wonder if we're talking past each
11:53:08 10 other with respect to the word "concerns"?

11:53:15 11 Q. Well, is it possible that they
11:53:16 12 may have had other complaints at that time, that
11:53:18 13 we don't see evidence of in the documentary
11:53:21 14 record?

11:53:23 15 MR. FELICIAN: Your Honour, that
11:53:25 16 calls directly for speculation. To ask, is it
11:53:29 17 possible that they may have other concerns that
11:53:31 18 aren't documented? That's not calling for an
11:53:34 19 expert opinion.

11:53:39 20 THE COURT: Always tricky when you use
11:53:41 21 that phraseology, counsel. I'll permit the
11:53:54 22 question, I don't know how much value will be
11:53:57 23 attached to it that way.

11:53:59 24 Is it possible that there may have
11:54:01 25 been other complaints that were not documented?

11:54:05 1 THE WITNESS: Anything is possible,
11:54:06 2 but as an ethnohistorian and as a researcher my
11:54:10 3 task is to evaluate what is documented.
11:54:26 4 BY MS. GUIRGUIS:
11:54:27 5 Q. And your review and evaluation is
11:54:29 6 based on the documents that you located in the
11:54:31 7 archives, we've talked about that. It didn't
11:54:34 8 include any records of oral history evidence?
11:54:37 9 A. Not evidence presented at this
11:54:39 10 trial, no.
11:54:40 11 Q. Or other oral history evidence
11:54:41 12 from the Saugeen Ojibwe Nation?
11:54:43 13 A. Well, the oral histories about
11:54:46 14 the beaver wars, I do extensive analysis on
11:54:48 15 that.
11:54:49 16 Q. That's prior to this period?
11:54:52 17 A. That's prior to this period, yes.
11:54:53 18 Q. Okay. Thank you.
11:55:03 19 Let's return to the changes in your
11:55:05 20 opinion, so Exhibit 4706. If we go to page 4 of
11:55:18 21 Exhibit 4706 you have further changes about
11:55:23 22 Oliphant's behaviour. This is -- please scroll
11:55:32 23 up please.
11:55:36 24 Under the heading "Expert Volume 3,
11:55:45 25 page 203, second solid bullet under section

11:55:49 1 7.8.9". So here you've changed the word
11:55:53 2 "manipulative", you've crossed that out to
11:55:56 3 "managed"?

11:55:57 4 A. Correct.

11:55:58 5 Q. And you're referring to
11:55:59 6 Oliphant's conduct?

11:56:00 7 A. Yes.

11:56:01 8 Q. Now, the word "manipulate" you'd
11:56:03 9 agree that that means to handle or to control?

11:56:05 10 A. It includes that, yes.

11:56:07 11 Q. So, in effect, it's not that
11:56:08 12 different than the word "manage"?

11:56:11 13 A. No, I was -- at the time I was
11:56:13 14 reconsidering my opinion here. The word
11:56:16 15 "manipulate" struck me as having a bit of a
11:56:20 16 negative connotation that I did not intend.

11:56:26 17 Q. So would you agree that Oliphant
11:56:29 18 still set a certain tone by rushing and, let's
11:56:32 19 say, controlling the situation to get a desired
11:56:35 20 outcome?

11:56:40 21 A. By "rushing" you mean calling the
11:56:42 22 council for 7 o'clock the evening that the other
11:56:46 23 chiefs arrived? Yes, I do think that he did --
11:56:49 24 he attempted to set a tone, yes.

11:57:06 25 Q. I want to bring up S1324, this

11:57:12 1 excerpt that I have in front of me is chapter 9
11:57:12 2 of a book written by Margaret Oliphant entitled,
11:57:16 3 "Memoir of the Life of Laurence Oliphant and
11:57:16 4 Alice Oliphant, His Wife". The date of
11:57:22 5 publication is 1891. It's a source that's
11:57:25 6 referred to by other experts that have been
11:57:27 7 called in this trial. I don't -- are you
11:57:30 8 familiar with this book?

11:57:32 9 A. I'm not.

11:57:33 10 Q. You're not. I wonder, Your
11:57:42 11 Honour, if I might add this as the next exhibit,
11:57:46 12 if there's no objection from my friends?

11:57:48 13 THE COURT: Is there an objection?
11:57:50 14 Presumably it is what it appears to be.

11:57:53 15 MR. FELICIAN: It is what it appears
11:57:54 16 to be.

11:57:56 17 THE COURT: Mr. Registrar?

11:57:57 18 THE REGISTRAR: Exhibit number 4851.

11:57:59 19 EXHIBIT NO. 4851: Excerpt from
11:57:59 20 chapter 9 of a book entitled, "Memoir
11:57:59 21 of the Life of Laurence Oliphant and
11:57:59 22 Alice Oliphant, His Wife"; authored by
11:57:59 23 Margaret Oliphant; published 1891;
11:57:59 24 document number S1324.

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BY MS. GUIRGUIS:

Q. So I'll leave that there since you haven't reviewed this in your research, correct?

A. Correct.

Q. So just going back to the changes in your opinion, Exhibit 4706, with respect to the changes in your opinion you didn't cite any new documents or evidence about what happened prior to the council starting October 13th, 1854, in your changed opinion, correct?

A. No, I relied on the evidence I had already documented in my report.

Q. So you didn't have any new information or new accounts but your opinion has changed about Oliphant's attempts to influence the proceedings as not being beyond reproach?

A. I reconsidered my analysis of the evidence I had already presented.

Q. So I want to turn to one final change on page 4, and it's where you deleted the word "questionable" from the beginning of the perhaps. So here your original sentence read:

"I agree that the evidence that Oliphant employed was questionable."

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(As read.)
Or that employed questionable tactics.
And then you changed it to:
"I agree that the evidence shows
that Oliphant employed calculated
negotiation tactics."
A. Yes.
Q. And I want to take a look at how
you explain this change in your testimony. The
final transcript, if I can bring that up?
So this is from February 13th, 2020.
If you go to page 10710, and if you could look
at the time stamp 10:30:28 to the next page,
10:31:17?
A. (Witness reading the document.)
Okay.
Q. So I want to ask about the use of
the word "questionable". Would you agree with
me that the ordinary use of this word
"questionable" isn't simply "I question why", as
you suggest, it's actually usually used to
suggest something that's wrong or problematic or
subject to doubt?
A. Which is what I say in the final
paragraph.

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Q. Okay.

A. That it has a negative connotation.

Q. So in having gone through the rest of your original opinion where you said Oliphant's conduct was not beyond reproach, and manipulative, and unbecoming of the Crown, you'd agree with me that it would make more sense that you were, prior to changing your opinion, using the term "questionable", in what I describe as its ordinary use, to describe that there was something wrong or problematic about what Oliphant did?

A. Which is why I reconsidered and refined my wording.

Q. Okay. So it's not a matter of that you were never using the term "questionable" in that sense?

A. In?

Q. In the ordinary sense.

A. Negative sense?

Q. Right.

A. Yes.

Q. So I have one final issue in relation to the change of your opinion. My

1 friend, Mr. Feliciant, asked you on February 13,
2 2020, he asked you the question:

3 "Did anyone suggest to you that
4 you should change your opinion?"

5 You answered, "No".

6 What I'm wondering is, did anyone ask
7 you instead whether you had any changes that you
8 wanted to make to this section of your report,
9 without expressly stating that you should make
10 such changes?

11 A. I recall during preparation for
12 my direct examination we went through all four
13 volumes, and the four supplementary reports, and
14 discussed a whole variety of issues.

15 And I recall that when we came to
16 volume 3 we had a conversation about Oliphant's
17 conduct, and I raised the issue that some of the
18 wording was not what I would now use were I
19 writing the report today, in view of other
20 testimony, in view of reconsidering all of the
21 evidence.

22 And I was at that point advised that
23 if I wanted to make a change I could do so in
24 writing, but that it was completely up to me.

25 So I considered that opportunity and

12:03:40 1 decided that the issue was important enough to
12:03:45 2 submit something in writing.

12:03:48 3 Q. Okay. Thank you Dr. Reimer.

12:03:50 4 So I want to go back to -- well not
12:03:55 5 back to, I want to go to your CV, which is
12:03:59 6 Exhibit 4575. So from my review of your CV you
12:04:07 7 were first retained by Ontario as a consultant
12:04:09 8 in 1995, is that correct?

12:04:13 9 A. By the Ministry of the Attorney
12:04:16 10 General, yes.

12:04:17 11 Q. And from 1995 to present Ontario
12:04:19 12 has regularly retained you?

12:04:21 13 A. Yes.

12:04:25 14 Q. And from 2011 to present all of
12:04:32 15 your consultant work has been for government
12:04:33 16 parties, is that right?

12:04:35 17 A. From 2011?

12:04:37 18 Q. Yes.

12:04:37 19 A. I'm just trying to remember when
12:04:38 20 I did the Aboriginal Healing Foundation that may
12:04:42 21 have been 2010.

12:04:50 22 Q. Do you want us to scroll down?

12:04:52 23 A. Sure. Yes, that was 2010. I've
12:05:00 24 done some work for the Municipalities, I don't
12:05:03 25 think that is Government of Ontario.

12:05:04 1 Q. Yes, my question was from 2011 to
12:05:07 2 present all of your consultant work has been for
12:05:10 3 government parties?

12:05:10 4 A. Yes, okay.

12:05:11 5 Q. The majority for Ontario?

12:05:13 6 A. The majority for Ontario, yes.

12:05:15 7 Q. And from 2011 to date you've been
12:05:18 8 retained by other government parties on two
12:05:20 9 occasions, once by Canada?

12:05:23 10 A. Yes.

12:05:24 11 Q. And once by the Municipal
12:05:25 12 defendants in this litigation?

12:05:27 13 A. Yes.

12:05:27 14 Q. And in terms of your experience
12:05:31 15 as an expert witness in litigation you've always
12:05:33 16 worked for government parties?

12:05:40 17 MR. FELICIAN: Your Honour, I object
12:05:41 18 because of the phrase "always worked for
12:05:44 19 government parties".

12:05:47 20 Experts are intended to be objective
12:05:48 21 and they're not working for any particular
12:05:52 22 party. I suppose one can say "retained" by
12:05:56 23 government parties, but "working for" suggests
12:05:59 24 something else.

12:06:06 25 MS. GUIRGUIS: I can rephrase.

12:06:07 1 BY MS. GUIRGUIS:

12:06:08 2 Q. And in terms of your experience
12:06:09 3 as an expert witness in litigation you have
12:06:10 4 always been retained by government parties?

12:06:13 5 A. Those were the opportunities that
12:06:15 6 came my way, yes.

12:06:16 7 Q. So you've never been retained by
12:06:18 8 an Indigenous group to testify as an expert
12:06:22 9 witness?

12:06:22 10 A. I've not had that opportunity,
12:06:24 11 no.

12:06:25 12 MS. GUIRGUIS: If I could have a
12:06:26 13 moment, Your Honour?

12:06:31 14 BY MS. GUIRGUIS:

12:06:31 15 Q. So, Dr. Reimer, those are all my
12:06:33 16 questions for you.

12:06:34 17 MS. GUIRGUIS: Your Honour, I have one
12:06:35 18 administrative matter that my colleague wanted
12:06:38 19 me to bring to your attention, is that on
12:06:41 20 consent of the parties there is a list of
12:06:43 21 exhibits to be added on consent. We've provided
12:06:47 22 a list to the Registrar, which is SC2033.

12:07:03 23 THE COURT: All right. Mr. Registrar.

12:07:06 24 THE REGISTRAR: Yes, Your Honour.

12:07:07 25 THE COURT: Would you, for the record,

1 read each document number and the assigned
2 exhibit number without feeling the need to read
3 the rest of the document, because right now
4 we're going to mark the rest -- or the entire
5 document as a lettered exhibit. And what is the
6 lettered Exhibit.

7 THE REGISTRAR: Lettered Exhibit B-4.

8 EXHIBIT NO. B-4: List of exhibits to
9 be entered, listed by document number
10 and date.

11 THE COURT: Please go ahead.

12 THE REGISTRAR: Document number SC0489
13 is Exhibit number 4852.

14 EXHIBIT NO. 4852: Nawash Band minutes
15 of meeting.

16 THE REGISTRAR: Document number SC0508
17 is Exhibit number 4853.

18 EXHIBIT NO. 4853: Memo from Butchart
19 to Department of Citizenship and
20 immigration.

21 THE REGISTRAR: Document number SC0588
22 is Exhibit number 4854.

23 EXHIBIT NO. 4854: Letter from
24 Bartlett to Hegler.

25 THE REGISTRAR: Document number SC0595

1 is Exhibit number 4855.

2 EXHIBIT NO. 4855: Correspondence

3 between T.M. Daly and James Masson,

4 MP.

5 THE REGISTRAR: Document number SC0608

6 is Exhibit number 4856.

7 EXHIBIT NO. 4856: Correspondence from

8 W.M. Smith to Lawrence Vankoughnet.

9 THE REGISTRAR: Document number SC1907

10 is Exhibit number 4857.

11 EXHIBIT NO. 4857: Transcript of

12 Exhibit 1455.

13 THE REGISTRAR: Document number SC1908

14 is Exhibit number 4858.

15 EXHIBIT NO. 4858: Partial transcript

16 of Exhibit 1459.

17 THE REGISTRAR: Document number SC1910

18 is Exhibit number 4859.

19 EXHIBIT NO. 4859: Transcript and

20 handwritten copy of correspondence

21 from Bartlett to the Indian Chiefs &

22 Warriors, Cape Croker.

23 THE REGISTRAR: Document number SC1911

24 is Exhibit number 4860.

25 EXHIBIT NO. 4860: Partial transcript

12:07:38 1 of Exhibit 2615.

12:07:38 2 THE REGISTRAR: Document number SC1912

12:07:38 3 is Exhibit number 4861.

12:07:38 4 EXHIBIT NO. 4861: Partial transcript

12:07:38 5 of Exhibit 2630.

12:07:38 6 THE REGISTRAR: Document number SC1914

12:07:38 7 is Exhibit number 4862.

12:07:38 8 EXHIBIT NO. 4862: Transcript and

12:07:38 9 handwritten copy of correspondence

12:07:38 10 from Jermyn (Indian Agent) to

12:07:38 11 Vankoughnet.

12:07:38 12 THE REGISTRAR: Document number SC1916

12:07:38 13 is Exhibit number 4863.

12:07:38 14 EXHIBIT NO. 4863: Excerpt from

12:07:38 15 Sessional Papers No. 15, 1888.

12:07:38 16 THE REGISTRAR: Document number SC1936

12:07:38 17 is Exhibit number 4864.

12:07:38 18 EXHIBIT NO. 4864: Transcript of

12:07:38 19 Exhibit 3089.

12:07:38 20 THE REGISTRAR: Document number SC1940

12:07:38 21 is Exhibit number 4865.

12:08:58 22 EXHIBIT NO. 4865: Partial transcript

12:08:58 23 of SC0588.

12:09:00 24 THE COURT: All right.

12:09:00 25 MS. GUIRGUIS: Thank you, Your Honour.

12:09:02 1 BY MS. GUIRGUIS:

12:09:02 2 Q. Thank you, Dr. Reimer?

12:09:03 3 A. Thank you.

12:09:05 4 THE COURT: Which counsel is doing
12:09:07 5 re-examination?

12:09:10 6 MR. FELICIANANT: I am.

12:09:12 7 THE COURT: Mr. Feliciant.

12:09:15 8 RE-EXAMINATION BY MR. FELICIANANT:

12:09:18 9 Q. Good afternoon, Dr. Reimer.

12:09:19 10 A. Good afternoon.

12:09:22 11 Q. I have no questions, Your Honour,
12:09:23 12 in re-examination with respect to Canada's
12:09:26 13 cross-examination.

12:09:30 14 I'll start, Dr. Reimer, with a couple
12:09:33 15 of questions around transcript clarifications.
12:09:38 16 Can we bring up, please, the rough draft
12:09:42 17 transcript of March 3rd, page 57, line 2?

12:10:00 18 MR. FELICIANANT: I think, Your Honour,
12:10:01 19 my enthusiasm got the best of me. We're still
12:10:04 20 connecting the technology.

12:10:20 21 THE COURT: Any particular exhibits I
12:10:21 22 should have handy while we're waiting?

12:10:31 23 MR. FELICIANANT: Primarily it will be
12:10:32 24 volume 3, and there may be a question regarding
12:10:37 25 volume 1, but mostly volume 3, the others will

1 be displayed on the screen, I hope.

2 THE COURT: I can't recall whether
3 anyone has mentioned -- Ms. Guirguis tried to do
4 it to this witness, that there's a distinction
5 between the rough transcripts and the final one.
6 We have very good court reporters but rough
7 means rough.

8 I've certainly found as I've read
9 transcripts that they don't necessarily, in
10 rough form, state what I think I said. So bear
11 that in mind when you look at these, Dr. Reimer.

12 BY MR. FELICIANANT:

13 Q. So we're bringing up the rough
14 draft transcript of March 3rd and we're at page
15 57, line 2 is your answer. Now, if we can just
16 scroll to the prior page so you can recall the
17 context. The question is:

18 "QUESTION: I have trouble putting
19 that together with subsisting
20 primarily on agriculture. Can you
21 explain how you see those."

22 And your answer, if you could just
23 read your answer and let me know if it actually
24 reflects what you were intending to say? And I
25 would draw your attention particularly to the

12:12:18 1 words, "[...] doesn't mean you also diversify".

12:12:23 2 A. I'm just wondering could we go up
12:12:25 3 a little bit? I'm trying to recall the subject
12:12:28 4 matter of this. Okay. You can go back down.

12:12:41 5 (Witness reading the document.)

12:12:43 6 THE COURT: Just while the witness is
12:12:44 7 doing that, Mr. Feliciant, and anticipating you
12:12:47 8 have more questions like this, I think it's more
12:12:50 9 appropriate to ask whether something needs to be
12:12:54 10 clarified than to direct the witness to --
12:12:58 11 perhaps you can do it. There was no objection.
12:13:00 12 But I'm going to ask that you try to be cautious
12:13:03 13 about that.

12:13:04 14 I see why you're asking it on this
12:13:07 15 answer, but we'll see what the witness says.

12:13:12 16 Please go ahead, Dr. Reimer.

12:13:17 17 THE WITNESS: So you may correct me if
12:13:20 18 I'm wrong, but I see that where as on a previous
12:13:25 19 occasion I used a double negative here I did
12:13:27 20 not.

12:13:29 21 So I suppose what I meant to say was,
12:13:32 22 just because you relied heavily on agriculture
12:13:37 23 does not mean that you do not also diversify
12:13:40 24 your resource economy by fishing and/or hunting.

25

1 BY MR. FELICIANANT:

2 Q. I actually have one more question
3 along these lines. If we can go to the rough
4 draft transcript of March 9th, 2020, and page
5 141, line 24. And if you can scroll up a bit so
6 you can see the -- sorry, scroll down is a
7 better way to put it. Stop.

8 If you can just read that paragraph
9 and advise us whether anything requires
10 amendment or clarification?

11 A. (Witness reading the document.)

12 Pardon me, but the highlighted area is
13 an incomplete sentence. So I'm -- can you tell
14 me what you want me to read?

15 Q. You can ignore -- well start
16 with, "I think Anderson went with --"

17 MS. GUIRGUIS: Your Honour, I'm just
18 wondering if she can see the question and then
19 provide her view as to whether anything needs
20 clarification?

21 THE COURT: Yes, scroll up to the
22 question, which may take a bit of scrolling, and
23 then once you finish reading it, Dr. Reimer, why
24 don't you pause and we'll get you a question.

25 THE WITNESS: (Witness reading the

1 document.)

2 Yes, I see now. It should not be
3 Anderson went with a different kind of attitude,
4 it should be I think Oliphant went with a
5 different kind of attitude.

6 BY MR. FELICIANANT:

7 Q. Thank you.

8 Now, if we can go to the rough draft
9 transcript of March 3rd, 2020, page 29, line --

10 MS. GUIRGUIS: Your Honour, my concern
11 with this is I don't want to keep rising, but my
12 concern with the highlighting it is quite
13 directive in terms of what my friend is asking
14 Dr. Reimer to change in her answer.

15 THE COURT: Well, I appreciate you
16 making note of that, in this instance it's the
17 entire answer so it's not the best example, but
18 we'll see if it comes up again.

19 MR. FELICIANANT: This is a
20 clarification question but not a transcript
21 clarification question. This is a question that
22 will follow from that question and answer.

23 THE COURT: I take note of your
24 concerns, Ms. Guirguis.

25 MS. GUIRGUIS: Thank you.

12:17:15 1 THE COURT: Please go ahead,
12:17:16 2 Mr. Feliciant.
12:17:17 3 BY MR. FELICIANANT:
12:17:18 4 Q. So Ms. Guirguis asked -- I
12:17:23 5 believe this was Mr. Townshend was asking you at
12:17:32 6 that time, this is March 3, 2020, if you can see
12:17:35 7 the question read that portion of the question
12:17:38 8 please.
12:17:38 9 A. (Witness reading the document.)
12:17:39 10 Okay.
12:17:54 11 Q. Mr. Townshend is asking you about
12:17:57 12 a passage in your volume 1 report at page 159.
12:18:01 13 Mr. Townshend then took you to one of the
12:18:07 14 sources you cited and asked you a question at
12:18:10 15 page 31. So if we can go to page 31 please,
12:18:13 16 line 1 of the transcript?
12:18:30 17 And you'll see the question and
12:18:32 18 answer, if you could just read the question and
12:18:35 19 answer starting at line 1 of page 31?
12:18:38 20 A. (Witness reading the document.)
12:19:01 21 Okay.
12:19:08 22 Q. The question -- I'm going to be
12:19:09 23 asking a question about specifically the part of
12:19:09 24 it is I asked you to review them. And my
12:19:12 25 question is going to be, it doesn't mention a

12:19:14 1 number of words.

12:19:14 2 So if we can pull up the source now
12:19:16 3 that is being referred to at S1644 please? And
12:19:20 4 if we can go to page 151? And if we can start
12:19:31 5 to blow that up a little bit?

12:20:27 6 MS. GUIRGUIS: Your Honour, just going
12:20:28 7 to flag the issue. We're flipping
12:20:31 8 back-and-forth because we didn't get a chance to
12:20:33 9 look at the precise excerpt, but I think it's
12:20:35 10 necessary to go back and look at the precise
12:20:38 11 context of what the witness was referring to as
12:20:41 12 she made that answer. Whether -- in which
12:20:44 13 location.

12:20:51 14 THE COURT: I was waiting until the
12:20:52 15 technical problems had been resolved.

12:20:57 16 MR. FELICIAN: It appears it's large
12:20:59 17 enough.

12:20:59 18 THE COURT: That's better.

12:21:01 19 Mr. Guirguis, the context wasn't reflected in
12:21:03 20 the question and answer?

12:21:07 21 MS. GUIRGUIS: So it's the context of
12:21:08 22 the source and that quote is not reflected. If
12:21:16 23 you could just look at the previous page.

12:21:19 24 THE COURT: Okay. Scroll to the
12:21:20 25 previous page.

12:21:30 1 What is your question going to be and
12:21:31 2 I hope it is a question about clarification and
12:21:34 3 explanation and not something else.
12:21:35 4 MR. FELICIANANT: No it's a --
12:21:37 5 BY MR. FELICIANANT:
12:21:39 6 Q. I would ask that that witness
12:21:41 7 read the paragraph on to page 151, and the
12:21:44 8 question is going to be, Mr. Townshend suggested
12:21:46 9 there were no number of warriors mentioned. Can
12:21:50 10 you explain the number -- warrior numbers
12:21:53 11 referenced at the top of the page? So that's
12:21:54 12 the clarification.
12:22:11 13 A. (Witness reading the document.)
12:22:11 14 Okay. What's the question?
12:22:22 15 Q. The question is, can you explain
12:22:25 16 the warrior numbers referenced at the top of the
12:22:27 17 page?
12:22:36 18 A. Well, he -- he's assuring Brock,
12:22:42 19 Brock is being assured of the services of 250 to
12:22:46 20 300 Indians, 79 of whom he sent at once to
12:22:50 21 Amherstburg.
12:22:51 22 I'm not clear on what it is that needs
12:22:55 23 to be clarified.
12:22:57 24 THE COURT: That's okay, Dr. Reimer,
12:22:58 25 because that's Mr. Feliciant's job not yours.

12:23:02 1 Please go ahead.

12:23:10 2 BY MR. FELICIANANT:

12:23:10 3 Q. Does this passage in any way
12:23:12 4 assist you with the answer you gave -- does this
12:23:22 5 answer in any way have a bearing on the answer
12:23:25 6 you gave in response to Mr. Townshend asking you
12:23:27 7 about the number of warriors, and your answer
12:23:29 8 that the number "200" did not appear in this
12:23:32 9 document? Does this have any bearing on that?

12:23:37 10 THE COURT: Ms. Guirguis.

12:23:38 11 MS. GUIRGUIS: Your Honour, that's --
12:23:39 12 I don't think a proper matter for redirect.
12:23:42 13 It's taking the witness to sources to revise her
12:23:48 14 evidence that she's given in cross-examination.

12:23:52 15 THE COURT: Well, there's nothing
12:23:53 16 wrong in re-examination if -- I'm not saying
12:23:56 17 Mr. Townshend did this, but if counsel said
12:23:59 18 there's nothing that says "X" and in fact there
12:24:01 19 is something then counsel's submission can be
12:24:05 20 addressed in re-examination.

12:24:11 21 I might quarrel a little bit with the
12:24:14 22 way Mr. Feliciant is doing it, but I will permit
12:24:16 23 him to show -- in the example I gave you, if
12:24:22 24 that's the case.

12:24:24 25 MS. GUIRGUIS: Okay.

12:24:31 1 THE COURT: It's more customary, I
12:24:32 2 think, to phrase it slightly differently. But
12:24:35 3 this is an expert witness and I think she
12:24:37 4 understands the question. That's not your
12:24:40 5 objection, I realize. I'm just stopping short
12:24:43 6 of telling Mr. Feliciant how to do it.

12:24:45 7 MS. GUIRGUIS: Thank you, Your Honour.

12:24:48 8 THE WITNESS: I see the numbers at the
12:24:50 9 top of this page, pages 151 and 152 were the
12:24:55 10 pages that I cited on page 159 of my report
12:24:59 11 where I reference:

12:25:00 12 "[...] the British force and
12:25:02 13 about 200 allied Indians had assembled
12:25:07 14 at St. Joseph."

12:25:08 15 It doesn't, to me, answer my question
12:25:12 16 about my source of the 200 allied Indians. And
12:25:16 17 I believe in my response to Mr. Townshend was
12:25:19 18 that I needed to go back to my sources to
12:25:22 19 determine where I had -- where I had read about
12:25:28 20 this particular number of allied Indians at
12:25:33 21 St. Joseph seizing Michilimackinac.

12:25:37 22 I needed to be back to my sources, all
12:25:40 23 of the sources I had reviewed, because it may in
12:25:42 24 fact in my report not be completely or
12:25:47 25 accurately sourced only from Stanley's pages 151

12:25:52 1 to 152. I'm not sure quite how else to clarify
12:25:57 2 that.

12:25:57 3 BY MR. FELICIANANT:

12:25:58 4 Q. All right. Thank you.

12:26:03 5 Can we go to the transcript, rough
12:26:05 6 draft March 3rd, please, line 20?

12:26:16 7 THE COURT: Page?

12:26:18 8 BY MR. FELICIANANT:

12:26:19 9 Q. Page 91, and that's line 20. So
12:26:25 10 the question and answer is -- if you could read
12:26:29 11 that please?

12:26:29 12 A. (Witness reading the document.)

12:26:30 13 Okay.

12:26:36 14 Q. Now, do you recall Mr. Townshend
12:26:37 15 asking you questions about "Sacred Feathers", a
12:26:41 16 biography of Peter Jones, do you recall that?

12:26:47 17 A. I don't recall it.

12:26:59 18 Q. Perhaps we can go to page 91?
12:27:01 19 I'll ask it differently then.

12:27:10 20 What councils did you think
12:27:13 21 Mr. Townshend was referring to when he asked
12:27:21 22 that question?

12:27:22 23 A. General Indian councils.

12:27:27 24 Q. Any particular ones?

12:27:28 25 A. I would need to go further up in

12:27:30 1 the transcript to see if we're discussing
12:27:32 2 Specific time period of general Indian
12:27:35 3 councils.

12:27:51 4 If I recall correctly we were just
12:27:53 5 speaking generally about the general councils
12:27:55 6 that possibly I had documented in my
12:27:58 7 supplementary report on general Indian councils.

12:28:10 8 Q. I would like to now go to page
12:28:14 9 104 of the same rough draft transcript, and this
12:28:21 10 is line 6. And you'll see the question which
12:28:29 11 asks -- refers you to Exhibit 1322?

12:28:35 12 A. Okay.

12:28:36 13 Q. Now, if we can go to page 107,
12:28:41 14 line 16, he asks you:

12:28:52 15 "QUESTION: Yes, but we already talked
12:28:54 16 about the leadership of this
12:28:55 17 particular General council was fairly
12:28:58 18 dominantly Methodist."

12:29:00 19 Do you see that?

12:29:00 20 A. Yes.

12:29:12 21 Q. Now can we go to Exhibit 1322,
12:29:14 22 and go to page 3 of the transcript? And if you
12:29:26 23 could read the highlighted portion to yourself
12:29:29 24 please?

12:29:30 25 A. (Witness reading the document.)

12:29:37 1 MS. GUIRGUIS: Your Honour, I'm
12:29:38 2 concerned again with this being very leading in
12:29:41 3 terms of redirect.

12:29:47 4 MR. FELICIANANT: Your Honour, I have to
12:29:47 5 ask the question first. The highlighted portion
12:29:50 6 is not directing the answer. It's the passage
12:29:55 7 that I would have orally directed her to read
12:29:57 8 and I was going to ask her a question about it,
12:29:58 9 which is different. That's not the same.

12:30:01 10 THE COURT: I think Ms. Guirguis is
12:30:05 11 just trying to make sure she doesn't miss her
12:30:07 12 mark, but let's wait for the question.

12:30:12 13 MS. GUIRGUIS: Okay.

12:30:13 14 BY MR. FELICIANANT:

12:30:14 15 Q. Can you tell us what the role of
12:30:16 16 a presiding Chief is at a council?

12:30:22 17 A. It would be similar to a
12:30:26 18 chairperson of a meeting. He would preside over
12:30:32 19 to organization, conduct of the council.

12:30:42 20 I would suspect the chairperson would,
12:30:46 21 or the presiding chief would be responsible to
12:30:50 22 make sure the council was orderly. So akin to a
12:30:58 23 chairperson of a meeting or a council.

12:31:03 24 Q. And what was the role of the
12:31:04 25 secretary?

12:31:05 1 A. To keep the minutes.

12:31:12 2 Q. And if we can go back to the

12:31:15 3 first page of these minutes? How does -- how

12:31:27 4 does the role of chairman and secretary compare

12:31:30 5 to the roles of the people listed on page 1 that

12:31:33 6 attended the council?

12:31:38 7 A. How does it compare? I'll try to

12:31:42 8 answer the question, if I've misunderstood then

12:31:44 9 you will let me know.

12:31:45 10 The -- as I state in my supplementary

12:31:49 11 report on general Indian councils, generally

12:31:52 12 the --

12:31:57 13 MS. GUIRGUIS: Sorry, Your Honour, to

12:31:58 14 interrupt, be I'm not clear on how this arises

12:32:01 15 from the questions that Mr. Townshend asked the

12:32:06 16 witness on cross-examination?

12:32:10 17 MR. FELICIAN: The question, if I

12:32:11 18 recall it, was, we can go back to the question.

12:32:17 19 Perhaps that's the best idea. Can you go back

12:32:20 20 to page 107, line 16 of the transcript please?

12:32:32 21 Yes. There's the question.

12:32:34 22 "QUESTION: But we already talked

12:32:35 23 about the leadership of this

12:32:36 24 particular general council was fairly

12:32:39 25 dominantly Methodist."

1 So my questions arise from that
2 question to determine what the role of the
3 leadership was, and how that would have worked
4 with the roles of other people at the council to
5 address the suggestion that somehow being fairly
6 dominantly Methodist had an influence. That's
7 the purpose of the clarification questions.

8 THE COURT: The thing is,
9 Mr. Feliciant, and I said this enough times in
10 this trial to other counsel, it's the role of
11 re-examination is to facilitate explanation and
12 clarification.

13 If you can ask this witness questions
14 that fall within that role then that's one
15 thing; but you, like almost every other person
16 in the room, seem disinclined to use those
17 verbs.

18 So this isn't about you, it's about
19 the role of re-examination. So I am going to
20 ask you to limit yourself, that does not mean
21 that you can't embark on a topic, it just means
22 you have to stay within that -- if you have some
23 other submission about the role of
24 re-examination I'll hear from you. But when it
25 has come up in the past no counsel has stood up

1 and said, Your Honour, you're wrong about the
2 role of re-examination.

3 So can you embark on this with that in
4 mind, counsel? It doesn't -- anyway, I think
5 I've said enough about it.

6 BY MR. FELICIANANT:

7 Q. I'll move on now.

8 Mr. Townshend asked you questions
9 about the linguist, Professor Valentine who
10 testified in this trial. He asked you to assume
11 Professor Valentine made certain findings and
12 then asked you if that was the kind of evidence
13 you should take into account. Do you recall
14 that?

15 A. Yes.

16 Q. Did you read Professor
17 Valentine's report?

18 A. Yes.

19 Q. Did you read the transcript of
20 his evidence?

21 A. No, I don't recall if -- I don't
22 recall whether I did or no.

23 Q. Was there anything in his report
24 that would alter your conclusions in your report
25 in any way?

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12:36:58 25

A. No.

Q. My friend also asked you questions about the Macauley report. If we could pull up the March 5th, 2020, rough draft transcript please? Page 86, line 23. The question starts at line 23 and goes on to the next page. So if you can let me know when you're ready to scroll down if it's necessary?

A. (Witness reading the document.)
Okay.

Q. Now, your answer was:
"ANSWER: Not in any formal way [...]"
What does that mean to say, "Not in any formal way"?

A. That unlike the Treaty 45 text in relation to Manitoulin Island in 1836, there are -- there's wording in that text that is explicit with respect to the island becoming a general refuge, or general Reserve for Indians coming from other parts of Canada and the US.

Treaty 45 1/2, which I've described as a continuation, in a sense, of 45 does not formalize the notion of a general refuge or Reserve in the same explicit terms.

But in my opinion there was an

12:37:00 1 implicit understanding that becomes evident in
12:37:05 2 the documented record after 1836, that it was
12:37:11 3 understood in a similar way. So it was not
12:37:19 4 formalized as, say, a condition of 45 1/2, it is
12:37:23 5 implied, and the historical record after 1836
12:37:31 6 supports that implication.

12:37:39 7 Q. And do you recall from the
12:37:40 8 Macauley report whether that report discusses a
12:37:45 9 general Reserve, a common Reserve for Indians to
12:37:48 10 come to Saugeen, in a less formal way than the
12:37:53 11 question is phrased here?

12:37:56 12 A. I would need to review the
12:37:58 13 Macauley report to answer that.

12:38:01 14 Q. If we can pull up Exhibit 1297,
12:38:04 15 that is the Macauley report. And if we can go
12:38:22 16 to page 46?

12:38:24 17 MS. GUIRGUIS: Your Honour, with
12:38:24 18 respect to the previous question, again, I would
12:38:26 19 object because I don't think that's clarifying.

12:38:30 20 THE COURT: Well, the previous
12:38:31 21 question was answered. Mr. Feliciant was having
12:38:33 22 this difficulty with your questions this morning
12:38:36 23 too. I thought you were rising on the last
12:38:50 24 question.

12:38:52 25 MS. GUIRGUIS: I was.

12:38:52 1 THE COURT: I thought you meant the
12:38:53 2 one previous to this question.
12:38:55 3 MS. GUIRGUIS: No.
12:38:56 4 THE COURT: Tell me what your objection
12:38:58 5 is to the last question.
12:39:00 6 MS. GUIRGUIS: The last question is
12:39:01 7 whether she recalls from the Macauley report the
12:39:04 8 discussion of a general Reserve.
12:39:06 9 THE COURT: That was also answered,
12:39:07 10 that question, she said she'd have to look it
12:39:09 11 over I think.
12:39:16 12 MR. FELICIAN: And to be transparent,
12:39:16 13 Your Honour, now my plan is to show her some
12:39:17 14 passages from the Macauley report and ask her if
12:39:21 15 that would impact her answer.
12:39:23 16 THE COURT: Ms. Guirguis.
12:39:31 17 MS. GUIRGUIS: Your Honour, I would
12:39:32 18 object to that. Those are leading questions in
12:39:34 19 the way that they're framed, and I don't think
12:39:36 20 it's necessarily a proper matter for
12:39:38 21 re-examination.
12:39:39 22 She's been asked about the Macauley
12:39:41 23 report and she's provided an answer. To take
12:39:44 24 her to excerpts of the document to rephrase her
12:39:47 25 answer, I would submit, does not -- is not

12:39:52 1 proper re-examination.

12:39:55 2 THE COURT: Well, amongst the
12:39:57 3 objections is an objection that this next step
12:40:02 4 is not proper re-examination.

12:40:09 5 She has explained, I wish you would
12:40:11 6 use the right verb, but it was in the nature of
12:40:14 7 an explanation. She has explained her answer.

12:40:16 8 And how does going to this report, for
12:40:19 9 whatever it does say is already in evidence, how
12:40:21 10 is that re-examination?

12:40:29 11 MR. FELICIAN: I can move on, Your
12:40:30 12 Honour.

12:40:31 13 THE COURT: All right.

12:40:43 14 BY MR. FELICIAN:

12:40:43 15 Q. Can we go to March 5th, 2020,
12:40:48 16 rough draft transcript at page 145, line 10?
12:41:03 17 The question -- if you could just read the
12:41:04 18 question:

12:41:07 19 "QUESTION: Okay. So your conclusion
12:41:09 20 at volume 3 that we've looked at
12:41:13 21 [...]."
12:41:14 22 If you could just read that question
12:41:16 23 please?

12:41:16 24 A. (Witness reading the document.)
12:41:27 25 Okay.

12:41:30 1 Q. Could we now go to where you
12:41:32 2 discuss this at volume 3 of your report, Exhibit
12:41:37 3 4703, at page 111. And can you read the
12:41:54 4 sentence starting, "In Anderson's view [...]"
12:42:00 5 A. (Witness reading the document.)
12:42:00 6 Okay.
12:42:02 7 THE COURT: Where is it?
12:42:04 8 BY MR. FELICIANANT:
12:42:04 9 Q. The sentence starting at the top
12:42:06 10 of page 111, starting with --
12:42:09 11 THE COURT: I've got it now.
12:42:17 12 THE WITNESS: Yes, I've read it.
12:42:19 13 BY MR. FELICIANANT:
12:42:19 14 Q. Whose conclusion was it you are
12:42:21 15 discussing on this page?
12:42:22 16 A. Anderson's.
12:42:29 17 Q. Is it your conclusion?
12:42:30 18 A. No.
12:42:46 19 Q. I'm going to move on now to
12:42:51 20 discuss free grants. Ms. Guirguis asked you
12:42:55 21 questions about Exhibit 4833, which is an Order
12:42:58 22 in Council dated November 2nd, 1846, which is
12:43:03 23 Exhibit 4833, which addressed settlers on Owen
12:43:07 24 Sound lands that were not yet open for sale.
12:43:10 25 Now, if we can go to March 5th, rough

1 draft transcript, page 159, line 16, you'll see
2 the question where Ms. Guirguis asked you about
3 the Order in Council, do you see that?

4 A. I do. Can you remind me the date
5 of the Order in Council being discussed here?

6 Q. This is November 2nd, 1846.

7 A. Okay.

8 Q. Page 150 of the March 5th
9 transcript, lines 2 to 25, Ms. Guirguis asked
10 you to confirm that the settlers were there
11 prior to paying for the land and prior to the
12 Order in Council. Do you see those questions
13 and answers? And I'll give you a chance to read
14 them.

15 A. (Witness reading the document.)

16 Okay.

17 Q. Having read these -- sorry, can
18 you explain how it happened or how it was that
19 there were settlers on the lands in 1841 prior
20 to paying for the lands, and five years prior to
21 the OIC?

22 A. Is it possible to remind me what
23 lands we're talking about?

24 Q. If we can go to the Order in
25 Council at Exhibit 4833? And perhaps you can

12:45:27 1 read the -- that document and it will refresh
12:45:31 2 your memory.

12:46:03 3 A. (Witness reading the document.)

12:46:04 4 Okay. If we can go back to the
12:46:07 5 transcript?

12:46:09 6 (Witness reading the document.)

12:46:33 7 And your question, if you could repeat
12:46:50 8 that, please?

12:46:51 9 Q. How was it that settlers were on
12:46:54 10 the lands in 1841 prior to paying for the lands
12:47:00 11 and five years prior to the OIC?

12:47:16 12 A. I'm pausing because I'm not
12:47:19 13 completely sure I understand the question.

12:47:23 14 If you're asking for context in terms
12:47:27 15 of building of colonization roads and settling
12:47:32 16 the Queen's bush, certainly the Order in Council
12:47:38 17 that we've just read demonstrates that there was
12:47:42 18 some kind of understanding; that settlers could
12:47:47 19 take up lands in those areas and that
12:47:51 20 arrangements would be made after the fact for
12:47:54 21 them to be able to purchase those lands from the
12:48:03 22 Crown.

12:48:07 23 Q. And are you familiar with any of
12:48:08 24 the details of Crown land policies at the time
12:48:11 25 that would bear upon this?

12:48:15 1 A. Primarily historical accounts of
12:48:22 2 colonization roads, of the granting of lots
12:48:28 3 along the colonization roads in the 1850s. But
12:48:32 4 it's more of a general knowledge taken from some
12:48:39 5 secondary and some primary sources as opposed to
12:48:42 6 the specifics of the lands being directed at in
12:48:53 7 this Order in Council.

12:48:57 8 Q. Now, moving on, if we could bring
12:49:01 9 up Exhibit 1659, please? In cross-examination
12:49:25 10 you were taken to this exhibit. And it reads:

12:49:32 11 "Each family was asked separately
12:49:35 12 whether they were for the west or Owen
12:49:38 13 Sound. 51 families were for the west,
12:49:43 14 9 were absent, 2 remained at the
12:49:46 15 Credit, 1 removed to Owen Sound. 63
12:49:50 16 total."

12:49:59 17 So if we can go to the rough draft
12:50:01 18 transcript, and we'll come back to this in a
12:50:03 19 moment, at March 10, page 152, line 21. And if
12:50:19 20 we can go up so you can see the question that
12:50:25 21 starts at line 7.? And I'll give you an
12:50:29 22 opportunity to read that and tell us when to
12:50:31 23 scroll down?

12:50:33 24 A. (Witness reading the document.)

12:50:34 25 Okay.

12:51:03 1 Q. So if you can keep in your mind
12:51:05 2 part of that question that says:
12:51:07 3 "[...] in consideration of a move
12:51:10 4 not to Owen Sound."
12:51:13 5 If we can go back to Exhibit 1659
12:51:15 6 please?
12:51:25 7 So when you say a consideration of a
12:51:35 8 move to -- not to Owen Sound, in your last
12:51:41 9 answer, what does that mean in the context of
12:52:00 10 the statement in this document:
12:52:05 11 "Each family was asked separately
12:52:07 12 whether they were for the west or Owen
12:52:08 13 Sound."
12:52:11 14 A. My original reading --
12:52:12 15 MS. GUIRGUIS: Sorry, Your Honour, I'm
12:52:13 16 not clear on how this is a clarification
12:52:16 17 explanation of the answer that she gave in
12:52:19 18 cross-examination?
12:52:25 19 THE COURT: Well, despite
12:52:26 20 Mr. Feliciant's inexplicable refusal to use the
12:52:30 21 correct verbs, which I don't understand, the
12:52:33 22 question is to explain what this witness meant
12:52:36 23 by her answer, then that is re-examination. Is
12:52:44 24 that the question, Mr. Feliciant --
12:52:45 25 MR. FELICIAN: Yes.

12:52:46 1 THE COURT: -- despite the way you put
12:52:48 2 it?

12:52:49 3 BY MR. FELICIANANT:

12:52:50 4 Q. Yes. Can you explain your answer
12:52:52 5 in reference to this document?

12:52:59 6 THE COURT: Could you explain your
12:52:59 7 answer in reference to this document is the
12:53:01 8 question, Mr. Reimer.

12:53:02 9 THE WITNESS: Yes, I can.

12:53:04 10 When I originally read this document
12:53:07 11 I -- and I agree that mistakenly my original
12:53:12 12 interpretation was for the west or Owen Sound,
12:53:15 13 meaning the west was Owen Sound. Owen Sound is
12:53:20 14 west of the credit.

12:53:21 15 So I read the west and Owen Sound,
12:53:24 16 Owen Sound being a specific -- specifying where
12:53:27 17 in the west. And so my reading of this document
12:53:31 18 was that the majority of families were for the
12:53:35 19 west or Owen Sound.

12:53:37 20 The document that came after, I think
12:53:40 21 it was from Anderson, who clarifies that these
12:53:43 22 are two different places, then led me to retract
12:53:51 23 the notion then how do we estimate the number of
12:53:54 24 families that might have been willing to move to
12:53:56 25 Owen Sound, and then use that as -- be able to

1 infer from that an acreage of land that the Owen
2 Sound and Saugeen First Nations might want to
3 set aside for them.

4 And so it's because of the
5 documentation that further explains the
6 distinction between the west and Owen Sound that
7 makes this document less relevant to the setting
8 aside of the tract at Owen Sound.

9 What it does, however, still do is it
10 does provide us some documentation on the number
11 of families who were willing to relocate.

12 So there is still some usefulness from
13 the document but not, as was pointed out in
14 cross-examination, specifically at this point
15 who is willing to move to Owen Sound.

16 A year prior to this they had, as I
17 document in my squatting -- in my -- the map
18 report, they had wanted to relocate to Owen
19 Sound.

20 BY MR. FELICIANANT:

21 Q. Where it says "63 total" --

22 A. 63 families.

23 Q. -- what does that refer to?

24 A. Total families making up -- my
25 understanding is 63 families total making up the

1 Credit River Ojibwe Band.

2 Q. And did those 63 families
3 consider the proposal to move to Owen Sound?

4 A. A year prior, yes.

5 MS. GUIRGUIS: It's already answered,
6 Your Honour, but I don't think that is, again, a
7 clarification or explanation of the answer she
8 gave on cross-examination.

9 THE COURT: Well, counsel, I agree
10 with you I encourage you to --

11 MR. FELICIAN: I will move on.

12 THE COURT: Stand up as quickly as you
13 can.

14 BY MR. FELICIAN:

15 Q. You probably recall a discussion
16 earlier, a few moments ago, about secretary and
17 assistant to -- when we were talking about
18 Oliphant you were being asked questions about
19 Oliphant's experience negotiating, and you gave
20 evidence, he acted as secretary?

21 A. Yes.

22 Q. What does "secretary" mean, that
23 word?

24 A. That he was the record keeper,
25 the correspondence, I understood from reading

12:57:07 1 about Oliphant's role with Elgin during the
12:57:13 2 Reciprocity Treaty that he took care of many of
12:57:17 3 the practical matters in terms of keeping a
12:57:20 4 record of the negotiations and assisting
12:57:25 5 Oliphant (sic) in that regard.

12:57:36 6 Q. You were also asked by
12:57:38 7 Ms. Guirguis whether there was any instance of
12:57:40 8 the Crown reversing the land cession, do you
12:57:42 9 recall that?

12:57:43 10 A. Yes.

12:57:43 11 Q. Was there any instance where the
12:57:46 12 Crown --

12:57:47 13 MS. GUIRGUIS: Sorry, Your Honour.

12:57:50 14 THE COURT: Finish your question and
12:57:52 15 then I'll hear from Ms. Guirguis.

12:57:54 16 BY MR. FELICIANANT:

12:57:54 17 Q. I was going to ask, was there any
12:57:56 18 instance where the Crown was asked to reverse
12:58:00 19 the land cession?

12:58:02 20 MS. GUIRGUIS: Your Honour, I'm rising
12:58:03 21 because the phrasing of the question whether
12:58:05 22 there was any instance of the Crown reversing a
12:58:07 23 land cession, I believe that my question is
12:58:09 24 slightly different than that.

12:58:15 25 I defer to the transcript but I

1 believe it was, based on your review have you
2 come across any evidence of that?

3 THE COURT: Not sure that changes the
4 re-examination topic, Ms. Guirguis.

5 MS. GUIRGUIS: Well, I think that in
6 addition the question, as phrased, calls for new
7 evidence and not clarification.

8 MR. FELICIAN: So the question and
9 answer was, it's at time stamp 10:17:25 and the
10 question was:

11 "QUESTION: Have you ever come across
12 a case where the Crown reversed a land
13 surrender treaty?"

14 And the answer was:

15 "ANSWER: Reversed it? So sanctioned
16 it first and then reversed it?

17 "QUESTION: Right.

18 "ANSWER: No."

19 THE COURT: And the question is
20 whether the witness knows of any occasion where
21 the Crown was asked to do so?

22 MR. FELICIAN: That's right.

23 THE COURT: And the objection?

24 MS. GUIRGUIS: My objection to that,
25 Your Honour, is that's a new question, it's not

1 seeking clarification for the answer to this
2 one.

3 THE COURT: I think it does arise from
4 the cross-examination, Ms. Guirguis, because of
5 the nature of the question.

6 MS. GUIRGUIS: All right.

7 THE COURT: So I'll permit the
8 question.

9 MS. GUIRGUIS: Thank you, Your Honour.

10 BY MR. FELICIANANT:

11 Q. Do you need me to repeat the
12 question?

13 THE COURT: I'm going to do it because
14 I'm worried it's going to come out differently.

15 "Was there any occasion where the
16 Crown was asked to reverse a land
17 cession or the land cession?"

18 THE WITNESS: I don't recall a request
19 specifically to reverse a land cession. I do
20 recall documenting an instance that came out of
21 the 1860 petitions to the Prince of Wales where
22 the Nawash, the Chippewas of Nawash suggested
23 that the surrender of the Nawash Reserve was not
24 yet legal because it had not been signed by the
25 Governor General, something to that effect.

01:00:49 1 I don't know whether I would consider
01:00:51 2 that a request for reversal. It was the
01:00:55 3 questioning of the confirmation and hence
01:00:58 4 validity of the Treaty as it then stood in 1860.

01:01:07 5 BY MR. FELICIANANT:

01:01:08 6 Q. Those are my questions, Your
01:01:09 7 Honour.

01:01:11 8 THE COURT: Let me just --

01:01:27 9 BY MR. FELICIANANT:

01:01:27 10 Q. Sorry, Your Honour, one more
01:01:29 11 question.

01:01:34 12 At 10:04 this morning, so it would be
01:01:37 13 today's transcript, you were asked about Exhibit
01:01:41 14 2105, which is Sawyer's response to Anderson's
01:01:49 15 proposal.

01:01:52 16 If we can pull up Exhibit 2105 please?
01:01:57 17 And if we can go down to number 3, the
01:02:01 18 "Third" -- or to the end there. Sorry, down
01:02:09 19 further.

01:02:45 20 A. I may be able to assist, I
01:02:46 21 believe the answer starts two pages from this.
01:02:48 22 This is the document where the pages are out of
01:02:50 23 order.

01:02:51 24 Q. Okay.

01:02:52 25 A. There. Can you scroll up? This

1 is "Answer to Five ".

2 Q. "Answer to Five". You were being
3 asked about this exhibit. If we can go to --
4 you were taken to page 23 of your maps report,
5 that is Exhibit 4710, and to point 1(d) on page
6 23. And it's on the screen as well, 1(d).

7 If you can just refresh your memory
8 and read that over?

9 A. (Witness reading the document.)

10 Okay.

11 Q. Then at 10:05 you were asked:

12 "So from what we know, and what
13 we talked about yesterday about
14 Exhibit 2105, we know that the Saugeen
15 Ojibwe were only intending to
16 surrender the 60,000 acre inland
17 wedge, as we've described?

18 The answer was, "Yes."

19 So if we can go to the transcript from
20 March 10th, starting at 4:18:50, and this is
21 page 165. And I would like you to review that
22 transcript starting at 4:18:50 until 4:26:15?

23 A. So that would be line 18?

24 Q. That would be line 18 on this
25 page.

01:05:33 1 A. (Witness reading the document.)
01:05:34 2 Much of -- well, there is an error in
01:06:40 3 line 7 on this page, I'm not sure if that's what
01:06:44 4 you're wanting me to note but I could just
01:06:47 5 correct that while we're here. My reading of
01:06:50 6 this is that Anderson brought a map along with
01:06:52 7 him.
01:09:28 8 (Witness reading the document.)
01:09:29 9 Okay.
01:09:29 10 Q. So can we now just go back to the
01:09:32 11 transcript from yesterday at 10:05? So I'm
01:09:51 12 going to repeat the question and then ask my
01:09:53 13 question. So the question you were asked by
01:09:55 14 Ms. Guirguis:
01:09:56 15 "So from what we know, and what
01:09:56 16 we talked about yesterday [which we
01:09:56 17 just read] about Exhibit 2105, we know
01:09:56 18 that the Saugeen Ojibwe were only
01:09:56 19 intending to surrender the 60,000 acre
01:09:56 20 inland wedge, as we've described?
01:10:16 21 This is my question now, can you
01:10:17 22 clarify what, if anything, from the discussion
01:10:21 23 of Exhibit 2105 yesterday you understood was
01:10:25 24 being referred to in my friend's suggestion to
01:10:28 25 you this morning, and which led to your answer

1 concerning the inland wedge?

2 A. Can you repeat that one more time
3 please.

4 Q. Can you clarify what, if
5 anything, from the discussion of Exhibit 2105
6 yesterday you understood was being referred to
7 in my friend's suggestion to you -- questions to
8 you this morning and which led to your answer
9 concerning the inland wedge?

10 A. Again, you can rephrase the
11 question if I'm not understanding it correctly.

12 My understanding of that 60,000 acre
13 inland wedge comes from Exhibit 2014, which is
14 Rankin's letter. It's is not specified in 2105,
15 which is the answer spoken by Sawyer.

16 Q. And is there anywhere in that
17 discussion where it would -- I will stop there.

18 Those are all my questions.

19 THE COURT: Thank you, Dr. Reimer, for
20 coming and assisting us with this matter. You
21 can step down from the witness box.

22 Mr. Feliciant?

23 MR. FELICIAN: Sorry, Your Honour.

24 THE COURT: Is there any more evidence
25 in Ontario's case or not.

01:12:12 1 MR. FELICIANANT: Subject to a couple of
01:12:13 2 things, Your Honour.

01:12:14 3 THE COURT: Okay, what's that.

01:12:18 4 MR. FELICIANANT: Ontario is going to be
01:12:19 5 requesting to make the maps exhibits, and my
01:12:23 6 friends --

01:12:25 7 THE COURT: Are you doing that right
01:12:26 8 now.

01:12:27 9 MR. FELICIANANT: Yes. My friends have
01:12:28 10 had discussions, and I understand the plan was
01:12:30 11 to do it now.

01:12:31 12 The other thing that needs to be done
01:12:33 13 is Ontario provided my friends last week with
01:12:38 14 read-ins. We received a response yesterday to
01:12:44 15 those read-ins. We have yet to work that out.

01:12:47 16 So my request would be, subject to
01:12:51 17 addressing the maps issue, and subject to us
01:12:55 18 addressing the read-ins issue, we have no more
01:12:57 19 witnesses.

01:12:58 20 THE COURT: Can we do one thing at a
01:12:59 21 time?

01:13:00 22 MR. FELICIANANT: Yes.

01:13:01 23 THE COURT: What is your request with
01:13:02 24 respect to the maps?

01:13:05 25 MR. FELICIANANT: Mr. Ogden will be

01:13:07 1 taking that question.

01:13:09 2 THE COURT: Mr. Ogden, what is your
01:13:11 3 request with respect to the maps?

01:13:12 4 MR. OGDEN: Our request, Your Honour,
01:13:14 5 is that I tender them this afternoon and we have
01:13:17 6 submissions on whether or not they can become
01:13:19 7 evidence.

01:13:19 8 THE COURT: Is there a dispute still?

01:13:23 9 MR. OGDEN: Over at least one, I'm not
01:13:24 10 sure all.

01:13:27 11 THE COURT: Why are you not sure?

01:13:31 12 MR. OGDEN: Because I've been told by
01:13:32 13 my friends that there is a possibility of
01:13:34 14 consent over some but certainly not all.

01:13:40 15 THE COURT: Well, let me ask who is
01:13:41 16 going to be speaking to the maps issue?

01:13:43 17 MS. GUIRGUIS: Your Honour,
01:13:44 18 Ms. Nerland will be speaking to it.

01:13:51 19 THE COURT: What do you have to say
01:13:51 20 about that, Ms. Nerland? Is there any reason
01:13:51 21 why we can't do it right now? Depends on your
01:13:51 22 position.

01:13:52 23 MS. NERLAND: Your Honour, we'll be
01:13:57 24 objecting to at least four of the maps. If
01:14:01 25 we --

01:14:02 1 THE COURT: Well, I hope that by now
01:14:03 2 you know exactly what you're objecting to.

01:14:11 3 MS. NERLAND: Yes, we had planned to
01:14:12 4 object to all of the maps.

01:14:13 5 THE COURT: And you're thinking of
01:14:14 6 perhaps limiting it to four of them?

01:14:17 7 MS. NERLAND: Uhm hmm.

01:14:32 8 THE COURT: I say to both of you,
01:14:33 9 we've had so much argument, by which I mean
01:14:36 10 submission, about the maps already, and so much
01:14:38 11 evidence about them, that I am a bit surprised
01:14:40 12 that this is becoming an item that you think is
01:14:45 13 going to take a lot of time. I hope that isn't
01:14:48 14 the case.

01:14:48 15 Now, I'm prepared to give the lunch
01:14:50 16 break to get down to four, if that's what's
01:14:53 17 going on.

01:14:54 18 But, Ms. Nerland, I hope that that
01:14:59 19 doesn't mean -- I mean, I've sat through all
01:15:02 20 that evidence, you're not planning on sitting
01:15:04 21 through it again today, are you?

01:15:07 22 MS. NERLAND: No, Your Honour.

01:15:09 23 THE COURT: How long do you think
01:15:10 24 you're going to be? Bearing in mind the
01:15:11 25 extensive amount of time you've already spent on

01:15:14 1 these exhibits.

01:15:17 2 MS. NERLAND: Yes, Your Honour.

01:15:18 3 Fifteen minutes, Your Honour.

01:15:21 4 THE COURT: Well, that's a long time
01:15:22 5 in the circumstances. I ask over the lunch that
01:15:31 6 you review your plan and ask yourself the
01:15:34 7 question, are you standing up to repeat a lot of
01:15:37 8 things that have already been said? In which
01:15:40 9 case you don't need to do that.

01:15:41 10 But I will ask you to get straight to
01:15:43 11 the point for these maps as to why you say they
01:15:47 12 shouldn't be entered as exhibits.

01:15:50 13 MS. NERLAND: Thank you, Your Honour.

01:15:50 14 THE COURT: And since it's an
01:15:51 15 objection I don't need to hear from Mr. Ogden
01:15:57 16 until I hear from you as to what your objection
01:16:00 17 is. All right? So that's the maps. You'll
01:16:03 18 have, at most, 15 minutes and I hope it's a
01:16:06 19 great deal shorter than that.

01:16:08 20 MS. NERLAND: Thank you, Your Honour.

01:16:10 21 THE COURT: Okay. What is it with
01:16:12 22 respect to the read-ins that's standing in the
01:16:14 23 way of dealing with that right now?

01:16:23 24 MR. FELICIAN: Mr. Townshend has
01:16:24 25 proposed additions to supplement the read-ins or

01:16:32 1 clarify them.

01:16:33 2 THE COURT: That's his right to do so.

01:16:36 3 MR. FELICIANANT: We have accepted most
01:16:37 4 of them, however, at least two of them we are of
01:16:40 5 the view are not in that category, that they're
01:16:44 6 just -- stand on their own as just additional
01:16:47 7 evidence.

01:16:47 8 So that's the -- and we may be able to
01:16:49 9 sort this out through a discussion with our
01:16:52 10 friends, but we haven't been able to have that
01:16:54 11 discussion yet.

01:16:55 12 THE COURT: But you can have it right
01:16:56 13 now.

01:16:57 14 MR. FELICIANANT: We can have it.

01:16:58 15 THE COURT: Or this afternoon.

01:16:59 16 MR. FELICIANANT: Yes.

01:17:01 17 THE COURT: All right. Well
01:17:01 18 Mr. Townshend was entitled to make those
01:17:05 19 requests and discussion of the small number of
01:17:07 20 disputes is also normal.

01:17:09 21 I'm a little disappointed that it's
01:17:11 22 happening at this late stage, which I don't
01:17:14 23 think it's down to the plaintiffs. Bearing in
01:17:17 24 mind I raised it a long time ago.

01:17:20 25 What is the time that you propose with

01:17:21 1 respect to dealing with that issue? Because you
01:17:25 2 know we have the Municipalities coming tomorrow
01:17:28 3 morning at 10:00 o'clock to open.

01:17:31 4 MR. FELICIAN: Yes, and I'd like to
01:17:31 5 have the discussion with my friend at some point
01:17:34 6 over the lunch and then I'll have a much better
01:17:37 7 sense of where we are.

01:17:39 8 THE COURT: All right. So we'll
01:17:40 9 resume at 2:15.

01:17:41 10 -- RECESSED AT 1:17 P.M. --

02:16:04 11 -- RESUMED AT 2:16 P.M. --

02:16:04 12 THE COURT: I did ask you to go first,
02:16:10 13 because you were objecting, Ms. Nerland, but I
02:16:18 14 think as a formality I need Mr. Ogden to put on
02:16:18 15 the record the lettered exhibit numbers that
02:16:18 16 he's requesting be made numbered exhibits, so
02:16:18 17 we'll let him do that first.

02:16:25 18 MR. OGDEN: Thank you, Your Honour.
02:16:25 19 The lettered exhibits that I wish to make
02:16:30 20 numbered exhibits are K-2, L-1, L-2, M-2, N-1,
02:16:39 21 N-2, and O-1.

02:16:45 22 THE COURT: All right. Ms. Nerland, I
02:16:47 23 take it you're objecting?

02:16:50 24 MS. NERLAND: That's correct, Your
02:16:50 25 Honour.

02:16:51 1 THE COURT: Please go ahead.

02:16:53 2 MS. NERLAND: First off, we're going
02:16:55 3 to consent to the admission as numbered exhibits
02:16:58 4 of O-1, M-2, and L-2. So I'll be objecting
02:17:08 5 today to the admission of K-2, L-1, N-1, and
02:17:14 6 N-2.

02:17:21 7 THE COURT: All right.

02:17:22 8 MS. NERLAND: So the test for
02:17:22 9 admission for demonstrative aids like this is
02:17:26 10 set out in Sopinka's Fifth Edition at section
02:17:29 11 18.104, and that's at page 1356.

02:17:39 12 So this test has four elements and we
02:17:41 13 think that maps are inadmissible based on the
02:17:44 14 third element of the test, which is that the
02:17:46 15 witness must show that evidence is not too time
02:17:48 16 consuming, it's not misleading and does not have
02:17:51 17 prejudicial value that outweighs its probative
02:17:54 18 effects.

02:17:55 19 THE COURT: Which of those? All of
02:17:56 20 them or some of them?

02:17:58 21 MS. NERLAND: That it's misleading.

02:18:00 22 So our objection to these four maps is
02:18:02 23 that they are misleading and that they are not
02:18:04 24 supported by the underlying exhibits that they
02:18:07 25 purport to represent.

02:18:12 1 So I want start by saying, I
02:18:15 2 understand this isn't a jury trial and that Your
02:18:16 3 Honour is very much in a position to separate
02:18:19 4 what is misleading from what is not.

02:18:21 5 But it's our submission that these
02:18:22 6 maps are tools of cross-examination and they are
02:18:25 7 reflections of Ontario's position on disputed
02:18:28 8 facts.

02:18:30 9 THE COURT: Well, the
02:18:30 10 cross-examinations are over.

02:18:32 11 MS. NERLAND: Yes.

02:18:33 12 THE COURT: So how is that prejudicial
02:18:35 13 at this late stage?

02:18:41 14 MS. NERLAND: It's our position that
02:18:42 15 these maps, as demonstrative aids, are intended
02:18:45 16 to be reflective of underlying exhibits, and
02:18:48 17 they are not at all reflective of those
02:18:50 18 underlying exhibits. And so as tools of
02:18:55 19 advocacy they should not be admitted as numbered
02:18:58 20 exhibits, much like we have not admitted other
02:19:01 21 such illustrations in this litigation, like
02:19:06 22 Exhibit P, for instance.

02:19:08 23 THE COURT: Well, the creator of
02:19:10 24 Exhibit P did not get into the witness box so
02:19:12 25 it's not an apt analogy.

02:19:15 1 MS. NERLAND: Yes, we don't take any
02:19:24 2 issue with the process by which Mr. Sikma
02:19:28 3 created the map, we think he did a diligent job.
02:19:31 4 Our concern is with the relationship between
02:19:34 5 what the map purports to represent and what it
02:19:37 6 in fact shows.

02:19:40 7 So I would like to draw your attention
02:19:41 8 to one case on this point, which I've passed up
02:19:44 9 to the Registrar, and also out to my friends,
02:19:46 10 and that's The Queen v. Kanagasivam, 2016, ONSC
02:20:13 11 2250.

02:20:19 12 THE COURT: Where in that case should
02:20:19 13 I turn?

02:20:21 14 MS. NERLAND: I'd like to draw your
02:20:21 15 attention to paragraphs 49 to 54 please.

02:20:24 16 THE COURT: This is a criminal case
02:20:24 17 involving theft, kidnapping, robbery, use of a
02:20:24 18 firearm, and so on?

02:20:25 19 MS. NERLAND: That's correct, Your
02:20:25 20 Honour.

02:20:25 21 THE COURT: All right.

02:20:25 22 MS. NERLAND: So at issue in this case
02:20:27 23 was the admission of a PowerPoint presentation
02:20:29 24 that showed an illustration of cell phone tower
02:20:33 25 records. And at paragraph 49 Justice Fairburn

1 explains the reasoning behind her decision to
2 exclude those illustrations.

3 And this continues to paragraph 54,
4 but I want to draw your attention to paragraph
5 49 in particular.

6 THE COURT: This was a jury trial?

7 MS. NERLAND: Yes, that's correct,
8 Your Honour. Justice Fairburn wrote:

9 "Demonstrative or illustrative
10 aids in the form of summaries of
11 otherwise admissible and admitted
12 evidence are not meant to be tools of
13 advocacy or to paint a picture of one
14 party's position."

15 So I know that Your Honour is aware of
16 the issues that we canvassed with these four
17 maps on cross-examination with Dr. Reimer. And
18 I think Dr. Reimer fairly conceded some of the
19 frailties of the documents that are intended to
20 support the inferences in these maps.

21 These are not charts or illustrations
22 of any expert witness.

23 THE COURT: Doesn't have to be an
24 expert witness, you know that because you just
25 gave me the test. The Creator of the

02:21:37 1 illustration does not need to be an expert
02:21:39 2 witness.

02:21:40 3 MS. NERLAND: Yes, Your Honour, I was
02:21:41 4 simply making the point that they're tools of
02:21:43 5 advocacy that were supported after the fact by
02:21:47 6 expert evidence.

02:21:52 7 THE COURT: Again, I don't understand
02:21:53 8 why you would put it that way. I think the
02:21:55 9 factual basis for an illustration can come from
02:21:57 10 any type of witness before or after the
02:21:58 11 illustration is put forward, as long as it gets
02:22:02 12 done.

02:22:03 13 MS. NERLAND: Let me turn then, Your
02:22:06 14 Honour, to our issues with the factual basis for
02:22:08 15 this illustration.

02:22:10 16 So in our submission there's no basis
02:22:12 17 in the documents referred to on the maps
02:22:14 18 themselves, or in Dr. Reimer's report or
02:22:16 19 testimony, for the size of the Credit tract
02:22:20 20 represented on Exhibits L-1 and K-2.

02:22:29 21 There's no basis for the conclusion
02:22:31 22 that the Saugeen Ojibwe Nation, as a whole,
02:22:33 23 intended the Caughnawaga tract marked on those
02:22:35 24 maps to be set aside as marked.

02:22:42 25 The documents we took Dr. Reimer to in

02:22:44 1 cross-examination showed that the Saugeen Ojibwe
02:22:46 2 had something much smaller and much more limited
02:22:49 3 in mind for the Caughnawaga tract.

02:22:53 4 These two maps, L-1 and K-2, purport
02:22:57 5 to show what was intended for various groups
02:23:00 6 prior to Treaty 72.

02:23:01 7 In the case of map L-1 Dr. Reimer in
02:23:04 8 her report stated that this was a reference to
02:23:06 9 what was intended by SON in 1851. But
02:23:11 10 Dr. Reimer also confirmed that neither Owen
02:23:13 11 Sound nor Colpoy's Bay had a Reserve at this
02:23:16 12 point in time, as marked on the map, they used
02:23:18 13 the whole Saugeen Reserve.

02:23:20 14 And there's no basis to conclude that
02:23:21 15 SON intended these tracts to be reserved prior
02:23:24 16 to 1854 and to the conclusion of Treaty 72.

02:23:30 17 In relation to map N-1, the underlying
02:23:35 18 documents that are identified in support of this
02:23:37 19 map are Exhibits 2104, which is Rankin's letter
02:23:40 20 to Anderson of August 2nd, 1854, and Exhibit
02:23:45 21 2105, which was the Saugeen Ojibwe
02:23:47 22 counterproposal to Anderson's proposal, as
02:23:50 23 recorded by David Sawyer on the same date.

02:23:54 24 These documents do not contain
02:23:56 25 information about the specific size of these

02:23:57 1 parcels or where the boundaries between them
02:24:00 2 should be drawn. This map is Ontario's
02:24:01 3 inference and speculation.

02:24:03 4 Finally, in relation to map N-2, this
02:24:08 5 purports to be an illustration of Exhibit 2120,
02:24:12 6 which is what Anderson proposed to the Saugeen
02:24:15 7 Ojibwe on the 2nd of August 1854.

02:24:18 8 Now, the only record of this actual
02:24:20 9 proposal was a map produced by Anderson, and
02:24:22 10 that's never been located.

02:24:24 11 Aside from the tract marked "B", which
02:24:27 12 is intended to represent the manual labour
02:24:30 13 school tract, Dr. Reimer confirmed that there is
02:24:32 14 no documentary evidence supporting the size or
02:24:35 15 location of the Reserves marked on this map as
02:24:40 16 what Anderson proposed in August 1854.

02:24:52 17 So in our view these maps represent
02:24:52 18 Ontario's account of disputed facts and are not
02:24:53 19 supported by the underlying exhibits they
02:24:53 20 reference.

02:24:53 21 They should, in our submission, as has
02:24:55 22 been the practice in this trial, remain lettered
02:24:58 23 exhibits.

02:24:58 24 And those are my submissions.

02:25:00 25 THE COURT: What practice is that in

02:25:03 1 this trial?

02:25:07 2 MS. NERLAND: In relation to Exhibit
02:25:08 3 P.

02:25:08 4 THE COURT: It's not analogous to
02:25:10 5 Exhibit P. There was never any request made for
02:25:12 6 Exhibit P to become trial evidence. And how is
02:25:14 7 that a practice?

02:25:16 8 MS. NERLAND: Let me rephrase.

02:25:16 9 THE COURT: I don't know of any other
02:25:17 10 situation where a request was made and there was
02:25:19 11 an objection and a ruling, was there one?

02:25:22 12 MS. NERLAND: No. That's right, Your
02:25:23 13 Honour.

02:25:24 14 THE COURT: All right. So there's no
02:25:24 15 practice in this trial that assists you, is
02:25:32 16 there?

02:25:32 17 MS. NERLAND: No, Your Honour.

02:25:32 18 THE COURT: Now, just on the details,
02:25:33 19 which I'm very aware of, much of what you spoke
02:25:42 20 about having occurred in the last few days, it
02:25:42 21 seems like you're essentially asking me to make
02:25:46 22 findings of fact in relation to the entirety of
02:25:49 23 the trial record, including drawing inferences
02:25:51 24 of fact in order to exclude these maps.

02:26:03 25 MS. NERLAND: I don't think I'm asking

02:26:04 1 you to make final findings of fact about what
02:26:07 2 the documents -- what did or did not happen,
02:26:09 3 what the documents do or do not say.

02:26:13 4 THE COURT: Well, how else can you
02:26:15 5 argue that they should be excluded, as opposed
02:26:20 6 to marked, subject to your right to say I should
02:26:26 7 disregard some portions of them, because I
02:26:29 8 recognize you're not troubled by all of what's
02:26:32 9 illustrated just part of it.

02:26:36 10 MS. NERLAND: I think what I'm asking,
02:26:37 11 your Honour, is for the underlying documents,
02:26:38 12 which they purport to represent, to be allowed
02:26:41 13 to speak for themselves.

02:26:46 14 THE COURT: Well, for -- I'm pausing
02:26:48 15 because we have had some extensive evidence over
02:26:51 16 the last week which showed that that proposition
02:26:53 17 that you've just said is a complicated one,
02:26:56 18 hence my question about the findings of fact.

02:26:59 19 In any event, do you have anything to
02:27:00 20 add?

02:27:02 21 MS. NERLAND: No, Your Honour.

02:27:03 22 THE COURT: All right. Thank you very
02:27:04 23 much.

02:27:05 24 Mr. Ogden, I got handed a couple of
02:27:08 25 other things. Are these from you?

02:27:12 1 MR. OGDEN: Your Honour, I've handed
02:27:14 2 up a brief.

02:27:15 3 THE COURT: I have something called
02:27:16 4 Woods v. Jackiewicz and an excerpt from a
02:27:21 5 textbook.

02:27:29 6 MR. OGDEN: They are both from my
02:27:29 7 friend, Your Honour.

02:27:30 8 I handed up to Mr. Registrar, which is
02:27:30 9 coming to you now, a brief that I do not intend
02:27:33 10 to take you through in depth but it may be of
02:27:35 11 assistance.

02:27:36 12 THE COURT: Well, let me ask the
02:27:36 13 question this way, do you take any significant
02:27:39 14 disagreement with the test put forward by
02:27:42 15 counsel relying on Sopinka?

02:27:47 16 MR. OGDEN: Not significant, but I
02:27:50 17 would like to clarify part of it so I ask you to
02:27:53 18 turn up tab 4, please.

02:27:54 19 And at the bottom of the first
02:27:57 20 paragraph is the test that she's referred to
02:27:59 21 from Sopinka. The fourth element there:

02:28:03 22 "Such evidence must not be
02:28:06 23 cumulative."

02:28:07 24 I submit is not part of the test.
02:28:14 25 There is a cite there, that's cite 4, and that's

02:28:15 1 to a paper given by Justice Sopinka citing
02:28:20 2 another secondary resource.

02:28:22 3 And I'm --

02:28:24 4 THE COURT: Well, since counsel's only
02:28:26 5 relying on the third element I think we can
02:28:29 6 overlook a dispute about the fourth one.

02:28:32 7 MR. OGDEN: Yes.

02:28:37 8 I think it's fair to say though, Your
02:28:39 9 Honour, that there is no case directly on point
02:28:44 10 and that there are contradictions within the
02:28:46 11 secondary literature, and within the case you're
02:28:52 12 addressing, such documents and evidence.

02:28:57 13 And so I wish to provide this in case
02:28:59 14 it's something that Your Honour wishes to
02:29:01 15 consider in more detail.

02:29:04 16 I will make a submission as to what I
02:29:07 17 consider the law to be and I'll do that briefly
02:29:09 18 now.

02:29:10 19 THE COURT: Well, please focus on --
02:29:12 20 Ms. Nerland has focused on one aspect of the
02:29:16 21 requirements, and without overly summarizing
02:29:23 22 what she said she's saying that these maps are
02:29:26 23 misleading.

02:29:27 24 And she said a great deal more than
02:29:29 25 that, but if you look at item number 3, upon

02:29:33 1 which she is relying, she says it's a
02:29:36 2 requirement that they not be misleading, and for
02:29:38 3 various reasons, which you've heard, her
02:29:42 4 submission is that they are.

02:29:44 5 MR. OGDEN: I will do, Your Honour.

02:29:47 6 In my submission, broadly, the
02:29:49 7 evidence should be relevant, reliable, not have
02:29:54 8 a prejudicial effect that outweighs its
02:29:57 9 probative value, and not be excluded by any rule
02:30:03 10 concerning external interests, such as
02:30:06 11 confidentiality.

02:30:07 12 I will focus on the second part of
02:30:09 13 that which I said was reliability. And within
02:30:12 14 that there are three parts; one is that the
02:30:17 15 exhibit -- the evidence be authenticated, be
02:30:23 16 accurate and then be fair. And that is the not
02:30:27 17 misleading component that I will address, that
02:30:32 18 Ms. Nerland took exception to.

02:30:34 19 And just by way of analogy, if we were
02:30:36 20 talking about photographs the photograph might
02:30:39 21 be accurate if it were not doctored digitally in
02:30:43 22 some way; and the fairness of it might concern
02:30:47 23 whether or not the angle from which the
02:30:48 24 photograph was taken did not suggest -- was not
02:30:56 25 misleading.

02:31:04 1 Before I come to that, Your Honour,
02:31:06 2 just on the law, I wish to say one point about
02:31:08 3 accuracy because it does relate to whether or
02:31:11 4 not it's fair or misleading.

02:31:15 5 There's a case that I have included at
02:31:17 6 tab 7, Your Honour. And I include this because
02:31:37 7 it's one of two or three cases that are referred
02:31:40 8 to in the extracts that I've included for you,
02:31:44 9 from the leading texts, "The Oatley-McLeish
02:31:45 10 Guide to Demonstrative Advocacy", and that text
02:31:52 11 has been cited favorably in the Court of Appeal.

02:31:55 12 And the tab -- the case at tab 7 is
02:31:58 13 McCutcheon v. Chrysler and was argued by
02:31:58 14 Mr. Oatley all throughout that text.

02:32:01 15 And I'd like you to turn, if you could
02:32:10 16 please, to paragraph 7, it's about the fourth
02:32:15 17 page in. Page 4 is on the bottom, it's
02:32:24 18 paragraph 7 at the top. And the judge there is
02:32:27 19 referring to the position of counsel for the
02:32:29 20 plaintiff, which is Mr. Oakley. And at the last
02:32:32 21 sentence of that paragraph, and I -- the
02:32:40 22 computer animation in this case was accepted as
02:32:43 23 evidence.

02:32:47 24 The judge says:

02:32:48 25 "Finally the plaintiff argues

02:32:49 1 that the animator, to a tolerable
02:32:52 2 level, accurately produced a computer
02:32:54 3 animation which reasonably represents
02:32:57 4 what it is intended to illustrate."

02:33:00 5 So just to clarify the test for
02:33:02 6 accuracy, we're not dealing here with
02:33:06 7 photographs, we're dealing with things that are
02:33:11 8 not intended to be or going to be 100 percent
02:33:14 9 accurate. There is room for variation from the
02:33:22 10 underlying facts, so that should be taken into
02:33:27 11 account considering the test to apply.

02:33:35 12 I'll turn now, Your Honour, to the
02:33:37 13 maps in dispute. They are being tendered as
02:33:45 14 demonstrative exhibits. The phrase
02:33:46 15 "demonstrative aid" is used, and some of the
02:33:49 16 secondary resources as was used by my friend.

02:33:52 17 But there's an important distinction
02:33:54 18 here, which is that these are being put forward
02:33:59 19 as evidence in and of themselves and not just to
02:34:04 20 explain -- not just to provide assistance to the
02:34:09 21 trier of fact in understanding the evidence that
02:34:16 22 is already before the court.

02:34:23 23 And there is a difference, and I
02:34:25 24 mention that now in case it's something you wish
02:34:28 25 to consider later.

02:34:30 1 So the maps themselves, N-2, which is
02:34:48 2 the Anderson proposal of August 2, 1854, and the
02:34:54 3 objection to that was that it was in relation to
02:34:57 4 the exact location of the Reserves, the shape of
02:35:00 5 the Reserves that are depicted. Again, this is
02:35:05 6 intended as an illustration of what the proposal
02:35:13 7 was. And it's relevant in considering the
02:35:20 8 nature of the proposal made, it is not intended
02:35:23 9 to prove, as a matter of fact, that the
02:35:30 10 locations and boundaries depicted were exactly
02:35:35 11 the ones drawn on the map.

02:35:44 12 The same can be said about Exhibits
02:35:47 13 K-2 and L-1. These are variations based on
02:35:54 14 largely the same documents, but essentially on
02:35:59 15 Exhibit 1873, which is an agreement to provide a
02:36:05 16 tract of land to the Caughnawaga Indians.

02:36:07 17 And they are there to illustrate and
02:36:14 18 to help the court consider that document; and
02:36:19 19 that document is clear that there was a tract,
02:36:22 20 with certain boundaries, Colpoy's Bay on the
02:36:28 21 north, Owen Sound on the east, the John Jones
02:36:31 22 tract on the west and Credit tract on the south.

02:36:37 23 It is there to show the intention of
02:36:43 24 the parties to that agreement. It is not
02:36:48 25 there -- and it uses the word "tracts", those

02:36:53 1 exhibits use the word "tract" in the title.

02:36:56 2 It is not proffered to show or to
02:36:59 3 prove that the areas depicted in those
02:37:11 4 illustrations were in fact set aside as
02:37:11 5 Reserves. We are not going to ask the court for
02:37:14 6 a finding on that.

02:37:14 7 It is to show the intention of the
02:37:17 8 parties as to what land the Saugeen and Nawash
02:37:21 9 considered they would -- they were prepared to
02:37:24 10 give up use and occupancy of.

02:37:28 11 And my friend referred to, and this
02:37:32 12 should be evident from the cross-examination of
02:37:36 13 Dr. Reimer, the fact that the Saugeen First
02:37:38 14 Nation, or the Chippewas of Saugeen were not
02:37:42 15 initially signatories to that agreement but
02:37:44 16 subsequently asked if they objected to it, and
02:37:49 17 they said they did not but they did not want to
02:37:51 18 be taken to be accepting that the Caughnawaga
02:37:56 19 could do what they wished with the land, in the
02:37:59 20 sense of disposing of it if they wished to.
02:38:02 21 Nevertheless, the Chippewas of Saugeen
02:38:10 22 subsequently indicated that they were okay with
02:38:12 23 that agreement.

02:38:28 24 In respect of the -- there is evidence
02:38:29 25 that the Credit Mississaugas numbered at least

02:38:31 1 60 families in 1848, 1849.

02:38:34 2 THE COURT: I just heard all this
02:38:35 3 evidence, and having said to Ms. Nerland she
02:38:38 4 should get to the point I ask you to do the
02:38:40 5 same.

02:38:44 6 MR. OGDEN: Thank you, Your Honour.

02:38:44 7 There is sufficient evidentiary basis
02:38:49 8 from which this court can conclude that the maps
02:38:52 9 are reliable, the underlying facts are reliable.

02:38:57 10 Mr. Sikma has been called. And I
02:39:00 11 understand my friend to say that she does not
02:39:04 12 dispute his capacity or the manner in which he
02:39:08 13 has interpreted the instructions given to him.
02:39:12 14 And on that basis the maps should be entered as
02:39:15 15 exhibits.

02:39:16 16 And any dispute as to what use may be
02:39:25 17 made of them by this court, and what degree of
02:39:31 18 reliance the court can place on them, should be
02:39:33 19 subject to argument as a matter of weight.

02:39:36 20 Those are my submissions, Your Honour.

02:39:39 21 THE COURT: Ms. Nerland?

02:39:44 22 MS. NERLAND: Nothing further from me,
02:39:45 23 Your Honour.

02:45:35 24 --- RULING ---

02:45:38 25 THE COURT: This is my ruling on the

02:45:39 1 objected-to maps:

02:45:49 2 On consent Exhibits 0-1, N-2 and L-2
02:45:54 3 shall be trial exhibits.

02:45:56 4 However, the plaintiffs object to
02:45:58 5 Exhibits K-2, L-1, N-1 and N-2 becoming trial
02:46:04 6 Exhibits.

02:46:09 7 I note that the person who prepared
02:46:10 8 all of these illustrations has testified and has
02:46:14 9 been cross-examined.

02:46:20 10 I further note that the plaintiffs do
02:46:22 11 not take issue with the process he used to
02:46:25 12 create these illustrations. However, the
02:46:32 13 plaintiffs submit that with respect to the
02:46:36 14 illustrations to which they object, that those
02:46:41 15 illustrations are misleading and not supported
02:46:44 16 by underlying evidence.

02:46:49 17 In that regard the plaintiffs rely on
02:46:51 18 the third requirement of the test for admitting
02:46:54 19 illustrations, as set out in Sopinka, "The Law
02:47:00 20 of Evidence in Canada", Fifth Edition, at
02:47:02 21 paragraph 18.104.

02:47:09 22 Of the criteria set out at that
02:47:11 23 paragraph the plaintiffs specifically rely on
02:47:14 24 requirement number 3, and the part of that
02:47:19 25 requirement that requires that the evidence not

02:47:21 1 be misleading.

02:47:29 2 The plaintiffs further rely on the
02:47:30 3 decision of The Queen v. Kanagasivam, 2016 ONSC
02:47:33 4 2250, for the proposition in paragraph 49.

02:47:53 5 Among other things, that paragraph says that:

02:47:55 6 "[...] illustrative aids [...]
02:47:56 7 are not meant to be tools of advocacy
02:47:59 8 or to paint a picture of one party's
02:48:02 9 position [...]"

02:48:02 10 Citing R. v. Myles

02:48:06 11 It goes on to say:

02:48:07 12 "[...] they are meant to
02:48:08 13 facilitate juror comprehension of the
02:48:11 14 facts by clarifying and distilling
02:48:11 15 them into a manageable and
02:48:11 16 understandable format."

02:48:18 17 While I accept the general proposition
02:48:20 18 set out in that case it is important context to
02:48:23 19 note that this was a criminal trial before a
02:48:25 20 jury. That is materially different than the
02:48:30 21 trial in front of me.

02:48:33 22 I recognize that any role of these
02:48:37 23 maps as advocacy must be avoided and conclude
02:48:44 24 that I'm perfectly capable of doing so.

02:48:53 25 Ontario submits it has put forward

02:48:55 1 these illustrations to explain the evidence and
02:48:56 2 not as advocacy. Further, according to Ontario,
02:49:07 3 the use that Ontario intends to put these
02:49:10 4 exhibits to is more narrow than that that
02:49:12 5 appears to concern the plaintiffs, and that more
02:49:16 6 narrow use is now on the trial record.

02:49:24 7 The plaintiffs take issue with some of
02:49:26 8 the factual substratum to these illustrations.
02:49:30 9 There's no doubt that there's been lengthy
02:49:32 10 cross-examination not only of Dr. Reimer about
02:49:36 11 these maps but at least one other witness.

02:49:43 12 Obviously in this trial there is a
02:49:45 13 very extensive trial record with thousands of
02:49:51 14 exhibits, and I think we're maybe in the 10,000s
02:49:57 15 of pages of transcript.

02:50:05 16 I recognize that the plaintiffs have
02:50:07 17 challenged various of the underlying exhibits
02:50:11 18 that have been referred to in support of some of
02:50:15 19 these illustrations. They have also challenged
02:50:19 20 related assumptions and other evidence in this
02:50:24 21 context.

02:50:29 22 I note that there are several
02:50:31 23 different issues and they are not all
02:50:33 24 straightforward evidentiary issues. In some
02:50:37 25 instance at least, the plaintiffs are looking

02:50:38 1 for me to draw inferences from the evidence and
02:50:42 2 weigh the evidence from this long trial in order
02:50:47 3 to accept the factual conclusion that the
02:50:49 4 illustration is, in some fashion, unsupported by
02:51:03 5 the evidence or misleading.

02:51:17 6 In the circumstances of this trial I
02:51:18 7 find that it is at best difficult to suggest
02:51:22 8 that those sorts of factual determinations
02:51:24 9 should be made at this stage.

02:51:29 10 I'm of this view especially because I
02:51:31 11 think there is a completely fair opportunity to
02:51:33 12 do so in closing submissions at this trial.

02:51:43 13 I am, therefore, satisfied that these
02:51:49 14 maps should be marked as evidence on the basis
02:51:52 15 that the weight given to the illustrated items,
02:51:54 16 on any of them, will be subject to the evidence
02:51:58 17 in this trial, including the outcomes of the
02:52:00 18 extensive cross-examinations and all the
02:52:02 19 exhibits that are raised by the parties, and any
02:52:04 20 party is free to say that I should disregard any
02:52:07 21 of them entirely in their closing submissions.

02:52:12 22 That concludes my ruling.

02:52:19 23 MR. OGDEN: Thank you, Your Honour.

02:52:20 24 THE COURT: Mr. Registrar, can you
02:52:21 25 please assign exhibit numbers to all the maps or

02:52:24 1 the illustrations?

02:52:26 2 THE REGISTRAR: I already assigned the

02:52:28 3 numbers, Your Honour.

02:52:32 4 So lettered Exhibit K-2, which is

02:52:39 5 document number SC2078 is going to be Exhibit

02:52:44 6 4866

02:52:44 7 EXHIBIT NO. 4866: Map, lettered

02:52:44 8 Exhibit K-2; document number SC2078.

02:52:47 9 THE REGISTRAR: Lettered Exhibit L-1,

02:52:49 10 which is document number SC2079, is going to be

02:52:53 11 Exhibit number 4867

02:52:55 12 EXHIBIT NO. 4867: Map, lettered

02:52:55 13 Exhibit L-1; document number SC2079.

02:52:57 14 THE REGISTRAR: Lettered Exhibit L-2,

02:53:00 15 which is document number SC2080, is going to be

02:53:05 16 Exhibit number 4868.

02:53:06 17 EXHIBIT NO. 4868: Map, lettered

02:53:06 18 Exhibit L-2; document number SC2080.

02:53:09 19 BY MR. FELICIANANT:

02:53:12 20 Q. Letter Exhibit M-2, which is

02:53:15 21 document number SC2081, is going to be Exhibit

02:53:19 22 number 4669.

02:53:20 23 EXHIBIT NO. 4869: Map, lettered

02:53:20 24 Exhibit M-2; document number SC2081.

02:53:24 25 THE REGISTRAR: Lettered Exhibit N-1,

02:53:26 1 which is document number SC2082, is going to be
02:53:31 2 Exhibit number 4870.

02:53:35 3 EXHIBIT NO. 4870: Map, lettered
02:53:35 4 Exhibit N-1; document number SC2082.
02:53:37 5 THE REGISTRAR: N-2, which is document
02:53:38 6 number SC2083, is going to be Exhibit number
02:53:40 7 4871.

02:53:40 8 EXHIBIT NO. 4871: Map, lettered
02:53:40 9 Exhibit N-2; document number SC2083.
02:53:41 10 THE REGISTRAR: And O-1, which is
02:53:41 11 SC2084, is going to be Exhibit number 4672.

02:53:49 12 EXHIBIT NO. 4872: Map, lettered
02:53:49 13 Exhibit O-1; document number SC2084.
02:53:49 14 THE COURT: Thank you Mr. Registrar.
02:53:53 15 All right, Mr. Feliciant.

02:54:07 16 MR. FELICIAN: Over the lunch break
02:54:08 17 we met and I've spoken to Mr. Townshend. We've
02:54:14 18 gone over Mr. Townshend's suggestions in detail.
02:54:18 19 And having spoken to Mr. Townshend, and looked
02:54:20 20 at the suggestions he has made, I am confident
02:54:24 21 that there will likely be no argument with
02:54:27 22 respect to the read-ins.

02:54:29 23 Having said that, we need an
02:54:31 24 opportunity to actually format the document,
02:54:34 25 remove the various questions we're removing and

02:54:38 1 add the ones that Mr. Townshend has requested
02:54:40 2 that we add.

02:54:41 3 And after we do that we'll have to
02:54:43 4 send that to Mr. Townshend because he will
02:54:45 5 obviously want to look at that himself again.

02:54:49 6 Mr. Townshend would agree, and we will
02:54:52 7 request, that you give us some time beyond this
02:54:57 8 afternoon to accomplish that. Perhaps we could
02:55:05 9 pick a date, but there is -- we don't have a
02:55:08 10 specific date in mind other than to say, Friday,
02:55:11 11 perhaps a day after the March break, but before
02:55:16 12 the close of the case, the evidence in the case,
02:55:19 13 which would be Professor Morin.

02:55:29 14 Having said that, subject to that
02:55:30 15 Ontario is in a position to close its case. We
02:55:32 16 have no other witnesses to call and are not
02:55:34 17 asking to call any more.

02:55:37 18 THE COURT: I don't want to
02:55:38 19 inconvenience Mr. Townshend because he is not
02:55:41 20 the author of this problem. So if that's what
02:55:44 21 we're talking about then that's one thing.

02:55:46 22 But I told you all so many months ago,
02:55:49 23 before this trial even commenced, I'm sure, that
02:55:52 24 this precise thing should not occur.

02:55:59 25 MR. FELICIAN: I appreciate that and

02:56:00 1 I do apologize. It was a much larger
02:56:02 2 undertaking than we anticipated to go through.

02:56:06 3 THE COURT: Well, let me hear from
02:56:08 4 Mr. Townshend.

02:56:09 5 Mr. Townshend, assuming that -- now,
02:56:11 6 Mr. Feliciant I assume that you can get the
02:56:12 7 document done right away? That's not the issue?
02:56:16 8 The reformatting part?

02:56:18 9 MR. FELICIAN: It's probably not an
02:56:19 10 issue. We ask that we send it out tomorrow
02:56:23 11 morning.

02:56:24 12 THE COURT: Mr. Townshend, I don't
02:56:25 13 want you to be inconvenienced by this. If you
02:56:28 14 are to receive this revised document, and
02:56:30 15 obviously you've got things that occupy you
02:56:33 16 apart from looking at it, how much time do you
02:56:36 17 request to properly review Ontario's revised
02:56:40 18 document?

02:56:42 19 MR. TOWNSHEND: Probably a day, but I
02:56:45 20 will be in court the rest of this week.

02:56:48 21 THE COURT: I mean, bearing all that
02:56:49 22 in mind what deadline would you request for you
02:56:56 23 to respond to Ontario?

02:56:59 24 MR. TOWNSHEND: After the March Break
02:57:00 25 then, March 23rd.

02:57:07 1 THE COURT: After the March Break?

02:57:11 2 MR. TOWNSHEND: Well, after this week

02:57:12 3 is after the March break.

02:57:39 4 THE COURT: What day is Monday?

02:57:42 5 MR. TOWNSHEND: March 23.

02:57:43 6 THE COURT: This upcoming Monday?

02:57:43 7 MR. TOWNSHEND: No, that's the

02:57:43 8 following.

02:57:43 9 THE COURT: I don't want to leave it

02:57:44 10 so far that if there is a dispute we're talking

02:57:47 11 about this again two weeks from now.

02:57:53 12 MR. TOWNSHEND: Well, there's just

02:57:54 13 Thursday and Friday and then we're at March

02:57:57 14 23rd.

02:57:58 15 THE COURT: Yes, but is there some

02:57:58 16 reason why next week is not available to move

02:58:02 17 this project forward?

02:58:06 18 MR. TOWNSHEND: We're not sitting.

02:58:08 19 THE COURT: I'm only talking about

02:58:10 20 your team reviewing the written document, that

02:58:12 21 you will get from Mr. Feliciant's office, with

02:58:15 22 their proposed revised Q&As, and responding to

02:58:19 23 Mr. Feliciant. I'm not talking about coming to

02:58:22 24 court.

02:58:23 25 MR. TOWNSHEND: Next Tuesday.

02:58:24 1 THE COURT: Next Tuesday is enough
02:58:24 2 time?
02:58:25 3 MR. TOWNSHEND: Yes.
02:58:25 4 THE COURT: All right.
02:58:27 5 So Mr. Feliciant. Can you please put
02:58:36 6 an unqualified statement on the record about
02:58:39 7 closing your case, subject to this issue?
02:58:40 8 That's the gist of what you told me but I'd like
02:58:45 9 to have it again.
02:58:49 10 MR. FELICIAN: Your Honour, Ontario
02:58:49 11 is pleased to advise that, subject to the issue
02:58:52 12 of the read-ins, Ontario closes its case.
02:58:55 13 THE COURT: All right. And you will
02:58:57 14 provide Mr. Townshend's office with the revised
02:59:00 15 document sometime tomorrow?
02:59:03 16 MR. FELICIAN: Yes.
02:59:06 17 THE COURT: And Mr. Townshend, being
02:59:07 18 helpful, said Tuesday but I will give him until
02:59:11 19 Wednesday to get back to you with his comments,
02:59:13 20 if any, on the re-revised document. And I
02:59:20 21 expect you to put a priority next week on
02:59:23 22 getting it completed.
02:59:24 23 MR. FELICIAN: Yes, Your Honour.
02:59:25 24 THE COURT: I hope there aren't any
02:59:27 25 extant disputes, I can tell you I've never had

02:59:30 1 one, but if there are I'm going to be expecting
02:59:33 2 a brief written submission before the 23rd as to
02:59:36 3 why, except if that inconveniences plaintiffs'
02:59:41 4 counsel. So I'm going to leave that open.

02:59:44 5 You can communicate with my office if
02:59:45 6 there's a problem, but I don't want to be -- and
02:59:50 7 the whole idea of this process is not to spend
02:59:53 8 this kind of time in court on it because it's
02:59:58 9 not necessary. All right?

02:59:59 10 MR. TOWNSHEND: Yes, Your Honour.

03:00:00 11 THE COURT: Is there anything else any
03:00:02 12 counsel wishes to raise before we break until
03:00:04 13 tomorrow morning?

03:00:06 14 Can I ask, Mr. Feliciant, you're on
03:00:08 15 your feet, can you please communicate, I guess
03:00:12 16 you can do a "reply all" to whatever is the most
03:00:15 17 full email with your full counsel list to
03:00:17 18 indicate to the Municipalities that we're on
03:00:20 19 schedule and they're starting first thing
03:00:22 20 tomorrow morning?

03:00:23 21 MR. FELICIAN: Yes, Your Honour.

03:00:24 22 THE COURT: Thank you.

23 --- Whereupon the proceedings were
24 adjourned at 3:00 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 testimony of the witness and
all objections made at the time of the
examination were recorded stenographically by me
[Note: Not all quotes have been verified
against source document, but transcribed as
read into the record];

That the foregoing is a true and
accurate transcript of my shorthand notes so
taken. Dated this 25th day of March, 2020.



PER: HELEN MARTINEAU
CERTIFIED SHORTHAND REPORTER

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