

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

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DAY 95 VOL 95  
March 12, 2020

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Toronto, ON M5K 1A2  
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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

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--- This is VOLUME 95 / DAY 95 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 12th day of March 2019.

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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 :

Roger Townshend, Esq., for the Plaintiffs,  
& Jaclyn McNamara, Esq., the Chippewas of  
Nation, and the  
Chippewas of Nawash  
First Nation.

Barry Ennis, Esq., for the Defendant,  
& Alexandra Colizza, Esq., Attorney General  
of Canada.

Richard Ogden,, Esq., for the Defendant,  
Her Majesty the  
Queen in Right of  
Ontario.

M. Jill Dougherty, Esq., for the  
& Debra McKenna, Esq., Municipalities  
& Tammy W. Grove-McClement, Esq.,  
& Gregory F. Stewart, Esq.

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1 --- Upon commencing at 10:06 a.m.

10:06:18 2 THE COURT: Mornings.

10:06:22 3 MS. McNAMARA: Morning, Your Honour.

10:06:23 4 Before we get started I have an administrative  
10:06:26 5 matter.

10:06:26 6 THE COURT: Please go ahead.

10:06:27 7 MS. McNAMARA: We have a number of  
10:06:28 8 documents that we've asked to be made exhibits  
10:06:31 9 on consent, and there are documents that are  
10:06:33 10 already exhibits in Exhibit 3943 so we've broken  
10:06:37 11 them out into individual documents, and in some  
10:06:39 12 cases replaced with a better copy.

10:06:41 13 The SC number for this document is  
10:06:44 14 SC2086.

10:06:51 15 THE COURT: Mr. Registrar, can you  
10:06:52 16 report on what you've done with this chart.

10:06:55 17 THE REGISTRAR: So I have assigned  
10:06:57 18 exhibit numbers to all document. The list of  
10:07:03 19 Exhibits is going to be marked as a lettered  
10:07:06 20 Exhibit C-4.

10:07:15 21 EXHIBIT NO. C-4: List of exhibits.

10:07:16 22 THE REGISTRAR: And the first  
10:07:16 23 document, which is SC2042, is going to be marked  
10:07:16 24 as Exhibit 4873, and the last document, which is  
10:07:19 25 document SC2065, is going to be marked as

1 Exhibit number 4895. So everyone has a list  
2 with the numbers.

3 EXHIBIT NO. 4873: Letter from Carlyle  
4 (sic) to Stewart, dated September 19,  
5 1922. Document number SC2042.

6 EXHIBIT NO. 4874: Letter from Carlyle  
7 (sic) to Stewart, dated September 23,  
8 1922. Document number SC2043.

9 EXHIBIT NO. 4875: Application from  
10 Snider to the Department of Mines &  
11 Resources, dated May 3, 1940.  
12 Document number SC2044.

13 EXHIBIT NO. 4876: Letter from Snider  
14 to Secretary of the Indian Affairs  
15 Branch of the Department of Mines and  
16 Resources, dated May 31, 1940.  
17 Document number SC2045.

18 EXHIBIT NO. 4877: Letter from Snider  
19 to the Superintendent of the Reserves  
20 & Trusts of Indian Affairs Branch of  
21 the Department of Mines & Resources,  
22 dated July 25, 1940. Document number  
23 SC2046.

24 EXHIBIT NO. 4878: Letter from  
25 McKerroll to the Indian Affairs Branch

1 of the Department of Citizenship and  
2 Immigration, dated May 30, 1957.

3 Document number SC2047.

10:11:40 4 EXHIBIT NO. 4879: Letter from Bethune  
5 to McKerroll, dated August 23, 1957.

6 Document number SC2048.

10:11:40 7 EXHIBIT NO. 4880: Letter from Bethune  
8 to McAvoy, Craig, McKerroll,

9 Barristers & Solicitors for the  
10 Township of Keppel, dated June 28,  
11 1961. Document number SC2049.

10:11:40 12 EXHIBIT NO. 4881: Letter from  
13 McKerroll to Bethune, dated July 21,  
14 1961. Document number SC2050.

10:11:40 15 EXHIBIT NO. 4882: Letter from Purser  
16 to Given, dated March 2, 1967.  
17 Document number SC2051.

10:11:40 18 EXHIBIT NO. 4883: Letter from Purser  
19 to Given, dated January 2, 1968.  
20 Document number SC2053.

10:11:40 21 EXHIBIT NO. 4884: Letter from  
22 Vergette to MacAulay, dated January  
23 23, 1968. Document number SC2077.

10:11:40 24 EXHIBIT NO. 4885: Excerpt from The  
25 Sun Times, Wednesday, May 9, 1984,

1 Owen Sound, Ontario, pages 1-5.

2 Document number SC2054.

10:11:40 3 EXHIBIT NO. 4886: Excerpt from The  
4 Sun Times, Grey Bruce Edition, Monday  
5 July 23, 1984, Owen Sound, Ontario,  
6 pages 1-5. Document number SC2055.

10:11:40 7 EXHIBIT NO. 4887: Letter from  
8 Williams to Taylor, dated March 26,  
9 1987. Document number SC2056.

10:11:40 10 EXHIBIT NO. 4888: Letter from Taylor  
11 to Minister William Hunter McKnight,  
12 dated August 25, 1988. Document  
13 number SC2057.

10:11:40 14 EXHIBIT NO. 4889: Letter from Taylor  
15 to Mr. and Mrs. William MacDonnell,  
16 dated September 1, 1988. Document  
17 number SC2058.

10:11:40 18 EXHIBIT NO. 4890: Letter from  
19 Minister William Hunter McKnight to  
20 Taylor, dated September 28, 1988.  
21 Document number SC2059.

10:11:40 22 EXHIBIT NO. 4891: Letter from Wyonch  
23 to the Chippewas of Saugeen, dated  
24 March 9, 1989. Document number  
25 SC2060.

10:11:40 1 EXHIBIT NO. 4892: Letter from Chief  
2 Vernon Roote to Taylor, dated June 1,  
3 1990. Document number SC2061.

10:11:40 4 EXHIBIT NO. 4893: Letter from Frits  
5 to Morneau and Hewines, dated March  
6 24, 1993. Document number SC2062.

10:11:40 7 EXHIBIT NO. 4894: Letter from Olthuis  
8 to Wyonch, dated June 18, 1993.  
9 Document number SC2064.

10:11:40 10 EXHIBIT NO. 4895: Letters from  
11 Townshend to Township of Amabel,  
12 Albermarle, Eastnor, Lindsay, St.  
13 Edmunds, Keppel, Wiarton, County of  
14 Grey, County of Bruce, Town of  
15 Sounthampton and the Village of  
16 Tobermory, dated December 10, 1993.  
17 Document number SC2065

10:07:32 18 THE COURT: Thank you, Mr. Registrar.  
10:07:33 19 So those are the beginning and ending  
10:07:34 20 numbers of the newly marked exhibits, as  
10:07:36 21 reflected on the chart that is now Exhibit C-4.

10:07:40 22 MS. McNAMARA: Thank you, Your Honour.

10:07:47 23 THE COURT: Thank you. Now, who is  
10:07:48 24 going first for the Municipality or  
10:07:50 25 Municipalities.

10:07:56 1 MS. GROVE-McCLEMENT: Morning, Your  
10:07:57 2 Honour. Grove-McClement, initial T. I am  
10:07:59 3 counsel for the Corporation of the County of  
10:08:01 4 Bruce. I just want to make a few submissions  
10:08:05 5 prior to the start of commencement of calling  
10:08:07 6 evidence.

10:08:08 7 My friends, Jill Daugherty and Debra  
10:08:18 8 McKenna, will be calling evidence from two  
10:08:19 9 witnesses from Georgian Bluffs today.

10:08:19 10 But there are a few matters I would  
10:08:21 11 like to address on behalf of all the Municipal  
10:08:24 12 defendants.

10:08:24 13 Firstly, I wish to advise the court  
10:08:24 14 that we are not intending to make any further  
10:08:26 15 opening statements in addition to what was  
10:08:28 16 delivered by Ms. Daugherty on behalf of the  
10:08:32 17 Municipal defendants at the commencement of  
10:08:34 18 trial last year, and the opening has been filed.

10:08:37 19 Any additional comments that we would  
10:08:38 20 have presented to Your Honour during today's  
10:08:41 21 attendance were already dealt with at the court  
10:08:45 22 attendance last week where Jill Daugherty,  
10:08:48 23 counsel for Georgian Bluffs, appeared on behalf  
10:08:52 24 of the Municipal defendants in regard to making  
10:08:54 25 submissions related to the evidence we intended

1 to call in Phase 1. Therefore, we're not going  
2 to repeat that -- those submissions.

3 At this point, however, Your Honour I  
4 would like to remind the court at the  
5 commencement of the trial that the Municipal  
6 defendants asked to be recognized that  
7 throughout the course of the proceedings that we  
8 would be having one counsel attend on behalf at  
9 times and make submissions for all.

10 In addition, we represented that we  
11 were acting jointly in responding to the  
12 lawsuit. And, therefore, for the purposes of  
13 Phase 1 we've selected witnesses, we have four  
14 being called, the intention is to have two from  
15 Georgia Bluffs today, we have a CAO as well as a  
16 public works gentleman.

17 And so the intention is that the two  
18 additional witnesses we are hoping will be  
19 called tomorrow. We plan on -- we have those  
20 witnesses here, the intention is that they hear  
21 what is being heard so that we can minimize the  
22 duplication tomorrow for purposes of the court,  
23 and quite possibly determine if they're even  
24 necessary to be called. So that's our intention  
25 for the purposes of today.



1 And also that any evidence that is  
2 being called during the course of the next two  
3 days is being called on behalf of all of the  
4 Municipal defendants, save and except, we have  
5 been asked by counsel for Grey County to advise  
6 the court that Grey County will not be  
7 presenting evidence in Phase 1, because it is  
8 satisfied that any evidence relating to claims  
9 against land owned by it can be presented in  
10 Phase 2. So I just wanted to clarify that with  
11 the court.

12 In addition, to also request that we  
13 are intending to call evidence in Phase 1. The  
14 evidence that we're calling will be in a broad  
15 context to give some context to the Municipal  
16 defendants who are a party to the proceeding.

17 It's not the intention to go into  
18 specific detail with respect to the roads,  
19 that's the intention that we're going to be  
20 dealing with those in Phase 2.

21 We just want to confirm, however, that  
22 we won't be precluded from -- we'll be relying  
23 upon the evidence in the next two days for Phase  
24 2, but we will be expanding on that evidence in  
25 Phase 2 and we don't want to be precluded from

1 doing so if it was dealt with in the next -- in  
2 the first two days.

3 As well the witnesses presented may be  
4 the same witnesses that will be called in Phase  
5 2 on behalf of the Municipalities.

6 THE COURT: Just before you go on,  
7 that's consistent with what I believe was a  
8 submission made last week by the plaintiffs  
9 about what should be -- what should not be in  
10 Phase 1 and what should be in Phase 2, that is  
11 that specific detail with respect to the roads,  
12 whether from the same witnesses or other  
13 witnesses, would properly be called in Phase 2.

14 And I don't think, but I will check  
15 with Mr. Townshend, that the plaintiffs are  
16 taking the position that by calling this general  
17 evidence now you would be in some way precluded  
18 from doing so. Is that correct, Mr. Townshend?

19 MR. TOWNSHEND: That's correct. If we  
20 get to Phase 2 we don't want whatever we haven't  
21 cross-examined on, or cross-examined lightly we  
22 don't want that to preclude cross-examining much  
23 more thoroughly in Phase 2.

24 THE COURT: The same goes for the  
25 plaintiffs, Ms. Grove-McClement, which is that

1 just as you may go beyond this general evidence,  
2 the plaintiffs may, with the same witnesses or  
3 other witnesses in the same general subject  
4 matter areas, wish to conduct a much more  
5 detailed cross-examination.

6 Is that satisfactory to the  
7 Municipalities as well?

8 MS. GROVE-McCLEMENT: Yes, Your  
9 Honour.

10 THE COURT: Please go ahead.

11 MS. GROVE-McCLEMENT: Lastly then,  
12 Your Honour, it's a procedural matter. My  
13 colleague, Greg Stewart, is here as well.  
14 Mr. Stewart is counsel for three lower-tier  
15 Municipalities in the County of Bruce, namely  
16 the Town of Saugeen Shores, the Municipality of  
17 Southern Bruce Peninsula and the Municipality of  
18 North Bruce Peninsula.

19 Mr. Stewart is requesting, as well as  
20 I am, leave of the court to amend our statements  
21 of defence. We have served amended Statement of  
22 Defence earlier this week, I believe Tuesday on  
23 all counsel.

24 We've received no objections, but due  
25 to the time limitations we haven't received

1 everyone's consent for the amendments.

2 In terms of the Bruce County's  
3 amendments, and I do have a draft of my Amended  
4 Statement of Defence and Crossclaim, if I'm  
5 allowed to hand that up?

6 THE COURT: You may but I'm not sure I  
7 need it right now. You're still in the process  
8 of seeking the position of the parties. If  
9 consent is forthcoming then it can be dealt with  
10 as an administrative matter.

11 So what I'd like to do is understand  
12 the timing. There's nothing especially unusual  
13 about leave to amend during a trial.

14 Have the plaintiffs take a position  
15 yet?

16 MR. TOWNSHEND: We have no objection.

17 THE COURT: You have no objection.

18 So you still have a few other people  
19 you need to hear from?

20 MS. GROVE-McCLEMENT: If all parties  
21 present represent each party we would appreciate  
22 their --

23 THE COURT: Do I see Canada at the  
24 back row?

25 MR. ENNIS: We don't oppose.

10:14:38 1 THE COURT: What about Ontario?

10:14:38 2 Mr. Ogden?

10:14:40 3 MR. OGDEN: No instructions yet but  
10:14:41 4 perhaps we will have them by the end of the day  
10:14:43 5 and we can address it then.

10:14:45 6 THE COURT: So what I would suggest,  
10:14:47 7 Ms. Grove-McClement, is that provided that there  
10:14:50 8 are no objections, and the parties' positions  
10:14:55 9 are either consent or not objecting, that you  
10:14:57 10 prepare an email to my office recording the  
10:15:03 11 positions of the parties, as have been  
10:15:06 12 communicated, and attaching -- well, unless you  
10:15:15 13 get actual consent you will need an order.

10:15:18 14 So if you don't get affirmative  
10:15:20 15 consent, which is probably the way it's going to  
10:15:22 16 shake out from the way I hear, then attaching a  
10:15:25 17 draft order for leave to amend, and appending  
10:15:29 18 the proposed Amended Statements of Defence,  
10:15:33 19 plural. And obviously that material should be  
10:15:37 20 provided to the parties in advance of being  
10:15:41 21 provided to my office.

10:15:43 22 But it suggests to me that that's  
10:15:45 23 probably going to be a sufficient way of dealing  
10:15:47 24 with that.

10:15:49 25 MS. GROVE-McCLEMENT: Okay.

10:15:49 1 THE COURT: And we'll go from there.

10:15:51 2 All right?

10:15:53 3 MS. GROVE-McCLEMMENT: Thank you, Your  
10:15:53 4 Honour, that's all I have at this time.

10:15:56 5 THE COURT: I just wanted, before you  
10:15:57 6 sit down, to say welcome. I know you've been  
10:16:00 7 involved in a number of trial management  
10:16:02 8 conferences especially on the phone, and same to  
10:16:05 9 Mr. Stewart, who I see in court this morning.  
10:16:08 10 Welcome.

10:16:08 11 I think technically I may have met  
10:16:10 12 each of you at a case conference a very long  
10:16:13 13 time ago but I think this is the first time  
10:16:15 14 you've been here recently.

10:16:17 15 And you should both feel free to raise  
10:16:20 16 any issues at all, and you've obviously got  
10:16:23 17 yourselves organized, which has been  
10:16:24 18 characteristic of the Municipalities in this  
10:16:27 19 trial and I really appreciate it.

10:16:31 20 So thank you for confirming,  
10:16:32 21 Ms. Grove-McClement, that the Municipalities  
10:16:35 22 have already made their openings. I did take  
10:16:37 23 out that material and had a look at it. I've  
10:16:40 24 got both the written opening and of course there  
10:16:43 25 was an oral opening made back in April of last

10:16:47 1 year.

10:16:48 2 I take it from what you've said that  
10:16:49 3 the next thing we will be doing in the defence  
10:16:52 4 of the Municipalities is turning things over to  
10:16:55 5 Ms. Daugherty, and I can't recall if you also  
10:16:58 6 said Ms. McKenna, to call certain witnesses?

10:17:02 7 MS. GROVE-McCLEMENT: Yes.

10:17:03 8 THE COURT: Thank you very much,  
10:17:03 9 counsel.

10:17:12 10 Please go ahead, Ms. Daugherty.

10:17:19 11 MS. DAUGHERTY: Thank you, Justice  
10:17:21 12 Matheson.

10:17:22 13 THE COURT: Oh, Ms. Daugherty, so I  
10:17:22 14 don't forget. We normally break for lunch at  
10:17:24 15 1:00 but today I need to break at 12:45.

10:17:28 16 MS. DAUGHERTY: Thank you. And I  
10:17:29 17 should say that plaintiffs, and in particular  
10:17:34 18 the document manager for the plaintiffs, has  
10:17:36 19 very kindly agreed to help call up certain of  
10:17:40 20 the documents that have just been marked as  
10:17:43 21 exhibits during the examination of the Georgian  
10:17:50 22 Bluff witnesses, so I'm very appreciative to my  
10:17:54 23 friends in that regard.

10:17:55 24 THE COURT: Thank you, counsel, to the  
10:17:56 25 plaintiff and your tech help for doing that for

1 the Municipalities, it is extremely helpful.

2 Please go ahead.

3 MS. DAUGHERTY: Thank you.

4 So I don't propose to make any further  
5 opening statement.

6 THE COURT: I understand that.

7 MS. DAUGHERTY: So I'd like to call as  
8 the first witness for the Township of Georgian  
9 Bluffs Wendi Hunter.

10 WENDI HUNTER: AFFIRMED.

11 EXAMINATION IN-CHIEF BY MS. DAUGHERTY:

12 THE COURT: Ms. Hunter, we have a  
13 cavernous room. That microphone in front of  
14 you, if you can move as much as you can your  
15 chair forward, will help you. But would you  
16 please also try and keep your voice up more than  
17 you might in ordinary business?

18 THE WITNESS: I'll do my best, Your  
19 Honour.

20 THE COURT: People in the back row, if  
21 you can't hear please raise your hand and we'll  
22 make adjustments.

23 Please go ahead, Ms. Daugherty.

24 MS. DAUGHERTY: Thank you.

25



1 BY MS. DAUGHERTY:

2 Q. Ms. Hunter, what is your position  
3 with the Town of Georgian Bluffs?

4 A. My current position is as Clerk  
5 and Director of Legislated Services. I have  
6 been there since May of 2017 in that position  
7 between November and February -- November of  
8 2019 and February of this year I also acted as  
9 CAO.

10 Q. And before joining Georgian  
11 Bluffs where were you employed?

12 A. Prior to Georgian Bluffs I was  
13 almost 20 years, not quite 20 years at the City  
14 of Brampton in the Clerk's Department reporting  
15 directly to the City Clerk; and my last 10 years  
16 there was as Manager of Administrative Services  
17 and Elections.

18 Q. And what about prior to your  
19 working in Brampton?

20 A. Prior to Brampton I was almost 15  
21 years at the City of Mississauga in the Clerk's  
22 Department.

23 Q. Now, going back to your roles and  
24 responsibilities at Georgian Bluffs, and  
25 focusing on any portions of your work relevant

10:20:38 1 to municipal roads, can you provide a summary of  
10:20:44 2 what your role involves?

10:20:47 3 A. My role as Clerk is -- my  
10:20:52 4 statutory duties as the secretary to Council,  
10:20:59 5 but my duties include creating by-laws. If we  
10:21:03 6 speak specifically to roads I would be writing  
10:21:06 7 by-laws pertaining to traffic control.

10:21:09 8 I have written by-laws -- composed and  
10:21:12 9 had by-laws passed on stopping of closing road  
10:21:14 10 allowance and conveyance on road allowances.

10:21:17 11 I'm responsible for administering  
10:21:20 12 agreements for the townships, some of those  
10:21:22 13 including roads, and other Clerk and  
10:21:26 14 administrative duties. I am also responsible  
10:21:28 15 for the planning and building divisions of the  
10:21:28 16 Township of Georgian Bluffs.

10:21:40 17 Q. Now I want to show to you a map  
10:21:41 18 and get you to identify it, it's been added to  
10:21:44 19 the REDI database. And the database number is  
10:21:49 20 SC2080, it is not yet marked as an exhibit.  
10:21:54 21 I've provided old fashioned, paper copies to my  
10:22:00 22 friends and an electronic copy as well, and I  
10:22:07 23 have paper copies for the court, and a map  
10:22:09 24 mounted on foam board.

10:22:12 25 THE REGISTRAR: Court's indulgence.

1 Ms. Daugherty, the SC number is 2087.

2 MS. DAUGHERTY: My apologies, 2087.

3 Thank you. If everyone could correct that  
4 number I would be grateful.

5 THE COURT: Is that image in the  
6 database at this stage?

7 THE REGISTRAR: Yes, Your Honour.

8 MS. DAUGHERTY: Yes, it is.

9 THE COURT: Very good.

10 MR. TOWNSHEND: That document is in  
11 the database but for some reason it's not  
12 loading.

13 THE COURT: Thank you for drawing that  
14 to our attention. Do you have one more copy,  
15 Ms. Daugherty?

16 MS. DAUGHERTY: I do.

17 THE COURT: Perhaps I'll ask my staff  
18 to get a piece of scotch tape from the registrar  
19 and just put that over on the wall so the  
20 members of the public can see it.

21 Please go ahead.

22 MS. DAUGHERTY: Thank you.

23 BY MS. DAUGHERTY:

24 Q. So, Ms. Hunter, are you familiar  
25 with the map that I've just handed to you,

10:24:10 1 which, again for the record, is SC2087 in the  
10:24:14 2 REDI database. And it's a map entitled  
10:24:16 3 "Township of Georgian Bluffs", and down in the  
10:24:21 4 bottom, right-hand corner it says "2019 Grey  
10:24:24 5 County Planning"?

10:24:25 6 A. Yes, I am familiar with it.

10:24:27 7 Q. And who prepared this map?

10:24:30 8 A. This map was prepared by the  
10:24:32 9 Planning Department at the County of Grey. Most  
10:24:34 10 of our mapping is done by Grey County.

10:24:38 11 Q. And I gather that they have some  
10:24:40 12 particular Geographic Information System that's  
10:24:44 13 used for that mapping?

10:24:46 14 A. Yes. Grey County has --  
10:24:48 15 basically has the technology, the Geographic  
10:24:50 16 Information System is mapping technology which  
10:24:53 17 can add layers to a map showing where roads are,  
10:24:56 18 showing what zoning is, placing parcels on the  
10:25:01 19 map so that we can find out who owns those --  
10:25:04 20 that property, that sort of information is on  
10:25:06 21 the GIS.

10:25:08 22 Q. And just broadly speaking, I'm  
10:25:12 23 going to take you through the detail of it, but  
10:25:14 24 broadly speaking, what is shown on this map  
10:25:19 25 then?

10:25:19 1 A. The map shows the roads in  
10:25:24 2 Georgian Bluffs, including opened and unopened  
10:25:27 3 road allowances and the settlement areas in  
10:25:30 4 Georgian Bluffs.

10:25:32 5 Q. Now, just to get a little bit  
10:25:35 6 more background information before we go through  
10:25:40 7 the roads information. I noticed that, for  
10:25:44 8 example, along the right-hand shoreline shown  
10:25:52 9 here there is a word, "Sarawak", and then I  
10:25:59 10 notice the word "Keppel", and then below on the  
10:26:03 11 map in noticed the word "Derby"? Can you  
10:26:05 12 explain what "Sarawak" and "Derby" are?

10:26:06 13 THE COURT: I'm just not seeing it,  
10:26:06 14 counsel. Where are you?

10:26:09 15 MS. DAUGHERTY: So I am looking --  
10:26:13 16 perhaps I can point on the foam core map is the  
10:26:18 17 easiest way to do it.

10:26:24 18 BY MS. DAUGHERTY:

10:26:25 19 Q. So if I can point to the very  
10:26:31 20 built-up area with numerous roads shown just at  
10:26:36 21 the bottom of this inlet? If you go on the  
10:26:43 22 left, or western side, up the bay toward the  
10:26:48 23 pink area labelled "Cobble Beach", you can see  
10:26:51 24 the words "Sarawak" in grey on the map?

10:27:00 25 THE COURT: I've got it now. Thank

10:27:01 1 you.

10:27:02 2 BY MS. DAUGHERTY:

10:27:02 3 Q. And then if you look to the west  
10:27:03 4 of that running along roughly below the road  
10:27:09 5 labelled "Concession 14", you will come to the  
10:27:11 6 words "Keppel", or the word "Keppel".

10:27:18 7 THE COURT: All right.

10:27:20 8 BY MS. DAUGHERTY:

10:27:20 9 Q. And then if you look straight  
10:27:21 10 down from Keppel and you go below the green line  
10:27:26 11 that's marked "Highway 21" you'll see the word  
10:27:33 12 "Darby" [ph] or "Derby", depending on how you  
10:27:42 13 pronounce it.

10:27:45 14 So my question to you, Ms. Hunter, is  
10:27:48 15 what do Sarawak, Keppel and Derby refer to?

10:27:56 16 A. Sarawak, Keppel and Derby were  
10:27:59 17 the former townships that were amalgamated,  
10:28:01 18 effective January 1, 2001, by the Province of  
10:28:04 19 Ontario to form the township of Georgian Bluffs.

10:28:08 20 Q. And just for your assistance, and  
10:28:12 21 I think there's no dispute about it so I'm going  
10:28:15 22 to lead on this one point, provided my friends  
10:28:18 23 don't spring to their feet, the area that we're  
10:28:20 24 concerned about then is the area north of  
10:28:26 25 Highway 21 and east of Highway 6, and excluding

1 Sarawak?

2 A. That's correct.

3 Q. So focusing on that area what do  
4 the red coloured roads in that portion of the  
5 map of Georgian Bluffs represent?

6 A. The red coloured roads indicate  
7 roads under the jurisdiction of Grey County.

8 THE COURT: Yes, counsel.

9 MS. McNAMARA: My apologies, I'm a  
10 little late with my objection here, but to the  
11 extent that "east of Highway 6" excludes the  
12 portion -- the triangle between Highway 21,  
13 Highway 6, and Bruce Road 10, that that section  
14 is in fact included.

15 MS. DAUGHERTY: Yes, and I take that  
16 correction from my friend, thank you.

17 THE COURT: Thank you, Ms. McNamara,  
18 for giving that correction.

19 BY MS. DAUGHERTY:

20 Q. Just to clarify for Ms. Hunter,  
21 we're talking about the area east of Highway 6  
22 and also east of Bruce Road 10 and north of  
23 Highway 21.

24 A. Yes.

25 Q. So subject to that clarification

1 then what do the red coloured roads on that  
2 portion of the map represent?

3 A. The red coloured roads are roads  
4 that are under the jurisdiction of Grey County,  
5 they're county roads.

6 Q. So, for example, that would  
7 include Grey Road 17 and the Grey Road 1 that is  
8 shown as running around the shore of the north  
9 portion of the Township?

10 A. Yes.

11 Q. Now, I'm going to come back to  
12 it, but just to clarify, has Grey Road 1 always  
13 been a county road?

14 A. No -- my understanding of the  
15 history of Grey Road 1 is prior to it being  
16 assumed by the county it was a development road  
17 that was created and built by the Township of  
18 Keppel.

19 Q. So originally a Municipal road  
20 but at some point it became a county road?

21 A. Yes.

22 Q. We'll come back to that.

23 Now, what about the green coloured  
24 roads that are shown then on that portion of the  
25 map that we're interested in?



10:31:27 1 A. The green roads are Provincial  
10:31:29 2 highways.  
10:31:32 3 Q. And so, for example, that would  
10:31:34 4 be Highway 21 and Highway 6?  
10:31:37 5 A. Yes.  
10:31:37 6 Q. Correct?  
10:31:38 7 A. Yes.  
10:31:41 8 Q. Now, what about the roads shown  
10:31:44 9 in solid black lines on that portion of the map?  
10:31:47 10 What are they?  
10:31:48 11 A. The solid black lines are opened  
10:31:52 12 and maintained roads of the Township of Georgian  
10:31:56 13 Bluffs.  
10:31:57 14 Q. So improved Municipal roads,  
10:32:00 15 essentially?  
10:32:01 16 A. Yes.  
10:32:03 17 Q. Now, what about -- there were a  
10:32:05 18 few roadways shown in black but with a dotted  
10:32:13 19 line. So, for example, if you look at  
10:32:19 20 Concession 4 that runs across roughly the middle  
10:32:27 21 of the area that we're interested in in an  
10:32:31 22 east-west direction, portions of it are shown in  
10:32:34 23 a dotted line. What does that dotted line mean?  
10:32:42 24 A. I actually think, Ms. Daugherty,  
10:32:42 25 you're talking about Concession 14.

10:32:45 1 Q. Yes. I'm sorry, did I --

10:32:47 2 A. Just above the name "Keppel".

10:32:49 3 Q. Yes.

10:32:50 4 A. So there are dotted lines there.

10:32:53 5 I believe that the dotted black lines represent

10:32:56 6 roads that were once opened and maintained by

10:32:59 7 the Municipality but are no longer maintained by

10:33:03 8 the Municipality, so they're not regularly used

10:33:07 9 for public traffic and they're not maintained

10:33:09 10 regularly by the Municipality.

10:33:17 11 Q. So roads that were improved

10:33:18 12 travel roads but no longer maintained by the

10:33:21 13 Municipality?

10:33:22 14 A. That's correct.

10:33:22 15 Q. Okay. Now, what about then the

10:33:25 16 roads that are shown in the dotted yellow lines

10:33:37 17 in this area?

10:33:39 18 A. The dotted yellow lines represent

10:33:41 19 road allowances that have not been assumed or

10:33:46 20 opened by the Municipality and are not

10:33:48 21 maintained by the Municipality.

10:33:55 22 Q. So unassumed, unmaintained road

10:33:56 23 allowances?

10:34:00 24 A. That's correct.

10:34:01 25 Q. Now, would any of those road

1 allowances that are shown in yellow have been  
2 stopped up and closed by the Municipality  
3 though?

4 A. Not that I'm aware of, no.

5 Q. So, roughly how many kilometres  
6 of unimproved road allowances, so the yellow,  
7 dotted line ones, does Georgian Bluffs have?

8 A. It's roughly 240 kilometres.

9 Q. And just for purposes of getting  
10 a sense of what the width of these road  
11 allowances is, is there a standard width for  
12 these yellow road allowances?

13 A. I believe the standard width is  
14 66 feet.

15 Q. So approximately 240 kilometres  
16 of road allowances that are 66 feet wide.

17 Do you have a rough acreage  
18 calculation for that or have you not done the  
19 calculation?

20 A. No, I'm sorry, I don't.

21 Q. Now, approximately how many  
22 kilometres of improved roads does Georgian  
23 Bluffs have? And by that I'm talking about the  
24 roads that are shown in black or the dotted  
25 black lines?

10:35:30 1 A. It's roughly 382 kilometres. And  
10:35:33 2 I want to be clear that this is for the whole of  
10:35:36 3 the Township of Georgian Bluffs.

10:35:41 4 Q. Okay.

10:35:41 5 A. All three areas, Keppel, Sarawak  
10:35:44 6 and Derby.

10:35:45 7 Q. And Sarawak and Derby are not  
10:35:47 8 included in the area that is subject to this, so  
10:35:50 9 you've given the global number?

10:35:52 10 A. That's right.

10:35:54 11 Q. Thank you. Now, just sort of  
10:35:56 12 stepping back from the detail on the map and the  
10:35:59 13 different colouring, if you look at all of the  
10:36:01 14 black and yellow and red roads taken together  
10:36:04 15 there's sort of a grid pattern, if you will,  
10:36:06 16 that emerges on this map. Where does that grid  
10:36:19 17 of roads originate?

10:36:20 18 A. My understanding is it comes from  
10:36:22 19 the original Crown survey done in the 1800s of  
10:36:26 20 the area.

10:36:27 21 Q. And just for the record, and I  
10:36:29 22 don't propose to turn it up, but the Township  
10:36:33 23 survey for the Township of Keppel has already  
10:36:37 24 been marked as Exhibit number 2468, just for the  
10:36:41 25 record.

10:36:46 1 Now, before I proceed further then I'd  
10:36:48 2 ask that this map showing the road system in  
10:36:54 3 Georgian Bluffs be marked as the next exhibit?

10:36:59 4 THE COURT: All right. Any objection?  
10:37:01 5 No? Mr. Registrar.

10:37:04 6 THE REGISTRAR: Exhibit number 4896.  
10:37:14 7 EXHIBIT NO. 4896: Map depicting the  
10:37:14 8 road system in Georgian Bluffs.

10:37:25 9 MS. DAUGHERTY: Thank you,  
10:37:25 10 Mr. Registrar.

10:37:30 11 BY MS. DAUGHERTY:

10:37:30 12 Q. Now, you've made some reference  
10:37:34 13 in your testimony so far to whether a road  
10:37:37 14 allowance was assumed by Georgian Bluffs or not  
10:37:43 15 assumed for maintenance, can you expand on what  
10:37:46 16 you mean by that?

10:37:53 17 A. As required under the current  
10:37:55 18 Municipal Act, if a Township is going to  
10:38:00 19 maintain a road allowance to standards for  
10:38:05 20 public travel then the Township has to pass a  
10:38:08 21 by-law to assume the road allowance for  
10:38:15 22 maintenance purposes and for travel purposes.

10:38:17 23 Q. Okay. So I take it -- or let me  
10:38:22 24 ask you then, for the road allowances that are  
10:38:24 25 shown in yellow on Exhibit 4896 on the map that

10:38:33 1 we've just been dealing with, for those road  
10:38:35 2 allowances am I right that there wouldn't have  
10:38:38 3 been a by-law assuming those for -- to be  
10:38:41 4 maintained by the Municipality?

10:38:44 5 A. That's correct. Those road  
10:38:49 6 allowances have not been assumed by the  
10:38:51 7 Municipality and are not publicly traveled;  
10:38:55 8 they're not for car traffic.

10:38:59 9 Q. But when you say "not publicly  
10:39:01 10 travelled" you're talking about vehicular  
10:39:05 11 traffic?

10:39:05 12 A. I am talking about --

10:39:07 13 Q. Okay. Now, what types of roads  
10:39:20 14 or highways do these Municipal maintenance  
10:39:22 15 obligations apply to then?

10:39:28 16 A. What types of highway -- I'm  
10:39:30 17 sorry, I don't understand.

10:39:31 18 Q. Maybe I'll back up and ask it in  
10:39:32 19 a different way then.

10:39:34 20 If you look at the -- if you look at  
10:39:38 21 the map that we've just been going through,  
10:39:41 22 which of the roads shown on this map would be  
10:39:47 23 subject to those Municipal maintenance  
10:39:52 24 obligations?

10:39:53 25 A. Any of the roads on the map shown

10:39:55 1 as solid black would be subject to our  
10:39:57 2 maintenance obligations.

10:40:07 3 Q. And where do those maintenance  
10:40:07 4 obligations come from? Are they set out  
10:40:09 5 anywhere?

10:40:09 6 A. They are defined in a regulation  
10:40:10 7 that has been passed under the current Municipal  
10:40:14 8 Act.

10:40:14 9 Q. And very broadly speaking, we're  
10:40:16 10 going to have a witness to speak to this in a  
10:40:19 11 bit more detail, but just broadly speaking, what  
10:40:23 12 types of maintenance obligations are imposed  
10:40:26 13 then by that regulation?

10:40:28 14 A. So I've briefly gone through the  
10:40:32 15 regulation and it speaks to such things as  
10:40:36 16 regular patrol of the road; depending on the  
10:40:40 17 class of road, when snow needs to be removed; it  
10:40:45 18 speaks to the amount of snow that comes down,  
10:40:48 19 the timing of the snow that is coming down,  
10:40:51 20 preparing for an ice event in nonwinter months;  
10:40:55 21 it speaks to size, depth of potholes and cracks;  
10:41:00 22 and what's going on on the shoulders; and when  
10:41:05 23 work needs to be done to repair those things.

10:41:16 24 Q. So you've talked about those  
10:41:17 25 maintenance obligations as applying to the roads

1 that are coloured black on this map, the  
2 Municipal, assumed travel roads?

3 A. Yes.

4 Q. I want to talk a little bit about  
5 what, if any, maintenance is done on the yellow,  
6 unassumed road allowances. So my question to  
7 you is, can you tell us about what if any  
8 maintenance work the Municipality does on the  
9 unassumed road allowances? The yellow ones?

10 A. Georgian Bluffs doesn't have  
11 policy, nor do we have regulations that we need  
12 to follow with regard to unopen road allowances.  
13 But, those unopened road allowances, unassumed  
14 road allowances are used by the public. Some  
15 for, for instance, for access for farmers to  
16 their fields and farm buildings, that sort of  
17 use, plus public recreational use.

18 So we will occasionally grade them or  
19 perhaps put down a load of gravel or, you know,  
20 cut back brush. Those sorts of activities we do  
21 on an as-needed and as-requested basis rather  
22 than because we have to follow a policy or  
23 regulation regarding them.

24 Q. So if you don't have any policy  
25 or regulation that compels you to do it why do



10:42:54 1 you do any maintenance work on these unassumed  
10:43:00 2 road allowances?

10:43:02 3 A. Because they are used regularly  
10:43:04 4 by the public, as I said, by farmers, by people  
10:43:08 5 accessing their property that may not be facing  
10:43:10 6 on to an assumed road allowance. And for public  
10:43:16 7 safety we have to apply some level of  
10:43:19 8 maintenance to those roads, road allowances.

10:43:23 9 Q. When you talk about -- you  
10:43:27 10 mentioned that the public used these thing for,  
10:43:30 11 among other things, recreational purposes. What  
10:43:33 12 do you mean when you say "recreational  
10:43:36 13 purposes"?

10:43:37 14 A. We have a lot of trails and  
10:43:38 15 hiking in our Municipality. Some of those road  
10:43:41 16 allowances actually are along the Bruce Trail,  
10:43:44 17 which there is much of in Georgian Bluffs.

10:43:47 18 Those -- recreationally some of those  
10:43:50 19 road allowances are also used for ATVs,  
10:43:53 20 all-terrain vehicles, and snowmobiling in the  
10:43:57 21 winter time.

10:43:58 22 Q. Now, do the public actually have  
10:44:08 23 a right to use those --

10:44:14 24 MS. McNAMARA: Your Honour, I think  
10:44:15 25 whether or not the public have a right to access

1 something is a legal question.

2 MS. DAUGHERTY: Let me rephrase.

3 BY MS. DAUGHERTY:

4 Q. Is there any way for the  
5 Municipality to restrict or prevent people from  
6 using unopened road -- or unimproved road  
7 allowances? The yellow road allowances in the  
8 Municipality?

9 THE COURT: Ms. McNamara?

10 MS. McNAMARA: This strikes me as  
11 perhaps also a legal question. I have the same  
12 objection.

13 THE COURT: So just while we're on the  
14 subject, and we've had a number of witnesses  
15 including this type of witness, who have  
16 described the activities, roles and  
17 responsibilities of government work, which  
18 almost invariably is under or in relation to  
19 some sort of legislation or regulation.

20 And obviously I will not take any  
21 evidence from any of these lay witnesses as to  
22 whether they're right about what their  
23 obligations are.

24 Ms. McNamara, I wonder if we could  
25 proceed on the basis, not to say you shouldn't

1 stand up if there's something you're not  
2 comfortable with, but generally on the basis  
3 that these individuals who perform their jobs  
4 under legislation or regulation can describe  
5 their understanding and obviously be free, if it  
6 became important, to say they were wrong.

7 Is that satisfactory for now?

8 MS. McNAMARA: Yes, Your Honour.

9 THE COURT: If you become  
10 uncomfortable with that you can just say so.

11 MS. McNAMARA: Thank you, Your Honour.

12 THE COURT: Continue on that basis,  
13 Ms. Daugherty.

14 MS. DAUGHERTY: Thank you, Justice  
15 Matheson, and I'm not in any way attempting to  
16 elicit a legal opinion from this witness.

17 THE COURT: No, I understand that.

18 We've had these issues already.  
19 Everyone's trying to manage their way through it  
20 and without making a concession, which is why  
21 Ms. McNamara got on her feet.

22 BY MS. DAUGHERTY:

23 Q. So then let me, if I can remember  
24 it, put my question to you again, Ms. Hunter,  
25 which is, is there any way, under the current

1 Municipality Act, is there anyway for Georgian  
2 Bluffs to restrict or remove any public right to  
3 use the road allowances, the unassumed road  
4 allowances?

5 A. The current Municipal Act  
6 provides that Municipalities may pass a by-law  
7 restricting access to roads and road allowances.

8 Q. And has Georgian Bluffs passed  
9 those types of by-laws to restrict access to  
10 what I'll call the yellow road allowances, the  
11 unimproved ones?

12 A. To the best of my knowledge no.

13 Q. Are there any circumstances of  
14 which you're aware where the Municipality is  
15 contemplating restricting access in that manner?

16 A. We -- the Township about four  
17 years ago closed portions of a couple of roads,  
18 we call them the W-Hill and Suicide Hill, to  
19 vehicular traffic because of concerns for our  
20 ability to maintain them to the appropriate  
21 standards and the safety of the people who are  
22 using those roads.

23 Q. Now, does the Municipality have  
24 any other arrangements or agreements in relation  
25 to public use of these unassumed road

10:48:21 1 allowances?

10:48:22 2 A. We occasionally will enter into  
10:48:24 3 agreements with property owners, for example,  
10:48:32 4 who want to log their property. And the easiest  
10:48:34 5 way to -- for them to access their property and  
10:48:37 6 get their equipment in to log is to use an  
10:48:41 7 unassumed road allowance, so we would enter into  
10:48:44 8 an agreement with that property owner.

10:48:46 9 Those agreements are always time  
10:48:48 10 limited to allow them to do the logging on their  
10:48:52 11 property, using -- accessing it by the unopened  
10:48:59 12 road allowance or the unassumed road allowance.

10:49:02 13 The agreement generally says that they  
10:49:04 14 will bring the road allowance back to the  
10:49:07 15 condition it was in before they started, and  
10:49:09 16 that they don't hold the Township responsible  
10:49:13 17 for any maintenance on those unassumed road  
10:49:18 18 allowances when they are in use by the property  
10:49:21 19 owner.

10:49:23 20 Q. Now, what if any signage does the  
10:49:27 21 Municipality use with respect to these yellow,  
10:49:31 22 unassumed road allowances?

10:49:37 23 A. In the past the signage has been  
10:49:40 24 a bit piecemeal, sometimes the sign will say  
10:49:44 25 "Road Not Maintained", "Road Not Maintained in

1 the Winter Months".

2 If the road allowance looks like it  
3 may be drivable there is a sign at the entrance  
4 to that road allowance.

5 In 2018, in an effort to standardize  
6 our signs and conform with Provincial standards,  
7 the piecemeal signage was replaced with -- all  
8 of those signs were replaced with "Road Not  
9 Assumed by the Municipality".

10 Q. You've mentioned that the  
11 Municipality could decide to assume a road  
12 allowance and if they do that they do it by  
13 by-law. Can you tell us, in what circumstances  
14 would the Municipality or might the Municipality  
15 decide to assume an unimproved road allowance  
16 and decide, well, now we're going to assume it  
17 and make it an improved municipally-maintained  
18 road?

19 A. The Township might assume a road  
20 if residents on that road -- because some of  
21 these unassumed road allowances do have  
22 residences on them, at the request of the  
23 residents of the unassumed road might choose to  
24 assume it and bring it to a standard that can be  
25 maintained.

10:51:29 1  
10:51:30 2  
10:51:31 3  
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I have done some research on this.  
I've only found one in the last 20 years that actually assumed an unopened road allowance.  
Our by-laws regarding assuming road allowance are almost exclusively regarding new development where a developer has taken, you know, a chunk of land and put roads in there and houses and then at one point or another we will assume them; or with regards to severances where there has been road widenings or entrances that -- where a portion of the property has had to be assumed for highway purposes in order to facilitate the severance and the building on those lots.  
Q. So do I understand from what you just said that the -- the situations where there may be residences along an unassumed, unopened road allowance you just leave that as it is and not assume it? Is that what you were indicating?  
A. My research shows that that is very rare that we assume a road where there are residents, an unopened road allowance where there are residences.  
Where people have chosen to build on

1 an unassumed road we enter into what we call a  
2 "Limited Services Agreement" with those owners,  
3 where the owners of the property acknowledge  
4 that the road allowance is unassumed and  
5 unmaintained, and so they can't come back to the  
6 Municipality and say, Well, you let me build  
7 there now you have to maintain the road.

8 So we enter into those agreements so  
9 they can build if they want to but they  
10 understand that we will not be maintaining those  
11 road allowances.

12 Q. Now, does Georgian Bluffs  
13 maintain any liability insurance on Municipal  
14 property?

15 A. Yes. Our liability insurance  
16 does show a line for roads, it does not -- it  
17 does not delineate whether they are opened or --  
18 assumed or unassumed roads. Yes, we do.

19 And we also maintain insurance for the  
20 operations centres, the three operation centres  
21 for the crews that work out for road  
22 maintenance.

23 Q. And why do you maintain insurance  
24 on not just your improved roads but also your  
25 unimproved roads?



10:54:02 1 A. Because we acknowledge that those  
10:54:04 2 unimproved or unassumed roads are still being  
10:54:09 3 used by the public, and because they are public  
10:54:11 4 lands we are assuming some liability for them.

10:54:18 5 When I worked for the City of  
10:54:19 6 Brampton, just as I started with the City of  
10:54:24 7 Brampton, they were winding up litigation  
10:54:27 8 wherein a young man was injured using public  
10:54:30 9 lands that were posted for non -- for no  
10:54:34 10 motorized vehicle use.

10:54:35 11 The young man was -- used a mini bike  
10:54:38 12 and was severely injured and there was a  
10:54:40 13 significant award against the City.

10:54:44 14 I think that the practice of assuming  
10:54:46 15 liability for their public lands is -- and  
10:54:51 16 insuring that is regular practice for  
10:54:53 17 Municipalities.

10:54:54 18 Q. So I want to turn then to the  
10:54:58 19 process that Georgian Bluffs follows, or is  
10:55:04 20 required to follow if it wants to close one of  
10:55:12 21 these yellow road allowances, so the unimproved  
10:55:15 22 unassumed road allowances; if you actually want  
10:55:20 23 to close that what are the requirements?

10:55:25 24 A. The current Municipal Act  
10:55:27 25 requires us to pass a by-law to close that

10:55:32 1 portion of the road allowance and to register  
10:55:35 2 that by-law on title.

10:55:38 3 The Township has a policy regarding  
10:55:43 4 closing road allowances, which requires public  
10:55:50 5 notice of our intention to close a road or a  
10:55:53 6 road allowance, including advertising in local  
10:55:57 7 papers and posting the property for at least  
10:55:59 8 three weeks in order that the public is aware of  
10:56:02 9 the Township's intentions to close the road.

10:56:11 10 Q. So you've talked about various  
10:56:13 11 procedural requirements applying by policy under  
10:56:17 12 the current Municipal Act, do you have any  
10:56:21 13 experience relating to the procedures prescribed  
10:56:27 14 under the -- what I'll call the old Municipal  
10:56:30 15 Act before 2001?

10:56:32 16 A. The previous Municipal Act used  
10:56:34 17 to be quite prescriptive regarding public  
10:56:38 18 notice.

10:56:39 19 The current Municipal Act is not so  
10:56:41 20 prescriptive, but my experience with  
10:56:44 21 Municipalities is that we have followed those  
10:56:48 22 rules that were previously -- in the interest of  
10:56:51 23 keeping the public informed we follow those  
10:56:54 24 public notice requirements as part of our  
10:56:56 25 policies as opposed to it being required under

1 the Municipal Act.

2 Q. Okay. So you do public notice,  
3 and then once you've done the public notice, and  
4 you may have already said this but just to be  
5 clear, once you've done the notice what does the  
6 Municipality have to do to then actually close  
7 the unassumed road allowance?

8 A. We pass a by-law to say -- with,  
9 you know, a description of the road allowance  
10 that is being closed; we pass that by-law and  
11 then that by-law is registered on title to the  
12 property so that potential purchasers would be  
13 aware that that road allowance is closed.

14 Q. Now, what if you also -- so  
15 suppose the Municipality passes a by-law that  
16 stops up and closes one of these Municipal road  
17 allowances, what if you want to then convey the  
18 land that used to be the road allowance? Is  
19 there a process that you follow for that?

20 A. Georgian Bluffs has a policy  
21 to -- and procedure to follow to stop up and  
22 convey a road allowance.

23 The process is usually begun by the  
24 abutting owner to the road allowance. So that  
25 abutting owner would approach the Township

1 saying, I'd like to buy this portion of the road  
2 allowance.

3 So we would take that to -- staff  
4 would take that to Council for agreement in  
5 principle for stopping up and conveying that  
6 portion of the road allowance.

7 Then the abutting owner is responsible  
8 for obtaining a Certificate of Pending  
9 Litigation from the First Nations, and a Notice  
10 of No Objection from the First Nations that they  
11 do not object to the conveyance of the road  
12 allowance.

13 The owner -- abutting owner is  
14 responsible to -- we have a \$2,000  
15 administrative fee that must be paid as part of  
16 the process, and they must have surveys prepared  
17 in order to facilitate the conveyance of the  
18 property.

19 Once those steps have been taken we  
20 would follow that public notice procedure with  
21 regards to an ad in the paper and posting at the  
22 property. And we also post this information on  
23 our website.

24 And then once all of those steps have  
25 been taken we would take a by-law to Council to

1 stop up, close and convey that portion of the  
2 road allowance.

3 Q. Now, why do you have this process  
4 in place requiring people who want to buy a road  
5 allowance, at least in this area of Keppel, to  
6 register a Certificate of Pending Litigation and  
7 get the consent of the First Nations? Why do  
8 you have that process in place?

9 A. My understanding is the policy  
10 was developed in response to the litigation that  
11 is currently in process.

12 Q. Okay. Now I want to go back and  
13 ask a more general question which is, that I  
14 probably should have asked you first. Turning  
15 from the procedural to just the kind of -- you  
16 know, whether you're going to agree to stop up  
17 and convey Municipal road allowances in the  
18 first place, what considerations does Georgian  
19 Bluffs take into account in deciding whether  
20 they're going to do that or not?

21 A. Whether the road allowance, the  
22 portion of the road allowance may be needed for  
23 future transportation purposes; whether stopping  
24 up and conveying would mean access to the public  
25 would be restricted, including access to the

1 waterfront, because most of these requests for  
2 conveyance are around waterfront properties. So  
3 we want to make sure that we maintain access by  
4 the public to the waterfront.

5 Whether safety is a consideration, and  
6 also our policy speaks specifically to the  
7 interests of the First Nations.

8 Q. So what if you were dealing with  
9 a situation where the person asking for the  
10 conveyance of the road allowance is a property  
11 owner who has given up lands on which a  
12 municipal travel road was actually constructed  
13 in lieu of opening up the original road  
14 allowance? Are there statutory requirements  
15 relating to that under the Municipal Act?

16 A. Yes. The Municipal Act requires  
17 that if a Municipality takes road allowance  
18 without compensation to the property owner, if  
19 there is property elsewhere that could be given  
20 to the property owner we are required to.

21 That is a way of compensating the  
22 property owner for the property that's been  
23 taken for road purposes.

24 Q. And in light of my friend's  
25 objection I don't propose to go any further into

1 those Municipal Act -- those road in lieu  
2 Municipal Act provisions.

3 Now, I recognize this was before your  
4 time, but just for purposes of dealing with this  
5 issue while a witness from Georgian Bluffs is in  
6 the stand, are you familiar with the -- with  
7 litigation involving the former Township of  
8 Keppel and the plaintiffs in this proceeding  
9 relating to the shore road allowance in the  
10 Municipality?

11 A. Yes.

12 Q. And in general what was the  
13 nature of that litigation?

14 A. So if I could walk you through my  
15 understanding of the history of that litigation?

16 THE COURT: Well, I'm going to just  
17 ask you to answer the question. Ms. Daugherty  
18 will ask you another question if you haven't  
19 gone into it enough.

20 BY MS. DAUGHERTY:

21 Q. Very briefly, and appreciating  
22 that you were not at the Municipality at the  
23 time that that litigation occurred, can you  
24 indicate your understanding, just in broad,  
25 general terms of the nature of that litigation?

11:05:32 1 What it was about, so to speak?

11:05:34 2 A. As a result of a decision which  
11:05:38 3 transferred part of the shore road allowance to  
11:05:42 4 one owner of property along Grey Road 1, a group  
11:05:48 5 of owners along Grey Road 1 approached Keppel  
11:05:53 6 for similar conveyances of road allowance.

11:05:59 7 Keppel -- I understand that the First  
11:06:03 8 Nations objected to that. Keppel passed a  
11:06:09 9 by-law issuing a number of quick claims. The  
11:06:13 10 First Nations took that decision to court and  
11:06:19 11 the by-law that issued those quick claims was  
11:06:23 12 quashed by the court.

11:06:25 13 Q. And the various property owners  
11:06:30 14 who were seeking quick claims along Grey Road 1,  
11:06:39 15 again just very broadly, what was the  
11:06:42 16 circumstance in terms of Grey Road 1 being  
11:06:49 17 constructed that that was the basis for this  
11:06:54 18 claim?

11:06:54 19 A. The original road allowances was  
11:06:55 20 improved by the Township of Keppel for access to  
11:06:59 21 the properties along the waterfront.

11:07:04 22 And that development, that improvement  
11:07:07 23 of the road -- in doing that they took property  
11:07:11 24 from those owners without compensation.

11:07:16 25 The road was assumed by the county at



1 one point or another and the county actually  
2 widened it a little bit and took a little bit  
3 more property. So under the terms of the  
4 Municipal Act those owners were entitled to --  
5 they felt they were entitled to the shore road  
6 allowance in order to compensate them for the  
7 property that had been taken for the  
8 construction and widening of what is now Grey  
9 Road 1.

10 Q. And I take it from what you said  
11 that Grey Road 1 was not actually built on the  
12 shore road allowance, it was built on a somewhat  
13 different location on property taken from those  
14 landowners?

15 A. That's right. Grey Road 1 isn't  
16 right along the shore, there are homes and  
17 cottages between Grey Road 1 and the shore road  
18 allowance.

19 Q. Now, I want to then talk to you  
20 about the issue of notice. And here is where my  
21 friends have very kindly agreed to pull up  
22 documents that have just this morning been  
23 marked as exhibits.

24 And before I put any documents to you,  
25 Ms. Hunter, my general question to you is, when

1 did Georgian Bluffs, or its predecessor, the  
2 Township of Keppel, first receive notice from  
3 the plaintiffs that the plaintiffs were claiming  
4 a "beneficial and possessory interest" in the  
5 road allowances in the Municipality within the  
6 area we've been talking about?

7 A. I believe it was in 1993.

8 Q. And if I can then turn up Exhibit  
9 4895, document SC2065 in the REDI database? And  
10 you have that on the screen in front of you,  
11 Ms. Hunter?

12 A. Yes.

13 Q. So are you familiar with this  
14 letter?

15 A. I am familiar with a letter that  
16 is addressed to the Township of Keppel, the one  
17 that I'm seeing right now is addressed to the  
18 Township of Amabel.

19 Q. Oh, I see. They've been marked  
20 as a group. Page 6 is the Township of Keppel.  
21 Okay.

22 Okay, we now have the correct letter.  
23 It should be a letter addressed to the  
24 Corporation of the Township of Keppel by  
25 Mr. Townshend, dated December 10th of 1993?

11:10:27 1 A. Yes.

11:10:27 2 Q. And you're familiar with this  
11:10:29 3 letter.

11:10:33 4 A. Yes, I am.

11:10:35 5 Q. And what is your understanding  
11:10:36 6 with respect to the notice provided to the  
11:10:42 7 Township in this letter?

11:10:44 8 A. The letter clearly states that:

11:10:46 9 "The Chippewas of Saugeen and the  
11:10:51 10 Chippewas of Nawash claim a beneficial  
11:10:56 11 and possessory interest in the lands."

11:11:00 12 Q. And I'm going to ask to turn up  
11:11:02 13 another exhibit, which is Exhibit 4893, REDI  
11:11:11 14 database number SC2062.

11:11:21 15 And what you should have in front of  
11:11:23 16 you is a March 24th, 1993, letter from  
11:11:34 17 Mr. Fritz, who I believe is a lawyer who was at  
11:11:41 18 Morris Rose Ledgett, along with Mr. Townshend at  
11:11:49 19 the time, to Julia Morneau, the then-solicitor  
11:11:53 20 for the Township of Keppel, and Mr. Hewines, who  
11:12:01 21 was the Clerk for the Township of Keppel,  
11:12:03 22 correct?

11:12:04 23 A. Yes.

11:12:05 24 Q. And, again, what was the notice  
11:12:06 25 provided to the Township at that point?

11:12:08 1 A. Again, the notice that was the  
11:12:10 2 Chippewas of Saugeen and Chippewas of Nawash  
11:12:14 3 First Nations enjoyed a beneficial and  
11:12:15 4 possessory interest in the shore road allowances  
11:12:19 5 in the Township.

11:12:20 6 Q. Now, I notice that at the very  
11:12:22 7 end of that first paragraph of the letter it  
11:12:23 8 says:

11:12:24 9 "Please note that this interest  
11:12:26 10 exceeds a mere compensatory interest  
11:12:29 11 to fair market value."

11:12:31 12 So my question to you is, based on  
11:12:41 13 your review of the correspondence received by  
11:12:44 14 the Township of Keppel, how did the notice in  
11:12:58 15 these 1993 letters of this beneficial and  
11:13:06 16 possessory interest, how did that compare to any  
11:13:09 17 notice that Keppel had received prior to that?

11:13:12 18 A. From my review of the  
11:13:17 19 correspondence it appears that these are the  
11:13:20 20 first notices that the claim of the First  
11:13:25 21 Nations may exceed a claim to fair market value  
11:13:31 22 of the property that was being conveyed.

11:13:34 23 Q. So, in other words, prior to that  
11:13:36 24 time the notices were related to compensation  
11:13:40 25 for the value of the property? Is that --

11:13:43 1 A. It appears to me that that is the  
11:13:45 2 case, yes.

11:13:55 3 Q. And perhaps if we can very  
11:13:56 4 quickly run through some of the -- well, the  
11:14:02 5 previous correspondence.

11:14:05 6 So if I can then ask you to turn up  
11:14:10 7 document SC2048, which is Exhibit number 4879.  
11:14:20 8 And that should be an August 23rd, 1957, letter  
11:14:29 9 to a Mr. McKerroll.

11:14:45 10 Based on your review of the  
11:14:48 11 correspondence who was Mr. McKerroll of McAvoy  
11:14:50 12 Craig and McKerroll?

11:14:54 13 A. I believe they were solicitors  
11:14:55 14 for the Township of Keppel.

11:15:25 15 Q. So in this letter then what is  
11:15:25 16 the description of the interest of the  
11:15:25 17 plaintiffs in these road allowances that Keppel  
11:15:25 18 was being provided with?

11:15:26 19 A. It appears to me that sale  
11:15:29 20 proceeds for those conveyed road allowances  
11:15:33 21 would be -- would be forwarded to the First  
11:15:36 22 Nations if the road allowances were closed and  
11:15:41 23 sold.

11:15:41 24 Q. So if the road allowances are  
11:15:43 25 closed and sold there's a claim to receive the

1 proceeds?

2 A. Yes.

3 Q. Now, if I can then turn to  
4 document SC2049, which is Exhibit 4880, which  
5 should be a June 28th, 1961, letter from W.C.  
6 Bethune of Indian and Northern Affairs Canada,  
7 to Mr. McKerroll.

8 Again, what is the Township being told  
9 in this letter about the nature of the  
10 plaintiffs' interest in these road allowances?

11 A. That letter indicates that if the  
12 road allowance were transferred to the lot  
13 owners without compensation that the Township  
14 would be given a release of the Indian interest  
15 in the road allowance.

16 Q. Now, looking to the second  
17 paragraph of the letter, what particular road  
18 allowance are they talking about in this letter?

19 A. The shore road allowance, the  
20 original shore road allowance.

21 Q. If I can then turn up document  
22 SC2059, which is Exhibit number 4890, which  
23 ought to be a September 28th, 1988, letter from  
24 Mr. McKnight of Indian and Northern Affairs  
25 Canada.

1 And in this letter what is the  
2 Township of Keppel being told, and in particular  
3 in the third paragraph of the letter regarding  
4 the nature of the plaintiffs' interest claimed  
5 in the road allowance?

6 A. So the letter states that when a  
7 road closing takes place there is an entitlement  
8 for appropriate compensation arising from the  
9 conveyance of the lands.

10 Q. And, lastly, if I can take you to  
11 document SC2061, which is Exhibit 4892, which  
12 should be a letter from Chief Vernon Roote of  
13 the Saugeen First Nation to the Clerk of the  
14 Township of Keppel dated June 1st of 1990.

15 So my question to you is, and again,  
16 directing you in particular to the second -- or  
17 I guess the third full paragraph of the letter,  
18 the one right in the middle of the page, what is  
19 Chief Roote indicating about the nature of the  
20 interest claimed by the Saugeen First Nation to  
21 the road allowances?

22 A. It states that there is a trust  
23 obligation pursuant to the Treaty to collect  
24 fair market value for the land, and to ensure  
25 that the proceeds are invested properly for the

1 benefit of the Chippewas of Saugeen and Nawash.

2 Q. So at the risk of repeating  
3 myself then, when, based on your review of the  
4 correspondence to the Municipalities, did the  
5 Municipality first get notice that the  
6 plaintiffs were claiming a "beneficial and  
7 possessory interest" in the road allowances?

8 A. 1993.

9 Q. So you get this notice in 1993.  
10 How, if at all, did that -- actually before I go  
11 on to there, just for the sake of completeness,  
12 I want to take you to one more piece of  
13 correspondence, which is document SC2056,  
14 Exhibit number 4887, which should be a letter  
15 from Paul Williams to the Township of Keppel in  
16 1987.

17 So this is a letter dated March 26th  
18 of 1987. And what is Mr. Williams, who I take  
19 it is writing on behalf of the Band  
20 administrator of the Chippewas of Nawash, what  
21 is he indicating about his client's position  
22 concerning the shore road allowance?

23 A. It appears that he is of the  
24 opinion that the Township has no power to sell  
25 or dispose of the road allowance.



1 Q. Does the letter indicate anything  
2 about a claim to a beneficial and possessory  
3 interest being advanced by the Chippewas of  
4 Nawash First Nation?

5 A. No.

6 Q. So then to my final question to  
7 you. So you get in 1993, you've said, notice  
8 that the First Nations are claiming this  
9 beneficial and possessory interest in the road  
10 allowances, the travel and also the unassumed  
11 road allowances in the Municipality. What  
12 impact did that have on the Municipality's  
13 maintenance obligations relating to these roads?

14 A. I don't believe it would have any  
15 impact on our obligations.

16 Q. And why is that?

17 A. Because we're obligated under the  
18 Municipal Act to maintain roads; and we have a  
19 responsibility to our residents and our rate  
20 payers to maintain those roads.

21 Q. And so what have you done in  
22 relation to road maintenance since 1993 when  
23 you've gotten notice of this claim?

24 A. We haven't made any changes to  
25 our -- to how we maintain our roads.

11:24:11 1 Q. Okay. Thank you, those are all  
11:24:22 2 my questions.  
11:24:23 3 THE COURT: All right.  
11:24:24 4 Ms. McNamara -- oh, I'm looking at the time. Do  
11:24:27 5 you want to start now or start after the break.  
11:25:07 6 MS. McNAMARA: If it's okay with you,  
11:25:08 7 Your Honour, I'd like to take the break and see  
11:25:08 8 if I can cut down my cross-examination.  
11:25:09 9 THE COURT: All right, twenty minutes.  
11:25:09 10 -- RECESSED AT 11:25 A.M. --  
11:25:09 11 -- RESUMED AT 11:46 A.M. --  
11:46:46 12 THE COURT: Please go ahead.  
11:46:48 13 MS. McNAMARA: Thank you, Your Honour.  
11:46:48 14 CROSS-EXAMINATION BY MS. McNAMARA:  
11:46:50 15 Q. Good morning, Ms. Hunter. My  
11:46:50 16 name is Jaclyn MacNamara and I'll be asking you  
11:46:50 17 questions on behalf of the plaintiffs in this  
11:46:50 18 litigation.  
11:46:50 19 So I want to start off by talking a  
11:46:55 20 bit about the unopened road allowances that you  
11:46:57 21 mentioned in your evidence this morning.  
11:47:02 22 And you seem -- from your testimony  
11:47:04 23 I'm assuming that you're generally familiar with  
11:47:07 24 the geography of the township of Georgian  
11:47:10 25 Bluffs, would that be fair?

11:47:11 1 A. Yes, I am.

11:47:12 2 Q. And I wonder if you'll agree with  
11:47:16 3 me that there are some of these unopened road  
11:47:18 4 allowances where it is highly unlikely that they  
11:47:20 5 will ever be opened?

11:47:22 6 A. Yes, I would agree with that.

11:47:50 7 Q. And I want to take you to a  
11:47:52 8 document -- my friend took you to a number of  
11:47:54 9 documents respecting what notice the Township of  
11:47:56 10 Keppel had when. So I'd like to bring you to  
11:47:59 11 Exhibit 4886, which is SC number 2055. Do you  
11:48:17 12 have the document on your screen?

11:48:19 13 A. I do. It's an article in the Sun  
11:48:20 14 Times?

11:48:30 15 THE COURT: Yes, we have a Sun Times  
11:48:33 16 article on masthead of July 23rd, 1984, if that  
11:48:39 17 is what you were going for?

11:48:42 18 BY MS. MCNAMARA:

11:48:42 19 Q. That is what I was going for, and  
11:48:44 20 thank you for getting the screen working.

11:48:46 21 Have you seen this article before?

11:48:49 22 A. I have seen it. I can't say that  
11:48:51 23 I have read it carefully.

11:48:53 24 Q. And we all note that it is an  
11:48:59 25 article dated July 23rd, 1984, as Her Honour

1 stated, and entitled "Official Tells Keppel  
2 Cottagers Indian Road Allowance Claims Valid."

3 I'd like to give you a moment to read  
4 the first three perhaps of that article.

5 THE COURT: Can you improve the size  
6 of it?

7 THE WITNESS: That is clear for me.  
8 (Witness reading the document.)

9 BY MS. MCNAMARA:

10 Q. So I would be fair to say that  
11 this article indicates that the Municipalities  
12 can't sell the road allowances?

13 A. The third paragraph states that  
14 the Joint Council sent a letter to Bruce  
15 Peninsula Municipalities telling them they  
16 couldn't sell the unopened road allowances, yes.

17 Q. So is it fair to say that this  
18 information would have been part of the public  
19 record or public knowledge as of July 23rd,  
20 1984?

21 A. It was published in the Sun  
22 Times, yes.

23 Q. Those are my questions, Your  
24 Honour.

25 THE COURT: Thank you. Is there any

1 re-examination, Ms. Daugherty?

2 MS. DAUGHERTY: No, Your Honour.

3 THE COURT: Ms. Hunter, thank you very  
4 much for coming. You may step out of the  
5 witness box now.

6 Is it Ms. Daugherty or Ms. McKenna  
7 who is calling the next witness?

8 MS. MCKENNA: It's me, Your Honour.

9 THE COURT: Please go ahead,  
10 Ms. McKenna.

11 MS. MCKENNA: Thank you, Your Honour  
12 the next witness is Troy Unruh.

13 TROY UNRUH: SWORN.

14 EXAMINATION IN-CHIEF BY MS. MCKENNA:

15 THE COURT: Mr. Unruh, you were in the  
16 courtroom and you heard what I said about  
17 keeping your voice up please.

18 THE WITNESS: Yes.

19 MS. GUIRGUIS: Please go ahead,  
20 Ms. McKenna.

21 MS. MCKENNA: Thank you.

22 BY MS. MCKENNA:

23 Q. Sir, you are an employee of  
24 Georgian Bluffs?

25 A. Yes, I am.

11:52:11 1 Q. And how long have you worked for  
11:52:12 2 Georgian Bluffs?  
11:52:13 3 A. I started on June 19th, 2016 --  
11:52:17 4 sorry, 2006. Sorry.  
11:52:20 5 Q. And what is your current position  
11:52:22 6 at Georgian Bluffs?  
11:52:23 7 A. I am a utility co-ordinator.  
11:52:26 8 Q. And have you held other positions  
11:52:28 9 with the Municipality?  
11:52:29 10 A. Yes. When I started in 2006 I  
11:52:33 11 was a plow operator and then advanced into a  
11:52:40 12 grader operator, and then in 2015 I become --  
11:52:45 13 became the utility co-ordinator for the  
11:52:47 14 Township.  
11:52:48 15 Q. Have you acted in any other  
11:52:49 16 capacities while you've been at Georgian Bluffs?  
11:52:52 17 A. Yes. I was acting road  
11:52:55 18 supervisor while the road supervisor was on  
11:53:00 19 leave.  
11:53:00 20 Q. And when -- in what period of  
11:53:03 21 time was that?  
11:53:03 22 A. From November 20th, 2019, to  
11:53:07 23 March 2nd, 2020.  
11:53:11 24 Q. Thank you. And so in your  
11:53:13 25 various roles with the Municipality are you

11:53:14 1 familiar with the Municipality's road network?

11:53:18 2 A. Yes, I am.

11:53:19 3 Q. Have you been involved in the  
11:53:20 4 construction and maintenance of the  
11:53:22 5 Municipality's road network?

11:53:24 6 A. Yes, I have.

11:53:25 7 Q. Can you tell the court what your  
11:53:26 8 understanding is of how large the Municipality's  
11:53:27 9 road network is?

11:53:30 10 A. Yeah. It's 382 kilometres of  
11:53:33 11 maintained roads, and then all the unopened road  
11:53:39 12 allowances, so about 225 roughly.

11:53:45 13 Q. 225 roughly of --

11:53:48 14 A. Of unmaintained.

11:53:50 15 Q. And when you say "unmaintained"  
11:53:52 16 what do you mean by that? Or, sorry, when you  
11:53:54 17 say "maintained" what do you mean by that?

11:53:59 18 A. So "maintained" would be receives  
11:53:59 19 regular maintenance based on the minimum  
11:54:02 20 maintenance standards. There's plowing -- year  
11:54:07 21 round service.

11:54:07 22 Q. Just behind you there on the map,  
11:54:08 23 there's a map behind you. Are you familiar with  
11:54:10 24 this map?

11:54:11 25 A. Yes, I am.

11:54:12 1 Q. And what does this map represent?

11:54:15 2 THE COURT: Sorry, counsel, you need

11:54:16 3 to be more specific for the record.

11:54:17 4 MS. McKENNA: Sorry?

11:54:21 5 THE COURT: There is a map behind this

11:54:22 6 gentleman, are you referring to the map that was

11:54:24 7 marked as Exhibit 4896 earlier this morning?

11:54:28 8 MS. McKENNA: Yes, please.

11:54:30 9 THE COURT: Please go ahead.

11:54:32 10 BY MS. MCKENNA:

11:54:32 11 Q. Are you familiar with the exhibit

11:54:33 12 that was marked this morning?

11:54:35 13 A. Yes, I am.

11:54:35 14 Q. And so in terms of the

11:54:36 15 maintenance in the Municipality we heard about

11:54:38 16 black roads?

11:54:39 17 A. Yes.

11:54:40 18 Q. Your understanding is -- what is

11:54:41 19 the black roads?

11:54:43 20 A. So black roads are roads that we

11:54:46 21 maintain year round. They get plowed, receive

11:54:51 22 maintenance throughout the year.

11:54:54 23 Q. And the green roads are the

11:54:56 24 Ontario highways, are you involved in the

11:54:58 25 maintenance of those roads?



11:55:00 1 A. No, I'm not.

11:55:01 2 Q. And the red roads that belong to  
11:55:02 3 the county, are you involved in the maintenance  
11:55:05 4 of those roads?

11:55:06 5 A. No, I'm not.

11:55:07 6 Q. So starting first with the  
11:55:08 7 improved roads, you mentioned that you are  
11:55:12 8 involved in maintenance, the roads department is  
11:55:13 9 involved in maintenance of those roads. In  
11:55:21 10 terms of the improved roads, the black roads,  
11:55:24 11 that the Municipality maintains, can you explain  
11:55:26 12 to the court what is involved in the  
11:55:28 13 maintenance? Starting first with the improved  
11:55:30 14 roads from the springtime?

11:55:32 15 A. So on our maintained -- or the  
11:55:35 16 black roads in the map, in the Spring, after we  
11:55:39 17 stop plowing, there's street sweeping, usually  
11:55:45 18 road maintenance, gravel, we have to grade the  
11:55:50 19 roads.

11:55:51 20 And in the Spring then we go into  
11:55:56 21 grass cutting, roadside mowing; and then from  
11:56:00 22 there there's pothole fixing all year round.

11:56:04 23 And then we get into construction  
11:56:06 24 where there's culvert replacements, or road  
11:56:12 25 improvements to the current roads that we are

11:56:14 1 running because they do require upkeep and  
11:56:16 2 maintenance yearly.

11:56:19 3 And then in the -- once we get more  
11:56:23 4 into the Fall we'll usually do brushing on  
11:56:27 5 roadsides and look at the equipment, getting it  
11:56:34 6 ready for the plowing season.

11:56:39 7 Also we put dust suppression down on  
11:56:41 8 the gravel roads, that's more late spring, early  
11:56:46 9 summer.

11:56:47 10 Q. So just a few follow-ups from  
11:56:48 11 there. You mentioned a number of things.  
11:56:51 12 Firstly, you mentioned "culvert". What is a  
11:56:55 13 culvert?

11:56:55 14 A. A culvert is -- it can be made of  
11:57:00 15 various materials, basically it just lets a path  
11:57:04 16 for water to go from one side of the road to the  
11:57:07 17 other.

11:57:07 18 Q. And does the Municipality build  
11:57:10 19 those with respect to the roads?

11:57:11 20 A. Yes. You do have --  
11:57:14 21 Municipalities -- they're through all road  
11:57:17 22 networks everywhere.

11:57:19 23 Q. Okay. You also mentioned I think  
11:57:21 24 "dust suppression", what does that involve?

11:57:25 25 A. So dust suppression on our gravel

1 roads. During the summer we put down either --  
2 you can go two ways, you can have brine, which  
3 is a salt-water mix, or a calcium chloride  
4 liquid put on the road, and that helps with  
5 keeping dust down and stops potholes from  
6 forming in the gravel roads.

7 Q. How many people work in the roads  
8 department for Georgian Bluffs?

9 A. Currently we have eight full-time  
10 employees, plus we try and get three to four  
11 seasonal employees which work in the winter.

12 Q. Okay. And so what is involved in  
13 the winter maintenance of the roads?

14 A. Winter maintenance requires  
15 patrolling based on minimum maintenance  
16 standards, plowing the roads from snow, putting  
17 abrasion down so that could be salt, sand, that  
18 we use, and also cleaning of sidewalks and other  
19 Municipal properties.

20 Q. You also mentioned construction  
21 and paving?

22 A. Yes.

23 Q. What is the percentage or  
24 breakdown between paved roads and unpaved roads  
25 in the improved roads of the Municipality?

11:58:50 1 A. So in the Municipality we have  
11:58:51 2 157 of hard top, or of tar and chip roads, and  
11:58:53 3 around 90 kilometres of asphalt, we have a half  
11:59:04 4 kilometre of asphalt (sic), and then roughly  
11:59:06 5 around 106, 108 of gravel.

11:59:12 6 Q. So you said -- so asphalt, tar  
11:59:15 7 and chip, is that like surface treatment?

11:59:17 8 A. Yeah, surface treatment.

11:59:18 9 Q. Can you explain what that is?

11:59:20 10 A. Surface treatment is a liquid tar  
11:59:24 11 like emulsion that is put down, and then usually  
11:59:29 12 you can put either five-eighths gravel on top or  
11:59:32 13 stone chip. And it's -- it's like pavement but  
11:59:36 14 just doesn't have the life span and it's not  
11:59:39 15 quite as costly.

11:59:43 16 Q. So I just want to summarize to  
11:59:43 17 make sure I got it. You said approximately 90  
11:59:45 18 kilometres of asphalt?

11:59:47 19 A. Yes, 157 of hard top.

11:59:50 20 Q. And then you said about 109 or  
11:59:52 21 110 of gravel?

11:59:54 22 A. Yes.

11:59:55 23 Q. And then you said half a  
11:59:56 24 kilometre of concrete?

11:59:58 25 A. Yeah.

1 Q. Do you do all this work in-house  
2 or do you also hire outside service people to  
3 come and help you do this work?

4 A. We hire contractors as well to  
5 help with the maintenance and/or construction of  
6 the roads.

7 Q. Does the Municipality have any  
8 bridges?

9 A. Yes, we do. We currently have  
10 ten bridges and we also have 26 culverts that  
11 have to be inspected yearly, or every three  
12 years.

13 Q. Is there any special requirements  
14 with respect to the maintenance or inspection of  
15 bridges?

16 A. Yes. We have to contract out to  
17 engineers and they have to examine the bridges  
18 and the culverts. And they tell us the state  
19 that the culverts and bridges is in and if any  
20 repair is required. And then we have to, as a  
21 Municipality, allocate funds to those bridges or  
22 culverts.

23 Q. So in the various things that you  
24 talked about the Municipality doing, street  
25 sweeping, paving, plowing, does the roads

1 department have special equipment to do all this  
2 work?

3 A. Yes, we do. We don't pave -- we  
4 don't physically pave roads because that is  
5 highly-specialized equipment, but for grading  
6 the roads there's special equipment for that.  
7 Plowing the roads is required special trucks for  
8 that as well.

9 Q. So when you don't have the  
10 equipment in-house do you rent the equipment or  
11 hire a contractor to do it?

12 A. Yes, if we don't have the  
13 equipment we will have to get a contractor or  
14 rent equipment to complete the work.

15 Q. And how do you know what is  
16 required in terms of the maintenance for the  
17 roads?

18 A. So maintenance for the roads is a  
19 regulation with the minimum maintenance  
20 standards, and that's set out by the Ontario  
21 government.

22 Q. So, Your Honour I've provided my  
23 friends with a copy, and I will provide it to  
24 you as well, and the Registrar has it as well.  
25 The document has been uploaded into the system

1 at SC2088, which is the Ontario Regulation for  
2 the Minimum Maintenance Standards for Roads.

3 Would you like a paper copy or would  
4 you like the electronic version?

5 THE COURT: Well, if it's on-line  
6 let's wait and see if it's available.

7 BY MS. MCKENNA:

8 Q. Sir, are you familiar with this  
9 document?

10 A. Yes, I am.

11 Q. And what is this document?

12 A. This is the minimum maintenance  
13 standards set out by the Ontario government.

14 MS. MCKENNA: So, Your Honour I would  
15 like to have this document marked as the next  
16 exhibit?

17 THE COURT: Well, I don't normally  
18 mark current legislation as exhibit, counsel.

19 I'll hear from you if you have a  
20 submission about that, but my suggestion is that  
21 it can be marked as a lettered exhibit to  
22 maintain what is before the witness.

23 MS. MCKENNA: That's fine.

24 THE COURT: Mr. Registrar?

25 THE REGISTRAR: Lettered Exhibit D-4.

12:03:23 1 EXHIBIT NO. D-4: Ontario Regulation  
12:03:23 2 for the Minimum Maintenance Standards  
12:03:23 3 for Roads; document number SC2088.  
12:03:26 4 BY MS. MCKENNA:  
12:03:26 5 Q. So these are the maintenance  
12:03:29 6 standards that the Municipality follows in terms  
12:03:31 7 of maintaining roads in the Municipality?  
12:03:34 8 A. Yes, it is.  
12:03:35 9 Q. And if you turn over to the  
12:03:36 10 second page of the document? There's a table in  
12:03:39 11 the middle of the page that talks about the  
12:03:41 12 classification of highways?  
12:03:42 13 A. Yes.  
12:03:45 14 Q. Does the Municipality have roads  
12:03:46 15 in its road network that fall into the category  
12:03:50 16 of column number 8, which is from 0 to 40  
12:03:53 17 kilometres?  
12:03:53 18 A. Yes, we do.  
12:03:55 19 Q. And what about column number 7,  
12:03:56 20 from 41 kilometres to 50 kilometres?  
12:03:59 21 A. Yes.  
12:03:59 22 Q. And column number 6 from 50 to  
12:04:02 23 60?  
12:04:03 24 A. Yes.  
12:04:03 25 Q. And column number 5?



12:04:04 1 A. Yes.

12:04:05 2 Q. As well as column number 4?

12:04:07 3 A. Yes.

12:04:10 4 Q. So what do these columns tell you

12:04:12 5 in terms of the category of the roads in the

12:04:15 6 Municipality?

12:04:16 7 A. So the columns -- it's a

12:04:19 8 two-part, I guess, answer.

12:04:24 9 The columns give you your speed, and

12:04:27 10 on the left-hand side they give you the vehicle

12:04:30 11 numbers of that -- on the table.

12:04:34 12 So if you do a traffic count and you

12:04:37 13 have your speed of the road, you go across and

12:04:40 14 then you can figure out what road classification

12:04:43 15 you have on your road.

12:04:46 16 And then from there you can go through

12:04:49 17 this regulation and it can tell you what you

12:04:51 18 have to do to maintain those roads.

12:04:53 19 Q. So if you turn over to the next

12:04:55 20 page, the first sort of category of road

12:04:58 21 maintenance, as required, is to patrol the road

12:05:01 22 and find out what needs to be required.

12:05:04 23 So if you have -- just taking what you

12:05:05 24 summarized there, a class 3 road, what does the

12:05:08 25 table tell you about how often you have to --

12:05:11 1 A. Once every seven days.

12:05:14 2 Q. And over to the next page, with  
12:05:16 3 respect to snow accumulation you have a category  
12:05:19 4 class Highway 4, how long does it tell you --  
12:05:22 5 how often do you have to perform maintenance?

12:05:25 6 A. Sixteen hours.

12:05:28 7 Q. And the next one deals with bike  
12:05:30 8 lanes, we won't look at that.

12:05:30 9 The next table, "Treatment of Icy  
12:05:33 10 Roads"?

12:05:33 11 A. Yes.

12:05:34 12 Q. This dictates how often the  
12:05:36 13 Municipality has to go out and do maintenance  
12:05:39 14 with respect to ice on the roads?

12:05:40 15 A. Yes.

12:05:40 16 Q. I won't take you through the  
12:05:43 17 whole thing, for the benefit of the court, but  
12:05:45 18 it covers all the areas and all the things that  
12:05:47 19 the Municipality is required to do in terms of  
12:05:50 20 maintaining these roads?

12:05:51 21 A. Yes.

12:05:52 22 Q. To minimum maintenance standards?

12:05:54 23 A. Yes.

12:05:59 24 Q. Now, we've been talking about the  
12:06:01 25 improved roads. Does Georgian Bluffs do any

12:06:04 1 regular maintenance with respect to the yellow  
12:06:06 2 roads or the unassumed roads on the map?

12:06:11 3 A. With the yellow roads there's  
12:06:13 4 no -- being there's no actual law that states  
12:06:17 5 that we have to -- no regular but there is  
12:06:21 6 periodically maintenance done to these road  
12:06:21 7 allowances.

12:06:24 8 Q. And so what kind of ad hoc or  
12:06:27 9 irregular maintenance do you do on the  
12:06:29 10 unimproved roads?

12:06:34 11 A. Unimproved roads if we do have  
12:06:38 12 some concerns we have to sometime put gravel in  
12:06:40 13 these roads, sometimes we do have to do tree  
12:06:44 14 removal on these road allowances.

12:06:47 15 And then you -- usually that's kind of  
12:06:52 16 rough idea of what we do.

12:06:53 17 Q. And how do you know that you have  
12:06:55 18 to do those things?

12:06:56 19 A. Usually those are  
12:06:57 20 complaint-based.

12:07:00 21 Q. So if someone calls you and says,  
12:07:02 22 There's a tree fallen in a particular place, the  
12:07:05 23 Municipality will take steps to deal with that?

12:07:07 24 A. Yes, yes.

12:07:09 25 Q. Are there other circumstances in

1 which the Roads Department would also take steps  
2 to deal with maintenance on a particular road  
3 allowance?

4 A. If it became a safety issue.

5 Q. And have there been examples that  
6 you've been involved in with respect to safety  
7 issues that have been addressed by the  
8 Municipality?

9 A. Yes. So with the closing of the  
10 W-Hill, or the restriction of vehicles on W-Hill  
11 and Suicide Hill on the -- in these areas we've  
12 had to restrict access because the safety was a  
13 big concern.

14 Q. So in respect of W-Hill can you  
15 explain to the court what you mean by the  
16 "safety issue" that was there?

17 A. Basically it was the road design  
18 at that time. The hill does a series of S-bends  
19 down a very steep embankment and they -- it is a  
20 very narrow path and the design of the road had  
21 a lot of problems with vehicles going down.

22 Due to GPS we actually had a tour bus  
23 get stuck on that hill. And we finally -- that  
24 was -- once that happened we just -- there's  
25 more and more traffic starting to use that road.

12:08:30 1 So then we had to stop -- restrict access to it  
12:08:35 2 because of the safety.

12:08:36 3 Q. And have you had the same  
12:08:38 4 circumstances or situations that have arose with  
12:08:41 5 respect to the unimproved roads with road  
12:08:43 6 allowances?

12:08:44 7 A. We haven't had to restrict on the  
12:08:49 8 unimproved roads but we have had to add gravel,  
12:08:53 9 or that, because if it does became (sic) a big  
12:08:57 10 safety issue then we do have to do something  
12:09:00 11 about it.

12:09:01 12 Q. And when you talk about -- what  
12:09:03 13 would be the issue with respect to safety if  
12:09:05 14 someone -- why would you put down gravel?

12:09:07 15 A. If a pothole or a washout -- if a  
12:09:11 16 washout happens and then a vehicle hits it and  
12:09:15 17 damage is done, or somebody is hurt then we do  
12:09:18 18 have to repair it.

12:09:20 19 Q. So what you're saying there is --  
12:09:22 20 what I hear you saying is that people drive down  
12:09:24 21 the unopened road allowances sometimes?

12:09:27 22 A. Yeah. Some of them that have  
12:09:29 23 paths do drive down these roads.

12:09:31 24 Q. So what I'm looking -- if I were  
12:09:33 25 looking at the map and some of these yellow

1 roads, the unopened or unimproved road

2 allowances, are there ones that are more used by

3 the public or less used by the public --

4 A. Yes.

5 Q. -- in terms of being able to  
6 access them?

7 A. Yes. Georgian Range Road it's  
8 the black dotted line.

9 Q. Yes.

10 A. So that is a more frequently  
11 travelled road.

12 Gordon Sutherland Parkway, another  
13 black dotted line, it is used more frequently  
14 than other roads.

15 THE COURT: Counsel, I don't have a  
16 problem with a couple of examples, but in the  
17 spirit of my ruling last week we are not going  
18 to be going through any immense amount of  
19 road-by-road analysis.

20 MS. MCKENNA: I don't plan to do that.

21 BY MS. MCKENNA:

22 Q. So the Municipality has knowledge  
23 that people are still using these roads even  
24 though they're not officially assumed and open  
25 for car traffic?

12:10:36 1 A. Yes.

12:10:36 2 Q. And are there people that are  
12:10:37 3 also using it not for car traffic but just to  
12:10:40 4 pass through --

12:10:41 5 A. Yes.

12:10:41 6 Q. -- for hiking or other reasons?

12:10:43 7 A. Yeah, for hiking, recreational  
12:10:45 8 use as well, snowmobiles, ATVs.

12:10:50 9 We do have some sections that are in  
12:10:54 10 the yellow lines and there is a drainage ditch  
12:10:57 11 that goes through it.

12:11:02 12 Because it is Municipal-owned if a  
12:11:04 13 drainage issue does arise then we do have to go  
12:11:06 14 in and look after it.

12:11:09 15 Q. So earlier in your testimony you  
12:11:11 16 were talking about there's ten bridges. Are  
12:11:13 17 there any bridges that are on any of the  
12:11:16 18 unopened road allowances in the network?

12:11:19 19 A. The ones that we inspect there  
12:11:25 20 was -- the Sarawak Townline had one I believe  
12:11:27 21 and it was closed.

12:11:28 22 Q. And why was it closed?

12:11:30 23 A. Due to the structure of it, it  
12:11:32 24 was -- engineers deemed it unsafe.

12:11:35 25 Q. The bridge?

12:11:35 1 A. Yes.

12:11:36 2 Q. So an unopen road allowance that  
12:11:40 3 had a bridge that the road was closed because of  
12:11:42 4 the bridge?

12:11:43 5 A. Yes.

12:11:43 6 Q. Are there other things that the  
12:11:44 7 Municipality has done, steps that it's taken  
12:11:46 8 with respect to the use of these roads with  
12:11:49 9 respect to safety?

12:11:52 10 A. With respect to safety you do  
12:11:55 11 have to -- because it is public travel, like,  
12:12:00 12 it's public, Municipal-owned land, you do have  
12:12:05 13 to look after it to a point. If there is a  
12:12:08 14 major safety concern then we would have to deal  
12:12:10 15 with it.

12:12:11 16 Q. And does the -- so, for example,  
12:12:13 17 we heard earlier the posting of signs?

12:12:16 18 A. Yes.

12:12:16 19 Q. Are you -- is the roads  
12:12:17 20 department involved in supervision or inspecting  
12:12:20 21 to make sure that the signs are put up to make  
12:12:22 22 sure that the public knows about the condition  
12:12:29 23 of the road?

12:12:29 24 A. Yes. We do have to look after  
12:12:32 25 those signs and post them.



12:12:35 1 Q. Does that involve -- is that part  
12:12:37 2 of your minimum maintenance requirements in  
12:12:40 3 terms of making sure that roads are properly  
12:12:42 4 signed, or is that another issue?

12:12:45 5 A. That's, I think, another issue.

12:12:47 6 Q. Okay. So you've talked a little  
12:12:49 7 bit about the various improvements there are to  
12:12:51 8 the road network, are there other uses that are  
12:12:55 9 made of the roads that you're aware of?

12:12:56 10 A. Yes. So with our roads there's  
12:12:59 11 buried infrastructure. So the Municipality does  
12:13:02 12 have water in various locations through the  
12:13:07 13 Municipality, and our watermains do run along  
12:13:11 14 those road allowances. And if there is a water  
12:13:14 15 break or a repair the Municipality -- it is a  
12:13:18 16 cost to the Municipality to repair that leak and  
12:13:21 17 restore it to -- restore it after it's been  
12:13:27 18 repaired for the road standard.

12:13:28 19 Q. Okay. Are there other  
12:13:30 20 third-party services that are provided?

12:13:33 21 A. Yes, there is.

12:13:34 22 Q. Is the Municipality involved in  
12:13:36 23 the maintenance or the returning, if there is an  
12:13:39 24 issue, of the road for construction?

12:13:40 25 A. That is usually up to the third

1 party to restore it, but we have to make sure  
2 it's restored to the standard that it was  
3 before.

4 Q. Your Honour, I don't have any  
5 more questions for this witness?

6 THE COURT: All right.

7 Any cross-examination of this witness.

8 MS. McNAMARA: May I have a moment,  
9 Your Honour?

10 THE COURT: Of course you may. Please  
11 go ahead and discuss that with your colleague.

12 MS. McNAMARA: Thank you for your  
13 indulgence, Your Honour.

14 CROSS-EXAMINATION BY MS. McNAMARA.

15 Q. Morning, Mr. Unruh, my name is  
16 Jaclyn McNamara, I don't know if you heard  
17 before but I'm counsel for the plaintiffs and  
18 I'll be asking you some questions today.

19 You spoke a lot in your testimony  
20 about unopened road allowances, and you spoke a  
21 little bit about the fact that some unopened  
22 road allowance are used by the public for  
23 various things.

24 And I just want to clarify with you,  
25 would you agree with me that not all unopened

1 road allowances are in fact used by the public?

2 A. Not all of them would be  
3 passable.

4 Q. Those are my question, Your  
5 Honour.

6 THE COURT: Thank you. Is there any  
7 reply?

8 MS. McKENNA: No.

9 THE COURT: Sir, thank you very much.  
10 You may step down out of the witness box.

11 Who is calling the next witness?

12 MS. DAUGHERTY: That is all the  
13 witnesses for Georgian Bluffs, Your Honour.

14 MS. GROVE-McCLEMENT: Your Honour, I'm  
15 questioning whether at this point -- we didn't  
16 anticipate the evidence to be done so quickly  
17 this morning for Georgian Bluffs.

18 If we possibly could take the lunch  
19 break now? We would like to meet with the other  
20 two witnesses. It could be possible that the  
21 evidence presented may -- we may consider that  
22 we don't need all the evidence we were thinking  
23 we would need so we can avoid some duplication,  
24 and possibly one witness may not be testifying.

25 THE COURT: Well, that's always an

1 attractive opportunity. All right. We were  
2 going to be finishing early before lunch anyway  
3 so this will be even earlier.

4 Unfortunately I have a commitment  
5 which means I won't be able to resume before  
6 2:15, but I take it you hold out the possibility  
7 you will still be able to address matters  
8 potentially with only one witness this  
9 afternoon.

10 MS. GROVE-McCLEMENT: Yes, I believe.

11 MR. STEWART: It is possible, Your  
12 Honour.

13 THE COURT: Thank you, sir. In the  
14 circumstances I think I will permit you the  
15 opportunity to do that. So we will rise now and  
16 resume at 2:15.

17 -- RECESSED AT 12:17 P.M. --

18 -- RESUMED AT 2:13 P.M. --

19 THE COURT: Ms. Grove-McClement, are  
20 you calling the next witness?

21 MS. GROVE-McCLEMENT: I am, Your  
22 Honour. I will be calling Miguel Pelletier.

23 MIGUEL PELLETIER: SWORN.

24 EXAMINATION IN-CHIEF.

25 BY MS. GROVE-McCLEMENT:

02:15:00 1 Q. Could you please state your  
02:15:01 2 occupation?

02:15:02 3 A. I am the Director of  
02:15:04 4 Transportation and Environmental Services for  
02:15:06 5 the County of Bruce.

02:15:07 6 Q. And how long have you been a  
02:15:08 7 director with the County of Bruce?

02:15:09 8 A. Since May 2018.

02:15:11 9 Q. And prior to becoming a director  
02:15:14 10 what was your position and employment?

02:15:17 11 A. I was the Director of Public  
02:15:19 12 Works for the Municipality of Chatham Kent from  
02:15:22 13 2014 to 2018.

02:15:24 14 Q. And during your time at Chatham  
02:15:28 15 Kent could you say that your responsibilities  
02:15:29 16 were similar to or the same as what they are  
02:15:32 17 with the County?

02:15:34 18 A. Yeah. They were less broad but  
02:15:41 19 more of it, more roads, more bridges, and some  
02:15:44 20 of the functions I have now I didn't have then.

02:15:47 21 Q. So in terms of being a Director  
02:15:48 22 of Transportation and Environmental Services for  
02:15:51 23 Bruce County part of your responsibility, as you  
02:15:53 24 indicated, is for the roads, but does it expand  
02:15:56 25 beyond roads or simply roads?

02:15:59 1 A. So roads, bridges, public  
02:16:01 2 transportation, although we don't have any, but  
02:16:03 3 that's part of the mandate, the active  
02:16:06 4 transportation, waste management, environmental  
02:16:10 5 issues, we also do some engineering and project  
02:16:17 6 management.

02:16:17 7 Q. So do you have a staff that work  
02:16:18 8 for you or under you?

02:16:20 9 A. The staff in my department is 50,  
02:16:23 10 what they call "full-time equivalents", so 50  
02:16:25 11 full-time people; and it's a variation of people  
02:16:29 12 from engineers to operators, we do trails, we do  
02:16:33 13 forestry as well.

02:16:35 14 Q. And prior to Chatham Kent, just  
02:16:38 15 for the record, what was your employment?

02:16:41 16 A. I worked with a federal  
02:16:43 17 department for 33 -- Federal Government for 33  
02:16:46 18 years, 26 years in the military and then seven  
02:16:50 19 years with Public Works and Government Services  
02:16:52 20 Canada, and another few years with Parks Canada.

02:16:56 21 Q. And just for clarification for  
02:16:58 22 the court, Bruce -- the defendant -- the  
02:17:03 23 Corporation of the County of Bruce is a County,  
02:17:04 24 it's not a Municipality or Town, as defined by  
02:17:07 25 the other defendants. Can you explain what the

02:17:10 1 difference between the County is versus the  
02:17:12 2 other co-defendants?

02:17:13 3 A. So the County of Bruce is a  
02:17:15 4 defined as an "upper-tier Municipality" and then  
02:17:20 5 the -- of course there are lower-tier  
02:17:23 6 Municipalities.

02:17:23 7 So there's -- then this is defined  
02:17:27 8 under the Municipal Act. So as an upper-tier  
02:17:32 9 Municipality we have different responsibilities,  
02:17:34 10 and in some cases we have the same  
02:17:36 11 responsibilities but they're split between the  
02:17:38 12 lower-tier and the upper-tier.

02:17:40 13 And the governance for the upper-tier  
02:17:44 14 is that there's a Council with a warden, and the  
02:17:47 15 members of the Council are the mayors of the  
02:17:50 16 lower-tier Municipalities.

02:17:51 17 Q. And just to assist you, there is  
02:17:53 18 a map that's located behind you and that map --  
02:17:56 19 do you recognize that map?

02:18:00 20 A. I do. That looks like Bruce  
02:18:02 21 County, yeah.

02:18:03 22 Q. And who prepared that map?

02:18:04 23 A. The map was prepared by the  
02:18:06 24 Planning Department at the County, and we have  
02:18:09 25 some Geomatics information systems' technicians.

02:18:13 1 And all the data is georeferenced. And the data  
02:18:15 2 comes from surveys, records, air photos.

02:18:20 3 Q. And so that was similar -- you  
02:18:21 4 heard the evidence this morning of Wendi Hunter  
02:18:22 5 and she had referred to a map. And she referred  
02:18:25 6 to the GIS mapping that Grey County had done, so  
02:18:31 7 that's a similar service that you have as well  
02:18:34 8 then?

02:18:34 9 A. Yes, it is.

02:18:35 10 Q. And if we look at the map -- for  
02:18:37 11 ease of reference would Your Honour allow the  
02:18:40 12 witness to refer to a smaller version? I did  
02:18:48 13 hand it out to everyone.

02:18:50 14 THE COURT: Yes. I can use the screen  
02:18:51 15 but if you want the witness to have a paper  
02:18:54 16 version that's fine.

02:18:56 17 THE WITNESS: I can see the screen as  
02:18:57 18 well.

02:18:57 19 BY MS. GROVE-MCCLEMENT:

02:18:57 20 Q. For the purposes of the court we  
02:18:59 21 have identified this in the REDI system as  
02:19:02 22 SC2089.

02:19:03 23 And I'd like to go through the map.  
02:19:07 24 So on this map can you identify Bruce County for  
02:19:11 25 the court?



02:19:14 1 A. So right now on the map on the  
02:19:16 2 screen we see the upper part of Bruce County, so  
02:19:19 3 it's on the left of the map, west, and it's the  
02:19:22 4 pale grey, that's the upper part of Bruce  
02:19:25 5 County. And then you can see -- the part that's  
02:19:28 6 in green is what you saw this morning, which is  
02:19:31 7 Grey County.

02:19:33 8 Q. So Bruce County, as you  
02:19:35 9 indicated, consists of lower tiers, or local  
02:19:37 10 Municipalities. Can you identify for the court  
02:19:40 11 who those lower tiers are?

02:19:42 12 A. Correct. And I'll be following  
02:19:45 13 the map from top to bottom so you have a --

02:19:47 14 Q. So we start at Tobermory at the  
02:19:49 15 top?

02:19:50 16 A. Yes. Top Tobermory, so you see  
02:19:52 17 Northern Bruce Peninsula; and then below it you  
02:19:54 18 see Southern Bruce Peninsula; and then you see  
02:19:57 19 Arran-Elderslie; Saugeen Shores; and below that  
02:20:02 20 there's Brockton; and then you have  
02:20:04 21 Huron-Kinloss; and the last one is called South  
02:20:10 22 Bruce.

02:20:10 23 Q. And I believe as well there's  
02:20:10 24 Kincardine?

02:20:12 25 A. And Kincardine, I forgot, sorry.

02:20:13 1 The mayor won't be happy.

02:20:14 2 Q. So as you had indicated, for  
02:20:16 3 Bruce County Council they consist of the mayor  
02:20:19 4 for each of those lower-tier Municipalities?

02:20:22 5 A. Correct, and they elect a warden  
02:20:24 6 for a one-year period.

02:20:27 7 Q. So for the purposes of this  
02:20:29 8 litigation I want to specifically address your  
02:20:32 9 attention to above Highway 21, north of Highway  
02:20:35 10 21.

02:20:36 11 And as you are aware there's three  
02:20:38 12 lower tiers that are co-defendants in this  
02:20:41 13 action, so that would be the Town of Saugeen  
02:20:43 14 Shores, South Bruce Peninsula as well as  
02:20:46 15 Northern Bruce Peninsula?

02:20:47 16 A. Yes.

02:20:48 17 Q. But for the purposes of your role  
02:20:50 18 at Bruce County, and as Director of  
02:20:53 19 Transportation, your services encompass all of  
02:20:56 20 Bruce County?

02:20:57 21 A. Correct. They do, yes.

02:20:59 22 Q. Would you have an approximate  
02:21:03 23 acreage of what Bruce County consists of?

02:21:07 24 A. 4,000 square kilometres.

02:21:09 25 Q. And I don't know if you've done

02:21:10 1 the calculation for the area above Highway 21  
02:21:12 2 that's part of the claim?

02:21:14 3 A. No, I have not.

02:21:17 4 Q. So for the purposes of your  
02:21:20 5 evidence I'm hoping that we can make this an  
02:21:27 6 exhibit.

02:21:28 7 THE COURT: Any objection? No.  
02:21:30 8 Mr. Registrar.

02:21:31 9 THE REGISTRAR: Exhibit 4897.

02:21:34 10 EXHIBIT NO. 4897: Map of Bruce  
02:21:34 11 County.

02:21:45 12 BY MS. GROVE-MCCLEMENT:

02:21:45 13 Q. Now I want to direct your  
02:21:46 14 attention to a second map.

02:21:50 15 And I do apologize, Your Honour, I  
02:21:52 16 have paper maps not hard-copy maps.

02:22:10 17 THE COURT: It's not a problem,  
02:22:10 18 counsel, we have the image on our screens.  
02:22:14 19 SC2090?

02:22:18 20 MS. GROVE-McCLEMENT: Yes.

02:22:18 21 BY MS. GROVE-MCCLEMENT:

02:22:18 22 Q. And I's would like to refer the  
02:22:21 23 witness to the next map. As Your Honour said  
02:22:23 24 it's SC2090.

02:22:26 25 Are you familiar with this map?

02:22:28 1 A. Yes, I am.

02:22:29 2 Q. And this map is entitled "Map of  
02:22:31 3 the Corporation of the County of Bruce's Road  
02:22:33 4 Network, Including Bridges and Culverts North of  
02:22:37 5 Highway 21". Do you know who prepared this map?

02:22:40 6 A. It's the same technicians that --  
02:22:41 7 from the Planning Department at the County that  
02:22:46 8 prepared this map.

02:22:48 9 Q. And so this map, just for  
02:22:50 10 clarification, addresses, in the pale colour,  
02:22:53 11 the area north of Highway 21, and that highway  
02:22:57 12 is defined at the bottom of the map, is that  
02:22:59 13 correct?

02:23:00 14 A. Correct.

02:23:02 15 Q. And can you tell me what the  
02:23:05 16 orange lines are? What they identify?

02:23:08 17 A. Yeah, the orange lines identify  
02:23:09 18 county roads.

02:23:10 19 Q. And are those roads -- do they  
02:23:13 20 belong to the County of Bruce or are owned by  
02:23:15 21 the County of Bruce?

02:23:17 22 A. Yeah. They're part of the Bruce  
02:23:19 23 County, the road network, and so there's a  
02:23:22 24 right-of-way for each of these roads and it  
02:23:24 25 falls under the County.

02:23:26 1 Q. And can you identify the County  
02:23:30 2 roads that are in your jurisdiction there?  
02:23:33 3 Other than showing them what are the numbers for  
02:23:35 4 them?

02:23:36 5 A. Yeah. So 13, 14, 10 -- I'll  
02:23:41 6 just -- just a sense on here, 10 is shared with  
02:23:46 7 Grey County, we share responsibility, it's right  
02:23:48 8 on the border.

02:23:50 9 Q. So that's a boundary road between  
02:23:53 10 the two?

02:23:53 11 A. It's a boundary road between the  
02:23:54 12 two so we do share some responsibilities.

02:23:56 13 Q. Is there special treatment in  
02:23:58 14 regards to boundary roads?

02:24:06 15 A. We have boundary agreements.

02:24:09 16 County road 8, 13, 9 and 29, and "WR"  
02:24:14 17 refers to "West Road", so it's a County road but  
02:24:16 18 it doesn't have a number.

02:24:19 19 Q. So in terms of the County roads  
02:24:21 20 are the roads that you identified north of  
02:24:26 21 Highway 21 are those the only roads that Bruce  
02:24:29 22 County has jurisdiction over north of that  
02:24:32 23 Highway 21?

02:24:33 24 A. Yes, that's the only roads we  
02:24:34 25 have jurisdiction on.

02:24:36 1 Q. And can you just describe on an  
02:24:38 2 overview are those roads travelled public roads?

02:24:44 3 A. Yeah, they're travelled public  
02:24:46 4 roads. The main purpose of the County road  
02:24:49 5 network is to connect communities, so it will  
02:24:52 6 connect the different communities and also to  
02:24:54 7 connect to the Provincial highways.

02:24:56 8 Q. What would be the speed limit on  
02:24:57 9 those roads?

02:24:58 10 A. It's usually 80 kilometres in the  
02:25:02 11 rural areas, and once you get into urban areas  
02:25:04 12 it's usually 50, but there are some exceptions;  
02:25:12 13 community safety zones, or some roads that we  
02:25:15 14 took over from lower-tier Municipalities  
02:25:17 15 sometimes were 50 kilometre roads so they stay  
02:25:21 16 at that.

02:25:22 17 Q. So the roads north of Highway 21,  
02:25:26 18 what are the pavement surface? Is there  
02:25:29 19 pavement, asphalt, is it gravel road?

02:25:32 20 A. It's mostly asphalt. We only  
02:25:34 21 have one very small section of gravel road and  
02:25:37 22 it's a small section of the West Road that I was  
02:25:40 23 referring to earlier.

02:25:41 24 Q. And in terms of County roads, we  
02:25:44 25 have referred earlier when Mr. Troy Unruh had

02:25:49 1 testified, he referred to minimum standards that  
02:25:52 2 are implemented by legislation. What would the  
02:25:57 3 class of your County roads be normally?

02:26:00 4 A. Most of our County roads are  
02:26:02 5 class 3, and then we have a class 2 as well.  
02:26:05 6 And the class 2 is not in this area though it's  
02:26:09 7 in the south.

02:26:13 8 Q. So the County, as well as the  
02:26:14 9 lower tiers, will rely on or will follow those  
02:26:18 10 minimum standard guidelines?

02:26:19 11 A. The County does, it's our minimum  
02:26:22 12 standards. We have service levels, sometimes it  
02:26:24 13 is a little higher but it's not lower than the  
02:26:27 14 minimum maintenance standard.

02:26:29 15 Q. And what is normally the width of  
02:26:32 16 a County road?

02:26:33 17 A. The width of a County road is  
02:26:35 18 around 12, 13 metres, and the right-of-way is  
02:26:38 19 100 feet but, again, there are exceptions to  
02:26:43 20 that. Depending on where the road came from  
02:26:46 21 sometimes we don't have that wide, or we don't  
02:26:48 22 have that big of a right of a way, especially in  
02:26:51 23 urban areas.

02:26:52 24 Q. So you have a travelled portion  
02:26:53 25 on your road and then you have a ditch area as

02:26:56 1 well that encompasses the road allowance, or  
02:27:00 2 gravel, or --

02:27:01 3 A. Yeah. So there's a travel  
02:27:04 4 surface, usually the paved part, and then  
02:27:05 5 there's a shoulder. Sometimes there's a  
02:27:08 6 sidewalk and of course then there's ditching.

02:27:10 7 Q. And would the County put the  
02:27:11 8 sidewalk in or would that be a lower tier  
02:27:15 9 responsibility?

02:27:16 10 A. Yes. So under the Municipal Act  
02:27:22 11 sidewalks are determined to be a lower-tier  
02:27:24 12 Municipality. So you can have a sidewalk on a  
02:27:27 13 County road but it's the lower tier that's  
02:27:30 14 responsible for maintaining it or if anything  
02:27:32 15 happens on it.

02:27:33 16 Q. And what about, for instance, a  
02:27:35 17 bicycle lane? Would that be a County  
02:27:38 18 responsibility or a lower tier?

02:27:41 19 A. Yeah. So the -- if there's a  
02:27:46 20 bicycle lane under the minimum -- there's a  
02:27:49 21 minimum maintenance standard for it.

02:27:51 22 It's not clear -- there's no  
02:27:54 23 legislation that says under which level it  
02:27:57 24 should fall so normally it's on a case-by-case  
02:28:00 25 basis. If there is one it's what we agree, what



02:28:02 1 was agreed between the County and the lower-tier  
02:28:06 2 Municipality.

02:28:07 3 Q. So for the purposes of your roads  
02:28:09 4 I also see on the maps that there are bridges  
02:28:12 5 identified. Who owns those bridges?

02:28:16 6 A. Correct. So those bridges are  
02:28:18 7 owned by the County.

02:28:19 8 Q. And those just fall on County  
02:28:21 9 roads?

02:28:22 10 A. In this case they fall on the  
02:28:24 11 County road, although we do have some other  
02:28:28 12 parts of Bruce County where we have bridges on  
02:28:31 13 Municipal roads. Not sure how that came about  
02:28:34 14 but that's -- it's -- it is that way.

02:28:39 15 Q. So normally when you are  
02:28:45 16 disposing of a road, for instance, would you be  
02:28:48 17 following the same guideline that was expressed  
02:28:51 18 earlier by the CAO for Georgian Bluffs, Wendi  
02:28:57 19 Hunter?

02:28:58 20 A. Yes, it's a very similar process.

02:29:01 21 Q. Would you need approvals from any  
02:29:02 22 agencies if you were stopping up and closing a  
02:29:05 23 road?

02:29:07 24 A. We would certainly advise the  
02:29:09 25 Province if we're closing a road because it may

02:29:11 1 have an impact on their roads.

02:29:13 2 But, for example if you look at the  
02:29:14 3 map on County Road 9, it's about half way up, it  
02:29:18 4 goes from left to right, it goes to Lion's Head,  
02:29:21 5 it crosses the Provincial Highway number 6., so  
02:29:25 6 we would have to advise the Province. If we do  
02:29:30 7 anything on it with our road in that area and it  
02:29:31 8 connects to theirs normally we would advise  
02:29:33 9 them.

02:29:34 10 Q. For maintenance purposes if a  
02:29:36 11 County road crosses a Provincial road who  
02:29:38 12 maintains that strip?

02:29:44 13 A. Normally it would be the  
02:29:45 14 Province. Normally it's the Province, yes, but  
02:29:48 15 there's always exceptions.

02:29:57 16 Q. So for the purposes of your  
02:29:58 17 position and your department the bridges for  
02:29:59 18 maintenance and repair would fall under your  
02:30:02 19 staff as well as the roads, and you treat them  
02:30:05 20 the same?

02:30:10 21 A. Correct. The bridges are part of  
02:30:11 22 the road network, however, from a management of  
02:30:14 23 the asset and life cycle their life span  
02:30:16 24 consideration is different so we don't  
02:30:20 25 necessarily treat them all the same.

02:30:21 1 It's not the same -- it's a little  
02:30:23 2 more complex to deal with bridges than it is to  
02:30:26 3 deal with roads.

02:30:27 4 Q. So you're referring to a life  
02:30:28 5 span, for example, what would be a typical life  
02:30:31 6 span for a bridge?

02:30:32 7 A. For a bridge a typical life span  
02:30:34 8 is 75 years, for the newer bridges, some of the  
02:30:38 9 older ones, as you may know, can go over a  
02:30:39 10 hundred; and roads it's usually 35, 40 years is  
02:30:43 11 the life span of a road.

02:30:45 12 Q. And you refer to it as "asset  
02:30:46 13 management plan", so you would treat these as  
02:30:49 14 assets for Bruce County, is that correct?

02:30:51 15 A. Correct. And we have a long-term  
02:30:53 16 plan to manage these assets. So, for example,  
02:30:56 17 even though a bridge may not need to be  
02:30:59 18 replaced, or may only need to be replaced 20  
02:31:01 19 years from now you have to start planning now to  
02:31:04 20 make sure you have the funding.

02:31:07 21 Once you inspect a bridge and it's  
02:31:10 22 been determined that the life span is going to  
02:31:12 23 be this long, you have to start planning quite a  
02:31:14 24 bit ahead of time to make sure you're ready to  
02:31:17 25 replace it or repair it when it's required.

02:31:20 1 Q. So what you're indicating then is  
02:31:22 2 that there is this ongoing review of the assets,  
02:31:25 3 and inspections of them, to ensure that they're  
02:31:31 4 safe and they are able to be used by the public?

02:31:36 5 A. Yes. So we have formal  
02:31:38 6 inspections of the bridges every two years, and  
02:31:41 7 the large culverts as well every two years, and  
02:31:43 8 then the roads we usually do an assessment every  
02:31:47 9 three or four years.

02:31:48 10 Q. And you heard the evidence in  
02:31:50 11 regard to culverts, did you have anything to add  
02:31:53 12 to that evidence or were you content?

02:31:55 13 A. So overall Bruce County in this  
02:31:58 14 area you see 14 bridges, but overall we have 148  
02:32:02 15 bridges and culverts over three metres in  
02:32:05 16 diameter.

02:32:06 17 Q. Do you know the approximate  
02:32:07 18 kilometres of roads that you have in the County?

02:32:09 19 A. Yeah. The County is 790  
02:32:12 20 kilometres of road and about 140 is in this  
02:32:15 21 section.

02:32:15 22 Q. Approximately 140 --

02:32:18 23 A. Is in this section that we're  
02:32:19 24 discussing today.

02:32:23 25 Q. Now, we were indicating that you

02:32:25 1 had stated approximately that your road width is  
02:32:28 2 a hundred feet?

02:32:29 3 A. The right-of-way is a hundred  
02:32:31 4 feet, the road width is like 12, 13 metres,  
02:32:35 5 sorry skipping from metric to Imperial.

02:32:38 6 Q. So what is 12, 13 metres in feet?  
02:32:42 7 Sorry to put you on the spot.

02:32:43 8 A. So 12 metres is about 40 feet, 36  
02:32:51 9 and a bit, yes.

02:32:52 10 Q. And for the purposes of your  
02:32:54 11 road, and you had indicated earlier, I believe,  
02:32:56 12 that sometimes you would get it from a lower  
02:32:58 13 tier. Maybe I'm wrong and I'm misstating it,  
02:33:02 14 but if you got a lower standard road would you  
02:33:04 15 just leave it as is or are there things that the  
02:33:07 16 County does for their roads?

02:33:10 17 A. So there is -- over the years  
02:33:14 18 there's -- there have been discussion and  
02:33:19 19 transfer of roads from one level of government  
02:33:21 20 to another.

02:33:23 21 So we do -- usually it goes -- the  
02:33:26 22 process to do that is we go through a study, we  
02:33:29 23 analyze a whole bunch of factors and then we  
02:33:32 24 come up with a plan on which road needs to move  
02:33:35 25 where.

02:33:35 1 The condition of the road, how it's  
02:33:37 2 built is part of the decision process. And then  
02:33:39 3 it goes to Council and the delegated official to  
02:33:44 4 make the decision to make the transfer.

02:33:46 5 It does happen though that we will  
02:33:49 6 inherit a road that might be at the lower-tier  
02:33:52 7 standard and make it a County road, and we're  
02:33:55 8 not able to upgrade it all right away.

02:33:57 9 The West Road is a good example of  
02:33:59 10 that. It was deemed to be a County road in 2004  
02:34:09 11 and we're still working on making it wider and  
02:34:13 12 bigger, or upgrading it to a County road.

02:34:16 13 Q. So how do you make a road wider?

02:34:19 14 A. Well, first of all you have to  
02:34:20 15 determine if you have the land and then it's  
02:34:23 16 construction.

02:34:23 17 Q. So determining the land. So  
02:34:25 18 would you be looking at abutting landowners for  
02:34:28 19 the --

02:34:29 20 A. Yes. So normally that type of --  
02:34:31 21 this type of a project requires an environmental  
02:34:33 22 assessment process; on which solutions you pick  
02:34:36 23 the impact on the environment, the social, the  
02:34:38 24 cultural impact, and of course land ownership is  
02:34:42 25 an issue that we consider.

02:34:43 1 So if we need to have more road then  
02:34:46 2 we have to consult with the land owners and see  
02:34:49 3 if we can come to an agreement.

02:34:51 4 Q. And you purchase the strips of  
02:34:52 5 land to --

02:34:54 6 A. Purchase or we can trade as well.

02:34:57 7 Q. And then in some cases would you  
02:34:59 8 be expanding intersections, for instance? For  
02:35:03 9 like daylight triangles, or is that an  
02:35:06 10 upper-tier process or is that simply a  
02:35:08 11 lower-tier?

02:35:10 12 A. Daylight triangle that's -- like,  
02:35:11 13 when you get to the corner of the road to make  
02:35:14 14 sure that the motorists can see the other road.  
02:35:16 15 You don't want an obstacle so sometimes you will  
02:35:19 16 buy that property to make sure that nobody  
02:35:22 17 builds on it, and that's a responsibility at all  
02:35:24 18 levels. That's just a safety requirement for a  
02:35:27 19 road to have -- when you get to an intersection  
02:35:28 20 to make sure you have good visibility.

02:35:31 21 Q. So you heard the evidence of  
02:35:32 22 Mr. Unruh this morning in regards to general  
02:35:35 23 maintenance of the roads, of the lower-tier  
02:35:37 24 roads. Is there anything that you want to add  
02:35:40 25 in regards to the County level that he may not

02:35:44 1 have stated?

02:35:45 2 A. No, the concepts he presented are  
02:35:47 3 pretty much the same ones we're using, the same  
02:35:50 4 procedures, same ideas. Our portfolio is  
02:35:53 5 different than theirs. We have maybe more  
02:35:55 6 bigger roads and less smaller road and we have  
02:35:59 7 more bridges.

02:36:00 8 So the portfolio is different so we  
02:36:02 9 manage it differently, but the process on how we  
02:36:05 10 decide to do things is the same.

02:36:08 11 Q. So the maintenance is very  
02:36:11 12 similar?

02:36:11 13 A. Yes.

02:36:11 14 Q. The snowplowing and the repairs  
02:36:12 15 that he mentioned?

02:36:14 16 A. Yes.

02:36:15 17 Q. And then in terms of replacement,  
02:36:18 18 would you be internally doing that or would you  
02:36:20 19 be contracting out as well? I think he  
02:36:22 20 indicated that they contract externally.

02:36:24 21 A. So Bruce County has engineers and  
02:36:31 22 technologists on staff so we're able to do some  
02:36:34 23 design work. However, we -- but as soon as it  
02:36:37 24 gets more complicated then we hire consultants.

02:36:41 25 The County used to do road repaving



02:36:43 1 and some of these things in-house with our  
02:36:46 2 resources but we've shifted away from that. So  
02:36:48 3 now we basically do pothole repair and  
02:36:51 4 maintenance, small repairs. Any big repavement  
02:36:55 5 it's all done through contractors.

02:36:59 6 Q. In terms of use of the roads  
02:37:03 7 obviously you had mentioned that it's public  
02:37:08 8 roads. There was some indication this morning  
02:37:11 9 that there were potentially -- the roads are  
02:37:15 10 used for the culverts, the watermains and  
02:37:18 11 whatnot. Is that similar with the County roads?  
02:37:21 12 Are there things within the road allowance that  
02:37:25 13 provide services?

02:37:26 14 A. Those -- that is -- so the part  
02:37:29 15 of the need for right-of-way, that's widen the  
02:37:32 16 road, is we often allow utilities, electricity,  
02:37:36 17 water, gas, Internet; we also need room to put  
02:37:41 18 signs and street lights. So there are utilities  
02:37:46 19 in the right-of-way, more so in the urban areas  
02:37:50 20 than the rural ones. So, yeah, that's part of  
02:37:53 21 the need for a right-of-way, to be able to put  
02:37:56 22 utilities in it.

02:37:57 23 Q. And so another question that I  
02:37:59 24 have is, in terms of these roads, they --  
02:38:03 25 looking at the map, and I don't know if I made

02:38:07 1 this an exhibit?

02:38:08 2 THE COURT: Not yet.

02:38:11 3 MS. GROVE-McCLEMMENT: I would ask the  
02:38:11 4 court if we could make this an exhibit, and I am  
02:38:15 5 referring to the SC2090.

02:38:17 6 THE COURT: Mr. Registrar.

02:38:19 7 THE REGISTRAR: Exhibit 4898.

02:38:20 8 EXHIBIT NO. 4898: "Map of the  
02:38:20 9 Corporation of the County of Bruce's  
02:38:20 10 Road Network, Including Bridges and  
02:38:20 11 Culverts North of Highway 21";  
02:38:20 12 document number SC2090.

02:38:25 13 BY MS. GROVE-MCCLEMMENT:

02:38:25 14 Q. So referring to Exhibit 4898,  
02:38:28 15 these roads seem to be -- run from north of  
02:38:33 16 Highway 21 up to towards Tobermory. And I'm  
02:38:37 17 just wondering, for the purposes of the level of  
02:38:41 18 road, like, is there a weight difference between  
02:38:47 19 an arterial road versus the lower-tier roads?

02:38:53 20 A. Yes. So there is -- the roads  
02:38:55 21 are usually built for a certain -- to take a  
02:38:59 22 certain load, like I'm talking weight, but also  
02:39:03 23 volume of traffic, and also the width is part of  
02:39:05 24 it.

02:39:06 25 So usually the County roads would

02:39:10 1 be -- the ones that are arterial can take a  
02:39:13 2 higher volume of traffic at a higher speed, but  
02:39:15 3 they're also able to accommodate the heavier  
02:39:18 4 loads, and this is the same for bridges.

02:39:23 5 Q. So when you say "heavier loads"  
02:39:24 6 are you suggesting, for instance, larger trucks?

02:39:27 7 A. Yes. Normally there's a -- on a  
02:39:29 8 day-to-day basis there's a set weight, it's the  
02:39:32 9 same across the Province; that if you're under  
02:39:34 10 that weight you can travel on the roads.

02:39:36 11 Once you get above a certain weight  
02:39:38 12 you have to ask the Municipality for moving  
02:39:41 13 permits. If somebody needs a moving permit on a  
02:39:43 14 County road they come to us and they get it.

02:39:46 15 If there's something that's super  
02:39:48 16 heavy, we call those "super loads", and it's the  
02:39:51 17 same thing. We go through a process, do an  
02:39:53 18 engineering review and allow the super load to  
02:39:55 19 go on our roads.

02:39:56 20 And if they go to a lower tier they go  
02:39:59 21 through the same process with lower tier, and  
02:40:01 22 same process with the Province on highways.

02:40:03 23 Q. So, for instance, if I had a  
02:40:05 24 development up north you indicated they need a  
02:40:06 25 permit to transport large materials to that

02:40:10 1 area?

02:40:10 2 A. If they use a large truck, yes.

02:40:12 3 Q. So would you have an agreement in  
02:40:14 4 place or just issuing a permit?

02:40:17 5 A. Normally they ask for a permit,  
02:40:18 6 but we do issue permits for an entire year. If  
02:40:22 7 somebody is going to do it often we don't ask  
02:40:25 8 them every time to do it, we just give them an  
02:40:27 9 annual permit.

02:40:28 10 Q. And is there any -- in terms of  
02:40:30 11 these arterial roads there was discussion  
02:40:32 12 earlier about -- from the lower-tier, Georgian  
02:40:35 13 Bluffs, that they have insurance on these roads.  
02:40:39 14 You would obviously have these assets under a  
02:40:42 15 policy of insurance as well?

02:40:44 16 A. So, yes, I'm certainly aware that  
02:40:49 17 the County does have an insurance policy. I  
02:40:51 18 wouldn't be able to give you the specific detail  
02:40:52 19 of the coverage but I would assume, yes, the  
02:40:55 20 roads are on there.

02:40:58 21 Usually if somebody is going to work  
02:41:00 22 on our road we ask them to have insurance as  
02:41:03 23 well, and WSIB, to use an acronym, but Workman's  
02:41:06 24 Compensation. If anybody works on our road so  
02:41:10 25 if they get hurt the County doesn't have

02:41:12 1 liability for them hurting while they're working  
02:41:15 2 on the road.

02:41:16 3 My apologies if I use the word  
02:41:25 4 "liability" wrong.

02:41:30 5 Q. I just need a moment, Your  
02:41:31 6 Honour.

02:41:31 7 You heard the evidence this morning of  
02:41:37 8 both Wendi Hunter and Troy Unruh, was there  
02:41:42 9 anything you wanted to add for clarification  
02:41:44 10 purposes for a difference between your County  
02:41:45 11 procedures versus theirs? Generally speaking.

02:41:48 12 I'm sure you have different policies  
02:41:50 13 that are implemented by by-law from the County  
02:41:54 14 Council, but the general principles are the  
02:41:57 15 same?

02:41:57 16 A. Yes, from what I hear this  
02:41:59 17 morning we use -- our policies might be slightly  
02:42:02 18 different but we work under the same by-laws,  
02:42:05 19 same legislations and the same concepts for  
02:42:09 20 ethics.

02:42:14 21 Q. I believe those are all my  
02:42:15 22 questions at this point, thank you.

02:42:17 23 THE COURT: Thank you.

02:42:17 24 Ms. McNamara?

02:42:22 25 CROSS-EXAMINATION BY MS. MCNAMARA:

02:42:27 1 Q. Hello, Mr. Pelletier.

02:42:28 2 I'm sure you've heard my introduction  
02:42:32 3 a couple of times now but I'm Jaclyn McNamara  
02:42:36 4 and I'm going to be asking you a few questions  
02:42:38 5 on behalf of the plaintiffs.

02:42:39 6 I'm going to get you to look again at  
02:42:41 7 the map that's already up on your screen,  
02:42:44 8 Exhibit 4898. Was this map prepared at your  
02:42:48 9 instruction?

02:42:51 10 A. No, I knew about it. Actually we  
02:42:54 11 have -- there's a -- we have a strategic planner  
02:42:58 12 in our department and -- he reports to our chief  
02:43:01 13 administration officer, and he's the one who's  
02:43:04 14 responsible for this file within the  
02:43:07 15 corporation. So he's the one that actually got  
02:43:11 16 the map done, but I was aware of it and we  
02:43:17 17 worked together.

02:43:18 18 Q. Great. And to your knowledge the  
02:43:20 19 map accurately shows the road network for the  
02:43:22 20 portion of Bruce County that is depicted in the  
02:43:25 21 map?

02:43:25 22 A. It does, yeah. I use the same  
02:43:28 23 information for my purposes. So it's the same  
02:43:30 24 geo reference information that they put on the  
02:43:32 25 map that the whole corporation use.

02:43:35 1 Q. Great. And that includes -- you  
02:43:38 2 spoke with my friend a bit about the roads that  
02:43:40 3 are in orange and the roads that are thick and  
02:43:43 4 are grey. So that would be, for example, the  
02:43:46 5 road labelled "6", but that would also include  
02:43:50 6 the lines, the light grey lines on the map? Am  
02:43:55 7 I correct that those are roads as well?

02:43:57 8 A. I'm confident that they are roads  
02:43:59 9 and they are the lower-tier Municipality roads.  
02:44:06 10 But when we made this map our focus was not on  
02:44:09 11 there so not sure about the level of quality  
02:44:12 12 control for that particular section.

02:44:14 13 Q. You may be able to answer this  
02:44:16 14 you may not, but to your knowledge are the roads  
02:44:20 15 accurately depicted for the lower-tier roads as  
02:44:23 16 well?

02:44:23 17 A. It looks like they are.

02:44:26 18 MS. GROVE-McCLEMMENT: Your Honour,  
02:44:26 19 sorry to interrupt. I'm going to object simply  
02:44:29 20 because the intent and purpose was to identify  
02:44:31 21 the County roads, the underlying was not  
02:44:39 22 reviewed.

02:44:41 23 THE COURT: That may be so, counsel,  
02:44:42 24 but in cross-examination I permit the questions,  
02:44:45 25 subject of course to the witness' ability to

02:44:47 1 answer .

02:44:48 2 THE WITNESS: I can't give you "hand  
02:44:49 3 on my heart" these are all accurate. Like I  
02:44:51 4 said, the data comes from a database and it's  
02:44:56 5 geo referenced, so it's a question of making  
02:44:58 6 different layers.

02:44:59 7 So that information that if it's  
02:45:01 8 pictured there is accurate that it's in our  
02:45:04 9 system, but I haven't -- but I cannot say that  
02:45:06 10 it's necessarily what is on the ground exactly  
02:45:11 11 because I haven't personally reviewed the  
02:45:14 12 information.

02:45:18 13 BY MS. MCNAMARA:

02:45:18 14 Q. Those are my questions, thank  
02:45:19 15 you.

02:45:20 16 THE COURT: Thank you.

02:45:20 17 Did you have any re-examination,  
02:45:21 18 counsel.

02:45:22 19 MS. GROVE-McCLEMENT: I don't, Your  
02:45:23 20 Honour .

02:45:24 21 THE COURT: Thank you, sir, very much.  
02:45:25 22 You can step down.

02:45:26 23 How did things turn out about your  
02:45:31 24 prospect of having an additional witness or not?

02:45:36 25 MR. STEWART: Yes, Your Honour.



02:45:38 1 THE COURT: Mr. Stewart.

02:45:39 2 MR. STEWART: We did consult over the  
02:45:41 3 lunch break and, as you know, I act for the  
02:45:45 4 other three, lower-tier Municipalities.

02:45:47 5 And I have a witness here who has  
02:45:49 6 carefully listened to the evidence this morning  
02:45:51 7 and we are content that we would not be adding  
02:45:54 8 anything materially to that evidence. So we're  
02:45:57 9 content -- those three municipalities are  
02:45:59 10 content to confirm and rely on that evidence as  
02:46:02 11 their own evidence in the hearing.

02:46:04 12 THE COURT: Thank you, Mr. Stewart.

02:46:09 13 MR. STEWART: Thank you.

02:46:09 14 THE COURT: Now, while you are on your  
02:46:11 15 feet, Mr. Stewart, and seeing that some of the  
02:46:12 16 counsel from this morning are not present this  
02:46:14 17 afternoon -- oh yes you are, at the back.  
02:46:17 18 Sorry, I didn't see you back there. For those  
02:46:20 19 Municipalities represented today are you closing  
02:46:22 20 your defence case?

02:46:27 21 MS. DAUGHERTY: Yes, we are.

02:46:30 22 MR. STEWART: Yes.

02:46:31 23 MS. GROVE-McCLEMENT: Yes.

02:46:37 24 MR. ENNIS: I wanted to revise, Canada  
02:46:39 25 does consent to the amendments.

02:46:42 1 THE COURT: Thank you for giving us  
02:46:43 2 that update to the pleadings amendment question.

02:46:47 3 Thank you, counsel, from the  
02:46:49 4 Municipalities, you may have a seat.

02:46:51 5 And having closed their cases,  
02:46:53 6 Mr. Townshend or Ms. McNamara, as you know our  
02:46:59 7 final witness is a reply expert, where does that  
02:47:02 8 individual reside?

02:47:09 9 MR. TOWNSHEND: In Montreal.

02:47:11 10 THE COURT: It would seem prudent to  
02:47:12 11 see if arrangements could be made. We have next  
02:47:15 12 week when we're not sitting so there's time to  
02:47:18 13 see if arrangements could be made such that that  
02:47:23 14 gentleman doesn't have to travel to Toronto.

02:47:25 15 So I'm asking you, you don't have to  
02:47:25 16 give a position right now, it is not at all  
02:47:29 17 uncommon in our court that we do hear witnesses  
02:47:31 18 via Skype, and sometimes other technology, but  
02:47:37 19 Skype seems to be the one that people are most  
02:47:40 20 familiar with.

02:47:41 21 And bearing in mind the day-to-day  
02:47:44 22 changes in the ability of people to travel,  
02:47:48 23 given the problems that we're experiencing, and  
02:47:55 24 really hour-to-hour changes, it would seem to me  
02:48:02 25 prudent to look into.

02:48:04 1 First of all the timing of that  
02:48:04 2 gentleman's evidence because the first two days  
02:48:05 3 of that week are occupied --

02:48:07 4 MR. TOWNSHEND: He is intending to be  
02:48:11 5 here for the 23rd.

02:48:12 6 THE COURT: I understand that, but I  
02:48:13 7 just want to have a back-up plan, sir.

02:48:16 8 MR. TOWNSHEND: Yes.

02:48:17 9 THE COURT: Because there will be lots  
02:48:18 10 of potential changes in the next ten days. I'm  
02:48:21 11 around. You don't have to wonder about things,  
02:48:24 12 you can communicate with my office.

02:48:25 13 But I do want you to embark now,  
02:48:28 14 rather than later, on considering two things,  
02:48:33 15 one is when, because of finishing the  
02:48:38 16 Municipalities case a bit early; and the other  
02:48:41 17 is, if for some reason he cannot attend or ought  
02:48:44 18 not attend in Toronto in person I'd like to be  
02:48:48 19 able to do his evidence electronically,  
02:48:49 20 especially because he's an expert; because  
02:48:54 21 expert evidence tends to be a little bit  
02:48:57 22 different.

02:48:58 23 So can you please look into that, sir?

02:49:02 24 MR. TOWNSHEND: Yes, I will.

02:49:04 25 THE COURT: I know Mr. Brookwell isn't

02:49:05 1 here at the moment, he's the person I'm always  
02:49:07 2 looking for when it comes to tech, but I'm sure  
02:49:12 3 your team will consider it. And can you also  
02:49:14 4 discuss it with other counsel and perhaps by  
02:49:17 5 mid-next week could you give me an email update?

02:49:20 6 MR. TOWNSHEND: Thank you, Your  
02:49:20 7 Honour.

02:49:21 8 THE COURT: A good deal of things  
02:49:22 9 might change in the meantime, but regrettably it  
02:49:25 10 does not appear that they'll necessarily change  
02:49:27 11 to become more positive than the situation today  
02:49:31 12 and I think a back-up plan may well be needed,  
02:49:38 13 bearing in mind this evolving difficult  
02:49:40 14 situation that everybody is working under for  
02:49:43 15 the Corona virus.

02:49:50 16 So we will adjourn until the Monday of  
02:49:53 17 the week follow next, subject to changes that  
02:49:56 18 may occur to our schedule depending on what  
02:49:59 19 Mr. Townshend's team figures out with other  
02:50:04 20 counsel about -- is it Professor Morin?

02:50:07 21 MR. TOWNSHEND: Yes.

02:50:08 22 THE COURT: About Professor Morin's  
02:50:10 23 situation.

02:50:12 24 Is there anything else you or any  
02:50:14 25 other counsel wish to raise before we adjourn?

MR. TOWNSHEND: No, thank you.

THE COURT: I do encourage you to communicate with my office if you have any things you're wondering about as far as these arrangements are concerned. Thank you.

--- Whereupon the proceedings were adjourned at 2:50 p.m.

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 26th day of March, 2020.



PER: HELEN MARTINEAU  
CERTIFIED SHORTHAND REPORTER

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