

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

DAY 88 VOL 88
March 03, 2020



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1 Court File No. 94-CQ-50872CM

2 ONTARIO

3 SUPERIOR COURT OF JUSTICE

4 B E T W E E N:

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

Plaintiffs

- and -

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

Defendants

15 Court File No. 03-CV-261134CM1

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

17 CHIPPEWAS OF NAWASH UNCEDED FIRST NATION and
18 SAUGEEN FIRST NATION

Plaintiffs

- and -

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

Defendants

21 --- This is the VOLUME 88/DAY 88 of the trial proceedings
22 in the above-noted matter, being held at the Superior
23 Court of Justice, 330 University Avenue, Courtroom 5-1,
24 Toronto, Ontario, on the 3rd day of March, 2020.

25 B E F O R E:

The Honourable Justice Wendy M. Matheson

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

2

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

8

9

10 Michael McCulloch, Esq., for the Defendant,
11 & Barry Ennis, Esq., The Attorney General &
12 & Alexandra Colizza, Esq. Of Canada.

13

14

15 David Feliciant, Esq., for the Defendant,
16 & Peter Lemmond, Esq., Her Majesty the
17 & Richard Ogden, Esq., Queen in Right of
18 & Julia McRandall, Esq., Ontario.
19 & Jennifer Lepad, Esq.,

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23 REPORTED BY: Judith M. Caputo, RPR, CSR, CRR

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WITNESS:

DR. GWEN REIMER; Previously sworn

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-- Upon commencing at 10:01 a.m.

THE COURT: Good morning, Mr. Brookwell.

MR. BROOKWELL: Good morning, Your Honour.

THE COURT: So, unfortunately, we have a flashing pot light right over Ontario, or at least near Ontario. I've asked yesterday for it to be fixed, but as you can tell it has not been fixed.

The alternative is darkness. But if after any length of time anyone, including members of the public, are troubled by it, just stand up, because we will shift to turning them off. I don't want anyone to be bothered by it, all right?

Unfortunately, we can't have it repaired during the course of the trial. But we're working on it, not today, then perhaps tonight.

You're the first up, Mr. Brookwell?

MR. BROOKWELL: No, Your Honour. It's an administrative matter that I would like to speak to first. It's with respect to the RETI database.

THE COURT: Yes?

MR. BROOKWELL: And you may recall at the beginning of the trial when we had entered in a large number of documents on consent for a Joint

1 Book of Documents, there were some placeholders
2 where the PDF had yet to be included. And some of
3 those still need to be updated and there's two
4 things that I wanted to raise.

5 The first is, in the Plaintiffs'
6 process of looking through to find those documents,
7 our document manager inserted some of those
8 documents and discovered that that had been done --
9 when he had done it, it was for a primary
10 collection document which is an exhibit.

11 So that raises a technological issue
12 that we need to resolve, is that the exhibit
13 container shouldn't be modifiable.

14 So we would like to address that with
15 RETI, but we wanted to raise it right away. And I
16 have a list of those documents which I can discuss
17 with Mr. Registrar at the break; but that's the
18 first issue.

19 And I've alerted Canada and Ontario.
20 They've reviewed those documents and haven't raised
21 an issue with the actual thing put in; but it is a
22 technical issue that really needs to be addressed
23 right away.

24 The second is, the practical matter is
25 we have to put in some of these containers in a

10:03:16 1 proper approach. And the approach we've discussed
10:03:20 2 is the parties will find the ones that are
10:03:22 3 appropriate and we would mark it offline with the
10:03:25 4 registrar and RETI together.

10:03:26 5 So it would be a process offline, but I
10:03:28 6 wanted to raise those issues for your attention
10:03:31 7 today. And I can discuss further with
10:03:33 8 Mr. Registrar at the break, subject to any
10:03:35 9 questions you may have.

10:03:37 10 THE COURT: Thank you, Mr. Brookwell,
10:03:39 11 that's helpful. If there is any further issue,
10:03:42 12 just raise it, but I'm sure we'll be able to work
10:03:45 13 it out with the other parties and Mr. Registrar.

10:03:49 14 MR. BROOKWELL: Thank you, Your Honour.

10:03:54 15 THE COURT: Now, Dr. Reimer, welcome
10:03:56 16 back.

10:03:57 17 THE WITNESS: Thank you.

10:03:58 18 THE COURT: I just wanted to let you
10:04:01 19 know, if you haven't already been advised, I have
10:04:02 20 permitted the Plaintiffs to divide their
10:04:06 21 cross-examination into sections with different
10:04:09 22 counsel.

10:04:10 23 So Mr. Townshend is standing, but you
10:04:13 24 should anticipate that, as your cross-examination
10:04:18 25 unfolds, other counsel may be asking you questions,

10:04:20 1 all right?

10:04:21 2 THE WITNESS: Thank you.

10:04:22 3 THE COURT: Remember about speaking up,
10:04:24 4 please, Doctor.

10:04:26 5 Please go ahead, Mr. Townshend.

10:04:28 6 MR. TOWNSHEND: Thank you.

10:04:30 7 I will be examining Dr. Reimer on
10:04:32 8 Volumes 1, 2, and the General Council report. And
10:04:38 9 Ms. Guirguis will be examining in relation to the
10:04:41 10 balance of the reports.

10:04:44 11 THE COURT: Let me get the -- which
10:04:48 12 exhibit number is the General Council report?

10:04:54 13 Perhaps 4709?

10:04:58 14 MR. TOWNSHEND: That is correct.

10:04:58 15 THE COURT: Those are the three I
10:05:01 16 should have handy, sir?

10:05:04 17 MR. TOWNSHEND: Yes, Your Honour.

10:05:16 18 And just for Your Honour's information,
10:05:18 19 and Dr. Reimer's. My examination is organized
10:05:25 20 schematically, not by report page. So there will
10:05:28 21 be some skipping around.

10:05:29 22 So, as it happens, I'm going to start
10:05:32 23 at the end of Volume 2. If we could have Volume 2,
10:05:45 24 which is Exhibit 4702, page 131, which is PDF 143,
10:05:50 25 that's coming up on the screen in a minute.

1 Yes, 7.7.1 paragraph.

2 CROSS-EXAMINATION BY MR. TOWNSHEND:

3 Q. So here, Dr. Reimer, you said you
4 agree with Dr. Driben that "the Anishinaabe have
5 included water in their band territory since time
6 out of mind [...]", and go on to say that the
7 Ottawa and Ojibway assert control over trade routes
8 and protect fisheries in their waters.

9 And then you go on to say that,
10 although you agree in general, there are two
11 examples that Dr. Driben gives that you do not
12 agree with; is that a fair statement of what you
13 have on this page?

14 A. Yes.

15 Q. So those two examples are about
16 La Salle's ship, the Griffon, and the matter of
17 Father Allouez?

18 A. Correct.

19 Q. If we go over to the next page,
20 132, PDF 144. Right at the top of the page, it
21 states that Allouez was travelling with the Ottawa
22 trade brigade, implying he did have permission to
23 use the water; you see that?

24 A. Yes.

25 Q. So at Volume 1, which is

1 Exhibit 4576, you discuss this incident of Allouez
2 in some more detail at page 31, which is PDF 44.

3 There's a passage starting, "While I
4 agree that this incident suggests that Allouez was
5 not welcome [...]".

6 THE COURT: I don't know where you are
7 on the page, Mr. Townshend.

8 MR. TOWNSHEND: I'm having trouble
9 finding it, too. The cursor is on it, there it is.

10 Okay.

11 BY MR. TOWNSHEND:

12 Q. So leaving aside the reason why
13 Allouez was left behind during the 1665 journey,
14 you agree he was left behind?

15 A. Yes, he was.

16 Q. And that's because he was no
17 longer welcome; is that right?

18 A. Yes.

19 Q. You mentioned he was an unskilled
20 paddler and he had a lot of gear with him?

21 A. Yes.

22 Q. So, as a practical matter, he
23 couldn't continue, could he?

24 A. On his own?

25 Q. Right.

10:09:43 1 A. No.

10:09:43 2 Q. And the Anishinaabe would have
10:09:45 3 known that?

10:09:45 4 A. I think that's plausible.

10:09:52 5 Q. So isn't this a matter of
10:09:54 6 controlling the waterway, by just leaving him
10:09:57 7 there?

10:09:57 8 A. I don't think it's a demonstration
10:10:02 9 of control. To me, control of the waterway would
10:10:09 10 have been to deny entry by Allouez or anyone else
10:10:19 11 who they didn't want to have travelling on their
10:10:22 12 waterways to use those waterways.

10:10:26 13 I don't agree that this is a valuable
10:10:31 14 example of control of waterways, when there are
10:10:36 15 other circumstances that explain why Allouez was
10:10:43 16 abandoned.

10:10:45 17 The fact that he was unable and
10:10:47 18 unskilled in order to continue on his way does not,
10:10:54 19 to me, demonstrate control by others over that
10:11:00 20 waterway.

10:11:02 21 Unless you mean purely in practical
10:11:05 22 means, in terms of being able to paddle a canoe or
10:11:08 23 having a canoe, or that sort of thing.

10:11:12 24 Q. Well, I'm suggesting that it
10:11:14 25 sounds like he initially had permission, and for

10:11:19 1 various reasons, they decided they didn't want him
10:11:23 2 anymore.

10:11:24 3 A. But the same may have been true on
10:11:27 4 land as opposed to water; he was abandoned.

10:11:31 5 Q. Yes?

10:11:32 6 A. Okay. I think maybe we're
10:11:35 7 speaking at cross purposes. I'm not sure. If you
10:11:39 8 could rephrase your question?

10:11:42 9 Q. By leaving him, they prevented him
10:11:48 10 from continuing, and they knew that that would be
10:11:54 11 the effect of leaving him?

10:11:55 12 A. Yes.

10:11:55 13 Q. So in a practical sense, they were
10:11:59 14 keeping him out?

10:11:59 15 A. In a practical sense, yes.

10:12:01 16 Q. All right. Now, if we go back to
10:12:14 17 Volume 2, page 132, PDF 144, where we talk about
10:12:25 18 the La Salle ship, the Griffon. It's the paragraph
10:12:38 19 that starts "Dr. Driben cites the example of the
10:12:42 20 destruction of the French trade ship [...]".

10:12:48 21 So you summarize here La Patherie's
10:12:50 22 account of the destruction of the Griffon?

10:12:55 23 A. Yes.

10:12:56 24 Q. The ship was attacked?

10:12:57 25 A. Yes.

10:12:57 1 Q. And it was burnt?

10:13:00 2 A. Yes.

10:13:00 3 Q. And the crew was killed?

10:13:01 4 A. Yes.

10:13:01 5 Q. And this was the Anishinaabe and
10:13:03 6 their allies who did this?

10:13:04 7 A. May I just re-read the paragraph,
10:13:08 8 please?

10:13:09 9 Q. Certainly.

10:13:28 10 A. (Witness reviews document).
10:13:29 11 Yes.

10:13:30 12 Q. So, as I understand it, you're
10:13:32 13 saying this is warfare rather than control of
10:13:36 14 territory?

10:13:36 15 A. In the paragraph following, I re
10:13:41 16 clarify that I am uncertain whether an act of
10:13:45 17 warfare and self-preservation is equivalent to
10:13:49 18 customary attitudes towards control of waterways
10:13:52 19 and water resources.

10:13:56 20 So to that extent, I remain uncertain
10:13:59 21 that the destruction of the ship and the crew in
10:14:10 22 1679 is a valuable example of customary control by
10:14:14 23 Anishinaabe of waterways.

10:14:17 24 Q. Well, isn't warfare a typical
10:14:22 25 example of control of territory?

10:14:24 1 A. In my understanding, from having
10:14:28 2 studied the Beaver Wars, for example, it is
10:14:33 3 shifting control of territory by various groups as
10:14:36 4 they moved in and out of territory, raided
10:14:39 5 territory, defeated enemies.

10:14:42 6 And so in that context, is it
10:14:51 7 appropriate; is it valuable; does it teach us
10:14:54 8 anything in terms of customary control of territory
10:14:59 9 and waterways as would be perceived by an
10:15:03 10 Anishinaabe band who used and occupied particular
10:15:08 11 territory.

10:15:09 12 This was a time of hostilities,
10:15:11 13 conflict, movement, disbursements, so I'm
10:15:17 14 questioning whether that is a good example of
10:15:22 15 customary control of waterways.

10:15:24 16 Q. So you're questioning whether it
10:15:29 17 was the territory of the people who attacked the
10:15:31 18 ship?

10:15:32 19 A. I'm questioning whether, in the
10:15:35 20 context of warfare, one should be determining
10:15:40 21 customary attitudes towards waterways in
10:15:44 22 Anishinaabe band territory. To me there's another
10:15:49 23 whole context that needs to be considered and taken
10:15:52 24 into account when looking at the instance like the
10:15:59 25 Griffon and the crew that was destroyed.

1 I'm saying it's not a black and white
2 example of customary control by Anishinaabe of
3 control over waterways.

4 Q. But warfare is an attempt to
5 assert control over territory in general, isn't it?

6 A. It is. And in the context of the
7 Beaver Wars, as I said earlier, you're seeing
8 shifting occupations use conquest over various
9 areas of territory by the Iroquois, by Anishinaabe,
10 by the different alliances.

11 It's a time of change, of hostility, of
12 constant movements by groups from one area to
13 another. Of motivations to conquer or maintain
14 control over territory in the context of widespread
15 warfare in hostility.

16 I'm not saying it's not an example.
17 I'm saying it certainly shouldn't be cited as a
18 sole example or even necessarily a good example of
19 Anishinaabe customary control over their own
20 territory.

21 Q. Have you been able to pinpoint
22 where this took place?

23 A. Again, can I just re-read my
24 paragraph?

25 Q. Sure.

10:17:49 1 A. Thank you. (Witness reviews
10:18:02 2 document).

10:18:02 3 Just from my summary here, it's on Lake
10:18:05 4 Huron in a small bay. I would need to go back to
10:18:09 5 the original documents to see if I can determine
10:18:15 6 the exact location.

10:18:23 7 Q. All right. I'll leave it at that.

10:18:30 8 Now, I want to talk about an earlier
10:18:32 9 interaction between the Anishinaabe and the French.
10:18:34 10 And in several parts of your report, you discuss
10:18:37 11 the meeting between the Cheveux Relevés and
10:18:41 12 Champlain at the mouth of the French River in 1615.

10:18:45 13 A. Correct.

10:18:46 14 Q. And at that point, Champlain was
10:18:50 15 met by 300 warriors, right?

10:18:54 16 A. That may be correct. I just would
10:18:56 17 want to confirm the number, but there were quite a
10:19:00 18 few.

10:19:36 19 Q. We could go to --

10:19:42 20 A. Excuse me? On page 73 of
10:19:46 21 Volume 1, I quote Champlain and, yes, he does say
10:19:49 22 300 men of a tribe named by us the Cheveux Relevés.

10:19:56 23 Q. Okay, thank you. They told him
10:19:58 24 they were picking berries, correct?

10:20:09 25 A. Yes.

10:20:09 1 Q. And you said you have taken that
10:20:10 2 at face value?

10:20:11 3 A. Yes.

10:20:12 4 Q. I'd like to take you to the
10:20:13 5 transcript of Dr. Driben's examination, which is
10:20:17 6 October 22nd, page 6824. Bear with us a moment,
10:21:06 7 please.

10:21:07 8 And the question that starts "How do
10:21:17 9 you interpret [...]"

10:21:19 10 THE COURT: I don't see a question that
10:21:21 11 starts that way on the screen.

10:21:29 12 MR. TOWNSHEND: Sorry, I had the wrong
10:21:31 13 page number, no that's 6824, it's marked there.

10:21:31 14 BY MR. TOWNSHEND:

10:21:36 15 Q. The question that starts "How do
10:21:38 16 you interpret [...]" . You can review the rest of
10:21:42 17 that page there.

10:21:43 18 A. (Witness reviews document). I've
10:21:53 19 read the first page.

10:21:54 20 Q. Then he refers to Leo Waisberg.
10:22:01 21 So if I can take you to Leo Waisberg's PhD thesis,
10:22:06 22 which is Exhibit 4336. If we go to page 33 of that
10:22:12 23 which is PDF 56. And if you could look at that,
10:22:20 24 read that, starting: "I find it somewhat hard to
10:22:26 25 credit", down to the end of that paragraph.

10:22:57 1 A. I've read it.

10:22:58 2 Q. So do you accept that, among the
10:23:02 3 Anishinaabe, traditionally berries are picked by
10:23:08 4 children, women and old men?

10:23:10 5 A. Yes.

10:23:11 6 Q. And not by warriors likely?

10:23:14 7 A. I'm not sure it would be exclusive
10:23:17 8 to women, children and old men. I interpreted
10:23:23 9 Champlain's reference to blueberry picking to refer
10:23:28 10 to the group that he met being there for more than
10:23:35 11 just berry picking, but that he also noted that
10:23:39 12 that's what they had told him they were doing
10:23:42 13 there.

10:23:43 14 For me, my quotation of Champlain's
10:23:50 15 meeting in 1615 with the group of Cheveux Relevés
10:23:58 16 at the French River was more to document his first
10:24:01 17 encounter with that group. Exactly what they were
10:24:05 18 doing there, and whether or not they were literally
10:24:09 19 or only blueberry picking was of less concern to me
10:24:14 20 at the time when I was writing this chapter.

10:24:17 21 Q. Again, so in light of Professor
10:24:22 22 Driben and Dr. Waisberg saying that this sounds
10:24:26 23 like it was either humor or an invasion, that they
10:24:29 24 were really there to meet Champlain, because they
10:24:33 25 found out he was coming. Would you accept that's a

10:24:37 1 reasonable interpretation of what happened?

10:24:39 2 A. Not completely, no. I agree they
10:24:41 3 may well have come to meet him. French River was a
10:24:45 4 very important and central trade route that was
10:24:49 5 used by the Odawa, by the Huron.

10:24:55 6 It is the route that the French,
10:24:56 7 including the Champlain would have used. It's
10:25:00 8 possible that word had been passed along that there
10:25:06 9 were French coming down the river and that the
10:25:09 10 Odawa, group of Odawa, went to meet them, or went
10:25:13 11 to see what was going on.

10:25:16 12 It's also possible there may have been
10:25:21 13 women and children with them, although Champlain
10:25:24 14 doesn't say it. I don't know why, and certainly
10:25:26 15 the two passages I've read here don't explain why
10:25:30 16 Champlain would be making humor at this point when
10:25:35 17 he's simply recounting the meeting with a group
10:25:39 18 that he had not met before, the Cheveux Relevés.

10:25:44 19 Q. I wasn't suggesting Champlain was
10:25:46 20 attempting humor. I'm suggesting the Anishinaabe
10:25:49 21 were, and Champlain didn't get it?

10:25:51 22 A. Oh, I see. I suppose that's
10:25:57 23 possible.

10:25:57 24 Q. Okay. So 300 warriors is a lot?

10:26:02 25 A. It is a lot. It is a large group.

10:26:04 1 And I would certainly agree that they were there
10:26:07 2 for more than just blueberry picking.

10:26:09 3 Q. They would have quickly depleted
10:26:11 4 any blueberry patch?

10:26:13 5 THE COURT: You're giving that evidence
10:26:15 6 from the stand, Mr. Townshend? I think you're
10:26:18 7 going to have to qualify this witness, before you
10:26:23 8 can descend into that humor, in her expertise in
10:26:28 9 blueberry picking. I know you have big smile on
10:26:32 10 your face.

10:26:33 11 MR. TOWNSHEND: Perhaps there is
10:26:35 12 certain judicial notice that could be taken of
10:26:37 13 certain blueberry picking.

10:26:38 14 THE COURT: I know enough about it that
10:26:41 15 I would not take judicial notice of it.

10:26:45 16 Please go ahead.

10:26:45 17 MR. TOWNSHEND: Okay.

10:27:00 18 BY MR. TOWNSHEND:

10:27:00 19 Q. I think you agree that it was a
10:27:02 20 reasonable interpretation that they were there to
10:27:04 21 meet Champlain and see what his intentions were?

10:27:08 22 A. Alternatively, they were there on
10:27:12 23 a trade mission and happened to meet Champlain. We
10:27:15 24 don't know. It's not documented.

10:27:18 25 Q. You think it's likely they just

1 happened to be there at that time?

2 A. It's not impossible.

3 Q. Not impossible, but I'd suggest
4 not that likely?

5 A. Can I just check at what time of
6 year this is? It would have been in the fall if
7 there were in fact blueberries around. It was in
8 the summer of 1615.

9 I find it credible a large group would
10 have been travelling on a trade mission. Waisberg
11 suggests this was at a time of -- I'm not sure if
12 it's Waisberg or Dr. Driben -- suggested this was a
13 time of raiding.

14 I'm not sure -- it is Waisberg -- what
15 they might have been raiding, other trade parties,
16 for example. So were they there specifically to
17 meet Champlain? It's not impossible.

18 Were they there for other reasons and
19 happened to meet Champlain? I think equally
20 possible.

21 Q. Okay. I'll leave it at that.

22 If you would go to Volume 2 of your
23 report, page 23, which is PDF 35.

24 THE COURT: 23?

25 MR. TOWNSHEND: 23.

1 THE COURT: Thank you.

2 Just for the record, you're in
3 Exhibit 4702?

4 MR. TOWNSHEND: That is correct,
5 Exhibit 4702, page 23. In the end of the first
6 paragraph on that page, you're again talking about
7 acts of warfare not being equivalent with customary
8 attitudes.

9 THE WITNESS: To clarify, I state that
10 I am uncertain.

11 BY MR. TOWNSHEND:

12 Q. All right.

13 A. About equivalence.

14 Q. So the time of Pontiac, it's a
15 little different than time of La Salle?

16 A. Correct.

17 Q. And here we have Pontiac,
18 including Anishinaabe, occupying Lake Huron?

19 A. In the area of Detroit, yes.

20 Q. Yeah. And the British trying to
21 get in, and they're resisting that?

22 A. Correct.

23 Q. So again, is that not -- in this
24 case, is that not an example of controlling
25 territory? It's warfare, yes. But the point of

1 the warfare was to control territory?

2 A. Yes, I agree they were attempting
3 to maintain control of their territory.

4 Q. All right. Let's talk a bit more
5 about what happened after the Pontiac War. It
6 started in 1763, correct?

7 A. Yes.

8 Q. And in October of 1763 we have the
9 Royal Proclamation issue?

10 A. Correct.

11 Q. And that was after the start of
12 Pontiac War?

13 A. Correct.

14 Q. So then in 1764, we have what you
15 call the Congress of Niagara. And in your evidence
16 in-chief, you said you hadn't specifically turned
17 your mind to whether the Congress at Niagara was a
18 part of or a treaty; do you recall that?

19 A. Yes, I do.

20 Q. So if we can have Exhibit SC1894,
21 please. This is an article called
22 "British-Canada's Land Purchases, 1783 to 1788",
23 which you wrote?

24 A. Correct.

25 Q. And published in Ontario History?

10:32:33 1 A. Correct.

10:32:33 2 Q. So this you published in the

10:32:35 3 spring of 2019?

10:32:37 4 A. Sure.

10:32:39 5 Q. Okay.

10:32:42 6 A. I don't recall if it was spring.

10:32:46 7 Q. Well, the publication date at the

10:32:48 8 bottom?

10:32:48 9 A. Yes, I see that there. Yes,

10:32:50 10 you're correct.

10:32:51 11 Q. Can we have this marked as an

10:32:54 12 exhibit, please?

10:32:55 13 THE COURT: Yes. Is it the entire

10:32:58 14 article or just an excerpt?

10:33:02 15 MR. TOWNSHEND: I'm waiting for an

10:33:18 16 exhibit number.

10:33:18 17 THE COURT: Is it an entire article?

10:33:21 18 MR. TOWNSHEND: Yes, it is. Sorry,

10:33:22 19 it's the entire article.

10:33:23 20 THE COURT: Sir, it does not work if

10:33:25 21 two people talk at the same time. It is an entire

10:33:30 22 article?

10:33:31 23 MR. TOWNSHEND: Yes, it is.

10:33:33 24 THE COURT: Okay, Mr. Registrar.

10:33:35 25 THE REGISTRAR: Exhibit 4727.

EXHIBIT NO. 4727: Article entitled
"British-Canada's Land Purchases, 1783
to 1788" by Dr. Gwen Reimer.

BY MR. TOWNSHEND:

Q. So if we can go to page 38, which
is the PDF 3.

THE COURT: Just for the record, is
what appears to be a highlighted arrow on that page
part of the original article or not?

MR. TOWNSHEND: Maybe I should ask Dr.
Reimer that.

THE WITNESS: It's original to the
article, yes.

THE COURT: Thank you.

BY MR. TOWNSHEND:

Q. It's just the sentence that starts
right at the bottom of that page and over on to the
next page. If you go on to the next page, there we
are.

You say:

"The purpose of the 1764
congress was to formally "settle the
peace", to establish an alliance
with the English and to explain the
rules of trade and Indian lands

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10:36:05

1 established by the Royal
2 Proclamation."
3 Do you see that?
4 A. Yes.
5 Q. So this is an article about
6 numerous land transactions with Aboriginal people
7 in the 18th century?
8 A. Yes, it is.
9 Q. And you start off by talking about
10 the Congress of Niagara?
11 A. Yes.
12 Q. And it is about a formal
13 settlement of peace and alliance and the rules of
14 trade in Indian lands?
15 A. Yes.
16 Q. It didn't occur to you to wonder
17 whether that was a treaty or not?
18 A. It was not a question I was asking
19 in terms of the objectives of this particular
20 article that I was writing.
21 If I can just explain. My testimony
22 earlier, I understood the question to be -- to
23 imply whether or not the 1764 congress established
24 a legal or formal treaty.
25 And that's the question I have not

1 turned my mind to, and I did not at the time of
2 writing this article, nor is it that actually
3 relevant or pertinent to the rest of the article
4 that I'm writing here.

5 Q. Well, leaving that aside, trade
6 was a big item of discussion at the congress,
7 wasn't it?

8 A. Definitely, yes.

9 Q. And after that, there was a period
10 of peace between the British and the Anishinaabe?

11 A. Yes.

12 Q. And trade resumed?

13 A. Yes.

14 Q. And you agree that trade was an
15 important goal of the Anishinaabe at the congress
16 in 1764?

17 A. Yes.

18 Q. Now, a little further in your
19 report, you note that there were no Aboriginal
20 objections to the British being in Lake Huron after
21 1764; do you want to go to the --

22 A. In my report --

23 Q. Yeah.

24 A. -- or in this article?

25 Q. No, in your report.

10:37:18 1 A. In my report.

10:37:19 2 Q. Would you like to go there?

10:37:20 3 A. Yes, please.

10:37:21 4 Q. Volume 2, which is Exhibit 4702,
10:37:24 5 pages 7 to 8; which is PDF 1920.

10:38:07 6 If you could read the paragraph
10:38:09 7 starting 1.3.2 and continuing on.

10:38:25 8 A. (Witness reviews document).

10:38:46 9 Q. If we can scroll down to the next
10:38:48 10 page.

10:38:50 11 It's the first bold paragraph on page 8
10:38:54 12 that you're saying, there's no objection to
10:38:56 13 navigation by Europeans?

10:39:03 14 A. I'm saying I found no evidence
10:39:05 15 that ancestors of the Saugeen-Nawash First Nations
10:39:08 16 objected to the navigation of these waters by
10:39:13 17 Euro-Canadian interests; is that the paragraph
10:39:16 18 you're referring to?

10:39:18 19 Q. Yes.

10:39:18 20 A. Yes.

10:39:19 21 Q. So this is a time of peace, is
10:39:24 22 that right?

10:39:32 23 A. Sure, yes.

10:39:33 24 Q. It is a time that the Anishinaabe
10:39:35 25 wanted to trade with the British?

1 A. Yes.

2 Q. Then it's reasonable that they
3 wouldn't object to the British being there, isn't
4 it?

5 A. It is reasonable, yes.

6 Q. Now an example of that, you also
7 mentioned a little further on page 24 to 25 in the
8 same report, which is PDF 36 and 37.

9 So if you could read the last paragraph
10 on page 24 and over on to the top of page 25.

11 A. (Witness reviews document).

12 Okay.

13 Q. So based on the instructions to
14 Lieutenant Sinclair, I think we could have some
15 confidence that Anishinaabe people who encountered
16 the Gladwin would have been told its mission was
17 relating to opening trade, wouldn't they?

18 A. That's a fair assumption, yes.

19 Q. Being told that and wanting to
20 trade, they would have no reason to object to it,
21 would they?

22 A. That's a fair statement, yes.

23 Q. I want to turn to the War of 1812,
24 Volume 1, which is Exhibit 4576, at page 159, which
25 is PDF 172.

10:42:36 1 So in the middle paragraph in that
10:42:41 2 page, the end of that paragraph, you're saying:

10:42:44 3 "The British force and about
10:42:47 4 200 allied Indians that assembled at
10:42:50 5 St. Joseph immediately seized
10:42:52 6 Michilimackinac."

10:42:56 7 Do you see that?

10:42:58 8 A. Yes.

10:42:58 9 Q. You didn't cite that to a source
10:43:01 10 explicitly.

10:43:03 11 The next citation is about George
10:43:07 12 Stanley's book. We can go there if you want, but
10:43:17 13 would you agree that he doesn't mention the number,
10:43:21 14 "200 allied Indians"?

10:43:23 15 A. I would need to review the source;
10:43:29 16 I don't recall.

10:43:30 17 Q. That is document S1644.

10:44:16 18 This is the title page of the journal
10:44:21 19 that that is in. If you go in a little further...

10:44:27 20 THE COURT: I can't read it. Can you
10:44:30 21 make it larger, please? There is a date on it. It
10:44:34 22 says 1950?

10:44:36 23 MR. TOWNSHEND: That is correct.

10:44:37 24 THE COURT: All right.
25

1 BY MR. TOWNSHEND:

2 Q. So we'll go to the beginning of
3 the article. Can we see where it mentions that
4 this is by George Stanley? Is that in the index we
5 just passed?

6 Yes, there it is, the third item down,
7 under June, No. 2, June. "The Indians in the War
8 of 1812", George Stanley.

9 So was this the article you were
10 referring to?

11 A. Yes.

12 Q. Your reference was pages 151-152.
13 So if we can go to those pages, please. I ask you
14 to review them, and my question is going to be it
15 doesn't mention the number of warriors.

16 A. (Witness reviews document).

17 I'm just wondering if I could see the
18 footnotes, please? You're correct. I don't see
19 the number 200 here. I would need to go back to
20 the full article to see whether in fact it was
21 cited elsewhere. And I misidentified all the pages
22 I referred to in my footnote in my report. Other
23 than that, I can't explain that the number 200.

24 Q. Let me take you to Carl Benn's
25 report, which is Exhibit No. 4195. Have you seen

1 this report before?

2 A. No.

3 Q. Okay. This is Carl Benn's
4 historical report, "Historical Questions Related to
5 Lake Huron and Georgian Bay - 1760s to 1830s". If
6 we can go to page 38 of that, which is also page 38
7 of the PDF.

8 And there's a paragraph that begins
9 "While the shorthand of history [...]", and if you
10 could review that paragraph, please.

11 A. I've read it.

12 Q. So that is a figure of 400
13 warriors, including 280 Anishinaabe from Lake
14 Huron?

15 A. According to Benn, yes.

16 Q. Are you able to dispute that or...

17 A. I would want to review his source
18 for those numbers.

19 Q. Okay. We can go to the sources;
20 he has three. The first is Gough: Fighting Sail
21 on Lake Huron, which is document S0680.

22 On PDF page 11 there's a specific
23 reference, there's a longer period -- passage here.
24 But if you would read that paragraph, it starts
25 "Once ready, the force constituted [...]"

10:49:52 1 A. (Witness reviews document).

10:50:04 2 Is there some context that he's
10:50:07 3 provided here what the year is, the date? I mean
10:50:11 4 "Once ready, the force constituted an irregular
10:50:15 5 little army".

10:50:17 6 Q. Yes, so we can review pages 19 to
10:50:21 7 26, which he is talking about Michilimackinac here.
10:50:26 8 I see that we need to back up and look at that.

10:50:39 9 MR. TOWNSHEND: Yes, where you are
10:50:39 10 right there actually, if you would back up.

10:50:41 11 THE COURT: I don't know who you're
10:50:43 12 talking to when you say things like that, Mr.
10:50:49 13 Townshend.

10:50:49 14 MR. TOWNSHEND: I'm sorry.

10:51:32 15 BY MR. TOWNSHEND:

10:51:33 16 Q. This is on PDF page 8, which is I
10:51:35 17 think page 19 of the article. And the paragraph
10:51:45 18 starts: "One of these key new posts was Fort Saint
10:51:49 19 Joseph, not far from Michilimackinac [...]". And
10:51:53 20 we're talking about after the British had been
10:51:56 21 relocated after Jay's treaty.

10:52:00 22 So that gives you some place and time
10:52:02 23 we're talking about?

10:52:06 24 A. Okay.

10:52:18 25 MR. OGDEN: Your Honour, I don't

1 believe this document is an exhibit cited by
2 Dr. Benn, and it's in the RETI database, but I
3 don't believe it has been qualified to be part of
4 the record.

5 And since it relates to military
6 history, I believe it is outside the expertise of
7 Dr. Reimer to agree to any of the statements made
8 in or about the size of the military force.

9 THE COURT: This witness has put
10 something in her report about a particular incident
11 and the size of the military force. So, on that
12 basis, I don't have a problem with her being
13 questioned on it.

14 I am pausing over what appears to be a
15 20-page long article that she said she has never
16 seen before and has since said she needs more
17 context for.

18 So I don't accept your objection, but I
19 have a, perhaps, different concern about it.

20 You haven't heard the next question, so
21 if you feel that there's something that does touch
22 specifically on military history that's outside of
23 this witness's expertise, you may rise again. But
24 on this focused issue of size of the force on that
25 event that's referred to in her report, I'm

10:53:50 1 certainly not going to grant the objection.

10:54:00 2 MR. OGDEN: Thank you, Your Honour.

10:54:01 3 THE COURT: Mr. Townshend, you haven't
10:54:03 4 asked a question since you moved to page 19. So
10:54:06 5 perhaps you could move forward.

10:54:07 6 I am a little concerned you said there
10:54:09 7 was a section of what sounded to me 16 pages of
10:54:12 8 this article that was required to get sufficient
10:54:14 9 context.

10:54:15 10 MR. TOWNSHEND: It was -- Carl Benn
10:54:16 11 cited a seven-page -- perhaps I can give it -- he
10:54:21 12 cited three different sources for that. And I can
10:54:25 13 give some others that are shorter.

10:54:27 14 THE COURT: You may, if you wish. Are
10:54:30 15 you going to mark this or not? Or ask to mark it
10:54:36 16 or not?

10:54:37 17 MR. TOWNSHEND: Yes, I'll ask to mark
10:54:39 18 it.

10:54:40 19 THE COURT: Mr. Registrar?

10:54:41 20 THE REGISTRAR: Exhibit No. 4728.

10:54:46 21 EXHIBIT NO. 4728: Article entitled,
10:49:10 22 "Fighting Sail on Lake Huron and
10:54:46 23 Georgian Bay by Barry Gough."

10:54:46 24 THE COURT: 4728. All right.
25

1 BY MR. TOWNSHEND:

2 Q. I'll go to a shorter reference,
3 which is by Dunnigan, "The British Army at
4 Mackinac", 1812 to 1815, which is at document
5 S0514.

6 If we go to page 11 to 12 of that.

7 MR. TOWNSHEND: You need to make that
8 bigger.

9 THE COURT: Do you have a question?

10 MR. TOWNSHEND: Yes, I'm just looking
11 for the best part of the --

12 THE COURT: As I've reminded other
13 counsel, sir, if you're wishing a useful record you
14 must say it on the record what it is you're looking
15 at.

16 MR. TOWNSHEND: Well, this is an
17 article by Dunnigan, "The British Army at
18 Mackinac".

19 THE COURT: That is on the record.

20 MR. TOWNSHEND: Yes.

21 THE COURT: But we're looking at the
22 page.

23 MR. TOWNSHEND: We are now at page 11
24 of it, and there's a -- the left-hand column is
25 highlighted here.

1 THE COURT: It's not highlighted on the
2 trial exhibit, sir, so please be very specific
3 about what you're asking about.

4 MR. TOWNSHEND: The left-hand column of
5 that page.

6 BY MR. TOWNSHEND:

7 Q. If you would review that then?

8 A. Can you scroll down a little bit,
9 please? (Witness reviews document).

10 Okay.

11 Q. So about the sixth line from the
12 bottom it said -- it's citing 280 Ottawa and
13 Chippewa warriors?

14 A. Yes, I see that.

15 Q. So in light of that, are you
16 satisfied that Professor Benn's account of 280
17 Aboriginal warriors at Michilimackinac is correct?

18 A. I'm at a disadvantage here. I
19 have not reviewed Dr. Benn's report. I have not
20 reviewed two of the articles you have shown me.

21 I would also need to go back to the
22 sources I originally relied on in writing this
23 paragraph on page 159 of Volume 2 (verbatim) of my
24 report.

25 If in fact the number 200 is incorrect,

1 I am more than willing to correct that, but not
2 before I've had a chance to examine the material on
3 my own.

4 Q. All right. Before moving on,
5 could we exhibit that document by Dunnigan?

6 THE COURT: Can you please describe it
7 for the record, sir?

8 MR. TOWNSHEND: It's Dunnigan, "The
9 British Army at Mackinac 1812 to 1815".

10 THE COURT: Is it the entirety of the
11 book? Or you've been calling it an article. It
12 seems like a short book.

13 MR. TOWNSHEND: It's an excerpt of a
14 book.

15 THE COURT: Excerpt of a book by that
16 name. And what is the -- is it a chapter, or do
17 you know?

18 MR. TOWNSHEND: Yes, it is a chapter
19 called "Mackinac in the War of 1812".

20 THE COURT: All right. Mr. Registrar.

21 THE REGISTRAR: Exhibit No. 4729.

22 EXHIBIT NO. 4729: "Mackinac in the War
23 of 1812," a chapter of The British Army
24 at Mackinac Island 1812 to 1815, by
25 Brian Dunnigan.

1 BY MR. TOWNSHEND:

2 Q. All right. I'm moving on to a
3 different area here.

4 In your examination in-chief, and we
5 can pull up a rough transcript, if you wish, you
6 were talking about the documented evidence of
7 presence on the Bruce Peninsula being scanty up
8 until the late 1700s, early 1800s.

9 And then you mentioned some naval
10 surveyors like Gother Mann, and what was observed
11 there?

12 And you go on to say that this
13 territory was pretty much unknown as far as the
14 British were concerned. Would you like to see that
15 transcript?

16 A. I recall the testimony and you've
17 summarized it fairly correctly.

18 Q. Okay. So I'd like to go to the
19 Gother Mann and the map or sketch he created is
20 Exhibit 708. And if we then zoom in on the
21 Peninsula and on the notation "A". Notation "A"
22 would be further down than that. I think you've
23 reproduced that notation in your report.

24 So I'll just read that, it's in your
25 report on page 153, for the record, Volume 1:

1 "The whole coast of the great
2 projecting point being a steep rock
3 cliff without any campground or
4 landing place is extremely dangerous
5 for boats or canoes to go round and
6 is therefore rarely attempted: Of
7 those who have ventured several have
8 perished."

9 And you can see the way he has drawn
10 the Peninsula, he's drawn a cliff around the entire
11 northern part of the Peninsula; is that right?

12 A. Yes, that's how it appears.

13 Q. He doesn't say that he went there,
14 did he?

15 A. His journal indicates he went
16 around there, so past it.

17 Q. We'll come to that.

18 I was going to go to the journal later,
19 but I'll come back to that part of it. But you
20 take it from that that the Peninsula was not likely
21 inhabited; is that correct?

22 A. Well, certainly, the British did
23 not think it was.

24 Q. Are you expressing the opinion
25 that therefore it wasn't?

11:03:28 1 A. No, not necessarily. Just because
11:03:33 2 Gother Mann didn't see anyone doesn't mean no one
11:03:36 3 was there.

11:03:38 4 Q. Okay. Have you been to the Bruce
11:03:40 5 Peninsula?

11:03:40 6 A. Yes.

11:03:40 7 Q. You're generally familiar with the
11:03:44 8 terrain of it?

11:03:45 9 A. Only very generally.

11:03:47 10 Q. Okay. Well, let me see. Would
11:03:51 11 you agree that the west side of the Peninsula,
11:03:54 12 there are no cliffs, it's sandy beaches?

11:03:58 13 MR. OGDEN: Your Honour.

11:04:01 14 THE COURT: Yes, Mr. Ogden.

11:04:03 15 MR. OGDEN: I'm going to object to that
11:04:07 16 question. Dr. Reimer has been qualified as an
11:04:12 17 expert ethnohistorian to talk about events that
11:04:19 18 occurred in the past. And this line of questioning
11:04:23 19 seems to be eliciting from her the evidence about
11:04:27 20 what -- the geographic nature of the Bruce
11:04:33 21 Peninsula, which she is not qualified to give.

11:04:41 22 And in addition, the question seeks an
11:04:48 23 answer concerning the present rather than the past,
11:04:54 24 250 years ago.

11:04:55 25 THE COURT: Mr. Townshend?

11:05:00 1 MR. TOWNSHEND: I think it can be taken
11:05:02 2 that whether it's a cliff there would not have
11:05:06 3 changed between then and now.

11:05:19 4 THE COURT: Why?

11:05:21 5 MR. TOWNSHEND: Rocky cliffs don't
11:05:23 6 disappear.

11:05:24 7 THE COURT: Are you saying that as a
11:05:26 8 lawyer standing up in this trial, sir? We've had
11:05:28 9 geologists in this trial; I don't recall that being
11:05:30 10 tendered in evidence. I have considerable evidence
11:05:34 11 about massive changes to the geology of the lakes
11:05:36 12 in the Great Lakes region.

11:05:39 13 MR. TOWNSHEND: Not in the last
11:05:40 14 200 years.

11:05:41 15 THE COURT: Well, I don't accept it
11:05:43 16 from you, sir, if you're asking me to take judicial
11:05:47 17 notice of that fact. I don't recall it being in
11:05:50 18 the record that major -- that cliffs would not
11:05:54 19 change over the last 250 years. Certainly not a
11:05:58 20 matter of ordinary experience.

11:06:01 21 So there's two problems, sir. One is
11:06:08 22 the problem presented by Mr. Ogden. What is the
11:06:11 23 present geology of the Bruce Peninsula, which
11:06:15 24 certainly was that question.

11:06:16 25 There's then the second problem which

1 is whatever the present geology is, whether that is
2 relevant to geology 250 years ago.

3 And the third problem is whether your
4 question is within the expertise of this witness.
5 So do you have any additional submissions about any
6 of those things?

7 MR. TOWNSHEND: Well, if it wasn't in
8 Dr. Reimer's personal knowledge I was going to go
9 to some maps, and Dr. Reimer in fact has done a
10 report on mapping.

11 THE COURT: You're saying there's a
12 report that makes a factual statement about the
13 nature of the west side of the Bruce Peninsula?

14 MR. TOWNSHEND: Pardon me?

15 THE COURT: Are you saying that this
16 witness has provided a report that makes a factual
17 statement about the nature of the geology of the
18 west side of the Bruce Peninsula?

19 MR. TOWNSHEND: No, I haven't. I'm
20 saying that she is able to read maps and --

21 THE COURT: Not the subject of the
22 objection at the moment.

23 MR. TOWNSHEND: No, that I was trying
24 to -- I don't have to ask her if she knows. I can
25 take her to maps. Now, that won't deal with the

11:07:41 1 issue of could it have changed in the last few
11:07:45 2 hundred years.

11:07:52 3 THE COURT: I've been over a number of
11:07:55 4 times in this trial with various counsel how one
11:07:58 5 can deal with facts and expert witnesses; I don't
11:08:02 6 see a need to repeat it again.

11:08:05 7 The present question issue under the
11:08:11 8 objection was -- my computer is not cooperating,
11:08:22 9 give me a moment.

11:08:23 10 To ask this witness to agree that the
11:08:32 11 west side of the Peninsula is sandy beaches, that
11:08:38 12 seems to me that at least falls outside of her
11:08:40 13 expertise if nothing else, sir, with the various
11:08:46 14 problems with the question.

11:08:47 15 I'll permit you to proceed. If there
11:08:49 16 are additional objections, we'll deal with that.

11:08:51 17 She said she had been to the Bruce but
11:08:54 18 knows it only generally.

11:08:56 19 MR. TOWNSHEND: Yes.

11:08:56 20 THE COURT: And it is informing part of
11:09:00 21 the report as a matter of factual evidence or
11:09:02 22 opinion evidence.

11:09:04 23 Frankly, I don't think it could be part
11:09:07 24 of her report as opinion evidence. Please go ahead
11:09:09 25 with your next question, sir, and see if Mr. Ogden

11:09:13 1 objects or not.

11:09:20 2 BY MR. TOWNSHEND:

11:09:22 3 Q. Well, I'd like to take you then to
11:09:26 4 a couple of -- first to document SC1939. This is a
11:09:45 5 contour map of part of the Bruce Peninsula. It was
11:09:49 6 downloaded from Bruce County's online GIS.

11:09:57 7 And if you zoom in a bit --

11:10:01 8 THE COURT: I don't see a date on it;
11:10:03 9 is there a date? When you say "downloaded" --

11:10:05 10 MR. TOWNSHEND: Yes.

11:10:06 11 THE COURT: -- you mean it was taken
11:10:07 12 off the Internet?

11:10:09 13 MR. TOWNSHEND: Yes. Yesterday, I
11:10:11 14 think, or in the last little bit. If we zoom in on
11:10:18 15 that, we're seeing the contour lines.

11:10:23 16 BY MR. TOWNSHEND:

11:10:24 17 Q. So it looks like the beach it's
11:10:26 18 called, it says Sauble Beach there, the elevation
11:10:30 19 near the waterline would appear to be 180 metres;
11:10:34 20 do you see that?

11:10:35 21 THE COURT: Excuse me. Mr. Ogden?

11:10:36 22 MR. OGDEN: I do object, Your Honour.
11:10:40 23 First to the question, the immediate question, does
11:10:48 24 Dr. Reimer see hydrological marking -- I didn't
11:10:53 25 object to that immediately, because Dr. Reimer can

1 see a marking.

2 To the extent Dr. Reimer may be able to
3 answer that this is a hydrological marking, there's
4 nothing in the record of Dr. Reimer's qualification
5 that she has the capacity to read a hydrological
6 map.

7 So I object and to that, there's no
8 indication that this map is a historical map, of
9 which she may have some --

10 THE COURT: Mr. Townshend has frankly
11 said it's not, so it's a current map. And you've
12 made an objection already on that basis; does that
13 objection persist or not?

14 MR. OGDEN: Yes.

15 THE COURT: Mr. Townshend, there are
16 two objections; what is your submission?

17 MR. TOWNSHEND: Well, I can ask
18 Dr. Reimer to assume that the basic topography of
19 the Bruce Peninsula has not radically changed since
20 the time of Gother Mann.

21 THE COURT: You can, provided that you
22 have a plan to prove that fact in this trial, sir.

23 As I've said to another lawyer, I will
24 accept your professional -- that's the wrong way of
25 putting it.

1 If you have actually got a plan to
2 prove that fact in this trial, at this late stage,
3 I do wonder about that. But in the absence of that
4 plan, I don't believe it's in the record, sir.

5 And it's not -- what is your response
6 to that? You're obviously not going to be able to
7 prove it through with this witness.

8 I don't know if there's someone coming
9 next week that you had hoped for -- as I
10 understand it, there's an objection standing over
11 on top of that, but that has not been addressed
12 yet.

13 MR. TOWNSHEND: Well, we would have
14 to -- I was not anticipating this to be an
15 objection, so, no, I don't have a plan, but I could
16 probably devise one. I don't think that is going
17 to be difficult to, a difficult fact to establish.

18 THE COURT: At this late stage of this
19 long trial, when it's never been part of your case?

20 All right, let's do it this way, Mr.
21 Townshend. You have no current plan to establish
22 this fact; that's the problem. Because if you
23 don't establish it, this is useless evidence, all
24 right?

25 Whether you can at this late stage of

1 the trial embark on such a plan I will deal with
2 later, because obviously I can't deal with it now
3 since you don't know what that's going to be.

4 I have some significant difficulty with
5 you putting a proposition to this witness about a
6 map, about the current state of Sauble Beach and
7 that being relevant to this trial.

8 But I'm going to let you ask, ask the
9 witness to make the assumption. And I'm going to
10 say to Mr. Ogden he's going to have to keep
11 standing up because just this one assumption does
12 not overcome other problems that have been raised
13 about this line of questioning.

14 So if you could repeat your question,
15 please, sir, for the witness, stating the
16 assumption you would like her to make. And then
17 Dr. Reimer -- Dr. Reimer, we'll ask you to pause
18 before answering the question to see if there's
19 another objection.

20 We haven't heard the question. We've
21 only heard the request to make the assumption.

22 Please go ahead.

23 BY MR. TOWNSHEND:

24 Q. The question was that the contour
25 line near the edges of Sauble Beach is at 180

1 metres elevation?

2 THE COURT: That's not a question.

3 MR. TOWNSHEND: Isn't it?

4 THE COURT: No, that isn't an
5 assumption. I think your original question was
6 properly stated, subject to those objections.

7 You can ask this expert witness to make
8 a factual assumption; that's not a question.
9 That's a prelude to a question. Is that what
10 you're trying to do? Ask this witness to make a
11 factual assumption? I thought that's what your
12 question was.

13 MR. TOWNSHEND: The factual assumption
14 that I'll be asking for sort of over the next few
15 questions will be that the basic topography has not
16 changed radically since the time of Gother Mann.

17 THE COURT: Well, I have a lot of
18 trouble with that. That's not an assumption;
19 that's a conclusion.

20 But the question that you originally
21 asked -- let me just get it out, make sure I'm
22 right about this.

23 You've asked the witness to assume that
24 the basic topography at the Bruce Peninsula has not
25 radically changed since the time of Gother Mann.

1 So that's not a question, sir; that's an
2 assumption.

3 MR. TOWNSHEND: That's right.

4 THE COURT: You can ask her to assume,
5 I've ruled that you can ask her to make that
6 assumption.

7 Dr. Reimer, when you're asked to make
8 an assumption, that's just what it is, right?
9 That's not somehow becoming your personal or
10 professional opinion.

11 Now I've said that Mr. Townshend can
12 ask you, and I'm going to read this: "To assume
13 that the basic topography of the Bruce Peninsula
14 has not radically changed since the time of Gother
15 Mann".

16 I have lots of trouble with that, but I
17 am permitting it. So you've made that assumption
18 at Mr. Townshend's request.

19 What is your question, sir?

20 BY MR. TOWNSHEND:

21 Q. The question is, do you see the
22 contour line near the water's edge of Sauble Beach
23 being 180 metres elevation?

24 THE COURT: Well, that was a very part
25 of the objection. You can ask this witness --

1 well, Mr. Ogden objected not on the basis that this
2 witness is incapable of seeing a line, although I
3 observe there are several lines. But on the basis
4 that the nature of the line is outside her
5 expertise, right?

6 So again, I've said you can ask her to
7 make a factual assumption, but we seem to still be
8 in that same disputed area.

9 I think what I'll suggest to you, Mr.
10 Townshend, is that we take an early morning break,
11 so you can think about these issues and your
12 questions and continue consulting with your
13 colleagues as you have been, which is fine. Unless
14 you feel you don't need that break.

15 MR. TOWNSHEND: I would appreciate a
16 break.

17 THE COURT: All right. We'll take
18 20 minutes.

19 -- RECESS TAKEN AT 11:18 --

20 -- UPON RESUMING AT 11:44 --

21 THE COURT: Please go ahead.

22 BY MR. TOWNSHEND:

23 Q. I'm going to go to a different map
24 instead. If I can have Exhibit 378, please. Now
25 if we zoom in on the right margin starting near the

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11:46:55 25

top.

Have you seen this map before, Dr. Reimer?

A. I think I may have.

Q. Okay. So that indicates that it was done in 1725 by Chaussegros de Léry; is that correct?

A. Yes, that's what it appears to read.

Q. Now if you could go to the Bruce Peninsula and zoom in on that area.

That notes "Papinachois" in the northern part of the Peninsula.

A. Yes, I see that.

Q. So that suggests there were Papinachois people living there in 1725?

A. Yes, that's what it would suggest.

Q. I'm going to shift to talk now about Aboriginal identity. And maybe we'll start at page 16 of your Volume 1, which is at PDF 29.

Near the top of page 16 you give the opinion:

"While the Ojibway, Ottawa and Potawatomi appear to have had common prehistorical cultural origins, they were distinct nations at the time of

11:46:57 1 first contact with Europeans."

11:46:59 2 A. Yes.

11:47:01 3 Q. What you also note is that they
11:47:02 4 all refer to themselves as "Anishinabeg"?

11:47:04 5 A. Yes.

11:47:05 6 Q. They speak similar dialects or
11:47:08 7 languages?

11:47:09 8 A. Algonquian, yes.

11:47:11 9 Q. They shared many cultural beliefs?

11:47:17 10 A. Beliefs?

11:47:18 11 Q. Beliefs.

11:47:19 12 A. The sharing of cultural beliefs, I
11:47:23 13 don't know that I actually address that in my
11:47:26 14 report.

11:47:27 15 Cultural traits and features, yes.

11:47:31 16 Q. If we go to the paragraph just
11:47:36 17 before paragraph 2.2.1, and zoom in a little bit on
11:47:40 18 that. In the middle of the third line in that
11:47:51 19 paragraph:

11:47:52 20 "Algonquian speakers refer to
11:47:53 21 themselves as being Anishinabeg,
11:47:54 22 spoke similar languages and shared
11:47:58 23 many cultural beliefs."

11:48:04 24 A. Yes, I do make that statement.

11:48:05 25 Q. And you also mention they have a

1 common system of kinship, inheritance and marriage
2 regulation?

3 A. Yes.

4 Q. Later on you said they shared
5 spiritual beliefs and the practice of the
6 Midewiwin?

7 A. Some of them, yes.

8 Q. So you explain the distinctions
9 are mainly in subsistence patterns?

10 A. And location, geographic location.

11 Q. Let's talk about subsistence
12 patterns. They all hunted, fished and gathered; is
13 that right?

14 A. Yes, to varying extents, yes.

15 Q. And the Odawa and the Potawatomi
16 practiced some horticulture?

17 A. Correct.

18 Q. Now you say the Potawatomi were
19 the most distinct; do you want to go to that
20 citation?

21 A. Sure.

22 Q. That's on page 16. The second
23 full paragraph, third line down:

24 "Chute (2002) singles out the
25 Michigan Potawatomi as the most

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11:51:03

1 distinct in terms of economic
2 adaptation centred on horticulture."
3 A. Yes, I'm citing Chute there.
4 Q. Is that your view as well?
5 A. I am relying on Chute's analysis
6 of the Potawatomi.
7 Q. Okay. So you also say that they
8 don't use canoes much. That's at that italic
9 paragraph on page 16.
10 A. I'm citing what Schoolcraft had to
11 say about the Potawatomi.
12 Q. Are you adopting that view?
13 A. I'm providing a summary of primary
14 and secondary literature in describing the
15 Algonquian groups, Ottawa, Potawatomi, and Ojibway.
16 And I'm relying on the sources to provide a summary
17 of their similarities and their differences.
18 This is what I have to do, because I
19 have not personally done an ethnography of
20 Potawatomi.
21 Q. That was a more general question I
22 have in reading this. When you cite someone -- I
23 may have to talk about specific ones -- but if you
24 cite that a certain scholar says that, it's not
25 always clear if you're agreeing with him or not.

11:51:05 1 A. I'm providing information to the
11:51:12 2 reader about what sources, who have written in
11:51:17 3 greater detail about Potawatomi and other
11:51:21 4 Algonquian groups, about what they have to say and
11:51:24 5 have said, and what other sources have been able to
11:51:33 6 determine about the similarities and distinctions
11:51:36 7 between these groups.

11:51:37 8 Q. Do you come to your own opinion on
11:51:39 9 that?

11:51:39 10 A. I have basically adopted what I
11:51:47 11 determine to be the majority opinion and
11:51:53 12 descriptions of these groups.

11:51:56 13 It's the best one can do when one needs
11:52:00 14 to rely on external sources for information on
11:52:05 15 cultural groups.

11:52:16 16 Q. Can we go to page 221 of Volume 1
11:52:20 17 of your report? Bottom of that page, please.

11:52:54 18 Four lines down in the bottom paragraph
11:53:00 19 it says:

11:53:02 20 "As outlined earlier, the
11:53:04 21 Potawatomi were distinct from the
11:53:06 22 Ojibway in that the former lived a
11:53:08 23 semi-sedentary village-based
11:53:11 24 lifestyle subsisting primarily on
11:53:14 25 agriculture."

11:53:18 1 A. Yes.

11:53:18 2 Q. That's your view?

11:53:19 3 A. That is my summary of what I

11:53:21 4 gleaned from the sources I reviewed on the

11:53:23 5 Potawatomi.

11:53:36 6 Q. Now if we go to page 42, the very

11:53:50 7 top of that page in italics you have:

11:53:54 8 "During the spring and summer

11:53:56 9 the Potawatomis relied heavily upon

11:53:58 10 fish as a major source of protein.

11:54:00 11 Fishing from dugouts and birchbark

11:54:02 12 canoes, the Indians used nets,

11:54:05 13 weirs, harpoons, and hooks and lines

11:54:07 14 to catch a variety of species common

11:54:10 15 to Wisconsin."

11:54:10 16 A. Yes.

11:54:11 17 Q. That's also your view?

11:54:13 18 A. That's Edmunds' view.

11:54:17 19 Q. Do you agree with it?

11:54:18 20 A. I have no reason to dispute it.

11:54:21 21 Q. I have trouble putting that

11:54:24 22 together with subsisting primarily on agriculture.

11:54:27 23 Can you explain how you see those?

11:54:50 24 A. Just because you rely heavily on

11:54:53 25 agriculture doesn't mean you also diversify your

11:55:00 1 resource economy by fishing and/or hunting.

11:55:03 2 Q. All right. Can I have

11:55:17 3 Exhibit 4583, please. This is a chapter from

11:55:25 4 Trigger's Handbook of North American Indians. And

11:55:30 5 this exhibit is the chapter on Potawatomi by James

11:55:36 6 Clifton.

11:55:45 7 Have you seen this before?

11:55:46 8 A. Yes.

11:55:46 9 Q. You recognize Clifton as an

11:55:48 10 authority about Potawatomi?

11:55:50 11 A. Yes.

11:55:51 12 Q. Can I have page 727, which is PDF 6.

11:56:11 13 And if you can review that top

11:56:13 14 paragraph on column one.

11:56:19 15 If it can be made a little bigger.

11:57:06 16 A. (Witness reviews document). Okay.

11:57:07 17 Q. So while in the middle of that

11:57:11 18 paragraph there's a line that starts "Streams that

11:57:15 19 flow..."

11:57:17 20 A. Yes, I see it.

11:57:18 21 Q. And at the end of that it starts a

11:57:20 22 new sentence. Sorry, I want to go back a little

11:57:35 23 earlier.

11:57:35 24 The line that starts "Summer villages"?

11:57:40 25 A. Okay.

11:57:40 1 Q. And the sentence then begins:

11:57:43 2 "Even the Potawatomi of the
11:57:45 3 'prairie', that is, villagers in
11:57:47 4 southern Wisconsin, Illinois and
11:57:49 5 Indiana, maintained their villages
11:57:51 6 in wooded river valleys, while the
11:57:53 7 greatest share of those in other
11:57:56 8 parts of Wisconsin and Michigan
11:57:58 9 settled near the shoreline of Lake
11:58:00 10 Michigan and Lake Erie, generally
11:58:02 11 along the many streams that flow
11:58:03 12 into their waters. This preference
11:58:05 13 involved a heavy dependency on
11:58:08 14 fishing for a basic food supply,
11:58:10 15 especially in the early spring."

11:58:12 16 Do you accept that?

11:58:14 17 A. Yes.

11:58:17 18 Q. If we could go to the next page of
11:58:21 19 Clifton's article, page 728, and if you would look
11:58:30 20 at the top paragraph there.

11:58:33 21 THE COURT: Is that the beginning of a
11:58:35 22 sentence?

11:58:36 23 MR. TOWNSHEND: Yes, it is, can we back
11:58:38 24 up to see the beginning?

11:58:40 25 THE COURT: It is not.

11:58:41 1 MR. TOWNSHEND: No, it is not the
11:58:43 2 beginning of a sentence. We can start the page
11:58:45 3 before if you want the full sentence.

11:59:02 4 THE WITNESS: (Witness reviews
11:59:14 5 document).

11:59:14 6 Okay.

11:59:14 7 BY MR. TOWNSHEND:

11:59:14 8 Q. So that refers to the Potawatomi
11:59:17 9 manning 30 canoes for a fur trade brigade to
11:59:21 10 Montreal?

11:59:21 11 A. Yes.

11:59:22 12 Q. Do you accept that?

11:59:23 13 A. I have no reason to dispute it.

11:59:25 14 Q. So would you accept then that your
11:59:29 15 comment subsisting -- the Potawatomi subsisting
11:59:33 16 primarily on agriculture might be overstated?

11:59:36 17 A. It may be overstated. I could
11:59:39 18 have provided a more balanced view of the diversity
11:59:43 19 of their economy.

11:59:44 20 Q. If you can go to page 37 of
11:59:59 21 Volume 1 of your report. I'm on the last paragraph
12:00:32 22 of that page. You're describing the Potawatomi as
12:00:36 23 forming a single tribal organization in which
12:00:40 24 relatively large villages formed the most important
12:00:43 25 social, economic and political units?

12:00:49 1 A. Yes.

12:00:49 2 Q. That's your view?

12:00:50 3 A. I am, again, summarizing the

12:00:54 4 sources I relied on about Potawatomi.

12:00:58 5 Q. If you go to the next page, 38.

12:01:22 6 The first full paragraph, you say:

12:01:29 7 "A second basic difference from

12:01:32 8 the Ojibwa and Ottawa is that there

12:01:34 9 is no historical evidence suggesting

12:01:35 10 that the Potawatomi were organized

12:01:37 11 into bands during their early

12:01:39 12 contact history."

12:01:41 13 A. Yes, I'm summarizing Clifton here.

12:01:52 14 Q. So if we go back to Clifton, that

12:01:56 15 we had a minute ago, his article from the Handbook.

12:02:10 16 If we can go to page 732, which is PDF 11. And the

12:02:23 17 first paragraph under the heading "Village and

12:02:28 18 Tribe", would you read that, please.

12:02:35 19 A. (Witness reviews document).

12:02:36 20 Okay.

12:02:47 21 Q. That's speaking of the importance

12:02:52 22 of the village political unit and independent

12:02:55 23 chiefs, isn't it?

12:02:56 24 A. Yes.

12:02:57 25 Q. So aren't villages sort of like

1 bands in an ethnological sense?

2 A. They may be. I'm wondering in
3 this same article if we can go to page 730?

4 Q. Uhm-hmm.

5 A. (Witness reviews document).
6 Sorry, is this 730?

7 Q. Yes, it is.

8 A. Okay. I'm asking to review this,
9 simply because in the paragraph in my report, just
10 prior to the one you're asking about, I cite
11 Clifton page 730 with respect to their tribal
12 solidarity.

13 So I would need to just review this and
14 see what part of the page that's on.

15 Q. Yes, please go ahead.

16 A. (Witness reviews document).
17 Scroll down, please. Scroll up,
18 please. (Witness reviews document).

19 So the first paragraph under
20 "Transformations in the Refuge Area" circa 1640, so
21 this is the dispersion, or just prior to the
22 Iroquois Wars. Beginning from "From the date":
23 "From the date on which they
24 enter the historical scene, 1640,
25 the Potawatomi were invariably

12:05:36 1 called by a single name, marking the
12:05:38 2 tribe as a whole. There are no
12:05:40 3 known references to separate
12:05:42 4 geographically localized autonomous
12:05:46 5 clans or a band such as those that
12:05:49 6 mark the several local groups who
12:05:50 7 later became collectively identified
12:05:52 8 as the Chippewa and Ottawa tribes.
12:05:54 9 Indeed, in the early historical
12:05:56 10 records when Potawatomi clans are
12:05:58 11 mentioned, these are always clearly
12:06:00 12 specified as subunits of the tribal
12:06:03 13 identity."

12:06:06 14 So that's the point that I'm drawing
12:06:08 15 out on page 38 of my report.

12:06:14 16 Q. That says there are no references
12:06:17 17 to specific bands or clans. Are you taking from
12:06:22 18 that that they don't exist?

12:06:24 19 A. To continue down in the paragraph,
12:06:27 20 Clifton states:

12:06:28 21 "This uniformity of reference
12:06:30 22 strongly suggests that the
12:06:32 23 Potawatomi had formed a tribal
12:06:34 24 identity and a higher degree of
12:06:36 25 solidarity earlier than their

12:06:39 1 Chippewa or Ottawa relatives. If
12:06:42 2 this process of tribal unification
12:06:44 3 had not occurred prior to their
12:06:47 4 leaving lower Michigan, then it
12:06:49 5 characterized their adaptation to
12:06:52 6 the new setting in Wisconsin."

12:07:04 7 Q. That doesn't say that there was a
12:07:07 8 unified political tribal structure, though. It
12:07:13 9 says "tribal identity..."

12:07:16 10 A. Tribal identity implies some sort
12:07:19 11 of unified tribal political structure.

12:07:22 12 Q. Are you suggesting that matters of
12:07:29 13 land use was decided by the Potawatomi tribe as a
12:07:33 14 whole rather than by individual villages?

12:07:35 15 A. I need to go through my -- I'm
12:07:39 16 talking about differences in levels of political
12:07:44 17 structure and organization between the three
12:07:49 18 Algonquian groups that I have discussed in my
12:07:51 19 report.

12:07:52 20 And this is, this tribal identity is an
12:07:55 21 aspect of Potawatomi culture that is documented and
12:08:00 22 was observed and is described by experts such as
12:08:04 23 Clifton, etcetera, that provides some distinction
12:08:09 24 to Ottawa and Chippewa in the same time period.

12:08:12 25 I need to review this section of the

1 land tenure of my report to be able to properly
2 answer your question.

3 Q. How long would that take?

4 A. I'll go to page 41 of Volume 1 of
5 my report and review what I've written there.

6 THE COURT: Mr. Ogden.

7 MR. OGDEN: I believe a question was
8 asked and Dr. Reimer said she'd like to review it.
9 I believe she may have finished reviewing a little
10 bit; it might not be clear.

11 THE COURT: Have you finished the
12 review?

13 THE WITNESS: I have, I was waiting for
14 a prompt from Mr. Townshend.

15 THE COURT: Thank you for bringing that
16 to our attention, Mr. Ogden.

17 Mr. Townshend, you may proceed.

18 BY MR. TOWNSHEND:

19 Q. Well, the question I had asked
20 was, are you suggesting that matters of land use
21 were decided by Potawatomi tribe as a whole rather
22 than by individual villages?

23 A. On page 41 of Volume 1 of my
24 report the top bullet reads "Potawatomi Land Tenure
25 and Territorial Control".

12:12:54 1 Although I did not find any direct
12:12:57 2 references to Potawatomi land tenure or territorial
12:13:02 3 control, my reading of Clifton and Kinietz,
12:13:12 4 etcetera, leads me to presume there was control at
12:13:15 5 the village level. And it would have been somewhat
12:13:18 6 similar to Ottawa and Chippewa or Ojibwe in terms
12:13:22 7 of controlling fields in the immediate vicinity
12:13:26 8 around the village.

12:13:28 9 So I do make the presumption that
12:13:33 10 "proprietary systems and customary rules of
12:13:35 11 territorial control were similar among the
12:13:39 12 Potawatomi".

12:13:39 13 "Potawatomi lived in summer
12:13:41 14 villages where they cultivated
12:13:43 15 cornfields and gardens, and it is
12:13:45 16 likely that punitive measures were
12:13:47 17 levelled against outsiders who
12:13:48 18 trespassed in these cultivated
12:13:51 19 areas.

12:13:53 20 "Village populations commonly
12:13:55 21 dispersed to family winter hunting
12:13:58 22 sites by late fall. Again, it may
12:14:01 23 be presumed that customary rules of
12:14:03 24 trespass and encroachment were
12:14:05 25 developed by and acted upon by

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Potawatomi".

So at -- that's the end of my answer.

Q. Moving on, if we can go to page 34
of your report.

THE COURT: Which report?

MR. TOWNSHEND: Volume 1.

BY MR. TOWNSHEND:

Q. If you could read the top
paragraph there "The Potawatomi".

A. (Witness reviews document).

Yes, I've read it.

Q. Okay. I thought you might be
suggesting there that who Champlain referred to as
the "fire nation" were the Potawatomi; is that your
intention there?

A. I know that they're -- I'm not 100
per cent clear on the connection between the
"Asistaguerouon" or "Fire People" and the
Potawatomi. It's a matter that I should and would
be happy to investigate more carefully.

At the time of writing, that was the
assumption I was making, yes.

Q. Go to page 109 of your report,
very bottom of that page.

A. Sorry, what page is this?

12:17:07 1 Q. Page 109.

12:17:19 2 A. Okay.

12:17:20 3 Q. The last few lines of that
12:17:24 4 paragraph seems to me to suggest that the Nation de
12:17:30 5 Feu, or the Mascoutens were not Potawatomi?

12:17:51 6 A. You're referring to the line: Les
12:17:56 7 Mascoutens ou -- sorry, I don't speak French --
12:17:58 8 Nation of Fire?

12:18:01 9 Q. Yes.

12:18:01 10 A. Yes. That reference is making the
12:18:06 11 connection between the Mascoutens and Nation of
12:18:12 12 Fire.

12:18:12 13 Q. Do you accept that most scholars
12:18:13 14 think that the Champlain's fire nation was the
12:18:26 15 Mascoutens.

12:18:26 16 A. I'm just wondering, if you could
12:18:28 17 let me know what the page was we looked at just
12:18:32 18 previous to this? Because just as we were turning
12:18:35 19 to page 109, I noticed I had made an alternate
12:18:39 20 footnote referring to the dispute about who the
12:18:44 21 nation of the fire were.

12:18:46 22 Q. It's page 34.

12:18:48 23 A. 34...

12:19:05 24 Right. So if we can go to page 34,
12:19:08 25 footnote 141. And I don't know if you want me to

1 read this into the record.

2 Q. Sure.

3 A. So I say:

4 "Some earlier ethnohistorians,
5 for example, Kinietz, tended to
6 equate Champlain's 'fire people'
7 with the Potawatomi by drawing on
8 semantic similarities: Potawatomi
9 means "people of the place of fire."
10 I'm citing Clifton there.

11 "However, majority opinion
12 among contemporary ethnohistorians
13 is that the early 17th century
14 references to the 'fire people' or
15 the 'fire nation' were generic
16 references to a group of distinct
17 Algonquian Nations living in the
18 Michigan Peninsula that included the
19 Mascoutens and possibly the Miami as
20 well as the Potawatomi. As Clifton
21 explains, French references to the
22 'fire people' or 'fire nation'
23 disappear from later 17th century
24 records as explorers, traders and
25 missionaries made direct contact

12:20:34 1 with occupants of the Lake Michigan
12:20:36 2 region and began to use distinct
12:20:38 3 names and terms to refer to
12:20:40 4 different peoples and tribal
12:20:47 5 groupings."

12:20:49 6 Q. All right. Can we go back to the
12:20:53 7 Clifton handbook article?

12:20:55 8 And page 741. PDF 20.

12:21:55 9 So at the bottom there, under the title
12:22:01 10 "Synonymy", it's talking about the name
12:22:10 11 "Potawatomi", and starts at the bottom of that
12:22:12 12 column and continues on the top of the next column.

12:22:35 13 A. (Witness reviews document). Yes.

12:22:36 14 Q. That says that the name
12:22:41 15 "Potawatomi" referring to "Fire People" is a folk
12:22:47 16 etymology?

12:22:48 17 A. This is a linguistic analysis of
12:22:51 18 the Ojibwe word "potawa". If we go back down to
12:22:55 19 the bottom.

12:22:56 20 So this is what Clifton is now drawing
12:22:58 21 on Goddard, who did a linguistics synonymy and
12:23:02 22 analysis for most of the articles in the Handbook
12:23:05 23 of North American Indians.

12:23:10 24 So I just wanted to provide that
12:23:13 25 context. Now if we can go back up to the top.

1 Yes, that's the conclusion that Goddard came to.

2 Q. If that's true, then the
3 association of Potawatomi with fire nation falls to
4 the ground, doesn't it? Because that was the basis
5 of making the original link?

6 A. If I could just read the next
7 paragraph, please.

8 (Witness reviews document). And just
9 scroll down a little ways, please.

10 I agree that there is certainly a
11 debate and dispute about the association between
12 people of the fire, or the fire nation, and the
13 Potawatomi. And that this was perhaps an issue I
14 could have analyzed more carefully in my report.

15 Q. I'll move on. Can I have
16 Exhibit 4326, please.

17 This is an excerpt from a book by
18 Charles Cleland, "Rites of Conquest". If we can go
19 to page 39, PDF 25. And expand that. If you could
20 read essentially that page, that would be page 39.

21 A. (Witness reviews document).

22 Are we going to the next page? I'm
23 done with this page.

24 Q. Yes, keep going and finish off the
25 -- finish off the top paragraph?

12:27:11 1 A. (Witness reviews document). I'm
12:27:12 2 done.

12:27:12 3 Q. So Cleland is saying the
12:27:15 4 Aboriginal identity of the people he's talking
12:27:17 5 about is primarily Anishinaabe, and secondarily
12:27:21 6 it's clan and local group.

12:27:24 7 Do you agree with that?

12:27:25 8 A. Yes, generally, I agree with that.

12:27:28 9 Q. And then, continuing on, the next
12:27:36 10 paragraph following that, you could look at that
12:27:41 11 one. It starts, "Given this means of thinking
12:27:44 12 [...]"

12:27:45 13 A. (Witness reviews document). Just
12:28:07 14 that one paragraph?

12:28:08 15 Q. Yeah?

12:28:09 16 A. I'm done.

12:28:10 17 Q. So that says that 19th century
12:28:13 18 political configurations had little, almost no
12:28:18 19 meaning to the Anishinaabeg people; do you agree
12:28:22 20 with that?

12:28:23 21 A. Generally, yes.

12:28:25 22 Q. Okay. I want to go to a
12:28:44 23 transcript from April 30th of Karl Keeshig, and
12:28:56 24 page 262. And look at lines 12 to 25, please.

12:29:41 25 A. (Witness reviews document). I'm

1 done.

2 Q. I should have said Karl Keeshig,
3 you may or may not know, is one of our community
4 witnesses?

5 A. Okay.

6 Q. So my point is here, he's still
7 identifying primarily the same way Clifton
8 describes identity as primarily Anishinaabe; do you
9 agree with that?

10 A. Yes, I agree with that.

11 Q. Now can I go to Exhibit 3949. And
12 this is the Rule 36 examination of Fred Jones.
13 These are also community witnesses that we examined
14 before trial in 2002, I believe, because we were
15 concerned they might not be around for trial.

16 So this is a -- this is now an exhibit
17 in this trial. I'd like to go to page 8. And
18 starting with line 18. Again, read that and then
19 on to the next page, please.

20 A. (Witness reviews document). Okay.

21 Q. And the next bit.

22 A. (Witness reviews document). Okay.

23 Q. So Fred Jones is expressing that
24 although they understood some distinctions between
25 Ottawa and others, that they were the same people?

12:31:38 1 A. Yes.

12:31:45 2 Q. And if we can go to the transcript
12:31:48 3 of Ted Johnson, who was another community witness,
12:31:52 4 it's the transcript of May 1st.

12:32:22 5 MR. TOWNSHEND: Bear with us a moment,
12:32:24 6 please. Can we go to page 391, please.

12:33:27 7 BY MR. TOWNSHEND:

12:33:29 8 Q. And starting with line 24, and
12:33:35 9 over on to -- start that and then over on to the
12:33:41 10 next page?

12:33:54 11 A. Okay.

12:33:54 12 Q. Little further down -- okay, yeah,
12:33:59 13 keep going, that's a good part, too.

12:34:05 14 A. (Witness reviews document).

12:34:05 15 Q. Yes, down to the end of line 14.
12:34:08 16 So Ted Johnson is also saying the
12:34:12 17 Potawatomi are basically the same people.

12:34:14 18 A. Yes.

12:34:14 19 Q. So do you have any reason to doubt
12:34:18 20 that, among Saugeen and Nawash, that they consider
12:34:25 21 themselves the same people as the Potawatomi?

12:34:28 22 A. I have no doubt that they all
12:34:30 23 consider themselves Anishinaabe.

12:34:32 24 Q. And the same people?

12:34:34 25 A. I'm hesitant to answer that

1 question, because I am not one of them. This is
2 what the members are saying, and I have no reason
3 to dispute what they are saying.

4 Q. So you also, if you go to page 201
5 of your first report. And this is a section called
6 7.5.2 "Discontent and Factionalism". I'd like to
7 talk a little bit more about that.

8 You're relying fairly significantly on
9 a thesis by Sylvia Coral Waukey on that section?

10 A. Yes.

11 Q. Can we have the Waukey thesis,
12 which is SC2009.

13 There is another exhibit, it's called
14 the same thing. This is a more complete version of
15 it; Exhibit 4641 was incomplete. This is the
16 complete version. So I'd like this one made an
17 exhibit, please.

18 THE COURT: Mr. Registrar.

19 THE REGISTRAR: Exhibit No. 4730.

20 EXHIBIT NO. 4730: Thesis by Sylvia
21 Coral Waukey.

22 BY MR. TOWNSHEND:

23 Q. So if we start at page 4 of that,
24 PDF page 7. The bottom line of that page and then
25 on to page 8; there seems to be a pagination issue

12:37:46 1 here. That is the section I'm talking about.

12:37:48 2 THE COURT: Well, it's page 4 and the
12:37:50 3 top of page 5, just to be accurate for the record.

12:37:55 4 MR. TOWNSHEND: I'm sorry. I looked at
12:37:56 5 the wrong thing. Yes, page 4 then top of page 5.

12:38:15 6 THE COURT: Do you have a question?

12:38:16 7 BY MR. TOWNSHEND:

12:38:18 8 Q. Yes. So here Ms. Waukey is
12:38:24 9 describing factionalism as a political process; is
12:38:27 10 that right?

12:38:27 11 A. Yes.

12:38:28 12 Q. If we go further down on page 5,
12:38:45 13 bottom paragraph, and on to the next page, if you
12:38:50 14 would review that.

12:39:04 15 A. (Witness reviews document).

12:39:17 16 I've read it.

12:39:18 17 Q. So here she's describing a
12:39:20 18 religious denominational basis for faction, right?

12:39:26 19 A. Yes.

12:39:27 20 Q. And it notes that a striking
12:39:28 21 characteristic of factionalism at Nawash is the
12:39:34 22 involvement of non-Aboriginal actors?

12:39:35 23 A. Yes.

12:39:36 24 Q. So then it goes on to explain
12:39:40 25 Methodists lacked direct access to political power,

12:39:40 1 so they acted through the medium of their converts
12:39:43 2 to influence local politics?

12:39:52 3 A. I don't see those words in that
12:39:54 4 highlighted paragraph.

12:40:03 5 Q. I think it's further down on
12:40:05 6 page 6, please.

12:40:11 7 A. Would you go up a little bit,
12:40:13 8 please. (Witness reviews document).

12:40:48 9 All right, I've read it.

12:40:49 10 Q. So she says there that: "The
12:40:52 11 Methodists lack direct access to political power
12:40:55 12 and they act through the medium of their converts."

12:40:59 13 A. Okay.

12:41:00 14 Q. Do you take any issue with that?

12:41:02 15 A. Well, except that Methodists also
12:41:07 16 worked with the Wesleyan Methodist Society, who had
12:41:11 17 leaders in Toronto and supporters in Britain as
12:41:17 18 well. So I'm not sure that I would describe it in
12:41:19 19 such a limited respect that Waukey does.

12:41:23 20 Q. But as far as their political
12:41:30 21 activities on the ground on the Bruce Peninsula?

12:41:34 22 A. That's likely a generally accurate
12:41:40 23 characterization.

12:41:41 24 Q. If you could now go on to page 7.
12:41:58 25 And the last four lines of that page are marked.

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A. Could I see the full paragraph,
please?
Q. Yes?
A. Thank you.
(Witness reviews document). Scroll
down, please. (Witness reviews document).
Sorry, I'm just parsing through her
last two sentences here. All right, maybe if you
ask your question I'll be able to...
Q. Okay. She's expressing the view
that the subordinate position the government placed
Aboriginal groups was crucial to both the genesis
and perpetuation of factionalism; she says that?
A. Yes, she says that. I was just
trying to determine -- she discusses the
government's role up further in that paragraph, so,
yes, okay.
Q. Do you take issue with that?
A. (Witness reviews document).
No, not in light of her preceding
statement that the government's efforts in
long-term positive impact in situations involving
factionalism -- or excuse me. "The mechanisms for
resolving conflicts were in effect out of the hands
of the disputants --" meaning, the First Nations

12:45:01 1 members, and hence "-- conflicts would usually
12:45:06 2 continue unresolved".

12:45:07 3 So, yeah, based on her research, that
12:45:10 4 would be a plausible statement.

12:45:24 5 Q. Could we go to page 3 of the same
12:45:27 6 thesis, PDF 6.

12:45:39 7 Yes, that's the first full paragraph on
12:45:43 8 page 6. Would you review that, please?

12:45:45 9 A. (Witness reviews document). I've
12:46:04 10 read it.

12:46:04 11 Q. Here she's discussing Potawatomi
12:46:06 12 immigration is a factor in factionalism; is that
12:46:11 13 right?

12:46:11 14 A. Yes.

12:46:11 15 Q. One of the things she concludes
12:46:13 16 was that that was increased by the Potawatomi
12:46:16 17 outnumbering the original resident?

12:46:18 18 A. At Nawash village, yes.

12:46:25 19 Q. Now if we go to page 23, which is
12:46:30 20 PDF 26 of that same thesis. Here is her source of
12:46:50 21 the population figures. And she's saying here that
12:46:53 22 the Potawatomi outnumbered the original inhabitants
12:46:58 23 by about 6 to 1; do you see that?

12:47:00 24 A. Yes.

12:47:03 25 Q. And she's citing Peter Schmalz for

12:47:10 1 that?

12:47:10 2 A. Yes.

12:47:10 3 Q. In your report, and we can go
12:47:14 4 there if you want, you acknowledge Schmalz was in
12:47:17 5 error at that point?

12:47:18 6 A. Yes.

12:47:19 7 Q. He had compared the number of
12:47:20 8 adult males to a total population, and that's how
12:47:23 9 he got the 6 to 1?

12:47:25 10 A. Yes.

12:47:25 11 Q. So if you actually go -- and
12:47:33 12 Schmalz is here, he's talking about number of adult
12:47:38 13 males reported by van Dusen in 1855?

12:47:41 14 A. Can you tell me where in my report
12:47:43 15 I discuss that?

12:47:45 16 Q. If you go to page 184 of your
12:47:48 17 report, and footnote 723.

12:48:27 18 A. (Witness reviews document). Okay.

12:48:30 19 Q. Now, that's what I was --

12:48:36 20 MR. TOWNSHEND: Can you make that a
12:48:38 21 little bigger?

12:48:39 22 BY MR. TOWNSHEND:

12:48:49 23 Q. So here is what you asked to see?

12:48:55 24 A. Right.

12:48:56 25 Q. So you're agreeing that he

1 compared the number of adult males reported by van
2 Dusen in 1855 to a total population in 1857?

3 A. Yes.

4 Q. And that's the source of the
5 error?

6 A. That's the 6 to 1, yes.

7 Q. If you actually look at the
8 ethnicity report by van Dusen reported in 1855, you
9 set those out at the bottom of 183 of your report,
10 it's the previous page. And there you're quoting
11 van Dusen as saying there were 76 Ojibway, 27
12 Potawatomi, 2 Ottawa and 1 Sioux?

13 A. Correct.

14 Q. So there's nothing like a majority
15 of Potawatomi on that basis, is there?

16 A. Not in that, no.

17 Q. So given that Waukey was relying
18 on Schmalz's population analysis, which you agree
19 was in error, would it be fair to say that Waukey
20 may have overestimated the role of ethnicity in
21 factionalism?

22 A. She may have, yes.

23 Q. So I'm going to sum up what we've
24 been speaking about for a while. We've talked
25 about cultural similarities between Odawa, Ojibwe

1 and Potawatomi. We talked about how Cleland
2 described identity, we've taken statements of
3 members from Saugeen and Nawash of how they
4 identify. And we've taken Waukey's factionalism
5 analysis.

6 Would it be fair to say, in light of
7 all that, that the Ojibwe, Odawa, Potawatomi
8 distinction is much less significant to the people
9 involved themselves than to anthropologists?

10 A. My problem with agreeing outright
11 with that statement is the amount of historical
12 documentation that speaks to factional issues in
13 the communities, chiefs wanting to oust other
14 chiefs, problems of who was the secretary of the
15 band, whether they were Potawatomi, whether they
16 were Methodist, whether they were Church of
17 England.

18 And there's so much correspondence and
19 petitions and historical documentation that speaks
20 to issues of factionalism that -- and some of which
21 is drawn on cultural lines, some of which is drawn
22 along religious lines, that I think that there is
23 still -- it is still fair to conclude that in the
24 19th century, and at around the time of
25 treaty-making from, say, 1836 to 1854, that the

12:52:51 1 cultural differences were part of -- or cultural
12:53:00 2 origins, I should say, were part of the
12:53:03 3 factionalism that we see reflected in the
12:53:07 4 historical documentation.

12:53:07 5 Q. I'll ask a more narrow question
12:53:13 6 then.

12:53:14 7 A. Okay.

12:53:14 8 Q. I'm not going to suggest there was
12:53:18 9 no factionalism. I'm saying that, would you agree
12:53:22 10 that if there are factions, it doesn't mean overall
12:53:28 11 they're not the same people?

12:53:30 12 A. I think you're minimizing the
12:53:37 13 notion that the Potawatomi, who at the time were
12:53:44 14 identified as Potawatomi in the 19th century, who
12:53:47 15 came to the Bruce territory and to the Bruce
12:53:51 16 Peninsula, came into an area that had been occupied
12:53:56 17 by people who had identified as Anishinaabe.

12:54:02 18 They recognized Potawatomi as brothers,
12:54:07 19 Anishinaabe, as were the Ottawa, but they were
12:54:10 20 nevertheless differences in distinctions in terms
12:54:13 21 of inside or outsider distinctions, and that those
12:54:20 22 apparently lingered into the treaty period.

12:54:25 23 I'm not sure if I've answered your
12:54:27 24 question.

12:54:28 25 Q. Just a moment.

12:54:43 1 Thank you, that did answer my question.

12:54:45 2 A. Thank you.

12:54:46 3 THE COURT: In that that sounded like a
12:54:48 4 conclusion to an area, sir --

12:54:50 5 MR. TOWNSHEND: Yes.

12:54:50 6 THE COURT: -- and correct me if I'm
12:54:52 7 wrong, we could break for lunch at this time.

12:54:56 8 MR. TOWNSHEND: Yes, please.

12:54:58 9 THE COURT: All right. 2:15. Just
12:55:01 10 before everyone is standing up.

12:55:04 11 Dr. Reimer, you remember the rules that
12:55:05 12 I articulated to you about not engaging yourself in
12:55:09 13 any way on the subject matter of your evidence over
12:55:12 14 lunch.

12:55:13 15 THE WITNESS: I understand.

12:55:14 16 THE COURT: All right.

12:55:14 17 -- RECESS TAKEN AT 12:55 --

02:17:40 18 -- UPON RESUMING AT 2:15 --

02:17:40 19 THE COURT: Please go ahead.

02:17:42 20 BY MR. TOWNSHEND:

02:17:43 21 Q. Good afternoon. I want to switch
02:17:44 22 to talking about General Councils. The General
02:17:49 23 Councils report for the record is Exhibit 4709.

02:17:59 24 First, I just wanted to clarify what I
02:18:02 25 don't think you're saying. You're not suggesting

02:18:05 1 that General Councils displaced the authority of
02:18:10 2 bands to make decisions about their territories,
02:18:13 3 are you?

02:18:13 4 A. I am not saying that, correct.

02:18:17 5 Q. So you're not saying they can make
02:18:18 6 a decision about other First Nations moving to
02:18:21 7 Saugeen territory without an invitation from the
02:18:25 8 Saugeen. Maybe you're assuming a double negative
02:18:34 9 in that?

02:18:34 10 A. Perhaps if you could rephrase?

02:18:36 11 Q. Yes. In order for -- a General
02:18:44 12 Council would not take it upon itself to invite
02:18:47 13 people to Saugeen territory without an invitation
02:18:51 14 from Saugeen?

02:18:51 15 A. Without the consent and/or
02:18:54 16 invitation of the Saugeen, yes, I agree.

02:18:57 17 Q. Now one of the things you
02:19:03 18 mentioned was the General Council being analogous
02:19:05 19 to earlier alliances?

02:19:07 20 A. Yes.

02:19:07 21 Q. The earlier alliance you mentioned
02:19:11 22 was the Three Fires Confederacy; is that right?

02:19:13 23 A. (Witness reviews document).

02:19:23 24 I may have. I was just looking for
02:19:26 25 where I will have referenced that.

02:19:39 1 Q. You referred to earlier alliances
02:19:42 2 on page 3 of the General Councils report, and I was
02:19:47 3 just saying that in Volume 1, the alliance you
02:19:53 4 mentioned was the Three Fires Confederacy?

02:19:54 5 A. Yes, yes.

02:19:54 6 Q. Is that what you meant in
02:19:56 7 Volume 3?

02:19:57 8 A. In part, yes, that will have been
02:19:59 9 one of the types of General Council that I will
02:20:05 10 have been thinking of when I wrote the summary,
02:20:07 11 yes.

02:20:08 12 Q. And you expressed the Three Fires
02:20:10 13 Confederacy to be a loose alliance that met
02:20:13 14 as-needed?

02:20:14 15 A. Yes.

02:20:14 16 Q. And do you have the same view as
02:20:18 17 General Councils, roughly speaking?

02:20:19 18 A. General Councils, in the time
02:20:25 19 period that I'm focusing on here, it depends on who
02:20:31 20 was attending the General Council.

02:20:33 21 So it's my understanding that based on
02:20:37 22 what people like Peter Jones said they're talking
02:20:40 23 about, Anishinaabe General Councils mainly, is it a
02:20:46 24 loose alliance? It's a council that comes together
02:20:50 25 to speak to issues of common concern to the

02:20:58 1 delegates who are there and representing the
02:21:00 2 various Anishinaabe or other bands attending the
02:21:05 3 council.

02:21:05 4 Q. So one of your key references was
02:21:17 5 the thesis by John Shields about the General Indian
02:21:21 6 Council of Ontario 1870 to 1936, is that correct?

02:21:28 7 A. I believe it's Norman Shields.

02:21:30 8 Q. Yes, Norman Shields.
02:21:34 9 That mentioned at the end of it, we can
02:21:36 10 go to the page if you wish, the General Council
02:21:39 11 eventually changed its name to Union of Ontario
02:21:42 12 Indians in 1946?

02:21:46 13 A. That was one iteration of it later
02:21:49 14 on, yes.

02:21:50 15 Q. Now the thesis on which you're
02:22:02 16 relying gives us a period of 1870 to 1936?

02:22:07 17 A. Right.

02:22:08 18 Q. And the principal topics, maybe we
02:22:13 19 can go to that.

02:22:14 20 That thesis is Exhibit 4632. It's
02:22:35 21 "Anishinaabe Political Alliance in the
02:22:37 22 Post-Confederation Period: The Grand General
02:22:42 23 Indian Council of Ontario 1870 to 1936".

02:22:46 24 On page Roman Numeral II, which is PDF
02:22:50 25 page 2, the line beginning "Prevalent at the Grand

02:23:02 1 Council then:

02:23:04 2 "Delegates to the Grand Council
02:23:06 3 principally reviewed federal Indian
02:23:09 4 legislation."

02:23:10 5 Do you see that?

02:23:11 6 A. Yes.

02:23:11 7 Q. That is saying the principal
02:23:12 8 topics at Grand Council, at least in this time
02:23:16 9 period, were federal policies and legislation?

02:23:19 10 A. Yes. And note that he's using the
02:23:20 11 words "Grand Council", not "General Council". And
02:23:25 12 Shields makes the distinction between General
02:23:28 13 Council and Grand Council.

02:23:31 14 Q. Is he talking about both?

02:23:37 15 A. He does in his introduction. He
02:23:39 16 speaks to the background of general Ojibwe councils
02:23:43 17 and General Indian Councils and then the evolution
02:23:46 18 or development into the Grand Council.

02:23:54 19 The Grand Council being a broader
02:23:57 20 political umbrella forming out of what was General
02:24:06 21 Councils in the 19th century.

02:24:08 22 Q. So in that sense, by Grand
02:24:11 23 Council, you're including people other than
02:24:13 24 Anishinaabe?

02:24:13 25 A. That's the way Norman shields

1 discusses it, yes.

2 Q. Now, if we go to page 7, which is
3 PDF ten of that thesis. Starting third line down,
4 if you could read the next eight lines or so?

5 A. On page 7 of my General Council
6 report?

7 Q. No, on the Shields thesis which is
8 on the screen.

9 A. Oh, I'm sorry.

10 (Witness reviews document). Okay.

11 Q. So he's saying that most observers
12 considered it to be ineffective; is that right?

13 A. That's what he's saying, yes.

14 Q. Do you accept that?

15 A. In terms of the Grand Council, if
16 that's the conclusion that he's come to, then I
17 would accept his conclusion. But I don't accept it
18 as a conclusion in relation to the General Councils
19 I've discussed in my supplementary report.

20 Q. Okay. So on the next page,
21 page 8, the last four lines of that.

22 A. (Witness reviews document). Okay.

23 Q. That's saying in 1980, the Union
24 of Ontario Indians suggested the General Council
25 had always been an integral aspect of the minimal

1 government they preferred?

2 A. Yes.

3 Q. Do you accept that?

4 A. I do.

5 Q. So let's talk about the

6 Methodists. Among the Saugeen, not all of them
7 were Methodist, were they?

8 A. No.

9 Q. Some were Roman Catholic?

10 A. Yes.

11 Q. Some were traditionalists?

12 A. Yes. And I think some were Church
13 of England?

14 Q. And Peter Jones was a leading
15 Anishinaabe Methodist missionary, wasn't he?

16 A. Yes, he was.

17 Q. So I'd like to go to SC1934.
18 This is a biography called Sacred
19 Feathers of Peter Jones, by Donald Smith. Have you
20 read it?

21 A. I'm familiar with it.

22 Q. Okay. I'd like this made an
23 exhibit. This is an excerpt.

24 THE COURT: Mr. Registrar.

25 THE REGISTRAR: Exhibit No. 4731.

02:28:02 1 EXHIBIT NO. 4731: Excerpt from Sacred
02:28:12 2 Feathers by Donald Smith.

02:28:12 3 BY MR. TOWNSHEND:

02:28:12 4 Q. If we go to page 151 of this
02:28:15 5 excerpt, which is PDF page 3. If we look at the
02:28:29 6 first two full paragraphs on page 3.

02:28:45 7 THE COURT: This is which part? Where
02:28:47 8 does it begin, sir?

02:28:48 9 MR. TOWNSHEND: The paragraph that
02:28:50 10 starts "Eliza".

02:28:53 11 THE COURT: "Eliza became a strength to
02:28:55 12 her husband [...]"; that paragraph?

02:28:58 13 MR. TOWNSHEND: Yes.

02:29:16 14 THE WITNESS: (Witness reviews
02:29:59 15 document). All right, I've read it.

02:30:29 16 BY MR. TOWNSHEND:

02:30:29 17 Q. So he was very prominent in the
02:30:31 18 Methodist church?

02:30:33 19 A. Yes.

02:30:34 20 Q. For example, and I can take you to
02:30:35 21 sources if you'd like, he went to England twice on
02:30:38 22 fund-raising tours?

02:30:40 23 A. I know he went to England, so...

02:30:43 24 Q. And thousands of people came to
02:30:45 25 hear him speak; should we go to a source for that?

02:30:50 1 A. Sure.

02:30:51 2 Q. Page 166 which is PDF page 8. And

02:30:59 3 the middle paragraph on page 166.

02:31:50 4 A. (Witness reviews document). Okay.

02:31:51 5 Q. So my question is, that he went to

02:31:54 6 England on fund-raising tours and thousands of

02:31:57 7 people came to hear him speak, and he raised lots

02:31:59 8 of money?

02:32:00 9 A. And what was the last?

02:32:01 10 Q. He raised lots of money?

02:32:03 11 A. Yes, "[...] and collections" at

02:32:09 12 the end, yes.

02:32:10 13 Q. Now if we can go now to the same

02:32:18 14 document, page 211, which is PDF page 30. And the

02:32:30 15 paragraph beginning "For two decades [...]"

02:32:44 16 A. (Witness reviews document).

02:32:46 17 I'm just reading the whole paragraph to

02:32:57 18 get the context.

02:32:58 19 Q. Certainly.

02:33:17 20 A. Okay.

02:33:17 21 Q. So that is suggesting Peter Jones

02:33:19 22 had a strong influence on councils he participated

02:33:23 23 in?

02:33:23 24 A. Yes.

02:33:24 25 Q. Now I would like to go to

02:33:26 1 Exhibit 1322. And these are the minutes of the
02:33:46 2 1840 General Council. Have you read these before?

02:33:53 3 A. Yes.

02:33:54 4 Q. You'll see as it starts, it
02:34:12 5 started with Peter Jones opening in prayer; do you
02:34:17 6 see that?

02:34:17 7 A. Not on the screen, no.

02:34:19 8 Q. Oh, I'm sorry. You have to scroll
02:34:21 9 down a bit. Just after it says, "The Council met
02:34:35 10 and then after singing and prayers by Peter Jones".

02:34:35 11 A. Yes.

02:34:35 12 Q. Then if we go to the next page,
02:34:40 13 and a little further down, just after, it says --
02:34:46 14 page 4, we'll use the transcript -- that's a
02:34:48 15 resolution. Each day ending with singing and
02:35:06 16 prayer?

02:35:06 17 A. Yes.

02:35:06 18 Q. So back on the page 1 of the
02:35:15 19 transcripts, the second paragraph from the bottom:

02:35:27 20 "Peter Jones gave notice that
02:35:29 21 he should submit the following
02:35:30 22 measures for the consideration of
02:35:31 23 the Council."

02:35:36 24 It starts with one, and then goes over
02:35:38 25 the next page, and there are 11 items on that list.

02:35:47 1 A. Yes.

02:35:48 2 Q. So it sounds like Peter Jones set
02:35:50 3 the agenda pretty much?

02:35:51 4 A. Well, according to the transcript
02:35:53 5 of the minutes, he -- we don't know that he
02:35:57 6 established the minutes. He listed the minutes, or
02:36:01 7 the agenda items. You'll notice that the last one
02:36:08 8 is by Chief Sawyer.

02:36:17 9 Q. Well he's taking a leadership role
02:36:20 10 with the Council?

02:36:21 11 A. Yes.

02:36:21 12 Q. And you'll also see that over on
02:36:31 13 page 3 of the transcript, at the top, that he is to
02:36:36 14 be the secretary of the meeting?

02:36:39 15 A. It was proposed that he be the
02:36:42 16 secretary and it was carried unanimously.

02:36:46 17 Q. Now at that same point, it says:
02:37:02 18 "It was proposed by John Sunday that Chief Joseph
02:37:07 19 Sawyer be the presiding Chief and that Peter Jones
02:37:11 20 be the secretary"?

02:37:13 21 A. Yes.

02:37:13 22 Q. John Sunday was a Methodist
02:37:16 23 missionary, wasn't he?

02:37:17 24 A. As far as I know, yes.

02:37:20 25 Q. And Peter Jones, of course, was a

02:37:22 1 Methodist missionary?

02:37:22 2 A. Yes.

02:37:22 3 Q. And Joseph Sawyer was the father
02:37:24 4 of David Sawyer, wasn't he?

02:37:27 5 A. I will take your word for that,
02:37:31 6 I'm not sure if I've done a genealogy of -- but
02:37:36 7 that sounds right.

02:37:37 8 Q. Well, I can take you to that, if
02:37:40 9 you wish. If you go to Exhibit 2658 which is the
02:37:59 10 book, The Indian Chief, which is about David
02:38:04 11 Sawyer, have you read this?

02:38:06 12 A. I am familiar with this.

02:38:07 13 Q. If you go to page 22 of that,
02:38:11 14 which is PDF 39.

02:38:19 15 A. Yes, the son of Joseph Sawyer.

02:38:22 16 Q. And David Sawyer was also a
02:38:25 17 Methodist missionary?

02:38:35 18 A. Yes.

02:38:36 19 Q. So in this paragraph, you have
02:38:37 20 three things happening: John Sunday, a Methodist
02:38:39 21 missionary, moves that Joseph Sawyer, the father of
02:38:42 22 a Methodist missionary, be chairman, and Peter
02:38:44 23 Jones, a Methodist missionary, be secretary?

02:38:47 24 A. Yes.

02:38:47 25 Q. Now, down at page 5 of this

02:38:55 1 transcript. If you look a little further down,
02:39:12 2 just before it says page 10. If you can just read
02:39:15 3 that paragraph. "The Council highly disapproved
02:39:21 4 [...]"

02:39:21 5 A. Okay.

02:39:22 6 Q. So this is a Chief called
02:39:26 7 "Kanooching", and his people refused to attend this
02:39:29 8 council because they didn't want to hear about
02:39:34 9 Christianity?

02:39:34 10 A. Correct.

02:39:35 11 Q. And the council disapproved of
02:39:37 12 that?

02:39:37 13 A. Yes.

02:39:38 14 Q. So would it be fair to say that
02:39:40 15 the leadership of this General Council was pretty
02:39:44 16 solidly Methodist?

02:39:45 17 A. I would just like to add some
02:39:47 18 context before I agree or disagree with your
02:39:50 19 statement.

02:39:51 20 This council was being held at the
02:39:54 21 River Credit, which was a mission community near
02:39:58 22 York or Toronto. Traditionally, wherever a General
02:40:03 23 Council was held, it will have been leaders of that
02:40:07 24 village or community who will have been appointed
02:40:13 25 or delegated as the host and the chairperson of the

02:40:21 1 General Council.

02:40:22 2 And generally, wherever the council was
02:40:24 3 being held, it was the leaders of that band or that
02:40:28 4 community who took the leadership role at the
02:40:32 5 council.

02:40:36 6 Q. Okay.

02:40:37 7 A. So in this instance, yes. But it
02:40:40 8 can be explained both in traditional terms as well
02:40:46 9 as, you seem to be implying, Methodist terms.

02:40:50 10 Q. Let's go to Exhibit 1605. These
02:40:50 11 are the minutes of the 1846 General Council. And
02:40:50 12 this was held at Orillia.

02:40:50 13 -- REPORTER'S NOTE: Off the record due
03:00:37 14 to technical difficulties.

03:00:37 15 -- RECESS TAKEN AT 2:43 --

03:02:28 16 -- UPON RESUMING AT 3:00 --

03:02:28 17 THE COURT: Just before the recess,
03:02:31 18 Madam Reporter's technology just stopped. So
03:02:34 19 there's no recorded adjournment to permit her to
03:02:41 20 fix it.

03:02:42 21 Please go ahead, Mr. Townshend.

03:02:47 22 BY MR. TOWNSHEND:

03:02:48 23 Q. So we have up now Exhibit 1605,
03:02:51 24 which are minutes of the 1846 General Council,
03:03:03 25 which was held at Orillia.

03:03:06 1 If you go to the first page of the
03:03:07 2 minutes shown here, and those who are present,
03:03:11 3 we've got George Vardon, who is the Assistant
03:03:16 4 Superintendent General of Indian affairs, Captain
03:03:18 5 Anderson, the visiting Superintendent of Indian
03:03:20 6 Affairs, and five ministers.

03:03:26 7 And of those, we've already agreed John
03:03:30 8 Sunday was a Methodist minister, we know Peter
03:03:32 9 Jones was a Methodist minister. William Case was
03:03:36 10 also a Methodist minister, wasn't he?

03:03:38 11 A. I believe so.

03:03:38 12 Q. Do you know the other two?

03:03:42 13 A. I'm not familiar with Horace Dean,
03:03:46 14 but John Sunday was a Methodist minister.

03:03:52 15 Q. And Mr. McIntyre?

03:03:55 16 A. I'm not familiar with him.

03:03:58 17 Q. As we go through the minutes --
03:04:09 18 they actually start on page 5 -- we start with
03:04:28 19 Thomas Anderson because he gives a lengthy speech.
03:04:31 20 And he speaks until top of page 8. And then we
03:04:44 21 have George Vardon, who starts to speak; do you see
03:04:48 22 that?

03:04:48 23 A. Yes.

03:04:58 24 Q. At the bottom of page 8, you will
03:05:01 25 notice the missionaries have been invited to

03:05:03 1 address the council if they should have anything to
03:05:03 2 say.

03:05:06 3 Over on the top of page 9, we have
03:05:09 4 Peter Jones, which is not transcribed, because it
03:05:18 5 was in Anishinaabemowin; do you see that?

03:05:21 6 A. Yes, I do.

03:05:22 7 Q. And a couple of paragraphs down,
03:05:26 8 Reverend Case is addressing the Council. And he
03:05:35 9 keeps talking until the middle of page 10. Then
03:05:51 10 there's Reverend McIntyre's speech begins in the
03:05:55 11 middle of page 10; do you see that?

03:05:57 12 A. Yes.

03:06:12 13 Q. Page 11, third paragraph down, we
03:06:15 14 see Captain Anderson speaks again?

03:06:19 15 A. Yes.

03:06:19 16 Q. A little later, there's an address
03:06:23 17 by the Mohawks of the Bay of Quinte?

03:06:27 18 A. Yes.

03:06:32 19 Q. And that was read by Mr. John
03:06:34 20 Hill; do you see that?

03:06:36 21 A. Yes.

03:07:12 22 Q. And the second line from the
03:07:14 23 bottom, if you see it starts, "Brothers, we send
03:07:21 24 our representatives Chief Paulus Claus, catechist
03:07:24 25 John Hill and warrior Seth Powles".

03:07:27 1 So John Hill was a catechist to the
03:07:31 2 Mohawks?
03:07:31 3 A. Yes.
03:07:32 4 Q. So that's a missionary as well?
03:07:34 5 A. I suppose so, Roman Catholic,
03:07:37 6 though, not Methodist --
03:07:39 7 Q. Yes?
03:07:41 8 A. -- yes.
03:07:59 9 Q. Over on page 14, several
03:08:01 10 paragraphs down, meeting adjourned at 2:00 p.m. for
03:08:04 11 dinner and Captain Anderson left; do you see that?
03:08:12 12 Captain Anderson at about 2:00 p.m.?
03:08:16 13 A. Yes, I see that.
03:08:17 14 Q. After dinner, the council
03:08:20 15 reassembled, and Captain Anderson's speech was read
03:08:25 16 over again by the council by Reverend Peter Jones.
03:08:28 17 A. Yes.
03:08:29 18 Q. And then there were more remarks,
03:08:31 19 a couple of times, a little bit later. And then
03:08:38 20 Reverend John Sunday, Shawoundais, Reverend John
03:08:40 21 Sunday spoke. It's got his speech there.
03:08:52 22 A few other chiefs. At the bottom of
03:08:53 23 the page, Reverend Peter Jones speaking?
03:08:59 24 THE COURT: Where are you now?
03:09:01 25 MR. TOWNSHEND: At the bottom of 14.

03:09:04 1 THE COURT: There's four chiefs.

03:09:08 2 MR. TOWNSHEND: Yes, bottom of 14 Peter
03:09:11 3 Jones is speaking. Then at the top of 15, Council
03:09:15 4 adjourned at 7 o'clock.

03:09:16 5 THE WITNESS: Yes.

03:09:17 6 BY MR. TOWNSHEND:

03:09:19 7 Q. So what I'm drawing was that, from
03:09:21 8 that is that we're at the bottom of page 14, and
03:09:28 9 near the end of the day, before anybody gets to
03:09:31 10 speak, there wasn't either an Indian Affairs
03:09:35 11 official or missionary; is that fair?

03:09:37 12 A. Sorry, can you repeat that?

03:09:39 13 Q. We're near the bottom -- the first
03:09:45 14 14 pages, we've got Crown officials speaking, we
03:09:49 15 have Methodist missionaries and other missionaries
03:09:53 16 speaking. It's not until then, which is getting
03:09:56 17 close to the end of the day, that anybody else,
03:09:59 18 other than a Crown official or a missionary gets to
03:10:02 19 speak; is that fair?

03:10:03 20 A. "Gets to speak" implies that there
03:10:07 21 was a denial of others to speak. And that is not
03:10:11 22 necessarily either applied nor is it stated in
03:10:15 23 this.

03:10:15 24 I think it's important to remember that
03:10:17 25 this particular General Council was called at the

03:10:21 1 request of Indian Affairs to discuss issues of
03:10:25 2 common concern, particularly in relation to manual
03:10:30 3 labour schools. And so the first speech -- the
03:10:35 4 first speeches on the first day were by Anderson
03:10:39 5 and Vardon and other Indigenous and/or missionary
03:10:47 6 individuals involved in or interested in the
03:10:52 7 development of manual labour schools.

03:10:54 8 So the first day was taken up
03:10:57 9 explaining what the objective and purpose and
03:11:04 10 questions were that government was posing to the
03:11:09 11 General Council, as well as some additional
03:11:12 12 speeches by some of the Methodist and other
03:11:16 13 missionaries who would potentially -- who were
03:11:20 14 either involved at that time in manual labour
03:11:23 15 schools, or would potentially be involved in the
03:11:26 16 establishment of new manual labour schools.

03:11:32 17 So I think what I'm saying is, I don't
03:11:35 18 find this -- when I first read this, I noticed,
03:11:39 19 too, that the first 15 pages were taken up by that.

03:11:42 20 But I didn't find it necessarily
03:11:44 21 surprising or unusual that the full text of what
03:11:47 22 the officials and missionaries had to say was
03:11:52 23 recounted in the minutes because that was the
03:11:56 24 purpose for which the Council had been called.

03:12:01 25 Then Vardon and Anderson leave, and the

03:12:06 1 next few days are the Anishinaabe and other First
03:12:12 2 Nation delegates to the Council.

03:12:19 3 Q. I shouldn't have said "gets to
03:12:26 4 speak" --

03:12:26 5 A. Sorry, I should've come to a stop
03:12:28 6 to let you --

03:12:28 7 Q. -- "need to speak".

03:12:30 8 I mean, my point was that the
03:12:32 9 leadership and the agenda of this General Council
03:12:34 10 seems to be strongly Crown and missionaries; is
03:12:39 11 that fair?

03:12:39 12 A. Yes. And in my supplementary
03:12:41 13 report, I make that very clear that.

03:12:45 14 "The General Council was called
03:12:46 15 at the request of Indian Affairs for
03:12:47 16 ascertaining -- for the purpose of
03:12:51 17 ascertaining the Chiefs' 'sentiments
03:12:53 18 on the subject of establishing
03:12:55 19 Manual Labour Schools.'"

03:12:57 20 That's Section 4.5.1 in my
03:13:01 21 supplementary report on General Indian Councils,
03:13:06 22 page 13.

03:13:16 23 Q. Can we go back to the Peter Jones
03:13:20 24 biography that we had before. That was SC1934 and
03:13:26 25 it is now Exhibit No. 4731.

03:13:40 1 I'd like to go to page 165, which is
03:13:44 2 PDF page 7. Now it's the second last paragraph I'm
03:13:59 3 interested in, but you may want to look a bit
03:14:02 4 earlier to get your bearings on the date.

03:14:07 5 The previous paragraph talks about
03:14:13 6 1838. If you then read that sentence, the
03:14:17 7 paragraph that begins "In the interview Glenelg
03:14:27 8 [...]"

03:14:33 9 A. (Witness reviews document). Okay.

03:14:48 10 Q. So in that case, Peter Jones is
03:14:51 11 raising with Glenelg, who is the Colonial Secretary
03:14:54 12 in London, the issue of title deeds for Indian
03:15:01 13 lands?

03:15:03 14 A. Yes.

03:15:03 15 Q. So if we go to page 167, if you
03:15:07 16 would scroll down, and the last paragraph there.
03:15:13 17 Just below it, "Although it lasted [...]"

03:15:31 18 A. (Witness reviews document). Okay.

03:15:42 19 Q. So here Peter Jones is raising the
03:15:45 20 point of title deeds with the Queen?

03:15:48 21 A. Correct.

03:15:49 22 Q. So if we now go to page 156 of
03:15:57 23 this same biography. So the paragraph that begins,
03:16:24 24 "the Herkimers" starting on page 156, if you could
03:16:30 25 read that, please.

03:16:57 1 A. (Witness reviews document). Just
03:17:11 2 the first paragraph?

03:17:11 3 Q. Yes, just that first paragraph.
03:17:13 4 We'll come to the next one soon.

03:17:15 5 A. Okay.

03:17:18 6 Q. So here Peter Jones is preaching
03:17:25 7 about the importance of farming?

03:17:27 8 A. Yes.

03:17:27 9 Q. And he's putting that forward as a
03:17:34 10 Christian duty?

03:17:35 11 A. I suppose.

03:17:41 12 Q. Okay. Now could you go to the
03:17:46 13 1840 Grand Council minutes, which is Exhibit 1322
03:17:54 14 again.

03:18:00 15 If you go to page 14 of that
03:18:04 16 transcript. And the last full paragraph on the
03:18:11 17 page, it begins "About 16 years ago [...]". Could
03:18:19 18 you read that, please?

03:18:20 19 A. Can you tell me who's speaking
03:18:23 20 here? Who's saying "Father"?

03:18:29 21 Q. At the bottom of page 13, if you
03:18:38 22 go there for a minute, it says:

03:18:41 23 "The secretary Peter Jones read
03:18:42 24 the following address to the
03:18:45 25 Governor General and moved for its

03:18:47 1 adoption which was carried
03:18:49 2 unanimately with prayers."
03:18:53 3 And then it continues with "Various
03:18:56 4 fathers" down until this one we have, "about
03:18:59 5 16 years ago".
03:19:14 6 A. Okay.
03:19:14 7 Q. Would it be fair to say the
03:19:16 8 Methodist agenda at the time was to very much turn
03:19:19 9 Aboriginal people into farmers?
03:19:21 10 A. That was certainly part of their
03:19:23 11 agenda, yes.
03:19:24 12 Q. In their world view, the
03:19:26 13 Methodists, farming was a moral activity and
03:19:30 14 they're seeing hunting and fishing as not being
03:19:35 15 moral in general?
03:19:35 16 A. "Moral". I would not use that
03:19:40 17 word "moral".
03:19:42 18 Q. All right.
03:19:43 19 A. Certainly there was a connection
03:19:47 20 between civilization, Christianity and farming.
03:19:53 21 Was it a moral connection? I suppose if you are a
03:19:57 22 Methodist you might see it in those terms. I'm not
03:20:01 23 sure I would want to analyze it solely within those
03:20:04 24 terms, though.
03:20:05 25 Q. Well, in the paragraph here in the

1 1840 Grand Council, they're saying:

2 "[...] forsaken our old ways
3 and evil habits and are now trying
4 to live like good Christians and
5 good farmers."

6 That's seeing being Christian and
7 farmers in the same breath.

8 A. Yes, I agree.

9 Q. So I'm going to suggest to you
10 that the title of, the concept of the title, very
11 much fit into the Methodist agenda of making
12 Aboriginal people into farmers?

13 A. I think it was consistent, yes.

14 Q. As was the concept of aggregating
15 Aboriginal people in one large place; is that fair?

16 A. Certainly centralization was
17 consistent with their objectives, the Methodist
18 objectives, yes.

19 Q. And neither of those fit terribly
20 well with the traditional Anishinaabe perspective;
21 do they?

22 A. Their perspective?

23 Q. The traditional way of life?

24 A. Not the traditional way of life as
25 it had been, no. But I think that at this point in

03:21:17 1 their history, certainly there's enough evidence
03:21:19 2 that they were turning their minds to enormous
03:21:26 3 changes in the world around them and to their own
03:21:31 4 ways of life.

03:21:34 5 And looking for ways to be part of that
03:21:38 6 change, to be a successful part of that change, and
03:21:41 7 for their children to be prepared for the changes
03:21:46 8 occurring around them as well.

03:21:49 9 This petition, if we go back up to the
03:21:53 10 top although Peter Jones read the petition it says
03:21:56 11 -- could we go back up to the top, please, where he
03:22:01 12 introduces it?

03:22:04 13 "The address of the Ojibwe
03:22:05 14 nation of Indians residing at the
03:22:08 15 River Credit, Aldersville, Rice
03:22:12 16 Lake, Mud Lake, Balsam Lake,
03:22:15 17 Narrows, Snake Island, Cold Water,
03:22:17 18 Saugeen, St. Clair, and Muncey Town
03:22:21 19 and General Council assembled."

03:22:23 20 Together the delegates and chiefs
03:22:25 21 attending the General Council agreed on the wording
03:22:28 22 and on the perspective that was being presented in
03:22:33 23 this petition to the Governor General.

03:22:39 24 Q. Yes, but we already talked about
03:22:41 25 the leadership of this particular General Council

1 was fairly dominantly Methodist?

2 A. Well, I don't -- if that is the
3 case, and whether or not that is the case, I think
4 does not denigrate or indicate that the other
5 leadership of Anishinaabe groups in what is now
6 Ontario or what was then Canada West, completely
7 abdicated their traditional leadership roles and
8 responsibilities to their communities.

9 Q. I wasn't suggesting that.

10 We'll come back to that. I want to
11 talk about manual labour schools. So if we can go
12 to the Peter Jones biography again.

13 THE COURT: Exhibit?

14 MR. TOWNSHEND: Which is 4731.

15 BY MR. TOWNSHEND:

16 Q. If we can go to page 159 which is
17 PDF page 4. And starting the last line of that
18 page, "The white and Indian school teachers [...]",
19 and continuing on to page 160, that paragraph.
20 Would you read that, please.

21 A. (Witness reviews document).

22 Okay.

23 Q. So here Peter Jones is recognizing
24 that the schools in Aboriginal communities aren't
25 being effective enough, and deciding that it was

03:25:47 1 necessary to take them away from the influence of
03:25:51 2 their parents into a centralized residential
03:25:56 3 school.

03:25:57 4 A. He doesn't say "centralized
03:26:00 5 residential school".

03:26:01 6 Q. Well --

03:26:03 7 THE COURT: I'm just going to pause,
03:26:05 8 sir. I don't like to interrupt your
03:26:08 9 cross-examination, but that turn of phrase has a
03:26:09 10 very specific meaning in modern Canada. Unless
03:26:12 11 that's the meaning you intend to evoke, which is
03:26:14 12 not what this says, I think it would be more fair
03:26:19 13 not to use that phrase.

03:26:22 14 MR. TOWNSHEND: All right. I will come
03:26:23 15 to another excerpt.

03:26:25 16 THE COURT: If you intend to do it,
03:26:27 17 sir, that's fine. If you intend to evoke the
03:26:30 18 modern conception, that's up to you. The witness
03:26:35 19 has said that is not what this paragraph says.

03:26:38 20 MR. TOWNSHEND: Yes, which is a fair
03:26:39 21 comment and I'll go to another excerpt from there.

03:26:48 22 BY MR. TOWNSHEND:

03:26:49 23 Q. If you go to page 193 of that same
03:26:55 24 exhibit. It's PDF 31?

03:27:06 25 THE COURT: Did you say 193?

03:27:19 1 MR. TOWNSHEND: 193.

03:27:28 2 BY MR. TOWNSHEND:

03:27:29 3 Q. So the last paragraph and going
03:27:33 4 over the page to 194.

03:27:43 5 A. (Witness reviews document).

03:27:44 6 Just to ask a question here, the page
03:27:47 7 -- the part of the page to the left of the top
03:27:51 8 green box is giving me a date in the 1840s; is that
03:27:58 9 what this is talking about as well, the green boxed
03:28:02 10 excerpts? I just want to get a timeframe for this
03:28:05 11 passage.

03:28:09 12 Q. Later on in that paragraph it
03:28:11 13 mentions the date 1844.

03:28:14 14 A. Oh, yes, I see it now. Okay,
03:28:16 15 thank you.

03:28:55 16 (Witness reviews document). Okay.

03:28:56 17 Q. So here, Peter Jones is raising
03:28:58 18 with the Governor General building a manual labour
03:29:02 19 school, and it says "or residential school" in that
03:29:07 20 part?

03:29:07 21 A. Those are Smith's words.

03:29:09 22 Q. Those are Smith's words. Do you
03:29:12 23 take exception with them?

03:29:13 24 A. I do, for a reason similar to what
03:29:15 25 the justice explained.

03:29:17 1 Q. Well, here it uses the word?

03:29:20 2 A. Yes, but that's Smith, not Peter
03:29:22 3 Jones. But that's fine.

03:29:26 4 The original, the historical
03:29:30 5 documentation from around this time period
03:29:33 6 sometimes refers to "boarding schools". But, you
03:29:42 7 know, as long as we're not understanding the two
03:29:45 8 words "residential school" in the way we have
03:29:48 9 understood it in the last decade, then I will not
03:29:51 10 take exception to it.

03:29:53 11 So go on.

03:29:54 12 Q. Well, the excerpt we were just at
03:29:57 13 a minute ago, it was talking about Peter Jones
03:30:02 14 wanting to get Aboriginal children away from the
03:30:05 15 influence of their parents?

03:30:07 16 A. Yes.

03:30:07 17 Q. Is that not akin to a residential
03:30:10 18 school?

03:30:11 19 A. I prefer not to express an opinion
03:30:15 20 on that particular question. He certainly was
03:30:19 21 referring to boarding schools; that came out in
03:30:21 22 some of the General Council minutes that I reported
03:30:24 23 on in my supplementary report. It's the modern-day
03:30:30 24 connotation that I object to.

03:30:37 25 But yes, to be clear, manual labour

03:30:40 1 school and boarding school were generally
03:30:44 2 equivalent. In other words, children moved away
03:30:49 3 from their parents and lived at the school.

03:30:51 4 Q. All right. Would it be fair to
03:31:05 5 say that manual labour schools met the Methodist
03:31:08 6 agenda quite well?

03:31:10 7 A. Not only Methodist, but, yes,
03:31:13 8 Methodist as well.

03:31:14 9 Q. I would suggest that that would,
03:31:31 10 to a traditional Anishinaabe perspective, there
03:31:35 11 would likely be resistance to having their children
03:31:39 12 taken away from them, or sending their children
03:31:44 13 away?

03:31:44 14 A. Can you repeat that, please?

03:31:45 15 Q. Would it be fair to say that many
03:31:48 16 Anishinaabe people in the mid 19-century would
03:31:52 17 resist the idea of sending their children away to
03:31:56 18 school?

03:31:56 19 A. Yes, and that's documented.

03:31:58 20 Q. Now, if you go to your General
03:32:12 21 Council report which is Exhibit 4709. If you go to
03:32:18 22 page 8 of that.

03:32:31 23 And paragraph 3.7.1. My understanding
03:32:38 24 of that is you're giving an example of the General
03:32:42 25 Council pushing back against the Methodist agenda

03:32:45 1 of wanting to change the hymn books?

03:32:52 2 A. Yes.

03:32:52 3 Q. Let's look a little deeper into
03:32:54 4 that. If we go to the Peter Jones biography again,
03:33:00 5 which is Exhibit 4731. And to page 153, PDF 4.
03:33:22 6 That I have wrong, sorry. Page 153 at the top.

03:33:47 7 If you could read from the top of that
03:33:50 8 page down to six or so lines into the paragraph
03:33:56 9 that begins "Once Peter and Eliza [...]"

03:34:19 10 A. (Witness reviews document). All
03:34:33 11 right, I've read the text in green.

03:34:35 12 Q. And keeping that in mind, can we
03:34:39 13 now go to page 185, the same exhibit. And the
03:34:51 14 top -- the first two paragraphs on that page,
03:34:56 15 please.

03:35:58 16 A. (Witness reviews document). Okay.

03:35:59 17 Q. So I would suggest what these two
03:36:01 18 passages are saying is that the hymn book affair
03:36:07 19 was a dispute between Methodists, between Peter
03:36:11 20 Jones, who had translated them, and between some
03:36:13 21 other Methodist ministers who had a different
03:36:16 22 translation and wanted to do it a different way?

03:36:18 23 A. Yes, that's fair.

03:36:20 24 Q. So it would be fair that when this
03:36:23 25 came up at General Council, it wasn't so much the

03:36:28 1 Anishinaabe pushing back against the Methodist
03:36:31 2 agenda, it was an internal Methodist argument which
03:36:36 3 General Council took the side of Peter Jones on?

03:36:39 4 A. Yes, I would consider that. I
03:36:44 5 wasn't aware of this additional context and I would
03:36:48 6 take that into consideration in terms of now
03:36:51 7 re-reading the minutes of that General Council.

03:37:06 8 Q. So let's look at Peter Jones's
03:37:08 9 relations with other Anishinaabe people. If we can
03:37:13 10 go to page 156. I think that's PDF 3 -- no, sorry.

03:37:32 11 The paragraph at the bottom of 156
03:37:35 12 carrying over to the top of 157, starting on "The
03:37:43 13 Jones party's suggestion [...]".

03:37:55 14 A. (Witness reviews document).

03:38:07 15 Okay, if we can scroll up.

03:38:13 16 (Witness reviews document). Okay.

03:38:33 17 Q. So this is saying that Peter Jones
03:38:35 18 was advocating whipping children to discipline, and
03:38:39 19 going on to say that that was something contrary to
03:38:44 20 Anishinaabe custom and that that was being visited;
03:38:49 21 is that fair?

03:38:51 22 A. I'm just going to re-read that
03:38:54 23 section, if you can scroll down a little bit,
03:38:56 24 please. (Witness reviews document).

03:38:58 25 Thank you.

03:39:11 1 A. Yes, that's fair.

03:39:12 2 Q. If we go over to page 158, the
03:39:16 3 next page and the middle two full paragraphs,
03:39:25 4 starting, "In the mid-1830s [...]"

03:40:15 5 A. (Witness reviews document). Okay.

03:40:16 6 Q. So in that case, there's been some
03:40:20 7 resistance to Peter Jones because it's considered
03:40:24 8 that he talked, acted and lived too much like a
03:40:28 9 White man?

03:40:28 10 A. Yes, that's what it says.

03:40:30 11 Q. Do you think that's a fair
03:40:32 12 analysis? Maybe I should --

03:40:41 13 A. It's not my analysis so...

03:40:44 14 Q. Is that a fair statement of how
03:40:48 15 some Anishinaabe viewed Peter Jones?

03:40:50 16 A. You know, I don't know, so I'm
03:40:54 17 hesitant to agree or to disagree. The detailed
03:40:59 18 history and characterization and relationship
03:41:03 19 between Peter Jones and his own community is not
03:41:07 20 one that I've studied in any detail.

03:41:10 21 So you know, this is what Donald Smith
03:41:15 22 says. Smith, I know, has long expertise in this
03:41:21 23 area. Normally, if I was doing a study of these
03:41:28 24 issues on my own, I would go to each one of the
03:41:31 25 footnotes and read the original sources for myself

03:41:36 1 in order to either come to an agreement or
03:41:40 2 disagreement with Smith's characterization here.

03:41:45 3 Q. All right. Let's go to another
03:41:53 4 General Council minutes. Exhibit 1103.

03:42:26 5 These are minutes of the council held
03:42:29 6 at the Narrows on 26th of January, 1836. And the
03:42:39 7 Narrows are near Orillia, I gather?

03:42:43 8 A. Yes, that is correct.

03:42:45 9 Q. Now, there's a lot of numbering in
03:42:55 10 this which is a bit hard to follow. At the
03:43:00 11 beginning, we have Chief Yellowhead submitting a
03:43:07 12 number of things for consideration of the other
03:43:10 13 chiefs. Do you see that?

03:43:12 14 A. Yes.

03:43:12 15 Q. And then after the paragraph
03:43:17 16 labelled "fifth", if you scroll down, it says "to
03:43:23 17 which the chiefs from the east and south, and
03:43:25 18 Council returned the following in reply [...]" and
03:43:28 19 that reply goes on and on. Until we reach on
03:43:37 20 page 4, the 15th.

03:43:50 21 And this said that "John Sunday be
03:43:52 22 appointed to make the above particulars known to
03:43:55 23 the General Council"?

03:43:56 24 So this is the reply of these other
03:43:59 25 chiefs to Yellowhead; is that your understanding?

03:44:01 1 A. Yes, that's my understanding.

03:44:03 2 Q. And John Sunday, as we talked
03:44:06 3 about it, his speech is taking up a big chunk of
03:44:12 4 this, and he is a Methodist missionary?

03:44:15 5 A. Yes, that's my understanding.

03:44:16 6 Q. So there is at least some
03:44:18 7 Methodist influence in this?

03:44:19 8 A. Oh, yes. I think it's -- you
03:44:23 9 can't read the General Council minutes particularly
03:44:28 10 1840s, late 1830s without acknowledging that those
03:44:33 11 influences were -- are evident.

03:44:38 12 Q. So after that, it says "Council
03:44:46 13 met again on the 27th of January" and this
03:44:50 14 describes an event that Yellowhead was asked to
03:44:56 15 come, and he didn't, because he wanted -- well,
03:45:02 16 I'll let you read the paragraph first, sorry.

03:45:07 17 A. (Witness reviews document).
03:45:17 18 Scroll down, please. Okay.

03:45:28 19 Q. So he wanted, rather than come to
03:45:31 20 the meeting, he wanted to meet with the chiefs
03:45:33 21 privately without the warriors present?

03:45:35 22 A. That's the impression I get, yes.

03:45:38 23 Q. That's not traditional Anishinaabe
03:45:42 24 custom, is it?

03:45:44 25 A. I don't know.

03:45:46 1 Q. Okay. The other chiefs pushed
03:45:50 2 back on that, didn't they?

03:45:51 3 A. They did.

03:45:52 4 Q. And Yellowhead eventually came
03:45:55 5 with some -- a bit of a compromise?

03:45:59 6 A. There was a compromise, yes, that
03:46:01 7 the lawyers would not be permitted to speak until
03:46:04 8 permission was granted them.

03:46:06 9 Q. Okay. Can you go to a document
03:46:17 10 SC1879, please. This is article by Jennifer Brown
03:46:34 11 called "Mission Indian: Progress and Dependency".
03:46:40 12 I would like that made an exhibit.

03:46:43 13 THE COURT: Mr. Registrar?

03:46:46 14 THE REGISTRAR: Exhibit No. 4732.

03:46:51 15 EXHIBIT NO. 4732: Article entitled
03:46:35 16 "Mission Indian: Progress and
03:46:36 17 Dependency" by Jennifer Brown.

03:46:59 18 BY MR. TOWNSHEND:

03:46:59 19 Q. Have you happened to read this
03:47:00 20 article?

03:47:00 21 A. I received this this past
03:47:03 22 Saturday. I have been able to skim through it, but
03:47:05 23 that's all.

03:47:06 24 Q. You recognize Jennifer Brown as a
03:47:10 25 reputable historian?

03:47:11 1 A. Yes, I do.

03:47:13 2 Q. Now if we go to page 20, which is
03:47:21 3 PDF 5. Going to the last paragraph on that page,
03:47:30 4 if you could read that.

03:47:32 5 A. (Witness reviews document).

03:47:34 6 THE COURT: While the witness is
03:47:36 7 reading that, can you show me the cover page again?
03:47:39 8 Oh, I guess we can't do that. Doctor, please wait
03:47:43 9 for a moment. I didn't see what the date of
03:47:45 10 publication was, and I don't believe counsel put it
03:47:50 11 on the record.

03:47:52 12 MR. TOWNSHEND: It's 1981 in Arctic
03:47:55 13 Anthropology.

03:48:04 14 THE COURT: All right, thank you.

03:48:41 15 THE WITNESS: (Witness reviews
03:48:42 16 document). I've read the green text.

03:48:45 17 BY MR. TOWNSHEND:

03:48:45 18 Q. Keeping that in mind and go to
03:48:48 19 page 26, which is PDF 11. And the first column and
03:48:55 20 lines -- well, starting "Near the end of his life,
03:49:01 21 E.R. Young [...]"

03:49:11 22 A. Okay.

03:49:12 23 Q. So I'm going to suggest that the
03:49:17 24 Methodists' reported success or successes in the
03:49:21 25 mid-19th century were often less than it seemed --

03:49:30 1 MR. OGDEN: Your Honour.

03:49:32 2 THE COURT: Just wait until Mr.

03:49:35 3 Townshend finishes his question first, Mr. Ogden,
03:49:36 4 and then I'll call on you. Perhaps you can finish,
03:49:42 5 Mr. Townshend.

03:49:43 6 BY MR. TOWNSHEND:

03:49:43 7 Q. I'm going to suggest that the
03:49:45 8 Methodists' reported successes in the mid-19th
03:49:50 9 century often didn't stick, put it that way?

03:49:54 10 THE COURT: Okay, Mr. Ogden?

03:49:59 11 MR. OGDEN: The second page of the
03:50:07 12 article states that it contains slides or images
03:50:12 13 from the latter half of the 19th century.

03:50:15 14 And so there's nothing in the extracts
03:50:17 15 that Mr. Townshend read that lead -- leads to the
03:50:25 16 fact that this article concerns the mid-19th
03:50:28 17 century.

03:50:29 18 So in fairness, there shouldn't be
03:50:33 19 taken to be an implication from the extracts shown
03:50:37 20 to the witness that they relate to the mid-19th
03:50:42 21 century as opposed to the latter half of the 19th
03:50:54 22 century.

03:50:54 23 MR. TOWNSHEND: I asked about the
03:50:56 24 mid-19th century. I'm not sure --

03:50:57 25 THE COURT: That was the objection.

03:51:03 1 The objection was that the article relates to the
03:51:05 2 latter half of the 19th century and nothing you put
03:51:10 3 to the witness supports the proposition you just
03:51:15 4 put to the witness, if I could rephrase the
03:51:19 5 objection.

03:51:19 6 So it seems to be a temporal objection,
03:51:22 7 sir. Do you have any submissions?

03:51:49 8 MR. TOWNSHEND: Well, the next
03:51:50 9 paragraph down, it's speaking of the 19th century
03:51:53 10 Indians. It's not trying to slice it that finely
03:51:57 11 between mid- and late 19th century.

03:52:08 12 THE COURT: Do you have anything
03:52:08 13 further to say, Mr. Ogden?

03:52:11 14 MR. OGDEN: Well, that is a different
03:52:13 15 paragraph that was not put to the witness. But
03:52:20 16 certainly the context of the paragraph is that it
03:52:24 17 is in the article, which on the second page states
03:52:28 18 that it's the late 1800s.

03:52:36 19 So the question was the mid-19th
03:52:42 20 century, there's nothing even in the past that
03:52:45 21 reads 19th century, and anything that would suggest
03:52:49 22 a reference in the context of this article is to
03:52:52 23 the mid-19th century.

03:52:54 24 THE COURT: Well, that may be the case.
03:52:56 25 But this is an expert witness. I think she's

03:52:59 1 capable of looking at the context of what she was
03:53:02 2 shown.

03:53:02 3 So I'm going to permit the question and
03:53:05 4 I'm going to read it off the transcript.

03:53:09 5 MR. OGDEN: Thank you, Your Honour.

03:53:10 6 THE COURT: Dr. Reimer, the question
03:53:12 7 from Mr. Townshend was the following:

03:53:14 8 "Q. So I'm going to suggest
03:53:15 9 that the Methodists' reported
03:53:17 10 success or successes in the mid-19th
03:53:20 11 century were often less than it
03:53:21 12 seemed?"

03:53:24 13 THE WITNESS: First of all, I don't
03:53:27 14 recall you showing me any evidence of Methodists
03:53:30 15 reporting their levels of success. So I'm not
03:53:38 16 quite sure about the connection of Dr. Brown's
03:53:43 17 article and her citation of E.R. Young's draft
03:53:50 18 manuscript to Methodist successes.

03:53:53 19 This is the first -- I know that my
03:53:57 20 memory is not the best -- but I don't recall us
03:54:00 21 speaking to that issue of Methodist success among
03:54:03 22 Indians.

03:54:04 23 We've been speaking about Peter Jones
03:54:08 24 primarily. So unless we can backtrack and you can
03:54:14 25 show me evidence of a Methodist reporting successes

03:54:19 1 among Indigenous peoples in Canada West, I can't
03:54:29 2 really answer that question.

03:54:30 3 I should perhaps add as well, my
03:54:32 4 understanding of Dr. Brown's article in Arctic
03:54:37 5 Anthropology is that she is focusing primarily on
03:54:40 6 images from a much northern, more northern area,
03:54:45 7 Rupert River, Hudson Bay, etcetera. So I'm not
03:54:53 8 sure that I have enough information to be able to
03:54:57 9 answer your question.

03:54:58 10 Q. All right. I'll put it a
03:55:03 11 different way.

03:55:04 12 We were talking before, and that was
03:55:08 13 one of the first excerpts I took you to from Peter
03:55:12 14 Jones' biography, about the successes that he had
03:55:21 15 had.

03:55:24 16 For example, if we go to -- might as
03:55:27 17 well go to it, let's go to Peter Jones' biography
03:55:31 18 again. Exhibit 4731, page 151. It's the -- there
03:55:52 19 we go.

03:55:52 20 That excerpt there is, seemed to my
03:55:58 21 mind to be talking about great successes of Peter
03:56:04 22 Jones in particular.

03:56:05 23 THE COURT: This is the paragraph that
03:56:08 24 begins "Eliza became a strength to her husband
03:56:13 25 [...]"

03:56:14 1 MR. TOWNSHEND: Yes.

03:56:16 2 THE COURT: Again, for the record.

03:56:17 3 MR. TOWNSHEND: Thank you, Your Honour.

03:56:23 4 THE WITNESS: (Witness reviews

03:56:26 5 document).

03:56:26 6 I'm just going to quote from the --

03:56:45 7 "Father Nicolas Wiseman, to

03:56:48 8 become England's Cardinal Wiseman

03:56:51 9 only four years later, specifically

03:56:53 10 mentioned Peter Jones in his

03:56:54 11 lectures on the practical success of

03:56:57 12 the Protestant rule of faith of

03:56:59 13 converting heathen nations."

03:57:01 14 And he quotes -- and I'll go to the

03:57:03 15 last sentence of that quote.

03:57:05 16 "Among these was the Wesleyan

03:57:08 17 Missionary Jones, and it is certain

03:57:10 18 that he has succeed in bringing a

03:57:12 19 considerable number to the

03:57:12 20 profession of Christianity, probably

03:57:14 21 the first instance in which the

03:57:16 22 labors of any Protestant missionary

03:57:22 23 may have been successful."

03:57:23 24 This is one example of one speech that

03:57:25 25 is speaking about one missionary, who in Father

03:57:30 1 Wiseman's opinion has brought a considerable number
03:57:33 2 of fellow Indigenous people to Christianity.

03:57:39 3 I think that there's a fair bit of
03:57:43 4 documentation in my reports, in some of my
03:57:46 5 supplementary reports, in the reports written by
03:57:50 6 other experts in this matter, that there were
03:57:55 7 Indigenous peoples in Upper Canada and Canada West,
03:58:00 8 Anishinaabe who had converted to Christianity.

03:58:02 9 I don't see that as inconsistent with
03:58:07 10 this particular passage. And I don't see it as an
03:58:14 11 example contrary to what we read in Dr. Brown's
03:58:19 12 article that by the end of the 19th century, I
03:58:24 13 can't remember the -- E.R. Young drafting the
03:58:30 14 manuscript that it had been less than successful
03:58:34 15 than had been originally reported or anticipated.

03:58:42 16 So to answer your question, if your
03:58:44 17 question is, does Jennifer Brown's article
03:58:49 18 demonstrate that the Methodists were of the view by
03:58:54 19 the end of the 19th century that their success had
03:58:58 20 been over reported, that may well have been the
03:59:00 21 attitude at the end of the 19th century.

03:59:02 22 This may be one example, but I don't
03:59:04 23 see a direct thread between this particular passage
03:59:08 24 and a general lack of success within Canada West by
03:59:14 25 Methodist or other Protestant missionaries.

03:59:18 1 I think that the impact of Christian
03:59:24 2 missionaries from the Jesuits onward sort of into
03:59:28 3 the 19th-century with Methodists, Roman Catholics
03:59:31 4 and Anglicans, certainly the impact was felt, and
03:59:36 5 that it's well documented.

03:59:38 6 So unless you have a corollary
03:59:44 7 question, I'm not completely certain what it is you
03:59:51 8 are asking about here.

04:00:02 9 BY MR. TOWNSHEND:

04:00:04 10 Q. From reading the General Council
04:00:08 11 minutes we've been talking about, one would get the
04:00:10 12 impression the Methodists had significant, and you
04:00:16 13 agree, had significant roles in those councils?

04:00:25 14 A. I don't agree that -- the
04:00:26 15 Methodist missionaries and Methodist leaders had a
04:00:30 16 significant role? Yes.

04:00:31 17 But as leaders of their communities as
04:00:34 18 well, not solely as Methodists. And I think in
04:00:43 19 General Councils they always list all of the
04:00:45 20 different groups who were there.

04:00:48 21 And again, I object to the idea that
04:00:52 22 the leaders of the Anishinaabe groups somehow
04:00:58 23 succumbed wholly to a Methodist agenda. I think
04:01:03 24 that oversimplifies what was happening in the
04:01:06 25 mid-19th century in Upper Canada and Canada West.

04:01:09 1 Q. You agreed a while ago that
04:01:32 2 general reserve and manual labour schools were
04:01:35 3 consistent with the Methodist agenda, and they
04:01:38 4 seemed to have been advanced by General Council; is
04:01:42 5 that fair?

04:01:42 6 A. As well as Indian Affairs and
04:01:47 7 government policy.

04:01:47 8 Q. I'm suggesting given what Jennifer
04:01:57 9 Brown's article says about -- she's talking about
04:02:12 10 what she called "backsliding", which, that suggests
04:02:18 11 there's -- their apparent adoption of Methodism,
04:02:25 12 which then disappears. Is that fair?

04:02:30 13 A. No, I don't think that's fair.

04:02:32 14 Q. No?

04:02:33 15 A. Can we go back to the quotation,
04:02:35 16 please.

04:02:37 17 Q. Yes, that's in Exhibit 4732 and
04:02:47 18 that's on page 20.

04:03:01 19 THE COURT: Sorry, this is the article
04:03:02 20 where?

04:03:03 21 MR. TOWNSHEND: This is the article in
04:03:05 22 Arctic Anthropology by Jennifer Brown.

04:03:09 23 THE COURT: I see, thank you.

04:03:12 24 BY MR. TOWNSHEND:

04:03:12 25 Q. On page 20?

04:03:28 1 THE COURT: What's the question?

04:03:30 2 MR. TOWNSHEND: I'm trying to get to
04:03:32 3 page --

04:03:33 4 THE COURT: I see. You're not at the
04:03:34 5 page yet. We seem to have gone backwards,
04:03:38 6 actually.

04:03:39 7 BY MR. TOWNSHEND:

04:03:40 8 Q. At the bottom paragraph on
04:03:42 9 page 20, where it's talking about "backsliding".

04:03:59 10 THE COURT: This is the same paragraph?

04:04:00 11 MR. TOWNSHEND: Yes, this is the
04:04:01 12 paragraph we were at before.

04:04:03 13 THE COURT: Does it continue on to the
04:04:05 14 next page? It appears that it does.

04:04:10 15 MR. TOWNSHEND: There are a number of
04:04:11 16 pictures. There is the --

04:04:23 17 THE COURT: There is the rest of the
04:04:26 18 sentence.

04:04:29 19 THE WITNESS: If we can go back up to
04:04:31 20 the original quote.

04:04:34 21 (Witness reviews document).

04:04:40 22 If I understand your question
04:04:42 23 correctly, you're equating "backsliding" with
04:04:44 24 "disappearing", and that's not what this sentence
04:04:48 25 says:

04:04:48 1 "Methodists' conversions
04:04:48 2 professed slowly and suffered
04:04:48 3 attrition from a distressing amount
04:04:48 4 of 'backsliding' despite the fanfare
04:05:00 5 and publicity given to their
04:05:01 6 successes in the late 19th century."

04:05:09 7 So I'm not surprised, I would not
04:05:11 8 dispute the notion that there was attrition and
04:05:13 9 backsliding.

04:05:15 10 The fact remains, a number of
04:05:18 11 Anishinaabe in Upper Canada and Canada West stayed
04:05:24 12 faithful to their Methodist conversion and faith
04:05:28 13 and mission and objectives, so it certainly did not
04:05:33 14 disappear.

04:05:35 15 BY MR. TOWNSHEND:

04:05:35 16 Q. I didn't mean "disappear", I meant
04:05:38 17 on an individual basis --

04:05:40 18 THE COURT: You said "disappear". So
04:05:42 19 if you didn't mean it, perhaps you could restate
04:05:46 20 your question.

04:05:48 21 BY MR. TOWNSHEND:

04:05:54 22 Q. "Backsliding" suggests that
04:05:56 23 certain Anishinaabe people were converted and the
04:06:00 24 conversion for certain of them didn't stay?

04:06:03 25 A. Not completely. Backsliding

04:06:06 1 doesn't necessarily mean you reject your faith
04:06:10 2 completely.

04:06:12 3 Q. By that, you mean Methodists
04:06:15 4 didn't?

04:06:15 5 A. In this particular context, yes.
04:06:18 6 But I would argue in most Protestant -- anyway --
04:06:48 7 faiths, "backsliding" is a common term and often
04:06:28 8 can refer to a temporary turning away, and a
04:06:34 9 potential for returning.

04:06:36 10 Doesn't necessarily imply a complete
04:06:42 11 rejection of that faith. And I'm speaking actually
04:06:46 12 now not as an expert, but just from what I
04:06:51 13 generally know about Protestantism and the term
04:07:00 14 "backsliding".

04:07:01 15 Q. From the second bit of it, it
04:07:04 16 sounds like something more than temporary. When
04:07:09 17 Egerton Ryerson Young concluded "conversion efforts
04:07:11 18 were the most humiliating and unsatisfactory
04:07:14 19 chapters in the history of missions". That sounds
04:07:17 20 more than a temporary slide to me.

04:07:23 21 A. Well, certainly he, in this
04:07:24 22 paragraph, sounds very disappointed, and dismayed
04:07:31 23 at what in the end transpired from the Methodist
04:07:36 24 mission efforts of Indigenous peoples.

04:07:42 25 So he's very -- I would say he sounds

04:07:46 1 very -- he's humiliated and dissatisfied.

04:07:51 2 Q. What I'm suggesting this is an
04:07:53 3 example of, is that if at some point it looks like
04:07:59 4 everyone is on board with a Methodist agenda, it
04:08:04 5 doesn't mean that's going to stick. It doesn't
04:08:07 6 mean that's very deep. Is that a fair comment?

04:08:11 7 A. It may mean that.

04:08:13 8 Q. I'll leave it at that, thank you.

04:08:38 9 I want to talk about ethnonyms now, the
04:09:03 10 names of the Indigenous groups.

04:09:04 11 A. Okay.

04:09:05 12 Q. So let's start at Volume 1 of your
04:09:14 13 report, which is Exhibit 4576. And starting at
04:09:23 14 page 19, PDF 32.

04:10:15 15 MR. TOWNSHEND: Pardon me that doesn't
04:10:17 16 seem to be the right page, if you give me a moment.

04:11:38 17 Pardon me, I was in the wrong...

04:11:40 18 BY MR. TOWNSHEND:

04:11:41 19 Q. So the report line 1, page 19,
04:11:56 20 that I'm looking at. This is the section called
04:12:07 21 2.2.2 "The Ojibway".

04:12:10 22 Now, throughout this section, you
04:12:13 23 repeatedly cite Theresa Schenck's article
04:12:18 24 identifying Ojibway; is that right? An example at
04:12:32 25 footnote 68, 78, 81, 82, 83, 84.

04:12:39 1 I want to go to that Schenck article,
04:12:42 2 which is Exhibit 4628. This is an article by
04:13:08 3 Theresa Schenck "Identifying the Ojibwa". And this
04:13:13 4 was presented at the Algonquian conference in 1994.

04:13:25 5 Bottom of the first page, it's
04:13:27 6 recording that the French first met -- I'll let you
04:13:33 7 read the bottom of page 395 there.

04:13:46 8 A. (Witness reviews document). Okay.
04:13:47 9 THE COURT: I haven't been able to see
04:13:49 10 it.

04:13:50 11 MR. TOWNSHEND: Pardon me.

04:13:51 12 THE COURT: It seems to be stopping in
04:13:52 13 the middle of a sentence.

04:13:54 14 MR. TOWNSHEND: It continues on
04:13:57 15 page 396.

04:14:01 16 THE COURT: Oh, I see. It's just not
04:14:03 17 part of the same box; is that the issue?

04:14:06 18 MR. TOWNSHEND: Yes.

04:14:11 19 THE COURT: All right.

04:14:16 20 BY MR. TOWNSHEND:

04:14:16 21 Q. So here. It's recording that the
04:14:19 22 French first met people from Sault Ste. Marie in
04:14:23 23 1742 on the east shore of Georgian Bay and were
04:14:28 24 invited to visit with them in Sault Ste. Marie.

04:14:31 25 A. 1642.

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Q. Pardon me. 1642.

They met people, invited them to visit them at Sault Ste. Marie and they called them "Saulteurs".

A. Yes.

THE COURT: Can you expand this, please, so it's readable, for me at least. Perhaps the witness can read it.

THE WITNESS: (Witness reviews document).

BY MR. TOWNSHEND:

Q. If we now go to the bottom of 396 there is a paragraph that starts "By 1667 [...]" and it will continue on to the next page, if you can read that, please.

A. (Witness reviews document).

Okay to the top of the next page, please.

(Witness reviews document). Okay.

Q. So by 1667, French realized Saulteurs were called Ojibwa by other groups or some variant of that and the French called them that sometimes?

A. Yes.

Q. And it goes on to say that, so in

04:17:01 1 the 17th century only those at Sault Ste. Marie
04:17:03 2 were called Ojibwa?

04:17:05 3 A. That's what Schenck concludes,
04:17:08 4 yes.

04:17:10 5 Q. Do you take any issue with that?

04:17:12 6 A. No.

04:17:13 7 Q. Now if we go to page 399. It's
04:17:28 8 not the -- it's the sentence "Among the Ojibwa
04:17:35 9 Sault Ste. Marie".

04:17:37 10 "Among the Ojibwa of Sault Ste.
04:17:38 11 Marie the preeminent role of the
04:17:41 12 crane totem was always recognized"?

04:17:44 13 A. Yes.

04:17:44 14 Q. Do you agree with that?

04:17:46 15 A. Yes, I do.

04:17:52 16 Q. And go back to 397 for a minute.
04:18:13 17 Yes, at the top there:

04:18:16 18 "Other Anishinaabe groups on
04:18:19 19 Georgian Bay, at that time, recalled
04:18:20 20 other things, usually totem names
04:18:23 21 like Amikouet for beaver, and
04:18:26 22 Niquoquit for otter..."

04:18:27 23 THE COURT: Where are you reading from,
04:18:29 24 sir? I'm on 397 on the screen.

04:18:33 25 MR. TOWNSHEND: Yeah.

04:18:36 1 THE COURT: There is a boxed section,
04:18:38 2 which is not what you're reading.
04:18:40 3 BY MR. TOWNSHEND:
04:18:42 4 Q. The third line of that.
04:18:44 5 "It is also clear this early
04:18:46 6 period, the Saulteurs were the only
04:18:48 7 Ojibwe, the Noquets were Noquets,
04:18:53 8 and Amikouets were Amikouets, and
04:18:56 9 Mississauga were Mississauga. And
04:18:58 10 so they remained throughout the 17th
04:19:00 11 century."
04:19:04 12 So these names, your understanding that
04:18:54 13 Amikouet is a clan name for Beaver?
04:19:15 14 A. Yes.
04:19:16 15 Q. And Niquoquit; it doesn't say
04:19:25 16 Niquoquit there. I'll leave it there.
04:19:27 17 They were called other things, and
04:19:31 18 these names, some of them anyway, are totem names?
04:19:36 19 A. Yes, I would agree.
04:19:44 20 Q. If you go to page 400 of this
04:19:47 21 article, which is PDF 4.
04:19:57 22 So the paragraph that begins,
04:20:02 23 "Tradition and the historical record [...]"
04:20:11 24 A. (Witness reviews document).
04:20:13 25 Yes.

04:20:22 1 Q. So the group called "Ojibwa" in
04:20:26 2 the 17th century was quite small. Are they talking
04:20:30 3 150 people there?

04:20:56 4 A. Yes.

04:20:56 5 Q. So the next section is fairly --
04:20:58 6 it's fairly long here, but it's 400 and 401 and --

04:21:09 7 THE COURT: I know your team is trying
04:21:10 8 to do what you want, but it's not helpful when it's
04:21:14 9 swimming around as it is. I think this particular
04:21:17 10 article is just difficult because it's two pages
04:21:19 11 per page, if you will. And it's having an
04:21:24 12 unpleasant effect, if you will.

04:21:27 13 MR. TOWNSHEND: I think I'll ask my
04:21:30 14 question and then let Dr. Reimer read --

04:21:33 15 THE COURT: If there's something she
04:21:35 16 needs to read, the one option is she can read it
04:21:35 17 after court for tomorrow morning. It's up to you,
04:21:42 18 sir, if it's a very long passage.

04:21:44 19 BY MR. TOWNSHEND:

04:21:45 20 Q. Doctor, you're familiar with this
04:21:46 21 article; you've cited it?

04:21:48 22 A. Yes. Although it's been a number
04:21:50 23 of years that I've read through it, so.

04:21:52 24 Q. Let me ask the question and see if
04:21:57 25 you can answer it. If you need to read a lot, then

04:22:00 1 we can deal with that.

04:22:01 2 A. Okay.

04:22:02 3 Q. In these next few pages, I would
04:22:04 4 suggest that Schenck is saying many allied groups
04:22:09 5 became called "Ojibwa" --

04:22:11 6 A. Yes.

04:22:12 7 Q. -- they were not initially?

04:22:13 8 A. Yes, I would agree.

04:22:14 9 Q. And they continued to call
04:22:18 10 themselves "Anishinaabe", and continued to identify
04:22:21 11 by their totem?

04:22:21 12 A. Yes.

04:22:24 13 Q. Okay. You don't have to read
04:22:27 14 that.

04:22:28 15 A. Okay.

04:22:48 16 Q. And then on page 401, there's a
04:22:57 17 paragraph that begins "By 1680 [...]".

04:23:05 18 THE COURT: I assume we should be
04:23:06 19 disregarding the extensive handwritten marks on
04:23:09 20 this document, sir?

04:23:10 21 MR. TOWNSHEND: Yes, they were there
04:23:12 22 when I --

04:23:14 23 THE COURT: Sir, I didn't ask anything
04:23:16 24 about them, like how they got there. But we will
04:23:21 25 disregard them, yes?

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MR. TOWNSHEND: Yes, please.

THE COURT: All right.

BY MR. TOWNSHEND:

Q. The paragraph that begins "By
1680 [...]"

MR. TOWNSHEND: Pardon me, Your Honour.
I'm having a little difficulty, we're five minutes
before close. Can I suggest we break for the day?

THE COURT: That will be fine.

Dr. Reimer, will remember that she's
not going to be engaging in any way in these
matters overnight and we will adjourn.

-- Court adjourned at 4:24 p.m.

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REPORTER'S CERTIFICATE

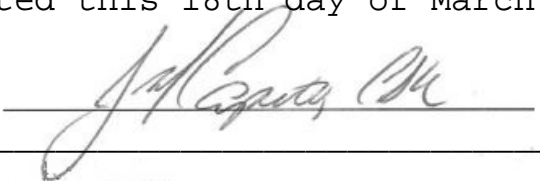
I, JUDITH M. CAPUTO, RPR, CSR, CRR,
Certified Shorthand Reporter, certify;

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

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

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

Dated this 18th day of March, 2020.



NEESONS, A VERITEXT COMPANY

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

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