

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

DAY 89 VOL 89
March 04, 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
7 Plaintiffs

8 - and -

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

18 Court File No. 03-CV-261134CM1

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

20 CHIPPEWAS OF NAWASH UNCEDED FIRST NATION and
21 SAUGEEN FIRST NATION

22 Plaintiffs

23 - and -

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

Defendants

26 --- This is the VOLUME 89/DAY 89 of the trial
27 proceedings in the above-noted matter, being held at
28 the Superior Court of Justice, 330 University Avenue,
29 Courtroom 5-1, Toronto, Ontario, on the 4th day
30 of March, 2020.

31 B E F O R E:

32 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 & Benjamin Brookwell, Esq., The Chippewas of
5 & Krista Nerland, Esq., Saugeen First Nation,
6 and the Chippewas of
7 Nawash First Nation.

8

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

13

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

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22 REPORTED BY: Judith M. Caputo, RPR, CSR

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I N D E X

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DR. GWEN REIMER

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09:52:38 1 -- Upon commencing at 10:14 a.m.

10:16:25 2

10:16:29 3 THE COURT: Please go ahead.

10:16:31 4 DR. GWEN REIMER: PREVIOUSLY SWORN.

10:16:31 5 CROSS-EXAMINATION BY MR. TOWNSHEND (CONT'D):

10:16:32 6 Q. Good morning, Dr. Reimer.

10:16:34 7 A. Good morning.

10:16:35 8 Q. Yesterday we were in the midst of
10:16:40 9 discussing an article which is Exhibit 4628 called
10:16:46 10 "Identifying the Ojibwa" by Theresa Schenck.

10:16:50 11 At the close of yesterday, I believe
10:16:54 12 you had agreed with me, based on this article, that
10:16:57 13 there were many allied groups who were not earlier
10:17:02 14 called Ojibwa who became called Ojibwa as time went
10:17:07 15 on?

10:17:07 16 A. What do you mean by "allied"?

10:17:10 17 Q. Well, that was going to be my
10:17:12 18 follow up question.

10:17:13 19 A. Okay.

10:17:14 20 Q. My follow up question is that in
10:17:15 21 the context of this article by Theresa Schenck, she
10:17:19 22 seemed to be talking about "allies" as allied in
10:17:23 23 the Iroquoian war and resisting the Iroquois?

10:17:27 24 A. I don't recall that being an
10:17:31 25 aspect of her analysis. I know that she is

1 speaking to Algonquian groups but whether or not
2 she connects them as, or identifies them as allies
3 during the Beaver Wars -- do you have an instance
4 in this article where she refers specifically to
5 that?

6 Q. Well, on page 400 of that article,
7 bottom paragraph, the paragraph begins:

8 "In 1653 a group of Saulteurs,
9 Mississauga, Nipissing, Amikouet and
10 Atchiligouan joined together near
11 Sault Ste. Marie to go the aid of
12 the Ottawa and the Huron who were
13 being pursued by Iroquois."
14 It's the general context of the
15 article.

16 A. Okay. I see that, I agree.

17 Q. So I now want to go to
18 Exhibit 4245 now, please.

19 This is an article published in
20 "Ethnohistory" by Adolph Greenberg and James
21 Morrison called, "Group Identities in the Boreal
22 Forest: The Origin of the Northern Ojibwa".

23 And this is an article you refer to in
24 your report?

25 A. Yes.

10:19:12 1 Q. If we can go to the next page, I
10:19:15 2 just want to blow it up, just the abstract.

10:19:42 3 A. (Witness reviews document).
10:19:43 4 I've read it.

10:19:44 5 Q. Okay. So would it be a fair
10:19:47 6 summary to say that this article tells a similar
10:19:51 7 story, only this time in relation to groups to the
10:19:54 8 north and west of Lake Superior? That people in
10:19:57 9 the 17th century who were called names like
10:20:02 10 Kilistinon, Cree, Monsoni, Muskego and Gens des
10:20:05 11 Terres are now called Ojibwa, in this case northern
10:20:08 12 Ojibwa.

10:20:11 13 A. Yes. And Theresa Schenck's
10:20:13 14 article in the '90s builds on the work that was
10:20:16 15 started by Greenberg and Morrison. So the answer
10:20:20 16 would be, yes, I agree.

10:20:28 17 Q. And part of their key reasoning --
10:20:31 18 maybe we should go to the concluding paragraph of
10:20:34 19 that, which is on page 91 of the article. And at
10:21:06 20 the bottom of the page, the first paragraph of the
10:21:10 21 conclusion there, if you could review that.

10:21:15 22 A. (Witness reviews document).
10:21:17 23 Okay.

10:21:46 24 Q. Would it be a fair summary that
10:21:47 25 one of their key reasonings is it is far more

10:21:51 1 likely there is a shift in the names that people
10:21:53 2 are called rather than some massive population
10:21:56 3 explosion of the Ojibwa?

10:21:57 4 A. Yes, that's what Greenberg and
10:21:59 5 Morrison are arguing. And this was part of a
10:22:03 6 fairly active academic debate at the time between
10:22:09 7 Bishop and Greenberg and Morrison, about the
10:22:13 8 emergence and the population growth of Ojibwa.

10:22:16 9 And Bishop argued that it was an actual
10:22:19 10 population displacement. And Greenberg and
10:22:23 11 Morrison, and then later Schenck, argue that it's
10:22:26 12 more plausible that it was transference of name as
10:22:33 13 opposed to actual population.

10:22:35 14 Q. So today, I don't know that you
10:22:51 15 have the population figures at your hand, but I'm
10:22:53 16 sure you know there are many, many Ojibway people,
10:22:57 17 probably a hundred thousand in Canada?

10:22:58 18 A. There's many, yes.

10:23:00 19 Q. So I suggest it's sensible that
10:23:02 20 not all of them originated from the original 150
10:23:05 21 that were called Ojibwa at Sault Ste. Marie?

10:23:08 22 A. I think there's a good argument
10:23:10 23 for exactly that, yes. I tend to agree with the
10:23:15 24 Greenberg, Morrison and Schenck reasoning.

10:23:19 25 Q. Now let's look at the "Odawa"

1 name. In the middle of the 17th century, the
2 French were calling a whole lot of people Odawa.
3 Essentially, any Algonquian groups in the Great
4 Lakes they tended to call "Odawa"; do you agree
5 with that?

6 A. I'm not sure, actually.

7 Q. Okay. Let's go to Exhibit 189.

8 This is from the Jesuit Relations,
9 Volume 51.

10 THE COURT: You said it's from the
11 Jesuit Relations, Volume 51?

12 MR. TOWNSHEND: Yes.

13 THE COURT: What is that? A name of a
14 book?

15 MR. TOWNSHEND: Well, I'll --

16 THE COURT: Can you describe the
17 exhibit, sir? Better describe the exhibit?

18 MR. TOWNSHEND: The Jesuit Relations is
19 a collection of --

20 THE COURT: I'm not asking you to give
21 evidence. You should properly describe what we're
22 looking at here.

23 MR. TOWNSHEND: It is a excerpt of
24 Jesuit Relations, Volume 51.

25 THE COURT: Dated?

10:24:54 1 MR. TOWNSHEND: This is the Relation of
10:24:58 2 1666.

10:24:58 3 THE COURT: Is that the date of the
10:24:59 4 book, sir?

10:25:01 5 MR. TOWNSHEND: No, that's the date of
10:25:02 6 the topic. This particular book is a
10:25:07 7 re-publication in the 20th century.

10:25:27 8 THE COURT: Well, it's not very clear
10:25:29 9 but if the witness knows, that's the main thing, so
10:25:32 10 please go ahead.

10:25:39 11 BY MR. TOWNSHEND:

10:25:39 12 Q. Maybe it would help the record if
10:25:42 13 you explained what the Jesuit Relations are?

10:25:45 14 A. The Jesuit Relations originated as
10:25:47 15 letters between Jesuits in what is now known as
10:25:51 16 Canada and their superiors in France. The word
10:25:56 17 "relations" refers to relating information, or the
10:26:00 18 letters and reports that they sent back.

10:26:03 19 Originally they were all written in
10:26:05 20 French. And in the 20th century, the entire
10:26:10 21 collection was translated into English by an
10:26:15 22 individual whose first name I forget. His last
10:26:19 23 name is Thwaites. T-H-W-A-I-T-E-S.

10:26:24 24 There are 73 volumes, thousands of
10:26:28 25 pages, and they've become a landmark set of

1 documents relied on by ethnohistorians for the
2 period of the 1600s and initial European contact in
3 what is now Ontario and Québec.

4 Q. Okay.

5 A. So just to situate this particular
6 one. Of the 73 volumes, this is volume number 51,
7 and then they're all dated so you can see at the
8 top, Relation of 1666 to '67.

9 Q. Now the paragraph I wanted to draw
10 your attention to was the second paragraph which is
11 underneath the green box. Which concludes that:

12 "[...] all with traces of
13 French, although of widely different
14 nations, bear the general name of
15 'Outaouacs' under whose auspices
16 they make the journey."

17 A. Yes.

18 Q. Also go to Exhibit 199. I would
19 like to go to page 127. This is another volume
20 from the Jesuit Relations, Volume 54.

21 And this is -- this is chapter ten of
22 the missions to the upper Algonquians and the first
23 couple of paragraphs in there is -- if you can
24 review that?

25 A. (Witness reviews document).

1 Okay, I've read it.

2 Q. I started off asking to

3 acknowledge if in the mid-17th century the French
4 tended to call all Algonquian groups in the Great
5 Lakes "Odawa". This seems to say that?

6 A. They were commonly referred to as
7 "Odawa", or some variation of that, yes.

8 Q. Now today, if you look at people
9 in Canada who identify as Odawa, are you familiar
10 with --

11 A. Sorry, can you repeat the
12 question?

13 Q. With whom in Canada today
14 identifies as Odawa?

15 THE COURT: Mr. Ogden?

16 MR. OGDEN: Your Honour, this witness
17 is not qualified to provide evidence about the
18 description of Indigenous communities today,
19 particularly the Odawa.

20 THE COURT: Mr. Townshend, why should
21 this witness be proffering evidence about
22 population statistics in 2020 for the --

23 MR. TOWNSHEND: I wasn't asking for
24 statistics.

25 THE COURT: Well, it's the same thing,

10:30:12 1 sir.

10:30:13 2 MR. TOWNSHEND: Pardon me?

10:30:14 3 THE COURT: Why don't I just check your
10:30:17 4 question.

10:30:28 5 You were asking if the witness was
10:30:30 6 familiar with the people in Canada today who
10:30:33 7 identify as Odawa. How does that fall within this
10:30:36 8 witness's tender?

10:30:39 9 MR. TOWNSHEND: Well, a key part of Dr.
10:30:46 10 Reimer's thesis, as I understand it, is that the
10:30:52 11 current Saugeen people are not continuous with the
10:31:01 12 various 17th-century groups.

10:31:04 13 So she's talking about Saugeen today --

10:31:08 14 THE COURT: This question doesn't say
10:31:10 15 that, sir. That wasn't your question. Perhaps you
10:31:15 16 should restate your question and the witness can
10:31:19 17 pause. It does look like it was interrupted at
10:31:21 18 some point in the process.

10:31:22 19 What was your question, sir?

10:31:25 20 BY MR. TOWNSHEND:

10:31:26 21 Q. My question is, there are
10:31:29 22 relatively few people today who identify as Odawa
10:31:32 23 in Canada?

10:31:34 24 THE COURT: All right, just stopping
10:31:35 25 there, that gets back to what I thought you were

1 asking about, which is population numbers. And why
2 do you say this witness is qualified to give
3 population numbers for the Odawa in Canada today?

4 MR. TOWNSHEND: Well, the discipline of
5 ethnohistory includes looking at the present to
6 understand the past. There's been evidence to that
7 effect in this case.

8 THE COURT: And you say looking at the
9 present to understand the past includes knowing the
10 numerical population of the Odawa today in Canada?

11 I point out that that that was the
12 question. It wasn't the Saugeen, or Bruce, or
13 Ontario or anything like that.

14 MR. TOWNSHEND: Well, we were talking
15 about, a minute ago, the name Ojibwa spreading from
16 its original source.

17 THE COURT: We've moved on from that.

18 MR. TOWNSHEND: I want to now talk
19 about the name "Odawa" shrinking from its original
20 use.

21 THE COURT: That's what you want to
22 talk about; that wasn't the problem. The problem
23 was the question. Which has changed again.

24 Mr. Ogden, do you have any difficulty
25 with the current question, which just changed from

1 the outset?

2 MR. OGDEN: What is the current
3 question? I'm sorry, Your Honour.

4 THE COURT: It is a little unclear.
5 Mr. Townshend, would you please state
6 your question?

7 MR. TOWNSHEND: The issue I'm trying to
8 get at --

9 THE COURT: That's not what you were
10 asked to do, sir. You were asked to restate your
11 question.

12 MR. TOWNSHEND: Yes.

13 I was trying to explain the relevance
14 of that question.

15 THE COURT: We'll get to that if
16 necessary, but what's the question?

17 It's had a few different formulations.

18 BY MR. TOWNSHEND:

19 Q. Well, I can ask then, not all
20 those, if, Dr. Reimer, if you agree that not all
21 those who identified as Odawa, who were called as
22 Odawa by others in the 17th century, are now called
23 Odawa?

24 THE COURT: Okay, pause.

25 Mr. Ogden, do you have a problem with

10:34:20 1 that question?

10:34:21 2 MR. OGDEN: One minute, please, Your
10:34:24 3 Honour.

10:34:26 4 THE COURT: While you're considering
10:34:27 5 that...

10:35:13 6 -- OFF THE RECORD DISCUSSION --

10:35:16 7 THE COURT: Mr. Ogden?

10:35:17 8 MR. OGDEN: I do object, Your Honour.
10:35:19 9 There's nothing in the tender, or beyond that, the
10:35:21 10 expertise of this witness to indicate she has
10:35:25 11 expertise in who today is currently called Odawa or
10:35:30 12 identified as Odawa.

10:35:32 13 There's nothing in the evidence to
10:35:33 14 indicate that she has reviewed any links between
10:35:37 15 those who are called Odawa at the time of contact,
10:35:41 16 and other Indigenous people in Ontario who may be
10:35:46 17 called Odawa.

10:35:50 18 THE COURT: That's not specifically
10:35:51 19 there within the most recent formulation of the
10:35:54 20 question, which Mr. Townshend has now made
10:36:00 21 sufficiently of a general nature that I'm going to
10:36:03 22 permit it.

10:36:04 23 Mr. Townshend, I'm not inviting you to
10:36:07 24 change it again. You can obviously ask more
10:36:10 25 questions, but let me just find the question that

1 most recent formulation.

2 I'm going to read it, Dr. Reimer.

3 Dr. Reimer, would you agree that not
4 all those who identified as Odawa, who were called
5 Odawa by others in the 17th century, are now called
6 Odawa?

7 If you could answer that question,
8 please do so.

9 THE WITNESS: I consider the question
10 somewhat misconstrued in that it collapses about
11 200 years of history where initial -- where in the
12 initial decades of contact, a number of very
13 general assignments were used to identify
14 different Indigenous groups irrespective of how
15 these Indigenous groups might have self-identified.

16 As we go through those 200 years and
17 into the 18th century and 19th century, there are
18 more changes and more crystallizations and more
19 divisions and more amalgamations of groups.

20 So to make a direct connection between
21 who was considered or named "Odawa" in the 1600s,
22 and who might be named "Odawa" in the 19th century,
23 it's a complex question.

24 Do I agree that in the 17th century,
25 many different nations were referred to as the

1 Odawa by the French? Yes, I agree with that.

2 BY MR. TOWNSHEND:

3 Q. So do you agree that after the
4 17th century, the name shifted so that those who
5 were called Odawa became -- many who were called
6 Odawa then became called something else?

7 A. They may have, yes. Especially
8 during the course of the Iroquois or the Beaver
9 Wars, where there was considerable dispersal of
10 groups.

11 The combination of villages or of
12 various nations concentrating in single places,
13 intermarriage, some fission of groups, yes, it was
14 a period of immense change on a variety of levels
15 including identification and apparently some
16 self-identification as well by Indigenous groups.

17 Q. And those overlap with the groups
18 that Professor Schenck was talking about who became
19 known as Ojibwa?

20 A. Yes.

21 Q. And so you're agreeing some groups
22 were called "Odawa" in the 17th century are now
23 called "Ojibwa"?

24 A. They may have been.

25 Q. All right. I want to shift more

1 specifically to the Saugeen. So can I have
2 document S1767, please.

3 This is a book called, "I Am Nokomis,
4 Too: The Biography of Verna Patronella Johnston,
5 by Rosamond Vanderburgh". It doesn't say "Rosamond
6 Vanderburgh" on the cover page. Maybe it says it
7 on the next page.

8 There we are. And this would be
9 referred to in your report?

10 A. Yes.

11 MR. TOWNSHEND: Can we have that marked
12 as the next exhibit, please.

13 THE COURT: Mr. Registrar.

14 THE REGISTRAR: Exhibit No. 4733.

15 EXHIBIT 4733: Book entitled I Am
16 Nokomis, Too: The Biography of Verna
17 Patronella Johnston, by Rosamond
18 Vanderburgh.

19 BY MR. TOWNSHEND:

20 Q. If we go to the end of the book --
21 Rosamond Vanderburgh was a professor of
22 anthropology at the University of Toronto?

23 A. As far as I know, yes.

24 Q. If you go to the end of the book,
25 page PDF 131. And it says she has "related to

1 Verna Johnston at the Cape Croker community through
2 nearly a decade of field work".

3 Do you see that?

4 A. Yes, I do.

5 Q. If we go to page 9 of the PDF.

6 The PDF numbers correspond to the numbering on the
7 right side of the page, which is different than the
8 published page.

9 The middle paragraph on the right-hand
10 page there, if you could review that, please.

11 A. (Witness reviews document).

12 I've read it.

13 Q. So Professor Vanderburgh is
14 recounting that she cross-checked some of the
15 information she got from Verna Johnston with
16 Verna's family and with other members at Nawash?

17 A. At Cape Croker, yes.

18 Q. Which is now called "Nawash"?

19 A. Okay, yes.

20 Q. So now we go over on the left of
21 that page. If you look at the top, the first full
22 paragraph there.

23 A. (Witness reviews document).

24 I've read it.

25 Q. Okay. So in English, Verna

1 Johnston is identifying as Ojibwa; do you see that?

2 A. Yes.

3 Q. Now, if we go to PDF page 12.

4 That's beginning the chapter about her father's
5 people and I believe this is the story you referred
6 to in your report?

7 A. I'm just trying to remember where
8 in my report I referred to this publication. Do
9 you have it?

10 Q. If you -- page 190 of Volume 1 of
11 your report. It's footnote 748.

12 A. Oh, yes, I see it.

13 Q. So here you're referring to this
14 story of Verna's ancestors being Potawatomi from
15 Wisconsin who moved to Cape Croker?

16 A. Correct.

17 Q. Now if we go to PDF page 15. If
18 you look at the first full paragraph on the
19 left-hand side.

20 A. (Witness reviews document).
21 I've read it.

22 Q. So this is describing how the
23 Nadjiwon family joined and intermarried with the
24 local group?

25 A. Yes.

1 Q. And it names that group they
2 joined as an Ottawa group?

3 A. It does, yes.

4 Q. And names the Chief at Wahbahdick?

5 A. Correct.

6 Q. And that's the same Wahbahdick
7 that signed Treaty 72; do you agree with that?

8 A. Yes. Of the Wahbahdick clan,
9 Wahbahdick was the Chief, yes.

10 Q. So we have Verna Johnston, her
11 genealogical descent seems to be mixed Potawatomi
12 and Odawa; and she identifies in English as Ojibwa?

13 A. Yes.

14 Q. So that suggests to me the
15 distinctions between Ojibwa, Odawa and Potawatomi
16 are quite fluid?

17 A. Well, so for Verna Johnston they
18 certainly are, yes.

19 Q. Now I want to also look at the --
20 some articles in the Trigger, Handbook of North
21 American Indians. And we've had a number of these
22 before, and I want to look at four of them in
23 comparison.

24 One of them is Ed Rogers' article on
25 "Southeastern Ojibwa", which is Exhibit 3998.

10:48:33 1 One of them is an article by Feest and
10:48:39 2 Feest called "Odawa", which is Exhibit 4589.

10:48:45 3 One of them is an article by Robert
10:48:48 4 Ritzenthaler on "Southwestern Chippewa", which is
10:48:51 5 document S1444, which I'd like to make an exhibit.

10:49:03 6 THE COURT: I heard your description of
10:49:05 7 an article, but you did not say anything about the
10:49:07 8 exhibit.

10:49:08 9 Is it an excerpt? Is it the entirety
10:49:10 10 of the document? What is its date and so forth?

10:49:14 11 MR. TOWNSHEND: It's the article called
10:49:16 12 "Southwestern Chippewa" which is included in the
10:49:18 13 Handbook of North American Indians.

10:49:22 14 THE COURT: I understand that, sir.
10:49:23 15 What is the date of the document; you want it to be
10:49:28 16 made as an exhibit?

10:49:30 17 MR. TOWNSHEND: Yes.

10:49:31 18 THE COURT: It's just a routine.

10:49:43 19 MR. TOWNSHEND: It's a 1978 book.

10:49:45 20 THE COURT: The 1978 handbook.

10:49:48 21 MR. TOWNSHEND: Yes, Handbook of North
10:49:51 22 American Indians.

10:49:51 23 THE COURT: Okay, Mr. Registrar?

10:49:53 24 THE REGISTRAR: Exhibit No. 4734.

10:49:57 25 EXHIBIT NO. 4734: Article entitled

10:49:16 1 "Southwestern Chippewa" by Robert
10:49:18 2 Ritzenthaler, included in the Handbook
10:49:58 3 of North American Indians dated 1978.
10:49:58 4 MR. TOWNSHEND: And the final one is
10:49:59 5 the article by Gordon Day called "Nipissing" in the
10:50:04 6 same book, and that article is S0451.
10:50:17 7 I'd also like that marked as an
10:50:19 8 exhibit.
10:50:19 9 THE COURT: Mr. Registrar?
10:50:21 10 THE REGISTRAR: Exhibit No. 4735.
10:50:24 11 EXHIBIT NO. 4735: Article called
10:50:24 12 "Nipissing" by Gordon Day, included in
10:49:18 13 the Handbook of North American Indians
10:50:32 14 dated 1978.
10:50:32 15 BY MR. TOWNSHEND:
10:50:32 16 Q. Now what I want to do is look at
10:50:34 17 how these four articles interact with each other
10:50:37 18 and I want to focus on the group at the northeast
10:50:42 19 corner of Georgian Bay, at the mouth of the French
10:50:50 20 River. So if we can go to Ed Rogers' article,
10:50:55 21 which is Exhibit 3998, to start.
10:51:03 22 And there's a map later on that page,
10:51:07 23 if we go to the next page. Yes, the top of the
10:51:10 24 next page.
10:51:12 25 MR. TOWNSHEND: Can we make that map

10:51:14 1 bigger?

10:51:18 2 BY MR. TOWNSHEND:

10:51:18 3 Q. So can you locate the mouth of the
10:51:22 4 French River there?

10:51:23 5 A. Yes.

10:51:24 6 Q. And you'll see that there's a
10:51:26 7 triangle icon there?

10:51:30 8 A. Yes.

10:51:30 9 Q. And in the legend that says "Named
10:51:35 10 route presumably Ojibwa, about 1650"?

10:51:39 11 A. Yes.

10:51:39 12 Q. Yeah. So Ed Rogers is saying the
10:51:45 13 people at that location are Southeastern Ojibwa?

10:51:50 14 A. Presumably.

10:51:53 15 Q. Now, if we go to the Feest and
10:51:59 16 Feest article on Ottawa, which we just made an
10:52:02 17 exhibit --

10:52:03 18 A. Before we leave this, could I just
10:52:05 19 see the rest of the writing. I just wanted to read
10:52:14 20 the groups that he was including.

10:52:18 21 (Witness reviews document). All right,
10:52:45 22 thank you.

10:52:45 23 Q. Next I wanted to go to the Feest
10:52:51 24 and Feest article on the Ottawa, which is
10:52:57 25 Exhibit 4589. And if we go to the next page, I

10:53:08 1 guess.

10:53:25 2 So in the first paragraph he's
10:53:27 3 describing the Ottawa as being located on
10:53:35 4 Manitoulin, adjacent parts of Bruce Peninsula and
10:53:37 5 probably the north and east shores of Georgian Bay?

10:53:42 6 A. Yes, I see that.

10:53:43 7 Q. And he also says further down that
10:53:54 8 page, the paragraph starts, "It's sometimes
10:53:58 9 difficult. He says:

10:54:00 10 "It is sometimes difficult to
10:54:01 11 separate the Ottawa from their
10:54:03 12 neighbors."

10:54:05 13 A. Yes, I see that.

10:54:06 14 Q. He goes on in that paragraph and
10:54:08 15 talks about the way Ottawa has been used
10:54:11 16 differently over the years?

10:54:13 17 A. Yes.

10:54:15 18 Q. And bottom of that page, bottom of
10:54:19 19 that paragraph, if you scroll down a bit -- okay,
10:54:25 20 sorry.

10:54:25 21 He's saying that in the 19th and 20th
10:54:31 22 centuries, those Ottawas living near or with
10:54:34 23 Chippewas or Potawatomi cannot be clearly
10:54:37 24 distinguished except on the basis of
10:54:40 25 self-identification?

10:54:43 1 A. Yes, I see that.

10:54:44 2 Q. And further on the top of the next
10:54:48 3 column, in the middle of that section, he's saying
10:54:56 4 that:

10:54:59 5 "Equations of historic tribes
10:55:01 6 and prehistoric cultures must
10:55:04 7 therefore largely remain guesswork
10:55:08 8 [...]."

10:55:10 9 A. Yes.

10:55:14 10 Q. Just to close the loop, the way he
10:55:17 11 describes the location of the Ottawa, the north and
10:55:19 12 east shores of Georgian Bay, would include the
10:55:22 13 mouth of the French River. Would you agree with
10:55:24 14 me?

10:55:24 15 A. I'm sorry I'm trying to find that.
10:55:27 16 I know I've read it...

10:55:28 17 Q. It's at the very top?

10:55:31 18 A. "North and east shores of Georgian
10:55:34 19 Bay", yes, I agree.

10:55:35 20 Q. Now, if we can go to the article
10:55:41 21 on the Nipissing by Day, which we just made an
10:55:45 22 exhibit, 4735.

10:56:09 23 If we look at the map on the right-hand
10:56:12 24 column, if you can blow that up. It looks like he
10:56:21 25 has shown the range of the Nipissing in the shaded

1 area, centered on Lake Nipissing and seeming to go
2 to the mouth of the French River; do you agree with
3 that?

4 A. That's the top map?

5 Q. Yes.

6 A. That circular area?

7 Q. Yes.

8 A. (Witness reviews document). Yes.

9 Q. Now I want to go to the
10 Ritzenthaler article, which we've just made an
11 exhibit. Which is 4734.

12 And although he's writing on the
13 southwest Chippewa, he's making some more general
14 statements. If we can scroll down on that page,
15 there is a line that starts "1962:" It goes on:

16 "The following groups, and
17 there may have been others, are
18 recorded for the mid-17th century."

19 And it lists a number of names.

20 It goes on to say:

21 "Some of the less well-known of
22 these groups who lived along the
23 eastern and northern shore of
24 Georgian Bay prior to 1650 have also
25 been classified as Ottawa and it's

1 possible that some of them were
2 Nipissing. There's simply not
3 enough data to resolve this
4 problem."

5 A. Yes, I see that.

6 Q. So, looking at these four
7 different articles talking about mouth of the
8 French River, would it be fair to say that even
9 when apparent distinctions are made between Ojibwa
10 and Ottawa, there's considerable uncertainty about
11 that among scholars?

12 A. In the 17th century, certainly.

13 Q. If we can go back to the Ed Rogers
14 article, which is Exhibit 3998. And this time I
15 want to focus on Parry Island.

16 MR. TOWNSHEND: And if we can make that
17 map bigger again, please. Especially the caption
18 of the map. Can we just scroll down to the caption
19 of the map.

20 BY MR. TOWNSHEND:

21 Q. You'll see that he's naming as
22 Southeastern Ojibwa locations, and if we get down
23 to number eight, he's got Parry Island?

24 A. Yes, I see that.

25 Q. And then if we go back to the

1 Feest and Feest article on Ottawa, which is
2 Exhibit 4589, and go to page 778 of that article.

3 Which is another map, and I also need
4 the caption enlarged so you can read it better.

5 So Figure 5 caption is "Ottawa
6 territories of the Great Lakes during the
7 Anglo-American period", and when you get down to
8 number 33 J, it names "Parry Island".

9 A. Yes, okay. I would just qualify
10 by stating that the authors state the village
11 location is tentative.

12 Q. On the same article, we go to
13 page 772 --

14 A. Excuse me, can I just take a look
15 at where 33 J is on the map? Just out of curiosity
16 I would like to see that. Right, okay. Fine.

17 Q. If we go to page 772 of that. On
18 the top of that page, right in the first sentence,
19 it says the Ottawa speak a Southeastern Ojibwa
20 dialect?

21 A. Yes.

22 Q. So I'm suggesting this is another
23 example of uncertainty about where to draw the line
24 between Ojibwa and Odawa.

25 A. I would suggest this is the

1 author's, perhaps, misapplication of the Ojibwa,
2 word Ojibwa. I would have -- I think it's more
3 accurate to say it was a Southeastern dialect of
4 Algonquian. But they've said Ojibwa, so -- sorry,
5 can you restate your question?

6 Q. My question is -- I think you
7 reinforced my question --

8 A. Okay.

9 Q. -- that there is some uncertainty
10 among scholars about distinguishing Ojibwa and
11 Odawa?

12 A. Yes.

13 Q. So I want to move to archaeology.
14 And I realize you've discussed your qualifications
15 in archaeology; they have some limitations. But
16 you've given archaeological opinions, so I wanted
17 to probe those.

18 So if we can start at Volume 1 of your
19 report, Exhibit 4576. Page 53, your archaeological
20 section begins.

21 So I just want to summarize what I
22 understand your opinions to be about the
23 archaeological evidence, and tell me if that's
24 fair. And if we need to break it down, we can
25 break it down, but I'll start with an overall.

1 If I understand it, you're concluding
2 that there's no evidence of Algonquian occupation
3 of Saugeen territory from about 900 AD to about
4 1500 AD, that the Odawa were in the area from about
5 1500 to 1650. The Odawa left about 1650 and then a
6 different Anishinaabe group returned sometime in
7 the late 17th century. Is that --

8 A. In a nutshell, that is fair.

9 Q. If I could go for a minute then to
10 Volume 2 of your report. Which is Exhibit 472.
11 And page Roman Numeral V. And the first bullet on
12 that page. If you could read the paragraph under
13 that bullet.

14 A. The first bullet?

15 Q. The first bullet saying "Expert
16 opinion in relation to Aboriginal use and control
17 of the lake claim area in the pre-to proto-historic
18 period, 900 to 1600 AD". If you would read the
19 paragraph under that?

20 A. (Witness reviews document). Okay.

21 Q. So I'm having trouble reconciling
22 that with the summary we just did.

23 This seems to be saying that there's a
24 consensus that Algonquian people used the waters
25 around the Bruce Peninsula in the period 900 to

11:07:19 1 1600.

11:07:21 2 A. Yes, I see the discrepancy here.

11:07:24 3 And I would need a minute to compare the two
11:07:29 4 volumes to be able to answer you more fully.

11:07:34 5 Q. Okay. Please take a minute.

11:07:35 6 A. (Witness reviews document).

11:07:49 7 Would it be possible for me to do this
11:07:51 8 during the break? It's a little less -- and we
11:07:54 9 pick it up afterwards? I ask only I be able to do
11:07:57 10 a more relaxed review.

11:08:04 11 Q. All right. I'll continue on with
11:08:07 12 the archaeology and then come back to that.

11:08:09 13 A. If I can just make a note to
11:08:11 14 myself. Thank you.

11:08:33 15 Q. So if we could go to page 57 of
11:08:40 16 your first report. In the top paragraph, you're
11:08:57 17 saying that Finlayson postulates the Saugeen
11:09:03 18 culture, i.e., the Donaldson site is an in-situ
11:09:09 19 development of the Archaic period population in the
11:09:12 20 area?

11:09:14 21 A. Yes.

11:09:15 22 THE COURT: Did you say page 57?

11:09:18 23 MR. TOWNSHEND: Yes.

11:09:20 24 THE COURT: That is not the page on the
11:09:22 25 screen. Which volume are you in?

11:09:27 1 MR. TOWNSHEND: We should be in
11:09:29 2 Volume 1.
11:09:32 3 THE COURT: Well, that is not page 57
11:09:34 4 of Volume 1, sir.
11:09:36 5 MR. TOWNSHEND: That's right, we're
11:09:37 6 fixing that.
11:09:50 7 THE COURT: I couldn't find what you
11:09:52 8 were saying.
11:09:52 9 MR. TOWNSHEND: This is the top
11:09:53 10 paragraph.
11:09:54 11 THE COURT: Where does it say
11:09:55 12 "postulated" something?
11:09:58 13 MR. TOWNSHEND: The fourth line from
11:09:59 14 the bottom.
11:10:04 15 THE COURT: Where it says "He later
11:10:06 16 postulated that [...]?"
11:10:09 17 MR. TOWNSHEND: Yes.
11:10:10 18 BY MR. TOWNSHEND:
11:10:14 19 Q. So just to keep the record clear,
11:10:20 20 I realize different archaeologists date things
11:10:24 21 differently. But when he's talking about Archaic
11:10:28 22 period, roughly speaking we're talking 8000 BC to
11:10:32 23 1000 BC?
11:10:34 24 A. You're challenging my own memory
11:10:37 25 of the dating. Could you had repeat that, please?

11:11:07 1 Q. I was just asking if you would
11:11:10 2 agree, when archeologists are talking about the
11:11:14 3 Archaic period, generally speaking they're talking
11:11:16 4 about somewhere around 8000 BC to 1000 BC.

11:11:21 5 A. You know, I would have to, I would
11:11:24 6 have to double check that. I can't confirm it off
11:11:28 7 the top of my head.

11:11:29 8 I was just looking at the paragraph
11:11:33 9 here, and Finlayson is dating the Donaldson site
11:11:42 10 from perhaps 500 BC to AD 100 to 200.

11:11:51 11 So if you want me to assume those are
11:11:53 12 the dates of the Archaic populations, I can build
11:11:56 13 on your assumption, but I can't confirm it without
11:12:06 14 going back and checking some of the archeological
11:12:09 15 sources that I refer to.

11:12:10 16 Q. When he's talking about an in-situ
11:12:15 17 development from the Archaic period, he's talking
11:12:19 18 about a period before when he's dated the Donaldson
11:12:23 19 site?

11:12:24 20 A. Yes, that I agree with.

11:12:25 21 Q. We're earlier than 500?

11:12:27 22 A. We're earlier than 500.

11:12:35 23 Q. Then another archeological term
11:12:39 24 that gets used a lot is "Middle Woodland"?

11:12:39 25 A. Yes.

11:12:41 1 Q. And Donaldson is an example of
11:12:44 2 that?

11:12:45 3 A. Yes.

11:12:45 4 Q. And, again, roughly speaking,
11:12:47 5 we're talking about maybe 300 BC to 500 AD?

11:12:51 6 A. Yes.

11:12:52 7 Q. Okay.

11:12:54 8 A. Or Finlayson dates it to possibly
11:12:57 9 100 to 200 AD.

11:13:00 10 Q. Yes, that's the Donaldson site?

11:13:02 11 A. Yes.

11:13:02 12 Q. I just meant the Middle Woodland
11:13:05 13 period is a bit broader than that?

11:13:08 14 A. Yes, you are correct.

11:13:10 15 Q. So if we go to document S0578,
11:13:20 16 this is the paper by Finlayson that you're
11:13:22 17 discussing.

11:13:42 18 This is a publication by Finlayson
11:13:45 19 called, "The Saugeen Culture: A Middle Woodland
11:13:49 20 Manifestation in Southwestern Ontario", and it's
11:13:52 21 dated 1977.

11:14:04 22 So if we go to page 644 of that
11:14:13 23 article, and starting at the bottom and over on to
11:14:18 24 the top, if you could read that paragraph that
11:14:20 25 spans 644-645.

11:14:26 1 A. (Witness reviews document). Okay.

11:14:50 2 Q. So Finlayson is actually saying

11:14:53 3 there is little doubt about the continuity between

11:14:57 4 the Archaic and the Middle Woodland period?

11:15:00 5 A. Yes.

11:15:00 6 Q. Do you agree with him on that

11:15:03 7 point?

11:15:03 8 A. I have to take his word for it.

11:15:06 9 Q. Okay. I want to move to the Late

11:15:32 10 Woodland period, and again to keep the record

11:15:38 11 clear, Late Woodland, generally speaking, refers to

11:15:44 12 somewhere approximately 800 AD until European

11:15:49 13 contact?

11:15:49 14 A. Yes.

11:15:50 15 Q. Now going back to page 57 of your

11:15:57 16 first report. I want to go to the second paragraph

11:16:15 17 there. And the middle of that paragraph you're

11:16:26 18 talking about an Iroquoian migration into the area

11:16:29 19 at approximately 1350?

11:16:31 20 A. Yes.

11:16:32 21 Q. Maybe -- we should probably make

11:16:37 22 this clear. The Donaldson site is on the Saugeen

11:16:41 23 River near the mouth?

11:16:42 24 A. Yes.

11:16:43 25 Q. So I gather this Iroquoian

1 migration is based on interpreting the Nodwell site
2 as Iroquoian, correct?

3 A. I can't answer that. I don't
4 know.

5 Q. What are you relying on for that
6 proposition?

7 A. Finlayson's analysis.

8 Q. So let's go to Finlayson's
9 reference at Exhibit 4590. And I want to go to
10 page 605 of that.

11 So the second paragraph there is the --
12 well, maybe just read the top paragraph and the
13 second paragraph, please.

14 A. (Witness reviews document). I've
15 read it.

16 Q. So here he's saying the fate of
17 the Saugeen culture is problematic because of the
18 lack of evidence of Late Woodland occupation. All
19 there is is a minor presence at Inverhuron-Lucas
20 and the village at Nodwell.

21 And he's relying on Wright for
22 that?

23 A. Correct.

24 Q. And so Wright interpreted Nodwell
25 as Iroquoian?

11:19:41 1 A. Yes.

11:19:42 2 Q. And that's the basis for the
11:19:45 3 theory of an Iroquoian migration in the area?

11:19:49 4 A. As described by Finlayson, yes.

11:20:00 5 Q. So let's go to Wright, if we go to
11:20:03 6 Exhibit 4247.

11:20:15 7 So this is another publication by J.V.
11:20:21 8 Wright called "The Nodwell Site" by the
11:20:26 9 Archaeological Survey of Canada. The date is 1974.

11:20:43 10 I want to go to page 304 of this. If
11:21:16 11 you could read the top part, well, the whole page
11:21:20 12 is one paragraph. If you read the top part of
11:21:23 13 that?

11:21:24 14 A. (Witness reviews document).

11:21:25 15 I've read it.

11:21:36 16 Q. So here -- oh, and we should
11:21:41 17 locate Nodwell. Nodwell is on the -- near the
11:21:47 18 shore of Lake Huron a bit south of the Saugeen
11:21:56 19 River. I think you may have a map that marked it.

11:22:03 20 A. I'm looking for that. Yes, on
11:22:07 21 page 60 of Volume 1 of my report, there's a map,
11:22:12 22 and number nine on the map is the Nodwell site, on
11:22:22 23 the shore of Lake Huron, maybe in the vicinity of
11:22:27 24 Goderich.

11:22:27 25 Q. Yes, if we can blow that up.

1 Well, that's much closer to Southampton than to
2 Goderich, isn't it?

3 A. Yes, it might be, yes.

4 Q. So back to the Wright publication.
5 He's positing there's an Iroquoian village at
6 Nodwell on the shore of Lake Huron. It's greater
7 than 100 kilometers away from any other such
8 village and which appeared suddenly and disappeared
9 suddenly and with no similar site in the region at
10 any time period?

11 A. Yes, I see that.

12 Q. Do you accept that?

13 A. Yes.

14 Q. Now if we can go then over to
15 page 306. And if you could read the first full
16 paragraph there.

17 A. (Witness reviews document).

18 Okay.

19 Q. So Wright considered it very
20 unusual behaviour that there would be such a
21 village, didn't he?

22 A. Yes.

23 Q. And he thought his explanation of
24 migration and abandonment was speculative?

25 A. Yes.

11:24:31 1 Q. He seems to have considered it
11:24:33 2 Iroquoian because it had longhouses?

11:24:35 3 A. Yes.

11:24:35 4 Q. And because of pottery styles?

11:24:37 5 A. Yes.

11:24:51 6 MR. TOWNSHEND: Your Honour, I'm in the
11:24:53 7 middle of quite a long section, but now may be a
11:24:57 8 better time than later to break.

11:24:58 9 THE COURT: All right. And the witness
11:25:00 10 asked if she could review certain things, and you
11:25:02 11 said that was fine with you.

11:25:04 12 So I think the witness knows what that
11:25:06 13 was at this point that she should review.

11:25:10 14 THE WITNESS: Yes.

11:25:11 15 THE COURT: 20 minutes.

11:25:11 16 -- RECESS TAKEN AT 11:25 --

11:47:40 17 -- UPON RESUMING AT 11:46 --

11:47:40 18 THE COURT: Please go ahead.

11:47:42 19 BY MR. TOWNSHEND:

11:47:43 20 Q. Dr. Reimer, you asked for some
11:47:45 21 time to review two pieces of your report, and make
11:47:49 22 further comments. Have you done that?

11:47:52 23 A. Yes, I've done the review and I am
11:47:55 24 ready to respond.

11:47:56 25 Q. Please.

11:47:56 1 A. The discrepancy is due to a lack
11:48:00 2 of precision on my part. So in Volume 2, page V
11:48:07 3 the first bullet, the subtitle of the first bullet
11:48:15 4 is "Expert opinion in relation to Aboriginal use
11:48:18 5 and control of the land claim area in the pre- to
11:48:23 6 proto-historic period". The date circa 900 to 1600
11:48:29 7 refers to those two periods, the pre- and
11:48:33 8 proto-historic period.

11:48:34 9 The actual paragraph underneath,
11:48:38 10 however, is in relation solely to the
11:48:43 11 proto-historic period, 1500 to 1615. And I failed
11:48:47 12 to make that clear in that executive summary
11:48:51 13 paragraph.

11:49:11 14 Q. All right. We were talking about
11:49:13 15 the Nodwell site, and I would like to talk more
11:49:17 16 about the Nodwell site.

11:49:19 17 And that's the article by J.V. Wright
11:49:24 18 that's still on the screen. So if we go to page 88
11:49:32 19 of that, please.

11:49:37 20 THE COURT: Just as you get going, Mr.
11:49:39 21 Townshend, I found this morning that you were very
11:49:41 22 difficult to hear partly because you are moving
11:49:44 23 around and not articulating your questions as a
11:49:51 24 sentence, and consulting with your colleagues.

11:49:55 25 You're free to move around and consult

1 with your colleagues, but when you get to the
2 questions I would appreciate it if you would
3 articulate them fully and keep your voice up.

4 MR. TOWNSHEND: Thank you, Your Honour.
5 I will do so.

6 THE COURT: All right.

7 BY MR. TOWNSHEND:

8 Q. So on page 88 of the Nodwell
9 report by J.V. Wright, he's reporting "immature dog
10 burials". In fact, there are six of them. Do you
11 see that?

12 A. Yes.

13 Q. Now, let me take you to a bit of
14 the transcript of Dr. Williamson from
15 September 15th -- September 16, page 5288. And
16 start at the bottom of that page and the question
17 "Dr. Williamson, you touched on this a bit already
18 [...]" and go to the bottom of the next page, if
19 you would, please.

20 A. (Witness reviews document).

21 Just the first paragraph of his answer?

22 Q. No, we'll go down to the end. We
23 need to scroll down, but to the bottom of the next
24 page.

25 A. (Witness reviews document).

11:51:54 1 Scroll down, please. Is there anything
11:52:10 2 on the next page?

11:52:11 3 Q. No.

11:52:12 4 A. Then I'm finished, thanks.

11:52:14 5 Q. Do you take any issue with any of
11:52:16 6 that?

11:52:16 7 A. No. Dr. Williamson is an
11:52:19 8 archaeologist and I would defer to his opinion.

11:52:22 9 Q. All right. So we were just at a
11:52:39 10 spot in Wright's report on the Nodwell site that
11:52:45 11 reported six puppy burials, so based on Dr.
11:52:51 12 Williamson's evidence that you're accepting, that's
11:52:54 13 characteristic of Odawa culture?

11:52:56 14 A. Yes.

11:52:57 15 Q. That's not something found on
11:53:00 16 Iroquoian sites?

11:53:00 17 A. Not that I know of, and according
11:53:03 18 to Dr. Williamson just in his testimony there he
11:53:07 19 said it was not a feature of Iroquoian burials.

11:53:11 20 Q. If we go a little further down in
11:53:15 21 this, it's probably already there. It's also
11:53:19 22 referring to an immature black bear skeleton that
11:53:23 23 was found? That's at the page 89?

11:53:28 24 A. Yes, I see that, yes.

11:53:29 25 Q. So that's also characteristic of

11:53:31 1 Odawa culture?

11:53:33 2 A. I don't know.

11:53:35 3 Q. Well, you didn't take any issue

11:53:38 4 with Dr. Williamson?

11:53:39 5 A. I just couldn't remember whether

11:53:42 6 he referred to bear as well.

11:53:43 7 Q. He referred to it; shall we go

11:53:45 8 back to that?

11:53:46 9 A. Sure.

11:54:03 10 MR. TOWNSHEND: If you scroll up a

11:54:04 11 little bit.

11:54:05 12 BY MR. TOWNSHEND:

11:54:06 13 Q. "The other Odawa burials are

11:54:08 14 animals that occur in association

11:54:11 15 with places that have -- some have

11:54:13 16 dogs, and some don't. So you may

11:54:15 17 have a loon burial, you may have --

11:54:18 18 for example, at Providence Bay, you

11:54:21 19 have some bear there as well. You

11:54:22 20 have passenger pigeons at the

11:54:24 21 Nodwell site."

11:54:26 22 A. Yes, I see that.

11:54:27 23 Q. You accept that that's

11:54:28 24 characteristic of Odawa culture?

11:54:30 25 A. Yes.

11:54:31 1 Q. And it's not something you would
11:54:32 2 find on an Iroquoian site?

11:54:34 3 A. According to Dr. Williamson's
11:54:35 4 testimony, no. But it's not a subject or a question
11:54:37 5 that I researched in terms of looking in other
11:54:39 6 archeological reports and publications to make any
11:54:45 7 kind of majority, a conclusion based on majority
11:54:50 8 opinion.

11:55:01 9 Q. It also refers to two passenger
11:55:03 10 pigeons?

11:55:03 11 A. Yes.

11:55:03 12 Q. Again, Dr. Williamson says that's
11:55:05 13 characteristic of Odawa culture, and not
11:55:08 14 characteristic of Iroquoian, and you're taking no
11:55:11 15 issue with that?

11:55:12 16 A. Yes -- or no. Depending how you
11:55:14 17 ask the question.

11:55:15 18 I'm taking no issue with that.

11:55:17 19 Q. Now, if you go to page 304, the
11:55:27 20 Wright report on Nodwell. If we scroll down to the
11:56:08 21 bottom part of that, it's the bottom six lines of
11:56:14 22 the page. He's talking about -- well, if you can
11:56:22 23 review that, please.

11:56:37 24 A. (Witness reviews document). Okay.

11:56:38 25 Q. So he's referring to copper tools

1 found at Nodwell that are characteristic of
2 Algonquian culture?

3 A. Yes, and he attributes that to
4 trade.

5 Q. And if Nodwell was in fact Ottawa,
6 you weren't -- an Ottawa site, you wouldn't need
7 that explanation, would you?

8 A. No. And if you go down to the end
9 of the paragraph, he suggests that it is the most
10 reasonable explanation that he could offer at the
11 time.

12 Q. And we'll come to that.

13 A. Okay.

14 Q. If we go to page 305, at the top
15 of 305, the part after the box, it's the fifth line
16 down.

17 He's also talking about non-Iroquoian
18 ceramics and suggesting that that indicates contact
19 with Anishinaabe, the Algonquian-speaking people?

20 A. Yes.

21 Q. So if Nodwell was in fact Odawa,
22 you wouldn't need that explanation, would you?

23 A. No.

24 Q. Let's talk about developments,
25 about archaeology since Wright quoted his report on

1 Nodwell in 1974. He didn't know Odawa sometimes
2 lived in longhouses, did he?

3 A. I'm assuming he did not. It was
4 the identification of longhouses at Nodwell that
5 was one of the features that led him to presume or
6 speculate that it was Iroquoian.

7 Q. And you accept that some Odawa
8 lived in longhouses?

9 A. Yes.

10 Q. Okay. And he also didn't know
11 that some of the so-called Iroquoian-style ceramics
12 are also found in Anishinaabe sites, did he?

13 A. I'm sorry, can you repeat that?

14 Q. He didn't know, when Wright was
15 writing, he didn't know that ceramic styles that
16 were characterized as Iroquoian have been found on
17 sites that are potential --

18 MR. OGDEN: Your Honour, sorry.

19 THE COURT: I'll let Mr. Townshend
20 finish, but I realize you want to make your
21 presence known and we can't see you because you're
22 behind him.

23 Mr. Townshend, finish your question and
24 then we'll hear from Mr. Ogden.

25 MR. TOWNSHEND: Maybe I'll break it

11:59:57 1 down a different way.

11:59:59 2 BY MR. TOWNSHEND:

12:00:02 3 Q. Are you aware that ceramic styles
12:00:07 4 previously thought to be Iroquoian are found on
12:00:10 5 sites that are clearly not Iroquoian?

12:00:13 6 A. I am not aware of that detail of
12:00:19 7 artifact analysis on archaeological sites,
12:00:23 8 Iroquoian or Algonquian. It's not something I can
12:00:27 9 speak to.

12:00:27 10 Q. You haven't researched that?

12:00:30 11 A. Not specifically, no.

12:00:31 12 Q. Okay. Let's have Exhibit 4505.

12:01:02 13 This is an article by Dr. von Gernet about
12:01:08 14 excavations in Renfrew County, and this is already
12:01:19 15 an exhibit in this trial.

12:01:27 16 If you note on page 120, in column one
12:01:38 17 he's identifying this site as an Algonquian site;
12:01:42 18 do you see that?

12:01:44 19 A. Can you locate that for me? I'm
12:01:52 20 sorry, I'm not... on page 120?

12:01:57 21 Q. If you go about eight lines down
12:02:07 22 from the top?

12:02:07 23 A. Where he's citing Day and Trigger
12:02:10 24 there?

12:02:14 25 Q. Yes, before citing Day and Trigger.

12:02:19 1 "Based on this account, as well
12:02:21 2 as 17th-century cartographic
12:02:23 3 evidence, it has been inferred that
12:02:26 4 a considerable portion of the 5,000
12:02:28 5 square kilometre area drained by the
12:02:30 6 Madawaska River was the late
12:02:33 7 prehistoric and early historic
12:02:35 8 period of homeland of the
12:02:37 9 Matouweskarini band of Ontario
12:02:40 10 Algonquian."

12:02:40 11 A. Yes, I see that.

12:02:41 12 Q. Then if we go down to the second
12:02:43 13 column on that page, and read that paragraph, and
12:02:47 14 then over as it continued as the map.

12:03:31 15 A. (Witness reviews document). Okay.

12:03:32 16 Q. So he's describing what artifact
12:03:38 17 found that seems to be indistinguishable from
12:03:42 18 Iroquoian sites?

12:03:43 19 A. Yes, a pipe bowl. Did you also
12:03:52 20 mention there was a map? I don't know if you
12:03:54 21 wanted me to look at that or...

12:03:56 22 Q. No.

12:03:57 23 A. Okay.

12:03:57 24 Q. If you wish to see the map on the
12:04:00 25 page before that shows where Renfrew County is.

12:04:06 1 A. Yes, I know Renfrew county.

12:04:08 2 Q. Yes, you live near Renfrew?

12:04:11 3 A. Yes, I do.

12:04:12 4 Q. So at page 122 at the bottom

12:04:18 5 paragraph, just have a look at that.

12:04:39 6 A. (Witness reviews document).

12:04:40 7 Scroll down, please. (Witness reviews

12:04:55 8 document).

12:04:55 9 Okay.

12:04:56 10 Q. So he's showing in his report that

12:05:00 11 there are styles of ceramics that are -- that have

12:05:06 12 been treated as Iroquoian and are found at sites

12:05:09 13 that are just not Iroquoian?

12:05:11 14 A. That are likely not Iroquoian.

12:05:12 15 The geographic location of those sites do not

12:05:15 16 accord with what is considered Huron or other

12:05:22 17 Iroquoian territory in a prehistoric period.

12:05:36 18 Q. I'd like to go to Exhibit 4248,

12:05:40 19 please. This is a thesis by Lisa Rankin that was

12:05:48 20 published in 2000 called "Interpreting the

12:05:54 21 Long-Term Trends in Transition to Farming:

12:05:56 22 Reconsidering the Nodwell Site". If you go further

12:06:00 23 down -- there you are.

12:06:08 24 Had you been aware of this publication?

12:06:11 25 A. No.

1 Q. If we go to page 14 of that
2 thesis. Starting at the bottom of the second
3 column, on 14 and going over the page, starting
4 "Wright (1985) bases his interpretation [...]"

5 A. Can you make that a little larger,
6 please? Thank you. (Witness reviews document).
7 Okay.

8 Q. And keeping that in mind, and then
9 going to page 91 of this thesis. And starting at
10 the bottom of the second column "However, in the
11 years [...]" and continuing on to the next page.

12 A. (Witness reviews document).
13 Scroll down, please. Okay.

14 Q. So I'm going to suggest to you
15 that this clearly touches on your opinion about an
16 Iroquoian migration into Saugeen territory in the
17 14th century?

18 A. Is that my opinion? The Iroquoian
19 migration?

20 Q. We had talked earlier about that
21 Iroquoian migration into the area around 1350?

22 A. Oh, okay.

23 Q. So this touches on those issues?

24 A. It certainly questions it, yes.

25 Q. And would that be something you

1 would want to reconsider and revisit your opinion
2 in light of?

3 A. Yes, I would want to look at more
4 recent archaeological analyses and conclusions. I
5 mean, certainly, it appears that the analysis and
6 examination of the Nodwell site has advanced
7 considerably since Wright initially reported on it.
8 And the new evidence needs to be taken into
9 consideration, and I would be willing to do that.

10 Q. Let's go back to your Volume 1 of
11 your report, page 14, for example.

12 Now this is about the Petun. And you
13 say at -- here and at several other points in your
14 report that Garrad postulates that the Petun had
15 permission of the Odawa to be present where they
16 were?

17 A. Sorry, I missed the page number.

18 Q. Page 14, footnote 39, for example.

19 A. If you could repeat the question,
20 please.

21 Q. So you say at several points in
22 your report that Garrad postulates or speculates
23 that the Petun had the permission of the Odawa to
24 be present where they were?

25 A. (Witness reviews document). Yes.

12:11:32 1 Q. So do you agree with that?

12:11:38 2 A. I take the authors who have
12:11:43 3 studied this more carefully, I accept their
12:11:47 4 opinions based on the evidence I read in their
12:11:50 5 reports.

12:11:50 6 Q. So you're not questioning Garrad's
12:11:59 7 -- you call it speculation but you're not
12:12:02 8 questioning it?

12:12:03 9 A. No.

12:12:03 10 Q. All right. I want to talk about
12:12:30 11 an archaeological site at Nochemowenaing also known
12:12:34 12 as "Hunter's Point".

12:12:38 13 A. Okay.

12:12:39 14 Q. We've heard quite a bit of
12:12:41 15 evidence about that in this trial. And in fact, he
12:12:45 16 was a part of a view that the Court went on.
12:12:47 17 You mentioned it in passing at some
12:12:49 18 point.

12:12:51 19 A. Yes.

12:12:52 20 Q. So let's go to document S1220.

12:13:00 21 THE COURT: I'm pausing, sir, because
12:13:03 22 of the scope of this witness's expertise. As you
12:13:11 23 say, we've had a lot of evidence about this, not
12:13:13 24 from this witness or her report.

12:13:15 25 MR. TOWNSHEND: Yes.

12:13:16 1 THE COURT: Why is it that -- I suppose
12:13:18 2 if it's short maybe it doesn't matter. But if
12:13:24 3 you're pausing over it.

12:13:27 4 MR. TOWNSHEND: The opinion of this
12:13:28 5 witness, as we outlined before, was various
12:13:36 6 discontinuities in the occupation of the Saugeen
12:13:38 7 territory. The Odawa were there from 1500 to 1650,
12:13:42 8 not before or after. And I'm trying to show
12:13:48 9 continuity over thousands of years.

12:13:51 10 THE COURT: That isn't responsive to my
12:13:53 11 question.

12:13:55 12 MR. TOWNSHEND: Pardon me?

12:13:56 13 THE COURT: You haven't answered my
12:13:57 14 question.

12:13:58 15 MR. TOWNSHEND: Well, if Dr. Reimer is
12:14:01 16 going to give opinions about discontinuity, surely
12:14:05 17 I can put to her evidence about continuity. Unless
12:14:09 18 she's going to withdraw those opinions.

12:14:13 19 THE COURT: What you said was he wanted
12:14:15 20 to talk about Hunter's Point, which is referred in
12:14:18 21 passing in her report. From which I took that she
12:14:20 22 didn't put her opinion forward about Hunter's
12:14:25 23 Point.

12:14:25 24 Now perhaps what I'll do is let you
12:14:27 25 begin the questions and see how it goes, as to

12:14:31 1 whether it falls within her expertise. Because
12:14:35 2 we've had lots of evidence from archaeologists, and
12:14:40 3 we certainly aren't going to be going over all of
12:14:43 4 that, I assume.

12:14:44 5 MR. TOWNSHEND: Well, the problem is
12:14:48 6 that Dr. Reimer's opinion, as written, contradicts
12:14:54 7 some of that.

12:14:55 8 THE COURT: Well, you have -- I'll let
12:15:00 9 you begin. You have to stay within the tender; you
12:15:03 10 don't have any option in that regard. All right?

12:15:08 11 You've had cross-examination
12:15:10 12 opportunities on archaeology with others, but I
12:15:13 13 will let you begin. If you want to use your time
12:15:16 14 in this way, sir, if we don't have Mr. Ogden on his
12:15:20 15 feet again as we did earlier.

12:15:43 16 MR. TOWNSHEND: Well, I'd like to make
12:15:45 17 this an exhibit.

12:15:46 18 THE COURT: What?

12:15:47 19 MR. TOWNSHEND: This is the James
12:15:50 20 Molnar Hunter's Point Site Summary Report, Revised
12:15:57 21 May 1993.

12:15:59 22 THE COURT: Mr. Registrar?

12:16:01 23 THE REGISTRAR: Exhibit No. 4736.

12:16:05 24 THE COURT: I take it, sir, despite all
12:16:07 25 the archeologists' evidence you just referred to,

1 this isn't in evidence already?

2 MR. TOWNSHEND: That particular
3 document isn't.

4 THE COURT: Is not?

5 MR. TOWNSHEND: That's correct. I was
6 going to this because it's a nice compact
7 summary --

8 THE COURT: You don't have to tell me
9 why you're going to it, sir. Please go ahead.

10 EXHIBIT NO. 4736: Hunter's Point Site
11 Summary Report by James Molnar, Revised
12 May 1993.

13 BY MR. TOWNSHEND:

14 Q. I'll try it this way then.

15 I'm going to say to you that this
16 report is an early archaeological investigation of
17 Hunter's Point and that it speaks of artifacts
18 dating to the Middle Woodland period, the Late
19 Woodland period, the Early Historic period, the
20 19th century, that it has, speaks of Algonquian --
21 I'll leave it at that -- do you take any issue with
22 that?

23 THE COURT: Mr. Ogden?

24 MR. OGDEN: I don't believe there's
25 evidence that Dr. Reimer has read this report.

12:17:26 1 THE COURT: Not so far, no.

12:17:28 2 MR. OGDEN: So that is my objection,
12:17:29 3 Your Honour.

12:17:30 4 THE COURT: All right. Well I think
12:17:34 5 the witness can speak up if she's never seen the
12:17:37 6 document. It's obviously going to be an impediment
12:17:40 7 to answering the question.

12:17:41 8 MR. OGDEN: In addition, I might add,
12:17:43 9 Your Honour, this document is now an exhibit and
12:17:46 10 can speak for itself.

12:17:49 11 THE COURT: That's certainly the case,
12:17:51 12 but I'll permit the question.

12:17:55 13 The question was, well, it was a long
12:18:03 14 question, but do you recall the question, Dr.
12:18:06 15 Reimer?

12:18:06 16 THE WITNESS: No.

12:18:11 17 THE COURT: Mr. Townshend said: "I am
12:18:13 18 going to say to you that this report is an early
12:18:16 19 archaeological investigation of Hunter's Point and
12:18:16 20 that it speaks to artifacts dating to the Middle
12:18:22 21 Woodland period, the Late Woodland period and Early
12:18:24 22 Historic period of the 19th century, that it has --
12:18:27 23 it speaks about Algonquian. I'll leave it at that.
12:18:30 24 Do you take any issue with that?"

12:18:31 25 THE WITNESS: I can't answer the

12:18:32 1 question because I have not read this document.

12:18:35 2 BY MR. TOWNSHEND:

12:18:40 3 Q. All right. When Dr. Williamson
12:18:46 4 was testifying about Hunter's Point, he said that
12:18:53 5 Hunter's Point included evidence of Algonquian
12:18:55 6 ritual use from the 17th century and Algonquian
12:19:01 7 ritual use in the 19th century, and further that
12:19:05 8 none of the features intruded on each other.

12:19:14 9 So unless you have any issue with that,
12:19:17 10 I'll ask you to assume those things?

12:19:18 11 A. I don't know what is meant by
12:19:20 12 "intruded on each other".

12:19:22 13 Q. They didn't overlap or disturb
12:19:25 14 each other?

12:19:26 15 A. Okay, they were in different
12:19:28 16 distinct strata, okay.

12:19:29 17 Q. No, horizontally different.

12:19:32 18 A. I'm just looking at my own report
12:19:35 19 on pages -- Volume 1, pages 59 to 60; where I do
12:19:40 20 make passing mention to Hunter's Point and I repeat
12:19:44 21 James Molnar's -- just a minute.

12:19:52 22 No, I cite W.A. Fox, who states that:

12:19:59 23 "The archaeology of Bruce
12:20:01 24 Peninsula and the Island sites have
12:20:03 25 expanded the understandings of

12:20:05 1 Algonquian/Odawa settlement patterns
12:20:08 2 and subsistence activities."

12:20:12 3 And Fox maintains that archaeological
12:20:14 4 investigation of the area is still in its infancy.

12:20:17 5 Again, I understand that that kind of
12:20:21 6 archaeological investigation has advanced in the
12:20:24 7 last 20 years or so. But at this point, I am not
12:20:27 8 making any dispute with the Hunter site or the
12:20:32 9 Mason site being consistent with Algonquian
12:20:40 10 occupation. I think that's the best I can say
12:20:43 11 about the Hunter site.

12:20:47 12 Q. So given the range of dating,
12:20:50 13 which I ask you to assume, essentially, would it be
12:21:00 14 reasonable to conclude that that evidence shows
12:21:02 15 that there's a continuity of the people occupying
12:21:07 16 that site because of the -- they had intimate
12:21:12 17 knowledge of the ritual nature of them?

12:21:14 18 THE COURT: Mr. Ogden?

12:21:16 19 MR. OGDEN: The question asks the
12:21:21 20 witness whether it is reasonable to make an
12:21:24 21 archaeological conclusion. And her expertise as
12:21:29 22 set out in the tender does not include the capacity
12:21:34 23 to make archaeological conclusions.

12:21:37 24 And then the evidence leading to a
12:21:40 25 tender, and as she said this morning, that she has

1 read, and perhaps the word is "synthesized"

2 archeological reports and majority of these are

3 those reports, but that is the extent of her

4 expertise.

5 So I object on the basis the question

6 is seeking an answer outside of the witness's

7 accepted expertise.

8 THE COURT: Mr. Townshend?

9 MR. TOWNSHEND: Well, I'll ask a

10 different question.

11 BY MR. TOWNSHEND:

12 Q. Is this not the kind of evidence
13 one would want to look at before giving an opinion
14 about continuity or discontinuity of occupation?

15 A. It's the type of evidence, yes.

16 Q. That someone would want to look
17 at --

18 A. Yes.

19 Q. -- before making conclusions about
20 continuity or discontinuity?

21 A. I'm a little confused by the line
22 of questioning, simply because by the time I start
23 summarizing archaeological reports in the proto-
24 and Early Historic period, I am adopting and
25 reciting the majority opinion that these were

12:23:18 1 Algonquian sites.

12:23:19 2 So I'm not sure where the discontinuity
12:23:22 3 notion is coming from. So that's where I'm -- my
12:23:27 4 hesitancy to answer some of your questions in a
12:23:30 5 more detailed way is coming from.

12:23:32 6 You know, I don't, I don't know if
12:23:36 7 you're challenging my synthesis and summary of the
12:23:45 8 archaeological evidence for that period on the
12:23:48 9 Bruce Peninsula. You know, unless I've misled in
12:23:53 10 some way, I thought I was expressing the majority
12:23:57 11 opinion that these were Algonquian sites.

12:24:02 12 So where is the discontinuity -- I know
12:24:04 13 it's not for me to question you -- but I would need
12:24:07 14 clarification on where in my report I'm saying
12:24:12 15 there is discontinuity?

12:24:14 16 Q. Well, I'm not suggesting you're
12:24:19 17 saying this site was not Algonquian. I'm saying we
12:24:23 18 started with a capsule summary. You started with,
12:24:26 19 there was no Algonquian occupation between 900
12:24:33 20 AD and 1500 AD. The Odawa were there from 1500 to
12:24:40 21 1650, and a different group came back later.

12:24:43 22 So I'm looking at the temporal
12:24:47 23 continuity across those and saying, this is a
12:24:49 24 multi-component site, with -- dated to all these
12:24:55 25 different dates I've gone through. And that some

1 of those sites are ritual sites.

2 And the fact that they don't intrude on
3 each other suggests that the people knew how to
4 recognize a site and it's showing a continuity
5 across time. That's the point of my question.

6 If you haven't read this, I mean, maybe
7 I should just say, isn't this something you would
8 want to look into before giving an opinion?

9 A. I should explain then my approach
10 to the presentation of the archaeological evidence
11 which was, in response to the questions posed to me
12 by Ontario, was to provide an overview of the
13 archaeological evidence in relation to the area at
14 and around Bruce Peninsula.

15 My approach then was to search for and
16 review the accessible, and what I thought were the
17 fundamental or seminal articles on the archaeology
18 of southwestern Ontario, and then to provide a
19 synthesis of that.

20 I acknowledge fully that it is not
21 exhaustive. I acknowledge fully that I am not an
22 archaeologist. I acknowledge that when I came to
23 revise the report years after the initial draft,
24 that additional research had been done, and I
25 obviously have not located every single

1 archaeological report relevant to the issues.

2 So is Molnar's revised '93 article
3 something, had I been aware of, that I would have
4 reviewed? Yes, I would have reviewed it.

5 But I don't think my chapter in
6 Volume 1 on the archaeological evidence should be
7 considered as an exhaustive account.

8 It's a very general kind of overview,
9 and from what I've read more recently in terms of
10 -- so Dr. Williamson's testimony, for example, it
11 is apparent to me that additional research has
12 started to question some of the prior majority
13 opinions. And I accept that. I don't have a
14 problem with that; that's the nature of research.

15 Q. Well, let me ask it this way.
16 When I look through the references in the
17 archaeological part of your report, apart from
18 Garrad's book, none of them are later than 1990; is
19 that fair?

20 A. I would need to check. But it
21 could be fair to say. If you've checked, I'll take
22 your word for it.

23 Q. So I'm going to suggest that
24 you've really given a state of archaeological
25 knowledge as it was in the early 1990s?

12:28:16 1 A. Okay.

12:28:17 2 Q. You have not generally considered
12:28:19 3 things that have happened since?

12:28:20 4 A. No, I have not reconsidered the
12:28:22 5 archaeological evidence since first drafting this a
12:28:25 6 number of years ago.

12:28:26 7 Q. When did you first draft it?

12:28:29 8 A. I started in the '90s.

12:28:32 9 Q. Okay.

12:28:59 10 MR. TOWNSHEND: Your Honour, I think
12:29:00 11 that concludes a rather large chunk, and I wonder
12:29:03 12 if you would entertain an early lunch?

12:29:10 13 THE COURT: Well, that's fine if we're
12:29:12 14 ahead of schedule, but if we're not, I'd rather
12:29:15 15 keep going.

12:29:16 16 I mean, you all, meaning your team,
12:29:18 17 made a firm commitment to me that you would
12:29:21 18 complete this cross-examination within a certain
12:29:23 19 number of days, which is extremely lengthy. And I
12:29:28 20 expect to meet that commitment.

12:29:32 21 If an early lunch has no impact on that
12:29:35 22 and is your request, that's fine.

12:29:37 23 MR. TOWNSHEND: I would suggest coming
12:29:38 24 back earlier, too. Not to have a longer lunch, an
12:29:41 25 early lunch.

1 THE COURT: Why don't we just press
2 ahead? Is there some reason not to? We started
3 late this morning because of our case conference
4 and...

5 If you need the time, sir, to organize
6 yourself, then just say so because that's fine.

7 MR. TOWNSHEND: I would appreciate time
8 to see if I've indeed, if there's anything else I
9 need to deal with in archaeology, and there may not
10 be.

11 THE COURT: All right. That's fine,
12 sir. So we will resume at 1:45.

13 MR. TOWNSHEND: Thank you.

14 -- RECESS TAKEN AT 12:30 --

15 -- UPON RESUMING AT 1:45 --

16 THE COURT: Please go ahead.

17 BY MR. TOWNSHEND:

18 Q. Good afternoon, Doctor.

19 A. Good afternoon.

20 Q. I'm starting in a different area.

21 A. Okay.

22 Q. Are you familiar with Terry
23 Tobias?

24 A. I know the name.

25 Q. He's a scholar, especially about

1 Aboriginal land use studies?

2 A. Okay.

3 Q. Do you agree with that?

4 A. I don't know enough about him to
5 say.

6 Q. I'd like to bring up document
7 SC2027. This is an excerpt from a book by Terry
8 Tobias called, "Living Proof, the Essential Data
9 Collection Guide For Indigenous Use and Occupancy
10 Map Surveys". I would like to make that an
11 exhibit.

12 THE COURT: Is 16 pages the entire
13 book, sir?

14 MR. TOWNSHEND: No, it's an excerpt.

15 THE COURT: I would really prefer that
16 you properly describe every document that you want
17 to be an exhibit. I don't see a date but perhaps
18 -- no, it's not there.

19 MR. TOWNSHEND: It's an excerpt from a
20 book called Living Proof the Essential Data
21 Collection Guide -- the description would do, an
22 excerpt from a book by Terry Tobias called Living
23 Proof.

24 THE COURT: Published?

25 MR. TOWNSHEND: It's 2009.

01:47:08 1 THE COURT: All right. Mr. Registrar?

01:47:10 2 THE REGISTRAR: Exhibit No. 4737.

01:47:13 3 EXHIBIT NO. 4737: Excerpt from a book

01:47:13 4 by Terry Tobias called Living Proof,

01:47:23 5 published 2009.

01:47:23 6 BY MR. TOWNSHEND:

01:47:23 7 Q. I'd like to go to page 1 of

01:47:25 8 Chapter 19, which is the -- if we can expand that,

01:47:32 9 please. I'm particularly interested in the bottom

01:47:40 10 paragraph in the first column, but if you'd like to

01:47:43 11 read the whole page or --

01:47:48 12 THE COURT: It's much too small.

01:47:50 13 MR. TOWNSHEND: Okay.

01:48:04 14 BY MR. TOWNSHEND:

01:48:04 15 Q. Perhaps you can read that first

01:48:06 16 column.

01:48:07 17 A. Okay. (Witness reviews document).

01:48:52 18 Okay, I'm finished.

01:48:53 19 Q. So he's saying that place names

01:49:00 20 are usually evidence of long-term occupancy?

01:49:03 21 A. Yes, if they've been traced over

01:49:09 22 generations, yes.

01:49:10 23 Q. Do you take any issue with that?

01:49:13 24 A. No.

01:49:15 25 MR. OGDEN: Your Honour.

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THE COURT: Mr. Ogden?

MR. OGDEN: The word "toponym" has not been in evidence in this trial yet. And it's not established that this is an aspect of ethnohistorical expertise, and otherwise within the area of expertise that Dr. Reimer has.

The last question that was asked veered into asking her opinion whether she agrees with the statement made in this excerpt, and so I object on that basis. It may be that it can be rephrased slightly, and that's not what my friend was seeking to do.

THE COURT: Well, the witness answered the question. The question began with the proposition of, "What does this gentleman say?" Which is not the same thing as what this witness might say.

And the second question was, does she take issue with it? That does not mean that she agrees with it. There's been no foundation for any of this, as regards to this witness.

I suppose if Mr. Townshend works himself up to asking for this witness's own professional opinion, we'll -- you may well be back on your feet. But that question was answered, for

1 what it's worth, with no foundation, so we'll see
2 what Mr. Townshend is trying to do.

3 MR. OGDEN: Thank you.

4 BY MR. TOWNSHEND:

5 Q. Dr. Reimer, do you consider land
6 use and occupancy surveys a part of anthropology?

7 A. It's a part of anthropology, yes.

8 Q. Is that something you have any
9 familiarity with?

10 A. Very minimally.

11 Q. So would you agree that the
12 insights that can be gained from land use and
13 occupancy analysis could be valuable in addressing
14 issues of continuity occupation?

15 A. Within a defined time period, yes.

16 Q. So with that in mind, I want to
17 take you to some of the evidence we've heard about
18 place names in this trial.

19 And if we can go to Exhibit 4014. This
20 is a map that was created by a witness, Paul
21 Nadjiwon, in this trial. The red dots?

22 THE COURT: Excuse me for a moment.

23 Please go ahead.

24 BY MR. TOWNSHEND:

25 Q. The red dots constitute place

1 names and I'll show you a list of those in a
2 moment. Paul Nadjiwon is a community member, a
3 band member from Nawash and he made this list and
4 map of place names after interviewing a number of
5 Elders he knew about these things.

6 So if I can go to Exhibit 4013 now.
7 These are the place names he has collected, with
8 the name of the location, its meaning, and the name
9 of that location in English.

10 So maybe just starting with the one
11 that says eight there, it's Name-wekwe-donsing.
12 And meaning of that is "Little Sturgeon Bay" and
13 that's what's referred to what's called in English
14 Wiarton or Colpoy's Bay.

15 And there are other examples of that,
16 but the point I'm making is that the
17 Anishinaabemowin name, which Mr. Nadjiwon
18 collected, is unrelated to the English name?

19 THE COURT: Mr. Ogden.

20 MR. OGDEN: That strikes me as a
21 statement of evidence. And if it is to form part
22 of a question I would object to it, which I think
23 it was about to. I can wait to hear the question,
24 but if it does --

25 THE COURT: It was a question. It was.

01:55:17 1 "The point I'm making is that the
01:55:19 2 Anishinaabemowin name which Mr. Nadjiwon one
01:55:24 3 collected is unrelated to the English name".
01:55:27 4 That's the question. He's asking the witness to
01:55:29 5 agree that that's the case.

01:55:32 6 Do you want to put your objection in
01:55:36 7 terms of the question. For some reason there's a
01:55:42 8 green box on one line. I don't know why.

01:55:49 9 MR. OGDEN: I'll sit down and wait,
01:55:56 10 Your Honour.

01:56:00 11 THE COURT: I don't understand your
01:56:02 12 question, sir, in context.

01:56:06 13 You can ask it if you want, but we've
01:56:08 14 got a chart, I can't see most of it. The witness
01:56:11 15 presumably has never seen it. You haven't asked
01:56:14 16 her -- are you asking her to draw a conclusion
01:56:18 17 based on something that relates to this chart?

01:56:23 18 MR. TOWNSHEND: Yes. At this point I
01:56:24 19 was asking if, for example, for line 8, that the
01:56:30 20 Anishinaabemowin name is unrelated to the English
01:56:33 21 name.

01:56:34 22 THE COURT: What's the foundation for
01:56:36 23 this witness being able to answer that question?

01:56:43 24 Does she know the language?

01:56:45 25 MR. TOWNSHEND: Well, the translation --

01:56:48 1 I'm asking her to assume that the translation
01:56:52 2 "Little Sturgeon Bay" is the correct translation of
01:57:01 3 Name-weke-donsing. And I'm asking if "Little
01:57:03 4 Sturgeon Bay" is not related to the English name,
01:57:07 5 "Colpoy's Bay".

01:57:09 6 THE COURT: Well, I'm going to ask you
01:57:10 7 to start again, because I don't think you've put a
01:57:13 8 proper foundation forward.

01:57:16 9 You're adding things as you go along,
01:57:18 10 which may resolve that problem, but you need to do
01:57:19 11 it in a proper question.

01:57:20 12 So can you please start again, sir,
01:57:22 13 with this chart. You're welcome to ask this
01:57:25 14 witness to make assumptions, but up until now you
01:57:28 15 have not done so.

01:57:29 16 BY MR. TOWNSHEND:

01:57:29 17 Q. I'm asking you to assume that the
01:57:30 18 translations in the middle column are accurate
01:57:33 19 translations of the Anishinaabemowin name in the
01:57:37 20 left column.

01:57:38 21 A. I have to take it as face value --

01:57:44 22 THE COURT: Sorry, Doctor. Mr.
01:57:46 23 Townshend is entitled to ask you to make an
01:57:49 24 assumption, that's what he's doing. It's an
01:57:51 25 assumption, that's all it is. Please go ahead,

01:57:53 1 sir.

01:57:53 2 BY MR. TOWNSHEND:

01:57:53 3 Q. I'm asking you to further assume
01:57:55 4 that the name in column one is the name by which
01:58:07 5 the Saugeen referred to a location in column three.

01:58:15 6 A. Okay.

01:58:16 7 Q. So my question is, looking at, for
01:58:19 8 example, line 8, Anishinaabemowin name, translation
01:58:26 9 of it is "Little Sturgeon Bay" is that unrelated to
01:58:30 10 the English place name, which is "Colpoy's Bay"?

01:58:35 11 A. It appears to be, yes.

01:58:37 12 THE COURT: Mr. Beggs?

01:58:39 13 MR. BEGGS: Your Honour, my friend
01:58:40 14 seems to be asking her expert opinion on vocabulary
01:58:44 15 in this case.

01:58:45 16 THE COURT: Yes, I was expecting
01:58:47 17 someone would stand up and say that at some point.

01:58:52 18 Mr. Townshend, I mean, with the absence
01:58:55 19 of a proper foundation, this evidence is of not
01:58:58 20 much use to me.

01:59:00 21 Now, I don't understand the foundation.
01:59:05 22 This expert is not here to answer lay persons'
01:59:10 23 observations about this chart, which went in
01:59:13 24 through someone else, if that's what you're going
01:59:16 25 for. It's not why she's here. What is the

01:59:18 1 expertise that you say is engaged here?

01:59:35 2 MR. TOWNSHEND: I'm saying that the
01:59:37 3 analysis of place names, which is part of
01:59:47 4 anthropology, and according to the excerpt from
01:59:50 5 Terry Tobias it can show land use and occupancy,
01:59:57 6 and is this an example that one would want to look
02:00:01 7 at if one was making conclusions about land use and
02:00:07 8 occupancy? That's where I'm going.

02:00:09 9 THE COURT: You don't have an
02:00:10 10 evidentiary foundation about Mr. Tobias. You've
02:00:13 11 tried to get one, that's fine, and you couldn't.
02:00:16 12 So that's not going to get you very far.

02:00:45 13 MR. TOWNSHEND: All right. I'll move
02:00:47 14 on.

02:00:47 15 BY MR. TOWNSHEND:

02:01:03 16 Q. You said in your examination
02:01:04 17 in-chief that you found the oral history about what
02:01:09 18 was happening during the Iroquois Wars the best
02:01:14 19 evidence and was reliable; do you recall that?

02:01:17 20 A. Yes.

02:01:17 21 Q. I wanted to take you to some of
02:01:23 22 what the community witnesses said about Iroquois
02:01:27 23 Wars. If we go to the examination of Vernon Roote,
02:01:40 24 which is May 15th. And if we go to page 445 of
02:01:49 25 that. And if you can review lines 10 to 25,

02:02:04 1 please.

02:02:06 2 THE COURT: Can you expand it because
02:02:09 3 it starts, "In such a case", but I can't read what
02:02:15 4 that refers to.

02:02:16 5 I don't mean expand it, I apologize. I
02:02:20 6 mean put more of the document on the screen, which
02:02:22 7 I suppose means minimize the document a bit.

02:02:25 8 Okay. Thank you.

02:02:54 9 THE WITNESS: (Witness reviews
02:03:11 10 document). Does it continue on to the next page?

02:03:13 11 BY MR. TOWNSHEND:

02:03:14 12 Q. Yes. Let's finish off the answer.

02:03:24 13 A. (Witness reviews document). Okay.
02:03:25 14 I've read it.

02:03:26 15 Q. So this is recounting that when
02:03:30 16 the Huron went under attack by the Iroquois, they
02:03:33 17 asked for help from the Saugeen; do you see that?

02:03:35 18 A. Yes, although I have to say, it
02:03:45 19 doesn't specifically say the Saugeen. Can we go
02:03:48 20 back up, please? Okay. He says "our people".

02:03:59 21 Q. Yeah?

02:04:00 22 A. Yes, so I see that now.

02:04:02 23 Q. He says other things. I'll take
02:04:06 24 you to a couple of other things he says about the
02:04:09 25 Iroquois Wars.

02:04:10 1 If you go to page 487. And I'm asking
02:04:26 2 you to expand on that, what he just said. Could
02:04:30 3 you review that page from line 18 on the bottom.
02:04:40 4 A. Again, does it go on to the next
02:04:43 5 page?
02:04:43 6 Q. And finish, please.
02:04:45 7 A. If you could scroll, please.
02:04:51 8 (Witness reviews document).
02:04:58 9 THE COURT: Can we see the entire
02:05:00 10 answer, please?
02:05:02 11 MR. TOWNSHEND: Yes, please keep going
02:05:07 12 to the...
02:05:10 13 THE WITNESS: (Witness reviews
02:05:32 14 document). Could I continue reading the next few
02:05:34 15 lines?
02:05:36 16 BY MR. TOWNSHEND:
02:05:36 17 Q. Yes.
02:05:46 18 A. (Witness reviews document). Okay.
02:05:49 19 Q. And if you would read the next
02:05:52 20 question and answer, too?
02:05:53 21 A. Okay. And scroll down, please.
02:05:57 22 (Witness reviews document). Okay.
02:06:25 23 Q. So my question is, is this the
02:06:28 24 kind of evidence you would want to consider if you
02:06:31 25 were addressing the question of if the Anishinaabe

1 who were there before the Iroquois Wars, were the
2 same or different than the ones who came back after
3 the Iroquois Wars, is this the kind of evidence you
4 would want to consider?

5 A. If it was available to me, yes.

6 Q. All right, I want to talk about
7 linguistics a little bit. I realize you're not a
8 linguist, so I'm going to talk about some
9 linguistic evidence that we have heard and ask you
10 to assume that.

11 Professor Valentine was a linguist we
12 called, and I want you to assume that he analyzed
13 the dialect of Anishinaabemowin at Saugeen and
14 Nawash and compared them, those dialects, to the
15 dialects of surrounding communities. And his
16 findings, there are a number of key findings.

17 He found the Saugeen and Nawash dialect
18 beyond the linguistic boundary between Odawa and
19 Southeastern Ojibwa.

20 He found the dialect at Saugeen and
21 Nawash was closest to those of Wiikwemkoong, which
22 was a core Odawa community. And he gave his
23 opinion as a linguist, that that linguistic pattern
24 indicates long-term geographic stability over
25 centuries.

02:08:43 1 So my question is, is that also the
02:08:50 2 kind of evidence one would want to consider related
02:08:53 3 to the length of occupation of the territory by
02:08:58 4 Saugeen and Nawash?

02:08:59 5 THE COURT: Mr. Ogden?

02:09:01 6 MR. OGDEN: The question is
02:09:13 7 objectionable at this point, but may not be if it
02:09:18 8 can be first established -- and I submit it isn't
02:09:23 9 yet -- that Dr. Reimer's expertise includes the
02:09:30 10 ability to incorporate or comment on the
02:09:33 11 conclusions, so the opinions of a linguistic
02:09:37 12 expert.

02:09:39 13 THE COURT: Mr. Townshend? Are you
02:09:43 14 planning on laying a foundation for any of this?

02:09:45 15 MR. TOWNSHEND: All right. I'll try to
02:09:51 16 do that.

02:09:51 17 BY MR. TOWNSHEND:

02:09:54 18 Q. Linguistics is a part of
02:09:56 19 anthropology, isn't it?

02:09:57 20 A. It's one subfield, yes.

02:09:59 21 Q. So if dealing with an
02:10:05 22 anthropological question of ethnic identity, would
02:10:16 23 it not be appropriate to look at fields other than
02:10:20 24 particular ethnology, for example. Would it not be
02:10:24 25 appropriate if there were insights that could be

02:10:28 1 gained from related disciplines, such as
02:10:30 2 linguistics, wouldn't it be appropriate to consider
02:10:35 3 that as part of the analysis?

02:10:37 4 A. Yes, that would be appropriate.

02:10:48 5 Q. I'll go back to my original
02:10:50 6 question then.

02:10:57 7 So you recall what I said about the
02:11:01 8 evidence of Dr. Valentine?

02:11:03 9 A. I'm not sure I quite got the first
02:11:05 10 statement that you made, and I was going to ask you
02:11:09 11 to repeat it, then you continued with a second
02:11:12 12 statement. So if you would just repeat your first
02:11:15 13 statement, please.

02:11:15 14 Q. Well, the first thing I asked to
02:11:17 15 you assume was that Dr. Valentine analyzed the
02:11:22 16 Saugeen and Nawash dialects in comparison to the
02:11:25 17 dialects of surrounding Anishinaabe communities?

02:11:28 18 A. Okay.

02:11:28 19 Q. And he made three key findings
02:11:31 20 that I mentioned. And the first was: He found
02:11:38 21 Saugeen-Nawash, the dialects there to be on the
02:11:40 22 linguistic boundary between Odawa and Southeastern
02:11:44 23 Ojibway.

02:11:45 24 A. Okay.

02:11:45 25 Q. Second was that it was close

02:11:47 1 dialects at Saugeen and Nawash, which were slightly
02:11:52 2 different, were closest to Wiikwemkoong which is a
02:11:56 3 core Odawa dialect.

02:11:58 4 And the third was, as a linguist he
02:12:01 5 gave the opinion that that pattern shows long-term
02:12:05 6 geographical stability over centuries.

02:12:11 7 So then my question is, is that the
02:12:16 8 kind of evidence one would want to consider related
02:12:19 9 to the -- if one was asked to answer a question
02:12:23 10 about the length of occupation of territory by
02:12:27 11 Saugeen and Nawash?

02:12:28 12 A. Yes.

02:12:28 13 Q. All right. I want to talk about a
02:12:58 14 few other factors about continuity. I'm focusing
02:13:01 15 on continuity across the 17th century and before
02:13:04 16 and after the Iroquois Wars.

02:13:05 17 A. Okay.

02:13:06 18 Q. So we heard some evidence that in
02:13:15 19 that case, a group would return to the territory
02:13:21 20 with which they were familiar with because they
02:13:23 21 would know about how to use the resources there; do
02:13:28 22 you consider that a reasonable proposition?

02:13:29 23 A. There is documentation that that
02:13:32 24 happened among some groups, yes.

02:13:34 25 Q. And we've also had evidence that

02:13:45 1 return would be to territory where there was a
02:13:47 2 strong spiritual connection; is that also something
02:13:51 3 you would consider reasonable?

02:13:54 4 A. I'm sorry, can you repeat the
02:13:59 5 question?

02:13:59 6 Q. We've heard evidence that a group
02:14:10 7 coming back after the Iroquoian Wars would go to
02:14:13 8 territories where they have a strong spiritual
02:14:16 9 connection; is that something you consider
02:14:17 10 reasonable?

02:14:19 11 THE COURT: Mr. Ogden?

02:14:21 12 MR. OGDEN: The question as asked is
02:14:28 13 not clear, but he appears to be asking Dr. Reimer
02:14:32 14 whether she would consider it reasonable for groups
02:14:37 15 to return to places where they had a strong
02:14:40 16 spiritual connection, to assess whether what they
02:14:46 17 did was a reasonable act. And she's not qualified
02:14:53 18 to do that.

02:14:54 19 It may be a question of phrasing and
02:14:58 20 re-wording may assist.

02:15:01 21 THE COURT: Mr. Townshend, it was a
02:15:03 22 long question. This has been a problem today,
02:15:06 23 built-in facts and so forth.

02:15:09 24 Could you take another go at it? And I
02:15:12 25 don't mean reading the old question, because that's

02:15:18 1 the problem.

02:15:19 2 BY MR. TOWNSHEND:

02:15:31 3 Q. Would you consider if an
02:15:34 4 Anishinaabe group, after the Iroquois Wars, was
02:15:41 5 coming back into the territory vacated by the
02:15:46 6 Iroquois, that it would be likely they would go to
02:15:49 7 a location where they had a spiritual connection?

02:15:52 8 A. If they were returning, yes, that
02:15:54 9 would be reasonable.

02:15:55 10 Q. And related to that, I want to ask
02:16:11 11 about the connection to the graves of one's
02:16:17 12 ancestors and you mentioned that a couple of times
02:16:20 13 in your report. Actually at Volume 3 you talked
02:16:23 14 about certain groups refusing to move because it
02:16:27 15 would mean leaving the graves of their ancestors?

02:16:30 16 A. Yes, I recall.

02:16:31 17 Q. So you recognize that as a strong
02:16:33 18 connection among Anishinaabe people?

02:16:35 19 A. Yes.

02:16:35 20 Q. So it would be reasonable that if
02:16:38 21 a group is coming back, they would go to where the
02:16:41 22 graves of their ancestors were?

02:16:43 23 A. That may be reasonable, yes.

02:16:45 24 Q. I want to go to Volume 1 of your
02:17:03 25 report, Exhibit 4576 at page 112. I'd like you to

1 read the first paragraph after the quotation.

2 A. (Witness reviews document). Okay.

3 Q. So you're suggesting it's possible
4 that Odawa were still on Manitoulin in the
5 mid-1650s; is that right?

6 A. Yes.

7 Q. Now, I'd like to go to the Jesuit
8 Relations, it's Exhibit 216. This is another
9 excerpt from the Jesuit Relations. This is
10 Volume 55. I'd like to go to page 169 of that.

11 MR. TOWNSHEND: Can I have the next
12 page, please. Yes, that's the French version.
13 Here we are.

14 THE COURT: What page are we on now?

15 MR. TOWNSHEND: This is page 171.

16 THE COURT: Thank you.

17 BY MR. TOWNSHEND:

18 Q. If you could read the second full
19 paragraph, that's the part that's marked line 7 to
20 the end of the paragraph?

21 THE COURT: You say line 7, but there's
22 no line indicators on this document?

23 MR. TOWNSHEND: I'm sorry.

24 BY MR. TOWNSHEND:

25 Q. The line that begins "Their

1 location and to the end of the paragraph?

2 THE COURT: Thank you.

3 THE WITNESS: (Witness reviews
4 document). Okay.

5 BY MR. TOWNSHEND:

6 Q. This is, you'll see at the top of
7 the page, this is Relation 1670 to 1771?

8 A. Correct.

9 Q. This is recording that the Odawa
10 returned to Manitoulin in 1671 and found some
11 people of their own nation there already.

12 A. Yes.

13 Q. So the Odawa may have been on
14 Manitoulin in the mid-1650s and they were back at
15 the latest by 1671.

16 A. That's possible, yes.

17 Q. And possible they might have even
18 stayed -- some of them might have even stayed
19 there?

20 A. It is possible, yes.

21 Q. And if that's possible for
22 Manitoulin, wouldn't that be possible for the Bruce
23 Peninsula?

24 A. It's possible.

25 Q. Let's move to another area about

02:22:28 1 the Potawatomi migrations, and how that related to
02:22:33 2 the group they joined.

02:22:38 3 First, I also want to recall the
02:22:43 4 evidence we've heard from Dr. Valentine. He also
02:22:48 5 testified there was no trace of Potawatomi in the
02:22:52 6 dialect at Saugeen/Nawash?

02:22:54 7 A. Okay.

02:22:55 8 Q. So I'm asking you to assume that?

02:22:57 9 A. Okay.

02:22:58 10 Q. And he gave an opinion, as a
02:23:01 11 linguist, that if there were a significant number
02:23:09 12 of people with Potawatomi ancestry, the fact that
02:23:13 13 there was no trace of Potawatomi in the language,
02:23:18 14 that that could be due to the social relationships
02:23:21 15 in the community.

02:23:23 16 So I'm asking you to assume that as the
02:23:28 17 linguistic.

02:23:28 18 A. Okay.

02:23:29 19 Q. So my suggestion as an
02:23:31 20 anthropologist, that would be something you would
02:23:34 21 want to consider in answering the question if the
02:23:39 22 Potawatomi joined and were incorporated into an
02:23:43 23 existing community; is that fair?

02:23:46 24 A. That's fair.

02:23:49 25 Q. Okay. Now, had you looked at oral

1 histories from Saugeen and Nawash concerning
2 Potawatomi joining them in the mid-19th century?

3 A. No, the oral histories I examined
4 were focused mainly on the 17th century. So the
5 Iroquois Wars and return to Southern Ontario after.

6 Q. I want to take you to a couple of
7 those oral histories. Can I have Exhibits 3949,
8 please.

9 This is what we call a Rule 36
10 examination; I showed you one of these before.
11 This is by Fred Jones in 2002. And if we can go to
12 page 8 of that.

13 THE COURT: Mr. Ogden?

14 MR. OGDEN: I think in fairness to the
15 witness, the characterization of this testimony
16 should be limited to that. It is testimony in this
17 trial, and not that it is oral history.

18 That is a particular phrase given to a
19 narrative and conclusion reached by this Court, and
20 is something in issue in this trial, the question
21 whether or not the testimony given is oral history.

22 THE COURT: Mr. Townshend?

23 MR. TOWNSHEND: This is an account by a
24 community witness about historical matters. I'm
25 not sure why that wouldn't be oral history.

02:26:05 1 THE COURT: That wasn't the objection.
02:26:07 2 The objection is that there is an issue in this
02:26:11 3 trial about to what extent some of this community
02:26:16 4 evidence is oral history.

02:26:20 5 I'm not going to be deciding that issue
02:26:22 6 today, but it seems to be an issue. So you may
02:26:26 7 have your position, and other parties may have
02:26:29 8 theirs.

02:26:31 9 The gist of Mr. Ogden's objection is
02:26:38 10 questioning that suggests there's no issue about
02:26:39 11 the characterization, I think -- is that it,
02:26:42 12 Mr. Ogden?

02:26:43 13 MR. OGDEN: Yes, Your Honour.

02:26:44 14 THE COURT: All right.

02:26:46 15 MR. TOWNSHEND: I'm certainly aware
02:26:47 16 there is a question about the reliability of this
02:26:53 17 kind of testimony, but this is the kind of thing
02:26:56 18 that the courts have called oral history.

02:27:00 19 It doesn't mean that they don't weigh
02:27:03 20 it and consider what weight to give it and what to
02:27:07 21 do with it. But it is the sort of thing that, what
02:27:09 22 community members say is oral history.

02:27:15 23 THE COURT: Sir, I'm not going to rule
02:27:17 24 on the issue right now, in the middle of an
02:27:20 25 objection.

02:27:20 1 We've had a lot of evidence from a lot
02:27:22 2 of different witnesses on accounts of things at
02:27:26 3 various points in time and how they should or
02:27:29 4 shouldn't be characterized.

02:27:31 5 And we're not going to be dealing with
02:27:32 6 that in the middle of your cross-examination;
02:27:36 7 especially because it seems to me very simple to
02:27:39 8 phrase the question to avoid the problem.

02:27:48 9 MR. TOWNSHEND: All right, I'll
02:27:49 10 rephrase it.

02:27:50 11 BY MR. TOWNSHEND:

02:28:04 12 Q. In considering the questions, the
02:28:09 13 relations between Potawatomi who moved to Saugeen
02:28:16 14 territory, is this the kind of evidence one would
02:28:23 15 want to consider in answering that question?

02:28:26 16 THE COURT: What does the word "this"
02:28:29 17 apply to?

02:28:30 18 MR. TOWNSHEND: This would be, for
02:28:31 19 example, this question and answer from Fred Jones.

02:28:34 20 THE COURT: All right.

02:28:37 21 THE WITNESS: If it was available to
02:28:39 22 the person addressing the issue to the researcher,
02:28:42 23 then, yes.

02:28:59 24 BY MR. TOWNSHEND:

02:29:12 25 Q. I wanted to move to one aspect of

02:29:15 1 the relationships of the Potawatomi and the group
02:29:18 2 they joined at Owen Sound.

02:29:22 3 One of your conclusions about that was
02:29:24 4 that Nawash was a leader in the War of 1812, and
02:29:29 5 later led a large group of Potawatomi to Owen Sound
02:29:36 6 and founded the Indian settlement there; is that
02:29:38 7 fair?

02:29:39 8 A. Yes. I recall that, yes.

02:29:41 9 Q. As far as I can understand, the
02:29:48 10 basis on which you reached that -- we can go to the
02:29:51 11 passage if you wish -- shall we go there?

02:29:56 12 A. Yes, please.

02:29:58 13 Q. At page 282 of your first report.
02:30:23 14 So my understanding of your line of reasoning was
02:30:28 15 you looked at records of the War Chief Nawash in
02:30:35 16 the War of 1812. You looked at a group referred to
02:30:42 17 in 1831 census as "Naigwas" group. You looked at a
02:30:53 18 person in the 1834 census called "Nawash" and that
02:31:00 19 those would be the primary documents from which you
02:31:03 20 drew that conclusion.

02:31:05 21 And then you supplemented that with a
02:31:09 22 secondary source from "The History of County of
02:31:13 23 Grey" and an excerpt from the Cape Croker community
02:31:17 24 newsletter; is that a fair summary as to how you
02:31:22 25 arrived at that conclusion?

02:31:25 1 A. If we can just back up a moment, I
02:31:27 2 need to explain Chapter 11.

02:31:29 3 Q. Okay.

02:31:30 4 A. Which is where you're taking this
02:31:32 5 information. When the series of research projects
02:31:38 6 was started by Ontario a number of years ago, one
02:31:46 7 of the projects was related to genealogical
02:31:50 8 analysis. I did not conduct that. It was
02:31:53 9 conducted by Gwen Paterson, who is a certified
02:31:59 10 genealogist.

02:32:00 11 I was then later asked to review her
02:32:04 12 conclusions and to incorporate and/or to summarize
02:32:10 13 areas where her conclusions seemed to dovetail with
02:32:15 14 the conclusions I had come to in the -- from the
02:32:19 15 ethnohistorical documentation. So that's the
02:32:21 16 background to this 11.1 joint conclusion.

02:32:31 17 So the -- a lot of the specifics to
02:32:37 18 individuals, identities, that sort of thing have
02:32:40 19 drawn, been drawn from this other report. And it
02:32:44 20 was my task to determine if and how that was
02:32:49 21 consistent with what I had been able to find in the
02:32:58 22 ethnohistorical accounts.

02:33:00 23 Q. Yes?

02:33:01 24 A. So now that I've given you the
02:33:02 25 background, I just wanted to make that clear. And

02:33:07 1 so if what you were doing was itemizing the data
02:33:12 2 that I'm citing here, you were referring to me and
02:33:18 3 only me, and I just wanted to make sure that it was
02:33:21 4 clear to the Court that these are joint
02:33:24 5 conclusions.

02:33:27 6 Q. All right. And you're adopting
02:33:29 7 them?

02:33:29 8 A. Yes.

02:33:30 9 Q. So is what I gave a fair recount
02:33:41 10 of the basis for your conclusion?

02:33:43 11 A. I don't remember every single item
02:33:45 12 that you recounted. But if it was taken directly
02:33:50 13 from pages 282 to 283, then I will take your word
02:33:56 14 for it.

02:33:57 15 Q. Well, I'll state them again.

02:33:59 16 A. Okay.

02:34:00 17 Q. Looked at records of the War Chief
02:34:06 18 Nawash in the War of 1812?

02:34:08 19 A. Correct.

02:34:09 20 Q. You looked at a group in the 1831
02:34:14 21 census called "Naigwas"?

02:34:18 22 A. Gwen Paterson looked at that.

02:34:21 23 Q. And you're relying on that?

02:34:23 24 A. And I'm relying on her, yes.

02:34:25 25 Q. There's the 1834 Census of a

1 person called "Nawash" that you're relying on?

2 A. Yes.

3 Q. And you're relying on an excerpt
4 from The History of County of Grey?

5 A. (Witness reviews document).

6 Q. There are other places you refer
7 to these in your report; I'm not sure these are all
8 listed here. I can go to the other places, if you
9 wish?

10 A. Sure.

11 Q. You also refer to this at
12 page 161-162 of the first volume, at page 166 and
13 page 188. I'm not sure how much of that you want
14 to look at?

15 A. 162?

16 Q. 161 and 2, 166 and 188.

17 We'll go to each of these in turn --

18 A. I just needed to remind myself,
19 I'm satisfied.

20 Q. So we'll start with page 161. So
21 on page 161, you're referring to the War Chief
22 Nawash, who is a key leader and ally of Tecumseh in
23 the War of 1812; is that right?

24 A. Yes.

25 Q. And some of his speeches were

1 recorded, and you mention a couple of those on
2 pages 162 and 163?

3 A. Yes.

4 Q. I want to take you to another one
5 of his speeches, I have document SC1827.

6 This is a document called, "Naiwashe's
7 Speech to British Officers, 20th of May 1814".

8 MR. TOWNSHEND: I'd like to make that
9 an exhibit.

10 THE COURT: Mr. Ogden?

11 MR. OGDEN: If I could have a moment to
12 check.

13 THE COURT: While you're making that
14 check...

15 I can't see enough of this document,
16 Mr. Townshend.

17 MR. TOWNSHEND: It's just an archival
18 document. If you go to the next page you'll see
19 the --

20 I have a transcript for that, which I
21 would also want to make an exhibit. I just wanted
22 to make this an exhibit first.

23 MR. OGDEN: I have no problem, Your
24 Honour.

25 THE COURT: Can you properly describe

1 it for the record, sir.

2 MR. TOWNSHEND: I would describe it as
3 "Naiwashe's Speech to British Officers" --

4 THE COURT: Well, I said properly
5 describe it. What it is, is a handwritten
6 document, dated maybe 1814, I can't see it.

7 Are you saying that he wrote this
8 document?

9 MR. TOWNSHEND: No.

10 THE COURT: So please describe the
11 document as opposed to the subject matter of the
12 document.

13 MR. TOWNSHEND: It is a record of
14 Nawash's speech. At the top it says, "Speech of
15 Naiwashe --" and another name. And the people whom
16 it was listed present are British officers, that's
17 why I was --

18 THE COURT: Are you testifying about
19 that, sir?

20 MR. TOWNSHEND: Well, we can --

21 THE COURT: Sir, the answer is, no
22 you're not testifying about that.

23 MR. TOWNSHEND: That's right.

24 THE COURT: Mr. Registrar. This is a
25 handwritten document dated May 20, 1814, entitled

02:39:18 1 "Speech of --" what are the two names,
02:39:22 2 Mr. Townshend?
02:39:22 3 MR. TOWNSHEND: The first one is
02:39:24 4 "Naywash". Here it seems to be spelled
02:39:30 5 N-A-I-W-A-S-H-E.
02:39:31 6 THE COURT: The second name is spelled?
02:39:32 7 MR. TOWNSHEND: The second is very
02:39:34 8 difficult to make out.
02:39:35 9 THE COURT: You have a transcript, so
02:39:36 10 presumably this has been addressed already.
02:39:39 11 MR. TOWNSHEND: Yes.
02:39:40 12 THE COURT: So perhaps you can read it
02:39:41 13 out. It's not a complicated matter to correctly
02:39:44 14 describe an exhibit sir. We've wasted a lot of
02:39:49 15 time today on this sort of thing.
02:39:53 16 MR. TOWNSHEND: Pardon me, Your Honour.
02:40:02 17 THE COURT: If you wish to put up the
02:40:03 18 transcript on the screen for assistance, that's
02:40:06 19 fine.
02:40:06 20 MR. TOWNSHEND: All right. We've put
02:40:08 21 up SC1828.
02:40:28 22 THE COURT: Spell that second name,
02:40:30 23 please.
02:40:31 24 MR. TOWNSHEND: Pardon me?
02:40:32 25 THE COURT: Could you spell the second

1 name, please. Or pronounce it.

2 MR. TOWNSHEND: This is transcribed as
3 S-H-K-E-W-A-B-E-K.

4 THE COURT: All right. Mr. Registrar,
5 that handwritten document shall be the next
6 exhibit.

7 THE REGISTRAR: The handwritten
8 document is Exhibit No. 4738.

9 EXHIBIT NO. 4738: Handwritten document
10 dated May 20, 1814, entitled
11 "Naiwashe's Speech to British
12 Officers."

13 THE COURT: And the transcript would be
14 the next exhibit.

15 THE REGISTRAR: Exhibit 4739, Your
16 Honour.

17 EXHIBIT NO. 4739: Transcript of
18 handwritten document dated May 20,
19 1814, entitled "Naiwashe's Speech to
20 British Officers."

21 THE COURT: Please go ahead.

22 BY MR. TOWNSHEND:

23 Q. If you can scroll down and read
24 the transcript of it.

25 A. (Witness reviews document).

02:41:59 1 Is that the end of it, or does it
02:42:04 2 continue?
02:42:05 3 Q. There's a little bit more, yes.
02:42:22 4 A. (Witness reviews document). Okay.
02:42:23 5 Q. So this recounts that Naywash
02:42:28 6 tried to leave the Aboriginal Confederacy after the
02:42:32 7 death of Tecumseh, but the Shawanees would not
02:42:44 8 join?
02:42:45 9 A. The Shawanees, yes, that is
02:42:50 10 correct.
02:42:50 11 Q. Now if you would go back to
02:43:12 12 page 161 of your first report. On the first full
02:43:31 13 paragraph, you're suggesting that Nawash was
02:43:35 14 Ottawa, Ottawa War Chief?
02:43:37 15 A. Yes, there are documents that
02:43:38 16 identify him as Ottawa War Chief.
02:43:41 17 Q. And you also suggested, it sounds
02:43:47 18 like he originated in Saginaw Bay, Michigan?
02:43:51 19 A. I'm referring to the quote right
02:43:53 20 above that seems to indicate that, yes.
02:44:03 21 Q. Now, I want to go to a document
02:44:12 22 SC1812. This is another archival document and I
02:44:29 23 have a transcript as well at SC1811. It will be
02:44:34 24 easier to describe it if we work with the
02:44:37 25 transcript.

02:44:38 1 So this is a letter of Lieutenant
02:44:43 2 Colonel James to Major General Robinson on the 16th
02:44:47 3 of July, 1815. And I would like that document and
02:44:54 4 transcript made exhibits, please.

02:44:57 5 THE COURT: Mr. Registrar, the
02:44:58 6 handwritten document will be the next exhibit.

02:45:01 7 THE REGISTRAR: Exhibit No. 4740.

02:45:04 8 EXHIBIT NO. 4740: Handwritten letter
02:44:42 9 from Lieutenant Colonel James to Major
02:44:44 10 General Robinson dated July 16, 1815.

02:45:05 11 THE COURT: And its transcript the
02:45:06 12 following exhibit.

02:45:07 13 THE REGISTRAR: 4741.

02:45:10 14 EXHIBIT NO. 4741: Transcript of
02:44:40 15 handwritten letter from Lieutenant
02:44:43 16 Colonel James to Major General Robinson
02:44:47 17 dated July 16, 1815.

02:45:20 18 BY MR. TOWNSHEND:

02:45:20 19 Q. The point I want to make in this
02:45:22 20 letter is on page 8. That's 8 of the original, so
02:45:28 21 -- it's near the end of the transcript.

02:46:27 22 The paragraph starting "Colonel
02:46:30 23 Caldwell [...]".

02:46:37 24 A. (Witness reviews document).

02:46:38 25 I've read it.

02:46:39 1 Q. So at this point, this is in 1815,
02:46:47 2 and Nawash and his people were located at Fighting
02:46:51 3 Island.

02:46:55 4 A. Yes.

02:46:56 5 Q. And that's in the Detroit River?

02:46:59 6 A. That's -- yes, in the
02:47:01 7 Detroit-Windsor area, yes.

02:47:03 8 Q. I want to go to document SC1829.
02:48:01 9 There's a transcript of this as well, at SC1830.
02:48:43 10 Actually, the title doesn't seem to be on the
02:48:46 11 transcript here?

02:48:47 12 THE COURT: I don't have a transcript
02:48:49 13 yet; is this the transcript?

02:48:51 14 MR. TOWNSHEND: What's on the screen is
02:48:52 15 the transcript, but it doesn't seem to have --

02:48:54 16 THE COURT: I see, that's why it
02:48:56 17 doesn't look like one.

02:48:57 18 MR. TOWNSHEND: Yes, the original
02:48:58 19 document has a title page, if we can go back to
02:49:03 20 that for a moment.

02:49:03 21 It's a "Memorial from the Ottawa,
02:49:06 22 Chippewa, and Potawatomi tribes of Indians
02:49:09 23 respecting the Huron reserve at Amherstburg now
02:49:15 24 occupied by the Wyandot".

02:49:20 25 There's no date on this, we'll deal

02:49:24 1 with that in a few minutes, but I would like this
02:49:27 2 document and the transcript -- it's a partial
02:49:31 3 transcript I guess, added as exhibits.

02:49:34 4 THE COURT: Is there a reason why we
02:49:36 5 can't deal with the date? If you're going to --

02:49:39 6 MR. TOWNSHEND: There's no date on the
02:49:40 7 document.

02:49:41 8 THE COURT: I see that. You said
02:49:42 9 you're going to deal with it?

02:49:43 10 MR. TOWNSHEND: Yes, but I need further
02:49:45 11 evidence to deal with that.

02:49:46 12 THE COURT: Mr. Registrar, the
02:49:47 13 handwritten document will be the next exhibit.

02:49:49 14 THE REGISTRAR: 4742.

02:49:51 15 EXHIBIT NO. 4742: Handwritten document
02:49:04 16 entitled "Memorial from the Ottawa,
02:49:06 17 Chippewa, and Potawatomi tribes of
02:49:09 18 Indians respecting the Huron reserve at
02:49:11 19 Amherstburg now occupied by the
02:49:18 20 Wyandot".

02:49:52 21 THE COURT: And then its partial
02:49:54 22 transcript.

02:49:55 23 THE REGISTRAR: The transcript, 4743.

02:49:58 24 EXHIBIT NO. 4743: Partial transcript
02:49:04 25 of "Memorial from the Ottawa, Chippewa,

02:49:07 1 and Potawatomi tribes of Indians
02:49:09 2 respecting the Huron reserve at
02:49:11 3 Amherstburg now occupied by the
02:49:18 4 Wyandot."

02:50:02 5 THE COURT: All right.

02:50:05 6 BY MR. TOWNSHEND:

02:50:05 7 Q. I'll deal first with the date. If
02:50:11 8 we go to the transcript, it's addressed to "His
02:50:28 9 Excellency Sir John Colborne"; do you see that, Dr.
02:50:31 10 Reimer?

02:50:31 11 A. I do.

02:50:32 12 Q. You recall that Colborne left
02:50:34 13 Canada in January of 1836?

02:50:37 14 A. Yes.

02:50:38 15 Q. So the best I can do with the date
02:50:40 16 for this is that it's sometime before 1836?

02:50:42 17 A. Yes, I agree.

02:51:11 18 Q. I'd like to look at the bottom of
02:51:14 19 the text of that first. It starts, "Father, at a
02:51:19 20 Council [...]"

02:51:22 21 A. (Witness reviews document).

02:51:33 22 I've read it.

02:51:34 23 Q. So that records the Chief Nawash
02:51:36 24 had died before then, which places that in 1835 or
02:51:42 25 earlier; do you agree?

02:51:43 1 A. Yes.

02:51:43 2 Q. If we now go to a previous page,
02:52:00 3 "Father --" the first one:

02:52:09 4 "Father, we still own some
02:52:11 5 lands which we have not sold in this
02:52:13 6 province. Among others, an island
02:52:15 7 in the River Detroit called
02:52:17 8 'Fighting Island', and a small tract
02:52:19 9 situated near Amherstburg called the
02:52:21 10 'Huron Reserve', upon which a few
02:52:23 11 families of Wyandots (or Hurons) are
02:52:26 12 now settled."

02:52:27 13 Do you see that?

02:52:28 14 A. Yes.

02:52:28 15 Q. And the second paragraph,
02:52:31 16 paragraph starting, "This piece of ground records
02:52:36 17 among other things, that they are bidding in the
02:52:39 18 United States."

02:52:49 19 THE COURT: Is that a question?

02:52:51 20 BY MR. TOWNSHEND:

02:52:51 21 Q. Yes, is that correct, Dr. Reimer?

02:52:54 22 A. I just need a minute to read this
02:52:58 23 through. If you could repeat the question, please.

02:53:25 24 Q. They say that they are living in
02:53:28 25 the United States at that time?

02:53:29 1 A. Yes.

02:53:30 2 Q. So we have Nawash, who is
02:53:38 3 Tecumseh's peer, died before 1836 and his followers
02:53:42 4 appear to be living in the United States in 1835;
02:53:48 5 do you agree?

02:53:50 6 A. Are you asking me to agree that
02:53:52 7 all of his followers were there? Certainly some of
02:54:02 8 his people were in the United States, yes.

02:54:04 9 Q. All right. I'll leave it at that.
02:54:19 10 Now, if I can go to document SC2013.

02:54:37 11 This is a record of the 1851 Census of
02:54:49 12 Canada West, Grey County, Derby Township.

02:54:58 13 A. Sorry, what's the date?

02:55:00 14 Q. It's the 1851 census.

02:55:04 15 A. Okay.

02:55:08 16 THE COURT: I'll take your word for
02:55:10 17 that, Mr. Townshend, but I can't see that anywhere
02:55:13 18 here.

02:55:15 19 MR. TOWNSHEND: It's not easy to read.

02:55:27 20 THE WITNESS: May I interject?

02:55:29 21 BY MR. TOWNSHEND:

02:55:29 22 Q. Yes.

02:55:30 23 A. In the "age next birthday" column
02:55:34 24 it says 1852. So that may indicate that this is
02:55:39 25 prior to 1852.

02:55:46 1 Q. Yeah. If we can scroll to the
02:56:38 2 bottom of this page, you see the archival citation.
02:56:44 3 It says the 1851 Census Canada, West Grey County,
02:56:50 4 Derby Township.

02:56:52 5 So we'd like that made an exhibit.

02:56:56 6 THE COURT: Mr. Registrar.

02:56:56 7 THE REGISTRAR: Exhibit No. 4744.

02:56:59 8 EXHIBIT NO. 4744: Record of the 1851
02:54:46 9 Census of Canada West, Grey County,
02:56:50 10 Derby Township.

02:56:50 11 BY MR. TOWNSHEND:

02:57:12 12 Q. There's a line marked 25. If we
02:57:16 13 can expand that a little bit, that says "James
02:57:28 14 Newash". You have to scroll up for the headings of
02:57:31 15 those columns.

02:57:42 16 First is the name, then the
02:57:46 17 "Profession, Trade, Or Occupation"; then place of
02:57:49 18 birth; religion; residence if out of limits; and
02:57:57 19 age next birthday.

02:57:59 20 So if we go down to that --

02:58:23 21 THE COURT: It seems you're having
02:58:36 22 technical problems this afternoon.

02:58:27 23 MR. TOWNSHEND: We have a better copy
02:58:28 24 that we just downloaded from the archives site. If
02:58:33 25 you wish, we can put that up.

02:58:43 1 Let's show that then.

02:58:49 2 THE COURT: I think step number one is
02:58:51 3 to ask the other counsel who have not seen this
02:58:51 4 before if they agree.

02:58:54 5 And step number two is to indicate what
02:58:58 6 you want, sir. It's a piece of evidence that
02:59:00 7 you're putting forward.

02:59:06 8 MR. TOWNSHEND: If other counsel don't
02:59:08 9 object, I would like this to be either another
02:59:10 10 exhibit or replace 4744.

02:59:14 11 THE COURT: I think it's better to have
02:59:17 12 the record indicate what you actually did in the
02:59:20 13 trial.

02:59:20 14 MR. TOWNSHEND: Okay.

02:59:21 15 THE COURT: This document -- how many
02:59:24 16 pages is it? Is it the same number of pages as the
02:59:28 17 other? It says 1 of 1. I'm all for having a
02:59:40 18 better copy but it needs to be described though. I
02:59:41 19 thought the other document was longer than one
02:59:46 20 page. It seems to be 21 pages.

02:59:49 21 MR. TOWNSHEND: What has been
02:59:50 22 downloaded there is the first page.

02:59:53 23 THE COURT: And what's the production
02:59:55 24 number? The image?

02:59:58 25 MR. TOWNSHEND: We don't have one.

03:00:00 1 THE COURT: So Mr. Registrar doesn't
03:00:03 2 have this new copy yet.
03:00:04 3 MR. TOWNSHEND: That is correct.
03:00:06 4 THE COURT: Mr. Registrar, can we
03:00:07 5 reserve the next exhibit number for a single page,
03:00:11 6 page 1, which is a better copy of Exhibit 4744. So
03:00:19 7 what would the exhibit number be?
03:00:23 8 THE REGISTRAR: 4745, Your Honour.
03:00:26 9 THE COURT: And Plaintiffs' counsel
03:00:28 10 will get you the image when they have it.
03:00:31 11 EXHIBIT NO. 4745: More legible copy of
02:54:42 12 record of the 1851 Census of Canada
02:56:49 13 West, Grey County, Derby Township.
03:00:32 14 THE COURT: All right. Please go
03:00:33 15 ahead.
03:00:43 16 BY MR. TOWNSHEND:
03:00:43 17 Q. Now going down to line 25, we have
03:00:55 18 "James Newash" and the third column over, that's
03:00:58 19 the "Born in" column and then it says "Saugeen" and
03:01:03 20 then in the column for "Age Next Birthday" it says
03:01:08 21 "55". Do you see that, Dr. Reimer?
03:01:11 22 A. Yes, can I just see the headings
03:01:14 23 again one more time?
03:01:22 24 (Witness reviews document). Okay.
03:01:25 25 Q. So that would make him born in

03:01:27 1 approximately 1796, correct?

03:01:34 2 A. You're challenging my mathematics.
03:01:54 3 I'll take your word for it.

03:01:56 4 Q. Okay. I want you to go to
03:01:58 5 document SC2014. This is a letter from Plummer to
03:02:17 6 Laird, 14th of June, 1875.

03:02:41 7 At the bottom, you can see it's the
03:02:46 8 Honorable Minister of the Interior Ottawa. And on
03:02:57 9 the last page it's signed by Plummer,
03:03:05 10 Superintendent. I'm not sure I can quite make that
03:03:20 11 out. Can you help, Dr. Reimer?

03:03:22 12 A. It's abbreviation
03:03:24 13 "Superintendent", and abbreviation for
03:03:26 14 "Commissioner", IA, "Indian Affairs".

03:03:40 15 MR. TOWNSHEND: I'd like this made an
03:03:42 16 exhibit, please.

03:03:43 17 THE COURT: Mr. Registrar?

03:03:45 18 THE REGISTRAR: Exhibit No. 4746.

03:03:47 19 EXHIBIT NO. 4746: Letter from Plummer
03:02:16 20 to Laird, dated June 14th, 1875.

03:03:48 21 BY MR. TOWNSHEND:

03:03:48 22 Q. If we look at the first paragraph
03:03:50 23 of the letter, I'd ask you to review that.

03:04:15 24 A. Okay.

03:04:15 25 Q. So Plummer had been asked for the

03:04:17 1 names of Indians who were still living who fought
03:04:19 2 in the War of 1812 for the British?

03:04:23 3 A. Correct.

03:04:23 4 Q. Now if we look at page 2, if we
03:04:35 5 look at the last paragraph -- you can review that.

03:04:55 6 A. (Witness reviews document). Okay.

03:05:01 7 Q. So that is recording one of these
03:05:04 8 Indians was James Newash of Cape Croker, who is
03:05:09 9 80 years old at the time, who served at Niagara
03:05:12 10 under Mahingun, the Wolf, who is believed to be
03:05:20 11 Captain McGibbons, and was in two or three
03:05:23 12 engagements, correct?

03:05:23 13 A. (Witness reviews document).

03:05:30 14 MR. TOWNSHEND: And we need the next
03:05:32 15 page.

03:05:32 16 A. Right. "Was in two or three
03:05:44 17 engagements" yes.

03:05:45 18 THE COURT: Mr. Beggs?

03:05:48 19 MR. BEGGS: Your Honour, I'm not clear
03:05:50 20 because I'm still making out some of the
03:05:51 21 handwriting.

03:05:53 22 Did the document say that "the Wolf" is
03:05:57 23 believed to be Captain McGibbons, or is
03:06:01 24 that Mr. Townshend's observation?

03:06:03 25 THE COURT: I can't see it on this

03:06:04 1 page, but you better go back to the previous page.

03:06:10 2 Mr. Townshend, did you --

03:06:11 3 MR. TOWNSHEND: The document does say
03:06:14 4 Captain McGibbons, the last line.

03:06:15 5 THE COURT: No, but it's the
03:06:16 6 characterization as "the wolf", I think, that Mr.
03:06:19 7 Beggs is on his feet about.

03:06:19 8 MR. TOWNSHEND: Well, the last three
03:06:19 9 lines:

03:06:20 10 "He served under Mahingun --
03:06:22 11 brackets (the wolf) -- English name
03:06:23 12 is supposed to be Captain
03:06:23 13 McGibbons."

03:06:26 14 THE COURT: Right, thank you for
03:06:28 15 clarifying that. Please go ahead.

03:06:53 16 MR. TOWNSHEND: May I have document
03:06:56 17 SC1822, please.

03:07:13 18 BY MR. TOWNSHEND:

03:07:14 19 Q. This is a photograph of James
03:07:17 20 Newash from the collection of the Grey Roots Museum
03:07:21 21 and Archives?

03:07:22 22 THE COURT: Mr. Ogden?

03:07:23 23 MR. OGDEN: That is what it purports to
03:07:33 24 be, I think, Your Honour.

03:07:34 25 THE COURT: Well, I can't see that. If

03:07:36 1 you say so.

03:07:37 2 MR. OGDEN: Well, it reads -- the
03:07:39 3 document has been produced and we have reviewed it,
03:07:44 4 and it does state --

03:07:46 5 THE COURT: What is the objection?

03:07:47 6 MR. OGDEN: The objection, Your Honour
03:07:48 7 is, to my friend giving as evidence that this is a
03:07:58 8 photo of James Newash or to asking a question based
03:08:03 9 on that proposition.

03:08:06 10 THE COURT: Mr. Townshend?

03:08:10 11 MR. TOWNSHEND: If we could scroll
03:08:11 12 down. What I'm taking from this is the date of
03:08:16 13 death, not the photograph.

03:08:23 14 THE COURT: What you're taking from it
03:08:25 15 is not a question.

03:08:26 16 MR. TOWNSHEND: Yes. This is --

03:08:29 17 THE COURT: Are you asking this witness
03:08:30 18 if she can verify the date of death? Is that what
03:08:34 19 you're trying to do? You don't have to tell me
03:08:36 20 what you're trying to do.

03:08:37 21 What's your question that you're hoping
03:08:39 22 to ask about this?

03:08:41 23 MR. TOWNSHEND: The question is to
03:08:43 24 confirm that he died, or that this says that he
03:08:45 25 died in 1876.

03:08:47 1 THE COURT: Well I don't know whether
03:08:49 2 the witness knows that answer or not, but I will
03:08:52 3 permit the question.

03:08:53 4 Do you know when this gentleman died?

03:08:55 5 THE WITNESS: No.

03:08:56 6 BY MR. TOWNSHEND:

03:09:08 7 Q. All right. From the previous
03:09:09 8 document, we know he was still alive in 1875,
03:09:13 9 correct?

03:09:14 10 A. Yes.

03:09:14 11 Q. And he was very old at that time?

03:09:17 12 A. 80.

03:09:18 13 Q. All right. So we have Tecumseh's
03:09:32 14 peer Nawash, who was apparently Odawa from Saginaw
03:09:36 15 Bay, Michigan and he died before 1836.

03:09:40 16 And we have James Newash, who was born
03:09:42 17 in Saugeen in 1896. He would have been a teenager
03:09:45 18 in the War of 1812 and he died sometime after 1875;
03:09:55 19 is that fair?

03:09:55 20 A. He was born in 1796. I think in
03:09:58 21 error you said "1896".

03:10:01 22 Q. You are correct, thank you. He
03:10:02 23 was born in 1796.

03:10:05 24 So these are two different people,
03:10:10 25 aren't they?

03:10:11 1 A. I agree. These are two different
03:10:13 2 people.

03:10:26 3 MR. TOWNSHEND: Your Honour, when do
03:10:28 4 you wish to take the afternoon break we started
03:10:30 5 earlier.

03:10:31 6 THE COURT: 3:15? But if you're at a
03:10:35 7 point --

03:10:35 8 MR. TOWNSHEND: It would be better to
03:10:36 9 break now than in five minutes.

03:10:39 10 THE COURT: -- that would be assistance
03:10:40 11 to you, we can break now?

03:10:41 12 MR. TOWNSHEND: Yes.

03:10:42 13 THE COURT: All right. 20 minutes.

03:11:00 14 -- RECESS TAKEN AT 3:10 --

03:32:32 15 -- UPON RESUMING AT 3:32 --

03:32:32 16 THE COURT: Please go ahead.

03:32:34 17 BY MR. TOWNSHEND:

03:32:35 18 Q. So now I'm going to talk about the
03:34:31 19 Naigwas group from the 1831 census that you rely
03:32:44 20 on. Can I have Exhibit 991, please.

03:33:37 21 So this is the document you referred to
03:33:38 22 as the 1831 Census of Chippewas and Potawatomi. It
03:33:45 23 is not easy to read. That's the 1830, I think it's
03:33:59 24 further down, PDF 9.

03:34:17 25 Yes, that has an "1831" in the upper

03:34:20 1 left corner. And the "Naigwas" is in the
03:34:34 2 right-hand side top page line.

03:34:35 3 A. Yes, I see it.

03:34:36 4 Q. That is what you were talking
03:34:39 5 about?

03:34:39 6 A. Yes.

03:34:45 7 Q. If we scroll over to the second
03:34:47 8 page then. The headings are not easy to -- but I
03:34:58 9 do believe you've dealt with that in your report.

03:35:03 10 But as I make it out, the various
03:35:07 11 headings are: "Arrival/Departure; "Name",
03:35:14 12 Deserving Chiefs/Warriors and Widows"; "Common
03:35:16 13 Chiefs/Warriors and Widows". And then "Boys" of
03:35:20 14 various ages; "Girls" of various ages; "Totals";
03:35:24 15 "Pensions"; "Bread and Beef"?

03:35:28 16 You've seen this document before, I
03:35:30 17 gather?

03:35:30 18 A. A long time ago.

03:35:35 19 Q. The point I want to make, and it's
03:35:37 20 a fairly narrow point, is that "deserving chiefs,
03:35:42 21 warriors and widows", meant having served in the
03:35:48 22 War of 1812?

03:35:49 23 A. That is my understanding, yes.

03:35:50 24 Q. Under the Naigwas group there are
03:35:53 25 no entries under deserting chiefs, warriors or

03:35:58 1 widows; are there?

03:35:59 2 A. No.

03:36:00 3 Q. So whatever this Naigwas group was
03:36:12 4 it wouldn't have included either Tecumseh's peer
03:36:16 5 Naywash or James Newash?

03:36:18 6 A. Does not appear so. Not according
03:36:23 7 to the enumerator.

03:36:30 8 Q. Now if I can go to Exhibit 1047,
03:36:33 9 please.

03:36:55 10 So this is the 1834 census of the
03:37:03 11 Chippewas of Lakes Huron and Simcoe. Now, on the
03:37:15 12 second page of that, which is on the screen now,
03:37:18 13 the fifth line down says "Naiwash brackets (at
03:37:25 14 Sauging)"; do you see that?

03:37:27 15 A. Yes.

03:37:30 16 Q. Is there any reason to believe
03:37:32 17 that would not be James Newash that we talked about
03:37:35 18 before the break?

03:37:36 19 A. This is 1834 census?

03:37:39 20 Q. Yes.

03:37:39 21 A. And your question is, is there any
03:37:41 22 reason to believe that this would not be the James
03:37:44 23 Newash?

03:37:45 24 Q. Yes.

03:37:45 25 A. I think it's possible.

03:38:00 1 Q. So just summing up the primary
03:38:02 2 sources, just dealing with them for a moment, that
03:38:05 3 you cite for the proposition that Nawash was the
03:38:08 4 leader of the War of 1812 and later led a large
03:38:11 5 group of Potawatomi to Owen Sound and founded the
03:38:14 6 Indian settlement.

03:38:15 7 The primary sources are actually about
03:38:17 8 two different people which appear to have been
03:38:19 9 treated as one in your analysis; is that fair?

03:38:22 10 A. I certainly accept that I need to
03:38:23 11 re-examine the primary documentation. Because I
03:38:28 12 agree that there's certainly an indication that
03:38:33 13 they're talking about more than one individual.
03:38:35 14 But to sort that out, I would need some time to
03:38:39 15 look at this and then -- yeah, to re-analyze that
03:38:46 16 data.

03:38:47 17 Q. If I could go to Volume 1 of your
03:39:06 18 report, page 190. Pardon me, that's not where I
03:39:24 19 meant to go.

03:39:25 20 Rather page 208 and 9.

03:40:15 21 So this is a chart is that you prepared
03:40:17 22 of "Aboriginal Population in Saugeen/Bruce
03:40:21 23 Peninsula" to try to compare and contrast various
03:40:25 24 figures from a great deal of sources.

03:40:29 25 A. Yes.

03:40:29 1 Q. So I'm going to keep coming back
03:40:32 2 to this. So you may want to put a flag on that
03:40:35 3 page. Would it be fair to say it's quite
03:40:59 4 complicated to draw conclusions from this table?

03:41:06 5 A. It is, yes.

03:41:07 6 Q. So I wanted to focus in on the
03:41:13 7 lines that try to put numbers on ethnicity, I think
03:41:22 8 that's what we're focusing on here.

03:41:29 9 So the first one is the seventh line
03:41:40 10 down dated 1837, August 8th. And it refers to 218
03:41:54 11 Potawatomis and 152 Chippewas.

03:42:01 12 And you refer to that as showing that
03:42:06 13 beginning of permanent Potawatomi migration on the
03:42:09 14 Peninsula, right? Do you want to go to that?

03:42:13 15 A. Sure let's go to the --

03:42:14 16 Q. That's at page 179 of your report.
03:42:55 17 The paragraph beginning "In 1837".

03:43:10 18 A. Okay.

03:43:27 19 Q. So the quote, though, should be
03:43:30 20 included right after that, is:

03:43:32 21 "The Potawatomis from
03:43:33 22 Millwackie intend to remain in
03:43:36 23 Canada and a large portion of them
03:43:37 24 have gone to Sauging for the winter.
03:43:40 25 The remainder are clearing land in

03:43:44
03:43:46
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the Manitoulin Gulf [...]"

So I suggest to you that says some Potawatomi have gone to Saugeen for the winter. That doesn't really suggest permanence; does it?

A. Not this particular quote, no.

Q. And this document is a return that you're relying on, is a return of those who received presents at Manitowaning in August of 1837; is that right?

A. Yes.

Q. So it's possible that some might not have gone to it?

A. And he says that in the quote as well.

Q. Okay. The next line back at Table 7.1. The next line that I found that spoke to ethnicity was the second line from the bottom.

And that is from the Bagot Commission Report at Saugeen. It refers to 197, including about 20 Potawatomis, and at Owen Sound it records 130 Chippewas, and no mention of Potawatomi there?

A. No.

Q. The next one I found that spoke to ethnicity was on the second page of that table, the third line down. The third line down it mentions

1 "plus 29 Credit Mississauga"?

2 A. Okay.

3 Q. So you deal with that at page 190
4 of your report. And the bottom paragraph in that
5 page...

6 A. I believe it's on the top of
7 page 191.

8 Q. Yes, it is. The report I'm
9 working from has a slightly different pagination.
10 Yes, you're quite -- it's the paragraph that begins
11 "in 1848". It says:

12 "29 Credit Mississauga were
13 added to the Owen Sound population.
14 Not all stayed, and to those who
15 remained appear to have been
16 absorbed or adopted into the Nawash
17 Band [...]."

18 I'm suggesting what we can glean from
19 the document you're referring to here is there were
20 29 Mississaugas from the Credit living in Owen
21 Sound in 1848. We don't know how many stayed, and
22 we don't know from this document how many others
23 there were in Owen Sound?

24 A. No.
25

03:47:58 1 BY MR. TOWNSHEND:

03:47:58 2 Q. The next one I found that has
03:48:01 3 ethnicity mentioned is the fifth line down in the
03:48:08 4 second page of Table 7.1. And that says under
03:48:35 5 "Owen Sound: 250 total, (53 'original settlers',
03:48:45 6 plus Potawatomi etcetera)."

03:48:54 7 Now if we go to Exhibit 1951, which is
03:48:56 8 what I believe you're referring to here. This is a
03:49:18 9 letter from Thomas Anderson to the Owen Sound
03:49:22 10 chiefs and councillors dated October 9, 1852.
03:49:28 11 Maybe if you'll just read the letter. It's not
03:49:31 12 very long.

03:49:35 13 A. (Witness reviews document). Okay.

03:50:04 14 Q. So that doesn't actually say 250
03:50:08 15 people. I gather you calculated 250 from the
03:50:11 16 amount of the annuity?

03:50:12 17 A. Correct.

03:50:12 18 Q. So if we go to Exhibit 1367,
03:50:21 19 please. I think you actually quote this later on.
03:50:55 20 It would be easier to read.

03:51:38 21 MR. TOWNSHEND: Could I have the top of
03:51:40 22 that? I'm sorry, that didn't work.

03:51:57 23 BY MR. TOWNSHEND:

03:51:59 24 Q. This is a letter. Have you seen
03:52:07 25 this letter before?

03:52:09 1 A. I think this is a dispatch related
03:52:12 2 to granting the standard 210 annuity after -- under
03:52:17 3 Treaty 45½.

03:52:19 4 Q. Yes. And it's Downing Street,
03:52:25 5 it's dated 19 September 1840, Downing Street?

03:52:32 6 A. Yes.

03:52:34 7 Q. I can't make out who signed it,
03:52:36 8 but it's an official document?

03:52:38 9 A. It's referred to as a dispatch,
03:52:40 10 so...

03:52:40 11 Q. So if we go down to the paragraph
03:52:49 12 that's highlighted. I'll just read it to you:

03:52:57 13 "The arrangement which, with
03:52:59 14 the advice of your Executive Council
03:53:01 15 you have proposed for the settlement
03:53:03 16 of this claim appears to be very
03:53:04 17 reasonable. I, therefore, authorize
03:53:06 18 you to issue to each member of the
03:53:08 19 tribe customary annuity of 2 pounds
03:53:10 20 10 shillings. The annuity not to
03:53:12 21 increase with the tribe, but to
03:53:14 22 decrease with its diminution in
03:53:16 23 proportion to the" -- it's on the
03:53:21 24 next page -- "in proportion to the
03:53:28 25 lessening of its members."

03:53:45 1 Now if we go for a minute to Volume 3
03:53:47 2 of your report, Exhibit 4703, pages 67 to 68, which
03:53:54 3 do deal with these annuities.

03:53:58 4 THE WITNESS: Do you have the page
03:53:59 5 numbers again?

03:54:00 6 BY MR. TOWNSHEND:

03:54:01 7 Q. Volume 3, pages 67 and 68. And if
03:54:26 8 you review the paragraph that starts "In 1844-1845"
03:54:33 9 it's about the diminution clause. And over on to
03:54:38 10 page 68, if you would read through that, please.

03:54:58 11 A. (Witness reviews document).

03:55:19 12 Yes, just to the end of the quote. Is
03:55:21 13 that what you wanted me to read on page 68?

03:55:24 14 Q. Well, to the end of the text on
03:55:30 15 page 68.

03:55:30 16 A. Okay. (Witness reviews document)
03:55:48 17 okay.

03:55:48 18 Q. So you're saying here, despite
03:55:50 19 questions about the population, the Saugeen were in
03:55:55 20 effect paid the full annuity of the 1,250 pounds
03:55:59 21 annually?

03:56:00 22 A. Yes.

03:56:00 23 Q. That was divided equally between
03:56:06 24 Saugeen and Nawash?

03:56:07 25 A. No, my understanding is it's by

03:56:10 1 population because it was a per capita annuity.

03:56:20 2 Q. If we take you to Volume 3 still,
03:56:23 3 in footnote 268, which is on page 68. And the
03:56:36 4 fourth line from the end of footnote 268 says:

03:56:44 5 "Accounts indicate that the
03:56:46 6 annuity was divided equally among
03:56:49 7 Nawash and Saugeen Bands."

03:56:51 8 A. Yes.

03:56:52 9 Q. So if they're divided equally,
03:56:59 10 that's 625 pounds each?

03:57:01 11 A. Yes.

03:57:01 12 Q. So when in the letter from
03:57:04 13 Anderson, the chief's that we had up before, he
03:57:10 14 mentions being entitled to 625 pounds, he's just
03:57:14 15 referring to the annuity --

03:57:16 16 A. Yes. You're correct.

03:57:17 17 Q. -- amount? He's not tying that to
03:57:19 18 a population figure at all?

03:57:20 19 A. You're correct, yeah.

03:57:37 20 Q. Okay. Now, the annuity that was
03:57:40 21 created, it was expressed to decrease with the
03:57:45 22 number of the members of the tribe. We had that
03:57:48 23 document up a minute ago. It didn't mention
03:57:51 24 anything about original settlers there, did it?

03:57:54 25 A. No.

03:57:55 1 Q. So when Anderson is talking about
03:58:07 2 "original settlers", as you've set out in your
03:58:15 3 table here, he doesn't explain what he means, does
03:58:17 4 he?

03:58:17 5 A. No, and that's -- I point out
03:58:20 6 that's one of the problems. He doesn't define how
03:58:24 7 he designates them as original.

03:58:26 8 Q. So settlers might suggest starting
03:58:29 9 a farm?

03:58:30 10 A. Could we go to his document?

03:58:34 11 Q. Sure. I think actually you quoted
03:58:46 12 it?

03:58:47 13 A. I do on page 193, I see it here
03:58:50 14 now, of Volume 1.

03:59:45 15 Q. I believe it's Volume 3 page 91.
04:00:03 16 Have you found it?

04:00:04 17 A. It's Volume 1, page 193.

04:00:08 18 Q. Thank you.

04:00:24 19 It doesn't explain original settlers
04:00:57 20 that you mentioned?

04:00:57 21 A. No.

04:00:58 22 Q. I'm suggesting that could connote
04:01:01 23 people who started a farm.

04:01:04 24 A. Certainly not the way I
04:01:07 25 interpreted it. I mean, he's -- he's comparing the

04:01:12 1 words "original settlers", and I focused in on the
04:01:16 2 word "original" comparing those, or contrasting
04:01:23 3 those to the Elliots, Potawatomi and all other
04:01:26 4 strangers.

04:01:28 5 Q. But he says, "the original
04:01:30 6 settlers at Owen Sound"?

04:01:31 7 A. Yes.

04:01:31 8 Q. People who were living elsewhere
04:01:34 9 in the territory, that wouldn't necessarily embrace
04:01:36 10 those, would it?

04:01:37 11 A. Possibly.

04:01:50 12 Q. So I want to look at something
04:01:52 13 that isn't in this table, which is Exhibit 1571.

04:02:51 14 I'm sorry, 1561. Sorry, I gave you the
04:02:56 15 wrong number. So this is "Return of Owen Sound and
04:03:14 16 Saugeen Indians Distinguishing the Original
04:03:17 17 Proprietors of the Soil and the Tribes of
04:03:19 18 Potawatomi, Other Indians Residing in This Place".
04:03:23 19 And it's dated, "Owen Sound, October 11, 1845".

04:03:37 20 And you discuss that in Volume 3 of
04:03:43 21 your report, page 68. And four lines down in
04:04:23 22 footnote 268, it's talking about:

04:04:28 23 "The return of Indians produced
04:04:30 24 after the annual distribution of
04:04:33 25 presents in the summer of 1845

04:04:35 1 revealed a total population of 437
04:04:38 2 comprised of 278 'original
04:04:41 3 proprietors of the soil'; 91
04:04:43 4 Potawatomis; 43 Aissance Ojibway
04:04:46 5 (from Coldwater/Narrows); and 25
04:04:49 6 Manitoulin Island Indians."

04:05:00 7 MR. TOWNSHEND: Your Honour, it appears
04:05:01 8 to me the transcripts aren't --

04:05:10 9 THE COURT: You're quite right, the
04:05:12 10 iPad is no longer scrolling. Is that an impediment
04:05:15 11 to continuing? As long as Madam Reporter has -- I
04:05:18 12 can see Madam Reporter is reporting still.

04:05:24 13 Perhaps another member of team can
04:05:26 14 reset your iPad?

04:05:29 15 MR. TOWNSHEND: All right.

04:05:49 16 -- OFF THE RECORD DISCUSSION --

04:06:31 17 THE COURT: Please go ahead.

04:06:33 18 BY MR. TOWNSHEND:

04:06:34 19 Q. So I just read from footnote 268
04:06:39 20 above the figures there which distinguish between
04:06:42 21 original proprietors of the soil and others.

04:06:45 22 A. Correct.

04:06:46 23 Q. And in that estimation, the
04:06:48 24 original proprietors of the soil are the majority,
04:06:52 25 in fact. I made it about 64 percent?

04:06:55 1 A. Yes.

04:06:56 2 Q. If you go back to Table 7.1 again.

04:07:19 3 The next one that speaks to ethnic distinctions is

04:07:25 4 the sixth line from the bottom of page 2. --

04:07:39 5 MR. TOWNSHEND: The fifth line from the

04:07:40 6 bottom of page 2, Barry.

04:07:49 7 BY MR. TOWNSHEND:

04:07:49 8 Q. And there we have 106 adult

04:07:53 9 Indians have legitimate claim to Surrender 72 land:

04:07:57 10 76 Ojibwa, 27 Potawatomi, 2 Ottawa, 1 Sioux?

04:08:08 11 A. Yes.

04:08:08 12 Q. The reference for that is the book

04:08:12 13 The Indian Chief that I think we had up yesterday?

04:08:16 14 A. Yes.

04:08:16 15 Q. Which is written by Conrad van

04:08:21 16 Dusen?

04:08:21 17 A. Yes.

04:08:21 18 Q. So if we can go to that reference,

04:08:25 19 which is Exhibit 2658. And to page 94 of that. So

04:09:14 20 you see this is the letter that you're referring

04:09:16 21 to; is that right?

04:09:17 22 A. Yes.

04:09:18 23 Q. The context for this is what we've

04:09:25 24 been talking about, factional disputes and

04:09:29 25 complaints about Treaty 72; is that right?

04:09:38 1 A. (Witness reviews document).

04:09:45 2 I would need to re-read the entire

04:09:57 3 document to be able to confirm or not your

04:10:02 4 description of the purpose of the document.

04:10:05 5 So far, I'm not seeing it on this page.

04:10:10 6 Q. Well, this is in 1855. It's after

04:10:21 7 Treaty 72?

04:10:23 8 A. Yes.

04:10:23 9 Q. And the third paragraph of the

04:10:26 10 letter, he's saying:

04:10:27 11 "False representations having

04:10:29 12 been made, I feel it is the duty of

04:10:31 13 the Indians that I state the

04:10:32 14 following facts, gathered neither

04:10:34 15 from rumor or conjecture but from

04:10:37 16 actual observation." [As read.]

04:10:45 17 A. Yes.

04:10:46 18 Q. Going on:

04:10:46 19 "There are only 106 adult

04:10:48 20 Indians in the Owen Sound and

04:10:50 21 Saugeen country who have any claim

04:10:53 22 to the land recently surrendered."

04:10:57 23 In the context, I believe you said

04:10:59 24 somewhere else that means adult males; is that right?

04:11:02 25 A. Yes.

04:11:02 1 Q. If we go down to page 95 by the
04:11:25 2 book by van Dusen. And the second paragraph of
04:11:29 3 that is:

04:11:31 4 "The Indians who share equally
04:11:33 5 in the annuities paid to them for
04:11:34 6 lands previously surrendered, and to
04:11:36 7 whom is secured the Peninsula by a
04:11:39 8 Deed of Declaration, bearing the
04:11:42 9 date June 9th, 1847, there are 76
04:11:46 10 Ojibway, 27 Potawatomi, 2
04:11:51 11 Tahwahs and 1 Sou [...]"

04:11:56 12 A. Yes.

04:11:56 13 Q. At the bottom of that page, it
04:11:58 14 then refers to the Ojibways as original owners of
04:12:03 15 the soil; it's just the sentence overlapping that
04:12:06 16 page and the next page.

04:12:15 17 A. (Witness reviews document). Okay?

04:12:26 18 Q. So on van Dusen's account, we have
04:12:33 19 something like 72 percent Ojibwa and 25 percent
04:12:37 20 Potawatomi and the rest are others; is that fair?

04:12:40 21 A. Correct.

04:12:41 22 Q. Back to Table 7.1 again. And the
04:12:52 23 third line from the bottom, it talks about 115
04:12:58 24 emigrants being adopted into the band.

04:13:11 25 Now if you go to page 186 of Volume 1

04:13:15 1 of your report. The bottom line in page 186 --

04:14:03 2 sorry I believe the top of page 187. "The Saugeen

04:14:13 3 Chiefs [...]"

04:14:15 4 If you could review that page and to

04:14:20 5 the end of the section which will be on the next page?

04:14:25 6 A. (Witness reviews document). Okay.

04:15:04 7 Q. So I'm taking it from that, it's

04:15:06 8 uncertain that these people being referred to, the

04:15:10 9 157 emigrants actually became band members or not?

04:15:14 10 A. It is uncertain, yes.

04:15:15 11 Q. So I'm going to suggest to you

04:15:19 12 after all looking at these documents, there are two

04:15:24 13 that unambiguously address ethnicity and

04:15:28 14 territorial rights. That would be Anderson in

04:15:31 15 1854, which isn't in your table. And van Dusen in

04:15:35 16 1855; is that fair?

04:15:44 17 A. I thought there was one more but...

04:15:54 18 (Witness reviews document).

04:15:55 19 I'm just trying to recall the 1852.

04:16:13 20 Q. Yes, and we talked about the

04:16:15 21 uncertainty about what he meant by "original settlers"?

04:16:19 22 A. Right, okay.

04:16:20 23 Q. But that doesn't explicitly

04:16:22 24 address land rights.

04:16:23 25 A. Okay.

04:16:29 1 Q. So the two that do express -- that
04:16:34 2 address territorial rights, both Anderson and
04:16:39 3 van Dusen, name the Ojibwa as the original owners
04:16:43 4 of the soil and count them as making up a majority
04:16:47 5 of the population?

04:16:48 6 A. Yes.

04:16:49 7 Q. So given that, after that, would
04:16:53 8 you agree that the Saugeen were likely not
04:16:58 9 outnumbered by emigrant Indians?

04:17:03 10 A. That was my conclusion.

04:17:04 11 Q. Okay. Now I'd like to go to
04:17:22 12 page 190 of Volume 1 of your report. Actually it
04:17:47 13 starts more on 191. And here you're addressing the
04:18:08 14 Colpoy's Bay Indians and you're discussing them
04:18:12 15 coming into the area and then leaving, but some of
04:18:17 16 them moving to Nawash; is that fair?

04:18:21 17 A. (Witness reviews document).

04:18:23 18 I'm sorry, page 191?

04:18:25 19 Q. Yes. Well, the paragraph starts
04:18:37 20 "In 1848, 29 Credit Mississauga" but later in the
04:18:41 21 paragraph it starts talking about Colpoy's?

04:18:44 22 A. Correct, yes.

04:18:45 23 Q. So I just want to add a little
04:18:48 24 more to that story.

04:18:56 25 If I can go to SC1892, please. So this

04:19:19 1 is a letter from Cape Croker Chiefs to Bartlett,
04:19:23 2 dated 29th of April, 1862?

04:19:29 3 MR. TOWNSHEND: I would like that
04:19:30 4 marked as an exhibit.

04:19:31 5 THE COURT: Mr. Ogden?

04:19:32 6 MR. OGDEN: Your Honour.

04:19:34 7 THE COURT: Yes.

04:19:35 8 MR. OGDEN: I believe this has already
04:19:44 9 been entered as 4747.

04:19:52 10 THE COURT: All right. Mr. Townshend?

04:19:54 11 MR. OGDEN: Sorry, Your Honour, this is
04:19:55 12 what the RETI is showing currently.

04:20:01 13 THE COURT: I don't have that on my
04:20:03 14 screen, but I'm sure Mr. Townshend and his team can
04:20:08 15 check that.

04:20:11 16 The screen is up, only the document
04:20:13 17 that Mr. Townshend requested, nothing else.

04:20:36 18 MR. TOWNSHEND: My apologies. That
04:20:37 19 does seem to be Exhibit 4747 already, so if we
04:20:42 20 could have that exhibit on the screen, please.

04:20:45 21 THE COURT: Mr. Ogden?

04:20:47 22 MR. OGDEN: It may be, Your Honour,
04:20:48 23 that the screen -- the RETI database might be
04:21:05 24 moving ahead of us, if I can -- speak obliquely --
04:21:10 25 but I'm not sure.

04:21:11 1 THE COURT: The next exhibit number was
04:21:13 2 4747, I hope the database isn't moving ahead of us.
04:21:18 3 But Mr. Registrar can clarify this.
04:21:20 4 Sir?
04:21:22 5 THE REGISTRAR: Exhibit No. 4747, Your
04:21:24 6 Honour, is the next one.
04:21:27 7 THE COURT: So it is that exhibit now?
04:21:29 8 I wonder if that was a technical population of a
04:21:35 9 field perhaps?
04:21:36 10 MR. OGDEN: Yes, that appears to be the
04:21:40 11 case, thank you, Your Honour.
04:21:42 12 THE COURT: All right. Thank you.
04:21:53 13 EXHIBIT NO. 4747: Letter from Cape
04:19:22 14 Croker Chiefs to Bartlett, dated April
04:19:24 15 29, 1862.
04:21:54 16 MR. TOWNSHEND: All right, then.
04:21:56 17 BY MR. TOWNSHEND:
04:22:01 18 Q. So if we go to the first page of
04:22:03 19 the document, the second paragraph:
04:22:22 20 "The main object of the meeting
04:22:28 21 being was to invite the Colpoy's Bay
04:22:35 22 Indians to join our Band in full and
04:22:38 23 enjoy the same privileges as one of
04:22:41 24 ourselves. In answer to which the
04:22:43 25 following was received from their

04:22:45 1 chiefs: The offer you have so kindly
04:22:48 2 presented to us will be accepted if
04:22:50 3 the department approves of it."

04:22:52 4 So what I'm taking from this is the
04:22:55 5 Cape Croker Band invited Colpoy's to amalgamate
04:22:59 6 with them and Colpoy's accepted.

04:23:04 7 A. Yes.

04:23:04 8 Q. Now, if I can go to Exhibit 2621
04:23:19 9 which is Bartlett to Sprague, 29th August, 1862. I
04:23:25 10 have prepared a transcript for that at SC1893.

04:23:47 11 I'd like that transcript added as an
04:23:50 12 exhibit, please.

04:23:51 13 THE COURT: Mr. Registrar?

04:23:52 14 THE REGISTRAR: Exhibit No. 4748.

04:23:55 15 EXHIBIT NO. 4748: Transcript of
04:23:55 16 Exhibit 2621, Letter from Bartlett to
04:24:00 17 Sprague, dated August 29, 1862.

04:24:00 18 BY MR. TOWNSHEND:

04:24:00 19 Q. So if we scroll down to the
04:24:03 20 paragraph that starts, "At this meeting [...]"

04:24:06 21 And if you could read that paragraph
04:24:08 22 and the next.

04:24:16 23 A. (Witness reviews document).

04:25:02 24 Q. What I'm taking from this is that
04:25:04 25 in return for being allowed to join Cape Croker,

04:25:08 1 Colpoy's band would need to transfer to Nawash
04:25:09 2 their share of the annuity of the Chippewas of Lake
04:25:12 3 Huron and Simcoe, and also the proceeds of the sale
04:25:14 4 of Colpoy's reserve; is that fair?

04:25:18 5 A. Yes, correct.

04:25:19 6 Q. Would it be fair to characterize
04:25:22 7 that as Nawash agreed to Colpoy's joining them and
04:25:26 8 the conditions of that permission were the
04:25:28 9 amalgamated band would get the Colpoy's Bay assets?

04:25:33 10 A. Yes.

04:25:33 11 Q. Okay.

04:25:37 12 MR. TOWNSHEND: Your Honour, this would
04:25:42 13 be a good time to break. The next section would be
04:25:47 14 a longer one.

04:25:48 15 THE COURT: All right, as long as you
04:25:51 16 don't need the time, we'll adjourn to tomorrow
04:25:53 17 morning.

04:25:53 18 MR. TOWNSHEND: We've picked up speed
04:25:57 19 considerably.

04:25:57 20 THE COURT: I'm glad to hear that, sir.
04:26:00 21 We'll adjourn until tomorrow morning.

04:26:03 22 And of course the witness knows she
04:26:05 23 should engage herself otherwise in the meantime.

24 -- Court adjourned at 4:26 p.m.

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REPORTER'S CERTIFICATE

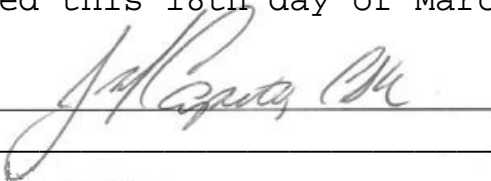
I, JUDITH M. CAPUTO, RPR, CSR, CRR,
Certified Shorthand Reporter, certify;

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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