

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

DAY 92 VOL 92
March 09, 2020



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ONTARIO

SUPERIOR COURT OF JUSTICE

B E T W E E N:

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

- and -

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

Court File No. 03-CV-261134CM1

A N D B E T W E E N:

CHIPPEWAS OF NAWASH UNCEDED FIRST NATION and
SAUGEEN FIRST NATION
Plaintiffs

- and -

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

--- This is VOLUME 92 / DAY 92 of the trial
proceedings in the above-noted matter, being
held at the Superior Court of Justice, 330
University Avenue, Courtroom 5-1 Toronto,
Ontario, on the 9th day of March, 2020.

B E F O R E:

The Honourable Justice Wendy M. Matheson

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

Roger Townshend, Esq., for the Plaintiffs,
& Benjamin Brookwell, Esq., the Chippewas of
& Cathy Guirguis, Esq., Saugeen First
& Renée Pelletier, Esq, Nation, and the
& Krista Nerland, Esq. Chippewas of Nawash
First Nation.

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

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

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

10:02:01 2 THE COURT: Morning. Ms. Guirguis,
10:02:07 3 I'm going to do my ruling from Friday first, get
10:02:11 4 that out of the way.

10:02:25 5 Dr. Reimer, you're welcome to sit
10:02:27 6 there and make yourself comfortable. If you'd
10:02:29 7 be more comfortable sitting in the gallery you
10:02:31 8 can do that too. It will probably take a couple
10:02:34 9 of minutes.

10:03:21 10 I am going to give my oral reasons and
10:03:23 11 I might stop now and then to push a button on my
10:03:27 12 computer so we're ready to go when Ms. Guirguis
10:03:30 13 gets started.

10:03:31 14 Madam reporter, this is the
10:03:33 15 commencement of my ruling and reasons for
10:03:35 16 decision as follows.

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1 -- RULING --

2 The plaintiffs object to part of the
3 proposed testimony of certain witnesses proposed
4 to be called by the Municipal defendants.

5 There are six Municipal defendants
6 involved in one of the two actions before me,
7 specifically CQ-50872. Rather than reading
8 their names in full I will simply observe that
9 five of six of those Municipal defendants
10 proposed to call viva voce evidence commencing
11 on Thursday of this week.

12 The remaining Municipal defendant is
13 the Municipality of Grey. That Municipality
14 does not propose to call any viva voce evidence.
15 In turn it has not taken part in addressing the
16 plaintiffs' objection.

17 Going forward in my oral reasons for
18 decision, when I say "the Municipalities", I am
19 referring to the five Municipalities who joined
20 together in resisting the objection of the
21 plaintiffs to their witnesses.

22 By email dated Friday February 28,
23 2020, I was notified there was a dispute about
24 the proposed Municipal evidence. That email is
25 Exhibit Y-3. By that email a case conference,

1 or what I will call a trial management
2 conference, as I usually call them, was
3 requested.

4 Along with the email I was provided
5 with the will-say statements for four witnesses;
6 those will-say statements have been given to the
7 other parties in January of this year; they also
8 form part of Exhibit Y-3.

9 They are will-say statements for four
10 witnesses, which comprise the viva voce
11 testimony that the Municipalities propose to
12 call in defence of the plaintiffs' claim.

13 The requested case conference was held
14 on Wednesday, March the 4th. At that time there
15 was a preliminary discussion about the issues.

16 As of the conclusion of that case
17 conference there remained an objection to some
18 but not all of the proposed evidence.

19 At that time I indicated that if
20 counsel could not work out the remaining issues
21 I would hear argument in court on Friday, March
22 7th. Argument regarding the plaintiffs'
23 objection was heard that day. Canada and
24 Ontario took no position.

25 Two issues were raised by the

10:06:48 1 plaintiffs. The first and main objection was to
10:06:52 2 proposed financial information. This is
10:07:00 3 summarized in the Municipalities' written
10:07:02 4 submissions handed up at the hearing of the
10:07:05 5 objection, in particular at paragraph 2 of those
10:07:14 6 written submissions.

10:07:22 7 By way of general overview the
10:07:23 8 Municipalities indicated that the topics to be
10:07:27 9 covered by their witnesses include:

10:07:31 10 "[...] the total of what each
10:07:32 11 Municipality had spent (globally, not
10:07:37 12 on a road-by-road basis) developing,
10:07:41 13 improving and maintaining its roads".
10:07:45 14 Elsewhere in the summary the
10:07:48 15 investment involved in establishing improved
10:07:53 16 roads and in closing road allowances was
10:07:58 17 referred to.

10:08:03 18 In oral argument counsel speaking for
10:08:04 19 the Municipalities specified that they wished to
10:08:08 20 put forward figures of two types: 1. total
10:08:13 21 financial expenditures; and, 2. total road
10:08:19 22 subsidies. This was the main issue raised by
10:08:23 23 the plaintiffs, who object to this evidence.

10:08:27 24 The second issue is a minor one both
10:08:30 25 in terms of attention by counsel in argument and

1 in terms of the arguments put forward.

2 That second issue is the proposed
3 evidence regarding when the Municipality called
4 "Georgian Bluffs" in this trial received notice
5 of any claim from the plaintiffs.

6 In relation to that objection, there
7 was no argument made based on prejudice, only on
8 relevance, and I see no need to exclude that
9 evidence altogether based on relevance at this
10 stage. I, therefore, do not rule in favour of
11 the plaintiffs' objection on that topic.

12 Moving back to the main issue, i.e.,
13 financial figures, these figures are apparently
14 derived from the Municipalities' audited
15 financial statements and financial returns to
16 the Provincial Government. Those statements
17 apparently show total expenditures and subsidies
18 each year.

19 There is, however, a substantial
20 disclosure issue in this regard. Up until
21 January 24, 2020, no financial statements had
22 been produced by any Municipality. This was the
23 case despite the mandatory discovery obligations
24 in the Rules of Civil Procedure.

25 I will give some brief background in

1 this regard. This particular action was
2 commenced in 1994. Case management schedules
3 were set for discovery deadlines and included
4 deadlines in the early 2000s. Some production
5 was made at that time by the Municipalities but
6 not these financial documents.

7 Moving to the question of relevance,
8 the Municipalities submit that the financial
9 figures are relevant to a certain position of
10 the plaintiffs.

11 In particular, as set out in paragraph
12 eight of the Municipalities' written outline of
13 submissions, they submit as follows:

14 "The Plaintiffs have been clear
15 that their claims do not include lands
16 that are in the hands of a bona fide
17 purchaser for value without notice."

18 In those submissions, the
19 Municipalities go on to quote other sources for
20 that proposition, including the opening
21 statement of the plaintiffs, for example.

22 In keeping with that
23 proposition, at about the time of commencement
24 of this trial Georgian Bluffs amended its
25 Statement of Defence to add a paragraph, that

1 paragraph is paragraph 4A of its amended
2 Statement of Defence.

3 "With respect to the adoption of
4 the admissions and allegations in
5 paragraph 22 to 26 of the Fresh As
6 Amended Statement of Defence of
7 Ontario, noted in paragraph 4 above,
8 Georgian Bluffs pleads that it
9 received the impugned road allowances
10 in exchange for onerous obligations
11 and expense to maintain, repair,
12 grade, and pave roads for the benefit
13 of the public. Such expenditures were
14 incurred as a result of and in
15 reliance on receiving title to the
16 road allowances through the vesting
17 provisions in the Municipal Act, S.O.
18 1913, c. 43, and successor
19 legislation. The expenditures were
20 made in good faith for the benefit of
21 the public and without knowledge on
22 the Plaintiff's alleged claim.
23 Georgian Bluffs received the road
24 allowances as a bona fide purchase for
25 value without notice."

1 As set out in the Municipalities'
2 written submission in paragraph 3, the
3 Municipalities submit that all the proposed
4 evidence is relevant to what obligations the
5 Municipalities assumed and what they paid in
6 monies and monies worth for their roads.

7 The Municipalities submit that in turn
8 it is a key to the issue of whether the
9 Municipality is in the position of a bona fide
10 purchaser for value without notice. That is the
11 gist of the amendment to their Statement of
12 Defence. Put another way, they submit they are
13 analogous to such a purchaser.

14 I pause to address a point regarding
15 the pleadings. Plaintiffs' counsel correctly
16 observes that paragraph 4A, which was a consent
17 amendment, was the only such amendment made.
18 None of the other Municipalities amended their
19 pleadings to make that specific pleading.

20 However, given my disposition of the
21 objection I do not need to deal with this
22 pleadings issue.

23 As noted by counsel representing the
24 Municipalities on the hearing on Friday, there
25 is already some evidence before me regarding the

1 financial expenditures of the Municipalities.

2 That evidence is in an agreed statement of fact
3 which has been entered as Exhibit 3929. In
4 brief, it states that the Municipal defendants
5 have:

6 "[...] expended significant
7 resources building, maintaining, and
8 repairing roads and highways [...]"

9 In other words, there is already
10 evidence in the record before me that the
11 Municipal defendants have expended significant
12 resources.

13 As I said on Friday, the
14 Municipalities can attempt to make whatever use
15 they may wish to try and make of that admission.
16 However, what they now wish to do is put forward
17 actual financial figures.

18 As I mentioned, Georgian Bluffs
19 amended its Statement of Defence essentially at
20 the time of commencement of this trial. Under
21 the ordinary discovery rules it had an
22 obligation to produce documents relevant to that
23 amendment shortly after the amendment was made.

24 As of last week I hear that this did
25 not include any production of documents over the

1 course of the period from May through to January
2 of this year regarding these financial figures.

3 Along with the delivery of will-says
4 in late January the Municipalities produced some
5 audited financial statements for recent years.
6 That was the status as of the case conference
7 last Wednesday.

8 I was informed on Friday that last
9 Thursday Georgian Bluffs also provided a zip
10 drive to the plaintiffs, which included annual
11 financial statements dating back to 1913, thus
12 they were produced last Thursday, March 5th.

13 In summary, Georgian Bluffs has
14 produced annual financial statements for a
15 period exceeding 100 years, all in the last week
16 and in late January. As far as I have been
17 advised, none of the other Municipalities have,
18 as of yet, produced any financial statements.

19 In response to concerns raised about
20 this, counsel appearing for the Municipalities
21 indicated that this type of document, i.e.
22 audited financial statements, is more reliable
23 than other types of documents. Even if that is
24 so, this does not mean that the plaintiffs are
25 obliged to forego any reasonable opportunity to

1 review and test those documents through a
2 discovery process and they have had no such
3 opportunity.

4 The Municipalities also submit that
5 they are in an unusual position in this action.
6 That is so. There is no cause of action against
7 them yet they are named as defendants due to
8 remedial requests.

9 Counsel also submits that they are
10 defending themselves on a shoe string. I've
11 taken this into account and I have mentioned it
12 in other contexts, such as my reasons for
13 decision on the phasing motion. However, this
14 does not relieve these defendants of their
15 discovery obligations.

16 At least recently these defendants
17 were able to produce financial statements, at
18 least for Georgian Bluffs, and there has been no
19 suggestion before me that Municipalities could
20 not have produced the necessarily annual
21 financial statements within a reasonable period
22 of time after the Georgian Bluffs' amendment
23 last May.

24 As well, since the beginning of this
25 trial, in trial management, I have made repeated

1 mention to the Municipalities to sort out who if
2 any witnesses they intended to call. There has
3 been lots of time to address that issue and any
4 related production of documents issues.

5 Late in oral argument on Friday the
6 Municipalities raised the possibility of an
7 adjournment to move these witnesses to the end
8 of the witness schedule, presumably to permit
9 the plaintiffs time to engage in some discovery.
10 However, these witnesses are essentially already
11 at the end of the witness schedule.

12 This evidence is scheduled to begin
13 this Thursday and finish in the week of March
14 23rd. We are not sitting next week because next
15 week is March Break, and not surprisingly
16 counsel asked for that week off due to family
17 obligations.

18 Also not surprisingly the plaintiffs
19 object to any adjournment requests this late in
20 this trial.

21 After the Municipal evidence scheduled
22 this week, and the week after next, there is
23 only one more witness, which is an expert reply
24 witness being called by the plaintiffs. He is
25 coming the week of March 23rd, having made

1 special arrangements to do so, in order that the
2 oral testimony stage of this trial can be
3 concluded.

4 Municipal counsel did not request a
5 longer adjournment and I assume that there
6 would be similar submissions if one had been
7 requested. I'm not prepared to exercise my
8 discretion to grant that requested adjournment,
9 which has little meaning in any event, given our
10 trial schedule.

11 I conclude that the discovery issues
12 alone mean that it would make it unfair at this
13 late stage to permit these specific financial
14 figures to be put forward. I note in passing
15 that that financial detail is not even in the
16 will-say statements themselves. As of last
17 Friday none of the aggregate figures have been
18 disclosed.

19 I note that a number of other
20 arguments were made against this evidence. The
21 plaintiffs had a series of objections, or
22 grounds for their objections including, for
23 example, whether this evidence was properly in
24 Phase 1 or Phase 2. I see no need to address
25 these arguments now. The plaintiffs will have

1 full opportunity to respond to them, to whatever
2 extent they are made by the Municipalities, in
3 closing arguments. This may be a preview of
4 these points for both sides.

5 In summary, the Municipalities are not
6 permitted to call evidence quantifying the
7 financial commitments, or expenditures, or
8 costs, or estimated costs they have or may
9 incur. They may attempt to rely on the
10 admission in the Agreed Statement of Fact that
11 they have expended significant resources.

12 I note that this is not a blanket
13 permission regarding the other topics in the
14 will-says that are not excluded by this ruling.
15 Counsel should make any objections they see fit
16 under the ordinary rules of evidence when these
17 four witnesses are called.

18 That concludes my ruling.
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1 Now, obviously I've confirmed with
2 Madam Reporter that Municipal counsel will get
3 the transcript but that won't be until later
4 today. So can I have a volunteer, I think in
5 fairness it probably shouldn't be the
6 plaintiffs, on the defence side to send an email
7 with the gist of my ruling to Municipal counsel
8 subject to their -- you can say subject to the
9 transcript so you don't have to worry too much
10 about precise wording.

11 MR. FELICIAN: We'll do that.

12 THE COURT: Thank you, Mr. Feliciant.

13 Now, Dr. Reimer, Ms. Guirguis, thank
14 you for your patience, please go ahead.

15 MS. GUIRGUIS: Thank you, Your Honour.

16 THE COURT: And of course we all know
17 that the clocks haven't been adjusted and we'll
18 all be able to add an hour at any time we glance
19 at the clock in the courtroom. All right?

20 MS. GUIRGUIS: Thank you, Your Honour.

21 GWEN REIMER: PREVIOUSLY AFFIRMED.

22 CROSS-EXAMINATION BY MS. GUIRGUIS:

23 (continued)

24 Q. Good morning, Dr. Reimer.

25 A. Good morning.

1 Q. So we left off last Friday
2 talking about the 1850 Indian Lands Protection
3 Act?

4 A. Yes.

5 Q. We've provided you with some time
6 to review that Act. So I'm just going to go
7 back to some of the questions that I was asking
8 there.

9 So in your review of the 1850 Indian
10 Land Protection Act, which for the record is
11 Exhibit 1784, again I'm not asking for any legal
12 interpretation, but just based on a simple
13 reading, I wondering if you might agree with
14 these propositions.

15 Would you agree that the 1850 Indian
16 Land Protection Act includes measures that could
17 be taken against people illegally occupying and
18 taking timber and other resources from Indian
19 lands?

20 A. Yes.

21 Q. And it also includes measures
22 that could be taken against people purchasing,
23 leasing and selling Indian lands without the
24 Crown's consent?

25 A. Yes.

10:23:56 1 Q. And would you agree that those
10:23:57 2 measures include Commissioners can issue
10:24:01 3 warrants to remove offenders?

10:24:03 4 A. Yes.

10:24:04 5 Q. And if the offender returns, the
10:24:06 6 Commissioner can direct the arrest of the
10:24:07 7 offender and jail time up to 30 days?

10:24:10 8 A. Yes.

10:24:13 9 Q. That timber thieves, or people
10:24:16 10 found to have taken timber resources, would have
10:24:18 11 to forfeit their timber and can be fined and
10:24:21 12 jailed?

10:24:23 13 A. I looked for the section that
10:24:27 14 referred to seizing of timber and I had trouble
10:24:31 15 finding that but, yes, it was subject to a fine
10:24:34 16 and/or jail.

10:24:38 17 Q. Okay, thank you. So in your
10:24:41 18 review of the historical record, which as I
10:24:45 19 understand from your examination in-chief with
10:24:47 20 my friend Mr. Feliciant, included review of
10:24:51 21 thousands of documents, correct?

10:24:52 22 A. Yes.

10:24:54 23 Q. Did you come across any evidence
10:24:57 24 of any instances where someone was prosecuted
10:25:00 25 for making a lease pursuant to the 1850 Act on

1 the Saugeen Reserve, on the peninsula prior to
2 October 14th, 1854?

3 A. Just to clarify, the 1850 Act was
4 extended to the peninsula in 1851?

5 Q. Right.

6 A. No, I did not find any
7 documentation to that effect.

8 Q. Did you come across evidence of
9 any instances where warrants were issued
10 pursuant to the 1850 Act in relation to
11 squatters on the Saugeen Peninsula prior to
12 October 14th, 1854?

13 A. No, I did not.

14 Q. Did you come across evidence of
15 any instances where any squatter was removed
16 pursuant the 1850 Act from the Saugeen Peninsula
17 prior to October 14th, 1854?

18 A. No, I did not.

19 Q. Did you come across any evidence
20 of any person being put in jail for offences
21 under the 1850 Act as a result of squatting on
22 the peninsula prior to October 14th, 1854?

23 A. No, I did not.

24 Q. And finally, did you come across
25 any evidence of a person being fined pursuant to

1 an offence under the 1850 Act as a result of
2 squatting or intrusion on the Saugeen Peninsula
3 prior to October 14th, 1854?

4 A. Specifically a fine you're
5 referring to, yes?

6 Q. Yes.

7 A. I don't recall. I recall reading
8 documentation about warnings of fines, but off
9 the top of my head right now, I don't recall
10 documentation specifying any actual fine being
11 charged.

12 Q. Thank you, Dr. Reimer.

13 So I'd like to further ask you about,
14 staying with volume 3, which is Exhibits 4703,
15 or volume 3 of 4, page 98. You stated the
16 opinion that enforcement --

17 THE COURT: Just a moment.

18 MS. GUIRGUIS: Yes, Your Honour.

19 THE COURT: I don't have my volumes
20 well sorted this morning. Three will be the
21 bottom one. What page did you say?

22 MS. GUIRGUIS: I said page 98.

23 THE COURT: All right, please go
24 ahead.

25

10:27:31 1 BY MS. GUIRGUIS:

10:27:33 2 Q. So at this section of your volume
10:27:34 3 report, you state the opinion that the
10:27:37 4 enforcement of the Acts, the 1839 Acts and the
10:27:43 5 1850 Acts, also suffered from the absence of a
10:27:46 6 police force in Bruce and Grey Counties?

10:27:53 7 A. Yes.

10:27:54 8 Q. So you've not been qualified as
10:27:56 9 an expert on law enforcement resources that are
10:27:58 10 available in Upper Canada between 1836 and 1854,
10:28:00 11 so I assume you did not do extensive research on
10:28:06 12 different law enforcement institutions that were
10:28:08 13 available on or near the peninsula in this
10:28:10 14 period, correct?

10:28:11 15 A. No. I basically looked at the
10:28:13 16 1851/1852 census to get a sense of the scope of
10:28:19 17 judicial and law enforcement in the area.

10:28:23 18 Q. And that report, the census for
10:28:26 19 Canada 1851 to 1852, you've cited that at your
10:28:31 20 footnote 384?

10:28:33 21 A. Correct.

10:28:34 22 Q. And for the record, that census
10:28:36 23 is found at Exhibit 2007.

10:28:39 24 And I understand that based on this
10:28:41 25 census, you've stated that:

10:28:45 1 "There were no police force in
10:28:46 2 Bruce and Grey. They were only in
10:28:48 3 larger cities, Toronto, Kingston
10:28:51 4 [...]."
10:29:00 5 A. (Witness reading the document.)
10:29:01 6 I don't see any reference to Toronto
10:29:03 7 and Kingston.
10:29:04 8 Q. Okay. I think it might be in the
10:29:10 9 footnote. You certainly note, based on this --
10:29:11 10 A. Oh, 384. Sorry, I was looking at
10:29:12 11 the wrong footnote. Right, correct.
10:29:21 12 Q. And you also note there weren't
10:29:23 13 any constables in Bruce or Grey, based on that
10:29:26 14 source?
10:29:35 15 A. Not according to the census, no.
10:29:36 16 Q. Okay. And that's for only 1851
10:29:39 17 to 1852?
10:29:41 18 A. Correct.
10:29:41 19 Q. So I'd like to pull up Exhibit
10:29:44 20 4819. The title of this document that we see in
10:30:05 21 the transcript, this is a transcript followed by
10:30:08 22 the originals, it's the "Minutes for the Court
10:30:10 23 of General Quarter Sessions of the Peace for the
10:30:18 24 Country of Grey, April Session 1854 continuing
10:30:25 25 to September Session 1861".

10:30:27 1 So as I mentioned, we have the
10:30:29 2 transcript and then the original of the document
10:30:30 3 follows, if you want us to scroll the original
10:30:33 4 to look at it?

10:30:34 5 A. That's fine.

10:30:35 6 Q. So the first nine pages of the
10:30:36 7 transcript, which we can refer to, in the first
10:30:39 8 page of the transcript there is a list of
10:30:43 9 magistrates that were present at these meetings.
10:30:45 10 And if we turn to the second page, we see a list
10:30:48 11 of names under the heading "Constables Appointed
10:30:55 12 for 1854".

10:30:56 13 What I'd like to bring your attention
10:30:58 14 to is if we can move to the fifth page, which is
10:31:01 15 page 5 of the PDF, under the heading "Claims
10:31:06 16 Against Q.S.". That means quarter sessions,
10:31:09 17 you'd agree?

10:31:11 18 A. If you say so.

10:31:12 19 Q. Okay. So it's "Claims Against
10:31:17 20 Q.S." considered. And then if you could take
10:31:20 21 it -- take a look at this highlighted portion,
10:31:23 22 "Abraham Neelands claim [...]" ending with
10:31:28 23 "carried"?

10:31:32 24 MR. FELICIAN: Your Honour.

10:31:32 25 THE COURT: Yes, Mr. Feliciant?

1 MR. FELICIANANT: Dr. Reimer has
2 qualified her opinion or statement with respect
3 to law enforcement and has specifically said all
4 she did was look at the census of 1951 (sic);
5 and she's also said she's not an expert in law
6 enforcement.

7 It would be one thing for Ms. Guirguis
8 to be asking her questions about that census and
9 about that very qualified opinion, but knowing
10 that she's not an expert in law enforcement,
11 just because she said what she said in her
12 report should not be a springboard into what is,
13 in effect, now a cross-examination about law
14 enforcement and documents this witness has never
15 seen pertaining to that subject.

16 THE COURT: Do you have a response to
17 that? I mean, we've had more than one expert
18 already on law enforcement who have been
19 cross-examined on at length.

20 What is your response to
21 Mr. Feliciant?

22 MS. GUIRGUIS: Your Honour, this
23 witness has opined somewhat on the enforcement
24 resources that are available. I agree that
25 she's not been qualified as an expert on that.

10:32:49 1 However, she's made this statement in her
10:32:51 2 footnote with respect to statements that there
10:32:53 3 were no constables in 1851 and 1852. So I
10:32:58 4 thought it fair to show her some evidence that
10:33:00 5 may indicate otherwise and ask her opinion.

10:33:02 6 THE COURT: Well, how can I use that
10:33:04 7 opinion, counsel, in that this expert is --
10:33:06 8 herself doesn't suggest she has those
10:33:11 9 qualifications? I have ruled in a
10:33:13 10 circumscribed -- I have a number of problems.

10:33:17 11 And we started off with I don't
10:33:19 12 remember evidence about what Q.S. means in this
10:33:21 13 trial. And we're not going to be getting it
10:33:24 14 from Dr. Reimer or you.

10:33:27 15 And that's a red flag because, you
10:33:30 16 know, maybe it's there somewhere and I've
10:33:32 17 overlooked it. It's been a long trial, so I've
10:33:36 18 said nothing about that, but what use do you
10:33:39 19 submit I can make about anything that this
10:33:41 20 witness says about law enforcement in relation
10:33:44 21 to documents that she's never seen before? It's
10:33:48 22 not on a matter that's not within her expertise.

10:33:52 23 She's already confirmed the
10:33:54 24 qualification to her report. That's done in a
10:33:59 25 very straightforward fashion.

10:34:03 1 MS. GUIRGUIS: Your Honour, I would
10:34:04 2 add also is that the evidence that Dr. Reimer
10:34:08 3 has cited with respect to the census, if
10:34:10 4 there's -- what I wanted to do is provide an
10:34:12 5 opportunity to show her conflicting evidence and
10:34:16 6 then possibly see her opinion as to whether her
10:34:19 7 source -- get her opinion as to -- on that
10:34:22 8 source that she originally cited as to why there
10:34:26 9 might be conflicting accounts.

10:34:31 10 THE COURT: Well, and what do you say
10:34:35 11 about the fact that the very first question that
10:34:37 12 you have about this document is a question this
10:34:39 13 expert can't answer and you may happen to know
10:34:42 14 what that acronym stands for? Are you saying
10:34:45 15 there's evidence about that from somebody?

10:34:49 16 MS. GUIRGUIS: Yes, there is evidence
10:34:50 17 about that that we've heard from other
10:34:53 18 witnesses.

10:34:54 19 THE COURT: About the meaning of
10:34:55 20 "Q.S."?

10:34:58 21 MS. GUIRGUIS: Well, by reference to
10:35:00 22 other exhibits and evidence that's been entered
10:35:03 23 and also this one in front of us too.

10:35:17 24 THE COURT: I'm having a lot of
10:35:19 25 trouble with what use I'm going to be able to

1 make of this evidence. You've had I can't
2 remember how many military experts -- sorry, law
3 enforcement experts, already.

4 Is this intended to be a lengthy
5 process, counsel, of documents that this witness
6 will never have seen and is not expert in
7 assessing their significance?

8 MS. GUIRGUIS: No, Your Honour, it's
9 not intended to be a lengthy process. These
10 documents were provided to my friends last week.
11 They came out of --

12 THE COURT: Well, it's not a
13 disclosure issue. It's a scope issue.

14 MS. GUIRGUIS: It's not intended to be
15 a lengthy process, Your Honour. I'm going to
16 show her, I believe I have two to three
17 documents to show her and some questions about
18 them.

19 THE COURT: But then you're going to
20 ask for an opinion about law enforcement which
21 is outside of my ruling, is that right?

22 MS. GUIRGUIS: I'm going to ask for
23 her opinion about -- her understanding of these
24 two -- the different sources of the evidence and
25 how that might -- whether she maintains the

1 opinion she's expressed with respect to the
2 census document or whether she --

3 THE COURT: She's only expressed an
4 opinion with respect to the census document.

5 Okay, Mr. Feliciant, what is your
6 reply?

7 MR. FELICIANANT: My primary concern is
8 this is far more complicated than my friend is
9 letting on because we have heard evidence about
10 different kinds of constables, whether they're
11 part-time or full-time. We have to get into
12 what this document is talking about and what she
13 was talking about in her report. And it goes
14 well beyond what Dr. Reimer simply said she did.

15 I maintain my objection that it is a
16 springboard to talk about evidence this witness
17 isn't qualified to talk about. And it doesn't
18 help that problem to simply say, Well, I'm
19 showing the witness a series of documents of
20 which she claims no expertise just to get an
21 opinion about the document she made a comment
22 on.

23 So I maintain my objection.

24 THE COURT: So we've had Professor
25 Harring, called by the plaintiff, as an expert

10:38:10 1 on the police and other law enforcement. I'm
10:38:20 2 trying to remember the name, maybe Mr. Feliciant
10:38:24 3 can help me. Was it Canada who called someone?

10:38:31 4 MR. McCULLOCH: Your Honour, we called
10:38:32 5 Tyler Wentzell.

10:38:35 6 THE COURT: Of course. He was
10:38:36 7 qualified to talk about law enforcement. He was
10:38:39 8 the gentleman from RMC?

10:38:41 9 MR. McCULLOCH: Well, he's currently
10:38:41 10 with the Canadian Defence College.

10:38:45 11 THE COURT: No. That was part of his
10:38:45 12 background?

10:38:45 13 MR. McCULLOCH: Yes.

10:38:45 14 THE COURT: From the Royal Military
10:38:45 15 College.

10:38:45 16 So we've had at least two experts who
10:38:46 17 were squarely qualified. My problem,
10:38:50 18 Ms. Guirguis, is that if you put a bunch of
10:38:54 19 documents to this witness that she's never seen
10:38:58 20 before and not an expert in the area so she
10:39:04 21 can't fairly assess -- she won't have done any
10:39:06 22 research and so forth, and it seems to me you're
10:39:10 23 going to, therefore, say the Canadian census was
10:39:12 24 wrong. Is that the gist of it?

10:39:14 25 MS. GUIRGUIS: Yes, Your Honour.

10:39:15 1 THE COURT: And I'm wondering how this
10:39:16 2 witness gets to give that opinion given the
10:39:19 3 scope her expertise, to balance some documents
10:39:21 4 in an area outside her expertise that she's
10:39:25 5 never seen before against this official record.

10:39:29 6 So I'm struggling with what weight I
10:39:32 7 would ever give to that sort of evidence. I'm
10:39:44 8 reluctant to stop you all together in case
10:39:45 9 there's something useful here but we got off to
10:39:46 10 a bad start with this document. Never seen it
10:39:49 11 before, doesn't know what the important acronym
10:39:50 12 means. I don't remember that coming up before
10:39:53 13 in this trial.

10:39:54 14 And I just -- what I'm going to do is
10:40:01 15 I'm going to let you ask the questions about
10:40:03 16 this document, bearing all of what I've said in
10:40:06 17 mind, counsel, and bearing in mind that you
10:40:08 18 can't put factual propositions to this witness
10:40:10 19 unless you are confident, reasonably confident
10:40:13 20 that it is either in the record or it will be a
10:40:17 21 very short time from now, when we are not having
10:40:20 22 any more experts on this subject, all right?

10:40:28 23 So you say you've got three documents?

10:40:33 24 MS. GUIRGUIS: Yes. Let me confirm
10:40:35 25 that, Your Honour.

1 THE COURT: And it won't take very
2 long. So on that basis, even though I may find
3 it of no use to me at all, I'm going to let you
4 ask about the three documents in a short
5 fashion.

6 And I ask you to be very cautious,
7 counsel, about putting propositions to the
8 witness out of the mouth of counsel, all right?
9 Not to put things to the witness that's not
10 already in the record or you don't plan to
11 introduce into the record because she should not
12 be called upon to interpret things that are
13 outside her expertise. She can be called upon
14 to do it but it's of no use to me.

15 Please go ahead.

16 MS. GUIRGUIS: Okay. If I can have
17 one moment, Your Honour?

18 Thank you, Your Honour.

19 BY MS. GUIRGUIS:

20 Q. So, Dr. Reimer, from review of
21 the highlighted portion, the "Abraham Neelands
22 claim for services as constable" and ending with
23 "carried", you've had a moment to review that?

24 A. (Witness reading the document.)

25 I've read it.

10:42:10 1 Q. Okay. So is this a fair summary
10:42:14 2 that this is someone seeking payment for
10:42:17 3 constable services in Grey County in 1852?

10:42:20 4 A. Yes.

10:42:21 5 Q. And he refers to enforcement of
10:42:22 6 the 1850 Act, which we were just talking about?
10:42:29 7 Actually he doesn't -- sorry, he refers to --
10:42:32 8 for services with respect to "selling spirituous
10:42:34 9 liquors" to Indians?

10:42:38 10 A. Correct.

10:42:49 11 Q. So would you -- if we could go up
10:42:51 12 to Exhibit 4823? This is a document dated April
10:43:07 13 22nd, 1852, with the title "List of Persons to
10:43:12 14 Serve as Constables for the Year 1852 to 1853
10:43:16 15 Appointed by the Court of General Quarter
10:43:17 16 Sessions of the Peace April 1852".

10:43:28 17 Again we have a transcript at the
10:43:29 18 beginning and the original document after the
10:43:31 19 transcript. And if we scroll through to this
10:43:42 20 you see -- sorry.

10:43:45 21 Sorry, if we could scroll back up to
10:43:47 22 the first page? You see at the left-hand corner
10:43:54 23 that it says that it's in Goderich?

10:43:58 24 A. Correct.

10:44:03 25 Q. And if we scroll through, if we

10:44:06 1 stop there, it's --

10:44:08 2 THE COURT: Sorry, I'm back at the

10:44:09 3 top.

10:44:10 4 MS. GUIRGUIS: Yes.

10:44:11 5 THE COURT: It says the word

10:44:12 6 "Goderich" but there are many other geographical

10:44:15 7 locations mentioned.

10:44:17 8 MS. GUIRGUIS: Yes.

10:44:18 9 THE COURT: Are you saying that the

10:44:19 10 word "Goderich" -- well, you can't say, counsel,

10:44:23 11 because you aren't here to testify about this

10:44:25 12 document. I don't remember anyone else

10:44:27 13 testifying about this but they said whatever

10:44:29 14 they said.

10:44:32 15 BY MS. GUIRGUIS:

10:44:32 16 Q. So if we scroll through the list,

10:44:34 17 if we stop halfway through the first page, we

10:44:37 18 see "Bruce". Would you agree with me that this

10:44:40 19 is referring to Townships of Bruce County?

10:44:44 20 A. Townships of Bruce County?

10:44:46 21 Q. Uhm-hmm.

10:44:47 22 A. Can you go up a little bit,

10:44:51 23 please? Can you go to the top, please?

10:45:01 24 I really can't tell from the way this

10:45:03 25 document is -- it doesn't say "Bruce County" and

10:45:08 1 then "Townships in Bruce County". So the way
10:45:12 2 this has been transcribed, I really don't want
10:45:14 3 to say anything for certain.

10:45:15 4 Q. Okay. If we can continue to
10:45:17 5 scroll down?

10:46:31 6 Can I bring up exhibit 4822? So this
10:47:00 7 is dated November 24th, 1851. It's an excerpt
10:47:08 8 from the General Quarter Sessions dated -- and
10:47:11 9 it's titled "The Clerk of the Peace Submitted to
10:47:21 10 the Court a list of claims against the united
10:47:24 11 counties to the present sessions as examined and
10:47:26 12 certified by order of sessions."

10:47:32 13 I'm going to ask that we scroll down
10:47:33 14 to the original document again. Here --
10:47:37 15 actually, can we stop here on the transcript at
10:47:40 16 page 5?

10:47:41 17 So this is dated "General Quarter
10:47:43 18 Sessions 24th November 1851". And here from
10:47:46 19 "List of claims preferred against the United
10:47:49 20 Counties of Huron-Perth and Bruce, submitted".

10:47:54 21 So would you agree with me that based
10:47:56 22 on this we're looking at lists of claims that
10:48:00 23 are submitted against the United Counties of
10:48:03 24 Huron-Perth and Bruce?

10:48:05 25 A. I have to take the words at face

1 value.

2 Q. And if you look at the list below
3 at entries 11 and 12, for example, it lists
4 "constable".

5 MR. FELICIANANT: Your Honour.

6 THE COURT: Mr. Feliciant?

7 MR. FELICIANANT: In two places it lists
8 "constable", it appears, but how do we know that
9 each of those are constables? I mean, in two
10 places at 11 and 12 I see the words "constables"
11 but I don't think my friend can ask this witness
12 to comment on anything other than what the words
13 say.

14 THE COURT: Mr. Guirguis?

15 MS. GUIRGUIS: Yes, that's right, Your
16 Honour. I'm not asking for any more comment
17 than what the words say is that we see the list
18 for "constable" and "claims for constable".

19 THE COURT: I'm not sure how that's a
20 helpful question in that case. The document
21 says the word "constable", all right?

22 I don't think there's any great
23 dispute about what the document -- what word is
24 used on that line of the document or those two
25 lines. It really is just a matter of where

10:49:29 1 you're headed so why don't you keep going and
10:49:31 2 we'll see if Mr. Feliciant stands up again.

10:49:34 3 BY MS. GUIRGUIS:

10:49:35 4 Q. Okay. Well, let me try this is a
10:49:37 5 different way.

10:49:37 6 Let me bring up Exhibit 4832, which is
10:49:39 7 an excerpt of a book that was added as an
10:49:43 8 exhibit earlier on in your examination called
10:49:44 9 "Preserving the Peace, A History of the Owen
10:49:51 10 Sound Police Force". And if we can turn to page
10:49:55 11 16 of this document, which is PDF page 2?

10:50:51 12 So if you could take a look at the
10:50:53 13 passage that's highlighted on the right-hand
10:50:54 14 side of the page starting with, "He died August
10:51:02 15 11, 1894 [...]" and ending with "[...] High
10:51:21 16 Constable's at 12 pounds 10 shillings."

10:51:50 17 A. (Witness reading the document.)

10:51:51 18 I've read it.

10:51:53 19 Q. Before I ask you a question about
10:51:54 20 these excerpts I'm going to take you to another
10:51:57 21 one, page 19 of the document, which is PDF page
10:52:00 22 8. And, again, on the right-hand side of the
10:52:08 23 document, there's a highlighted portion starting
10:52:13 24 from, "It is unlikely [...]" and ending with
10:52:16 25 "[...] a blacksmith."?

1 THE COURT: Maybe the witness would
2 like to read the whole paragraph, it's up to
3 her, but I would like to read it; the left-hand
4 column. If you can just leave it there, I would
5 like to read it.

6 Okay, I've read it. Dr. Reimer, have
7 you read that?

8 THE WITNESS: Yes, I have, thank you.

9 THE COURT: Thank you.

10 I'm a little puzzled, counsel, because
11 the square box is about remuneration which is
12 well afield of anything this witness ever talked
13 about.

14 BY MS. GUIRGUIS:

15 Q. Well, my question -- perhaps I'll
16 clarify, is that the excerpts that I've taken
17 you to suggest that constables were often
18 part-time positions, that they held other
19 professions?

20 A. According to this publication,
21 yes.

22 Q. Okay. Would that --

23 MR. FELICIAN: Sorry, Your Honour, I
24 would also point out that -- and the other
25 problem I have with this, and again this is an

10:53:56 1 expertise issue, there's a reference in the
10:53:58 2 paragraph we read initially about a special
10:54:01 3 constable to deal with by-law infractions.

10:54:06 4 So are we talking about apples and
10:54:08 5 oranges even? But this witness won't even know
10:54:11 6 that.

10:54:12 7 THE COURT: Well, this extract is a
10:54:13 8 few years later than anything the witness ever
10:54:15 9 spoke about.

10:54:20 10 Counsel, we've heard a lot of evidence
10:54:23 11 about -- which is complex about all the levels
10:54:27 12 of law enforcement, part-time, full-time, how
10:54:30 13 they got compensated, how the compensation did
10:54:34 14 or didn't affect various things. Are you saying
10:54:37 15 there's a line in the census that says
10:54:41 16 "part-time"?

10:54:44 17 MS. GUIRGUIS: No. My question with
10:54:45 18 respect to the census is whether when a census
10:54:48 19 is taken, would folks report that they work as
10:54:51 20 constables if it's only part-time or would they
10:54:55 21 report their full-time professions?

10:54:58 22 THE COURT: Well, that's a different
10:55:00 23 question.

10:55:01 24 MS. GUIRGUIS: Yes.

10:55:02 25 THE COURT: I don't have -- and

1 Mr. Feliciant is not standing. I don't have a
2 problem with you asking this witness a question
3 about the census.

4 MS. GUIRGUIS: Yes.

5 THE COURT: Which you haven't done yet
6 but that was a question about the census.

7 I do have a problem with you getting
8 the witness to look at what are anecdotal, at
9 best, selective documents that are outside her
10 expertise and draw conclusions from them. There
11 are other ways to accomplish that with an
12 expert. So if you want to ask the census
13 question, by all means.

14 MS. GUIRGUIS: Okay, thank you, Your
15 Honour.

16 BY MS. GUIRGUIS:

17 Q. So, yeah, my purpose, Dr. Reimer,
18 in showing this to you is to get a sense of
19 whether you would agree that when people report
20 to a census about what their profession is, do
21 they typically report their full-time position
22 or profession?

23 A. I don't have expertise in census
24 taking and enumeration. Certainly that's a
25 possibility.

1 Q. Is it reasonable that if people
2 are appointed as constables that were not
3 full-time that they may not have reported as
4 being constables in a census?

5 THE COURT: Mr. Feliciant?

6 MR. FELICIAN: Your Honour, I don't
7 think this witness can answer a question like
8 that.

9 THE COURT: I agree with that,
10 counsel. We're drifting into yet another area
11 of expertise.

12 MS. GUIRGUIS: Okay.

13 BY MS. GUIRGUIS:

14 Q. So I asked you some questions
15 about the review of the historical record and
16 whether there were -- whether there was evidence
17 and records about enforcement before the
18 surrender, before October 14th, 1854.

19 So I want to talk to you now about
20 Oliphant protecting the peninsula after Treaty
21 72 was concluded. And if we go to Exhibit 2175
22 at page 15?

23 So the highlighted portion at the top
24 of page 15 is the letter sent to Sheriff
25 Schneider and the notice to squatters, correct?

10:57:59 1
10:58:01 2
10:58:04 3
10:58:04 4
10:58:10 5
10:58:12 6
10:58:14 7
10:58:16 8
10:58:18 9
10:58:23 10
10:58:24 11
10:58:35 12
10:58:36 13
10:58:41 14
10:58:46 15
10:58:55 16
10:58:57 17
10:59:00 18
10:59:04 19
10:59:07 20
10:59:08 21
10:59:08 22
10:59:08 23
10:59:08 24
10:59:08 25

A. Correct.

Q. And the notice is specific to the Saugeen Peninsula?

A. Correct.

Q. So what we see here are two measures, the letter to sheriff of Grey County and a notice warning squatters, that identifies the Saugeen Peninsula in particular, saying that they may not trespass or cut timber on those lands, correct?

A. Yes.

Q. So you'd agree with me that this was a request for assistance by Oliphant from local law enforcement after the surrender?

A. Yes.

Q. And in your review, have you come across any evidence that any Crown official asked for assistance of local law enforcement at any point prior to October 13, 1854?

A. Can you repeat that, please?

Q. Yes. In your review of that historical record, have you come across any evidence that any Crown official asked for the assistance of local law enforcement at any point prior to October 13, 1854?

10:59:08 1 A. I don't recall correspondence
10:59:10 2 with local law enforcement specifically.
10:59:14 3 Generally issues of trespass were directed from
10:59:19 4 the Indian Affairs officials to the land and
10:59:24 5 Crown Land Agents in the area.

10:59:34 6 Q. So you discussed this with my
10:59:35 7 friend on February 13th in your examination
10:59:37 8 in-chief, which was day 84 of the trial. And
10:59:40 9 I'll just take you to have a look at the final
10:59:43 10 transcript, page 10713. Starting at 10:35:23,
10:59:59 11 line 22 of this page, this is the question that
11:00:05 12 my friend asked you. And if you could take a
11:00:07 13 look at that and the answer that goes on to the
11:00:10 14 next page and ends at 10:37:22.

11:00:16 15 A. (Witness reading the document.)

11:00:51 16 THE COURT: Can I just see the
11:00:53 17 question, please?

11:00:54 18 MS. GUIRGUIS: Yes.

11:01:07 19 THE COURT: There's something odd
11:01:09 20 about the question. I'm just trying to
11:01:11 21 understand the question. I don't know if you
11:01:11 22 can you help me with the question?

11:01:24 23 MS. GUIRGUIS: Yes.

11:01:24 24 THE COURT: I guess it is what it is.
11:01:25 25 The witness may be able to discern. It says:

11:01:27 1 "But my question is why were the
11:01:36 2 no trespassing notices given to the
11:01:38 3 Sheriff when they were given to the
11:01:40 4 Sheriff?"
11:01:40 5 So I guess it's about the timing. I
11:01:42 6 see that now. Slow start this morning.
11:01:47 7 So can we go to the answer now? Thank
11:01:51 8 you.
11:02:59 9 THE WITNESS: (Witness reading the
11:02:59 10 document.)
11:02:59 11 Okay.
11:03:00 12 BY MS. GUIRGUIS:
11:03:00 13 Q. So how I understand your answer
11:03:01 14 is that Oliphant only realized the immediacy of
11:03:04 15 the threat posed by squatters to the peninsula
11:03:10 16 in September 1854 when he realized -- when he
11:03:11 17 was on his way to seek the surrender, is that
11:03:13 18 right?
11:03:17 19 A. The question includes a bit of an
11:03:19 20 assumption that I'm not sure I made in my
11:03:21 21 report.
11:03:24 22 If I understand your question
11:03:25 23 correctly, you're asking me to assume that
11:03:29 24 Oliphant had not been aware of any kind of
11:03:32 25 trespass issues or encroachment issues prior to

11:03:35 1 this time. I don't know that that's the case.

11:03:40 2 Q. So what I'm looking at in your
11:03:41 3 answer is when you talk about the immediacy and
11:03:44 4 the timing of providing the notice. And it was
11:03:46 5 when the big land sale occurred and he was on
11:03:49 6 his way to seek the surrender. There seems to
11:03:54 7 be -- what I'm understanding your answer to be
11:03:56 8 is that that was when he realized the immediacy.

11:04:01 9 A. Certainly, yes, a stark
11:04:02 10 intensification of demand for lands. And, as he
11:04:06 11 describes it I think in his memoirs, threats
11:04:10 12 that people will move onto the land once a
11:04:13 13 surrender has been affected, if affected, and
11:04:16 14 pressure to affect a successful surrender due to
11:04:22 15 those -- that demand.

11:04:23 16 Q. So the demand -- and you
11:04:25 17 mentioned the big land sale increasing the
11:04:28 18 demand. And that occurred on September 27th,
11:04:32 19 1854, correct?

11:04:34 20 A. Correct.

11:04:34 21 Q. The surrender of the peninsula
11:04:34 22 was taken on October 13th, 1854?

11:04:35 23 A. Correct.

11:04:35 24 Q. So that's 16 days later?

11:04:37 25 A. Uhm-hmm.

11:04:38 1 Q. You've not cited any documents or
11:04:40 2 records that the Crown took any steps to deal
11:04:42 3 with the threat of squatting on the peninsula in
11:04:45 4 between September 27th, 1854, and October 13th,
11:04:48 5 1854, correct?

11:04:51 6 A. I didn't find any, no.

11:04:53 7 Q. But to your knowledge, he still
11:04:55 8 could have issued the notice to the sheriff
11:04:57 9 before -- during that time period, before he
11:04:59 10 took the surrender? There was nothing stopping
11:05:02 11 him from doing that?

11:05:05 12 A. Again, that question is asking me
11:05:08 13 to assume that Oliphant -- that Oliphant was as
11:05:19 14 aware of the threat and intensification of
11:05:23 15 demand as of that big sale in September.

11:05:30 16 I think that he did not become aware
11:05:34 17 of the immediacy until he was actually there,
11:05:39 18 right there in the area visiting the taverns,
11:05:43 19 stopping, hearing people. I think that's when
11:05:46 20 it became very real to him that -- of the
11:05:52 21 demand.

11:05:54 22 Q. He passed by Owen Sound, didn't
11:05:56 23 he, on the way to Saugeen?

11:05:58 24 A. He had to pass through I believe,
11:06:00 25 yes.

11:06:01 1 Q. So he could have issued that
11:06:03 2 notice to the sheriff while he was passing
11:06:04 3 through before he took the surrender?

11:06:09 4 A. But the notice is specific to the
11:06:11 5 surrender, to the success of the surrender.

11:06:12 6 Q. Well, it's specific to the
11:06:13 7 peninsula. Couldn't he have -- that notice been
11:06:15 8 specific to the peninsula before it was
11:06:17 9 surrendered?

11:06:18 10 A. The notice is specific to the
11:06:19 11 fact that the peninsula has been surrendered,
11:06:21 12 that it will be surveyed and that no squatting
11:06:24 13 or trespass will be allowed even though that
11:06:27 14 surrender had happened. And this is in direct
11:06:34 15 relationship to the fact that he -- Oliphant
11:06:36 16 knew that if a surrender was successful, word
11:06:40 17 would get around very quickly and the threat
11:06:43 18 would intensify.

11:06:44 19 And he consequently, the 14th, the
11:06:48 20 chronology indicates that he knew that once
11:06:52 21 people started to hear that the Saugeen
11:06:57 22 Peninsula had been surrendered that some people
11:07:00 23 might take this as license to go and squat.

11:07:02 24 And he wanted to make sure, in my
11:07:04 25 opinion, that there was a public notice that

1 this would be prohibited.

2 So I think your question is in some
3 ways putting the cart before the horse because I
4 think Oliphant's October 14 notice is very
5 specific and consequential to the success of the
6 surrender negotiations the day before.

7 It is not a notice generally about
8 squatting and encroachment on Indian lands.

9 Q. That's right, it's not. And my
10 question is as we have seen previous notices,
11 Anderson gave a general one that we went to
12 earlier that you referred to.

13 A. Correct.

14 Q. I showed you one that was issued
15 by Givins with respect specifically to the Huron
16 Reserve.

17 A. Correct.

18 Q. So it was possible that a notice
19 be issued with respect to Indian Reserve lands?

20 A. Yes.

21 Q. And Oliphant -- so it was
22 possible for Oliphant to issue that notice
23 before getting the surrender?

24 If he realized the immediacy, and
25 that's my understanding of your testimony, is he

1 realized the immediacy on his way to seek the
2 surrender, he could have taken a step to issue a
3 notice or a letter to the sheriff on his way
4 there, before seeking the surrender, correct?

5 A. Yes, but the notice would have
6 been worded differently, I believe.

7 Q. That's right. It would have been
8 in reference to Indian Reserve lands, correct?

9 A. Yes.

10 Q. Okay. But we don't have any
11 evidence of Oliphant doing that?

12 A. No. And I would argue that this
13 is because his notice specifically addresses the
14 success of the surrender. That's what he's
15 addressing.

16 And his perception that when word got
17 around that the surrender had been successful,
18 that there would be intensified threats and he
19 wanted to address that specifically.

20 Q. So I'd like to turn to volume 4,
21 your volume 4 report, which is Exhibit 4704; and
22 at page 15, which is PDF page 22, and this
23 excerpt that's marked at the top, this
24 paragraph, "At around the same time Patrick J.
25 Hamilton [...]", and ending with "[...] no such

1 assistance was necessary."

2 THE COURT: That's the first full
3 paragraph, counsel?

4 MS. GUIRGUIS: That's correct, Your
5 Honour.

6 THE WITNESS: (Witness reading the
7 document.)

8 Yes, I read it.

9 BY MS. GUIRGUIS:

10 Q. So here you're citing this
11 example in June 1855, the Indian Department,
12 with the approval of the Governor General, was
13 prepared to arrange for military assistance to
14 protect its surveyors from the Saugeen Ojibwe's
15 protests from their interference?

16 A. Yes.

17 Q. And that's again after the
18 surrender --

19 A. Yes.

20 Q. -- of the peninsula?

21 So to your knowledge, and based on
22 your review of the documents for this case,
23 there's no evidence that military support was
24 ever offered in protection of the Saugeen
25 Reserve prior to the surrender, correct?

1 A. As far as I know it was not
2 requested, either.

3 Q. Thank you.

4 And if we go to page 110 of your
5 volume 4 report, which is PDF page 117? There
6 you write:

7 "For example, after the first
8 auction was postponed newspaper
9 notices forbidding trespass on the
10 Saugeen tract were published in
11 October 1855."

12 So, in your review of the documentary
13 record for this case, you've not come across any
14 evidence that any newspaper notices forbidding
15 trespass on the Saugeen Reserve were published
16 prior to October 13th, 1854?

17 A. I did not find any, no.

18 Q. So I'm going to flip back to your
19 volume 3 and I have some questions about the
20 Half-Mile Strip surrender. So that's located
21 volume 3, Exhibit 4703, at pages 117 to 130,
22 just for your reference.

23 So I'm going to take you through some
24 propositions about the events surrounding the
25 Half-Mile Strip surrender and I'd like you to

1 tell me if you agree or disagree.

2 A. Okay.

3 Q. The subject of a road connecting
4 Owen Sound and the Saugeen settlement had been
5 something the Crown was considering as early as
6 1841, correct?

7 A. Both the Crown and the First
8 Nations.

9 Q. And in the 1840's, there's
10 documents to show the Crown was discussing how
11 to go about building the road?

12 A. Sorry, what date did you give me?

13 Q. In the 1840s.

14 A. Yes.

15 Q. Including the notion that it
16 would be helpful to have settlers on both sides
17 of the road to keep the road in good repair?

18 A. Yes.

19 Q. However, no one suggested that
20 this would require surrender of additional lands
21 from the Saugeen Ojibwe until 1851, correct?

22 A. Yes. I think it was 1851 when
23 that notion was first made explicit.

24 Q. And it was T.G. Anderson that
25 proposed a surrender to the Saugeen Ojibwe for

11:13:57 1 the purpose of building this road for the first
11:13:59 2 time in February of 1851, yes?
11:14:01 3 A. Yes, at a formal council, yes.
11:14:03 4 Q. And the Saugeen Ojibwe refused to
11:14:06 5 surrender the lands at that time?
11:14:08 6 A. Correct.
11:14:14 7 Q. And Anderson -- well, it was
11:14:18 8 Sawyer that reports that he and John Frost, you
11:14:21 9 say, a magistrate from Owen Sound, spent two
11:14:24 10 days trying to convince them in council,
11:14:26 11 correct?
11:14:41 12 A. Yes.
11:14:42 13 Q. The reason Chief Madwayosh gave
11:14:44 14 for refusing the surrender is that his people
11:14:46 15 wished to settle along the road, correct?
11:15:05 16 A. Yes. Alexander says he wishes --
11:15:08 17 according to David Sawyer, Alexander says he
11:15:11 18 wishes to settle his people along the line and
11:15:13 19 therefore will not sell.
11:15:16 20 Q. So Anderson comes back in June
11:15:18 21 1851 asking again for a surrender of the
11:15:21 22 Half-Mile Strip, is that right?
11:15:23 23 A. Not for the Half-Mile Strip, no.
11:15:26 24 Q. He comes back asking for a
11:15:29 25 surrender for creation of the road?

11:15:31 1 A. Yes, and settlement along the
11:15:33 2 road.

11:15:38 3 Q. So he asked this in council, and
11:15:40 4 I'd like to go to the minutes from this council.
11:15:42 5 Is that right, he asked for it in a council with
11:15:45 6 the Saugeen Chiefs?

11:15:46 7 A. Yes.

11:15:46 8 Q. So this is Exhibit 1855. So we
11:15:58 9 have a transcript at Exhibit 4786, which might
11:16:01 10 be helpful to refer to. So this is dated June
11:16:13 11 24th, 1851. "General Council at the Saugeen and
11:16:14 12 Owen Sound Indians held at Owen Sound by T.G.
11:16:14 13 Anderson."

11:16:27 14 So if we can go to the fifth question
11:16:30 15 down. So if we could go to the fifth question
11:16:43 16 down -- you know what? I'd like to go back to
11:16:51 17 the original. This is -- we had two versions of
11:17:01 18 the transcript. It seems that the wrong one was
11:17:02 19 added as an exhibit. Are you able to read
11:17:03 20 those, Dr. Reimer?

11:17:05 21 A. I think so.

11:17:06 22 THE COURT: Just on that front, that's
11:17:08 23 fine. Please make a note to deal with
11:17:14 24 Mr. Registrar to correct that.

11:17:16 25 MS. GUIRGUIS: Will do, Your Honour.

11:17:21 1 BY MS. GUIRGUIS:

11:17:22 2 Q. So it's question number 4 in the
11:17:23 3 document, on the second page of the document, of
11:17:25 4 the PDF. The document page number is 110375 at
11:17:33 5 the top. And you're able to make out the
11:17:36 6 question?

11:17:37 7 A. That's right. I just recall now
11:17:39 8 that someone wrote over the actual question, but
11:17:42 9 I'll do my best.

11:17:44 10 Number 4. Did you want me to read it
11:17:46 11 out or just to myself?

11:17:48 12 Q. I think it might be helpful if
11:17:48 13 you read it out.

11:17:52 14 A. "You have been asked by your
11:17:54 15 great father to give up a small strip
11:17:56 16 of your land to make a road from this
11:17:58 17 [...]"

11:18:01 18 And that's a reference to Owen Sound
11:18:03 19 where the council was being held.

11:18:05 20 "[...] to the Saugeen village."

11:18:11 21 THE COURT: It becomes very difficult,
11:18:12 22 counsel, after that point. I will permit the
11:18:22 23 witness to try and read it but I think it has to
11:18:24 24 be on the record how hard that would be to read.

25

11:18:28 1
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11:19:52 25

BY MS. GUIRGUIS:

Q. Yes.

A. Shall I go ahead?

THE COURT: You can try, Dr. Reimer,
but please expressly indicate when you're doing
more guessing than reading.

THE WITNESS: All right. I read after
the word "Saugeen village" I read it looks like:

"[...] it shall then be sold for
your benefit [...]".

And the next word after "benefit" is
illegible. And then Anderson adds:

"I used all the arguments I was
master [could be master] of to the
purpose."

That's a bit of a paraphrase. I can't
make it out exactly.

BY MS. GUIRGUIS:

Q. Thank you, Dr. Reimer. And if we
could move over to the right-hand side of the
page to see if we can make out the answer or
part of the answer.

A. I'll do my best. The answer
seems to read:

"We are not willing on any

11:19:57 1 conditions to surrender the strip of
11:20:01 2 land in question."

11:20:05 3 Q. Thank you, Dr. Reimer. So this
11:20:06 4 is the second attempt by Anderson to get a
11:20:13 5 surrender and the Saugeen Ojibwe are saying no
11:20:21 6 again, is that correct?

11:20:22 7 A. Correct.

11:20:23 8 Q. And Anderson states that he's
11:20:26 9 using, from what you were able to make out, that
11:20:26 10 he's used all the arguments to convince the
11:20:30 11 Saugeen Ojibwe to make the surrender?

11:20:33 12 A. Correct.

11:20:34 13 Q. And then two days later on June
11:20:36 14 26, 1851, the Saugeen Ojibwe Chiefs agree to a
11:20:41 15 surrender of the Half-Mile Strip?

11:20:44 16 A. They counter-propose a Half-Mile
11:20:46 17 Strip, yes.

11:20:47 18 Q. So if we turn to page 122 of your
11:20:50 19 report, volume 3, which is Exhibit 4703, this is
11:20:56 20 at PDF page 132.

11:21:07 21 So at the beginning of the second
11:21:08 22 paragraph -- in the top paragraph actually
11:21:23 23 you've noted that we don't have any documents
11:21:25 24 about what happened in the two-day period to
11:21:27 25 change the Saugeen Ojibwe's "no" to a "yes",

1 right?

2 A. Yes, I didn't find anything for
3 those two days.

4 Q. But what you say in the next
5 paragraph:

6 "What appears highly plausible is
7 that in this time a compromise was
8 reached by the parties to greatly
9 reduce the depth of the ceded tract."

10 A. Correct.

11 Q. So your opinion is that there was
12 a compromise about the amount of land
13 surrendered and that's why the Saugeen Ojibwe
14 agreed?

15 A. It's my opinion that they
16 counter-proposed a much narrower tract of land
17 and then were willing to come to an agreement on
18 that basis.

19 Q. Your opinion is that the Saugeen
20 Ojibwe counter-proposed?

21 A. I think it's plausible.

22 Q. But we don't have any documents
23 indicating that?

24 A. No.

25 Q. Okay. So can we go to Exhibit

1 1859? We have a transcript of this at Exhibit
2 4791. We see on the title page of the original
3 it's "Copy of minutes of Council".

4 So this is "Copy of Minutes of Council
5 dated the 26th day of June 1851." So that's the
6 same day that the Half-Mile Strip surrender was
7 taken?

8 A. Yes, correct. That's the same
9 date -- yes. It's the date of the Band council
10 resolution.

11 Q. So if you could just review the
12 transcript of the copy of minutes council that
13 we have here?

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

16 Q. Okay. So these are minutes of a
17 council that Anderson presided over, correct?

18 A. Yes.

19 Q. And that's with respect to
20 charges against Kegedonce and Wahbahdik?

21 A. Yes.

22 Q. Both Chiefs?

23 A. Yes.

24 Q. And the charges against Wahbahdik
25 are for drunkenness?

11:24:25 1 A. Yes.

11:24:25 2 Q. And against Kegedonce, the
11:24:28 3 charges involve leaving his place of residence
11:24:31 4 for one or two months at a time?

11:24:42 5 A. Yes.

11:24:43 6 Q. It also includes against
11:24:44 7 Kegedonce encouraging indolence and creating
11:24:47 8 division among his men. And it says the words:

11:24:53 9 "[...] and oppose himself to the
11:24:55 10 influence of government and the
11:24:58 11 missionaries."

11:25:08 12 A. Yes.

11:25:08 13 Q. So leaving his place of residence
11:25:11 14 and encouraging indolence, would you agree that
11:25:14 15 that could be a reference to Kegedonce going
11:25:17 16 hunting and refusing to farm?

11:25:22 17 MR. FELICIAN: Your Honour, is there
11:25:22 18 any evidence of this somewhere else? It's
11:25:26 19 certainly not apparent on the face of that
11:25:28 20 document. And, again, you know, it's one thing
11:25:32 21 to ask an expert opinion that has reference to
11:25:36 22 evidence but it's another to simply ask her to
11:25:39 23 speculate, which any of us can do.

11:25:49 24 THE COURT: Well, I think Dr. Reimer
11:25:51 25 has shown that she can distinguish between

11:25:54 1 things she has a basis for and things where
11:25:59 2 there is none.

11:26:01 3 I just want to caution you,
11:26:04 4 Dr. Reimer, I think you know this, but because
11:26:07 5 counsel says it does not make it so. Even with
11:26:11 6 a very capable counsel who I'm sure -- well --
11:26:19 7 but I am going to permit the question because I
11:26:21 8 think Dr. Reimer is able to distinguish between
11:26:25 9 things she knows something about and things she
11:26:28 10 doesn't know something about.

11:26:29 11 So can you repeat your question
11:26:31 12 please, Ms. Guirguis?

11:26:33 13 MS. GUIRGUIS: Sure.

11:26:34 14 BY MS. GUIRGUIS:

11:26:36 15 Q. And let me qualify this, based on
11:26:37 16 your own expertise, Dr. Reimer, understanding
11:26:41 17 the historical record around this time, would
11:26:44 18 you agree with me that leaving his place of
11:26:46 19 residence and encouraging indolence, it could be
11:26:48 20 a reference to Kegedonce going hunting and
11:26:51 21 refusing to farm?

11:26:52 22 A. I don't agree that the word
11:26:53 23 "indolence" would necessarily refer to that.
11:26:56 24 "Leaving his place of residence for one and two
11:27:00 25 months", may refer to going out fishing and or

11:27:03 1 hunting or traditional harvesting activities.

11:27:08 2 Q. Can we go now to Exhibit 1881?

11:27:19 3 So, again, we have a transcript of this Exhibit
11:27:22 4 at 4792. So the title is "Memo of Council Held
11:27:41 5 on the 3rd of September 1851 at Owen Sound for
11:27:44 6 the Purpose of Making Inquiries into Certain
11:27:47 7 Complaints against the Chiefs." And if we go
11:27:50 8 to -- well, if we look at that title, would you
11:28:00 9 agree that this is -- this seems to be another
11:28:04 10 council dealing with the Chiefs' behaviour?

11:28:07 11 A. From the title, yes.

11:28:08 12 Q. But now we're just over a month
11:28:09 13 after the surrender of the Half-Mile Strip?

11:28:13 14 A. No, it's the day after.

11:28:14 15 Q. It's September 3rd?

11:28:16 16 A. Yeah, but the surrender itself is
11:28:18 17 dated 2 September, 1851.

11:28:21 18 Q. Oh.

11:28:22 19 A. The Band council resolution was
11:28:26 20 in June.

11:28:27 21 Q. Okay. So my mistake. So now
11:28:31 22 we're a few months after the Band council
11:28:34 23 resolution and you're saying a day after the
11:28:37 24 dated surrendered?

11:28:39 25 A. Correct.

11:28:39 1 Q. Okay. So if we look at the
11:28:44 2 transcript under the heading "2/5" we see it's
11:28:49 3 T.G. Anderson S.I.A. presiding, correct?

11:28:53 4 A. Correct.

11:28:54 5 Q. Okay. So I'd like to go to, if
11:29:04 6 we scroll down in the transcript, to here in the
11:29:05 7 middle of the second page of the transcript
11:29:13 8 under the heading "4/5"?

11:29:17 9 A. Okay.

11:29:23 10 Q. So if you could look at the
11:29:24 11 exchange that starts "Supt. Peter J. Kegedonce,
11:29:40 12 what have you to say?"

11:29:41 13 A. Can you explain the line read and
11:29:42 14 explain document 5319? Is that in the original
11:29:46 15 document?

11:29:47 16 Q. Why don't we look at it and we
11:29:49 17 can see?

11:29:50 18 A. Okay.

11:30:09 19 Q. Oh, I'm sorry, no, but this is in
11:30:09 20 reference to one of the other discussions. So
11:30:11 21 if we go to PDF image 4 of this document, I
11:30:14 22 think you'll see what -- at the top.

11:30:21 23 A. Oh there, I do see it there.

11:30:30 24 Okay, so I understand that Anderson
11:30:33 25 will have likely brought some documents along

11:30:35 1 with him which may well have been petitions, or
11:30:38 2 as he calls them "complaints" against certain
11:30:41 3 individuals, and Indian Affairs will have
11:30:43 4 numbered them and now he's referencing them for
11:30:45 5 the record, I suppose.

11:30:52 6 Q. So if we -- would you -- we could
11:30:53 7 go back to the transcript or if you'd like to
11:30:55 8 look at the original it's up to you.

11:31:00 9 A. The transcript is fine.

11:31:01 10 Q. So if we go back to that portion
11:31:03 11 under 4/5 looking at "Supt. Peter J. Kegedonce
11:31:09 12 [...]" and looking to the bottom of the page
11:31:12 13 "[...] I acknowledge I did so."

11:31:15 14 A. (Witness reading the document.)

11:31:41 15 Okay.

11:31:41 16 Q. So would you agree that this
11:31:43 17 suggests that part of what Kegedonce is being
11:31:46 18 complained of or being charged with was opposing
11:31:48 19 the surrender of the Half-Mile Strip to the
11:31:50 20 government?

11:31:50 21 A. That's part of it, yes. Could I
11:31:53 22 read the next -- after this line though?

11:31:57 23 Q. Yes.

11:31:58 24 A. (Witness reading the document.)

11:32:13 25 All right, I just wanted to see if he

11:32:15 1 said anything more about the strip.

11:32:23 2 MS. GUIRGUIS: Your Honour, I see it's
11:32:24 3 just past 11:30, would you like to take the
11:32:29 4 morning break right now?

11:32:31 5 THE COURT: Are you finished with this
11:32:32 6 document? We could take the morning break but
11:32:34 7 if you have a few more questions about this
11:32:37 8 Exhibit, and if it doesn't create a problem for
11:32:40 9 you, it might be good to complete it. I'll let
11:32:43 10 you make that call, counsel.

11:32:45 11 MS. GUIRGUIS: Let me ask a few more
11:32:47 12 questions -- a couple more questions and then
11:32:49 13 I'm going to be going to another Exhibit so I'll
11:32:52 14 stop there. Thank you, Your Honour.

11:32:53 15 BY MS. GUIRGUIS:

11:32:53 16 Q. So the last document that we
11:32:55 17 looked at on the same day that the Half-Mile
11:32:57 18 Strip -- the Band council resolution was passed
11:33:00 19 was agreed to, agreeing to the Half-Mile Strip
11:33:03 20 surrender, Anderson also presided over a council
11:33:07 21 about removing two key Saugeen Ojibwe Chiefs
11:33:10 22 from office, correct?

11:33:11 23 A. Yes.

11:33:12 24 Q. And one of those charges at least
11:33:14 25 against Kegedonce included opposing the

11:33:17 1 government?

11:33:17 2 A. Yes.

11:33:19 3 Q. Would you agree with me that this
11:33:21 4 kind of council demonstrated Anderson's power or
11:33:25 5 authority over the Saugeen Ojibwe Chiefs?

11:33:28 6 A. Could we scroll up to the portion
11:33:30 7 that you had me read earlier, please?

11:33:33 8 Q. So that was the previous
11:33:33 9 document?

11:33:34 10 A. No, this is fine.

11:33:35 11 Q. Okay.

11:33:46 12 A. If you could just repeat your
11:33:48 13 preamble in your question, please?

11:33:48 14 Q. So you would agree with me that
11:33:49 15 this kind of council demonstrated Anderson's
11:33:53 16 power or authority over the Saugeen Ojibwe
11:33:54 17 Chiefs?

11:34:03 18 A. But that's a complex question
11:34:05 19 because there was a relationship between any of
11:34:06 20 the First Nation Chiefs and T.G. Anderson who
11:34:10 21 was the Superintendent over the central
11:34:13 22 superintendency.

11:34:16 23 He is questioning complaints that he
11:34:18 24 originally received from other members of the
11:34:21 25 First Nations and is presiding over a council

11:34:25 1 where he's asking these individuals, who have
11:34:27 2 been complained about, to explain themselves.

11:34:29 3 I don't see in this particular excerpt
11:34:35 4 the exercise of power by Anderson over anybody
11:34:41 5 except to question and to ask for explanations.

11:34:49 6 Q. But he's presiding over a meeting
11:34:51 7 where there's charges brought against the
11:34:54 8 Saugeen Ojibwe Chiefs on June 26th, 1851. One
11:34:59 9 of those charges being opposing the government.
11:35:01 10 And then we have --

11:35:01 11 THE COURT: I'm struggling here.

11:35:03 12 MS. GUIRGUIS: Yes, Your Honour.

11:35:07 13 THE COURT: It's a word choice
11:35:08 14 situation, but in my mind "charges" means
11:35:11 15 criminal charges, but the witness said
11:35:13 16 "complaints" made by other members of the First
11:35:16 17 Nations. Are you intending to suggest criminal
11:35:19 18 charges?

11:35:20 19 MS. GUIRGUIS: No, I'm intending the
11:35:21 20 other document refers to "charges", the word
11:35:23 21 "charges", the other exhibit that we looked at.
11:35:28 22 So I was just --

11:35:30 23 THE COURT: So you're clarifying that
11:35:32 24 you don't intend to -- you say "charges" and the
11:35:34 25 witness says "complaints" made by other members

1 of the First Nations and you're referring to
2 that. Is that the clarification?

3 MS. GUIRGUIS: I'm referring to -- in
4 Exhibit 1859, it's described as "charges".

5 THE COURT: Well, I'm just moving from
6 the answer that the witness gave, which is not
7 what I see as criminal charges.

8 Please go ahead.

9 BY MS. GUIRGUIS:

10 Q. So we have Anderson presiding
11 over that meeting on the 26th of June 1851 and
12 we have this document in front of us now, which
13 is Exhibit 4792. Would the discussion
14 indicating that one of those complaints is about
15 opposing the government and its surrender?

16 A. Yes. And this is -- this one is
17 dated September 3, 1851.

18 Q. Would you agree with me that the
19 Saugeen Ojibwe Chiefs would have understood that
20 creating division or opposing the government in
21 this way could be punished?

22 A. Punished?

23 Q. Uhm-hmm.

24 A. I don't agree. I'm not sure what
25 you mean by "punished".

11:36:59 1 Q. Well, these complaints are made.
11:37:01 2 These meetings are held where the question is
11:37:03 3 being asked whether they should be removed from
11:37:05 4 their office.

11:37:05 5 A. Okay.

11:37:06 6 Q. So isn't that a punishment?

11:37:14 7 A. I just want to understand your
11:37:15 8 question correctly. If you are saying that
11:37:21 9 Anderson, without any grounds of complaint by
11:37:25 10 fellow Chiefs, is going to exert his authority
11:37:30 11 to punish Chiefs just on his own account, that's
11:37:33 12 not what these documents are saying.

11:37:36 13 He is, in my opinion, to a great
11:37:41 14 extent, arbitrating complaints that have been
11:37:44 15 made by some members against other members and
11:37:49 16 questioning them.

11:37:50 17 So did the Indian Department sometimes
11:37:57 18 relieve chiefs of their standing? Yes, I think
11:38:06 19 that that happened. Is that what this document
11:38:08 20 is necessarily stating? Not from what I can see
11:38:13 21 from what you've shown me here.

11:38:15 22 Q. But you'd agree that the
11:38:17 23 complaint that's being raised is the opposing --
11:38:20 24 opposing the government's seeking of the
11:38:23 25 surrender of the land?

11:38:25 1 A. In part, yes.

11:38:26 2 Q. In part, okay.

11:38:30 3 A. Which Kegedonce denies.

11:38:33 4 Q. From this document?

11:38:37 5 A. "Supt Peter J. Kegedonce, what

11:38:39 6 have you to say? Answer: Well, I

11:38:42 7 leave my people sometimes one or two

11:38:44 8 months, but as to opposing the

11:38:47 9 government I deny that entirely."

11:38:51 10 Q. And what about the sentence below

11:38:52 11 that, the one that starts with "D. Sawyer"?

11:38:57 12 A. "D. Sawyer: Did you (Kegedonce)

11:39:00 13 not try to prevent the sale of a strip

11:39:02 14 of land between Owen Sound and

11:39:04 15 Saugeen?"

11:39:06 16 And presumably Kegedonce's answer:

11:39:09 17 "And, sir, I acknowledge I did

11:39:10 18 so."

11:39:10 19 Q. So isn't he acknowledging that he

11:39:11 20 opposed the government's -- the surrender

11:39:11 21 preventing the sale of the strip of the land

11:39:13 22 between Owen Sound and Saugeen?

11:39:15 23 A. It may be that he does not

11:39:17 24 necessarily equate being against a surrender of

11:39:21 25 land as opposing the government.

11:39:24 1 Q. But he says, "I acknowledge I did
11:39:26 2 so."
11:39:27 3 A. He does acknowledge that in
11:39:29 4 response to Sawyer's question that he tried to
11:39:34 5 prevent the sale of the strip of land.
11:39:37 6 Q. So he does acknowledge?
11:39:39 7 A. He does acknowledge that
11:39:40 8 specifically, yes.
11:39:42 9 Q. Okay.
11:39:52 10 MS. GUIRGUIS: Your Honour, this is a
11:39:52 11 good time to break before I go to the next
11:39:53 12 exhibit.
11:39:53 13 THE COURT: All right, thank you.
11:39:53 14 -- RECESSED AT 11:40 A.M. --
11:39:53 15 -- RESUMED AT 12:02 P.M. --
12:02:40 16 THE COURT: Go ahead.
12:02:41 17 MS. GUIRGUIS: So, Your Honour, my
12:02:42 18 friends just brought to my attention an issue
12:02:44 19 with the transcript for Exhibit 1859. One word
12:02:54 20 that they noticed that was incorrect. Perhaps
12:02:56 21 if we can bring up the original Exhibit 1859.
12:03:01 22 THE COURT: Has it been used?
12:03:02 23 MS. GUIRGUIS: Yes.
12:03:03 24 THE COURT: Oh, it was just used.
12:03:05 25 MS. GUIRGUIS: It was just used, yes.

12:03:13 1 So we have here beginning about midway through
12:03:16 2 the first paragraph:

12:03:18 3 "Charges were brought against the
12:03:22 4 first that John T. Wahbahdik."

12:03:26 5 And if we go to the Exhibit 4791,
12:03:27 6 which is the transcript, it says about the
12:03:51 7 third -- the fourth line down:

12:03:54 8 "The following charges were
12:03:56 9 brought against them by J.T.
12:03:57 10 Wahbahdik."

12:03:59 11 So my friends have rightly pointed out
12:04:02 12 that it should say "John T. Wahbahdik".

12:04:16 13 BY MS. GUIRGUIS:

12:04:18 14 Q. So, Dr. Reimer, we left off
12:04:19 15 talking about Anderson hearing -- presiding over
12:04:22 16 meetings, hearing complaints, or as referenced
12:04:26 17 in this earlier document, Exhibit 4791, as
12:04:31 18 charges against the Saugeen Ojibwe Chiefs. And
12:04:34 19 you described this as Anderson hearing of the
12:04:37 20 complaints from the community against the
12:04:39 21 Chiefs?

12:04:40 22 A. Yes.

12:04:43 23 Q. Okay. So I just want to clarify
12:04:46 24 something, if the Chiefs were going to be
12:04:47 25 removed, it would be Anderson and his superiors

12:04:50 1 that would make that decision, correct?

12:04:54 2 A. It's my understanding that, yes,
12:04:56 3 they would make the final decision, but that it
12:05:02 4 will have been informed by the complaints by the
12:05:08 5 other members of the First Nation.

12:05:10 6 Q. But the ultimate decision is made
12:05:12 7 by the Indian Department?

12:05:13 8 A. That's my understanding, yes.

12:05:16 9 Q. So I'd like to bring up Exhibit
12:05:18 10 1858. So we have a transcript which
12:05:30 11 unfortunately we haven't added as an exhibit
12:05:33 12 yet, it's at SC1783.

12:05:48 13 So, Your Honour, if I may add this
12:05:50 14 transcript of Exhibit 1858 as the next exhibit.

12:05:54 15 THE COURT: Mr. Registrar?

12:05:56 16 THE REGISTRAR: Exhibit 4840.

12:05:58 17 EXHIBIT NO. 4840: Transcript of
12:05:58 18 Exhibit 1858; document number SC1783.

12:06:05 19 BY MS. GUIRGUIS:

12:06:06 20 Q. So, Dr. Reimer, earlier you had
12:06:08 21 clarified for me that on June 26, 1851, is when
12:06:12 22 the Saugeen Ojibwe passed a resolution accepting
12:06:16 23 the surrender or agreeing to the surrender of
12:06:18 24 the Half-Mile Strip?

12:06:19 25 A. Of a half mile in breadth, yes.

12:06:23 1 Q. Okay. And this is a copy of --
12:06:24 2 this is a transcript of a copy of the
12:06:28 3 resolution?
12:06:31 4 A. Can I see the original, please?
12:06:33 5 Q. Yes. So that's Exhibit 1858.
12:06:47 6 A. Could you go down to the bottom?
12:06:49 7 I just want to see the archival reference if
12:06:55 8 it's been copied there. Yes, this appears to be
12:06:59 9 the document I cited.
12:07:01 10 Q. But the Half-Mile Strip surrender
12:07:04 11 wasn't concluded until September 2nd, 1851?
12:07:08 12 A. Correct.
12:07:08 13 Q. So here we have the agreement of
12:07:10 14 the Chiefs to the surrender, and just so that
12:07:15 15 I'm understanding the timing correctly, this is
12:07:17 16 two days after Anderson has received a "no" to
12:07:22 17 his request, his second request for the
12:07:24 18 surrender?
12:07:25 19 A. Correct.
12:07:26 20 Q. We don't have any documents in
12:07:26 21 between the "no" and this acceptance?
12:07:34 22 A. No, which is why I suggest it's
12:07:35 23 plausible that some kind of compromise or
12:07:37 24 counterproposal was made in the intervening two
12:07:40 25 days.

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12:09:01 24
12:09:02 25

Q. Okay. So I'd like to bring up SC1980.

MR. FELICIAN: Before we leave this document, Your Honour, I wanted to point out, and it refers back to the change in the last transcript because the person's name actually will matter ultimately for us.

So "John Wahbahdik" is actually "John T. Wahbahdik" so it's -- we want to make it clear it's the same person. So in the original it's "John T. Wahbahdik".

THE COURT: I'm hoping, counsel, that these minor corrections to the transcripts can be made and correct transcripts substituted.

MS. GUIRGUIS: Yes, Your Honour.

THE COURT: All right. Please go ahead.

BY MS. GUIRGUIS:

Q. So if we go to SC1980. So this is a transcript of a letter from T.G. Anderson, it's followed by the original letter, if we can scroll down to that. So here in the original letter, we see it's dated June 27th, 1851 and it's from Anderson to Bruce?

A. Yes.

12:09:05 1 MS. GUIRGUIS: Your Honour, can I add
12:09:06 2 this as the next exhibit?
12:09:08 3 THE COURT: Yes. Mr. Registrar?
12:09:09 4 THE REGISTRAR: Exhibit number 4841.
12:09:12 5 EXHIBIT NO. 4841: Letter from T.G.
12:09:12 6 Anderson to Bruce, dated June 27th,
12:09:12 7 1851.
12:09:26 8 BY MS. GUIRGUIS:
12:09:26 9 Q. And if we can go back up to the
12:09:28 10 transcript and you can review that?
12:09:35 11 A. (Witness reading the document.)
12:09:37 12 Okay.
12:09:37 13 Q. So Anderson says that he encloses
12:09:41 14 the four questions we just looked at and the
12:09:48 15 conclusions, so the agreement. Is that the
12:09:49 16 agreement of the Saugeen Ojibwe to the
12:09:52 17 surrender?
12:09:59 18 A. I'm having a little trouble with
12:10:01 19 your wording that -- in which you specify their
12:10:06 20 agreement to the surrender.
12:10:08 21 Q. Okay.
12:10:09 22 A. Because I think that it obscures
12:10:11 23 the fact that they did not agree to the original
12:10:12 24 proposed surrender by the Crown, by Anderson,
12:10:16 25 but rather agreed to surrender a much narrower

1 strip of land.

2 Q. Sure. So what he's enclosing
3 though is that June 26th, 1851, document that we
4 had just looked at, correct?

5 A. Well, it sounds like he's
6 enclosing the questions and explaining that the
7 answer to the fourth is no longer valid because
8 of what happened on the 26th.

9 Q. Okay. So just to be clear then,
10 we're talking about Exhibit 1859.

11 A. I have to take your word for it
12 because I don't have exhibit numbers.

13 Q. Of course, let me bring that up.
14 Exhibit 1859, which is the original. No, I'm
15 sorry.

16 A. It's the 24th, isn't it?

17 Q. Exhibit 1855.

18 So it's these four questions that he's
19 referring to?

20 A. Yes.

21 Q. And --

22 A. Could we just take a moment?

23 Q. Yes.

24 A. I think what the scrawling -- the
25 scrawled note over number 4 and the answer is

1 dated 26, June, 1851, and that's Anderson -- I'm
2 presuming Anderson scrawling over, "This no
3 longer applies", because of what happened two
4 days later. And then that's what he explained
5 in the more recent exhibit you had on the
6 screen.

7 Q. Thank you, Dr. Reimer, that's
8 what I was hoping to clarify.

9 A. Okay.

10 Q. So if we can go back to what we
11 just added as Exhibit 4841? So in this letter
12 to Bruce, there's no report that sets out the
13 arguments that Anderson made to change their
14 minds with respect to the surrender of the strip
15 of land, correct?

16 A. You're saying this letter does
17 not detail the arguments that he made? No, it
18 does not.

19 Q. That's right.

20 Okay, I'd like now to go to Exhibit
21 1884. So this again is a letter from Anderson
22 to Bruce dated September 10th, 1851. I also
23 have a transcript at Exhibit 4816.

24 And, Dr. Reimer, if you could just
25 review this letter and let me know when you're

12:13:41 1 ready for me to ask you a question?

12:13:43 2 A. (Witness reading the document.)

12:14:30 3 I've read it but portions of this
12:14:32 4 transcript I'm not convinced actually meet the
12:14:36 5 original. Some of the sentence syntax does not
12:14:41 6 seem to be complete or is incorrect.

12:14:45 7 So I'm just wondering, could we go
12:14:48 8 back to the original if I could take a look at
12:14:50 9 that and see how legible it is?

12:14:56 10 Q. Yes, certainly.

12:15:04 11 A. All right. Maybe if you ask your
12:15:05 12 question then I could determine whether I want
12:15:07 13 to look at the original or the transcript.

12:15:09 14 Q. Okay, thank you, Dr. Reimer.

12:15:12 15 So would you agree that this report
12:15:13 16 from Anderson to Bruce doesn't give us any more
12:15:16 17 insight about why the Saugeen Ojibwe changed its
12:15:20 18 mind?

12:15:21 19 A. No, you're correct.

12:15:27 20 Q. But it does suggest that Anderson
12:15:29 21 is still planning to get the land on the other
12:15:32 22 side of the road?

12:15:35 23 A. Let me just scroll down, please.

12:15:40 24 Q. Sure.

12:15:51 25 A. I'm not sure which portion of

12:15:53 1 this letter you're referring to.

12:15:55 2 Q. So I'm referring to the:

12:16:00 3 "[...] which would also hasten
12:16:02 4 the settlement of the tract on both
12:16:05 5 sides of the road."

12:16:06 6 The section that ends with that
12:16:08 7 sentence. It's near the bottom of the page.

12:16:21 8 A. (Witness reading the document.)

12:16:44 9 I'm not quite clear on what your
12:16:46 10 question is. Are you asking if in Anderson's
12:16:49 11 mind there would be another surrender of land on
12:16:53 12 another side of the road?

12:16:55 13 Q. Yes. Is that what's suggested in
12:16:58 14 this letter?

12:17:04 15 A. I'm not sure if that's what's
12:17:07 16 being suggested here.

12:17:08 17 Q. Well, okay, based on what we
12:17:10 18 reviewed with respect to the Half-Mile Strip, we
12:17:12 19 know that the Saugeen Ojibwe said "no" to the
12:17:16 20 surrender twice?

12:17:20 21 A. Yes.

12:17:20 22 Q. Okay. We know on the same day
12:17:28 23 that the Saugeen Ojibwe Chiefs did agree to some
12:17:31 24 surrender?

12:17:31 25 A. Yes.

12:17:32 1 Q. That two key Chiefs, Wahbahdik
12:17:35 2 and Kegedonce, were brought to a council meeting
12:17:39 3 where Anderson was presiding and it's described
12:17:41 4 that charges were against both of them?

12:17:45 5 A. Okay.

12:17:46 6 Q. Inquiring into whether they would
12:17:47 7 be removed.

12:17:49 8 MR. FELICIAN: It's the use of the
12:17:50 9 word "charges" again, Your Honour. I don't know
12:17:53 10 if we've established that they were charges.
12:17:55 11 They were complaints by other community members.

12:18:01 12 MS. GUIRGUIS: Your Honour, the
12:18:01 13 word -- I'm trying to use the word that's used
12:18:04 14 in that Exhibit from June 26th, 1851, that says
12:18:08 15 "charges". That's the only reason why I've used
12:18:11 16 it, just to follow along with what the document
12:18:13 17 says. I'm not intending to imply anything else.

12:18:20 18 THE COURT: Well, you've said on the
12:18:21 19 record that you are equating the term
12:18:22 20 "complaint" and "charge" and so the witness has
12:18:29 21 heard you say that. Please go ahead.

12:18:32 22 MS. GUIRGUIS: Thank you, Your Honour.

12:18:38 23 BY MS. GUIRGUIS:

12:18:39 24 Q. So that meeting where Anderson
12:18:43 25 was presiding with respect to complaints or

12:18:46 1 charges, by which I mean the same thing, trying
12:18:49 2 to follow what's in the document, against
12:18:52 3 Wahbahdik and Kegedonce, that happened on the
12:18:55 4 same day that the Saugeen Ojibwe Chiefs did
12:18:58 5 agree to some surrender?

12:19:01 6 A. You're talking about June 26th --

12:19:04 7 Q. That's correct.

12:19:04 8 A. -- 1851? Yes, but John
12:19:05 9 Wahbahdik, his name is on the resolution. So I
12:19:10 10 think you said earlier that both Kegedonce and
12:19:13 11 Wahbahdik opposed the surrender and yet we see
12:19:17 12 Wahbahdik's name on the Band council resolution,
12:19:21 13 do we not?

12:19:25 14 Q. I did not -- I do not believe I
12:19:26 15 said that, to be clear for the record, it was
12:19:29 16 Kegedonce that we see at a later meeting, again
12:19:32 17 presided over by T.G. Anderson.

12:19:35 18 A. Yes, at the later meeting we see
12:19:36 19 that Kegedonce, one complaint is that he opposed
12:19:40 20 the surrender.

12:19:41 21 Q. Right. And he admits to opposing
12:19:44 22 the surrender?

12:19:45 23 A. Yes.

12:19:46 24 Q. And we also, based on what we
12:19:48 25 reviewed, we don't see any explanation in the

1 reports about the councils or other documents as
2 to why the Saugeen Ojibwe agreed to the
3 surrender of the Half-Mile Strip?

4 A. Not explicitly, no.

5 Q. So you speculated that it may be
6 that they came to a compromise about the amount
7 of land and that's why they've come to an
8 agreement. But based on what you've reviewed --
9 on what we've reviewed, would you agree with me
10 that it's also plausible that it was the Crown's
11 pressure that resulted in the Saugeen Ojibwe
12 relenting after a very firm "no" just a few days
13 before?

14 A. It's possible but I think that's
15 a simplistic view because we know from prior
16 documentation that the road was important to the
17 First Nations to have a proper road between
18 Saugeen and Owen Sound.

19 And so they were also interested in
20 the success and being able to move forward with
21 the construction of that road. And I think that
22 needs to be taken into account when the
23 counterproposal for less than half the land that
24 the Crown originally proposed was agreed to.

25 So I don't think it can -- you can

12:21:05 1 simplify that it was purely the result of
12:21:08 2 pressure from the Crown.

12:21:13 3 Q. So even accepting that the road
12:21:15 4 was something that the Saugeen Ojibwe Chiefs may
12:21:18 5 have wanted built, there's no reason their
12:21:25 6 surrender was necessary for that road to be
12:21:28 7 built, is there?

12:21:29 8 A. I can't actually say that I
12:21:32 9 researched that specific question. It was
12:21:36 10 deemed important from the Crown's perspective
12:21:40 11 with respect to having settlers and surveyed
12:21:44 12 lots on -- alongside the road in order to
12:21:48 13 construct and maintain the road.

12:21:52 14 Q. And in keeping with what you
12:21:54 15 said, you said that it's simplistic to determine
12:21:59 16 that it was just pressure from the Crown for a
12:22:03 17 surrender, based on what we see in the record
12:22:08 18 about the Saugeen Ojibwe wanting a road.

12:22:10 19 We have seen also in the documents
12:22:11 20 that we've just reviewed that they -- the
12:22:15 21 Saugeen Ojibwe, even if they did want a road,
12:22:17 22 said very firmly that they would not surrender
12:22:20 23 under any condition, correct?

12:22:22 24 A. Under any condition? That was
12:22:24 25 one of the earliest responses to Anderson's four

12:22:28 1 questions, yes.

12:22:41 2 Q. Okay. The proposed road wasn't
12:22:43 3 built until 1866, is that right?

12:22:46 4 A. I would need to check. Do you
12:23:01 5 have documentation that you can show me or point
12:23:03 6 me to a place in my report where I document
12:23:05 7 that?

12:23:06 8 Q. I think you do document in your
12:23:07 9 report but I don't have that citation. I'll
12:23:10 10 bring up Exhibit 4286, which is Robertson County
12:23:21 11 of Bruce, it's page 6. I'm sorry, I don't have
12:23:33 12 it marked but if you want to have look at the
12:23:36 13 page on the screen?

12:23:37 14 A. What is this document, I'm sorry?

12:23:38 15 Q. This is Robertson's History of
12:23:43 16 the County of Bruce.

12:23:45 17 A. Okay.

12:23:46 18 Q. You're familiar with this
12:23:47 19 document?

12:23:47 20 A. Yes, I am.

12:23:48 21 Q. Yes. So I think if we scroll
12:23:49 22 down on this page, it's the middle paragraph
12:23:51 23 that starts with, "The first land to be
12:23:55 24 surrendered [...]" and ending with, "[...]a
12:23:59 25 direct road was not opened until 1866".

12:24:21 1 A. I see that. I'm just
12:24:22 2 cross-checking with my own discussion of -- this
12:24:25 3 is a secondary source, so I just wanted to see
12:24:27 4 what I had been able to document from the
12:24:29 5 primary sources.

12:24:29 6 Q. Sure.

12:24:31 7 A. (Witness reading the document.)

12:25:03 8 All right. Well, I don't want to take
12:25:05 9 up more time of the court. I know that there
12:25:08 10 was definitely a delay in the final construction
12:25:15 11 and opening of the road.

12:25:16 12 Q. Okay. So let me shift to talking
12:25:22 13 to you about your opinion of SON's -- the
12:25:26 14 Saugeen Ojibwe's motivations for entering into
12:25:30 15 Treaty 72.

12:25:32 16 So you deal with this in your volume 3
12:25:34 17 report, which is Exhibit 4703, at around pages
12:25:39 18 147 to 152.

12:25:54 19 So in this section of your report,
12:25:56 20 you've suggested that one of the Saugeen
12:25:58 21 Ojibwe's motivations for entering Treaty 72 was
12:26:01 22 financial.

12:26:02 23 A. Yes.

12:26:10 24 Q. So the Saugeen Ojibwe's money was
12:26:13 25 held by the government, correct?

12:26:14 1 A. Yes, it was held in trust by the
12:26:17 2 Indian Department, yes.
12:26:19 3 Q. In a Band account?
12:26:20 4 A. In a Band account?
12:26:21 5 Q. Is that what it's typically
12:26:21 6 referred to? It's held in an account for the
12:26:28 7 Band?
12:26:28 8 A. Yes, sure.
12:26:29 9 Q. So I'd like to bring up SC1884.
12:26:34 10 So we have two letters on the first page of this
12:26:42 11 transcript, the original letters follow, dated
12:26:48 12 April 16th, 1855, and June 26th, 1855. Both are
12:27:02 13 Anderson to Bury enclosing a statement of
12:27:05 14 accounts.
12:27:19 15 MS. GUIRGUIS: Your Honour, I would
12:27:19 16 like to add this as the next exhibit.
12:27:23 17 THE COURT: Mr. Registrar?
12:27:25 18 THE REGISTRAR: Exhibit number 4842.
12:27:34 19 EXHIBIT NO. 4842: Document number
12:27:34 20 SC1884. Transcript of two letters
12:27:34 21 from Anderson so Bury; letters are
12:27:34 22 dated April 16th, 1855, and June 26th,
12:27:34 23 1855, respectively.
12:27:36 24 BY MS. GUIRGUIS:
12:27:36 25 Q. So, Dr. Reimer, if you want to

12:27:40 1 take a look at these letters and we'll scroll
12:27:43 2 down when you're ready. So take a look at the
12:27:46 3 enclosures.

12:28:24 4 A. (Witness reading the document.)

12:28:27 5 Okay. I'm not quite sure what you're
12:28:30 6 asking me to look at here. Anything to do with
12:28:32 7 Colpoy's Bay or Saugeen Owen Sound --

12:28:37 8 Q. Right there.

12:28:38 9 A. -- annuity amounts there?

12:28:41 10 Q. Yes. I just wanted to give you
12:28:43 11 an opportunity to look at the document.

12:28:45 12 A. Okay.

12:28:46 13 Q. So based on what you've reviewed
12:28:47 14 here, is this a statement of their -- it's a
12:28:54 15 statement of various, I suppose, First Nations
12:28:57 16 under Anderson's care or superintendency of
12:29:00 17 their accounts, correct?

12:29:02 18 A. Yes.

12:29:02 19 Q. Okay. And the line for Saugeen
12:29:06 20 and Owen Sound states that between 1855 and 1856
12:29:14 21 they have 1,593 pounds in their account, is that
12:29:19 22 correct?

12:29:20 23 A. Yes.

12:29:25 24 Q. So 1855 to 1856, this was before
12:29:29 25 the beginning of the sale of land surrendered in

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Treaty 72, right?

A. That's correct.

Q. So the profits from the land sales wouldn't be reflected in this number?

A. No.

Q. Now, in order for First Nations to -- at that time to purchase something or to use their money, they had to apply for permission from the Superintendent of Indian Affairs?

A. Yeah, they submitted requisitions, yes.

Q. So that would have been the same for the Saugeen Ojibwe?

A. Yes.

Q. Or as an alternative, they could incur debts and seek to pay it out of their annuity or Band funds later?

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

Q. Or as an alternative, they could incur debts and then seek permission to pay it out of their annuity or Band funds later?

A. Yes.

Q. So in this context, the incurring of debts would be an ordinary thing for First

1 Nations?

2 A. It's not unusual, yes.

3 Q. But page 150 of your report,
4 which is PDF page 160 of your volume 3 report,
5 if we can bring that up? It's Exhibit 4703.
6 You refer to at the second paragraph in your
7 report on this page, that:

8 "The Saugeen-Nawash First Nations
9 also sought means to settle their
10 debts and to provide economic security
11 for their communities."

12 And you've cited a long list of
13 documents at footnote 589.

14 A. Yes.

15 Q. So your footnote 589 takes up
16 over half the page. By my count, I counted
17 about 26 documents that you've cited for this
18 footnote.

19 A. Okay.

20 Q. So, I mean, from looking at it,
21 it seems that there's a pretty substantial
22 record of debts that the Saugeen Ojibwe have in
23 advance of Treaty 72?

24 A. Sure, you can draw that inference
25 I suppose, yes.

12:31:57 1 Q. So I want to look at the sources
12:31:59 2 that you've cited with respect to SON's debts --
12:32:03 3 with respect to the Saugeen Ojibwe's debts that
12:32:03 4 you say were one of the motivations for entering
12:32:06 5 into Treaty 72.

12:32:21 6 So if we can go to Exhibit 1566. This
12:32:25 7 is one of the cites that you provided at 589.
12:32:29 8 It's a petition from the Owen Sound Chiefs to
12:32:29 9 Anderson dated, October 27th, 1845. We have a
12:32:35 10 transcript at Exhibit 4762.

12:33:13 11 A. (Witness reading the document.)

12:33:25 12 Okay.

12:33:26 13 Q. So this is a letter from 1845, so
12:33:28 14 that's nine years before Treaty 72 is concluded?

12:33:32 15 A. Yes.

12:33:33 16 Q. And it's a debt that the Saugeen
12:33:38 17 Ojibwe's seem to owe to Mr. James and
12:33:41 18 Mrs. Louisa Darling of about 100 pounds,
12:33:46 19 correct?

12:33:46 20 A. Yes.

12:33:51 21 Q. And the letter tells us here that
12:33:53 22 the Chiefs have long ago asked Colonel Jarvis to
12:33:59 23 pay, "[...] who promised he would do it."

12:34:03 24 Right?

12:34:05 25 A. Yes.

12:34:05 1 Q. So it seems that the Chiefs are
12:34:09 2 saying that Jarvis didn't properly settle the
12:34:11 3 debt, as they requested, and so they're making
12:34:14 4 the request again that it comes out of their
12:34:15 5 annuities, yes?

12:34:16 6 A. Correct.

12:34:17 7 Q. Okay. Let's go to Exhibit 1568,
12:34:24 8 which is a letter from Anderson to Higginson,
12:34:27 9 dated December 2nd, 1845, which you also cite in
12:34:27 10 footnote 589. We have a transcript, so it's
12:34:53 11 SC1787.

12:34:53 12 MS. GUIRGUIS: Your Honour, may I add
12:34:56 13 this transcript as the next exhibit? Transcript
12:35:03 14 of Exhibit 1568.

12:35:06 15 THE COURT: Yes. Mr. Registrar?

12:35:09 16 THE REGISTRAR: Exhibit number 4843.

12:35:12 17 EXHIBIT NO. 4843: Transcript of
12:35:12 18 Exhibit 1568; document number SC1787.

12:35:24 19 BY MS. GUIRGUIS:

12:35:25 20 Q. Dr. Reimer, if you could have a
12:35:27 21 look at this? I assume that you'd like to
12:35:29 22 review them again because I've referenced them?

12:35:30 23 A. It's been a while since I've
12:35:32 24 looked at these.

12:35:35 25 (Witness reading the document.)

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12:36:05 12
12:36:05 13
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12:36:33 19
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Okay.

Q. So this is also about the debt that's owed to Mrs. Darling of 100 pounds, isn't it?

A. Yes, the same debt.

Q. Okay. And Anderson here is writing to Higginson, who at that time is the Superintendent General of Indian Affairs, right?

A. I believe so, yes.

Q. Okay. And he's asking that the payment be processed?

A. Yes.

Q. And, again, this is 1845, so nine years before Treaty 72 is concluded?

A. Yes.

Q. Let's go to Exhibit 1569. And we have a transcript of this that's been added at Exhibit 4763. This is dated December 17th, 1845.

THE COURT: Just while the witness is reading that, counsel, I need to break for our lunch break at quarter to 1:00 today to 2:00 o'clock, so factor that in in your plan and you tell me what will work for you.

MS. GUIRGUIS: Will do, Your Honour,

1 thank you.

2 THE WITNESS: (Witness reading the
3 document.)

4 I've read it.

5 BY MS. GUIRGUIS:

6 Q. Okay. So this letter is about
7 the same debt to Mrs. Darling?

8 A. Yes, authorizing payment.

9 Q. Okay. And who's authorizing the
10 payment?

11 A. Higginson.

12 Q. So it's Higginson's response to
13 Anderson authorizing the payment to
14 Mrs. Darling?

15 A. Yes.

16 Q. So would you agree, based on
17 this, that the debt was likely settled nine
18 years before Treaty 72 was concluded?

19 A. Yes. I think there's perhaps a
20 slight disconnect between what I was attempting
21 to do in footnote 589 in relation to -- direct
22 relation to financial motivation for Treaty 72.

23 I start off in footnote 589 by saying:

24 "Documents dated from the 1840s
25 refer to various debts incurred by

12:38:00 1 Saugeen First Nations some of which
12:38:06 2 involved court actions [...]"

12:38:07 3 And then I provide a list of examples
12:38:09 4 of documents that speak to the issue of debts by
12:38:12 5 the First Nations, not that each one of these
12:38:16 6 was a motivating factor in Treaty 72.

12:38:20 7 And if I did not make that clear
12:38:23 8 that -- I take responsibility for that in this
12:38:26 9 footnote.

12:38:31 10 Q. So the footnote there is not then
12:38:33 11 support to say that there was a variety of
12:38:35 12 outstanding debts at the time of Treaty 72?

12:38:38 13 A. No. And, again, I need to
12:38:40 14 clarify that. I should have explained that more
12:38:44 15 clearly in the footnote. This is simply an
12:38:47 16 accounting of the issue of indebtedness and...

12:38:54 17 Q. So would you agree with me then
12:38:55 18 on that basis that the debts that you've listed
12:39:00 19 at 589, did it form a motivation for SON to
12:39:06 20 enter into Treaty 72?

12:39:08 21 A. Not all of them, no. It's simply
12:39:10 22 a demonstration of the -- of First Nations
12:39:13 23 seeking means to settle debts, not
12:39:16 24 necessarily -- and then footnote 589 is simply
12:39:20 25 as full an accounting as I was able to find in

12:39:23 1 the documents that I reviewed about the issue of
12:39:30 2 acquiring debt, settling debt, et cetera, as an
12:39:34 3 overall general kind of motivation for the
12:39:39 4 Saugeen Ojibwe Nation in terms of having to work
12:39:48 5 within a system of currency exchange,
12:39:57 6 indebtedness, et cetera, in order to carry on
12:40:00 7 the business the Band needed to carry on.

12:40:05 8 Q. Okay. So let me ask you a few
12:40:07 9 questions to see if we can avoid going through
12:40:10 10 each of the letters.

12:40:12 11 A. Yes, that might be useful.

12:40:14 12 Q. These -- because based on what
12:40:16 13 you've said now, we can modify. These 26 or by
12:40:20 14 my count 26 documents that you've cited, would
12:40:23 15 you agree with me that while there's 26
12:40:26 16 documents, they only deal with a handful of
12:40:29 17 debts, about four or five?

12:40:32 18 A. Yes, they demonstrate the problem
12:40:34 19 of debt.

12:40:35 20 Q. Okay. But we can take from what
12:40:44 21 you're saying that the 26 letters or documents
12:40:48 22 that are cited don't each go to a different debt
12:40:52 23 that was outstanding at Treaty 72?

12:40:54 24 A. No, that's correct.

12:40:55 25 Q. Okay. And in fact a few of these

12:41:02 1 handful of debts that it deals with were settled
12:41:07 2 prior to Treaty 72?

12:41:09 3 A. Yes, they were.

12:41:10 4 Q. And some were found to be
12:41:12 5 unwarranted debts. Would you agree with that?

12:41:18 6 A. I will qualify my agreement with
12:41:21 7 respect to I would need to go through them all
12:41:23 8 but I do recall some of them -- what do you mean
12:41:31 9 by "unwarranted"?

12:41:33 10 Q. So would you agree that in some
12:41:35 11 of these correspondence that you've cited, the
12:41:39 12 Indian Department looks into the debts?

12:41:44 13 A. Yes, they did.

12:41:46 14 Q. And they determined whether
12:41:47 15 they're valid or not?

12:41:51 16 A. Valid?

12:41:55 17 Q. Maybe I can take you to an
12:42:09 18 example. Let me just...

12:42:13 19 MS. GUIRGUIS: Well, perhaps, your
12:42:14 20 Honour, if we need to break early, I can take a
12:42:15 21 look and see if I can come up with a simplified
12:42:18 22 version of this part of the plan.

12:42:21 23 THE COURT: Sounds like a good idea.

12:42:22 24 MS. GUIRGUIS: Okay.

12:42:22 25 THE COURT: Break until 2:00 o'clock.

12:42:22 1 -- RECESSED AT 12:42 P.M. --

02:04:36 2 -- RESUMED AT 2:04 P.M. --

02:04:36 3 THE COURT: Please go ahead.

02:04:45 4 MS. GUIRGUIS: Thank you, Your Honour.

02:04:46 5 BY MS. GUIRGUIS:

02:04:46 6 Q. Good afternoon, Dr. Reimer.

02:04:47 7 A. Good afternoon.

02:04:48 8 Q. So we left off by talking about

02:04:50 9 the citations that you had under footnote 589.

02:04:54 10 And I had asked you a question about debts that

02:04:58 11 the department had considered invalid or not

02:05:02 12 warranted and so on.

02:05:03 13 And so I want to bring you to an

02:05:06 14 example to shed some light on what I was

02:05:09 15 referring to.

02:05:09 16 So if I could bring up Exhibit 2008?

02:05:12 17 So we have a report here from T.G. Anderson

02:05:22 18 dated August 17th, 1853, that you refer to and

02:05:26 19 we have a transcript at Exhibit 4795 that we can

02:05:30 20 refer to.

02:05:38 21 So, Dr. Reimer, if you want to just

02:05:39 22 review this transcript and let me know when I

02:05:42 23 can ask you some questions.

02:06:13 24 A. (Witness reading the document.)

02:07:27 25 Okay.

02:07:28 1 Q. So here we have a discussion that
02:07:32 2 Anderson's reporting on in this letter about
02:07:36 3 Madwayosh saying that he doesn't think that
02:07:41 4 these debts are honest, correct?

02:07:43 5 A. Can you go to the top again,
02:07:44 6 please?

02:07:45 7 Q. Yes.

02:07:48 8 A. (Witness reading the document.)
02:07:49 9 Yes, that's what Madwayosh says.

02:07:52 10 Q. Okay. So and he's saying that at
02:07:55 11 least some of the debt is for liquor?

02:07:57 12 A. Yes.

02:08:09 13 Q. And I actually want to take you
02:08:10 14 to Exhibit 2016 -- sorry, before we leave this
02:08:12 15 one, this is with respect to a debt from someone
02:08:15 16 named Mr. Johnston and Mr. Gooding, correct?
02:08:19 17 You could see that at the top.

02:08:24 18 A. I see Johnston and Mr. Gooding,
02:08:45 19 correct, okay.

02:08:47 20 Q. Okay. So if we can go to Exhibit
02:08:48 21 2016? So this is a letter from Colonel Bruce to
02:08:53 22 Anderson dated September 29th, 1853. I'm not
02:09:04 23 sure if we have a corresponding transcript.

02:09:07 24 A. I see the date below it but is
02:09:09 25 there a date above it that would be the date of

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02:10:35 20
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this letter?

Q. Let's see.

A. Yes, okay.

Q. Can you give me a moment? I'm just going to check if we have a corresponding transcript.

So we have a partial transcript of this exhibit at Exhibit 4808.

So, Dr. Reimer, if you could review this and then let me know when I can ask you a question?

A. (Witness reading the document.)

Okay.

Q. So here the debt that Bruce is discussing is the same debt that we've seen in the previous document to Gooding and Johnston?

A. It appears to be so, yes.

Q. And at the last line Bruce is saying that payment for liquors illegally supplied to the Indians won't be allowed?

A. Yes.

Q. Okay. So would you agree, Dr. Reimer, that this is the kind of debt that wouldn't be viewed as being valid or warranted by the Indian Department?

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1 A. Yes.

2 Q. Okay. And in addition we have

3 reference to the Indian Protection Act and the

4 date of this letter is 1853, so is that

5 referring to the 1850 Indian Lands Protection

6 Act, from your reading?

7 A. It likely is, yes.

8 Q. Okay. Let me take you to another

9 letter, Exhibit 1787. And this letter is dated

10 September 2nd, 1850, from Anderson to Barton.

11 Mr. Barton, that's the Assistant Superintendent

12 General of Indian Affairs at that time?

13 A. Maybe, yes.

14 Q. Okay. So we do have a transcript

15 of this at Exhibit 4795. Sorry, give me one

16 moment to find the correct exhibit number.

17 Exhibit 4794. Here we go.

18 So, Dr. Reimer, if you could take a

19 look at this letter from Anderson to Barton and

20 let us know when you'd like us to scroll down?

21 A. (Witness reading the document.)

22 Okay.

23 MS. GUIRGUIS: So -- can I just have

24 one moment, Your Honour? Thank you.

02:14:19 1 BY MS. GUIRGUIS:

02:14:19 2 Q. So here we have reference in this
02:14:30 3 again to this debt from -- or the debt to
02:14:35 4 Mr. Gooding and Mr. Johnston?

02:14:37 5 A. Yes, a debt to Mr. Gooding and
02:14:41 6 Mr. Johnston, yes.

02:14:45 7 Q. Okay. And if we look at the last
02:14:47 8 paragraph of the transcript, the beginning
02:14:48 9 Anderson is saying:

02:14:50 10 "As however under the new Act
02:14:51 11 parties cannot collect the debts due
02:14:54 12 by Indians and as there may be causes
02:14:57 13 where such debts are justly due and
02:14:59 14 should therefore be paid [...]."

02:15:01 15 So this, again, do you understand this
02:15:03 16 to be a reference to the 1850 Indian Land
02:15:05 17 Protection Act?

02:15:07 18 A. Yes, likely it is.

02:15:09 19 Q. And based on your review, your
02:15:11 20 reading, your simple reading of the 1850 Indian
02:15:14 21 Land Protection Act, do you understand to have
02:15:17 22 some protection against -- for Indians against
02:15:22 23 the payment of debts?

02:15:24 24 THE COURT: Mr. Feliciant?

02:15:25 25 MR. FELICIAN: I believe that's

02:15:25 1 starting to call for legal opinion of what the
02:15:27 2 effect of that Act is.

02:15:31 3 MS. GUIRGUIS: I can rephrase that.

02:15:32 4 BY MS. GUIRGUIS:

02:15:33 5 Q. So does this -- if he's likely
02:15:35 6 referring to that Act, does this reflect an
02:15:40 7 understanding of the Crown that there's some
02:15:42 8 protection in this Act against the
02:15:43 9 enforceability of debts?

02:15:56 10 A. I'm just reading the first
02:15:58 11 sentence here and it's not completely clear to
02:16:00 12 me. And in order to answer your question, I
02:16:02 13 would want to review the 1850 Act again and
02:16:09 14 compare it with what is being stated in this
02:16:13 15 letter.

02:16:17 16 Q. Okay. We can bring up Exhibit
02:16:24 17 1784, which is the Act, and turn to PDF page 3
02:16:36 18 which is page 1409 of the document. And if you
02:16:48 19 go to the third paragraph from the bottom, which
02:16:50 20 is section III it starts with, "And be it
02:16:56 21 enacted [...]", and ends with "[...] upwards."

02:17:20 22 A. I have to confess that this is
02:17:22 23 legalese that I do not completely understand.
02:17:24 24 It has the word "debt" in it but that's about
02:17:26 25 the best I can say.

02:17:30 1 Q. Okay, that's fair. And really
02:17:31 2 this is based on a simple reading. I'll take
02:17:33 3 you to another paragraph and if you feel like
02:17:36 4 you don't understand it just let me know.

02:17:39 5 If you go to the next page, PDF 4, if
02:17:42 6 you could read section VIII, it's the
02:17:45 7 second-last paragraph from the bottom beginning,
02:17:47 8 "And where as certain tribes of Indians [...]",
02:17:53 9 and then ending with "[...] or cause
02:18:01 10 whatsoever."

02:18:36 11 A. (Witness reading the document.)
02:18:37 12 I would need assistance in parsing
02:18:39 13 what actually is being enacted by this section.

02:18:45 14 Q. Okay. That's fine.

02:18:46 15 I mean, going back to the letter that
02:18:48 16 we were looking at, the transcript of the -- of
02:18:51 17 Exhibit 1787 at Exhibit 4795, you'd agree that
02:18:55 18 what Anderson is saying, he's referring to a new
02:18:59 19 Act?

02:19:00 20 A. Yes.

02:19:01 21 Q. And saying that parties can't
02:19:03 22 collect debts due by Indians?

02:19:13 23 A. Yes, that seems to be what he's
02:19:15 24 saying, yes.

02:19:16 25 Q. Okay. And based on the rest of

02:19:28 1 what he's saying to the extent -- in this
02:19:35 2 paragraph Anderson is saying if there's
02:19:37 3 legitimate debts that should be paid, he is
02:19:40 4 saying that the request for payment should be
02:19:42 5 submitted directly to the Indian Department,
02:19:45 6 correct?

02:19:45 7 A. Correct.

02:19:52 8 Q. So would you agree with me that
02:19:54 9 the Indian Department, the Indian officials that
02:19:56 10 we've reviewed, Anderson and other such
02:19:59 11 officials, there's some investigation as to
02:20:01 12 whether the debts are valid or not?

02:20:04 13 A. Yes.

02:20:06 14 Q. And in some cases --

02:20:08 15 A. "Valid" as defined by the
02:20:10 16 department and the Act, et cetera.

02:20:13 17 Q. And they take into consideration
02:20:16 18 what the debt is for when determining whether
02:20:19 19 it's valid?

02:20:20 20 A. Apparently, yes.

02:20:22 21 Q. They take into account whether
02:20:26 22 it's enforceable according to their
02:20:30 23 understanding of enforceability under the law?
02:20:34 24 The Indian Department undertakes some kind of
02:20:38 25 investigation as to whether they are warranted

02:20:40 1 or valid?

02:20:41 2 A. Yes.

02:20:44 3 Q. So we talked about before that
02:20:45 4 the documents that you've cited at footnote 589
02:20:49 5 that there's really only reference to a handful
02:20:52 6 of debts, four or five?

02:20:54 7 A. Uhm-hmm.

02:21:01 8 Q. And some of them you've said have
02:21:03 9 been settled?

02:21:04 10 A. Yes.

02:21:04 11 Q. And then I put to you whether --
02:21:10 12 that there's some investigation by the
02:21:13 13 department going on as to whether those are
02:21:14 14 enforceable or legitimate or valid.

02:21:17 15 So even if we assume that some of the
02:21:19 16 debts that you've cited in 589 were enforceable
02:21:21 17 or legitimate, we've looked at the Band account
02:21:26 18 of the Saugeen Ojibwe earlier on and we know
02:21:28 19 that prior to receiving any proceeds from the
02:21:30 20 sale of peninsula lands in 1855 to 1856 of the
02:21:38 21 Saugeen Ojibwe had about 1500 pounds in their
02:21:40 22 account?

02:21:41 23 A. Yes.

02:21:42 24 Q. So -- and also the Saugeen Ojibwe
02:21:44 25 they also received 1250 pounds in annuities each

02:21:49 1 year, correct?

02:21:51 2 A. Yes.

02:21:51 3 Q. So they had the funds --

02:21:56 4 MR. FELICIAN: Sorry, I rise because

02:21:57 5 I think, in fairness to the witness, the 1500

02:22:00 6 pounds did in fact include the 1250 pounds of

02:22:04 7 annuity, so it wasn't additional to that amount.

02:22:08 8 MS. GUIRGUIS: I wasn't suggesting it

02:22:09 9 was additional.

02:22:11 10 THE COURT: I'm sure you weren't but

02:22:12 11 it came out that way.

02:22:13 12 MS. GUIRGUIS: Okay.

02:22:13 13 THE COURT: So that's what I heard.

02:22:14 14 If you didn't intend that then are you content

02:22:17 15 with Mr. Feliciant's clarification?

02:22:19 16 MS. GUIRGUIS: That's fine, Your

02:22:21 17 Honour.

02:22:21 18 THE COURT: All right. Please go

02:22:22 19 ahead.

02:22:23 20 BY MS. GUIRGUIS:

02:22:24 21 Q. So if the Indian Department had

02:22:25 22 allowed the use of the funds that the Saugeen

02:22:29 23 Ojibwe had in their accounts to pay their debts,

02:22:33 24 they did have available money to do so?

02:22:39 25 A. Well, according to that one year

02:22:42 1 of their accounts, yes.

02:22:44 2 Q. And when we say that they have --
02:22:46 3 they received 1250 pounds in annuities each
02:22:50 4 year, that's an income that takes place every
02:22:52 5 year?

02:22:53 6 A. Yes.

02:22:54 7 Q. So even if they depleted the 1500
02:22:58 8 pounds that were there in 1855 and 1856, they
02:23:01 9 have another 1250 coming next year?

02:23:05 10 A. Yes.

02:23:05 11 Q. So they would have money to pay
02:23:07 12 off debts if the Indian Department authorized
02:23:10 13 them to do so without having to resort to
02:23:13 14 surrendering the lands on the peninsula?

02:23:17 15 MR. FELICIAN: I apologize to get up,
02:23:19 16 but, again, is this -- I think in fairness to
02:23:22 17 the witness, are we talking about the debts that
02:23:25 18 she referenced in the 1840s in her footnote?
02:23:27 19 Or are we talking about different debts that may
02:23:30 20 have been extant in 1854?

02:23:33 21 But I think in fairness to the witness
02:23:34 22 we have to clarify what debts and what time
02:23:38 23 period we're talking about.

02:23:41 24 THE COURT: Because of the nature of
02:23:42 25 your cross-examination, I think it would be fair

02:23:44 1 if you gave a specific time period, which that
02:23:49 2 question didn't have.

02:23:50 3 MS. GUIRGUIS: Right.

02:23:50 4 BY MS. GUIRGUIS:

02:23:51 5 Q. So let me clarify. As I started
02:23:56 6 off, I said even if we assume that some of the
02:23:59 7 disputed debts were enforceable, and I am
02:24:01 8 referring to the debts that you've referenced in
02:24:03 9 your footnote 589, being previous -- prior to
02:24:07 10 1854, the surrender in 1854.

02:24:16 11 And based on what we've discussed in
02:24:18 12 terms of what's in the Saugeen Ojibwe's account
02:24:21 13 as of 1855 to '56, and what you've said that
02:24:26 14 they receive in annual income from their
02:24:27 15 annuities, 1250 pounds in each year, if the
02:24:31 16 Indian Department had allowed them to use those
02:24:34 17 funds to pay off debts, then we see that there
02:24:38 18 was no need to have to resort to surrendering
02:24:41 19 the lands on peninsula to do so?

02:24:44 20 THE COURT: Well, there's no time
02:24:45 21 period in that question again. When you said --

02:24:50 22 MS. GUIRGUIS: Right.

02:24:50 23 THE COURT: It's a very long, compound
02:24:53 24 question and one part of it had a time period,
02:24:56 25 but the ultimate question did not.

02:24:59 1 The ultimate phrase where you say, We
02:25:06 2 see that there was no need to have to resort to
02:25:08 3 surrendering the land to do so to pay off debts,
02:25:15 4 that part had no time period.

02:25:18 5 BY MS. GUIRGUIS:

02:25:18 6 Q. To pay off the debts as of 1854.

02:25:23 7 THE COURT: Did you get that,
02:25:24 8 Dr. Reimer, or would you like to have it again?

02:25:27 9 THE WITNESS: I'll provide an answer
02:25:29 10 and if it does not respond to your understanding
02:25:33 11 of the question, then we can work through it
02:25:35 12 further.

02:25:37 13 The -- this portion of my report which
02:25:43 14 is very brief, is simply a reference to seeking
02:25:47 15 means to settle debts.

02:25:50 16 The numerous documents in 589
02:25:53 17 illustrate the issue of debts, how those debts
02:25:58 18 worked, how those debts were paid, how
02:26:01 19 requisitions were made, how the Indian
02:26:03 20 Department considered those debts.

02:26:08 21 And then I follow this up by saying
02:26:11 22 that it was a means to settle debts, considering
02:26:14 23 the process that the First Nations had to go
02:26:16 24 through in order to purchase items whether valid
02:26:20 25 or not, and to provide economic security for

02:26:23 1 their communities.

02:26:24 2 So land sales is, in part, a
02:26:27 3 motivation because it would enhance their
02:26:30 4 account in order to deal with this kind of debt
02:26:33 5 system that they were tied to at the time.

02:26:39 6 Then I follow that up with one example
02:26:42 7 of March 18, '54, where there's a resolution to
02:26:46 8 dispose of some lands unsold at Goderich for the
02:26:49 9 payment of the old debts.

02:26:50 10 So I'm simply creating a link between
02:26:55 11 financial security, debt payment and future land
02:27:00 12 sales as part of the overall economic security
02:27:04 13 for their communities.

02:27:12 14 BY MS. GUIRGUIS:

02:27:12 15 Q. Right, so I understand that,
02:27:13 16 Dr. Reimer, and when you say:

02:27:15 17 "So land sales is, in part, a
02:27:16 18 motivation because it would enhance
02:27:18 19 their account [...]".

02:27:21 20 That's what I'm trying to get at right
02:27:23 21 now.

02:27:24 22 A. Right, okay.

02:27:24 23 Q. So as of -- we know that 1855 to
02:27:27 24 1856 there's about 1500 pounds in the Saugeen
02:27:31 25 Ojibwe's account?

02:27:32 1 A. Yes.

02:27:32 2 Q. That's prior to seeing any

02:27:35 3 proceeds from the sale of the peninsula lands?

02:27:37 4 A. Yes.

02:27:38 5 Q. That money, if the Indian

02:27:40 6 Department had approved it, could have been used

02:27:43 7 to pay off debts that they had incurred prior to

02:27:47 8 1854?

02:27:48 9 A. Yes.

02:27:49 10 Q. Okay. And the Saugeen Ojibwe

02:27:52 11 also received 1250 pounds a year by virtue of

02:27:56 12 their annuities?

02:27:58 13 A. Correct.

02:27:58 14 Q. So there was a way of

02:27:59 15 replenishing their account?

02:28:01 16 A. Yes.

02:28:03 17 Q. And for debts that were incurred

02:28:05 18 prior to 1854, if the department had approved

02:28:08 19 the use of those annuity funds, those funds

02:28:14 20 could have also been used?

02:28:15 21 A. Yes.

02:28:16 22 Q. Okay, thank you.

02:28:24 23 So there's no record of the Treaty

02:28:26 24 proceedings in 1854 that suggest that debts were

02:28:31 25 ever discussed either by the Saugeen Ojibwe or

02:28:34 1 by Oliphant as a reason for entering the Treaty,
02:28:37 2 correct?

02:28:37 3 A. As far as I recall, no. That's
02:28:40 4 correct.

02:28:53 5 Q. So I want to move to discussion
02:28:56 6 of the attempts by the Crown to get a surrender
02:29:00 7 of parts of the peninsula prior to Treaty 72 in
02:29:05 8 1854. There are a few attempts that you discuss
02:29:08 9 in your report, correct?

02:29:10 10 A. Yes.

02:29:11 11 Q. So I'd like to go through some of
02:29:14 12 these. I think, for your reference, it's volume
02:29:19 13 3, Exhibit 4703, where you discuss this. I
02:29:25 14 think at around page 146?

02:29:31 15 A. I have 152 or are you going even
02:29:35 16 earlier?

02:29:37 17 Q. I think I'm going a bit earlier.

02:29:39 18 A. Okay.

02:29:39 19 Q. But I'll take you to the places
02:29:41 20 where I need to.

02:29:49 21 So I'd like to pull up Exhibit 1943.
02:30:01 22 And these are the minutes of a general counsel
02:30:03 23 at Owen Sound dated August 18th, 1852, with the
02:30:08 24 tribes of Owen Sound and Saugeen assembled, it
02:30:12 25 says. We have a transcript at Exhibit 4775 and

1 if we can turn to page 2 of the transcript.

2 The passage marked here from "The
3 Superintendent [...]" down to "[...] our
4 children."

5 A. Is the Superintendent referring
6 to Anderson?

7 Q. That was going to be my question
8 for you. Shall we scroll up?

9 A. Yes, please. This seems to be a
10 continuation of something else.

11 Q. Let's flip to the original
12 Exhibit at 1943.

13 So I'm not sure if it says that -- who
14 it is, but on August 18th, 1852, the
15 Superintendent for Owen Sound and Saugeen, that
16 was Anderson?

17 A. It could be referring to -- it's
18 probably referring to Anderson. Sometimes
19 McNabb would attend councils but it was usually
20 Anderson. He was the Superintendent of the
21 central agency at the time.

22 Q. Anderson was?

23 A. Anderson was, yes.

24 Q. And McNabb wouldn't have been
25 referred to as "Superintendent"?

02:32:48 1 A. No, not really, no.

02:32:49 2 Q. Okay. So if we go back to the

02:32:57 3 transcript at the passage that we've marked,

02:33:05 4 "the Superintendent" perhaps Anderson?

02:33:07 5 A. Yes, right, okay.

02:33:09 6 Q. If you could read to "[...]the

02:33:18 7 benefit of our children."

02:33:35 8 A. (Witness reading the document.)

02:33:36 9 Okay.

02:33:37 10 Q. So when the Superintendent says

02:33:41 11 "last spring", would this have been the spring

02:33:44 12 of 1851?

02:33:48 13 A. Right, because this document is

02:33:49 14 dated September 1852? Is that --

02:33:55 15 Q. August 18th, 1852.

02:33:57 16 A. Well, it could be the spring of

02:33:59 17 1852 then.

02:34:01 18 Q. Okay. So what we see here then

02:34:03 19 is that starting in either 1851 or spring of

02:34:08 20 1852, the government was asking the Saugeen

02:34:11 21 Ojibwe to surrender part of the reserve?

02:34:14 22 A. Was suggesting the benefit they

02:34:15 23 would derive from disposing of part of the

02:34:18 24 reserve, yes.

02:34:21 25 Q. And the answer that they received

1 from John Johnston for Owen Sound is, no,
2 because they want to keep it for their children,
3 correct?

4 A. Correct.

5 Q. So I'd like to bring up Exhibit
6 2004. So this is a report from T.G. Anderson.
7 So only pages 9 and on I believe are
8 transcribed, 1 to 8 are not. If we go to PDF
9 page 5 and zoom in at the top, there's the title
10 of the report "Of My Visit to the Various Tribes
11 Under My Superintendents Between 19 July and
12 25th August, 1853".

13 So if we go to page 3 of the
14 transcript, so here again there's a passage
15 marked for your review at the top from,
16 "Superintendent to all [...]", and ending -- if
17 you can review up to, "[...]reserve for them."

18 A. (Witness reading the document.)

19 Okay.

20 Q. So here the Superintendent's
21 statement is referencing on a former occasion.
22 Is he referencing earlier requests for ceding
23 the reserve?

24 A. If you could go up again, please?

25 Q. Yes.

02:36:49 1 A. Yes, he's referring to a former
02:36:50 2 occasion where the government recommended --
02:36:53 3 where he informed the Saugeen Nawash that the
02:36:58 4 government recommended ceding the tract of land
02:37:01 5 to be sold for their benefit.

02:37:10 6 Q. And again here when he references
02:37:12 7 this and says, "What do you think of it now?"
02:37:15 8 The Saugeen Ojibwe Chiefs are saying, "No",
02:37:15 9 citing again that they want to keep it for their
02:37:18 10 children?

02:37:19 11 A. Well, no. In fact, this is
02:37:20 12 curious because Madwayosh makes a direct
02:37:24 13 reference between Treaty 45 1/2 with Sir Francis
02:37:28 14 Bond Head and surrounding Bands of Indians who
02:37:31 15 wish to come and live here, and also for their
02:37:34 16 children, which goes to our discussion last week
02:37:37 17 about an understanding, implicit understanding
02:37:40 18 of the peninsula as a general reserve.

02:37:46 19 And for those reasons, Madwayosh and
02:37:48 20 Kegedonce agrees that no, they're not ready to
02:37:52 21 surrender the lands at this time.

02:37:54 22 Q. But Madwayosh also references
02:37:56 23 "for our children"?

02:37:58 24 A. For them and our children.

02:38:01 25 Q. So he does say they want to keep

02:38:03 1 it for their children?

02:38:04 2 A. For them and our children, yes.

02:38:07 3 Q. Sure. We do see here, yes, that
02:38:09 4 the Saugeen Ojibwe Chiefs mention others joining
02:38:13 5 them on the peninsula and they're citing this as
02:38:16 6 a reason why they shouldn't have to surrender
02:38:19 7 their lands, correct?

02:38:20 8 A. That they don't want to.

02:38:29 9 Q. So I'd like to go to Exhibit
02:38:30 10 2026. This is a letter October 22nd, 1853, to
02:38:54 11 the Saugeen Chiefs. And if you can review this
02:38:57 12 letter.

02:39:08 13 A. Could you go to the top again?
02:39:09 14 And this is from?

02:39:11 15 Q. If we scroll down to the second
02:39:13 16 page.

02:39:14 17 A. Anderson, okay. If I could see
02:39:16 18 that full paragraph?

02:39:17 19 Q. Uhm-hmm.

02:39:18 20 A. (Witness reading the document.)
02:39:18 21 Okay.

02:40:01 22 Q. So in this letter, Anderson seems
02:40:03 23 to be responding to the Saugeen Ojibwe wanting
02:40:06 24 to lease their mill sites, correct?

02:40:08 25 A. Scroll up again, please. It's

02:40:21 1 discussing leasing as opposed to surrendering
02:40:24 2 the lands for the mill site and the difficulty
02:40:30 3 of collecting rents.

02:40:34 4 And so Anderson is suggesting that it
02:40:36 5 would be a greater -- of greater advantage to
02:40:39 6 them if the land was ceded and then sold.

02:40:47 7 I'm not sure it's saying that the
02:40:48 8 Saugeen Ojibwe Nation is asking to lease the
02:40:50 9 lands. It's comparing the two types of benefits
02:41:00 10 from the lands, leasing or selling.

02:41:02 11 Q. Okay. And he's recommending
02:41:06 12 ceding those lands to the Crown instead?

02:41:08 13 A. Yes.

02:41:08 14 Q. He says, it would be too
02:41:10 15 difficult to collect the rent?

02:41:12 16 A. Yes. And this is from prior
02:41:14 17 experience where they have had difficulties
02:41:18 18 collecting the lease and rental payments.

02:41:21 19 Q. And what he says to them is that
02:41:23 20 it's up to them whether they cede a portion of
02:41:26 21 the lands to the government or to lease it and
02:41:28 22 get nothing from it, right?

02:41:31 23 A. Scroll down a little bit, please?

02:41:40 24 Yeah, it's a curious turn of phrase
02:41:42 25 because leasing is not nothing.

02:41:44 1 Q. Right. Yes, but he's saying that
02:41:50 2 the government won't collect rents if the
02:41:53 3 Saugeen Ojibwe choose instead to lease the
02:41:56 4 sites?

02:41:57 5 A. No, that's not how I've read
02:41:58 6 that.

02:41:59 7 Q. Okay.

02:42:01 8 A. I've read this as Anderson not
02:42:05 9 favouring the lease option and favouring the
02:42:10 10 surrender and sales option. Exactly what
02:42:14 11 Anderson is meaning by "get nothing for it" I
02:42:18 12 had not taken as the government would refuse to
02:42:21 13 lease it.

02:42:28 14 Q. Would you take for it that
02:42:29 15 Anderson's pushing that surrender is preferred?

02:42:33 16 A. Yes.

02:42:35 17 Q. No surrender of this site, we're
02:42:37 18 talking about the Ausable River Mill site,
02:42:40 19 directly follows this letter, correct?

02:42:46 20 A. No surrender of the Sauble Mill
02:42:50 21 site follows this?

02:42:52 22 Q. Yes.

02:42:52 23 A. As far as I know, no.

02:43:14 24 Q. So if we bring up Exhibit 2062.
02:43:17 25 It's a March 10th, 1854, letter from Charles

02:43:26 1 Keeshig to Anderson. We have a transcript at
02:43:30 2 Exhibit 4776. Dr. Reimer, if you want to take a
02:43:42 3 look at this letter?

02:43:44 4 A. (Witness reading the document.)

02:44:00 5 THE COURT: I always hope our members
02:44:02 6 of the public, guests and visiting experts know
02:44:07 7 that we're in hospital row so the fact that we
02:44:09 8 constantly hear ambulances should not surprise
02:44:12 9 you.

02:44:13 10 I've mentioned it to a number of
02:44:14 11 witnesses at the trial, so I mention it to you,
02:44:17 12 Dr. Reimer, because it seems like you've had
02:44:19 13 them constantly today.

02:44:22 14 THE WITNESS: I listened to them all
02:44:25 15 weekend as well.

02:44:26 16 THE COURT: Oh dear. Well, that's the
02:44:27 17 reason.

02:44:57 18 THE WITNESS: Okay, I've read it.

02:44:58 19 BY MS. GUIRGUIS:

02:44:58 20 Q. Okay. From the first line it
02:45:03 21 seems that this letter is in response to another
02:45:05 22 proposal from Anderson that they sell some of
02:45:08 23 their lands, correct?

02:45:09 24 A. "[...] the plan proposed in
02:45:11 25 council last time you were here."

02:45:17 1 So, yes, when was the last time
02:45:19 2 Anderson was there? It will have been possibly
02:45:24 3 in the fall of 1853. So it is in response to a
02:45:33 4 plan that Anderson had proposed.

02:45:37 5 Q. And again, it only seems to be
02:45:39 6 about -- the proposal only seems to be about
02:45:42 7 some of the Saugeen Ojibwe lands and not all,
02:45:44 8 correct?

02:45:45 9 A. Yes, Keeshig refers to a portion
02:45:46 10 of their lands.

02:45:52 11 Q. Okay. And if we go to Exhibit
02:45:54 12 2091. This is a letter dated -- if we scroll
02:46:11 13 down a bit, it's a letter dated June 22nd, 1854,
02:46:15 14 PDF image 2. We see the date right there on the
02:46:18 15 first page.

02:46:19 16 And it's a letter from Anderson to
02:46:21 17 Oliphant. If we go to the PDF image 2, which is
02:46:28 18 the second page of the transcript, just the
02:46:32 19 highlighted portion, "Thirdly [...]", and ending
02:46:36 20 with "[...] future consideration." If you can
02:46:38 21 have a look at that?

02:46:53 22 A. (Witness reading the document.)

02:46:54 23 Okay. Do we need to scroll down?

02:46:58 24 Q. No, that's it.

02:46:59 25 A. Okay.

02:47:01 1 Q. So here Anderson is again
02:47:02 2 referring to getting a cession of the Saugeen
02:47:06 3 reserve. And he tells Oliphant that he's:
02:47:09 4 "[...] repeatedly endeavoured to
02:47:11 5 affect this desirable object without
02:47:13 6 success."
02:47:14 7 So this tells us that Anderson has
02:47:18 8 made several attempts already to get the Saugeen
02:47:19 9 Ojibwe to surrender the peninsula?
02:47:22 10 A. Or portions of it, yes.
02:47:25 11 Q. Which was -- and based on what
02:47:29 12 we've reviewed, the pressure for a partial
02:47:32 13 surrender or sale started in at least as early
02:47:36 14 as spring 1852?
02:47:39 15 A. The requests.
02:47:41 16 Q. Right.
02:47:42 17 A. Not sure I would use the word
02:47:44 18 "pressure".
02:47:45 19 Q. Okay. And ultimately from Spring
02:47:48 20 1852, the Saugeen Ojibwe said "no" each time and
02:47:52 21 there were no surrenders or sales taken?
02:47:58 22 A. Correct.
02:47:58 23 Q. So that brings us to the summer
02:48:00 24 of 1854 and we have here Anderson's letter to
02:48:03 25 Oliphant saying that he's attempted several

02:48:07 1 times to obtain the desirable object of getting
02:48:10 2 a surrender.

02:48:11 3 And if we go to Exhibit 2094. This is
02:48:25 4 a letter from Oliphant to Anderson dated June
02:48:32 5 28th, 1854. We have a transcript at Exhibit
02:48:38 6 4778. You can take a look at that, Dr. Reimer.

02:48:53 7 A. (Witness reading the document.)

02:49:09 8 Yes, I've read it.

02:49:10 9 Q. So as of the end of June, we have
02:49:12 10 Oliphant indicating the Governor General's
02:49:16 11 agreement in this letter with Anderson's plan to
02:49:19 12 get the whole peninsula, correct?

02:49:20 13 A. Well, it doesn't say "the whole
02:49:22 14 peninsula" but it does say the reserve at
02:49:25 15 Saugeen should be surrendered by the Indians for
02:49:28 16 sale.

02:49:28 17 Q. And the reserve at Saugeen refers
02:49:32 18 to the peninsula and the Fishing Islands?

02:49:35 19 A. I think that's implied, yes.

02:49:36 20 Q. So I want to look at the events
02:49:38 21 of July 1854. If we go to Exhibit 2097. This
02:49:51 22 is a July 11th, 1854, letter from Keating to
02:49:55 23 Anderson. You're familiar with this letter,
02:49:57 24 correct?

02:50:19 25 A. (Witness reading the document.)

02:50:19 1 Yes, I'm familiar with this.

02:50:25 2 Q. So in this letter, you recall

02:50:26 3 that in part Keating is advising Anderson what

02:50:28 4 happened at what he calls a "general council" of

02:50:33 5 the Chiefs of the Saugeen Ojibwe in respect of

02:50:37 6 his seeking to purchase a square of 5 miles by

02:50:39 7 10 miles at the Sauble River on the Saugeen

02:50:41 8 reserve?

02:50:42 9 A. Correct.

02:50:42 10 Q. And it's for a mill site, right?

02:50:45 11 A. Correct.

02:50:46 12 Q. The Bands have said "no" to

02:50:47 13 Keating?

02:50:50 14 A. That's what this letter states,

02:50:51 15 yes.

02:50:57 16 Well, this is Keating's report --

02:50:59 17 Q. Yes.

02:50:59 18 A. -- to Anderson on what transpired

02:51:01 19 at that council. And, yes, the Saugeen -- the

02:51:06 20 general council rejected the proposal.

02:51:10 21 Q. And Keating's reporting that in

02:51:12 22 this letter to Anderson?

02:51:13 23 A. Yes.

02:51:14 24 Q. So Keating also mentions a letter

02:51:16 25 from Mr. McLean, if we look at page 3 of 8 of

02:51:23 1 the transcript.

02:51:30 2 So this Mr. McLean, that refers to
02:51:33 3 John McLean, the individual we've discussed
02:51:35 4 before? You refer to him in your report as the:

02:51:38 5 "[...] official appointed as a
02:51:39 6 Commissioner to prevent deprivations
02:51:41 7 on the Saugeen Reserve".

02:51:44 8 Correct?

02:51:45 9 A. He doesn't specify but that's
02:51:47 10 what I understood, yes.

02:51:48 11 Q. So in this part of Keating's
02:51:54 12 letter, his report, he's referring to a letter
02:51:56 13 that Mr. McLean has directed to Vandusen but
02:52:00 14 addressed to the Indians.

02:52:02 15 If you can look at the excerpt marked,
02:52:05 16 "A letter of Mr. McLean [...]", and ends with,
02:52:09 17 "[...] he cannot". It ends on the next page.
02:52:12 18 You can let us know when you'd like us to
02:52:12 19 scroll.

02:53:04 20 A. Okay. (Witness reading the
02:53:04 21 document.)

02:53:04 22 Okay, I've read it.

02:53:06 23 Q. From this excerpt, would you
02:53:08 24 agree that it sounds like the letter from
02:53:10 25 Mr. McLean was also calling on the Saugeen

02:53:12 1 Ojibwe to sell their lands?

02:53:23 2 A. It does sound that way. It
02:53:25 3 sounds like the letter from Mr. McLean called
02:53:28 4 upon them to sell their lands for the support of
02:53:30 5 an industrial school.

02:53:35 6 Q. Okay. And the letter from McLean
02:53:40 7 is saying that if they do not, he's warning them
02:53:43 8 that some bad governor may replace the current
02:53:46 9 one and simply take their lands?

02:53:48 10 A. Well, purportedly that's how
02:53:50 11 Keating is -- I don't know if Keating actually
02:53:55 12 had a copy of this letter and whether he's
02:53:57 13 directly quoting him, but that was Keating's
02:54:00 14 impression, yes.

02:54:01 15 Q. So Keating's impression of the
02:54:03 16 letter is that he was telling the Saugeen Ojibwe
02:54:07 17 that McLean was telling the Saugeen Ojibwe that
02:54:10 18 if they don't sell the lands, the Crown may just
02:54:13 19 take their lands without their consent?

02:54:15 20 A. That was Keating's account of
02:54:17 21 that letter, yes.

02:54:18 22 Q. Okay. And this letter from
02:54:21 23 McLean was part of the discussion at the council
02:54:23 24 in early July 1854, according to Keating's
02:54:28 25 report, when the Saugeen Ojibwe rejected

02:54:31 1 Keating's proposal to surrender a mill site at
02:54:36 2 the Saugeen site?

02:54:38 3 A. Yes, that's part of the same
02:54:40 4 report, yes.

02:54:40 5 Q. So I want to turn to Anderson's
02:54:42 6 report of his meeting with the Saugeen Ojibwe on
02:54:44 7 August 2nd, 1854.

02:54:58 8 So if we can go to Exhibit 2175.
02:54:59 9 Anderson's report, which is dated August 16th,
02:55:01 10 1854, it starts at the bottom of page 11 of the
02:55:13 11 document, which is PDF page 10.

02:55:15 12 And Anderson's speech of August 2nd,
02:55:17 13 1854, is at the bottom of page 12 of the
02:55:19 14 document, which is at PDF 11.

02:55:29 15 So in Anderson's council on August
02:55:32 16 2nd, 1854, he was looking for a full surrender
02:55:36 17 of the peninsula in this meeting, correct?

02:55:39 18 A. Yes, he was.

02:55:40 19 Q. If we look at the last paragraph
02:55:41 20 on page 12, it starts with, "You complain
02:55:44 21 [...]", and ends with "[...] children." On the
02:55:49 22 next page.

02:56:09 23 A. (Witness reading the document.)
02:56:10 24 Okay.

02:56:11 25 Q. So this excerpt, it suggests that

02:56:14 1 people aren't just stealing timber at this point
02:56:17 2 but they're in fact already settling on the
02:56:20 3 Saugeen reserve by August 1854, correct?

02:56:23 4 A. That there had been complaints of
02:56:24 5 that, yes.

02:56:25 6 Q. And the complaints from the
02:56:26 7 Saugeen Ojibwe, they would have complained to
02:56:29 8 Anderson about it?

02:56:30 9 A. That -- yes.

02:56:32 10 Q. But in this speech, Anderson
02:56:33 11 doesn't offer any assistance to remove the
02:56:37 12 trespassers or squatters?

02:56:39 13 A. No.

02:56:47 14 Q. Instead he says at this passage:

02:56:49 15 "I certainly do not think that
02:56:50 16 the government will take the trouble
02:56:52 17 to help you."

02:56:53 18 And he says:

02:56:53 19 "The government as your guardian
02:56:54 20 have the power to act as it pleases
02:56:58 21 with your reserve."

02:56:59 22 And he says he's going to recommend to
02:57:01 23 the government to do so, right?

02:57:03 24 A. He does say so, yes.

02:57:05 25 Q. Would you agree with me that this

02:57:06 1 is very similar to what they have just heard in
02:57:09 2 the July council that Keating reports on about
02:57:15 3 from McLean and his letter?

02:57:17 4 A. Keating's account of McLean's
02:57:20 5 letter, there is a similarity there, yes.

02:57:25 6 Q. McLean's warned the Indians that
02:57:28 7 if they don't sell a bad Governor may come and
02:57:31 8 just take possession of all their lands; and now
02:57:34 9 Anderson is presumably confirming that?

02:57:36 10 A. Restating it, yes.

02:57:43 11 Q. So according to Anderson's
02:57:45 12 report, his statement -- his speech prompts the
02:57:50 13 Saugeen Ojibwe to make a counterproposal,
02:57:51 14 correct?

02:57:54 15 A. Well, the counterproposal was in
02:57:58 16 part a response to the speech. Whether it was
02:58:09 17 in response solely to that speech I'm not
02:58:16 18 certain but, yes, we have his speech and then we
02:58:19 19 have the counterproposal, so chronologically,
02:58:21 20 yes, I agree.

02:58:25 21 Q. And if we go to his report, which
02:58:27 22 starts at page 12, or down to his report, which
02:58:35 23 is page 11, page 11 of the PDF.

02:58:41 24 Here, this portion that's highlighted.
02:58:46 25 That's -- starts at, "They at first declared

02:58:50 1 [...]", and then it doesn't end where we've
02:58:55 2 marked it, but then ends at "[...] limits
02:58:59 3 proposed by the Indians."

02:59:02 4 A. Okay.

02:59:02 5 Q. If you can have a look at that
02:59:04 6 and let me know and I will ask you a question
02:59:07 7 then.

02:59:37 8 A. (Witness reading the document.)

02:59:38 9 All right, I've read it.

02:59:39 10 Q. You said that chronologically he
02:59:42 11 makes the statement and then they provide their
02:59:45 12 counterproposal.

02:59:46 13 And I would suggest that from reading
02:59:47 14 the words of this excerpt as well, he's also
02:59:51 15 indicating that it's his statements that -- and
02:59:56 16 the support that he receives for those
02:59:59 17 statements from several people, that push the
03:00:02 18 Saugeen Ojibwe to make the counterproposal,
03:00:03 19 after having first declared they would not sell
03:00:06 20 an inch, is that fair?

03:00:07 21 A. Again, I'm not sure I would use
03:00:09 22 the word "push".

03:00:12 23 They requested leave to consult among
03:00:15 24 themselves for an hour. This line is preceded
03:00:19 25 by Anderson's report that there was not full or

majority consensus for one position or another.

Then they consulted among themselves for an

hour; and on their return to the council, they

agreed to cede the parts marked in pencil on the

map.

Q. So this counterproposal, we find it at Exhibit 2105, if we can go to that?

So we have a transcript at Exhibit 4796. The counterproposal is written down and delivered by Mr. Sawyer, correct?

A. Yes, he was the chosen speaker.

Q. And Mr. Sawyer was the missionary?

A. And secretary.

Q. So if we look at the transcript, which is Exhibit 4796, starting at page 3 of the PDF, starting at, "Fifth question [...]", and ending at, "[...] interest of it every year."

So fifth question or fifth, being at the left-hand side of the page and then the answers are on the right-hand side of the page for this transcript.

And I'd ask you to review the question and also the answer on the right-hand side and then let me know when you would like to scroll.

03:02:23 1 A. (Witness reading the document.)

03:03:38 2 Okay, I'm done.

03:03:39 3 Q. So to pause here, what we've
03:03:41 4 reviewed is that we have just over at least two
03:03:43 5 years of the Crown trying to get surrender of
03:03:46 6 some parts of the peninsula?

03:03:49 7 A. Yes.

03:03:50 8 Q. The Saugeen Ojibwe has told the
03:03:52 9 government "no" to that surrender more than
03:03:53 10 once?

03:03:54 11 A. Yes.

03:03:54 12 Q. And the Saugeen Ojibwe have been
03:03:56 13 told by government officials, McLean and
03:03:59 14 Anderson, that the government may just take
03:04:01 15 their land without consent?

03:04:05 16 A. Yes.

03:04:17 17 Q. And that's the last thing that
03:04:18 18 they hear from Anderson before they make this
03:04:20 19 counterproposal?

03:04:21 20 A. Yes, but I would qualify my
03:04:24 21 answer. Just because Anderson said it does not
03:04:26 22 mean that the Chiefs necessarily believed it.

03:04:29 23 They had just been through a land sale
03:04:30 24 surrender in 1851 and understood, I believe,
03:04:36 25 that they had experience from that surrender

03:04:41 1 just three years prior to this.

03:04:46 2 I think it is just as plausible that
03:04:48 3 they -- their relationship with Anderson was
03:04:52 4 already, at this point, beginning to
03:04:55 5 deteriorate. And so there's two sides of the
03:04:59 6 story, essentially, is what I'm saying. What
03:05:02 7 Anderson said and what the First Nations
03:05:05 8 actually took from what he said.

03:05:08 9 And I think the counterproposal that
03:05:11 10 they make and the new lines that they draw on
03:05:13 11 the map may in fact be demonstration and
03:05:20 12 manifestation of their understanding that they
03:05:23 13 need not acquiesce to everything that Anderson
03:05:26 14 said to them.

03:05:27 15 THE COURT: Just while you're pausing,
03:05:27 16 counsel, around now would be the ordinary time
03:05:27 17 for the afternoon break, bearing in mind we
03:05:27 18 started early.

03:05:27 19 MS. GUIRGUIS: Right.

03:05:27 20 THE COURT: Is that convenient to you?

03:05:27 21 MS. GUIRGUIS: Yes, that's fine, Your
03:05:27 22 Honour.

03:05:27 23 -- RECESSED AT 3:05 P.M. --

03:05:27 24 -- RESUMED AT 3:32 P.M. --

03:32:23 25 THE COURT: Go ahead.

03:32:24 1 MS. GUIRGUIS: Thank you, Your Honour.

03:32:25 2 BY MS. GUIRGUIS:

03:32:26 3 Q. Dr. Reimer, we left off talking

03:32:28 4 about Anderson's statement that the government

03:32:29 5 would take the Saugeen Ojibwe's lands whether or

03:32:32 6 not they agree. And I suggested that this was

03:32:34 7 the last thing that they heard before they made

03:32:37 8 their counterproposal.

03:32:41 9 And you suggested that there's nothing

03:32:46 10 that -- that it may be that the Saugeen Ojibwe

03:32:49 11 Chiefs didn't believe Anderson?

03:32:51 12 A. Yes.

03:32:54 13 Q. But, Dr. Reimer, there's no

03:32:56 14 document or anything in the report that suggests

03:32:58 15 that the Saugeen Ojibwe didn't believe him

03:33:00 16 though, is there?

03:33:01 17 A. Not in this particular report,

03:33:03 18 no.

03:33:03 19 Q. Or any other document that

03:33:04 20 suggests that?

03:33:05 21 A. There are documents that speak to

03:33:08 22 complaints by the Saugeen Ojibwe Nation against

03:33:11 23 Anderson.

03:33:12 24 Q. Complaints about Anderson though,

03:33:16 25 and you mentioned this, that the relationship

03:33:19 1 was deteriorating; that doesn't necessarily mean
03:33:21 2 that they wouldn't have believed his authority
03:33:23 3 on this point, would they?

03:33:25 4 A. I think they would have
03:33:27 5 questioned it, yes. I think that they were well
03:33:31 6 enough informed about the process of land
03:33:35 7 surrenders, both from their own experience in
03:33:40 8 prior surrenders, particularly 1851, but also
03:33:45 9 with respect to their communication and
03:33:50 10 information and conversation at general Indian
03:33:55 11 councils with other First Nations in Canada West
03:33:58 12 at the time, that there was a fairly good
03:34:05 13 understanding of how lands could be taken by the
03:34:12 14 government and that was through surrender and
03:34:16 15 not by force.

03:34:31 16 Q. We know from this report from
03:34:33 17 what Anderson says is that he makes this
03:34:35 18 statement to them, they go away and then they
03:34:37 19 come back with a counterproposal.

03:34:40 20 So it is reasonable to assume that
03:34:43 21 this statement had some impact on them and their
03:34:48 22 internal discussions such that they came back
03:34:50 23 with a counterproposal, isn't it?

03:34:52 24 A. It may have. Equally I think
03:34:53 25 there will have been the influence of the other

03:34:56 1 Chiefs who had been in favour of some scope of
03:35:02 2 surrender as well, not only Anderson.

03:35:06 3 I think it's useful to recall that in
03:35:10 4 1851, they also came back with a
03:35:12 5 counterproposal.

03:35:13 6 So this was not necessarily a new type
03:35:24 7 of negotiation or a new experience or first-time
03:35:27 8 experience of a Crown official or -- yeah, an
03:35:31 9 official representing the Crown coming and
03:35:33 10 asking for a surrender of lands and the Saugeen
03:35:36 11 Ojibwe Nation coming back after some
03:35:41 12 deliberation with either rejecting the proposal
03:35:45 13 or with some kind of counterproposal.

03:35:48 14 Q. Now, to be clear, with respect to
03:35:50 15 the 1851, you said that they came back with a
03:35:53 16 counterproposal. When we discussed the 1851
03:35:57 17 surrender, you agreed that there are no
03:35:58 18 documents detailing that they came back with a
03:36:02 19 counterproposal?

03:36:03 20 A. We have documents that indicate
03:36:07 21 what it was the Crown wanted and what it was the
03:36:10 22 First Nations would agree to.

03:36:13 23 Q. But we don't have documents
03:36:14 24 reflecting what discussion happened between the
03:36:17 25 "no's" turning into a "yes"?

03:36:19 1 A. You're correct.

03:36:20 2 Q. So in any case, the

03:36:25 3 counterproposal comes back and Anderson rejects

03:36:27 4 this counterproposal and instead he recommends

03:36:32 5 to his superiors that they go out immediately

03:36:34 6 and survey the lands for sale, correct?

03:36:45 7 If it will help, we can go to Exhibit

03:36:48 8 2175?

03:36:50 9 A. That would help, yes.

03:36:50 10 Q. Which is page 12, PDF 11. If we

03:37:07 11 scroll down on this page 12, it's the last

03:37:08 12 paragraph of Anderson's report to Oliphant

03:37:11 13 starting with, "Therefore [...]", and ending at,

03:37:19 14 "[...]included in that deed."

03:37:40 15 A. (Witness reading the document.)

03:37:41 16 Yes, okay.

03:37:41 17 Q. So he rejects the counterproposal

03:37:44 18 and he recommends taking the Saugeen Ojibwe

03:37:46 19 lands?

03:37:46 20 A. Yes.

03:37:47 21 Q. Now, the department doesn't act

03:37:49 22 on Anderson's recommendation to take the

03:37:51 23 peninsula, correct?

03:37:52 24 A. Correct.

03:37:57 25 Q. There's no evidence that any

03:37:58 1 Crown officials communicated to the Saugeen
03:38:00 2 Ojibwe that Anderson's statements about taking
03:38:02 3 their lands without their consent were not true
03:38:05 4 and were not going to be acted on, is there?

03:38:08 5 A. I have not found such
03:38:10 6 documentation, no.

03:38:12 7 Q. So instead what we have is that
03:38:15 8 Oliphant, who's Anderson's boss?

03:38:17 9 A. Yes.

03:38:18 10 Q. He arrives to seek the surrender
03:38:20 11 of the peninsula in October 1854?

03:38:24 12 A. Correct.

03:38:25 13 Q. And there's no evidence that
03:38:27 14 anyone communicated to the Saugeen Ojibwe prior
03:38:33 15 to Oliphant's arrival that the department was
03:38:36 16 not going to be taking their lands without their
03:38:38 17 consent?

03:38:39 18 A. No.

03:38:42 19 Q. And we don't have any record
03:38:43 20 indicating that Oliphant made it clear that
03:38:46 21 Anderson's statement was not true or was not
03:38:48 22 going to be acted on?

03:38:53 23 A. No.

03:38:53 24 Q. So if we go to Exhibit 2175,
03:38:58 25 which is in front of us on the screen, page 4,

03:39:00 1 which is page 3 of the PDF, this is Oliphant's
03:39:03 2 report of the Treaty Council. We have a section
03:39:18 3 marked in that second paragraph but I think if
03:39:21 4 you want to -- I suggest if you review from, "I
03:39:27 5 opened the proceedings by stating [...]", and
03:39:33 6 end at "[...] derived."

03:40:24 7 A. (Witness reading the document.)

03:40:24 8 Okay.

03:40:40 9 Q. So Oliphant notes in this passage
03:40:42 10 that squatters were indeed locating themselves
03:40:44 11 upon the reserve, correct?

03:40:46 12 A. Yes.

03:40:47 13 Q. So it's a confirmation that
03:40:48 14 people were actually settling on the reserve
03:40:50 15 prior to October 1854?

03:40:54 16 A. It seems to be, yes.

03:41:01 17 Q. And in addition, Oliphant's
03:41:03 18 stating that it was pretty much impossible for
03:41:05 19 the government to prevent this?

03:41:06 20 A. Yes.

03:41:09 21 Q. Wouldn't SON have understood this
03:41:09 22 or wouldn't have the Saugeen Ojibwe have
03:41:11 23 understood this as a confirmation of what
03:41:13 24 Anderson was saying in August, that the
03:41:15 25 government would not protect their lands?

03:41:22 1 A. I don't know. That the
03:41:32 2 government would not protect their lands?

03:41:35 3 Q. Uhm-hmm.

03:41:38 4 A. I think it's -- you're asking if
03:41:42 5 it's a confirmation of what Anderson said? I
03:41:44 6 think it's a continued conversation of the
03:41:46 7 pressures and demands for lands that Anderson
03:41:50 8 had talked about, that Oliphant experienced and
03:41:53 9 that apparently the Saugeen First Nations were
03:41:58 10 also witnessing.

03:42:00 11 So I'm just wondering if you could ask
03:42:04 12 the question either again or in different words?

03:42:14 13 Q. Okay. Well, yes, let me try to
03:42:14 14 phrase it this way.

03:42:16 15 In your report, I believe you
03:42:19 16 characterize Oliphant's speech at the Treaty
03:42:20 17 Council in October 1854 as positive
03:42:24 18 reinforcement, as a positive reinforcement
03:42:28 19 approach?

03:42:29 20 I believe this is at page 175 of your
03:42:32 21 report when you say that his approach was about
03:42:44 22 emphasizing protection and economic benefits of
03:42:47 23 the surrender?

03:42:48 24 A. Yes.

03:42:48 25 Q. Okay. But Oliphant is also

03:42:50 1 reaffirming that if they don't surrender, they
03:42:52 2 will lose their lands. So he's building on what
03:42:56 3 Anderson told the Saugeen Ojibwe in August,
03:42:57 4 isn't he?

03:43:02 5 A. That's not the way that I have
03:43:06 6 read this. In my view, and in the analysis I
03:43:13 7 present on pages 175 to 176 of volume 3 of my
03:43:17 8 report, I'm reading Oliphant's approach as quite
03:43:25 9 different from Anderson's in the respect that
03:43:30 10 Anderson's speech and his report demonstrate
03:43:36 11 what I view as direct threats and I do not see
03:43:43 12 Oliphant necessarily taking that same kind of
03:43:45 13 approach.

03:43:47 14 I think he -- his approach is much
03:43:50 15 more to present what he sees as a reality, what
03:43:56 16 he sees as the First Nations themselves also
03:44:00 17 recognizing as a reality and as presenting the
03:44:06 18 surrender as one, as an option to deal with that
03:44:11 19 reality.

03:44:21 20 Q. So here is what I want some
03:44:23 21 clarification on because we have Anderson,
03:44:24 22 having left in August, telling them that the
03:44:27 23 government will take the lands without your
03:44:28 24 consent. And Oliphant comes in October 1854 and
03:44:32 25 it's this sentence here where he starts the

1 proceeding saying:

2 "I represented the extreme
3 difficulty if not impossibility of
4 preventing such unauthorized intrusion
5 on the lands."

6 Isn't he reaffirming that their lands
7 are being threatened?

8 A. Yes, he is.

9 MR. FELICIAN: Sorry, I rise because
10 the length of the question I become concerned
11 the witness may inadvertently endorse something
12 earlier on that might have been missed.

13 My friend said:

14 "[...] because we have Anderson
15 having left in August telling them
16 that the government will take the
17 lands without your consent."

18 That is not what Anderson said or did.
19 He made a recommendation in a subsequent letter
20 that was rejected.

21 THE COURT: I had the same concern,
22 counsel, when I heard you phrase it that way.
23 And it's your obligation to fairly describe the
24 evidence and we've gone through it in immense
25 detail at this point.

03:45:37 1 I don't see that there'd be a point in
03:45:40 2 going back and going through it in immense
03:45:42 3 detail again.

03:45:43 4 MS. GUIRGUIS: No.

03:45:43 5 THE COURT: But your choice of
03:45:44 6 phraseology doesn't accord with the record.

03:46:22 7 MS. GUIRGUIS: So let me rephrase and
03:46:24 8 hopefully I will get it a little more precisely.

03:46:31 9 BY MS. GUIRGUIS:

03:46:31 10 Q. Is that Anderson made the
03:46:32 11 statement to them that the government can just
03:46:38 12 take their lands. And in fact that he
03:46:42 13 recommends to the department doing so. We've
03:46:45 14 talked about that.

03:47:01 15 So when Oliphant comes and says that
03:47:08 16 he:

03:47:08 17 "[...] represented the extreme
03:47:10 18 difficulty if not impossibility of
03:47:12 19 preventing such unauthorized
03:47:14 20 intrusion[...]"

03:47:17 21 Would you agree with me that he's
03:47:18 22 building on what Anderson told the Saugeen
03:47:20 23 Ojibwe in August?

03:47:21 24 A. Not necessarily, no.

03:47:23 25 My overall view, and I take this from

03:47:28 1 not just these few lines that you've outlined in
03:47:31 2 green, is that Oliphant is decidedly taking
03:47:35 3 quite a different approach than what he knew
03:47:37 4 Anderson had taken.

03:47:45 5 I mean, we know that the Crown did not
03:47:46 6 accept Anderson's recommendations. We don't
03:47:49 7 know whether they disapproved of the approach he
03:47:55 8 had taken. The fact that Anderson's statements
03:47:59 9 were actually contrary to department policy
03:48:02 10 suggests that they may have.

03:48:04 11 I think Anderson (sic) went with a
03:48:06 12 different kind of attitude and that was one that
03:48:09 13 was not to build on what Anderson had failed to
03:48:12 14 do, but rather to build on the reality of the
03:48:18 15 situation that was, in Oliphant's view, one that
03:48:26 16 was leading to the difficulty, if not
03:48:28 17 impossibility, of preventing unauthorized
03:48:31 18 intrusion. So -- and he said as well that they
03:48:37 19 were compelled to admit this.

03:48:40 20 So I think that he is certainly
03:48:46 21 providing explanations and making statements to
03:48:51 22 induce the First Nations to start thinking about
03:48:54 23 what was happening all around them.

03:48:57 24 I do not connect this directly to what
03:49:01 25 Anderson just told them, for the reasons that

03:49:03 1 I've already expressed in my answers about
03:49:06 2 Anderson and about his conduct in August 1854.

03:49:14 3 Q. But you acknowledge there's
03:49:16 4 nothing indicating that Oliphant told the
03:49:18 5 Saugeen Ojibwe that Anderson acted incorrectly
03:49:23 6 or that his approach wasn't sanctioned?

03:49:25 7 A. No. I'm not convinced that
03:49:27 8 that's relevant.

03:49:31 9 Q. Whether it's relevant or not,
03:49:33 10 it's not --

03:49:34 11 A. We have no record stating,
03:49:36 12 "Anderson was wrong when he said this to you."

03:49:46 13 Q. So taking a step back, so what
03:49:48 14 we've discussed, we have at least two to three
03:49:50 15 years of Crown officials seeking the surrender
03:49:55 16 or sale of parts of the peninsula from the
03:49:59 17 Saugeen Ojibwe?

03:50:00 18 A. Correct.

03:50:00 19 Q. We have Anderson's statement in
03:50:02 20 August 1854, which is repeating what the Saugeen
03:50:07 21 Ojibwe may have heard before from Mr. McLean
03:50:10 22 with respect to the government taking their
03:50:12 23 lands?

03:50:13 24 A. According to Keating, yes.

03:50:17 25 Q. Followed by the arrival of

Anderson's superior, Oliphant, saying that it's almost impossible for the government to protect their lands?

A. Yes.

Q. So based on all of this, would you agree that this idea, these statements advanced by government officials that the lands would not or could not be protected, was a central factor in the Saugeen Ojibwe deciding to agree to the surrender?

A. I think it was one factor. I would not necessarily characterize it as a central factor because what it omits is all of the other factors that went into the decision to surrender the lands and, as I opine in my report, that it was multi-faceted. You can't pick one or another factor as the sole factor behind that surrender.

Was it one factor, you know, the fact that the department and Oliphant had been having difficulties preventing encroachments, et cetera. I think that will have had an impression on the Saugeen Ojibwe Nation; but at the same time they had shown considerable resistance to these kinds of statements and had

03:51:44 1 their own reasons for agreeing or not agreeing
03:51:48 2 to the proposals that were being presented to
03:51:50 3 them.

03:51:59 4 THE COURT: Counsel, I saw you glance
03:52:00 5 at the clock. I hope you realize that modern
03:52:03 6 technology has caught up with daylight saving's
03:52:06 7 time?

03:52:06 8 MS. GUIRGUIS: Yes, thank you, Your
03:52:06 9 Honour.

03:52:06 10 THE COURT: So I request that you
03:52:06 11 simply add an hour and you should be -- you can
03:52:06 12 come to an end.

03:52:06 13 MS. GUIRGUIS: Okay, will do.

03:52:22 14 BY MS. GUIRGUIS:

03:52:23 15 Q. Let's shift to Crown's
03:52:24 16 motivations for the surrender of the peninsula.
03:52:26 17 And you discuss this at page 137 of your volume
03:52:30 18 3 report.

03:52:37 19 You have a heading "Crown's motives
03:52:39 20 and objectives". So here, Dr. Reimer, I think
03:52:57 21 you summarized three main motivations. Pressure
03:52:59 22 on the Crown for more settlement development
03:53:02 23 lands?

03:53:03 24 A. Yes.

03:53:03 25 Q. Crown motivation to make Indian

03:53:04 1 Affairs self-supporting?

03:53:06 2 A. Yes.

03:53:07 3 Q. And you talk about the failure of
03:53:09 4 the centralization scheme?

03:53:10 5 A. Correct.

03:53:11 6 Q. So we've already touched on
03:53:12 7 pressure for lands in our previous discussions.
03:53:16 8 So I'd like to talk about the other two.

03:53:19 9 I'd like to go first to the role, if
03:53:25 10 any, of the centralization scheme.

03:53:31 11 So let's go to volume 3 -- your volume
03:53:34 12 3 report at page 145, which is PDF 155. And
03:53:51 13 here we've highlighted the first part of your
03:53:53 14 last paragraph on this page. It starts, "At the
03:53:57 15 end of July 1854 [...]", and ends with "[...]
03:54:01 16 August 3rd and October 13th". Actually probably
03:54:19 17 better to end at the sentence "[...] opposed to
03:54:21 18 the idea."

03:54:43 19 (Witness reading the document.)

03:54:44 20 Yes, okay.

03:54:44 21 Q. So here you're referencing
03:54:46 22 questionnaires being sent out to the Bands and
03:54:49 23 asking about whether they would move to Saugeen
03:54:51 24 reserve?

03:54:52 25 A. Correct.

03:54:52 1 Q. So I want to go to Exhibit 2109.
03:54:57 2 And just -- you say that they were received
03:55:00 3 between August 3rd and October 13th, 1854, the
03:55:04 4 answers, correct?

03:55:06 5 A. Their answers, yes.

03:55:12 6 Q. So Exhibit 2109. This is one of
03:55:14 7 the answers of the questionnaires you're
03:55:16 8 referring, to correct.

03:55:23 9 A. (Witness reading the document.)

03:55:26 10 Q. We can scroll down if you like.

03:55:31 11 A. You usually don't get the -- oh,
03:55:36 12 just the questionnaire itself or not referring
03:55:39 13 to the answers at this point in time?

03:55:42 14 Q. There's answers as well, correct?

03:55:44 15 A. Yes.

03:55:46 16 Q. Okay.

03:55:46 17 A. But this is the questionnaire
03:55:49 18 that was sent out, yes.

03:55:50 19 Q. And this one's dated July 29th,
03:55:52 20 1854?

03:55:53 21 A. The questionnaire is, yes.

03:55:56 22 Q. The questionnaire.

03:55:56 23 A. Yes.

03:55:56 24 Q. So the response wasn't received
03:55:58 25 until later?

03:55:59 1
03:55:59 2
03:56:06 3
03:56:10 4
03:56:12 5
03:56:21 6
03:56:25 7
03:56:26 8
03:56:30 9
03:56:30 10
03:56:31 11
03:56:35 12
03:56:36 13
03:56:38 14
03:56:39 15
03:56:39 16
03:56:42 17
03:56:47 18
03:56:58 19
03:57:04 20
03:57:05 21
03:57:07 22
03:57:10 23
03:57:12 24
03:57:13 25

A. Right.

Q. And this one is from the Penetanguishene Indians sent to Anderson?

A. Well, I can't see that from here but.

Q. Perhaps if we scroll down.

THE COURT: It does say "Penetanguishene" on page 4.

MS. GUIRGUIS: Right.

BY MS. GUIRGUIS:

Q. And it's dated there August 3rd, 1854, which is the date that you cite, Dr. Reimer, as when they started receiving the answers back?

A. Yes.

Q. Okay. So if we can go to PDF page 2, which is page number 126132 of the document, and here we have at the left-hand side of the page next to "Third" the question set out:

"Do you wish for or are you opposed to the concentration of the Chippewa Tribes at Owen Sound? If you are opposed to such an arrangement state what are your objections."

03:57:15 1 Is that right?

03:57:16 2 A. Yes.

03:57:17 3 THE COURT: Well, it goes on after the
03:57:19 4 word "objections", counsel.

03:57:21 5 MS. GUIRGUIS: Oh.

03:57:23 6 THE COURT: I can't really tell what
03:57:24 7 it says. But it does go -- I guess "to it" and
03:57:28 8 then another two words after that.

03:57:30 9 THE WITNESS: May I read it?

03:57:31 10 BY MS. GUIRGUIS:

03:57:32 11 Q. Yes.

03:57:32 12 A. After the comma:
03:57:33 13 "[...] If you are opposed to such
03:57:35 14 an arrangement state what your
03:57:37 15 objections to it are."

03:57:52 16 Q. So this one -- if you can also,
03:58:03 17 Dr. Reimer, are you able to read out the answer?

03:58:06 18 A. The answer is:
03:58:07 19 "Our objection to going to Owen
03:58:09 20 Sound is because the Owen Sound and
03:58:12 21 Saugeen Indians signed over to us 6
03:58:15 22 miles square of their reserve lands,
03:58:17 23 which would be sufficient for us and
03:58:20 24 our children after us. We now hear
03:58:22 25 they have surrendered all their

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reserve lands to the government."

Q. So here we have the answer that of, no, they don't want to move because they believe that the reserve has already been surrendered?

A. Yes.

Q. And you've noted that Anderson didn't begin to receive final answers to this question until after August 3rd, 1854?

A. Correct.

Q. So that's after Anderson's attempt to take the surrender of the peninsula on August 2nd, 1854?

A. Yes, but if we go back down to the bottom of this document, it's actually dated October 1854?

Q. So it's even later?

A. Yes, Snake Island, 13 October, 1854. You see on the side there?

Q. Yes, thank you Dr. Reimer.

So Anderson's attempt to secure a surrender of the peninsula in August of 1854, that's before any of the questionnaires that are received that definitively says that people are not going to be moving to the peninsula, is that

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right?

A. I'm sorry, I lost my train of thought. Could you repeat that, please?

Q. So Anderson's attempt to secure a surrender of the peninsula in August of 1854, that's August 2nd, 1854, that's before any of the questionnaires are received?

A. Yes.

Q. Okay. And so it's before he definitively knows whether or not people are willing to move to the peninsula, is that right?

A. Definitively, I would agree. I think that there was already indications that this likely -- that most groups would not agree.

And I speculate that this questionnaire was in fact to make that determination more final, to get a more definite determination on the intent of other Bands to move there, yes.

Q. Okay. Now, we've already talked about before the documentation tells us that the Crown had decided months before to seek a surrender of the peninsula, is that correct?

A. Portions of it.

Q. And in fact Oliphant writes to

04:01:14 1 Anderson at the end of June 1854 telling him
04:01:21 2 that the Governor General agrees with his
04:01:23 3 proposal to seek a surrender of the peninsula?

04:01:26 4 A. Yes.

04:01:38 5 Q. So in volume 3 of your report,
04:01:41 6 this is jumping back to page 41, which is PDF
04:01:47 7 page 51, footnote 155, you've cited an article
04:02:04 8 there at footnote 155, Shanahan. It's a 1994
04:02:09 9 article called "The Manitoulin Treaties" at page
04:02:13 10 21?

04:02:14 11 A. Yes.

04:02:14 12 Q. So this is document S1547 which
04:02:18 13 I'd like to open up now.

04:02:31 14 MS. GUIRGUIS: And, Your Honour, I'd
04:02:32 15 like to add this as the next exhibit?

04:02:35 16 THE COURT: Just finish the
04:02:37 17 description first, please.

04:02:38 18 MS. GUIRGUIS: Sure. It's David
04:02:40 19 Shanahan 1994 article titled "The Manitoulin
04:02:44 20 Treaties, 1836 and 1862: The Indian Department
04:02:48 21 and Indian Destiny".

04:02:50 22 THE COURT: Is this a chapter of a
04:02:53 23 book? That's what it looks like. Oh, I see,
04:02:53 24 yes, it is. It's in a publication called
04:02:57 25 "Ontario History".

04:02:57 1 MS. GUIRGUIS: That's right.

04:02:58 2 THE COURT: March 1994.

04:02:58 3 Mr. Registrar?

04:03:01 4 THE REGISTRAR: Your Honour, this

04:03:02 5 document is marked Exhibit 4631 by Ontario.

04:03:06 6 THE COURT: Very good, 4631, counsel.

04:04:02 7 We've had an odd schedule today,

04:04:04 8 counsel, and I don't know how you're doing on

04:04:08 9 your timing, but as long as you're doing well in

04:04:10 10 your timing and if you want to stop a bit early,

04:04:12 11 I would permit that. So I'll leave that up to

04:04:15 12 you.

04:04:29 13 MS. GUIRGUIS: I would be fine with

04:04:30 14 that, Your Honour, and I can look at this.

04:04:32 15 THE COURT: You're sufficiently on

04:04:33 16 track, are you?

04:04:34 17 MS. GUIRGUIS: I believe so, yes.

04:04:35 18 THE COURT: Well, everybody can enjoy

04:04:37 19 30 minutes of what is a beautiful summer day

04:04:40 20 because apparently tomorrow March will return.

04:04:43 21 We'll adjourn until tomorrow at 10:00 a.m.

22 --- Whereupon the proceedings were

23 adjourned at 4:04 p.m.

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REPORTER'S CERTIFICATE

I, HELEN MARTINEAU, CSR, Certified
Shorthand Reporter, certify;

That the foregoing proceedings were
taken before me at the time and place therein
set forth;

That the testimony of the witness and
all objections made at the time of the
examination were recorded stenographically by me
[Note: Not all quotes have been verified
against source document, but transcribed as
read into the record];

That the foregoing is a true and
accurate transcript of my shorthand notes so
taken. Dated this 13th day of March, 2019.



PER: HELEN MARTINEAU
CERTIFIED SHORTHAND REPORTER

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