

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

DAY 12 / VOL 12
May 27, 2019



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Court File No. 94-CQ-50872CM

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 12/DAY 12 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 27th day of May 2019.

B E F O R E:

The Honourable Justice Wendy M. Matheson

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

2 H.W. Roger Townshend, Esq., for the Plaintiffs,
3 & Benjamin Brookwell, Esq., The Chippewas of
4 & Cathy Guirguis, Esq., Saugeen First
5 Nation, and the
6 Chippewas of Nawash
7 First Nation.

8
9 Michael Beggs, Esq., for the Defendant,
10 & Michael McCulloch, Esq., Attorney General
11 & Barry Ennis, Esq., of Canada.

12
13 David Feliciant, Esq., for the Defendant,
14 & Richard Ogden, Esq., Her Majesty the
15 Queen in Right of
16 Ontario.

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20 REPORTED BY: Helen Martineau, CSR.

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I N D E X

PAGE

WITNESS: JOHN NADJIWON.....1203

(Via videotaped examination.)

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INDEX OF EXHIBITS

NO. / DESCRIPTION

PAGE

NONE MARKED.

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

10:01:53 2 THE COURT: Morning, counsel.

10:01:54 3 MR. TOWNSHEND: Morning.

10:01:59 4 THE COURT: I assume you got my
10:02:00 5 message --

10:02:01 6 MR. TOWNSHEND: Yes, I did Your
10:02:02 7 Honour.

10:02:02 8 THE COURT: -- about recalibrating for
10:02:05 9 today if the gentleman you mentioned on Friday
10:02:08 10 is your first choice.

10:02:10 11 MR. TOWNSHEND: Yes.

10:02:11 12 THE COURT: When I went back and
10:02:13 13 looked at the list of videos I was a little
10:02:15 14 confused because for Mr. Nadjiwon it is listed
10:02:20 15 that there are three, but when I went into the
10:02:23 16 database the exhibits marked there are two.

10:02:28 17 MR. TOWNSHEND: I think the
10:02:29 18 videographer just ran out of tape at that point
10:02:31 19 and had to change tapes. There are -- there's
10:02:37 20 an examination in-chief which took place in
10:02:39 21 September and there is a cross-examination which
10:02:41 22 took place in November, that includes
10:02:45 23 cross-examination by Ontario and by Canada, but
10:02:47 24 I don't believe the break in the videotape
10:02:52 25 relates to that. I think it's just the tape

10:02:55 1 that was changed.

10:02:58 2 THE COURT: So do you think that the
10:02:59 3 estimate was as I thought on Friday, about four
10:03:02 4 and half hours for the gentleman? Because there
10:03:05 5 are in fact those three numbers that we have
10:03:07 6 to --

10:03:08 7 MR. TOWNSHEND: The total is 4 hours
10:03:09 8 and 13 minutes.

10:03:11 9 THE COURT: That's what I thought.
10:03:12 10 All right. We'll do the first two tapes today.

10:03:15 11 MR. TOWNSHEND: All right.

10:03:16 12 THE COURT: And then the third one
10:03:17 13 tomorrow morning. And you think that perhaps
10:03:20 14 there's two exhibits because one is chief and
10:03:23 15 one is cross but there are three videos, is that
10:03:25 16 the gist of it?

10:03:27 17 MR. TOWNSHEND: That's correct.

10:03:28 18 THE COURT: All right. Got it.
10:03:30 19 Please go ahead.

10:03:36 20 MR. TOWNSHEND: The transcript of the
10:03:37 21 examination in-chief is 3951 and the transcript
10:03:41 22 of the cross-examination is 3952.

10:03:52 23 So we're ready to start the
10:03:53 24 examination in-chief.

10:03:54 25 -- REPORTER'S NOTE: (Videotaped

10:03:54 1 Examination of John Nadjiwon is played
10:03:54 2 for the Court).

10:03:54 3 (Videotaped Examination was paused).

10:57:59 4 THE COURT: All right. We'll take the
11:07:53 5 morning break at this time, 15 minutes.

11:07:58 6 -- RECESSED AT 11:09 A.M. --

11:15:19 7 -- RESUMED AT 11:32 A.M. --

11:32:56 8 THE COURT: Yes, sir.

11:32:57 9 MR. TOWNSHEND: Yes, we're ready to go
11:32:59 10 with the cross-examination.

11:33:02 11 THE COURT: Is this segment two-hours
11:33:05 12 long?

11:33:06 13 MR. BROOKWELL: Yes, that's correct.

11:33:08 14 THE COURT: So we'll want to take a
11:33:09 15 break at some point. Is it split between
11:33:16 16 different cross-examiners, sir, or is it all the
11:33:20 17 same?

11:33:21 18 MR. TOWNSHEND: It is, but I don't
11:33:21 19 think that split has anything to do with where
11:33:24 20 the videotape is split.

11:33:26 21 THE COURT: Do we know where the first
11:33:28 22 changeover is or we'll find out when we get
11:33:32 23 there?

11:33:33 24 MR. BROOKWELL: We don't know the
11:33:34 25 exact point.

1 THE COURT: Let's play it by ear,
2 literally, and after about an hour start looking
3 at a -- looking for a logical break point. And
4 if there is one at a change of counsel
5 questioning that's obviously an easy one.

6 Thank you, please go ahead.

7 -- REPORTER'S NOTE: (Videotaped
8 Examination of John Nadjiwon is played
9 for the Court).

10 (Videotaped Examination was paused).

11 THE COURT: Is that the break?

12 MR. TOWNSHEND: This tape keeps going.

13 THE COURT: Okay, very good. Can you
14 pause that? We seem to have picked up a lot of
15 background noise. Maybe the volume was
16 different on the other tape? Do you control the
17 volume on this, sir?

18 MR. BROOKWELL: I do.

19 THE COURT: Maybe just turn it down a
20 notch, the background noise won't be as loud.
21 That's it, thank you.

22 -- REPORTER'S NOTE: (Videotaped
23 Examination of John Nadjiwon is played
24 for the Court).

25 (Videotaped Examination was paused).

12:42:41 1 THE COURT: Is that the end of the
12:42:42 2 tape?

12:42:43 3 MR. TOWNSHEND: No, but it was
12:42:44 4 shifting to another --

12:42:46 5 THE COURT: So you paused the tape.

12:42:51 6 MR. TOWNSHEND: Is this an appropriate
12:42:51 7 time?

12:42:53 8 THE COURT: Well, how much is left on
12:42:54 9 this tape? Can you tell.

12:42:56 10 MR. BROOKWELL: There is about 50
12:42:58 11 minutes left on this tape.

12:43:00 12 THE COURT: Five-zero?

12:43:02 13 MR. BROOKWELL: Yes.

12:43:03 14 THE COURT: So that's a logical time
12:43:05 15 then, that is a good chunk, and instead of
12:43:12 16 returning at 2:15 we'll return at 2:00 o'clock
12:43:16 17 and have another hour at that time. Thank you.

12:43:18 18 -- RECESSED AT 12:43 P.M. --

01:55:51 19 -- RESUMED AT 2:02 P.M. --

02:02:23 20 THE COURT: Yes, sir.

02:02:23 21 MR. TOWNSHEND: Your Honour, my
02:02:24 22 clients have asked me to explain that the Eagle
02:02:28 23 Staff is not present because the staff carrier
02:02:30 24 is not well.

02:02:31 25 THE COURT: I'm sorry to hear that.

02:02:33 1 Thank you for letting me know.

02:02:35 2 This is the continuation then of this

02:02:39 3 gentleman's testimony. There we go. Great.

02:02:43 4 Please go ahead.

02:02:44 5 -- REPORTER'S NOTE: (Videotaped

02:02:44 6 Examination of John Nadjiwon is played

02:02:44 7 for the Court).

02:02:44 8 (Videotaped Examination was paused).

02:06:14 9 THE COURT: Thank you for playing that

02:55:01 10 video. I don't know why it takes more attention

02:55:10 11 to watch a video than a live witness but it

02:55:13 12 seems to. So we're not going to try and do

02:55:16 13 another hour and half today, but we will resume

02:55:20 14 tomorrow morning and have the continuity with

02:55:22 15 this gentleman.

02:55:23 16 And I think the last video is an hour

02:55:25 17 and 20 minutes or something like that? Does

02:55:33 18 that sound right?

02:55:34 19 MR. TOWNSHEND: It is over an hour.

02:55:36 20 MR. BROOKWELL: Just over an hour.

02:55:38 21 THE COURT: And the next in-person

02:55:40 22 witness is not until Wednesday, is that correct?

02:55:44 23 MR. TOWNSHEND: That's correct.

02:55:44 24 THE COURT: So my suggestion, unless

02:55:46 25 you have some objection, is that after we

02:55:48 1 conclude that cross-examination that we move on
02:55:49 2 to Mr. Fred Jones and complete his evidence as
02:55:55 3 well --

02:55:56 4 MR. TOWNSHEND: All right.

02:55:57 5 THE COURT: -- tomorrow. And is it
02:56:00 6 still for Wednesday Mr. Jones, Mr. J. Jones?

02:56:08 7 MR. TOWNSHEND: Yes.

02:56:09 8 THE COURT: So he's coming for 10:00
02:56:10 9 o'clock on Wednesday.

02:56:12 10 MR. TOWNSHEND: Yes.

02:56:16 11 THE COURT: And he is not expected to
02:56:18 12 be more than one day?

02:56:19 13 MR. TOWNSHEND: That's correct.

02:56:20 14 THE COURT: So we may be able to deal
02:56:21 15 with one of the longer Rule 36 people on
02:56:24 16 Thursday as well.

02:56:26 17 MR. TOWNSHEND: Okay.

02:56:26 18 THE COURT: We have a couple more that
02:56:28 19 are more than three hours I think. We can work
02:56:31 20 that out on Wednesday, but just so you know what
02:56:34 21 the options are, because I understand that you
02:56:37 22 then have someone coming in person on Friday?

02:56:39 23 MR. TOWNSHEND: That's right.

02:56:40 24 THE COURT: So let's try and walk
02:56:43 25 forward that way, if it doesn't work for some

02:56:46 1 reason you can let me know.

02:56:50 2 MR. TOWNSHEND: Okay.

3 -- Whereupon the proceedings were
4 adjourned at 2:56 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 submissions of counsel and
Her Honour were recorded stenographically by me
and were thereafter transcribed;

That the foregoing is a true and
accurate transcript of my shorthand notes so
taken. Dated this 4th day of June 2019.



PER: HELEN MARTINEAU

CERTIFIED SHORTHAND REPORTER

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