

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

VOL 60 TRIBUNAL HEARING
November 18, 2019



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1 Court File No. 94-CQ-50872CM
2 ONTARIO
3 SUPERIOR COURT OF JUSTICE

4 B E T W E E N:

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

8 - and -

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

18 Court File No. 03-CV-261134CM1

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

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

22 Plaintiffs

23 - and -

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

Defendants

26 -----
27 --- This is VOLUME 60/DAY 60 of the trial
28 proceedings in the above-noted matter, being held
29 at the Superior Court of Justice, Courtroom 5-1,
30 330 University Avenue, Toronto, Ontario, on the
31 18th day of November, 2019.

32 -----
33 B E F O R E: The Honourable Justice Wendy M.
34 Matheson
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A P P E A R A N C E S:

Renée Pelletier, Esq., for the Plaintiffs,
& Christopher Evans, Esq., The Chippewas of
Saugeen First Nation,
and the Chippewas of
Nawash First Nation.

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

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

REPORTED BY: Deana Santedicola, RPR, CSR, CRR

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I N D E X

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Z2: Expert Report of Professor
Michel Morin entitled "Alliances,
Peace Treaties and Aboriginal
Territories in the Great Lakes Area
During the French Regime (1603-1760),"
dated May 11, 2017.

09:52:38 1 -- Upon commencing at 10:03 a.m.

10:02:42 2
10:02:42 3 THE COURT: Good morning, Counsel.

10:03:55 4 Yes, sir.

10:03:56 5 MR. McCULLOCH: Good morning, Your
10:03:57 6 Honour.

10:03:59 7 I would like to call Professor Alain
10:04:04 8 Beaulieu as the next witness.

10:04:05 9 THE COURT: All right.

10:04:06 10 PROFESSOR ALAIN BEAULIEU; AFFIRMED.

10:05:00 11 THE COURT: Go ahead, Mr. McCulloch.

10:05:05 12 MR. McCULLOCH: Your Honour, I would
10:05:06 13 like to make some documents exhibits.

10:05:11 14 SC0623, which is the report of
10:05:16 15 Professor Alain Beaulieu, "French, British and
10:05:20 16 Aboriginal Peoples."

10:05:30 17 THE COURT: Can you please also include
10:05:32 18 the date.

10:05:33 19 MR. McCULLOCH: Dated December 2015.

10:05:37 20 THE COURT: All right. Mr. Registrar?

10:05:42 21 THE REGISTRAR: Exhibit No. 4380.

10:05:42 22 EXHIBIT NO. 4380: Expert Report of

10:05:42 23 Professor Alain Beaulieu entitled

10:05:42 24 "French, British and Aboriginal Peoples
10:05:42 25 in the Great Lakes Area 1600-1774,"

1 dated December 2015.

2 MR. McCULLOCH: And I would also like
3 to make an exhibit of SC0624, report of Professor
4 Alain Beaulieu, Congress of Vienna [sic].

5 THE COURT: The date?

6 MR. McCULLOCH: June 2016.

7 THE COURT: All right.

8 MR. McCULLOCH: Sorry, "Congress at
9 Niagara." And --

10 THE REGISTRAR: Court's indulgence.
11 Exhibit No. 4381.

12 EXHIBIT NO. 4381: Expert Report of
13 Professor Alain Beaulieu entitled "The
14 Congress at Niagara in 1764: The
15 Historical Context and Meaning of the
16 British-Aboriginal Negotiations," dated
17 June 2016.

18 MR. McCULLOCH: And I would like to
19 make an exhibit of SC1379.

20 THE COURT: Which is?

21 MR. McCULLOCH: Report of Professor
22 Beaulieu "Translation," and the date is October
23 2018.

24 THE COURT: '18?

25 MR. McCULLOCH: '18.

10:07:05 1

THE COURT: Mr. Registrar?

10:07:08 2

THE REGISTRAR: Exhibit No. 4382.

3

EXHIBIT NO. 4382: Expert Report of

4

Professor Alain Beaulieu entitled

5

"Translation Issues Concerning French

6

Documents Relative to the Impact of the

7

Iroquois Wars in the Mid-Seventeenth

10:07:13 8

Century," dated October 2018.

10:07:13 9

MR. McCULLOCH: I would also like to

10:07:14 10

make an exhibit of the curriculum vitae of

10:07:20 11

Professor Alain Beaulieu, SC1377, dated November

10:07:32 12

2019.

10:07:33 13

THE COURT: Mr. Registrar?

10:07:36 14

THE REGISTRAR: Exhibit No. 4383.

10:07:43 15

EXHIBIT NO. 4383: Curriculum Vitae of

10:07:43 16

Professor Alain Beaulieu, dated

10:07:44 17

November 2019.

10:07:44 18

MR. McCULLOCH: There is also a list of

10:07:46 19

documents at SC1381 which we may be asking to be

10:07:51 20

made exhibits.

10:07:56 21

THE COURT: You may be asking? You

10:07:57 22

haven't decided yet?

10:07:59 23

MR. McCULLOCH: We will be asking to be

10:08:00 24

made exhibits. We may not tender all of them, but

10:08:05 25

we will be asking them to be made exhibits.

1 THE COURT: Okay. Well, if you are not
2 tendering all of them, I'm not sure we need to do
3 anything with the list.

4 MR. McCULLOCH: We certainly do not
5 now.

6 THE COURT: All right.

7 MR. McCULLOCH: Just thought I would
8 give the Registrar some advance notice.

9 I would like to make a lettered exhibit
10 out of SC1378, which is our tender for the
11 expertise of Professor Beaulieu.

12 THE COURT: Can you put that one up on
13 the screen, please. Mr. Registrar, what is the
14 next lettered exhibit?

15 THE REGISTRAR: Lettered Exhibit Z1.

16 EXHIBIT NO. Z1: Tender of the expert
17 qualifications of Professor Alain
18 Beaulieu.

19 MR. McCULLOCH: It is my understanding
20 that there is no objection to this tender.

21 THE COURT: And is it your intention to
22 go over any of the background or not in that
23 situation?

24 MR. McCULLOCH: I intend to go over
25 Professor Beaulieu's curriculum vitae to establish

1 the range of his expertise.

2 THE COURT: Well, if you are going to
3 do that, I would ask that you go ahead and do that
4 and we'll deal with the tender afterwards.

5 MR. McCULLOCH: Thank you.

6 EXAMINATION IN-CHIEF BY MR. McCULLOCH
7 (ON QUALIFICATIONS):

8 Q. Professor Beaulieu, I am Michael
9 McCulloch, and I will be asking you some questions
10 on behalf of the Attorney General of Canada.

11 I would like first to deal with your
12 curriculum vitae. Do you have a copy in front of
13 you?

14 A. Yes, I have a copy.

15 Q. Do you recognize this document?

16 A. Yes.

17 Q. Could you tell me who prepared it?

18 A. I prepared it.

19 Q. Could you tell me about your
20 university education.

21 A. Yes, I first completed a bachelor
22 degree in history in 1983, and after that I began a
23 masters degree in Aboriginal history at Université
24 Laval, under the supervision of Professor Denys
25 Delage, who was at that time one of the only few

10:10:28 1 scholars working in French on the history of the
10:10:32 2 Aboriginal people.

10:10:33 3 I graduated in 1986. My masters thesis
10:10:42 4 dealt with the history of the missionary enterprise
10:10:44 5 of the Jesuits among the Aboriginal people of the
10:10:51 6 St. Lawrence Valley and the Ottawa Valley, mainly
10:10:55 7 the Innu and the Algonquin, and I did try in this
10:11:00 8 masters thesis to understand the strategies used by
10:11:03 9 the Jesuits to convert the Aboriginal people but
10:11:06 10 also the different reactions of the Aboriginal
10:11:08 11 people to this enterprise for converting them.

10:11:11 12 I prepared from this masters thesis one
10:11:19 13 article which was published in a French review,
10:11:27 14 "Recherches amérindiennes au Quebec," and I also
10:11:27 15 worked on revised versions of my masters thesis,
10:11:30 16 which was published in 1990.

10:11:32 17 Q. And what did you do next in terms
10:11:36 18 of your formal educational training?

10:11:38 19 A. Between 1986 and 1988 I decided to
10:11:43 20 take a break from my university studies to work as
10:11:48 21 an assistant for a Professor at the Université
10:11:54 22 Laval, at the Department of Literature. Réal
10:12:01 23 Ouellet was working at that time on a huge project
10:12:04 24 to prepare re-editions of the works of the Baron de
10:12:12 25 Lahontan. Lahontan was a French soldier who came

1 in New France at the end of the 17th century. He
2 participated to expeditions against the Iroquois in
3 the 1690s, and most importantly, when he went back
4 in France he decided to publish books about his
5 experience telling to people in France his
6 different experience, especially among/with
7 Aboriginal peoples.

8 So those book became very famous in
9 France at that time at the beginning of the 18th
10 century, but there was no real French re-editions
11 at the end of the 20th century, because even if
12 Lahontan was well-known among the philosophers, he
13 was not well accepted, I would say, by the
14 historians, who considered him as not a reliable
15 source of information.

16 So I worked as an assistant on this
17 project for two years working on the historical
18 aspect of the edition, putting this author, his
19 books, in historical context, and trying to check
20 also all the information that he gave about the
21 experience in New France.

22 And the book were published in 1990 in
23 two volumes, and a very important collection,
24 Bibliotheque du Nouveau Monde, the library of new
25 world, and as -- when I worked on this project,

1 progressively my role changed. I was not only an
2 assistant research, but I became more a kind of
3 collaborator, so at the end of the project, Réal
4 Ouellet decided that I deserved to put my name on
5 the book, so I was considered as a co-editor of
6 this edition.

7 Q. And could you explain how your
8 work on Baron de Lahontan is relevant to any of
9 your three reports?

10 A. It is relevant if you want to
11 understand in part. It helps us to understand the
12 strategy of the French, their relationship with the
13 Aboriginal people, because it gave us another view
14 of this history. It is also relevant because I had
15 for the third report to clarify some aspects, some
16 problems, the translations of some excerpts of the
17 works of the Baron de Lahontan.

18 Q. And after you worked on editing
19 the works of Baron de Lahontan, what did you do
20 next?

21 A. In 1988 I started my Ph.D. thesis,
22 again at Université Laval, again under the
23 supervision of Professor Denys Delage, and I
24 decided this time to work on the history of the
25 relation between the French and the Five Nations

1 Iroquois.

2 What surprised me at the beginning of
3 my research was a formula that appeared in the
4 documents, especially in "The Jesuit Relations" at
5 that time, speeches from the Five Nations telling
6 to the French that they want to be one people with
7 them.

8 And for me it was strange, because in
9 Quebec we had this vision that the Five Nations
10 were the most traditional, the most violent enemies
11 of the French, and what I can see in "The Jesuit
12 Relations" especially was many conferences in which
13 the Five Nations proposed to the French to be one
14 people with them, and it was clear when I read this
15 document that they did not want to become French
16 but they want to integrate the French within their
17 own confederacy.

18 So I work on this, the first phase of
19 the relationship between the French and the Five
20 Nations, especially trying to understand not only
21 the war but the different efforts by the French and
22 by the Iroquois to establish a close relationship
23 or even an alliance between themselves.

24 So it is why I decided also for the
25 title of my Ph.D. to keep the formula used that I

1 found in "The Jesuit Relations" to be one people,
2 "ne faire qu'un seul peuple," to look at this very
3 specific aspect of the relationship between the
4 French and the Five Nations.

5 Q. How important in the history of
6 European and Indigenous relations are "The Jesuit
7 Relations"?

8 A. It is one of the main sources,
9 especially for the first decades of the 17th
10 century. They were the more educated people. They
11 were interested in publishing each year a relation
12 of their activities to convince people to donate
13 for their missionary activities. It was also a way
14 for them to promote their status, their place in
15 the history, in the activities of New France.

16 So we have a lot of information about
17 the Aboriginal people, about the events which have
18 happened in the year previous to the publication of
19 the relations, and the Jesuit were also interested
20 to learn about the Aboriginal people, their
21 cultures, their way of life, their economic
22 activities, their way of thinking.

23 So we can find in this, in those
24 relations many informations about the Aboriginal
25 people. And it is now, I would say since the

1 1950s, 1960s, mostly 1970s, one of the main sources
2 used by the historians when they are looking at the
3 history of the first meeting between the French and
4 the Aboriginal people.

5 THE COURT: Sir, I have no difficulty
6 understanding you, but I think when we get into the
7 substance of your evidence, I am going to need you
8 to slow down a little bit. All right?

9 THE WITNESS: Perfect.

10 THE COURT: Please go ahead.

11 BY MR. McCULLOCH:

12 Q. When did you first become
13 interested in the history of relations between
14 Europeans and Indigenous peoples?

15 A. I would say very soon. It was my
16 first year at university. I was mostly, I think,
17 at first fascinated by "The Jesuit Relations" and
18 the Jesuit way of thinking about their role in New
19 France, their project to convert, to change the way
20 of life of the Aboriginal people. I think that was
21 the first aspect that fascinated me, I would say.

22 And during my first years at the
23 university, I had the chance to meet Denys Delage
24 who was hired at that time and he was really a
25 mentor. He gave me the -- stimulate, I would say,

1 my interest and my passion for this aspect of the
2 history of New France.

3 Q. I would like to ask now about your
4 work experience.

5 A. Yes. After finishing my Ph.D., I
6 had the opportunity to make a post doctoral
7 research, so I had a grant from the Social Sciences
8 and Humanities Research Council of Canada, I had
9 also this grant for my Ph.D., but -- so I worked
10 for a few months on this post doctoral --

11 Q. Professor Beaulieu, could you
12 explain for the benefit of the Court what a post
13 doctoral program is?

14 A. Post doctoral gives the students
15 who finish their Ph.D. with, I would say, a level
16 of excellence to continue their work, and usually
17 it is you have the time to wait for a job, to wait
18 for positions. You have the time to work on your
19 Ph.D., to transform it maybe in a book, to publish
20 some articles, to participate in some conferences.

21 It is just a way to give you -- a way
22 to explore in more depth, I would say, your field
23 of expertise, and usually it is for two years. In
24 my case, I decided to stop after six months because
25 I had the opportunity to work as an historian for

10:20:31 1 the Department of Justice in Quebec, so I did
10:20:37 2 prefer at that time to take this opportunity to
10:20:41 3 work really on very, I would say, real aspect of
10:20:47 4 history.

10:20:47 5 So I was hired at the Department of
10:20:51 6 Justice. Again, it was a short experience
10:20:55 7 resulting from budget cuts, it was only for six
10:20:58 8 months. But I really appreciated this experience.
10:21:04 9 So I decided to become a consultant, and between
10:21:09 10 1993 and 1999 I was a consultant in history, mainly
10:21:17 11 on Aboriginal history, but not exclusively. I
10:21:20 12 worked on different aspects of the history of New
10:21:23 13 France or the history of Canada, the history of the
10:21:26 14 City of Quebec.

10:21:32 15 Q. What did you do in 1999 and after?

10:21:34 16 A. And after? Before that, I have
10:21:38 17 worked on different research for different
10:21:43 18 organizations, museum of Aboriginal people, the
10:21:48 19 Indian Affairs, Revenue Canada, and I'm not sure,
10:21:51 20 in 1999 I testified for the second time in court on
10:22:01 21 a report that I prepared for members of the
10:22:04 22 Huron-Wendat community. It is an Aboriginal
10:22:06 23 community close to Quebec City, and I had a mandate
10:22:13 24 with them to prepare an historical report on their
10:22:17 25 hunting activities from the 17th to the beginning

1 of the 20th century.

2 Q. And the Huron-Wendat, that is an
3 Aboriginal community, an Indigenous community?

4 A. Yes, they were living when the
5 French arrived in New France at the beginning of
6 the 17th century in the Bay Georgian area, but
7 following the wars of the Iroquois in the 16th and
8 the middle of the 17th century, many of them, I
9 think it is around 400 to 600 Huron, decided to
10 come to Quebec City and they established themselves
11 there and they continued to live around Quebec City
12 from 1650 and they are still now living there and
13 very, I would say, active and, how can I say that,
14 very prosperous Aboriginal community.

15 Q. And when did you become connected
16 with the History Department at Laval, at the
17 Université du Québec à Montréal?

18 A. I just saw a position announced,
19 and I did not believe at first that I had really
20 chance because I did not know anybody at the
21 Université du Québec à Montréal, but in the list
22 there was a history of women, a history of some
23 workers, economic history, and at the end
24 Aboriginal history. So I decided to send my CV. I
25 was received and I got the position in 1999.

10:23:58 1 Q. What was the position that you
10:24:01 2 got?

10:24:01 3 A. I was hired as a Professor in
10:24:04 4 Canadian history before the creations of the
10:24:09 5 Canadian Confederation but as a specialist of the
10:24:13 6 history of Aboriginal people. And one of my
10:24:17 7 missions was to develop this field of research at
10:24:22 8 this university.

10:24:24 9 When I arrived there in 1999, nobody
10:24:26 10 was really teaching the history of Aboriginal
10:24:28 11 people, and to my knowledge, I was the first
10:24:33 12 Francophone hired in a Francophone university in
10:24:36 13 Quebec to work on this aspect of the history
10:24:40 14 of -- the aspect of the Canadian history.

10:24:44 15 Q. What was your rank when you were
10:24:48 16 hired?

10:24:48 17 A. I think in my university there is
10:24:52 18 no assistant Professor or something, but I think it
10:24:57 19 correspond to assistant Professor, and now I'm, I
10:25:03 20 don't know, in French it is "titulaire," it is the
10:25:10 21 higher level that you can reach when you are a
10:25:11 22 teacher, a Professor at university.

10:25:13 23 Q. You said the highest level?

10:25:14 24 A. The highest level, yes, I'm sorry.

10:25:16 25 Q. I think in English we say full

1 Professor.

2 A. I think it is, yes, I think it is
3 correct.

4 Q. Okay. What have been some of your
5 responsibilities as a Professor at the University
6 of Quebec at Montreal? Apart from teaching and
7 researching, have you done anything administrative?

8 A. Yes, maybe I could just say that
9 before, after a few years, I was hired in 1999, and
10 in 2004 I had the opportunity to get a Canada
11 Research Chair on the Aboriginal land question. So
12 it is a very selective process. And in 2003, I had
13 the occasion to present my file for this Canada
14 Research Chair and I had this Chair from 2004 until
15 2014.

16 So for ten years I had a grant to
17 develop this field of Aboriginal history in my
18 university, so it was -- it could be considered as,
19 I would say, administrative job, but it was -- I
20 was a Professor and my objective was to train as
21 many students as possible and to organize as many
22 activities as I could to promote the knowledge and
23 the divisions of the history of the Aboriginal
24 people.

25 Q. We'll be exploring that topic

1 further in a few minutes, but I note that you were
2 Director of Graduate Studies at the university --

3 A. Yes, it is a recent position,
4 since June, since last June, I was director of the
5 graduate students. I have to make a precision
6 between 2004 and 2014. It was not possible for me
7 to get this kind of position because I have a
8 Canada Research Chair, so I have to concentrate
9 myself on research and promoting the history of
10 Aboriginal people.

11 So now I am a little bit, I would say,
12 not -- I have more -- it is possible now for me to
13 get this kind of position.

14 Q. What do you do as Director of
15 Graduate Studies?

16 A. We just follow the students. We
17 just organize the different courses. We follow and
18 solve all the problems concerning the formations of
19 the students. We met the students. We have to
20 supervise the evaluations of their master thesis,
21 of their Ph.D.

22 So it is a lot of administrative work,
23 but always connected, I would say, to the need of
24 the students and to be sure that they will have all
25 they need to get the best formation as possible in

10:28:21 1 history.

10:28:22 2 Q. By "formation" you mean education
10:28:25 3 or training or something like that?

10:28:29 4 A. Education, I'm sorry. I used the
10:28:31 5 French word.

10:28:32 6 Q. That is not a problem. Could you
10:28:38 7 tell me what areas of research have engaged your
10:28:42 8 interest?

10:28:43 9 A. What do you mean when -- in
10:28:47 10 general or --

10:28:49 11 Q. Areas of research that are
10:28:52 12 relevant to the issues before the Court.

10:28:55 13 A. I made a lot of studies about the
10:29:01 14 history of the relationship between the French and
10:29:05 15 the Aboriginal people. It was my first field of
10:29:10 16 interest, but when I become a consultant in 1993, I
10:29:19 17 was led to work on the history of the British
10:29:22 18 regime, the first -- especially the period after
10:29:26 19 the conquest of New France, the change that this
10:29:29 20 implied for the Aboriginal people. They were no
10:29:34 21 more allied of the French and they had to
10:29:36 22 reorganize their alliances with the new European
10:29:40 23 powers.

10:29:40 24 So I worked on the French regime. I
10:29:42 25 have worked on political aspects of the first

10:29:46 1 meeting with the British. And after that, I have
10:29:49 2 worked also on the, I would say, questioned land
10:29:55 3 issue, mainly in Quebec, because there is a
10:29:57 4 specificity in this region because no treaty have
10:30:02 5 been concluded with the Aboriginal people to buy
10:30:08 6 the land.

10:30:08 7 So I have to -- my intentions,
10:30:11 8 especially in the context of my Canada Research
10:30:14 9 Chair, was to understand the basis of the
10:30:18 10 specificity in Quebec, to understand why no
10:30:21 11 treaties were -- has never been concluded with the
10:30:25 12 Aboriginal people. How can we explain that? How
10:30:28 13 can we find in documents some explanation to this
10:30:35 14 very specific reality?

10:30:36 15 And I am working now on a book that I
10:30:38 16 hope to be able to finish before retiring on the
10:30:42 17 history of this process of dispossession of
10:30:50 18 Aboriginal people from 1650 -- the two dates is
10:30:53 19 1650 -- 1651 is the first concession of land for
10:30:57 20 Aboriginal people in the St. Lawrence Valley, and
10:30:59 21 the other date would be 1851, it is the moment when
10:31:03 22 the Government of Canada decided to put aside
10:31:11 23 200,000 acres of lands for the creations of new
10:31:15 24 Indian Reserves in Quebec.

10:31:17 25 So I followed the history during two

10:31:21 1 centuries to understand how the French but also how
10:31:23 2 the British after the conquest managed the land
10:31:26 3 question.

10:31:27 4 Q. I would like to take you to
10:31:29 5 section 4 of your curriculum vitae.

10:31:40 6 A. Yes.

10:31:40 7 Q. In this section, I believe you
10:31:45 8 list major areas of your research. Could you
10:31:49 9 explain the first one?

10:31:51 10 A. The first one is in continuity
10:31:56 11 with what I did with Réal Ouellet, that is editing
10:32:02 12 old French texts, so it was my first experience
10:32:05 13 with Baron de Lahontan.

10:32:09 14 And after that, I continued to work
10:32:10 15 with Réal Ouellet on another book, re-editions of
10:32:12 16 the first narrative of Samuel de Champlain, the
10:32:18 17 title in French was "Des Sauvages," published in
10:32:22 18 1603. So I made an edition with him on this book.

10:32:24 19 And after that, I also edited one of
10:32:27 20 the most, in my view, one of the most interesting
10:32:29 21 relations of the Jesuits, it is the relations of
10:32:33 22 the Jesuit Paul Lejeune who decided to follow some
10:32:41 23 Innu during a winter, so he left the colony in the
10:32:44 24 fall of 1633 and he followed them during many
10:32:47 25 months. And when he came back, he wrote a very

10:32:51 1 interesting relations about his experience and
10:32:53 2 giving us a lot of informations about the way of
10:32:57 3 life of those people.

10:32:58 4 And now I'm also trying to finish, but
10:33:02 5 it is an old project, the edition of another
10:33:07 6 important book. It is -- it was published in 1722
10:33:11 7 by a French administrator named Bacqueville de la
10:33:19 8 Potherie, who wrote the history of French North
10:33:24 9 America, in which you can find a lot of information
10:33:27 10 again about the Aboriginal people.

10:33:29 11 And what is interesting is we know that
10:33:32 12 in this book, Bacqueville de la Potherie got many
10:33:39 13 informations from travellers, from "coureurs de
10:33:48 14 bois," from soldiers, so it is not only the result
10:33:50 15 of his own experience, but also a kind of
10:33:54 16 transmission, I would say, from information coming
10:33:56 17 from other peoples that he put in his book.

10:33:58 18 And he had also --

10:33:58 19 Q. Professor Beaulieu, could you
10:34:00 20 explain what a "coureurs de bois" is?

10:34:04 21 A. "Coureurs de bois" was those young
10:34:06 22 French men who decided to leave the colony to go
10:34:10 23 into the interior of the continent for the fur
10:34:13 24 trade. Many of them preferred to stay there than
10:34:18 25 to come back in the colony. Many of them decided

10:34:21 1 to follow this life because it was easier. It was
10:34:25 2 a life with less constraint. They were mainly
10:34:29 3 outside of the control of -- they were not so
10:34:33 4 controlled as in the centre of the colony.

10:34:35 5 So many of them, it is difficult to
10:34:38 6 evaluate the number, but I would say that at the
10:34:40 7 end of the 17th century the French authorities
10:34:45 8 mentioned that maybe 600 to 800 young French men
10:34:51 9 were in the Great Lakes area, living with
10:34:55 10 Aboriginal people and being, in the eyes of French
10:34:59 11 authorities, being too much influenced by the
10:35:04 12 Aboriginal way of life.

10:35:04 13 Q. You have mentioned an edition.
10:35:11 14 What is involved in producing an edition of someone
10:35:15 15 like de Champlain or "The Jesuit Relations" or
10:35:20 16 Lahontan?

10:35:20 17 A. There is different types of
10:35:22 18 editions. You can decide to make a very extensive
10:35:24 19 one, as we did with the Baron de Lahontan. It is a
10:35:28 20 very long operation. You have to be sure that you
10:35:30 21 have the good text. You have to follow the best
10:35:32 22 edition that you can find, and you have to add a
10:35:36 23 lot of footnotes about every aspect that could be
10:35:41 24 problems for a modern reader to understand, a lot
10:35:45 25 of informations about geography, about Aboriginal

1 Nations, about everything which could not be
2 understood very easily by a modern reader.

3 So sometimes in this kind of editions,
4 the footnotes are longer than the text itself, but
5 it is a very -- for the academic world, I would say
6 it is oriented towards those who want to make
7 research on this kind of book.

8 Another type of editions is to just to
9 be sure that the text will be easily -- easy to
10 read for students, for people who are interested in
11 the history of New France. So sometimes what you
12 do, you can decide just to respect, with strict
13 integrity, the way that the text was written and it
14 is more difficult to read because it is old French,
15 or you can decide to modernize, not the formulation
16 but the letters.

17 And if you do this kind of
18 transformations, the text becomes very easy to read
19 for -- especially for students.

20 So those types -- these type of
21 editions is more for students in classes when you
22 want to put the students in contact with old French
23 documents. If you ask them to read, I would say,
24 an old version, it is sometimes a bit difficult,
25 but with an edition with modernized text, it is

10:37:21 1 easier. It is a good way to lead them to consider,
10:37:27 2 I would say, the interests of those documents.

10:37:29 3 Q. I would like to ask you now about
10:37:31 4 the second area of research listed in section 4 of
10:37:39 5 your CV.

10:37:40 6 A. Yes, I have mentioned it earlier,
10:37:41 7 so it is -- my field of research is mainly the
10:37:45 8 relations between European and Aboriginal people,
10:37:50 9 and over, I would say, the last maybe 20, 25 years
10:37:54 10 I was more interested by the political, the
10:37:58 11 diplomatical aspect of this relationship.

10:38:03 12 At first I was interested by the
10:38:06 13 religious dimension, but now what really interests
10:38:07 14 me is the political interaction, the treaties and
10:38:11 15 the way that they are trying to negotiate to find,
10:38:15 16 I would say, another word is common ground to
10:38:19 17 manage their relations.

10:38:20 18 So I still continue to work on the 17th
10:38:24 19 century, but I worked over the last maybe 10, 15
10:38:30 20 years more on the period at the conquest of New
10:38:33 21 France and the end of the 18th century and the
10:38:36 22 first half of the 19th century.

10:38:40 23 But I want to go back to the New
10:38:42 24 France. I think that there still is a lot of work
10:38:45 25 to do in this field.

1 Q. The third bullet is "The history
2 of the Wendat people in Quebec."

3 Do you have anything to add to what you
4 have already said about your work on and with the
5 Wendat?

6 A. No, I have -- maybe just a few
7 informations. I have worked on the history of the
8 Wendat for many years. Like, my first mandate, as
9 I said earlier, was on the history of this
10 community and I have continued to work on the
11 history of this community with other scholars.

12 It is why we decided to publish a book
13 a few years ago about the history of this
14 community, to show how they manage, I would say, to
15 survive through the trauma resulting from the wars
16 of the Iroquois, how they were able to find their
17 place in the colonial world, how they were able to
18 develop real economic activities and to be -- I
19 think that they are now one of the most -- probably
20 the most dynamic Aboriginal communities, especially
21 in Quebec.

22 Q. You have also talked about your
23 work on the Aboriginal land issue?

24 A. Yes.

25 Q. Do you have anything to add to

10:40:05 1 what you have already said?

10:40:06 2 A. It is one of my main fields of
10:40:09 3 research since 2004. I continue, as I said, I want
10:40:15 4 to finish a book on this aspect of the relationship
10:40:19 5 between Europeans and Aboriginal people, mainly, as
10:40:26 6 I said, in Quebec, but I try also to compare with
10:40:31 7 Maritimes colony. There is no treaty in that
10:40:35 8 region also. And with what became Ontario, because
10:40:40 9 it is the first place in Canada where some treaties
10:40:42 10 were concluded with the Aboriginal people to buy
10:40:46 11 the land.

10:40:47 12 So I wanted to understand the
10:40:49 13 difference between those different regions,
10:40:53 14 different regions in what became Canada.

10:40:57 15 Q. And the final point in section 4,
10:41:06 16 "The problems around the judicialization of
10:41:09 17 Aboriginal history."

10:41:11 18 First of all, can you tell us what you
10:41:12 19 mean by "judicialization"?

10:41:15 20 A. It is the way that -- how the fact
10:41:18 21 that history is now used as a really important
10:41:22 22 aspect in litigation. I think that the historians
10:41:27 23 have been implied in this process, have been
10:41:32 24 implied for many years, so I think it is a good
10:41:35 25 idea to think about the impact of these

10:41:41 1 implications of this role of the historians in this
10:41:44 2 litigation process.

10:41:46 3 I tried to understand how it could
10:41:48 4 influence my work and the work of other historians,
10:41:52 5 how it could create some problems, how the
10:41:57 6 historians could try to maintain their autonomy
10:42:03 7 through juridical decisions.

10:42:07 8 So I tried to reflect on the impact of
10:42:09 9 this use of history and how we have to work to --
10:42:18 10 how can I say -- to stay -- to keep our autonomy
10:42:22 11 within this field and not to be too much influenced
10:42:24 12 by the debate surrounding the litigation question.

10:42:31 13 So it is a result, I would say, of my
10:42:33 14 first participations in this process. I was
10:42:37 15 invited very early to give some lectures on these
10:42:41 16 problems by -- mainly by lawyers who were
10:42:43 17 interested to understand or to be aware of the
10:42:49 18 historian's perspective on that aspect.

10:42:50 19 And it was always interesting and
10:42:52 20 challenging to discuss on these different issues
10:42:56 21 with lawyers interested by history, but who want to
10:42:59 22 know how the historians feel about these
10:43:03 23 implications and their role in this process.

10:43:07 24 Q. I would like now to move on to
10:43:09 25 your publications.

10:43:13 1 A. Yes.

10:43:14 2 Q. And particularly I'll start with
10:43:15 3 your books. You have already mentioned publishing
10:43:19 4 a book on the Wendat of Quebec. Could you tell
10:43:24 5 me -- tell the Court, rather -- about what the Prix
10:43:31 6 de l'Assemblée nationale is?

10:43:32 7 A. This prize is given each year by
10:43:36 8 -- it is financed by the National Assembly of
10:43:39 9 Quebec and it is given each year for the best book
10:43:47 10 in relation closely or not with, I would say, the
10:43:51 11 historical aspect of history.

10:43:54 12 So there is -- if a book is covering
10:43:59 13 some aspect of historical -- of political history,
10:44:05 14 I would say, this -- so each year the best book is
10:44:10 15 -- receive this prize.

10:44:12 16 Q. And --

10:44:13 17 A. And it is administered, can we say
10:44:15 18 that, by the Institut d'histoire de l'Amérique
10:44:20 19 française, so it is a group of historians who
10:44:22 20 receive different books and who decided what book
10:44:25 21 should be considered as the best one.

10:44:30 22 Q. Could you tell us a bit more about
10:44:33 23 the Institut d'histoire de l'Amérique française?

10:44:36 24 A. This is the most important
10:44:39 25 professional associations of historians in Quebec.

1 I would say that maybe -- certainly a great
2 majority of historians in Quebec working on the
3 history of Quebec and/or Canada are members of this
4 association.

5 We have also many students who are
6 members of this association.

7 And also scholars from other regions of
8 Canada, even from the United States, specialists
9 interested by the history of French North America,
10 but I would say that over the last maybe 15, 20
11 years, these notions of French America has grown.
12 Can we say that? It was enlarged, and now we have
13 many conferences about the history of the
14 Aboriginal people. The last meeting last October,
15 I think that there was at least four panels
16 covering some aspect of the history of the
17 Aboriginal people.

18 Q. And the second item under "Books,"
19 that is the edition you were talking about earlier?

20 A. Yes.

21 Q. Do you have anything that you
22 would like to add?

23 A. No, this is exactly the result of
24 the first work -- not the first work, but the work
25 on the relations of Paul Lejeune, the Jesuit, his

1 relation of 1634. It was first published and we
2 prepared a new edition in 2009.

3 Q. And number 3, "Amérique
4 française," what is that?

5 A. It is a book for a larger
6 audience. It was the result in part of an exhibit
7 in Quebec City, and I have to prepare a book on the
8 general overview of the history of Amérique
9 française connected with this exhibit.

10 Q. And number 4, "La Grande Paix,"
11 which I gather has been translated as "The Great
12 Peace"?

13 A. Yes.

14 Q. What would you like to say about
15 this work?

16 A. This work was also connected to an
17 exhibit in Montreal, Musee Pointe-à-Callière. It
18 was the first exhibit about the peace of 1701
19 between the French, the Five Nations and all of the
20 Aboriginal allies of New France. So it was one of
21 the biggest -- it was probably the biggest
22 diplomatical event in the history of New France, a
23 huge gathering in Montreal, and a really important
24 piece at that time. And Musee Pointe-à-Callière
25 decided to organize an exhibit in 2001 to

10:47:35 1 commemorate this great event.

10:47:37 2 And I have the mandate to wrote a book,
10:47:39 3 again for a larger audience, with another scholars
10:47:42 4 about this event, with -- we divided our work, so I
10:47:48 5 wrote some parts and Roland Viau wrote some other
10:47:55 6 aspects, and we put a lot of images of objects, so
10:47:57 7 it was a book for -- it could be used in classes,
10:48:02 8 but it was mainly oriented towards a larger public.

10:48:05 9 Q. And number 5, "Les Autochtones du
10:48:18 10 Quebec," that is the Indigenous peoples of Quebec?

10:48:21 11 A. Yes.

10:48:21 12 Q. Is there anything you would like
10:48:22 13 to say about that?

10:48:23 14 A. I received a mandate to prepare
10:48:25 15 general presentations of the history of the
10:48:29 16 Aboriginal people of Quebec from the beginning of
10:48:32 17 their meeting with the French. There is small
10:48:35 18 sections about before this meeting, but it started
10:48:40 19 really in 17th century and to cover the history of
10:48:44 20 the Aboriginal people until the end of the 20th
10:48:50 21 century.

10:48:51 22 So it was -- the objective was to give
10:48:54 23 an overview of what we know about the Aboriginal
10:48:56 24 people, their history, especially in Quebec.

10:49:01 25 Q. I believe we have already talked

10:49:04 1 about your work on the edition of Samuel de
10:49:10 2 Champlain's "Des Sauvages." Do you have anything
10:49:15 3 to add?

10:49:15 4 A. No, I don't.

10:49:22 5 Q. "Convertir les fils de Caïn," "To
10:49:23 6 convert the children of Caïn," is that an
10:49:25 7 appropriate translation?

10:49:27 8 A. Yes, it was my masters thesis, the
10:49:29 9 revised edition of my masters thesis.

10:49:32 10 Q. And I believe we have already
10:49:34 11 discussed your work on the edition of Lahontan. Do
10:49:38 12 you have anything that you would like to add?

10:49:40 13 A. No.

10:49:41 14 Q. The next section of your
10:49:47 15 curriculum vitae is labelled "Direction or
10:49:50 16 co-direction." By "direction" do you mean editing
10:49:55 17 or co-editing?

10:49:56 18 A. Yes.

10:49:56 19 Q. Okay, I just wanted to make that
10:49:59 20 clear.

10:49:59 21 And could you explain for the Court
10:50:04 22 what "CREQTA" is?

10:50:10 23 A. "Chaire de recherche du Canada sur
10:50:10 24 la question territoriale autochtone", Research
10:50:17 25 Chair on Aboriginal land question.

10:50:20 1 Q. So the works for --

10:50:23 2 A. Yes.

10:50:23 3 Q. -- that acronym are related --

10:50:26 4 A. Yes, it is the acronym, yes.

10:50:27 5 Q. Related to your Chair?

10:50:28 6 A. Yes, exactly.

10:50:30 7 Q. I would like to now turn to your

10:50:33 8 works in peer-reviewed journals. Could you explain

10:50:40 9 what the term "peer-reviewed" means?

10:50:43 10 THE COURT: He can if he wants to, but

10:50:44 11 I am very familiar with what it means.

10:50:46 12 MR. McCULLOCH: Then I am perfectly

10:50:48 13 content --

10:50:48 14 THE COURT: I'm presuming we are not

10:50:50 15 going to go through every single publication in

10:50:52 16 this document.

10:50:52 17 But before you proceed, sir, I just

10:50:54 18 want you to remember that Madam Reporter needs a

10:50:57 19 little more time whenever, and I guess counsel as

10:51:00 20 well, whenever you are speaking about a French

10:51:04 21 name, and I know with the report you have got a

10:51:08 22 very helpful approach where you use English, but as

10:51:12 23 we looked at the CV, there are a lot of French

10:51:14 24 names and it may be that on a break Madam Reporter

10:51:18 25 will also need you to assist her with the French.

10:51:21 1 THE WITNESS: Okay.

10:51:21 2 THE COURT: I am not suggesting that
10:51:22 3 the amount of French increase, but just that you be
10:51:26 4 aware that you need to go a little bit more slowly.

10:51:29 5 Go ahead, sir.

10:51:30 6 BY MR. McCULLOCH:

10:51:30 7 Q. And I would like to assure Your
10:51:32 8 Honour I have no intention of covering every item
10:51:35 9 in Professor Beaulieu's CV. Otherwise, we would be
10:51:38 10 here for a very long time.

10:51:40 11 But I would like to ask you about
10:51:44 12 number 2, "An equitable right to be compensated."
10:51:49 13 I see that was published in the Canadian Historical
10:51:53 14 Review. Could you tell me what the status of the
10:51:56 15 Canadian Historical Review is?

10:51:57 16 A. Very briefly, it is the most
10:51:59 17 important review about the -- concerning the
10:52:03 18 history of Canada.

10:52:04 19 Q. And we have already discussed the
10:52:17 20 Institut d'histoire de l'Amérique française
10:52:17 21 mentioned in number 3, but could you tell us what
10:52:20 22 the Prix Guy-et-Lilianne-Frégault is?

10:52:25 23 A. It is a prize given each year for
10:52:28 24 the best article published in the "Revue d'histoire
10:52:34 25 de l'Amérique française." So each year the best

10:52:36 1 article of the last year was selected and receives
10:52:38 2 this prize.

10:52:39 3 Q. Now, number 5, "Les garanties d'un
10:52:49 4 traité disparu," the, I guess, "Guarantees of a
10:52:51 5 vanished treaty." Could you tell us if there is
10:52:53 6 anything special about this article?

10:52:56 7 A. Yes, this article is the result in
10:53:00 8 part of research. In the research I had to cover
10:53:05 9 the aspect of the treaties concluded at the
10:53:07 10 conquest of New France between the Aboriginal
10:53:10 11 people living in the St. Lawrence Valley and the
10:53:14 12 British.

10:53:15 13 In the 1990s it was a big issue, this
10:53:18 14 question of the treaties concluded between those
10:53:22 15 people, because the general idea at that time was
10:53:25 16 that no treaty had ever been concluded with people
10:53:29 17 living in the St. Lawrence Valley and the decisions
10:53:32 18 of the Supreme Court of Canada in the Treaty Murray
10:53:39 19 became a huge issue.

10:53:41 20 And many, many, I would say, lawyers
10:53:43 21 were interested by -- to know if other treaties had
10:53:46 22 been concluded at the conquest of New France.

10:53:49 23 So I started to work on this project.
10:53:54 24 At first, I had the impressions that no treaty had
10:53:57 25 ever been concluded, but I discovered many

10:54:01 1 documents, especially oral testimony from
10:54:04 2 Aboriginal people, in the archives.

10:54:07 3 So I started and I tried to -- even if
10:54:09 4 we don't have a document, a written document of
10:54:14 5 this treaty, I was able to reconstruct the
10:54:22 6 principal clauses of this treaty by using the
10:54:25 7 excerpts of the oral traditions and comparing them
10:54:28 8 with what we know, what the historians know about
10:54:33 9 what the British were ready to promise to the
10:54:37 10 Aboriginal people at the time of the conquest of
10:54:41 11 New France.

10:54:41 12 So now even if we don't have a written
10:54:43 13 document, I think that now it is clear that we can
10:54:46 14 establish that a treaty was concluded with those
10:54:51 15 people at the conquest of New France.

10:54:54 16 Q. I would like to take you now to
10:54:57 17 number 7.

10:54:59 18 A. Yes.

10:54:59 19 Q. Again, the "Revue d'histoire de
10:55:08 20 l'Amérique française." You have talked about the
10:55:09 21 Institut, but what is the "Revue d'histoire de
10:55:12 22 l'Amérique française"?

10:55:12 23 A. This review is published by the
10:55:15 24 Institut. One of its main objectives is not only
10:55:17 25 to organize an annual congress, but also to publish

1 a review on this, on history. It is, I would say,
2 in Quebec it could be considered as the equivalent
3 of the Canadian Historical Review.

4 Q. And the article itself, is a
5 proper translation of the title "The traps of the
6 judicialization of Indigenous history"?

7 A. Yes, I think it could be
8 translated like that. It was a special request by
9 one of my colleagues who wanted to have an article
10 on these problems and what, as I said, it meant for
11 the historians to be engaged in those litigations
12 and how this could influence their work and how
13 some historians are, I would say, reproducing some
14 decisions in their analysis of the past.

15 Q. I would like now to move on to
16 your "In collective works," number 15. Could you
17 tell me -- tell the Court, rather -- about what you
18 did with Gabriel Sagard, "The great travels in the
19 country of the Hurons"?

20 A. Yes, just a few words. The
21 Jesuits were not alone in their effort to convert
22 the Aboriginal people. The Récollets, the branch
23 of the Franciscan family, were also present and we
24 have one of them, Gabriel Sagard, who published a
25 very fascinating narrative of his experience among

10:57:04 1 the Huron people. So I had to prepare an article
10:57:04 2 on this guy and on the importance of his writing
10:57:06 3 and especially to see how other people in Europe
10:57:11 4 after its publication used this book.

10:57:15 5 Q. And I would like to now go to the
10:57:19 6 section of your curriculum vitae entitled "In
10:57:24 7 conference proceedings," and this is page 6. I'm
10:57:27 8 only going to ask you about one of these conference
10:57:31 9 papers, I think is the way to describe them, and
10:57:37 10 that is number 33.

10:57:41 11 A. This conference was the result, as
10:57:44 12 I said earlier, of an invitation by lawyers who had
10:57:51 13 their annual meetings and they wanted to learn
10:57:55 14 about these questions, how the history was used in
10:58:01 15 Court, what are the problems, what is the role of
10:58:05 16 the historian in this process.

10:58:08 17 Q. And --

10:58:09 18 A. I used the word "instrumentalize"
10:58:14 19 because to show that in Court we are doing --
10:58:21 20 preparing a report that are used by the Court, and
10:58:23 21 I would say that we lost the -- how we say -- that
10:58:28 22 we prepare something and, after that, it is not --
10:58:30 23 it is no more our -- in articles you can have some
10:58:35 24 reactions from colleagues, you can discuss, you can
10:58:37 25 review, but when you are working in a Court, you

10:58:40 1 prepare something and you have to renounce after
10:58:42 2 that to this report, which is used within the very
10:58:48 3 specific context.

10:58:49 4 Q. And the "Conference des juristes
10:58:55 5 de l'État," what is that?

10:58:57 6 A. It is the annual conference of the
10:58:59 7 jurists of Quebec, Quebec government, so it is an
10:59:05 8 event which comes each year, and at that time it
10:59:09 9 was very interesting because among the roundtable
10:59:12 10 there was the ex-Justice of the Supreme Court of
10:59:19 11 Canada, Michel Bastarache, I don't know if I
10:59:27 12 pronounce it correctly, and a lawyer from the
10:59:29 13 Quebec government, so it was a really interesting
10:59:31 14 discussion about the implications of using history
10:59:32 15 in the judicial context.

10:59:34 16 Q. And in section 4.2.3, page 7, you
10:59:47 17 are talking about your current work. You have
10:59:50 18 already mentioned that you are working on a new
10:59:53 19 edition of "Histoire de l'Amérique septentrionale."
10:59:57 20 I hope I pronounced that right. What is a good
11:00:02 21 English translation of that?

11:00:03 22 A. "History of North America," if you
11:00:08 23 want. It is a very -- the northern part of
11:00:12 24 America.

11:00:12 25 Q. Do you have anything to add to

11:00:14 1 what you have already said --

11:00:15 2 A. No.

11:00:15 3 Q. -- about that edition?

11:00:22 4 I would like to now go to page 11 of
11:00:27 5 your curriculum vitae.

11:00:32 6 A. Yes.

11:00:32 7 Q. And the section 4.3.2 "Conferences
11:00:40 8 (colloquiums, seminars, round tables, etc.)."

11:00:46 9 A. Yes.

11:00:46 10 Q. I would like to ask you about item
11:00:49 11 52.

11:00:50 12 A. Yes. The title in English could
11:00:54 13 be "The historical methodology and the oral
11:00:57 14 traditions, some reflections, some critical
11:01:00 15 reflections." So I was invited to talk to judges
11:01:04 16 about the use of oral testimonies, oral traditions
11:01:10 17 that we can find in the documents, and to try to
11:01:15 18 explain how the historians are working with those
11:01:20 19 materials, what kind of problems that we meet when
11:01:24 20 we are using this material, how can it be useful to
11:01:29 21 use them to achieve, I would say, a better
11:01:32 22 understanding of the history of the meeting between
11:01:35 23 the French and the -- the French, the British and
11:01:39 24 the Aboriginal people.

11:01:40 25 Q. You have mentioned the importance

1 of using oral traditions in your article on the
2 Treaty of Oswegatchie. Have you done other work
3 where Indigenous oral traditions were important?

4 A. I would say since my Ph.D., as I
5 said, I started with the formula to be one people
6 and to understand correctly these expressions, I
7 went back to the narrative in which the Iroquois
8 remember the origins of their league, and to read
9 this narrative helped me to understand what could
10 have been the project of the Iroquois toward the
11 French, not, as I said, to become French but to
12 integrate the French within their own confederacy.

13 So it was a first, I would say, first
14 effort to use non-classical historical material to
15 achieve a better understanding of the relationship
16 between the French and the Aboriginal people.

17 I used it also for the article about
18 the relationship between the French and the Innu,
19 the article called "L'on n'a point d'ennemis plus
20 grands," we can't have worst enemies than those,
21 and I was surprised when I looked at the oral
22 traditions of the Innu people collected in the 20th
23 century to see that they had a very different view
24 of their relationship with the French than we can
25 have in the classical historiography about the

11:03:26 1 meeting between the French and the Innu, because
11:03:29 2 generally we have these impressions that everything
11:03:32 3 went well between the French and the Innu. And in
11:03:36 4 their tradition, the Innu had the impression that
11:03:40 5 everything went wrong.

11:03:41 6 So it was a real contradictions between
11:03:44 7 these two visions. So I started with these visions
11:03:46 8 in the oral traditions and I went back to the
11:03:48 9 narratives of Samuel de Champlain and I was
11:03:51 10 surprised to see how many references that we can
11:03:54 11 find about tensions between the French and the
11:03:57 12 Innu, how many conflicts, murders, efforts from
11:04:03 13 Champlain to imprison some people.

11:04:05 14 So I think that in that case, the
11:04:08 15 visions of the oral traditions helped me to have a
11:04:10 16 better understanding of the first meeting between
11:04:13 17 the French and the Innu. As I said, I use it also
11:04:20 18 to understand the treaties concluded at the moment
11:04:24 19 of the conquest at Oswegatchie, but also at
11:04:29 20 Kahnawake a few days later.

11:04:31 21 So in that case, the oral tradition was
11:04:34 22 very helpful.

11:04:34 23 Q. And item 54, we have already
11:04:40 24 encountered, "The traps of instrumentalized
11:04:45 25 history," but you gave this paper at a conference

1 organized by la Faculté de droit de l'Université de
2 Montreal, that is to say the Law School at the
3 University of Montreal?

4 A. Yes.

5 Q. And in item 56, is this another
6 place where you have talked about Indigenous
7 peoples and the law?

8 A. Yes.

9 Q. And is there anything that you
10 would like to add about item 63?

11 A. No, I think I have covered the
12 most important aspects.

13 Q. It is another occasion where you
14 have talked in this case it is to the Congrès de la
15 Société des professeurs d'histoire du Quebec?

16 A. Yes.

17 Q. That is an academic organization?

18 A. Yes, but for teachers for
19 secondary school, so they are interested to
20 integrate the history of Aboriginal people in their
21 classes and the question of law and history was a
22 point of interest for them.

23 Q. So by "professeurs," it is
24 teachers?

25 A. Yes, teachers.

11:06:08 1 Q. So you don't only talk to
11:06:09 2 academics?

11:06:10 3 A. No.

11:06:11 4 Q. I would like to now go to
11:06:15 5 historical research in the legal context, item 4.4
11:06:21 6 of your CV.

11:06:24 7 A. Yes.

11:06:24 8 Q. Now, I understand that there are
11:06:28 9 sometimes limits on what you can say about --

11:06:32 10 A. Yes.

11:06:33 11 Q. -- certain current mandates?

11:06:35 12 A. Yes.

11:06:36 13 Q. What could you tell the Court
11:06:40 14 about item number 1?

11:06:41 15 A. It is a mandate that I have with
11:06:49 16 the Mi'kmaq people to make an historical research
11:06:51 17 on the occupations of their land. The project
11:06:52 18 started in 2016. I don't know if -- presently it
11:06:57 19 is on hold. I don't know if it will continue or
11:07:00 20 not, but a lot of work have been done for
11:07:05 21 collecting documents and preparing, I would say,
11:07:07 22 the field for a redaction of a report.

11:07:13 23 Q. What can you tell us about item
11:07:15 24 number 2?

11:07:16 25 A. Essentially the same thing. It is

1 a historical project with the Algonquin to prepare
2 historical report on their use, occupations of
3 traditional land.

4 Q. Could you tell us where the -- and
5 again, I hope I'm not mangling this too badly --
6 the Kitigan Zibi Anishinabeg are located?

7 A. They are located on the --
8 traditionally we are talking about the reserve of
9 Maniwaki. It is in Quebec City. So it was one of
10 the reserves created in the middle of the 19th
11 century. But they were hunting on the two sides of
12 the frontier established with -- between Quebec and
13 Ontario.

14 Q. So there is some overlap with
15 Ontario?

16 A. Yes.

17 Q. Yes. I would like now to go to
18 4.4.2, page 14. When you say "Court-Related
19 expertise," an "expertise" is a report, right?

20 A. Yes.

21 Q. And I noticed items 1 and 2 have
22 similar titles. Could you tell us about the
23 differences, if any, between those two?

24 A. The first one, it is within the
25 context of the specific claims tribunal, and in the

1 case involving the Abenakis Nation, and for me what
2 is really important in that case is that I was
3 asked by the Abenakis and by the Federal Government
4 to prepare a joint expertise.

5 The two parties acknowledged that my
6 expertise in this field was -- it was not necessary
7 to prepare a report and an expertise and a
8 counter-expertise, and they decided to hire me to
9 be their only expert in -- their joint expert in
10 this specific aspect.

11 In this report, I cover the history of
12 the land reserve for the Abenakis at the beginning
13 of the 18th century. The Abenakis were not living
14 in the St. Lawrence Valley when the French arrived.
15 They arrived later, and the French decided to
16 reserve some piece of lands for missions, for the
17 establishment of Jesuit missions or Sulpicians
18 mission, so you have one in the Quebec region and
19 you have two for the Abenakis.

20 So I have to understand the context in
21 which those lands were set apart, under what
22 conditions, what could have been the rights of the
23 Abenakis in this context.

24 Q. Where were the Abenakis before
25 they came to Quebec?

11:10:10 1 A. They were living it was now to the
11:10:13 2 south, close to what became United States, so they
11:10:19 3 were coming after the huge war against the English
11:10:24 4 at the end of the 1670s.

11:10:27 5 Q. Now, item number 2 is titled the
11:10:35 6 "Congress at Niagara." Could you tell us about the
11:10:38 7 difference between that report and the report that
11:10:45 8 you are going to be presenting to the Court in this
11:10:47 9 trial?

11:10:47 10 A. Yes, this report is an extension,
11:10:50 11 I would say, of the report that I will discuss in
11:10:52 12 this case. I had to make some comments about the
11:10:59 13 report prepared by Alain Corbiere, and I had also
11:11:03 14 the occasions to make a supplementary research
11:11:09 15 about one aspect concerning the distribution of
11:11:13 16 annual gifts to the Aboriginal people. It was a
11:11:16 17 real important point at the conquest of New France,
11:11:20 18 because the British decided to abolish or to reduce
11:11:23 19 considerably the number of presents given to
11:11:26 20 Aboriginal people.

11:11:27 21 And I had to understand how this policy
11:11:29 22 was restarted, I would say, by the British after
11:11:34 23 the great Pontiac's War, and I found other
11:11:39 24 documents which helped us to understand that it was
11:11:42 25 not a quick re-installation, but a more slower

1 process that we were -- than the historians were
2 thinking.

3 Q. But just to clarify, this was in
4 response to the position set out by Mr. Alain
5 Corbriere?

6 A. Yes, a response, yes, but it was a
7 point of interest from strictly, I would say,
8 historical perspective, because this annual
9 distribution of presents is really important. It
10 started at the end of 17th century and it was
11 really an important element.

12 So from a strictly historical
13 perspective, it is really interesting to understand
14 when and why the British decided to stop and to
15 restart this policy of annual distribution.

16 Q. I would like to now go to page 16,
17 the section dealing with research reports, 4.4.2,
18 and ask you about item number 8.

19 A. Yes, this report was mandated by,
20 again, by the Mi'kmaq. They needed an overview of
21 the history, the socio-economic history of the
22 region in Quebec called Gaspésie --

23 Q. Could you tell us, for those of us
24 not familiar with the geography of Quebec, where
25 the Gaspésie is?

11:13:20 1 A. At the east, close to New
11:13:23 2 Brunswick, so it is at the entrance, I would say,
11:13:27 3 of the St. Lawrence River. And the mandate was to
11:13:32 4 understand the new reality which resulted from the
11:13:37 5 colonization and the impact on the Mi'kmaq and on
11:13:42 6 their land from 1800 to 1950.

11:13:47 7 And this report was submitted in 2010,
11:13:53 8 and the large sections of this report were
11:13:59 9 published in a book published by the Mi'kmaq. The
11:14:11 10 title is "Our History," and large excerpts of my
11:14:14 11 report have been integrated in this book.

11:14:17 12 Q. And item 22 on page 17.

11:14:25 13 A. Yes, this report is the result of
11:14:27 14 the mandate that I received from members of the
11:14:30 15 Huron-Wendat of Quebec region, so I explained that
11:14:33 16 I have to work on the history of the way that they
11:14:37 17 hunt and fish during -- after their installation in
11:14:41 18 the Quebec region, and it was important at that
11:14:46 19 time.

11:14:46 20 Now it is clear, but at that time, as
11:14:50 21 the Huron were sedentary people, many people
11:14:53 22 considered that for them hunting and fishing was
11:14:56 23 not important, so it was a real point of debate in
11:14:59 24 the Court what was the importance of hunting and
11:15:04 25 fishing for those Aboriginal people and how this

1 translated in occupation in some specific areas to
2 the north of the St. Lawrence River.

3 Q. I would like to now go to page 20
4 of your CV. It is section 4.6, "Awards and
5 Distinctions." We have already talked about the
6 Prix de l'Assemblée nationale du Quebec for "Les
7 Wendats." What is the difference between that and
8 the prize of the Quebec National Assembly 2009?

9 A. The two of them are administrated
10 by the Institut d'histoire de l'Amérique française.
11 The two of them are given following the
12 recommendations of a committee of historians
13 working on the history of French North America.

14 Q. But the two prizes were separate,
15 right?

16 A. Yes, one is for an article and the
17 other one is for a book.

18 Q. Could you tell us a little bit
19 about "France-Canada-Quebec"?

20 A. It is a collective book prepared
21 by one of my colleagues and I had to present in his
22 book an overview of the history of the French
23 relations with the Aboriginal people.

24 So the book itself received the prize,
25 and I had one article in this book.

1 Q. Okay, I would like to now go to
2 page 24 of your CV, item 5.2. I'm not going to ask
3 about the individual items, but I would like you to
4 explain what you mean by "Creation of a place for
5 training and thinking on Aboriginal Issues"?

6 A. It was one of the main objectives
7 when I decided to present my file for a Canada
8 Research Chair. I did not want just to be in my
9 office having a lot of money and writing and
10 travelling around the world to benefit from this
11 money.

12 I really wanted to have this place as a
13 place where we can make the promotion of the better
14 -- to achieve a better knowledge of the history of
15 the Aboriginal people. So I put a lot -- I took a
16 lot of time to create a real place where young
17 students can make their studies.

18 I organized a lot of activities,
19 conferences. I invited many people, scholars and
20 non-scholars, Aboriginal people, just to create a
21 kind of dynamic, a kind of interest about this
22 aspect of the -- about the history of the
23 Aboriginal people.

24 And it is within this context that I
25 also published some books that are enumerated in my

1 CV following some conferences that I organized
2 for -- sometimes only for young scholars, giving
3 them the chance to present the papers, to write an
4 article with these papers, to have a team who will
5 help them to verify their articles and to get it
6 published in a book.

7 So for ten years I have invested many,
8 many hours to be sure that this Chair won't be just
9 a place where academics will discuss, but also to
10 be sure that a large, many people could benefit
11 from the works that has been done in this context.

12 Q. I said I wasn't going to ask you
13 about the specifics, but of all the events that you
14 have done under that heading, is there one that you
15 are particularly pleased with or proud of that you
16 would think the Court could benefit by knowing
17 about?

18 A. I don't know, I think I was
19 pleased by all those activities, especially the
20 activities organized for young scholars. It was
21 always a very good moment, good participation, many
22 colleagues who want to assist to those
23 presentations, and it was also good occasions to
24 create a good dynamic with young scholars working
25 on those aspects of history.

11:19:33 1 So I would -- no, I think I don't have
11:19:39 2 -- I don't want to select one as the most
11:19:41 3 important.

11:19:41 4 Q. They were all your favourite
11:19:43 5 children?

11:19:43 6 A. I have all -- good memory for all
11:19:47 7 of them.

11:19:47 8 Q. Now, in section 5.3 on page 28 of
11:19:54 9 your CV, you have already mentioned that you have
11:19:58 10 done a fair amount of work in collaboration with
11:20:02 11 museums and heritage institutions. Could you tell
11:20:06 12 us on a practical level what's involved with that
11:20:11 13 kind of collaboration?

11:20:12 14 A. It is always connected to my
11:20:15 15 knowledge about the history of the relation between
11:20:19 16 Europeans and Aboriginal people. Of course, I have
11:20:28 17 met most of them before being hired at the
11:20:33 18 University of Quebec at Montreal, but I have
11:20:34 19 continued after that to receive some invitation, to
11:20:37 20 participate to some scientific or academic
11:20:38 21 committee, to review some text, to write some
11:20:42 22 papers, to help, I would say, the preparation of
11:20:46 23 the exhibits.

11:20:47 24 So it was another way to promote the
11:20:52 25 knowledge of the history of the Aboriginal people

11:20:54 1 by using my knowledge to help people working in
11:21:00 2 museums to prepare, I would say, exhibits which
11:21:07 3 could be as close as possible with the recent
11:21:11 4 knowledge that we have about the history of the
11:21:14 5 Aboriginal people.

11:21:15 6 And now, this meeting, of course, now I
11:21:18 7 am working on a project which I forgot to put in my
11:21:24 8 CV with Musee Pointe-à-Callière. There is a place
11:21:28 9 that they want to re-arrange their exhibition, so
11:21:31 10 there are some academics, there are some Aboriginal
11:21:33 11 people representative from Aboriginal people
11:21:37 12 communities, so we have some meetings to discuss
11:21:39 13 some specific points related to aspects of the
11:21:41 14 history that will be covered in the exhibit.

11:21:44 15 Q. Could you repeat the name of the
11:21:47 16 musee?

11:21:48 17 A. I'm sorry, Musee
11:21:53 18 Pointe-à-Callière. The "Pointe-à-Callière,"
11:21:54 19 Callière was the Governor of New France and his
11:21:56 20 house was built on a very small piece of land, a
11:21:59 21 point, so the museum took the name
11:22:07 22 Pointe-à-Callière.

11:22:07 23 Q. And where is that?

11:22:09 24 A. In Montreal City.

11:22:09 25 Q. And I have, I believe, one last

11:22:13 1 question based on your CV. I see that you have
11:22:20 2 done a lot of radio and television work. Could you
11:22:28 3 explain how that fits into your understanding of
11:22:32 4 your role as an expert on Indigenous-European
11:22:38 5 relations?

11:22:39 6 A. When I receive an invitation, if I
11:22:41 7 have the time, I'm always ready to talk about
11:22:43 8 different aspects. If it is connected to my
11:22:45 9 knowledge, if I did not receive a call 15 minutes
11:22:50 10 before the interview, I am always ready to
11:22:52 11 participate in this kind of work and sometimes it
11:22:56 12 is connected to a book that I have published,
11:23:00 13 sometimes to other aspects.

11:23:01 14 So when I receive some invitations, I'm
11:23:04 15 always ready to participate to this kind of event.

11:23:10 16 Q. And can you tell us if it is in
11:23:13 17 the same spirit that you get involved in dealing
11:23:17 18 with textbooks?

11:23:18 19 A. Yes, it is always you have to be
11:23:24 20 -- the objective is to interest a larger audience,
11:23:27 21 so if it is video, if it is radio interview, you
11:23:32 22 have always to keep in mind that you are not
11:23:33 23 talking to your colleagues, that you are trying to
11:23:38 24 explain some aspect of Aboriginal history to some
11:23:41 25 people who could be or who are interested by the

11:23:44 1 history but who don't have all the backgrounds
11:23:50 2 necessary to go into more complex, I would say,
11:23:55 3 narratives.

11:23:55 4 Q. And just to conclude, could you in
11:24:01 5 general terms describe your methodology as a
11:24:06 6 historian?

11:24:07 7 A. In very general terms, yes, I
11:24:12 8 could. I think that the first operation that we
11:24:14 9 have to do, it is in part a technical one, we have
11:24:19 10 to find all the necessary documents, as many
11:24:23 11 documents as possible. And when I say "documents,"
11:24:26 12 of course it is documents that we can find in the
11:24:30 13 archives, in the French archives, in the British
11:24:32 14 archives, but other types of documents that could
11:24:34 15 be connected that your subject.

11:24:41 16 So when you have identified the aspect
11:24:43 17 that you want to cover, you have to also identify
11:24:46 18 the most relevant archives for covering your
11:24:51 19 subject. You have to find all the print documents.
11:24:57 20 There is a lot of many documents printed since the
11:25:00 21 19th century. Many French documents were
11:25:04 22 translated.

11:25:05 23 So the first operations is to be sure
11:25:09 24 that you have collected not all, it is not always
11:25:12 25 possible to collect all documents, but as many

11:25:14 1 documents as possible.

11:25:16 2 And after that, my strategy is only to
11:25:22 3 read them from the beginning to the end and to put
11:25:24 4 them in chronology, to have a view of the
11:25:28 5 evolutions of some event, and sometimes what you
11:25:31 6 cannot see because you are looking -- you are not
11:25:34 7 looking at the document in chronology, some
11:25:36 8 explanation could emerge from these operations.

11:25:42 9 And to compare, always to compare the
11:25:43 10 documents, the information coming from one sources
11:25:49 11 to an information coming from the other sources,
11:25:52 12 and try to identify the best source of information
11:25:55 13 because we cannot always -- I am sure that "The
11:25:58 14 Jesuit Relations" is a good source of information
11:26:04 15 for specific aspect, but it doesn't mean that it is
11:26:08 16 always the best source of information for another
11:26:10 17 point.

11:26:10 18 Q. You have mentioned how in terms of
11:26:12 19 the Treaty of Oswegatchie, and in terms of French
11:26:18 20 relations with the Innu, that examination of the
11:26:23 21 documents have led you to change your mind.

11:26:25 22 Are there any other instances you can
11:26:27 23 think of in your career where your original ideas
11:26:34 24 were changed by looking at the documentary record?

11:26:36 25 A. One that I have in mind is about

11:26:38 1 the history of the Seven Nations of Canada. It is
11:26:41 2 the term used to name a political unit in the St.
11:26:53 3 Lawrence Valley from political organizations in
11:26:56 4 which, among the members, you had the Mohawks close
11:26:59 5 to Montreal, the Abenakis, the Huron, and we
11:27:03 6 find -- I find and my assistant also found some
11:27:09 7 documents concerning the history of the Seven
11:27:11 8 Nations.

11:27:11 9 And at first, I had the impression that
11:27:13 10 it was a very strong -- it was organizations, but
11:27:18 11 we also discovered other documents in which only
11:27:21 12 the Mohawks of Montreal told that we are the Seven
11:27:27 13 Nations, we are the Seven Nations.

11:27:28 14 So when you have these kind of
11:27:32 15 documents, you have to reconsider your
11:27:33 16 understanding of some aspect of this relation.

11:27:39 17 I would say that you have always to be
11:27:43 18 ready to adjust yourself. One of -- maybe in this
11:27:46 19 case, the best example would be the Treaty of
11:27:53 20 Niagara. When I received the mandate, it was to
11:27:55 21 cover the Treaty of Niagara. I have to understand
11:27:57 22 the Treaty itself, to understand what was promised,
11:28:01 23 and it is only when I started to look at the
11:28:05 24 document that I had to change my mind about this
11:28:07 25 very specific event.

11:28:09 1 Q. And finally, could you tell us if
11:28:10 2 there is a difference in the methodology you use
11:28:14 3 for your academic articles and the methodology you
11:28:18 4 use for the reports you prepare for Court?

11:28:21 5 A. There is no difference in the
11:28:23 6 principles. I think that of course there is some
11:28:26 7 differences. One of them is the time that you have
11:28:28 8 to do research. When you are in the academic, you
11:28:34 9 can wait before finishing your book, you can wait
11:28:37 10 before finishing your article, you can decide that
11:28:40 11 you will take six months more for doing your
11:28:42 12 research.

11:28:42 13 In that context, the time limit is a
11:28:47 14 really important aspect, so you have to manage to
11:28:49 15 cover the question that you were asked to answer in
11:28:54 16 the time that you have.

11:28:56 17 So it is a really important point.

11:29:00 18 You have also, I would say, to be
11:29:02 19 conscious of the litigation process and how this
11:29:06 20 would influence your way of looking at the
11:29:08 21 documents and giving answers to the questions that
11:29:13 22 were asked to you.

11:29:14 23 From, I would say, very early, I have
11:29:17 24 to find a way to be sure that I am doing research
11:29:25 25 in the same way that I would have done in the

11:29:28 1 academic field, and the only -- I think for me the
11:29:33 2 best way to do that was to be able to answer the
11:29:37 3 question: I am trying to understand the past or I
11:29:42 4 am trying to argue about the past? And if I try to
11:29:46 5 understand the past, it is what I do in the
11:29:48 6 academic field. I'm only interested to understand
11:29:51 7 what happened.

11:29:52 8 If I try to argue, to support some
11:29:56 9 arguments, I am still doing history but not in the
11:30:03 10 same way that I would have done in the academic,
11:30:08 11 and when I have these discussions about the
11:30:10 12 intersection between law and history, it is very
11:30:12 13 often the example that I try to give to make sure
11:30:15 14 that those who want to use the work of the
11:30:20 15 historians have to be conscious that they have to
11:30:22 16 do their work as in the academic field.

11:30:25 17 And I give this example, this sample
11:30:28 18 question: I am trying to understand or to argue?

11:30:31 19 And sometimes the line is very thin,
11:30:35 20 but you have always to keep this in mind. Should I
11:30:38 21 be able to publish exactly the same thing in a book
11:30:41 22 or in an article? Or is it something that I would
11:30:45 23 like just to put, not to be -- or I am not proud of
11:30:51 24 it or I am not agree with what I wrote?

11:30:53 25 So I just want to be sure that they are

11:30:55 1 the same level of, I would say, integrity, but I am
11:30:58 2 not sure it is the good word. To be sure that it
11:31:03 3 is exactly the same principles, same basic
11:31:06 4 principles used in this research.

11:31:12 5 MR. McCULLOCH: Your Honour, those are
11:31:13 6 my questions for the qualification. It is my
11:31:16 7 understanding that my friend would like to
11:31:18 8 cross-examine on the qualification. Would now be a
11:31:22 9 good time to take a break?

11:31:25 10 THE COURT: Well, your friend seems to
11:31:28 11 disagree with your proposition.

11:31:29 12 MR. McCULLOCH: Oh.

11:31:31 13 MS. PELLETIER: Your Honour, we are not
11:31:32 14 objecting to the tender, Your Honour, so I had just
11:31:34 15 assumed that I would cross-examine on his
11:31:36 16 qualifications in the course of cross-examining.

11:31:38 17 THE COURT: That would be customary.

11:31:40 18 MR. McCULLOCH: Okay.

11:31:41 19 THE COURT: Can you put the tender back
11:31:42 20 up on the screen, please.

11:31:45 21 MR. McCULLOCH: I would ask my
11:31:47 22 friend -- my colleague, Ms. Kirk.

11:31:52 23 I propose that you accept this tender,
11:31:55 24 Your Honour, as Professor Beaulieu's qualification.

11:31:59 25 THE COURT: Dr. Beaulieu, thus far this

11:32:03 1 morning you haven't talked about what is called in
11:32:08 2 the tender New France.

11:32:11 3 THE WITNESS: Yes.

11:32:12 4 THE COURT: Now, I have read your
11:32:13 5 reports which are now in evidence, so they talk
11:32:16 6 about New France. I believe they talk about its
11:32:21 7 development geographically as well, suggesting to
11:32:25 8 me that it wasn't a static geographic place.

11:32:29 9 Is that correct?

11:32:30 10 THE WITNESS: New France is, I would
11:32:33 11 say, almost a continuously extending notion, so
11:32:38 12 that the expressions of New France at the beginning
11:32:40 13 of 17th century does not cover the same area at the
11:32:49 14 end of the French regime.

11:32:50 15 THE COURT: All right. And so I take
11:32:53 16 it, Mr. McCulloch, this is intended to encompass
11:32:57 17 New France in whatever situation it found itself in
11:33:01 18 from time to time; is that the idea?

11:33:04 19 MR. McCULLOCH: Right up to 1763.

11:33:09 20 THE COURT: Well, that leads to a
11:33:11 21 second question, Mr. McCulloch, because 1763 is the
11:33:17 22 moment in time when the British come on the scene,
11:33:22 23 if you will, but this tender talks about the early
11:33:25 24 years of the British regime, which I would assume
11:33:28 25 would extend beyond 1763.

11:33:30 1 MR. McCULLOCH: Yes, the second part of
11:33:32 2 his expertise, we have asked him questions in his
11:33:34 3 report to cover the period from 1763 to 1774, the
11:33:42 4 first years of the British regime. New France of
11:33:45 5 course ends with the Treaty of Paris.

11:33:49 6 THE COURT: All right. I am just not
11:33:51 7 sure that the tender and its terminology is
11:33:54 8 specific enough because it uses terminology that --
11:34:05 9 "Native" is another term that I didn't find
11:34:09 10 commonly used in this gentleman's evidence. Is
11:34:11 11 there some particular reason you are using that
11:34:13 12 term instead of "Aboriginal"?

11:34:15 13 MR. McCULLOCH: Because this is the
11:34:17 14 term that, for example, Professor Benn has used, it
11:34:20 15 has been used by a number of the previous experts
11:34:23 16 and it is fairly common in academia. It was
11:34:26 17 inspired by a book by Bruce Trigger.

11:34:28 18 However, I am perfectly happy to change
11:34:30 19 it, if you prefer, to "Indigenous" and
11:34:35 20 "non-Indigenous" relations.

11:34:39 21 THE COURT: Well, I just didn't find
11:34:40 22 this term that characterized this gentleman's
11:34:44 23 reports. I mean, if there is no dispute about it,
11:34:45 24 I suppose it is okay, but do you intend to draw a
11:34:49 25 distinction between Indigenous peoples which are

1 referred to in this gentleman's report and native
2 peoples?

3 MR. McCULLOCH: I beg your pardon, Your
4 Honour?

5 THE COURT: Are you intending to draw a
6 distinction between them?

7 MR. McCULLOCH: No, Your Honour.
8 "Indigenous" is the current term that is used to
9 replace the older term "Native."

10 THE COURT: Yeah, I am just looking at
11 the report itself.

12 MR. McCULLOCH: Uhm-hmm.

13 THE COURT: Which isn't especially
14 current, but I guess what I will say is this, that
15 I accept this gentleman as an expert as set out in
16 this tender, with the clarifications that nothing
17 is intended by the choice of terminology as between
18 his report and the use here of "Native," and that
19 New France is intended to deal with New France as
20 it existed from time to time and not at a
21 particular time.

22 And on that basis, this is
23 satisfactory.

24 Now, before we take the break, a couple
25 of things.

11:35:53 1 First of all, I made a ruling in --
11:35:57 2 when did I make the ruling? On August 16th of this
11:36:01 3 year, about this gentleman's testimony, which I
11:36:03 4 merely put on the record at this point.

11:36:05 5 I am sure that you have all noticed
11:36:09 6 that our clock is still in summer time, and you
11:36:11 7 will have that fixed, but we are going to go by the
11:36:14 8 time, not the clock, until it is fixed.

11:36:18 9 And I imagine you have told Professor
11:36:23 10 Beaulieu that now that his three reports have been
11:36:26 11 entered into evidence at this trial, that it is not
11:36:29 12 the case that all of that material must be covered
11:36:33 13 also from the witness box. In fact, the opposite
11:36:36 14 is the case, that that is intended to be a way of
11:36:42 15 streamlining the testimony.

11:36:45 16 So Mr. McCulloch will ask you
11:36:47 17 questions, but it is not an exercise in making sure
11:36:50 18 you repeat every word that is in your three
11:36:53 19 reports, sir.

11:36:53 20 THE WITNESS: Okay.

11:36:54 21 THE COURT: The other thing I want to
11:36:57 22 specifically deal with before we move on to the
11:36:59 23 examination in-chief is the French.

11:37:01 24 Now, sometimes names are French and
11:37:06 25 they are French and should be given in French, and

1 Madam Reporter will get assistance if necessary.

2 But members of the public are present
3 in Court and this trial is being conducted in
4 English. Now, I am not sure of the French skills
5 of Ms. Pelletier or Mr. Evans, but it is everyone
6 in the room that needs to understand the evidence,
7 sir.

8 So I can tell that you are very able in
9 English, and I appreciated when I read in your
10 reports, at page 9 of Exhibit 4380, that for
11 communication purposes that things that were
12 originally in French have been translated into
13 English for the purposes of your reports. This is
14 very helpful.

15 And I am sure you'll try and do that in
16 your oral testimony as well.

17 THE WITNESS: Yes.

18 THE COURT: Obviously, there is an
19 exception that applies to the third report, which
20 is Exhibit 4382, because the subject matter of that
21 report is what I will call a lack of agreement
22 between the parties about the translation.

23 Now, I am not sure to what extent that
24 is going to be the subject of oral testimony,
25 Mr. McCulloch, but if it is, this will not work

1 well if you are inviting the witness to read out
2 loud long French passages which are carefully
3 included already in the evidence in the report.

4 MR. McCULLOCH: I anticipate asking one
5 very simple question about the third report. I
6 believe that it more or less -- in fact, it does
7 speak for itself.

8 THE COURT: Yes, no, you can ask
9 whatever questions you wish. I am looking to you
10 to be focussed so that there is no unintended need
11 to go on at some length reading a French document
12 that is fully quoted in this report and therefore
13 already in evidence.

14 If you need to, or if cross-examining
15 counsel needs to advert to the French, that is
16 obviously fine, and I said earlier this morning the
17 important thing there is to slow down when you get
18 to the French.

19 THE WITNESS: Perfect.

20 THE COURT: All right, to make it
21 easier for everyone to follow along. All right?

22 I think that is everything. Let me
23 look at my note here.

24 Okay, so leaving aside our problem with
25 our clock, we'll take a 20-minute break at this

11:39:43 1 time.

11:39:43 2 -- RECESSED AT 11:40 A.M.

12:05:30 3 -- RESUMED AT 12:05 P.M.

12:05:30 4 MR. McCULLOCH: Your Honour, there are
12:05:33 5 two items of business before I proceed with my
12:05:36 6 examination in-chief.

12:05:38 7 THE COURT: All right. A blue screen
12:05:41 8 is not a good thing on my computer, so...

12:05:45 9 There are two items of business, but
12:05:46 10 don't start the chief until I have got this up.

12:05:49 11 Oh, here we go.

12:05:51 12 I attribute this sort of thing to the
12:05:56 13 fact it is Monday, and if you need to, you could go
12:05:59 14 to raining. And there is a rumour that I suspect
12:06:08 15 it is in Montreal, sir.

12:06:09 16 We are good to go. Please go ahead.
12:06:16 17 Two items of business.

12:06:18 18 MR. McCULLOCH: Yes, the first item of
12:06:19 19 business is to make the tender of qualification of
12:06:24 20 Professor Beaulieu a numbered exhibit.

12:06:28 21 THE COURT: We are making the tenders
12:06:30 22 lettered exhibits.

12:06:32 23 MR. McCULLOCH: I'm sorry, lettered
12:06:33 24 exhibit.

12:06:33 25 THE COURT: And it was made Z1 earlier

12:06:36 1 today.

12:06:37 2 MR. McCULLOCH: Okay, and the second
12:06:38 3 item of business is Your Honour has proposed a
12:06:41 4 meeting to discuss --

12:06:43 5 THE COURT: Yes, did you all come up
12:06:45 6 with a preferred time? What did you come up with?

12:06:48 7 MR. McCULLOCH: Thursday at 4:30.

12:06:50 8 THE COURT: All right. I hope someone
12:06:51 9 will facilitate the Municipalities' participation.

12:06:59 10 MR. McCULLOCH: I will ask my friends
12:07:00 11 from Ontario, since the Municipalities --

12:07:02 12 THE COURT: I am sure the
12:07:03 13 Municipalities will speak up, so you don't have to
12:07:05 14 worry about that part.

12:07:06 15 All right, were those the two items of
12:07:09 16 business?

12:07:10 17 MR. McCULLOCH: Yes, Your Honour.

12:07:12 18 THE COURT: All right, please go ahead.

12:07:14 19 EXAMINATION IN-CHIEF BY MR. McCULLOCH:

12:07:15 20 Q. Professor Beaulieu, I would like
12:07:16 21 to ask you some questions about your first report,
12:07:18 22 the one entitled "French, British and Aboriginal
12:07:21 23 Peoples in the Great Lakes Area 1600 to 1774,"
12:07:27 24 which is Exhibit 4380.

12:07:31 25 A. Okay.

12:07:32 1 Q. And I would like to ask you,
12:07:35 2 first, about the questions you were asked to
12:07:41 3 address in this report.

12:07:43 4 A. Yes, I had three questions:
12:07:47 5 Who used the Great Lakes and for what
12:07:49 6 purposes between 1701 and 1774?

12:07:52 7 And the proposal that I submitted when
12:07:58 8 I received these questions, I precised that I will
12:08:04 9 cover these questions really in connection with the
12:08:06 10 two other ones, because many people were in the
12:08:09 11 Great Lakes area and I had to cover the French, the
12:08:18 12 European presence in this region.

12:08:19 13 The second question: Did the French
12:08:21 14 feel themselves legally bound to seek permission
12:08:24 15 from Indigenous communities when they used the
12:08:26 16 Great Lakes and built forts and trading posts at
12:08:28 17 certain locations?

12:08:29 18 And the last one: How did relations
12:08:34 19 evolve between the British Crown and Indigenous
12:08:38 20 peoples from 1760 to 1774?

12:08:42 21 Q. Could you explain what the
12:08:43 22 connection in your mind is between the second
12:08:47 23 question and the first and third questions?

12:08:50 24 A. As I said, I have to precise what
12:08:58 25 I will do in my report with the first question, so

12:09:01 1 to understand for what reasons the French were
12:09:05 2 there and, after that, for what reasons the British
12:09:09 3 were there; what was their intention; and how their
12:09:12 4 objective, their intention, their understanding of
12:09:15 5 what they wanted to do could have influenced their
12:09:23 6 feelings or their understandings of their legal
12:09:26 7 obligations about their presence in this region.
12:09:30 8 Did they have to ask authorization? Did they ask
12:09:35 9 permission? It was connected at least in a very
12:09:39 10 general way to their objective, for what reason
12:09:42 11 they were there, what kind of activities they
12:09:46 12 wanted to do there.

12:09:46 13 And the third one, of course, it
12:09:54 14 concerns the change after the conquest of New
12:09:56 15 France, so how the British perceived their role,
12:10:01 16 what were their objectives and how this could have
12:10:04 17 influenced their way of thinking about their
12:10:06 18 obligation toward the Aboriginal people.

12:10:10 19 THE COURT: Sorry, just before you go
12:10:12 20 on, could whoever has control of the screens take
12:10:16 21 down the CV, which is distracting, assuming that is
12:10:19 22 not what we are looking forward to being questioned
12:10:21 23 about at this point. Mr. McCulloch, if you need it
12:10:24 24 there, that is fine, but --

12:10:26 25 MR. McCULLOCH: No, that is actually a

12:10:28 1 different document that we don't need at the
12:10:30 2 moment.

12:10:30 3 THE COURT: Okay, now we have the
12:10:31 4 report. I see the report now.

12:10:33 5 MR. McCULLOCH: Yes, this is the --

12:10:34 6 THE COURT: Well, that is fine, because
12:10:35 7 that is the questions this gentleman was just
12:10:37 8 dealing with, yes.

12:10:38 9 MR. McCULLOCH: Yes, this is the
12:10:38 10 introduction --

12:10:39 11 THE COURT: Yes, I didn't see that
12:10:43 12 page. All right, go ahead.

12:10:44 13 BY MR. McCULLOCH:

12:10:45 14 Q. Professor Beaulieu, could you tell
12:10:46 15 us how this first report is organized?

12:10:48 16 A. I decided to make three sections.

12:10:54 17 The first one covered the period from
12:10:58 18 the French settlement and expansion, started from
12:11:03 19 the beginning of the 17th century, and I close with
12:11:08 20 the capitulation of Montreal in 1760.

12:11:13 21 I think that from an historical point
12:11:16 22 of view, of course, the situations of New France
12:11:19 23 was not totally decided, but after the capitulation
12:11:23 24 of Montreal, the British were in control of the old
12:11:27 25 French places, posts and forts, so I decided to

12:11:30 1 close this section with the date 1760.

12:11:37 2 My intention in this section was to
12:11:41 3 give a very general background, to be sure that all
12:11:46 4 the necessary points will be known before covering
12:11:51 5 more precisely and more extensively the points
12:11:58 6 mentioned in the second and the third section.

12:12:01 7 So a very general overview of the
12:12:06 8 French presence, the French intention. The French
12:12:09 9 also I cover in this aspect, I can come back later,
12:12:15 10 their first legal framework, organizing their
12:12:21 11 presence in this region.

12:12:23 12 The second section was about movement
12:12:28 13 on the territory and occupations of areas. This
12:12:32 14 section is more closely connected to the second
12:12:36 15 question, did the French fail the obligations to
12:12:42 16 ask permissions to Aboriginal people for travelling
12:12:45 17 or for building some posts or some forts in this
12:12:49 18 region?

12:12:50 19 And the third section covered the
12:12:53 20 period going from 1760 to the Act of Quebec in
12:13:01 21 1774. I tried mainly to understand how the British
12:13:08 22 tried to impose, I would say, their rule after the
12:13:10 23 conquest of New France.

12:13:11 24 Q. And could you tell me, again
12:13:16 25 focussing on the highlights of the first section,

12:13:21 1 could you give us a quick overview of the
12:13:25 2 establishment of the colony and its expansion?

12:13:29 3 A. Yes, in this section I insist on
12:13:34 4 the fact that even if the first French, in the
12:13:40 5 first decades of the 17th century, the French did
12:13:43 6 many travels. They reached Huronia. Some of them
12:13:49 7 went further. But the most important phase of the
12:13:52 8 French expansions, if you want to take the history
12:13:58 9 of New France in a global perspective, it happens
12:14:05 10 after 1666, after the French military expeditions
12:14:09 11 against one of the five Iroquois nations. It was a
12:14:13 12 huge military operation and it led to conclusions
12:14:18 13 of a peace which will last for a few decades.

12:14:22 14 So from that moment, the French were in
12:14:25 15 a better position to explore the interior of the
12:14:31 16 continent. They were no more under pressure from
12:14:33 17 the Iroquois who stopped them, who attacked them,
12:14:36 18 who tried to limit them at very specific areas.

12:14:40 19 So these military operations from the
12:14:44 20 French in 1666 was a turning point in the balance
12:14:48 21 of power, I would say one of the turning points in
12:14:53 22 the balance of power between the French and the
12:14:55 23 Iroquois, but also the other Aboriginal Nations in
12:14:58 24 this region.

12:14:59 25 Q. Could I ask what factors made 1666

12:15:04 1 such a turning point?

12:15:05 2 A. As I said, it is the military
12:15:08 3 expeditions of the Regiment du Carignan-Salières,
12:15:14 4 the French troops sent by Louis XIV to wage war
12:15:19 5 against the Iroquois, and there was also peace
12:15:24 6 treaties concluded, the first one in 1665 and the
12:15:31 7 other ones in 1666.

12:15:33 8 And finally, in 1667, the Mohawks, one
12:15:39 9 of the most, I would say, the most resistant to the
12:15:44 10 French will also decided to conclude peace with the
12:15:47 11 French in 1667.

12:15:50 12 So this marked -- this placed the
12:15:57 13 French in a better position to explore the
12:15:59 14 continent. And one point that we have also to keep
12:16:02 15 in mind is that the wars of the Iroquois which led
12:16:06 16 to the destruction of Huronia in 1650 was another
12:16:12 17 turning point, because from the beginning of the
12:16:15 18 17th century up to the middle of the 17th century,
12:16:19 19 most of the fur that were collected by the French
12:16:24 20 were the result of voyages from the Hurons who came
12:16:31 21 from Georgian Bay to the St. Lawrence Valley for
12:16:34 22 selling their furs.

12:16:36 23 So after 1650, the French needed to
12:16:41 24 rebuild their commercial network to be able to
12:16:47 25 expand and to maintain their presence into the

12:16:49 1 interior of the continent.

12:16:51 2 Q. Could you tell us why are the
12:16:55 3 French so interested in furs?

12:16:59 4 A. It was the -- at first, I would
12:17:03 5 say, if we look at the first trips of the French in
12:17:09 6 16th century, they were not interested at all by
12:17:11 7 furs. They were looking for very important natural
12:17:17 8 resources. They were looking for gold. They
12:17:22 9 wanted at that time to be -- to imitate the Spanish
12:17:26 10 to the south, and they hoped to find some very
12:17:30 11 important resources to the north.

12:17:32 12 But it was not the case. And at the
12:17:36 13 end of the 16th century, a new trading activity was
12:17:39 14 developed and it was the fur trade "peau de
12:17:47 15 castor," I'm sorry, the beaver pelt, which was used
12:17:53 16 at that time to build some hats in France and in
12:17:59 17 Europe. So it was really interesting activities
12:18:02 18 and very -- with a large many benefits for the
12:18:06 19 French merchants engaged in these activities.

12:18:09 20 But we have also to understand that if
12:18:11 21 the French want to maintain this activity, they had
12:18:14 22 always to find new Aboriginal people able to sell
12:18:22 23 them furs. So at first it was in the St. Lawrence
12:18:26 24 Valley. After that it was in the Lake Huron.
12:18:30 25 After that it was the other Great Lakes. There is

12:18:33 1 a general tendency for the French to expand their
12:18:37 2 territory, to enter in contact with many Aboriginal
12:18:40 3 people, to be sure to get as many furs as possible.

12:18:45 4 So it was one of the leading factors
12:18:48 5 behind, I would say, the constant expansion of the
12:18:53 6 French into the interior of the continent.

12:18:57 7 Q. So you have said that one of the
12:19:00 8 factors for the French expansion was the pursuit of
12:19:04 9 furs for hats. Were there any other factors?

12:19:07 10 A. Yes, certainly I would say
12:19:12 11 geo-political or strategic regions, especially
12:19:14 12 after in the last decades of the 17th century when
12:19:20 13 England was able to attack the Dutch along the
12:19:30 14 Hudson Valley, so they created a new colony which
12:19:33 15 became New York which was a really important place
12:19:34 16 for the fur trade also.

12:19:36 17 And the British -- the English was able
12:19:39 18 to build some forts at Hudson Bay. So there was a
12:19:49 19 rivalry between the French and the British for
12:19:50 20 gaining access to the interior of the continent, so
12:19:52 21 this point is a political reality, certainly played
12:19:56 22 a role in the decisions of the French at some
12:19:58 23 occasions to stay there and to expand their
12:20:01 24 presence, to build some forts just to be sure that
12:20:04 25 the British will not take the place before them.

1 So this is, especially starting at the
2 end of the 17th century, one very important element
3 to understand the French policy, because the French
4 authorities were a bit more reluctant, I would say,
5 to expand New France just for the fur trade,
6 because it could be done, in their minds, by the
7 Aboriginal people.

8 It would be enough for them to wait in
9 Montreal and to wait that the Aboriginal people
10 came for selling their furs. It was at the first
11 stage of the French colonization, it was this model
12 that was in place and it worked very well because
13 the Wendat were -- the Huron were able to manage
14 this trade network.

15 But after that, as I said, the French
16 authority were more reluctant, but they were
17 conscious of the rivalry with the British, and it
18 was certainly for -- especially if we think to the
19 French authority in France, the preoccupations to
20 stop the British expansions by being there before
21 the British.

22 Q. Were the British and the French in
23 competition or in conflict anywhere else other than
24 North America?

25 A. North of country, but I'm just

12:21:29 1 familiar with the North American reality. But the
12:21:32 2 big -- the wars that were fought in Europe at the
12:21:36 3 end of the 17th century, during the 18th century,
12:21:41 4 had a real impact on North America. They were
12:21:46 5 transposed, I would say, in North America.

12:21:48 6 The only exception, I would say, is
12:21:50 7 probably the last war, the war of seven years, when
12:21:52 8 it started for the first time in North America in
12:21:55 9 the Ohio Valley. It was a really important sector
12:22:00 10 and the war started there in 1754 even before the
12:22:06 11 war was officially declared in Europe.

12:22:11 12 Q. So just for purposes of
12:22:13 13 clarification, the Seven Years' War actually starts
12:22:17 14 in 1754 rather than 1756?

12:22:20 15 A. Unofficially it started in 1754.
12:22:24 16 We can also say that it started unofficially in
12:22:29 17 1755 with the expeditions by the British toward the
12:22:34 18 Ohio Valley. But the official date is 1756 and it
12:22:40 19 is why we call Seven Years' War.

12:22:43 20 Q. Thank you, I just wanted to check
12:22:45 21 my arithmetic.

12:22:46 22 Could you tell us what kind of legal
12:22:52 23 framework the French thought they were working in
12:22:56 24 during this period of expansion?

12:22:58 25 A. For me, it was important to

12:23:00 1 understand what the French had in mind, to answer
12:23:06 2 correctly the second questions about their legal
12:23:08 3 obligations.

12:23:11 4 And what I understand, that the best
12:23:14 5 documents to try to understand the French legal
12:23:18 6 perspective was to go back to the French legal
12:23:20 7 documents, those given from the 16th century up to
12:23:26 8 the middle of -- up to 16 -- almost the end of 17th
12:23:33 9 century, the legal documents prepared by the Kings,
12:23:38 10 the Kings of France, for giving some power to
12:23:42 11 people, to companies, to go in North America and to
12:23:46 12 contribute to the implantation, installations of
12:23:53 13 the French sovereignty over this land.

12:23:56 14 It is why I started with the first real
12:24:02 15 important document, I would say, in this
12:24:04 16 perspective is the commission given to sieur de
12:24:11 17 Roberval in 1541. It was for the first time the
12:24:15 18 King of France giving very specific guidelines to a
12:24:19 19 French officer to be his lieutenant in this region
12:24:23 20 and to take the necessary measures to impose the
12:24:29 21 French rule in this region.

12:24:31 22 So I started with this first commission
12:24:36 23 and I followed with the other commissions. My
12:24:41 24 intention was not to take all of them, but to
12:24:42 25 select some very significant, to show that there

12:24:46 1 was a general trend from the beginning to the last
12:24:52 2 one is the one given to the West Indies Company in
12:24:58 3 1664 to show if we can establish a model that the
12:25:04 4 French authorities tried to establish to give some,
12:25:09 5 as I said, guidelines to the French who were in the
12:25:13 6 colony.

12:25:13 7 Q. Could you describe for us what the
12:25:16 8 principal features of this model that you found in
12:25:20 9 the documents you have just mentioned were?

12:25:23 10 A. Yes, one of the most important
12:25:28 11 characteristics, I would say, would be to not
12:25:32 12 consider the existence of an Aboriginal
12:25:36 13 sovereignty. There is different -- they knew that
12:25:40 14 this land was inhabited by Aboriginal people. They
12:25:45 15 don't -- especially if we look at the 16th century,
12:25:50 16 they did not know a lot about the Aboriginal
12:25:55 17 reality, but they knew, especially if we consider
12:25:58 18 the travels from Jacques Cartier in 1534 and 1535.
12:26:06 19 So the French had some ideas about this, the
12:26:09 20 occupations of this land.

12:26:10 21 But in their view, it was as an empty
12:26:13 22 land, a land that could be taken, that could be
12:26:18 23 possessed, a land in which the French could create
12:26:21 24 their sovereignty, implement their institutions,
12:26:27 25 their forts, their fortifications, where they can

1 grant lands to French people who will settle there,
2 without any preoccupation for the rights of the
3 Aboriginal people on this land.

4 It was -- this characteristic was
5 pretty clear in the first commission given to
6 Roberval by Francois I in 1541.

7 And we have the same general principle,
8 the same general idea, which -- in the following
9 commission given during the 16th century.

10 Q. Did this model change under Louis
11 XIV? You mentioned him earlier.

12 A. There is no -- I would say on the
13 basic principle there was no significant change.
14 Maybe that when we approach the 17th century, the
15 idea that it was necessary to maintain pacific
16 relations with the Aboriginal people, maybe that
17 this idea became more important and more
18 significant in the documents in the thinking of the
19 French authorities, but the basic principle that
20 the land could be taken, that the land could be
21 granted, that the land could be occupied, that the
22 French could travel on this land without any
23 preoccupations for the Aboriginal people, this very
24 general idea was present from, I would say, the
25 16th century until the last charter in 1664.

12:28:23 1 Q. Speaking also in general terms, in
12:28:30 2 terms of highlights, what, by the 18th century,
12:28:34 3 let's say after 1701, was the French role in
12:28:39 4 dealing with the multiplicity of Indigenous
12:28:42 5 peoples?

12:28:43 6 A. In 1701, there was a Great Peace
12:28:51 7 of Montreal which was --

12:28:54 8 Q. Professor Beaulieu, if you would
12:28:54 9 like to pause and take a drink of water.

12:28:56 10 A. Yes. Thank you.

12:28:59 11 In 1701, so as I mentioned earlier, a
12:29:05 12 Great Peace was concluded at Montreal between the
12:29:09 13 French, all the Five Nations, the five Iroquois
12:29:12 14 nations and all the allies of the French in the
12:29:19 15 Great Lakes area, in the St. Lawrence Valley, and
12:29:21 16 we know that maybe some of them were coming from
12:29:23 17 Acadia, so it was a huge meeting between the French
12:29:29 18 and Aboriginal people.

12:29:29 19 And of course, one of the objectives
12:29:31 20 was to establish peace between all those people.
12:29:34 21 It was, as the French expressed as their idea, it
12:29:39 22 was to create a universal peace, a peace which will
12:29:42 23 include all the Aboriginal allies of the French,
12:29:46 24 the Five Nations and the French themselves.

12:29:49 25 So it was probably the most important

12:29:51 1 aspect.

12:29:51 2 But during the negotiations, the
12:29:56 3 Governor of the colony, Louis-Hector du Callière,
12:30:04 4 decided to impose or to negotiate his role as a
12:30:06 5 mediator between all those Aboriginal people, and
12:30:10 6 in my report I used the word "harm mediator,"
12:30:18 7 because in these negotiations it was the most --
12:30:21 8 for this aspect the most important point is that
12:30:24 9 all the Aboriginal Nations did accept, when some
12:30:29 10 conflicts will arrive between them, to go to meet
12:30:32 11 with the Governor, to expose their problem, and to
12:30:34 12 ask him to give a decision and the promise that
12:30:38 13 they will accept the decision of the Governor.

12:30:42 14 And this condition was associated with
12:30:48 15 the idea that if one of the nations decided not to
12:30:53 16 accept the decisions of the Governor, the Governor
12:30:56 17 will, with the French troops, with his allies,
12:31:01 18 attack these nations.

12:31:03 19 So it is why he played this role of
12:31:08 20 mediator, but with the power to exercise some
12:31:11 21 military pressure to be sure that his decisions
12:31:15 22 will be respected by the Aboriginal Nations. It
12:31:20 23 was the theoretical model accepted at Montreal in
12:31:24 24 1701, and we know that, of course, the Aboriginal
12:31:29 25 Nations were trying to use it to their advantage.

12:31:34 1 We see that the Five Nations were a few
12:31:37 2 times going to see the Governor of New France and
12:31:39 3 asking them to fight with him the allies of New
12:31:44 4 France, because they considered that the allies of
12:31:45 5 New France did not respect the decisions of the
12:31:47 6 Governor.

12:31:48 7 So it doesn't mean that this
12:31:51 8 negotiations always played in favour of the French,
12:31:55 9 but it was a real important step in the way that
12:31:59 10 the French were able to position themselves at the
12:32:02 11 centre, in the middle of the relationship between
12:32:07 12 Aboriginal people and themselves.

12:32:10 13 Q. How did Indigenous peoples allied
12:32:14 14 with the French address the Governor of New France?

12:32:18 15 A. The French, I would say I think it
12:32:22 16 is around 1680, they were able to impose or to
12:32:26 17 recommend and in a formula that was accepted by the
12:32:30 18 Aboriginal people, they call him "Father." It was
12:32:34 19 the Father of all those Indian "Aboriginal
12:32:42 20 children." Those are the words used in the
12:32:44 21 documents. And of course we cannot read those
12:32:50 22 expressions as the strict hierarchy between a
12:32:56 23 father able to impose strictly his will to his
12:33:02 24 children, because there is two models at play in
12:33:06 25 these words.

1 The French, of course, had a more -- a
2 model with the father has all the power, but it is
3 not the case in the Aboriginal world where the
4 father did not have this kind of authority.

5 So we are not totally sure of the
6 understanding of the two groups, but it is clear
7 that there is a distinction between the father and
8 his children and probably that one of the
9 understandings of the Aboriginal people was that
10 the father will be someone who will protect, who
11 will assist, who will give them the presents, who
12 will give them some -- will furnish them with some
13 necessary merchandise, with the training.

14 So he has the role of the father as the
15 protector, which give him also much more influence
16 among the Aboriginal people because he has this
17 power not to threaten but to use his generosity, I
18 would say, as a means to exercise pressure on the
19 Aboriginal people.

20 Q. I would like actually to ask Ms.
21 Kirk to bring up the map on page 62 of the first
22 report, which is to say Exhibit 4380.

23 THE COURT: Did you say 62, Counsel?

24 MR. McCULLOCH: 61.

25 THE COURT: I have no map on --

12:34:46 1 MR. McCULLOCH: Well, there is a blank
12:34:48 2 page, there is 59 and then there is a blank page,
12:34:51 3 and then the map.

12:34:52 4 THE COURT: Are you in the first
12:34:53 5 report?

12:34:54 6 MR. McCULLOCH: "The French, British
12:34:56 7 and Aboriginal Peoples."

12:34:58 8 THE COURT: Okay. Well, I am calling
12:34:59 9 them the first, second and third report.

12:35:02 10 MR. McCULLOCH: So it would be the
12:35:02 11 first report.

12:35:03 12 THE COURT: And tell me again the page
12:35:04 13 number?

12:35:05 14 MR. McCULLOCH: It is not paginated --
12:35:07 15 oh, it's the page just before 61.

12:35:13 16 THE COURT: Yes, I have it now. In my
12:35:17 17 copy, it is an unnumbered page after page 59. All
12:35:24 18 right, please go ahead.

12:35:24 19 MR. McCULLOCH: I hope, Your Honour,
12:35:52 20 that is large enough for --

12:35:53 21 THE COURT: Well, I have a printed copy
12:35:55 22 as well, but yes, that is larger than the copy I
12:35:58 23 have looked at.

12:36:00 24 BY MR. McCULLOCH:

12:36:00 25 Q. You have given us a kind of

12:36:01 1 overview, as you have said in your first section.

12:36:04 2 I would like to move into your second section
12:36:07 3 which, as you have identified, deals with more
12:36:11 4 specific events and issues.

12:36:15 5 A. Yes.

12:36:16 6 Q. And I would like to ask you, were
12:36:21 7 there limits on the French freedom of movement?

12:36:24 8 A. No, there is no limit that the
12:36:38 9 French would have accepted to their liberty to
12:36:41 10 travel in these regions, and we can see that very
12:36:47 11 early. It started with the first trip of Jacques
12:36:52 12 Cartier just to show that even if it is Jacques
12:36:56 13 Cartier in the 16th century, he was not very
12:36:59 14 militarily well equipped.

12:37:01 15 He travelled and he decided to travel
12:37:03 16 along the St. Lawrence River, even if he knows that
12:37:08 17 the Iroquoian of the Quebec region were opposed to
12:37:15 18 this project, to go up the river and to reach the
12:37:19 19 Montreal -- what has become the Montreal area.

12:37:23 20 So from the beginning, I think that the
12:37:26 21 French could not have accepted to be under the
12:37:31 22 obligations to ask permission to Aboriginal people
12:37:34 23 for travelling on this continent.

12:37:38 24 And it is the same, the same situations
12:37:43 25 at the beginning of the 17th century. We know that

1 Samuel de Champlain would not have been submitted
2 to some kind of taxes to travel along the Ottawa
3 River. We have the examples from the Jesuit
4 Récollets who directly refused to be submitted to
5 these kind of taxes by the Aboriginal people.

6 And during the history of the French
7 regime, we can find some examples where the
8 Aboriginal people tried to impose their rule to
9 stop the movement of the French or to impose them
10 some kind of tribute to give them the right to
11 travel.

12 But it was never the intention of the
13 French to be subjected to this kind of treatment
14 from the Aboriginal people.

15 And the only time that I would say that
16 when Aboriginal people in the regions that are
17 covered in my report was able to restrict the
18 movement of the French, it was the Iroquois, the
19 Five Iroquois Nations, who by their wars
20 represented a real threat to the capacity of the
21 French to circulate along the St. Lawrence River,
22 within the Great Lakes region area.

23 And it is one of the reasons which led
24 the French to organize very important military
25 expeditions in that case to be sure that they won't

12:39:31 1 be submitted to that kind of restrictions to their
12:39:36 2 freedom to travel around the continent.

12:39:40 3 As I explained in my report, the
12:39:45 4 rivers, the lakes, those were -- it was the routes
12:39:49 5 used by the French. If they want to maintain their
12:39:53 6 presence into the interior of the continent, if
12:39:56 7 they want to be able to build there some forts, to
12:40:03 8 impose their rule, they could not be subject to the
12:40:05 9 control of the Aboriginal Nations.

12:40:09 10 So in my report, I covered this, I
12:40:16 11 covered, I would say, the efforts by some allies of
12:40:22 12 the French to limit the freedom of movement, but I
12:40:25 13 also covered the example of the decisions of the
12:40:29 14 French to use military forces to break, if I can
12:40:37 15 say that, the oppositions presented by the Five
12:40:44 16 Nations, Five Iroquois Nations, so --

12:40:47 17 Q. Just for clarification, the Five
12:40:50 18 Nations that you refer to become the Six Nations?

12:40:53 19 A. They became the Six Nations at the
12:40:55 20 beginning of the 18th century with the integrations
12:40:58 21 of the Tuscacoras.

12:41:03 22 Q. I have put a map up. It shows a
12:41:07 23 lot of forts but I am not going to ask you about
12:41:11 24 all of them. I just want to ask you some details
12:41:15 25 of specific forts that are particularly important,

12:41:21 1 such as, for example, Fort Frontenac?

12:41:23 2 A. Yes, I would say if we look at the
12:41:25 3 map in general, what we have to keep in mind, those
12:41:29 4 forts are -- most of them are located at very
12:41:33 5 strategic points. So for the French, it was really
12:41:36 6 important to control strategic areas. It was these
12:41:41 7 decisions which led Frontenac to build a fort at
12:41:46 8 the entrance of Lake Ontario.

12:41:49 9 And after that the forts were --
12:41:51 10 Niagara was also a pretty good example of the
12:41:55 11 necessity for the French to build some posts, some
12:42:01 12 forts at very strategic sites to protect their
12:42:09 13 trading network, to protect their capacity to
12:42:12 14 travel, to impose their presence into the interior
12:42:17 15 of the continent.

12:42:18 16 So you have Fort Frontenac, Fort
12:42:22 17 Niagara, Fort Detroit also which was considered as
12:42:25 18 a very strategic point for the French presence into
12:42:31 19 the interior of the continent.

12:42:32 20 Q. Fort Detroit has played a fairly
12:42:37 21 large part in this matter to date. Would you like
12:42:40 22 to elaborate about why Fort Detroit was a strategic
12:42:45 23 location?

12:42:45 24 A. It was a place where it was
12:42:50 25 well-connected to protect in the French, in the

12:42:54 1 mind of those who did the promotion of this fort,
12:42:58 2 to protect the French presence into the interior of
12:43:01 3 the continent.

12:43:02 4 What is strange in that case is that
12:43:05 5 this fort, the decisions to build this fort was
12:43:08 6 taken at the time when the French were considering
12:43:11 7 to close many other forts. There was a huge fur
12:43:15 8 trade crisis at that time and the French decided
12:43:19 9 for a few years to close some forts. But they
12:43:23 10 decided at this moment to open a new one in the
12:43:27 11 Detroit region.

12:43:30 12 And it was not the first time that they
12:43:32 13 tried to do that. They built a small fort during
12:43:38 14 one of -- following one of their wars with one of
12:43:44 15 the Five Nations, but at that time they had this
12:43:46 16 objective to create this place where, in the mind
12:43:48 17 of the French, many Aboriginal people will come and
12:43:52 18 form a huge settlement of French and Aboriginal
12:43:56 19 people.

12:43:57 20 It is one of the last, and maybe the
12:44:00 21 last, expressions of the will that the French had
12:44:05 22 to integrate the Aboriginal people within the
12:44:11 23 French society. I think I forgot to mention that
12:44:14 24 point, but one of the objectives of the French at
12:44:18 25 the beginning of the 17th century was not only to

12:44:22 1 convert the Aboriginal people, but to make them
12:44:25 2 French, to transform them in French people.

12:44:31 3 So this idea was still present in the
12:44:35 4 proposal made by Lamothe de Cadillac to build a new
12:44:42 5 fort in this area that he presented as a place
12:44:47 6 where not only the French but all Aboriginal people
12:44:48 7 would come, many Aboriginal people would come and
12:44:50 8 become progressively French citizens, if you want.
12:44:55 9 This idea disappeared after 1701, but it was still
12:45:00 10 -- it was the last expressions of this will.

12:45:03 11 Q. I see from the map that the proper
12:45:08 12 name for what we have been calling Fort Detroit is
12:45:14 13 Fort Pontchartrain; am I pronouncing that
12:45:17 14 correctly?

12:45:17 15 A. Yes, Pontchartrain was the name of
12:45:23 16 the minister responsible for the French colonies at
12:45:26 17 that time.

12:45:26 18 Q. Is there anything distinctive
12:45:32 19 about the history of Fort Niagara?

12:45:33 20 A. It is the most -- I have covered a
12:45:35 21 few examples in my report -- to understand that the
12:45:39 22 French felt they had the obligation to ask the
12:45:41 23 permission to the Aboriginal people before
12:45:46 24 establishing themselves, building forts within the
12:45:50 25 interior of the continent.

12:45:51 1 And Fort Niagara is, in my opinion, the
12:45:56 2 most ambiguous example, because you have -- the
12:46:02 3 French decided to build a fort there following
12:46:06 4 their expeditions, one of their military
12:46:08 5 expeditions of the 1680s, decided to create a
12:46:14 6 strong place there to control the Five Nations
12:46:19 7 Iroquois. It was a short-lived project, but at the
12:46:23 8 beginning they consider that they did not have to
12:46:26 9 ask the authorizations to the Five Nations before
12:46:28 10 building this fort.

12:46:30 11 When they decided to create, first of
12:46:35 12 all, a fur trade post, I would say, in this area,
12:46:40 13 and later a military infrastructure, they had a
12:46:48 14 strategic preoccupation because Fort Niagara was
12:46:54 15 located close to the Seneca, the most influential,
12:47:03 16 the most strongest of the Five Nations, so it was
12:47:06 17 not in a position where the French could
12:47:08 18 necessarily -- they knew that they will probably
12:47:10 19 met some problems if they decided to create this
12:47:16 20 fort.

12:47:16 21 So in my report I explain the different
12:47:19 22 strategies used by the French to obtain the consent
12:47:23 23 of the Five Nations, which was never a real consent
12:47:29 24 given by the league, by the Iroquois league, but a
12:47:34 25 partial consent given by some members of the

1 Iroquois Five Nations.

2 But it is the only case where we have a
3 clear expression that the French felt that if they
4 don't ask the consent, they will have to fight, and
5 they wanted to avoid this possibility. But we also
6 know from documents in the French archive that they
7 would, even if the Five Nations would have opposed
8 their -- refused to give them their permission,
9 they said that they would have to do it by using
10 military forces.

11 So it was a clear -- the clear
12 intention to settle there, and they maneuvered to
13 do it in a peaceful means, instead of using from
14 the beginning the military -- their military
15 strength, I would say.

16 Q. Also in this proceeding we have
17 heard a fair bit about the Ohio Valley. Could you
18 explain the function of the French forts along the
19 Ohio Valley?

20 A. Those forts were built at the very
21 end of the French regime. We have to know that
22 starting in the 1740s the Ohio Valley became one
23 very strategic region for the French and for the
24 British. It was not yet a sector open to
25 colonization, but the French knew that the British

12:49:16 1 were seriously interested to go there and to trade
12:49:23 2 there with the Aboriginal people.

12:49:25 3 And they saw this, the French saw this
12:49:29 4 region as a kind of -- for them, if the British
12:49:35 5 were able to settle there, it could mean the end of
12:49:38 6 New France, because from there the British would be
12:49:41 7 able to take control of the Great Lakes, they will
12:49:45 8 be able to take control of the route which
12:49:48 9 connected the Great Lakes to Louisiana in the
12:49:56 10 south.

12:49:56 11 So it was for the French a very
12:50:00 12 strategic region. They were not present, they had
12:50:03 13 no fur trade posts in this region at that time,
12:50:09 14 they had no forts. They are -- some nations there
12:50:14 15 were allies with them, but there was no real French
12:50:18 16 presence at that time in this area.

12:50:21 17 And in that case, their only motivation
12:50:23 18 was to build, to build some forts to protect this
12:50:27 19 region and to prevent the British to go there
12:50:30 20 before them.

12:50:33 21 And it is why it is a bit strange when
12:50:36 22 we look at what happened at the end of the French
12:50:39 23 regime. It was a region where we find no British,
12:50:43 24 no French, but so strategic that it started a war
12:50:47 25 between the French and the British.

12:50:50 1 And we can follow the strategy adopted
12:50:54 2 by the French in this region. They decided in a
12:51:01 3 unilateral way to build forts. They knew pretty
12:51:04 4 well that some Aboriginal people were living there.
12:51:08 5 They knew pretty well that many of them were
12:51:12 6 against this project of French installation,
12:51:15 7 because the Ohio Valley at that time was a place
12:51:19 8 for refugees, maybe not exactly the right word, but
12:51:25 9 for Aboriginal people who had to leave other
12:51:27 10 regions and who decided to settle in the Ohio
12:51:31 11 Valley regions. And for them, they would have
12:51:33 12 preferred to be not under the -- to be independent
12:51:38 13 from the British and from the French.

12:51:42 14 Q. Just as a point of clarification,
12:51:46 15 what are the Indigenous peoples in the Ohio Valley
12:51:50 16 escaping from or why would they --

12:51:53 17 A. From the east, from the British
12:51:56 18 colonies, you have the Delawares, you have the
12:51:59 19 Shawnees, you have the Menominees, you have also
12:52:03 20 some people from the Five Nations who decided to
12:52:05 21 leave the territory of the Five Nations, so it was
12:52:07 22 a mix of many people. And the only one I think
12:52:12 23 that could be considered at that time as original
12:52:16 24 Aboriginal people from this place were the Shawnees
12:52:24 25 that the French met at the end of the 17th century.

12:52:26 1 But it was a mix of Aboriginal people
12:52:29 2 living there, with a strong desire to stay neutral.
12:52:32 3 They didn't want to see the French or the British
12:52:35 4 to settle on their land. They would have liked to
12:52:38 5 be independent from the two colonial powers.

12:52:41 6 So when the French decided to build
12:52:46 7 those fort there, it was really against the desire
12:52:48 8 of the Aboriginal Nations present in that place.

12:52:54 9 Q. You mentioned Louisiana. The map
12:52:58 10 we have here, this is not all of New France, is it?

12:53:01 11 A. No. I decided to focus on the
12:53:06 12 Great Lakes region area.

12:53:09 13 Q. So what parts of New France aren't
12:53:12 14 on this map?

12:53:12 15 A. The northern part, which is
12:53:16 16 considered -- I think it is in 1717 I think that
12:53:23 17 the French authorities decided to cut New France in
12:53:26 18 two sections, Canada to the north and globally I
12:53:31 19 would say maybe the Ohio making the demarcation
12:53:35 20 between what could be considered as Canada and what
12:53:39 21 was dependent to Louisiana to the south.

12:53:40 22 Q. But Louisiana was part of the
12:53:42 23 French empire?

12:53:43 24 A. Yes, it was part of the French.
12:53:45 25 We can say that it was part of New France, but with

1 a separate government to the south than the one to
2 the north.

3 Q. Okay. Now, I think I would like
4 to move on to your third section.

5 A. Yes.

6 Q. Unless there is something you
7 would like to add about issues you discussed in
8 your second section that we haven't --

9 A. Maybe in the case of Niagara, in
10 my report I also explain why the Five Nations were
11 opposed to this French presence in the Ohio Valley.
12 The Five Nations or the Six Nations at that time
13 did consider that they had conquered those lands,
14 that those lands, the Ohio Valley, was part of
15 their empire, a place that they had won following
16 their wars in the 17th century.

17 So they considered that the French
18 should have asked them the authorizations before
19 doing something there, and the Iroquois clearly
20 said to the French that they would never authorize
21 them to go there to settle, that it was -- the
22 French could not do that if they cannot first
23 obtain the authorizations of the Five Nations.

24 And again, seeing the French documents
25 that the French clearly did not want to be

1 submitted to this kind of control imposed by the
2 Five Nations.

3 Q. And just to settle that point,
4 Fort Niagara remained a French fort until the
5 capitulation of Montreal?

6 A. Yes.

7 Q. Now, moving on to the third
8 section of your report, I would like to deal with
9 some initial aspects of it before we go into the
10 broader picture, just to get the chronology clear
11 of the major events.

12 A. Yes.

13 Q. You have mentioned the
14 capitulation of Montreal in 1760, but you mentioned
15 that that was not the definitive settlement of the
16 fate of New France. What was the definitive
17 settlement?

18 A. The Treaty of Paris in 1763 is
19 clearly the end, the real ending point of the
20 French presence in North America. So there was
21 three years where the French -- the British were, I
22 would say, in control of the old French area to the
23 north, because the British did not conquer
24 Louisiana and the colony in the Illinois country,
25 so the British were in control of the northern

1 part, I would say, of the French empire after the
2 capitulation of Montreal.

3 And between 1760 and 1763, the British
4 had to impose their rules to the old French allies.
5 We have to keep in mind also that the majority of
6 Aboriginal people fought with the French and not
7 with the British during the last war, during the
8 Seven Years' War.

9 So the British had to impose their rule
10 to some -- to the old French allies in this area.
11 So it was not an easy period. It was neither for
12 the British and neither for the Aboriginal people,
13 because until then they had been able to play the
14 rivalry between France and Great Britain and now
15 they were confronted with only one European power,
16 the British who were in a better position than the
17 French earlier to impose their rule.

18 Q. Did anything else happen in 1763
19 that is relevant to British-Indigenous relations?

20 A. The Pontiac Wars. If you want to
21 talk about the British decisions or --

22 Q. The British decisions, I was
23 thinking actually about the Royal Proclamation, if
24 that is not a leading question.

25 A. The Royal Proclamation is the most

12:58:30 1 famous, probably, document of the beginning of the
12:58:31 2 British regime in North America. It was -- the
12:58:40 3 decision to publish this Proclamation was taken
12:58:48 4 after the news of the great wars of Pontiac into
12:58:53 5 the interior of the continent.

12:58:55 6 So the British, after the signature of
12:58:57 7 the Treaty of Paris, had decided to revise their
12:59:01 8 Aboriginal or their Indian policy, and in their
12:59:05 9 report, one important idea that appeared in their
12:59:10 10 report was the idea to create a huge land reserve
12:59:17 11 for the Aboriginal people.

12:59:23 12 But at first it was not the intentions
12:59:25 13 of the British to explain this policy by a Royal
12:59:31 14 Proclamation. It was supposed to be integrated
12:59:36 15 within the instructions to the different Governors,
12:59:38 16 but Pontiac's War convinced the British authority
12:59:43 17 that they had to make, I would say, a public
12:59:47 18 announcement of their new policy and how they see
12:59:53 19 what they would try to put in place to improve
12:59:57 20 their relations with the Aboriginal people.

13:00:00 21 Q. And there is one more kind of
13:00:03 22 chronological fixed point that I want to ask you
13:00:06 23 about before we get into the substance of section
13:00:12 24 3. What is the significance of the Quebec Act for
13:00:17 25 Indigenous issues?

13:00:18 1 A. In my opinion, it was not -- it
13:00:26 2 was -- it is connected to Aboriginal matters,
13:00:32 3 because between 1763 and 1774, the British were
13:00:39 4 trying to find a way to manage in a better way
13:00:42 5 their relations with the Aboriginal people. They
13:00:46 6 have tried to manage their -- to control the
13:00:50 7 expansion into the interior of the continent. They
13:00:53 8 have tried to find a way to create better
13:01:00 9 regulations for the trade with the Aboriginal
13:01:02 10 people.

13:01:02 11 But they were unsuccessful to create a
13:01:04 12 real, how can I say that, a real functioning model,
13:01:12 13 can I say, something which will work correctly.
13:01:16 14 They were unable to stop the expansion. They were
13:01:19 15 unable to impose new regulations.

13:01:21 16 So the Quebec Act in a sense was a new
13:01:29 17 attempt, a new effort for the British to create a
13:01:32 18 new space. They decided to extend the limits of
13:01:35 19 the Province of Quebec to place this land under the
13:01:39 20 jurisdiction of the Governor of the Province of
13:01:44 21 Quebec.

13:01:44 22 The Royal Proclamation was officially
13:01:48 23 abolished, that is maybe not the right word in the
13:01:51 24 document, but this idea that it was no more, it
13:01:56 25 would be no more applied in this region.

13:01:59 1 But it doesn't mean, and I think it is
13:02:05 2 a really important point, it doesn't mean that the
13:02:08 3 British had decided to open freely those lands. It
13:02:10 4 was for them a way to exercise a better control by
13:02:14 5 giving the authority to only one Governor for the
13:02:18 6 regulation of trade and also for in the sense to
13:02:22 7 control the expansions within this territory.

13:02:27 8 MR. McCULLOCH: Your Honour, I believe
13:02:29 9 it is, well, one o'clock. Perhaps now would be a
13:02:35 10 good time for lunch, before I launch into section
13:02:38 11 3.

13:02:38 12 THE COURT: All right.

13:02:38 13 -- RECESSED AT 1:03 P.M.

14:21:44 14 -- RESUMED AT 2:21 P.M.

14:21:44 15 THE COURT: Thank you, Mr. Registrar,
14:21:46 16 for fixing our clock.

14:21:55 17 Just a minute, Mr. McCulloch.

14:22:03 18 MR. McCULLOCH: Thank you, Your Honour.

14:22:04 19 BY MR. McCULLOCH:

14:22:08 20 Q. Professor Beaulieu, before we
14:22:08 21 broke, we established some chronological points and
14:22:11 22 I am now going to ask you about the highlights of
14:22:13 23 section 3 of your report, "British-Aboriginal
14:22:19 24 Relations, 1760-1774."

14:22:23 25 THE COURT: I am not sure you heard me,

14:22:24 1 sir, I said just a minute, please.

14:22:26 2 MR. McCULLOCH: Oh, I'm sorry.

14:22:27 3 THE COURT: That is okay. It is still
14:22:29 4 working, slowly.

14:23:27 5 Please go ahead.

14:23:29 6 MR. McCULLOCH: Thank you, Your Honour.

14:23:29 7 BY MR. McCULLOCH:

14:23:33 8 Q. Professor Beaulieu, before we
14:23:34 9 broke, we had established some chronological
14:23:39 10 marking points in the first decades of the British
14:23:45 11 regime.

14:23:48 12 I would now like to ask you about some
14:23:54 13 of the high points of section 3 of your report, the
14:23:57 14 one entitled "British-Aboriginal Relations,
14:24:00 15 1760-1774." Could you tell me, how did the British
14:24:07 16 feel after the surrender, the capitulation of
14:24:10 17 Montreal, about French forts?

14:24:13 18 A. It is clear that in their mind
14:24:17 19 they had to occupy those forts, and there is
14:24:20 20 provisions, clauses, a clause in the articles of
14:24:24 21 the capitulations of Montreal about this point.

14:24:29 22 So it was clear that they had to go
14:24:30 23 there to take -- to replace the French soldiers in
14:24:34 24 those forts by British soldiers. So they did very
14:24:37 25 quickly, after the defeat of the French in 1760.

14:24:42 1 Q. Did the British feel they had to
14:24:45 2 talk to anyone before occupying the forts?

14:24:47 3 A. We have no indications that they
14:24:51 4 considered that they had to obtain the
14:24:54 5 authorizations or the permissions of the Aboriginal
14:24:57 6 people. They arrived. They just put their
14:25:00 7 soldiers in the forts, and it was, in my mind, and
14:25:07 8 I wrote it in my report, it was probably one of the
14:25:11 9 first aggressive actions by the British toward the
14:25:13 10 Aboriginal people.

14:25:14 11 It was perceived as a real violent
14:25:21 12 action because the Aboriginal people considered
14:25:24 13 that they should have been asked by the British
14:25:27 14 before seeing the soldier installing themselves
14:25:35 15 within those forts.

14:25:36 16 Q. What was the Aboriginal reaction
14:25:38 17 to what you have described as aggressive acts?

14:25:42 18 A. They expressed, I would say, their
14:25:44 19 concerns about this presence of British soldiers
14:25:47 20 within the interior of the continent. We have a
14:25:52 21 few examples where -- in which the Aboriginal
14:25:56 22 people are asking, for example, to William Johnson,
14:26:00 23 what is the objective of this military presence of
14:26:04 24 the British on their land, on the forts built -- in
14:26:10 25 the forts built by the French.

14:26:14 1 They saw it as a real threat, and it
14:26:17 2 was perceived by them as a kind of aggression,
14:26:21 3 especially because if we look at the Ohio Valley,
14:26:26 4 the British had probably promised that they will
14:26:29 5 abandon the forts after the defeat of the French
14:26:32 6 and they did not abandon them. They just
14:26:35 7 reinforced them.

14:26:36 8 So there was a real fear from the
14:26:38 9 Aboriginal people that it was the first step in the
14:26:43 10 project of the British to impose their domination.

14:26:45 11 Q. And what form did the Aboriginal
14:26:52 12 objection to the British occupation of the forts
14:26:55 13 take?

14:26:56 14 A. The most significant reaction was
14:27:03 15 the Pontiac Wars. This war was the result of, as I
14:27:09 16 said, of the unilateral occupation by the British
14:27:12 17 of the forts, but also it was created by other
14:27:15 18 factors, as the decisions of the British to stop
14:27:19 19 the distribution of the presents to Aboriginal
14:27:22 20 people.

14:27:25 21 It was also connected to the decision
14:27:26 22 of the British to reduce the selling of ammunition
14:27:34 23 and guns and all the things that the Aboriginal
14:27:39 24 people needed at that time for their hunting
14:27:42 25 activities but which was perceived by the British

14:27:46 1 as a potential threat if -- it was especially the
14:27:53 2 thinking of Jeffrey Amherst. He thought that if he
14:27:56 3 gave too much arms and ammunitions to the
14:27:59 4 Aboriginal people, this could be used by those
14:28:04 5 people against the British.

14:28:05 6 Q. Could you tell us, Professor
14:28:07 7 Beaulieu, who was Jeffrey Amherst? What position
14:28:12 8 did he occupy?

14:28:13 9 A. Jeffrey Amherst was the
14:28:14 10 Commander-in-Chief of the British army in North
14:28:18 11 America. He was the head of the military
14:28:23 12 operation. He was the great -- I would say the
14:28:26 13 great general behind the defeat of -- the success,
14:28:33 14 the military success of the British, and he had a
14:28:37 15 very, very negative view of the Aboriginal people.

14:28:40 16 He was ready to, as I explained, maybe
14:28:42 17 not in this report but the other one, was ready to
14:28:45 18 make some promises, but when the war, after the end
14:28:49 19 of the war, he had a more radical attitude toward
14:28:52 20 the Aboriginal people and he was at the origin of
14:28:55 21 this radicalizations, I would say, of the British
14:28:59 22 policy towards the Aboriginal people.

14:29:01 23 Q. What was this radicalization of
14:29:04 24 British policy?

14:29:05 25 A. As I mentioned, he decided to cut

14:29:11 1 the presents. He decided to reduce the selling of
14:29:16 2 ammunition and arms. He decided to consider them
14:29:21 3 as not important allies. We know also that some of
14:29:27 4 his officers in the different forts did not treat
14:29:32 5 very well the leaders of those communities.

14:29:35 6 So a series of actions which gave the
14:29:39 7 impressions that the British were not respectful
14:29:42 8 and were not interested by the alliance with the
14:29:47 9 Aboriginal people.

14:29:47 10 And in this perspective, the decisions
14:29:50 11 to cut the annual distribution of presents was
14:29:54 12 certainly a sign that the British did not really
14:29:58 13 want to maintain a peaceful relationship that the
14:30:02 14 French had installed or created before the
14:30:07 15 conquest.

14:30:07 16 Q. What was the British approach to
14:30:10 17 the fur trade immediately after the capitulation of
14:30:13 18 Montreal?

14:30:14 19 A. They tried to impose some new
14:30:18 20 regulations. William Johnson especially was in
14:30:23 21 favour of a policy to centralize all the trading
14:30:29 22 operations at some specific forts. He considered
14:30:32 23 that it was not a good thing to let the merchants
14:30:36 24 to live among the Aboriginal people, to circulate
14:30:40 25 freely among the Aboriginal people.

14:30:42 1 So he wanted to centralize all those
14:30:45 2 trading activities at some specific fort and to
14:30:49 3 place those commercial relations under the
14:30:53 4 supervision of military officers. So it was one of
14:30:56 5 his great -- one element in his plan to reorganize
14:31:04 6 the trade with the Aboriginal people.

14:31:06 7 I would say also that for the British
14:31:10 8 at that time, they were conscious that the trade
14:31:13 9 could be a tool in their efforts to dominate, to
14:31:17 10 control, to influence the Aboriginal people,
14:31:20 11 because at that time they were the only European
14:31:25 12 power in place able to sell to some European
14:31:33 13 merchandise that the Aboriginal people needed at
14:31:36 14 that time.

14:31:37 15 Q. And what was the effect or what
14:31:43 16 were the effects of Pontiac's War?

14:31:45 17 A. In this report I insist on the --
14:31:51 18 as I think I mentioned it earlier, it incited the
14:31:56 19 British to publish a Royal Proclamation for
14:31:58 20 explaining what will be the policy that the British
14:32:02 21 will follow toward the Aboriginal land.

14:32:06 22 So it was from -- if we look at the
14:32:10 23 political level in London, it was the most
14:32:15 24 important reaction, the decision to publish this
14:32:22 25 Proclamation in an effort to reassure to the

14:32:26 1 Aboriginal people.

14:32:27 2 Q. What was the military result of
14:32:33 3 Pontiac's War?

14:32:34 4 A. The war was -- it was successful
14:32:37 5 at the beginning because the Aboriginal people were
14:32:39 6 able to attack many forts, many British forts, but
14:32:43 7 in the end they were quickly obliged to renounce
14:32:48 8 their project.

14:32:51 9 So what started at first as a plan to
14:32:54 10 expose the British within the interior of the
14:32:58 11 continent finished with the re-occupation by the
14:33:01 12 British of the forts that the Aboriginal people had
14:33:05 13 not necessarily destroyed but captured, that the
14:33:12 14 Aboriginal people captured those forts. So the
14:33:14 15 British were able to re-occupy those forts very
14:33:16 16 quickly.

14:33:16 17 Q. Were there any forts that Pontiac
14:33:23 18 supporters did not take?

14:33:24 19 A. Yes, the most important forts,
14:33:26 20 those who had been, I would say, very well
14:33:31 21 fortified during the French regimes were in a state
14:33:35 22 to resist to the Aboriginal people's assaults. So
14:33:41 23 Detroit was able to resist and Niagara was able to
14:33:45 24 resist, and Fort Pitt also. So those forts who
14:33:49 25 fell at the hands of the Aboriginal people were the

14:33:53 1 posts which were not well defended necessarily by
14:33:58 2 the British.

14:33:59 3 And in all the cases, it was not the
14:34:01 4 result of, I would say, frontal attack by the
14:34:05 5 Aboriginal people. It was always they used
14:34:10 6 different strategies to avoid to attack directly
14:34:13 7 the fort, even if the forts were not very strong.

14:34:15 8 Q. Could you explain what you mean by
14:34:19 9 "different strategies"?

14:34:20 10 A. Oh, they used -- how can I say
14:34:25 11 that? They used tricks to enter into the fort
14:34:27 12 under the pretense of playing some game or just
14:34:31 13 coming for trading. So they maneuvered to be sure
14:34:36 14 to be able to enter within the fort and not to
14:34:39 15 attack when all the doors would have been closed.

14:34:43 16 Q. You mentioned earlier that the
14:34:47 17 Quebec Act marked a change in the policy in the
14:34:52 18 Royal Proclamation in terms of restraining
14:34:55 19 settlement. Are there any events -- were there any
14:34:58 20 events between 1760 and 1774 that indicated a shift
14:35:05 21 in the British attitude towards colonization?

14:35:09 22 A. I think the general attitude did
14:35:11 23 not change. What we can say is that the
14:35:16 24 unwillingness of the British to use the necessary
14:35:21 25 means to impose their strategy. As I mentioned, I

14:35:26 1 don't think that the Quebec Act was the result of
14:35:28 2 the will of the British to open those lands to
14:35:31 3 colonization. It was just another political or
14:35:38 4 juridical measure adopted by the British to
14:35:40 5 maintain this policy of controlling as much as
14:35:47 6 possible the expansion.

14:35:47 7 So we can see this policy in the Royal
14:35:49 8 Proclamation, but after the publication of the
14:35:52 9 Royal Proclamation, there is no -- we cannot see
14:35:55 10 any real intention of the British to spend the
14:36:01 11 necessary money, I would say, to be sure that this
14:36:05 12 policy would be respected, and it would have -- if
14:36:08 13 the British had really wanted to stop the
14:36:12 14 colonization, to force the colonists to respect the
14:36:18 15 line established by the Royal Proclamation, it
14:36:20 16 would have implied the use of many, many soldiers
14:36:24 17 to be sure that the line won't be crossed by those
14:36:28 18 colonizers.

14:36:29 19 Q. Did the line established by the
14:36:33 20 Royal Proclamation stay the same from 1763 to 1774?

14:36:39 21 A. No, very early some -- I would say
14:36:42 22 that the pressure from the colonies, especially
14:36:47 23 from the colonies of the east coast, led the
14:36:50 24 British to make some adjustments to that line, and
14:36:54 25 there was -- for me it is an indication that there

14:36:57 1 was no real intentions to invest, to take the
14:37:00 2 necessary measures to stop these colonizations.

14:37:05 3 And the example that I gave in my
14:37:08 4 report is the Treaty of Fort Stanwix in 1768, so
14:37:12 5 only five years after the adoption of the Royal
14:37:15 6 Proclamation, the establishment of a line was
14:37:17 7 supposed to be a clear demarcation between the land
14:37:20 8 open to colonization and land reserved as hunting
14:37:26 9 grounds for Aboriginal people. You have this
14:37:27 10 Treaty concluded by William Johnson, and I think it
14:37:30 11 is more than 2 million acres of land which were
14:37:35 12 bought at that time in only one treaty.

14:37:39 13 So it is a clear indication that even
14:37:43 14 if we can see a will to control the expansion,
14:37:49 15 there were other forces behind the expansion and
14:37:53 16 that the British were not always in a position to
14:37:57 17 stop.

14:37:57 18 Q. We are going to be meeting William
14:38:00 19 Johnson again and again in your next report, but
14:38:03 20 since you have mentioned his name, could you tell
14:38:07 21 us who William Johnson was?

14:38:09 22 A. At the conquest of New France,
14:38:11 23 William Johnson was the Superintendent of Indian
14:38:14 24 Affairs for the Northern Department. In 1755,
14:38:22 25 after, I would say, a few years of discussion and

14:38:25 1 reflection, the British decided it was necessary to
14:38:30 2 reorganize their Indian Affairs policy.

14:38:35 3 Up to 1755, each colony was in a
14:38:39 4 position to negotiate directly with the Aboriginal
14:38:45 5 people, so it has led to a very incoherent Indian
14:38:50 6 policy. And the British at that time were seeing
14:38:52 7 the French having a core and centralized Indian
14:38:57 8 policy, and they consider that if they want to be
14:38:59 9 in a position to oppose the French ambition, they
14:39:04 10 have also to put in place a new structure, new very
14:39:10 11 specific leaders, and to be sure that they will --
14:39:18 12 that those in charge of the negotiations with the
14:39:20 13 Aboriginal people will be able to maintain a clear
14:39:22 14 line and not different lines adopted by different
14:39:25 15 colonies.

14:39:26 16 So the Superintendent -- two
14:39:37 17 Superintendencies were created in 1755, one for the
14:39:40 18 south and another one for the north, and William
14:39:42 19 Johnson was in charge of the north. So in theory,
14:39:45 20 he was in charge of all the negotiations with the
14:39:49 21 Aboriginal people. In practice, we can see that in
14:39:53 22 the first years it was not necessarily easy for him
14:39:56 23 to impose his sole and exclusive authority in the
14:40:02 24 negotiations with the Aboriginal people.

14:40:05 25 So there was a lot of pressure from

14:40:08 1 different colonial actors to contest this
14:40:12 2 authority.

14:40:12 3 And again, in 1768, at the same time as
14:40:16 4 the Treaty of Fort Stanwix was negotiated, the
14:40:21 5 power of the Superintendents were greatly reduced,
14:40:26 6 so it was -- it came to, I would say -- it became
14:40:31 7 less influenced, less determinant in the
14:40:37 8 negotiations with the Aboriginal people.

14:40:37 9 So this policy, this will of
14:40:41 10 centralizing the Indian Affairs was very strong
14:40:43 11 during the Seven Years' War, but it quickly, I
14:40:46 12 would say, reduced after 1763.

14:40:54 13 Q. Do you have an opinion as to why
14:40:55 14 it was reduced?

14:40:56 15 A. There is, as I said, different
14:41:01 16 forces behind the British policy. Of course, some
14:41:06 17 considered that the British expansion should be
14:41:10 18 stopped because it was a source of problems, of
14:41:15 19 wars with Aboriginal people, but many influential
14:41:20 20 people in London, in the colonies, were encouraging
14:41:23 21 the opening of the west.

14:41:25 22 Many people in the colonies, and they
14:41:28 23 were supported by people in London, said that the
14:41:32 24 war against the French was because the British
14:41:35 25 wanted to occupy those lands and they were very,

14:41:38 1 very critical when they saw that the British, after
14:41:42 2 the Treaty of Paris, decided to stop the
14:41:46 3 colonizations and to reserve this land for
14:41:48 4 Aboriginal people.

14:41:48 5 So when we see -- when we follow all
14:41:53 6 the debates about the relevance, I would say, of
14:41:57 7 the British policy after 1763, we can see a lot of
14:42:02 8 pressure in London, in the colonies, to open this,
14:42:07 9 to re-adjust, the word probably "re-adjust" the
14:42:12 10 line, but sometimes it is not only an adjustment,
14:42:15 11 it is really an expansion of the line.

14:42:17 12 And for the British, it looks like it
14:42:19 13 was easier to negotiate, to displace or -- or not
14:42:24 14 remove, but reorganize the line than to put in
14:42:27 15 place the measure to stop the colonization.

14:42:28 16 So like if they knew that it won't be
14:42:32 17 possible to stop the colonization, they just tried
14:42:35 18 to reorganize by redefining a new line.

14:42:41 19 Q. Thank you. Those are the
14:42:43 20 questions about your first report.

14:42:46 21 I would like to ask Ms. Kirk to display
14:42:54 22 SC1380. It is the report of Michel Morin entitled
14:43:04 23 "Alliance, Peace Treaties and Aboriginal
14:43:09 24 Territories" and it is dated November the 20th,
14:43:13 25 2016.

14:43:19 1 Oh, sorry, that should be May 11, 2017.

14:43:29 2 I don't know why.

14:43:30 3 And I would suggest, Your Honour, that

14:43:33 4 we make this a numbered exhibit.

14:43:37 5 THE COURT: Why?

14:43:38 6 MR. McCULLOCH: Sorry, a lettered

14:43:39 7 exhibit, I'm sorry.

14:43:40 8 THE COURT: Well, we haven't heard from

14:43:43 9 this gentleman in this trial, but it has gone up

14:43:49 10 again, but it looks like it was prepared for this

14:43:51 11 trial, is that correct?

14:43:52 12 MR. McCULLOCH: That's correct. It is

14:43:57 13 an express reply to Professor Beaulieu's report.

14:43:59 14 THE COURT: Oh, is that right, is that

14:44:00 15 the reply witness? I am always forgetting the name

14:44:02 16 of that gentleman.

14:44:03 17 MS. PELLETIER: That's correct, Your

14:44:04 18 Honour.

14:44:04 19 THE COURT: So I probably have this

14:44:05 20 report. I have no problem with it being marked as

14:44:07 21 a lettered exhibit, if that is what you intended to

14:44:09 22 say.

14:44:10 23 MR. McCULLOCH: Yes, it was, Your

14:44:11 24 Honour.

14:44:11 25 THE COURT: Mr. Registrar?

14:44:11

1

THE REGISTRAR: Exhibit Z2.

2

EXHIBIT NO. Z2: Expert Report of

3

Professor Michel Morin entitled

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"Alliances, Peace Treaties and

5

Aboriginal Territories in the Great

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Lakes Area During the French Regime

14:44:19

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(1603-1760)," dated May 11, 2017.

14:44:19

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BY MR. McCULLOCH:

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Q. Professor Beaulieu, are you

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familiar with this report?

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A. Yes.

14:44:22

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Q. Do you have any general comments

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to make about agreements or disagreements before we

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get into some of the specifics?

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THE COURT: Well, just pausing there, I

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suppose that is okay. I mean, this is an 86-page

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report. Are you really asking this gentleman to

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make general comments? It is okay if you really

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want to, but it seems like you are asking a lot.

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MR. McCULLOCH: I believe he is

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prepared to make some general comments about where

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he agrees.

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THE COURT: I take it Canada will not

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24

be objecting to this gentleman testifying in reply

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when the time comes?

14:45:06 1 MR. McCULLOCH: No, Your Honour.

14:45:07 2 THE COURT: Because there is no
14:45:08 3 presumptive right to call him.

14:45:11 4 MR. McCULLOCH: No, Your Honour, we
14:45:12 5 have agreed that he can be called in reply.

14:45:14 6 THE COURT: All right. Please re-ask
14:45:17 7 your question.

14:45:18 8 BY MR. McCULLOCH:

14:45:19 9 Q. Professor Beaulieu, do you have
14:45:20 10 any general remarks about where you agree with the
14:45:25 11 overall report by Professor Morin?

14:45:30 12 A. I would say that I agree with
14:45:32 13 specific points. I agree, for example, on the
14:45:35 14 importance of alliances in the history of
14:45:43 15 French-Indigenous history. It is a point that
14:45:45 16 Professor Morin mentioned and I totally agree with
14:45:48 17 this argument and it is an argument that I present
14:45:50 18 in my report and that I have already presented a
14:45:52 19 lot of times.

14:45:53 20 So there is no debate in my mind on
14:45:55 21 this point that the importance of -- that the
14:46:01 22 alliances with the Aboriginal people were
14:46:07 23 essential, really essential to the building of this
14:46:11 24 French empire.

14:46:11 25 But I disagree with the conclusions

14:46:15 1 which follow this point. So we don't have the same
14:46:20 2 view of what this importance implies, especially
14:46:26 3 concerning the obligations for the French to ask
14:46:32 4 permission to the Aboriginal people to travel over
14:46:36 5 the land or to build some forts.

14:46:41 6 I also agree that we find mention of
14:46:47 7 the French desire to keep peaceful relations with
14:46:51 8 the Aboriginal people in the commission that I
14:46:54 9 mentioned earlier. We have mentioned in the
14:46:58 10 documents of the 16th century, 17th century, and it
14:47:05 11 is clear that we can -- not we can, but we find in
14:47:08 12 those documents mention that the French had to
14:47:13 13 maintain as much as possible pacific relation with
14:47:19 14 the Aboriginal people.

14:47:19 15 And I also agree with Professor Morin
14:47:23 16 that this was in part the result of the desire of
14:47:26 17 the French to distance themselves from the Spanish
14:47:29 18 policy. The Spanish in 16th and 17th century had a
14:47:36 19 pretty -- very bad reputation. Their colonial
14:47:42 20 enterprise to the south was perceived in Europe as
14:47:52 21 horrible, and the British, the English, the French,
14:47:54 22 the Dutch, all those people who went in North
14:48:00 23 America officially want to distance themselves, to
14:48:02 24 say that we won't do the same thing as the Spanish
14:48:04 25 did.

14:48:05 1 And I think that one of the reasons
14:48:07 2 that we find those mention about the importance to
14:48:12 3 maintain pacific relations within the commissions
14:48:18 4 of the 16th and 17th century is the result of this
14:48:22 5 will to publicly demonstrate that the French
14:48:27 6 colonizations will not be so harsh, will not be so
14:48:33 7 destructive for the Aboriginal people, but that the
14:48:37 8 French will -- they want to go there, to convert
14:48:43 9 them, to -- not to kill them, but to integrate them
14:48:48 10 within their colonial world.

14:48:54 11 But again, I don't agree with the
14:48:56 12 conclusions that we saw. So I agree that it is
14:49:00 13 mentioned. I agree with him about the general
14:49:03 14 context, but not with the conclusions that we have
14:49:06 15 to arrive based on this point.

14:49:11 16 THE COURT: I am going to interrupt. I
14:49:13 17 don't usually interrupt, but twice, sir, in your
14:49:15 18 answer you have said "pacific" relations, and what
14:49:20 19 did you mean by "pacific"?

14:49:22 20 THE WITNESS: Specific.

14:49:23 21 THE COURT: You said "pacific"
14:49:26 22 relations. And I just wonder --

14:49:28 23 THE WITNESS: Peaceful.

14:49:29 24 THE COURT: Peaceful.

14:49:30 25 THE WITNESS: Peaceful, I'm sorry.

14:49:33 1 THE COURT: That makes a lot more
14:49:34 2 sense.

14:49:34 3 THE WITNESS: Yes, peaceful relations
14:49:34 4 with the Aboriginal people.

14:49:34 5 THE COURT: I would rather have the
14:49:37 6 clarification somewhere near the same spot in the
14:49:39 7 transcript. Please go ahead, sir.

14:49:41 8 BY MR. McCULLOCH:

14:49:41 9 Q. I would like now to ask some
14:49:43 10 questions about specific points in Professor
14:49:47 11 Morin's report. Could you go to page 11 of the
14:49:50 12 report.

14:49:51 13 A. Yes.

14:49:52 14 Q. You see the section entitled
14:50:04 15 "Principles of the law of nations"?

14:50:05 16 A. Yes.

14:50:06 17 Q. And do you see that Professor
14:50:08 18 Morin talks about the discussions about what he
14:50:11 19 calls normative guidance?

14:50:14 20 A. Yes.

14:50:15 21 Q. Do you have any comments about the
14:50:18 22 effect of this law of nations and normative
14:50:22 23 guidance and its debate on actual French policy?

14:50:26 24 A. I don't think it is relevant to if
14:50:29 25 we want to really understand the French policy or

14:50:32 1 the French legal framework, because there is no
14:50:38 2 specific, I would say, code of law.

14:50:43 3 When you are talking about the law of
14:50:44 4 nations, we are talking about a series of
14:50:47 5 discussion, authors writing about the rights of the
14:50:54 6 Aboriginal people or writing more generally about
14:50:56 7 what should be considered as a right war, a wrong
14:51:00 8 war, what were the right people in this context.

14:51:06 9 So there is no specific code of law
14:51:10 10 that we can say, look, the French knew that this is
14:51:14 11 a rule and they decided to apply. There is a lot
14:51:17 12 of contradiction among those authors. There is no
14:51:20 13 consensus about what should be done or not done.
14:51:25 14 And there is no, I would say, supra-national
14:51:30 15 institutions able to argue about the obligations of
14:51:32 16 the French to choose this kind of policy instead of
14:51:36 17 another one.

14:51:37 18 And to my knowledge, there is no
14:51:39 19 document showing that the French were -- they
14:51:45 20 decided to look at what the authors had written and
14:51:49 21 to apply those rules within the colonies.

14:51:53 22 So there is no connection between
14:51:56 23 different -- the different books, different ideas
14:52:01 24 developed by the authors, theologians,
14:52:07 25 philosophers, jurists about what should be the

1 policy of the Europeans. There is no indications
2 that the French were looking at this and trying to
3 apply those rules in North America.

4 The only example that I know is the
5 work of a French jurist Marc Lescarbot, who wrote
6 an "History of New France," "Histoire de la
7 Nouvelle-France," in 1609, and he clearly knew the
8 debate about the rights of the Aboriginal people.
9 He clearly knew the positions of some theologians
10 as Vitoria, but he said the French did not have to
11 follow those lines.

12 For him, it was a kind of divine right
13 of the French to go there and to take possession of
14 the land. Of course the French should not --

15 Q. Professor Beaulieu, you mentioned
16 I believe it was Vitoria?

17 A. Yes.

18 Q. Could you explain who that was?

19 A. He is a theologian who was
20 obliged -- obliged, no. Decided to intervene in
21 the debate about the right of the Aboriginal people
22 under the Spanish domination, and he was highly
23 critical about the action and the motivation, the
24 justification taken by the Spanish, and he was --
25 all his main -- I would say his main argument is

14:53:43 1 that the Spanish did not have the right to do what
14:53:45 2 they did, the Spanish should stop their colonial
14:53:50 3 enterprise. If we follow his reasoning to the end,
14:53:53 4 the Spanish should have left South America and go
14:53:57 5 back in Spain.

14:53:58 6 So he was highly critical about the
14:54:02 7 logic behind this colonial enterprise and he did
14:54:06 8 not consider that the Pope had the right to give
14:54:10 9 this land to the Spanish. He did not consider that
14:54:12 10 the Spanish had the right to enslave Aboriginal
14:54:16 11 people. He was highly, highly critical about the
14:54:18 12 actions of the Spanish.

14:54:21 13 So this probably at the end of 16th
14:54:26 14 century and the beginning of the 17th century, this
14:54:29 15 author was the most famous of his time, and we can
14:54:34 16 suppose that Marc Lescarbot knew him when he wrote
14:54:40 17 his work on the -- we can suppose that he knew this
14:54:53 18 book, but he did not write that the King of France
14:54:58 19 should follow the recommendations of this
14:55:03 20 theologian.

14:55:05 21 So I did not discuss this. I am not
14:55:08 22 saying that those authors and their writings are
14:55:12 23 not interesting. It is fascinating for the
14:55:16 24 intellectual history. It is very fascinating to
14:55:20 25 try to understand how the Spanish but how the

1 Europeans in general tried to understand the logic
2 behind the colonial enterprise and tried to justify
3 or to criticize so far the history of the ideas.
4 It is really fascinating.

5 But as I said, I don't think that we
6 can say that there was a law of nations that was
7 applied in New France by the French authorities.

8 Q. Do we have any indication of what
9 the King of France thought about this debate?

10 A. No direct indication, but again,
11 the best indications is the work of Marc Lescarbot.
12 His book was dedicated to the King, and so a book
13 dedicated to the King in which a jurist is arguing
14 in favour of a unilateral taking possession of the
15 Aboriginal land, it is -- I think it is a good
16 indication that this author was closer to the
17 thinking of the court of France at that time than
18 the ideas of a Spanish theologian.

19 So it is not the proof. It is just an
20 indication that if this lawyer decided to write the
21 book and the book was accepted as a book dedicated
22 to the King, that those -- the ideas elaborated in
23 this book probably were in conformity with what the
24 King or the court of France thought at that time.

25 Q. And I am going to ask you about

14:57:05 1 another jurist mentioned in the report on page 14.

14:57:12 2 There is a reference to, I believe it is, Vattel?

14:57:20 3 A. Eric Vattel, yes, he was also one
14:57:23 4 of the most famous writers, but at the end of the
14:57:28 5 French regime, if you can say, published in 18th
14:57:31 6 century. And he was -- it is a good example that
14:57:34 7 the contradictions that we can find in those
14:57:37 8 writings, because Vattel was clearly opposed to the
14:57:42 9 idea to recognize that the hunting grounds of the
14:57:46 10 Aboriginal people should be left to them.

14:57:49 11 He was arguing that it was too much
14:57:52 12 land for people who did not use them correctly, in
14:57:56 13 the sense of the European sense of the term. For
14:58:02 14 him the only valuable activities was agriculture.

14:58:07 15 So he wrote that if those people did
14:58:13 16 have too much land, the European had the right to
14:58:16 17 take those lands to give them to colonizers.

14:58:21 18 So it is a good example of very radical
14:58:25 19 opposition between those authors, and we know that
14:58:30 20 Vattel was well known in Canada in 19th century.
14:58:34 21 When we look at the Commission of Inquiry in 1840s,
14:58:42 22 his work was mentioned as a kind of justification
14:58:44 23 for the dispossession of the Aboriginal people.

14:58:46 24 So my point is that we cannot take --
14:58:52 25 we cannot consider that there is one law of

1 nations. There is many, many opinions and
2 contradictory opinions, that we cannot consider as
3 a consensus or the basis for understanding the
4 French policy.

5 Q. On the same page, page 14,
6 Professor Morin states:

7 "A majority of authors
8 considered that nomadic peoples
9 possessed the territories over which
10 they hunted and fished, although
11 some denied this."

12 Can you see anywhere, can you take us
13 to anywhere in the report that justifies this
14 assessment of what was the majority view?

15 A. No, there is no indication, and to
16 my knowledge, especially for -- certainly not for
17 the 16th century, because even when we look at the
18 work of Vitoria, he was not talking about nomadic
19 people.

20 The question of the rights of the
21 nomadic people, people living from hunting and
22 fishing, is not well covered, I would say, in the
23 literature of the 16th, 17th and 18th century.

24 And if you think, for example, to John
25 Lock who wrote a very famous book at the end of

15:00:12 1 17th century, he was, as Vattel, opposed to the
15:00:15 2 idea that the land of the Aboriginal people living
15:00:17 3 from hunting and fishing should be reserved to
15:00:21 4 them.

15:00:22 5 So there is no -- we cannot say that --
15:00:28 6 in my opinion, we cannot say that a majority of
15:00:31 7 authors considered that specific nomadic people had
15:00:38 8 specific rights to their hunting grounds.

15:00:40 9 Q. If we could go now to page 15.

15:00:49 10 A. Yes.

15:00:49 11 Q. The first sentence of the first
15:00:58 12 full paragraph reads:

15:00:59 13 "Using the documents analyzed
15:01:00 14 by Professor Beaulieu, I will show
15:01:03 15 that because representatives of the
15:01:05 16 King were generally instructed to
15:01:06 17 respect treaties or alliances to
15:01:10 18 which Aboriginal peoples and the
15:01:11 19 French were parties, they needed to
15:01:13 20 concern themselves with aboriginal
15:01:17 21 sovereignty."

15:01:19 22 A. I disagree with that. It is clear
15:01:21 23 that the French, and we can also say it for the
15:01:26 24 British, it was important to respect the treaties.

15:01:29 25 But in my mind, there is no direct

1 connection between this necessity to respect the
2 treaties and the respect of an Aboriginal
3 sovereignty. The French could respect the treaties
4 concluded with the Aboriginal people without
5 considering that they had to get their
6 authorizations or their permission before
7 travelling or building some forts on the land or
8 even before granting lands to French colonizers.

9 So it is two reality that I think that
10 we could not mix because it is too different in the
11 will, the necessity to respect treaties is not
12 necessarily a sign, the indications or the proof
13 that the French wanted to respect the Aboriginal
14 sovereignty.

15 Q. Now I would like to go to the
16 bottom of page 15 and over on to page 16. I don't
17 want to ask you something that you have already
18 testified about, but could you comment on Professor
19 Morin's analysis of the de Roberval warrant that
20 you mentioned earlier in your testimony in-chief?

21 A. Yes, my point is the passage which
22 started:

23 "In 1541, the Kings of Spain
24 and Portugal were the only one
25 present in America. Therefore

1 'princes and potentates' must refer
2 to Aboriginal peoples."

3 I totally disagree with these
4 conclusions. When we read the document, when we
5 consider the context, it is clear that those
6 princes and potentates were European powers and not
7 Aboriginal people.

8 I think that we have to keep in mind
9 that those letter patents were not written for a
10 few days or for just one expedition. It was open
11 patent letters for a relatively long period of
12 time.

13 So the French knew very well at that
14 time that other European powers were interested by
15 the colonial enterprise. The French knew pretty
16 well that the British had already sent some
17 expeditions at the end of the 15th century. They
18 knew pretty well that in the following years other
19 Europeans will come in North America.

20 So this mention of princes and
21 potentates were not analogous to European and these
22 allusions did not fit within the conception that
23 the French had at that time of the, I would say,
24 political power of the Aboriginal people.

25 So I disagree with this interpretation

15:04:40 1 about the meaning of these two words.

15:04:45 2 Q. And on page 18, do you have any
15:04:57 3 comments about Professor Morin's discussion of the
15:05:02 4 patents awarded to de Monts?

15:05:06 5 A. Yes, in this passage we can read:

15:05:13 6 "The King announced his
15:05:15 7 intention to 'extend and widen the
15:05:17 8 bounds and limits' of his crown, so
15:05:19 9 far as this could legitimately be
15:05:22 10 done."

15:05:25 11 So there is this mention that it should
15:05:28 12 be done in a legitimate way. If we project on this
15:05:33 13 formula maybe too modern conceptions, we could have
15:05:38 14 the impressions that it mean that you had to
15:05:41 15 respect and you could not go there without
15:05:44 16 obtaining before the authorizations of the
15:05:47 17 Aboriginal people. But when you look at this
15:05:49 18 formulation and you compare to what Marc Lescarbot
15:05:57 19 wrote, it is clear that for the French at that time
15:05:58 20 to take possessions of the land without asking any
15:06:02 21 authorizations was not an illegitimate way of
15:06:05 22 doing.

15:06:05 23 Probably that the notion that what
15:06:08 24 should be legitimate is not to kill Aboriginal
15:06:12 25 people, not to use a military action if it was not

15:06:23 1 necessary.

15:06:25 2 Q. And do you have any comments on
15:06:31 3 Professor Morin's discussion of de Monts'
15:06:37 4 appointment as lieutenant general and the
15:06:41 5 description of the terrain?

15:06:42 6 A. Just one remark. I think that
15:06:44 7 there is -- not "I think." There is two
15:06:47 8 commissions given to de Monts in 1603. I cited the
15:06:55 9 two, those two commissions in my report, and in my
15:07:00 10 opinion there is no contradiction between the two.
15:07:03 11 They are just -- we can read them in connection and
15:07:09 12 it is not the King trying to say that the previous
15:07:12 13 one was not the right commission.

15:07:14 14 If you read carefully the first and you
15:07:16 15 read the second, there is this same spirit about
15:07:20 16 what should be the action of the French in North
15:07:23 17 America, and we cannot oppose this, the commission
15:07:28 18 given by the King to the one given by one of his
15:07:34 19 inferiors at the same time.

15:07:37 20 Q. And at the top of page 20, the
15:07:42 21 first full paragraph, first sentence, Professor
15:07:49 22 Morin talks about the charter of the Company of One
15:07:55 23 Hundred Associates as being a new approach.

15:07:56 24 A. I don't think that we can qualify
15:07:58 25 this as a new approach. He says it is clearly a

15:08:02 1 new step in the effort of the French to colonize
15:08:06 2 North America. For the first time there was this
15:08:13 3 great company created by Cardinal Richelieu with
15:08:16 4 the clear objective to send people in North America
15:08:21 5 to establish their strong colony.

15:08:25 6 And this big company got a lot of
15:08:30 7 power. She got what was called at that time New
15:08:34 8 France or Canada in full property, and there was no
15:08:38 9 preoccupation about the rights of the Aboriginal
15:08:42 10 people. And it was a pure -- I would say the same
15:08:46 11 colonial logic that we have seen from the 16th
15:08:50 12 century which is still at work at the beginning of
15:08:54 13 the 17th century.

15:08:55 14 So I think that we have to avoid to
15:08:58 15 consider that the French were more respectful
15:09:02 16 toward the Aboriginal people. They had a different
15:09:05 17 strategy. They had a different way of doing things
15:09:08 18 than the British. They were less generous. But I
15:09:13 19 think that those documents are clear indications of
15:09:15 20 their colonial spirit. What they wanted to do was
15:09:18 21 to establish a new sovereignty on this land and --

15:09:26 22 Q. Do you want to take a bit of a
15:09:28 23 break and have a --

15:09:29 24 A. No, I think I speak too fast, so I
15:09:31 25 just want to maybe slow down a little bit.

1 So my point is that when you look at
2 those documents, we should avoid to read them with
3 modern eyes. If we want to understand them
4 clearly, we have to consider what were the
5 objectives of the French, and they were clearly
6 colonial. They were not respectful. They were
7 just -- they have just a clear ambition and it was
8 to settle this land and to take possession of this
9 land.

10 So I cannot see it as a new approach.
11 It is a clear continuity of the approach adopted
12 since the 16th century.

13 Q. And on the next page?

14 A. The next -- yes, the next --

15 Q. Professor, I would like to sneak a
16 question in. On the next page, Professor Morin
17 talks about the edict establishing the Company of
18 the West Indies?

19 A. Yes.

20 Q. Do you have any comments on the
21 way he interprets that document?

22 A. Professor Morin tried to show that
23 there is in this charter a distinction between the
24 Aboriginal people that should be considered as
25 allies of the French, and in that case the French

15:11:13 1 could not take possession of their land.

15:11:15 2 And at the page 22, he presents two
15:11:19 3 versions arguing that the punctuation is really
15:11:24 4 important to understand the exact meaning of this
15:11:29 5 text.

15:11:30 6 I'm sorry, but in 17th century you
15:11:34 7 cannot, I think, make your point with punctuation
15:11:37 8 because it is so fluctuating, so variable, there is
15:11:42 9 no strict rule about punctuation. So you cannot
15:11:47 10 say the French text, if we respect the
15:11:50 11 punctuations, we should arrive necessarily to this
15:11:53 12 conclusion.

15:11:54 13 I think the best example of this is
15:11:58 14 that in this charter the same formula are used two
15:12:03 15 times, but with different punctuation, the same
15:12:07 16 text. So there is no clear indications that the
15:12:10 17 punctuation could be a point to establish what was
15:12:14 18 the true intention of the author of this text.

15:12:21 19 And in my opinion, the King was just
15:12:25 20 saying that the company could enlarge its
15:12:31 21 possessions by exposing Aboriginal people or
15:12:36 22 submitting them or by attacking other European
15:12:41 23 powers who were not allied to the French.

15:12:45 24 And for me, the meaning of this passage
15:12:49 25 is pretty clear.

1 It doesn't mean that the French
2 considered that by submitting the Aboriginal
3 people, they will have to fight them, that they
4 will have to send soldiers. The notion of
5 submitting the Aboriginal people could be taken in
6 a more peaceful way, and we have good example of
7 that in the action taken by the French in the 1670s
8 when they went to take possession of the Great
9 Lakes area.

10 When you read the documents confirming
11 that the French took possession of the land, you
12 have this formula that all the nations present
13 there submitted themselves to the King.

14 So in the French spirit, to gain the
15 submission of the Aboriginal people did not mean
16 that you have to fight a war and that you have to
17 exterminate them, that you have to force them to
18 submit.

19 A voluntary submission as the one that
20 we can read in the documents in the 17th century
21 could be considered as in total conformity with
22 what was written in the charter of the company in
23 1664.

24 So it is my -- I think it is always in
25 the same spirit, same colonial spirit from the

15:14:25 1 French to appropriate in a unilateral way the land
15:14:31 2 of the Aboriginal people, which doesn't mean that
15:14:37 3 they took them effectively and they considered that
15:14:42 4 they had nothing to do when they want to grant
15:14:44 5 those lands, when they want to build some forts on
15:14:47 6 those lands, but of course if no French were
15:14:50 7 interested in some regions, you had no real
15:14:54 8 dispossession of the Aboriginal people.

15:14:57 9 Q. And again on page 23, Professor
15:15:01 10 Morin refers to the power to hold full property and
15:15:10 11 seigniority. This is the top of the last paragraph
15:15:13 12 on page 23.

15:15:16 13 A. I'm sorry, I don't have --

15:15:18 14 Q. As for the full property and -- in
15:15:32 15 your opinion, what does "full property and
15:15:36 16 seigniority" mean in this context?

15:15:37 17 A. It means that they were the real
15:15:38 18 proprietors of those lands. They received those
15:15:40 19 lands from the King, and a seigniority, they had the
15:15:51 20 right also to grant some land to other French
15:15:53 21 people in what was called seigniority, and so a huge
15:16:01 22 piece of land given to a people, to someone and
15:16:01 23 this seignior had the obligations to give also a
15:16:08 24 piece of this land to other people.

15:16:10 25 Q. And during the French regime, were

15:16:13 1 there seigniories granted?

15:16:15 2 A. Mostly in the St. Lawrence Valley.

15:16:17 3 It was the centre of the French colonial

15:16:20 4 enterprise, so if you look at some maps of the

15:16:23 5 French regime, you will see that most of the

15:16:34 6 seigniories were granted along the St. Lawrence

15:16:38 7 Valley, but we have also some of them along the

15:16:42 8 Richelieu River and along the Lake Champlain area.

15:16:47 9 We have a few ones in the Great Lakes region, for

15:16:50 10 example at Fort Frontenac there was one. You have

15:16:53 11 some -- I am not sure for Detroit.

15:16:58 12 Some lands were of course granted. I'm

15:17:01 13 not sure it was under the system -- under the

15:17:06 14 seigniorial system. But you have indications in

15:17:09 15 the Great Lakes area that the same policy at the

15:17:12 16 very lower level was also applied, not only in the

15:17:18 17 St. Lawrence Valley, but also elsewhere.

15:17:20 18 Q. Just to make sure that I

15:17:22 19 understand, so that we have land being granted?

15:17:25 20 A. Yes, yes, all the St. Lawrence

15:17:28 21 Valley was granted, I would say, at the end of the

15:17:33 22 17th century. Not really -- it doesn't mean that

15:17:38 23 all the lands were occupied, but they were granted.

15:17:45 24 I don't know if I can ask for a small

15:17:48 25 break?

15:17:48 1 THE COURT: Yes, you may.

15:17:50 2 Our clock is failing us once again.

15:17:53 3 MR. McCULLOCH: Oh, dear, I was

15:17:55 4 wondering why time was moving so slowly.

15:17:57 5 THE COURT: Yes. Well, it is about 20

15:17:58 6 minutes after 3:00 and it is a very good time for a

15:18:01 7 break and, sir, if you need one, just ask.

15:18:06 8 So we'll take a 20-minute break at this

15:18:08 9 time.

15:18:08 10 -- RECESSED AT 3:20 P.M.

15:54:01 11 -- RESUMED AT 3:53 P.M.

15:54:01 12 THE COURT: In the old days,

15:54:09 13 Mr. McCulloch, we used to take off our watches and

15:54:12 14 put them on the podium, because there weren't any

15:54:14 15 other options.

15:54:15 16 MR. McCULLOCH: Unfortunately, the last

15:54:17 17 time I kept on doing this, I was accused of

15:54:20 18 checking my email during my examination.

15:54:23 19 THE COURT: Well, I'm confident that

15:54:25 20 that wasn't this trial, because I would have

15:54:26 21 remembered if I had said that. But you are free to

15:54:30 22 check the time, and, if not, someone will help you,

15:54:34 23 I'm sure.

15:54:34 24 Please go ahead.

15:54:35 25 MR. McCULLOCH: Well, Your Honour,

15:54:38 1 Professor Beaulieu tells me that he is quite tired,
15:54:40 2 so I was wondering if we could wrap up a little
15:54:43 3 early today.

15:54:43 4 THE COURT: Yes. And, Professor, we
15:54:46 5 are happy to accommodate you, so don't you be shy.

15:54:49 6 THE WITNESS: Yes.

15:54:50 7 THE COURT: And that includes stopping
15:54:51 8 a little early today, and we'll start at 10:00
15:54:54 9 tomorrow, but if we need to have either longer
15:54:57 10 breaks or --

15:54:58 11 THE WITNESS: Because at the end of the
15:55:01 12 days it is more difficult to find the good words.

15:55:04 13 THE COURT: You can see -- I don't know
15:55:06 14 how much time Mr. McCulloch will be taking
15:55:08 15 tomorrow, but however much time, he can make sure
15:55:10 16 that we do all of those things, all right.

15:55:15 17 THE WITNESS: Thank you.

15:55:15 18 THE COURT: So what were you proposing
15:55:16 19 for today, starting back a little late? What time
15:55:20 20 is it? It is going on 4 o'clock. Do you want to
15:55:25 21 cover just a little bit more ground and then rise
15:55:27 22 for the day; is that what you are suggesting?

15:55:29 23 MR. McCULLOCH: There are two or three
15:55:30 24 more points that I think might fit in today, but I
15:55:35 25 certainly would like to close not too long after

1 4:00.

2 THE COURT: Yes, that is no problem at
3 all, sir. All right.

4 THE WITNESS: Thank you very much.

5 THE COURT: We have scheduled things to
6 accommodate that.

7 Please go ahead, sir.

8 BY MR. McCULLOCH:

9 Q. Thank you, Your Honour.

10 Professor Beaulieu, I would like to go
11 now to page 27 of the Morin report.

12 A. Yes.

13 Q. Now, at the beginning of the third
14 full paragraph, Professor Morin says:

15 "To sum up this section, it can
16 be seen that in 1541, the first
17 document granted by the King of
18 France," that's the de Roberval
19 document, "envisioned either
20 entering into treaties with
21 Aboriginal Peoples, waging war
22 against them and/or subjugating
23 them."

24 Do you have any comment to make on the
25 way in which Professor Morin has summarized the

1 Roberval Commission?

2 A. My point is that we have to keep
3 in mind that those commissions we have a real
4 principal objective and you also have tools offered
5 or suggested by the King to those who will try to
6 achieve these objectives.

7 And peaceful relations were against
8 them. Those are, in my understanding, tools that
9 the French officer can use to achieve the big
10 objective of the King, which was to impose his
11 domination in this region.

12 So you can -- we cannot -- we should
13 not consider those expressions as an objective in
14 itself. These are means that the French could use
15 to reach the objective that the French gave to
16 them.

17 I'm sorry, my -- I am a bit hesitant,
18 but I'm sorry.

19 Q. Well, we won't go much further. I
20 just have a couple more questions to fit in, and
21 then we can, I hope, rise until tomorrow.

22 I would like to take you to page 31.

23 A. Yes.

24 Q. And if you could scroll down a
25 bit, Professor Morin cites a letter from the King.

1 That would be Louis XIV?

2 A. Yes.

3 Q. To "Intendant Talon." Could you
4 tell us what an Intendant was?

5 A. The Intendant was the
6 administrator responsible for the administrations
7 of justice and for how to concern the good -- I
8 would say the good regulations in the colony for
9 trade, for agriculture, as I said, for justice. So
10 it is one of the two main administrators in New
11 France. The Governor was the military officer and
12 the Intendant was in charge of all which concerned,
13 I would say, more administrative level.

14 Q. Now, I would like you to take the
15 time to read the extract. I don't think it is
16 necessary for me to read it out loud. But if you
17 would like to take a few minutes to read that
18 extract --

19 THE COURT: Well, just for my
20 information, which page number in the report is
21 this?

22 MR. McCULLOCH: 31.

23 THE COURT: Well, the page in the PDF
24 is 31, but is that also --

25 MR. McCULLOCH: Yes. There is the

1 quotation.

2 THE COURT: All right, thank you.

3 BY MR. McCULLOCH:

4 Q. If you would like to take a
5 moment, and then if you could comment on the way in
6 which Professor Morin interprets it in the text
7 below the quotation.

8 A. Yes, as I understand the remark of
9 Professor Morin, it is like saying that the taking
10 of possession of land is not so significant. So I
11 don't want to argue that taking possession was
12 enough to establish a strong sovereignty, but when
13 I read this kind of remark for the King telling to
14 his Intendant, I approve what you have done but be
15 careful, don't do too much, because when you are
16 taking possession, you are creating a kind of
17 obligation, it becomes part of the kingdom and the
18 King doesn't want to have to lose these
19 territories.

20 So they need to be cautious because it
21 meant something. If it was non-significant, if it
22 was -- if it had no relevance in the colonial
23 enterprise, if it was a gesture that anybody could
24 do without any implications, we won't have this
25 kind of remark of the King to remember to the

1 colonial officials that they had to be cautious.

2 He was in favour of the idea to enlarge
3 his domain, but he want also to be sure not to be
4 obliged to retreat and to renounce to something,
5 and taking possession was the first measure which
6 indicates that the King is taking possession of the
7 land.

8 Q. And if I could ask you to go to
9 page 36.

10 A. Yes.

11 Q. And this here, this is Talon
12 writing in 1670 on this page.

13 A. Yes.

14 Q. To the King, and again, it is to
15 Louis XIV?

16 A. Yes.

17 Q. The long quotation at the bottom,
18 if you would like to read that and then, again,
19 comment on the way in which Professor Morin
20 interprets that quotation.

21 A. Yes. I have already read, and I
22 can take a few seconds just to --

23 [Witness reviews document.]

24 THE COURT: I think the question was to
25 comment on the interpretation.

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THE WITNESS: Yes.

THE COURT: But it is not entirely showing on the page that I am looking at, so I can't see the whole sentence.

MR. McCULLOCH: If I could ask -- ah, there.

THE COURT: It is across the page, so -- okay, thank you, I can see it now.

THE WITNESS: Yes, for me it is not surprising to say that for the moment it is not useful but it will be in the future.

Again, we have to keep in mind that when they are doing this kind of action on the land, the French knew pretty well that the British were also interested.

So if now at the moment when the taking possession was done it was not useful on the very short-term, it was a necessary step; it will be useful in the future when the French will be confronted with more aggressive attitudes from the British.

So for me, it is again an indication that those gestures were not -- were serious actions for the French. They were symbolic actions which has a real significance for the French.

1 Of course, the British would not --
2 don't want to recognize this kind of action as a
3 proof that this land is not a part of the King --
4 French King domain, but for the French it was very
5 essential to start with this taking possession.
6 And the British done the same thing.

7 So even if they disagree on the
8 significance of the extent of the French possession
9 and the French contested the extensions of the
10 British colonies, the two European powers
11 considered that symbolic act were not useless.
12 Those had to be done to express a clear will of the
13 King to take those lands.

14 Of course, if it was followed by
15 nothing, it was highly contestable, but as a first
16 step, in my mind, it was considered as an important
17 action to be done.

18 BY MR. McCULLOCH:

19 Q. And with Your Honour's permission,
20 I am going to ask one more question, since it is a
21 fairly important one, and I think that might be a
22 good place, if it is possible, to stop.

23 I would like to ask you to turn to page
24 49, and in the last paragraph I would like you to
25 take a look at that last paragraph and tell me what

16:05:04 1 the "King's domain" meant in the 18th century?

16:05:08 2 A. It is not the easiest question to
16:05:12 3 answer at the end of the day, but I will try to
16:05:14 4 give you some element of answer, and maybe we can
16:05:16 5 come back tomorrow if I have the impressions that I
16:05:19 6 didn't give all the information.

16:05:22 7 The King's domain was a huge piece of
16:05:26 8 land that the French authorities decided to
16:05:31 9 reserve, starting from the middle of the 17th
16:05:33 10 century, as a huge trade monopoly.

16:05:38 11 So it was -- they decided that on a
16:05:41 12 very big piece of land. Only some merchants who
16:05:47 13 got the authorization to go there will have the
16:05:52 14 right to trade with the Aboriginal people.

16:05:53 15 So when we are talking about the King's
16:05:56 16 domain, we have to remember that it is not
16:06:01 17 something Aboriginal. It is something that the
16:06:04 18 King or the French authorities decided to create.
16:06:07 19 They established limits and they forbade to some
16:06:15 20 peoples to go there to trade with the Aboriginal
16:06:18 21 people because it was a reserved land for a group
16:06:21 22 of merchants.

16:06:25 23 And I think that this is really
16:06:26 24 important if we want to understand some
16:06:29 25 interdiction that we can find in this document.

1 For example, when the ordinance of the Intendant
2 contained -- if we can read in this ordinance that
3 the stranger Indians were forbidden, it was not
4 forbidden from Aboriginal land reserve for the
5 Aboriginal people. They were forbidden to go on
6 the land that the King or the French authorities
7 decided to reserve for certain merchants.

8 And I think it is a good example not of
9 the desire of the French to necessary to reserve a
10 specific piece of land for Aboriginal people, but
11 to create some trade monopoly, and within this
12 monopoly, they will refuse the access not only to
13 some French merchants, but also to Aboriginal
14 people coming from outside. So they were outside
15 the King's domain, they were not resident within
16 the King's domain, so within the limits that the
17 King decided to establish for this trading
18 monopoly.

19 So I am not sure that I understood
20 exactly the meaning that Professor Morin wanted to
21 give to this example, but for me it is an example
22 that the French considered that they could
23 establish some restriction of movement on some land
24 in the colony.

25 And also we have to keep in mind that

1 the main river in this kingdom was the Saguenay
2 River, it was a huge river, and by this action you
3 have decisions from the French to exercise some
4 control on the circulations of a specific piece of
5 land in the colony.

6 So I have never seen this as a will
7 from the French to protect some lands for the
8 Aboriginal people, but more as a will to create
9 something special for merchants who will have the
10 exclusivity to trade with the Aboriginal people
11 living within the specific land delineated by the
12 King.

13 MR. McCULLOCH: I believe that is clear
14 enough, but we may want to revisit that tomorrow,
15 if you have any other thoughts.

16 So I would ask if we could rise early.

17 THE COURT: Yes, as I said a moment
18 ago, we'll adjourn until 10 o'clock tomorrow
19 morning.

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21 -- Adjourned at 4:10 p.m.
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REPORTER'S CERTIFICATE.

I, DEANA SANTEDICOLA, RPR, CRR,
CSR, Certified Shorthand Reporter, certify;

That the foregoing proceedings were
taken before me at the time and place therein set
forth, at which time the witness was put under oath
by me;

That the testimony of the witness
and all objections made at the time of the
examination were recorded stenographically by me
and were thereafter transcribed;

That the foregoing is a true and
correct transcript of my shorthand notes so taken.

Dated this 25th day of November, 2019



NEESON COURT REPORTING INC.

PER: DEANA SANTEDICOLA, RPR, CRR, CSR
CERTIFIED REAL-TIME REPORTER

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