

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

DAY 66 VOL 66
November 26, 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
26 Defendants

27 -----
28 --- This is the VOLUME 66/DAY 66 of the transcript
29 of the trial proceedings in the above-noted
30 matter, being held at the Superior Court of Justice,
31 330 University Avenue, Courtroom 5-1, Toronto,
32 Ontario, on the 26th day of November, 2019.

33 -----
34 B E F O R E:

35 The Honourable Justice Wendy M. Matheson

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

2

3 Ben Brookwell, Esq.,

for the

4 Plaintiffs,

5 & Cathy Guirguis, Esq.,

The Chippewas of
Saugeen First Nation,
and the Chippewas of
Nawash First Nation.

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11 Michael Beggs, Esq.,

for the Defendant,

12 & Barry Ennis, Esq.,

The Attorney General

13 & Michael McCulloch, Esq.,

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14 & Alexandra Colizza, Esq.,

15

16 Peter Lemmond, Esq.,

for the Defendant,
Her Majesty the
Queen in Right of
Ontario.

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

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09:41:21 1 -- Upon commencing at 10:03 a.m.

10:01:23 2

10:03:06 3 THE COURT: Welcome back, Mr. Beggs.

10:03:10 4 MR. BEGGS: Thank you, Your Honour.

10:03:11 5 THE COURT: I hope all is well.

10:03:13 6 MR. BEGGS: Yes, thanks.

10:03:16 7 THE COURT: Do you have something to --
10:03:17 8 you're going to call the next witness?

10:03:20 9 MR. BEGGS: I am, but I believe
10:03:21 10 Mr. Lemmond has something to address.

10:03:25 11 THE COURT: Mr. Lemmond.

10:03:27 12 MR. LEMMOND: I've asked our articling
10:03:28 13 student to join us at the counsel table, I just
10:03:31 14 wanted to make sure that was okay with your Honour.

10:03:33 15 THE COURT: Absolutely. Welcome.

10:03:36 16 MR. LEMMOND: Thank you.

10:03:44 17 THE COURT: Mr. Morin can come forward.

10:03:50 18 MR. BEGGS: Okay, thank you.
10:03:50 19 Mr. Jean-Pierre Morin.

10:03:54 20 THE REGISTRAR: Good morning, sir.
10:03:54 21 Would you like to make an oath on the Holy Book or
10:03:54 22 make a solemn affirmation?

10:03:54 23 THE WITNESS: A solemn affirmation,
10:03:54 24 please.

10:04:01 25 THE REGISTRAR: Can you state and spell

1 your first and last name for the record.

2 THE WITNESS: Jean-Pierre Morin.

3 THE REGISTRAR: Can you spell it,
4 please.

5 THE WITNESS: J-E-A-N hyphen
6 P-I-E-R-R-E, M-O-R-I-N.

7 THE REGISTRAR: Thank you.

8 JEAN-PIERRE MORIN: AFFIRMED.

9 THE COURT: Sir, this is a very big
10 room, so you have to keep your voice up. I'm
11 trying to illustrate the point. Higher than your
12 normal intonation, please.

13 THE WITNESS: Probably not, I'm usually
14 extremely loud.

15 THE COURT: That is good news in this
16 venue.

17 Please go ahead, Mr. Beggs.

18 MR. BEGGS: Thank you, Your Honour.

19 Before we begin questioning, I would
20 say that Mr. Morin is here as a fact witness, like
21 Professor Johnston before him, has certain
22 expertise, but we will be treading carefully to
23 avoid that if possible.

24 EXAMINATION IN-CHIEF BY MR. BEGGS:

25 Q. Now, Mr. Morin, where are you

1 employed?

2 A. I'm a historian at the Department
3 of Crown-Indigenous Relations and Northern Affairs.

4 Q. And is Crown-Indigenous Relations
5 and Northern Affairs sometimes known by an acronym?

6 A. Yes, commonly known as "CIRNAC".

7 Q. Okay. What is your current
8 position there?

9 A. I'm the departmental historian.

10 Q. What is involved with being the
11 departmental historian?

12 A. My main roles are to undertake
13 research into the history of the administration of
14 the Department; how it was formed; the history of
15 the policies of the Department; the history of its
16 relationship with Indigenous peoples across Canada
17 from its origins in the 1700s, all the way to the
18 present day.

19 As well as answering questions of
20 the -- on the history of the Department to the
21 general public; as well as other government
22 departments, First Nations, other Indigenous
23 groups. We research reports, and provide all kinds
24 of advice on that history.

25 THE COURT: Now, sir, you're going to

1 have to also slow down.

2 THE WITNESS: Okay. I can do that.

3 THE COURT: Excellent, please go ahead.

4 MR. BEGGS: Thank you, Your Honour.

5 BY MR. BEGGS:

6 Q. Now when were you first employed
7 by the Department?

8 A. I was first employed in 1996. I
9 was a student hired in the now defunct litigation
10 support directorate.

11 Q. Do you recall what the Department
12 was called at that time?

13 A. The legal name of the Department
14 in 1996 was "the Department of Indian Affairs and
15 Northern Development".

16 Q. And was there another name it was
17 also known by?

18 A. Yes, its common usage name was
19 "Indian and Northern Affairs Canada" or "INAC".

20 Q. Has the name changed between 1996
21 and now?

22 A. The legal name changed on the 15th
23 of July 2019, when the Department was dissolved.

24 The common usage name of the Department
25 has changed three times since 1996. It was first

1 "INAC", "Indian Northern Affairs Canada".

2 In about 2011, it became known as
3 "Aboriginal Affairs and Northern Development" or
4 "Aboriginal and Northern Affairs".

5 And in 2015, it was changed to
6 "Indigenous and Northern Affairs".

7 Q. Thank you. And did those name
8 changes involve changes to the organization as
9 well?

10 A. The name changes didn't really
11 bring any -- they were much more -- it's quite
12 literally the common usage name of the Department,
13 it's not the official name. Changes internally to
14 the Department occurred continuously throughout
15 this period, units being moved from one part of the
16 Department to another, new sectors being created or
17 dissolved. It's been near continuous, every three
18 to five years likely, there would have been some
19 changes.

20 Q. Thank you. Now, in the course of
21 your work and research, have you ever dealt with
22 the series called "The Indian treaties and
23 Surrenders"?

24 A. Yes, I have.

25 Q. What is that?

10:08:04 1 A. It's a collection of documents
10:08:05 2 that were created first by the Department of Indian
10:08:08 3 Affairs I believe in the 1880s, which are now held
10:08:11 4 by Library and Archives Canada.

10:08:13 5 It's a collection of documents related
10:08:15 6 to treaties concluded with First Nations; sales and
10:08:17 7 surrenders of reserve lands, as well as maps and
10:08:21 8 other documents that relate to the ceding and
10:08:24 9 surrendering of lands.

10:08:25 10 Q. I'd like to call up an article
10:08:31 11 Exhibit 4295. This is an article by John Leslie.

10:08:40 12 Could you tell us who John Leslie is or
10:08:43 13 was.

10:08:43 14 A. Yes. John Leslie was a historian
10:08:45 15 employed by the Department of Indian and Northern
10:08:48 16 Affairs. He retired in about -- around 2000, and
10:08:52 17 he became a consulting historian.

10:08:55 18 Q. And have you read this article?

10:08:58 19 A. I have read this article. In
10:09:01 20 fact, I helped with the research for the drafting
10:09:03 21 of this article.

10:09:04 22 Q. Did you do your own research on
10:09:15 23 this topic as well?

10:09:16 24 A. Yes, I have.

10:09:16 25 Q. If I can go to page 2 of this

1 document. Actually, sorry.

2 No, page 2 is fine.

3 In the middle of the paragraph under
4 the headline "The Organization of the Collection",
5 Mr. Leslie refers to the Indian Affairs Department
6 numbering system being "quirky".

7 Based on your work with the collection,
8 can you tell us how the numbering system works,
9 briefly?

10 A. So the numbering system is
11 entirely artificial to the actual documents
12 themselves. They were compiled by departmental
13 officials, and they were reorganized in a
14 chronological manner, with the oldest documents
15 that they had in their collection being document 1,
16 running through sequentially as new treaties or
17 surrenders were concluded, or at least added to the
18 collection itself.

19 Calling it "quirky" is a fair
20 statement? It's actually, I would go so far as to
21 say that the system itself is very complicated.
22 Because there are fractions as well as letters
23 attributed to numbers.

24 So even though the system is
25 sequential, if a document was found at a later

1 date, but was earlier in the chronology, it
2 received a later number. The best example is a
3 treaty that was concluded in 1781, but the document
4 itself was only found in the 1950s. So the
5 document is number 381, even though sequentially it
6 would be the fourth treaty concluded.

7 The fractions relate to versions of
8 treaties. For example, here on the screen it
9 actually has Treaty 27 and a quarter. 27 and a
10 quarter is the second version, and it's considered
11 the definitive one because it was approved by the
12 Legislative Assembly -- by the Superintendent
13 General of Indian Affairs in that period.

14 So there were multiple -- the version
15 that was concluded on the ground may be slightly
16 different than the version that was approved in a
17 few months later in some cases.

18 Q. Now, just for clarity. You're
19 familiar with Treaty 45 and 45 ½?

20 A. Yes, I am.

21 Q. And Treaty 45 ½ is not another
22 version of Treaty 45, is it?

23 A. No, it's a separate treaty that
24 was negotiated at the same time as Treaty 45 in
25 1836.

1 Q. Okay. Now, from your work with
2 the collection, would you say the collection is
3 complete of all treaties?

4 A. No, the collection is not in any
5 way complete. It only covers treaties that were --
6 first off, it only covers treaties that are
7 concluded in basically what is today, Ontario and
8 Quebec.

9 It does not include -- and the later
10 numbered treaties. It doesn't include any of the
11 treaties concluded by the Hudson's Bay Company, for
12 example, on Vancouver Island from 1850 to 1854. It
13 doesn't include the Peace and Friendship Treaties
14 that were concluded in the Maritimes from 1725 to
15 1779. And at the same time, the collection itself
16 does not include all possible treaties or land
17 surrenders that were concluded during this time
18 period. Some of these documents have been lost, or
19 are located in different parts of the Federal
20 record in the Library and Archives Canada.

21 Q. Thank you. Now, in your work in
22 research, have you seen any document that refers to
23 the 1854 treaty with the Saugeen and Owen Sound
24 Bands as No. 72 prior to its inclusion in this
25 collection?

10:13:25 1 A. No. The only -- the Treaty 72 is
10:13:31 2 usually prior to the -- when discussing it in the
10:13:34 3 archival collection, it's usually referred to as
10:13:37 4 the "Saugeen Peninsula Treaty". Or sometimes also
10:13:40 5 called the "Saugeen Tract", although the 1836
10:13:45 6 treaty is normally called the Saugeen tract as
10:13:48 7 well. Treaties of this period are usually named by
10:13:50 8 the location where they're being concluded.

10:13:54 9 Q. Okay. I'd like to show you
10:14:03 10 another document also by Mr. Leslie, can we call up
10:14:07 11 Exhibit 4297.

10:15:07 12 THE COURT: What was the number again,
10:15:08 13 Mr. Beggs?

10:15:10 14 MR. BEGGS: It was Exhibit 4297, I
10:15:13 15 think it's a lengthy document but...

10:15:15 16 BY MR. BEGGS:

10:15:16 17 Q. So do you recognize this document?

10:15:17 18 A. Yes, this is John Leslie's
10:15:20 19 Master's Thesis.

10:15:21 20 Q. And it's entitled, "Commissions of
10:15:24 21 Inquiry into Indian Affairs in the Canadas, 1828 to
10:15:29 22 1858."

10:15:30 23 Are you familiar with the commissions
10:15:31 24 of inquiry he was referring to here?

10:15:34 25 A. I am.

1 Q. And based on your work and
2 research into the history of the Department, what
3 are the names of the various commissions that would
4 be relevant here?

5 A. So John Leslie refers to actually
6 six separate commissions throughout the report, the
7 Darling Commission, the MacCauley Commission, the
8 Bagot Commission, the Pennefather Commission and
9 the Bury Commission -- I've now said those out of
10 order.

11 The commissions themselves are
12 established by the British authority to examine
13 various aspects of the Indian Affairs in the
14 colonies.

15 Q. Okay. And where there is names of
16 these commissions, the names of the authors or the
17 names of the governors?

18 A. For the most part, they are the
19 names of the head commissioner of the Commission of
20 Inquiry, with the exception of the Bagot Commission
21 of 1841 to 1844, it's named after the governor.

22 Q. Just for reference, I'm not going
23 to call it up, but the Bagot Commission report is
24 Exhibit 1447.

25 And with respect to the Pennefather

1 Commission, when did that take place?

2 A. So the Pennefather Commission I
3 believe was 1853 or 1856 and concluded its work in
4 1858.

5 MR. BEGGS: And, again, for reference,
6 the Pennefather Commission is Exhibit 2494 in the
7 database.

8 BY MR. BEGGS:

9 Q. Did the Pennefather Commission
10 make any changes in the Indian Department?

11 A. Yes. As part of the
12 recommendations of the commission itself, was that
13 responsibility and authority for Indian Affairs be
14 transferred from the Imperial Government to
15 Colonial administrations, to all of the different
16 colonies. And this resulted in 1860 to a change in
17 policy where there was that specific transfer.

18 Q. I'd like to show you another
19 document, it's SC1449.

20 Now this is an excerpt of a document,
21 it's not the entire document, but can you tell us
22 what this is?

23 A. Yes. This is an article that was
24 written by T.R.L. MacInnes. It's called, "History
25 of the Indian Administration in Canada". MacInnes

1 was secretary to the Indian Affairs branch from
2 1936 to 1952.

3 MR. BEGGS: Your Honour, I'd like to
4 ask this be made an exhibit, excerpt of "The
5 History of Indian Administration in Canada",
6 by T.R.L. MacInnes.

7 THE COURT: Mr. Registrar.

8 THE REGISTRAR: Exhibit No. 4422.

9 EXHIBIT NO. 4422: Excerpt of "The
10 History of Indian Administration in
11 Canada", by T.R.L. MacInnes.

12 BY MR. BEGGS:

13 Q. Are you aware through your work as
14 to why Mr. MacInnes created this document?

15 A. The specific reason why it was
16 done is not really known. That being said, the
17 officials of the Department of the Indian Affairs
18 and Indian Affairs branch routinely would publish
19 articles on various aspects of the Department.

20 I believe this one, if you scroll to
21 the bottom of the page, it will actually say that
22 it was published in a journal, The Journal of
23 Economics and Political Science.

24 Q. And the date is August 1946?

25 A. Yes.

10:19:55 1 Q. Could we go down to the next page
10:19:58 2 of this document which is page 3 of the article.

10:20:05 3 THE COURT: You mean 388?

10:20:11 4 MR. BEGGS: Sorry, 388, yes. My
10:20:13 5 apologies.

10:20:14 6 BY MR. BEGGS:

10:20:15 7 Q. Now, the beginning of the legible
10:20:19 8 part there refers to Sir William Johnson at 1755.
10:20:26 9 Could you tell us what -- first of all, is this
10:20:30 10 history set out here generally accepted by the
10:20:35 11 Department as accurate?

10:20:35 12 A. Yes. So the text here states that
10:20:37 13 the Department, the Indian Department was
10:20:40 14 established in 1755. This is the basic fact of the
10:20:45 15 date of the creation of the Department. There's
10:20:46 16 actually a specific date, which is the 15th of
10:20:52 17 April.

10:20:52 18 Q. And at that time, it -- was it
10:21:08 19 under civilian or military control at that time?

10:21:10 20 A. So in 1755, the superintendency of
10:21:15 21 Indian Affairs was directly part of the British --
10:21:19 22 it flowed, rather, out of the authority of the
10:21:22 23 commander of the forces in the colonies during the
10:21:25 24 Seven-Year War.

10:21:26 25 So William Johnson reported directly to

1 General Braddock at that period.

2 Q. And did that change at some point?

3 A. During the time of William
4 Johnson's period, it changed in June or July
5 rather, in 1755 when General Braddock was killed in
6 combat.

7 He then reported to General Jeffrey
8 Amherst, who succeeded him as the commander of the
9 forces. During Johnson's lifetime, the Indian
10 Department always referred back through the
11 authority of the commander in forces.

12 Q. Was there a point at which the
13 military was no longer the authority of the
14 Department?

15 A. Yes. In 1796, authority was
16 transferred from military to civilian authority.
17 So it went from the commander of the forces for the
18 colony to the Lieutenant Governor of Upper Canada,
19 for Upper Canada. And it remained with the Office
20 of the Governor General for Lower Canada.

21 Q. And did that change as well later
22 on?

23 A. Yes, it did. It changed again in
24 1816, when it transferred back to the commander of
25 the forces. And the commander of the forces there

1 was always the Military Secretary to the Governor
2 General at that period.

3 Q. So just to clarify for myself, in
4 1755 to 1796 it was under the military control --
5 or military authority?

6 A. Yes, it was.

7 Q. And from 1796 to 1816 it was under
8 civilian, essentially?

9 A. Yes, it was.

10 Q. And 1816 to when?

11 A. So from 1816 to 1830 it was under
12 military control or military authority. Once
13 again, reporting through the Military Secretary to
14 the Governor General. And from 1830 onwards, it
15 reverted back to civilian authority.

16 Q. Was there any official declaration
17 making that last change in 1830?

18 A. There was a letter, or a letter
19 that was sent from the Colonial Governor -- the
20 Colonial Secretary, rather, of the Colonial Office
21 in London in June 1830, that was sent to Sir John
22 Kempt who was the administrator of the colonies in
23 Upper Canada at the time, announcing that that
24 transfer would occur.

25 MR. BEGGS: Can I call up Exhibit 977?

10:24:00 1 THE WITNESS: (Witness reviews
10:24:08 2 document).

10:24:08 3 BY MR. BEGGS:

10:24:14 4 Q. Do you recognize this document?
10:24:24 5 A. Yes, this would be the general
10:24:26 6 order that was sent to John Kempt, or a transcript
10:24:30 7 rather.

10:24:30 8 Q. Thank you. If I can go back to
10:24:42 9 Exhibit 4422, thank you.

10:24:45 10 So after discussing Sir William
10:24:47 11 Johnson, Mr. MacInnes in the next paragraph refers
10:24:52 12 to Imperial Government being responsible. During
10:25:00 13 what period was the Imperial Government responsible
10:25:03 14 for Indian Affairs in Canada?

10:25:04 15 A. The Imperial Government was
10:25:06 16 responsible for Indian Affairs from 1763, the date
10:25:08 17 of the Royal Proclamation on the 7th of October, to
10:25:11 18 the 1st of July 1860. And from 1860, it's the
10:25:19 19 transfer through the --

10:25:19 20 (Reporter sought clarification).

10:25:29 21 A. -- through the act respecting the
10:25:30 22 lands, the Management of Indian Lands and
10:25:32 23 Properties Act.

10:25:33 24 Q. And for reference, I'm not going
10:25:38 25 to call it up, but it's Exhibit 2587, which is the

10:25:41 1 1860 statute that was referred to.

10:25:47 2 If I can go now to a different
10:25:50 3 document, it's Exhibit 3615. Now, have you seen
10:26:16 4 this document in the course of your work and
10:26:18 5 research?

10:26:19 6 A. Yes, I have.

10:26:19 7 Q. And could you identify it for us,
10:26:23 8 please.

10:26:23 9 A. Yes. This is a document called
10:26:26 10 "Administrators of Indian Affairs, a Historic
10:26:29 11 Sketch". It's a document that was written by GM or
10:26:34 12 GW Matheson, who was the registrar of Indian
10:26:40 13 Affairs. He started in the Department in the 1880s
10:26:43 14 and finished his career in 1936, I believe.

10:26:49 15 MR. BEGGS: Actually, if we can go to
10:26:51 16 the last page for a second.

10:26:56 17 So there we have --

10:26:59 18 THE COURT: Isn't that interesting.
10:27:02 19 Any relation to the Mathesons of Montreal, by any
10:27:07 20 chance?

10:27:08 21 THE WITNESS: That I don't know.

10:27:09 22 THE COURT: Neither do I, so we can
10:27:11 23 move forward.

10:27:19 24 BY MR. BEGGS:

10:27:19 25 Q. Okay. Now you say "registrar",

10:27:20 1 that's not the same as what would today be the
10:27:23 2 "Registrar of Indian Affairs", is it?

10:27:24 3 A. No. Currently the Registrar of
10:27:26 4 Indian Affairs is the official who's responsible
10:27:28 5 for the list of what are known as status Indians.

10:27:32 6 The registrar in this sense is in the
10:27:35 7 more truer sense of what the registrar is, which is
10:27:38 8 the person who is responsible for the records of
10:27:40 9 the Department. Basically, this is the official
10:27:42 10 who manages the records of the Department.

10:27:47 11 Q. Thank you. And I don't think the
10:27:48 12 document has a date on it, but you say Mr. Matheson
10:27:55 13 retired in 1936?

10:27:59 14 A. Yes. It's generally believed that
10:28:00 15 this document was written in 1935.

10:28:06 16 Q. Thank you. If you scroll to the
10:28:07 17 bottom of the page, there's reference identifying
10:28:10 18 where the document came from.

10:28:11 19 It mentions "RG10". Can you tell us
10:28:14 20 what "RG10" is?

10:28:16 21 A. Yes. So the session number, which
10:28:19 22 is what that is at the bottom, is the coding that
10:28:22 23 is used to record and track documents by what is
10:28:24 24 now Library and Archives Canada.

10:28:27 25 Any document that has an "RG" in it,

10:28:30 1 refers to a Federal Government record group;
10:28:33 2 "RG" stands for "record group".

10:28:36 3 "10" specifically means -- is the
10:28:38 4 numerical identifier for Indian Affairs. And the
10:28:42 5 rest of it is the volume number that it would have
10:28:45 6 been kept in, like specific, literally which paper
10:28:48 7 volume it would have been kept in.

10:28:50 8 Q. So would the RG10 series be
10:29:01 9 commonly used for research in Indian Affairs?

10:29:04 10 A. Yes. It's the primary holding of
10:29:08 11 all records relating to Indigenous Affairs. It's
10:29:10 12 the second largest collection inside the --
10:29:10 13 (Reporter sought clarification).

10:29:16 14 A. -- it's the second largest set of
10:29:17 15 records in Library and Archives Canada for
10:29:19 16 government records.

10:29:26 17 MR. BEGGS: If I can go to page 3 of
10:29:27 18 this document. If you can scroll down toward the
10:29:37 19 bottom.

10:29:37 20 BY MR. BEGGS:

10:29:42 21 Q. It refers to various Lieutenant
10:30:08 22 Governors. The first one referred to is Sir John
10:30:10 23 Colborne and the second is Sir Francis Bond Head.

10:30:14 24 Can you just indicate what time periods
10:30:16 25 Sir Francis Bond Head was the -- well, actually,

10:30:19 1 it's just, "Bond Head" -- head is part of their
10:30:21 2 response -- but what time period he was in place?

10:30:24 3 A. So he was Lieutenant Governor of
10:30:28 4 Upper Canada from 1836 to 1838.

10:30:32 5 Q. So at that time was he the
10:30:37 6 responsible authority for Indian Affairs?

10:30:39 7 A. No. He's not the top official,
10:30:48 8 he's the secondary official. The top official
10:30:51 9 would have been the Governor General of both Upper
10:30:56 10 and Lower Canada, but he would have been
10:30:58 11 responsible for Indian Affairs in Upper Canada
10:31:00 12 itself.

10:31:00 13 Q. Now, if we go to page 8 -- I
10:31:13 14 believe it's near the top. It refers to the Union
10:31:18 15 of the Canadas. And could you explain how the
10:31:27 16 Union of the Canadas was reflected in the
10:31:31 17 Department structure?

10:31:31 18 A. Yes. So when the Union of the
10:31:34 19 Canadas occurred, there was no need for two
10:31:37 20 separate streams of administration for Indian
10:31:39 21 Affairs; one for Upper Canada and one for Lower
10:31:42 22 Canada. It all became basically merged under the
10:31:44 23 Office of the Governor General through the Civil
10:31:47 24 Secretary.

10:31:51 25 Q. Am I correct that Upper Canada

1 essentially became Canada West?

10:31:54 2 A. Yes. Even though the term "Upper
10:31:56 3 Canada" and "Lower Canada" remained in constant
10:31:59 4 usage until 1867.

10:32:00 5 Q. Okay.

10:32:03 6 MR. BEGGS: Now, if I can go to
10:32:08 7 page 10, if you can scroll down to the bottom.

10:32:08 8 BY MR. BEGGS:

10:32:13 9 Q. It gives a list of Governor
10:32:16 10 Generals, and it refers to the Earl of Elgin from
10:32:23 11 1847 to 1854; is that the same as Lord Elgin?

10:32:27 12 A. Yes, it is.

10:32:27 13 Q. And his successor was Sir Edmund
10:32:36 14 Head; is that correct?

10:32:37 15 A. Yes, it is.

10:32:38 16 Q. Is he related to Bond Head?

10:32:40 17 A. Not to my knowledge.

10:32:40 18 Q. Okay. Now, if I can go back to
10:32:47 19 page 8. If you can scroll down a bit, in the
10:32:56 20 middle of the page.

10:32:57 21 It describes the location of the seat
10:33:00 22 of government; do you know what would be meant by
10:33:04 23 that, "the seat of government"?

10:33:04 24 A. Yes. The seat of government is
10:33:06 25 where the Colonial Legislature would have met. It

1 moved continuously throughout this period.

2 Q. And so in 1854, or more
3 specifically October of 1854, where would the seat
4 of government have been?

5 A. It would have been in Quebec City.

6 Q. And then if I can go back to
7 page 10. I believe at the bottom it gives a list
8 of civil secretaries who were also Superintendents
9 General of Indian Affairs; and could you indicate
10 who was the Superintendent General in October of
11 1854?

12 A. Yes, that would have been Lawrence
13 Oliphant.

14 Q. Who was his successor?

15 A. Lord Bury.

16 Q. And who was in place prior to
17 Mr. Oliphant?

18 A. It was, according to this, it
19 should be Lieutenant Colonel Robert Bruce.

20 Q. And did the Civil Secretary have
21 other duties apart from being Superintendant
22 Lieutenant General?

23 A. Yes. The Civil Secretary, is the
24 Civil Secretary to the Governor General and is
25 basically the main administrator for the colony of

1 the Province of Canada.

2 Q. And are you familiar with Captain
3 Thomas Gummersall Anderson?

4 A. Yes, I am.

5 Q. What would Captain Anderson's
6 relationship be to Mr. Oliphant in 1854?

7 A. He would have been his -- one of
8 his officers, one of the agents, Indian Agents
9 working in the field in Upper Canada.

10 Q. Okay. Now you told us about the
11 1860 statute. Could you tell us how the
12 administration of Indian Affairs changed after
13 confederation?

14 A. Yes. So at confederation, through
15 the articles of the British North America Act at
16 Section 9124, the Federal Government became
17 responsible, or held responsibility for Indians and
18 lands reserved for Indians, therefore, vesting
19 authority with the Federal Government.

20 In 1868 -- so to back up. Prior to
21 confederation, from 1860 to 1868, Indian Affairs
22 was the responsibility of the Crown Lands Office.
23 And in 1868, it became the responsibility of the
24 Secretary of State for Canada, which was a kind of
25 super Minister.

1 In 1869, that was amended to make the
2 Secretary of State for the Provinces. So it was
3 just a redistribution of responsibilities inside
4 there.

5 In 1873, the responsibility for Indian
6 Affairs was transferred to the Minister of the
7 Interior, when the Department of the Interior was
8 established.

9 In 1880, the Department of Indian
10 Affairs was established as a separate ministry from
11 the Department of the Interior.

12 Q. Sorry, I'll stop you there. If we
13 can go back for a moment.

14 So in 1880, how was that establishment --
15 how did that occur?

16 A. It was an amendment to the Indian
17 Act, the Indian Act passed in 1876. I believe it's
18 clauses 6 to 12, established the authority that the
19 Minister of the Interior would be the
20 Superintendent General of Indian Affairs,
21 establishing the Department and the various
22 functions.

23 MR. BEGGS: Now again, I won't call it
24 up, but for reference the 1880 Act is Exhibit 2874.

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10:38:06 25

BY MR. BEGGS:

Q. If I can go back for a moment.

You mentioned the change in 1868, was that also by statute?

A. Yes. That was the enabling legislation for the Secretary of State for the Provinces.

Q. If I can call up SC1437.

Is this the statute you're referring to?

A. Yes. This is the amended version of that statute.

MR. BEGGS: I'd like to ask that this be made the next exhibit, Your Honour.

"An Act providing for the organization of the Department of the Secretary of State of Canada from 1868".

THE COURT: Mr. Registrar.

THE WITNESS: Exhibit No. 4423.

EXHIBIT NO. 4423: An Act providing for the organization of the Department of the Secretary of State of Canada from 1868.

BY MR. BEGGS:

Q. And how did the 1869 change occur?

A. It was an amendment, it's either

10:38:11 1 an amendment to this act or to an Order-in-Council.
10:38:15 2 At this moment I can't remember.
10:38:16 3 MR. BEGGS: If I can call up SC1434.
10:38:16 4 BY MR. BEGGS:
10:38:31 5 Q. Have you seen this document before?
10:38:33 6 A. Yes, this is the Order-in-Council,
10:38:35 7 which transfers the responsibility between the
10:38:37 8 secretaries.
10:38:38 9 Q. I'd like to ask that this --
10:38:44 10 sorry, is the "928" at the top, is that the number
10:38:47 11 of the Order-in-Council or...
10:38:49 12 A. It could be, or it could just be
10:38:52 13 the number of the page.
10:38:53 14 MR. BEGGS: Can you scroll down perhaps
10:38:54 15 and see. To the next page.
10:39:00 16 THE WITNESS: No, that would be the
10:39:01 17 Order-in-Council number.
10:39:04 18 MR. BEGGS: Okay. Could we make
10:39:05 19 Order-in-Council No. 928 from 1869 the next
10:39:12 20 exhibit?
10:39:13 21 THE COURT: Mr. Registrar.
10:39:15 22 THE WITNESS: Exhibit No. 4424.
10:39:17 23 EXHIBIT NO. 4424: Order-in-Council No.
10:39:17 24 928 from 1869.
25

1 BY MR. BEGGS:

2 Q. And if I can call up SC1439 and
3 you mentioned the change in 1873 as well?

4 A. Uhm-hmm.

5 Q. How was that done?

6 A. That was done through legislation.

7 Q. And is this the legislation at the
8 bottom there?

9 A. Yes, it is. This is the enabling
10 legislation for the Department of the Interior.

11 MR. BEGGS: If I can make this the next
12 exhibit, "An Act to Provide for the Establishment
13 of the Department of the Interior", dated 1873.

14 THE COURT: Mr. Registrar.

15 THE REGISTRAR: Exhibit No. 4425.

16 EXHIBIT NO. 4425: An Act to Provide
17 for the Establishment of the Department
18 of the Interior, dated 1873.

19 BY MR. BEGGS:

20 Q. Sorry, I interrupted you after
21 1880, but perhaps you can tell us --

22 THE COURT: Maybe you can ask a fresh
23 question because --

24 MR. BEGGS: Yes.

25 THE COURT: -- I'm not sure you asked

10:40:01 1 him to go on indefinitely.

10:40:03 2 MR. BEGGS: No, no.

10:40:04 3 THE COURT: All right.

10:40:05 4 BY MR. BEGGS:

10:40:07 5 Q. So with the Department being
10:40:10 6 created in 1880, how long did it exist as a
10:40:16 7 department in that form?

10:40:17 8 A. The Department existed from
10:40:19 9 1880 until 1936.

10:40:22 10 Q. And what happened in 1936 to the
10:40:27 11 Department?

10:40:27 12 A. In 1936, it was downgraded to the
10:40:29 13 level of a branch. And merged into the new
10:40:33 14 Department of Mines and Resources.

10:40:37 15 MR. BEGGS: If I can call up SC1440.

10:40:37 16 BY MR. BEGGS:

10:40:48 17 Q. Can you identify this?

10:40:49 18 A. Yes. This is the enabling
10:40:50 19 legislation for The Department of Mines and
10:40:50 20 Resources.

10:40:57 21 MR. BEGGS: If I could ask that "An Act
10:40:58 22 Respecting The Department of Mines and Resources of
10:41:01 23 1936" be marked as the next exhibit.

10:41:03 24 THE COURT: Mr. Registrar.

10:41:03 25 THE REGISTRAR: Exhibit No. 4426.

10:41:06 1 EXHIBIT NO. 4426: An Act Respecting
10:41:06 2 The Department of Mines and Resources
10:41:07 3 of 1936.
10:41:07 4 BY MR. BEGGS:
10:41:19 5 Q. While the Department was within
10:41:21 6 mines and resources, who was the Minister for the --
10:41:25 7 in charge of the Department?
10:41:26 8 A. The Minister of Mines and
10:41:28 9 Resources. He held the title of Superintendent
10:41:31 10 General of Indian Affairs.
10:41:31 11 Q. And how long did that remain in
10:41:34 12 place?
10:41:35 13 A. Mines and Resources was
10:41:37 14 responsible until 1949.
10:41:40 15 Q. And what happened to the branch in
10:41:43 16 1949?
10:41:43 17 A. At that point, it was moved to the
10:41:46 18 new Department of Citizenship and Immigration
10:41:48 19 through its enabling legislation.
10:41:51 20 MR. BEGGS: If I can call up SC1441.
10:41:51 21 BY MR. BEGGS:
10:42:03 22 Q. Could you identify this document?
10:42:05 23 A. Yes, this is the enabling
10:42:06 24 legislation for the Department of Citizenship and
10:42:10 25 Immigration.

10:42:10 1 MR. BEGGS: Could I ask that "An Act
10:42:13 2 Respecting the Department of Citizenship and
10:42:15 3 Immigration dated 1949" be the next exhibit.

10:42:18 4 THE COURT: Mr. Registrar.

10:42:19 5 THE REGISTRAR: Exhibit No. 4427.

10:42:21 6 EXHIBIT NO. 4427: An Act Respecting
10:42:21 7 the Department of Citizenship and
10:42:22 8 Immigration dated 1949.

10:42:22 9 BY MR. BEGGS:

10:42:27 10 Q. And how long was it a branch
10:42:31 11 within Citizenship and Immigration?

10:42:33 12 A. It remained there until
10:42:36 13 1965-1966. It depends on how you want to read the
10:42:42 14 order.

10:42:42 15 Q. And what happened in 1965-1966 to
10:42:46 16 change it?

10:42:47 17 A. In 1965 there is an
10:42:49 18 Order-in-Council using the public service -- I'm
10:42:54 19 going to say this very slowly -- the Public Service
10:42:57 20 Transfer of Duties Act -- sorry, I got that
10:43:01 21 wrong -- the Public Service Reorganization and
10:43:05 22 Transfer of Duties Act, to move part of the
10:43:08 23 Department of Citizenship and Immigration, the
10:43:11 24 Indian Affairs branch, to the Department of
10:43:13 25 Northern Affairs and National Resources.

10:43:17 1 MR. BEGGS: If I can call up SC1453.

10:43:17 2 BY MR. BEGGS:

10:43:32 3 Q. Is this the order you're referring

10:43:34 4 to?

10:43:34 5 A. It is.

10:43:35 6 MR. BEGGS: Could I make the

10:43:39 7 Order-in-Council 1965-2285 the next exhibit.

10:43:46 8 THE COURT: Mr. Registrar.

10:43:46 9 THE REGISTRAR: Exhibit No. 4428.

10:43:49 10 EXHIBIT NO. 4428: Order-in-Council

10:43:49 11 1965-2285.

10:43:49 12 BY MR. BEGGS:

10:43:53 13 Q. This starts in December of 1965

10:43:55 14 and you refer to something in 1966?

10:43:59 15 A. It took effect on the 1st of

10:44:01 16 January.

10:44:01 17 Q. Okay. And how long did it stay in

10:44:03 18 that form?

10:44:03 19 A. It stayed in that form until the

10:44:05 20 reorganization of Northern Affairs National

10:44:07 21 Resources into the Department of Indian Affairs and

10:44:11 22 Northern Development in June of 1966.

10:44:13 23 Q. Okay. And how was that done?

10:44:16 24 A. That was done through the -- a

10:44:20 25 very broad omnibus piece of legislation that

1 reorganized several departments all in one go.

2 MR. BEGGS: Could I call up SC1444.

3 BY MR. BEGGS:

4 Q. Is this the legislation you're
5 referring to?

6 A. It is indeed.

7 MR. BEGGS: Could I ask that "An Act
8 Respecting the Organization of the Government of
9 Canada dated 1966" be the next exhibit.

10 THE COURT: Mr. Registrar.

11 THE REGISTRAR: Exhibit No. 4429.

12 EXHIBIT NO. 4429: "An Act Respecting
13 the Organization of the Government of
14 Canada dated 1966".

15 BY MR. BEGGS:

16 Q. And does that take us back to the
17 form of the Department when you joined it?

18 A. Yes, it does.

19 Q. Now I'd like to take you to a
20 different document, more specific, operations.

21 MR. BEGGS: Could I go to Exhibit 2832.

22 Now this is a letter dated
23 15, November, 1877.

24 If you can scroll to the bottom and see
25 who it's addressed -- it seems to be addressed to a

1 Brian B. Miller, Wiarton. And if we can go to the
2 bottom, perhaps, to see.

3 And it's from, looks like Meredith,
4 Deputy of the Minister of the Interior.

5 So are you familiar with this document?

6 A. I am.

7 Q. And could you explain what it is?

8 A. Yes, it's a letter from Deputy
9 Minister Meredith to Bryce Miller. He was being
10 appointed as the Lands Officer for the Indian
11 Affairs Land Office of Wiarton, Ontario.

12 Q. Do you know through your research
13 and work what the purpose of that land office would
14 have been?

15 A. Land offices were established
16 throughout Canada, and they were Indian Affairs
17 offices to manage the sale of lands -- of reserve
18 lands.

19 MR. BEGGS: If I can call up SC1435.

20 BY MR. BEGGS:

21 Q. Do you recognize this document?

22 A. Yes. I believe this is the
23 Order-in-Council establishing the agencies -- or
24 sorry. The actual land office.

25 Q. Okay. And it says that "an office --"

10:48:24 1 sorry, there's a phrase uncertain there.

10:48:27 2 "An agency be established at
10:48:29 3 Wiarton in the County of Bruce".

10:48:31 4 A. Yes.

10:48:32 5 MR. BEGGS: And sorry, while I'm here,
10:48:37 6 could I ask that this Order-in-Council No. 981 be
10:48:44 7 made the next exhibit?

10:48:46 8 THE COURT: Mr. Registrar.

10:48:47 9 THE REGISTRAR: Exhibit No. 4430.

10:48:51 10 EXHIBIT NO. 4430: Order-in-Council
10:48:53 11 No. 981.

10:48:53 12 BY MR. BEGGS:

10:48:56 13 Q. Now, are you aware if there's
10:48:59 14 still a land sales office in Wiarton today?

10:49:03 15 A. To my knowledge, there is none.

10:49:05 16 Q. Do you know when it was closed
10:49:09 17 from your work?

10:49:09 18 A. So the only way to see if offices
10:49:12 19 are in operation are based on the financial
10:49:14 20 accounts of the Department. And we know that until
10:49:18 21 1921, the lands office in Wiarton is being funded,
10:49:23 22 so the salary is being paid to the agent who is
10:49:26 23 there; and this ceases in 1921. From that point,
10:49:30 24 we have no other records as to the existence of the
10:49:32 25 land agency. So we don't know if it's closed at

10:49:36 1 that point, but we don't have any other records of
10:49:38 2 its existence.

10:49:39 3 Q. And this Land Office in Wiarton,
10:49:43 4 is that different from the Indian Agents Office?

10:49:47 5 A. Yes, it is.

10:49:48 6 Q. Now I'd like to take you to a
10:49:58 7 document, SC1436.

10:50:10 8 Now, do you recognize this document or
10:50:12 9 do you want some time to look at it?

10:50:15 10 A. No, I recognize this document.

10:50:16 11 Q. Could you tell us what it is?

10:50:17 12 A. This is an Order-in-Council from
10:50:19 13 1882, which deals with the establishment of new
10:50:24 14 agencies across Ontario after the central agency,
10:50:30 15 or superintendency is abolished and new
10:50:37 16 administrative structures are established
10:50:38 17 throughout the Province.

10:50:39 18 MR. BEGGS: Could we scroll down a bit?

10:50:39 19 BY MR. BEGGS:

10:50:46 20 Q. So No. 2 it says there:

10:50:50 21 "For the Chippewas of Nawash
10:50:54 22 whose reserve is at Cape Croker in
10:50:57 23 the County of Bruce, the agent to be
10:50:58 24 stationed on the reserve."

10:51:05 25 And if you go down further, No. 3:

1 "For the Chippewas of Saugeen

2 whose reserve is in the County of

3 Grey, the agent to be stationed on

4 the reserve."

5 Now, was this a new development to have
6 an agent stationed on reserve?

7 A. For these two communities, yes, it
8 is.

9 MR. BEGGS: Okay. I'd like to ask that
10 Order-in-Council 1462 be made the next exhibit.

11 THE COURT: Mr. Registrar.

12 THE REGISTRAR: Exhibit No. 4431.

13 EXHIBIT NO. 4431: Order-in-Council
14 No. 1462.

15 BY MR. BEGGS:

16 Q. So from what you've said earlier,
17 prior to 1882, these areas were under something
18 called the "Central Superintendency"?

19 A. Yes, they were.

20 MR. BEGGS: Now I'd like to call up a
21 document, SC1445.

22 BY MR. BEGGS:

23 Q. Do you recognize this document?

24 A. Yes, I do. It's a document, it's
25 a compilation of all the field offices in Ontario.

1 It was compiled by the Department of Indian Affairs
2 and Northern Development.

3 Q. Do you know where the information
4 came from for this document?

5 A. I believe the information is
6 gathered from the various filing systems that we
7 have inside the Department. Most specifically, a
8 system called "the card index".

9 Q. Okay. I'd like to ask that this
10 alphabetical -- well, alphabetical list of field
11 offices be made the next exhibit?

12 THE COURT: Mr. Registrar.

13 THE REGISTRAR: Exhibit No. 4432.

14 EXHIBIT NO. 4432: Alphabetical List of
15 Field Offices.

16 MR. BEGGS: If we can scroll down a bit
17 to the next page or next two pages. Actually, if
18 we can go to the next page as well. No, sorry
19 another page. There we go.

20 BY MR. BEGGS:

21 Q. So this is an entry for the Cape
22 Croker Agency, and it indicates that the
23 predecessor was the central superintendency as we
24 just said.

25 Could you tell us from this document,

1 or from your own research and materials, whether
2 there is still an office in Nawash?

3 A. No, to my knowledge there's no
4 office currently in Nawash.

5 Q. Okay.

6 MR. BEGGS: If I can go to document
7 SC1315.

8 Perhaps we can scroll down a bit.

9 BY MR. BEGGS:

10 Q. Do you recognize this document?

11 A. Yes. This is a document from
12 the Department indicating the merger of the two
13 agencies on the Bruce Peninsula.

14 Q. Yes, that's the Cape Croker and
15 Saugeen agencies?

16 A. That's right.

17 Q. And it has a little -- I'm not
18 sure what to describe it, but it lists the current
19 employees of the Cape Croker and Saugeen agency and
20 then following the amalgamation?

21 A. Yes, it indicates what the grades
22 are of the employees. So it has, for example, it
23 states that at both Cape Croker and at Saugeen
24 there is a superintendent Grade 1. And that after
25 the amalgamation, the Superintendent is now at

1 Grade 2.

2 Q. And is there a difference between
3 Superintendent and Indian Agent?

4 A. There is. And it depends on the
5 time period that we're speaking of. At this point
6 in time, from 1951 onwards, the title of "Indian
7 Agent" was used less formally. It was used
8 informally by both staff and by communities. But
9 the official title of an individual who is
10 representing an agency became "Superintendent".

11 Q. Okay.

12 MR. BEGGS: So I'd like to ask that
13 this Memorandum dated 16th of May 1958, be made the
14 next exhibit.

15 THE COURT: Mr. Registrar.

16 THE REGISTRAR: Exhibit No. 4433.

17 EXHIBIT NO. 4433: Memorandum dated
18 May 16, 1958.

19 MR. BEGGS: If I can go to document SC1316.

20 BY MR. BEGGS:

21 Q. Do you recognize this document?

22 A. Yes. This is a document to the
23 Department from the Superintendent at Saugeen.

24 MR. BEGGS: Actually, if we can scroll
25 down a bit.

1 THE WITNESS: Sorry, that's right.

2 So this is an internal document

3 indicating who the new Superintendent would be.

4 BY MR. BEGGS:

5 Q. And does it indicate the change,
6 when the change is occurring?

7 A. Yes. It says "Effective July 1,
8 1958".

9 MR. BEGGS: Could I ask that this
10 Memorandum dated June 26, 1958, be made the next
11 exhibit?

12 THE COURT: Mr. Registrar.

13 THE REGISTRAR: Exhibit No. 4434.

14 EXHIBIT NO. 4434: Memorandum dated
15 June 26, 1958.

16 BY MR. BEGGS:

17 Q. Now what would the impact of
18 merging the two agencies be on the work of the
19 Superintendent for this area?

20 A. In principal, the Superintendent
21 would now be responsible for both, anything that
22 was to occur within both communities. Thus, the
23 increase of the pay grade. The various activities
24 of Superintendents or Agents at this period are
25 shifting towards less management on the ground of

10:58:18 1 the community and more -- there's a very large
10:58:22 2 series of documents about how Indian Agents or
10:58:25 3 Superintendents are trying to encourage economic
10:58:27 4 development in the communities. But at the same
10:58:29 5 time they're still managing the day-to-day business
10:58:32 6 of the community, its relationship with the
10:58:34 7 Department, communicating to the Department through
10:58:37 8 the regional office in Toronto, at this point,
10:58:40 9 about anything that's happening on the reserve or
10:58:43 10 any decision of the Band Council.

10:58:45 11 Q. Before this amalgamation took
10:58:48 12 place, was it common for there to be a single agent
10:58:53 13 for a single Band?

10:58:55 14 A. Yes, it was quite common. By the
10:59:00 15 1920s, 1930s almost every community had one --
10:59:05 16 almost all Indian Agents had one or two
10:59:09 17 communities, it depended on how closely
10:59:11 18 geographically the communities were one to another.

10:59:15 19 Q. So I'd like to go to a document
10:59:29 20 SC1319. We're moving from Nawash to Saugeen at
10:59:36 21 this point.

10:59:46 22 This is a letter dated 14th of
10:59:50 23 August -- I think that's a "4" -- of 1973. Do you
10:59:56 24 recognize this document?

10:59:57 25 A. Yes. This is a cover letter

10:59:59 1 for -- that's been done by the records office of
11:00:03 2 the Department sending it to -- it doesn't actually
11:00:06 3 specify who the district supervisor is for this
11:00:10 4 district at that period, about who were employed at
11:00:13 5 the agencies on the Bruce Peninsula.

11:00:18 6 MR. BEGGS: Could I mark this
11:00:21 7 Memorandum dated August 14, 1973 as the next
11:00:25 8 exhibit.

11:00:26 9 THE COURT: Mr. Registrar.

11:00:27 10 THE REGISTRAR: Exhibit No. 4435.

11:00:33 11 EXHIBIT NO. 4435: Memorandum dated
11:00:34 12 August 14, 1973.

11:00:34 13 MR. BEGGS: If I could call up SC1320.

11:00:34 14 BY MR. BEGGS:

11:01:01 15 Q. Could you tell us what this
11:01:02 16 document is?

11:01:02 17 A. So this is the attached document
11:01:04 18 that would have gone with the preceding letter.
11:01:09 19 This is a list of all of the superintendents and
11:01:13 20 agencies for, I think what became the Bruce
11:01:17 21 District.

11:01:18 22 MR. BEGGS: If we can scroll down, I
11:01:21 23 think to the next page.

11:01:21 24 BY MR. BEGGS:

11:01:27 25 Q. It goes up to the present time,

11:01:29 1 which I think was 1973 --

11:01:29 2 A. That's right.

11:01:31 3 Q. -- from the previous letter?

11:01:39 4 And it indicates what you mention of
11:01:41 5 the merger in 1958. It refers to a change in 1972;
11:01:45 6 could you tell us what that was?

11:01:46 7 A. So in 1972, the name of the agency
11:01:52 8 was changed to a district. This was a general
11:01:55 9 approach that was being done across the Department
11:01:59 10 itself, all agencies -- the usage of the term
11:02:03 11 "agencies" ceased to exist and it moved to
11:02:06 12 "districts" and the responsibilities of the
11:02:09 13 Superintendents of these districts increased as
11:02:12 14 some agencies were merged together into new
11:02:17 15 administrative structures.

11:02:19 16 Q. If I can go back to Exhibit 4432.

11:02:47 17 So we were at Cape Croker Agency, and
11:02:52 18 at the bottom it says "Successor Agency Bruce
11:02:55 19 Agency".

11:02:57 20 If we can scroll up, because I think
11:02:59 21 these are alphabetical -- well, it said
11:03:02 22 alphabetical at the front. So it gives the details
11:03:08 23 of the Bruce Agency, and it says "Bruce District"
11:03:15 24 as you just said.

11:03:16 25 MR. BEGGS: Can we scroll down to

1 "Bruce District"?

2 If we can scroll down a little bit
3 farther.

4 BY MR. BEGGS:

5 Q. Does this tell us what -- it has a
6 question mark for date of dissolution. Do we know
7 what that means?

8 A. Yes. The cards, the card index
9 that was used for the compilation of this document,
10 which was done in the 1990s, I believe, did not
11 have all of the information to be able to pinpoint
12 it, the actual dissolution of the agency, of the
13 district.

14 Q. So at the bottom it does have a
15 "successor agency"; does that indicate some change
16 took place?

17 A. Yeah, so that's the issue of the
18 Southern District. In the 1970s, there was an
19 entire reorganization of the structures once again.
20 And all agencies for the southern half of Ontario
21 were moved to Brantford.

22 Q. And just for completeness, if we
23 can scroll down I think alphabetically to the
24 Southern District -- it appears there was an entry
25 for the Central Superintendency.

11:04:36 1 MR. BEGGS: If we can scroll back down.

11:04:39 2 BY MR. BEGGS:

11:04:39 3 Q. Okay, "Southern District". It

11:04:43 4 indicates a date of establishment, and a date of

11:04:51 5 dissolution. It says "extant"; are you aware if

11:04:57 6 there's still an office in Brantford?

11:04:59 7 A. There is still an office in

11:05:01 8 Brantford, but the term "Southern District" is no

11:05:08 9 longer used.

11:05:10 10 Q. Where would the headquarters of

11:05:18 11 CIRNAC be?

11:05:19 12 A. The current headquarters of the

11:05:19 13 Department?

11:05:19 14 Q. Yes.

11:05:19 15 A. The current headquarters of the

11:05:20 16 Department are in Gatineau, Quebec.

11:05:23 17 Q. So we have the headquarters in

11:05:26 18 Gatineau, and an office in Brantford. Do you know

11:05:28 19 if there's an office currently located at Saugeen?

11:05:32 20 A. To my knowledge there is none.

11:05:38 21 MR. BEGGS: Could I go to Exhibit 4110.

11:05:55 22 BY MR. BEGGS:

11:05:58 23 Q. Now have you seen this document

11:05:59 24 before?

11:05:59 25 A. Yes, I have.

11:06:00 1 Q. And could you tell us what it is,
11:06:06 2 basically?

11:06:06 3 A. It's a Band Council Resolution
11:06:09 4 from the Chippewas of Nawash, that deals with the
11:06:11 5 transfer of files, I believe, from the office of
11:06:17 6 the Bruce District to the Regional Office of the
11:06:20 7 Department, which would have been in Toronto.

11:06:24 8 MR. BEGGS: Can we scroll down to the
11:06:25 9 bottom on the page.

11:06:25 10 BY MR. BEGGS:

11:06:29 11 Q. It has some sort of a numerical
11:06:33 12 identifier on the bottom, does that indicate that
11:06:35 13 it came from CIRNAC files?

11:06:37 14 A. I believe it does. "The Canada",
11:06:41 15 refers to Canada; "Ontario" is the Ontario region
11:06:45 16 east -- I'm not really sure, it seems to be an
11:06:48 17 internal numerical code for the storing of
11:06:52 18 documents.

11:06:52 19 Q. Now would it be common for CIRNAC
11:06:54 20 to receive copies of Band Council Resolutions?

11:06:57 21 A. All Band Council Resolutions would
11:07:00 22 have been sent to the Department.

11:07:02 23 Q. This one is dated 10th of
11:07:07 24 September 1997 and it's No. 362.

11:07:10 25 MR. BEGGS: If I can go to another

11:07:11 1 document SC1447.

11:07:11 2 BY MR. BEGGS:

11:07:40 3 Q. This is a letter dated
11:07:44 4 September 11th, 1997, so one day after the BCR.
11:07:50 5 And it's addressed to the Regional Director General
11:07:53 6 in the Ontario Regional Office in Toronto.

11:07:56 7 Now, what was the Regional Director
11:08:01 8 General of Ontario Regional Office responsible for?

11:08:05 9 A. So the administration of the
11:08:08 10 Department is divided across the country into
11:08:10 11 various regional offices. There's one specifically
11:08:13 12 for the Province of Ontario, and the headquarters
11:08:16 13 has been in Toronto since the 1960s.

11:08:19 14 The Regional Director General manages
11:08:21 15 all of the affairs of the Department. It's a
11:08:22 16 Director General level position as indicated. So
11:08:25 17 they manage both the human resources of the
11:08:27 18 regional office, but as well as managing all of the
11:08:31 19 on-the-ground activities of the Department.

11:08:33 20 So dealing with communities, anything
11:08:35 21 that has to do with claims or economic development,
11:08:40 22 the delivery of programs and services.

11:08:42 23 Q. If we can scroll down to see who
11:08:46 24 it's from. It's from Chief Ralph Akiwenzie,
11:08:51 25 Chippewas of Nawash First Nation.

11:08:55 1 Have you seen this document before?

11:08:56 2 A. Yes, I have.

11:08:59 3 MR. BEGGS: And well first, actually,
11:09:02 4 could I make this letter dated September 11, 1997
11:09:09 5 from Chief Akiwenzie to John Donnelly, the next
11:09:14 6 exhibit?

11:09:18 7 THE COURT: Mr. Registrar.

11:09:19 8 THE REGISTRAR: Exhibit No. 4436.

11:09:24 9 EXHIBIT NO. 4436: Letter dated
11:09:24 10 September 11, 1997 from Chief Akiwenzie
11:09:25 11 to John Donnelly.

11:09:25 12 BY MR. BEGGS:

11:09:26 13 Q. What does this letter indicate
11:09:27 14 about the offices and the files?

11:09:29 15 A. It's a letter calling on the
11:09:32 16 Department to not remove any of the documents in
11:09:36 17 the Bruce District Office as it is, according to
11:09:39 18 this, going to be closed.

11:09:40 19 Q. Okay. And lastly, if I could go
11:09:47 20 to SC0738.

11:09:59 21 And this is dated 16th of April 1998.
11:10:03 22 Have you seen this document before?

11:10:04 23 A. Yes, I have.

11:10:05 24 Q. What is it, basically?

11:10:07 25 A. It's another Band Council

1 Resolution from the Chippewas of Nawash, calling on
2 the Federal Government -- or the Department,
3 rather, to guarantee the protection of the
4 documents and not to remove any documents from the
5 District Office in -- or the Bruce District Office.

6 MR. BEGGS: If I could make the next
7 exhibit, this Band Council Resolution No. 19 dated
8 16th of April, 1998.

9 THE COURT: Mr. Registrar.

10 THE REGISTRAR: Exhibit No. 4437.

11 EXHIBIT NO. 4437: Band Council
12 Resolution No. 19 dated April 16, 1998.

13 BY MR. BEGGS:

14 Q. And can we draw any conclusion
15 from this BCR -- that would be the abbreviation for
16 Band Council Resolution?

17 A. Yes, it is.

18 Q. -- from this Band Council
19 Resolution as to whether the office is still open
20 at this point?

21 A. From this it implies that the
22 office is still open, or at least that the -- the
23 office in itself is still in existence, I'm not
24 sure if it's actually open or not. It doesn't say
25 if the office is in operation. But it does seem to

11:11:17 1 imply that any documents held in that office have
11:11:19 2 not yet been removed.

11:11:22 3 Q. And are you aware if there is an
11:11:27 4 office in Saugeen today? I'm not sure that I asked
11:11:30 5 that.

11:11:30 6 A. To my knowledge there is no office
11:11:33 7 in Saugeen.

11:11:54 8 MR. BEGGS: If I could ask,
11:11:55 9 Mr. Registrar, what is Exhibit No. 4435?

11:11:59 10 THE REGISTRAR: Memorandum dated
11:12:02 11 August 14, 1973.

11:12:04 12 MR. BEGGS: Okay. I think I missed
11:12:14 13 making a document an exhibit, that was the
11:12:17 14 attachment to Exhibits 4435. The document was
11:12:25 15 SC1320, and that was this list.

11:12:29 16 THE COURT: I have that down as 4436.
11:12:33 17 Is that correct, Mr. Registrar?

11:12:34 18 THE REGISTRAR: Yes, it is correct.

11:12:37 19 MR. BEGGS: I thought Exhibit 4436 was
11:12:39 20 the letter from 1997.

11:12:43 21 THE COURT: My note is that it's the
11:12:46 22 attachment to 4435, which is the cover letter.

11:13:17 23 MR. BEGGS: There seems to be something
11:13:18 24 wrong with the database, we'll have to look at it
11:13:21 25 later.

1 THE REGISTRAR: Court's indulgence.

2 Actually, document No. SC1320 was not
3 made an exhibit yet.

4 THE COURT: Is that the attachment?

5 THE REGISTRAR: This is the
6 Superintendents and Agents of Saugeen, Indian
7 Agency List.

8 THE COURT: There is one that you
9 missed, but it's not the one you asked about.

10 Can we make that as the next exhibit,
11 Mr. Registrar?

12 THE REGISTRAR: Yes, Your Honour.

13 THE COURT: And what is the number?

14 THE REGISTRAR: Exhibit No. 4438.

15 EXHIBIT NO. 4438: Superintendents and
16 Agents of Saugeen, Indian Agency List.

17 BY MR. BEGGS:

18 Q. Now lastly, are you aware of a
19 series of documents called "Annual Reports of
20 Indian Affairs"?

21 A. I am.

22 Q. And what are those?

23 A. These are reports that were
24 written by the Department and tabled in the House
25 of Commons as part of the sessional papers on a

1 yearly basis, basically, from the 1860s until 1991.

2 Q. And what sort of information would
3 it contain?

4 A. The information in the annual
5 reports varied greatly over time. In the earliest
6 period, they were very, very much concentrating on
7 the activities of the Department, its goals and its
8 mandates, reports from Indian Agent superintendents
9 and inspectors.

10 From 1938, I believe -- sorry, from
11 1898 to 1938, they also included the financial
12 audits of the activities of the Department,
13 published by or provided by the Auditor General of
14 Canada.

15 By the 1960s, they are a very high
16 level representations of what the activities and
17 the goals and programs, and policies of the
18 Department of Indian Affairs and Northern
19 Development.

20 Q. Now you described how in the 20th
21 century, different ministries were in charge of
22 Indian Affairs.

23 How would that be reflected in these
24 annual reports?

25 A. The annual reports would then be

1 published under the name of the various
2 departments. So in the 1860s, in the 1860s their
3 annual reports are being published by the
4 Commissioner of Crown lands.

5 From 1880 to 1936 by the Minister or
6 the Superintendent General of Indian Affairs who is
7 also mostly the Minister of the interior.

8 After that, it's whichever specific
9 ministry is responsible, as a part of their annual
10 report. So for citizenship and immigration, it is
11 one chapter of their annual report on their yearly
12 activities.

13 MR. BEGGS: Thank you, those are my
14 questions. Thank you, Your Honour.

15 THE COURT: Ms. Guirguis, are you
16 asking this gentleman questions or is
17 Mr. Brookwell?

18 MS. GUIRGUIS: I will be, Your Honour.

19 I think I only have a few questions for
20 clarification. But I was wondering if we could
21 take the morning break early and I can review my
22 notes.

23 THE COURT: That sounds like a good
24 idea.

25 MS. GUIRGUIS: Thank you, Your Honour.

11:16:33 1 THE COURT: If there are any other
11:16:36 2 uncertainties about the exhibit list, can you
11:16:38 3 please consult Mr. Registrar when we're on break.

11:16:41 4 MR. BEGGS: Thank you.

11:16:41 5 THE COURT: Now, sir, have you ever
11:16:44 6 testified as a witness before?

11:16:44 7 THE WITNESS: Yes, I have.

11:16:45 8 THE COURT: And do you recall -- and if
11:16:47 9 not, I'll remind you -- that there's some strict
11:16:50 10 constraints on you whilst under cross-examination;
11:16:54 11 do you recall that, sir?

11:16:55 12 THE WITNESS: I would like to be
11:16:56 13 reminded.

11:16:56 14 THE COURT: Okay. So treated as of
11:16:59 15 now, until you're finished, not to discuss your
11:17:03 16 evidence or do anything else in relation to it with
11:17:06 17 anyone, all right? Stick to whatever sports are
11:17:12 18 your favourite one.

11:17:14 19 So that includes not discussing your
11:17:16 20 evidence with counsel and so forth, all right?
11:17:19 21 Having said that I'm sure they can help you get a
11:17:22 22 cup of coffee over the morning break. 20 minutes.

11:17:25 23 -- RECESS TAKEN AT 11:20 --

11:42:59 24 -- UPON RESUMING AT 11:42 --

11:43:11 25 THE COURT: Please go ahead.

11:43:13 1 MS. GUIRGUIS: Thank you, Your Honour.

11:43:14 2 CROSS-EXAMINATION BY MS. GUIRGUIS:

11:43:14 3 Q. Good morning, my name is Cathy
11:43:17 4 Guirguis, and I'm one of the lawyers for the
11:43:19 5 Plaintiffs.

11:43:19 6 I just had a few questions to clarify a
11:43:21 7 few of the things you discussed with my friend this
11:43:24 8 morning.

11:43:25 9 The first question I had is, my friend
11:43:28 10 asked you a question about when Indian Affairs was
11:43:30 11 under the administration of the Imperial
11:43:33 12 Government. And your answer was 1763 to 1860.

11:43:37 13 Just prior to that, you had said that
11:43:41 14 the Indian Department had been created on April 13,
11:43:45 15 1755, under Johnson, I believe, who was reporting
11:43:47 16 to the Commander of Forces.

11:43:50 17 So I just wanted to clarify or confirm
11:43:52 18 that from 1755 to 1763 it was under the
11:43:56 19 administration of the Imperial Government, correct?

11:43:58 20 A. Yes. But it's a question of what
11:44:02 21 is Canada?

11:44:02 22 Q. Okay.

11:44:05 23 A. So prior to 1763, British
11:44:08 24 authority in what is the Territories that are now
11:44:10 25 Canada are French territories.

1 In 1763, the Royal Proclamation of the
2 7th of October states that responsibility for the
3 relationship with Indigenous peoples is through the
4 Crown at that point.

5 So from a Canada perspective, we always
6 count from 1763. From the administration of the
7 Department we always start at 1755.

8 Q. I understand. That makes sense to
9 me.

10 So the 1755 to 1763, though, the
11 administration of the Department is under the
12 Imperial Government through the military authority.

13 A. Yes.

14 Q. Okay. Thank you.

15 The other thing I wanted to clarify is,
16 my friend asked you about Lieutenant Governor Bond
17 Head, whether he was the top official at the time.
18 And you said that he reported to the Governor
19 General.

20 Now in the exhibit that you were
21 referring to, which is 3615, I notice here at
22 page 8 they don't mention any Governor Generals
23 until after the Proclamation of the Union of Upper
24 Canada and Lower Canada after February 5, 1841.

25 Were there Governor Generals before

11:45:27 1 that time?

11:45:28 2 A. Yes.

11:45:29 3 Q. Okay.

11:45:29 4 A. Well, there were governors -- the
11:45:31 5 title of "Governor" and "Governor in-Chief" and
11:45:36 6 "Governor of the Colonies" is used relatively
11:45:39 7 interchangeably from the 1760s onwards.

11:45:43 8 So at the period of Lieutenant Governor
11:45:46 9 Bond Head, there is a Governor General at Quebec.
11:45:49 10 And he is the Governor General for both Upper and
11:45:55 11 Lower Canada. The ultimate authority for all
11:45:57 12 Colonial administration comes through the Governor
11:46:00 13 General.

11:46:00 14 Q. So I wanted to bring up another
11:46:02 15 exhibit, just to clarify this a bit further for my
11:46:06 16 own benefit, maybe others that are confused by
11:46:08 17 this.

11:46:09 18 Exhibit 1137, so this is a transcript
11:46:26 19 of a letter, a dispatch that was written from
11:46:30 20 Sir Francis Bond Head to Lord Glenelg August 20th,
11:46:38 21 1836. And Lord Glenelg at the time was the
11:46:43 22 Colonial Secretary, correct?

11:46:43 23 A. Yes.

11:46:48 24 Q. I read this document and this
11:46:50 25 reporting as Sir Francis Bond Head reporting to his

1 superior. But am I correct in understanding your
2 answer is that there was a Governor General in
3 between that he would have reported to?

4 A. Yes. So there was a Governor
5 General in Quebec City. The issue, and the
6 relationship on -- I'm going to start that over.

7 Sir Francis Bond Head was reporting
8 directly back to Lord Glenelg, because Lord Glenelg
9 was criticizing Sir Francis Bond Head's actions in
10 the signing of the treaties in 1836. So this is a
11 series of interchanges that occurred between the
12 Colonial Office, which is the actual administrator
13 of all things in the colonies, including Indigenous
14 affairs. To between the Secretary Lord Glenelg and
15 Sir Francis Bond Head.

16 I've seen this document before, but I
17 believe this may be Sir Francis Bond Head's report
18 on the negotiation of the Treaty.

19 Q. Yes, that's correct.

20 A. So he is reporting back to Lord
21 Glenelg on the Treaty that he concluded. And there
22 are some -- this was somewhat irregular. Because
23 normally, the Lieutenant Governor wasn't writing
24 directly to the Colonial secretary on Indian
25 Affairs.

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Q. Okay, thank you.

So do you know who the Governor General was at this time that Sir Francis Bond Head would have been reporting to the Governor General for then Upper Canada and Lower Canada?

A. It's either John Kemper or John Colborne. One of the documents we saw earlier actually had that list.

Q. Okay. So maybe that's the previous exhibit, 3615. And this is where I wasn't able to find any mention of Governor General before 1841.

A. So I believe if you go to the top of the document, if you start scrolling down, at some point there's a list of Governors of the colonies.

(Witness reviews document).

No, it's not this document. I do have a document that has all of this entire list, just not here.

Q. Okay. Well, that helps to clarify that for me, thank you.

The last question that I wanted to ask you about was an exhibit that was added today, Exhibit 4433. So this is the letter about the

11:49:38 1 merging of two agencies, the Nawash and the Saugeen
11:49:42 2 Agency and merging them at Chippewa Hill, which is
11:49:46 3 Saugeen.

11:49:47 4 If we scroll down to the second page,
11:49:52 5 just highlighted a portion here that talks about
11:49:55 6 the reasoning for merging the two agencies. And it
11:49:55 7 says:

11:50:01 8 "Last fall the Assistant
11:50:02 9 Superintendent of Agencies had an
11:50:03 10 opportunity of visiting both the
11:50:05 11 Cape Croker and Saugeen Agencies and
11:50:08 12 seeing what was involved,
11:50:10 13 recommended that headquarters of the
11:50:15 14 new agency, if at all possible,
11:50:18 15 remain at Saugeen."

11:50:22 16 And if we move down and skip that next
11:50:24 17 paragraph, second sentence. Move down:

11:50:28 18 "While it is true that Wiarton
11:50:29 19 is roughly 20 miles from both the
11:50:31 20 Saugeen and Cape Croker reserves,
11:50:33 21 the need for supervision is greater
11:50:35 22 at Saugeen. And in any event, Cape
11:50:37 23 Croker is only about 40 miles
11:50:39 24 distant, and there should be no
11:50:41 25 difficulty in the Agency

11:50:42 1 Superintendent with the Assistant
11:50:44 2 making regular visits to this
11:50:46 3 group."

11:50:46 4 So we know that the agency was then
11:50:50 5 located at Chippewa Hill at Saugeen. And from this
11:50:54 6 reading, the reasoning behind it, included, you
11:50:59 7 would agree with me, that it included that it had
11:51:02 8 to be easy for the agency superintendent to make
11:51:05 9 regular visits to Cape Croker?

11:51:07 10 THE WITNESS: Yes.

11:51:11 11 MS. GUIRGUIS: Okay. Thank you, sir.
11:51:12 12 Those are all my questions.

11:51:14 13 THE WITNESS: Thank you.

11:51:16 14 THE COURT: Anything on re-examination,
11:51:18 15 Mr. Beggs?

11:51:19 16 MR. BEGGS: No, Your Honour.

11:51:20 17 THE COURT: Thank you, sir. That
11:51:21 18 concludes your testimony, you can step down.

11:51:27 19 THE WITNESS: Thank you.

11:51:27 20 (Jean-Pierre Morin was excused from the
11:51:27 21 proceedings).

11:51:27 22 THE COURT: Now Mr. Beggs, as I
11:51:31 23 understand it -- I'm sure you've been brought up to
11:51:34 24 date about our discussions about --

11:51:38 25 MR. BEGGS: Yes, Your Honour.

1 THE COURT: -- January the 8th, and my
2 comments about how the gap this week should be used
3 productively to get that material all in order.
4 And then we're over to December the 9th.

5 MR. BEGGS: Yes, Your Honour.

6 THE COURT: And is it still the
7 gentleman, McHugh --

8 MR. BEGGS: Yes, it's Professor McHugh.

9 THE COURT: -- Professor McHugh on that
10 Monday?

11 MR. BEGGS: Yes. And if Professor
12 McHugh finishes any earlier, it should not be
13 difficult to move Professor Morden or Ms. Minotti
14 to fill that gap.

15 THE COURT: That's helpful.

16 And I'm not sure if -- I think you were
17 not there when we discussed reserving some time on
18 the 13th for a trial management conference.

19 MR. BEGGS: Yes, I wasn't but I was
20 told about it.

21 THE COURT: But you were advised of
22 that.

23 MR. BEGGS: Yes.

24 THE COURT: Please keep Plaintiffs'
25 counsel up-to-date, but I guess there's only three

11:52:43 1 people on that short list, as to who's coming when.

11:52:46 2 But we'll start with Professor McHugh
11:52:49 3 on the Monday, all right?

11:52:51 4 Is there anything else anyone wishes to
11:52:54 5 raise before we adjourn until that day?

11:52:57 6 No?

11:52:57 7 MS. GUIRGUIS: No, Your Honour.

11:52:58 8 THE COURT: No.

11:53:01 9 MR. LEMMOND: No, Your Honour.

11:53:02 10 THE COURT: We will adjourn then until,
11:53:05 11 I think I said it was December the 9th.

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13 -- Court adjourned at 11:53 a.m.
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REPORTER'S CERTIFICATE

I, JUDITH M. CAPUTO, RPR, CSR, CRR,
Certified Shorthand Reporter, certify;

That the foregoing proceedings were
taken before me at the time and place therein set
forth at which time the witness was put under oath
by the court registrar;

That the testimony of the witness and
all objections made at the time of the examination
were recorded stenographically by me (Note: Not
all quotes have been verified against source
document, but transcribed as read into the record);

That the foregoing is a Certified
Transcript of my shorthand notes so taken.

Dated this 6th day of December, 2019.



NEESON COURT REPORTING INC.

PER: JUDITH M. CAPUTO, RPR, CSR, CRR

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