

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

DAY 56 VOL 56
October 24, 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 56/DAY 56 of the trial proceedings
29 in the above-noted matter, being held at the Superior
30 Court of Justice, 330 University Avenue, Courtroom 5-1,
31 Toronto, Ontario, on the 24th day of October, 2019.

32 -----

33 B E F O R E:

34 The Honourable Justice Wendy M. Matheson

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

2

3 Roger Townshend, Esq., for the Plaintiffs,
4 & Ben Brookwell, Esq., The Chippewas of
5 & Krista Nerland, Esq., Saugeen First Nation,
6 and the Chippewas of
7 Nawash First Nation.

8

9

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

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15 David Feliciant, Esq.,
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17 & Richard Ogden, Esq., Her Majesty the
18 & Julie McRandall, Esq., Queen in Right of
19 & Peter Lemmond, Esq., Ontario.

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24 REPORTED BY: Judith M. Caputo, RPR, CSR, CRR

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WITNESS:

DR. PAUL DRIBEN; previously sworn.

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09:56:22 1 -- Upon commencing at 10:02 a.m.

10:02:40 2
10:02:40 3 THE COURT: Please go ahead.

10:02:45 4 MR. FELICIAN: Thank you.

10:02:45 5 THE WITNESS: Good morning.

10:02:52 6 PAUL DRIBEN: PREVIOUSLY SWORN.

10:02:52 7 CROSS-EXAMINATION BY MR. FELICIAN (CONT'D):

10:03:10 8 Q. Good morning. Before we go back
10:03:13 9 to the document we were looking at yesterday when
10:03:16 10 we broke, I just want to ask you a couple of
10:03:18 11 questions.

10:03:18 12 Would you agree that from the late
10:03:20 13 1700s to 1840 there was a considerable increase in
10:03:24 14 the European white population in Upper Canada?

10:03:29 15 A. Yes, there was.

10:03:29 16 Q. To make room for this influx of
10:03:32 17 settlers, the Crown entered into a number of
10:03:35 18 treaties with people who identify themselves as
10:03:37 19 Anishinaabe in Southern Ontario?

10:03:39 20 A. Generally -- yes, this is correct.

10:03:43 21 Q. Now, if we can go back to the
10:03:46 22 document we were looking at yesterday. This is a
10:03:49 23 General Council involving a number of First
10:03:56 24 Nations. And those First Nations that participated
10:03:59 25 in the Council, they were among the First Nations

10:04:01 1 that entered into those treaties in Southern
10:04:08 2 Ontario such as Alderville, Rice Lake,
10:04:10 3 Mississaugas, the River Credit, Saugeen; do you
10:04:12 4 agree with that?

10:04:13 5 A. I can't say specifically, because
10:04:14 6 I don't know that right now. I'd have to look at
10:04:17 7 that.

10:04:17 8 Q. So you're not aware of the --

10:04:19 9 A. I'm aware there's treaties in
10:04:21 10 Southern Ontario, there's many treaties in Southern
10:04:24 11 Ontario, but I can't associate specific Bands with
10:04:26 12 specific treaties.

10:04:27 13 Q. Okay. We have now returned to the
10:04:34 14 General Council meeting in 1840 that we were
10:04:37 15 looking at yesterday. I'll just take you, to
10:04:40 16 remind you, I showed you a paragraph that's on the
10:04:43 17 page that told us the Bands -- "We have learned
10:04:48 18 that a union of Upper and Lower Canada is about to
10:04:52 19 take place".

10:04:53 20 Do you recall us looking at that
10:04:55 21 yesterday?

10:04:55 22 A. Yes, I do.

10:04:56 23 Q. Okay. So if we can now go to PDF
10:05:00 24 page 4, and we're going to be looking at the third
10:05:07 25 "Father" on the page. And you can see it reads

10:05:15 1 that:

10:05:16 2 "We thank Your Excellency for
10:05:18 3 the readiness which you have always
10:05:21 4 manifested in promoting our welfare,
10:05:23 5 and we hope Your Excellency will be
10:05:26 6 pleased to continue to look after
10:05:28 7 the interests of your Red Children
10:05:33 8 and to secure to us and to our
10:05:35 9 children, as soon as convenient, the
10:05:37 10 lands on which we reside, as
10:05:40 11 expressed in Lord Glenelg's
10:05:44 12 dispatches."

10:05:46 13 Before I ask you my question, I'll show
10:05:50 14 you one last passage. It's the last "Father" on
10:05:55 15 the last page of this document. If we can scroll
10:05:58 16 the screen up, please:

10:06:01 17 "Father, last winter an Act was
10:06:04 18 passed by the Parliament of this
10:06:06 19 country for the protection of game
10:06:10 20 and for the better observance of the
10:06:14 21 Sabbath day, imposing fines and
10:06:16 22 penalties against any person or
10:06:18 23 persons shooting game on the
10:06:24 24 Sabbath."

10:06:27 25 So it appears from what we've seen,

10:06:30 1 they were aware of an upcoming union of Upper and
10:06:36 2 Lower Canada. They read Lord Glenelg's dispatches;
10:06:39 3 they were aware of legislation that affected them.

10:06:43 4 So my question is a fairly simple one.
10:06:46 5 These Bands were very well informed about the
10:06:48 6 political climate and legislative climate in Upper
10:06:53 7 Canada at the time; isn't that correct?

10:06:55 8 A. Some members of the Bands were. I
10:06:57 9 agree with that.

10:06:57 10 Q. And in this particular case, these
10:07:00 11 Bands who assembled at this General Council clearly
10:07:03 12 were aware of those things?

10:07:04 13 A. Yes, I think these are largely
10:07:06 14 Methodists, and that's why they are aware, because
10:07:09 15 they're educated.

10:07:10 16 Q. And if we can go, please, to PDF
10:07:14 17 page 5 of this document. "Having considered"...
10:07:22 18 this is the first "Father" on the page:

10:07:25 19 "Having considered the future
10:07:26 20 welfare of our children, and
10:07:28 21 anticipating the time when your Red
10:07:33 22 children will be so crowded by your
10:07:35 23 White children as to compel them to
10:07:38 24 leave their present settlements and
10:07:41 25 seek a home elsewhere. We

10:07:43 1 therefore, humbly pray that our
10:07:46 2 beloved Great Mother, the Queen, may
10:07:49 3 be graciously --"

10:07:51 4 A. "Pleased".

10:07:53 5 Q. "-- pleased to reserve a
10:07:55 6 sufficient tract of land in the
10:07:56 7 vicinity of Saugeeng River as the
10:07:59 8 future home of all your Red
10:08:02 9 children."

10:08:03 10 So there's a couple of questions I'd
10:08:06 11 like to ask you from that. And one is, you'll note
10:08:10 12 that at this point in this petition, they're
10:08:14 13 anticipating being so crowded -- they're not saying
10:08:19 14 that at that particular point they're so crowded,
10:08:22 15 but they anticipate being so crowded; you'd agree
10:08:25 16 with that?

10:08:26 17 A. Yes.

10:08:26 18 Q. And we also see that all of the
10:08:29 19 Bands assembled are asking for a future settlement
10:08:37 20 at Saugeen? It's not simply Saugeen?

10:08:39 21 A. That's correct. But you have to
10:08:41 22 remember that it's not this -- it's not the entire
10:08:45 23 Band, it's a part of the Band that's operating on
10:08:49 24 this premise. And this is the Methodist part of
10:08:52 25 the Band.

10:08:52 1 There's also people that live off the
10:08:54 2 land regularly and still living a traditional
10:08:57 3 lifestyle who are not cultivating the land, and in
10:09:00 4 fact they would be the majority.

10:09:01 5 This represents an exceptional group of
10:09:05 6 people in that community and they are aware of
10:09:07 7 exactly what you're saying.

10:09:08 8 Q. Do you know who from Saugeen is
10:09:14 9 attending?

10:09:14 10 A. I can't remember. It was listed
10:09:16 11 earlier in this document.

10:09:18 12 Q. I'm struggling -- you may be right
10:09:20 13 in your answer that they're Methodist, but I'm
10:09:23 14 struggling to know, to understand how you would
10:09:25 15 know that they're Methodist if you don't actually
10:09:27 16 know who's there on behalf of Saugeen?

10:09:29 17 A. Well, because they're educated.
10:09:31 18 Because they're literate. Because the people that
10:09:34 19 live off the land at this time are not literate and
10:09:37 20 they don't use a money economy, and they don't
10:09:40 21 cultivate the land.

10:09:42 22 They live much like they lived in the
10:09:46 23 1820s, you know, the 1800s. They live a
10:09:49 24 traditional life. So these things that you're
10:09:51 25 talking about, like the union of Upper and Lower

10:09:55 1 Canada. To them, that's not part of their --
10:09:58 2 that's not part of their daily concerns. These are
10:10:01 3 concerns of an exceptional group of people in the
10:10:04 4 community, whether they're Methodists or not -- and
10:10:06 5 I think that they are.

10:10:07 6 But whether they're Methodist or not,
10:10:09 7 this represents a special group of people in the
10:10:11 8 community that have a special interest and
10:10:13 9 knowledge and objectives.

10:10:14 10 Q. But my understanding from your
10:10:16 11 evidence is that before Chiefs of communities
10:10:19 12 attend a Council, they would canvass the issues and
10:10:24 13 reach a consensus before attending the Council;
10:10:28 14 isn't that the way the decision-making process
10:10:32 15 works?

10:10:32 16 A. This is a different sort of
10:10:34 17 Council. This is a gathering, this is a gathering
10:10:36 18 of people -- I believe this is a gathering of
10:10:39 19 Methodist people and they are doing a Methodist
10:10:41 20 thing here.

10:10:41 21 And for that, you don't need approval
10:10:43 22 of everybody, you want to do the thing with the
10:10:45 23 other Methodists, so it's a different sort of
10:10:48 24 enterprise. This is not something that's going to
10:10:50 25 affect, this is not something they're concerned

1 with affecting the whole Band, where the decision
2 comes from the bottom.

3 Because what they're saying here is,
4 they're saying, okay, there's people coming, and
5 then what is the subtext? The subtext is, well,
6 we're going to end up farming. I don't think the
7 Band as a whole would have said that in 1840
8 because in 1840, the Band is still living off the
9 land.

10 To undertake that transformation would
11 have been a complete change in their lifestyle. It
12 would be as if you said to me, "Paul, from now on,
13 you're going to be a forager." Well, I'd have to
14 completely reorganize everything.

15 So I can see these people saying this,
16 but I can see in 1840, when this is written, that
17 there is not a consensus to move in this direction,
18 because so many people are living off the land.

19 And it doesn't make any sense they
20 would want to transform themselves. Because we
21 know in the 1850s they still haven't transformed.
22 In the 1860s they still want to live off the land.

23 Q. If we go back to PDF page 3,
24 there's a list of people attending on that, the
25 communities, if we can go back and go down to

1 Saugeen.

2 You have Jacob Metigwob. Is he
3 Methodist?

4 A. I can't recall, I'm sorry.

5 Q. Alexander Chief; is he Methodist?

6 A. I can't recall.

7 Q. Thomas Wahbahdik?

8 A. Sorry, I can't recall.

9 Q. And James Madwayosh?

10 A. I can't recall.

11 Q. Do you know enough about this
12 General Council to comment on whether in fact they
13 did or didn't canvass with the community what they
14 were going to General Council to talk about?

15 A. No, because yesterday was the
16 first time I've seen this document. I mentioned
17 that to you.

18 Q. Yeah, all right.

19 Now if we can go back to the last page
20 we were on, and that was PDF page 5. If we can go
21 to the next "Father".

22 "We wish to be informed whether
23 the White people have power to
24 prevent the Indians for hunting on
25 their wild lands. We ask this

10:13:23 1 question on account of our people
10:13:24 2 having been repeatedly ordered off
10:13:27 3 the -- from the woods where they
10:13:30 4 have gone to hunt and in some
10:13:31 5 instances, have had their venison
10:13:34 6 taken away from them by White men."

10:13:38 7 So that tells me that certainly on that
10:13:41 8 issue, they've canvassed the community to
10:13:46 9 understand they've had some difficulties with white
10:13:48 10 people ordering hunters off the land.

10:13:51 11 A. They know that. Yes, they know
10:13:53 12 that from their experience. Whether they've
10:13:55 13 canvassed the community is I think they've probably
10:13:59 14 observed it.

10:14:00 15 Q. And that, to me, shows that they
10:14:03 16 have an understanding that when white settlement
10:14:07 17 increases and white people come to their lands, it
10:14:11 18 will have an impact on their usual hunting
10:14:18 19 routines; they would understand that?

10:14:19 20 A. Yes, they understand that it can
10:14:21 21 have an impact on their hunting regime. And here
10:14:25 22 what they're trying to do is protect their hunting
10:14:28 23 regime. So those people who are concerned with
10:14:30 24 living off the land, which is the vast majority;
10:14:33 25 will be able to engage in that endeavor.

1 Q. And I'd suggest to you in this
2 case it has had an impact, which is why they're
3 saying: People have been ordered off our land, our
4 venison has been taken?

5 A. That is correct. It has had an
6 impact.

7 Q. So Saugeen is at this Council?

8 A. Yes.

9 Q. And so at the time of the treaty
10 in 1854, Saugeen is very aware that white
11 settlement means, in some cases, an impact on their
12 usual routine of hunting. As farms are built and
13 fences are put up, it has some impact on the
14 ability to hunt as they usually did?

15 A. More than that. In 1854, in
16 September of 1854 on the 27th, was what was called
17 "The Big Sale", which generated \$50,000 in income
18 from land sales. I don't know if that was a day or
19 a year, but that was a fortune and that happened on
20 the 27th.

21 And on the 13th -- this is while
22 Oliphant was on his way, and on the 13th Oliphant
23 arrived.

24 And Oliphant said, you know, I'm sorry.
25 We just cannot control these people. And they knew

10:15:48 1 that those people were there, because they had been
10:15:51 2 buying land. So they had just seen -- what you're
10:15:53 3 describing is correct. But it's even more so.

10:15:56 4 Because these people are on their
10:15:58 5 doorstep in 1854 just a month before Oliphant
10:16:02 6 arrives. And then he says to them, you know, I'm
10:16:05 7 sorry, we just can't do anything about this. We
10:16:07 8 don't have the resource to his do this. We just
10:16:10 9 can't help you.

10:16:10 10 So you're right, they know full well
10:16:13 11 they are under tremendous pressure, tremendous
10:16:16 12 pressure at this time.

10:16:17 13 Q. And so you say this, I have to
10:16:18 14 admit, I don't recall reading about the big sale in
10:16:22 15 your report. But who could they have -- who sold
10:16:26 16 the lands to whom, if the lands had not yet been
10:16:30 17 surrendered?

10:16:30 18 A. These were surrendered lands just
10:16:32 19 south.

10:16:32 20 Q. This is not land in the Treaty 72
10:16:35 21 area; this is land in the Half Mile Strip area and
10:16:38 22 south of that?

10:16:39 23 A. Just south of it, yes. This is
10:16:41 24 right on, right next to them. And they're looking
10:16:44 25 at this, and you're right. When they look at this,

10:16:47 1 they say to themselves, wow. If we want to protect
10:16:52 2 ourselves we have to do something. And we need
10:16:55 3 this much area in order to live off the land. For
10:16:58 4 sure they're concerned with stuff like this.

10:17:01 5 Q. Okay. Thank you.

10:17:08 6 Actually there is one more section of
10:17:10 7 this document, if we move over to the other side of
10:17:12 8 the page, to the other column.

10:17:20 9 You'll see the first and second
10:17:25 10 "Fathers". If we go up a bit it says:

10:17:34 11 "Being convinced of the
10:17:36 12 necessity of making greater --"

10:17:37 13 I don't know what that word is, can you
10:17:39 14 help me with that one?

10:17:40 15 A. Sorry, where are you reading?

10:17:42 16 Q. The "Father" under the small
10:17:43 17 handwriting. "Being convinced of the necessity",
10:17:47 18 where the cursor is.

10:17:49 19 A. "-- necessity of making greater
10:17:51 20 exertions in our agricultural
10:17:53 21 improvements and in the attainment
10:17:56 22 of useful trades, we are willing to
10:18:01 23 adopt any measures our Great Father
10:18:04 24 may recommend for the accomplishment
10:18:08 25 of these objects."

1 Q. Okay. And then the next one, you
2 do a better job than me; if you can read that for
3 me.

4 A. Certainly.

5 "It is our earnest desire that
6 one or more Manual Labour Schools
7 should be established at some of our
8 settlements for the religious
9 education of our children and at the
10 same time to train them up in
11 industrious and domestic habits, and
12 we beg to state that if our Great
13 Father would render assistance in
14 the formation of such schools, and
15 are willing to appropriate part of
16 our land payments for such objects."

17 Q. Okay. So from that, we understand
18 that at least certainly as early as 1840, we have
19 these Bands advocating for the establishment of
20 manual labour schools?

21 A. Well, this tells me this is a
22 Methodist document; for two reasons. First of all,
23 when you go up to the very top of the page, you see
24 Peter Jones is a secretary of this Council; that
25 tells me -- he is a Methodist.

1 When we read here, we read about these
2 industrial schools. This is a Methodist program.
3 So this document is, in my opinion, a Methodist
4 document, written by Methodists, to promote their
5 particular views of what they see for the future of
6 their community. But this does not represent, from
7 my perspective, all of the things that the
8 Anishinaabe, the Saugeen Anishinaabe want to
9 achieve.

10 Q. Now, manual labour schools, I take
11 it would be a benefit to the community insofar as
12 if there is a local school your children would not
13 have to travel -- if it is a day school, your
14 children would not have to travel out of the
15 community to attend it. So there's a benefit in
16 that sense?

17 A. Yes, but you're not going to be on
18 the land. You're not going to realize yourself as
19 a man or a woman. You're going to miss your
20 identity, you're going to miss all the humanity,
21 you're going to miss the experience of your
22 culture. It's like taking the culture and
23 stripping it away.

24 And so you're saying it would create a
25 benefit. It would create a benefit if they were

1 going to enter into industries if they had desire
2 to do that. But that was not their desire. Their
3 desire was to maintain their lifestyle as
4 Anishinaabe.

5 As I said, the industrial schools, this
6 was definitely a Methodist program. It wasn't only
7 in this community they wanted to establish them.
8 They established them in other areas as well.

9 Q. Can we go to one of the documents
10 cited at your footnote 145 that's Exhibit 1542.
11 And this is the letter to the editor from Chief
12 Jones dated August 16, 1845.

13 Now you'll see this in the very first
14 sentence refers to:

15 "A great number of Indian
16 Chiefs and people convened from
17 various parts of Canada West on the
18 25 June last at Saugeeng for the
19 twofold purpose of holding --"
20 So this was actually a meeting held at
21 Saugeen?

22 A. Yes, for a camp meeting, which is
23 a religious revival.

24 Q. And a General Council?

25 A. Correct.

10:21:31 1 Q. And if we can go down, please.

10:21:35 2 You'll see:

10:21:36 3 "The General Council commenced
10:21:37 4 on the 1st of July, by appointing
10:21:40 5 Joseph Sawyer of the Credit Mission
10:21:43 6 as the Chairman of the Council and
10:21:45 7 Chief John Jones of the same place
10:21:46 8 as Secretary.

10:21:48 9 "The Saugeeng and Owen Sound
10:21:50 10 Chiefs opened the Council by
10:21:51 11 submitting the following subjects to
10:21:53 12 the consideration of the General
10:21:54 13 Council."

10:21:55 14 We can go down:

10:21:57 15 "That all the Ojibway Indians
10:22:01 16 be one people, and all have a share
10:22:02 17 of the territory in possession of
10:22:04 18 the Saugeeng and Owen Sound Indians,
10:22:06 19 for the general colonization of the
10:22:08 20 scattered tribes of the Ojibway
10:22:10 21 Nation of Indians.

10:22:10 22 "Two, respecting the
10:22:12 23 establishment of Manual Labour
10:22:12 24 Schools."

10:22:14 25 So, again, we have another meeting

10:22:17 1 after the meeting we talked about in 1840. We're
10:22:20 2 now in 1844 for this meeting.

10:22:26 3 Again, talking about the establishment
10:22:27 4 of manual labour schools in Saugeen and a great
10:22:30 5 number of Chiefs are attending.

10:22:31 6 So again, I would suggest that the
10:22:36 7 Chiefs who attended this on their territory would
10:22:42 8 have canvassed the population to see if they were
10:22:45 9 on board with establishing manual labour schools?

10:22:47 10 A. I disagree with that. This is a
10:22:49 11 Methodist enterprise; this is not a Band
10:22:51 12 enterprise.

10:22:52 13 That's one of the issues here. When
10:22:54 14 you think to yourself, I wonder why they could not
10:22:59 15 reach a consensus, why would it be difficult to
10:23:02 16 reach a consensus?

10:23:02 17 After all, they were facing a huge
10:23:06 18 problem. You'd think when you're facing that kind
10:23:08 19 of problem, it would bind people together and they
10:23:10 20 would have to solve it.

10:23:12 21 In this case, you have Methodists, you
10:23:14 22 have Catholics, you have traditionalists; and that
10:23:18 23 combination makes it all the more difficult to come
10:23:21 24 to a consensus.

10:23:22 25 So I believe that this is the opinion

1 of the Methodists, but it's not the opinion of
2 everybody. It's one faction. And why we know this
3 is because this is the literate faction.

4 If the factions who are living off the
5 land could read and write and were producing
6 documents like this, we'd see the other. But of
7 course they're not literate at this time, so they
8 can't produce those documents.

9 So what we're left with is this
10 document. But we should not take this document to
11 represent the consensus in the Band. Because we
12 know in 1854 there was no consensus.

13 Q. Well, initially we know there was
14 no consensus?

15 A. No, I don't believe there was a
16 consensus ever, except at the end, because when
17 they faced the possibility of their -- when they
18 faced the existential threat, then they have to
19 act.

20 Q. So could we now go to
21 Exhibit 1655, please. This is a petition to His
22 Excellency the Governor General from the Saugeen
23 Indians in reference to "Manual Labour School".

24 If we can go to the first two
25 paragraphs, please, this is March 25, 1847. It

10:24:50 1 says -- not first two paragraphs, 72, I guess:

10:24:53 2 "That your petitioners have
10:24:54 3 given a tract of land (near our
10:24:56 4 village and well situated) for the
10:24:58 5 farm and grounds for the Manual
10:25:01 6 Labour School.

10:25:01 7 "That your petitioners are very
10:25:03 8 anxious to have this school go into
10:25:05 9 operation as soon as possible as our
10:25:06 10 children are suffering for want of
10:25:08 11 good training, and as much money has
10:25:11 12 already been laid out on the place
10:25:13 13 which would otherwise be lost."

10:25:19 14 How is it then that a tract of land can
10:25:24 15 be set aside, and money be invested, without the
10:25:33 16 consensus of the Band? I had understood -- this is
10:25:38 17 flying in the face of what I had understood the
10:25:41 18 decision-making process was that you had explained.
10:25:44 19 That the decisions come from the ground up?

10:25:47 20 A. Yes.

10:25:48 21 Q. And so there must have been quite
10:25:50 22 a bit of support for this, even if it wasn't
10:25:53 23 everybody?

10:25:53 24 A. There must have been support for
10:25:55 25 it, or it didn't matter to people. Because, after

10:25:58 1 all, they weren't taking up huge areas of land.

10:26:01 2 They're taking up very small bits of land. So

10:26:04 3 that's not something that's going to affect the

10:26:06 4 future welfare of the Band.

10:26:08 5 And for that matter, this might help

10:26:09 6 the other members of the Band. So I don't think it

10:26:12 7 would be a matter of critical concern to them, and

10:26:14 8 I don't think it would call for that kind of

10:26:16 9 decision.

10:26:16 10 It's not like a treaty where you really

10:26:18 11 need that sort of participation, or whether

10:26:21 12 somebody -- whether you're going to go to war,

10:26:27 13 let's say. Those are the kind of decisions that

10:26:30 14 would require everybody in the Band to be involved.

10:26:33 15 But here we have a tract of land near

10:26:35 16 the village, well situated, missionaries are there

10:26:39 17 too. That's not a huge thing, the fact they can

10:26:42 18 set aside land. I'm not convinced what you say is

10:26:46 19 correct.

10:26:46 20 I think this would not necessarily

10:26:48 21 require the kind of councils and deliberative

10:26:52 22 process that I spoke of earlier because those would

10:26:54 23 be matters of concern to everybody in the Band, and

10:26:59 24 I should add they would be serious concerns. This

10:27:02 25 amount of land is not particularly serious.

10:27:05 1 Q. Okay. Can we go to Exhibit 1821.
10:27:12 2 This is George Kahgegagahbowh's book from 1850, The
10:27:19 3 Traditional History and Characteristic Sketches of
10:27:23 4 the Ojibway Nation.

10:27:24 5 If we can go to 142, if we can look at
10:27:40 6 the second full paragraph. Sorry, can you go to
10:27:46 7 the top of the page? There we go. It says:

10:27:58 8 "Of late, the General Councils
10:28:00 9 of the Christian Ojibways have been
10:28:03 10 convened and carried on in the same
10:28:05 11 manner as the public meetings of the
10:28:06 12 whites are conducted.

10:28:08 13 "The last General Council,
10:28:09 14 which consisted of Ojibways and
10:28:11 15 Ottawas, was held at Sangeeng. The
10:28:13 16 chiefs came from Saint Clair, Huron,
10:28:15 17 Ontario, Simcoe, Rice and Mud Lakes.

10:28:19 18 "The object of this convention
10:28:22 19 was to devise plans by which the
10:28:24 20 tract of land then held by the
10:28:26 21 Sangeeng Indians, could be held for
10:28:28 22 the sole use of Ojibway Nation; to
10:28:30 23 petition the government for aid in
10:28:32 24 establishing a Manual Labour School [...]"
10:28:35 25 And then for other things.

10:28:38 1 So, again, your evidence would be not
10:28:41 2 with respect to Saugeen, was it driven by the
10:28:44 3 Methodists, but the chiefs of all these other
10:28:47 4 communities represented factions, and they were
10:28:50 5 also acting in a manner that may not have arisen
10:28:55 6 from consensus in their communities?

10:28:58 7 A. That's hard to say, because I
10:29:00 8 don't know the proportion of Methodists in other
10:29:02 9 communities. It might have been a very large
10:29:05 10 proportion.

10:29:06 11 Under those circumstances, it would
10:29:07 12 have been -- you wouldn't even have to ask for a
10:29:10 13 consensus. You would know the consensus is there.

10:29:12 14 Q. But the answer is you don't know,
10:29:14 15 really?

10:29:14 16 A. That is correct. I don't know. I
10:29:16 17 don't know.

10:29:16 18 Q. Now, if we can pull up
10:29:20 19 Dr. Reimer's report, she discusses this issue at
10:29:25 20 Volume 3 page 101 and it's lettered Exhibit G-1.

10:29:31 21 I should ask you, have you read
10:29:33 22 Dr. Reimer's report?

10:29:34 23 A. Yes, I have.

10:29:37 24 Q. If we can go to page 101. And
10:29:41 25 it's the first sentence of the second paragraph.

10:29:54 1 No, you have it, right there. So first sentence of
10:29:57 2 the second paragraph:

10:29:59 3 "Invitations to relocate to
10:30:01 4 Saugeen territory were issued to
10:30:02 5 specific groups in the 1840s as a
10:30:05 6 place of refuge, but also to ensure
10:30:07 7 a sufficient population base for the
10:30:09 8 establishment of a Manual Labour
10:30:14 9 School."

10:30:14 10 And then Dr. Reimer, as you'll recall,
10:30:16 11 goes through the various documents that support her
10:30:19 12 thesis.

10:30:19 13 So would you agree with her, though,
10:30:22 14 that one of the objectives -- I'm not saying it was
10:30:26 15 the only objective -- but one of the objectives was
10:30:29 16 to ensure a sufficient population base for the
10:30:33 17 establishment of a manual labour school?

10:30:38 18 A. I'm just not sure about that.
10:30:41 19 What they wanted to do was to establish a manual
10:30:44 20 labour school, but I'm not sure that Dr. Reimer is
10:30:48 21 correct here when she says that they're -- what
10:30:51 22 they were taking into account were demographic
10:30:54 23 considerations.

10:30:56 24 I think they were taking into account
10:30:59 25 other considerations, like you say, you're saying

10:31:02 1 it may have played a role. I'm not saying it
10:31:05 2 didn't play a role but I think the role would be
10:31:07 3 relatively small.

10:31:09 4 Because what they're really trying to
10:31:11 5 do here is have people, the Methodists, what they
10:31:14 6 want to do is have people saved. They have a
10:31:17 7 mission; they have a goal in mind.

10:31:19 8 And their goal, their goal is to have
10:31:22 9 the manual labour school so they can do this. Now
10:31:25 10 if you had a sufficient population, that would be
10:31:27 11 good.

10:31:27 12 But their goal is not let's increase
10:31:30 13 the population so we can get the manual labour
10:31:32 14 school, from my perspective. It's let's get that
10:31:35 15 manual labour school, and then they will come.

10:31:38 16 Q. Did you read all of the documents
10:31:39 17 underlying the citations?

10:31:42 18 A. I don't think so. No, I can't
10:31:44 19 say, I can't say one way or the other.

10:31:47 20 Q. Okay. So I'm going to move on to
10:31:50 21 another area now. Can we go to page 79 of your
10:31:53 22 report. If you go down a bit, please, you speak
10:32:11 23 about the Emo Ojibway, among the Emo Ojibway. This
10:32:17 24 is a community north of Lake Superior close to the
10:32:20 25 Manitoba border; am I right about that?

10:32:23 1 A. That is correct. It is in the
10:32:24 2 Treaty 3 area.

10:32:25 3 Q. This account was also taken from
10:32:28 4 the 1930s?

10:32:28 5 A. That is correct. That's when
10:32:31 6 Landes did her work with the Emo.

10:32:33 7 Q. So it represented the current
10:32:35 8 views and practices in the 1930s of the Emo
10:32:38 9 Ojibway?

10:32:38 10 A. It represents what she learned in
10:32:40 11 the 1930s. When you go back and you look at other
10:32:43 12 accounts that are earlier, what you'll see is that
10:32:45 13 this account is consistent with those previous
10:32:48 14 accounts with regard to -- this is what I was
10:32:49 15 talking about yesterday when I was talking about
10:32:52 16 family trapping territories, territories that
10:32:54 17 people occupy for fishing, hunting territories.

10:32:57 18 What Landes is saying in the 1930s is
10:33:00 19 she sees these, she sees these there, but we know
10:33:03 20 they existed before. This is a description or an
10:33:06 21 ethnographic account of the 1930s.

10:33:09 22 But what's interesting about this
10:33:10 23 ethnographic account is its consistency with other
10:33:14 24 literature that takes it back into the 1840s,
10:33:18 25 1830s, 1850s so we can see the same patterns are

10:33:22 1 prevailing in the 1930s as they did 80 years ago in
10:33:26 2 other venues.

10:33:27 3 Q. Just to be clear about that.
10:33:29 4 That's not something that you got into in your
10:33:31 5 report, you didn't take it and give that part of
10:33:33 6 your opinion in your report with respect to this
10:33:36 7 author's work?

10:33:37 8 A. That's what -- that's the --
10:33:43 9 that's one of the things that ethnohistorians do.
10:33:46 10 They do fieldwork --

10:33:49 11 Q. I'm sorry, I'm just asking, is it
10:33:52 12 in your report what you've just said about the
10:33:54 13 1930s and taking it back and so on?

10:33:56 14 A. Well, in a manner of speaking it
10:33:58 15 is. Because that's the method of ethnohistory.
10:34:01 16 You're looking at contemporary
10:34:03 17 information that you gather in the field yourself.
10:34:06 18 You're looking at other ethnologists such as this
10:34:08 19 to help you inform your understanding of what
10:34:10 20 happened in the past.

10:34:11 21 So it's my method. It's the
10:34:13 22 methodology that all ethnohistorians who are
10:34:16 23 anthropologists take: Fieldwork. Because that's
10:34:19 24 when you see the things in action before you.

10:34:21 25 That's where you can see

10:34:23 1 territoriality. That's where you can see people
10:34:26 2 praying, that's where you can see people hunting,
10:34:26 3 and you can do all that with them. And that's
10:34:29 4 important because that informs your understanding
10:34:31 5 of the literature that you read.

10:34:33 6 Because when you read it, you don't
10:34:35 7 feel it as the same way you do when you're with
10:34:38 8 them.

10:34:39 9 And then when you read what Landes has
10:34:41 10 done, and I know from my experience too, I know
10:34:41 11 what Landes is experiencing. I knew her as well,
10:34:44 12 but I know what she was experiencing.

10:34:46 13 And when I read that, I go back in time
10:34:51 14 and I can tell you, based on my understanding, as
10:34:53 15 limited as it is, as limited as an ethnohistorian
10:34:57 16 is, I can tell you what was going in 1850, by
10:35:01 17 looking at this, by looking at my own fieldwork and
10:35:04 18 by looking at the documents, because they're all of
10:35:06 19 a piece.

10:35:07 20 Q. Can we now go to page 91 of your
10:35:10 21 report. Now, if you go down, you were speaking not
10:35:23 22 yesterday but the day before about Chief
10:35:27 23 Egouchouay. I think it's further down the page.

10:35:39 24 Do you recall your evidence regarding
10:35:45 25 Chief Egouchouay? And you were asked whether or

1 not "land", in his statement, included lands and
2 waters. And your view was, lands and waters were
3 included -- oh, maybe it's here.

4 A. It's on page 90.

5 Q. Page 90. Here it is.

6 "Lieutenant Governor Simcoe was
7 advised likewise by Odawa Chief
8 Egouchouay, who told Simcoe on 14
9 September 1794 that "The Giver of
10 Life gave these to subsist upon:
11 The land was ours from the beginning
12 of time."

13 And do you recall you were asked
14 whether "land" included lands and waters, and you
15 said it included everything in the territory,
16 including the water?

17 A. Yes, I do.

18 Q. Okay. Can we go to, please,
19 Exhibit 1731. This is the actual speech of
20 Egouchouay that you cited, at footnote 180. And
21 it's page 2 of the document, and it's the second
22 "Father" on page 2. So you quoted part of this,
23 but the entire thing reads:

24 "The Giver of Life gave to us
25 these lands to subsist upon. The

10:37:07 1 lands were ours from the beginning
10:37:08 2 of time. When these people came to
10:37:11 3 settle among us, they all promised
10:37:14 4 to pay us for the lands they
10:37:16 5 occupied, but they have never paid
10:37:19 6 us anything. We are therefore,
10:37:22 7 obliged in this manner to appeal to
10:37:24 8 your justice and hope you will not
10:37:26 9 see us any longer imposed upon by
10:37:29 10 these people."

10:37:31 11 I'm suggesting in the context of this
10:37:34 12 description, when you see that what's being
10:37:38 13 discussed here is people settling among them on the
10:37:41 14 lands, paying them for the lands, this particular
10:37:45 15 reference to "lands" is just lands.

10:37:49 16 A. I don't agree with that. It's
10:37:51 17 like when I sing the national anthem and I sing
10:37:56 18 "our home and native land", I don't mean the land
10:37:59 19 itself, I mean the water. I mean all the water.

10:38:02 20 I think they mean exactly the same
10:38:04 21 thing. This is their country, the water and the
10:38:06 22 land, just as it is for Canadians today. The land
10:38:11 23 and water. That is what this means to me.

10:38:13 24 We can parse the words here, but we
10:38:15 25 have to think to ourselves, how do they perceive of

10:38:18 1 their environment?

10:38:18 2 And they perceive of their environment
10:38:21 3 not simply as land. They're not agriculturalists;
10:38:24 4 they don't divide the land up into plots. They see
10:38:27 5 it in terms of land, water, you know, marshland,
10:38:31 6 this is the kind of thing they're looking at.

10:38:33 7 When they use the term "land", like I
10:38:35 8 said, I think they're looking at it exactly the
10:38:37 9 same we feel all of us when we sing the national
10:38:40 10 anthem.

10:38:41 11 Q. Surely there are times when they
10:38:42 12 speak about land and they only mean land. This
10:38:45 13 must be one of them, if they're talking about lands
10:38:48 14 being occupied and paid for. That's all I'm
10:38:51 15 saying?

10:38:51 16 A. And I would say to you, yes,
10:38:52 17 you're correct. They do, they do understand that
10:38:55 18 land is different from water because they have
10:38:57 19 different words for those.

10:38:59 20 However, what we're looking at here is
10:39:03 21 what he's talking about is, you pay us for the
10:39:05 22 lands they occupied. They also expect to be paid,
10:39:07 23 and we know this, to be paid in presents for the
10:39:11 24 water that they were using. We know that from
10:39:13 25 various examples.

10:39:15 1 So that he -- we may have an example
10:39:18 2 here of specifically of lands, but that shouldn't
10:39:21 3 take away from the larger picture that these people
10:39:24 4 consider water to be their territory and they
10:39:26 5 consider to have proprietary rights over the water
10:39:29 6 and all of the aqueous resources therein. That's
10:39:33 7 their way, no matter how we parse the words; that
10:39:36 8 is their way.

10:39:36 9 Q. I'm going to move on to another
10:39:39 10 example now. You gave evidence at page 92 of your
10:39:44 11 report and gave evidence here about the ship called
10:39:46 12 "Le Griffon". If we can go to page 93.

10:40:02 13 The last sentence before that next
10:40:07 14 section it says:

10:40:11 15 "But Le Griffon was lost on its
10:40:13 16 return voyage between Washington
10:40:16 17 Island, and Michilimackinac, likely
10:40:17 18 at the north end of Green Bay, some
10:40:19 19 say because the Odawa 'boarded and
10:40:21 20 burned her after murdering those on
10:40:23 21 board; others accuse the
10:40:27 22 Pottawatomies.' "

10:40:29 23 Now in your evidence, you had said on
10:40:32 24 October 22nd the Le Griffon was attacked and
10:40:44 25 destroyed. I'd like to explore this idea that it

10:40:44 1 was necessarily either attacked and destroyed or
10:40:44 2 boarded and burned by the Odawa.

10:40:47 3 You cite three sources at footnote 191
10:40:51 4 so I'd like to pull up the first one, S1350. And
10:41:02 5 this is the Parkman book called History of the
10:41:06 6 Conspiracy of Pontiac.

10:41:09 7 MR. FELICIAN: Can we make this the
10:41:11 8 next exhibit, please?

10:41:13 9 THE COURT: Mr. Registrar?

10:41:14 10 THE REGISTRAR: Exhibit No. 4346.

10:41:05 11 EXHIBIT NO. 4346: History of the
10:41:06 12 Conspiracy of Pontiac by Francis
10:41:21 13 Parkman.

10:41:21 14 BY MR. FELICIAN:

10:41:22 15 Q. And you cite pages 51 to 52; if we
10:41:26 16 can go to page 51, please. And that's the first
10:41:46 17 page you cite, and if we can go down the page a
10:41:53 18 little bit, you see the discussion of the Le
10:41:57 19 Griffon appears to start "at the close of the year
10:42:00 20 1678..." and then it goes on to the next page.
10:42:05 21 And then you'll see five lines from the top:

10:42:12 22 "Her name was The Griffin and
10:42:14 23 her burden was 60 tons. On the 7th
10:42:18 24 of August, 1679, she began her
10:42:22 25 adventurous voyage amid the

10:42:23 1 speechless wonder of the Indians,
10:42:25 2 who stood amazed, alike at the
10:42:28 3 unwonted size of the wooden canoe at
10:42:30 4 the flash and roar of the cannon
10:42:32 5 from her decks, and at the carved
10:42:34 6 figure of a griffin, which, with
10:42:37 7 expanded wings, sat crouched upon
10:42:39 8 her prow."

10:42:40 9 This tells us this was something quite
10:42:42 10 remarkable at the time to be seen on the Great
10:42:44 11 Lakes; is that right?

10:42:46 12 A. It was. As a matter of fact, this
10:42:54 13 was built in the Seneca homeland and they were
10:42:54 14 quite upset about that.

10:43:06 15 Q. Now the next sentence indicates:

10:43:06 16 "She bore on her course along
10:43:06 17 the virgin waters of Lake Eerie,
10:43:06 18 through the beautiful windings of
10:43:06 19 the Detroit, and among the restless
10:43:08 20 billows of Lake Huron, where a
10:43:09 21 furious tempest had well nigh
10:43:13 22 engulfed her."

10:43:14 23 This just tells us how dangerous Lake
10:43:17 24 Huron can be when a storm comes on, even for a
10:43:19 25 large ship.

10:43:19 1 A. The Great Lakes are a very
10:43:21 2 dangerous place to be.

10:43:24 3 Q. Now, in this portion of Parkman's
10:43:29 4 text that you cite of The Griffin, The Griffin
10:43:31 5 isn't being attacked by anyone at least in the
10:43:33 6 portion you cited at pages 51 and 52?

10:43:36 7 A. That's correct.

10:43:44 8 Q. Then if we go down to the next
10:43:47 9 paragraph you'll see. "Thence he pushed" -- third
10:43:49 10 sentence down.

10:43:50 11 "Thence he pushed on into the
10:43:52 12 unknown region of the Illinois; and
10:43:54 13 now dangers and difficulties began
10:43:57 14 to thicken about him. Indians
10:43:58 15 threatened hostility; his men lost
10:44:01 16 heart, clamored, grew mutinous, and
10:44:02 17 repeatedly deserted; and, worse than
10:44:04 18 all, nothing was heard of the vessel
10:44:06 19 which had been sent back to Canada
10:44:07 20 for necessary supplies."

10:44:09 21 So from this account, at least the
10:44:11 22 portion we've cited, we don't know what happened to
10:44:16 23 The Griffin?

10:44:17 24 A. No, what's -- well, what we do
10:44:22 25 know is that the ship was -- let me say destroyed.

1 I don't mean to say that there's a fundamental
2 difference between that and being burned. It
3 existed and then it no longer existed; let me put
4 it that way.

5 But this is about, this is about La
6 Salle, because La Salle left Le Griffon and he
7 continued on his voyage and this is about that part
8 of his voyage. Because he's going on and pushing
9 through the country of the Illinois here.

10 You're correct, according to this
11 account, no, we don't know what happened.

12 Q. But in fairness, there is a quote
13 from Parkman in another document you cite. Which I
14 couldn't find in this, but it probably exists
15 somewhere. If we can pull up S1938.

16 This is "The History of the Great
17 Lakes".

18 A. Could we just pause for a moment?

19 Q. Yeah?

20 A. Because the paragraph you're
21 telling me about gives us some insight. He's
22 entering the territory of the Illinois. Why are
23 they upset? He's entering on the water. Why are
24 they upset? Because he's using their water without
25 their permission; that's why he's upset.

10:45:33 1

Q. And did you research --

10:45:35 2

A. That's why the Illinois are upset.

10:45:37 3

Q. Don't you need to research that to

10:45:39 4

make a statement like that?

10:45:40 5

A. No, because I understand

10:45:42 6

territoriality among Indigenous people. That's one

10:45:46 7

of my specialties. I've said it over and over

10:45:48 8

again, that all Bands own territory, whether they

10:45:51 9

are Illinois Bands or Anishinaabe Bands.

10:45:53 10

And that an infringement on their

10:45:56 11

property, their proprietary rights or their

10:45:59 12

territory for which they have proprietary rights,

10:46:01 13

is met with three different actions.

10:46:04 14

In this case, Parkman is telling us,

10:46:07 15

they went into his territory -- La Salle went into

10:46:11 16

his territory. We know he went by boat, by canoe,

10:46:14 17

pardon me, and they were upset. What would they be

10:46:17 18

upset by? Except by him using the water, because

10:46:20 19

that's all he's doing, is entering the territory

10:46:22 20

and using the water.

10:46:24 21

So this informs me, based on what I

10:46:26 22

know about Anishinaabe people and people like them

10:46:29 23

-- Illinois, who are allied with them, and they're

10:46:31 24

organized into Bands as well -- exactly how they

10:46:35 25

would react.

1 Q. But you actually don't know that
2 either. You don't know that they were only just
3 using the water, because they could have been -- I
4 can stand here and think of any number of things.
5 They could have been fishing, they could've been
6 hunting, they could've been throwing garbage; you
7 just don't know.

8 I appreciate you can say on a certain
9 level this may have been what it was. I'm
10 concerned that you go a step further and say, based
11 on my experience generally, I can say this is what
12 actually happened all this time with respect to a
13 specific event. That's my concern.

14 A. Okay, I'm not saying that I can
15 tell you precisely exactly what happened. But I
16 can make sense of this for you. I can tell you why
17 they're upset.

18 And I don't think you're offering me an
19 explanation, not that you have to, that's not your
20 task. You're not offering me an explanation that
21 makes sense.

22 They could have been throwing out
23 garbage. Well, they're not going to be upset if
24 they're throwing out garbage because they're not
25 environmentalists in the same sense that we think

1 of environmentalists today. So that's not a
2 reasonable explanation.

3 I ask myself, what is reasonable here?
4 Given what I know, based upon what I've researched,
5 what other anthropologists have researched, and
6 what the documentary history tells me about
7 Anishinaabe people and like them, and their Band
8 territories and what they find offensive about
9 Europeans with respect to their Band territories, I
10 can say with confidence, with confidence, that this
11 is about the use of water.

12 And I think I have a good explanation
13 based on everything that I've said, and everything
14 that's in the documentary record and everything
15 that I've researched. I think that this makes
16 perfectly good sense. It's not a random
17 observation; it's an observation based on my
18 career.

19 Q. Okay. So there's -- if we can
20 look at S1938 for a moment. This is the "History
21 of the Great Lakes". This is also cited in your
22 footnote. If we can make this the next exhibit,
23 please?

24 THE COURT: Mr. Registrar?

25 THE REGISTRAR: Exhibit No. 4347.

1 EXHIBIT NO. 4347: Excerpt from
2 "History of the Great Lakes."

3 BY MR. FELICIANANT:

4 Q. Now, I'll briefly stop on PDF
5 page 8, four lines above the heading "Griffin
6 leaves for Niagara", if we can go down. There we
7 go.

8 You'll see four lines above it says --
9 this is The Griffin.

10 "They've collected a large
11 quantity of furs to the amount of
12 12,000 pounds, in anticipation of
13 the arrival of The Griffin, the
14 navigators found secure shelter in a
15 small bay, now known as Detroit
16 Harbor, on the southerly side of the
17 island where they rode out at anchor
18 a violent storm of four days'
19 duration."

20 I point that out because The Griffin
21 was carrying a valuable cargo when it was lost
22 isn't that correct?

23 A. That is correct -- to Europeans.
24 They don't have a money economy, \$12,000 in coin
25 and specie is not going to mean anything to them.

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Q. But to Europeans it would have been valuable?

A. Oh, that's a fortune.

Q. So if we can now go to PDF page 9, this article actually talks about the fate of The Griffin and quotes Parkman in the second paragraph. So this is where you see the reference to what you had said in your report, I think?

A. This is correct.

Q. "Parkman says of the ill-fated Griffin: 'Indians, fur traders, and even Jesuits have been charged with contriving her destruction. Some say that Ottawas boarded and burned her after murdering those on board. Others accuse the Pottawatomies. Others affirm that her own crew scuttled and sunk her. Others again against that foundered in a storm. As for La Salle, the belief grew in him to a settled conviction that she had been treacherously sunk by the pilot and the sailors to whom he had entrusted her.

"La Salle, in a letter to

1 Frontenac written in 1863, said that
2 a young Indian belonging to him told
3 him that three years before he saw a
4 White man answering the description
5 of the pilot, a prisoner among a
6 tribe beyond the Mississippi. He
7 had been captured with four others
8 on that river, while making his way
9 with canoes laden with goods towards
10 the Sioux. His companions had been
11 killed.'"

12 If we can scroll down further, we have
13 on the next paragraph there's a description by
14 Hennepin that gives another account of the
15 destruction of The Griffin. And then if you go
16 down to the next paragraph, among the Jesuits, they
17 have a different tradition: It was driven ashore
18 during a gale and the crew murdered and the vessel
19 plundered.

20 The question really is it's not
21 entirely fair to say she was attacked and
22 destroyed, is it? That's the evidence you gave the
23 other day when you were summarizing what happened.

24 You said she was attacked and
25 destroyed. I'm just saying, that's not accurate.

10:51:37 1 What's accurate is, we don't know what happened to
10:51:39 2 The Griffin, there's a lot of different theories;
10:51:41 3 that's accurate.

10:51:42 4 A. Yes, that's right.

10:51:44 5 Q. Okay.

10:51:44 6 A. But there is no ship -- there was
10:51:46 7 no ship anymore.

10:51:49 8 Q. That is true, but we don't know
10:51:51 9 what happened to it?

10:51:52 10 A. No, we don't know what happened to
10:51:53 11 it but we have to think to ourselves. You're
10:51:56 12 asking me here as an ethnohistorian, you're asking
10:51:59 13 me questions as an ethnohistorian, not as an
10:52:02 14 historian, not as an accountant, not as a
10:52:02 15 psychiatrist, not as any of the things you
10:52:05 16 mentioned yesterday.

10:52:06 17 I'm telling you as an ethnohistorian,
10:52:08 18 that when I look at this, and I understand how
10:52:11 19 people regard the water in their territory as their
10:52:14 20 own property, I think I can offer you an
10:52:17 21 explanation that makes more sense than the
10:52:19 22 Jesuits', at least from an ethnohistorical point of
10:52:23 23 view.

10:52:23 24 That's what you have me here for, to
10:52:25 25 tell you from an Indian point of view, if you will,

10:52:28 1 what the story is. That's what I'm telling you.

10:52:31 2 I'm not going to tell you about the Jesuits.

10:52:33 3 THE COURT: I'm sorry, I'm just going
10:52:35 4 to interrupt you for a moment because I want to
10:52:38 5 make sure there's no misunderstanding in your
10:52:40 6 evidence.

10:52:40 7 First of all, Mr. Feliciant does not
10:52:43 8 have you here.

10:52:44 9 THE WITNESS: Oh, I'm sorry.

10:52:45 10 THE COURT: Second of all, the reason
10:52:47 11 you're here is to assist me, all right?

10:52:50 12 Third, cross-examination gets a wide
10:52:56 13 berth, which means Mr. Feliciant can ask you all
10:53:00 14 manner of questions, some of which may be directly
10:53:06 15 focused on your expertise as an ethnohistorian, and
10:53:12 16 some of which may not be.

10:53:13 17 And certainly you're free to bring that
10:53:16 18 expertise to bear on your answer, so I'm not
10:53:19 19 suggesting otherwise.

10:53:21 20 But I don't want to get too far off
10:53:23 21 track about why you're here, except to say that
10:53:27 22 you're here to do your best to answer the
10:53:29 23 questions. So if we could just stick to that.

10:53:32 24 THE WITNESS: I understand I'm here to
10:53:33 25 assist the Court, Your Honour.

1 THE COURT: I know it is a long and I'm
2 sure tiring endeavor. You've been sitting there
3 for some time now, but I don't want to get too far
4 off track.

5 Mr. Feliciant, please go ahead.

6 BY MR. FELICIAN:

7 Q. I'm going to move to another area
8 now. If we could bring up a map, S1925 and this is
9 a map which I believe appears in your report as
10 well and you talked about it here. It's 1925.

11 THE COURT: What is the exhibit number
12 again, or is it not yet an exhibit number?

13 MR. FELICIAN: It's part of the
14 report. I could find the page number of the
15 report. Sorry, Your Honour.

16 THE COURT: Because they're
17 interspersed in the report.

18 If we could pull up page 129 of
19 Professor Driben's report, please, page 129.

20 BY MR. FELICIAN:

21 Q. Now you'll recall this map is a
22 map in which you've identified the six access
23 points to Lake Huron and Georgian Bay?

24 A. Yes, that's correct.

25 Q. Okay. This might be a bit tedious

10:55:21 1 but I want to go through the different circles.

10:55:24 2 So looking at the one where it says
10:55:27 3 "St. Mary's" at the top, St. Mary's River. We'll
10:55:33 4 start with that one.

10:55:34 5 In the 1600s which Band would that
10:55:36 6 access point have been in, in terms of their
10:55:40 7 traditional territory?

10:55:41 8 A. The Sault Ste. Marie.

10:55:42 9 Q. In 1600?

10:55:45 10 A. Yes.

10:55:45 11 Q. Okay. And in 1700?

10:55:48 12 A. As far as I know, the Sault Ste.
10:55:50 13 Marie Band has been there since, well they say
10:55:53 14 since the beginning of time. I think one of their
10:55:55 15 primary reasons for that is the fantastic fishery
10:55:59 16 they have there.

10:56:00 17 I've described it in my report, and
10:56:02 18 they invited many other people there and they were
10:56:05 19 in control of that area, as far as we know, back to
10:56:08 20 the time of the Jesuits even before the missions
10:56:11 21 were established, they were in control of that
10:56:13 22 area.

10:56:13 23 Q. For the purpose of your report,
10:56:15 24 I'm assuming because it's not in your report, you
10:56:18 25 didn't travel to St. Mary's to gather any evidence

1 with respect to their sort of concerns, objectives
2 or priorities with respect to their historic use of
3 that access point? You didn't do that for this
4 report?

5 A. To?

6 Q. You didn't go to St. Mary's for
7 the purpose of gathering evidence to assist us with
8 respect to that Band's historic priorities,
9 concerns or use of that access point?

10 A. That's correct.

11 Q. Now the next one, going to the
12 right, on Georgian Bay, this is on the top east
13 corner of the shore, the northeastern shore of
14 Georgian Bay.

15 What Band would that next circle, whose
16 traditional territory would that circle be in,
17 first let's start with the 1600s and then the
18 1700s?

19 A. I can't say. But I can tell you
20 that along the North Shore of -- that in this
21 particular area here, this is Anishinaabe
22 territory. But I cannot name the Band.

23 Q. Okay. But we've already
24 established that the Bands control the Territories,
25 their own territories?

10:57:29 1 A. This is correct, yes.

10:57:30 2 Q. So then the next access point
10:57:34 3 going down the coast, my guess would be around
10:57:39 4 Penetanguishene; do you know what Band in the 1600s
10:57:43 5 or 1700s, whichever you happen to know, controlled
10:57:46 6 or had access to that access point?

10:57:48 7 A. No, I'm sorry. I can't say.

10:57:54 8 Q. The next one at the very bottom of
10:57:57 9 Georgian Bay; do we know?

10:57:58 10 A. I'm sorry, I can't say.

10:58:00 11 Q. And do we know the traditional
10:58:02 12 territory, the Band whose traditional territory it
10:58:05 13 is that the St. Clair River access point is
10:58:08 14 situated in in the 1600s or the 1700s?

10:58:11 15 A. Again, I cannot say which specific
10:58:14 16 Band.

10:58:14 17 Q. And finally, the last one is up at
10:58:18 18 the top of the Michigan Peninsula there in the
10:58:24 19 United States. What traditional territory is that
10:58:29 20 located in? Whose Band?

10:58:31 21 A. That would be the Band that
10:58:33 22 occupies the Straits of Mackinac, I can't recall
10:58:35 23 the name. But they're well-known in Cadillac's
10:58:39 24 time, which is an early French explorer who was
10:58:41 25 describing the fishery there was well.

10:58:43 1 Q. So for the purpose of your report,
10:58:46 2 you did not analyze the Bands, any of those Bands,
10:58:52 3 their capacity at any point in time to control any
10:58:55 4 of these access points?

10:58:57 5 A. No, I didn't do that analysis.

10:58:59 6 Q. Okay. And similarly, none of the
10:59:02 7 second -- none of the sources -- I won't say
10:59:05 8 secondary.

10:59:05 9 None of the sources upon which you rely
10:59:08 10 have argued or suggested that the specific Bands in
10:59:14 11 whose territories these access points lie, acted
10:59:18 12 collectively and in concert with each other to
10:59:22 13 manage these access points to Lake Huron and
10:59:24 14 Georgian Bay; there's nothing in your material
10:59:29 15 about that?

10:59:29 16 A. No, as a matter of fact, each of
10:59:33 17 the Bands, as I've explained, each of the Bands
10:59:36 18 since it's their territory would make its own
10:59:38 19 decision about how to proceed.

10:59:40 20 So there's no -- in this case, when I'm
10:59:44 21 identifying these six locations, I'm not -- I don't
10:59:47 22 mean to suggest that they're acting in concert
10:59:50 23 continually to control access. They act, as all
10:59:54 24 Bands do, on the basis of their own interests and
10:59:57 25 concerns at that particular time.

1 Q. Now I'm going to move on to
2 another topic. You discuss dodems, I believe
3 that's how you pronounce it? If I'm wrong, please
4 correct me.

5 A. No, that's Anishinaabemowin
6 pronunciation.

7 Q. Can we pull up S1505, please.
8 This is an article by Schenck entitled, "The
9 Algonquian Totem and Totemism: The Distortion of
10 the Semantic Field".

11 MR. FELICIAN: Can we make this the
12 next exhibit, please.

13 THE COURT: Mr. Registrar, the Schenck
14 article?

15 THE REGISTRAR: Exhibit No. 4348.

16 EXHIBIT NO. 4348: Article by Theresa
17 Schenck entitled, "The Algonquian Totem
18 and Totemism: The Distortion of the
19 Semantic Field".

20 BY MR. FELICIAN:

21 Q. If we can go to page 343 of the
22 document, PDF page 4, the first full paragraph,
23 please.

24 So the author writes that:

25 "The extended concept of totem,

11:01:20 1 which was nothing more than a
11:01:21 2 village or family naming system, had
11:01:24 3 many functions in the early
11:01:26 4 Algonquian Society. Not only was it
11:01:28 5 the family name, but it also served
11:01:31 6 to regulate exogamy and to establish
11:01:33 7 a bond among relatives, however
11:01:36 8 distant. As a symbol or mark, it
11:01:38 9 identified a village or the route
11:01:40 10 taken by the members of a village, a
11:01:42 11 custom similar to that of the Huron
11:01:45 12 whose 'armorial bearings' Gabriel
11:01:49 13 Sagard described in 1624 as
11:01:52 14 'inscribed not only as a post
11:01:55 15 erected in their village, but also
11:01:57 16 on the birch bark along whatever
11:01:59 17 route they took to let others know
11:02:02 18 that they had passed by.'"

11:02:03 19 So this description suggests that one
11:02:05 20 of the purposes of the totem is that it initially
11:02:07 21 in the early days represented village names, but
11:02:10 22 then eventually it evolved into family marks
11:02:15 23 separate from village names; is that right?

11:02:17 24 A. That's what Dr. Schenck is
11:02:20 25 arguing, but if you think about the argument it

11:02:22 1 doesn't make a lot of sense. Because if a village
11:02:25 2 is a clan, that means that everybody in the village
11:02:28 3 is blood relative. That means there's no
11:02:31 4 possibility of mating with anyone.

11:02:32 5 So single-clan villages, from my point
11:02:37 6 of view, are impossible just because -- she
11:02:41 7 mentions it right there. You're going to have
11:02:43 8 exogamy here which means marriage out, so under
11:02:48 9 these circumstances I don't see a single-clan
11:02:50 10 village as a possibility.

11:02:51 11 Q. Certainly the norm becomes
11:02:54 12 multi-clan villages?

11:02:55 13 A. They always have to be multi-clan
11:02:57 14 because you have to have mates. So that in any
11:02:59 15 community that you go to, you'll always find
11:03:09 16 several clans so people can choose. Like I said,
11:03:09 17 if you only have one clan, then you have no choice
11:03:09 18 of mates.

11:03:10 19 Q. Can we pull up S0263. It's
11:03:16 20 Bohaker's article. "Reading Anishinaabe
11:03:20 21 Identities". Can we make that this next exhibit?

11:03:25 22 THE REGISTRAR: Court's indulgence.

11:03:42 23 THE COURT: Mr. Registrar?

11:03:42 24 THE REGISTRAR: Exhibit No. 4349.

11:03:45 25 EXHIBIT NO. 4349: Article by Heidi

11:03:19 1 Bohaker entitled "Reading Anishinaabe
11:03:20 2 Identities".
11:03:46 3 BY MR. FELICIANANT:
11:03:47 4 Q. Can we go to page 13. This is
11:03:50 5 another article you cited in your report. Page 13,
11:03:53 6 PDF 3.
11:03:53 7 This is eight lines from the bottom of
11:03:58 8 the first full paragraph. "Expectations", do you
11:04:06 9 see where the cursor is?
11:04:08 10 "Expectations of hospitality
11:04:10 11 and alliance between members having
11:04:12 12 the same identity (and therefore
11:04:13 13 being part of the same extended
11:04:15 14 family) shaped regional politics
11:04:18 15 through to the 19th century. A
11:04:20 16 strong taboo against intraclan
11:04:23 17 marriage that also continued into
11:04:24 18 the reservation era, meant that
11:04:26 19 couples could count on lateral
11:04:28 20 alliances with the clan of their
11:04:30 21 spouse as they sought hospitality
11:04:33 22 while moving throughout the region.
11:04:34 23 These kin networks and related
11:04:36 24 lateral alliances criss-crossed the
11:04:38 25 region and characterized its

1 political geography."

2 The author here, I'd suggest is
3 speaking, at this point, about alliances and
4 relationship between families that exist as a
5 result of sharing the same totem; is that right?

6 A. Yes, that's much what I said.

7 Q. Now finally, if we can go to
8 S0795, please. This is an article cited at
9 footnote 298 by Harold Hickerson.

10 If we can pull that up, it's entitled
11 "The Genesis of Bilaterality Among Two Divisions of
12 Chippewa". If we can make this the next exhibit,
13 please?

14 THE REGISTRAR: Exhibit No. 4350.

15 EXHIBIT NO. 4350: Article by Harold
16 Hickerson entitled "The Genesis of
17 Bilaterality Among Two Divisions of
18 Chippewa".

19 BY MR. FELICIAN:

20 Q. If we can go to page 11 which is
21 PDF page 15.

22 The first sentence under the heading,
23 if you go down the page. So it writes:

24 "Clan autonomy gave way
25 completely to tribal organization

11:06:02 1 (1680 to 1700)."

11:06:11 2 If we can go to the second full
11:06:13 3 paragraph on the next page. Yeah, the second full
11:06:25 4 paragraph, so if you can bring it up a bit, the
11:06:28 5 page up.

11:06:34 6 "Once the multiclan village
11:06:36 7 came into existence, the clan was
11:06:38 8 forever doomed as a territorial
11:06:40 9 unit. It is not known whether the
11:06:42 10 villages in the 17th century had
11:06:44 11 councils with clan representations.
11:06:46 12 However, as I have demonstrated,
11:06:48 13 certain ceremonials, the most
11:06:50 14 important of which was the Midewiwin
11:06:53 15 were founded to give form to the
11:06:55 16 chrysalis, the tribal village."

11:06:57 17 I believe that what you may be what you
11:07:06 18 said earlier, that the multiclan village became the
11:07:06 19 norm.

11:07:07 20 A. I believe it was Indigenous. I
11:07:09 21 don't believe Dr. Hickerson -- I don't think he's
11:07:12 22 suggesting that. But the point I was making
11:07:13 23 earlier is that you cannot have a village with one
11:07:17 24 clan. That's impossible, sociologically. So you
11:07:23 25 have must have multiclan villages, and they must be

11:07:26 1 there, from my point of view, from the beginning.

11:07:28 2 I say this, too, because the existence
11:07:30 3 of clans among the Anishinaabe is well-known. And
11:07:34 4 there's no indication that I've ever come across,
11:07:37 5 no reliable indication that clans were introduced
11:07:40 6 to the people. As a matter of fact, the word
11:07:45 7 "totem" and word "totemism" is derived from
11:07:49 8 Anishinaabemowin, the word, as you pronounced it
11:07:51 9 earlier, "dodem".

11:07:53 10 So this is a word that has become a
11:07:55 11 technical term in anthropology, that we actually
11:07:58 12 borrowed from Indigenous people. It describes to
11:08:00 13 me something that's existed in the community since
11:08:04 14 the beginning of time; that's their nascent social
11:08:07 15 organization, I believe.

11:08:11 16 Q. You'd agreed with me -- I have
11:08:12 17 read these articles you've cited; I imagine you've
11:08:16 18 read a number of articles.

11:08:19 19 None of the sources support the
11:08:21 20 proposition that treating those with the same
11:08:24 21 marker dodem as relations is the equivalent of
11:08:28 22 political -- politically distinct Bands sharing
11:08:32 23 territorial control.

11:08:33 24 So none of these articles make the
11:08:36 25 connection that simply because there's a bear clan

11:08:41 1 here and a bear clan on the North Shore of Lake
11:08:45 2 Superior, that these clans somehow share political
11:08:48 3 control of their territories, because they don't?

11:08:50 4 A. You're correct, they don't. Each
11:08:52 5 Band controls its own territory; you're correct.

11:08:54 6 Q. Okay. Thank you.

11:08:55 7 I'm going to move on to a few questions
11:08:58 8 now about squatters, if I may. As a squatter, I'm
11:09:09 9 considering a squatter persons of the -- for the
11:09:12 10 purposes of my questions, if you take issue with it
11:09:15 11 please tell me -- but as a person or family
11:09:18 12 residing on the Bruce Peninsula reserve north of
11:09:21 13 the Half Mile Strip. So this is the Bruce
11:09:23 14 Peninsula that is subject to Treaty 72.

11:09:25 15 That are there without the permission
11:09:34 16 of the government or the Saugeen or Nawash. So
11:09:34 17 that's -- are you okay with that understanding of a
11:09:34 18 squatter?

11:09:34 19 A. Sure, I understand what you mean.

11:09:35 20 Q. Okay. You would agree that
11:09:39 21 there's no evidence in the materials of how many
11:09:41 22 squatters actually were on the Bruce Peninsula at
11:09:46 23 any particular point in time?

11:09:47 24 A. I agree with that, yes.

11:09:49 25 Q. Okay. We don't actually know when

11:09:53 1 they started arriving?

11:09:55 2 A. The settlers?

11:09:57 3 Q. No, the squatters.

11:09:58 4 A. Oh, the squatters; I couldn't say.

11:10:01 5 Q. We don't know for certain what
11:10:09 6 they were doing, although there are some accounts
11:10:12 7 of, I suppose they'd have to hunt and fish to
11:10:15 8 support themselves, and there's accounts of people
11:10:18 9 taking timber, but we don't know for sure what they
11:10:21 10 were doing?

11:10:21 11 A. No, we don't know. But you're
11:10:23 12 correct. People living at this time, their
11:10:27 13 lifestyle was not hugely different from
11:10:29 14 Anishinaabe. Farmers are still going to be hunting
11:10:31 15 because that's going to be one of their primary
11:10:34 16 sources of food, protein in particular.

11:10:36 17 Q. We don't know where they were
11:10:37 18 residing specifically?

11:10:39 19 A. I don't know that.

11:10:40 20 Q. And we don't know what kinds of
11:10:42 21 shelters they lived in?

11:10:43 22 A. That's correct. I don't know
11:10:44 23 that.

11:10:45 24 Q. We don't know how much land they
11:10:47 25 occupied?

11:10:48 1 A. That's correct.

11:10:52 2 Q. There's no evidence really to tell
11:10:54 3 us if these squatters were permanent or seasonal?

11:10:57 4 A. I don't know that.

11:10:59 5 Q. I would suggest that the fear or
11:11:02 6 threat of squatting was the more pressing concern
11:11:06 7 than actual squatting?

11:11:08 8 A. There's no way to tell that
11:11:11 9 without -- because of the propositions you gave me,
11:11:14 10 we don't know anything about them. So we can't
11:11:19 11 assess the fear.

11:11:20 12 Q. And we don't know if they had any
11:11:22 13 impact or how severe it was on the First Nations
11:11:27 14 and the use of their territory?

11:11:28 15 A. I think it would have an impact on
11:11:30 16 them, since they considered the territory their
11:11:32 17 own. And they would consider these people
11:11:35 18 intruders, so it would have an impact on them.
11:11:37 19 Whether it would have a negative impact on their
11:11:40 20 economy or other elements I cannot say.

11:11:42 21 Q. In other words, there's not enough
11:11:44 22 evidence to say how serious an impact or if it was
11:11:48 23 serious, just that there would be an impact?

11:11:50 24 A. Well, I would say from the
11:11:51 25 perspective of Anishinaabe, it would be an

11:11:53 1 important impact. Because people are using your
11:11:55 2 territory, which you consider your own, over which
11:11:57 3 you possess the proprietary rights. And people are
11:12:00 4 now abusing that and that would be an important
11:12:03 5 consideration, a serious consideration.

11:12:05 6 I'm sure in the communities where I've
11:12:09 7 observed -- in a community where I've observed
11:12:11 8 exactly this sort of thing, albeit in the 20th
11:12:14 9 century, one person in a huge territory, setting up
11:12:17 10 a tent, a camp in the summertime, a man from
11:12:21 11 Toronto, on the North Shore of Lake Nipigon caused
11:12:25 12 all kinds of consternation in the Band, and this is
11:12:28 13 in the 20th century.

11:12:29 14 Q. This is modern now?

11:12:30 15 A. That's right.

11:12:31 16 Q. For those references in the
11:12:33 17 material to whites taking timber, we don't know how
11:12:36 18 much timber they took, do we?

11:12:38 19 A. I believe that they took -- if I
11:12:44 20 recall the reports correctly, they took sufficient
11:12:47 21 amounts so that it would be noted.

11:12:49 22 Q. We don't know how frequently it
11:12:51 23 happened, other than again what you said it would
11:12:53 24 be noted. It was frequent enough to be noted?

11:12:55 25 A. Yes, you're correct. We do not

1 know the particulars of these things.

2 Q. Can we go to page 233 of your
3 report, the last sentence of the first paragraph?
4 This is slightly different topic but not entirely.

5 "It also is my opinion that,
6 apart from its commercial value, the
7 Saugeen Anishinaabe believed that
8 fishing would contribute more to
9 their subsistence economy in the
10 future than hunting and trapping,
11 not only because unscrupulous
12 opportunists were trespassing on the
13 land where the Saugeen Anishinaabe
14 pursued game and fur-bearers, but
15 also because colonial officials told
16 Saugeen leaders that the government
17 was powerless to stop the
18 intruders."

19 You have a citation there in support of
20 your quote that unscrupulous opportunists were
21 trespassing on the land and it's at footnote 528.
22 Let's go to 528. That's Alexander McNabb's
23 requisition and Alexander McNabb was an Indian
24 Agent.

25 A. I believe he was the land agent.

1 BY MR. FELICIANANT:

2 Q. All right, the land agent. If we
3 can pull up Exhibit 2057.

4 And this is the letter from agent
5 McNabb writing to his superior, Anderson on
6 February 10, 1854. So if we just go down you'll
7 see the text of the letter under the numbers there
8 where he's talking about the money being
9 requisitioned.

10 He writes:

11 "I am requested by Chiefs
12 Madwayosh and Kadahgegwun to
13 transmit to you the enclosed
14 requisitions on account of
15 provision."

16 Then you skip the amounts there, I'll
17 skip the amounts.

18 "In consequence of the weather
19 being exceedingly stormy in the
20 whole of the fishing season, the
21 poor Indians caught few fish and
22 lost all their nets, and as this
23 tract of country is filling up with
24 white settlers breaking up the
25 hunting grounds so that it is really

11:15:30 1 necessary to grant to the tribe a

11:15:33 2 small supply of provisions to get

11:15:35 3 them through this severe winter. I

11:15:37 4 sincerely hope it will be granted."

11:15:44 5 Now this letter is from McNabb. Can we

11:15:50 6 just scroll down to make sure he signed it there?

11:15:53 7 Signed Alexander McNabb, that's right, to Anderson.

11:15:58 8 Now he's talking in this letter about

11:16:00 9 white settlers. So I'm assuming he's talking about

11:16:04 10 settlement that has occurred in the lands already

11:16:07 11 surrendered under Treaty 45½ or in the Half Mile

11:16:13 12 Strip; isn't that a fair assumption?

11:16:15 13 A. I think that's fair.

11:16:17 14 Q. Okay. So there's no use of the

11:16:19 15 word here "unscrupulous opportunists", so this

11:16:24 16 letter does not support that proposition?

11:16:29 17 A. Yes, I get your point. I

11:16:36 18 understand your point, sir.

11:16:37 19 Q. Okay. I'd like to move on to

11:16:53 20 another area now and talk about Anderson's and

11:16:53 21 Oliphant's reports. So if we can pull up

11:16:57 22 Exhibit 2175, please.

11:17:13 23 So this is Governor General Lord

11:17:17 24 Elgin's report to London enclosing Oliphant's

11:17:20 25 report on Treaty 72, dated November 3, 1854. And

11:17:25 1 it also includes Anderson's report from August 6,
11:17:30 2 1854.

11:17:32 3 Lord Elgin's report also includes a sub
11:17:35 4 enclosure as Anderson's address to the Saugeen and
11:17:39 5 Nawash on August 2nd, 1854.

11:17:43 6 If we can start by looking at
11:17:45 7 Anderson's address dated August 2, 1854, this is
11:17:49 8 PDF page 11, page 12 of the document sub enclosure
11:18:02 9 2, it says.

11:18:02 10 So you'll see this took place, the
11:18:06 11 meeting took place two and a half months before the
11:18:09 12 treaty was ultimately executed; is that right?

11:18:11 13 A. That's correct. It was executed
11:18:13 14 in October.

11:18:14 15 Q. And you'll see that the very first
11:18:18 16 line says "After talking all day yesterday and
11:18:21 17 nearly all last night..." So we now know the
11:18:25 18 meeting he's talking about happened on August 1st.

11:18:30 19 This is an address to the communities
11:18:33 20 directly; is that right?

11:18:36 21 A. Yes, that's correct.

11:18:38 22 Q. Okay. So we can assume that when
11:18:41 23 Anderson is describing what occurred, particularly
11:18:45 24 when quoting what they said to him, he'd make an
11:18:52 25 effort to be accurate; you'd agree with that. So

11:18:57 1 if I was to quote you and you're sitting in front
11:19:00 2 of me, I'm going to try and quote you accurately.
11:19:03 3 Isn't that a fair assumption absent evidence to the
11:19:06 4 contrary?

11:19:06 5 A. Absent evidence to the contrary.
11:19:09 6 Remember, though, we have to remember and take into
11:19:11 7 account that this is a government official who's
11:19:15 8 been in the business for a long time writing
11:19:18 9 another government official.

11:19:20 10 He's at the very end of his career
11:19:23 11 here. I don't think he wants to paint himself in a
11:19:25 12 negative light. Which, by the way, his own
11:19:29 13 comments on the meeting actually do.

11:19:31 14 He's writing this as an official report
11:19:33 15 and I think that we can say fairly that he wants to
11:19:36 16 portray himself as a fair minded honest broker.

11:19:40 17 Q. Okay. So looking at specific
11:19:43 18 portions though, and I'll take the first sentence:

11:19:46 19 "After talking all day
11:19:47 20 yesterday and nearly all last night,
11:19:50 21 on the subject of your reserve, you
11:19:52 22 have concluded not to cede your land
11:19:54 23 to the Government to be sold for
11:19:56 24 your benefit."
11:19:56 25

11:19:58 1 You have no reason to think Anderson
11:20:00 2 misrepresented what they told him and how long they
11:20:04 3 talked?

11:20:04 4 A. No, I have no reason to believe
11:20:06 5 that. I think they consulted, and they had a
11:20:08 6 proposal in mind before they actually consulted,
11:20:10 7 and they came forward to Captain Anderson and made
11:20:13 8 this proposal. Then as we know, Captain Anderson
11:20:15 9 refused it, rejected it.

11:20:17 10 Q. So there was a real discussion
11:20:19 11 concerning the surrender, and the communities came
11:20:22 12 back with a counterproposal; that's basically what
11:20:25 13 happened?

11:20:28 14 A. I'm not so sure about the word
11:20:31 15 "counterproposal". I think that they had a
11:20:33 16 proposal in mind from the beginning and that's why
11:20:35 17 they were able to respond to Anderson in the
11:20:38 18 relatively quick way in which they did.

11:20:41 19 So I think that they came to the
11:20:43 20 meeting with an idea that they would do a cession
11:20:46 21 -- we don't know what it was, because of course the
11:20:49 22 map is missing -- but they would do a cession of
11:20:51 23 some sort. But we don't know exactly what that
11:20:55 24 was.

11:20:56 25 However, we know it was sufficient from

11:20:58 1 the Anishinaabe point of view for them to be
11:21:00 2 believe that they would be able to sustain
11:21:02 3 themselves but it was insufficient from the
11:21:04 4 government's point of view to acquire land to
11:21:07 5 settle the area.

11:21:10 6 Q. If we go down to the second
11:21:11 7 paragraph now, so just scroll up a little bit.
11:21:15 8 Anderson writes, or Anderson says in his address:

11:21:18 9 "You complain that the whites
11:21:20 10 not only cut and take your timber
11:21:22 11 from your land but that they are
11:21:24 12 commencing to settle upon it."

11:21:28 13 You have no reason to think that
11:21:29 14 Anderson is misrepresenting what the complaints
11:21:32 15 were here, do you?

11:21:35 16 A. No, I don't believe that, and this
11:21:38 17 ties in with what I was saying about "unscrupulous"
11:21:41 18 before.

11:21:41 19 Q. And although we don't know what
11:21:43 20 the word -- what "commencing to settle" means
11:21:47 21 exactly, I think a reasonable interpretation of
11:21:50 22 commencing is just starting to settle. It's a more
11:21:54 23 recent occurrence?

11:21:55 24 A. Yes, they're settling there, yes,
11:21:58 25 that's correct.

1 Q. Now, if we scroll up the page, if
2 we can -- let's see where I am. If we scroll up
3 the page we can see the third full paragraph on the
4 page, starting "The reserves":

5 "The reserves which I have
6 proposed contain in the aggregate
7 about 34,600 acres, which is more
8 than they will cultivate for two or
9 three lives, and in my opinion it
10 would be quite opposed to their
11 interest were the Government to
12 accede to their unwise conclusion,
13 for in two days Council they did not
14 advance one good argument why the
15 reserve should not be sold beyond,
16 'We don't want to sell our land',
17 'We want to keep it for our
18 children', 'We expect Indians to
19 come here to settle', etcetera,
20 etcetera, acknowledging at the same
21 time their inability to manage their
22 concerns."

23 So do you have any reason to believe
24 that Anderson is misrepresenting the reasons given
25 by the Indigenous peoples for wanting to keep the

1 land they identified wanting to keep?

2 A. No, I don't think that he's
3 misrepresenting what the Anishinaabe told him. But
4 again, from my point of view, they can only tell
5 him things that he can understand.

6 They can not tell him things such as,
7 we want this land because -- well, they're saying
8 for the children, but I'm trying to understand it
9 in a deeper sense. Why would they want the land
10 for their children? To me the answer is, they want
11 the land so their children can go on the land so
12 they can experience all the beauty and the richness
13 of their culture.

14 So to me, they're talking about --
15 they're talking about they want it for their own
16 sake for culture, but to express that to Anderson,
17 wouldn't really make sense to Anderson because he
18 doesn't think very much of their culture.

19 We know that by his comments you know,
20 they wouldn't be able to cultivate this land in two
21 or three generations, he says.

22 So I see this as not at all, as you
23 say, it's not misrepresenting what they said. But
24 I don't think it's accurate to say that this is
25 their actual reasons for not doing this. I think

1 we can understand their reasons in the context of
2 their culture at the time.

3 Q. So although Anderson doesn't state
4 what concerns they're talking about, where they
5 talk about acknowledging at the same time their
6 inability to manage concerns, bottom of that
7 paragraph.

8 It's likely he's talking about taking
9 timber and whites putting pressure on the land. In
10 other words, some of the squatters coming to
11 settle. You would agree that's probably what the
12 concerns are that they're not able to manage?

13 A. Yes, that makes sense to me.

14 Q. Okay. And you would also agree
15 that however many squatters we're talking about or
16 however much timber we're talking about, it's not
17 posing such a problem that they considered it
18 necessary to agree to Anderson's request. So at
19 that point in time, whatever pressure they felt
20 certainly wasn't enough to accede to Anderson's
21 proposal?

22 A. I agree. Whatever the
23 contingencies were at that time, they had devised a
24 plan, I believe in advance, according to the terms
25 of their culture, to make a proposal to Anderson.

1 And they thought that that would be sufficient.

2 But as I said, Anderson didn't.

3 Q. Can we go up to page 3 of the
4 document, PDF page 2, which is the first page of
5 Oliphant's report of November 3rd relating to the
6 Council held two and a half months after Anderson's
7 Council. So this is PDF page 2, page 3. Starting
8 with paragraph 2.

9 Sorry if we can go down to the third
10 paragraph:

11 "On my way to Saugeen and in
12 passing through the counties of Grey
13 and Bruce, adjoining this reserve, I
14 received numerous evidences
15 testifying to the expediency of the
16 mission upon which your Lordship had
17 been pleased to send me, and leading
18 me to the hope, that the most
19 beneficial results might be
20 anticipated to all classes of the
21 community, by the successful issue
22 of the undertaking. The tide of
23 emigration which has, of late years
24 been flowing into Canada, has driven
25 before it, a crowd of those more

11:27:42 1 adventurous spirits whose office it
11:27:43 2 is to prepare the way for the
11:27:47 3 industrious emigrant. These were
11:27:49 4 the more eager in their search for
11:27:51 5 wild lands, as the prospect of
11:27:53 6 obtaining them became almost
11:27:55 7 confined in this direction to the
11:27:57 8 counties bordering on the Saugeen
11:27:59 9 the Peninsula then an Indian
11:28:02 10 reserve, and which must be now be
11:28:05 11 the limit of their explorations."

11:28:08 12 I'll stop there. What he's saying is,
11:28:09 13 the tide of settlement is coming. There's a line
11:28:11 14 of settlement moving towards Saugeen. As long as
11:28:14 15 the Saugeen Peninsula remains a Indian reserve, it
11:28:17 16 can't be fully and properly settled; is that right?

11:28:22 17 A. Well, I think he's talking about
11:28:25 18 the two waves of emigrants. First, the more
11:28:30 19 aggressive ones and the second about the ones that
11:28:34 20 come in their wake. To use common sense terms, the
11:28:40 21 ones that would be more law abiding, let us say.

11:28:43 22 I think that's what he's saying here.
11:28:46 23 If you go on in the paragraph there's an important
11:28:48 24 sentence because he's describing the people
11:28:50 25 collected at "every backwood tavern", gangs, and

11:28:54 1 what he's describing here is -- if I can use the
11:29:00 2 term -- a rabble. Not organized settlement. Not
11:29:04 3 organized settlers and he's saying these people
11:29:13 4 would be the most frightening from the point of
11:29:13 5 view from those who are already there.

11:29:13 6 Q. And he's talking about the
11:29:14 7 potential for bloodshed, he's talking about murder.
11:29:20 8 Presumably, though, this is murder and bloodshed as
11:29:23 9 between the squatters and settlers fighting amongst
11:29:27 10 themselves; that's what I take from that.

11:29:29 11 But in any event he's worried about
11:29:33 12 bloodshed and murder?

11:29:34 13 A. Actually I took it in a different
11:29:36 14 way. I took it in a way that the conflict would be
11:29:39 15 with the Anishinaabe, not so much with the
11:29:43 16 settlers. I think that they would, they would be
11:29:45 17 worried about that if they're taking timber, if
11:29:48 18 they're taking fish, if they're taking game that
11:29:50 19 would lead inevitably to lead with conflict with
11:29:54 20 the Indigenous people so that's the kind of
11:29:55 21 conflict I thought we were looking at here.

11:29:57 22 Q. Just the way the letter is worded,
11:29:59 23 it reads:

11:30:03 24 "Disappointed in their search
11:30:04 25 for land, inveighing against the

11:30:05 1 alleged dishonesty of Crown land
11:30:08 2 agents, organizing bands for the
11:30:09 3 forcible ejection of more fortunate
11:30:12 4 squatters, a proceeding which
11:30:15 5 generally resulted in bloodshed."

11:30:17 6 I had assumed that clause modified the
11:30:19 7 previous clause and that it was the battle between
11:30:22 8 fortunate squatters and the rabble you're talking
11:30:24 9 about.

11:30:24 10 A. I think that's true. But I think
11:30:26 11 it's also from the Anishinaabe looking at this and
11:30:29 12 looking at the settlers coming, looking at these
11:30:32 13 people collected in the backwater taverns, as
11:30:36 14 Mr. Oliphant is describing them, would certainly
11:30:40 15 create a situation in which the potential for
11:30:43 16 bloodshed existed between Anishinaabe and
11:30:44 17 non-Anishinaabe.

11:30:45 18 Q. And so the concern on Oliphant's
11:30:48 19 part that that was a real possibility was a
11:30:52 20 reasonable concern?

11:30:54 21 A. Yes, I think it was reasonable for
11:30:56 22 him to be concerned overall with this group of
11:30:58 23 people that he's describing. Because he believes
11:31:01 24 that he -- he's saying, these people cannot be
11:31:04 25 controlled; that's what he's saying, these people

11:31:07 1 cannot be controlled. That is a problem not only
11:31:09 2 for those who are legitimate settlers, as you're
11:31:13 3 pointing out here, but also for the Anishinaabe.

11:31:15 4 MR. FELICIAN: Your Honour, it's the
11:31:18 5 usual break time, if it's convenient.

11:31:19 6 THE COURT: 20 minutes.

11:31:26 7 -- RECESS TAKEN AT 11:32 --

11:53:51 8 -- UPON RESUMING AT 11:55 --

11:55:30 9 THE COURT: Please go ahead.

11:55:32 10 BY MR. FELICIAN:

11:55:32 11 Q. So if we can just scroll the page
11:55:35 12 up a little bit. This is the same page as we were
11:55:48 13 on. Oliphant writes:

11:55:51 14 "They threatened, in my
11:55:53 15 presence, to settle upon the Indian
11:55:55 16 reserve in defiance of the
11:55:58 17 Government."

11:55:58 18 So that tells us, firstly, that they
11:56:01 19 were threatening. But also that Oliphant was aware
11:56:08 20 and they would have been aware that it would have
11:56:10 21 been in defiance of the government. So they were
11:56:12 22 aware of the rules they weren't allowed to settle
11:56:15 23 there. Doesn't that tell us that?

11:56:19 24 A. (Witness reviews document).

11:56:23 25 Q. That they're threatening to settle

11:56:25 1 "in defiance of the Government"?

11:56:27 2 A. Oliphant certainly knew that and I
11:56:29 3 would suspect it's reasonable to believe that the
11:56:31 4 others knew that that was the case as well; I think
11:56:34 5 that's reasonable.

11:56:35 6 Q. "The general principle that
11:56:37 7 Indian concessions are beneficial
11:56:38 8 alike to the Indian and the white,
11:56:40 9 was merged here in a more important
11:56:43 10 consideration. So keen was the
11:56:47 11 struggle for land that a surrender
11:56:49 12 of the territory for the purpose of
11:56:50 13 sale, appeared the only method by
11:56:53 14 which the property of these tribes
11:56:55 15 could be conserved to them."

11:57:00 16 So I would suggest that the merger of
11:57:02 17 considerations would have included the concern for
11:57:08 18 the possibility of bloodshed and violence?

11:57:11 19 A. I think so, too. I think that
11:57:14 20 there was a concern on his part that these -- if I
11:57:17 21 can use the word "unscrupulous" individuals would
11:57:21 22 occupy the land, use and occupy the land and that
11:57:24 23 would lead to a bloodshed, yes, that's correct.

11:57:26 24 Q. So if we can go to the next page,
11:57:31 25 page 4, third full paragraph:

11:57:42 1 "I opened the proceedings by
11:57:44 2 stating to them the reasons which
11:57:47 3 had induced Your Excellency to
11:57:50 4 recommend the surrender of so large
11:57:53 5 a portion of their territory. The
11:57:54 6 evidence of their own senses was
11:57:57 7 sufficient to bear me out in the
11:57:58 8 truth of my assertions in reference
11:58:00 9 to the avidity with which the
11:58:02 10 neighbouring lands were being taken
11:58:05 11 up by whites."

11:58:07 12 Here he's referring to the Treaty 45½
11:58:10 13 land south of the Peninsula; is that right? "The
11:58:14 14 neighbouring lands"?

11:58:20 15 A. Yes, well these are people coming
11:58:24 16 -- yes, they're coming from the south, they're
11:58:26 17 coming to the north.

11:58:27 18 Q. "They were compelled to admit
11:58:29 19 that squatters were, even then,
11:58:31 20 locating themselves without
11:58:33 21 permission, either from themselves
11:58:34 22 or the department upon the reserve."

11:58:39 23 So stopping there, it's not -- he
11:58:44 24 doesn't write it's readily apparent or everyone
11:58:48 25 admitted readily, or you know, I don't have to

1 worry about the threat that actual squatting is a
2 horrendous problem. He's saying they were
3 compelled to admit that squatters were.

4 I think that supports what we're saying
5 or we've said earlier that there were some
6 squatters there. We don't know how many, but there
7 wasn't the pervasive, horrible problem they were
8 thinking it might soon become?

9 A. Oh, in 1854?

10 Q. Yes.

11 A. Yes, I believe that their concerns
12 escalated about the property from the time -- about
13 the territory we're talking about -- from the 1854
14 Council with Captain Anderson. Hard on the heels
15 of that was the sale in September, and then
16 Anderson appears in October.

17 So I see this as something that's
18 mounting, it's mounting, it's an increasing threat
19 over time. And he's right. They can see it as
20 plain as day because of the sale of the territory
21 just south of them on the 27th of September, which
22 is two weeks, two weeks before Oliphant appears.

23 Q. I'm going to move on now to
24 another -- let's keep the document up, please, for
25 a different matter. I want to talk a bit about the

1 actual settlement condition.

2 Page 5. If we can go to page 5, which
3 is PDF 4. I'm looking for the sixth paragraph
4 starting. "Having thus given a detailed account".

5 "Having thus given a detailed
6 account of the proceedings connected
7 with the Indian surrender, I shall
8 take the liberty of offering for
9 Your Excellency's consideration,
10 some suggestions as to the
11 conditions which should be attached
12 to those sales, and also as to the
13 mode in which the money arising out
14 of them should be appropriated."

15 And then if you go down a little bit,
16 you will see after the line that says "Their
17 valuation". He says:

18 "The advantages of confining
19 the sale to actual settlers were
20 much pressed upon my consideration
21 at Saugeen and Owen Sound, a large
22 proportion of the community of those
23 settlements being composed of a
24 class which is possessed of more
25 enterprise and experience than

12:01:14 1 capital. Regarding, however, the
12:01:16 2 results which characterize the
12:01:17 3 system now adopted by the Crown Land
12:01:21 4 Department, and the great difficulty
12:01:22 5 which must always attend the
12:01:25 6 enforcement of conditions,
12:01:26 7 compliance with which is supposed to
12:01:28 8 imply actual settlement, it does not
12:01:31 9 seem advisable that the same system
12:01:33 10 should be pursued here."

12:01:34 11 And then he goes on to give another
12:01:36 12 reason. I suppose my question for you is, it does
12:01:41 13 appear, though, although Oliphant did not recommend
12:01:44 14 the condition of actual settlement, he did turn his
12:01:48 15 mind to it?

12:01:49 16 A. Yes, because I think he was
12:01:50 17 pressed to turn his mind to it by the Anishinaabe,
12:01:53 18 because after they put their marks on the treaty,
12:01:57 19 after they touched the pen, they wanted to get the
12:02:04 20 best they could out of what was a bad deal, a very
12:02:07 21 bad deal.

12:02:08 22 So under these circumstances, they
12:02:10 23 believe, or I'm saying they believed that it would
12:02:13 24 be good to have actual settlers there, because then
12:02:15 25 they could form a relationship with those people

12:02:18 1 and live in a, you know, a larger community. I'm
12:02:23 2 sorry.

12:02:24 3 Q. Go ahead, sorry.

12:02:25 4 A. I'm sorry, I just lost my train of
12:02:28 5 thought. I was --

12:02:30 6 Q. Sorry, I didn't mean to interrupt
12:02:32 7 you.

12:02:32 8 You actually say that at page 255 of
12:02:35 9 your report; you actually talk about that?

12:02:37 10 A. Yeah.

12:02:38 11 Q. And one of the things, however, I
12:02:40 12 could not find that theory located in any of the
12:02:43 13 supporting documents.

12:02:44 14 Like, you're not able to cite the
12:02:47 15 theory that they were really interested in actual
12:02:51 16 settlement because of the ability to form relations
12:02:53 17 with their neighbors. That's not something I found
12:02:57 18 in any of the supporting documents?

12:02:58 19 A. No, that's my explanation of it.

12:03:00 20 Q. That's your explanation of it?

12:03:01 21 A. Yes, yes, that's my explanation.

12:03:03 22 And that falls in line, if you think about it, with
12:03:06 23 the conditions of the permission. Because if
12:03:08 24 people are going to be in an area where you are,
12:03:13 25 you want to impose -- an area that you control,

1 from an Anishinaabe point of view, you impose the
2 conditions of the permission.

3 For me, I look at this as a cultural
4 response. They're saying, okay, now we've been
5 confined to the ishkonigan but maybe we can have a
6 relationship with those who come perhaps.

7 We've chosen to survive rather than be
8 overwhelmed. So let's make a relationship with
9 these people and do the best we can. Those would
10 be specifically the conditions of the permission
11 from an Anishinaabe perspective.

12 Q. That's something -- you can come
13 to a conclusion you can come to. What I'm asking
14 is, if you can agree, you couldn't find any support
15 for that conclusion or another ethnologist or
16 ethnohistorian who said that in their material.
17 This is a theory you've developed on your own; is
18 that right?

19 A. Yes. But I think it's entirely
20 reasonable. It's not a radical theory, it's just
21 saying that this is part of their custom to impose
22 conditions of permission, and they're following the
23 custom here.

24 I don't think it's anything
25 extraordinary that I'm saying. I'm saying this is

12:04:19 1 part of their culture, and it seems reasonable that
12:04:22 2 they would operate in this way at this time in
12:04:25 3 order to enhance their ability to survive, now
12:04:28 4 they're going to be confined or concentrated in
12:04:31 5 reservations -- reserves, pardon me.

12:04:33 6 Q. To the extent that actual
12:04:35 7 settlement may result in settlers who are willing
12:04:41 8 to work with the communities, you're not saying
12:04:46 9 that there would be no impact that those settlers
12:04:51 10 would have, just that there might be able to be the
12:04:53 11 possibility of arrangements that could be made to
12:04:56 12 facilitate harvesting or hunting?

12:04:59 13 But there would be an impact? You're
12:05:00 14 acknowledging there would be an impact?

12:05:03 15 A. Yes, I would acknowledge there
12:05:05 16 would be an impact. What they're trying to do here
12:05:07 17 is trying to mitigate any adverse effects of that
12:05:11 18 impact.

12:05:11 19 Q. Now I'm going to move -- I have
12:05:15 20 some questions briefly about the length of Treaty
12:05:18 21 Councils. And if we can pull up page 263 of your
12:05:23 22 report, for a moment. And it's the last two
12:05:27 23 sentences. You've seen this before, I believe.

12:05:48 24 "Befitting the roles these
12:05:49 25 agreements played in their social

1 and economic lives treaty councils

2 allowed time and delicate

3 negotiations, frequently lasted for

4 several weeks [...]"

5 I'm focused more on that phrase. The

6 citation there is 590. If we can bring up

7 Exhibit 4335, which is the document footnote 590.

8 If we can go to PDF page 9, page 161 of

9 the document. The last paragraph on the right side

10 of the page. Now we looked at this before, but I'm

11 asking you a different question.

12 "Treaty councils were major

13 events usually lasting from one to

14 four weeks".

15 I'm going to suggest to you "usually

16 lasting from one to four" weeks is not the same as

17 "frequently lasting for several weeks". Wouldn't

18 you agree with me that one conveys a different idea

19 than the other?

20 A. I didn't mean to convey any

21 different. One to four weeks, seems to me it is

22 several weeks. I didn't mean it in any -- in any

23 strange way.

24 It seems to me that when I look at the

25 Treaty Councils of the 1837 Treaty, 1842 Treaty,

12:07:27 1 these are all treaties made in the area. I look at
12:07:30 2 the 1850 Treaty with the Robinson Huron and
12:07:34 3 Robinson Superior Anishinaabe. Those councils
12:07:38 4 lasted for weeks, several weeks.

12:07:42 5 Q. Now in this document, this author
12:07:44 6 is also considering American Treaties in her
12:07:47 7 assessment as well; isn't that right?

12:07:49 8 A. Yeah, she mentions here in this
12:07:51 9 paragraph, Dr. Tanner mentions both Canada and the
12:07:56 10 United States.

12:07:56 11 Q. And she also talks about how they
12:07:59 12 were attended with ceremonies, feasting and
12:08:03 13 dancing. Are you aware of the Saugeen or Nawash
12:08:07 14 ever complaining after the treaty was concluded
12:08:10 15 that no treaty was in fact concluded due to a lack
12:08:12 16 of ceremony?

12:08:14 17 A. No, I don't think so -- I don't
12:08:17 18 think that that's sort of a -- I don't know they
12:08:20 19 would make that complaint in the first place. But
12:08:23 20 even if they made that complaint, it strikes me it
12:08:27 21 would fall on deaf ears.

12:08:29 22 They have to make statements to the
12:08:30 23 government that make sense to government. They
12:08:33 24 know how to make those statements. But I don't
12:08:35 25 think they can say, look, we have a protocol and

12:08:38 1 this is the protocol.

12:08:39 2 The protocol that's identified is an
12:08:41 3 analytical scheme that's been developed by
12:08:44 4 ethnohistorians: Myself, Dr. Cleland, when we look
12:08:47 5 at these things. So I don't expect the Anishinaabe
12:08:50 6 to say, these are the three phases of
12:08:53 7 treaty-making.

12:08:54 8 I'm saying that when I look at various
12:08:58 9 treaties that are made with Anishinaabe, that I
12:09:01 10 say, and others say as well, we can identify these
12:09:05 11 stages.

12:09:06 12 But I don't expect the participants
12:09:08 13 themselves to be able to do that because they're
12:09:10 14 not, they're not looking at the treaty-making
12:09:12 15 process in an analytical, dispassionate way that I
12:09:16 16 am. They're looking at it is as participants. I
12:09:19 17 don't think that this would be a complaint that
12:09:21 18 they would make.

12:09:22 19 The basic problem, I would guess, from
12:09:24 20 their point of view, or I would suspect from their
12:09:27 21 point of view would be the time. There's just not
12:09:29 22 enough time to deliberate here. Because, after
12:09:32 23 all, they have to make a decision, and this
12:09:34 24 decision is going to be for the rest of time.
12:09:38 25 They're not going to have anything but the

12:09:41 1 ishkonigan, anything but the scraps. That is a
12:09:44 2 very, very serious question.

12:09:46 3 So under those circumstances, I believe
12:09:48 4 that they would require considerable deliberation.
12:09:52 5 One to several weeks.

12:09:56 6 Q. Now, you would agree with me that
12:09:59 7 the Saugeen Ojibway and Nawash would have
12:10:03 8 understood that they were surrendering lands on the
12:10:06 9 Bruce Peninsula for their benefit; they understood
12:10:08 10 the treaty?

12:10:09 11 A. I'm not going to say for their
12:10:11 12 benefit. They knew they were surrendering. I
12:10:14 13 don't know if they regarded it for their benefit
12:10:16 14 because it would create a radical change in their
12:10:19 15 culture and they would be confined to a smaller
12:10:21 16 space, so...

12:10:22 17 Q. Sorry, the sale of lands for their
12:10:25 18 benefit in the sense that the lands would be sold
12:10:28 19 and they would receive the monies for the lands
12:10:30 20 that would be sold?

12:10:32 21 A. Some of it. Mr. Oliphant also
12:10:35 22 makes the point that this money would go to pay off
12:10:37 23 the department as well; it would be used by the
12:10:40 24 Indian Affairs.

12:10:40 25 Q. And, finally, can we bring up

1 Exhibit 4332, please. And this is an article by
2 Victor Lytwyn, who I believe you identified as
3 another ethnohistorian like yourself or
4 anthropologist?

5 A. He is an historical geographer to
6 the best of my knowledge.

7 Q. But he is somebody you relied on
8 in your report?

9 A. Yes, I did. He's done
10 considerable work on fishing among the Saugeen
11 Anishinaabe.

12 Q. At page 93 of his report, if we
13 can go to page 93, three lines from the top.
14 Mr. Lytwyn or Dr. Lytwyn is talking about the
15 Treaty 72.

16 And he says:

17 "In 1854, representatives" --
18 top of the page -- "in 1854,
19 representatives of the colonial
20 government met with the Saugeen
21 Chiefs to negotiate another treaty
22 to surrender land in the Saugeen
23 Peninsula. After long and difficult
24 negotiations, the chiefs agreed on
25 13 October 1854 to surrender a

12:11:52 1 portion of their remaining territory
12:11:53 2 to the government."

12:11:55 3 So here is an authority that you cited
12:11:59 4 in your report and looked at this treaty and he
12:12:01 5 concluded they were long and difficult
12:12:04 6 negotiations. So I guess that's proof that
12:12:07 7 intelligent people can disagree; is that right?

12:12:10 8 A. Yes, of course, intelligent people
12:12:12 9 can disagree. But I think that if you asked Dr.
12:12:15 10 Lytwyn whether five hours was sufficient to
12:12:19 11 conclude a treaty, he might rethink that statement.

12:12:22 12 Q. So you're assuming he didn't do
12:12:23 13 his research; is that what you're saying?

12:12:25 14 A. No, I am thinking that he's --
12:12:29 15 that he's looking at it in a different way than I
12:12:31 16 am. And I'm focusing on the actual period when
12:12:36 17 they're getting together.

12:12:37 18 Because what I'm -- because what I'm
12:12:39 19 trying to figure out is that, okay, they've said
12:12:44 20 no. They've decided that they don't want to do
12:12:46 21 this.

12:12:47 22 We know the people living in Saugeen
12:12:49 23 don't want to proceed, and that's why the conflict
12:12:51 24 with Chief Madwayosh occurs with Oliphant. They
12:12:54 25 don't want to go ahead with it.

1 So they've already, they already made
2 up their minds. If you looked at it on the other
3 hand and you said that the entire negotiation took
4 place and then moved into 18 October -- in other
5 words if you started in August and moved into
6 October, and didn't take account of the fact that
7 they said no, it would look differently than if you
8 realized they said no, and that there was conflict
9 at the Treaty Council and they resolved it at --
10 you know, after a five-hour period.

11 By the way, this is not -- this is not
12 central to his argument. But it is central to my
13 argument.

14 Q. I appreciate that. But presumably
15 he wouldn't want to make false statements he didn't
16 actually believe?

17 A. No scholar would like to do that.

18 Q. No, okay.

19 So I'm going to move on to another
20 point, if we could. Can we look at page -- can we
21 bring up the transcript from -- I think it was
22 yesterday where we talked about the fistfight. I
23 don't know if that was...

24 Okay, can we bring up yesterday's rough
25 draft transcript, please, page 50. And I'd like to

1 go to page 50, line 19, so scroll down a bit.

2 We're talking about the fistfight.

3 You say, line 6 you start, you say:

4 "In one document, for instance,
5 we have an indication that there was
6 conflict. In another document that
7 may be blown up. In the case of
8 Oliphant's, that's blown up in terms
9 of hyperbole in terms of a
10 fistfight. I don't believe that
11 there was a fistfight, but I do
12 believe is that there was a
13 conflict."

14 Do you remember that evidence?

15 A. Yes, I do.

16 Q. Can we go to page 280 of your
17 report, please?

18 A. Under "The Reverend Sawyer's
19 Observations" you write:

20 "The fact that Saugeen leaders
21 undoubtedly had been discussing the
22 matter with their constituents since
23 Anderson's visit compounded the
24 problem; judging by the fistfight
25 that broke out among the delegates,

12:15:23 1 consensus had yet to be achieved,
12:15:25 2 and almost certainly had not been
12:15:26 3 achieved when the agreement was
12:15:28 4 concluded within the hour of the
12:15:31 5 fight."

12:15:32 6 At what point did you determine there
12:15:34 7 was no fistfight?

12:15:35 8 A. I determined that early on. I'm
12:15:38 9 just giving the Reverend Sawyer's observations
12:15:40 10 here. This is what the Reverend Sawyer is saying.
12:15:44 11 As I said before, I take this as an example of
12:15:46 12 conflict but I determined that right from the get
12:15:48 13 go.

12:15:49 14 Q. Why didn't you say that in your
12:15:51 15 report for the benefit for us and the judge, that I
12:15:54 16 actually don't believe there was a fight. Nowhere
12:15:59 17 do you say, I don't believe there was a fight. We
12:16:02 18 are left with the impression there was a fight?

12:16:04 19 A. I will say it: I don't believe
12:16:06 20 there was a fight. I believe that was hyperbole.

12:16:16 21 Q. I'm just asking why wouldn't you
12:16:18 22 have told us that? That's my question.

12:16:19 23 A. I can't answer that question.

12:16:24 24 Q. If I can move on to my last area.
12:16:27 25 I'd like to talk to you about the "Faith in Paper"

1 Cleland text that you testified about and Dr.
2 Reimer had criticized you about.

3 Can we please bring up the rough draft
4 transcript from yesterday and go to page 46, and so
5 I can remind you of what your evidence was so we
6 know what it was.

7 This is line 13 page 46. You say --
8 the question is:

9 "I'd like to take you to
10 Exhibit G-1, which is Dr. Reimer's
11 report, Volume 3, and go to page 199
12 and 200. It overlaps on the two
13 pages if we can scroll there. Here
14 Dr. Reimer makes the critique of
15 your expert opinion, but there's two
16 points I have a question for you
17 about.

18 "The first is, she suggests
19 that Cleland's work applies
20 primarily to the United States, and
21 may I have your comment on that
22 before we move to the second point?"

23 Your answer is:

24 "Yes. Well, that's not what
25 Charles Cleland has in mind. People

12:17:39 1 who study the Anishinaabe, like
12:17:42 2 Charles Cleland, Charles Bishop,
12:17:44 3 myself, Ed Rogers, Mary Black, we're
12:17:46 4 interested in the Anishinaabe
12:17:49 5 wherever they live. The
12:17:51 6 international boundary is no barrier
12:17:54 7 to them."

12:17:55 8 You're still of the view that Charles
12:17:58 9 Cleland's book is about all of the Great Lakes
12:18:01 10 people, including those in Canada?

12:18:07 11 A. I'm of the opinion that the
12:18:09 12 description of the Treaty Council that he presents
12:18:11 13 in that book is the same as the Treaty Council that
12:18:18 14 takes place in Canada. In other words, the
12:18:22 15 lineaments are the same, the elements of the
12:18:24 16 treaty-making process are the same on both sides
12:18:27 17 the border.

12:18:28 18 Everything that is in that book, the
12:18:31 19 treaties that are looked in that book, the 1837
12:18:33 20 treaty, the 1842 treaty, the treaty with the
12:18:35 21 Menominee and so on, that's quite true. Those are
12:18:37 22 treaties -- when you look in Faith in Paper you
12:18:40 23 will see the treaties he considers are treaties in
12:18:43 24 the United States.

12:18:43 25 But the scheme that he's developing, if

12:18:48 1 you recall what we were just looking at when we
12:18:55 2 looked at Tanner, Tanner was talking about the
12:18:55 3 Treaty Councils in Canada and the United States.

12:18:55 4 So when I look at this, I say to
12:18:57 5 myself, this is a scheme that, if we look at, or an
12:19:01 6 analytical scheme, I should say, that if we look at
12:19:04 7 the treaty-making process we can identify the steps
12:19:07 8 of the Treaty Council to see if it conforms to
12:19:11 9 that, to the deliberative stage and to the
12:19:14 10 invitation.

12:19:14 11 No matter what Charles Cleland says, or
12:19:18 12 no matter what the contents of the book in terms of
12:19:21 13 its focus on U.S. treaties, that still applies
12:19:25 14 here.

12:19:25 15 And Charles Cleland, by the way, I
12:19:27 16 don't think Charles Cleland would argue with that
12:19:30 17 as well. In a festschrift that was written for
12:19:33 18 Cleland, it's exactly this phrase was mentioned:
12:19:36 19 "The international border -- or border is no
12:19:38 20 barrier to Chuck".

12:19:40 21 Q. I want to see exactly what Charles
12:19:44 22 Cleland says. So let's bring up Exhibit 4328.
12:19:51 23 That is the Cleland book. If we can go to page 19,
12:19:55 24 please.

12:19:56 25 If you go down the page, scroll down

12:20:00 1 the page you'll see a heading on the left side that
12:20:03 2 says "The Great Lakes Indians". And then if you
12:20:07 3 scroll up again, on the right side, he writes:

12:20:16 4 "Today we know only the bare
12:20:18 5 remnants of this garden of cultural
12:20:21 6 diversity, and even so, it is quite
12:20:21 7 impressive. This book deals with
12:20:23 8 only a small corner of the North
12:20:26 9 American content, the upper Great
12:20:28 10 Lakes region of the United States,
12:20:30 11 that is, the drainages of Lakes
12:20:34 12 Superior, Michigan, and Huron."

12:20:37 13 So to the extent that Dr. Reimer is
12:20:40 14 saying, you're quoting an American source that is
12:20:44 15 detailing the American experience; she is not
12:20:49 16 wrong. You are quoting an American source that's
12:20:52 17 detailing the American experience.

12:20:55 18 A. I'm quoting from a book that was
12:20:57 19 written by an American. But the scheme that Dr.
12:21:00 20 Cleland puts forth informs me about the
12:21:03 21 treaty-making process on this side of the border.

12:21:06 22 The focus that I have is on
12:21:09 23 treaty-making with the Anishinaabe people. And
12:21:13 24 this, the treaty-making process with Anishinaabe
12:21:15 25 people developed on both sides of the border in

12:21:18 1 exactly the same way. It developed through
12:21:21 2 contact, largely with the British -- through
12:21:25 3 contact with the British, a scheme was developed to
12:21:27 4 make treaties.

12:21:27 5 The Anishinaabe and other Indigenous
12:21:30 6 people had their own protocols, but the Treaty
12:21:33 7 Council was something they developed in common. If
12:21:35 8 we look at Canada, let's say, for instance, if we
12:21:38 9 look at the 1850 treaties with the Lake Huron and
12:21:41 10 Lake Superior Ojibwe, we'll see that the same sort
12:21:45 11 of procedure was followed here.

12:21:47 12 Q. Can we go to page 13. And Cleland
12:21:52 13 has a heading called "The Era of American Treaty
12:21:56 14 Making". And so he talks about, as you say,
12:21:59 15 American treaty-making and those are the examples.

12:22:02 16 Now, you also say, though, that you
12:22:11 17 were not asked to look at the British understanding
12:22:13 18 of treaty-making. You said that yesterday?

12:22:17 19 A. Yes, I was asked to look at the
12:22:20 20 Anishinaabe understanding of treaty-making and
12:22:22 21 that's why I've offered the explanation I've put
12:22:25 22 forward about the Treaty Council and the other
12:22:27 23 stages.

12:22:28 24 Q. Can we go to page 19 of exhibit --
12:22:31 25 this same exhibit, please. Back to page 19. If we

12:22:38 1 can go down, the last sentence on the left column
12:22:44 2 before the heading, "understanding treaties".

12:22:46 3 So, "understanding treaties" -- this is
12:22:49 4 just before the heading "The Great Lakes Indians".

12:22:52 5 "Understanding treaties is a
12:22:52 6 cross-cultural exercise, and this
12:22:53 7 fact explains the role of
12:22:56 8 anthropologists and ethnohistorians
12:22:58 9 in the judicial process."

12:23:02 10 So my question to you is, how can you
12:23:04 11 fully explain treaty-making in what we now know as
12:23:10 12 Canada when you were asked only to look at the
12:23:12 13 Anishinaabe perspective of it, knowing that there's
12:23:15 14 a second very important party, the Crown?

12:23:18 15 THE COURT: Don't answer the question.

12:23:20 16 Mr. Townshend?

12:23:21 17 MR. TOWNSHEND: Your Honour, I realize
12:23:22 18 there's a broad scope of cross-examination, but
12:23:30 19 Professor Driben had certain questions, he was
12:23:34 20 given questions.

12:23:35 21 If there's a problem with the question,
12:23:37 22 it is not a problem of Professor Driben. It's a
12:23:40 23 problem with me, who wrote the questions.

12:23:42 24 So for that reason I find that question
12:23:45 25 is going outside the proper bound.

12:23:49 1 THE COURT: Well, I agree with
12:23:50 2 Mr. Townshend to the extent that this gentleman was
12:23:53 3 asked certain questions and it is very clear on the
12:23:57 4 record both where they came from and what those
12:24:00 5 questions are.

12:24:01 6 However, he's written a lengthy report
12:24:04 7 which draws certain conclusions. And I don't think
12:24:08 8 instructing counsel can confine cross-examination
12:24:12 9 by the form of questions.

12:24:13 10 Now, I don't think that is what's
12:24:15 11 happened here anyway. I don't think that
12:24:17 12 Mr. Townshend set out to do any such thing. But
12:24:22 13 given the breadth of cross-examination, and given
12:24:27 14 that this line of questions is focused on evidence
12:24:30 15 that's been given, I am going to permit the
12:24:34 16 question, which will now need to be repeated.

12:24:38 17 Please go ahead.

12:24:39 18 BY MR. FELICIANANT:

12:24:40 19 Q. So my question is, how can you
12:24:49 20 fully explain the treaty-making process in Canada
12:24:53 21 in what is now Canada, when you were asked to look
12:24:57 22 at the Anishinaabe perspective only, without regard
12:25:01 23 to the other party, big party, Britain and the
12:25:05 24 Crown?

12:25:05 25 A. Well, I think I just pointed out,

1 I just said that the treaty-making process was a
2 joint effort that was developed between Britain and
3 Canada -- Britain and the Indigenous peoples in
4 what is now Canada. And that subsequently was a
5 procedure that was adopted by the United States.

6 It was more or less a Canadian
7 experience before it ever became an American
8 experience.

9 Q. Now you had written -- if we go to
10 page 264 of your report. You write that:

11 "Europeans favoured the view
12 that treaties gave them the
13 authority to control the ceded
14 territories. By the middle of the
15 19-century, the two sides had come
16 to a meeting of the minds with
17 respect to the procedure that
18 governed the treaty making process."

19 Now, if we can -- how, if you were
20 asked only to look at the Anishinaabe perspective,
21 I'm going to suggest it's not possible to draw a
22 conclusion that there was a meeting of the minds,
23 if you never explored, for the purpose of this
24 report, the Crown's perspective?

25 A. I have to know the Crown's

12:26:41 1 perspective in my work. I mean, that's just part
12:26:43 2 of the work. So to say that I was not asked a
12:26:47 3 question, you're quite correct.

12:26:48 4 But to say that I didn't turn my mind
12:26:50 5 to the issue is mistaken because I have to turn my
12:26:53 6 mind to the issue. Because I've said here that
12:26:56 7 they've developed this process together.

12:26:57 8 So I have to -- I'm describing what the
12:26:59 9 process is that they've described together. So I'm
12:27:03 10 not -- I'm not ignoring what's happening to
12:27:06 11 Europeans or from the European perspective.

12:27:09 12 But instead I'm focusing on what the
12:27:11 13 Anishinaabe protocols were. I can't ignore the
12:27:14 14 other; you're quite correct. You have to take that
12:27:16 15 into account. But that can't be the driving force.
12:27:19 16 The protocols cannot be European protocols. I have
12:27:23 17 to focus on the Anishinaabe protocols.

12:27:25 18 Q. Well, can you tell me then, when
12:27:30 19 the Crown met with the Anishinaabe collectively,
12:27:37 20 and arrived at this process that matches up with
12:27:44 21 the process you've put in your report that you got
12:27:46 22 from Cleland's book, because your report doesn't
12:27:49 23 tell us anything about how that meeting of the
12:27:54 24 minds came about?

12:27:56 25 A. Yeah.

12:27:56 1 Q. So I would have thought that would
12:27:58 2 have required a General Council with the Crown, it
12:28:02 3 would have required correspondence, and meetings.

12:28:05 4 Whereas all I'm aware of is the Crown
12:28:10 5 rendering the Royal Proclamation and sending the
12:28:13 6 additional instructions and the instructions of
12:28:17 7 1794, which were not as a result of consultation
12:28:20 8 with First Nations. They were generated in London?

12:28:22 9 So how is it you come to the conclusion
12:28:25 10 that there was a meeting of the minds between
12:28:28 11 Britain and all of the Anishinaabe in Southern
12:28:31 12 Ontario?

12:28:31 13 A. Well, I've come to that conclusion
12:28:34 14 because the two sides are involved in treaty-making
12:28:37 15 for a long period of time. It starts in the 1700s
12:28:41 16 and they're involved in treaty-making.

12:28:44 17 At first we can imagine that they have
12:28:46 18 to develop a mutually acceptable system, and this
12:28:49 19 mutually acceptable system has to really take
12:28:53 20 account of Indigenous concerns because the
12:28:54 21 Europeans are not in control at this time.

12:28:56 22 So we should expect a scenario or
12:28:59 23 should expect a kind of a treaty-making process, we
12:29:03 24 should expect a treaty-making process to
12:29:06 25 incorporate a lot of Anishinaabe protocols.

12:29:08 1 But those protocols would not be
12:29:10 2 written down anywhere and they would exist even
12:29:13 3 before Europeans came here. Because Anishinaabe,
12:29:15 4 the Royal Commission on Aboriginal People has
12:29:20 5 pointed out that there was a Continental treaty
12:29:22 6 order long before Europeans got here.

12:29:25 7 They had a protocol in mind and when
12:29:27 8 the Europeans came here, over time, not at a grand
12:29:31 9 Council because it didn't happen that way.

12:29:34 10 It happened by coming together, coming
12:29:36 11 together, coming together, over and over and over
12:29:38 12 again until we end up in 1850, 1854 -- and by that
12:29:43 13 time, we can see by the middle of the century there
12:29:46 14 has been a meeting of the minds.

12:29:48 15 Because they've had a lot of experience
12:29:49 16 together and they both said, both agreed, yeah, we
12:29:53 17 can follow this procedure and we'll end up with a
12:29:54 18 treaty.

12:29:55 19 It's not a singular event, like, as you
12:29:58 20 say a Council, a grand Council. It's something
12:30:00 21 that develops slowly over time.

12:30:02 22 Q. So why would you rely on an
12:30:05 23 American source focused on American treaties, using
12:30:08 24 American treaties as examples to describe a
12:30:10 25 treaty-making process that you say developed in

1 Upper Canada over time from the 1700s? Why
2 wouldn't you discuss in your report the relevant
3 experience that led to that?

4 A. The "relevant"? I'm sorry I don't
5 understand.

6 Q. The relevant experience meaning
7 what happened in Canada between Britain and the
8 Anishinaabe, not what happened in the States
9 between the United States government and American
10 tribes?

11 A. I disagree that what Dr. Cleland
12 has done is written with the -- is focused on
13 American Anishinaabe, on American Indian customs.

14 What Dr. Cleland is doing, it seems to
15 me, he is talking about Anishinaabe, and is talking
16 about protocols that exist on both sides of the
17 border.

18 It doesn't make any sense to me to
19 think Anishinaabe south of the border would have
20 different protocols than Anishinaabe north of the
21 border. They would have the same -- they have the
22 same culture. They develop the same system in
23 place with Britain.

24 And then the Americans take it over,
25 you know, when they achieve independence and they

1 follow that protocol. But that protocol, if we
2 look at it, we think about it. That protocol would
3 have developed over the period of time that they've
4 been in contact with Britain much more than the
5 Americans.

6 And I don't think this is truly an
7 American experience. Because when I look at these
8 treaties, and I look at the Canadian treaties that
9 I have looked at, I see a common experience from
10 the point of view from the Anishinaabe.

11 Certainly, the concerns of the Great
12 Father in the United States and the Great Mother in
13 Canada, those concerns are different.

14 But having said that, the procedure is
15 the same on both sides of the border, because it's
16 largely an Anishinaabe procedure that Europeans, in
17 particular Britain and later the Americans, who
18 were British to begin with, have made an
19 accommodation to.

20 Q. With the exception that the Royal
21 Proclamation and then the Dorchester instructions
22 applies to Canada, what is now Canada?

23 A. I understand that, but if I say,
24 well, you know, what is the Anishinaabe
25 perspective? Are they concerned with the Royal

1 Proclamation with the details of the Royal
2 Proclamation? I don't think so. I mean, I think
3 they're concerned with their own protocols.

4 Most of them can't read when they're
5 making treaties. They're not going to be carrying
6 around the Royal Proclamation and the further
7 instructions and the Dorchester regulations. I
8 agree those are all important. But to me, that's
9 not the Anishinaabe perspective. That's the
10 British perspective.

11 So if we want to understand it
12 ethnohistorically, how they went about making
13 treaties, we should focus on their procedures
14 rather than the British procedures.

15 Q. Can we pull up Exhibit 1508,
16 please. This is the Bagot Commission report. If
17 we can go to page 5 -- I think it's PDF page 5. I
18 think it matches at page 5.

19 It says -- this is in the Bagot
20 Commission report. It says:

21 "The subsequent proclamation of
22 His Majesty George III, issued in
23 1763, furnished them with such
24 guarantees for the possession of
25 their hunting grounds and the

12:33:41 1 protection of the Crown. This
12:33:42 2 document, the Indians look upon as
12:33:44 3 their charter. They have preserved
12:33:46 4 a copy of it to the present time,
12:33:48 5 and have referred to it on several
12:33:50 6 occasions in their representations
12:33:50 7 to the government. It is of
12:33:52 8 sufficient importance and interest
12:33:53 9 to be quoted in part in this place."

12:33:57 10 I would suggest, from this and other
12:34:02 11 historic correspondence, but this certainly tells
12:34:04 12 you that the Indians and the Indigenous people took
12:34:07 13 the Royal Proclamation very seriously. It was very
12:34:10 14 important to them.

12:34:11 15 A. Well, I would say you're correct.
12:34:12 16 They understood that the Crown was obliged to make
12:34:15 17 a treaty with them. I mean, that's clear in 1850,
12:34:20 18 they understand that as well.

12:34:21 19 But what they also understand is that
12:34:23 20 there's a procedure for making a treaty and this is
12:34:25 21 a procedure that they have largely imposed on
12:34:29 22 Europeans, because there's a lot of celebration
12:34:32 23 added, there's a lot of ritual added. It's a kind
12:34:35 24 of procedure that they've imposed on Europeans. To
12:34:38 25 them, that's what makes the treaty legitimate.

1 I don't think it -- that the Royal
2 Proclamation makes it legitimate from the
3 Indigenous point of view. From their point of
4 view, the Royal Proclamation says to them, yes, you
5 have to make a treaty with us, that's what
6 Shingwaukonse pointed out to Vidal and Anderson, as
7 well.

8 They said, yes, you are obliged to make
9 a treaty with us. So of course they're cognizant
10 of that promise. But the actual protocols are
11 protocols they developed together. They're
12 independent of the Royal Proclamation.

13 The Royal Proclamation is the rule:
14 You must make a treaty. But then how exactly you
15 make a treaty, it seems to me that has to do with
16 the protocols, and we should look at the protocols
17 more than the Royal Proclamation.

18 The Royal Proclamation is just a cover
19 term for us to say, yes, they do that. Then how do
20 they actually -- how do they actually make the
21 treaty? That's what I'm trying to focus on from
22 the Anishinaabe point of view.

23 It's not by following any dictates in
24 the Royal Proclamation. It's by following the
25 dictates that they've developed over time in

12:35:43 1 contact with Britain.

12:35:48 2 Q. One of the words you used in your
12:35:50 3 report was that "these protocols" or "this process
12:35:53 4 governed the treaty-making process". I want to go
12:35:58 5 to Exhibit 4328, which is back to the Cleland
12:36:03 6 report at page 38. Under "Treaty Protocol".

12:36:16 7 "As the mutually negotiated
12:36:18 8 treaty procedure evolved over time,
12:36:20 9 a fairly well-established order of
12:36:22 10 negotiation developed, at least when
12:36:24 11 negotiations took place in Indian
12:36:25 12 country. The Indigenous elements
12:36:27 13 were less prominent when discussions
12:36:29 14 were held in Washington, D.C., or in
12:36:32 15 other urban areas. At the risk of
12:36:35 16 some repetition, the following is
12:36:36 17 the informal order for the
12:36:38 18 negotiation of most 19-century
12:36:41 19 treaties."

12:36:41 20 So what I'd suggest is that "governed"
12:36:44 21 is too strong a word. In fact, it is an informal
12:36:48 22 order and it's not all of the 19-century treaties;
12:36:51 23 it's some of them. But there's no suggestion here
12:36:53 24 that those that didn't exactly conform to it are
12:36:56 25 invalid?

1 A. No, it doesn't say "some of them"
2 also, it says "most of them". And I think that we
3 may not think that the Indigenous elements are
4 important. We may play those down. We may say,
5 well, you know, the ritual really isn't that
6 important. The meetings beforehand are not that
7 important. The invitation is not that important.

8 We could say that, but I have to tell
9 you, it's super important to the Anishinaabe
10 because that's what they regard -- these particular
11 Anishinaabe, that's what they regard as important
12 in the treaty-making process.

13 If these protocols are not followed, I
14 would say from Anishinaabe point of view they have
15 reason to say there is no treaty here because this
16 thing was done in a way in which is completely
17 foreign to us. This is not part of the mutually
18 negotiated treaty procedure that evolved over time.
19 It doesn't resemble it at all.

20 Q. But you've done no fieldwork in
21 Saugeen and Nawash to actually explore with them
22 what their perspective is on what happened with
23 Treaty 72; have you?

24 A. No, what I'm done is I've looked
25 at the oral histories and I said yesterday that

12:38:09 1 when it came --

12:38:09 2 Q. But the oral histories that aren't
12:38:12 3 part of your report?

12:38:12 4 A. This is correct, yes. And when I
12:38:15 5 looked at that, I found a consistency between their
12:38:18 6 statements about something was askew with the
12:38:21 7 treaty-making process and then it's my, I think
12:38:24 8 it's my task as an ethnohistorian to explain that.

12:38:28 9 What was it that was askew because they
12:38:32 10 have an uneasy feeling? I have to know or, you
12:38:35 11 know, it's not an uneasy feeling, a strong feeling
12:38:38 12 so they --

12:38:39 13 Q. I've read the oral histories.

12:38:41 14 A. Yeah.

12:38:41 15 Q. They are not detailed, I'm
12:38:43 16 suggesting to you. They are not detailed and they
12:38:45 17 do not explore in any detail the treaty-making
12:38:49 18 process for Treaty 72, and the vast majority of
12:38:52 19 informants aren't able to talk about it in any real
12:38:55 20 depth way?

12:38:56 21 A. Oh, you're quite right because
12:38:58 22 it's so long ago.

12:39:00 23 Q. Right.

12:39:01 24 A. But if we do have feelings about a
12:39:03 25 particular treaty and time passes and the feelings

12:39:06 1 are, there was something wrong with the treaty.

12:39:09 2 I'm trying to -- if the Indigenous
12:39:11 3 people say that, if Anishinaabe say that, I want to
12:39:14 4 find out why it is that they have this feeling
12:39:16 5 about the treaty. Why do they feel this was not a
12:39:20 6 good treaty, if I can use that term?

12:39:23 7 I think I'm able to explain that by the
12:39:25 8 facts, by looking at the way treaties are made at
12:39:29 9 this particular time and looking at the facts on
12:39:31 10 the ground.

12:39:31 11 And the facts on the ground, sure there
12:39:34 12 are exceptions. He's talking about most treaties.
12:39:37 13 Yeah, there are exceptions. But in this case, this
12:39:40 14 is not an exception. This is so radically
12:39:43 15 different that it didn't follow the procedure at
12:39:46 16 all.

12:39:47 17 It was, it was, as Oliphant described
12:39:49 18 it, a midnight treaty.

12:39:52 19 Q. All right. If we can look for a
12:39:54 20 moment at the Morrison -- I should have written the
12:40:03 21 number on here.

12:40:07 22 If I can have a moment, Your Honour.
12:40:18 23 Can we bring up SC1249, please.

12:40:27 24 Now this is a document report for the
12:40:29 25 Royal Commission on Aboriginal Peoples prepared by

1 James Morrison.

2 Do you know James Morrison?

3 A. Yes, I do.

4 Q. Okay. And would you consider him
5 a reputable authoritative scholar?

6 A. I do.

7 Q. And have you read this document
8 before prepared by Mr. Morrison?

9 A. I have.

10 Q. Can we go to page -- could we make
11 this the next exhibit, please, Your Honour?

12 THE COURT: Mr. Registrar?

13 THE REGISTRAR: Exhibit No. 4351.

14 EXHIBIT NO. 4351: Report for the Royal
15 Commission on Aboriginal Peoples, by
16 James Morrison.

17 BY MR. FELICIANANT:

18 Q. Can we go to page 2, please,
19 line 1 -- sorry. Under the introduction.

20 "To the extent that historians
21 have studied these treaties -- being
22 the Robinson Treaties in this case
23 that he's writing about -- they see
24 them as part of a orderly
25 progression of agreements with

12:41:25 1 Aboriginal people in what is now
12:41:26 2 Ontario. These agreements -- which
12:41:30 3 conformed to the Royal Proclamation
12:41:31 4 of 1763 and subsequent Imperial
12:41:34 5 regulations -- had begun in the
12:41:36 6 period following the American
12:41:37 7 Revolution, and had been designed to
12:41:39 8 provide settlement lands for
12:41:41 9 American Loyalists and other
12:41:43 10 immigrants to Canada."

12:41:48 11 So Mr. Morrison in his analysis is
12:41:51 12 talking about treaties in Upper Canada that
12:41:53 13 conformed or didn't conform to the Royal
12:41:55 14 Proclamation of 1763, the Imperial regulations.
12:41:59 15 He's not talking about Cleland's process?

12:42:02 16 A. Jim is an historian.

12:42:04 17 Q. And that makes a difference?

12:42:05 18 A. Between a historian and
12:42:07 19 ethnohistorian?

12:42:08 20 Q. No, it makes a difference in terms
12:42:11 21 of what you regard as the treaty-making process?
12:42:14 22 Why would that make a difference?

12:42:16 23 A. Well, because it makes a
12:42:20 24 difference what discipline you're in when you're
12:42:22 25 approaching the subject matter. If you're a

12:42:24 1 historian you would approach it in a different way
12:42:27 2 than I am. Ethnohistory. It means I'm interested
12:42:31 3 in a cultural history.

12:42:33 4 What Jim is talking about here is he's
12:42:35 5 talking about historians, and by and large I agree
12:42:38 6 what he's saying here. In fact, I agree with what
12:42:40 7 he's saying here.

12:42:41 8 Sure, if you look at it from a
12:42:42 9 historical point of view, that's right. You're
12:42:44 10 going to look at the Royal Proclamation, you're
12:42:47 11 going to look at the Dorchester regulations.

12:42:50 12 If you want to go beyond that and you
12:42:52 13 want to do the ethnohistory and understand it from
12:42:55 14 an Anishinaabe point of view, I would say that
12:42:58 15 that's not going to get at it through this
12:43:02 16 historical study. You have to do the
12:43:04 17 ethnohistorical study to do that, and Jim is an
12:43:07 18 historian.

12:43:07 19 Q. If we can go to page 4 for a
12:43:10 20 moment. Page 4, first full paragraph, six lines
12:43:18 21 down.

12:43:21 22 "Displaying longer memories
12:43:23 23 than their settler adversaries,
12:43:23 24 these native leaders stress the
12:43:23 25 important roles the Ojibwes have

12:43:29 1 played as British military allies.

12:43:31 2 They also reminded the Government of

12:43:33 3 the Crown's solemn promises to their

12:43:36 4 ancestors which has been enshrined

12:43:38 5 in the Royal Proclamation of 1763

12:43:40 6 and the resultant treaty-making

12:43:42 7 process, promises they said which

12:43:44 8 had never previously been violated."

12:43:47 9 So he's tying in the treaty-making

12:43:51 10 process to the Royal Proclamation of 1763, which

12:43:56 11 applies to Upper Canada.

12:43:58 12 A. Well, actually, in this particular

12:44:00 13 report what he's talking about here is the Robinson

12:44:03 14 Treaties. What he's talking about here is the

12:44:07 15 Shingwaukonse and Peau De Chat's statements when

12:44:16 16 they met with Captain Anderson, who met with them I

12:44:16 17 think it was in 1848. And they pointed out to him

12:44:19 18 that the Crown was obliged to have a treaty with

12:44:22 19 them.

12:44:22 20 So they certainly knew that the Crown

12:44:24 21 was obliged to have a treaty with them, but again

12:44:27 22 the way the treaty actually folded out was

12:44:30 23 according to the protocols of the Anishinaabe

12:44:32 24 people.

12:44:35 25 Q. Can we go to --

12:44:36 1 A. In other words, what I'm saying is
12:44:38 2 this is a very specific reference to a specific
12:44:41 3 fact in the 1850 treaty -- history of the 1850
12:44:45 4 treaties.

12:44:45 5 Q. Can we go to 7.1 please, which is
12:44:49 6 the second last page of the document.
12:44:51 7 Unfortunately the document is not page numbered.
12:44:59 8 Again, he talks about the Royal Proclamation.

12:45:00 9 "The Royal Proclamation of 1763
12:45:02 10 had required purchases from any of
12:45:06 11 the nations or tribes in North
12:45:08 12 America to be made at some public
12:45:10 13 meeting or assembly of the said
12:45:13 14 Indians. This rule was elaborated
12:45:15 15 in subsequent directions and
12:45:15 16 instructions to Colonial officials,
12:45:17 17 the most important of which were the
12:45:19 18 Dorchester regulations of
12:45:21 19 December 1794, which would govern
12:45:23 20 land acquisition policy in British
12:45:25 21 North America during the first three
12:45:27 22 decades of the 19th century."

12:45:31 23 So again, he's talking about what
12:45:34 24 governs land acquisition policy in what would
12:45:38 25 become Canada. And not strictly from the

12:45:42 1 Anishinaabe perspective?

12:45:44 2 A. He's an historian. He's telling
12:45:49 3 you something a historian would tell you. I'm not
12:45:51 4 trying to do that. I'm trying to do something
12:45:54 5 else.

12:45:54 6 So his statement here, when I read
12:45:58 7 this, yes, it all makes sense to me from an
12:46:01 8 historical point of view. But what I'm trying to
12:46:03 9 do is something different. I'm not looking -- I
12:46:06 10 understand that there's the Royal Proclamation. I
12:46:09 11 understand what the Royal Proclamation says. I
12:46:11 12 understand the importance of the Dorchester
12:46:13 13 regulations.

12:46:14 14 And from Jim's point of view, those are
12:46:16 15 important in understanding how the 1850 treaty, the
12:46:20 16 1850 treaties I should say, unfolded. My concern
12:46:24 17 is different.

12:46:25 18 In this report, what I'm concerned with
12:46:29 19 is treaty-making procedure from a cultural point of
12:46:32 20 view, from the Anishinaabe point of view and that's
12:46:34 21 not what Jim is interested in. Jim and I have
12:46:38 22 talked over the 1850 treaty in person hours and
12:46:41 23 hours.

12:46:42 24 Q. I don't want you talking about
12:46:43 25 what you spoke to Mr. Morrison about.

12:46:47 1 A. Okay, enough said then.

12:46:48 2 MR. FELICIAN: Thank you, Your Honour,
12:46:50 3 those are my questions.

12:46:50 4 THE COURT: Thank you. Re-examination?

12:46:53 5 MR. TOWNSHEND: No re-examination, Your
12:46:57 6 Honour.

12:46:57 7 THE COURT: Sir, I do have a point that
12:47:01 8 I wanted to ask you about.

12:47:04 9 You have discussed at some length the
12:47:10 10 process, I'm going to call it, through which Bands
12:47:14 11 provide I think what you called instructions to
12:47:17 12 their Chiefs, who would then attend at a
12:47:19 13 treaty-making Council.

12:47:21 14 So that's the area I'm asking about,
12:47:25 15 all right?

12:47:26 16 THE WITNESS: Yes, Your Honour.

12:47:28 17 THE COURT: And you also gave some
12:47:30 18 evidence at some length about how a Band is -- what
12:47:35 19 a Band is, and how those instructions come to be,
12:47:40 20 and the involvement of the Chief.

12:47:42 21 Do you recall all of that evidence?

12:47:45 22 THE WITNESS: Yes, Your Honour.

12:47:46 23 THE COURT: In the 19th century, for
12:47:47 24 Anishinaabe, how was a Chief either selected or
12:47:51 25 otherwise how did someone become the Chief of the

12:47:56 1 Band?

12:47:56 2 THE WITNESS: Your Honour, it was often
12:47:58 3 hereditary, and young men were trained by their
12:48:02 4 fathers to become Chiefs.

12:48:04 5 But that was not a universal rule, Your
12:48:08 6 Honour. It was people who were -- had supernatural
12:48:13 7 power, who could muster supernatural power, who
12:48:17 8 were great orators, and who were very generous.
12:48:21 9 Those were all considerations that would be taken
12:48:23 10 into -- and had good kinship connections -- I
12:48:25 11 should add that, Your Honour.

12:48:26 12 Those were all factors taken into
12:48:29 13 account. So that you had two schemes at the same
12:48:32 14 time. One of them primogeniture. But in case that
12:48:35 15 that didn't work out, you would always choose the
12:48:39 16 best person for the job based upon the criteria I
12:48:41 17 just mentioned.

12:48:42 18 THE COURT: And these are general
12:48:44 19 questions, I recognize. But did a Chief have
12:48:48 20 responsibilities to the Band outside the
12:48:50 21 treaty-making process?

12:48:51 22 THE WITNESS: Yes, Your Honour.

12:48:52 23 THE COURT: And in a sentence or two,
12:48:55 24 could those be described to me?

12:48:57 25 THE WITNESS: Well, yes, Your Honour.

1 For instance, at the beginning of the season before
2 the hunt takes place, before people travel -- in
3 the winter travel to their trapping grounds, the
4 Chief could host a meeting, I think I have examples
5 in my report -- host a meeting where they can
6 discuss something like that so they can distribute
7 themselves on the landscape in that manner.

8 THE COURT: Yes, I recall that.

9 I'm working up to my question. You
10 were discussing with Mr. Feliciant a General
11 Council of various Bands that took place in 1840;
12 do you recall that, sir?

13 THE WITNESS: Yes, Your Honour.

14 THE COURT: End of the day yesterday,
15 beginning of the day this morning.

16 And Saugeen was one of the Bands
17 represented at that General Council?

18 THE WITNESS: Yes, Your Honour.

19 THE COURT: All right. And there were
20 a number of discussions that are recorded in that
21 document that you were asked about. One was
22 statements about the land becoming crowded with
23 whites; do you recall that?

24 THE WITNESS: Yes, I do.

25 THE COURT: And some other statements

12:49:59 1 about the prospect of I believe it was called a
12:50:03 2 manual labour school.

12:50:05 3 THE WITNESS: Yes, Your Honour.

12:50:06 4 THE COURT: All right. In answering
12:50:08 5 those questions, you called the Council a religious
12:50:14 6 revival. And you referred several times to the
12:50:19 7 people being Methodists.

12:50:21 8 Why would you use that description for
12:50:23 9 a Band -- excuse me, for a General Council of
12:50:28 10 Bands?

12:50:28 11 THE WITNESS: Oh, I do that, Your
12:50:30 12 Honour, because I believe that these councils were
12:50:32 13 councils of Methodists. So they were General
12:50:36 14 Councils that were, that were called under the
12:50:38 15 auspices of the Methodist church and the councils
12:50:42 16 would discuss matters -- religious matters as well
12:50:45 17 as other matters. I believe that's what those
12:50:48 18 councils were.

12:50:49 19 THE COURT: I'm trying to understand
12:50:51 20 your evidence about the Chiefs that attended these
12:50:54 21 councils. Whether you're saying that their motives
12:51:00 22 were different from what their responsibilities
12:51:02 23 were to their Bands?

12:51:05 24 Because they're there in that capacity,
12:51:07 25 as Chief, and calling something a religious revival

1 doesn't, in my mind, bring to mind discharge of
2 responsibilities to your Band. It brings to mind
3 discharge of alliances to a church.

4 I'm' trying to understand why you used
5 that description. Are you saying those Chiefs
6 didn't do their job?

7 THE WITNESS: Not at all, Your Honour.
8 I think they did their job. I think they were the
9 best people that came forward to do the job.

10 But in this case I don't believe that
11 the Band's concern was -- that the Band's concern
12 was exactly the same as the Methodists' concern.
13 The Methodists I think had a particular agenda in
14 mind.

15 And that those, those Chiefs, at this
16 Council, are speaking as leaders of the Methodist
17 part of their community rather than speaking as
18 Chiefs of the entire Band.

19 THE COURT: I'm struggling with how
20 that accords with them having responsibilities to
21 their whole Band. And this is a major event, you
22 can tell from the list of attendees.

23 THE WITNESS: Yes.

24 THE COURT: It seemed to me that what
25 you were saying was everyone there, to a person,

12:52:21 1 including the Chiefs, were promoting a religious
12:52:27 2 objective irrespective of what their Bands, as a
12:52:31 3 whole, might have seen appropriate. Is that not
12:52:37 4 the same as saying none of those people were
12:52:40 5 fulfilling their responsibilities?

12:52:41 6 THE WITNESS: No, I believe that they
12:52:43 7 were trying to fulfill their responsibilities. But
12:52:45 8 in this case I believe their responsibilities were
12:52:47 9 more towards the Methodists than the others.

12:52:51 10 I think that in matters that would --
12:52:53 11 matters that would concern the Band in a larger
12:52:56 12 sense, because let's say, for instance, the
12:52:59 13 treaty-making or distributing people on the land, I
12:53:01 14 think that would call for the procedure that I
12:53:04 15 called for.

12:53:05 16 But in this case, I don't think that --
12:53:08 17 I don't think that this was the kind of thing that
12:53:11 18 the Chiefs came to the meeting with, or this
12:53:14 19 Council with, and represented the Band's interest.

12:53:18 20 Because the Band's interest was varied.
12:53:20 21 The Band also had Catholic members. The Bands also
12:53:24 22 had traditionalists in it, and those interests are
12:53:28 23 different than those interests that are expressed
12:53:31 24 here, say, for instance, about the industrial
12:53:32 25 school, in this argument, in this petition that's

12:53:35 1 made.

12:53:36 2 So I understand why it seems confusing.
12:53:41 3 Because on the one hand I'm saying, yes, of course,
12:53:43 4 the Bands represent -- the chiefs represent the
12:53:46 5 will of the Band.

12:53:47 6 But in this case, I don't see it as the
12:53:49 7 will of the Band. It's not something that's going
12:53:52 8 to occupy the Band -- the Band in the same sense,
12:53:56 9 to me, that a treaty-making procedure would, Your
12:54:00 10 Honour.

12:54:00 11 THE COURT: That may be so. One of the
12:54:02 12 subjects you were asked about was squarely within
12:54:05 13 something you say is of significant importance,
12:54:09 14 which is their land. That was a subject of
12:54:13 15 discussion at this General Council.

12:54:17 16 THE WITNESS: Yes.

12:54:18 17 THE COURT: And I don't think, from
12:54:19 18 what I've heard from you over the last couple of
12:54:21 19 days, I don't think you would say that that was not
12:54:24 20 an issue of significance to the entire Band.

12:54:28 21 So I'm struggling a bit with what I
12:54:31 22 heard, which suggested to me that this entire event
12:54:36 23 was described as a religious revival.

12:54:41 24 THE WITNESS: That was --

12:54:43 25 THE COURT: Remembering, of course,

12:54:44 1 this is a Council amongst Indigenous communities.

12:54:48 2 It's not, you know, it's different, as you've said,
12:54:51 3 from a treaty-making account.

12:54:52 4 THE WITNESS: I use that word because
12:54:54 5 of the description in the document which called it
12:54:58 6 a camp meeting, if I recall correctly. I didn't
12:55:02 7 mean that their concerns were strictly Methodist.
12:55:04 8 They would have, of course, had other concerns as
12:55:07 9 well.

12:55:07 10 I would say to Your Honour, if -- I
12:55:12 11 know they were planning on settling all of the
12:55:14 12 people there, gathering all of the Anishinaabe
12:55:16 13 together.

12:55:17 14 Now, at the time, if that actually
12:55:19 15 became a reality and people started to come and
12:55:22 16 people said, yes, we're going to come. That would
12:55:25 17 require a Council of the Band. That would require
12:55:28 18 decision making in the Band.

12:55:29 19 But just in this stage, I don't think
12:55:32 20 it's absolutely necessary. At least I don't think
12:55:35 21 the Chiefs thought it was necessary. I thought
12:55:37 22 they would proceed along -- they were proceeding
12:55:40 23 along this path, and if things come to fruition,
12:55:45 24 then, yes, they will have to consult with all
12:55:47 25 members of the Band.

1 THE COURT: In reality, this is just
2 the way it is. We don't know what those people did
3 before they went to this General Council?

4 THE WITNESS: You're right, Your
5 Honour. We don't.

6 THE COURT: With their Band members, we
7 just don't know that.

8 THE WITNESS: We just don't know.

9 THE COURT: I guess that was more than
10 one question, but I was trying to get at one
11 question.

12 Mr. Townshend, do you have any
13 questions arising from my line of questions?

14 MR. TOWNSHEND: No thank you, Your
15 Honour.

16 THE COURT: Yes, sir.

17 MR. ENNIS: No, Your Honour.

18 THE COURT: Mr. Feliciant at the back?

19 MR. FELICIAN: No, Your Honour.

20 THE COURT: All right. Thank you, sir,
21 for coming and devoting all of this time to this
22 proceeding. That concludes your testimony, so you
23 can step down from the witness box.

24 THE WITNESS: You're welcome, Your
25 Honour. I consider it a privilege.

12:56:31 1 THE COURT: All right.

12:56:33 2 Now, Mr. Townshend, did you have an

12:56:35 3 opportunity to -- it wasn't just you, but I'm

12:56:39 4 starting with you -- to consult about the idea that

12:56:42 5 I had of a case conference tomorrow.

12:56:44 6 MR. TOWNSHEND: Yes, we can have a case --

12:56:46 7 THE COURT: Is that satisfactory to

12:56:47 8 you?

12:56:48 9 MR. TOWNSHEND: Yes, it is.

12:56:48 10 THE COURT: What about Canada?

12:56:50 11 MR. BEGGS: That's good for us as well.

12:56:52 12 THE COURT: And Ontario?

12:56:53 13 MR. FELICIAN: Your Honour that is

12:56:54 14 acceptable. I just ask before we break for the day

12:56:56 15 the Plaintiffs are going to be officially closing

12:56:58 16 their case on the record.

12:57:00 17 THE COURT: I'm getting to that next.

12:57:02 18 MR. FELICIAN: Oh, sorry, Your Honour.

12:57:03 19 THE COURT: I guess my administrative

12:57:06 20 list came first.

12:57:07 21 Mr. Townshend, is the Plaintiff closing

12:57:10 22 its case?

12:57:11 23 MR. TOWNSHEND: There's one thing I

12:57:12 24 wish to do before that.

12:57:14 25 THE COURT: Oh, yes?

12:57:16 1 MR. TOWNSHEND: There's one discovery
12:57:17 2 answer I want to read in. I don't need it read in.
12:57:20 3 I just want to make it an exhibit.

12:57:22 4 THE COURT: Have you consulted with the
12:57:24 5 others based on the rule requirements?

12:57:25 6 MR. TOWNSHEND: Yes.

12:57:26 7 THE COURT: You have, all right. Very
12:57:28 8 good. Please go ahead.

12:57:30 9 MR. TOWNSHEND: If who has control
12:57:36 10 could bring up document SC1232.

12:58:12 11 I can say what it is while it's coming
12:58:14 12 up.

12:58:15 13 THE COURT: While enjoying the
12:58:17 14 beautiful picture of a camp somewhere in Canada,
12:58:19 15 but it is taking a little bit of time -- there we
12:58:22 16 go. Okay.

12:58:24 17 MR. TOWNSHEND: This is an extract from
12:58:28 18 a set of discovery questions that we asked Canada
12:58:33 19 and these are dated, which you'll see on page 2,
12:58:39 20 July 6, 2017.

12:58:41 21 And this extract is Question 844, and
12:58:46 22 this is a question about interpreters' salaries.
12:58:54 23 You may recall some evidence about Peter Jacobs and
12:58:58 24 what he was paid. So this was Canada's answer to
12:59:01 25 that. I would like that made an exhibit, please.

12:59:06 1 THE COURT: Mr. Registrar?

12:59:08 2 THE REGISTRAR: Exhibit No. 4352.

12:59:10 3 THE COURT: 4352?

12:59:12 4 THE REGISTRAR: Correct, Your Honour.

12:58:26 5 EXHIBIT NO. 4352: Extract from a set

12:58:29 6 of discovery questions dated July 6,

12:58:41 7 2017.

12:59:14 8 THE COURT: So is that the last item

12:59:16 9 and you are now closing your case?

12:59:19 10 MR. TOWNSHEND: That is correct, Your

12:59:20 11 Honour.

12:59:24 12 -- Plaintiff closes their case --

12:59:24 13 THE COURT: Thank you. I recognize

12:59:25 14 that subject to certain orders I've made, that may

12:59:28 15 lead to some reply evidence in due course.

12:59:31 16 MR. TOWNSHEND: Yes.

12:59:31 17 THE COURT: All right.

12:59:33 18 Now, having done that, is there any

12:59:36 19 other matter, other than someone sending me dial-in

12:59:40 20 information for tomorrow, that anyone wishes to

12:59:44 21 raise before we break until Monday?

12:59:48 22 MR. FELICIAN: Do we have the time of

12:59:50 23 our call tomorrow?

12:59:51 24 THE COURT: Well, I suggested

12:59:52 25 10 o'clock. I'm open to other suggestions if

12:59:55 1 counsel have other obligations they're trying to
12:59:58 2 accommodate.

01:00:05 3 MR. FELICIAN: I think ten is fine for
01:00:07 4 Ontario.

01:00:08 5 THE COURT: Now, I'm expecting tomorrow
01:00:11 6 to go over the schedule including any changes that
01:00:15 7 are occasioned by, for example, the lengthy ruling
01:00:18 8 I gave on Monday. And any changes that may arise
01:00:23 9 just from the fact that we are here, where we are
01:00:25 10 today.

01:00:26 11 And, Mr. Beggs, you will not be
01:00:29 12 surprised to hear that I will be asking you about
01:00:32 13 that, and hoping that in the meantime you have
01:00:35 14 consulted.

01:00:36 15 So whatever you're suggesting isn't
01:00:39 16 coming as a surprise to the Plaintiffs or other
01:00:42 17 parties, okay?

01:00:47 18 And we'll take it from there. If
01:00:48 19 anyone has anything they wish to raise tomorrow,
01:00:51 20 that's fine. Try and give your colleagues a little
01:00:54 21 bit of a heads up so they can think about it. All
01:00:57 22 right? Anything else? No? All right.

01:01:29 23
01:01:29 24 -- Court adjourned at 1:01 p.m.

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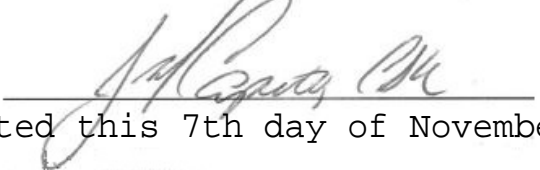
REPORTER'S CERTIFICATE

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

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

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

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


Dated this 7th day of November, 2019.

NEESON COURT REPORTING INC.

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

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