

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

VOL 22 DAY 22
June 28, 2019



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1 Court File No. 94-CQ-50872CM

2 ONTARIO

3 SUPERIOR COURT OF JUSTICE

4
5 B E T W E E N:

6 THE CHIPPEWAS OF SAUGEEEN FIRST NATION, and THE

7 CHIPPEWAS OF NAWASH FIRST NATION

8 Plaintiffs

9 - and -

10 THE ATTORNEY GENERAL OF CANADA,

11 HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO,

12 THE CORPORATION OF THE COUNTY OF GREY,

13 THE CORPORATION OF THE COUNTY OF BRUCE,

14 THE CORPORATION OF THE MUNICIPALITY OF NORTHERN

15 BRUCE PENINSULA, THE CORPORATION OF THE TOWN OF

16 SOUTH BRUCE PENINSULA, THE CORPORATION OF THE TOWN

17 OF SAUGEEEN SHORES, and THE CORPORATION OF THE

18 TOWNSHIP OF GEORGIAN BLUFFS

19 Defendants

20 -----
21 --- This is Volume 22/Day 22 of the trial proceedings
22 in the above-noted matter, being held at the Superior
23 Court of Justice, 330 University Avenue, Courtroom 5-2,
24 Toronto, Ontario, on the 28th day of June, 2019.

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B E F O R E:

The Honourable Justice Wendy M. Matheson

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

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

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

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

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

I N D E X

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WITNESS:

Marshall Nadjiwan; sworn on the Eagle Feather

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3 NO. DESCRIPTION PAGE NO.

4 4074: Letter from Gladwin to Johnson dated 2078
5 October 7, 1763

6 4075: Photograph of the Oliphant area taken 2081
7 from the viewing tour.

8 4076: Photograph from the Howdenvale Dock 2085
9 taken from the viewing tour.

10 4077: Photograph of the Howdenvale Dock with 2089
11 a tugboat, taken from the viewing tour.

12 4079: Signed Resolution Appointing Attorney 2159
13 to Attend a Meeting.

14

15 (Upon agreement of counsel, Exhibit
16 4078 was subsequently re-marked and substituted as
17 Exhibit 4079).

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25

09:57:11 1 -- Upon commencing at 10:00 a.m.

10:01:13 2

10:01:41 3 THE COURT: Good morning, Counsel.

10:01:42 4 MS. PELLETIER: Good morning, Your
10:01:45 5 Honour.

10:01:45 6 THE COURT: Are you calling the next
10:01:46 7 witness, Counsel?

10:01:46 8 MS. PELLETIER: We do have one
10:01:48 9 preliminary matter.

10:01:49 10 THE COURT: As do I. What is your
10:01:51 11 preliminary matter?

10:01:52 12 MS. PELLETIER: Last day of trial
10:01:54 13 during the re-examination of Dr. Hinderaker, this
10:01:57 14 was June 21st. In reviewing the transcript, we
10:01:59 15 noted Mr. Evans put a document to Dr. Hinderaker
10:02:06 16 but neglected to enter it as an exhibit.

10:02:14 17 So we have obtained consent of counsel
10:02:15 18 to have that document entered, and we were
10:02:15 19 wondering if we could do that today.

10:02:18 20 THE COURT: Yes, just give me a moment.
10:02:21 21 What is the source number?

10:02:25 22 MS. PELLETIER: SC0211. It is a letter
10:02:32 23 from Gladwin to Johnson dated October 7, 1763.

10:02:50 24 THE COURT: On consent, that will be
10:02:51 25 the next exhibit, Mr. Registrar.

1 THE REGISTRAR: Exhibit No. 4074.

2 MS. PELLETIER: Thank you, Your Honour.

3 EXHIBIT NO. 4074: Letter from Gladwin
4 to Johnson dated October 7, 1763.

5 THE COURT: Just before you call your
6 next witness, Counsel, I also wish to put on the
7 record that on Monday of this week, June 24th, a
8 view was conducted for this trial in the general
9 area of the claims made in this trial.

10 The view was originally scheduled for
11 two days, but proceeded with the alternative bad
12 weather plan, which was an extended one-day view
13 for about eight and a half hours by bus.

14 We, meaning, me, a court services
15 officer and an impressive array of counsel, visited
16 a number of sites, really covering the length and
17 width of the Bruce Peninsula, including some
18 additional locations that were added on Monday.

19 And we were assisted by Mr. Roote, who
20 has already testified in this trial, and Mr.
21 Nadjiwan, who I understand is your next witness,
22 providing us with explanations of the significance
23 of various locations that we visited.

24 The view was largely organized by
25 counsel. And I want to thank all counsel, but

10:04:24 1 especially Mr. Brookwell, who I see is not here
10:04:28 2 today, because I think he was mainly carrying the
10:04:31 3 labouring oar for what was a significant
10:04:34 4 organizational undertaking. So you can pass that
10:04:36 5 along to him, Counsel.

10:04:39 6 MS. PELLETIER: Will do, Your Honour.

10:04:42 7 THE COURT: With that on the record,
10:04:44 8 we'll proceed to your next witness. Please go
10:04:47 9 ahead.

10:04:47 10 MS. PELLETIER: Thank you. The
10:04:48 11 Plaintiff's next witness is Marshall Nadjiwan.

10:05:08 12 THE REGISTRAR: Good morning, sir.
10:05:10 13 Would you like to swear an oath on the Holy Book or
10:05:13 14 make a solemn affirmation to tell the truth.

10:05:16 15 THE WITNESS: Yes, a feather.

10:05:23 16 THE REGISTRAR: Can you state and spell
10:05:25 17 your first and last name for the record.

10:05:27 18 THE WITNESS: It's Marshall Nadjiwan.
10:05:27 19 M-A-R-S-H-A-L-L, N-A-D-J-I-W-A-N.

10:05:27 20 MARSHALL NADJIWAN: Sworn on the eagle
10:06:03 21 feather.

10:06:03 22 EXAMINATION IN-CHIEF BY MS. PELLETIER:

10:06:50 23 Q. Good morning, Mr. Nadjiwan. Her
10:06:50 24 Honour just discussed the view which we took
10:06:50 25 earlier this week, and you accompanied us, as she

1 mentioned.

2 And I'd like to begin today by talking
3 about some of those places and now we're in court
4 I'd like to ask you to tell us a bit more about
5 them.

6 I'm going to begin by showing you a
7 photograph. It is document SC0679. This is a
8 photograph taken by Mr. Evans when we stopped at
9 Oliphant. Do you recognize what's in this photo?

10 A. Yes, I do.

11 Q. Can you tell us what is in this
12 photo?

13 A. It's the gut way from Oliphant
14 what you can see there is the start of the Islands
15 that start from there, all the way up to Pike Bay
16 and Stokes Bay.

17 Q. Your Honour, I'd ask that this be
18 made the next lettered exhibit.

19 THE COURT: Any objection?

20 Can I ask why it's being marked as a
21 lettered exhibit, Counsel?

22 MS. PELLETIER: I thought it might be
23 helpful for you, Your Honour.

24 THE COURT: As opposed to a numbered
25 exhibit?

1 MS. PELLETIER: I'm happy to also make
2 it a numbered exhibit. I didn't know if that was
3 necessary.

4 THE COURT: The question is if you want
5 -- lettered exhibits are not evidence.

6 If it's not going to be evidence, then
7 the answer of this witness won't be meaningful.

8 It's up to you what you're asking for.

9 MS. PELLETIER: I had envisioned that
10 it would be helpful for you in reviewing the
11 transcript maybe a year from now to look to see
12 what reminders of what Oliphant looked like.

13 I'm happy to make it evidence. I'm not
14 totally sure that's necessary. But if there's no
15 objection to having it be a numbered exhibit, that
16 might be the safer thing to do.

17 THE COURT: Is there any objection?
18 No.

19 It would seem to me it would be more
20 meaningful to understand this gentleman's answers
21 if it's actually in evidence, Counsel.

22 So this will be the next trial exhibit.

23 THE REGISTRAR: 4075, Your Honour.

24 EXHIBIT NO. 4075: Photograph of the
25 Oliphant area taken from the viewing

10:08:13 1

tour.

10:08:13 2

BY MS. PELLETIER:

10:08:13 3

Q. Mr. Nadjiwan, can you remind us

10:08:15 4

what you said on the view about the Fishing

10:08:19 5

Islands?

10:08:19 6

A. Yes, when I was a councillor, I

10:08:23 7

can't remember I think I was 19 years old, we got

10:08:25 8

back from the Government, the Islands. They handed

10:08:31 9

them back to us.

10:08:33 10

And after that, the councils got me to

10:08:40 11

go and stamp these islands that were left that they

10:08:43 12

hadn't sold. It was a government surveyor and we

10:08:50 13

went and placed stamps on islands that weren't

10:08:54 14

sold, all the way up to Stokes Bay.

10:08:59 15

Q. When you say they haven't sold,

10:09:01 16

who is "they"?

10:09:02 17

A. This is the Government, the

10:09:04 18

Federal Government that handed them back because we

10:09:10 19

wouldn't accept the money that they tried to give

10:09:12 20

us as a Council -- my dad was the Chief at the

10:09:17 21

time.

10:09:20 22

Q. How do you use the Fishing Islands

10:09:22 23

today?

10:09:24 24

A. We use them at Oliphant here,

10:09:28 25

that's usually where the fish are in the spring and

10:09:31 1 outside these islands is where we mainly fish, in
10:09:37 2 the Oliphant area here, between Oliphant and
10:09:41 3 Howdenvale.

10:09:42 4 Q. What do you know of how the
10:09:44 5 islands were used in the past?

10:09:46 6 A. As far as the history goes, I
10:09:51 7 heard that Anishinaabe people lease these islands
10:09:58 8 out to the government for fishing uses.

10:10:03 9 And I don't know for sure, if it was
10:10:06 10 the Hudson's Bay -- that's what I heard first --
10:10:10 11 then another company after that one had leased
10:10:15 12 these islands from the government.

10:10:17 13 Q. And who did you hear these things
10:10:19 14 from?

10:10:21 15 A. It was through the SON -- they
10:10:28 16 looked into the old records, and most of that was a
10:10:39 17 learning stage. They had documents and stuff like
10:10:42 18 that where they had leased these out to these two
10:10:50 19 different companies for the purposes of trade with
10:10:56 20 England.

10:10:57 21 Q. Just to clarify, when you say
10:11:02 22 "they leased", who are you referring to?

10:11:04 23 A. The Saugeen Ojibwe leased it to
10:11:07 24 them, but the Federal Government had control of us
10:11:09 25 at that time -- no, they didn't have control of us

1 at that time. I'm making a mistake here. Because
2 it was before Canada was a province.

3 Q. Okay. Thank you, Mr. Nadjiwan.

4 Now, on the view we quickly drove by
5 Red Bay. Is there anything wanted to say about
6 that?

7 A. Yeah, Red Bay area there, that's
8 where we warred against the Iroquois, because they
9 had got pushed into our territory. And they had
10 come and killed all the women and children in our
11 community at that time; it was before Canada had
12 become Canada.

13 And it was all the people from -- the
14 names all come from the Neyaashiinigmiiing, the ones
15 that went in the war, because there was government
16 documents stating that after Canada was formed,
17 that there was such a war there.

18 And they killed all the Iroquois except
19 for one and they sent him back to tell the Iroquois
20 if they ever come back into our nation we'll be
21 warring on them, we'll kill them all.

22 Q. Where did it gets its name, Red
23 Bay?

24 A. Red Bay got its name from the
25 blood that was spilt in the water.

1 Q. Thank you. I'm going to show you
2 another photograph. The document number is SC0680.
3 This is a view from Howdenvale dock. Firstly, do
4 you recognize this photo?

5 A. Yes, it's a gut way from
6 Howdenvale from the Islands.

7 MS. PELLETIER: Your Honour, I ask that
8 this be made the next exhibit.

9 THE COURT: Any objection?

10 THE REGISTRAR: Exhibit No. 4076.

11 EXHIBIT NO. 4076: Photograph from the
12 Howdenvale Dock taken from the viewing
13 tour.

14 THE COURT: For the record, this was
15 taken on Monday?

16 MS. PELLETIER: That is correct. By
17 Mr. Evans.

18 BY MS. PELLETIER:

19 Q. And what is a "gut way"?

20 A. The gut way, there is a gut ways
21 all the way between these islands where a boat can
22 come through, a bigger boat.

23 Like, we had 65-foot tugs, at least
24 three of them, around this dock and I don't know
25 how many 45's we can fit, as many as we could fit

1 on that dock. And we had a couple at Oliphant at
2 that time.

3 They were Anishinaabe boats. This was
4 after the court case that we had won.

5 Q. Can you tell us what court case
6 you're referring to?

7 A. We had to go to court over the
8 Fishing Islands and the rights of our people.

9 Q. Okay. Could you tell us a bit how
10 SON uses this area?

11 A. Yes, this is one of the main areas
12 in the fall that the boats are tied up to. And
13 within the Islands here, smaller boats can fish
14 without putting their life on the line because
15 they're protected from the Islands, from the big
16 winds that come up in the fall.

17 Q. What about how SON used this area
18 in the past?

19 A. They were supposed to have, before
20 the court case, in our agreements with the Queen
21 and that, the documents from the Queen, that we had
22 these 7-mile rights out to beyond these islands.

23 That document is between us and the
24 Queen before Canada was even established. And this
25 was the Islands here that we had fished until

10:15:29 1 Hudson's Bay and this other company, I don't know
10:15:35 2 which the other company was, but I heard there was
10:15:37 3 another company right after this, they had
10:15:39 4 documents on that, but I never really read those
10:15:42 5 things because they were history before Canada was
10:15:47 6 started.

10:15:54 7 This is where they say that the fish
10:15:56 8 ran so heavy that you could almost walk on them in
10:15:59 9 the fall, amongst these islands here. It's shallow
10:16:03 10 in some spots and they said there was fish
10:16:06 11 everywhere.

10:16:07 12 So that's why the Queen wanted these
10:16:10 13 fish for overseas. So they built barrels and
10:16:19 14 salted these fish, and where they sent them, I
10:16:23 15 don't know. I heard it was down to the Detroit
10:16:27 16 River somewhere.

10:16:27 17 I don't know how they got them out of
10:16:30 18 Ontario here but -- on Georgian Bay or Lake Huron.
10:16:35 19 I don't know how they got them there, or what they
10:16:40 20 did with them after. But that's the history of it.

10:16:44 21 Q. Okay. And just to clarify, when
10:16:47 22 you say "they" sent the barrels of fish?

10:16:50 23 A. I'm always talking about the
10:16:52 24 Federal Government when I say "they".

10:16:55 25 Q. Okay.

10:16:55 1 A. Because it's the Feds that the
10:17:01 2 Queen dealt with to have these companies come in.
10:17:08 3 So after Canada was born, the Feds were the ones
10:17:14 4 that moved us around from Owen Sound to Cape Croker
10:17:24 5 and Saugeen; they were split.

10:17:26 6 But these were our shorelines, where we
10:17:29 7 fished, hunted and had most of our -- most of our
10:17:38 8 lives, like, because there was always lots of
10:17:40 9 venison around that area and there's always lots of
10:17:46 10 fish, and we had encampments all the way around to
10:17:48 11 Southampton at that time. That was before Canada
10:17:52 12 was born.

10:17:56 13 Q. Thank you, Mr. Nadijwan. I'll
10:17:57 14 show you one last document, SC0681, a view from the
10:18:03 15 Howdenvale dock and this is a photo that Mr. Evans
10:18:07 16 took during the view.

10:18:08 17 Could you explain to us what we're
10:18:10 18 looking at now?

10:18:11 19 A. You're looking at a 45-foot tug.
10:18:14 20 It's usually four crew members with a captain
10:18:19 21 driving, and it's one of the Anishinaabe tugs
10:18:26 22 that's parked there right now.

10:18:34 23 I know the person who owns this. He
10:18:34 24 has another tug, it's a bigger tug. He's running
10:18:35 25 that now because of the shortage of workers right

1 now. Because the younger generation doesn't seem
2 to want to get into fishing as a livelihood. And
3 that's all I can really say about that tug.

4 Q. Thank you, Mr. Nadjiwan.

5 MS. PELLETIER: Your Honour, can I have
6 this marked as the next exhibit, please.

7 THE COURT: Seeing no objection,
8 Mr. Registrar.

9 THE REGISTRAR: Exhibit No. 4077.

10 EXHIBIT NO. 4077: Photograph of the
11 Howdenvale Dock with a tugboat, taken
12 from the viewing tour.

13 BY MS. PELLETIER:

14 Q. Are there any non-native fishing
15 boats that use this dock?

16 A. Before the court case it was all
17 non-natives that parked at all of these docks. The
18 Howdenvale, Oliphant, and Stokes Bay, and
19 Southampton, they were full of commercial fishing,
20 fleet of the native -- not native but the white.

21 They all had licenses for different
22 parts of this area around here, fishing area. That
23 was our fishing area but they had all the licenses
24 through the Government, through the Federal
25 Government to fish this area.

1 Q. And now how far out do people
2 fish, people from SON fish from this dock?

3 A. They go out seven miles for the
4 chub, about 150 feet, that would be a mile and a
5 half off the Islands there, for the whitefish in
6 the summertime. In the springtime they're in close
7 to the Islands, south side of them.

8 Q. Thank you.

9 I'd like to move away from the view now
10 and ask you some questions about when you saw the
11 Indian Agent burning documents.

12 So, firstly, how old were you when this
13 happened?

14 A. I was about 14 years old. And I
15 was trying to make some money to go to high school.
16 Because we had very little money back then. We
17 couldn't clothe ourselves, hardly, like, to go to
18 high school.

19 So I was earning my money by painting
20 the windows and the porch of this Indian agency,
21 and I did the trim inside and different parts,
22 whatever the Indian Agent wanted done.

23 Q. Sorry, how old are you now?

24 A. I'm going on 71 this September.

25 Q. Would that have made it around the

10:21:34 1 year 1962?

10:21:35 2 A. Around there, yes.

10:21:36 3 Q. So can you tell us what happened
10:21:39 4 when you were painting the windows at the Indian
10:21:43 5 agency?

10:21:44 6 A. Three Federal Suburbans drove up
10:21:47 7 to the agency, they all rushed out and all rushed
10:21:55 8 into the Indian agency. And there were six Federal
10:22:02 9 Government police, I don't know what you call them,
10:22:04 10 Federal agents.

10:22:06 11 They rushed into his office, at the
10:22:10 12 Indian Agent's office, and they were yelling and
10:22:14 13 screaming at him. And they told him -- I went
10:22:20 14 inside to see what was going on. I was pretending
10:22:23 15 I was cleaning my brushes.

10:22:24 16 They had shut the door but it was a
10:22:27 17 real thin door and it had lots of clearance
10:22:31 18 underneath and they were telling the Indian Agent
10:22:34 19 that he has to burn every paper in that -- that the
10:22:40 20 government had, and all the books. Because they
10:22:44 21 didn't want the Indians to know what they have done
10:22:48 22 to them.

10:22:48 23 Q. How far were you, would you say,
10:22:51 24 from the Indian Agent's office when you overheard
10:22:54 25 these things?

10:22:54 1 A. I was -- went right up to the door
10:22:57 2 to hear what was going on, to make sure I knew
10:23:01 3 exactly what was going on. And I was standing
10:23:05 4 right at the door listening, and they were yelling
10:23:07 5 at him.

10:23:09 6 They said "the Chief" of the reserve,
10:23:14 7 which was my dad at the time, "has enough political
10:23:18 8 clout to get rid of him", the Indian Agent. So he
10:23:22 9 had to leave that day.

10:23:24 10 But they said, they kept grilling it
10:23:27 11 into him that they had to burn everything. And
10:23:30 12 they said, you make sure that they are all burnt.

10:23:34 13 Q. And just to clarify. Your father
10:23:37 14 is Wilmer Nadjiwon?

10:23:43 15 A. Yes.

10:23:43 16 Q. So after you overheard these
10:23:45 17 things, what was next?

10:23:46 18 A. The Feds had left, I guess, it was
10:23:53 19 one or two in the afternoon when they got there.
10:23:56 20 And after they had left, the Indian Agent had a
10:24:00 21 barrel outside, 45-gallon barrel, and he was
10:24:08 22 throwing all these thick books in this barrel and
10:24:13 23 was throwing all the papers on top from inside.

10:24:17 24 And he walked back into the Indian
10:24:21 25 Agent's office after, I guess, he had everything

10:24:24 1 out. And he got a coil oil lamp, he unscrewed the
10:24:31 2 top and he poured the coil oil all over the top and
10:24:38 3 he lit it on fire.

10:24:38 4 After that, he didn't stay to see if
10:24:40 5 they were burnt, because it was getting around
10:24:43 6 5 o'clock, and I guess that was the end of his day
10:24:49 7 there, or whatever. He left right away.

10:24:50 8 So I kicked the barrel over, I said
10:24:52 9 these books must be really important to our people.
10:24:58 10 So I put the fire out on all of them and I carried
10:25:01 11 them to the next property over.

10:25:03 12 There was a barn owned by Edwin
10:25:08 13 Akiwenzie. He was a member of our reserve. And I
10:25:18 14 placed all these books in his barn.

10:25:21 15 Q. I apologize, you may have said
10:25:23 16 this. But when the Indian Agent was putting the
10:25:26 17 books in the barrel, where were the six Federal
10:25:29 18 agents at that time?

10:25:29 19 A. They had left.

10:25:30 20 Q. You mentioned that you were
10:25:33 21 putting out the fire. How did you do that?

10:25:36 22 A. I just dumped over the barrel and
10:25:39 23 I turned the books over back and forth in the grass
10:25:41 24 and they all went out because coil oil burns very
10:25:46 25 slowly compared to gasoline.

1 Q. How many books would you estimate
2 you had to carry to the barn?

3 A. Either 8 or 10 big books. I never
4 counted them. But it was a barrel full.

5 Q. And in terms of damage, how badly
6 were the books burned?

7 A. The covers were singed a little
8 bit, but the insides weren't touched, you know.

9 Q. You mentioned you put the books in
10 Edwin Akiwenzie's barn. Did you ask him permission
11 to do this?

12 A. No, I didn't. I wanted to get a
13 hold of my dad but he wasn't home. He was either
14 in Ottawa or in Toronto here with the union.

15 Q. As far as you know, did Edwin
16 Akiwenzie know you had put the books in his barn?

17 A. No, he hadn't been using his barn
18 for a while. At that time he didn't have his
19 horses. He used to have a horse team but he didn't
20 have them at the time, so the barn was sort of just
21 vacant there.

22 Q. What was in the books?

23 A. I didn't really look in them at
24 that time. When my dad got home on late Saturday
25 night I told him about them, and what the Feds

10:27:03 1 said. And I said they must be really important so
10:27:05 2 you have to go and get those books.

10:27:11 3 So the next Sunday morning he went and
10:27:15 4 got those books, and he took them back to the
10:27:17 5 house. He opened one the table, he left the rest
10:27:22 6 in his trunk and he says oh, these are land sales
10:27:25 7 books, he says. And he let me look at some of the
10:27:29 8 pages. He said look at the ridiculous prices they
10:27:32 9 sold these for.

10:27:33 10 That was our Fishing Islands.

10:27:36 11 Q. And you said that when your father
10:27:38 12 got back late Saturday night; I don't think we
10:27:41 13 established what day of the week the book burning
10:27:44 14 had happened. How many days passed between when
10:27:47 15 you put the books in the barn and your dad got
10:27:50 16 back?

10:27:51 17 A. It was that Friday, that Friday
10:27:52 18 after five, that I took them over there. He was
10:27:58 19 gone all day Saturday and I was waiting for him to
10:28:01 20 get home, but he did get home about 10 o'clock that
10:28:05 21 night.

10:28:05 22 And I was waiting for him at the door,
10:28:07 23 you know, like because I wanted to tell him about
10:28:11 24 everything that I've heard and that, things that
10:28:14 25 had happened there.

10:28:16 1 Q. Thank you, Mr. Nadjiwan.

10:28:21 2 Now, finally I'd like to ask you some
10:28:23 3 questions about your role as a pipe carrier. So
10:28:26 4 could you begin by telling us, what is a pipe
10:28:29 5 carrier?

10:28:29 6 A. A pipe carrier is one that carries
10:28:38 7 the pipe for his people. He's got to be a humble
10:28:44 8 person.

10:28:48 9 They were to do prayers for the
10:28:51 10 community. They were to do ceremonies in sweat
10:29:03 11 lodges, tepees, Midewin lodges.

10:29:11 12 And the pipe carriers were in different
10:29:15 13 stages. Like, some worked for the water, and that
10:29:25 14 would be the crane clan. They were the highest
10:29:34 15 part on the dodem.

10:29:35 16 The bear clan had pipes because they
10:29:39 17 were the medicine people; they are the ones that
10:29:43 18 picked the medicines and were the midwives, sort
10:29:47 19 of, for the people. And the nurses, and they
10:29:52 20 looked after the people, the ones, that bear clan.

10:29:57 21 Q. How does your role as a pipe
10:29:59 22 carrier relate to water?

10:30:01 23 A. My grandfather was Chief when I
10:30:06 24 was seven years old. I ended up back at Cape. My
10:30:10 25 dad was working on the Buffalo Bridge so we were

1 living in Fort Erie.

2 At seven years old, his dad had phoned
3 him and said he's on his deathbed. He doesn't know
4 how long he's going to live.

5 So my dad took me, I was seven years
6 old, and took him up, took me to his place and left
7 me there that weekend. He was talking to his dad
8 and his dad said I don't know when I'm going to go,
9 but it's very shortly.

10 So when he left me there, he said he
11 was going to go and catch some fish to bring home.
12 So I stayed with my grandfather that weekend, and
13 he went with the fishing people, whoever was
14 fishing at that time.

15 I never seen him until that Sunday at
16 night. He had to go back to work, but he had
17 talked a long time with my grandfather that Sunday
18 after he got back from fishing.

19 But, in the meantime, as a little kid I
20 was -- my grandfather only spoke Anishinaabe, and I
21 couldn't understand what him and his wife were
22 speaking about all the time, and it was sort of
23 boring for me, and I wanted to go back and find my
24 dad.

25 So I walked that shoreline all the way

10:31:41 1 to the dock. It was about a mile and a half from
10:31:44 2 port where he lived. And I waited around there at
10:31:52 3 the dock, and I couldn't find my dad or anybody and
10:31:56 4 the cop came down. It was Orville Johnson at the
10:32:02 5 time, and he come and see me and ask me who I was.

10:32:06 6 I was just a little kid. And I told
10:32:11 7 him who I was, so he went up to his house. There's
10:32:15 8 very few phones, but the cop had one. My
10:32:19 9 grandfather had one because he was a Chief.

10:32:22 10 So he phoned my grandfather and says, I
10:32:25 11 think I have your grandson down here. He's down at
10:32:28 12 the dock. He must have walked all the way from
10:32:31 13 port.

10:32:32 14 So my grandfather did come to get me,
10:32:35 15 and when he got there he started talking to me. He
10:32:39 16 says, the things I'm going to tell you are things
10:32:44 17 that your dad will never understand, because he was
10:32:48 18 brought up in the white society, he went to
10:32:51 19 residential school and right after that he went to
10:32:54 20 war.

10:32:57 21 And he knew very little about the
10:32:59 22 Anishinaabe way. He could understand the language,
10:33:06 23 but he couldn't speak it.

10:33:09 24 So my grandfather told me to go down to
10:33:19 25 the lake. He told me to pick a rock out of the

10:33:23 1 water and he says: Look at that rock. What do you
10:33:32 2 see?

10:33:34 3 It's just a rock, Grandfather. I said
10:33:36 4 it's very clean, the water is clean so the rocks
10:33:40 5 are clean here. He said, yes, that was my job
10:33:44 6 during my traditional life was to look after that
10:33:46 7 lake, all the water that's out there. He pointed
10:33:50 8 out there. And in time, that's going to be your
10:33:59 9 job.

10:33:59 10 I said: What do you mean by this,
10:34:01 11 Grandfather?

10:34:02 12 He said, you'll be getting gifts and in
10:34:06 13 time you'll understand. I cried. As a kid, I
10:34:09 14 looked out on that lake, I said this job is way too
10:34:13 15 big for me, Grandpa. I was crying away.

10:34:18 16 He says, "Grandson, you'll get gifts.
10:34:24 17 And in those gifts you'll understand later how to
10:34:27 18 look after that lake". And then he took me home.

10:34:32 19 But in the meantime, he was telling me,
10:34:36 20 he was saying down there, he said: I had to go to
10:34:41 21 the Ottawa many times to keep this lake clean.

10:34:44 22 He said at Colpoy's Bay there was a
10:34:53 23 huge sawmill there and he said there was other
10:34:56 24 sawmills along the lake. He said they were using
10:34:59 25 chemicals and debarking this wood and it was going

10:35:02 1 into the lake.

10:35:03 2 And he said the lake started to get
10:35:06 3 stuff on the rocks at one time. Started to get
10:35:10 4 dirty, he said, so he was fighting the Government
10:35:13 5 to stop this.

10:35:15 6 So he says, I went to Ottawa more than
10:35:19 7 one time, trying to stop these sawmills. He said,
10:35:26 8 that was my job, to look after that lake.

10:35:29 9 So he finally, the last time, Ontario
10:35:38 10 did, or the Feds did shut down the lake.

10:35:42 11 Q. Shut down --

10:35:44 12 A. I mean, shut down the sawmills to
10:35:47 13 help out the lake. Because of he put his point
10:35:49 14 across to the Parliament that this had to be
10:35:55 15 stopped or the lakes would be polluted.

10:35:56 16 Q. You mentioned your grandfather
10:35:58 17 said that you would be receiving gifts. When did
10:36:01 18 you receive the gifts?

10:36:02 19 A. At 12 years old, I was
10:36:07 20 excommunicated from the Catholic Church by a bishop
10:36:13 21 in Hamilton. He had sent a letter to me personally
10:36:20 22 at 12 years old and I showed it to my mom. They
10:36:26 23 excommunicated me because I crossed the line as a
10:36:30 24 Catholic.

10:36:32 25 At Christmastime that year, I had went

10:36:38 1 to church and I enjoyed the church services at the
10:36:45 2 Catholic church.

10:36:47 3 But I also got a bunch of guys together
10:36:50 4 and we all went over to the Protestant church, and
10:36:54 5 we went in there and listened to the singing
10:36:56 6 because it was Anishinaabe singers and they sang
10:36:59 7 all the hymns in Anishinaabe.

10:37:02 8 And I said, I love to hear hymns being
10:37:11 9 sung. And all these young boys that followed me,
10:37:15 10 they weren't excommunicated, but I was the leader
10:37:19 11 so I was excommunicated from the church.

10:37:22 12 So I had little or no association with
10:37:28 13 other people anymore. When we used to go to church
10:37:36 14 we used to all talk and associate with each other,
10:37:39 15 but I wasn't allowed to go there anymore.

10:37:41 16 So I used to go up into the fields and
10:37:44 17 I prayed to the Creator and said: I don't know why
10:37:47 18 this has happened to me, but I'm praying that you
10:37:52 19 can help me in some way.

10:37:57 20 And it wasn't until later that Sunday,
10:37:59 21 that night that I had went and prayed to God our
10:38:10 22 Creator, Zemdido (ph) we called him. We always
10:38:17 23 believed in two gods. Zemdido was the forgiving
10:38:22 24 God and Medzowin (ph) was a universal God, where
10:38:30 25 karma was bestowed on you.

10:38:31 1 That's how we were taught growing up.

10:38:34 2 Do nothing bad or steal or anything like that, or
10:38:38 3 this karma would be bestowed on you, not through
10:38:46 4 man but through spirit.

10:38:52 5 And that night the thunderbird came. I
10:38:54 6 couldn't see it, but the wings were bigger than
10:39:02 7 this building. It was huge. It came across the
10:39:05 8 whole Cape Croker from the south.

10:39:07 9 And it dropped something I was on the
10:39:10 10 top of the hill at my mom's. I was hunting
10:39:14 11 squirrels for my dog. We didn't have enough food
10:39:18 12 hardly for the table let alone feed an animal.

10:39:23 13 I had my slingshot with me and it
10:39:25 14 scared me when this thing came because it was just
10:39:28 15 above the trees at that time, but I couldn't see
10:39:31 16 it.

10:39:32 17 And I could feel something, it dropped
10:39:35 18 something through me, I could feel it dropping
10:39:39 19 something through me. And those are the gifts that
10:39:42 20 -- and it wasn't until later on that I understood
10:39:50 21 this, that after it dropped it there, it flew
10:39:53 22 around four times around my dad's house because he
10:39:57 23 had two tepees on it and on the west side he had a
10:40:00 24 thunderbird on it.

10:40:02 25 He had made the brickwork to have a

10:40:06 1 thunderbird on it, but he said he didn't know why
10:40:09 2 he did this.

10:40:10 3 And when they were bestowed on me,
10:40:15 4 those gifts, I couldn't understand it, so I had to
10:40:19 5 go and ask an Elder, and an Elder was old Mrs.
10:40:31 6 Nawash who lived down below us.

10:40:32 7 Her and her son were the last two
10:40:34 8 Nawashes on our reserve. So I went and asked her
10:40:37 9 about this. And she said, yes, what has happened
10:40:40 10 to you is the thunderbird has come and bestowed
10:40:43 11 your gifts. That's all she told me.

10:40:53 12 She said, I'd like to teach you, but us
10:40:54 13 medicine people we all got together and seen what
10:40:56 14 was happening in the schools, where you were all
10:40:58 15 getting whipped, and you were getting whipped when
10:41:01 16 you got home because your chores weren't done.

10:41:05 17 That as medicine people we put all away
10:41:09 18 our bundles. By bundles she meant their pipes,
10:41:12 19 their feathers, anything that had to do with
10:41:19 20 healing, their medicines.

10:41:20 21 They put all these bundles away because
10:41:23 22 the Catholic church was whipping the children, not
10:41:30 23 just by the nuns, but by the priests. They were
10:41:35 24 being knocked around just for speaking one word of
10:41:37 25 Anishinaabe in the school yard.

1 We were made to write 100 times after
2 we were whipped on the board: "No Anishinaabe to
3 be spoken in this school yard". We had to write
4 100 times before we could leave.

5 By then, if it was in the wintertime,
6 by then it was getting dark and none of our water
7 was carried; none of our wood was carried in; none
8 of our wash water was carried for washing clothes.

9 And we were whipped again for being
10 late because those chores weren't done before dark,
11 so we had to go and do them before we could even
12 eat and that's how strict my dad was. He was very
13 strict.

14 Because he was strict through -- he
15 told me later on that he was like this because he
16 was brought up like a soldier when he was in those
17 schools. He said this is the way we were treated
18 in there.

19 And he says he couldn't get out of it
20 because he says when he joined the Army right after
21 leaving Spanish, he says I had no problem fitting
22 into the Army, he says, because orders are all I
23 have been given all my life as a kid since his mom
24 had died.

25 Q. Mr. Nadjiwan, you mentioned that

10:43:09 1 when the thunderbird came and gave you the gifts,
10:43:12 2 you said later you'd understand what they meant.

10:43:15 3 Can you tell us about when you finally
10:43:18 4 did understand?

10:43:25 5 A. I was working in Detroit and there
10:43:27 6 seemed to be something following me or something,
10:43:30 7 like a monkey on my back that I couldn't understand
10:43:34 8 what it was.

10:43:34 9 Then I come back to Toronto and worked
10:43:36 10 in Toronto for years, and this monkey was still on
10:43:43 11 my back. So I started to drink.

10:43:47 12 And I went to AA here in Toronto for a
10:43:50 13 year, and I couldn't get rid of this feeling. I
10:43:55 14 drank because I got this thing, whatever was in me,
10:43:58 15 I couldn't understand it.

10:44:02 16 At that time, there was no really
10:44:05 17 Anishinaabe people left that did ceremonies or
10:44:10 18 anything like that.

10:44:12 19 But after I was working in Toronto for
10:44:15 20 a while, I had to go home, because I started
10:44:22 21 drinking on weekends, and it was sort of affecting
10:44:26 22 me at work. And I wanted to get rid of this
10:44:32 23 feeling.

10:44:33 24 So I went to the reserve. When I got
10:44:37 25 there, my brother said to me -- I was about

10:44:42 1 32 years old or 31 years old, around there. He
10:44:45 2 said: Melvin Elliott has a sweat lodge going up
10:44:50 3 the hill.

10:44:52 4 He went out off the reserve to learn,
10:44:56 5 because he was kept from learning those things,
10:44:59 6 too. But he went off the reserve, I think it was
10:45:03 7 to Six Nations on the other side, the Ojibwe people
10:45:06 8 there, and he learned all the ceremonies of the
10:45:09 9 sweat lodge.

10:45:11 10 And when he came back, he start doing
10:45:15 11 the ceremonies for the reserve. And at that time,
10:45:20 12 I did take my brother's advice. I went up to see
10:45:28 13 Melvin Elliott. I brought him tobacco. He said,
10:45:32 14 that's how you approach him. And I asked him if he
10:45:36 15 could help me. So he says, yes, we'll do a healing
10:45:42 16 sweat for you.

10:45:43 17 So that evening he says, I got the
10:45:47 18 sweat set up, he says you're coming up with the
10:45:49 19 rest of us. He had a little bunch of people that
10:45:56 20 he was teaching about that sweat lodge to
10:46:02 21 understand it and everything.

10:46:04 22 So I went into the sweat with him, and
10:46:07 23 he says, you pray to the Creator. You pray to your
10:46:11 24 grandfathers and your grandmothers to help you with
10:46:16 25 your problem.

10:46:21 1 So after I come out of that sweat, I
10:46:24 2 couldn't believe what happened to me. Because all
10:46:28 3 that week and the next week and the next week I
10:46:31 4 never had a taste for alcohol again.

10:46:35 5 So something had happened to me inside,
10:46:39 6 or to my mind. I didn't know what caused that.
10:46:43 7 But I guess I'm starting to learn tradition, the
10:46:49 8 tradition my grandfather was talking about. This
10:46:52 9 was my start.

10:46:53 10 And after that, I went to -- Melvin
10:46:58 11 asked me, do you want to go to other ceremonies.
10:47:01 12 He said it's up to you; it's not up to me. He said
10:47:04 13 you come and ask me if you want to go. But I'm
10:47:07 14 holding vision quests. I asked him what a vision
10:47:14 15 quest was.

10:47:16 16 A vision quest he said is to find out
10:47:19 17 who you really are in life and what you're supposed
10:47:22 18 to be doing as Anishinaabe people. So I said,
10:47:30 19 sure, I said, sure, this is what I want to learn.
10:47:32 20 I wanted to learn that language. I wanted to learn
10:47:36 21 more about that lodge, so I did go and fast.

10:47:42 22 We fast for four days with no food and
10:47:46 23 water. We'd go through two sweats a day. And the
10:47:51 24 sweat is a cleansing of mind, body and spirit.

10:47:57 25 So I went that first year. I never had

10:48:01 1 no visions or anything. And after it all was like
10:48:07 2 -- to go to one of these things, you have to
10:48:10 3 prepare for it.

10:48:11 4 You have to -- if you're a carver or
10:48:15 5 something like that or a poet or something, you
10:48:18 6 have to put a bunch of stuff together for gifts.

10:48:24 7 At the end of the ceremony we had a
10:48:28 8 meal. And at this meal, you could either talk
10:48:32 9 about your visions or whatever happened to you
10:48:35 10 during this quest that you were up there.

10:48:39 11 And I had nothing to talk about on my
10:48:41 12 first vision quest, except for I got my first eagle
10:48:49 13 feather for doing the four days and I joined the
10:48:52 14 lodge after that. And we did many ceremonies for
10:48:58 15 people here in Toronto; it's called distant
10:49:05 16 healing.

10:49:05 17 They were healing ceremonies for people
10:49:08 18 that have lost someone and were grieving. So we
10:49:16 19 did these ceremonies all summer.

10:49:18 20 Mel was receiving tobacco from all
10:49:21 21 these different families. So each time, didn't
10:49:24 22 matter what time through the week we had to go and
10:49:27 23 do that ceremony again for another family,
10:49:31 24 whatever.

10:49:32 25 Then we got families from the Cape at

10:49:35 1 that time, that people were injured so bad that
10:49:43 2 even doctors or specialists couldn't heal them,
10:49:49 3 couldn't fix them.

10:49:52 4 I'll give you one example. It was
10:49:55 5 Walter Chegahno where a dual-wheeled tractor had
10:50:01 6 rolled over on him, and he went through all of
10:50:06 7 Canada trying to find a surgeon to fix his legs
10:50:10 8 after he was crushed by that tractor.

10:50:13 9 Then he went to the States with his
10:50:15 10 aunt, they tried to find surgeons down there that
10:50:18 11 could fix him because he couldn't walk anymore.
10:50:21 12 And he couldn't find no one to fix him.

10:50:25 13 So he decided he would go to Mel
10:50:30 14 Elliott and give him that tobacco. As a group we
10:50:34 15 all dragged him into that sweat lodge and we did
10:50:37 16 that ceremony for him, that healing ceremony.

10:50:42 17 In six months that man was hobbling
10:50:47 18 down the road on crutches; in one year he was
10:50:59 19 working iron with me. And those are the kind of
10:51:03 20 things why I kept with the lodge, because there was
10:51:06 21 something to it.

10:51:09 22 That man become so strong he could lift
10:51:12 23 a 300-pound block and throw it over a dump truck;
10:51:17 24 that's how strong this man was.

10:51:19 25 I worked with him; he was shimmying up

1 steel 40 feet at a time. He was bolting up, he was
2 doing all -- everything an iron worker could do.

3 So those are the reasons why, I could give you
4 other incidents but I won't...

5 Q. Thank you, Mr. Nadjiwan. You
6 mentioned that the first time you did a vision
7 quest that you received your feather?

8 A. Yes.

9 Q. Was there a second time?

10 A. Yes, the next fall I went and did
11 a vision quest again. Mel says maybe you aren't so
12 spiritually inclined. He says you have to humble
13 yourself to your Creator when you go through these
14 quests, and you pray every day to him.

15 Maybe the first time you just went and
16 sat in your lodge or stayed in your lodge and he
17 didn't show you nothing.

18 So I did humble myself, to the lowest I
19 could humble as a man, and I did go through the
20 second set of sweats and fasts.

21 And in that time, the eagle -- and the
22 last day, the last sweat, it would have been over,
23 I had to get out of the sweat lodge because I was
24 getting so dizzy in there, which didn't happen to
25 me before.

1 Melvin says he's on his vision quest.

2 Leave him alone. We'll go and do this last round
3 in this sweat lodge for the rest of you, but leave
4 him alone.

5 I went and sat beside this tree. An
6 eagle spirit came and picked the spirit out of my
7 body, and took me up to the rainbows and showed me
8 that I was Anishinaabe from the rainbow society.

9 And then he took me further up on to
10 the earth, and I've seen a big tree there, I
11 believe it was an olive tree, because I've seen
12 them in pictures and stuff like that.

13 Beside the olive tree there was two
14 pipes, one on each side, Anishinaabe pipes. And
15 that eagle showed me those and he took me over the
16 wheat fields until he came to a place where there
17 was a bush line. And within that bush line and the
18 field, there was four tepees there.

19 He took me close to these tepees and
20 made me understand what the first teepee was, it
21 was a thunderbird on it. The Star Magpie, with an
22 arrow through it, with no blood leaking from it.

23 The second teepee he went to was to the
24 south, and again, it was the Star Magpie with an
25 arrow through it, with a few drops of blood that

10:54:45 1 was coming out of it.

10:54:47 2 The third was the half blood teepee; it
10:54:55 3 was in the west. And that teepee had quite a bit
10:55:00 4 of blood pouring out of it. Then when it got to
10:55:04 5 the north, where my teepee was standing, he showed
10:55:12 6 me that there was a lot of blood that dripped from
10:55:17 7 this thunderbird.

10:55:22 8 And here he was teaching me the
10:55:25 9 bloodline, from full blood to quarter blood, which
10:55:30 10 I am. And I had to carry that teepee. He showed
10:55:35 11 me a spear beside that teepee with seven feathers
10:55:40 12 with the seven grandfather teachings on it.

10:55:48 13 The seven feathers, I had to make these
10:55:49 14 things and he showed me a shield. And on the
10:55:53 15 shield was a flower in the centre, sweetgrass all
10:56:01 16 the way around it and the four colours.

10:56:03 17 The four colours were the fire colours:
10:56:08 18 Red -- I should start at the east -- it was yellow,
10:56:18 19 red, black in the west, and white in the north part
10:56:27 20 of it.

10:56:30 21 And on these colours, that was my
10:56:34 22 shield to protect me while I was here on earth.
10:56:41 23 And those are the things I had to make for my
10:56:45 24 Creator.

10:56:47 25 And after that, he brought me up in

10:56:50 1 front of the Creator. He stood there with a staff,
10:56:54 2 and he was so huge that he was bigger than any
10:56:58 3 mountain in Canada. He was Anishinaabe man, and
10:57:05 4 that eagle had to take him so far back so I could
10:57:09 5 see his face, he was so huge. And he was talking
10:57:15 6 to me. He says: "This will be your job on earth,
10:57:22 7 is to look after the land, such as I'm doing up
10:57:27 8 here. This is your job".

10:57:30 9 After that, the eagle took me up to the
10:57:33 10 sun, and he made me look down on the earth, and he
10:57:38 11 showed me the Lord's house, where it would be.

10:57:42 12 And I have been there on this earth
10:57:45 13 right now, because I worked for MPH Consulting, and
10:57:51 14 we worked in the Tay Mountains, north of Farrell.

10:57:58 15 And at the last hole that we were
10:58:02 16 drilling at that time, I sat there, and I could
10:58:06 17 remember a story as a kid my mom told me in the
10:58:10 18 Bible.

10:58:11 19 And that story, I looked around,
10:58:22 20 everything she told me in that story, in that
10:58:25 21 Bible, I could see the mountain goats walking up,
10:58:29 22 the white mountain sheep, the tarmiken (ph) of all
10:58:33 23 different kinds going around us.

10:58:35 24 It was like a field, a plateau, almost,
10:58:43 25 to the mountains, the second set of mountains.

1 And I sat there for the longest time.

2 I said, "Gee, this is almost exactly what my mom
3 had told me in this story that came out of that
4 Bible". So I guess that's why he took me up to the
5 sun to see this place.

6 It was so pristine, and a crystal of
7 some sort was placed in the same place where I had
8 been sitting. And he showed me -- that's on this
9 next plateau, this next earth, he showed me that's
10 where the Lord's house would be.

11 And he showed me that it was so bright,
12 with the sun reflecting off it I had to cover my
13 eyes. What I was looking at was pure white,
14 pristine white with the sun shining on it.

15 After that he brought me back down to
16 the earth and placed me back in my body, and I had
17 a story to tell at that time to the rest of the
18 guys in there.

19 They all had different visions at
20 different times in their lives going up there. But
21 this is my story to tell to them.

22 So I told them that story. And at that
23 time, we had an Elder from Sagamok. He used to
24 come to our fasts all the time. He would come and
25 help Mel with the fast. He was an Elder. He

1 brought his pipe and everything and did pipe
2 ceremonies with Mel and everything.

3 But he came at that time. He had come
4 years before, but he come that time, too. At that
5 time he brought a whole bunch of feathers with him.
6 And amongst those feathers he gave one to each one
7 of those fasters that had their stories. He gave
8 them all a brown feather, like this.

9 He hadn't given me a feather; there was
10 two feathers left. Oh, I said, thank God, I said,
11 Melvin is going to get this white feather. I was
12 so grateful for all the stuff he had taught me.
13 And I figured it's time he carries that white
14 feather because he's a teacher now.

15 And I didn't expect that old man to
16 come and pass me that white feather. My heart was
17 just beating, I was so excited. I never felt that,
18 from that feather before, the first feather, like,
19 being a white feather, because that's a teacher's
20 feather.

21 And I felt so overwhelmed with that
22 feather. And he gave Melvin another brown feather.
23 And I don't know why. I don't ask these questions.

24 I don't ask these questions why he has
25 shown me all he has shown me. Because we're not

11:02:18 1 supposed to question anything that we see, that God
11:02:22 2 shows us. So I left it at that.

11:02:25 3 And today, I had picked up that pipe in
11:02:29 4 the meantime by learning about it, by learning
11:02:34 5 about the teachings of my teepee that I had made,
11:02:39 6 and an artist helped me paint, from Wiki, he was
11:02:50 7 working for my dad.

11:02:52 8 He says, can I help you paint that
11:02:54 9 teepee? I'm an artist, I'm working for your father
11:02:57 10 right now. But, he says, I'm out of work this
11:03:00 11 year. And there was somebody out in Southampton
11:03:06 12 that had built a brand new motel and he wanted all
11:03:09 13 Indian art in it.

11:03:10 14 So I referred him to Port Elgin to go
11:03:12 15 and ask this, the people that were building this
11:03:16 16 motel. And I guess they got him to do all the
11:03:21 17 artwork in the whole hotel, and the next year, he
11:03:27 18 says -- that's when he asked me.

11:03:29 19 He says: "You did a favour for me, I'm
11:03:33 20 going to do a favour for you". He says, I'm an
11:03:38 21 artist. I said it's a Star Magpie. He says, I
11:03:44 22 know how to make that; I know how to do all the
11:03:46 23 brushing and everything just to make it the same as
11:03:49 24 it is on that picture.

11:03:50 25 I brought him a picture of that teepee

11:03:56 1 from history, way back. I helped him paint it, but
11:04:01 2 he helped me paint and I didn't know how to do the
11:04:04 3 brushing, how to make the feathering inside of it
11:04:09 4 to make it so beautiful. I didn't know how to do
11:04:12 5 these things.

11:04:13 6 He said this is how you do it, you thin
11:04:15 7 it out, you thin out the paints. The bird was just
11:04:18 8 beautiful after that, with the arrow through it and
11:04:21 9 the blood dripping down to the bottom with a pile
11:04:24 10 of blood on the bottom; that's for the quarter
11:04:27 11 blood.

11:04:28 12 And my teaching is, if you ever become
11:04:31 13 quarter blood, you have to tell the women and the
11:04:35 14 men that they have to marry back into the circle to
11:04:45 15 higher blood so that you never go below that
11:04:48 16 quarter blood. So your children will receive the
11:04:54 17 gifts that were in our society, of the circle of
11:05:00 18 our society.

11:05:01 19 Q. Thank you, Mr. Nadjiwan.

11:05:03 20 A. That's all I know about that pipe
11:05:08 21 as a teacher.

11:05:09 22 Q. I want to ask you a few more
11:05:11 23 questions about your role was a pipe carrier, but
11:05:14 24 first, just to clarify a few things that you said.

11:05:16 25 You mentioned praying to grandfathers.

1 Can you tell me what you mean by that?

2 A. The crane?

3 Q. Praying to grandfathers. What do
4 you mean by grandfathers and grandmothers? What do
5 you mean by that?

6 A. The pipe is made of two parts.
7 The bowl is the grandmother; she is part of the
8 earth. The stem has to be fasted for. We have to
9 go through another process of fasting to place that
10 stem within that mother -- we call it grandmother.

11 When we pray, we do that pipe ceremony
12 and we say grandmothers and grandfathers because
13 that's just part of our teaching. First, we pray
14 to our Creator, our grandmothers and our
15 grandfathers, and to those four directions.

16 Q. Thank you for that explanation.
17 And then finally, could you just briefly describe
18 what is a sweat lodge?

19 A. A sweat lodge is a place we do
20 ceremonies. There are many different ceremonies
21 that can be done in it. Healing ceremonies to heal
22 people. Long-distance healings for people because
23 we couldn't be there at that time.

24 It was prayers in those lodges for
25 those families or whatever happened. If it was a

11:07:06 1 person that got hurt, we'd be sending those prayers
11:07:10 2 to that family and that person that got hurt. It
11:07:14 3 was a healing sweat.

11:07:17 4 But we have many different other
11:07:20 5 ceremonies that we do in there, like your vision
11:07:23 6 quests, just a regular sweat to keep us grounded.
11:07:29 7 If it was an ordinary sweat, it was just a prayer
11:07:32 8 sweat.

11:07:33 9 Q. Could you describe what the
11:07:34 10 structure of what the actual sweat lodge looks
11:07:38 11 like?

11:07:38 12 THE COURT: I don't understand your
11:07:40 13 question. You mean the building, what the building
11:07:43 14 looks like?

11:07:44 15 MS. PELLETIER: That's right.

11:07:45 16 THE WITNESS: The lodge is made of 16
11:07:48 17 sticks and I don't carry the sweat lodge. So I was
11:07:52 18 showed how to build them --

11:07:54 19 THE COURT: Sir, you're not being asked
11:07:55 20 -- I interrupted. You're not being asked how
11:08:00 21 they're built. You're asking what they look like.

11:08:03 22 THE WITNESS: Oh, they were mounds with
11:08:05 23 tarps around them, and they were dark inside and
11:08:11 24 that's where we brought the rocks from outside,
11:08:17 25 inside to do our prayers around. Each ceremony was

1 a different mound of rocks that we used.

2 BY MS. PELLETIER:

3 Q. What do you do with the rocks?

4 A. We heat them, and between the fire
5 and water, is how we did our ceremonies. Fire and
6 water as a purifier. Purified our bodies, our
7 minds and our spirits in the process of praying.

8 Q. Thank you. Now moving back to
9 your role as a pipe carrier, could you tell us what
10 responsibilities you had to water as a pipe
11 carrier?

12 A. As a pipe carrier, I have to go
13 down to the lake every year and do that ceremony
14 for the water, to ask it to renew itself, because
15 as human beings we're so small.

16 So I have to ask the water spirits, my
17 Creator, and those four directions to help me.
18 Because I'm only a human being.

19 If it's getting polluted, I have to do
20 that ceremony for that water, because through that
21 ceremony, it can renew itself. It can renew the
22 bottom of the lakes, because that was the gift I
23 was given -- to look after the water, the land,
24 the medicines, the trees.

25 Those were my duties as a pipe carrier,

11:10:11 1 to look after all these things, and pray for them
11:10:16 2 when they were dying. Like the oak trees, try to
11:10:21 3 start dying on us because of some bug that come on
11:10:24 4 to the reserve and the whole tops of the trees were
11:10:27 5 dying and it killed the whole tree eventually on
11:10:30 6 the oaks.

11:10:32 7 I felt so bad inside. I didn't know
11:10:34 8 what to do, so I had to start praying. When we did
11:10:39 9 pray -- when I did pray -- I didn't use anybody
11:10:40 10 else. I didn't go to the sweat lodge or anything,
11:10:44 11 those trees started to grow again.

11:10:46 12 Lots of them died in that meantime,
11:10:49 13 like in that little period of time, because those
11:10:55 14 worms had stripped all the leaves off and it had
11:11:02 15 killed, you know, lots of them, lots of those
11:11:05 16 trees.

11:11:05 17 But they renewed themselves; they came
11:11:07 18 back to life. Now it's all healthy trees again.
11:11:12 19 And that's just my job as a pipe carrier to do
11:11:16 20 these things.

11:11:16 21 Q. You mentioned water spirits; could
11:11:19 22 you tell us what water spirits are?

11:11:21 23 A. Water spirits are the things that
11:11:23 24 look after the lake. They're spirits within the
11:11:27 25 water. They can renew the water, they can renew

11:11:34 1 the bottom of the lakes.

11:11:40 2 Because of pollution, it's something
11:11:44 3 too big for me to handle as a pipe carrier, so I
11:11:48 4 have to pray for these things. I feel so small in
11:11:54 5 such a big world, as far as lakes and rivers and
11:12:00 6 streams go.

11:12:01 7 Because of the pollution from the
11:12:03 8 farmers, like toxins from farm fields and stuff
11:12:08 9 that go through the creeks and into the lakes, and
11:12:12 10 pollution from factories and stuff like that, and
11:12:20 11 pollution from septics and like raw sewage that's
11:12:21 12 been put into the lake.

11:12:23 13 And that's why, at the water's edge,
11:12:29 14 you see scum forming, and, like, the Ministry had
11:12:35 15 come up to the reserve, given their presentation
11:12:39 16 just last -- or two weeks ago, I guess it was.
11:12:42 17 Their science that the bottom of the lake was dying
11:12:46 18 and it couldn't support fish anymore.

11:12:49 19 So I have to go back to that lake and
11:12:52 20 ask it to renew itself. I didn't tell the Ministry
11:12:58 21 that; I just told them their mistakes. For
11:13:03 22 30 years now, we've been fighting with the Ministry
11:13:07 23 to not keep putting, dumping and dumping and
11:13:11 24 dumping of fish, because it's going to ruin our
11:13:15 25 ecosystem and that's exactly what it did.

11:13:18 1 Q. You mentioned that you do water
11:13:20 2 ceremonies -- first, actually, let me ask. I think
11:13:23 3 you said you went to the water to do ceremonies,
11:13:26 4 where did you go or where do you go?

11:13:28 5 A. I usually go and do my water
11:13:33 6 ceremony where my grandfather's brother lived along
11:13:37 7 the shore at that time. It was before my time, but
11:13:43 8 his building was still on the shore; my dad always
11:13:46 9 talked about it.

11:13:47 10 But he went down there and fished with
11:13:49 11 old Bob Nadjiwon, that was my grandfather's
11:13:54 12 brother, and that was in Cove of Cork, that's at
11:13:58 13 North Bay, from my house. It's up towards the
11:14:01 14 lighthouse, about halfway, it's on the left-hand
11:14:05 15 side of the lake.

11:14:11 16 Q. This is on the reserve?

11:14:12 17 A. This is on our reserve, yes.

11:14:14 18 Q. Is there anywhere elsewhere you
11:14:16 19 conducted water ceremonies before?

11:14:18 20 A. Melvin. We all went as a group of
11:14:21 21 traditional people and it's only up to one pipe
11:14:24 22 carrier to do that ceremony. So we let Melvin do
11:14:29 23 that ceremony at Howdenvale at the beginning of,
11:14:35 24 when we start fishing there. And he did that
11:14:39 25 ceremony there.

1 Q. And could you tell me what would
2 happen if you didn't do water ceremonies?

3 A. The police -- I mean -- not the
4 police, but the lake bottoms would -- and edges of
5 the water would get all dirty. The fish wouldn't
6 be able to live in it, it would be polluted.

7 And because we have to look after the
8 fish as Anishinaabe people do, it goes along with
9 that water. And all the creatures that live in
10 that water.

11 Q. What have you done to get the
12 Government to address problems like pollution?

13 A. We've fought with the Ministry for
14 30 years now, with our science against their
15 science. Because we hired biologists from the
16 Guelph University to work with us, to take water
17 samples, water quality -- water quality, and tried
18 to understand the ecosystem, how come it was
19 getting destroyed and leaving.

20 And we could never come to terms with
21 equal science between us and the Ministry. We were
22 always fighting. They always wanted to control us
23 but yet as a Crown corporation sort of a deal, to
24 make us lesser down there, and saying their science
25 is better than our science so accept their science.

11:16:39 1 But now their science is telling us
11:16:41 2 that these things are happening in the lake. They
11:16:46 3 don't know what to do, so they're coming back to
11:16:49 4 our people to ask us to fix their problem.

11:16:53 5 Q. When is the last time you did a
11:16:55 6 water ceremony?

11:16:56 7 A. At least five years ago -- no, six
11:17:03 8 years ago. Because I had an operation done to me
11:17:06 9 and for two years I couldn't hardly walk. It took
11:17:12 10 me three years to accept what they put inside of
11:17:17 11 me.

11:17:22 12 And today I'm fairly healthy, where I
11:17:24 13 can do ceremonies again. I'm building a teaching
11:17:34 14 lodge in the back of my house right now, and I'm
11:17:36 15 going to put up another teepee because my teepee
11:17:39 16 has rotted over many, many years of ceremonies
11:17:42 17 being done in it.

11:17:47 18 So this year is the year that I'll be
11:17:51 19 going back to the lake because I was reminded by
11:17:54 20 the Elders in Six Nations: You haven't done your
11:17:59 21 water ceremonies. And they knew. How the Elders
11:18:03 22 knew, I don't know they're seers.

11:18:07 23 And people from Six Nations bewilder me
11:18:10 24 sometimes, the Elders, Mohawk people, because my
11:18:14 25 wife found out she was Mohawk and she had to have

1 ceremonies done for her through Six Nations because
2 she thought she was Ojibwe all her life, because
3 she was taught Ojibwe.

4 She understood every rule and
5 regulation of Ojibwe, because my great aunt brought
6 her up only to speak Anishinaabe.

7 And when she went to school, she had
8 such a hard time because the teacher couldn't even
9 understand what she was talking about to go to the
10 washroom. She said, I had to wet my pants, the
11 teacher couldn't understand what I was trying to
12 tell her. She said: I was so embarrassed.

13 She said, it took me many years to
14 learn English because in that, in my household we
15 only spoke Anishinaabe.

16 Q. Could you tell us a bit about the
17 laws of water?

18 A. The laws. The laws are instemmed
19 (verbatim) in us as the seven teachings, to have
20 respect, honour, there's many other teachings -- we
21 have seven, but I don't use them because they're
22 instemmed in me. I was instemmed by my Creator.

23 Those teachings are within me when I
24 speak, to have that humbleness, to carry that pipe.
25 There's humility and there's a few others there,

11:20:05 1 too, but I don't know them all, because I don't
11:20:10 2 teach that way.

11:20:13 3 But I've seen many places where they
11:20:17 4 have those seven teachings. And it's exactly the
11:20:23 5 way a pipe carrier carries on with his pipe and his
11:20:31 6 ceremonies.

11:20:32 7 Q. Mr. Nadjiwan, what is your dodem
11:20:36 8 or clan?

11:20:37 9 A. I belong to the crane clan. It
11:20:41 10 was my grandfather's clan, my Dad's clan, his
11:20:45 11 grandfather's clan, and it just keeps going down on
11:20:51 12 the dodem pole.

11:20:54 13 And the purpose of this clan, either
11:20:57 14 you become chiefs because it's the highest, or you
11:21:01 15 become chieftains, as traditional people to look
11:21:07 16 after the lake.

11:21:09 17 Q. And just because I'm not sure if
11:21:13 18 you clarified this before, when talking about your
11:21:15 19 grandfather, was he also a pipe carrier?

11:21:17 20 A. I was told. He never showed his
11:21:22 21 pipe to me, but through -- other Elders on the
11:21:25 22 reserve said, he did carry that pipe. He was not a
11:21:29 23 Midewin, though.

11:21:31 24 He worked with the Midewin people, but
11:21:38 25 he wasn't the same type of Indian as Midewin. He

1 was Potawatomi, but he never joined that lodge. He
2 did everything, his ceremonies were done by
3 himself.

4 Q. Do you need to be a Midewin to be
5 a pipe carrier?

6 A. No.

7 MS. PELLETIER: One moment, Your
8 Honour, please.

9 BY MS. PELLETIER:

10 Q. Could you tell us a bit of the
11 process you follow in doing a water ceremony?

12 A. We're asking -- first we load our
13 pipe from the four different, or there's really six
14 different directions. We go to our Creator first
15 and ask him, with respect, we ask him if he can
16 help us, because I am only a human being. And we
17 place that tobacco in that pipe.

18 And there's an Anishinaabe word it's
19 more than just a respect, it's not just a thank
20 you. But it's a respect further than that. It's
21 an honour to carry his pipe to our Creator before
22 we put that tobacco and we tell him about our
23 situation, something that we cannot do as one man,
24 as a simple man: "I need your help. Can you help
25 me?" We're talking in Anishinaabe words to say

11:23:31 1 these things.

11:23:32 2 We place that tobacco in there, and
11:23:39 3 then we go to our grandmother, the earth, and we
11:23:43 4 ask her: "Can you help us renew these lakes, renew
11:23:50 5 that water? We need your help. We are just a
11:23:55 6 simple human being". And we place that tobacco in
11:24:00 7 that pipe.

11:24:01 8 And then we go to the Eastern door, and
11:24:09 9 on that Eastern door we ask that direction if it
11:24:14 10 could help us as human beings, not just as me, as
11:24:23 11 human beings. "Can you help us?" We place that
11:24:30 12 tobacco in that pipe; we're talking Anishinaabe.

11:24:33 13 Then we face that pipe to the south and
11:24:35 14 we ask that, with that tobacco, we ask that
11:24:38 15 southern direction if what you should -- I mean, if
11:24:45 16 it could help us renew the lakes. We go to each
11:24:50 17 one of these directions.

11:24:52 18 Then we go to the west, to the
11:24:54 19 thunderbirds and we ask them if they can help us
11:24:57 20 renew those lakes. Then we go to the north and we
11:25:01 21 ask that white bear if he can help us, because that
11:25:07 22 is the point of wisdom is that white bear. And we
11:25:15 23 place that tobacco each time.

11:25:18 24 Then we hold our pipe to the Creator,
11:25:22 25 and we ask again and we thank every different

11:25:28 1 direction. And then we smoke that pipe.

11:25:35 2 We place the stem of that pipe into the
11:25:37 3 lake and ask the water spirits to have smoke and
11:25:44 4 send it up to the Creator. Then the conductor
11:25:51 5 always finishes smoking that pipe and giving thanks
11:25:54 6 to everyone or every spirit that could help us
11:25:59 7 renew that lake, and that's that water ceremony.

11:26:03 8 Q. Thank you, Mr. Nadjiwan.

11:26:06 9 Does water come up in different
11:26:08 10 ceremonies or is it only when you are doing the
11:26:11 11 ceremony by the lake?

11:26:19 12 A. The women of the Anishinaabe
11:26:20 13 people, they are the real water carriers. Every
11:26:23 14 time a ceremony is done, whether a man does it or a
11:26:30 15 woman does it those women are always there, and
11:26:33 16 they are the ones that pray for our water.

11:26:37 17 And a drink is given to everybody
11:26:41 18 around, because the prayer that goes into the water
11:26:45 19 from the water spirit up to the Creator, it's a
11:26:48 20 healing. And that's why they pass that drink
11:26:51 21 around, for that water can flow through you with
11:26:58 22 that prayer to help you heal.

11:27:01 23 MS. PELLETIER: Thank you, Mr.
11:27:02 24 Nadjiwan. Those are my questions, Your Honour.

11:27:04 25 THE COURT: Okay, we will take the

1 morning break at this time. Who is next counsel
2 asking this gentleman questions?

3 MR. ENNIS: Yes, Your Honour, I will
4 be.

5 THE COURT: So after the morning break
6 then, 20 minutes.

7 -- RECESS TAKEN AT 11:27 --

8 -- UPON RESUMING AT 11:51 --

9 THE COURT: Please go ahead.

10 MR. ENNIS: Thank you, Your Honour.

11 CROSS-EXAMINATION BY MR. ENNIS:

12 Q. Good morning, Mr. Nadjiwan. My
13 name is Barry Ennis, and I'm one of Canada's legal
14 counsel.

15 I'd like to thank you, first of all,
16 for your testimony today and for being one of the
17 guides earlier this week on our view of the
18 Peninsula, including the important fishing sites.

19 A. Yes.

20 Q. I want to ask you just a few
21 clarifying questions about your testimony earlier
22 this morning.

23 You mentioned a court case in one of
24 your answers. Was that the Jones and Nadjiwon case
25 you were referring to?

11:52:35 1 A. Yes.

11:52:35 2 Q. And you mentioned three Federal
11:52:42 3 Suburbans that came on to the Indian Agent's
11:52:46 4 office; what is a Suburban?

11:52:48 5 A. A Suburban was a black truck, it
11:52:51 6 was a big, like a -- I don't know how you would --
11:52:58 7 they were called Suburbans back then. Those big
11:53:03 8 trucks. They were covered like a SUV, almost like
11:53:08 9 an SUV, but bigger than the SUVs we have nowadays.
11:53:14 10 But they were government trucks, they were black
11:53:17 11 trucks that the Feds always drove around in.

11:53:20 12 Q. Okay. Thank you.

11:53:22 13 And you say that you rescued, you know,
11:53:25 14 from the fire, approximately 8 to 10 books. Were
11:53:29 15 any of the books actually destroyed in the fire?

11:53:32 16 A. Not to my knowledge, no. Because
11:53:36 17 I put the fire out on the cover -- it was mostly
11:53:40 18 the covers that were burning.

11:53:41 19 Q. Thank you. I wanted to ask you
11:53:49 20 whether you are related to John Nadjiwon. He's
11:53:54 21 deceased now, but he gave videotaped testimony in
11:53:58 22 this case in 2002?

11:53:59 23 A. He's my half uncle.

11:54:02 24 My grandfather was married twice,
11:54:06 25 because his first wife got killed in a car

11:54:09 1 accident. And he married an Akiwenzie and John was
11:54:17 2 the sibling.

11:54:17 3 Q. So John was the half brother to
11:54:20 4 your father Wilmer?

11:54:21 5 A. Yes.

11:54:27 6 Q. Now, you, yourself, did testify in
11:54:30 7 the trial that was brought against Chief Howard
11:54:31 8 Jones and your brother, Francis Nadjiwon?

11:54:34 9 A. Yes.

11:54:34 10 Q. That was in 1992 for overfishing,
11:54:37 11 exceeding the Ministry quotas at that time; that's
11:54:41 12 correct?

11:54:41 13 A. That is correct.

11:54:42 14 Q. I'd like to take you to your
11:54:46 15 testimony in that trial, which you gave on June 19,
11:54:52 16 1992, and we brought up the transcript of your
11:54:56 17 testimony before His Honour Judge Fairgreave on
11:55:01 18 that day. It's document SC0690. And my colleague
11:55:10 19 is assisting me.

11:55:11 20 If we can go to page 56 of the trial
11:55:14 21 transcript, I will be reading from the transcript a
11:55:43 22 few passages and then I'll ask you a question after
11:55:46 23 that.

11:55:47 24 THE COURT: I'm still on the first page
11:55:49 25 there, I don't know about the witness.

11:55:52 1 MR. ENNIS: The monitor indicates that
11:55:54 2 it's taking time to -- there's a circle.

11:55:58 3 THE COURT: Well, best to leave it.
11:56:03 4 I see that. It is a vote of optimism.
11:56:14 5 To get it started again might be faster.

11:56:17 6 MR. ENNIS: I'm prepared to simply read
11:56:18 7 from it, from the transcript that I have in paper
11:56:21 8 copy, or I'm in your hands or to wait to see if
11:56:25 9 this resolves itself.

11:56:36 10 THE COURT: It seems that restarting is
11:56:43 11 being attempted, so let's see if it works.

11:56:47 12 Is there another area that you can deal
11:56:48 13 with while your colleagues deal with this
11:56:52 14 transcript? It's up to you, sir.

11:56:57 15 If you have a paper copy, that's a
11:56:59 16 solution that you can give this gentleman to look
11:57:01 17 at.

11:57:01 18 MR. ENNIS: I only have -- trusting in
11:57:04 19 technology, I only brought one paper copy.

11:57:12 20 THE COURT: Is it a long passage, sir?

11:57:16 21 MR. ENNIS: All together it's probably
11:57:18 22 about -- it's probably about two and a half to
11:57:24 23 three pages. But --

11:57:27 24 THE COURT: That's a "yes", then?

11:57:29 25 MR. ENNIS: Yes.

11:57:36 1 THE COURT: Was it your intention to
11:57:38 2 read the entirety of it, or do it piecemeal?

11:57:42 3 MR. ENNIS: Well, probably reading it
11:57:45 4 in pieces, but probably cumulatively before I asked
11:57:51 5 my question.

11:57:53 6 THE COURT: Well, it's still showing as
11:57:55 7 not responding on the computer.

11:57:59 8 Let's give it another minute.

11:58:09 9 Any of the other parties happen to have
11:58:11 10 by chance with them have a transcript printed from
11:58:16 11 this gentleman's testimony in that trial?

11:58:19 12 No, great.

11:58:26 13 MR. ENNIS: I think it's relatively
11:58:28 14 clear and understandable. Obviously it would be
11:58:31 15 better if it were up on the screen, but I can make
11:58:34 16 an attempt to read it clearly and indicate where
11:58:36 17 exactly in the transcript it is. If that didn't
11:58:40 18 work, we can try something else.

11:58:43 19 THE COURT: Mr. Nadjiwan, we're having
11:58:46 20 some technical problems. This gentleman is going
11:58:49 21 to read from your former testimony and if you feel
11:58:54 22 like you, having heard him, have a clear
11:58:59 23 understanding of what he's read, then that's fine.

11:59:03 24 But if you would like to look at it,
11:59:04 25 look at what he said after he's read it to you,

11:59:08 1 then I would permit him to come up and show you the
11:59:11 2 passage as well on the printed paper.

11:59:14 3 So if you could just indicate when
11:59:17 4 you're asked the questions whether you want to see
11:59:20 5 it on the printed paper before you answer; could
11:59:23 6 you do that, sir?

11:59:24 7 THE WITNESS: No, I'll let him ask the
11:59:26 8 question and try to answer to my best ability.

11:59:30 9 THE COURT: That's very helpful of you,
11:59:32 10 sir. Please go ahead.

11:59:34 11 MR. ENNIS: Thank you.

11:59:35 12 BY MR. ENNIS:

11:59:35 13 Q. As I say Mr. Nadjiwan, I will be
11:59:37 14 reading a few passages and I'll indicate where they
11:59:41 15 are in the transcript because it's my intention to
11:59:44 16 have the transcript entered as an exhibit
11:59:48 17 subsequently if there is no sustainable objection.

11:59:53 18 THE COURT: I'm smiling because, okay,
11:59:57 19 well, let's wait and see. Please go ahead.

12:00:03 20 BY MR. ENNIS:

12:00:03 21 Q. This is from page 56 of the
12:00:07 22 transcript. Now the transcript is Volume 10 of the
12:00:13 23 proceedings at trial.

12:00:15 24 THE COURT: Now it's working, how nice.
12:00:18 25 All right. Please go ahead with the transcript in

12:00:21 1
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front of you, sir.

BY MR. ENNIS:

Q. On page 56, we'll start on line
15. And I'll read. It was a question to you:

"Okay. When you do see a
commercial fisherman who's not from
your reserve, can you comment on the
kind of equipment that you see them
using and how it might differ from
your own?"

And your answer:

"Just the boat sizes is larger.
That's about the only difference in
equipment, except for they got radar
and sonar, and you know, radios and
stuff like that.

"Question: And is there any
advantage to a fisherman having a
larger boat?"

"Answer: Oh, there's a lot of
advantage because like, we were such --
our area around our reserve is a
very small area, you know. We could ---
we're inshore fisherman, like most
of the Indians were inshore

12:01:18 1 fishermen. Because they had such
12:01:20 2 small boats, they gave us
12:01:26 3 tullibee waters out on the other
12:01:28 4 side. It's almost even with
12:01:30 5 Meaford, like the Ministry has given
12:01:32 6 us tullibee on our licence.

12:01:38 7 "Question: Tullibee is a name;
12:01:38 8 is it?

12:01:38 9 "Answer: Yes, it's a deep
12:01:38 10 water herring. That's what it's
12:01:41 11 called."

12:01:42 12 Over to page 57, and I'm going to
12:01:44 13 resume with line 6. Question in the middle of that
12:01:49 14 line, towards the end of that line:

12:01:51 15 "Oh, is that another word for
12:01:53 16 chub?

12:01:55 17 "Answer: It is a chub.

12:01:57 18 "Question: Oh, okay.

12:02:00 19 "Answer: Yeah, but it's called
12:02:03 20 'tullibee.'

12:02:03 21 "Question: Anyway, you had
12:02:06 22 been given some chub and are you
12:02:08 23 able to get out to it using your
12:02:10 24 size boat?"

12:02:12 25 Then if we could briefly go to page 78

1 now, of the transcript, at line 26.

2 "Question: And in 1989 the
3 allocation of chub was 29,561 pounds?

4 "Answer: Uhm-hmm.

5 "Question: Again, is that a
6 poundage that the Band would be able
7 to get with the equipment that you
8 have?

9 "Answer: No, we couldn't fish
10 the chub, because it's --"

11 Going on to page 79:

12 "-- because our boats are too
13 small.

14 "Question: And it's deep water?

15 "Answer: Yeah, that's right.
16 It's way out. Those fish are way
17 out."

18 Now, if I can return back to page 57 of
19 the transcript and line 12, I'll go back to ten,
20 actually. The question is:

21 "Anyway, you've been given some
22 chub and are you able to get out to
23 it using your size boat?

24 "Answer: I took my 30-footer
25 out there and we almost drowned in

12:03:48 1 it because it was too small. We
12:03:50 2 come back in this big wind, and got
12:03:52 3 caught behind the Islands. The
12:03:54 4 motor had quit because the waves
12:03:57 5 were too big and we just about
12:04:00 6 drowned. That's the last time I
12:04:01 7 went tullibee fishing."
12:04:07 8 And then the question:
12:04:08 9 "These non-Aboriginal fishermen
12:04:11 10 then with the larger boats, are they --
12:04:14 11 "Oh, they're capable of --
12:04:16 12 "Question: -- able to go out?
12:04:18 13 "Answer: -- going anywhere on
12:04:20 14 the lake."
12:04:21 15 So that is, they're capable of going
12:04:23 16 anywhere on the lake, the Great Lakes.
12:04:25 17 "Question: The boat that you
12:04:27 18 use, is it an open boat or a closed
12:04:29 19 boat?
12:04:30 20 "Answer: The 18-footer is an
12:04:32 21 open boat, but this 30-footer I had
12:04:35 22 enclosed it, something like a tug,
12:04:36 23 but it was way smaller than a tug.
12:04:39 24 "Question: Are you able to go
12:04:40 25 out in all seasons then with the

12:04:43 1 equipment that you have, or are
12:04:45 2 there limits on that?
12:04:46 3 "Answer: Ugh, we have --
12:04:50 4 "Question: I mean because of
12:04:50 5 --
12:04:51 6 "Answer: We have fished, we
12:04:52 7 have fished in 40 below zero weather
12:04:54 8 in our 18-foot open boat."
12:04:57 9 Then on to page 58:
12:05:00 10 "Question: The larger boats
12:05:01 11 that the other fisherman have, are
12:05:04 12 they any better equipped for that
12:05:05 13 kind of weather than you, or is it
12:05:07 14 about the same?
12:05:09 15 "Answer: Oh, yes, they're all
12:05:11 16 enclosed, like in their big boats.
12:05:14 17 And they got stoves in them and
12:05:16 18 everything else. They're warm in
12:05:18 19 their boats."
12:05:25 20 Lastly, if we can turn to page 102,
12:05:26 21 line 22:
12:05:46 22 "Question: They wouldn't --
12:05:49 23 the chub area that you're talking
12:05:50 24 about is the one that's offshore
12:05:52 25 where you almost drowned in your

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12:06:03 7
12:06:06 8
12:06:06 9
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12:06:13 11
12:06:17 12
12:06:23 13
12:06:26 14
12:06:31 15
12:06:36 16
12:06:40 17
12:06:47 18
12:06:49 19
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12:07:05 24
12:07:16 25

boat?

"Answer: Yeah.

"Question: It's not an inshore
fish?

"Answer: No, no. This is a
real deep. This is way out.

"Question: Two or three
hundred feet deep like?

"Answer: Yeah, it was 300 feet."

So Mr. Nadjiwan, that's a very long
passage, and I apologize for reading it all out.

But my question to you is, based on
this evidence that you gave at the Jones and
Nadjiwon trial in 1992, based on the size of the
boats that you had in 1992, were there limitations
on your ability to fish far offshore and in deep
water because of weather conditions?

A. Rephrase that.

Q. When you had your boat, the
evidence was, you had a 30-foot boat in 1992 and
you generally fished inshore, unlike, at that time,
the commercial fisherman who had larger boats.

Were there limits, because of the
weather, on how -- on your ability to fish offshore
during some of the seasons?

12:07:17 1 A. Yes, we had quite a problem being
12:07:20 2 that far offshore, so that's when we start buying
12:07:24 3 tugs. Because we were getting caught on the Lake
12:07:31 4 Huron side, we were getting caught in such big
12:07:34 5 winds. We have fished chub at seven miles out in
12:07:37 6 those 30-foot boats but it was so dangerous trying
12:07:41 7 to get back after a wind came up, and especially if
12:07:45 8 you had to bring your net and your fish in at the
12:07:48 9 same time, that was a lot of weight. And those
12:07:54 10 boats could barely carry that weight, let alone
12:07:58 11 handle the wind.

12:07:59 12 Q. Now, would that also have applied
12:08:04 13 to offshore fishing in the deep waters for your
12:08:08 14 ancestors, if they used the boats that they had
12:08:13 15 then?

12:08:13 16 A. Yes, but I've seen small tugs that
12:08:19 17 my ancestors have built, they were small wooden
12:08:19 18 tugs. And that's -- they had long engines in them,
12:08:26 19 that was, I guess, that must have been World War I
12:08:30 20 area because those were, World War I vets' at that
12:08:36 21 time.

12:08:37 22 But they had tugboats that were little
12:08:40 23 bigger than our 30-foot boats and they were well
12:08:46 24 built out of wood. And they had a cover over the
12:08:50 25 top, so they could travel at distances. But we

12:08:55 1 were still locked in, within that one-mile range in
12:08:58 2 that time, around the reserve.

12:09:01 3 Q. But in terms of the boats of your
12:09:06 4 ancestors from the World War I era, you say they
12:09:09 5 were engine-powered?

12:09:10 6 A. Yeah, one-lungers they called
12:09:13 7 them. That was, I don't know if they were steam or
12:09:16 8 what they used, but they even had big steel boats
12:09:20 9 my dad said in his time, and they had one-lungers
12:09:26 10 in them, too.

12:09:27 11 And a few of them rested up at shore at
12:09:30 12 the dock over there at the Cape. These were, I
12:09:32 13 would say, around a 45-footer, almost the same as
12:09:37 14 that tug that we seen earlier on these pictures; it
12:09:42 15 was that big, it was made out of steel then.

12:09:45 16 And that's in my grandfather's time.
12:09:48 17 So the time before that, I can't say exactly, you
12:09:52 18 know, how far out they fished, but they always
12:09:56 19 talked about the east bank.

12:09:57 20 And the east bank is over at Meaford
12:10:01 21 and that's the only place the east bank is. It was
12:10:04 22 always known as the east bank. They said we can't
12:10:06 23 understand why the Government won't let us go fish
12:10:10 24 over there when it was our fishing grounds in the
12:10:12 25 first place, so they must have fished with them

12:10:18 1 steel boats at one time.

12:10:19 2 Q. These were the steel boats that
12:10:20 3 were engine-powered?

12:10:21 4 A. Yeah, they were engine-powered
12:10:24 5 with a one-lung engine in it. I don't know how
12:10:27 6 they were powered, if they were powered with gas.
12:10:29 7 My dad used to call them one-lungers.

12:10:33 8 Q. And the engine made them stable
12:10:35 9 enough to go out into the deep water?

12:10:37 10 A. Yes. They traveled long distances
12:10:40 11 with those boats. They were better than any
12:10:43 12 rowboat, you know. It was something safer.

12:10:47 13 Q. Thank you.

12:10:59 14 Well, I decided not to mark it as an
12:11:01 15 exhibit. We have it on the record anyway. And
12:11:04 16 that evidence was evidence that you recalled giving
12:11:09 17 at the trial?

12:11:09 18 A. Yes, it is.

12:11:10 19 Q. Thank you.

12:11:11 20 Now, I'd like to turn to your evidence
12:11:15 21 about the book burning incidence that you testified
12:11:18 22 about this morning, and confirm some more details
12:11:23 23 of that incident. You say the incident took place
12:11:27 24 probably about 1962 to '63?

12:11:29 25 A. I'm not for sure. It's whenever

12:11:31 1 the Indian Agent -- that's all I know. I was a
12:11:36 2 young kid then I never thought about time of years
12:11:38 3 or anything like that.

12:11:40 4 But I figured it was around, when I was
12:11:43 5 around 14 because from 14 to 17, that's when I went
12:11:47 6 to high school in Owen Sound. And I was trying to
12:11:52 7 make money to go there.

12:11:53 8 Q. And you turned 14 in September of
12:11:56 9 1962?

12:11:57 10 A. Yeah.

12:11:57 11 Q. Okay. And do you know the name of
12:12:03 12 the Indian Agent at that time?

12:12:05 13 A. Some say it was Adams, I don't
12:12:08 14 know. I'm not for sure. Because you know, I never
12:12:11 15 even thought about names then. I was trying to
12:12:14 16 earn some money. I didn't know anything about
12:12:17 17 politics.

12:12:17 18 Q. No, that's fine. If you don't
12:12:19 19 know the name, that's fine.

12:12:21 20 Did this take place in Nawash rather
12:12:27 21 than Saugeen?

12:12:28 22 A. Yes, this was Nawash.

12:12:30 23 Q. And you say that there were --
12:12:33 24 your father told you they were land sale books?

12:12:37 25 A. That's what he said.

12:12:39 1 Q. Now, after your father took the
12:12:44 2 books from the Akiwenzie farm, where were those
12:12:55 3 books later kept?

12:12:56 4 A. I have no clue; he wouldn't tell
12:12:59 5 anybody. But the Government did find out.

12:13:02 6 Q. Sorry, the Government found out?

12:13:04 7 A. Found out that he had those books.
12:13:07 8 I don't know how, but they did find out from
12:13:10 9 somebody.

12:13:11 10 Because they sent those three SUVs from
12:13:20 11 the Government, they came to my -- well, first we
12:13:23 12 got a phone call from Ottawa. Somebody said the
12:13:28 13 Feds are going to kill you, to my dad. He says,
12:13:31 14 you better get out of that house before they kill
12:13:35 15 your family. He says they're after them books that
12:13:38 16 you got.

12:13:38 17 And I heard my dad, he was standing
12:13:40 18 there talking to this guy from Ottawa. I don't
12:13:43 19 know who he was, I haven't got a clue. But he
12:13:46 20 talked about getting out of the house right away
12:13:50 21 because they're on their way up there, he says.

12:13:53 22 My dad just ran right to the bedroom,
12:13:56 23 he threw out his suitcase and dumped all his
12:14:00 24 clothes in it. He shut it up and he walked me
12:14:02 25 outside and said you're going to have to be the man

1 of this house from now on. He says I have to
2 leave. I don't want my family killed, he said.

3 That's all he said and where he took
4 the books or where -- I have no clue of where he
5 hid them all those years that he took off.

6 Q. And did your father return home at
7 some point?

8 A. I think I was telling Renée this
9 morning, I couldn't remember but it was when I was
10 21 years old, he had just come home, my mom said.
11 I was 21 -- yeah, I was 21 years old. I just left
12 Detroit. I came to Cape and he was at the house at
13 that time.

14 Q. Did he move back to the home at
15 that point?

16 A. He did for a little while; I don't
17 know how long. But he was with my mom because I
18 was working out; you know, I was working in
19 different places.

20 Next thing I know, he's running for
21 Chief, I heard that. And he was run off the
22 reserve, but I wasn't up there at that time when he
23 was run off.

24 Q. He was running for Chief and he
25 was run off?

12:15:14 1 A. Yeah, he ran for Chief and he won,
12:15:17 2 and he got run off by the existing Chief that was
12:15:21 3 trying to get in. And he was like a criminal, he
12:15:24 4 just got out of -- he got out of Kingston a few
12:15:28 5 years before that.

12:15:29 6 He was a native guy from Saugeen that
12:15:32 7 was running at the time, it was a Frank Solomon.
12:15:36 8 And he came after my dad with a two-truckloads
12:15:42 9 worth of guys with guns. And so my dad again left.

12:15:47 10 And I don't know where he left after
12:15:49 11 that. I never caught up to him until I seen him
12:15:54 12 selling stuff in Ottawa; he was a carver, I heard
12:16:00 13 he was going to be in Ottawa so at the tulip
12:16:03 14 festival or something like that, he was setting up
12:16:07 15 there. So I traveled all the way to Ottawa because
12:16:09 16 it was the first time I seen him in a long time.

12:16:13 17 I never did get to see him there, he
12:16:16 18 wasn't at his booth. He had somebody else running
12:16:18 19 it at that time. I said I can't stay all day to
12:16:23 20 the woman that was looking after the booth. They
12:16:26 21 said your dad should be dropping in anytime. I
12:16:30 22 waited there two or three hours.

12:16:32 23 I was running a game farm outside of
12:16:34 24 Aaron, so I said I can't stay too long. I have to
12:16:37 25 feed those animals morning and night; we had all

12:16:40 1 the wild game there to feed.

12:16:43 2 It was a game farm for unprivileged
12:16:47 3 kids. They used to bring busloads in there to look
12:16:51 4 at all the wild animals. I raised those animals
12:16:55 5 for three years, I guess, then my brother took
12:17:01 6 over.

12:17:01 7 Q. Did you subsequently see your dad
12:17:03 8 after he was in the booth at Ottawa, ever after
12:17:10 9 that?

12:17:10 10 A. I never did get to see him there,
12:17:13 11 but I did hear that he had a place out of
12:17:15 12 Orangeville that he was staying at. This was
12:17:19 13 hearsay.

12:17:19 14 So I went to looked for him at that
12:17:23 15 place and sure enough I found him there. But he
12:17:28 16 was carving. I guess he was going to powwows or
12:17:30 17 shows, whatever he did. We had a little talk there
12:17:32 18 and at least I knew where he was, because I didn't
12:17:36 19 know where he vanished to. But that's where he
12:17:38 20 was.

12:17:38 21 Q. These books that you rescued, do
12:17:41 22 you have any idea where those books are now?

12:17:48 23 A. He told me when he became Chief
12:17:48 24 again, for a day or two, whatever before he got ran
12:17:52 25 out, he placed them within the vault of

1 Neyaashiinigiing. That's where he left them.

2 Where he got them from, I have no idea.

3 Q. Do you know whether they're still
4 in the vault?

5 A. Yes, they were there when Peggy
6 was looking for something that I told her my
7 grandfather told me down at the dock at that time.
8 I says we had a treaty with the Queen and why we
9 can't push it without -- other than this mile out.

10 He says, I can't understand those
11 things, why the Indian Agent won't let us, you
12 know, and she had a hard time finding them. She
13 said she was going through all the ledger books and
14 the land sales books and she says, I shook --
15 there's a book and I shook it and sure enough the
16 deed came out between us and the Queen. That's
17 before Canada was formed.

18 Q. Is this Peggy Blair?

19 A. Yes, it is.

20 Q. She was a lawyer?

21 A. She was a lawyer there and Peggy
22 who was from out -- Johnson, was our researcher at
23 that time.

24 Q. And do you know if the books that
25 weren't destroyed, if they are still in the

12:19:17 1 possession of the Band?

12:19:20 2 A. You would have to ask the Band
12:19:22 3 that, because I haven't been into politics except
12:19:31 4 for fishing meetings and stuff like that. Those
12:19:31 5 are only important things to me, not politics.

12:19:33 6 Q. Okay. Now there have been some
12:19:37 7 other accounts of the burning of these books and
12:19:42 8 documents.

12:19:42 9 How would you respond if someone said
12:19:46 10 that it wasn't actually you who witnessed the
12:19:51 11 burning and saved the books but it was either your
12:19:54 12 father, Wilmer, or Howard Chegahno, or George
12:20:00 13 Keeshig? How would you respond?

12:20:02 14 A. Oh, I was told about that. There
12:20:06 15 was no problem there. My Dad said there was other
12:20:10 16 books at the Council Hall and he says him and
12:20:18 17 George Keeshig found them burning book -- I guess
12:20:21 18 the Indian Agent after he got those first bunch of
12:20:25 19 books they were burning papers and books at the
12:20:28 20 Council Hall; that was separate from the agency.

12:20:32 21 He said they had them over there and
12:20:34 22 they were burning them outside the Council Hall.
12:20:37 23 It was a wooden Council Hall.

12:20:39 24 Q. Was this in the same time in 1960

12:20:42 25 --

12:20:43 1 A. Yeah, that's what my Dad told me
12:20:45 2 anyway.

12:20:45 3 Q. It would have been after you saved
12:20:47 4 the books?

12:20:47 5 A. Yeah, I was the first part of the
12:20:49 6 books, okay? And he said there was other books.
12:20:52 7 And he said there was other papers. Like in those
12:20:56 8 books, it was the land sales books that were
12:20:59 9 burning, but he was talking about ledger books
12:21:02 10 other than that, too.

12:21:03 11 So he said him and George Keeshig
12:21:07 12 tipped over a barrel over in front of the Council
12:21:10 13 Hall, saying that he recovered lots of information,
12:21:14 14 too, from those Indian Agent books.

12:21:18 15 And I don't know anything about them,
12:21:20 16 you know. It was just before he died that he told
12:21:22 17 me about this. I says, "How come you wrote in your
12:21:26 18 book that you found those books and it was me?"

12:21:30 19 He says: "There was other books that
12:21:32 20 me and George Keeshig did at the Council Hall, not
12:21:37 21 at the Indian Agent".

12:21:39 22 MR. ENNIS: Just one moment, please.

12:21:53 23 Thank you, Mr. Nadjiwan. Those are the
12:21:55 24 questions I have for you today.

12:21:56 25 Thank you very much.

12:21:57 1 THE WITNESS: Okay.

12:22:00 2 THE COURT: Which counsel is next

12:22:01 3 questioning this gentleman?

12:22:09 4 MR. FELICIAN: I am, Your Honour.

12:22:11 5 THE COURT: Please come forward.

12:22:30 6 Please go ahead, Mr. Feliciant.

12:22:35 7 MR. FELICIAN: Thank you, Your Honour.

12:22:39 8 CROSS-EXAMINATION BY MR. FELICIAN:

12:22:40 9 Q. Good morning, Mr. Nadjiwan. My

12:22:43 10 name is David Feliciant, I'm one of the counsel for

12:22:48 11 Ontario in the trial. I have some questions for

12:22:50 12 you this afternoon.

12:22:52 13 So just briefly, so I can make sure

12:22:54 14 I've identified everyone correctly, your father is

12:22:58 15 William Nadjiwon?

12:22:59 16 A. Wilmer.

12:23:00 17 Q. Wilmer Nadjiwon, W-I-L-M-E-R.

12:23:04 18 A. Yeah.

12:23:04 19 Q. Your mother was Lucie Regimbauld?

12:23:07 20 A. Yes, she was from Toronto. She

12:23:09 21 was French.

12:23:10 22 Q. Your paternal grandparents, so

12:23:14 23 this is Wilmer's mom and dad, were Peter Nadjiwon

12:23:18 24 and Charlotte Penn?

12:23:19 25 A. Right.

1 Q. As you testified with Mr. Ennis, I
2 understand Peter Nadjiwon, your grandfather, had
3 another wife, Lillian Keeshig and they had a son
4 named John Nadjiwon?

5 A. No.

6 Q. No?

7 A. It was Lillian Akiwenzie.

8 Q. Lillian Akiwenzie?

9 A. Yes.

10 Q. They had a son named John
11 Nadjiwon?

12 A. And another daughter, Beula
13 Nadjiwon, which married Fred Jones.

14 Q. Now, I think you had mentioned in
15 your evidence this morning that your grandfather
16 was Potawatomi, and did he come from Wisconsin?

17 A. That's the story. My wife has
18 looked up her ancestry and she's just starting on
19 mine. That's just the story I've heard. That's a
20 story that my aunt had written in a book.

21 But I don't know if that's fact,
22 because I heard that -- she just started, and she
23 says: Your grandfather's father came from
24 Christian Island. So that's what my wife had found
25 out since.

12:24:35 1 Q. I'd like to show you a document,
12:24:37 2 if we're set up, it's SC0684.

12:24:50 3 Now, this appears to be a resolution
12:24:56 4 quite a while ago. And if you just go down to the
12:24:59 5 bottom of the page, so you see who signed it, one
12:25:03 6 of the signatures you'll see is Patrick Nadjiwon.
12:25:07 7 Do you know what relation Patrick Nadjiwon would be
12:25:12 8 to you?

12:25:12 9 A. What year is this in?

12:25:22 10 Q. Well, if we scroll up a bit and
12:25:24 11 I'll just read the document to you, so you know
12:25:27 12 what it's about:

12:25:29 13 "Know all men by these presents
12:25:31 14 that we, the group of Wisconsin
12:25:34 15 Potawatomi Indians resident in
12:25:36 16 Canada, in meeting assembled, do
12:25:39 17 hereby constitute and appoint --
12:25:41 18 blank space -- of -- blank space --
12:25:43 19 appointed our true and lawful
12:25:45 20 attorney and in our name, place and
12:25:48 21 stead, to vote at the meeting to be
12:25:51 22 held in Midland, Ontario on
12:25:52 23 Thursday, September 15, 1932, in
12:25:55 24 connection with proceedings to be
12:25:56 25 taken concerning our claim as

1 Potawatomi Indians against the
2 United States Government, and
3 otherwise to set at such meeting as
4 our proxy or -- sit at such meeting
5 at our proxy -- or representative as
6 if we were personally present. We
7 hereby agree to ratify and confirm
8 whatsoever the said attorney shall
9 lawfully do or cause to be done at
10 said meeting on our behalf."

11 So it appears to be the appointment of
12 at that point an unnamed attorney to attend a
13 meeting in 1932 with regard to proceedings to be
14 taken in the United States.

15 Does that help situate who Patrick
16 Nadjiwon might be in your family tree?

17 A. All the time that -- you see,
18 there's -- I went to Wisconsin, and I've seen our
19 names over there, in Wisconsin. And I can't go
20 that far back on the other side, on the American
21 side, as the Canadian side. Because I know my
22 grandfather's father was in -- lived in Christian
23 Island, and he was claiming that he was Potawatomi.

24 He was one of the Potawatomi Indians
25 but he wasn't Midewin. His son was Peter Nadjiwon.

12:27:28 1 There's no Patrick Nadjiwon carrying down through
12:27:32 2 my family tree, as far as I know.

12:27:41 3 I don't know if -- Patrick? I don't
12:27:49 4 even think any of my uncles have mentioned that
12:27:51 5 name.

12:27:52 6 Q. Do you know anything about the
12:27:53 7 claim that the Potawatomi Indians in Canada brought
12:27:58 8 against the United States government for
12:28:00 9 compensation?

12:28:01 10 A. I heard that Butch Elliott was
12:28:07 11 claiming something towards the United States, but I
12:28:14 12 don't know how far it got, because he's passed on
12:28:16 13 now.

12:28:16 14 I never see those Potawatomi people
12:28:21 15 coming to the reserve anymore, because he was
12:28:23 16 having meetings with them. But I wasn't a part of
12:28:25 17 that. I don't understand what he was doing or -- I
12:28:29 18 haven't got a clue.

12:28:32 19 MR. FELICIAN: If we can make this the
12:28:33 20 next exhibit, please, Your Honour.

12:28:34 21 THE COURT: Any objection?

12:28:36 22 If you can identify it for the record,
12:28:37 23 please.

12:28:37 24 MR. FELICIAN: It's a resolution
12:28:39 25 signed by JD McCloud, can you scroll up a bit?

1 JD McCloud, Dan Wannigans and Patrick Nadjiwon
2 appointing attorney to attend a meeting.

3 THE COURT: Mr. Registrar, what is the
4 next exhibit number?

5 THE REGISTRAR: Exhibit No. 4078.

6 EXHIBIT NO. 4079: Signed Resolution
7 Appointing Attorney to Attend a
8 Meeting.

9 THE COURT: 4078; thank you. Please go
10 ahead.

11 -- REPORTER'S NOTE: (Upon agreement of
12 counsel, Exhibit 4078 was subsequently re-marked
13 and substituted as Exhibit 4079).

14 BY MR. FELICIANANT:

15 Q. Now you spoke also about some of
16 the fishing. I'm going to change topics now and
17 ask you about the fishing, about the boats you had
18 used and evidence that you gave in 1992?

19 A. Yes.

20 Q. I'd like to go a bit further back
21 than that. And when you were a young boy, what
22 kind of boats generally would be used in your
23 community?

24 A. When I was young, we always, each
25 family was making rowboats, a double-oar rowboat

12:29:45 1 where two men rowed that boat. It went pretty
12:29:47 2 fast. You got out there pretty quick. It was
12:29:49 3 almost like a four horsepower motor, or something,
12:29:53 4 with two guys rowing.

12:29:55 5 Those are the boats that we had built
12:29:58 6 at that time. I built with one with my Dad,
12:30:02 7 Melvin's dad was building boats. That's a type of
12:30:06 8 both they use, is a two-oar.

12:30:10 9 Q. And those boats you wouldn't be
12:30:13 10 taking far out into either Georgian Bay or Lake
12:30:18 11 Huron? You'd stay close to the shore; is that
12:30:20 12 fair?

12:30:20 13 A. No, we used to row them over to
12:30:23 14 the Islands, a mile and a half out. There was no
12:30:26 15 problem with rowing to any one of those islands and
12:30:27 16 hunting them.

12:30:28 17 Q. You'd stay in the area of those
12:30:31 18 islands?

12:30:31 19 A. Yes, we were given a mile or a
12:30:33 20 mile and a half around our reserve, and that's all
12:30:36 21 we were given to fish in.

12:30:38 22 Q. Would you have fished for
12:30:39 23 whitefish primarily?

12:30:41 24 A. Yes, it was primarily whitefish,
12:30:44 25 because we were used to eating that type of fish;

12:30:49 1 it wasn't as strong as a trout.

12:30:52 2 All the trout, I think, were sold in my
12:30:55 3 Dad's time just for buying flour or rice, because
12:31:02 4 there was no welfare or anything like that, you
12:31:07 5 know. You had to live off the land more or less at
12:31:15 6 that time.

12:31:15 7 Q. You said chub was a deep water
12:31:17 8 fish. At what point did the community start
12:31:20 9 fishing for chub?

12:31:21 10 A. They fished them out in the gut
12:31:23 11 way there it's over 300 feet between the Band
12:31:27 12 office and that island over there. It's really
12:31:30 13 deep in the middle there. They used to fish chub
12:31:33 14 there but it was hard to pull, like, 300 feet an
12:31:36 15 anchor up, 300 feet of rope.

12:31:40 16 And then you have to take the weight of
12:31:42 17 the net after that, because it's so deep. But we
12:31:46 18 have done it lots of times. But after we got
12:31:54 19 pullers it made it so much easier.

12:31:58 20 Q. Thank you. I'd like to ask you
12:31:59 21 some questions about the water ceremonies. So
12:32:04 22 would you give thanks only to the water in your
12:32:08 23 territory, or do you give thanks to the water in
12:32:11 24 other territories when you are there?

12:32:12 25 A. We're talking about all

12:32:14 1 territories.

12:32:14 2 Q. All territories.

12:32:15 3 A. And vice versa. When they do
12:32:17 4 their ceremonies in their territory, everything
12:32:19 5 overlaps each other. So we're talking for
12:32:23 6 everybody, not for just Cape Croker or Howdenvale.
12:32:29 7 It's for all people, it's a word we use. It's a
12:32:33 8 plural word, for more than ourselves, you know.

12:32:37 9 Q. Presumably I guess that's because
12:32:40 10 all water is equally sacred; is that fair? All
12:32:44 11 water is equally sacred --

12:32:47 12 A. Yes.

12:32:47 13 Q. -- whether it's in your territory
12:32:49 14 or some other territory?

12:32:49 15 A. Yes.

12:32:50 16 Q. Now, I'm going to ask you some
12:32:57 17 questions now about the books. I know you've
12:33:02 18 answered a lot of questions. I'm going to try not
12:33:05 19 to ask you the same questions you've been asked
12:33:07 20 already.

12:33:08 21 When you participated in this event,
12:33:16 22 who was with you at the time? Who was there when
12:33:20 23 this happened?

12:33:21 24 A. What events are you talking about?

12:33:23 25 Q. This is when you were helping to

1 burn the books and they were in the --

2 A. I wasn't.

3 Q. Oh, you weren't helping?

4 A. I wasn't helping nobody. I was
5 saving.

6 Q. So you tipped over the bucket --

7 A. Yes.

8 Q. -- of the books.

9 Who was with you at the time? Was
10 anyone there?

11 A. There was nobody there but me and
12 the Indian Agent and the three Feds, the three
13 truckloads of Feds that came in there.

14 Q. Did they see you knock over the
15 books?

16 A. The Feds?

17 Q. Yeah?

18 A. I told you the Feds had left and
19 Indian Agent was carrying them books and dumping
20 them in this barrel. And then he went and got a
21 whole bunch of papers and threw them on top and
22 dumped the coil oil on them and lit them on fire.

23 Q. What happened to him again?

24 A. He just left, he didn't even wait
25 to stay around to see if the books burnt because

12:34:18 1 the Feds were so yelling at this man, you stay
12:34:23 2 there and make sure that every document is burnt.

12:34:26 3 And he never did. He just jumped in
12:34:29 4 his vehicle once he seen the fire lit and he was
12:34:32 5 gone.

12:34:32 6 Q. When you came home, and told your
12:34:36 7 Dad -- your Dad wasn't home. But when your Dad got
12:34:40 8 home on the Sunday and you told him what had
12:34:42 9 happened?

12:34:43 10 A. Yup.

12:34:44 11 Q. Did he -- what did he say to you?
12:34:48 12 What was his response to that?

12:34:50 13 A. Well, we better go and get them
12:34:52 14 right away. And we went and loaded them in the
12:34:55 15 back of his vehicle and he took them back to the
12:34:57 16 house at that time. And he took one out. He
12:35:01 17 wanted to see what they were.

12:35:03 18 Q. Did he ever talk to you about --
12:35:07 19 at that point, was it at that point he talked to
12:35:10 20 you about another book burning incident?

12:35:12 21 A. No, this is just before he died.
12:35:17 22 He had testified in another, I don't know if it was
12:35:20 23 in this fishing court case or some other court
12:35:23 24 case, that he had saved books from the Government
12:35:26 25 -- that the Indian Agent had had at one time.

12:35:30 1 And I asked him, just before he died
12:35:32 2 and he wrote it, he wrote a book, and in his book
12:35:37 3 he had that in there, too. I said, how come you're
12:35:40 4 writing this when I was the one who saved those?

12:35:44 5 He said those weren't the one at the
12:35:46 6 agency. Those are the ones at the Council Hall.

12:35:50 7 He says: I guess the Indian Agent came
12:35:56 8 that next Monday and he took out all the stuff that
12:36:00 9 he could out of that Council Hall because he dealt
12:36:03 10 directly with the Indians at every Council and they
12:36:07 11 had books in there, I guess. Or ledgers or
12:36:09 12 whatever they were, but that's what he said. There
12:36:13 13 was ledgers, too.

12:36:14 14 Q. The Council Hall was in Nawash?

12:36:17 15 A. It was exactly where the community
12:36:20 16 centre is there at the corner before the Cenotaph.
12:36:24 17 That's where it was.

12:36:25 18 Q. Are you aware of any other
12:36:27 19 accounts of burning books other than what you spoke
12:36:31 20 about?

12:36:31 21 A. Yes. I've heard on the news that
12:36:34 22 not long after the Indian Agent had been gotten rid
12:36:40 23 of, there was a fire in Ottawa and that was in the
12:36:43 24 archives, the Indian archives. But they said they
12:36:49 25 got it out and saved most of the stuff.

1 That's all I heard. That was on the
2 news. It wasn't something I heard from the mouth
3 of anybody.

4 Q. I'd like to pull up, if I could,
5 Exhibit 3888, and this is an interview with John
6 Nadjiwon taken in 1998. You'll see this is the
7 version we've highlighted to assist you in finding
8 the passages I'm going to refer you to.

9 You'll see it's an interview of John
10 Nadjiwon. If we can go to page 9, please. If we
11 can just go towards the bottom of page 9 and stop
12 there, please. You'll see the highlighted portion
13 saying, "I was telling Donald".

14 So in response to a question by one of
15 the researchers, Janet Armstrong, about the
16 Jay Treaty, this was John's answer:

17 "I was telling Donald I saw
18 books that big and that thick, of
19 names of people on these ledgers,
20 books that were buying parcels of
21 land and all they did was put
22 X-number of dollars down, balance
23 owing. And every one of those names
24 that were on those ledger books was
25 so much balance owing, and all the

12:38:24 1 way thousands.

12:38:24 2 "And the irony, which was
12:38:26 3 terrible, you have Mr. Tuffnell over
12:38:31 4 here back in, it would be '47 or
12:38:33 5 '48, up to maybe '49. He was
12:38:35 6 retiring at the time, and he took a
12:38:37 7 lot of those books and he threw them
12:38:38 8 out behind his house there at the
12:38:41 9 livery stable and he just piled them
12:38:43 10 up there.

12:38:44 11 "And Howard Chegahno was
12:38:49 12 apparently caretaker or something
12:38:51 13 and he came across some of these
12:38:53 14 books that were just piled and left
12:38:55 15 out in the rain. And he picked some
12:38:55 16 of them up and they apparently got
12:38:55 17 after him for taking those.

12:38:57 18 "The agent and the Mounties came
12:38:59 19 to see him. He brought some back,
12:39:01 20 but he didn't bring them all back.
12:39:03 21 And then the agent turned around and
12:39:04 22 he burnt them. He burnt all that
12:39:07 23 information and documents, and these
12:39:09 24 big books. They were all burnt. He
12:39:10 25 burnt them all."

1 Then the question by Ed Koenig, he's
2 one of the interviewers.

3 "You think Howard kept a few of
4 them?"

5 Next page:

6 "John: Yeah, he did, I think.
7 If you go to the Band office there
8 was used to be an old safe in the
9 Band, just about the size of that...
10 and in the bottom of that safe,
11 there was four of these books. Now
12 whether they were still there, I
13 can't say. But they were there and
14 I have seen them. I have gone
15 through them and put them back.

16 "There was a change of agents at
17 the time before Bouchard came along
18 after Tuffnell left, and then there
19 was a Mr. McGuire. He came along
20 but only stayed for a very short
21 period of time. And then Mr. Purser
22 came along. Mr. Purser was the last
23 one, in 1962. This is when we
24 started to kind of semi-administer
25 our own affairs."

12:40:03 1 So, firstly, do you know what safe
12:40:08 2 we're talking about in the --

12:40:10 3 A. They had a small safe in the Band
12:40:12 4 office, where it is now.

12:40:15 5 Q. And when you were in Council, did
12:40:17 6 you ever look in the safe and see if the books were
12:40:19 7 there?

12:40:19 8 A. No, I had no reason to open the
12:40:23 9 books at that time. But I believe that story.
12:40:29 10 Because when I took them books and put them in that
12:40:32 11 barn, there was two other books that were in there.

12:40:36 12 And I don't know who put them there, or
12:40:38 13 why they were in that barn, but there was two
12:40:41 14 there. So that's the same barn he's talking about.

12:40:50 15 Now I'd like to show you an interview
12:40:53 16 of your father, Wilmer, from October 26, 1998.
12:40:57 17 That's Exhibit 3897, if we can bring that up.

12:41:03 18 So you see on the front page of this
12:41:06 19 interview it says "Interview with Wilmer Nadjiwon
12:41:10 20 October 26, 1998".

12:41:12 21 If we can go to page 4. Sorry, before
12:41:19 22 we do that, you'll see Wilmer is saying he's 77
12:41:19 23 years old at that time.

12:41:19 24 If we can go to page 4. Wilmer is now
12:41:31 25 giving an account of the books, and references

12:41:32 1 George Keeshig, who I believe you spoke of in your
12:41:37 2 evidence. He says:

12:41:39 3 "I remember, I don't know if it
12:41:41 4 was during the time I was in the
12:41:43 5 States or something, I happened to
12:41:45 6 be standing outside the Council Hall
12:41:46 7 and the caretaker was George
12:41:50 8 Keeshig. And the agent was standing
12:41:52 9 there and they had this huge pile of
12:41:55 10 books and they were setting them on
12:41:56 11 fire.

12:41:57 12 "And I wondered about that, so I
12:41:59 13 said to George, 'What is there?' He
12:42:02 14 said, 'I don't know, but the agent
12:42:04 15 tells me to burn them. So I burn
12:42:06 16 them.' I picked one up, and I
12:42:11 17 looked at it and I decided, this is
12:42:13 18 part of our history but the boss is
12:42:15 19 there.

12:42:15 20 "You see, nobody ever went up
12:42:18 21 against the agent. He was the king,
12:42:20 22 he was the power. So you never did
12:42:22 23 anything that -- you never
12:42:24 24 questioned him. But in my mind, I
12:42:25 25 questioned him.

12:42:26 1 "So when we got to this folks
12:42:29 2 school, Leo Bonner made me speak.
12:42:33 3 He threw me, he said: Is there any
12:42:33 4 questions?

12:42:34 5 "And I said, 'Yes, who has the
12:42:36 6 authority to burn documents,
12:42:38 7 historical documents,' I said.

12:42:40 8 "I stood right there in a huge
12:42:42 9 pile of books being burned right in
12:42:44 10 front of me, and the agent is
12:42:46 11 standing there. So I said, 'Does he
12:42:48 12 the authority or do you give him the
12:42:50 13 authority? Just how does this
12:42:52 14 work?'

12:42:53 15 "And he gave this big long spiel
12:42:56 16 and when he was through, I said,
12:42:58 17 'But, Mr. Bonner, you haven't
12:43:01 18 answered my question at all.'

12:43:04 19 "So he would start over again,
12:43:06 20 around and around. Well, he said,
12:43:08 21 'There is documents in the
12:43:10 22 archives.' I said, 'There can't be,
12:43:12 23 because these are in longhand.
12:43:14 24 There is no reproduction.'

12:43:15 25 "So anyway, he never did

12:43:17 1 answer. But all the people there
12:43:19 2 said, you know, we never thought of
12:43:22 3 the agent that way. We never heard
12:43:24 4 anybody opposing him, and here you
12:43:26 5 are opposing him strongly.

12:43:28 6 "Before I left, they said, we are
12:43:29 7 going to ask you to run for Chief.
12:43:31 8 We are going to campaign for you.
12:43:34 9 So they did, and the next 14 years I
12:43:36 10 was Chief."

12:43:39 11 And then he goes on to say:

12:43:40 12 "Starting in 1950 --

12:43:43 13 "Wilmer: No, '64.

12:43:44 14 "Ed: Starting in '64 till '79?

12:43:47 15 "Wilmer: From '50 to '60 I was
12:43:50 16 in the States.

12:43:50 17 "Janet: So was this book
12:43:53 18 burning some time in the '60s?

12:43:54 19 "Wilmer: I have tried to
12:43:56 20 remember, I think it was in the
12:43:57 21 '50s. I can't be sure."

12:44:08 22 So it doesn't appear from this account
12:44:09 23 that your Dad was able to save any of the books.

12:44:12 24 A. That's just what I read in his
12:44:14 25 book.

12:44:14 1 Q. Oh, okay. Well, I'd like to pull
12:44:17 2 up his book now, if that's okay. If we can pull up
12:44:27 3 Exhibit 3897, SC0683.

12:44:43 4 Now you'll see this is a document
12:44:45 5 entitled "Not Wolf, Nor Dog". Is that the book
12:44:52 6 you're referring to, your Dad's book?

12:44:54 7 A. Yes, it is. I was real angry
12:44:57 8 about him putting that title on there, because that
12:45:00 9 was a title from the States, of a book that was
12:45:03 10 written in the States. So it was like, perjury,
12:45:08 11 like writing this.

12:45:09 12 Q. Plagiarism?

12:45:10 13 A. That title.

12:45:12 14 Q. Okay. If you go down on the
12:45:15 15 front, a little further down, you'll see there "By
12:45:18 16 Wilmer Nadjiwon" and you'll see it was published in
12:45:21 17 2012. And when he wrote this particular account,
12:45:24 18 or this book, I understand he was actually in his
12:45:27 19 90s; is that right?

12:45:29 20 A. In his what?

12:45:31 21 Q. 90s?

12:45:31 22 A. Yes, he was about 94, 95 maybe.

12:45:36 23 Q. Okay. So if we can go to page 3
12:45:42 24 of the PDF, which is page 101 of the book. It's a
12:45:47 25 bit of a long passage, but this is Wilmer's account

1 of what happened when he's in his 90s now:

2 "It was on one of these weekend
3 trips home that I was witness to a
4 strange sight. Looking back, I can
5 see how pivotal a moment that was,
6 for it changed the direction of my
7 life forever. The year was 1958. I
8 was about to change my value system.

9 "There were few people about that
10 particular Saturday morning on the
11 reserve, when I happened to see a
12 huge bonfire blazing near our
13 community hall. And standing near
14 that bonfire was our Indian Agent,
15 with the caretaker of our public
16 building at his side.

17 "I approached the two men who
18 were stoking the flames of a large
19 bonfire that appeared to be
20 devouring a great pile of large
21 books. There were many, many books
22 or journals burning, and the flames
23 were consuming them steadily.

24 "Most of the large books were
25 no longer legible as the flames

12:46:49 1 licked and curled every page. One
12:46:49 2 of the journals had slipped from the
12:46:52 3 pile, however, temporarily escaping
12:46:54 4 the hungry flames.

12:46:55 5 "I bent down and picked it up,
12:46:57 6 shaking off the cinders and ashes.
12:47:00 7 To my surprise, the pages were dry
12:47:03 8 and yellow with age and the words
12:47:04 9 were all handwritten in ink. They
12:47:06 10 were official documents.

12:47:08 11 "From what I could tell, these
12:47:09 12 were journals maintained by land
12:47:11 13 sales officers. I was stunned to
12:47:13 14 see the words and the dates. These
12:47:14 15 were 19th century documents, treaty
12:47:16 16 documents.

12:47:17 17 "I looked up and gazing at the
12:47:19 18 huge bonfire, I realized with horror
12:47:21 19 what was happening. These were the
12:47:23 20 documents that had recorded the land
12:47:25 21 given up in the treaties of 1836 and
12:47:30 22 1854.

12:47:30 23 "These were records of the sale
12:47:32 24 of our Bruce Peninsula were going up
12:47:34 25 literally in smoke. Our past,

12:47:36 1 valuable, important documents that
12:47:38 2 had determined our present, were
12:47:40 3 being carelessly destroyed.

12:47:42 4 "The keys to our current
12:47:44 5 condition and state of affairs would
12:47:46 6 be gone forever. What truths were
12:47:48 7 being taken from us, what trail of
12:47:50 8 infamy was now rising from smoke and
12:47:51 9 vanishing in the air?

12:47:53 10 "Of course, at that time these
12:47:55 11 words weren't actually formulating
12:47:56 12 in my head. The questions were more
12:47:59 13 gut reaction than a thought process.
12:48:01 14 I don't know how long I just stood
12:48:02 15 there, unable to move or speak."

12:48:09 16 Now in this particular version --
12:48:11 17 sorry, and then the next page:

12:48:13 18 "I was shaken out of this state
12:48:15 19 by the voice of the Indian Agent,
12:48:17 20 now firmly ordering me to return the
12:48:19 21 document I was holding to the
12:48:21 22 bonfire and to leave the spot
12:48:23 23 immediately.

12:48:23 24 "I looked at him, still
12:48:25 25 incredulous, but the agent summoned

12:48:28 1 all his governmental authority and
12:48:29 2 ordered me to drop the document and
12:48:30 3 leave.

12:48:31 4 "I stood there for a moment,
12:48:32 5 unable to mouth any words or
12:48:34 6 articulate any of the questions
12:48:35 7 bothering me. The hard gaze of the
12:48:37 8 agent further inhibited me, as if I
12:48:40 9 too was being reduced to a pile of
12:48:47 10 cinders, along with the documents
12:48:47 11 and the future of our land.

12:48:47 12 "You have to understand the power
12:48:47 13 of the Indian Agent at the time in
12:48:48 14 order to understand why I did not
12:48:50 15 challenge him on the spot. The
12:48:51 16 Indian Agent was all powerful on the
12:48:53 17 reserve in the 1950s; he was the
12:48:55 18 ultimate authority. He was the
12:48:57 19 Government's representative on the
12:48:58 20 reserve and as such you did not
12:49:00 21 dispute or challenge the
12:49:02 22 Government's representative. It
12:49:03 23 just wasn't done.

12:49:06 24 "What I did next may make you
12:49:07 25 wonder, but you must understand the

12:49:09 1 times. There's nothing I could do
12:49:11 2 but obey his commands.

12:49:11 3 "With great reluctance, I let the
12:49:14 4 half burned records of much of our
12:49:17 5 land drop from my hands. The flames
12:49:18 6 found it and instantly devoured the
12:49:19 7 contents. The document curled,
12:49:21 8 smouldered then vanished, and with
12:49:23 9 it a written testament of something
12:49:25 10 long ignored, disregarded and
12:49:26 11 forgotten. Like a treaty promise,
12:49:29 12 you might say.

12:49:30 13 "I turned my back on the two men
12:49:31 14 and walked away. I would never be
12:49:34 15 able to forget what I had witnessed.
12:49:36 16 The scene haunted me years later.
12:49:38 17 It haunts me still. We will never
12:49:41 18 know exactly what was destroyed by
12:49:42 19 the flames that day so many years
12:49:44 20 ago.

12:49:44 21 "I recall my turmoil and my
12:49:46 22 frustration as I walked away, for at
12:49:48 23 that moment it was apparent to me
12:49:50 24 that our future as a race was bleak,
12:49:52 25 the present was pretty grim and our

1 past was being taken from us too in
2 a very real, very tangible way."

3 So in this version, he remembered very
4 precisely when it happened in 1958. And I'm
5 wondering if you ever had an opportunity to talk
6 with him about --

7 A. The timeframe? No.

8 Q. -- how that turned out to be the
9 case?

10 A. No, I haven't -- I just -- the
11 stuff that he was saying in there, it was -- I
12 wasn't even born. That was '58, you said?

13 MR. FELICIAN: That was '58.

14 THE WITNESS: That's when we were
15 living at Crystal Beach there. At that time, he
16 was working in the States, he was working in
17 Buffalo.

18 So I don't know anything about this
19 part of history. He never mentioned it to me
20 except talking about George Keeshig and him saving
21 some ledgers, you know, after the Indian Agent or
22 during that time that he was getting kicked out he
23 had to get rid of everything, so I don't know
24 anything about this. Because he's never mentioned
25 it to me.

12:51:16 1 BY MR. FELICIANANT:

12:51:17 2 Q. Can we go back to Exhibit 3897?

12:51:24 3 And this is page -- could we go to page 12. It's
12:51:33 4 page 11 of the interview.

12:51:35 5 There's a question at the bottom
12:51:37 6 starting by Janet:

12:51:40 7 "When the agents left, were
12:51:41 8 there records left or had they
12:51:43 9 destroyed everything?"

12:51:46 10 And on the next page, Wilmer answers:

12:51:50 11 "Well, you have to understand I
12:51:51 12 don't know that part of it. I do
12:51:53 13 know at one time the agent gave me a
12:51:56 14 contract to paint the agency garage.
12:51:58 15 There were several buckets, barrels,
12:52:00 16 I looked into one and sure enough
12:52:02 17 there were some of them books they
12:52:04 18 were burning before, I took them.
12:52:06 19 Darlene still has them. She says
12:52:08 20 they are in the safe. I gave them
12:52:11 21 into the Band."

12:52:14 22 Do you know anything about those books
12:52:16 23 that were in the barrel in the agency garage?

12:52:23 24 A. I don't even remember an agency
12:52:26 25 garage there. When he was getting older and older

12:52:30 1 he couldn't hardly remember things. Like, he'd
12:52:34 2 leave things out from history that he had taught me
12:52:39 3 as a kid.

12:52:41 4 Q. Okay.

12:52:41 5 A. He was sort of getting like sort
12:52:43 6 of senile, so I don't know if that's the truth or
12:52:51 7 not.

12:52:51 8 Q. This would have been 77 when he
12:52:52 9 said that?

12:52:52 10 A. Huh?

12:52:53 11 Q. He would have been 77 years old
12:52:55 12 when he said that?

12:52:56 13 A. Yeah, that's when he said that.
12:52:58 14 But he's talking about in '58. And in '58 I was in
12:53:03 15 Crystal Beach at that time. That's way before he
12:53:09 16 came Chief. And we had moved back to the reserve,
12:53:17 17 and I don't know what year that was.

12:53:31 18 We were in Crystal Beach at least two
12:53:32 19 or three years anyway, while he was painting in
12:53:35 20 Niagara Falls and Buffalo. So then he became Chief
12:53:38 21 after that. We moved back to the Cape for good to
12:53:43 22 the reserve.

12:53:43 23 Q. If I can move on to another topic,
12:53:45 24 I want to ask a couple of questions about the
12:53:48 25 Indian Agent. If we can pull up Exhibit 3879.

1 This is an earlier interview from Wilmer Nadjiwon,
2 dated June 4, 1991, so this is earlier again.

3 If we can go to pages 5 and 6. There's
4 a question that starts the answer that Wilmer
5 gives:

6 "Question: Did they go back
7 and fish there ever again?

8 "Answer: I don't think so.
9 You see, we were talking about a
10 different era. You don't know the
11 power and authority of the agent at
12 that time when you have no concept
13 of what I'm saying.

14 "If the agent said you can't fish
15 there, you couldn't fish there. You
16 did not dispute the agent; he knows
17 everything.

18 "It wasn't until my time, until
19 the agent came into question. I
20 used to spend 5 or 6 meetings a year
21 as an observer at the table and I
22 thought, what the hell?

23 "The Council has not authority,
24 the agent has the authority. He
25 tells them when he wants a motion,

12:54:57 1 how it is to be said, how printed.

12:54:59 2 He gives it to the secretary and he

12:55:01 3 records it. He asks someone to pass

12:55:04 4 it somebody to second the motion,

12:55:05 5 and that's it.

12:55:06 6 "When I got in, I said, no way,

12:55:08 7 the agent has got to go. I had a

12:55:11 8 lot of conflict with my Council.

12:55:12 9 "Question: When would this

12:55:15 10 have been?

12:55:15 11 "Answer: I got -- went in '64

12:55:20 12 and by '67, I think the first agent

12:55:23 13 that I put off the reserve was in

12:55:25 14 '67.

12:55:25 15 "Question: Was this generally

12:55:26 16 because you didn't like the Indian

12:55:27 17 Agent or was it a specific...

12:55:30 18 "Answer: No, he wouldn't

12:55:30 19 cooperate. I tried to reason with

12:55:33 20 that, he had a lot to offer the

12:55:35 21 reserve, and if he would work with

12:55:37 22 the Council there would be no

12:55:39 23 conflict at all. But he wanted the

12:55:41 24 power, he had the power, he had

12:55:42 25 always had it.

12:55:43 1 "I said, no, if we can't work
12:55:45 2 together, there is not room for two
12:55:47 3 of us. And I belong here, and I am
12:55:49 4 going to stay. He had to go. He
12:55:51 5 lived on the reserve until then. He
12:55:54 6 lived at Saugeen at the Agent's
12:55:56 7 place.

12:55:57 8 "When I got through with him,
12:55:59 9 they took him to Toronto and gave
12:56:01 10 him a job. He only lasted two
12:56:04 11 years. That is how much power that
12:56:07 12 affected him. They took away his
12:56:09 13 power, gave him a better job, more
12:56:11 14 money and everything. Took away the
12:56:11 15 power, and he was nothing. Two
12:56:11 16 years later he died."

12:56:14 17 Did your father, Wilmer, ever talk to
12:56:16 18 you about the process that led up to kicking the
12:56:19 19 Indian Agent off the reserve and standing up to
12:56:21 20 him?

12:56:21 21 A. Yes. We were fishing one day and
12:56:25 22 coming home with fish, and the Indian Agent and my
12:56:28 23 Dad met on the road and they stopped vehicles and
12:56:30 24 they bought wound down their windows.

12:56:32 25 And he said to the Indian Agent, he

12:56:34 1 says this reserve is not big enough for two chiefs.
12:56:41 2 And you will be the one that will be leaving, he
12:56:43 3 said. Then he started the union after that.

12:56:46 4 Q. And what union -- I was going to
12:56:48 5 ask you about that, I take it you're referring to
12:56:51 6 the Union of Ontario Indians?

12:56:52 7 A. Yes.

12:56:53 8 Q. When was this? What year, do you
12:56:56 9 remember what year this would have been?

12:56:57 10 A. I haven't got a clue. It would be
12:56:59 11 in the '60s, probably.

12:57:00 12 Q. And what was the role --

12:57:02 13 A. And the Chief Mason, he used to
12:57:05 14 take Chief Mason to the union meetings all the time
12:57:08 15 from Saugeen; he was the Chief there. And they
12:57:13 16 were trying to start up this union and they got
12:57:16 17 other Chiefs involved, from Six Nations and all
12:57:20 18 around Ontario.

12:57:22 19 And they all met at the union, and they
12:57:25 20 weren't strong enough yet to push the Government
12:57:30 21 anywhere. So they got the backing of the churches,
12:57:34 22 and that's how we got the Indian Agent kicked out.
12:57:37 23 Because he had enough political clout to get rid of
12:57:41 24 him.

12:57:41 25 Q. And so the Indian Agent at that

12:57:43 1 time wasn't able to stop your Dad and the other
12:57:47 2 Chiefs from forming this union?

12:57:48 3 A. No.

12:57:49 4 Q. Now, I just want to talk to you
12:57:59 5 about another claim I understand that your
12:58:02 6 community made about the 1836 Treaty. I think if I
12:58:08 7 can pull up Exhibit 3888, please.

12:58:18 8 Now if we can go to page 3. At the
12:58:27 9 bottom. And you have the last question there on
12:58:29 10 the page?

12:58:31 11 THE COURT: What are we looking at,
12:58:31 12 Counsel?

12:58:34 13 Sorry, I'm looking at page 3. This is
12:58:36 14 the interview with John Nadjiwon from the interview
12:58:39 15 of 1998, the last question by Ed:

12:58:50 16 "Do you think, I have heard
12:58:52 17 that some native peoples had clans?

12:58:55 18 "John: Yeah, the otter,
12:58:57 19 Charlie Kegedonce Jones, his totem
12:59:01 20 was the otter. And that otter
12:59:03 21 appears, the signature appears in
12:59:04 22 the claim that we made of the 1836
12:59:07 23 claim that we presented to Roland
12:59:10 24 Michener, the Governor General in
12:59:10 25 Ottawa.

12:59:14 1 "Ed: When was that?

12:59:17 2 "John: That was back in the
12:59:18 3 mid '70s we made that claim. Paul
12:59:20 4 Williams was the researching lawyer
12:59:22 5 and we had to work on that
12:59:23 6 particular claim. That encompassed
12:59:25 7 from Goderich right across to
12:59:27 8 Arthur, then back up to Meaford and
12:59:30 9 Owen Sound, 1.5 million acres. That
12:59:35 10 was the claim that we presented."
12:59:39 11 Then if we go a little further down on
12:59:41 12 that page.

12:59:42 13 "Ed: Were you on council?

12:59:44 14 "John: Yes, I was actually one
12:59:44 15 of the delegates along with Frank
12:59:47 16 Sullivan and Howard Chegahno and
12:59:47 17 myself and...we went along with
12:59:51 18 James Mason and Shawbedees down
12:59:53 19 here, and Orville Ritchie, we all
12:59:54 20 went to Ottawa to present that to
12:59:56 21 the Governor General.

12:59:57 22 "When we presented him that
12:59:59 23 document we were well received about
01:00:01 24 it. He told us there, well, in
01:00:03 25 order for us to sort of rebuttal the

01:00:05 1 presentation, he said we would have
01:00:06 2 to take that home to do the research
01:00:09 3 and that is where it ended.

01:00:10 4 "I don't know whether the
01:00:12 5 Government done any research on it,
01:00:13 6 I don't think so. Once we presented
01:00:15 7 it, he said we will further look
01:00:18 8 into it, but we also must have a
01:00:20 9 chance to do our research against
01:00:22 10 our presentation. But nothing ever
01:00:25 11 was done."

01:00:26 12 Can you tell me anything about the
01:00:27 13 claim that John is referring to about the 1836
01:00:27 14 Treaty?

01:00:33 15 A. No, I haven't -- I was councillor
01:00:37 16 back then, but I had to quit being councillor about
01:00:42 17 halfway through the year, because I was just about
01:00:47 18 losing my jobs at Douglas Point, and at -- I was
01:00:53 19 working in Hamilton, iron worker.

01:00:56 20 I was taking too much time off from the
01:00:59 21 company, and I told them I had to quit Council
01:01:03 22 because it was costing me too much, to travel back
01:01:07 23 and forth three times a month to go to a meeting.

01:01:17 24 We were -- as a councillor in them days
01:01:18 25 was only \$50 a month, and my gas money was more

01:01:21 1 than that to drive from Hamilton to these Council
01:01:23 2 meetings.

01:01:24 3 Same as Douglas Point. I almost lost
01:01:26 4 my job there because I was taking too much time for
01:01:30 5 Council. So I decided to let the Council go and
01:01:33 6 keep my job and keep at least a good job rather
01:01:37 7 than the \$50 a month.

01:01:39 8 Q. And what year were you on Council?
01:01:41 9 Can you remember what years that would have been or
01:01:47 10 year? How old were you? Maybe work backwards?

01:01:50 11 A. I was 21 years old, I don't know
01:01:52 12 what year that would have been. I'm guessing if
01:01:58 13 I'm 71, 50 years ago.

01:01:59 14 Q. When you were on Council, if you
01:02:02 15 remember this, did you have researchers working on
01:02:04 16 staff looking into the various claims; or do you
01:02:07 17 remember?

01:02:07 18 A. The Council was very small there,
01:02:10 19 it's not like it is now. It wasn't eight people.
01:02:15 20 And administration was a lot smaller than what you
01:02:19 21 see there now, because we got a lot more research
01:02:25 22 going on and other things in our Band office, like
01:02:29 23 fishing and all these other programs that we got
01:02:32 24 going in there.

01:02:36 25 It was only a very few people that we

1 had on Council. I think it was five. And there
2 was very few people in that office to look after
3 it. It was only a few -- it was very few people
4 that Council had working for them at that time.
5 Because you know, even the wages weren't worth, you
6 know, working for Council.

7 Q. But thinking back, do you actually
8 remember whether you had researchers or not?

9 A. I can't remember. I don't recall.
10 I remember Paul Williams. At the time when Frank
11 was in there, it was one of his best friends. And
12 he was our lawyer doing research.

13 But as far as on the reserve doing
14 research, I don't think there was anybody that I
15 know of. But I know Paul Williams did all our
16 research when they were going to make this claim.

17 Because I disputed Paul Williams for
18 working on it. I went into Council, I says:
19 You've been paying this lawyer for almost 20 years
20 now and every time I come to this table and ask
21 what he has produced for this Band.

22 And he says nothing, he brings no
23 paperwork with him or anything, he doesn't tell us
24 how far ahead he is. And they fired him.

25 Q. So when was that; do you remember

1 when that was?

2 A. I don't remember what year that
3 was.

4 Q. That was after you were off
5 Council?

6 A. Yeah, I was off Council then. But
7 I wanted to find out what was going on in the Band
8 office and who our lawyer was and stuff like that,
9 I'd go and listen to Council because it went on.
10 Anybody was allowed from the reserve to listen to
11 the politics at that time.

12 And those things -- I remember they
13 were putting in some kind of a land claim dispute
14 at that time, but I didn't know what Paul Williams
15 was working on.

16 Q. When you say "that time", what do
17 you mean by "that time"? What time are you --

18 A. The time of this claim that John
19 -- is it John that put this in?

20 Q. What John was talking about?

21 A. Yeah, I don't know. Because he
22 was a councillor for a long time with Frank. Frank
23 was the Chief.

24 Q. Would this be the '60s?

25 A. Probably the '70s -- end of '60s

01:05:15 1 and '70s, probably.

01:05:17 2 MR. FELICIAN: Thank you very much. I
01:05:18 3 appreciate your time. Your Honour, those are my
01:05:20 4 questions.

01:05:21 5 THE COURT: Thank you. Any brief
01:05:22 6 re-examination?

01:05:23 7 MS. PELLETIER: Very brief, Your
01:05:25 8 Honour.

01:05:25 9 RE-EXAMINATION BY MS. PELLETIER:

01:05:29 10 Q. Mr. Nadjiwan, when Mr. Feliciant
01:05:31 11 was asking you about boats and where you would fish
01:05:34 12 you were speaking about the rowboats that you used
01:05:36 13 to build.

01:05:37 14 And you mentioned that you would go
01:05:40 15 about a mile and a half out around your reserve,
01:05:45 16 and then you said: "That's all we were given"; do
01:05:47 17 you recall that?

01:05:48 18 A. Yes.

01:05:48 19 Q. Given by who?

01:05:51 20 A. The Ministry of Indian and
01:05:58 21 Northern Affairs had the province, the provincial
01:06:05 22 government make a line around there.

01:06:09 23 As far as I know, it was game wardens
01:06:12 24 -- first it was the Feds in my Dad's time. And
01:06:17 25 then it was the game wardens that prevented us from

01:06:22 1 fishing outside that little square that we had
01:06:26 2 there.

01:06:26 3 Q. And that was before the court case
01:06:28 4 that you also spoke about with your fishing rights?

01:06:31 5 A. Yes.

01:06:32 6 MS. PELLETIER: Thank you.

01:06:33 7 THE COURT: Thank you.

01:06:33 8 MS. PELLETIER: Those are my questions,
01:06:35 9 Your Honour.

01:06:35 10 THE COURT: Thank you, Mr. Nadjiwan.
01:06:36 11 That completes your testimony. Thank you for
01:06:40 12 coming this morning and you can step back down into
01:06:43 13 the public area.

01:06:47 14 THE WITNESS: Thank you.

01:06:47 15 (Marshall Nadjiwan steps down from the
01:06:48 16 witness box.)

01:06:48 17 THE COURT: Now, Ms. Pelletier.

01:06:52 18 MS. PELLETIER: Yes, Your Honour.

01:06:56 19 THE COURT: As I understand it, when we
01:07:01 20 reconvene on the 8th of July, we have Ms. Johnston;
01:07:10 21 is that correct?

01:07:12 22 MS. PELLETIER: If you can give me one
01:07:13 23 moment, Your Honour. I thought it was Paul Jones
01:07:15 24 but I could be wrong.

01:07:17 25 THE COURT: Well, he's down for the

1 15th of July on the schedule I'm looking at. But,
2 yes, please do check, and everyone needs to know.

3 MS. PELLETIER: You were correct, Your
4 Honour. It's Ms. Darlene Johnston.

5 THE COURT: Second question, which I
6 think is a question for Canada.

7 We had previously scheduled a motion
8 regarding one of your expert witnesses, von Gernet
9 for the 12th of July to do with a longer version of
10 his expert report; is that motion going ahead, sir?

11 MR. BEGGS: Yes, Your Honour, that
12 motion is going ahead and I can also advise that
13 Dr. von Gernet is able to appear in person, so we
14 can do both the motion and the --

15 THE COURT: The voir dire.

16 MR. BEGGS: Yes.

17 THE COURT: That was my second
18 question.

19 MR. BEGGS: Sorry, yes.

20 THE COURT: Don't apologize.

21 So those two issues that were
22 timetabled are both taking place on the 12th?

23 Is that the gist of it, sir?

24 MR. BEGGS: Yes, Your Honour.

25 THE COURT: And I know that you have

01:08:24 1 agreed on a schedule for materials on the motion,
01:08:31 2 which I require that you timetable. I don't think
01:08:36 3 that I require that you timetable an exchange of
01:08:39 4 materials on the voir dire.

01:08:41 5 So let me ask these two questions.
01:08:43 6 First of all, when can I expect to receive the
01:08:48 7 party's motion materials, by which I mean on the
01:08:53 8 motion itself, the motion records and what I'm
01:08:56 9 expecting in a brief facta, setting out the gist of
01:09:01 10 the positions of the parties. When in that week
01:09:04 11 can I expect to receive that material?

01:09:06 12 MR. BEGGS: Sorry, our materials are
01:09:09 13 completed, so we could serve it --

01:09:11 14 THE COURT: Your motion record is
01:09:13 15 completed.

01:09:15 16 MR. BEGGS: We also did our factum as
01:09:17 17 well.

01:09:17 18 THE COURT: Oh, very good. They've
01:09:19 19 been served already?

01:09:20 20 MR. BEGGS: It's been served on the
01:09:22 21 parties.

01:09:23 22 THE COURT: Okay. Well, since, as I
01:09:27 23 understand the most recent timetable I have a copy
01:09:30 24 of, the Plaintiffs' materials are not due until the
01:09:33 25 9th of July.

01:09:36 1 MS. PELLETIER: That's correct.

01:09:37 2 THE COURT: Is it also the Plaintiffs'
01:09:38 3 intention to concurrently serve its brief written
01:09:42 4 factum at that time?

01:09:44 5 MS. PELLETIER: Yes, Your Honour, it
01:09:44 6 is.

01:09:44 7 THE COURT: What I'd like the parties
01:09:46 8 to do therefore, is to bring to court -- I don't
01:09:49 9 see why you have to take them across the street;
01:09:52 10 we'll be here -- all of your materials, to be filed
01:09:56 11 with Mr. Registrar for me, no later than the 9th;
01:10:04 12 which is our second day back, right?

01:10:06 13 Now let's move on to the voir dire.
01:10:09 14 Obviously there's no material required in advance.
01:10:12 15 However, I do require that the parties exchange any
01:10:17 16 case authorities that they rely on for the issue
01:10:21 17 with respect to the voir dire. I believe it's
01:10:26 18 bias. I think someone told me it was bias?

01:10:29 19 MS. PELLETIER: That is correct, Your
01:10:30 20 Honour.

01:10:30 21 THE COURT: And it would be of
01:10:35 22 assistance to me to receive those as well, in
01:10:39 23 advance.

01:10:41 24 For example, on the 10th. Is that
01:10:44 25 satisfactory, Counsel?

01:10:45 1 MS. PELLETIER: Yes, Your Honour.

01:10:47 2 THE COURT: Is any other party taking
01:10:49 3 place in these two issues on the 12th, which are
01:10:54 4 mainly, it seems, issues between Canada and the Plaintiffs.

01:10:58 5 MR. FELICIAN: No, Your Honour.

01:10:59 6 THE COURT: So I won't be expecting any
01:11:01 7 material from Ontario, that's fine.

01:11:03 8 So I'm going to receive the motion
01:11:06 9 materials on the 9th, at the latest, any case
01:11:12 10 authorities on the 10th.

01:11:14 11 Is there anything else that needs to be
01:11:17 12 done in the view of any counsel to organize that
01:11:20 13 first week back in a way that would be efficient
01:11:23 14 beyond the things I've already raised?

01:11:27 15 People are shaking their head, okay.
01:11:30 16 So we're not sitting next week. I'm at a
01:11:33 17 conference, which means I'm not on vacation, which
01:11:35 18 means you can continue to e-mail my assistant and
01:11:38 19 expect that one way or another that will eventually
01:11:41 20 make its way to me.

01:11:42 21 So don't be shy, if there's a
01:11:47 22 development of any kind, all right? Optimist that
01:11:49 23 I am, perhaps the motion will be, you know,
01:11:52 24 something you can work out. I realize thus far
01:11:55 25 that has not occurred. But it's never too late.

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Okay, so before we adjourn, is there anything else anyone wishes to raise apart from me wishing every one a nice long weekend?

All right. Thank you, Counsel.

-- Court adjourned at 1:13 p.m.

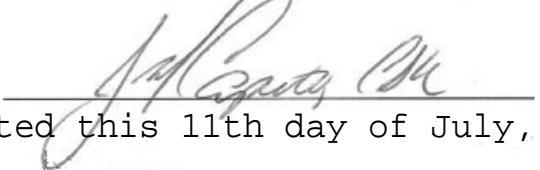
REPORTER'S CERTIFICATE

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 11th day of July, 2019.

NEESON COURT REPORTING INC.

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

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