

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

VOL 45 DAY 45
September 18, 2019



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Court File No. 94-CQ-50872CM

ONTARIO

SUPERIOR COURT OF JUSTICE

B E T W E E N:

THE CHIPPEWAS OF SAUGEEN FIRST NATION, and THE
CHIPPEWAS OF NAWASH FIRST NATION

Plaintiffs

- and -

THE ATTORNEY GENERAL OF CANADA,
HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO, THE
CORPORATION OF THE COUNTY OF GREY, THE
CORPORATION OF THE COUNTY OF BRUCE, THE
CORPORATION OF THE MUNICIPALITY OF NORTHERN
BRUCE PENINSULA, THE CORPORATION OF THE TOWN OF
SOUTH BRUCE PENINSULA, THE CORPORATION OF THE
TOWN OF SAUGEEN SHORES, and THE CORPORATION OF
THE TOWNSHIP OF GEORGIAN BLUFFS

Defendants

Court File No. 03-CV-261134CM1

A N D B E T W E E N:

CHIPPEWAS OF NAWASH UNCEDED FIRST NATION and
SAUGEEN FIRST NATION

Plaintiffs

- and -

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

Defendants

--- This is VOLUME 45 / DAY 45 of the
transcript of the trial proceedings in the
above-noted matter, being held at the Superior
Court of Justice, 330 University Avenue,
Courtroom 5-1 Toronto, Ontario, on the 18th day
of September 2019.

B E F O R E:

The Honourable Justice Wendy M. Matheson

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

Renee Pelletier, Esq., for the Plaintiffs,
H.W. Roger Townshend, Esq., The Chippewas of
& Benjamin Brookwell, Esq., Saugeen First
& Chris Evans, Esq., Nation, and the
Chippewas of Nawash
First Nation.

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

David Feliciant, Esq., for the Defendant,
& Jennifer Le Pan, Esq., Her Majesty the
& Richard Ogden, Esq. Queen in Right of
Ontario.

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I N D E X

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5	4257 Extracts from the book "The	5490
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7	by Bruce Trigger; Document S1726	
8	S-1 First report of Dr. Reimer	5491
9	titled "Aboriginal Use and	
10	Occupation of Bruce Peninsula and	
11	Environs circa 500 BC to 1860	
12	AD"; Document SC1085.	
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14	Dead", authored by H. Hickerson;	
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4262	Article by Frances Stewart titled "Faunal Findings from Three Longhouses of the McKeown Site, (BeFc-1) a St. Lawrence Iroquoian Village"; Document SC1099.	5585

1 --- Upon commencing at 10:05 a.m.

10:05:25 2 THE COURT: Morning, Mr. Ogden.

10:05:28 3 MR. OGDEN: Morning, Your Honour.

10:05:35 4 THE COURT: Please go ahead.

10:05:36 5 MR. OGDEN: Your Honour, this morning
10:05:37 6 counsel for the plaintiffs were good enough to
10:05:40 7 scan a marked-up copy of page 44 of Dr. Reimer's
10:05:44 8 first report that Dr. Williamson had marked up
10:05:46 9 overnight.

10:05:47 10 RONALD WILLIAMSON:

10:05:47 11 PREVIOUSLY AFFIRMED.

10:05:47 12 CROSS-EXAMINATION BY MR. OGDEN:

10:05:47 13 (Continued)

10:05:47 14 Q. Good morning, Dr. Williamson.

10:05:49 15 A. Good morning.

10:05:50 16 Q. Thank you for your homework.

10:05:51 17 A. Thank you.

10:05:53 18 Q. And counsel sent it to Ontario
10:05:55 19 and Canada, and we're going to load it into the
10:05:59 20 ready system, but due to a minor technical
10:06:03 21 difficulty we haven't quite done that yet, but
10:06:05 22 we can display it on the screen for you. And I
10:06:07 23 have the hard copy, which I would nevertheless
10:06:09 24 like to pass up and mark as an exhibit.

10:06:13 25 And then I have additional paper

10:06:15 1 copies of that, although it's smaller than the
10:06:22 2 original, which limits the immediate usefulness.
10:06:25 3 There is the original.

10:06:31 4 THE COURT: You can pass that to
10:06:32 5 Mr. Registrar, and he'll hand that to me.

10:06:47 6 Dr. Williamson, thank you for being so
10:06:49 7 neat. It's very neat.

10:06:51 8 Now, so you're proposing that -- what
10:06:53 9 are you proposing, counsel?

10:06:56 10 MR. OGDEN: Firstly that this be
10:06:58 11 marked as the next exhibit, and then --

10:07:01 12 THE COURT: The "this" you're
10:07:02 13 referring to is the annotated copy?

10:07:05 14 MR. OGDEN: Yes, of page 44 of
10:07:08 15 Dr. Reimer's report.

10:07:13 16 THE COURT: Mr. Registrar, I think you
10:07:13 17 should have the original as an exhibit. I will
10:07:34 18 take the copy.

10:07:34 19 MR. OGDEN: Your Honour, if you'd
10:07:34 20 like, we can arrange for a larger copy.

10:07:34 21 THE COURT: No, I don't think that's
10:07:34 22 necessary because of the way the witness has
10:07:34 23 done his annotations. I take it there's no
10:07:34 24 objection. I see no objection.

10:07:34 25 Mr. Registrar, the original annotated

10:07:35 1 copy of page 44 of the Reimer report shall be
10:07:40 2 the next exhibit.

10:07:43 3 THE REGISTRAR: Exhibit Number 4256,
10:07:43 4 Your Honour.

10:07:46 5 EXHIBIT NO. 4256: Original, annotated
10:07:46 6 copy of page 44 of Dr. Reimer's
10:07:46 7 report.

10:07:56 8 THE COURT: And did you have another
10:07:57 9 request, sir?

10:07:58 10 MR. OGDEN: Two other exhibits related
10:07:59 11 to this task. One is document S1726. This is a
10:08:16 12 large document that was produced and we gave
10:08:19 13 portions of this to Dr. Williamson, but I'll
10:08:23 14 add, if I may, the whole document, please, and
10:08:29 15 this is nevertheless described as "Extracts of
10:08:35 16 Trigger, 'The Children of Aataentsic'". And for
10:08:42 17 the record, we gave Dr. Williamson pages 99 to
10:08:46 18 104 of the original.

10:08:56 19 THE COURT: Mr. Registrar.

10:08:58 20 THE REGISTRAR: Exhibit Number 4257.
10:09:00 21 EXHIBIT NO. 4257: Extracts from the
10:09:00 22 book "The Children of Aataentsic",
10:09:00 23 authored by Bruce Trigger; Document
10:09:00 24 S1726

10:09:01 25 MR. OGDEN: Thank you. And then

10:09:02 1 lastly, Dr. Reimer's first report, which
10:09:05 2 Dr. Williamson had the opportunity to review,
10:09:08 3 which is SC1085. And this report is titled
10:09:21 4 "Aboriginal Use and Occupation of Bruce
10:09:23 5 Peninsula and Environs circa 500 BC to 1860 AD".

10:09:26 6 THE COURT: Can you scroll down to the
10:09:27 7 date of the report, sir? There it is. All
10:09:30 8 right. What sort of exhibit are you suggesting?

10:09:35 9 MR. OGDEN: Our practices vary but a
10:09:37 10 numbered exhibit at this point, Your Honour.

10:09:42 11 THE COURT: I'm not sure what practice
10:09:43 12 you're talking about.

10:09:45 13 MR. OGDEN: Sorry, Your Honour. We
10:09:45 14 had done different --

10:09:45 15 THE COURT: For defence expert
10:09:46 16 reports, I think they have uniformly been marked
10:09:48 17 as lettered exhibits, unless there is some
10:09:50 18 reason to depart from that here.

10:09:54 19 MR. OGDEN: No, Your Honour, my
10:09:55 20 recollection is perhaps in error as to one of
10:09:55 21 those documents, but lettered exhibit, please,
10:10:00 22 Your Honour.

10:10:01 23 THE COURT: Mr. Registrar.

10:10:02 24 THE REGISTRAR: Lettered Exhibit S-1.

10:10:04 25 EXHIBIT NO. S-1: First report of

10:10:06 1 Dr. Reimer titled "Aboriginal Use and
10:10:06 2 Occupation of Bruce Peninsula and
10:10:06 3 Environs circa 500 BC to 1860 AD";
10:10:06 4 Document SC1085.
10:10:08 5 THE COURT: S-1. All right.
10:10:26 6 MR. OGDEN: Thank you, Your Honour.
10:10:39 7 THE COURT: Please go ahead.
10:10:40 8 BY MR. OGDEN:
10:10:41 9 Q. Dr. Williamson, again, this is
10:10:42 10 Exhibit 4256, which was your annotated copy of
10:10:45 11 page 44 and then your notes attached to it.
10:10:51 12 And just for clarity, you put numbered
10:10:54 13 notes on page 44 next to "Ojibwe" and "Odawa", 5
10:11:02 14 and 6. And then table 2.1 notes, which is the
10:11:07 15 second page of the exhibit. In note 5 you say:
10:11:10 16 "While I noted in my 2013 report
10:11:12 17 the locations of these populations at
10:11:15 18 various times and acknowledge the
10:11:17 19 broad use of the term 'Ojibwe', I did
10:11:19 20 not report on these aspects of these
10:11:22 21 groups."
10:11:23 22 And then note 6:
10:11:26 23 "I comment on only some of these
10:11:29 24 aspects for the Ottawa in my 2013
10:11:32 25 report."

10:11:33 1 Now, you were asked yesterday to look
10:11:36 2 over page 44 and indicate if you agree, disagree
10:11:41 3 or whatever with respect to the statements that
10:11:44 4 were made and to make any changes that you would
10:11:47 5 make.

10:11:49 6 So just to be clear, although you've
10:11:54 7 got these notes 5 and 6 you're otherwise saying,
10:11:58 8 except for notes 7 -- except for note 7, you're
10:12:04 9 saying you agree with the statements under the
10:12:06 10 column "Algonquian"?

10:12:10 11 A. Actually, what I'm saying is that
10:12:11 12 I did not -- in the course of my work I was not
10:12:14 13 asked to look at, for example, the social
10:12:16 14 organization between kinship of the Potawatami
10:12:22 15 or the Ojibwe. I was asked to look at the
10:12:25 16 record and figure out where people were and how
10:12:28 17 they interacted at various times throughout the
10:12:33 18 period.

10:12:34 19 Q. Notwithstanding what you're asked
10:12:36 20 by plaintiff's counsel, are those -- are those
10:12:46 21 matters that fall within your expertise, with
10:12:48 22 which you would --

10:12:55 23 A. So I am an archeologist. Some of
10:12:59 24 these matters are the purview of a cultural
10:13:01 25 anthropologist. For example -- let me give you

1 an example here.

2 Q. Yes.

3 A. You ask about residence patterns
4 and if you look in detail at the archeological
5 record of the Odawa you can see that the
6 residence pattern, as it has been generally
7 accepted, winter dispersal, is not necessarily
8 the case on the villages that the Odawa
9 inhabited. They may have stayed in those
10 villages as the settlement patterns themselves
11 may indicate.

12 So I would want, before I agreed in
13 detail, to have a full understanding of the
14 documentary record as it relates to those
15 questions. If I had looked at those questions
16 I'd be prepared quickly to say that I could
17 concur with this.

18 I'm just saying that sometimes there
19 are little details that differ, and I would want
20 to have looked at that and I did not.

21 Q. You've reviewed Dr. Reimer's
22 report though?

23 A. I did.

24 Q. And the statements she made that
25 she has put into this table?

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A. I did.

Q. And that's not sufficient to, with an addition to your existing knowledge and expertise --

A. Well, as I --

Q. Sorry, say whether you agree with these statements in their generally expressed form?

A. In a generally expressed form I can agree.

Q. Sorry, you can agree?

A. I can.

Q. Okay.

A. But in terms of the detail, as I just explained, I would want to look at those records in detail, which I did not.

Q. There's some other matters of terminology I'd like to address. The word "occupation", do you agree there is no set meaning in the archeological field for "occupation"? No standard meaning, no set meaning?

A. I think it's a difficult term in our field depending on the context, whether we're talking about a site or an area.

10:15:37 1 Q. And so the word "occupation" can
10:15:39 2 mean different things depending on its context
10:15:42 3 and perhaps depending on the adjective, would
10:15:47 4 you agree with that?

10:15:53 5 A. I would want to see the context
10:15:54 6 of a particular question or use of the word
10:15:56 7 "occupation", yes.

10:16:03 8 Q. If it's used by itself it could
10:16:05 9 mean presence that is seasonal or temporary or
10:16:08 10 permanent or intermittent or so on? It could
10:16:12 11 mean all of those things if it didn't have in it
10:16:16 12 a qualifier, is that right?

10:16:19 13 A. As I testified in cross
10:16:20 14 yesterday, I am comfortable using the word "use"
10:16:24 15 --

10:16:25 16 Q. Okay.

10:16:26 17 A. -- when talking about the use of
10:16:28 18 a site. Clearly that area of the site is
10:16:33 19 occupied seasonally in some cases and more
10:16:37 20 permanently in others. So there is -- there is
10:16:43 21 a little bit of difficulty in this area.

10:16:52 22 Q. And the same then for population,
10:16:53 23 the word "population" or "populated", there's no
10:16:57 24 set meaning in the field of archeology?

10:16:59 25 A. Well, "population" is used most

1 often in demographic studies.

2 I have used "population", I have used
3 "group" in relating two groups of people within
4 certain circumscribed areas.

5 Q. And how about "populated", an
6 area being populated, for example?

7 A. I've certainly seen that in the
8 record, yes.

9 Q. But is there a set, understood
10 meaning of that within the field? Is it a
11 defined term amongst archeologists?

12 A. Um...

13 Q. Or is it like "occupation" where
14 it depends on the context?

15 A. Yeah, I'm not necessarily aware
16 of somebody who has defined "populated", and
17 what does that mean --

18 Q. And so it depends on the context
19 and --

20 A. I think it depends on --

21 THE COURT: Both of you -- okay,
22 Dr. Williamson, you simply cannot talk at the
23 same time even though you may anticipate where
24 counsel is going, and counsel as well.

25 MR. OGDEN: Yes, Your Honour.

10:18:01 1 THE WITNESS: Yes, Your Honour.

10:18:02 2 THE COURT: Please start again.

10:18:06 3 BY MR. OGDEN:

10:18:07 4 Q. So is the word "populated" like
10:18:09 5 "occupation" where it depends on the context and
10:18:13 6 the modifying word such as "seasonal",
10:18:17 7 "temporary", "permanent", "intermittent"?

10:18:24 8 A. Are you asking me if those terms
10:18:25 9 can apply to the word "occupation"?

10:18:28 10 Q. No, does the meaning that's given
10:18:30 11 to the word "populated" in a text depend on its
10:18:34 12 context and depend on any qualifiers used such
10:18:38 13 as those?

10:18:40 14 A. One might say that an area is
10:18:42 15 populated but qualify it by using some of those
10:18:45 16 terms that you mentioned.

10:18:46 17 Q. And if it's not qualified and the
10:18:49 18 context is not clear, it could mean any of those
10:18:53 19 types of populated, seasonal, intermittent,
10:18:57 20 permanent, temporary?

10:19:01 21 A. Again, I would want to look at
10:19:02 22 the context. I'd want to look at the details of
10:19:05 23 whatever the person was talking about.

10:19:11 24 Q. Do you agree that this applies
10:19:16 25 also to words and terms -- the following words

1 and terms, "living in an area" or "living in"?

2 A. I think if somebody uses the word
3 "living in an area" it may -- some of those
4 terms may apply, context specific, again.

5 Q. "Inhabited"?

6 A. Typically in archeology when you
7 say an area is "inhabited" it means somebody's
8 there permanently.

9 Q. "Resides in"?

10 A. Well, somebody has resided in a
11 settlement of some sort, meaning they lived
12 there.

13 Q. And then perhaps a more general
14 one, "present"? Presence can be permanent,
15 temporary, intermittent, seasonal?

16 A. Yes, they can.

17 Q. And then you describe in-situ
18 development, and there's a meaning for "in situ"
19 for physical objects in the ground. That's an
20 established meaning in archeology, is that
21 correct?

22 A. Yes.

23 Q. But is there no set meaning for
24 the development of a culture or an ethnicity in
25 an area?

10:20:43 1 A. There's a general understanding
10:20:45 2 of the use of that term as it applies to the
10:20:52 3 particular -- the cultural evolution of
10:20:54 4 Iroquoians.

10:20:55 5 Q. Can you give that general
10:20:57 6 understanding of the term, please?

10:20:59 7 A. That they developed out of
10:21:00 8 preceding populations without the significant
10:21:03 9 intrusion of other people who would otherwise
10:21:10 10 displace the people who had been there.

10:21:13 11 Q. So it describes a cultural
10:21:16 12 development; the culture became the culture of
10:21:20 13 which it is known within that territory or area?

10:21:23 14 A. Out of preceding populations.

10:21:25 15 Q. So is it out of -- it's not out
10:21:28 16 of all preceding populations going back to the
10:21:30 17 beginning of time, is it? It's...

10:21:35 18 A. Well, if you can trace back the
10:21:39 19 presence of populations in a particular area
10:21:44 20 from 13,000 years ago to a particular period
10:21:48 21 then you can -- without the intrusion of
10:21:53 22 populations, then you could argue that a
10:21:55 23 population at any particular time developed in
10:21:58 24 situ.

10:22:00 25 That doesn't mean that people from

1 time-to-time may have visited the area; it
2 doesn't mean that ideas may have been
3 transmitted to these people; it doesn't mean
4 that they're involved in a broader network,
5 social network; it just means that there doesn't
6 appear to have been a population replacement
7 that occurred.

8 Q. And that depends on whether or
9 not you can determine if there was an intrusion
10 of population?

11 A. Generally, yes.

12 Q. Could we go to Exhibit 4251,
13 please? Exhibit 4251 is a chapter of a book.
14 You wrote the chapter and you were taken to this
15 yesterday. It's a chapter in the book "Georgian
16 Bay".

17 And could we go to page 9 of the PDF,
18 please? This contains a map referring to Ojibwe
19 and Odawa. And you explained that the reference
20 to Ojibwe was there because the map was prepared
21 for a public audience and not a scholarly
22 audience.

23 Now, if we go, please, to Exhibit
24 4258, which is Dr. Reimer's report, and to page
25 6 of that report and page 19 of the PDF. There

1 is a map here. And if you go to the bottom of
2 the map it's -- so this is described, figure 2.1
3 in Dr. Reimer's report, "Key to Protohistoric
4 Tribal Territories in the Great Lakes Regions"
5 from Trigger, ed. 1978 "Key to Tribal
6 Territories" in the "Handbook of North American
7 Indians" front piece.

8 So that is the front piece to
9 Trigger's -- or a book that Trigger edited
10 called "Handbook of North American Indians".
11 And you're familiar with that book?

12 A. Yes, I am.

13 Q. Is that a scholarly book or a --

14 A. Yes, it is.

15 Q. And you called Trigger Canada's
16 preeminent ethnohistorian and archeologist?

17 A. I have.

18 Q. And we have this map, which is
19 "Key to Tribal Territories". Could you go up,
20 please? No date range is given on this map. No
21 date range is given. It just says "Key to
22 Tribal Territories".

23 So you agree that in this map
24 Trigger -- in including this map Trigger Appears
25 To have felt comfortable enough to identify and

1 distinguish between the tribal territories of
2 the Odawa and the Ojibwe -- Ojibwa, sorry. Do
3 you agree?

4 A. I would make two comments.

5 Q. Yes.

6 A. That this was based on scholarly
7 input about 40 years ago. So he was -- he was
8 using the work of people who were -- his own
9 work in chapters that he had to do that. And it
10 is reflective of the protohistoric period.

11 Q. If you look there on the Michigan
12 Peninsula?

13 A. Yes.

14 Q. You have Potawatami?

15 A. Yes.

16 Q. And then to the south of them
17 Mascouten. The Mascouten, are they also known
18 as the Fire Nation?

19 A. Well, some archeologists refer to
20 the traditional enmity between the Odawa and the
21 Neutral with the Fire Nation, and they identify
22 them as the Mascouten.

23 Q. And another name is the
24 Assistaronon, is that --

25 A. I believe so.

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10:28:07 25

Q. Assistaronon.

A. It is in my report, yes.

Q. And the Mascouten were an Algonquian-speaking people?

A. Yes.

Q. Can we go in this same Exhibit 4258, to page 76 of the report and page 89 of the PDF, please? And to the bottom of the page. And see the footnote 292 quoting from Trigger "The Children of the Aataentsic", which you've described as a masterpiece. And then if we go up to the quote please:

"[...] Trigger agrees with Garrad's assessment of Champlain's visit to Petun country in 1616, arguing further that the Bruce Peninsula may have been parted of a 'no-man's-land' between the Cheveaux relevéz, Petun and Neutral who were at war with the western Fire Nation (Assistaronon) at the time."

Do you agree with Trigger on that point that the Bruce Peninsula may have been part of a no-man's-land?

A. I don't believe that given the

1 amount of archeological work that has been done
2 since this was written.

3 Q. Can we go to Exhibit 109, please?
4 And this is -- the document refers to Thwaites
5 and this translation of one of the Jesuit
6 Relations concerning the Feast of the Dead in
7 1641.

8 If we go to page 23 of the PDF, which
9 is page 225 of the original, please? And just
10 -- sorry, to page 223, I think, of the original.
11 The bottom there of this page 222 of the
12 original the author refers to meeting the group,
13 and I'm not going to describe them, but their
14 name starts with "P", and they were invited by
15 them to go to their own country which is -- they
16 were the inhabitants of Sault Ste. Marie, what
17 became Sault Ste. Marie. Do you recall that?

18 A. Yes.

19 Q. And then it says that they were
20 harbouring the Potawotami who had taken refuge
21 from a hostile nation, and that would be
22 Mascouten, is that right?

23 A. Potentially, yes.

24 Q. Do you think it might be someone
25 else at that time?

10:30:02 1 A. I'm not -- I think it probably is
10:30:04 2 the Mascouten.

10:30:10 3 Q. In your report at page 21 -- and
10:30:19 4 you don't need to turn to it, it's very brief --
10:30:22 5 you refer to Richard White's book, "The Middle
10:30:24 6 Ground", and you say that the book -- and this
10:30:27 7 is your quote:

10:30:29 8 "[...]Argues the Anishinaabek
10:30:30 9 only developed a collective sense of
10:30:32 10 identity post 1650."

10:30:37 11 And is this book "The Middle Ground"
10:30:39 12 well respected in the field of archeology?

10:30:43 13 A. Um, there's a number of issues
10:30:45 14 with the book; for example, the inclusion of the
10:30:50 15 Wendat as Algonquian peoples in the way that he
10:30:55 16 frames his research.

10:30:57 17 So like every source, I think people
10:30:59 18 use it carefully and cautiously.

10:31:07 19 Q. But to distinguish it from every
10:31:10 20 source that's a well-respected source,
10:31:13 21 notwithstanding that people use caution when
10:31:16 22 approaching it as they do any other source?

10:31:20 23 A. I would say people use the book,
10:31:20 24 but it's been -- it has had both positive and
10:31:23 25 negative reviews.

10:31:24 1 Q. More positive than negative?

10:31:26 2 A. I couldn't calculate that.

10:31:31 3 Q. Also in your report, and you were
10:31:33 4 taken to this yesterday by counsel for Canada,
10:31:35 5 it's page 27 of your report, you note Professor
10:31:39 6 Bohaker's Ph.D. dissertation and she, as you
10:31:50 7 say, cautions against focusing on dodemic
10:31:50 8 identity while disregarding names such as
10:31:54 9 "Odawa", "Chippewa" or "Ojibwe" merely because
10:31:58 10 those Latin names seem to be a generalization of
10:32:02 11 colonial administrators. And the quote from
10:32:05 12 Bohaker which you conclude is:

10:32:08 13 "European observers were
10:32:09 14 witnessing crucial distinctions even
10:32:11 15 if they struggled to explain what they
10:32:14 16 were seeing."

10:32:15 17 And it continues:

10:32:16 18 "As inconsistent as Europeans
10:32:17 19 were in their naming practices, they
10:32:21 20 were at least seeing distinctions
10:32:23 21 which had validity for Aboriginal
10:32:26 22 peoples themselves."

10:32:28 23 Do you agree with both of those
10:32:30 24 sentences in that extract from Bohaker?

10:32:40 25 A. So, first, in my report I took to

10:32:42 1 providing passages from any number of authors as
10:32:51 2 to the presence of people and the terms that
10:32:53 3 they used to refer to those people.

10:32:55 4 So where I agree, and I think I said
10:32:57 5 this yesterday, when Champlain uses the term
10:33:03 6 "Cheveaux relevéz" and I and others have equated
10:33:10 7 that with the Odawa, or the Ottawa, I think
10:33:15 8 that's a time when that term, as well the term
10:33:20 9 "Cheveaux relevéz", introduced by Champlain, can
10:33:26 10 be applied to a particular group.

10:33:28 11 So I see it as useful terms at times
10:33:33 12 and maybe not at other times, as I have
10:33:37 13 testified in-chief, et cetera.

10:33:40 14 Q. Well, Bohaker's point is that you
10:33:44 15 can't just dismiss --

10:33:45 16 THE COURT: Yes, Ms. Pelletier.

10:33:49 17 MS. PELLETIER: Thank you, Your
10:33:49 18 Honour. This was covered yesterday in
10:33:51 19 cross-examination by Canada. Mr. Ogden is
10:33:54 20 taking the witness to exact -- the exact same
10:33:57 21 section of his report and exact same cite as --
10:34:04 22 of Bohaker.

10:34:08 23 THE COURT: Mr. Ogden.

10:34:10 24 MR. OGDEN: Well, the question I had
10:34:11 25 for the witness was not asked by Canada, which

1 is, do you agree with these statements by
2 Bohaker?

3 He has not yet answered that question.
4 So I would like to continue to get an answer,
5 seek an answer from him.

6 THE COURT: Given that broad scope of
7 cross-examination, I am going to permit the
8 question.

9 MS. PELLETIER: Thank you, Your
10 Honour.

11 MR. OGDEN: Thank you, Your Honour.

12 BY MR. OGDEN:

13 Q. So, again, my question was not
14 whether or not these were useful at some times
15 and useful in others, but really whether you
16 agree -- well, it was, do you agree with Bohaker
17 that Europeans using these terms "Ojibwe" and
18 "Odawa" were seeing differences that those terms
19 reflect?

20 A. Their use of those terms at times
21 are differences that are useful.

22 Q. We've seen a lot of evidence of
23 Odawa sites and the lands that are defined in
24 the claim as the SONTL prior to the dispersal by
25 the Iroquois and the expulsion of the Iroquois.

1 Is there much evidence of Ojibwe
2 presence in those same lands prior to dispersal
3 by the Iroquois?

4 A. Well, I think I've been quite
5 clear in my report and in the testimony I've
6 given that the sites that are in that area I
7 consider to be related to the Cheveaux relevéz
8 and, therefore, the Odawa.

9 There are lots of sites obviously that
10 predate the historic period that I believe are
11 sites of the ancestors of the Odawa.

12 Q. It might be helpful now to turn
13 to page 21 of your 2013 report, please, which is
14 Exhibit 4239. The bottom paragraph is what I'm
15 looking at.

16 And you refer to the Anishinaabek
17 Feast of the Dead, although in your footnote
18 there you call it an "Algonquian Feast". But
19 you say in the body of your report, and I'm just
20 going to read this first sentence there:

21 "An examination of an
22 Anishinaabeg Feast of the Dead in the
23 17th century illustrates how a sense
24 of collective identity among these
25 groups was present before and

1 persevered after 1650."

2 And then just on page 28 of your
3 report you tie this together. Can you turn to
4 page -- if you would like to turn to page 28?
5 It's up to you.

6 A. Oh, I thought it was --

7 Q. No -- well, there it is. Down to
8 the bottom of that second paragraph, the last
9 sentence:

10 "It is important to note that
11 this sense of a people existed before
12 the dispersal period as reflected in
13 the ceremonial practices at the Feasts
14 of the Dead."

15 So I'm going to ask you about the
16 Feast of the Dead that you refer to. Just to
17 clarify, back on page 21, please, the second
18 sentence there you say:

19 "Jesuit Fathers Claude Pijart and
20 Charles Raymbault attended a feast in
21 1641 and provided a detailed account."

22 And you cite Thwaites and Hickerson,
23 although also on the next page you cite Bohaker.

24 I'd like to start with Hickerson,
25 which is document S0792, Hickerson, "The Feast

1 of the Dead", a chapter or article -- or just
2 Hickerson, "Feast of the Dead".

3 Your Honour, I would like to make this
4 the next exhibit, please.

5 THE COURT: Mr. Registrar.

6 THE REGISTRAR: Exhibit Number 4258.

7 EXHIBIT NO. 4258: Document entitled

8 "Feast of the Dead", authored by H.

9 Hickerson; Document S0792.

10 BY MR. OGDEN:

11 Q. Thank you. And then on page 88
12 of this original and page 8 of the PDF, the
13 second paragraph there, the second sentence:

14 "The Jesuit missionary, Jérôme
15 Lalemant, described a ceremony he
16 observed at Georgian Bay [...]"

17 And then there is also a reference
18 there to the Jesuit Relations, which we'll see
19 on pages 209 to 223, which are the pages from
20 Thwaites -- or included in Thwaites.

21 And then page 89, the next page, the
22 third paragraph there starting:

23 "Of the four accounts of the
24 Feast of the Dead, the one by Lalemant
25 in 1641 is the most detailed [...]"

10:40:12 1 And then he continues, Hickerson
10:40:13 2 continues:
10:40:14 3 "I will present Lalemant's
10:40:17 4 account in detail[...]"
10:40:20 5 And just for the sake of clarity, you
10:40:21 6 said it was Jérôme Lalemant and not Pijart and
10:40:24 7 Raymbault who provided the account? Or before
10:40:27 8 you answer, if you'd like we can go to Thwaites.
10:40:32 9 A. Well, actually I can answer.
10:40:34 10 Q. You can?
10:40:36 11 A. Yes.
10:40:37 12 Q. Yes. Thank you.
10:40:37 13 A. Lalemant was the superior. The
10:40:38 14 two priests are the ones who actually attended
10:40:41 15 and who reported to Lalemant and Lalemant made
10:40:45 16 the report. So I believe it actually was the
10:40:47 17 two priests that attended this.
10:41:00 18 Q. Well, I'm not asking if they
10:41:00 19 attended. I agree that they attended. Did they
10:41:02 20 provide the detailed account?
10:41:04 21 A. I provide -- I suggest that or I
10:41:06 22 indicate that they provided the details of the
10:41:08 23 feast to Lalemant.
10:41:10 24 Q. Okay. Thank you.
10:41:15 25 So still in Hickerson, Exhibit 4258,

10:41:20 1 page 81 of the original, 1 of the PDF, the first
10:41:27 2 paragraph in the middle of it starting with the
10:41:29 3 words "An enrichment". I'm going to read out
10:41:35 4 and then I'm going to have a question after
10:41:36 5 another quote:

10:41:43 6 "An enrichment in material
10:41:45 7 culture and the development of
10:41:47 8 external relations stemming from the
10:41:49 9 trade formed the basis for political
10:41:50 10 and ceremonial developments quite
10:41:53 11 exceptional in terms of the later
10:41:55 12 history of those Algonkians."

10:41:59 13 And then the second paragraph:

10:42:03 14 "The Feast of the Dead had a
10:42:04 15 brief career in the Upper Great Lakes
10:42:07 16 region."

10:42:07 17 And then page 87, PDF page 7, the last
10:42:17 18 paragraph there in the middle:

10:42:20 19 "The only Algonkians who, so far
10:42:23 20 as we know, ever celebrated the Feast
10:42:26 21 of the Dead were some of those who had
10:42:28 22 direct contact with the Huron during
10:42:30 23 the first half of the 17th century."

10:42:33 24 And do you agree that the point
10:42:35 25 Hickerson is making here is that the Feast of

10:42:37 1 the Dead practiced by Algonquians was a response
10:42:42 2 to particular economic conditions that existed
10:42:45 3 in a particular place for a short period of
10:42:48 4 time?

10:42:49 5 A. I'm not sure I agree with that.

10:42:51 6 Q. I'm sorry, do you agree that
10:42:53 7 that's the point that Hickerson is making?

10:42:57 8 A. I do. That's the point he's
10:42:59 9 making.

10:43:15 10 Q. Now, there are other Feasts of
10:43:16 11 the Dead, to be clear, that occurred later in
10:43:19 12 the 17th century, two others, I think, that are
10:43:23 13 recorded, is that correct?

10:43:25 14 A. They're outlined in my report.

10:43:35 15 Q. If we go then to your report --
10:43:35 16 back to your report on page 22, and at the top
10:43:43 17 of it you say or you describe it as the feast
10:43:54 18 held at a place:

10:43:54 19 "[...]distant about twenty
10:43:54 20 leagues from the country of the Hurons
10:43:55 21 at the beginning of September and 'all
10:43:58 22 the confederated Nations' were
10:44:00 23 invited."

10:44:07 24 So if we go to Exhibit 109, please,
10:44:12 25 which is Thwaites, and to page 209 of the

1 original, which is PDF page 6. And in the last
2 paragraph we have this quote:

3 "The day was appointed, at the
4 beginning of September for all the
5 confederated Nations, who were invited
6 thereto by Envoys expressly sent."

7 And this is the Nipissings, who are
8 described as the Nipissiriniens in this record,
9 who were doing the inviting, isn't it?

10 A. It seems so.

11 Q. And the Hurons were among those
12 invited to attend?

13 A. Yes.

14 Q. So PDF page 18, page 221 of the
15 original:

16 "Afterward, two Meetings were
17 held; one consisted of the Algonquins
18 who had been invited to this
19 Solemnity, to whom various presents
20 were given according to the extent of
21 the Alliance that existed between the
22 Nipissiriniens and them."

23 Is the Relations there referring to
24 the Algonquians in the general sense or the
25 community directly next to the Nipissings? And

10:45:47 1 the reason I ask, just for -- to further the
10:45:52 2 question, is because it speaks about the extent
10:45:54 3 of the alliance that existed, which suggests a
10:45:59 4 variation between the extent of alliance between
10:46:01 5 the Nipissings and various Algonquians.

10:46:06 6 A. There's another place in this
10:46:08 7 passage where it speaks of the Algonquian
10:46:10 8 Nations who speak a different language from the
10:46:10 9 Iroquoians, and that I cite in my report. I
10:46:17 10 think what was being said here was that all of
10:46:19 11 the people who spoke Algonquin were treated
10:46:22 12 separately than those who spoke Iroquoian.

10:46:40 13 Q. Right, but that's in your report,
10:46:40 14 and we'll get to that.

10:46:42 15 The Potawatami did not attend, did
10:46:44 16 they?

10:46:45 17 A. I don't know.

10:46:45 18 Q. Well, if we go down further to
10:46:47 19 page 225, we looked at this briefly earlier.
10:46:51 20 This is page 23 of the PDF. And the priests
10:46:59 21 were invited to go to Sault Ste. Marie by the
10:47:02 22 inhabitants there. The Algonquian, a nation of
10:47:08 23 the Algonquin language, inhabitants of the
10:47:11 24 Sault, and then it says:

10:47:16 25 "Especially as we learned that a

10:47:17 1 more remote nation, whom they called
10:47:17 2 'Potawotami', had abandoned their own
10:47:21 3 country."
10:47:22 4 This suggests that the Potawotami were
10:47:25 5 not actually at the feast, doesn't it?
10:48:00 6 A. I'm not sure what that suggests
10:48:02 7 about the presence of Potawotami at the event.
10:48:05 8 Q. Well, what the priest is saying
10:48:07 9 is they promised to visit Sault Ste. Marie
10:48:09 10 because they -- and the reason they wanted to go
10:48:11 11 is because there they might be able to meet a
10:48:13 12 more remote nation that was taking refuge with
10:48:17 13 the inhabitants of the Sault.
10:48:22 14 So if they were at the feast, they
10:48:23 15 would have met them already, wouldn't they?
10:48:27 16 A. Can't be sure of that.
10:48:31 17 Q. No? You can't be sure whether
10:48:32 18 the Potawotami were invited either, I take it
10:48:35 19 then?
10:48:37 20 A. Agree.
10:48:41 21 Q. The Mascouten probably were not
10:48:42 22 invited?
10:48:49 23 A. I would doubt it.
10:48:50 24 Q. So it's clear that not all
10:48:52 25 Algonquian-speaking peoples were invited then?

10:48:55 1 A. Correct.

10:48:59 2 Q. If we go back up to page 221,
10:49:00 3 please? This is the fourth paragraph:

10:49:09 4 "The second Assembly was that of
10:49:11 5 the Huron Nations, at which the
10:49:13 6 Nipissiriniens gave us the highest
10:49:17 7 Seat, the first titles of honour, and
10:49:20 8 marks of affection above all their
10:49:23 9 Confederates. Here new presents were
10:49:25 10 given, and so lavishly that not a
10:49:28 11 single Captain withdrew empty-handed."

10:49:30 12 So the "us", "the Nipissiriniens gave
10:49:35 13 us the highest Seat", this is referring to the
10:49:39 14 Jesuit priests, isn't it?

10:49:43 15 A. I believe so.

10:49:44 16 Q. And the Nipissiriniens gave the
10:49:46 17 priests the higher seats than the Hurons, is
10:49:48 18 that what it's saying?

10:49:49 19 A. It appears that he's saying that.

10:49:49 20 Q. And then the reference to all the
10:49:49 21 Confederated Nations, above all the Confederates
10:49:49 22 that the Jesuits got a higher seat above all the
10:49:49 23 Confederates of the Nipissiriniens, that's what
10:49:49 24 it's saying, isn't it?

10:50:17 25 A. I'm not sure I understand the

1 question. I mean --

2 Q. Okay. Well, we'll read the
3 sentence again:

4 "The second Assembly was that of
5 the Huron Nations, at which the
6 Nipissiriniens gave us the highest
7 Seat, the first titles of honour, and
8 marks of affection above all their
9 Confederates."

10 So we agree that the Nipissings gave
11 the priests a higher seat than that of the Huron
12 Nations, which is referred to in the sentence.

13 And it says:

14 "And marks of affection above all
15 their[...]"

16 A. I would agree that's implied
17 here.

18 Q. So back to page 209, please.
19 Down to the sentence:

20 "The day was appointed at the
21 beginning of September for all the
22 Confederated Nations who were invited
23 thereto by Envoys and expressly sent."

24 In this document we know that the
25 Hurons were sent and that other passages of

1 Confederates refers to Hurons. This passage
2 referring to "all the Confederated Nations" is
3 referring to nations confederated with the
4 Nipissings, including the Hurons, isn't it?
5 Likely?

6 A. It could be that or nations who
7 participate in confederacies, like the
8 Tionontaté as well as the Wendat. Another way
9 to read it.

10 But I do believe that we're talking
11 here about people that the Nipissings have
12 friendly relationships with.

13 Q. It's not referring to all
14 Algonquian-speaking Nations?

15 A. Not all Nations.

16 Q. Sorry, not all
17 Algonquian-speaking Nations?

18 A. I agree.

19 Q. And on page 22 of your report, in
20 this paragraph you refer to Bohaker and have a
21 quote from her where she says, if we go down in
22 the middle there:

23 "According to Bohaker, the
24 elaborate nature of the multi-day
25 ceremony, with its feasting, mourning,

10:52:37 1 games, and massive gift exchange 'is
10:52:39 2 illustrative of community
10:52:40 3 cohesiveness'."

10:52:43 4 This is a quote from Bohaker at the
10:52:45 5 end. Now, the Hurons gave gifts to the
10:52:50 6 Nipissings, didn't they?

10:52:52 7 A. I believe so.

10:52:53 8 Q. And the Nipissings gave gifts to
10:52:54 9 the Hurons?

10:52:56 10 A. I believe so.

10:52:57 11 Q. So the community that's evident
10:53:02 12 in the gift exchange included the Hurons?

10:53:07 13 A. Yes.

10:53:07 14 Q. And you noted that the feast was
10:53:15 15 prepared and that Algonquian Nations were served
10:53:17 16 apart, as the language is entirely different
10:53:20 17 from the Huron. And then you go on to state on
10:53:24 18 page 22, the last sentence there, I'll read it
10:53:26 19 out:

10:53:28 20 "This separateness, as well as
10:53:30 21 differences in the Feast of the Dead
10:53:32 22 between the Huron and the Algonquians,
10:53:35 23 are clearly indicative of a collective
10:53:36 24 sense of identity among the
10:53:38 25 Anishinaabeg, as a people distinct

1 from Iroquoian-speakers, prior to the
2 1650 destruction of Huronia."

3 So firstly, to the extent there were
4 differences arising from an Algonquin Feast of
5 the Dead -- Algonquian Feast of the Dead and a
6 Huron Feast of the Dead, the Algonquian Feast of
7 the Dead only occurred because of trade
8 relations with the Hurons, do you agree with
9 that? Perhaps my question was not clear enough.

10 A. That's a hypothesis. I'm not
11 sure I agree with it.

12 Q. Do you agree that a more
13 noticeable difference arising from the Algonquin
14 Feast of the Dead is between those Anishinaabek
15 communities who practice the Feast of the Dead
16 and those who did not practice the Feast of the
17 Dead?

18 A. I agree that the collective sense
19 of identity among the Anishinaabek that's being
20 referred to here is among the various
21 Anishinaabek Nations that were at the event.

22 And it should be noted that the more
23 significant difference between the point I was
24 really making and some other point at some other
25 place between the Algonquian and the Iroquoian

10:55:14 1 aspect of the Feast of the Dead is the actual
10:55:16 2 burial mode.

10:55:31 3 Q. So if we're relying on this
10:55:34 4 record to the question of identity and
10:55:39 5 distinction between people, to the extent that
10:55:44 6 the Algonquians at the Feast of the Dead
10:55:50 7 recorded here considered themselves distinct
10:55:53 8 from the Hurons, it was limited to language and
10:56:00 9 minor differences in the feasts, we're relying
10:56:05 10 on this record. If there's a -- an
10:56:08 11 understanding of difference by those Algonquian
10:56:13 12 Nations there, that understanding is limited to
10:56:15 13 language and differences in the feast?

10:56:20 14 A. Well, I believe
10:56:22 15 Algonquian-speaking Nations would have seen them
10:56:26 16 as quite separate from Iroquoian-speaking
10:56:30 17 Nations with whom they were dealing. They were
10:56:32 18 structured quite differently obviously.

10:56:34 19 Q. As far as what we can take from
10:56:35 20 this record though?

10:56:36 21 A. From this particular account what
10:56:39 22 we can see is that the Algonquian Nations that
10:56:41 23 were there considered themselves together
10:56:45 24 separately from the Huron, and possibly
10:56:48 25 Tionontaté if they were there.

1 Q. And we're also seeing there a
2 reference to an Algonquian-speaking community at
3 war that did not attend the feast that was at
4 war with another Algonquian-speaking community.

5 So we can look at this document and
6 indicate that there was a collective sense of
7 identity amongst all Algonquian-speaking
8 Nations. But not -- there were limits, perhaps,
9 to the sense of identity, collective sense of
10 identity amongst Algonquian-speaking Nations?

11 A. I would agree that what is being
12 referred to here are the Algonquian Nations that
13 attended this event, and they considered
14 themselves separate from the Iroquoian Nations
15 that attended the event.

16 Q. Yesterday you said that the
17 Tionontaté came into their historic locale in
18 the late 16th century, and we know that because
19 there are no predecessor sites for the
20 Tionontaté in that locale, do you recall that?

21 A. Yes.

22 Q. Thank you. And you said that the
23 Tionontaté experience of entering the new area
24 was not dissimilar to the experience of the
25 ancestral Huron entering the area that became --

1 well, the areas that are north of Lake Ontario
2 and into historic Huronia?

3 A. Yes.

4 Q. And you said and your report says
5 that the experience of the ancestral Huron was
6 indicated by the Wellington site that you
7 studied?

8 A. Yes.

9 Q. And you said you argued that the
10 Iroquoian people from the North Shore of Lake
11 Ontario had to negotiate their way into
12 territory likely seasonally used by Algonquian
13 people?

14 A. Yes.

15 Q. And you characterized that as an
16 extreme likelihood.

17 A. Yes.

18 Q. Now, am I correct that your
19 argument is based at least in part on an
20 assumption that if there had been no
21 negotiation, not talking about results of
22 negotiation, but if there'd no negotiation, the
23 Iroquoian people would not have come?

24 A. At the Wellington site --

25 Q. Do you understand my question?

10:59:59 1 A. I do. I was going to answer it.

11:00:00 2 Q. Sorry, I'll allow you to answer
11:00:02 3 it, but -- and to continue with what you were
11:00:05 4 going to say -- well, I'll let you answer and
11:00:07 5 I'll come back to it. Thank you.

11:00:10 6 A. At the Wellington site we found
11:00:14 7 evidence of food items, and particularly eel,
11:00:26 8 that people from the North Shore of Lake Ontario
11:00:29 9 had brought with them at this site in southern
11:00:31 10 Simcoe County.

11:00:32 11 And I have argued elsewhere that
11:00:36 12 people along the North Shore who were beginning
11:00:41 13 to move into this area at the beginning of the
11:00:44 14 14th century or end of the 13th century had
11:00:51 15 likely already had relationships with central
11:00:55 16 Algonquians, I would guess the Nipissings and
11:00:58 17 the Odawa, and that that I've testified and
11:01:02 18 written about has to do with the need for hides.

11:01:06 19 And I think they were moving into an
11:01:09 20 area that they knew that it was seasonally used,
11:01:15 21 and I say "seasonally used" because there is no
11:01:18 22 evidence of more substantive occupations,
11:01:21 23 despite a fair amount of surveying in Simcoe
11:01:23 24 County, and we have just completed an
11:01:26 25 archeological management plan for Simcoe County

1 so I know the record pretty well.

2 The issue then is, I think this is a
3 place where people met. I think this is a place
4 where Algonquians met with the people who wanted
5 to move into the area. These are the very first
6 settlements.

7 Q. To my question then, which I'll
8 repeat, does your argument require assuming that
9 the Iroquoian people would not have come if
10 there hadn't been a negotiation? Because you're
11 saying there's an extreme likelihood that there
12 was a negotiation. So there's something in
13 their culture that suggests it was necessary.

14 Are you assuming that they ...

15 A. Of course implicit in that is
16 that you wouldn't go into an area that was
17 occupied by someone else even seasonally without
18 discussing it with them. Whether, you know --
19 and these are people with whom I believe they
20 already had relationships.

21 Q. Just returning to your report,
22 please, page 50 of your report. Page 49, sorry,
23 it's PDF page 50. And you draw the link between
24 your conclusions about negotiation at the
25 Wellington site -- this is at the bottom of the

11:03:06 1 page -- and with the ancestral Huron and the
11:03:10 2 Tionontaté. It starts there:

11:03:14 3 "I believe that a similar process
11:03:16 4 may have taken place in the late 16th
11:03:18 5 century when the ancestral Tionontaté
11:03:22 6 first moved into Anishinaabeg
11:03:23 7 territory. Like the Wendat, this
11:03:25 8 close, likely symbiotic relationship
11:03:28 9 continued well into the 17th century
11:03:31 10 as evidenced in early European
11:03:33 11 documents. Thus, it is also possible
11:03:36 12 that the Blue Mountain site (BdHc-21)
11:03:43 13 as well as Site BdHc-22, and perhaps
11:03:49 14 others in the site cluster documented
11:03:51 15 by Fitzgerald, were places of
11:03:55 16 negotiation."

11:03:57 17 And you discuss the -- those two Blue
11:04:00 18 Mountain sites on pages 46 and 47 of your
11:04:04 19 report. Now, if Fitzgerald concluded -- sorry,
11:04:08 20 I'll give you a moment -- well, it would be
11:04:13 21 better to go to the hard copy, I think.

11:04:55 22 A. Yes.

11:04:55 23 Q. So Fitzgerald concluded that the
11:04:57 24 inhabitants of both the Blue Mountain sites
11:05:02 25 referred to were ancestors of the 17th century

11:05:05 1 Odawa, didn't he?

11:05:08 2 A. He did.

11:05:12 3 Q. The Tionontaté, they are
11:05:14 4 understood to be six villages, is that right?
11:05:17 5 Three pairs?

11:05:18 6 A. Well, yeah, there were a number
11:05:20 7 of villages that Charles Garrad has tried to
11:05:25 8 organize into paired villages, but there are
11:05:29 9 other ones as well.

11:05:31 10 Q. Ending in Plater-Martin and
11:05:35 11 Plater-Fleming?

11:05:36 12 A. That's correct.

11:05:37 13 Q. As a side note, Plater-Fleming is
11:05:41 14 named after the family that owned the site
11:05:43 15 originally, one of whose members was
11:05:45 16 Sir Sandford Fleming?

11:05:48 17 A. That is correct.

11:05:50 18 Q. So we have the pairings of larger
11:05:52 19 and smaller villages, there is a larger Plater
11:05:56 20 village and a smaller Plater village, in your
11:06:00 21 opinion and Garrad's opinion. The smaller one
11:06:02 22 was Algonquian, likely Odawa at the site, is
11:06:06 23 that correct?

11:06:07 24 A. Garrad's opinion is that
11:06:09 25 Plater-Fleming is likely an Odawa village.

11:06:12 1 There is Odawa presence reflected on the
11:06:16 2 Plater-Martin site as well by the bear jaw tools
11:06:21 3 that I was speaking about, so much so that the
11:06:24 4 Plater-Fleming site by the excavator was renamed
11:06:27 5 "Dog", I think I mentioned that in my report --

11:06:30 6 Q. You did, yes.

11:06:31 7 A. -- because of the presence of so
11:06:33 8 many burials of dogs.

11:06:35 9 Q. But that's your view as well that
11:06:37 10 the Plater-Fleming site --

11:06:38 11 A. My view is that it is likely an
11:06:41 12 Odawa village, yes.

11:06:42 13 Q. And the Tionontaté were an
11:06:44 14 agricultural people?

11:06:45 15 A. They were.

11:06:46 16 Q. You see on that point they would
11:06:47 17 still have hunted and fished though in their
11:06:50 18 locale, wouldn't they?

11:06:50 19 A. Oh, absolutely.

11:06:52 20 Q. To what distance from the
11:06:54 21 village?

11:06:55 22 A. Well, hunting can take people
11:07:00 23 quite a distance depending on the availability
11:07:02 24 of animals in their immediate vicinity and the
11:07:05 25 length of time that they've been in a particular

1 locale. So deer populations, you have to be
2 careful not to deplete the deer population
3 dramatically or you have to go much farther to
4 find it.

5 In terms of fishing, of course they're
6 in a very advantageous area for fishing.

7 Q. And does that depend on how much
8 they have to carry with them when they're
9 hunting?

10 A. That's part of it. But of course
11 what you carry back from a hunt depends on
12 dressing the animal in the field and bringing
13 back what you want to the site.

14 Q. How far do you think they would
15 go?

16 A. Well, we know the Wendat went
17 considerable distances to hunt because their
18 territory did not have an abundance of deer in
19 the area.

20 Q. And how far did they go?

21 A. They went into the Trent Valley
22 and at times it appears into the North Shore
23 area.

24 Q. And to the smaller village in
25 these pairs, for example the Plater-Fleming

11:08:14 1 village was a site -- is an Odawa site, and the
11:08:18 2 Odawa would trade with the Tionontaté on the
11:08:22 3 larger site, is that what happened?

11:08:24 4 A. Well, I believe that they were
11:08:29 5 using those villages contemporaneously, so, yes,
11:08:33 6 there was interaction between the two
11:08:35 7 communities, and, yes, there are artifacts that
11:08:46 8 reflect that interaction.

11:08:49 9 Q. And both communities would plant
11:08:51 10 corn around the sites?

11:08:54 11 A. I think that's a good question.
11:08:56 12 I believe it is likely that the Odawa, based on
11:08:58 13 the descriptions from the period, did grow corn
11:09:03 14 around the site, and they were practicing a
11:09:15 15 horticultural style of life which involved,
11:09:21 16 likely, growing corn, not just trading for it,
11:09:27 17 is what I'm saying.

11:09:28 18 Q. And they would grow the corn
11:09:32 19 until they couldn't grow it anymore because the
11:09:35 20 fields were worn out?

11:09:37 21 A. Well, given the population of the
11:09:40 22 site if we use, for example, the population
11:09:45 23 estimated by Rankin for Nodwell of 250 people,
11:09:49 24 that's -- you could live there for quite a
11:09:53 25 period of time.

11:09:55 1 There's an archeologist named Gary
11:09:59 2 Warrick who argues that population has a lot to
11:10:02 3 do with the time in which you can stay in one
11:10:04 4 place. So this 10 to 12 years for a village
11:10:09 5 certainly would be true if you had 1500 people
11:10:12 6 living in the village. If you have 250 that may
11:10:14 7 not be the case. You could be there much
11:10:16 8 longer, not that they were because as we know
11:10:19 9 they were dispersed in 1650.

11:10:21 10 Q. And then at the end of the 10 to
11:10:23 11 12 years they would move on to another site?

11:10:26 12 A. Sure, the historic pattern for
11:10:27 13 the Wendat was to move, according to the
11:10:31 14 historic record, every 10 to 15 years.

11:10:34 15 Q. and why north? Why not south?
11:10:37 16 There are lots of areas in the south.

11:10:39 17 A. Well, within Wendake, I think
11:10:42 18 that direction within the Nation's territory.
11:10:45 19 So if you were Bear you would stay within your
11:10:47 20 defined territory.

11:10:51 21 The issue about moving north was
11:10:53 22 coming off the North Shore, so that's the
11:10:55 23 ancestral Wendat who are moving up the drainages
11:11:00 24 towards the Oak Ridges Moraine. And once they
11:11:02 25 hit that Moraine, that's the point at which it

11:11:04 1 seems the move to Wendake occurred.

11:11:09 2 Q. And the Tionontaté, same reason
11:11:10 3 moving north? Because it's away from Lake
11:11:14 4 Ontario?

11:11:14 5 A. Well, to be clear, we're not
11:11:16 6 absolutely certain where the villages are that
11:11:21 7 formed the Tionontaté, where that population
11:11:25 8 came from. I believe it could have been the
11:11:30 9 Credit River. Others have argued it could have
11:11:34 10 been a community on the Humber River. Others
11:11:37 11 have argued that they may have already been in
11:11:40 12 the southern Barrie area, having migrated into
11:11:53 13 that area and then moved over to the Tionontaté
11:11:56 14 to migrate into there.

11:11:58 15 Q. The Wellington site, your report
11:12:10 16 on it is contained in document -- or is document
11:12:14 17 S0134, which I would like to refer to and to
11:12:17 18 make an exhibit, please, Your Honour.

11:12:31 19 And I think it should be described as
11:12:34 20 ASI -- it's an ASI report, isn't it? Not from
11:12:37 21 you personally?

11:12:38 22 A. That's correct.

11:12:39 23 Q. ASI report on the archeology of
11:12:41 24 the Wellington site.

11:12:46 25 THE COURT: Mr. Registrar.

11:12:47 1 THE REGISTRAR: Exhibit Number 4259.

11:12:51 2 EXHIBIT NO. 4259: ASI report on the

11:12:51 3 archeology of the Wellington site;

11:12:51 4 Document S0134.

11:12:51 5 BY MR. OGDEN:

11:12:51 6 Q. Thank you.

11:12:53 7 A. Could you remind me of the date

11:12:54 8 of this report?

11:12:56 9 Q. Yes, if we scroll down, August

11:13:01 10 2005.

11:13:08 11 And you didn't write all of this

11:13:09 12 report personally, did you? That's not how it

11:13:15 13 works?

11:13:15 14 A. No.

11:13:15 15 Q. You reviewed all of the report,

11:13:17 16 but in terms of writing the text?

11:13:19 17 A. Could you scroll down --

11:13:21 18 Q. We can scroll down, certainly.

11:13:23 19 A. -- to the...

11:13:29 20 Q. There's you as project director?

11:13:31 21 A. I was the project director.

11:13:32 22 Q. Okay.

11:13:32 23 A. So is there a report preparation?

11:13:35 24 There you go.

11:13:36 25 So there are a number of people

1 involved in preparing the report.

2 Q. And if we go to page 117 of this
3 report, which is PDF page 125, this is Chapter
4 7, which is the summary and conclusions written
5 by you and Robert Pihl -- Pill or Pihl?

6 A. Pihl.

7 Q. Pihl. "Summary and Conclusions".
8 And if we go to the next page, page 118, there's
9 a paragraph there, the third paragraph, your
10 conclusion. It says that you're talking about
11 that there was a site and a series of
12 negotiations.

13 A. Sorry, I don't have it in front
14 of me here.

15 Q. Oh, you don't?

16 A. Oh, could we just scroll up a
17 bit?

18 Q. Yes.

19 A. Yes.

20 (Witness reading the document.)

21 Okay.

22 Q. So the second paragraph, the end
23 of it it says:

24 "In fact, it is possible that the
25 site was used during a series of

1 negotiations between a party from a
2 north shore of Lake Ontario Iroquoian
3 community intent on migrating into the
4 south Barrie region and
5 representatives of the local resident
6 Algonquian population."

7 Next paragraph:

8 "The evidence for such a scenario
9 is obviously largely circumstantial."

10 I take it since that point that your
11 view on this scenario has strengthened from "it
12 is possible" to "it is thought" and "extremely
13 likely"? Is it something else you're relying
14 on? Are there other archeological reports that
15 you're relying on for this conclusion?

16 A. No, since that time we have
17 discovered through radiocarbon analysis and
18 Bayesian modelling of those that Wellington
19 predates Barrie. So Wellington is the
20 pioneering community, it is the earliest
21 community in that area. That strengthens that
22 argument.

23 This was picked up and used by other
24 archeologists; for example, Garrad and Fox on
25 their -- on their article about Algonquians

1 interacting with Wendat. They believe that
2 that's probably what's happening here.

3 So this is a position that I think is
4 more -- certainly more likely now than I did in
5 2003 or '04 or whenever this document was being
6 prepared.

7 Q. What I want to do is go through
8 the evidence that you cite in this summary and
9 conclusion and ask you some questions about
10 that.

11 And I'm not going to go through all of
12 this. There are about two and a half, maybe
13 three pages in this summary that refer to
14 particular sentences so that they are -- so that
15 we're clear that I'm accurately summarizing
16 those sentences later.

17 So you'll see as we go, and the first
18 I'll start with then is page 17 of the original.
19 The first paragraph there, the bottom of that
20 first paragraph, we have there:

21 "The second structure, House 2,
22 with its more randomized feature
23 distribution, lack of bunks and
24 episodes of rebuilding or repair, does
25 not resemble a long-term Iroquoian

11:17:57 1 dwelling, but rather a structure
11:17:59 2 erected and then maintained to shelter
11:18:01 3 a series of reoccurring activities."
11:18:04 4 So your point there is that the
11:18:06 5 shelter indicates that it's not a long-term
11:18:10 6 occupation but recurring -- reoccurring
11:18:13 7 activities, is that right?
11:18:14 8 A. That's what we were saying at
11:18:15 9 that time, yes.
11:18:16 10 Q. Okay. The next paragraph then,
11:18:21 11 the first sentence:
11:18:22 12 "Given the recovery of over
11:18:24 13 12,000 artifacts, the majority from
11:18:26 14 the two midden deposits, however it is
11:18:30 15 clear that Wellington was occupied for
11:18:32 16 some time."
11:18:34 17 And then the bottom of that same
11:18:35 18 paragraph:
11:18:36 19 "It is also possible that the two
11:18:38 20 houses were occupied simultaneously by
11:18:42 21 two different groups."
11:18:44 22 And then the next page, describing
11:19:09 23 work by Sutton, the second-to-last sentence of
11:19:13 24 this paragraph:
11:19:14 25 "He makes a strong case that this

11:19:16 1 village is one of the earliest in the
11:19:17 2 Barrie area, which marks the vanguard
11:19:20 3 of Middle Iroquoian pioneers into the
11:19:23 4 region. We would argue that within
11:19:24 5 the southern cluster of sites, the
11:19:27 6 Wellington site might represent a
11:19:29 7 similar function."

11:19:31 8 And that's the point you were talking
11:19:32 9 about with the data testing, that this site was
11:19:35 10 the earliest one in the region, and you're
11:19:39 11 firmer on that view now?

11:19:41 12 A. Yes. Well, I'm firm on the view
11:19:43 13 that Wellington predates Barrie and was likely
11:19:45 14 -- it confirms the pioneering nature of that
11:19:48 15 site.

11:19:48 16 Q. Okay. So then on to page 118 and
11:19:55 17 the fourth paragraph starting "The evidence":

11:19:57 18 "The evidence for such a scenario
11:20:00 19 is obviously largely circumstantial."

11:20:07 20 At the end of that sentence there:

11:20:07 21 "[...] there is no clear evidence
11:20:08 22 that corn was grown around the
11:20:10 23 settlement."

11:20:12 24 Another one of your points is that
11:20:14 25 there's no corn grown around the settlement, so

11:20:16 1 it wasn't a --

11:20:17 2 A. Well, we don't have evidence of
11:20:19 3 corn.

11:20:19 4 Q. There's no evidence of it. Okay.

11:20:20 5 A. That corn was grown there.

11:20:21 6 Q. Okay. Starting the next
11:20:22 7 paragraph:

11:20:23 8 "Alternatively, there is clear
11:20:24 9 evidence for multiple, seasonal
11:20:25 10 [activities] of hunting and fishing,
11:20:30 11 although some food resources were
11:20:32 12 brought to the site from elsewhere."

11:20:34 13 And you refer to this?

11:20:35 14 A. Uhm-hmm.

11:20:36 15 Q. Different types of food, and one
11:20:38 16 you refer to in your report is the presence of
11:20:41 17 American eel, indicating a clear connection with
11:20:45 18 the North Shore of Lake Ontario. So that is
11:20:48 19 another one of the facts or evidence that you
11:20:49 20 rely on for this conclusion?

11:20:59 21 A. Uhm-hmm.

11:21:00 22 Q. The whole of the next paragraph:

11:21:04 23 "The settlement patterns of the
11:21:05 24 site, and in particular, the different
11:21:07 25 house structures and refuse disposal

11:21:10 1 patterns might indicate two different
11:21:10 2 groups using the site concomitantly or
11:21:10 3 separate occupations by the same group
11:21:10 4 with different economic pursuits. The
11:21:12 5 ceramic vessel mends between middens
11:21:14 6 suggests the former. If this were so,
11:21:17 7 there are also interesting differences
11:21:19 8 in the artifact assemblages and
11:21:21 9 settlement features between the two
11:21:23 10 structures, suggesting in turn two
11:21:25 11 distinct ethnic groups."

11:21:27 12 Next paragraph:

11:21:30 13 "There are, for example,
11:21:32 14 significant differences in the
11:21:33 15 frequencies of chert types between the
11:21:35 16 two house structures."

11:21:36 17 And then the next page, there's a
11:21:43 18 large section that I am not going to read out in
11:21:45 19 the paragraph starting, "The other major
11:21:48 20 difference [...]"

11:21:49 21 This is where you -- I think you
11:21:52 22 describe -- this is evidence that leads you to
11:21:54 23 think that one of the houses held an Algonquian
11:22:00 24 community, is that right?

11:22:00 25 A. That and the fact that there's so

11:22:02 1 much Fossil Hill chert in the cabin. So there's
11:22:05 2 other --

11:22:06 3 Q. Okay. And then there's a section
11:22:06 4 there, "These features currently [...]" So this
11:22:12 5 is on the left there, "These features."

11:22:14 6 And there's a big section there that
11:22:14 7 goes through to bottom of the paragraph, almost
11:22:17 8 to the bottom, Romanowski 1996. I think
11:22:23 9 that's -- that section is cut-and-pasted into
11:22:27 10 part of your report holus-bolus at one point on
11:22:42 11 page 21?

11:22:44 12 A. I use elements of that section in
11:22:45 13 a number of articles now, referring to this.

11:22:48 14 Q. Okay. And in the last paragraph:
11:22:50 15 "In conclusion, all of these data
11:22:52 16 suggests to us [...]"
11:22:54 17 This is all of the data we've
11:22:55 18 reviewed.

11:22:56 19 " [...] that the site may have
11:22:58 20 functioned as a place where
11:22:59 21 negotiations were held prior to the
11:23:01 22 migration of the entire Iroquoian
11:23:03 23 community from the north shore of Lake
11:23:04 24 Ontario."
11:23:05 25 I just want to summarize what I

1 think -- the evidence you've said is largely --
2 that is largely circumstantial in support for
3 the conclusion. It's not a long-term
4 occupation, but a shelter for reoccurring
5 activities; it was not occupied for a long time;
6 there were different house structures -- the
7 house structures were different and the refuse
8 disposal patterns were different, which suggests
9 two different groups occupying concurrently, one
10 Odawa, based on the burials; and it was the
11 earliest village in the area that -- the
12 "vanguard" was the expression; corn was not
13 grown around the settlement; there were multiple
14 seasonal episodes of hunting and fishing; and
15 food sources were brought from elsewhere, in
16 particular American eel from Lake Ontario.

17 Are there additional points that I've
18 missed?

19 A. There is the prevalence of
20 northern cherts in the cabin.

21 Q. So you say that the site was
22 occupied for a long time. If the parties had
23 been negotiating in-migration of the Iroquoians,
24 would that have taken longer than one or two
25 seasons maybe?

11:24:45 1 A. I have no idea. Enough to leave
11:24:47 2 12,000 artifacts.

11:24:57 3 Q. And the American eel that was
11:24:59 4 brought, that's native to Lake Ontario, is it?
11:25:04 5 Or it was found in Lake Ontario?

11:25:06 6 A. Yes, it's not in drainages
11:25:08 7 further north.

11:25:08 8 Q. So it's not in the Humber River
11:25:11 9 then, for instance?

11:25:11 10 A. Well, it might go into the Humber
11:25:13 11 River.

11:25:14 12 Q. Well, the Humber River is very
11:25:15 13 close to the site, isn't it?

11:25:17 14 A. It would not go that far.

11:25:18 15 Q. Okay. That was about 30, 35
11:25:24 16 kilometres from Lake Ontario, that site is?

11:25:30 17 A. Yes.

11:25:30 18 Q. Are there other examples though
11:25:31 19 where cultures bring a food from a distance to
11:25:36 20 share with another culture without the purpose
11:25:41 21 of that transportation being for negotiation of
11:25:45 22 migration?

11:25:47 23 A. I don't know that that foodstuff
11:25:49 24 was brought to share, or that foodstuff may have
11:25:52 25 been brought by the people to consume.

11:25:58 1 Q. Or if it was brought to share it
11:26:00 2 could have been as a gift, as one exchanges
11:26:06 3 food, exotic foods for people?

11:26:09 4 A. Well, eel wasn't considered that
11:26:11 5 exotic. It was well-known as a food resource in
11:26:13 6 the North Shore area. It doesn't appear on
11:26:16 7 other archeological sites in that general area.
11:26:20 8 So I -- I think it was brought by the people to
11:26:23 9 consume on the site or --

11:26:25 10 Q. Okay. So all these facts lead
11:26:37 11 you to conclude that the sites may have
11:26:43 12 functioned as a place where negotiations were
11:26:44 13 held prior to the migration of the entire
11:26:47 14 Iroquoian community for the North Shore of Lake
11:26:50 15 Ontario, or perhaps you feel stronger than that
11:26:54 16 now.

11:26:55 17 And you referred to the need for
11:27:00 18 residents of Huronia at the Mantle site, you
11:27:05 19 said yesterday, to have 7,000 hides a year,
11:27:09 20 which would have required them to trade with
11:27:12 21 Algonquian peoples outside of Huronia, is that
11:27:15 22 right?

11:27:17 23 A. Yes. The Mantle site is located
11:27:19 24 in the upper reaches of the Rouge, south of the
11:27:22 25 Oak Ridges Moraine. And, yes, they would have

1 required resources far beyond that available in
2 their local drainage in order to clothe the
3 population or to use or to acquire all the hides
4 they would have required annually.

5 We model that in the book "The Mantle
6 Site".

7 Q. And they would have traded for
8 those, because they got them by trade?

9 A. I believe so.

10 Q. It would have required a
11 substantial amount of trade?

12 A. I believe so. That's a site
13 occupied in the late 16th century, with a
14 population of roughly 1,800 people.

15 Q. What was the population of the
16 Iroquoian people who may have used the
17 Wellington site?

18 A. It's hard to know. There are --
19 if it's one longhouse, maybe there's a group of
20 people that come along, one family, maybe 50
21 people.

22 Q. Sorry, I don't mean what number
23 of people used the Wellington site from the
24 Iroquoian site. I mean the population that was
25 travelling there, because you said it wasn't

1 occupied permanently, it was temporary use on a
2 repeated basis.

3 If they were negotiating a move-in,
4 what was the population of the group that was
5 negotiating the move-in?

6 A. Sorry, I'm a bit confused. Are
7 you asking what the population is of the group
8 that left the North Shore to negotiate at
9 Wellington?

10 Q. Well, sorry, I misunderstood. My
11 understanding is that the site was used for
12 negotiations prior to the in-migration, is that
13 not what you're saying? You're saying that --

14 A. No, I am saying that.

15 Q. Okay. So they used the site
16 prior to moving. They were somewhere before
17 they moved. What was the population when they
18 were in that place before they moved, while they
19 were -- as you --

20 A. So, sorry, along the North Shore
21 from perhaps -- based on the social signaling
22 models that have been produced in the last five
23 years, it seems even from Halton County all the
24 way to the Trent Valley there are connections
25 into southern Wendake into this area and to

11:29:43 1 these communities that might suggest quite a
11:29:49 2 broad range of populations -- well, obviously
11:29:51 3 these people eventually abandon the area, but
11:29:55 4 they begin this at the end of the 13th century,
11:29:58 5 at the beginning of the 14th century.

11:30:03 6 Each of those communities if every
11:30:05 7 major drainage was occupied by one community at
11:30:08 8 a time, which is the sense of sequences of
11:30:10 9 villages within those drainages, you may have
11:30:14 10 had 5 to 10,000 people that were going to move
11:30:18 11 from that area alone into Wendake at -- over
11:30:24 12 time.

11:30:25 13 I -- the issue here is that it's not
11:30:27 14 one move all at one time. I think this was --
11:30:31 15 this was the beginning. This was the place
11:30:33 16 where a group went to negotiate the move into
11:30:37 17 that area.

11:30:39 18 And then what we see from the
11:30:40 19 archeological record is that occurred over a
11:30:43 20 number of centuries. And there are even sites
11:30:45 21 that we think were occupied halfway, so it's an
11:30:50 22 interesting pattern.

11:30:51 23 Q. So the population that would
11:30:52 24 have, in your proposition, been negotiating at
11:31:02 25 the Wellington site, how does that compare in

1 size to the population that resided at the
2 Mantle site?

3 A. Well, I'm saying the people who
4 were at the Mantle site in the late 1500s are --
5 is a sizable population of 1,800 people, but
6 that's literally 500 years after the events
7 we're talking about here because some people
8 stayed in the North Shore villages and completed
9 the evolution of those villages into more
10 permanent communities like Mantle over that
11 300-year period.

12 But the Wendat themselves tell us that
13 by 1450 there were two nations that had
14 confederated, that it was the beginning of the
15 confederacy. And those are the people that I
16 believe arrived there between, let's say, 1300
17 and 1450. So enough people moved up.

18 And what I was saying earlier is I
19 believe those people came from a variety of
20 locations, probably not the Trent Valley and
21 probably not the Rouge or necessarily the
22 Humber, but from other areas.

23 Q. Your Honour, I'm going to ask a
24 couple of questions just, if I may, to tie up
25 this section before the break.

11:32:24 1 So my question there is that there
11:32:28 2 would have been a population that had needs for
11:32:31 3 hides and it would have required to trade for
11:32:34 4 those hides?

11:32:36 5 A. At Mantle?

11:32:37 6 Q. No, the population that moved --

11:32:40 7 A. No.

11:32:40 8 Q. -- north through negotiation --

11:32:42 9 A. I don't believe so.

11:32:43 10 THE COURT: Sir, sir --

11:32:45 11 THE WITNESS: Okay. I'm sorry.

11:32:47 12 THE COURT: This is not a

11:32:48 13 conversation, all right? Please start again,
11:32:51 14 counsel.

11:32:52 15 BY MR. OGDEN:

11:32:52 16 Q. Thank you, Your Honour.

11:32:53 17 So the population that was negotiating
11:33:00 18 in-migration had a need for hides, yes or no,
11:33:08 19 outside of its community resources?

11:33:13 20 A. I don't think so.

11:33:20 21 Q. Did it trade outside of its --
11:33:22 22 did it trade with -- would it have traded with
11:33:25 23 Algonquian communities?

11:33:26 24 A. I'd have to look at the
11:33:27 25 particular community, but let me help you.

1 Q. No, no, no. Sorry, just give me
2 a second, please.

3 Well, let me just tie this up here.
4 We've gone through some facts. I'm going to
5 repeat them again briefly and then ask you a
6 question about them.

7 The facts that you've given that
8 indicate that this was a site of negotiation for
9 in-migration and the facts which you said are
10 largely circumstantial, that it was not a
11 long-term occupation but a shelter for
12 reoccurring activities; occupied for a long
13 time; different house structures and refuse
14 disposal patterns suggesting two different
15 groups occupying concurrently, one of which was
16 Algonquian; it was the earliest village in the
17 area, the vanguard; the prevalence of northern
18 cherts; corn not grown around the settlement;
19 multiple seasonal episodes of hunting and
20 fishing; and food sources brought from
21 elsewhere, although you've said that could have
22 just been for personal consumption by one of the
23 groups.

24 And you've used these to conclude that
25 the site may have functioned and now you say

1 extremely likely functioned as a place where
2 negotiations were held prior to the migration of
3 the entire Iroquoian community from the North
4 Shore of Lake Ontario.

5 And my question to you is, from these
6 facts isn't it also a plausible conclusion that
7 the site was a trading site and that any
8 negotiations that took place at the site were
9 for the purpose of trade between the Algonquian
10 and Iroquoian people and not for wholesale
11 migration of the Iroquoian community? Is that a
12 plausible explanation based on those facts?

13 A. No.

14 Q. And why do you say that?

15 A. The migration of Iroquoian
16 populations from the North Shore of Lake Ontario
17 has been known for 60 years. What we are now
18 doing is investigating the mechanisms by how
19 that happened. We know that these communities
20 along the North Shore, when they moved, were
21 relatively self-sufficient. I'm not arguing
22 that they did not possibly have communications
23 with northern Algonquians, but the requirement
24 for them to secure hides, et cetera, probably
25 didn't occur until the 15th century or 16th

1 century because of population size.

2 So, this site fits far more
3 reasonably, and I'm more certain today because
4 this report was written in the early 2000s
5 before, quite frankly, I fully appreciated -- I
6 knew they were affiliated with Algonquians,
7 these kinds of animal burials, but I had not
8 yet, for example, surveyed all of the Iroquoian
9 sites to see that they're absent on Iroquoian
10 sites.

11 And so I realized how strong the case
12 is for this to be a negotiating site with
13 Algonquians at the moment, just before people
14 start moving into that area.

15 Q. And so your answer is that you're
16 certain it was not a trading site?

17 A. I'm not certain that there could
18 have been some trade at the site, but at that
19 point in time I'm not sure what the trade would
20 have been about.

21 It is possible the Iroquoians brought
22 maize with them, but that's not why I think this
23 site was occupied.

24 Q. So you're certain that the
25 purpose of the site was not for trade of goods?

11:38:06 1 A. I want to be careful. I'm never
11:38:09 2 certain about anything in the archeological
11:38:10 3 record. I think it highly likely that this site
11:38:14 4 was occupied by a group of Iroquoian speakers
11:38:19 5 who came off the North Shore to negotiate with
11:38:23 6 Algonquians about moving into that area, which
11:38:27 7 then prompted the large and comprehensive
11:38:33 8 in-scale -- or in-migration of Iroquoians.

11:38:38 9 Q. Thank you.

11:38:51 10 THE COURT: All right. We'll take the
11:38:52 11 morning break. Sir, the restrictions I
11:38:55 12 discussed with you yesterday still apply.

11:38:59 13 THE WITNESS: Yes, Your Honour.

11:39:00 14 THE COURT: 20 minutes.

11:39:01 15 -- RECESSED AT 11:39 A.M. --
11:39:01 16 -- RESUMED AT 12:01 P.M. --

12:01:58 17 THE COURT: Please go ahead.

12:01:59 18 MR. OGDEN: Thank you.

12:02:01 19 BY MR. OGDEN:

12:02:02 20 Q. Dr. Williamson, yesterday you
12:02:03 21 said there were four reliable indicators of
12:02:06 22 Odawa sites. One was the burial of dogs,
12:02:13 23 juvenile dogs?

12:02:14 24 A. Yes.

12:02:15 25 Q. I think you said butchered in

1 particular ways and the same for other animals.

2 And you were referring to what are called

3 "bundled" burials aren't you?

4 A. Yes.

5 Q. So for dogs it's dogs that are
6 killed and cut up, and then the bones are buried
7 together in a bundle?

8 A. I think another important point
9 is that they're puppies.

10 Q. Okay. And then another way to
11 describe that is "disarticulated", is that
12 right?

13 A. That's true.

14 Q. And chert was another indicator
15 from the sources on the map at page 150 of your
16 report?

17 A. Yes.

18 Q. And red stone beads?

19 A. Yes.

20 Q. And a perforated bear mandible?

21 A. In the late period, yes.

22 Q. In the late period. Okay. So to
23 the Nodwell site, and we refer to document --
24 Exhibit 4249, which is the "Cult of Irocentrism"
25 by Fitzgerald and Johnston. And they, to your

12:03:35 1 knowledge, don't mention the red stone beads
12:03:38 2 were found at Nodwell, do they?

12:03:40 3 A. No.

12:03:44 4 Q. And yesterday you said that the
12:03:47 5 Nodwell site was hundreds of kilometres -- it
12:03:50 6 would have meant a migration by Iroquoian people
12:03:53 7 of hundreds of kilometres. And then in your
12:03:57 8 2013 report at page 44 you said it was more than
12:04:00 9 100 kilometres from the nearest Iroquoian
12:04:03 10 village.

12:04:08 11 It's about a hundred and -- well, less
12:04:12 12 than 150 kilometres, would you say, from Lake
12:04:15 13 Simcoe and the Wellington site?

12:04:23 14 A. It's probably about that, yeah.

12:04:29 15 Q. So Exhibit 4249 we'll refer to.
12:04:33 16 Also, I'd also like to turn up now document
12:04:38 17 S0585. This is one of the documents that you
12:05:05 18 refer to in your report, and it is the report on
12:05:06 19 the River Mouth Speaks site, is how I will
12:05:12 20 describe, it if I can make it the next exhibit,
12:05:15 21 please, Your Honour?

12:05:15 22 THE COURT: Sir, is there a date on
12:05:16 23 this document?

12:05:17 24 MR. OGDEN: Yes.

12:05:26 25 THE COURT: August 23, 2013.

12:05:28 1 MR. OGDEN: Thank you.

12:05:29 2 THE COURT: Mr. Registrar.

12:05:30 3 THE REGISTRAR: Exhibit Number 4260.

12:05:32 4 EXHIBIT NO. 4260: Report on the River

12:05:32 5 Mouth Speaks site; Document S0585.

12:05:40 6 BY MR. OGDEN:

12:05:40 7 Q. If we go to page 27, page 6 of

12:05:48 8 the PDF, the "Executive Summary".

12:05:54 9 THE COURT: Sorry, counsel --

12:05:56 10 MR. OGDEN: Oh, sorry, my microphone

12:05:56 11 --

12:05:56 12 THE COURT: No, it's not your

12:05:56 13 microphone. Which page are you going to?

12:05:58 14 You've just given two pages.

12:06:00 15 BY MR. OGDEN:

12:06:00 16 Q. Yes, I was not sure, Your Honour.

12:06:01 17 And I will determine that and then let you know.

12:06:18 18 So this is page 6 of the PDF, and

12:06:25 19 there is no page number on the original, Your

12:06:28 20 Honour, but it's page 6 of the PDF under the

12:06:30 21 "Executive summary".

12:06:32 22 And showing on the screen now is a

12:06:33 23 reference to Bill Fitzgerald as representative

12:06:39 24 of SON. And Dr. Williamson, Dr. Fitzgerald

12:06:49 25 wrote -- this is the report in which

1 Dr. Fitzgerald wrote about glass beads found at
2 the River Mouth Speaks site, is that right?

3 A. Yes, it is.

4 Q. We'll go to Exhibit 3966, please,
5 which is the transcript from TVO documentary on
6 the Bruce. And this is episode 1, "The Fishing
7 Chiefs". Page 4 we have here -- the caption
8 reads, "Dr. Bill Fitzgerald, Archeologist". It
9 continues and he says:

10 "People have been here
11 continuously for 12,000 years; longer
12 than the pyramids, longer than the
13 cave paintings in Europe. There is a
14 very long and continuous history
15 here."

16 And it continues. The narrator says:

17 "The Saugeen Ojibwe work closely
18 with archeologists like Dr. William
19 Fitzgerald to identify and protect
20 their cultural resources."

21 And then, Dr. Williamson, you
22 interacted, I guess, with Dr. Fitzgerald in
23 archeological assessments, haven't you?

24 A. Not as a part of our team; only
25 insofar as he may represent SON from

12:08:30 1 time-to-time.

12:08:30 2 Q. And he would represent them as
12:08:32 3 what you call an "archeological technical
12:08:35 4 advisor"?

12:08:36 5 A. Yes.

12:08:37 6 Q. Do you know whether he does that
12:08:39 7 regularly?

12:08:41 8 A. I think he does.

12:08:43 9 Q. Mostly for the SON?

12:08:44 10 A. I think so.

12:08:46 11 Q. And does he work only for the
12:08:47 12 SON?

12:08:48 13 A. I have no idea.

12:08:55 14 Q. In your supplementary report you
12:08:58 15 restate the view held by Fitzgerald and
12:09:02 16 Johnston, their view that Rankin had
12:09:04 17 misidentified the chert found at Nodwell.

12:09:09 18 You have not, yourself, examined that
12:09:11 19 chert, have you?

12:09:14 20 A. No.

12:09:18 21 Q. Yesterday you referred to Wright
12:09:20 22 who did the initial excavation, and his report
12:09:23 23 is Exhibit 4247. And you said that he was
12:09:35 24 uncertain about his conclusion that the site was
12:09:38 25 Iroquoian -- well, sorry, your words were that

1 Wright had discovered what, to him, looked like
2 an Iroquoian settlement pattern and what looked
3 to him to be Iroquoian ceramics. And you said
4 that Wright described his conclusion as
5 "speculative". Do you recall that?

6 A. Yes.

7 Q. So can we go to page 337 of
8 Exhibit 4247, please? PDF page 337, which is
9 306 of the original. And this is the document.
10 This is a page we went to yesterday. The second
11 paragraph there, which I'll read:

12 "The foregoing explanations for
13 the appearance and disappearance of
14 the Nodwell site population are
15 speculative and certainly cannot be
16 proven by archeological data. The
17 archeological evidence, however, does
18 clearly suggest that these people
19 appeared suddenly and disappeared in
20 an equally sudden fashion. The
21 speculative explanations for these
22 events are the only reasonable
23 suggestions that I can offer at this
24 time for such unusual behaviour."
25 And when you were talking about this

1 you were talking about -- specifically about
2 Wright's conclusions about the appearance and
3 disappearance at the Nodwell site of the
4 Iroquoian inhabitants as being speculative, is
5 that right?

6 A. Yes, in describing the site as an
7 Iroquoian site.

8 Q. Let's go up then, please, to page
9 305 of the original. And the second paragraph
10 there:

11 "An explanation for the sudden
12 disappearance of the Nodwell
13 population is as speculative as the
14 explanation for their sudden
15 appearance that some suggestive
16 evidence exists."

17 And then up again further to page 304,
18 the fifth line:

19 "To explain this sudden
20 appearance and disappearance a certain
21 amount of speculation is necessary."

22 And that's the speculation that he
23 summarizes on page 306. If we go up more, one
24 further page, please, this is to the beginning
25 of the section of his report, we have Chapter 5,

12:12:04 1 summary. So this is in his summary, and he
12:12:07 2 starts off:

12:12:07 3 "The Nodwell site was occupied by
12:12:09 4 the ancestors of the historic Huron
12:12:12 5 Petun in the mid-14th century (AD
12:12:15 6 1340, plus or minus 75). In
12:12:22 7 archeological terms the site belongs
12:12:23 8 to the middle Ontario Iroquois stage
12:12:26 9 (Middleport substage) of the Ontario
12:12:29 10 Iroquoian tradition."

12:12:39 11 In this part of his report the
12:12:41 12 speculation that he's making is about the coming
12:12:44 13 and going, the suddenness of the coming and
12:12:46 14 going of the Iroquoian inhabitants, isn't it?

12:12:51 15 A. I believe it's also about -- if
12:12:52 16 they suddenly appear and disappear, it's also
12:12:54 17 about the identification of the site as
12:12:56 18 Iroquoian.

12:13:02 19 Q. He's not equivocating in these
12:13:05 20 first two sentences here, is he, about the
12:13:07 21 identity of the -- the cultural identity of the
12:13:09 22 inhabitants?

12:13:10 23 A. But those two things must be
12:13:12 24 linked.

12:13:14 25 Q. Could we go to page 228 of the

1 original, 259, please? And down we have a
2 heading "Ceramics":

3 "Ceramics are the most abundant
4 artifactual material to be recovered
5 from the Nodwell site."

6 And then down to page 230 within this
7 section, the top of that says:

8 "The gradual change through time
9 from concave and straight interior
10 profiles to convex profiles is well
11 documented in the sequence leading up
12 to the historic Huron-Petun."

13 So here Wright is saying that some of
14 the ceramics he's found and the changes in style
15 of the ceramics fit well with well-documented
16 changes in style of the ancestral Hurons, isn't
17 it?

18 A. In the early 1970s.

19 Q. But that's what he was saying
20 then at that point?

21 A. At that point, yes.

22 Q. Not speculating about the
23 identity of the ceramics?

24 A. No, not at this point.

25 Q. And then at page 11 of your

12:14:34 1 supplementary report, which is Exhibit 4241,
12:14:37 2 page 11 of the original, and page 13 of the PDF.
12:14:54 3 At the top of the page you're talking about
12:14:54 4 Nodwell, and you say in the fourth sentence in
12:14:55 5 the third line:

12:14:56 6 "Detailed artifact analysis
12:14:56 7 indicated a predominantly Ontario
12:14:58 8 Iroquoian ceramic tradition dating to
12:15:01 9 the Middle to Late Iroquoian period."

12:15:12 10 And you say in your reports that some
12:15:13 11 Algonquian sites have predominantly Iroquoian
12:15:17 12 ceramics, don't you?

12:15:18 13 A. The Providence Bay site, for
12:15:19 14 example, on Manitoulin Island has a substantial
12:15:22 15 assemblage of Iroquoian-style artifacts.

12:15:28 16 Q. This may seem straightforward,
12:15:29 17 but you're not disputing that Iroquoian sites
12:15:32 18 would have predominantly Iroquoian ceramics?

12:15:35 19 A. Yes.

12:15:38 20 Q. So Iroquoian ceramics at the
12:15:40 21 Nodwell site is consistent with the site being
12:15:42 22 Iroquoian?

12:15:46 23 A. On appearance.

12:15:52 24 Q. By itself the ceramics --
12:15:53 25 ceramics being Iroquoian is consistent --

12:15:57 1 A. I have no problem with Wright
12:16:00 2 having looked at that assemblage and thought it
12:16:03 3 was Iroquoian.

12:16:11 4 Q. Back then to Exhibit 4249, which
12:16:13 5 is "The Cult of Irocentrism", and page 17. You
12:16:27 6 reviewed this paper in your supplementary report
12:16:36 7 on page 11 and note some of the comments made by
12:16:49 8 Fitzgerald and Johnston, and in particular the
12:16:52 9 cherts and animal burials.

12:17:01 10 We're going to look now at the animal
12:17:03 11 burials. So page 17 of the original, and that's
12:17:09 12 page 18 of the PDF of --

12:17:12 13 THE COURT: Of the original of what?

12:17:14 14 BY MR. OGDEN:

12:17:14 15 Q. The original paper, Exhibit 4249.

12:17:18 16 THE COURT: I think I know what you
12:17:19 17 mean, but I can't imagine how anyone else is
12:17:22 18 going to figure it out. So we're looking at
12:17:25 19 this gentleman's supplementary report.

12:17:28 20 BY MR. OGDEN:

12:17:29 21 Q. I apologize, Your Honour. You're
12:17:29 22 right. The original -- sorry, page 17 of
12:17:31 23 Exhibit 4249.

12:17:33 24 THE COURT: All right.
25

12:17:39 1 BY MR. OGDEN:

12:17:39 2 Q. And it's the PDF page 18,
12:17:41 3 "Animal Interments". If we go to the fourth
12:17:54 4 paragraph, the third sentence beginning "The
12:18:12 5 distinctive methods[...]", "The distinctive
12:18:12 6 methods[...]", if you see there in the middle of
12:18:12 7 the screen sort of to the right side of the
12:18:12 8 paragraph:

12:18:13 9 "The distinctive methods of
12:18:21 10 slaughter, dismemberment, and a bundle
12:18:27 11 burial first described [and it goes
12:18:30 12 on] have subsequently been observed on
12:18:33 13 interred dogs at numerous sites in
12:18:35 14 northern and central Ontario and
12:18:35 15 northern Michigan indicating a shared
12:18:35 16 ritual treatment of the dogs across
12:18:35 17 the upper Great Lakes during Late
12:18:41 18 Woodland and Contact periods."

12:18:43 19 So that's referring there to what we
12:18:46 20 talked about, disarticulation and bundle burial,
12:18:52 21 isn't it?

12:18:52 22 A. That is correct.

12:18:59 23 Q. So if I pull up Exhibit 4248,
12:19:01 24 please, which is the Rankin thesis. And go to
12:19:05 25 page 31 of the original of that, which is PDF

12:19:08 1 page 13. And the bottom of this page we see a
12:19:17 2 slightly small -- a diagram of the houses. It
12:19:32 3 says there the "Nodwell village settlement plan,
12:19:36 4 adapted from Wright 1974".

12:19:40 5 And then this is a site map of the
12:19:42 6 Nodwell site. Back to Exhibit 4249. Still on
12:20:33 7 page 17 of Exhibit 4249 of the original, PDF
12:20:37 8 page 18, the last paragraph:

12:20:41 9 "At Nodwell, two very young dog
12:20:44 10 burials were situated in House 7 while
12:20:47 11 four additional immature dogs were
12:20:49 12 interred in House 12 -- two in one pit
12:20:53 13 and two others beneath an intact
12:20:55 14 ceramic vessel. The six dogs were,
12:20:55 15 however, reportedly buried in flexed
12:21:03 16 positions."

12:21:03 17 Now, what is a flexed position,
12:21:04 18 please, Dr. Williamson?

12:21:05 19 A. The flexed position is in an
12:21:08 20 articulated position typically on the side.

12:21:17 21 Q. So it's not dismembered or
12:21:19 22 disarticulated?

12:21:21 23 A. These apparently were not.

12:21:22 24 Q. Or bundled, not bundled?

12:21:25 25 A. They were not bundled.

12:21:28 1 Q. So the dog burials here were not
12:21:28 2 distinctive of an Odawa method of ritual
12:21:28 3 slaughter of a dog?

12:21:30 4 A. Using that definition of
12:21:31 5 "bundled", yes.

12:21:37 6 Q. In your 2013 report -- actually,
12:21:44 7 no.

12:21:52 8 And this continues, and there is a
12:21:54 9 relatively long section which I think I'll just
12:21:57 10 ask you to read, please, through from here
12:21:57 11 continuing on until -- if we can continue, I'm
12:22:07 12 just going to show you where to read, until it
12:22:10 13 finishes there with the bottom of the -- through
12:22:25 14 to the third paragraph there, "the Upper Great
12:22:28 15 Lakes Algonquians"? So if you go up -- could
12:22:29 16 you read that for me? I'm going to have a
12:22:29 17 question for you. From --

12:22:30 18 A. I could be mistaken, but I
12:22:30 19 thought you said this is from my report. This
12:22:32 20 is the Irocentrism paper.

12:22:35 21 Q. This is the Irocentrism, correct.
12:22:36 22 Sorry, I was going to ask you a question about
12:22:38 23 your report, and I've decided not to ask that
12:22:40 24 question.

12:22:40 25 But if you continue reading here where

12:22:42 1 it stops and we talk about the flexed position
12:22:45 2 of the dogs, so it continues with "in House 8"
12:22:47 3 and then read on, please.

12:22:49 4 A. Okay.

12:22:50 5 Q. Silently, of course.

12:22:53 6 A. No, but I mean, could you scroll
12:22:55 7 up, please?

12:22:56 8 Q. Thank you.

12:22:58 9 A. (Witness reading the document.)

12:23:32 10 Yes.

12:23:33 11 Q. And you see the sentence there
12:23:34 12 towards the end in the beginning of the third
12:23:35 13 paragraph:

12:23:43 14 "The absence of dog and other
12:23:44 15 animal interments from indisputable
12:23:45 16 Neutral, Huron, and Petun sites of the
12:23:46 17 16th and 17th centuries, when compared
12:23:50 18 to their ubiquity sites from the Upper
12:23:50 19 Great Lakes[...]"

12:23:54 20 The point I want to ask you about, the
12:23:58 21 statement there is:

12:23:58 22 "The absence of dog and other
12:23:59 23 animal interments from indisputable
12:24:01 24 Neutral, Huron, and Petun sites in the
12:24:04 25 16th and 17th centuries[...]"

1 Are dog burials, dog burials absent
2 from indisputable Neutral, Huron and Petun sites
3 of the 16th and 17th centuries?

4 A. No. They're rare, but they're
5 present.

6 Q. Are you aware of -- well, there's
7 a document you've cited. Well, you referred to
8 it in your bibliography, but you did not cite
9 this document. I am going to take you to S1905.

10 And the title is misleading. That's
11 the cover page of a book, but it contains a
12 chapter that you see on the second page, Joyce
13 Wright, "Ouatit's People: The Cosmological
14 Significance of Dogs in Wendat Society".

15 Could this be the next exhibit,
16 please, Your Honour?

17 THE COURT: Yes.

18 MS. McRANDALL: Exhibit Number 4261.

19 EXHIBIT NO. 4261: Chapter by Joyce
20 Wright titled, "Ouatit's People: The
21 Cosmological Significance of Dogs in
22 Wendat Society"; Document S1905.

23 BY MR. OGDEN:

24 Q. Are you familiar with this
25 document?

12:25:32 1 A. Yes, I am.

12:25:33 2 Q. Now, is Joyce Wright related to

12:25:35 3 the Wright of --

12:25:37 4 A. It is his daughter. She is his

12:25:39 5 daughter.

12:25:39 6 Q. She is. And she is an

12:25:42 7 archeologist, and were there any other

12:25:48 8 archeologists in the family?

12:25:49 9 A. Yes, there was a nephew of Jim

12:25:52 10 Wright named Milt Wright who was also an

12:25:55 11 archeologist.

12:25:56 12 Q. So this is Joyce Wright, and she

12:25:59 13 presumes here that Nodwell in this article is an

12:26:02 14 Iroquoian site, doesn't she?

12:26:03 15 A. She does.

12:26:12 16 Q. And so the fact that the puppy

12:26:14 17 burial, as she calls it, is in this site doesn't

12:26:19 18 preclude the site being Iroquoian, does it?

12:26:23 19 A. I think it makes it less likely

12:26:27 20 if one were only using dogs as a test.

12:26:33 21 Q. So if we go to page 310 of

12:26:38 22 this -- of the original of this document, which

12:26:40 23 is PDF page 8, there is a table, table 16.1,

12:26:47 24 described as "Dog Burials from Iroquoian

12:26:51 25 Archeological Sites", and she lists her sources.

12:26:54 1 And by my count there are 19 of them on this
12:26:58 2 page and the following two pages. They include
12:27:00 3 Nodwell and Plater-Fleming, which you've said is
12:27:05 4 Odawa.

12:27:06 5 Are there any other sites that she
12:27:08 6 lists here that you would call Odawa sites?

12:27:22 7 A. Could you scroll down, please?
12:27:23 8 And further?

12:27:40 9 No.

12:27:41 10 Q. And there are many sites there
12:27:43 11 that are Wendat sites, and a couple I think are
12:27:49 12 Neutral sites, the Petun site, which tends to
12:27:54 13 contradict Fitzgerald and Johnston's statement
12:27:57 14 that there was only one published account of a
12:28:00 15 dog burial, doesn't it?

12:28:02 16 A. I think Joyce Wright -- what is
12:28:06 17 the date of this article? It's in my report.
12:28:25 18 Sorry, it's 2004.

12:28:27 19 Q. 2004.

12:28:31 20 A. So it's -- the work that Joyce
12:28:34 21 Wright is doing is in preparation for the
12:28:37 22 Feschrift [ph] for Jim Pendergrass. It's being
12:28:44 23 written and published I think in the same year
12:28:46 24 that the original paper of Fitzgerald and
12:28:47 25 Johnston, so they did not have the benefit of a

1 survey of all the sites. So it could be that
2 they only were aware of the one dog at Draper,
3 was it he mentioned?

4 Q. But you're aware of it and it
5 does contradict their point that there was only
6 one site, the Bennett site?

7 A. I don't think anybody has -- I
8 don't think he would deny that dog is an
9 important element and dog feasting is an
10 important element of many Indigenous cultures in
11 the Great Lakes area.

12 Q. There's also a reference to a
13 bear burial, an immature bear within House 8.
14 This is a reference within the Fitzgerald and
15 Johnston paper, Exhibit 4249. Now, there are
16 reports or records of bear burials in Iroquoian
17 sites, aren't there?

18 A. Bear burials?

19 Q. Yes.

20 A. You'd have to take me to it.

21 Q. Well, what I can do is -- are you
22 familiar with the McKeown site?

23 A. McKeown, the St. Lawrence
24 Iroquoian site?

25 Q. Right.

12:30:25 1 A. Okay.

12:30:25 2 Q. Are you familiar with there being

12:30:26 3 a bear burial there?

12:30:29 4 A. No.

12:30:32 5 Q. And the Beckstead site?

12:30:37 6 A. Another St. Lawrence Iroquoian

12:30:39 7 site?

12:30:40 8 Q. Right. Could we go to SC1099,

12:31:06 9 please?

12:31:10 10 Your Honour, this is a document that

12:31:12 11 has not been produced in which we -- counsel for

12:31:18 12 Ontario found last evening and provided to

12:31:23 13 counsel for the plaintiffs this morning, and

12:31:24 14 it's an article. And I understand --

12:31:31 15 THE COURT: Let me ask you to wait

12:31:32 16 because there is a whole raft of documents

12:31:34 17 flashing across the screen, and you can't

12:31:37 18 conceivably be referring to all of them. So if

12:31:40 19 it's settled in on what you're referring to,

12:31:42 20 perhaps you could say what it is and then go on

12:31:44 21 and make your submission.

12:31:46 22 MR. OGDEN: Thank you. This is an

12:31:47 23 article by Frances Stewart titled "Faunal

12:31:54 24 Findings from Three Longhouses of the McKeown

12:31:57 25 Site, (BeFc-1) a St. Lawrence Iroquoian

12:32:05 1 Village".

12:32:32 2 THE COURT: Dated?

12:32:34 3 MR. OGDEN: We don't have a date for

12:32:36 4 this, Your Honour. It appears in "Ontario

12:32:36 5 Archeology" --

12:32:36 6 THE COURT: There must be one. What

12:32:38 7 you're saying is you don't have a note of a

12:32:39 8 date.

12:32:39 9 MR. OGDEN: Correct.

12:32:40 10 THE COURT: And surely that can be

12:32:41 11 fixed.

12:32:46 12 MR. OGDEN: We can find one, yes, Your

12:32:46 13 Honour.

12:32:46 14 THE COURT: Based on the evidence of

12:32:47 15 this witness, I don't think we're going to get

12:32:50 16 very far until we have the date if you want to

12:32:53 17 ask this gentleman questions about this

12:32:55 18 document.

12:33:21 19 Let's take this one step at a time.

12:33:21 20 There's no date on the PDF. We haven't gotten

12:33:21 21 there yet anyway. What is it you're proposing

12:33:23 22 to do with this document, counsel, having

12:33:24 23 discovered it last night?

12:33:25 24 MR. OGDEN: Make it an exhibit, take

12:33:28 25 the witness to a section within it and ask him a

1 question about that section.

2 THE COURT: All right. Ms. Pelletier.

3 MS. PELLETIER: Your Honour, the
4 difficulty that we have is in addition to this
5 document, defendant's counsel has provided us
6 with four -- a total of four documents, one is
7 several hundred pages long.

8 We just received these this morning.
9 I obviously haven't had a chance to go through
10 them, nor have we had a chance to go through
11 them with our witness. So to the extent that we
12 might have raised some of these matters with him
13 in-chief, we've been denied that ability to do
14 so.

15 I've taken a close look at the break,
16 and I think that to the extent that
17 Dr. Williamson is unfamiliar with the documents,
18 then that should end the matter there.

19 I won't object to him answering
20 questions if he is familiar with the documents,
21 but I just highlight that this is the second
22 time this has happened, and I think this really
23 speaks to the need that counsel agree on a
24 protocol for the late disclosure of documents,
25 which we are still waiting on the Crown's

12:34:24 1 comments for.

12:34:25 2 THE COURT: Well, in the absence of a
12:34:26 3 protocol there are rules, and they do not say
12:34:30 4 that you cannot do this. They do say that I
12:34:36 5 would hear from you about incalculable
12:34:44 6 prejudice. This is a journal. I'll be very
12:34:47 7 surprised if this witness isn't familiar with
12:34:50 8 the journal, leaving aside the article, given
12:34:52 9 that he is an expert.

12:34:54 10 It is not a, you know, kind of
12:34:55 11 never-before-seen, internal, handwritten letter.
12:34:59 12 So this is the only one I know of. Are the
12:35:02 13 other three documents of a similar character?

12:35:06 14 MS. PELLETIER: We have a Ph.D.
12:35:08 15 thesis.

12:35:10 16 THE COURT: I'm sorry, I didn't hear
12:35:10 17 you, counsel.

12:35:10 18 MS. PELLETIER: Two Ph.D --

12:35:12 19 THE COURT: Two theses?

12:35:12 20 MS. PELLETIER: Two theses. And then
12:35:12 21 -- no, three. Sorry, three, and then this
12:35:17 22 article.

12:35:20 23 MR. OGDEN: Your Honour, I'm not going
12:35:20 24 to --

12:35:21 25 THE COURT: You are not being called

1 on yet, sir.

2 MR. OGDEN: I apologize.

3 THE COURT: Have a seat. You'll get
4 your chance, I promise.

5 Ms. Pelletier. So we have one journal
6 article and three Ph.D. theses.

7 MS. PELLETIER: That's correct.

8 THE COURT: All right. One of which I
9 presume is extremely lengthy.

10 MS. PELLETIER: Yes.

11 THE COURT: And so I understand your
12 submission is that if this gentleman is able to
13 answer questions about these documents you have
14 no objection to him doing so. And that's
15 helpful.

16 Is there anything else you would say
17 about how this particular discreet collection of
18 four documents should be addressed from your
19 standpoint?

20 MS. PELLETIER: No, I think in this
21 instance, Your Honour, given that I have taken a
22 look at them, I'm not concerned by them.

23 I just would note that, again, this is
24 the second time this has happened in this trial,
25 and it makes things challenging, and we are

12:36:17 1 prejudiced by the fact that we haven't had a
12:36:20 2 chance to speak with our witness about these
12:36:22 3 documents, and we could have raised possibly
12:36:24 4 some of the issues contained in these sources
12:36:27 5 in-chief with him.

12:36:28 6 THE COURT: The difficulty is you
12:36:29 7 don't know.

12:36:30 8 MS. PELLETIER: Yes.

12:36:31 9 THE COURT: I think that's the
12:36:31 10 difficulty. Whether you're prejudiced or not
12:36:34 11 remains to be seen.

12:36:36 12 MS. PELLETIER: That's true. I won't
12:36:37 13 object in this instance. I just wanted my
12:36:39 14 displeasure noted.

12:36:41 15 THE COURT: I understand. You don't
12:36:42 16 have to repeat yourself. Okay. Have a seat.

12:36:44 17 Mr. Ogden, what is it you have to say
12:36:46 18 in response?

12:36:49 19 MR. OGDEN: The two Ph.D. theses I'm
12:36:51 20 not intending to put before the witness. We
12:36:54 21 found them and --

12:36:55 22 THE COURT: I thought there were
12:36:56 23 three.

12:36:57 24 MR. OGDEN: Sorry? There were two
12:36:57 25 theses and two articles.

12:37:00 1 THE COURT: Oh, okay.

12:37:00 2 MR. OGDEN: On the screen is one

12:37:02 3 article, and the other article we've determined

12:37:05 4 is in the bibliography of this witness' 2013

12:37:13 5 report.

12:37:13 6 THE COURT: All right.

12:37:13 7 MR. OGDEN: And, Your Honour, to say

12:37:16 8 that this is not -- well, as is evident from

12:37:19 9 what I said before, this is not a document we

12:37:22 10 found some time ago and held it back.

12:37:25 11 THE COURT: No, no, reply is not an

12:37:26 12 opportunity to repeat yourself.

12:37:29 13 So are you planning to question about

12:37:31 14 both the two journal articles? Or just the one

12:37:34 15 we're looking at right now?

12:37:38 16 If you don't know, you can say that.

12:37:41 17 MR. OGDEN: I can answer in a very

12:37:43 18 brief moment, Your Honour.

12:38:36 19 I have to apologize, Your Honour. I

12:38:36 20 said that this was included in the bibliography

12:38:39 21 of Dr. Williamson's 2013 report, and it is not.

12:38:42 22 THE COURT: You said that the other

12:38:43 23 one was.

12:38:44 24 MR. OGDEN: Correct. Sorry --

12:38:45 25 THE COURT: And it is not.

12:38:46 1 MR. OGDEN: And it is not. This
12:38:47 2 document here, this article dates from 1992.

12:38:52 3 THE COURT: All right.

12:38:54 4 MR. OGDEN: And --

12:38:54 5 THE COURT: My question was whether it
12:38:57 6 is your plan to possibly refer to this witness
12:39:01 7 to both of the two articles or not.

12:39:03 8 MR. OGDEN: Just this one on the
12:39:04 9 screen.

12:39:05 10 THE COURT: Just this one. All right.
12:39:06 11 And just before we get sidetracked a second
12:39:09 12 time, so I know, if it turns out this gentleman
12:39:13 13 has not read the article, are you going to be
12:39:15 14 asking that he do that so that you can ask him
12:39:18 15 questions about it or not?

12:39:20 16 MR. OGDEN: No, I will take him to one
12:39:22 17 section, one paragraph -- and ask him whether
12:39:31 18 that -- sorry, just one section --

12:39:35 19 THE COURT: Counsel, stop, all right?
12:39:35 20 I want you to listen to my questions and answer
12:39:38 21 my questions. And if you're thinking it
12:39:44 22 through, that's fine. Don't do it out loud, all
12:39:47 23 right?

12:39:48 24 MR. OGDEN: Yes.

12:39:49 25 THE COURT: My question was, do you

12:39:50 1 plan possibly to take this witness to both of
12:39:52 2 these articles in your cross-examination? That
12:39:54 3 was my question. I think your answer was, no,
12:39:56 4 just this one. Is that correct?

12:39:58 5 MR. OGDEN: Yes, that's correct.

12:39:59 6 THE COURT: Okay. My next question
12:40:01 7 was, if this gentleman has not read this article
12:40:04 8 before, is it your intention to ask him to read
12:40:06 9 it or not?

12:40:08 10 MR. OGDEN: No.

12:40:09 11 THE COURT: No. All right. Please go
12:40:10 12 ahead. On that basis, and given the extremely
12:40:13 13 reasonable position of the plaintiff's counsel,
12:40:14 14 I will permit you to ask questions about this
12:40:17 15 document.

12:40:19 16 MR. OGDEN: Thank you.

12:40:21 17 BY MR. OGDEN:

12:40:22 18 Q. Dr. Williamson, this document
12:40:27 19 appears in the journal "Ontario Archeology", and
12:40:33 20 you're familiar with that journal?

12:40:35 21 A. I am.

12:40:35 22 Q. And it is a reputable journal?

12:40:37 23 A. Yes, it is.

12:40:38 24 Q. It's a peer-reviewed journal?

12:40:41 25 A. Having served on the editorial

1 board, I am aware of the journal, and, yes it's
2 peer-reviewed.

3 Q. Thank you. And are you aware of
4 this article?

5 A. Now that you've brought it up, I
6 recall it, but it's obviously from more than 30
7 years ago.

8 Q. Could I add this article as the
9 next exhibit, please, Your Honour?

10 THE COURT: Mr. Registrar.

11 THE REGISTRAR: Exhibit Number 4262.

12 EXHIBIT NO. 4262: Article by Frances
13 Stewart titled "Faunal Findings from
14 Three Longhouses of the McKeown Site,
15 (BeFc-1) a St. Lawrence Iroquoian
16 Village"; Document SC1099.

17 BY MR. OGDEN:

18 Q. Sir, could we go, please, to page
19 33 of the article and page 17 of the PDF? On
20 the left-hand side there is a paragraph
21 beginning "Did". Could you read that paragraph,
22 please?

23 THE COURT: Do you want this gentleman
24 to read it out loud or read it to himself?

25 MR. OGDEN: No, to himself.

12:41:46 1 THE COURT: All right.

12:42:06 2 THE WITNESS: (Witness reading the

12:42:06 3 document.)

12:42:08 4 Yes.

12:42:10 5 BY MR. OGDEN:

12:42:12 6 Q. So do you dispute any of the

12:42:12 7 statements in that paragraph?

12:42:17 8 A. Sorry, I'm just reading on.

12:42:24 9 (Witness reading the document.)

12:42:30 10 Could I also ask that you show me the

12:42:32 11 location of this site? There must be a map

12:42:35 12 affiliated near the beginning of the article. I

12:42:45 13 believe it's in the Ottawa Valley. Oh, yes, on

12:43:07 14 the South Nation River. Yes.

12:43:13 15 Q. So my question was, do you

12:43:15 16 dispute the statements in that paragraph that I

12:43:17 17 showed you beginning, "Did the bears[...]?"

12:43:21 18 A. I'm very sorry, can we go back?

12:43:36 19 Q. Yes.

12:43:52 20 A. I would question it. I would --

12:43:55 21 I would ask a question about it. For example,

12:43:56 22 there's a well-known Algonquian group that lives

12:44:00 23 in the South Nation River, and no doubt the

12:44:03 24 St. Lawrence Iroquoians were very familiar with

12:44:07 25 those Algonquians.

1 And, in fact, there is a literature
2 about that, about the close relationship between
3 the St. Lawrence Iroquoians and those
4 Algonquians.

5 So I'd want to look very carefully at
6 the context of this bear, how it was treated on
7 the site, if it was bundled like other animal
8 bundles by Algonquians, if -- I would want to
9 look at this very carefully.

10 I would want to know whether Frances
11 Stewart was aware of the very close proximity of
12 Algonquians and the Algonquian practice of
13 bundling animals. So I wouldn't accept this
14 point-blank. I would want to look at it very
15 carefully.

16 Q. And so it's enough to give you
17 doubt that the presence of a bear burial
18 precluded an Iroquoian population? That is a
19 double negative, I apologize.

20 A. Sorry, where?

21 Q. At the Nodwell site.

22 A. So I don't know what the distance
23 is, but this particular site is a completely
24 different culture from Huron and Wendat --
25 St. Lawrence Iroquoian -- it's in the eastern

1 part of the province.

2 I've already indicated that it's --
3 those people are known to be very closely
4 associated with the Algonquians living in that
5 area, so I would want to look at this case very
6 carefully.

7 But the bear burial at Nodwell is
8 consistent with the bundled burial types
9 elsewhere. And, if I recall, it's a young bear
10 with -- the youngness of animals I think is an
11 important attribute, as I said earlier.

12 I don't know what the passenger pigeon
13 burials at Nodwell -- it's consistent with other
14 practice.

15 MR. OGDEN: Your Honour, I have one
16 large section remaining concerning the bead
17 report, and I ask if we break now, please, and I
18 will complete my examination likely before the
19 afternoon break.

20 THE COURT: All right. That's fine.
21 I have a commitment, which means we will still
22 resume at 2:15.

23 MR. OGDEN: Okay.

24 THE COURT: And I was going to suggest
25 a telephone case conference if we do complete

12:47:20 1 this witness. I'm not inclined to give counsel
12:47:23 2 a hard time being that we're back in September
12:47:24 3 and I'm sure everyone is working very hard and
12:47:26 4 the schedule is difficult.

12:47:27 5 I think the plaintiff's case is in
12:47:28 6 except for expert witnesses, whose schedules are
12:47:32 7 challenging. Is that correct, Ms. Pelletier?
12:47:33 8 Are you nodding your head?

12:47:35 9 MS. PELLETIER: That is correct. All
12:47:36 10 of our experts are out of town.

12:47:36 11 THE COURT: So you can rest easy over
12:47:39 12 lunch that I'm not going to give you a lecture,
12:47:41 13 because I know I've been doing that every now
12:47:44 14 and then.

12:47:44 15 MS. PELLETIER: Thank you.

12:47:46 16 THE COURT: But I would like to
12:47:47 17 schedule a call probably later in the week just
12:47:49 18 to start back up again on some of the things
12:47:55 19 we've been talking about as far as trial
12:47:56 20 management. So I'll leave that in your head to
12:47:57 21 think about, and we'll resume at 2:15.

12:47:58 22 -- RECESSED AT 12:48 P.M. --

12:47:58 23 -- RESUMED AT 2:17 P.M. --

02:17:35 24 THE COURT: Please go ahead.

02:17:47 25 MR. OGDEN: Thank you, Your Honour.

02:17:48 1 BY MR. OGDEN:

02:17:48 2 Q. I'm going to refer to Exhibit
02:17:49 3 4240, which is the beads dating report; Exhibit
02:17:56 4 4241, which is the supplementary report; Exhibit
02:18:01 5 4250, which is the one-pager; and then a couple
02:18:04 6 of other documents that I would ask to be added
02:18:10 7 as exhibits as we proceed.

02:18:11 8 Dr. Williamson, I just want to repeat
02:18:28 9 my -- your opinion, to state my understanding of
02:18:36 10 it. Yesterday you said that the bead analysis
02:18:39 11 led you to the conclusion that use of the site
02:18:43 12 at the River Mouth Speaks had resumed by the
02:18:45 13 last half of the 17th century?

02:18:47 14 A. I believe so.

02:18:50 15 Q. And in your supplementary report
02:18:53 16 at Exhibit 4241, page 19 of that report there's
02:18:57 17 a paragraph, second paragraph:

02:19:25 18 "Thus, chemical analysis of a
02:19:33 19 sample of the River Mouth Speaks bead
02:19:37 20 assemblage suggests most of the beads
02:19:38 21 were deposited at the site between the
02:19:41 22 late 17th to mid-18th century with
02:19:43 23 some dating to an earlier period (late
02:19:46 24 16th century to early 17th century)
02:19:49 25 and some later (late 19th to 20th

02:19:52 1
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02:20:24 9
02:20:26 10
02:20:29 11
02:20:31 12
02:20:35 13
02:20:37 14
02:20:42 15
02:20:44 16
02:20:53 17
02:20:59 18
02:21:01 19
02:21:09 20
02:21:15 21
02:21:21 22
02:21:21 23
02:21:30 24
02:21:32 25

century)."

That remains your opinion?

A. Altogether, yes.

Q. And then at Exhibit 4240, which is the bead analysis report, page 26 of the report, which is page 30 of the PDF, in the middle of this main paragraph you say:

"Chemical results from analysis of the River Mouth Speaks bead assemblage suggests that the intensity of these exchanges peaked between late 17th to mid-18th century."

And this conclusion remains your conclusion and follows on from the other comments within the conclusion section beginning on the previous page, 25, is that right?

A. Yes.

Q. So turning to page 3 of this bead report, Exhibit 4240, the last paragraph there, PDF page 7, it says:

"A hundred and thirty of the 152 glass beads of the Ne'bwaakaah giizwed ziibi (The River Mouth Speaks) site were provided to ASI for testing on December 4th, 2015."

02:21:36 1 And then back to page 26 of the same
02:21:39 2 report, which is page 30 of the PDF, you offer a
02:21:49 3 qualifier in the last sentence there:

02:21:52 4 "However, it should be noted that
02:21:54 5 this study only examined a portion of
02:21:58 6 the River Mouth Speaks glass bead
02:22:00 7 assemblage."

02:22:03 8 Do you know why only 130 and not all
02:22:05 9 152 of the beads were provided to ASI?

02:22:09 10 A. Yes, we only requested certain of
02:22:11 11 the beads. We began with the white beads and
02:22:15 12 then requested additional beads and were only
02:22:19 13 provided with these.

02:22:21 14 We would have -- as I recall, we would
02:22:23 15 have liked more, but this represents 85 percent
02:22:26 16 of the collection so we're -- actually, I should
02:22:31 17 say, 130 of 153 beads were analyzed, which
02:22:38 18 represents 85 percent.

02:22:40 19 So we felt that we had enough to do
02:22:44 20 what we needed to do.

02:23:08 21 Q. Can you say whether -- what
02:23:12 22 difference those additional beads, if any, would
02:23:15 23 have made to your conclusions?

02:23:17 24 A. I can't.

02:23:20 25 Q. Back then to the bead report,

02:23:21 1 page 10, which is PDF page 13, it's table 3 and
02:23:35 2 table 4.

02:23:45 3 Table 3, I'll read for the record,
02:23:47 4 says, "Opacifying Elements of White Glass Beads
02:23:56 5 from Known Associated Archeological Sites".

02:24:17 6 What you're seeing on the screen now
02:24:19 7 is the bottom part of this table. And it lists
02:24:23 8 sites -- at the top of this part you can see
02:24:25 9 under the heading "Antimony" beads -- white
02:24:32 10 beads that had antimony but not arsenic.

02:24:36 11 And the next section is white beads
02:24:38 12 that had arsenic.

02:24:40 13 And then next to antimony there we see
02:24:44 14 the general time period, late 17th century to
02:24:47 15 early 19th century. And I just want to clarify
02:24:49 16 there because you'll see that sites that are
02:24:56 17 listed there go to -- you'll see there's a Moose
02:24:59 18 Factory I and II, 1840 to 1860 plus. I mean,
02:25:04 19 just to be clear, that should be late 17th
02:25:07 20 century to mid-19th century, is that right?

02:25:11 21 A. Moose Factory I and II to 1850,
02:25:17 22 to mid-19th century, yeah.

02:25:19 23 Q. To mid-19th century?

02:25:21 24 A. Well, I say early 19th century.
02:25:21 25 Yes, mid-19th century. 1850 is mid-19th century.

02:25:26 1 Q. And in this part here there are
02:25:28 2 nine sites, and then if we go down to table 4,
02:25:36 3 which is below it, which is headed "Summary of
02:25:41 4 the River Mouth Speaks Site Bead Groupings by
02:25:45 5 Colour and Chemistry[...]"

02:25:51 6 And at first you have "White Group A"
02:25:53 7 in -- the number equals 68 --

02:25:56 8 A. Uhm-hmm.

02:25:56 9 Q. -- and "Antimony". And then you
02:25:58 10 have the average for the beads taken from that
02:26:01 11 site, which is 3.5 percent plus or minus 9
02:26:05 12 percent, see that?

02:26:06 13 A. Uhm-hmm. .9 percent.

02:26:08 14 Q. .9, sorry. And then "Associated
02:26:12 15 Date", late 17th -- this is created late 17th to
02:26:15 16 mid-19th century. And then it has the
02:26:17 17 "Comparable Sites". And these are such that you
02:26:22 18 can -- they were listed in table 3, and I'm just
02:26:28 19 going to go through some of the dates here.

02:26:32 20 And from the -- well, you see there,
02:26:34 21 you know, you just mentioned Moose Factory I and
02:26:38 22 II. That's Moose Factory III, sorry, 1840 to
02:26:42 23 1860. It might be easier, actually, sorry, if
02:26:45 24 you refer to your paper copy and you can look up
02:26:49 25 to the table above it rather than us having to

02:26:49 1 move the PDF around.

02:26:55 2 A. Yeah.

02:26:55 3 Q. And then there's the Dewar site,
02:26:58 4 1830s; Fort Malden, 1797 to 1813; and also Fort
02:27:05 5 St. Joseph, 1796 to 1814.

02:27:14 6 And so there are several sites, aren't
02:27:17 7 there, that date in the 19th century in this
02:27:20 8 table?

02:27:21 9 A. There are.

02:27:43 10 Q. Could we go now to Exhibit 4260?
02:27:46 11 It's also S0585, which is the River Mouth Speaks
02:27:51 12 report. We have here -- and it's a large
02:28:02 13 document and the page numbers within the
02:28:04 14 document start anew in each chapter, which is a
02:28:09 15 bit unhelpful. But if we go to Chapter 7, page
02:28:12 16 2, and the PDF page is 180. Chapter 7. There
02:28:15 17 we go. And if you go to the bottom of that
02:28:23 18 page, please, you'll see page number -- Chapter
02:28:26 19 7, page 2.

02:28:28 20 So at the top of that there is a
02:28:30 21 section here on glass and glass-like beads
02:28:33 22 that's written by Dr. Bill Fitzgerald. Now, at
02:28:37 23 the next page then, page 3, PDF page 181, the
02:28:45 24 bottom of the first -- the first paragraph and
02:28:47 25 the last sentence there there's a comment by

02:28:52 1 Dr. Fitzgerald:

02:28:54 2 "Conversely, an assemblage of
02:28:57 3 glass beads recovered from an
02:28:59 4 indisputably multi-component site,
02:29:03 5 such as BdHi-2, may be composed of a
02:29:07 6 mixture of varieties from spatially
02:29:10 7 overlapping campsites, each of which
02:29:13 8 however, might be separated temporally
02:29:17 9 by decades or even centuries."

02:29:21 10 Do you agree with that statement?

02:29:22 11 A. I do.

02:29:22 12 Q. Now to page 11 of Chapter 7,
02:29:23 13 please, which is PDF 189, there's this paragraph
02:29:38 14 here:

02:29:39 15 "Comparisons with the bead
02:29:40 16 assemblages from a selection of
02:29:42 17 relatively securely dated Native and
02:29:46 18 European archeological sites across
02:29:48 19 the northeastern North America and the
02:29:51 20 Great Lakes[...]"

02:29:56 21 And it continues on, but we have table
02:29:58 22 2 here which is the selection of relatively
02:30:01 23 securely dated sites. And Fitzgerald doesn't
02:30:06 24 say why he chose those sites, does he, other
02:30:08 25 than that they're relatively securely dated, as

1 far as you know?

2 A. As far as I know.

3 Q. You can look at the next page if
4 you like.

5 Now these sites, if you see them, if
6 you scroll down, date is in the fourth column,
7 date, they're all from the late 17th century
8 down into the middle part, really, of the 18th
9 century. The latest is the 1780s.

10 So Fitzgerald has selected for
11 comparison, his selection were sites from the
12 1670s or so to the 1780s.

13 And we know from table 3 of your bead
14 dating report that there are available sites for
15 beads for comparison from the 19th century.

16 So then we go down to page -- the
17 second -- the bottom of the table here, second
18 paragraph -- well, the first paragraph then:

19 "While glass bead varieties
20 within the BdHi-2 assemblage are
21 present within all of the sites listed
22 in table 2, its greatest overall
23 affinity is with assemblages from
24 such."

25 And then he lists some sites there,

1 1710 to 1754, 1715 to 1781, 1750 to 1779, and
2 then 1760 to 1770. Now, from -- so that's 1710
3 to 1781 -- '81 is the greatest overall affinity.

4 And then he continues:

5 "It can be concluded with a
6 comfortable degree of confidence that
7 most if not all of the fortuitously
8 recovered glass beads from this
9 section of the BdHi-2 site arrived at
10 the mouth of Saugeen River sometime in
11 the middle decades of the 18th
12 century."

13 And then in your bead report, at page
14 2 you repeat this conclusion. You state at the
15 top of page 2 of the report, "He concludes that
16 [...]," and you quote that without any comment
17 on it.

18 Now, you can see the gap in the logic
19 here in terms of concluding that most if not all
20 of these beads arrived at the mouth of the
21 Saugeen River, in Fitzgerald's analysis, can't
22 you?

23 A. Can I see which in that analysis?

24 Q. There's a gap in the logic there.

25 And I'll be more explicit. The gap is that he's

02:33:23 1 chosen for comparison only sites from the
02:33:26 2 1670s or so to the 1780s.

02:33:29 3 A. I obviously can't speak for
02:33:31 4 Dr. Fitzgerald and what he did, but what I do
02:33:33 5 know is that -- two things. He was looking at
02:33:36 6 these visually and thinking of sites that seemed
02:33:43 7 to him -- he's had a lot of experience looking
02:33:47 8 at glass beads. He looked at the glass beads
02:33:50 9 and thought about the sites that seemed to him
02:33:52 10 to fit these beads most comfortably.

02:33:55 11 Q. Sorry --

02:34:00 12 A. I'm just explaining what you
02:34:01 13 asked.

02:34:02 14 Q. Yes.

02:34:03 15 A. He then goes on -- or earlier in
02:34:05 16 his section or towards the end in the
02:34:07 17 conclusions Fitzgerald makes the recommendation
02:34:09 18 that this could be more tightly evaluated if
02:34:15 19 chemical analysis was undertaken, which we
02:34:22 20 followed up.

02:34:36 21 Q. Can we go back to table 3, page
02:34:38 22 10 of your bead report? And in the middle of
02:34:45 23 the table there, we have the antimony beads, the
02:34:52 24 arsenic, and one fluorine bead, late 19th to
02:34:59 25 20th century, Camp Kitchikewana BfGx-13. 1836

1 is the date range, 1836 to '56 plus.

2 And the "plus" means later, perhaps,
3 doesn't it? 1836 to --

4 A. Probably.

5 Q. Okay. And then the source for it
6 is Hancock et al., 1997.

7 And then table 4, which is just below
8 it, lists comparable sites for the average
9 antimony content. And these sites, although
10 it's not apparent here, are in date order if you
11 want to go through them, but you can accept they
12 are in date order based on the dates given in
13 table 3.

14 A. Okay.

15 Q. So we have -- just to give you a
16 couple, Bead Hill is 1670 to 18 -- 1690; and
17 then the second-to-last one, Moose Factory I,
18 1750 to 1850; and Camp Kitchikewana based on
19 what we've just seen in table 3, 1836 to 1856.

20 At the end of these chronologically
21 placed sites and then page 12 of the bead dating
22 report, table 5 at the bottom of page 12, we
23 have "Archeological Sites used in Comparative
24 Analysis of Antimony White Beads".

25 And Camp Kitchikewana there is listed

02:36:40 1 with date range of 1700 to 1750. And in your
02:36:51 2 conclusion at page 25 you also give Camp
02:36:54 3 Kitchikewana as 1700 to 1750.

02:37:19 4 So are there two Camp Kitchikewana
02:37:23 5 sites?

02:37:23 6 A. There are multiple components,
02:37:25 7 and the glass database has them broken down by
02:37:29 8 components of sites.

02:37:43 9 Q. So you're confident that in this
02:37:45 10 analysis here on page 12, which is the bivariate
02:37:48 11 distribution, that the Camp Kitchikewana site is
02:37:53 12 not -- the beads from which -- or the site from
02:37:57 13 which that bead assemblage is taken is not
02:38:00 14 BfGx-13?

02:38:03 15 A. I would be very surprised if
02:38:06 16 Dr. MacDonald and Dr. Hancock, who control that
02:38:09 17 database and work with it often, would get that
02:38:11 18 wrong. So they've identified a group of beads
02:38:17 19 from a component on that site as dating to that
02:38:20 20 period.

02:38:24 21 Q. So they've taken beads from two
02:38:27 22 parts of that site, or two layers at least, is
02:38:30 23 what you're saying?

02:38:31 24 A. Well, there are beads from
02:38:32 25 multiple components on some of these sites.

02:38:34 1 Q. But you're saying from -- you
02:38:36 2 think from Camp Kitchikewana they took it from
02:38:39 3 two places?
02:38:40 4 A. Well, I'm assuming that, yes.
02:38:48 5 Q. Do you know which study or which
02:38:52 6 analysis the other sites listed in table 5 were
02:38:58 7 taken from?
02:39:01 8 A. Table 5. Well, they're taken out
02:39:04 9 of the database.
02:39:09 10 What happened is that all antimony
02:39:11 11 beads either published or unpublished, for
02:39:15 12 example by Sempowski, and all of those that were
02:39:19 13 in the database were used in the analysis.
02:39:21 14 So all of the antimony bead
02:39:23 15 assemblages were analyzed as in comparison to
02:39:27 16 this site.
02:39:32 17 Q. If they took that broad approach
02:39:34 18 wouldn't they have to distinguish here between
02:39:38 19 Camp Kitchikewana at 1836 to 1856 and another
02:39:42 20 date range for Camp Kitchikewana? If they took
02:39:48 21 that approach, then they're just taking all of
02:39:51 22 the Camp Kitchikewana beads?
02:39:55 23 A. Well, again, in the conclusions
02:39:57 24 on page 25 it's written that the 1700 to 1750
02:40:06 25 component --

02:40:09 1 Q. I don't see the word "component",
02:40:10 2 sorry.
02:40:11 3 A. Well, I'm just saying, that was
02:40:13 4 in keeping with the other sites that are there
02:40:16 5 that speak to a late 17th century through 18th
02:40:20 6 century occupation.
02:40:22 7 Q. All right. But we have to assume
02:40:24 8 that they've got this right, that there is a --
02:40:26 9 they have taken beads from a -- there is a
02:40:29 10 different part of the Camp Kitchikewana site,
02:40:32 11 and they've taken and analyzed beads from a
02:40:36 12 different part than the 1836 to 1856?
02:40:42 13 A. I assume that's what's happened
02:40:43 14 here. I'm not as familiar as they with the
02:40:46 15 database.
02:40:48 16 Q. And you're not -- how familiar
02:40:51 17 with the site are you, Camp Kitchikewana?
02:40:54 18 A. I'm not.
02:41:16 19 Q. Can we turn to Exhibit 4250,
02:41:19 20 please, which is your one-page summary? In
02:41:40 21 your testimony you looked at this, kind of,
02:41:41 22 first bullet and you said that :
02:41:43 23 "These 18 beads group chemically
02:41:47 24 with sites that extend from roughly
02:41:49 25 1670, the Seneca Bead Hill site, which

02:41:53 1 is located on the Rouge River, I
02:41:55 2 talked about it yesterday, through to
02:41:56 3 the 1750 period."

02:42:01 4 Now, we've got a site there, 1625 to
02:42:05 5 1675, Metabechuhuan II site. So it's really
02:42:13 6 only from 1670, very roughly, isn't it? It
02:42:18 7 would be better to say or more accurate to say
02:42:20 8 that it extends from 1625 to 1750, is that
02:42:27 9 right?

02:42:28 10 A. So you're forgetting that we're
02:42:29 11 looking at the antimony beads from those sites.
02:42:32 12 So those sites may have a longer date range, but
02:42:36 13 we're only looking at a subset of the beads off
02:42:39 14 of those sites. And in this case the antimony
02:42:42 15 beads, antimony as an opacifier occurs later,
02:42:47 16 post 1650 period, usually thought of in the
02:42:53 17 1660 to 1670 period.

02:42:56 18 Q. Okay --

02:42:56 19 A. So you may have a site that has
02:43:01 20 an assemblage of beads that extends over a long
02:43:04 21 period of time, but when you take a subset of
02:43:06 22 those beads for comparative purposes, if they're
02:43:11 23 antimony opacified, then you're looking at a
02:43:15 24 later set of beads than the earlier ones.

02:43:36 25 Q. You're saying that antimony

02:43:37 1 wasn't used before 1650?

02:43:41 2 A. Well --

02:43:42 3 Q. You just --

02:43:44 4 A. Statistically, Hancock has
02:43:46 5 identified those beads as typically appearing in
02:43:51 6 assemblages if they are -- if they're opacified
02:43:54 7 with antimony, in the mid- to late 17th century.

02:44:02 8 Q. Well, so page 11 of your report
02:44:05 9 there's a graph which is called "Figure 1" in
02:44:09 10 this bead report?

02:44:10 11 A. Yes.

02:44:11 12 Q. Exhibit 4240. And the middle
02:44:20 13 one, "Sb", is antimony with a date range along
02:44:35 14 the bottom and amount, parts per million in the
02:44:38 15 Y-axis.

02:44:46 16 And that indicates, doesn't it, that
02:44:50 17 there was antimony in beads dating from -- well,
02:44:55 18 at least 1625, but certainly a quarter of as
02:45:02 19 much antimony as there was 100 years later. And
02:45:05 20 -- yes, go ahead.

02:45:12 21 A. So they've concluded based on the
02:45:14 22 parts per million for the beads that we have on
02:45:17 23 this site versus other sites. So while it's
02:45:20 24 theoretically possible that beads have been
02:45:23 25 opacified with antimony, let's say, 1625, they

02:45:27 1 don't believe that's what this equates with in
02:45:31 2 our case or at this site.

02:45:38 3 Q. And what do they conclude about
02:45:39 4 the Metabechuhuan II site? Because they list it
02:45:47 5 here, and you've listed it in your summary.

02:45:50 6 A. Can you go back to the --

02:45:51 7 Q. The one-page summary?

02:45:51 8 A. -- conclusion? Yeah, please.

02:45:52 9 Q. 4250. You say, group chemically
02:45:56 10 with beads from that site. It's not specific as
02:46:00 11 to only beads after 1670.

02:46:03 12 A. But, again, I'm saying that this
02:46:05 13 site itself may date to an earlier period, but
02:46:08 14 there are beads from the later occupation of
02:46:11 15 that site that Hancock and MacDonald have
02:46:14 16 grouped together.

02:46:16 17 Q. And they've been able to
02:46:18 18 establish that those beads are from a later
02:46:20 19 period of occupation on that site?

02:46:22 20 A. Well, based on the chemistry,
02:46:24 21 yes, and looking at well over 4,000 beads. I
02:46:31 22 mean, these guys work with this constantly.

02:47:55 23 Q. Could we go to page 25, please,
02:47:57 24 of bead dating report to the "Conclusion"
02:47:59 25 section? In the middle there there is a

1 sentence beginning "This weaker
2 association[...]", which I'll read:

3 "This weaker association extends
4 the date range for the assemblage to
5 late 17th to early 19th century;
6 however, it should be noted that the
7 majority of the assemblage is
8 consistent with the former sites
9 dating to late 17th to mid-18th
10 century. The River Mouth Speaks
11 antimony-white beads also group with
12 the other sites listed in table 3."

13 Could we go back to table 3, please,
14 on page 10? And we have there a group of sites,
15 several of which date to the 19th century. So
16 the conclusion here is that there is an
17 association with a certain range, late 16th --
18 late 17th to mid-18th century, a weaker
19 association from late 17th to early 19th
20 century.

21 And then it says, well, we've also got
22 grouped in with other sites -- this is table
23 3 -- which if we had to go back and look, are in
24 the 19th century.

25 So there's no -- at this particular

02:49:40 1 point of your conclusion you're not choosing
02:49:44 2 between these two analyses, are you? You're
02:49:46 3 saying there's one analysis which shows
02:49:49 4 something, but we also have consistency with
02:49:53 5 sites that range up to the mid-19th century, is
02:49:56 6 that right?

02:49:57 7 A. Can we go back to the summary
02:49:59 8 page?

02:49:59 9 Q. Page 75, yes.

02:49:59 10 A. No, the summary page.

02:50:00 11 Q. Yes -- sorry, Exhibit 4250.

02:50:11 12 A. So what it says here is 18 beads
02:50:14 13 grouped chemically with that first set; 47 date
02:50:19 14 with the later sites.

02:50:20 15 So there are beads that chemically
02:50:26 16 relate to the earlier period and beads that
02:50:29 17 chemically relate to the later period and beads,
02:50:31 18 80 at least, that dates to the late 18th to even
02:50:33 19 mid-19th century and even three beads that could
02:50:38 20 be a bit later.

02:50:41 21 So these are beads within the white
02:50:43 22 bead assemblage that chemically group with other
02:50:46 23 sites at those periods.

02:50:48 24 Q. And table 3 shows -- and table 4
02:50:54 25 show that there's a broad range? It's a

02:50:57 1 different type of analysis, isn't it, the
02:51:00 2 average antimony?

02:51:01 3 A. Well, this is the result of --
02:51:03 4 the summary here is the result of the chemical
02:51:06 5 analysis of these beads.

02:51:09 6 Q. Do you mean the bivariate
02:51:09 7 distribution analysis?

02:51:13 8 A. Well, the various analyses that
02:51:14 9 are undertaken for them, yes.

02:51:28 10 Q. So your conclusion says that the
02:51:29 11 beads also group with the other sites listed in
02:51:32 12 table 3. These are other sites that aren't in
02:51:38 13 table 5. These are sites over which the
02:51:45 14 bivariate distribution analysis was not
02:51:49 15 undertaken.

02:52:00 16 Can you explain why the bivariate
02:52:03 17 distribution analysis was not undertaken for
02:52:05 18 those other sites in table 3? These are Dewar,
02:52:10 19 1830; Moose Factory III, 1840 to 1860; and Moose
02:52:12 20 Factory I. So if they were in the database why
02:52:22 21 was a bivariate distribution analysis not done
02:52:25 22 over those -- the beads from those sites and
02:52:28 23 those dates?

02:52:32 24 A. You're speaking of sites in table
02:52:34 25 3.

02:52:34 1 Q. Yes, in your conclusion you say,
02:52:36 2 also grouped with these other sites, and there
02:52:38 3 are three sites that aren't listed -- they're in
02:52:41 4 table 3 that aren't listed in table 5, Dewar,
02:52:44 5 1830; Moose Factory III, 1840 to 1860; and Moose
02:52:48 6 Factory I, which is, I believe, 1750 to 1850.

02:53:05 7 So do you know why the bivariate
02:53:08 8 distribution analysis was not done over those
02:53:10 9 sites?

02:53:11 10 A. I actually don't.

02:53:15 11 Q. Do you know where they would plot
02:53:18 12 on graph 3 on page 12 in terms of bivariate
02:53:26 13 distribution of sodium and manganese?

02:53:30 14 A. No.

02:53:37 15 Q. You can't say they wouldn't graph
02:53:41 16 with the 47 beads that had a comparatively
02:53:43 17 weaker correlation, can you?

02:53:47 18 A. I don't know where they would
02:53:48 19 graph. I agree they're not in that graph for
02:53:52 20 some reason that Hancock and Brandi would know.

02:53:59 21 Q. If we turn back to Exhibit 4250,
02:54:02 22 please -- well, we have it, sorry, in front of
02:54:05 23 us. We have the first two bullets there
02:54:13 24 describing two sets of beads, one with 18, group
02:54:17 25 with a certain listing of sites, and then the

02:54:24 1 second bullet describes a group of 49.

02:54:26 2 And I'm going to call the first set
02:54:28 3 "set 18" and then "set 49" so we know what we're
02:54:35 4 talking about.

02:54:36 5 A. "Set 47".

02:54:39 6 Q. 47? Thank you. Second bullet
02:54:44 7 refers to 47 beads.

02:55:00 8 Now, your bead report does not
02:55:08 9 describe -- do you know what I mean by a "linear
02:55:14 10 relationship"?

02:55:16 11 A. Yes.

02:55:18 12 Q. So the bead report doesn't
02:55:20 13 describe a linear relationship between the beads
02:55:24 14 in set 18 and the sites that are grouped with it
02:55:28 15 and the beads in -- well, secondly, the beads in
02:55:32 16 set 47 and the sites that are grouped with that,
02:55:37 17 is that correct?

02:55:38 18 A. No. They have two separate
02:55:43 19 chemistries, some of which -- and they relate to
02:55:46 20 those sites. So 18 of them to those sites and
02:55:50 21 47 of them to the other sites.

02:55:53 22 Q. So the set 18 and the sites they
02:55:57 23 relate to, there's not a linear relationship
02:56:00 24 described between those 18 beads and those sites
02:56:03 25 they relate to? The relationship is not put out

1 as a linear relationship?

2 A. I'm not sure what you mean when
3 you say that.

4 Q. Okay. What I mean is, is it --
5 it's not described in -- let me just put it in
6 mathematical terms where you can say that the
7 association has a certain degree of strength.

8 I might not be able to get very far
9 with this, but let me put it -- come at it from
10 a different way.

11 The relationship that's described
12 between, say, set 18 and the sites is called an
13 "association" or a "grouping"?

14 A. Yes.

15 Q. And it's not expressed in a
16 formula, for instance, or not given a number
17 that describes the relationship between them?

18 A. Do you mean like 75 percent
19 strength versus --

20 Q. Well, something -- correct.

21 A. No.

22 Q. And the same with set 47?

23 A. Right.

24 Q. Right. And in your report on
25 page 12, which you have graph 3, and you're

02:57:16 1 describing graph 3, you talk about beads
02:57:22 2 scattering to the left of the plot, and there's
02:57:24 3 a broad association. This is -- sorry, we've
02:57:27 4 got -- I'll wait for a second. This is Exhibit
02:57:31 5 4240. There it is. And if you go up to the
02:57:42 6 text...

02:57:46 7 So the third line, "exhibit some
02:57:48 8 tendency to correlate with each other"; and then
02:57:52 9 further down, "tend to cluster to the right of
02:57:55 10 the graph"; and then we see further down,
02:58:01 11 "scatter to the left of the plot"; and "they are
02:58:03 12 in broad association".

02:58:05 13 So we're describing it in those
02:58:07 14 general sort of terms rather than any
02:58:14 15 mathematical relationship? Is that --

02:58:16 16 A. That's correct.

02:58:17 17 Q. And you use the word
02:58:18 18 "association" -- words "association" and "group"
02:58:23 19 in your conclusion on page 25 as well?

02:58:30 20 A. And in the summary.

02:58:31 21 Q. And in the one-page summary. And
02:58:34 22 what you say is that what I'm calling "set 47"
02:58:40 23 has a relatively weaker association with the
02:58:42 24 sites that you associate it with than set 17 has
02:58:46 25 with the sites that you associate it with, is

02:58:49 1 that right?

02:58:50 2 A. Set 18, yes.

02:58:51 3 Q. Set 18. Apologize.

02:58:55 4 A. You can see more clustering with

02:58:57 5 the 18 than in the others.

02:59:00 6 Q. So what we're doing is comparing

02:59:04 7 an association between one set of beads and

02:59:07 8 sites with the association between another set

02:59:10 9 of beads and sites? So just -- it's about

02:59:16 10 relative strength of association is what you're

02:59:18 11 doing there?

02:59:19 12 A. With sodium and manganese on

02:59:23 13 antimony beads.

02:59:25 14 Q. Right.

02:59:25 15 A. Yes.

02:59:26 16 Q. And for set 18 you say that

02:59:28 17 relatively there is a stronger association with

02:59:33 18 the sites that are associated with --

02:59:37 19 A. For set 18.

02:59:38 20 Q. Set 18, yes, than with --

02:59:41 21 relatively stronger than the association between

02:59:43 22 set 47 and those sites, those association?

02:59:46 23 A. I believe that's what they

02:59:48 24 concluded or what we concluded looking at this,

02:59:51 25 the analysis.

02:59:52 1 Q. Right. We don't know in absolute
02:59:54 2 terms how strong the association is between each
02:59:57 3 set and the sites they're associated with?

03:00:00 4 A. I would agree.

03:00:03 5 Q. So it could be that the link
03:00:05 6 between set 18 and the sites that they have
03:00:07 7 there is actually not very strong to start with?
03:00:16 8 We have a graph showing some clustering?

03:00:19 9 A. Right. So it was examined by
03:00:25 10 people who look at these bead clusters all the
03:00:28 11 time who said, that's a pretty good association,
03:00:30 12 but the other one is weaker.

03:00:33 13 Q. Sorry, they said, it's a pretty
03:00:36 14 good association?

03:00:36 15 A. Well, that's what we're
03:00:38 16 reflecting in the comments here.

03:00:39 17 Q. Okay. On page 25 of your bead
03:00:48 18 report we don't also know -- sorry, before I
03:00:56 19 continue with page 25, we don't know how much
03:00:59 20 stronger the association in -- between set 18
03:01:04 21 and those sites in set 47 and those sites is, do
03:01:08 22 we? It's relatively stronger but we don't know
03:01:12 23 how much stronger?

03:01:13 24 A. There's no measure.

03:01:15 25 Q. So page 25. We have -- further

03:01:16 1 down, please. We talk about the weaker
03:01:31 2 association in the middle there of set 47:

03:01:35 3 "This weaker association extends
03:01:37 4 the date range for the assemblage to
03:01:40 5 late 17th to early 19th century.
03:01:40 6 However, it should be noted that the
03:01:42 7 majority of the assemblage is
03:01:44 8 consistent with the former sites
03:01:45 9 dating to late 17th to mid-18th
03:01:48 10 century."

03:01:50 11 If we go back to Exhibit 4241, please,
03:02:09 12 this is your supplementary report, page 19. We
03:02:21 13 read this before:

03:02:23 14 "Thus, chemical analysis of a
03:02:24 15 sample at the River Mouth Speaks bead
03:02:28 16 assemblage suggests most of the beads
03:02:30 17 were deposited at the site between the
03:02:32 18 late 16th to mid-18th century[...]"

03:02:38 19 So here in these two parts,
03:02:40 20 particularly in page 25, if we go back to the --
03:02:42 21 there's no -- this point is not comparing the
03:03:00 22 strengths. You're saying:

03:03:03 23 "However, it should be noted that
03:03:04 24 the majority of the bead assemblage
03:03:05 25 [...]"

03:03:08 1 So you're saying that one set of beads
03:03:10 2 is consistent -- excuse me.

03:03:23 3 A. It's actually -- if you go to the
03:03:24 4 summary page, it's the best page to use because
03:03:26 5 I used it to summarize the results.

03:03:31 6 Q. Well, I would like to stay on
03:03:34 7 this page if it's all right.

03:03:39 8 THE COURT: I am going to interrupt
03:03:40 9 you. That is maybe the fifth or sixth or
03:03:42 10 seventh time today that I've heard a computer
03:03:45 11 noise. It's also the very first time in now
03:03:47 12 three or four months of trial. So whoever is
03:03:51 13 having that happen today, if you could please
03:03:53 14 change it so it doesn't.

03:03:55 15 Once is fine because that just
03:03:57 16 happens, but it's been several times today.
03:04:00 17 Please go ahead, sir.

03:04:02 18 MR. OGDEN: Thank you, Your Honour.

03:04:25 19 BY MR. OGDEN:

03:04:26 20 Q. The point here you're making when
03:04:27 21 you say:

03:04:28 22 "However, it should be noted that
03:04:29 23 the majority of assemblage is
03:04:32 24 consistent with the former sites
03:04:33 25 dating to late 17th to mid-18th

03:04:36 1 century."

03:04:37 2 That's not a comparison of relative
03:04:39 3 strengths of association, is it, between beads
03:04:44 4 and sites?

03:04:52 5 I'll ask you the question again if
03:04:53 6 you'd like.

03:04:54 7 A. No. The statement about the time
03:04:58 8 period and the beads in the supplementary
03:05:02 9 report, as reflected in the summary page,
03:05:06 10 reflects that as a whole there are many beads,
03:05:12 11 or there -- and they're plotified, that date,
03:05:17 12 for example, the turquoise and the black, that
03:05:20 13 date to the mid- to late 17th century.

03:05:28 14 And then we have the antimony beads
03:05:31 15 reflecting pretty much, as I gave evidence
03:05:34 16 in-chief, what Dr. Fitzgerald already had said
03:05:37 17 about the range of the antimony beads.

03:05:43 18 Q. So if I can -- well, to ask my
03:05:47 19 question again though, what you're saying here
03:05:49 20 is -- the point you're making, it should be
03:05:52 21 noted the majority of the assemblage is
03:05:54 22 consistent with the former sites dating to late
03:05:56 23 17th to mid-18th century, and those are the
03:05:59 24 former sites that you've otherwise said
03:06:02 25 associate with set 18.

03:06:08 1 In this point you're making here it
03:06:11 2 should be noted that the majority of the
03:06:13 3 assemblage is consistent. You're describing
03:06:16 4 strength of association or relative strength of
03:06:18 5 association between set 18 and those sites?

03:06:23 6 A. I haven't -- sorry.

03:06:26 7 Q. And set 18 and those sites?

03:06:28 8 A. I have not provided a measure of
03:06:30 9 that, yes.

03:06:30 10 Q. But the point you're making here
03:06:32 11 is separate from that. It's not a point about
03:06:35 12 relative strengths. The point here is about the
03:06:39 13 majority of the assemblage is consistent, isn't
03:06:43 14 it?

03:06:50 15 A. Yes, that is what is said here.

03:07:16 16 Q. So we have set 18, which groups
03:07:20 17 with a number of sites, and set 47, which groups
03:07:25 18 with a number of sites. And your evidence is
03:07:28 19 that set 18 groups more strongly with its sites
03:07:33 20 than set 47 groups with its sites, but we don't
03:07:38 21 know how strong, in absolute terms, either of
03:07:43 22 those associations is.

03:07:44 23 And then you go on and you say, and
03:07:47 24 the weaker association, which is the association
03:07:51 25 between set 47 and its sites, extends the date

03:07:56 1 range, broadens it from late 17th to mid-18th
03:08:02 2 century to late 17th to early 19th century.

03:08:06 3 But then you pull that back and you
03:08:07 4 say, however, it should be noted that the
03:08:09 5 majority of the assemblage is consistent with
03:08:13 6 the former sites dating to late 17th to mid-18th
03:08:17 7 century, which is set 18.

03:08:20 8 Now, it should be apparent that 18 is
03:08:23 9 not a majority, is it?

03:08:26 10 A. Yes.

03:08:27 11 Q. And I take it that's just
03:08:30 12 occurred to you now?

03:08:31 13 A. No, that's why I did the summary
03:08:33 14 page. The summary page lays out the listing of
03:08:39 15 the beads by numbers and the conclusions reached
03:08:48 16 about them.

03:08:54 17 Q. So the comment here about the
03:08:58 18 majority is an error, isn't it?

03:09:05 19 A. The majority. The problem is it
03:09:08 20 says "the majority of the assemblage". And so
03:09:13 21 if you add all the beads from the black beads
03:09:16 22 with the turquoise beads, the red bead, you get
03:09:24 23 pretty much toward an even distribution.

03:09:27 24 But as I was preparing the table, it
03:09:29 25 is true that I noticed that the 18 is not a

03:09:34 1 majority.

03:09:38 2 Q. This is -- sorry, this is the

03:09:39 3 table --

03:09:41 4 A. The summary.

03:09:42 5 Q. Exhibit 4250?

03:09:43 6 A. Yes.

03:09:44 7 Q. And in your supplementary report

03:09:47 8 you say:

03:09:48 9 "Chemical analysis suggests most

03:09:50 10 of the beads were deposited between

03:09:53 11 late 17th to mid-18th century."

03:09:55 12 And so that conclusion there relies on

03:09:57 13 the proposition that the majority of beads

03:10:02 14 relate to that -- sites in that period?

03:10:07 15 A. Of the entire assemblage.

03:10:09 16 Q. Well, we have 69 white beads, 12

03:10:14 17 turquoise beads, which date from 1650 to 1675,

03:10:20 18 and also 1620 to 1650, plus 16 black beads which

03:10:27 19 on Exhibit, again, 4250, date from 1601 to 1610

03:10:33 20 or 1605 to 1687, prior to 1650.

03:10:38 21 So, really, the majority is still

03:10:40 22 before the late -- if you add in -- sorry, if

03:10:45 23 you add in the turquoise and black beads to get

03:10:49 24 to a majority with, we're dragging the time

03:10:54 25 period into the mid- or perhaps the early 17th

03:10:57 1 century, aren't we?

03:10:59 2 A. So here's the problem with what
03:11:01 3 you're doing. There are assemblages of beads on
03:11:04 4 the site, for example the turquoise beads.
03:11:08 5 There are 12 beads, turquoise beads that have a
03:11:12 6 chemistry that group tightly in the last half of
03:11:16 7 the 17th century.

03:11:17 8 There are some of the white-antimony
03:11:19 9 beads that date tightly with sites that date to
03:11:23 10 that period. And the black beads are even more
03:11:28 11 interesting in that they were deposited in the
03:11:32 12 late part of the 17th century.

03:11:35 13 So that there is a substantial
03:11:40 14 presence of beads in the assemblage that were
03:11:43 15 laid down, I believe, in the late 17th century.
03:11:46 16 There are substantial number of beads, as
03:11:50 17 Fitzgerald first identified, that I think were
03:11:54 18 laid down in the 18th century. And there are
03:11:57 19 even some beads that are laid down in the 19th
03:12:00 20 century, by their nature.

03:12:02 21 So I think the glass chemistry -- you
03:12:05 22 can't characterize the whole assemblage as one.
03:12:07 23 It's sections of the assemblage. So there can
03:12:12 24 be white-antimony beads that date to the late
03:12:15 25 17th century, and there can be antimony beads

1 that date to the 18th century.

2 And that's what I was trying to show
3 in the summary page.

4 MR. OGDEN: Those are my questions,
5 Your Honour.

6 Thank you, Dr. Williamson.

7 THE COURT: Thank you, sir.

8 Ms. Pelletier?

9 MS. PELLETIER: No re-exam, Your
10 Honour.

11 THE COURT: Thank you, sir, that
12 concludes your testimony. You may step down.

13 THE WITNESS: Thank you.

14 THE COURT: Please go ahead.
15 Ms. Pelletier or whoever the right person is,
16 Mr. Townshend, from your team, I mentioned what
17 I mentioned over lunch because I didn't want you
18 all to have heart failure.

19 Do you have a proposal as to how we
20 would proceed in the next short while? Or is
21 the next thing going to be my suggestion of a
22 trial management update on the telephone?

23 MR. TOWNSHEND: We can have a trial
24 management update. The -- Your Honour had asked
25 me earlier to make sure that Mr. Greene would be

03:13:47 1 available on September 30th, and he will be.

03:13:51 2 THE COURT: Yes, I understand given
03:13:52 3 his geographic location, profession and
03:13:55 4 background that this -- to suggest he might be
03:13:58 5 available on short notice would be rather a long
03:14:00 6 shot. Having said that, I would at least raise
03:14:08 7 with you, sir, how long is -- is he sort of a
03:14:10 8 two-day witness, I think? Mr. Greene?

03:14:16 9 MR. TOWNSHEND: May I get my file?

03:14:23 10 THE COURT: Please go ahead. Yes, of
03:14:23 11 course. I'm just wondering if it's worth the --
03:14:25 12 just having counsel make a phone call about this
03:14:29 13 upcoming Monday. It would be what I would
03:14:31 14 describe as a long shot.

03:14:31 15 MR. TOWNSHEND: Yes.

03:14:31 16 THE COURT: But unless you have a
03:14:33 17 problem with it, sir, or any of the counsel
03:14:35 18 present who may be charged with cross-examining
03:14:37 19 that gentleman, I don't have a problem with the
03:14:39 20 idea of no harm in asking.

03:14:42 21 If any counsel, if that would present
03:14:45 22 a problem with this gentleman arriving a week
03:14:47 23 early, just say so because I know that
03:14:49 24 preparation can be --

03:14:49 25 MR. McCULLOCH: No problem.

03:14:51 1 THE COURT: No problem. All right.

03:14:51 2 Mr. Ogden?

03:14:51 3 MR. OGDEN: Ms. McRandall is going to

03:14:52 4 do --

03:14:53 5 THE COURT: She's not here today.

03:14:56 6 MR. OGDEN: But without speaking for

03:14:57 7 her, it may be possible, but we'll have to get

03:15:00 8 back to you.

03:15:03 9 MR. TOWNSHEND: I'm almost certain he

03:15:04 10 is not available.

03:15:06 11 THE COURT: Yes, I am too actually

03:15:06 12 just given his profession and background. But I

03:15:11 13 do prefer the idea of making the inquiry of him

03:15:14 14 on the basis that there really is no harm in

03:15:17 15 asking as long as it does not present a problem

03:15:19 16 for your preparation, sir, or whomever is

03:15:23 17 charged with calling that witness on your team.

03:15:27 18 MR. TOWNSHEND: Actually, it does.

03:15:29 19 THE COURT: It does. All right. Fair

03:15:30 20 enough.

03:15:31 21 Well, here's what I'll say then. I

03:15:33 22 think we'll adjourn for today, and I will ask

03:15:36 23 counsel, as I have before, to consider their --

03:15:39 24 well, bearing in mind you were supposed to be

03:15:41 25 here tomorrow, I think I'll just send an e-mail

03:15:45 1 out, and we'll talk about the trial schedule on
03:15:47 2 the telephone.

03:15:51 3 If you have any creative ideas
03:15:53 4 overnight, you can let me know, all right? I
03:15:55 5 know that Mr. Greene is fixed to come up here
03:15:57 6 from the United States for September 30th, and
03:16:01 7 if all else fails that's when we'll see
03:16:08 8 Mr. Greene.

03:16:10 9 Is there anything else you wish to
03:16:11 10 raise, sir?

03:16:13 11 MR. TOWNSHEND: No, thank you.

03:16:14 12 THE COURT: No. Okay. So my office
03:16:15 13 will be in touch with you about scheduling.

03:16:19 14 For purposes of the members of the
03:16:20 15 public who are here, the next witness I just
03:16:22 16 mentioned is currently scheduled for September
03:16:25 17 30th. If you are interested in discovering if
03:16:29 18 there's someone sooner, I would suggest you talk
03:16:33 19 after court with one of the lawyers here and see
03:16:35 20 if you can arrange for them to let you know,
03:16:37 21 okay?

22 --- Whereupon the proceedings were
23 adjourned at 3:16 p.m.

24
25

REPORTER'S CERTIFICATE

I, HELEN MARTINEAU, CSR, Certified
Shorthand Reporter, certify;

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

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

That the foregoing is a true and
accurate transcript of my shorthand notes so
taken. Dated this 1st day of October 2019.



PER: HELEN MARTINEAU

CERTIFIED SHORTHAND REPORTER

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