

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

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DAY 11 / VOL 11  
May 24, 2019

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Toronto, ON M5K 1A2  
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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

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--- This is the VOLUME 11/DAY 11 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 24th day of May, 2019.

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B E F O R E:

The Honourable Justice Wendy M. Matheson

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

2

3 H. W. Roger Townshend, Esq., for the Plaintiffs,  
4 & Benjamin Brookwell, Esq., The Chippewas of  
5 Saugeen First Nation,  
6 and the Chippewas of  
7 Nawash First Nation.

8

9

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

13

14 Richard Ogden, Esq., for the Defendant,  
15 Her Majesty the  
16 Queen in Right of  
17 Ontario.

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

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DONALD PETER KEESHIG.....	1192
(via videotaped examination)	

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1 -- Upon commencing at 10:00 a.m.

2  
3 THE COURT: Good morning, Mr. Townshend.

4 MR. TOWNSHEND: Good morning, Your Honour.

5 THE COURT: Now, I understand this  
6 morning we're going to hear one of the Rule 36  
7 witnesses. And just for the members of the public  
8 who are present, what that means is that certain  
9 individuals who were either elderly or otherwise,  
10 it was unclear if they would be available to  
11 testify at trial, evidence was taken in advance of  
12 trial. And it has turned out that they are not  
13 available.

14 So as I understand it, sir, the Rule 36  
15 evidence we're now going to hear is Mr. Donald  
16 Keeshig; is that correct?

17 MR. TOWNSHEND: That is correct.

18 THE COURT: Just for the record, when  
19 was that evidence taken, sir?

20 MR. TOWNSHEND: It was taken in the  
21 fall of 2002.

22 THE COURT: All right.

23 Now I notice, Mr. Townshend, that one  
24 of the agreed statements of fact relates to this  
25 gentleman's Rule 36 evidence.

10:02:22 1 MR. TOWNSHEND: Yes.

10:02:23 2 THE COURT: And it doesn't need to be  
10:02:24 3 repeated, because it's in the exhibits. But I  
10:02:27 4 think it would be helpful to put the exhibit number  
10:02:29 5 on the record, if someone has it, the ASF regarding  
10:02:33 6 this particular evidence.

10:02:35 7 MR. TOWNSHEND: Thank you, that is  
10:02:36 8 Exhibit 3932.

10:02:38 9 THE COURT: 3932.

10:02:42 10 MR. TOWNSHEND: And the purpose of that  
10:02:43 11 was that Mr. Keeshig was cross-examined vigorously  
10:02:48 12 in relation to consistency of his evidence with an  
10:02:52 13 interview he had given in 1998, and he said that he  
10:02:57 14 had not said exactly what the transcript said.

10:03:01 15 And when we went back and listened to  
10:03:03 16 the tape, there was indeed an omission from the  
10:03:06 17 transcript which changed the sense of what he said,  
10:03:09 18 in our submission. And that he was correct, that  
10:03:12 19 he had not said what he was being cross-examined  
10:03:15 20 about.

10:03:16 21 THE COURT: Right. And do you have  
10:03:17 22 also the exhibit numbers for the evidence itself?

10:03:23 23 MR. TOWNSHEND: Yes. The examination  
10:03:24 24 in-chief is Exhibit 3945. And the cross-examination  
10:03:30 25 is Exhibit 3946.

1 THE COURT: All right. Madam reporter  
2 is going to be keeping a record of these  
3 proceedings, as she's doing right now as we talk.

4 There is already a full transcript of  
5 the actual Rule 36 evidence. So I leave it to the  
6 parties to talk to madam reporter at some point, if  
7 you have not done so already, about the extent to  
8 which you're going to be asking her to transcribe  
9 for a second time that evidence.

10 We don't need to do it right now, but  
11 just make sure before the day is out...

12 MR. TOWNSHEND: We've already spoken to  
13 her about it.

14 THE COURT: What is it you're proposing?

15 MR. TOWNSHEND: We don't need an  
16 additional transcript, we already have the --

17 THE COURT: Okay. So we'll have  
18 today's proceedings in the ordinary way, but the  
19 Rule 36 evidence itself, need not be transcribed a  
20 second time.

21 Now, are those two exhibit numbers you  
22 gave me the actual transcript?

23 MR. TOWNSHEND: Yes, they are.

24 THE COURT: All right.

25 Is there any other preliminaries, sir,



10:04:44 1 that we should attend to before we begin?

10:04:46 2 MR. TOWNSHEND: Yes, I have an  
10:04:47 3 administrative matter.

10:04:49 4 Your Honour asked about the authenticity  
10:04:51 5 agreement.

10:04:51 6 THE COURT: Yes, I did.

10:04:52 7 MR. TOWNSHEND: We have now had that  
10:04:54 8 signed, and it's been entered as document SC0173.

10:05:00 9 THE COURT: All right. And our  
10:05:02 10 practice is to make these sort of things a lettered  
10:05:06 11 exhibit.

10:05:07 12 Yes. Mr. Registrar, what is the next  
10:05:10 13 lettered exhibit?

10:05:11 14 THE REGISTRAR: Lettered Exhibit C-2,  
10:05:14 15 as "Christopher".

10:05:16 16 THE COURT: C-2, all right.

10:05:16 17 EXHIBIT C-2: Signed Authenticity  
10:05:16 18 Agreement.

10:05:19 19 THE COURT: Now I noted, sir, from the  
10:05:21 20 information you gave me that this gentleman's  
10:05:24 21 examination in-chief is 1 hour and 20 minutes?

10:05:27 22 MR. TOWNSHEND: Yes.

10:05:28 23 THE COURT: What I think we should do  
10:05:29 24 is run that in its entirety, unless there is a  
10:05:32 25 reason why anyone stands up and needs to address

1 something, then we'll take a break at that point.

2 MR. TOWNSHEND: Yes.

3 THE COURT: Which will be roughly at  
4 the regular time. And then we'll run the  
5 cross-examination after that; is that satisfactory?

6 MR. TOWNSHEND: That is fine, thank  
7 you.

8 THE COURT: Thank you, Mr. Townshend.  
9 Whoever is in charge of the video,  
10 should get it going.

11 MR. TOWNSHEND: Ready to go.

12 THE COURT: Yes.

13 MR. TOWNSHEND: May I sit for this?

14 THE COURT: You should certainly sit  
15 for this.

16 If any counsel does wish to interject,  
17 they should stand up and wait until the technology  
18 is paused. I know that you've all seen this, so I  
19 doubt there's going to be any need for that.  
20 Please go ahead.

21 -- REPORTER'S NOTE: (Videotaped  
22 Examination In-Chief of Donald Peter Keeshig held  
23 on September 13, 2002 is played for the Court).

24 (Videotaped Examination was paused).

25 THE COURT: So that I take it is the

11:24:48 1 examination in-chief of that gentleman?

11:24:51 2 MR. TOWNSHEND: That is correct.

11:24:52 3 THE COURT: The cross-examination which  
11:24:53 4 is about a little more than two hours long, as I  
11:24:56 5 understand it, will commence promptly after our  
11:25:00 6 20-minute break, all right.

11:25:29 7 -- RECESS TAKEN AT 11:25 --

11:46:44 8 -- UPON RESUMING AT 11:46 --

11:46:50 9 THE COURT: Mr. Townshend.

11:46:52 10 MR. TOWNSHEND: Yes, we should continue  
11:46:53 11 with the cross-examination.

11:46:55 12 THE COURT: Yes. Now, your colleague,  
11:47:01 13 Mr. Brookwell, has control of the video.

11:47:01 14 MR. TOWNSHEND: Yes.

11:47:03 15 THE COURT: So obviously it's much too  
11:47:05 16 long to complete the cross-examinations --  
11:47:07 17 do you have a breakdown of each cross' time, or do  
11:47:10 18 we know?

11:47:11 19 MR. BROOKWELL: No, Your Honour, we  
11:47:12 20 don't have it broken down by time. But I can keep  
11:47:16 21 an eye on the time.

11:47:18 22 THE COURT: I think at 5 to 1:00, or  
11:47:20 23 maybe even 10 to 1:00, start looking for a, you  
11:47:24 24 know, logical break point. And I'm sure everyone  
11:47:31 25 will be content with whatever that happens to be.

11:47:34 1 If there's a desire to go along a  
11:47:38 2 little further, the applicable counsel will say so  
11:47:41 3 at that point. But don't leave it abruptly to  
11:47:44 4 1:00, just in case their cross-examining counsel is  
11:47:48 5 in the middle of something, okay?

11:47:51 6 MR. BROOKWELL: Okay.

11:47:52 7 THE COURT: Please go ahead.

10:07:09 8 -- REPORTER'S NOTE: (Videotaped  
10:07:09 9 Cross-examination of Donald Peter Keeshig held on  
10:07:18 10 December 5, 2002 is played for the Court).

10:07:09 11 (Videotaped Examination was paused).

12:44:53 12 MR. TOWNSHEND: The cross-examination  
12:44:56 13 shifts to another topic at this point.

12:44:58 14 Would you care to take a lunch break at  
12:45:01 15 this time?

12:45:02 16 THE COURT: It's a bit early. Do we  
12:45:05 17 have any sense of -- you've probably reviewed the  
12:45:10 18 transcript already. Is there another point we can  
12:45:14 19 cover, Mr. Townshend, before we rise for lunch?

12:45:18 20 MR. TOWNSHEND: I'm sure we can go a  
12:45:20 21 bit further.

12:45:21 22 THE COURT: Let's go a bit further and  
12:45:25 23 see what we do. Thank you for working on that  
12:45:31 24 objective.

10:07:09 25 -- REPORTER'S NOTE: (Videotaped

10:07:09 1 Cross-Examination of Donald Peter Keeshig held on  
10:07:18 2 December, 2002 is played for the Court).

10:07:09 3 (Videotaped Examination was paused).

12:55:21 4 THE COURT: Mr. Brookwell, is that a  
12:55:23 5 place where you can stop? Is that alright?

12:55:30 6 MR. TOWNSHEND: That will do.

12:55:35 7 THE COURT: We'll resume at 2:15.

12:56:29 8 -- LUNCH RECESS TAKEN AT 12:56 --

02:14:42 9 -- UPON RESUMING AT 2:15 --

02:15:20 10 THE COURT: Yes, sir.

02:15:31 11 MR. TOWNSHEND: We're ready to go.

02:15:34 12 THE COURT: Terrific, please go ahead.

02:15:37 13 -- REPORTER'S NOTE: (Videotaped  
02:15:37 14 Cross-examination of Donald Peter Keeshig  
10:07:18 15 continues).

10:07:09 16 -- REPORTER'S NOTE: (Videotaped  
10:07:09 17 Cross-Examination of Donald Peter Keeshig held on  
03:21:01 18 December 5, 2002 is concluded).

03:21:01 19 THE COURT: That concludes that  
03:21:02 20 gentleman's evidence.

03:21:04 21 Now, further to the information I  
03:21:05 22 received from counsel about the witness schedule,  
03:21:10 23 we're going to proceed on Monday with another  
03:21:14 24 Rule 36 witness of about the same length,  
03:21:19 25 Frank Shawbedees.

03:21:22 1 And then you, sir, have told me about  
03:21:25 2 some other schedule questions for next week and the  
03:21:28 3 following week. So I'll communicate with counsel  
03:21:30 4 separately about those, having considered that  
03:21:33 5 information. But just so everyone knows where  
03:21:37 6 we're starting on Monday.

03:21:38 7 MR. TOWNSHEND: I was thinking, perhaps  
03:21:40 8 of doing John Nadjiwon on Monday, which is slightly  
03:21:45 9 longer.

03:21:46 10 THE COURT: We can start it, we won't  
03:21:48 11 be able to finish him based on today's experience.

03:21:51 12 MR. TOWNSHEND: John Nadjiwon is about  
03:21:55 13 ten minutes longer than today's.

03:21:58 14 THE COURT: You didn't turn the page,  
03:22:01 15 sir, there's a part one and a part two.

03:22:03 16 MR. TOWNSHEND: Yes. 109 in-chief, 158  
03:22:07 17 cross, 106 cross.

03:22:09 18 THE COURT: Yeah, that's about an  
03:22:11 19 hour-plus longer than today.

03:22:13 20 MR. TOWNSHEND: I made a mistake there.  
03:22:15 21 Yes, I'm sorry. I'm fine with starting with Frank  
03:22:19 22 Shawbedees.

03:22:19 23 THE COURT: Why don't we do that. We  
03:22:21 24 have some other gaps to fill in as well. I'm not  
03:22:25 25 saying we won't quickly get to the other gentleman.

03:22:27 1 But we'll resume on Monday at 10 o'clock with  
03:22:31 2 Mr. Shawbedees, and then in the interval, we'll  
03:22:34 3 plug in the gaps that you've told me about with  
03:22:37 4 these other witnesses, all right?

03:22:43 5 Thank you everybody.

03:23:04 6  
7 -- Court adjourned at 3:21 p.m.  
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REPORTER'S CERTIFICATE

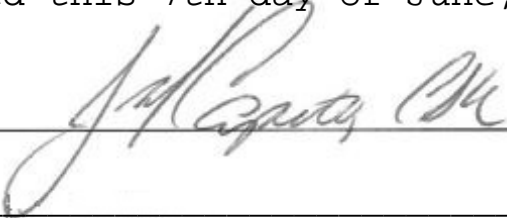
I, JUDITH M. CAPUTO, RPR, CSR, CRR,  
Certified Shorthand Reporter, certify;

That the foregoing proceedings were  
taken before me at the time and place therein set  
forth;

That the testimony of the witness  
and all objections made at the time of the  
examination were recorded stenographically by me  
and were thereafter transcribed;

That the foregoing is a true and  
correct transcript of my shorthand notes so taken.

Dated this 7th day of June, 2019.



\_\_\_\_\_

NEESON COURT REPORTING INC.

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



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