

REGISTRY NO. 999 93 3220

ONTARIO COURT (PROVINCIAL DIVISION)

HER MAJESTY THE QUEEN

against

STEVE POWLEY AND RODDY C. POWLEY

V O L U M E V

E X C E R P T S F R O M T R I A L

BEFORE THE HONOURABLE JUDGE C. VAILLANCOURT
at the City of Sault Ste. Marie
on July 14 and 15, 1998

Charge: S. 47 (1) Game and Fish Act
S. 46 Game and Fish Act

APPEARANCES:

B. Long, Esq.

Counsel for the Crown

J. Teillet

Counsel for the Accused

ONTARIO COURT (PROVINCIAL) DIVISION

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Tuesday, July 14, 1998

THE COURT: Good morning.

MR. LONG: Good morning, Your Honour. There are just two brief matters if I may, Sir, before I commence. One, is I wish to advise the Court that Ms. Christie is working for Sierra Legal Defence Fund now. She's no longer with the Ministry and I would ask that Peter LaMont, this gentleman to my left, be allowed to sit at the table to assist me. He's assumed significant responsibilities in relation to this file and it would certainly be of great assistance to me.

THE COURT: No objection, counsel?

MS. TEILLET: Oh, none at all. Your Honour, there's one other housekeeping matter. The documents which I provided to you in Toronto, I ask that they be admitted....

THE COURT: Alright. What I'll do is I'll give them to you and then you can file them.

MS. TEILLET: Okay, and...

THE COURT: I think I'm going to need a transport to bring all this material back to Toronto to get final judgment together.

MS. TEILLET: There are...now I don't quite know exactly what the best way to do this and I don't know whether

there's, to be honest with you a rule that everything has to be in consecutive

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order, but it seems to me logical that since they're continuations of Dr. Ray's and Dr. Lytwyn's that we add them in to the original exhibits. I don't know if that makes sense to everybody else.

THE COURT: I think it seems to make sense to me. We can always, whatever the other exhibit is, we can put this as a) or something.

MS. TEILLET: Well, ya and they're volume numbered, so we're actually adding volume numbers to the original exhibit.

THE COURT: Oh, alright. Alright, that's good.

MS. TEILLET: So, then I'd ask that we...and these, the Crown has already been provided with these materials, Your Honour. Volume III and Volume IV added to Dr. Ray's exhibit. These binders...to Dr. Ray's binders which are Exhibit thirty-one, so it will include, plus now it will be four binders.

THE COURT: Alright, so that will be Volumes III and IV added.

MS. TEILLET: And to Exhibit number forty, there was only one binder for Dr. Lytwyn and now is there's a Volume II.

THE COURT: Alright, Volume II will form part of that exhibit.

MS. TEILLET: Now, there is

four...now, we do have, before I hand them into the Court, I just have two more that we had sent in stages and since I gave these to

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Your Honour, there's two more that have to be added in to here just to make it up-to-date with what Mr. Long's office has and if I could do that...I don't know if you want me to do that right now or I could do it a little later.

THE COURT: Alright, are these more documents to add to those volumes?

MS. TEILLET: To these Volumes III and IV.

THE COURT: Alright, and Mr. Long already has that material?

MS. TEILLET: He's got it all, yes.

THE COURT: Alright, let's do it at the break or something.

MS. TEILLET: Thank you. OK, and then I'll give them into the Court.

THE COURT: Alright, and before we go on, there is one other housekeeping matter. I'd like to mention, I'd like to thank the Court Reporter for getting the transcripts prepared. That was a rather massive task in the circumstances.

MR. LONG: I agree, it's wonderful.

MS. TEILLET: Yes.

THE COURT: The next housekeeping matter, while we're on housekeeping, the...my decision with respect to the hunting for 1998, I'm going to release

that on August the 4th. I'm up here. Counsel will not have to be here. I will likely have you...I'll have my judgment in your hands prior to August

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the 4th.

MS. TEILLET: Prior to.

THE COURT: Prior to. So, you will not have to attend on that date and the only reason I'm sort of going to do it here again is because there has been a certain amount of local interest. I want to give the judgment if there are interested members of the public.

MS. TEILLET: And there are.

THE COURT: And it may be a little too early. I understand though there are two witnesses to be called over the next two or three days.

MR. LONG: That's correct.

THE COURT: And what are the odds, if I can put it that way, of being able to make submissions either for August 4th to 7th. That might be cutting it I think a little too fine to get the transcripts if you require those, but I also have dates in the first week of September. September 3rd and 4th, so you might want to check...no commitments right now, just think about it and before we break, of course, we'll have to have a return date so those are some dates you might want to think about. Alright.

MR. LONG: Thank you. I'd like to call Gwyn Jones please.

THE COURT: Gwyn Jones. Now, the witness stand is over here. Although
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this is a new court room, I'm not sure where they found the furnishings.

GWYNNETH COLLEEN DEGNAN JONES SWORN:

EXAMINATION-IN-CHIEF BY MR. LONG:

MR. LONG: I wonder, Your Honour, if the witness could be seated?

THE COURT: Well, let's have her sworn in first. She is sworn in? Alright.

MR. LONG: No, she isn't.

THE COURT: No, she isn't. We got her name.

THE CLERK OF THE COURT: No, the name comes after the swearing in.

THE COURT: Alright.

THE CLERK OF THE COURT: Your Honour, there's been a directive.

THE COURT: Well, this is a good start to the day. You are sworn in then. Alright. You may sit down.

A. Well, a chair would be helpful probably.

THE COURT: After getting used to the posh surroundings next door, you know, we have to come back to reality here. Is it possible if the witness, if

she was sitting up here with the mike in that corner? Would that be better? I think we're ready.

MR. LONG: Q. Ms. Jones, I understand that you reside in Vancouver, British Columbia, is that

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correct?

A. That's correct.

Q. And you formerly had been a resident of this Province, is that correct?

A. That's right.

Q. Could you indicate, ma'am, when you graduated with your degree of Bachelor of Arts?

A. In 1981.

Q. And what was your major at that time?

A. History. Mostly Canadian history.

Q. And did you receive any awards during that period?

A. Yes, I was the gold medallist in all of honour's history and that's my graduating year. My third year I was the top of the class in honour's history.

Q. And from what university if I haven't asked?

A. That's Queen's University at Kingston.

Q. Kingston? Thank you, and what was your next degree? Educational degree.

A. My next degree was a Masters degree in public administration, also from Queen's.

Q. Alright, and your next degree please?

A. It was...

Q. I'm sorry, when was the Masters in public administration?

A. In 1982.

Q. Thank you. And subsequent to that?

A. Was a Masters degree in history from

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York University.

Q. And are there any awards academically that you've received that you have not described already?

A. Well, I was...I received more scholarship money than anyone else in the incoming year in my Masters degree in history. There were a number of schools who were anxious to have me. I think those are all the major academic awards. The individual scholarships are listed in the curriculum vitae.

Q. And when did you commence your employment related to Aboriginal issues?

A. In 1984.

Q. And your position please?

A. Was as an Indian Land Claims Researcher with the office of Indian Resource Policy and the Ministry of Natural Resources.

Q. And can you briefly, ma'am, describe your responsibilities in that position?

A. As a land claims researcher, I was responsible for assembling documentation and writing reports on a variety of land claims. Some of the issues that I researched were in the Robinson Huron Treaty area to do with flooding surrendered lands and roads and also in the Treaty 3 area to do with Ojibway use of islands as gardens, treaty land entitlement, flooding and roads.

Q. How long did you continue in that position?

A. I was a land claims researcher until 1984. 1984 I was...or 1988, sorry, I was classified as a land claims researcher.

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Q. OK, and what was your next position?

A. In that period 1984 to 1988 I had taken a year off to start my Masters degree.

Q. Yes.

A. So when I returned I was promoted to the position of Senior Researcher with what was then the Ontario Native Affairs Directorate, essentially the same group that had been merged into with another group and that was the position of head of research at Ontario Native Affairs.

Q. And what matters were you researching at that time, or heading up the research on?

A. Among the projects that I supervised were some major projects on Lake of the Woods fishing, Bruce Peninsula and Manitoulin Island land surrenders including Aboriginal fishery uses; the Moose Factory Metis land claim; some Garden River Indian Reserve land surrenders including some of the Aboriginal uses of the land; Treaty 9 flooding issues to do with hydro. As well, when I was there, I developed what is now the resource centre at Native Affairs and compiled and had organized a map collection of over 1,300 maps.

Q. How long did that position last?

A. That lasted until 1989. I was actually in that position for almost two years. At that time, the Directorate was reorganized to put more

resources into policy and negotiations.

Q. In that position, ma'am, I take it you were in a supervisory capacity, is that correct?

A. That's right.

Q. And what number of staff were you

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supervising?

A. There were up to five full-time and there were also some contract staff and part-timers, summer students, that sort of thing, so there could be up to eight or ten of us working in that group.

Q. All of whom reported to you.

A. Ya.

Q. Your next position please?

A. My next position was as a policy advisor with the Federal/Provincial Aboriginal Relations Branch and I might characterize this position and the succeeding six years as ones of increasing responsibility for negotiations and policy and I was responsible at that time and often exclusively responsible for the liaison and relationships with...between the Ontario Government and Native Affairs and also in a corporate sense and Metis and off-reserve Aboriginal people. I would be facilitating relationships between the Metis and various Government ministries and developing policy on Metis enumeration, community development, that sort of thing. During that time I visited many Metis groups and attended annual meetings with the organization and just generally tried to make the acquaintance of as many people in that community as I could.

Q. Alright, and would you continue please. Your next position and just briefly describe

its responsibilities.

A. All these positions from 1989 on, although they have different titles, the responsibilities are similar. The only thing that's slightly different about the next one, the policy

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advisor in the Corporate Policy Development Branch is that at that time Ontario was in constitutional negotiations so I had a special responsibility to assist the negotiators in issues that involved Metis and off-reserve Aboriginal peoples.

Q. And at some point you became a consultant independently employed, is that correct?

A. Yes. Well, before I had left Ontario, this is in 1993, I had what had been essentially an informal continuation of my responsibilities as head of research for Native Affairs because they found that they just couldn't get out of that business altogether, confirmed and it's reflected in my title, then again as Research Co-ordinator and Senior Policy Advisor, so that's the title that I held when I left Ontario and in the middle of 1995 I relocated to Vancouver, British Columbia.

Q. Alright.

A. And then from then I set up an independent consultant's practice specializing in land claims and treaty issues and also continuing to do some work on Metis and off-reserve Aboriginal issues.

Q. Ms. Jones, I apologize for abbreviating this somewhat, but I take it that your list of publications totals some 16 is that correct?

A. That's right.

Q. And just if you...you understand

I'll be filing your curriculum vitae.

A. Ah hm.

Q. Could you just briefly describe the types of publications with which you've been associated?

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A. Most of them are book reviews.

There are a few papers that I've presented to conferences and four articles that I've contributed to the Dictionary of Canadian Biography. The papers for the scholarly conferences and the Dictionary of Canadian Biography reflect one of my historical specialities which is late 19th Century Canada in general and particularly the workings of Government at that time which I got interested in as a land claims researcher. I was trying to decide how decisions would have been made at that time affecting Indian people and of the reviews I can just generally characterize them. I'm also the Book Review Editor of a newsletter which has a fairly broad circulation in the academic and other Aboriginal....

Q. Give us the name of that please.

A. That's the Social Sciences and Humanities Aboriginal Research Exchange newsletter known as SHARE for short.

Q. You are the Review Editor?

A. I'm the Review Editor.

Q. And I take it then you have an opportunity to inspect various...

A. Essentially I have to keep up to date on all the new material that's published. I have all the publishers send me their new release lists and the information describing them and as well I attend

the annual...I'm a member of the Canadian Historical Association. I attend their conference every year and I make a very concerted effort to be up to date on the latest research and analysis of these Aboriginal issues.

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Q. Ms. Jones, I'm showing you a document of some four pages, entitled Curriculum Vitae. Would you please review that briefly and indicate if that is your curriculum vitae with publications etc. attached?

A. Yes.

MR. LONG: Thank you. I'd ask that be filed as an exhibit.

THE COURT: Exhibit forty-nine.

EXHIBIT NUMBER FORTY-NINE:

Curriculum Vitae of Ms. Jones.

MR. LONG: Q. So, in conclusion, Ms. Jones I would take it from your description of your employment that for some period in excess of ten years you have been involved with matters related to Aboriginal claims and generally Aboriginal issues in Canada and Ontario specifically, is that correct?

A. I think it's closer to fourteen years now. Yes.

MR. LONG: On the basis of the qualifications as described, Your Honour, I would submit that Ms. Jones is qualified as an expert in Canadian Aboriginal History.

THE COURT: Counsel, any questions for the witness?

MS. TEILLET: Yes, I do have some

questions.

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G. Jones - Cr-Ex**

CROSS-EXAMINATION BY MS. TEILLET:

Q. Now, Ms. Jones, you said that you did a major in Canadian history and that that's your arts degree and that you...that you had a specialty in 19th Century Canadian history, is that....

A. That's right.

Q. That's correct.

A. That's right.

Q. And that was your specialty in your under-grad degree?

A. That's right.

Q. And it was also your specialty in your history, Masters...?

A. The Masters degree as well.

Q. Right, and now you...did you do a thesis for your Masters degree, Ms. Jones?

A. No, I didn't.

Q. No.

A. I did four courses, or rather three courses and four major papers instead of a thesis.

Q. Right, so...but you'd agree with me that a Masters thesis is an academic standard of expertise on a particular topic, is that...would you agree with that?

A. It's a standard.

Q. One standard. Ya, not the only

standard, but a standard, right, and you don't have a PhD in history.

A. I don't.

Q. Right. Now, when you were studying history, did you study...was your...was your

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specialty...you said was public administration was something you were very interested in, right?

A. Ah hm.

Q. Now, did you study anthropology at all?

A. No.

Q. No? And did you study ethnology at all?

A. No.

Q. And did you study or make a specific study of the fur-trade at all?

A. No.

Q. And now, Ms. Jones, your...your resume, you've had a long career working for Government.

A. That's right.

Q. And I see that you worked from '82 to '84 on labour issues, public sector bargaining...

A. That's right.

Q. ...issues.

A. I was a labour economist.

Q. Right, and then you, in the...as you described to us from about 1988 to '95 I guess when you moved to Vancouver, you spent the bulk of that time you were policy advisor for the Ontario Native Affairs Secretariat and working in, as you described yourself, negotiations.

A. That's right and as a research supervisor as well.

Q. Ya, now I see that that you have listed in here that you supervised researchers and that you also planned and managed projects and I also see

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that when you were in Negotiations Support and Community Relations Branch you negotiated budgets and work plans, so you were in a super...in an administrative capacity is that...is that right? On those? That was a large part of your work?

A. Well, I wouldn't say a large part actually. Policy work is not administrative. There were some administrative elements to some of the negotiations that I was involved in in making sure that certain pieces of paper arrived with the right people at the right times, but I wouldn't characterize it as administrative.

Q. But you weren't the negotiator though. The chief negotiator for these...

A. For some files I was and...

Q. You were?

A. In fact the Metis files I was.

Q. Oh, and what negotiations actually went on?

A. There were tripartite self-government negotiations that took place with the Ontario Metis and Aboriginal Association between 1988 and approximately 1991 I believe. Then there were a lot of discussions that I would characterize as developmental as to how...how to organize, how to define issues, how to bring issues to the point where they might become negotiable.

Q. Alright. Now...now you also said that you developed policy for...developed and implemented policy for Metis and off-reserve...

A. Ah hm. Yes.

Q. Now...now I'd like to ask you a few

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questions, Ms. Jones, about your publications here.

A. Alright.

Q. Now, I see that you have three papers that you've got in here from 1989 to 1992. Now the first one, I'm looking at the bottom of your list called A Demographic Study of the Ottawa Civil Service in the Late Nineteenth Century.

A. That's right.

Q. Preliminary Findings, that's...now, is that really the same as the 1992 one? Is that a draft version basically or work in progress of what ended up being the 1992 Ottawa Civil Service in 1880 demographic study? Since it's a work in progress.

A. Yes, the work in progress which was quite preliminary...

Q. Ah hm.

A. ...was presented to what was called a graduate students' seminar, although there were people of all ages and stages present to hear it, but essentially it was an opportunity for graduate students to give people an idea of what they working on and what kinds of things were emerging.

Q. Right, and the Canadian Historical Society does that quite often, right?

A. Right.

Q. Encourages grad students to put reports in and things like that.

A. Ah hm.

Q. That's right. Now, I see that...that you've done four biographies for the Dictionary of Canadian Biography of Frederic Gisborne, William Smith, Archibald Blue and John Lowe.

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A. That's right.

Q. Are any of those people Aboriginal people?

A. No.

Q. They're public administrators, is this more work on...

A. Most of them were involved in public service at some point in their lives.

Q. So it's more on your...your...your fascination with the public...

A. That's the 19th Century Government...

Q. Right.

A. ...connection.

Q. OK. And I see that you've done one, two, three, four, five, six, seven, eight, nine reviews mostly for the Canadian Book Review Annual?

A. That's right.

Q. And those appear to be mostly reviews of other peoples' work on Aboriginal top...that touch Aboriginal topics, is that correct?

A. That's right.

Q. Now, Ms. Jones, would you agree with me that a scholarly paper is...or a scholarly publication is something that's been peer reviewed and that contributes to the ongoing...just as a general definition and contributes to the ongoing debate on a

particular topic, does that sound like a fair...

A. A scholarly publication in a journal would answer to that description if the journal is scrupulously conducted.

Q. And are any of these scholarly

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publications then that to your mind, have they been peer reviewed?

A. Well, the...certainly the four articles for the Dictionary of Canadian Biography have been extensively reviewed.

Q. Ah hm.

A. It's a very rigorous process to be published in the dictionary. That papers presented to the annual meetings were reviewed by a number of people before I presented them and, of course, at the time when they were presented. The book reviews fall into a different category. I mean, you'll have to understand at the time that I was working more than full-time most people would say for the Government and in the course of that work I was doing a lot of research and analysis, both historical and otherwise...

Q. I understand, but the question...

A. ...but none of these can appear on the publication list.

Q. Right, but they're not...these are not, the question is whether book reviews are a scholarly publication and they're really not are they?

A. Oh, I think they're...most scholars would include them...

Q. They're not peer reviewed.

MR. LONG: I wonder if the witness could complete her answers.

THE COURT: Yes, I would like the witness to have that opportunity.

A. I think you'll find that scholars include them in their lists of publications as scholarly publications. I think that people would

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characterize them that way. I think a review is in a different...I agree with you, a review is a different type of thing than a completely original article, but it also means that you're being asked for your views and essentially you are becoming a peer reviewer for other people and offering to do a review or being asked to do a review. I think it reflects both the view that other people believe that you can contribute something to the discussion by offering your views, you're in a position to do that and a reflection of the fact that you the reviewer have been up to date on what's been going on in the field.

Q. I see that...that one of those reviews that you've done is in also for the newsletter that you are the Review Editor for.

A. That's right.

Q. Now, Ms. Jones, the Ontario Native Affairs Secretariat and the M.N.R. do publish policy papers and reports quite regularly, is that not so?

A. I don't know whether I would say regularly. I mean I'm not in touch with what they are doing right now since I left.

Q. They do publish though.

A. They have made a number of their articles available for people to read.

Q. And none of your works have been published by Natural Resources or by Ontario Native

Affairs Secretariat or in fact by the Ontario Government at all?

A. There are a number of my papers on land claims that are publicly available that have been done up with covers and zerlox binding and that sort of

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thing. We were considering starting a formal publication series of which mine were going to be a part, but for various reasons, mostly shortage of manpower and the funds to organize something that would be registered as a publications program, we never did that, but a number of the papers were released anyway in an official format for anyone to read.

Q. Are they still available? Do you happen to know?

A. I believe they are. The last time I was in their resource centre they were still there.

Q. Because I checked and was told that there's nothing of yours available.

A. Now. Who did you check with?

Q. Ontario Native Affairs Secretariat, Government Ontario publications and the Ministry of Natural Resources and I was informed that none of your material is available, but you say it was in the past, but you've been in B.C. for a while so you might not know.

A. I think perhaps if you talk to the...I don't know who you talked to at Native Affairs.

If you had talked to the head of research there now, she might have been able to tell you that there were a number of things that are available.

Q. Now, Ms. Jones, I see that

you...actually, I won't ask you that right now. Your Honour, I have no further questions for this witness, but I wondered if Ms. Jones could be asked to step down for a while while we discuss or...

THE COURT: Well, first of all, the Crown has the right to re-examine the

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witness and then...

MR. LONG: I have no further questions, thank you, Your Honour.

THE COURT: Yes, we'll excuse the witness. If she waits out in the hall and we can discuss the acceptance of her as an expert witness then.

MS. TEILLET: Your Honour, I...Ms. Jones is very clearly a fine civil servant. She's done...she's got an impressive...an impressive credentials as a policy advisor and negotiations team member. If Your Honour looks at her resume starting on the first page, we...and from '93 to '95 she talks...there's great things here about building inter-ministerial teams and liaising with Aboriginal negotiating teams and preparing settlement options and representing Ontario and there's no question that she has worked with Aboriginal people on a broad range of issues. And if we look at page two, she talks about developing and implementing Ontario policy, assisting and advising staff, representing Ontario in inter-governmental discussions, commissioned

and supervised research, planned projected human and dollar resource requirements, developed Ontario position and mandates, lots of negotiation work, lots of supervisory work, started

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development for Ontario guidelines for self-government negotiations, supported constitutional negotiators. On Page 3, represented Ontario in tripartite negotiations, liaised, and as she said herself, went into the community and met a lot of people, development of settlement proposals, drafted correspondence, supervised research. It's obvious Ms. Jones has worked in the field of Aboriginal issues. There is no question of that, Your Honour, but the issue here is that there's a requirement for expertise in a specific area that is before the Court and that is historical analysis here and I would point out to you that Ms. Jones did not do a Masters thesis, which is recognized academic standard that is subject to great peer review. She also has no PhD and didn't do a PhD thesis. Her...the bulk of her interest and her scholarly publications are to do with the civil service and while it's a fascinating topic, the 19th Century civil service, it is certainly not on topic for what is at issue before this Court. Her publications in the

Dictionary of Canadian Biography are about civil servants. She has only done book reviews of other people's work and her work has not even been...you know, and I reiterate my own experience in trying to get a hold of some of Ms.

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Jones reports, that it wasn't available. Now...

THE COURT: I accept her evidence when she says that at one time it was available. Whether...you know, there are a certain number of publications. If they print a hundred copies, knowing how the Government often works, when those are exhausted, unless they've got some replenishing system, then that's the end of it.

MS. TEILLET: I'm not going to dispute that, but I say to you, Your Honour, that she isn't recognized as an expert in Aboriginal history. Now, when we brought Dr. Lytwyn and Dr. Ray before the Court, they have long careers of work that has been subjected to great peer review and analysis. They've published on topic their own primary research and their own materials that have furthered the ongoing discussion and debate on Aboriginal issues and history and economy. Ms. Jones has admitted that she is not...she hasn't studied many of the things that are...are...she didn't study

anthropology or ethnology or statistics and in what we see here is that there are no qualifications here that show that she is qualified as an expert to give an opinion on Aboriginal rights. Now, Your Honour, this case that we're

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looking at here is very...is, as we all are understanding I think, is going to be a very important test case on Metis rights and I would point you to the case of The Catholic Children's Aid Society Hamilton Wentworth v. S. (J.C.) 1986 and the cite is 9 C.P.C. (2d) 265 and that's a judgment of the Ontario Unified Family Court and this is a question of whether a social worker was qualified because of their training and on-the-job experience and I would like to quote to you at 272 where the Trial Judge said, "I note that some of the commentators and editorialists have written regarding a certain laxity or latitude in certain courts toward admission of expert evidence. This view ought not to apply to cases where the contested issue is whether or not a child should be made a Crown ward and adopted or returned home to his or her parents. The issue is of such importance that laxity or latitude in the admission of expert evidence ought not to be accepted". And we say here, Your Honour, that we're dealing with a...I...we take it, of course, it's

important a child...whether a child is in danger of being returned home. We also say here, Your Honour, that this is an extremely important issue that affects many, many people and that we have to be rigorous in our standards of

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accepting an expert. And I'd also like to point to you the case of R.V.S. (F) and that citation is 1997 34 O.R. (3d) 332 and this is a judgment of the Ontario Court of Appeal and in that sense what they say is that you can't have an expert who's a general...can't be qualified as an expert in general. They have to demonstrate expertise in a specific area in which the Court requires assistance and in that case, Your Honour, there were two doctors there and they were qualified. No one doubt...disputed the fact that they were medical experts and they had even treated the patient, Your Honour, but the Ontario Court of Appeal said that the Judge erred when he allowed them to give expert evidence on psychological harm because they were G.P.'s and they didn't have expertise in the specific field. So, Your Honour, we'd also like to say that this is a very different case from the case of Ms. Armstrong which we put before you when we last visited this discussion about qualifying experts. Ms. Armstrong had a very, very

specific and very unique expertise
 having done over a thousand genealogies
 of the people in this specific area
 and...

THE COURT: A thousand?

MS. TEILLET: Now...I think we said
 over

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a...

THE COURT: I thought it was a hundred.

MS. TEILLET: Was it? She's not
 here. I'm sorry, then don't take my
 numbers.

THE COURT: Well...

MS. TEILLET: We'll delete the....I
 can look it up.

THE COURT: That's a rather
 significant...

MS. TEILLET: Right.

THE COURT: I was left with
 the...my recall is that it was about a
 hundred, which is and I found is a
 significant number.

MS. TEILLET: I will look up the
 exact number for you that Ms.
 Armstrong...I think I have it actually
 handy, Your Honour, and I could be wrong
 about the number. Seems like a
 thousand. And the question I asked her
 was whether she's researched
 approximately 2,000 Aboriginal families,
 is that a fair estimate. She says,
 that's right. And that's 2,000 families
 in the Algoma and Chippewa County area

alone. That's right.

THE COURT: I know, but as far as running the families back, I was under the impression that she's done about a hundred of them. I don't think really anything turns on that quite frankly...

MS. TEILLET: The issue really...

THE COURT: Well, carry on.

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MS. TEILLET: The issue really is that it was a narrow specialty and the...and the experience was so specific to the actual question in hand. Now, the usefulness of an expert, Your Honour, we would submit is circumscribed by the limits of their knowledge and we would say that while this witness has some demonstrated expertise in the area of public administration and clearly policy, there is...I have no problem with the fact that Ms. Jones has a great deal of expertise in Government policy.

What I don't find here and haven't heard from her is a demonstrated and...that she has demonstrated a sufficient background in Aboriginal history, economics, culture and sociology which has been in anyway accessible to anyone to understand and appreciate or to criticize or to subject to any kind of test and we say, Your Honour, that while Ms. Jones may have spent and clearly has a great deal of time working with Aboriginal people,

that doesn't qualify her as a historical expert in the field and we note also that there's no demonstration here of her doing primary research in the field and...we...and I think I've made my point basically, Your Honour.

THE COURT: Alright. Thank you. Crown? Briefly.

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MR. LONG: Thank you, Your Honour, I respectfully submit that Ms. Jones has been qualified academically because she has indicated that that was her specialty when she was in undergraduate work and she graduated with that as a specialty and she also indicated that history, particularly the late 1900's has been the major area focus of her reviews. So, I submit, without going through it in great detail, she has been qualified academically. She's certainly been qualified professionally. I find from her work report from 1984 through until 1995 she's been exclusively dealing with Aboriginal issues, be they in a policy position or in a research position. It commences with an Indian Land Claims Researcher and ends up in 1995 as a Senior Policy Advisor/Research Co-ordinator for the Ontario Native Affairs Secretariat. When she lists her specific responsibilities, how much more could she do than, for instance, liaising with Canada and Aboriginal

negotiating teams and the Indian Commission of Ontario. Representing Ontario in relations with Metis, urban and other off-reserve Aboriginal peoples. Working with Native Canadian Centre of Toronto in developmental government...self-government discussions and it continues on the second page. I

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don't propose to go through them in detail, I just respectfully submit that she has a vast amount of professional experience in the very area with which we're dealing, that is Aboriginal issues, Aboriginal claims and Aboriginal rights. And finally, she has been qualified in a practical sense. She is a Review Editor, Social Sciences and Humanities Aboriginal Research Exchange Newsletter, which indicated...in which she indicated is a means of keeping her abreast with all of the latest issues. We're dealing with the latest issue. I would just simply in conclusion indicate that even if she didn't have the academic qualifications, which she certainly does, sometime academic qualifications have to yield to practical experience.

THE COURT: I've already made that comment with respect to the witness referred to by the defence.

MR. LONG: So in the three areas which I respectfully submit the law

requires she be qualified, academic, professional and even in the practical sense, I submit Ms. Jones has met the test. The qualifications differ, of course, from expert to expert. That's just simply a matter of weight to be given to the expert. I respectfully submit that her evidence can qualify as an expert and

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opinion evidence could be provided.

THE COURT: We are dealing with a rather interesting group of experts in this particular case. I'm not sure how many cases really are qualifying historians as experts. Usually, when experts are called they generally fall into scientific fields that are extremely narrow and expertise almost is not in question. For example, the last case cited by Ms. Teillet involving general practitioner giving expert evidence with respect to psychological type of evidence, I don't think there would be much of a quarrel there because it's a very scientific field and you sort of make the checks as you go through. In this particular case with historians, obviously I have been not only interested but impressed with the witnesses to date and I would observe that each one of them, if you look at it very coldly, have a very limited, almost sort of specialized interest in looking

at a piece of history or an area, be it the economics of the fur-trade which is a very sub, sub, sub, sub, specialty in which you almost felt that you could see them counting the furs and exchanging the goods because there was that much detail. This witness, again, I don't think there's any quarrel that she has great expertise in history and but she

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comes from perhaps a different point of view and that would...her interest is more in public policy of the day, how governments liaison, her practical experience does involve Aboriginal, it also involved the particular treaty that...that has been referred to in this case and that's the Robertson (sic) Huron Treaty and again, at the end of the day it's the weight that is to be attached to each witness from their different points of view and we've had defence approach it from one aspect, perhaps the Crown is approaching this area of time from another area, so the court then can step back and view the area and the circumstances from two or three or four different perspectives and I think that would be of great assistance to the Court. And so I am prepared to qualify her as an expert and if she might be recalled.

MR. LONG: Thank you, Your Honour.

May I recall Ms. Jones please?

THE COURT: Yes, Mr. Long.

EXAMINATION-IN-CHIEF BY MR. LONG CONTINUES:

MR. LONG: I wonder, Your Honour, if it might be advisable to advise Ms. Jones your ruling, simply so that she knows the bounds of her own evidence

THE COURT: Well, the fact that she's

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back in the stand I think speaks for itself that she has been qualified as an expert and we'll continue questioning.

MR. LONG: Q. Ms. Jones, I'm going to ask you for this particular matter to explain the structure of the research team that you utilized.

A. The structure of the team was that I was in charge of the research, in other words, I was in terms...I was responsible for developing terms of reference, giving direction, suggesting sources and as well doing some work that I could do in Vancouver and sources that were readily available there and then to take all materials collected and produce a report and analysis at the end. I had working under my direction, two members of a firm in Ottawa called Public History Inc. who have extensive experience in researching land claims and other Aboriginal issues.

Q. You've utilized them at other times? You've known of them?

A. I have known of them. When I was the head of research at Ontario Native Affairs, I went to meetings at which they were present as contract

research staff with the Department of Indian Affairs and since then I have had the opportunity to see some of their work which they have produced for the Ontario Native Affairs Secretariat and other parties and I was...I know that they have an excellent reputation in the Aboriginal research business and I was quite impressed with the materials that I had seen that they had produced.

Q. They have provided a corporate resume for Public History Inc. and you're familiar with that? You have a copy before you?

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A. Yes, I have a copy.

Q. And you've reviewed it and...

A. Yes.

Q. ...I take it that is some of the basis of your opinion and approval of them, is that correct?

A. I'm not familiar with everybody and every project, of course, on this list, but as I say from the people that I have come to know and the work of their's that I've seen I had confidence in them to be able to do what they were going to be asked to do.

MR. LONG: Thank you. Your Honour, it might be helpful if this resume provided by the corporation that was utilized by Ms. Jones is entered as an exhibit.

THE COURT: Exhibit fifty.

EXHIBIT NUMBER FIFTY: Curriculum Vitae - Public History Inc.

MR. LONG: Yes. My friend has a copy as well. Q. Now, Ms. Jones, yourself in conjunction with the team that you've described, I'd like you to just

direct your mind to the procedures that you utilized.

A. What I did was first of all to develop some fairly detailed terms of reference and a list of potential sources, then I discussed with the research team, who at that point were Eric Angel and Stuart Manson. Then they offered their own suggestions as to materials they thought might be helpful and a research schedule. We agreed that they would research in Ottawa and Toronto and Sault Ste. Marie, with also some reference to the M.N.R. map collections in Peterborough. Though, as they collected material, they would courier it out to me in Vancouver so that I would

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have the opportunity to look at it and decide how it could be used in a report.

Q. So they basically were the collector of information?

A. Yes.

Q. And you were the analyzer of the information, if I could characterize you as such?

A. That's right and there were a number of things that I also collected on my own when I was in Vancouver.

Q. And the third preliminary area I would ask you to consider would be your source materials. How would you describe them?

A. Most of them are created by Government for a variety of purposes, or created by a variety of agencies. Some of them are from the Department of Indian Affairs being correspondence and other types of records that were created by them. A lot of the material is from the Canadian Census from the years 1861 through 1901. There are a few newspaper clippings and other documents that were created by

people living in the Sault area at various times.

Q. Is this type of documentation customarily relied upon by experts researching matters such as this?

A. It's one of the very important sources, yes.

Q. Why is it important?

A. It's important simply because there is so much information contained in these documents. Some of it is, I suppose you could say, created almost incidentally to the purpose of the agencies that created it. In other words, the Dominion Census may

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not have set out to create a repository of information on Aboriginal people, but the kind of information that was collected has left us with a tremendous resource to investigate some aspects of Aboriginal life for the years the census covered.

Q. Is the reliability of the documents something that you personally take into account?

A. Oh, definitely.

Q. And is there any way that you can rank the reliability of certain documentation, ranging from Government records through to, for instance, newspaper accounts?

A. I do think that you have to look at each document on its own merits and they...every form of information that one can use in creating a report has its strengths and weaknesses and no...no one source is perfect. That's why it's optimal to try to use as many different sources as possible to see which ones tend to confirm each other and which ones are clearly...contain information that's not consistent with anything else.

Q. And have you done that in this case?

A. Oh, yes. I have certainly have and
I...

Q. Can you give us one example?

A. I can. I can provide a very specific example. Now, as well I had at my disposal the documents collected by Ms. Armstrong, the genealogical researcher and for example, and one that's directly relevant to this case, Eustache Lesage first appears in the Dominion Census in 1881 and I have records as created by Ms. Armstrong for his family and I have the census record of 1881. Now I looked at the

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census record, he appeared to be...this man, Eustache Lesage appeared to be five years older and to have a range of children with completely different names, including no child named Leonard. So, I thought well, now I'm faced with an inconsistency in documentation. So then I went to look for additional documents to see if I could shed light on why these two sources might not agree and there were a number of different sources that all came together to help me. One was, there's subsequent censuses which showed the same man, Eustache Lesage about ten years older than he had been in the previous censuses with the same children and the annuity paylists for about the same time listed a man who was listed as either Eustache or Mizigun Lesage with about the right number of dependents. There was only one man with a family of about this type in the area at the same time. Then later on, you read in other sources such as the Macrae Report of 1899 that this man Mizigun Lesage was a brother to some of the other Lesage family that we know about. Josef and Pierre, that he was living at Garden River, that he had

a number of children. In other words, all the...all the records were starting to work together to give us an impression of this man who had a large family, whose name was Eustache or Mizigun, clearly the same person, and one of whose children as it turns out in the 1891 census was named Leonard. So, I think that's an instance in which...if you rely on one source exclusively, it shows you that sometimes you can be left with incorrect information. If you can put together a number of sources and bring them all to bear on each other, you can come to a much closer idea of what might have been true at the time.

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Q. Ms. Jones, you have collected the documents upon which you relied in some three volumes and I understand that in the first volume you have put together a document index of some sixteen pages, is that correct?

A. That's correct.

Q. And just very briefly, the document, for instance, number three will be located in Volume I at Tab 3, is that correct?

A. That's right.

MR. LONG: Your Honour, I would like to file the three volumes of source documentation.

THE COURT: Exhibit fifty-one. Do you have them in Volumes one, two, three.

MR. LONG: I do.

THE COURT: So it will be...

A. Now, there are additional files...

MR. LONG: Yes, I'll get to that.

THE COURT: Exhibit fifty-one which

is composed of volumes one, two and three or...

MR. LONG: Just Volume I, I have here as Exhibit fifty-one, it might be easier.

THE COURT: Alright.

MS. TEILLET: I'm sorry, are you saying it's just Volume I you're putting in as Exhibit fifty-one?

MR. LONG: That's right.

THE COURT: Alright.

EXHIBIT NUMBER FIFTY-ONE: Volume I
- Source documents.

MR. LONG: Volume II I would ask to be

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exhibit fifty-two.

THE COURT: Alright, Exhibit fifty-two.

EXHIBIT NUMBER FIFTY-TWO: Volume
II - Source documents.

MR. LONG: Volume III...exhibit....

THE COURT: Fifty-three.

EXHIBIT NUMBER FIFTY-THREE: Volume
III - Source documents.

MR. LONG: And in addition and it might be better to put them in as a separate exhibit, a series of filing folders containing the documents, I'm going to ask Ms. Jones to explain...

A. OK. The only reason that these are not included in the binders is one of sheer size. They're legal size format as you can see and a number of them are very bulky. To have put them in binders of the size that was available to me at the time would

have been very awkward so they are separately as files, but they are part of the set that are numbered.

Q. So, for instance, I have document number 49, as you've indicated it's legal size. Now in Tab 49, would this same document be in place there but in a reduced, smaller format?

A. There is a sheet that says see files I think.

MR. LONG: Your Honour, there are...

A. Six.

MR. LONG: ...some six folders. Now, they obviously are inter-related and can be correlated with the three previous exhibits.

THE COURT: How about exhibit fifty-four
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a, b, c, d, e and f.

MR. LONG: Thank you.

EXHIBIT NUMBER FIFTY-FOUR A): File folder of documents.

EXHIBIT NUMBER FIFTY-FOUR B): File folder of documents.

EXHIBIT NUMBER FIFTY-FOUR C): File folder of documents.

EXHIBIT NUMBER FIFTY-FOUR D): File folder of documents.

EXHIBIT NUMBER FIFTY-FOUR E): File folder of documents.

EXHIBIT NUMBER FIFTY-FOUR F): File folder of documents.

MR. LONG: Q. Ms. Jones, I understand that you made a study of residency and the patterns of families in the Sault Ste. Marie area from 1850 and

later than that, is that correct?

A. That's right.

Q. So just to be sure, the focus of your study was, how would you describe it rather than my putting words in your mouth?

A. The focus of the study was to examine these officially created records I guess you could characterize them as, printed records, public records, to see whether the families who were living at the Sault in 1850 stayed there for at least the second half of the 19th Century, which is about as far as I could take the work for various reasons, up until the early 20th Century. Now the reason that I was interested in learning that was to see at the same time whether those families, if they stayed, might have exhibited any characteristics, as much as we can tell

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through this documentation, that might indicate that they were a cohesive group or that they might have shared a common identity. And I would say at this point that persistence, which is the word that historians use when they're describing whether or not people stayed in an area over an extended period of time, is one aspect of the study of a community or community identity. It's certainly not the only one, but I think it's one of the first things to establish when one is trying to study groups of people.

Q. So what would have been the earliest date of individuals that you studied?

A. There are earlier documents which you see in your binder because I have relied on some documentation that was provided by Ms. Joan Holmes to create a table which you'll find at the back of the report, but essentially the first...my real beginning

point is about 1850. 1846.

Q. And...and let me move then to the other end of the time spectrum, what would be the latest date of individuals that you studied?

A. The very latest thing I have in a primary resource is a diary for which the closing date is 1925. There are some subsequent recollections by various people that date to after that, but they are mostly...they describe a much earlier time so the descriptions that I'm looking at end at about 1925.

Q. Alright, so we have 1850 to 1925 and within that period, what would have been the main time period that you studied and the records were available for?

A. The bulk of the records address the period between 1856 and 1901.

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Q. Let me move then away from the time to the place. What was the geographical area that you studied?

A. I studied...I had to make some kind of decision about what region to study and to some extent it has to be arbitrary, but I also don't think it's completely unreasonable. It includes the City of Sault Ste. Marie on both the Canadian and American sides of the international boundary and the outlining townships and settlements for the City of Sault Ste. Marie on the Canadian side from Batchewana Bay to the northwest to Bruce Mines on the southeast and that includes Canadian and American islands in Lakes Michigan, Superior, Huron and the St. Mary's River.

Q. Now, when you refer to Sault Ste. Marie, what do you usually mean?

A. I...if I was referring to Sault Ste.

Marie, I usually specify as to whether it's the Village of Sault Ste. Marie, Town of Sault Ste. Marie. If it's another area, I would refer to it by name, Batchewana, Garden River, Bruce Mines. I have another term which I call the Sault area of the vicinity of the Sault and generally when I use that term it means the whole area that I've just described.

Q. That you've identified. Ms. Jones, how does the persistence of a family or families I should say in an area, how does that relate to the continuity of a community?

A. As I said earlier, it's one very important feature, but it's certainly not the only feature and it may not even be a determining feature. If people, families, tend to stay in the same geographic area or are easily accessible to each other

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physically, it certainly helps their communication with each other and it helps them maintain their ties with each other. It does facilitate that development. But it is also possible to have families or people of the same ethnic group or religious or cultural affiliation living in a geographical area without having those kinds of ties. So it's...it's important, but it's not determinative I would say.

Q. What do you mean when you use the word community?

A. In this paper, there are...there are two meanings to the word community and one of them can simply mean a town, a settlement, a geographical area, but in the paper I wrote, I've tried to use the word community to mean much more than that. To mean a group of people who are bound together and who feel a common identity or a common affinity for one another. It

might be bound by a variety of different kinds of ties like language, religion, culture, social and economic life, occupation. There are a number of different ways in which these affinities can be expressed or in which they can be described.

Q. But your definition then, do I understand you to say, does not include the geographical designation or location, is that...is that correct?

A. I would characterize the geographical evidence as being part of the information one would use to help discover whether or not a community might have existed in a certain place. For example, if people tended to live all in one part of town or if new people of the same cultural group moved into town, if they all tended to go to that one area

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where there were already a lot of people living, then I think that would give you a piece of evidence about whether or not there was community feeling among those people.

Q. Alright, so the geography may lead you to the community feelings.

A. Ya.

Q. Have you had an opportunity to review the transcripts of all the evidence given at this trial?

A. Yes.

Q. OK, and you've done so.

A. Yes.

Q. Did you discover any oral evidence about the cultural traditions of any Metis community in the Sault Ste. Marie area in the 1900's? That's a long question, do you wish me to repeat that?

A. In the 1900's I did. I guess I was hoping, I suppose, to find even more. And I guess, particularly because of the focus of my paper, I was hoping to find things that I could carry over into the 19th Century.

Q. What would you have been looking for?

A. I would have been looking for traditions as to distinctive cultural practices that might only have been found among the Metis people or even some combination of practices. There are a number of general descriptions in the oral evidence which are valuable, useful. In the oral testimony it's sometimes not clear to me how far back, say into the 19th Century they might extend or whether it just purely covers the last perhaps 30 years or so.

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Q. So you had some difficulty determining the time frame that was being described? Is that what you said?

A. Yes, that's fair.

Q. And were you able to locate any distinctive cultural practices?

A. I think there is certainly, again, I'm trying to apply as much of this as I can to the period in which I wrote the paper because I don't know whether I want to pass judgment on a period in which I haven't done research or had the opportunity to really do a more extensive study. I think there are certainly indications in the oral evidence, for example, that people who lived in what I'll call the Sault area, say Bruce Mines, Batchewana, Garden River, Sault Ste. Marie village or town, didn't lose touch with one another if they moved around within the area. That they

maintained family ties, friendship ties. Now you're asking for specific Metis cultural practices. There were a lot of references, for example, to the practices of sharing whatever was available within the family. I think that was characterized as a core value. There was some other information that, I'm not sure that all of it could be characterized as being exclusively Metis. It's...it's all valuable in its way, but again, I guess I was hoping for something a bit more specific.

Q. You just used the word Metis, how do you define a Metis?

A. For the purposes of this paper, I did, I used a number of terms and terminology is always front and centre in these discussions it seems. I tended towards using the term mixed-blood which in itself has its own weaknesses and drawbacks and I did

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sometimes use the word Metis. The word that people called themselves or were called inasmuch as anyone can tell at the time, this time, the 19th Century, was Halfbreed and that phrase seems to have fallen out of favour for a variety of reasons, so I stayed away from that. I used the word Metis as another way of expressing the concept of mixed Aboriginal and non-Aboriginal ancestry. I'm not sure I want to import back to 19th Century people, some of the modern concepts that have become attached to the word Metis or say all of the cultural assumptions that have become attached to that word because I'm not sure that all the 19th Century people would have recognized them all in themselves or about themselves.

Q. So your use of the word Metis is not in a historical sense, can I characterize it as in a more modern sense that you use that word?

A. Yes, in that it is not a word that appears in the documentation from the 19th Century.

Q. Now from your review of all the documentation, approximately how many mixed-blood families did you find to be in the Sault region in 1850?

A. Well, perhaps I can answer that question by explaining how I started. You have to have some place to start in all these projects. What I did was I took a list of the surnames that Ms. Joan Holmes has listed in an index, which I attached as Appendix A to my own report, of people who were present in 1850 and I...I started with those surnames. Now in some cases, we know that those people were either the, in some cases the non-Aboriginal heads of mixed-blood families or were of mixed-blood themselves. In other

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cases we don't and we just...there's no way we can be positive about the ancestry of a lot of the individuals. We have general descriptions but we don't know specifically for that person. So of Joan's list I chose 51 surnames.

Q. 51...

A. Surnames.

Q. So that's...

A. Now within those surnames with some of them there might have been two, three, four families and not all of those families might have been of mixed Aboriginal and non-Aboriginal ancestry.

Q. So let me be clear. The 51 families, you are not able to say were specifically mixed-blood families, is that correct?

A. Yes.

Q. And the 51...is it 51 families or 51

names?

A. 51 names. Now among those names, you see, without doing a genealogical study of every one of those families, it's...I mean you can't be absolutely sure how many different families there were meaning that how many of them had started their own households or were still living in the same household as their parents. The same reasons that you can't...I mean if you really put it to say well, do you know those people are of mixed Aboriginal and non-Aboriginal ancestry, that I might not be able to answer that question one way or the other.

Q. Without tracing each one back.

A. That's right. But it was...it was a place to start. I did exclude a few people who I knew certainly were of completely non-Aboriginal ancestry

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where both the husband and wife were not born on this continent and I...the descriptions of the Sault Ste. Marie area at this time indicate that most of the families were of mixed Aboriginal and non-Aboriginal descent so that was my reasoning.

Q. So does the most of the families equal the 51 families approximately? Is that...is that how you...

THE COURT: No, she's got 51 surnames but there may be more than 51 families, is that correct?

A. That's right.

MR. LONG: OK.

A. We have a general description. For some individuals we have more specific descriptions, but I mean you see why I'm trying to qualify this here. Without looking at every one of those individuals, I

can't say there were exactly this many families of this descent in this area. We know that the probability was that most of them were of mixed Aboriginal and non-Aboriginal ancestry.

Q. Were any of these families direct ancestors of Steven Powley?

A. Yes.

Q. Now moving along in time from 1850 did all of these mixed-blood surnames remain in the...in the City of Sault Ste. Marie?

A. No.

Q. Where did they go?

A. We know about many of them. There are many of these families who appear on the nearby Indian Reserves after 1850. Some of them moved to outlying areas such as Bruce Mines or the townships

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that are immediately outside of Sault Ste. Marie. A few of them we know went to the States and there are some that we just don't have enough information about to be sure. And when I say the States I mean, because of the study area that we conducted, Chippewa County, very close or Sugar Island.

Q. States meaning Michigan as it's known today for the most part?

A. Right.

Q. Did you follow any beyond the borders of Michigan into other parts of the United States?

A. No.

Q. OK.

THE COURT: I take it and just for my own clarification, you didn't...in fact, your search area didn't go beyond

the Chippewa area, is that correct?

A. That's right.

MR. LONG: Q. Ms. Jones, what did you find to be the way of life of mixed-blood persons in 1850?

A. I think one of the best descriptions that I've read of that way of life in 1850 all in one place, you know, there are a number of different things to look at, but I particularly liked the description of John Driver in 1893 when he was recalling, as he calls them, how the Halfbreeds and Canadian friends lived around the time of the Robinson Huron Treaty and he describes a very varied way of life. There are a lot of different elements in it. There is some wage and contract labour, fishing is very prominent, trading is noted, the making of maple sugar, harvesting of hay,

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the keeping of gardens and livestock. There's a tremendous variety in the way of life and he really describes it very clearly.

Q. Does he also describe the occupations of the mixed-blood persons in that period?

A. He describes some of them, for example, as being boat builders or skilled tradesmen, doing contract work of various kinds for the fur companies. I guess that's what you'd call an occupation. I mean, we think of it perhaps in terms of a trade, but it's certainly not all that people did. They did a great variety of things in order to make a living.

Q. Now moving along the time spectrum. Were you able to discover the principal occupations of mixed-blood persons from 1850 to 1900?

A. I can say that in 1900 or 1901, for

example, there were occupations listed in the census at that time and fishermen, labourer and skilled trades would cover most of the people and by skilled trades I'm also including the specialties like boat building and navigation.

Q. Any other skilled trades that you can think of?

A. There were blacksmiths, coopers, carpenters...well, just about the whole range of skilled trades that were available at that time.

Q. Now, you also use the term Old Sault families. What do you mean by that?

A. When I use that term essentially it's just another way of my hedging my bets to see that all of the surnames that I've been following from 1850, that some of them may in fact not be of mixed

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Aboriginal and non-Aboriginal ancestry. So I call them Old Sault because they were...they were the residents of the village, the first residents of the village at Sault Ste. Marie that we know about from 1850.

Q. But you haven't been able to determine their ethnicity at all then? Or you're not clear on...

A. In some cases, but when I'm talking about them as a group, I don't want to make a generalization because I don't know about every individual.

Q. After 1881, how many of these Old Sault families are left in the Sault town?

A. In the town there are seven of the surnames that I started with in Sault Ste. Marie and among those seven surnames there are a number of different family units.

Q. Were any of those surnames Lesage?

A. No. Not in the town.

Q. When you described the occupations of various mixed-blood persons in 1850 and on, I noted you did not describe them as hunters. Is that what you found?

A. I found that in the documentation they are not described primarily as hunters. In other words, there...there are certainly people living in this area whose primary occupation, main way of making a living, is identified as hunting. It's not that the category doesn't exist, but among these people of mixed ancestry, that does not tend to be identified. It's only very few isolated instances in which is identified as their primary occupation.

MR. LONG: Your Honour, I'm going to be

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turning to one of the exhibits. I don't know when you propose to take the morning recess.

THE COURT: I thought we'd go to eleven and then take fifteen, twenty minute break then, then go to one.

MR. LONG: I wonder, Madam Clerk, if you could extract exhibit number twenty-two. It's actually the family tree, Lesage/Powley family. It's one of the larger charts.

THE COURT: Behind the...

A. OK, I can read that.

MR. LONG: Are you able to see that, Ms. Jones?

A. Ya.

MR. LONG: Probably everybody except the Clerk can see it.

THE COURT: Well, I'm not saying that she doesn't have to see it, but I have sent her out on a mission to see if we can find a stand that will make it a little bit easier. As long as the witness can see it. I'm fairly familiar with it.

A. OK.

MR. LONG: Q. Ms. Jones, I'm going to direct your attention to some of the persons, indeed most of the persons named on Exhibit twenty-two, commencing in the upper left-hand corner with Madeline Lagarde.

A. OK.

Q. And ask you about each of these

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persons the following questions. When they were born, where they were born, where they lived and any occupation if known.

A. Alright.

Q. So if I may, I'd like to commence with Madeline Lagarde. What was her birthdate please?

A. We don't have an exact birthdate for her, but in the 1880 U.S. Census her age is given as 86.

Q. Alright. So you would agree with the birthdate of 1802 approximately? Or where would...

A. No.

THE COURT: No.

A. 1794?

Q. Oh, let me do my math again then.

A. That was my math.

THE COURT: If that's an example of your math, it's...

MR. LONG: Well, I'm not a statistician.

THE COURT: Well, a little weak.

MR. LONG: Alright.

A. I have to say too about that particular piece of evidence that there was another birthdate given by Ms. Armstrong, again, an estimate. In this time people were not as obsessed with keeping records as they are now, which would have made her even for those times exceptionally young when she formed a lasting union with Jean Baptiste Lesage and had her first child and the date of 1794 seems to be more...more realistic to me, given when she had her first child.

Q. Alright, and where did she...where was she born?

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A. She was born in Wisconsin as far as we know.

Q. And where did she live the majority of her life?

A. We know that she was in...she was...again, I can't be very specific about dates simply because they just don't exist. We know that she spent some of the earlier part of her life on the American side in Sault Ste. Marie town. Her husband was a trader there and we do know that she lived for a while in Garden River with her, I find her in the census with her daughter and son-in-law.

Q. Was that on the reserve at Garden River?

A. The census isn't always perfectly clear where the demarcation lines are, but if it's not

on the reserve, it's very close to the village and the...we also know that she died in the United States.

As I say, by 1880 she was living in Chippewa County on Sugar Island again with her daughter and son-in-law and their family and there is a letter of 1894 in which she is, this is information which has been offered by Josef Lesage that she died on the American side as he says so it's probably right in that vicinity.

Q. Are you, or were you able to determine the period of time, the length of time that she would have resided in the Garden River area?

A. I can't be very exact about it. We find her in Garden River in 1861. We find her on Sugar Island in 1880 and there isn't really a great deal in between. I don't think she appears in the Canadian census in 1871.

Q. Is there any significance to her

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appearing on the census? What does that indicate? How did somebody get their name on the census?

A. Well, there were...there were two methods that were recommended to census enumerators around this time. First of all, in urban areas it was suggested that they could go from house to house, leave some blank schedules and then come back and collect them and ask any further questions. In rural areas, the usual practice was for the census enumerator to go from door to door and ask people questions and fill out his forms. Now as it turned out, of course, a lot of people in urban areas at that time couldn't read or write or weren't familiar with the concept of filling out forms or any of this kind of materials, so it turned out in the urban censuses as well, a lot of the information was gained from people going from door to

door, taking information and there is evidence when they went into Aboriginal communities, for example, that they would bring an interpreter with them if they themselves were not fluent in the language and some of them were.

Q. So the person simply had to be...be what, a resident to...to become a member or to be on the census?

A. The instructions the enumerators were given were to count every person that was found in the household at the time that he was standing at the door and as well to identify any family members or any other residents of that household who would normally live there, but who for some reason were temporarily absent.

Q. Alright. So residency seems to have been a pre-requisite for inclusion in the census list.

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A. At least on...on the day the census taker was at the door, yes.

Q. Alright, finally did you determine an occupation for Madeline Lagarde?

A. She is given an occupation in the 1880 U.S. census. Before that, the earlier Canadian censuses generally didn't assign any occupations to women unless they were employed outside as domestics, but she is assigned an occupation in the American census and that is of, as a maker of birch bark work.

Q. What might that include, ma'am?

A. My understanding of that is that that's a traditional craft activity which is found in the Ojibway and Chippewa people of making designs or pictures in birch bark and I don't know, it might have been done in a variety of ways, but that's probably as

much as we can determine.

Q. Alright. Now if you can just move across the chart to the name Jean Baptiste Lesage.

A. Right.

Q. I ask...I'll ask you simply did you determine when he was born?

A. We don't have a definite birthdate for him. There are only estimates. I believe that Ms. Armstrong believed that he would have been born around 1788. I haven't seen any documentation one way or the other that would shed any more light on that.

Q. OK. Secondly, where was he born?

A. We seem to have two possibilities in that in the U.S. census again, in 1880, Madeline Lesage was asked where her husband at that time, in other words, Mr. Lesage, even though she was a widow, was born and the response on the census is France. Now, we

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also have another reference in 1894 where Josef Lesage calls his father, Jean Baptiste Senior, a French Canadian. Now I understand from some secondary sources that there was a prominent trading family named Lesage who were French from France who might have been operating in this time, but we don't really know. You know, we can't be sure. There are these two indications in the documentation.

Q. Are you able to determine where he lived much of his adult life?

A. Ms. Armstrong has produced some documentation which shows that he's listed as a trader for the Mackinac Company, that he traded in Milwaukee, possibly in Wisconsin. We see him on the list in 1846 of people with land holdings on what is now the Canadian side at Sault Ste. Marie. Again, the

specifics of when people came and went at that time are very indeterminate mostly.

Q. So his occupation was as a trader and where he lived was Milwaukee and...

A. I don't know whether he lived in Milwaukee. He was sent out to trade there....

Q. Trade there.

A. ...for some winters.

Q. OK.

A. But he was probably based around Mackinac, Sault Ste. Marie, Michigan, Sault Ste. Marie, Ontario.

Q. Now, moving across the left column again, Melinda Shunk. Were you able to determine when she was born?

A. When she was born. Let's see what I have. I have that her age as given in the U.S. census

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of 1860 was 22.

Q. I won't even attempt to...

A. So there's the math again, yes. I think that comes out to 1838.

Q. And where was she born?

A. She, according to the U.S. census, she was born in Canada.

Q. Any more specific details as to where in Canada?

A. None that I can produce right now. There may be some documentation that Ms. Armstrong has produced, but I just have this one reference from my own documents that says she was born in Canada.

Q. Do you know where she lived much of her adult life?

A. Well, when we find her in 1860 she's

living on Sugar Island, which is in Michigan. Her occupation is as a housekeeper. She's keeping house for another family, an unrelated family as far as we know. However, by 1881 we find her at Garden River in the Canadian census.

Q. Are you able to determine how long she was at Garden River?

A. As far as we know she was at Garden River until she died. There's...we don't find her anywhere else, let's just put it that way.

Q. And what was her date of...her death approximately, are you able to determine?

A. Hm...I'm sorry, I don't have that in front of me.

Q. Any indications that...

A. I don't have any new information on that at any rate to offer.

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Q. She lived there until she passed away. She lived at Garden River.

A. As far as we know, I think.

Q. Alright. Now you indicated her occupation was as a housekeeper, is that how you described her?

A. When she was single.

Q. Yes, before. Before she married...

A. Probably after she was married as well, but...

Q. And she was married to Eustache Lesage.

A. That's right.

Q. You've...you've described already.

A. Yes.

Q. Mizigun is another name.

A. That's right.

Q. And if you can indicate when he was born?

A. Eustache. I'm just looking at my notes here. No...page...OK, this is where...this is one of the instances in which I noticed there were, again, I described earlier, there seems to be some inconsistency in the documentation. I gather that Ms. Armstrong got a birthdate of 1833 from a family bible that belongs to the Shunk family. In the census he...it's pretty consistent from discennial census year to year, the birthdate is probably closer to 1828. Maybe he described himself as five years younger than he really was to his prospective bride, we don't know, but anyway the other records seem to be relatively consistent that he would have been born around that time.

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Q. And where was he born?

A. Let's see what I have on that, if anything. I don't have any additional information as to where he was born from the documents that I looked at.

Q. Were you able to determine where he lived?

A. We find him for the first time in Canada at Garden River in 1881. That's the first time he emerges in the records that I was looking at.

Q. Alright, and did you find him at more than one spot in the records? More than one time at Garden River?

A. Yes. He seems to have been a member of the Batchewana Band, but always resident at Garden River.

Q. And did you determine an occupation for Eustache Lesage?

A. In the 1881 census he's described as a labourer.

Q. What might that have meant?

A. This was a very broad occupational category at this time. It...it could really include almost any kind of day labour, short-term contract labour, long-term contracts, there was a lot of work in the late 19th Century that needed to be done by people with strong backs and...

Q. Physical work of course.

A. Yes, physical work.

Q. And did that description of his occupation continue in...in subsequent documentation or did you note any difference?

A. In...I notice on his death

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registration, I have a note here that his occupation was also given as labourer. That's 1922.

Q. OK.

A. And I believe in the intervening censuses he was also described that way.

Q. Consistently, thank you.

THE COURT: Alright. Eleven o'clock then. Take fifteen, twenty minute morning break.

R E C E S S : 11:00 A.M.

R E S U M E : 11:20 A.M.

THE COURT: Alright, counsel?

MR. LONG: Your Honour. Q. Ms. Jones,

if we could continue. We concluded Eustache Lesage and I'm going to ask you to direct your comments to Sarah Kay and ask you if you can confirm the birthdate of 1877?

A. 1877. I don't have any new documentation that would bear on the birthdate.

Q. Thank you. Can you indicate where Sarah Kay was born?

A. She appears to have been born in Michigan.

Q. And do you have a more specific location in Michigan?

A. I don't of my own documents. Again, I don't have anything to add to that.

Q. And can you indicate where she lived most of her life?

A. She appears to have spent a

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considerable amount of time in Michigan and by that I mean probably fairly close to the border from what we can understand. She was married in Mackinac County according to the marriage licence and certificate. I don't find her in the census records that we looked at, but then Mackinac was just out of the area I think that we were examining.

Q. Were you able to determine an occupation or is it housewife, mother?

A. According to the marriage licence, she was a domestic or a housekeeper I guess you could say.

Q. Which would be a worker within a house...

A. That's usually what that implies. It implies a paid employment as a housekeeper.

Q. If you would consider Leonard Lesage.

A. There is one thing I might be able to add...

Q. Please.

A. ...about Sarah Kay. She is described in the MacRae Report of 1899 as a white person, which is also the way she's described on her marriage licence.

Q. I'm sorry, is also the way she's...

A. It's the way she's described on her marriage licence.

Q. As a white person.

A. But the MacRae Report provides one more piece of information on that point.

Q. Alright, and if we could deal with Leonard Lesage please?

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A. Alright.

Q. Birthdate if you would?

A. His birthdate was in about 1870.

Q. And where was he born?

A. I don't have...now I do have on his death certificate, it says he was born in Ontario. I don't have a lot of additional information besides that as to where he might have been born. It is possibly of interest that when his father Eustache first appears in the 1881 census, Leonard is not listed among his children. It seems from the birth places of some of the other children as if Eustache might have been living in the United States as well and Leonard would have been about 11 years old in 1881 so and he does appear with the family in 1891 as a young man of 21.

Q. That is Leonard does appear with the

family?

A. In 1891 and I can't specifically account for why he might not be there as an 11 year old. There are a number of reasons why that might be.

Q. Where did Leonard live according to your records?

A. The first record that I have of him I believe is in 1891, the census living with Eustache at Garden River. That's the first time he appears in our records. He appears in a number of other records after that quite often. He was on the Batchewana Band payroll at least in 1897 and I believe again in 1900. He is listed in several of the pieces of...named in several of the pieces of correspondence that I have in my documents as living and being very active at Garden River in the community there.

Q. So Garden River and Batchewana.

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A. I think he was probably living at Garden River, although he was a member of the Batchewana Band.

Q. Were you able to determine an occupation for Leonard Lesage?

A. On his marriage licence, he's...his occupation is given as labourer, but I believe in some of the censuses he's identified as a farmer and in fact the documents that are a part of the document sets that have been filed do describe his activities as being active in the local agricultural association and raising prize winning crops of various kinds and that sort of thing, so probably he did have a farm. It seems that's almost certain.

Q. The term labourer does not connote farmer does it?

A. The census enumerators normally tried to distinguish between farmers and labourers. For example, they might sometime enter a farmer's son as a labourer because he was working as help on the farm for his father, but the head of the family on his own farm or location as it might have been on reserve, would have been classed as a farmer.

Q. Moving if you would please to Eva Lesage. Were you able to determine a birthdate for her?

A. She seems to have been born in 1898.

Q. And where was she born?

A. There are conflicting descriptions in the documents. Some say that she was born in the United States and some say that she was born in Canada. She may have been born just outside Detroit in a place called Halfway. The...there's only one document that I

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have here that describes her as being born in Canada and that appears to be the birth record of her daughter, Alberta and it's not specific as to where in Canada.

Q. Were you able to determine where she lived much of her, or most of her life?

A. In 1901 she appears as a little girl at Garden River.

Q. And subsequent to that please?

A. Subsequent to that I don't have any new or different information to offer. Most of my public records end sometime in the very early part of the 20th Century.

Q. And were you able to determine an occupation for Eva Lesage?

A. Well, in the census, of course,

she's just three or four years old so...it's not given.
I don't have anything new to add there.

Q. Can you move across to Ancel Micks?
Do you have any information about Ancel Micks?

A. I don't have anything new to add about Ancel Micks at all. We did look at the census for all of Chippewa County in Michigan for 1910 and he doesn't appear there. And he doesn't appear in any of the earlier censuses that I've already mentioned in Canada and the United States that we looked at.

Q. And would I take it then that Alberta Micks and Powley, of course, are also beyond the scope of the time that you were...

A. That's right. I don't...ya, I don't have anything new at all to add about those people.

Q. Ms. Jones, I understand that your observations and conclusions, you were kind enough to

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put into the format of a report, is that correct?

A. That's correct.

MR. LONG: Your Honour, I would like to present this to the Court not for formal filing until the explanations will be given which accompany it.

THE COURT: Alright, so reference can be made to it and then...

MR. LONG: And I will tender it after the explanations have been given. Q. And you have a copy of that before you, Ms. Jones?

A. Yes.

Q. Thank you. If I could direct your attention to your report, specifically to pages 9 through 11 inclusive. There appears to be a Table 1.

A. Right.

Q. Could you please describe the content of that table and the format of that table as well?

A. The format, it is a sub set of larger tables which I'll describe later, but the format is essentially a way of presenting information drawn from the manuscript census rolls in 1861 and 1881 was all I managed to get to in terms of entering it into a database. This particular table only deals with 1861 and it puts down some of the most pertinent information about members of the Lesage family that appeared in the 1861 census. Because we have had some genealogical work done I could include one of the married daughters who was by that time had taken another name than Lesage but who was one of the family members. So there are eight entries on that table. It gives the name of the person that I'm talking about, the census year, which

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in all cases is 1861. There's a relationship column which gives both the relationship according to the census of what they would have termed the head of the household, which is usually the oldest male, not always, but usually, the father of any of the children in the family. The occupation as given in the census, religion and the census district from which this information was drawn. The age and birth place according to the census and the ethnic identification, if any, and I have a few of my own notes as well on that table, such as the relationship to Mr. Powley, Steven Powley and calculations if I can make them as to blood quantum and I normally...

Q. That's in the column residency/other notes.

A. Other notes, ya.

Q. And you have, for instance, for the first entry of LaSarge, Peter you have Indian [1/4 Indian blood].

A. Right.

Q. And that is your determination?

A. It is.

Q. OK. And finally, can you explain the last column entitled page and line number?

A. This is the page and line number of the original manuscript census. In other words, the first entry which says page 9, line 26 means that it's page 9 of the returns from the District including Batchewana Indian Mission to Rankin location and this particular entry is on line 26 of that page. All the lines in the census are numbered.

Q. Alright. I'm going to ask you, ma'am, if you would similarly turn to page 20 of your

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report for Table II and if you would similarly describe the format and the significance of Table II. It, of course, is at pages 20 to 23 inclusive if you would.

A. This is a slightly different kind of table. I didn't go through the 1871 census to link every name to every name that I had either on the Holmes index or to people who had previously appeared in the 1861 census. But what I did do was look at...there is a schedule which has survived in manuscript form for this census and they didn't survive for most of them, but it has for this particular one, which includes as one of its categories the amount of fur which each person would have produced himself or herself over the previous year. In other words, not furs that they might have traded or bought from somebody else, but what they themselves actually caught

and processed. So what I did was, certainly not everybody in this area had any of these, what I call fur returns, so I looked at the pages that had the fur returns on them and linked them back to line numbers on the census and if there was anybody who had fur returns who was a member of the sub set I've described earlier, the 51 surnames, I have noted it on this table. There are a couple of exceptions where...there are a couple of people in there who I...who had no fur returns, but who I put in because for various reasons they were of particular interest, but generally speaking, it's only the people who are at the intersection of those two descriptors, had fur returns in 1871, were on my original list of surnames of people who were in the Sault area around 1850 that appear on this census table here.

Q. So the table from which you were
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working would indicate the number of fur returns and the particular animals.

A. That's right.

Q. And they range I take it from a high of 150 muskrat, 5 mink, 2 otters, 6 martin, 16 other, down to fur returns none.

A. Right. One of the one's I included, just to give an idea of how the tables were drawn up was a man who was identified as a trader in 1871, so because he had no returns of his own it indicates that he...he traded in these goods, furs probably being among them, but he didn't himself run a trap line.

Q. So this would delineate the people from 1850 who would be still harvesting furs in 1871 then, am I correct?

A. Well, who...who did harvest fur in

1871.

Q. Alright, who did harvest furs, OK.

Now, similarly there is a Table III which actually comprises some, I believe it's 60 or more pages at the conclusion of your report. Page 34 is the title Table III, describing where the information was secured from and then there are, I counted them and I think there's a hundred and some names following that.

A. Right.

Q. Can you please describe the significance of Table III?

A. Table III puts down in some readable form, again some of...some key information from the manuscript census returns of 1861 and 1881 and among the things it can record is whether the same person was still in the census area in 1881 if he was also there

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in 1861 and as well any new families that we see in 1881 and all the people who were there in 1861 who might not appear again. So the information in that table again describes the relationship, usually to the head of the household, as defined by the census enumerators under the instructions they were given and if it's possible, if there is a relationship I can identify, any relationship to Mr. Powley and it also gives the occupations as were described in the census, with the exception that I assigned to members of the household occupations which relate to the occupation given by the head of the household. In other words, for a person on the first page, Etienne Jolineau, also known as Steven, he's identified as a fisherman in 1861 and his son, I have assigned an occupation of being a fisherman's son. So that doesn't appear itself in the

census. The reason I've done that is that it makes it possible to sort by occupations if we should want to do so without missing all the family members that were dependent on somebody going fishing for example.

Q. Now, Table...if I can return just briefly, Table I, would you indicate the area, the census area?

A. Table I is...the census area is described as Batchewana Indian Mission, this is a paraphrase, but this is the area in which it is...it covers. Batchewana Indian Mission to Rankin location. So essentially it covers almost the whole study area on the Canadian side. As well, I did look at returns for...that were specific to St. Joseph's Island and Bruce Mines and they're indicated on the table when that occurs. My...there is a note in the microfilm of the census for 1861 that says that the returns for the

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town of Sault Ste. Marie are missing, but based on what I have seen in the returns and whatever we can do to link people in the census to where they were actually living on the ground, I suspect that this particular category does include people who were living in the town of Sault Ste. Marie at that time.

Q. Similarly with Table II, what...what region does it refer to?

A. The regions are as given under the residency and other notes column there. Table II has a...by then the census districts had changed slightly. There is a separate census district called Sault Ste. Marie. There's a separate one for Batchewana and there were also separate ones for Bruce Mines, St. Joseph's Island some of the other surrounding area which don't

happen to show up on this table.

Q. But have you included in these Tables I and II?

A. I've looked at them in order to draw out the information for those tables.

Q. Thank you. OK. Now, in conclusion I'm going to ask you specifically to look in your report at Page 6, second last line on Page 6 the second name in is Mrs. Lesage.

A. Yes.

Q. Now which Mrs. Lesage? Who is she that you've referred to there?

A. This name Mrs. Lesage is as it appears on the paylists, which is what I'm talking about on this place, but from the information that's offered as to the number of children, it is...it refers to Mrs. Joseph Lesage, Joseph being a son of Jean Baptiste Senior.

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Q. So what relationship is she to Joseph Lesage?

A. She's his wife.

Q. Is she a direct ancestor of Steven Powley described on this chart?

A. Not as described in that chart.

Q. So her connection to Steven Powley would be through what, marriage?

A. Yes. Right.

Q. Page 7, fifth line down commencing...the sentence commences "In July of 1859..."

A. Right.

Q. "Pierre Lesage".

A. Right.

Q. Who is Pierre Lesage?

A. Pierre Lesage is another son of Jean Baptiste Lesage Senior. He is a Great, Great Grand Uncle of Steven Powley.

Q. In the direct ancestral line?

A. He doesn't appear on that chart, but he is a...he is a brother of Eustache.

Q. Similarly at Page 8, the final...I'm sorry, the second last sentence describes, I'm sorry, reads as follows, "Notable exceptions are the Ermatingers and four of the children of Jean-Baptiste Lesage Sr. and their families". Is the Powley, call it the Powley line of the Lesage family one of those notable exceptions?

A. They're not present in the 1861 census, that's correct.

Q. There are Lesage's there.

A. There are Lesage's there.

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Q. Listed there.

A. Right.

Q. But they are not Powley ancestors, is that what you're saying?

A. In the direct line on that chart.

Q. Thank you. On Page 12 you are discussing the 1881 census and I just want to clarify this. I apologize for being repetitive, but does this discussion cover the whole area that you were including, not just the city or the town of Sault Ste. Marie?

A. That's right. It's the whole area.

Q. Alright, so individuals there listed could be living on reserves then?

A. Ya.

Q. OK. And I want the same question on Page 13, the conclusion of the first complete paragraph you have, "several hundred people of mixed Aboriginal/non-Aboriginal ancestry continued to reside at the Sault at this time, both on and off the Indian Reserves". You're again discussing the whole area that you looked at.

A. The whole area, ya.

Q. And one final name I'm going to ask you to consider, Page 14, eight lines from the bottom, the name Melinda Shunk and you've already described her. Do I take from what you have said that she showed up on the U.S. census, do you have any views as to whether she is or was an Aboriginal or not?

A. I think it's...it's unlikely that she's Aboriginal. She is described as being of German descent, which would probably apply to her father and I would have to look at the actual entry again, but I

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don't think any of the information that she offers about her mother or her father would indicate that she's an Aboriginal person.

MR. LONG: Your Honour, with those explanations and clarifications, I would ask that the report and the three tables be entered as an exhibit.

THE COURT: What exhibit are we at?

THE CLERK OF THE COURT: Fifty-five.

THE COURT: Which is the next one?
Exhibit fifty-five.

EXHIBIT NUMBER FIFTY-FIVE: Black binder - report Ms. Jones.

MR. LONG: Thank you. My final questions, Ms. Jones, relate to moose hunting. Q. How would you describe moose hunting by mixed-blood persons in relation to their lifestyle?

A. In the documentation for the 19th Century that I looked at, it's not referred to at all. There are a couple of references to hunting, none of them happen to mention moose.

Q. And what would that omission indicate to you?

A. Given that there is so much vivid description in such detail of so many other of the practices of Metis people at this time, or mixed-blood people at this time and the fact that people seem to be able to identify them easily as being a distinct group and to be able to describe what they do, there are people who are alive at the time who are part of the group who describe what they did in some detail with times of year, locations, places, everything, I find it...I find it surprising that there is no reference at

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all to moose hunting and that what references there are to hunting in general are very incidental. I would...my conclusion as I draw it in my report is that at least at this time it wasn't one of the most salient things about the way of life at that place.

MR. LONG: Thank you, Ms. Jones, those are my questions. My friend may have some questions.

THE COURT: Cross-examination, Ms. Teillet.

MS. TEILLET: Thank you.

CROSS-EXAMINATION BY MS. TEILLET:

Q. Now, Ms. Jones, I just wanted to take us back to a terminology discussion just to sort of start off here cause it's a difficult one, the language issues around the term Halfbreed, Metis and I see in your report and you've explained it, you used for the most part the word mixed-blood, but you do also sometimes use the word Aboriginal/non-Aboriginal and you also sometimes use the word Metis.

A. Right.

Q. Now, are you...are you making...is there any difference in your mind or is it all just...just so hard to say that you...

A. Well, for this period, as I say almost everybody, both inside...people who identified themselves as being of mixed Aboriginal and non-Aboriginal ancestry, and people who were non-Aboriginal who are describing them, the term that they all use is Halfbreed.

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Q. Now do you speak French, Ms. Jones?

A. A little bit.

Q. Did you search the French records?

A. Ah...

Q. For this particular project?

A. There were no French records, oh, there were a few, there were a few birth and death certificates that were forwarded to me.

Q. And what term do they use?

A. Actually, they don't refer, in those particular ones, they don't refer to racial origin.

Q. Ah hm. So we don't...we don't really know whether in French they would use...I mean

they probably would...do you think they...maybe I'll just ask you. Do you think they would use the term Halfbreed in French?

A. All I can say is that some of the people who were interviewed for example in 1893 were of French descent and it's a term that arises in their descriptions.

Q. Ah hm.

A. Now, I guess, you know, I...there just isn't an instance...

Q. Ah hm.

A. ...whether...where I've seen that exact word Metis used and I really don't know whether that's significant or not, you know.

Q. Ah hm.

A. Whether the term itself would have had a different meaning or a special meaning or anything for the people who were on the ground there.

Q. So your...your usage of it in your report where you sort of move back and forth between

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terms is indicative of the...of lack of clarity...

A. Ya.

Q. ...About it.

A. I'm not making any particular statement when I change my terminology.

Q. Alright, that's really what I wanted to know.

A. Ya.

Q. Thank you. Now, in...on Page 1 of your report at paragraph 2, you...I'm just trying to find the part I'm looking for, in the part...what's described as paragraph a) there...

A. Right.

Q. Where...in...and I'll take you down to about the middle of the page, Ms. Jones...

A. Ah hm.

Q. ...where you say, "This date marks the beginning point of collective"...actually, above, the sentence above that actually, I'm sorry, where you say that the British..."The first date, the signing of the Robinson-Huron Treaty, marks the formal undertaking between Aboriginal peoples in the Sault Ste. Marie area and the British Crown to permit non-Aboriginal use of land and resources on Aboriginal traditional territories in exchange for benefits such as treaty annuities and the protection of certain rights, such as the right to subsistence hunting on 'unoccupied lands'." Now, Ms. Jones, I just wanted to ask you where the idea of subsistence hunting comes from. Can you...that you've referred to there, that that's the right even in the Treaty. Does the Treaty itself say subsistence hunting?

A. I believe the Treaty itself uses

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another term.

Q. Perhaps we could look at...we do have the Treaty here and it's Exhibit forty-three. Could the witness be supplied with Exhibit forty-three? If you can't find it, I will give the witness my copy and she can read from that.

THE COURT: Well, actually I'm a bit...for the purpose of cross-examination I'll allow that to be done. My concern is when I'm going over this material I would like exhibits in some sort of order. Sort of a word to the wise.

MS. TEILLET: Now, I'm sorry, my copy's got some underlining on it which I don't know whether yours does or not, but...

A. OK.

Q. Ms. Jones, can you just pick up where the underlining starts down here and read that part?

A. Alright. "And further to allow the said Chiefs and their tribes the full and free privilege to hunt over the territory now ceded by them and to fish in the waters thereof, as they have heretofore been in the habit of doing, saving and exceptions...saving and excepting such portions of the said territory as may from time to time be sold or leased to individuals or companies of individuals and occupied by them with the consent of the Provincial Government".

MS. TEILLET: And, Your Honour, that's at the bottom of the first page.

THE COURT: Yes.

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MS. TEILLET: Did you...ya, now I'm...I'm...I want...would ask you where the subsistence concept, it says, to hunt over the territory now ceded by them and to fish in the waters thereof as they have heretofore been in the habit of doing and where does it say subsistence?

A. If I can make a clarification that might help you.

Q. Ah hm.

A. The reason that I phrased it the way I did, it says, "In exchange for benefits such as treaty annuities and the protection of certain rights,

such as the right to subsistence hunting on unoccupied lands", I'm not meaning to be definitive there in that that is the only right that's protected or it's only subsistence hunting or...my intent was not to narrow, but to simply give one example and I chose an example that appears to have been recognized by Governments and the Courts.

Q. So your...you...you are agreeing that it isn't limited to subsistence hunting necessarily by the Treaty.

A. In the terms of the Treaty. I mean, my...my objective in putting that point in was not to make a definitive statement about what the right is.

Q. OK.

A. It's an example of one of the rights that was protected in the Treaty.

THE COURT: I think...I think, you know, when you look at the Treaty, it says, "privilege to hunt", it doesn't have subsistence hunting or anything...

MS. TEILLET: Yes.

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THE COURT:like that. I think that's the plain language.

MS. TEILLET: Ah hm. I agree. Q. Now...now on...I'd like to take you back to your report, Ms. Jones, at the bottom of Page 2.

A. OK.

Q. And it's in the...it's...oh, sorry, I'll give you a minute. OK, at the...in the middle of that paragraph c) which starts "At least some of the individuals on this list", and you're referring to Ms. Holmes' list, "are not of mixed blood or may not have identified themselves"...um..."or may not have

identified themselves as mixed-blood people", and I'm wondering...I'm interested in the "or may not have identified themselves as mixed-blood people", what source you rely on for that statement.

A. That statement is designed to reflect that the fact that there isn't direct evidence from this time, 1850 or 1846 in a lot of cases as to how people would have identified themselves. So I don't want to say they all would have identified themselves as being of mixed blood or they wouldn't have. It's a statement that allows for some flexibility. It's essentially saying, I'm not saying one way or the other how all these people would have described themselves in a conversation.

Q. Now, on Page 3 at the very top line, you say that, "The names on the Holmes index have been augmented with a few families with ties to the Lesage family"...

A. That's right.

Q. I really didn't quite understand what you meant by that. What does ties to the Lesage

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family mean?

A. When I was looking at the genealogical charts that Ms. Armstrong prepared...

Q. Ah hm.

A. ...I was particularly relying on one that unfortunately doesn't have a number on it, but is very, very, very, very long. You remember that?

Q. Yes, I do.

A. Well, that's the one that I relied on the most.

Q. This one.

A. Yes. And if I happened to see, as I was going through the census and looking at names, if I happened to see one of the names that was listed somewhere on that very, very, very long fold-out, particularly near the beginning, the founding generations I made a note of it. I included it in my records. For example, it could help us even if...if those people say weren't in the documents that Ms. Holmes used to identify people who were living near Sault Ste. Marie in 1850, I thought if I made a note of the families that intermarried with the Lesage line at various places, it might be interesting information as to how long that family might have been living there, at least a provisional beginning date or whether they tended to stay in the same area for a long period of time.

MS. TEILLET: For the record, Your Honour, we're talking about the...it's at Tab 2F of Ms. Armstrong's document binder which is Exhibit 48.

THE COURT: Thank you.

MS. TEILLET: Q. So what you're

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really...as I understand what you've just said is that these are the people who married into the Lesage family.

A. Right.

Q. So they're actually part of the Lesage family, but don't contain the name and their children are still part of the big...

A. Right.

Q. Lesage tribe or whatever we want to call them.

A. Clan Lesage, I guess other...

Q. Clan Lesage.

A. ...people might say.

Q. OK. Now...now again on Page 3 of your report, Ms. Jones, you talk about the...ya, right underneath that, the blood..."Although blood quantum and/or mixed ancestry has been identified in family members whenever direct evidence can be adduced to support such an identification". Now, I assume...by family members, you mean the Lesage family.

A. Right.

Q. And now direct evidence, is the direct evidence the evidence that Ms. Armstrong provided for the most part?

A. That's a part of it and as well there are some descriptions from other individuals who remember who was living around that time, saying, oh well so and so was a French Canadian, he married an Indian woman. So and so was a Halfbreed, he married another Halfbreed woman. Now, particularly if you get into the...a later period these identifications become more and more difficult and just for the record, I didn't rely on what was in the census because it varies

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greatly from year to year and it's...it's...provides you with clues, but it's certainly not a...

Q. OK.

A. ...definitive indicator.

Q. So, but on the blood quantum thing, I think you said that you didn't really go back in and check the parish records and marriage records and sort of reproduce the work that Ms. Armstrong did.

A. I didn't reproduce it, no.

Q. OK, so now when you say that there's

direct evidence that can be adduced to support blood quantum, no, I think I'll leave that.

A. OK.

Q. OK.

A. I might just state that I was very, very conservative. There are a lot of people who on the charts that you might be able to identify with a reasonable amount of certainty as having mixed blood, but I didn't...I didn't put it in unless I was really a hundred per cent sure for various reasons.

Q. This...this is just really the limitations of the....

A. Ya.

Q. ...particular research that you were able to do...

A. Ya.

Q. ...starting in 1850 kind of...

A. Ah hm.

Q. ...leaves you and then not doing the genealogical research, right?

A. Right, exactly.

Q. Now...now I...when you described the Sault area that your report covers and you said you

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went from Batchewana Bay to Bruce Mines and you also covered into the United States area, I'm just very curious about...I know...you said you had to make arbitrary decisions and but you think they're reasonable and I certainly accept that. What was the decision for keeping Michipicoten out of the turf here?

A. Well, I mean Michipicoten was a separate post.

Q. Ah hm.

A. It did have, at least to some

extent, a separate group of people visiting it from areas that were quite far north of Lake Superior and quite far to the west and I'm relying to some extent on the documents that Professor Ray provided for a lot of this information, and I...I thought that by including people at Michipicoten I might get a few more individuals who would have ties to the Sault, but I might also be getting a lot of people who really didn't because there is a whole different area that draws into Michipicoten and it is a separate post. So, that was essentially my reasoning for cutting it off around Batchewana.

Q. But you did...you did see that some people or that there are references that move back and forth.

A. There were a few references to moving back and forth, ya.

Q. Now...now this area that you're describing for the purposes of the census and trying to gather Government documents, I'm...you're...you're very familiar, I'm sure, with the concept of seasonal rounds....

A. Ah hm.

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Q. ...that Aboriginal people go on. Do you think this area that you're describing is the limit...also describes the limitation of the seasonal rounds that the Ojibway...

A. For the actual census areas?

Q. Ya.

A. No, I wouldn't want to make any conclusions on that.

Q. Ah hm.

A. I'm sure that people visited or did

other things outside the census area. This is where they would have had their houses.

Q. Ah hm.

A. You can see in some instances that even if the primary resident is not there, his house is identified. This is Xavier Biron's house.

Q. Right.

A. So that's where they had their residence.

Q. But we don't know where Xavier Biron, just for an example to pick up, we don't know where his hunting camp is.

A. Oh, no not from the census.

Q. No, not at all.

A. No.

Q. OK. Or his fishing island or anything like that. We don't know where any of those things are.

A. No.

Q. Now when you talk about this whole idea of community and ethnicity and it's a difficult topic here and you cite the document 122 in your binder, you cite a study by Breton.

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A. Right.

Q. And I don't really want to take us through it in detail or anything like that, but...

A. Ah hm.

Q. ...I just...I just wanted to ask you, Ms. Jones, when I looked at that report I found it a very interesting study, but I found it to be a study of ethnic...ethnicity that's retained from people who are immigrating from Europe...

A. Ah hm.

Q. ...into downtown Toronto and how they maintained their ethnicity over the years in a large urban centre. Is that a fair description of what the study's about?

A. I think so.

Q. Ya? And it's...he particularly uses the term successful social incorporation, right?

A. Being a sociologist, he would use terms like that, yes.

Q. Right, so could we say that another word for that is assimilation?

A. You know, I don't want to make a lot of assumptions about the way he's used that word. I don't know whether he actually defines the concept very clearly anywhere.

Q. Well...but basically he's talking about, when he uses the term successful social incorporation, is it fair to say that he's talking about whether...I think he uses German, Ukrainian, Jewish people and I can't remember the last one, there's a fourth.

A. Ah hm.

Q. That he's basically studying...they

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come, they immigrate, they live in a neighbourhood in Toronto and over the generations how they keep their language and their dress and their...things like that, right? And...and how they become part of the larger political body or its social entity, is that fair?

A. Certainly their relationship with other communities...

Q. Ah hm.

A. ...and the whole, anybody who lives

in the City of Toronto is something that he's partly interested in, ya.

Q. So he...and you point this out as saying that, you know, he uses such...that such markers are things like occupation and education and on page 3 of your report you talk about religion and language and those persistence of cultural observances. Now, Ms. Jones, is it...are there...are...there's no reference in that study to Aboriginal people at all is there?

A. No, and I only used it as an example. There are many examples of these kinds of studies.

Q. Ah hm.

A. And that one happened to come under my hand in the library and it happened to be a particularly clear one.

Q. I don't really mean to dispute that issue. I just want to ask you whether the same markers, the same identification markers and the same principles that are laid out for persistence of people who come from another culture here into an urban centre can be applied to Aboriginal people who are here already.

A. Ah hm.

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Q. And who are in the face of that emigration seeking to survive. Is it...is it your theory that the issues you're looking at are exactly the same?

A. I do think that you can use some of the same types of markers and studies of Aboriginal people, for example, in the fur-trade areas have looked at things such as marriage inside or outside, mixed-

blood or Indian communities. They have looked at songs and music. They have looked at literature. They have looked at dress, occupation, religion, a lot of the same kind of factors, you know, as to...as to how a...no one of these is ever going to be determinative I don't think.

Q. I guess what I want to...I want to ask...

A. I think that...

Q. Sorry.

A. ...that they are among the list of things that you can look at...

Q. Ah hm.

A. ...that make people different.

Q. Ah hm.

A. That makes them the same as their own cultural community, things they share and possibly different from other people who don't belong to that cultural or ethnic group.

Q. OK, then can we just take one of those which you list as last. Self-identification.

A. Ah hm.

Q. Do you...is your placing of it there last an indication of the importance that you would put on that?

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A. Well, it's really...it's a very tricky question and you know that better than anybody else probably. Does the fact that somebody doesn't identify themselves at various stages in their lives or what have you, as being a member of a certain cultural, ethnic, social, occupational, whatever type of group it is you're looking at, does that mean that that all by

itself takes them out of that group?

Q. Ah hm.

A. And, I think my personal view on it would be that it's like other identifying markers is that all by itself it...it can't take you out of a group, you know....

Q. Ah hm.

A. In combination with other factors possibly, but it shouldn't be the only thing that you should look at one way or the other to either include or exclude people as being a part of a group.

Q. I mean, I don't really want to rank all these things, because I...I appreciate your point that it's...all these things have to be put together to create what we might call a composite picture, right? And you can't isolate out one or another, but self-identification and you've read I'm sure and studied the Royal Commission Report...

A. Ah hm.

Q. ...and you've probably read their whole discussions about self-identification particularly in the Metis chapter.

A. That's right. It's front and centre.

Q. Right, and that...that's my point, it is front and centre isn't it...

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A. Ah hm.

Q. ...the issue of self-identification.

A. And I think it's particularly true because there have been shifts in self-identification in the Metis community, just talking generally over the years and again, the question should be well, is that

really determinative. You know, if somebody chooses not to identify as being of mixed Aboriginal and non-Aboriginal ancestry, does that take them out of the pool or if they do identify but they don't share any of the other traits, does that put them into the pool? And frankly, it's not an issue on which I feel I can speak categorically and particularly about a cultural group that I'm not a part of myself. You know, I don't feel I can state one way or the other what should be so. How important this should be. What the rules should be as far as self-identification for Metis people goes.

Q. And...and aside from Metis people, did you agree with the general concept that was put out in the Royal Commission Report about the importance of self-identification just as a marker?

A. Could you give me what your understanding of that would be?

MS. TEILLET: I think the...perhaps...the Royal Commission is, Your Honour, at...it's exhibit...no, the whole Royal Commission, chapter...is Exhibit twenty-one, Your Honour. It's rather a large one.

THE COURT: It's fairly thick.

MS. TEILLET: Q. I'd like to read you a part and see if...

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A. OK, read me the part and I'll...

Q. ...you accept the...the theory that the Royal Commission puts forward. "When the subject of"...this is, Your Honour, on the very, the second page on the right-hand column, I think it's probably

page 201 at the bottom where it says, "When the subject of Aboriginal identity is discussed, reference is sometimes made to rational connections and objective criteria such as place of residence, languages spoken, family links and community involvement. These are matters of evidence. They are guides to helping people decide whether someone who claims association has a genuine connection with the people. No one objective factor can ever be conclusive by itself. Even when weighted for value, objective measures cannot be applied mechanically. In the end, it comes down to two key elements, ancestry and culture and their acceptance by both the individual and the people". Would you agree with that? I can let you read it if you want to take a look at it for a second.

A. Certainly, ya, it's a very...it seems to me that they've kind of contradicted themselves in there. The section where they talk about "rational connections and objective criteria such as place of residence, languages spoken", a lot of these are similar to the ones I've mentioned. That "no one objective can be conclusive by itself", I would agree with that completely. They are just essentially, I don't know whether I would say mechanical things, but they are things of evidence. I'm just having a tough time with what exactly this sentence really means - "Ancestry and culture and their acceptance by both the individual and the people." It's...to me it's not a

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very clear statement really because they're taking two elements, ancestry, well, what does that mean? Does that mean...

Q. I take it to mean blood...blood

connection to Aboriginal people. I mean that's certainly, this is the Metis chapter after all.

A. Ah hm.

Q. That's what I took it to be. Of course, you can have your own understanding of it, but that was simply my...my understanding of it.

A. And culture is such a huge subject to put in there all by itself as if it's just one thing.

Q. Well, or would you think that culture is basically the accumulation of all those markers you were talking about? The language, the religion, the identity, the food, the occupations, all those things you were talking about. If we looked at it that way?

A. Those things might be elements of it, ya.

Q. And then those as a conglomerate altogether make...I guess, the point I'm really not trying to get you to agree with their language...

A. OK.

Q. ...I was really trying to ask whether you agreed with the theory which I think is in there, which is that you have to have individual acceptance of it and that by...the individual has to accept or identify that they are that and then the community itself has to say ya, we agree with you that you're that.

MR. LONG: I wonder if my friend could

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break that question into its two components, Your Honour. It's a little

difficult to ask the witness to group things together and agree or disagree.

MS. TEILLET: Thank you.

THE COURT: Well, ya, I think...

MS. TEILLET: I can do that.
That's fine.

THE COURT: It might be easier.

MS. TEILLET: Q. And since we're talking about self-identification which was the basic question to begin with, that's the real issue...that's why I read that part is do...they talk about whether the individual accepts it and...

A. In other words, whether he himself would identify himself as being from a certain group. Again, I don't think it's determinative because I think a lot of...a lot of identifiable groups resist some people who would come in and say, oh well, you know, I'm one of you, I'm just like you if they don't really know who that person is. On the other hand, does that take away from that person the...the right to identify that way. To sort of align him or herself along those precepts? Again, I feel that if you're specifically making...asking me to express my opinion on how this might apply to the Metis, I'm not really sure it's my place to do that. You know?

Q. Fair enough.

A. I don't think I can.

Q. OK. Now I wanted to move onto your use of the census materials.

A. OK.

Q. Now...I think you start that

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discussion around page 12.

A. Alright.

Q. And as I read the top of Page 12 in your report, Ms. Jones, there's a...you're trying to lay out the basic format of what you did...

A. Right.

Q. ...in the...in the names, right?

A. When I was comparing the 1861 and 1881 manuscript census, right.

Q. Now, Ms. Jones, did you say whether you had any training in statistical analysis at all?

A. I have actually had some training in this field.

Q. Ah hm.

A. I did a course in statistics for my Masters degree in public administration.

Q. OK.

A. And I did a course in historical demography and methods for my Masters degree in history.

Q. OK, so perhaps you could illuminate for me a little bit more what some of these figures mean. I...when I looked at your 29%, what you called I guess it's taken from the 1861 census and then to the 1881 census and you say there's a 29% retention rate and you cite that as being relatively low and I wondered if...relatively...relative to what? Like I guess my question would be if we looked at the 1861 census as a whole, what's the retention rate to 1881 versus the numbers and names that you picked out. Did you do that kind of analysis?

A. What I really mean by relatively low is relative to a hundred per cent.

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Q. Right, so...

A. 29% doesn't sound like much although if you look at...there's...in document 117 the extract from the book by David Gagan called Hopeful Travellers...

Q. Do you happen to remember which binder 117 is in?

A. That would be in the third binder. It's 117. This, by the way, this book Hopeful Travellers was one of the first and still stands as one of the most remarkable achievements in this field of historical demography. It's a remarkable book and he was one of the first people to experiment with some of these methods. Now, on page 6 right around the middle at the beginning of the second paragraph, he's done a study of Peel County, Canada West and one of the things he discovered as opposed to what some people might imagine in Victorian times is people living quietly in little villages all their lives and having farms and never going very far away, is that "...families moved into and left the community at an astonishing rate, so high in fact that only one-quarter of the families enumerated at census time would have been there since the previous census and would stay until the next enumeration ten years later". In other words, that's the thirty year, three censuses. So he's saying that for non-Aboriginal people around Peel only 25% of the families he found...

Q. Ah hm.

A. ...would have stayed for as long as thirty years. Now, I don't know whether to make that general statement which is in the introduction, he did what I did next which is to try to correct in a very

crude way for the fact that part of that 29% is because people died and because women changed their names when they married and I haven't traced them. Again, you need more genealogical work to do that. So, do you want me to go on?

Q. No, so, I guess that's really the point I was trying to get at was just some sort of understanding of...because I guess when I read it I was sort of left with the impression that if...if there's nothing...there were no guidelines for us to understand what the general one...

A. I was thinking of how a lay person would read that. And they would read that 29% and think, that's...that's really low. But I guess my later point is that it's not low at all. In fact, it's probably a little higher than the average.

Q. So it's pretty much, when you're saying one-quarter so 25% in the other study, so it's...it's actually higher retention rate, so it's not...I see what you're saying now with relatively low so thanks for explaining that. Now, the 1861 census, do we know when it was taken?

A. There are some dates on some of the returns.

Q. I just meant seasonally.

A. Yes, I know.

Q. OK.

A. I have to be able to look at it.

Q. I think it's at Tab 22.

A. Right. Now, I have to apologize for the quality of some of these copies. I've seen worse actually, but I realize that a lot of them are quite difficult to read. I might also explain a little bit

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about what these copies from 1861 look like. It might help you read your way through them a little more easily, just while we're doing this.

Q. To be honest with you, I can barely read any of this.

A. These were microfilmed in 1955 when microfilming technology was not fully developed. Unfortunately, the originals have been destroyed, so this is what we've got. Now, if you like, I can try to take you through some of the headings if you feel it would be useful to sort of try to understand this document...

Q. Actually, I just wanted...my first questions were just...

A. The date?

Q.about...

THE COURT: Sort of the seasonal....

MS. TEILLET: Ya, exactly what...

A. In some cases, they indicate when they visited and that's what I'm looking for now.

Q. If I can take you towards the back...

A. Right.

Q. ...I see that there are...is a memoranda from I gather the Superintendent or somebody in charge, Carney?

A. Ah hm.

Q. And then the actual enumerator John Bowker.

A. And those are dated, now these would be after the fact, of course, and we don't know how far after. They're dated the 5th of July, 6th of May and

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13th of May. My impression is that most of this was done sometime in April.

Q. Now you told us a little bit about the...what happened in rural census taking, the person would move from house to house and sit down and ask a few questions and write it down. Is it your impression that the 1861 census is as, just for comparison sake, as accurate as the 1881 census?

A. The 1881 census generally speaking is probably better.

Q. Ah hm. My understanding from reading this is that the and it might have been that it's winter-like conditions in April.

A. Ah hm.

Q. But I guess when I was reading this memorandum it seemed to me that it was taken in the winter cause he talks about the distance over ice to get to particular places and I also see if I can take you to the memoranda by Mr. Carney and I don't know if you can find it and they're not numbered pages, so...

A. Ya, I can...I think I've got it.
Ya.

Q. If you can find it. And as I read the second last paragraph, he says, it actually appears to me to be a bit of an apology for mistakes, but Mr. Bowker has furnished much valuable information which I hope will be a set off against apparent carelessness and errors in the other parts of the...the something...the severity of the weather.

A. Severity of the weather.

Q. Going something into houses was against him?

A. Carelessness and errors in other

parts, the severity of the weather, the weather going cold...

Q. Oh, cold.

A. ...into houses was against him.

Q. OK. So carelessness and errors in the...in the census data, now and it's taken in...you...you said I think April?

A. There are some notes on some of these pages that indicate that the enumerator was around in April, but I don't happen to know the date of this, when the official date was of the census.

Q. Now, and I think you also said earlier that in the census they were...the instructions they had was to go into the house and they were supposed to enumerate who was there at that particular date and also who would normally live there.

A. Right.

Q. Now, and we talked earlier about seasonal rounds...

A. Ah hm.

Q. ...if this is happening in April, is it...is it your understanding that there would be quite a few, perhaps whole families who would be off to hunting camps or different...different parts of their seasonal round? It's possible?

A. Yes, although it's, if you look at the, a number of the entries on the census, you'll see that it doesn't seem to necessarily mean that they've missed people who were hunters cause there are many people who are identified as hunters and fishermen.

Q. No, I didn't just mean in their identification as their occupation, I just meant the fact that there could be whole people, whole families

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could be missed in fact?

A. In some areas much more than others I would say.

Q. Now, I'd like to ask you about this whole idea of occupational listing on the census.

A. Ah hm.

Q. And I guess my first question is just a big generic question. In sort of a frontier community, or would you agree that Sault Ste. Marie was basically a kind of a frontier community around that time? I don't want to argue about what frontier means.

A. That's a funny...

Q. I just mean it's not a...it's not a...

A. Well, I think...I think the economy would have had different ways of operating.

Q. Right.

A. You know. If you're talking about the whole area, the area up around Batchewana seems to have been different from maybe what was happening at Garden River or right in the middle of the village of Sault Ste. Marie.

Q. OK, so what I'm really trying to get at is, occupations...

A. Ya.

Q. ...at that time. Did...leaving aside Aboriginal people for a moment...

A. Ah hm.

Q. ...did most people have one occupation in the kind of community that we would be dealing with in say 1861 in Sault Ste. Marie, or would most people have several streams...

A. I would say that most people would

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say that they had one primary occupation that they would identify themselves with. They might be a carpenter or a boat builder or a fisherman or what have you. That is not to say that that's the only thing they ever did, which is probably what you're really getting at.

Q. Well, I guess, ya, part of that, I'm just trying to get at whether a listing in the census is really any indicator for Aboriginal people about what they did, what their lives were really like in 1861. If you say that a guy is a fisherman....

A. Ah hm.

Q. ...does that mean that he fishes all year round and that's all he does?

A. Well, now this is one reason why I said earlier it was so important to try to get a variety of different sources.

Q. Ah hm.

A. Because if you just rely on the one source, the census, then you're not going to get information about what people might have done besides say go fishing. If you look at some of the descriptions say that John Driver collected around the end of the 19th Century, as to how people lived at earlier times, like around 1861, you will see that he describes a great variety of things.

Q. Ah hm.

A. And that's...that's why it's important to try to combine as many different sources as possible. I think it's still fair to say that people would have said if asked, well, what do you do for a living? What's your occupation? They might have chosen something like fisherman because maybe they made

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more of their living from that than anything else, but it doesn't indicate that that, as I say, is the only way they made their living.

Q. Or would it...would it perhaps be an indication because the census, the question was being asked at a particular time of what they were actually doing at that particular time? Is that possible?

A. I think the census people, now we can all help ourselves here by looking at another article by David Gagan which actually gives the instructions to the census takers for 1861. And I think that they were instructed to...I'll just get it before I talk off the top of my head. Again, third binder...

THE COURT: Counsel and the witness with respect to the 1861 census that you provided in the tables on Page 9, 10 and 11, it's sort of a moot point because occupation is blank, blank, blank, blank, blank, blank, blank, and labourer.

A. Exactly.

Q. Well...

A. Now this is one of the...this is a very interesting example of how people might have tried to tackle these questions. The blanks in 1861 occur probably about where the Indian Reserves would have come on the ground. So, now is that the enumerator saying they're Indians, I don't know how to describe what they do, or people not being able to give one occupation, or the enumerator saying, they're just Indians, it's not important? I mean, we just...we don't know.

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Q. We don't know.

A. We just don't know.

Q. And that's really exactly what I wanted to ask you is that we don't know and actually, Your Honour, there are several indicators as you get further into it that say farmer, servants, plasterer, I'm looking at, labourer....

THE COURT: I'm just sort of looking at the, sort of a summary report that was given. You know, it's interesting when you look at the 1871 survey on page 21 of the conclusions, you have somebody by the name of Henry Solomon whose occupation is described by labourer and yet he wins by miles and miles the fur return contest, so....

MS. TEILLET: Exactly. And that, of course, is the...is the point that I was trying to raise and which Ms. Jones you've clarified that there's a lot more going on than can fit into I guess one tiny little line on the census.

A. Ah hm. Now...

THE COURT: Well, I think...I think the witness has given all kinds of sort of reasons why, you know, this...these documents are not 1990's you know, computers, all kinds of...you know, today you can do a profile on any individual, you just get a couple of computers going at them and you'll have more information than you'd ever want to know about anyone. It would seem that

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in the days gone by they worked under a bit more flexible standard.

MS. TEILLET: Yes.

A. I do want to direct your attention to document 112 though because I think it might shed a little bit more light on it, at least how they were instructed and also the dates which I now see, which is a good thing. This is document 112. It starts on page 363, these are the instructions issued to Census Enumerators and they would have, as well, had supervisors who would try to explain to them these instructions and how to interpret them. "On the second Monday in January", I'm on the fourth paragraph now, "which will be the 14th day of the month, you will proceed to your labor", so then they're asked to "enter the name of every person who sojourned in each house, on the night of Sunday, the 13th of January, as well strangers as members of the family who are temporarily absent, but whose usual residence it is". And if they found a house was empty, they would often go to the neighbours and say, who lives there? I think they did try to, they made a real effort to get as much information as they could get. So, then the second is, "In the second column, enter the Trade, Profession, or calling of each person. Where a son works for the benefit of his father - if the father be a farmer, enter the son or sons as labourers", etc.

Q. I'm sorry, I have no idea where you are here on this...

THE COURT: Document 112 and there's a reference to page 363.

MS. TEILLET: Right. Thank you.

THE COURT: Is the witness now

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retracting the idea about the April?
Are we in January then with these
censuses?

A. Yes, although I also...

THE COURT: But it could be done in
April as well?

A.I have to say that some of them
went on much longer than they were supposed to.
Particularly these early ones. Simply because of
things like the weather. At any rate, these
instructions can give you an idea...

MS. TEILLET: Q. Right.

A. ...of how they were...

Q. I think that that's clear.

A. Yup. My favourite is numbers 20, 21
and 22, "Be careful to distinguish between Lunatics and
Idiots". I just had to put that one in.

Q. Begs a few questions.

A. Words to live by I guess.

Q. Yes. Now when you were compiling
your documents and to try and put together the
information that you drew your report from, you say
that the census was a good source of things about where
people were at a particular time and their ages,
whether accurate or not, and their occupations, etc.,
is there....you were aware that the Hudson's Bay
Company records had similar types of information.

A. Ah hm.

Q. Did you not access those cause you
didn't have access to those documents?

A. Well, I had hoped that Professor Ray
had really drawn out whatever was relevant in those. I
didn't, in this project, I didn't, particularly given

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the time frame, I didn't want to duplicate anybody's work. I wanted to do something completely new, to add more information, so I didn't go back to those records.

Q. OK. Now, on Page 6 of your report you, in your footnote, state that the families are headed by women and, "four families added after the Treaty are all apparently headed by women". Now...

A. That's not a qualitative comment you understand.

Q. Right.

A. It's in keeping with the convention at the time.

Q. Right, and I guess one other thing that we should ask about is the...is...and I don't mean to be just referring to the 1861 census. I think a lot of these comments about occupation, etc., apply to all the census data you've put in, I would assume, although I guess maybe we can make an assumption they get a little better as they move into the 20th Century?

A. Ya, they do. I mean, I don't know whether every set of comments I might make about 1861 would apply to say 1901, which is quite different.

Q. Fine. Then, since it was done in the winter, is it possible that the families that appear to be headed by women that they are...that it's just that it's the women who are there and that the men are not...not listed, or do we know for sure that these are widows with their children. Do we...do we really know?

A. This comment about the four families added after the Treaty, in the text of the report, I'm talking about the Robinson Treaty paylists for the Garden River Band, so this is not the census. And as

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well, the Batchewana Band.

Q. Ah hm.

A. Now, on the paylists then, of the people on the paylists, these people were listed as Mrs. Cadotte, Mrs. Lesage, Mrs. John Biron and Mrs. O-be-quick, who's also known as Michel Belleau and to look at the paylists you would think that it's...it's the women and their families, but it's just an observation that they're not widows at this time. Their husbands are still alive.

Q. Exactly, so they're not...they maybe aren't heads of families.

A. The...ya, well I guess that's more or less what I'm saying. On the paylists it's only the wives that appear and not the husbands. I don't know why that is, but they and their families appear and their husbands do not, but it's not because their husbands are dead.

Q. Right, so...so your footnote where you say that, you made note that the four families added after the Treaty are all apparently headed by women, is not...that's...I think you just said that you're basically saying that since their husbands are alive, that might...you don't really know whether those families are apparently headed by the women or not.

A. It's just to look at the paylists, that might be the impression you would get.

Q. Right.

THE COURT: Alright, it's one o'clock. 2:15.

R E C E S S : 1:00 P.M.
R E S U M E : 2:15 P.M.

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COUNSEL: I understand counsel want cold water. Alright, carry on.

MS. TEILLET: Thank you, Your Honour.

Q. Now, Ms. Jones, we were still on the census issues and I just want...I have a few more questions about them.

A. OK.

Q. When you're talking about your...the term you use persistency of the community you...you tracked...you...I know in your...in your table, I think it's Table II or is it Table I where you actually added McKay's in Table I as someone who married...so it's Jean Baptiste Lesage's daughter who marries a McKay...

A. Right.

Q. Baptiste McKay.

A. There are also some McKay's or McKay's referred to in...in the index, Neil and Angus, the father of those people, whoever that was.

Q. And, but you didn't track...is it safe to say that you as a rule didn't track the women in the...in these families?

A. I did where I could. In other words, where I have the additional genealogical information that would help me know what married name to look for.

Q. Ah hm.

A. And also in the instances where they didn't marry or the names didn't change for some reason. There are a couple of those too.

Q. So when...in your general following of those 51 surnames though, is your theory just the tracking of the surnames or is it the tracking of the surnames and the branches that would added as, say the

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women married and took other names. Is that part of your persistence picture or is it not part of it?

A. I couldn't include a lot of the women after they would have married and changed their names, unless, of course, they married into other families with the surnames I was following. I think you'll see in documents like the MacRae Report in 1899 there was a tremendous amount of inter-marriage been between all these families, so I may be in fact tracking a lot of these people.

Q. Now, I guess and again, we keep talking about limitations of the surveys, right? So another one I guess would be that I note in yours that you say that you list a bunch of families that you say sort of disappeared between the 1861 census and then they come back again and you list the Grants, Driver, Labatte, Masteaux and Nolin's.

A. Ah hm.

Q. Now and I understand that you're tracking, but I guess I'm wondering if...would you agree with me that you would be limited in just because of the materials you're looking at if you didn't know the Aboriginal names of these people? So, just let me give you an example. For instance...

MR. LONG: I wonder if there's a question, Your Honour.

THE COURT: Well, I think there is.

MS. TEILLET: Q. For instance, if the...just to tell you this, if you under...knew that Watap, which I think you've got listed as a Metis name, means in Ojibway the cedar roots that are used to make canoes with, so I don't know if you knew that or not. Did you know that?

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A. I think I had read that somewhere actually, ya.

Q. Alright, so you knew that.

A. Ah hm.

Q. But if you knew that Louis Nolin who's listed in your 1881 census and you say he sort of disappeared, but if you knew that his nickname was Watap, you would know then to look under both names, would that be a reasonable assumption?

A. When you say his nickname is that...

Q. Well, or another name he went by?

A. A second name? In some cases, Joan Holmes in her index identifies the alternate names and where she can, I do follow them up. Ya.

Q. I guess and I...I would take you to your manuscript census from 1861 except to be honest with you I can't read it...

A. OK.

Q. So I'm going to take you to the one that Ms. Armstrong gave us. The...

A. Oh, the index or the abstract.

Q. ...which is transcribed one from the Genealogical Society and...just because it's typed out and it's readable. Do you have any objection to me using that as the census?

A. Well, I usually prefer to use the originals, but tell me what you're after.

Q. OK, do you have Ms. Armstrong's binder?

A. I don't with me.

Q. OK. Do we have...

THE COURT: Which exhibit is it, counsel?

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MS. TEILLET: Ms.

Armstrong's...is...it's Exhibit forty-eight and it's...

A. Do you, just while you're waiting have a page and line number reference for that?

THE COURT: Let's not chat. The Reporter is now filling in as our Clerk, so...fessiciously say not too successfully, but...I'm sure the Reporter will chat to me later. Alright, we've got Exhibit forty-eight.

Perhaps if the witness might be provided with that.

MS. TEILLET: Q. Now, it's at Tab 6, Ms. Jones.

A. OK. And where in Tab 6?

Q. OK, and it's on page 63. It's towards the end. The page numbers are right up at the upper right-hand corner.

A. Right, OK.

Q. OK? Now, and I think the reference to the census is right after the names, where it says page...can you see D at the top and then PG, I think that's what refers to the page in the census.

A. District, page...OK.

Q. OK? So just for your reference, but what I really wanted to point you to is the Watap's there.

A. Ah hm.

Q. And if you look at Bets...Betsay....

A. Ah hm.

Q. Can you see that about, I don't know, quarter of the way down?

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A. Ya.

Q. And then about one, two, three, four, five down from that is Louis.

A. Ah hm.

Q. And they are 32 age, and 33, Roman Catholic, male, female, CW, that means Canada West?

A. They were born in Canada West.

Q. And they live in the same house, they're all in 471 right?

A. Ah hm.

Q. And they're all identified as Indians here.

A. Ah hm.

Q. OK, but the last name is Watap. Now, if you turn to the very next tab number which is the 1881 census.

A. Right.

Q. And you look at page 53.

A. Alright.

Q. At the very bottom we have Betsy Nolan.

A. Right.

Q. Who is 59 and we're what 20 years later, so it's pretty close and then if we go over to the next page about five down again, we have a Louis Nolan.

A. Ah hm.

Q. And he's also 59 and they live in the same family, number 17 and he's listed as an Indian and a voyageur.

A. Right.

Q. As occupation. Right, now I guess what I'm trying to ask is that...is whether one of the

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issues would be if...if you had information to know that Watap was another name that Nolan's went by and what I'm really trying to get at Ms. Jones is that these kinds of things about the different names that people had an Indian name and an Anglo name or French Canadian name, that that might be showing up all the way through the census and might be affecting your...what you're calling persistence because you might be expecting them to be Nolan's all the way through and they might actually be something else. Is that possible?

A. Well, I can't, I mean, is it one instance or is it fifty or...

Q. Well...

A. ...I just....I can't gauge what kind of an effect it would have.

Q. We have...I mean...just that example, but also we know that Eustache Lesage went by the name Mizigun, so we have another instance of people having an Indian name and I assume you read the...you said you read the transcripts so you're aware that there was evidence put in that Shinguakonce had a different name...

A. Yes.

Q. ...and that Nebenaigoching had a different name.

A. Yes.

Q. And that they show up on different things as different names and if you didn't know that they had these different names, you would assume perhaps that they were different people, right?

A. Well, in these instances, I did happen to know...

Q. Ah hm.

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A. ...that Joseph Sayer and Nebenaigoching were the same person, for example. And the same with Eustache and Mizigun Lesage through other documents and in this case as well, of course, I'm tracking both Nolan's and Watap's so they would show in some way. Now, that's again why I like to try to have access to as many sources as I can.

Q. Alright, so now I wanted to ask you now about on...moving off the census stuff for a little bit. On page 18...

THE COURT: On page 18 that's referring to Exhibit fifty-five?

MS. TEILLET: Oh...

THE COURT: Or is it?

MS. TEILLET: Yes, of Exhibit fifty-five of Ms. Jone's report. Q. Now, Ms. Jones have you found that?

A. Not just yet.

Q. OK, I'll give you a minute.

A. OK.

Q. OK?

A. Yup.

Q. Alright, now you say in the middle of the paragraph there that the Hudson Bay Company post closed in 1846. Can I ask you what your source of that information is?

A. Ah...I had read it in a couple of different places and I...the reason I put establishment afterwards was that I know that the Hudson's Bay Company still had a presence in the area after 1846, so I have to assume that the author must have been referring to some larger establishment that the Bay was running at the time.

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Q. Are you...do you...have you studied what the actual Hudson's Bay Company post function at Sault Ste. Marie was at any time?

A. I have read the documents that Professor Ray supplied and I have read as much secondary material as I could find, a lot of which does mention Hudson's Bay Company.

Q. Yes, mentions that it was there.

A. Yes, and the people involved in it and that sort of thing.

Q. Now, but, Dr. Ray on Page 8 of his report and you said you read it, it says and I'll quote, "Fort St. Mary Post functioned primarily as a depot, transport post whereas the other posts operated as trading centres. Thus, the trading activities of local Native people were not well documented at Sault Ste. Marie". And then there's a little bit more, but he goes on then to say, "The Natives of this community did most of their trading with rival merchants located north and south of the border". Do you disagree with Dr. Ray on that?

A. I would defer to his opinion.

Q. Thank you. Now...now you cite the 1871 census, you used the fur returns from the 1871 census.

A. Right.

Q. And I think you said in your examination-in-chief when Mr. Long asked you, I think you said that these were fur returns would not be what they traded, but they would be what they caught and processed themselves. I didn't quite understand what you meant by that.

A. Or they...or my understanding is

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that this is what people said that they produced themselves during the year, so in...it doesn't include furs that just passed through their hands because people who were identified as traders could have zero fur production themselves, but it could mean that those furs were processed, prepared for market by them and/or that they were trapped, I would think, by those people themselves.

Q. What...to your mind, when you're discussing the fur returns, would those represent sort of assets for those people? In fact, would they be worth money to them?

A. Oh, yes.

Q. And...and is...is it...I believe you've...in one of your supporting documents that when you're talking about the census, I think at Tab 128 you don't necessarily need to go there, but at Tab 128, which is a document about reporting of assets...

A. Right.

Q. And that...the person who did that report says that the reporting of assets can be under-reported by as high as 40 to 50% and that it's pretty certain that it would be the same of historical data and you've just said that these fur returns would be assets. Do you think that these people are accurately reporting their fur returns? Do we have any way of knowing?

A. I think that there is actually a note at the end of the 1861 census, I don't know whether you noticed it, about collecting information about fur returns.

Q. Well, I note that in the 1861 census that it said that they couldn't do it because the men

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were all away.

A. Well, one of the things they did say was that when they were asking people what they caught during that year, a lot of people, not surprisingly couldn't remember whether they had caught 26 or 28 beaver, or 10 or 12 martin, or something, but they could remember the dollar amount.

Q. Ah hm.

A. I got \$425. in fur last year. And sometimes from that they could work back to estimates of about how much that would have been.

Q. Ah hm.

A. And I think the...the declarations in the fur returns that we see here should maybe be taken in the same light. It's not to say that somebody, say the person who caught the most....

Q. Solomon, I think his name is.

A. Um...

Q. Henry Solomon.

A. Now did he catch exactly 150 muskrat? Probably not. He probably caught, he would have estimated something like 150 muskrat, maybe a couple of otter, maybe a half dozen martin and these kinds of things. But I think to get an idea of the scale, now what you've just said about under-representing maybe by 40 or 50%, somebody who's catching two muskrats, to my mind, the difference between two and four is not that significance....significant, and even in terms of range, the difference between a hundred and a hundred and fifty, but the significance of the difference between two and sixty is substantial and I think that most people would have been able to identify that much

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difference. They would have been able to get the range and also the difference between zero, none and some.

Q. The trading posts around there where people are getting their supplies are still working on a debt system at that time, is that correct?

A. Not exclusively. There's some cash by that time.

Q. Some?

A. Well, for example, the person who was dealing in the 150 muskrat could probably go in and get credit, but there were a lot of people who weren't operating that way any more. They were getting paid in money and buying things with money. So, not...by no means was everybody in the community operating on a credit system.

Q. But some were.

A. Probably. That's all I can say. I can't say definitively.

Q. Right, and if...

A. We know that there were some people who had accounts.

Q. Right...

A. With the Bay at that time.

Q. OK and if you had an account...

A. Or a trader.

Q. Pardon me?

A. Or another trader. As you point out, there were several independent traders and they show up in these rolls as well.

Q. And as Dr. Ray says they could be trading in var...

A. Across the border.

Q. ...all over the place, right.

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Michipicoten, Flying Post, wherever.

A. To my mind that wouldn't affect how much fur they might have declared in the census. In the way the census might be more accurate than whatever accounts there are with the various companies.

Q. Well, what...do you have some evidence for that?

A. If people are trading, if people are trading in a number of different places, any one account that they might run in any one place would only represent a part of what their total business was for the year in fur, but if they're estimating for a census man about how much fur did you get this year, did you get any, they would...I would say include everything they caught not just what they traded with the independent trader down the street or across the river.

Q. I guess that's...is that based on a presumption that they are telling honestly to the census man their fur returns?

A. I believe that people who are answering the census questions at this time made an honest effort to try to be accurate. If they were not completely accurate, I mean I don't assume fraud in people you know. And I think there is an effort made to try to answer questions accurately.

Q. So your...your...the person that you're citing at Tab 128 and I'm sorry I don't have the name at the top of my head, but...

A. I think I can guess the article you're referring to.

Q. That...by Darroch, I guess it's Gordon Darroch and Lee Soltow, that at Tab 128 of your binder three, so when he says that people under-report

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by 40 to 50% and it's the same historically, you're saying you basically don't think that's true. That you think that they're being honest and it's a fairly accurate presentation. Is that what I'm understanding?

A. I think that part of what might be going on is that people who have complicated assets to value might not be able to give a perfectly accurate evaluation as to how much these things might be worth.

The kinds of things that the people who studied in this book were looking at tend to be, for example, real property assets, manufacturing assets, machinery, equipment, that kind of thing. Even investments like stocks and bonds and some of that may be I think a difficulty in estimating how much those things are really worth and a certain caution that they might have exercised thinking that the information might be used for tax assessment, but I would remind you at that time that...that taxes only applied to real property and to imports and exports and not to income as a whole.

Q. Well...

A. So what I'm saying is that there wouldn't be much incentive for someone who is trying to estimate about how much fur they got in a year to have changed their estimates by very large margins or from, you know, if they got a lot to say that they didn't get anything. There just isn't much incentive to do that.

Q. And is it...do you think that Aboriginal people at that time trusted someone who came into their house like that and asked them questions about their livelihood that they would...what I'm understanding from you is you say that would have just trusted and told them...

A. Well, they told them a lot of other

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things. That from what we can gauge against other sources are pretty accurate.

Q. Ah hm. OK. Now, do you have any...I'd like to go back to Page 21 of your report where we're looking at Henry Solomon again and his 150 fur returns which you say may be more or less, right?

A. Ah hm.

Q. And all the others. Do you have any concept of the value of those, any of those fur returns, Ms. Jones to the person who got them?

A. I couldn't put a dollar value on them, but I think it would be safe to say that, you know, clearly in just about any economy, 60 muskrat or 150 muskrat is a lot. That would represent a big portion of your income for the year I would estimate.

Q. But even if it's 5, do you know what that would represent to...in dollar value to an Aboriginal family at that time?

A. I can't say in dollar value. What I can say is that it was probably a useful supplement to the income.

Q. Supplement.

A. Ya. Very useful.

Q. Now, do you have any idea of the cultural significance of these fur returns to the people?

A. What do you mean by that?

Q. The importance to them of the fact that they're actually doing it. They're actually out there trapping whether it's 5 or 15 to the family.

A. Well, for these people on this return, these kinds of documents don't shed light on that kind of material which is why you look for other

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material as well.

Q. And I guess that's coming to my point where you say that the returns for many of these people are of an insignificant nature, but...and what you've just said is that it might be economically insignificant, but you really don't know what that means to that family in terms of their...the value they place on those fur returns. Is that so?

A. Well, I'm just...I'm weighing that question carefully before I answer it. Because I'm also considering what other evidence does exist at this time from the way people described their lives. Now for these individuals for whom we have fur returns, I can't speak for them to say what it meant to them to get a couple of beaver and a mink in a year. Equally, if there are people that don't have any returns at all I don't know whether it's fair to impugn anything to that fact, if you see what I mean. If they have zero does it mean that they feel that a part of their life is missing or...or does it not mean that? I mean, we just can't infer that kind of information from this kind of historical record.

Q. So I guess you're answering me in the affirmative basically. You're saying you don't know the significance of the...the trapping. I guess because otherwise, Ms. Jones, the implication appear to be that if there's a lot of trapping that's culturally significant because it's economically significant because there's a lot of number and if there aren't any then that means they're not trapping, they don't do it, it doesn't mean anything to their culture and I'm just saying to you is that really an equation we can draw out of this and is it?

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A. Well, I don't know how you can get around the fact that if somebody is clearly spending a lot of time and effort on a trap line then it must be important to them and if they're not producing furs at all then I guess the answer is we can't speculate one way or the other.

Q. And likewise, if you have someone listed on here with no fur returns, he might have been sick that year, right? You have no idea. He might have no fur returns cause he didn't go trapping cause he had pneumonia or something that year. We don't know, right?

A. It's possible, but I'm also looking at it as a part of a general pattern if you see what I did in the report, in that these people with these surnames consistently don't report much in the way of fur returns as a group. Whereas there are other people who consistently do. So, if you go through by individuals then you can say well, he might not have had any that year because he had pneumonia, but if you look at a collectivity of 300 people and the pattern is quite consistent, then I mean you have to make up 300 different stories and I think it gets more and more difficult to do that as to why that particular person might not have gone trapping that year. I'm looking at the group as much as anything. What does the group tend to do?

Q. By...by my look at your chart here, I...I guess I'm looking at your chart and wondering about the group too because you have Joseph Sayer in here.

A. Ah hm.

Q. And his occupation is listed as

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Chief.

A. Yes.

Q. Now...

A. Now, he's a person I subsequently to writing this report, and this is one reason why I was so cautious about characterizing all these surnames as being of mixed-blood individuals. He probably is not based on some other reading that I've done. He was...appears to have been the son of a Chief and of an Ojibway woman, the Ojibway woman later re-married and all the children took the name Sayer and it's a good example of why I was so cautious about characterizing them all one way or the other. So now here's an individual who is probably not of mixed Aboriginal and non-Aboriginal ancestry who's appeared on my table. It's one reason I was quite cautious about saying some of the things I was saying. So, I mean, I don't know what...I don't know what you're going to say to me next.

Q. I think I've made my...the point that I wanted to make. I'd like to move on to your page 18 of your report. I realize that's moving back to page 18, but. Now in the middle paragraph there you are making a statement about the...the fact that the traders are what you call "downgraded to occupations such as Labourer" and the last line of the middle paragraph you say, "This was probably symptomatic of the final marginalization of the fur trade as a viable activity in the area by this time". Now, you've already read Dr. Ray's material.

A. Ah hm.

Q. I have a quote from a book by Dr. Ray and I'll give it to you and to the Court. Now I've

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highlighted the first paragraph...

A. Right.

Q. ...where and this is Dr. Ray's book called the Canadian Fur Trade in the Industrial Age.

A. Ya, I'm familiar with it.

Q. Are you familiar with this?

A. Ya.

Q. And he says in his first paragraph, "In his classic study, The Fur Trade in Canada, Harold Innis observed that the era after 1869 was 'one of the most interesting periods in the history of the trade'. Contrary to popular impressions, the fur trade did not remain a static business which slowly faded away during this time. Rather, with fur prices soaring, it remained strong and vibrant and expanded in the north until after the Second World War".

A. I don't have any problem with that statement. The only difficulty is that it doesn't tell us what was going on right around Sault Ste. Marie. The fur-trade as a whole might have been doing brilliantly well, but I think that some of Professor Ray's other documents indicate that the area right around Sault Ste. Marie had really been very seriously depleted, almost from the beginning of the 19th Century and that it, for practically the whole century, wildlife populations really did not rebound.

Q. And that will probably take me to...exactly to my next point which is and I see that you've included...you're familiar with...

THE COURT: Did you wish this filed as an exhibit or...

MS. TEILLET: Actually, yes, Your Honour.

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THE COURT: Exhibit fifty-six.

EXHIBIT NUMBER FIFTY-SIX: Excerpt
from The Canadian Fur Trade in the
Industrial Age.

A. There's another point which I could
make ancillary to this, but I might wait until after
you've shown me whatever you're going to show me next.

MS. TEILLET: Q. You're familiar with
the Ontario Sessional Reports.

A. Ah hm.

Q. And...and I note you've got some in
there. I...I have a collection of some of those
sessional reports from 1880 and 1899 and going into the
early 1900's and I've highlighted some sections of them
and I'd like to just show you. The first report is
from...the report of G.A. MacCallum, Chairman Ontario
Game and Fish Commission, 1899 where he says in the
highlighted portion on the first page, "Reports from
the northern districts say that moose have increased
and are there in fair numbers. If the government
decides to allow them to be hunted next autumn your
Commissioners would suggest a special license costing
from \$5. to \$10. should be charged each hunter who
wants to hunt moose and further that only one bull be
allowed to each hunter - cows and calves not to be
killed on any consideration".

A. Ah hm.

Q. And then as we move to the next page
in the Algoma District down towards the middle of the
page, we see that people are...there are...these are
charges right? Offence charged, shipping a moose head,
killing a deer, seized two moose hides and heads. If
we move, not to the next page but the page after that

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at the bottom of Thomas Bolger, who is a Provincial Land Surveyor making an 1880 report. The bottom paragraph he says, "There appear to be a good...there appears to be a good many beaver on the small streams throughout the township, but other fur bearing animals appear scarce. Moose tracks are occasionally seen, but I think that moose...I do not think moose are very plentiful. I saw no signs of the common deer". Now that is with reference to, if you look a couple of paragraphs up, he's looking at Thessalon and Bruce Mines area.

A. Ah hm.

Q. If you skip the next page and go the page after that, you see 1885, John McAree, Provincial Land Surveyor, saying, "As regard Natural History, it may be remarked that beaver are still found in considerable numbers, and no doubt the other aquatic fur-bearing animals also. There are a few moose and red deer, and black bears of course". And then if you skip the next page and go to the page after that, which is MacCallum again, who is the Chairman of the Ontario Fish and Game Commission and this is in 1898, the top. Actually, I think his report is 1897, but the sessional paper is 1898. "Moose are reported to be increasing, notwithstanding the number alleged to be killed by Indians on their reserves and vicinity. Deer are making their way further north than ever reported, owing, no doubt, to the gradual decrease of wolves in the northern portion of this province". Then if we skip a page and go to the next page which is a Willmott who's the Game Warden and again in the highlighted point, 1898, "From many points in Algoma word comes to the effect that moose and caribou are on the increase,

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and that red deer are working their way west, many being found in places where formerly they were unknown". If you skip a page and go to the next one, it is another report by Bolger, the Provincial Land Surveyor, his report is 1887, "As regards natural history, I may remark that beaver are found in considerable numbers, moose are found also, and bears of course, and mink are numerous on Vermillion River".

A. Now this is, besides Vermillion River, what's the other reference? Geographic reference?

Q. If you look at...

A. It's written from Penetanguishine.

Q. It says the District of Algoma, right? So he's talking about the Township of Foster in the District of Algoma and then he goes through several variations in the District of Algoma. If you go to, skip a page and go further on, we're looking at Joseph M. Tiernan, Provincial Land Surveyor, again with reference to the District of Algoma in 1890. "The lakes are well stocked with fish and there is an abundance of game, consisting of moose, bear, deer, duck, partridge, etc.". And if you go to the next page you'll see that there are prosecutions, 24 prosecutions in the districts and one is killing a moose and having the moose in possession. Skip a page and go to 1895. I may mention that recently I passed through a portion...actually I won't read that one because I think I highlighted that one by mistake cause it's reference to Perry Sound, which I think is a little out of our turf here. Now...and just going to the very...to the second last page, 1896 where, "Moose are reported on the increase, especially in Algoma. There

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is no doubt, however, that many of these are killed by Indians".

A. What do I think of all that is going to be your question?

THE COURT: Well, I'm curious, what is the question?

MS. TEILLET: Q. Your...your point is that and you say it in your report that there is...that game is scarce and that throughout the century from the early part on and my point is that doesn't this go to show that in the latter part, there is in fact big game in the Algoma District?

A. Right at the very end of the century.

Q. Well, 1880.

A. All your...

MR. LONG: I wonder if the witness could be allowed to finish.

A. And I think the single comment that everyone is making is how much they're increasing, which seems to imply to me that there weren't very many before and now the remarkable thing is that there are more and more. And these references all come from very late in the century and they certainly don't come from 1871.

Q. I agree with you, they're not from 1871 and I think that the evidence from Dr. Ray and Dr. Lytwyn both confirmed your statement that there wasn't a lot in the earlier part of the century.

A. And that...I mean, Professor Ray's book is, The Canadian Fur Trade in the Industrial Age is...it is a very interesting book and I think that one of the things about the later fur trade is that small

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traders had a more and more difficult time competing against a few very large fur companies that were in the area. So, that could be another reason, at least why this...you don't see these people come back as traders later on. It could be that once their business goes as small traders it becomes more and more difficult for them to re-establish a small business dealing in fur.

MS. TEILLET: Your Honour, could we have the Ontario Sessional Papers added as an exhibit?

THE COURT: Next exhibit?

THE CLERK OF THE COURT: Fifty-seven, Your Honour.

THE COURT: Exhibit fifty-seven.

EXHIBIT NUMBER FIFTY-SEVEN:

Ontario Sessional Papers.

THE COURT: Does the witness also have one of the exhibits, one of the binders did we hand over?

A. Oh, I gave it back.

THE COURT: Oh, you gave it back, thank you.

MS. TEILLET: Q. Now on page 13 of your report, Ms. Jones., you refer to E.B. Borron.

A. Right.

Q. Who's the former MP for Algoma and stipendiary...stipendiary magistrate?

A. Ah hm.

Q. And you point out towards the bottom of the page that Borron made...Borron came in and made quite a few...he launched an investigation of annuity payments that Ontario launched one and he was the one they sent out to do the investigation, is that correct?

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A. Yes, or to manage the investigation anyway, ya.

Q. Oh, manage it, OK.

A. Ya, and do some of it himself.

Q. And you say that his...the essential point of Borron's conclusions was that there was a substantial mixed-blood element in the band populations near Sault Ste. Marie, which in his view, should not be eligible for Treaty benefits. Now, you then on page 25 go on to cite some of Borron's report.

A. Ah hm.

Q. And I wonder if you could pull out document 49, which is...Your Honour, it's in one of the file folders.

A. Alright.

Q. That is attached to Ms. Jones'...it would be Exhibit fifty-four A.

THE COURT: No, fifty-four A. We're in business.

MS. TEILLET: Q. Got it?

A. Ah hm.

Q. OK, now, this is kind...it's a fascinating report to read and I wonder Ms. Jones if you could tell us, you said that he was sent out to investigate or manage the investigation of the annuity payments and he was sent out to determine whether there were Halfbreeds.

A. Right.

Q. Wasn't there a...what was the purpose of finding out whether there were Halfbreeds?

A. It had been relatively common knowledge between the two Governments, Ontario and Canada for some time that there were a lot of people of

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mixed Aboriginal and non-Aboriginal ancestry who were receiving Robinson Treaty annuity payments and even people with no Aboriginal ancestry at all. Now, there was an ongoing dispute between Ontario and Canada at this time. Ontario, Quebec and Canada, but the two parties involved in this are Ontario and Canada about how the division of responsibilities incurred during the pre-confederation period by the United Province of Canada should be dealt with and particularly financial responsibilities. So, one of the aspects of these, of this financial responsibility, one of the responsibilities incurred before Confederation was responsibility to pay Robinson Treaty annuity payments and, in fact, Ontario had been paying them at the time that Borron was writing his reports. So, Ontario at that time was complaining about how many people were on the paylists, especially given the information that so many people had been added after the Treaty and that some of those people might not be of Aboriginal ancestry.

Q. Ah hm.

A. So that was why Borron was sent out to investigate.

Q. And do you...do you take his statements at face value, Ms. Jones?

A. Again, as one source, I wouldn't...you know, I wouldn't rely on them if they were all that I had necessarily. But I do have to say that he was a resident of Sault Ste. Marie for twenty-five years. He knew a lot of the people very well and both the...in both the Aboriginal and non-Aboriginal communities and I think there is something to be said for hearing what he has to say simply because he was

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there in 1891 and he went to some lengths to get as many statements as he could from people in the mixed-blood community at the time. He hired a person to go out and take statements for him who was conversant in the languages for example and who was a member himself.

And I think...I think it's worth hearing him out. Whether you say you take everything at face value, perhaps not, but I think that a lot of what he says could be of considerable interest.

Q. Do you think he had...that he was prejudiced against the Halfbreed people of the community here?

A. You know I'm not sure he was because if you read, he wrote three reports.

Q. Ah hm.

A. The...the bulk of the reports in which he is arguing that people should be taken off the paylists deal with what he believed Robinson himself to have intended at the time. He...he goes into great depth and detail about what he thought the Treaty Commissioner meant to do, meant to say, what he thought the Treaty Commissioner's promises meant and that sort of thing. He doesn't anywhere say that the mixed-blood community don't...don't deserve anything. He doesn't say angry things about them anywhere and in fact if you'll allow me to find it, there is one quotation of his in his 1892 report that I think is quite...a test to confirm that point. I apologize for the delay. There's just so much paper here. I have notes...now I do apologize, I have a set of notes here in which I have this reference.

THE COURT: Perhaps to assist the witness, we'll take a short recess and

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she can flip through her papers.

R E C E S S : 3:10 P.M.
R E S U M E : 3:30 P.M.

MS. TEILLET: Q. Ms. Jones, you wanted to read us something from your notes. Did you find it?

A. Yes, I did. It's document number fifty-two. This is the Borron Report of 1892 and it's on page 48.

THE COURT: Fifty-two you said?

A. Right.

THE COURT: I think that's fifty-four...

MS. TEILLET: B.

THE COURT: ...B. Yes, and page?

A. Page 48, the page numbers are at the bottom.

THE COURT: Yes.

A. It's the section just above the heading, Revisions of the Pay-Lists and he says, "I would have liked to have given my opinions as to the position of the half breed population of the territory, and its claims to kindly and considerate treatment at the hands of both Governments. Not however as 'Indians' or members by treaty or otherwise of Indian tribes or bands, but as the children of white men - men of our own race and blood - who have too frequently been shamefully neglected and deserted by their fathers, but such would be out of place in this report".

Q. OK, I'd like to take you to some other quotes of Mr. Borron's.

A. OK.

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Q. And I'd like to look at what is in the 1891 report which is Exhibit fifty-four A.

A. Document 49.

Q. 49, yes and I'm looking at Page 29. The numbers on this one are at the top of the page. Are you there?

A. Ah hm.

Q. And in the middle he says, "If confined to Indians only - the Hon. W.B. Robinson knew that no such provisions was necessary. Had he intended to include, or ever anticipated that French Canadians and French Half-breeds or other 'breeds of like fecundity and longevity - were to be recognized as Indians by the Department of Indian Affairs and permitted to draw Annuities which his Province would be called upon to pay, a man of the Hon. W.B. Robinson's sagacity and shrewdness would surely have inserted a clause in the treaty to protect the Province from such an imposition". Now, Ms. Jones, I wanted to...

A. Is there something that you wanted to say about that paragraph?

Q. Well, I guess I find it at odds, Ms. Jones, with the one where...that you just read where he says he appears to be saying that he...that they've been shamefully neglected, but here to call them "breeds of like fecundity and longevity", does that not appear to you that his concern is that they are too fertile and live too long?

A. I'm not sure I would put that construction on it. The word "breeds" is also the term that's used in the census in 1901 by the way, so I think it was, again, it's something that's come to have quite a negative connotation but I'm not sure that it

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always did at the time. Now, I believe his...one of his points that he wants to make generally in these reports is that Robinson didn't intend the total numbers, the total dollars spent on the treaties to have an unlimited cap, or to be unlimited is what I'm trying to say. So, I think his point is that there were...there have been a lot of people added to the paylists since 1850 in various ways and one of which is being the children of people who were added to the paylists afterwards and that if Robinson had foreseen that there might be this kind of augmentation, he probably would have said that that was not in his intent and he really seems to hinge the whole business on what he believes Robinson to have intended at the time. That's the way he wants to frame the whole discussion and...

Q. Now, Ms. Jones, I think the...I just want to back up to just a little pre...you can keep these Borron reports out, but I wanted to take a look at something that's leading up to this, which is reported by the Royal Commission again and it's from Volume I of the Royal Commission Report, which I'm sure you're familiar with and it starts at 267. Now, in this section, the Royal Commission is describing the...and I don't know how to pronounce this, perhaps you do, is it Bagot or Bagot?

A. Bagot. I think it's just plain old Bagot.

Q. Thank you. So, Bagot, the Bagot Commission of 1844 and on the second page that I've given you where it's highlighted, they basically are giving a...the run down of what the Bagot Commission was, so that's 1844, that's long pre-Borron, but and

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they say that, "Crown financial obligations were to be reduced by taking a census of all Indians living in Upper Canada. This would enable officials to prepare band lists. No Indian could be added to a band list without official approval, and only persons listed as band members would be entitled to treaty payments. It was recommended that the following classes of persons be ineligible to receive those payments; all persons of mixed Indian and non-Indian blood who had not been adopted by the band; all Indian women who married non-Indian men and their children; and all Indian children who had been educated in industrial schools. These recommendations were adopted in one form or another in the years after the Bagot Commission issued its report and formed the heart of the Indian status, band membership and enfranchisement provisions of the Indian Act". Now, the next page they...actually skipping over to the page after that, they then go to the Pennefather Commission which you mention in your report and you have some cites from Pennefather and again in the highlighted section they say, "The next important official inquiry into the conditions of Indians in the colonies was that of the Pennefather Commission in 1858. Established in response to the continuing emphasis on financial retrenchment by imperial authorities, its mandate was to report upon 'the best means of securing the future progress and civilization of the Indian tribes' and 'the best mode of so managing the Indian property as to secure its full benefit to the Indians, without impeding the settlement of the country'. Commissioners found generally that the relationship between the Crown and Indian nations had changed a great deal over the past years as a result of

the civilization policy, with Indians slowly being weaned from dependence on the Crown. Although commissioners were optimistic about the possibility that Indians might be 'reclaimed from their savage state' over time, they felt themselves forced to 'confess that any hopes of raising the Indians as a body to the social or political level of their white neighbours, is yet but a glimmer and distant spark'. Slow progress in the civilizing program was attributed to the 'apathy' and 'unsettled habits' of Indians rather than to any shortcomings in the civilization policy or its administration. Ultimately, the Pennefather Commission recommended moves toward a policy of complete assimilation of Indians into colonial society. It called, for example, for direct allotment of lands to individual Indians instead of creating communally held reserves. This policy was carried out later in Manitoba in the case of the Metis people, where individual plots of land were awarded instead of collective Metis lands. The Commission also proposed collecting smaller bands in a single reserve, consolidating the various pieces of Indian legislation, legislating the dismantling of tribal structures, and eventually abolishing the Indian department once the civilizing efforts had borne fruit. As we will see, these recommendations were acted upon in one way or another over the years". Now that was in 18...Pennefather Commission was in 1858, right?

A. Yes.

Q. So now when we get further down the road here to the Borron Commission...

THE COURT: This material, Looking Forward, Looking Back will be the next

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exhibit. Fifty-eight.

EXHIBIT NUMBER FIFTY-EIGHT: Report of the Royal Commission on Aboriginal Peoples - Looking Forward, Looking Back.

MS. TEILLET: Q. So can I take you to now document 52 of your...of the Borron Reports, which is Exhibit fifty-four B. I think you've already got it.

A. Yes.

Q. And Ms. Jones, can you turn to page 3 and read from where it starts saying, "Halfbreeds".

A. "It will in all probability be again contended as was done by the Deputy Superintendent of Indian Affairs in 1884 - That all those who are recognized as such by the Government are "Indians", and that "Half breeds are by the law of Ontario, "Indians". As long as they have Indian blood in their veins they are (says Mr. VanKoughnet) Indians legally". Do you want me to go on?

Q. Ah hm.

A. "I am totally at a loss to understand upon what grounds such an apparently wild and absurd definition can be maintained. There was no law of Ontario in existence in 1850, so far as known to me, which thus describes the legal of social status of half-breeds, and others with more or less Indian blood in their veins".

Q. Keep going.

A. Keep going?

Q. Ah hm.

A. "In the Report of the Commission appointed by the Governor General in the year 1856, or six years after the conclusion of the Robinson

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treaties, we find the following on this subject. The word "Indian" in Western Canada, is held, more perhaps from usage than from any legal authority to comprise not only all persons of pure Indian blood, but also those of mixed race, who are recognized members of any tribe or band resident in Canada, and who claim Indian descent on the father's side."

Q. So, ya, can you just continue for the next paragraph and that's it.

A. OK. "An Indian woman marrying a White loses her rights as a member of the tribe, and the children have no claim on the lands or moneys belonging to their mother's nation". This is the opinion expressed by Messrs. Richard T. Pennefather, Superintendent General of Indian Affairs, and his brother commissioners (one of whom was also an Officer in the Department) at that time. And this is the definition that we are willing to abide by now."

Q. Thank you. Now, can you stick with that report and move to page 9?

A. Alright.

Q. Now in the second paragraph there, the second full paragraph, he refers to the numbers that he says "That the number of Indians entitled to the benefit of the treaties was incidentally stated in the treaties themselves, as being at the time 1,240 in the Lake Superior Territory, and 1,422 in the ceded territory on Lake Huron. And that the numbers thus named in the body of the Treaties included not only the Indians of pure blood, but all the Half breeds in the respective territories". And now I gather later on, as you move from Page 9 through to Page 14 in particular, he's arguing that those numbers are, and I look on Page

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14, he arguing that that's a mistake. He says this clause was an afterthought, it was on the spur of the moment, a mistake was made in the treaty and that it really wasn't meant to include the Halfbreeds and then again on Page 16, if you move a little further along, towards the top he says, "It is, in this ill-advised, hurriedly drawn, wrongly inserted, and altogether discredited and unreliable Proviso, that the figures actually occur, the accuracy of which is challenged by us, and the error in which has (in my humble opinion) occurred at the very same time, and under precisely the same circumstances as those which gave rise to the mistake which has unquestionably been made in the wording and insertion of the proviso itself". Now, Ms. Jones, he refers several times in this report to a court case, so it...it...it appears that he's been and perhaps you can tell me if this is true, he's commissioned by the Attorney General, the Honourable O. Mowat to come and do this, to make this report?

A. Ah hm.

Q. And he's finding them ammunition for the pending court case about the annuity payments with the Federal Government, is that correct?

A. That's correct.

Q. OK. So he has an agenda.

A. Yes.

Q. When he goes out there.

A. Ah hm.

Q. And, also can you just in the Royal Commission and I don't think we read it there, but I think it's in the section where they...no, we did read it, that it's really starting with the Bagot Report and then continuing with Pennefather and then continuing

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with Borron, this idea that women are to be...women who marry either people...men who are Halfbreeds or men who are White or men who are even Indians, but not from that Treaty area, that they're going to retain their rights for that...their lifetime, but it's not going to be passed on. Is that correct? That it begins in...in here?

A. Yes.

Q. OK. Thank you. Now, am I correct in understanding your report to say that John Driver, that Borron went there and he collected accounts or he commissions somebody to translate accounts from the people there, so the accounts of John Driver and of Biron, is it Joshua?

A. Yes, there are a couple of Biron's I think.

Q. Right, so...

A. And several other people.

Q. ...those are...those are given...those are collected by Borron to substantiate his case, right? He's collecting them and then he's using them as part of the case that he's putting forward here.

A. I don't know how many of them he actually used. These are the materials that were collected by the lawyers and then how they were used was up to what the lawyers wanted to do, um...

Q. OK, so...but they are, these accounts were collected by Borron.

A. And his...some of his assistants, yes, who were...

Q. OK. Thank you.

A. ...of mixed-blood ancestry

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themselves.

Q. Ah hm. Now, now I note on your...on page 25 of your report that you note...I'm trying to find where it is in your report actually...right, that they...and towards the bottom of the paragraph where Borron's writing about the Metis, or the Halfbreeds as he calls them, that "They lived in log houses and when not employed by the Hudson Bay Com...the Hon. Hudson Bay Company or others - as voyageurs, boatmen, couriers or labourers would eke out a subsistence by hunting and fishing or in various other ways". And again, in Borron's report on and I'm taking you back to Exhibit fifty-four A at the bottom of the first page of his report.

A. Document number...

Q. Sorry, forty-nine, Ms. Jones. It's the 1891 report. And he says towards the bottom there that they...I'm looking at "the hunting grounds on which they were dependent for subsistence", he's referring to the Indians, right?

A. OK.

Q. That, "to the hunting grounds on which they were dependent for subsistence, had become dissatisfied". Now, so Borron himself is...in the 1891 Report, it seems to me from both those quotes saying that both the Metis and the Indians were dependent on subsistence hunting, "eked out a subsistence by hunting and fishing", or "a hunting grounds on which they were dependent for subsistence", and those are both from Borron, is that correct? They're both from him?

A. I think it is interesting that Borron himself, who as I say lived there for a very long time and knew a lot of people, is the one who

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writes more about hunting than anybody else in this whole period, all the documents. He's the one who describes more than anyone else how they might have hunted or trapped.

Q. Thank you.

A. Ya. I might just say though that the reference on this first page is specifically to Indians...

Q. Yes.

A. ...and Borron does clearly understand that Indians and Halfbreeds are different. He sees them as being distinct, different people.

Q. I think that's clear in your report that they're distinguishable. Now, in...I wanted to take you to one question in your...in your Table III...

A. OK.

Q. ...in your report, so that the Jones...Gwyn Jones, Ms. Jones Report, Exhibit fifty-five and it's Table III.

A. OK.

Q. Now, the pages aren't numbered so it's...

A. Yes, I apologize for that. It's just a formatting problem.

Q. Ya. Now...

A. You can kind of get an idea of where people are by what their numbers are.

Q. Ah hm. Well, just...I just wanted to ask about just, we don't necessarily need to...well, I guess we do actually, in Eustache Lesage which...if we're trying to find it. I've...I counted the pages up to be 139 so it's somewhere around page 119 which is towards the back, Your Honour.

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A. OK, what number does he have, do you remember?

Q. He's number 516.

A. 516. OK, I've got him.

MS. TEILLET: We have to wait for His Honour to find us in the paging here. It's going to be difficult.

A. Ya.

THE COURT: Alright.

MS. TEILLET: Got it?

THE COURT: Ya.

MS. TEILLET: Q. OK, now you...you say in the top on Eustache you say new family in 1881, now as I understand it this morning you're...you're saying that that's just when he shows up in the 1881 census.

A. That's right.

Q. Right? It doesn't necessarily mean that he wasn't around that region before.

A. Before. That's right.

Q. Right, now and you did look at the American census I think you said, I think the ones you gave us were 1860 and...18....

A. '80.

Q. ...80 and you didn't look at the 1871...

A. No.

Q. ...for Sugar Island did you?

A. No.

Q. So, I'd like to give you a copy of that and ask you if you recognize that as looking like it comes from the Sugar Island Township Census and this is of 19...1870.

A. 1870.

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Q. And does that look...look like the census to you, Ms. Jones?

A. Well, I haven't seen it so I can't swear for sure.

Q. Ah hm.

A. But, it looks like a census.

Q. And it looks similar to the census ones that you've included in your documents?

A. Ah hm.

Q. Thank you. Now, if you look to the third...

MR. LONG: Your Honour, I'm a little concerned that we have a document that hasn't been recognized by the witness as something that she considers to be authoritative. We've not the slightest idea from where it originated or how it arrived here, so I would object to the admission of the document as an exhibit.

THE COURT: Counsel?

MS. TEILLET: Your Honour, I'd like to remind us of what went on when we were here before, that Ms. Christie and Mr. Long put in several documents which the witness didn't recognize and which I objected to and which Your Honour brought in and...

THE COURT: I'll be consistent, let's put it that way. Quite...quite frank with different witnesses are approaching the issues from different perspectives, restricting themselves in

some ways to material that they might have been able

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to obtain. It would appear from the face of this document that it was in fact the 1870 census of the United States with a certification on it and considering Sugar Island is a stone's throw from Garden River, I think it's very important if in fact this individual who might very well have been in the area is listed in this census and so I'm prepared to allow this document to be examined by the witness.

MS. TEILLET: Thank you, Your Honour.

Q. If you turn, Ms. Jones, one, not the cover page, but one, two, three in and if you look you'll see, I think, Eustache Lesage.

A. Yes.

Q. Listed there and I believe below that the line, it looks like Malindy.

A. Yes, it's probably right.

Q. And he's listed as 36 male and it looks like something and then it's been scratched out and Ind put in above it?

A. Ah hm.

Q. Does...you're probably much more experienced at looking at these than I am, Ms. Jones, does that look like HB scratched out with Indian or something else? Do you have any idea what you can read of that?

A. They don't seem to have a category for HB.

Q. OK.

A. It might be, but it's...without really getting a good look at it, it's hard to know.

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Q. OK. But it's...it's clearly Ind above that, would you agree with that?

A. Right, I would.

Q. OK, and then his occupation is listed as farmer.

A. Ah hm.

Q. And these...would you agree, Ms. Jones, that these appear to line up with the children that you found in the 1881 census, at least some of them?

A. At least some of them, yes.

Q. OK.

A. Not Leonard, but...it could be a time of year thing, who knows?

Q. Did I...I understood you to say this morning in your testimony that you thought that Leonard was born somewhere around 1870, is that correct?

A. Right.

Q. So, it's possible he might not have been born...

A. It's possible.

Q.at this point. Whenever this is, June or July, right? OK. Thank you. Your Honour, could we have that as...

THE COURT: Next exhibit.

MS. TEILLET: Fifty-nine.

THE COURT: Fifty-nine?

EXHIBIT NUMBER FIFTY-NINE: U.S. National Archives Microfilm Publications. Population Schedule 1870.

MS. TEILLET: Q. Now, I'm...I'm still

on...back in your report, Ms. Jones, and looking at Eustache and then turning to the very next page and can

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you look at number 522?

A. Right.

Q. Now that's a son of, you've got it listed as a son of Eustache Lesage and it's an Elianord and it's a son who's ten years old, so my reading would be he's born somewhere around 1870 and he's got a son.

Did you consider the fact that Elianord might be Leonard? That it's the son that we're looking at?

A. I did. It's...it's a bit of a leap. I mean, it could be. It's possible.

Q. You don't discount it entirely.

A. No.

Q. OK. Thank you.

A. It's...I mean it is kind of odd that a common name like Leonard would be rendered in this incomprehensible way, but it's...it is possible, sure.

THE COURT: When you look at a lot of these other documents, how they came up with some of these spellings and names and they're all the same person, it's not that much of a leap.

MS. TEILLET: Q. I'm...cause I'm looking also at the one underneath it and noting that it's another son named Ethlen, I guess I'm just wondering if these are...are twins that...

A. Well, there might be even two sets of twins.

Q. Ah yes.

A. Because there are two that are two years old as well.

Q. Right.

A. So...it's good to know.

Q. Alright. So this might be the

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answer to why we couldn't find Leonard before. OK. Now, so you've got new family here. I'm going to go back to 516 on the earlier page about Eustache where you've got new family. If you had known about the 1870 U.S. census would you have put him as a new family here?

A. Well, for my purposes because this is only the Canadian census here, but I probably would have then mentioned in the report that we do see what is probably the same family at Sugar Island in 1870.

Q. OK. Thank you. Now, now would you agree with me Ms. Arm...sorry, Ms. Jones that some of the identifications as to whether someone's French or Indian and everything is to say the least inconsistent?

A. Oh, yes. Oh, yes.

Q. Yes.

A. I think the most it can provide you is as I say is maybe with some clues. For example, in the censuses where the ethnic origin is drawn from the father's side, if it says French or Indian, you might think well, there's a possibility. If I were a genealogist I should investigate that further, but again, I still wouldn't take it as definitive. If you can see in the alternating generations here that in one census is identified as Indian and then the next they're identified as French, that again might give you a clue as to what their ancestry might have been.

Q. And I note that some of the brothers, like Eustache, Moses, Joseph where some of them are French, some of them are Indian. Now...

A. And if I just also might make an

observations about the 1881 census, I don't know why this is the case, but in this...the 1881 census, the

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ethnicities appear to have been drawn from the mother.

Q. Now that was my very next point.

A. Oh, good.

Q. Is it...now, Ms. Jones, is it consistent all the way through the census that it's drawn from the mother or is it just with the Lesage family?

A. The others, and, of course, I don't know specifically about everybody, that's the tricky thing, but some of the others that I looked at where I do have an idea, I think it's pretty consistent it comes from the mother's side.

Q. And would you say that's extremely unusual?

A. I found it unusual. I don't know why they chose to do it that way in this census. I don't know.

Q. They take, and I note it's not just the identification, it's the religion...

A. Ah hm.

Q. ...is noted from the mother as well and you'd agree with that as well?

A. Yes.

Q. Alright, now I'm winding to the close of my...my comments or questions for you, Ms. Jones.

THE COURT: You might not be all that far off the mark. Sometimes your questions are more in the form of comments than questions.

MS. TEILLET: Yes.

THE COURT: Freudian slip perhaps.

MS. TEILLET: And this might be too

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actually.

A. Well, ask away.

Q. But it's a complimentary comment to you and maybe just to ask you to elaborate just a little bit. I found your...the part of your report where you were discussing the band election material and the breakdowns between the Halfbreed community on the Reserves and the Indian community on the Reserves and the breakdown of religion, that it seemed to breakdown on Roman Catholic as well as Protestant ones, I found absolutely fascinating and I wondered if you could just elaborate a little bit on that for us.

A. Now, direct me to a page.

Q. I think it's towards the end of your report where you're talking about...

A. It's about identity.

Q. Ya.

A. Residents and group perceptions.

Q. Ah hm. I think it's at the bottom of page 30 where you start about band elections and really goes onto 31 at the top I guess.

A. Ah hm. So now what would you like me to...

Q. I...I was...I guess I was wondering whether you had an opinion for us as to whether this is unique, what's going on here or whether you've ever studied this kind of situation in any other...like for instance, what you're talking about here is Shinguakonce, right? So, and this is at Garden River I take it.

A. Right, this is Garden River.

Q. And was the same thing found in Batchewana?

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A. I didn't see it in Batchewana. There were some other election returns from Batchewana where if just eye-balling the names and the names of the candidates, you might have guessed that there was some division...

Q. Ah hm.

A. ...between...the people of mixed Aboriginal and non-Aboriginal ancestry tended to vote for other people...

Q. Ah hm.

A. ...who would probably be from the same group of families, but at Garden River in these years anyway, it's particularly striking.

Q. I found it so myself. Now, I think that that's really all the questions that I have for this witness, Your Honour.

THE COURT: Alright, thank you.
Any re-examination, Mr. Long?

MR. LONG: I have just briefly,
Your Honour.

RE-EXAMINATION BY MR. LONG:

Q. Ms. Jones, you were questioned about Exhibit fifty-six, which commences, "In his classic study, The Fur Trade in Canada, Harold Innis", etc. and you indicated at that time that you had something additional to add about that, do you recall what you were going to add?

A. Oh, just what my comments were later that the title, The Canadian Fur Trade in the

Industrial Age, might give you a clue as to...well, the changing economies that might have made it more

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difficult for small traders to become established if they had once gone out of business. I was commenting at that time that in the 1881 census, we don't see the traders any more among the people in this chart who I was following and I had been speculating that one of the reasons for that was simply that it was no longer a viable business for a small trader to be in in Sault Ste. Marie at that time and I think some of what Professor Ray would indicate would be...would tend to support that, that it became a business of large companies and they might have their agents, but the small individual trader would have found it much more difficult to get going and make a business.

Q. Which isn't an unusual phenomenon in business that the smaller business is subjected to the conglomerate and simply overridden, is that about it?

A. Yes, I think and it may have been exacerbated in this area because for a period of time the stock on which they could draw was very limited in terms of the availability of furs as well.

Q. Now, finally there were several excerpts from Exhibit fifty-seven read to you and I don't propose to go into them at great length. Do you have that exhibit with you still?

A. Fifty-seven.

Q. Fifty-seven is the...

A. Is...

Q. ...Ontario...

A. Oh, the sessional papers?

Q. Yes.

A. Yes.

Q. Without going through these highlighted areas one at a time, some of the comments I

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noted are, "moose tracks are occasionally seen, but I do not think moose are very plentiful" and "there are a few moose and red deer and black bears, of course", "moose are reported to be increasing notwithstanding the number alleged to be killed by Indians". Did those quotes in any way, did you find them, one other I'd like to give you, "game such as bear, moose and red deer are not very plentiful". Do you find those at all inconsistent with your position that you indicated in-chief that...

A. No.

Q. ...indeed the moose were diminishing?

A. No, so far whatever evidence I have seen about the 19th Century indicates that these animals were in very short supply, almost non-existent in places and what this tells me is that at the very end of the 19th Century, some of these populations begin to rebound.

Q. Rebound meaning that they had been scarce and were being...

A. Right.

Q. One other comment, did any of those quotations indicate to you that the animals had been killed by mixed-bloods or Metis? That is the moose as animals?

A. The moose. Well, I can't...I don't think you can draw definitively any conclusions. There's one person on Page 26 of the second page, which has been highlighted. The name of the offender is said to be John Collins. There is an old Collins family

around the Sault. There are also some new ones that came in later who were not of Aboriginal ancestry.

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Without doing more work you wouldn't be able to say definitely which family this person belonged to and he's charged with shipping a moose head, so it doesn't actually say where he got it. Whether he bought it from somebody or whether perhaps he was even guiding for somebody who might have shot it. It just doesn't tell you very much.

Q. Second last page of the sessional papers, the quote is, "There is no doubt, however, that many of these animals are killed by Indians". Have you found any quote that indicates that many of these animals referring to moose were killed by Metis?

A. Well, that's not what this statement says and I have a lot of other evidence to indicate that the people in the area really could see very clearly, even if everyone was living together at Garden River, they identified Halfbreeds and they identified Indians. Now, I can't say specifically for this person whether he could do that, but certainly other people in the area still had a very clear idea of who was who.

Q. So when this person indicated that the animals were killed by Indians, what are you suggesting? That their description was accurate?

A. I can...I can only take what I see here. He says they're killed by Indians and more than that it doesn't convey.

Q. But there was a clear demarcation between Halfbreeds and Metis and Indians.

A. Or at least Halfbreeds and Indians. A lot of people could see that even if they didn't live on the reserve or they weren't Indians themselves.

MR. LONG: Thank you, ma'am. Those are my questions.

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THE COURT: Thank you.

MR. LONG: The second witness can be available in a short fifteen-minute phone call, Your Honour.

THE COURT: To have him come here for ten minutes seems a bit ridiculous.

MR. LONG: I anticipate tomorrow being approximately one-hour in examining in-chief, so that may allow us to start later or whatever you wish.

THE COURT: Let's start at nine and then if we are finished, we're finished an hour earlier. Actually, I'm very pleasantly surprised. When I used to practice in here they didn't have air-conditioning and I was envisioning by now it would be just absorbing us all in paper towels. It's been a pleasant surprise. Alright, tomorrow morning, 9:00 a.m.

Wednesday, July 15, 1998

THE COURT: Good morning.

MR. LONG: Good morning, Your Honour.

MS. TEILLET: Good morning, Your Honour.

THE COURT: By the way, I checked the transcript.

MS. TEILLET: Yes.

THE COURT: It was a hundred searches that she did, but in those searches she would have run into about

1,000 to 1,500, 2,000 families.

MS. TEILLET: Ah.

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THE COURT: Ah.

MS. TEILLET: Thank you.

THE COURT: Alright, and you've got your witness.

MR. LONG: I do, thank you. I'd like to call Scott Jones please. Mr. Jones?

SCOTT JONES SWORN:

EXAMINATION-IN-CHIEF BY MR. LONG:

Q. Mr. Jones, by whom are you presently employed?

A. I'm presently employed by the Ontario Ministry of Natural Resources.

THE COURT: Alright, if we could just have a moment, the microphone...the last witness sat back here, so...

A. Do you want me to sit back there?

THE COURT: Sit wherever you want.

MR. LONG: Q. I can repeat my question, would you please repeat your answer. By whom are you presently employed?

A. I'm presently employed by the Ontario Ministry of Natural Resources.

Q. In what capacity, Sir?

A. My present position is Forest Ecologist within the Forest Evaluation and Standards Section, Forest Management Branch here in the Sault.

Q. And what do your responsibilities include?

A. My present responsibilities include the assessment, evaluation and reporting of wildlife information, biodiversity information and landscape

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ecology with respect to forest management in the Province of Ontario.

Q. There's one word I'd like you to explain before I proceed. Biodiversity, what does that mean?

A. Biodiversity is kind of a fancy name for essentially the variety of biological life.

Q. You graduated with a degree of Bachelor of Science in Forestry from the University of New Brunswick in 1976, is that correct?

A. That is correct.

Q. And you had a major in wildlife biology, is that correct?

A. It was actually a second major.

Q. OK.

A. The degree is in forestry and I also had enough credits for an Honours biology degree in wildlife biology.

Q. Thank you. I understand that since 1982 you have been certified as a Wildlife Biologist by the Wildlife Society of America, is that correct?

A. That is correct.

Q. And if you can develop this chronologically, Mr. Jones, you first commenced your professional work experience in 1976 and can you explain what your position and responsibilities were then please?

A. I was a Project Biologist in the Ministry's Wildlife Branch in Toronto and there I was...my primary duties were related to work that was

being done by the Ontario Deer Technical Committee which was reviewing the provincial moose population with the intent of revising the management program and

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also establishing new policy related to deer management.

Q. And how long did you continue in that position?

A. I worked on that project for eleven months, however, six months into it I received my first classified position in Espanola.

Q. And what was that?

A. I was the District Biologist in Espanola.

Q. And what were your duties there?

A. Essentially my duties were all aspects of fish and wildlife management within the district, however, my...the majority of my emphasis was placed on white-tailed deer management on Manitoulin Island.

Q. And were you involved with the moose management as well at that time?

A. Yes, I was.

Q. And what was that...what did that include?

A. I was in charge of most of the mortality surveys, user surveys and I got involved very little in the population inventory at that time, but also the extension part dealing with people with respect to moose management was my responsibility.

Q. Were you involved with the setting of quotas at that time?

A. No. There were no quotas at that time.

Q. And in 1982 your responsibilities changed, is that correct?

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A. That is correct.

Q. And to what, what did you then become involved with?

A. I moved to the Lindsay District in Southern Ontario where I was titled the Environmental Biologist. There was also a District Biologist there and I was essentially responsible for wildlife management within the district.

Q. Did that include moose management as well?

A. Yes.

Q. And in 1986 your responsibilities and indeed your area changed, is that correct?

A. That is correct.

Q. And what did you...what responsibilities did you then assume?

A. I assumed the responsibilities of District Biologist in the Sault Ste. Marie district.

Q. May I please...

THE COURT: Yes.

MR. LONG: I apologize.

THE COURT: Ms. Rudolph has a unique laughter. You can pick it out of a crowd.

MS. TEILLET: You know who that is do you?

MR. LONG: Q. I'm sorry, can you commence, continue then? In 1986?

A. Yes, I moved to the District Biologist position in the Sault Ste. Marie District.

Q. And what did your responsibilities include?

A. Again, my responsibilities in the
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Sault District included all aspects of fish and wildlife management within the district.

Q. And did you...were you involved with moose management specifically?

A. Very much so, yes.

Q. In what particular areas of the Sault Ste. Marie area were you involved?

A. There are three wildlife management units within the Old Sault Ste. Marie District at that time, unit 35, unit 36 and unit 45.

Q. And you were involved with moose management in those three particular management divisions...

A. Yes, that is correct.

Q.management units, I guess is the correct way?

A. Yes.

Q. And in 1996 I understand your responsibilities changed as you became more involved with management side as a Senior Competency Analyst, is that correct?

A. That is correct.

Q. And did that put you in the position of surveying or determining the competency of other persons to be involved with your programs?

A. That is correct.

Q. And since 1998, indeed this year, you have been a Forest Ecologist and I'm going to ask you just once more to briefly explain what your present responsibilities include.

A. My present responsibilities see me doing the analysis, evaluation and reporting on wildlife information, biodiversity information and

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landscape ecology information related to the impact of forest management activities in Ontario.

Q. Thank you. And I understand that you have been involved in the preparation and presentation of some nineteen reports and publications related to fish and wildlife management, is that correct?

A. That is correct.

Q. I'm showing you two-pages and I'd just ask you to review that if you would. I'd ask...and I'll ask you if you recognize those documents as documents which you have authored?

A. Yes, I do.

THE COURT: Did you want that filed as an exhibit?

MR. LONG: I'm going to ask that to be filed with a copy of the C.V., Sir.

THE COURT: Alright.

MR. LONG: It'll be an addendum to that.

THE COURT: Alright.

MR. LONG: Q. On the basis of, firstly, I'll ask to file the curriculum vitae of Mr. Jones and ask you to review that if you would for a moment. That's exhibit sixty and attached to that is a copy of the publications and reports.

THE COURT: Alright, we'll combine those as Exhibit sixty.

EXHIBIT NUMBER SIXTY: Curriculum Vitae and attachments - Mr. Jones.

MR. LONG: And on the basis of the

answers and responses given by Mr. Jones, I would respectfully submit that he is qualified as a forest wildlife

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ecologist with special expertise in the area of moose management. Thank you.

THE COURT: Questions, counsel?

MS. TEILLET: Actually, Your Honour, I have no problem with qualifying Mr. Jones as a wildlife expert. He's clearly qualified.

THE COURT: Alright. Carry on then.

MR. LONG: Thank you. Q. Mr. Jones, you mentioned previously that there are areas described as wildlife management units and you indicated that there were three with which you were personally involved, I think they were 35, 36 and 45. I'm just going to ask you to concentrate on area, wildlife management in the area 35. On Exhibit number two before the Court, are you able to...to show us that area? Point out that area of wildlife management unit number two (sic)?

A. Yes.

MR. LONG: I would ask that he be allowed to approach the exhibit?

THE COURT: Yes.

A. Wildlife management unit 35 is located in this area here.

Q. Now, I'm going to ask you just to stop because the Reporter will be taking down this, so I wonder if you could relate your evidence to a geographical location and I'm going to ask you to outline it.

A. OK, the unit 35 is bounded on the

north by Highway 101 from Wawa to Chapleau. On the east by Highway 129. On the south by largely the Ranger Lake Road, which is 556 and then on the west by

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the Algoma Central Railway tracks.

Q. Would you be able to circle that area that you just described and I'll ask you to put your initials within the circle. If you could put your initials and the number 35, thank you. And similarly, I would ask you to identify orally wildlife management unit number 36.

A. Management unit 36 is bounded on the north by the, I believe it's the south end of Lake Superior Provincial Park, approximately, Montreal River. On the east by the Algoma Central Railway tracks. Again on the north by the Ranger Lake Road. The east boundary is Highway 129 and the western boundary is Lake Superior, south boundary is the North Channel and St. Mary's River.

Q. And would you similarly mark that with a black marker on Exhibit number two please? Thank you. And finally, I'd ask you to describe the location of Pennefather Township.

A. This map is...it's difficult to pinpoint it on this map exactly because of the scale, but it's located in the Goulais River Valley approximately in this area, so it would be in the central part of Unit 36.

Q. I wonder if you could indicate that, Sir, by a large "P" in that general area, that might show us. OK. Thank you. Can you resume the stand please? I'm showing you a document which is comprised of some seven pages, the first page of which is described as Figure I, Number of Moose Hunters in WMU

35 as recorded in the Provincial Mail Survey from 1973 to 1994. Firstly, Sir, do you recognize that document?

A. Yes, I do.

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Q. Just briefly, we'll deal with it in a moment in some detail, but just briefly what does it depict?

A. It...it shows some of the statistics related to the moose population and hunters in management unit 35.

Q. Described on the second...Your Honour, I'm going to ask that to be entered at this point. My friend has a copy and I will be making reference to it.

THE COURT: Alright, is this one collective document...

MR. LONG: It is.

THE COURT: ...you're wishing to put forward then?

MR. LONG: Yes.

THE COURT: Counsel? Any...you have this document?

MS. TEILLET: Yes, I do.

THE COURT: Alright.

MS. TEILLET: Thank you.

MR. LONG: I have an additional copy.

THE COURT: Exhibit sixty-one.

EXHIBIT NUMBER SIXTY-ONE: Charts for wildlife management unit 35.

MR. LONG: An additional copy for Your Honour if you wish because the witness will refer to this. Thank you. Q. Mr. Jones, on the second page of, as it's described Figure II on the chart, there is a description called target population. Would you

describe what that involves and what that means?

A. The target population is just under 3,500 moose and the target for that particular

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management unit was developed as part of a land use planning exercise in the mid to late '70's. The population was...that target was estimated based on moose densities in similar type of habitat that were found in some study areas that the Ministry was looking at and the density from those study areas was extrapolated to management unit 35 because the assumption made, was made that it was very similar in habitat types.

Q. Are there factors taken into account to determine that target population?

A. If we were doing that target today, we would take into consideration the key habitat components of moose habitat and there are four of them. The first one is the amount of late winter habitat. The second one is the amount of early winter habitat. The third one is the summer range and the fourth one is the presence of moose aquatic feeding areas.

MR. LONG: Your Honour, I trust I gave you the right one which is number 35. I did not. I apologize.

THE COURT: Alright.

MR. LONG: I will be filing that one later.

MS. TEILLET: Can you just make sure that we're on the same one?

MR. LONG: 35.

MS. TEILLET: This is the right one.

MR. LONG: That's the correct one.

THE COURT: I was trying to find

the numbers that you were referring to.

I just thought maybe I was going blind,
but make me feel better now.

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MR. LONG: Q. How are the moose
populations, present populations determined, Mr. Jones?

A. We use an aerial inventory technique
that uses the basis of quadrat sample system.

Q. And what...describe that in more
detail.

A. The moose range, in this case,
management unit 35 is...is broken up by a number of
grid blocks that are 10 kilometres by 10 kilometres and
each of those ten kilometre blocks is divided into four
sub-blocks for the purposes of our inventory. Each of
those plots would be 10 kilometres long by two and a
half kilometres wide. We randomly select a number of
those plots and we carry out a line transect survey by
aircraft within that plot.

Q. A line transect survey.

A. The plot...the plot, in order to
search for...for moose in the plot, we fly straight
lines within that plot. We go from one end to the
other and back again and attempt to cover the majority
of the plot.

Q. Now, has the target population,
you've described it as been previously been determined,
has it been met in wildlife management unit number 35?

A. No, it has not.

Q. And why not?

A. Essentially, the actual mortality of
moose has exceeded the target mortality and the
population has not reached its target.

Q. Are there factors that you take into

account for that?

A. The mortality of the moose herd is divided among a number of factors. One is natural

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predation. Second one is disease, injury, accidents, what we call non-hunt mortality and the third one is the mortality lost to human harvesting.

Q. And how many of those factors can...can you actually manage or determine?

A. We can only manage a portion of the human harvest.

Q. Now, I'd like to show you a similar document for wildlife management unit number 36.

THE COURT: Exhibit sixty-two.

MR. LONG: Thank you.

EXHIBIT NUMBER SIXTY-TWO: Charts for wildlife management unit 36.

MR. LONG: Q. Do you recognize that, Mr. Jones?

A. Yes, I do.

MR. LONG: OK, I'll have that entered as an exhibit please.

THE COURT: Exhibit sixty-two.

MR. LONG: Thank you. Q. And similarly on the second page, Figure II of Exhibit sixty-two, there appears to be a target population from 1975 through to 1977 and I will ask you in that wildlife management unit, has the target population been...ever been met?

A. No, it has not.

Q. And what reasons would you give for it not being met if you can?

A. Again, it's a combination of mortality being relatively high. This management

unit's in a little better shape than unit 35 and again if we could reduce the mortality to the point where the population could increase to the target, that's again

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the only way we have of controlling it, so mortality has not allowed us to reach that target yet.

Q. And it is within wildlife management unit number 36 that Pennefather Township is located. You've already indicated that.

A. Yes.

Q. Can you just keep those before you, I'll return to them in a moment. Mr. Jones, why does the Government, Provincial Government have policies to manage moose population?

A. The number one reason is conservation of moose. Without conserving the moose population, we cannot provide for the other two parts of our goal and that is to provide social and economic benefit to the people of Ontario.

Q. And what would be the social benefits to the people of Ontario?

A. It's...it's a combination of hunting recreation and non-hunting recreation. Just knowing that moose are there, seeing them.

Q. And the economic benefits?

A. The economic benefits are quite significant related to hunting activities of both residents of Ontario and non-residents through the tourist industry.

Q. I'm showing you a publication entitled The Moose in Ontario, Book I - Moose Biology, Ecology and Management. Are you familiar with that publication?

A. Yes, I am.

Q. Indeed that's published by your Ministry, Ministry of Natural Resources, is that correct?

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A. In partnership with the Ontario Federation of Anglers & Hunters, yes.

Q. Thank you. I'm going to refer you to page 23 and pages 24, Chapter 5, entitled Why Manage Moose.

A. Yes, Sir.

Q. Are you familiar with the contents of those two pages.

A. Yes, I am.

Q. And do you agree with those contents?

A. Yes, I do.

MR. LONG: Alright. I'd ask that this be entered as Exhibit sixty...

THE COURT: Three.

MR. LONG: ...three please.

EXHIBIT NUMBER SIXTY-THREE: Report
- The Moose in Ontario.

MR. LONG: Q. Mr. Jones, you've indicated why the Government manages the moose population, what is the goal of the Provincial moose policy?

A. Well, as I mentioned, the number one goal is to...to conserve moose in the Province of Ontario and through that conservation is to provide social and economic benefits to the people of Ontario.

Q. If I could have that exhibit back please. Could I refer you to Page 25 of Exhibit number sixty-three. If you would just briefly review that, does the information there describe the goals of the

Provincial moose policy?

A. Yes, it does.

Q. Thank you. Now, I'm going to ask

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you, Sir, to just tell us briefly the natural history of moose. Why they're important to our eco-system.

A. Moose are what we refer to as a keystone species in the Boreal Forest and by that I mean that as a population moose are able to influence the structure and composition of the forest habitat and obviously if they are able to do that that has implications to a host of other wildlife species.

Q. Can you elaborate on that please? How do they influence?

A. Essentially through browsing, they control the types of trees that are found on the landscape and in...in essence, the quantity, so that's where we get the composition and structure of the habitat.

Q. So if they're removed from the eco-system, what happens?

A. Then we see a change in the composition of the forest, different tree types prevail and the structure would then be different and then we would...we would notice changes in the abundance and distribution of other wildlife species based on that.

Q. Can you please give me an example, just a concrete example of that?

A. Moose in the Boreal feed very heavily on balsam fir and after fires and what not, balsam fir is a pioneer species, it comes back very prolifically and moose browse it quite heavily and this allows other trees like black spruce and...and in some cases jack pine to....to take over that site. If moose

were not there, the balsam fir would tend to grow to maturity and it would exclude the black spruce and jack pine for essentially the lifespan of the balsam fir,

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which is anywhere from 65 to 140 years, depending on other disturbances.

Q. Why would...would we be concerned about the moose habitat?

A. We're concerned about moose habitat because through the management for moose habitat, we provide habitat not only for moose, but approximately 70% of the other wildlife species that occur in Ontario.

Q. Explain that please?

A. If we can provide good moose habitat, we also provide good habitat for approximately 70% of Ontario's wildlife species.

Q. What other species would be included in that?

A. This would include animals such as wolves, right down through martin, rabbits or hare, songbirds, other small mammals such as moles, mice and amphibians as well that use the...the areas adjacent to water.

Q. I'm going to ask you to move to another area. You, of course, are aware of the procedures for securing the right to hunt a moose in 1993, the licensing provisions, is that correct?

A. Yes.

Q. Can you briefly describe them in 1993?

A. In 1993, in order to obtain a moose licence the potential hunter would have to show proof of previous hunting experience and that would...is

usually done through the previous years' licence or a previous years' hunting licence and that would permit the hunter to buy a current moose licence to hunt a

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calf moose in any management unit in Ontario where there's an open season.

Q. Is there a cost to that? To securing that licence?

A. Yes, there is. The cost of the licence I think was \$31., it certainly was not more than \$31.

Q. Alright. Has that procedure changed in 1998?

A. Essentially, no. There has been a slight change in the format of the licence. Now a hunter is issued an outdoor card which is issued to a hunter based on previous hunting experience and based on that that card is valid for three years and now the hunter purchases a moose validation sticker that goes on the back there, or sorry on the back of that card and that permits them to hunt a calf moose in any management unit in the Province where there's an open season.

Q. Is there a cost involved today?

A. Yes.

Q. What is that?

A. The outdoor card is an initial fee of \$6. good for three years and then the additional cost of a moose licence each year is \$31.

Q. OK. Now, would you describe the tagging procedure generally?

A. The...the tagging procedure is probably the most complicated big game draw in North America and through that essentially we issue adult

validation tags to hunters who are successful in the draw. The adult validation tags, there is a separate set for bulls and there is a separate set for cows.

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Q. What...why is it the most complicated system in North America?

A. It's the most complicated because we offer the hunter the most choices. I think that there are 16 choices that a hunter could obtain a validation tag through the draw.

Q. And the tagging procedure if you would in 1993, generally how did that work?

A. The tagging procedure is largely unchanged. As the manager of the management unit, I determine a target allocation of moose. It's the desired harvest and then I calculate the number of tags that I think that I need to issue in order to achieve that harvest. That is submitted to the Province centrally and the applications come in and the draw is done centrally to allocate those tags to successful applicants.

Q. And is that the procedure today as well?

A. Yes.

Q. And it was in 1993?

A. That is correct.

Q. Thank you. Who, Mr. Jones, who requires a moose licence to hunt moose of course?

A. Any one who wants to hunt moose in the Province of Ontario during the open season requires a hunting licence with the exception of the First Nations Indians.

Q. Is there a need for licensing and tagging provisions?

A. Absolutely.

Q. And what is that need?

A. Well, based on the demand that we

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have for moose, we cannot...we don't have an allowable harvest that will meet the demand, so we have to restrict the harvest. We have to restrict in essentially basic terms, we have to restrict access to that harvest.

Q. So, I take it from what you've said that there are simply more people that want to hunt moose than there are moose available to be hunted.

A. Available to be harvested, yes.

Q. Alright, and are you able to give us the numbers, for instance, 1993?

A. Could you just clarify which numbers?

Q. The numbers of hunters and the numbers of moose available?

A. Based on the information here that I have in front of me, no.

Q. I'm showing you a document...

A. My memory's not quite that good.

Q. ...of some 9 pages, it has a number 3 in the upper left-hand corner, just for purposes of identification. Now...

THE COURT: Has Ms. Teillet got...

MR. LONG: She has all of these documents.

MS. TEILLET: I have no idea what that is. And this...

MR. LONG: Sorry, I expected that she had it.

MS. TEILLET: I've never seen it.

MR. LONG: You can have mine if you wish.

MS. TEILLET: Thank you.

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MR. LONG: We seem to be short one copy, Your Honour. I'll have it entered and then...

THE COURT: Well, just let Ms. Teillet perhaps examine it just for a moment.

MR. LONG: To assist her, there are really only two lines out of the document which will be of significance. They're the top two wildlife management units 35 and 36.

THE COURT: Alright, we're altogether then? And this will be Exhibit sixty-four.

EXHIBIT NUMBER SIXTY-FOUR: Chart - Bull Targets, Tags and Harvests for NTI and TI Hunters.

MR. LONG: Mr. Jones will have to refer to this. I'm going to see if I can find another copy. I'm not too optimistic of that. Possibly I'll ask Mr. Jones to explain the fact and then refer it to the document to Your Honour to just confirm it. Would that be agreeable?

THE COURT: I think that's a workable way.

MR. LONG: Q. If you would, Mr. Jones, in particular in, and only rather in areas 35 and 36, can you explain the moose population in those

management areas?

A. This...from this information here, the population information is not on this chart. What we have here is a summary of the...the desired target harvest, the number of tags that were issued, the tag

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filling rate and then the actual harvest.

Q. Alright. Looking at the initials on the first column, there's a column headed harvest.

A. Yes.

Q. What does that describe?

A. That...that is the...the first number, the target is the harvest that we are targeting.

Q. Yes.

A. That's the desired...the number of animals that we feel we would...that's our target harvest, that's the number of animals that we would like to harvest.

Q. Alright.

A. We feel we can harvest.

Q. And the second column?

A. Is the number of tags that we have issued in order to achieve that harvest.

Q. And how is that described on the diagram? Or on the chart, sorry. What initials describe...

A. Oh, sorry, those numbers are broken down into the two major components of the harvest, which is the non-tourist industry, which is NTI; the tourist industry allocation which is TI and then a total.

Q. Alright.

A. For each year.

Q. And the first two lines of the chart relate to areas 35 and 36, is that correct?

A. That's correct.

Q. OK. Now there appear from the exhibits already entered to be a variation in the moose

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populations from year to year, is that correct?

A. That is correct.

Q. And what are the reasons for those variations?

A. Again, we have to look at the...at the mortality pattern that is impacting that herd and the mortality as I indicated earlier is a combination of losses to predators, to accidents, injury, disease, starvation in the winter it forms a winter mortality and, of course, the human harvest.

Q. And again, which of those can you control?

A. We can only control a portion of the human harvest.

Q. What do you mean by the selective harvest program?

A. A selective harvest program refers to the fact that we are gearing the harvest to the calves and then we...we only allow a limited harvest of adult bulls and adult cows.

Q. Why is that?

A. Essentially, we have to look at the productivity of moose, which is a member of the deer family and is...it cannot be compared to white-tailed deer, which are highly productive. Moose are much less productive and we need a higher proportion of bulls in the population in order to effect productivity and coupled with that is a very high mortality rate in

calves. Much higher than we would find in white-tailed deer fawns.

Q. How do you assess the annual harvests?

A. We assess the annual harvest largely

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through a survey of users and the prime users, of course, are the people who hold the adult validation tags either for bulls or cows and we sample that...that group of hunters and we extrapolate the results to the...to the total and then also periodically there is a summary of all...or a survey of all hunters, however, in the Province, however, we don't usually get that survey in time to deal with quota setting.

Q. Is this is a voluntary system? In other words, you request people to fill out the survey and they may or may not return them?

A. That is correct.

Q. How are the Aboriginal Native harvests calculated?

A. We do not calculate that portion of the harvest.

Q. How are Metis harvests calculated?

A. Again, we do not calculate a harvest for that component.

Q. Why not?

A. We haven't been able to secure co-operation of either of those two groups in reporting their harvest.

Q. Would it be useful to M.N.R. if there were reports from all the hunters?

A. Absolutely.

Q. Do you have an incentive program...

THE COURT: Before you carry on, any comments from the audience will be stifled.

MR. LONG: Q. Do you have incentives for hunters of all types to report to M.N.R.?

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A. Yes, we do.

Q. Would you describe them please?

A. We offer a crest in return for the lower jaw of...of moose and we encourage hunters to bring in that lower jaw in return for the crest and we use the jaw to age the animal and get a kill date and location.

Q. And are there initiatives publicized?

A. Yes, they are.

Q. Now I'd like you to refer to a document entitled Guidelines for Moose Harvest Planning and Adult Moose Tag Quota Calculations. Do you recognize that document, Mr. Jones?

A. Yes, I do.

Q. And is that a document that you utilize in setting of various targets?

A. Yes, I do.

MR. LONG: Alright, I'd ask that that be the next exhibit please.

THE COURT: Exhibit sixty-five.

EXHIBIT NUMBER SIXTY-FIVE: Moose Harvest Planning and Adult Moose Tag Quota Calculations.

MR. LONG: Thank you. Q. And is it accurate to characterize that document as being the framework within which you work when you're setting the various moose quotas?

A. That is correct.

Q. And I'd like you to refer to a document entitled Moose Management in the Northwestern Region: Toward a New Strategy, apparently authored by Alan R. Bisset. Are you familiar with that document?

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A. Yes, I am.

Q. Do you know Mr. Bisset?

A. Yes, I do.

Q. And in what sense? How do you know him?

A. I know him professionally.

Q. And what is his occupation or responsibilities?

A. He is a Wildlife Biologist and his responsibility is to look after the moose inventory data for the Province. Inventory and he also looks after analysing a lot of the harvest data as well.

Q. And does this document similarly outline the techniques that you use in setting quotas, things of that nature?

A. Yes.

Q. Thank you.

THE COURT: Exhibit sixty-six.

EXHIBIT NUMBER SIXTY-SIX: Moose Management in the Northwestern Region: Toward a New Strategy.

MR. LONG: Thank you. Q. Finally, Mr. Jones, what is the relationship or inter-relationship between the deer population and the moose population?

A. There is some overlap in the range and habitat use of moose and deer. Deer tend to be users of habitat is younger than what moose would use.

The deer tend to occupy areas that do not have the snow depths that moose occupy and in a lot of places where the range overlaps, there are problems with moose because the deer carries a brain parasite that is lethal to the other members of the deer family. It's a natural parasite of deer and doesn't affect them.

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Q. And is there a family membership, is one a member of another fam...another's family? How does that...how is the deer related to the moose?

A. The family is actually called the deer family is the servodate and the moose is one of the members of that. Reindeer, caribou, moose and deer are all members of the same family.

MR. LONG: Thank you, Sir, you've been very helpful. Those are my questions.

THE COURT: Cross-examination, counsel?

MS. TEILLET: Yes, thank you, Your Honour.

CROSS-EXAMINATION BY MS. TEILLET:

Q. Mr. Jones. Now, Mr. Scott (sic) you spoke about your target...target populations and you said that in wildlife management 35 you hadn't met the target populations and that that meant that the actual mortality of the moose had exceeded those targets, right? Did I understand you correctly?

A. It depends on what you're referring to as targets. The...the...we haven't reached the population target because the...the annual mortality has exceeded that desired harvest target.

Q. Does that mean that the moose are...that doesn't necessarily equate to the moose decreasing in population does it? It just means it doesn't meet your target.

A. If we exceed the harvest target, it is quite possible for the moose population to decline.

Q. Does it equate to not meeting the target, I really want an answer to that particular

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question.

A. Yes.

Q. It does...does it equate to the moose...if you don't meet the target, does that mean necessarily that moose population is declining?

A. Not on an annual basis in any given year.

Q. Now, it seemed to me when I reading this that the moose population is actually on the...a little bit on the increase. Is that correct?

A. If you look at that in terms of Ontario...

Q. Ah hm.

A. ...yes.

Q. OK, and now how many tags...do you have any idea how many tags are given out in Ontario for moose every year?

A. No.

Q. Ballpark even. It doesn't have to be exact. Like a hundred or twenty-six thousand, something...

A. Thirty-five thousand.

Q. Thirty-five thousand? And that would be Provincial.

A. Yes.

Q. Alright, and in this area, in these units here if you totalled them up, do you have a kind of a ballpark figure for how many...

THE COURT: Referring to 35 and 36?

MS. TEILLET: Yes.

A. I should be able to go...I don't have the table.

THE COURT: Which exhibit?

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A. I think the...number 3, the one with the two rows that we were looking at.

MS. TEILLET: Ah hm.

MR. LONG: Exhibit sixty-four.

A. Sixty-four. Thank you. In 1996 which is on this, the number of tags in 35 was shown at 858.

MS. TEILLET: Q. Do we have the same information? My charts only go up to 1994, so I'm...that's sort of why I was asking cause that seems outdated.

A. Oh, sorry, it is 1994, I'm sorry.

Q. Oh, I see. OK, so in '94...

A. Ya, it looks like a six, but it is...it's 1994.

Q. OK.

A. 858 and then for unit 36, 125. Now, you have to add to that...

Q. Ah hm.

A. ...those are for bulls. There should be another page in here for...

Q. For cows?

A. That has cows.

Q. Ah hm.

A. And it is the third page in.

Q. Ah hm.

A. At the top? 310 tags for cows in unit 35 and 60 for unit 36. So you have to add the cow tags and the bull tags together.

Q. Thank you. OK, I make no claim to be the world's great mathematician here, but...

THE COURT: You've got some stiff competition on the other side as

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demonstrated yesterday.

MS. TEILLET: Q. I make that out to be about 1,353, but let's...let's say at least 1,200 tags given out in this area, right? And that doesn't include the calf tags which everybody can access, is that right?

A. That is correct.

Q. OK. Now, is there a...a general guideline for when you're...when you're trying to arrive at your how many tags to give out for bulls and for calves, is there...do you have a general guideline for what you're going to allocate for First Nations? Any ballpark number that you try to mark off?

A. No.

Q. None at all.

A. No.

Q. So you don't account for them at all in any way?

A. What we've done is, our system for allocating the...determining the allowable harvest is based on some computer modelling of moose data in Ontario and in that modelling exercise there...the

First Nation harvest was accounted for in...in that calculation. So, because we don't have a number for that particular harvest component, it's treated almost like how we would treat the lost to predation. We know that it's a mortality factor...

Q. Ah hm.

A. We know that it comes off the top, we can't control it.

Q. Ah hm.

A. And it...it's sort of accounted in our system of developing that allocation.

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Q. And...and so do you give it a number when you're counting it?

A. No.

Q. Not at all.

A. No, we can't.

Q. OK.

A. We don't have the...the data to do that.

Q. Right. Now, I...I...I was quite interested in your discussion of the surveying that you're trying to do when you're trying to count them and I believe you were describing fixed-wing airplane flights that fly over, is that right?

A. Yes, we use fixed-wing or helicopter.

Q. Or helicopter. Are most of them done on fixed-wing or most helicopter?

A. It depends on the time period. Obviously the helicopter is a fairly recent addition to our...our aircraft fleet and we don't have as many helicopters. I think we have one per region...

Q. Ah hm.

A. ...that we are allowed to used in the winter for surveys. Sometimes they're contracted, so I would say the majority of the surveys over the time period that we're looking at here have been done with fixed-wing.

Q. Now, are these accurate? I mean really accurate?

A. Our confidence interval on the estimate is approximately plus or minus 20% which I think for this type of survey is pretty good.

Q. 20% eh? Now, what...what is the

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length of the moose season in those...what was it in 1993 and what is it today? Is it...in those units?

A. The moose season in those units has not changed over that period and it opens on the Saturday closest to the 8th of October and closes the 15th of November.

Q. So what's that, a month and a half?

A. It's about five weeks.

Q. OK, and what's the deer season in...in these wildlife...in 35 and 36 wildlife management units?

A. There is no deer season in 35.

Q. Ah hm.

A. The deer season in 36 corresponds to the rest of the north shore of Lake Huron and the deer season opens the first Monday in November and runs for two weeks.

Q. Two weeks. Now when you were asked what the purpose of management of wildlife was, you...I'm just going to see if I can accurately reflect

what you said and I hope I can, I think...you said it's to conserve the wildlife to provide social and economic benefits to the people of Ontario? Is that...

A. Yes, the reference was in...it was directly related to moose.

Q. OK, so you wouldn't...you wouldn't say that's a general for all...all of this...all of the wildlife management?

A. For all wildlife management, yes. Our first goal is...is conservation.

Q. Ah hm.

A. Is sustaining that...that particular resource.

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Q. Ah hm.

A. No matter what species it is and then the social and economic benefits would come from that. Without sustaining the actual species, we can't provide the social and economic benefits.

Q. Right, then...then I think you went on to talk about recreation, about hunting recreation and non-hunting recreation. Now, for residents and tourist. Now in your...in that basic sort of goal of policy and policy statement, there's no...is there any...any consideration of Aboriginal peoples at all?

A. Certainly, I don't believe that there's any specific reference...

Q. Ah hm.

A. ...to First Nation Aboriginals, however, I mean they're considered residents of Ontario and the benefits are equally as much for them as they are for non-Aboriginals.

Q. Now you must have been...I see from

your...your impressive resume here that you've been a part of this wildlife management in Ontario and you were certainly in place when the Sparrow decision came down. You know what the Sparrow case is.

A. Yes.

Q. And when the...the Ontario Government put into place its' Interim Enforcement Policy and those kinds of policies. Now, I don't see any of that in any of the materials in here. Any reference to the, sort of the principles that Sparrow laid down. Do you...do you have any explanation for...I realize you didn't write these materials, but do you have any explanation for that?

A. No, I don't.

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Q. OK, and now just one other question. Your understanding of the...and again I know you didn't write that policy, those policies and everything, but your understanding of the application of any kind of special or allocation for Aboriginal people is for First Nations. I believe that's what you said. It's for First Nations Aboriginal people. That's what your understanding is. It's for Metis people.

A. That's correct.

MS. TEILLET: Thank you very much.

I have no further questions.

THE COURT: Alright, any...

MR. LONG: No re-examination, Your Honour.

THE COURT: Thank you witness and I think you have an exhibit. I don't want you to walk away with it.

MR. LONG: That completes the evidence that I propose to call.

THE COURT: Alright. Less than an hour. You people want to escape from Sault Ste. Marie or what? We'll take a short recess right now and perhaps we can meet with counsel in my chambers and we can discuss a return date and see how things are going to be mapped out.

R E C E S S : 10:00 A.M.

R E S U M E : 10:15 A.M.

THE COURT: Alright. We have canvassed continuation dates, both with the administrative staff, the court reporter
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and counsel and tentatively, we will set argument for the week of August the 4th, 1998. Again, any objections for 9:00 a.m. starts?

MS. TEILLET: None at all.

THE COURT: Alright. 9:00 a.m. in a court room in this building. They'll let us know what court room that will be. Also, for the record, I...if for any reason we are unable to proceed with the actual argument for whatever reason, I will also have set aside September 1st, 2nd, 3rd and 4th for argument, but we will address that back-up date on August the 4th. As I've indicated earlier, my decision regarding the holding off of laying of any charges

will also be delivered on August the 4th
in any event. Alright, until the 4th
then.

THIS IS TO CERTIFY THAT the foregoing
is a true and accurate transcription
of the record made by sound recording
apparatus to the best of my skill and
ability.

.....
Karen A. Berto
Court Reporter

Photostatic copies of this transcript are not certified
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original signature of Karen A. Berto, and accordingly are in direct violation of Ontario Regulation 587/91, Courts of Justice Act, January 1, 1990.