

FILE NO.: SCT-2002-20
CITATION: 2025 SCTC 6
DATE: 20250815

SPECIFIC CLAIMS TRIBUNAL
TRIBUNAL DES REVENDICATIONS PARTICULIÈRES

BETWEEN:

TIMISKAMING FIRST NATION AND
WOLF LAKE FIRST NATION

Claimants (Applicants)

– and –

HIS MAJESTY THE KING IN RIGHT OF
CANADA

As represented by the Minister of Crown-
Indigenous Relations

Respondent (Respondent)

Scott Robertson and Laura Sharp, for the
Claimants (Applicants)

Stéphanie Lisa Roberts, Kateri Vincent and
Marie-Paule Boucher, for the Respondent
(Respondent)

HEARD: May 7 and 12, 2025

REASONS ON APPLICATION

Honourable Todd Ducharme

NOTE: This document is subject to editorial revision before its reproduction in final form.

Case Cited:

R v Abbey, 2009 ONCA 624.

Authors Cited:

David M. Paciocco, Palma Paciocco & Lee Stuesser, *The Law of Evidence*, 8th ed (Toronto: Irwin Law, 2020).

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I. INTRODUCTION

[1] In this Claim, the Timiskaming First Nation and Wolf Lake First Nation (Claimants) allege that the Crown agreed to set apart a 100,000-acre reserve on the shores of Lake Timiskaming in 1849 via an Order in Council, and that it took steps to do so but never completed the process. This failure to fulfill a promise, the Claimants say, breaches the Crown's legal and fiduciary duties. The Respondent denies the allegation, saying that the 1849 Order in Council does not disclose an intention to create a reserve, and says that the Crown had no obligation to create a reserve until it actually did so in 1854.

[2] On March 6, 2025, the Claimants filed an Application for Leave and Notice of Application (Application), seeking an order that a number of maps contained within the report of the Respondent's historical expert Dr. Stéphanie Béreau (report maps) be found inadmissible, and that the three "interactive" maps that Dr. Béreau intends to use during her testimony (testimonial maps or interactive maps) also be found inadmissible. On May 12, 2025, after hearing arguments from both Parties on May 7, 2025, I dismissed the Application, with Reasons to follow. The following are my Reasons.

II. FACTS

[3] The report that the Claimants partially impugn is entitled "The Creation of a Reserve on Lake Timiskaming in the Mid-19th Century." It was originally filed with the Tribunal on April 22, 2024, but had to be resubmitted due to issues with citations, and an updated version was filed on September 20, 2024. The updated version did not simply fix the citation issues; A number of the maps contained in the earlier version of the report were also changed.

[4] The maps included in the report, as well as the interactive maps, were developed by a geomatician and cartographer named Yanick Vandal, upon the instructions of Dr. Béreau. At a hearing held on March 17 and 18, 2025, to examine and cross-examine Dr. Béreau and Yanick Vandal about the maps, Yanick Vandal testified that he has more than 20 years of experience creating both interactive and static maps for applications as disparate as litigation, academic literature, tourism, transit, infrastructure and the environment. Dr. Béreau also has more than 20 years of experience in the field of history, with a particular expertise in Indigenous history in Quebec. She has been qualified as an expert historian at the Tribunal on four prior occasions.

Yanick Vandal and Dr. Béreau have collaborated since 2010.

III. CLAIMANTS' POSITION

[5] The main thrust of the Claimants' objection to the report maps and testimonial maps is that, they say, the maps do not meet the criteria for admissibility of expert evidence in *R v Abbey*, 2009 ONCA 624 [*Abbey*]. The *Abbey* test consists of two steps:

- first, the judge must consider the “preconditions to the admissibility” of a) relevance, b) the necessity in assisting the trier of fact, c) the absence of any exclusionary rule and d) a properly qualified expert (*Abbey* at paras. 75–76); and
- second, the judge undertakes a “gatekeep[ing]” stage where they consider whether evidence that meets the preconditions is “sufficiently beneficial to the trial process to warrant its admission despite the potential harm to the trial process that may flow from the admission of the expert evidence” (*Abbey* at para. 76).

[6] At the hearing on the Application on May 7, 2025, the Claimants focused their criticisms on the reliability of the maps produced by Dr. Béreau and Yanick Vandal. In *Abbey*, the assessment of reliability is a subset of the assessment of relevance in the sense that, to be relevant, a piece of evidence must be reliable. The Claimants pointed out inconsistencies and argued that these inconsistencies showed a lack of knowledge of the claim area, making any of Dr. Béreau's subsequent opinions—contained within the maps—unreliable, and therefore inadmissible.

[7] In their written submissions, the Claimants argued that the interactive maps “fall within the realm of novel science” because they “consist of sophisticated mapping techniques whereby individual layers of information are weaved together with other forms of information which are then manipulated to suggest an opinion” (para. 49). As the interactive maps are “novel” science, a significantly higher level of scrutiny is necessary on the subject of reliability: the Claimants argue that the underlying instructions, methods, sources, data and conclusions must be individually scrutinized to determine that the ultimate output—the maps—are supported by sufficiently-reliable data so as to be reliable in and of themselves. And, the Claimants say, the Respondent has not provided the underlying data and instructions in a comprehensive enough manner that the ultimate output can be assessed.

IV. RESPONDENT'S POSITION

[8] On the subject of the interactive maps, the Respondent argues that these are “meant to be utilized as a testimonial aid” (Respondent’s written submissions at para. 2). For both the report maps and the testimonial maps, the Respondent says that these are merely a “visual reproduction” of the information and opinions found in the written portions of Dr. Béreau’s report, and the objective of the maps is to “help the trier of fact in evaluating and weighing copious amounts of historical data” by presenting it in a form that is easier to digest.

[9] On the subject of reliability, the Respondent points to *Abbey* where, it says, the Ontario Court of Appeal made a significant distinction between reliability and accuracy. The Court of Appeal wrote:

The Crown was not required to demonstrate on the *voir dire* that the information relied on by Dr. Totten was accurate. The Crown was required to demonstrate that there were sufficient *indicia* of reliability to warrant placing an opinion based on that information before the jury so that it could make the ultimate determination on the reliability of that information and the validity of the opinion based on it. The probability that some part of the wealth of material relied on by Dr. Totten may have been inaccurate was not enough to keep his opinion from the jury. [para. 130]

[10] In addition, the Ontario Court of Appeal in *Abbey* laid out a number of “factors relevant to the reliability of an opinion” at paragraph 119, most of which are concerned with criteria subjective to an expert’s discipline. These factors focus on questions of methodology, procedure, recognition within the discipline, reliance upon specialized training and independence—not objective accuracy.

[11] The Respondent pointed out that the Tribunal has a particularly wide discretion to accept evidence and information, and that admissibility of expert opinions is the default except for opinions that are biased on their face. The Crown also argued that Dr. Béreau’s evidence clearly fulfills the admissibility criteria in *Abbey*, and that any concerns about reliability ought to go to the weight attached to her evidence, not to its admissibility.

V. ANALYSIS

[12] From an affidavit from Yanick Vandal sworn March 7, 2025 (Vandal Affidavit), and testimony from both Dr. Béreau and Vandal, the Tribunal has been able to obtain an accurate sense

of how the maps—both the report maps and the testimonial maps—were created, and the nature of underlying data and the instructions. Vandal wrote that the maps he prepared were “based on the historical documents sent to me by Dr. Stéphanie Béreau” and prepared according to her instructions (Vandal Affidavit at para. 16). Later he wrote that the process to create the maps involves superimposing a number of layers using a graphic design program called Adobe Illustrator, each layer of which “presents a specific type of geographical information” such as roads, land use, hydrography, elevation, or a number of others (Vandal Affidavit, Exhibit E). This file is then exported as a “dynamic PDF” which maintains the layers and allows each layer to “be activated or deactivated in Adobe Acrobat for interactive viewing.”

[13] This is, essentially, the basis of the interactive maps Dr. Béreau plans to utilize in her testimony: she intends to activate or deactivate layers on the map to illustrate aspects of her opinion in a visual manner.

[14] Dr. Béreau testified that the static maps included in her report are created in a similar manner. Yanick Vandal provides her with a dynamic PDF, which he creates based on the documents and instructions she provided. Once her writing is complete, Dr. Béreau activates or deactivates the layers until she is satisfied that the map represents the best visual illustration of her opinion. She then takes a screenshot of the map and inserts the resulting image into her report at the appropriate place. At the hearing held on March 17, 2025, she testified that her objectives in using the maps are threefold. First, she endeavours to “clearly [re]present geographical elements” such as the locations of communities, cities, rivers and other features. Second, she seeks to “bring [the] attention of the reader [to] some element ... of the written text.” Third, she explained that she uses maps to demonstrate a “divergence of opinion” between herself and the Claimants’ historical experts. She testified that while she relies on Yanick Vandal for his technical expertise, the maps reflect her decision making.

[15] Ultimately, the maps illustrate the opinion contained within the written portions of the report, or they are designed to synthesize and illustrate aspects of her oral testimony. She further testified that her “opinion is not based on the maps” and that “you can remove all the maps of [her] discourse, the written discourse won’t change, it will just be more complicated to understand.”

[16] Given the nature of the maps and their relationship to Dr. Béreau’s opinion evidence, I am

not convinced that the *Abbey* test is the applicable test for determining the admissibility of any of the maps. These maps are not novel science. Dr. Béreau testified that the maps cannot even stand on their own—they are useless without their accompanying text or testimony. Her view on the matter appears to be that the maps, whether the interactive testimonial maps or the static maps included in the report, are a visual representation of her expert opinion—they are not expert opinion in and of themselves. I agree. Obviously, the interactive maps intended for use during her testimony are testimonial aids. Given that the static maps included in the report are intended to illustrate the opinions already contained in the report, they are analogous to testimonial aids as well.

[17] Testimonial aids are “demonstrative evidence.” In *The Law of Evidence*, the Honourable David Paciocco, along with co-authors Palma Paciocco and Lee Stuesser, defines demonstrative evidence in the following way:

True “demonstrative evidence” is not evidence *per se*. It involves the use of visual aids to assist the testimony of witnesses. In a murder case, for example, a map may be introduced that will help the witnesses explain, and the judge or jury understand, the location of various site referred to in testimony. An expert called may use a chart or diagram to explain blood typing or DNA analysis. Another expert may use an anatomical model to explain the wounds suffered by the victim and may then go on to demonstrate how, in their opinion, the victim was killed. Even a PowerPoint presentation might be used to assist in organizing evidence. [citation removed; David M. Paciocco, Palma Paciocco & Lee Stuesser, *The Law of Evidence*, 8th ed (Toronto: Irwin Law, 2020) at p. 567]

[18] The textbook authors then offer an admissibility rule for demonstrative evidence:

The base admissibility rule for demonstrative evidence that is offered only as a testimonial aid is simple: the witness that purports to use the demonstrative evidence to explain their testimony must confirm that the use of the diagram (e.g., map, chart, graph, model) could assist the jury in understanding that testimony, and the trial judge must agree. The judge will then consider the relevance and accuracy of the demonstration, the need for explanatory assistance, and any potential prejudice that could arise, including the undue consumption of time, distraction, or the inflammatory potential of the demonstrative evidence, and its overall fairness and effect on the integrity of the trial. [pp. 567–68]

[19] I am satisfied that the report maps and the interactive maps are admissible under this rule. Although the Claimants have challenged the relevance and accuracy of Dr. Béreau’s maps, these objections pertain to weight, not admissibility. The Claimants will be free to further address any perceived inaccuracies by way of a reply report or cross-examination; however, I will not find the

maps inadmissible on this basis.

[20] The maps were created by properly qualified experts. They are relevant, adequately reliable, necessary to assist in understanding the facts and not subject to any applicable exclusionary rule. Whether under *Abbey* or the standard for demonstrative evidence, the maps are admissible.

VI. CONCLUSION

[21] The maps proffered as part of the Respondent's expert report prepared by Dr. Stéphanie Béreau, as well as the interactive maps she intends to use during her testimony, are admissible. The Claimants' Application is dismissed, and there shall be no order as to costs in relation to this Application.

TODD DUCHARME

Honourable Todd Ducharme

**SPECIFIC CLAIMS TRIBUNAL
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File No.: SCT-2002-20

OTTAWA, ONTARIO August 15, 2025

PRESENT: Honourable Todd Ducharme

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Claimants (Applicants)

and

**HIS MAJESTY THE KING IN RIGHT OF CANADA
As represented by the Minister of Crown-Indigenous Relations**

Respondent (Respondent)

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**AND TO: Counsel for the Respondent (Respondent)
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