January 14, 1989
VANCOUVER, B.C.

THE REGISTRAR: Order in court. In the Supreme Court of British Columbia, Vancouver, this Saturday, January 14th, 1989, calling Delgamuukw versus Her Majesty the Queen at bar, my lord.
I caution the witness you're still under oath.
THE COURT: Willms.
MR. WILLMS:
Q Miss Albright, what artifacts did you unearth within the land territory claimed by the Gitksan in this action that is culturally different from material unearthed outside the land area claimed by the Gitksan in this action?
A All of the materials found during excavations can be compared to materials found in other areas.
Q That comment holds true for the materials that you excavated from the land territory claimed by the Wet'suwet'en as well?
A Yes, the materials can be compared to items in other areas.
Q So that archaeological evidence does not indicate the territorial borders of the human inhabitants at any particular time does it?
A No.
MR. WILLMS: Are you --
THE COURT: You mean no, it does not?
THE WITNESS: No, the artifacts do not --
THE COURT: Yes.
THE WITNESS: -- indicate --
THE COURT: The territorial boundaries of the inhabitants. Thank you.
MR. WILLMS:
Q Are you a member of any of the plaintiffs' houses?
A No.
Q When you were retained by the tribal association to do archaeological research, you wrote to the Heritage Conservation Branch requesting a permit under the Heritage Conservation account and the forms to complete for that permit?
A There was one letter sent to the branch.
Q And the branch sent you back the forms to complete for a permit didn't they?
A They sent application forms.
Q You did not apply for a permit to excavate site GgSt-2, did you?

A No.
Q In fact, you did not apply for a permit to excavate any of the test pits that you excavated in your investigations?
A I did not apply for a permit.
Q Was that because you were told by the tribal association that it was not necessary to have a permit because they were claiming jurisdiction over the territory?
A No.
Q Have you ever done an excavation, for example, on Crown land in the province of British Columbia before without applying for a permit from the Heritage Conservation Branch or without someone else having applied for a permit for the excavation?
A No.
Q Why did you change here and do these excavations without applying for a permit?
A The excavations at Moricetown were on reserve land.
Q Well, what about the test pits that you excavated up and down the Skeena River Valley?
A I did not apply for a permit in that applying for a permit would have contravened the agreement of confidentiality that I had already entered into in my agreement to do the work.
Q So one of the reasons for not applying had to do with the fact that it was related to the case?
A It would have contravened an agreement of confidentiality concerning the nature of the work I was doing.

MR. WILLMS: Now, if you refer to appendix A, schedule C, you will see that throughout the schedule there are from place to place -- this is exhibit --

THE REGISTRAR: 845.

MR. WILLMS: Exhibit 845. Throughout the lists there are locations which are not identified by a Borden site number, but instead are identified as undesignated and, for instance, if you turn to page 43, site numbers 192 all the way through to site number 216, the undesignated sites, those were all sites that you located; correct?

THE COURT: You said page 143?

MR. WILLMS:

Q Forty-three, my lord, in the appendix, and it's item -- and this is -- there are some entries first, but from 192 on to 216 at page 46 are a series that are marked undesignated. Now, those are your -- those

are the excavations or the investigations that were carried out by you or the people working for you; correct?

A Yes.

Q And in fact those sites have never been given a Borden number by the Heritage Conservation Branch have they?

A These specific sites, no.

Q Okay. And you've never filed any information with respect to your investigations in respect of these sites with the Heritage Conservation Branch?

A No.

Q So that any other archaeologist wanting to do research in the area would not be able to find that out from the Heritage Conservation Branch?

A Not up to this point in time.

Q No. And another archaeologist couldn't review your findings to see whether they were correct or not because the findings weren't on file; correct, and this confidentiality?

A Yes.

Q Yes. So that there's really no way that another archaeologist excavating or working in the Skeena River Valley could use your material at all in assessing their own investigations; is that correct?

A They could at the point that this information is made public and available.

Q Yes. When you give your evidence in court, right?

A Yes.

Q Isn't that highly unusual in the field of archaeology?

A No, it isn't.

Q You're aware of other archaeological work that has been done that hasn't been placed at least in a government location, federal or provincial, so that other archaeologists would have the opportunity to review that material?

A Material is made available at a point when the researcher has completed the work, completed the forms, or a report.

Q Well, correct me if I'm wrong, but aren't many of these archaeological sites set out in the appendix things like two cobble spalls, one scraper, at a particular location, and that's it? You know, when Dr. MacDonald went up the Skeena River or Dr. Ames and found a scraper in a particular location, they made sure that that was on file at the Heritage Conservation Branch and had a site designation number given to it?

A No, that's not true.
Q Just before I leave this, is it a common archaeological practise not to disclose in some public way the results of your findings so that other archaeologists can build on those findings?
A Yes, it is common practise to report on findings.
Q It's common practise to report on all the archaeological findings that you make, isn't it?
A There are -- no, there are many many instances where there's a considerable time lapse between field work and the reporting of that work.
Q Well, let's start with the designation. My understanding, and correct me if I'm wrong, is that the reason why there is care taken to note where you find particular archaeological features or artifacts, is so that other archaeologists who are coming into the area know what has been located there previously; is that correct?
A Yes.
Q And an important aspect of that is the record of those investigations at the Heritage Conservation Branch; correct?
A Yes, that is a common housing in British Columbia.
Q And in fact that's where Linda Burnard-Hogarth went to get the list of the archaeological areas that had already been investigated in this area; correct?
A Yes.
Q But another archaeologist who didn't know about this report and was doing work in the Skeena River Valley wouldn't know about the findings that you had made in your investigations?
A No, not up until this point.
Q And so up until this point there would be no way for another archaeologist to either refute your findings with other findings or to confirm them, unless they knew about this report; correct?
A Yes.
Q It's important in the field of archaeology that all of the information that's available for a particular region that's relevant be available to future archaeologists who are looking into that area; correct?
A Yes, that is preferable.
Q And notwithstanding that, you didn't report any of this?
A No, I haven't reported it.
Q Now, your excavations at Moricetown revealed three

undisturbed cultural layers; correct?
A Identified as four cultural layers.
Q At Moricetown?
A Yes.
Q Well, three undisturbed cultural layers lying over sterile fluvial deposits of sand and gravel?
A Yes, with a subdivision of the sea deposits.
Q And the Hagwilget Canyon excavation, done by Ames, reported three occupational zones?
A Yes.
Q And I'm just -- one of the references in your report was to a paper in the Skeena River Prehistory Archaeological Survey of Canada paper number 87 and it was the paper by Dr. Ames about Hagwilget Canyon at GhSv-2, and if you -- and I've just put in the 209 and 210 which contain his conclusions. You will see that he discusses, this is at page -- first of all, this is a reference that you referred to and relied on in writing your report?
A Yes, it is.

MR. WILLMS: 849-18, my lord.

(EXHIBIT 849-18: Skeena River Prehistory Archaeological Survey, pages 209,210)

MR. WILLMS:
Q And it would be useful if you turned at the same time to table 5 in your report to -- and that table is between pages 219 and 220. In the middle paragraph on page 209 Dr. Ames notes that a second site in Kitselas Canyon, the fortress site, was an historic Coast Tsimshian village, and cites Allaire. And just turning to your table 5, do you show in table 5 anywhere the historic -- the fortress site for Kitselas Canyon in the historic period?
A That refers to Gitlaxdzawk.
Q All right. The two names that you've got below the 200 line, they're -- they're what's being referred to as the historic Coast Tsimshian village?
A Yes Gitlaxdzawk was -- was occupied during historic times, but there is also evidence of prehistoric occupation at the site.
Q Well, yes, there's up until 1500 and then there's the archaeologically unclear break between then and the historic period?
A There -- though there are precontact materials at Gitlaxdzawk as outlined by Allaire and MacDonald.
Q Whatever Allaire and MacDonald say about that, that's what you're relying on?

A Allaire and MacDonald indicate that there are precontact materials in at Gitlaxdzawk.
Q Yes. Now, you'll see Ames carries on, and comparing it with his excavations at Hagwilget:

"Hagwilget zone C was a Carrier village of the same period."

That is the historic period, and we've already been through this, and I think you'll recall that you've drawn this dotted line at 2500 for Hagwilget Canyon between the village site and the fishing zone,, but Ames would draw the line up at 200 B.P.?
A In reviewing the materials -- what is the question you're asking?
Q Ames drew the line for the figure that you're showing, he didn't draw the line at 2500 or 1500, he drew the line at 200. He said that Hagwilget was a historic Carrier village. That's what he concluded?
A It was known in historic times as a -- as Hagwilget, as documented by Jenness and Harlan Smith.
Q Yes. From 1820?
A Yes, they have noted that date as 1820.
Q Yes?
A There is also -- Ames also describes precontact materials at the site which are contained within zone -- zone C.
Q Yes?
A Which indicate occupation of a village prior to that 1820 date.
Q Yes, to 3500 B.P.. I'm sorry, but it may be easier if you just turn to the next page to his conclusions. I thought we'd gone through this, but maybe I'm confused. In describing his excavations at Hagwilget Canyon, which you've called Tse, T-s-e, Kya, K-y-a, he said: "Three occupational zones are recognized. The occupation in the first zone was relatively intense." And then he said that that lasted for an undetermined period ending between 4000 and 3500 B.P..
And on figure -- table 5 you show that as ending at 3500 B.P.; correct?
A Yes.
Q Then he carries on:

"In the following zone, the evidence indicates that occupation was light and sporadic and that activity was probably

limited to fishing. This situation continued until 1820 A.D. when the locality was given to the Carrier by the Gitksan."

Now, so I'm suggesting to you that Ames draws the line between the village site at zone C, which he calls zone C, at about 200 years ago or a little less, actually at 1820; correct? That's where he'd draw the line?

A I would like to look at his -- at -- could I look at the document book?

THE REGISTRAR: This one?

THE WITNESS: Yes.

MR. WILLMS:

Q In the document book do you have -- he's drawn a table 5 in his -- in Skeena River Prehistory?

A Yes.

Q At page 215, and you'll see --

A Yes. In his --

THE COURT: Where will I find that, please?

THE WITNESS: In tab 4, the preliminary report of Ames on Hagwilget Canyon, and there is a table 5. I believe it's at the end of the text.

MR. WILLMS: My lord, this is a draft of what is finally reproduced in Skeena River Prehistory, but it's -- there's no numbers on the pages.

THE COURT: Yes.

MR. WILLMS:

Q But there is a table 5. And Miss Albright, before you try to interpret the dates on table 5, if you just turn to the page before table 5?

A May I -- may I refer to this, please?

Q Yes.

A Okay.

THE COURT: Table 5?

THE WITNESS: Table 5.

THE COURT: Yes.

THE WITNESS: Yes. He has presented a table based on a comparison, a comparison of the materials at Hagwilget with the summary of occupation at Kitselas Canyon and Prince Rupert that would be up to the time that work was done. He lists occupation zone A, B, and zone C. He does not draw any precise lines here indicating their actual termination.

MR. WILLMS:

Q Well, could you turn to the previous page?

A And at occupation zone C, based on the materials at

the site, in which occupation zone C contains both historic materials as well as precontact materials.

Q Would you turn to the page just before the table? He starts off the paragraph "Three occupational zones are recognized". Do you see that at the bottom of the page?

A Yes.

Q And let's -- before I proceed, you know that he's calling them A, B, and C?

A Yes.

Q Right.

> "The occupation in the first zone was relatively intense. The zone is characterized by multiple activity localities at the site. This occupation lasted for an undetermined period, ending between 4000 and 3500 B.P."

Now, let's stop there. That's zone A, right? You agree with me?

A Yes.

Q All right. He then continues: "In the following zone..." Now, that would be zone B, wouldn't it?

A Yes.

Q

> "...the evidence indicates that occupation was light and sporadic and that activity was probably limited to fishing. This situation continued until 1820 A.D..."

So he's describing zone B continuing to 1820 A.D. there, isn't he?

A That was his opinion. Yes.

Q Yes. So that when you read table 5 on the next page, and the dates of course are not clear because of the compressed scale, but you've got to turn back to the previous page to know that occupation zone C starts at 1820?

A According to --

Q Ames.

A -- Ames' description. Yes.

Q Yes.

A I have reviewed materials and his -- his discussion of the materials at the site, as well as reviewing artifactual material from the site, and have -- have a

somewhat different opinion in terms of the materials that are represented in the upper portions of the site, which is what I have outlined in this table.

Q And just keeping your table 5 before you, let's just turn back to Ames' table 5, and you'll see that he has Prince Rupert on that table; correct?

A Yes.

Q And so do you on your table 5, right?

A Yes.

Q He's got Gitaus and so do you?

A Yes.

Q Now, he doesn't have Paul Mason because it wasn't excavated at the time that he wrote his report?

A Right.

Q He's got his own excavation, which you've depicted, but of course he didn't have your surface scatter at GhSv-85-A, and he didn't have your Moricetown either, so he couldn't depict those; correct? But he depicts the Kitselas fortress site and you don't. Why not? Was that an archaeologically unimportant site?

A I have put the name of Gitlaxdzawk on the table.

Q At Gitaus?

A Mentioned the names.

Q At Gitaus? The recent village of Gitaus, at Gitaus, is at the fortress site, isn't it?

A No. The --

Q See the -- let me just make --

A Excuse me --

MR. WILLMS: Let me clear this up.

MR. RUSH: Just a second.

MR. WILLMS: Well, I may have confused her, and if I can clarify that.

THE COURT: Well, she has disagreed with you that the fortress site is the same thing.

MR. WILLMS:

Q And that's what I may have confused her with, my lord, and I can clear that up I think by this question. Were there different -- is the fortress site in a different location than the Gitaus site?

A Yes, the fortress and the Gitaus sites are --

Q Different?

A Are different, yes.

Q So --

A And I have put -- I have put Gitxtsaex and Gitlaxdzawk in this time frame with -- there is a break, or the data examined at -- through excavations at Gitaus and Paul Mason site indicated occupation up to 1500, and

for that period after 1500 there it is not clear as to at what point -- perhaps people at Gitaus and Paul Mason site had perhaps moved to another location, Gitxtsaex and Gitlaxdzawk, which were occupied in late precontact times and historic times. So I've put the -- as a -- as a table I have put the Gitxtsaex and Gitlaxdzawk villages in the Kitselas Canyon area as an occupation at Kitselas Canyon from late precontact to historic times.

Q Is the Paul Mason site a separate archaeological site from the Gitaus site?

A Yes.

Q And are they both separate sites from the fortress site?

A Yes.

Q And the fortress site is an archaeological site?

A Yes.

Q But you do not depict a separate fortress site in table 5, do you?

A I have not put it in a separate column.

Q No.

A And perhaps that's where the confusion is.

Q Have you blurred any other sites in this description here? Have you combined any other archaeological sites into one column here?

A Well, the Prince Rupert harbour area is based on data from a number of different sites.

Q Yes.

A And at one time -- at one point in drafting a table I had combined both Paul Mason site and Gitaus site in one column.

Q Yes. And then you separated them?

A And then I separated them. So in terms of looking at the material at Kitselas Canyon, it might be more appropriate to put that title Paul Mason site and Gitaus site down at the 1500 B.P. line.

Q Just referring to your table 5, when you dated the surface scatter at Hagwilget Canyon at GhSv-85-A, did you date that primarily with reference to Ames' results?

A I compared the materials from GhSv-85-A with materials from Ames' excavation and Moricetown Canyon as --

Q You compared both of them?

A Yes.

Q For dating?

A In terms of an estimate of its comparative age. These are under this column. These are -- these are --

they're open-ended estimates -- estimations of the period of occupation as represented by the materials found there and the comparison at other sites, just as -- just as Ames' table 5 in his preliminary report is a tentative table based on his comparison at the time.

THE COURT: Did you agree with Mr. Willms' designation, Hagwilget GhSv-85-A has a surface scatter?

THE WITNESS: Yes.

THE COURT: Tell me, just while I'm here, I'm not familiar with this name Tse Kya, T-s-e K-y-a?

THE WITNESS: Oh, Tse Kya. That is a contemporary name used to refer to the village and fishing station at the river, the village at Hagwilget Canyon.

THE COURT: Not the present village up at bridge level? That's Hagwilget village now?

THE WITNESS: Yes.

THE COURT: You're not talking about that area, you're talking about --

THE WITNESS: I believe the name is often used in respect to that village.

THE COURT: But as an archaeological site what am I to take from the designation canyon Tse Kya?

THE WITNESS: Oh --

THE COURT: Am I to confine it to the area down by the river?

THE WITNESS: Tse Kya refers to -- yes, the site at the river for the moment.

THE COURT: All right. Thank you.

THE WITNESS: In the context of my report.

THE COURT: Yes. Thank you.

THE WITNESS: And I've put Hagwilget Canyon up above and then the two site names just underneath.

THE COURT: All right. Thank you.

MR. WILLMS:

Q On table 5 you have shown discontinuous cultural occupation at Kitselas Canyon; correct? You've got the two cross-hatches, one for Paul Mason from 3500 to 3200, and then you've got another one at Gitaus from 3500 to I think you said 3400? That's what that hatching is?

A Yes.

Q And that shows discontinuous cultural occupation; is that correct?

A A break in -- yes, as identified by the researchers working at those sites.

Q I'm showing you a document which is referred to in your references that you referred to in preparing your

report entitled "Introduction to the Prehistory of British Columbia", by Dr. Fladmark. You referred to this and relied on it in preparing your report?

A Yes.

Q And the extract that I have put is at 121 to 122, the last two pages, and if you can turn to the bottom of the page. First of all, MacDonald describes cultural continuity throughout the Prince Rupert harbour sequence in that paragraph at the bottom of the page and that was his excavation, Prince Rupert harbour?

A That was work conducted under MacDonald, yes.

Q So he's got cultural continuity in Prince Rupert harbour representing 4 to 5000 years of "in situ Tsimshian cultural development", and then he just continues to "just Prince Rupert".

And then at the bottom says this:

"However, these are rather coarse cultural units as so far described, and there is little information yet available on the specific chronologies and the stratigraphic relationships of individual artifact types. This may be crucial since in at least one site - Gitaus..."

And just pausing there, Gitaus is the Allaire site represented on table 5; correct?

A Yes.

Q

"...about 120 kilometres upstream from the mouth of the Skeena River, Allaire reports what appears to be alternating 'Interior' and 'Coastal' cultures, with an early Coastal related culture replaced between 3500 - 4000."

MR. RUSH: No. "...early Coastal related horizon..."

MR. WILLMS:

Q

"...horizon replaced ca. 3500 to 4,000 B.P. by a purely lithic assemblage possessing lanceolate points presumed to be of Interior origin. (The Skeena Complex)."

Now, pausing there, you accept Dr. Fladmark's interpretation of the Allaire work, which you also

reviewed as well?
A Yes.
Q Yes. And then he says:

"This in turn later slowly becomes more 'coastal' in content - i.e. adds more ground stone through time."

Now, do you -- just pausing there, do you accept that as archaeologically accurate respecting Gitaus?
A Yes.
Q And then he says this:

"The Gitaus sequence thus suggests a significant cultural discontinuity about 3500 to 4000 B.P..."

And you show the cultural discontinuity and, putting Paul Mason to one side for the moment, you've got the cultural discontinuity going -- instead of being below the 3500 B.P. line, you've got it above. Can you explain why?
A Yes, because Dr. Fladmark wrote this paper in 1982 before Gary Coupland had completed his work at the Kitselas Canyon as well, and the work conducted by Coupland was able to, in comparing the materials from the Paul Mason site with materials at the Gitaus site, which Coupland does, then he was able to provide a time framework for that. Mr. Allaire himself I think also makes a relationship, discusses the probable break in introduction of new materials.
MR. WILLMS: But -- and we refer to it earlier from Dr. Coupland's dissertation, but he describes the break at Paul Mason from 3600 to 3200, that is, starting at 36, not at 35. I'm just wondering whether or not that line there might be dropped down a hundred years for that break in cultural continuity on your table?
THE COURT: He's asking you whether the line should be dropped a hundred years I think.
MR. WILLMS:
Q That's what I'm asking you.
A For Gitaus?
Q Yes, for Gitaus. On the archaeological review of Ames and Coupland, that could be dropped a hundred years to 3600, right?
A Yes, I guess the break itself could.
Q Now, according to Ames, at Hagwilget Canyon occupation

was culturally discontinuous?
A Would you repeat that, please?
Q According to Ames, at Hagwilget Canyon the occupation from the archaeological record was culturally discontinuous?
A Could you give me the reference page for that citation?
Q Well, we've been through it a couple of times, but he says that -- maybe I better preface this with this question: Is there a material cultural difference between the Gitksan and the Wet'suwet'en as far as you're aware? Is there a difference in the material culture of the Gitksan and the Wet'suwet'en?
A Between materials found in those two areas?
Q Yes.
A Yes, I believe I indicated yesterday that the small side-notched arrow points found in Moricetown excavations at the Moricetown site I have not seen or heard of being found or recall being found further down the Skeena.
Q And I think you've --
A So that would be one difference.
Q And you understand that the Wet'suwet'en -- that that material culture is Athapaskan or has been broadly described --
A It has been broadly described as Athapaskan, yes.
Q And the material culture --
A It is also found in other areas, the Salishan areas, as Magne and Matson have studied.
Q But that's different from Tsimshian areas?
A Yes, a small point -- small arrow points, small side-notched arrow points, are particular of anterior environments. It's not to say that small points might not be found in Gitksan territory. I don't recall any of them being found to date.
Q So just referring back to what I read to you from Ames before when he says that it was a sporadic fishing zone until the area was given by the Gitksan to the Wet'suwet'en in 1820, that's a cultural change, isn't it, at the location? That's a change from Tsimshian, broadly speaking, to Athapaskan, broadly speaking?
A I believe at that area the peoples were very closely related, as I understand it. In the material, the material culture found at -- I believe the material culture found at the canyon reflects the adaptation and activities occurring at that canyon site or location.

Q Oh, I thought Coupland, and I thought you agreed with me when I suggested this to you a couple of days ago, in assessing Kitselas Canyon, Hagwilget, and Prince Rupert, argued that there was a broad cultural exchange zone where diagnostic artifacts were similar at all three? Isn't that one of the conclusions that Dr. Coupland came to?
A I couldn't agree with that statement until I looked at the reference again, whether it was --
Q Well, putting Dr. Coupland to one side, you reviewed the material excavated by Ames at Hagwilget; correct?
A Yes.
Q You reviewed the results of the excavation at Kitselas?
A Yes.
Q And you reviewed the results of the excavation at Prince Rupert?
A Yes.
Q And you found diagnostic artifacts in reviewing the Hagwilget material that was similar in material culture to that recovered at Kitselas and Prince Rupert?
A Yes.
Q That is, broadly speaking, Tsimshian?
A Yes.
Q The recent occupation, I think we all agree, is Wet'suwet'en?
A Yes.

THE COURT: I'm sorry?
MR. WILLMS: Wet'suwet'en.
THE COURT: No, the recent -- what was the --
MR. WILLMS: I said the recent occupation, and I mean historic.
THE COURT: Occupation of Hagwilget?
MR. WILLMS: Hagwilget.
THE COURT: Thank you.
MR. WILLMS:

Q Is Wet'suwet'en; correct?
A Yes.
Q So that there is a cultural break at Hagwilget, and let's not argue about the date, whether it's 1820 or some other time, but there's a change between Tsimshian and Athapaskan, broadly speaking?
A The -- in reviewing the materials recovered from -- through Ames' excavation, the materials indicate occupation of a village site from precontact times through to historic times, so the precontact materials as well as historic materials in the upper levels.

Q Okay.
A And the -- the 1820 date is not -- is not relevant to interpreting the materials.
Q Okay. That's why I suggested ignore the 1820 date. Ignore the date completely. My suggestion is, is that the cultural -- the material cultural record at Hagwilget shows a change from Tsimshian, broadly speaking, material culture, to Athapaskan, broadly speaking, material culture? Forgetting about the date that Ames puts on it, do you agree with that?
A The material does not -- does not obviously reflect a shift in language group, so I could not agree with your statement.
Q Is the only difference between Tsimshian and Athapaskan language? Is the material culture identical for Athapaskan and Tsimshian groups, archaeologically?
A There are items, yes, many items which are similar, in that the materials reflect similar adaptation of activity at similar types of sites and resources and environmental zones.
Q So that archaeologically when you look at an artifact, perhaps an artifact that you picked up in the surface scatter at Hagwilget, you can't tell from looking at that artifact whether it represents Tsimshian culture, broadly speaking, or Athapaskan culture, broadly speaking; is that what you're saying?
A An artifact is not identified in isolation.
Q What's a diagnostic artifact again? Can you refresh my memory as to what a diagnostic artifact is?
A A diagnostic artifact, such as projectile points, are ones that are seen to change over time, so they can be indicative of general time periods, relative time periods, within a particular geographical areas.
Q Yes, location; correct? They are diagnostic as to location?
A Yes, in terms of cultural -- broad cultural areas or provinces.
Q So that there are some artifacts which are diagnostic as to, broadly speaking, the Athapaskan culture; correct?
A Yes, that are identified as being present in those areas.
Q And you found such artifacts at the surface scatter at Hagwilget?
A Excuse me? Could you repeat that, please?
Q You found diagnostic artifacts similar to Athapaskan

artifacts at Hagwilget?
A Materials which have been found in Athapaskan areas.
Q Yes. You also found artifacts, and you reviewed Ames and he found artifacts, which reflect, broadly speaking, artifacts recovered from Tsimshian areas?
A In Ames' --
Q In Ames' and your surface collection?
A Yes.
Q Is that correct?
A Yes.
Q The Athapaskan material culture, broadly speaking, is a separate or a different material culture from the Tsimshian material culture; one's coastal, one's interior, broadly speaking?
A Broadly speaking, yes.
Q Okay. And you found evidence of both in the surface scatter at Hagwilget Canyon?
A Yes.
Q And so did Ames in his excavation?
A Yes.
Q So I'm going to suggest again that the occupation at Hagwilget Canyon was culturally, from the archaeological viewpoint, discontinuous?
A No, I believe Ames indicates in his report that he sees a continuity of -- general continuity --
Q Well --
A -- of occupation.
Q By which material culture, Tsimshian or Athapaskan? Which material culture shows continuous occupation at Hagwilget Canyon, Tsimshian or Athapaskan?
A The materials reflect interaction of peoples occupying that area with peoples in other areas, both to the north -- there's interaction with peoples in the north through trade. There is also interaction with peoples further down the river.
Q Is there any continuous material culture identifiable at Hagwilget? It would seem that there either is or there isn't. I mean, is there or isn't there?
A Well, I would refer to Ames' summary of the -- of the site and discussion of occupation of the site. He refers to a long sequence of occupation at the site which reflects the kinds of activities that are being conducted at that location. He notes a shift in the settlement from multiple activities characteristic of winter village location to fishing activities, and then increased intensity of site use in later times and use of the site as a village site again.

Q By a different -- by peoples having a different material culture than the inhabitants at a prior time; isn't that what Ames identifies?
A Well, he refers to this transfer at 1820, but the material culture in the upper levels of the site reflect the activities, the focus of activities, that are being carried out there.

MR. WILLMS: My lord, this might be appropriate time to --
THE COURT: All right. Thank you.
MR. WILLMS: Thank you, my lord.
THE REGISTRAR: Order in court. Court will recess.

(PROCEEDINGS ADJOURNED AT 10:45 a.m.)

I hereby certify the foregoing to be a true and accurate transcript of the proceedings herein transcribed to the best of my skill and ability.

_____
Tanita S. French
Official Reporter

h2 S.L. Albright (for Plaintiffs)

(PROCEEDINGS RECONVENED AT 11:00 a.m.)

THE REGISTRAR: Order in court.
THE COURT: Mr. Willms.
MR. WILLMS: My lord, I ask we mark the extract from Fladmark as Exhibit 849-19.
THE COURT: Thank you.

(EXHIBIT 849-19 - Extract from Canadian Journal of Archaeology by K.R. Fladmark)

MR. WILLMS:

Q You noted in your excavations at Moricetown that -- and in grouping C1 and C2 together, you noted three distinct cultural layers?
A I referred to -- I refer to four layers at the site.
Q In your report?
A Yes.
Q Early on you referred to three, initially. C1 and C2 were lumped together on your initial observations?
A C1 and C2 were similar in texture but distinct in colouration which justified -- which indicated or justified a separation as a layer.
Q But your initial observations on the site, before you went back in September to look again, your initial observations were three distinct cultural layers?
A No. That -- those distinctions were seen during excavation.
Q Yes. Three distinct cultural layers, that's what was observed during excavation?
A With a division of -- a distinction between C1 and C2.
Q Later on?
A A dark -- no, a dark -- a dark -- a dark layer, a dark C layer, C1, was identified during excavation.
Q Could Exhibit 849 be put before the witness, dash 11, tab 11, and these are referring back to the radiocarbon sample sheets?
A Yes.
Q And you'll see, Ms. Albright, on each descriptive page, which is page 2 -- these were done in September, so this is before you went back to the site in September -- but each one describes three distinct cultural layers in the description?
A Yes.
Q Correct? And that was the observation that was made by you, by Ms. Ludovicz and by Mr. Brolly during

excavation?
A This is a generalized description written by Miss Ludovicz on the forms.
Q And on each form?
A Yes.
Q She says three distinct cultural layers?
A Yes.
Q Yes.
MR. RUSH: I think my friend, if he is going to put the forms, should identify to the witness the two recognized C's.
MR. WILLMS: Well, it -- all I'm pointing out, my lord, is no matter which one we take and no matter whether it's one with C2 or C4 or B1 or B2, every one of them says in the information page, "The site is comprised of three distinct cultural layers." Every one, take your time and review them.
THE COURT: Well, I'm looking at SR-85-3, Miss Albright, which says it shows three distinct cultural layers, but it shows A, B, C1, C and D.
MR. WILLMS: Yes. D is the alluvial -- D isn't a cultural layer, my lord.
THE COURT: It has four layers, A, B, C1 and C.
MR. WILLMS: And that's what I'm getting at, my lord. The description above is written on this page with the definition on each --
THE COURT: Yes.
A But the distinction between C1 and C2, a dark C and the lower C, was observed during excavation, that is noted on the forms as well.
MR. WILLMS:
Q But at the time of the excavation, even though it was noted on the forms at the time of excavation, each and every one of these descriptions describe only three distinct cultural layers, correct?
A These are designations for observations made in the field.
Q And the distinction between C1 and C2 as distinct cultural layers was made when you went back in September to look at the site, correct?
A Could you ask that again, please.
Q You've pointed out that there is a C and C1, and if you look through these there are C's and C1's drawn on these diagrams?
A Yes.
Q Notwithstanding that there are C's and C1's drawn on this diagram, each description above talks about three distinct cultural layers, not four, but three,

correct, each one?
THE COURT: Well, that's a matter of record as some people would say, isn't it, Mr. Willms?
MR. WILLMS: I thought it would be, my lord, and I'm trying to get to the next question, but if the witness won't agree that that's what it says and that's what it means, I can't get to the next question.
THE COURT: I don't think she is disputing that. I think she is saying that's what Miss Hogarth said, you know, when she wrote it down, but the witness hasn't agreed that it's necessarily a precise statement of what she saw on excavation.
MR. WILLMS:
Q By the way, are any of these in your handwriting?
A These are prepared under my instruction.
Q Are any of these in your handwriting?
A These are prepared by Miss Ludovicz.
Q Every one of them?
A Yes.
Q So your handwriting isn't on any of these?
A Except the notes that I made after.
Q Later on?
A Yes.
Q All right.
THE COURT: I'm sorry, I used the wrong name a moment ago. I meant Miss Ludovicz.
Miss Albright, when you said the distinction between the subdivision letter C, they were similar in texture but then you said different in what was it, colour?
THE WITNESS: Colouration, yes.
THE COURT: Colour and?
THE WITNESS: Colour.
THE COURT: Just colour.
MR. WILLMS:
Q All right. But ultimately you recognized four distinct cultural layers?
A Yes.
Q And when you got four distinct cultural layers, that would suggest that cultural discontinuity is possible at the site?
A No, I do not see cultural discontinuity.
Q You identified four distinct cultural layers but conclude that there is continuous in situ development of material culture; is that correct?
A Yes.
Q So what relevance is the distinct cultural layer at

all, in your assessment?
A In observing changes in technology over time.
Q Yes?
A As -- which technology does do, technology does change over time as an adaptation to using the environment.
Q So there -- you can say that there was an increase in the complexity of the technology at the site?
A Yes.
Q And you noted diagnostic artifacts at the site that were Athapaskan, broadly speaking?
A Broadly speaking, yes.
Q And you noted diagnostic artifacts at the site that were Tsimshian, broadly speaking?
A There are materials at the site that are also found in the Tsimshian area.
Q Yes. Does that not suggest to you -- and I won't use the word discontinuous -- a difference in material culture at the site, perhaps, from time to time?
A It may be -- it may reflect differences in activities that were being carried out at the site at different times.
Q How about differences in material culture at different times?
A Well, in that material culture reflects --
Q Activities?
A -- activities, yes.
Q And sometimes there are, broadly speaking, Tsimshian activities going on at the site?
A I wouldn't -- I would refer to them as activities that are related to use of resources within the environment.
Q Yes. And sometimes they are more Athapaskan like and sometimes they are more Tsimshian like?
A No.
Q They are all indistinguishable?
A I'm not identifying any artifacts as either Tsimshian or Athapaskan. Tsimshian -- the terms Tsimshian and Athapaskan are terms that are used by anthropologists to refer to groups of people who speak similar languages, related languages, and within a geographical area.
Q Are there no material cultural differences between -- and this is solely from an archaeological context -- are there no material cultural differences between Athapaskan groups, broadly speaking, or Tsimshian groups, broadly speaking?
A There are differences which reflect differences in

adaptation in different environments.
Q So there are differences?
A Yes.
Q Just as -- and you refer to Magne's work on differentiating between the Athapaskan projectile points and the Salish projectile points, there were differences?
A These are stylistic differences --
Q Differences?
A -- that are identified.
Q And so there are stylistic differences that you noted at the site between some Tsimshian type artifacts and Athapaskan type artifacts?
A Magne and Matheson are referring to a very specific type of analysis and comparison of tool types, of a type found and used during a period of -- same period of time.
Q Are there material cultural differences between the -- and if you don't like Tsimshian -- coastal culture and the Athapaskan culture, material culture?
A Yes, there are differences.
Q Did you excavate artifacts at Moricetown Canyon that were similar to what might be called coastal cultural artifacts?
A Yes.
Q Did you also excavate material at Moricetown Canyon that might be called Athapaskan cultural artifacts?
A Yes.
Q Does that not indicate to you that the -- at various times in the past, that a coastal material culture may have inhabited the site, people with that type of material culture?
A The material culture found at the site, the materials at the site definitely indicate interaction, yes.
Q Well, I'm not talking about interaction. I'm not talking about whether -- or are you saying that there were Athapaskan people there using cultural material, that that's a possibility, from the archaeology?
A From an archaeological analysis of the materials, there are materials -- materials reflect adaptation and use of resources at the site. The materials reflect interaction and trade with -- with other areas.
Q So getting back to my question, the artifacts that you found which are similar to coastal cultural artifacts, could indicate the presence of people who use that culture, who exhibit that culture, or it could

represent a borrowing of those artifacts and use by a different material culture. Is that what you are saying?

A Its ideas and materials and technologies are transmitted between peoples from one area and peoples at another area.

Q And so when you excavate a particular diagnostic artifact, that doesn't really tell you who was there at the time that it was used, it just tells you that the artifact was there?

A The materials reflect occupation and use of resources at that site over a period of time.

Q But by whom? You can't tell in the archaeological record?

A No, they don't have names of the makers on them.

Q No. And that is why, for example, it's important to know as Magne and Matheson did, generally, the material technology of a group before you can determine where that group may have been at a particular time so that you can -- the whole purpose for Magne is attaching ethnicity to the artifact, isn't it?

A Not to one specific artifact. He is looking --

Q A group of artifacts?

A He is looking at a large collection of artifacts.

Q Right. But in fact, you can't attach any ethnicity to the artifacts that you excavated at Moricetown Canyon, can you?

A By comparison of the materials within the sequence at Moricetown to those -- to materials found in other areas, we can see that there are similarities, so there are similarities of -- in terms of projectile point types found in other areas at a similar time period.

Q Well I'm confused, because I don't -- can you or can you not by reviewing the material that you excavated at Moricetown, tell the ethnicity of the human inhabitants at the time that the material was deposited?

A They don't have names written on them, the names of the makers.

Q So the answer is no?

A They don't have -- they don't indicate that they were made by a person speaking a specific language.

Q So the answer is no?

A Which is what the anthropologist term, Athapaskan or Tsimshian, refers to, our language grouping.

Q So your answer is no, it couldn't tell you what the ethnicity is, does it?
A Not directly.
Q No?
A Not a specific tool.
Q It just tells you that at some point in the past there was human habitation present using that material culture?
A Yes.
Q All right. Can you tell from the archaeological data that you unearthed at Moricetown, whether the resource use at any particular time was primarily fish related or primarily game related or can you draw that distinction at all?
A There are items which indicate specific activities, yes.
Q Well, what items in what cultural layer indicate fish-related activities?
A Bone points and abrasive stones are indicators of fishing technology and fishing technologies.
Q How many bone points did you find and where did you find them, what level?
A We have a bone point preserved, I believe there are -- have been other items identified, other work items identified. We have a bone point --
Q I'm showing you plate A-6 in the appendices, and you'll see that "O" which was taken from layer A is --

THE COURT: Just a moment, Mr. Willms, where are you?
MR. WILLMS: I'm in Exhibit 845, my lord.
THE COURT: Yes. Whereabouts?
MR. WILLMS:

Q Plate A-6, projectile points, and the upper left-hand point is identified as "O", and in the description at the bottom it's described as a bone point.
Now you -- that was recovered from layer A in Moricetown?
A Yes.
Q And how many other bone points were recovered at Moricetown, to your recollection?
A I believe there were two or three other items that were -- that could possibly have been used in fishing technology as well, as bone points.

THE COURT: What do you mean by a bone point? This is a piece of bone that's been shaped in this way?
THE WITNESS: Yes. And indicative of use in fishing technology.
MR. WILLMS:

Q Were the other bone points found in layer A, to your

recollection, or were they dispersed throughout?
A I believe they were mostly found in the upper layers.
Q Now, you have game-related resource use.
THE COURT: Sorry, before you go to that, you mentioned something else that mentioned fish related activities besides bone point?
THE WITNESS: Yes. Abrasive stones, abraders will be for polishing and shaping the bone points.
THE COURT: Um-hmm?
THE WITNESS: Or stone tools as well.
THE COURT: Okay.
MR. WILLMS:
Q And I think you've already said this, but the projectile points, the other projectile points, are they game or thought to be related to exploitation of game?
A Yes.
Q All right. Are any of them thought to be related to exploitation of fish?
A No.
Q So the materials that were unearthed at Moricetown, would you say on the whole, reflected primarily a game related resource use?
A The artifact collection as a whole reflects a variety of activities, including fishing and hunting activities.
Q All right. But as between fishing and hunting, is it -- you've mentioned two or three projectile bone points for fishing and then you've got a great number -- or at least photographed here, I don't know whether you intended that this would be a representative sample of the artifacts of the projectile points, but it appears that except for the bone point the other projectile points are usually associated with game?
A Yes.
Q And I'm wondering whether or not it was your view in looking at all of the artifact assemblage from the site, that you could say from that that there were more artifacts related to game than there were to fish, or vice versa?
A No, I couldn't say that.
Q Were these artifacts similar at all to artifacts that you became familiar with in your Tahltan ethnoarchaeology?
MR. RUSH: Which artifacts are you referring to?
MR. WILLMS:

Q I'm referring to the artifacts on plate A-6 of Exhibit 845. For example, are these artifacts -- are any of these artifacts similar to artifacts that have been excavated in the Tahltan area, or are they familiar to you from your work on Tahltan ethnoarchaeology?
A Yes, I've seen similar point styles in the Stikine area.
Q Including the bone point?
A Yes, bone points.
Q And you described the Tahltan in that as hunter-gatherers. Is that an archaeological or an ethnoarchaeological term to describe a group of people, hunter-gatherers?
A It's a general term used in anthropology, yes.
Q And generally, what does it mean, what's the ethnoarchaeological meaning of hunter-gatherer?
A Hunter-gatherer refers to a -- is a subsistance economy based on hunting, fishing and gathering of various resources in the environment.
Q Is this also associated with -- especially the hunting aspect, with following the resource along to exploit it?
A There is a variety of different subsistant settlement patterns that are exhibited by hunter-gatherer peoples, or peoples with a hunter-gatherer subsistance economy.
Q Yeah. And one of the patterns is to follow the resource in order to exploit it?

MR. RUSH: What does my friend mean by that, my lord? Because presumably the resource doesn't come to the individual.

MR. WILLMS:

Q Well, let me just -- fish, as a resource, tend to, if you are in the right place, come to you, like if you are at a canyon?
A I don't think fish come to people. It -- fishing involves a technology for capturing and processing fish. Fishing also involves information and knowledge concerning that resource, when and where it's available, and it also includes the organization of people involved in those activities.
Q But there are, if I might put it this way, some preferable locations for fishing, one of them -- or a number of them, as MacDonald has pointed out, is wherever there is a canyon in a river that carries fish?
A He refers to canyon settings as places where we are

most likely to find deeply stratified deposits indicative of long-term occupation. Those are often good fishing places. There may be other fishing places, may be other good fishing places along the river.

Q But to exploit a resource that is not constrained by the water, the hunter-gatherer -- and by "resource" I mean deer, goat, bear, caribou -- the hunter-gatherer moves or can move about with the resource?

A People's with -- have the knowledge of where -- of where those resources are within the environment and the patterns of movement of those resources, the different types of environments those resources are adapted to to hunt those resources, requires that knowledge. It also requires a scheduling of -- an organization of people to have people in a -- points where those resources can be hunted or gathered in chases of other resources. In other words, peoples are aware of the seasonality and the geographic distribution of resources and so they schedule their -- they schedule their activities during the year in order to hunt goats at a time when it's convenient to hunt goats, when goats are available.

Q And of course where the goats are?

A Yes. To carry out fishing activities during the runs and where the runs are on.

THE COURT: Aren't we dealing with something that is relatively straightforward? It seems to me it's taking us a long, long time to find out whether hunter-gatherers are people that follow the migrations of game or don't follow the migrations of game. Isn't that what we are talking about?

MR. WILLMS:

Q That's what I'm trying to get at, but I don't know if that's what the witness is getting at. If that's what the witness is saying by all of that, then I can move on.

That's what hunter-gatherer means, you just follow the migration of the game?

A No.

Q I'm sorry, my lord, but that's -- what does it mean? Does it mean you go to a particular spot and hope that the game shows up?

A No.

Q Are you aware of any archaeological evidence whatsoever in the -- in these maps of -- wherever the maps are -- plot all of the archaeological sites, any

archaeological evidence whatsoever indicating human habitation beyond a mile on either side of a river or a lake shore?

A I can't recall, offhand.

Q In your Tahltan ethnoarchaeology, did you become aware during your research there or your research in preparing for your ethnoarchaeological evidence here, aware that Tsetsault, T-S-E-T-S-A-U-L-T?

A Yes.

Q And at one point the Tsetsault were located as a group somewhere between the Tahltans, who you investigated, and the Gitksan?

A Yes.

Q Now, your earlier work on Tahltan ethnoarchaeology indicated a review of the ethnography of the Tahltans?

A Yes.

Q And I'm showing you a -- it's the cover page of publication, and one page of it. Did your -- if you turn the page, did your review of the Tahltan ethnoarchaeology indicate, as is set out in figure 2, the clan territories and the Tahltan tribal boundaries that you indicated there?

A Yes.

Q All right. And you've shown the Nas Koten, N-A-S, K-O-T-E-N at the headwaters of the Nass, and another group, the T-L-E-P-A-N-O-T-E-N at the headwaters of the Skeena River?

A Yes.

Q And that was the ethnography that you reviewed in doing your Tahltan ethnoarchaeology?

A Yes. Based on Teit's, James Teit's previous work in that area.

Q Yes. And you -- and I think you mentioned in your evidence -- or maybe I better mark that, my lord, before I ask the next question and before I forget. 849-20, my lord.

THE COURT: All right.

(EXHIBIT 849-20 - Extract from Tahltan Ethnoarchaeology by Ms. Albright dd. 1984)

MR. WILLMS:

Q I think you said earlier in your evidence in chief that at one point in the past, you had done a review of the Kaska dena land claim submission?

A Yes.

Q And when you reviewed that Kaska dena land claim

submission, did you review -- or do an ethnoarchaeological review? Did you review the ethnography?

A I reviewed the ethnography, yes.

Q And you recall the map that Marvin George showed you before you plotted the archaeological sites on the maps that have been marked? Do you recall Marvin George's map?

A Yes.

Q And did you recall from your review of the Kaska dena land claim submission, that part of that claim submission overlapped the Marvin George map that you looked at?

A I don't recall.

Q You don't recall.

THE COURT: What's the spelling of Kaska dena, please?

MR. WILLMS: K-A-S-K-A and then D-E-N-A.

THE COURT: Thank you.

MR. WILLMS: Could you turn in your report to page 2-1.

THE COURT: Sorry, two dash?

MR. WILLMS: Two dash one.

THE COURT: Thank you.

MR. WILLMS:

Q You refer to a -- in the first paragraph, "analysis of artifact assemblages". And do you mean by that, does that refer to a group of artifacts or material remains related to a human activity that's associated -- they are associated with each other?

A The material culture reflecting human behaviour, yes.

Q That's associated?

A Indicative of, yes.

Q And I can understand how you can get an artifact assemblage from an in situ deposit, but can you explain, does this apply to artifacts found on the surface too, in a surface scatter?

A It could.

THE COURT: Sorry, your question was, does it indicate what?

MR. WILLMS: I said, does the term also apply to artifacts found in the surface scatter, and can you find artifact assemblages from a surface scatter?

THE COURT: All right.

MR. WILLMS: And your answer was yes?

MR. RUSH: No, she said it could.

THE COURT: It could.

A Possibly, yes.

MR. WILLMS:

Q Possibly. You then talk about contextual data, and

it's at page 2-1. What do you mean by "contextual data"?
A That's the context in which materials are found.
Q So that when you find material in situ and it's very close, you can make some assumptions about the relationships of those artifacts to each other?
A Yes.
Q How do you do that for a surface scatter?
A The context. The context is different for excavating materials and surface material.
Q Yes. It's much more difficult to identify an artifact assemblage from a surface scatter than it is from an excavation?
A I guess that would depend on how you wanted to define the term "assemblage".
Q Well, based on your definition, does it make any difference to your definition of artifact assemblage, whether you find it -- does it make any difference to your definition of artifact assemblage and contextual data, whether you find it in an excavation or whether you find it on the surface?
A The surface materials I have not referred to as components or specifically as assemblages; I've referred to them as groupings of tools. They may represent an assemblage in that an assemblage is a group of tools reflecting activities which have taken place at a particular time at a particular place at a particular time period or time frame.
Q Well, further down on page 2-1, you say in the last paragraph:

"The archaeological data described in this chapter include artifact assemblages collected by us during the 1985 season. These include materials surface collected from site Gh Sv 85 - A."

Now, did you collect artifact assemblages from that surface scatter?
A If I have, I've used the term in this sense: as groups -- as a group of tools found at a specific location, yes.
Q Isn't it the assemblage that is supposed to tell you something about how the tool was used -- or the tools were used in relationship to each other?
A The assemblage will reflect the -- a variety of activities, yes.
Q No, I'm not talking about reflecting. But in terms of

understanding how tools were used when you have a tool assemblage, that is something taken from an in situ deposit close together, the fact that it's close together allows you to explain, perhaps, how the tools are used in relationship to each other?

A Yes.

Q But when you have a surface scatter of tools, you don't know when you pick the tool up off the ground, whether it was used in the same context as a tool that might be lying beside it, or in the same context as a tool that is 30 feet away, do you?

A If they are similar types of tools, they may reflect similar activities.

Q But you are presuming the use to create the assemblage, aren't you? You are not using the assemblage to explain the use, you presume the use to create an assemblage when you have artifacts that are 30 metres apart?

A No.

Q No, all right. Carrying on to page 2-4, you describe -- and this is at the start of the page -- "Thirty-one different cultural features --"

A Two?

Q I'm sorry, 2-4 of your report, I'm sorry, Exhibit 844, and you describe in the last paragraph, the pit features and a feature 2, and you say this: "Most impressive is a large rock-lined pit, Figure #2." And you describe the location, and you then conclude at the bottom of the paragraph:

> "Based on its size and constituency, this feature is interpreted as the remains of a food roasting pit. Roasting pits, as described in the ethnographic literature, were commonly used for preparing large quantities of food."

Now, what ethnographic literature are you referring to there?

A I believe there are a variety of references referring to the use of roasting pits or steaming pits for preparing food.

Q Which one?

A My review has been some time.

Q Is there a reason why you didn't cite the literature right there?

A It says -- it's -- like I say, in my mind it seemed it was a common -- an aspect of common knowledge for me.

I've referred to, in my own research in the Stikine, I've referred to pit features used for steaming and roasting of foods. I know that the "Gathering What the Great Nature Provided," by the people of Ksan, refers to preparation of foods.

Q Just pausing there, that's -- that's in your reference list?

A And Nancy Turner refers to many steaming pits and roasting pits used by -- of the variety -- different groups in her work on food plants used by native peoples.

Q The book that you've just referred to a minute ago is --

MR. RUSH: Excuse me, excuse me, hold on. Is the witness finished answering the question?

MR. WILLMS:

Q I am not meaning to cut her off, I just want to identify the people of Ksan that she referred to 1980, "Gathering What the Great Nature Provided," that's the one in your reference?

A Yes, right.

Q That was one of your ethnographic references?

A Yes.

Q Okay. All right, carry on if you've got more?

THE COURT: You mentioned Nancy Wilson?

THE WITNESS: Turner, Nancy Turner.

MR. RUSH: And she also mentioned her own work in the Tahltan.

THE WITNESS: Yes.

MR. WILLMS:

Q Yes.

A There are also in the literature for the central southern interior, there are references to steaming and roasting pits. Hillary Stewart also refers to roasting and steaming pits in describing fishing on the northwest coast.

Q When you reviewed feature 2, did you find any bones or artifacts within the feature?

THE COURT: Sorry, feature 2?

MR. WILLMS:

Q Feature 2, my lord, was the one which was described as the roasting pit.

A Oh yes, yes. There were bone fragments in the matrix of the pit feature.

Q I'm showing you the feature record form for feature 2. This feature was recorded by you?

A Yes.

Q And you'll -- you see you describe the feature as a,

"rock lined pit feature. Fill - loose, sandy silt (dark grey) with FCR." What's FCR?
A Fire cracked rock.
Q "Fire cracked rock and boulders." All right. And is it normal when you mark down a feature that, for example, if you find bones or artifacts within the feature, to list them on the feature record form?
A Yes, one might or one may not.
Q You didn't here?
A No.

MR. WILLMS: Exhibit 849-21, my lord.

(EXHIBIT 849-21 - Feature Record Form No. F2)

THE COURT: Bone fragments would include what?
THE WITNESS: These are bones of -- animal bones, they could be mammal, bird, fish.
THE COURT: Yes.

A The way these -- I would like to note that these feature record forms was used as one part of our study. In recording these, they don't reflect all of the analysis that was carried out on the associated materials.

MR. WILLMS:

Q You say just -- and I just want to stay with feature 2 for a moment -- in your report at 2-4, "Based on its size and constituency, this feature is interpreted as the remains of a food roasting pit." Now, based on your review of what you found there, it could also be the remains of a storage pit too?
A No.
Q One of your references in your report was to "Recent Archaeological Research in the Middle Skeena Valley, British Columbia," by Kenneth Ames, reported in the mid -- this is one of the extracts that you refer to in preparing your report? Yes? Do you recognize this?
A Yes, I do.
Q 849-22, my lord.

THE COURT: Yes.

(EXHIBIT 849-22 - Report by K.M. Ames, "Recent Archaeological Research in the Middle Skeena Valley, British Columbia")

MR. WILLMS:

Q And in that, can you turn to page 4. Just to give you

the context, you'll see at the bottom of page 4, Dr. Ames is referring to GhSv:2, the Hagwilget Canyon Site, and then he has got a figure on stratigraphy on the next page, and then on page 6 he discusses what he excavated, and goes through the zones. And we've been through the zones a number of times and I'm not going through them again. But at the bottom, he starts talking about some of the features on page 6, and he said this at the very bottom:

> "In excavation block (B block), occupation Zone A was characterized by large, rock-lined storage pits. Some of these pits contained fish and mammalian remains."

Now, is it possible when you excavate a feature such as the feature that you've identified as a roasting pit, that you -- a large rock-lined pit could be a storage pit and not a roasting pit?

A No. In this context it would be the --

Q You didn't find any carbon staining in this roasting pit, did you?

A Yes.

Q Oh, you did?

A Yes.

Q And the -- you mean like -- and I'm sorry, maybe I just don't understand how to read the diagrams. But when you are referring to hearths, is a fire on a hearth different than a fire in a roasting pit? Do they leave different material behind?

A Yes. They -- the feature itself is distinct.

Q All right. But underlying the feature, the bottom, if you are going to roast something, it is a fire? Is that right, is that how you roast it?

A Fire is involved, yes.

Q In roasting?

A Yes.

Q Yes. And so when you have these hearths and you found these -- the carbon stained lens and you've -- in your diagram here you've identified hearths and you'll recall that when you identified the feature later on in your report, you've -- and this is in the house depression, the house unit that you located -- you've got black carbon stained silt and there is no carbon stained silt in a food roasting pit?

A There are pieces of charcoal and some carbon staining. There is also fire cracked rock in a roasting or

steaming pit.
Q But you found fire cracked rock all over this site, didn't you, particularly in zone A?
A Not all over, no.
Q Particularly in zone A?
A In zone A there was a lot, yes, large amounts of fire cracked rock.
Q All right. And you found charcoal here and there throughout the site?
A Yes.
Q Yes. So what was it that was different in the other parts of this site about what you found here, that caused you to call it a food roasting pit rather than possibly a storage pit?
A The characteristics of the feature itself.
Q Such as? Please explain?
A Its size, its depth, the large boulders, the fragments of bone, the bits of charcoal, fire cracked rock.
Q Might you find bits of bone in a storage pit?
A Yes.
Q Might you find large rocks lining the bottom of a storage pit?
A Possibly.
Q Might you find a large sized rock-lined storage pit?
A Possibly.
Q Yes. And I think you've already said, you found fire cracked rock here and there throughout the site, primarily in the top zone, correct?
A Yes.
Q And so -- and you found charcoal as well here and there?
A Yes.
Q But you are saying that because that fire cracked rock was actually down in there and the charcoal was too, that that means that it was a food roasting pit and not a storage pit?
A This pit is interpreted as a food roasting/steaming pit.
Q Roasting/steaming pit. Roasting pit?
THE COURT: Well, there would be ashes, were there not?
THE WITNESS: Yes, there were also flecks of ash in it. And there were ash lenses associated with it.
THE COURT: But isn't it unusual not to find carbon stained material in the immediate vicinity?
THE WITNESS: The matrix itself was -- indicated carbon staining.
THE COURT: Well, in feature 2 you took a carbon sample from the

A layer?
THE WITNESS: Above.
THE COURT: Yes, the layer above. But you didn't take any carbon sample from anywhere else, did you, in connection with feature 2?
THE WITNESS: I believe we did collect charcoal from that feature and the -- it -- chunks may have been too small to send for a reliable age determination.
THE COURT: Am I looking at the right feature on figure two, F2, the middle sketch -- or the large sketch in the middle of the page?
THE WITNESS: Yes. With the large boulders?
THE COURT: Yes?
THE WITNESS: Yes. F2, feature two, yes.
MR. WILLMS:
Q And layer A you described which immediately overlays the feature all the way across, layer A is described as "Silty loam with abundant fire cracked rock"?
A Yes.
Q So the fire cracked rock is really neither here nor there as to what the feature is?
A It is one component of the feature matrix.
Q But it's one component of every feature all the way along that abuts it?
A So the feature is identified on the basis of several characteristics not just on one item alone, but on several types of material found within that feature and the feature itself, the nature of its outline and shape.
THE COURT: But you've got a hearth identified two metres away above feature 4. What did you say feature 4 was?
THE WITNESS: Feature 4, well, it was interpreted as a small cooking pit.
THE COURT: And you've got a large carbon stained area in the layer above?
THE WITNESS: The hearth, yes. At eight metres.
THE COURT: Yes?
THE WITNESS: Yes.
THE COURT: Yes, eight metres.
THE WITNESS: Yes.
THE COURT: You wouldn't expect to find similarly carbon stained material in connection with a large hearth -- I'm sorry, a large roasting pit?
THE WITNESS: Well, that's it. In looking at the relationship between that hearth, the two pits on either side, and so the ash that are -- patches that are in relationship to those features, it -- those features

may all be related to each other in terms of use of the roasting pits.

THE COURT: All right, thank you.

MR. WILLMS:

Q The other -- and this is just over to the next page. You've identified feature five -- and not the next page from the figure, my lord, but --

THE COURT: Where are you reading from?

MR. WILLMS: It's -- sorry, it's --

THE COURT: Two dash five?

MR. WILLMS: No. Carries on at 2-6.

THE COURT: Yes.

MR. WILLMS:

Q "A similar pit, Feature #5, but without the rock lining, was exposed." And then you say, "Having a similar matrix fill, it is likewise interpreted as a food steaming and/or roasting pit." And I'm just showing you the feature record for feature 5. This was a feature record that was made by you?

A Yes.

Q And you'll see that your description of the feature is pit, correct?

A Yes.

Q Without any distinction of what kind of pit, it's just a pit?

A Yes.

Q Correct? And you just say, "Black to very dark brownish grey matrix with FCR fill - loose," and there is no carbon stain soil specifically noted here. Couldn't this just be a storage pit as well?

A No, it's not interpreted as a storage pit.

Q I know you didn't interpret it as a storage pit, but could it not be a storage pit?

A No.

Q 849-22, my lord.

THE COURT: No, we have two, I think.

THE REGISTRAR: 849-23, my lord.

(EXHIBIT 849-23 - Feature Record Form No. F5)

MR. WILLMS:

Q You know that at site GgSt2 which is where these excavations are taking place, Turnbull, in 1966, had identified a number of storage pits, cache pits?

A Yes.

Q Was it not a consideration or a possibility that these two features that you've identified as roasting pits

or cooking pits were just cache pits? Isn't that a possibility?
A Not from my interpretation of the feature and the matrix within the feature.
Q And I just want to be clear. I suggest that it might be a possibility and you say no, not even a possibility?
A That's one possibility when one is considering the nature of features at a site.
Q So it is a possibility?
A It's a possibility one would consider, yes.
Q But is it possible that these two features, instead of being roasting pits or steaming pits, were in fact cache pits? Is that a possibility?
A No. I'm -- I've interpreted them as roasting pits, steaming pits based on my analysis of the materials that were.

MR. WILLMS: Perhaps we could adjourn for lunch, my lord.
THE COURT: All right. I thought that we might adjourn at four o'clock, is that convenient?
MR. WILLMS: Either four o'clock or -- and my lord, I am bearing in mind what your lordship said as far as I can usefully take us.
THE COURT: All right. Well, we will adjourn earlier than that if that's the sensible thing to do, I just thought perhaps we should settle we won't sit beyond four o'clock.
MR. RUSH: That's agreeable to me, my lord.
THE REGISTRAR: Back at what time, my lord?
THE COURT: Well, do you want to come back at 1:30?
MR. RUSH: I think two o'clock, my lord.
MR. WILLMS: Two, my lord.
THE COURT: Two o'clock it is.
THE REGISTRAR: Order in court. This court stands adjourned for lunch.

(PROCEEDINGS ADJOURNED AT 12:30 p.m.)

I hereby certify the foregoing to be a true and accurate transcript of the proceedings herein transcribed to the best of my skill and ability.

_____
Toni Kerekes, O.R., R.P.R.

United Reporting Service Ltd.

(PROCEEDINGS RESUMED PURSUANT TO LUNCH RECESS)

THE REGISTRAR: Order in court.
THE COURT: Willms.
MR. WILLMS:
Q The last feature that was described as a steaming or roasting pit, and we were at page 2-6 of your report, feature 4, and you have -- and I'm showing you the feature record form. You recognize that as the form for feature 4 filled out by Miss Ludovicz?
A Yes.
MR. WILLMS: 849-24, my lord.
THE COURT: Yes.

(EXHIBIT 849-24: Feature record form)

MR. WILLMS:
Q And you'll see that it's identified by her as a possible pit?
A Yes.
Q Now, the one thing that's consistent about each one of these, feature 2, feature 5, and feature 4, in the feature record forms is that they're all identified with the generic term "pit"?
A Yes.
Q And they're all -- and if you look down under number 15 at the bottom, there are no faunal remains noted as being associated with them?
A Not on the form. No.
Q No. Okay. Now, just carrying on down page 2-6, you describe ash deposits and you say "about four ash deposits in layers B and C".
A What page?
MR. WILLMS: Sorry, 2-6 of your report.
THE COURT: And whereabouts, please?
MR. WILLMS: It's the middle paragraph, my lord. It starts off with "Seven ash deposits".
THE COURT: Thank you.
MR. WILLMS:
Q Three associated with layer B, then four ash deposits in layers B and C in the north trench wall, and then you say this:

"These appear to be deposits of ash which often build-up during slow combustion in smoky fires associated with food drying activities."

Was there an ethnographic reference that you had in mind when you made that statement?

A In the case of this particular sentence, I had -- I was thinking about my experiences in the Stikine where -- where I have observed processing of salmon within the contemporary context.

Q So this is a reference to your experience with the Tahltan in investigating the ash deposits left over from fish-smoking fires?

A Yes. We have -- here we have ash deposits in -- on both sides of the trench and --

Q Just getting back to my question, you make the statement based on your observations of what ash deposits look like after being used by the Tahltan in smoking fish?

A And -- yes. I was also thinking of -- yes, for that particular sentence.

Q All right. Now, if you turn back to page 2-5 on the ash deposits, you will see that all of the ash deposits are within 20 centimetres of the surface; correct?

A Yes.

Q And that's -- and there's a range there between 12 down to 20 which is what, between 5 and 9 inches below the surface about?

A I've used metric in this sense. Yes.

Q You know from Turnbull's investigation and from the investigation by Murdoch at Moricetown Canyon that historically there have been smokehouses located at Moricetown Canyon?

A Yes.

Q And you did not obtain a carbon date of any of the material in these particular ash deposits?

A No.

Q So it's possible that these ash deposits could have been created since 1800?

A No.

Q And you can say that with confidence even though you haven't carbon dated the material in the ash deposit?

A Yes.

Q And you can say that with confidence even though you know that a glass insulator fragment was recovered 10 to 20 centimetres below the surface at GgSt-2?

A Yes.

Q Isn't ash one of those things that looks like ash whether it's created today or 200 years ago or 2,000

years ago?
A Ash is ash.
Q Yes. And that's why you felt confident using your experience with the Tahltan in watching ash deposits being created to identify this as an ash deposit associated with smoking food?
A There are ash deposits here associated with this pit feature which indicate that food was processed in this pit.
Q Well, let's take the four that weren't associated with the pit feature. You identified those as an ash deposit based on your experience with the Tahltan and noting that there was a certain kind of ash deposit left over from smoking fish?
A Ash deposits that relate to hearths, yes.
Q But when you look at an ash deposit, you can't tell by looking at it how old it is?
A The context in which the ash is found is significant for interpretation.
Q For example, if there was an insulator fragment found in the ash deposit, that might lead you to believe that the ash deposit was created historically? That would be one possibility wouldn't it?
A A possibility.
Q Yes. And so when you know that at, let's say, 15 centimetres below the surface you found an insulator fragment, even if you don't find it in the ash deposit but you find an ash deposit at the same depth, it's a possibility that the ash deposit's historic?
A I believe we noted yesterday that there was both D.B.U. and D.B.S. referred to in the recording of materials during excavation.
Q Well, I thought we'd settled -- it's at Exhibit 849-16. Correct me if I'm wrong, but I thought that you'd finally agreed that 85-104 was found at 10 to 20 centimetres below the surface D.B.S.; isn't that what you agreed yesterday?
A It was -- it was in -- it was recorded in the catalogue, yes, as being in -- here, level bag material.
Q Oh, well, now are you sure it's level bag? Look at the provenience. That's an exact provenience, isn't it, 1.06 east and .17 north? This insulator fragment was picked out of the soil, wasn't it?
A It was collected into a level bag with a depth of 10 to 20 is a level bag reference for a level.
MR. WILLMS: No, no, I'm looking under the column "Horizontal

EU", and correct me if I'm wrong, but let's just take a comparison. We'll look down below it and you'll see that there are a series at .8 to 1.5 east, .0 to .5, and there are a series of three items. That's from a level bag, right?

THE COURT: You're talking about the sentence that says 85-101?

MR. WILLMS: Or even 85-105, 85-106, 85-107.

THE COURT: Yes.

MR. WILLMS:

Q They're all -- they all have the same horizontal EU? Now, that's the description of a level bag isn't it basically, Miss Albright?

A No. That's the -- that's the -- that's with reference to the location of the unit that was excavated, in relationship to the datum point for the site.

Q All right. And there is a range given east to west and a range given north to south?

A Yes.

Q That indicates a level that's been excavated, doesn't it, that range?

A That refers to the grid; the unit that was excavated.

Q So that --

A The location of the unit.

Q Yes. All we know about 85-105 is that it was excavated somewhere between .8 and 1.5 east, .0 and .5 north, at 20 to 30 centimetres D.B.S.?

A Yes.

Q All right. That indicates that that was taken from a level bag?

A Yes.

Q All right. However, if you look immediately above that, you have a specific provenience east, 1.06. You have a specific provenience north and south, .17 N, north. Does that not indicate that it was picked out by hand separately, but not picked out in a level bag?

A In that case it would seem to me that there would have been a -- if there was a 3D provenience, that there would have been a specific point below surface or below datum, and 10 centimetres below surface at that point could still have been within the sod layer.

Q Well, you've said that yesterday?

A Yes.

Q And 12 centimetres below the surface could be in the sod layer too couldn't it?

A The sod layer varied in its thickness from one unit to the other, as well as many of the layers. Some layers are thicker in one unit than another and the sod on

the surface of the site is thicker in some areas than others.

Q The depth of your excavation at GgSt-2 was less than the depth of the excavation conducted by Ames at Hagwilget?

A Yes.

Q And it was less than the depth of the excavation conducted by Coupland at Kitselas Canyon?

A I don't offhand recall the depth of his excavation units there.

Q Do you recall the Allaire depth, that it was greater? You haven't gone down here anywhere more than a metre?

A A metre, a metre 20.

Q And I think if you look at your excavation feature list, and we've been through this, the deepest feature was at 80 centimetres, pit 2; correct?

A Yes.

Q Now, one thing that you have to be concerned about as an archaeologist when you're excavating a site is determining the stratigraphic break between the historic and the prehistoric zone? That's one area of concern, isn't it?

A There may not be any break at all.

Q But one thing that concerns you as an archaeologist when you're doing an excavation is you want to know when you've got below a layer which might be called disturbed; correct?

A One clearly wants to identify whether there's disturbance at the site. Yes.

Q Yes. And where you find or you've located historic artifacts -- first of all, you were using five centimetre levels as you were excavating here, is that --

A For the most part.

Q For the most part. Is it usual or is it common when you're coming down from the very top layer to perhaps go in one or two centimetre levels so that you can have -- be assured of where the potential disturbed zone stops and where the zone where you can feel confident to say things were deposited in situ start?

A No.

Q No. Unheard of as far as you're aware? Just not common?

A I'm not sure what point you're trying to get at here; whether you're referring to a method of recording information or observations about the deposits that are --

Q But when you get --
A -- observations are recorded in the level notes.
Q When you retrieve artifacts, tell me if I'm wrong, but there's two general ways to retrieve an artifact. You can either pick it out of where it is and then mark down the provenience of the artifact, or you can take a level, whatever the dimensions of the level may be, put everything from that level in a bag, take the bag either to a table at the site or somewhere else, and shake it out and see what's in the bag? Those are the two usual methods of recovering artifacts from an excavation?
A One gives a three dimensional provenience.
Q Yes. And it's either a specific provenience, if you've picked it out correct, I mean, "That's where I found it."?
A Yes.
Q Or if you pull it out of level bag material you've got a volume of material that you've taken out and somewhere from that volume of material was this artifact?
A Flake material from a -- a volume of soil matrix.
Q Yes.
A Is often put into one level bag within -- for that unit.
Q Okay. And so when you pull the artifacts out of that level bag, you don't know where exactly they were specifically in situ, other than somewhere in that volumetric area; correct?
A There are often notes or comments, observations, made in the level notes that may note differences.
Q Specific proveniences for something that is then -- it's picked out and put in the level bag?
A Yes.
Q Or is it picked out and -- I saw some of your samples with handwriting on them and artifact numbers and they're given specific proveniences?
A The artifacts are given numbers, are numbered.
Q Yes, and then the catalogue shows their provenience?
A Yes. Yes.
Q Well, I'm -- when you have recovered an insulator fragment from a layer that is the same depth and the same layer description as features that you've described, is it not possible that the feature and whatever you recovered from the same depth and the same layer may be co-equal in date?
A You're referring to an insulator that was found at the

surface of the site and features that were found in layers below?

Q I'm just referring to the way they were described and the depth they were described. That's all that I'm referring to.

A Okay.

Q And I'm saying that when you recover an insulator fragment from a layer that has been described as a particular layer, at a particular depth, and you find other features at the same depth or the same layer, that it's possible that the dates for those -- for the feature and the insulator fragment are roughly the same?

A No.

Q All right. Could you just turn back to page 2-4 of your report? You described a hearth feature, three hearth features, in the second paragraph, and in the middle of the paragraph you say:

> "Their size (10 to 25 centimetres in depth, and 70 to 80 centimetres in diameter) indicates that they were used regularly and intensely over a considerable period of time."

Now, by "a considerable period of time", do you mean millennia?

A No, I would not say millennia in this case.

Q Do you mean centuries, if not millennia?

A No, not particularly. Not specifically.

MR. WILLMS: When you used the words "a considerable period of time", what do you mean?

THE COURT: Where are you reading from Mr. Willms, please?

MR. WILLMS: I'm on page 2-4, middle paragraph, the reference to the hearth features.

THE COURT: Yes. Thank you.

MR. WILLMS:

Q What do you mean by "a considerable period of time"?

A Well, that the hearth size indicates use -- it could represent use within a structure that may have been standing a number of years, perhaps up to in the vicinity of a hundred years.

Q And that's what you meant there when you talked about "a considerable period of time", up to a hundred years?

A I cannot say with certainty how long any one feature was used, but their size indicates repetitive use over

a period of time at that -- at that location.
Q Well, maybe you could give us a range of what you meant by considerable period of time; one year to a hundred years; five years to a hundred years?
A Yes, I'll say one to a hundred years.
Q Well, I don't want you to just agree with me. I want to know what you meant. If that's what you meant, then please, yes, that's fine, but if that's not what you meant, what did you mean? Did you mean anywhere between one and a hundred years?
A Yes, it could represent use over a longer period of time than that too.
Q Longer than a hundred years?
A It could.
Q Well, how long, one to what?
A The -- based on a date, a date return on a sample from the -- from a hearth feature is given with a range of time in which that date may fall.
Q Are you saying that the carbon dating uncertainty has something to do with how long that hearth was used? I'm not asking you the date that it was used, I'm asking you what you meant by it was used for "a considerable period of time", and I want to know what you mean by "a considerable period of time" in years. Now, I think you've already said it could be as short as one year. Do I have the lower level right? It could be one year that it was used?
A Not likely.
Q And so now what about the not likely, but possible on the high side?
A Possible, yes.
Q Yes. What, 200 years?
A Possible.
Q Three hundred? Can you tell by looking at it how long it's been used? You can't, can you?
A No, I can't say for sure how long the hearth was used for. I have observed hearths used in another context which would indicate that it takes considerable time for a carbon and charcoal in a hearth to build-up. I have seen -- I have observed hearths in contexts where they have been used over a period of more than 50 years that did not have the depth or the size of this -- of the -- these hearth features, which is my basis for saying that they were used over a period of time, not just once or on an occasional basis, but were used quite regularly and intensely, as what would be indicated in habitation of -- over a period of

time.
Q And that's why you -- please be as generous in your estimates as you want on either side of what you meant there, but do you know from looking at those hearths how long you think those hearths were used?
A I cannot say with certainty exactly how long the hearths were used.
MR. WILLMS: And can you say with certainty over what period of time they might have been used?
MR. RUSH: Isn't that the same question, my lord?
THE COURT: Well, I was wondering about that.
MR. WILLMS: Well, I thought the answer was a little narrower, that she can't say with certainty how long they've been used, and I'm --
THE COURT: Then what period of time was it used?
MR. WILLMS: I'm trying to get a range, my lord. I'm not asking her to say that this was used for exactly 50 years.
THE COURT: Put the question again. I'm not too sure the way you phrased it that the two questions don't mean the same thing.
MR. WILLMS:
Q All right. And you can't tell with any certainty what the range of time of use is either, can you?
A They -- the hearths were used within the range estimated for the layer in which -- in the context, the layer context, in which they were found.
Q And how long was that? Pick one of the hearths. They're all in layer B; correct? That's --
A Yes.
Q -- on page 2-5 you say they're all in layer B, and your dates, your carbon dates for layer B, run from I think the oldest date on the north trench wall is 1960, and the -- and in fact the shortest date is 1700. So are you saying that those hearths could have been in use for 250 years?
A They could have been used within that time frame.
Q I wish you'd answer the question that I asked. I don't want to know when they were used, I want to know for how long.
A I thought that was the point of your -- of this most recent question, was what frame of time could they have been used. You told his honour it was a rephrasing of the question.
Q No, no. Well, I mean a range of time from the moment that the very first fire was ever built to the time when there were no more fires built.
A But that's the same as saying how long.

MR. RUSH: Exactly.
MR. WILLMS: Yes.
MR. RUSH: And that question has been asked and answered twice.
MR. WILLMS: Well, all right. And so, coming back to your statement that these had been used for a considerable period of time, you acknowledge that you just can't say that, can you? You can't tell?
MR. RUSH: The answer was, if my friend is going to restate the answer, it is, I think, I can't say with certainty how long the hearths were used. That is my note.
THE COURT: I think that's her evidence.
MR. WILLMS: That is her evidence, my lord, and that means a considerable period of time, I don't know. I guess it means centuries to millennia.
THE COURT: Well, she also says it's within the time frame of the layer in which it's found, but that requires inferences from a few carbon samples. I'm not sure -- I haven't calculated the range for all these samples in layer B, but I don't think there's any doubt the evidence of the witness is you can't tell from looking at it for how long a period it was used, nor can you say with certainty the start date and finish date.
MR. WILLMS: All right.
THE COURT: Except that it's within the layer.
THE WITNESS: Within the layer, yes.
THE COURT: Incidentally, where is hearth number 3 -- or, I'm sorry, feature 3?
THE WITNESS: Feature 3.
THE COURT: I can't find --
THE WITNESS: It would be on figure 3. It's on -- I don't believe it's in the profile.
THE COURT: I'm looking for it in figure 2.
THE WITNESS: Yes, I don't believe it's shown in the profile.
THE COURT: Why wouldn't it be? What am I missing?
THE WITNESS: Oh, maybe it is.
THE COURT: Is it the black --
THE WITNESS: Yes.
THE COURT: -- stained area at 8 metres?
THE WITNESS: Yes, it is. It's -- that's the one.
THE COURT: That's feature 3?
THE WITNESS: Yes.
THE COURT: All right.
MR. WILLMS:
Q I think it starts at six, my lord, on the left, and you'll see the RC?
A Yes, that's the hearth at above -- at about 4 metres.
MR. WILLMS: And it compares from this, although --

THE COURT: Well, that's feature 2, isn't it? It says "F-2"?
THE WITNESS: No, feature 2 is the large roasting pit we referred to --
THE COURT: Yes.
THE WITNESS: -- earlier, and then feature 3 is the hearth, the black area that has the little RC in it.
THE COURT: Yes, at 8 metres?
THE WITNESS: Yes, that's it.
THE COURT: All right. Thank you.
MR. WILLMS: My lord, I think you were on -- at 8 metres you were on the south wall, and it's on the north wall.
THE COURT: Oh, it's on the north wall?
THE WITNESS: No, it's on the south wall.
MR. WILLMS:

Q Feature 3?
A Yes, it is.
Q Well, I'm looking at figure 3, and if you look on figure 3 --
A It's on the south wall on the left-hand side of the page.

MR. WILLMS: Oh, yes. All right. Okay.
THE COURT: Where is figure 3?
THE WITNESS: Figure 3 follows --
THE COURT: Oh, yes.
THE WITNESS: -- page 2-5.
MR. WILLMS: Yes. All right.
THE COURT: It's on the south wall?
THE WITNESS: Yes, it is.
THE COURT: All right.
MR. WILLMS:

Q And just to make sure that your drawing here on figure 2 accurately represents, it's completely overlaid by layer A?
A Yes.
Q Now, in your -- this is at the beginning of your report, setting out your data basis at page 1-2, you describe in the second paragraph native peoples in the north-west region having a very rich oral history tradition, and then you go through the Gitksan and the Wet'suwet'en, a brief discussion, and then you say at the beginning of the next paragraph:

> "Very rarely have archaeologists considered or made use of the rich and detailed information contained in the oral histories for interpreting the history of a particular region. This type of approach to

understanding the history of a people or region has been referred to in the recent literature as ethno-archaeology."

Now, that is the approach that you took in drafting this report; is that correct? You took an ethnoarchaeological approach?

A Ethnoarchaeology referring to a methodology, yes.

Q Yes. And you reviewed, and I think you've said this earlier, in as much detail as you could to feel comfortable with it, the oral histories not only of the Gitksan and the Wet'suwet'en, but oral histories of the surrounding areas?

A For the purposes of the research that I carried out, the field work that I carried out, I referred to ethnographic literature which describes or outlines oral histories for the Gitksan and Wet'suwet'en area. I am familiar with some of the other literature, but it's the literature for the area that I'm concerned with.

Q One of the ethnographic pieces that you referred to was entitled "Wolf Clan Invaders from the Northern Plateau Among the Tsimshian", by Marius Barbeau. That was something that you referred to in preparing your report?

A Yes.

MR. WILLMS: And in fact a different, not the same pages of "Wolf Clan Invaders", but part of the same -- oh, never mind that part, but can that be, my lord, 849-25?

THE COURT: Yes.

(EXHIBIT 849-25: Document entitled "Wolf Clan Invaders from the Northern Plateau among the Tsimshian")

THE COURT: Miss Albright, may I just ask this: That in the evidence that you've been giving, particularly the cross-examination, I haven't been conscious of any ethnographic content in your evidence that is based upon oral history. You've been defending your opinions based upon your interpretation of the physical findings. Where does the -- where does the oral history come into it, just in the written texts that I haven't yet studied carefully?

THE WITNESS: The ethnographic literature was consulted mainly with respect to the survey that was carried out in an attempt to locate evidence of the -- of several ancestral villages. And the references to those

villages, which were found in the ethnographic literature, were used to direct our investigation to particular places.

THE COURT: But they're all places where you'd expect to find people anyway, are they not, except with the one possible exception of the Mosquito Flats?

THE WITNESS: Yes, the literature indicates that there was a village site at a particular --

THE COURT: Yes.

THE WITNESS: -- place, and we used those references to go there to see if we could find evidence of earlier occupation at that site. Yes.

THE COURT: But you wouldn't need to go to the ethnographic literature to get a hint that you might look usefully at a place like Hagwilget or Moricetown or Kitselas or Kisgegas or any of those places, would you? They're obvious choices for archaeologists, are they not?

THE WITNESS: Yes. MacDonald earlier said that they were where -- they were places where we were most likely to find sites with stratified deposits, yes, where we might see evidence of cultural development.

THE COURT: All right. I just wanted to make sure I wasn't overlooking something.

MR. WILLMS:

Q Thank you, my lord.

Now, the extract that I have referred you to from Barbeau, you -- and what you did, and this is mostly in chapter 3 of your report, was you analysed the ethnographic literature in terms of migrations, et cetera, to determine likely places to look for the various ancestral villages?

A No, not as you have outlined. I used the literature or reviewed the literature in terms of references to villages and where they were located, and these were used to define the study area where we would go to investigate.

Q And attempt to give some time depth archaeologically to the oral history?

A No. Our -- we were attempting to find any evidence which might indicate the age or time period at which that specific village was, the site, was used or occupied.

Q To give time depth to the oral history describing that village site? I thought that was one of the purposes for all of your field work on ancestral village localities?

A Our archaeological investigations were concerned with

locating archaeological sites or archaeological remains, evidence of use and occupation, at particular locations noted in the literature.

Q Can you turn to page 3-1 where you discuss what you're doing in this investigation?

A 3-1.

Q You start off the section by saying, first of all:

> "This section attempts to correlate the history of origins and migrations of the Gitksan and Wet'suwet'en people as recorded in their adaawk and kungax with the archaeological evidence for early occupation of several localities in Gitksan and Wet'suwet'en territories."

And then you say:

> "Archaeological investigation of ancestral village localities tends to confirm the reliability of Gitksan and Wet'suwet'en oral histories."

That's the conclusion you came to; correct?

A Yes.

Q So you were doing archaeological investigations in order to give some time depth to the oral histories?

A Yes, correlation between archaeological evidence and mention of occupation of certain areas within the oral histories.

Q And you know from your review and your research that taking, for example, either Temlaham -- well, let's just take Temlaham. You know from your oral history review that it's alleged that there is Wolf Clan and Eagle Clan, Wolf Phratry and Eagle Phratry at Temlaham?

A No.

Q You didn't notice that in your review of the ethnographic literature?

A No.

THE COURT: Would it be convenient to take a short adjournment while you're looking for references?

MR. WILLMS: Yes, my lord.

THE REGISTRAR: Order in court. Court will recess.

(PROCEEDINGS ADJOURNED FOR THE AFTERNOON RECESS)

I hereby certify the foregoing to be a true and accurate transcript of the proceedings herein to the best of my skill and ability.

_____

Tanita S. French
Official Reporter

(PROCEEDINGS RECONVENED AT 3:15 p.m.)

THE REGISTRAR: Order in court.
THE COURT: Mr. Willms.
MR. WILLMS:

Q My lord, when I left off, I was referring not only to the wrong clan but to the wrong ancestral village and I apologize to the witness.

You are aware from your review of the ethnographic literature that one of the clans present at Gitanka'at from the ethnographic literature is the eagle clan?

A The eagle clan -- houses of the eagle clan in the literature are said to have lived at Gitanka'at.

Q All right. And you knew from your review of Barbeau and "Wolf-Clan Invaders", that the oral histories of the northern plateau among the Tsimshians were that the eagle clan were an off-shoot of the wolf clan, from the oral histories?

THE COURT: Did you know that or was that your understanding?
THE WITNESS: No, no that's not my understanding.
MR. WILLMS: Can you turn to Exhibit 849-6.
THE COURT: 849?
MR. WILLMS:

Q 849, it's the grey binder, my lord.

And this is the document that was forwarded to Mr. Overstall on August 1st, 1986, and if you turn to page 2 where you discuss the wolf phratry, you talk about some members of the group under the wolf phratry?

A Yes.

Q And you have:

"Some members of this group settled among the Stikinwkan at the mouth of the Stikine River and others among the Tongas or Tantakwan --"

T-A-N-T-A-K-W-A-N,

"-- further to the south."

A Tantakwan.

Q Tantakwan, thank you.

"Other members of the group, known as the fugitives, continued south, some to become part of the Gitlaen --"

G-I-T-L-A-E-N,

"-- people of the Coast Tsimshiam while others established the Nisga branch of the clan on the lower Nass River."

Now, you carry on over the next page to describe the eagle clan, and say:

"Houses of the eagle phratry are thought to be the most recent immigrants to the Gitksan territory. Related to the eagle houses among the Nisga and the Coast Tsimshiam peoples, their oral histories indicate that they 'originated among the Tlingit, at Na'a --"

N-A-'-A,

"-- now known as Loring Alaska: and because of a feud with the wolf clan of Nees-lanranows --"

N-E-E-S, dash, L-A-N-R-A-N-O-W-S,

"-- migrated southwards."

And you cite Barbeau.

Now, the Barbeau reference and the "Wolf-Clan Invaders" reference deal with the fugitives that you've mentioned under the wolf phratry and also the eagles as well, correct?

A No.
Q Well --
A Not that --
Q What I've handed to you is the "Wolf-Clan Invaders". It is cited in your reference list?
A Yes.
Q And you'll see there is a table of contents and there is the Tahltan origin of the leading wolf clans, and a discussion at the beginning to the -- and it's the Stikine River that you've mentioned at Exhibit 849-6, and the lava flow, in particular, at page 11 and 12. Now --
A Where are you? What are you referring to?
Q I'm at 11 and 12. Did you know --

THE COURT: Of Barbeau?

MR. WILLMS:

Q Of Barbeau.

A Yes, 11 and 12.
MR. RUSH: There is a two-page -- double page system -- pagination system, rather.
MR. WILLMS: Yes. There is an 11 typed, my lord, but a handwritten number in the upper right-hand corner.
THE COURT: That's the 11, the handwritten?
MR. WILLMS: The handwritten is 18 where I'm referring to.
THE COURT: Oh, 18.
MR. WILLMS: And 19.
THE COURT: Yes.
MR. WILLMS:
Q And if you -- first of all, are you aware -- you refer in Exhibit 849-6, when you were referring to the wolf clan, you refer to the Ayansh -- the lava flow. Were you also aware of the part about the travel under the glacier on the Stikine?
A Yes.
Q From the oral histories?
A Yes.
Q And you know that Barbeau in this discussion is discussing the wolf clan -- "The Wolf-Clan Invaders from the Northern Plateau," the wolf clan is coming down the Stikine?
A I recall he does mention wolf clans coming down the Stikine, yes.
Q Okay. And just starting at the bottom of page -- it's 18 handwritten in the upper right-hand corner, he refers to the glacier tradition and then says:

> "The reference in this glacier tradition to sea-otter hunting, after the Chief's-Hill fugitives had reached the salt water and joined a coast tribe, is another detail suggesting a historical date. Intensive sea-otter hunting developed only after the Russians and other sea traders began to press the natives, from the Aleutian Islands down to the Tlingit country, into their service; that is, less than two hundred years ago."

And then over to the top of the next page, discussing the place where he says:

> "The passage under the glacier may not be older than two hundred years. For the Wolf fugitives no sooner had crossed the Tlingit country, and entered the Nass River to the south,

than they experienced a fantastic cataclysm, which deeply impressed itself upon tribal memories. They were smothered by poisoned fumes and thrown back by a volcano in full eruption."

That's the same volcanic eruption you are discussing under the wolf phratry of page 2 of 849-6, isn't it?

A It may be, yes.

Q All right. And you'll see that you did cite it at page 2 of Exhibit 849-6, you cited Barbeau 1929 and Barbeau 1962, and I'm just showing you your reference list for Barbeau 1962, it's "Wolf-Clan Invaders from the Northern Plateau"?

A Yes.

Q And that's what you are looking at right now?

A Yes.

Q Now, so that when you reviewed this material, you noted that the oral history, that Duff had used the Stikine glacier and also the lava flow to estimate a date for the wolf clan invaders coming down the Stikine at 200, 250, but you mentioned 250 years in Exhibit 849-6, correct? That's what you say on the bottom of page 2?

A No.

Q Well, you say, "After the Ayansh lava flow, dated to about 250 years ago, two households moved to the Skeena watershed --"

A Yes.

Q "-- to be incorporated into the Gitksan"?

A Yes.

Q All right. And that's the Ayansh -- isn't that the Ayansh lava flow that's referred to by Barbeau in "Wolf-Clan Invaders"?

A I believe so, yes.

THE COURT: Where did you find the 250 years?

MR. WILLMS: The 250 years, my lord, is at Exhibit 849-6, that's tab 6.

THE COURT: Yes.

MR. WILLMS: On page 2 under, "Wolf Phratry".

THE COURT: All right.

MR. WILLMS:

Q Part way down where it mentions the Ayansh lava flow. Then -- and now this is continuing on with --

A But my "no" was to your question and the way you had phrased your question.

THE COURT: I'm confused too, Mr. Willms, because on page 19

Barbeau talks about the last eruption being a hundred and fifty years ago.

MR. WILLMS: Well, when Barbeau -- this is -- Barbeau wrote this -- sorry, which?

THE COURT: Well, at the end of the second full paragraph on page 19 he talks about the last eruption took place a hundred and fifty years ago.

MR. WILLMS: Yeah. Probably a few generations only after the passage under the glacier. The time span, my lord, Barbeau puts the time span at about 200 years, that's his estimate. It's the witness -- the witness has written about 250 years in her report.

THE COURT: Where does Barbeau say 200 years?

MR. WILLMS: Barbeau says at the very top of the passage, the passage under "The glacier --

THE COURT: Oh yes.

MR. WILLMS: -- may not be much older than two hundred years."

THE COURT: Yes, all right.

MR. WILLMS:

Q And so you'll also see, if you then carry on with Barbeau in the reference that you cited and relied on in your material over to page 17, which is numbered 24 in the corner, he says this at the bottom:

> "Although the Stikine fugitives, who passed under the glacier and were later thrown back by the volcano, are usually called the Wolf people, it does not follow that the name of Wolf now applied to them is really ancient, or that the wolf has been their totem for very long.

Now, is that consistent with the ethnography that you read about the oral history of the wolf people? Is that consistent with the oral history that you reviewed before you did your -- in your work, in the ancestral villages?

A Well, this is one statement that Barbeau makes in this. This is a general introduction to a much larger document which included much more detailed adaawk. And I've -- in my specific investigations I refer to much more specific references.

Q Now another reference that you refer to from Barbeau in your reference list is called "Raven-Clan Outlaws on the North Pacific Coast." And this was -- and this was on microfiche, I'm sorry the copy is like that. But this is the work that is referred to in your reference list at page R2 under 1963 "Raven-Clan

Outlaws in the North Pacific Coast"?
A Yes.
MR. WILLMS: The -- my lord, could that be the next exhibit, 849-26.
THE COURT: Yes.

(EXHIBIT 849-26 - Extract from "Raven-Clan Outlaws on the North Pacific Coast" by M. Barbeau)

MR. WILLMS:
Q Now, it's at the top of -- and this -- when you reviewed this, you -- once again, it's Barbeau collecting oral histories from the northwest coast, that's what he has done in this work. This is just a small extract of it, but the whole work is a collection of oral histories that Barbeau, with the assistance at times of Mr. Beynon, collected?
A Yes.
Q Now, you'll see here at page 5, in discussing the wolf phratry at the top, Barbeau says:

> "The wolves split up into halves or moieties - one of them, the Wolves proper, and the other, the Eagles, in imitation of the Russian imperial crest. The Eagle moiety or phratry, at the height of the fur trade with the Russians and the British, rose to the first rank among the Tsimshiam, the Haidas, and the southern Tlingits."

Now, is that consistant with the oral history review that you did before or as part of your ethnoarchaeological investigations that the wolves were split into two halves, one of them the wolves proper, and the other of them the eagles?
A This is a general discussion of a much -- as an introduction to a much larger document. Again, this is a general comment and I have used much more specific references in the context of the work that I carried out in terms of archaeological investigations.
Q All right.
A I don't understand the relevancy of your questioning me on these general discussions of the ethnographic literature since the general discussions I have are not relevant to the specific investigations that I carried out.
Q Well, perhaps you could turn to page 3-3 of your report. You have at page 3-3 in your discussion --

this is your discussion of Gitanka'at, said at the very top:

"Several sources suggest that Gitanka'at was an old village, coeval with Temlaxam. In Men of Medeek, Walter Wright describes how Gisga'ast families were forced to leave Temlaxam after a devastating famine. Moving down the Skeena, the House of Nistewas came upon an Eagle village situated on the banks of the Skeena River, across from the Seven Sisters Peaks."

Now, just pausing there, that was relevant to your discussion, wasn't it, that's why you put it in your report?

A Relevant to the -- relevant to our -- relevant to our investigation in the -- to Gitanka'at.

Q All right. That there was an eagle village situated on the banks of the Skeena River, and that's why I'm suggesting to you that one of the references which you've considered was "Raven-Clan Outlaws", which is in your reference list where Duff says -- who collected the ethnographies -- that the eagles --

A Excuse me, we have been referring to Barbeau documents and you are saying that these were collected by Duff.

Q Oh, I meant --

A You are the one who is presenting these documents to me.

Q I meant Barbeau, I'm sorry.

A That's twice you have done that. I feel that you are deliberately trying to mislead me in terms of the response that you want from me.

Q Well, I apologize for that. I am not trying to deliberately mislead you. I've made a few mistakes already and I'm sure I'll make more. I meant Barbeau.

A Well, if you want me to answer clearly and confidently, then --

THE COURT: Are you getting tired, Miss Albright?

THE WITNESS: Yes. I feel somewhat frustrated by this line of cross-examination.

THE COURT: Well, you'll have to bear with that. You put all this material in your report and you said you relied upon it.

THE WITNESS: Yes. The point I'm making is that I have relied on very specific references and Mr. Willms is leading to some very general discussions.

THE COURT: Well, there is some very general statements being

made all over the place and I don't think it's confined to one source or another.

THE WITNESS: Yes, yes.

THE COURT: But it's been a long week and it's been a long day and maybe if we are reaching the point where it's becoming burdensome, as I'm sure it is, perhaps we should adjourn until the next time when we can resume this. Are you at a convenient place to adjourn, Mr. Willms?

MR. WILLMS: I am, my lord, because I was going to turn to another point.

THE COURT: All right. Well then, as I understand our present situation, we will be commencing with Miss Harris on Monday morning and going upwards of two and a half, three days with her and longer if possible, and that we will then resume with this witness.

MR. WILLMS: That's agreeable to me, my lord.

MR. RUSH: Well, my lord, I think that leaves things in a very unsettled state.

THE COURT: I agree with you, Mr. Rush, but I don't know whose fault that is either.

MR. RUSH: I'm not trying to attribute fault.

THE COURT: I am not either, and I am staying away from fault as much as I can, but I am saying we can't continue to run this lawsuit at inconveniencing everyone except the court.

MR. RUSH: What I want to try to do, my lord, is put together various statements of how we are going to deal with next week.

THE COURT: Well, is there any dispute about it? I thought we were going to go as far as we could go with Miss Harris and continue with this witness.

MR. RUSH: But does that mean until Wednesday afternoon or Thursday morning? My difficulty is that neither Miss Harris nor Miss Albright is in the city, and I --

THE COURT: I don't think I can make arrangements that are that minute, Mr. Rush, I really don't think that that can be expected. This evidence has taken far too long and I don't want to put any blame in that direction either, but it has taken far too long and therefore it's fundamental that when we are going to inconvenience someone we usually inconvenience the witness, which is regrettable, but I don't see how else it can be, considering the number of us.

MR. RUSH: Assuming that for the moment, my lord, then my question is that when we had the pretrial at the beginning of this session, we indicated that we would

try to fit the witness into the time allotted for and we've already gone by the boards in that with respect to Miss Albright, and no doubt that is going to happen with respect to Miss Harris.

THE COURT: Yes.

MR. RUSH: But what I think it would be helpful in terms of certainty, is are we going -- is it an open-ended cross-examination that my friend is entitled to lead, and if it isn't finished next week, does that mean it follows into the next week? Are there any -- I guess I'm trying to determine, are we going to try and fit into a specific time slot that we can try to meet to complete Miss Albright's evidence?

THE COURT: Well, I'm assuming that we are going to finish this witness in a couple more days. I would like to think we are. I haven't -- no one has suggested we aren't. Are -- is there any problem with that, Mr. Willms?

MR. RUSH: Well, my lord, I -- the only -- I don't have any problem with that. It has taken far longer to go through the material than I thought it would, and I can't say whether it will take the same length of time to go through the balance of the material. I don't think it should take longer than that, but part of that is out of my hands.

THE COURT: Well, my sense of this is that we should go as far as we can with Miss Harris, and when we are finished there we'll know with some certainty, some relative certainty, how far we are going to go with Miss Harris, and I wouldn't expect the witness to be available at three o'clock to put in an hour to finish at a day, but I think she has to be ready for the next day.

MR. RUSH: I appreciate that, my lord. And let's assume we finish Miss Harris on Wednesday afternoon in direct or we find we can't proceed any further --

THE COURT: Then we'll proceed.

MR. RUSH: I would like some indication from my learned friends that we would -- that Miss Albright will be finished, including my redirect, by Friday afternoon. I think we need to know that. And my sense of it is my friend is not assuring me of that by any means.

THE COURT: Well, cross-examination is supposed to be sacred, and one thing we are not supposed to do is we are not supposed to apply closure onto cross-examination. There comes a time when you have to do so but I don't know that we've reached that.

But I think that if we are not finished -- if we

get started with Miss Albright -- or restarted with Miss Albright on Thursday, if we have to go through Saturday, I think we have to go through Saturday to finish her. But we haven't got far enough to -- or that far along that I received any submissions from counsel in that regard, but that's my preliminary view. I just believe that we have to finish these witnesses as best we can and we have to do it in the most inconvenient way and I don't know anything better than what I've just suggested. But I would think that we could tell from the way it's going on Monday and Tuesday, where we are going to be later that week, and I would think by Tuesday Mr. Willms would be able to give us a very, very close estimate of how much more time he will require for cross-examination. Is that -- is anything unexpected in what I've just said, Mr. Willms?

MR. WILLMS: No, my lord. It's still those 300 pages, but -- well, I can't say. I don't anticipate that there will be a difficulty advising the court sometime Tuesday of a time estimate for the completion of my cross-examination.

THE COURT: Well then, I think we'll leave it at that basis then and we'll start with Miss Harris Monday and we'll resume with this witness probably on Thursday. But if we can continue with Miss -- if we can continue with Miss Harris I think we should do so.

MR. RUSH: Yes, I think that's right.

THE COURT: All right, thank you.

THE REGISTRAR: Order in court. Court stands adjourned until 10:00 a.m. Monday.

(PROCEEDINGS ADJOURNED AT 3:45 p.m.)

I hereby certify the foregoing to be a true and accurate transcript of the proceedings herein transcribed to the best of my skill and ability.

_____

Toni Kerekes,
O.R., R.P.R.
United Reporting Service Ltd.